

Assisted Suicide (Scotland) Bill

Scottish Council of Jewish Communities

The Scottish Council of Jewish Communities (SCoJeC) is the representative body of all the Jewish communities in Scotland and its aims are to advance public understanding about the Jewish religion, culture and community. It works with others to promote good relations and understanding among community groups and to promote equality, and represents the Jewish community in Scotland to government and other statutory and official bodies on matters affecting the Jewish community.

In preparing this response we have consulted widely among relevant organisations and members of the Scottish Jewish community.

The Jewish Community in Scotland

The majority of the Jewish community in Scotland is affiliated to Orthodox Judaism, which has four synagogues in Glasgow, and one in each of Edinburgh, Dundee, and Aberdeen. In addition there is a Liberal Jewish community in Edinburgh, and a Reform synagogue in Glasgow. There are also several welfare organisations, including organisations providing care services to people with terminal or life-shortening illnesses or conditions.

Jewish religious law regards human life as sacrosanct. Its value is absolute, not relative to a person's age or health, and it is certainly not something that can be ended at will. The requirement to save life is central to Jewish belief – the Talmud states that "one who saves a single life is regarded as if he had saved the whole world", and other religious obligations must (not "may") be set aside in order to do so.

Reform and Liberal Judaism differ in some respects from traditional Judaism with regard to assisted suicide. All of these views are reflected in this response. Reform and Liberal Judaism respect and consult Jewish law and tradition in making decisions but do not regard themselves as ultimately bound by it; in particular they respect the autonomy of individuals and the right of individual conscience in reaching decisions, especially on issues of deep personal concern such as end-of-life issues.

1. Do you agree with the general purpose of the Bill to make it permissible, in the circumstances provided for, to assist another to commit suicide?

Jewish religious law is unequivocally opposed to both euthanasia and suicide, and Judaism sets great store by the dedicated care given to patients in their final illness by members of the medical and nursing professions. Jewish religious tradition gives clear guidance to those caring for terminally ill patients and for the patients themselves. Expressed simply, the principle is that it is forbidden to do anything that will hasten death. The pre-eminent authority on Jewish medical ethics, Rabbi Dr J.D. Bleich, has stated, in summarising the Jewish view on euthanasia: "Any positive act designed to hasten the death of the patient is equated with murder in Jewish law, even if the death is hastened only by a matter of moments. No matter how laudable the intentions of the

person performing an act of mercy-killing may be, his deed constitutes an act of homicide.”¹

However, adequate pain relief supplied with the sole intention of relieving pain and distress is permitted by Jewish religious law, even if there is the possibility that the patient's life may be shortened in consequence. Since this is a complex area, consultation with doctors and a religious authority nominated by the patient or his or her family may be requested to establish what is appropriate in any individual case.

While never encouraging suicide, Liberal Judaism is divided about assisted suicide. Many, motivated by the ethical concerns about the inherent value of all life, and the grave risk of coercion, would oppose any change in the law. Many others, however, would see it as the moral right of an individual to seek assistance in ending life which had become intolerable due to a terminal illness or terminal condition, and would oppose the prosecution of individuals who offered such assistance out of love and care, or in pursuance of their legally recognised responsibility. Where this is done within the framework of a procedure designed to ensure informed consent, and eliminate abuses, many members of the Liberal Jewish community would welcome a change in Scottish law.

Reform Judaism is also divided about assisted suicide; it has no unequivocal position on assisted suicide, and respects the differing views. However, there are a growing number of Reform Rabbis who believe that there are limits to the efficacy of palliative care, and who strongly assert that assisted dying should be permitted, providing that safeguards are in place to protect the vulnerable.

2. Do you have any views on how the provisions in this Bill compare with those from the previous End of Life Assistance (Scotland) Bill?

The current Bill does not, in our view, provide improved security for individuals suffering from terminal or life-limiting illnesses or conditions, or for those who might be involved in assisting such individuals to commit suicide.

3. The Bill precludes any criminal and civil liability for those providing assistance, providing the processes and requirements set out in the Bill have been adhered to. Do you wish to make any comment on this?

Opinion in the Jewish community is divided on this subject. When she was Deputy Minister for Health and Community Care, Rhona Brankin informed the Scottish Parliament that "Under Scots law, an act of euthanasia by a third party, including physician-assisted suicide, is regarded as the deliberate killing of another and would be dealt with under the criminal law relating to homicide. The consent of the victim would not be a defence and no degree of compassion on the part of the person who carried out the act would amount to a legal justification." ² Many Jewish people, from across the religious

¹ Judaism and Healing, Ktav Books, 1981

² Official Report, 11 November 2004

spectrum, would prefer this situation to be maintained, while, however, allowing the Lord Advocate wide discretion to consider each case on its individual merits. Others, however, would prefer greater clarity, and would therefore welcome a clear and legally enforceable statement defining what behaviour is permissible, and what would expose someone to prosecution.

4. The Bill outlines a three stage declaration and request process that would be required to be followed by an individual seeking assisted suicide. Do you have any comment on the process being proposed?

We do not believe that the proposed procedure can be relied on to ensure that an individual does not feel under pressure to request an assisted suicide. A rational decision to die would have to follow consideration, with family, friends, and carers, of the nature of the illness, concern about the impact that one is having on others, reflection on the available alternatives, and even on the perceived attitude of the health care team. If, for example, they, or any of the witnesses, believe that, were they in the situation of the requesting person, they would not wish to go on living, this view will undoubtedly be communicated, by tone and body language, if not in words, and will be an additional pressure on the person to proceed. The position of trust that they occupy in relation to a person requesting an assisted suicide, would itself lend weight to their view, whether explicitly stated or only implied.

The death of a burdensome relative may be welcome to some people, and we are therefore concerned that the proposed lawful killing could become a cover for murder, and though the proposed safeguards might limit the scope for direct abuse, a considerable potential still exists for indirect abuse, not to mention well-intentioned but dangerous legal uncertainty.

i) Declaration and Requests

We would have expected a requirement for the full team engaged in caring for and supporting an individual to be involved in the request procedure, including, for example, both hospital-based doctors and GPs, hospital, hospice, and community nurses, and the community psychiatric team. We are, therefore, concerned that the Bill only requires the involvement of two medical practitioners, neither of whom is required to have known or provided care to the individual for any significant length of time.

ii) Witness declarations

It is not, in our view, possible for the witnesses to the declaration and requests to make a safe determination that an individual “has made the declaration voluntarily and, in particular, has not been persuaded or similarly influenced by another person to make it.” since the person concerned may feel constrained to withhold information that would lead to a contrary determination. If expert witnesses can disagree about mens rea – whether or not an act was voluntary – how can lay people make this judgement about someone who may be distraught and in pain? Moreover, being ‘voluntary’ does not preclude a request from having been made as a result of real or perceived pressure. We are concerned that some people may feel pressured

http://www.scottish.parliament.uk/parliamentarybusiness/28862.aspx?r=4541&mode=html#io_b_34020

to request assistance to end their life because they believe that otherwise they will be a financial burden to their family or to the NHS, but that this may not always be apparent. The simple presence on the statute book of a law legalising a form of euthanasia would in itself introduce an additional psychological pressure on patients.

iii) Time limit

Far from being a safeguard, it is conceivable that setting a time limit between the second request and its implementation might put additional pressure on an individual to proceed with an assisted suicide before the 14 days are up – and sooner than they otherwise might have done – in order to avoid having to repeat the entire request procedure.

5. Do you have any comment on the provisions requiring that the person seeking assisted suicide must have a terminal or life-shortening illness, or a progressive condition which is either terminal or life-shortening?

We are concerned at the breadth of these proposals. A person with a terminal or life-shortening illness may continue to live for only a few days or for several years, and whether or not there is a “prospect of any improvement” may depend as much on someone’s emotional as physical condition. It is not uncommon for a person who does not believe life worth living on one day, desperately to wish to live long enough to attend a wedding or see a grandchild when an engagement or pregnancy is revealed on the next, and it is not tenable to rely on a criterion that is not only subjective, but which may be subject to complete reversal in response to factors that have no bearing on the extent of a person’s illness or level of incapacitation.

6. Are you satisfied with the eligibility requirements as regards age, capacity, and connection with Scotland as set out in the Bill?

We are very concerned that the Bill’s proposal only to require a minimal connection with Scotland, namely registration, for however short a period, with a Scottish GP, would, as has become the case with Switzerland, cause Scotland to become a destination for people seeking assisted suicide. In the words of the Chief Executive of a welfare organisation in the Jewish Community that provides services to a large number of vulnerable people, “What the Bill is proposing would make Scotland a death haven – is that really how the Scottish Parliament wants us to be known?”

The premise of the proposed Bill is that a person under 16 is not competent to request an assisted suicide, but we are concerned that some young adults could feel under pressure to do so. For example, if a child under 16 expressed a wish to commit suicide, and his or her family moved to Scotland in order to facilitate this, he or she may feel compelled to abide by that earlier statement, the more especially if other members of the family are suffering continuing detriment or disadvantage as a result.

7. Do you have any comment on the roles of medical practitioners and pharmacists as provided for in the Bill?

The Policy Memorandum acknowledges that relevant “guidelines or codes might include recognition that some GPs and pharmacists will have ethical or faith-based objection to any involvement in assisted suicide”, but we are

concerned that the absence of an opt-out procedure from the face of the Bill could leave practitioners vulnerable. Even were guidelines to permit this, at best many would come under pressure not to opt out, and at worst some may find themselves out of a job, the more especially since judges in several recent cases have ruled that public employees are not exempted from duties that contradict religious beliefs. The emotional and legal pressure would be even greater on the incumbent of a single-GP practice in a remote rural area, especially if his or her nearest colleagues also happened to have conscientious objections to assisting a suicide.

8. Do you have any comment on the means by which a person would be permitted to end his/her life under the Bill?

We do not wish to comment on this question.

9. Do you have any comment on the role of licensed facilitators a provided for in the Bill?

We are concerned at the proposal that licensed facilitators could be as young as 16, and do not think it appropriate that someone with so little life-experience should be permitted to take on the burden of assisting someone to kill him- or herself.

10. Do you have any comment on the role of the police as provided for in the Bill?

We agree that it is appropriate for the police to investigate all cases of assisted suicide reported to them, and to take whatever subsequent action they consider appropriate.

11. Do you have any comment to make about the Bill not already covered in your answers to the questions above?

Judaism believes that all people, including the dying, should be invested with dignity, and that the dying should be treated with the greatest respect. Traditional Judaism disagrees absolutely with the suggestion that a death that is "assisted" to take place before its natural time can be described as "dignified", and is entirely opposed to the putative ethic on which the proposed Bill is based. Liberal and Reform Judaism would agree that the dignity and wellbeing of the dying should be the paramount concern of the law, and that every effort should be made through counselling to encourage patients to find meaning in their lives, however circumscribed by illness and incapacity. However, many Liberal and Reform Jews would support the autonomy of the patient in deciding whether dignity and wellbeing consist in the continuation of life or its peaceful termination, and would agree that appropriate assistance should be permitted to those who wish to die.

Very many people in a situation where assisted suicide might be considered, in a regime where assisted suicide is permitted, fall under some pressure to comply, and we are concerned that the enactment of the proposed Bill would inevitably place a moral and emotional burden on those who are already suffering.

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