



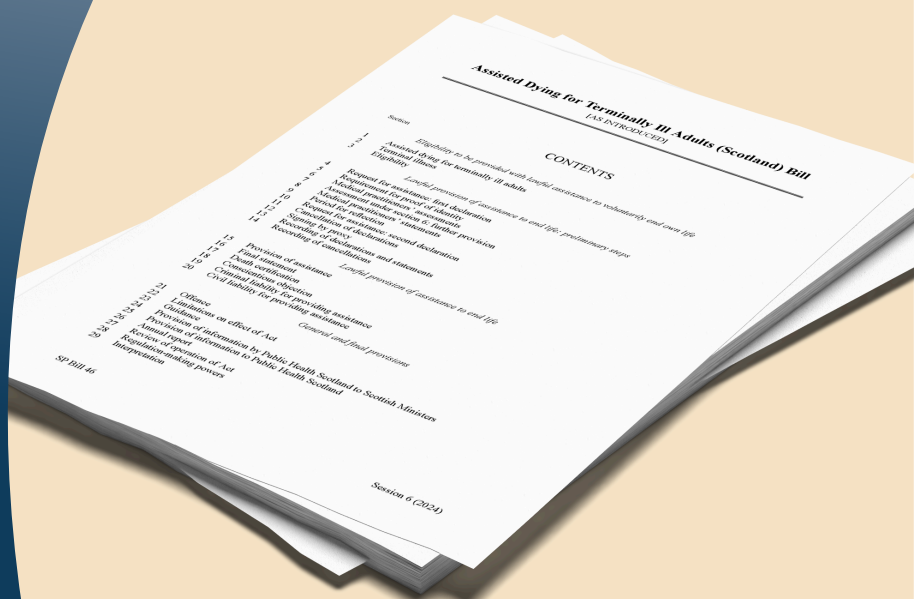
SPICe Briefing

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# The Assisted Dying for Terminally Ill Adults (Scotland) Bill and the European Convention on Human Rights

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This briefing looks at human rights issues relating to proposals in the Assisted Dying for Terminally Ill Adults (Scotland) Bill. These include the risks of a legal challenge on human rights grounds and systems for effective scrutiny and monitoring.



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# Purpose of this briefing

The purpose of this briefing is to look in detail at the rights in the European Convention on Human Rights in the context of potential Stage 2 amendments to the Assisted Dying for Terminally Ill Adults (Scotland) Bill (from now on referred to as "the Bill").

It covers the role of the European Convention on Human Rights, both in creating enforceable rights for individuals in the UK and in constraining the legislative competence of the Scottish Parliament. It looks at the human rights issues which featured in Stage 1 scrutiny of the Bill, in particular:

- [the risks of eligibility for assisted dying being extended on human rights grounds](#)
- [appropriate protections for the right to life \(Article 2\)](#)
- [improving monitoring and review arrangements to support human rights compliance.](#)

# The role of the European Convention on Human Rights

**Individuals can take court action to challenge breaches of the rights outlined in the European Convention on Human Rights (ECHR) . It is beyond the legislative competence of the Scottish Parliament to pass legislation which is incompatible with ECHR rights.**

## The ECHR

The Convention is an international treaty signed by the 46 members of the [Council of Europe](#). It commits them to upholding the rights it contains.

The ECHR establishes the [European Court of Human Rights](#) (sometimes styled the ECtHR) as a mechanism to deal with alleged breaches of ECHR rights by citizens of the countries which have signed it. Its decisions are binding on those countries.

## Human Rights Act 1998

Although the UK has been a signatory of the ECHR since 1950, for a long time it was not possible for UK citizens to rely on human rights breaches as a basis for claims in the UK courts. Instead, they had to appeal decisions all the way through the UK court hierarchy - to the then House of Lords if necessary - before being able to raise the matter with the European Court of Human Rights.

The Human Rights Act 1998 changed the law so that the UK courts could consider alleged breaches of ECHR rights directly. All public bodies (such as the UK and Scottish Governments, the police and the NHS) must respect the rights outlined in the ECHR or face the risk of legal action. Where a court case claiming a human rights breach is successful, courts can make orders requiring public bodies to change what they do and pay compensation.

## The Scotland Act 1998

The Scotland Act 1998 established the Scottish Parliament. It sets out the powers of the Scottish Parliament to pass legislation.

Under Section 29 of the 1998 Act, a legislative provision is "not law" (in other words, has no legal effect) if it is outwith the legislative competence of the Scottish Parliament. Ultimately, this means that the courts can strike down provisions in legislation passed by the Scottish Parliament where they are beyond its competence. One of the requirements of legislative competence is that a legislative provision is not incompatible with any of the rights in the ECHR.

## Potential consequences for assisted dying legislation

Any legislation passed by the Scottish Parliament can be challenged in court by the Scottish or UK Governments, or by interested bodies or individuals, if they believe it is beyond the competence of the Scottish Parliament. Separately, individuals or bodies can bring legal challenges against organisations like the NHS or the police if they believe their processes are not compliant with ECHR rights.

It is therefore important that ECHR rights issues are properly considered during the parliamentary scrutiny of the Assisted Dying for Terminally Ill Adults (Scotland) Bill in order to minimise the risks of successful challenge.

# Assisted dying and Convention rights

**ECHR rights relevant to assisted dying legislation include the right to life (Article 2), the right to respect for private and family life (Article 8) and the prohibition on discrimination on any grounds (Article 14).**

## **The right to life (Article 2)**

Article 2 protects the right to life. It is absolute, in that, beyond exceptions listed in the article, there are no grounds on which the right can be limited by the state.

The European Court of Human Rights has held that the right to life does not encompass a right to decide when and how to die. However, Article 2 does not prevent a state introducing assisted dying as long as there are suitable safeguards against abuse. In particular, the free and informed consent of anyone accessing assisted dying is a key protection.

Article 2 also imposes a duty on the state to adequately investigate deaths to ensure the state's human rights obligations are being met.

## **The right to respect for private and family life (Article 8)**

Article 8 protects the right to make decisions about your private life free from government interference. There are exceptions, for example, to protect public safety, health and the rights of others.

The European Court of Human Rights has found that Article 8 can cover the right to decide when and how to die. However, it has held that states have significant discretion in how this is balanced against protections which uphold the right to life. This discretion is often referred to as a wide "[margin of appreciation](#)".

In the case of [Karsai v. Hungary](#) (No. 32312/23, 13 June 2024), the European Court of Human Rights considered whether Hungary's blanket ban on assisted dying breached the ECHR. The Court found that there was no right to access a physician-assisted death under Article 8 in this case. Hungary had a wide margin of appreciation on this subject and had not failed to strike a fair balance between the different interests. The Court noted, though, that the law in this area should be kept under review, taking into account developments in social attitudes and medical ethics.

## **Prohibition on discrimination (Article 14)**

Article 14 requires that there must be no discrimination on any grounds in relation to exercising the rights protected by the ECHR. Some stakeholders have argued that, once a state introduces assisted dying, it is vulnerable to challenges if there is not equality of access (for instance, if people with physical disabilities which prevent self-administration are not able to access it). However, this interpretation is disputed, and the scope of Article 14 in this context is still subject to legal debate.

# When human rights conflict

**Most of the rights contained in the ECHR are not absolute rights. Instead, they must be balanced against other rights, and can be restricted on various grounds set out in the Convention - for example, national security, public safety, health and morals, as well as protecting the rights of others.**

## Dealing with human rights conflicts

The European Court of Human Rights has stated that there is no hierarchy in relation to Convention rights, so that all rights are equally protected. However, it recognises that there are sometimes conflicts between rights. The Court has developed legal criteria through its decisions in individual cases which aim to achieve a fair balance between them.

In the context of assisted dying, Article 2 is an absolute right, while Article 8 is not. This means that Article 8 rights can be restricted to meet the requirements of Article 2, but Article 2 rights cannot be restricted to meet the requirements of Article 8.

## The "margin of appreciation"

This concept recognises that individual states are often better placed than an international court to reach decisions about how rights should be exercised in the context of their societies. In cases where the European Court of Human Rights decides there is a wide margin of appreciation, it may defer to the decisions made by the state when setting its legal framework. However, the European Court of Human Rights maintains the jurisdiction to decide whether any restrictions to Convention rights are proportionate (see below).

The European Court of Human Rights will usually afford states a wide margin of appreciation in situations where there isn't a general consensus across European states on a particular issue. Assisted dying falls into this category.

## Restricting human rights

Some ECHR rights cannot be restricted, including Article 2. In cases where ECHR rights can be restricted, those restrictions must be proportionate.

The European Court of Human Rights has set out a three-stage process for judging whether this is the case. To meet the requirements of the ECHR, restrictions must:

- **be prescribed in law** - the law should be accessible. It should also be clear enough that it is possible for a citizen to foresee - with the help of appropriate advice if necessary - how it would apply to them
- **pursue a legitimate aim** - the legitimate aim must be one of the justifications detailed in the ECHR, such as the protection of health or the rights of others
- **be necessary in a democratic society** - the European Court of Human Rights has developed several tests relating to this. However, broadly, restrictions must be proportionate to the legitimate aim pursued.

# Stage 1 scrutiny of the Bill

**Human rights considerations were raised by stakeholders on both sides of the assisted dying debate. However, the emphasis of the human rights framework in the context of assisted dying is on ensuring appropriate safeguards are in place.**

A number of stakeholders highlighted human rights issues in both written and oral evidence to the Health, Social Care and Sport Committee (referred to from now on as the "Health Committee"). However, it is generally acknowledged that our current human rights framework does not provide any easy answers to the question of whether access to assisted dying should be provided. Instead, it is for each state to ensure appropriate consideration is given to the relevant interests in the context of their specific social and legal set-ups.

In oral evidence to the Health Committee, Eleanor Deeming from the Scottish Human Rights Commission said <sup>1</sup> :

“ If legislation is adopted, the key point is that, to be compliant from a human rights perspective, the legislation must have in place appropriate and sufficient safeguards, particularly to ensure free and informed consent of anyone accessing assisted dying. It is especially important to consider the rights of particular groups of people, such as disabled people, in the debate on whether to adopt legislation.”

This section of the briefing looks at what was said at Stage 1 about the implications of the Bill in relation to ECHR rights . Key issues were

- [the risks of eligibility for assisted dying being extended on human rights grounds](#)
- [appropriate protections for the right to life \(Article 2\)](#)
- [improving monitoring and review arrangements to support human rights.](#)

## The risk of eligibility for assisted dying being extended on human rights grounds

**A key issue during Stage 1 scrutiny was the extent to which the Bill might be subject to legal challenges which could expand its application. This feeds into the "slippery slope" argument - that, once it is permitted, access to assisted dying will be extended.**

### Equal access to assisted dying

It has been argued that, if assisted dying is introduced in Scotland, it could be subject to legal challenges on the basis that some groups could be prevented from accessing it.

Domestic anti-discrimination law in the form of the Equality Act 2010 does not provide a basis for overruling restrictions set in other legislation. However, the prohibition on discrimination contained in Article 14 of the ECHR arguably could. Provisions in Acts of the Scottish Parliament are outwith competence - and can be struck down by the courts - if they breach ECHR rights.

Dr Mary Neal from the University of Strathclyde explained the equal access argument as follows <sup>1</sup> :

“ Under article 14, as other witnesses said, the argument is that, once assisted dying is allowed within a jurisdiction, questions begin to arise about discrimination and about whether the rules for eligibility will discriminate against some groups who are not eligible. Once you start to allow it for some people, the question that arises is whether human rights require that you allow it for others, too.”

### **Barriers to access for people with mental health issues and learning disabilities**

In order to access assisted dying, the Bill would require that someone is "not suffering from any mental disorder which might affect the making of the request". Eleanor Deeming from the Scottish Human Rights Commission stated <sup>1</sup> :

“ The bill appears to refuse assisted dying to someone on the basis of a diagnosis of mental disorder that is unrelated to the reason why they are seeking assisted dying. We have concerns that that could be discriminatory, unless it can be justified in the individual circumstances.”

### **Barriers to access for people with physical disabilities**

The Bill would also require anyone who goes through the assisted dying process to "use the substance provided to end their own life" (section 15(5)). The requirement is described in the Policy Memorandum which accompanies the Bill as "self-administration", but the limits are otherwise undefined. This may prevent people with physical disabilities who cannot self-administer the substance from accessing assisted dying.

Murray Earle, from the University of Edinburgh, commented <sup>1</sup> :

“ At the moment, the bill is quite tight, but we have seen abroad that there has been slippage— the so-called slippery slope. We have seen that because people have claimed a rights basis for their exclusion, or, rather, they have claimed that their rights are being breached because they have been excluded. In parts of the bill, I can definitely see equality issues arising because of exclusion [...]. I would use the example of people with neuromuscular conditions who cannot self-administer the substance...”

### **Current European Court of Human Rights approach**

However, some Stage 1 witnesses thought the chances of a European Court of Human Rights-led expansion of the eligibility criteria in the Bill were low. Eleanor Deeming said <sup>1</sup> :

“ As recently as last year, in the case of *Karsai against Hungary*, you again see the court at Strasbourg level [the European Court of Human Rights] re-emphasising that this is an area where states are afforded a wide margin of appreciation. That is not to say that it would never intervene under article 2 were it needed to ensure that stringent safeguards were in place to support the right to life, but it was clear that, from the perspective of article 8, the margin extends not just to the decision to intervene or legislate in this area, but, once an intervention has been made, to the detailed rules that are laid down to achieve a balance between different interests.”

### **Views of the Member in charge of the Bill**

Addressing the risk of access to assisted dying being expanded more generally, the Member in charge (Liam McArthur MSP) stated <sup>2</sup> :

“ The slippery slope argument is made consistently. I point the committee to the report published by the House of Commons Health and Social Care Committee in February last year, at the end of an 18-month inquiry into assisted dying and end-of-life choices, which concluded that there was no international evidence of a jurisdiction that has introduced a terminal illness mental capacity model that is similar to the one that I am proposing and that is being considered by Westminster, where the eligibility criteria have changed. That was confirmed in the evidence that the committee heard from the witnesses who are involved in the process in Australia.”

## Protecting the right to life under Article 2

**The state's duty to protect life was further explored at Stage 1. The Health Committee heard significant concerns about the potential impact of the Bill on disabled people. It also considered oversight mechanisms for investigating deaths.**

This part of the briefing looks at:

- [the potential for the Bill to undermine disabled people's right to life](#)
- [the state's role in investigating deaths under Article 2](#)
- [improving oversight of decisions to access assisted dying to strengthen human rights compliance](#)
- [the views of the Member in charge of the Bill on oversight mechanisms.](#)

## The potential for the Bill to undermine disabled people's right to life

**The Health Committee considered evidence that there was a risk the Bill's provisions could result in disabled people accessing assisted dying for reasons other than their end of life experience.**

The Committee conducted a [call for views with stakeholders](#) in advance of considering oral evidence on the Bill <sup>3</sup> . A strong theme from the responses was the impact of the Bill on disabled people. Key concerns were that:

- the Bill could increase pressure - both external and internalised - on disabled people to end their lives sooner than they might otherwise choose, due to feelings of being a burden for financial or care-related reasons
- disabled people already faced significant difficulties in accessing adequate support services and life opportunities. These factors, rather than concerns about their end of life experience, could cause disabled people to access assisted dying.

In responses to the call for views, disabled people's organisations were particularly clear in expressing opposition to the Bill. Tressa Burke from Glasgow Disability Alliance said <sup>4</sup> :

“ [...] we feel that the impact of structural inequality is absent from the bill. That relates to all the things that we are talking about. The decisions of people living with long-term or terminal illnesses could, for the reasons that have been outlined, be influenced by their need for support, by the barriers that they face in getting the support that they need to live a full life and participate in society, and by the exceptional poverty that they face.”

The Member in charge of the Bill (Liam McArthur MSP) stated in response <sup>2</sup> :

“ I understand the concern that people in the disability community often feel that their lives can be devalued, that access to the rights that they have is not realised consistently or that there are rights that they still do not have. I stand in solidarity with them with regard to improving that situation, but we do not improve it by denying terminally ill adults the right to an assisted death when they choose it. [...] All I can do is offer the reassurance that having a disability alone does not make you eligible to access an assisted death—you need to have an advanced progressive terminal illness and mental capacity in order to be able to do so.”

## **The state's role in investigating deaths**

**Article 2 requires the state to have effective processes in place to investigate deaths. The Crown Office and Procurator Fiscal Service oversees the death investigation process in Scotland.**

### **The Article 2 requirement to investigate deaths**

The European Court of Human Rights has held that Article 2 also includes a procedural obligation to sufficiently investigate deaths so that the rights guaranteed by that article can be upheld. Such investigations must be independent, adequate, prompt and conducted in a manner which allows some public scrutiny. There must also be involvement of next of kin to the extent necessary to protect their interests.

### **The death investigation process in Scotland**

All deaths in Scotland which are suspicious or unexplained are investigated by the police under the direction of the Crown Office and Procurator Fiscal Service. Investigations by other bodies (for example, the Health and Safety Executive or the NHS) may feed into this.

Where they meet the legislative criteria, a small proportion of deaths will result in a Fatal Accident Inquiry. However, there have been concerns that death investigations which do not result in a Fatal Accident Inquiry may not meet the human rights requirements flowing from Article 2.

The Crown Office and Procurator Fiscal Service emphasised the role of the current death investigation system in oral evidence to the Committee. Andy Shanks said <sup>5</sup> :

“Deaths are already investigated independently by the COPFS on behalf of the Lord Advocate, which would bring that degree of independent scrutiny to the circumstances of the death. That is not only done in relation to the potential for criminality but, beyond that, in terms of wider death investigation purposes, it is done to see whether there are systemic issues or issues of public concern that require further investigation— or, indeed, whether it is in the public interest to hold a fatal accident inquiry. Therefore, I think that independent scrutiny would already exist.”

## **Improving scrutiny of assisted death decisions to strengthen human rights compliance**

**Some stakeholders called for the introduction of a mechanism to enable certain cases to be reviewed before an individual was able to access assisted dying. Pre-death reviews feature in the Westminster Bill and are part of the process in several other countries.**

### **Pre-death reviews of challenging cases as a more effective way of meeting Article 2 obligations**

Several stakeholders highlighted the opportunity to strengthen the Bill's compliance with Article 2 by introducing more effective oversight mechanisms<sup>3</sup>. In particular, a mechanism which would allow more challenging cases to be reviewed **before** an individual had accessed assisted dying was considered to provide significantly more protection than an investigation after a death had occurred.

Eleanor Deeming (Scottish Human Rights Commission) described pre-event reviews, carried out in an independent or judicial capacity as “a robust means of reducing concerns about inappropriate use”<sup>1</sup>.

Options for conducting pre-event reviews put forward by stakeholders included:

- creating local or national "review panels" which could consider difficult cases and monitor wider trends
- providing for judicial oversight of the process for requesting an assisted death.

### **Approaches in other countries**

Researchers from the Nuffield Trust have looked at [Assisted dying in practice](#)<sup>6</sup> (2025) in other countries. Oversight boards or panels are a common feature of these regimes (although functions may also be carried out by government bodies). However, their set up, composition and functions vary significantly from place to place.

It is common to have medical and legal expertise on the bodies, with some countries also including other health professionals, non-professionals with relevant experience, or ethicists. Most oversight boards carry out retrospective reviews of assisted deaths. Pre-death reviews - of all or some assisted dying requests - is less common.

The researchers noted that, in some countries, oversight bodies were not sufficiently resourced to deal with demand for their services. They concluded that adequate resourcing is critical to avoiding delays in access to assisted dying

## **Assisted Dying Review Panels in the Westminster Bill**

The UK Parliament's Terminally Ill Adults (End of Life) Bill contained a requirement for court review of each assisted dying request when it was introduced. This mechanism has been amended to create an "Assisted Dying Review Panels" made up of legal, psychiatry and social work representatives. Panels would assess each application to decide whether an assisted death could proceed. Panels would be co-ordinated by a Voluntary Assisted Dying Commissioner, who would be a member of the senior judiciary.

The Westminster Bill is still making its way through the parliamentary process, so there may be further amendments relating to pre-death scrutiny mechanisms.

## **Oversight of access to assisted dying - views of the Member in charge of the Bill**

During his evidence to the Committee, the Member in charge of the Bill (Liam McArthur MSP) was asked whether he had considered a role for court oversight in the assisted dying process. He responded <sup>2</sup> :

“ I did, because I was aware that it had been an aspect of earlier bills that had come before the Westminster Parliament. However, I was not necessarily convinced that I could see what additional safeguard it would put in place. The balance is always to ensure that the safeguards do what they are intended to do, and do not simply act as an unnecessary obstacle while not providing any protection.”

## **Improving monitoring and review requirements to support human rights**

**Adequate monitoring and review processes are necessary to show ongoing human rights compliance.**

Human rights compliance is an ongoing obligation. Collecting sufficient data and carrying out regular reviews help to ensure compliance. There have been calls to expand the provisions in the Bill to make this process more effective.

This part of the briefing looks at

- [the monitoring and review provisions in the Bill](#)
- [calls for additional categories of data to be collected](#)
- [the approach in other countries](#)
- [the views of the Member in charge of the Bill on monitoring mechanisms.](#)

## **Monitoring and review provisions in the Bill**

**The Bill contains requirements to collect data on people accessing assisted dying, as well as for a review after five years. However, the processes for doing this rely on**

**regulations from the Scottish Government, so have not yet been set out.**

### **Monitoring provisions in the Bill**

Sections 24 to 26 of the Bill would make provision for information collection and reporting in relation to assisted dying. Information to be collected would include:

- the number of people accessing each stage of the assisted dying process
- the number of people assessed as ineligible
- reasons for progressing - or not progressing - with an assisted dying request
- individual characteristics, such as ethnicity, postcode district and type of terminal illness.

Public Health Scotland would be required to report information annually to the Scottish Government, which would separately be required to report annually to the Scottish Parliament on assisted dying. The Scottish Government would have regulation-making powers to change the types of information to be reported and to require information to be supplied to Public Health Scotland for the purposes of reporting.

### **Review requirements in the Bill**

Section 27 of the Bill would require the Scottish Government to review the operation of the legislation after five years. The review would cover:

- the extent to which the legislation had been successful in supporting assisted dying
- any concerns raised about the operation of the legislation
- Scottish Ministers' response to any concerns, including any recommendations for change.

There would be no ongoing review requirements after a five year review was completed.

## **Calls for additional categories of data to be collected**

**The Health Committee heard concerns that adequate monitoring of access to - and appropriate use of - assisted dying could require additional categories of data to be collected. Key issues were monitoring whether some groups were over- or under-utilising assisted dying and what factors were influencing a decision to access assisted dying.**

### **Additional categories of information which could be collected**

The Health Committee carried out a [call for views with stakeholders](#) in advance of considering oral evidence on the Bill <sup>3</sup>. Some respondents called for additional categories of data to be collected. Suggested additions included:

- incidences of complications and adverse events
- impact on staff and relatives

- data on protected characteristics (such as gender, race or disability, some of which is covered by the current requirements in the Bill)
- socio-economic information
- data on who is involved in assisted dying and their qualifications
- cases involving psychiatric assessment
- costs and savings associated with assisted dying.

### **Measuring the impact on disabled people**

Disabled people's organisations were particularly concerned that proposed monitoring wasn't sufficient to monitor whether external socio-economic factors were overly influencing disabled people to access assisted dying. Marianne Scobie from Glasgow Centre for Inclusive Living said in oral evidence to the Committee <sup>4</sup> :

“ Under the bill as drafted, there would be no record of socioeconomic elements, such as whether someone had financial difficulties prior to when they sought support and services; similarly, social care or palliative care elements or what their main reason was in opting for assisted dying would not be recorded. Our main concern is that there would no monitoring or reporting of whether the person had had a mental health assessment, or any counselling or support, before they made the decision to go ahead with the decision to end their life.”

### **The approach to monitoring and review in other countries**

**It is common in other countries for a specialist body, such as an oversight board, to carry out the task of monitoring and reporting. The Westminster Bill contains specific mechanisms for assessing the impact on disabled people, people with learning disabilities and access to palliative care.**

#### **International approaches to data collection and reporting**

Nuffield Trust researchers have carried out research into [Assisted dying in practice](#) <sup>6</sup> (2025) in other countries. They found a variety of approaches to data collection, with national or regional oversight boards or committees often undertaking this task. It was common to have a requirement to report annually, with some bodies also making recommendations on how to improve services.

In terms of legislation for assisted dying in the UK, researchers made the following recommendations:

- given known inequalities in end of life care, access to assisted dying should be monitored by ethnicity, sex, region and other personal characteristics
- those accessing assisted dying, as well as family, carers and people assessed as ineligible should be involved in improving service delivery
- data collection should be comparable across different UK nations.

## The approach in the Westminster Bill

The UK Parliament's Terminally Ill Adults (End of Life) Bill, as originally introduced, would have placed responsibility for data collection, monitoring compliance and reporting on the Chief Medical Officers of England and Wales. It has since been amended to move these functions to the Voluntary Assisted Dying Commissioner ([who would also have a role in reviewing assisted dying requests](#)).

The data collection requirements in the Westminster Bill as introduced were broadly similar to those in the Scottish Parliament Bill. The review arrangements are also similar, although there is a specific requirement to report on access to palliative care.

The Westminster Bill has been amended during parliamentary scrutiny to:

- require the establishment of a Disability Advisory Board, to report on the impact of the provisions on disabled people. This board would provide a report six months after it was established, and every year after that
- require consultation with people with protected characteristics and reporting on the impact of the Bill on people with different protected characteristics
- require the five year review to specifically look at the impact of the Bill on people with learning disabilities
- require the five year review to report on end of life care needs as well as palliative care needs.

The Westminster Bill is still going through the parliamentary scrutiny process, so may be amended further.

## Monitoring and review - views of the Member in charge of the Bill

The Member in charge of the Bill (Liam McArthur MSP) emphasised the flexibility of the information collection provisions in the Bill to the Health Committee<sup>2</sup> :

“ It would certainly be an option for the Scottish Government to add additional requirements on data gathering. I have sought to set out the data that, on the face of it, looks to be the most relevant, and what I have set out certainly reflects what the data-gathering processes look like in other jurisdictions. However, if the Government or stakeholders that are informing the Government feel that other elements need to be added, there is a mechanism for doing that. As with any data gathering, there needs to be an understanding of why something is being added to the list. Such processes are not without time and cost implications, so we need to understand the purpose for which we are gathering data.”

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