

# ORGAN TOURISM AND CADAVERS ON DISPLAY BILL [HL]

## EXPLANATORY NOTES

### What these notes do

These Explanatory Notes relate to the Organ Tourism and Cadavers on Display Bill [HL] as introduced in the House of Lords on 28 January 2020 (HL Bill 67).

- These Explanatory Notes have been prepared by Lord Hunt of Kings Heath in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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## Overview of the Bill

- 1 The Organ Tourism and Cadavers on Display Bill amends the Human Tissue Act 2004 to:
  - (a) prohibit a United Kingdom citizen from travelling outside the United Kingdom and receiving any controlled material, for the purpose of organ transplantation when the organ donor has not provided free, informed and specific consent;
  - (b) provide for the offences in section 32 of the Human Tissue Act 2004 to be prohibited even if the offence does not take place within the United Kingdom, if the person has a close connection to the United Kingdom;
  - (c) provide for regulations for patient identifiable records and an annual report on instances of United Kingdom citizens receiving transplant procedures outside of the United Kingdom by NHS Blood and Transplant; and
  - (d) provide for imported bodies on display to have the same consent requirements as those sourced from the United Kingdom.

## Policy background

- 2 Currently United Kingdom citizens can travel abroad for organ transplantation regardless of the legal framework of organ donation and consent in the country of transplantation. This may lead to the obtaining of organs for the purpose of organ transplantation without appropriate consent from the donor or donor's next of kin and contribute to organ trafficking.
- 3 This Bill amends the Human Tissue Act 2004 ("the Act") to prohibit a British citizen from travelling outside the United Kingdom to receive any controlled material for the purpose of organ transplantation, when the organ donor has not provided free, informed and specific consent or the controlled material was received in exchange for financial gain or comparable advantage, and to provide for the offences in section 32 of the Act to be prohibited even if the offence does not take place in the United Kingdom if the person has a close connection to the United Kingdom.
- 4 Imported cadavers for display do not require documentation or consent in the United Kingdom under section 1 of the Act. This can lead to uncertainty of the source of these corpses for exhibitions.
- 5 In 2008, a settlement was reached between Premier Exhibitions and the New York State attorney general in which Premier Exhibitions' 'Bodies' exhibition agreed to display a disclaimer that stated the displayed remains were received by the Chinese Bureau of Police and that Premier Exhibitions could not independently verify that those cadavers were not those of persons who were incarcerated in Chinese prisons.<sup>1</sup>
- 6 This Bill amends section 32 of the Act to provide for regulations for patient identifiable records and an annual report on instances of United Kingdom citizens receiving transplant procedures outside of the United Kingdom.
- 7 The Bill also amends section 1 of the Act to provide for the same consent requirements for imported cadavers for display, as United Kingdom-sourced cadavers for display.

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<sup>1</sup> [https://ag.ny.gov/press-release/cuomo-settlement-bodies-exhibition-ends-practice-using-human-remains-suspect-origins;](https://ag.ny.gov/press-release/cuomo-settlement-bodies-exhibition-ends-practice-using-human-remains-suspect-origins)  
<http://www.premierexhibitions.com/exhibitions/4/4/bodies-exhibition/bodies-exhibition-disclaimer>

## Legal background

- 8 This Bill amends section 32 of the Act (Prohibition of commercial dealings in human material for transplantation) to prohibit United Kingdom citizens travelling abroad for the purposes of receiving controlled materials for the purpose of organ transplantation when the organ donor has not provided free, informed and specific consent. It currently prohibits certain offences related to organ trafficking which are committed within the United Kingdom.
- 9 In section 1 of the Act, bodies imported are exempt from the consent requirements provided for. This Bill amends section 1 to provide for bodies imported for the purpose of public display to have the same consent requirements as those sourced in the United Kingdom for the purposes of public display.

## Territorial extent and application

- 10 This Act extends to England and Wales and Northern Ireland only. Human Tissue policy is within the devolved competence of the Welsh and Northern Ireland Assemblies. The Bill will require a Legislative Consent Motion from the National Assembly for Wales and the Northern Ireland Assembly if the Northern Ireland Assembly is restored before the Bill is enacted.

## Commentary on provisions of Bill

### Clause 1: Appropriate consent to transplantation activities when travelling abroad (organ tourism)

- 11 Clause 1(2) amends the Human Tissue Act 2004 by amending section 32 (prohibition of commercial dealings in human material for transplantation). New paragraphs (f) prohibits a United Kingdom citizen to travel outside the United Kingdom and receive any controlled material, for the purpose of organ transplantation, where the material was obtained without the free, informed and specific consent of a living donor, or the free, informed and specific consent of the donor's next of kin where the donor is unable to provide consent. New paragraph (g) prohibits a United Kingdom citizen from travelling outside the United Kingdom and receiving controlled material which was removed from the donor (whether living or deceased) in exchange for financial gain or comparable advantage.
- 12 Inserted subsection (1A) provides for an offence for the purposes of paragraphs (f) and (g) to arise equally from an act or omission. Inserted subsection (1B) provides for the offence to arise whether the acts or omissions take place in the United Kingdom or elsewhere.
- 13 Inserted subsection (1C) defines "financial gain or comparable advantage" for the purpose of subsection (1)(g). Inserted subsections (1D), (1E) and (1F) provides that anyone with a close connection to the United Kingdom is liable for proceedings for the offence in any criminal court in England and Wales or Northern Ireland if the offence does not take place within the United Kingdom.
- 14 Subsection (3) and (4) are consequential amendments to the Human Tissue Act 2004 relating to the existing offences in the Act.
- 15 Subsection (5) of the Bill inserts new subsection (4A). This provides for the penalties for the new offences in subsection (1)(f) and (g).
- 16 Subsection (7) amends section 34 of the Act, inserting new subsections (2A) and (2B) to provide for patient identifiable records and for an annual report on instances of United Kingdom citizens receiving transplant procedures outside of the United Kingdom to be produced by NHS Blood and Transplant.

### Clause 2: Appropriate consent for public display of imported cadavers

- 17 Subsections (1) and (2) amend section 1 of the Human Tissue Act 2004 to provide for the same consent requirements for imported cadavers for display as United Kingdom-sourced cadavers for display.

## Financial implications of the Bill

- 18 There will be financial implications as a result of possible new criminal trials, and of the provision of patient identifiable records and an annual report on instances of United Kingdom citizens receiving transplant procedures outside of the United Kingdom by NHS Blood and Transplant.

## Related documents

- 19 The following documents are relevant to the Bill and can be read at the stated locations:

- Human Tissue Act 2004:  
[http://www.legislation.gov.uk/ukpga/2004/30/pdfs/ukpga\\_20040030\\_en.pdf](http://www.legislation.gov.uk/ukpga/2004/30/pdfs/ukpga_20040030_en.pdf)



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Ordered by the House of Lords to be printed, 28 January 2020

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