



# Deddf Trawsblannu Dynol (Cymru) 2013

2013 dccc 5

# Human Transplantation (Wales) Act 2013

2013 anaw 5

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Lluniwyd Nodiadau Esboniadol yn gymorth i ddeall y Ddeddf hon ac maent ar gael ar wahân.

Explanatory Notes have been produced to assist in the understanding of this Act and are available separately.

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# Human Transplantation (Wales) Act 2013

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# Deddf Trawsblannu Dynol (Cymru) 2013

Deddf gan Gynulliad Cenedlaethol Cymru i wneud darpariaeth ynglŷn â'r cydsyniad sy'n ofynnol ar gyfer tynnu, storio a defnyddio organau a meinweoedd dynol at ddiben trawsblannu; ac at ddibenion cysylltiedig. [10 Medi 2013]

**Gan ei fod wedi ei basio gan Gynulliad Cenedlaethol Cymru ac wedi cael cydsyniad Ei Mawrhydi, deddfir fel a ganlyn:**

## *Cyflwyniad*

### 1 Trosolwg

Mae prif ddarpariaethau'r Ddeddf hon—

- (a) yn gosod dyletswydd ar Weinidogion Cymru i hyrwyddo trawsblannu (adran 2);
- (b) yn darparu bod gweithgareddau penodol a wneir yng Nghymru at ddiben trawsblannu yn gyfreithlon os cânt eu gwneud â chydsyniad (adran 3);
- (c) yn nodi sut y caiff cydsyniad ei roi i weithgareddau trawsblannu, gan gynnwys yr amgylchiadau lle yr ystyrir bod cydsyniad wedi ei roi yn absenoldeb cydsyniad datganedig (adrannau 4 i 9);
- (d) yn ei gwneud yn drosedd i weithgareddau trawsblannu gael eu cyflawni yng Nghymru heb gydsyniad (adran 10);
- (e) yn gwneud diwygiadau (adrannau 15 ac 16) i Ddeddf Meinweoedd Dynol 2004 gan gynnwys darpariaeth mewn perthynas â chod ymarfer sydd—
  - (i) yn rhoi canllawiau ymarferol i bersonau sy'n cyflawni gweithgareddau trawsblannu, a
  - (ii) yn gosod y safonau a ddisgwylir mewn perthynas â chyflawni'r gweithgareddau hynny, gan gynnwys sut y mae cydsyniad i'w gael.

## *Hyrwyddo trawsblannu*

### 2 Dyletswydd Gweinidogion Cymru i hyrwyddo trawsblannu

(1) Rhaid i Weinidogion Cymru—

- (a) hyrwyddo trawsblannu fel modd i wella iechyd pobl Cymru,
- (b) darparu gwybodaeth am drawsblannu a chynyddu ymwybyddiaeth ohono,
- (c) hysbysu'r cyhoedd am yr amgylchiadau lle yr ystyrir bod cydsyniad wedi ei roi i weithgareddau trawsblannu yn absenoldeb cydsyniad datganedig, a



# Human Transplantation (Wales) Act 2013

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.

## *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) sicrhau bod yr adnoddau sydd ar gael i Fyrddau Iechyd Lleol yn cynnwys y cymwyseddau a'r sgiliau arbenigol sy'n ofynnol at ddibenion y Ddeddf hon.
- (2) Mae'r ddyletswydd o dan is-adran (1) yn cynnwys, yn benodol, rwymedigaeth ar Weinidogion Cymru i hyrwyddo, o leiaf unwaith bob 12 mis, ymgyrch i hysbysu'r cyhoedd ledled Cymru am yr amgylchiadau lle yr ystyrir bod cydsyniad i weithgareddau trawsblannu wedi ei roi yn absenoldeb cydsyniad datganedig.
- (3) Rhaid i Weinidogion Cymru, am y pum mlynedd gyntaf ar ôl i'r adran hon ddod i rym, adrodd yn flynyddol i Gynulliad Cenedlaethol Cymru ar y camau a gymerwyd i gyflawni eu dyletswyddau o dan is-adran (1).

*Gweithgareddau trawsblannu cyfreithlon*

**3 Awdurdodi gweithgareddau trawsblannu**

- (1) Mae gweithgareddau trawsblannu yn gyfreithlon os cânt eu gwneud yng Nghymru –
- â chydsyniad datganedig pan fo'n ofynnol ei gael (gweler adrannau 4 i 7), neu
  - fel arall lle yr ystyrir bod cydsyniad wedi ei roi (gweler adrannau 4 ac 9).
- (2) Mae'r canlynol yn weithgareddau trawsblannu at ddiben y Ddeddf hon –
- storio corff person ymadawedig i'w ddefnyddio at ddiben trawsblannu;
  - tynnu o gorff person ymadawedig, i'w ddefnyddio at y diben hwnnw, unrhyw ddeunydd perthnasol y mae'r corff wedi ei gyfansoddi ohono neu y mae'n ei gynnwys;
  - storio i'w ddefnyddio at y diben hwnnw unrhyw ddeunydd perthnasol sydd wedi dod o gorff dynol;
  - defnyddio at y diben hwnnw unrhyw ddeunydd perthnasol sydd wedi dod o gorff dynol.
- (3) Mae gweithgaredd trawsblannu o'r math a grybwyllir yn is-adran (2)(c) neu (d) yn gyfreithlon (heb yr angen am gydsyniad) pan y'i gwneir yng Nghymru –
- os yw'r deunydd perthnasol wedi ei fewnforio i Gymru o'r tu allan i Gymru, a
  - os tynnwyd y deunydd o gorff person y tu allan i Gymru.

*Cydsynio*

**4 Cydsynio: oedolion**

- (1) Mae'r adran hon yn gwneud darpariaeth ynghylch cydsynio at ddibenion adran 3 mewn perthynas â gweithgaredd trawsblannu sy'n ymwneud â chorff, neu ddeunydd perthnasol o gorff, person nad yw –
- yn oedolyn a eithrir (gweler adran 5), neu
  - yn blentyn (gweler adran 6).
- (2) Ystyrir bod cydsyniad wedi ei roi i'r gweithgaredd oni bai –
- bod yr achos yn un a grybwyllir yng ngholofn gyntaf Tabl 1 yn is-adran (3); ac os felly mae'n ofynnol cael cydsyniad datganedig, neu
  - nad yw'r achos yn un a grybwyllir yng ngholofn gyntaf Tabl 1 yn is-adran (3) ac mae is-adran (4) yn gymwys.



- (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.

*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) Ar gyfer pob achos a grybwyllir yng ngholofn gyntaf Tabl 1, mae ystyr cydsyniad datganedig mewn perthynas â gweithgaredd wedi ei ddarparu yn ail golofn y tabl –

**TABL 1**

Yr achos	Ystyr cydsyniad datganedig
1. Mae'r person yn fyw.	Cydsyniad y person.
2. Mae'r person wedi marw ac yr oedd penderfyniad gan y person i gydsynio, neu i beidio â chydsynio, i'r gweithgaredd mewn grym yn union cyn iddo farw.	Cydsyniad y person.
3. Mae'r person wedi marw, nid yw achos 2 yn gymwys, yr oedd y person wedi penodi person neu bersonau i ymdrin â'r mater o gydsynio mewn perthynas â'r gweithgaredd ac mae rhywun yn gallu rhoi cydsyniad o dan y penodiad.	Cydsyniad a roddir gan y person neu'r personau a benodir.
4. Mae'r person wedi marw, nid yw achos 2 yn gymwys ac yr oedd y person wedi penodi person neu bersonau i ymdrin a'r mater o gydsynio mewn perthynas â'r gweithgaredd, ond nid oes neb yn gallu rhoi cydsyniad o dan y penodiad.	Cydsyniad person y mae perthynas gymhwysol rhyngddo a'r person cyn iddo farw.

- (4) Mae'r is-adran hon yn gymwys –

- (a) os yw perthynas neu gyfaill ers amser maith i'r ymadawedig yn gwrthwynebu ar sail barn yr ymadawedig, a
  - (b) pe byddai person rhesymol yn dod i'r casgliad bod y perthynas neu'r cyfaill yn gwybod mai barn ddiweddaraf yr ymadawedig cyn iddo farw ar gydsynio i weithgareddau trawsblannu oedd bod yr ymadawedig yn gwrthwynebu i gydsyniad gael ei roi.
- (5) Yn yr adran hon mae cyfeiriad at benodi person neu bersonau i ymdrin â'r mater o gydsynio yn gyfeiriad at benodiad o dan adran 8.
- (6) Nid yw'r adran hon yn gymwys i gydsyniad i weithgaredd trawsblannu sy'n ymwneud â thynnu deunydd perthnasol a eithrir (gweler adran 7 am ddarpariaeth mewn perthynas â hyn).

## 5 Cydsynio: oedolion a eithrir

- (1) Mae'r adran hon yn gwneud darpariaeth ynghylch cydsynio at ddibenion adran 3 mewn perthynas â gweithgaredd trawsblannu sy'n ymwneud â chorff, neu ddeunydd perthnasol o gorff, oedolyn a eithrir.
- (2) Yn achos oedolyn a eithrir mae angen cydsyniad datganedig.
- (3) Ystyr "oedolyn a eithrir" yw –
  - (a) oedolyn sydd wedi marw ac nad oedd wedi bod yn preswyllo fel arfer yng Nghymru am gyfnod o 12 mis o leiaf yn union cyn iddo farw, neu

- (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.
- (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).

## 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) oedolyn sydd wedi marw ac nad oedd ganddo am gyfnod sylweddol cyn marw y galluedd i ddeall y cysyniad y gellir ystyried bod cydsyniad i weithgareddau trawsblannu wedi ei roi;

ac at y diben hwn mae cyfnod sylweddol yn golygu cyfnod sy'n ddigon hir i arwain person rhesymol i'r casgliad y byddai'n amhriodol ystyried bod cydsyniad wedi ei roi.

- (4) Ar gyfer pob achos a grybwyllir yng ngholofn gyntaf Tabl 2 mae ystyr cydsyniad datganedig mewn perthynas â gweithgaredd wedi ei ddarparu yn ail golofn y tabl—

**TABL 2**

Yr achos	Ystyr cydsyniad datganedig
1. Yr oedd penderfyniad gan yr oedolyn a eithrir i gydsynio, neu i beidio â chydsynio, i'r gweithgaredd mewn grym yn union cyn iddo farw.	Cydsyniad yr oedolyn a eithrir.
2. Nid yw achos 1 yn gymwys, yr oedd yr oedolyn a eithrir wedi penodi person neu bersonau i ymdrin â'r mater o gydsynio mewn perthynas â'r gweithgaredd, ac mae rhywun yn gallu rhoi cydsyniad o dan y penodiad.	Cydsyniad a roddir gan y person neu'r personau a benodir.
3. Nid yw achos 1 yn gymwys ac yr oedd yr oedolyn a eithrir wedi penodi person neu bersonau i ymdrin â'r mater o gydsynio mewn perthynas â'r gweithgaredd, ond nid oes neb yn gallu rhoi cydsyniad o dan y penodiad.	Cydsyniad person y mae perthynas gymhwysol rhyngddo a'r oedolyn a eithrir yn union cyn iddo farw.
4. Nid yw achosion 1, 2 na 3 yn gymwys mewn perthynas â'r oedolyn a eithrir.	Cydsyniad person y mae perthynas gymhwysol rhyngddo a'r oedolyn a eithrir yn union cyn iddo farw.

- (5) Yn yr adran hon mae cyfeiriad at benodi person neu bersonau i ymdrin â'r mater o gydsynio yn gyfeiriad at benodiad o dan adran 8.

- (6) Nid yw'r adran hon yn gymwys i gydsyniad i weithgaredd trawsblannu sy'n ymwneud â thynnu deunydd perthnasol a eithrir (gweler adran 7 am ddarpariaeth mewn perthynas â hyn).

## 6 Cydsynio: plant

- (1) Mae'r adran hon yn gwneud darpariaeth ynghylch cydsyniad at ddibenion adran 3 mewn perthynas â gweithgaredd trawsblannu sy'n ymwneud â chorff, neu ddeunydd perthnasol o gorff, person sy'n blentyn neu sydd wedi marw'n blentyn.
- (2) Yn achos person sy'n blentyn neu sydd wedi marw'n blentyn mae angen cydsyniad datganedig.
- (3) Ar gyfer pob achos a grybwyllir yng ngholofn gyntaf Tabl 3 mae ystyr cydsyniad datganedig wedi ei ddarparu yn ail golofn y tabl—

- (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.
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.

- (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).

## 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 –

TABL 3

Yr achos	Ystyr cydsyniad datganedig
1. Mae'r plentyn yn fyw ac nid yw achos 2 yn gymwys.	Cydsyniad y plentyn.
2. Mae'r plentyn yn fyw, nid oes unrhyw benderfyniad gan y plentyn i gydsynio, neu i beidio â chydsynio, i'r gweithgaredd mewn grym, a naill ai nid yw'r plentyn yn gymwys i ymdrin â'r mater o gydsynio neu mae'n gymwys i ymdrin â'r mater ond yn methu â gwneud hynny.	Cydsyniad person sydd â chyfrifoldeb rhiant dros y plentyn.
3. Mae'r plentyn wedi marw ac yr oedd penderfyniad gan y plentyn i gydsynio, neu i beidio â chydsynio, i'r gweithgaredd mewn grym yn union cyn iddo farw.	Cydsyniad y plentyn.
4. Mae'r plentyn wedi marw, nid yw achos 3 yn gymwys, yr oedd y plentyn wedi penodi person neu bersonau i ymdrin â'r mater o gydsynio mewn perthynas â'r weithgaredd ac mae rhywun yn gallu rhoi cydsyniad o dan y penodiad.	Cydsyniad a roddir gan y person neu'r personau a benodir.
5. Mae'r plentyn wedi marw, nid yw achos 3 yn gymwys ac yr oedd y plentyn wedi penodi person neu bersonau i ymdrin â'r mater o gydsynio mewn perthynas â'r gweithgaredd, ond nid oes neb yn gallu rhoi cydsyniad o dan y penodiad.	Cydsyniad person a oedd â chyfrifoldeb rhiant dros y plentyn yn union cyn i'r plentyn farw, neu pan nad oes unrhyw berson o'r fath yn bodoli, cydsyniad person y mae perthynas gymhwysol rhyngddo a'r plentyn yr adeg honno.
6. Mae'r plentyn wedi marw ac nid yw achosion 3, 4 na 5 yn gymwys mewn perthynas â'r plentyn.	Cydsyniad person a oedd â chyfrifoldeb rhiant dros y plentyn yn union cyn i'r plentyn farw, neu pan nad oes unrhyw berson o'r fath yn bodoli, cydsyniad person y mae perthynas gymhwysol rhyngddo a'r plentyn yr adeg honno.

- (4) Yn yr adran hon, nid yw penderfyniad neu benodiad a wneir gan blentyn ond yn ddilys os oedd y plentyn yn gymwys i ymdrin â'r mater o gydsyniad wrth ei wneud.
- (5) Yn yr adran hon, mae cyfeiriad at benodiad person neu bersonau i ymdrin â'r mater o gydsyniad yn gyfeiriad at benodiad o dan adran 8.
- (6) Nid yw'r adran hon yn gymwys i gydsyniad i weithgaredd trawsblannu sy'n ymwneud â thynnu deunydd perthnasol a eithrir (gweler adran 7 am ddarpariaeth mewn perthynas â hyn).

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 of consent in relation to the activity, but no one is able to give consent under the appointment.	Consent of a person who had parental responsibility for the child immediately before the child died, or where no such person exists, the consent of a person in a qualifying relationship to the child at that time.
6. The child has died and none of cases 3, 4 or 5 applies in relation to the child.	Consent of a person who had parental responsibility for the child immediately before the child died, or where no such person exists, the consent of a person in a qualifying relationship to the child at that time.

- (4) In this section a decision or appointment made by a child is only valid if the child was competent to deal with the issue of consent when it was made.
- (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).



**7 Cydsynio: gweithgareddau trawsblannu sy'n ymwneud â deunydd a eithrir**

- (1) Mae'r adran hon yn darparu ar gyfer cydsyniad i weithgaredd trawsblannu sy'n ymwneud â thynnu deunydd perthnasol a eithrir.
- (2) Yn y Ddeddf hon, ystyr "deunydd perthnasol a eithrir" yw deunydd perthnasol o fath a bennir gan Weinidogion Cymru mewn rheoliadau.
- (3) Enghreifftiau o'r mathau o ddeunydd perthnasol y caniateir ei bennu'n ddeunydd perthnasol a eithrir yw meinweoedd cyfansawdd a mathau eraill o ddeunydd yr ystyrir bod eu tynnu a'u defnyddio yn ddull newydd.
- (4) Yn achos gweithgaredd trawsblannu sy'n ymwneud â thynnu deunydd perthnasol a eithrir mae cydsyniad datganedig yn ofynnol, ac mae rhaid i'r cydsyniad hwnnw fod yn benodol i dynnu deunydd perthnasol a eithrir.
- (5) I oedolyn, ar gyfer pob achos a grybwyllir yng ngholofn gyntaf Tabl 4, ystyr cydsyniad datganedig mewn perthynas â gweithgaredd yw'r ystyr a nodir yn ail golofn y tabl—

**TABL 4**

Yr achos	Ystyr cydsyniad datganedig
1. Mae'r oedolyn yn fyw.	Cydsyniad yr oedolyn.
2. Mae'r oedolyn wedi marw ac yr oedd penderfyniad gan yr oedolyn i gydsynio, neu i beidio â chydsynio, i'r gweithgaredd mewn grym yn union cyn iddo farw.	Cydsyniad yr oedolyn.
3. Mae'r oedolyn wedi marw, nid yw achos 2 yn gymwys, yr oedd yr oedolyn wedi penodi person neu bersonau i ymdrin â'r mater o gydsynio mewn perthynas â'r gweithgaredd ac mae rhywun yn gallu rhoi cydsyniad o dan y penodiad.	Cydsyniad a roddir gan y person neu'r personau a benodir.
4. Mae'r person wedi marw, nid yw achos 2 yn gymwys ac yr oedd yr oedolyn wedi penodi person neu bersonau i ymdrin â'r mater o gydsynio mewn perthynas â'r gweithgaredd, ond nid oes neb yn gallu rhoi cydsyniad o dan y penodiad.	Cydsyniad person y mae perthynas gymhwysol rhyngddo a'r oedolyn yn union cyn iddo farw.
5. Mae'r oedolyn wedi marw ac nid yw achosion 2, 3 na 4 yn gymwys mewn perthynas â'r oedolyn.	Cydsyniad person y mae perthynas gymhwysol rhyngddo a'r oedolyn yn union cyn iddo farw.

- (6) I blentyn, ar gyfer pob achos a grybwyllir yng ngholofn gyntaf Tabl 5, ystyr cydsyniad datganedig mewn perthynas â gweithgaredd yw'r ystyr a nodir yn ail golofn y tabl—



**7 Consent: transplantation activities involving excluded material**

- (1) This section makes provision about consent for a transplantation activity that involves the removal of excluded relevant material.
- (2) In this Act, “excluded relevant material” means relevant material of a type specified by the Welsh Ministers in regulations.
- (3) Examples of the types of relevant material that may be specified are composite tissues and other types of material the removal and use of which is considered to be novel.
- (4) In the case of a transplantation activity that involves the removal of excluded relevant material express consent is required, and such consent must be specific to the removal of excluded relevant material.
- (5) For an adult, for each case mentioned in the first column of Table 4 the meaning of express consent in relation to an activity is as provided in the second column of the table—

**TABLE 4**

<b>Case</b>	<b>Meaning of express consent</b>
1. The adult is alive.	The adult’s consent.
2. The adult has died and a decision of the adult to consent, or not to consent, to the activity was in force immediately before death.	The adult’s consent.
3. The adult has died, case 2 does not apply, the 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.
4. The adult has died, case 2 does not apply and the 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 adult immediately before death.
5. The adult has died and none of cases 2, 3 or 4 applies in relation to the adult.	Consent of a person who stood in a qualifying relationship to the adult immediately before death.

- (6) For a child, for each case mentioned in the first column of Table 5 the meaning of express consent in relation to an activity is as provided in the second column of the table—

TABL 5

Yr achos	Ystyr cydsyniad datganedig
1. Mae'r plentyn yn fyw ac nid yw achos 2 yn gymwys.	Cydsyniad y plentyn.
2. Mae'r plentyn yn fyw, nid oes unrhyw benderfyniad gan y plentyn i gydsynio, neu i beidio â chydsynio, i'r gweithgaredd mewn grym, ac nid yw'r plentyn yn gymwys i ymdrin â'r mater o gydsynio, neu, mae'n gymwys i ymdrin â'r mater ond yn methu â gwneud hynny.	Cydsyniad person sydd â chyfrifoldeb rhiant dros y plentyn.
3. Mae'r plentyn wedi marw ac yr oedd penderfyniad gan y plentyn i gydsynio, neu i beidio â chydsynio, i'r gweithgaredd mewn grym yn union cyn iddo farw.	Cydsyniad y plentyn.
4. Mae'r plentyn wedi marw, nid yw achos 3 yn gymwys, yr oedd y plentyn wedi penodi person neu bersonau i ymdrin â'r mater o gydsynio mewn perthynas â'r gweithgaredd ac mae rhywun yn gallu rhoi cydsyniad o dan y penodiad.	Cydsyniad a roddir gan y person neu'r personau a benodir.
5. Mae'r plentyn wedi marw, nid yw achos 3 yn gymwys ac yr oedd yr oedolyn wedi penodi person neu bersonau i ymdrin â'r mater o gydsynio mewn perthynas â'r gweithgaredd, ond nid oes neb yn gallu rhoi cydsyniad o dan y penodiad.	Cydsyniad person a oedd â chyfrifoldeb rhiant dros y plentyn yn union cyn i'r plentyn farw, neu pan nad oes unrhyw berson o'r fath yn bodoli, cydsyniad person y mae perthynas gymhwysol rhyngddo a'r plentyn yr adeg honno.
6. Mae'r plentyn wedi marw ac nid yw achosion 3, 4 na 5 yn gymwys mewn perthynas â'r plentyn.	Cydsyniad person a oedd â chyfrifoldeb rhiant dros y plentyn yn union cyn i'r plentyn farw, neu pan nad oes unrhyw berson o'r fath yn bodoli, cydsyniad person y mae perthynas gymhwysol rhyngddo a'r plentyn yr adeg honno.

- (7) Yn yr adran hon, nid yw penderfyniad neu benodiad a wneir gan blentyn ond yn ddilys os oedd y plentyn yn gymwys i ymdrin â'r mater o gydsyniad wrth ei wneud.
- (8) Yn yr adran hon, mae cyfeiriad at benodiad person neu bersonau i ymdrin â'r mater o gydsyniad yn gyfeiriad at benodiad o dan adran 8.

## 8 Cynrychiolwyr penodedig

- (1) Caiff person benodi un neu ragor o bersonau i gynrychioli'r person ar ôl ei farwolaeth mewn perthynas â chydsyniad datganedig at ddibenion adran 3.
- (2) Caiff penodiad fod yn gyffredinol neu'n gyfyngedig i gydsyniad mewn perthynas ag unrhyw un neu ragor o weithgareddau trawsblannu a bennir yn y penodiad.
- (3) Caniateir i benodiad gael ei wneud ar lafar neu'n ysgrifenedig.
- (4) Dim ond os caiff ei wneud ym mhresenoldeb o leiaf ddau dyst sy'n bresennol yr un pryd y mae penodiad llafar yn ddilys.

TABLE 5

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 of 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 of consent in relation to the activity, but no one is able to give consent under the appointment.	Consent of a person who had parental responsibility for the child immediately before the child died, or where no such person exists, the consent of a person who stood in a qualifying relationship to the child at that time.
6. The child has died and none of cases 3, 4 or 5 applies in relation to the child.	Consent of a person who had parental responsibility for the child immediately before the child died, or where no such person exists, the consent of a person who stood in a qualifying relationship to the child at that time.

- (7) In this section a decision or appointment made by a child is only valid if the child was competent to deal with the issue of consent when it was made.
- (8) 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.

## 8 Appointed representatives

- (1) A person may appoint one or more persons to represent the person after death in relation to express consent for the purposes of section 3.
- (2) An appointment may be general or limited to consent in relation to such one or more transplantation activities as may be specified in the appointment.
- (3) An appointment may be made orally or in writing.
- (4) An oral appointment is only valid if made in the presence of at least two witnesses present at the same time.

- (5) Dim ond os yw un o'r canlynol yn wir y mae penodiad ysgrifenedig yn ddilys –
  - (a) ei fod wedi ei lofnodi gan y person sy'n ei wneud ym mhresenoldeb o leiaf un tyst sy'n ardystio'r llofnod,
  - (b) ei fod wedi ei lofnodi yn ôl cyfarwyddyd y person sy'n ei wneud, yn ei bresenoldeb ac ym mhresenoldeb o leiaf un tyst sy'n ardystio'r llofnod, neu
  - (c) ei fod wedi ei gynnwys yn ewyllys y person sy'n ei wneud, a honno'n ewyllys sydd wedi ei gwneud yn unol â gofynion adran 9 o Ddeddf Ewyllysiau 1837.
- (6) Pan fo person yn penodi dau berson neu ragor mewn perthynas â'r un gweithgaredd trawsblannu, maent i'w hystyried yn rhai sydd wedi eu penodi i weithredu ar y cyd ac yn unigol onid yw'r penodiad yn darparu eu bod wedi eu penodi i weithredu ar y cyd.
- (7) Caniateir i benodiad gael ei ddirymu ar unrhyw bryd.
- (8) Mae is-adrannau (3) i (5) yn gymwys i ddirymu penodiad yn yr un modd ag y maent yn gymwys i wneud penodiad o'r fath.
- (9) Caiff person a benodir ildio'r penodiad ar unrhyw bryd.
- (10) Ni chaiff person weithredu o dan benodiad –
  - (a) os nad yw'n oedolyn, neu
  - (b) os yw'r person o ddisgrifiad a ragnodir drwy reoliadau a wneir gan Weinidogion Cymru.
- (11) Pan fo person wedi penodi person neu bersonau o dan adran 4 o Ddeddf Meinweoedd Dynol 2004 i ymdrin â'r mater o gydsynio mewn perthynas â gweithgaredd a wneir at ddibenion trawsblannu, mae'r person i'w drin hefyd fel un sydd wedi gwneud penodiad o dan yr adran hon mewn perthynas â'r gweithgaredd.
- (12) At ddiben adrannau 4(3), 5(4), 6(3) a 7 os nad yw'n rhesymol ymarferol cyfathrebu â pherson a benodir o dan yr adran hon o fewn yr amser sydd ar gael os yw'r cydsyniad i gael ei roi ar waith, mae'r person i gael ei drin fel pe na bai'n gallu rhoi cydsyniad i weithgaredd o dan y penodiad.

## **9 Gweithgareddau sy'n ymwneud â deunydd o oedolion nad yw'r galluedd ganddynt i gydsynio**

- (1) Mae'r adran hon yn gymwys –
  - (a) pan fo gweithgaredd trawsblannu o fewn adran 3(2)(c) neu (d) (storio neu ddefnyddio deunydd perthnasol sydd wedi dod o gorff dynol) sy'n cael ei wneud yng Nghymru yn ymwneud â deunydd perthnasol o gorff person ("P") –
    - (i) sy'n oedolyn, a
    - (ii) nad yw'r galluedd ganddo i gydsynio â'r gweithgaredd, a
  - (b) pan na fo unrhyw benderfyniad gan P i gydsynio, neu i beidio â chydsynio, i'r gweithgaredd mewn grym.
- (2) Ystyrir bod P wedi cydsynio i'r gweithgaredd os yw'r gweithgaredd wedi ei wneud mewn amgylchiadau o fath a bennir drwy reoliadau a wneir gan Weinidogion Cymru.

- (5) A written appointment is only valid if –
  - (a) it is signed by the person making it in the presence of at least one witness who attests the signature,
  - (b) it is signed at the direction of the person making it, in his or her presence and in the presence of at least one witness who attests the signature, or
  - (c) it is contained in a will of the person making it, being a will which is made in accordance with the requirements of section 9 of the Wills Act 1837.
- (6) Where a person appoints two or more persons in relation to the same transplantation activity, they are to be regarded as appointed to act jointly and severally unless the appointment provides that they are appointed to act jointly.
- (7) An appointment may be revoked at any time.
- (8) Subsections (3) to (5) apply to the revocation of an appointment as they apply to the making of such an appointment.
- (9) A person appointed may at any time renounce the appointment.
- (10) A person may not act under an appointment if the person –
  - (a) is not an adult, or
  - (b) is of a description prescribed by regulations made by the Welsh Ministers.
- (11) Where a person has appointed a person or persons under section 4 of the Human Tissue Act 2004 to deal after death with the issue of consent in relation to an activity done for the purpose of transplantation, the person is also to be treated as having made an appointment under this section in relation to the activity.
- (12) For the purpose of sections 4(3), 5(4), 6(3) and 7 if it is not reasonably practicable to communicate with a person appointed under this section within the time available if consent is to be acted upon, the person is to be treated as being not able to give consent to an activity under the appointment.

## **9 Activities involving material from adults who lack capacity to consent**

- (1) This section applies where –
  - (a) a transplantation activity within section 3(2)(c) or (d) (storage or use of relevant material which has come from a human body) done in Wales involves relevant material from the body of a person (“P”) who –
    - (i) is an adult, and
    - (ii) lacks capacity to consent to the activity, and
  - (b) no decision of P’s to consent, or not to consent, to the activity is in force.
- (2) P’s consent to the activity is to be deemed if the activity is done in circumstances of a kind specified by regulations made by the Welsh Ministers.

## Troseddau

**10 Gwahardd gweithgareddau heb gydsyniad**

- (1) Mae person yn cyflawni trosedd os yw'n gwneud, heb gydsyniad, weithgaredd trawsblannu yng Nghymru.
- (2) Ond nid yw person yn cyflawni trosedd o dan is-adran (1) –
  - (a) os yw'r person yn credu yn rhesymol –
    - (i) ei fod yn gwneud y weithgaredd â chydsyniad, neu
    - (ii) nad yw'r hyn y mae'n ei wneud yn weithgaredd trawsblannu;
  - (b) os yw adran 3(3) (deunydd sydd wedi'i fewnforio) yn gymwys;
  - (c) os yw adran 13(1) (preserfio deunydd at ei drawsblannu) yn gymwys.
- (3) Mae person yn cyflawni trosedd os yw, yng Nghymru –
  - (a) yn ymhonni'n dwyllodrus wrth berson y mae'n gwybod neu'n credu ei fod yn mynd i wneud gweithgaredd trawsblannu neu y gall ei wneud –
    - (i) bod cydsyniad i wneud y gweithgaredd, neu
    - (ii) nad yw'r gweithgaredd yn weithgaredd trawsblannu, a
  - (b) yn gwybod bod yr ymholiad yn anwir neu ddim yn credu ei fod yn wir.
- (4) Mae person sy'n euog o drosedd o dan yr adran hon yn agored –
  - (a) o'i gollfarnu'n ddiannod i ddirwy heb fod yn fwy na'r uchafswm statudol;
  - (b) o'i gollfarnu ar ddiad –
    - (i) i garchariad am gyfnod heb fod yn hwy na 3 blynedd, neu
    - (ii) i ddirwy, neu
    - (iii) i'r ddau.
- (5) Yn yr adran hon ystyr "cydsyniad" yw'r cydsyniad sy'n ofynnol yn rhinwedd adran 3.

**11 Troseddau gan gyrff corfforaethol**

- (1) Pan fo corff corfforaethol yn cyflawni trosedd o dan adran 10 ac os profir bod y trosedd hwnnw wedi ei gyflawni â chydsyniad neu gydgyllwyn unrhyw un o'r canlynol, neu y gellir ei briodoli i esgeulustod ar ran unrhyw un o'r canlynol –
  - (a) unrhyw gyfarwyddwr, rheolwr neu ysgrifennydd i'r corff corfforaethol, neu
  - (b) unrhyw swyddog oedd yn honni gweithredu yn rhinwedd unrhyw un o'r swyddi hynny,

bydd yr unigolyn hwnnw (yn ogystal â'r corff corfforaethol) yn euog o'r trosedd ac yn agored i achos yn ei erbyn a chosb yn unol â hynny.
- (2) Mae'r cyfeiriad at gyfarwyddwr, rheolwr neu ysgrifennydd i'r corff corfforaethol yn cynnwys cyfeiriad at –
  - (a) unrhyw swyddog tebyg sydd gan y corff;
  - (b) pan fo'r corff yn gorff corfforaethol y mae ei fusnes yn cael ei reoli gan ei aelodau, unrhyw swyddog neu aelod o'r corff.

*Offences***10 Prohibition of activities without consent**

- (1) A person commits an offence if the person does, without consent, a transplantation activity in Wales.
- (2) But a person does not commit an offence under subsection (1) if—
  - (a) the person reasonably believes—
    - (i) that he or she does the activity with consent, or
    - (ii) that what he or she does is not a transplantation activity;
  - (b) section 3(3) (imported material) applies;
  - (c) section 13(1) (preservation for transplantation) applies.
- (3) A person (“P”) commits an offence if, in Wales—
  - (a) P falsely represents to a person whom P knows or believes is going to, or may, do a transplantation activity—
    - (i) that there is consent to the doing of the activity, or
    - (ii) that the activity is not a transplantation activity, and
  - (b) P knows that the representation is false or does not believe it to be true.
- (4) A person guilty of an offence under this section is liable—
  - (a) on summary conviction to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment—
    - (i) to imprisonment for a term not exceeding 3 years, or
    - (ii) to a fine, or
    - (iii) to both.
- (5) In this section “consent” means the consent required by virtue of section 3.

**11 Offences by bodies corporate**

- (1) Where an offence under section 10 is committed by a body corporate and is proven to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—
  - (a) any director, manager or secretary of the body corporate, or
  - (b) any officer who was purporting to act in that capacity,he or she (as well as the body corporate) is guilty of the offence and liable to be proceeded against and punished accordingly.
- (2) The reference to the director, manager or secretary of the body corporate includes a reference—
  - (a) to any similar officer of the body;
  - (b) where the body is a body corporate whose affairs are managed by its members, to any officer or member of the body.



**12 Erlyn**

Ni chaniateir cychwyn achos am drosedd o dan adran 10 ac eithrio drwy neu â chydsyniad y Cyfarwyddwr Erlyniadau Cyhoeddus.

*Cyffredinol***13 Preserfio deunydd at ei drawsblannu**

- (1) Pan fo rhan o gorff person ymadawedig sy'n gorwedd mewn ysbyty, cartref nyrsio neu sefydliad arall yng Nghymru yn addas neu o bosibl yn addas i'w defnyddio mewn trawsblaniad, mae'n gyfreithlon i'r person sy'n llywio neu'n rheoli'r sefydliad—
  - (a) cymryd camau at breserfio'r rhan i'w defnyddio mewn trawsblaniad, a
  - (b) cadw'r corff at y diben hwnnw.
- (2) Nid yw awdurdod o dan is-adran (1)(a) yn ymestyn ond at—
  - (a) cymryd y lleiafswm o gamau angenrheidiol at y diben a grybwyllir yn y ddarpariaeth honno, a
  - (b) y defnydd o'r dull lleiaf mewnwthiol.
- (3) Mae awdurdod o dan is-adran (1) yn peidio â bod yn gymwys pan fydd wedi ei chadarnhau nad yw cydsyniad datganedig sy'n ei gwneud hi'n gyfreithlon i dynnu'r rhan i'w thrawsblannu wedi ei roi, ac na fydd yn cael ei roi ac nad yw'n cael ei ystyried bod cydsyniad wedi ei roi.
- (4) Mae awdurdod o dan is-adran (1) yn ymestyn i unrhyw berson a awdurdodir i weithredu o dan yr awdurdod gan—
  - (a) y person y rhoddir yr awdurdod iddo gan yr is-adran honno, neu
  - (b) person a awdurdodir o dan yr is-adran honno i weithredu o dan yr awdurdod hwnnw.
- (5) Mae gweithred a wneir ag awdurdod o dan is-adran (1) i'w thrin fel un nad yw'n weithgaredd y mae adran 3 yn gymwys iddo.

**14 Crwneriaid**

- (1) Nid oes dim yn y Ddeddf hon sy'n gymwys i unrhyw beth a wneir at ddibenion swyddogaethau crwner neu o dan awdurdod crwner.
- (2) Mae is-adran (3) yn gymwys pan fo person ("P") yn gwybod, neu pan fo ganddo reswm dros gredu, bod angen neu y gall fod angen—
  - (a) corff person ymadawedig, neu
  - (b) deunydd perthnasol sydd wedi dod o gorff person ymadawedig,at ddibenion swyddogaethau crwner.
- (3) Mae'n ofynnol cael cydsyniad y crwner cyn y caiff P weithredu yn ôl awdurdod o dan—
  - (a) adran 3 (awdurdodi gweithgareddau trawsblannu), neu
  - (b) adran 13 (preserfio deunydd at ei drawsblannu),mewn perthynas â'r corff neu'r deunydd.



**12 Prosecutions**

No proceedings for an offence under section 10 may be instituted except by or with the consent of the Director of Public Prosecutions.

*General*

**13 Preservation for transplantation**

- (1) Where part of a body of a deceased person lying in a hospital, nursing home or other institution in Wales is or may be suitable for use for transplantation, it is lawful for the person having the control or management of the institution –
  - (a) to take steps for the purpose of preserving the part for use for transplantation, and
  - (b) to retain the body for that purpose.
- (2) Authority under subsection (1)(a) extends only to –
  - (a) the taking of the minimum steps necessary for the purpose mentioned in that provision, and
  - (b) to the use of the least invasive procedure.
- (3) Authority under subsection (1) ceases to apply once it has been established that express consent making removal of the part for transplantation lawful has not been, and will not be, given and that consent is not deemed to be given.
- (4) Authority under subsection (1) extends to any person authorised to act under the authority by –
  - (a) the person on whom the authority is conferred by that subsection, or
  - (b) a person authorised under that subsection to act under that authority.
- (5) An act done with authority under subsection (1) is to be treated as not being an activity to which section 3 applies.

**14 Coroners**

- (1) Nothing in this Act applies to anything done for the purposes of functions of a coroner or under the authority of a coroner.
- (2) Subsection (3) applies where a person (“P”) knows, or has reason to believe, that –
  - (a) the body of a deceased person, or
  - (b) relevant material which has come from the body of a deceased person,is, or may be, required for purposes of functions of a coroner.
- (3) The consent of the coroner is required before P may act on authority under –
  - (a) section 3 (authorisation of transplantation activities), or
  - (b) section 13 (preservation for transplantation),in relation to the body or material.

**15 Codau ymarfer**

- (1) Mae Deddf Meinweoedd Dynol 2004 wedi ei diwygio fel a ganlyn.
- (2) Yn adran 26 (llunio codau ymarfer) –
- (a) yn is-adran (2)(d) ar ôl “Act” mewnosoder “and the Human Transplantation (Wales) Act 2013”;
  - (b) ar ddiwedd is-adran (3) ychwaneger “(including consent for the purposes of the Human Transplantation (Wales) Act 2013).”;
  - (c) yn is-adran (5)(b) yn lle “National Assembly for Wales” rhodder “Welsh Ministers”.
- (3) Yn adran 27 (darpariaeth mewn cysylltiad â chydsynio) –
- (a) yn is-adran (1) yn lle “section 2(7)(b)(ii) or 3(6)(c)” rhodder “a provision listed in subsection (1A)”;
  - (b) ar ôl is-adran (1) mewnosoder –
    - “(1A) Those provisions are –
      - (a) section 2(7)(b)(ii) or 3(6)(c) of this Act;
      - (b) section 4(3), 5(4), 6(3) or 7 of the Human Transplantation (Wales) Act 2013.”;
  - (c) yn is-adran (4) yn lle “section 2(7)(b)(ii) or 3(6)(c)” rhodder “a provision listed in subsection (1A)”;
  - (d) ar ôl is-adran (8) mewnosoder –
    - “(8A) The duty under section 26(3) shall also have effect, in particular, to require the Authority to give practical guidance on the circumstances in which consent is deemed under section 4 (consent of adults that are not excepted) of the Human Transplantation (Wales) Act 2013.
    - (8B) In giving practical guidance on the circumstances in which consent is deemed the authority must, in particular, give guidance on how a relative or friend of long standing of the deceased can object on the basis of the deceased’s wishes.”;
  - (e) yn is-adran (9) ar ôl “subsection (4)” mewnosoder “, except in so far as it applies to section 4(3), 5(4), 6(3) or 7 of the Human Transplantation (Wales) Act 2013.”;
  - (f) ar ôl is-adran (9) mewnosoder –
    - “(10) The Welsh Ministers may by order amend subsection (4) in so far as it applies to section 4(3), 5(4), 6(3) or 7 of the Human Transplantation (Wales) Act 2013.
    - (11) Before making an order under subsection (10) the Welsh Ministers must carry out such public consultation as they consider appropriate.”
- (4) Yn adran 29 (cymeradwyo codau) –
- (a) ar ôl is-adran (1) mewnosoder –
    - “(1A) Where a code of practice to which subsection (1) applies deals with a matter relating to the carrying on in Wales of a transplantation activity (within the meaning of the Human Transplantation (Wales) Act 2013) the Authority may not issue the code unless –

**15 Codes of practice**

- (1) The Human Tissue Act 2004 is amended as follows.
- (2) In section 26 (preparation of codes of practice) –
  - (a) in subsection (2)(d) after “Act” insert “and the Human Transplantation (Wales) Act 2013”;
  - (b) at the end of subsection (3) add “(including consent for the purposes of the Human Transplantation (Wales) Act 2013).”;
  - (c) in subsection (5)(b) for “National Assembly for Wales” substitute “Welsh Ministers”.
- (3) In section 27 (provision with respect to consent) –
  - (a) in subsection (1) for “section 2(7)(b)(ii) or 3(6)(c)” substitute “a provision listed in subsection (1A)”;
  - (b) after subsection (1) insert –
    - “(1A) Those provisions are –
      - (a) section 2(7)(b)(ii) or 3(6)(c) of this Act;
      - (b) section 4(3), 5(4), 6(3) or 7 of the Human Transplantation (Wales) Act 2013.”;
    - (c) in subsection (4) for “section 2(7)(b)(ii) or 3(6)(c)” substitute “a provision listed in subsection (1A)”;
    - (d) after subsection (8) insert –
      - “(8A) The duty under section 26(3) shall also have effect, in particular, to require the Authority to give practical guidance on the circumstances in which consent is deemed under section 4 (consent of adults that are not excepted) of the Human Transplantation (Wales) Act 2013.
      - (8B) In giving practical guidance on the circumstances in which consent is deemed the authority must, in particular, give guidance on how a relative or friend of long standing of the deceased can object on the basis of the deceased’s wishes.”;
    - (e) in subsection (9) after “subsection (4)” insert “, except in so far as it applies to section 4(3), 5(4), 6(3) or 7 of the Human Transplantation (Wales) Act 2013.”;
    - (f) after subsection (9) insert –
      - “(10) The Welsh Ministers may by order amend subsection (4) in so far as it applies to section 4(3), 5(4), 6(3) or 7 of the Human Transplantation (Wales) Act 2013.
      - (11) Before making an order under subsection (10) the Welsh Ministers must carry out such public consultation as they consider appropriate.”
  - (4) In section 29 (approval of codes) –
    - (a) after subsection (1) insert –
      - “(1A) Where a code of practice to which subsection (1) applies deals with a matter relating to the carrying on in Wales of a transplantation activity (within the meaning of the Human Transplantation (Wales) Act 2013) the Authority may not issue the code unless –

- (a) a draft of it has been sent to and approved by the Welsh Ministers and laid by them before the National Assembly for Wales, and
- (b) the National Assembly has approved the draft by resolution.”;
- (b) yn is-adran (2)(a) yn lle “National Assembly for Wales” rhodder “Welsh Ministers”;
- (c) yn is-adran (3)(a) yn lle “National Assembly for Wales” rhodder “Welsh Ministers”;
- (d) ar ôl is-adran (4) mewnosoder –
  - “(4A) If the Welsh Ministers do not approve a draft sent to them under subsection (1A), they shall give reasons to the Authority.”
- (e) ar ôl is-adran (6) mewnosoder –
  - “(7) In calculating the period mentioned in subsection (1A) no account is to be taken of any time during which the National Assembly is dissolved or in recess for more than 4 days.”
- (5) Yn adran 52 (gorchmynion a rheoliadau) ar ôl is-adran (4) mewnosoder –
  - “(4A) No order under section 27(10) may be made by the Welsh Ministers unless a draft of the instrument has been laid before, and approved by a resolution of, the National Assembly for Wales.”

## 16 Diwygiadau canlyniadol a chysylltiedig i Ddeddf Meinweoedd Dynol 2004

- (1) Mae Deddf Meinweoedd Dynol 2004 wedi ei diwygio fel a ganlyn.
- (2) Yn adran 1 (awdurdodi gweithgareddau at ddibenion rhestredig) –
  - (a) ar ôl is-adran (1) mewnosoder –
    - “(1A) Subsection (1) does not apply in relation to consent for transplantation activities done in Wales.”;
  - (b) ar ôl is-adran (13) mewnosoder –
    - “(14) In this section “transplantation activities” has the same meaning as in the Human Transplantation (Wales) Act 2013 (which makes provision in relation to consent for transplantation activities done in Wales).”
- (3) Yn adran 6 (gweithgareddau sy’n ymwneud â deunydd o oedolion nad yw’r galluedd ganddynt i gydsynio) –
  - (a) daw’r testun presennol yn destun is-adran (1), a
  - (b) ar ôl is-adran (1) ychwaneger –
    - “(2) This section does not apply in relation to transplantation activities done in Wales.
    - (For provision in these circumstances see section 9 of the Human Transplantation (Wales) Act 2013).”
- (4) Yn adran 8 (cyfyngu ar weithgareddau mewn perthynas â deunydd a roddwyd) yn is-adran (6) ar ôl “section 1(1) to (3)” mewnosoder “or section 3(1) to (3) of the Human Transplantation (Wales) Act 2013”.

- (a) a draft of it has been sent to and approved by the Welsh Ministers and laid by them before the National Assembly for Wales, and
  - (b) the National Assembly has approved the draft by resolution.”;
- (b) in subsection (2)(a) for “National Assembly for Wales” substitute “Welsh Ministers”;
- (c) in subsection (3)(a) for “National Assembly for Wales” substitute “Welsh Ministers”;
- (d) after subsection (4) insert –
  - “(4A) If the Welsh Ministers do not approve a draft sent to them under subsection (1A), they shall give reasons to the Authority.”
- (e) after subsection (6) insert –
  - “(7) In calculating the period mentioned in subsection (1A) no account is to be taken of any time during which the National Assembly is dissolved or in recess for more than 4 days.”
- (5) In section 52 (orders and regulations) after subsection (4) insert –
  - “(4A) No order under section 27(10) may be made by the Welsh Ministers unless a draft of the instrument has been laid before, and approved by a resolution of, the National Assembly for Wales.”

## **16 Consequential and incidental amendments to the Human Tissue Act 2004**

- (1) The Human Tissue Act 2004 is amended as follows.
- (2) In section 1 (authorisation of activities for scheduled purposes) –
  - (a) after subsection (1) insert –
    - “(1A) Subsection (1) does not apply in relation to consent for transplantation activities done in Wales.”;
  - (b) after subsection (13) insert –
    - “(14) In this section “transplantation activities” has the same meaning as in the Human Transplantation (Wales) Act 2013 (which makes provision in relation to consent for transplantation activities done in Wales).”
- (3) In section 6 (activities involving material from adults who lack capacity to consent) –
  - (a) the existing text becomes subsection (1), and
  - (b) after subsection (1) add –
    - “(2) This section does not apply in relation to transplantation activities done in Wales.  
  
(For provision in these circumstances see section 9 of the Human Transplantation (Wales) Act 2013).”
- (4) In section 8 (restriction of activities in relation to donated material), in subsection (6) after “section 1(1) to (3)” insert “or section 3(1) to (3) of the Human Transplantation (Wales) Act 2013”.

- (5) Yn adran 15 (swyddogaethau cyffredinol yr Awdurdod Meinweoedd Dynol) –
- (a) ym mharagraff (c)(i) ar ôl “this Part” mewnosoder “or under the Human Transplantation (Wales) Act 2013”;
  - (b) ym mharagraff (e) yn lle “National Assembly for Wales” rhodder “Welsh Ministers”;
  - (c) ym mharagraff (f) yn lle “National Assembly for Wales” rhodder “Welsh Ministers” ac yn lle “Assembly” rhodder “Ministers”.
- (6) Yn adran 36 (adroddiad blynyddol) –
- (a) yn is-adran (3)(b) yn lle “National Assembly for Wales” rhodder “Welsh Ministers”;
  - (b) ar ôl is-adran (5) mewnosoder –
 

“(5A) The Welsh Ministers shall lay a copy of each report received by them under this section before the National Assembly for Wales.”
- (7) Yn adran 43 (preserfio deunydd at ei drawsblannu) ar ôl is-adran (6) mewnosoder –
- “(7) This section does not apply in relation to a part of a body lying in an institution in Wales.
- (For provision in these circumstances see section 13 of the Human Transplantation (Wales) Act 2013).”
- (8) Yn adran 52 (gorchmynion a rheoliadau) –
- (a) yn is-adran (3) yn lle “6,” rhodder “6(1),”;
  - (b) yn is-adran (7)(a) yn lle “National Assembly for Wales” rhodder “Welsh Ministers”;
  - (c) yn is-adran (8) –
    - (i) yn lle “National Assembly for Wales” rhodder “Welsh Ministers”;
    - (ii) yn lle “section 6” rhodder “section 6(1)”;
  - (d) yn is-adran (10) yn lle “section 6” rhodder “section 6(1)”.
- (9) Yn adran 58 (trosiannol), yn is-adran (5) yn lle “National Assembly for Wales” rhodder “Welsh Ministers”.
- (10) Yn adran 60 (cychwyn), yn is-adran (3) yn lle “National Assembly for Wales” rhodder “Welsh Ministers”.
- (11) Yn Atodlen 2 (yr Awdurdod Meinweoedd Dynol) –
- (a) ym mharagraff 1(1)(c) yn lle “National Assembly for Wales” rhodder “Welsh Ministers”;
  - (b) ym mharagraff 13(a)(ii) yn lle “National Assembly for Wales” rhodder “Welsh Ministers”;
  - (c) ym mharagraff 16(4)(b) yn lle “National Assembly for Wales” rhodder “Welsh Ministers”;
  - (d) ar ôl paragraff 16(5) mewnosoder –
 

“(5A) The Welsh Ministers shall lay before the National Assembly for Wales each statement of accounts received by them under sub-paragraph (4).”

- (5) In section 15 (general functions of the Human Tissue Authority) –
- (a) in paragraph (c)(i) after “this Part” insert “or under the Human Transplantation (Wales) Act 2013”;
  - (b) in paragraph (e) for “National Assembly for Wales” substitute “Welsh Ministers”;
  - (c) in paragraph (f) for “National Assembly for Wales” substitute “Welsh Ministers” and for “Assembly” substitute “Ministers”.
- (6) In section 36 (annual report) –
- (a) in subsection (3)(b) for “National Assembly for Wales” substitute “Welsh Ministers”;
  - (b) after subsection (5) insert –
    - “(5A) The Welsh Ministers shall lay a copy of each report received by them under this section before the National Assembly for Wales.”
- (7) In section 43 (preservation for transplantation) after subsection (6) insert –
- “(7) This section does not apply in relation to a part of a body lying in an institution in Wales.  
(For provision in these circumstances see section 13 of the Human Transplantation (Wales) Act 2013).”
- (8) In section 52 (orders and regulations) –
- (a) in subsection (3) for “6,” substitute “6(1),”;
  - (b) in subsection (7)(a) for “National Assembly for Wales” substitute “Welsh Ministers”;
  - (c) in subsection (8) –
    - (i) for “National Assembly for Wales” substitute “Welsh Ministers”;
    - (ii) for “section 6” substitute “section 6(1)”;
  - (d) in subsection (10) for “section 6” substitute “section 6(1)”.
- (9) In section 58 (transition), in subsection (5) for “National Assembly for Wales” substitute “Welsh Ministers”.
- (10) In section 60 (commencement), in subsection (3) for “National Assembly for Wales” substitute “Welsh Ministers”.
- (11) In Schedule 2 (the Human Tissue Authority) –
- (a) in paragraph 1(1)(c) for “National Assembly for Wales” substitute “Welsh Ministers”;
  - (b) in paragraph 13(a)(ii) for “National Assembly for Wales” substitute “Welsh Ministers”;
  - (c) in paragraph 16(4)(b) for “National Assembly for Wales” substitute “Welsh Ministers”;
  - (d) after paragraph 16(5) insert –
    - “(5A) The Welsh Ministers shall lay before the National Assembly for Wales each statement of accounts received by them under sub-paragraph (4).”



- (12) Yn Atodlen 5 (pwerau arolygu, mynd i mewn, chwilio ac ymafael) –
- (a) ym mharagraff 3(1)(a) ar ôl “2” mewnosoder “or under the Human Transplantation (Wales) Act 2013”;
  - (b) ym mharagraff 5(2) ar ôl “2” mewnosoder “or under the Human Transplantation (Wales) Act 2013”.

### 17 Diwygiad canlyniadol i Ddeddf Ewyllysiau 1837

Yn adran 1 o Ddeddf Ewyllysiau 1837 (ystyr geiriau penodol yn y Ddeddf hon), ar ôl “section 4 of the Human Tissue Act 2004” mewnosoder “or section 8 of the Human Transplantation (Wales) Act 2013”.

### 18 Deunydd perthnasol

- (1) Yn y Ddeddf hon, ystyr “deunydd perthnasol” yw deunydd, nad yw’n gametau, ac sydd wedi ei gyfansoddi o gelloedd dynol neu’n eu cynnwys.
- (2) Yn y Ddeddf hon, nid yw cyfeiriadau at ddeunydd perthnasol o gorff dynol yn cynnwys –
  - (a) embryonau y tu allan i’r corff dynol, neu
  - (b) gwallt ac ewinedd o gorff person byw.
- (3) Yn yr adran hon, mae i “embryo” a “gametau” yr un ystyr ag “embryo” a “gametes” yn rhinwedd adran 1(1), (4) a (6) o Ddeddf Ffrwythloni ac Embryoleg Dynol 1990 yn narpariaethau eraill y Ddeddf honno (ar wahân i adran 4A).

### 19 Dehongli

- (1) Yn y Ddeddf hon –
 

mae i “cyfrifoldeb rhiant” yr un ystyr â “parental responsibility” yn Neddf Plant 1989;

mae i “deunydd perthnasol” (“*relevant material*”) yr ystyr a roddir yn adran 18; ac mae i “deunydd perthnasol a eithrir” (“*excluded relevant material*”) yr ystyr a roddir iddo yn adran 7;

mae i “gweithgareddau trawsblannu” (“*transplantation activities*”) yr ystyr a roddir yn adran 3;

ystyr “oedolyn” (“*adult*”) yw person sydd wedi cyrraedd 18 mlwydd oed;

ystyr “plentyn” (“*child*”) yw person nad yw wedi cyrraedd 18 mlwydd oed.
- (2) At ddibenion adrannau 6, 7 ac 8, mae plentyn yn gymwys i ymdrin â’r mater o gydsyniad os yw’n ymddangos i berson rhesymol bod gan y plentyn ddigon o ddealltwriaeth i wneud penderfyniad ar sail gwybodaeth.
- (3) Mae’r canlynol yn berthnasoedd cymhwysol at ddiben y Ddeddf hon –
  - (a) priod, partner sifil neu bartner;
  - (b) rhiant neu blentyn;
  - (c) brawd neu chwaer;
  - (d) tad-cu/taid neu fam-gu/nain, neu wŷr neu wyres;
  - (e) plentyn i frawd neu chwaer;
  - (f) llys-dad neu lys-fam;



- (12) In Schedule 5 (powers of inspection, entry, search and seizure) –
- (a) in paragraph 3(1)(a) after “2” insert “or under the Human Transplantation (Wales) Act 2013”;
  - (b) in paragraph 5(2) after “2” insert “or under the Human Transplantation (Wales) Act 2013”.

## 17 Consequential amendment to the Wills Act 1837

In section 1 of the Wills Act 1837 (meaning of certain words in this Act), after “section 4 of the Human Tissue Act 2004” insert “or section 8 of the Human Transplantation (Wales) Act 2013”.

## 18 Relevant material

- (1) In this Act “relevant material” means material, other than gametes, which consists of or includes human cells.
- (2) In this Act references to relevant material from a human body do not include –
  - (a) embryos outside the human body, or
  - (b) hair and nail from the body of a living person.
- (3) In this section “embryo” and “gametes” have the same meaning as they have by virtue of section 1(1), (4) and (6) of the Human Fertilisation and Embryology Act 1990 in the other provisions of that Act (apart from section 4A).

## 19 Interpretation

- (1) In this Act –
  - “adult” (“*oedolyn*”) means a person who has attained the age of 18 years;
  - “child” (“*plentyyn*”) means a person who has not attained the age of 18 years;
  - “parental responsibility” (“*cyfrifoldeb rhiant*”) has the same meaning as in the Children Act 1989;
  - “relevant material” (“*deunydd perthnasol*”) has the meaning given in section 18; and “excluded relevant material” (“*deunydd perthnasol a eithrir*”) has the meaning given in section 7;
  - “transplantation activities” (“*gweithgareddau trawsblannu*”) has the meaning given in section 3.
- (2) For the purposes of sections 6, 7 and 8 a child is competent to deal with the issue of consent if it would appear to a reasonable person that the child has sufficient understanding to make an informed decision.
- (3) The following are qualifying relationships for the purpose of this Act –
  - (a) spouse, civil partner or partner;
  - (b) parent or child;
  - (c) brother or sister;
  - (d) grandparent or grandchild;
  - (e) child of a brother or sister;
  - (f) stepfather or stepmother;

- (g) hanner-brawd neu hanner-chwaer;
  - (h) cyfaill ers amser maith.
- (4) At ddibenion y Ddeddf hon, mae person yn bartner i unigolyn arall os yw'r ddau ohonynt (p'un a ydynt o rywiau gwahanol neu o'r un rhyw) yn byw fel partneriaid mewn perthynas deuluol barhaus.
  - (5) Caiff Gweinidogion Cymru ddiwygio is-adran (3) drwy orchymyn.
  - (6) Yn y Ddeddf hon –
    - (a) mae cyfeiriadau at ddeunydd o gorff person byw yn cyfeirio at ddeunydd o gorff person sy'n fyw adeg y gwahanu,
    - (b) mae cyfeiriadau at ddeunydd o gorff person ymadawedig yn cyfeirio at ddeunydd o gorff person nad oedd yn fyw adeg y gwahanu, ac
    - (c) mae cyfeiriadau at gydsyniad datganedig yn cynnwys cydsyniad a roddwyd cyn i'r Ddeddf hon ddod i rym.
  - (7) Yn y Ddeddf hon, mae cyfeiriadau at drawsblannu yn cyfeirio at drawsblannu i gorff dynol ac yn cynnwys trallwysu.
  - (8) At ddibenion y Ddeddf hon, nid yw deunydd i'w ystyried yn ddeunydd o gorff dynol os yw wedi ei greu y tu allan i'r corff dynol.

## 20 Gorchmynion a rheoliadau

- (1) Mae pŵer i wneud gorchymyn neu reoliadau o dan y Ddeddf hon yn cynnwys pŵer i wneud unrhyw ddarpariaeth gysylltiedig, ganlyniadol, drosiannol neu atodol y mae Gweinidogion Cymru yn barnu ei bod yn briodol.
- (2) Mae pŵer Gweinidogion Cymru i wneud gorchymyn neu reoliadau o dan y Ddeddf hon yn arferadwy drwy offeryn statudol.
- (3) Cyn gwneud gorchymyn neu reoliadau o dan y Ddeddf hon rhaid i Weinidogion Cymru gynnal unrhyw ymgynghoriad cyhoeddus sy'n briodol yn eu barn hwy.
- (4) Ni chaniateir gwneud offeryn statudol sy'n cynnwys gorchymyn neu reoliadau o dan y Ddeddf hon onid oes drafft o'r offeryn wedi ei osod gerbron Cynulliad Cenedlaethol Cymru ac wedi ei gymeradwyo drwy benderfyniad ganddo.
- (5) Nid yw is-adrannau (3) a (4) yn gymwys i orchmynion o dan adran 21 (cychwyn).

## 21 Cychwyn

- (1) Daw'r Ddeddf hon i rym yn unol â darpariaeth a wneir gan Weinidogion Cymru drwy orchymyn.
- (2) Ni chaiff gorchymyn a wneir o dan is-adran (1) ddarparu bod unrhyw ddarpariaeth yn y Ddeddf hon i ddod i rym cyn diwedd y cyfnod o ddwy flynedd gan ddechrau ar y diwrnod y mae'r Ddeddf yn cael Cydsyniad Brenhinol.
- (3) Ni chaniateir i orchymyn a wneir o dan is-adran (1) gychwyn y ddarpariaeth a wnaed yn adran 14(3)(b) hyd oni fydd adran 43(5A) o Ddeddf Meinweoedd Dynol 2004 wedi dod i rym.
- (4) Nid yw is-adran (1) yn gymwys i –
  - (a) adran 1,
  - (b) adran 2,
  - (c) yr adran hon, a

- (g) half brother or half sister;
- (h) friend of long standing.
- (4) For the purposes of this Act, a person is another's partner if the two of them (whether of different sexes or the same sex) live as partners in an enduring family relationship.
- (5) The Welsh Ministers may by order amend subsection (3).
- (6) In this Act –
  - (a) references to material from the body of a living person are to material from the body of a person alive at the point of separation,
  - (b) references to material from the body of a deceased person are to material from the body of person not alive at the point of separation, and
  - (c) references to express consent include consent given before the coming into force of this Act.
- (7) In this Act, references to transplantation are to transplantation to a human body and include transfusion.
- (8) For the purposes of this Act, material is not to be regarded as from a human body if it is created outside the human body.

## **20 Orders and regulations**

- (1) A power to make an order or regulations under this Act includes power to make such incidental, consequential, transitional or supplemental provision as the Welsh Ministers consider appropriate.
- (2) A power of the Welsh Ministers to make an order or regulations under this Act is exercisable by statutory instrument.
- (3) Before making an order or regulations under this Act the Welsh Ministers must carry out such public consultation as they consider appropriate.
- (4) A statutory instrument containing an order or regulations under this Act may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, the National Assembly for Wales.
- (5) Subsections (3) and (4) do not apply to orders under section 21 (commencement).

## **21 Commencement**

- (1) This Act comes into force in accordance with provision made by the Welsh Ministers by order.
- (2) An order made under subsection (1) may not provide for any provision of this Act to come into force before the end of the period of two years beginning with the day on which this Act receives Royal Assent.
- (3) An order made under subsection (1) may not commence the provision made in section 14(3)(b) until section 43(5A) of the Human Tissue Act 2004 has come into force.
- (4) Subsection (1) does not apply to –
  - (a) section 1,
  - (b) section 2,
  - (c) this section, and

(d) adran 22;

sydd i ddod i rym ar y diwrnod y mae'r Ddeddf hon yn cael Cydsyniad Brenhinol.

- (5) Caiff gorchymyn a wneir o dan is-adran (1) bennu diwrnodau gwahanol at ddibenion gwahanol.

## **22 Enw byr**

Enw byr y Ddeddf hon yw Deddf Trawsblannu Dynol (Cymru) 2013.

---

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(d) section 22;

which are to come into force on the day this Act receives Royal Assent.

(5) An order made under subsection (1) may appoint different days for different purposes.

## **22 Short Title**

The short title of this Act is the Human Transplantation (Wales) Act 2013.

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