

Assisted Suicide (Scotland) Bill

Catholic Bishops' Conference of Scotland

1. Do you agree with the general purpose of the Bill to make it permissible, in the circumstances provided for, to assist another to commit suicide?

No. We believe human life must be fully protected by the law at every stage. It is not appropriate for any person to make judgments about the 'quality' of another's life as this bill would require. We concur with the concern expressed by the director of the Scottish Council on Human Bioethics that "[o]nce an individual or society as a whole begins to believe that some persons are unworthy of life, then the equality in value and in worth of every human life is rejected – an equality that is the very basis of a civilised and compassionate society."¹

The Bill is, in our view, at variance with protections under European human rights instruments.² In particular the parliamentary Assembly of the Council of Europe has stated "The Assembly ... recommends that the Committee of Ministers encourage the member states of the Council of Europe to respect and protect the dignity of terminally ill or dying persons in all respects . . . (c) **by upholding the prohibition against intentionally taking the life of terminally ill or dying persons**, while: (i) recognising that the right to life, especially with regard to a terminally ill or dying person, is guaranteed by the member states, in accordance with article 2 of the European Convention on Human Rights which states that 'no one shall be deprived of his life intentionally'; (ii) recognising that a terminally ill or dying person's wish to die never constitutes any legal claim to die at the hand of another person; (iii) recognising that a terminally ill or dying person's wish to die cannot of itself constitute a legal justification to carry out actions intended to bring about death.³ (Emphasis added).

More recently the Parliamentary Assembly has re-affirmed this position stating that "Euthanasia, in the sense of the intentional killing by act or omission of a dependent human being for his or her alleged benefit, must always be prohibited."⁴

We are concerned also that the Policy Memorandum acknowledges that this legislation is a stepping-stone to further, more wide-ranging legislation and therefore contradicts claims that there is no danger of a 'slippery slope' and the consequent threat to innocent life.

2. Do you have any views on how the provisions in this Bill compare with those from the previous End of Life Assistance (Scotland) Bill?

¹ Letter to Herald 15 March 2013, Dr Calum MacKellar (See URL <http://www.heraldscotland.com/comment/letters/fear-persists-assisted-suicide-will-not-be-adequately-monitored.20502463> last accessed 22 May 2014)

² For example the duty to act to provide criminal laws as a deterrence against the deprivation of life as identified in *McCann v UK* (1996) 21 EHRR 97, *Osman v UK* (1999) EHRLR 228 etc.

³ Parliamentary Assembly of the Council of Europe, Recommendation 1418 (1999)¹ 'Protection of the human rights and dignity of the terminally ill and the dying' adopted 25 June 1999

⁴ 'Protecting human rights and dignity by taking into account previously expressed wishes of patients' Resolution 1859 (2012) of the Parliamentary Assembly of the Council of Europe, See URL <http://assembly.coe.int/Mainf.asp?link=/Documents/AdoptedText/ta12/ERES1859.htm> (last accessed 22 May 2014)

Many of the previous “safeguards” have been diluted or entirely removed potentially creating an even more unsatisfactory bill than that overwhelmingly rejected by the parliament so recently.

It is a retrograde step to remove any involvement of those most qualified and specially trained i.e. psychiatrists and psychologists. ‘Inclusion Scotland’ states “the definition of legal capacity as used by the Adults with Incapacity Act (2001) was not a sufficient safeguard without a psychiatric evaluation, particularly where a patient was not known to the doctor involved.”

The removal of the requirement for a continuous 18 months registration with a medical practice in Scotland greatly increases the likelihood for “suicide tourism”.

The removal of a second witness to the process can only mean a weakening in safeguards.

3. The Bill precludes any criminal and civil liability for those providing assistance, providing the processes and requirements set out in the Bill have been adhered to. Do you wish to make any comment on this?

The law should remain unchanged. The proposals gravely undermine the protection due to all citizens as required by article 2 of the European Convention on Human Rights. It fails to provide adequate deterrence for the misuse of any of the provisions and fails to provide direction on how such misuse should be detected and investigated.

4. The Bill outlines a three stage declaration and request process that would be required to be followed by an individual seeking assisted suicide. Do you have any comment on the process being proposed?

The witness statement could be provided by someone who has known the person for an extremely short period of time. This therefore reduces confidence that this will be an adequately informed view. A witness who has only known an applicant for a short time is evidently less likely to notice if someone is acting out of character or under inappropriate pressure.

Written cancellations after the request for lethal medication could be lost in the post or misplaced thus jeopardising the integrity and safeguards of the process. There is also a risk of confusion for those already in a highly vulnerable position due to the requirement that a cancellation of request must be sent to their own practice even though there may have been no involvement of a GP from their practice at any stage of the process.

The fact that “neither of the statements relating to a person’s second request need be made by a medical practitioner who made a statement in relation to the person’s first request” risks a dilution of this safeguard through a lack of continuity and consistency. It could also increase the chances of this part of the process being a ‘rubber stamp’ rather than an additional safeguard.

There is some ambiguity in the procedure over how the cancellation of an earlier stage in the process impacts on subsequent stages which have already been completed.

We share the concern expressed by the Royal College of Physicians of Edinburgh that a time-limit may result in people feeling pressured to take the lethal concoction (or other deadly measure) before the deadline.

The admissibility of a photocopy for the original documents provides a much lower threshold of proof than for many other issues that do not even involve life and death decisions such as the deferment of student loans, completion of tax forms etc.

5. Do you have any comment on the provisions requiring that the person seeking assisted suicide must have a terminal or life-shortening illness, or a progressive condition which is either terminal or life-shortening?

The provisions are too broad in scope to ensure clarity in the law. The eligibility requirements may be construed to encompass those with relatively minor illnesses.

6. Are you satisfied with the eligibility requirements as regards age, capacity, and connection with Scotland as set out in the Bill?

No. In its submission to the 2010 bill the Royal College of Psychiatrists expressed a 'general reluctance to contemplate end of life assistance in young people.' A lower age limit than 18 would not be in line with the United Nations Convention on the Rights of the Child.

Recent statistics have shown the increasing prevalence of depression among the young (as well as others) and that 708 young people have been waiting more than 26 weeks for treatment.⁵ This would be a very dangerous climate in which to introduce assisted suicide.

In consultation responses to the proposed assisted suicide (Scotland) bill we note that a wide range of organisations rightly gave detailed concerns about the bill's provisions for determining capacity.

With no minimum period stipulated that one must be registered with a medical practice in Scotland the system would leave itself open to "suicide tourism".

7. Do you have any comment on the roles of medical practitioners and pharmacists as provided for in the Bill?

It would directly undermine the Hippocratic ethics which have underpinned the practise of medicine in our country for centuries.

In practice a register of pro and anti GP's and consultants would need to be created. This has been recognized as fairly likely by 'The Royal College of General Practitioners Scotland'.

There is no legislative provision of conscientious objection for pharmacists, GPs and consultants.

As we have seen in other areas of medical practice e.g. abortion, even when there is the right to conscientious objection it can lead to discrimination or at least a difficult work environment for those not prepared to take part.

Can already heavily overworked GP's really be expected to provide the adequate time and consideration needed to try and determine someone's suitability to take their own life? Many GPs would readily admit to not being sufficiently qualified to do so. It will also introduce a whole new swathe of 'paperwork' to their workload.

⁵ Figures as cited in Scottish Parliament Motion S4M-09558 on Improving Scotland's Mental Health

It is notable that 70% of respondents to the consultation were against the proposals.

8. Do you have any comment on the means by which a person would be permitted to end his/her life under the Bill?

There is no clear definition given on the means of ending life therefore raising grave concerns about the methods which could be employed.

9. Do you have any comment on the role of licensed facilitators as provided for in the Bill?

They are in a far more vulnerable position due to the decision to remove a requirement to film from the bill. It is surely inappropriate that someone as young as 16 could and may be expected under term of contract to fulfil this role. The general functions of the licensed facilitators are so broadly termed that the process risks becoming one of euthanasia in all but name. As the only other person who might be involved in the assisted suicide it is a tremendous level of trust and responsibility to place on the shoulders of an individual. Placing such a level of responsibility on any person or system would require a proportionate level of oversight and safeguards to ensure the proper exercise of that power. No greater power can be granted than that of ending someone's life and therefore any system of checks and safeguards would have to be extensive. It is indeed a grave concern that a civilised society should envisage such a role.

10. Do you have any comment on the role of the police as provided for in the Bill?

An already overworked professional body will have their workload added to and more time will need to be spent on administration rather than the real priorities of the policing.

11. Do you have any comment to make about the Bill not already covered in your answers to the questions above?

There is an obvious contradiction between the government's 'suicide prevention strategy' drive and the introduction of this Bill.

It is troubling that the accompanying documents to the Bill speak of a reduction: in the costs of providing social care; in demand of recognized medical practitioner's time; in the costs of medication; and family care costs, if the bill were to be passed. This gives further credence to the MSYP who said "I think the problem is going to be this societal expectation going forward that if you are someone who needs support from other people, you are a burden and you have a responsibility to stop being a burden..."⁶ A utilitarian approach to healthcare would open the door to a destructive path especially given the cost saving possibilities which could easily lead to the dehumanisation of patients and give rise to pressures to end lives prematurely.

The large amounts of attendant costs to the bill would be better spent in greater provision of palliative care.

Section 24 of the bill with regard to 'savings' which seeks to cover mistakes in the process that are done "unintentionally but not carelessly" or are "done in good faith"

⁶ Assisted Suicide (Scotland) Bill, Summary of Consultation Responses, paragraph 48 See URL http://www.scottish.parliament.uk/S4_MembersBills/Assisted_Suicide_Summary_of_consultation_responses_Final_v.3.pdf (last accessed 14 May 2014).

is surely going to be nigh impossible to determine or adjudicate upon.

There is concern that in the analysis of responses to the consultation some responses in favour of the proposal have been categorised as substantive individual responses by the Non Government Bills Unit when they are clearly part of a campaign response, for example response 150; whereas a genuinely substantive individual response such as response 187 is registered as a standard response which is understood by the NGBU as a response type which “at best adopt other people’s reasons without giving their own.”

There is an inherent contradiction in the philosophical justifications proposed by the bill.

Autonomy is contradicted by safeguards based on criteria other than competence. ‘Safeguards’ which define those who are eligible for having their lives prematurely ended are intrinsically arbitrary and discriminatory.

The proposal is wrong in principle and would be impossible to implement in practice whilst ensuring the safety of inhabitants of our country.

It is important to bear in mind that a change in the law is formally opposed by the British Medical Association, the Association for Palliative Medicine, the British Geriatric Society, the World Medical Association and the Royal Colleges of Physicians and General Practitioners. Medical opposition has been frequently reaffirmed as with the BMA in 2012 and the RCGP in 2011 and 2014, when 77% of respondents favoured maintaining collegiate opposition. We recommend the RCGP’s consultation analysis which is the most recent survey of Scottish doctors on this issue.

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