Assisted Suicide (Scotland) Bill

"A proposal for a Bill to enable a competent adult with a terminal illness or condition to request assistance to end their own life, and to decriminalise certain actions taken by others to provide such assistance."

Consultation by

Margo MacDonald MSP
Member for the Lothians

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FOREWORD

On 1 December 2010, the Bill I sponsored on assisted dying (the End of Life Assistance (Scotland) Bill) was defeated at Stage 1. However, the volume of correspondence I've received and the continuing public interest, stimulated by some high profile statements in favour of the general principal of the Bill indicates a consistent level of support for individuals suffering a terminal illness or condition for whom life becomes intolerable, to have the legal right to request help to end their life before nature decrees.

Advances in palliative care and medical practice mean that most people are likely to experience the peaceful and dignified end to their life that we all seek. Unfortunately this is not true in every case and it is their circumstances that my proposed bill is intended to assist.

For some people, the legal right to seek assistance to end life before nature decrees is irrelevant. Their faith or credo forbids such action. Although I take a different point of view I absolutely defend their right to refuse to actively participate in the processes of assisted suicide. Equally, I defend the right of a person, facing death imminently or for whom life has become intolerable, as a result of their condition, to seek help to end their life at a time of their own choosing. The proposed Bill would enable, not compel.

There was a wide-ranging and also very specific consultation on the last Bill. Many of the moral and philosophical points that emerged during debate are unchanged. I do not intend to consult further on these general issues, but would prefer to use this consultation to investigate expert and lay opinion on the specifics of the process now proposed. But should any person or group feel that their particular interest requires more consideration, they are invited to submit written responses.

Margo MacDonald MSP
January 2012

HOW THE CONSULTATION PROCESS WORKS

This consultation is being launched in connection with a draft proposal which I have lodged as the first stage in the process of introducing a Member's Bill. The process is governed by Chapter 9, Rule 9.14, of the Parliament's Standing Orders and can be found on the Parliament's website.[1]

A minimum 12 week consultation period is required, following which responses will be analysed. Thereafter, a final proposal is lodged in the Parliament along with a summary of the consultation responses. Subject to securing the required level of support for the proposal from other MSPs and political parties, and the Scottish Government not indicating that it intends to legislate in the area in question, I will then have the right to introduce a Bill which will follow the legislative process: generally, scrutiny at Stages 1 and 2 by a Parliamentary Committee and at Stage 3 by the whole Parliament.

At this stage, therefore, there is as yet not a Bill, only a draft proposal for the legislation.

The role of this consultation in the development of my Bill is to provide a range of views on the subject matter of the Bill, highlighting potential problems with the proposals, identifying equalities issues, suggesting improvements, raising any financial implications which may not previously have been obvious and, in general, to assist in ensuring that the resulting legislation is fit for purpose. The consultation process for my Bill is being supported by the Scottish Parliament's Non-Executive Bills Unit (NEBU) and will therefore comply with the Unit's good practice criteria. The Non-Executive Bill's Unit will also analyse and provide an impartial summary of the response received.

Details on how to respond to this consultation are provided at the end of the document.

Additional copies of the paper can be requested by contacting me at Room MG0.2 Scottish Parliament, Edinburgh EH99 1SP or by telephone on 0131 348 5714 or email margo.macdonald.msp@scottish.parliament.uk. Alternative formats may also be requested by contacting me and I will try to ensure that the format requested is provided. An on-line copy is available on the Scottish Parliament's website and can be found under Parliamentary Business, Bills and then on the Proposals for Members' Bills page for Session 4. The following link will take you directly to the appropriate page: http://www.scottish.parliament.uk/parliamentarybusiness/Bills/29731.aspx.

[1] Available from: http://www.scottish.parliament.uk/parliamentarybusiness/17797.aspx

AIM OF THE PROPOSED BILL

BACKGROUND

It was suggested by some commentators that the defeat of the previous Bill in December 2010 was evidence that that there was *not* general support for the introduction of some form of legislation to allow certain categories of people the right to obtain assistance in ending their lives, at a time of their choosing, if they found their lives had become intolerable.

However, from the correspondence and comments that I have received, I believe that most people are convinced of the need for such legislation and for this reason I have decided to look again at introducing a Bill into the Scottish Parliament. Those with faith based objections and some groups representing disabled people were deeply opposed to any move towards legalisation of assisted suicide. However, during and after the discussions on the last Bill, I met many individuals at odds with their church's position, and people who disagreed with what was being said on their behalf by campaigning groups.

I accept that protection needs to be afforded to those who might be perceived to be vulnerable to coercion or pressure that causes them to feel that they have become a burden to others. I have tried to improve this part of the process (i.e. the criteria that must be satisfied before a person can request assisted suicide). I have also introduced the idea of a registration process. Quite simply, this will mean that any person can be absolutely sure that they will not require to involve themselves with this new Bill. My new Bill will also be limited to assisted suicide only and will not permit voluntary euthanasia.

Around the world there is growing pressure for change in the laws governing assisted suicide. People are living longer and being kept alive longer, which is a testament to advances in medicine and palliative care. However, this has led to those with terminal illnesses or other conditions sometimes being forced to endure lives that they believe have become intolerable.

Autonomy of choice is the central tenet of my proposal. I believe that each of us has the same right to exercise choice and take responsibility for the manner of our death as we do with all other actions during our lifetime. I accept that such a decision is subjective but I remain of the opinion that only the person concerned, assuming they have full capacity, has the right to decide whether their life has become intolerable. The Committee looking at my previous Bill held a very useful session exploring these issues in some detail.[2]

[2] http://archive.scottish.parliament.uk/s3/committees/endLifeAsstBill/or-10/ela10-0502.htm

The Policy Memorandum for the End of Life Assistance (Scotland) Bill contained a range of polling evidence that pointed to enduring public support for a change in the law regarding assisted suicide[3]. There has been no evidence produced since the fall of that Bill to suggest that there has been any diminution in this support.

My office continues to receive letters, emails and phone-calls from across the country from people recounting personal and family experiences which above all convince me that I am correct in attempting a change in legislation by introducing another Bill to the Scottish Parliament.

I also very much welcome the recent report by the Commission on Assisted Dying[4] chaired by Lord Falconer. We have the same objective but the details of how we reach it differ. This is hardly surprising given that considerable debate has been ongoing in Scotland since my first proposal in 2008.

Current Law

In Scotland, as in other parts of the UK, it is not a criminal offence to commit suicide, but the law does not permit another person to encourage or assist in an act of suicide.

In England and Wales, it is an offence (subject to a penalty of up to 14 years' imprisonment) to encourage or assist a suicide or attempted suicide (section 2 of the Suicide Act 1961). Prosecution for such an offence requires the consent of the Director of Public Prosecutions (DPP). The law relating to the DPP's role has been clarified by two high-profile cases. In the case of Diane Pretty, who suffered from motor neurone disease and was unable to end her own life without assistance, the DPP refused to give an advance undertaking not to prosecute Ms Pretty's husband should he assist her in ending her own life; and the House of Lords upheld this refusal against a challenge on ECHR grounds.

The other case involved Debbie Purdy, who suffers from multiple sclerosis and wished her husband to be able to help her travel to Dignitas in Switzerland without fear of prosecution on his return. The DPP initially refused to issue any guidance on the approach that would be taken to the prosecution decision, but the House of Lords ruled that the DPP's refusal contravened ECHR. Accordingly, the DPP issued guidelines (interim version in 2009, final version 2010) aimed at clarifying the approach to cases of encouraging or assisting a suicide.[5] However, these guidelines do not have the force of law, prosecution remains at the discretion of the DPP and the guidelines have no direct bearing in Scottish cases.[6]

[3] Available from: http://www.scottish.parliament.uk/parliamentarybusiness/Bills/21272.aspx
[4] Available from: http://www.demos.co.uk/publications/thecommissiononassisteddying
[5] Available from: http://www.cps.gov.uk/publications/prosecution/assisted_suicide.html
[6] Source: Law Society of Scotland: http://www.journalonline.co.uk/News/1007039.aspx

In Scotland, someone who assists a person to commit suicide may be liable to be prosecuted for homicide (e.g. murder or culpable homicide), depending on the circumstances, although the law appears to be subject to some uncertainty, partly because of a lack of relevant case-law. The decision whether to prosecute in any particular case is one for the Crown Office and Procurator Fiscal Service (COPFS), taking account of all the circumstances of the case, including whether prosecution would be in the public interest.

Voluntary euthanasia (in which it is another person's action that causes death, with the victim's consent or agreement) is regarded as illegal both in Scotland and the rest of the UK. In Scotland, such an action is liable to be prosecuted as either murder or culpable homicide. In certain circumstances, it may be a defence to argue that the intention was to relieve suffering rather than to end life, although the lack of reported cases makes the position unclear. However, the law permits a form of non-voluntary euthanasia in very limited circumstances involving patients who have lost all capacity to make decisions about their own treatment. For example, it can be considered lawful to withdraw treatment (including nutrition and hydration) from someone in a permanent vegetative state, where it is judged to be in that person's best interests to do so.

In addition, the law already gives any individual who has capacity the right to withdraw completely from a course of treatment or other intervention, even if it is necessary to keep them alive (a form of passive, voluntary euthanasia). In extreme cases people can simply refuse nutrition and water. By any measure, either of these options offers the prospect of a bleak, and possibly painful or undignified end to someone's life.

Another option is by "advance directives", sometimes called "living wills". This is a means by which a person can express, while they have mental capacity, a wish not to receive life-prolonging treatment in defined future circumstances. For example, a person may use an advance directive to express the wish to have all treatment withdrawn should they ever be in a permanent vegetative state. I do not consider this an adequate means of protecting a person's rights in the matter of how their life ends, as such directives have no formal status in law.

In 2010, the Scottish Government issued new national guidelines regarding the circumstances in which a person could request that in the event of their having a pulmonary or cardiac failure they should not be resuscitated (Do Not Attempt Cardiopulmonary Resuscitation – DNACPR). The guidance states that;

"A patient makes a competent advance refusal

- Where CPR is not in accord with the recorded, sustained wishes of the patient who has capacity for that decision.
- Where CPR is not in accord with a valid applicable advance healthcare directive (living will). A patient's informed and competently made refusal which relates to the circumstances which have arisen should be respected."[7]

[7] Available at: http://www.scotland.gov.uk/Publications/2010/05/24095633/7

I wholly welcome this acknowledgement that a competent patient can make a positive decision about their end of life experience in the specific circumstances to which these guidelines relate. I believe that the principle they establish is very relevant to my current consultation.

It also remains the case that where a patient is under sedation, or unable to communicate their wishes regarding their treatment, the medical team can effectively make a clinical decision not to resuscitate, or stop treatments that may prolong life, the consequence of which is that the patient will die. I take no issue with this. I believe that this forms part of what I would expect to be proper palliative end of life care for a patient.

Other Jurisdictions

A very full explanation of the provisions for assisted suicide elsewhere was provided by the Scottish Parliament's Information Centre (SPICe) during the passage of my previous Bill and it would be informative for readers to re-read this document.[8]

Evidence gathered from jurisdictions that allow assisted suicide has led me to conclude that a template modelled on the systems operated by the State of Oregon and by organisations operating in Switzerland offer a combination of what I perceive to be best practice.

A recurring argument against legalising assisted suicide is that it will somehow lead to the vulnerable and the frail being coerced into ending their lives. Evidence from Oregon clearly refutes this. Assisted suicide records now stretch back 13 years and the latest State records from 2010 record that 65 persons died as a result of ingesting medication prescribed under their Death with Dignity Act (DwDA). The report notes that:

> "*As in previous years most were white (100%), well educated (42.2% had at least a baccalaureate degree) and had cancer (78.5%) … the most frequently mentioned end-of-life concerns were: loss of autonomy (93.8%) decreasing ability to participate in activities that made life enjoyable (93.8%) and loss of dignity (78.5%).*"[9]

The DwDA lays out clearly that those who wish to end their lives must do so unaided. Whilst a doctor is not precluded from being in attendance when this is done, most choose not to be. In 2010 only 10% of doctors remained present at the end.

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[8] Available at: http://www.scottish.parliament.uk/SPICeResources/Research%20briefings%20and%20fact%20sheets/SB10-51.pdf

[9] Available at: http://public.health.oregon.gov/ProviderPartnerResources/EvaluationResearch/DeathwithDignityAct/Pages/ar-index.aspx

What I take from this model is that:

- it is simple to understand
- it is patient led
- it is self-administered.

I am on record as stating that I find it appalling that people suffering intolerably in Scotland, and with a clear wish to die, must travel to Switzerland in order to obtain lawful assistance to commit suicide. Furthermore, it is neither fair nor equitable that only those with the financial means can access an assisted death.

There are several organisations operating in Switzerland with perhaps the best known internationally being Dignitas, based in Forch, near Zurich.[10] Latest data published by them show that 160 Britons have travelled there over the past 10 years for an accompanied suicide with another 765 people currently registered as members of the association.

What I take from this model is that people:

- must have pre-registered
- must undergo two examinations by a doctor
- must be able to take the medication themselves, and
- will be attended to by official assistants provided by Dignitas.

Both systems operate very well and there is no evidence that I can find of any malpractice in either jurisdiction. Evidence given by witnesses from Oregon to the End of Life Assistance (Scotland) Bill Committee strongly supported the notion that there was no evidence at all of the 'slippery slope', or that the vulnerable were in any danger of being coerced into ending their lives. In oral evidence, Professor Linda Ganzini (Oregon Health and Science University) stated:

> *"… it does not appear that illegal assisted suicides still take place. By the way, any physician found to be involved in such practices would suffer enormous negative repercussions. Physicians who go outside the law take a huge risk, given that there is a way of staying within it."*[11]

Another witness from Oregon, Deborah Whiting Jacques of the Oregon Hospice Association said:

> *"We are not talking about the disenfranchised meek who are requesting to use the Death with Dignity Act 1997 … The family is not pushing them; usually, the*

[10] Website: http://www.dignitas.ch/index.php?lang=en

[11] Scottish Parliament Official Report, End of Life Assistance (Scotland) Bill Committee, 7 December 2010, col 64: http://archive.scottish.parliament.uk/s3/committees/endLifeAsstBill/or-10/ela10-0402.htm.

family is holding back. They are happy to take care of them and are saying, "Don't do this." I do not see coercion as an issue."

End of Life Assistance (Scotland) Bill[12]

I do not intend to continue referencing the previous Bill. There is a very full record of it, its accompanying documents and the record of the deliberations of the ad hoc committee set up to scrutinise it. There are some aspects of the previous Bill that I have retained in this new proposal, for example the requirement for two separate examinations by a doctor, and the waiting time requirements between requests.

The previous Bill was robust but cumbersome and if passed, I believe that very few if any people would have been able to negotiate all its hurdles in their quest for a peaceful death. With the benefit of that experience the new proposal, whilst being equally robust aims to provide a clearer, more straightforward process.

For example:

- Removal of the requirement for a compulsory psychiatric assessment. Doctors were very clear in evidence to the previous Bill that under the provisions of the Adults with Incapacity Act (2000), they routinely assess patients for competency – nothing in the new proposal will bar them from seeking any professional opinion they require in reaching a decision on a qualifying person's request for an assisted suicide but if they are satisfied with their own findings, they will not be required to do so.

- Removal of any direct physician assistance in an assisted suicide. Whilst any qualifying person may choose to have anyone informally present, the only person required by law to be in attendance will be a person designated under the new proposal as a facilitator. (There will be no ban on qualified medical professionals who wish to train as facilitators.)

- Addition of a requirement to pre-register. Whilst I will ask some questions about the exact nature of this registration requirement, I see this being a tool for the proper management of the potential resource requirements that may arise under the operation of this Bill. Equally, I see it as being a clear delineator between those who might wish an assisted suicide and those who do not.

[12] Scottish Parliament Official Report, End of Life Assistance (Scotland) Bill Committee, 7 December 2010, col 69: http://www.scottish.parliament.uk/parliamentarybusiness/Bills/21272.aspx.

Assisted Suicide (Scotland) Bill

Main provision of the proposed bill:

- It will give any person who meets the eligibility requirements the right to request medication to end their own life.

- It will set out a straightforward process for a qualifying person to follow, involving initial registration followed by two formal requests.

- It will decriminalise the actions of those who assist a qualifying person to end their own life within the parameters set by the Bill.

- It will require a trained and "licensed facilitator" to be present when a qualifying person takes their own life.

Q1. Do you support the general aim of the proposed Bill (as outlined above)? Please indicate "yes/no/undecided" and explain the reasons for your response.

Q2. What do you see as the main practical advantages of the legislation proposed? What (if any) would be the disadvantages?

Eligibility Criteria

After consideration of all the arguments made in relation to the criteria in my previous Bill, I now propose the following eligibility requirements which, I believe, are simpler and clearer – namely that a qualifying person must:

- be capable (i.e. have the mental capacity to make an informed decision – using the definition established by the Adults with Incapacity (Scotland) Act 2001)

- be registered with a medical practice in Scotland

- be aged 16 or over

- have either a terminal illness or a terminal condition

- find their life intolerable.

In drawing up these criteria I have tried to strike a balance between providing appropriate safeguards and making access to assisted suicide as equitable as possible. I have tried to avoid being either too prescriptive or vague.

I have considered carefully the arguments advanced during discussion of the previous Bill about a minimum age of 16, but continue to believe it is the appropriate age at which to allow a person to make an informed decision of this sort. I no longer propose to extend eligibility to people who are "permanently physically incapacitated to such an extent as not to be able to live independently" if their condition is not terminal.

Q3. Do you consider that these suggested eligibility requirements are appropriate? If not, please explain which criterion or criteria you would like to see altered, in what ways, and why.

Process

My aim has always been to allow for a process which, while providing appropriate safeguards, is proportionate and not unduly cumbersome. As with the previous Bill, I continue to believe that a two-step formal request process should form the main element of the process to be followed. However, I also now propose an initial step involving pre-registration. This has been added to address an argument that is made time and again, namely that any move to legislate for assisted suicide will place a burden of fear on the vulnerable, elderly and disabled.

The existing law should already be sufficient to penalise anyone who put inappropriate pressure on a vulnerable person to end their own life. However, I would be prepared to consider including in my Bill a new offence provision if a case can be made that this would provide an additional safeguard.

I do not believe that vulnerable people would be put at greater risk by the legalisation of assisted suicide; however, I recognise that the perception of that risk may cause some people fear or anxiety – and this is something I would clearly wish to avoid.

Pre-registration

Pre-registration would consist of signing a simple declaration to the effect that the person regards assisted suicide as an option he/she may or would wish to pursue. The declaration would also state that the person is signing it freely without having been put under any inappropriate pressure to do so; and is aware that it doesn't commit them to taking any further steps towards an assisted suicide and that it can be rescinded at any time.

A copy of the signed declaration would be given to the person's general practitioner and recorded in their notes, a duplicate of which would be retained by the person.

The Declaration Document

There will be a standardised document, made widely available which a person can complete at any time. The wording of this declaration can be clarified at a later stage,

however if it is standardised, there will be no ambiguity in the minds of either the person completing the document, or the doctor receiving it, as to its intention or validity.
This declaration will state:

- the person is giving advance notice that they may, at some future point, make an application for an assisted suicide under the terms of the relevant legislation
- is making the declaration voluntarily
- understands the nature of the declaration
- is not acting under any undue influence in making the declaration.

In addition this declaration will be signed by two witnesses confirming that to the best of their knowledge and belief the requesting person:

- understands the nature of the declaration
- is making the declaration voluntarily and
- is not acting under any undue influence in making the declaration.

Anyone acting as a witness cannot be:

- a relative of the person making the declaration
- a person who would benefit from the person's estate
- a person who would have another interest in that death
- the person's doctor or any other medical person directly involved in the person's care.

With a properly completed declaration at this preliminary stage, a person who is already ill with a qualifying condition may approach their doctor to make a first formal request, or more likely, may simply lodge this document in anticipation of a possible first formal request at a future date. I liken this to an 'insurance policy', allowing people to carry on living, with the comfort of knowing that if things do get bad for them, then they have already made a clear legal declaration of their intentions.

My view is that whether the pre-registration declaration is lodged by a person who is fit and well, or by an ill person, it should be actively managed by the person who lodges it. I am happy to consult on this point, but believe that after a period of time, a person would be required to re-confirm its validity. This could be done simply with the addition of a note to that effect on their medical file.

I see two benefits arising from this. Firstly, it can serve as an enduring record of a person's wish in the matter and secondly, if a person has had such a request on their medical files for a period of time, the doctor would be able to take this into consideration when looking at all the circumstances of a request for an assisted suicide, and this may make it easier for them to reach a decision in any individual case.

Finally, without any such declaration on their medical files, those who fear the introduction of this legislation will be secure in the knowledge that without any registered declaration, they need have nothing to do with it.

Q4. What is your general view on the merits of pre-registration (as described above)? Do you have any comments on what pre-registration should consist of, and on whether it should be valid for a set period of time?

The first formal request

- With a valid registration a person may approach a doctor and make a first formal request for an assisted suicide. (If the person's own doctor has a faith-based or ethical objection to assisted suicide, they would not be obliged to consider it, but would be required to refer the person to another doctor). The request would be in writing, and be signed and dated by the requesting person. The doctor would be required to check whether the various qualifying conditions had been met, and then refer the request to a second doctor for assessment and verification. If satisfied, each doctor would complete a declaration to that effect and attach it to the request, and sign and date it.

The second formal request

- The qualifying person would be required to wait for a minimum of 14 days before making a second formal request.

- During the waiting period, alternatives may be explored and offered to the person – for example, changes in medical routine, counselling, hospice and respite care. However, the person would be under no obligation to consider any or all of these options.

- At any time from the 14th day to the 28th day after the first formal request, the person could make a second formal request. Like the first request, this would have to be in writing and be signed and dated, and would require written confirmation from two medical professionals that all the qualifying conditions continue to apply.

- As part of the second formal request, a qualifying person could be asked to sign a form that they consent to the filming of their death as part of the process of safeguards.

- If a second formal request is not made within 28 days, the process would be re-set and it would be necessary to begin the process afresh by making a further first formal request. There is no limit to the number of times that a person may do this.

Confirmation of first and second formal request

- The requirement of the previous Bill that each formal request be witnessed by two other people not connected with the process has been removed. On reflection I do not think that this step adds anything to the process and questions the integrity of the medical professionals involved.

- I also no longer consider it necessary to require a separate report by a psychiatrist. The Adults with Incapacity Act (2000) already allows GPs to make assessment of the mental capacity of patients and this is now something that they routinely do. However, nothing in the Bill would preclude them from seeking *whatever* expert help they feel they might require in order to assess a formal request.

Q5. Do you have any comment on the process proposed for the first and second formal requests (for example in terms of timings and safeguards)?

Provision of medication

- If a valid second request is made, then it would be expected that the person's doctor would write a prescription for lethal medication, for dispensing by a pharmacist. (This will not be a requirement of the Bill, and could depend on UK-wide professional bodies amending relevant guidelines)

- As with the doctors, pharmacists who object on faith-based or ethical grounds would not be required to dispense any such prescription themselves, although they would be expected to suggest other pharmacists who do not share their view. This does not represent a departure from current practice: pharmacists already have the right to refuse to dispense medication if not satisfied about its use.

Timing of assisted suicide

- I have always stressed that patient autonomy and competency is at the heart of my proposal. I am aware that as the end of life approaches, some people may lose full capacity. Therefore, as a particular requirement of this proposal, an assisted suicide would only be lawful if carried out within 28 days of the second formal request. If this time-limit is not met, the person will be required to return to the start of the formal process and make a first formal request to their doctor.

Q6. Do you think a time-limit of 28 days (or some other period) is an appropriate safeguard against any deterioration of capacity?

The role of the licensed facilitator

- Whilst the process of the first and second request is being followed, the qualifying person would be provided with a list of licensed facilitators whom they could contact. The role of the facilitator would be to:

    - collect the medication from the dispensing pharmacist and convey it to the person (and return to the pharmacist any medication not used within a specified period)
    - stay with the person throughout the remainder of the process and assist them in any way necessary to enable the person to take the medication correctly – but will be forbidden to administer the medication
    - with the appropriate consent, film the process for the legal record
    - fill in the necessary final paperwork and report the person's death to the police.

- The presence of a licensed facilitator would be a necessary condition of taking the fatal medication. This is to ensure that the process of taking the medication is followed correctly, helping to avoid situations where a person may take medication too quickly or too slowly which can cause problems.

- Licensing requirements could be set out by Scottish Minsters and organisations might apply to Ministers to train and license facilitators. The aim of the training would be to ensure that facilitators understood the nature and limits of their role, and could provide appropriate assistance if required. Organisations, likely to be established voluntary organisation in this field, providing the training would need to have processes in place to ensure that facilitators were adequately vetted before being licensed – for example by undertaking Disclosure checks on applicants for the role. These organisations would also be obliged to provide lists of trained facilitators to anyone considering an assisted suicide.

- A licensed facilitator would be excluded from assisting in any instance where he or she was a relative of the person, or would stand to gain from the person's death.

- It would be up to the person whether anyone other than the licensed facilitator (such as a relative, or the person's doctor) was also informally present at the time of death.

- The facilitator would be obliged to provide documentation and evidence to the police that the process had been properly followed. This could include any filmed record. The Bill would guarantee that, so long as the police were satisfied by the evidence provided, the facilitator would be protected from any criminal sanction.

Q7. Do you agree that the presence of a disinterested, trained facilitator should be required at the time the medication is taken? Do you have any comments on the system outlined for training and licensing facilitators?

Q8. What sort of documentation and evidence is likely to be required? In particular, how important is it that the process is filmed?

The Prescription

There is no evidence from either Oregon or Switzerland that a lethal prescription has been wrongly used or taken by anyone other than for whom it was intended. However, it is the case that there will be in circulation prescriptions for lethal doses of medication. I believe that having the licensed facilitator collect the medication and convey it to the qualifying person provides an adequate record of the process. I would also envisage facilitators being trained in the importance of returning any unused medication to a pharmacist.

Financial implications of the Bill

There will be some costs to the Scottish Government in producing literature and guidance both for the public and for medical professionals. I do not expect that the training of facilitators will be carried out by the Scottish Government; this task will be undertaken by organisations who may apply to be recognised as providing such courses.

However, there will be a cost in monitoring the courses and the quality of the facilitators who go through this training. I do not expect that Scottish Government to hold any central database of trained facilitators but will be expected to direct any queries about suitably qualified individuals to whichever organisations have them.

Q9. What is your assessment of the likely financial implications of the proposed Bill to your organisation? Do you consider that any other financial implications could arise?

Equalities Issues

An initial Equalities Impact Assessment has been undertaken and has informed some of the thinking and questions posed in this consultation. For example, the impact on age as a qualifying criterion and the removal of eligibility of those people who live with a non-progressive disability.

Q10. Is the proposed Bill likely to have any substantial positive or negative implications for equality? If it is likely to have a substantial negative implication, how might this be minimised or avoided?

QUESTIONS

Q1. Do you support the general aim of the proposed Bill (as outlined above)? Please indicate "yes/no/undecided" and explain the reasons for your response.

Q2. What do you see as the main practical advantages of the legislation proposed? What (if any) would be the disadvantages?

Q3. Do you consider that these suggested eligibility requirements are appropriate? If not, please explain which criterion or criteria you would like to see altered, in what ways, and why.

Q4. What is your general view on the merits of pre-registration (as described above)? Do you have any comments on what pre-registration should consist of, and on whether it should be valid for a set period of time?

Q5. Do you have any comment on the process proposed for the first and second formal requests (for example in terms of timings and safeguards)?

Q6. Do you think a time-limit of 28 days (or some other period) is an appropriate safeguard against any deterioration of capacity?

Q7. Do you agree that the presence of a disinterested, trained facilitator should be required at the time the medication is taken? Do you have any comments on the system outlined for training and licensing facilitators?

Q8. What sort of documentation and evidence is likely to be required? In particular, how important is it that the process is filmed?

Q9. What is your assessment of the likely financial implications of the proposed Bill to your organisation? Do you consider that any other financial implications could arise?

Q10. Is the proposed Bill likely to have any substantial positive or negative implications for equality? If it is likely to have a substantial negative implication, how might this be minimised or avoided?

HOW TO RESPOND TO THIS CONSULTATION

You are invited to respond to this consultation by answering the questions in the consultation and by adding any other comments that you consider appropriate.

Responses should be submitted by **Monday 30 April 2012** and sent to:

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Please make it clear whether you are responding as an individual or on behalf of an organisation.

To help inform debate on the matters covered by this consultation and in the interests of openness, please be aware that the normal practice is to make responses public – by posting them on my website www.margoforlothian.com and in hard copy in the Scottish Parliament's Information Centre (SPICe).

Therefore, if you wish your response or any part of it, to be treated as **anonymous,** please explain the reasons for this. If I accept the reasons, I will publish it as "anonymous response". If I do not accept the reasons, I will offer the option of withdrawing it or submitting it on the normal attributable basis. If your response is accepted as anonymous, it is your responsibility to ensure that the content does not allow you to be identified.

If you wish your response or any part of it, to be treated as **confidential,** please state this clearly and give reasons. If I accept the reasons, I will not publish it (or publish only the non-confidential parts). However, I am obliged to provide a (full) copy of the response to the Parliament's Non-Executive Bills Unit when lodging my final proposal. As the Parliament is subject to the Freedom of Information (Scotland) Act (FOISA), it is possible that requests may be made to see your response (or the confidential parts of it) and the Parliament may be legally obliged to release that information. Further details of the FOISA are provided below.

NEBU may be responsible for summarising and analysing the results of this consultation and will normally aim to reflect the general content of any confidential response in that summary, but in such a way as to preserve the confidentiality involved. You should also note that members of the committee which considers the proposal and

subsequent Bill may have access to the full text of your response even if it has not been published in full.

There are a few situations where not all responses will be published. This may be for practical reasons: for example, where the number of submissions we receive does not make this possible or where a large number of submissions are in very similar terms. In the latter case, only a list of the names of people and one response who have submitted such responses would normally be published.

In addition, there may be a few situations where I may not choose to publish your evidence or have to edit it before publication for legal reasons. This will include any submission which contains defamatory statements or material. If I think your response potentially contains such material, usually, this will be returned to you with an invitation to substantiate the comments or remove them. In these circumstances, if the response is returned to me and it still contains material which I consider may be defamatory, it may not be considered and it may have to be destroyed.

Data Protection Act 1998
As an MSP, I must comply with the requirements of the Data Protection Act 1998 which places certain obligations on me when I process personal data. Normally I will publish all the information you provide (including your name) in line with Parliamentary practice unless you indicate otherwise. However, I will not publish your signature or personal contact information (including, for example, your home telephone number and home address details, or any other information which could identify you and be defined as personal data).

I may also edit any information which I think could identify any third parties unless that person has provided consent for me to publish it. If you specifically wish me to publish information involving third parties you must obtain their consent first and this should be included in writing with your submission.

If you consider that your response may raise any other issues concerning the Data Protection Act and wish to discuss this further, please contact me before you submit your response**.**

Further information about the Data Protection Act can be found at: www.ico.gov.uk.

Freedom of Information (Scotland) Act 2002
As indicated above, once your response is received by NEBU or is placed in the Scottish Parliament Information Centre (SPICe) or is made available to committees, it is considered to be held by the Parliament and is subject to the requirements of the Freedom of Information (Scotland) Act 2002 (FOI(S)A). So if the information you send me is requested by third parties the Parliament is obliged to consider the request and provide the information unless the information falls within one of the exemptions set out in the Act, even if I have agreed to treat all or part of the information in confidence and

to publish it anonymously. I cannot therefore guarantee that any other information you send me will not be made public should it be requested under FOI.

Further information about FOI can be found at: **www.itspublicknowledge.info.**