

End of Life Assistance (Scotland) Bill

[AS INTRODUCED]

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ACCOMPANYING DOCUMENTS

Explanatory Notes, together with other accompanying documents, are printed separately as SP Bill 38-EN. A Policy Memorandum is printed separately as SP Bill 38-PM.

End of Life Assistance (Scotland) Bill

[AS INTRODUCED]

An Act of the Scottish Parliament to permit assistance to be given to persons who wish their lives to be ended; and for connected purposes.

1 Lawful to provide assistance under this Act

- 5 (1) It is not a criminal offence or a delict for a person—
- (a) to provide end of life assistance in accordance with this Act; or
 - (b) to provide assistance, including assistance by participating in any step required by this Act, to enable another person to obtain or provide end of life assistance in accordance with this Act.
- 10 (2) In this Act “end of life assistance” means assistance, including the provision or administration of appropriate means, to enable a person to die with dignity and a minimum of distress.

2 Need for two formal requests

- 15 (1) End of life assistance may be provided under this Act only where—
- (a) the person who wishes such assistance (the “requesting person”) has made two formal requests for such assistance (the “first formal request” and the “second formal request”) to a registered medical practitioner; and
 - (b) those requests have been approved by that practitioner.
- (2) In this Act, the “designated practitioner” means the registered medical practitioner to whom a first formal request has been made by the requesting person.

3 Revocability of request for assistance

- 20 (1) End of life assistance may not be provided if, at any time, the requesting person gives notice, however informal, to the designated practitioner that the requesting person no longer wishes it.
- 25 (2) Such notice does not prevent a subsequent request for end of life assistance from being made under this Act.

4 Eligibility requirements

- (1) A person may make a formal request for end of life assistance under this Act only if the person—
- (a) is 16 years of age or over at the time of making the first formal request;
 - 5 (b) has been registered with a medical practice in Scotland for a continuous period of at least 18 months immediately prior to making that request; and
 - (c) satisfies the requirements of subsection (2).
- (2) The requirements of this subsection are that the requesting person—
- (a) has been diagnosed as terminally ill and finds life intolerable; or
 - 10 (b) is permanently physically incapacitated to such an extent as not to be able to live independently and finds life intolerable.
- (3) For the purpose of subsection (1)(b) it is not necessary that the requesting person should have been registered with the same medical practice throughout the period.
- (4) For the purposes of subsection (2)(a) a person is terminally ill if the person suffers from a progressive condition and if death within six months in consequence of that condition can reasonably be expected.
- 15

5 Requirements relating to designated practitioners and psychiatrists

- (1) The following cannot act as the designated practitioner or as a psychiatrist for the purposes of this Act—
- 20 (a) a relative of the requesting person;
 - (b) a person who would benefit from the requesting person's estate on the requesting person's death;
 - (c) a person who would have another interest in that death.
- (2) For the purposes of subsection (1)—
- 25 (a) a person is disqualified from acting only if that person knows of the relationship, benefit or interest referred to; and
 - (b) "interest" does not include the payment of reasonable fees for work done in relation to the provision of end of life assistance.

6 Requirements relating to first formal request

- (1) The first formal request must—
- 30 (a) state that it is a first formal request for end of life assistance under this Act; and
 - (b) be in writing signed by the requesting person and by two witnesses.
- (2) Each witness must, in addition to acting as a witness to the requesting person's signature, sign a statement that to the best of the witness's knowledge and belief the requesting person—
- 35 (a) understands the nature of the request;
 - (b) is making the request voluntarily; and
 - (c) is not acting under any undue influence in making the request.

- (3) If the requesting person is accommodated and cared for in accommodation provided by a care home service—
- (a) one of the witnesses must, where practicable, be an employee of the service designated by a manager of the service as a person who knows the requesting person well; and
 - (b) one of the witnesses must be a person who is not a manager or employee of the service.
- (4) The following cannot act as a witness for the purpose of this section—
- (a) a relative of the requesting person;
 - (b) a person who would benefit from the requesting person's estate on the requesting person's death;
 - (c) a person who would have another interest in that death;
 - (d) the designated practitioner.
- (5) For the purposes of subsection (4) a person is disqualified from acting only if that person knows of the relationship, benefit or interest referred to.

7 Consideration of first formal request by designated practitioner

- (1) Before determining whether or not to approve the first formal request, the designated practitioner must physically meet with the requesting person and discuss with that person—
- (a) the medical condition referred to in section 4(2);
 - (b) all feasible alternatives to end of life assistance, including hospice care and palliative care where relevant;
 - (c) the nature and consequences of the request, including its revocability; and
 - (d) the forms of end of life assistance which may be provided.
- (2) The designated practitioner may approve the first formal request only if satisfied that—
- (a) the eligibility requirements of section 4 are met;
 - (b) the requesting person is making the request voluntarily;
 - (c) the requesting person is not acting under any undue influence in making the request; and
 - (d) a psychiatrist acting under section 9 has given a positive report.
- (3) For the purposes of subsection (2)(d) a positive report is one which states that to the best of the psychiatrist's knowledge and belief, the requesting person—
- (a) has capacity to make the formal request;
 - (b) is making the request voluntarily; and
 - (c) is not acting under any undue influence in making the request.
- (4) Approval is to be in writing, signed and dated by the designated practitioner and stating that the requirements of this section have been satisfied.

8 Requirements relating to second formal request

- (1) A second formal request for end of life assistance may be made under this Act only if—
- (a) the first formal request has been approved by the designated practitioner;
 - (b) the requesting person has been informed of the approval; and
 - (c) a period of at least 15 and not more than 30 clear days has elapsed from the date when the requesting person was informed of the approval.
- (2) The second formal request must—
- (a) state that it is a second formal request for end of life assistance under this Act;
 - (b) be addressed to the designated practitioner; and
 - (c) be in writing signed by the requesting person and by two witnesses.
- (3) The provisions of section 6, subsections (2) to (5), and of section 7 apply in relation to the second formal request as they do in relation to the first formal request.
- (4) It is not necessary that the witnesses to the second formal request are the same as the witnesses to the first formal request.

9 Consideration of capacity etc. by psychiatrist

- (1) It is a requirement of this Act that a psychiatrist, after the first formal request and again after the second formal request, has physically met with the requesting person, has discussed with that person the matters mentioned in subsection (2) and has reported to the designated practitioner.
- (2) The matters to be discussed with the requesting person are—
- (a) the medical condition referred to in section 4(2);
 - (b) all feasible alternatives to proceeding under this Act, including hospice care and palliative care where relevant;
 - (c) the nature and consequences of the request, including its revocability;
 - (d) the forms of end of life assistance which may be provided; and
 - (e) the requesting person's reasons for, and feelings with regard to, the decision to seek end of life assistance.
- (3) The matters to be covered in a report under this section are whether the requesting person—
- (a) has capacity to make the relevant formal request;
 - (b) is making the request voluntarily; and
 - (c) is acting under any undue influence in making the request.
- (4) For the purposes of this Act a person has capacity to make a request for end of life assistance if that person is not suffering from any mental disorder which might affect the making of such a request and is capable of—
- (a) making a decision to request such assistance;
 - (b) communicating such a decision;
 - (c) understanding such a decision; and
 - (d) retaining the memory of such a decision,

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

- 5 (5) The following cannot act as a psychiatrist for the purposes of this section—
- (a) a relative of the designated practitioner;
 - (b) a person who has a financial connection with the designated practitioner;
 - (c) a person who has acted as a witness in relation to the first or second formal request.
- 10 (6) The psychiatrist who acts in relation to the second formal request need not be the psychiatrist who acted in relation to the first formal request.
- (7) Reports under this section are to be in writing, addressed to the designated practitioner, signed and dated by the psychiatrist.

10 Agreement on provision of assistance

- 15 (1) Where the second formal request is approved, and before end of life assistance can be provided, the requesting person and the designated practitioner must agree—
- (a) that end of life assistance is to be provided;
 - (b) who is to provide the end of life assistance;
 - (c) on the place where that assistance is to be provided; and
 - (d) on the means by which that assistance is to be provided.
- 20 (2) The agreement must be in writing, signed by both the requesting person and the designated practitioner, and dated.
- (3) The agreement does not become effective until the expiry of at least two clear days from the date of its conclusion.

11 Requirements relating to the actual provision of assistance

- 25 (1) The end of life assistance must, so far as reasonably practicable, be provided in accordance with the agreement between the requesting person and the designated practitioner.
- 30 (2) The end of life assistance must be provided before the expiry of 28 clear days from the date when the requesting person was informed of the approval of the second formal request.
- (3) End of life assistance may be provided only if the designated practitioner is satisfied that the requesting person is still acting voluntarily, is still not acting under any undue influence and still wishes to proceed.
- 35 (4) Only a person who is not connected to the requesting person in any of the ways mentioned in section 5(1)(a) to (c) when read with section 5(2) may provide end of life assistance under this Act.
- (5) The place where the end of life assistance is to be provided must not be one to which the public has access at the time when the assistance is being provided.
- 40 (6) Where end of life assistance is provided under this Act, the designated practitioner must be present at the end of the requesting person's life.

12 Interpretation

In this Act—

“care home service” has the same meaning as in section 2(3) of the Regulation of Care (Scotland) Act 2001 (asp 8);

5 “civil partner” has the same meaning as in section 1 of the Civil Partnership Act 2004 (c. 33);

“financial connection” means any profit sharing or similar business arrangement but does not include the charging of reasonable fees for work done;

10 “mental disorder” has the same meaning as in section 328 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13);

“registered medical practitioner” means a person who is registered in the register of medical practitioners referred to in section 2 of the Medical Act 1983 (c. 54); and

“relative” means—

15 (a) parent, child, grandparent, grandchild, great grandparent or great grandchild (whether by blood or by adoption);

(b) brother, sister, uncle, aunt, nephew, niece, great uncle, great aunt, great nephew or great niece (whether of the full or half blood or by adoption);

(c) spouse or any person related to a spouse in any of the ways set out above;

20 (d) civil partner or any person related to a civil partner in any of the ways set out above.

13 Commencement and short title

(1) This Act (except this section) comes into force at the end of the period of 6 months beginning with the date of Royal Assent.

25 (2) The short title of this Act is the End of Life Assistance (Scotland) Act 2010.

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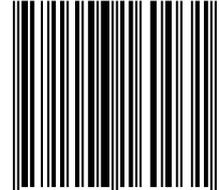
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