

Written evidence submitted by Lord Michael Forsyth (Member of the House of Lords) (ADY0297)

Background:

While I had previously been an opponent of assisted dying, I changed my mind after witnessing my father's death in 2020. In 2022, I tabled an amendment to the Government's Health and Care Bill, asking that Government give time to assisted dying legislation, following the stalling of Baroness Meacher's Bill due to lack of time granted for debate. The amendment was voted down after Government whipped against it, with several Conservative Peers breaking the whip and all other parties treating the amendment as a conscience issue.

International evidence

I do not propose to answer all parts of the call for evidence, suffice to say that while there are differing views on the lessons that can be learned from international experiences of assisted dying laws, it is undeniable that there is growing momentum to permit dying people the choice over how and when they die. That is true in English-speaking, Common Law countries like the USA, Australia and New Zealand, and in many countries across Europe, with more (including France) expected to change the law in the near future.

We should not simply adopt one of those laws 'off the shelf', but act as a Parliament to debate the merits of the various safeguards and procedures in order to draft a law that adequately balances the interests of dying people who wish to have control in their final days of life, the interests of healthcare professionals – those who wish to participate and those who do not – and the need to protect potentially vulnerable people. That dozens of jurisdictions have managed to do so for themselves already, and none have ever been repealed, suggests either that we as a Parliament have a greater wisdom than all of those who have voted to change the law, or that we lack the courage to deal with these issues as the public has repeatedly demanded.

The role of Government in the assisted dying debate

It has been the position of this Government and those preceding it that assisted dying is a matter for Parliament rather than Government, and that it should be dealt with as a private member's bill. There have been two major attempts to progress the assisted dying debate by private members' bills in the House of Lords in the last decade, and both have fallen to the same fate.

Lord Falconer's Assisted Dying Bill was granted a Second Reading in July 2014 after nearly 10 hours of debate. It had two further days of debate at Committee Stage, where two votes were won by large majorities, but did not progress further due to a lack of time allocated to complete its stages. Lord Falconer subsequently introduced an Assisted Dying Bill in the 2015-16 and 2016-17 sessions, though on each occasion it was not granted time for a Second Reading debate.

In 2021 Baroness Meacher introduced the Assisted Dying Bill, based on Lord Falconer's previous Bills. It too received its Second Reading but was not granted sufficient time for Committee Stage debates. A single day's debate was offered at a late stage, but due to the huge number of amendments tabled to the Bill it would have had no prospect of proceeding out of Committee.

It is the case that private members' bills can be successful and, in a small number of cases, there have been successful private members' bills on sensitive and divisive topics. The examples often given – the decriminalisation of homosexuality, the legalisation of abortion, the abolition of the death penalty – are from six decades ago, and were the result of at least tacit support from the

government of the time, who ensured that time was made available for them to become law. More recent examples, such as the Organ Donation (Deemed Consent) Act, have received explicit support from Government, which has ensured they are given the time needed.

When Lord Joffe's Assisted Dying for the Terminally Ill Bill was debated in 2006, there was a vote in the House of Lords to deny the Bill a Second Reading. Subsequent attempts by Lord Falconer and Baroness Meacher have not been voted upon at Second Reading, though in each case the majority of speakers were clear that they supported the proposals. An amendment was tabled to Baroness Meacher's Bill in October 2021, but was not moved to a vote. The implication is therefore that those opposed to assisted dying did not believe they had sufficient support to vote down the bills in 2014 and 2021 as they had in 2006. In fact there have only been three votes on assisted dying during that time: two votes on amendments to Lord Falconer's Bill in January 2015, where those opposed to the legislation called divisions on their amendments, both of which were defeated by clear margins; and a vote on my amendment to the Government's Health and Care Bill, which was only defeated – and narrowly so – due to the Government whipping against it.

If there is then a majority in favour of assisted dying in the House of Lords, it has been effectively neutralised by a sort of filibuster tactic. By tabling hundreds of amendments, those opposed to the legislation can defeat it by drawing out the process, without ever having to risk a vote on the principle or the detail of the legislation. Both Lord Falconer's and Baroness Meacher's Bills were the subject of nearly two hundred amendments each, the vast majority of which were tabled by those who had stated their opposition in principle to assisted dying either in the Second Reading debate or previously.

The content of many of those amendments betrays the clear intent behind the exercise: dozens were on the terminology used, for instance proposing the more stigmatising "assisted suicide" or "assistance with suicide" to assisted dying, a term that has been used consistently in efforts to change the law both in the UK and overseas in Australia; or changing each reference to "life-ending medication" instead to "lethal drugs", a change that would have absolutely no impact on the legislation beyond an attempt to toxify the language. Others can be seen to be clearly designed to wreck the legislation – in one egregious example, it was proposed that a person must have signalled their intention to use the assisted dying law twelve months in advance of starting the process, thereby suggesting that a terminally ill person without the power of predicting the future would be denied their right to end their own lives on their own terms.

Taken together, these amendments would have taken many, many sitting days to get through, days that those opposed to the legislation knew would not be forthcoming from Government due to its position of treating assisted dying like any other private member's bill. Lord Falconer's Bill was given two full days of debate at Committee Stage, but still only concluded debate on the thirteenth amendment of almost two hundred that were tabled.

In early 2022, I brought forward an amendment to the Government's Health and Care Bill, which would have required Government to draft legislation on assisted dying and lay it before Parliament. As I explained in the debates at Committee Stage and Report Stage of the Bill in the House of Lords, this was an attempt to break the stalemate on assisted dying debates in the Lords and to force Government to treat the subject seriously. Had the Government come forward with a pledge to give the necessary time to an Assisted Dying Bill in either that session or the following, I would have happily withdrawn the amendment, as I said in the debate.

No such offer was forthcoming and the amendment was voted upon and defeated by a relatively narrow margin. This is particularly the case considering that the Government had imposed a whip on

its own side to oppose the amendment, an approach not taken by any of the other parties. Government's position was that the amendment was not simply an issue of conscience; they argued instead against the procedural precedent that it could establish, namely that the legislature was requiring the executive to bring forward legislation.

Nonetheless the amendment attracted support from the Government benches and even from Peers who have been and remain longstanding opponents of a change in the law, presumably because they agreed with the point that they should win by the force of their arguments, rather than using existing procedure to forestall those efforts.

There is clear public support for assisted dying. No matter the pollster, nor who commissioned it, there has always been a majority of support for changing the law, for at least the last three decades. I am not aware that there have been any polls that find a majority of people oppose a change in the law, even with the most leading questions.

It is my view that if the position of the Government does not change, there is no realistic prospect of an assisted dying law being passed in Westminster. Each session there will be an attempt to bring forward legislation, which in itself will be subject to the whims of the ballot procedure, and if time is allocated for a Second Reading it will be debated at length and then proceed no further. If it is given time for consideration at Committee, amendments will be tabled in huge numbers and more than fill up the time available.

Quite aside from the suffering that will persist under the existing laws, it will be a failure of democracy and of Parliament's role as a legislating body. It cannot be right that a Bill with support in the country and in Parliament cannot proceed – if there is opposition to the proposals, it should be expressed in the usual way, through debates and divisions. If Government accepts that there are no realistic ways for assisted dying to become law without some input from Government, it must be transparent about how the deadlock can be opened.

A possible way through

If it is to be the position of Government that assisted dying is a matter for Parliament and Parliament alone, that does not mean it cannot nor should not engage in the debate. Neutrality on assisted dying is a defensible position, but neutrality on the procedure has put Government squarely on the side of the status quo. It is de facto opposition to law change.

The key obstacle to a sensible and sensitive debate on assisted dying is the question of time. There is precedent that Government can provide time for consideration of matters of conscience that are raised in private members' bills. There should be no reason why this cannot be the case in the question of assisted dying.

In a Westminster Hall debate on 4th July 2022, then Justice Minister James Cartledge outlined the Government's position on assisted dying, responding to a debate organised by the House of Commons Petitions Committee:

“While I note the petition’s call for the Government to bring forward legislation to allow assisted dying for adults who are terminally ill and have mental capacity, our neutral stance means that such a change would have to be made via private Members’ legislation. If, at a future date, it became the clearly expressed will of Parliament to amend or change the criminal law so as to enable some form of assisted dying, the Government would of course undertake the role of ensuring that the relevant legislation was delivered as effectively as possible.”

I would propose that Government should establish this position in more detail, and commit to giving time to assisted dying legislation if it is the position of Parliament that it should be debated. How to determine Parliament's "will" on assisted dying is a matter for Government, though a vote at Second Reading would be an obvious opportunity. That is of course based on the idea that an assisted dying bill were given time for a Second Reading, which is not guaranteed due to the use of ballots for private members' bills in both Houses. Government should consider whether a vote on a motion in each House would be a sensible way to gauge the will of Parliament, or if an amendment to Government legislation would be necessary.

In addition, while Government's neutrality means it will not determine whether assisted dying should be legalised, that should not preclude its clear role in informing the debate by gathering and publishing research that others simply cannot. A good example is the recent research by the Office of National Statistics on the number of suicides amongst terminally ill people, commissioned by then Health Secretary Matt Hancock. Because of the greyness of the law on assisted dying, there is remarkably little empirical evidence on the extent to which, for instance, assisted dying is already happening behind closed doors or overseas. This is a matter of public safety as much as it is an important part of the case for assisted dying, and this should be a priority for Government to investigate.

Finally, it should be recognised by Government that it has a quasi-monopoly on the expertise and resources to produce watertight legislation on an area such as this. While individual members of the House of Lords, with support from clerks and outside groups, have proposed legislation and amendments that would change the law, it would be preferable if Government would engage in the detail of the legislation in advance. I would encourage the Government to consider what would be necessary for it to decide to bring forward legislation of its own, so that it would not have to work quickly on amending a private member's bill that had received support. It would be unforgivable to dying people and the vast majority of British people for Government to step in to prevent legislation on assisted dying progressing because it decided too late in the process that there were deficiencies in the law.

I would be delighted to give evidence in person if the Committee would find that helpful.

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