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Mr M J Brown
States Supervisor
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Sir Charles Fossard House
PO Box 43, La Charroterie
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Your reference

Our reference ISL 02 20/45/1

Date 25 February 2003

Dear Mr Brown

REQUÉTE ON DEATH WITH DIGNITY (VOLUNTARY EUTHANASIA)

Further to my letter of 21 January 2003, please find enclosed a copy of the response received from the Scottish Executive.

I will of course forward a copy of any response from Northern Ireland as soon as it is received.

Yours sincerely

J I Schofield

Jennifer Schofield

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SCOTTISH EXECUTIVE

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Your ref: ISL 01 20/45/1
Our ref: UGH/4/1

20 February 2003

Ms Jennifer Schofield
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Dear Ms Schofield

Thank you for your letter of 21 January, with which you enclosed a number of documents about the possible enactment of legislation by the authorities of Guernsey to allow for 'voluntary euthanasia'. I note that you have already received a response from the Department of Health, about the issue of voluntary euthanasia in England and Wales and are now seeking the views of the Scottish Executive Health Department. The subject of euthanasia is **devolved** to the Scottish Parliament

Under Scots law, euthanasia is regarded as the deliberate killing of another, and would be dealt with under the criminal law relating to homicide. The consent of the victim would not be a defence, and no degree of compassion would amount to legal justification. There might be cases where the circumstances of the offence would make a charge of culpable homicide more appropriate than one of murder, and all the circumstances of cases of this kind would be taken into account by a court before sentence was pronounced. If the accused was convicted of murder, however, a sentence of life imprisonment would be mandatory.

The Scottish Executive's policy has been and remains that, whilst it is right that terminally ill patients should, as far as possible, receive the best palliative care available, the deliberate taking of life cannot be condoned and should remain illegal. The UK Government made its views very clear in their response to a report by the House of Lords Select Committee on Medical Ethics which dealt with this subject. A doctor, in particular, is bound by law and professional ethics, and cannot be required to take any action which conflicts with either. Our opposition to euthanasia is underpinned by the long held view that any relaxation of the law in this area would weaken the protection it affords to the most vulnerable members of society, such as the very elderly, the weak and the disabled, from unscrupulous people acting from motives which might not be altruistic.

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You may be aware that the Scottish Parliament has enacted legislation – "The Adults with Incapacity (Scotland) Act 2000" (the AWI Act)- aimed at protecting the rights of adults who cannot make decisions for themselves. In terms of its medical provisions (contained in Part 5), the Act provides a general authority for doctors to carry out procedures which are reasonable under the circumstances in order to safeguard or promote the health of a patient, who is incapable of consenting. The proposed authority is subject to a number of safeguards, including a requirement to take into account the person's wishes where these can be ascertained and consultation with a patient's family or representatives.

During the passage of the Bill, and relevant to the debate currently going on in Guernsey, the Executive received a number of representations that the legislation would permit passive euthanasia. But Ministers made clear that the Bill would authorise the person in charge of treatment to do only those things which are reasonable in the circumstances and which would safeguard or promote the physical or mental health of the patient. Any intervention which is reasonable in the circumstances but does not have the effect of safeguarding or promoting the physical or mental health of the patient, is not authorised under the Act. The withdrawal of food or liquids, however they are administered, when that would lead to death, would not be safeguarding health and is therefore not permitted under the Act.

The legal position that any case of withdrawal of feeding or hydration might require authority from the Court of Session, depending on the circumstances, has not changed. A doctor who withdrew feeding or hydration without the authority could lay himself open to prosecution. It would be for the Lord Advocate to decide whether to prosecute such a doctor, and to decide upon the charges to be faced by the doctor.

The legal position in Scotland on the withdrawal of feeding from a patient in a permanent vegetative state was clarified by the case of Law Hospital NHS Trust v Lord Advocate (1996 SC 301), in which the Court of Session ruled that feeding and hydration could be withdrawn from Mrs Janet Johnstone, who had been in a permanent vegetative state for more than a year. The Court laid down procedures for any future cases of the kind, though acknowledging it might be necessary to alter them in the light of experience. The possibility that there might be future cases which would not require to be brought before the Court was recognised.

The AWI Act therefore does not alter the common law and would not affect the legal position regarding the Law Hospital judgement (the relevant case law in England, I think is the Bland judgement).

A number of other proposals were made during consultation on the AWI legislation, including legislation to give clear legal force to advance directives (or "living wills"). Although the proposal had the support of particular interest groups, the Executive did not consider that they commanded general support and it was not therefore included within the scope of the AWI legislation. In part, this was because we believe the speed of advances in medical technology, and the length of time that passes before "living wills" may be activated, bring dangers that the circumstances may not be as envisaged when the advance directive was drawn up. The Executive does not therefore intend to legislate generally on this matter. The Mental Health Bill, which is currently before the Scottish Parliament, makes limited provision for 'advance statements'. However, this is restricted to patients subject to compulsory measures under mental health legislation, and the Bill only requires doctors and others to have regard to such statements: they are not legally obliged to follow them.

INVESTOR IN PEOPLE
POSITIVE ABOUT DISABLED PEOPLE

As a general principle of law and medical practice, treatment should only be given with the consent of the patient. An advance directive, which contains a person's instructions about the medical treatment he would or would not be prepared to accept, if he should subsequently lose the capacity to indicate his wishes directly, may be effective in law depending on the circumstances, but cannot authorise actions which would be contrary to the law.

J T BROWN

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