

Assisted Dying for Terminally Ill Adults (Scotland) Bill

Explanatory Notes

Introduction

1. As required under Rule 9.3.2A of the Parliament's Standing Orders, these Explanatory Notes are published to accompany the Assisted Dying for Terminally Ill Adults (Scotland) Bill, introduced in the Scottish Parliament on 27 March 2024.
2. The following other accompanying documents are published separately:
 - a Financial Memorandum (SP Bill 46–FM);
 - a Policy Memorandum (SP Bill 46–PM);
 - a Delegated Powers Memorandum (SP Bill 46–DPM);
 - statements on legislative competence made by the Presiding Officer and the Member in charge of the Bill (SP Bill 46–LC).
3. These Explanatory Notes have been prepared by the Non-Government Bills Unit, on behalf of Liam McArthur MSP, the Member who introduced the Bill, 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 the Parliament.
4. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

The Bill

Overview and Summary

5. The purpose of the Bill is to make it lawful for a terminally ill adult who meets specified eligibility criteria to voluntarily request, and be provided with, assistance by health professionals to end their life. The Bill establishes a lawful process, delivered by

This document relates to the Assisted Dying for Terminally Ill Adults (Scotland) Bill (SP Bill 46) as introduced in the Scottish Parliament on 24 March 2024

health professionals, for terminally ill adults, if eligible, to access the provision of assistance.

6. The Member believes that the current legal position is unacceptably unclear as there is currently no specific legislation in Scotland which makes assisted dying a criminal offence, yet it is also possible to be prosecuted for murder or culpable homicide for assisting the death of another person. The Bill improves legal clarity by making it lawful for a person to access assisted dying if they meet the various criteria, while continuing to ensure that assisting death outwith the provisions of the Bill remains unlawful.

7. The Bill has 33 sections and 5 schedules.

8. Sections 1 to 3 establish the lawfulness of the provision of assistance to a terminally ill eligible adult to end their own life, and deal with the criteria which must be met in order for a terminally ill adult to be eligible to request, and be provided with, assistance to end their life in accordance with the provisions of the Bill.

9. Sections 4 to 14 set out the preliminary procedural steps which must be taken, and how criteria will be assessed and determined, in order for a person to be eligible to be provided with assistance to end their life.

10. Sections 15 to 20 deal directly with the provision of assistance to an eligible terminally ill adult for them to end their life by self-administered means. This includes provision that there is no duty on anyone, including registered medical practitioners and other health professionals, to participate in the process if they have a conscientious objection to doing so, and also provides that it is not a crime to provide an eligible person with assistance where the requirements of the Bill have been met, and that there is also no equivalent civil liability. These sections also deal with the process after a terminally ill adult has died as a result of taking the substance supplied, including the completion of a final statement and how to record the death on the death certificate.

11. Sections 21 to 33 deal with general and final provisions which include making it an offence to coerce or pressure a terminally ill adult into requesting an assisted death, provisions relating to the collection and reporting of data, the publication of an annual report, and a requirement to review the Act after five years of operation.

12. Schedules 1 to 4 contain the forms which are required to be completed, signed and witnessed at various stages of the process. These consist of a first and second declaration form, in which a terminally ill adult asks to be provided with assistance to end their life, two medical assessment statement forms, to be completed by registered medical practitioners, which assess eligibility, and a final statement form, to be completed after a death has taken place. Schedule 5 sets out reasons why a person is disqualified from being a witness or proxy for the purposes of the Bill.

Commentary on sections and schedules

Eligibility to be provided with lawful assistance to voluntarily end own life

Section 1 – Assisted dying for terminally ill adults

13. Section 1(1) provides that an eligible terminally ill adult¹ may, on request, be lawfully provided with assistance to end their life. This should be read alongside section 2, which defines terminal illness for the purposes of the Bill, and section 3, which sets out the other eligibility criteria. Subsection (2) provides that assistance to end life is lawfully provided if it is provided in accordance with the provisions of the Bill.

Section 2 – Terminal illness

14. Section 2 defines terminal illness for the purposes of the Bill. To be considered as terminally ill, a person must have a disease, illness or condition which they will not recover from, is worsening and at a late stage, and which is expected to cause their premature death. This is relevant in particular to sections 6 to 8 which set out the provisions relating to the assessments which medical practitioners must carry out to determine if someone is eligible to be provided with assistance. One such assessment is to be satisfied that the adult is terminally ill, in accordance with the definition set out in this section.

Section 3 - Eligibility

15. The eligibility criteria, in addition to being aged 16 or over and being terminally ill, are set out in section 3. To be eligible to be provided with assistance, a terminally ill adult must also:

- be ordinarily resident in Scotland for at least 12 months before the date on which the first declaration is made² (i.e. that they lawfully and voluntarily live in Scotland, as their home, throughout a set period, allowing for absences such as holidays and business trips);
- be registered with a general practitioner/medical practice in Scotland; and
- have capacity to understand the issues at hand and be able to make, understand, communicate, and remember the decision made. Section 3(2) sets out how a terminally ill adult's capacity to make the decision to request assistance to end their life should be determined. Section 3(3) provides that a person does not lack capacity if they can be helped to make a decision by the provision of support (for example, via interpretation or provision of a technological aid, such as a screen reader).

¹ Section 29 defines an "adult" as a person who is aged 16 or over.

² See section 4.

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16. One of the determining factors detailed in section 3(2) is that the person is not suffering from any mental disorder which might affect decision making (section 3(2)(a)). In this section, “mental disorder” has the same meaning as it has in section 328 of the Mental Health (Care and Treatment) (Scotland) Act 2003³, namely any mental illness, personality disorder, or learning disability, however caused or manifested. A person is not suffering from a mental disorder only due to their sexual orientation, sexual deviancy, transsexualism, transvestism, dependence on, or use of, alcohol and/or drugs, behaviour that causes, or is likely to cause, harassment, alarm or distress to any other person, or by acting as no prudent person would act. This means, in particular, that a terminally ill adult should not be deemed as lacking capacity on the basis that their decision seems unwise.

17. The eligibility criteria will be assessed as having been met or not by up to two registered medical practitioners (see sections 6 and 7).

Lawful provision of assistance to end life: preliminary steps

Section 4 – Request for assistance: first declaration; schedule 1 – Form of first declaration; and schedule 5 – Disqualified from being a witness or proxy

18. Section 4 sets out the first preliminary step in the process a terminally ill adult must complete in order to be provided with assistance to end their own life. This is called a “first declaration” and takes place after a terminally ill adult has indicated to a registered medical practitioner (doctor) that they wish to be provided with assistance to end their life.

19. A doctor, on receiving such a request, will provide the person with (or give them access to) a first declaration form. A first declaration must be made by the completing, signing and witnessing of a first declaration form (subsection (1)). The form is set out in schedule 1 (note that section 30 gives the Scottish Ministers power to amend any of the forms set out in schedules 1 to 4 by regulations, subject to the negative procedure in the Scottish Parliament⁴ - see section 28 which sets out which procedure regulations provided for by the Bill are subject to).

20. The first declaration must be signed and dated by the person making the request (or, if they are unable to do so, by a proxy – see section 12), the registered medical practitioner (RMP) who is performing the role of the coordinating doctor, and an independent witness. The witnesses must see the form being signed (whether by the terminally ill adult or by a proxy). The purpose of the first declaration form is to record a terminally ill adult’s request, made of their own free will, to be provided with assistance to end their life. The form records various personal details of the terminally ill adult, declares that the adult wishes to end their life, and confirms that the process has been explained to them and that they have made the declaration (that, if eligible, they wish to

³ [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2003/32/section/328).

⁴ Negative procedure means that the regulations must be laid after being made and may be annulled by resolution of the Parliament within 40 days.

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be provided with assistance to end their life) of their own free will, without being coerced or unduly pressured. The completion of the form also marks the start of the minimum 14-day (and minimum 48-hour period if both doctors agree that the person has less than 14 days to live) period of reflection,⁵ after which a terminally ill adult can (providing that two doctors have independently agreed a person is eligible) sign a second declaration form requesting they be provided with assistance to end their life.

21. Section 4(5) defines “coordinating registered medical practitioner” for the purposes of the Bill. Note that “registered medical practitioner” is defined in the Interpretation and Legislative Reform (Scotland) Act 2010⁶ as “a fully registered person within the meaning of the Medical Act 1983 (c. 54)⁷ who holds a licence to practise under that Act”. A “coordinating” registered medical practitioner (cRMP) is one who has told a terminally ill adult requesting an assisted death that they will perform the coordinating role set out in the Bill (being the registered medical practitioner that has responsibility for overseeing the process from beginning to end). It is expected that this will usually be the terminally ill adult’s GP or primary care doctor. Section 4(5)(a) allows the Scottish Ministers to make regulations to specify any qualifications and experience that a registered medical practitioner must have in order to be able to fulfil the role of the coordinating registered medical practitioner. Section 4(6) requires the Scottish Ministers to consult anyone they think relevant before laying the regulations. Section 28 provides that first regulations made under this power are subject to the affirmative⁸ procedure in the Scottish Parliament, and any subsequent regulations are subject to the negative procedure.⁹

22. Section 4(3) requires the first declaration to be witnessed by another adult in addition to the coordinating registered medical practitioner. This should be read with schedule 5 which sets out reasons a person may not be a witness to the signing of the first declaration form (being a relative of, or otherwise closely connected to, the terminally ill adult, a beneficiary in the terminally ill adults will, or a health professional who had provided treatment or care to the adult). Schedule 5 does not apply to the cRMP. However, the risk of a person having a cRMP who is known and close to them is mitigated by existing medical ethics and General Medical Council guidance which states that it is not good practice for doctors to treat family members and/or friends.

23. Section 4(4) should be read with section 13. It provides that a completed first declaration form must be recorded in the terminally ill adult’s medical records, and that it is the responsibility of the cRMP to ensure that is done.

⁵ See section 9.

⁶ [Interpretation and Legislative Reform \(Scotland\) Act 2010 \(legislation.gov.uk\)](https://legislation.gov.uk/ukpga/2010/11).

⁷ [Medical Act 1983 \(legislation.gov.uk\)](https://legislation.gov.uk/ukpga/1983/54).

⁸ Affirmative procedure means that regulations must be laid in draft before the Parliament for approval by resolution.

⁹ Negative procedure means that regulations must be laid after being made and may be annulled by resolution of the Parliament within 40 days.

Section 5 – Requirement for proof of identity

24. Section 5 provides that when a terminally ill adult makes a first declaration, they must provide the cRMP and other witness with two forms of proof of their identity. The purpose is to ensure that the person requesting assistance is who they say they are and the person the doctor and witness believes them to be. Subsection (3) allows the Scottish Ministers to make regulations which set out the forms of proof of identity that will be accepted. Section 28 provides that these regulations are subject to the negative procedure in the Scottish Parliament.¹⁰

Sections 6 - Medical practitioners' assessments

25. Sections 6 and 7 deal with the assessment part of the process, which follows the completion of a first declaration form. Once that form has been completed, signed, and witnessed, the cRMP must (under sections 6(1) and 6(2)) assess the eligibility of the terminally ill adult. The cRMP must assess whether the person is, in the view of the cRMP, terminally ill and meets the eligibility criteria set out in section 3. The cRMP must also be satisfied that the person is making the decision of their own free, settled, will, without being coerced (i.e. forced) or being pressured (i.e. to be subject to psychological and/or moral pressure¹¹).

26. If the cRMP is satisfied a terminally ill adult is eligible, and acting voluntarily, subsection (3) requires the cRMP to then refer the adult to another, independent, RMP (who has not provided treatment or care to the person, and is not a relative, partner or colleague of the cRMP) to assess that the person is terminally ill, has capacity to make the request, and is not being coerced or pressured (the independent RMP is not required to assess the other eligibility criteria in section 3 relating to residency and registration with a GP practice). If the cRMP is not satisfied that the adult is eligible, no referral to another RMP is made, and the terminally ill adult's request to be provided with assistance to end their life is not approved and the process ends.

27. If either RMP is unsure, when assessing the terminally ill adult, with regard to the prognosis of the adult, or whether they have sufficient capacity to make and understand the decision, they may refer the adult to an appropriate medical specialist (see section 7(2)).

Section 7 – Assessment under section 6: further provision

28. Section 7 makes further provision about the assessments. Subsection (1)(a) provides that a RMP performing an assessment under section 6 of the Bill must discuss with/explain to the terminally ill adult matters relating to diagnosis, prognosis, available treatment and care options and clearly explain that taking the substance will end their life. Subsection (1)(b) provides that RMPs must also tell the terminally ill adult what the remaining steps in the process are (to sign a second declaration and then decide on the

¹⁰ Negative procedure means that regulations must be laid after being made and may be annulled by resolution of the Parliament within 40 days.

¹¹ For example, by reference to [GMC guidance on decision making and consent](#).

date on which the assisted death should take place) and of their right not to proceed at any point and how they can cancel the first or second declaration (this should be read with section 11 which sets out that a terminally ill adult can tell the cRMP or a RMP at the medical practice they are registered with, that they wish to cancel a declaration). Subsection (1)(c) provides that assessing RMPs should also advise (if they consider it appropriate to do so) the terminally ill adult to tell their GP (if their GP is not the cRMP or is otherwise unaware) and to discuss their decision with those emotionally closest to them (family, friends etc.).

29. Subsection (2) allows a RMP assessing a terminally ill adult's eligibility to be provided with assistance to end their own life to refer the adult to an appropriate specialist on issues relating to either the terminal illness diagnosis/prognosis or on capacity.¹² If a referral relates to the diagnosis of terminal illness, it should be made to a RMP with appropriate qualifications and experience in the illness in question. If the referral relates to matters of capacity, it should be made to a registered psychiatrist (a RMP on the General Medical Council Specialist Register) or to another RMP with qualifications/experience in assessing mental capacity. If an RMP does make such a referral, they must take account of the opinion of the other RMP or medical specialist.

Section 8 – Medical practitioners' statements; and schedule 2 – Medical practitioners' assessments: form of statements

30. Where a RMP has completed a medical practitioner's assessment under section 6 and is satisfied that a terminally ill adult is eligible to be provided with assistance to end their life, section 8 provides that they must complete a medical practitioners' assessment form. Separate forms for the cRMP and the independent RMP are contained in schedule 2. Those forms record the personal details of the RMP, confirm the various required parts of the assessment process have been carried out and confirm the terminally ill adult is eligible to be provided with assistance. The forms are to be signed and dated by the RMP who carried out the assessment and are to be recorded in the person's medical records (as detailed in section 13). If either RMP is not satisfied, and does not complete the assessment form, then the process stops, and the person will not be provided with assistance to end their life. Subsection (5) confirms that the cRMP and RMP should not make the assessments set out in subsections (1) and (2) of this section if the first declaration is cancelled (see section 11).

Section 9 – Period for reflection

31. Section 9 provides for a period of reflection which begins on the date the first declaration is made. A second declaration cannot be made until a period of at least 14 days has elapsed or, where the cRMP thinks that the terminally ill adult may have less than 14 days to live and waives the 14-day period, a period not less than 48 hours. This ensures that a terminally ill adult who has made a declaration has an opportunity to consider their decision and discuss with others if they wish. For the 14-day period to be waived, both RMPs must agree and must complete the relevant part of the practitioners' statements (see schedule 2). As all the forms involved in the process are to be recorded

¹² See section 2 for a definition of terminal illness, and section 3 for provision relating to capacity.

on a person's medical records, it will be a matter of record if the 14-day period was waived.

Section 10 – Request for assistance: second declaration, and schedule 3 – Form of second declaration

32. Section 10 sets out the part of the process which follows a first declaration having been made and two RMPs having assessed the terminally ill adult as being eligible to be provided with assistance to end their life. This involves the terminally ill adult making a second declaration, which is a confirmation that, having been found eligible to be provided with assistance to end their own life, they wish to continue, and be provided with assistance.

33. Subsection (1) provides that (where a first declaration has been made, two RMPs have assessed the person as being eligible, and the period for reflection has ended) a terminally ill person who wishes to proceed and be provided with assistance to end their life, must make a second declaration. Subsection (2) provides that a second declaration is made by completing the form set out in schedule 3 and must be signed and dated by the terminally ill adult (or a proxy) and (as is the case with the first declaration form) witnessed and signed by the cRMP and another person (which cannot be the other RMP who assessed the eligibility of the person). The cRMP and witness must see the terminally ill adult, or their proxy, sign the form. The same other exclusions from being a witness apply as is the case with the first declaration form (see schedule 5). Before signing the form, the cRMP must remain satisfied that the person is eligible to be given assistance to end their life (so, if any new concerns exist, for example around a person's capacity or voluntary decision-making, the process could stop at this stage). The form is to be recorded in the person's medical records.

Section 11 – Cancellation of declarations

34. Section 11 provides that a first or second declaration, once made, can be cancelled by the terminally ill adult communicating (orally or in writing) to the cRMP or any other registered medical practitioner in their GP practice that they wish to cancel it. The cRMP must ensure that such a cancellation is recorded in the person's medical records. A cancellation has effect from the moment it is made (i.e. the process will end at whatever point has been reached). If a first declaration is cancelled before either or both medical assessments have been carried out, the outstanding assessments should not take place. If a first declaration is cancelled after the assessments have taken place, but before a second declaration has been signed, then the second form would not be signed. If a second declaration is cancelled, assistance will not be provided to the person to end their own life. Cancellation of a second declaration can be made by the terminally ill adult at any point before taking the substance, and, regardless, a terminally ill adult can end the process at any point by indicating that they no longer wish to be provided with assistance. Note that if a terminally ill adult cancels a first or second declaration and subsequently wishes to be provided with assistance to end their own life, they are required to start the process again (i.e. to make a first declaration).

Section 12 – Signing by proxy

35. Section 12 provides that, should they not be able to sign their own name (for example due to a physical impairment or being unable to read), a terminally ill adult can authorise a proxy (that is, a person legally allowed to act on behalf of another person) to sign the first and/or second declaration forms on their behalf. In such instances the declaration is still being made by the terminally ill adult, but physically signed, on their behalf, by a proxy. In instances of a proxy signing in such circumstances, their signature requires to be seen by the cRMP and other witness, as is the case when a terminally ill adult signs either declaration. Subsection (5) provides that a proxy, for the purposes of the Bill, is a solicitor, a member of the Faculty of Advocates, or a justice of the peace in Scotland but cannot be (under schedule 5) a relative, or person otherwise closely connected to the person as detailed in schedule 5, or a person who is a beneficiary in the will of the terminally ill person.

36. The first and second declaration forms are adapted in cases where a proxy is signing on behalf of the person, to record the details of the proxy.

Section 13 – Recording of declarations and statements

37. Under section 13, the cRMP must ensure that all forms completed under the Bill (contained in schedules 1 to 4: the first and second declaration forms, the two medical practitioner's statements and the final statement) are sent to the terminally ill adult's GP and must be added to their medical records. Note that a person's medical records in Scotland are currently retained for three years after a person's death.

Section 14 – Recording of cancellations

38. Section 14 requires the cancellation of either a first or second declaration form to be notified to the person's GP and recorded in their medical records (a cancellation must be made to a RMP, see section 11). Subsections (2) to (5) provide that, if the RMP to whom the cancellation was made works in the terminally ill adult's medical practice, then they must record the cancellation in the adult's medical records. If that RMP does not work in the medical practice, they must inform a RMP in the relevant medical practice, who must record the cancellation in the adult's medical records.

Lawful provision of assistance to end life

Section 15 – Provision of assistance

39. Section 15 deals with the end-of-life process and sets out how a person will be provided with assistance to lawfully end their own life. It is for the person to decide, after completing a second declaration, if, when, and where (in which premises – for example at home, in hospital, or in a hospice or care home) they wish to be given an approved substance for them to take to end their life. The person should notify the cRMP once they have made a decision. There is no time limit by which a person must have decided to end their life, and/or have ended their life, after a second declaration has been made

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(this is safeguarded by the requirement for issues of capacity and free will to be assessed again before the substance is provided to the person to end their own life).

40. Subsection (1) allows the cRMP, or another health professional authorised by the cRMP, to provide the person with an approved substance for them to take to end their life, providing that conditions set out in subsections (2) and (3) are met. Subsection (8) defines an “authorised health professional” for this purpose as being a RMP or registered nurse authorised by the cRMP. Under subsection (8) the Scottish Ministers can make regulations setting out what an approved substance is for the purposes of the Bill. Section 28 provides that such regulations are subject to the affirmative procedure in the Scottish Parliament.¹³ Note that subsection (8) in particular should be read alongside section 22 (limitations on the effect of Act).¹⁴

41. Subsection (2) requires that, in order to be given the approved substance to end their life, a person must have made, and not cancelled, a first declaration and a second declaration, and the cRMP and independent RMP must have completed the medical practitioners’ assessment process, and both be satisfied that the person can be provided with assistance.

42. Subsection (3) requires the cRMP, or other authorised health professional, to be satisfied, before providing the person with the substance, that the person wishes to proceed voluntarily and of their own free will and continues to have the capacity to make the decision (as set out in section 3(2)). If the cRMP or other authorised health professional is satisfied, the approved substance can be provided to the person. The person must self-administer the substance. Subsection (5) requires the cRMP or other authorised health professional attending the end-of-life process to remain with the person until they decide whether to take the substance, and if they do take the substance, until they have died. The cRMP or other authorised health professional does not have to be in the same room as the person but should be in the same premises and not too distant.

43. Subsection (4) allows the attending cRMP or authorised health professional (another RMP or a registered nurse) to be accompanied by another health professional if they wish. Section 29 defines “health professional” for this purpose as a RMP, registered nurse or registered pharmacist. Note that such a health professional attending at the request of, and in support of, the attending cRMP or authorised health professional cannot provide the terminally ill person with an approved substance to end their life or perform any of the other functions specific to the cRMP or authorised health professional as set out in section 15.

¹³ Affirmative procedure means that regulations must be laid in draft before the Parliament for approval by resolution.

¹⁴ Section 22 puts it beyond doubt that the Scottish Ministers can approve such substances by way of regulations only if they are not regulated by or under the Misuse of Drugs Act 1971 or the Medicines Act 1968 or, if they are so regulated, their use for the purposes of assisted death has been approved under those Acts.

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44. If the terminally ill adult decides not to take the substance, subsection (7) requires the cRMP or authorised health professional in attendance to take back the substance and remove it from the premises.

Section 16 – Final statement, and schedule 4 – Form of statement by coordinating registered medical practitioner

45. Section 16 provides that, where an assisted death has lawfully taken place under the provisions set out in the Bill, a final statement should be made. This consists of a final statement form, as set out in schedule 4, being properly completed. The form must be completed, signed, and dated by the cRMP and must be notified to the person's GP and recorded in the person's medical records.

Section 17 – Death certification

46. When a terminally ill adult has died as a result of taking an approved substance to end their life, as provided for in the Bill, section 17 requires (for the purposes of section 24 of the Registration of Births, Deaths and Marriages (Scotland) Act 1965¹⁵) the cause of death to be recorded on the death certificate as the illness, disease or condition which led to them requesting and being provided with assistance to end their life, and not the approved substance provided to them. It is expected that the use of the approved substance will also be recorded on the death certificate.

Section 18 – Conscientious objection

47. Section 18 provides that no one, including any individual health professional, is under any legal duty to play an active, participatory role in anything authorised by the Bill. This includes registered medical practitioners, registered nurses and registered pharmacists. Subsection (2) provides that in any resulting legal proceedings it is for the person claiming a conscientious objection to prove that they are lawfully able to object.

Sections 19 and 20 – Criminal and civil liability for providing assistance

48. Section 19 provides that it is not a crime (of any kind) to provide a terminally ill adult with assistance to end their life (or attempt to end their life) where the requirements of the Bill are complied with.

49. Subsection (1) of section 19 removes any criminal liability regardless of which offence an individual has been or may be charged with.¹⁶ Note that subsection (1) applies only where the substance of the case against the individual is (or would be) that they provided a person with assistance to end their life under the Bill. It does not apply to any incidental unlawful acts which an individual may have committed (e.g. where the

¹⁵ [Registration of Births, Deaths and Marriages \(Scotland\) Act 1965 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/1965/24).

¹⁶ It is likely that in any prosecution the individual providing assistance to a person to end their own life would be charged with one of a number of more general existing offences against the person. Murder, culpable homicide, assault and culpable and reckless injury or behaviour may all be possibilities, though in the absence of any modern prosecutions the likely outcome of such a trial is hard to assess.

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substances used to assist death were unlawfully supplied under legislation restricting the circulation of these items). Subsection (2) ensures that the courts will continue to be able to find that no offence has been committed for reasons which are separate from anything contained in the Bill (e.g. because the individual's conduct in the particular case never amounted to a crime under Scots law).

50. Section 20 mirrors the provisions of section 19 but with regard to civil liability which might arise from a health professional's or other person's involvement in the provision of assistance under the Bill.

General and final provisions

Section 21 – Offence

51. Section 21(1) makes it an offence to coerce or pressure a terminally ill adult to make a first or second declaration,¹⁷ i.e. to make or persuade a terminally ill adult make an involuntary declaration - a first or second declaration against their own free will. Subsection (2)(a) provides that a person who commits the offence is liable to, on summary conviction,¹⁸ imprisonment of no more than 2 years or a fine not exceeding level 5 on the standard scale (which is currently £5,000), or both. Subsection (2)(b) provides that on conviction on indictment¹⁹ a person is liable to imprisonment for no more than 14 years, a fine (at the judge's discretion), or both.

Section 22 – Limitations on effect of Act

52. Section 22 clarifies, for the avoidance of doubt, that any provision of the Bill, or made under the Bill, which relates to the reserved matters listed (misuse of drugs, regulation of health professions, medicines, medical supplies and poisons, as defined in section 22) has no effect. This is of particular relevance when read with section 15 (provision of assistance) and the power delegated to the Scottish Ministers to make regulations for the use of approved substances to be provided to an eligible terminally ill adult for them to self-administer to end their life.

Section 23 - Guidance

53. Section 23 allows the Scottish Ministers to issue guidance regarding the practical operation of the Act. Subsection (2) sets out that such guidance may include provision about various aspects of the Bill as described. Such guidance is expected to be of a practical nature (for example, guidance for individuals witnessing a first declaration, for doctors around the requirement for proof of identity, how the period for reflection is intended to work and other such requirements under the process set out in the Bill). Ministers must consult (under subsection (3)) anyone they consider appropriate when preparing guidance (for example, this could include health professionals, related regulatory and representational bodies and third sector organisations). Subsection (5)

¹⁷ See commentary on section 4 and section 10.

¹⁸ Summary cases are less serious cases heard before a justice of the peace or a sheriff without a jury.

¹⁹ More serious "solemn" cases are heard before a judge and jury.

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states that the guidance can be revised, and revised guidance must be published, and under subsection (6), revised guidance is subject to the same requirements of this section as original guidance. Subsection (4) provides that a person carrying out any function under the Bill must have regard to any guidance issued by the Scottish Ministers under this section.

Section 24 – Provision of information by Public Health Scotland to Scottish Ministers

54. Sections 24 to 27 deal with the collection and reporting of data and subsequent review of the legislation.

55. Section 24 places a duty on Public Health Scotland²⁰ (PHS) to submit a report to the Scottish Ministers on the operation of the Bill as soon as possible after the end of each reporting period. Subsection (6) defines a reporting period as being a period of one year starting on the day section 24 comes into force, and each subsequent one-year period.²¹ Subsection (2) sets out information which must be included in each annual report, in so far as it known by PHS. This includes (as detailed in subsection (2)(a)(i) to (v)): the number of people who make first and second declarations; the numbers who end their lives under the provisions of the Bill; the reasons why people want to be provided with assistance to end their lives; the reasons why a person decides not to proceed and end their own life; the details of the approved substance provided and used; and the place where an assisted death took place. Subsection (2)(a) requires this data to be broken down by the characteristics set out in subsection (3) (age, area of residence, gender, ethnicity, nationality and type of illness).

56. Subsections (2)(c) and (e) relate to the reasons why a terminally ill adult wants to be provided with assistance to end their own life or decides not to proceed. It is for PHS to determine how best to collect that information. Subsection (4) provides that the report must not divulge personal and/or sensitive information that could disclose the identity of an individual.

57. Under subsection (5) the Scottish Ministers can make regulations to add, vary or remove any of the information and characteristics set out in subsections (2) and (3). Section 28 provides that regulations made under subsection (5) are subject to the negative procedure in the Scottish Parliament.²²

Section 25 – Provision of information to Public Health Scotland

58. Section 25(1) requires the Scottish Ministers to make regulations for the provision of information to PHS (for example, by medical practices, RMPs and other health professionals, and other parts of the NHS, such as Health Boards) which will inform the

²⁰ As defined in section 29.

²¹ Section 32 – commencement – provides for section 24 to come into force on a day provided for in regulations laid by the Scottish Ministers.

²² Negative procedure means that the regulations must be laid after being made and may be annulled by resolution of the Parliament within 40 days.

report that PHS must make each year to Scottish Ministers (under section 24). Subsection (2) sets out that such regulations may include provision about what information is to be provided, who should provide it, and any circumstances in which information must, or may not, be provided. Subsection (5) requires the Scottish Ministers to consult anyone they consider appropriate (this could, for example, include PHS, Health Boards in Scotland, and professional and other representative bodies) before making the regulations. Section 28 provides that such regulations will be subject to the affirmative procedure in the Scottish Parliament.²³

59. Subsection (3) enables regulations made under subsection (1) to include provision setting out the circumstances in which disclosing information provided to PHS, or the disclosure of information by PHS, is prohibited, including provision that disclosure of information despite such a prohibition is an offence. Subsection (4) provides that a person committing an offence under regulations made under subsection (1) should be subject to summary cause procedure and liable to a fine to be set out in the regulations (but not exceeding level 5 on the standard scale (currently £5,000²⁴).

Section 26 – Annual report

60. Section 26(1) requires Scottish Ministers to prepare and publish an annual report on the operation of the Act after the end of each reporting period. An annual report must be laid before the Scottish Parliament. Subsection (3) provides that the reporting period is one year, beginning on the day this section comes into force (section 32 allows the Scottish Ministers to commence this section by regulation) and each subsequent period of one year.

61. Subsection (2) provides that an annual report must include all the information set out in section 24(2) (i.e. the number of people who have completed each part of the process, broken down by various characteristics, and the reasons why people decided to have an assisted death and/or ended the process, where known). An annual report can also include any other information the Scottish Ministers think relevant.

Section 27 – Review of operation of Act

62. Section 27 requires the Scottish Ministers to review the operation of the Act after a period of 5 years after the day on which section 1 comes into force.²⁵ The Scottish Ministers must prepare and publish a report on the outcome of the 5-year review and lay the report before the Scottish Parliament.

63. The 5-year review report can include anything related to the operation of the Bill which the Scottish Ministers consider to be relevant, but subsection (2) provides that the report must: assess how successful the legislation has been in supporting terminally ill

²³ Affirmative procedure means that regulations must be laid in draft before the Parliament for approval by resolution.

²⁴ See section 225 of the Criminal Procedure (Scotland) Act 1995, [Criminal Procedure \(Scotland\) Act 1995 \(legislation.gov.uk\)](https://legislation.gov.uk/ukpga/1995/225).

²⁵ Under section 32, section 1 is to be commenced by regulations laid by Scottish Ministers.

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adults in being provided with assistance to end their own lives; set out any concerns raised about the operation of the legislation; and respond to any concerns raised, including making recommendations for change (such as changing guidance issued under section 23, or changes required to this, or any other, Act). Subsection (3) provides that the report must take account of each annual report published during the 5-year review period (see section 26).

Section 28 – Regulation-making powers

64. Section 28(1) allows the Scottish Ministers to make incidental, supplementary, consequential, transitional, transitory or saving provision when making any regulations under the delegated powers set out in the Bill. Subsection (2) sets out which of the regulations contained in various sections of the Bill are to be subject to the negative procedure, and subsection (3) sets out which of the regulations contained in various sections of the Bill are to be subject to the affirmative procedure. Subsection (4) provides that regulations made under section 32(2) (commencement) are not subject to any procedure. See the Delegated Powers Memorandum for more information.

Section 29 - Interpretation

65. Section 29 defines various terms for the purposes of the Bill. Such terms have been explained in these Notes in relevant places.

Section 30 – Modification of declarations and statements

66. Section 30 allows Scottish Ministers to modify the forms set out in schedules 1 to 4 (first and second declarations, both medical practitioner’s statements, and the final statement) by regulations.²⁶ Any regulations made under this section are subject to the negative procedure in the Scottish Parliament, which means that the regulations must be laid after being made and may be annulled by resolution of the Parliament within 40 days).

Section 31 – Ancillary provision

67. Section 31 allows the Scottish Ministers to make incidental, supplementary, consequential, transitional, transitory or saving provision that they consider it appropriate to make. Any use of this power has to be for the purposes of the Act or any provision made within it, or in connection with, or for giving full effect to, the Act or any provision made under it. Such provision is made by regulations, which are subject to the affirmative procedure if they amend any Act (including this Act), but otherwise are subject to the negative procedure (both procedures as described elsewhere in these Notes).

²⁶ Section 28(1)(a) allows the Scottish Ministers to make any related necessary transitional, transitory or saving provision. For example, to deal with a situation such as a form changing when a terminally ill adult is mid-way through the process.

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Section 32 - Commencement

68. Section 32 provides for this section, section 28 (regulation-making powers), section 29 (interpretation - the section which provides the meaning of various terms for the purposes of the Bill), section 31 (ancillary provisions) and section 33 (the short title of the Act – which requires no further explanation) to come into force the day after Royal Assent (when the Bill gets formal agreement by the King and becomes an Act of the Scottish Parliament). The other provisions of the Bill are to be commenced by regulations made by the Scottish Ministers.

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Assisted Dying for Terminally Ill Adults (Scotland) Bill

Explanatory Notes

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