

HEALTH AND SPORT COMMITTEE

HUMAN TISSUE (AUTHORISATION) (SCOTLAND) BILL

SUBMISSION FROM GLASGOW CITY HEALTH AND SOCIAL CARE PARTNERSHIP

Our response focusses only on section 17 of the draft legislation, which relates to situations where a local authority has parental rights and responsibility for a child who has since died. We have no comment to make on any other part of the proposed legislation.

As we noted in our response to the initial call for views on this proposed legislation, the current legislative position is that local authorities are not be able to approve organ or tissue donation where a child for whom they held parental rights and responsibilities has died. We stated that we felt local authorities should be able to do this, and welcome the fact that the proposed new legislation would give local authorities that ability.

There are however a number of issues with this proposed legislation from a practical point of view, these relate both to professional social work practice and to system development.

Draft legislation would require local authorities to seek the views of the child's parents and others involved in that child's life, where this is reasonably practicable. The way this provision is drafted allows no flexibility for local authorities to choose not do this if the deceased had previously expressed a wish that they wanted their parents to have no say in their life or in what happens to their body after their death. We feel this could force local authorities into going against the expressed wishes of the child, and would strongly suggest that provision should be made in the legislation for local authorities to exercise an element of discretion in this matter, over and above the requirement that local authorities should do what is "reasonably practicable" to ascertain the views of all parties. "Reasonably practicable" does not equate to "morally and ethically correct and respecting the wishes of the child", and therefore clarity is required in this area.

There is no guidance given on what judgement local authorities should make if the wishes of those parents conflict with the stated wishes of the deceased child, particularly where those parents may have a history of not acting in the child's best interests. We would suggest that legislation provides a presumption that the wishes of the child, should they have been expressed prior to the child's death, be given greater precedence than the wishes of others who may be consulted.

It can also be inferred from the draft legislation that local authorities will need to establish the views of every child for whom they hold parental rights and responsibilities – this would require system development to enable us to hold and keep up to date this information and therefore provision must be made for this in setting an implementation date for any new legislation. It should also be noted that system development comes at a cost, which inevitably would lead to diversion of funds from front-line services.