

Assisted dying bill for England and Wales published in House of Commons

14 November 2024

On Monday 11th November, Kim Leadbeater MP published the text for her [private members bill](#) to allow adults who are terminally ill to request and be provided with assistance to end their own life. Please find a briefing below summarising the key provisions in the Bill with a focus on those most relevant to hospice and palliative care.

This initial briefing provides a factual update on the content of the Bill 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.

Please do get in touch with your local MP to share your expertise and experience ahead of the Second Reading of the Bill on 29th November. To share any thoughts on the Bill with Hospice UK, please email policy@hospiceuk.org

1. Eligibility for assistance to voluntarily end own life

The Bill sets out the eligibility criteria in terms of age, residency, patient status, terminal illness, and mental capacity.

Eligibility

- Be *terminally ill* (see definition below)
- Have the *necessary capacity* to make the decision (see definition below)
- Be aged 18 or over
- Resident in England and Wales for at least 12 months
- Be registered as a patient with a GP practice in England or Wales
- Have a clear, settled and informed wish to end their own life and be able to make that decision without being coerced or pressured by any other person

Terminal Illness

- The bill stipulates that a person must have an inevitably progressive illness, disease or medical condition that cannot be reversed by treatment and be expected to die within 6 months.
- A person is not considered to be terminally ill based only on a diagnosed mental illness or by having a disability.

Necessary Capacity

- A person must have the necessary capacity to make the decision and be able to:
 - Understand the information relevant to the decision
 - Retain that information
 - Use and weigh that information as part of the decision-making process
 - Communicate their decision
- A person lacks capacity if they are unable to make a decision for themselves because of an impairment of, or a disturbance in the functioning of, the mind or brain.

2. Initial discussions with medical practitioner

The Bill makes clear that no doctor is under a duty to raise the subject of the provision of assisted dying with a patient, however, this does not prevent a doctor exercising their professional judgement to discuss the matter with a patient.

- Where a patient indicates to a doctor that they wish to seek assistance end their own life, the doctor may (but is not required to) discuss the matter with the patient.
- If the discussion takes place, it must cover, amongst other things, the available palliative, hospice or other care.
- If the doctor is unwilling or unable to conduct the discussion, the Bill requires them to refer the patient to another doctor who is willing and able to conduct the discussion.

3. Procedure, safeguards and protections being proposed

The Bills sets out key steps that must be taken, and safeguards and protections that will operate, when a person decides to seek assistance to end their own life. Central to this process are two doctors (a coordinating doctor and an independent doctor) who will carry out two assessments of the person to ensure they meet the eligibility criteria (see paragraph 1 of this briefing).

Before the doctors carry out their assessments a person must make an initial request for assistance (first declaration). If the first declaration is successful and both doctors make their statements, they may then apply to the High Court for approval. If approved by the Court, the person may then make their second declaration for provision of assistance to end their own life.

A person can, at any time, cancel the declaration by giving notice to the coordinating doctor or to a doctor at their GP's practice.

Initial request for assistance: first declaration

- A person who wishes to be provided with assistance to end their own life needs to make a declaration which must be witnessed by the coordinating doctor and another independent person. As part of this process they must also provide two forms of proof of identity.
- Where the person is unable to sign, the Bill enables it to be signed by a proxy (subject to safeguards).
- Neither the coordinating doctor nor the independent witness can be a relative of the person seeking the assistance nor can they know or believe that they are a beneficiary under that person's will or may otherwise benefit from the person's death.

First doctor's assessment (coordinating doctor)

- Where a first declaration is made by a person, the coordinating doctor who witnessed the first declaration must carry out an initial assessment ensuring they meet the eligibility criteria (see paragraph 1 of this briefing).
- If the coordinating doctor is satisfied, they must complete a statement and also refer the person for a second assessment by the independent doctor.
- There is a period of at least 7 days ("the first period of reflection") between the first and second assessments.

Second doctor's assessment (independent doctor)

- The second assessment by the independent doctor also establishes whether the person meets the eligibility criteria (see paragraph 1 of this briefing).
- The independent doctor must carry out the second assessment independently of the coordinating doctor and if they are satisfied that all the requirements are met, they must complete a statement.
- To ensure independence, the independent doctor must not have provided the person with treatment or care in relation to their terminal illness and must not be in the same medical practice or clinical team as the coordinating doctor. The independent doctor must also not know or believe that they are a beneficiary under the person's will or may otherwise benefit from that person's death.

Responsibilities of the coordinating and independent doctor carrying out assessments

The Bill sets out things that both the coordinating and independent doctor carrying out the assessment must do. These include:

- A requirement to explain to and discuss with the person the possible treatments, the palliative, hospice and other care available and the nature of the substance that might be provided to assist the person to end their own life (including how it will bring about death).
- The doctor must also explain the further steps that would need to be taken if the person wished to be provided with assistance to end their own life and that those steps may be cancelled by the person at any time.
- The doctor is also to advise the person to inform their GP and, so far as the doctor considers it appropriate, advise the person to discuss the request with their next of kin and other people they are close to.
- If the doctor carrying out the assessment has a doubt as to whether the person being assessed is terminally ill, the doctor must obtain an opinion from a specialist in the illness, disease or condition in question.
- If the doctor carrying out the assessment has doubt as to the capacity of the person being assessed, they may refer the person for assessment by a psychiatrist or other suitably qualified person but are not required to do so.
- In the event that an independent doctor is not satisfied a person meets the eligibility criteria, the Bill enables a person to request a second opinion from another independent doctor.
- The Bill enables the Secretary of State to make regulations providing for cases where the original coordinating doctor becomes unable or unwilling to continue to carry out their functions.

Court approval

- Providing a person has made a successful first declaration and both the coordinating and independent doctor have made their statements, they may then apply to the High Court for a declaration.
- For the High Court to make a declaration, it must be satisfied that the eligibility criteria (see paragraph 1 of this briefing) and procedure, safeguards and protections have been met.
- The court may hear from and question the person, and must hear from the coordinating doctor or the independent doctor (or both). It may also hear from and question any other person or ask a person to report to the court on any relevant matter.
- If the High Court refuses to make the declaration, the person can appeal to the Court of the Appeal.

Confirmation of request for assistance: second declaration

- If a person obtains a court declaration, they may then make a second declaration for assistance to end their own life.
- The second declaration cannot be made until “the second period for reflection” has ended. The second period for reflection begins on the day the court declaration is made and lasts for 14 days. But, if the coordinating doctor is of the opinion that the person is likely to die within one month of the court declaration, the period for reflection is reduced to 48 hours.
- The second declaration must be witnessed by the coordinating doctor and by an independent witness.

4. Provision of assistance to end own life

Where the High Court or Court of Appeal has approved and the person has made a second declaration, a person can proceed towards receiving an approved substance to end their own life.

- The approved substance must be provided directly, and in person, by the coordinating doctor, who must still be satisfied that the person has the capacity to make the decision free of coercion or pressure:
 - The coordinating doctor can then prepare that substance for self-administration by that person.
 - Prepare a medical device which will enable that person to self-administer the substance
 - Assist that person to ingest or otherwise self-administer the substance.
 - But the decision to self-administer the approved substance and the final act of doing so must be taken by the person themselves not by the coordinating doctor.
 - The coordinating doctor must remain with the person after the approved substance has been provided, although they need not be in the same room.
 - If the person decides not to take the approved substance it is removed by the coordinating doctor.
- With the consent of the person, the coordinating doctor may authorise another named registered medical practitioner to exercise the coordinating doctor’s functions providing provision of assistance.
- When the person has died, the coordinating doctor to make a final statement. The making of the declaration must be recorded in the person’s medical records, and the original statement included as part of that record.

5. No obligation to provide assistance (conscientious objection)

- The Bill stipulates that no registered medical practitioner or other health professional is under any duty (whether arising from any contract, statute or otherwise) to participate in the provision of assistance.
- An employer must respect an individual employee's right to participate or not in the process.

6. Matters relating to prescribing, death certification and codes of practice

Prescribing, dispensing, transporting etc of approved substances

- The Bill says the Secretary of State will have to make regulations regulating the prescribing, dispensing, transportation, handling and disposal of approved substances.

Death certification

- The Bill enables the Secretary of State to make regulations so the cause of death is recorded as "assisted death" along with a record of the person's terminal illness by reason of which they were entitled to be provided with assistance to end their own life.
- It also requires the Registrar General to report annually to Parliament with a statistical analysis of deaths which have arisen from the provision of assistance.

Codes of practice

- The Bill authorises the Secretary of State to issue codes of practice in relation to assessing of whether a person has a clear and settled intention to end their own life and the assistance which a person may be given to ingest or self-administer an approved substance.

7. Responsibilities of Secretary of State, Chief Medical Officers, and reviewing legislation

- The Bill enables the Secretary of State to make arrangements for services to be provided through the health service or by a separate service to enable assistance for people end their own life, including funding for any provision.
- Requires Chief Medical Officers in England and Wales to produce guidance and monitor the operation of the Bill.
- The Secretary of State is required to review the operation of the Bill after 5-6 years, including an assessment of the availability, quality and distribution of appropriate health services to persons with palliative care needs.

8. References to hospice and palliative care in the Bill

- In their initial discussion with a person wishing to end their life, the medical practitioner must discuss the available palliative, hospice or other care (Clause 4).
- The two doctors responsible for carrying out assessments are required to explain and discuss with the person the palliative, hospice and other care available (Clause 9).
- The Bill says the Secretary of State may issue codes of practice on the information made available on palliative, hospice or other care available to the person (Clause 30).

- In their 5-year review of the Bill, the Secretary of State must include an assessment of the availability, quality and distribution of appropriate health services to persons with palliative care needs and the information available (Clause 35).