



17 November 2021

Assisted Dying for Terminally Ill Adults (Scotland) Bill: **NSS response**

Submitted by email: Liam.McArthur.msp@parliament.scot

About you

1. Are you responding as:

X on behalf of an organisation

2B. Please select the category which best describes your organisation:

X Third sector (charitable, campaigning, social enterprise, voluntary, nonprofit)

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 National Secular Society (NSS) is a not-for-profit, non-governmental organisation founded in 1866, funded by its members and by donations. We advocate for separation of religion and state and promote secularism as the best means of creating a society in which people of all religions and none can live together fairly and cohesively. We seek a diverse society where all are free to practise their faith, change it, or to have no faith at all. We uphold the universality of individual human rights, which should never be overridden on the grounds of religion, tradition or culture.

We advocate for a secular approach to current major health issues. We are opposed to religious influences in medicine where these adversely affect the manner in which medical practice is performed.

We support patient autonomy and work to protect patients from the imposition of other people's personal religious views. Strong opposition to assisted dying comes from some religious leaders who regard life as sacred and assisted dying as intrinsically harmful. We support the democratic right of all people to contribute to this debate. However, the over-representation and special status of religious groups currently impose a disproportionate level of influence. The views of the general public, professionals and relevant organisations should be fairly reflected at policy level.

Our response has been written in consultation with professionals from the Secular Medical Forum, which provides expert advice and opinion to the NSS on issues related to healthcare.

3. Please choose one of the following:

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

4. Please provide your 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 (Note: The name will not be published if you have asked for the response to be anonymous or “not for publication”.)

National Secular Society

Please provide 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. (Note: We will not publish these contact details.)

5. Data protection declaration

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

Your views on the proposal

Aim and approach

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

X Fully supportive

Please explain the reasons for your response

We are fully supportive of the proposed Bill, and the reasons for the Bill outlined in the proposal document. The Bill is broadly similar to Baroness Meacher’s Assisted Dying Bill currently at committee stage in the House of Lords, which we also support.

We recognise that those who support reforms to the law to accommodate assisted dying have differing views on what the law should look like. For example, My Death My Decision argues that assisted dying should also be available for those who do not have a terminal illness but are suffering unbearably from an incurable disease.

While we support reforms in law to accommodate the choice of assisted dying, the NSS is neutral on what form these reforms should take, provided they are centred on patient welfare and safeguarding against any abuse. We believe this modest Bill is crucial to bring about urgently needed reform to ensure dying people are treated with compassion and dignity, and to bring clarity to Scotland’s ambiguous laws regarding assisted dying.

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

We think legislation is required. Scotland's law around assisted dying is particularly ambiguous, and only legislation can help to clarify the law for dying people and their relatives. It will also provide for greater safeguards to protect dying people than currently exist.

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

X Fully supportive

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 fully support the proposed process, which broadly mirrors that proposed in Baroness Meacher's Assisted Dying Bill.

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

X Fully supportive

Please explain the reasons for your response.

We fully support the proposed safeguards, which broadly mirror those proposed in Baroness Meacher's Assisted Dying Bill.

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

X Fully supportive

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.

We support the proposals regarding data collection. We place particular importance on the consideration of who can access the register of Health Care Professionals and staff whose personal ethics permit participation in assisted dying (and presumably, those whose personal ethics *do not* permit participation). This is sensitive personal data and it should only be available on a 'need to know' basis to protect the privacy and safety of all healthcare professionals, whatever their views.

6. Please provide comment on how a conscientious objection (or other avenue to ensure voluntary participation by healthcare professionals) might best be facilitated. It is important that healthcare professionals with religious or philosophical objections to assisted dying have the right to refuse to participate. However, patients must not be left in a position whereby the healthcare professional is abandoning them because they have chosen a particular reasonable, legal treatment option. Patients' rights and welfare must not be undermined by the individual beliefs of healthcare professionals. Healthcare professionals who do refuse to participate must have a legal duty to refer the patient to another consenting provider.

We are concerned that there have been recent attempts to widen freedoms for healthcare professionals to withdraw from providing certain services. For example, in the past few years the NSS has become aware of a number of incidents in which women seeking emergency contraception have been turned away from pharmacies where the pharmacist on duty refused to provide it without referring the patient to another suitable pharmacist, which is in breach of General Pharmaceutical Council guidance¹.

It is vital that facilitating conscientious objection is not applied so broadly that patients seeking lawful assisted dying are inhibited from making this choice due to the personal objections of healthcare professionals.

Financial implications

7. 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:

X a significant reduction in cost

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.

We believe the proposed Bill is very likely to lead to a significant reduction in cost for individuals and both public and private sectors.

One of the cruellest consequences of the lack of legislation to enable assisted dying is that a dignified and pain-free death for the terminally ill is a luxury only the wealthiest in society can opt for.

Travelling to Switzerland's Dignitas clinic for an assisted death is simply not a viable option for most people in Scotland whose suffering has become so unbearable and unmanageable that they would prefer to hasten their death. It costs more than £10,000, so it is too expensive for a huge proportion of Scots. Even people who can afford the cost often need to travel whilst they are still physically capable of doing so, meaning that they end their lives sooner than they would were the option of an assisted death available to them in Scotland. They also may feel that they must travel alone to avoid placing their loved ones at risk of prosecution on their return. That cost should be a principal factor in determining whether an assisted death is available for an individual in Scotland is an intolerable injustice.

¹ <https://www.secularism.org.uk/news/2020/11/ensure-women-can-access-emergency-contraception-pharmacy-told>

Financial implications of assisted dying to the public and private sectors should be considered with caution. The possible savings to the public sector of allowing assisted dying should not be a significant consideration in this argument – dying people should never be treated as a ‘burden’ on society or the economy. We believe there is a strong case for more public money to go towards ensuring every individual requiring palliative care can receive it to the highest standard.

There will be additional costs involved in a robust assessment process, training of professionals and use of assisted dying. But evidence from other jurisdictions suggest that assisted dying would be at least cost-neutral overall.

Equalities

8. 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?

X Positive

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.

The proposed Bill is likely to have a positive impact on equality, particularly in regard to the protected characteristics of age, disability, race, and sex.

Terminal or incurable illness can affect anyone, at any time. But certain incurable illnesses such as terminal cancer are more likely to be diagnosed in older people². It is therefore the elderly who are more likely to suffer detriment from the lack of availability of an assisted death.

Since a legal assisted death is only possible abroad at the Dignitas clinic in Zurich, and disabled people are less able and sometimes unable to travel because of their disability, disabled people are uniquely disadvantaged by the current situation. A person with a terminal illness may well be disabled as a result of that illness. According to the Campaign for Dignity In Dying, 86% of people with a disability support a change to the law on assisted dying³.

The option of travelling to Dignitas is only accessible for those who are financially secure, as it costs over £10,000 in total. This is highly discriminatory against those who are less wealthy. Certain protected characteristics recognised by the Equality Act 2010 are linked with income, including age, disability, race and sex.

We welcome the proposal’s acknowledgement that “freedom of religion and belief protects individuals but not institutions, and protects individuals with non-religious convictions as equally as those with religious beliefs”. Therefore, allowing individuals the choice of an assisted death has no impact on the religious freedom of those who do not agree with assisted dying, as long as healthcare providers are given the right to conscientious objection as this Bill proposes. Conversely, it would protect the freedom and autonomy of individuals who do want an assisted death, even if this differs with the established teachings of their religion or their community.

² Web MD, ‘Cancer incidence rates by age’. <https://www.webmd.com/cancer/guide/cancer-incidence-age> Accessed 28 June 2021.

³ Campaign for Dignity in Dying, ‘The facts’. <https://www.dignityindying.org.uk/why-we-need-change/the-facts/> Accessed 28 June 2021.

Sustainability

9. 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?

Yes

Please explain the reasons for your response.

Living within environmental limits

While environmental concerns play an exceedingly minimal role in the assisted dying debate, it is hardly environmentally sound to force people to fly to Switzerland to have an assisted death at Dignitas.

Ensuring a strong, healthy and just society

A 'just' and 'healthy' society cannot be one where dying people are forced to endure unbearable suffering and have cannot choose a dignified and pain-free assisted death.

Achieving a sustainable economy

Please see our answer to Q7 for discussions on the financial implications of assisted dying.

Promoting effective, participative systems of governance

As the proposal highlights, the public are overwhelmingly in favour of changes in law to accommodate assisted dying. This Bill would therefore promote healthy and robust democracy and send the message that the public are being listened to and their needs addressed.

Ensuring policy is developed on the basis of strong scientific evidence

Developing policy on the basis of strong scientific evidence is at the heart of the argument for legislating to allow the choice of assisted dying. Strong opposition to assisted dying comes from religious leaders who regard life as sacred and assisted dying as intrinsically harmful. Their views are frequently rooted in religious beliefs and scriptures rather than scientific evidence. We support the democratic right of all people to contribute to this debate. However, the over-representation of religious groups and the special status granted to religious groups currently impose a disproportionate level of influence. For example, the Church of England, which opposes assisted dying, has been given a privileged voice in this debate in parliament due to its bishops given seats as of right in the House of Lords.

The views of the general public, professionals and relevant organisations should be fairly reflected at policy level. And the prevailing view of these groups is that of support for assisted dying, as the proposal has highlighted.