

*These notes refer to the Organ and Tissue Donation (Deemed Consent) Act (Northern Ireland) 2022 (c.10) which received Royal Assent on 30 March 2022*

# Organ and Tissue Donation (Deemed Consent) Act (Northern Ireland) 2022

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## **EXPLANATORY NOTES**

### **OVERVIEW**

10. The current law on consent for the use of bodies and most human organs and tissue relevant material is set out in the Human Tissue Act 2004 (“the 2004 Act”). The 2004 Act, among other things, makes provision with respect to activities involving human tissue, such as organ transplantation, and authorises the removal, storage and use of organs and tissues for the purposes of transplantation if there is “appropriate consent”. The meaning of appropriate consent differs depending on whether the relevant material is obtained from an adult or a child, but, under the 2004 Act as it currently stands, the overarching principle for activities which are to take place after an individual’s death is that consent must be given expressly by a decision of the individual which is in force immediately before their death, or by a decision by a person appointed by them or in a “qualifying relationship” with them.
11. The Act amends the 2004 Act to provide that consent to organ and tissue donation in NI will be deemed to have been given by a potential adult organ donor before their death unless that donor has expressly stated that they did not wish to be an organ donor or one of the exceptions applies.
12. This is often referred to as an “opt-out” system of consent as a person will be deemed to have given consent to becoming an organ donor unless they have otherwise indicated. The Act does not propose any changes to the rules on consent to organ donation in respect of children under 18 or people who have expressly made a decision on consent before their death (either by recording their decision to give or refuse consent or appointing someone to make that decision on their behalf)
13. This Act also does not propose any changes to consent concerning transplants from living persons and the consent of the donor will continue to be required in those circumstances. Further, the Act sets out that deemed consent will not apply where a person in a qualifying relationship to the deceased (partners, certain family members or a friend of long standing) provides information that would lead a reasonable person to conclude that the deceased potential organ donor would not have consented to be an organ donor. This has been referred to as a “soft opt-out” system as evidence of the known wishes of the deceased

person has to be considered in deciding whether consent should be deemed to have been given.

14. The Act also provides exceptions applicable to the following groups of adults, in respect of whom the deemed consent provisions will not apply:
  - People who were short-term visitors or temporarily resident in Northern Ireland for less than 12 months immediately before dying. Examples could include overseas workers, students, overseas Armed Forces personnel; and
  - People who lacked the capability to fully understand the consequences of deemed consent for a significant period before dying.
15. Deemed consent will not apply in respect of all organs and tissues. Organs and tissues that are to be included within deemed consent will be set out in regulations made by the Department.
16. The Act will also amend the Health (Miscellaneous Provisions) Act (Northern Ireland) 2016 to extent the Department's existing statutory duty to report to the Assembly to include, at least once every five years, the opinion of the Department as to whether both the 2016 Act and the new Organ and Tissue Donation (Deemed Consent) Act, have been effective in promoting transplantation. The Act also included a duty on the Department to inform the public at least once a year specifically about deemed consent and how a person can during their lifetime record their own decisions about transplantation after their death of parts of their body, or appoint someone to make decisions after their death about transplantation of parts of their body.