



THE UNIVERSITY of EDINBURGH
Edinburgh Law School

The Assisted Suicide Bill: Does Scotland Need to Legislate?

Symposium overview

In response to the success of the public debate held by Sparkle and Dark and the Mason Institute at the University of Edinburgh on 'Assisted Dying: What are the Issues and Options for Scotland?' in August 2013, the Mason Institute partnered with Ampersand Advocates to host a Symposium for practitioners on the Assisted Suicide Bill Scotland on 24 April 2014. The Symposium focused on whether Scotland needs to legislate for assisted suicide. It involved specific consideration of the Assisted Suicide (Scotland) Bill introduced by Margo MacDonald MSP on 13 November 2013, and now carried forward by Patrick Harvie MSP after Margo Macdonald's recent and untimely death. The Symposium was attended by practitioners that might be called upon to implement the proposed law, including, GPs, palliative care physicians and specialists, medical lawyers, staff and representatives of the Scottish Parliament, advocates, academics, and representatives of advocacy and religious groups.

The event was organised according to four main topic areas based on the **principles, practicalities, palliative care and policing aspects** of the proposed Bill. The Symposium was opened by a keynote address from Jackson Carlaw MSP, the Conservative supporter of the Bill. His keynote was followed by four panel sessions, each chaired by a designated representative of the topic area, with two to three additional panel participants who spoke to the panel subject. At the end of each session, the panel was open to questions from the audience to promote an interactive and discursive event for the practitioners in attendance.

Key themes and discussion points

*The Symposium covered the **principles, practicalities, palliative care and policing aspects** underlying the proposed Bill.*

Principles

The first morning session revolved around the **principles** underlying the Assisted Suicide (Scotland) Bill, considering:

- The right to life versus the duty to live;

- The right to choice as a function of the ‘respect agenda’ during end of life decision-making (i.e. the right to choose assisted suicide or to choose the palliative care route);
- The duty to do no harm and the impact legislating for assisted suicide would have on the role of GPs/physicians and other health care professionals;
- Dignity as a related aspect of individual autonomy and the sanctity of human life;
- Dignity as an inalienable feature of human life and how legislating for assisted suicide might impact upon this inherent human trait;
- The role of spirituality, morality and human relations in end of life decision-making; and
- The question of whether to reject or embrace the proposed Bill on matters of differing principles or differing perspectives on core principles of autonomy, sanctity of human life, beneficence, or other grounds.

The morning session on **principles** was finished with a vote from the audience on whether the Assisted Suicide (Scotland) Bill *should* be enacted by Scottish Parliament – voting with a yes, no, or undecided. 37% were in favour of enacting the Bill, whilst 42% were opposed, and 21% were undecided.

Practicalities

The **practicalities** panel session featured discussion from the legal perspective on the practicalities of implementing the provisions of the Bill if it were to be passed in its current form. The panel raised practical issues found in the current iteration of the Bill including:

- Issues with timescales proposed in the Bill (time limits imposed) and how this might ‘force’ or unduly coerce vulnerable individuals to make decisions before it is in their interests to do so;
- The use of new concepts as opposed to existing legal definitions e.g. the inclusion of a new definition of capacity and not the definition of “incapable” in section 1(6) of the Adults with Incapacity (Scotland) Act 2000;
- Provisions for individuals to change their minds at different stages in the process;
- How active assistance is intended to be or would legally be permitted to be;
- Whether enacting assisted suicide legislation in Scotland would inevitably lead to the acceptance of other life-ending conduct other than assisted suicide, and/or whether this would widen the substantive criteria over time;
- Consideration of other jurisdictions’ experiences in enacting assisted suicide legislation;
- Complexities over how liability is removed for those legally permitted to assist in the suicide, and how procedural errors may impact liability for such individuals;
- Whether a sufficient number of doctors will want to participate;
- The standards of care used in assessing facilitator actions and the role of ‘good faith’;
- The crucial importance of keeping any legislation under regular review, particular to ensure safeguards remained effective, and, where appropriate, where politically expedient decisions about eligibility might be revisited in light of experience.

Palliative Care

The **palliative care** panel session featured discussion with a representative from a palliative care advocacy group (Scottish Partnership for Palliative Care), a palliative care physician and a practising surgeon who was one of eleven medical expert signatories in a letter to the Herald in support of the Assisted Suicide (Scotland) Bill. This panel considered:

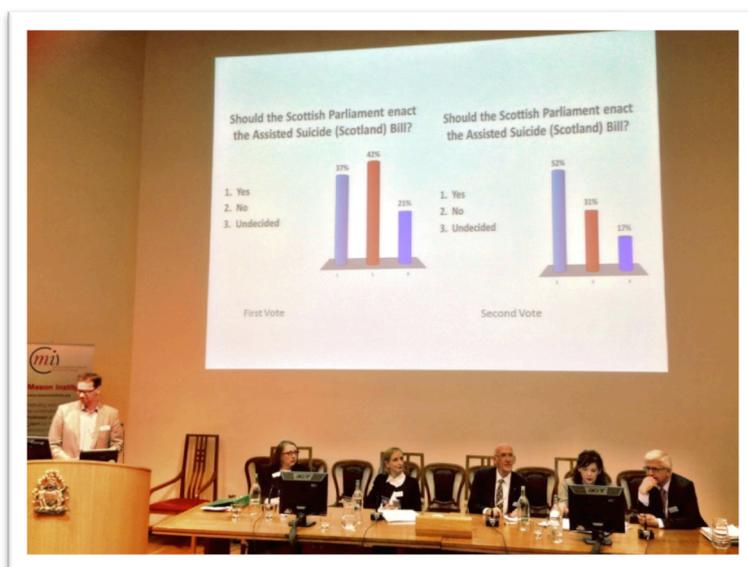
- Challenges in facing death, dying and bereavement, especially in ensuring that individuals' preferences over death and dying *are* taken into account;
- The need to facilitate open discussion about end of life issues;
- Common misconceptions about palliative care;
- The ways in which Scotland can meet new challenges in end of life decision-making;
- A doctor's responsible discharge of professionalism and how assisted suicide legislation can impact upon this;
- Potential factors that might drive decisions for assisted suicide legislation;
- What palliative care does and does not offer (not inappropriately extending life, whilst not hastening death);
- The potential risks posed to patient/palliative care if the proposed legislation were enacted, including risks to the vulnerable from being pressured to choose assisted suicide and the potential slippery slope that might in future widen the circumstances in which assisted suicide is permissible;
- Palliative care as *complementary* to assisted suicide legislation;
- Assisted suicide as potentially something which offers solace to 'symptoms' that cannot be palliated; and
- The perceived lack of evidence of the 'slippery slope' when enacting assisted suicide legislation.

Policing

The final panel session of the Symposium featured discussion on the **policing** aspects of the Assisted Suicide (Scotland) Bill, and specifically the mechanisms required to ensure effective and responsible enforcement of the Bill. This included detailed discussion regarding the perceived sufficiency or insufficiency of particular aspects of the Bill including:

- The lack of protection against undue influence on the patient's decision;
- Residency requirements and the potential risk for forum shopping;
- How 'conditions' will be assessed for inclusion under the remit of the Bill, in light of the subjectivity of the issue, and in particular the patient's perceptions about his or her own circumstances;
- Independence of the second medical practitioner involved;
- The need for a review and reporting mechanism and general oversight authority;
- The point at which assistance will turn into direct action and the impact on liability;
- State resources to properly enforce and monitor;
- The need for guidance for public prosecutors and also publicly-available guidance on prosecution policies and considerations;
- The need for introduction of protocols for police and Crown Office, with engagement of the medical professions, extending to such basic points as certification, etc.;
- Determining which public authorities will work within a monitoring and enforcement capacity;
- Implications for death certification, and
- Generally, how compliance with the Bill will be assessed.

The Symposium was closed by a re-visitation of the morning vote on whether the audience were in favour of, against or undecided on the enactment of the proposed Assisted Suicide (Scotland) Bill.



Those in favour of the legislation increased from the morning vote of 37% to **52%** in the afternoon; and interestingly 42% changed to 31% undecided, with a 4% decrease in those against the legislation (17% in the final afternoon vote versus 21% in the morning session).

It is important to note, however, that these numbers might have been slightly skewed due to fewer people voting in the morning than afternoon sessions and a small change in attendees. Notwithstanding, this could indicate a general decrease in those undecided and nominal increase in favour of the legislation, with those opposed to the legislation remaining largely the same.

Feedback and the Future

The Symposium was well attended, and out of fifty-five registered attendees, only one was unable to attend.

We asked attendees to respond to a short survey on the Symposium. As of 23 May, seven attendees responded. The survey was designed to gauge the overall impact and relevance of the event for the practitioners that attended, in order to inform, develop and shape future events. As the purpose of the Symposium was to facilitate thought and discussion on issues relating to the potential enactment of the Assisted Suicide (Scotland) Bill, it was encouraging to see that a majority of those that responded found the event helpful in clarifying questions they had regarding the Bill, and that the information gleaned from the event would in fact be used in their work and/or thinking on the issues. Also encouraging was that almost all respondents would discuss the issues raised at the Symposium with family, friends, and/or colleagues – as this was a key aim of holding the event (to foster further discussion of the issues).

Areas for improvement indicated that it would have been beneficial if more time for general discussion from the floor was allowed. Due to the range of issues discussed and the emotive nature of the topic, it was difficult to secure a more significant amount of time for questions and answers. A more focused event i.e. just on the principles or practicalities of the Bill, might have allowed for more time for general discussion with the attendees. Recognising the emotive nature of the topic and the wide range of views, it was encouraging that both

attendees and panels represented a fairly balanced cross-section of the viewpoints on the topic – undecided, for and against.

It was indicated that the Symposium would have benefitted from participation members of Parliament and/or their staff that were directly involved with drafting of the Bill – however, due to the untimely passing of Margo Macdonald MSP and overall scheduling commitments of those involved in the Bill's drafting – it was not possible to incorporate this. Further, Jackson Carlaw MSP, the Conservative MSP supporter of the bill, provided an insightful keynote address on the Bill which served as an important backdrop on the contextual background and principles underlying the Bill, whilst highlighting areas that required additional development prior to assisted suicide legislation passing in Scottish Parliament.

Finally, it emerged that there may have been confusion regarding the absence of a specific aspect of the proposed Bill – the absence of a conscientious objection clause for Scottish Medical Practitioners. It has been iterated that within the Assisted Suicide (Scotland) Bill no clause can seem to, or in fact, direct medical services, as this power is reserved to Westminster. Rather, a conscientious opt-out clause would be appropriately placed in professional guidance of the relevant professional bodies instead, if the Bill were to be passed.

Overall, both from the minority of those that responded to the survey and those spoken to after and during the Symposium, the event was successful in presenting thought provoking perspectives on those issues that are raised by the proposed Bill. This achieved the key purpose behind the Symposium, and ensured relevance to those practitioners that might be asked to implement assisted suicide legislation in future.

With thanks

The Mason Institute would like to thank Ampersand Advocates for supporting this event which is leading to other opportunities and consultation on the issue of assisted suicide in Scotland. The Mason Institute is currently drafting a response to the public consultation on the Assisted Suicide (Scotland) Bill.

Finally, the Mason Institute would like to take this opportunity to thank each of the panel chairs and individual panellists for their participation in the Symposium, and the attendees, for contributing their valuable thoughts and discussion during the event.

Leslie Stevens 23 May 2014