

Assisted Suicide (Scotland) Bill

Dignitas

To live with dignity - To die with dignity

Q1. 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?

Yes.

Dignitas defends the right of an individual to have access to a self-determined, dignified and risk-free end in life in the case that individual chooses this option and therefore fully supports this aim.

Dignitas supports the three stage declaration as we have seen from many years of experience that such approach satisfies the requirements of professionally assessing the individual request and documenting it.

At Dignitas, there are always two professionals present during the entire process, this professional attendance to all needs of the individual, to his or her close ones, and also to the requirements of ensuring safety during the process and control mechanisms makes all the difference. The proposed Assisted Suicide (Scotland) Bill adheres to safety and quality requirements and Dignitas agrees with them.

Q2. Do you have any views on how the provisions in this Bill compare with those from the previous End of Life Assistance (Scotland) Bill?

No.

Q3. 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 sections of Part 1 of the Bill are most important as they clarify that 1) actions taking place within the frame of the requirements of the Bill – and only such actions – are lawful and protected and 2) anyone qualifying to be involved in the process, such as a practitioner, a facilitator or a proxy, would actually be prepared to act in the benefit of a suffering person.

Q4. 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 proposed system of a first and then a second request basically adheres to the “Swiss model” However, Dignitas feels that having to find two different registered medical practitioners, each making a statement, that is, acknowledging the request, would be a prerequisite too strict, a hurdle too high.

Dignitas therefore would prefer that it should be implemented in the Bill that one medical practitioner’s statement is sufficient and that he or she is free to choose to contact a colleague in order to obtain a second opinion, but this not having to be a prerequisite.

Regarding the proposed waiting period of 14 days between the first and the second request: such a waiting period should not be implemented, because, for a terminal cancer patient for example suffering from bone metastases which are known to cause extreme pain, 14 days is a very long time. Dignitas proposes the “Swiss

model” which has a one-formal-request approach, involving one medical doctor, whom the patient can contact and access again as soon as a ‘provisional green light’ for assisted suicide is given. A fixed waiting period is not necessary as automatically, ‘straight-forward’ requests will be acknowledge quicker whilst more complicated ‘cases’ would take more time to assess.

The formal request(s) period should be used to explore and suggest alternatives such as changes in medical routine, counselling, hospice and respite care, etc., without the person having the obligation to consider these alternatives. In fact, not only during a waiting period (no matter how short or long) of the assessment proceedings towards an assisted suicide, but at all times of contact between a patient and his or her practitioner, an in-depth exploring and suggesting of treatments and alternatives should take place.

Q5. 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?

It is generally and widely accepted that individuals suffering from a physical terminal or life-shortening illness or progressive condition such as most forms of cancer, Amyotrophic Lateral Sclerosis (Motor Neurone Disease), Multiple Sclerosis, Parkinson’s, etc. should be eligible for assistance with assisted suicide. The Bill adheres to this. However, questions on defining “terminal”, “life-shortening” and “progressive” could come up.

Q6. Are you satisfied with the eligibility requirements as regards age, capacity, and connection with Scotland as set out in the Bill?

1) Regarding that the person must be aged 16 or over

This eligibility requirement takes legal age as the ‘starting point’ of being able to access the option of an assisted/accompanied suicide. Dignitas acknowledges that in legislation one has to “draw a line somewhere” in order to establish a legal frame; thus, the criterion of legal age makes sense, however, one should not oversee the aspect of discrimination due to age.

2) Regarding capacity

Mental capacity to make an informed decision is the basis for individuals not only to express their will but also to ensure that such will is effective in the frame of the given legal system. This corresponds to the approach of all jurisdictions – as far as we can see – which up front presume any adult to be mentally competent unless they fail to meet certain given criteria which could lead one to assume that their capacity might be limited or even lacking; for example such as is enshrined in Swiss Civil Code article 16 which states: “A person is capable of judgement within the meaning of the law if he or she does not lack the capacity to act rationally by virtue of being under age or because of a mental disability, mental disorder, intoxication or similar circumstances”¹. Any individual – with at least a minimum of physical autonomy – no matter whether mentally competent or not, can attempt and/or commit suicide; however, it is clear that if it shall be a rational, well-considered decision with involvement of third persons, mental capacity to make an informed decision must be given. This criterion matches the ‘Swiss model’ and it is appropriate.

¹ See online: <http://www.admin.ch/ch/e/rs/2/210.en.pdf>

3) Regarding the connection with Scotland

As it is pointed out in paragraph 55 of the Policy Memorandum, it was one of the policy decisions to require anyone seeking an assisted suicide to be registered with a medical practice in Scotland, because there were concerns that the Bill might lead to a cross-border traffic in people resident elsewhere travelling to Scotland to seek an assisted suicide.

The term “suicide tourism” is often (mis)used; however, people from abroad coming to Dignitas are not suicide tourists. They are, in fact, “freedom tourists” or “self-determination tourists”.

Q7. Do you have any comment on the roles of medical practitioners and pharmacists as provided for in the Bill?

Dignitas has concerns that giving responsibility for deciding whether somebody who requests an assisted death should be eligible for assistance, paternalism over individuals is enforced instead of strengthening the self-determination of individuals, a result which is in direct contradiction with the meaning and content of the ECHR.

As to the provision of the medication, the proposal of a pharmacist dispensing the lethal drug based on the prescription by the medical doctor and giving it to the ‘facilitator’: this matches the ‘Swiss model’.

Q8. Do you have any comment on the means by which a person would be permitted to end his/her life under the Bill?

Based on the experience of Dignitas deriving from over 1,700 accompanied suicides in 16 years, the one drug of choice for a dignified, risk-free and painless accompanied suicide is Sodium Pentobarbital², a dosage of 15 - 20 grams. This drug is a fast-acting barbiturate which has been used (in small dosages) for short-term treatment of insomnia and anaesthetic. In small dosage it is not lethal as it is not a poison. However, in large dosage it will lead to unconsciousness and a deep coma within 3 - 5 minutes and, after 20 - 40 minutes it will affect the breathing which will become shallow and finally stop, like a natural dying process. The drug is easy to handle because it is a powder, which at the time of use is dissolved in a small quantity of simple tap water, after which it is ingested orally. If need be, it can also be ingested intravenously or via PEG.

There are a few other drugs (and combinations of drugs) available which would have a similar effect and which could be used as well, however, to Dignitas experience, Sodium Pentobarbital is the best choice.

Q9. Do you have any comment on the role of licensed facilitators as provided for in the Bill?

Dignitas supports the presence of a trained and licensed facilitator as the advantages are manifold:

- 1) there is a chain of custody for the lethal drug, ensuring that this drug reaches only the person and – if not used – is returned to the pharmacy
- 2) it is a safety measure as the trained facilitator would instruct the person on how to take the drug, thus avoiding a failed suicide

² <http://pubchem.ncbi.nlm.nih.gov/summary/summary.cgi?cid=4737>

- 3) the facilitator could check on the capacity of discernment of the person just like the medical doctors before him or her and look into the stability of the wish to die
- 4) the assisted suicide is witnessed, profoundly facilitating the work of the authorities, especially the police who would otherwise – with a not-yet-determined cause of death – have to start a time-consuming (and costly) investigation
- 5) the facilitator, as outlined in section 19 (b) would offer comfort and reassurance to the person, thus attending to the emotional needs of the person and to the loved ones present in the last hour.

As a point of difference to the Bill, at Dignitas there are always two ‘facilitators’ present. The majority of accompanied suicides at Dignitas take place in the presence of relatives and friends of the person: in fact, Dignitas very much encourages the person to have his or her loved ones present. In this situation, it is very advantageous to have one facilitator who is able to concentrate on taking care of the person wishing to have the assisted suicide whilst the second facilitator is available to attend to the needs of the family members and friends of the patient. Having two facilitators present is a safety and quality control measure in the sense that “four eyes are better than two”.

Q10. Do you have any comment on the role of the police as provided for in the Bill? The role of the police, as it is outlined in the Policy Memorandum paragraph 49, basically matches the approach in Switzerland, where each assisted suicide is reported to the police. However, it would be necessary to define more closely what is meant by “It would then be for the police to make any investigation they consider necessary” and “Should there be any reason for believing that the process set out in the Bill was not properly followed . . . “The police and the procurator fiscal should have a clear legal framework as to how to carry out their investigation.

Q11. Do you have any comment to make about the Bill not already covered in your answers to the questions above?

Dignitas would like to congratulate and thank everyone involved in the making of this Assisted Suicide (Scotland) Bill. This Bill is an important step forward towards the right of individuals to decide on their time and manner of end in life, which has been confirmed by the European Court of Human Rights (see chapter 2 of this submission) being respected and the frame within which such proceedings take place is implemented in domestic law, thus making it clear for everyone. Legal certainty is the base for the functioning of a (democratic) society. Dignitas supports this Bill as it aims at respecting and implementing values of humanity. In this context, we refer to the philosophical and political principles guiding the activities of Dignitas³ which we feel may well serve as a basis for any consideration of end-of-life-issues.

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³ See the booklet/brochure „How DIGNITAS works“, available online: http://www.dignitas.ch/index.php?option=com_content&view=article&id=23&Itemid=84&lang=en