

推定反對？ 器官捐贈選擇退出制度與 特定組織器官的排除(四)*

Presumed Dissent? Opt-out Organ Donation
and the Exclusion of Organs and Tissues (IV)

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摘要

人們經常聲稱，器官捐贈的合法方式應為選擇退出制度，也稱為「推定同意」、「視為同意」或「視為授

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關鍵詞：視為同意 (deemed consent)、器官捐贈選擇退出 (opt-out organ donation)、器官捐贈政策 (organ donation policy)、政策排除和豁免 (policy exclusions and exemptions)、推定同意 (presumed consent)、移植倫理 (transplantation ethics)

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權」，因此，除非個人有明確拒絕，否則死後將推定或視為願意捐贈至少一部分組織或器官。但即便大致上許多制度都預設支持捐贈，但它們在幾個關鍵面向有所不同，例如，潛在捐贈者家庭成員的偏好所扮演的角色、地位與重要性；排除特定人口群體，或額外強調的保護機制；或是仍被排除在選擇退出制度的器官或組織。本文將對英格蘭、蘇格蘭及北愛爾蘭近期事後退出權的轉變進行案例研究，並參考推動整個英國造成這樣轉變的關鍵因素，本文將會嘗試提問：倘若如此，為何且如何，死後器官捐贈制度中的事後退出權應排除某些視為同意的特定器官或組織。換句話說，死後器官捐贈制度的事後退出權，是否應當對特定器官或組織的捐獻提出質疑？

It is often claimed that a legitimate approach to organ donation is an opt-out system, also known as ‘presumed consent’, ‘deemed consent’, or ‘deemed authorisation’, whereby individuals are presumed or deemed willing to donate at least some of their organs and tissues after death unless they have explicitly refused permission. While sharing a default in favour of donation, such systems differ in several key respects, such as the role and importance assigned to the family members of prospective donors and their preferences, and exclusions and safeguards which often specify the demographic groups, purposes, or organs and tissues that will remain outside the scope of the opt-out system. Using the recent shift to opt-out in England, Scotland, and Northern Ireland as case studies, and by reference to the key goals motivating this shift across the UK, this article asks whether and, if so, why, and how, opt-out systems for post-mortem organ donation should restrict the types of organs and tissues for which consent is deemed. In other words, ought opt-out systems for PMOD

presume dissent regarding the donation of certain organs and tissues?

本文上篇載於本報告第88期，77-94頁。

(二) 反映潛在捐贈者對死後器官的偏好

正如第貳節的二、下所解釋的，支持英國轉向選擇退出制度的第二個主要政策理由是，在潛在捐贈者死前讓其偏好、期望及價值觀與器官取得實踐之間實現更緊密的一致性。這顯然影響了英國各地間排除器官及組織所採取的方法，英格蘭、蘇格蘭及威爾士政府各自展開了為研議排除器官及組織的民意諮詢活動。在英格蘭，民意調查詢問了受訪者是否「同意政府擬定的排除移植清單」的意見¹，並提供了一個勾選欄，列出了各個排除項目，並詢問「哪些應被排除在選擇退出制度外」²。在蘇格蘭，民眾被詢問是否有「身體的任何部位（特別是列出來的）不應該被列入名單」³或「是否有遺漏」⁴。在威爾士，在關於例外的身體部位的第二次協商中，詢問了參與

1 DHSC, 'Organs and Tissues To Be Excluded from the New System of Organ and Tissue Donation in England (Known as "Opt-Out" or "Deemed Consent"): Consultation on the Draft Human Tissue (Permitted Material: Exceptions) (England) Regulations 2019' (2019) pp 13-16 <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/798467/Organs_and_tissues_to_be_excluded_from_the_new_system_of_organ_and_tissue_donation_in_England_-_consultation_document.pdf> accessed 10 October 2021, 13-16.

2 *ibid.*

3 Scottish Government, 'Human Tissue (Authorisation) (Excepted Body Parts) (Scotland) Regulations 2020 Consultation' (2020) <<https://www.gov.scot/publications/consultation-human-tissue-authorisation-excepted-body-parts-scotland-regulations-2020/pages/2/>> accessed 20 October 2021, 10.

4 *ibid.*