

## Conclusion and recommendations

256. The Committee recommends that the Parliament take the following findings of the Stage 1 inquiry into account when arriving at a decision on the general principles of the Bill—

- There is no ambiguity in current Scots law in this area – if some people choose to travel to other jurisdictions to commit an assisted suicide or to access voluntary euthanasia, they do so because certain, inherent aspects of those actions are unlawful in Scotland. That the decision of whether to prosecute is separate and subject to the Prosecution Code is part of due process. Any call for clarity is, therefore, spurious.
- Examples from other jurisdictions have been offered as though comparable with the proposal in this Bill. However, there is firstly an important difference in the cultural and legislative contexts of those countries compared with Scotland. Secondly, there is a fundamental difference in the breadth and scope of this Bill.
- The Bill seeks to decriminalise both assisted suicide and voluntary euthanasia under a single definition – it would have been clearer for the two acts to have been dealt with as separate provisions in the Bill.
- An individual's 'autonomy' has been advanced by the member in charge as a central argument in favour of the Bill. The Bill would not, however, accord or establish any rights. Further, although courts have acknowledged the right to respect for a private life, they have also acknowledge that this right may have to be tempered in the interests of wider society. The Bill should be considered, then, in the context of preserving a balance between an individual's right to exercise autonomy and the interests of society as a whole. Most members of the Committee believe that the wider societal concerns should prevail in the context of the Bill and do not accept the principle of autonomy as argued by the member in charge. One member believes that the interests of the individual should prevail.
- The preservation of an individual's 'dignity' has also been presented as a central argument in favour of the Bill. However, 'dignity' is capable of two interpretations. Whilst those in favour of assisted suicide see it as a means of preserving dignity in the terminal stages of life and in the moment of death, those against present an equally compelling argument that a hastened death is undignified by its very hastening and that the key to preserving dignity in the terminal stages of life lies in the quality of care available to and the respect afforded to the dying. It is impossible to reconcile these arguments.
- In Scots law, if a person aged over 16's capacity is to be challenged, the challenger has to lead evidence to demonstrate the loss of capacity. The majority of evidence questioned why the Bill would create an unprecedented requirement across the board, to the effect that all individuals requesting assisted suicide and voluntary euthanasia would be subject to a test. However, the Committee believes that, in a situation such as this, the approach would be justified.
- The Bill would establish a procedure, one of the purposes of which would be to detect undue influence. However, the approvals necessary to

proceed would be obtainable following two meetings with a medical practitioner and one other meeting with a psychiatrist, neither of whom would need to have previously had any contact with the requesting person. The question is whether this level of contact with these particular categories of person would give sufficient assurance that there had been no undue influence on the requesting person's decision.

- The Bill attributes a meaning to the phrase "end of life assistance" that does not explicitly include any notion of hastening death. This use of terminology is confusing and arguably misleading and inconsistent with the member in charge's stated reasons for proposing the Bill. It would have been unambiguous to use the terms "assisted suicide" and "voluntary euthanasia".
- The Bill, in setting out eligibility requirements in Section 4, ostensibly provides for an objective standard based on finding life "intolerable". The Committee believes, however, the standard set out is inherently subjective. Indeed, the member in charge placed great emphasis throughout the inquiry on her intention that the wishes and self determination of the requesting person be paramount. Such a test cannot, therefore, stand up as an objective test.
- A further eligibility requirement set out in the Bill would be based on being "permanently physically incapacitated to such an extent as not to be able to live independently". This raised a number of equalities issues. The terminology used was aimed at capturing a small number of people who find life intolerable but could also apply to a wider group of people with a range of physical conditions or physical incapacity. This is symptomatic of the breadth of the member in charge's intentions. The immense difficulty of drafting a provision that would capture all those that the member in charge means to include without extending to whole other groups should be recognised; this terminology is, however, extraordinarily wide.
- There are real problems in the Bill's definition of "terminal illness" as it is based on a notion of timescale that may be difficult to ascertain.
- In relation to the eligibility requirement based on an inability to live independently, the Committee found evidence from organisations representing people with disabilities to be particularly compelling because of the way in which society may let an individual's life be intolerable by neglecting to provide sufficient and appropriate support. Using the inability to live independently as an eligibility requirement for end-of-life assistance raises issues of definition, clarity and subjectivity similar to those relating to other terminology in the Bill, with the additional possibility of unintended consequences.
- The Bill does not specify any particular qualifications or experience for the designated practitioner and psychiatrist roles. The Committee shares the concerns raised in evidence about this issue but notes that this may raise competence, regulatory and legal issues. The Committee did not hear evidence that these issues had been explored.
- Points were also made about the age threshold. Some members found the threshold at 16 to be consistent with other legislation. Other members were sympathetic to the arguments in favour of setting the threshold at 18.
- Concerns were expressed on the lack of detail with regard to the requirement for the presence of the designated medical practitioner but

believes that any medication administered during the end-of-life process should nonetheless be in the presence of a medical practitioner.

- The Committee is concerned that the setting of a limit of 28 days for the provision of end-of-life assistance could encourage a person to proceed prematurely.
- The Bill would not explicitly require the participation of any particular person or class of person in assisted suicide or voluntary euthanasia. Nor does it state explicitly that they would be able to refuse to take part. An absence of a requirement is not necessarily equivalent to a right to refuse. There were calls in the evidence for a form of 'conscience clause' to be specified. This may, however, fall within the ambit of regulation of the health professions and, therefore, outwith the legislative competence of the Parliament. It may be difficult for this Bill to find a satisfactory solution within legislative competence. The Committee believes, however, that, in legislation of this nature, a conscience clause should be included.
- Contrary to the assertions of the Policy Memorandum, the Bill could have a negative effect for disabled people. There are also potential issues of inequality in relation to remote areas where it could prove difficult to find locally practitioners and psychiatrists willing to participate.
- The Committee is not confident that equalities issues have been robustly considered in the preparation of this Bill. The Policy Memorandum asserts that the Bill will have a "positive impact on issues of equality" but does not appear to be able to support this claim. It is an established practice that Scottish Government bills and policies are impact assessed to ensure that a negative impact is not inadvertently created for equality groups. The member in charge has not followed this example and the Committee finds that, as a result, the consideration of the equalities impact of the Bill lacks rigour.
- Consideration of the Financial Memorandum uncovered weaknesses in its approach to estimating the number of assisted suicides and deaths by voluntary euthanasia that would occur if the Bill were enacted. In particular, no sufficiently sophisticated modelling has been undertaken. The Financial Memorandum also makes flawed assumptions about where costs would fall and is vague in respect of their scale. A further potential equalities issue – the possible differential impact on people from varying economic backgrounds – also appears to have been overlooked in terms of costs that may have to be met by individuals.

257. Overall, the majority of the Committee was not persuaded that the case had been made to decriminalise the law of homicide as it applies to assisted suicide and voluntary euthanasia, termed 'end-of-life assistance' in the Bill, and, accordingly, does not recommend the general principles of the Bill to the Parliament.