



The Scottish Parliament
Pàrlamaid na h-Alba

Published 3rd December 2015

2015 (Session 4)

Web

Finance Committee

Report on Transplantation (Authorisation of Removal of Organs etc.) (Scotland) Bill's Financial Memorandum



Published in Scotland by the Scottish Parliamentary Corporate Body.

All documents are available on the Scottish
Parliament website at:
www.scottish.parliament.uk/documents

For information on the Scottish Parliament
contact Public Information on:

Telephone: 0131 348 5000
Textphone: 0800 092 7100
Email: sp.info@scottish.parliament.uk

© Parliamentary copyright. Scottish Parliamentary Corporate Body

The Scottish Parliament's copyright policy can be found on the website –
www.scottish.parliament.uk

Contents

Introduction	1
The Financial Memorandum	1
Issues raised in Evidence: Costs on the Scottish Government	2
Implementation Costs	2
Publicity Campaign Costs	3
Issues raised in Evidence: Costs on the NHS	4
Transplantation Costs and Savings	4
Authorised Investigating Person Costs	7
Conclusions	8
ANNEXE A: Letter from Anne McTaggart MSP Dated 29 October 2015	9

Finance Committee

1. The remit of the Finance Committee is to consider and report on-
 - a. any report or other document laid before the Parliament by members of the Scottish Government containing proposals for, or budgets of, public expenditure or proposals for the making of a tax-varying resolution, taking into account any report or recommendations concerning such documents made to them by any other committee with power to consider such documents or any part of them;
 - b. any report made by a committee setting out proposals concerning public expenditure;
 - c. Budget Bills; and
 - d. any other matter relating to or affecting the expenditure of the Scottish Administration or other expenditure payable out of the Scottish Consolidated Fund.
2. The Committee may also consider and, where it sees fit, report to the Parliament on the timetable for the Stages of Budget Bills and on the handling of financial business.
3. In these Rules, “public expenditure” means expenditure of the Scottish Administration, other expenditure payable out of the Scottish Consolidated Fund and any other expenditure met out of taxes, charges and other public revenue.



scottish.parliament.uk/finance



finance@scottish.parliament.uk



0131 348 5451



Follow the Scottish Parliament @ScotParl

Committee Membership



Convener
Kenneth Gibson
Scottish National Party



Deputy Convener
John Mason
Scottish National Party



Jackie Baillie
Scottish Labour



Richard Baker
Scottish Labour



Gavin Brown
Scottish Conservative
and Unionist Party



Mark McDonald
Scottish National Party






Jean Urquhart
Independent

Introduction

1. The Finance Committee issued a call for evidence on the Financial Memorandum (FM) of the [Transplantation \(Authorisation of Removal of Organs etc.\) \(Scotland\) Bill](#) in June 2015 in response to which [eight responses](#) were received. Whilst the majority of responses came from NHS-related bodies, the Scottish Government also submitted evidence and the [member in charge wrote to the Committee](#) to “update and expand on” some of the information in the FM. Her letter is attached as an annexe.
2. To further explore the issues raised in the responses the Committee then took [oral evidence on 11 November 2015](#) from the member in charge.

The Financial Memorandum

3. The FM states that the purpose of the Bill is to—
 “amend current law (primarily, the Human Tissue (Scotland) Act 2006) to convert it to a “soft opt-out” system which allows (in certain circumstances) for the removal of parts of a deceased adult’s body (organs and tissue, in particular) for the purposes of transplantation in the absence of express authorisation.”
4. The FM states that “the two main costs for the Scottish Ministers are the set-up and implementation costs of an opt-out system, and the costs of the publicity campaign.”
5. The Scottish Government submission states—
 “our overall view is that it is impossible to accurately assess the costs of the proposed measures from the limited information contained within the FM To assist the Committee at this early stage however, we have attempted to extrapolate some costs from the information contained within the Bill.”
6. The Government submission goes on to state that whilst the FM—
 “suggests costs to Scottish Ministers might be in the region of £6.1 million over 10 years (see Table 1 in Annex A) our own calculations suggest that implementing the Bill as drafted would have a cost closer to £22.2 million over ten years, and with recurring costs of circa £2 million each year thereafter.”
7. This increased estimate, the Government states—

“is the result of two specific and significant areas we consider are not addressed by the Financial Memorandum: the likely need for a new team of ‘Authorised Investigating Persons’, described in the Policy Memorandum but not addressed at all within the Financial Memorandum; and the need to maintain an on-going awareness-raising campaign regarding presumed consent and opt out.”

Issues raised in Evidence: Costs on the Scottish Government

Implementation Costs

8. In 2013, the Welsh Assembly passed the Human Transplantation (Wales) Bill which introduced a “soft opt-out” in Wales and comes into force on 1 December 2015. Its implementation is expected to cost £7.5million over 10 years and the FM suggests that “it would be reasonable to assume that the equivalent costs in Scotland would be similar to those incurred in Wales.”
9. The FM notes that expenditure is likely to be higher in Scotland than in Wales in some respects (such as the publicity campaign and training clinicians) as a result of Scotland’s higher population, but would be “much less” in others given that the Organ Donation Register has already been adapted to allow for the additional information required under an opt-out system.
10. Therefore, the FM states that “the estimated overall cost of £7.5 million over 10 years for the Wales Act seems a reasonable overall estimate for this Bill, too.”
11. In its [written submission to the lead committee](#), the Scottish Government stated that it “should continue to await evaluation of the move to opt-out in Wales before making any decision about the introduction of opt-out in Scotland.”
12. When invited to respond to this Government’s suggestion in oral evidence, Ms McTaggart pointed out that the evaluation was not due to be published until 2017. This delay, she stated, would have a financial impact on the NHS in terms of continued dialysis costs. Given that 74% of people awaiting organ transplants were waiting for kidneys and dialysis treatment cost an average of £30,800 per patient per year, Ms McTaggart suggested that, over two years—

“Six hundred and nine kidney transplants will save the NHS £145 million in dialysis costs.¹ Waiting for at least another two years—it could be longer—would incur not only a financial cost, but a cost to those people affected. I am afraid that that is the real cost.”

¹ The Non-Government Bills Unit has confirmed that this refers to information provided to Ms McTaggart by the British Heart Foundation which stated that “609 kidney transplants took place in Scotland between 2011 and 2015. These transplants have saved the NHS over £145m in dialysis costs.”

Publicity Campaign Costs

13. The Bill would require the Government to undertake a publicity campaign (lasting a minimum of six months) to ensure public awareness of the changes being introduced by the Bill. On the basis of the Welsh experience, the FM suggests that a year-long campaign in Scotland might cost around £2.8 million “(based on halving the £3.3 million spending by the Welsh Government over two years, and then adjusting by a factor of 1.7 to account for Scotland’s larger population size (and geographic area)).”
14. Table 2 of the Government submission suggests indicative marketing costs of £3.3m over the first two years followed by recurring costs of £0.62m per annum. If taken over two years, the submission states, “the costs would still be – in both those years – roughly equal to the Scottish Government’s entire annual Health and Social Care marketing budget.”
15. However, in her [letter dated 29 October](#), Ms McTaggart states that she is “no longer confident that the £3.3m figure is a fair reflection of Welsh Government expenditure.” Ms McTaggart goes on to note the estimate of £3.3 million over two years provided in the Scottish Government’s submission and states “as the Scottish Government is in a better position than I am to estimate this cost, I would be happy to accept this higher figure as more realistic.”
16. The letter also draws attention to the Government’s estimated £0.62 per annum in ongoing publicity campaign costs (eg for informing teenagers of the policy as they approach their eighteenth birthday and temporary residents residing in Scotland for over six months). As this sum is “only slightly higher than the £527k marketing budget for organ donation in the Scottish Government’s 2012-13 budget”, Ms McTaggart suggests that “these recurring costs should be capable of being absorbed within existing budgets – and that only the initial publicity campaign needs to be counted as additional expenditure attributable to the Bill.”
17. However, the Government submission points out that its organ donation marketing budget has been “reduced by half” since 2012/13.
18. The letter also highlights what appears to be an error in Table 2 of the Scottish Government submission with regard to the cost of notifying 16 year olds (which it suggests should read £0.5m rather than the stated £0.3m).
19. The letter concludes by providing Ms McTaggart’s “assessment of the breakdown of each area of spend which, adjusted to reflect the Scottish Government’s estimates, totals £6.8m.”
20. In oral evidence, Ms McTaggart confirmed her position that the Bill would necessitate increased publicity spending in the first two years after its

Finance Committee

Report on Transplantation (Authorisation of Removal of Organs etc.) (Scotland) Bill's Financial Memorandum, 2015 (Session 4)

enactment but would have no financial impact on publicity spending in subsequent years. The Human Tissue (Scotland) Act requires the Government to “promote information and awareness about the donation for transplantation of parts of the human body” and in Ms McTaggart’s view—

“It is reasonable to assume that any recurring campaign costs related to organ donation would be included within that annual budget and that no separate advertising budget would be required...Any recurring organ donation advertising and campaigning costs are not additional expenditure attributable to the bill, so they were not included in the financial memorandum. The financial memorandum includes the most up-to-date organ donation advertising spend information that was available, which was £527,000 for 2012-13.”

21. The lead committee may wish to further explore whether ongoing publicity costs will be required as a result of the Bill and if so, what the cost implications might be.

Issues raised in Evidence: Costs on the NHS

Transplantation Costs and Savings

22. The FM notes that the Scottish Government makes an annual payment to NHS Blood and Transplants (NHSBT), the UK-wide body that manages transplant services. Whilst NHSBT would be likely to incur some costs as a result of the necessary changes to its systems, many have already been made as a result of the Welsh legislation and FM assumes that the Government’s payment to NHSBT would remain unchanged.
23. The FM also points out that the NHS could be expected to make longer-term savings if the Bill results in more transplants taking place. As the NHSBT register operates on a UK-wide basis, any such savings would also be spread across the UK.
24. However, the Government submission notes that the FM “does not provide any defined estimate of overall costs/savings to the NHS or to Scotland”. It further states that—
- “given there is no estimate provided in the supporting documentation for the Bill of the likely number of additional donors that will flow from the legislation, it is difficult to assess potential costs/savings.”
25. In oral evidence, Ms McTaggart suggested that on the basis of international evidence, the introduction of a soft opt-out system could “lead to an increase in organ donations of between 25 and 30 per cent.” This, she stated could lead to

“an additional 24 to 29 donors a year and an additional 75 to 90 operations a year.”

26. Ms McTaggart then thanked the Scottish Government “because it was able to give some of the detailed information and costings that we were not able to provide.” However, she went on to state that “the cost of additional transplant operations arising as a result of the Bill is far more difficult to quantify,” pointing out that the Government had stated that it was “not in a position to provide any robust estimate of financial costs/savings to the NHS and to Scotland.”

27. The Government submission goes on to state that—

” “an increase in transplants (other than kidney transplants), whilst undoubtedly desirable and something to strive for, will result in immediate higher costs to the NHS that require to be clearly acknowledged, even if these costs are immediately accepted as inevitable and worthwhile.”

28. Whilst several NHS bodies were broadly content with the FM, a number queried its estimates in their written submissions. NHS Lothian, for example, sought clarification in two areas—

” “Firstly, will savings in reduction in dialysis be releasable in the context of demographic and other factors. Secondly, will savings from dialysis in one region be recoverable for reinvestment in service provision in another region.”

29. NHS Lothian also noted that the FM made no specific reference to the costs of increased organ retrieval activity and stated that “any increase in overall donations is likely to require additional investment in retrieval services” which, it suggested, could “only be financed from existing resources if there is a releasable saving from a reduction in dialysis.”

30. When invited to comment on NHS Lothian’s specific point about increased organ retrieval costs, Ms McTaggart stated “If additional investment in retrieval services is required, that is a matter for the Scottish Government to decide.”


31. The Committee considers that estimates for any increased investment in retrieval services required as a result of the Bill should have been included in the FM.

32. NHS National Services agreed that the Bill could lead to increased costs for transplantation services if it resulted in increased transplantation activity. However, its submission stated “we do not expect significant changes to the number of transplant operations in Scotland as a result of the Bill” before it

Finance Committee

Report on Transplantation (Authorisation of Removal of Organs etc.) (Scotland) Bill's Financial Memorandum, 2015 (Session 4)

confirmed that NHS National Services “would expect to manage any increased activity within the existing financial portfolio.”

33. NHS Western Isles suggested that “the financial elements are very vague” before stating that it would not incur offsetting savings for any transplants other than kidneys “as the medical management of transplants is undertaken by other health boards who would simply recharge us for the cost of the transplant.”
34. On that basis, NHS Western Isles suggested “it would seem reasonable for a budget to be held centrally to fund these cases as they arise, especially for small health boards.”
35. When invited to respond to some of the concerns expressed by health boards, Ms McTaggart stated that “the costs will be met from NHS board budgets.” She also highlighted NHS National Services Division’s position that it would be expected to manage the costs of increased transplantation activity within the existing financial portfolio.
36. When asked to respond to the specific concerns raised by NHS Western Isles, Ms McTaggart stated—
 “It is about trying to offset some of the savings. I am not sure that NHS Western Isles would not benefit, in a sense. We are signed up to UK-wide organ transplantation delivery, so the costs would be met throughout. Not all the organs that are transplanted into people—perhaps from the Western Isles or within Scotland—necessarily come from deceased persons in Scotland; they are UK-wide.”
37. NHS Blood and Transplant drew attention to the likelihood of additional costs arising as a result of changes to the Organ Donor Register necessitated by the Bill but stated “it is too early to estimate these costs.” It also highlighted costs relating to the rewriting of policy documents and training of staff which, it stated “broadly would be in line with costs in Wales – a total of £364,105.” Whilst the FM makes reference to such costs for the NHS, it does not quantify them stating simply that they “could be offset by the long-term savings of a reduction in the burden of the health service through reduced dialysis provision and associated long-term care costs.”
38. Expanding on the potential for savings through reduced rates of dialysis, Ms McTaggart explained that 425 or 74% of the 571 people awaiting transplants in Scotland were waiting for a kidney transplant “so that is where a lot of the money is perhaps offset, from kidney dialysis, in the on-going cost of a person not getting a transplant.”
39. Ms McTaggart went on to explain that “the cost benefit of a kidney transplantation compared with dialysis is £24,100 a year.” On that basis, she stated that “the 153 [kidney] transplants that were performed in Scotland in

2014-15 represent a cost saving of approximately £3.7 million, or £37 million over a 10-year period.”

40. When asked about the financial implications of other types of transplants, Ms McTaggart acknowledged that they would result in higher ongoing costs for the NHS but explained that her intention was “to offset that with kidney cost savings.”
41. Ms McTaggart went on to confirm that rather than focusing on individual health boards, she was looking at the broader picture across the whole of Scotland. She also pointed out that the redistribution of any resulting savings “would also be for the Scottish Government, and for the NHS to determine.”

42. The lead committee may wish to explore further the potential impact of the Bill’s proposals on individual health board budgets.

Authorised Investigating Person Costs

43. NHS Blood and Transplant also highlighted anticipated costs regarding the Authorised Investigating Person (AIP) who would be responsible for establishing whether removal of an organ for transplantation was lawfully authorised describing them as “potentially the most significant financial issue relating to the Bill”. The response states that “it is unclear from the Bill and accompanying FM what qualifications and skills will be needed to undertake this role” but suggests that the role may fall to Specialist Nurses. NHS Blood and Transplant states that it would cost around £1.1m per annum to ensure 24 hour availability of such nurses 365 days a year. The FM makes no reference to potential costs relating to AIPs.
44. Whilst the Government’s submission notes that “there are different options for delivering the AIP function,” Table 4 of its submission estimates that the creation of new AIP team would cost around £120,000 in year one set up costs followed by annual recurring costs of £1.2m per annum.
45. However, Ms McTaggart noted that whilst the Government had based its estimate on a “Rolls Royce service,” she did not consider it necessary to employ new staff to undertake the role—

” “There are people working in that role currently—they are called senior nurses in organ donation, or SNODs. Those people have the skills and are doing that job. The bill aims to enhance and extend their current role...Creating a new role is not a requirement of the bill, so the costs of doing that are not missing from the financial memorandum; we do not reckon that they should be there.”

Finance Committee

Report on Transplantation (Authorisation of Removal of Organs etc.) (Scotland) Bill's Financial Memorandum, 2015 (Session 4)

46. Ms McTaggart went on to confirm that the Governments in both Wales and Northern Ireland had adopted similar approaches to the one she advocated and that neither had recruited additional staff to become AIPs.
47. When invited to expand on AIP costs, Ms McTaggart estimated that enhanced training for SNODs would cost around £500,000.

Conclusions

48. The Health and Sport Committee is invited to consider the above in its scrutiny of the Bill at Stage 1.

ANNEXE A: Letter from Anne McTaggart MSP Dated 29 October 2015

Dear Mr Gibson,

I am writing to update and expand on some of the information contained in the Financial Memorandum for the Transplantation (Authorisation of Removal of Organs etc.) (Scotland) Bill. The relevant paragraphs are 17, which estimates the likely overall costs of the Bill as £7.5 million over ten years, and 18, which estimates the cost of a one-year publicity campaign at around £2.8 million.

The paragraph 18 estimate was arrived at by halving a figure of £3.3 m for “spending by the Welsh Government over two years” and then adjusting by a factor of 1.7 to account for Scotland’s larger population size and geographical nature. However, I am no longer confident that the £3.3m figure is a fair reflection of Welsh Government expenditure.

The Welsh Government’s Regulatory Impact Assessment (RIA) for its Bill (as revised at Stage 2) envisages spending of £3.43 million over a three year period, from 2013-14 to 2015-16. Please find a copy of the relevant table attached. Using this figure, and applying the same methodology, the estimated cost of a one-year publicity campaign in Scotland would be £1.87m, and not £2.8m, as stated in the financial memorandum.

However, I also note that in its submission to the Finance Committee the Scottish Government, having noted differences in context between Scotland and Wales (paragraph 5) estimates the cost of an initial publicity campaign at around £3.3 million (spread over either one or two financial years) (Table 2). As the Scottish Government is in a better position than I am to estimate this cost, I would be happy to accept this higher figure as more realistic.

The same table estimates the recurring publicity campaign costs as £0.62 million per year. I would draw the Committee’s attention to the £150K per year figure provided by the Welsh Government in its RIA (see attached table) – itself a significant increase from the £50K figure given for 5 of those 6 years in the RIA that accompanied the Bill at stage 1. It is difficult to see why recurring expenditure in Scotland would need to be more than four times higher than in Wales. However, as even the £0.62 million cost is only slightly higher than the £527K marketing budget for organ donation in the Scottish Government’s 2012-13 budget (see paragraph 20 of the Financial Memorandum), these recurring costs should be capable of being absorbed within existing budgets – and that only the initial publicity campaign needs to be counted as additional expenditure attributable to the Bill.

I wanted to thank the Scottish Government for providing an estimate, in table 1 of its submission, of the estimated costs for each area of spend and a total estimate of £6.1m to implement the Bill over 10 years. In the interests of accuracy I wish to draw the Committee’s attention to an apparent error in that table. In the row which

Finance Committee

Report on Transplantation (Authorisation of Removal of Organs etc.) (Scotland) Bill's Financial Memorandum, 2015 (Session 4)

calculates the cost for notifying 16 year olds, the cost in Wales was £0.3 m, and when adjusted by 1.7, would be a cost of £0.5m in Scotland (not £0.3m as stated in the table).

I thought that it would be helpful to provide the Committee with my assessment of the breakdown of each area of spend which, adjusted to reflect the Scottish Government estimates, totals £6.8m.

Table 1. Estimated costs to Scottish Ministers over 10 years

Spend Area	Cost £m	Comment
Initial publicity campaign	3.3	SG estimate of 1 or 2 year campaign
Business Change Management	0.1	SG estimate
IT Changes (NHSBT Register)	0.5	SG estimate
Process additional registrations	1.7	Welsh costs x 1.7
Notify 15 year olds	0.5	Welsh costs x 1.7. Wales 17yrs; Scotland 15yrs
Evaluation	0.2	Welsh costs – no change
Clinician training	0.5	Welsh costs x 1.7
Total	6.8 m	

I hope that this additional information will assist the Committee in its consideration of the financial memorandum for the Transplantation (Authorisation of Removal of Organs etc.) (Scotland) Bill. I have provided a copy of this letter to the Health and Sport Committee and the Minister for Public Health for information.



Yours sincerely,
Anne McTaggart MSP

RIA Appendix 1

Fixed Costs Expected with Adoption of Organ Opt-Out System

	<u>£000s</u>										(Discount Rate =3.5%)
	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21	2021-22	<u>Total Fixed Cost</u>
Communications	£143	£383	£808	£2,215	£150	£150	£150	£150	£150	£150	£3,986
Management of business change	£91	£182	£273	£40							£557
IT changes	£134	£1,124	£553	£156	£156	£156	£156	£156			£2,394
Other nation register contributions		-£653	-£413	-£98							-£1,105
Receive and process additional registrations			£419	£328	£81	£81	£81	£81			£955
Notify 17 year olds				£25	£50	£50	£50	£50	£50	£50	£263
Evaluation	£27	£65	£50	£0	£95						£219
Clinician training			£224	£100							£300
Total	£395	£1,101	£1,915	£2,766	£532	£437	£437	£437	£200	£200	£7,569

