

# Organ donations need prior consent



The opt-out bill before Holyrood is unethical, argues **Will Mata**

**A** NEW parliamentary bill, drawn up and championed by Scottish Labour MSP

Anne McTaggart is seeking to develop the removal of organs and tissue from deceased adults who have not given their formal consent to do so in their lifetime – through a so-called opt-out (presumed consent) system.

With Scotland having an ever increasing need for organ donation, many feel changes are required to the current system to meet the long waiting list of patients needing a transplant. Thus Ms McTaggart is proposing Scotland follows Wales and Spain in implementing a soft opt-out system where organs could be removed when the closest relatives gives their consent, even if the relative had no knowledge of the deceased's wishes.

However, the report presumes Scotland is currently operating an opt-in system, where volunteers would sign up to the Organ and Tissue Donation Register to be considered for donation – as is the case in England.

In reality, though, Scotland has been operating a hybrid de facto soft opt-out system since the implementation of the Human Tissue (Scotland) Act 2006. Under this legislation the deceased's closest relatives already have the power to authorise organ removal when there is no knowledge of his or her wishes whilst still alive.

This Scottish opt-out (presumed consent) system may provide the greatest number of organs, but while one must stress the need for research in this area, such a system may not currently be considered an appropriate solution. The pivotal flaw with the opt-out system is that it does not draw the line between presumed and explicit consent.

The government's UK Organ Donation Taskforce stated in 2008 that: "Presumed consent" is something of a misnomer in medical care because consent is an active process in which permission is given by a patient for a procedure to be carried out on their body."

The ethical importance is highlighted in incidents such as those at Alder Hey Children's Hospital in Liverpool in the late 1990s – where body parts were retained without consultation and with the presumed consent of parents.

It is crucial that organs or tissues should only be removed if prior consent has been given. Any system where body parts are removed without assured consent would be considered ethically unacceptable.



Even Ms McTaggart acknowledged: "There is a risk the family may make a false statement about their knowledge of the deceased person's wishes in order to give expression to their own view."

One could therefore argue the case for a return to the former un-mixed opt-in system in Scotland where a deceased person's organs and tissue would not be used for transplantation without his or her informed explicit consent. Any other system has the potential to undermine the concept of organ donation as a gift, to erode trust in the NHS and to negatively impact on donation numbers.

In proposing the bill, Ms McTaggart made reference to the fact that, at present, around 40 per cent of the Scottish population is registered on the organ donation register despite only about 5 per cent opposing the practice. People can register online or apply for a donor card by filling out a form.

However, barriers which prevent organs from being donated could be countered.

The UK Organ Donation Taskforce identified, in its 2008 report, factors such as a lack of awareness, laziness and an unwillingness to think about death as possible reasons why people do not sign up to donate after death. The report further states: "The public engagement work undertaken suggests that numbers on the organ donor register could be increased at a relatively modest cost through a more extensive publicity and engagement programme, perhaps akin to that of blood donation."

Such a cost would be little compared to the challenge and huge expenses needed to publicise the change to an opt-out system should the proposed bill be passed.

Furthermore, an opt-out system would represent a challenge for those who are less able to understand the procedure, such as those with learning difficulties or speak English as a second language.

In summary, any opt-out system that relies upon presumed consent is impractical, ambiguous and may be unethical. Everything should be done, instead, to promote organ donation through explicit and informed consent.

● Will Mata writes on behalf of the Scottish Council on Human Bioethics, [www.schb.org.uk](http://www.schb.org.uk)