



# Human Transplantation (Wales) Act 2013

2013 anaw 5

## *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

<b>Case</b>	<b>Meaning of express consent</b>
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	Consent given by the person or persons appointed.

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*Status: This is the original version (as it was originally enacted).*

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<b>Case</b>	<b>Meaning of express consent</b>
someone is able to give consent under the appointment.	
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) 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

<b>Case</b>	<b>Meaning of express consent</b>
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.

<b>Case</b>	<b>Meaning of express consent</b>
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—

TABLE 3

<b>Case</b>	<b>Meaning of express consent</b>
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.

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<b>Case</b>	<b>Meaning of express consent</b>
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 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.

<b>Case</b>	<b>Meaning of express consent</b>
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—

TABLE 5

<b>Case</b>	<b>Meaning of express consent</b>
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	Consent of a person who had parental responsibility for the child immediately

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<b>Case</b>	<b>Meaning of express consent</b>
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.	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) 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.