

GUERNSEY STATUTORY INSTRUMENT

2022 No. 87

**Human Tissue and Transplantation (Bailiwick of
Guernsey) Regulations, 2022**

Made 29th November, 2022

Coming into operation 1st January, 2023

Laid before the States 2023

THE STATES OF GUERNSEY COMMITTEE FOR HEALTH AND SOCIAL CARE, in exercise of the powers conferred on it by sections 7, 9(5)(e) and 23 of the Human Tissue and Transplantation (Bailiwick of Guernsey) Law, 2020^a, and all other powers enabling it in that behalf, hereby makes the following Regulations:-

Authorisation of persons.

1. Any person working in a specialist organ donation role as part of a National Health Service organ donation team, or within the intensive care unit or the emergency department of the Princess Elizabeth Hospital in Guernsey is an authorised person for the purposes of the Law if the person -

- (a) is registered in the Nurses' Part, or the Specialist Community Public Health Nurses' Part, of the register

^a Order in Council No. III of 2021.

maintained by the Nursing and Midwifery Council under Article 5 of the Nursing and Midwifery Order 2001^b, or

- (b) is fully registered in the medical register kept under the Medical Act 1983^c and holds a licence to practise under that Act.

Effect of decisions recorded on the Organ Donation Register.

2. (1) The following decisions recorded on the Organ Donation Register have effect as decisions made under the Law and may be recognised by authorised persons for the purposes of certification -

- (a) a decision by a person to give express consent to a regulated activity, and
- (b) a decision by a person not to consent to a regulated activity (for example by making an "opt-out" declaration).

(2) A decision by a person ("A") to appoint another person ("B") to represent A after A's death to deal with the issue of express consent, where recorded on the Organ Donation Register -

^b UK S.I. 2002 No. 253; this enactment has been amended.

^c An Act of Parliament, 1983 c.54; this enactment has been amended.

- (a) is a valid written appointment of B for the purposes of such representation under section 9 of the Law, and
- (b) may be recognised by authorised persons for the purposes of certification.

(3) Paragraph (1)(a) does not apply in respect of any regulated activity involving the removal or use of excluded material from the body of a deceased person.

(4) For the avoidance of doubt, nothing in this regulation -

- (a) precludes an authorised person recognising a decision made by a person ("C") -
 - (i) to give express consent to a regulated activity,
 - (ii) not to consent to a regulated activity, or
 - (iii) to appoint another person ("D") to represent C after C's death to deal with the issue of express consent,

by reason only that the decision is not recorded on the Organ Donation Register, or

- (b) requires any person to carry out a regulated activity by reason only that express consent has been given to the activity -

- (i) as recorded on the Organ Donation Register, or
- (ii) by a person appointed to deal with express consent as recorded in that register.

Requirements for authorised persons recording or certifying consent.

3. Subject to regulation 4, an authorised person must -
- (a) have regard to any applicable code of practice issued by the Committee under section 20 of the Law in determining whether or not there is express or deemed consent to a regulated activity, and
 - (b) where there is express or deemed consent to a regulated activity, record and certify that consent in the form and manner specified in the code of practice.

Special provisions for certification of deemed consent.

4. (1) This regulation applies for the purposes of an authorised person certifying that there is deemed consent for the removal of human tissue from the body of a deceased adult ("E") for a transplantation activity.

(2) An authorised person must not treat E as an excepted adult for the purposes of section 7(1)(d) of the Law by virtue of E falling within section 24(1)(a) of the Law unless a person provides information to the authorised person that would lead a reasonable person to conclude that throughout all or the majority of the designated period, E was incapable of understanding -

- (a) that an adult may be deemed to have consented to the removal and use of a part of the adult's body after the adult's death for transplantation, and
- (b) that if authorisation is so deemed, after the adult's death part of the adult's body may be removed from the body and used for transplantation.

(3) An authorised person must not determine that E would not have consented to the transplantation activity for the purposes of section 7(1)(e) of the Law unless a person provides information to the authorised person that would lead a reasonable person to conclude that -

- (a) E's most recent view was that E was unwilling for the relevant part of E's body to be used for transplantation, or
- (b) if E were capable of making a decision about removal and use of the part, E would be unwilling in the circumstances for the part to be used for transplantation.

(4) In paragraph (2), "**designated period**" means the period of 12 months immediately before E's death.

Interpretation.

5. In these Regulations -

"**certify**", in relation to an authorised person, means to certify express or deemed consent to a regulated activity, for the purposes of section 4(3)(b) of the Law,

"**the Law**" means the Human Tissue and Transplantation (Bailiwick of Guernsey) Law, 2020,

"**Organ Donation Register**" means the United Kingdom NHS Organ Donation Register,

"**regulated activity**" has the meaning given by section 1(1) of the Law, and

"**transplantation**" and "**transplantation activity**" have the respective meanings given by section 1 of the Law.

Citation.

6. These Regulations may be cited as the Human Tissue and Transplantation (Bailiwick of Guernsey) Regulations, 2022.

Extent.

7. These Regulations have effect throughout the Bailiwick.

Commencement.

8. These Regulations shall come into force on 1st January, 2023.

Dated this 29th day of November, 2022



.....
A. H. BROUARD

President of the Committee for Health & Social Care

For and on behalf of the Committee

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations authorise certain nurses and medical practitioners to act as authorised persons under the Human Tissue and Transplantation (Bailiwick of Guernsey) Law, 2020 ("**the Law**") and recognise a decision to give express consent or not to consent, and a decision to appoint a person to deal with the issue of express consent, where recorded on the NHS Organ Donation Register.

These Regulations also regulate the determination and certification of express or deemed consent, and make associated provisions.

These Regulations come into force on 1st January, 2023, which is the date on which the Law will be brought into force by the Human Tissue and Transplantation (Bailiwick of Guernsey) Law, 2020 (Commencement) Ordinance, 2022.