

# The Herald

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## Legal position on organ consent

WITH respect to the decision by the Scottish Government not to introduce an opt-out system for the removal of organs from deceased persons for transplantation, it should be pointed out that in Scotland the Human Tissue (Scotland) Act 2006 has already created a hybrid system between the explicit consent (opt-in) and presumed consent (opt-out) systems ("Fears over organ deaths as donations opt-out shelved", The Herald, July 12).

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

- Informed consent (opt-in) for those who register their wish to donate a number of organs before death on the NHS Organ Donor Registry or by carrying an organ donor card (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 Act).
- "Soft" presumed consent (opt-out) is similar to the Spanish system, when no prior wishes of the deceased person are known. Indeed, the general thrust of the soft presumed consent system in Scotland enables nearest relatives to agree to the removal of organs from a deceased person when, in the words of the Scottish Act, they have no "actual knowledge the adult was unwilling for any part of the adult's body ... to be used for transplantation".

Basically, the Scottish system of consent is the one that would provide the greatest number of organs without having to go down the road of "hard" informed consent, which means relatives having no say if the patient has not said anything. Most "presumed consent" countries do not accept this since it is considered to be too traumatic for relatives. Whether most people in Scotland are aware of the present legal situation is another matter.

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