

Criminal Justice and Licensing (Scotland) Bill

Evidence from the Scottish Council of Jewish Communities

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The Scottish Council of Jewish Communities would urge Parliament to take the opportunity presented by the Criminal Justice and Licensing (Scotland) Bill to clarify that a post-mortem carried out by non-invasive methods such as Magnetic Resonance Imaging (MRI) is acceptable for all purposes for which a surgical post-mortem is generally accepted. This is not currently part of the published Bill, but we would ask that consideration be given to an amendment that could be incorporated among its miscellaneous provisions.

Background

Halachah (Jewish Law) regards the human body – including all body parts, and tissue – as sacrosanct, and requires that it should always be treated with dignity. According to *Halachah*, there should be as little interference with a dead body as possible, and burial should take place as early as possible, preferably before sunset on the day that death occurred. Any delay, or procedures such as a post-mortem examination, are therefore likely to be particularly distressing to the family of the deceased. In addition, the *shivah* (initial period of mourning) cannot begin until after the burial has taken place, and consequently any postponement will delay the grieving process, and inevitably cause great psychological stress to the bereaved. Much of this is also true of other faiths.

Post-mortem examination

We fully accept that there may be occasions, on which it may be necessary for a post-mortem examination to take place, for example, if the death is unexpected and the cause unclear, to ascertain whether there is any risk to public health, or to determine whether the death may have resulted from a criminal act.

At present all post-mortem examinations taking place in Scotland are conducted surgically (often referred to as "intrusive pathology" (IP)). There is, however, an alternative that has been employed in the Manchester area and elsewhere since 1997, namely the use of MRI. In those cases when a post-mortem examination is unavoidable, an MRI scan is much more acceptable to Jewish (and, we understand, to Muslim and other) families since the body remains intact. We have, moreover, been informed that it is frequently preferred by coroners since it can on occasion be even more informative than a surgical post-mortem – for example, deaths resulting from pneumothorax are instantly recognisable as such using MRI, but since the trapped air is immediately released when the chest cavity is opened, these are difficult if not impossible to diagnose by surgical methods.

We have been advised that prior to the introduction of this system there were approximately one hundred surgical post-mortems per annum in the Manchester Jewish community, but that this has fallen to fewer than ten per annum since the introduction of MRI post-mortem examinations.

The current situation in Scotland

We took the opportunity to raise this matter last year directly with the Lord Advocate who was sympathetic to the introduction of MRI post-mortem examinations and advised us to follow the matter up with Crown Office. We have since spoken to a number of members of the Procurator Fiscal Service, and have found that they too are sympathetic to the needs of the Jewish community. However, we have been informed on a number of occasions that they are powerless to assist since MRI is not currently recognised as a form of post-mortem examination in Scotland, and also that they have no authority to request anyone other than a pathologist to conduct a post-mortem examination. Since pathologists are generally not trained in the interpretation of MRI scans, this has prevented Procurators Fiscal from acceding to requests from Jewish families for their use as an alternative to a surgical post-mortem.

The legislative situation in England and Wales

At a recent meeting with faith leaders¹, the UK Justice Minister, Bridget Prentice, said: *"We have listened carefully to bereaved families and are pleased to propose these reforms which will allow coroners to consider the wishes of the family and faith issues and where possible conduct an MRI scan in place of an invasive post-mortem."* The reforms to which she refers are the inclusion in the Coroners and Justice Bill² currently before the UK Parliament of a measure permitting a coroner to specify the kind of post-mortem examination that should be made (clause 16). According to the Explanatory Notes³:

148. The term "post-mortem examination" is not defined but it will include any examination made of the deceased including non-invasive examinations, for example, using Magnetic Resonance Imaging (MRI)."

150. [the Bill] defines a suitable practitioner as either a registered medical practitioner or where a particular form of examination is required, such as an MRI Scan, a practitioner who the Chief Coroner has designated is suitable to carry out such examinations.

Furthermore, in discussing compliance with the European Convention on Human Rights, the Explanatory Notes state:

810. A coroner may ask a suitable practitioner to make a post-mortem examination of the deceased (clause 16). This would include any examination made after the death of the deceased, whether invasive or non-invasive, for example, using MRI since an invasive post-mortem involves dissection of the body it runs counter to certain religious beliefs and could therefore engage the deceased's family members' right to manifest religious belief under Article 9. The Government considers that an invasive post-mortem examination would be justified, even where it infringes their religious belief, where it contributes to the purpose of an investigation in promoting and protecting public safety and health.

¹ <http://www.justice.gov.uk/news/newsrelease210409a.htm>

² <http://www.publications.parliament.uk/pa/ld200809/ldbills/033/2009033.pdf>

³ <http://www.publications.parliament.uk/pa/ld200809/ldbills/033/en/2009033.pdf>

811. In any event the Government considers that the provision is not disproportionate in effect. Regulations made under the Bill will enable the deceased's family members to make representations to the coroner about whether a post-mortem examination should take place. A coroner will be required to take into account representations from family members to use non-invasive procedures at a post-mortem although the final decision will be for the coroner. "

The Criminal Justice and Licensing (Scotland) Bill

The Criminal Justice and Licensing Bill currently before the Scottish Parliament provides an opportunity to enact a similar provision to recognise MRI as a form of post-mortem examination, and permit Procurators Fiscal to request relevant practitioners to conduct such examinations where appropriate. An amendment to the current draft Bill in similar terms to the Westminster proposal would provide great comfort to the Scottish Jewish community, and we believe it would also be welcomed by the Scottish Muslim community and other faith communities.

We would welcome the opportunity to discuss this possibility in more depth with the committee and to provide more detailed information about the successful Manchester scheme and its potential impact if adopted in Scotland.

Note: The Scottish Council of Jewish Communities (SCoJeC) is the representative body of all the Jewish communities in Scotland comprising Glasgow, Edinburgh, Aberdeen, and Dundee as well as the more loosely linked groups of the Jewish Network of Argyll and the Highlands, and of students studying in Scottish Universities and Colleges. SCoJeC is Scottish Charity SC029438, 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.