Transplantation (Authorisation of Removal of Organs etc.) (Scotland) Bill

Royal College of Physicians of Edinburgh

The Royal College of Physicians of Edinburgh (“the College”) is pleased to respond to the Scottish Parliament Health and Sport Committee’s call for views on the Transplantation (Authorisation of Removal of Organs etc.) (Scotland) Bill.

1. Do you think the Bill (if enacted) would achieve its aim of increasing the number of organs and tissue made available for transplantation in Scotland? Please provide an explanation for your answer.

The College has received mixed views on this issue. Some Fellows have expressed the view that there are a number of individuals who would be donors but have not made that view known before their death. The move to a soft opt-out system would therefore likely make a small but real difference to the number of organs donated in Scotland.

The available international evidence supports the fact that ‘opt-out’ legislation is associated with increased rates of deceased organ donation. However, the legislation itself may not be the major determining factor for organ donation as some countries with “opt-in” systems still have higher organ donation rates than countries which have adopted “opt-out” legislation.

Nonetheless, the higher rate of organ donation in ‘opt-out’ jurisdictions persists even when the next of kin are still asked for their approval before retrieval (this is termed ‘soft’ opt-out as opposed to ‘hard’ opt-out when the relatives are not consulted).

We believe a higher rate of organ donation will reflect increased public awareness and education, societal attitudinal change to donation, and improved clinical infrastructure.

2. Do you support the proposal of appointing a proxy? Please provide an explanation for your answer.

This is again an issue where Fellows have expressed mixed views; however there is widespread concern that there is potential for the proxy and the next of kin to disagree which could cause distress and anxiety at an already very stressful time.

In a situation where a proxy confirms that the wishes of the deceased are opposed to the views held by the immediate family, clinicians could be placed in the very difficult position of harvesting organs in the face of explicit opposition from immediate family members, which could undermine confidence in medical teams. This is also at odds with widely accepted current practice. It is the College’s view that the immediate family should always be consulted about the request to harvest organs and asked about the expressed wishes of the
deceased, and therefore we feel the introduction of a proxy in legislation has the potential to create a negative effect.

3. Do you have any comments on the role of “authorised investigating persons” as provided for in the Bill?

In current practice, members of the transplant team effectively carry out this role and we note the draft legislation does not set out who would specifically be responsible in this regard as this would be outlined in regulations.

While we do not have the full detail of this proposal yet, the College notes that the “authorised investigating persons (AIPs)” would have responsibility for making contact with any known proxy with a view to securing a decision by the proxy whether or not to authorise removal of the organ in question. There will be significant time pressures involved when reaching a decision on whether removal of an organ for transplantation is lawfully authorised and therefore the role of the AIP as defined in regulations would need to reflect this.

4. Is there anything in the Bill you would change? If yes, please provide more details.

Yes. The College has previously stated support for moves to a soft opt-out system provided there is a parallel process of public education about the benefits of organ donation and improved infrastructure to support families and clinical teams at the time of organ donation.

There are differing opinions within the medical profession and society at large regarding an ‘opt-out’ system. Some believe that “opt-out” legislation effectively means acquisition by the State of organs, and removal of the altruistic aspect of donation is of real concern to some of our Fellows, who feel that bereaved families take great solace from an active act of giving. These and other ethical issues have prevented the global adoption of presumed consent legislation.

Public confidence in an opt-out system would be quickly undermined if family did not continue to play a key role in decision making. Changing the role of the family to one limited to being consulted on whether they are aware of any (unregistered) objection by the deceased rather than asking for their views and consent has the potential to be highly emotive and divisive. As outlined in the answer to question two, clinicians could be placed in the very difficult position of harvesting organs in the face of explicit opposition from immediate family members, which could undermine confidence in medical teams. It therefore remains the College’s view that the family should always be consulted about the request to harvest organs and asked about the expressed wishes of the deceased.

All College responses are published on the College website www.rcpe.ac.uk.

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