

Briefing for the Citizen Participation and Public Petitions Committee on petition PE1972: [Assisted dying for people with long-term mental illness and consenting capacity](#), lodged by Kevin Sutherland

Brief overview of issues raised by the petition

The petition is calling on the Scottish Parliament to urge the Scottish Government to ensure all future legislation on assisted dying includes provisions for access to assisted dying for anyone of adult age suffering from a long-term mental illness, and/or who has compelling philosophical reasons for wanting to terminate their lives, provided they:

- have sought psychological or psychiatric assistance, which resulted in no change to their condition; and
- continue to have consenting capacity.

Law on Assisted Dying in Scotland

In Scotland it is not a criminal offence to commit suicide or attempt to commit suicide, and there is no specific legislation that governs ending your own life or assisted dying.

However, assisting in the death of another may give rise to liability for murder or culpable homicide, and limited case law in this area means there is uncertainty around what actions would be lawful or unlawful. As a result, those assisting in someone's death could be at risk of criminal charges.¹

Mental Illness and Capacity

Capacity generally refers to the ability of a person to make decisions for themselves and manage their own affairs. In Scotland, the law presumes an individual has capacity unless it is proven otherwise, and the presence of a mental illness does not automatically mean a person lacks capacity.

Proposed Member's Bill

¹ Robson, K and Harvie-Clark, S (2015) [Assisted Suicide \(Scotland\) Bill](#). SPICe Briefing SB 15-02

On 22 September 2021, Liam McArthur MSP lodged a draft proposal for a Bill to enable assisted dying for adults who are terminally ill. A [consultation on this proposal ran until 21 December 2022](#).

The [proposed Assisted Dying for Terminally Ill Adults \(Scotland\) Bill](#) would “enable competent adults who are terminally ill to be provided at their request with assistance to end their life.”

An [analysis of the consultation was recently published](#) showing 76% of respondents were supportive of the proposal and 21% were opposed. The remaining responses were either partially supportive or partially opposed.

Some of the responses raised the issue of widening eligibility beyond those with a terminal illness. Others also raised how people with mental health problems should be treated under the proposed legislation.

Having gained support from the required number of MSPs and parties, the Member can now introduce a Bill in the Scottish Parliament.

The [final proposal for the Bill](#), which sets out the specific terms upon which a bill can be drafted, has now been lodged. This restricts a draft Bill to allowing “competent adults who are terminally ill to be provided at their request with assistance to end their life”.

While other Members could bring forward amendments at stages 2 & 3 seeking to alter the scope of the Bill, the Bill as introduced would be limited by what is in the final proposal.

Scottish Government Action

There has been no specific action by the Scottish Government on assisted dying.

A [review of mental health law and capacity law reported recently](#) but – at the time of writing - the Scottish Government has not yet responded to the report.

Scottish Parliament Action

There have been three previous attempts to legislate in this area:

- **2004:** Jeremy Purvis MSP lodged a proposal for a bill [to allow capable adults with a terminal illness to access the means to die with dignity](#). The Bill did not receive the required number of supporting MSPs (18) to be introduced.
- **2010:** Independent MSP, Margo MacDonald introduced the [End of Life Assistance \(Scotland\) Bill](#) to enable persons whose life has become intolerable and who meet the conditions prescribed in the Bill to legally access assistance to end their life. The Parliament did not agree to the general principles of the Bill on 1 December 2010, by 85 votes to 16 (with two abstentions), and the Bill fell.
- **2013:** Margo MacDonald MSP introduced the [Assisted Suicide \(Scotland\) Bill](#) ('the 2013 Bill') for certain people who are approaching the end of their lives to seek assistance to end their lives at a time of their own choosing, and to provide protection in law for those providing that assistance. Margo MacDonald lived with Parkinson's disease and died in 2014. At this time, Green MSP, Patrick Harvie, took over as the Bill's sponsor. The Parliament did not agree to the general principles of the Bill on 27 May 2015, by 82 votes to 36, with no abstentions, and the Bill fell.

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SPICe Researcher
 [18/10/2022]

The purpose of this briefing is to provide a brief overview of issues raised by the petition. SPICe research specialists are not able to discuss the content of petition briefings with petitioners or other members of the public. However, if you have any comments on any petition briefing you can email us at spice@parliament.scot

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