

# Assisted Dying for the Terminally Ill Bill [HL]

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**B I L L**

TO

Enable an adult who has capacity and 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 for connected purposes.

**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**

Subject to the provisions of this Act, it shall be lawful for—

- (a) a physician to assist a patient who is a qualifying patient to die—
  - (i) by prescribing such medication, and
  - (ii) in the case of a patient for whom it is impossible or inappropiate orally to ingest that medication, by prescribing and providing such means of self-administration of that medication,
 

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as will enable the patient to end his own life, and
- (b) a person who is a member of a health care team to work in conjunction with a physician to whom paragraph (a) of this section applies.
 

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**2 Qualifying conditions**

- (1) Before the assisting physician can assist a patient to die the conditions specified in subsections (2) and (3) must be satisfied, the patient must have made a declaration in accordance with section 4 and the requirements of section 5(3) must have been complied with.
 

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- (2) The first condition is that the attending physician shall have—
  - (a) been informed by the patient in a written request signed 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 does not lack capacity;
  - (c) determined that the patient has a terminal illness;
 

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- (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; 5
  - (iii) the process of being assisted to die; and
  - (iv) the alternatives to assisted dying, including, but not limited to, palliative care, care in a hospice and the control of pain;
- (f) ensured that a specialist in palliative care, who shall be a physician or a nurse, has attended the patient to inform the patient of the benefits of the various forms of palliative care, 10
- (g) recommended to the patient that the patient notifies his next of kin of his request for assistance to die,
- (h) 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 15
- (i) referred the patient to a consulting physician.
- (3) The second condition is that the consulting physician shall have—
- (a) been informed by the patient that the patient wishes to be assisted to die; 20
  - (b) examined the patient and the patient's medical records and satisfied himself that the patient does not lack capacity;
  - (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; 25
  - (e) informed the patient of the alternatives to assisted dying including, but not limited to, palliative care, care in a hospice and the control of pain;
  - (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 30
  - (g) advised the patient that prior to being assisted to die the patient will be required to complete a declaration which the patient can revoke.
- (4) For the purposes of this Act, a person lacks capacity in relation to being assisted to die if at the material time he is unable to make a decision for himself in relation to that matter because of an impairment of, or a disturbance in the functioning of, the mind or brain resulting from any disability or disorder of the mind or brain. 35
- 3 Determination of lack of capacity**
- (1) If, in the opinion of either the attending or the consulting physician, a patient who wishes to make a declaration may lack capacity, the attending physician shall refer the patient to a consultant psychiatrist, or a psychologist, who shall be independent of the attending and consulting physicians, for an opinion as to the patient's capacity. 40
- (2) No assistance to end the patient's life may be given unless the consultant psychiatrist or the psychologist has determined that the patient does not lack capacity. 45

#### **4 Declaration**

- (1) When the qualifying conditions have been met, a patient who wishes to be assisted to die must make a declaration of his wish to die in the form prescribed by regulations made by the Secretary of State.
- (2) The declaration must be witnessed by two individuals one of whom shall be either a solicitor who holds a current practising certificate or a public notary. 5
- (3) The solicitor or public notary may only witness the declaration if—
  - (a) the patient is personally known to, or has proved his identity to, him;
  - (b) it appears to him that the patient is of sound mind and has made the declaration voluntarily; and 10
  - (c) he is satisfied that the patient understands the effect of the declaration.
- (4) The patient and witnesses shall sign and witness the declaration respectively at the same time and each in the presence of the others.
- (5) Neither the attending or consulting physician, nor a member of the health care team, a consultant psychiatrist or a psychologist consulted under section 3, nor a relative or partner (by blood, marriage or adoption) of the patient who wishes to be assisted to die, may witness the declaration. 15
- (6) No person who owns, operates or is employed at a health care establishment where the patient is a resident or is receiving medical treatment may witness the declaration. 20

#### **5 Duties of assisting physician**

- (1) The assisting physician shall be either the attending physician or the consulting physician.
- (2) The assisting physician shall not take any action to assist the patient to die until after the expiration of a period of 14 days from the date on which the patient informed the attending physician under section 2(2)(a) that the patient wished to be assisted to die. 25
- (3) Before taking any step to assist the patient to die the existing physician shall have—
  - (a) informed the patient of his right to revoke the declaration, and 30
  - (b) asked the patient to confirm that the declaration has not been revoked, and received such confirmation.

#### **6 Revocation of declaration**

- (1) A patient may revoke his declaration orally or in any other manner and irrespective of his physical or mental state. 35
- (2) In the event of a declaration being revoked, the assisting physician, or if there is no assisting physician, the attending physician, shall ensure that a note recording its revocation is made on the patient's file.

#### **7 Conscientious objection**

- (1) No person shall be under any duty to participate in any diagnosis, treatment or other action authorised by this Act, apart from subsection (6), to which he has a conscientious objection. 40

- (2) No hospice, hospital, nursing home, clinic or other health care establishment shall be under any obligation to permit an assisted death on its premises.
- (3) No person shall be under any duty to raise the option of assisted dying with a patient, to refer a patient to any other source for obtaining information or advice pertaining to assistance to die, or to refer a patient to any other person for assistance to die under the provisions of this Act. 5
- (4) If an attending physician whose patient makes a request to be assisted to die in accordance with this Act has a conscientious objection as provided in subsection (1), the patient shall be free to consult another physician who does not have a conscientious objection and who, for the purposes of this Act, shall then be the patient's attending physician. 10
- (5) If a consulting physician to whom a patient has been referred in accordance with section 2(2)(i) has a conscientious objection as provided in subsection (1), the patient shall be free to consult another consulting physician who does not have a conscientious objection and who, for the purposes of this Act, shall then be the patient's consulting physician. 15
- (6) Where a patient has consulted a physician under subsection (4) or (5) the physician who has a conscientious objection shall immediately, on receipt of a request to do so, transfer the patient's medical records to the new physician.
- 8 Protection for health care professionals and other persons 20**
- (1) A physician who assists a qualifying patient to die, or attempts to do so, in accordance with the requirements of this Act, shall not, by so doing, be guilty of an offence.
- (2) A member of a health care team who works in conjunction with a physician who assists a qualifying patient to die, or attempts to do so, in accordance with the requirements of this Act, or in reliance on information supplied to him that the requirements of this Act in relation to the patient had been fully complied with, shall not by so doing be guilty of an offence. 25
- (3) A person who is present when –  
 (a) a qualifying patient dies, having received assistance to die, or  
 (b) an attempt is made to assist a qualifying patient to die,  
 shall not be guilty of an offence provided that he is present in reliance on information provided to him that the requirements of this Act in relation to the patient have been complied with. 30
- (4) A physician to whom subsection (1) of this section applies or a member of a health care team to whom subsection (2) of this section applies, shall be deemed not to be in breach of any professional oath or affirmation. 35
- (5) No physician, psychiatrist, psychologist or member of a health care team may take any part 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, except for his proper professional fees or salary, as a result of the death of that patient. 40

## 9 Offences

- (1) A person commits an offence if he wilfully falsifies or forges a declaration made or purporting to be made under section 4 with the intent or effect of causing the patient's death.
- (2) A person guilty of an offence under subsection (1) shall be liable, on conviction on indictment, to imprisonment for life. 5
- (3) A person commits an offence if he makes a statement as a witness to a declaration made, or purporting to be made, under section 4 that he knows to be false.
- (4) A person commits an offence if he wilfully conceals or destroys a declaration. 10
- (5) A physician, psychiatrist, psychologist, or member of a health care team who takes any part in assisting a qualifying patient to die, or who gives an opinion in respect of such a patient, and who has grounds for believing that he will benefit financially or in any other way, except for his proper professional fees or salary, as the result of the death of that patient, contrary to section 8(5) commits an offence. 15
- (6) A person guilty of an offence under subsections (3) to (5) shall be liable on conviction on indictment to imprisonment for a period not exceeding five years or a fine or both.
- (7) 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. 20

## 10 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 physician having assisted a qualifying patient to die in accordance with this Act. 25

## 11 Requirements as to documentation in medical records and reporting requirements

- (1) The assisting physician shall ensure that the following are documented and filed in the patient's medical records— 30
  - (a) all evidence, data and records which demonstrate that the qualifying conditions have been met;
  - (b) any written request by the patient for assistance to end his life;
  - (c) the declaration; and
  - (d) a note by the assisting 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 end the patient's life including the description and quantity of the medication and any means of self-administration prescribed or provided. 35
- (2) The assisting physician shall send a copy of each of the documents referred to in subsection (1) of this section to the monitoring commission for the region concerned within seven days of the qualifying patient having been assisted to die or of an attempt so to assist having been made. 40

## 12 Monitoring commission

- (1) The Secretary of State shall by order establish such number of monitoring commissions covering regions forming parts of England and Wales as he may determine, to review the operation of this Act and to hold and monitor records maintained pursuant to this Act. 5
- (2) A monitoring commission shall consist of three members appointed by the Secretary of State, of whom –
- (a) one shall be a registered medical practitioner;
  - (b) one shall be a solicitor or barrister; and
  - (c) one shall be a lay person having first hand experience in caring for a person with a terminal illness. 10
- (3) If, in relation to documents sent to a monitoring commission in accordance with section 11(2), two of its members consider that the qualifying conditions have not been met, the declaration had not been validly made or had been revoked, or that the requirements of this Act had not been complied with, the monitoring commission shall refer the matter to the district coroner. 15
- (4) A monitoring commission to which documents have been sent in accordance with section 11(2) shall confirm to the assisting physician concerned whether all the requirements of this Act have been complied with as soon as reasonably possible after the date of receiving such notification of the patient having been assisted to die or of an attempt so to assist having been made. 20
- (5) The Secretary of State shall publish an annual statistical report of information collected under this section.

## 13 Interpretation

- (1) In this Act – 25
- “assisting physician” means the physician who assists the patient to die;
  - “attending physician” means the physician who has primary responsibility for the care of the patient and the treatment of the patient’s illness;
  - “consulting physician” means a consultant physician who is qualified by specialty to make a professional diagnosis and prognosis regarding the patient’s illness and who is independent of the attending physician; 30
  - “declaration” means a witnessed declaration in writing made under section 4 by the patient;
  - “health care team” means a person or persons assisting the attending physician or the consulting physician; 35
  - “informed decision” means a decision by a patient to request assistance to die, which is based on an appreciation of the relevant facts and after having been fully informed in accordance with section 2 of –
    - (a) his medical diagnosis; 40
    - (b) his prognosis;
    - (c) the process of being assisted to die; and
    - (d) the alternatives to being assisted to die, including, but not limited to, palliative care, care in a hospice and the control of pain; 45



- “monitoring commission” means a commission set up by the Secretary of State to monitor the workings of this Act in a region forming a part of England and Wales;
- “nurse” means a nurse practitioner who is registered with the Nursing and Midwifery Council; 5
- “patient” means a person who is under the care of a physician;
- “physician” means a medical practitioner who is fully registered with the General Medical Council;
- “psychiatrist” means a physician who is a specialist in psychiatry;
- “psychologist” means a person who is registered with the British Psychological Society as a chartered clinical psychologist; 10
- “qualifying conditions” means the conditions set out in section 2(2) to (4);
- “qualifying patient” means a patient who –
- (a) has reached the age of majority, and
  - (b) after having been registered for primary health care in England and Wales for a period of at least twelve months has made a declaration that is for the time being in force; 15
- and in respect of whom –
- (i) all the qualifying conditions have been met, and
  - (ii) the requirements of section 5(3) have been complied with; 20
- “signed” in relation to the signature of a patient on a document means executed –
- (a) by the patient writing his own signature, or
  - (b) where the patient cannot write legibly either through illiteracy or physical infirmity, by the patient leaving his mark, or 25
  - (c) where the patient through physical infirmity cannot either sign or make his mark, by a third party signing for the patient at his direction and so indicating on the document after the signature and adding his own full name and address; 30
- “terminal illness” means an illness which in the opinion of both the attending and the consulting physician –
- (a) is inevitably progressive,
  - (b) cannot be reversed by treatment (although treatment may be successful in relieving symptoms temporarily), and 35
  - (c) will be likely to result in the patient’s death within six months;
- “unbearable suffering” means suffering whether by reason of pain, distress or otherwise which the patient finds so severe as to be unacceptable; and
- “witness” means a person who signs a declaration by way of attestation. 40
- (2) Grammatical variations of words and expressions to which definitions are assigned in this section shall be construed in accordance with the definitions.

#### 14 Power to make orders and regulations

- (1) The Secretary of State may at any time by order make such supplementary, incidental, consequential or transitional provision as appears to him to be necessary or expedient for the general or particular purposes of this Act or in consequence of any of its provisions or for giving full effect to it. 45
- (2) The Secretary of State may make regulations under this Act –

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- (a) determining classes of persons who may or may not witness a declaration;
  - (b) regulating the custody of records and the collection of information regarding the operation of this Act;
  - (c) making provision about appointments to and the operation of the monitoring commissions; and
  - (d) providing a code of practice for the guidance of physicians, members of health care teams and other persons acting in accordance with the provisions of this Act. 5
- (3) The power to make orders and regulations under this Act is exercisable by statutory instrument and includes power to make different provision for different cases. 10
- (4) A statutory instrument containing regulations made under section 4(1) is subject to annulment in pursuance of a resolution of either House of Parliament and no other 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. 15
- 15 Amendment of the Suicide Act 1961**
- Section 2 of the Suicide Act 1961 (c. 60) is amended by inserting after subsection (3) – 20
- “(3A) Subsection (1) does not apply where a person assists another person to die, or where a person helps another person to assist a third person to die, or where a person is present when another person ends his own life or attempts to do so, in accordance with sections 1 and 8 of the Assisted Dying for the Terminally Ill Act 2005.” 25
- 16 Short title and extent**
- (1) This Act may be cited as the Assisted Dying for the Terminally Ill Act 2005.
  - (2) This Act does not extend to Scotland or Northern Ireland.



# Assisted Dying for the Terminally Ill Bill [HL]

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## **B I L L**

To enable an adult who has capacity and 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 for connected purposes.

*The Lord Joffe*

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