



THE SOCIETY FOR THE PROTECTION OF UNBORN CHILDREN

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Human Transplantation Bill: Consultation Response

Introduction

The Society for the Protection of Unborn Children (SPUC) is an independent education, research, advocacy and lobby group with active members throughout Britain and Northern Ireland. We are committed to affirming, defending and promoting the inherent value of human life from the moment of conception until its natural end. We defend, assist and promote the life and welfare of mothers during pregnancy and of their unborn children from fertilisation up to, during and after birth. We reassert the principle laid down in the Declaration of the Rights of the Child that:

...the child by reason of his physical and mental immaturity, needs special safeguards and care, including legal protection, before as well as after birth.¹

We are opposed to the intentional killing of unborn children through abortion, whether by chemical or surgical means (including the use of drugs and devices to cause abortion of the early embryo) as morally unjustifiable. We are opposed to abortion whether performed within the health service or the private sector.

As well as fighting abortion, we also campaign against other direct threats to the lives of vulnerable individuals, such as euthanasia and embryo abuse. We believe in the need for a consistent life ethic - to value the lives of all human beings equally - but at the centre of this must always be recognising the humanity of the child in the womb.

Our principles

We base all our work on these principles of natural justice:

- it is wrong to kill innocent human beings
- everyone should be treated equally
- all human beings are people with rights
- children deserve special protection and care
- the weakest in society must be protected by the law

These are principles that we believe everyone can agree on, whatever their political, religious or cultural beliefs.

¹ United Nations Declaration of the Rights of the Child (1959) preamble.

Observations on the potential problems with organ transplantation in an opt-out system

By definition the donation of anything is the free gift on the part of the donor and therefore requires that individual's consent. If anything is taken from an individual in the absence of his or her consent then this is no longer a donation but an acquisition. It is when consent, freely given and fully informed, is absent that problems with organ donation begin to arise. In an opt-out system, where most people's wishes are unknown, consent is absent, it is no longer possible to speak of organ donation. The retrieval of organs without consent also represents a high level of interference by the state in personal life. The dead person's body effectively becomes the property of the State.

The worst situation in this regard would be where death of an individual could actually be hastened because his or her organs were needed for someone else. There is already pressure for this. The International Forum on Transplant Ethics² has proposed that lethal injections be given to people who are long-term unconscious, in so-called a persistent or permanent vegetative state, and for whom life has been deemed unworthy of being lived. It is argued by some that such injections could produce better-quality organs than if the person died naturally. While the 'donor' would be dead when the organs were taken, the death would nevertheless have been caused to enable their removal. Even if the patient had previously given consent, medics would be involved in hastening his or her demise.

The evidence even seems equivocal about whether such a change would increase the number of organs available. Some countries with opt-out systems do worse than Northern Ireland but some do better, suggesting that other factors may be more important. In countries with a so-called soft opt-out system, such as Spain, grieving relatives are presented with a choice that many find very difficult. With a hard opt-out system, however, relatives can find their exclusion from the decision process very painful.

Any opt-out system also requires high public awareness so that everyone who objects to organ donation actually does opt out. It is sometimes argued that opting in cannot produce high donation rates because many people who want to donate simply fail to register but, with an opt-out system, many people's genuine wishes would be over-ridden. An opt-out system could potentially further alienate those who already distrust the authorities. Indeed, in some countries where the introduction of an opt-out system has been debated, some people who had registered to donate have said they would opt out in protest at State interference if consent were presumed.

Consent might also come to be presumed in other medical contexts. It could be argued that presumed consent should extend to the use in research of tissues and organs obtained at autopsies, despite the strongly negative public reaction to revelations of such

² See K Hoffenberg, M Lock, M Tilney et al, "Should Organs from Patients in Permanent Vegetative State be used in Transplantation?" (1997) 350 Lancet 1320, and see Letters at (1998) 351 Lancet 211-12. The BMA has previously stated that "Patients in PVS should not at present be considered as potential organ or tissue donors; see BMA Guidelines on Treatment Decisions for patients in PVS.

practices at UK hospitals³ ⁴ in recent years. While opt-out systems tend to refer to organs from deceased persons, they could also be made to apply to tissues. If they did, there could be implications for consent regarding the use of tissue from miscarried or aborted fetuses. The current controversy in the United States surrounding the commercial harvesting of organs from aborted fetuses by Planned Parenthood has given added weight to this concern. By contrast with opting out, opt-in systems are aligned with the ethical view that people should actively give their consent. Melanie Phillips, author and columnist with the Daily Mail raised another extremely serious concern when she wrote:

“There is, however, a yet more fundamental objection to the opt out proposal. This is the serious doubt whether people whose organs are harvested are dead.”⁵

In addition to ensuring that a change in the law does not help to advance any of the dangers or abuses set out above, SPUC would draw just two specific points to the attention of the Committee:

- The Bill requires the DHSSPS to inform the public about the change from the current arrangement to an opt-out system. This task must be given adequate resources and must be renewed at intervals sufficiently short so as to ensure that everyone who needs to be aware of the change in the registration system knows about it. If not then there is a real risk some of those automatically registered as donors will not have given informed consent. SPUC would suggest that such information campaigns should take place no longer than a period of three years apart.
- The role of families in the process of donation is central so it is hoped that the potential confusion within the Bill regarding the use of the terms “qualified relationship” and “relative” and “friend of long-standing” is clarified. In particular, the role of a minor’s legal parents or guardian, must also be given its rightful position in the Bill’s final text.

³ Presumed consent for transplantation: a dead issue after Alder Hey? J Med Ethics. 2003 Jun; 29(3): 147–152. doi: [10.1136/jme.29.3.147](https://doi.org/10.1136/jme.29.3.147) <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1733719/> (accessed 4 Dec 2015)

⁴ See also J Fletcher, M Harrison and J Robertson “Primates and Anencephalics as Sources for Pediatric Organ Transplants: Medical, Legal and Ethical Issues (1986) I Fetal THERAPY 150.

⁵ Organ donation is a noble act - but we must never be denied the right to choose <http://www.dailymail.co.uk/columnists/article-508042/Organ-donation-noble-act--denied-right-choose.html> (accessed 4 Dec 2015)