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HUMAN TISSUE (SCOTLAND) BILL: FŒTAL TISSUE

On Day 2 of Stage 2 of the Bill, during the discussion about definitions, Dr Jean Turner raised a question about the status of foetal tissue under the Bill. She suggested that 'as the definitions are unclear, there is some doubt as to the status of the foetal material, either on the death of the unborn foetus or after the death of the mother' (col. 2489). In my response, I said that we wanted to consider the issue of foetal tissue (col. 2491).

I have now done so, and I thought it might be helpful to the Committee if I wrote to you on this point in advance of the Stage 3 debate.

This is an extremely complex area, which goes much wider than the purposes covered by this Bill. The general legal position throughout the UK is, however, that a foetus has no legal status. There is a general acceptance that foetal tissue, given its non-legal status, should be regarded as tissue of the woman.

In terms of the application of the Bill's provisions to foetal tissue, a specific concern was expressed in the Stage 1 evidence about the status of foetal material in the post-mortem examination context. Part 2 of the Bill deals with hospital post-mortem examinations carried out on the body of a deceased 'person' while Part 3 makes provision relating to the use of organs and tissue samples removed from the body of a deceased 'person' during a procurator fiscal post-mortem examination, once the fiscal's purposes have been served. Since the foetus is not a legal 'person', I can confirm that the provisions of Parts 2 and 3 of the Bill will not apply to a foetus such as to regulate any examination of the foetus as a 'deceased person' in its own right. We will instead cover in guidance issues about the examination of the foetal material. In doing so, we will take account of any material on the subject in the Codes of Practice which are being developed by the Human Tissue Authority. That will address any issues relating to the examination of foetal tissue where the mother is alive.

Dr Turner had however asked specifically about the position regarding the examination of foetal material on the death of the mother. In those circumstances, the foetal tissue could be the subject of a post-mortem examination, in the same way as could any other tissue removed from the dead woman's body.

As a result of the consideration I have given to this subject, I do not propose to lodge any amendments to the Bill at Stage 3 in relation to foetal tissue.

I trust this is helpful to the Committee.

Yours sincerely
Lewis MacDonald

LEWIS MACDONALD