Royal College of Psychiatrists in Scotland – Briefing for MSPs on the Assisted Dying for Terminally Ill Adults (Scotland) Bill

May 2025

About the College in Scotland

Who we are – The Royal College of Psychiatrists is the professional medical body responsible for supporting the psychiatry profession to develop standards and act collectively to improve clinical care and treatment for people with mental ill health. This support extends throughout their careers, from training through to retirement, and in setting and raising standards of psychiatry in Scotland and the United Kingdom.

What we do – The College aims to improve the outcomes, not just of people with mental ill health, but to also positively address the mental health of all individuals, their families and communities. To achieve this, the College sets standards and promotes excellence in psychiatry; leads, represents and supports psychiatrists; improves the scientific understanding of mental illness; works with and advocates for patients, carers and their organisations. Nationally and internationally, the College has a vital role in representing the expertise of the psychiatric profession to governments and other agencies.

Our engagement with the Bill

In order to gauge the views of the profession as widely as possible, RCPsychiS undertook a survey of its membership in April and May 2024. It was not the intention of the survey to establish whether the College in Scotland is in favour or opposed to the principle of assisted dying for terminally ill adults; we asked a range of questions, with a primary focus on the roles proposed for psychiatry in this Bill. We also considered the profession's concerns about possible consequences not specified in the Bill. Centrally, at present, **RCPsychiS does not have a formal position on assisted dying.** It should also be noted that this briefing refers only to the position of the College and Bill in Scotland: a separate briefing has been prepared on the RCPsych response to the Terminally Ill Adults (End of Life) Bill in England and Wales.

RCPsychiS has provided both written and oral evidence in response to the Health, Social Care and Sport Committee's call for views on the Bill. Our written evidence can be accessed here. Details of our membership survey can be found in the appendix of this evidence.

Items welcomed

We welcome the following provisions of the Bill and recommendations of the report (which align with the evidence we offered):

1. No *default* expectation of involvement by psychiatrists in every case.

2. *Restriction of the role of psychiatrists* to assessments of *capacity* in cases where either of the coordinating or independent doctors have doubts, especially where capacity is called into question by apparent mental disorder.

3. Willingness to consider a *central register* of psychiatrists who have opted in to participation. This will facilitate the choices of psychiatrists who prefer not to participate. and will enable training, oversight, quality control, data gathering, research and access to second opinions, the need for all of which is emphasised in the Report. In this respect, the provision of psychiatric assessments would operate as a "stand-alone" service, rather than one integrated with usual practice — an issue the Report considers.

4. Confirmation that while excluding *coercion* is important, it is not specifically a role for psychiatrist

5. Raising the *minimum age* to 18 (we note that Mr MacArthur has since accepted this recommendation)

6. Recording *both* the mode of death and underlying illness on death certificates

Items of concern

We share concerns set out in the Report about the potential for *extension of eligibility* (via future legislation or legal challenges to the current bill) to other groups.

These include people with:

- non-terminal physical illness
- mental disorder without qualifying terminal illness
- current incapacity at the time of assisted dying

We agree with the recommendations of the Report that protections against this extension need to be considered if the Bill passes Stage 1.

Items of omission

We identify omissions in the Report. In our evidence, we raised the question of the eligibility of people with two specific diagnoses, namely *dementia* and *anorexia nervosa*. The Report did not address these concerns directly.

Dementia

Dementia meets the eligibility criteria for assisted dying, *provided capacity is maintained up to the time of death*. Most people with dementia will have lost capacity by the time their condition is "advanced" — *but not all.* This places a heavy burden on assessments of capacity, which is not straightforward in borderline cases. It may require input from a range of medical professionals (eg speech therapists, occupational therapists, psychologists, social workers and mental heath officers). Team meetings may be needed to reach a consensus, with the potential for a range of views: different clinicians and different teams may reach different conclusions. It is important to recognise this, given the starkly dichotomous life-or-death outcomes which follow.

Anorexia nervosa

The RCPsychiS takes the view that *anorexia nervosa,* no matter how severe, is *not* a terminal condition under the definition in the Bill. (Other opinions have been expressed elsewhere on this matter). We reiterate our recommendation that a statement to this effect is included on the face of the Bill, and it is not left to secondary legislation, regulation or professional opinion to attempt to resolve the question.

Items of primary focus for psychiatry

Capacity

The assessment of capacity to make decisions about medical treatment and other matters is a core skill expected of all doctors. It is not a specialist expertise to be assigned solely to psychiatrists, though psychiatrists can *assist* in cases where apparent mental disorder calls it into question.

(*In other cases capacity may be called into question by factors unrelated to mental disorder, such as a severe difficulty in communication arising from neurological impairment. These assessments should be made by an appropriate specialist such as a neurologist, with assistance from speech and language therapists.)*

In our evidence, we sought clarity on why the Bill reverses the presumption of capacity in the Adults with Incapacity Act, by which we are all presumed to retain capacity, until it has been confirmed that we do not. Under this Bill, *capacity* has to proved: in every other area, it is ***in****capacity* which requires proof. The Report recognises this reversal of presumption, but makes no related recommendation. It is unclear why this is so, and what legal and practical consequences follow.

Treatment vs intervention

There is debate about whether assisted dying should be considered a "treatment" or not, given that certain legal consequences flow, including the question of whether the Adults with Incapacity Act applies. There is no doubt that is a

medical intervention, and in this respect similar to medical and surgical interventions such as abortion and live organ donation. Neither of these is, strictly speaking a treatment, but the relevant law governing capacity to consent to them is very clearly the Adults with Incapacity Act. In our view the same is true for assisted dying.

Mental disorder

As currently worded, the Bill discriminates against people with mental disorder by denying them access to assisted dying for a comorbid qualifying terminal illness. Amendment will be required to correct this, while preserving additional protection for those rendered vulnerable by mental disorder.

Next steps

Amendments and Clarifications

The Report describes many issues as requiring further clarification and/or amendments to the Bill if it passes Stage One. As the primary body representing psychiatrists in Scotland, RCPsychiS is willing to work with legislators to advise on those amendments and areas of clarification relating to incapacity, mental disorder and the roles envisaged for psychiatrists.

Training

Beyond that, if the Bill passes Stage 3, RCPsychiS is also willing to assist in developing training for non-psychiatric colleagues potentially working in this area in the future, on such matters as assessing capacity, the ways in which mental disorder may call it into question, and the role of countertransference in interactions between patients and clinicians. As The Report notes, the provision of training will also require sufficient resources.

Resourcing

Despite an unprecedented rise in demand for services in recent years, there has been no corresponding investment in our workforce: in fact, the number of psychiatrists in Scotland has fallen.[1] Urgent investment is needed to address these workforce challenges and ensure meaningful reform.

Mental health services lack the resources to deliver everything expected of them at present. As the Report acknowledges, new roles and responsibilities arising from the Bill will require new resources. This is not fully reflected in the financial memorandum accompanying the Bill.

Contact For further information, please contact us at scotland@rcpsych.ac.uk.

[1] According to NHS Scotland Workforce Census data, the number of permanent general psychiatrists in WTE posts in September 2024 was 113 less than the number in post a decade before in September 2014.