

Introduction

The Royal College of Nursing (RCN) is the world's largest professional organisation and trade union for nursing staff, with members in the NHS, independent and voluntary sectors. RCN Scotland promotes patient and nursing interests by campaigning on issues that affect our members, shaping national health policies, representing members on practice and employment issues and providing members with learning and development opportunities. With over 49,500 members in Scotland, we are the voice of nursing.

Background

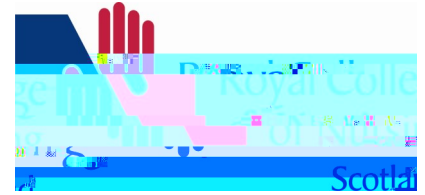
Liam McArthur MSP introduced this Member's Bill which, if passed, would allow terminally ill adults in Scotland, who are eligible, to lawfully request, and be provided with, assistance by health professionals to end their own life.

Since 2009, the RCN has had a neutral position on whether the law on assisted dying should be changed. This rightly reflects our members' differing views on the issue and means we neither support nor oppose attempts to change the law.

However, a neutral position does not mean that we do not take a view on the impact introducing assisted dying would have on our members. In particular, we will seek to ensure there are sufficient protections for members who may wish to engage in assisting a death under the terms of the legislation, and to protect those members who may wish to refuse to participate, both directly and indirectly, under the terms of the legislation.

Further detail on the RCN's position on Assisted Dying can be found [on our website](#).

Health, Social Care and Sport Committee's call for
evidence on the Assisted Dying for Terminally Ill
Adults (Scotland) Bill



Consultation questions and RCN Scotland responses

Question 1 – Overarching question

The purpose of the Assisted Dying for Terminally Ill Adults (Scotland) Bill is to introduce a lawful form of assisted dying for people over the age of 16 with a terminal illness. Which of the following best reflects your views on the Bill?

- Fully support
- Partially support
- Neutral/Don't know
- Partially oppose
- Strongly oppose

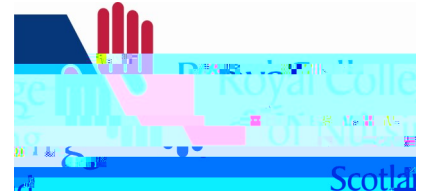
RCN Scotland response:

The RCN is committed to supporting its members to provide high quality end of life care, ensuring a comfortable and dignified death. We recognise that the assisted dying debate is complex and, since 2009, the RCN has held a neutral position on whether the law on assisted dying should be changed. This rightly reflects our members' differing views on the issue and means we neither support nor oppose attempts to change the law.

However, the Bill, as proposed, could see registered nurses play a significant role in the assisted dying process in Scotland. The RCN has a responsibility to engage in the process to ensure that, if passed, the Bill contains the necessary safeguards to protect the interests of both members who may wish to engage in assisting a death under the terms of the legislation, and members who may not wish to participate. Notwithstanding our neutral position on whether assisted dying should be legalised, we have significant concerns with the Bill as currently drafted which we detail below.

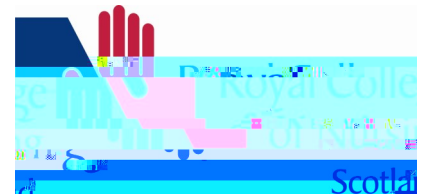
As well as protecting our individual members, we are also mindful of the need to ensure that, if the Bill passes, it results in a high-quality service, which is accessible in all parts of Scotland, and which does not have a negative resourcing impact on existing, and often struggling, nursing services. Comments on these issues should not be interpreted as support for assisted dying; rather they are about ensuring that, if the Bill passes, services are sustainable and safe for patients and for staff.

All our activity to comment on, and influence, the Bill will adhere to the RCN position of neutrality on assisted dying. Our comments will focus on the safeguards needed to protect our members and nursing practice and, as such, we do not answer all the questions in this survey. Where we do not comment on a specific provision in the Bill, this is because it is not an issue that impacts on nursing practice and should not be interpreted as support for those provisions.



RCN Scotland response:

Question –The Assisted Dying procedure and procedural safeguards



family members would pose a serious risk. It would be possible for someone other than the terminally ill adult to administer the substance, or to ingest the substance themselves. In its report (November 2022) the Bill's Medical Advisory Group was clear that the healthcare practitioner should remain with the patient until they have self-ingested the substance for reasons of accountability, safety and support.

Throughout the process, it is unclear who has legal responsibility for the assisted death and this needs to be clarified on the face of the Bill.

The cRMP presumably has a role over the whole process whether or not they are present at the time of death, but the legal responsibility of the AuHP needs to be clearly defined on the face of the Bill and in statutory guidance.

Putting a substance into a container to hand to the individual is the same in law as administering a medicine and so, in this case, a registered nurse would be legally responsible for the approved substance. This will create legal and regulatory issues if, for example, something happens to the substance. It also creates issues if the approved substance interacts with other medication and makes death less comfortable (this is further complicated by the fact that the approved substance's ingredients may not be known). We would expect these issues to be addressed in the legislation for the protection of our members.

Question 4 – Method of dying

The Bill authorises a medical practitioner or authorised health professional to provide an eligible adult who meets certain conditions with a substance with which the adult can end their own life.

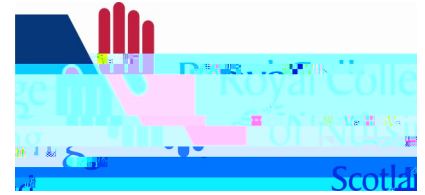
Which of the following most closely matches your opinion on this aspect of the Bill?

It should remain unlawful to supply people with a substance for the purpose of ending their own life.

It should become lawful to supply people with a substance for the purpose of ending their own life, as proposed in the Bill

It should become lawful to supply people with a substance for the purpose of ending their own life, as proposed in the Bill, and it should also be possible for someone else to administer the substance to the adult, where the adult is unable to self-administer.

[Other – please provide further detail](#)

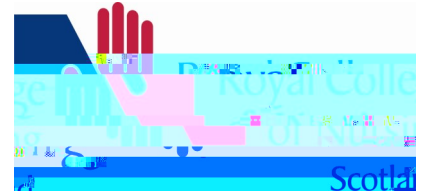


Given the RCN's neutral position on assisted dying, we do not have a position on whether or not it should be lawful to supply someone with a substance for the purpose of ending their life.

We are clear that it must be set out, with absolute clarity, what "provide a terminally ill adult with an approved substance" means in practice as set out within section 15(1). This is vital given the risk of prosecution if health professionals do not remain within the legal framework established by the Bill. For example, does "provide a terminally ill adult with an approved substance" mean setting a cup containing the substance down on a table next to the individual or would it be permitted to place a cup within an individual's hand. Our legal advice is extremely clear that if an individual struggled to take the substance, and a nurse was to help them lift the cup to their lips, the nurse could be prosecuted for murder.

Given the importance of these issues, and the risk of prosecution, explicit guidance is needed to define where the line lies, in order to protect health professionals as well as to safeguard people accessing an assisted death. This must include a checklist of what can be done lawfully and what is unlawful. This is particularly important given that there is a possibility of pressure being put on cRMPs or AuHPs to provide assistance beyond what is permitted by the Bill, for example where an individual's condition has deteriorated to a point where they are unable to self-administer the substance.

We also note that at no point in the process, prior to the approved substance being provided, is there any assessment of whether an individual can self-administer the approved substance. This could raise expectations, as it may be that an individual goes through the assessments and first and second declarations despite being unable to self-administer the approved substance, for example due to inability or difficultly swallowing. We believe that this should form part of the assessment process required by section 6 and there also needs to be consideration of any potential impact where the individual's stance. This could



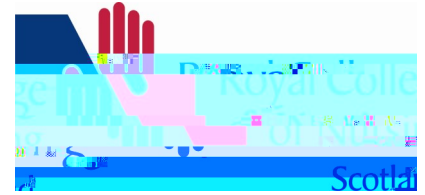
We are concerned with the way this question is framed. It asks how the Bill may affect the medical profession and then provides options that don't relate to how the Bill may affect the medical profession. In addition, it does not ask how the Bill may affect the nursing profession, despite the fact that registered nurses would take on the role of AuHP. Our positions on these issues are detailed below.

There is a need for greater protection for health professionals within the Bill. If assisted dying is legalised in Scotland, the legislation must give registered nurses a genuine choice about whether, and if so, to what extent, they are willing to participate in activities related to assisted dying.

Section 18 of the Bill allows those with a conscientious objection to opt-out of being involved. We recognise that the conscientious objection clause, similar to that found in legislation on abortion and assisted reproduction, benefits from established case law providing interpretation and guidance on how it is to be applied. However, within the context of assisted dying, our position is that the inclusion of a conscientious objection clause does not offer sufficient protection, and that staff should be able to object to being involved based on conscience or any other reason. We believe this general right to object is required to ensure that health professionals have a genuine choice about whether or not they are involved. We are also calling for an opt-in provision as a further safeguard, which we discuss further below.

There is also some question about whether the conscientious objection clause relates to reserved matters and we urge the Committee to seek clarity on this issue. Our understanding is that section 22 of the Bill means that, if it is deter

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financial memorandum sets out, but there are important benefits for individuals seeking an assisted death and for staff:

Nurses who do not wish to participate in assisted dying would not face any pressure to do so.

All staff who opt-in to the service would receive high-quality, specialist training and would gain valuable experience delivering the service.

Staff could be better provided with specialist wellbeing support and access to a peer support network.

Patients would have a clear pathway for accessing the service and would be less likely to experience staff exercising a conscientious objection.

Patient choice about the timing and place of an assisted death could be better accommodated by a dedicated service.

The establishment of a dedicated service would enable staff to travel as and when required to support the delivery of assisted dying in rural and remote areas.

Existing services are under resourced and struggling and this cannot simply be added to existing workloads.

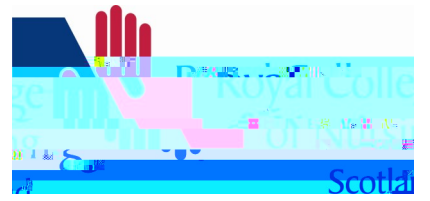
We do not support an approach where assisted dying would be provided by existing teams, for example district nurses. District nursing is under huge pressure and teams are dealing with large caseloads and needing to make tough decisions every day to prioritise who receives a visit and who does not. Providing someone with assistance to end their life requires time in order to provide them, and their families, with the necessary care, support and respect. Expecting existing teams to take on this role, in addition to existing workloads, would not be safe or sustainable.

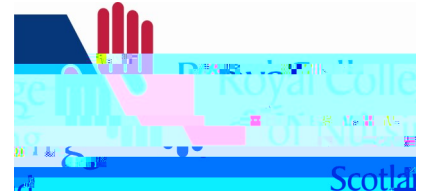
While we do not expect the Bill to set out all the details on exactly how assisted dying should be implemented, it should make clear that staff will opt-in and that a separate service will be established.

We would also like to see the Bill amended to provide statutory protection from discrimination for registered nurses so that it is unlawful to discriminate against them based on their decision to either participate or not participate in assisted dying.

Assisted dying is an extremely emotive issue, with strongly held views on either side of the debate, and health care staff should not be concerned about whether their decision to participate, or not participate, will have an impact on their professional or personal life. This provision may provide particular reassurance for staff who work in rural areas or in small communities.

We also support the BMA's calls for the Bill to include provision for safe access zones that could be established in future, should the need arise, to protect staff and patients from harassment.





The reporting and review requirements set out in the Bill are broadly appropriate

The reporting and review requirements seem excessive and would place an undue burden on frontline services

Other – please provide further detail

RCN Scotland response:

In response to question 3 above, we are clear that the Bill needs amended to ensure that once the cRMP or AuHP has provided the adult with the approved substance, they do not leave the room. This is because they need to witness that the adult has taken the substance themselves and record the time the substance is taken and the time of death.

We would also like to see employers record the number of conscientious objections that are made to ensure transparency about the impact on the workforce.

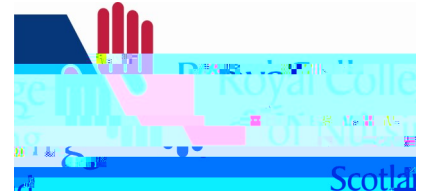
We have called for the Bill to make clear that a separate standalone service is to be established, if assisted dying is legalised, as we believe this model would have many important benefits. However, if assisted dying were to be delivered via existing patient pathways, we believe data should be collected on what services and teams are involved in the process to understand how assisted dying is being delivered across the country.

Question 8 – Do you have any other comments in relation to the Bill?

Notwithstanding our neutral position, RCN Scotland has significant concerns with the Bill as currently drafted. Major issues include: the need to make clear that a standalone service (s) will be established that staff will opt-in to work within; the need for greater safeguards for staff, including having two AuHPs attend; the need for AuHPs to be in the room at the time of taking the approved substance; and clarity around legal responsibility at all stages of the process.

If MSPs back the general principles of the Bill, then we would expect these issues to be addressed at stage 2.

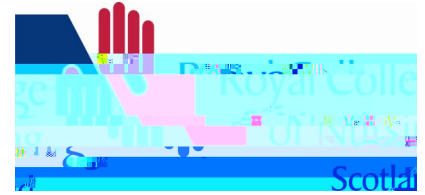
In addition, we also want to challenge again the assumption in the financial memorandum that expects these services to be provided by existing, over-stretched staff, under existing budgets. Health and care services are in crisis, under-



Consultation questions and RCN Scotland responses

Question 1–Did you take part in any consultation exercise preceding the Bill and, if so, did you comment on the financial assumptions made?

Yes, we submitted a short response to the 2021 consultation on the proposed Bill which sets out the RCN’s neutral position on whether the law on assisted dying should be changed. This neutral position reflects our members’ differing views on the issue and means we neither support nor oppose attempts to change the law. Our response did not comment on financial issues.



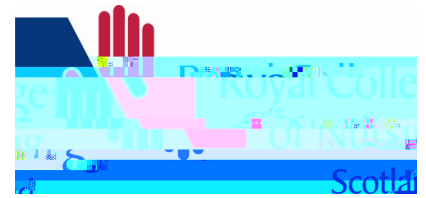
Care (Staffing) (Scotland) Act places a duty on NHS boards to ensure staff are suitably trained.

As the nursing regulator, part of the NMC's role involves setting education standards. However, it is not its role to provide training for nurses who will be involved in supporting the assisted dying process.

Similarly, this is not the responsibility of the RCN. We have provided guidance for members "When someone asks for your assistance to die" which has been developed to support the nursing workforce if they are asked about assisted dying or for their help to hasten death. This RCN guidance will be updated in response to legislative developments across the UK and Crown Dependencies to ensure our members are well supported; this is something we are already looking at. However, it is not the responsibility of the RCN to provide training to nurses on assisted dying if this Bill passes, unless we are commissioned to do so.

The Bill needs to make clear that this responsibility lies with the service provider and employer and that appropriate, specialist training must be provided to all nurses participating in assisted dying. Registered nurses will be asked to make complex assessments around capacity and supervise the death of an individual. For younger adults, or for older people with cognitive impairment, these decisions are complex, and it is therefore a highly skilled job.

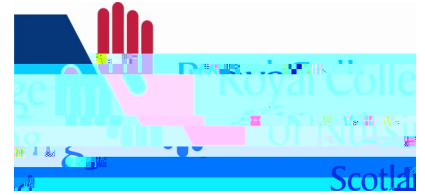
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established. Staff would opt-in to work within this service and would receive specialist training and peer support. We believe this is the best way to safeguard the rights of our members and to provide a high-quality, consistent service across Scotland.

Question 7 – Does the FM accurately reflect the margins of uncertainty associated with the Bill's estimated costs and with the timescales over which they would be expected to arise?

RCN Scotland response:

Please see answer to question 5.

