

Scottish Council on Human Bioethics

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Human Tissue (Scotland) Bill

The Scottish Council on Human Bioethics would like to support Dr. Nanette Milne MSP's amendments to the Human Tissue (Scotland) Bill at Stage 3 of the parliamentary process on Thursday the 2nd of February 2006.

Overview of concerns:

The Human Tissue (Scotland) Bill is a hybrid between explicit consent (opt-in) and presumed consent (opt-out) systems for transplantation.

In other words, the proposed system in Scotland is of:

1. informed consent (opt-in) for those who register their wish to donate a number of organs before death (though their nearest relatives may greatly add to this number of body parts being donated after death, without the informed consent of the deceased person, in conformity with Section 7 of the Bill), and
2. 'soft' presumed consent (opt-out), similar to the Spanish system, when no prior wishes of the deceased person are known. Indeed, the general thrust of the opt-out system in Spain enables nearest relatives to agree to the presumed consent from a deceased person to the removal of organs when they have no *"actual knowledge that the adult was unwilling for any part of the adult's body ... to be used for transplantation"* (using the words of the Scottish Bill in Section 7, paragraphs 4 & 5).

However, in contrast to all other systems of 'soft' presumed consent in Europe, the Scottish Bill does not enable persons, who wish to do so, to register their opposition to the removal of body parts after death.

In other words, a problem arises if a person does not know or cannot rely on his or her relatives, characterised in Section 45 of the Bill (and who may be just friends), concerning the decision to use his or her body parts after death. Indeed this person cannot stop his or her potentially unknown or unreliable relatives indicating that they have no *"actual knowledge that the adult was unwilling for any part of the adult's body ... to be used for transplantation"* after death in the present UK context (using the words of the Scottish Bill in Section 7, paragraphs 4 & 5). This is because the UK does not have a national register opposing general or specific organ donation.

This, unfortunately, has very serious ethical consequences and could lead to the undermining of the principle of informed consent in transplantation.

Thus, the SCHB remains very concerned about the present drafting of Section 6 in the Human Tissue (Scotland) Bill. **It is convinced that it would undermine confidence in the transplantation system and thereby reduce the number of organs available for transplantation.**

The SCHB is already aware of a number of single persons who are considering taking their names off the NHS Organ Donor Register and obtaining legal advice if the provisions proposed in Section 6 are not amended by the Scottish Parliament. This is because they do not have any appropriate close relatives, as characterised in Section 45 of the Bill, on which they can really rely to implement their wishes after death.

The SCHB continues to share the concerns of Dr. Nanette Milne MSP, expressed on the 30th of November 2005 in the Scottish Parliament at stage 1 (Col 21241), whereby the Bill does not allow any provisions for people who either object to donation in general or to some of their specific organs. The absence of fail-safe mechanisms to allow people to record their wishes, be they positive or negative, is a cause for concern that the Bill should consider.

In this respect the SCHB would like to support the amendments suggested by Dr. Milne for Stage 3 of the Bill (2 February 2006) which can be found at: <http://www.scottish.parliament.uk/business/bills/42-humanTissue/index.htm>

For a review of different transplantation systems in Europe see:

http://www.scottish.parliament.uk/business/research/briefings-05/SB05-82_000.pdf