

Organ Donation (Deemed Consent) Bill

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B I L L

TO

Enable persons in England to withhold consent for organ donation and transplantation; and for connected purposes.

BE IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1 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) in subsection (1), after “appropriate” insert “or, in the case of adult transplantation activities in England, deemed”; 5
 - (b) after subsection (1) insert—
“(1A) For the purposes of subsection (1), “adult transplantation activities” mean—
 - (a) storing the body of a deceased person for use for the purpose of transplantation, 10
 - (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, 15
 - (d) using for that purpose any relevant material which has come from a human body,where the person in question is not a child or an excepted adult (see section 3B).”
- (3) In section 3 (“Appropriate consent: adults”)— 20
- (a) in subsection (1), after “activity” insert “, except transplantation activities in England as defined in section 1(1A),”;
 - (b) in subsection (6)(c), after “applies” insert “or a transplantation activity as defined in section 1(1A)”;

(4) After section 3, insert –

“3A Deemed consent for transplantation activity: adults

- (1) This section makes provision for the interpretation of “deemed consent” in section 1 in relation to transplantation activity in England for a person (“the person concerned”) who is not – 5
- (a) an excepted adult (see section 3B), or
 - (b) a child.
- (2) Where the person concerned is alive, “deemed consent” means his or her express consent.
- (3) Where the person concerned has died and has not during his or her lifetime registered an objection to his or her body, or any specified part of his or her body, being donated for transplantation after his or her death on the Organ Transplant Opt-out Register (see section 3C), it shall be deemed that he or she consented to such a donation, except where either condition A or B is met. 10 15
- (4) Condition A is met if the person concerned has made an appointment under section 4, in which case express consent given by the appointed person or persons is required.
- (5) Condition B is met if a person who stood in a qualifying relationship to the deceased immediately before death provides information that would lead a reasonable person to conclude that the deceased would not have consented. 20
- (6) In this section –
- “express consent” means consent expressed orally or in writing, where written consent is only valid if – 25
 - (a) it is signed by the person concerned in the presence of at least one witness who attests the signature, or
 - (b) it is signed at the direction of the person concerned, in his or her presence and in the presence of at least one witness who attests the signature; 30
 - a “qualifying relationship” for the purposes of subsection (5) is a
 - (a) spouse, civil partner or partner;
 - (b) parent or child;
 - (c) brother or sister;
 - (d) grandparent or grandchild; 35
 - (e) child of a brother or sister;
 - (f) stepfather or stepmother;
 - (g) half brother or half sister; or
 - (h) friend of long standing.

3B Deemed consent: excepted adults 40

- (1) This section makes provision about deemed consent for the purposes of section 3A in relation to a transplantation activity for an excepted adult in England.
- (2) In the case of an excepted adult, express consent is required, where “express consent” has the same meaning as in section 3A(6)(a). 45

- (3) An “excepted adult” means –
- (a) an adult who has died and who had not been ordinarily resident in England for a period of at least 6 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. 5
- (4) For the purposes of section (3)(b), a “significant period” is 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. 10
- (5) Express consent may be granted by an appointed representative so long as the appointed representative was appointed in a period when the now excepted adult had capacity to make the appointment.
- 3C Register of objections to transplantation of organs**
- (1) There shall be an Organ Transplant Opt-out Register of those persons who object to their organs being used for transplantation (“the register”). 15
- (2) Where a person is found to have registered an objection under subsection (1), no removal of his or her organs is permitted (see section 5(6A)). 20
- (3) Where it is intended to remove any organ of a deceased person for the purposes of transplantation, the register established under subsection (1) must be consulted to determine whether the person had registered an objection.
- (4) *The Secretary of State must make regulations to provide for the establishment and operation of the register established under subsection (1), including but not restricted to –* 25
- (a) *the manner in which a person is able to register an objection;*
 - (b) *the manner in which the register must be consulted before the removal of organs for transplantation; and* 30
 - (c) *the form in which the register shall be maintained.*
- (5) Regulations under subsection (4) shall be made by statutory instrument.
- (6) A statutory instrument containing regulations under subsection (5) may not be made unless a draft of it has been laid before and approved by a resolution of each House of Parliament.” 35
- (5) In section 5, after subsection (6), insert –
- “(6A) A person commits an offence if, when he or she undertakes an activity to which section 1(1A) applies, he or she – 40
- (a) does not consult the Organ Transplant Opt-out Register, or
 - (b) carries out the activity when the person concerned has registered an objection to his or her organs being used for transplantation on the Organ Transplant Opt-out Register.”

2 Extent

This Act extends to England and Wales.

3 Commencement

This Act comes into force six months after the day on which this Act receives Royal Assent.

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4 Short Title

This Act may be cited as the Organ Donation (Deemed Consent) Act 2017.

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To enable persons in England to withhold consent for organ donation and transplantation; and for connected purposes.

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