

Changes in this version

Complete rewrite of policy 164 to remove any reference to English/Welsh/NI/other territories, following the introduction of deemed consent legislation in England and the subsequent introduction of the consent manual (SOP5818).

POL164 is now only relevant to Scotland, until the anticipated deemed authorisation law change Spring 2021, where POL164 will be archived/obsolete and replaced by the authorisation manual.

Policy

In Scotland specific legislation sets out who can provide lawful 'authorisation' for organ and/or tissue donation.

The authority or refusal to give authorisation, of the individual expressed in life take priority over any views expressed by the relatives after the person has died. This policy sets out to discuss the current legislation framework in Scotland, the relevant legislation is the Human Tissue (Scotland) Act 2006 (HT Scotland Act) the Adults with Incapacity (Scotland) Act 2000 and the Children (Scotland) Act 1995; the HT Scotland Act requires authorisation to be given for organ and/or tissue donation.

Authorisation is required for organ and tissue donation under this legislation; therefore, the Specialist Nurse-Organ Donation (SNOD), Nurse Practitioner (NP) Tissue Donor Co-ordinator- where applicable - must ensure that they understand the requirements of legislation pertinent to Scotland.

For authorisation to be valid it must be given voluntarily by an appropriately informed person who has the capacity to understand and agree to the activity of organ and/or tissue donation. The authorisation process should follow consistent national practice, based on the specific training undertaken by the SNOD/SNTD. Information provided during the authorisation conversation should be supported by written information tailored to meet the needs of the relatives.

Purpose

The purpose of this policy is to detail the responsibility of the SNOD/SNTD when ascertaining authorisation for organ and/or tissue donation.

Roles

- **Specialist Nurse-Organ Donation (SNOD)/Specialist Nurse-Tissue Donation (SNTD)** - To access the NHS Organ Donor Register (ODR) and identify any recorded donation decision of the patient. Following this the SNOD/SNTD will speak to the relatives and discuss organ and/or tissue donation to ascertain authorisation if appropriate.
- **Professional Development Specialists (PDS)** – To support the **SNOD/SNTD with training aspects related to** in the donation conversation process. To ensure that the policy is implemented and monitored, with appropriate education and training packages in place to maintain quality and standards of practice pertaining to authorisation

1. Introduction:

- 1.1. NHS Blood and Transplant (NHSBT) is a UK wide organisation and, as such, must take into consideration the differing legal systems concerning authorisation across the constituent countries of the United Kingdom. NHSBT as an organisation is responsible for staff working in organ and tissue donation, therefore NHSBT will be required to work to The Quality and Safety of Organs intended for Transplantation Regulations (2012) and associated UK legislation and guidance to ensure the requirements relating to authorisation are met prior to procurement of organs and tissues. This policy outlines the legal and professional

responsibilities of the SNOD/NP/TDC when ascertaining authorisation from relatives. The HT Scotland Act refers to the term ‘authorisation.’

- 1.2. Authorisation for organ/tissue donation must be given without conditions and without financial benefit (DH & NHSBT, 2010).
- 1.3. Within organ and tissue donation, in the circumstances of proposed Donation after Circulatory Death (DCD), where brain injury is not a feature and capacity is retained by the patient, authorisation for organ donation can only be obtained from the patient before planned Withdrawal of Life Sustaining Treatment (WLST).
- 1.4. In all cases of proposed Donation after Brain Death (DBD) and in the majority of proposed DCD cases, if the person has not given authorisation and lacks the capacity to do so, it is not possible to obtain authorisation from the individual therefore any authorisation can be given in keeping with the requirements of the HT(S) Act 2006.

2. Telephone authorisation

- 2.1. It is possible to proceed with organ and/or tissue donation based on telephone authorisation, as it is not a legal requirement to have written authorisation. Documentary evidence of how verbal authorisation was obtained is a professional requirement of the General Medical Council and Nursing and Midwifery Council.

3. Legal requirements and framework for authorisation HT(S)A 2006 verifying or obtaining authorisation for deceased donation

- 3.1. The HT(S) Act 2006 makes clear that adults can authorise the removal and use of body parts after their death for the purpose of transplantation, as well as for the purposes of research, education or training or audit.
- 3.2. The SNOD must ascertain if the patient has registered a decision regarding organ donation on the ODR. If the patient is not on the ODR, the SNOD must ascertain if the patient had made their decision known via a donor card/will or an expressed decision.
- 3.3. If self-authorisation is established, the relatives of the deceased should be informed.
- 3.4. If self-authorisation cannot be established, the ‘nearest relative’ or, in the case of children under 16, the person with parental rights and responsibilities should be approached for authorisation.
- 3.5. In the absence of expressed decision/nearest relatives/friend of longstanding the SNOD should discuss these circumstances at the time with the TM/geographical RM/On-Call RM as donation will not be able to proceed.
- 3.6. If an adult with incapacity has expressed a decision to donate their views should be taken into account, as with any other adult. If incapacity was known the relatives should be approached for authorisation.

4. Self-authorisation

- 4.1. Self-authorisation is all that is required for donation for transplantation to be legal.
- 4.2. If self-authorisation was not made in life the nearest relative should be approached for authorisation.
- 4.3. The nearest relative can extend authorisation for transplantation to include education, training, research and audit.

5. Authorisation for children

- 5.1. Under the HT(S) Act 2006, a child is defined as anyone under the age of 16 years.
- 5.2. Under the HT(S) Act 2006, anyone aged 12 years or older can give self-authorisation.
- 5.3. Children over the age of 16 can give authorisation to donate the organs/tissue of their parent.
- 5.4. If a child has not given self-authorisation before death only the person with parental rights and responsibilities in relation to the child (and who is not a local authority) can provide authorisation.
- 5.5. The person with parental rights and responsibilities can also extend authorisation for transplantation to include education, training, research and audit.

6. Hierarchy of the nearest relative

The nearest relative is the person who immediately before the adult's death was:

- a) the adult's spouse or civil partner;
* person living with the adult as husband or wife or in a relationship which had the characteristics of the relationship between civil partners and had been so living for a period of not less than 6 months (or if the adult was in hospital immediately before death had been so living for such period when the adult was admitted to hospital);
- b) the adult's child;
- c) the adult's parent;
- d) the adult's brother or sister;
- e) the adult's grandparent;
- f) the adult's grandchild;
- g) the adult's uncle or aunt;
- h) the adult's cousin;
- i) the adult's niece or nephew; and
- j) a friend of longstanding of the adult

For the purpose of identifying the nearest relative, the categories of persons listed above rank in the order of that list.

A person can be left out of account if they are (i) under 16; (ii) if they do not wish or are unable to make a decision regarding authorisation; or (iii) it is not reasonably practicable to communicate with them in the time available.

*A partner has to have been living with the deceased in an 'enduring relationship'. The length of that relationship is not specified in legislation but over 6 months is generally accepted.

*Half-blood relatives are treated as whole; a stepchild is treated as a child: spouse or partner removed from hierarchy is permanently separated.

If the adult's spouse or civil partner is permanently separated (either by agreement or under an order of a court or has deserted the adult) they should be disregarded.

7. Best practice

- 7.1. In Scotland legislation allows the SNOD to provide the nearest relative with a level of information that meets with the relatives' requirements, there is no obligation to provide core information.
- 7.2. The SNOD should, where the relatives wish it, discuss the option of organ and or tissue donation in a way that they can understand. The most important part of the donation process is the discussion, information giving and decision-making surrounding authorisation.
- 7.3. The donation conversation forms part of the process rather than something that happens in isolation. The SNOD must therefore ensure the relatives receive accurate, understandable and consistent information regarding the patient's prognosis.
- 7.4. The information the SNOD imparts should meet the needs of the relatives, bearing in mind that information can be provided by means other than just verbal communication.
- 7.5. In circumstances where nearest relatives are providing authorisation on behalf of the patient and the relatives decline to receive information about the donation process, this does not prevent the relatives from giving authorisation.
- 7.6. The SNOD should ensure that adequate information is provided to the patient's relatives to allow a decision to be made regarding organ and/or tissue donation.
- 7.7. In addition, the person giving authorisation must do so voluntarily and have the capacity to do so. They must also have no actual knowledge that the adult was unwilling for donation to proceed.
- 7.8. If self-authorisation does not exist and if the nearest relative has contributed to the death of the donor (e.g. murder or culpable homicide) this may be classed as a form of desertion/separation and authorisation obtained from the nearest relative lower in the hierarchy.
- 7.9. If there is no friend of longstanding but the patient's GP has knowledge of the person's decision to be a donor this may be acceptable.

8. Extension of authorisation for transplantation to include research, education, training or audit

- 8.1. Registration on the ODR does not include authorisation for storage or research, education, training or audit and these areas must be discussed with the patient's relatives to ascertain their authorisation.
- 8.2. The SNOD should inform the relatives that in the unlikely event that the organs authorised for removal, should not be suitable for transplant after removal they may be offered for research, education, training and audit or disposed of as per HT(S) Act 2006.

9. Retraction of authorisation (Scotland)

- 9.1. In Scotland, retraction by nearest relative is unlawful for transplant but permissible for other purposes. The SNOD must discuss this point with the patient's relatives in a sensitive manner and document that the conversation has taken place on the authorisation form.
- 9.2. Authorisation can **only** be withdrawn for the other purposes (research, education, training, and audit), but this must be in writing, by completing **FRM4154** - Retraction of Authorisation by Nearest Relative.
- 9.3. Retraction for transplantation is unlawful in Scotland if authorisation has already been given.

10. Prohibition of payment

- 10.1. The HT(S) Act 2006 prohibits any reward being offered or accepted in exchange for an organ.

Definitions

- **Relatives** - refers to the spouse, partner and, in cases where there are no relatives, close friends of the deceased person
- **SNOD** - for the purposes of this document the terminology 'SNOD' will apply to Specialist Nurse, Specialist Requester (SR) with the relevant knowledge, skills and training in organ and/or tissue donation, working within NHSBT.
- **SNTD** – Specialist Nurse Tissue Donation is a practitioner with the relevant knowledge, skills and training in tissue donation working within the National Referral Centre/Scottish National Blood Transfusion Service (SNBTS).
- **Relevant Information** - is any information offered by the relatives that might come to light during the donation conversation that suggests the patient changed his or her mind about their decision to donate any or all organs or tissue or their decision not to donate any or all organs or tissue
- **Retraction of patient authorisation by the nearest relative** - In Scotland, retraction by nearest relative is unlawful for transplant but permissible for other purposes.

Related Documents

- **MPD598** - Management of the Deceased Donor Relatives Donation Conversation (Scotland)
- **FRM1538** - Authorisation-Solid Organ and Tissue Donation
- **MPD875** - Patient Assessment (Relatives Conversation)
- **FRM4154** - Retraction of patient authorisation by nearest relative
- **MPD888** - Accessing to the ODR
- **SOP3817** - Access for SNODs to the Organ Donor Register (ODR)
- **SOP3649** - Voice Recording of Telephone Conversations
- **SOP5663** - Process for authorisation for the removal and storage of specific organs / tissues samples for research and other purposes
- **SOP4044** - QUOD Consent/Authorisation and collection of samples for Quality in Organ Donation research - Specialist Nurse role
- **INF1164** - Tissue Consent Leaflet
- **INF1166** - Eye Consent Leaflet
- **INF1167** - Research Consent Leaflet
- **INF1233** - Organ Donation Leaflet (Scotland)
- **INF1370** - Rationale for Authorisation -Solid Organ and Tissue Donation
- http://webarchive.nationalarchives.gov.uk/20130107105354/http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_114800 - Requested Allocation of a Deceased Donor Organ
- <http://www.legislation.gov.uk/asp/2006/4/contents> - HT Scotland Act
- <http://www.legislation.gov.uk/asp/2006/4/notes/contents> - HT Scotland Act (Explanatory Notes)
- <http://www.legislation.gov.uk/asp/2000/4/contents> - Adults with Incapacity (Scotland) Act 2000
- <http://www.legislation.gov.uk/ukpga/1995/36/contents> - Children (Scotland) Act 1995