

# **HUMAN TRANSPLANTATION (WALES) ACT 2013**

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## **EXPLANATORY NOTES**

### **BACKGROUND AND SUMMARY**

2. Prior to the coming into force of the Human Transplantation (Wales) Act 2013 all statutory provisions on consent for the use of bodies and relevant materials were set out in the Human Tissue Act 2004 (the 2004 Act), which applies to Wales, England and Northern Ireland. The 2004 Act authorises certain activities, including the removal and use of organs and tissues, for a number of purposes that are set out in Schedule 1 to that Act. One of these is use for the purpose of transplantation. Under the 2004 Act “appropriate consent” is required for the use of organs and tissues for the purposes listed in the Schedule. The meaning of appropriate consent differs depending on whether the relevant material is obtained from an adult or child, but the overarching principle is that the consent must be given expressly.
3. The purpose of the Human Transplantation (Wales) Act 2013 is to change the way in which consent is to be given to organ and tissue donation in Wales, for the purposes of transplantation. The Act provides that, in the absence of express provision in relation to consent, consent will be deemed to have been given in most cases. This means that, after death, a person’s consent will be deemed to have been given unless they had expressed a wish for or against donation. However, deemed consent does not apply to the under 18s, people who have not lived in Wales for at least 12 months before they died, and people who lack capacity to understand that consent could be deemed in the absence of express action being taken. In addition, in practice people who cannot be identified or whose next of kin cannot be found will not be subject to deemed consent, since it would not be possible to check whether the person satisfied key criteria including residency.
4. The Act therefore creates a default position where adults are considered (deemed) to have given their consent unless they object. However, consent will not be deemed where a relative or friend of long standing objects on the basis they knew that the deceased would not have consented to their organs and tissues being donated for the purpose of transplantation. This is what is often referred to as a “soft opt-out system” for organ and tissue donation. The notion of “appropriate consent” from the 2004 Act is therefore replaced by two concepts, “express consent”, (which replicates “appropriate consent”) and “deemed consent”.
5. There are several exceptions to deemed consent, including children, those who are not ordinarily resident in Wales and those who lack capacity to understand the notion of deemed consent. Where deemed consent will not apply, the Act generally restates the meaning of the concept of appropriate consent set out in the 2004 Act. This means the status quo will remain for a person who dies in Wales but who is not subject to deemed consent. In summary, therefore, with the exception of deemed consent applying in Wales, the system of express consent in England, Northern Ireland (and in certain cases in Wales) remains the same.