



Human Transplantation (Wales) Act 2013

2013 anaw 5

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 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) 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—

Status: This is the original version (as it was originally enacted).

“(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) 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) 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” (“*plentyn*”) 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) 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) 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.