

STATES OF JERSEY



DRAFT HUMAN TRANSPLANTATION AND ANATOMY (JERSEY) LAW 201- (P.57/2018): AMENDMENT

Lodged au Greffe on 27th March 2018
by the Minister for Health and Social Services

STATES GREFFE

DRAFT HUMAN TRANSPLANTATION AND ANATOMY (JERSEY) LAW 201-
(P.57/2018): AMENDMENT

1 PAGE 46, ARTICLE 9 –

In paragraph (2) for the words “Article 19(2)(a)” substitute the words “Article 18(2)(a)”.

2 PAGE 48, ARTICLE 14 –

Delete Article 14 and renumber the subsequent Articles.

3 PAGE 50, ARTICLE 19 (RENUMBERED ARTICLE 18) –

In Article 19 (renumbered Article 18) –

- (a) renumber paragraphs (1) and (2) as paragraphs (2) and (3) respectively;
- (b) before renumbered paragraph (2) insert the following paragraph –
 - “(1) The States shall by Regulations make provision for the registration of express consent, or a decision not to consent, to a specified activity.”;
- (c) in renumbered paragraph (3) –
 - (i) delete sub-paragraph (d),
 - (ii) renumber sub-paragraph (e) as sub-paragraph (d).

MINISTER FOR HEALTH AND SOCIAL SERVICES

REPORT

The Draft Human Transplantation and Anatomy (Jersey) Law 201- (the “draft Law”) ([P.57/2018](#)) makes provision concerning the storage, removal, and use of the body, or relevant material (as defined in Article 1(1)) from the body of a deceased person for the purposes of transplantation, teaching of anatomy, medical education, or research and therapeutic purposes.

In reviewing the draft Law, the Health and Social Security Scrutiny Panel raised a number of constructive points in policy and legislative matters, and the Minister for Health and Social Services is happy to acknowledge and address a number of those points in this amendment.

Firstly, in responding to a query from the Panel regarding the effect of Article 14, which makes further provision around the concept of ‘authority’ being given in respect of a body by a person entrusted with that body, on reflection it was determined that Article 14 could be deleted in its entirety. The reason for this is that, under the draft Law, authority to undertake a specified activity stems from consent being given by the patient (whether that is express consent or, in the absence of express consent and subject to the relevant criteria being fulfilled, deemed consent). Article 14 and the reference to the concept of ‘authority’ in that provision was brought forward from the Anatomy and Human Tissue (Jersey) Law 1984 but, given the way the new draft Law is constructed around the concept of ‘consent’, the residual reference to ‘authority’ in Article 14 being required from persons in control and management of the body is a concept that does not fit with the main provisions in the draft Law. This makes the presence of Article 14 in the draft Law unnecessary.

Secondly, in reviewing the draft Law, the Scrutiny Panel suggested that a mechanism should be in place for recording the decision of those who wished to opt out from consent being deemed in their case. The draft Law includes a provision (Article 19(2)(d)) for the States to make further provision by Regulations for the registration of express consent, or express refusal to consent, to a specified activity. This provision would enable the States to make provision to implement the necessary mechanism for registration of the ‘opt out’ from deemed consent. The Scrutiny Panel considered that the need for such a mechanism to be put in place was of such importance that the obligation to make provision in this regard should be mandatory, rather than discretionary as currently drafted. The Minister agrees to the Panel’s comments in this regard and the proposed amendment would provide that the States shall make further provision by Regulations for the required mechanism. This amendment is reflected in the new proposed (renumbered) Article 18(1).

In practice, it is likely that individuals will register their decision with the National Health Service Blood and Transplant service, which currently maintains the single UK-wide register that records whether an individual has opted out (or opted in) to organ donation. This arrangement will be confirmed in the period before the new Law comes into effect.

The Minister asks Members to support the draft Law, as amended.

Collective responsibility under Standing Order 21(3A)

The Council of Ministers has a single policy position on this proposition, and as such, all Ministers, and the Assistant Ministers for Health and Social Services, are bound by the principle of collective responsibility to support the proposition, as outlined in the Code of Conduct and Practice for Ministers and Assistant Ministers ([R.11/2015](#) refers).

Financial and manpower implications

There are no additional financial or manpower implications for the States arising from the adoption of this amendment.