

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.

Physician-assisted dying legislation around the world

1. Map of international jurisdictions

- Doctors permitted to prescribe lethal drugs for self-administration
- Doctors permitted to prescribe lethal drugs for self-administration AND to administer
- Court rulings create a defence for doctors

Oregon, USA
Death with Dignity Act 1994 permits doctors to prescribe drugs for self-administration.

California, USA
End of Life Option Act 2015 permits doctors to prescribe drugs for self-administration.

Colorado, USA
End of Life Options Act 2016 permits doctors to prescribe drugs for self-administration.

New Mexico, USA
End of Life Options Act 2021 permits doctors to prescribe drugs for self-administration.

Hawaii, USA
Our Care, Our Choice Act 2019 permits doctors to prescribe drugs for self-administration.

New Jersey, USA
Aid in Dying for the Terminally Ill Act 2019 permits doctors to prescribe drugs for self-administration.

Canada
Canadian Supreme Court ruled that Canada's ban on assisted dying violated citizens' rights in 2015; the Federal Government passed legislation on 'Medical Aid in Dying' in 2016, amended in 2021. Doctors are permitted to prescribe drugs for self-administration and to administer.

Washington, USA
Death with Dignity Act 2008 permits doctors to prescribe drugs for self-administration.

Washington DC, USA
Death with Dignity Act 2017 permits doctors to prescribe drugs for self-administration.

Colombia
In 1997, the Colombian Constitutional Court ruled that a doctor could not be prosecuted for assisting a terminally ill, consenting adult to die.

Montana, USA
Doctors may have a defence to assisting in a person's suicide under a 2009 Court ruling.

Vermont, USA
Patient Choice and Control at the End of Life Act 2013 permits doctors to prescribe drugs for self-administration.

Germany
In February 2020, Germany's federal Constitutional Court ruled that a 2015 law, which made commercial promotion of assisted dying a criminal offence, was unconstitutional. It ruled that it should be permissible for doctors to prescribe drugs for self-administration. It is expected that legislation will follow.

Western Australia, Australia
Voluntary Assisted Dying Act 2019 which came into force in July 2021 permits doctors to prescribe drugs for self-administration and, in cases where an individual is physically unable to self-administer, to administer the drugs.

Queensland
The Voluntary Assisted Dying Act 2021 permits doctors to prescribe drugs for self-administration, or to administer the drugs if requested by an individual. The Act is in force from 1st January 2023.

South Australia
Voluntary Assisted Dying Act 2021 permits doctors to prescribe drugs for self-administration, or to administer the drugs if requested by an individual. The Act is in force from 30th January 2023.

Victoria, Australia
Voluntary Assisted Dying Act 2017 permits doctors to prescribe drugs for self-administration and, in cases where an individual is physically unable to self-administer, to administer the drugs.

New South Wales
The Voluntary Assisted Dying Act 2022 permits doctors to prescribe drugs for self-administration, or to administer the drugs if requested by an individual. The Act will come into force in November 2023.

Tasmania, Australia
End-of-life Choices (Voluntary Assisted Dying) Act 2021 permits doctors to prescribe drugs for self-administration or to administer the drugs if requested by an individual. The Act came into force in October 2022.

Spain
Organic Law 3/2021, of March 24, Regulating Euthanasia came into effect on 25 June 2021. It permits doctors to prescribe drugs for self-administration and to administer.

Maine, USA
Death with Dignity Act 2019 permits doctors to prescribe drugs for self-administration.

Belgium
Belgian Act on Euthanasia 2002 permits doctors to prescribe drugs for self-administration and to administer.

The Netherlands
Termination of Life on Request and Assisted Suicide Act 2001 permits doctors to prescribe drugs for self-administration and to administer.

Austria
In January 2022 legislation came into force with eligibility to be assessed by two doctors, prior to self-administration.

Luxembourg
Right to Die with Dignity Act 2009 permits doctors to prescribe drugs for self-administration and to administer.

Switzerland
Swiss Criminal Code 1942 permits individuals to assist in another's suicide as long as the motive for doing so is not 'selfish'.

Italy
Italy's Constitutional Court ruled in 2019 that helping someone in "intolerable suffering" commit suicide was not always a crime. In March 2022 MPs voted in favour of legislation that would allow "voluntary medically assisted death" for patients who suffer from an irreversible illness that causes "intolerable physical and psychological suffering".

New Zealand
End of Life Choice Act 2019 which came into force in November 2021 permits doctors to prescribe drugs for self-administration or to administer the drugs if requested by an individual.

Tasmania, Australia
End-of-life Choices (Voluntary Assisted Dying) Act 2021 permits doctors to prescribe drugs for self-administration or to administer the drugs if requested by an individual. The Act came into force in October 2022.



For more information on physician-assisted dying go to bma.org.uk/pad

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 Ill Adults Bill as Private Member's Bill in House of Lords, not currently being progressed
- Kim Leadbeater MP introduced Terminally Ill 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 **table** (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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