

**SECOND SUPPLEMENT TO THE GIBRALTAR
GAZETTE**

No. 4436 of 8 February, 2018

LEGAL NOTICE NO.35 OF 2018.

**PUBLIC HEALTH (HUMAN TISSUES, CELLS AND ORGANS) ACT
2009**

**PUBLIC HEALTH (HUMAN TISSUES, CELLS AND ORGANS)
(AMENDMENT) REGULATIONS 2018**

In exercise of the powers conferred upon him by section 29 of the Public Health (Human Tissues, Cells and Organs) Act 2009, the Minister has made the following Regulations–

Title.

1. These Regulations may be cited as the Public Health (Human Tissues, Cells and Organs) (Amendment) Regulations 2018.

Commencement.

2. These Regulations come into operation on the day of publication.

Amendment of the Public Health (Human Tissues, Cells and Organs) Act 2009.

3.(1) The Public Health (Human Tissues, Cells and Organs) Act 2009 is amended in accordance with the provisions of these Regulations.

(2) After section 28W insert–

“Consent for donation after death.

28X.(1) Subject to subsections (2) and (3) where a person has died his consent to be a donor means–

- (a) his decision to consent to the donation, or his decision not to consent to it, which was in force immediately before he died;
- (b) if–

- (i) paragraph (a) does not apply, and
 - (ii) the person had appointed a nominated representative under section 28Y,
consent given under the appointment;
 - (c) if neither paragraph (a) nor paragraph (b) applies, the consent of a person who stood in a qualifying relationship to him immediately before he died.
- (2) Where it is not reasonably practicable to communicate with a nominated representative appointed under section 28Y within the time available for the donation, the nominated representative shall be treated as not being able to give consent under the appointment.
- (3) Where a person has died as a child his consent to be a donor means-
- (a) his decision to consent to the donation, or his decision not to consent to it, which was in force immediately before he died;
 - (b) if paragraph (a) does not apply-
 - (i) the consent of a person who had parental responsibility for him immediately before he died, or
 - (ii) where no person had parental responsibility for him immediately before he died, the consent of a person who stood in a qualifying relationship to him at that time.

Nominated representative.

28Y.(1) An adult may appoint one or more persons to represent him after his death in relation to consent for the purposes of donation.

- (2) An appointment under this section may be made orally or in writing.

- (3) An oral appointment under this section is only valid if made in the presence of at least two witnesses present at the same time.
- (4) A written appointment under this section is only valid if-
 - (a) it is signed by the person making it in the presence of at least one witness who attests the signature;
 - (b) it is signed at the direction of the person making it, in his presence and in the presence of at least one witness who attests the signature; or
 - (c) it is contained in the person's will.
- (5) Where a person appoints two or more persons under this section, they shall be regarded as appointed to act jointly and severally unless the appointment provides that they are appointed to act jointly.
- (6) An appointment under this section may be revoked at any time.
- (7) Subsections (2) to (4) apply to the revocation of an appointment under this section as they apply to the making of such an appointment.
- (8) A person appointed under this section may at any time renounce his appointment.
- (9) A person may not act under an appointment under this section if-
 - (a) he is not an adult; or
 - (b) he lacks capacity to consent.

Qualifying relationships for donation.

28Z.(1) The qualifying relationships for the purpose of donation shall be ranked in the following order-

- (a) spouse, civil partner, or partner;

- (b) parent or child;
 - (c) brother or sister;
 - (d) grandparent or grandchild;
 - (e) child of a person falling within paragraph (c);
 - (f) stepfather or stepmother;
 - (g) half-brother or half-sister;
 - (h) friend of longstanding.
- (2) Relationships in the same paragraph of subsection (1) are accorded equal ranking.
- (3) Consent is obtained from the person whose relationship to the deceased person is accorded the highest ranking in accordance with subsections (1) and (2).
- (4) If the relationship of each of two or more persons to the deceased person is accorded equal highest ranking in accordance with subsections (1) and (2), it is sufficient to obtain the consent of any of them.
- (5) In applying the principles set out above, a person's relationship shall be left out of account if-
- (a) he does not wish to deal with the issue of donation;
 - (b) he is not able to deal with the issue of donation; or
 - (c) it is not reasonably practicable to communicate with him within the time available if consent in relation to donation is to be acted on.
- (6) The Minister may by Regulations amend the order of qualifying relationships at subsection (1).”

Dated 8th February, 2018.

N F COSTA,
Minister with responsibility for Health.

EXPLANATORY MEMORANDUM

These Regulations amend the Public Health (Human Tissues, Cells and Organs) Act 2009, to include provisions on consent for organ donation after death.