



The Scottish Parliament
Pàrlamaid na h-Alba

Clerk to the Delegated Powers and Law Reform Committee
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Human Tissue (Authorisation) (Scotland) Bill at Stage 1

The Delegated Powers and Law Reform Committee considered the above Bill on Tuesday 4 September and seeks an explanation of the following matters:

Section 3(2)- Establishment and maintenance of register

Power conferred on: The Scottish Ministers

Power exercisable by: Regulations

Parliamentary procedure: Affirmative

The proposed new sections 2A to 2C of the 2006 Act (inserted by section 3(2) of the Bill) place a duty on Ministers to make arrangements for the establishment and maintenance of “the Register” (the Organ Donor Register). This would put the existing register on a statutory footing.

The Committee asks the Scottish Government to explain the following, in relation to the powers contained in the proposed new sections 2A(1), 2B and 2D of the 2006 Act, as inserted by section 3(2) of the Bill:

(a) The DPM explains that it is intended that NHS Blood and Transplant will be authorised under the proposed new section 2B(1) as the “register organisation” to establish and maintain the Register.

Why is it considered appropriate that this is not specified in the Bill, for approval by the Parliament?

(b) Why is it considered appropriate that the appointment of the “register organisation”, and any future changes in appointment, could be made as part

of the arrangements decided upon by the Scottish Ministers for the establishment and maintenance of the Register, and so the appointment (in terms of proposed new section 2B) would require only the publication of information about the “register organisation” decided upon by Ministers, and not Parliamentary approval by means of the regulations which would contain provision in relation to the Register?

(c) In what circumstances could it be appropriate to use regulations under the proposed new section 2D(2) to modify the listing of the Health Boards, Special Health Boards and the Common Services Agency (CSA) in new section 2C(2), with whom Register information may be shared?

Which other persons might be listed in future, and in what circumstances could it be proposed to remove any of those Boards or the CSA from the list?

(d) The proposed new section 2D(1) is framed as a general power by regulations to make provision in relation to the Register.

Can you please explain in what circumstances this power could be used, where those circumstances would not be enabled by the various provisions which the regulations may in particular include as set out in new section 2D(2), combined and supplemented by the powers to make ancillary provisions in section 25 of the Bill?

Section 22(1) (inserting new sections 16B(1) and 16C(1) of the 2006 Act) – Predeath procedures relating to transplantation

Power conferred on: The Scottish Ministers

Power exercisable by: Regulations

Parliamentary procedure: Affirmative

Section 22 amends the 2006 Act to provide for a system for authorisation of “predeath procedures”. These are medical procedures carried out primarily for the purpose of increasing the likelihood of successful transplantation of a part of a person’s body after death.

The Committee asks the Scottish Government to explain the following, in relation to the powers in section 22(1) (inserting proposed new section 16C(2) of the 2006 Act).

The reason provided in the DPM for prescribing “Type A procedures” and “Type B procedures” separately in secondary legislation is to “keep pace with medical developments which may have an impact on the nature and necessity of pre-death procedures without recourse to primary legislation” (paragraph 36 of the DPM).

However, the proposed new section 16C(2)(a)(i) to (iii) would enable regulations to make provision about the circumstances in which Type B procedures may be carried out, the way in which the carrying out of Type B procedures may be authorised, and the process for authorisation. For Type A

procedures, those requirements would be set out in the proposed new sections 16D to 16F of the 2006 Act.

(1) Why therefore is it appropriate that for Type B procedures, the matters stated in new section 16C(2)(a)(i) to (iii) should be specified in regulations rather than in the Bill?

(2) Could examples be provided of what Type B procedures could be prescribed in the regulations, and what for different procedures might be so specified?

I would be grateful if you could please email your response to the Delegated Powers and Law Reform Committee e-mail address above by 5pm on Tuesday 2 October.

Thank you.

Andrew Proudfoot

Clerk to the Delegated Powers and Law Reform Committee