Department of Health & Social Care | Ministry of Justice

Terminally Ill Adults (End of Life) Bill: ECHR memorandum (as introduced to the Lords)

Published 26 June 2025

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Introduction and overall ECHR analysis

This memorandum has been prepared by the Department of Health and Social Care (DHSC) and addresses issues arising under the European Convention on Human Rights (ECHR) in relation to the Terminally Ill Adults (End of Life) Bill ('the bill').

No statement has been made by a government minister under section 19(1)(a) of the Human Rights Act 1998 that the provisions in the bill are compatible with the convention rights. This is because the bill is a private member's bill and such a statement is not required. Nevertheless, the government is of the view that the bill is compatible with the ECHR.

The purpose of the bill is to make provision for adults who are terminally ill to choose to request, and lawfully be provided with, assistance to end their own life.

The bill contains a number of provisions which may engage convention rights, in particular:

- article 2 (right to life)
- article 3 (prohibition of torture)
- article 5 (right to liberty and security)
- article 6 (right to a fair trial)
- article 7 (no punishment without law)
- article 8 (right to respect for private and family life)
- article 9 (right to freedom of thought, conscience and religion)
- article 10 (right to freedom of expression)
- article 14 (prohibition of discrimination)

This memorandum deals only with those provisions of the bill which may raise ECHR issues. The remaining provisions of the bill are considered not to engage convention rights.

Summary of the bill

Eligibility to be provided with lawful assistance to voluntarily end own life

Clauses 1 to 3 provide that a terminally ill adult may, on request, be provided with assistance to end their own life if they fulfil certain criteria including that they have the capacity to make such a decision and are aged 18 or over at the time they make a ‘first declaration’.

Clauses 8 to 29 require steps to be taken to establish that the person has a clear, settled and informed wish to end their own life and has made the decision voluntarily without being coerced or pressured by any other person.

Voluntary assisted dying commissioner

Clause 4 provides for the creation of the new role of the voluntary assisted dying commissioner (‘the commissioner’), and schedule 1 to the bill makes further provision about the commissioner. The commissioner is to be appointed by the Prime Minister and will be a current or retired judge of the

Supreme Court, the Court of Appeal or the High Court. The commissioner's functions include making appointments to a list of persons eligible to sit on assisted dying review panels and referring cases to such panels.

Preliminary discussions

Clause 5 contains provision about a preliminary discussion between a person wishing to seek assistance to end their own life in accordance with the bill and a registered medical practitioner.

Clause 6 provides that no registered medical practitioner or other health professional is to raise the subject of providing voluntary assisted dying under the bill with a person under the age of 18.

Clause 7 provides for the recording of a preliminary discussion in a person's medical records.

Procedure, safeguards and protections

Clause 8 provides that a person who wishes to be provided with assistance to end their own life must make a first declaration to that effect, which is to be witnessed by the co-ordinating doctor and another person.

Clause 8 also makes provision as to the requirements a registered medical practitioner must fulfil in order to be a co-ordinating doctor, including imposing a duty on the Secretary of State to make regulations which make provision about the training, qualifications and experience a practitioner must have to act as a co-ordinating doctor.

Clause 9 makes provision about proof of identity of the person seeking an assisted death.

Clause 10 provides that the co-ordinating doctor must, as soon as reasonably practicable after a first declaration, carry out a first assessment to ascertain whether, in their opinion, the person seeking assistance meets the eligibility requirements set out in clause 10(2)(a) to (h). The co-ordinating doctor must make a report about the assessment and make a referral to another registered medical practitioner (an 'independent doctor') if they are satisfied that the person fulfils the eligibility requirements. If the independent doctor dies or through illness is unable or unwilling to act as an independent doctor, a further referral may be made.

Clause 11 provides that where a referral is made under clause 10(3)(c), and after a period of reflection, an independent doctor must carry out a second assessment to ascertain eligibility requirements (as per clause 11(2)(a) to (e)) and must make a report about the assessment. It also sets out the requirements a registered medical practitioner must fulfil in order to be an independent doctor.

Clause 12 makes further provision about doctors' assessments, including requiring assessing doctors to make a referral for further assessment (and take account of any opinion provided) where they have doubt about whether the person is terminally ill and/or doubt as to the capacity of the person being assessed.

Clause 13 enables a second opinion to be sought where an independent doctor has carried out the second assessment and has made a report that states they are not satisfied that the eligibility requirements in clause 11(2) are met.

Clause 14 provides for the Secretary of State to make regulations about replacing the co-ordinating doctor if they become unable or unwilling to carry out their functions (for example, through death, illness or otherwise).

Clause 15 makes provision about the process for replacing the co-ordinating or independent doctor where they are unable or unwilling to carry out their functions. Clause 15(4) confers a power on the Secretary of State to make provision relating to the appointment of a replacement co-ordinating doctor, including provision to ensure continuity of care.

Clauses 16 to 18 provide that on receipt of the person's first declaration, as well as on receipt of the reports about the person's first and second assessments by the co-ordinating doctor and independent doctor respectively, the commissioner must refer the person's case to a multidisciplinary assisted dying review panel ('panel').

The panel must determine whether the requirements in clause 17(2) have been met and, if so, grant a certificate of eligibility - otherwise, it must refuse to do so. In making the determination, it must hear from and may question either or both assessing doctors and may hear from and question the person to whom the referral relates or any other person.

The panel may also ask any person to report to it on any matters it considers appropriate to making the determination.

Where a panel refuses to grant a person a certificate of eligibility, the person can apply to the commissioner for reconsideration of their case. Such application would be on the grounds that the first panel's decision:

- contains an error of law
- is irrational
- is procedurally unfair

The commissioner would be required to consider the application without a hearing and, if satisfied that any of the specified grounds are met, refer the case to a second panel for a fresh determination.

Where the commissioner decides not to refer the case to a second panel or where the second panel also refuses to grant a certificate of eligibility, the person may apply to the High Court for a judicial review on the usual grounds.

Schedule 1 makes further provision with regards to the commissioner, including the appointment of the commissioner and deputy commissioner. Schedule 2 makes provision relating to the panel, including the composition of the panel and decision-making process.

Clause 19 provides that, following a second period of reflection, a person who wishes to be provided with assistance to end their own life must then make a second declaration. The second period of reflection is 14 days, though can be shortened to 48 hours where the co-ordinating doctor reasonably believes the person's death is likely to occur within one month. If the co-ordinating doctor is satisfied of the matters in clause 19(5), they must make a statement to that effect.

Clause 20 provides that a person may cancel a first or second declaration.

Clause 21 makes provision about proxies relating to the signing of the declarations (for example, where a person is unable to sign their own name due to a physical impairment).

Clause 22 imposes a duty on the Secretary of State to make provisions, by regulations, on the appointment of independent advocates to support qualifying persons, as defined under subsection (4). Regulations may include the circumstances when a person can act as an independent advocate, approval requirements, provisions for payments, training requirements and obligations on other persons performing a function in accordance with the bill.

Information in medical records

Clause 23 contains provision requiring the making of any of the declarations, reports certificates or statements (or a refusal to make such) to be notified to a person's GP practice and recorded in their medical records.

Clause 24 contains similar provision in relation to cancellations of declarations.

Provision of assistance to end life

Clause 25 makes provision for the co-ordinating doctor to provide a person with an approved substance which the person may self-administer to end their own life. The approved substance must be provided directly, and in person, by the co-ordinating doctor to that person. The co-ordinating doctor may:

- help to prepare the approved substance for self-administration by that person
- prepare a medical device which will enable that person to self-administer the substance
- assist that person to ingest or otherwise self-administer the substance

However, the decision to self-administer the approved substance and the final act of doing so must be taken by the person to whom the substance has been provided. The co-ordinating doctor is not authorised to administer an approved substance to another person with the intention of causing that person's death.

Clause 26 enables the co-ordinating doctor to authorise another doctor to carry out their functions under clause 25.

Clause 27 requires the Secretary of State to specify one or more drugs as 'approved substances' for the purpose of the bill.

Clause 28 provides that, where a person has been provided with assistance to end their own life in accordance with the bill, and has died as a result, the co-ordinating doctor must complete a final statement to that effect. The making of the statement must be reported to the person's GP practice and recorded in their medical records. A copy of the statement must be provided to the commissioner.

Clause 29 requires the co-ordinating doctor to make a report where the co-ordinating doctor is not satisfied of the matters mentioned in clause 25(5). The Secretary of State has power to make provision about the content and form of the report, and the report must be given to the person seeking assistance, to the person's GP (if that is not the co-ordinating doctor) and to the commissioner.

Clause 30 provides for similar reporting and recording requirements in cases where assistance is provided and either the person decides not to take the substance or the procedure fails.

Protections for health professionals and others

Clause 31 sets out that the persons described in the clause are not under any duty to participate in providing assistance under the bill in the ways described. Clause 31(8) introduces schedule 3, which amends the Employment Rights Act 1996 to provide enforceable rights for workers to be free from detriment for providing, or not providing, assistance under the bill.

Clause 32 sets out the ways in which health professionals involved in the assisted dying process, and those who support a person through that process, may be protected from criminal liability.

Clause 32(1) provides 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 bill, or performing any other function under the bill in accordance with the bill
- assisting a person seeking to end their own life in accordance with the bill, in connection with the doing of anything under this bill

Clause 32(2) declares that clause 32(1) does not displace other ways in which a court may find a person not guilty of an offence, including under the Suicide Act 1961 ('the Suicide Act').

Clause 32(3) inserts a new section 2AA into the Suicide Act:

- subsection (1) makes clear that the offence of encouraging or assisting suicide in section 2 of the Suicide Act is not made where a person:
    - provides assistance to a person to end their own life in accordance with the bill

- performs any other function under the bill, in accordance with the bill
- assists a person seeking to end their own life in accordance with the bill, in connection with the doing of anything under the bill

- subsection (2) creates a defence to the section 2 offence for those who reasonably believe they were acting in accordance with the bill, and took all reasonable precautions and exercised all due diligence to avoid the commission of the section 2 offence

Clause 33 provides that providing assistance to a person to end (or attempt to end) their own life in accordance with the bill does not, of itself, give rise to any civil liability and confirms that liability can arise where there is dishonesty, bad faith or negligence.

Offences

Clause 34 sets out 2 new criminal offences:

1. By dishonesty, coercion or pressure, inducing another person to make a first or second declaration, or not to cancel such a declaration (clause 34(1)).
2. By dishonesty, coercion or pressure, inducing another person to self-administer an approved substance provided under the bill (clause 34(2)).

Clause 35 creates 4 new criminal offences:

1. Making or knowingly using a false instrument which purports to be a first declaration, a second declaration or a certificate of eligibility (clause 35(1)(a)).
2. Intentionally or recklessly concealing or destroying a first declaration or second declaration by another person (clause 35(1)(b)).
3. In relation to another person who has made a first declaration under the bill, knowingly or recklessly providing a medical or other professional opinion in respect of a matter relating to any function under the bill, which is false or misleading in a material particular (clause 35(2) and (3)).
4. Intentionally or recklessly failing to comply with an obligation under section 20(2) or (3) or section 24 (clause 35(4)).

Clause 36 creates 3 new criminal offences:

1. With the intention of facilitating the provision of assistance to a person ('B') under the act to end their own life, making or knowingly using a false instrument which purports to be a first declaration, a second declaration or a certificate of eligibility (clause 36(1)(a)).
2. With the intention of facilitating the provision of assistance to a person ('B') under the act to end their own life, providing a false or misleading medical or other professional opinion in respect of B (clause 36(1)(b)).
3. With the intention of facilitating the provision of assistance to a person ('B') under the act to end their own life, failing to comply with an obligation under section 20(2) or (3) (clause 36(1)(c)).

Regulatory regime for approved substances

Clause 37 imposes an obligation on the Secretary of State to make regulations about approved substances, including the supply or offer of supply, or administration, of approved substances, the transportation, storage, handling and disposal of approved substances, and about the keeping of records in relation to those matters. The regulations may, in particular, make provision which is similar to, or that corresponds to, any provision of the Human Medicines Regulations 2012, or which applies (with or without modifications) those regulations. The Secretary of State may also make regulations about devices for the self-administration of approved substances.

Investigation and registration of deaths

Clause 38 amends section 1 of the Coroners and Justice Act 2009 ('the 2009 Act') to exclude voluntary assisted deaths under the bill from the definition of an 'unnatural death' for the purposes of the duty to investigate certain deaths under that act. It will remain open to anyone, including medical practitioners, to report an assisted death to the coroner if they have concerns that it was not carried out in accordance with the provisions of the bill (or for any other reason).

Clause 38 also amends section 20 of the 2009 Act to enable the Secretary of State to make regulations about a medical certificate of cause of death ('MCCD') in respect of cases where assistance was provided or purportedly provided to the deceased under the bill. The MCCD for an assisted death must state the cause of death to be 'assisted death' and record the terminal illness which made the person eligible to receive assistance under the bill.

Codes and guidance

Clause 39 confers a power on the Secretary of State to issue one or more codes of practice in connection with matters relating to the operation of the bill.

Clause 40 provides for the Secretary of State to issue guidance relating to the operation of the bill. The guidance need not (but may) deal with matters which are devolved in Wales. The Welsh ministers may issue guidance which deals with devolved matters. The Secretary of State or the Welsh ministers must consult specified persons before issuing guidance, and they must have regard to the need to provide practicable and accessible information, advice and guidance to:

- persons requesting and/or considering assisted dying
- next of kin and families
- persons with learning disabilities
- the general public

Provision of and about voluntary assisted dying services

Clause 41 requires the Secretary of State to make regulations to secure that arrangements are made for the provision of voluntary assisted dying services in England. The Secretary of State may also by regulations make other provision about voluntary assisted dying services in England.

Clause 42 provides that the Welsh ministers may by regulations make provision about voluntary assisted dying services in Wales, including securing arrangements for the provision of such services. The Secretary of State may also by regulations make provision about voluntary assisted dying services in Wales where those provisions would not be within the legislative competence of the Senedd.

Prohibition on advertising

Clause 43 requires the Secretary of State to make regulations prohibiting the publication, printing, distribution or designing (anywhere) of advertisements whose purpose or effect is to promote a voluntary assisted dying service under the bill (or causing such publication, printing, distribution or designing). The regulations may contain exceptions to the prohibition.

Notifications and information

Clause 44 confers a power on the Secretary of State to make regulations requiring a registered medical practitioner to notify the commissioner of various events relating to the procedure set out in the bill.

Clause 45 creates an information sharing gateway between the Secretary of State, the commissioner and other relevant bodies for the purposes of any of their relevant functions.

Clause 46 confirms the overriding duty to disclose information under the bill provided it complies with data protection legislation.

Monitoring and review

Clause 47 also makes provisions requiring the Secretary of State to provide regular progress updates on implementation.

Clause 48 imposes a duty on the commissioner to, within 6 months of appointment, appoint a disability advisory board (‘the board’) to advise on the implementation of the bill and its impact on disabled people. The clause sets out requirements on the composition of the board and the requirement to report to the Secretary of State and the commissioner on the implementation of the bill and for the report to be laid before both Houses of Parliament.

Clause 49 contains provision relating to the monitoring of the operation of the bill by the commissioner. The commissioner’s report must include information about the application of the act in relation to persons who have protected characteristics and other persons as described by the Secretary of State in regulations. The persons whom the commissioner must consult prior to the annual report are the chief medical officers of England and Wales and persons appearing to the commissioner to represent the interests of persons with protected characteristics.

Clause 50 contains provision for post-legislative review.

General and final

Clause 51 requires the Welsh ministers, when making regulations under section 42, to include in those regulations provision which ensures that reasonable steps are taken to secure that a person in Wales is able to receive communications by a person providing assisted dying services in

Welsh, as well as any report about a first or second assessment under the act. It also provides that the commissioner must take all reasonable steps to ensure that a person in Wales is able to engage with the assisted dying process in Welsh.

Clause 52 makes provision for disqualification of a person from acting as a witness or a proxy for the purposes of the bill.

Clause 53 makes consequential and transitional provision (conferring a power on the Secretary of State to make regulations).

Clause 54 sets out the procedure for making regulations under the bill, and clause 55 contains the duty to consult before making regulations under various clauses of the bill.

Clauses 56 to 58 makes provision for interpretation, extent (the bill would extend to England and Wales, except clause 31(8) and schedule 3 would additionally extend to Scotland, and clauses 37 and 43 would additionally extend to Scotland and Northern Ireland) and commencement. The bill is to be commenced by regulations but would come into force 4 years after Royal Assent if not commenced before then, save in relation to sections 42(1) and (2) and 51(2) and (3), which are to be brought into force by regulations made by the Welsh ministers.

The bill and convention rights

Article 2

Article 2 of the ECHR provides that:

Everyone’s right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which the penalty is provided by law. The government considers that article 2 is engaged by the bill as a whole, in the sense that the bill sets up a new regime for the provision of voluntary assisted dying and the entirety of that regime engages right to life considerations as protected by article 2.

The government considers that the provisions in the bill which relate to safeguards are particularly likely to engage article 2, given their existence will be highly relevant to a court’s assessment as to article 2 compatibility. The following provisions of the bill, which include provisions

related to safeguards, therefore are likely to be relevant to article 2 compatibility:

- clause 1 - assisted dying
- clause 2 - terminal illness
- clause 3 - capacity
- clause 5 - preliminary discussions with registered medical practitioners
- clauses 8 to 22 - procedure, safeguards and protections
- clause 25 - provision of assistance
- clauses 34 to 36 - offences
- clause 38 - inquests, death certification etc
- clause 39 - codes of practice
- clause 40 - guidance about operation of act
- clause 49 - monitoring by commissioner
- clause 52 - disqualifications from being a witness or proxy
- clause 41 - voluntary assisted dying services: England
- clause 42 - voluntary assisted dying services: Wales

Clause 41 imposes a duty on the Secretary of State to make regulations securing that arrangements are made for the provision of voluntary assisted dying services in England. Clause 41 also confers a power on the Secretary of State to make other provision about voluntary assisted dying services in England.

Similarly, clause 42 provides that both the Welsh ministers and the Secretary of State may by regulations make provision about voluntary assisted dying services in Wales, including provision securing that arrangements are made for the provision of such services.

The government considers that the establishment of voluntary assisted dying services, principally through clause 41 and clause 42 of the bill, engages article 2. However, the government's view is that the bill does not interfere with article 2. The government observes that the European Court of Human Rights (ECtHR) has afforded a wide margin of appreciation to states when considering end-of-life matters as a result of the complex legal, social, moral and ethical issues raised. See, for example, Mortier v Belgium (78017/17) and Karsai v Hungary (32312/23). Moreover, domestically, the

government is of the view that very considerable respect will be accorded to the judgements made by Parliament in primary legislation. The challenges to the current legal position have all emphasised that the core judgements are for Parliament to make. See, for example, R (Conway) v Secretary of State for Justice [2018] EWCA Civ 1431.

Article 2 contains distinct substantive obligations:

- the obligation to take appropriate steps to safeguard and protect by law the right to life (often known as the positive obligation on the state)
- the prohibition of intentional deprivation of life (often known as the negative obligation on the state)

Article 2 also contains a procedural obligation to carry out an effective investigation into alleged breaches of its substantive obligations.

While it will be the person seeking the assistance, and not the co-ordinating doctor, who will ultimately administer the approved substance which causes death, under clause 25 of the bill, the co-ordinating doctor providing the substance will inevitably know that the substance will be used to enable the person to die. Therefore, where an NHS medical practitioner provides the substance, an argument could be attempted that an agent of the state is intentionally causing the death of the person, so as to engage the negative obligation of article 2.

However, the government considers that a court is highly unlikely to hold that the provision of assisted dying by the state-run health service would be found by a court to interfere with the negative obligation under article 2. The ECtHR in Mortier v Belgium and Karsai v Hungary has held that article 2 does not require states to forbid assisted suicide and euthanasia (see, for example, paragraph 138 of Mortier v Belgium). In Mortier the court held that “in the context of a case concerning an act of euthanasia alleged to violate article 2 of the Convention, the court considers that the applicant’s complaints fall to be examined under the positive obligations of the state to protect the right to life within the meaning of the first sentence of paragraph 1 of that provision”, as opposed to the negative obligation.

The government’s view is therefore that the bill is more likely to engage, and should be analysed by reference to, the state’s positive obligations under article 2.

Safeguards

The government recognises that robust safeguards will be essential to ensure compliance with the state's positive obligation under article 2. For example, in Mortier v Belgium at 141 the court held that states must ensure: "the provision of appropriate and adequate safeguards to prevent abuse and thus ensure respect for the right to life. In this connection, the court also notes that the United Nations Human Rights Committee has held that euthanasia does not in itself constitute an interference with the right to life if it is accompanied by robust legal institutional safeguards to ensure that medical professionals are complying with the free, informed, explicit and unambiguous decision of their patient, with a view to protecting patients from pressure and abuse".

Safeguards are included throughout the bill and within the following clauses.

Clause 1 provides that a person must have capacity to make a decision to end their own life and clause 3 provides that references to capacity in the bill are to be read in accordance with the Mental Capacity Act 2005.

Clause 1 also provides that person must be:

- terminally ill
- aged over 18
- ordinarily resident in England and Wales (and have been so resident for at least 12 months)
- registered as a patient with a general medical practice in England or Wales

Importantly, a person must also have a clear, settled and informed wish to end their own life, and have made the decision that they wish to end their own life voluntarily and have not been coerced or pressured by any other person into making it.

Clause 2 defines where a person will be considered to have a terminal illness under the bill as where the person has an inevitably progressive illness or disease which cannot be reversed by treatment and the person's death in consequence of that illness or disease can reasonably be expected within 6 months.

Clause 5 contains provision about a preliminary discussion between a person wishing to seek assistance to end their own life in accordance with

the bill and a registered medical practitioner. Where a person has a preliminary conversation with a registered medical practitioner, that discussion must not simply focus on the availability of assisted dying, but clause 5 requires that it should also cover any treatment available and the likely effect of it - all appropriate palliative, hospice or other care, including symptom management and psychological support. Any adjustments for language and literacy barriers, including the use of interpreters, must also be made. No registered medical practitioner or other health professional may raise the subject of the provision of assistance under the bill with a person under the age of 18 (clause 6). A record must also be kept of that discussion in the person's medical records (clause 7).

Clause 8 provides that a person who wishes to be provided with assistance to end their own life must make a first declaration to that effect, which is to be witnessed by the co-ordinating doctor and another person.

Clause 8 also requires the Secretary of State to make provision about the training, qualifications and experience that a registered medical practitioner must have in order to act as the co-ordinating doctor. That training must include training on capacity, assessing coercion or pressure, training on reasonable adjustments for those with autism or a learning disability and training on domestic abuse, coercive control and financial abuse.

Clause 9 provides that a co-ordinating doctor and independent witness may only witness a first declaration where they are satisfied that 2 forms of proof of identity have been provided.

Clause 10 provides that a co-ordinating doctor must carry out a first assessment of the person to ensure, among other things, that the person has a terminal illness, has the capacity to make the decision to end their own life, has a clear, settled and informed wish to end their own life, and has made the decision voluntarily and has not been coerced or pressured by anyone else. The co-ordinating doctor must make a report after carrying out the first assessment.

Clause 11 provides for a second assessment by an independent doctor, to provide a further check to ensure, among other things, that the person:

- has a terminal illness
- has the capacity to make the decision to end their own life
- has a clear, settled and informed wish to end their own life

- has made the decision voluntarily and has not been coerced or pressured by anyone else

The independent doctor must also make a report after carrying out the second assessment.

There must also be a period of at least 7 days between the first and second assessments, to enable reflection by the person seeking an assisted death.

Clause 11 further empowers the Secretary of State to make provision about the training, qualifications and experience that a registered medical practitioner must have in order to act as the independent doctor. That training must include training on:

- capacity
- assessing coercion or pressure
- domestic abuse
- coercive control
- financial abuse

Clause 12 makes further provision about both co-ordinating and independent doctors (assessing doctors) and provides that, if the doctor carrying out the assessment has a doubt as to whether the person being assessed is terminally ill, the doctor must obtain an opinion from a specialist in the illness or disease in question. Furthermore, if the doctor carrying out the assessment has doubt as to the capacity of the person being assessed, they must refer the person for assessment by a psychiatrist or other registered medical practitioner who has qualifications in, or experience of, a capacity assessment.

The assessing doctor must also make such enquiries of professionals who are providing or who have recently provided health or social care to the person seeking an assisted death as the assessing doctor considers appropriate and must consider consulting health professionals or social care professionals with qualifications in, or experience of, a matter relevant to the person being assessed.

The assessing doctors must also explain to, and discuss with, the person:

- the possible treatments
- the palliative, hospice and other care available

- the nature of the substance that might be provided to assist the person to end their own life (including how it will bring about death)

The assessing doctor is also to advise the person to inform their GP and, so far as the doctor considers it appropriate, advise the person to discuss the request with their next of kin and other people they are close to.

The assessing doctor must also ensure the provision of adjustments for language and literacy barriers, including the use of interpreters when carrying out the assessments.

Clauses 16 to 18 provide that on receipt of the person's first declaration, as well as on receipt of the reports about the person's first and second assessments by the co-ordinating doctor and independent doctor respectively, the commissioner must refer the person's case to a multidisciplinary assisted dying review panel ('panel').

The panel must determine whether the requirements in clause 16(2) have been met and, if so, grant a certificate of eligibility - otherwise, it must refuse to do so. In making the determination, it must hear from and may question either or both assessing doctors and may hear from and question the person to whom the referral relates or any other person.

The panel may also ask any person to report to it on any matters it considers appropriate to making the determination.

Where a panel refuses to grant a person a certificate of eligibility, the person can apply to the commissioner for reconsideration of their case. Such application would be on the grounds that the first panel's decision:

- contains an error of law
- is irrational
- is procedurally unfair

The commissioner would be required to consider the application without a hearing and, if satisfied that any of the specified grounds are met, refer the case to a second panel for a fresh determination.

Where the commissioner decides not to refer the case to a second panel or where the second panel also refuses to grant a certificate of eligibility, the person may apply to the High Court for a judicial review on the usual grounds.

Schedule 1 makes further provision with regards to the commissioner, including the appointment of the commissioner and deputy commissioner. Schedule 2 makes provision relating to the panel, including the composition of the panel (which must include a legal member, psychiatrist member and social work member) and decision-making process.

Clause 19 provides that, following a second period of reflection, a person who wishes to be provided with assistance to end their own life must then make a second declaration. The second period of reflection is 14 days, although can be shortened to 48 hours where the co-ordinating doctor reasonably believes the person's death is likely to occur within one month. If the co-ordinating doctor is satisfied of the matters in clause 19(5), they must make a statement to that effect.

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Clause 25 makes provision for the co-ordinating doctor to provide a person with an approved substance which the person may self-administer to end their own life. The approved substance must be provided directly, and in person, by the co-ordinating doctor to that person. The co-ordinating doctor may:

- help to prepare the approved substance for self-administration by that person
- prepare a medical device which will enable that person to self-administer the substance
- assist that person to ingest or otherwise self-administer the substance

However, the decision to self-administer the approved substance and the final act of doing so must be taken by the person to whom the substance has been provided. The co-ordinating doctor is not authorised to administer an approved substance to another person with the intention of causing that person's death.

Clauses 34 to 36 create new criminal offences which seek to protect the assisted dying regime set out in the bill from abuse. The details of the new criminal offences are set out in full above.

Clause 38 provides that following an assisted death, all deaths will be certified by an ‘attending practitioner’ (a doctor that has attended the patient) and scrutinised by an independent medical examiner who must confirm the cause of death as set out in the medical certificate cause of death. It will be open to anyone who has concerns about the death (including any concerns that it had not occurred in line with provisions in the bill) to make a referral to a coroner for investigation.

Clause 39 provides that the Secretary of State will also issue one or more codes of practice in connection with a number of matters including, for example:

- responding to unexpected complications that arise in relation to the administration of the approved substance (including where the procedure fails)
- the arrangements for a person requesting assistance to end their own life to receive the support of an independent advocate

The Secretary of State will also issue one or more codes of practice on the arrangements for ensuring effective communication in connection with the provision of assistance, including the use of interpreters.

Clause 40 provides that the Secretary of State (or, in relation to matters devolved in Wales, the Welsh ministers) will also issue guidance relating to the operation of the bill, having consulted specified persons before preparing such guidance, and those persons must include persons with learning disabilities. The Secretary of State (or the Welsh ministers) must have regard to the need to provide practicable and accessible information and advice and guidance to:

- persons requesting and/or considering assisted dying
- next of kin and families
- persons with learning disabilities
- the general public

Clause 49 provides that the commissioner must monitor the operation of the act, investigate and report to an appropriate national authority (the Secretary of State or Welsh ministers) on matters related to the operation of the act and the report must also include information about the application

of the act to persons who have protected characteristics. The persons whom the commissioner must consult prior to the annual report are the chief medical officers of England and Wales and persons appearing to the commissioner to represent the interests of persons with protected characteristics.

Clause 48 (disability advisory board on the implementation and implications of the act for disabled people) imposes a duty on the commission to, within 6 months of appointment, appoint a disability advisory board ('board') to advise on the implementation of the bill and requirements on the composition of the board.

Clause 52 makes provision for disqualification of a person from acting as a witness or a proxy for the purposes of the bill. A person who acts as a proxy for the person seeking assisted dying must have known the person for at least 2 years and meet the requirements set out in regulations made by the Secretary of State. They must not be a relative of the person or know or believe that they are a beneficiary in the person's will or may otherwise benefit financially or in any other material way from the death of the person.

In addition to the safeguards within the bill, there is also the existing criminal offence of doing an act capable of encouraging or assisting the suicide or attempted suicide of another person, in section 2 of the Suicide Act 1961 (subject to amendment by clause 32 of the bill) and which forms part of the overall picture of protections.

Overall, the government considers that the combination of these safeguards is sufficient to ensure that that an individual's decision to end his or her life is taken freely and with full understanding of what is involved and to prevent interference with article 2.

Safeguards: capacity

The government recognises that ensuring a person has capacity to choose to end their own life is a particularly important safeguard. The Mental Capacity Act 2005 ('the MCA') deals with capacity as being assessed at the time a decision needs to be made. Additionally, it is a statutory principle of the MCA (section 1(2)) that an individual is presumed to have capacity unless it is established that they lack capacity. It is a further statutory principle of the MCA (section 1(3)) that an individual is not to be taken to lack capacity unless all practical steps to help them make a capacitous decision have been taken without success. The final principle of the MCA relevant to the capacity assessment is the requirement that a

person must not be considered unable to make a decision because they make an unwise decision.

Under the bill, capacity must be assessed at 5 points:

1. At the first doctor's assessment.
2. At assessment by the assisted dying review panel.
3. At the second doctor's assessment.
4. At the second declaration.
5. At the time the approved substance is provided.

It might be contended that article 2 requires capacity to be proven in every case, or alternatively that the starting point should be neutral, rather than a presumption of capacity.

However, the ECtHR has not mandated any particular definition of capacity and the government considers that this is likely to fall within the state's margin of appreciation. The government considers that there are good policy reasons for using a definition of capacity which is already well understood by doctors and judges. Any changes to the way capacity is approached for the sole issue of assisted dying could lead to uncertainty and inadvertent error in assessing capacity in practice. In particular, the issue of fluctuating capacity and capacity while on medications are all part of normal day-to-day medical practice, including for procedures with a high mortality rate, or a very high chance of major life-changing effects. The government's view is that applying capacity in line with the principles established in domestic law under the MCA provides a sufficient safeguard in line with article 2.

Safeguards: freedom from pressure

Clause 1(2) refers to the steps to be taken to ensure a person has made a decision to end their own life voluntarily and has not been "coerced or pressured by any other person". The term 'pressure' is construed by the courts broadly in line with its natural meaning. The legislation at issue in Mortier required the request for euthanasia to be "made of the patient's own free will, in a considered and constant manner, and is not the result of external pressure" (section 3 of the Euthanasia Act of 28 May 2002 as quoted in Mortier v Belgium at 50). The government notes that this provision was held to be compatible with the state's positive obligation under article 2. The phrase 'external pressure' in the Belgian law is arguably slightly wider, and thus may offer marginally greater protection

than the phrase ‘by any other person’. However, any distinction appears minimal, and the government therefore considers that the wording used in the bill is highly likely to be article 2 compliant as in Mortier.

Safeguards: review and judicial oversight

In Mortier v Belgium the court recognised that the state’s duty to safeguard the right to life involves, in the event of death, the procedural positive obligation to have in place an effective independent judicial system (see, for example, 166 of Mortier). The bill does not impose an obligation, nor does it provide specific new powers, for the state to investigate whether someone has been pressured into an assisted death. The bill also amends (at clause 38(1)) the Coroners and Justice Act 2009 to ensure that a coroner’s duty to investigate certain deaths should not be triggered merely because they died as a result of assisted dying under the bill. Clause 32(3) also creates an exception to criminal liability where assistance is provided in accordance with the bill.

However, the government notes that the possibility of a death being reported to a coroner where an individual has concerns about a death would still be retained under the bill (it is merely that an obligation to investigate will not be triggered merely because the death occurred as a result of assisted dying under the bill). Anyone who has concerns is able to refer a case to the coroner. Medical professionals are under a duty to refer a case where the ‘reason to suspect’ threshold is reached (see regulation 3(1) of the Notification of Deaths Regulations 2019). The government intends to amend these regulations following passage of the bill to reflect the fact that assisted deaths should not be notified to the coroner unless there is reason to suspect that they did not occur in line with the provisions of the bill.

The medical examiner regime also provides that deaths in any health setting that are not investigated by a coroner will be reviewed by NHS medical examiners, who must be independent of the other medical professionals involved in the certification of the cause of death or who have made a referral to the coroner: see regulation 6, Medical Examiners (England) Regulations 2024, similar legislation for Wales exists. The government intends to amend those 2024 regulations following passage of the bill to ensure that the medical examiner is independent from the co-ordinating doctor, in cases where they are not the attending practitioner for the purposes of the medical certificate of cause of death. For comparison, see Mortier v Belgium at 177 for criticism of the review board for lack of independence from the doctor who performed the euthanasia.

Furthermore, the state retains the ability to investigate whether any criminal offences (for example, offences under clauses 34 to 36 or section 2 of the Suicide Act 1961) have been committed where concerns arise that a death has occurred which is not in accordance with the bill. The bill creates a series of new criminal offences specifically to target various behaviours that undermine or abuse the legal assisted dying process, in order to provide safeguards for those seeking an assisted death. Furthermore, while clause 32 sets out the ways in which health professionals involved in the assisted dying process, and those who support a person through that process, may be protected from criminal liability, these are narrowly drawn and tied to behaviour that is, or is reasonably believed to be, in accordance with the bill. The government notes that a substantial part of the ECtHR's criticism in Mortier related to the excessive length (and initial inaction) of the criminal investigation, following a complaint by the family (see paragraphs 179 to 181 of Mortier). There is no reason to expect that delays of an equivalent length (over 4 years) will arise in these cases.

Significantly, the government also notes that in Mortier, the Belgian system did not include any pre-death review to ensure that the legislative safeguards had been followed. The ECtHR considered that this placed greater emphasis on the need for an independent post-death review system (see, for example, 171 of Mortier). However, under the bill, there will be a pre-death review procedure. We consider this procedure in the following paragraphs, but in short, the government's view is that if a regime which involved merely a post-death review procedure was held capable of being article 2 compliant in principle in Mortier (see, for example, 155 of Mortier), then the regime in the bill, which includes a review procedure at, arguably, a more critical stage of the process (that is, pre-death) is likely to be considered article 2 compliant by the courts.

At clauses 4, 16, 17 and 18, the bill sets out the role of a voluntary assisted dying commissioner and assisted dying review panels in overseeing the assisted dying process. The commissioner would be responsible for making appointments to a 'pool' of persons eligible to sit as members of voluntary assisted dying review panels (as set out in schedule 2 of the bill) and refer cases to such panels. The panels would be independent and consist of a legal member who holds or has held high judicial office, a psychiatrist and a social worker. The panels will determine whether the criteria for seeking an assisted death under the bill have been met and accordingly grant or refuse to grant a certificate of eligibility for assisted dying. In case the panel refuses a person's request, the bill allows the person to apply to the commissioner to reconsider their case on specified

grounds and the commissioner can further allocate their case for reconsideration by a second panel.

The government considers that this review framework (involving the commissioner and multidisciplinary panels) is sufficient to discharge the state's positive obligations under article 2 in principle. Schedule 1 to the bill, which provides that the independent panel is chaired by a legal member who holds or has held high judicial office (a judge of the Supreme Court, Court of Appeals, or a judge or deputy judge of the High Court), one of His Majesty's Counsel or a former judge of the High Court or Court of Appeal, will provide a robust safeguard.

As outlined above, the ECtHR in Mortier upheld the euthanasia legal framework in Belgium despite the absence of a review mechanism prior to provision of assistance of the kind provided under this bill. The bill's safeguards go even further by allowing for reconsideration of panel decisions by a second panel on the grounds that the first panel's decision contained an error of law, was irrational or procedurally unfair.

The government further notes that article 2 does not require there to be a right of appeal from the decision of the panel. Where the panel refuses a declaration, that decision would be amenable to judicial review on the usual grounds.

Accordingly, the government considers that the role of a voluntary assisted dying commissioner and assisted dying review panels in overseeing the assisted dying process are compatible with article 2 of the ECHR.

Article 3

Article 3 of the ECHR provides that:

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.
Article 3, as with article 2, may on one view be engaged by the bill as a whole. In the sense that the bill sets up a new regime for the provision of assisted dying and, in so far as that regime may allow for suffering as a result of an approved substance, article 3 is arguably engaged. The following provisions of the bill may particularly engage article 3:

- clause 1 - assisted dying
- clause 25 - provision of assistance

- clause 27 - meaning of ‘approved substance’
- clause 37 - regulation of approved substances and devices for self-administration

Clause 1 of the bill makes provision for assisted dying for terminally ill adults who meet a number of criteria.

Clause 25 of the bill sets out that a co-ordinating doctor may provide a person with an approved substance with which to end their own life.

Clause 27 of the bill requires the Secretary of State to specify in regulations one or more drugs or other substances which can be used as approved substances under clause 25.

Clause 37 requires the Secretary of State to make regulations about the supply or offer for supply, or administration, of approved substances, and the transportation, storage, handling and disposal of approved substances, and about the keeping of records in relation to those matters.

The government recognises that the ECtHR has interpreted article 3 to include both negative and positive obligations. The negative obligation essentially requires states to refrain from inflicting serious harm on persons within their jurisdiction. The positive obligations derive from article 1 of the ECHR which, when taken together with article 3, “imposes on States positive obligations to ensure that individuals within their jurisdiction are protected against all forms of ill-treatment prohibited under article 3, including where such treatment is administered by private individuals” (Chernega v Ukraine (74768/10) at paragraph 150).

The government has considered the case law on the existing legal position. In Pretty v United Kingdom (2346/02), Diane Pretty alleged that the refusal to provide her husband with immunity from prosecution for assisting her to die by suicide violated article 3 of the ECHR. This argument failed before the House of Lords and the ECtHR, both of which rejected any suggestion that the state had subjected Ms Pretty to ‘treatment’ such as to engage article 3 of the ECHR. In the Lords, Lord Bingham observed that, “There is … nothing in article 3 which bears on an individual’s right to live or to choose not to live. That is not its sphere of application.”

The government recognises that an argument could be attempted that the finding in Pretty arose in the context of examining whether the ban on assisted suicide (and the Director of Public Prosecution’s refusal to guarantee impunity from prosecution) engaged article 3, and that the court

should be more willing to find that article 3 is relevant in the scenario under the bill, whereby the state is allowing for the provision of assisted dying.

As set out with respect to article 2 above, while it will be the patient, and not the co-ordinating doctor, who will ultimately self-administer the approved substance which will then cause death (and any potential suffering prior to death), as required by clause 25, the substance will have been intentionally provided to the patient by the doctor, who will understand the impact of the substance on the individual (including, presumably, the potential for any suffering).

An argument could be attempted that, where assisted dying is provided through the NHS, an agent of the state is subjecting the patient to treatment contrary to article 3. However, the government's view is that the negative obligations under article 3 are not engaged, given that the ECtHR has held that the negative obligations of the more directly relevant article 2 is not interfered with by the legalisation of assisted dying. In so far as a court may be prepared to consider article 3 engagement at all, the government considers it is more likely that a court would do so by reference to the positive obligations under article 3.

As with the positive obligations under article 2, the government considers that the provision of safeguards to ensure that only those with capacity and free from coercion or pressure are able to access assisted dying will be relevant, in particular to the obligation to protect individuals from ill-treatment. The government is mindful that that protective obligation may be given particular emphasis by the court in the context of vulnerable individuals, and that the ECtHR has held that the positive obligation under article 3 includes establishing a legislative and regulatory framework to shield individuals adequately from breaches of their physical and psychological integrity (see, for example, X and Others v Bulgaria (22457/16) at paragraph 179).

However, it is a well-established principle of ECtHR case law that ill treatment must reach a 'minimum level of severity' for article 3 to be engaged, which includes consideration of the purpose for which ill treatment was inflicted, the motivation behind it and the context. In the government's view, given the aim of the bill is to enable already terminally ill persons to have choice and control over the time and manner of their death, which may then serve to alleviate further suffering, any suffering that may be experienced as a result of the assisted dying process falls short of the minimum level of severity required and so does not interfere with article 3.

Furthermore, even where a court were to hold that the minimum level of severity was reached, the government considers that the combination of safeguards in the bill, as set out above, are sufficient to shield individuals from breaches of their integrity.

Accordingly, the government considers that the bill does not interfere with article 3 and its provisions are therefore compatible with article 3.

Article 5

Article 5 of the ECHR provides that:

(1) Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law: (a) the lawful detention of a person after conviction by a competent court;…
The bill includes various offences which could result in the lawful arrest or detention. The following provisions of the bill may engage article 5:

- clause 34 - dishonesty, coercion or pressure
- clause 35 - falsification or destruction of documentation
- clause 36 - falsification of documentation etc with intention that another will obtain assistance to end own life

The maximum penalties for the new offences will be as follows:

- clause 34(1): imprisonment for a term not exceeding 14 years
- clause 34(2): life imprisonment
- clause 35(1)(a): if summarily convicted, to imprisonment for a term not exceeding the general limit in the magistrates' court or a fine (or both); if convicted on indictment, imprisonment for a term not exceeding 5 years
- clause 35(1)(b): if summarily convicted, to imprisonment for a term not exceeding the general limit in the magistrates' court or a fine (or both); if convicted on indictment, imprisonment for a term not exceeding 5 years
- clause 35(2): if summarily convicted, to imprisonment for a term not exceeding the general limit in the magistrates' court or a fine (or both); if convicted on indictment, imprisonment for a term not exceeding 5 years

- clause 35(3): if summarily convicted, to imprisonment for a term not exceeding the general limit in the magistrates' court or a fine (or both); if convicted on indictment, imprisonment for a term not exceeding 5 years
- clause 36(1)(a): imprisonment for a term not exceeding 14 years
- clause 36(1)(b): imprisonment for a term not exceeding 14 years
- clause 36(1)(c): imprisonment for a term not exceeding 14 years

The measures fall within the authorised circumstances prescribed by article 5(1) where deprivation of liberty is lawful - namely detention after conviction of a competent court (article 5(1)(a)).

It is for member states, not the court, to decide what the appropriate sentence for any given offence is. However, for detention to be lawful there must not only be a basis in domestic law, but it must not be arbitrary. We consider that the proposed penalties in clauses 34 to 36 are proportionate to the nature and severity of the offending.

Although the offence in clause 34(2) overlaps with the offence in section 2 of the Suicide Act (for which the maximum penalty is 14 years' imprisonment), the potential penalty is higher to reflect that inducing someone by dishonesty, coercion or pressure to go through a legal, state-sanctioned system designed to enable a dignified death with appropriate safeguards is inherently more wrong than the offence of encouraging or assisting suicide. It undermines public confidence in the integrity of the system and the specific subset of behaviour captured in clause 34(2) therefore warrants a higher penalty on par with homicide offences. The causal connection between the conviction and the deprivation of liberty is therefore maintained, and the maximum penalty justified.

The higher maximum penalties for the offences in clause 36 when compared with those in clause 35, which capture very similar behaviour, reflect the fact that the offences in clause 36 are necessarily more serious given the relevant intent element. The causal connection between the conviction and the deprivation of liberty is therefore maintained, and the maximum penalty justified.

In all cases, the court will be able to take account of all the relevant circumstances of the offence and the offender in the usual way when handing down a sentence. This provides an important safeguard. Accordingly, the government's view is that these provisions are compatible with article 5.

Article 6

Article 6 of the ECHR provides that:

In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.
The government considers that article 6 may be engaged by the bill in the context of the required procedure for accessing the assistance provided for under the bill, including a potential independent panel process. The bill also provides an exemption for civil liability, and a defence to the Suicide Act 1961, where a person has provided assistance in accordance with the bill which is relevant to the justice process and fair trial. The following provisions in the bill may particularly engage article 6:

- clause 16 - referral by commissioner of case to multidisciplinary panel
- clause 17 - determination by panel of eligibility for assistance
- clause 18 - reconsideration of panel decisions refusing certificate of eligibility
- clause 32(3) - as it inserts a new section 2AA(2) into the Suicide Act to set out a defence to the offence of encouraging or assisting suicide
- clause 33 - civil liability for providing assistance

Determination by commissioner and panel

Clauses 16 to 18 set out the role of an independent voluntary assisted dying commissioner (‘commissioner’) in overseeing the assisted dying process and the determination process by the voluntary assisted dying panel (‘panel’). Article 6 requires any tribunal to be independent from the other branches of power - that is, the executive and the legislature and also from the parties. While the panel is not a tribunal, the article 6 requirement of independence is likely to extend to it.

Schedule 1 to the bill makes provisions relating to the office of the commissioner and, in particular, paragraph 13 of schedule 1 and paragraph 11 of schedule 2 make amendments to part 3 of schedule 1 to the House of Commons Disqualification Act 1975 to disqualify anyone:

- holding the office of the commissioner

- on the list of those eligible to be appointed to a panel from being a member of the House of Commons

The government's view is that this will maintain the independence of the commissioner and is compliant with article 6.

Clause 17 provides for the decision-making process of the panel. The panel will receive cases from the commissioner and be independent of the co-ordinating doctor, the assessing doctor and the person seeking assistance under the bill, and the government's view is that this will maintain the independence of the panel and is compliant with article 6.

Article 6 is very likely to also be engaged in the context of decisions by the commissioner and the panel. The civil right in question is the article 8 right of a person to choose the time and manner of their death (Haas v Switzerland (31322/07) at 51 - see also Mortier v Belgium). Convention rights are civil rights for the purposes of article 6 engagement.

Under clause 16, once the commissioner has received the necessary evidence, they must refer the person to a panel for determination regarding their eligibility to request assistance in accordance with the bill. Clause 16 does not include any statutory right of appeal against the decision of the commissioner to not refer the person's case to a panel.

Clause 18 sets out provisions relating to the appeal of the panel's determination to grant, or refuse to grant, a certificate of eligibility. Where the panel refuses to grant a certificate of eligibility, the person seeking assistance may apply to the commissioner for a review of the panel's refusal where the panel's decision:

- contains an error of law
- is irrational
- is procedurally unfair

The commissioner must consider any application without a hearing and where they are satisfied that one of the grounds of appeal applies, the commissioner must refer the case to a different panel for a fresh determination. In all other circumstances, the commissioner must dismiss the application. The commissioner must also set out the reasons for their decision.

In practice, where an application has been made to the commissioner referring a case to reconsider the panel's refusal to grant a certificate of eligibility, the applicant could challenge the commissioner's decision via a

judicial review on the usual grounds. The possibility of challenging the decision by way of judicial review would, in the government's view, be sufficient to comply with the applicant's convention rights. The court hearing the judicial review is itself a public authority and would determine any convention issues for itself.

While clause 17 does not make provision for anyone (other than the person seeking the certificate of eligibility) to be a party, or to apply to be a party, to the person's case before the panel, it does allow for the panel to hear from and question 'any other person' - clause 17(4). This provides some degree of flexibility to enable the panel to consider relevant evidence from others while maintaining safeguards to ensure only the person seeking the declaration can be a party to that application.

Where a certificate of eligibility has been granted by the panel, the applicant will have no cause to challenge the decision of the panel. It is possible that others may seek to challenge the panel's decision either on the facts or on the procedure. Such persons can still seek a judicial review of the decision if they are adjudged to have standing to bring the judicial review claim.

In so far as the lack of statutory appeal route of appeal may be said to interfere with article 6, the government notes that article 6 is a qualified right which is capable of lawful interference where necessary and proportionate to 'protect the rights and freedoms of others' and to safeguard the ability of those who are terminally ill and wish to die to access a medical practitioner who will facilitate the assisted dying regime. The government's view is that given the applicant will have a limited lifespan, where a panel has decided to grant a certificate, it would be proportionate to ensure the process is not frustrated through lengthy legal challenges and a court is unlikely to find that there is interference with article 6. In the event a court does find that there is an interference, the government's position is that it is necessary and proportionate.

Criminal offence

Clause 32(1) of the bill provides 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 bill, or performing any other function under the bill in accordance with the bill

- assisting a person seeking to end their own life in accordance with the bill, in connection with the doing of anything under this act

The government's view is that clause 32(1) acts as a declaratory statement that in the circumstances set out in clause 31(1), the relevant behaviour does not amount to a criminal offence, and that it does not operate as a legal exemption. The government's view is that clause 32(1) does not therefore engage article 6.

Clause 32(3) inserts a new section 2AA into the Suicide Act. Subsection (2) of that provision sets out that it is a defence for a person charged with an offence under section 2 of that act to prove that they reasonably believed they were acting in accordance with the bill and took all reasonable precautions and exercised all due diligence to avoid the commission of the offence. The defendant carries the legal burden of proving that defence, on the balance of probabilities.

The government considers that new section 2AA(2) as inserted by clause 32(3) therefore engages article 6. Article 6 broadly protects the right to a fair trial, but this encompasses matters such as the presumption of innocence, burdens of proof and evidential presumptions.

The defence in new section 2AA(2) reflects the fact that there may be cases in which a person incorrectly thinks they are acting in accordance with the process set out in the bill, but through no fault of their own are not in fact doing so (because, for example, an error was made at an earlier stage of the process).

The government notes that the circumstances around the defendant's actions, and the steps they took to ensure they were acting in accordance with the bill, are within the knowledge and possession of the defendant, unless disclosed to the prosecution. As such, if the defendant does feel the defence is available to them, satisfying the burden should be relatively straightforward in that it merely requires provision of the relevant information. Conversely, were an evidential burden to be adopted, this would require the prosecution to then prove that the defendant's belief was not reasonable, and that they had not taken all reasonable precautions and exercised all due diligence, which could be difficult and therefore limit their ability to prosecute the offence.

Taking account of the above, the government's view is that the reverse burden contained in clause 32(3) is compatible with article 6(2).

Civil liability

At clause 33(1), the bill provides an exemption for person from ‘civil liability’ in relation to the provision of assistance to a person to end their own life, provided that the person acted in accordance with the bill. For article 6 to be applicable, there must be a substantive right in domestic law, and it has been recognised at the ECtHR that the assertion of the right, derived from a tortious claim, to seek an adjudication on the admissibility and merits of an arguable claim was in itself sufficient to ensure the applicability of article 6.

Clause 33(1) is intended to have a declaratory effect to confirm that a person does not incur civil liability by virtue of providing assistance to a person in accordance with the bill. Clause 33(2) specifically clarifies that where a person provides assistance in accordance with the bill and a civil liability arises, such as negligence, or where there is dishonesty or bad faith, clause 33 does not provide an exemption. In effect, the government’s view is that it does not engage article 6.

Accordingly, the government considers that these provisions are compatible with article 6.

Article 7

Article 7 of the ECHR provides that:

(1) No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.

(2) This article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations. Article 7 therefore prohibits the retrospective application of criminal law to the disadvantage of a defendant, and is engaged in so far as it requires the offence and corresponding penalty to be clearly defined in law. The government is of the view that the following provisions in the bill may particularly engage article 7:

- clause 32 - criminal liability for providing assistance
- clause 34 - dishonesty, coercion and pressure

- clause 35 - falsification or destruction of documentation
- clause 36 - falsification of document etc with intention that another will obtain assistance to end own life

Clause 32 engages article 7 in so far as it sets out circumstances in which behaviour that would otherwise be an offence is no longer an offence. Clauses 34 to 36 engage article 7 in so far as they create new criminal offences.

In order to comply with the requirement of a clear definition in law, the key question to be satisfied is whether the defendant could reasonably have foreseen - with the assistance of a lawyer, if necessary - that they risked being convicted of the offence in question and being sentenced to the penalty the offence carries, at the time of the commission of the offence.

In relation to foreseeability and the wording of clause 34, while the terms ‘coercion’, ‘pressure’ and ‘dishonesty’ are not defined in the clause, the government considers that the terms are widely understood by the general public given their use elsewhere - for example:

- the offence of controlling and coercive behaviour in section 76 of the Serious Crime Act 2015
- the offence of encouraging or assisting serious self-harm in section 184 of the Online Safety Act 2023 (which defines an act capable of encouraging the serious self-harm of another person as including putting pressure on another person)
- section 65 of the Serious Crime Act 2007, which provides for the purposes of the inchoate offences in that act, that references to a person’s doing of an act that is capable of encouraging the commission of an offence includes a reference to their doing so by putting pressure on another person to commit an offence

Dishonesty is also a well-understood concept.

In relation to the penalties under the new offences, these are clearly set out in the proposed clauses, the offences will not have any retrospective effect, and the public will have sufficient familiarity with the concepts in the offence in order to identify the kinds of acts that would fall within it.

Accordingly, the government considers that the provisions are compatible with article 7.

Article 8

Article 8 of the ECHR provides that:

Everyone has the right to respect for his private and family life, his home and his correspondence. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.
The government considers that article 8 is likely to be engaged by the bill. The following provisions of the bill are particularly likely to engage article 8:

- clause 1 - assisted dying
- clause 2 - terminal illness
- clause 25 - provision of assistance

Clause 1 of the bill, as outlined, makes provision for assisted dying for terminally ill adults who meet a number of criteria.

Clause 2 defines where a person will be considered to have a terminal illness under the bill. This is where the person has an inevitably progressive illness or disease which cannot be reversed by treatment and the person's death in consequence of that illness or disease can reasonably be expected within 6 months.

Clause 2 explicitly provides that a person is not to be considered to be terminally ill merely because they are a person with a disability or mental disorder (or both).

The government considers that in providing for assisted dying, the bill is in keeping with article 8, which has been held to protect the right to choose the time and manner of one's death (see, for example, Pretty v United Kingdom at 67).

Persons with a disability or mental disorder

The government recognises that the bill will only enable assisted dying for those who are 'terminally ill' as defined at clause 2 of the bill, and that clause 2 explicitly provides that a person is not to be considered to be terminally ill merely because they are a person with a disability or mental disorder (or both) (at clause 2(3)). In so far as this treats those with a

mental disorder or disability differently compared with those who do not have a disability or mental disorder, the government considers this is justifiable in pursuit of the aim of protecting the sanctity of the lives of disabled persons and those with a mental disorder, which is in keeping with their article 2 rights.

Further consideration of the rights of those with a disability or mental disorder is considered below under the heading of article 14.

Terminal illness

In allowing terminally ill people (as defined by the bill) access to assisted dying, but not non-terminally ill people (that is, those who do not meet the definition of terminal illness under the bill), the bill arguably treats 2 comparable groups differently, so as to engage the prohibition on discrimination under article 14 of the ECHR (in conjunction with article 8). Consideration of this issue can be found at the section on article 14 within this analysis, but in short the government's view is that any interference with article 8, and discrimination in the enjoyment of article 8 rights under the bill, would be justified by the need to protect the sanctity of life and the risk that, if the assisted dying scheme were more widely available, then the scope for violations of article 2 may increase.

Making assisted dying available more widely (such as exclusively on the basis of mental illness and/or disability) could implicitly devalue the lives of those who suffer from such conditions. The government considers that restricting assisted dying to those whose death is both inevitable and reasonably imminent strikes a proportionate balance between articles 2 and 8, and is sufficient to justify any potential interference with article 14.

Self-administration

Clause 25 of the bill sets out that a co-ordinating doctor may provide a person with an approved substance with which to end their own life, and that this substance must ultimately be self-administered.

The government recognises that this means that a person who is unable to self-administer an approved substance will be unable to access assisted dying under the bill. The government considers that any interference with article 8, and/or discrimination in the enjoyment of article 8 rights (as protected by article 14) which may arise between those who are able to self-administer and those who are not, is justifiable.

Any such interference would be ‘provided for by law’ as it would be contained in primary legislation.

Furthermore, the government’s view is that the self-administration requirement pursues a legitimate aim in that it seeks to protect a person from having an approved substance administered to them, which if allowed for, could increase the risk for abuse of the regime - for example, forced administration by a third party. A justification based on the need to safeguard the sanctity of life and the balancing act required by the competing interests at play under articles 8 and 2 is, in the government’s view, legitimate.

The government considers that proportionality is then achieved by the fact that the co-ordinating doctor is able to prepare the approved substance, a medical device for administration and to assist the person with ingestion and/or self-administration (as set out at clause 25(7) and (8)). Allowing for assistance with preparation potentially enables a broader range of people to access assisted dying under the bill than if the bill required the preparation stage to also be undertaken solely by the person seeking assisted dying.

Accordingly, the government considers that these provisions are compatible with article 8 of the ECHR.

Right to access information in the context of death of a family member

The government considers that the right to access information in the context of death of a family member is adequately protected by the robust death certification and registration requirements of the bill, both in relation to deaths as a whole under existing legislation, and in specific relation to assisted deaths under the bill, including the requirement for the cause of death to be recorded as ‘assisted death’ where regulations are made applying existing legislation.

For completeness, the general prohibition against assisted suicide, as set out in section 2 of the Suicide Act, engages article 8 (Pretty v United Kingdom and R (Nicklinson) v Ministry of Justice [2014] UKSC 38). The more limited prohibition provided for by section 2 when read with clause 32(1) and as amended by clause 32(3), must therefore also engage article 8. However, in our view the associated interference with article 8 does not arise from clause 32 in and of itself but rather is a result of the bill overall. This memorandum does not therefore set out a separate article 8 analysis in respect of clause 32.

Civil registration has in some circumstances been found by the ECtHR to engage article 8 ECHR rights to private and/or family life including:

- births and marriages and/or partnerships registration and parent-child relationships
- issues surrounding names as part of personal and family identity (see, for example, Dadouch v Malta (38816/07); Mennesson v France (65192/11))
- issues surrounding names as part of personal and family identity (see, for example, Mentzen v Latvia (71074/01))

The ECtHR has emphasised that everyone has a right to have access to information concerning private and/or family life in the context of death of a family member, and there is an obligation to take reasonable steps to ensure that family members are informed of a death, as well as disposal of a body. See, for example, Lozovyye v Russia (4587/09) or Jovaovic v Serbia (21794/08), in which the facts included that the applicant's son, who had died, was recorded in births registration but not deaths registration records and (among other allegations) the body was not released.

Article 9

Article 9 of the ECHR provides that:

(1) Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

(2) Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

Article 9 may be engaged by the bill as a whole in the sense that the bill sets up a new regime for the provision of assisted dying and that there are likely to be a range of views from various groups based on beliefs and religion. These notions protect 'atheists, agnostics, sceptics and the unconcerned', thus protecting those who choose to hold or not to hold religious beliefs and to practise or not to practise a particular religion (see,

for example, S.A.S. v France (4834/11) at paragraph 124 and İzzettin Doğan and Others v Turkey (62649/10) at paragraph 103).

Preserving the right of individuals to decline to provide assistance and to providing safeguards to ensure these individuals are not subject to any detriment, will be relevant in assessing any interference with article 9 rights. The government considers that the following provisions may potentially engage article 9:

- clause 5 - preliminary discussions with registered medical practitioners
- clauses 8 to 22 - procedure, safeguards and protections
- clauses 25 to 27 - provision of assistance to end life
- clauses 41 and 42 - voluntary assisted dying services in England and Wales

The ECHR holds a reasonably broad approach as to what convictions are capable of protection under article 9 and the government considers that conscientious objection to partaking in the assisted dying regime is likely to attain the level of cogency, seriousness, cohesion and importance required to be protected under article 9. The government notes, for example, that opposition to abortion has been held by the ECHR to attract article 9 protection (see Knudsen v Norway (110845/84) and Van Schijndel and Others v the Netherlands (30936/96)).

The bill provides that persons are not required to provide assistance at clause 31. Schedule 3 amends the Employment Rights Act 1996 to provide protection against any detrimental treatment by an employer of a worker where the worker has exercised their right not to participate in the provision of assistance or for participating in the provision of assistance. The government is of the view that this clause would ensure individuals are not required to participate where they do not wish to on the basis of their religion or their beliefs (or indeed for any reason at all). As such, the government's position is that the bill does not interfere with article 9, nor does it allow for indirect discrimination in the enjoyment of article 9 rights.

Under clause 5(6), registered medical practitioners who are unwilling or unable to carry out an initial discussion with a patient regarding assisted dying are under a duty (if requested to do so) to ensure that the person is directed to where they can obtain information and to have the initial discussion. The government notes in this regard that there is no similar duty of referral under the Abortion Act 1967. This could potentially engage a person's rights under article 9.

However, article 9 is a qualified right which is capable of lawful interference where necessary and proportionate to 'protect the rights and freedoms of others'. The department's view is that any interference as a result of the requirement at clause 5(6) is justified in pursuance of the legitimate aim of enabling those who wish to die to access information on assisted dying and to have an initial discussion. In other words, the bill strikes a balanced and proportionate approach between the need to protect healthcare professionals' rights under article 9 (and article 14) against the need to protect the article 8 rights of a terminally ill person who is seeking assistance to end their own life.

Clauses 8 to 14 set out the duties a registered medical practitioner must take if they were to assume the role of the co-ordinating doctor or independent doctor.

Clauses 16 to 18 set out the duties placed on the commissioner and panel members where a person applies to the commissioner for a determination by the panel.

Clauses 25 to 27 set out the process for the provision of assistance, including the supply of the approved substance for the purpose of assisting a person to end their life.

The government notes that there is there is no obligation on a registered medical practitioner to act as a co-ordinating doctor. Clause 8(5)(b) states that a co-ordinating doctor is a registered medical practitioner who has indicated that they are able and willing to carry out the functions of the co-ordinating doctor. Similarly, there is no obligation on persons eligible to act as the commissioner to take up the role, or on persons eligible to be appointed as panel members to be appointed to the list in accordance with paragraph 3 of schedule 2. As such, the government's position is that there is no obligation on those who do not wish to participate on grounds of their religion or belief and it is likely that only those who wish to participate in this process will do so. Accordingly, the government considers that these provisions do not engage article 9.

Under clauses 41 and 42, there is a regulation-making power for the Secretary of State and Welsh ministers to make provisions for the delivery of voluntary assisted dying services in England and Wales as a health service under the relevant National Health Service. In particular, clauses 41(1) and 42(1) impose a duty on the Secretary of State or Welsh ministers to make provisions securing that arrangements are made for the provision of voluntary assisted dying services in England and Wales. As such, it is

possible that such arrangements could require individuals to participate in the process.

Again, the government notes that clause 31 of the bill provides that persons are not required to provide assistance and schedule 3 provides for protection against any detrimental treatment by an employer of a worker where the worker has exercised their right not to participate in the provision of assistance or for participating in the provision of assistance. The government is of the view that this would ensure individuals are not required to participate where they do not wish to on the basis of their religion or their beliefs. Accordingly, the government considers that these provisions are compatible with article 9 of the ECHR.

Article 10

Article 10 of the ECHR provides that:

(1) Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent states from requiring the licensing of broadcasting, television or cinema enterprises.

(2) The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

The government recognises that article 10 may be engaged by clause 43 and the prohibition of advertising which promotes assisted dying services. The ECtHR has established in a series of cases that freedom of expression extends to commercial expression and confirmed that advertising is a form of expression protected under article 10 (see, for example, Casado Coca v. Spain (15450/89)). Therefore, the prohibition at clause 43 potentially interferes with article 10.

Article 10 is, however, a qualified right, interference with which will be lawful where it is prescribed by law and a proportionate means of achieving a legitimate aim.

Any interference with will be prescribed by law, being contained in secondary legislation to be made under subsection (1) of clause 43 of the bill.

The government considers that the prohibition on advertising which promotes voluntary assisted dying services pursues a legitimate aim. Article 10(2) specifically provides that the exercise of freedom of expression may be subject to conditions and restrictions prescribed by law (among other things) in the interest of the protection of the rights of others. The government considers that any potential interference is capable of being justified by the legitimate aim of preventing individuals (who are terminally ill and eligible to access assisted dying services under the bill) from feeling pressured to seek an assisted death. The government considers that prohibiting such advertising is consistent with the government's positive obligations under article 2 of the ECHR to provide sufficient safeguards (as considered in the article 2 analysis set out above).

Furthermore, the government considers that any interference with article 10 is proportionate. While the new clause 43 at subsection (1) requires regulations to be made which prohibit advertising promoting voluntary assisted dying services, subsection (2) enables the regulations to contain exceptions, for example, for the provision of certain information to users or potential users of voluntary assisted dying services. The government therefore considers that the power to build in exceptions to the general prohibition on advertising achieves proportionality. Moreover, the power to make such regulations will be contained in primary legislation and so will have been subject to significant parliamentary scrutiny, as will regulations made under the power as a result of the affirmative procedure.

Accordingly, the government considers that clause 43 is compatible with article 10 of the ECHR.

Article 14

Article 14 ECHR provides that:

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.
Article 14 does not provide free-standing rights but must be considered in conjunction with another substantive ECHR provision. While it is necessary for the issue to fall within the remit of one of the substantive rights, it is not

necessary to show a violation of that right for article 14 to be engaged (see, for example, Carson v UK (42184/05)).

To fall within scope of article 14, a claimant must be within one of the groups listed or have ‘other status’. They must also show difference in treatment between themselves and a comparator - in other words ‘persons in an analogous or relevantly similar situation’.

Difference in treatment will not be discriminatory, and thus not contravene article 14, where the measure has a legitimate aim, there is a link between the measure and the aim, and the measure is proportionate - in other words, strikes a fair balance between the aim pursued and the rights and freedoms of those impacted.

The government considers that article 14 is engaged in conjunction with articles 8 and 9.

Article 14 and article 8

Clause 1 of the bill makes provision for assisted dying for terminally ill adults who meet a number of criteria.

Clause 2 defines where a person will be considered to have a terminal illness under the bill, as where the person has an inevitably progressive illness or disease which cannot be reversed by treatment and the person’s death in consequence of that illness or disease can reasonably be expected within 6 months.

Clause 2(3) explicitly provides that a person is not to be considered to be terminally ill merely because they are a person with a disability or mental disorder (or both).

As set out in the analysis of article 8 above, the government considers that clause 2(3), in so far as this treats those with a mental disorder or disability differently compared with those who do not have a disability or mental disorder, is justifiable in pursuit of the aim of protecting the value of the lives of disabled persons and those with a mental disorder, which is in keeping with their article 2 rights.

The government recognises that some of the requirements of the bill may in practice be more difficult for persons with particular disabilities or learning difficulties to comply with. For example, the need to be able to demonstrate a ‘clear, settled and informed wish’ to end one’s own life (as required by clause 1) and the need to be able to make the first and second

declaration (as required by clauses 8 and 19) may be difficult for those with a particular learning disability. The requirements of the bill therefore raise potential indirect discrimination in the enjoyment of article 8 rights, as protected by article 14. However, the government's view is that any discrimination in the enjoyment of article 8 rights is justifiable as a proportionate means of achieving a legitimate aim.

Firstly, the requirements of the bill are set out in primary legislation and so are prescribed by law.

Secondly, the bill's safeguards are critical in ensuring that only those who have a full understanding of the assisted dying process and have consistently demonstrated their free and informed desire to pursue assisted dying can access an assisted death. This is an important part of protecting the sanctity of life as required by article 2 and in the government's view pursues a robust legitimate aim.

Furthermore, the bill contains a number of provisions which aim to assist those who may have a disability or learning difficulty (and who also meet the definition of terminally ill) to be able to comply with the assisted dying process, so as to limit any potentially discriminatory impact that the requirements of the process may have on the enjoyment of article 8 rights. For example:

- under clause 5(4) and clause 12(5), when conducting the preliminary discussions or an assessment of the person seeking an assisted death, the registered medical practitioner, co-ordinating doctor or independent doctor must consider adjustments for language and literacy barriers, including the use of interpreters
- under clause 8(8)(c), a registered medical practitioner must have completed training relating to reasonable adjustments and safeguards for autistic people and people with a learning disability before they can act as the co-ordinating doctor
- under clause 39(1)(c), the Secretary of State must issue codes of practice related to the provision of information and support to persons with learning disabilities, who are eligible to request assistance under this bill, including the role of advocates
- under clause 40, the Secretary of State must (and the Welsh ministers, in respect of devolved matters, may) issue guidance on the operation of the act and in doing so must have regard to the need to provide practicable and accessible information, advice and

guidance to persons with learning disabilities and must consult persons with learning disabilities before preparing such guidance

- under clause 49, the commissioner must monitor the operation of the act, investigate and report to an appropriate national authority (the Secretary of State or Welsh ministers) on matters related to the operation of the act and the report must also include information about the application of the act to persons who have protected characteristics. The persons whom the commissioner must consult prior to the annual report are the chief medical officers of England and Wales and persons appearing to the commissioner to represent the interests of persons with protected characteristics
- under clause 55, there is a duty on the Secretary of State to consult the Commission for Equality and Human Rights and such other persons as the Secretary of State considers appropriate before making regulations under specific clauses in the bill
- clause 22 imposes a duty on the Secretary of State to make provisions, by regulations, on the appointment of independent advocates to support qualifying persons, as defined under subsection (4), which may include the circumstances when a person can act as an independent advocate, approval requirements, provisions for payments, training requirements and obligations on other persons performing a function in accordance with the bill
- clause 48 imposes a duty on the commissioner to, within 6 months of appointment, to appoint a disability advisory board (‘the board’) to advise on the implementation of the bill and requirements on the composition of the board. It also sets out the reporting requirements of the board to the Secretary of State and the commissioner on the implementation of the bill and for the report to be laid before both Houses of Parliament

Terminal illness

In allowing terminally ill people (as defined by the bill), access to assisted dying, but not non-terminally ill people (that is, those who do not fulfil the definition of terminally ill under the bill), arguably 2 comparable groups are treated differently, so as to engage the prohibition on discrimination under article 14 of the ECHR (in conjunction with article 8).

The government considers that it is likely that being ‘terminally ill’ would be found to amount to a ‘status’ under article 14. The courts have, for example, accepted that having a disability constitutes a relevant status for the purposes of article 14 (see, for example, Glor v Switzerland

(13444/04)). The government is also mindful of the judgment in R(Stott) v Secretary of State for Justice [2018] UKSC59, where it was found that while status has usually been said to refer to a ‘personal characteristic’ of a person, it is not limited to innate qualities such as sex, race, sexual orientation, birth status or colour. It includes acquired qualities such as marital status or religion.

The government’s view is that any interference with article 8, and discrimination in the enjoyment of article 8 rights under the bill would be justified.

Firstly, any such interference would be ‘provided for by law’ as it would be contained in primary legislation.

Secondly, the government considers that any interference would also be in pursuance of a legitimate aim. The eligibility line created by the definition of ‘terminal illness’ engages complex social, moral and ethical issues and essentially requires balancing the ability for a person to choose the time and manner of one’s death and the need to safeguard the sanctity of life. The need to protect the sanctity of life and the risk that, if the assisted dying scheme were more widely available, then the scope for pressure, coercion and ultimately violations of article 2 may increase, is, in the government’s view, a robust legitimate aim.

Moreover, making assisted dying available more widely (such as exclusively on the basis of mental illness and/or disability) could implicitly devalue the lives of those who suffer from such conditions. The government considers that restricting assisted dying to those whose death is both inevitable and reasonably imminent, strikes a proportionate balance between articles 2 and 8, and is sufficient to justify any potential interference with article 14.

Self-administration

Clause 25 of the bill sets out that a co-ordinating doctor may provide a person with an approved substance with which to end their own life, and that this substance must ultimately be self-administered.

The government recognises that this requirement means that a person who is unable to self-administer an approved substance will be unable to access assisted dying under the bill. The impact of this requirement is considered with regards to article 8 above. In short, the government considers that any discrimination in the enjoyment of article 8 rights, as protected by article 14,

which may arise between those who are able to self-administer and those who are not, is justifiable.

Any such indirect discrimination would be in pursuance of the legitimate aim of seeking to protect a person from having an approved substance administered to them, which, if allowed for, could increase the risk for abuse of the regime, for example, forced administration by a third party. The need to safeguard the sanctity of life and the balancing act required by the competing interests at play under articles 8 and 2 is, in the government's view, a sufficient rationale to justify any indirect discrimination under article 14.

Furthermore, the government considers that proportionality is achieved by the fact that the co-ordinating doctor is able to prepare the approved substance, a medical device for administration and to assist the person with ingestion and/or self-administration (as set out at clause 25(7) and (8)). Allowing for assistance with preparation potentially enables a broader range of people to access assisted dying under the bill than if the bill required the preparation stage to also be undertaken solely by the person seeking assisted dying.

The government therefore considers that any indirect discrimination in the enjoyment of article 8 rights is justifiable.

Article 14 and article 9

Article 14, read in conjunction with article 9, may also be engaged as the concept of assisted dying is relevant to a range of religious beliefs. Along with the protection against discrimination on the grounds of religion provided by article 14, the convention contains a substantive provision expressly providing for the right to freedom of thought, conscience and religion enshrined in article 9 of the convention.

As set out in the analysis of article 9 above, clause 5(6) of the bill imposes a duty on a registered medical practitioner, where they are unwilling or unable to conduct the preliminary discussion, to ensure that the person is directed to where they can obtain information and have the preliminary discussion.

However, article 14 is a qualified right which is capable of lawful interference where necessary and proportionate to 'protect the rights and freedoms of others'. The government's view is that any such interference flowing from the requirement at clause 5(6) is justified in pursuance of the legitimate aim of safeguarding the ability for those who are terminally ill and

wish to die to access information on assisted dying and to have a preliminary discussion. In other words, the government considers that any indirect discrimination in the enjoyment of article 9 rights (as protected by article 14) is justified by the need to balance those rights against the ability of persons to seek an assisted death, which is in keeping with the article 8 rights of those persons.

Furthermore, the government notes that the obligation at 5(6) does not require a medical practitioner to undertake the preliminary discussion directly themselves, and does not require any active, direct participation in the process of providing assisted dying itself. Therefore, the government considers that any potential interference with articles 9 and 14 is proportionate.