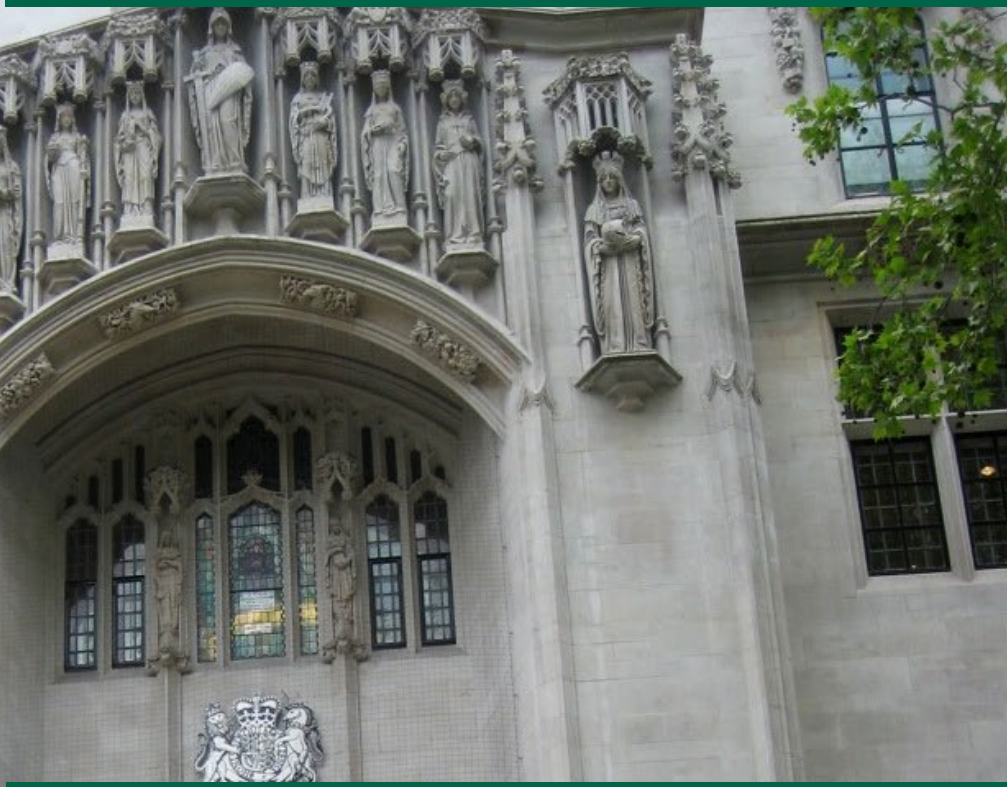
House of Commons Library

The law on assisted suicide

By Sally Lipscombe,
Joanna Dawson,
Elizabeth Rough,
Sarah Barber
1 July 2022



Summary

Image Credits

UK Supreme Court by Nils. Licensed under CC BY 2.0 / image cropped.

Disclaimer

The Commons Library does not intend the information in our research publications and briefings to address the specific circumstances of any particular individual. We have published it to support the work of MPs. You should not rely upon it as legal or professional advice, or as a substitute for it. We do not accept any liability whatsoever for any errors, omissions or misstatements contained herein. You should consult a suitably qualified professional if you require specific advice or information. Read our briefing 'Legal help: where to go and how to pay' for further information about sources of legal advice and help. This information is provided subject to the conditions of the Open Parliament Licence.

Feedback

Every effort is made to ensure that the information contained in these publicly available briefings is correct at the time of publication. Readers should be aware however that briefings are not necessarily updated to reflect subsequent changes.

If you have any comments on our briefings please email papers@parliament.uk. Please note that authors are not always able to engage in discussions with members of the public who express opinions about the content of our research, although we will carefully consider and correct any factual errors.

You can read our feedback and complaints policy and our editorial policy at commonslibrary.parliament.uk. If you have general questions about the work of the House of Commons email hcenquiries@parliament.uk.

Contents

Summary

Warning: This briefing discusses issues around suicide which some readers may find distressing.

On 4 July 2022, the Commons is due to debate an e-petition which calls on the Government to "legalise assisted dying for terminally ill, mentally competent adults". The petition was created by Sarah Wootton, Chief Executive of the Campaign for Dignity in Dying.

At the time of writing, it had received over 150,000 signatures. In its response to the petition the Government re-iterates its position that "any change to the law in this area is a matter for Parliament and an issue of conscience for individual parliamentarians rather than one for Government policy".

Terminology and focus

There is no consensus on which terminology to use when debating the issue of whether people should be legally permitted to seek assistance with ending their lives. A range of terms are used, principally 'assisted suicide' and 'assisted dying', and the choice of term often reflects underlying views on the debate.

This paper focuses on the existing criminal law (in England and Wales) on assisting suicide, as set out in section 2(1) of the Suicide Act 1961. It also examines calls to change the law to allow terminally ill people to end their lives by self-administering life ending drugs that have been prescribed by a medical professional. The paper does not cover euthanasia, nor does it cover the legal and ethical aspects of end-of-life care such as the withdrawal or refusal of life-sustaining treatment or the administration of pain-relief.

The title of this paper – Assisted suicide – has been chosen as a legal term to reflect the wording of the section 2(1) criminal offence. The use of this term is not intended to endorse or reflect any particular stance on the debate about changing the law.

This paper also includes an overview of selected stakeholder views and the legal position in other jurisdictions.

Assisted suicide: The criminal law and prosecution policy

Suicide or attempted suicide are not in themselves criminal offences. However, under section 2(1) of the Suicide Act 1961 it is an offence (in England and Wales) for a person to do an act capable of encouraging or assisting the suicide (or attempted suicide) of another, with the intention of encouraging or assisting suicide or attempted suicide.

Any proceedings for an offence under section 2(1) can only be brought by or with the consent of the Director of Public Prosecutions.

In common with all criminal offences, the Crown Prosecution Service (CPS) must follow the principles set out in the Code for Crown Prosecutors when deciding whether to start or continue a prosecution. The Code requires prosecutors to consider whether there is sufficient evidence against the defendant and whether it is in the public interest to prosecute.

For assisted suicide offences, the general principles in the Code are supplemented by an offence-specific prosecution policy. The policy sets out how prosecutors should apply the evidential and public interest tests in the Code to assisted suicide cases. The policy does not provide any guarantees against prosecution, nor does it legalise assisted suicide or euthanasia.

Human rights challenges

There have been several legal cases regarding the offence of assisted suicide, particularly in the context of disabled or terminally ill people who are unable to end their lives without assistance from family, friends or doctors.

Most significantly, in June 2014 the Supreme Court examined the issue of assisted suicide in the cases of Tony Nicklinson, Paul Lamb and AM, who were seeking a declaration that the current law on assisted suicide was incompatible with their right to a private life under Article 8 of the European Convention on Human Rights. The Supreme Court decided against making such a declaration by a majority of seven to two. It took the view that Parliament was the most appropriate forum for considering changes to the law on this issue.

Following the Supreme Court decision, in July 2015, the European Court of Human rights dismissed applications from Jane Nicklinson and Paul Lamb.

Parliamentary activity

The Government considers this issue to be a matter of individual conscience and the matter has traditionally been the subject of a free vote when debated in Parliament.

There have been several Private Members' Bills that sought to legalise assisted suicide or voluntary euthanasia. In the Commons, Rob Marris MP tabled the Assisted Dying Bill (No 2) 2015, which did not progress beyond second reading after it was defeated on a free vote by 330 votes to 118.

Private Members' Bills on the issue have also been introduced in the Lords. Most recently Baroness Meacher (Crossbench) introduced the Assisted Dying Bill [HL] 2021-22 in May 2021. The Bill did not proceed after the end of the 2021-22 session.

Getting help

If you are affected by the themes of this briefing, you can call Samaritans on 116 123 (UK and ROI) or visit the Samaritans website to find details of the nearest branch.

If you are covering a suicide-related issue, please consider following the Samaritans' media guidelines on the reporting of suicide, due to the potentially damaging consequences of irresponsible reporting.

1 Terminology

There is no consensus on which terminology to use when debating the issue of whether people should be legally permitted to seek assistance with ending their lives. Consequently, a range of terms are used, principally 'assisted suicide' and 'assisted dying', and the choice of term often reflects underlying views on the debate.

For example, the campaign group Dignity in Dying, which uses the term 'assisted dying' to campaign for a change in the law to permit terminally ill people to self-administer life-ending drugs, argues it is inappropriate to use the term suicide in relation to terminally ill people. The group says:

> Assisted Dying and Assisted Suicide are not the same. There is a clear difference between helping someone to die who is terminally ill and helping someone to die who is not.
>
> - Assisted dying allows the terminally ill person to have a choice over the manner and timing of their imminent death.
>
> - Assisted suicide enables someone who is not dying to choose death over life.[1]

By contrast, the Care Not Killing alliance, which promotes palliative care and opposes changes to the existing laws against euthanasia and assisted suicide, argues:

> 'Assisted dying' is a campaign term which has been promoted since the early 2000s as a softer sounding alternative to euthanasia and assisted suicide, and has no meaning in law. Proponents argue it is distinct from assisted suicide as only people with terminal illnesses would be eligible, but the imprecise nature of prognosis, moveable understanding of 'terminal illness' and arbitrary nature of the (commonly used) six month prognosis render this justification meaningless.[2]

The terms 'assisted suicide' and 'assisted dying' can also be used to differentiate between the self-administration of life-ending drugs, and the administration of such drugs by a third party such as a doctor. For example, the British Medical Association (BMA) uses the term 'physician-assisted dying' to cover both scenarios:

> Physician-assisted dying refers to doctors' involvement in measures intentionally designed to end a patient's life, covering the situations below.

1 Dignity in Dying, Blog: Assisted dying not assisted suicide, 10 April 2013
2 Care Not Killing, FAWs: Definitions [accessed 24 June 2022]

1. Where doctors would prescribe lethal drugs at the voluntary request of an adult patient with capacity, who meets defined eligibility criteria, to enable that patient to self-administer the drugs to end their own life. This is sometimes referred to as physician-assisted dying or physician-assisted suicide.

2. Where doctors would administer lethal drugs at the voluntary request of an adult patient with capacity, who meets defined eligibility criteria, with the intention of ending that patient's life. This is often referred to as voluntary euthanasia.[3]

1 Assisted suicide and euthanasia

The NHs provides the following definitions of assisted suicide and euthanasia on its website:

> Euthanasia is the act of deliberately ending a person's life to relieve suffering.
>
> For example, it could be considered euthanasia if a doctor deliberately gave a patient with a terminal illness a drug they do not otherwise need, such as an overdose of sedatives or muscle relaxant, with the sole aim of ending their life.
>
> Assisted suicide is the act of deliberately assisting another person to kill themselves. If a relative of a person with a terminal illness obtained strong sedatives, knowing the person intended to use them to kill themselves, the relative may be considered to be assisting suicide.[4]

Euthanasia is currently illegal throughout the UK and can be prosecuted as either murder or manslaughter, depending on the circumstances.

The focus of this paper is the existing criminal law on assisting suicide, as set out in section 2(1) of the Suicide Act 1961, and the calls to replace it with a legal model to enable terminally ill people to end their lives by self-administering life ending drugs that have been prescribed by a medical professional.

The paper does not cover euthanasia, nor does it cover the legal and ethical aspects of end-of-life care such as the withdrawal or refusal of life-sustaining treatment or the administration of pain-relief.

The title of this paper – Assisted suicide – has been chosen as a legal term to reflect the wording of the section 2(1) criminal offence. The use of this term is not intended to endorse or reflect any stance on the debate about changing the law.

3 BMA, Advice and support: ethics – physician-assisted dying [accessed 24 June 2022]

4 NHS website, Health A-Z: Euthanasia and assisted suicide [accessed 24 June 2022]

2 The criminal law on assisted suicide

2.1 The Suicide Act 1961 (England and Wales)

Suicide or attempted suicide are not in themselves criminal offences.[5] However, under section 2(1) of the Suicide Act 1961 it is an offence for a person to do an act capable of encouraging or assisting the suicide (or attempted suicide) of another, with the intention of encouraging or assisting suicide or attempted suicide.[6] The maximum available sentence is 14 years.

Any proceedings for an offence under section 2(1) can only be brought by or with the consent of the Director of Public Prosecutions (DPP).[7]

In practice, prosecutions under section 2(1) are relatively rare. In April 2022 the Crown Prosecution Service (CPS) said between 1 April 2009 and 31 March 2022, 174 cases recorded as assisted suicide were referred to it by the police. It did not proceed with 115 cases and the police withdrew 33. On cases that led to action, the CPS said:

> There are currently eight ongoing cases. Four cases of encouraging or assisting suicide have been successfully prosecuted. One case of assisted suicide was charged and acquitted after trial in May 2015 and eight cases were referred onwards for prosecution for homicide or other serious crime.[8]

2.2 Prosecution policy (England and Wales)

In common with all criminal offences, the Crown Prosecution Service (CPS) must follow the principles set out in the Code for Crown Prosecutors when deciding whether to start or continue a prosecution. The Code requires prosecutors to consider an evidential test followed by a public interest test:

> **Is there enough evidence against the defendant?**

5 Section 1 of the 1961 Act provided that "the rule of law whereby it is a crime for a person to commit suicide is hereby abrogated"

6 Section 2(1) was amended by the Coroners and Justice act 2009. For background see Ministry of Justice Circular 2010/03, Encouraging or Assisting Suicide: Implementation of Section 59 of the Coroners and Justice Act 2009, and Library Research Papers 09/06, Coroners and Justice Bill: Crime and Data Protection, and 09/27 Coroners and Justice Bill: Committee Stage Report.

7 s2(4) Suicide Act 1961

8 CPS website, Assisted suicide [accessed 24 June 2022]

> When deciding whether there is enough evidence to charge, Crown Prosecutors must consider whether evidence can be used in court and is reliable and credible, and there is no other material that might affect the sufficiency of evidence. Crown Prosecutors must be satisfied there is enough evidence to provide a "realistic prospect of conviction" against each defendant.
>
> **Is it in the public interest for the CPS to bring the case to court?**
>
> A prosecution will usually take place unless the prosecutor is sure that the public interest factors tending against prosecution outweigh those tending in favour.[9]

For assisted suicide offences under section 2(1) of the 1961 Act, an offence-specific prosecution policy supplements the Code. This policy was issued by the DPP in response to the House of Lords judgment in the case of Debbie Purdy (see section 3 of this paper). The policy sets out how prosecutors should apply the evidential and public interest tests in the Code to assisted suicide cases.

Interim policy and consultation

On 23 September 2009, the then DPP Keir Starmer QC published an interim policy setting out the factors he would consider when deciding whether to prosecute assisted suicide cases.[10] He emphasised that the interim policy did not provide any guarantees against prosecution, nor did it legalise assisted suicide or euthanasia.[11]

The interim policy was accompanied by a public consultation that sought views on the public interest factors for and against prosecuting assisted suicide offences.[12] The consultation closed on 16 December 2009. A summary of responses was published on 25 February 2010, together with the final policy.[13]

The final policy

The final Policy for Prosecutors in Respect of Cases of Encouraging or Assisting Suicide was published (and took effect) on 25 February 2010.[14] It lists public interest factors tending in favour of and against prosecution.

Announcing the policy, Keir Starmer said:

---

9 CPS, Code for Crown Prosecutors, October 2018

10 CPS, Interim Policy for Prosecutors in respect of Cases of Assisted Suicide, September 2009

11 CPS press release, DPP publishes interim policy on prosecuting assisted suicide, 23 September 2009

12 CPS website, A public consultation on the DPP's interim policy for prosecutors on assisted suicide, September 2009

13 CPS, Public Consultation Exercise on the Interim Policy for Prosecutors in respect of Cases of Assisted Suicide: Summary of Responses, February 2010. An overview of the changes that were made to the interim policy as a result of the consultation were set out in the DPP's Introductory Remarks on Assisted Suicide Policy, 25 February 2010.

14 It has been updated once since then, in October 2014, to clarify the application of the policy to healthcare professionals: see footnote 16

> The policy does not change the law on assisted suicide. It does not open the door for euthanasia. It does not override the will of Parliament. What it does is to provide a clear framework for prosecutors to decide which cases should proceed to court and which should not.[15]

He added that applying the policy to a case would not be "a tick-box exercise", and that each case would be considered on its own facts and merits.

The public interest factors tending **in favour** of a prosecution are as follows:

> 1. The victim was under 18 years of age;
>
> 2. the victim did not have the capacity (as defined by the Mental Capacity Act 2005) to reach an informed decision to commit suicide;
>
> 3. the victim had not reached a voluntary, clear, settled and informed decision to commit suicide;
>
> 4. the victim had not clearly and unequivocally communicated his or her decision to commit suicide to the suspect;
>
> 5. the victim did not seek the encouragement or assistance of the suspect personally or on his or her own initiative;
>
> 6. the suspect was not wholly motivated by compassion; for example, the suspect was motivated by the prospect that he or she or a person closely connected to him or her stood to gain in some way from the death of the victim;
>
> 7. the suspect pressured the victim to commit suicide;
>
> 8. the suspect did not take reasonable steps to ensure that any other person had not pressured the victim to commit suicide;
>
> 9. the suspect had a history of violence or abuse against the victim;
>
> 10. the victim was physically able to undertake the act that constituted the assistance him or herself;
>
> 11. the suspect was unknown to the victim and encouraged or assisted the victim to commit or attempt to commit suicide by providing specific information via, for example, a website or publication;
>
> 12. the suspect gave encouragement or assistance to more than one victim who were not known to each other;
>
> 13. the suspect was paid by the victim or those close to the victim for his or her encouragement or assistance;
>
> 14. the suspect was acting in his or her capacity as a medical doctor, nurse, other healthcare professional, a professional carer [whether for payment or

[15] CPS press release, DPP publishes assisted suicide policy, 25 February 2010

not], or as a person in authority, such as a prison officer, and the victim was in his or her care;[16]

15. the suspect was aware that the victim intended to commit suicide in a public place where it was reasonable to think that members of the public may be present;

16. the suspect was acting in his or her capacity as a person involved in the management or as an employee (whether for payment or not) of an organisation or group, a purpose of which is to provide a physical environment (whether for payment or not) in which to allow another to commit suicide.[17]

The public interest factors tending **against** prosecution are as follows:

1. the victim had reached a voluntary, clear, settled and informed decision to commit suicide;

2. the suspect was wholly motivated by compassion;

3. the actions of the suspect, although sufficient to come within the definition of the offence, were of only minor encouragement or assistance;

4. the suspect had sought to dissuade the victim from taking the course of action which resulted in his or her suicide;

5. the actions of the suspect may be characterised as reluctant encouragement or assistance in the face of a determined wish on the part of the victim to commit suicide;

6. the suspect reported the victim's suicide to the police and fully assisted them in their enquiries into the circumstances of the suicide or the attempt and his or her part in providing encouragement or assistance.[18]

The policy emphasises that the act of suicide requires the victim to take his or her own life; it is murder or manslaughter for a person to do an act that ends the life of another, even if this is at the latter's express wish.[19]

2 CPS guidance on failed suicide pacts and "mercy killings"

16 In October 2014 a footnote was added to 'clarify' this factor: "For the avoidance of doubt the words "and the victim was in his or her care" qualify all of the preceding parts of this paragraph. This factor does not apply merely because someone was acting in a capacity described within it: it applies only where there was, in addition, a relationship of care between the suspect and the victims such that it will be necessary to consider whether the suspect may have exerted some influence on the victim". See CPS press release, Director of Public Prosecutions responds to Supreme Court on assisted suicide policy, 16 October 2014 for further background.

17 DPP, Suicide: Policy for Prosecutors in Respect of Cases of Encouraging or Assisting Suicide, February 2010 (updated October 2014), para 43

18 As above, para 45

19 As above, paras 32-33

In early 2022, the CPS consulted on proposed changes to its legal guidance on homicide offences, which covers prosecution decision-making in murder and manslaughter cases.

The consultation sought views on introducing new guidance on the public interest factors that prosecutors should consider when dealing with homicide cases involving failed suicide pacts or so-called 'mercy killings'. The CPS said more direction was needed to help prosecutors apply the public interest tests for these cases.

It said the public interest considerations were similar for prosecutions of cases of encouraging and assisting suicide and those when the parties involved had "entered into a suicide pact or cases of so called 'mercy killing'."

The CPS described 'mercy killings' and failed suicide pacts as "cases where the course of conduct goes beyond encouraging or assisting suicide":

> Instead, the suspect has committed the act that caused the death of the victim. It includes cases in which the victim was seriously physically unwell and unable to undertake the act themselves and may have asked the suspect to do the act.
>
> A person commits murder or manslaughter if they do an act that causes the death of the victim, even where they believe that they were simply carrying out the victim's express wish or acting in the victim's best interest.[20]

The CPS therefore proposed to revise the homicide legal guidance to list relevant public interest factors similar to those in the assisted suicide policy.

Examples of proposed public interest factors in favour of a prosecution include that the victim was under 18 or had not reached a voluntary, clear, settled and informed decision to end their life. Examples of proposed public interest factors against a prosecution include that the suspect was "wholly motivated by compassion" or that the victim was "seriously physically unwell and unable to undertake the act".[21]

The consultation closed on 8 April 2022. At the time of writing the CPS is considering individual responses and will publish a summary of responses and the final version of the revised guidance.

2.3 Northern Ireland and Scotland

The criminal law on assisted suicide is devolved in Northern Ireland and Scotland.

---

20 CPS, Consultation on p.ublic interest guidance for suicide pact and 'mercy killing' type cases, 14 January 2022

21 CPS, Proposed changes to 'Homicide: Murder and Manslaughter' Guidance [accessed 27 June 2022]

Northern Ireland

The position in Northern Ireland mirrors that in England and Wales. Under section 12 of the Criminal Justice Act (Northern Ireland) 1966 (as amended) suicide itself is no longer an offence. However, under section 13 of the 1966 Act it is an offence for a person to do an act capable of encouraging or assisting the suicide (or attempted suicide) of another, with the intention of encouraging or assisting suicide or attempted suicide. The consent of the Director of Public Prosecutions for Northern Ireland is required to bring proceedings for a section 13 offence. The Public Prosecution Service has issued an offence-specific policy on how it will deal with cases involving section 13.[22]

Scotland

In Scotland there is no specific statutory offence of assisting suicide. Those who do assist suicide, however, could potentially find themselves liable for more general offences such as murder, culpable homicide, reckless endangerment, assault, breach of the peace, or various offences under the Misuse of Drugs Act 1971.

Detailed information about these more general offences can be found in the Scottish Parliament Information Centre (SPICe) Briefing on the Assisted Suicide (Scotland) Bill (PDF), January 2015.

There is no published prosecution policy specifically relating to assisted suicide cases. Instead there is a general Prosecution Code (Crown Office and Procurator Fiscal Service 2001) which sets out a list of public interest factors to be taken into account both for and against prosecution. In 2016 the Inner House of the Court of Session ruled that the lack of an offence-specific policy in Scotland did not violate Article 8 of the European Convention on Human Rights.[23]

[22] Public Prosecution Service, Policy on Prosecuting the Offence of Assisted Suicide, 1 February 2010

[23] Ross v Lord Advocate [2016] CSIH 12. See UK Human Rights Blog, Court of Session rejects challenge to prosecution policy on assisted suicide, 22 February 2016 and Scottish Legal News, Lord Advocate's prosecution policy on assisted suicide is 'in accordance with law', 19 February 2016 for further analysis

3 Human rights challenges

Over the past two decades, the debate on assisted suicide and assisted dying has been driven in part by legal challenges to the current regime, brought by people suffering from terminal illness or catastrophic injury. They have argued that various aspects of the existing law constitute violations of their human rights, as protected by the European Convention on Human Rights (ECHR).

3.1 Dianne Pretty (2002)

Dianne Pretty had motor neurone disease; she wished to end her own life but was unable to do so without help. She unsuccessfully sought an undertaking from the Director of Public Prosecutions (DPP) that, if her husband aided her, he would not be prosecuted. She argued that the position was incompatible with the ECHR on the following grounds:

- Article 2, which guarantees the right to life, protected a right to self-determination, entitling her to commit suicide with assistance;
- failure to alleviate her suffering by refusal of the undertaking amounted to inhuman and degrading treatment proscribed by Article 3;
- her rights to privacy and freedom of conscience under Articles 8 and 9 respectively were being infringed without justification; and
- she had suffered discrimination in breach of article 14, since an able-bodied person might exercise the right to suicide whereas her incapacities prevented her doing so without assistance.

The House of Lords unanimously dismissed her appeal, finding that Article 2 could not be interpreted as conferring a right to self-determination in relation to life and death and assistance in choosing death. The DPP also had no power to undertake that a crime yet to be committed should be immune from prosecution. This was because, as part of the executive, the DPP is unable to dispense with or suspend laws without parliamentary consent.[24]

Five months later, the European Court of Human Rights (ECtHR) ruled unanimously that neither the blanket ban on assisted suicide nor the DPP's refusal to give an advance undertaking that no prosecution would be brought

[24] *Pretty v DPP and Secretary of State* for *the Home Department* [2001] UKHL 61

against Mrs Pretty's husband violated the ECHR.[25] Less than two weeks after that, in May 2002, Mrs Pretty died in a hospice.[26]

3.2 Debbie Purdy (2009)

Debbie Purdy had multiple sclerosis, for which there is no known cure. She wished to end her own life when her condition became unbearable with the assistance of her husband.

In contrast to Diane Pretty, she did not bring legal action to seek immunity from prosecution for her husband. Instead, she sought a declaration that the DPP should be required to publish an offence-specific policy outlining the circumstances in which a prosecution under s2(1) of the 1961 Act would or would not be appropriate.[27]

In 2009, the House of Lords allowed Debbie Purdy's appeal. Departing from its previous decision in *Pretty*, the House of Lords considered that the right to respect for private life under article 8(1) **was** engaged in Ms Purdy's case. In the lead judgment, Lord Hope went on to consider Article 8(2), and the requirement that any interference with the right to respect for private life be "in accordance with the law":

> The Convention principle of legality requires the court to address itself to three distinct questions. The first is whether there is a legal basis in domestic law for the restriction. The second is whether the law or rule in question is sufficiently accessible to the individual who is affected by the restriction, and sufficiently precise to enable him to understand its scope and foresee the consequences of his actions so that he can regulate his conduct without breaking the law. The third is whether, assuming those two requirements are satisfied, it is nevertheless open to the criticism that it is being applied in a way that is arbitrary because, for example, it has been resorted to in bad faith or in a way that is not proportionate. (...)[28]

The court found that section 2(1) of the Suicide Act 1961 satisfied these requirements. However, the challenge related to the extent to which subsection (4) of section 2, which requires the DPP's consent to a prosecution under section 2, fulfilled the requirement of being sufficiently accessible and precise.

Lord Hope set out the steps the DPP had already taken "to provide a measure of consistency" when deciding whether to prosecute assisted suicide offences. One of these was the Code for Crown Prosecutors, issued under section 10 of the Prosecution of Offences Act 1985, which sets out the general principles to be applied by the CPS in determining whether to institute proceedings for an

---

25 *Pretty v United Kingdom* 2346/02 [2002] ECHR 427

26 "Diane Pretty dies", BBC News website, 12 May 2002

27 As noted above, a policy was published in 2010

28 *R v DPP ex p Purdy* [2009] UKHL 45, para 40

offence. However, the Code applies to criminal offences in general, rather than assisted suicide cases in particular.

Lord Hope drew attention to the fact that in a previous assisted suicide case involving Daniel James , the DPP had decided that "many of the factors identified in the Code in favour or against a prosecution do not really apply in this case". Other steps were also highlighted, for example the creation of a "Special Crimes Division" within the CPS and the publication of the DPP's decision in the Daniel James case. Counsel for the DPP submitted that, taking these steps together, there was now sufficient guidance available as to how decisions were likely to be taken in assisted suicide cases.

The House of Lords, however, held that "these developments fall short of what is needed to satisfy the Convention tests of accessibility and foreseeability".[29] It therefore ordered the DPP to:

> ...promulgate an offence-specific policy identifying the facts and circumstances which he will take into account in deciding, in a case such as that which Ms Purdy's case exemplifies, whether or not to consent to a prosecution under section 2(1) of the 1961 Act.[30]

It is worth emphasising that the judgment did not legalise assisted suicide, nor did the Law Lords express any views on whether Parliament should do so.[31] It did however lead to the publication of the DPP's policy, as discussed in the previous section.

3.3 Tony Nicklinson, Paul Lamb and AM (2014)

Tony Nicklinson suffered a stroke in 2005 which left him with 'locked in' syndrome. His condition was not life threatening and he had a reasonable expectation of living for many years. In 2007 he expressed a desire to end his own life but would only have been able to do so by refusing all food and liquids. He wanted a doctor to help him end his life by giving him a lethal injection, but if necessary he was prepared to kill himself using a machine invented by a Dr Nitschke (which would have been loaded with a lethal drug and activated by Mr Nicklinson via an eye blink computer). However, any doctor actively injecting Mr Nicklinson would have been open to a charge of murder, and anyone assisting him to commit suicide would have been liable to charges under s2(1) of the Suicide Act 1961.

Mr Nicklinson applied to the High Court for a declaration that a doctor who injected him with a lethal drug or who assisted him in terminating his own life would be able to make use of the defence of "necessity" and so would not be liable to criminal charges. The defence of necessity says that an act which would otherwise be a crime may (in very limited circumstances) be excused

29 *R v DPP ex p Purdy* [2009] UKHL 45, para 53
30 As above, at para 56
31 As above, at para 26

where it was done to avoid a greater evil: "the evil represented by committing the offence is outweighed by the greater evil which would ensue if the offence were not to be committed".[32]

If the first declaration was refused, Mr Nicklinson sought an alternative declaration that the current state of the law on murder and assisted suicide was incompatible with his right to a private life under Article 8 of the ECHR.

Alongside Mr Nicklinson's case the court also considered the case of another man, referred to as Martin, who was virtually unable to move following a brain stem stroke. He would be capable of physically assisted suicide and wished to travel to Dignitas to undertake this.[33] His wife, a nurse, was not prepared to help him achieve this, although she wished to be with him to provide comfort if he were to succeed in his purpose with the help of others.

Martin therefore sought a declaration that the DPP should clarify his policy on prosecuting cases of assisted suicide. This was so that other people with no personal connection to him, who might be willing to help on compassionate grounds, would know whether they were more likely to face prosecution than not. This could involve members of the public, health professionals or solicitors.

The High Court refused Mr Nicklinson both forms of relief.[34] He died six days later from pneumonia, having refused food following the judgment.[35] It also refused Martin's application. Lord Justice Toulson said:

> To do as Tony wants, the court would be making a major change in the law. To do as Martin wants, the court would be compelling the DPP to go beyond his established legal role. These are not things which the court should do. It is not for the court to decide whether the law about assisted dying should be changed and, if so, what safeguards should be put in place. Under our system of government these are matters for Parliament to decide, representing society as a whole, after Parliamentary scrutiny, and not for the court on the facts of an individual case or cases. For those reasons I would refuse these applications for judicial review.[36]

Mr Nicklinson's widow was added as a party to the proceedings and pursued an appeal to the Court of Appeal. Paul Lamb, another man with locked in syndrome, was added as a claimant in the Court of Appeal. Martin also appealed.

The Court of Appeal dismissed the Nicklinson/Lamb appeal but Martin's appeal was partially successful.[37] In relation to the first appeal, it reiterated the views of the High Court:

---

32 Blackstone's Criminal Practice, 2014 edition, para A3.47

33 Dignitas is a Swiss organisation which can arrange "accompanied suicide" in cases involving illness that will lead inevitably to death, unendurable pain or an unendurable disability.

34 *R on the application of Tony Nicklinson v Ministry of Justice* [2012] EWHC 2381

35 The Guardian, Tony Nicklinson dies six days after losing 'right to die' case, 22 August 2012

36 *R on the application of Tony Nicklinson v Ministry of Justice* [2012] EWHC 2381, at para 150

37 *R on the application of Nicklinson and Lamb v Ministry of Justice* [2013] EWCA Civ 961

> The repeated mantra that, if the law is to be changed, it must be changed by Parliament, does not demonstrate judicial abnegation of our responsibilities, but rather highlights fundamental constitutional principles.[38]

In relation to Martin's appeal, the Court of Appeal ruled (by a majority of two to one) that the DPP's policy was insufficiently clear regarding what it referred to as "class 2" helpers, being persons with no close or emotional connection to the person seeking assistance with suicide.[39] The majority judgment said:

> In our view, the Policy should give some indication of the weight that the DPP accords to the fact that the helper was acting in his or her capacity as a healthcare professional and the victim was in his or her care. In short, we accept the submission of Mr Havers [counsel for Martin] that the Policy does not provide medical doctors and other professionals with the kind of steer in class 2 cases that it provides to relatives and close friends acting out of compassion in class 1 cases.[40]

In a dissenting judgment, the Lord Chief Justice said he would have dismissed Martin's appeal in its entirety. He said there was a "clear demarcation" between responsibility for the processes leading to the decision to prosecute, which lies with the DPP alone, and the process of the court, to which the DPP is subject, and that this should not be blurred. He added:

> With great respect, we cannot keep ordering and re-ordering the DPP to issue fresh guidelines to cover each new situation. Prosecutorial Policy decisions must remain fact specific and certainty about the Policy which can be no more than indicative of the eventual decision if a crime is committed is not to be equated with the certainty required of provisions which create or identify criminal offences.[41]

Mrs Nicklinson and Mr Lamb appealed to the Supreme Court. The DPP appealed against the Court of Appeal's majority ruling in Martin's case, and Martin cross-appealed against the Court of Appeal's dismissal of the remainder of his application.

Supreme Court judgment

The cases were heard together in December 2013 by nine Justices and judgment was handed down in June 2014.[42]

Nicklinson/Lamb appeal

The Supreme Court dismissed the Nicklinson/Lamb appeal by a majority of seven to two.

---

38 As above, at para 154

39 As compared to "class 1" helpers, being friends or family with emotional ties to the person seeking assistance who act in good faith out of compassion

40 *R on the application of Nicklinson and Lamb v Ministry of Justice* [2013] EWCA Civ 961, at para 140

41 As above, at para 179

42 *R on the application of Nicklinson and Lamb v Ministry of Justice* [2014] UKSC 38. A press summary is also available

The Justices were divided as to whether the Supreme Court had the constitutional authority to make a declaration that the current law on assisted suicide is incompatible with Article 8, or whether this should be left to Parliament. The Justices were also divided as to whether such a declaration should in fact be made in the case before them. However, by contrast with the High Court and Court of Appeal, the majority agreed that in principle the court **had the authority** to make a declaration that the law on assisted suicide is incompatible with Article 8.

Three Justices (Lord Neuberger, Lord Mance and Lord Wilson) held that the Supreme Court had the constitutional authority to make a declaration of incompatibility, but should not do so in this particular case. In relation to authority, Lord Neuberger said:

> The interference with Applicants' article 8 rights is grave, the arguments in favour of the current law are by no means overwhelming, the present official attitude to assisted suicide seems in practice to come close to tolerating it in certain situations, the appeal raises issues similar to those which the courts have determined under the common law, the rational connection between the aim and effect of section 2 [of the Suicide Act 1961] is fairly weak, and no compelling reason has been made out for the court simply ceding any jurisdiction to Parliament.[43]

In relation to whether such a declaration of incompatibility with ought to be made, all three Justices considered that Parliament should instead be given the opportunity to consider the issue first. Lord Neuberger said there were four reasons why it would be "institutionally inappropriate at this juncture" for the Supreme Court to issue a declaration of incompatibility before giving Parliament the opportunity to consider the position:

> First, the question whether the provisions of section 2 should be modified raises a difficult, controversial and sensitive issue, with moral and religious dimensions, which undoubtedly justifies a relatively cautious approach from the courts. Secondly, this is not a case … where the incompatibility is simple to identify and simple to cure: whether, and if so how, to amend section 2 would require much anxious consideration from the legislature; this also suggests that the courts should, as it were, take matters relatively slowly. Thirdly, section 2 has, as mentioned above, been considered on a number of occasions in Parliament, and it is currently due to be debated in the House of Lords in the near future; so this is a case where the legislature is and has been actively considering the issue. Fourthly, less than thirteen years ago, the House of Lords in *Pretty v DPP* gave Parliament to understand that a declaration of incompatibility in relation to section 2 would be inappropriate, a view reinforced by the conclusions reached by the Divisional Court and the Court of Appeal in this case: a declaration of incompatibility on this appeal would represent an unheralded volte-face.[44]

Four Justices (Lord Sumption, Lord Hughes, Lord Reed and Lord Clarke) held that the Supreme Court should defer to Parliament on this matter given the

[43] As above, at para 111

[44] As above, at para 116

issues involved. It would therefore be inappropriate to consider the question of whether to grant a declaration of incompatibility.

Lord Sumption said "…the social and moral dimensions of the issue, its inherent difficulty, and the fact that there is much to be said on both sides make Parliament the proper organ for deciding it" and that it was an "inherently legislative issue". He considered that if Parliament had "abdicated the task of addressing the question at all, so that none of the constitutional organs of the state had determined where the United Kingdom stood on the question", the position might be different. However, he thought it was clear "that Parliament has determined for the time being the law should remain as it is."[45]

Only Lady Hale and Lord Kerr concluded that the Supreme Court both had the authority to make a declaration of incompatibility and should do so in this case. Lady Hale "reached the firm conclusion that our law is not compatible with the Convention rights" and therefore saw "little to be gained, and much to be lost, by refraining from making a declaration of incompatibility". She noted that Parliament would then be free "to cure that incompatibility… or to do nothing":

> It may do nothing, either because it does not share our view that the present law is incompatible, or because, as a sovereign Parliament, it considers an incompatible law preferable to any alternative.[46]

The reason for Lady Hale and Lord Kerr's finding that the law was incompatible was not "because it contains a general prohibition on assisting or encouraging suicide, but because it fails to admit of any exceptions".[47]

In 2015, the ECtHR dismissed applications from Mrs Nicklinson and Mr Lamb as inadmissible.[48] It rejected Mrs Nicklinson's argument that the Supreme Court had failed to deal with the substance of her complaint, and in any event found that the Supreme Court was not under any procedural obligation to examine the merits of a challenge brought against primary legislation. It was open to the UK to determine that this was an issue that Parliament was best placed to decide "in light of the sensitive ethical, philosophical and social issues which arise".[49]

Mr Lamb's application was rejected on the basis that he had not pursued all possible lines of argument in the UK courts, and had not therefore exhausted domestic remedies, as required.[50]

Since *Nicklinson* there have been further attempts in Parliament to change the law, primarily via Private Members' Bills. None have been successful. The

45 As above, at paras 233-4

46 As above, para 300

47 As above, para 301

48 *Nicklinson and Lamb v UK* (app no. 2478/15 & 1787/15)

49 ECtHR Press release, 2015 (PDF)

50 As above

Government has maintained a neutral position, treating the issue as one of conscience for individual parliamentarians. This is discussed further in Part 4.

Martin appeal

In Martin's case, the nine Justices unanimously allowed the DPP's appeal and dismissed Martin's cross-appeal, holding:

> It is one thing for the court to decide that the DPP must publish a policy, and quite another for the court to dictate what should be in that policy. The exercise of judgment by the DPP, the variety of relevant factors, and the need to vary the weight to be attached to them according to the circumstances of each individual case, are all proper and constitutionally necessary features of the system of prosecution in the public interest.[51]

3.4 Further legal challenges

In 2017 the High Court rejected a further attempt to review the Suicide Act 1961 on the basis of incompatibility with Article 8 brought by Noel Conway. Lord Justice Burnett set out the reason for the decision:

> The core reason for doing so is that Parliament has reconsidered the issue of assisted dying following the decision of the Supreme Court in Nicklinson, as that court encouraged it to do. Both the House of Commons and the House of Lords have debated the matter in the context of bills proposing a relaxation of the strict application of section 2(1). The result is that Parliament has decided, at least for the moment, not to provide for legislative exceptions to section 2(1) of the 1961 Act. The policy of the DPP has also been subject to parliamentary scrutiny and debate.[52]

Despite distinguishing the case from *Nicklinson* because of the differing circumstances of the claimant, the Court of Appeal dismissed an appeal in June 2018. The Supreme Court refused permission to appeal in November 2018.

In 2019 Phil Newby, who had motor neurone disease, applied for judicial review and asked the High Court to undertake a "detailed examination of the evidence" to determine whether the "blanket ban on assisted dying was compatible with his human rights" under Articles 2 and 8 of the ECHR. The High Court refused his application, stating:

> In the context of repeated and recent parliamentary debate, where there is an absence of significant change in societal attitude expressed through Parliament, and where the courts lack legitimacy and expertise on moral (as opposed to legal) questions, in our judgment the courts are not the venue for arguments which have failed to convince Parliament [...] In our judgment, there are some questions which, plainly and simply, cannot be 'resolved' by a

---

51 Supreme Court, *Press Summary: R (on the application of Nicklinson and another) (Appellants) v Ministry of Justice (Respondent); R (on the application of AM) (AP) (Respondent) v The Director of Public Prosecutions (Appellant) [2014] UKSC 38 On appeal from [2013] EWCA Civ 961*, 25 June 2014

52 [2017] EWHC 640

court as no objective, single, correct answer can be said to exist. On issues such as the sanctity of life there is no consensus to be gleaned from evidence. The private views of judges on such moral and political questions are irrelevant, and spring from no identifiable legal principle. We struggle to see why any public conclusion judges might reach on matters beyond the resolution of evidence should carry more weight than those of any other adult citizen.6 It was reported that Mr Newby is planning to appeal.[53]

[53] Newby, R (on the application of) v Secretary of State for Justice [2019] EWHC 3118 (Admin)

4 Parliamentary activity

The Government has repeatedly said it has no intention to change the law on assisted suicide or assisted dying. It considers it to be a conscience issue and a matter for Parliament.[54]

There have been several legislative and non-legislative debates on the issue in recent years, particularly in the Lords. The most significant Commons debate and vote on the law was in 2015, when on a free vote the Commons voted against giving the Assisted Dying (No 2) Bill 2015 (a Private Member's Bill introduced by Rob Marris MP) a second reading by 330 votes to 118.

4.1 Legislative debates

Private Members' Bills

The Assisted Dying for the Terminally Ill Bill [HL]

In 2004, Lord Joffe introduced the Assisted Dying for the Terminally Ill Bill [HL], which aimed "to enable a competent adult 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 to make provision for a person suffering from such a condition to receive pain relief medication".[55]

The Bill would have authorised "assisted dying", defined in clause 1 as "the attending physician, at the patient's request, either providing the patient with the means to end the patient's life or if the patient is physically unable to do so ending the patient's life".

The take note debate was on 10 October 2005.[56] The Bill lapsed at the end of the 2004-05 session but was re-introduced on 9 November 2005.[57] The second reading debate was on 12 May 2006.[58] The Lords voted by 148 to 100 against second reading.[59] Writing in The Times, Lord Joffe argued that opponents of assisted dying had prevented full debate:

54 PQ 72856 [on Euthanasia], 17 July 2020

55 This Bill followed a similar one (the Patient (Assisted Dying) Bill) introduced by Lord Joffe in 2003, which had its second reading in June 2003 but did not proceed any further (HL Deb 6 June 2003 cc1585-1690)

56 HL Deb 10 October 2005 c12-32, 45-150

57 HL Deb 9 November 2005 c619

58 HL Deb 12 May 2006 c1184-1296

59 HL Deb 12 May 2006, c1295

> [...] shown by their conduct at the last hearing of my Bill when they broke a longstanding tradition in the Lords of never opposing a Private Member's Bill at second reading. They succeeded in summarily bringing the debate to an end before a detailed examination of its provisions could even take place.[60]

3 Select Committee on the Assisted Dying for the Terminally Ill Bill

The Bill was considered by a select committee under the chairmanship of Lord Mackay of Clashfern. The committee was unable to reach any consensus on Lord Joffe's Bill. It instead used its final report to set out recommendations on issues it considered would be "pertinent to the consideration of any future bill which might be brought forward on this subject".[61] The committee's recommendations for the drafting of any future bill included:

- drawing a clear distinction between assisted suicide and voluntary euthanasia to enable careful consideration of these two courses of action, and the different considerations which apply to them, and to reach a view on whether, if such a bill is to proceed, it should be limited to the one or the other or both
- clearly setting out the actions which a doctor may and may not take either in providing assistance with suicide or in administering voluntary euthanasia
- if terminal illness is included as a qualifying condition, defining this so as to reflect the realities of clinical practice as regards accurate prognosis
- taking into account the need to identify applicants suffering from psychological or psychiatric disorder, as well as a need for mental capacity, when defining mental competence
- giving consideration to including "unrelievable" or "intractable" suffering or distress rather than "unbearable" suffering as a criterion
- balancing the need to avoid increased suffering for determined applicants against the desirability of providing time for reflection for the less determined when setting a waiting period between application and action (particularly in the case of voluntary euthanasia)
- accommodating physicians with conscientious objections and providing adequate protection for healthcare professionals and those working in multi-disciplinary teams
- recognising that the administration of pain relief

60 "Debbie Purdy deserves a less terrible choice", 30 October 2008, The Times [subscription only]

61 Select Committee on the Assisted Dying for the Terminally Ill Bill, Assisted Dying for the Terminally Ill Bill [HL] Volume I: Report, HL Paper 86-I , 2005, Chapter 7

The committee also concluded that if a future bill "is to claim with credibility that it is offering assistance with suicide or voluntary euthanasia as complementary rather than alternative to palliative care," then it should consider "how patients seeking to end their lives might experience such care before taking a final decision". It also concluded that clinical and practical considerations meant that any new bill should not attempt to govern the administration of pain relief by doctors.

The Assisted Dying Bill [HL]

The Assisted Dying Bill [HL] was a Private Member's Bill first introduced by Lord Falconer (Lab) in May 2013. It did not proceed beyond first reading in the 2013-14 session but was reintroduced by Lord Falconer in the 2014-15 session, where it reached the Committee Stage in late 2014/early 2015.

There were two Committee sittings during which the Bill was amended, most notably by adding a requirement for assisted dying cases to be subject to oversight by a judge of the Family Division of the High Court. The amended Bill fell due to the 2015 General Election. It was reintroduced by Lord Falconer in June 2015 but did not have a second reading.

Commission on Assisted Dying

The content of the Assisted Dying Bill was shaped by the findings of the Commission on Assisted Dying, which was chaired by Lord Falconer.

The Commission was established following a tender from two private individuals, Terry Pratchett and Bernard Lewis (both advocates of assisted dying), with support provided by the think tank, Demos.

The Commission published its final report (PDF) in January 2012. It described the current legal status of assisted suicide as "inadequate and incoherent" and proposed that Parliament should consider developing a new legal framework. This conclusion was supported by all the Commissioners other than the Reverend Canon Dr James Woodward, who considered that greater ethical, moral and social consensus needed to be generated on this issue before legal change should be considered.

The Bill aimed to enable competent adults who are terminally ill to request and lawfully be provided with assistance to end their own lives. The Bill would have defined a person as terminally ill if that person:

> (a) has been diagnosed by a registered medical practitioner as having an inevitably progressive condition which cannot be reversed by treatment ("a terminal illness"); and

(b) as a consequence of that terminal illness, is reasonably expected to die within six months.

The Bill provided that "the decision to self-administer the medicine and the final act of doing so must be taken by the person for whom the medicine has been prescribed". An assisting health professional would have been authorised to prepare the "medicine" for the individual to self-administer, prepare a "medical device" to enable the individual to self-administer, or to assist the individual to ingest or otherwise self-administer the "medicine". The Bill would not have authorised an assisting health professional "to administer a medicine to another person with the intention of causing that person's death".

The explanatory notes to the Bill provide full details, as does the Lords Library briefing In Focus: Assisted Dying Bill [HL].[62]

The Bill's second reading debate took place on 18 July 2014.[63] Opinion on the Bill was evenly split. There was, however, general consensus among those who spoke in the debate – whether for or against – that Parliament needed to address the issue properly following the Supreme Court's judgment in Nicklinson and that the Bill should proceed to Committee for detailed consideration.

The Bill was therefore given its second reading without a vote. As noted above, it did not progress beyond the committee stage due to the 2015 General Election.

Assisted Dying (No 2) Bill 2015

The Labour MP, Rob Marris, introduced the Assisted Dying (No 2) Bill in the House of Commons after coming first in the Private Members' Bill ballot. The Bill was similar to Lord Falconer's Assisted Dying Bill [HL]. For a detailed discussion of the contents of the Bill, see the 2015 Assisted Dying (No 2) Bill 2015 paper.

The Bill's second reading debate took place on 11 September 2015. The Commons voted against giving the Bill a second reading by 330 votes to 118 and it did not progress any further.[64]

Opening the debate, Mr Marris said the current law did not work to meet the needs of the terminally ill or others, adding that, in the Tony Nicklinson case, the Supreme Court recognised there was a problem that Parliament needed to address.[65]

He noted that opinion polling suggested there was strong support for a change in the law, in line with what the Bill proposed.[66] He also

62 LIF 2014/006, 14 July 2014
63 HL Deb 18 July 2014 c775
64 HC Deb 11 September 2015, c725-727
65 HC Deb 11 September 2015 c656
66 HC Deb 11 September 2015 c657

acknowledged that the medical profession was divided on the Bill (and that the majority were probably against a change in the law).[67] Mr Marris maintained, however, that there was no contradiction between the measures in the Bill and the provision of widespread high-quality palliative care.

He said the most difficult issue in relation to a change in the law was the risk of coercion of individuals. He therefore highlighted the safeguards proposed in the Bill, which included two doctors (one attending, and one independent) countersigning the declaration by the person that they have a voluntary, settled and informed wish to end their life, which then must be confirmed by a High Court judge.[68]

Over 80 MPs indicated to the Deputy Speaker that they wanted to contribute to the debate; a number she described as "unprecedented".[69] Views were expressed both in support of, and against, a change in the law.

Responding for the Government, the then Minister for Policing, Crime and Criminal Justice, Mike Penning, noted that it had been 18 years since the matter was last debated in the Commons. He emphasised that the Government did not hold a position on the Bill and that it would "respect the view of the House".[70]

Bills introduced since 2015

Several Private Members' Bills on assisted dying have been introduced in the Lords since the last Commons vote on the 2015 Bill:

- Lord Hayward (Con) introduced the Assisted Dying Bill [HL] 2016-17. The Bill had its first reading in June 2016 but made no further progress.
- Lord Falconer (Lab) introduced the Assisted Dying Bill [HL] 2019-21. The Bill had its first reading in January 2020 but made no further progress.
- Baroness Meacher (Crossbench) introduced the Assisted Dying Bill [HL] 2021-22 in May 2021 after coming seventh in the House of Lords ballot for private members' bills. It had its second reading on 22 October 2021 and was subsequently committed to a Committee of the Whole House, without division. The Bill fell at the end of the 2021-22 session, before its committee stage had begun. The House of Lords Library produced a briefing on the Assisted Dying Bill [HL].

67 HC Deb 11 September 2015 c659
68 HC Deb 11 September 2015 c661
69 HC Deb, 11 September 2015, c656
70 HC Deb, 11 September 2015, c723

Amendments to Government bills

The Coroners and Justice Bill 2008-09

During the passage of the Coroners and Justice Bill (now the Coroners and Justice Act 2009), two amendments that sought to amend the law on assisted suicide were tabled. Neither was successful.

Patricia Hewitt tabled a new clause for the Bill's report stage in the Commons. The new clause would have added the following provision to the 1961 Act:

> 2ZA Acts not capable of encouraging or assisting
>
> An act by D is not to be treated as capable of encouraging or assisting the suicide or attempted suicide of another person ("T") if the act is done solely or principally for the purpose of enabling or assisting T to travel to a country or territory in which assisted dying is lawful.[71]

The amendment was not called. Several Members expressed dissatisfaction that the programme motion had made it virtually certain that the amendment would not be reached, commenting that assisted suicide was a topical and urgent matter that required parliamentary debate.[72]

During the Bill's committee stage in the Lords, Lord Falconer of Thoroton proposed a similar (but more detailed) amendment to Patricia Hewitt's on assisted suicide.[73]

On a free vote, the amendment was defeated by 194 to 141.[74]

The Health and Care Bill 2021-22

An amendment to the Health and Social Care Bill (now Act) on assisted dying was tabled by Lord Forsyth (Conservative). It was unsuccessful.

During the Lords committee stage of the Health and Social Care Bill, Lord Forsyth tabled a new clause that would have required the Government to lay a draft Bill "to permit terminally ill, mentally competent adults legally to end their own lives with medical assistance" within 12 months of the Health and Social Care Bill passing.[75]

Speaking in the debate, the Minister for Technology, Innovation and Life Sciences, Lord Kamall, said it would "not be appropriate to include a commitment to bring forward new primary legislation in the Bill" on the

---

71 Coroners and Justice Bill: Report Stage Proceedings, NC42

72 HC Deb 23 March 2009 cc52-61. A programme motion is used by the Government to "timetable a Bill's progress through the House of Commons by setting out the time allowed for debate at each of its stages. The motion is usually put forward for agreement immediately after a Government Bill has passed its Second Reading": see Programme motion - UK Parliament, not dated.

73 HL Deb 7 July 2009 c598

74 HL Deb 7 July 2009 c634

75 Health and Care Bill, Ninth Marshalled List of Amendments (Lords), 7 February 2022

grounds that "future Bills and the use of parliamentary time are decisions that are rightly made via other avenues".[76]

The proposed new clause was not voted on at the Lords committee stage but was considered again at the report stage where it was defeated following a vote (Content 145, Not Content 179).[77]

4.2 Non-legislative debates

In addition to the legislative debates highlighted above, there have been several 'general debates' in Parliament on assisted dying over the past five years. General debates allow the Commons or Lords to consider and debate a subject but without committing to a specific course of action.[78] It is also not possible to "vote on, or table an amendment to, a motion in Westminster Hall".[79]

House of Commons

- Commons Chamber, Assisted Dying, (Nick Boles, Ind), 4 July 2019
- Westminster Hall debate, Assisted Dying Law, (Christine Jardine, Lib Dem), 23 January 2020
- Adjournment debate, Dignity in Dying (Andrew Mitchell, Conservative), 8 December 2021

There is a debate taking place in Westminster Hall on 4 July 2022 on assisted dying. The debate will consider an e-petition which calls on the Government to "legalise assisted dying for terminally ill, mentally competent adults".[80]

The petition was created by Sarah Wootton, Chief Executive of the 'Campaign for Dignity in Dying' (see section 5.2). At the time of writing, it had received over 150,000 signatures. The Government response to the petition re-iterates its position that "any change to the law in this area is a matter for Parliament and an issue of conscience for individual parliamentarians rather than one for Government policy".[81] Tonia Antoniazzi (Lab), on behalf of the Petitions Committee, will open the debate.

---

[76] HL Deb, 26 January 2022, c430

[77] HL Deb, 16 March 2022, c355-356

[78] UK Parliament, MP's Guide to Procedure, General debates, not dated [accessed 27 June 2022]

[79] UK Parliament, MP's Guide to Procedure, Westminster Hall, not dated [accessed 27 June 2022]

[80] Petitions, UK Government and Parliament, Legalise assisted dying for terminally ill, mentally competent adults, deadline 30 June 2022

[81] Petitions, UK Government and Parliament, Legalise assisted dying for terminally ill, mentally competent adults, deadline 30 June 2022

House of Lords

- Assisted Dying, (Baroness Jay of Paddington, Lab), 6 March 2017

This was a Lords question for short debate on what assessment the Government has made "of recent legislation on assisted dying in North America; and whether those laws provide an appropriate basis for legislation in England and Wales".

4.3 Request for a 'call for evidence'

Several MPs have pressed the Government to initiate a call for evidence on the adequacy of the existing law on assisted suicide and assisted dying and how it can be improved.

A general debate on the Functioning of the Existing Law Relating to Assisted Dying, led by Nick Boles (Ind), Sarah Champion (Lab) and Norman Lamb (Lib Dem), took place in the House of Commons Chamber on 4 July 2019. During the debate, Nick Boles asked the Secretary of State for Justice to "initiate a formal call for evidence on the impact of our existing laws on assisted dying".[82]

Speaking for the Government, the then Parliamentary Under-Secretary of State for Justice, Edward Argar, reiterated the Government's position, namely that any changes to the law in this area "remain an issue of conscience for individual Members of this House", adding that it is a "matter for [the] House to decide, not the Government".[83]

Calling for evidence on assisted dying has since been raised during Justice Questions and in written Parliamentary Questions. In October 2019, Nick Boles (Ind) told the Commons that the former Justice Secretary (David Gauke) had taken the matter of a call for evidence to the then Prime Minister, Theresa May, stating:

> I fear that he may not have received complete information from his officials, because his immediate predecessor did ask for a call for evidence and for No. 10 approval of a call for evidence. It is true that the previous Prime Minister resigned before that request could be approved, but the previous Lord Chancellor did make it clear that he thought a call for evidence was justified. To be clear about the reasons why: it is not that Government are going to take a position on a possible change of law, but only the Government can gather the information about the effect of the current law so that Parliament can decide whether that law needs to be changed.[84]

82 HC Deb, 4 July 2019, c1414
83 HC Deb, 4 July 2019, c1448
84 HC Deb, 8 Oct 2019, c1622

The Secretary of State responded that it was "not agreed that there should be a call for evidence" and added that it was "not [his] plan to initiate one".[85]

During a Westminster Hall debate in early 2020 on the law on assisted dying, the then junior Home Office Minister, Chris Philp, re-emphasised that while the Government did not have plans to initiate any review or call for evidence, it was "open to Committees of the House, including Select Committees, to initiate reviews, calls for evidence and investigations, if they see fit to do so".[86]

Andrew Mitchell (Con) subsequently asked the Justice Secretary if he would publish the Government document outlining the call for evidence on assisted dying that was prepared in 2019. In response, the then junior Justice Minister, Alex Chalk MP, stated that the Ministry of Justice had no plans to publish the "draft document prepared for the previous government which was not issued".[87]

Mr Mitchell also asked the then Health Secretary, Matt Hancock, during health questions in January 2021, what plans he had to "improve the evidence base for future debates on the options available for terminally ill people at the end of their life." Mr Hancock said the Government was "open to gathering data on the experiences of terminally ill people in order to inform the debate".[88]

The Telegraph newspaper subsequently reported, in May 2021, that the Health Secretary had written to Sir Ian Diamond, the UK's national statistician, to ask for information to inform Parliament's debate on assisted dying. More specifically, Mr Hancock was reported to have told a meeting of the All Party Parliamentary Group for Choice at the End of Life that he had requested "data on how many Britons who kill themselves have terminal medical conditions".[89]

Office for National Statistics data on 'Suicides among people diagnosed with severe health conditions, England: 2017 to 2020'

The data requested by Mr Hancock was subsequently published by the Office for National Statistics (ONS) in April 2022. The ONS examined the suicide rate per 100,000 people in England and compared "patients who were diagnosed with severe health conditions with matched controls". It explained the matched controls were people with "similar socio-demographic characteristics" to the patients but were not diagnosed with severe health

85 HC Deb, 8 Oct 2019, c1623
86 HC Deb, 23 January 2020, c208WH
87 PQ 110736 [on Euthanasia], 9 November 2020
88 HC Deb, 12 January 2021, UIN 910587
89 Matt Hancock takes first steps towards legalising assisted suicide, The Telegraph, 1 May 2021

conditions. [90] Further details about the methodology used can be found on the ONS website.

The specific "severe health conditions" were cancers with a low-survival rate, chronic obstructive pulmonary disease (COPD - lung conditions that cause breathing difficulties) and coronary heart disease. According to the ONS, the conditions were selected because they are typically "progressive, [...] cannot be reversed by treatment and there is a reasonable risk of death in those that are diagnosed".[91]

The data indicated "there were elevated rates of suicide in patients with the severe health conditions analysed one year after diagnosis" when compared to the matched controls:

- One year after diagnosis for low survival cancers, the suicide rate for patients (22.2 deaths per 100,000 people) was 2.4 times higher than the suicide rate for the matched controls (9.1 deaths per 100,000 people).
- One year after diagnosis for COPD, the suicide rate for patients (23.6 deaths per 100,000 people) was 2.4 times higher than the suicide rate for the matched controls (9.7 deaths per 100,000 people).
- One year after diagnosis for chronic ischemic heart conditions, the suicide rate for patients (16.4 deaths per 100,000 people) was nearly two times higher than the suicide rate for the matched controls (8.5 deaths per 100,000 people).[92]

The diagnosis and deaths occurred between 1 January 2017 and 31 March 2020. The Commons Library has also published a briefing on Suicide statistics (October 2021).

90 ONS, Suicides among people diagnosed with severe health conditions, England: 2017 to 2020, 20 April 2022

91 ONS, Suicides among people diagnosed with severe health conditions, England: 2017 to 2020, 20 April 2022

92 ONS, Suicides among people diagnosed with severe health conditions, England: 2017 to 2020, 20 April 2022

5 Stakeholders

There are many stakeholders with views on assisted suicide and assisted dying, including campaign groups and medical bodies. Brief details of some of these organisations (listed alphabetically) are set out below; it is not a comprehensive list.

5.1 Medical bodies

The British Medical Association

The British Medical Association (BMA), the trade union and professional association of doctors, formulates policies at its Annual Representative Meeting (ARM) where motions submitted by the BMA membership are debated. If approved, they become BMA policy.

The BMA adopted a neutral position on assisted dying in September 2021. A summary of the BMA's current policy is set out on its website.[93]

Prior to that date, the BMA had a policy of opposing assisted dying, though attempts were made to change its position. At its 2012 ARM, a motion was tabled that the BMA should move from a position of opposition to neutrality on assisted dying. Members voted against the motion in 2012 and voted against a similar motion in 2016.[94] [95] The BMA's Ethics Department published the third of three policy papers in 2016 setting out the BMA's reflections and recommendations on End-of-life care and physician-assisted dying issues.[96]

In February 2020, the BMA surveyed its membership to ask, for the first time, what position it should take on assisted dying. The BMA described it as one of the "biggest surveys of medical opinion on the issue that has ever been undertaken, with 28,986 BMA members responding" (19.35% of all members who received an invitation to participate).[97] The BMA stated, however, that the results of the survey would "not determine policy" but would "inform a debate on our policy" at the ARM in September 2021.[98]

[93] BMA website, The BMA's position on physician-assisted dying, not dated [accessed 30 June 2022]
[94] BMA, BMA continues to oppose legalising assisted dying, 27 June 2012
[95] Assisted dying: BMA surveys its members for first time, British Medical Journal, 2020; 368 (6 February 2020)
[96] BMA, End-of-life care and physician-assisted dying: Reflections and recommendations, 2016
[97] BMA, BMA physician-assisted dying survey results published, 8 October 2020
[98] BMA, Physician-assisted dying survey, last reviewed 14 December 2021

A full breakdown of the survey results, alongside the survey methodology, can be found at: Kantar, BMA Survey on Physician-Assisted Dying, Research Report, 2020. The survey results included:

- On the question of "what should the BMA's position be on a change in the law on prescribing drugs for eligible patients to self-administer to end their own life?" 40% of respondents though the BMA should be "supportive" of such a change, 21% were "neutral," 33% "opposed" and 6% "undecided".

- The poll also asked doctors whether they would "be willing to participate in any way in the process if the law changed on prescribing drugs for eligible patients to self-administer to end their own life?". In response, 36% said yes, 45% no and 19% were undecided. [99]

On 14 September 2021, at its ARM, the BMA voted in favour of a motion changing the BMA's policy from opposition to a change in the law on assisted dying, to a position of neutrality. The BMA subsequently stated that this meant they will "neither support nor oppose attempts to change the law" but they "will not be silent on this issue".[100]

The BMA has also issued guidance to doctors on assisted dying which states:

> The law does not provide a clear definition of which actions might constitute assisting or encouraging suicide. We recommend that doctors do not:
>
> - advise patients on what constitutes a fatal dose;
> - advise patients on anti-emetics in relation to a planned overdose;
> - suggest the option of suicide abroad;
> - write medical reports specifically to facilitate assisted suicide abroad;
> - provide literature to patients on aspects of assisted suicide;
> - disseminate information via the media (including the internet) which would be likely to encourage people to end their lives;
> - put patients in touch with other individuals or groups who may be able to assist or organisations who promote assisted dying; and
> - facilitate any other aspects of planning a suicide.[101]

[99] BMA, Physician-assisted dying survey, 21 May 2021

[100] British Medical Association, BMA position on physician-assisted dying, September 2021

[101] BMA, Responding to patient requests relating to assisted suicide: guidance for doctors in England, Wales and Northern Ireland, June 2019, p3

Royal College of General Practitioners

The Royal College of General Practitioners (RCGP) held a consultation on its position on assisted dying in 2013.[102] On 21 February 2014 it announced that the majority of respondents had agreed with maintaining a position of opposition to a change in the law on assisted dying:

> Although a minority of respondents put forward cases to shift the College's collective position to 'neutral' or 'in favour' of a change in law on assisted dying, most respondents were against a change in the law for a range of reasons, including that a change in the legislation would:
>
> - be detrimental to the doctor-patient relationship;
> - put the most vulnerable groups in society at risk;
> - be impossible to implement without eliminating the possibility that patients may be in some way coerced into the decision to die;
> - shift the focus away from investing in palliative care and treatments for terminal illnesses;
> - instigate a 'slippery slope' whereby it would only be a matter of time before assisted dying was extended to those who could not consent due to reasons of incapacity and the severely disabled.[103]

The RCGP reviewed its position in 2019-20, consulting 49,539 of its members between 29 October and 15 December 2019 on whether the RCGP should change its current position of opposing a change in the law on assisted dying. A total of 6,674 (13.47% of those consulted) responded:

- 47% of respondents said that the RCGP should oppose a change in the law on assisted dying;
- 40% of respondents said the RCGP should support a change in the law on assisted dying, providing there is a regulatory framework and appropriate safeguarding processes in place;
- 11% of respondents said that the RCGP should have a neutral position and;
- 2% of respondents abstained from answering.[104]

The decision to remain opposed to a change in the law was subsequently ratified by the RCGP's governing Council. In September 2020, two GPs, Prof Aneez Esmail and Sir Sam Everington, working with the Good Law project, and Dignity and Choice in Dying, called for an urgent review of the Council's

---

[102] RCGP, Assisted Dying Consultation Analysis, (opens PDF) January 2014

[103] RCGP, RCGP announces continued opposition to change in law on assisted dying, 21 February 2014 (this link no longer works, but parts of the press release can be found in RCGP announces continued opposition to change in law on assisted dying, not dead yet UK, 21 February 2014).

[104] RCGP, Royal College of GPs remains opposed to change in the law on assisted dying, 21 February 2021

decision on the grounds that it represented an "irrational" interpretation of the results of the consultation.[105]

Royal College of Nursing

In July 2009 the Royal College of Nursing (RCN) moved to a "neutral" position on assisted suicide, having previously opposed it.[106] The decision, voted on by the RCN Council, followed a three month consultation by the RCN with its members. Over 1,200 individual responses were received; 49% of individuals supported assisted suicide, while 40% opposed it. The remaining submissions were either neutral on the issue (9%) or failed to record a position (1%).[107]

The decision prompted some controversy among nurses; some argued that the consultation process was inadequate and that 1,200 responses out of around 400,000 members was not a sufficient mandate for change.[108]

In a letter to The Times, Dr Peter Carter, then the Chief Executive of the RCN, emphasised that its shift to a neutral position did not represent "implicit support" for assisted suicide, nor was it advising nurses to engage in dialogue with patients "on this contentious issue".[109]

In October 2011 the RCN issued guidance to nurses on how to respond to requests to "hasten death" and published a position statement in 2014.[110]

Royal College of Physicians

The Royal College of Physicians (RCP) conducted an online survey of its membership in early 2019, of which 6885 members responded. The RCP reported:

> 43.4% of respondents said that the RCP should be opposed to a change in the law on assisted dying, 31.6% said the RCP should support a change in the law, and 25% said the RCP should be neutral. Based on these results RCP Council adopted a position of neutrality on 21st March 2019.
>
> Neutrality was defined as neither supporting nor opposing a change in the law, to try to represent the breadth of views within its membership.[111]

Judicial review proceedings against the RCP were brought by some members and fellows of the College in March 2019 in connection with its "decision to

---

[105] Bindmans LLP, Legal letter, request for urgent review of the Council's decision of 21 February 2020 in respect of the RCGPs position on assisted dying, 17 September 2020

[106] Royal College of Nursing, RCN Position statement on assisted dying, November 2014; Royal College of Nursing 'neutral' on assisted suicide, The Guardian, 24 July 2009;

[107] RCN ends opposition to assisted suicide | GPonline, 27 July 2009

[108] See, for example, "Nurses need to speak up against euthanasia", The Telegraph, 29 July 2009, "Christian nurses speak against assisted suicide", The Observer, 26 July 2009

[109] "Nurses, undertakers and duty to die", The Times, 30 July 2009 [subscription only]

[110] Royal College of Nursing, When someone asks for your assistance to die: RCN guidance on responding to a request to hasten death, October 2011, revised December 2016; RCN Position statement on assisted dying, November 2014

[111] Royal College of Physicians, The RCP clarifies its position on assisted dying, 26 March 2020

survey [its] UK members on what position the RCP should adopt regarding assisted dying".[112]

Permission to proceed with the application for judicial review was refused by Mrs Justice Laing DBE on both procedural and substantive grounds.[113]

5.2 Campaign groups

Care Not Killing

Care Not Killing is an alliance of groups, formed in 2005, opposing euthanasia and assisted suicide. Its members include faith-based bodies, disability rights groups and doctors.[114] An overview of its aims is provided on its website:

- promoting more and better palliative care;
- ensuring that existing laws against euthanasia and assisted suicide are not weakened or repealed;
- influencing the balance of public opinion against any further weakening of the law.[115]

Dignity in Dying

Dignity in Dying, formerly known as the Voluntary Euthanasia Society, campaigns for "greater choice and control at the end of life".[116] Its position is that "assisted dying for terminally ill, mentally competent adults should be legal in the UK".[117]

Further details of Dignity in Dying's aims are set out on its website:

> We believe that everyone has the right to a dignified death. This means:
>
> - **Choice** over where we die, who is present and our treatment options.
> - **Access** to expert information on our options, good quality end-of-life care, and support for loved ones and carers.

[112] RCP, Update on legal proceedings related to assisted dying survey, 29 October 2019
[113] RCP, Update on legal proceedings related to assisted dying survey, 29 October 2019
[114] Care Not Killing, About us, not dated [accessed 24 June 2022]
[115] Care Not Killing website, About Care Not Killing [accessed 24 June 2022]
[116] Written evidence submitted by Dignity in Dying (HSC0808) to the Health and Social Care select committee's inquiry into the Department's White Paper on Health and Social Care, March 2021, published 13 April 2021
[117] Dignity in Dying, Our position, not dated, [accessed 24 June 2022]

- **Control** over how we die, our symptoms and pain relief, and planning our own death.[118]

4 Legalising assisted dying e-petition

In January 2022, the Chief Executive of Dignity in Dying, Sarah Wootton, started an e-petition calling on the Government to "legalise assisted dying for terminally ill, mentally competent adults" which, she says, should be permitted subject to "strict upfront safeguards, assessed by two doctors independently, and self-administered by the dying person".[119]

It is argued in the petition that, without assisted dying, "some people will die without adequate pain relief, symptom control or dignity" and highlights the differences in the law in other parts of the world which, it states, gives dying people the "option of dying at home, on their own terms".[120]

The Government response re-iterates its position that "any change to the law in this area is a matter for Parliament and an issue of conscience for individual parliamentarians rather than one for Government policy".[121] The Government notes it took a "neutral position" when Baroness Meacher's Assisted Dying Bill was debated in the House of Lords on 22 October 2021 and emphasises that, if Parliament sought to change the law in this area, the Government would "not stand in the way".[122] It adds, however, that the Government would seek to "ensure that the law could be enforced in the way that Parliament intended".[123]

At the time of writing, the e-petition had received over 150,000 signatures and a debate on the e-petition has been scheduled for 4 July 2022 in Westminster Hall.

Not Dead Yet UK

Not Dead Yet UK (NDYUK) was founded in 2002 by Jane Campbell, a campaigner and adviser for disability reforms who was made a life peer in 2007. It is a network of disabled people who oppose what it describes as "the

[118] Dignity in Dying, Home page [accessed 27 June 2022]
[119] Petitions, UK Government and Parliament, Legalise assisted dying for terminally ill, mentally competent adults, deadline 30 June 2022
[120] Petitions, UK Government and Parliament, Legalise assisted dying for terminally ill, mentally competent adults, deadline 30 June 2022
[121] Petitions, UK Government and Parliament, Legalise assisted dying for terminally ill, mentally competent adults, deadline 30 June 2022
[122] Petitions, UK Government and Parliament, Legalise assisted dying for terminally ill, mentally competent adults, deadline 30 June 2022
[123] Petitions, UK Government and Parliament, Legalise assisted dying for terminally ill, mentally competent adults, deadline 30 June 2022

legalised killing of disabled people".[124] Its website sets out its position on assisted suicide:

> If we give in to the demand to assist in a suicide, we are reinforcing attitudes that say that the lives of disabled people are not worth living – that they are a particular burden to themselves, their relatives and friends, and the state. These negative attitudes are faced by disabled people all the time. This discrimination does not just happen at moments of crisis or imminent death, they are the underlying reason why society is so inaccessible to disabled people and excludes and isolates us systematically.
>
> NDYUK's position links with that of the Equality and Human Rights Commission. In their policy statement on assisted suicide (released under their previous name, the Disability Rights Commission) they noted a number of steps that need to be taken before we contemplate assisted dying legislation including:
>
> - Abolishing discriminatory guidelines and practice on withholding and/or withdrawing life-saving treatment for disabled people;
> - Producing demonstrable reductions in discrimination and inequalities in health services;
> - Improving the quality and capacity of palliative care provision equally across the country and ensuring supply does not lag behind demand (as is currently the case);
> - Implementing effective rights to independent advocacy and communication support; and
> - Implementing rights to independent living to create a society where all disabled people are able to participate fully as equal citizens.
>
> NDYUK echoes this position wholeheartedly. [125]

Sunday Times Campaign, 2021

In May 2021, the Sunday Times newspaper launched a campaign to legalise assisted dying in the UK, stating:

> We believe passionately that everyone should be entitled to dignity in death and choice at the end of life, regardless of status. This country's legislation, passed 60 years ago, denies people these basic rights. It is time the law changed.[126]

[124] Not Dead Yet UK website, 'About', not dated [accessed 27 June 2022]

[125] Not Dead Yet UK website, 'About', not dated [accessed 24 June 2022]

[126] Sunday Times view on assisted dying: It's time to change the law so people can die with dignity, The Sunday Times, 23 May 2021

6 Developments in other jurisdictions

This section provides an overview of developments that are taking place in Jersey and Scotland to change the law on assisted dying. It also highlights a selection of countries and jurisdictions where the law already permits some form of assisted dying.

The BMA has published a map and accompanying overview (PDF) of physician-assisted dying laws in place around the world.[127]

6.1 UK and Crown Dependencies

Jersey

The Government of Jersey committed to holding a Citizens' Jury following a 2018 e-petition, signed by 1,861 people (the estimated population of Jersey in 2019 was 107,000), which called for the States Assembly to amend Jersey law and allow assisted dying.[128]

Between March and May 2021, the Government convened an Assisted Dying Citizens' Jury, consisting of 23 residents selected at random and who "demographically represented the Island's population". The Jury met online, on ten occasions, to address the question: "Should assisted dying be permitted in Jersey and, if so, under what circumstances?".[129] The Jury heard from "expert witnesses, both people with professional expertise on the subject and those with lived experience" and were supported in their deliberations by independent facilitators.[130] Its recommendations were presented in a report to the States Assembly; the decision makers with the authority to decide what, if any, changes are made to legislation in relation to assisted dying in Jersey.[131]

The Jury's initial recommendations were published on 22 June 2021. The recommendations highlighted:

- 78% of Jury members agree assisted dying should be permitted in Jersey:

[127] BMA, Physician-assisted dying legislation around the world (PDF), August 2021
[128] Population estimates, gov.je (not dated)
[129] Jersey Assisted Dying Citizens' Jury, gov.je (not dated)
[130] Jersey Assisted Dying Citizens' Jury, gov.je (not dated)
[131] Jersey Assisted Dying Citizens' Jury, gov.je (not dated)

- where a Jersey resident, aged 18 or over, has a terminal illness or is experiencing unbearable suffering and wishes to end their life

- subject to stringent safeguards including a pre-approval process; a mandatory period of reflection and consideration; with the direct assistance from doctors or nurses only, as opposed to non-medically qualified staff.[132]

Jersey's Minister for Health and Social Services, Deputy Richard Renouf, outlined the next steps, stating that the Jury's recommendations would be:

> followed by a full report by September around which time the Council of Ministers will lodge a report and proposition asking the States Assembly if they agree in principle with the Jury that assisted dying should be permitted in Jersey subject to appropriate safeguards.[133]

The final report was published on 16 September 2021 and on 24 November 2021, the States Assembly agreed, in principle, with the jury that "assisted dying should be permitted in Jersey; and that (i) the Government of Jersey should make arrangements for the provision of an assisted dying service".[134] The proposition was agreed to by 36 votes to 10.[135]

More specifically, the States Assembly agreed "in principle" that assisted dying should be permitted for those aged 18 years and over who are diagnosed with a terminal illness or incurable physical condition resulting in "unbearable suffering", who voluntarily wish to end their life and have the capacity to make that decision.[136]

The Government of Jersey explains that an 'in principle' decision means that the States Assembly wishes to "receive more information before confirming how an assisted dying service in Jersey should operate".[137] A public engagement exercise on assisted dying took place in Jersey between March and April 2022.[138] Islanders are expected to be consulted on more detailed policy proposals in July 2022, before the States Assembly debates those proposals in November 2022.[139]

---

[132] Minister receives initial report of Assisted Dying Citizens' Jury, Government of Jersey, 22 June 2021; Jersey Assisted Dying Citizens' Jury Recommendations – Initial Report, June 2021

[133] As above

[134] States of Jersey, Hansard 24th November 2021, Assisted Dying (P.95/2021) - as amended (P.95/2021 Amd.)

[135] States of Jersey, Vote for Assisted Dying [P.95/2021] as amended, 25 November 2021

[136] States of Jersey, Original proposition, Assisted dying, lodged on 13 October 2021; States of Jersey, Hansard 24th November 2021, Assisted Dying (P.95/2021) - as amended (P.95/2021 Amd.)

[137] Assisted dying in Jersey (gov.je), not dated (accessed 24 June 2022)

[138] Public engagement summary report on assisted dying in Jersey (gov.je), May 2022

[139] Assisted dying in Jersey (gov.je), not dated (accessed 24 June 2022)

Scotland

There have been two Bills introduced in the Scottish Parliament over the last decade on assisted suicide, neither of which have progressed beyond the Stage 1 debate:

- End of Life Assistance (Scotland) Bill. The Bill was defeated on 1 December 2010, after the Stage 1 debate, by 85 votes to 16, with 2 abstentions, following a free vote.

- Assisted Suicide (Scotland) Bill. The Bill was defeated on 27 May 2015, after the Stage 1 debate, by 82 votes to 36, with no abstentions, following a free vote.

Proposed citizens' assembly on assisted dying

The Scottish National Party (SNP) indicated in its 2021 election manifesto that it would hold a citizens' assembly on assisted dying:

> Going forward we will run annual Citizens' Assemblies to look at some of the more complex issues we face as a country. We will bring together a cross section of people from across our country to discuss topics such as reform of Council Tax and the role of local government, assisted dying and decriminalisation of drugs.[140]

Assisted Dying for Terminally Ill Adults (Scotland) Bill

The BBC reported on 20 June 2021 that the Liberal Democrat MSP, Liam McArthur, would be bringing forward a Bill to introduce "the right to an assisted death for terminally ill, mentally competent adults".[141]

A draft proposal for a Bill "to enable competent adults who are terminally ill to be provided at their request with assistance to end their life" has since been lodged by Mr McArthur.[142] This the first stage in the process of introducing a Member's Bill in the Scottish Parliament. A public consultation on the Bill ran until the 22 December 2021. At the time of writing, a final proposal for the Bill had not been lodged. More information about introducing a Member's Bill in the Scottish Parliament, and the subsequent stages following the consultation, can be found in the consultation document.[143]

[140] SNP Manifesto 2021, Scotland's Future, 15 April 2021

[141] Assisted dying bill to be lodged at Scottish Parliament, BBC News Online, 20 June 2021

[142] Assisted Dying for Terminally Ill Adults (Scotland) Bill: A proposal for a Bill to enable competent adults who are terminally ill to be provided at their request with assistance to end their life, Consultation by Liam McArthur MSP, Scottish Liberal Democrat Member for Orkney Islands, 22 September 2021

[143] Ibid, see page 6

6.2 Canada

In June 2016, the Canadian Government passed An Act to amend the Criminal Code and to make related amendments to other Acts (medical assistance in dying) which enabled eligible Canadian adults to request medical assistance in dying. The Act was prompted by a case heard in the Supreme Court – Carter v. Canada – which ruled in February 2015 that sections of the Criminal Code that prohibited medical assistance in dying were incompatible with certain rights guaranteed by the Canadian Charter of Rights and Freedoms. The Supreme Court gave the Government until 6 June 2016 to change the law.[144]

Under the MAID (medical assistance in dying) law, doctors are permitted to prescribe lethal drugs for self-administration. They are also permitted to administer those drugs. Exactly which drugs are to be used are outlined in clinical guidelines and practices established by Canadian provinces and territories.

In 2020, the Canadian Government introduced a Bill to the House of Commons to revise the MAID law. One of its aims was to change the law so that the person seeking assistance did **not** need to have a fatal or terminal condition to be eligible for MAID. The changes received Royal Assent, and came into effect, on 17 March 2021. The Government of Canada sets out the eligibility criteria for MAID, all of which must be met, as follows:

- be eligible for health services funded by the federal government, or a province or territory (or during the applicable minimum period of residence or waiting period for eligibility). Generally, visitors to Canada are not eligible for medical assistance in dying;
- be at least 18 years old and mentally competent. This means being capable of making health care decisions for yourself;
- have a grievous and irremediable medical condition;
- make a voluntary request for MAID that is not the result of outside pressure or influence;
- give informed consent to receive MAID.[145]

A grievous and irremediable medical condition is defined as meeting all of the following criteria:

- have a serious illness, disease or disability (excluding a mental illness until March 17, 2023)[146];

[144] Government of Canada, Medical assistance in dying, 23 June 2022

[145] Government of Canada, Medical assistance in dying, 23 June 2022

[146] More information about mental health and MAID is set out on the Government of Canada website, see 'About mental illness and MAID, Medical assistance in dying. 23 June 2022

- be in an advanced state of decline that **cannot** be reversed;
- experience unbearable physical or mental suffering from your illness, disease, disability or state of decline that **cannot** be relieved under conditions that you consider acceptable.[147]

When a person makes a request for MAID, the law requires that two clinicians (physicians or nurse practitioners) come to an opinion, independently of one another, about whether the eligibility criteria are met.[148] The federal legislation does not compel or force any person, including clinicians, to provide or help to provide medical assistance in dying.

Responsibilities for determining how and where MAID is provided rest with the provincial and territorial governments, though they cannot permit actions prohibited under the federal Criminal Code.[149]

Data from the Second Annual Report on Medical Assistance in Dying in Canada 2020 indicates that the total number of medically assisted deaths reported in Canada, since the enactment of legislation, is 21,589, with MAID deaths accounting for 2.5% of all deaths in Canada in 2020. Most people receiving MAID during 2020 were reported as having cancer as their main underlying medical condition (69.1%), followed by cardiovascular conditions (13.8%), chronic respiratory conditions (11.3%) and neurological conditions (10.2%).[150]

6.3 New Zealand

Since 7 November 2021 assisted dying has been permitted in certain circumstances under the End of Life Choice Act 2019.

The New Zealand Government describes the Act as outlining the "legal framework for assisted dying", adding that it "includes controls to ensure anyone who seeks assistance to end their life is making an informed decision of their own accord".[151] Section 3 of the 2019 Act sets out its purpose as follows:

> (a) to give persons who have a terminal illness and who meet certain criteria the option of lawfully requesting medical assistance to end their lives; and

[147] Government of Canada, Medical assistance in dying, 23 June 2022

[148] Mona Gupta & Samuel Blouin, Ethical judgment in assessing requests for medical assistance in dying in Canada and Quebec: What can we learn from other jurisdictions?, Death Studies, 2021, DOI: 10.1080/07481187.2021.1926636, p5

[149] Government of Canada, Medical assistance in dying, 13 August 2021

[150] Government of Canada, Second Annual Report on Medical Assistance in Dying in Canada 2020, 30 June 2021

[151] Ministry of Health, NZ, End of Life Choice Act, last updated 27 May 2022

> (b) to establish a lawful process for assisting eligible persons who exercise that option.

The context for the Bill (and subsequent Act) is set out in the Bill's Explanatory Note. This highlighted the case of Seales v Attorney-General [2015] NZHC 1239 which, the Note states, demonstrated that:

> without a change in the law, some people in New Zealand are suffering unbearably at the end of the lives and are taking their lives earlier than they would if assisted dying were legally available to them. There was broad consensus that palliative care cannot alleviate all suffering, including suffering that is unbearable for a person.[152]

The Bill Digest contains a summary of the Bill's background and main provisions. Section 2 of the Act stipulates that its commencement must be subject to a public referendum where voters are asked "Do you support the End of Life Choice Act 2019 coming into force?".

A public referendum was held on 17 October 2020, in conjunction with the General Election. The majority of voters supported its commencement; 1,893,290 voted in favour while 979,079 voted against.[153] The Act subsequently came into force on 7 November 2021, 12 months after the official referendum result.

The New Zealand Ministry of Health website has a section explaining the key aspects of the Act, including the eligibility criteria for assisted dying and the permitted methods:

> To be eligible, a person must meet all of the following criteria:
>
> - be aged 18 years or over
> - be a citizen or permanent resident of New Zealand
> - suffer from a terminal illness that is likely to end their life within 6 months
> - be in an advanced state of irreversible decline in physical capability
> - experience unbearable suffering that cannot be relieved in a manner that the person considers tolerable
> - be competent to make an informed decision about assisted dying.[154]

[152] New Zealand legislation, End of Life Choice Bill, Explanatory note, 2017

[153] New Zealand Gazette, 2020 End of Life Choice Referendum Declaration of Official Results, 6 November 2020

[154] NZ Ministry of Health, About the End of Life Choice Act, last updated 27 May 2022

6.4 Oregon, United States

The Death with Dignity Act 1994 (DWDA, enacted in 1997) permits doctors to prescribe lethal drugs for self-administration. According to the Oregon Health Authority's website, the Act "terminally ill individuals to end their lives through the voluntary self-administration of lethal medications, expressly prescribed by a physician for that purpose.".[155] A list of frequently asked questions (FAQs), produced by the Oregon Health Authority, provides more detailed background.

The FAQs set out the criteria that an individual must fulfil to make use of the Act:

> The DWDA states that to participate, a patient must be: (1) 18 years of age or older, (2) capable of making and communicating health care decisions for him/herself, and (3) diagnosed with a terminal illness that will lead to death within six months. It is up to the attending physician to determine whether these criteria have been met.[156]

Previously, the individual had to be able to prove residency in Oregon at the time they approached a physician for a prescription. As of March 2022, the Oregon Health Authority states that it is "no longer enforcing the DWDA's residency requirement".[157]

The FAQs explain that prescriptions of lethal medications under the Act can only be made by qualified physicians who are willing to do so and sets out the procedure for obtaining a prescription:

> The patient must meet specific criteria to be able to participate in the DWDA. Then, the following steps must be fulfilled:
>
> 1. The patient must make two oral requests to the attending physician, separated by at least 15 days.
>
> 2. The patient must provide a written request to the attending physician, signed in the presence of two witnesses, at least one of whom is not related to the patient.
>
> 3. The attending physician and a consulting physician must confirm the patient's diagnosis and prognosis.
>
> 4. The attending physician and a consulting physician must determine whether the patient is capable of making and communicating health care decisions for him/herself;

[155] Oregon Health Authority, Death with Dignity Act, not dated

[156] Oregon Health Authority, Frequently Asked Questions, Oregon's Death With Dignity Act (DWDA), updated 15 April 2022

[157] As above

5. If either physician believes the patient's judgment is impaired by a psychiatric or psychological disorder (such as depression), the patient must be referred for a psychological examination;

6. The attending physician must inform the patient of feasible alternatives to the DWDA including comfort care, hospice care, and pain control;

7. The attending physician must request, but may not require, the patient to notify their next-of-kin of the prescription request.

A patient can rescind a request at any time and in any manner. The attending physician will also offer the patient an opportunity to rescind his/her request at the end of the waiting period following the initial request to participate.

Physicians must report all prescriptions for lethal medications to the Oregon Health Authority, Center for Health Statistics. Pharmacists must also be informed of the prescribed medication's ultimate use.[158]

In January 2020, changes to the DWDA entered into force, so that "patients are exempt from any waiting period that exceeds their life expectancy".[159] The FAQs note that the "Attending Physician must file a medically confirmed certification of the imminence of the patient's death with the patient's medical record if any of the statutory waiting periods are not completed."[160]

The FAQs also stress that euthanasia is illegal in Oregon (and in every other US state): the patient, not the doctor, must administer any lethal medication prescribed under the Act.

6.5 Switzerland

In Switzerland, there is very little explicit legal regulation on assisted suicide. Under Article 115 of the Swiss Criminal Code assisted suicide is only a crime if done for "selfish" reasons:

> Any person who for selfish motives incites or assists another to commit or attempt to commit suicide is, if that other person thereafter commits or attempts to commit suicide, liable to a custodial sentence not exceeding five years or to a monetary penalty.

As is the case in Oregon, doctors can prescribe lethal drugs for self-administration, but the act must be carried out by the individual themselves. According to case law, the person requesting assistance to end their life must

158 Oregon Health Authority, Frequently Asked Questions, Oregon's Death With Dignity Act (DWDA), Q: How does a patient get a prescription from a participating physician?, updated 15 April 2022

159 Oregon Health Authority, Frequently Asked Questions, Oregon's Death With Dignity Act (DWDA), updated 15 April 2022

160 As above

have decision-making capacity.[161] All forms of euthanasia are also against the law.

The British Medical Association (BMA) notes that there is "not a centrally regulated process" for assisted dying in Switzerland and that "almost all assisted suicide takes place within frameworks set up by individual non-profit groups".[162] Dignitas, headquartered in Zurich, is one such non-profit group. Between 1998 and 2020, 475 Britons ended their life at Dignitas.[163]

In October 2009, the Swiss cabinet sent two proposals into the legislative process for consultation; one for tighter regulation of assisted suicide and the other for an outright ban. The Federal Council, however, ultimately decided against introducing any specific criminal provisions targeting assisted suicide.[164]

In May 2011, Zurich-based voters took part in a referendum on assisted suicide. A proposal to ban assisted suicide was rejected by 85%, while a second proposal to limit assisted suicide to Zurich residents was rejected by 78%.[165]

There is some concern that there is no legal requirement in Switzerland for a person to be suffering from a terminal illness in order to undergo assisted suicide. For example, in 2009 The Guardian newspaper reported it had obtained a document from the Dignitas clinic showing that a number of Britons with non-terminal conditions had used it to end their lives:

> The document shows that while many had terminal illnesses such as cancer and motor neurone disease, others had non-fatal conditions which doctors say some people can live with for decades.
>
> It covers the medical history of all but one of the 115 Britons who have died with Dignitas's help since the first did so in 2002. It identifies 22 conditions in all. Thirty-six of the 114 unnamed Britons had various forms of cancer, 27 had motor neurone disease and 17 had multiple sclerosis.
>
> But two had Crohn's disease, an inflammatory bowel disease; two were tetraplegics; three had kidney disease, which can be usually treated by dialysis or a transplant; and one had rheumatoid arthritis – all conditions which doctors say are not terminal.
>
> The details have prompted deep concern among senior doctors, calls for the NHS to provide much better end-of-life care and a renewed debate over

[161] Mona Gupta & Samuel Blouin, Ethical judgment in assessing requests for medical assistance in dying in Canada and Quebec: What can we learn from other jurisdictions?, Death Studies, 2021, DOI: 10.1080/07481187.2021.1926636, p7

[162] BMA, Physician-assisted dying legislation around the world, August 2021

[163] Dignitas, Accompanied Suicides per Year and Country of Residence 1998-2020

[164] Swiss Federal Department of Justice and Police press release, Assisted suicide: strengthening the right of self-determination, 29 June 2011

[165] Switzerland: Zurich votes on 'suicide tourism' laws, BBC News, 15 May 2011

> demands for a new legal right of assisted death to render the growing British use of Dignitas unnecessary.[166]

The BMA notes that while assisted suicide is, in principle, lawful in Switzerland irrespective of the condition of the person who requests it, there are some limits. Individual organisations, for example, have their own internal policies which set out eligibility criteria.

Furthermore, doctors must comply with the Federal Act on Narcotics and Psychotropic Substances and with the Federal Act on Medicinal Products and Medical Devices. These laws require that doctors are aware of the health status of a person requesting assistance in ending their life and that they act with "due diligence".[167] In addition, the Swiss Academy of Medical Sciences published revised medico-ethical guidelines in 2018 on the "Management of dying and death".[168] Doctors involved in assisted suicide (eg as a prescriber) are expected to follow the guidelines, though they are not legally binding.[169]

[166] Suicide clinic challenged over patients who could have lived 'for decades', The Guardian, 22 June 2009

[167] Mona Gupta & Samuel Blouin, Ethical judgment in assessing requests for medical assistance in dying in Canada and Quebec: What can we learn from other jurisdictions?, Death Studies, 2021, DOI: 10.1080/07481187.2021.1926636, p7

[168] Swiss Academy of Medical Sciences, Management of Dying and Death (opens PDF), 25 November 2021.

[169] Mona Gupta & Samuel Blouin, Ethical judgment in assessing requests for medical assistance in dying in Canada and Quebec: What can we learn from other jurisdictions?, Death Studies, 2021, DOI: 10.1080/07481187.2021.1926636, p7

The House of Commons Library is a research and information service based in the UK Parliament. Our impartial analysis, statistical research and resources help MPs and their staff scrutinise legislation, develop policy, and support constituents.

Our published material is available to everyone on commonslibrary.parliament.uk.

Get our latest research delivered straight to your inbox. Subscribe at commonslibrary.parliament.uk/subscribe or scan the code below:

commonslibrary.parliament.uk

@commonslibrary