

Assisted Suicide (Scotland) Bill

Frank Mulholland

It is recognised that this is a particularly difficult and emotive area of law raising important issues and therefore it is quite proper that any proposed change should be a matter for the Scottish Parliament. To assist the Committee in its deliberations, it might be helpful for me to explain the current position in Scotland where a person assists another to die.

As the Committee will be well aware due to historical differences between Scotland and the rest of the United Kingdom the development of legal systems in Scotland have resulted in a quite distinct criminal law in most instances except for where there has been law made by legislation of the UK Parliament which expressly covers Scotland .

Suicide is not a crime known to Scotland, nor is there a distinct crime of assisted suicide. In contrast, there is a statutory offence in England and Wales of assisted suicide in terms of section 2 of the Suicide Act 1961. The Suicide Act 1961 does not apply in Scotland.

In Scotland, if someone assists another to take their own life, such cases would be reported to the Procurator Fiscal as a deliberate killing of another and thus dealt with under the law relating to homicide.

Under the law of homicide, it would have to be considered whether there was sufficient evidence to establish that a crime had been committed, that the accused was the perpetrator and that the accused had the requisite mens rea (intention) to commit the offence.

In order to be satisfied that a crime had been committed the Crown would have to consider that there was a direct causal link between the actings of the accused and the deceased's death. In other words, that it was a significant contributory factor to the death. There is a considerable amount of case law in Scotland dealing with the issue of causation, which would require to be carefully considered in light of the circumstances of each case.

Thereafter consideration would have to be given to whether prosecution is in the public interest. The criteria for deciding whether prosecution is in the public interest are set out in the COPFS Prosecution Code. I am sure that you will appreciate that there is a high public interest in prosecuting all aspects of homicide where there is sufficient, credible and reliable evidence.

If the Crown considers there to be sufficient evidence that a person has caused the death of another it is difficult to conceive a situation where it would **not** be in the public interest to raise a prosecution but each case would be considered on its own facts and circumstances.

Thereafter it would be a matter for a jury to consider whether they were satisfied to the criminal standard of proof that the accused was guilty of homicide and also being satisfied that there was a direct causal link between the accused's actions and the

deceased's death. It would also be for the court to decide the appropriate sentence taking into account any mitigatory factors that exist.

I hope that this letter will be of assistance to the Committee in its work. I am content that this letter be made public.

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