End of Life Assistance (Scotland) Bill
Royal College of Nursing (RCN) Scotland

The Royal College of Nursing (RCN) is the UK’s largest professional association and union for nurses with around 395,000 members, of which over 38,000 are in Scotland. Nurses and health care support workers make up the majority of those working in health services and their contribution is vital to delivery of the Scottish Government’s health policy objectives. We are pleased to have the opportunity to offer written evidence to the Scottish Parliament’s End of Life Assistance Bill Committee.

The RCN has a position of neutrality on assisted suicide. As such, in providing this evidence we offer no comment on the general principles of a Bill intended to legalise such assistance. However, the RCN is bound to offer comment on the specific provisions in the End of Life Assistance (Scotland) Bill as published, as they would relate to the future safe and effective practice of nurses and healthcare assistants in Scotland. On this basis, our evidence is limited to just two specific areas that would affect nursing practice: the final act of assistance and choosing to make a conscientious objection.

1. The final act of assistance

The End of Life Assistance Bill offers extensive detail on the safeguards around decision-making but offers a very limited legislative framework around the act of final assistance. As currently written, the RCN believes that the Bill poses a risk to nurses and their practice, in particular around the lack of specificity over who will deliver the assistance. We highlight that, as drafted, the person who would deliver the final act of assistance can be anyone, as long as they are neither a relative of the requesting person nor a person who knows they will benefit from the estate of the requesting person or has another interest in the person’s death.

The Bill places no obligation on the designated medical practitioner and requesting person to involve the person nominated to undertake the final act of assistance – whoever they are – in any of the advance discussions leading to the decision of method/place/time nor to oversee any of the legislative requirements relating to designated practitioners or psychiatrists. This is problematic on two counts:

First, this lack of statutory engagement with, and consent from, nursing staff could lead to conflict and confusion between the nominating person, the designated medical practitioner and the nurse (or other clinician or person) nominated to assist with the final act of suicide at a time of already heightened stress and emotion. This does not support the professional engagement of nurses and their wider team with patients.

Second, we believe that, despite the welcomed extension of immunity contained in section 1(b), the decision to leave unspecified the person
responsible for the final act of assistance may expose nurses and health care assistants who agree to take on this role to the risk of future prosecution. They will, in practice, have no means to ensure definitively that the full process, for which they are not legally responsible, has been in accordance with the Act.

Finally, we understand that the Bill does not include a defined method of delivering assistance to allow for patient choice and for future developments in medical technology to be legally utilised without the need to amend primary legislation. However, once this is coupled with the option of nominating a person who is not a regulated clinician to deliver the final act, we are concerned that the Bill cannot adequately ensure that the clinical intervention chosen will be delivered by a suitably competent person. For example, it would be possible for an inexperienced healthcare assistant, with an established professional relationship to the requesting person, to be nominated to deliver assistance by injection and feel pressurised to meet the request even if it falls outwith their sphere of competence. This would expose both the practitioner and patient to risk.

Currently, the Bill is clear that the duty to ensure that the detail of this legislation is followed falls to the designated registered medical practitioner. As such, given the manner in which this Bill has been framed, if the Bill gains enough support from MSPs to proceed through Parliament, the RCN will call for it to be amended at Stage 2 to also limit the delivery of the final act of assistance to the designated medical practitioner alone. This would address the serious concerns raised above.

2. Choosing to make a conscientious objection

Notwithstanding our comments above, whilst we are satisfied that the draft legislation otherwise makes adequate provision for the protection of nurses and healthcare assistants who wish to engage in supporting the act of assistance under the provisions of the Bill, we are not satisfied that adequate provision is made for those nurses and healthcare assistants who do not wish to engage in the process of agreeing or delivering assistance.

The explanatory notes to the Bill suggest that the General Medical Council’s (GMC) ethical guidance is sufficient to allow registered medical practitioners to object. The GMC guidance has no effect on other healthcare professionals, such as nurses, who will inevitably be asked to be engaged in the process, whether through witnessing requests, supporting patients in their dealings with nominated registered medical practitioners and psychiatrists, caring for patients through the decision-making process, or being present at and/or participating in the final act.

There is legislative precedent for enshrining in law the right to not participate in such controversial clinical interventions in both the Abortion Act 1967 and
the Human Fertilisation and Embryology Act 1990$^1$. The same approach should be applied to this Bill.

Should the Bill pass to Stage 2, the RCN will call for an amendment to ensure any individual can assert his/her right to conscientiously object to participating in any activity detailed in the Bill. Given also the additional burden placed on witnesses to sign statements regarding the understanding and independent decision-making of the requesting person, and the particular request for care home staff to take on this role, we would seek to ensure that this conscientious objection amendment also legislates against any form of coercion to engage in any of part of the process.

Every nurse and healthcare assistant must be in a position to offer a clear and unequivocal statement of the limits of their agreed involvement to patients who have chosen to request assistance to end their life.

If the Committee has any further questions regarding the RCN's position on this legislation, please contact: Elinor Jayne, Media and Parliamentary Officer on 0131 662 6172.

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RCN Scotland
11 May 2010

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$^1$ 1967 Abortion Act:
4 Conscientious objection to participation in treatment
(1) Subject to subsection (2) of this section, no person shall be under any duty, whether by contract or by any statutory or other legal requirement, to participate in any treatment authorised by this Act to which he has a conscientious objection: Provided that in any legal proceedings the burden of proof of conscientious objection shall rest on the person claiming to rely on it.
(2) Nothing in subsection (1) of this section shall affect any duty to participate in treatment which is necessary to save the life or to prevent grave permanent injury to the physical or mental health of a pregnant woman.
(3) In any proceedings before a court in Scotland, a statement on oath by any person to the effect that he has a conscientious objection to participating in any treatment authorised by this Act shall be sufficient evidence for the purpose of discharging the burden of proof imposed upon him by subsection (1) of this section.

Human Fertilisation and Embryology Act 1990
38 Conscientious objection
(1) No person who has a conscientious objection to participating in any activity governed by this Act shall be under any duty, however arising, to do so.
(2) In any legal proceedings the burden of proof of conscientious objection shall rest on the person claiming to rely on it.
(3) In any proceedings before a court in Scotland, a statement on oath by any person to the effect that he has a conscientious objection to participating in a particular activity governed by this Act shall be sufficient evidence of that fact for the purpose of discharging the burden of proof imposed by subsection (2) above.