

**Call for Evidence on the Certification of Death (Scotland) Bill**  
**Response from the Scottish Council of Jewish Communities**

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The Scottish Council of Jewish Communities welcomes the opportunity to comment on the Certification of Death (Scotland) Bill.

*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. Once death has occurred, there should be as little interference with the body as possible. Ideally, it should not be left unattended, and burial should take place as early as possible, preferably before sunset on the day death occurred. Although Liberal Judaism (of which there is a small Scottish community in Edinburgh) places less emphasis on this, and the funeral may occasionally be delayed to enable distant family to attend, in the vast majority of cases, delay or procedures such as a post-mortem examination are 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 distress to the bereaved. When we recently met the Solicitor General and his officials, they assured us that COPFS recognise their obligations to the bereaved, but we do not think the Bill takes this sufficiently into account.

**Do you agree or disagree with the general principles of the Bill?**

We support the principle of effective scrutiny, and agree that the system must be “*proportionate and ... not impose undue delays on bereaved families arranging a funeral.*”<sup>1</sup> Although we agree that accuracy is important in recording the cause of death, this should not be an overriding consideration if no significant issues depend upon it such as legal proceedings. We are aware of many cases in which a post-mortem has been ordered simply because the deceased’s own GP was unavailable, and a locum was not prepared to certify a death that was entirely expected in accordance with the medical history of the deceased. In other cases a post-mortem has been ordered to determine the immediate cause of death, when the underlying condition was never in dispute. This is simply no necessity for this to happen, as it is likely to cause additional distress to families at what is already a very difficult time.

**Do you agree with the proposed changes to the system of death certification in Scotland?**

We are very concerned at the likely delay between death and release of the body for disposal. Although the Policy Memorandum states that the average length of time before a funeral is 7 days<sup>2</sup>, the vast majority of Jewish burials in Glasgow, where most of the Scottish Jewish community live, currently take place no later than early afternoon on the day after death. As we have already stated, it is of great importance to the bereaved, and

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<sup>1</sup> Policy Memorandum, paragraph 18

<sup>2</sup> Policy Memorandum, paragraph 65

the vast majority of the Scottish Jewish community, that Jewish burials take place as soon as possible after death, if possible before sunset on the same day. We are assured by senior forensic pathologists that there is no reason why this should not currently be achievable.

### **Request for registration and scrutiny to proceed in parallel**

Although we welcome the possibility of an expedited procedure, we remain concerned that some funerals may still be delayed.

Moreover, we are concerned that the decision as to whether registration may proceed before the review has been completed is left entirely at the discretion of the medical reviewer. Our concern is that this will give rise to a similar situation as currently obtains whereby the personal preference on the part of some senior staff for surgical post-mortem has led to only 1% of cases being conducted according to the 'view and grant' system in Glasgow, whereas in Dundee and the Lothians it is used in 30-35% of cases.

We urge that care should be taken to ensure that this legislation does not result in similar discrepancies, resulting in difficulties and distress to families. We therefore urge that section 7 of the Bill should, at least, be amended to require a presumption that registration may, on request, proceed in parallel with scrutiny unless there are sufficiently compelling counterarguments in any individual case.

Such amendment would not, however, address all our concerns, since the vast majority of bereaved families, whether or not they have a religious faith, will find it extremely distressing to be informed at the point of registration that registration may not proceed. We therefore suggest that the Bill should be amended to permit parallel registration and review in all cases. The issuing of a provisional registration certificate would enable arrangements for the funeral to proceed pending satisfactory scrutiny, after which a confirmatory registration certificate would be issued.

In addition, we urge that the Bill should be amended to include an expedited procedure for disposal. The Equality Impact Assessment (step 5) states that the current proposals will "*address the concerns that religious and belief groups raised during the consultation process [since] The Medical Reviewer will make the decision on whether quick disposal can take place alongside the random scrutiny*". This, however, is seriously misleading since the Bill currently provides only for parallel registration, and not for parallel disposal.

We recognise the importance of effective scrutiny but contend that it will be rare for the Medical Reviewer to require a post-mortem examination of the body after a full scrutiny of the medical records. We therefore suggest that, in the situations listed in paragraph 72 of the Policy Memorandum, the Bill should permit applications for parallel scrutiny and disposal, as stated in the Equality Impact Assessment, provided only that disposal is by means of burial, since in this case the body would still be available in the rare circumstances when a post-mortem examination might be required.

### **Deaths outwith "office hours"**

We welcome the acknowledgement<sup>3</sup> that some registrars open their offices to register deaths that take place at the weekend or on bank holidays, and are grateful to the staff

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<sup>3</sup> Policy Memorandum, paragraph 71

who make it possible for these burials to proceed in a timely fashion. However, the availability of an out-of-hours service varies widely from area to area, and in practice often depends on the family happening to have contacts who happen to have the personal contact details of the Registrar. This is clearly unsatisfactory and potentially discriminatory, and we suggest that the opportunity should be taken to introduce a Scotland-wide system of out-of-hours registration of deaths.

**Do you agree with the proposed creation of a system of Medical Reviewers?**

Although we hope that the medical reviewer system would be a deterrent to criminal activity and malpractice, it is clearly the case that “*no system of death certification can prevent all criminal activity of the type carried out by Shipman*”<sup>4</sup>. We are therefore concerned that there should not be a misplaced reliance on the new death certification system, in the way that, in some quarters, the ‘Disclosure’ system, similarly introduced in the wake of the Soham murders, is wrongly relied upon as if it were by itself an absolute guarantee that abuse could not happen again.

**Do you have any comments on the costs identified in the Financial Memorandum?**

No.

**Are there any other comments you wish to make on the Bill?**

**“Fairness”**

The Equality Impact Assessment states (p4) that the Bill will introduce a fairer system since “*the policy will introduce a uniform process*”. We would emphasise that uniformity that ignores relevant differences between groups is not fairness but the reverse. (It is, for example, not unfair for doctors to treat patients with one condition differently from those with another!) Fairness does not mean treating people the same, but must entail considering and reflecting difference – including the different requirements that some faith and cultural groups have for prompt burial.

**Monitoring**

Step 9 of the Equality Impact Assessment notes that the “*Duration of scrutiny and delays to funerals*” will be monitored. However, “delay” means different things to different people and communities; for example, whilst a next day burial would be viewed as delayed by many in the Jewish community, to other communities that may appear hasty. We trust therefore that monitoring will not be relative to some arbitrary supposedly acceptable delay, but will record the absolute interval between death and the disposal of the body.

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<sup>4</sup> Financial Memorandum, paragraph 75

## Verification of Death

The consultation paper preceding the Bill<sup>5</sup> pointed out that “*Due to changing practices in delivering out-of-hours medical care ... it is not always possible or practical for a doctor from the GP practice where the patient is registered to certify death immediately*” and requested views as to whether appropriately trained clinical staff, in particular senior nurses and paramedics, should be permitted to verify life extinct. We have already mentioned the difficulties that can sometimes arise if the deceased’s own GP is unavailable, and we believe that this would, as stated in the consultation paper, “*minimise distress for family or fellow residents [in nursing or residential homes]*” as well as minimising delay. Responses indicated<sup>6</sup> “*There was a high level of agreement ... that it would be appropriate to enable trained clinical staff, such as nurses and paramedics, to verify life extinct.*” Such deaths would, of course, be equally subject to random scrutiny as deaths verified by a doctor, and we therefore recommend that the opportunity provided by the Bill should be used to facilitate this practice.

## Summary

We support the need for effective scrutiny in order to deter criminal activity and malpractice, and also promote best practice, but emphasise that the legislation and guidance should not be such as to cause avoidable additional distress to the bereaved, and should recognise, rather than ignore, the specific needs of minority communities.

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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.

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

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<sup>5</sup> Death Certification, Burial and Cremation <http://www.scotland.gov.uk/Resource/Doc/300112/0093686.pdf>

<sup>6</sup> Death Certification, Burial And Cremation: Analysis Of Consultation Findings Phase 1 Report <http://www.scotland.gov.uk/Resource/Doc/318318/0101513.pdf>