

Clare Haughey MSP  
Convener  
Health, Social Care and Sport Committee  
Scottish Parliament  
Edinburgh  
EH99 1SP

30 September 2024

Dear Clare

Please find attached a memorandum setting out the Scottish Government's position on the Assisted Dying for Terminally Ill Adults (Scotland) Bill, introduced by Liam McArthur MSP on 27 March 2024.

I hope that the Committee finds this helpful in undertaking its scrutiny of the Bill.

Yours sincerely



**NEIL GRAY**

# **MEMORANDUM FROM THE SCOTTISH GOVERNMENT TO THE SCOTTISH PARLIAMENT'S HEALTH, SOCIAL CARE AND SPORT COMMITTEE**

## **Introduction**

1. This memorandum has been prepared by the Scottish Government to assist consideration by the Health, Social Care and Sport Committee of the Assisted Dying for Terminally Ill Adults (Scotland) Bill ("the Bill"), which was introduced by Liam McArthur MSP on 27 March 2024.

## **Background**

2. The Bill, as introduced, allows terminally ill adults (defined as aged 16 and over) in Scotland to request and, if eligible, be provided with assistance to end their life, and establishes a process, facilitated by health professionals, to enable people in Scotland to access assisted dying.

3. To be eligible, the adult must be resident in Scotland for at least 12 months; registered with a GP in Scotland; and have the mental capacity to make the request.

4. The process requires the adult to make two declarations (with a period of reflection in between), both of which have to be witnessed by a registered medical practitioner and another person. The adult is assessed by two medical practitioners and there is also provision for the adult to cancel a declaration. Declarations must be recorded in the adult's medical records.

5. There are requirements in the Bill for the assessing medical practitioners to explain health and care information/options (for example treatment and palliative care options), as well as information about the process of assisted dying, prior to the adult making a declaration. The adult must also have made the decision of their own free will, and there is an offence provision in the Bill of coercing or pressurising a terminally ill adult into making a first or second declaration. The adult must self-administer the approved substance to end their life.

6. The Bill provides for death certification to record the terminal illness (rather than the approved substance) as the cause of death. There are also separate requirements for information on the lawful provision of end of life assistance to be provided to Public Health Scotland (PHS), for PHS to report to the Scottish Ministers and for Ministers to report on assisted dying (and review the operation of the Bill).

7. There is also provision for conscientious objection so that an individual is not under any duty to participate in anything authorised by the Bill.

8. The Bill does not define 'terminally ill' by reference to a period of life expectancy, but sets out that a person is 'terminally ill' where 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".

9. There have been two previous attempts to pass Members Bills on the issue of assisted dying (in 2010 and 2013), both by the late Margo MacDonald MSP, however these were both rejected by Parliament in free votes at Stage 1.

## **Consultation**

10. Mr McArthur's public consultation, published on 22 September 2021, received 14,038 responses, 99.42% of which were from individuals and 0.58% of which were from organisations. Of these:

- 76% of respondents were fully supportive of the proposed Bill (including 16% of the organisations that responded);
- 2% were partially supportive (including 4% of organisations);
- 21% were fully opposed (including 57.5% of organisations);
- 0.4% were partially opposed;
- 0.3% were neutral (including 20% of organisations); and
- 0.2% were unsure (including 2.5% of organisations).

11. Many of the responses received talked of people's personal experiences. Whilst the majority of responses were supportive, many of them did raise a large number of concerns and issues, both around the idea of assisted dying and the impact that the proposed change could have on society, and around the specifics of Mr McArthur's proposal.

## **Financial Impact**

12. A Financial Memorandum was prepared on behalf of Mr McArthur by the Non-Government Bills Unit and published alongside the Bill, with a letter sent to the Committee by Mr McArthur on 17 June setting out some revisions to the Financial Memorandum. This estimated year 1 costs between £263,434 and £313,882, and ongoing costs rising year-on-year from between £23,107 and £35,566 in year 2, to between £160,186 and £368,954 in year 20.

13. The Financial Memorandum estimated that costs will be relatively low, due to the small number of terminally ill people expected to seek an assisted death (over the first 20-year period of assisted dying being available in Scotland. It estimates that the number of adults entering the process will range between 33 and 533 people per year, with the number likely to have an assisted death ranging between approximately 25 and 400 terminally ill adults). It also suggests that much of the infrastructure required to provide the service is already in place, and states that there may be some savings in cases where palliative care would no longer be required. It concludes that, on balance, the Bill is likely to be effectively cost neutral.

14. It is difficult to assess the accuracy of the estimated costs/savings in the Financial Memorandum, given the uncertainty around the likely number of cases and, in particular, how they will increase over time. The Scottish Government is, however, of the view that the unit costs of staff time have been underestimated, as this is costed using unrealistically low salaries and without on-costs, which are a key element of staff costs.

15. Furthermore, the cost of staff time for training has been omitted. This is a significant omission as most health professionals would need to be trained (if they do not opt out), so that they can respond appropriately and legally process any request for assisted dying. The Financial Memorandum states that the training would take six to eight hours for each individual health professional, based on international experience, so broadly speaking, one working day would be lost for each health professional trained.

16. As such, it is our view that the costs associated with the Bill could be substantially higher than estimated in the Financial Memorandum.

### **Legislative Competence**

17. In the Scottish Government's view, the Bill in its current form is outside the legislative competence of the Scottish Parliament. Of particular concern is section 15(8), which gives power to the Scottish Ministers to specify, in regulations, a drug or other substance as an "approved substance" (to be provided to the terminally ill adult to end their own life), and appears to relate to the reserved matter of medicines, medical supplies and poisons (section J4 of schedule 5 of the Scotland Act 1998).

18. Furthermore, and noting that the Bill represents a novel and fundamental shift in the role of medical practitioners, and the regulatory framework in which they operate, from protecting/enhancing patients' lives to assisting in termination of life, it is considered that the following provisions in the Bill may relate to the reserved matter of regulation of the health professions (section G2 of schedule 5 of the Scotland Act 1998):

- Sections 4(5)(a) and 6(6)(a) of the Bill, which make provision for the Scottish Ministers to specify, in regulations, qualifications and experience of registered medical practitioners who can carry out functions under the Bill.
- Section 7(2)(c), which requires a registered medical practitioner, where they have sought a second opinion from another medical practitioner, to take that opinion into account (in carrying out an assessment of a terminally ill adult).
- Section 18 of the Bill, which gives a right to conscientious objection.

19. The Bill's Policy Memorandum, at paragraph 7 onwards, acknowledges that, in order to have a truly comprehensive assisted dying scheme "something else would likely need to happen", and makes reference to the possibility of using various Orders under the Scotland Act 1998, such as a section 30 Order. The Scottish Government agrees that further processes would have to be gone through in order to bring the Bill within competence.

20. It should be noted that the process for such an Order generally takes 12-18 months and would require the co-operation of the UK Government, as it requires the approval of both Houses at Westminster, as well as the Scottish Parliament, before it is made by His Majesty in Council. This process would need to be completed prior to a vote being taken on the Bill at Stage 3.

## **Impact Assessments**

21. The Scottish Government notes that Mr McArthur submitted an Equalities Impact Assessment on the Bill, which we are considering carefully.

22. We recognise that members are not obligated to produce impact assessments for member's bills in the same way that the Scottish Government are, however, given the level of interest and the sensitivities around this particular Bill, it may be appropriate to see further impact assessments carried out, such as an Island Communities Impact Assessment, Children's Rights and Wellbeing Impact Assessment, Business and Regulatory Impact Assessment and Fairer Scotland Duty Assessment.

## **Scottish Government's Position**

23. The Scottish Government has agreed that Scottish Ministers will have a free vote on the Assisted Dying for Terminally Ill Adults (Scotland) Bill at Stage 1 of the Parliamentary process.

24. We recognise that there are strong feelings in this debate, and that a range of deeply felt views will be expressed as this Bill is being considered. Our hope is that this debate can be conducted with sensitivity and respect.

25. Whilst the Scottish Government will be maintaining a neutral position on the Bill at this Stage, we will be listening carefully to the evidence given to the Committee.

26. The issue of what steps will be required to bring the Bill within legislative competence will require to be revisited should the Bill pass Stage 1.