MANAGEMENT PROCESS DESCRIPTION MPD865/4

Obtaining Coroner/Procurator Fiscal Decision

This Management Process Description replaces MPD865/3

Copy Number

Effective **20/08/18**

Summary of Significant Changes

Complete re-write train to entire document.

Policy

Organ procurement should only occur after all requirements relating to authorisation or absence of any objection currently in force within the Member State have been met. In the United Kingdom, in some circumstances, it is necessary for the Coroner or Procurator Fiscal (Fiscal) to determine if an objection to solid organ and/or tissue donation will be raised. The Coroner/Fiscal has a legal requirement to do this, and must be satisfied that neither organ nor tissue donation will impede his/her investigation. Therefore, the Specialist Nurse – Organ Donation (SN-OD) must ensure that, to the best of their knowledge, all relevant information is relayed to the Coroner/Fiscal Office so that they may make a decision in relation to raising an objection (consent in Scotland) to organ and/or tissue donation proceeding.

Purpose

To guide the SN-OD on what key information is needed regarding the circumstances surrounding the patient's admission and how this information is documented and communicated to the Coroner/Fiscal Office. So that the Coroner/Fiscal can assess the case and make a decision regarding any lack of objection to donation.

Responsibilities

Specialist Nurse – Organ Donation:
To ensure that the retrieval of organs and/or tissues for donation only occur following Coroner/Fiscal lack of objection to donation, where appropriate.

To ensure that all necessary information pertaining to the potential donor's admission has been obtained and communicated to the Coroner/Fiscal to ensure that an informed decision has been made, either directly or via the responsible healthcare professional in the hospital.

To document all conversations and decisions made by medical team and Coroner/Fiscal.

To discuss the case with the Coroner/Fiscal, confirm the circumstances surrounding the admission of the patient/potential donor, and the decision surrounding the cause of death to be written on the necessary documentation.

Responsible Medical Professional (doctor with delegated responsibility from the clinician in charge of the patient's/potential donor's care)

Definitions

SN-OD – for the purposes of this document the terminology's **'SN-OD'** will apply to either Specialist Nurse or Specialist Practitioner working within NHSBT Organ Donation Services Teams (ODST)

DP – DonorPath Application

DCD – Donation after Cardiovascular Death

Fiscal – Procurator Fiscal

MCCD – Medical Certificate of Cause of Death

HCP – Healthcare Professional

Patient - This term refers to the donor/potential donor

DBD – Donation after Brain Death

Applicable Documents

FRM4039 - NHSBT Referral for Coroner/Procurator Fiscal

FRM6110 – Coronial Lack of Objection for Organ/Tissue Donation Request

FRM5499 – SNOD to DRD Handover Form

FRM4193 - Core Donor Data - SNOD (Used as EOS back-up)

SOP3925 – Manual Organ Donation Process for Potential Organ and/or Tissue Donor in the event of DonorPath/IT network unavailability

Exemplar of Section 9 Witness Statement (Form MG11)
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/257982/Witness-statements.pdf
Central Office Procurator Fiscal Service
http://www.crownoffice.gov.uk
Chief Coroner Guidance No 26 – Organ Donation
https://www.judiciary.uk/wp-content/uploads/2017/12/guidance-no-26-organ-donation.pdf
Guidance on Death, Stillbirth and Cremation Certification
https://www.health-ni.gov.uk/sites/default/files/publications/dhssps/guidance-death-stillbirth-and-cremation-certification-pt-b.pdf

1 INTRODUCTION

1.1 Deceased organ donation can occur in a limited set of circumstances, either following the declaration of death/pronouncement of life extinct (in Scotland) following the irreversible cessation of brain-stem function, or the cessation of circulatory function (AOMRC, 2008). In many cases, the circumstances surrounding the death of the patient would lead the medical teams to contact the Coroner/Fiscal. The Coroner/Fiscal has a legal duty to enquire about deaths in his or her jurisdiction where the cause is either unknown, or where the death is violent or unnatural, and any death which occurs in custody or otherwise in state detention.

1.2 In any case where the Coroner/Fiscal or police is involved, the Coroner/Fiscal has the final decision if organ and/or tissue donation can proceed (DoH, 2010; COPFS, 2004). In order to assist the Coroner/Fiscal to make that decision, the SN-OD and the medical team has an essential role in undertaking a detailed review of the circumstances surrounding the death of the potential donor.

1.3 Following the potential donor review the SN-OD and the medical team must ensure that the key information is communicated to the Coroner/Fiscal office for a decision to be made. This information is then assessed by the Coroner/Fiscal to determine if organ and/or tissue donation can proceed, without compromising any potential investigations. It is vital that the SN-OD documents such communication accurately; so that the meaning is clear (NMC, 2009).

2 COLLATION OF INFORMATION and DESCISION TO REFER TO CORONER

2.1 Obtaining an accurate account of the circumstances surrounding the patient's admission, any police involvement, course of illness, diagnosis, medical and surgical procedures and/or investigations and medical history from the critical care clinician and nursing staff is a crucial first step in determining a detailed history.

2.2 A discussion must be held with the clinician regarding the completion of a medical certificate for cause of death and if the clinician will be referring the patient's death to the Coroner/Fiscal. An agreement must be made as to who will contact the Coroner/Fiscal in the first instance. Ensure that a clinician who has treated the patient is available to speak with the Coroner/Fiscal and/or their officers.

2.3 If there is any doubt as to whether a Coroner/Fiscal should be contacted, best practice would be to make an inquiry to their offices to confirm if the case requires their attention. A list of reasons for contacting the Coroner in England and Wales can be found at Appendix 1, for the Procurator Fiscal in Scotland at Appendix 2, and for the Coroner Service in Northern Ireland at Appendix 3.

2.4 If a clinician has decided not to refer then this is their decision. However, in a situation where a decision is made not to refer but the SN-OD thinks a referral should be made then the SN-OD should engage with the clinician to discuss. If the clinicians' decision remains not to refer, and the SN-OD believes the Coroner should be notified, please escalate to the TM/ RM for advice.

2.5 If the clinician has already spoken to the Coroner/Fiscal in relation to donation, this should be clearly documented in the patient's medical records, detailing the lack of objection of which organs and/or tissues can be donated, any restrictions put in place or special requirements or requests and the SN-OD must ensure that a copy of the clinician's medical entry is held in the donor file. Details of the conversation with the Coroner/Fiscal must be recorded on DonorPath in the Coroner/Fiscal section.

2.6 If DonorPath is unavailable then **FRM4039** - Referral Form for Coroner/Procurator Fiscal must be completed in full, and a copy of **FRM4039** left in the patient's medical records. The Coroner/Procurator Fiscal lack of objection information must be included on **FRM4193** if **SOP3925** is implemented.

2.7 Some Coroner/Fiscal Offices require all deaths to be reported to them or some only require those deaths that fall within their jurisdiction (such as those detailed in Appendix 1-3). The referral timings may vary, some Coroner/Fiscals only wish to be contacted following the family's acceptance/decision to donate, whilst others may wish to be contacted before the outcome of the donation conversation. This information will be held locally within regional donor books.

2.8 The decision of when to contact the Coroner/Fiscal should be made on a case by case basis. There is no formal jurisdiction for a Coroner/Fiscal to agree to organ donation whilst a patient is still alive. However, the Chief Coroner is in agreement that the Coroner/Fiscal can be approached for a decision before any discussion with the family of the patient, in order to save the family, the distress of consenting to donation only to have the coroner object. In instances where a Coroner/Fiscal decision is obtained prior to family discussions, the outcome of these conversations in respect to consent for Organ/Tissue donation should be communicated to the Coroner/Fiscal. There may be some regions with specific Coronial/Fiscal requirements in relation to Donation after Circulatory Death (DoH, 2008; COPFS, 2004).

2.9 If there is any possibility that death may have been caused by another, hospital staff must inform the police. If this has not taken place by the time the SN-OD becomes involved, the SN-OD should ensure that it has been done prior to contacting the Coroner/Fiscal.

2.10 Following a lack of objection from the Coroner/Fiscal; if any new information is received regarding the circumstances surrounding a patient's death, or should there be any change in the details of the donation, such as a change in donor type from DCD to DBD where additional organs may be offered for donation, this information should be communicated to the Coroner/Fiscal and additional lack of objection sought. Details of these additional communications with the Coroner/Fiscal must be recorded on Donorpath in the Coroner/Fiscal section.

3 REFERRAL TO THE CORONER/FISCAL OFFICE

3.1 The SN-OD or Clinician should contact the Coroner/Fiscal Office, where possible, during working hours. If a call has to be made out of hours, it is preferable for this to be done in the daytime if at the weekend or early evening if on a weekday, rather than overnight. This will allow for the Coroner/Fiscal to be contacted more easily and enable a quicker decision to be made. It will also allow for the Coroner/Fiscal office to have discussions with other Coroner/Fiscals, where the initial injury/incident may have occurred outside their jurisdiction or to the relevant police officers to discuss the case in further detail. If this is not possible, then contact should be made through agreed communication channels. A night time call is generally only appropriate in the unlikely scenario where the referral is received out of hours, and the retrieval needs to take place out of hours during that same window of time (i.e. the same night). The SN-OD and Clinician must be available to answer any possible questions from the Coroner/Fiscal.

3.2 The SN-OD should provide details including name & telephone number of the SN-OD, name of the deceased, date of birth, date and place of death. A description of the course of events in hospital including what prompted the admission. These descriptions should include such details as, for example, whether a collapse was witnessed and, if so, by whom and exactly what was seen. If relevant, the SN-OD should give a synopsis of police involvement and endeavour to provide the name and telephone number of the Senior Investigating Officer and any CAD number. The SN-OD should also give the treating consultant's view of the medical cause of death. It may be necessary for one of the medical team to discuss this personally with the Coroner/Fiscal. The SN-OD should also disclose any safeguarding concerns, trust investigations or ongoing family complaints. Finally, the SN-OD should give the anticipated timeframe of retrieval and also detail the specific organ(s)/tissue(s) requested for donation.

3.3 The SN-OD should ask the Coroner/Fiscal or their officer if they are able to give a timeframe for a decision to be reached. If there is any significant delay there may be an impact on timings for the organ donation process, e.g. Approach to the family for organ donation or mobilisation of NORS team. Consider setting up the organ donation process and the Coroner/Fiscal to be contacted the next day, before NORS teams are mobilised to attend. This will be based on local agreements with the Coroner/Fiscal e.g. Memorandums of understanding, but it should be followed with this MPD.

3.4 If the timeframe for a decision has elapsed, and it is appropriate, then the SN-OD should contact the Coroner/Fiscal or their officer for further advice.

3.5 Organs can be offered pending a Coroner/Fiscal decision, however NORS should not be mobilised under normal circumstances. In exceptional circumstances NORS can be mobilised pending a Coroner/Fiscal decision if this has been agreed by the Regional Manager.

3.6 **For London Team Only.** Following a successful pilot, the Coroner for North London who has jurisdiction over Barnet General, North Middlesex and Northwick Park hospitals has established an agreed email referral process. The Coroner will be sent **FRM6110** in all cases where the medical cause of death is unnatural or unknown or the death is reportable to the Coroner. If the medical cause of death is natural and not one that needs to be reported there is no need to contact the Coroner (See Appendix 1). The completed **FRM6110** will be sent to the Coroner via email (admin.beh@hmc-northlondon.co.uk) as soon as possible regardless of consent from third parties (families) and the Coroner will make a decision in a timely manner between 8am and 10pm. The read-receipt function of email should be utilised. Outside these hours, the Coroner will reply the following morning after 8am. In the unlikely event of an urgent decision being required out of hours, the Coroner should be contacted directly as per existing national practice. If the Coroner requires more information or wishes to discuss the case with either the SN-OD or the medical team they will contact the SN-OD on the telephone number detailed on **FRM6110**. **FRM6110**will be returned via email to the SN-OD detailing lack of objection/restrictions to donation and signed by the Coroner. This should be printed out by the SN-OD for the donor file. There is a requirement for **FRM6110** to be emailed with encryption to ensure that the mails are secure and there is no breach of confidentiality.

4 DECISION FROM THE CORONER/FISCAL

4.1 In Scotland written confirmation from the Fiscal involved is required under the Human Tissue (Scotland) Act 2006 as soon as is practicably possible. Usually this is emailed to the donating unit.

4.2 On occasion the Coroner/Fiscal may wish to speak to a retrieving surgeon(s) with certain stipulations and requests in relation to the retrieval operation and make specific requests of the SN-OD, e.g. photos (usually by police), completion of witness statement under section 9 of the *Criminal Justice Act 1967* / MG11 Forms or pathology / police presence at retrieval, swabs or the impression of any bite marks, faxing of referral form **FRM4039** (if completed), the SN-OD must facilitate any of these requests. The SN-OD should request that the Coroner/Fiscal section of DonorPath is sent by the DRD post donation if requested by The Coroners/Fiscal Office.

4.3 In any event, the SN-OD should instruct the retrieval surgeon that incisions for organ retrieval must not encroach upon any endotracheal tube, site of neck surgery or neck ligature indentation. This should not prevent the retrieval surgeon from being able to perform a thorough assessment of the chest cavity.

4.4 The final Coroner/Fiscal decision including the specific organ(s)/tissue(s) should be clearly documented on the Coroner/Fiscal section of Donorpath.

Lack of Coroner/Fiscal Objection to Donation

4.5 If the Coroner/Fiscal lack's objection to organ and/or tissue donation, the SN-OD must confirm any special requirements or specifications or restrictions and document it clearly in the patient's medical records and on DonorPath or **FRM4193** if **SOP3925** is implemented. It is the SN-ODs responsibility to facilitate and support this. All relevant stakeholders and the donor family must be informed.

- In attempt to preserve evidence (e.g. suspected murder case) it is very important to involve the police service. Discussions should be held between the Coroner/Fiscal office, the SN-OD and the police teams to consider this possibility. Remember to discuss family keepsakes at this point.

Coroner/Fiscal Objection to Donation

4.6 If the Coroner/Fiscal or their officer objects to organ and/or tissue donation, the SN-OD should ascertain the reasons why donation cannot proceed. The SN-OD should explore with the Coroner/Fiscal office options which may support a lack of objection. For example:

- Where possible or by regional agreement the SN-OD should request to speak to the Coroner/Fiscal directly to discuss the rationale behind the objection to donation.
- Whilst full organ donation may not be permitted, restricted permission may be an acceptable compromise for the Coroner/Fiscal.
- Attendance of forensic and/or Home Office/Crown Office pathologist healthcare professionals can allow for an accepted form of post mortem to take place.
- Completion of relevant legal paperwork by retrieval surgeons (Section 9 Statements (Form MG11) - voluntary statements provided in compliance with the Criminal Justice Act (1967)) if required by the Coroner/Fiscal (**www.nationalarchives.gov.uk/ERORecords/HO/421/2/cpd/pvu/mg11.pdf**).
- In attempt to preserve evidence (e.g. suspected murder case) it is very important to involve the police service. Discussions should be held between the Coroner/fiscal office, the SN-OD and the police teams to consider this possibility. Remember to discuss family keepsakes at this point.
- Further discussions between Coroner/Fiscal and lead clinicians about the patient's injuries and/or the cause of death, may assist in lack of objection being granted for donation; whilst the death might be unnatural, a cause could be clear.

4.7 The SN-OD must inform all relevant stakeholders and donor family members of the Coroner/Fiscal's decision and document this.

5 POST - DONATION

5.1 It is often appreciated by the Coroner/Fiscal when SN-OD's provide an outcome letter with details of organ recipients. This letter will be a duplicate of the letter's sent to department(s) involved in the donation process. Some Coroner/Fiscal's may choose to read out this letter at the inquest describing the recipients, and to offer a public acknowledgement of thanks.

5.2 SN-OD's must communicate to the DRD using **FRM5499** that this is required. A member of the DRD team will write the letter and send to the Team Leader for checking prior to sending.

5.3 The Coroner/Fiscal will not receive more information than that contained within the family letter.

5.4 Should the family not wish to receive follow up information then the Coroner/Fiscal must not receive the information. The DRD may write to the Coroner/Fiscal to explain the reasons for this if requested to do so by the SN-OD.

APPENDIX 1 – Deaths which should be reported to the Coroner in England and Wales

- the cause of death is unknown
- the deceased was not seen by the certifying doctor *either* after death *or* within 14 days before death
- the death was violent or suspicious
- the death was unnatural
- the death may be due to an accident (whenever it occurred)
- the death may be due to self-neglect or neglect by others
- the death may be due to an industrial disease or related to the deceased's employment
- the death may be due to an abortion
- the death occurred during an operation or before recovery from the effects of an anaesthetic
- the death may be a suicide
- the death occurred during or shortly after detention in police or prison custody
- the death occurred while the deceased was subject to compulsory detention under the Mental Health Act or a Deprivation of Liberty Safeguards authorisation (DoLS)
- for any other concerning feature

(Chief Coroner Guidance No 23 – Report of Death – 2016)

NOTE
SN-ODs MUST BE AWARE OF THEIR REGIONAL CORONERS' REFERRAL PATTERNS AND CRITERIA, HOWEVER, IF IN ANY DOUBT THE CORONER'S OFFICE SHOULD BE CONTACTED TO DISCUSS THE CASE.

APPENDIX 2 – Deaths which should be reported to the Procurator Fiscal in Scotland

Any death which cannot be entirely attributed to natural causes (whether the primary cause or a contributing factor) including:

- Suspicious deaths – i.e. where homicide cannot be ruled out
- Drug related deaths - including deaths due to adverse drug reactions reportable under the Medicines and Healthcare Products Regulatory Agency (MHRA) (Yellow Card Scheme)
- Accidental deaths (including those resulting from falls)
- Deaths resulting from an accident in the course of employment
- Deaths of children from overlaying or suffocation
- Deaths where the circumstances indicate the possibility of suicide
- Any death due to natural causes where the cause of death cannot be identified by a medical practitioner to the best of his or her knowledge and belief.
- Deaths as a result of neglect/fault (including self-neglect)
- Deaths from notifiable industrial/infectious diseases
- Deaths whilst detained or liable to be detained (including community based compulsory treatment order) under the Mental Health (Care and Treatment) (Scotland) Act 2003 or Part VI of the Criminal Procedure (Scotland) Act 1995
- Death of a person subject to legal custody, including detained in prison, arrested or detained in police offices and in the course of transportation to and from prisons, police offices or otherwise beyond custodial premises e.g. a prisoner who has been admitted to hospital or a prisoner on home leave

Deaths under medical or dental care where:

- the circumstances of which are the subject of concern to, or complaint by, the nearest relatives of the deceased about the medical treatment given to the deceased with a suggestion that the medical treatment may have contributed to the death of the patient.
- the circumstances of which might indicate fault or neglect on the part of medical staff or where medical staff have concerns regarding the circumstances of death
- the circumstances of which indicate that the failure of a piece of equipment may have caused or contributed to the death
- the circumstances of which are likely to be subject to an Adverse Event Review (as defined by Healthcare Improvement Scotland)
- where, at any time, a death certificate has been issued and a complaint is later received by a doctor or by the Health Board, which suggests that an act or omission by medical staff caused or contributed to the death
- caused by the withdrawal of life sustaining treatment or other medical treatment to a patient in a permanent vegetative state (whether with or without the authority of the Court of Session).
- which occurs in circumstances raising issues of public safety.

Any death of a child:

- which is a sudden, unexpected and unexplained perinatal death
- where the body of a new born is found
- where the death may be categorised as a Sudden Unexpected Death in Infancy (SUDI)
- which arises following a concealed pregnancy
- a child whose name is on the Child Protection Register
- a child who is subject to a supervision requirement made by a Children's Hearing
- a child who is subject to an order, authorisation or warrant made by a Court or Children's Hearing (e.g. a child being accommodated by a local authority in foster care, kinship care, residential accommodation or secure accommodation)
- a child who is otherwise being accommodated by a local authority

(COPFS, 2015)

NOTE
SN-ODs MUST BE AWARE OF THEIR REGIONAL PROCURATOR FISCALS' REFERRAL PATTERNS AND CRITERIA. HOWEVER, IF IN ANY DOUBT A PROCURATOR FISCAL'S OFFICE SHOULD BE CONTACTED TO DISCUSS THE CASE.

APPENDIX 3 – Deaths which should be reported to the Coroner Service in Northern Ireland

There is a general requirement under section 7 of the Coroners Act (Northern Ireland) 1959 that any death **must** be reported to the Coroner if it resulted directly or indirectly, from any cause other than natural illness or disease for which the deceased had been seen and treated within 28 days of death. Deaths should be referred to the Coroners Service if a medical practitioner has reason to believe that the deceased died directly or indirectly: This list is not exhaustive:

- As a result of violence, misadventure or by unfair means
- As a result of negligence, misconduct or malpractice
- From any cause other than natural illness or disease e.g. homicidal deaths or deaths following assault, road traffic accidents or accidents at work, deaths associated with the misuse of drugs (whether accidental or deliberate), and apparent suicidal death, all deaths from industrial diseases
- From natural illness or disease for which the patient had not been seen and treated by a registered medical practitioner within 28 days prior to their death
- Death as a result of the administration of an anaesthetic (there is no statutory requirement to report a death occurring within 24 hours of an operation – though it may be prudent to do)
- In any circumstances that require investigation e.g. the death, although apparently natural was unexpected and Sudden Unexpected Death in Infancy

Doctors should refer to the Registrar General's extra-statutory list of causes of death that are referable to the Coroner.

https://www.health-ni.gov.uk/sites/default/files/publications/dhssps/guidance-death-stillbirth-and-cremation-certification-pt-b.pdf

(Guidance on Death, Stillbirth and Cremation Certification, 2012)

NOTE
SN-ODs MUST BE AWARE OF THEIR REGIONAL CORONERS' REFERRAL PATTERNS AND CRITERIA. HOWEVER, IF IN ANY DOUBT THE CORONER'S OFFICE SHOULD BE CONTACTED TO DISCUSS THE CASE.