

Scottish Council on Human Bioethics

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Briefing to UK Parliamentary Assembly Members of the Council of Europe

Mr Dick Marty's Euthanasia Proposals for the Parliamentary Assembly of the Council of Europe - Social and Family Affairs Committee : 5 September 2003

1. Since euthanasia and assisted suicide are not reserved matters for the UK Westminster Parliament under the Scotland Act 1998, Schedule 5 (Reserved Matters), Part II (Specific Reservations), Head J (Health and Medicines), it would be appropriate for the UK Parliamentary Assembly Members of the Council of Europe to consult the Scottish Parliament prior to any representations being made in Strasbourg.

2. The laws in the United Kingdom relating to euthanasia and assisted suicide are addressed by the following legal provisions:

England and Wales

Euthanasia:

In England and Wales, the term euthanasia is not defined in law and would be regarded as murder. In these countries, murder is a common law offence. In the medical setting, R v Cox (1992) confirmed that if a medical professional carried out an action with the intention of ending life, whether or not for compassionate reasons or at the patient's request, this would constitute murder.

Assisted suicide:

Assisted suicide is covered in England and Wales by the Suicide Act 1961, section 2 (1) which states that:

"A person who aids, abets, counsels or procures the suicide of another, or an attempt by another to commit suicide, shall be liable on conviction on indictment to imprisonment for a term not exceeding fourteen years."

Scotland

Euthanasia:

The term euthanasia is not defined in Scottish law and would be regarded as murder. In Scotland, murder is also a common offence.

Assisted suicide:

In Scotland, assisted suicide is not specifically defined in legislation. Assisting suicide may constitute the "art and part" of murder or culpable homicide.

3. If the proposals to liberate the position of the Parliamentary Assembly of the Council of Europe on euthanasia and assisted suicide were accepted:

- it would be impossible to ensure that all acts of assisted dying were truly voluntary. Indeed, there would always be a risk that, in some cases, non-voluntary euthanasia would be undertaken on patients who were not able to communicate their wishes to healthcare professionals.

- concerns would exist that vulnerable people - the elderly, lonely, sick or distressed - would feel pressure, whether real or imagined, to request death, so that they are "not a burden".

- the manner in which society views both death and disability would change. People who are difficult or costly to care for may then be seen as second class citizens.

- it would fundamentally change the role of doctors and other healthcare professionals, whose role has always been to cure and care for their patients, not to kill them. It would also change the relationship of trust between healthcare professionals and patients.

4. The near unanimity of European countries do not accept euthanasia or assisted suicide.

In a document covering euthanasia and assisted suicide, prepared by the Council of Europe and published on 20 January 2003, which contains the replies to a questionnaire from 34 countries of the Council of Europe and the USA, only Belgium and the Netherlands indicated that active euthanasia was permissible in their legislation (though it remains unlawful).

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SCHB Briefing re: Euthanasia

With respect to assisted suicide, only three countries (The Netherlands, Estonia and Switzerland) indicated that their legislation would not regard such an undertaking as an offence provided certain conditions were met. [1]

1. This document on euthanasia can be found at <http://www.coe.int/bioethics>. Look for euthanasia.