

**Submission by the Society for the Protection of Unborn Children (SPUC)
to the Health and Social Care Committee of the National Assembly of
Wales regarding the *Human Transplantation (Wales) Bill***

APPENDIX: Brain Death Controversies

The US President's Council on Bioethics in December 2008 was highly critical of current UK practice of seeking to identify 'brain-stem death' as a sufficient basis for the diagnosis and certification of death for transplant purposes. (President's Council on Bioethics, *Controversies in the Determination of Death* (Washington, D.C.: President's Council on Bioethics, 2008)). An influential recent paper on the subject by D. Alan Shewmon ("Brain Death: Can it be Resuscitated" *Hastings Centre Report* 39.2 (2009): 18-24) critically assesses the Council's work and makes a strong case against current UK practice in relation to 'brain stem death', as well as US practice in relation to 'whole brain death'. As Shewmon notes in the paper:

"Just as cigarette ads are required to contain a footnote warning of health risks, ads promoting organ donation should contain a footnote along these lines: "Warning: It remains controversial whether you will actually be dead at the time of the removal of your organs. This depends on the conceptual validity of 'position two' in the analysis of the determination of death conducted by the President's Council of Bioethics. You should study it carefully and decide for yourself before signing an organ donor card." Similarly in conversations with families of patients in total brain failure, representatives of organ procurement organisations should frankly disclose the existence of ongoing controversies over whether their loved one is dead or in a deep, irreversible coma. Of course such information is never given, neither to the public nor to individuals, because it would likely decrease the number of donated organs."

There have been documented cases of 'brain dead' patients maintaining bodily functions for months or even years; for example, growing up and passing through puberty in the case of a child, or sustaining a pregnancy and giving birth to a baby in the case of a pregnant woman. See D. Alan Shewmon, "The Brain and Somatic Integration: Insights Into the Standard Biological Rationale for Equating 'Brain Death' With Death", *Journal of Medicine and Philosophy* 26.5 (2001): 457-478. Moreover, it is well-known to transplant teams that heartbeating donors move when organs are taken, unless they are paralysed by drugs, and that their blood pressure goes up when the incision is made. It is worth noting that some anaesthetists recommend that the supposed 'cadaver' be anaesthetised when his/her organs are retrieved.