



**Response from the Scottish Council of Jewish Communities to**

**Section 58 and Schedule 28 to the Coronavirus Act 2020: Local death management –  
Statutory Guidance for local authorities on Section 58 and the Powers in Relation to  
Transportation, Storage and Disposal of the Deceased**

In preparing this response we have consulted as widely among members of the Scottish Jewish community as the extremely short timescale permitted, and this response reflects the views of all branches of Judaism that have communities in Scotland.<sup>1</sup>

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**Does the draft Guidance meet the needs of the community your group represents?**

With the important proviso below, we strongly welcome the acknowledgement that “*Local authorities are under a legal obligation to have regard to the deceased’s wishes, religion and beliefs*”, and that “*Local authorities should also where possible consider personal preferences for other aspects of the death process, in addition to method of final committal.*” We very much welcome this reminder to local authorities of their obligations, since, as the Guidance states, “*Whether the deceased should be buried or cremated is of the utmost importance to many people, including those of certain faiths and beliefs.*”

That said, “*hav[ing] regard to the deceased’s wishes, religion and beliefs*” also has implications for communicating with the family and community of the deceased, as we have explained below, and this consultation is itself an object lesson in what can go wrong. The request for a response to this consultation was circulated on the seventh day of the festival of Passover with a deadline of early afternoon on the eighth day, both days on which observant Jewish people do not work or use electricity. Because of this, we were not even able to find out about the consultation until more than eight hours after the deadline for responses. It is only due to the diligence of our staff that e-mail was checked at night immediately after the end of the festival and this response prepared overnight, and not only the following morning when our office reopened. We strongly urge that, despite its late submission, this response will be fully taken into account in finalising the Guidance.

**Ascertaining the wishes of the deceased**

We agree with the proposed procedure for ascertaining the wishes of the deceased by contacting their next of kin or family members, but would add that in the case of someone without relatives, a close friend may be able to provide the relevant information. We would,

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<sup>1</sup> See end-note

however, caution that in some cases the deceased may have been estranged from his or her family, and therefore we very much welcome the recommendation that, in the case that no-one can be found to provide the relevant information, the religious, faith, or belief group of the deceased should be contacted for advice.

**However, it is absolutely vital that local authorities should be aware that there are times when it may not be possible, for religious reasons, to contact people from particular faith communities, and in such cases they should not immediately proceed to step 5.6 of the Guidance.**

### **Contacting the Jewish Community**

Jewish people who observe the *Shabbat* (Sabbath) and festivals according to Orthodox Jewish law, do not use any electrical equipment, including telephone or computer, during these times, and will not, therefore, be able to receive phone calls, text messages, or e-mails. The information below **must** therefore be provided to local authorities together with this Guidance – it is unrealistic to expect local authorities to know what the Scottish Government was clearly unaware of, as explained above.

The times when the Jewish community cannot be contacted are as follows: (Note that the times shown in the document below are for the Glasgow area. Edinburgh is consistently around 4 minutes earlier, but times in the north and south of the country can vary by as much as an hour in mid summer and mid winter.)

- ***Shabbat***

Weekly from twilight on Friday evening until after dark on Saturday night (approximately 25 hours). The exact times vary but these can be checked at [www.scojec.org/shabbat-calendar.pdf](http://www.scojec.org/shabbat-calendar.pdf).

- **Festivals**

Two days from twilight on the evening preceding the first day of the festival until after dark on the second day of the festival (approximately 49 hours). Dates of Jewish festivals can be checked at [www.scojec.org/festival-calendar.pdf](http://www.scojec.org/festival-calendar.pdf) and the times that the festival begins and ends can be checked at [www.scojec.org/shabbat-calendar.pdf](http://www.scojec.org/shabbat-calendar.pdf)

- **Very occasionally**, when a festival falls on Thursday and Friday and so is followed immediately by *Shabbat*, the community is not contactable for a period of approximately 73 hours, from twilight on Wednesday evening until after dark on Saturday night. This will not occur during 2020.

**Unless local authorities take this information into account, they will not “have made reasonable attempts to discover [the wishes of the deceased]” before proceeding to “issue a direction for committal of the deceased.” (Guidance 5.6)**

In cases when the deceased’s relatives, friends, and community may be uncontactable because it is *Shabbat* or a festival, the body should be stored – but not embalmed – until they can be notified of the death and advise on burial procedures.

## **Recording decisions**

We strongly support the requirement (section 5.9) to record all steps taken to find out and comply with the deceased's wishes, and in those, we hope extremely rare, circumstances when these have not been followed, to record why the local authority had no alternative but to depart from those wishes.

The interaction between GDPR and the appropriate period for which records need to be kept (section 5.10) is unclear. It should be clarified as to whether data will be considered to be needed for a minimum of five years, or whether there are circumstances in which that period may be reduced. We strongly recommend that all data should be kept for a minimum of five years, and longer if there is any ongoing inquiry or research into the circumstances of particular cases.

## **Disregarding the wishes of the deceased**

We accept that there may be very rare instances when the wishes of the deceased may have to be disregarded because there would otherwise be a severe risk to public health, and strongly support the requirement that in such cases, local authorities must first have "*consulted local community and religious groups to understand whether there are any alternative mitigations available*".

In relation to the suggestion that it may be possible that "*the body can be committed in line with the deceased's wishes in an area outside of the local region*", we can confirm that the various Jewish burial societies would assist in facilitating this.

As we have already stated, Jewish law requires that burial should take place as soon after death as possible. If, however, the local authority in discussion with the relevant faith community determines that, in order to comply with the wishes of the deceased, "*the body can be stored for longer*", this should normally be by means of freezing, not embalming.

## **Are there other ways a local authority might be able to find out the wishes of a deceased person, in addition to the ways mentioned in the draft Guidance?**

As we have already stated, in the absence of next of kin or other family, or where the individual was estranged from his or her next of kin, a close friend may be able to give information about the wishes of a deceased person.

Some legislation such as regarding organ donation lays down a strictly hierarchical list of next of kin, but it should be borne in mind that operating a strictly hierarchical list may hinder rather than assist in determining the wishes of the deceased, since it is possible that the deceased may have had little contact, or even be on bad terms, with the relation at the top of the list, while being very close to a more distant relation or even to someone who is not a relation at all. In such a case, the more distant relation or friend will be better able to advise on the wishes of the deceased.

## **Conclusion**

The Scottish Council of Jewish Communities supports the proposed Guidance, and

welcomes the direction it gives to local authorities to take all possible steps to ascertain and comply with the wishes of the deceased.

## **NOTES:**

### **Burial in Jewish law and tradition**

Burial should normally take place as soon as possible after death, generally within 24 hours where possible. The human body must be treated with utmost respect, and most Jews do not permit cremation. (Liberal Judaism permits cremation but it not common practice even among the Liberal Jewish community.) Following the funeral, the parents, children, and siblings of the deceased observe a week of formal mourning ('sitting *shiva*') during which they do not go out and prayers are held in the home. They say special prayers (*kaddish*, which is often described as a memorial prayer, but is in fact a hymn of praise to God) for the rest of that year and on the anniversary thereafter. These rituals and prayers require a quorum of ten men, but, in recognition of the current very challenging circumstances, the leaders of all branches of Judaism have, for the only time in living memory, taken the very significant decision to instruct their members not to gather for communal prayers. Some funeral and *shiva* observances, and the communal recitation of the *kaddish* have, therefore, been suspended. In some cases, communities are arranging online *shiva* meetings so that people can, while distancing or even self-isolating, 'visit' and comfort the bereaved.

### **The Jewish Community in Scotland**

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, on matters affecting the Jewish community. 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 Reform Synagogue in Glasgow, a Liberal Jewish community in Edinburgh, and an unaffiliated community in Tayside and Fife. There is also a range of welfare organisations, most of which are based in East Renfrewshire but some of which serve the community Scotland-wide.

There are several Jewish burial societies in Scotland, some geographically-based, and others serving a particular branch of Judaism. These are all staffed by volunteers who undertake the *chesed shel emet* (truest kindness) of preparing the dead for burial according to Jewish law. Contact details for each of the burial societies are available from the *Guide to Jewish Facilities in Scotland* ([www.scojec.org/guidebook.pdf](http://www.scojec.org/guidebook.pdf)).