

Why Human Tissue Bill should be rejected

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THE aim of the Human Tissue (Authorisation)(Scotland) Bill currently going through the Scottish Parliament is to

increase the number of available organs from the deceased for transplantation by implementing an opt-out system. Such a system enables persons to instruct that their organs not be removed for transplantation after death (for example, by carrying a refusal card, informing relatives or joining a register) while the organs from all those who have not left such instructions, can be removed. In this respect, two categories of systems exist, namely "soft" opt-out systems, whereby nearest relatives have a final say as to the removal of organs, and "hard" opt-out systems, whereby relatives do not have a say.

The intention of the proposed legislation is praiseworthy as the number of patients on the waiting list for organs continues to go up. However, a number of very significant ethical concerns are present with this bill.

For example, under the proposed legislation the organs from up to one million Scots could be removed for transplantation after their death against their will. Indeed, according to the Scottish Parliament's own survey, up to 20 per cent of the Scottish population would be considered as donors even though they would be opposed to their organs being used for transplantation.

In this regard, very real concerns exist that such a situation could be considered as abusive and exploitative by the public and give rise to serious scandal that may eventually undermine trust in the system. Indeed, the present bill is not scandal-proof and could unfortunately give rise to a very serious situation, such as the one that took place in Alder Hey Children's Hospital in Liverpool in the 1990s. There, body parts of children were retained after post-mortem examination when healthcare professionals "deemed" or

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“presumed” that this would be acceptable to parents without consultation.

Moreover, significant confusion has arisen when the Scottish Government indicated the new bill “will establish ... a ‘soft’ opt-out system”. This is because when the legislation is actually examined, it is effectively a form of hard opt-out system of organ removal that is being introduced. This is because if a person has opted-out or is “deemed” to have left an authorisation for transplantation (by not stating any wishes) then the nearest relative would not have any legal right to stop certain organs being removed for purposes other than transplantation if they cannot produce concrete evidence that the deceased did not want them to be taken.

Finally, in this bill individuals cannot opt in or opt out of the possibility of their organs being used for research, and other purposes on the NHS Blood and Transplant Register. This is because there is no mention of such use on this register. Moreover, most individuals may not be aware that if they do not opt in or opt out for their organs being used for research and other purposes, then “silence means authorisation” and their organs can be used for such purposes. This is because the use of organs for research and other applications from the deceased is being left to nearest relatives to decide, even though they may have no knowledge of the wishes of the deceased in this regard. Again, this may give rise to scandals and could undermine trust in the system.

In this respect, information should also be made available to individuals wanting to donate their organs for other purposes. For example, they should be told whether the material could be used for ethically sensitive research in human reproduction.

The current bill should be rejected in order to re-introduce another one, in the future, when the above ethical challenges have been addressed.

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