ASSISTED DYING / ASSISTED SUICIDE - THE STATE OF PLAY

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A LANGUAGE PRIMER

- Assisted dying / assisted suicide
 - Usually understood to mean providing the means to enable a person to take their own life, but not carrying out the final act
- 'Euthanasia' (at least) two meanings (nb the Greek origin)
 - Any step taken which has (or could have) the factual effect of bringing about the patient's death
 - Active steps taken to bring about a person's death (going beyond providing the means or responding to patient refusal)



CURRENT POSITION IN ENGLAND & WALES

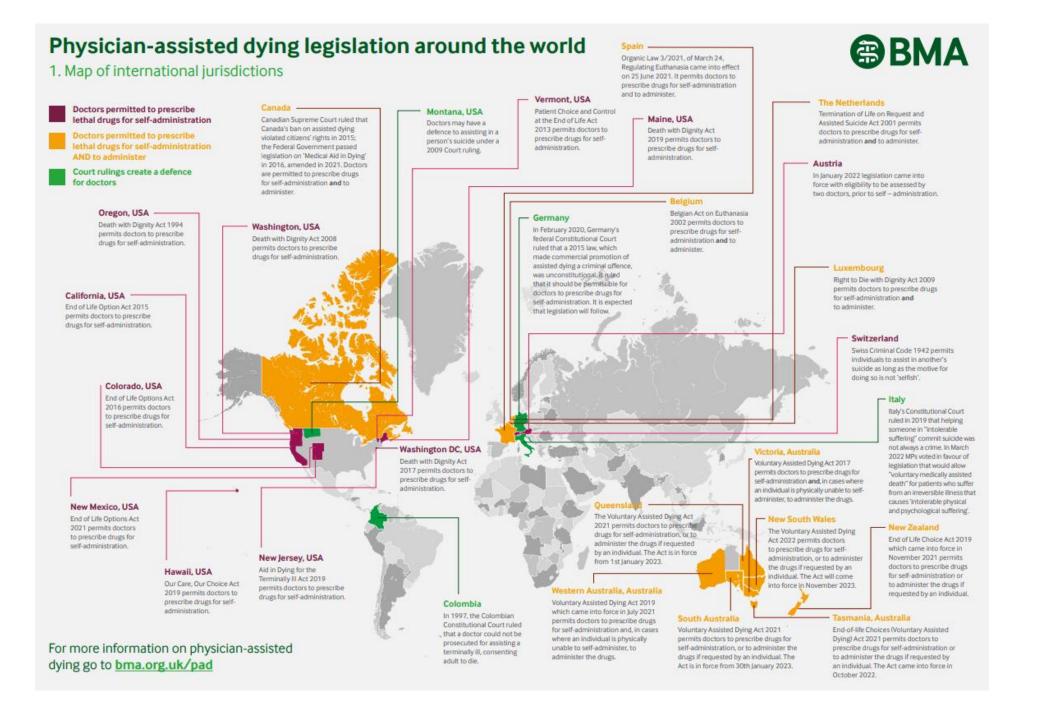
Suicide Act 1961:

- (1) A person ("D") commits an offence if—
 - (a) D does an act capable of encouraging or assisting the suicide or attempted suicide of another person, and
 - (b) D's act was intended to encourage or assist suicide or an attempt at suicide.
- (1A) The person referred to in subsection (1)(a) need not be a specific person (or class of persons) known to, or identified by, D.
- (1B) D may commit an offence under this section whether or not a suicide, or an attempt at suicide, occurs.

BUT – entirely lawful:

- To refuse treatment (if adult / competent minor)
- For a decision to be taken that not in best interests to continue treatment where person unable to make decision for themselves.







THE ECTHR

- Mortier v Belgium (2022)
 - Assistance with dying (including active euthanasia) not contrary to Article 2, but not required by Article 2 (or implicitly 8)
 - Breach of procedural limb of Article 2 on the facts
- Karsai v Hungary (2024)
 - Unusually sought comparative legal and ethical expert evidence
 - Cannot look at this as purely Article 8 negative right it necessarily involves a positive provision of access to medical intervention



WHERE ARE WE IN 2024?

- Isle of Man: legislation to have third reading, before moving onto the Legislative Council, the Isle of Man's upper chamber.
- Jersey: States Assembly approved detailed proposals for assisted dying in Jersey, and requested the Minister for Health
 and Social Services to bring forward primary legislation that permits assisted dying in Jersey for those with a terminal
 illness. "Work is now being undertaken on the preparation of a draft assisted dying law. The preparation of draft law is
 complex, and it is anticipated that this process will take a minimum of 12 to 18 months, with a debate on the draft law by
 the States Assembly by the end of 2025."
- Scotland: Private Member's Bill introduced, calls for views completed, and oral evidence being taken on timetable running to February 2025. Scottish Government position that the Bill in its current form is outside the legislative competence of the Scottish Parliament
- Lord Falconer introduced Assisted Dying for Terminally III Adults Bill as Private Member's Bill in House of Lords, not currently being progressed
- Kim Leadbeater MP introduced Terminally III Adults (End of Life) Bill, published on 11 November 2024, second reading 29
 November.



A COMPARISON

Similarities:

- Terminal illness
- Capacity
- Ordinary residence for specific period of time in relevant place

Differences:

- Age
- Length of prognosis
- 'Final act'
- Procedural steps
- Approach to conscientious objection / opt in
- Legalisation vs implementation
- For more, see this <u>table</u> (which also includes Lord Falconer's Bill)



AND REMINDER

Other models are available:

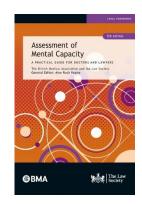
- 'Suffering' as the entry point either physical or 'psychic'
- Not necessarily medical / part of healthcare Switzerland and +/- Germany

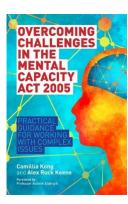


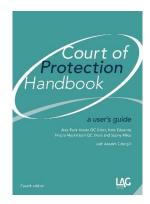
MORE RESOURCES

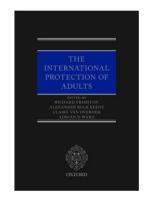
- 39 Essex Chambers
 Mental Capacity Law Resources
- Mental Capacity Law and Policy
- MCA Directory | SCIE
- Mental Health Law Online
- Open Justice Court of Protection

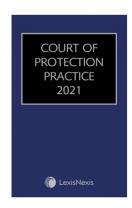
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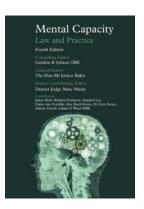












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