

Assisted Dying for Terminally Ill Adults (Scotland) Bill – Briefing for hospice members

Bill as published

The Bill was formally introduced to Scottish Parliament on 27/03/24 and published on 28/03/24. The Bill and accompanying documentation (including Explanatory Notes, Policy Memorandum and Financial Memorandum) is available on the Scottish Parliament website: [Assisted Dying Bill](#)

What this Briefing Covers

This initial briefing provides a factual update on the content of the Bill and associated documents but does not explore in detail the implications of the Bill on the hospice sector. Further information will be provided in due course, and we will engage with members through a number of different routes.

Bill Summary

Aims of the Bill

The aim of the Bill is to allow mentally competent terminally ill eligible adults in Scotland to voluntarily choose to be provided with assistance by health professionals to end their lives. The Policy Memorandum adds that Liam McArthur (as the MSP putting forward the Bill) believes that:

- *an individual's personal autonomy to decide on their medical care, and how their life should end in situations of terminal illness, should be protected in law*
- *the current legal position is unacceptably unclear... and ...The Bill improves legal clarity by making it lawful for a person to voluntarily access assisted dying if they meet the various criteria set out in the Bill*
- *the respect for personal autonomy should equally apply to registered medical practitioners (doctors) and other health professionals... and therefore that they should not have to participate in the provision of assistance if they conscientiously object to doing so*

Eligibility

The Bill defines a person as being terminally ill if they have an advanced and progressive disease, illness or condition from which they are unable to recover and that can reasonably be expected to cause their premature death.

The Bill does not include a time period related to life expectancy. The policy memorandum states that the definition requires a person to be in an advanced stage of terminal illness i.e. close to death. It is not the intention that people suffering from a progressive disease/illness/condition which is not at an advanced stage but may be expected to cause their death (but which they may live with for many months/years) would be able to access assisted dying.

In addition, to being terminally ill, the Bill sets out the following eligibility criteria:

- Be aged 16 years or over
- Be ordinarily resident in Scotland for at least 12 months
- Be registered with a general practitioner/medical practice in Scotland
- Have capacity to request assistance to end their life, including being capable of understanding information and advice about making the request, and to make, understand, communicate and remember the decision made. To have capacity, a person must also not be suffering from any mental disorder (as defined by the Mental Health (Care and Treatment) (Scotland) Act 2003) which might affect them making the request.

Basic Process Proposed

The Bill sets out the following steps that must be completed for a terminally adult to be provided with assistance to end their life:

- Following a terminally ill adult indicating to a registered medical practitioner that they wish to be provided with assistance to end their own life, they must complete and sign a **‘first declaration’** form. This form must also be signed and dated by the **‘coordinating registered medical practitioner’** and a witness.
- As soon as reasonably practicable the coordinating registered medical practitioner must make an **assessment** that the person who made the declaration:
 - Is a terminally ill adult
 - Is eligible to be lawfully provided with an assisted death
 - Made the declaration voluntarily and has not been coerced or pressured by any other person into making it
- If the coordinating registered medical practitioner is satisfied the person is eligible and acting voluntarily, they must refer them to another **independent registered medical practitioner** who assesses that the person is a terminally ill adult, has capacity to request assistance to end their life and has made the declaration voluntarily, without being coerced or pressured.
- When making their assessments, the registered medical practitioners must explain and discuss, so far as they consider appropriate:
 - the person’s diagnosis and prognosis,
 - any other treatment available,
 - **“any palliative or other care available”**
 - and that taking the substance will end their life.
 - They should also advise the person to inform their GP (if not already aware) and to discuss their request with those close to them.
- If satisfied in their assessments, the coordinating medical practitioner and independent medical practitioner complete and sign **assessment forms**. If they have doubts over the person’s terminal illness diagnosis/prognosis or capacity they can refer to an appropriate specialist.
- The terminally ill adult can then make a **second declaration** to confirm that, having been found eligible, they wish to continue and be provided with assistance to end their life. A **period of reflection** is required between the date of the first and second declaration of at least 14 days, unless the coordinating registered medical practitioner thinks the person may have less than 14 days to live, in which case the period is not less than 48 hours.
- All declarations and medical practitioner statements are sent to the person’s GP and added to their medical records. A terminally ill adult can authorise a proxy if they cannot sign their own name.
- The first or second declaration can be cancelled at any time by the person orally or in writing to the coordinating registered medical practitioner or any other registered medical practitioner in their GP practice.
- The Explanatory Notes of the Bill states that *“it is for the person to decide, after completing a second declaration, if, when and where (in which premises – for example at home, in hospital, or in a hospice or care home) they wish to be given an approved substance for them to take to end their life.”*
- After a second declaration has been made there is no time limit by which a person must have decided to end their life and/or have ended their life.
- The coordinating registered medical practitioner or an authorised healthcare professional can now provide the person with an approved substance for them to take their life. They must provide it to them in person, and they must be satisfied at the time that the person has capacity and is acting voluntarily, without coercion or being pressured.
- They must remain with the person until they decide whether to use the substance and if they do so, remain with them until they have died. The person must self-administer the substance. The healthcare professionals do not need to be in the same room but should be in the same

premises and not too distant. If the person decides not to use the substance, the coordinating medical practitioners/authorised healthcare professional must remove it from the premises.

- The coordinating medical practitioner must complete a '**final statement**' once a person has ended their life and inform the person's GP and it must be recorded in their medical records.
- The cause of death recorded on the person's death certificate is the illness, disease or condition that led them to request an assisted death, and not the approved substance provided to them. It is expected that the use of the approved substance will also be recorded on the death certificate.

Role of Professionals

The Bill sets out a number of roles for healthcare professionals:

- **Coordinating registered medical practitioner** - is a registered medical practitioner who has indicated to the terminally ill adult that they are willing to carry out the coordinating role set out in the Bill (i.e. being the registered medical practitioner that has responsibility for overseeing the process from beginning to end). The Bill allows for Scottish Ministers to create regulations that would specify the qualifications and experience required for this role. The Explanatory Notes state that it is expected that this role will usually be the terminally ill adult's GP or primary care doctor.
- **Independent registered medical practitioner** - This doctor provides an additional assessment of the individual requesting an assisted death. They must not have provided treatment or care to the individual being assessed, and they cannot be a relative, partner or colleague in the same practice or clinical team as the coordinating registered medical practitioner, or have been a witness. The Bill allows for Scottish Ministers to create regulations that would specify the qualifications and experience required for this role.
- **Authorised health professional** - the coordinating medical practitioner can authorise another health professional (a registered medical practitioner or registered nurse) to provide the substance to the person to take to end their life if they are satisfied the person wishes to proceed voluntarily and has capacity, and to remain with them until they die.
- The Bill also allows for the coordinating medical practitioner or authorised health professional to be accompanied by another health professional if they wish (a registered medical practitioner, registered nurse, or registered pharmacist). This person is attending at the request of the coordinating medical practitioner or authorised health professional, they cannot provide the terminally ill person with the substance to end their life or any of the other functions under the Bill
- The Bill makes no requirements around training of professionals, other than setting out that regulations might stipulate the qualifications and experience of the coordinating registered medical practitioner and the independent registered medical practitioner. The Policy Memorandum states that it is anticipated that relevant professional regulatory bodies will ensure suitable training is provided for health professionals.

Conscientious Objection

The Bill states that no individual is under any legal duty to play an active, participatory role in anything authorised by the Bill. This includes registered medical practitioners, registered nurses and registered pharmacists. The Bill makes no provision for conscientious objection at an organisational level, and no reference is made to this issue across any of the documentation that accompanies the Bill. The Policy Memorandum that accompanies the Bill makes reference to mirroring the current approach around abortion care. It states that if a person approaches a medical practitioner about having an assisted death and the practitioner objects to taking part, then the practitioner should refer the person to another registered medical practitioner who is content to participate.

Reporting/review of operation of Act

Once Assisted Dying is available, all data captured on requests for Assisted Dying and medical assessments/final statements will form part of a person's medical records. Public Health Scotland should be provided with anonymised data and they will then be required to provide an annual report

to the Scottish Government, who will publish this information. This report should include a breakdown by characteristics such as age, ethnicity and type of terminal illness, and should also provide an overview of requests started that do not ultimately result in Assisted Dying being delivered to an individual.

There is also a requirement for Scottish Ministers to undertake a review of the operation of the Act, five years after Assisted Dying becomes practically available in Scotland, and publish a review report. The review report may contain recommendations and/or proposals for amending aspects of the process as a result of the experience of health professionals, patients, and their support networks.

References to hospices and palliative care

There is a single reference to palliative care on the face of the Bill - that any assessment by a medical professional must explain and discuss (as they consider appropriate) any palliative or other care available. Across the set of accompanying documentation as a whole, there are a number of other references to palliative care, such as in paragraph 63 of the [Policy Memorandum](#) and paragraphs 87- 93 of the [Financial Memorandum](#).

Hospices, again, are mentioned only once on the face of the Bill – as a potential location for place of death. Across the other documentation the most significant references to hospices are within the Financial Memorandum which states that *“as the parts of the assisted dying process that will incur more significant costs... will not directly involve such organisations, it is anticipated that any costs incurred by private and third sector care homes and hospices as a result of an assisted death taking place on their premises will be minor”*.

Areas not on the face of the Bill

Financial impact/uptake

Within the Financial Memorandum it is estimated that uptake in Scotland in year 1 would see approximately 25 people likely to have an assisted death; by year 20 up to 400 people could be expected to have an assisted death per year. This estimated uptake in Scotland is based on case numbers within Oregon, USA and Victoria, Australia.

Potential costs are summarised across three areas: Scottish courts costs; Scottish administration costs; health service costs. Potential savings are also identified but only at a very high level. The overall conclusion is that the Bill will be effectively cost neutral: *“There may also be some savings, for example in cases where palliative care is not, or is no longer, required as a result of someone choosing to have an assisted death. Where the costs incurred by the Bill are estimated to be relatively low, so too are any savings that may be made as a result of the Bill’s enactment. On balance, it is concluded that the Bill is likely to be effectively cost neutral.”*

No costs are quantified for hospices/other third sector organisations in relation to health service costs. The costs relating to staff training appear only to cover direct development and delivery of training; no costs are quantified for staff undertaking training.

Support and navigation networks

There are no references within the Bill itself to any information/signposting services relating to Assisted Dying. The Policy Memorandum notes that:

“some other jurisdictions that have legalised a form of assisted dying have established (often via third sector initiative) support and navigation networks for those involved in the process (including health professionals, patients, and family and friends) and that something similar may emerge in Scotland once the Bill has been passed and the Act is operational. It is understood that organisations such as Friends at the End and Humanist Society Scotland have indicated that they would support implementation/operation by providing guidance, support, counselling, and other navigation for patients.”

Parliamentary Process

Powers reserved to the UK Government

Section 22 of the Bill (“Limitations on effect of Act”) makes it clear that the Bill if enacted could have no direct effect on powers currently reserved to the UK Government. These powers relate to legislation covering: misuse of drugs; regulation of health professions; and medicines, medical supplies and poisons.

Within the Policy Memorandum, a number of potential routes are highlighted as ways to address these reserved matters: a Section 30 order under the Scotland Act 1998; an order under Section 63 of the Scotland Act; an order under Section 104 of the Scotland Act; or UK Government could use existing powers under the Misuse of Drugs or the Medicines Act to permit the use of controlled drugs in Scotland for the purpose of the Bill.

Liam McArthur has had informal discussions with the Scottish and UK Governments and the Policy Memorandum states that if the general principles of the Bill are agreed then *“the Scottish Government should work with the UK Government to ensure that powers are made available to the Scottish Parliament, or to the Scottish Ministers, as soon as possible”*.

Consideration by the Scottish Parliament

The Bill will now go through [normally parliamentary processes](#) to consider new legislation. Stage 1 is where the general principles of the Bill are considered, with initial scrutiny work carried out by a lead committee which then provides a recommendation to Parliament. The Health, Social Care and Sport Committee is expected to be the lead committee considering this Bill; a number of other Committees may also consider the Bill (and provide reports to the lead committee). Hospice UK will be responding to Committee consultations/calls for evidence as appropriate.

Bills are often voted for on “party lines” – i.e. all members of a political party will vote the same way. However, all indications are that this Bill will be a free vote, allowing each MSP (including members of the Cabinet) to vote with their conscience.

Timescales for Implementation

Given the complexity of the issue it is likely that the parliamentary process in Scotland will take some time. If the Bill is passed then only the sections that give Scottish Government powers to make regulations will come into force the day after Royal Assent – to give time for the Scottish Government and health services and professionals to prepare for the introduction of assisted dying in Scotland as provided for in the Bill. There may also be a delay to ensure that the issue of matters reserved to the UK Government is addressed.

Next Steps

We will be developing a response to the Health, Social Care and Sport Committee’s call for evidence as they consider the proposed Bill. During this we will engage with hospice members to ensure we fully understand and explore the potential impact of the Bill on palliative care and the hospice sector. The [first webinar](#) on this issue is scheduled for April 25th.

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