Proposed Assisted Dying for Terminally Ill Adults (Scotland) Bill

Introduction

A proposal for a Bill to enable competent adults who are terminally ill to be provided at their request with assistance to end their life.

The consultation runs from 23 September 2021 to 22 December 2021.

All those wishing to respond to the consultation are strongly encouraged to enter their responses electronically through this survey. This makes collation of responses much simpler and quicker. However, the option also exists of sending in a separate response (in hard copy or by other electronic means such as e-mail), and details of how to do so are included in the member's consultation document.

Questions marked with an asterisk (*) require an answer.

All responses must include a name and contact details. Names will only be published if you give us permission, and contact details are never published – but we may use them to contact you if there is a query about your response. If you do not include a name and/or contact details, we may have to disregard your response.

Please note that you must complete the survey in order for your response to be accepted. If you don't wish to complete the survey in a single session, you can choose "Save and Continue later" at any point. Whilst you have the option to skip particular questions, you must continue to the end of the survey and press "Submit" to have your response fully recorded.

Please ensure you have read the consultation document before responding to any of the questions that follow. In particular, you should read the information contained in the document about how your response will be handled. The consultation document is available here:

Consultation Document

Privacy Notice

I confirm that I have read and understood the Privacy Notice attached to this consultation which explains how my personal data will be used.

On the previous page we asked you if you are UNDER 12 YEARS old, and you responded Yes to this question.

If this is the case, we will have to contact your parent or guardian for consent.

If you are under 12 years of age, please put your contact details into the textbox. This can be your email address or phone number. We will then contact you and your parents to receive consent.

Otherwise please confirm that you are or are not under 12 years old.

No Response

About you

Please choose whether you are responding as an individual or on behalf of an organisation.
Note: If you choose "individual" and consent to have the response published, it will appear under your own name. If you choose "on behalf of an organisation" and consent to have the response published, it will be published under the organisation's name.

on behalf of an organisation

Which of the following best describes you? (If you are a professional or academic, but not in a subject relevant to the consultation, please choose "Member of the public".)

No Response

Please select the category which best describes your organisation

Other (e.g. clubs, local groups, groups of individuals, etc.)

Optional: You may wish to explain briefly what the organisation does, its experience and expertise in the subject-matter of the consultation, and how the view expressed in the response was arrived at (e.g. whether it is the view of particular office-holders or has been approved by the membership as a whole).
The Royal College of Psychiatrists in Scotland is the professional medical body responsible for:
• setting standards and promotes excellence in specialist mental health care
• supporting the psychiatry profession, including our 1,400 members in Scotland
• collective action to improve support. care and treatment for people with mental ill health.
The College aims to:
• improve outcomes for people with severe mental ill health, addictions, intellectual disabilities and autism, and to be among their strongest advocates
• advocate for parity of esteem between physical and mental health care
• through a leadership role on Scotland's Mental Health Partnership, advocate for a 'Promote, Prevent, Provide' agenda on mental health
• project and promote the voice of patients, carers and their organisations, recognising the value of their voice in shaping the care we provide

Please choose one of the following:

I am content for this response to be published and attributed to me or my organisation

Please provide your Full Name or the name of your organisation. (Note: the name will not be published if you have asked for the response to be anonymous or "not for publication". Otherwise this is the name that will be published with your response).

The Royal College of Psychiatrists in Scotland

Please provide details of a way in which we can contact you if there are queries regarding your response. Email is preferred but you can also provide a postal address or phone number.

We will not publish these details.

Aim and Approach - Note: All answers to the questions in this section may be published (unless your response is "not for publication").

Q1. Which of the following best expresses your view of the proposed Bill?

Unsure

Please explain the reasons for your response.
The RCPsych adopted a neutral stance in 2006 on the principle of 'physician-assisted suicide'. This reflected the wide range of strongly held opinions among our members.
We believe the principles of the Bill is for society and individuals personally to grapple with. Our comments therefore focus on the feasibility of the Bill, those aspects which would potentially require psychiatric input, and the impact on services in which our members operate.
On the Bill itself, there are clarifications required for our members to take a clear view. We would hope following the formal lodging of this legislation that there will be sufficient clarity to answer this.

Q2. Do you think legislation is required, or are there other ways in which the Bill's aims could be achieved more effectively? Please explain the reasons for your response.

While acknowledging our neutral stance, we would strongly suggest that any such debate on this topic takes place through a complete legislative process, with widespread public engagement.
This will allow for relevant stakeholders to input, and for the detail on the practicalities of any such legislation to be scrutinised. This is understandably a contentious debate, and it should give full consideration both to the principle of what is proposed, as well as the practicalities for introducing such an option for terminally ill patients.
We believe a legislative process is the most appropriate means of achieving this widespread input, although the citizens assembly model has been seen to be effective in other legislatures on topics of societal significance.

Q3. Which of the following best expresses your view of the proposed process for assisted dying as set out at section 3.1 in the consultation document (Step 1 - Declaration, Step 2 - Reflection period, Step 3 - Prescribing/delivering)?

Unsure

Please explain the reasons for your response, including if you think there should be any additional measures, or if any of the existing proposed measures should be removed. In particular, we are keen to hear views on Step 2 - Reflection period, and the length of time that is most appropriate.
We offer the following comments on the steps outlined in the proposal:
Step 1: Declaration (request for an assisted death)
The criteria for assessing a patient requesting an assisted death includes whether they have the "capacity" to make that decision as defined within the Adults with Incapacity (Scotland) Act 2000. There would need to be clarity as to what level of capacity is felt to be appropriate to make such a decision, and whether a higher threshold would be required. There would also need to be consideration as to any impacts from the Scott Review into Mental Health Law, and proposals it contains around capacity assessments.
A robust process for opting out of this care should be included and be applicable for clinicians who could be called on to provide a capacity assessment. This should not require more than a stating of preference by a clinician. Doing so would ensure that the obligation to meet the patient's needs falls on the system, rather than the individual clinician.
Relatedly, clarity on when a clinician refuses to participate, and whether they or the health board are obligated to find a replacement would be very helpful, as would messaging in any awareness raising campaigns highlighting that opting out of providing this care is a legitimate choice.
There is a suggestion a doctor "must refer the person to an appropriate specialist such as a psychologist". Clearly defining who these professionals would be can help ensure that, for what is a highly significant

Q3. Which of the following best expresses your view of the proposed process for assisted dying as set out at section 3.1 in the consultation document (Step 1 - Declaration, Step 2 - Reflection period, Step 3 - Prescribing/delivering)?

assessment, only those with sufficient expertise to make such a decision are utilised. There would also need to be consideration given to the additional demands this would place on mental health services where one or more staff members conscientiously object to participating in the process (a right we would expect to be included for those making such capacity assessments). In areas with limited specialist staffing, this could create significant issues in providing that capacity assessment in a timely fashion.
While there is a clear expectation of conscientious objection being allowed for all who participate in the process up to the final procedure, there may well be arguments in future regarding the GMC principles, including not causing patients distress, and whether refusing to participate in assisted dying contravenes these. There should be a balanced approach taken throughout that enshrines the right of individual clinicians to not participate against their wishes, but that also charges the system to meet the needs of that individual patient.

Step 2: Reflection period
We offer no comments on the appropriateness of what is proposed.

Step 3: Prescribing/Delivery
On seeking confirmation that someone has not reversed their decision in the 14 days that have passed since the initial declaration, there would be the potential for an individual's capacity to take such a decision to have deteriorated. There would therefore be questions as to whether a further capacity assessment prior to the prescribing stage is needed.
We would also seek greater detail on the reporting body, and how this would be constituted to monitor use of the Bill's proposals. Consideration should also be given for scenarios where a sub-consultant administers the medicine, and who holds responsibility in a such a situation for the patient's safety.
It would also be valuable to ensure clinicians involved in this process are given access to support and potentially care for their wellbeing following what may well be a personally traumatic experience for them, regardless of their initially expressed will to participate.

Q4. Which of the following best expresses your views of the safeguards proposed in section 1.1 of the consultation document?

Unsure

Please explain the reasons for your response.
The safeguards we would explicitly comment on are:
1. Two doctors establish that the person has the mental capacity to request an assisted death.
Despite there being an expectation that non-mental health focused clinicians are trained in AWI (Adults with Incapacity) legislation, our members have previously reported there is a general uncertainty among this group around applying it that translates to patients needing to be seen by psychiatrists and other mental health professionals unnecessarily. Consideration must be given to any additional training required to ensure clinicians are prepared to assess capacity more widely and in these particular scenarios.
There should not be a situation where psychiatrists become the de facto arbiters of whether all those seeking the right to an assisted death have capacity to request this.
2. If either doctor is unsure about the person's capacity to request an assisted death, the person is referred to a psychologist or other appropriate specialist.
We would urge that, alongside the development of a Bill to deliver these proposals, efforts are made to clearly establish the referral criteria and professionals who would be expected to conduct these assessments. We would also urge consideration be given of what happens if a person requests the opportunity to end their life due to a terminal illness, but no longer has or has diminished capacity. Relatedly, the need to consider whether a person with fluctuating capacity will need reassessed after the period of reflection should be considered. This would apply in particular to neurodegenerative diseases such as Alzheimer's.
On the professionals involved, specialist training and support must be developed ahead of the Bill's implementation that ensures the knowledge and support is in place for a multidisciplinary workforce required to deliver aspects of the bill, including capacity assessments.

Q5. Which of the following best expresses your view of a body being responsible for reporting and collecting data?

Unsure

Please explain the reasons for your response, including whether you think this should be a new or existing body (and if so, which body) and what data you think should be collected.
There must be an effective monitoring system that develops and implements safeguards protecting people and ensuring the proposed legislation is only used as prescribed. The ability to enable someone to request to end their life is a wholly new concept, and would require a statutory body with the ability to report on and act against any abuses of the system.
We make no comment on whether this body could operate within another pre-existing agency or needs to be separate and distinct, but this would need to be clearly mapped out.
There would also need to be consideration of the work undertaken by other agencies, including the Mental Welfare Commission, who would have a role in monitoring and recording capacity assessments. This would include gathering data on those who apply for but are refused assisted suicide. This would allow for a review of capacity assessments as a safeguard in such instances.

Q6. Please provide comment on how a conscientious objection (or other avenue to ensure voluntary participation by healthcare professionals) might best be facilitated.

As we have discussed in responses to the previous questions, some of the sisues which will need addressed include:
• What it would mean in rural settings, where one team member opting out would potentially hamper the delivery of the process.
• How members who do not want to participate will be guaranteed they will not have to. This should include clear messaging and an assurance that their career path is not hampered by this objection. There should also be a guarantee that this is not included in the role description for an advertised post, with a discussion with that individual on duties relating to the Bill to take place once in post.
• A register of who was willing to participate would need to be carefully considered. On such an issue, it would not be out of the question for individuals vehemently opposed to the proposals to attempt to access that register in order to personally target clinicians who engage in the process.
• Clear communication with clinicians and with the public on the legislation, what it means, and the option to opt out for clinicians would also be critical. There cannot be an expectation that a clinician can be made to participate against their will among the public.
• Person-specific objections will also need to be accounted for, such as when a family member, friend or colleague seeks the right to an assisted death.
• Those willing to participate are likely to be more in favour of the practice (or at least less opposed) than those who object, and this is likely to introduce the potential for positive bias into the system.
In essence, any system must be flexible to an individual wishes, while also accounting and delivering the patient's wishes as a systems obligation.

Financial Implications

Q7. Taking into account all those likely to be affected (including public sector bodies, businesses and individuals etc), is the proposed Bill likely to lead to:

don't know

Please indicate where you would expect the impact identified to fall (including public sector bodies, businesses and individuals etc). You may also wish to suggest ways in which the aims of the Bill could be delivered more cost-effectively.
Focusing on the services in which psychiatrists operate, we would expect the impact to fall on mental health services to the extent that additional capacity assessments will be required. This impact would need

Q7. Taking into account all those likely to be affected (including public sector bodies, businesses and individuals etc), is the proposed Bill likely to lead to:

to be assessed prior to implementation, including implications for staffing. Doing so would ensure any additional staff needed to deliver provisions in the Act could be contracted ahead of time.

Equalities

Q8. What overall impact is the proposed Bill likely to have on equality, taking account of the following protected characteristics (under the Equality Act 2010): age, disability, gender re-assignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, sexual orientation?

Unsure

Please explain the reasons for your response. Where any negative impacts are identified, you may also wish to suggest ways in which these could be minimised or avoided.
We would expect proponents and opponents of the legislation among the College membership will have very strong views on the potential equalities implications. We would urge these discussions take place in an evidence-based manner, with clear communication to ensure there are no misunderstandings as to how the legislation would apply to different groups.

Sustainability

Q9. In terms of assessing the proposed Bill's potential impact on sustainable development, you may wish to consider how it relates to the following principles:

• living within environmental limits
• ensuring a strong, healthy and just society
• achieving a sustainable economy
• promoting effective, participative systems of governance
• ensuring policy is developed on the basis of strong scientific evidence.

With these principles in mind, do you consider that the Bill can be delivered sustainably?

Unsure

Please explain the reasons for your response.
From the perspective of our members and the services in which they operate, ensuring any resulting activities as a result of the proposals do not significantly increase demand on mental health services would be important. The sustainability of services, and the impact of these duties on the workforce, should be considered.

General

Q10. Do you have any other additional comments or suggestions on the proposed Bill (which have not already been covered in any of your responses to earlier questions)?

As psychiatrists who are experts in assessing for and treating mental disorders, we expect some of the duties in the proposal will fall to our members in certain instances. We would strongly urge any legislation accounts for the following:

1. We recognise that in complex cases, psychiatrists may be asked for a judgement on someone's capacity and decision making in relation to ending their life, in the same way psychiatrists are currently asked to make judgements related to other matters to do with capacity and decision making. We would urge, though, that psychiatrists would not expect to be routinely asked to be involved in determining whether people are able to make a request for an assisted death.
2. We would expect, as is suggested in the proposals, anyone who conscientiously objects to participating is allowed to. This should be extended to all clinicians who may be called on to participate in the process. This should be borne in mind when it comes to assessing the impact of the proposals on health and social care more widely, in particular in rural areas where a psychiatrist refusing to participate would hamper the operation of any process.
3. Psychiatrists have special expertise in the diagnosis and treatment of mental disorders. They are able to determine the presence of absence of mental illness but would not see this as a determining factor in any proposed process. Patients with a mental disorder should be treated in the same way as patients with a physical disorder and any process should be based on capacity rather than diagnosis.
4. Should this legislation be passed, the College would expect to be consulted again and could provide more detail on how the Act may work in practice in mental health settings. The Code of Practice and any documents related to the implementation of the legislation would be extremely important and the College would be happy to provide further advice at that stage.