

**THE STATES OF DELIBERATION**  
**of the**  
**ISLAND OF GUERNSEY**

**PROJET DE LOI**

Entitled

**THE HUMAN TISSUE AND TRANSPLANTATION (BAILIWICK OF GUERNSEY) LAW, 2020**

The States are asked to decide:-

Whether they are of the opinion to approve the draft Projet de Loi entitled "The Human Tissue and Transplantation (Bailiwick of Guernsey) Law, 2020", and to authorise the Bailiff to present a most humble petition to Her Majesty praying for Her Royal Sanction thereto.

This proposition has been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications in accordance with Rule 4(1) of the Rules of Procedure of the States of Deliberation and their Committees.

**EXPLANATORY MEMORANDUM**

Part I defines activities that are authorised and regulated under the Law.

Clause 1 defines "regulated activity", "transplantation" and "transplantation activity".

Part II authorises and regulates those activities.

Clause 2 authorises a transplantation activity or the removal of human tissue from the body of a deceased person, or removal of the body of a deceased person, for a teaching, research or therapeutic purpose ("a regulated activity") if the activity is carried out with express or deemed consent. The activity is also authorised if specifically authorised by clause 5 or if it comprises a limited activity in relation to human tissue that was lawfully removed outside the Bailiwick and lawfully imported into the Bailiwick.

Clause 3 prohibits regulated activities unless authorised by clause 2.

Clause 4 prohibits the removal of human tissue from the body of a deceased person for a transplantation activity or a teaching, research or therapeutic purpose unless the person removing the tissue is a registered medical practitioner, two registered medical practitioners have certified that life is extinct and an authorised person has certified that there is express or deemed consent for the relevant activity or purpose.

Clause 5 authorises the controller of a hospital or other institution to take steps to preserve the body or human tissue for use for transplantation unless and until it is clear that there is no express or deemed consent for transplantation.

Part III deals with the giving of express consent for a regulated activity and sets out circumstances in which consent for the activity is deemed to have been given.

Clause 6 sets out who can give express consent to a regulated activity involving the removal of human tissue from the body of an adult or removal of the body of a deceased adult.

Clause 7 sets out the circumstances in which consent is deemed to be given to a regulated activity involving the removal of human tissue from the body of a deceased adult.

Clause 8 sets out who can give express consent to a regulated activity involving the removal of human tissue from the body of a child or removal of the body of a deceased child.

Clause 9 provides for the oral or written appointment of one or more individuals to represent a person after death to deal with the issue of express consent.

Clause 10 precludes a guardian of an adult dealing with the issue of express consent by virtue only of being the guardian of the adult.

Clause 11 presumes that a child of or over 16 years of age is competent to deal with the issue of express consent unless the contrary is shown.

Clause 12 prohibits a person from giving, or acting on, consent to a regulated activity involving a deceased person where the person is aware or has reason to believe that a post-mortem or inquest might be required by Her Majesty's Procureur.

Part IV deals with offences and penalties under the Law.

Clause 13 makes it an offence to provide false, deceptive or misleading information in purported compliance with any condition, requirement or duty or where the information is used or relied on to make a determination or carry out an activity under the Law.

Clause 14 sets out the general penalty for an offence under the Law for which no other penalty is specified.

Clause 15 provides for a defence of due diligence.

Clause 16 deals with the criminal liability of directors and other officers of legal entities.

Clause 17 deals with criminal proceedings against unincorporated bodies.

Part V sets out general and miscellaneous provisions.

Clause 18 excludes post-mortem examinations, inquests and related activities from the application of the Law.

Clause 19 excludes civil liability on the part of an authorised person acting in the discharge of functions under this Law, unless the authorised person acted in bad faith.

Clause 20 provides for the States of Guernsey Committee for Health & Social Care to issue codes of practice and guidance for the purposes of the Law.

Clause 21 provides for the States of Deliberation to make Ordinances to give effect to the Law. Before recommending that the States of Deliberation make an Ordinance that affects Alderney or Sark, the States of Guernsey Committee for Health & Social Care must consult the Policy & Finance Committee of the States of Alderney or, as the case requires, the Policy and Finance Committee of the Chief Pleas of Sark. Either or both of the States of Alderney and the Chief Pleas of Sark may disapprove (and disapply) an Ordinance that would otherwise apply to Alderney or, as the case may be, Sark.

Clause 22 empowers the States of Deliberation to amend provisions of the Law relating to the giving of express consent for adults and children, deemed consent for adults, the appointment of persons to deal with consent, the meaning of "excepted adults" for the purposes of deemed consent, and the meaning of "qualifying relationship".

Clause 23 provides for the States of Guernsey Committee for Health & Social Care to make regulations for the purposes of the Law, including prescribing fees and charges for the issue of any report or certificate. Before making any regulations that affect Alderney or Sark, the States of Guernsey Committee for Health & Social Care must consult the Policy & Finance Committee of the States of Alderney or, as the case requires, the Policy and Finance Committee of the Chief Pleas of Sark. Either or both of the States of Alderney and the Chief Pleas of Sark may disapprove (and disapply) regulations that would otherwise apply to Alderney or, as the case may be, Sark.

Clause 24 defines "excepted adult" for the purposes of deemed consent.

Clause 25 defines "qualifying relationship".

Clause 26 clarifies the meaning of references to human tissue from a body.

Clause 27 defines other expressions used in the Law.

Clause 28 repeals the Human Tissue (Bailiwick of Guernsey) Law, 1981.

Clause 29 makes transitional provision in respect of a body or part of a body removed in accordance with an authority given under section 1 of the Human Tissue (Bailiwick of Guernsey) Law, 1981. Where such removal takes place before the date on which that Law is repealed, the removal and subsequent use of the body or part of the body in accordance with that authority remains lawful as if that Law had not been repealed.

Clauses 30 and 31 are the citation and commencement provisions respectively. The Law will come into force on the date or dates specified by Ordinance of the States of Deliberation.

# PROJET DE LOI

ENTITLED

## **The Human Tissue and Transplantation (Bailiwick of Guernsey) Law, 2020**

ARRANGEMENT OF SECTIONS

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# PROJET DE LOI

ENTITLED

## **The Human Tissue and Transplantation (Bailiwick of Guernsey) Law, 2020**

**THE STATES**, in pursuance of their Resolution of the 28<sup>th</sup> November, 2018<sup>a</sup>, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Bailiwick of Guernsey.

### PART I

#### PRELIMINARY

#### **Meaning of "regulated activity", "transplantation" and "transplantation activity".**

1. (1) In this Law –

**"regulated activity"** means –

- (a) any transplantation activity;
- (b) the removal of human tissue from the body of a deceased person, or removal of the body of a deceased person, for a teaching, research or therapeutic purpose,

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<sup>a</sup> Article XIV of Billet d'État No. XXV of 2018.

- (c) any other prescribed activity, and

**"transplantation activity"** means –

- (a) storing the body of a deceased person for the purpose of transplantation,
- (b) carrying out tests and investigations to determine whether human tissue is suitable for the purpose of transplantation,
- (c) removing from the body of a deceased person for the purpose of transplantation any human tissue of which the body consists or which it contains,
- (d) storing for the purpose of transplantation any human tissue which has come from the body of a person,
- (e) using for the purpose of transplantation any human tissue which has come from the body of a person, or
- (f) any prescribed activity.

(2) In this Law, a reference to transplantation –

- (a) is a reference to transplantation to a human body, and
- (b) includes transfusion.



PART II  
AUTHORISATION AND CONTROL OF REGULATED ACTIVITIES

**Authorisation of regulated activities.**

2. (1) Subject to subsection (5), despite any custom or rule of law to the contrary, a person may carry out a regulated activity if it satisfies one or more of conditions A, B and C.

(2) Condition A is that the activity is carried out with express consent or deemed consent.

(3) Condition B is that the activity falls within paragraph (d) or (e) of the definition of "**transplantation activity**" in section 1(1), and the human tissue was –

(a) lawfully removed from the person's body outside the Bailiwick, and

(b) lawfully imported into the Bailiwick.

(4) Condition C is that the activity is authorised by section 5.

(5) Subsection (1) does not apply if the activity is carried out in breach of section 4(1) or 12(2).

(6) This section does not –

(a) make unlawful any dealing with the body of a

deceased person or any human tissue from it that would be lawful otherwise than under this Law, or

- (b) limit the effect of section 4.

**Prohibition of regulated activities.**

3. (1) A person must not carry out a regulated activity unless it is authorised by section 2.

(2) A person who contravenes or fails to comply with subsection (1) is guilty of an offence.

**Conditions for removal of human tissue from deceased persons.**

4. (1) Unless both conditions D and E and any other prescribed condition are satisfied, a person must not remove any human tissue from the body of a deceased person for –

- (a) a transplantation activity,
- (b) a teaching, research or therapeutic purpose, or
- (c) any other prescribed activity.

(2) Condition D is that the person removing the human tissue –

- (a) is a registered practitioner, or
- (b) is not a registered practitioner but satisfies the conditions in section 1(1)(a) and (b) of the Regulation of

Health Professions (Medical Practitioners) (Guernsey and Alderney) Ordinance, 2015<sup>b</sup> or section 1(1)(a) and (b) of the Regulation of Health Professions (Medical Practitioners) (Sark) Ordinance, 2017<sup>c</sup>, as the case may be,

- (3) Subject to subsection (4), condition E is that –
- (a) two registered practitioners have issued a certificate to the effect that they each have by personal examination of the body satisfied themselves that life is extinct, and
  - (b) an authorised person has issued a certificate to the effect that the person is of the opinion that there is express consent or deemed consent for the removal of that human tissue for the activity or purpose concerned.

(4) A person removing or using the human tissue must not issue a certificate for the purposes of subsection (3).

(5) A person who contravenes or fails to comply with subsection (1) is guilty of an offence.

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<sup>b</sup> Ordinance No. XXII of 2015; amended by No. L of 2015 and No. IX of 2016.

<sup>c</sup> Sark Ordinance No. VI of 2017.

**Preservation for transplantation.**

5. (1) Where human tissue from the body of a deceased person lying in a hospital, nursing home, mortuary or other institution is or may be suitable for use for transplantation, the controller of the institution may do all or any of the following –

- (a) take steps for the purpose of preserving the body or human tissue for use for transplantation,
- (b) store the body or human tissue for the purpose mentioned in paragraph (a), and
- (c) carry out any other prescribed activity.

(2) Subsection (1)(a) only authorises –

- (a) the taking of minimum steps necessary for the purpose mentioned in that provision, and
- (b) the use of the least invasive procedure.

(3) Subsection (1) ceases to apply once the controller is aware or has reason to believe that, for the removal of the human tissue from the body for transplantation –

- (a) express consent has not been and will not be given, and
- (b) there is no deemed consent.

(4) For the avoidance of doubt, subsection (1) does not apply where the body is entrusted to the controller only for the purpose of its interment or cremation.

(5) In this section "**controller**", in relation to any institution –

(a) means the person that has the control or management of the institution, and

(b) includes any person authorised by the person described in paragraph (a) to carry out an activity mentioned in subsection (1).

PART III  
CONSENT

**Express consent for adults.**

6. (1) Express consent is given for a regulated activity involving the removal of human tissue from the body of an adult, or removal of the body of a deceased adult, in each case described in column 1 of Table 1 where the person specified in column 2 of the table has given express consent to the activity –

TABLE 1

Column 1		Column 2
Case		Person giving express consent
1.	The adult is alive.	That adult.

Column 1		Column 2
Case		Person giving express consent
2.	The adult has died and a decision of the adult as to consent to the regulated activity was in effect immediately before the adult's death.	That adult.
3.	The adult has died, case 2 does not apply, the adult had appointed a person under section 9 to deal with the issue of express consent and the appointed person is available to give express consent under the appointment.	The appointed person.
4.	The adult has died, case 2 does not apply and the adult had appointed a person under section 9 to deal with the issue of express consent but the appointed person is unavailable to give express consent under the appointment.	Any person who stood in a qualifying relationship to the adult immediately before the adult's death.
5.	The adult has died and none of cases 2, 3 or 4 applies in relation to that adult.	Any person who stood in a qualifying relationship to the adult immediately before the adult's death.

(2) For the avoidance of doubt, case 1 in Table 1 does not apply to a regulated activity involving the removal of human tissue from the body of a deceased adult or the removal of the body of a deceased adult.

**Deemed consent for adults.**

7. (1) Consent is deemed to be given for a transplantation activity involving the removal of human tissue from the body of a deceased adult unless –

- (a) the human tissue is or contains excluded material,
- (b) the case falls within the description of case 2, 3 or 4 of Table 1 in section 6,
- (c) a decision of the adult not to consent to transplantation activity is in effect,
- (d) the adult is an excepted adult,
- (e) the adult would not have consented to the transplantation activity, or
- (f) proceeding with the transplantation activity would lead to severe distress in or severe conflict amongst persons who stood in a qualifying relationship to the adult immediately before death.

(2) The Committee may make regulations to regulate the issue by an authorised person of a certificate to the effect that there is deemed consent for the purposes of section 4(3)(b), including regulations prescribing –

- (a) the procedure to be followed by an authorised person to determine whether or not there is deemed consent,
- (b) the matters to be considered by an authorised person to determine whether or not there is deemed consent, and
- (c) the manner and form in which a certificate may be

issued.

**Express consent for children.**

8. (1) Express consent is given for a regulated activity involving the removal of human tissue from the body of a child, or removal of the body of a deceased child, in each case described in column 1 of Table 2 where the person specified in column 2 of the table has given express consent to the activity –

TABLE 2

<b>Column 1</b>		<b>Column 2</b>
<b>Case</b>		<b>Person by whom the express consent is given</b>
1.	The child is alive, no decision of the child as to consent to the regulated activity is in effect, and either the child is not competent to deal with the issue of express consent or is competent to deal with the issue but fails to do so.	Any person who has parental responsibility for the child.
2.	The child is alive and case 1 does not apply.	That child.
3.	The child has died and a decision of the child as to consent to the regulated activity was in effect immediately before that child's death.	That child.
4.	The child has died, case 3 does not apply, the child had appointed a person under section 9 to deal with the issue of express consent and the appointed person is available to give express consent under the appointment.	The appointed person.
5.	The child has died, case 3 does not apply and	Any person who had parental



Column 1		Column 2
Case		Person by whom the express consent is given
	the child had appointed a person under section 9 to deal with the issue of express consent but the appointed person is unavailable to give express consent under the appointment.	responsibility for the child immediately before the child's death or, where no such person exists, the consent of any person who stood in a qualifying relationship to that child immediately before that child's death.
6.	The child has died and none of cases 3, 4 or 5 applies in relation to that child.	Any person who had parental responsibility for the child immediately before the child's death or, where no such person exists, the consent of any person who stood in a qualifying relationship to that child immediately before that child's death.

(2) For the avoidance of doubt, neither case 1 nor case 2 in Table 2 applies to a regulated activity involving the removal of human tissue from the body of a deceased child or the removal of the body of a deceased child.

**Appointment of persons to deal with consent.**

9. (1) A person may appoint one or more individuals ("**appointed persons**") to represent the person after death to deal with the issue of express consent for the purposes of this Law.

- (2) An appointment may be –
  - (a) general, or
  - (b) limited to express consent to one or more regulated activities specified in the appointment.
- (3) An appointment may be made orally or in writing.
- (4) An oral appointment is valid only if made in the presence of at least two witnesses present at the time the appointment is made.
- (5) A written appointment is valid only if –
  - (a) it is signed by the person making it in the presence of at least one witness who attests to the signature,
  - (b) it is signed at the direction of the person making it, in that person's presence and in the presence of at least one witness who attests to the signature,
  - (c) it is contained in the will of the person making it,
  - (d) it is an appointment made in a lasting power of attorney concerning the person's health and welfare

under the Capacity (Bailiwick of Guernsey) Law, 2020<sup>d</sup>,

or

- (e) it is made in any other circumstances, or in accordance with any other procedures, prescribed by regulations made by the Committee.

(6) Where a person appoints two or more individuals to deal with the issue of express consent to the same regulated activity, those two or more individuals are to be regarded as appointed to act jointly and severally unless the appointment provides that they are appointed only to act jointly.

(7) An appointment may be revoked or amended at any time and subsections (3), (4) and (5) apply with appropriate modifications to a revocation or an amendment as they apply to the making of an appointment.

(8) An appointed person may at any time renounce the appointment.

(9) An appointed person is to be treated as being unavailable to give express consent under the appointment if –

- (a) proscribed by regulations made by the Committee,
- (b) the appointed person is a child,

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<sup>d</sup> Order in Council No. \*\* of 2020.

- (c) the appointed person is dead or physically or legally incapable of giving express consent,
- (d) it is not reasonably practicable to communicate with the appointed person within the time available if express consent is to be acted upon, or
- (e) the appointed person has renounced the appointment.

**Competence of guardians of adults.**

10. (1) This section applies where a person ("A") is the guardian of an adult ("B") under any custom or rule of law.

(2) For the avoidance of doubt, A is not competent to do any of the following by virtue only of being the guardian of B –

- (a) to give express consent on behalf of B,
- (b) to appoint one or more persons to represent B after death to deal with the issue of express consent for the purposes of this Law, or
- (c) to otherwise deal with the issue of express consent for B.

**Competence of children.**

11. (1) Unless shown to the contrary, a child is presumed to be competent for the purposes of this Law if the child is of or over the designated age.

(2) Subsection (1) has effect despite any custom, rule of law or provision in any other enactment to the contrary.

(3) In this section –

"**competent**", in relation to any child, means competent –

- (a) to give express consent,
- (b) to appoint one or more persons to represent the child after death to deal with the issue of express consent, or
- (c) to otherwise deal with the issue of express consent, and

"**designated age**" means –

- (a) the age of 16 years, or
- (b) any other age prescribed in place of the age in paragraph (a).

**Restrictions on consent where post-mortem, etc. may be required.**

12. (1) This section applies where a person ("A") has died and another person ("B") is aware or has reason to believe that Her Majesty's Procureur might require a post-mortem examination to be carried out on A's body or might direct an inquest to be held into A's death.

(2) Where this section applies, B must not give or act on any consent to a regulated activity involving A's body or human tissue from it unless

authorised by Her Majesty's Procureur.

(3) Subsection (2) has effect despite any other provision to the contrary in this Law.

(4) A person who contravenes or fails to comply with subsection (2) is guilty of an offence and liable on summary conviction or conviction on indictment to a fine not exceeding twice level 5 on the uniform scale.

(5) Subsection (4) has effect subject to –

(a) the limits on the criminal jurisdiction of the Court of Alderney imposed by section 13 of the Government of Alderney Law, 2004<sup>e</sup>, and

(b) the limits on the criminal jurisdiction of the Court of the Seneschal imposed by section 11 of the Reform (Sark) Law, 2008<sup>f</sup>.

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<sup>e</sup> Order in Council No. III of 2005; as amended by Order in Council No. XXII of 2010; No. XI of 2012; No. V of 2014; Alderney Ordinance No. IX of 2016.

<sup>f</sup> Order in Council No. V of 2008; amended by Nos. VI and XXVII of 2008; No. XIV of 2010; No. XII of 2011; No. XI of 2014; No. IX of 2016; No. IX of 2017; Sark Ordinance Nos. II and VI of 2015; No. XI of 2017; No. XIII of 2018.

PART IV  
FURTHER OFFENCES AND PENALTIES

**Providing false, deceptive or misleading information.**

13. (1) A person is guilty of an offence if –
- (a) in purported compliance with any condition, requirement or duty imposed under this Law, or
  - (b) otherwise than as mentioned in paragraph (a) but in circumstances where the person knows, or could reasonably be expected to know, that the information would or could be used or relied on by any other person for the purpose of making a determination or carrying out an activity under this Law,

that person does any of the following –

- (i) makes a statement which that person knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular,
- (ii) recklessly makes a statement, dishonestly or otherwise, which is false, deceptive or misleading in a material particular,
- (iii) produces or furnishes, or causes or permits to be produced or furnished, any information which that person knows or has reasonable cause to

believe to be false, deceptive or misleading in a material particular, or

- (iv) recklessly produces or furnishes or recklessly causes or permits to be produced or furnished, dishonestly or otherwise, any information which is false, deceptive or misleading in a material particular.

(2) A person guilty of an offence under subsection (1) is liable on summary conviction or conviction on indictment to a fine not exceeding level 3 on the uniform scale.

(3) In subsection (1), "**making a determination or carrying out an activity under this Law**" –

- (a) means any determination or activity required or authorised by any provision of this Law, and
- (b) without limiting the generality of paragraph (a), includes –
  - (i) carrying out a regulated activity,
  - (ii) issuing any certificate required under any provision of this Law, and
  - (iii) determining whether or not there is express or deemed consent in any particular case.



**General penalty.**

14. (1) A person who is guilty of an offence for which no other provision in this Law provides a penalty is liable –

(a) on summary conviction to imprisonment for a term not exceeding two years, a fine not exceeding twice level 5 on the uniform scale, or both, and

(b) on conviction on indictment to imprisonment for a term not exceeding two years, a fine, or both.

(2) Subsection (1)(a) has effect subject to –

(a) the limits on the criminal jurisdiction of the Court of Alderney imposed by section 13 of the Government of Alderney Law, 2004, and

(b) the limits on the criminal jurisdiction of the Court of the Seneschal imposed by section 11 of the Reform (Sark) Law, 2008.

**Defence of due diligence.**

15. (1) In proceedings for an offence under this Law, it is a defence for the defendant ("A") to prove that both –

(a) the commission of the offence was due to a mistake or the reliance on information supplied to A, or to the act or default of another person, an accident or some other

cause beyond A's control, and

- (b) A exercised due diligence and took all reasonable precautions to avoid commission of the offence.

(2) If reliance on the defence provided by subsection (1) involves the allegation that the commission of the offence was due to reliance on information supplied by another person or to the act or default of another person, A is not, without leave of the court, entitled to rely on that defence unless, not less than 7 working days before the hearing, A has served on the prosecutor written notice providing information identifying, or assisting in the identification of, that other person.

- (3) This section does not apply to an offence under section 13.

**Criminal liability of directors and other officers.**

16. (1) Where an offence under this Law is committed by a body corporate, limited partnership with legal personality or foundation and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of –

- (a) in the case of a body corporate, any director, controller, manager, secretary or other similar officer,
- (b) in the case of a limited partnership with legal personality, any general partner,
- (c) in the case of a foundation, any foundation official, or

- (d) any person purporting to act in a capacity described in paragraph (a), (b) or (c),

that person as well as the body corporate, limited partnership or foundation is guilty of the offence and may be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) applies to a member in connection with the member's functions of management as if the member were a director.

**Criminal proceedings against unincorporated bodies.**

17. (1) Where an offence under this Law is committed by an unincorporated body and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of –

- (a) in the case of a partnership (not being a limited partnership with legal personality, or a limited liability partnership incorporated under the Limited Liability Partnerships (Guernsey) Law, 2013<sup>§</sup>), any partner,
- (b) in the case of any other unincorporated body, any officer of that body who is bound to fulfil any duty of which the offence is a breach or, if there is no such officer, any member of the committee or other similar governing body, or

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<sup>§</sup> Order in Council No. VI of 2014; amended by No. VI of 2017; Ordinance No. XII of 2015; No. IX of 2016 and Ordinance No. XXVII of 2018.

- (c) any person purporting to act in a capacity described in paragraph (a) or (b),

that person as well as the unincorporated body is guilty of the offence and may be proceeded against and punished accordingly.

(2) Where an offence under this Law is alleged to have been committed by an unincorporated body, proceedings for the offence must, without prejudice to subsection (1), be brought in the name of the body and not in the name of any of its members.

(3) A fine imposed on an unincorporated body on its conviction for an offence under this Law must be paid from the funds of the body.

## PART V

### GENERAL AND MISCELLANEOUS

#### **Post-mortem examinations, inquests, etc. excluded from this Law.**

18. This Law does not apply to anything done for the purposes of discharging or facilitating the discharge of any function of Her Majesty's Procureur or any court of the Bailiwick in relation to a post-mortem examination or an inquest.

#### **Exclusion of liability.**

19. (1) Subject to subsection (2), an authorised person is not liable in damages or personally liable in any civil proceedings in respect of anything done or omitted to be done after the commencement of this Law in the discharge or purported discharge of the authorised person's functions under this Law, unless the thing was done or omitted to be done in bad faith.

(2) Subsection (1) does not apply so as to prevent an award of damages in respect of the act or omission on the ground that it was unlawful as a result of section 6(1) of the Human Rights (Bailiwick of Guernsey) Law, 2000<sup>h</sup>.

**Codes of practice and guidance.**

20. (1) The Committee may issue a code of practice for the purposes of this Law and, in particular (but without limitation) –

- (a) for the guidance of any person acting under this Law in connection with any regulated activity, or
- (b) with respect to any other matter that the Committee considers appropriate.

(2) A person must have regard to any relevant code when acting under this Law.

(3) Subsection (4) applies where it appears to a court or tribunal, when conducting any civil or criminal proceedings, that either or both of the following are relevant to a question arising in those proceedings –

- (a) any provision of a code, or
- (b) a failure to comply with any provision of a code.

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<sup>h</sup> Order in Council No. XIV of 2000; as amended by Order in Council No. I of 2005; Ordinance No. XXXVII of 2001; No. XXXIII of 2003; No. XX of 2015; No. IX of 2016; No. XXVI of 2018; and G.S.I. No. 27 of 2006.

- (4) Where this subsection applies -
- (a) failure to comply with a relevant provision of a code issued under this section may be relied upon as tending to establish liability in those proceedings, and
  - (b) compliance with a relevant provision of such a code may be relied upon as tending to negative liability in those proceedings.

(5) Section 20 of the Interpretation and Standard Provisions (Bailiwick of Guernsey) Law, 2016<sup>i</sup> applies with all necessary modifications to a code as that provision applies to regulations made under this Law.

(6) Before issuing, amending or revoking a code, the Committee must consult stakeholders in a manner that the Committee considers appropriate.

(7) The Committee must publish a code and any amendment or revocation of it in a manner that the Committee considers appropriate to bring it to the attention of stakeholders.

(8) With a view to securing compliance with this Law, including any code, the Committee may issue guidance on any matter it considers appropriate.

(9) In this section –

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<sup>i</sup> Order in Council No. V of 2018; as amended by Ordinances No. XXII and XXVI of 2018.

"code" means a code of practice issued under subsection (1), and

"stakeholders", in relation to a code, means bodies or persons likely to be concerned with or affected by the provisions of the code.

**General power to make Ordinances.**

21. (1) The States of Deliberation may by Ordinance make any provision that the States considers appropriate for the purpose of giving effect to this Law.

(2) Without limiting the generality of subsection (1), the States of Deliberation may make an Ordinance for all or any of the following purposes –

- (a) further regulating any regulated activity,
- (b) exempting any regulated activity from a provision of this Law, and
- (c) prescribing or otherwise providing for any matter required or authorised to be prescribed or otherwise provided for by any provision of this Law.

(3) Subject to subsection (4), an Ordinance may–

- (a) provide for the creation, trial (summarily or on indictment) and punishment of offences,
- (b) give any function to any committee of the States of Guernsey, the States of Alderney, the Chief Pleas of

Sark or any other person,

- (c) empower any committee of the States of Guernsey, the States of Alderney, the Chief Pleas of Sark or any other person to –
    - (i) make subordinate legislation, or
    - (ii) issue a code of practice or guidance,
  - (d) provide that no liability is to be incurred by any person in respect of anything done or omitted in the discharge or purported discharge of the person's functions under this Law unless the thing is done or omitted in bad faith,
  - (e) repeal, replace, amend, extend, adapt, modify or disapply any rule of custom or law, and
  - (f) make any such provision to any extent that might be made by *Projet de Loi*, but may not provide that a person is to be guilty of an offence as a result of any retrospective effect of the Ordinance.
- (4) An Ordinance may not –
- (a) provide for offences to be triable only on indictment, or
  - (b) authorise the imposition –



- (i) on summary conviction, of imprisonment for a term exceeding 12 months, or a fine exceeding level 5 on the uniform scale, or
- (ii) on conviction on indictment, of imprisonment for a term exceeding two years.

(5) Before recommending that the States of Deliberation agree to make an Ordinance under this Law, the Committee must consult –

- (a) in the case of an Ordinance having effect in Alderney, the Policy & Finance Committee of the States of Alderney, and
- (b) in the case of an Ordinance having effect in Sark, the Policy and Finance Committee of the Chief Pleas of Sark,

in relation to the terms of the proposed Ordinance; but a failure to comply with this subsection does not invalidate any Ordinance made under this Law.

(6) An Ordinance made under this Law ceases to have effect –

- (a) in Alderney if, within the period of four months immediately following the approval date, the States of Alderney resolve to disapprove its application to Alderney, and

- (b) in Sark if, at the first or second meeting of the Chief Pleas of Sark following the approval date, the Chief Pleas resolve to disapprove its application to Sark.

(7) If the States of Alderney or the Chief Pleas of Sark resolve to disapprove the application of an Ordinance in accordance with subsection (6), the Ordinance ceases to have effect in Alderney or (as the case may be) Sark, but without prejudice to –

- (a) anything done under the Ordinance in Alderney or (as the case may be) Sark, or
- (b) the making of a new Ordinance having effect in Alderney or (as the case may be) Sark.

(8) In this section, "**approval date**", in relation to an Ordinance, means the date on which the Ordinance is approved by the States of Deliberation.

**Power to amend Law by Ordinance.**

22. The States of Deliberation may by Ordinance amend or substitute all or any of the following provisions of this Law –

- (a) Table 1 in section 6,
- (b) section 7,
- (c) Table 2 in section 8,
- (d) section 9,

(e) section 24, and

(f) section 25.

**Power to make regulations.**

23. (1) The Committee may make regulations for all or any of the following purposes –

(a) registering, recognising, confirming or otherwise giving effect to –

(i) the giving of express consent to a regulated activity, or

(ii) a decision not to consent to a regulated activity,

(b) charging fees for the provision or issue of any report or certificate or the exercise or performance of any other function under this Law, or

(c) prescribing or otherwise providing for any matter required or authorised, by any provision of this Law or any Ordinance made under it, to be prescribed or provided for by regulations.

(2) Regulations made under subsection (1)(b) may –

(a) specify who must pay the fee to whom,

- (b) specify the fee payable or a method by which the fee payable must be calculated, and
  - (c) specify the manner and time in which the fee must be paid.
- (3) Before making any regulations under this Law, the Committee must consult –
  - (a) in the case of regulations having effect in Alderney, the Policy & Finance Committee of the States of Alderney, and
  - (b) in the case of regulations having effect in Sark, the Policy and Finance Committee of the Chief Pleas of Sark,

in relation to the terms of the proposed regulations; but a failure to comply with this subsection does not invalidate any regulations made under this Law.

- (4) Regulations made under this Law cease to have effect –
  - (a) in Alderney if, within the period of four months immediately following the relevant date, the States of Alderney resolve to disapprove the application of those regulations to Alderney, and

- (b) in Sark if, at the first or second meeting of the Chief Pleas of Sark following the relevant date, the Chief Pleas resolve to disapprove the application of those regulations to Sark.

(5) If the States of Alderney or the Chief Pleas of Sark resolve to disapprove the application of any regulations in accordance with subsection (6), those regulations ceases to have effect in Alderney or (as the case may be) Sark, but without prejudice to –

- (a) anything done under those regulations in Alderney or (as the case may be) Sark, or
- (b) the making of new regulations having effect in Alderney or (as the case may be) Sark.

(6) Regulations made under this Law must be laid before a meeting of the States of Deliberation as soon as possible and, if at that or the next meeting the States resolve to annul them, these regulations cease to have effect without prejudice to anything done under them or to the making of new regulations.

(7) In this section, "**relevant date**", in relation to any regulations, means the date on which those regulations are made by the Committee.

**Meaning of "excepted adult".**

24. (1) A deceased adult is an excepted adult for the purposes of this Law only if –

- (a) throughout all or the majority of the designated period,

the adult had lacked capacity to understand the notion that consent to a regulated activity can be deemed to be given, or

- (b) the adult had not been ordinarily resident in the Bailiwick for the designated period.

(2) The Committee may make regulations prescribing circumstances in which a person is to be regarded to be, or not to be, ordinarily resident in the Bailiwick for the purposes of this section.

(3) In this section, "**the designated period**" means the period of 12 months immediately before dying.

**Meaning of "qualifying relationship".**

25. (1) For the purposes of express consent to a regulated activity, a person ("A") stands in a qualifying relationship to another person ("B") in any of the following circumstances –

- (a) A is a spouse or civil partner of B,
- (b) A is a parent or child of B,
- (c) A is a brother or sister of B,
- (d) A is a grandparent or grandchild of B,
- (e) A is the brother or sister of a parent of B,

- (f) B is the brother or sister of a parent of A,
- (g) A is the stepfather or stepmother of B,
- (h) A is a long standing friend of B,
- (i) B is living in the care of A pursuant to an order made under section 14 of the Children (Guernsey and Alderney) Law, 2008<sup>j</sup> or section 13 of the Children (Sark) Law, 2016<sup>k</sup>, as the case may be,
- (j) A is the guardian of B under any custom or rule of law, or
- (k) any other circumstances prescribed by regulations made by the Committee.

(2) For the purposes of subsection (1), a relationship of the whole blood includes a relationship of the half-blood.

(3) For the purposes of subsection (1)(a), A is a "**civil partner**" of B if –

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<sup>j</sup> Order in Council No. XIV of 2009; amended by No. XI of 2009 and No. VI of 2016; Ordinance No. XLVIII of 2009, Nos. IX and XX of 2016 and No. VI of 2017.

<sup>k</sup> Order in Council No. VIII of 2016; amended by Guernsey Ordinance No. IX of 2016; Sark Ordinance No. I of 2017.

- (a) A and B are in a civil partnership which exists under or by virtue of the Civil Partnership Act 2004<sup>1</sup> or equivalent legislation in force anywhere in the British Islands,
- (b) A and B are in a same sex relationship registered outside the British Islands which is entitled to be treated as a civil partnership under the Civil Partnership Act 2004 or equivalent legislation in force anywhere in the British Islands, or
- (c) A is living with B as an unmarried partner (whether same sex or not) in a relationship akin to marriage or a civil partnership (within the meaning of paragraph (a) or (b)) and neither of them is a spouse or civil partner (within the meaning of this definition) of any other person.

**Human tissue from a body.**

26. In this Law –

- (a) a reference to human tissue from the body of a living person is a reference to human tissue from the body of a person who is alive at the point of the separation of the human tissue from the body,

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<sup>1</sup> An Act of Parliament (Chapter 33 of 2004).



- (b) a reference to human tissue from the body of a deceased person is a reference to human tissue from the body of a person who is not alive at the point of the separation of the human tissue from the body, and
- (c) a reference to human tissue from a body excludes anything created outside the body.

**Interpretation.**

27. In this Law, unless the context requires otherwise –

"**adult**" means a person who is 18 years of age or more,

"**appointed person**" means an individual appointed under section 9 to represent a person after death to deal with the issue of express consent for the purposes of this Law,

"**approval date**": see section 21(8),

"**authorised person**" means a person authorised for the purposes of this Law –

- (a) by regulations made by the Committee, or
- (b) otherwise in writing by the Committee,

"**the Bailiwick**" means the Bailiwick of Guernsey,

"**certificate**" means a certificate in a form approved by the Committee,

"**child**" means a person who is under 18 years of age,

"**civil partner**": see section 25(3),

"**code**": see section 20(9),

"**the Committee**" means the States of Guernsey Committee for Health and Social Care,

"**competent**": see section 11,

"**consent**" means express consent or deemed consent,

"**controller**" has the meaning given by section 5(5),

"**deemed consent**" means consent deemed to be given under section 7,

"**designated age**": see section 11(3),

"**designated period**": see section 24(3),

"**embryo**" –

(a) means a live human embryo where fertilisation is complete, and

(b) is deemed to include an egg in the process of fertilisation, and

for the purposes of paragraph (a), fertilisation is not complete until the appearance of a two-cell zygote,

**"excepted adult"** has the meaning given by section 24,

**"excluded material"** means any prescribed human tissue,

**"express consent"** means express consent given in accordance with section 6 or 8,

**"foundation"** means –

- (a) a foundation created under the Foundations (Guernsey) Law, 2012<sup>m</sup>, or
- (b) an equivalent or similar body (however named) created or established under the law of any other jurisdiction,

**"human tissue"** –

- (a) means material which consists of or includes human cells, but
- (b) excludes –

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<sup>m</sup> Order in Council No. I of 2013; amended by No. VI of 2017; Ordinance No. IX of 2016 and Ordinance No. XXVII of 2018.

- (i) live human gametes (other than eggs in the process of fertilisation),
- (ii) embryos outside the human body,
- (iii) hair or nail from the body of a living person, and
- (iv) any other prescribed material,

"**this Law**" includes any Ordinance, regulations or code of practice made under a provision of this Law,

"**limited partnership**" means –

- (a) an arrangement which is registered as a limited partnership, and in respect of which there is a valid certificate of registration, under the Limited Partnerships (Guernsey) Law, 1995<sup>n</sup>, or
- (b) an arrangement entered into under the laws of a jurisdiction outside Guernsey between two or more persons, under which –
  - (i) one or more of them is, or are jointly and

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<sup>n</sup> Ordres en Conseil Vol. XXXVI, p. 264; amended by Vol. XXXVI, p. 571; Order in Council No. IV of 2001, No. X of 2007 and No. VIII of 2008; Ordinance No. XXXIII of 2003 and No. IX of 2016; G.S.I. No. 89 of 2008 and No. 51 of 2016.

severally, liable without limitation for all debts and obligations to third parties incurred pursuant to the arrangement, and

- (ii) the others have, by whatever means, contributed or agreed to contribute specified amounts pursuant to the arrangement and are not liable for those debts and obligations (unless they participate in controlling the business or are otherwise subjected to a greater liability by those laws in specified circumstances) beyond the amount contributed or agreed to be contributed,

whether with or without legal personality,

**"making a determination or carrying out an activity under this Law"**: see section 13(3),

**"parental responsibility"**, in relation to any child, has the meaning given by section 5 of the Children (Guernsey and Alderney) Law, 2008 or section 4 of the Children (Sark) Law, 2016, as the case may be,

**"prescribed"** means prescribed by an Ordinance made by the States of Deliberation,

**"qualifying relationship"**: see section 25,

**"registered practitioner"** –

(a) in Guernsey or Alderney, means a registered practitioner within the meaning of section 26(1) of the Regulation of Health Professions (Medical Practitioners) (Guernsey and Alderney) Ordinance, 2015, and

(b) in Sark, means a registered practitioner within the meaning of section 47(1) of the Regulation of Health Professions (Medical Practitioners) (Sark) Ordinance, 2017,

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

**"relevant date"**: see section 23(7),

**"repeal date"**: see section 29(4),

**"stakeholders"**: see section 20(9),

**"teaching, research or therapeutic purpose"** means –

- (a) the teaching of anatomy,
- (b) medical education or research, or
- (c) a therapeutic purpose,

**"transplantation"**: see section 1(2), and

"**transplantation activity**" has the meaning given by section 1(1).

**Repeal.**

28. The Human Tissue (Bailiwick of Guernsey) Law, 1981<sup>o</sup> is repealed.

**Transitional.**

29. (1) This section applies where a body or part of a body is removed before the repeal date in accordance with an authority given under section 1 of the Human Tissue (Bailiwick of Guernsey) Law, 1981 ("**the previous authority**").

(2) Despite the repeal of the Human Tissue (Bailiwick of Guernsey) Law, 1981, the following are and continue to be lawful on and after the repeal date as if that Law had not been repealed –

- (a) the removal of the body or part of the body, and
- (b) any use of the body or part of the body in accordance with the previous authority.

(3) Nothing in this Law applies on or after the repeal date to prohibit or restrict –

- (a) any use of the body or part of the body in accordance with the previous authority, or

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<sup>o</sup> Ordres en Conseil Vol. XXVI, p. 299; amended by Ordinance No. XXXIII of 2003 and No. IX of 2016.

- (b) any other activity carried out for the purpose of enabling or facilitating the use of the body or part of the body in accordance with the previous authority,

if the use or, as the case may be, other activity would have been lawful under the Human Tissue (Bailiwick of Guernsey) Law, 1981 before the repeal date.

- (4) In this section, "**repeal date**" means the date on which section 28 of this Law comes into force.

**Citation.**

30. This Law may be cited as the Human Tissue and Transplantation (Bailiwick of Guernsey) Law, 2020.

**Commencement.**

31. This Law shall come into force on the date appointed by Ordinance of the States; and different dates may be appointed for different provisions and for different purposes.