Organ Donation (Deemed Consent) Bill 2017-19

House of Commons, Committee Stage
Wednesday 12 September

About the BMA
The BMA (British Medical Association) is a professional association and trade union representing and negotiating on behalf of all doctors and medical students in the UK. It is a leading voice advocating for outstanding health care and a healthy population. It is an association providing members with excellent individual services and support throughout their lives.

The BMA has been lobbying for an opt-out system for more than 18 years, and we are delighted to see from recent developments, across the UK, that show important progress is being made on this front. We urge the UK Government to continue this momentum and use the Organ Donation (Deemed Consent) Bill to deliver its commitment to enact a life-saving shift to an opt-out model for organ donation in England by 2020.¹

Key points:

- The BMA has long advocated a ‘soft’ opt-out system for organ donation, as has been implemented in Wales and is being introduced in Scotland. We believe it is the best option for the UK to reduce the shortage of organs and save lives, and would like to see a soft opt-out introduced across the UK.

- We welcome the Government’s pivotal commitment to the implementation of an opt-out model, with safeguards, in England – and we further welcome the Prime Minister’s continued commitment ² to supporting the Organ Donation (Deemed Consent) Bill, following the Department of Health and Social Care’s consultation, as the vehicle to establish this life saving change in legislation.

- The BMA gives its wholehearted support to the Organ Donation (Deemed Consent) Bill and urges the Public Bill Committee to support its passage in Parliament without delay.

Organ Donation: the need for a soft opt-out system
Despite major improvements in the organ donation system over the last decade, hundreds of people are still dying every year in the UK whilst waiting for a donated organ. Doctors would like to see an end to patients dying because of a lack of organs when we know that more can be done.

Studies show that 80% of people support organ donation ‘in principle’³ but only 39% of the UK population have registered their wish to donate on the organ donor register. Organs that could

¹ Department of Health & Social Care, ‘New system of consent for organ and tissue donation announced’. Available at: https://www.gov.uk/government/news/new-system-of-consent-for-organ-and-tissue-donation-announced
² Theresa May speaking at Prime Minister’s Question Time (Wednesday 5 September). Available at: https://hansard.parliament.uk/commons/2018-09-05/debates/3F814697-57E7-4C9C-9897-44425C4CBC7/OralAnswersToQuestions
have saved lives are buried or cremated – not because the individual didn’t want to donate but because they never got around to making their views known.

We believe it must be made as easy as possible for a person’s wish to donate their organs after death to be realised. A shift to an opt-out system through this Bill, supported by publicity and engagement with the public, will build on the progress that has already been made and save more lives.

Under an opt-out system, everyone is presumed to be a donor unless they opt out during their lifetime. Crucially, an opt-out model provides individuals with exactly the same choice as an opt-in system (England’s current model) – to donate or not to donate; it is simply the default position that changes.

A ‘soft’ opt-out: involving the family as a safeguard measure
The Bill includes an important safeguard that would ensure the loved ones of a person who has died have the opportunity to make known any unregistered objection to organ donation that the individual may have had.

The impact on donation rates of a soft opt-out model
In spite of the difficulties of extrapolating from the experiences of other countries, systematic reviews of data have found that opt-out is one of a number of factors that is positively associated with higher donation rates.4

In addition, although it is too early to tell the impact of the introduction of opt-out in Wales, the early signs are positive with the latest data (for the year 2017/18) showing an increase from 61 to 74 deceased donors, compared with the previous twelve months.5

The BMA believes that introducing an opt-out model in England would increase donation rates, whilst also respecting the wishes and autonomy of those who donate. Furthermore, we believe this important shift in approach would, over time, promote a more positive attitude towards donation within society, which we would welcome. Qualitative research from Wales shows strong support for the new system amongst the public and health professionals.6

Public opinion on a soft opt-out model
There is strong public support for a shift to an opt-out system. In January 2017, the BMA commissioned a public opinion poll in England, Scotland and Northern Ireland asking if individuals would support an opt-out system, like that implemented in Wales, being introduced in other parts of the UK. Overall, 65% said that they would support such a shift.7

Organ Donation (Deemed Consent) Bill: a soft opt-out model in practice
Under this Bill, any person who had a known objection to organ donation, recorded or otherwise, would not be a donor. A person’s choice or views would govern whether their organs were donated or not, after death, as outlined in the following steps:

4 See, for example, the review conducted by the University of York: Organ Donation Taskforce (2008) The potential impact of an opt out system for organ donation in the UK. A report from the Organ Donation Taskforce. Supporting information, Annex I, p.9.

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1. **Following a person’s death, the organ donation opt-out register would be checked** – if the individual had not opted out of donating their organs, the donation team would move to the next stage of deliberation.

   *If the individual had opted out of donating their organs, donation would not proceed.

2. **Consultation with those close to the patient** – if the individual had not opted out of donation, efforts would be made to determine whether the patient’s loved ones were aware of any unregistered objection, or if they had any convincing evidence that the individual, despite not opting out, did not want to donate. The safeguarding role of family and loved ones in this process would be to ensure that if the individual had held any objection to organ donation, recorded or otherwise, it would be brought to light. The family’s role should be to provide information, rather than to give consent themselves.

   *If those close to the individual demonstrated that there was an unregistered objection to organ donation, donation would not proceed.

3. **Donation can lawfully proceed** – if, and only if, there is no evidence, registered or unregistered, that the individual would not have wanted to donate.

### The wider picture: UK developments on organ donation

- **Wales:** In December 2015, Wales became the first country in the UK to introduce a soft opt-out system for organ donation. As mentioned above, although the numbers are small, the latest data are positive; they show Wales leading the UK in 2017/18, at 25.4 donors per million population.\(^8\) It is also clear that we have not seen the type of public rejection of the system that some people had feared.\(^9\)

- **Scotland:** The Scottish Government has introduced a Bill to Parliament proposing a change in legislation to an opt out system of organ donation. The Bill is currently being considered by the Health and Sport Committee.\(^10\)

- **England:** The UK Prime Minister has spoken\(^11\) of the tragic number of people who die waiting for an organ transplant, and the need to tackle this by “shifting the balance of presumption in favour of organ donation”. Following a public consultation, the Government announced it expects a new system to be in place in England from Spring 2020. We believe the Organ Donation (Deemed Consent) Bill is vital to the timeliness of this life saving change being established in law.

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The BMA has a longstanding interest in public policy on organ donation. You can read more about the BMA’s proposed soft opt-out system, as well as our public opinion poll, here on the BMA’s website. You may also be interested to read the BMA’s report on the subject, ‘Building on Progress: Where next for organ donation policy in the UK?’.

View the BMA’s timeline of lobbying for a soft opt-out model for organ donation

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\(^9\) Currently around 6% of the Welsh population has opted out of donation, which is the type of figure that would be expected given the results of surveys on wishes about donation.

\(^10\) More information can be found at: [http://www.parliament.scot/parliamentarybusiness/Bills/576.aspx](http://www.parliament.scot/parliamentarybusiness/Bills/576.aspx)