

Briefing For MSPs on the Assisted Dying for Terminally Ill Adults (Scotland) Bill, Stage 1 Debate

Debate: Stage 1 Debate: Assisted Dying for Terminally Ill Adults (Scotland) Bill

Date: 13th May 2025.

Motion number: S6M-17416

Proposed by: Liam McArthur MSP

1. Summary

- The function of this brief is to inform MSPs of the relevant human rights considerations when considering whether to legislate on this matter. The SHRC does not take a position in favour or opposed to assisted dying or the specific scheme proposed.
- The SHRC offered analysis to the Health and Sport Committee to inform its Stage 1 consideration, and is pleased to brief the wider Parliament ahead the Stage 1 debate.
- The SHRC acknowledges the complexity and ethical character of the issues being considered and the need to balance competing principles such as the right to life, respect for personal autonomy, and the protection of vulnerable members of society.
- While it is vital that discussions take proper account of the applicable human rights framework, a human rights analysis does not provide a definitive answer on the question of whether or not to adopt legislation permitting assisted dying.
- Legislation permitting assisted dying can, in principle, be compatible with currently applicable human rights standards, as long as the legislation takes a human rights-based approach and appropriate safeguards are put in place, particularly to protect the rights of disabled people.
- However, elements of the specific scheme proposed present concerns in terms of human rights compatibility. These include the minimum age requirement, capacity assessment and arrangements for supported decision-making for all persons, and the introduction of prior and

subsequent independent oversight and review mechanisms. The Lead Committee, in its Stage 1 Report, noted that it would welcome the opportunity to consider amendments to the Bill introducing independent oversight, if the Bill were to proceed to Stage 2.

2. The Assisted Dying for Terminally Ill Adults (Scotland) Bill

The Stage One Debate is on the general principles of the Bill. The Policy Memorandum for the Bill describes its intention as to;

"[...]to allow mentally competent terminally ill eligible adults in Scotland to voluntarily choose to be provided with assistance by health professionals to end their lives."

3. The Human Rights Framework

3.1. European Convention on Human Rights:

The European Convention on Human Rights (ECHR) is of importance when discussing assisted dying; any legislation must be compatible with the ECHR to be within the competence of the Scottish Parliament.

A number of the provisions of the ECHR are engaged in relation to assisted dying:

- The right to life (Article 2)
- The right to freedom from inhuman and degrading treatment (Article 3)
- The right to respect for private and family life (Article 8)
- The right to freedom of thought, conscience and religion (Article 9), and
- The right to freedom from discrimination in the enjoyment of other rights (Article 14).

The European Court of Human Rights (ECtHR) has considered the issue of assisted dying considerably, and has taken a view that the ECHR does not require the prohibition or permission of assisted dying.¹ The ECtHR considers that the domestic authorities are best placed to decide given the lack of European consensus on the issue.

What the ECtHR does require, is that where assisted dying is permitted, there is sufficient oversight and safeguards in place.² These safeguards must ensure that any person accessing assisted dying has capacity and has taken their decision freely.

3.2. UN Convention on the Rights of Persons with Disabilities:

The other most relevant human rights requirements at stake come from the United Nations Convention on the Rights of Persons with Disabilities (CRPD). Whilst the CRPD is not legally enforceable in the same way the ECHR is, its obligations are nonetheless binding and must be reflected in domestic law.

Article 10 of the CRPD protects the right to life of people with disabilities on an equal basis with others.

Article 12 CRPD recognises the right of people with disabilities to access legal capacity on an equal basis with others. In their General Comment, the Committee on the Rights of Persons with Disabilities has noted that the legal capacity of persons with disabilities to make decisions must be respected and supported at all times.³ However, the drive to ensure equal recognition of legal capacity must also ensure that sufficient safeguards are provided to ensure that consent is informed and free from undue influence. Both the ECtHR,⁴ and the CRPD,⁵ require the State to put in place a procedure capable of ensuring that a person's decision to end their life does in fact reflect their free will.

3.3. UN Convention on the Rights of the Child

Under the UNCRC, a child means every human being below the age of 18. The Bill proposes a minimum age of 16 for assisted dying. The UNCRC requirements set out in Schedule 1 Part 1 of the UNCRC (Incorporation) (Scotland) Act 2024, and introduced by section 1(2) of the same Act, define a 'child' as every human being below the age of 18. It therefore appears that a minimum age of 16 for assisted dying is inconsistent in its definition of an 'adult' with the UNCRC requirements under the UNCRC (Incorporation) (Scotland) Act 2024, which came into force on 16 July 2024. We have consulted with our colleagues at the Children and Young People's Commissioner Scotland, who agree with this position.

3.4. Other relevant information:

MSPs might be interested that the UN Special Rapporteurs on the rights of persons with disabilities and on extreme poverty and human rights, as well as the UN Independent expert on the enjoyment of all human rights by older persons, have

issued a joint statement which expresses concern at the legalisation of assisted dying where the access criteria include disability or age.⁶ The letter specifies that;

"[...]even when access to medical assistance in dying is restricted to those at the end of life or with a terminal illness, people with disabilities, older persons, and especially older persons with disabilities, may feel subtly pressured to end their lives prematurely due to attitudinal barriers as well as the lack of appropriate services and support."⁷

Key Stage 1 Considerations

- The Human Rights Framework does not require the State to permit or prohibit assisted dying.
- If assisted dying were to be legislated on, the scheme would be required to have sufficient oversights and safeguards to ensure compliance with human rights, especially surrounding free and informed consent.
- The Bill proposes a minimum age of 16 for assisted dying. This definition of 'adult' appears inconsistent in its definition of an 'adult' with the UNCRC requirements under the UNCRC (Incorporation) (Scotland) Act 2024.
- Approaches to capacity need to take into account Article 12 CRPD, and requires supported decision making. Refusing assisted dying to someone on the basis of a diagnosis of mental disorder, which is unrelated to the reason they are seeking assisted dying, could be discriminatory unless justified in the individual circumstances.
- If legislation is enacted, a system of judicial or independent oversight, both prior and subsequent, is required by human rights standards to provide a higher degree of scrutiny and stronger procedural safeguards for the right to life.

4. For more information

Please contact hello@scottishhumanrights.com

Our detailed written evidence on the Bill is available at; [Evidence on the Assisted Dying for Terminally Ill Adults \(Scotland\) Bill](#)

5. Endnotes

¹ See *Mortier v Belgium* App No 78017/17 (Chamber decision of 4 January 2023), and *Pretty v The United Kingdom* App No 2346/02 (Chamber decision of 29 July 2002).

² *Mortier v Belgium* App No 78017/17 (Chamber decision of 4 January 2023) paras 137-139.

³ UN Committee on the Rights of Persons with Disabilities, General Comment No.1 on Article 12 CRPD: Equal Recognition before the law (19 May 2014) CRPD/C/GC/1 para 42.

⁴ *Haas v Switzerland* App No 31322/07 (Chamber decision of 20 June 2011).

⁵ Article 12(4) CRPD; UN Committee on the Rights of Persons with Disabilities, General Comment No.1 on Article 12 CRPD: Equal Recognition before the law (19 May 2014) CRPD/C/GC/1 paras 20-22.

⁶ Office of the High Commissioner for Human Rights, 'Press Release: Disability is not a reason to sanction medically assisted dying – UN experts | OHCHR (25 January 2021).

⁷ *Ibid.*