

Green Party Assisted Dying Policy



Assisted Dying Policy

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Policy

The Green Party proposes to introduce legislation which allows for assisted dying in Ireland.

1.1. Definitions

For the purposes of this policy, assisted dying can be defined as a terminally ill, mentally competent adult choosing, of their own free will, and after meeting strict legal safeguards, to take prescribed medication which will end their life.

Assisted dying should be distinguished in law from suicide, assisted suicide, and euthanasia. Suicide is the action of killing oneself intentionally. It was formerly the common law felony of self-murder, the death taking place within a year and a day. The crimes of suicide and attempted suicide have been abolished by the Criminal Law (Suicide) Act 1993, s 2(1). However, a person who aids, abets, counsels or procures the suicide of another, or an attempt by another to commit suicide is guilty of an offence under section 2(2). A person who assists another in suicide by killing that other is guilty of murder. Euthanasia is the term used to describe the intentional painless killing of a person. It is unlawful in this country and any person carrying out an act of euthanasia would be guilty of murder. The Medical Council in its *Guide to Ethical Conduct and Behaviour* (2004) states that “deliberately causing the death of the patient is professional misconduct”.

1.2. Legislation in other Jurisdictions

1.2.1. America

Some states in the USA have provided for assisted dying with legal safeguards for terminally ill people. Such safeguards protect vulnerable people whilst ensuring that terminally ill patients do not have to suffer unnecessarily against their wishes.

In Oregon (USA), the Death with Dignity Act (DWDA), enacted in 1997, allows terminally-ill, mentally competent adults the option of an assisted death by obtaining and using prescriptions for medications from their physicians for the self-administration of lethal doses of those medications. Between 1997 and 2015, some 752 people have been assisted to die. The Oregon Hospice Association was initially opposed to assisted dying, but later acknowledged that “there is no

evidence that assisted dying has undermined Oregon’s end of life care or harmed the interests of vulnerable people”.¹

In Washington State (USA), The Washington Death with Dignity Act was passed on 4 November 2008 and went into effect on 5 March 2009. This Act allows terminally ill adults seeking to end their life to request lethal doses of medication from medical and osteopathic physicians. These terminally ill patients must be Washington residents who have less than six months to live. The Washington State Department of Health 2014 Death with Dignity Act Report noted that 176 persons had utilised the Act in 2014. Of the 176 participants in 2014, 170 are known to have died: 126 died after ingesting the medication, and 17 died without having ingested the medication.

In Vermont (USA), assisted dying has been legal since May 2013. The Vermont law is very similar to the laws in Oregon and Washington, and Vermont is the first state to have passed an assisted dying law through the legislative process (rather than a public vote).

1.2.2. Europe

In the Netherlands, patients who have an incurable condition, face unbearable suffering, and are mentally competent, may be eligible for voluntary euthanasia or assisted dying. There are about 3,500 cases of assisted dying or voluntary euthanasia a year here.

In Belgium, The Belgian Act on Euthanasia was passed in May 2002. The law allows adults who are in a “futile medical condition of constant and unbearable physical or mental suffering that cannot be alleviated” to request voluntary euthanasia.

In February 2008, the Luxembourg Parliament approved a Law on the Right to Die with Dignity. This allows a person who is suffering unbearably from an illness, and is mentally competent, to request medical assistance to die.

Although voluntary euthanasia is forbidden in Switzerland, Article 115 of the Swiss Penal Code exempts people who assist someone to commit suicide if they act with entirely honourable motives.

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http://www.judiciary.senate.gov/hearings/testimony.cfm?id=e655f9e2809e5476862f735da1154c57&wit_id=e655f9e2809e5476862f735da1154c57-3-4

1.2.3. England

In September 2015, the UK Parliament voted down proposed legislation on assisted dying.² Opposition to the Bill centred on arguments relating to respect for the sanctity of life and that older people should not feel they are a burden on their families³; one MP described the Bill as “legally and ethically totally unacceptable”⁴; another asserted that the legislation would open a “Pandora’s box” and “overturn 2,000 years of the Hippocratic oath”.⁵ Opposing speeches also referred to concern that elderly people could be “emotionally blackmailed” by relatives to end their lives.⁶ Outside parliament, Justin Welby, the Archbishop of Canterbury, was among the faith leaders who warned that Britain would cross a “legal and ethical Rubicon” if parliament voted to permit terminally ill patients to end their lives.⁷

On the other hand, in a letter to the Guardian prior to the House of Commons debate on Friday 11 September 2015, a group of senior doctors expressed support for the Assisted Dying Bill. They stated that, as healthcare professionals, the current law in the UK prohibiting assisted dying was “dangerous, cruel and in direct conflict” with their duty to care for their patients in that it forced people to travel abroad to die or to end their own lives in the UK in distressing circumstances. This, they argued, was not consistent with patient-centred care. They pointed out that doctors encourage their patients to exercise choice throughout their lives, yet “the law dictates that they are denied choice at a time when they want it most.”⁸ The doctors expressed the view that an assisted dying law would not radically alter medical culture but would instead provide much-needed safeguards to a practice that is already happening, unregulated and behind closed doors. They also noted that, following consultation with their members, both the Canadian and Californian medical associations recently changed their stance on the issue of assisted dying and are now engaging with lawmakers to construct effective legislation that works for dying people and those that care for them, citing the body of evidence from jurisdictions where assisted dying is legal as showing that the fears of those who initially oppose change had not been realised.

The UK Bill would have applied to terminally ill adults in England and Wales with less than six months to live, who were mentally competent, informed of the alternatives, and had made the

2 ² Assisted Dying Bill [HL] 2015-16, Private Members' Bill (Starting in the House of Lords) sponsored by Lord Falconer of Thoroton

3 Caroline Spelman MP (Conservative)

4 ⁴ Fiona Bruce MP (Conservative)

5 Liam Fox MP (Conservative)

6 ⁶ Lyn Brown MP (Labour)

7 The Observer, 5 September 2015

8 The Guardian, 8 September 2015

choice of their own free will. Under the proposed legislation, once these facts had been established doctors could then prescribe a lethal dose of drugs to the terminally ill patient, which the patients would administer themselves. Accordingly, the legislation would not have applied to people with “locked-in syndrome” as they would not have been able to take the drugs themselves. Two independent doctors were required to agree that the patient had made an informed decision and provision was made for a High Court judge to review each case.

1.3. Proposed Legislation for Ireland

The Irish Green Party proposes that there should be a statutory right to an assisted death which would be distinguished in law from suicide, assisted suicide, and euthanasia. Assisted dying provisions should apply only to those with a terminal illness which is likely to result in death within six months. The Green Party is of the view that legislation allowing for assisted death is necessary because many dying adults experience acute distress due to the fear of suffering in their last days and weeks of life. As a consequence of the absence of assisted dying legislation, some adults attempt to commit suicide by refusing food, water, and medication, and in some cases plead with loved ones to help them to take their own lives. This places loved ones in an invidious position: on the one hand wishing to help their dying relative or friend, but at the same time potentially exposing themselves to criminal liability. Some people can afford to travel abroad to avail of assisted dying provisions, but many will not be able to do so. There is an inherent inequality in this state of affairs. As a result, many who are terminally ill and facing death within a relatively short period of time are effectively denied the choice of safe assisted death at a time and place of their own choosing.

Accordingly, the Green Party proposes to ensure that a person who is terminally ill will have the right to request and lawfully be provided with assistance to end their own life. Such a right would only apply where the person has a clear and settled intention to end their own life which is proved by making, and signing, a written declaration to that effect. Such a declaration must be countersigned by two doctors who are registered medical practitioners in the State. Such doctors would be suitably qualified in that they must, to the satisfaction of the Minister for Health, hold such qualification or have such experience in respect of the diagnosis and management of terminal illness.

Before either doctor signs the declaration, they must each have separately examined the person and the person’s medical records and have come to separate and independent conclusions that the

person is terminally ill, has the capacity to make the decision to end their own life, has a clear and settled intention to do so, and that their decision is fully informed and has been reached voluntarily in the absence of any coercion, duress, or undue influence. Each doctor must be satisfied that the person has been fully informed of the palliative, hospice and other care which is available to that person.

A person who makes a declaration must be able to revoke it at any time and such revocation need not be in writing. Once a valid declaration has been made by the person, one of the doctors may prescribe such medicines for that person to enable that person to end their own life. The prescribed medicines should only be delivered to the person for whom they are prescribed by the prescribing doctor or by such registered medical practitioner who has been authorised by the prescribing doctor to do so. The prescribing doctor must confirm that the person has not revoked their declaration and does not wish to revoke their declaration before the prescribed medicines are placed in the possession of the person. The prescribed medicines should be placed in the possession of the person no later than 14 days after their declaration becomes effective.

The prescribing doctor should be authorised to prepare the medicine for self-administration by the person or to prepare a medical device which would enable that person to self-administer the medicine. The person must, at all times, be in control of the administration of the medicine. The prescribing doctor should be required to remain with the person until they have self-administered the medicine and have died, or until the person has decided not to self-administer the medicine.

Legislation should include a conscientious objection clause and provision for creating criminal offences in circumstances where any person fails to adhere to the relevant statutory requirements governing assisted dying.

Consideration ought to be given to making an Irish Assisted Dying Bill subject to a residency requirement and a “sunset clause” under which the Oireachtas would review the law after 10 years. At that point the law could be repealed or affirmed. Such a clause should incorporate a formal review of how the law works in practice and any appropriate amendments could be made at that time.

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