

ASSISTED DYING BILL [HL]

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Assisted Dying Bill [HL] as introduced in the House of Lords on 4 June 2015 (HLBill 25).

- These Explanatory Notes have been prepared by Lord Falconer of Thoroton in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill. So where a provision of the Bill does not seem to require any explanation or comment, the Notes simply say in relation to it that the provision is self-explanatory.

BACKGROUND AND SUMMARY

1. The Bill provides for a person who is terminally ill and has six months or less to live to seek and lawfully be provided with assistance to end their own life.

Clause 1

2. This clause would enable a person who is terminally ill to request and be given assistance to end their own life, providing that he or she has received the consent of a judge of the Family Division of the High Court. The judge would have to be satisfied that the terminally ill person had a voluntary, clear, settled and informed wish to end their life. The process is dependent upon a request being made by the person concerned and no other person, including the patient's doctor, family or partner would be able to initiate the process of requesting an assisted death.

3. In order to be eligible, a person must be a terminally ill adult who is aged 18 or over, and have a clear and settled intention to end their own life: a declaration to that effect is required in accordance with Clause 3.

4. The Bill only extends to England and Wales and a person must have been ordinarily resident in England or Wales for at least one year when a declaration is made. This Bill would not permit people to travel to England and Wales in order to have an assisted death.

Clause 2

5. Clause 2 defines "terminally ill" and "terminal illness" and provides that the Bill only applies to a person who is expected to die from a terminal illness within six months (a prognosis which Clause 3 of the Bill provides must be made by two registered medical practitioners).

Clause 3

6. This clause sets out the procedure for making an application to the Family Division of the High Court as described in section 1(2).

7. In order to make the application to the Court, the person would need to sign a declaration – the form of which is prescribed in the Schedule to the Bill – in the presence of an independent witness. The witness must not be a relative (broadly defined in Clause 12 to include partners etc.) or involved in the person's care or treatment.

8. The form would then need to be countersigned by two doctors. The 'attending doctor' would usually be the person's GP or specialist consultant. The second doctor would be an 'independent doctor' from a different practice or clinical team. Both doctors would need to examine the person and his or her medical records and do so independently of each other. They would need to agree on the person's diagnosis and prognosis, that the person had the capacity to make the decision to end their own life and that the decision was voluntary and fully informed. Both doctors would have to explore the individual's motivation for requesting an assisted death and ensure the patient was informed of all the options available to them. In the event that either doctor had doubts over the person's capacity to make a voluntary and informed decision, he or she would have to refer that person to a psychiatrist or other appropriate specialist for a second opinion.

Clause 4

9. This clause sets out the practical arrangements for providing medicines to enable a terminally ill person to end their own life. If both doctors countersign a declaration, the attending doctor would write a prescription for the necessary medication but it would only be delivered after a 14 days 'cooling off' period (or six days if both doctors agreed that the person is likely to die within one month).

10. The attending doctor or another doctor or nurse authorised by the attending doctor, (the 'assisting health professional') would deliver the medicine at the patient's request (after the cooling off period had passed), check that the person had not revoked or did not wish to revoke their declaration, and remain with the person until the medicine had been taken and the person had died or the person had declined to take the medicine.

11. Regulations would provide that the medicine could only be delivered immediately before it was due to be self-administered and, if the person chose not to do so, must immediately be removed and, as soon as reasonably practicable, returned to the pharmacy from which it was dispensed.

12. The person would have to self-administer the medication, in most cases this would be by swallowing it. However, a person could use a feeding tube, syringe driver or other mechanism for taking the medication. The assisting health professional could lawfully put the medication into a tube or syringe driver but the person would need to take the final act that ended their own life, for example by activating the syringe driver. This Bill would not permit voluntary euthanasia, which is when life-ending medication is directly administered to a patient at their request, for example by injection.

Clause 5

13. This clause enables health professionals and others who are involved in caring for individuals who are terminally ill to refrain, on the ground of conscientious objection, from assisting a person to die in accordance with the Bill.

Clause 6

14. Clause 6 makes clear that a person who assists someone to end their life in accordance with the Bill's provisions does not commit an offence. The clause also amends the Suicide Act 1961, to clarify that assisted dying does not constitute suicide and that the offences under that Act are not committed by a person who assists someone to end their life in accordance with the Bill.

Clause 7

15. This clause clarifies that a Coroner may, but is not required to, hold an inquest in respect of an assisted death. The clause also enables the Secretary of State, by regulations, to determine how assisted deaths should be recorded on death certificates and registered under the Births and Deaths Registration Act 1953. It would require the cause of death to be recorded as an "assisted death".

Clause 8

16. This clause would enable the Secretary of State, following consultation, to issue codes of practice in respect of matters relating to the operation of the Bill, including the assessment of whether a person has a clear and settled intention to end their own life, the issue of capacity and the effects of depression and other psychological disorders on decision-making. The code of practice would be subject to an affirmative resolution of each House.

Clause 9

17. This clause provides for compliance with the Bill to be monitored by the Chief Medical Officers in England and Wales respectively.

Clause 10

18. This clause creates the following offences and provides for their mode of trial and punishment:

- making or knowingly using a false declaration under the Bill;
- wilfully concealing or destroying a declaration made under the Bill; and
- knowingly or recklessly providing a medical or other professional opinion which is false or misleading in a material particular.

19. This Clause provides for new offences under the Assisted Dying Bill and would have no effect on the prohibition of assisted suicide under the Suicide Act 1961. Anyone who assisted someone's death outside of the provisions set out in the Bill would remain open to prosecution under the Suicide Act.

Clause 11

20. Clause 11 provides for any Regulations made by the Secretary of State (under clauses 4 and 7) to be made by statutory instrument and subject to the negative resolution procedure (i.e. annulment by resolution of either House of Parliament).

Clause 12

21. This clause contains interpretation provisions.

Clause 13

22. This clause deals with the Bill's citation, extent and commencement. The main provisions of the Bill would come into force two years after Royal Assent. As noted above, the Bill only extends to England and Wales.

23. Importantly this clause also contains a 'sunset provision', which would enable the Bill to be repealed by resolution of each House of Parliament and without the need for further primary legislation, after the Act had been in force for ten years.

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