

ASSISTED SUICIDE (SCOTLAND) BILL

DELEGATED POWERS MEMORANDUM

PURPOSE

1. This memorandum has been prepared by the Non-Government Bills Unit on behalf of Margo MacDonald MSP. Its purpose is to assist consideration by the Delegated Powers and Law Reform Committee, in accordance with Rule 9.6.2 of the Parliament's Standing Orders, of provisions in the Assisted Suicide (Scotland) Bill conferring powers to make subordinate legislation. It describes the purpose of each of the subordinate legislation provisions in the Bill and outlines the reasons for seeking the proposed powers. This memorandum should be read in conjunction with the Explanatory Notes and Policy Memorandum for the Bill.

Outline of Bill provisions

2. The Bill makes provision to enable persons suffering from terminal or life-shortening illnesses or progressive conditions which are terminal or life-shortening to request assistance in ending their own lives, subject to certain conditions. It does this by setting out a procedure which requires to be followed in order to access assistance to commit suicide, and by removing criminal and civil liability from those providing such assistance where this procedure has been followed.

3. Sections 19 to 23 of the Bill create the role of "facilitator". A facilitator is an individual licensed by a licensing authority (licensing authorities in turn are to be appointed by the Scottish Ministers) to act as such, and whose role is to provide the person seeking an assisted suicide with practical assistance, comfort and reassurance at the end of life and to report any suicide or attempted suicide at which they assisted to the police, enabling monitoring and investigation (where appropriate) of such deaths. The assistance which the facilitator provides will often include help which is directly required to enable the act of suicide to take place, for example holding a cup for someone who might otherwise be unable to drink the necessary drugs from it.

Rationale for subordinate legislation

4. The Bill contains two powers to make subordinate legislation which are delegated to the Scottish Ministers. These powers are new, and no existing powers are amended or repealed. The powers are explained in detail in the following paragraphs, but in considering if and how provision should be set out in subordinate legislation rather than on the face of the Bill the member has had regard to-

- the need to strike a balance between the importance of ensuring full Parliamentary scrutiny of the core provisions of the Bill and making proper use of Parliamentary time;
- the relatively better position of the Scottish Ministers when compared with an individual member in making decisions on the best use of public resources to meet objectives;
- enabling a flexible and responsive approach on matters of detail, which do not relate to eligibility to access assisted suicide;
- the possible need to change provisions relating to such matters in a manner which responds to experience of their operation.

Delegated powers

Section 22(1) – Appointment of licensing authority

Power conferred on: Scottish Ministers
Power exercisable by: order made by statutory instrument
Parliamentary procedure: affirmative resolution of the Scottish Parliament

Provision

5. Section 22(1) enables the Scottish Ministers to appoint a person or a body, association or group of persons to be the licensing authority for facilitators, or two or more persons or bodies, associations or groups of persons to be licensing authorities.

Reason for taking power

6. Bodies which may be interested in taking on the role of licensing authority may need time during the passage of the Bill and immediately after its enactment to consider whether they wish to put themselves forward to do so. The changing nature of the organisational landscape in sectors such as the voluntary sector may require the authority or authorities appointed originally to be replaced over time. Appointment on the face of the Bill would therefore not be desirable.

Choice of procedure

7. The importance of ensuring that those appointed as licensing authorities are suitable to undertake this sensitive role means that the affirmative procedure is considered appropriate for the exercise of this power. Potential licensing authorities should be individually scrutinised by both Ministers and the Parliament prior to being given this important role.

Section 22(2) - Maintenance of standards amongst licensing authorities and facilitators and procedural matters

Power conferred on: Scottish Ministers
Power exercisable by: order made by statutory instrument
Parliamentary procedure: negative resolution of the Scottish Parliament

Provision

8. Section 22(2) empowers the Scottish Ministers to make provision in regulations for the suspension or revocation by them of an appointment as licensing authority; for the suspension or revocation of individual licences by them or by licensing authorities; for the grounds of suspension or revocation in either case; for the checking and training of those applying to become licensed facilitators and the training, supervision and inspection of existing facilitators; for the procedure for obtaining a licence; for appeals and for such other matters (within the context of the subsection) as the Scottish Ministers consider appropriate.

Reason for taking power

9. While the eligibility criteria and procedure for accessing assisted suicide are likely to be key points of debate and controversy during the passage of the Bill, it is considered that ancillary matters such as the detail of the licensing scheme for facilitators are substantially less sensitive. If they were on the face of the Bill, scrutiny of these aspects would be likely to be overshadowed by the ethical arguments about its core provisions. Including a detailed licensing scheme would also be likely to alter the balance of the Bill, which should be predominantly concerned with the issues of eligibility and core procedure and not skewed towards administrative matters.

10. Constructing an appropriate licensing scheme is likely to require the bringing together of different strands of expertise, for example from those with experience of running other licensing schemes, organisations such as Disclosure Scotland and court and tribunal interests. Decisions will require to be made about matters such as the extent of background checks to be required for individual facilitators, what training is or can be made available and would be appropriate and the right procedure and forum for any appeals. It is submitted that decisions of this type are best taken by Ministers following appropriate consultations.

11. The system for licensing facilitators should be sufficiently flexible to respond to both changing circumstances and experience of its operation. For example, experience may suggest that some aspect of procedure needs to be modified because it has turned out to be too onerous, or training requirements may need to be altered or extended as the role of facilitators becomes better-established.

Choice of procedure

12. The licensing scheme to be contained in regulations will require to be detailed, to contain administrative provisions and to have drawn on a range of expertise. The need to adjust details of the scheme in future without undue difficulty will also be important. We consider that given this context and the fact that exercise of the power will not involve amendment of primary legislation, the negative procedure is the most appropriate.

This document relates to the Assisted Suicide (Scotland) Bill (SP Bill 40) as introduced in the Scottish Parliament on 13 November 2013

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