

Assisted Dying for Terminally Ill Adults (Scotland) Bill

SAMH Response

About SAMH

Around since 1923, SAMH is Scotland's national mental health charity. Today, in over 60 communities we work with adults and young people providing mental health social care support, services in primary care, schools and further education, among others. These services, together with our national programme work in See Me, respectme, suicide prevention and active living, inform our policy and campaign work to influence positive social change.

Introduction

SAMH welcomes the opportunity to respond to the proposal for a bill to introduce assisted dying. We are taking a neutral stance on this proposal, however if the bill is introduced we will consult with service-users and stakeholders and, as a consequence, our position may change.

There are a number of areas we believe any future bill must address. These include ensuring extensive and robust safe-guards are put in place throughout any process; there is a clear and accurate definition of capacity; and that substantial psychological support is offered to anyone considering assisted dying, as well as to their loved ones.

1. Which of the following expresses your views on the approach?

Neutral.

Please explain your reason.

We are taking a neutral stance on this proposal. This is a shift from our position on the Assisted Suicide Bill in 2010 where we were opposed to the possibility that someone with a mental health problem which caused them to find their life to be intolerable may request assistance. We believe this current bill proposal to be a positive change in language and definitions.

Should this proposed bill be introduced, SAMH would carry out further consultation with service users and stakeholders, and with international contacts to ascertain what effect similar legislation abroad has had on people with mental illness. Therefore, in this consultation we are only able to express preliminary thoughts, and take no firm position for or against at this moment. We reserve the right to change any position we have on the proposed legislation.

2. Do you think legislation is required, are there other ways the bills aims could be achieved more effectively? Please explain your reasons.

SAMH believes that legislation is required to make sure that the appropriate checks, balances and transparency are in place.

3. Which of the following most expresses your views of the proposed process in section 3.1?

Neutral

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.

Step 1: Declaration.

We are concerned the definition of “capacity” is as yet unclear, as is some of the detail around how capacity will be assessed and the qualifications of those who will be responsible for doing so. We are also concerned there is no mention of psychological support being offered to the person considering assisted dying or to their loved ones.

In any draft bill we would like to see the meaning of the word “capacity” defined and expanded on, with reference to the definitions set out in existing adult and child protection legislation. This legislation is currently being reviewed by the Scottish Mental Health Law Review which is expected to report in 2022. We would want to see any recommendations on capacity be a determinant of the definition in this context.

Given the impact of a terminal diagnosis we would like to see a system where psychological support is offered to all those who receive a terminal diagnosis, as well as family members and loved ones. However, this should be an essential component of any assisted dying process. Anyone considering assisted dying must be proactively offered access to psychological support, delivered by a suitably qualified person for as long as they need it, both in advance of any decision as well as afterwards. This offer of support must also be extended to their loved ones. Any bill should reflect this requirement.

We would like to see detail on how such psychological support would be offered, how much the mental health budget would need to be increased to support this extra work, and how it would operate alongside the maximum 18 weeks waiting time.

We believe that there may be a necessity to expand upon the role and responsibilities of the two doctors involved in assessing the patient, for instance the Mental Health Act contains provisions on conflict of interests and Approved Medical Practitioners. We would also be keen to see any health professionals being given responsibility under this bill to have received thorough psychological training. We would welcome more detail around the doctors, their legislative responsibilities, training etc in the draft bill.

Step 2: Reflection. We are concerned that if someone with a mental illness should also receive a terminal diagnosis that the reflection time is too short. A major depressive episode may last longer than the 14 days, and even less significant depression can inhibit decision making. It will be important to determine if a person’s capacity to make a decision is significantly impaired while mentally ill. It may be necessary to have a longer reflection period, although we acknowledge this may not be possible in all cases.

4. Which of the following best describes your views set out in the safeguarding section 1.1 of the document. Please explain your answer.

Neutral

As we have stated we have concerns over the waiting period, definition of capacity, access to psychological support and recording.

Another concern is if doctors involved will have training in the subtle and complex signs of domestic, elder and disability abuse, and if they do detect these signs what their next steps and actions would be.

As stated previously, in any draft bill we would like to see the meaning of the word “capacity” defined and expanded on, with reference to the definitions set out in existing adult and child protection legislation. This legislation is currently being reviewed by the Scottish Mental Health Law Review which is expected to report in 2022. We would want to see any recommendations on capacity be a determinant of the definition in this context.

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

Neutral

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.

SAMH believes it is important there is a statutory duty to report to parliament on data regarding equalities characteristics of those requesting assisted dying, terminal diagnosis, comorbidities, disability and medications as well as rejected and accepted requests, geography, socio-economic status and some way to identify doctors involved. This will enable transparency and the proper analysis of trends.

Given the serious nature of assisted dying we believe it is important that there is an early warning system to show if any one population based on geography, identity or diagnosis is becoming over represented and take swift action to understand the trend.

As an example SAMH would be concerned and seek to understand more, if data showed that those who choose assisted dying had a much higher rate of co-morbidity with long-term mental ill health than the rest of the population. However, we can only understand trends if good quality data is collected and made publicly available on a regular basis.

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

As a matter of principle SAMH supports a professional’s right to conscientiously object to taking part in assisted dying, but believe professional organisations are best placed to comment on how this happens.

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:

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.

SAMH queries the adequate financing of psychological services which may have an impact on the bill. For instance there is currently an 18 week maximum waiting time for adult psychological

services¹, and similar in CAMHS². As the bill will be applicable to over 16s, the CAMHS waiting times would be relevant. If people who are requesting assisted dying were to be fast tracked to psychological services, we need to understand how this would impact on waiting lists.

As we stated previously, we believe psychological support should be offered to anyone with a terminal diagnosis, and in particular to any individual who is considering assisted dying and their loved ones in a timely manner, and for as long as the person requires it.

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?

Unsure

SAMH understands that the effect this bill may have on people who live with disability is of great concern to many. We would urge the Committee involved in the scrutiny of the bill and the Scottish Parliament as a whole to take the time needed to thoroughly explore these concerns.

We would not want to see a situation where people with any kind of disability felt pressure to end their lives either due to stigma or fear they are a burden. These motives may not be immediately clear so robust psychological support and assessment will be essential.

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?

Unsure

10. 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)?

To conclude, we are not at this point taking any position on the bill and remain neutral. We do however have concerns around how this piece of legislation will interact with those who have experienced mental illness and the legislation already in place to protect them. We understand that this bill seeks to alleviate pain and suffering for those with terminal illness, but we cannot assume

¹ <https://www.isdscotland.org/health-topics/waiting-times/waiting-times-statistics/>

² <https://www.publichealthscotland.scot/publications/child-and-adolescent-mental-health-services-camhs-waiting-times/child-and-adolescent-mental-health-services-camhs-waiting-times-quarter-ending-30-june-2021>

that there will not be part of the terminally ill population who will also have a co-morbidity with mental illness. Indeed such a diagnosis may well trigger depression even in those who have not previously experienced it. It will be essential any bill recognises this and puts in place robust psychological support as well as extensive safe-guards.