

Key Features of the Assisted Dying for Terminally Ill Adults (Scotland) Bill

Purpose of this Brief

This brief aims to provide:

- an easy read description of the *key* features contained in the Assisted Dying for Terminally Ill Adults (Scotland) Bill, published 28th March 2024. It describes what the Bill says – it is not an analysis or critique.

An updated paper on the parliamentary processes by which the Bill may be come law (and how those processes may be influenced) is available [here](#).

Background Documents

Five related papers were also published together with the Bill itself. These accompanying documents are a standard parliamentary requirement for any Bill. They are not part of the actual legislation:

1. Explanatory Notes which seek to explain the specific provisions in the Bill
2. A Policy Memorandum which has been prepared on behalf of Liam McArthur MSP (who has introduced the Bill) which argues the case for the Bill.
3. A Financial Memorandum which makes an assessment of the costs and savings which may be experienced by organisations (and individuals) affected by the Bill. Again this has been prepared on behalf of Liam McArthur MSP.
4. A Delegated Powers Memorandum which explains and justifies those parts of the Bill which instead of containing detail give powers to a Scottish minister to fill in the detail at a future point.
5. A Statement of Legislative Competence which confirms that the scope and content of the Bill doesn't overlap with reserved powers of the Westminster parliament.

The contents of documents 1-4 are not endorsed by the Parliament. It can be informative to read 1-3 as they provide illustrative detail and underlying assumptions about how Liam McArthur intends any new law to work in practice. It is important to remember however that it is only the specifics of the Bill itself (rather than assumptions and intentions in the accompanying documents) which determine the parameters of what will happen in practice, should the law be changed.

The Bill and all the other documents can be read or downloaded from the Scottish Parliament website [here](#).

Key Features

Eligibility

To be eligible to receive assistance to end their own life a person must be:

- Aged 16 or older
- Ordinarily resident in Scotland
- Registered with a GP in Scotland
- Have capacity to request assistance to end their life (the Bill uses standard definitions around capacity)
- Be terminally ill

Definition of Terminal Illness

In the Bill a person is deemed to be 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.”

Outline Process to Access Assistance to End Life

The terminally ill adult completes a **declaration form** (appended to the Bill) stating they want assistance to end their life, that they understand the assessment process (see below), that they are not being pressured to make the request, and that they understand they can cancel the declaration at any time.

A “co-ordinating” doctor must “*as soon as reasonably practical*” carry out **an assessment** to confirm that the person is terminally ill, meets the other eligibility requirements and has made the declaration voluntarily. Assuming the person is assessed as meeting the eligibility requirements the first doctor must then refer the person to a second independent doctor who repeats the assessment (age, residency and registration are not reassessed).

A “*period for reflection*” of 14 days applies, starting on the day the initial declaration was made. However, if both doctors believe the person may die within the 14 day period) a minimum period for reflection of 48 hours applies. Once the period for reflection has passed the person must make a second declaration (basically the same content as the first declaration). The coordinating doctor must also sign this declaration, stating their belief that the person remains eligible. The coordinating doctor must ensure all the paperwork has been recorded and must let the person’s GP know what is happening (if

they have not previously been informed). Unless the person cancels their declaration the process then moves on to the provision of assistance to end life.

More Detail on the Assessment Process

The required **qualifications and experience** of the coordinating doctor and the independent doctor who do the assessments of eligibility are not specified in the Bill. Instead the Bill leaves this to Scottish Ministers to specify any requirements they may deem necessary.

During the assessment the doctors **explain and discuss** with the person “*in so far as the medical practitioner considers appropriate*” the following:

- the person’s diagnosis and prognosis
- any treatment available and the likely impact of it on the person’s terminal illness
- any palliative or other care available
- 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)

and also **inform** the person about

- the further steps in the process to get assistance to end their own life
- that they may decide at any time not to take those steps (including how to cancel the first declaration and any of those further steps)

and **advise** the person (if the doctor considers appropriate)

- to inform their GP practice if they haven’t already done so
- that they should discuss their request with those close to them

If the assessing doctor is unsure about whether the person is terminally ill, or has capacity they may **seek specialist advice** from a more relevantly qualified doctor.

More Detail on the Provision of Assistance to End Life

Once the process of declarations and assessment described above has been completed the co-ordinating doctor (or nurse or pharmacist authorised by the co-ordinating doctor) provides the person with an “approved substance” with which that person may end their own life. At the time the substance is provided the coordinating doctor (or the nurse/ pharmacist) must be satisfied that the person still has capacity and hasn’t been pressured or coerced.

The coordinating doctor (or the nurse/ pharmacist) must remain with the person until they decide whether to end their life and, if they proceed, until they have died. Any other health professional can also be present if the coordinating doctor (or the nurse/ pharmacist think it necessary). None of the health professionals need be in the same room as the person ending their life.

If the person changes their mind then the drugs are taken away. If the person dies then the coordinating doctor completes a Final Statement containing limited details about the person who has died, and preceding process.

Other Issues Covered by the Bill

Death Certification

The death certificate will record the diagnosed terminal illness as the direct cause of death (rather than the substance taken to end life).

Conscientious Objection

The Bill states that *“An individual is not under any duty (whether arising from any statutory or other legal requirement) to participate in anything authorised by this Act to which that individual has a conscientious objection.”*

Criminal and Civil Liabilities for Providing Assistance

The Bill states that providing lawful assistance will not give rise to criminal or civil liability (including providing assistance to an *attempt* to end their own life).

Offence of Coercing or Pressuring

The Bill creates an offence of pressuring a terminally ill adult into making a first or second declaration, and sets out a range of penalties.

The Areas Where Ministers May Make Statutory Guidance

The areas where Ministers *may* produce detailed guidance are:

- the carrying out of assessments
- the making and cancellation of first and second declarations
- the provision of assistance
- the making of final statements
- public information about the lawful provision to terminally ill adults of assistance to end their own lives (including information to be provided to people seeking assistance to end their life).
- requiring submission of information to Public Health Scotland (see next section)
- amendments to the scope of annual reporting (see next section)
- the timetable for implementation

Where guidance is produced Ministers *must* consult appropriately.

Data and Reporting

Public Health Scotland must produce, and ministers must publish, an annual report containing the following data -

The number of people who:

- made a first declaration,
- made a second declaration
- made a second declaration but decided not to be provided with an approved substance
- were provided with an approved substance but decided not to use that substance
- were provided with an approved substance and died as a result of using that substance

Also

- the number of statements made by doctors doing the assessments, including the number of statements which concluded that the person assessed was eligible to be provided with assistance to end their own lives, and the number not eligible
- the reasons given by people who started the process but decided at any stage not to end their life
- the substance provided to end the persons life
- the place the person died as a result of taking the substance
- the reasons given by persons wishing to end their own lives

All this data is to be broken down by age group, postcode district, gender, ethnicity, nationality and type of terminal illness.

In the Bill as published there doesn't appear to be a provision to record or report:-

- the number of people who take the substance but do not die and/or there are medical complications or other untoward outcomes or incidents

Review of the Act

The operation of the Act will be reviewed five years after it becomes law and government must report to Parliament.

29th March 2024

Mark Hazelwood

CEO

Scottish Partnership for Palliative Care