

## Assisted Suicide (Scotland) Bill

### Scottish Justices Association

1. The Scottish Justices Association (SJA) makes no comment on policy and is responding only to Question 11, raising concerns regarding s16. This permits proxy signatures by Justices of the Peace (and solicitors and advocates) for 'preliminary declarations', and 'first' and 'second requests', in the case of a person who is 'blind or unable to read, or unable to sign their name'.
2. There is no objection to the principle of Justices acting as proxy signatories. Indeed as impartial, independent Judicial Officers, they are well placed to be proxy signatories, and since their services are, unlike those of solicitors and advocates, provided for free, use of these services might be expected to be greater than those of solicitors and advocates.
3. However, the role required by s16 is very different from that of simply witnessing signatures under oath, administering statutory declarations, certifying copies, and similar essentially notarial functions. They also assess evidence under examination in a formal court environment.
4. Firstly, since many Justices might have ethical objections to performing this role, the SJA considers that the Bill should make clear that there is no obligation on any particular Justice to do so.
5. Secondly, in respect of Justices who are in principle willing to perform this role, the SJA is concerned at the implications of s16(4), i.e.: 'A proxy may not sign a document unless satisfied that the person understands its effect.'
6. Nothing in the Bill indicates how a Justice of the Peace (or other proxy), might safely conclude that the prospective suicide is fully mentally capable of understanding the effects of the declaration. This is important because the person is very likely to be unknown to the Justice, who is therefore in a poor position to decide whether the person can 'understand its effect'.
7. Indeed, the SJA notes that in the Policy Memorandum at para 24, in relation to witnesses to preliminary declarations, it is expressly noted that 'The aim is to ensure that the witness can make an informed but detached judgement as to whether the person is making the declaration voluntarily **(recognising that a stranger would be less likely to notice if someone was acting out of character ...)**'. [emphasis added] This final sentence may indicate the difficulty of s16(4)
8. This concern is increased by the further concession in the Policy Memorandum, at para 37, specifically in relation to proxies, that 'people eligible to request assistance are much more likely than would normally be expected to be unable to complete the form unaided'. In short, the person might well not only be a stranger, but also be very ill.

9. A further associated difficulty is that there will be occasions when the person has speech difficulties, due to their condition, and likely to make it very difficult, if not impossible, for the Justice or other proxy, to ensure there is full understanding.
10. In such cases the Bill s12 (2), refers to ‘... a lack of or deficiency in a faculty of communication [being] made good by human or mechanical aid (whether of an interpretative nature or otherwise)’. However, since there is no indication of what ‘human or mechanical aids’ may be acceptable, there would require to be protocols created. A family member interpreting would clearly not be acceptable.
11. It is also noted that Sections 9 and 11, both state that the first and second requests are supported by medical practitioners statements and at both 9(a) and 11(a), the qualification is made that these include assertions that... ‘the person making the request has capacity within the meaning of section 12 to make it’.
12. **The SJA therefore considers that the Bill should require that this medical statement of capacity to understand, should be produced prior to the declaration being signed and the medical evidence so adduced, should be shown to the proxy who would be entitled to rely on its contents and that, in so doing, has thereby satisfied him- or herself that the prospective suicide understands the effect of a signature, thus avoiding any liability whether criminal or civil. There should be some mechanism whereby the endorsed medical statement is available to the proxy.**
13. While appreciating that the purpose of having the medical evidence comes second to the primary declaration, is to make the process less cumbersome, it is essential that the proxy gets it before acting and also that no one incapable of making the decision goes through the preliminary parts to be turned down eventually.
14. The SJA would further note that Justices of the Peace, being Commissioners of Oaths, are also qualified to certify that documents are true copies. At 14 (4) of the Policy Memorandum:-

‘A photocopy of such a document bearing to be certified as a true copy by either of the practitioners who made a statement contained in it or by a notary public and signed and dated by the practitioner or notary has the same effect as the original.
15. It is noted that there are protections for those involved in cll 1, 2 and 24. However, cll 1 and 2 are somewhat broadly drawn and do not relate to those declining to assist. And cl 24 is limited to those making ‘an incorrect statement or otherwise [doing] something inconsistent with the Act’ which is not wording apt to cover making a proxy signature’.