

Briefing Paper:- Key Features – End of Life Assistance (Scotland) Bill

About this Briefing Paper

This paper aims to set out the key features of the End of Life Assistance (Scotland) Bill in an easily digestible format. It is not an analysis of the implications of the Bill and in aiming for descriptive brevity there is inevitably some sacrifice of precision.

Terminology and Scope

The Bill makes no reference to “euthanasia”, “voluntary euthanasia”, “suicide”, “assisted suicide” or “physician assisted suicide”.

The Bill uses the phrase “end of life assistance” throughout, which it defines as:-

“assistance, including the provision or administration of appropriate means, to enable a person to die with dignity and a minimum of distress”

At first sight this definition would appear to encompass voluntary euthanasia in addition to physician assisted suicide.

Purpose of the Bill

The Bill states its purpose as being *“to permit assistance to be given to persons who wish their lives to be ended;”*

Who Can Request “end of life assistance”?

To be eligible for “end of life assistance” a person must:-

- Be aged 16 or over
- Have been registered with a Scottish medical practice for 18 months

AND

- Have been diagnosed as terminally ill and finds life intolerable **OR**
- Be permanently physically incapacitated to such an extent as not to be able to live independently and finds life intolerable.

Terminal illness is defined as suffering from a progressive condition with a reasonable expectation of death from that condition within 6 months.

To Whom is a Request Made?

The request must be to a "registered medical practitioner". This encompasses anyone on the GMC register. The Financial Memorandum (which is part of the Explanatory Notes), which accompanies but is not part of the Bill, states "*Given that requests will be made to general practitioners, the bulk of the work in relation to assisted dying will fall upon those in practice.*"

The Process for Requesting and Securing "end of life assistance"

Appendix 1 on page 4 of this brief is a flowchart showing the multi-stage process, including timescales, for requesting and securing "end of life assistance". In summary the patient must make 2 separate requests to a doctor, separated by a cooling off period. The doctor is required to meet and discuss a range of issues with the patient following receipt of each request. In addition a separate psychiatric assessment based on a meeting with the patient is to be conducted in respect of each request i.e. there are to be 2 psychiatric assessments. The place and means of "end of life assistance" is then agreed and following a further cooling off period this agreement may be enacted. Anyone who is not a relative and who does not have a financial or other interest in the death of the person may provide assistance. The same doctor must be involved from the start to the finish of the process.

Miscellaneous Safeguards

In addition to the sequence of discussions, assessments and time periods shown in Appendix 1 the Bill also incorporates a range of other safeguards:-

- Requests are to be made in writing and signed, stating that it is a formal request under the Act.
- Each request must have two independent witnesses who must also each make a statement that the patient understands the nature of the request, is making the request voluntarily and is not acting under any undue influence.
- Relatives can't act as witnesses. Neither can anyone else with a financial or other conflict of interest.
- Specific arrangements apply regarding witnesses for patients in care homes.
- In approving both the first and second request the doctor must be satisfied that the patient is eligible, is making the request voluntarily and "is not acting under any undue influence". The doctor must also be in receipt of positive reports from the psychiatrist (that the patient has capacity, is making the request voluntarily and "is not acting under any undue influence").
- "End of life assistance" may not be provided if the patient, at any time, gives notice (however informal) to the doctor that they no longer wish it.

- Doctors or psychiatrists who are relatives of the patient or who have a financial or other interest in the patient's death may not participate in the process.
- Approval decisions are documented.
- The agreements on who is to provide "end of life assistance", the place and the type of assistance are documented (though this agreement need not be witnessed).

Who is Deemed Capable of Making a Request?

A person has capacity to make a request for "end of life assistance" if:-

- They are capable of making a decision to request such assistance
- They are capable of communicating such a decision
- They are capable of understanding such a decision
- They are capable of retaining the memory of such a decision

And

- The person is not suffering from any mental disorder which might affect the making of such a request. "Mental disorder" is defined as per the Mental Health (Scotland) Act 2003.

Reporting, Monitoring and Review Arrangements

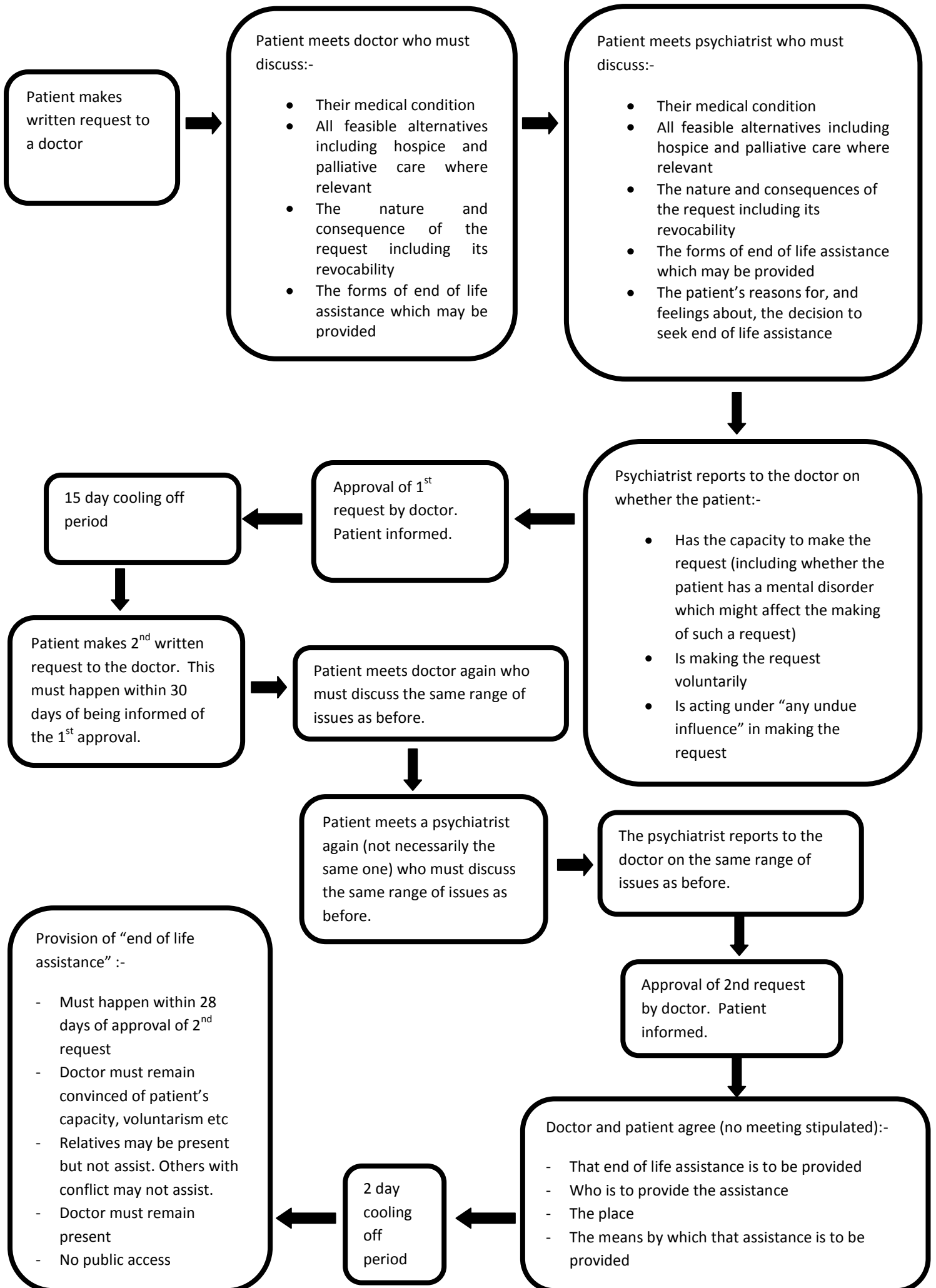
The Bill is silent on arrangements for reporting, monitoring and review arrangements for instances where "end of life assistance" has been provided. The Explanatory Notes which accompany but do not form part of the Bill suggest that the Crown Office of the Procurator Fiscal Service would consider each case of an assisted death.

Conscientious Objections to Participation

The Bill is silent on arrangements for medical staff (or other individuals who could be involved in the process) for refusing to participate on grounds of conscience. The Policy Memorandum which accompanies but does not form part of the Bill suggests that the GMC guidance and procedures on conscientious objection (for doctors) would not be affected by the Bill.

Mark Hazelwood
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Appendix 1 – Process for the Provision of “End of Life Assistance”



Patient makes written request to a doctor

Patient meets doctor who must discuss:-

- Their medical condition
- All feasible alternatives including hospice and palliative care where relevant
- The nature and consequence of the request including its revocability
- The forms of end of life assistance which may be provided

Patient meets psychiatrist who must discuss:-

- Their medical condition
- All feasible alternatives including hospice and palliative care where relevant
- The nature and consequences of the request including its revocability
- The forms of end of life assistance which may be provided
- The patient's reasons for, and feelings about, the decision to seek end of life assistance

15 day cooling off period

Approval of 1st request by doctor. Patient informed.

Psychiatrist reports to the doctor on whether the patient:-

- Has the capacity to make the request (including whether the patient has a mental disorder which might affect the making of such a request)
- Is making the request voluntarily
- Is acting under "any undue influence" in making the request

Patient makes 2nd written request to the doctor. This must happen within 30 days of being informed of the 1st approval.

Patient meets doctor again who must discuss the same range of issues as before.

Patient meets a psychiatrist again (not necessarily the same one) who must discuss the same range of issues as before.

The psychiatrist reports to the doctor on the same range of issues as before.

Approval of 2nd request by doctor. Patient informed.

Provision of "end of life assistance" :-

- Must happen within 28 days of approval of 2nd request
- Doctor must remain convinced of patient's capacity, voluntarism etc
- Relatives may be present but not assist. Others with conflict may not assist.
- Doctor must remain present
- No public access

Doctor and patient agree (no meeting stipulated):-

- That end of life assistance is to be provided
- Who is to provide the assistance
- The place
- The means by which that assistance is to be provided

2 day cooling off period