



Assisted Dying for Terminally Ill Adults (Scotland) Bill

Evidence from the Scottish Council of Jewish Communities

Background information

The Scottish Council of Jewish Communities (SCoJeC) is the representative body of all the Jewish communities in Scotland. SCoJeC advances public understanding about the Jewish religion, culture and community, by providing information and assistance to educational, health, and welfare organisations, representing the Jewish community in Scotland to Government and other statutory and official bodies, and liaising with Ministers, MSPs, Churches, Trades Unions, and others on matters affecting the Jewish community. SCoJeC also provides a support network for the smaller communities and for individuals and families who live outwith any Jewish community or are not connected with any Jewish communities, and assists organisations within the Scottish Jewish community to comply with various regulatory requirements. SCoJeC also promotes dialogue and understanding between the Jewish community and other communities in Scotland, and works in partnership with other organisations and stakeholders to promote equality, good relations, and understanding among community groups.

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

In preparing this response we have consulted widely among members of the Scottish Jewish community, and this response reflects the views of all branches of Judaism that have communities in Scotland.

The Consultation Process

We are greatly disturbed by several comments included in the call for evidence on the Scottish Parliament website¹.

Firstly the generalisation that *“As responses to this call for evidence will be self-selecting, they cannot be assumed to be representative of public opinion and will not be treated as such.”* As we have indicated above, the Scottish Council of Jewish Communities is a reputable representative organisation, and as such, we have consulted widely in the Scottish Jewish community in order to provide the Committee with this evidence. It presents the widely differing views of the various sections of the Scottish Jewish community, and is undoubtedly representative of those views.

¹ https://yourviews.parliament.scot/health/assisted-dying-for-terminally-ill-adults-bill/consult_view/

We are also concerned by the statement “*If we receive a very high volume of submissions to the detailed call for evidence, [the summary and analysis of responses] may need to be prepared on the basis of a sample of submissions.*”, and also the information that not all responses will be processed and published. The suggestion that only a – potentially biased – selection of responses may be taken into account is outrageous, and explicitly contradicts the objectives of the Scottish Parliament Public Engagement Strategy² to “*increase the reach of our engagement and the diversity of the people who engage with us*” and “*maximise Parliamentary education and engagement*”. If the Committee receives a high volume of submissions, that should be welcomed as a clear indication of public interest and engagement, and, in the interests of transparency, equity, and a genuine consultative process, all of the responses should be read, included in the summary and analysis of responses, given full consideration during the Committee’s deliberations on the Bill, and all those for which the appropriate permission has been granted should, as is usual, be published on the Scottish Parliament website.

1. The purpose of the Assisted Dying for Terminally Ill Adults (Scotland) Bill is to introduce a lawful form of assisted dying for people over the age of 16 with a terminal illness.

Which of the following best reflects your views on the Bill?

- Fully support
- Partially support
- Neutral/Don’t know
- Strongly oppose

Our true response would be “none of the above” but this option is not available. Our view is not “neutral” – indeed, neutrality entirely misrepresents the views of each of the Orthodox, Reform, and Liberal Jewish communities (see below). However, given the different, and strongly held views of the various branches of the Scottish Jewish community any other tickbox would be even more misleading.

Which of the following factors are most important to you when considering the issue of assisted dying?

- Impact on healthcare professionals and the doctor/patient relationship
- Personal autonomy
- Personal dignity
- Reducing suffering
- Risk of coercion of vulnerable people
- Risk of devaluing lives of vulnerable groups
- Sanctity of life
- Risk of eligibility being broadened and safeguards reduced over time
- Other, please specify

All of the above factors are important to the Jewish communities in Scotland.

² Scottish Parliament Public Engagement Strategy
<https://www.parliament.scot/-/media/files/spcb/strategic-plans/public-engagement-strategy.pdf>

Traditional Jewish religious law regards human life as sacrosanct. Its value is absolute, not relative to a person's age or health. 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 Orthodox or traditional Judaism. 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.

Orthodox Judaism is unequivocally opposed to assisted dying, and 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 or may hasten death, even, for example, so small an intervention as adjusting their pillow. 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. ... Judaism does not perceive the overriding obligation to preserve life to be in any way antithetical to "death with dignity". ... the struggle for life is never an indignity."*³

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, patients and their families may request a consultation not only with doctors but also with a religious authority of their choice, in order to establish what is appropriate in any individual case.

Reform Judaism is divided about assisted dying; it has no unequivocal position on assisted dying, 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

Liberal Judaism has formulated a policy in support of legalising assisted dying, which states that, as people *"have had control over their life, they should also have control over their death in order to minimise the suffering of those dying in pain or indignity"*⁴. Liberal Judaism is also a founder member of the Religious Alliance for Dignity in Dying, a collection of groups of various faiths, leaders and laypeople calling for a change in the law on assisted dying. Liberal Judaism emphasises, however, that assisted dying should only be *"one of several options for end-of-life care"*⁴. Many within Liberal Judaism oppose any change in the law because of ethical concerns about the inherent value of all life and the grave risk of coercion, while many others see it as the moral right of an individual to seek assistance in ending life which has become intolerable due to a terminal illness or terminal condition.

2. The Bill proposes that assisted dying would be available only to terminally ill adults. The Bill defines someone as terminally ill if they 'have an advanced and progressive

³ Judaism and Healing, Ktav Books, 1981

⁴ Assisted Dying Q&A (Liberal Judaism, 2021)
<http://www.eljc.org/newsletter/Dignity%20in%20Dying%20FAQs%20June%202021.pdf>

disease, illness or condition from which they are unable to recover and that can reasonably be expected to cause their premature death’.

An adult is defined as someone aged 16 or over. To be eligible a person would also need to have been resident in Scotland for at least 12 months and be registered with a GP practice.

Which of the following most closely matches your opinion on the terminal illness criterion for determining eligibility for assisted dying?

- No-one should be eligible for assisted dying
- Assisted dying should be available only to people who are terminally ill, and the definition of terminal illness should be narrower than in the Bill
- Assisted dying should be available only to people who are terminally ill, and the definition of terminal illness in the Bill is about right
- Assisted dying should be available only to people who are terminally ill, but the definition of terminal illness should be broader than in the Bill
- Assisted dying should be available to people who are terminally ill, and to people in some other categories.
- Other – please provide further detail

The view of Orthodox Judaism is that assisted dying should not be available to anyone.

The view of Reform and Liberal Judaism is that assisted dying should be available only to people who are terminally ill, and that the definition of terminal illness in the Bill is about right.

Which of the following most closely matches your opinion on the minimum age at which people should be eligible for assisted dying?

- No-one should be eligible for assisted dying.
- The minimum age should be lower than 16
- The minimum age should be 16
- The minimum age should be 18
- The minimum age should be higher than 18
- Other – please provide further detail

The view of Orthodox Judaism is that assisted dying should not be available to anyone.

The view of Reform and Liberal Judaism is that the minimum age should generally be set at 18, but that there may be an argument very rarely to permit assisted dying for young people aged 17 and 16 if there are very compelling reasons.

3. **The Bill describes the procedure which would be in place for those wishing to have an assisted death. It sets out various procedural safeguards, including examination by two doctors, test of capacity, test of non-coercion, two-stage process with period for reflection.**

Which of the following most closely matches your opinion on the Assisted Dying procedure and the procedural safeguards set out in the Bill?

- I do not agree with the procedure and procedural safeguards because I oppose assisted dying in principle
- The procedure should be strengthened to protect against abuse
- The procedure strikes an appropriate balance
- The procedure should be simplified to minimise delay and distress to those seeking an assisted death
- Other – please provide further detail

As we have already stated, Orthodox Judaism is opposed in principle to assisted dying.

Reform and Liberal Judaism support the introduction of assisted dying, but there are a number of issues in relation to the proposed procedure.

1) Status of the Registered Medical Practitioners

Although the Explanatory Notes state (para 21) that “*It is expected that [the coordinating registered medical practitioner] will usually be the terminally ill adult’s GP or primary care doctor*”, as one of the witnesses to the declarations, a person holding either of these roles is in fact disqualified from being the coordinating registered medical practitioner by reason of Schedule 5 which states:

1. *The individuals specified in paragraph 2 are disqualified from—*
 - (a) *witnessing a first declaration by a person under section 4(2),*
 - (b) *witnessing a second declaration by a person under section 10(3),*
 - (c) *being a proxy for a person intending to have a document signed by proxy under section 12.*
2. *Those individuals are as follows ...*
 - (h) *any health professional who has provided treatment or care for the person in relation to that person’s terminal illness.*

Furthermore, under the terms of Section 6 of the Bill,

- 6 (6) *A registered medical practitioner may carry out the functions of the independent registered medical practitioner under subsection (3) only if that practitioner ...*
 - (b) *has not provided treatment or care for the person being assessed in relation to that person’s terminal illness*

So, under the terms of the Bill, the two medical assessments must both be carried out by registered medical practitioners who have not provided any treatment or care in relation to the terminal illness of the person who has requested assisted dying. They will therefore be hindered by not having a detailed knowledge of the patient’s medical history, personal circumstances, etc.

By contrast, 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.

2) Level of discretion granted to the Registered Medical Practitioners

We are also concerned with the level of discretion granted to the registered medical practitioners. A rational decision to die would have to follow full 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. However, the Bill limits the requirement for this by permitting a very wide discretion to the registered medical practitioners:

(our emphasis)

7(1)(a) *A registered medical practitioner carrying out an assessment under section 6 must—*

- (ii) explain to and discuss with the person being assessed, **in so far as the registered medical practitioner considers appropriate**—*
- (i) the person’s diagnosis and prognosis,*
- (ii) any treatment available and the likely impact of it on the person’s terminal illness,*
- (iii) any palliative or other care available,*
- (iv) the nature of the substance that might be provided to assist the person to end their own life (including how it will bring about death) ...*

(c) in so far as the registered medical practitioner considers appropriate, *advise the person to—*

- (i) inform a registered medical practitioner of the medical practice with which the person is registered that they are requesting assistance to end their own life (if they have not already done so),*
- (ii) discuss the request with those close to the person.*

In other words, if either or both of the coordinating or independent registered medical practitioner consider it inappropriate, for whatever reason, to provide the person making a request for assisted dying with full information about his or her condition, and/or to encourage him or her to inform their family, friends, and own medical practice of the step they are considering, the registered medical practitioners are provided with a legal excuse not to do so.

3) Assessment of “coercion and pressure”

We also have concerns about the registered medical practitioners’ ability to conclude definitively that they believe the person requesting assisted dying has

6(2)(c), 6(4)(c), 8(1)(c), and 8(2)(c) *made the declaration voluntarily and has not been coerced or pressured by any other person into making it*

A voluntary request does not preclude a request from having been made as a result of real or perceived pressure, and we are concerned that some people may feel pressured to request assistance to end their life because they believe that their need for care will otherwise be a financial and/or emotional burden to their family or to the NHS.

Furthermore, it is not beyond the bounds of possibility that a registered medical practitioner may believe that were he or she in the situation of the requesting person, they would not wish to go on living. The registered medical practitioner’s view will undoubtedly be communicated, by tone and body language, if not in words, constituting a pressure on the person to proceed. In particular, the position of trust occupied by the two registered medical practitioners in relation to a person requesting an assisted death, would itself lend weight to their view, whether explicitly stated or only implied.

However, this may not always be apparent to those assessing the request, and the mere presence on the statute book of a law legalising assisted dying would in itself introduce an additional psychological pressure on patients.

We therefore urge:

- 1) that the contradictions between the wording of the Bill and the Explanatory Notes should be resolved;
 - 2) that at least one of the registered medical practitioners must have a working knowledge of the requesting person's medical history and personal circumstances. This will be best achieved by removing the requirement that neither should have provided care and treatment for the person during his or her terminal illness;
 - 3) delete the words "*in so far as the registered medical practitioner considers appropriate*" from 7(1)(a) and 7(1)(c). This would have the effect of requiring the registered medical practitioners to provide the requesting person with full information, and advising him or her to discuss their situation with family and friends, and to inform his or her own GP.
 - 4) protect the registered medical practitioners by amending sections 6(2)(c), 6(4)(c), 8(1)(c), and 8(2)(c) to state only that, to the best of their knowledge, the requesting person has not been coerced into making the request for assisted dying.
4. **The Bill authorises a medical practitioner or authorised health professional to provide an eligible adult who meets certain conditions with a substance with which the adult can end their own life.**

Which of the following most closely matches your opinion on this aspect of the Bill?

- It should remain unlawful to supply people with a substance for the purpose of ending their own life.
- It should become lawful to supply people with a substance for the purpose of ending their own life, as proposed in the Bill
- It should become lawful to supply people with a substance for the purpose of ending their own life, as proposed in the Bill, and it should also be possible for someone else to administer the substance to the adult, where the adult is unable to self-administer.
- Other – please provide further detail**

The view of Orthodox Judaism is that it should remain unlawful to supply people with a substance for the purpose of ending their own life.

The view of Reform and Liberal Judaism is that, with certain conditions, it should become lawful to supply people with a substance for the purpose of ending their own life, as proposed in the Bill, and it should also be possible for someone else to administer the substance to the adult, where the adult is unable to self-administer. However, Reform and Liberal Judaism emphasise that before being permitted to administer a substance that will end a someone's life, the person doing so must have undergone a thorough training to ensure that he or she fully understands the procedure, and is able to carry it out competently so as not to cause any pain or distress, and in addition, must have undergone comprehensive checks to ensure that he or she is a suitable person to provide this service.

5. **The Bill requires the direct involvement of medical practitioners and authorised health professionals in the assisted dying process. It includes a provision allowing individuals to opt out as a matter of conscience.**

Which of the following most closely matches your opinion on how the Bill may affect the medical profession? Tick all that apply.

- Medical professionals should not be involved in assisted dying, as their duty is to preserve life, not end it.**
- The Bill strikes an appropriate balance by requiring that there are medical practitioners involved, but also allowing those with a conscientious objection to opt out.**
- Assisting people to have a “good death” should be recognised as a legitimate role for medical professionals**
- Legalising assisted dying risks undermining the doctor-patient relationship**
- Other – please provide further detail**

The view of Orthodox Judaism is that medical professionals should not be involved in assisted dying on the principle is that it is forbidden to do anything that will or may hasten death. However, as stated above, 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. Orthodox Judaism strongly objects to the use of the phrase a “good death” as denoting assisted dying, and is greatly appreciative of the dedicated care given to patients in their final illness by members of the medical and nursing professions.

The view of Reform and Liberal Judaism is that assisting people to have a “good death” by means of assisted dying should be recognised as a legitimate role for medical professionals, and that the Bill strikes an appropriate balance by requiring that there are medical practitioners involved, but also allowing those with a conscientious objection to opt out.

- 6. If a person underwent an assisted death, the Bill would require their underlying terminal illness to be recorded as the cause of death on their death certificate, rather than the substance that they took to end their life.**

Which of the following most closely matches your opinion on recording the cause of death?

- I do not support this approach because it is important that the cause of death information is recorded accurately**
- I support this approach because this will help to avoid potential stigma associated with assisted death**
- Other – please provide further detail**

Death certificates are public documents, and it is important for regulatory oversight, research, and indeed the historical record, that they provide true and accurate information. In the absence of such information, it would not, for example, be possible to identify trends and geographical variations.

We therefore disagree with the proposal in the Bill that the underlying terminal illness should be recorded as the cause of death on their death certificate, rather than the substance that an individual took to end their life. If the Bill becomes law so that assisted dying were to be

legalised, there is no valid reason why its use should be regarded as any more private than the underlying illness. Moreover, permitting – indeed requiring – this information to be withheld would seriously undermine legislation introduced to prevent a repeat of the appalling abuse perpetrated by Harold Shipman. In order to ascertain that assisted dying were to be used only according to the law, and not as quasi-legal cover for a serial killer, Medical Reviewers must be able to investigate and assess the accuracy of the information provided on death certificates. In addition, omitting this information from the death certificate could severely limit the data available to the monitoring organisation, and result in a false understanding of how, and how widely, assisted dying was being used.

7. The Bill proposes that data on first and second declarations, and cancellations, will be recorded and form part of the person’s medical record.

It also proposes that Public Health Scotland should collect data on; requests for assisted dying, how many people requesting assisted dying were eligible, how many were refused and why, how many did not proceed and why, and how many assisted deaths took place.

Public Health Scotland would have to report on this anonymised data annually and a report would be laid before the Scottish Parliament.

The Scottish Government must review the operation of the legislation within five years and lay a report before the Scottish Parliament within six months of the end of the review period.

Which of the following most closely matches your opinion on the reporting and review requirements set out in the Bill?

- The reporting and review requirements should be extended to increase transparency
- The reporting and review requirements set out in the Bill are broadly appropriate
- The reporting and review requirements seem excessive and would place an undue burden on frontline services
- Other – please provide further detail

If the Bill becomes law so that assisted dying would be introduced in Scotland, we would strongly support the nomination of Public Health Scotland as a responsible professional body to collect and monitor full data concerning assisted dying, and produce regular public reports on the data collected.

8. Do you have any other comments in relation to the Bill?

All branches of Judaism believe that all people, including the dying, should be invested with dignity, that the dying should be treated with the greatest respect, and that every effort should be made to encourage patients to find meaning in their lives, however circumscribed by illness and incapacity.

Orthodox Judaism disagrees entirely with the suggestion that a death that is ‘assisted’ to take place before its natural time can be described as a good death or as dignified, and in any event is absolutely opposed to the ethic on which the Bill is based.

Reform Judaism has not adopted a formal position about assisted dying, and respects the differing views of its membership.

Liberal Judaism takes the view that it is the right of a terminally ill, mentally competent adult to have the choice of an assisted death if they are facing unbearable suffering.