

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

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Section 1: “Appropriate consent” to adult transplantation activities: Northern Ireland

This Section amends section 3 of the 2004 Act to provide that deemed consent of the person concerned amounts to appropriate consent for the purposes of certain transplantation activities unless the person concerned is an excepted adult. This is achieved in particular by the amendment to subsections (6)(ba). By shifting the default position in relation to consent away from an opt-in system to an opt-out one, it is hoped that consent for transplantation in the cases which are clinically suitable will rise towards the target percentage of 80 per cent.

There will be, of course, people who have actively recorded a decision in writing before they died as to whether they do or do not consent to organ donation, or who opted to appoint someone to make that decision on their behalf. In these cases, as in the case of children and living donors, there is no change to what constitutes “appropriate consent”. The Act also provides that consent cannot be deemed to have been given where a person who stood in a qualifying relationship to the deceased provides information that would lead to a conclusion that the deceased would not have consented to organ donation.

Consent will not be deemed to have been given in cases where the transplantation is of novel material. This is to ensure that the new system of consent is in line with the common understanding of organ and tissue donation. Material that is permitted to be transplanted (permitted material) will be specified in regulations made by the Department following consultation. Regulations made by the Department under the provisions inserted by this Act must be laid in draft before and approved by a resolution of the Assembly.

People who lacked capacity to understand deemed consent for a significant period before their death and those who were not ordinarily resident in Northern Ireland for at least 12 months before dying are excluded from the deemed consent system.

The Section amends section 15 of the Health (Miscellaneous Provisions) Act (Northern Ireland) 2016 to include a duty on the Department to inform the public

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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 or parts of their body, or appoint someone to make decisions after their death about transplantation of parts of their body. The Section also amends section 16(3)(a) of that Act to extend the duty of the Department to report the opinion of the Department as to whether that Act has been effective in promoting transplantation to include reporting also on whether this Act has been effective in promoting transplantation.