Assisted Dying for Terminally Ill Adults (Scotland) Bill 2021

The Assisted Dying for Terminally Ill Adults (Scotland) Bill is a proposed Members Bill brought by Liam McArthur (Lib Dem MSP Orkney) on 22nd September 2021. At the time of writing (Jan 2022) the Bill is in the first stage of consultation, feedback from the consultation will inform a final proposal. At present there is not a Bill, only a draft proposal for the Bill. Parliament is inviting consultation and the results of that feedback will be presented alongside the proposal for legislation.[[1]](#footnote-1)

The draft proposal can be found at the link below:

https://www.parliament.scot/-/media/files/legislation/proposed-members-bills/assisted-dying-for-terminally-ill-adults-scotland-consultation-2021-final.pdf

The final proposal needs support of at least 18 other MSPs from half of the political parties / parliamentary groups, then McArthur has the right to introduce a Members’ Bill. Once introduced, a Member’s Bill follows a 3-stage scrutiny process, during which it may be amended or rejected outright. If it is passed at the end of the process, it becomes an Act.

At present, in the UK, a person assisting in the death of another risks being charged with criminal offences.

Overview of Bill

The Bill proposes that a person who has been diagnosed as terminally ill can request and legally be provided with assistance to end their own lives. This request must be *voluntary, informed, settled and clear.* The person making the request should be over 18 years old, have mental capacity to make the decision and a UK resident for over a year.

Terminal illness is described as any illness which is progressive, and which will inevitably result in the death of that individual within 6 months (or a reasonable expectation of that timeframe).

In summary, this is a form of *voluntary active euthanasia*, which is not physician assisted.

The Bill proposes that the act of euthanasia is conducted by the individual themselves, rather than being physician assisted, meaning that whilst the physician prescribes and provides the mechanism by which the individual can administer the life ending mediation, the actual act of delivery is conducted by the patient themselves. (4c)[[2]](#footnote-2) The assisting healthcare professional is to remain in close proximity to the person, though not necessarily in the same room, until the individual has died. (4.6)

Safeguards within the Bill

The request of the individual to end their own life (1) must be made in the presence of a witness (2) who is not involved in the care of that individual, nor is a relative. It must be counter signed by the qualified medical practitioner (3) to whom the request is been made AND another qualified registered medical practitioner (4), who is not related or a colleague of (2 or 3). Effectively then the request must be made and signed before 3 independent witnesses. (3.1)

The 2 attending doctors must be satisfied of the diagnosis of terminal illness, the mental capacity of individual making the request and the clear, settled and uncoerced basis of that request. They also need to be reassured that the individual is making a fully informed decision, and that all options of palliative, hospice and other care have been made offered and made available.

The request can be revoked by the individual at any time, not necessarily in writing. (3.7)

When a person is expected to live for up to 6 months, a waiting period of 14 days is required, which is reduced to 6 days if the individual has a life expectancy of less than a month. (4.3)

It is expected that the Secretary of State will produces codes of practice for the following:

* assessing the capacity of an individual making a request to end their life under the Bill;
* recognising and taking account of any depression of psychological disorders that may impair a persons decision making;
* information provision relating to treatment, end of life care options and consequences of deciding to end their own life. (8.1)

Similarly, codes of practice may be issued relating to:

* counselling and guidance which should be made available to a person making a request to end their lives under the Act.
* Arrangements for delivery of methods of euthanasia and the circumstances and provision of assistance where required. (8.1)

History of Similar Bills

2010 – End of Life Assistance (Scotland) 2010 Bill.

Introduced by Margo Macdonald MSP in Jan 2010. Bill fell in December 2010. At the Stage 1 debate, parliamentary members did not support the principles of the Bill.

2013 – Assisted Suicide (Scotland) 2013 Bill

Introduced by Margo Macdonald MSP in November 2013. After Margos death in March 2014, Patrick Harvie MSP took over as additional member in charge of the Bill. The Bill fell in May 2015 after stage 1 debate. It was noted that there were significant flaws in the Bill.

Assisted Dying in other contexts

Currently individuals wishing to end their life by voluntary active euthanasia are required to travel overseas. This has cost implications and often means that they must travel whilst they are well enough to be able to make the journey. Some individuals choose to end their lives at home through suicide, others refuse food and water in a form of voluntary passive euthanasia.

Ethical considerations & Terminology

**Conscientious Objection** – Section 5 of the Bill allows for healthcare professionals to conscientiously object to participation in anything authorised by the Act.

**Legal Protections of Healthcare Professionals** – Section 6 absolves anyone from participating in anything proposed by the Act from prosecution, provided that all safeguards etc have been followed.

**Mental Capacity** (AwIS 2000)– as defined under the existing Adults with Incapacity Act (Scotland 2000). In this case the relevant principles of the AwIS 2000 are as follows:

* An individual is presumed to have mental capacity unless it can be deemed otherwise.
* All practical efforts should be made to enable an individual to make an informed decision – they will not be deemed incapacitated unless these steps have been taken without success.
* Allowance for unwise (but fully informed) decisions.

*Note: It should be noted that the above legislation came in to being to protect individuals who did not have the capacity to consent for themselves, so is written from the perspective of safeguarding such individuals. In the context of the Assisted Dying Bill it is expected that most individuals making a decision to end their own lives would have the mental capacity to make such a decision. So, essentially mental capacity in the case of the Assisted Dying Bill is approach from the opposite viewpoint to which the AwIS was originally written. The AwIS 2000 makes provision for temporary and fluctuating mental capacity, which the Assisted Dying Bill does not explore. It may be that the AwIS 2000 is a ‘best fit’ in the absence of a more relevant means of assessment.*

1. Assisted Dying for Terminally Ill Adults (Scotland) Bill, Liam McArthur MSP, Consultation Doc. <https://www.parliament.scot/-/media/files/legislation/proposed-members-bills/assisted-dying-for-terminally-ill-adults-scotland-consultation-2021-final.pdf> [↑](#footnote-ref-1)
2. Numbers in brackets pertain to the relevant section of the Bill. [↑](#footnote-ref-2)