



**Isle of Man**

*Ellan Vannin*

V02

# ORGAN DONATION BILL 2018



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## Explanatory Memorandum

1. This Bill is promoted by Mr Perkins, MHK pursuant to leave to introduce granted by the Keys on 31 October 2017.
2. Part 1 of the Bill (clauses 1 to 5 deals with introductory and fundamental matters. *Clause 1* provides the short title of the resulting Act. *Clause 2* provides for the Act to come into operation on a day appointed by the Department of Health and Social Care (“the Department”). *Clause 3* deals with the interpretation of terms used in the Bill, while *clause 4* provides a definition of the term “relevant material”. Finally *clause 5* provides an overview of the later provisions of the Bill.
3. *Part 2* of the Bill comprises *clause 6* which imposes on the Department a duty to promote transplantation.
4. *Part 3* of the Bill comprises *clauses 7 to 13* and specifies which transplantation activities are lawful and what consent is required to carry them out. *Clause 7* deals with the authorisation of transplantation activities and makes it clear that such activities are lawful if done with appropriate consent (which includes deemed consent in certain circumstances). *Clause 8* deals with actual or deemed consent in the case of an adult. *Clause 9* excepts from the general provisions on adult consent persons who have died and who were not ordinarily resident for the 12 months preceding their death, and persons who were suffering from mental disability and had no understanding of consent for a significant period prior to their death. *Clause 10* deals with consent in the case of organ donors who are children. *Clause 11* permits the Department to designate classes of relevant material (referred to as excluded relevant material) for the use of which express consent is required. *Clause 12* permits a prospective organ donor to appoint representatives to deal with consent for the use of a donor’s organs after the donor’s death. Finally, in this Part, *clause 13* deals with the use of organs from a person who lacked capacity.
5. *Part 4* deals with offences. *Clause 14* makes it an offence for a person to undertake a transplantation activity without the appropriate consent. *Clause 15* deals with offences by corporations. *Clause 16* requires a prosecution under the Act to be instituted by, or with the consent of, the Attorney General.
6. *Part 5* contains some miscellaneous provisions. *Clause 17* deals with the preservation of relevant material which may be suitable for transplantation until consent can be obtained. *Clause 18* deals with the interaction of the Bill’s provisions with the jurisdiction of a Coroner of Inquests. *Clause 19* requires the Department to make and publish a Code of Practice on the approach to be taken in relation to matters such as obtaining consent for transplantation, which is

supplemented by detailed provision in *clause 20*. *Clause 21* deals with the disposal of bodies which are no longer required for the purposes of transplantation activities. The person having lawful custody of a body must arrange for its burial or cremation as soon as conveniently possible, or notify the deceased's executors or administrators that the body is available to be so dealt with. Failure to comply constitutes an offence. *Clause 22* makes a consequential amendment to the *Human Tissue Act 1986*. *Clause 23* deals with powers to make orders and regulations, requiring the Department to undertake such consultation as it thinks appropriate before making them, and subjecting them to a requirement for Tynwald approval before they come into operation. This does not apply to appointed day orders under section 2 which need only be laid before Tynwald.

7. The Bill is not expected to cause any increase in government expenditure.
8. In the opinion of the member moving the Bill its provisions are compatible with the Convention rights within the meaning of the Human Rights Act 2001.



## ORGAN DONATION BILL 2018

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## ORGAN DONATION BILL 2018

A **BILL** to amend the law relating to organ donation: and for connected purposes.

**BE IT ENACTED** by the Queen's Most Excellent Majesty, by and with the advice and consent of the Council and Keys in Tynwald assembled, and by the authority of the same, as follows:—

### PART 1: INTRODUCTION

#### 1 Short title

The short title of this Act is the Organ Donation Act 2018.

#### 2 Commencement

This Act comes into operation on such day or days as the Department may by order appoint.

#### 3 Interpretation

W2013/5/19

(1) In this Act—

“**adult**” means a person who has attained the age of 18 years;

“**child**” means a person who has not attained the age of 18 years;

“**coroner**” has the same meaning as in the *Coroners of Inquests Act 1987*;

“**the Department**” means the Department of Health and Social Care;

“**parental responsibility**” has the same meaning as in the *Children and Young Persons Act 2001* (see section 2 of that Act);

“**relevant material**” has the meaning given in section 4; and “**excluded relevant material**” has the meaning given in section 11;

“**transplantation activities**” has the meaning given in section 7.

(2) For the purposes of sections 10, 11 and 12 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 Department 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.

#### 4 Relevant material

W2013/5/18

- (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” means a live human embryo; and

“gametes” has the same meaning as it has by virtue of section 1(1), (4) and (6) of the Human Fertilisation and Embryology Act 1990 (of Parliament) in the other provisions of that Act (apart from section 4A).



## 5 Overview

W2013/5/1

The main provisions of this Act—

- (a) impose a duty on the Department of Health and Social Care to promote transplantation (section 6);
- (b) provide that certain activities done in the Island for the purpose of transplantation are lawful if done with consent (section 7);
- (c) set out how consent is given to transplantation activities, including the circumstances in which consent is deemed to be given in the absence of express consent (sections 8 to 13);
- (d) make it an offence for transplantation activities to be done in the Island without consent (section 14);
- (e) make amendments (sections 19 and 22) to the Human Tissue Act 2004, including in relation to a code of practice issued under that Act which—
  - (i) gives practical guidance to persons that do transplantation activities, and
  - (ii) lays down the standards expected in relation to the doing of such activities, including how consent is to be obtained.

## PART 2: PROMOTION OF TRANSPLANTATION

### 6 Duty of the Department to promote transplantation

W2013/5/2

- (1) The Department must—
  - (a) promote transplantation as a means of improving the health of the people of the Island,
  - (b) provide information and increase awareness about transplantation,
  - (c) inform the public of the circumstances in which consent to transplantation activities is deemed to be given in the absence of express consent, and
  - (d) ensure that the resources available to the Department include the specialist skills and competencies required for the purposes of this Act.
- (2) The duty under subsection (1) includes in particular an obligation on the Department, at least once every 12 months, to promote a campaign for the purpose of informing the public in the Island about the circumstances in which consent to transplantation activities is deemed to be given in the absence of express consent.

- (3) The Department must, for the first five years after this section comes into force, report annually to Tynwald on the steps taken to fulfil their duty under subsection (1).

## PART 3: LAWFUL TRANSPLANTATION ACTIVITIES

### 7 Authorisation of transplantation activities

W2013/5/3

- (1) Transplantation activities are lawful if done in the Island—
- (a) with express consent where that is required (see sections 8 to 11), or
  - (b) otherwise with deemed consent (see sections 8 and 13).
- (2) The following are “**transplantation activities**” for the purpose of this Act—
- (a) storing the body of a deceased person for use for the purpose of transplantation;
  - (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;
  - (d) using for that purpose any relevant material which has come from a human body.
- (3) A transplantation activity of the kind mentioned in subsection (2)(c) or (d) is lawful (without the need for consent) where done in the Island if—
- (a) the relevant material has been imported into the Island from outside the Island, and
  - (b) its removal from a person’s body took place outside the Island.

### 8 Consent: adults

W2013/5/4

- (1) This section makes provision about consent for the purposes of section 6 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 9), or
  - (b) a child (see section 10).
- (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

<i>Case</i>	<i>Meaning of express consent</i>
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 someone is able to give consent under the appointment.	Consent given by the person or persons appointed.
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 12.
- (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 11).

## 9 Consent: excepted adults

W2013/5/5

- (1) This section makes provision about consent for the purposes of section 7 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 the Island 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

<i>Case</i>	<i>Meaning of express consent</i>
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.
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 12.
- (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 11).

**10 Consent: children**

W2013/5/6

- (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

<i>Case</i>	<i>Meaning of express consent</i>
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 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 12.
- (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 11).

## 11 Consent: activities involving excluded relevant material

W2013/5/7

- (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 Department 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

<i>Case</i>	<i>Meaning</i>
1. The adult is alive.	The adult’s consent.
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

<i>Case</i>	<i>Meaning of express consent</i>
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. T	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 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 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 10.

## 12 Appointed representatives

W2013/5/8

- (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 7.
- (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 3 of the *Wills Act 1985*.
- (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 Department.

For the purpose of sections 8(3), 9(4), 10(3) and 11 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.

### **13 Activities involving material from adults who lack capacity to consent**

W2013/5/9

- (1) This section applies where—
- (a) a transplantation activity within section 7(2)(c) or (d) (storage or use of relevant material which has come from a human body) done in the Island 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 Department.



## PART 4: OFFENCES

### 14 Prohibition of activities without consent

W2013/5/10

- (1) A person commits an offence if the person does, without consent, a transplantation activity in the Island.
- (2) But a person does not commit an offence under subsection (1) if—
  - (a) the person reasonably believes—
    - (i) that he or she does the activity with consent, or
    - (ii) that what he or she does is not a transplantation activity;
  - (b) section 7(3) (imported material) applies; or
  - (c) section 17(1) (preservation for transplantation) applies.
- (3) A person (“P”) commits an offence if, in the Island—
  - (a) P falsely represents to a person whom P knows or believes is going to, or may, do a transplantation activity—
    - (i) that there is consent to the doing of the activity, or
    - (ii) that the activity is not a transplantation activity, and
  - (b) P knows that the representation is false or does not believe it to be true.
- (4) A person guilty of an offence under this section is liable— (a) on summary conviction to a fine not exceeding the statutory maximum; (b) on conviction on indictment— (i) to imprisonment for a term not exceeding 3 years, or (ii) to a fine, or (iii) to both.
- (5) In this section “consent” means the consent required by virtue of section 7.

*Maximum penalty for an offence under this section—*

- (a) *(on information) 3 years’ custody;*
- (b) *(summary) a level 5 fine.*

### 15 Offences by bodies corporate

W2013/5/11

- (1) Where an offence under section 14 is committed by a body corporate and is proven to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—
  - (a) any director, manager or secretary of the body corporate, or
  - (b) any officer who was purporting to act in that capacity,he or she (as well as the body corporate) is guilty of the offence and liable to be proceeded against and punished accordingly.

- (2) The reference to the director, manager or secretary of the body corporate includes a reference—
- (a) to any similar officer of the body;
  - (b) where the body is a body corporate whose affairs are managed by its members, to any officer or member of the body.

## 16 Prosecutions

No proceedings for an offence under section 14 may be instituted except by or with the consent of the Attorney General.

## PART 5: GENERAL PROVISIONS

## 17 Preservation for transplantation

W2013/5/13

- (1) Where part of a body of a deceased person lying in a hospital, nursing home or other institution in the Island 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) 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.

**18 Coroners**

W2013/5/14

- (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 7 (authorisation of transplantation activities), or
  - (b) section 17 (preservation for transplantation),in relation to the body or material.

**19 Codes of practice**

P2004/30/26

- (1) The Department must prepare and issue codes of practice for the purpose of—
  - (a) giving practical guidance to persons carrying on activities to which this Act applies, and
  - (b) laying down the standards expected in relation to the carrying-on of such activities.
- (2) The Department must deal under subsection (1) with the following matters—
  - (a) the carrying-out of anatomical examinations;
  - (b) the definition of death for the purposes of this Act;
  - (c) communication with the family of the deceased in relation to the making of a post-mortem examination;
  - (d) the making of post-mortem examinations;
  - (e) communication with the family of the deceased in relation to the removal from the body of the deceased, for use for a scheduled purpose, of any relevant material of which the body consists or which it contains;
  - (f) the removal from a human body, for use for a scheduled purpose, of any relevant material of which the body consists or which it contains;
  - (g) the storage for use for a scheduled purpose, and the use for such a purpose, of—

- (i) the body of a deceased person, or
  - (ii) relevant material which has come from a human body;
- (h) the disposal of relevant material which has come from a human body;
- (3) In dealing under subsection (1) with the matters mentioned in subsection (2)(f) and (g), the Department must, in particular, deal with consent.
- (4) The Department must—
  - (a) keep any code of practice under this section under review, and
  - (b) prepare a revised code of practice when appropriate.
- (5) Before preparing a code of practice under this section, the Department must consult such persons as it considers appropriate.,
- (6) The Department must publish a code of practice issued under this section in such way as, in its opinion, is likely to bring it to the attention of those interested.
- (7) A code of practice issued under this section shall come into operation on such day as may be appointed by directions.
- (8) Codes of practice under this section —
  - (a) may make different provision for different cases; and
  - (b) must be laid before Tynwald.

## **20 Provision with respect to consent**

- (1) The duty under section 19(3) has effect, in particular, to require the Department to lay down the standards expected in relation to the obtaining of consent where consent falls by virtue of a provision listed in subsection (2) to be obtained from a person in a qualifying relationship.
- (2) Those provisions are section 8(3), 9(4), 10(3) and 11.
- (3) Subject to subsection (4), the standards required to be laid down by subsection (1) must include provision to the effect set out in subsections (5) to (9).
- (4) The standards required to be laid down by subsection (1) may include provision to different effect in relation to cases which appear to the Department to be exceptional.
- (5) The qualifying relationships for the purpose of a provision listed in subsection (2) should be ranked in the following order—
  - (a) spouse, civil partner or partner;
  - (b) parent or child;
  - (c) brother or sister;
  - (d) grandparent or grandchild;

- (e) child of a person falling within paragraph (c);
  - (f) stepfather or stepmother;
  - (g) half-brother or half-sister;
  - (h) friend of longstanding.
- (6) Relationships in the same paragraph of subsection (5) are to be accorded equal ranking.
- (7) Consent should be obtained from the person whose relationship to the person concerned is accorded the highest ranking in accordance with subsections (5) and (6).
- (8) If the relationship of each of two or more persons to the person concerned is accorded equal highest ranking in accordance with subsections (5) and (6), it is sufficient to obtain the consent of any of them.
- (9) In applying the principles set out above, a person's relationship shall be left out of account if—
- (a) the person does not wish to deal with the issue of consent,
  - (b) the person is not able to deal with that issue, or
  - (c) having regard to the activity in relation to which consent is sought, it is not reasonably practicable to communicate with the person within the time available if consent in relation to the activity is to be acted on.
- (10) The duty under section 19(3) also has effect, in particular, to require the Department 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.
- (11) 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.
- (12) After carrying out such public consultation as it thinks appropriate, the Department may by order amend subsection (5).

*Tynwald procedure for an order under this subsection – approval required.*

## **21 Disposal of bodies used for the purposes of transplantation activities**

Drafting: see 1984/13/3

- (1) Subject to any direction of a coroner, where a body or part of a body has been used for the purposes of transplantation activities, the person having charge of the body after it has been so used, or any part of the body not used for such purposes, must ensure that the body or that part of the body receives either burial or cremation in accordance with law as soon as conveniently possible.

- (2) The obligation under subsection (1) of a person having charge of a body or part of a body is discharged if that person informs the executor, surviving spouse, surviving civil partner, partner or nearest relative of the deceased that the body or part of the body is available for burial or cremation.
- (3) A person having charge of a body or part of a body who fails to comply with subsection (1) commits an offence.  
*Maximum penalty (summary) a level 4 fine.*
- (4) No proceedings for an offence under subsection (3) may be instituted except by or with the consent of the Attorney General.

## 22 Consequential amendment of the Human Tissue Act 1986

- (1) The *Human Tissue Act 1986* is amended as follows.
- (2) In section 1 (removal of organs etc for medical purposes) insert—
 

<p>11(1) Nothing in this section applies in relation to transplantation activities done in the Island.</p>	<p>Here “transplantation activities” has the same meaning as in the <i>Organ Donation Act 2018</i>. 12.</p>
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## 23 Orders and regulations

- (1) A power to make an order or regulations under this Act includes power to make such incidental, consequential, transitional, transitory, or supplemental provision as the Department consider appropriate.
- (2) Before making an order or regulations under this Act, other than an order under section 2 (commencement), the Department must carry out such public consultation as it considers appropriate.
- (3) Section 30 of the *Legislation Act 2015* (Tynwald procedure — approval required) applies to regulations and orders under this Act, other than an order under section 2.
- (4) Section 34 of the *Legislation Act 2015* (Tynwald procedure — laying only) applies to an order under section 2.