



TITLE	ENCOURAGING OR ASSISTING SUICIDE: IMPLEMENTATION OF SECTION 59 OF THE CORONERS AND JUSTICE ACT 2009
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ENCOURAGING OR ASSISTING SUICIDE: AMENDMENTS TO SECTION 2 OF THE SUICIDE ACT 1961

Introduction

Section 59 of the Coroners and Justice Act 2009 (“the 2009 Act”) amends section 2 of the Suicide Act 1961 so as to replace the substantive offence of aiding, abetting, counselling or procuring suicide and the separate offence of attempting to commit the section 2 offence with a single offence cast in modernised language. The Criminal Attempts Act 1981 therefore no longer applies to section 2 of the Suicide Act.

The purpose of these changes is to:

- improve public understanding of the law in this area; and
- make clear that the law applies to online actions in exactly the same way as it does offline.

The changes have been made in the context of growing public concern about the links made between suicide and the internet. However, section 59 of the Coroners and Justice Act is not confined to that context. The updated law, as with the previous law, can apply to all circumstances in which the elements of the offence in section 2(1) of the Suicide Act are present.

The scope of the law remains the same so these changes do not make liable to prosecution anyone who was not liable before.

These changes will come into effect on 1 February 2010.

This guidance sets out the background to and explains the change in legislation. It should not be regarded as providing legal advice. Legal advice should be sought if there is any doubt as to the application or interpretation of the legislation.

The guidance is set out under the following headings:

- A. Background
- B. The legislative position prior to 1 February 2010
- C. The changes effected by the Coroners and Justice Act 2009
- D. DPP consent
- E. Useful links

The relevant sections of the Suicide Act as amended or inserted by section 59 of the Coroners and Justice Act are set out in Annex A.

Frequently Asked Questions are at Annex B.

A Background

In recent years there has been growing concern about misuse of the internet to promote suicide and suicide methods. In particular, there has been widespread condemnation of the sort of internet sites which might assist mentally vulnerable but otherwise healthy people – particularly young people – to take their own lives.

2. The scope of the law was already sufficient to deal with such sites. However, child psychologist Tanya Byron's report *Safer Children in a Digital World* published in March 2008 identified websites promoting suicide as an area where there was some confusion about the application of the law to online activity. It recommended that the law on harmful and inappropriate material (including suicide websites) should be investigated to see if it could usefully be clarified.

3. Following such a review, the Government announced by way of a written Ministerial Statement on 17 September 2008 (Hansard col. 142WS) that it intended to simplify the law on assisting suicide to increase public understanding and reassure people that it applies as much on the internet as it does offline.

4. In reviewing the law, the Government took account of a recommendation by the Law Commission in its report *Inchoate liability for assisting and encouraging crime* published in July 2006 that the language of section 2 of the Suicide Act 1961 should be updated.

B The legislative position prior to 1 February 2010

5. Previously, the law of suicide comprised two offences. The first was the substantive offence under section 2 of the Suicide Act 1961 of aiding, abetting, counselling or procuring a suicide or a suicide attempt. For that offence to be committed, there needed to be an intention to aid, abet, counsel or procure an actual or attempted suicide and for a person to be assisted or encouraged by the defendant's conduct to actually commit suicide or attempt suicide.

6. The second was an offence under section 1(1) of the Criminal Attempts Act 1981 of *attempting* to aid, abet, counsel or procure a suicide or a suicide attempt. For an offence under the Criminal Attempts Act to be committed, the defendant had to do an act which was more than merely preparatory to aiding, abetting, counselling or procuring a suicide or a suicide attempt intending to so aid, abet etc. But no actual suicide or suicide attempt needed to occur as a result. In addition it was not a requirement that actual assistance was given to any person for there to be an attempt to assist suicide under the Criminal Attempts Act 1981. The effect was that conduct capable of assisting or encouraging suicide and intended to so assist or encourage was enough. It did not need to be aimed at a specific person or group of people.

7. Where there was a link between the material published and an actual suicide or attempted suicide the relevant charge would have been the substantive offence under section 2 of the Suicide Act 1961.

C The changes effected by the Coroners and Justice Act 2009

8. Section 59 of the 2009 Act simplifies the law by replacing the previous two offences, of aiding, abetting, counselling or procuring suicide and of attempting to do so, with a single offence. It covers behaviour that was previously caught by both section 2 of the Suicide Act 1961 and the offence of attempting to commit a section 2 offence under the Criminal Attempts Act 1981. All the law is therefore now in one place and, by virtue of paragraph 58 of Schedule 21 to the 2009 Act, the Criminal Attempts Act 1981 no longer applies to offences committed under section 2 of the Suicide Act.

9. In line with the Law Commission's recommendation, section 59 also replaces the old-fashioned language of aiding, abetting, counselling or procuring with the more modern - and equivalent - terms of encouraging or assisting which should make it easier for people to understand the sort of behaviour that the law prohibits. The same language has been adopted in other criminal law legislation such as the Serious Crime Act 2007 which replaced the common law offence of incitement with inchoate offences of assisting and encouraging crime. The new provisions also reflect the case law that exists in relation to the previous two offences.

The elements of the offence: section 59 subsections (2) and (4)

10. Subsection (2) of section 59 sets out the single offence which replaces the offences of aiding, abetting, counselling or procuring suicide and of attempting to do so. The offence will apply where a person does an act which is capable of encouraging or assisting another person to commit or attempt to commit suicide, and intends his act to so encourage or assist. The person committing the offence need not know the other person or even be able to identify them.

11. In the context of websites promoting suicide, this is an important point. It is highly unlikely that the author of such a site will know the identity of those who access the website. But if he intends that one or more of his readers will commit or attempt to commit suicide then he is guilty of an offence. That was already the case under the law as it previously stood but making it clear on the face of the statute should help to reassure people that the law is capable of dealing with this sort of material.

12. Subsection (4) inserts two new sections 2A and 2B into the Suicide Act. The new section 2A elaborates on what constitutes an act capable of encouraging or assisting suicide. New section 2A(1) provides that a person

who arranges for someone else to do an act capable of encouraging or assisting the suicide or attempted suicide of another person will also be liable for the offence if the other person does that act. So if A arranges for B to supply a gun to C with the intention that C will use the gun to commit suicide, A is liable for the offence.

13. New section 2A(2) provides that an act can be capable of encouraging or assisting suicide even if the circumstances are such that it was impossible for the act actually to encourage or assist. This reflects the general position under the Criminal Attempts Act 1981 that a person may attempt the impossible. It would cover, for example, the case where pills provided with the intention that they will assist a person to commit suicide are thought to be lethal but are in fact harmless. Or where lethal pills sent to a person with the intention that the person would use them to commit or attempt to commit suicide get lost in the post.

14. New section 2A(3) clarifies that references to doing an act capable of encouraging or assisting another to commit or attempt suicide include a reference to doing so by threatening another person or otherwise putting pressure on another person to commit or attempt suicide. The new section 2B provides that an act includes a course of conduct. This would cover, for example, a case where a person supplies another person with poison such as arsenic over a period of time intending that the other person will use the poison to kill himself.

15. Some concerns were expressed during the passage of the legislation about the application of the new provisions to situations where emotionally vulnerable people engage in detailed discussions with one another about suicide methods in online chat rooms or social networking sites. However, the new provisions have no implications for these situations beyond the scope of the previous law.

16. It is important to emphasise that doing an act capable of encouraging or assisting suicide is not, of itself, an offence. As with the previous law, the act has to be done with the intention that it will so encourage or assist. So any person making a posting to an online chat room or social networking site which intentionally encourages another person to commit or attempt to commit suicide may be guilty of an offence. But simply providing information about or discussing the issue of suicide through the internet (or any other medium), where there is no such intent, is not an offence.

D DPP consent

17. Under section 2(4) of the Suicide Act no prosecution for an offence under section 2(1) may be brought except by or with the consent of the Director of Public Prosecutions. The changes that have been made to section 2(1) do not alter that position. Prosecution for an offence under section 2(1) of the Suicide Act, as amended by section 59 of the 2009 Act, remains a matter for the Crown Prosecution Service.

18. Following the House of Lords ruling in the case of *Purdy v DPP* (which concerns the position of the appellant's husband if he helps her to go abroad to be assisted to commit suicide) on 30 July 2009, the DPP was required to promulgate an offence-specific policy identifying the facts and circumstances which he will take into account in deciding, in a case such as that exemplified by Ms Purdy's case, whether or not to consent to a prosecution for an offence under section 2(1) of the Suicide Act. The DPP published an interim policy for prosecutors, applicable to all cases of assisted suicide, on 23 September 2009. He has since undertaken a public consultation exercise in order to take account of the full range of views on the interim policy and will publish his final policy in the spring of 2010.

E Useful links

The Coroners and Justice Act 2009

http://www.opsi.gov.uk/acts/acts2009/ukpga_20090025_en_1

Explanatory notes on the Coroners and Justice Act 2009

http://www.opsi.gov.uk/acts/acts2009/en/ukpgaen_20090025_en_1

Inchoate liability for assisting and encouraging crime (July 2006)

<http://www.lawcom.gov.uk/docs/lc300.pdf>

Safer Children in a Digital World (March 2008)

<http://www.dcsf.gov.uk/byronreview>

Written Ministerial Statement (17 September 2008)

<http://www.publications.parliament.uk/pa/cm200708/cmhansrd/cm080917/wmstext/80917m0001.htm#0809173000073>

Annex A

2 Criminal liability for complicity in another's suicide

- (1) A person ("D") commits an offence if –
 - (a) D does an act capable of encouraging or assisting the suicide or attempted suicide of another person, and
 - (b) D's act was intended to encourage or assist suicide or an attempt at suicide.
- (1A) The person referred to in subsection (1)(a) need not be a specific person (or class of persons) known to, or identified by, D.
- (1B) D may commit an offence under this section whether or not a suicide, or an attempt at suicide, occurs.
- (1C) An offence under this section is triable on indictment and a person convicted of such an offence is liable to imprisonment for a term not exceeding 14 years.
- (2) If on the trial of an indictment for murder or manslaughter of a person it is proved that the deceased person committed suicide, and the accused committed an offence under subsection (1) in relation to that suicide, the jury may find the accused guilty of the offence under subsection (1).
- (3) The enactments mentioned in the first column of the First Schedule to this Act shall have effect subject to the amendments provided for in the second column (which preserve in relation to offences under this section the previous operation of those enactments in relation to murder or manslaughter).
- (4) No proceedings shall be instituted for an offence under this section except by or with the consent of the Director of Public Prosecutions.

2A Acts capable of encouraging or assisting

- (1) If D arranges for a person ("D2") to do an act that is capable of encouraging or assisting the suicide or attempted suicide of another person and D2 does that act, D is also to be treated for the purposes of this Act as having done it.
- (2) Where the facts are such that an act is not capable of encouraging or assisting suicide or attempted suicide, for the purposes of this Act it is to be treated as so capable if the act would have been so capable had the facts been as D believed them to be at the time of the act or had subsequent events happened in the manner D believed they would happen (or both).

- (3) A reference in this Act to a person (“P”) doing an act that is capable of encouraging the suicide or attempted suicide of another person includes a reference to P doing so by threatening another person or otherwise putting pressure on another person to commit or attempt suicide.

2B Course of conduct

A reference in this Act to an act includes a reference to a course of conduct, and a reference to doing an act is to be read accordingly.

Annex B

FREQUENTLY ASKED QUESTIONS

Why was a restating of the law necessary?

It is important, particularly in an area of such wide public interest and concern, for the law to be expressed in terms that everyone can understand. The Byron report *Safer Children in a Digital World* identified this as an area where there is some confusion about the application of the law to online activity. And the Law Commission also said that there was a strong case for updating the language of section 2 of the Suicide Act.

What has changed?

The previous two offences have been replaced with a single offence and the old-fashioned terms of aiding, abetting counselling and procuring have been replaced with the more modern ones of assisting and encouraging. The new provisions are in line with the case law relating to the previous two offences. The behaviour covered by the new provisions is the same as was covered by the previous law.

How will this make it clearer that the law applies to online actions?

Simplifying and modernising the law should increase public understanding and provide reassurance that the law is capable of reflecting the new ways of communicating and accessing information that have developed since the 1961 Act was passed.

Why not just make explicit that the law applies online?

It is not necessary to do this nor would it be sensible. The internet is simply a means of communication and the law already applies to that means of communication as it does to any other.

Do the terms ‘assisting and encouraging’ cover any behaviour that is not covered by ‘aiding, abetting, counselling and procuring’?

No. These terms cover the same behaviour that was previously covered by section 2 of the Suicide Act and the Criminal Attempts Act as it applied to section 2.

Will restating the law in this way increase the likelihood of prosecutions?

The decision to prosecute in individual cases for an offence under section 2 of the Suicide Act 1961 is a matter for the Crown Prosecution Service. The amendments that have been made to the Suicide Act simplify and modernise the law in this area but they do not make liable to prosecution anyone who was not liable before. The Director of Public Prosecutions gave oral evidence to the Public Bill Committee in March 2009 that the new provisions will not extend the current law. He did not therefore anticipate any increase in the number of prosecutions for this type of offence.

If a depressed person posts an opinion about suicide on the internet will they commit an offence?

The new provisions have no implications for freedom of expression beyond the scope of the previous law. A person will commit an offence if they do an act which is capable of encouraging or assisting a suicide or attempted suicide and with the intention to so encourage or assist. Such conduct was already an offence by virtue of section 2 of the Suicide Act and the Criminal Attempts Act 1981.

Why does the law now make provision for cases where an act is *capable* of encouraging or assisting suicide?

The new provisions cover behaviour that was currently caught by both section 2 of the Suicide Act and the offence of attempting to commit a section 2 offence under the Criminal Attempts Act 1981. The law therefore covers acts capable of encouraging or assisting suicide so that the new section 2 properly catches conduct that would previously have been caught by the Criminal Attempts Act. As the previous two offences have been replaced with one offence, the Coroners and Justice Act 2009 Bill includes provision (Schedule 21, paragraph 58) to the effect that the Criminal Attempts Act 1981 will no longer apply to offences committed under section 2 of the Suicide Act 1961.