

## Briefing for MSPs on the Assisted Dying for Terminally Ill Adults (Scotland) Bill, Stage 3 Debate

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Debate: Stage 3 Debate: Assisted Dying for Terminally Ill Adults (Scotland) Bill

Motion number: S6M-21005

Proposed by: Liam McArthur MSP

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### 1. Summary of the SHRC's position

- The purpose of this brief is to assist MSPs with their scrutiny of the Bill at Stage 3 and to ensure that any legislation passed meets human rights requirements.
- The SHRC does not take a position in favour of, or opposed to, either the principle of assisted dying, nor the specific scheme proposed.
- The human rights framework neither requires nor prohibits assisted dying legislation. Where a state does decide to permit assisted dying it has wide discretion as to how it does so. However, it is critical that any scheme for assisted dying contains adequate safeguards to ensure human rights are not violated.
- The SHRC has previously raised concerns about the Bill's approach to: (i) minimum age limit; (ii) capacity; (iii) safeguards against coercion; and (iv) judicial oversight (or lack thereof). The SHRC has also emphasised the need for a careful balancing exercise to ensure that disabled people are treated equally but at the same time are adequately protected. Further detail can be found in the SHRC's Stage 1 evidence and briefing to MSPs, which are linked in section 5 below.
- The SHRC acknowledges that changes have been made at Stage 2 in relation to some of our concerns.
- However, the SHRC urges MSPs to give further careful consideration to how the Bill deals with capacity, safeguards against coercion and judicial oversight at Stage 3 in order to ensure that the proposed scheme complies with human rights requirements, particularly those set out in the European

Convention on Human Rights ("ECHR") and the UN Convention on the Rights of Persons with Disabilities ("UNCRPD").

## 2. Concerns raised at Stage 1

The SHRC has been clear that the human rights framework does not require assisted dying legislation; nor does it prohibit such legislation. Therefore, this is a matter for Parliament. Where assisted dying is permitted, the human rights framework does not require a particular scheme given the wide-ranging approaches to assisted dying which already exist amongst States, and the complex character of the issues engaged.

However, it is critical that any scheme for assisted dying contains adequate safeguards to ensure human rights are not violated in the process. To this end, the SHRC highlighted the following key concerns at Stage 1:

### 2.1. Minimum age limit

The United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 ("UNCRC Act") defines a child as a person under the age of 18. However, the eligibility criteria in the Bill (as introduced) proposed a minimum age of 16 for "terminally ill adults" to access assisted dying. Therefore, the Bill (as introduced) was inconsistent with the UNCRC Act.

### 2.2. Conscientious objection

There must be careful consideration of how the conscientious objection clause, and in particular the proposal for the burden to be on medical professionals to prove that their objection is in fact based on conscience, interacts with the right to freedom of thought, conscience and religion protected by Article 9 ECHR.

### 2.3. The right to life of persons with disabilities

Article 10 UNCRPD protects the right to life of persons with disabilities on an equal basis with others. The UN Special Rapporteur on the Rights of Persons with Disabilities has set out that assisted dying should be restricted to those who are at the end of life and that having an impairment should never be a ground for assisted dying.

## **2.4. Capacity**

Article 12 UNCRPD recognises the right of people with disabilities to exercise legal capacity on an equal basis with others. Where necessary, persons with disabilities must be supported to make decisions. Given the seriousness of decisions regarding assisted dying, human rights standards require very stringent forms of supported decision-making.

The SHRC considers that refusing access to assisted dying on the basis of a "mental disorder" which is unrelated to the reason the person is seeking assisted dying could be discriminatory unless justified in the individual circumstances.

However, this must be carefully balanced against the need to ensure that an assisted dying decision is fully informed and free from coercion or undue influence (as detailed further in section 2.5 below).

## **2.5. Coercion and undue influence**

Both the ECHR and the UNCRPD are clear that there must be a procedure which ensures that the person's decision to access assisted dying is made freely and on a fully informed basis in order for a State to fulfil its positive obligation to protect life in the context of assisted dying.

## **2.6. Independent or judicial oversight**

The UN Human Rights Committee has recommended that, in order to comply with the right to life, States should consider introducing prior reviews by an independent mechanism or judicial oversight of requests or decisions for assisted dying.

In addition to regulation of prior acts, the positive obligation under Article 2 ECHR also requires the State to ensure there is adequate review following a death. This must be prompt, effective and independent.

Therefore, the SHRC considers that in order to be human rights compliant there should be a system of independent or judicial oversight - both prior and subsequent - to provide a higher degree of scrutiny and stronger procedural safeguards for the right to life.

## **3. Amendments made at Stage 2**

The SHRC notes that amendments were considered at Stage 2 which sought to address some of these concerns. In particular, the SHRC notes the following amendments have been agreed:

- The minimum age was increased to 18 at Stage 2.
- An amendment has been added at Stage 2 to make it clear that having a disability and/or a mental health condition does not, by itself, count as being "terminally ill" for the purposes of accessing assisted dying.
- The Bill now makes it an offence to coerce or pressure a terminally ill adult into taking an approved substance. It also makes it an offence to publish, distribute or display any advertisement, notice or material which would promote, encourage or solicit the provision of assisted dying to a terminally ill adult.
- The conscientious objection clause has been re-framed at Stage 2 so that there is now no duty to participate, this can be based on any grounds, and the burden of proof on medical professionals has been removed.

#### 4. Key considerations for Stage 3

The SHRC acknowledges that some steps have been taken at Stage 2 to bring the Bill closer in line with human rights requirements, particularly in relation to our concerns about minimum age, the burden of proof for a "conscientious objection", and disability as the sole basis for assisted dying.

Further to this, the SHRC urges MSPs to carefully consider the human rights requirements in relation to capacity and safeguards against coercion as summarised above and set out in more detail in our Stage 1 evidence. The Bill's approach to capacity must ensure that it respects the rights of disabled people to exercise legal capacity on an equal basis to others and facilitates supported decision-making, while also ensuring that decisions are made freely and on a fully informed basis. The SHRC also repeats our recommendation that there should be a mechanism for independent or judicial oversight of actions prior to an assisted death. Under Article 2 ECHR, a State must also have prompt, independent and effective review mechanisms in place in order to ensure that the State is complying with its positive obligation to protect life.

#### 5. For more information

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Our Stage 1 evidence is available here - [Evidence on the Assisted Dying for Terminally Ill Adults \(Scotland\) Bill](#)

Our Stage 1 briefing for MSPs is available here - [Assisted Dying - Stage 1 Briefing](#)

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