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### End of Life Assistance (Scotland) Bill

Independent MSP Margo MacDonald introduced the End of Life Assistance (Scotland) Bill in the Scottish Parliament on 20 January 2010. The purpose of this Members Bill is described in the Policy Memorandum accompanying it as "to enable persons whose life has become intolerable and who meet the conditions prescribed in the Bill to legally access assistance to end their life".

Although suicide - defined as self-inflicted death - has never been a crime in Scotland, it is currently illegal under Scots law to assist another person to end their life, even if that help is explicitly requested by the person wishing to die.

In the Bill, "end of life assistance" is defined as "assistance, including the provision or administration of appropriate means, to enable a person to die with dignity and a minimum of distress."

#### What does seeking end of life assistance entail?

Under the provisions of this Bill, a formal request for end of life assistance can be made to a registered medical practitioner (meaning registered to practice medicine under section 2 of the Medical Act 1983). There requires to be two formal requests, and both must be approved by this "registered medical practitioner" following positive reports both times by a registered psychiatrist, who will report back to the medical practitioner before they authorise a request for assistance.

#### Who qualifies?

To qualify to make a request for end of life assistance, a person must be 16 years or older; and have been registered with a GP in Scotland for at least 18 months before making a request. It is not required to have been the same GP for the entirety of the time.

In terms of medical conditions which will qualify for a request for end of life assistance, the person must (in addition to age and GP registration conditions):

- be terminally ill, where the person "suffers from a progressive condition and if death within six months in consequence of that condition can reasonably be expected";
- or be permanently physically incapacitated and incapable of living independently. This can cover both progressive conditions and those who have suffered a trauma which has resulted in incapacity.

In both of these cases, the final precondition is that the person "*finds life intolerable*". This phrase, however, has been left open to interpretation, with the explanatory notes which accompany the Bill stating that this will not be defined, as the test will be a subjective one determined by the person making the decision to request end of life assistance, although at least two psychiatric assessments (one at each stage of the request process) will be necessary under the terms of this Bill.

### **Who authorises the decision?**

The designated medical practitioner must not be related to the person making the request, or have an interest in that person's death, i.e. stand to make a financial gain as a result of the person's death. This also applies to the psychiatrist who carries out the assessments at each stage of the request process.

Each formal request must be in writing and signed by the person making the request as well as two witnesses, who must verify that:

"to the best of the witness's knowledge and belief the requesting person-

(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." (*section 6, subsection 2*)

Witnesses are required to be present at the signing of both the first and second requests, and although the witnesses can be the same, they do not need to be. This is the same for the psychiatrist: this can be, but need not necessarily be, the same person at both stages. This is unlike the condition attached to the designated medical practitioner - this will be the same person throughout the process.

Following a formal request for end of life assistance, the designated practitioner must physically meet with the person making the request to discuss: the medical condition causing the person to seek end of life assistance; alternatives to end of life assistance including palliative care and hospice care; terms and conditions of the request, including the ability to revoke the request once made; and the specific means of end of life assistance that would be provided. If the designated practitioner is satisfied that the patient has met all necessary preconditions, is not undertaking the request for assistance under coercion, or acting involuntarily, and has been given a positive report to this effect by the psychiatrist, then the request can be approved.

Once the first request has been approved by the designated practitioner following consultation with the psychiatrist, there must be a 'cooling off period' of 15- 30 days between requests.

### **Second request**

The second request takes much the same form as the first request, in that it requires to be signed in the presence of two witnesses, followed by a consultation with the designated practitioner and psychiatrist before approval by the designated practitioner. One area of controversy in this respect is that the same medical practitioner is the designated practitioner throughout this two-step process, and therefore the patient need only consult with one doctor in the process of requesting end of life assistance. Furthermore, given that the practitioner who gives approval to the request may also be the same one who provides the end of life assistance, there may only be one doctor involved in the entire process.

Nevertheless, regardless of which medical practitioner provides the end of life assistance (and this *need not be* the same doctor as has formally agreed the requests), the medic who has authorised the requests must be present at the procedure, which should take place no more than 28 days after the patient has received confirmation of the second request for assistance being granted; and must be conducted in private: "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" (*section 11, subsection 5*).

This section is particularly controversial when read alongside the explanatory notes to the Bill, which make reference to the person "who administers the means to bring about the end of life". (*EN no. 79*) The implication of this phrasing means that this Bill legislates for both physician assisted suicide (the patient taking the final action under the supervision of the doctor); and euthanasia (the doctor rather than the patient taking the final action).

## Opting out?

"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."  
*(section 3, subsection 1)*

Margo MacDonald consulted on a proposed End of Life Choices Bill, in which there was a suggestion that a review committee be set up, which would review the circumstances and procedures in each case in which a medical practitioner provides end of life assistance. This proposal was not included in the final draft of the Bill; an additional level of safeguarding may, therefore have been removed.

## Previous responses to Margo MacDonald's consultation on End of Life Choices

In December 2008, Margo MacDonald published a consultation on her proposed End of Life Choices (Scotland) Bill. She also met with a number of church representatives at a meeting organised by SCPO in February 2009 for a roundtable discussion. Following the consultation, the Bill went through further drafting and was introduced to the Scottish Parliament in January 2010 as the End of Life Assistance (Scotland) Bill.

SCPO is aware of the following denominations connected to the office having submitted responses to the proposed Bill in early 2009: Baptist Union, Roman Catholic Bishops' Conference of Scotland, Church of Scotland, Free Church of Scotland, The Salvation Army, Scottish Episcopal Church and United Free Church of Scotland.

All responses articulate deep concern with the general principles of the Bill as it was initially proposed. There is a significant degree of commonality about the responses, but by selecting points from each response, a fuller picture as to the range of concerns of Scotland's churches can be discerned.

Baptist Union (Public Issues Group): concerned about informed consent, life being 'intolerable', particularly those not suffering from a terminal illness, and reaffirming the worth of palliative care. Making reference to other faiths, such as Islam and Judaism, this response affirms the "sanctity of life" and holds that it is "not within God's plan for physicians, or others, to end a person's life early".

Bishops' Conference of Scotland: the Catholic Church response focuses on the "inalienable right to life" and the responsibility within society to care for others; a responsibility which lies particularly upon the medical profession: "society, particularly in this country, increasingly has it within its power to demonstrate its highest ideals by supporting those who are ill and those who suffer with them through the pain of love and by ensuring that as far as possible they suffer as little as possible without intentionally depriving them of life."

Church of Scotland (Church & Society Council): particularly concerned with the vulnerability of people who may feel pressured into ending their life prematurely if they perceive themselves to be a burden to others; this response also condemns the individualistic nature of the proposals, as it is "a dangerous fallacy to believe that a person can act independently of all others, with their actions having no consequences for anybody else".

Free Church of Scotland: also notes the arguments about the dependency of individuals on others, in relationships and communities; and the resultant negative impact on society which the proposals to introduce physician assisted suicide may have: "such a Bill, if it were to become law, would have a detrimental effect on society's respect for human life, would damage the doctor-patient relationship, would be difficult to administer without widespread abuse and would lead to a devaluing of the lives of people with disabilities and those in extreme old age".

The Salvation Army: defines true "dignity in death" as providing holistic care which takes the needs of the patient, relatives and carers into account: "the whole focus of "end of life" should not be on the moment of physical death, but on the period (days, weeks or months) leading up to that event, with the emphasis on achieving the best quality of life possible."

Scottish Episcopal Church: referring to the proposal in which it was suggested that there would be a 'register' of physicians authorised to assist in physician-assisted suicide [a feature which has been revised in the introduced draft of the Bill, but is still relevant in the context of accessing doctors who will be prepared to approve requests for end of life assistance]: "What of the physician who in conscience cannot be on the register of those prepared to assist in dying, and who has a duty to refer to someone who is on the register at the request of the patient, regardless of his or her own judgement of the case?"

United Free Church of Scotland: the response takes the commandment from Jesus to "love your neighbour as yourself" (Matthew 22:39) as fundamentally incompatible with assisting another person to die. The response also goes on to quote statistics that indicate that the majority of doctors are opposed to physician assisted suicide; and proposes that "it is incompatible for those directly involved in the care of the dying to also be involved in either assisted suicide or euthanasia".

## **Response to the End of Life Assistance (Scotland) Bill as introduced**

**Care Not Killing**, an umbrella organisation which includes human rights groups, disabilities groups and faith communities, has been strongly involved in opposing the Bill.

They provided SCPO with the following analysis of the published End of Life Assistance (Scotland) Bill:

*"This is truly the Bill that dare not speak its name. The only definition it gives of "end of life assistance" - which is what it is seeking to legalise - is "the provision of administration of appropriate means to enable a person to die with dignity and a minimum of distress". But that is the role of palliative care, which is perfectly legal and for which Scotland has an excellent reputation. The reason for this coyness is, of course, obvious - the Bill's authors do not want to say explicitly that its purpose is to licence doctors to kill their patients or give them the means to kill themselves. That might frighten the horses! One understands their reasons, but you can't legislate with euphemisms and verbal evasions.*

*The Bill's Explanatory Notes draw on the parallel of Oregon to claim it would result in around 55 additional deaths in Scotland every year. But this is not an Oregon-style bill: it's a Dutch-style euthanasia bill. Dutch experience indicates that the annual death toll in Scotland would run into many hundreds. You can see why when you look at who would be eligible for its "end of life assistance" - not just the terminally ill but anyone who "is permanently physically incapacitated to such an extent as not to be able to live independently". This could cover anyone who is blind, deaf or wheel-chair bound and needs help to live from others. The bill's ambit is truly breathtaking!*

*We do not doubt Margo MacDonald's good intentions, but her bill is highly dangerous and could put thousands of Scottish people at serious risk of self-harm." (Care Not Killing, February 2010)*

However, in an interview with the Scottish Parliament Holyrood Highlights programme, Margo MacDonald said that she has specifically put safeguards into the Bill, and restricted those eligible to seek end of life assistance precisely because she has "tried very hard to assure people that it is not the start of a 'slippery slope' " (Holyrood Highlights, 21 Jan).

## Next Steps: the Parliamentary Process

### Steps already taken:

Bill introduced to Parliament - this happened on 20 January;

Bill is assigned to a lead Parliamentary Committee - an ad hoc bill committee was agreed to on 10 February.

Despite early reports in the media suggesting that the Parliament's Health & Sport Committee would take responsibility for scrutinising the Bill, the Scottish Parliament Parliamentary Bureau voted to establish an ad hoc committee for its consideration. This was decided on the basis that it "clearly deals with serious moral and ethical issues and is not only a health matter" (Mike Rumbles MSP, 10 February 2010). Notwithstanding the Convener of the Health & Sport Committee, Christine Grahame MSP lodging a point of order to suggest that the Parliamentary Bureau should have assigned the Bill to her Committee, and an amendment lodged by Margo MacDonald to the same effect, the ad hoc committee was established by order of the Parliament. The vote, however, was not unanimous, with SNP members, Greens and Margo MacDonald all voting against the Parliamentary Bureau's proposal to establish an ad hoc committee, having voted in favour of Margo MacDonald's amendment to send the Bill to the Health & Sport Committee. (Scottish Parliament Official Report, 10 February 2010)

The motion establishing the End of Life Assistance (Scotland) Bill Committee stated that there would be 6 members. Ross Finnie (Lib Dem), Dr Nanette Milne (Con), Cathy Peattie, and Helen Eadie (both Labour), and Michael Matheson and Dr Ian McKee (SNP) have been announced as members of the Committee. According to the rota system for convening ad hoc committees, the Lib Dems will convene this Committee; and therefore former Health Secretary Ross Finnie MSP was appointed as Convener at the first meeting of the Committee on 2 March 2010. The Vice-Convener was to be an SNP member, and Dr Ian McKee MSP was duly appointed.

### We now expect the Bill to be processed as follows:

The ad hoc End of Life Assistance (Scotland) Bill Committee will meet to decide on timescales for the consideration of the Bill;

A call for written evidence will be issued by the Committee;

Witnesses will be called to give oral evidence to the Committee (selected by the Committee to reflect a range of opinions and technical expertise);

Oral evidence will be heard - this may run over a few meetings of the Committee;

Committee issues Stage 1 report, where they consider the general principles of the Bill. At this point, they can (although it is not obligatory) recommend to Parliament whether they think the general principles of the Bill should be accepted or not;

Parliament debates Stage 1 - again, this is based primarily on the general principles of the Bill.

If the Bill passes the Stage 1 debate, there will then be an opportunity for MSPs to lodge amendments and consider further the detail of the Bill.

It has been indicated by all of the main party managers at Holyrood that any vote taken on this Bill will not be subject to a party whip, which means that MSPs will be allowed, by their party, to vote as they wish on the Bill.

The Scottish Churches Parliamentary Office will continue to monitor the progress of this Bill throughout its parliamentary journey.