**Transplantation (Authorisation of Removal of Organs Etc.) (Scotland) Bill**

**BMA Scotland briefing paper for the Stage 1 debate**  
**February 2016**

BMA Scotland has long supported a move to a soft opt-out system of organ donation and is encouraging MSPs to support the general principles of Anne McTaggart’s Transplantation (Authorisation of Removal of Organs) (Scotland) Bill.

Although the majority of Health and Sport Committee members were not persuaded to support the bill due to serious concerns over some practical aspects, we believe that it would be possible to amend this bill to address these concerns so as not to delay the opportunity to increase donation rates any further.

Whilst we were disappointed that the Committee could not recommend the general principles of the Bill, we were encouraged by its statement that “there may be merit in developing a workable soft opt-out system for Scotland”. If this bill is rejected at Stage 1, we would call on the Scottish Government to take up the Health and Sport Committee’s recommendation to bring forward proposals to increase organ donations and transplants in Scotland, including soft opt-out, as a priority in the next Parliament.

The main reasons that we support a move to an opt-out system can be summarised as follows:

- We believe that, as one part of a broader strategy, a shift to an opt-out system will have a positive effect on donation rates.
- Studies show that a large majority of people would be willing to donate but less than half of the Scottish population are on the NHS Organ Donor Register or carry a donor card. While this level of apathy exists despite people’s good intentions, people will continue to die while waiting for donor organs.
- We support the principle behind an opt-out system – that if people do not object to their organs being used after death, they should be used to save lives.
- Under an opt-out system individuals have exactly the same choice as in an opt-in system – to donate or not to donate.
- The decision not to opt out of donation is as much of a gift as a decision to opt in.
- One important impact of a change in the system would be that over time, the introduction of an opt-out system would change the overall philosophy within society so that donation becomes the norm when someone dies in a situation where donation is possible. This represents a more positive view of organ donation which is to be encouraged, and could help towards a societal shift where organ donation becomes a part of the fabric of our national life.
- Overall an opt-out system is better for recipients (because more organs will be available) better for donors (because it is more likely their wishes will be respected) and better for relatives (because it is more likely that the individual’s own wishes will be known).
This briefing addresses a number of concerns that have been raised in discussions about a move to an opt-out system of organ donation.

A ‘soft’ opt-out system
Repeated surveys show that the majority of the public say that they support organ donation. Up to 90% of people support organ donation but, for various reasons, less than half of Scotland’s population is registered on the NHS Organ Donor Register (ODR).

We believe that genuine choice over organ donation can be facilitated through a soft opt-out system whereby adults – who have been well informed of the options – can choose to opt-out of organ donation during their lifetime, rather than having to opt in to donation, as is the status quo. A culture in which donation is discussed more openly and perceived as the norm would fit better with what most people claim to support. Rigorous safeguards are imperative to such a system, in order to ensure genuine choice is protected. We would emphasise the need for a wide-ranging publicity campaign to inform the public prior to any legislative change and we believe relatives should retain a role in the organ donation process, specifically by having the opportunity to provide information about any unregistered objection.

The effectiveness of an opt-out system
We note from the Health and Sport Committee’s Stage 1 report that the majority of members did not think that there was enough clear evidence to demonstrate that specifically changing to the opt-out system of organ donation would result in an increase in donations. It is notoriously difficult to assess the impact of opt-out legislation on donation rates, because of the problem of separating out the effect of opt-out from other factors that are known to affect donation rates. When analysing the data to assess the impact of opt-out legislation, there are two main types of research that can be undertaken, comparisons between countries with an opt-out system and those without, and comparing donation rates within countries before the introduction of an opt-out system and afterwards. It is not possible to do an experimental study or controlled trial, where other factors – such as the number of deaths from road traffic accidents – are manipulated or controlled, so it will never be possible to obtain a result showing a clear cause and effect. The best result that can be obtained from this type of research is a positive association or correlation between an opt-out system and donation rates.

In 2007 the UK Government asked the Organ Donation Taskforce to undertake a review of opt-out and consider the potential impact of introducing such a system in the UK. As part of this review the Taskforce commissioned the University of York to undertake an independent systematic review of all published studies. That positive association was found in all of the studies that met the criteria for the systematic review. The authors of the review concluded that:

‘The available evidence suggests that presumed consent legislation is associated with an increase in organ donation rates, though the size of the association varied between studies. A number of other factors also appear to be associated with organ donation rates, such as transplant capacity, GDP and health expenditure per capita.’

Ethical and practical considerations
Any system that has the potential to increase the number of organs available for donation, and therefore the number of lives that can be saved, has strong moral arguments to support it but there are other factors that need to be taken into account.
The central principle behind opt-out is that the default position should be to save lives. If people do not object, it is right that their organs should be used for the benefit of others. That is not to say that we have a moral obligation to donate, or that we have no interest or rights in relation to what happens to our bodies. Rather, if individuals have not indicated any objection to donation, it is appropriate to assume they would want to act in an altruistic manner and help others.

The gift of donation
The organ donation system in Scotland is based on altruism and the notion of a gift relationship. The ‘gift’ element of donation can be important to those families who give authorisation to donation, and to those who receive organs. It has been suggested that if the individual does not personally, or via his or her family, pro-actively ‘volunteer’ the organ, it is no longer a gift. Under an opt-out system, however, individuals go through exactly the same thought process to decide not to opt out as they do in deciding to opt in. Given the option to donate or not, a decision is made to act to help others, by not opting out of donation; this is no less of a gift than an organ donated under an opt-in system. Undoubtedly some will think more about this than others and some people will choose not to think about it at all. Under an opt-out system, there is no way of knowing which of those who have not opted out would have taken positive steps to donate under an opt-in system. Some people will see the loss of this positive action to donate as a cause for concern. Whilst it may be seen as preferable for individuals – or their families – to take active steps to give organs, we need to acknowledge that under the current system, organs are being lost that could have saved lives when that would not have been the wish of the deceased individuals. In the BMA’s view families should be encouraged to see the whole process of organ donation as a ‘gift’ which has the potential for very significant benefit to other people.

Autonomy
A central question around opt-out systems for organ donation is whether they enhance or reduce autonomy. Those who oppose such schemes suggest that the decision is being taken out of the hands of individuals and the government is taking and using organs without authorisation. Individuals, and their families, are thus denied the right to make a personal decision and so their autonomy is undermined. It is important to recognise, however, that under an opt-out system individuals have exactly the same decision to make – to donate or not to donate – and so the decision clearly still rests with the individual.

Public support
One of the major concerns about introducing an opt-out system is the risk of a backlash; the fear that people will object to the new system and opt out of donation as a means of protest. The BMA has always argued that an opt-out system must have public support before and after it is introduced. If there is widespread support for the system, the chance of people opting out in protest is significantly reduced; other countries that have introduced such systems have not experienced this problem. In Wales, where an opt-out system has just been introduced only around 3% of the population had opted out, as at November 2015.

Implementation
The success of an opt-out system depends to a very large extent on the way in which it is implemented. It is essential that there is widespread, high-profile publicity, both well in advance of the new system coming into effect and an ongoing campaign once the system is implemented. Particular efforts must be made to contact hard-to-reach groups and the publicity will need to be repeated at regular intervals. There must be quick, simple and
convenient ways for people to opt out, if that is their wish, and a robust and accurate database must be maintained. The database would also give people the option of opting out of donating different types of organs, such as heart or corneas, or the option to opt out completely.

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