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Organ donation in Jersey

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Introduction

The law that governs organ and tissue donation has recently changed in Jersey. The Human Transplantation and Anatomy (Jersey) Law 2018 (New Law) came into force on 1 July 2019. From that date, any adult in Jersey who does not 'opt out' of donating their organs before their death will now be deemed to have given consent to their donation.

In other words there will be an assumption that you will donate your organs unless you expressly 'opt-out'. Since December 2015, similar legislation has been in force in Wales. England, Northern Ireland and Scotland are expected to follow suit in 2020.

Why has the law changed?

There is a growing need for organ transplants and in the UK it is estimated that 6,000 people are awaiting organ transplants in 2019. In Jersey, according to a report prepared in 2017 by the former Minister for Health, Andrew Green MBE, the number of people registered to donate organs was just 12%. This is a very insignificant number even when compared to the fairly low UK average of 36%.

Interestingly, according to the survey on which the report was based, 75% of people would want an organ transplant if they needed one, and 55% of people would want their organs to be used to treat others when they die. Busy schedules or simply not knowing how to register were the reasons given by those wishing to register but not having done so.

It is hoped the New Law can produce a solution to this issue and can bridge the gap between the percentage of individuals already registered on the NHS donor register and those who are not registered but still wish to donate.

How does the New Law operate?

The New Law means that a person who does not 'opt-out' to the carrying out of certain 'specified activities' will be deemed to have consented to them. At present these 'specified activities' are transplantations of 'relevant material' (and associated activities such as storage and performing tests) and the use of transplanted material for medical education and therapeutic purposes.

'Relevant material' is defined as material, other than gametes, which consist of or includes human cells but does not include embryos outside the human body, or hair and nails from the body of a living person. There is

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provision in the New Law for orders to be made which may exclude certain relevant material. Transfusion is also included within the meaning of transplantation.

Deemed consent only applies to adults who have not opted-out of donating their organs and to certain 'excepted' persons'. However, family members may object to a donation if they have reason to believe that the deceased person would have objected to transplantation on the basis of the views they held and a reasonable person, stood in the position of the relevant family member, would have concluded the same.

People under the age of 18 will not be deemed to have given consent to the use of their organs for transplantation on their death i.e. express consent from the person who has parental responsibility for them will be required. That said, in the case of a young person who is 16 or over, they will be able to give express consent to transplantation whilst alive if it would appear to a reasonable person that the young person has sufficient understanding to make an informed decision on the issue.

Excepted persons for whom deemed consent is not given are:

- adults who have died having not been ordinarily resident in Jersey for a period of at least 12 months prior to their death; and
- adults who have died and for a significant period before dying lacked capacity to understand the notion that consent to a 'specified activity' can be deemed to have been given. A significant period is defined as a sufficiently long period for a reasonable person to conclude that it would be inappropriate for consent to be given.

The New Law also provides that, subject to fulfilling certain formalities, a person can appoint one or more persons to represent them after death for the purposes of giving any express consent required by the New Law. Such an appointment may be made by a young person who is 16 or over, if the same test for the purpose of giving express consent is also passed.

NHS Donor Register

In order to opt out of the deemed consent provisions, there must be in place a decision not to consent immediately before death. Therefore, the use of a will or other testamentary disposition will not be effective for the purpose of withholding of consent.

Under regulations which also came into force on 1 July 2019, an individual will be able to record a decision not to consent and an express consent to the donation of their organs on the NHS Organ Donor Register (https://www.organdonation.nhs.uk/).

How can we help?

If the New Law has got you thinking about how you can ensure your wishes in relation to organ donation are clear, please contact a member of our team who will be happy to discuss the changes with you further.

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