SCOTTISH CHRISTIAN FORUM ON ASSISTED DYING

Assisted Dying for Terminally Ill Adults (Scotland) Bill

Response to consultation questions posted by the Scottish Parliament Health, Social Care and Sport Committee

August 2024

About the Forum

The Scottish Christian Forum on Assisted Dying (SCFAD) is a network of individuals with particular interest in the implications of assisted dying from a perspective of Christian ethics and Christian pastoral support (ministry, chaplaincy etc).

All members of the Forum have firm affiliations with at least one of the major Christian denominations including the Church of Scotland, Scottish Episcopal Church and the Roman Catholic Church in Scotland. Most of us are regular worshippers in our respective churches. Roughly half of our members are ordained ministers in one of these churches – others are involved in various lay ministries.

Many of us have also undertaken recent academic research in issues of Christian ethics, moral philosophy, Christian spirituality etc, in several cases including specific work on assisted dying issues. The Forum's membership includes three professors or emeritus professors and a recent health care professional. Some of us have involvement in other charitable organisations working in the field.

As a Forum, we are broadly supportive of the case for enacting a legal framework to permit assisted dying in Scotland, subject to appropriate safeguards, as being in line with Christian ethics. However, we do not express this uncritically – we have a number of comments on the proposed Bill, as set out below. In particular, we argue that the legislation must facilitate pastoral and spiritual support for those seeking an assisted death (and for their families where applicable).

As Christians we also believe profoundly that all people are of equal worth in God's sight, and we are thus concerned that the legislation must facilitate any individual who meets the criteria to be able to access an assisted death if that is their genuine wish, without discrimination (for example) between rich and poor or between those with different levels of education or access to professional advice.

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

But see our further comments below on areas where we believe the Bill could be improved.

Which of the following factors are most important to you when considering the issue of assisted dying?

- Personal autonomy
- Personal dignity
- Reducing suffering

All of the factors mentioned are important, but these would be our priorities. In particular, reducing suffering is fundamental to the Christian calling to 'love our neighbour'. Across world religions, the

golden rule is expressed variously, but in Christianity it is framed by Jesus: 'Do to others as you would have them do to you'. There is no moral issue greater than the alleviation of human suffering.

Question 2 – Eligibility

The Bill proposes that assisted dying would be available only to terminally ill adults.

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.

Eligibility – Terminal illness

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

- Assisted dying should be available only to people who are terminally ill, and the definition of terminal illness in the Bill is about right

If you have further comments, please provide these.

We appreciate that the Bill is specifically concerned with assisted dying for the terminally ill, and we do not seek to re-open that issue at the present time. We believe the definition of terminal illness in section 2 is appropriately worded. However, we do believe consideration needs to be given at some point to the issues of those in great suffering who genuinely wish to die but who may not meet the clinical criteria in section 2 of the Bill.

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?

- The minimum age should be 16

If you have further comments, please provide these.

Whilst we consider that minimum age of 16 is appropriate, we have concerns with some of the other eligibility criteria.

(a) Whilst we understand the wish to avoid 'death tourism', we believe the requirement for a person to be "ordinarily resident in Scotland for at least 12 months" before the first declaration in section 3(1)(a) is an excessive time period.

It is not unusual for people diagnosed with a terminal illness to move long distances in order to be closer to relatives in their final months or perhaps to return to a specific church where they have historically felt great pastoral support. In many cases this may entail a move *into Scotland* from another jurisdiction. For such a patient who wants an assisted death then to have to wait 12 months before being able to make a first declaration is likely to cause immense suffering: there is a significant chance that within that timescale the patient will suffer the kind of death that he or she was so anxious to avoid.

We are concerned that a 12 month limit may work against the obvious benefits of those with terminal illnesses being close to relatives best able to support them (whether at home or in care home). It may have the effect of preventing people making such moves.

We therefore suggest a three month limit would be more appropriate.

(b) We also have concerns at the broad wording in section 3(2)(a) "not suffering from any mental disorder which might affect the making of the request". There is a cross-reference to the very wide definition of "mental disorder" in section 328 of the Mental Health (Care and Treatment) (Scotland) Act 2003. Anyone whose experience of such a condition "might affect the making of the request" is excluded.

None of us are specialists in mental health, but in our experience of Christian pastoral work, someone who has received a diagnosis of terminal illness is very likely to be experiencing symptoms of anxiety and/or some measure of reactive depression which would appear to fall within the definition in section 328 of the 2003 Act. Although the support of a Christian minister may help the patient come to an acceptance of their forthcoming death, it is rare that all anxiety will disappear.

We feel the provision in section 3(2)(a) is it stands could be grossly unfair and cruel: many patients seeking an assisted death may end up excluded because of doubts regarding some modest mental distress which "might" affect the making of a request. It would be absurd if an assisted death was, in practice, only possible for someone who showed little or no upset from the implications of a terminal diagnosis.

In most cases, the law would not consider someone with a moderate anxiety or mild depression to be lacking capacity and we believe the same principles should apply here. We feel the capacity assessment made by the medical practitioners as set out in section 6(4)(a) should be sufficient when combined with the non-coercion test in section 6(2)(c). We do not feel that further restrictions of the kind suggested in section 3(2)(a) are necessary or helpful.

(c) We are also perplexed that the Bill makes no explicit reference to NHS Scotland. It is vital that the medical procedures set out in the Bill are widely available through the NHS throughout Scotland in order to ensure equality of access.

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?

- The procedure should be simplified to minimise delay and distress to those seeking an assisted death

If you have further comments, please provide these

Although we are broadly supportive of the procedures and safeguards in the Bill, we have some concerns that the procedures may, in practice, be very hard to navigate, especially for patients with limited understanding of rules and legal procedures (see our comments below). It is important to remember that most people seeking an assisted death under the provisions of this Bill will be seriously ill. Many will be very elderly and may well be experiencing distressing symptoms.

As we commented above, as Christians we believe that access to medical treatment of any kind – included support for assisted dying where that is the patient's wish – must be equally available to all (see also our comments on Q8). Any arrangement which, in practice, meant that the option of an assisted death is only available to those who are highly educated, or with relatives who can access professional advice on their behalf would be unacceptable from the perspective of Christian ethics: each human being is of equal value and entitled to justice.

However, the same criteria must apply to the principles of non-coercion: everyone whatever their resources or level of education needs protection from being coerced into an assisted death.

But whilst we believe the Bill offers good safeguards on the non-coercion issue, we are concerned that access to an assisted death could be very challenging under the procedures set out, and we suggest that some modest simplifications to provisions in the Bill could reduce barriers without reducing the protection. We make the following suggestions to simplify and clarify the steps.

(a) **The second declaration**

We support the broad framework of two stages of declarations by the patient, normally separated by at least 14 days (or 48 hours in the circumstances in section 9(3)(b)). We also support the need for two separate medical assessments.

However, whilst it is right to include all the requirements in section 4 for the first declaration, we feel it is excessive to repeat exactly the same requirements for the second declaration. For example, why does the second declaration have to be witnessed by the co-ordinating registered medical practitioner (CRMP) – could not another health care professional act for the second declaration? This would allow much more flexibility and fewer delays.

And why is there a requirement yet again for an independent witness on the second declaration? Surely if the first declaration was independently witnessed that should be sufficient.

We are concerned that the need to bring together the patient, the CRMP and a witness on *two separate occasions* will, in practice, present significant barriers that will make it very hard for patients without significant professional help to navigate the process and also for those in rural or island locations.

(b) **The restrictions on the witness or proxy**

We feel that the restrictions in Schedule 5 on who can be a witness or proxy are excessive, and should be reduced so that only immediate family members are excluded.

In particular, the exclusion of "any health professional who has provided treatment or care for the person in relation to that person's terminal illness" (Sch 5, para 2(h)) will unnecessarily exclude a wide range of people who might otherwise be available.

We also consider that whilst it might seem reasonable to exclude anyone who will gain financially from the person's death (Sch 5, para 2(g)) many prospective witnesses will be unaware of whether they might gain financially, and may therefore find themselves excluded 'just in case'.

We also do not see the rationale for restricting the proxy to the very narrow list of persons (solicitors, advocates and justices of the peace) in section 12(5). Where a proxy is needed, we believe it will be challenging to find a suitable person able to act under this restriction except for those in a position to pay professional fees. Even so, we think many lawyers will not feel able to take on this role.

We think that in many cases practising Christians will want to ask their minister or pastor to act as a witness or proxy – but it is common for Christians to leave a charitable bequest to their church. We feel the provisions should, at least make clear that no one will be considered to

gain financially simply because of a role as a trustee or worker with a charity that may be a beneficiary of the person's estate.

(c) **Requirement for proof of identity**

We are perplexed by identity requirements in section 5 which we believe will create significant barriers for many of the most vulnerable patients who may wish to request an assisted death.

The very elderly and those receiving care often lack the forms of ID available to younger citizens. They will rarely have passports or driving licences. If they are in a care home, or being cared for in the home of a relative they are unlikely to have utility bills in their own name. If they are no longer able to travel independently they may no longer have a bus pass.

There has already been extensive publicity about those excluded from voting in General Elections as a result of the ID requirements – but in that situation only *ONE* item of photo ID is needed (and there is a means for those without appropriate ID to apply for 'Voter Authority Certificate').

We suggest that in most cases the patient's ID will already be clear as a result of the medical diagnosis they have received. In any case there is a requirement in the procedures for communication with the patient's registered medical practice (where the CRMP is based elsewhere) so it is hard to see why additional ID is needed.

Surely the only ID protection that is needed is to ensure that the person who is provided with a substance to end their life is the same person who made the declarations. It is hard to see how an additional requirement for identity documents will support this.

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 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.

If you have further comments, please provide these.

We broadly support the processes set out in section 15 of the Bill for provision of an approved substance to enable someone to end their own life.

However, we have some concerns about the process:

(a) We are very concerned at the potential discrimination against patients who have conditions which make it impossible for them to consume the substance without assistance. The Bill should clearly state that the coordinating registered medical practitioner (CRMP) or the authorised health professional (AHP) may offer the patient such assistance as they reasonably request in order to use the substance. In this respect the same provisions as in section 3(3) should apply so that the patient can use any appropriate human or technological aid to communicate such a request for assistance.

We suggest that to allow appropriate monitoring, in cases where assistance is provided, the details of the assistance and manner by which such assistance was communicated by the patient should be required to be reported by the CRMP as part of the final statement under section 16.

(b) Where the patient does not require assistance, we are concerned at the requirement that the CRMP or AHP must remain on the premises for the whole time until the patient has consumed the substance, or, alternatively until the patient decides not to use the substance. In practice, there will be a limit to the time for which the CRMP or AHP is available (especially where the patient is in a private dwelling), so this may result in some implied coercion on the patient to consume the substance earlier that they might otherwise wish to do so.

Whilst we agree that *some* responsible person should be on the premises, we feel there should be flexibility for the CRMP or AHP to authorise some other responsible person to take on the role of monitoring the substance until it is consumed (provided the patient is able to consume the substance without assistance.) This might be a role where volunteers from appropriate charities (including churches) could help.

(c) Whilst the Bill does not prohibit others from being present, we feel that many Christian patients may wish a minister or chaplain to be present to support them at the time they consume the substance, and certainly many will wish for one or more close relatives to be present.

We feel that spiritual support needs to be fully integrated into the process: where the patient is a person of faith, there should always be ample communication with their minister or pastor so that he or she can be involved if so requested. Many patients will wish to say final prayers, or receive a blessing or the sacrament of holy communion before proceeding to consume the substance.

In countries where assisted dying is already legal, it is common in hospices (for example) for there to be close involvement between the chaplaincy team and the medical teams to ensure the best possible holistic care.

But the wording of section 15 only mentions the adult and the CRMP/AHP. It might be helpful to add a specific provision – either in the Bill itself or in a code of practice – to indicate that other persons (not just the CRMP or AHP) including a minister of religion may be present if the patient indicates that this is their preference.

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.

- 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.

If you have further comments, please provide these

We agree the Bill is well drafted on this issue, but we also consider that medical practitioners can justifiably feel that their involvement in helping someone to have a 'good death' is a very valuable role (where that is the patient's clear wish in terms of the provisions in the Bill).

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 support this approach because this will help to avoid potential stigma associated with assisted death

If you have further comments, please provide these

We think the suggested answers are somewhat inappropriate as we do not think many people would feel a sense of 'stigma' associated with an assisted death – provided it was lawful and undertaken with appropriate medical support.

Nevertheless, we accept that there will be sensitivities around an assisted death, and from a pastoral perspective we agree most families would probably prefer the death certificate to record the underlying terminal illness. The reporting arrangements in the Bill (sections 16 and 24-26) should provide a sufficient means of oversight of the numbers of assisted deaths taking place and the associated procedures.

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 set out in the Bill are broadly appropriate

If you have further comments, please provide these

We do not have any specialist expertise in this area, but the reporting and review requirements appear to be reasonable and appropriate. They will provide the transparency needed whilst maintaining patient privacy.

Question 8 – Any other comments on the Bill

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

Much of the debate around the Bill has suggested significant concerns and objections in principle from many people with Christian convictions. But our experience is that Christians hold a wide range of views on the ethics of assisted dying, just as on many other issues.

Between us we have had many hundreds of pastoral conversations in situations of Christian ministry with people facing end of life situations. The overwhelming wish in the majority of cases is that medical intervention will enable them not to suffer as their condition leads them to deteriorate, even if

that intervention will shorten their life. Many say quite explicitly that they want to be able to say when they 'have had enough' and want to be released from this life.

Not all Christians appreciate that a change in the law is needed for this to happen. Some hide behind a belief that 'doctor knows best' without realising that at present a doctor in Scotland cannot deliberately take steps to end a patient's life, even if the patient is in great suffering and has expressed a clear wish to die. Others believe, wrongly, that a doctor can administer a terminal dose if family members say that is what the patient wants. So they support the principle of medically assisted deaths (whether administered by the doctor, or by the patient) without appreciating that legislation is needed for that to be possible.

The SCFAD clearly considers, therefore, that a change in the law is needed to allow adults in Scotland to have a choice to end their lives *before* they reach the stage where suffering is unbearable. We fully accept this is not for everyone: there are some Christians who would genuinely prefer to accept whatever suffering comes at the end of their lives rather than shorten their lives even by a day. That is why we support the provisions in the Bill to ensure that assisted dying is only made possible when the adult concerned has made unambiguous requests on more than one occasion: it must absolutely be a matter of choice. However, we also believe that once it becomes law, the Bill will offer worthwhile and vital protection to those who would *not* want an assisted death.

The case for legalising assisted dying begins with love. Love is a central theme to the teaching of Jesus as recorded in the New Testament - for example, in John 13:34 Jesus says to his disciples, 'I give you a new commandment, that you love one another' and in Matthew 22:39 he calls his followers to 'love your neighbour as yourself'. It is a theme repeated over and over in Christian scripture.

The call to love is not just a call to have warm feelings. It is a call to demonstrate the kind of concern for another that is prepared to express itself in action when the opportunity arises: in particular a call to do all we can to relieve the suffering of others. Jesus himself constantly showed compassion to those experiencing suffering in numerous different ways: those with long term illnesses, those facing hunger, drowning, imprisonment.

Over the centuries Christians have been at the forefront of measures to reduce human suffering: for example, through the provision of schools, hospitals and refuges long before state provision. Christians continue to give generously to charities seeking to alleviate suffering whether in developing counties or closer to home.

A loving person characteristically wants those they love to be free of pain or suffering and to enjoy the liberty to choose what they do or undergo. So, if someone in need asks for help and we are in a position to give it then, other things being equal, we should do so. This is especially true when the help they ask would ease their suffering and support their liberty and agency.

There is also the consideration of justice. It is widely reported that more than one person per week now travels from Britain to Switzerland (or sometimes Belgium) to end their life – but it is important to note one must be healthy and wealthy enough to make the trip. So, lives are ended earlier than would otherwise be the case and the poor have no access to this help. As things stand in Scotland (and the rest of the UK) only the privileged enjoy access to lawful and regulated forms of assistance if they wish to end their illness at their own time and on their own terms.

Christians stand passionately on the side of justice and equality. Members of the SCFAD believe that anyone who expresses a clear wish for help to end their life in order to avoid the suffering that may arise in the final stages of illness should be entitled to receive that help (under an appropriate legal framework). As we argue in our answers to Q3, it cannot be right for assisted dying to be available (whether via Switzerland or elsewhere) to those who are wealthy or well-educated but not to society's most vulnerable.

For all these reasons, we believe there is a very clear Christian case in favour of the proposed legislation.