



Royal College
of Nursing
Scotland

Member briefing on the

Assisted Dying for

Terminally Ill Adults

(Scotland) Bill

5 September 2024

Introduction

This briefing outlines RCN Scotland's position on the Assisted Dying for Terminally Ill Adults (Scotland) Bill. It is aimed at RCN members and stakeholders with an interest in this issue.

RCN Scotland has submitted [written evidence](#) to the Health, Social Care and Sport Committee about the Bill, which was informed by members' views. To further inform our engagement with the Bill we are running a survey in September 2024. This briefing provides further information about the proposals for RCN members.

You can give us your views by email at policyscotland@rcn.org.uk

What is Assisted Dying?

Assisted Dying is the process of aiding an individual with a terminal illness or incurable condition to end their own life, by means of lethal drugs. It differs from assisted suicide or euthanasia, where a terminal illness or even capacity are not necessary requirements and the ending of a life can be to relieve suffering. Lethal drugs can be administered orally in tablet or liquid form or via injection and can be self-administered or administered by a health professional.

The current legal position in Scotland is that there is no specific legislation which makes assisted dying a criminal offence, but it is possible to be prosecuted for murder or culpable homicide for assisting the death of another person. There would also be professional implications, particularly for regulated healthcare professionals. The Bill therefore seeks to provide an exemption from prosecution or professional consequences for professionals who assist with a death under the terms of the Bill.

The Assisted Dying for Terminally Ill Adults (Scotland) Bill would make it lawful for a terminally ill adult, who meets specified eligibility criteria, to voluntarily request, and be provided with assistance by health professionals to end their life via the self-administration of an approved substance.

In Scotland there have been three previous attempts to legislate in this area. The current Bill differs from previous attempts in that it is quite narrowly defined and an assisted death would only be available to those who have an advanced and progressive terminal illness. It also has an explicit role for registered nurses in the process. Previous Bills were either unclear about the role of nursing in the process, or set up new roles to assist with deaths. An important feature of the Bill is that a death must be caused by the self administration of an approved substance (most likely taken orally).

RCN Scotland's position on assisted dying

Since 2009, the RCN has had a neutral position on whether the law on assisted dying should be changed. This rightly reflects our members' differing views on the issue and means we neither support nor oppose attempts to change the law.

At the RCN 2024 Congress, a motion was debated on Assisted Dying. During that debate members spoke both in favour and against assisted dying and narrowly voted in favour of a motion which called on Council to consider the issue. The RCN remains neutral on whether assisted dying should be legalised and we don't anticipate that changing while our members' continue to have differing views on the issue.

However, a neutral position does not mean that we do not take a view on the impact introducing assisted dying would have on our members. In particular, we will seek to ensure there are sufficient protections for members who may wish to engage in assisting a death under the terms of the legislation, and to protect those members who may wish to refuse to participate, under the terms of the legislation.

We are also mindful of the need, when faced with a proposal for assisted dying, to ensure that those who are eligible are able to access a lawful service, in terms of ensuring a high-quality service, which is accessible in all parts of Scotland and which does not have a negative impact on existing and often struggling services. This approach should not be taken as tacit support for assisted dying; it is about ensuring that if such an approach is adopted, services are sustainable and safe for patients and for staff.

Further detail on the RCN's position on Assisted Dying can be found on [our website](#).

The Assisted Dying for Terminally Ill Adults (Scotland) Bill

A significant difference between this Bill and previous Bills relates to who will be able to access assisted dying. This Bill only permits access for those who have an advanced and progressive terminal illness. Section 2 of the Bill states "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."

While the Bill does not define "terminally ill" by reference to a period of life expectancy, the definition requires a person to be in an advanced stage of terminal illness (that is, close to death). To be eligible, a person needs to be assessed by two doctors as being terminally ill.

As further eligibility requirements, a person must also be: aged 16 or over; resident in Scotland for at least 12 continuous months; registered with a GP in Scotland; and have the mental capacity to make the request. The Bill requires two doctors to be satisfied that a person has sufficient mental capacity to make the decision.

A person would indicate to a registered medical practitioner (likely to be their GP or doctor in charge of their treatment and care) that they wish to have an assisted death. A first declaration form must be signed by the person, the doctor they spoke to about having an assisted death – who becomes the coordinating registered medical practitioner (CRMP) for the assisted dying process (if they agree to participate) - and another witness. A Registered Nurse (for example a practice nurse) could be this witness, but only if they do not provide care to the individual in relation to their terminal illness.

Following the signing of the first declaration form, the minimum waiting period that must elapse before a second declaration can be signed begins. This is 14 days, except in circumstances where death is expected by the assessing doctors to occur in less than 14 days, in which circumstance the period may be shortened but must not be shorter than 48 hours. The medical assessment process can also begin. The person will first be assessed by the coordinating doctor to ensure that they meet all the eligibility criteria and are not being coerced or unduly influenced. If the coordinating doctor is satisfied, they would make a referral to a second, independent, doctor to assess the person to determine whether they meet the eligibility criteria relating to terminal illness and capacity and are not being coerced or unduly pressured.

If either doctor is not satisfied on one or more of the criteria relating to terminal diagnosis and capacity, additional specialist assessment and input can be sought. If both doctors determine that the person is eligible and the minimum waiting time has elapsed since the first declaration was signed, then the person can sign a second, final, declaration form confirming they wish an assisted death to take place.

If, before then, either doctor is not satisfied, then the process stops, and assistance to end life will not be provided.

A second, final, declaration form must be signed by the person, the coordinating doctor and another witness.

If all the required parts of the process have been met successfully, the person decides where and when they wish to die and arrangements can be made for the person to be assisted to die on that day, by self-administered means. The Bill does not make provision for where or when this should happen, but the intention is for patient choice to be central to the process.

On the day of the assisted death, the CRMP or a health professional authorised by that coordinating doctor (which we anticipate is most likely to be a registered nurse) will attend and provide the person with an approved substance which they will take to end their life. This health professional is given the name Authorised Health Professional (AuHP).

Before providing the approved substance, the CRMP or AuHP must check that the person wishes to proceed and consider again whether they have capacity to make the decision and are doing so of their own free will.

It may be that other health professionals also attend if the CRMP or AuHP think it necessary (the Bill defines a health professional for this purpose as also including registered pharmacists, in addition to registered nurses and registered medical practitioners). The Bill does not require more than one health professional to attend, so a registered nurse could attend by themselves. Even if a second individual does attend, the second professional cannot perform any of the functions of the AuHP and so cannot provide a second professional judgement when carrying out the capacity assessment.

The CRMP or AuHP must remain with the person until they have decided to take the substance and, if so, until they have died. However, the Bill does not require them to be in the same room as the person either to see them take the substance nor at the time of death.

Where the person decides not to use the substance provided to end their life, the CRMP or AuHP must remove it from the premises.

After an assisted death, the CRMP completes a “final statement” noting all relevant details of the death (such as the date, time and cause of death, and the time between taking the substance and death occurring). The cause of death listed should be the underlying terminal illness the adult had, which is also the case with the death certificate.

The Bill also requires additional reporting and monitoring to be done of the impact of the Act, including to establish whether certain groups of people are more likely to access assisted dying than others.

Timeline for the legislation

The Health, Social Care and Sport Committee is responsible for examining the Bill and will hear from experts, organisations and members of the public about what the Bill will do. It will then write a report about what it has heard and its own view of the Bill.

- **16 August** – deadline for Stage 1 evidence, RCN Scotland submitted [written evidence](#)
- **Autumn 2024** – likely oral evidence sessions at Health, Social Care and Sport Committee.
- **Late 2024/early 2025** – likely Stage 1 report from the Health, Social Care and Sport Committee
- **Early 2025** – likely Stage 1 vote in the Scottish Parliament on the principles of assisted dying
- **Spring/Summer 2025** - if the Bill progresses past Stage 1, Stage 2 will allow MSPs to propose changes to the Bill. These amendments will be debated and decided on at a meeting of the Health, Social Care and Sport Committee. Stage 3 will see the amended Bill debated by the full Parliament.
- **Post 2026** – If the Bill is passed by MSPs, it will take time to put in place the resources necessary to offer assisted dying. It is therefore not anticipated that assisted dying will be available ahead of the Scottish Parliament elections in May 2026.

RCN Scotland's concerns

As outlined above, the RCN does not take a position for or against assisted dying. However, we do have a strong view that if introduced, there must be sufficient protection for any of our members who wish to engage in assisting a death under the terms of the legislation, and to protect those who wish to refuse to participate, under the terms of the legislation.

We have a number of concerns that the Bill fails to provide sufficient clarity for our members and we would expect these to be considered if the legislation progresses through the Scottish Parliament. Some of these points are significant.

Below are some of the areas we believe need addressing.

Standalone Service

If assisted dying is legalised, RCN Scotland believes that, instead of integrating assisted dying into existing services, a better model would be to establish a separate standalone service.

This approach would provide clarity for patients and, as discussed below, better protection for staff and it would avoid the situation where patients approach their GPs only to be told that the GP is not willing to act as the CRMP.

A separate service may be more costly than what is envisaged by the Bill, but it would be better for those seeking an assisted death and it would provide better protection and support for staff involved too. RCN Scotland are strongly opposed to assisted dying being added to the duties of existing teams, for example district nursing. District nursing is under huge pressure and adding on additional services, and one which will not be able to be easily carried out with care and respect alongside existing caseloads, would be unsustainable.

A separate service would also allow for staff to be adequately trained and importantly, supported, to do what will be a highly skilled, important and emotionally challenging role.

RCN Scotland is of the view that if adults are able to lawfully have an assisted death, then patient centred care would require a choice around both the timing and the location of death, as far as possible. A separate service would improve that choice.

An 'Opt-in' model

As well as a separate service RCN Scotland's view is that the Bill should require staff who want to be involved in assisted dying to have to 'opt-in' to do so, with the ability to rescind this offer at any time, as well as statutory protection against discrimination based on their choices.

RCN Scotland is of the view that, on a matter so significant, conscientious objection does not provide sufficient protection for our members. Conscientious objection puts the onus on staff to show that they have an objection based on their conscience. It is RCN Scotland's view that staff should be able to absolve themselves from providing assisted dying for any reason, whether that is moral, conscience, or in terms of their own protection.

As acknowledged, the issue of conscientious objection may also be a reserved matter and so outwith the legislative competence of the Scottish Parliament. RCN Scotland's reading of the Bill (specifically section 22) is that if this is found to be the case, the section on conscientious objection would not be enacted. This would remove any protection for members not wishing to provide assisted dying which would be unacceptable to RCN Scotland. RCN Scotland believes that staff should have to positively choose to participate in assisted dying.

RCN Scotland would also expect the Bill to provide statutory protection from discrimination against staff based on their decision to either participate or not participate in assisted dying.

Enhanced protection for the role of the Authorised Health Professional (AuHP)

RCN Scotland anticipates that Registered Nurses will be the most likely to become the AuHP and therefore that our members will have a significant role to play in assisted dying. We have a number of serious concerns about the way in which the Bill safeguards the AuHP role which require further consideration.

Firstly, it should not be the case that an AuHP carries out the role alone. While the Bill allows for an AuHP to bring a colleague, that additional colleague does not act as a second AuHP. There needs to be two registered professionals, both carrying out the role of an AuHP (including the checks necessary to do that role) separately of each other. If both AuHPs agree that the individual has capacity and is requesting assistance voluntarily, then the assisted death can go ahead. This joint role is necessary to ensure that staff are supported and protected, not least if there is a challenge to the process following death.

The Bill requires the AuHP to be satisfied that the individual has capacity and is voluntarily choosing an assisted death. This assessment will be made on the day and with no option for the AuHP to consult with other professionals, which is another reason why there needs to be two AuHPs and for a separate service to ensure staff are adequately trained to carry out this role.

Assessments of capacity in other settings are almost exclusively carried out by medical practitioners (for example under the Adults with Incapacity (Scotland) Act 2000). If nurses are to be required to carry out an assessment of capacity in terms of making a choice to die, this would be a significant change in approach. RCN Scotland is seeking clarification around this and believes it is essential that if this is the intention, nurses are given a clear power in law to assess capacity, as well as the required skills and training to carry out this role.

Additionally, RCN Scotland would expect the Bill to require the AuHPs to do an identity check as well as assess that all the prior paperwork has been completed correctly as additional safeguards, alongside the assessment around capacity.

We are also concerned that the explanatory notes to the Bill say that there is no requirement for the AuHP to be in the room when the person takes the approved substance. This, in RCN Scotland's view is a huge risk which would potentially place our members in an unacceptable situation. Families could be present, including young children, around a lethal substance, while the AuHP leaves the room. It therefore appears unclear how the AuHP can be assured that the individual has taken the substance themselves or know the time of death or the time between giving the substance and taking it (both of which have to be recorded on the final statement) if they are not in the room.

RCN Scotland is also concerned about the possibility of pressure being put on AuHP's to provide assistance beyond what is permitted by the Bill. It is likely that individuals will seek to have an assisted death as late as possible in the progression of their condition and this may mean that they become unable to self-administer. The individual and their families, wanting to exercise their wish for an assisted death, might urge health professionals to 'give a little extra help' including help to administer the substance. If that were to happen, the health professional would not be protected by the legislation. We are therefore calling for explicit guidance, including a checklist of what can be done lawfully and what is unlawful, to protect health professionals and safeguard people accessing an assisted death.

Training

Because assisted dying is an emotive subject and results in the death of an individual, it is vital that adequate safeguards are in place to protect staff who are involved. Bereaved families can, understandably, behave emotionally and this may particularly be the case where the assisted death was not supported by them. This can expose staff to criticism, pressure and even legal challenges.

While the Bill's explanatory notes do refer to the existing duty of healthcare providers to ensure staff are adequately trained, RCN Scotland's members tell us that due to staffing pressures across health and social care, training including mandatory training does not always happen. We also know that there is often pressure on staff to work outside their competencies.

This cannot be allowed to happen with respect to assisted dying. Registered Nurses will be asked to make complex assessments around capacity and supervise the death of an individual. For younger adults, or for older people with cognitive impairment, these decisions are not clear cut and it is therefore a highly skilled job.

RCN Scotland is of the view that the best way to ensure staff are highly and adequately trained to provide assisted deaths is for a standalone service to be set up. However, whatever model is adopted, safeguards to ensure staff are adequately trained to do their role is vital and RCN Scotland is concerned the Bill does not give sufficient attention to this point.

Other concerns

Throughout the assisted dying process, it is unclear who has legal responsibility for the assisted death and this needs to be clarified on the face of the Bill.

Allowing assisted dying has the potential to have a significant impact on existing services, particularly if insufficient funding is provided. We are concerned that a lack of certainty around the likely number of people seeking an assisted death makes assessing the workforce requirements and resourcing for the Bill difficult.

RCN Scotland is acutely aware that many members have concerns around the provision of palliative care across Scotland and the impact these proposals may have on these vital services. RCN Scotland agrees that there is a real and urgent need to improve access to palliative care across Scotland and that in some parts of the country, there are insufficient services to support people at the end of their lives. We responded sympathetically to the proposal to establish a Right to Palliative Care (see [here](#) for our response). RCN Scotland will continue to pursue this issue, separately from the debate around Assisted Dying.

Engaging with and representing RCN Scotland members

Assisted dying has been an issue which RCN members have debated extensively. In July 2009, the RCN's governing Council voted to move to a neutral stance in relation to assisted dying for people who have a terminal illness. This followed an extensive and detailed consultation process with members across the UK. A position statement on assisted dying was published and was reviewed in 2014 and again in 2023, following a debate at the 2022 RCN Congress. Assisted dying was again debated at RCN Congress 2024 and RCN Council is now considering the next steps in light of the views expressed by members.

RCN Scotland has also engaged with the proposal for this legislation at an early stage, including meeting with a number of stakeholders and the Member of the Scottish Parliament proposing a change in the law. We are also an active member of the Parliamentary Cross Party Group (CPG) on Palliative Care.

RCN Scotland has submitted written evidence in relation to the proposals, which is based on members existing views as well as RCN staff's analysis of the Bill. As the legislation progresses, we are launching a short survey to help inform our ongoing influencing work.

In addition to this, RCN Scotland members can send their views vby email at policyscotland@rcn.org.uk

As the Bill progresses, we will continue to inform and engage with RCN Scotland members.

Acknowledging that there are a significant range of views, this engagement will not focus on revisiting the merits of assisted dying and we anticipate that we will retain our neutral position. However, we will continue to press for protection for members who wish to be involved in providing assisted dying, as well as those who do not.



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