



Human Transplantation (Wales) Act 2013

2013 anaw 5

An Act of the National Assembly for Wales to make provision concerning the consent required for the removal, storage and use of human organs and tissue for the purpose of transplantation; and for connected purposes. [10 September 2013]

Having been passed by the National Assembly for Wales and having received the assent of Her Majesty, it is enacted as follows:

Introduction

1 Overview

The main provisions of this Act—

- (a) impose a duty on the Welsh Ministers to promote transplantation (section 2);
- (b) provide that certain activities done in Wales for the purpose of transplantation are lawful if done with consent (section 3);
- (c) set out how consent is given to transplantation activities, including the circumstances in which consent is deemed to be given in the absence of express consent (sections 4 to 9);
- (d) make it an offence for transplantation activities to be done in Wales without consent (section 10);
- (e) make amendments (sections 15 and 16) to the Human Tissue Act 2004, including in relation to a code of practice issued under that Act which—
 - (i) gives practical guidance to persons that do transplantation activities, and
 - (ii) lays down the standards expected in relation to the doing of such activities, including how consent is to be obtained.

Changes to legislation: There are currently no known outstanding effects for the Human Transplantation (Wales) Act 2013. (See end of Document for details)

Promotion of transplantation

2 Duty of the Welsh Ministers to promote transplantation

- (1) The Welsh Ministers must—
- (a) promote transplantation as a means of improving the health of the people of Wales,
 - (b) provide information and increase awareness about transplantation,
 - (c) inform the public of the circumstances in which consent to transplantation activities is deemed to be given in the absence of express consent, and
 - (d) ensure that the resources available to Local Health Boards include the specialist skills and competencies required for the purposes of this Act.
- (2) The duty under subsection (1) includes in particular an obligation on the Welsh Ministers, at least once every 12 months, to promote a campaign for the purpose of informing the public throughout Wales about the circumstances in which consent to transplantation activities is deemed to be given in the absence of express consent.
- (3) The Welsh Ministers must, for the first five years after this section comes into force, report annually to the National Assembly for Wales on the steps taken to fulfil their duty under subsection (1).

Lawful transplantation activities

3 Authorisation of transplantation activities

- (1) Transplantation activities are lawful if done in Wales—
- (a) with express consent where that is required (see sections 4 to 7), or
 - (b) otherwise with deemed consent (see sections 4 and 9).
- (2) The following are transplantation activities for the purpose of this Act—
- (a) storing the body of a deceased person for use for the purpose of transplantation;
 - (b) removing from the body of a deceased person, for use for that purpose, any relevant material of which the body consists or which it contains;
 - (c) storing for use for that purpose any relevant material which has come from a human body;
 - (d) using for that purpose any relevant material which has come from a human body.
- (3) A transplantation activity of the kind mentioned in subsection (2)(c) or (d) is lawful (without the need for consent) where done in Wales if—
- (a) the relevant material has been imported into Wales from outside Wales, and
 - (b) its removal from a person's body took place outside Wales.

Annotations:

Commencement Information

II S. 3 in force at 1.12.2015 by S.I. 2015/1679, art. 3(a)

Consent

4 Consent: adults

- (1) This section makes provision about consent for the purposes of section 3 in relation to a transplantation activity involving the body, or relevant material from the body, of a person who is not—
 - (a) an excepted adult (see section 5), or
 - (b) a child (see section 6).
- (2) Consent is deemed to be given to the activity unless—
 - (a) the case is one mentioned in the first column of Table 1 in subsection (3); in which case express consent is required, or
 - (b) the case is not one mentioned in the first column of Table 1 in subsection (3) and subsection (4) applies.
- (3) For each case mentioned in the first column of Table 1 the meaning of express consent in relation to an activity is as provided in the second column of the table—

TABLE 1

Case	Meaning of express consent
1. The person is alive.	The person's consent.
2. The person has died and a decision of the person to consent, or not to consent, to the activity was in force immediately before his or her death.	The person's consent.
3. The person has died, case 2 does not apply, the person had appointed a person or persons to deal with the issue of consent in relation to the activity and someone is able to give consent under the appointment.	Consent given by the person or persons appointed.
4. The person has died, case 2 does not apply and the person had appointed a person or persons to deal with the issue of consent in relation to the activity, but no one is able to give consent under the appointment.	Consent of a person who stood in a qualifying relationship to the person immediately before death.

- (4) This subsection applies if—
 - (a) a relative or friend of long standing of the deceased objects on the basis of views held by the deceased, and
 - (b) a reasonable person would conclude that the relative or friend knows that the most recent view of the deceased before death on consent for transplantation activities was that the deceased was opposed to consent being given.
- (5) In this section a reference to the appointment of a person or persons to deal with the issue of consent is a reference to an appointment under section 8.

Changes to legislation: There are currently no known outstanding effects for the Human Transplantation (Wales) Act 2013. (See end of Document for details)

- (6) This section does not apply to consent for a transplantation activity that involves removal of excluded relevant material (for provision in relation to which see section 7).

Annotations:

Commencement Information

I2 S. 4 in force at 1.12.2015 by S.I. 2015/1679, art. 3(a)

5 Consent: excepted adults

- (1) This section makes provision about consent for the purposes of section 3 in relation to a transplantation activity involving the body, or relevant material from the body, of an excepted adult.
- (2) In the case of an excepted adult express consent is required.
- (3) An “excepted adult” means—
- (a) an adult who has died and who had not been ordinarily resident in Wales for a period of at least 12 months immediately before dying, or
 - (b) an adult who has died and who for a significant period before dying lacked capacity to understand the notion that consent to transplantation activities can be deemed to be given;
- and for this purpose a significant period means a sufficiently long period as to lead a reasonable person to conclude that it would be inappropriate for consent to be deemed to be given.
- (4) For each case mentioned in the first column of Table 2 the meaning of express consent in relation to an activity is as provided in the second column of the table—

TABLE 2

Case	Meaning of express consent
1. A decision of the excepted adult to consent, or not to consent, to the activity was in force immediately before death.	The excepted adult's consent.
2. Case 1 does not apply, the excepted adult had appointed a person or persons to deal with the issue of consent in relation to the activity and someone is able to give consent under the appointment.	Consent given by the person or persons appointed.
3. Case 1 does not apply and the excepted adult had appointed a person or persons to deal with the issue of consent in relation to the activity, but no one is able to give consent under the appointment.	Consent of a person who stood in a qualifying relationship to the excepted adult immediately before death.

Changes to legislation: There are currently no known outstanding effects for the Human Transplantation (Wales) Act 2013. (See end of Document for details)

4. None of cases 1, 2 or 3 applies in relation to the excepted adult.	Consent of a person who stood in a qualifying relationship to the excepted adult immediately before death.
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(5) In this section a reference to the appointment of a person or persons to deal with the issue of consent is a reference to an appointment under section 8.

(6) This section does not apply to consent for a transplantation activity that involves removal of excluded relevant material (for provision in relation to which see section 7).

Annotations:

Commencement Information

I3 S. 5 in force at 1.12.2015 by S.I. 2015/1679, art. 3(a)

6 Consent: children

(1) This section makes provision about consent for the purposes of section 3 in relation to a transplantation activity involving the body, or relevant material from the body, of a person who is a child or has died a child.

(2) In the case of a person who is a child or has died a child express consent is required.

(3) For each case mentioned in the first column of Table 3 the meaning of express consent in relation to an activity is as provided in the second column of the table—

TABLE 3

Case	Meaning of express consent
1. The child is alive and case 2 does not apply.	The child's consent.
2. The child is alive, no decision of the child to consent, or not to consent, to the activity is in force, and either the child is not competent to deal with the issue of consent or is competent to deal with the issue but fails to do so.	Consent of a person who has parental responsibility for the child.
3. The child has died and a decision of the child to consent, or not to consent, to the activity was in force immediately before death.	The child's consent.
4. The child has died, case 3 does not apply, the child had appointed a person or persons to deal with the issue of consent in relation to the activity and someone is able to give consent under the appointment.	Consent given by the person or persons appointed.
5. The child has died, case 3 does not apply and the child had appointed a person or persons to deal with the issue	Consent of a person who had parental responsibility for the child immediately before the child died, or where no such