

Assisted Dying for Terminally Ill Adults (Scotland) Bill

[AS AMENDED AT STAGE 2]

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Assisted Dying for Terminally Ill Adults (Scotland) Bill

[AS AMENDED AT STAGE 2]

An Act of the Scottish Parliament to provide for the lawful provision to terminally ill adults of assistance to voluntarily end their own lives; and for connected purposes.

Eligibility to be provided with lawful assistance to voluntarily end own life

1 Assisted dying for terminally ill adults

- 5 (1) A terminally ill adult who is eligible may, on request, be lawfully provided with assistance to end their own life.
- (2) Such assistance is lawfully provided if it is provided in accordance with the provisions of this Act.

2 Terminal illness

- 10 (1) For the purposes of this Act, a person is terminally ill if they have an advanced and progressive disease, illness or condition from which they are unable to recover and that can reasonably be expected to cause their premature death.
- (2) For the avoidance of doubt, a person is not terminally ill only because they have a disability or mental disorder (or both).
- 15 (3) In this section and in section 3, “mental disorder” has the meaning given by section 328 of the Mental Health (Care and Treatment) (Scotland) Act 2003.

3 Eligibility

- (1) A terminally ill adult is eligible to be lawfully provided with assistance to end their own life if they—
- 20 (a) are ordinarily resident in Scotland and have been so resident for at least 12 months before the date of the first declaration (see section 4),
- (b) are registered as a patient with a medical practice in Scotland, and
- (c) have capacity to request that assistance.
- (2) A person has capacity to request lawfully provided assistance if they—
- 25 (a) are not suffering from any mental disorder which might affect the making of the request, and

- (b) are capable of—
 - (i) understanding information and advice about making the request,
 - (ii) making a decision to make the request,
 - (iii) communicating the decision,
 - (iv) understanding the decision, and
 - (v) retaining the memory of the decision.

- (3) However, a person is not to be regarded as lacking capacity by reason only of a lack of or deficiency in a faculty of communication if that lack or deficiency can be made good by human or technological aid (whether of an interpretative nature or otherwise).

Lawful provision of assistance to end life: preliminary steps

4 Request for assistance: first declaration

- (1) Where a terminally ill adult wishes to be lawfully provided with assistance to end their own life, they must make a declaration to that effect (a “first declaration”).
- (2) A first declaration must be—
 - (a) in the form set out in schedule 1,
 - (b) signed and dated by the person making the declaration,
 - (c) witnessed by—
 - (i) the coordinating registered medical practitioner, and
 - (ii) another person,
 both of whom must see the declaration being signed.
- (3) A person may witness a first declaration under subsection (2)(c)(ii) only if they are—
 - (a) an adult, and
 - (b) not disqualified under schedule 5 from being a witness.
- (4) The first declaration must be recorded in the medical records of the terminally ill adult (see section 13).
- (5) In this Act, the “coordinating registered medical practitioner” means a registered medical practitioner—
 - (a) who has such training, qualifications and experience as the Scottish Ministers must by regulations specify, and
 - (b) who has indicated to the terminally ill adult that they are willing to carry out the functions under this Act of the coordinating registered medical practitioner in relation to the lawful provision of assistance to the adult to end their own life.
- (6) The Scottish Ministers must, before—
 - (a) laying a draft of first regulations under subsection (5)(a) before the Scottish Parliament, or
 - (b) making subsequent regulations under subsection (5)(a),
 consult such persons as they consider appropriate.

4A Registered medical practitioner unable or unwilling to act: duty to direct

- (1) This section applies where a registered medical practitioner—
- (a) has been asked by a terminally ill adult, who intends to make a first declaration, to carry out the functions under this Act of the coordinating registered medical practitioner, and
 - (b) has indicated to the adult that they are not able or willing to do so.
- (2) The registered medical practitioner must direct the adult to—
- (a) a registered medical practitioner who may be willing to carry out the functions of the coordinating registered medical practitioner, or
 - (b) information about the lawful provision to terminally ill adults of assistance to end their own lives under this Act.

5 Requirement for proof of identity

- (1) This section applies where a terminally ill adult makes a first declaration.
- (2) The adult must, at the same time as the declaration is made, provide two forms of proof of identity to the coordinating registered medical practitioner and the witness.
- (3) The Scottish Ministers may, by regulations, make provision about the forms of proof of identity that are acceptable for the purposes of subsection (2).

6 Medical practitioners' assessments

- (1) The coordinating registered medical practitioner must, as soon as reasonably practicable after the first declaration is made, carry out the assessment mentioned in subsection (2).
- (2) That assessment is an assessment to ascertain whether, in the opinion of the registered medical practitioner carrying it out, the person who made the declaration—
- (a) is a terminally ill adult,
 - (aa) has been provided with, or offered, appropriate social care relevant to their terminal illness,
 - (b) is eligible to be lawfully provided with assistance to end their life, and
 - (c) made the declaration voluntarily and has not been coerced or pressured by any other person into making it.
- (3) If, having carried out that assessment, the coordinating registered medical practitioner is satisfied as to the matters mentioned in section 8(1), that practitioner must refer the person to another registered medical practitioner (the “independent registered medical practitioner”) for that other practitioner to carry out the assessment mentioned in subsection (4).
- (4) That assessment is an assessment to ascertain whether, in the opinion of the independent registered medical practitioner carrying it out, the person who made the declaration—
- (a) is a terminally ill adult,
 - (b) has capacity to request lawfully provided assistance to end their own life, and
 - (c) made the declaration voluntarily and has not been coerced or pressured by any other person into making it.

- (5) In carrying out an assessment mentioned in subsection (2) or, as the case may be (4), the registered medical practitioner doing so must also take the steps mentioned in section 7.
- (6) A registered medical practitioner may carry out the functions of the independent registered medical practitioner under subsection (3) only if that practitioner—
- (a) has such training, qualifications and experience as the Scottish Ministers must by regulations specify,
 - (b) has not provided treatment or care for the person being assessed in relation to that person's terminal illness,
 - (c) is not a relative, partner or colleague in the same practice or clinical team as the coordinating registered medical practitioner, and
 - (d) did not witness the first declaration.
- (7) The Scottish Ministers must, before—
- (a) laying a draft of first regulations under subsection (6)(a) before the Scottish Parliament, or
 - (b) making subsequent regulations under subsection (6)(a),
- consult such persons as they consider appropriate.

7 Assessment under section 6: further provision

- (1) A registered medical practitioner carrying out an assessment under section 6 must—
- (za) make such enquiries of professionals who are providing or have recently provided health or social care or social work services to the person as the registered medical practitioner considers appropriate,
 - (zb) consider making enquiries of a health professional, social care professional or social work professional with qualifications in, or experience of, a matter relevant to the person being assessed,
 - (zc) enquire about and discuss the person's reasons for wishing to be lawfully provided with assistance to end their own life,
 - (a) explain to and discuss with the person being assessed, in so far as the registered medical practitioner considers appropriate—
 - (i) the person's diagnosis and prognosis,
 - (ii) any treatment available and the likely impact of it on the person's terminal illness,
 - (iii) any palliative, hospice or other care available, including symptom management and psychological support,
 - (iv) the nature of the substance that might be provided to assist the person to end their own life (including how it will bring about death),
 - (b) inform the person—
 - (i) of the further steps that must be taken before the lawful provision of assistance to the person to end their own life,
 - (ii) that they may decide at any time not to take those steps (including how to cancel the first declaration and any of those further steps),

- (iii) that they may request to be referred for assessment by a registered social worker under subsection (4)(a) (including any potential benefits to receiving such an assessment),
 - (iv) that they can be referred for a palliative care assessment to explore whether any additional support could be provided to them,
- (c) in so far as the registered medical practitioner considers appropriate, advise the person to—
- (i) inform a registered medical practitioner of the medical practice with which the person is registered that they are requesting assistance to end their own life (if they have not already done so),
 - (ii) discuss the request with those close to the person.

- (2) A registered medical practitioner carrying out an assessment under section 6 must—
- (a) if they have doubt as to whether the person being assessed is terminally ill, refer the person for assessment by a registered medical practitioner who holds qualifications or has experience in the diagnosis and management of the terminal illness involved,
 - (b) if they have doubt as to the capacity of the person being assessed to request lawfully provided assistance to end their own life, refer the person for assessment by a registered medical practitioner who is registered in the specialism of psychiatry in the Specialist Register kept by the General Medical Council or who otherwise holds qualifications or has experience in the assessment of capacity,
 - (c) in either case, take account of any opinion provided by that other registered medical practitioner.

8 Medical practitioners' statements

- (1) Where the coordinating registered medical practitioner has carried out an assessment mentioned in section 6(2) and is satisfied that the person who made the first declaration—
- (a) is a terminally ill adult,
 - (b) is eligible to be lawfully provided with assistance to end their life, and
 - (c) made the declaration voluntarily and has not been coerced or pressured by any other person into making it,

the practitioner must make a statement to that effect.

- (2) Where the independent registered medical practitioner has carried out an assessment mentioned in section 6(4) and is satisfied that the person who made the first declaration—
- (a) is a terminally ill adult,
 - (b) has capacity to request lawfully provided assistance to end their own life, and
 - (c) made the declaration voluntarily and has not been coerced or pressured by any other person into making it,

the practitioner must make a statement to that effect.

- (3) The statement mentioned in subsection (1) or, as the case may be, (2) must be—
- (a) in the form set out in schedule 2,
 - (b) signed and dated by the registered medical practitioner making it.

- (4) The statement must be recorded in the person's medical records (see section 13).
- (5) Subsection (1) or (2) does not apply if, at any time before the statement is made, the first declaration is cancelled (see section 11).

9 Period for reflection

- (1) This section applies where a terminally ill adult has made a first declaration.
- (2) The adult may not make a second declaration under section 10 before the end of the period mentioned in subsection (3) ("the period for reflection").
- (3) The period for reflection is—
 - (a) the period of 14 days beginning with the day on which the first declaration was made, or
 - (b) where both the coordinating registered medical practitioner and the independent registered medical practitioner reasonably believe that the adult's death is likely to occur before the end of that period, such shorter period (being not less than 48 hours) beginning with the day on which the first declaration was made.

10 Request for assistance: second declaration

- (1) Where subsection (2) applies, a terminally ill adult who wishes to be lawfully provided with assistance to end their own life must make a further declaration to that effect (a "second declaration").
- (2) This subsection applies where—
 - (a) the adult has made a first declaration which has not been cancelled,
 - (b) the coordinating registered medical practitioner has carried out the assessment mentioned in section 6(2) and has made the statement mentioned in section 8(1),
 - (c) the independent registered medical practitioner has carried out the assessment mentioned in section 6(4) and has made the statement mentioned in section 8(2), and
 - (d) the period for reflection has come to an end.
- (3) A second declaration must be—
 - (a) in the form set out in schedule 3,
 - (b) signed and dated by the person making the declaration,
 - (c) witnessed by—
 - (i) the coordinating registered medical practitioner, and
 - (ii) a person other than that practitioner or the independent registered medical practitioner,both of whom must see the declaration being signed.
- (4) The coordinating registered medical practitioner may witness a second declaration only if, at the time the second declaration is made, that practitioner is still satisfied as to matters mentioned in section 8(1).
- (5) A person may witness a second declaration under subsection (3)(c)(ii) only if they are—
 - (a) an adult, and

(b) not disqualified under schedule 5 from being a witness.

- (6) The second declaration must be recorded in the medical records of the terminally ill adult (see section 13).

11 Cancellation of declarations

- (1) A terminally ill adult who has made a first declaration or, as the case may be, a second declaration may cancel it by giving notice to—

- (a) the coordinating registered medical practitioner,
(b) any registered medical practitioner of the medical practice with which the adult is registered as a patient.

- (2) Notice under subsection (1) may be given orally or in writing.

- (3) A cancellation under subsection (1) must be recorded in the adult's medical records (see section 14).

- (4) A cancellation under subsection (1) has effect from the time the notice is given.

- (5) Where a first declaration is cancelled—

- (a) the coordinating registered medical practitioner need not carry out the assessment mentioned in section 6(2) or, as the case may be, refer the adult to the independent registered medical practitioner to carry out the assessment mentioned in section 6(4),

- (b) the independent registered medical practitioner need not carry out such an assessment.

12 Signing by proxy

- (1) This section applies where a person intending to make a first declaration or a second declaration—

- (a) declares to a proxy that they are unable to sign their own name (by reason of physical impairment, being unable to read or for any other reason), and
(b) authorises the proxy to sign the declaration on their behalf.

- (2) A declaration signed by a proxy—

- (a) in the presence of the person, and
(b) in accordance with subsection (3),

has the same effect as if signed by the person themselves.

- (3) Where a proxy signs a declaration, the proxy is to add, after their signature—

- (a) their full name and address,
(b) the capacity in which they qualify as a proxy, and
(c) a statement that they have signed in that capacity as a proxy.

- (4) A proxy may not sign a declaration—

- (a) unless satisfied that the person understands the nature and effect of the making of the declaration,
(b) if disqualified under schedule 5 from being a proxy, or

(c) if the proxy signed the first declaration as a witness (in the case of a second declaration).

(5) In this section, “proxy” means a person who is an adult and who—

(d) has known the person who intends to make the declaration personally for a period of at least 2 years, or

(e) is a person of a description specified by the Scottish Ministers by regulations.

13 Recording of declarations and statements

(1) This section applies where—

(a) a first declaration is made,

(b) a statement under section 8(1) is made,

(c) a statement under section 8(2) is made,

(d) a second declaration is made.

(2) Subject to subsection (5), the coordinating registered medical practitioner must inform a person mentioned in subsection (3) of the making of the declaration or, as the case may be, statement.

(3) That person is a registered medical practitioner of the medical practice with which the terminally ill adult who made the declaration is registered as a patient.

(4) The practitioner so informed must record those facts in the adult’s medical records.

(5) Where the coordinating registered medical practitioner is a practitioner of the medical practice referred to in subsection (3)—

(a) subsections (2) and (4) do not apply, and

(b) the coordinating registered medical practitioner must record those facts in the adult’s medical records.

14 Recording of cancellations

(1) This section applies where—

(a) a first declaration is cancelled, or

(b) a second declaration is cancelled.

(2) Subsection (3) applies if the registered medical practitioner to whom notice of the cancellation is given is not a practitioner of the medical practice with which the terminally ill adult who cancelled the declaration is registered as a patient.

(3) The practitioner must inform a registered medical practitioner of the medical practice with which the adult is registered as a patient of the cancellation.

(4) The practitioner so informed must record that fact in the adult’s medical records.

(5) Where notice of the cancellation is given to a registered medical practitioner of the medical practice with which the adult is registered as a patient, that practitioner must record the cancellation in the adult’s medical records.

14A Right to advocacy

- (1) Every individual to whom subsection (3) applies has a right of access to independent advocacy in connection with the individual's request to be lawfully provided with assistance to end their own life in accordance with this Act.
- 5 (2) It is the duty of the Scottish Ministers to ensure that independent advocacy services are available to the extent necessary for that right to be exercised by the individuals who have it.
- (3) This subsection applies to an individual if they are—
- 10 (a) considering requesting assistance to end their own life in accordance with this Act, and
- (b) require an advocate's help to effectively and safely request that assistance and with the process leading up to provision of assistance.
- (4) For the purposes of this section—
- 15 (a) "advocacy services" means services of support and representation that are made available for the purpose of enabling an individual to whom they are provided to effectively and safely request assistance and with the process leading up to provision of assistance in accordance with this Act, including—
- 20 (i) offering emotional, legal, and procedural guidance,
- (ii) ensuring the individual's rights, autonomy, and wellbeing are prioritised,
- (iii) acting where the individual's rights are at risk of being breached,
- (iv) preventing undue influence,
- (v) ensuring that the individual's decisions are voluntary and autonomous,
- 25 (b) advocacy services are independent if they are provided by a person who is not previously known to the individual or their immediate family and is not otherwise involved in provision of care or support to the individual including the provision of services under this Act.

14B Advocacy service standards

- (1) Any provider of independent advocacy services in connection with their duty under section 14A(2) must comply with the advocacy service standards.
- 30 (2) The advocacy service standards are to be set by the Scottish Ministers in regulations and may, in particular, include provision in relation to—
- (a) the training and experience individuals providing advocacy services must have,
- (b) service quality,
- (c) quality assurance processes,
- 35 (d) record keeping.
- (3) The advocacy service standards, or a part of them, may be set by reference to another document (whether or not prepared by the Scottish Ministers).

*Lawful provision of assistance to end life***15 Provision of assistance**

- 5 (1) The coordinating registered medical practitioner or an authorised health professional may, provided the conditions in subsections (2) and (3) are satisfied, provide a terminally ill adult with an approved substance with which the adult may end their own life.
- (1A) An approved substance must only be supplied to a coordinating registered medical practitioner or an authorised health professional by a registered pharmacist, in accordance with the directions of the coordinating registered medical practitioner.
- 10 (2) The conditions are that—
- (a) the adult has made a first declaration which has not been cancelled,
 - (b) the coordinating registered medical practitioner has carried out the assessment mentioned in section 6(2) and has made the statement mentioned in section 8(1),
 - 15 (c) the independent registered medical practitioner has carried out the assessment mentioned in section 6(4) and has made the statement mentioned in section 8(2), and
 - (d) the adult has made a second declaration which has not been cancelled.
- (3) The conditions are that—
- (a) the coordinating registered medical practitioner or, as the case may be, authorised health professional provides the substance to the adult in person,
 - 20 (aa) where the substance is provided to the adult by an authorised health professional who is a registered nurse, that health professional is accompanied by the coordinating registered medical practitioner or another authorised health professional who is a registered medical practitioner, and
 - 25 (b) the coordinating registered medical practitioner or, as the case may be, authorised health professional who is a registered medical practitioner is satisfied, at the time the substance is provided, that the adult—
 - (i) has capacity to request the provision of assistance to end their own life, and
 - (ii) is requesting provision of that assistance voluntarily and has not been coerced or pressured by any other person into doing so.
- 30 (3A) For the avoidance of doubt, nothing in this section authorises any person to administer an approved substance to the adult on their behalf with the intention of bringing about the adult's death.
- (4) The coordinating registered medical practitioner or, as the case may be, authorised health professional where that professional is a registered medical practitioner may be accompanied by any other health professional as that practitioner or authorised health professional thinks necessary.
- 35 (4A) In respect of an approved substance which is provided to a terminally ill adult under subsection (1), the coordinating registered medical practitioner may—
- (a) prepare that substance for use by the adult,
 - 40 (b) prepare a medical device which will enable the adult to use the substance,
 - (c) assist the adult to ingest or otherwise use the substance.

(4B) Notwithstanding subsection (4A), the decision to use the approved substance and the final act of doing so must be taken by the terminally ill adult to whom the substance has been provided.

5 (4C) Subsection (4A) does not authorise the coordinating registered medical practitioner to administer an approved substance to another person with the intention of causing that person's death.

(4D) Where the authorised health professional is a registered nurse, that health professional must also be accompanied by another health professional for the purposes of subsections (5) to (7).

10 (5) The coordinating registered medical practitioner or, as the case may be, authorised health professional must remain with the adult until the adult decides whether to use the substance provided to end their own life and, if they decide to do so, until the adult has died.

15 (6) For the purposes of subsection (5), the coordinating registered medical practitioner or, as the case may be, authorised health professional need not be in the same room as the adult once the adult has used the approved substance.

(7) Where the terminally ill adult decides not to use the substance provided to end their own life, the coordinating registered medical practitioner or, as the case may be, the authorised health professional must remove it from the premises at which it was provided.

20 (7A) The coordinating registered medical practitioner must—

(a) record any complications, adverse reactions, or unintended effects arising from the provision of the approved substance in the adult's medical records,

(b) submit an anonymised report on such matters to Public Health Scotland.

25 (7B) The coordinating registered medical practitioner must report any complications, adverse reactions or unintended effects arising from the provision of the approved substance to Public Health Scotland.

(8) In this section—

“authorised health professional” means a registered medical practitioner or registered nurse who—

30 (a) has such training, qualifications and experience as the Scottish Ministers must by regulations specify, and

(b) is authorised by the coordinating registered medical practitioner for the purposes of this section,

35 “approved substance” means such drug or other substance as is specified by the Scottish Ministers by regulations.

(9) The Scottish Ministers must—

(a) before—

40 (i) laying a draft of first regulations under subsection (8) specifying training, qualifications and experience of authorised health professionals before the Scottish Parliament, or

(ii) making subsequent regulations under that subsection specifying such training, qualifications and experience,

(b) before laying a draft of regulations under that subsection specifying an approved substance before the Scottish Parliament,

consult such persons as they consider appropriate.

16 Final statement

- (1) This section applies where a terminally ill adult has been lawfully provided with assistance to end their own life and has died as a result.
- 5 (2) The coordinating registered medical practitioner must complete a statement to that effect (a “final statement”).
- (3) The statement mentioned in subsection (2) must be—
 - (a) in the form set out in schedule 4,
 - (b) signed and dated by the coordinating registered medical practitioner.
- 10 (4) Subject to subsection (6), the coordinating registered medical practitioner must inform a registered medical practitioner of the medical practice with which the adult was registered as a patient of the making of the statement.
- (5) The practitioner so informed must record the statement in the adult’s medical records.
- 15 (6) Where the coordinating registered medical practitioner is a practitioner of the medical practice referred to in subsection (4)—
 - (a) subsections (4) and (5) do not apply, and
 - (b) the coordinating registered medical practitioner must record the statement in the adult’s medical records.

17 Death certification

- 20 (1) This section applies where a terminally ill adult has been lawfully provided with assistance to end their own life and has died as a result.
- (2) For the purposes of section 24 (certificate of cause of death) of the Registration of Births, Deaths and Marriages (Scotland) Act 1965—
 - (a) the terminal illness involved is to be recorded as the direct cause of death, and
 - 25 (b) the use of the approved substance provided to the adult by virtue of section 15 is to be recorded as other relevant medical information.

18 Conscientious objection

- (1) An individual is not under any duty (whether arising from any statutory or other legal requirement) to participate directly in anything authorised by this Act.
- 30 (1A) An individual or organisation must not be subject to any detriment for not participating in anything authorised by this Act to which that individual or organisation has a conscientious objection.
- (1B) An individual must not be subject to any detriment for participating or, as the case may be, not participating in anything authorised by this Act.
- 35 (3) An individual exercising a conscientious objection under subsection (1) must not (as a consequence of making the objection) be subject to—
 - (a) any risk of discrimination in the place of their employment,
 - (b) any other adverse impact on their current or future employment, training or development.

18A No duty to raise assisted dying

- (1) No registered medical practitioner is under any duty to raise the subject of the provision of assistance in accordance with this Act with a person.
- (2) But nothing in subsection (1) prevents a registered medical practitioner exercising their professional judgement to decide if, and when, it is appropriate to discuss the matter with a person.

19 Criminal liability for providing assistance

- (1) It is not a crime to lawfully provide a terminally ill adult with assistance to end their own life.
- (2) Subsection (1) does not limit the circumstances in which a court can otherwise find that a person who has assisted another to end their own life has not committed an offence.
- (3) The references in subsections (1) and (2) to assisting a person to end their own life include references to assisting the person in an attempt to do so.

20 Civil liability for providing assistance

- (1) Providing lawful assistance to a terminally ill adult to end their own life does not give rise to any civil liability.
- (2) Subsection (1) does not limit the circumstances in which a court can otherwise find that a person who has assisted another person to end their own life is not subject to civil liability.
- (3) The references in subsections (1) and (2) to assisting a person to end their own life include references to assisting the person in an attempt to do so.

*Regulation of assisted dying services outwith National Health Service***20A Provision of assistance outwith National Health Service**

- (1) The Scottish Ministers must, by regulations, make further provision about the provision of assistance in accordance with this Act outwith the National Health Service.
- (2) Regulations under subsection (1) may, in particular, specify—
- (a) the role of Healthcare Improvement Scotland,
 - (b) the role of the Care Inspectorate,
 - (c) any settings or services where assistance must not be provided.
- (3) Before laying a draft of regulations under subsection (1) before the Scottish Parliament, the Scottish Ministers must consult such persons as they consider appropriate.

*General and final provisions***20B Raising assisted dying with a person under 18**

- (1) A registered medical practitioner or other health professional must not raise with a person under the age of 18 the subject of the provision of assistance to end their own life in accordance with this Act, where the subject has not first been raised by the person with the registered medical practitioner or, as the case may be, other health professional.

- (2) The provision of assistance to end their own life in accordance with this Act must not form part of an anticipatory care plan for any person under the age of 18.

21 Offence

- (1) A person who coerces or pressures a terminally ill adult into making a first or second declaration commits an offence.

- (1A) A person who coerces or pressures a terminally ill adult into using an approved substance provided by virtue of section 15 commits an offence.

- (2) A person who commits an offence under this section is liable—
- (a) on summary conviction to imprisonment for a term not exceeding 2 years or a fine not exceeding level 5 on the standard scale (or both),
 - (b) on conviction on indictment to imprisonment for a term not exceeding 14 years or a fine (or both).

21A Offence of advertising assisted dying

- (1) A person commits an offence if they publish, distribute or display any advertisement, notice or material which—

- (a) promotes,
- (b) encourages, or
- (c) solicits,

the provision of assistance to a terminally ill adult to end that adult's life.

- (2) For the purposes of subsection (1), "advertisement" includes but is not limited to—
- (a) printed material,
 - (b) electronic communications,
 - (c) social media posts,
 - (d) websites,
 - (e) any other form of public or private communication intended to reach more than one person.

- (3) A person guilty of an offence under this section is liable—
- (a) on summary conviction to a fine not exceeding level 5 on the standard scale,
 - (b) on conviction on indictment to imprisonment for a term not exceeding 2 years, or a fine not exceeding level 5 on the standard scale, (or both).

- (4) Nothing in this section applies to communications about the provisions of this Act solely intended for informing—

- (a) medical professionals,
- (b) academics,
- (c) legal professionals, or
- (d) members of the public,

provided that no encouragement or solicitation of assisted dying is included in the communication.

22 Limitations on effect of Act

In so far as any provision of this Act, or any provision made under it, would relate to the reserved matter of—

- (a) misuse of drugs (within the meaning of Section B1 of Part 2 of schedule 5 of the Scotland Act 1998),
- (b) regulation of the health professions (within the meaning of Section G2 of that Part of that schedule), or
- (c) medicines, medical supplies and poisons (within the meaning of Section J4 of that Part of that schedule),

the provision is (to the extent it would so relate) of no effect.

22A Assessment of likely impact of Act on palliative and end of life care services

- (1) The Scottish Ministers must, as soon as reasonably practicable after Royal Assent, carry out an assessment of the likely impact of the provisions of this Act on hospices and providers of palliative and end of life care services.
- (2) An assessment carried out under subsection (1) must, in particular, consider the likely impact on—
 - (a) the staffing of hospices and palliative and end of life care services, including the training and support that will be required,
 - (b) the operation of existing palliative and end of life care services, including those provided by non-statutory providers,
 - (c) existing funding streams for palliative and end of life care services,
 - (d) the regulation and scrutiny of palliative and end of life care.
- (3) The Scottish Ministers must publish a report on the assessment carried out under subsection (1).

22B Code of practice on interaction with palliative and end of life care services

- (1) The Scottish Ministers must, as soon as reasonably practicable after publishing a report under section 22A(3), prepare a code of practice making provision about the interaction between assistance provided in accordance with this Act and support provided by hospices and providers of palliative and end of life care.
- (2) A code of practice prepared under subsection (1) must, in particular, make provision about—
 - (a) the provision of guidance, training and support to health and social care professionals providing hospice, palliative and end of life care, including staff employed by non-statutory providers,
 - (b) any measures to mitigate any adverse impacts on the operation of existing palliative and end of life care services, including those provided by non-statutory providers,
 - (c) how existing and future statutory funding streams intended to support the delivery of palliative and end of life care services can be differentiated to ensure assistance provided in accordance with this Act is not funded at the expense of existing palliative and end of life care services,
 - (d) how provision in this Act interacts with existing regulation and scrutiny of palliative and end of life care.

- (3) In preparing a code of practice under subsection (2), the Scottish Ministers must consult—
- (a) persons who appear to them to represent the interests of hospices and providers of palliative and end of life care,
 - (b) such other persons as they consider appropriate.
- 5 (4) The Scottish Ministers must publish a code of practice prepared under subsection (1).

23 Guidance

- (1) The Scottish Ministers must prepare and publish guidance with regard to the lawful provision to terminally ill adults of assistance to end their own lives under this Act.
- (2) Guidance under subsection (1) must in particular include provision about—
- 10 (a) the carrying out of assessments under section 6 (including assessment of a terminally ill adult's eligibility to be lawfully provided with assistance to end their own life),
- (b) the making and cancellation of first and second declarations (including the signing of such declarations by proxy),
- 15 (c) the provision of assistance in accordance with section 15,
- (d) the making of final statements,
- (da) training and quality assurance to ensure the effective implementation of the Act,
- (e) information about the lawful provision to terminally ill adults of assistance to end their own lives (including information to be provided to such adults and to the
- 20 general public).
- (3) The Scottish Ministers must, when preparing guidance under subsection (1), consult—
- (a) trade unions and professional bodies who appear to them to represent the interests of persons who may carry out functions under this Act,
 - (b) such other persons as they consider appropriate.
- 25 (3A) Guidance making provision of the kind mentioned in subsection (2)(g) must be developed in consultation with, and approved by, the Lord Advocate.
- (4) A person carrying out any function under this Act must have regard to any relevant guidance published under subsection (1).
- (5) The Scottish Ministers—
- 30 (a) may from time to time revise guidance published under subsection (1), and
- (b) must publish any revised guidance.
- (6) Subsections (2) to (5) apply to revised guidance published under subsection (5) as they apply to guidance published under subsection (1).

23A Duty to provide information

35 The Scottish Ministers must provide, or secure the provision of, such information as they consider appropriate with regard to the lawful provision to terminally ill adults of assistance to end their own lives under this Act to, and in a form accessible to and understandable by—

- 40 (a) terminally ill adults wishing to be lawfully provided with assistance to end their own lives,

- (b) health professionals, social care professionals and social work professionals,
- (c) the general public.

24 Provision of information by Public Health Scotland to Scottish Ministers

- 5 (1) Public Health Scotland must, as soon as reasonably practicable after the end of each reporting period, submit a report to the Scottish Ministers on the lawful provision to terminally ill adults of assistance to end their own lives.
- (2) The report must include the following information, in so far as known to Public Health Scotland, in relation to the reporting period to which the report relates—
- 10 (a) broken down by reference to the characteristics mentioned in subsection (3), the number of persons who—
- (i) made a first declaration,
 - (ii) made a second declaration,
 - (iii) made a second declaration but decided not to be provided with an approved substance provided by virtue of section 15(1),
 - 15 (iv) were provided with an approved substance by virtue of section 15(1) but decided not to use that substance,
 - (v) were provided with an approved substance by virtue of section 15(1) and died as a result of using that substance,
- (b) the number of statements made under section 8(1) and (2), including the number of statements which concluded that the person assessed—
- 20 (i) was eligible to be lawfully provided with assistance to end their own lives,
- (ii) was not eligible to be so provided,
- (c) in relation to persons who—
- (i) made a first declaration but did not go on to make a second declaration,
 - 25 (ii) made a second declaration but did not go on to be provided with an approved substance by virtue of section 15(1),
 - (iii) were provided with such a substance but did not go on to use it,
- the reasons given by persons as to why they did not go on to make a second declaration, be provided with an approved substance or, as the case may be, to use the substance,
- 30 (d) in relation to persons who were provided with an approved substance by virtue of section 15(1),
- (i) the substance so provided, and
 - (ii) where the person died as a result of using that substance, the type of place where the death took place (that is, in the person's home, in a hospital, in a hospice and the like),
- 35 (e) the reasons given by persons wishing to be lawfully provided with assistance to end their own lives.
- (3) The characteristics referred to in subsection (2)(a) are—
- 40 (a) age group,

- (b) postcode district,
- (c) gender,
- (d) ethnicity,
- (e) nationality,
- (f) type of terminal illness.

(4) A report under subsection (1) must not include any information that would or might disclose the identity of a person.

(5) The Scottish Ministers may by regulations amend subsections (2) and (3) so as to—

- (a) add a description of information or characteristic to,
- (b) vary a description of information or characteristic in, or
- (c) remove a description of information or characteristic from,

the information or characteristics for the time being mentioned in those subsections.

(6) In this section, “reporting period” is the period of 1 year beginning with the day on which this section comes into force and each subsequent period of 1 year.

25 Provision of information to Public Health Scotland

(1) The Scottish Ministers must by regulations make provision for information, relating to the lawful provision to terminally ill adults of assistance to end their own lives, to be provided to Public Health Scotland for the purposes of the preparation of annual reports under section 24.

(2) Regulations under subsection (1) may in particular make provision about—

- (a) the information to be provided,
- (b) the persons who must provide the information,
- (c) the circumstances in which the information must be provided,
- (d) the circumstances in which information may not be provided.

(3) Regulations under subsection (1) may make provision for the circumstances in which disclosure of information by or to Public Health Scotland is prohibited, including provision that disclosure in breach of such a prohibition is an offence.

(4) A person who commits an offence under regulations made under subsection (1) is liable on summary conviction to a fine, as provided for in the regulations, but not exceeding level 5 on the standard scale.

(5) The Scottish Ministers must, before making regulations under subsection (1), consult such persons as they consider appropriate.

26 Annual report

(1) The Scottish Ministers must, as soon as reasonably practicable after the end of each reporting period—

- (a) prepare and publish a report on the lawful provision to terminally ill adults of assistance to end their own lives, and
- (b) lay the report before the Scottish Parliament.

- (2) The report—
- (a) must include the information mentioned in section 24(2),
 - (b) may include such other information as the Scottish Ministers consider appropriate.
- (3) In this section, the “reporting period” is the period of 1 year beginning with the day on which this section comes into force and each subsequent period of 1 year.

27 Review of operation of Act

- (1) The Scottish Ministers must, as soon as reasonably practicable (and no later than 6 months) after the end of the review period—
- (a) undertake a review of the operation of this Act, and
 - (b) prepare a report on that review.
- (2) The report must, in particular, set out—
- (a) the extent to which the Act has been successful in supporting terminally ill adults in being lawfully provided with assistance to end their own lives,
 - (b) any concerns with the operation of the Act which have been raised,
 - (c) the Scottish Ministers’ response to any such concerns, including any recommendations for changes to guidance under section 23 or in relation to changes to any enactment, including this Act.
- (3) In undertaking the review and preparing the report, the Scottish Ministers must take into account annual reports published during the review period.
- (4) The Scottish Ministers must, as soon as reasonably practicable after preparing the report—
- (a) publish the report, and
 - (b) lay the report before the Scottish Parliament.
- (5) In this section, the “review period” is the period of 5 years beginning with the day on which section 1 of this Act comes into force.

28 Regulation-making powers

- (1) Any power of the Scottish Ministers to make regulations under this Act includes the power to make—
- (a) incidental, supplementary, consequential, transitional, transitory or saving provision,
 - (b) different provision for different purposes.
- (2) Subject to subsection (3), regulations under the following sections are subject to the negative procedure: sections 4(5)(a), 5(3), 6(6)(a), 12(5)(e), 15(8) (regulations specifying training, qualifications and experience of authorised health professionals), 24(5), 30 and 31(1).
- (3) The following regulations are subject to the affirmative procedure—
- (a) first regulations under sections 4(5)(a), 6(6)(a) and 15(8) (regulations specifying training, qualifications and experience of authorised health professionals),
 - (aa) regulations under section 14B(2),

- (b) regulations under section 15(7B) and (8) (regulations specifying an approved substance),
- (c) regulations under section 25(1),
- (d) regulations under section 31(1) which add to, replace or omit any part of the text of an Act.

(4) This section does not apply to regulations under section 32(2).

29 Interpretation

In this Act—

“adult” means a person who is aged 18 or over,

“approved substance” has the meaning given by section 15(8),

“capacity” has the meaning given by section 3(2),

“coordinating registered medical practitioner” has the meaning given by section 4(5),

“eligibility”, to be lawfully provided with assistance to end life, has the meaning given by section 3(1),

“final statement” has the meaning given by section 16(2),

“first declaration” has the meaning given by section 4,

“health professional” means—

(a) a registered medical practitioner,

(b) a registered nurse,

(c) a registered pharmacist (within the meaning of section 108(1) of the National Health Service (Scotland) Act 1978),

“independent registered medical practitioner” has the meaning given by section 6(3),

“period for reflection” has the meaning given by section 9(3),

“Public Health Scotland” means the Special Health Board of that name constituted by the Public Health Scotland Order 2019 (S.S.I. 2019/336),

“second declaration” has the meaning given by section 10,

“terminally ill” has the meaning given by section 2; and “terminal illness” is to be construed accordingly.

30 Modification of declarations and statements

The Scottish Ministers may by regulations modify—

(a) the form of first declaration set out in schedule 1,

(b) the form of medical practitioner’s statement set out in schedule 2,

(c) the form of second declaration set out in schedule 3,

(d) the form of final statement set out in schedule 4.

31 Ancillary provision

- 5
- (1) The Scottish Ministers may by regulations make any incidental, supplementary, consequential, transitional, transitory or saving provision they consider appropriate for the purposes of, in connection with or for giving full effect to this Act or any provision made under it.
 - (2) Regulations under this section may—
 - (a) modify any enactment (including this Act),
 - (b) make different provision for different purposes.

32 Commencement

- 10
- (1) This section and sections 14A, 14B, 22A, 28, 29, 31 and 33 come into force on the day after Royal Assent.
 - (2) The other provisions of this Act come into force on such day as the Scottish Ministers may by regulations appoint.
 - (3) Regulations under subsection (2) may—

15

 - (a) include transitional, transitory or saving provision,
 - (b) make different provision for different purposes.

33 Short title

The short title of this Act is the Assisted Dying for Terminally Ill Adults (Scotland) Act 2024.

SCHEDULE 1
(introduced by section 4(2)(a))

FORM OF FIRST DECLARATION

First Declaration

5 **Person making declaration:**

Name:

Address:

.....

.....

10 Postcode:

Date of birth:

CHI number:

Medical practice:

(name and address)

15

.....

1 I declare that if I am eligible to be lawfully provided with assistance to end my own life under the Assisted Dying for Terminally Ill Adults (Scotland) Act 2024, I wish to be provided with that assistance.

20 2 I understand that, for that assistance to be provided, I must be assessed by two registered medical practitioners and I consent to be assessed by them for the purposes of the 2024 Act.

3 I make this declaration voluntarily and, in particular, I have not been coerced or pressured by any other person into making it.

25 4 I understand I can cancel this declaration at any time.

5 I am registered as a patient with the above medical practice.

6 I am aged 18 or over.

Signed:

Dated:

Coordinating registered medical practitioner:

30 Name:

Address:

.....

.....

Signed:

Dated:

Independent witness:

Name:

Address:

.....

5

.....

Signed:

Dated:

SCHEDULE 2
(introduced by section 8(3)(a))

MEDICAL PRACTITIONERS' ASSESSMENTS: FORM OF STATEMENTS

10

Coordinating registered medical practitioner's statement

Name:

Address:

.....

.....

15

1 I have discussed with [*name of adult*]—

(a) the nature and effect of the making by them of the first declaration under the Assisted Dying for Terminally Ill Adults (Scotland) Act 2024, and

(b) the nature and effect of the making by them of a second declaration under the Act.

20

2 To the best of my knowledge, they are making the request to be lawfully provided with assistance to end their own life voluntarily and, in particular, have not been coerced or pressured by any other person into making it.

3 I am satisfied that—

25

(a) they have signed a first declaration which has been witnessed,

(b) the fact that the declaration has been made and the date when it was signed have been recorded in their medical records,

(c) they have not cancelled the declaration.

4 I am of the opinion that they are terminally ill. The advanced and progressive disease, illness or condition involved is [*specify*].

30

5 I am satisfied that they—

(a) are ordinarily resident in Scotland and have been so for at least 12 months before the first declaration was made,

(b) are registered with as a patient with a medical practice in Scotland, and

(c) have capacity to request lawfully provided assistance to end their own life.

35

6 I have taken the steps mentioned in section 7(1) of the Act.

7 I agree/do not agree [*delete as appropriate*] to the period for reflection being shortened by reason that [*name of adult's*] death is likely to occur before the end of the period of 14 days beginning with the day the first declaration was made.

Signed:

Dated:

Independent registered medical practitioner’s statement

Name:

Address:

5

1 I have discussed with [*name of adult*]—
 (a) the nature and effect of the making by them of the first declaration under the
 Assisted Dying for Terminally Ill Adults (Scotland) Act 2024, and
10 (b) the nature and effect of the making by them of a second declaration under the
 Act.

2 To the best of my knowledge, they are making the request to be lawfully provided
with assistance to end their own life voluntarily and, in particular, have not been
coerced or pressured by any other person into making it.

15 3 I am satisfied that—
 (a) they have signed a first declaration which has been witnessed,
 (b) the fact that the declaration has been made and the date when it was signed have
 been recorded in their medical records,
 (c) they have not cancelled the declaration.

20 4 I am of the opinion that they are terminally ill. The advanced and progressive disease,
illness or condition involved is [*specify*].

5 I am satisfied that they have capacity to request lawfully provided assistance to end
their own life.

6 I have taken the steps mentioned in section 7(1) of the Act.

25 7 I agree/do not agree [*delete as appropriate*] to the period for reflection being shortened
by reason that [*name of adult’s*] death is likely to occur before the end of the period
of 14 days beginning with the day the first declaration was made.

Signed:

Dated:

30 SCHEDULE 3
(introduced by section 10(3)(a))

FORM OF SECOND DECLARATION

Second Declaration

Person making declaration:

Name:

35

Postcode:

Date of birth:

Medical practice:

(name and address)

1 I declare that I am eligible to be lawfully provided with assistance to end my own life
10 under the Assisted Dying for Terminally Ill Adults (Scotland) Act 2024 and that I
wish to be provided with that assistance.

2 I understand that the assistance can be provided only if I have made a first declaration,
have been assessed as eligible by two registered medical practitioners who have
completed medical assessment forms under the Act, and have made this second
declaration.

3 I make this declaration voluntarily and, in particular, I have not been coerced or
15 pressured by any other person into making it.

4 I understand I can cancel this declaration at any time.

5 I am registered as a patient with the above medical practice.

6 I am aged 18 or over.

20 Signed:

Dated:

Coordinating registered medical practitioner:

Name:

Address:

1 I am of the opinion that [*name of adult*] is terminally ill. The advanced and progressive
disease, illness or condition involved is [*specify*].

2 I am satisfied that—

(a) they are ordinarily resident in Scotland and have been so for at least 12 months
30 before the first declaration was made,

(b) they are registered with as a patient with a medical practice in Scotland, and

(c) they have capacity to request lawfully provided assistance to end their own life.

3 To the best of my knowledge, they are making the request to be lawfully provided
with assistance to end their own life voluntarily and, in particular, have not been
35 coerced or pressured by any other person into making it.

Signed:

Dated:

Independent witness:

Name:

Address:

.....

.....

5 Signed:

Dated:

SCHEDULE 4
(introduced by section 16(3)(a))

FORM OF FINAL STATEMENT BY COORDINATING REGISTERED MEDICAL PRACTITIONER

Name:

10 Professional address:

.....

.....

Postcode:

Telephone number:

15 Email address:

Medical specialism (if any):

1 I confirm that [name of adult], whose details follow, was lawfully provided with assistance to end their own life under the Assisted Dying for Terminally Ill Adults (Scotland) Act 2024.

20 2 I will enter this statement, or ensure that this statement is entered, in the medical records of [name of adult].

Name:

Address:

.....

25

Postcode:

Date of birth:

Gender:

CHI number:

30 Medical practice:

(name and address)

.....

Date of first declaration:

*Date of coordinating
registered medical
practitioner's statement:*

5 *Date of independent
registered medical
practitioner's medical
statement:*

Date of second declaration:

10 *Advanced and progressive
disease, illness or condition
involved:*

*Approved substance
provided:*

15 *Date and time of death:*

*Time between use of
approved substance and
death:*

Signed:

Dated:

20

SCHEDULE 5
(introduced by sections 4(3), 10(5) and 12(4))

DISQUALIFICATION FROM BEING A WITNESS OR PROXY

- 1 The individuals specified in paragraph 2 are disqualified from—
- 25 (a) witnessing a first declaration by a person under section 4(2),
(b) witnessing a second declaration by a person under section 10(3),
(c) being a proxy for a person intending to have a document signed by proxy under section 12.
- 2 Those individuals are as follows—
- 30 (a) the person's spouse, civil partner or cohabitee,
(b) the person's parent or grandparent and any spouse, civil partner or cohabitee of that parent or grandparent,
(c) the parent of the person's spouse, civil partner or cohabitee and any spouse, civil partner or cohabitee of that parent,
35 (d) the person's child or grandchild and the spouse, civil partner or cohabitee of that child or grandchild,
(e) the person's brother, sister, nephew or niece and the spouse, civil partner or cohabitee of that brother, sister, nephew or niece,

- (f) the person's aunt, uncle or cousin, the child of that cousin and any spouse, civil partner or cohabitee of that aunt, uncle, cousin or cousin's child,
- (g) anyone who will gain financially in the event of the person's death whether directly or indirectly and whether in money or money's worth,
- 5 (h) any health professional who has provided treatment or care for the person in relation to that person's terminal illness.

3 In paragraph 2, "cohabitee" in relation to a person, means another person who is living with the person as if married to, or in civil partnership with, the person.

4 The family relationships set out in paragraph 2(b) to (f) include—

- 10
- (a) relationships created by adoption or by marriage,
 - (b) relationships of the half-blood, and
 - (c) step-family relationships (step-children, step-brothers, step-sisters, step-cousins and so on).

Assisted Dying for Terminally Ill Adults (Scotland) Bill

[AS AMENDED AT STAGE 2]

An Act of the Scottish Parliament to provide for the lawful provision to terminally ill adults of assistance to voluntarily end their own lives; and for connected purposes.

Introduced by: Liam McArthur
On: 27 March 2024
Bill type: Member's Bill

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