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## **Transplantation (Authorisation of Removal of Organs etc.) (Scotland) Bill at Stage 1**

1. The Delegated Powers and Law Reform Committee considered the above Bill on Tuesday 3 November and seeks an explanation of the following matters:

### **Section 2 – Designation of authorised investigating persons**

<b>Power conferred on:</b>	<b>the Scottish Ministers</b>
<b>Power exercisable by:</b>	<b>regulations</b>
<b>Parliamentary procedure:</b>	<b>negative procedure</b>

2. Section 2A of the 2006 Act, as inserted by section 2, enables the Ministers to provide by regulations for the designation of persons, or categories of person, as authorised investigating persons for the purposes of the Human Tissue (Scotland) 2006 Act (“the 2006 Act”) (as amended by the Bill).

3. **The Committee asks the Member in relation to the power in section 2:**

**(a) The Delegated Powers Memorandum (“DPM”) states it is anticipated that the persons which would be designated as authorised investigating persons would be in clinical and administrative roles in the NHS, expressed in terms of NHS grading and staffing arrangements. However the power is drawn to permit any certain persons, or categories of persons, to be so designated for the purposes of the Bill.**

**To assist the Committee to understand how this power is capable of being exercised, could the Member explain what other persons, or categories of persons, might be designated as authorised investigating persons, apart from**

**NHS staff? Is the Member in a position to explain what NHS clinical or administrative roles or grades might be appropriate for designation?**

**(b) The DPM justifies the application of the negative procedure for scrutiny of the regulations on the ground that they are likely to have largely technical content, expressed in terms of NHS grading and staffing arrangements. However the power is capable of being exercised to designate persons, or categories of persons, beyond persons in an NHS role. The exercise of the power would also be highly significant to the proper operation of the opt-out system proposed by the Bill.**

**The Member is therefore asked to explain further why the negative procedure is considered to be more suitable than the affirmative procedure for scrutiny of the regulations.**

## **Section 16 – Regulations in relation to certain adults resident outside Scotland**

<b>Power conferred on:</b>	<b>the Scottish Ministers</b>
<b>Power exercisable by:</b>	<b>regulations</b>
<b>Parliamentary procedure:</b>	<b>affirmative procedure</b>

4. New section 6B(1)(a) of the 2006 Act (as inserted by section 6(1) of the Bill) excludes any adult who was not resident in Scotland on death from the new opt-out system “by operation of law”. This ensures that adults from countries operating “opt-in” systems of organ donation (such as England) who die in Scotland cannot have their organs removed for transplantation under new section 6B. Such adults would not have had the opportunity to record any objection to removal.

5. There are however a number of other countries around the world which have “opt-out” systems of different types, and subject to different conditions. The DPM states that Wales has recently legislated for a system similar to the one contained in the Bill, which is scheduled to come into force in December. The number of these countries may increase in future. The DPM also states that it might be thought unreasonable that a person dying in Scotland, who met the requirements for authorisation by operation of law under their “home system”, should be excluded from the “opt out” provisions in the proposed new section 6B.

6. Section 16 would enable the making of regulations to modify the 2006 Act (as amended by the Bill), to make particular provision for these circumstances.

**7. The Committee asks the Member in relation to the power in section 16:**

**The Delegated Powers Memorandum explains that the objective underlying this power is that, at the judgment of the Scottish Ministers, there may in future be circumstances where a person dying in Scotland but who met the requirements for an “opt-out” system of transplantation under their “home system” should be included within the opt-out provisions in the new section 6B of the 2006 Act (inserted by section 6 of the Bill).**

**The Committee notes that section 16(1) of the Bill would enable, by regulations subject to the affirmative procedure, any further modification of the 2006 Act to cater for those circumstances. The Parliament would be asked to either approve or reject the further modifications of the 2006 Act which would be proposed in the regulations.**

**The Member is asked to consider whether this power could more suitably be exercised by a “super-affirmative” form of procedure, which would enable the Parliament to consider an initial draft of the regulations. What in this context would the advantages and disadvantages of applying such procedure be (for the Parliament and others), in comparison with the affirmative procedure?**

8. Please email your response to the Delegated Powers and Law Reform Committee e-mail address above by 5pm on Tuesday 24 November.

**Deborah Cook  
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