



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

Bill Number:	SP Bill 72
Introduced on:	1 June 2015
Introduced by:	Anne McTaggart MSP (Member's Bill)
Fell:	9 February 2016

Passage of the Bill

The Transplantation (Authorisation of Removal of Organs etc.) (Scotland) Bill was introduced in the Scottish Parliament on 1 June 2015. The Health and Sport Committee, as lead committee, began taking stage 1 oral evidence on the general principles of the Bill on 6 October 2015. The stage 1 debate took place on 9 February 2015 and the Bill fell as the Parliament did not agree the general principles of the Bill.

Purpose and objectives of the Bill

The Bill sought to amend the law on the removal of parts of the human body for transplantation by providing for decisions to be made on behalf of a deceased adult by a proxy and by authorising removal and use in certain cases where the deceased adult has not recorded an objection.

Provisions of the Bill

The Bill sought to amend the Human Tissue (Scotland) Act 2006 and make minor amendments to the Adults with Incapacity (Scotland) Act 2000.

The Bill required Scottish Ministers to approve a register in which people resident in Scotland may record an objection to the removal of their organs or tissue for transplantation.

The Bill sought to allow any adult to appoint a proxy (or proxies) to make decisions about authorisation (for the removal of the adult's organs for transplantation), on their behalf, after their death.

The Bill referred to “authorised investigating persons” (AIPs). These would have been health professionals whose role it would have been to determine whether or not a deceased adult’s organs could lawfully be removed and used for transplantation.

The Bill did not allow relatives to block the removal of organs by reference to their own views or preferences about organ donation.

Scottish Ministers would have been responsible for ensuring that a publicity campaign of at least 6 months was run.

The Bill would have prevented a welfare attorney from either appointing (or withdrawing the appointment of) a proxy, or objecting to the removal of the adult’s organs.

The Bill would have applied to people who at the time of their death had been habitually resident in Scotland for a continuous 6 month period beginning after their 16th birthday and after the day the opt-out register became available.

Parliamentary consideration

The Committee issued a [call for written evidence](#) on the Bill and received [32 responses](#). It also commissioned a [survey](#) to seek public views.

The Scottish Government submitted a [written response](#) to the Committee’s Call for Evidence. The Scottish Government commended the aim of the Bill, but stated that it was not in a position to support it.

In November 2015, the Committee held a number of informal meetings with transplant recipients, donor families and faith and belief groups. On 16 November, the Committee visited Madrid on a fact-finding visit.

Stage 1 scrutiny of the Bill was undertaken by the Health and Sport Committee. The Committee held four evidence sessions. The Committee’s [Stage 1 Report](#) was published on 29 January 2016.

The overall conclusion of the Committee was that:

“A majority of the Committee is not persuaded that this Bill is an effective means to increase organ donation rates in Scotland due to serious concerns over the practical implications of aspects of this Bill. A majority of members consider that there is not enough clear evidence to demonstrate that specifically changing to the opt-out system of organ donation as proposed in this Bill would, in of itself, result in an increase in donations. As a result a majority of the Committee cannot recommend the general principles of the Bill.

However, a majority believes that along with on-going efforts to increase organ donation rates that there may be merit in developing a workable soft opt-out system for Scotland. The Committee therefore calls on the Scottish Government to commence work in preparation for a detailed consultation on further methods to increase organ donations

and transplants in Scotland, including soft opt-out, as an early priority in the next Parliament, learning from the experiences of Wales who are currently implementing their own opt-out legislation, and to consider legislating itself as appropriate.

A minority of the Committee considers that this Bill needs to be introduced now so that the resulting increase in organ donation rates can benefit those currently on transplantation waiting lists. They consider the opt-out system proposed in this Bill will enhance the range of other activities undertaken and will change the conversation with families at a time of loss such that there will be an increase in donation rates. As such a minority of members agree with the general principles of the Bill.” (para 260).

The [Scottish Government’s response](#) was published on 8 February 2016.

The [stage 1 debate](#) took place on 9 February 2016. The Scottish Government laid an amendment (S4M-15128.1) to the Member in charge of the Bill’s amendment S4M-15128 which had called for the Parliament to agree to the general principles of the Bill. The Government’s amendment to the motion was to leave out from “agrees” to end and insert:

“...does not agree to the general principles of the Transplantation (Authorisation of Removal of Organs etc.) (Scotland) Bill because it has serious concerns about the practical impact of the specific details in the bill that relate to organ donation rates and transplants; agrees the merits of developing a workable soft opt-out system for Scotland, and calls on the Scottish Government to commence work in preparation for a detailed consultation on further methods to increase organ donations and transplants in Scotland, including soft opt-out, as an early priority in the next parliamentary session, learning from the experiences in Wales, which is currently implementing its own opt-out legislation, and to consider bringing forward legislation as appropriate.”

This amendment was agreed to by majority with 59 MSPs voting for the amendment and 56 voting against it. The motion (S4M-15128), as amended, was agreed to by 65 to 48 with 2 abstentions. As a result, the Bill fell.

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