CAN SAFEGUARDS MAKE ASSISTED DYING SAFE?

A briefing on the Assisted Dying for Terminally Ill Adults (Scotland) Bill

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The Scottish Parliament will soon be asked to vote on the legalisation of assisted suicide. The Assisted Dying for Terminally Ill Adults (Scotland) Bill was introduced by Liam McArthur, (Lib Dem MSP for the Orkney Islands) and is the third attempt to change the law in Scotland since 2010. This briefing sets out the features of the Bill, the hazards it contains and the potential threats that it poses for the sick and the vulnerable.

WHAT DOES THE BILL PROPOSE?

The Bill seeks "to provide for the lawful provision to terminally ill adults of assistance to voluntarily end their own lives".

WHO WOULD BE ELIGIBLE?

Any mentally capable adult, who is normally resident in Scotland, is registered with a medical practice and suffering from a "terminal" condition. According to the Bill: "a person is 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."[1]

Mr McArthur argues that, unlike previous proposals, his Bill only permits access for those who have an advanced and progressive terminal illness and are "in the end stages of life". Despite this, the wording of his Bill has been criticised for being too vague. Under his definition of terminal illness, people with conditions such as type 1 diabetes, rheumatoid arthritis, alcoholism or anorexia* could be considered eligible. There is no requirement for a terminal prognosis and nothing in the Bill specifies that only those in the end stages of life would be eligible.

WHAT SAFEGUARDS DOES THE BILL CONTAIN?

Procedure

The The Bill lays out a procedure by which the "terminally ill adult" would request an assisted death. Subsection 15 summarises the procedure thus:

"The coordinating registered medical practitioner or an authorised health professional may, provided the conditions in subsections (2) and (3) are satisfied, provide a terminally ill adult with an approved substance with which the adult may end their own life. (2) The conditions are that—

(a) the adult has made a first declaration which has not been cancelled,

(b) the coordinating registered medical practitioner has carried out the assessment mentioned in section 6(2) and has made the statement mentioned in section 8(1),

(c) the independent registered medical practitioner has carried out the assessment mentioned in section 6(4) and has made the statement mentioned in section 8(2), and

(d) the adult has made a second declaration which has not been cancelled."

A legal official may act as a proxy if patients are too physically impaired to sign the documents for themselves. Family members and cohabitees are not permitted to act as witnesses or proxies.

*Recognition of a subcategory of anorexia nervosa as a terminal condition was first proposed in 2022 by J Gaudiani, A Bogetz and J Yager, in "Terminal anorexia nervosa: three cases and proposed clinical characteristics" [2022] *J Eat Disorders*, 10:23. According to a 2024 article in *Frontiers in Psychiatry*, 60 cases have been recorded in the USA and Europe in which patients with eating disorders underwent "assisted dying" between 2012 and 2024. See: Chelsea Roff and Catherine Cook-Cottone, "Assisted death in eating disorders: a systematic review of cases and clinical rationales," [2024] *Frontiers in Psychiatry*, 15, 1431771.

This bureaucratic procedure is presented as a safeguard. However, no mechanism of accountability is described, and it prescribes no penalties for breaches of the system.

Age

The scheme is restricted to those aged 16 and older. Although it is illegal for anyone below the age of 18 to buy tobacco or alcohol in Scotland, under this scheme, someone as young as 16 with a "terminal" condition could be supplied with drugs to help them commit suicide. In this respect, Mr McArthur's Bill is more radical than the law in Canada (one of the most permissive regimes in the world) which restricts assisted suicide to those aged 18 and older[2]. Supporters of the Bill argue that it would prevent the assisted suicide of children. However, we know that in practice, girls under 16 who are considered to be mature enough to make their own medical decisions are routinely provided with birth control and abortion without their parents being informed.[3] There is no reason to believe that similar pressure to treat mature children as adults couldn't arise once the law had changed. In 2023, the age limit in the Netherlands, which was set at 12 years, was removed to accommodate so-called "mature minors".[4] Ill and disabled children in the Netherlands who are incapable of consenting to euthanasia can also be killed with the approval of their parents.

Coercion

The medical practitioners involved are required to assess whether the patient "made the declaration voluntarily and has not been coerced or pressured by any other person into making it". However, this assumes that medical professionals will always make an accurate assessment of what is a non-medical matter. We know that some women seeking abortion do so under pressure.[5] Women who have spoken about this experience have described how doctors failed to recognise that they were acting under coercion.[6]

Nor would the Bill's bureaucratic approach protect patients from emotional manipulation or the undue influence of family members. Evidence from other jurisdictions shows that many people request assisted suicide because they do not wish to be a burden on their family or caregivers. In 2023, 43.3% of people in Oregon said they feared becoming a burden on family, friends and caregivers.[7]

How would the Bill affect doctors and their patients?

The majority of UK doctors, especially those working closely with dying patients, do not support assisted suicide. When last polled, 82% of members of the Association for Palliative Medicine of Great Britain & Ireland rejected the legalisation of assisted suicide[8] and the Royal College of General Practitioners[9] and the British Geriatrics Society remain opposed.[10] A 2020 poll commissioned by the British Medical Association found that 76% of palliative care physicians opposed legalisation.[11] A 2019 survey from the Royal College of Physicians (RCP) put support at just 9%.[12] If it was legalised, most doctors caring for the terminally ill are unlikely to willingly participate in assisted suicide. The RCP survey showed only 24% of doctors were willing to prescribe lethal medication. Only 18% of doctors in geriatric medicine, 24% in medical oncology and 5% in palliative care stated that they would be willing to participate.[13]

Section 18 of Mr McArthur's bill states that "An individual is not under any duty…to participate in anything authorised by this Act to which that individual has a conscientious objection." In this vague assurance, the Bill purports to protect the conscience rights of doctors but it is less than honest about the difficulties in this area. In fact, the regulation of the medical profession is beyond the legislative competence of Holyrood. This legislation cannot, by itself, guarantee that doctors with a conscientious objection won't be compelled to facilitate assisted suicide either through direct involvement or by referral. If passed it may even violate the conscience rights protected by Article 9 of the European Convention on Human Rights.[14]

A recent poll found that 60% of those surveyed worried that legalising assisted suicide would fundamentally change the relationship between doctors and patients.[15] This included 51% of those who said they supported a change in the law. The same survey found that 43% of respondents feared that introducing assisted suicide when the health and social care budget is under serious pressure would inevitably place an incentive on the health service to encourage some people to end their lives early.

The 1949 International Code of Medical Ethics states: "A doctor must always bear in mind the obligation of preserving human life."[16] The World Medical Association condemns physician-assisted suicide[17] and the American Medical Association considers it to be "fundamentally incompatible with the physician's role as healer, would be difficult or impossible to control, and would pose serious societal risks."[18]

WHAT WOULD HAPPEN IF THE BILL BECOMES LAW?

We need only look at the experience of other countries to see what is likely to happen if the Bill becomes law.

1. Safeguards will gradually be removed

Once legalised, safeguards are seen as barriers and the criteria for assisted suicide are invariably expanded.

- Oregon and Vermont recently removed residency requirements.[19]
- Hawaii reduced its statutory waiting period from 20 days to five.[20] In California, this was reduced from 15 days to 48 hours,[21] which may explain the surge in assisted suicides from 522 in 2021 to 853 in 2022.[22]
- Since arguments for assisted suicide and voluntary euthanasia are so similar, its legalisation in some places has led to vulnerable groups like disabled infants or dementia patients, being euthanized even if they had not asked for death. Belgium and the Netherlands now permit the non-voluntary euthanasia of children. Reports from Belgium and Holland up until 2010 show that between 7% and 9% of all infant deaths involved active euthanasia by lethal injection.[23] In the Netherlands, the number of dementia patients euthanized rose from 12 in 2009 to 162 in 2019.[24]

2. Palliative care will be undermined

Palliative care can significantly improve quality of life, alleviate physical symptoms and reduce depression.[25] Despite the claims to the contrary, legalising assisted suicide can undermine the provision of palliative care.

- In Belgium, healthcare facilities reluctant to practise assisted suicide have been threatened with the loss of public funding.[26] At some palliative care units medical personnel left because they felt that their function had been "reduced to preparing patients and their families for lethal injections". [27]
- In Canada, funding was withdrawn from several hospices that refused to participate in the country's "Medical Assistance in Dying" (MAiD) scheme.[25] A 2020 study of palliative care found that MAiD had a negative impact on palliative care.[29] Clinicians described the conflict between maintaining MAiD eligibility and effective symptom control which compelled them to withhold medications that could alleviate their patient's pain but might jeopardise legal eligibility for assisted suicide causing distress to both patients and providers.

3. There will be an increase in suicides generally

Before the Australian state of Victoria passed the Voluntary Assisted Dying Act in 2017, supporters claimed that it would reduce the number of unassisted suicides by at least one per week. However, research published in the *Journal of Ethics in Mental Health* showed that suicides among older people actually increased by more than 50%.[30]

A 2015 study in the US found that assisted suicide was linked to a 6.3% increase in total suicides and a 14.5% increase in the over 65s.[31] Changing the law was associated with "an increased inclination to suicide in others". Data from Europe and the US indicate that following the introduction of assisted suicide, it is women, in particular, who have been placed at the greatest risk of avoidable premature death from an increase in rates of unassisted suicide.[32] Contrary to the claims of the assisted suicide lobby, more people are likely to take "matters into their own hands with tragic consequences" when the law is changed.

4. The elderly and disabled feel increasingly vulnerable

Advocates of assisted dying claim it is not a threat to the disabled, yet many disabled people fear being pressured to end their lives. While disabled people are not usually terminally ill, the terminally ill are often disabled.[33] Legalising assisted suicide sends a message that disabled people facing these issues are right to want to die. It means that people who are considered healthy will receive suicide intervention, while the sick or disabled will receive suicide assistance. It would create a two-tiered system with the less valued group encouraged to die.[34] That is why Scope, Mencap and the Veterans Association UK oppose a change in the law.[35]

Action on Elder Abuse is also against legalisation. It is estimated that between 7% and 9% of older people in Scotland are victims of at least one form of abuse, with over 40% of victims suffering more than one kind of abuse.[36] A recent report found that more than a third of older people in Scotland feel that they are a burden to society, while 34% felt that life was getting worse for older people.[37] In such an atmosphere, older people are vulnerable to feeling pressured to end their lives prematurely.

CONCLUSION

Mr McArthur believes his scheme would allow people to end their own lives in a way that is "safe, controlled and transparent" while respecting personal autonomy. What he has proposed, however, is not safe, is wide open to expansion and far from transparent. Mr McArthur claims his proposal contains strict safeguards. Sadly, this is not the case. The safeguards in the Bill rely on a bureaucratic procedure but there is no mechanism of accountability and it prescribes no penalties for breaches of the system.

For further information, please contact Liam Gibson on *liamgibson@spuc.org.uk*, or *07984 990 688*

ENDNOTES

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SOCIETY FOR THE PROTECTION OF UNBORN CHILDREN
82 Union St, Glasgow, G1 3QS, UK. TEL: +44 (0)20 7091 7091
WEB: www.spuc.org.uk

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