1. Do you support the Bill?

Yes, the Bill represents a positive shift in approach to encourage and facilitate increased availability of organs for transplantation and save more lives.

2. 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.

Yes. There is clearly a high level of support in Scotland and the proposals set out in this Bill would remove existing barriers to organ donation, which is evidenced in other countries where an opt out system has been introduced.

The Bill still offers the ability to opt out for individuals but an opt out as opposed to an opt in system seems more in keeping with the general level of support evidenced through consultation and current donor registration.

There is clear evidence from other countries that there would be an increase in availability of organs and tissues for transplantation with the approach set out in the Bill. That said, the choice of ‘soft’ opt out as opposed to presumed ‘hard’ opt out still requires donors to register their intent, and further evaluation will be required to determine whether the legislation changes behaviour sufficiently to bring registration more in line with opinion.

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

It is unclear in what circumstances an individual would appoint a proxy where their intention was to donate any or all organs and tissues, other than to prevent any attempt to block this instruction by family or relatives. This would be the same where the facility exists to opt out and donation is not their wishes. It is unclear what additional benefit appointing a proxy would bring given the assumption that the proxy would be aware of the intention to donate or not and given the requirement for one of the three options to be formally registered.

Acknowledging that the appointment of a proxy can release the individual from opting in or opting out, would it not, however, be reasonable to infer a preference for donation when no explicit opt out instruction has been
registered where the facility to do so is clear in the Bill. The fact that the appointment of a proxy must be formally registered, as would the decision to opt in or opt out, further supports this inference as alternative arrangements are in place in the Bill where intention has not been registered at all.

Given the option to opt in or to opt out is explicit in all cases, the role of the proxy appears to build in an additional requirement to verify a clear intent, which may result in delay, however, where there is any risk that family or relatives would object to the removal of organs or tissues against the wishes of the donor, then there would be merit in the option to appoint a proxy where an individual felt this necessary. There does seem some ambiguity around this still however, where there is a suggestion that existing practice would continue where there was significant distress caused to the family of the deceased, which appears to contradict the spirit of the Bill or the benefit of a proxy.

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

This seems a clear role, particularly in instances where the intention to opt in or opt out or appoint a proxy has not been registered. There remains ambiguity about reasonable timescales for validating decisions and it will be important to ensure those fulfilling this role are robustly supported to apply the process set out in the Bill as they deem appropriate.

As previously stated, a key benefit of the opt out system proposed should be to reduce delay and ambiguity in authorisation for removal of organs and tissues, so it will be important to ensure the role of the authorised investigating persons delivers this benefit and supports the desired outcome.

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

No further comment beyond that above.