

Assisted Dying Bill [HL]

EXPLANATORY NOTES

Explanatory notes to the Bill, prepared by Lord Falconer of Thoroton, the Member in charge of the Bill, are published separately as HL Bill 25 – EN.

Assisted Dying Bill [HL]

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Schedule – Form of declaration

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B I L L

TO

Enable competent adults who are terminally ill to be provided at their request with specified assistance to end their own life; and for connected purposes.

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1 Assisted dying

- (1) Subject to the consent of the High Court (Family Division) pursuant to subsection (2), a person who is terminally ill may request and lawfully be provided with assistance to end his or her own life.
- (2) Subsection (1) applies only if the High Court (Family Division), by order, confirms that it is satisfied that the person—
- (a) has a voluntary, clear, settled and informed wish to end his or her own life;
 - (b) has made a declaration to that effect in accordance with section 3; and
 - (c) on the day the declaration is made—
 - (i) is aged 18 or over;
 - (ii) has capacity to make the decision to end his or her own life; and
 - (iii) has been ordinarily resident in England and Wales for not less than one year.

2 Terminal illness

- (1) For the purposes of this Act, a person is terminally ill if that person—
- (a) has been diagnosed by a registered medical practitioner as having an inevitably progressive condition which cannot be reversed by treatment (“a terminal illness”); and
 - (b) as a consequence of that terminal illness, is reasonably expected to die within six months.
- (2) Treatment which only relieves the symptoms of an inevitably progressive condition temporarily is not to be regarded as treatment which can reverse that condition.

3 Declaration

- (1) An application may be made to the High Court (Family Division) under section 1(2) only if—
- (a) the person has made and signed a declaration that he or she has a voluntary, clear, settled and informed wish to end his or her life in the form in the Schedule in the presence of a witness (who must not be a relative or directly involved in the person’s care or treatment) who signed the declaration in the person’s presence; and 5
 - (b) that declaration has been countersigned in accordance with subsection (3) by— 10
 - (i) a suitably qualified registered medical practitioner from whom the person has requested assistance to end their life (“the attending doctor”); and
 - (ii) another suitably qualified registered medical practitioner (“the independent doctor”) who is not a relative, partner or colleague in the same practice or clinical team, of the attending doctor; 15
 neither of whom may also be the witness required under paragraph (a).
- (2) The attending doctor (but not the independent doctor) may, but need not be, the registered medical practitioner who diagnosed that the person is terminally ill or first informed the person of that diagnosis. 20
- (3) Before countersigning a person’s declaration the attending doctor and the independent doctor, having separately examined the person and the person’s medical records and each acting independently of the other, must be satisfied that the person—
- (a) is terminally ill; 25
 - (b) has the capacity to make the decision to end their own life; and
 - (c) has a clear and settled intention to end their own life which has been reached voluntarily, on an informed basis and without coercion or duress.
- (4) In deciding whether to countersign a declaration under subsection (3), the attending doctor and the independent doctor must be satisfied that the person making it has been fully informed of the palliative, hospice and other care which is available to that person. 30
- (5) If the attending doctor or independent doctor has doubt as to a person’s capacity to make a decision under subsection (3)(b) or (c), before deciding whether to countersign a declaration made by that person the doctor must— 35
- (a) refer the person for assessment by an appropriate specialist; and
 - (b) take account of any opinion provided by the appropriate specialist in respect of that person.
- (6) A declaration under this section shall be valid and take effect on such date as the High Court (Family Division) may order. 40
- (7) A person who has made a declaration under this section may revoke it at any time and revocation need not be in writing.
- (8) For the purpose of subsection (1)(b)(ii), an attending or independent doctor is suitably qualified if that doctor holds such qualification or has such experience, including in respect of the diagnosis and management of terminal illness as the Secretary of State may specify in regulations (which may make different provision for different purposes). 45

- (9) In this section, “appropriate specialist” means a registered practitioner (other than the attending doctor or independent doctor) who is registered in the specialty of psychiatry in the Special Register kept by the General Medical Council.

4 Assistance in dying

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- (1) The attending doctor of a person who has made a valid declaration may prescribe medicines for that person to enable that person to end their own life.
- (2) Any medicines prescribed under subsection (1) shall only be delivered to the person for whom they are prescribed –
- (a) by the attending doctor; or
 - (b) by –
 - (i) another registered medical practitioner; or
 - (ii) a registered nurse;
 - who has been authorised to do so by the attending doctor;
 - (c) after the assisting health professional has confirmed that the person has not revoked and does not wish to revoke their declaration; and
 - (d) after a period of not less than 14 days has elapsed since the day on which the person’s declaration took effect.
- (3) If the attending doctor and the independent doctor agree that a person’s death from terminal illness is reasonably expected to occur within one month of the day on which a declaration takes effect, the period specified in subsection (2)(d) is reduced to six days.
- (4) In respect of a medicine which has been prescribed for a person under subsection (1), an assisting health professional may –
- (a) prepare that medicine for self-administration by that person;
 - (b) prepare a medical device which will enable that person to self-administer the medicine; and
 - (c) assist that person to ingest or otherwise self-administer the medicine; but the decision to self-administer the medicine and the final act of doing so must be taken by the person for whom the medicine has been prescribed.
- (5) Subsection (4) does not authorise an assisting health professional to administer a medicine to another person with the intention of causing that person’s death.
- (6) The assisting health professional must remain with the person until the person has –
- (a) self-administered the medicine and died; or
 - (b) decided not to self-administer the medicine;
- and for the purpose of this subsection the assisting health professional is to be regarded as remaining with the person if the assisting health professional is in close proximity to, but not in the same room as, the person.
- (7) The Secretary of State may by regulations specify –
- (a) the medicines which may be prescribed under this section;
 - (b) the form and manner in which such prescriptions are to be issued; and
 - (c) the manner and conditions under which such medicines are to be dispensed, stored, transported, used and destroyed.

- (8) Regulations under subsection (7)(c) shall provide that an assisting health professional –
- (a) must only deliver any medicine prescribed under this section to the person for whom they have been prescribed immediately before their intended use; and 5
 - (b) in the event that the person decides not to self-administer the medicine, must immediately remove it from that person and, as soon as reasonably practicable, return it to the pharmacy from which it was dispensed.
- (9) Regulations under subsection (7) may – 10
- (a) make different provision for different purposes; and
 - (b) include consequential, incidental, supplementary or transitional provisions.
- (10) In this section, “assisting health professional” means the attending doctor or a person authorised by the attending doctor in accordance with subsection (2)(b). 15
- 5 Conscientious objection**
- A person shall not be under any duty (whether by contract or arising from any statutory or other legal requirement) to participate in anything authorised by this Act to which that person has a conscientious objection. 20
- 6 Criminal liability**
- (1) A person who provides any assistance in accordance with this Act shall not be guilty of an offence.
- (2) In the Suicide Act 1961, after section 2B (course of conduct), insert –
- “2C Assisted dying** 25
- Sections 2, 2A and 2B shall not apply to any person in respect of the provision of assistance to another person in accordance with the Assisted Dying Act 2015.”.
- 7 Inquests, death certification etc.**
- (1) A person is not to be regarded as having died in circumstances to which section 1(2)(a) or (b) of the Coroners and Justice Act 2009 (duty to investigate certain deaths) apply only because the person died as a consequence of the provision of assistance in accordance with this Act. 30
- (2) In the Births and Deaths Registration Act 1953, after section 39A (regulations made by the Minister: further provisions), insert – 35
- “39B Regulations: assisted dying**
- (1) The Secretary of State may make regulations –
- (a) providing for any provision of this Act relating to the registration of deaths to apply in respect of deaths which arise from the provision of assistance in accordance with the Assisted Dying Act 2015 with such modifications as may be prescribed in respect of – 40

- (i) the information which is to be provided concerning such deaths;
 - (ii) the form and manner in which the cause of such deaths is to be certified; and
 - (iii) the form and manner in which such deaths are to be registered; 5
 - (b) requiring the Registrar General to prepare at least once each year a report providing a statistical analysis of deaths which have arisen from the provision of assistance in accordance with the Assisted Dying Act 2015; 10
 - (c) containing such incidental, supplemental and transitional provisions as the Secretary of State considers appropriate.
- (2) Any regulations made under subsection (1)(a)(ii) shall provide for the cause of death to be recorded as “assisted death”.
- (3) Any report prepared by the Registrar General in accordance with regulations made under subsection (1)(b) shall be laid before Parliament by the Secretary of State. 15
- (4) The power of the Secretary of State to make regulations under this section is exercisable by statutory instrument.
- (5) A statutory instrument containing regulations made under this section by the Secretary of State is subject to annulment in pursuance of a resolution of either House of Parliament.”. 20

8 Codes of practice

- (1) The Secretary of State may issue one or more codes of practice in connection with— 25
- (a) the assessment of whether a person has a clear and settled intention to end their own life, including—
 - (i) assessing whether the person has capacity to make such a decision;
 - (ii) recognising and taking account of the effects of depression or other psychological disorders that may impair a person’s decision-making; 30
 - (iii) the information which is made available on treatment and end of life care options available to them and of the consequences of deciding to end their own life; 35
 - (iv) the counselling and guidance which should be made available to a person who wishes to end his or her own life; and
 - (v) the arrangements for delivering medicines to the person for whom they have been prescribed under section 4, and the assistance which such a person may be given to ingest or self-administer them; and 40
 - (b) such other matters relating to the operation of this Act as the Secretary of State thinks fit.
- (2) Before issuing a code under this section the Secretary of State shall consult such persons as the Secretary of State thinks appropriate. 45
- (3) A code does not come into operation until the Secretary of State by order so provides.

- (4) The power conferred by subsection (3) is exercisable by statutory instrument.
- (5) An order bringing a code into operation may not be made unless a draft of the order has been laid before Parliament and approved by a resolution of each House.
- (6) When a draft order is laid, the code to which it relates must also be laid. 5
- (7) A person performing any function under this Act must have regard to any relevant provision of a code and failure to do so shall not of itself render a person liable to any criminal or civil proceedings but may be taken into account in any proceedings.
- 9 Monitoring** 10
- (1) The relevant Chief Medical Officer shall –
- (a) monitor the operation of the Act, including compliance with its provisions and any regulations or code of practice made under it;
- (b) inspect and report to the relevant national authority on any matter connected with the operation of the Act which the relevant national authority refers to the relevant Chief Medical Officer; and 15
- (c) submit an annual report to the relevant national authority on the operation of the Act.
- (2) The Chief Medical Officers may combine their annual reports for the same year in a single document (“a combined report”) in such manner as they consider appropriate. 20
- (3) The relevant national authority must publish each annual report or combined report it receives under this section and –
- (a) the Secretary of State must lay a copy of each report before Parliament; and 25
- (b) the Welsh Ministers must lay a copy of each report before the National Assembly for Wales.
- (4) In this section –
- “relevant Chief Medical Officer” means –
- (a) in England, the Chief Medical Officer to the Department of Health; and 30
- (b) in Wales, the Chief Medical Officer to the Welsh Assembly Government;
- “relevant national authority” means –
- (a) in England, the Secretary of State; and 35
- (b) in Wales, the Welsh Ministers.
- 10 Offences**
- (1) A person commits an offence if the person –
- (a) makes or knowingly uses a false instrument which purports to be a declaration made under section 3 by another person; or 40
- (b) wilfully conceals or destroys a declaration made under section 3 by another person.
- (2) A person (A) commits an offence if, in relation to another person (B) who is seeking to make or has made a declaration under section 3, A knowingly or

recklessly provides a medical or other professional opinion in respect of B which is false or misleading in a material particular.

- (3) A person guilty of an offence under subsection (1)(a) which was committed with the intention of causing the death of another person is liable, on conviction on indictment, to imprisonment for life or a fine or both. 5
- (4) Unless subsection (3) applies, a person convicted of an offence under this section is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum (or both);
- (b) on conviction on indictment, to imprisonment for a period not exceeding five years or a fine or both. 10

11 Regulations

- (1) Any power of the Secretary of State under this Act to make regulations is exercisable by statutory instrument.
- (2) A statutory instrument containing regulations under this Act is subject to annulment in pursuance of a resolution of either House of Parliament. 15

12 Interpretation

In this Act—

- “attending doctor” has the meaning given in section 3;
- “capacity” shall be construed in accordance with the Mental Capacity Act 2005; 20
- “independent doctor” has the meaning given in section 3;
- “relative”, in relation to any person, means—
- (a) the spouse or civil partner of that person;
- (b) any lineal ancestor, lineal descendant, sibling, aunt, uncle or cousin of that person or the person’s spouse or civil partner; or 25
- (c) the spouse or civil partner of any relative mentioned in paragraph (b),
- and for the purposes of deducing any such relationship a spouse or civil partner includes a former spouse or civil partner, a partner to whom the person is not married, and a partner of the same sex; and 30
- “terminal illness” has the meaning given in section 2(1)(a).

13 Extent, commencement, repeal and short title

- (1) This Act does not extend to Scotland or Northern Ireland.
- (2) The following come into force on the day on which this Act is passed— 35
- (a) sections 4, 7 and 11 so far as they confer a power to make regulations;
- (b) section 8 so far as it confers a power to issue codes of practice;
- (c) sections 11 and 12; and
- (d) this section.
- (3) Subject to subsection (2), the provisions of this Act come into force at the end of the period of two years beginning with the day on which this Act is passed. 40

- (4) At any time during the period of 12 months beginning on the day ten years after the provisions in subsection (3) come into force, this Act may be repealed by a resolution of each House of Parliament.
- (5) This Act may be cited as the Assisted Dying Act 2015.

I confirm that [name], who at the date of this declaration is [age] years of age and has been ordinarily resident in England and Wales for [time]:

(1) is terminally ill and that the diagnosis and prognosis set above is correct;

(2) has the capacity to make the decision to end their own life; and

5

(3) has a clear and settled intention to do so, which has been reached on an informed basis, without coercion or duress, and having been informed of the palliative, hospice and other care which is available to [him/her].

Signature:

Date:

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Name and Address of Attending Doctor:

Countersignature: Independent Doctor

I confirm that [name], who at the date of this declaration is [age] years of age and has been ordinarily resident in England and Wales for [time]:

(1) is terminally ill and that the diagnosis and prognosis set above is correct;

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(2) has the capacity to make the decision to end their own life; and

(3) has a clear and settled intention to do so, which has been reached on an informed basis, without coercion or duress, and having been informed of the palliative, hospice and other care which is available to [him/her].

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Signature:

Date:

Name and Address of Independent Doctor:

Assisted Dying Bill [HL]

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To enable competent adults who are terminally ill to be provided at their request with specified assistance to end their own life; and for connected purposes.

Lord Falconer of Thoroton

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