

## **LEGISLATIVE CONSENT MEMORANDUM**

### **TERMINALLY ILL ADULTS (END OF LIFE) BILL**

1. This Legislative Consent Memorandum (“LCM”) is laid under Standing Order (“SO”) 29.2. SO29 prescribes that a legislative consent memorandum must be laid, and a legislative consent motion may be tabled, before Senedd Cymru in relation to any UK Private Member’s Bill under consideration in the UK Parliament which makes provision in relation to Wales that has regards to devolved matters.
2. The Terminally Ill Adults (End of Life) Bill (“the Bill”) was introduced in the House of Commons on 16 October 2024. The Bill, as amended in Public Bill Committee, can be found at: <https://publications.parliament.uk/pa/bills/cbill/59-01/0212/240212.pdf>

#### **Policy Objective(s)**

3. The policy objective relates to choice at the end of life, to allow adults who are terminally ill to request to be provided with assistance to end their own life. The UK Government remains neutral on the issue citing the long-standing convention for issues of conscience. Guidance was issued to UK Government ministers on 3 October 2024 stating that ‘The UK Government will therefore remain neutral on the passage of the Bill and on the matter of assisted dying.

#### **Summary of the Bill**

4. The Bill is a private member’s bill sponsored by Kim Leadbeater, the MP for Spen Valley.
5. It seeks to allow adults who are terminally ill, subject to safeguards and protections, to request and be provided with assistance to end their own life.
6. Amongst its provisions, the Bill:
  - a. sets out the circumstances in which assistance can be provided to a person to end their own life. The person must be terminally ill (see 6b below), have the necessary capacity to make the decision to end their own life (see 6c below), be aged 18 or over, be ordinarily resident in England and Wales and have been so for at least 12 months, and be registered as a patient with a GP practice in England or Wales.
  - b. defines when a person is ‘terminally ill’ as having an inevitably progressive illness or disease that cannot be reversed by treatment, and the person must also be reasonably expected to die within 6 months as a consequence.

- c. makes clear that the test of whether a person has capacity to make a decision and end their own life is to be determined in accordance with the Mental Capacity Act 2005.
- d. confirms that there is to be a Voluntary Assisted Dying Commissioner appointed by the Prime Minister who must have held or have held office as a judge of the Supreme court, the Court of Appeal, or the High Court. The Commissioner's principal functions will be to receive documents made under the Act, make appointments to a list of persons eligible to sit on Assisted Dying Review Panels, referring cases to review panels, determining applications for reconsideration of panel decisions and monitoring the operation of this Act and reporting annually on it.
- e. makes clear that no registered medical practitioner is under any duty to raise the subject of the provision of assistance in accordance with this Act with a person. But that does not prevent a registered medical practitioner exercising their professional judgement to decide if, and when it is appropriate to discuss the matter with a patient.
- f. requires the person who wishes to be provided with assistance to end their own life to make a declaration to that effect. The person must sign the declaration, and it must be witnessed by the co-ordinating doctor and another person both of whom must see the declaration being signed.
- g. confirms that following the declaration, the coordinating doctor who witnessed the first declaration must carry out a first assessment of the person making the declaration.
- h. necessitates a second assessment by an independent doctor, 7 days after the first assessment to allow for a period of reflection. If the independent doctor is satisfied that all the requirements are met, they must make a report about the assessment.
- i. Requires the commissioner to refer the person's case to an Assisted Dying Review Panel for determination of the person's eligibility to be provided with assistance subject to all relevant assessments and reports being received.
- j. requires the relevant Chief Medical Officer for Wales ("CMO") to prepare and publish guidance relating to the operation of this Act. The CMO must consult such persons they consider appropriate before preparing guidance, which must include persons with learning disabilities. The CMO must, when preparing guidance, have regard to the need to provide practical and accessible information, advice and guidance to specified persons.
- k. permits the Welsh Ministers by regulations to make provision about voluntary assisted dying services in Wales, including provision securing that arrangements are made for the provision of such services.

- l. requires the Commissioner to monitor the operation of the Act, investigate, and report to an appropriate national authority on any matter connected with the operation of the Act which the appropriate national authority refers to the Commissioner, and submit an annual report to each appropriate national authority on the operation of the Act. In preparing the report, the Commissioner must consult with (among others) the Chief Medical Officer for Wales.
- m. requires any service, report, declaration or certificate of eligibility provided under the Act to a person seeking assistance to end their own life must be in the persons first language, if that language is English or Welsh or their preferred language of English or Welsh.
- n. requires the secretary of state to make regulations specifying drugs or other substances for the purposes of the Act.
- o. confirms that a person is not guilty of an offence by virtue of providing assistance to a person to end their own life in accordance with the Act.

### **Provisions in the Bill for which consent is required**

- 7. Our assessment of the Bill as amended in Public Bill Committee has concluded that the test in Standing Order 29 is met and the consent of Senedd Cymru is required in respect of clauses 37, 39, 45, 47, 50 and 54. The following is a summary of provisions of the Bill that contain provision in relation to Wales that has regard to devolved matters and therefore trigger the requirement for consent. Where the provision contains a power for Welsh Ministers to make subordinate legislation, the Senedd procedure applicable to the power is also indicated.

- i) Clause 37 – guidance about operation of the Act

Clause 37 requires the relevant Chief Medical Officer for Wales (“CMO”) to prepare and publish guidance relating to the operation of this Act. The CMO must consult such persons they consider appropriate before preparing guidance, which must include persons with learning disabilities. The CMO must, when preparing guidance, have regard to the need to provide practical and accessible information, advice and guidance to specified persons.

- ii) Clause 39(1), (2), (5) and (6) – Voluntary Assisted Dying Services: Wales

Clause 39(1) and (2) permits the Welsh Ministers by regulations to make provision about voluntary assisted dying services in Wales, including provision securing that arrangements are made for the provision of such services, where such provision could be made by an Act of Senedd Cymru and would be within the legislative competence of the Senedd if it were contained in such an Act. Clause 39(5) confirms regulations may not amend this Act and clause 39(6) defines ‘voluntary

assisted dying services' for the purposes of the wider provision. Regulations made under this power will be subject to the affirmative procedure (see clause 50).

iii) Clause 45 – Monitoring by Commissioner

Clause 45 requires the Commissioner to monitor the operation of the Act, investigate, and report to an appropriate national authority on any matter connected with the operation of the Act which the appropriate national authority refers to the Commissioner, and submit an annual report to each appropriate national authority on the operation of the Act. In preparing the report, the Commissioner must consult with (among others) the Chief Medical Officer for Wales. The appropriate national authority must publish any annual report received under this section, prepare and publish a response to any such report, and lay before Parliament or Senedd Cymru (as the case may be) a copy of the report and response. An appropriate national authority means the Secretary of State or Welsh Ministers.

iv) Clause 47(4) – Provision of information in English and Welsh

Clause 47 requires any service, report, declaration or certificate of eligibility provided under the Act to a person seeking assistance to end their own life must be in the persons first language, if that language is English or Welsh or their preferred language of English or Welsh. It also requires any regulations made by the Secretary of State under other specified sections of the Act (sections 7, 9, 10, 17 or 26) specifying the form and content of declarations or statements to also make provision for their being in both English and Welsh. Clause 39(4) provides that regulations that contain provision for the Welsh language may not be made unless a draft has been laid before and approved by a resolution of Senedd Cymru.

v) Clause 50(1), (2), (5) and (6) – Regulations

Clause 50 sets out the procedure for regulations made under the Act. Clause 39(5) states that the Welsh Ministers may not make a statutory instrument containing regulations under section 39 unless a draft of the instrument has been laid before, and approved by a resolution of, Senedd Cymru. Clause 50(1) also includes a general power which states that a power to make regulations under any provision of the Act includes power to make different provision for different purposes and incidental, consequential, transitional or saving provision. Clause 50(2) confirms that regulations are to be made by statutory instrument. Clause 50(6) confirms this clause does not apply to regulations under section 54 (commencement).

vi) Clause 54(6), (8) and (9) – Commencement

Clause 54 deals with commencement. Clause 54(6) provides that, in relation to Wales, the provisions of the Act not brought into force by clause 54(1) come into force on such day or days as the Welsh Ministers may by regulations appoint (and such regulations may not be made unless a draft statutory instrument containing them has been laid before, and approved by a resolution of, Senedd Cymru). Clause 54(1) brings into force sections 43 and 49 to 55 on the day on which the Act is passed. Clause 54(8) provides that the power to make regulations under this section includes the power to make different provision for different purposes. Clause 54(9) provides that regulations under this section are to be made by statutory instrument.

**UK Government view on the need for consent**

8. The UKG has not confirmed their position as to whether they believe the consent of the Senedd is required for this Bill as amended at Public Bill Committee but have acknowledged that some clauses do cut across devolved matters. We agree with this assessment and will continue to liaise with UKG and assess this position as the Bill progresses.
9. As referred to in paragraph 7 above, an LCM is required in relation to clauses 37, 39, 45, 47, 50 and 54.

**Provisions Relating to Wales in the Terminally Ill Adults (End of Life) Bill**

10. This Bill seeks to allow adults who are terminally ill, subject to safeguards and protections, to request and be provided with assistance to end their own life.
11. The primary mechanism through which the Bill achieves this is via amendments to the Suicide Act 1961, which is restricted by Schedule 7B.
12. Clauses 37, 39, 45, 47, 50 and 54 however make provision that confers functions on the Welsh Ministers and the Chief Medical Officer for Wales and which directly impacts Senedd Cymru and therefore has regard to devolved matters.

**Financial Implications**

13. Financial implications have not been assessed at this stage; however, UKG have confirmed that the impact assessment currently being undertaken for the Bill covers England and Wales and will include a cost analysis.
14. Further advice will follow on the financial implications in due course.

**Welsh Government position**

15. My officials and I are continuing to engage with UKG on the implications of the Bill on devolved matters. I will provide further updates to the Senedd on the Welsh Government's position in relation to this Bill following further engagement.

**Jeremy Miles MS**

**Cabinet Secretary for Health and Social Care**

**9 April 2025**