Royal College of Nursing Scotland

RCN Scotland's response to

Health, Social Care and Sport Committee's call for evidence on the Assisted Dying for Terminally Ill Adults (Scotland) Bill

and

Finance and Public Administration Committee's call for evidence on the Financial Memorandum of the Assisted Dying for Terminally Ill Adults (Scotland) Bill

15 August 2024

These responses were originally submitted using Scottish Parliament online forms

Introduction

The Royal College of Nursing (RCN) is the world's largest professional organisation and trade union for nursing staff, with members in the NHS, independent and voluntary sectors. RCN Scotland promotes patient and nursing interests by campaigning on issues that affect our members, shaping national health policies, representing members on practice and employment issues and providing members with learning and development opportunities. With over 49,500 members in Scotland, we are the voice of nursing.

Background

Liam McArthur MSP introduced this Member's Bill which, if passed, would allow terminally ill adults in Scotland, who are eligible, to lawfully request, and be provided with, assistance by health professionals to end their own life.

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.

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, both directly and indirectly, under the terms of the legislation.

Further detail on the RCN's position on Assisted Dying can be found on our website.

Royal College of Nursing Scotland

Health, Social Care and Sport Committee's call for evidence on the Assisted Dying for Terminally Ill Adults (Scotland) Bill

Consultation questions and RCN Scotland responses

Question 1 – Overarching question

The purpose of the Assisted Dying for Terminally Ill Adults (Scotland) Bill is to introduce a lawful form of assisted dying for people over the age of 16 with a terminal illness. Which of the following best reflects your views on the Bill?

- **Fully support**
- **Partially support**
- **Neutral/Don't know**
- **Partially oppose**
- **Strongly oppose**

RCN Scotland response:

The RCN is committed to supporting its members to provide high quality end of life care, ensuring a comfortable and dignified death. We recognise that the assisted dying debate is complex and, since 2009, the RCN has held 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.

However, the Bill, as proposed, could see registered nurses play a significant role in the assisted dying process in Scotland. The RCN has a responsibility to engage in the process to ensure that, if passed, the Bill contains the necessary safeguards to protect the interests of both members who may wish to engage in assisting a death under the terms of the legislation, and members who may not wish to participate. Notwithstanding our neutral position on whether assisted dying should be legalised, we have significant concerns with the Bill as currently drafted which we detail below.

As well as protecting our individual members, we are also mindful of the need to ensure that, if the Bill passes, it results in a high-quality service, which is accessible in all parts of Scotland, and which does not have a negative resourcing impact on existing, and often struggling, nursing services. Comments on these issues should not be interpreted as support for assisted dying; rather they are about ensuring that, if the Bill passes, services are sustainable and safe for patients and for staff.

All our activity to comment on, and influence, the Bill will adhere to the RCN position of neutrality on assisted dying. Our comments will focus on the safeguards needed to protect our members and nursing practice and, as such, we do not answer all the questions in this survey. Where we do not comment on a specific provision in the Bill, this is because it is not an issue that impacts on nursing practice and should not be interpreted as support for those provisions.

Question 2a – Eligibility

The Bill defines someone as 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'. An adult is defined as someone aged 16 or over. To be eligible a person would also need to have been resident in Scotland for at least 12 months and be registered with a GP practice.

Which of the following most closely matches your opinion on the terminal illness criterion for determining eligibility for assisted dying?

- **No-one should be eligible for assisted dying**
- **Assisted dying should be available only to people who are terminally ill, and the definition of terminal illness should be narrower than in the Bill**
- **Assisted dying should be available only to people who are terminally ill, and the definition of terminal illness in the Bill is about right**
- **Assisted dying should be available only to people who are terminally ill, but the definition of terminal illness should be broader than in the Bill**
- **Assisted dying should be available to people who are terminally ill, and to people in some other categories.**
- **Other – please provide further detail**

RCN Scotland response:

As described in response to question 1, the RCN has a neutral position in relation to assisted dying for people who have a terminal illness. We will only be commenting on provisions as they relate to nursing practice.

Question 2b – Eligibility – minimum age

Which of the following most closely matches your opinion on the minimum age at which people should be eligible for assisted dying?

- **No-one should be eligible for assisted dying.**
- **The minimum age should be lower than 16**
- **The minimum age should be 16**
- **The minimum age should be 18**
- **The minimum age should be higher than 18**
- **Other – please provide further detail**

RCN Scotland response:

As described in response to question 1, the RCN has a neutral position in relation to assisted dying for people who have a terminal illness. We will only be commenting on provisions as they relate to nursing practice.

To highlight, however, that 16-year-olds will potentially still be under the care of children's services and their inclusions within the scope of this legislation may therefore widen the scope of the healthcare professionals involved.

Question 3—The Assisted Dying procedure and procedural safeguards

The Bill describes the procedure which would be in place for those wishing to have an assisted death. It sets out various procedural safeguards, including:

- **examination by two doctors**
- **test of capacity**
- **test of non-coercion**
- **two-stage process with period for reflection**

Which of the following most closely matches your opinion on the Assisted Dying procedure and the procedural safeguards set out in the Bill?

- **I do not agree with the procedure and procedural safeguards because I oppose assisted dying in principle**
- **The procedure should be strengthened to protect against abuse**
- **The procedure strikes an appropriate balance**
- **The procedure should be simplified to minimise delay and distress to those seeking an assisted death**
- **Other – please provide further detail**

RCN Scotland response:

We have serious concerns about aspects of the procedure outlined in section 15 of the Bill (Provision of assistance) and the significant risks these pose for our members. We outline these in detail below.

If the Bill passes, we believe that in practice, it is likely that registered nurses will often take on the role of the authorised health professional (AuHP). We have serious concerns about safeguards for the AuHP role and will be calling for a number of amendments to this section if the Bill passes stage 1.

Lone working

A key concern is that section 15 allows the coordinating registered medical practitioner (cRMP) or an AuHP to provide a terminally ill adult with an approved substance to end their life while working alone. Before providing the substance, the AuHP or cRMP is required to be satisfied that the individual wishes to proceed voluntarily and continues to have the capacity to make the decision. Our position is that carrying out these final assessments, providing the approved substance and remaining with the individual while they self-administer, while working alone, would leave our members open to accusations of coercion or wrongdoing and represents an unacceptable risk. It cannot be assumed that family members would be supportive of assisted dying and the procedural safeguards established by the Bill need strengthened to protect the health professionals involved.

While section 15(4) states that a AuHP may be accompanied by another health professional as they think necessary, it does not require this. Given nursing workforce shortages, there is a serious risk that a registered nurse would have to attend alone, even if they want another nurse to accompany them. In addition, where they are accompanied by another health professional, the explanatory notes make clear that 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 Bill must require two registered health professionals to attend together to provide assistance to end life. They should both carry out the necessary assessments and, if both professionals agree that the individual has capacity and is requesting assistance voluntarily, then the approved substance can be provided. This is necessary to ensure that staff are supported and protected, not least if there is a challenge to the process following death.

Section 15 is also silent on what the AuHP or cRMP should do if they are in doubt about mental capacity or about whether the individual is requesting assistance voluntarily. While it is clear that they would not provide the substance at that point, we believe that further clarity is required on next steps.

We would also expect section 15 to include a requirement for proof of identity to be checked by the AuHP, as is required when an individual makes a first declaration, and for the previous paperwork to be reviewed so that the AuHP is satisfied that the conditions laid out in section 15(2) are met.

Leaving the room

Section 15(5) requires the health professional attending the end-of-life process to remain with the individual until they decide whether to take the substance, and if they do take the substance, until they have died. However, section 15(6) then states that the health professional does not have to be in the same room as the individual for the purposes of subsection 5. This is another key concern and needs to be amended. Once the cRMP or AuHP has provided the adult with the approved substance, they should not leave the room. They cannot leave the substance unattended; they need to witness that the adult has taken the substance themselves and record the time the substance is taken and the time of death. Providing the adult with the substance and them leaving them in the room with

family members would pose a serious risk. It would be possible for someone other than the terminally ill adult to administer the substance, or to ingest the substance themselves. In its report (November 2022) the Bill's Medical Advisory Group was clear that the healthcare practitioner should remain with the patient until they have self-ingested the substance for reasons of accountability, safety and support.

Legal accountability

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

The cRMP presumably has a role over the whole process whether or not they are present at the time of death, but the legal responsibility of the AuHP needs to be clearly defined on the face of the Bill and in statutory guidance.

Putting a substance into a container to hand to the individual is the same in law as administering a medicine and so, in this case, a registered nurse would be legally responsible for the approved substance. This will create legal and regulatory issues if, for example, something happens to the substance. It also creates issues if the approved substance interacts with other medication and makes death less comfortable (this is further complicated by the fact that the approved substance's ingredients may not be known). We would expect these issues to be addressed in the legislation for the protection of our members.

Question 4 – Method of dying

The Bill authorises a medical practitioner or authorised health professional to provide an eligible adult who meets certain conditions with a substance with which the adult can end their own life.

Which of the following most closely matches your opinion on this aspect of the Bill?

- **It should remain unlawful to supply people with a substance for the purpose of ending their own life.**
- **It should become lawful to supply people with a substance for the purpose of ending their own life, as proposed in the Bill**
- **It should become lawful to supply people with a substance for the purpose of ending their own life, as proposed in the Bill, and it should also be possible for someone else to administer the substance to the adult, where the adult is unable to self-administer.**
- **Other – please provide further detail**

RCN Scotland response:

Given the RCN's neutral position on assisted dying, we do not have a position on whether or not it should be lawful to supply someone with a substance for the purpose of ending their life.

We are clear that it must be set out, with absolute clarity, what "provide a terminally ill adult with an approved substance" means in practice as set out within section 15(1). This is vital given the risk of prosecution if health professionals do not remain within the legal framework established by the Bill. For example, does "provide a terminally ill adult with an approved substance" mean setting a cup containing the substance down on a table next to the individual or would it be permitted to place a cup within an individual's hand. Our legal advice is extremely clear that if an individual struggled to take the substance, and a nurse was to help them lift the cup to their lips, the nurse could be prosecuted for murder.

Given the importance of these issues, and the risk of prosecution, explicit guidance is needed to define where the line lies, in order to protect health professionals as well as to safeguard people accessing an assisted death. This must include a checklist of what can be done lawfully and what is unlawful. This is particularly important given that there is a possibility of pressure being put on cRMPs or AuHPs to provide assistance beyond what is permitted by the Bill, for example where an individual's condition has deteriorated to a point where they are unable to self-administer the substance.

We also note that at no point in the process, prior to the approved substance being provided, is there any assessment of whether an individual can self-administer the approved substance. This could raise expectations, as it may be that an individual goes through the assessments and first and second declarations despite being unable to self-administer the approved substance, for example due to inability or difficulty swallowing. We believe that this should form part of the assessment process required by section 6 and there also needs to be consideration of any potential impact where the individual's condition deteriorates during the process.

Question 5 - Health professionals

The Bill requires the direct involvement of medical practitioners and authorised health professionals in the assisted dying process. It includes a provision allowing individuals to opt out as a matter of conscience.

Which of the following most closely matches your opinion on how the Bill may affect the medical profession? Tick all that apply.

- **Medical professionals should not be involved in assisted dying, as their duty is to preserve life, not end it.**
- **The Bill strikes an appropriate balance by requiring that there are medical practitioners involved, but also allowing those with a conscientious objection to opt out.**

- **Assisting people to have a "good death" should be recognised as a legitimate role for medical professionals**
- **Legalising assisted dying risks undermining the doctor-patient relationship**
- **Other – please provide further detail**

RCN Scotland response:

We are concerned with the way this question is framed. It asks how the Bill may affect the medical profession and then provides options that don't relate to how the Bill may affect the medical profession. In addition, it does not ask how the Bill may affect the nursing profession, despite the fact that registered nurses would take on the role of AuHP. Our positions on these issues are detailed below.

There is a need for greater protection for health professionals within the Bill. If assisted dying is legalised in Scotland, the legislation must give registered nurses a genuine choice about whether, and if so, to what extent, they are willing to participate in activities related to assisted dying.

Conscientious objection

Section 18 of the Bill allows those with a conscientious objection to opt-out of being involved. We recognise that the conscientious objection clause, similar to that found in legislation on abortion and assisted reproduction, benefits from established case law providing interpretation and guidance on how it is to be applied. However, within the context of assisted dying, our position is that the inclusion of a conscientious objection clause does not offer sufficient protection, and that staff should be able to object to being involved based on conscience or any other reason. We believe this general right to object is required to ensure that health professionals have a genuine choice about whether or not they are involved. We are also calling for an opt-in provision as a further safeguard, which we discuss further below.

There is also some question about whether the conscientious objection clause relates to reserved matters and we urge the Committee to seek clarity on this issue. Our understanding is that section 22 of the Bill means that, if it is determined that section 18 relates to the reserved matter of regulation of health professionals, then section 18 is of no effect. This would remove any protection for members not wishing to participate in assisted dying.

Where a registered nurse exercises a conscientious objection to becoming an AuHP, we are not clear whether it falls to the cRMP or that individual nurse who objects, to find another individual to take on the role of AuHP. A clause which provides clarity on this should be included.

An opt-in delivery model

If the Bill passes, the way in which an assisted dying service is delivered, in practice, is a very significant issue for our members. The Bill itself is largely silent on this issue, but the

accompanying documents, particularly the financial memorandum, suggests that a wide range of nurses, working within a diverse range of teams, could be expected to participate in assisted dying, unless they exercise a conscientious objection. The financial memorandum states that "it is expected that the co-ordinating doctor will normally be the person seeking an assisted death's GP or other RMP in charge of their care." It goes on to state "it is anticipated that the RMPs would undertake the role as part of their existing employment and that costs would be absorbed by existing budgets." The financial memorandum is largely silent on the resourcing implications for nursing, despite the Bill establishing a key role for registered nurses in the process. But if we assume a similar approach is taken to that envisaged for doctors' involvement, then registered nurses working in a wide range of settings, for example district nursing, GP practices, hospices and acute medical settings, could all be expected to take on the role of AuHP, unless they exercise a conscientious objection.

We believe that while a clause allowing for objection based on conscience or for any other reason, should be included as a safeguard, the Bill should also make clear that an "opt-in" model of delivery is to be established. Only registered nurses who positively choose to participate should be expected to do so. The Bill's Medical Advisory Group (November 2022) reported that: "the group discussed the practicalities of conscientious objection and decided that assisted dying should be an opt-in process…". We understand that the BMA is also calling for an opt-in model.

There are various ways that the Bill could establish an opt-in model. For example, the legislative proposals in Jersey state that all professionals working in the assisted dying service must opt in to do so and only those who choose to register with the service and complete the mandatory training can participate.

As stated above, the Bill must give nurses a genuine choice about whether, and if so to what extent, they are willing to participate in assisted dying. Rather than simply expecting potentially large numbers of nurses, working across diverse range of teams, to exercise a conscientious objection, we believe that establishing an opt-in model would provide a greater degree of choice and reassure members who do not wish to participate, that they would not be asked to do so.

The need for a separate assisted dying service

In addition to requiring health professionals to opt-in to participating in assisted dying, it is our view that, if this legislation passes, a separate, dedicated assisted dying service should be established (either nationally, regionally or by local health boards), rather than integrating the provision of assisted dying into existing services and patient pathways. The service would accept referrals or self-referrals and staff would opt-in to work for the service as required (although this wouldn't necessarily form their whole role given the estimated relatively small numbers of assisted deaths in Scotland, at least in the first few years). While it is not our role to make detailed suggestions on how this should be run, we would like to see a model where, when someone requests an assisted death, a specialist, dedicated team wraps around them and takes them through the process.

A separate service (or separate regional/local services) may be more costly than the

financial memorandum sets out, but there are important benefits for individuals seeking as assisted death and for staff:

- Nurses who do not wish to participate in assisted dying would not face any pressure to do so.
- All staff who opt-in to the service would receive high-quality, specialist training and would gain valuable experience delivering the service.
- Staff could be better provided with specialist wellbeing support and access to a peer support network.
- Patients would have a clear pathway for accessing the service and would be less likely to experience staff exercising a conscientious objection.
- Patient choice about the timing and place of an assisted death could be better accommodated by a dedicated service.
- The establishment of a dedicated service would enable staff to travel as and when required to support the delivery of assisted dying in rural and remote areas.
- Existing services are under resourced and struggling and this cannot simply be added to existing workloads.

We do not support an approach where assisted dying would be provided by existing teams, for example district nurses. District nursing is under huge pressure and teams are dealing with large caseloads and needing to make tough decisions every day to prioritise who receives a visit and who does not. Providing someone with assistance to end their life requires time in order to provide them, and their families, with the necessary care, support and respect. Expecting existing teams to take on this role, in addition to existing workloads, would not be safe or sustainable.

While we do not expect the Bill to set out all the details on exactly how assisted dying should be implemented, it should make clear that staff will opt-in and that a separate service will be established.

Protection from discrimination and harassment

We would also like to see the Bill amended to provide statutory protection from discrimination for registered nurses so that it is unlawful to discriminate against them based on their decision to either participate or not participate in assisted dying.

Assisted dying is an extremely emotive issues, with strongly held views on either side of the debate, and health care staff should not be concerned about whether their decision to participate, or not participate, will have an impact on their professional or personal life. This provision may provide particular reassurance for staff who work in rural areas or in small communities.

We also support the BMA's calls for the Bill to include provision for safe access zones that could be established in future, should the need arise, to protect staff and patients from harassment.

Training

Section 5(a) of the Bill states that Scottish Ministers may make regulations specifying the qualifications and experience necessary to take on the role of the cRMP. There is no such provision included giving Ministers the ability to set out the qualifications and experience necessary to take on the role of AhHP.

The Bill does not include any provisions about training for health professionals. The policy memorandum states that the Member anticipates that relevant regulatory bodies, such as the General Medical Council (GMC) and Nursing and Midwifery Council (NMC) will ensure suitable training is provided for health professionals who will be involved in supporting the assisted dying process to ensure they are familiar with the process set out in the Bill. It goes on to say that support may also be provided by relevant representative and membership organisations such as the BMA and RCN. It also notes that the Health and Care (Staffing) (Scotland) Act places a duty on NHS boards to ensure staff are suitably trained.

As the nursing regulator, part of the NMC's role involves setting education standards. However, it is not its role to provide training for nurses who will be involved in supporting the assisted dying process.

Similarly, this is not the responsibility of the RCN. We have provided guidance for members "When someone asks for your assistance to die" which has been developed to support the nursing workforce if they are asked about assisted dying or for their help to hasten death. This RCN guidance will be updated in response to legislative developments across the UK and Crown Dependencies to ensure our members are well supported; this is something we are already looking at. However, it is not the responsibility of the RCN to provide training to nurses on assisted dying if this Bill passes, unless we are commissioned to do so. The Bill needs to make clear that this responsibility lies with the service provider and employer.

While the Bill's explanatory notes do refer to the existing duty of healthcare providers to ensure staff are adequately trained, our 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 complex and it is therefore a highly skilled job.

The legislation must make clear that appropriate, specialist training must be provided to all nurses participating in assisted dying, prior to them being involved in an assisted death. As discussed above, our position is that the best way to ensure staff are highly and adequately trained is for a standalone service to be set up. A standalone service would also better ensure protected learning opportunities for staff to undertake ongoing training and development. However, whatever model is adopted, safeguards to ensure staff are adequately trained to do their role is vital and we are concerned that the Bill does not give sufficient attention to this point.

Question 6 - Death certification

If a person underwent an assisted death, the Bill would require their underlying terminal illness to be recorded as the cause of death on their death certificate, rather than the substance that they took to end their life.

Which of the following most closely matches your opinion on recording the cause of death?

- **I do not support this approach because it is important that the cause of death information is recorded accurately**
- **I support this approach because this will help to avoid potential stigma associated with assisted death**
- **Other – please provide further detail**

If you have further comments, please provide these:

RCN Scotland response:

We do not have a comment to make on this issue.

Question 7 – Reporting and review requirements

The Bill proposes that data on first and second declarations, and cancellations, will be recorded and form part of the person's medical record.

It also proposes that Public Health Scotland should collect data on; requests for assisted dying, how many people requesting assisted dying were eligible, how many were refused and why, how many did not proceed and why, and how many assisted deaths took place.

Public Health Scotland would have to report on this anonymised data annually and a report would be laid before the Scottish Parliament.

The Scottish Government must review the operation of the legislation within five years and lay a report before the Scottish Parliament within six months of the end of the review period.

Which of the following most closely matches your opinion on the reporting and review requirements set out in the Bill?

- **The reporting and review requirements should be extended to increase transparency**

- **The reporting and review requirements set out in the Bill are broadly appropriate**
- **The reporting and review requirements seem excessive and would place an undue burden on frontline services**
- **Other – please provide further detail**

RCN Scotland response:

In response to question 3 above, we are clear that the Bill needs amended to ensure that once the cRMP or AuHP has provided the adult with the approved substance, they do not leave the room. This is because they need to witness that the adult has taken the substance themselves and record the time the substance is taken and the time of death.

We would also like to see employers record the number of conscientious objections that are made to ensure transparency about the impact on the workforce.

We have called for the Bill to make clear that a separate standalone service is to be established, if assisted dying is legalised, as we believe this model would have many important benefits. However, if assisted dying were to be delivered via existing patient pathways, we believe data should be collected on what services and teams are involved in the process to understand how assisted dying is being delivered across the country.

Question 8 – Do you have any other comments in relation to the Bill?

RCN Scotland response:

Notwithstanding our neutral position, RCN Scotland has significant concerns with the Bill as currently drafted. Major issues include: the need to make clear that a standalone service (s) will be established that staff will opt-in to work within; the need for greater safeguards for staff, including having two AuHPs attend; the need for AuHPs to be in the room at the time of taking the approved substance; and clarity around legal responsibility at all stages of the process.

If MSPs back the general principles of the Bill, then we would expect these issues to be addressed at stage 2.

In addition, we also want to challenge again the assumption in the financial memorandum that expects these services to be provided by existing, over-stretched staff, under existing budgets. Health and care services are in crisis, under-staffed and under-resourced. Given continuing high staff vacancies, increasing demand for services and increasingly complex health and care needs, our members are struggling every day to provide safe, high-quality care. These staff cannot be expected to do more when they already tell us that they cannot provide care to the level they expect. If assisted dying is legalised, then it must be properly resourced so that specially trained staff can deliver a high-quality, person centred service without existing services being adversely impacted.

Royal College of Nursing Scotland

Finance and Public Administration Committee's call for evidence on the Financial Memorandum of the Assisted Dying for Terminally Ill Adults (Scotland) Bill

Consultation questions and RCN Scotland responses

Question 1 – Did you take part in any consultation exercise preceding the Bill and, if so, did you comment on the financial assumptions made?

RCN Scotland response:

Yes, we submitted a short response to the 2021 consultation on the proposed Bill which sets out the RCN's neutral position on whether the law on assisted dying should be changed. This neutral position reflects our members' differing views on the issue and means we neither support nor oppose attempts to change the law. Our response did not comment on financial issues.

Question 2 – If applicable, do you believe your comments on the financial assumptions have been accurately reflected in the FM?

RCN Scotland response:

N/A

Question 3 – Did you have sufficient time to contribute to the consultation exercise?

RCN Scotland response:

N/A

Question 4 – If the Bill has any financial implications for you or your organisation, do you believe that they have been accurately reflected in the FM? If not, please provide details.

RCN Scotland response:

The Bill does not include any provisions about training for health professionals. Section 53 of the policy memorandum states that the Member anticipates that relevant regulatory bodies, such as the General Medical Council (GMC) and Nursing and Midwifery Council will ensure suitable training is provided for health professionals who will be involved in supporting the assisted dying process to ensure they are familiar with the process set out in the Bill. It goes on to say that support may also be provided by relevant representative and membership organisations such as the BMA and RCN. It also notes that the Health and

Care (Staffing) (Scotland) Act places a duty on NHS boards to ensure staff are suitably trained.

As the nursing regulator, part of the NMC's role involves setting education standards. However, it is not its role to provide training for nurses who will be involved in supporting the assisted dying process.

Similarly, this is not the responsibility of the RCN. We have provided guidance for members "When someone asks for your assistance to die" which has been developed to support the nursing workforce if they are asked about assisted dying or for their help to hasten death. This RCN guidance will be updated in response to legislative developments across the UK and Crown Dependencies to ensure our members are well supported; this is something we are already looking at. However, it is not the responsibility of the RCN to provide training to nurses on assisted dying if this Bill passes, unless we are commissioned to do so.

The Bill needs to make clear that this responsibility lies with the service provider and employer and that appropriate, specialist training must be provided to all nurses participating in 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 complex, and it is therefore a highly skilled job.

While the Bill's explanatory notes and financial memorandum do refer to the existing duty of healthcare providers to ensure staff are adequately trained, our 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.

As discussed further below, our position is that, if the Bill passes, the best way to ensure staff are highly and adequately trained is for a standalone service to be set up. The financial memorandum assumes that health professionals would participate in assisted dying as part of their existing roles. This means that registered nurses working in a wide range of settings - for example district nursing, GP practices, hospices and acute medical settings - could all be expected to participate where required, unless they exercise a conscientious objection. The financial memorandum estimates that training all healthcare staff will cost £200,000. If staff working across GP practices, community settings, hospices and acute hospital settings may be involved in delivering assisted dying at some point, this does not seem to be a realistic figure. Part of the reason that we are calling for a model where a separate, standalone service is established, is that all staff who opt-in to the service would receive high-quality, specialist training and would gain valuable experience delivering the service.

However, whatever model is adopted if the Bill is passed, safeguards to ensure staff are adequately trained to do their role is vital and we are concerned that the Bill and the financial memorandum do not give sufficient attention to this point.

Question 5 – Do you consider that the estimated costs and savings set out in the FM are reasonable and accurate?

RCN Scotland response:

We do not support the delivery model suggested in the Financial Memorandum and therefore believe the estimated costs are unreasonable.

If the Bill passes, the way in which an assisted dying service is delivered, in practice, is a very significant issue for our members. The Bill itself is largely silent on this issue, but the accompanying documents, particularly the financial memorandum, suggests that a wide range of nurses, working within a diverse range of teams, could be expected to participate in assisted dying, unless they exercise a conscientious objection. The financial memorandum states that "it is expected that the co-ordinating doctor will normally be the person seeking an assisted death's GP or other RMP in charge of their care." It goes on to state "it is anticipated that the RMPs would undertake the role as part of their existing employment and that costs would be absorbed by existing budgets." The financial memorandum is largely silent on the resourcing implications for nursing, despite the Bill establishing a key role for registered nurses in the process. But if we assume a similar approach is taken to that envisaged for doctors' involvement, then registered nurses working in a wide range of settings, for example district nursing, GP practices, hospices and acute hospital settings, could all be expected to take on the role of Authorised Health Professional (AuHP), unless they exercise a conscientious objection.

We believe that while a conscientious objection clause should be included as a safeguard, the Bill should also make clear that staff are able to object to being involved for any reason, rather than just based on issues of conscience, and that an "opt-in" model of delivery is to be established. Only registered nurses who positively choose to participate should be expected to do so. This would give nurses a genuine choice about whether, and if so to what extent, they are willing to participate in assisted dying. Rather than simply expecting potentially large numbers of nurses, working across diverse range of teams, to exercise a conscientious objection, we believe that establishing an opt-in model would provide a greater degree of choice and reassure members who do not wish to participate, that they would not be asked to do so.

In addition to requiring health professionals to opt-in to participating in assisted dying, it is our view that, if the Bill passes, a separate, dedicated assisted dying service should be established (either nationally, regionally or by local health boards), rather than integrating the provision of assisted dying into existing services and patient pathways. The service would accept referrals or self-referrals and staff would opt-in to work for the service as required (although this wouldn't necessarily form their whole role given the estimated relatively small numbers of assisted deaths in Scotland, at least in the first few years). While it is not our role to make detailed suggestions on how this should be run, we would like to see a model where, when someone requests an assisted death, a specialist, dedicated team wraps around them and takes them through the process.

A separate service (or separate regional/local services) may be more costly than the

financial memorandum sets out, but there are important benefits for individuals seeking as assisted death and for staff:

- Nurses who do not wish to participate in assisted dying would not face any pressure to do so.
- All staff who opt-in to the service would receive high-quality, specialist training and would gain valuable experience delivering the service.
- Staff could be better provided with specialist wellbeing support and access to a peer support network.
- Patients would have a clear pathway for accessing the service and would be less likely to experience staff exercising a conscientious objection.
- Patient choice about the timing and place of an assisted death could be better accommodated by a dedicated service.
- The establishment of a dedicated service would enable staff to travel as and when required to support the delivery of assisted dying in rural and remote areas.
- Existing services are under resourced and struggling and this cannot simply be added to existing workloads.

We do not support an approach where assisted dying would be provided by existing teams, for example district nurses. District nursing is under huge pressure and teams are dealing with large caseloads and needing to make tough decisions every day to prioritise who receives a visit and who does not. Providing someone with assistance to end their life requires time in order to provide them, and their families, with the necessary care, support and respect. Expecting existing teams to take on this role, in addition to existing workloads, would not be safe or sustainable.

While we do not expect the Bill to set out all the details on exactly how assisted dying should be implemented, it should make clear that staff will opt-in and that a separate service will be established.

Question 6 – If applicable, are you content that your organisation can meet any financial costs that it might incur as a result of the Bill? If not, how do you think these costs should be met?

RCN Scotland response:

We are already looking at updating our guidance for members "When someone asks for your assistance to die" which has been developed to support the nursing workforce if they are asked about assisted dying or for their help to hasten death. This RCN guidance will be updated in response to legislative developments across the UK and Crown Dependencies to ensure our members are well supported.

If the Bill is passed, the extent to which we may be required to provide support and advice to members depends on the model that is established to deliver assisted dying. As set out above, our position is that a separate, dedicated assisted dying service should be

established. Staff would opt-in to work within this service and would receive specialist training and peer support. We believe this is the best way to safeguard the rights of our members and to provide a high-quality, consistent service across Scotland.

Question 7 – Does the FM accurately reflect the margins of uncertainty associated with the Bill's estimated costs and with the timescales over which they would be expected to arise?

RCN Scotland response:

Please see answer to question 5.

Royal College of Nursing Scotland

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