

Briefing:- Key features of the proposed Assisted Suicide (Scotland) Bill

About this Brief

The aim of this briefing is to provide a short overview of a proposal for new legislation to permit assisted suicide in Scotland. This briefing does not comment on the merits or demerits of the issues or of the proposal. This briefing is based on information contained in the proposal for consultation published by Margo MacDonald MSP on 23 January 2012

<http://www.scottish.parliament.uk/parliamentarybusiness/Bills/46127.aspx> .

Detailed legislation will not be produced unless and until the consultation is concluded and the proposal receives sufficient support from MSPs. In places where the consultation document is unclear an attempt has been made to interpret its intention. Quote marks are used to indicate key phrases from the proposal.

Who Can Get Assistance for Suicide?

To qualify for assistance a person must:-

- Have mental capacity to make an informed decision (using the definitions in the Adults with Incapacity (Scotland) Act 2001)
- Be registered with a medical practice in Scotland
- Be aged over 16
- Have either a “terminal illness” or a “terminal condition”
- Find their life intolerable.

What is the Process for the Request and Provision of Assistance to Commit Suicide?

A flowchart showing the process is in Appendix 1.

Declaration

A person wanting assistance to commit suicide must make a declaration using a standardised format stating:-

- That they are giving notice that at some future point they may apply for assisted suicide
- That they are making this declaration voluntarily
- That they understand the nature of the declaration
- That they are not acting under any undue influence

This declaration must be witnessed by two people confirming that to the best of their knowledge the person making the declaration is not acting under undue influence and understands the nature of the declaration. Witnesses must not stand to gain from the person's death, be a relative of the person or be involved in their medical care.

Pre-registration

The proposal also makes provision for a process of pre-registration. "This would consist of a simple declaration to the effect that the person regards assisted suicide as an option he/she may or would wish to pursue". This registration can be done before a person meets the eligibility criteria for assisted suicide.

Copies of the pre-registration are kept by the person's GP and the person. The declaration must state that the person was not under any undue influence to pre-register and it may be rescinded at any time. The pre-registration is required to be reviewed regularly to ensure it remains valid.

The purpose of the "pre-registration" and its relationship with the "declaration" is not entirely clear from the published proposal for consultation and the phrases are used interchangeably in places. The purpose of the opportunity for pre-registration seems to be to provide evidence that a person has had an interest in assisted suicide which has endured over time, and that this evidence can form part of the consideration by doctors receiving a subsequent written request for assisted suicide. The consultation document also suggests that for people who fear the legalisation of assisted suicide the fact that they don't have a completed pre-registration on their medical file will provide reassurance.

Sequence of Written Requests

After making a "declaration" (also called a "registration" and a "pre-registration" in some parts of the proposal) the person can make a written request for assisted suicide to a doctor who is required to check whether the eligibility criteria have been met. The doctor must also refer the request to a second doctor "for assessment and verification". If satisfied each doctor records this in writing. There is then a 14 day waiting period following which the person seeking assistance can make a second formal request for assistance. During "this waiting period alternatives may be explored and offered to the person – for example - changes in medical routine, counselling, hospice and respite care." The second request must again be in writing and must again be approved by 2 doctors. The second request should also include consent from the person to the filming of the suicide "as part of the process of safe guards". If a second request is not made within 28 days then the process starts back at the first request again.

Following confirmation of the validity of the second request "the person's doctor" writes a prescription for lethal medication. There is a time limit of 28

days from the second written request within which the assisted suicide must take place. If this time limit is exceeded the person has to return to the start of the formal request process.

Who Assists the suicide?

A list of "Licensed Facilitators" is made available during the request process to the person wanting assistance. The role of the licensed facilitator, who must be present at the suicide, is to:-

- Collect the lethal medication from a pharmacist and convey it to the person (and to return any unused medication)
- Stay with the person through the process and assist in any way (but they must not administer the medication)
- Film the process
- Fill in final paperwork and report the death to the police, providing evidence that the proper process had been followed.

The proposal envisages that the Facilitators would be employed by established voluntary organisations in the field, who would also train, vet and license them (in accordance with requirements determined by Scottish Ministers).

What About Conscientious Objectors?

The proposal indicates that professionals with ethical objections to involvement in the process need not participate themselves, although they would be expected to direct the person requesting assisted suicide to a professional who was prepared to participate.

Some Key Differences from Margo MacDonald's previous bill [End of Life Assistance (Scotland) Bill] (2010)

- The eligibility criteria appear narrower in the new proposal; a person's disability and inability to live independently are not sufficient to qualify for assisted suicide.
- The new proposal does not include voluntary euthanasia.
- The new proposal does not require the presence or assistance of medical staff at the suicide.
- The new proposal does not stipulate the need for assessment by a psychiatrist.
- In the new proposal the written requests do not require to be witnessed.

Mark Hazelwood
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Appendix 1- Flowchart Illustrating the Process for the Provision of Assistance to Commit Suicide

