

# Assisted Dying for the Terminally Ill Bill [HL]

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Schedule – Form of declaration



A  
**B I L L**

TO

Enable a competent adult who is suffering unbearably as a result of a terminal illness to receive medical assistance to die at his own considered and persistent request; and to make provision for a person suffering from a terminal illness to receive pain relief medication.

**B**E 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 Authorisation of assisted dying**

(1) Subject to the provisions of this Act, it shall be lawful for a physician to assist a patient who is a qualifying patient, and who has made a declaration in accordance with this Act that is for the time being in force, to die.

(2) For the purposes of this Act— 5

“assisted dying” means the attending physician, at the patient’s request, either providing the patient with the means to end the patient’s life or if the patient is physically unable to do so ending the patient’s life;

“attending physician” means the physician who has primary responsibility for the care of the patient and the treatment of the patient’s illness; 10

“competent” means having the capacity to make an informed decision, and “competence” shall be construed accordingly;

“consulting physician” means a consultant physician practising in the National Health Service who is qualified by speciality to make a professional diagnosis and prognosis regarding the patient’s illness and who is independent of the attending physician; 15

“declaration” means a witnessed declaration in writing made by the qualifying patient in the form set out in the Schedule to this Act, as amended from time to time by regulations; 20

“incompetent” means not having the capacity to make an informed decision, and “incompetence” shall be construed accordingly;

“informed decision” means a decision by a qualifying patient to request medical assistance to die, which is based on an appreciation of the

relevant facts and after being fully informed by the attending physician, and the consulting physician (save in respect of (c) below), of –

- (a) his medical diagnosis;
- (b) his prognosis; 5
- (c) the process of being assisted to die; and
- (d) the alternatives, including, but not limited to, palliative care, care in a hospice and the control of pain;

“medical care team” means a person or persons assisting the attending physician in the provision of medical care to a patient, and includes but without limitation a nurse or pharmacist; 10

“monitoring commission” means a commission set up by the Secretary of State to monitor the workings of this Act in a country or region forming a part of Great Britain;

“patient” means a person who is under the care of a physician; 15

“physician” means a registered medical practitioner;

“qualifying conditions” means those conditions set out in sections 2, 3, 4 and 5;

“qualifying patient” means a patient who has reached the age of majority, who has been resident in Great Britain for not less than twelve months as at the date of the declaration and in respect of whom all the qualifying conditions under sections 2, 3, 4 and 5 are met; 20

“terminal illness” means an illness which in the opinion of the consulting physician is inevitably progressive, the effects of which cannot be reversed by treatment (although treatment may be successful in relieving symptoms temporarily) and which will be likely to result in the patient’s death within a few months at most; 25

“unbearable suffering” means suffering whether by reason of pain or otherwise which the patient finds so severe as to be unacceptable and results from the patient’s terminal illness; and “suffering unbearably” shall be construed accordingly; 30

“waiting period” means that period of time between the date on which the patient first informed the attending physician that the patient wishes to be assisted to die in accordance with section 2(2)(a) and the date on which the patient is assisted to die, and such period shall not be less than 14 days in all; and 35

“witness” means a person who signs by way of attestation a declaration made under section 4.

## 2 Qualifying conditions

(1) Before the attending physician can assist a qualifying patient to die the conditions specified in this section and sections 3, 4 and 5 must be satisfied. 40

(2) The attending physician shall have –

- (a) been informed by the patient that the patient wishes to be assisted to die;
- (b) examined the patient and the patient’s medical records and have no reason to believe the patient is incompetent; 45
- (c) made a determination that the patient has a terminal illness;
- (d) concluded that the patient is suffering unbearably as a result of that terminal illness;

- (e) informed the patient of—
    - (i) his medical diagnosis;
    - (ii) his prognosis;
    - (iii) the process of being assisted to die;
    - (iv) the alternatives, including, but not limited to, palliative care, care in a hospice and the control of pain; 5
  - (f) if the patient persists with his request to be assisted to die, satisfied himself that the request is made voluntarily and that the patient has made an informed decision; and
  - (g) referred the patient to a consulting physician. 10
- (3) The consulting physician shall have—
- (a) been informed by the patient that the patient wishes to be assisted to die;
  - (b) examined the patient and the patient’s medical records and satisfied himself that the patient is competent; 15
  - (c) confirmed the diagnosis and prognosis made by the attending physician;
  - (d) concluded that the patient is suffering unbearably as a result of the terminal illness;
  - (e) informed the patient of the alternatives including, but not limited to, palliative care, care in a hospice and the control of pain; 20
  - (f) if the patient still persists with his request to be assisted to die, satisfied himself that the request is made voluntarily and that the patient has made an informed decision; and
  - (g) advised the patient that prior to such assistance the patient will be required to complete a declaration which the patient can revoke. 25
- 3 Offer of palliative care**
- (1) The attending physician shall ensure that a specialist in palliative care who shall be a physician or nurse has attended the patient to discuss the option of palliative care. 30
  - (2) Only once the requirements of sections 2(2), 2(3) and 3(1) have been satisfied may the patient make the declaration in the form set out in the Schedule.
- 4 Declaration made in advance**
- (1) When the conditions set out in sections 2 and 3 have been met, a patient who wishes to be assisted to die must make a declaration in the form set out in the Schedule. 35
  - (2) The declaration must be witnessed by two individuals one of whom shall be a solicitor who holds a current practising certificate.
  - (3) The solicitor may only witness the declaration if—
    - (a) the patient is personally known to the solicitor or has proved his identity to the solicitor; 40
    - (b) it appears to the solicitor that the patient is of sound mind and has made the declaration voluntarily; and
    - (c) the solicitor is satisfied that the patient understands the effect of the declaration. 45

- (4) The other witness may only witness the declaration if—
- (a) the patient is personally known to that witness or has proved his identity to that witness; and
  - (b) it appears to that witness that the patient is of sound mind and has made the declaration voluntarily. 5
- (5) The patient and witnesses shall sign and witness the declaration respectively at the same time and each in the presence of the others.
- (6) The attending or consulting physician, psychiatrist or member of the medical care team, or a relative or partner (by blood, marriage or adoption) of the qualifying patient signing this request may not witness the declaration. 10
- (7) No person who owns, operates or is employed at a health care establishment where the person is a patient or resident may witness the declaration.
- (8) The declaration shall come into force after the requisite waiting period has elapsed and shall remain in force (unless revoked) for six months.
- 5 Further duties of attending physician 15**
- Before taking any step to assist the patient to die the attending physician shall have—
- (a) informed the patient of his right to revoke the declaration;
  - (b) verified immediately before assisting the patient to die that the declaration is in force and that it has not been revoked by the patient; and 20
  - (c) asked the patient immediately before assisting him to die whether he wishes to revoke the declaration.
- 6 Revocation of declaration**
- (1) A patient may revoke his declaration whether orally or in any other manner without regard to his physical or mental state. 25
  - (2) In the event of a declaration being revoked, the attending physician shall ensure that a note recording its revocation is made on the patient's file and that the declaration is removed from the patient's medical file and destroyed.
- 7 Duties of physicians, and conscientious objection 30**
- (1) No person shall be under any duty, whether by contract or by any statutory or other legal requirement, to participate in any diagnosis, treatment or other action authorised by this Act to which he has a conscientious objection.
  - (2) If an attending physician whose patient makes a request to be assisted to die in accordance with this Act or to receive pain relief under section 15 has a conscientious objection as provided in subsection (1), he shall take appropriate steps to ensure that the patient is referred without delay to an attending physician who does not have such a conscientious objection. 35
  - (3) If a consulting physician to whom a patient has been referred in accordance with section 2(2)(g) has a conscientious objection as provided in subsection (1), he shall take appropriate steps to ensure that the patient is referred without delay to a consulting physician who does not have such a conscientious objection. 40

**8 Psychiatric referral**

- (1) If in the opinion of either the attending or the consulting physician a patient who wishes to make or has made a declaration may not be competent, the attending physician shall refer the patient to a psychiatrist for a psychiatric opinion. 5
- (2) No assistance to end that patient's life may be given unless the psychiatrist has determined that the patient is not suffering from a psychiatric or psychological disorder causing impaired judgement, and that the patient is competent.

**9 Notification of next of kin**

The attending physician shall recommend to the patient that the patient notifies his next of kin of his request for assistance to die. 10

**10 Protection for physicians and other medical personnel**

- (1) A physician, acting in good faith, who assists a qualifying patient to die, or attempts to do so, in accordance with the requirements of this Act, shall not be guilty of an offence. 15
- (2) A member of a medical care team, acting in good faith, who helps a physician to assist a qualifying patient to die, or to attempt to do so, in accordance with what he reasonably believes to be the requirements of this Act, shall not be guilty of an offence.
- (3) A physician to whom subsection (1) applies or, as the case may be, a member of a medical care team to whom subsection (2) applies, shall be deemed not to be in breach of any professional oath or affirmation. 20
- (4) No physician, psychiatrist or member of a medical care team may take any part whatsoever in assisting a qualifying patient to die, or in giving an opinion in respect of such a patient, nor may any person act as a witness, if he has grounds for believing that he will benefit financially or in any other way as the result of the death of that patient. 25

**11 Offences**

- (1) A person commits an offence if he wilfully falsifies or forges a declaration made under section 4 with the intent or effect of causing the patient's death. A person guilty of an offence under this subsection shall be liable, on conviction on indictment, to imprisonment for life or for any shorter term. 30
- (2) A witness commits an offence if he wilfully puts his name to a statement he knows to be false. A person guilty of an offence under this subsection shall be liable on conviction to imprisonment for a term not exceeding five years. 35
- (3) A person commits an offence if he wilfully conceals or destroys a declaration made under section 4. A person guilty of an offence under this subsection shall be liable on conviction to imprisonment for a term not exceeding five years.
- (4) A physician, psychiatrist, member of a medical care team or witness commits an offence if he contravenes the requirements of section 10(4). A person guilty of an offence under this subsection shall be liable on conviction to imprisonment for a term not exceeding five years. 40

- (5) No provision of this Act shall be taken to affect a person's liability on conviction to criminal penalties for conduct which is inconsistent with the provisions of this Act.

## 12 Insurance

No policy of insurance which has been in force for 12 months as at the date of the patient's death shall be invalidated by reason of a doctor having assisted a qualifying patient to die in accordance with this Act. 5

## 13 Requirements as to documentation in medical records

- (1) The attending physician shall ensure that the following are documented and filed in the patient's medical records— 10
- (a) all evidence, data and records which demonstrate that the qualifying conditions required under sections 2, 3, 4 and 5 have been met;
  - (b) any oral or written requests by the patient for assistance to end his life;
  - (c) the declaration; and
  - (d) a note by the attending physician stating that he was satisfied, at the date and time of his having assisted the patient to die, that all requirements under this Act had been met and indicating the steps taken to carry out the declaration including the description and quantity of the medication prescribed. 15
- (2) The attending physician shall send a full copy of the file to the monitoring commission for the country or region concerned within seven days of the qualifying patient having been assisted to die or of an attempt so to assist having been made. 20

## 14 Monitoring commission and reporting requirements

- (1) There shall be established such number of monitoring commissions covering countries or regions forming part of Great Britain as the Secretary of State may determine, to review the operation of this Act and to hold and monitor records maintained pursuant to this Act. 25
- (2) A monitoring commission shall consist of three members appointed by the Secretary of State, of whom— 30
- (a) one shall be a registered medical practitioner;
  - (b) one shall be a legal practitioner; and
  - (c) one shall be a lay person having first hand knowledge or experience in caring for a person with a terminal illness.
- (3) If, in relation to a file sent to a monitoring commission in accordance with section 13(2), two of its members consider that the qualifying conditions have not been met, they shall refer the matter to the district coroner or in Scotland to the procurator fiscal for further investigation. 35
- (4) A monitoring commission to which a file has been sent in accordance with section 13(2) shall confirm to the attending physician concerned whether the qualifying conditions have been met as soon as reasonably possible after the date of receiving such notification of the patient having been assisted to die whether or not such assistance led to the patient's death. 40



- (5) The Secretary of State shall publish an annual statistical report of information collected under this section.

**15 Administration of drugs to patients suffering severe distress**

A patient suffering from a terminal illness shall be entitled to request and receive such medication as may be necessary to keep him free as far as possible from pain and distress. 5

**16 Power to make regulations**

- (1) The Secretary of State may make regulations under this Act—
- (a) to ensure the intent of this Act is carried out;
  - (b) determining classes of persons who may or may not witness a declaration made under section 4; 10
  - (c) regulating the custody of records and the collection of information regarding the operation of this Act; and
  - (d) making provision about appointments to and the operation of the monitoring commissions. 15
- (2) The power to make regulations under this Act is exercisable by statutory instrument.
- (3) No statutory instrument may be made under this Act unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament. 20

**17 Short title and extent**

- (1) This Act may be cited as the Assisted Dying for the Terminally Ill Act 2004.
- (2) This Act does not extend to Northern Ireland.

## SCHEDULE

Section 1

## FORM OF DECLARATION

Declaration made \_\_\_\_\_ 20\_\_

by [\_\_\_\_\_]

of [\_\_\_\_\_]

5

I, \_\_\_\_\_, am an adult of sound mind who has been resident in Great Britain for at least twelve months as at the date of this declaration.

I am suffering from \_\_\_\_\_, which my attending physician, Dr \_\_\_\_\_, has determined is a terminal illness and which has been confirmed by a consulting physician, Dr \_\_\_\_\_.

10

I have been fully informed of my diagnosis, prognosis, the process of being assisted to die, and the alternatives, including palliative care, care in a hospice and the control of pain.

I request that my attending physician assist me to die.

I make this request voluntarily and without reservation.

15

Please delete as appropriate:

I have decided to inform / not to inform my family of my decision.

I understand that I have the right to revoke this declaration.

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

20

## DECLARATION OF WITNESSES

I declare that I am a solicitor with a current practising certificate and that the patient signing this request:

- (a) is personally known to me or has proved his identity to me;
- (b) signed or made his mark confirming that this was his request in my presence;
- (c) appears to be of sound mind and to have made the declaration voluntarily; and
- (d) appears to understand the effect of the declaration.

25

\_\_\_\_\_ Witness 1

30

Date

I declare that the person signing this request:

- (a) is personally known to me or has proved his identity to me;
- (b) signed or made his mark confirming that this was his request in my presence; and
- (c) appears to be of sound mind and to have made the declaration voluntarily.

5

\_\_\_\_\_ Witness 2

Date

Notes

1. One of the witnesses must be a solicitor with a current practising certificate who has satisfied himself that the patient understands the effect of the declaration. 10
2. The patient and witnesses shall sign and witness the declaration respectively at the same time and each in the presence of the others. 15
3. The attending or consulting physician, psychiatrist or member of the medical care team, or a relative or partner (by blood, marriage or adoption) of the qualifying patient signing this request may not be a witness.
4. No person who owns, operates or is employed at a health care establishment where the person is a patient or resident may be a witness. 20

# Assisted Dying for the Terminally Ill Bill [HL]

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## **B I L L**

To enable a competent adult who is suffering unbearably as a result of a terminal illness to receive medical assistance to die at his own considered and persistent request; and to make provision for a person suffering from such a condition to receive pain relief medication.

*The Lord Joffe*

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