

Legislation Relating to Organ and Tissue Donation and Transplantation Consultation response from the Scottish Council of Jewish Communities

As the representative body of the Jewish community in Scotland, we welcome the opportunity to comment on the proposals relating to organ and tissue donation and transplantation.

In Halachah, (Jewish Law), the human body is regarded as sacrosanct and should always be treated with dignity. One manifestation of this is the requirement for quick burial, ideally within twenty-four hours of death, which explains Jewish people's anxiety to avoid any procedure that might cause a delay, such as post-mortem examination. However, Halachah also mandates that the **immediate** saving of life takes priority over other laws, and thus permits organ and tissue donation in certain circumstances.

Because Halachah (Jewish Law) is very complex, and stipulates that each case must be considered individually on its merits, we recommend that health professionals should, at the time of requesting relatives to authorise organ or tissue donation, ask whether they would like to consult with a religious leader, such as a Rabbi. As a general principle, religious Jews would not wish to proceed with organ donation unless such a consultation had taken place.

According to Halachah (Jewish Law) no procedures to facilitate organ or tissue donation may be carried out before death. (It should be noted that the Halachic (Jewish Law's) definition of death may not necessarily be the same as that used by medical staff, and that, for a Jewish patient, the Halachic definition should be adhered to.)

Question 2

We agree that 'the concept of 'authorisation' is as valid in the organ donation context as it is in the context of hospital post-mortem examination', and strongly support the view that 'authorisation suggests an active decision by someone in a recognised position of power'. In the context of organ or tissue donation we believe that this power should lie primarily with the prospective donor, and subsequently with their next-of-kin. However, in a situation in which someone has decided to carry a donor card or to add their name to the NHS Organ Donation Register, we do not see a requirement for a nominated person.

Questions 3, 5, 6 and 8

The issue of who can grant authorisation is important, especially in a case in which the prospective donor and/or surviving relatives hold differing views. This is time when people are naturally very vulnerable, and respect for their sensitivities should be a priority with all concerned. We would, therefore, urge that where a person has previously expressed a wish not to be an organ donor, their view should be respected, and donation should not take place. Similarly, if a surviving relative does not wish organ or tissue donation to take place, on religious or other grounds, then they should be given priority in any case of dispute.

We do not believe that there is a case for a hospital to authorise organ or tissue donation as the 'person lawfully in possession of the body' in 'circumstances in which there are no next-of-kin and no expression of wishes by the deceased'.

Neither do we believe that a 'friend of longstanding' should be included in the hierarchy of relatives. The definition of such a friend would be open to various interpretations, and we believe this would not serve any useful purpose.

In summary, it is our view that organ donation should only take place where there is no dissenting voice from either the prospective donor or from their surviving relatives, and, in the case of a religious Jew, this would be following consultation with a Rabbi.

Question 4

We do not feel that being on the Register is 'sufficient indication of the individual's wishes' because there will necessarily be a delay in updating the Register, so that, although an individual might have requested the removal of their name from the NHS Donor Register, this might not have been done at the time of their death. We therefore support the requirement for additional proof, either in the form of a verbal statement before two witnesses, or the carrying of a donor card.

Question 7

We feel that there is an inherent risk to a 'Register for those who wish to record their objection to organ donation', namely that it may be assumed that non-registration indicated a willingness to be an organ donor. We believe it to be more likely that many people would simply not get round to registering, so that the Register would not be a reliable source of information as to whether an individual objected to becoming an organ donor, and would be no more than a waste of resources.

Question 11

Because of the possibility of human error, we do believe that there should be a continuing provision for 'the doctor removing organs for transplantation to satisfy himself that life is extinct'. In the case of a potential Jewish donor the definition of death should be according to Halachah (Jewish Law), and should follow consultation with a Rabbi.

Question 14

We would support the proposal to 'include a provision to put beyond doubt the legality of taking the minimum action necessary to preserve a body so that consultation on transplantation can take place' providing that such action is not invasive and does not take place before death has occurred. As we have already stated, Halachah (Jewish Law) does permit organ and tissue donation for the immediate saving of life. However, in order to determine whether it is permissible in any individual case, religious Jews will generally wish to consult with a Rabbi. It may also take time to ascertain the expressed wishes of the deceased and of their surviving relatives, and any procedure which facilitates this with only minimal interference with the body is to be welcomed.

Question 15

We do not support the introduction of a provision for 'required request', and believe there is a continued role for medical staff discretion in deciding whether or not to approach relatives to discuss organ and tissue donation. Whether death has been unexpected or has followed an extended period of illness, the surviving relatives will be distressed and vulnerable, and, in some cases, a request for organ or tissue donation might cause additional distress.

Transplantation of Organ and Tissue from the Living

We would support the appropriate use of organ and tissue donation from living donors. This is permitted by Halachah (Jewish Law) providing that the donation is not unduly damaging to the donor. Donations of blood, skin, bone marrow and tissue do not present any Halachic difficulty (difficulty in Jewish Law). Kidney donation is considered a more serious undertaking, and religious Jews would generally wish to consult a Rabbi before making a decision. In the majority of cases, however, the risk to the donor will be minimal in comparison with the likely benefit to the recipient, and would therefore be permitted by Halachah.

Tissue Banking

As noted above, organ and tissue donation may be permitted by Halachah (Jewish Law) where there is the potential for an immediate saving of life. The purpose of tissue banking is to provide for a possible future need rather than for an immediate recipient, and, as such, is not permitted by Halachah.

Summary

The saving of life is an important Halachah (Jewish Law) and takes precedence over the vast majority of other laws. Where there is any possibility of carrying out an immediate life-saving procedure for a patient, Halachah permits burial to be delayed and organs and/or tissue to be removed from a body for donation. There are, however, many complex issues involved, and we would urge that medical staff respect and facilitate the need for religious Jews to consult with a Rabbi before they make any decision.