

Dworkin¹ suggests that legalisation of Assisted Dying (AD) can occur via two routes.

The first is by iterative change (as witnessed in the Netherlands and Canada) primarily initiated via the precedent of case-law rulings. For a period of time AD remains illegal in name, but prosecutors are encouraged to show discretion, and compassion/mercy is accepted as the motive and taken into consideration in sentencing.

While all of the above are technically in play in Scotland, there remains a lack of court-ruling precedents, and where rulings have occurred, courts have been unwilling to make substantive changes to the law as it stands (regarding such change as a matter for the Scottish Parliament), although some guidance has been provided. However, our overloaded court-system will likely remain an unwilling forum to establish any change in the existing law.

In addition, we already have the legally-acceptable application of treatments that kill a patient but fall within the doctrine of double-effect and notions of compassionate intent. We already commonly practice heavy/terminal sedation - drug (over)dosage of patients. We have practiced for some time 'voluntarily stop eating and drinking' (VSED) where medical staff support the dehydration and starvation of patients. We already have court agreement² and accepted medical practice in the withdrawal of life maintaining treatment for those in a persistent vegetative state (PSV) and other contexts where further treatment is regarded as futile in preserving an acceptable quality of life. We already have court agreement that friends or family members can accompany a consenting individual to their chosen location for euthanasia³.

However ambiguity remains that would appear to be unsustainable in view of an aging population increasingly subject to multiple incurable chronic conditions as they age. It is likely that an increasing number of Scots will face unbearable and intractable suffering, and the demand for legal clarity on AD will increase.

The second way to (a clearer and more specific) codification of Assisted Dying within Scots law that would define protections for both medical staff

¹ Dworkin, Gerald. Should Physician-Assisted Suicide Be Legalized? from *Giving Death a Helping Hand: Physician-Assisted Suicide and Public Policy. An International Perspective*. Edited by DIETER BIRNBACHER and EDGAR DAHL 2008 Springer Science+Business Media B.V.

² Pamela R Ferguson. Causing death or allowing to die? Developments in the law. *Journal of Medical Ethics* 1997; 23: 368-372

³ GORDON ROSS (reclaimer) against LORD ADVOCATE (respondent), appeal as heard by Lord Justice Clerk Carloway, Lady Dorrian and Lord Drummond Young. <https://www.biodiritto.org/ocmultibinary/download/3033/29374/9/b701678c234eece5a1bd6ac39d5423c1.pdf/file/ross.pdf>

and loved ones who may wish to support sufferers in seeking AD is via Parliamentary legislation. Two previous attempts, in 2010 and 2015, have been made to introduce some form of Assisted Dying legislation in Scotland. Liam McArthur has now introduced the Assisted Dying for Terminally Ill Adults (Scotland) Bill to the Scottish Parliament on 27 March 2024.

1.1 Background

In 1935 the Voluntary Euthanasia Society in the UK was established “with the support of influential medical men, churchmen, legal experts, and politicians...A movement to legalise an “easy death” for persons suffering from incurable and painful disease”. This first attempt to present a bill (at Westminster) failed, but the issue has continued to be presented in the years since.

Concern existed in relation to previous legislative attempts to introduce AD crossing “so many untested bridges as to constitute what is, in effect, a leap into the unknown.”⁴ This is no longer the case. Euthanasia in Switzerland has been legal since 1941 and certainly available and practiced since 1942⁵. Assisted dying has existed legally elsewhere in the world since 1997 when it was introduced in Oregon. Subsequently other states and countries have also introduced similar legislation with an estimated 400 million people now having access to legal assisted dying.⁶ It cannot be argued that the implementation of AD is untested in multiple arenas, or that there does not exist a panoply of independent case-studies or governmental data.

The overwhelming majority of people who make use of the access provided by these laws have cancer. It should also be noted that many sufferers who choose to make themselves eligible for assisted dying choose not to go through with it, but are simply happy to have peace of mind that the choice is there for them if needed.

“Between 0.3% to 4.6% of all deaths are reported as euthanasia or physician-assisted suicide in jurisdictions where they are legal. The

⁴ Laurie, G & Mason, JK. Assistance in Dying or Euthanasia? Comments on the End of Life Assistance (Scotland) Bill. EdinLR Vol 14 pp 493-497 DOI: 10.3366/E1364980910001757 https://www.pure.ed.ac.uk/ws/portalfiles/portal/11939907/MASON_K_Assistance_in_Dying_or_Euthanasia.pdf

⁵ Radbruch et al (2016) *Euthanasia and physician-assisted suicide: A white paper from the European Association for Palliative Care*. *Palliative Medicine* 101-192. <https://journals.sagepub.com/doi/epub/10.1177/0269216315616524>

⁶ Hurley et al (2021) *Assisted dying: a question of when, not if*. *BMJ* 2021;374:n2128 <https://doi.org/10.1136/bmj.n2128>

frequency of these deaths increased after legalization. More than 70% of cases involved patients with cancer. Typical patients are older, white, and well-educated... Existing data do not indicate widespread abuse of these practices.”⁷

A small minority in terminal phase experience “severe” pain, despite receiving hospice/palliative care⁸. However, whether suffering from a single condition or a range of co-morbidities, the experience is a unitary one, made up of a number of symptoms, experiences and side-effects in addition to extreme pain that combine to cause overall suffering.

Sufferers may rate the significance of each maleffect in their suffering in a different order - perhaps rating pain, or loss of autonomy, or loss of dignity as the worse element leading to their choice for an assisted death. For some, physical pain is such a core element that they see it as so unavoidable and integral that they may see it as causal rather than a result. The experience however remains a collective one. A bad death often comes as a collection of symptoms and experiences.

With each passing year more and more people either directly or through a loved one experience the shortcomings of the current legal options available to the incurably and intractably suffering.

In September 2024, a YouGov survey took an in-depth look at attitudes in the UK towards assisted dying. It found that 73% of Britons believe that assisted dying should be legal in the UK, with only 13% opposed. 70% of those supporting assisted dying (55% of the total surveyed) say that “assisted dying should be legal for patients with incurable conditions that are painful and/or debilitating, but not terminal.”⁹

In the July 2024 survey ‘Rethinking the UK’s approach to dying’¹⁰, it was the stated preference of 83% of respondents to prioritise their quality of life over living longer in the last years of their life. Of the 1,214 people in the sample whose last close friend or family member to die died of a short or long-term

⁷ Emanuel et al (2016) *Attitudes and Practices of Euthanasia and Physician-Assisted Suicide in the United States, Canada, and Europe*. JAMA. 2016;316(1):79-90. doi:10.1001/jama.2016.8499 <https://jamanetwork.com/journals/jama/article-abstract/2532018>

⁸ Australian Palliative Care Outcomes Collaboration (PCOC)/Australian Government Department of Health (2020) Patient Outcomes in Palliative Care in Australia: National Report for July to December 2020: 35-36. <https://documents.uow.edu.au/content/groups/public/@web/@chsd/@pcoc/documents/doc/uow269015.pdf>

⁹ <https://yougov.co.uk/politics/articles/50989-three-quarters-support-assisted-dying-law>

¹⁰ <https://compassionindying.org.uk/resource/rethinking-uk-approach-dying/>

illness, 26% said that a friend or family member received medical treatment they would not have wanted towards the end of their life.¹¹

Attempts to seek clarification through judicial review in courts in the UK have tended to do so on the basis that the right to an Assisted Death within the UK was compatible with the right to a private life, bodily autonomy and self-determination guaranteed by Article 8 of the European Convention on Human Rights. Courts have ruled that either current guidance is clear enough and/or it is not the place of the judiciary to further develop policy on the matter.

Rights to freedom from torture and unreasonable suffering, the right to privacy, the right to autonomy and self-determination, the right to dignity, the right to control our own destiny, and indeed the right for a person to end their life - have all played a part in the overall debate. Suicide is not illegal in Scotland and assisting another person's death, to some degree, is also not illegal.

The only debate, legally, that remains is whether the scope and degree of intimacy of involvement in assisting a death can be extended and legally defined by statute - specifically, can a doctor supply a lethal dosage for self-administration (and/or can a doctor legally administer a lethal dose), with the specific intention of the dose taking effect within a short time after administration. The former would be enabled by Liam McArthur's proposals, but not the latter. In the Scottish proposals, a doctor may prescribe a fatal dose, but cannot legally administer it. As Warlow's summary¹² confirms:

“the patient must administer any life ending substance themselves. They must be an adult, resident in Scotland, registered with a GP in Scotland, and mentally competent, as confirmed by two independent doctors. Important lessons from the last attempts to pass a bill on assisted dying in Holyrood have been incorporated into the new bill. For example, it does not allow an assisted death for anyone who is not “terminal” (meaning close to death, but within no specific time period) even if they have a debilitating, incurable, and progressive disease, and certainly not if they have a mental disorder that might affect their decision. The safeguards against coercion and exploiting a dying person have been strengthened, as have safeguards for disabled people who are not terminally ill and who have no wish to end their lives. The life ending medication will never be in public circulation and a

¹¹ ibid

¹² Warlow, Charles. A new bill could legalise assisted dying in Scotland. BMJ 2024;385:q792. <https://www.bmjjournals.org/content/385/bmj.q792>

healthcare practitioner will be present at the person's death. The patient must have had palliative care and hospice options explained to them. Clinicians can opt out of any involvement, just as they can with termination of pregnancy. There will be a robust system to record data on every patient, publicly available annual reports from Public Health Scotland, and a review of the legislation after five years."

There is no law against a person taking their own life in Scotland, and the law will not prosecute if a person supports another in going abroad to be assisted in dying, even when in full knowledge of the purpose. As noted in House of Commons Library, The Law on Assisted Suicide (July 2022)¹³:

"Assisting a suicide in Scotland is not a specific offence, however people who are suspected of doing so could potentially be prosecuted for more general offences including murder, assault or offences under the Misuse of Drugs Act 1971. Unlike in England and Wales, there is no published prosecution policy specifically relating to cases where there is suspicion of assisted suicide in Scotland....In September 2021 Liam McArthur MSP proposed the Assisted Dying for Terminally Ill Adults (Scotland) Bill, which sought to "enable competent adults who are terminally ill to be provided at their request with assistance to end their life¹⁴....The consultation summary sets out that a "clear majority" of respondents (76%) were supportive of the proposal, with 2% partially supportive, 21% fully opposed and 0.4% partially opposed."¹⁵

The McArthur Scottish consultation also confirmed that:

"Many believed a wider group of people should be able to choose an assisted death than the intended definition would allow for, such as those with potentially longer-term degenerative conditions, such as various neurological conditions and forms of dementia. A significant number of respondents also raised concerns about the proposal that the life ending substance must be self-administered, noting that some people who would wish to choose an assisted death would not be able to take the medicine themselves. Many respondents believed this to be potentially discriminatory and called for a health care professional to be able to administer the drug in certain circumstances, or that there

¹³ Assisted Dying/Assisted Suicide, Second Report of Session 2023–24: <https://publications.parliament.uk/pa/cm5804/cmselect/cmhealth/321/report.html#footnote-397-backlink>

¹⁴ The Scottish Parliament, Proposed Assisted Dying for Terminally Ill Adults (Scotland) Bill – Liam McArthur MSP Summary of Consultation Responses (September 2022)

¹⁵ *ibid*

should at least be clarity on how life would be ended in such circumstances.”¹⁶

In terms of justice, all sides would seem to agree that everybody should have a right to equal treatment and access to social support and medical resources. This point is particularly stressed by those supporters of AD who believe that those consenting individuals who are incurably suffering but unable to take a lethal dosage themselves, but wish to do so, should have a right to be assisted in the administration of the dose.

Assisted Dying has already been introduced in a range of other countries. The core question is whether there is sufficient evidence or public appetite to have clarifying and enabling legislation introduced that will allow specifically Medically Assisted Dying without the danger of subsequent prosecution. Only 6% of Scots think the current law in relation to AD in Scotland is working well.¹⁷

There now exists an abundance of evidence in support of AD, from peer-reviewed case-studies to meta-analyses and systematic reviews, some of which have led to the introduction of assisted dying in other states and countries. In addition, there are regular evaluations and reports to draw upon specifically published from already-established systems in other states and countries.

Assisted dying is already established in Belgium, Canada, Austria, Luxembourg, Netherlands, Oregon, Washington, New Jersey, New Mexico, Hawaii, Montana, Maine, Colorado, California, District of Colombia, California, Vermont and Switzerland. Spain, Portugal, Colombia, Ecuador, New Zealand, all six Australian states, and now the Isle of Man have legalised assisted dying, and legal support is also available in Colombia. New York Assembly passed the Medical Aid in Dying Act and Delaware passed the Ron Silverio/Heather Block End of Life Options Act (HB140) into law in May 2025.

The French government lower house recently passed a bill on assisted dying by a vote of 305 to 199¹⁸. Iceland, Cuba, Kentucky, Maryland, Massachusetts, and Tennessee have introduced bills. Most recently Jersey has voted to introduce assisted dying, and a bill is working through Parliament for England

¹⁶ Ibid

¹⁷ https://www.dignityindyingscotland.org.uk/wp-content/uploads/sites/2/2025/02/DiD_Inescapable_Truth_Scotland_WEB.pdf

¹⁸ <https://www.theguardian.com/world/2025/may/27/french-parliament-prepares-to-vote-on-legalising-assisted-dying>

and Wales. Legislation supporting death with dignity will be introduced this year in Scotland, Illinois, Indiana, Missouri, New Hampshire, Maryland, Florida, Kentucky, Tennessee, and Nevada.

In Switzerland and Germany there is an extensive practice of assisted suicide without explicit legislation.

Spain, the Netherlands, Belgium and Luxembourg have laws that allow not only people who are terminally ill but also those who are incurably and intractably suffering but not terminal to request and receive assistance to die.

The arguments for and against assisted dying have been around and mainstream for years. According to a range of recent surveys, around three quarters of the British public have consistently over decades supported the introduction of assisted dying as an additional choice within palliative care. The British Medical Association note that between 1983 and 2016, the British Social Attitudes Survey pegged UK public support for Assisted Dying consistently at 75% to 82%¹⁹. The National Centre for Social Research, in written evidence submitted to Westminster confirmed that:

“There has been broad support for assisted dying/suicide for 20 years, particularly in the case of people with painful and incurable terminal diseases; support has strengthened in the case of people with painful and incurable diseases that will not kill them.”²⁰

A majority of British medical organisation have withdrawn their objection to assisted dying. A majority of those diagnosed with chronic conditions and/or disability also support the introduction of assisted dying.

In recent years the British public have in a clear majority supported assisted dying for individuals suffering unbearably and incurably from chronic irreversible conditions.

1.2 Demographic changes.

As Will Self has observed:

¹⁹ BMA (2023) Public and professional opinion on physician-assisted dying. <https://www.bma.org.uk/media/4403/public-and-professional-opinion-on-physician-assisted-dying-report-v2.pdf>

²⁰ [https://committees.parliament.uk/writtenevidence/116429/pdf#:~:text=The proportion of respondents saying,\(see Table 1 below\).](https://committees.parliament.uk/writtenevidence/116429/pdf#:~:text=The proportion of respondents saying,(see Table 1 below).)

“We're living longer and longer, while our deaths are becoming commensurately more protracted. Such is the brilliance of contemporary medical science, at least in our privileged realm, that we can be kept breathing long past the point where our existence is anything save miserable - miserable for us, miserable for our loved ones, and miserable for those who have been appointed by either by the state or a private health plan to minister unto us. Many, I'm sure, will disagree, having had positive experiences of care and kindness in hearth and home and hospice, but these experiences are far from universal.”²¹

Research findings published by the Journals of Gerontology confirm that rates of illness and disability increased across successive generations during the last century²². This is increasing and will continue to increase in the future.²³.

“The Scottish population is ageing and in 2020, there were an estimated one million Scotland residents aged sixty-five years or older. By 2040, this will rise to an estimated 1.4 million, or 25% of our population....Currently in Scotland people aged over 70 years live with an average of three chronic health conditions.”²⁴

Living with numerous and often complex health problems is becoming the norm for older people and those from disadvantaged communities. Some conditions cluster together and people can experience many different combinations of conditions.²⁵ Long-term conditions or chronic diseases are conditions for which there is currently no cure, and which are managed with

²¹ <https://www.bbc.co.uk/news/magazine-20972525>

²² Gregory, Andrew (2024) *Baby boomers living longer but are in worse health than previous generations*. *Guardian*. https://www.theguardian.com/society/2024/oct/07/baby-boomers-living-longer-but-are-in-worse-health-than-previous-generations?CMP=fb_gu&utm_medium=Social&utm_source=Facebook&fbclid=IwY2xjawFwgkidleHRuA2FlbQIxMQABHS_OTmGcHGRFOd3dxHX17ZA9l8d4vW9J86sg1SmHNZJoTfCMAcxld8Kk3A_aem_fveSO8af7A6KY7Bs1VqPoQ#Echobox=1728281071

²³ Whitty, Chris (2023) *Chief Medical Officer's annual report 2023: health in an ageing society*. Department of Health and Social Care: p2. <https://www.gov.uk/government/publications/chief-medical-officers-annual-report-2023-health-in-an-ageing-society>

²⁴ Scottish Government (2022) *Health and Social Care Strategy for Older People: Analysis of Consultation Responses* <https://www.gov.scot/publications/health-social-care-strategy-older-people-analysis-consultation-responses/>

²⁵ Imison, Candace (2021) *NIHR Evidence; Multiple long-term conditions (multimorbidity): making sense of the evidence*. doi:10.3310/collection_45881

drugs and other treatment. The number of people with three or more long-term conditions (multi-morbidity) has also been increasing. A third of middle-aged UK adults have at least two chronic health issues. Prevalence of multimorbidity was high from mid-life (33.8% at age 46–48) in Britain²⁶.

People are living longer^{27 28}, but many of these additional years are spent with health problems. In the most cases, palliative care as it currently exists in the UK proves sufficient to allow life to remain at least bearable. There is however a clear and significant subset of cases where the range of choice available is simply insufficient and/or unpalatable to chronic sufferers.

“In 2016/17 there were about 57,000 deaths in Scotland, a figure set to rise slightly to just over 60,000 by 2037. Around 75% of these people will have needs arising from living with deteriorating health for the years, months or weeks before they die.”²⁹

²⁶ Gondek et al (2021) *Prevalence and early-life determinants of mid-life multimorbidity: evidence from the 1970 British birth cohort*. *BMC Public Health* volume 21, Article number:1319. <https://doi.org/10.1186/s12889-021-11291-w>

²⁷ Office for National Statistics (2021) *Profile of the older population living in England and Wales in 2021 and changes since 2011* <https://www.ons.gov.uk/peoplepopulationandcommunity/birthsdeathsandmarriages/ageing/articles/profileoftheolderpopulationlivinginenglandandwalesin2021andchangessince2011/2023-04-03>

²⁸ Government Office for Science (2016) *Future of an Ageing Population*. <https://assets.publishing.service.gov.uk/media/5d273adce5274a5862768ff9/future-of-an-ageing-population.pdf>

²⁹ Scottish Government (2018) *Palliative and End-of-Life Care by Integration Authorities: advice note*. <https://www.gov.scot/publications/strategic-commissioning-palliative-end-life-care-integration-authorities/pages/5/>