



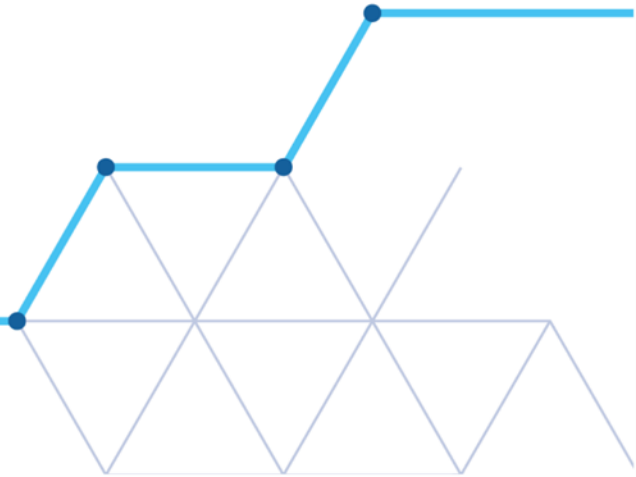
Ministry  
of Justice

# Assisted Suicide

## Call for Evidence

This call for evidence begins on [XX July 2019]  
This call for evidence ends on [XX October 2019]

Protecting and advancing the principles of justice



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Ministry  
of Justice

# Assisted Suicide

## Call for Evidence

A call for evidence produced by the Ministry of Justice. It is also available at <https://consult.justice.gov.uk/>

## About this call for evidence

- To:** This call for evidence invites all interested parties across England and Wales to provide evidence on the positive and negative impacts of the encouraging and assisting suicide offence under the Suicide Act 1961, and of any potential amendment to the law on assisted suicide.
- Evidence is also sought on the positive and negative impacts of laws on assisted suicide in other countries.
- Duration:** From [xx July 2019 to [dd/mm/yy]
- Enquiries (including requests for the paper in an alternative format) to:** Assisted Suicide Call for Evidence  
Ministry of Justice  
102 Petty France  
London SW1H 9AJ
- Email: AssistedSuicideEvidence@justice.gsi.gov.uk
- How to respond:** Please send your response by [insert date] to:
- Assisted Suicide Call for Evidence  
Ministry of Justice  
102 Petty France  
London SW1H 9AJ
- Email: AssistedSuicideEvidence@justice.gsi.gov.uk
- Additional ways to feed in your views:** For further information please use the “Enquiries” contact details above.

## Complaints or comments

If you have any complaints or comments about this call for evidence you should contact the Ministry of Justice at the above address.

## Extra copies

Further paper copies of this document can be obtained from the contact address above and is also available on-line at <https://consult.justice.gov.uk/>.

Alternative format versions of this document can be requested from contact address above.

## **Publication of response**

A paper summarising the responses to this call for evidence will be published. The response paper will be available on-line at <https://consult.justice.gov.uk/>.

## **Representative groups**

Representative groups are asked to give a summary of the people and organisations they represent when they respond.

## **Confidentiality**

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 2018 (DPA), the General Data Protection Regulation (GDPR) and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Ministry.

The Ministry of Justice will process your personal data in accordance with the DPA and in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties.



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# INTRODUCTION

1. Recent high-profile cases and debates in Parliament have highlighted the ongoing interest in the question of whether a person should be able to decide when, or how to end their life when they are suffering from a terminal or severe chronic condition.
2. There has also been increasing public and media interest in assisting suicide and there remain strongly held views on both sides of this debate. In recent years the courts have also considered this difficult issue and have made clear that they consider this a matter for Parliament. It is therefore likely that there will be future legislative proposals and Parliamentary debates.
3. To help inform such debates this paper seeks evidence on:
  - the positive and negative impacts of the current law on assisted suicide in England and Wales (encouraging or assisting suicide is an offence under the Suicide Act 1961);
  - potential impacts (positive or negative) of any changes that could be made to the current law on assisted suicide in England and Wales; and
  - the positive and negative impacts of the operation of assisted suicide laws in other countries.
4. This paper is **not** a consultation on, or seeking evidence on, any specific changes to the law being proposed by the Government. The Government retains a neutral view on changes to the law but to help inform future Parliamentary debate on this important issue is seeking evidence of the impact of the existing law on assisting suicide.
5. This call for evidence also relates **only to assisted suicide**. The paper does not deal with, or seek evidence on, the separate issues of euthanasia, withdrawal of life-sustaining treatment or end of life care.
6. The call for evidence is directed at anyone who has an interest in this issue and can provide the evidence requested at paragraph three above.

## **Equality Impact Assessments**

7. As the call for evidence does not contain specific policy proposals on which views/opinions are sought, no equality impact assessment has been undertaken.

## BACKGROUND

8. Under section 2(1) of the Suicide Act 1961<sup>1</sup> (the 1961 Act), a person commits an offence if they:
  - “[do] an act capable of encouraging or assisting the suicide or attempted suicide of another person and,
  - [the] act was intended to encourage or assist suicide or an attempt at suicide.”
9. The maximum penalty for encouraging or assisting a suicide is 14 years’ imprisonment.
10. There is no statutory exception to the offence of encouraging or assisting suicide under the 1961 Act. Whether there are any circumstances in which it should be legal to assist another person to die remains an issue where there are strong and divergent views.
11. This document seeks evidence on the impact, positive or negative, of the offence under section 2 of the 1961 Act, and any changes which may be made to that offence, including but not limited to the creation of statutory exceptions to the assisted suicide offence.

### Parliamentary Consideration

12. Parliament has debated assisted suicide on several occasions but to date has not voted to change the law. Political parties tend to regard assisted suicide as an issue of conscience on which there is traditionally a free vote.
13. Most recently, on 4 July 2019, a general debate on the function of the existing law on assisted suicide was debated.
14. Prior to this, the issue of assisted suicide was last debated in the House of Commons in September 2015 when the **Assisted Dying (No 2) Bill** – which sought to legalise assisted suicide for terminally ill, mentally competent adults who were reasonably expected to die within 6 months – was defeated by 330 votes to 118.

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<sup>1</sup> <http://www.legislation.gov.uk/ukpga/Eliz2/9-10/60>

## Summary of previous Bills considered by Parliament

15. Between 2003 and 2006 the late Lord Joffe introduced several drafts of his Assisted Dying for the Terminally Ill Bill, none of which progressed beyond second reading.
16. Lord Joffe's 1st Bill, the Patient (Assisted Dying) Bill sought to make both euthanasia and assisted suicide lawful for competent adults who are suffering unbearably from a terminal or a serious and progressive physical illness. Opinion amongst the 48 peers who spoke during the second reading debate in June 2003 was almost equally divided about the principle that doctors should be able to relieve patients of suffering at their request if they have terminal illnesses.
17. The 2nd Bill – re-titled the Assisted Dying for the Terminally Ill Bill – also sought to make both euthanasia and assisted suicide lawful but only for those who had a terminal illness. At second reading in March 2004 the Bill was remitted to a Select Committee which published its report in April 2005. The Committee did not take a position on whether the Bill should be reintroduced but recommended that its report should be debated early in the next session of Parliament and that any future Bill should be considered by a Committee of the whole House. The Select Committee report was duly debated in October 2005 when 72 Peers spoke, with an even balance between support for and opposition to the Bill.
18. Lord Joffe introduced a 3rd version of the Assisted Dying for the Terminally Ill Bill, this time confined to assisted suicide for those with a terminal illness, in November 2005 but it too fell at second reading in May 2006.
19. Lord Falconer of Thoroton first tabled a Private Member's Bill in 2013 to legalise, in England and Wales, assisted suicide for terminally ill, mentally competent adults who are reasonably expected to die within six months and have been ordinarily resident in England and Wales for at least 12 months. The Bill was not debated in the 2013-14 session and was reintroduced on 5 June 2014.
20. Lord Falconer's Bill built on the recommendations made in January 2012 by the Commission on Assisted Dying that he chaired and following a consultation on a draft Bill published in July 2013 by the All-Party Parliamentary Group on Choice at the End of Life, in partnership with the Dignity in Dying campaign group.
21. The Bill passed Second reading without a vote on 18 July 2014 when 130 Peers spoke. Support for and opposition to the Bill was almost evenly divided.
22. Lord Falconer's Bill did not progress beyond Committee stage before the dissolution of Parliament on 30 March 2015.

## **Public opinion**

23. The Government is aware of several opinion polls on assisted suicide and related topics.
24. The British Social Attitudes survey suggests that a substantial majority of people agree the law should be changed so that terminally ill, if not other, people can be assisted to end their own lives. Another poll, conducted by Dignity in Dying on 2 April 2019<sup>2</sup>, found that 84% of people in Great Britain support a change in the law.
25. A Comres poll<sup>3</sup> in 2014 showed that public support for Lord Falconer's Assisted Dying Bill (see above) reduced when respondents were asked about the impact on vulnerable people.
26. There is some divergence of views on the strength of evidence regarding public opinion and how it may have changed over recent years. The Government would therefore welcome evidence relating to public opinion in the UK and other countries.

## **Medical opinion**

27. The Government is aware that the medical profession have been considering their view of assisted suicide with some professional bodies changing their previously stated positions.
28. The Royal College of Physicians (RCP) has recently adopted a neutral position on assisted dying following an online survey of its UK fellows and members, reflecting their range of views, carried out between 5 February and 1 March 2019.
29. The British Medical Association (BMA) remains opposed to all forms of assisted dying<sup>4</sup>. The BMA represents doctors throughout the UK who hold a wide range of views on the issue of assisted dying but the consensus since 2006 has remained that the law should not be changed to permit assisted dying or doctors' involvement in assisted dying.
30. The Government would welcome evidence from professional medical bodies on the views of its membership.

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<sup>2</sup> <https://www.dignityindying.org.uk/news/poll-assisted-dying-support-84-britons/>

<sup>3</sup> <https://www.comresglobal.com/polls/itv-tonight-assisted-suicide-poll/>

<sup>4</sup> <https://www.bma.org.uk/advice/employment/ethics/ethics-a-to-z/physician-assisted-dying>

# THE CURRENT LEGAL FRAMEWORK

## Position in England and Wales

31. Assisted suicide is an offence under section 2(1) of the 1961 Act<sup>5</sup>. This provision applies in England and Wales and makes it an offence to do an act capable of encouraging or assisting the suicide or attempted suicide of another person with the intention to encourage or assist. The 1961 Act provides no exemptions to the prohibition on assisting suicide.
32. The maximum penalty for an offence under section 2(1) is 14 years' imprisonment.

## Legal Position in Northern Ireland and Scotland

33. In Northern Ireland, there are equivalent provisions to those set out in the 1961 Act, which are contained in section 13 of the Criminal Justice Act (Northern Ireland) 1966.
34. The encouraging and assisting suicide offence in the 1961 Act does not apply to Scotland. Scots law considers assisted suicide cases as potential murder or culpable homicide offences, depending on the facts and circumstances of the case.
35. This call for evidence relates only to the law in England and Wales but the Government welcomes evidence relating to the operation of the law in Scotland and Northern Ireland that would help inform the debate on assisted suicide in England and Wales.

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<sup>5</sup> As amended by section 59 of the Coroners and Justice Act 2009

## PROSECUTION POLICY

36. Under section 2(4) of the 1961 Act no prosecution for an offence under section 2(1) may be brought except by or with the consent of the Director of Public Prosecutions (DPP).
37. The DPP's *Policy for Prosecutors in Respect of Cases of Encouraging or Assisting Suicide* sets out the factors which prosecutors in England and Wales will consider, in addition to those already outlined in the Code for Crown Prosecutors, when deciding whether it is in the public interest to prosecute cases of encouraging or assisting suicide<sup>6</sup>.
38. Amongst the public interest factors tending against prosecution are that "the victim had reached a voluntary, clear, settled and informed decision to commit suicide", and that the suspect was "wholly motivated by compassion".
39. The policy did not change the law on assisted suicide and there are no exemptions for any person or class of persons who assist someone to die. Each case is considered by the CPS on its own facts and circumstances.
40. The offence-specific policy was issued following the decision of the former Appellate Committee of the House of Lords in the case of *R (on the application of Purdy) v Director of Public Prosecutions* [2009], which required the DPP "to clarify what his position is as to the factors that he regards as relevant for and against prosecution" in cases of encouraging and assisting suicide.

## Prosecutions

41. Whilst some cases are referred to the CPS as a case of assisted suicide or euthanasia, some suspects in such cases can be charged with other offences other than encouraging or assisting suicide, for example attempted murder, murder or manslaughter.
42. From 1 April 2009 to 31 January 2019<sup>7</sup>, 148 cases referred to the CPS by the police were recorded as assisted suicide. Of these 148 cases, 100 were not proceeded with by the CPS and 28 were withdrawn by the police.
43. Three cases of encouraging or assisting suicide have been successfully prosecuted. One case of assisted suicide was acquitted after trial in May 2015, and seven cases were referred for prosecution for homicide or other serious crime. As of 31 January 2019, three cases are ongoing.

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<sup>6</sup> <https://www.cps.gov.uk/legal-guidance/suicide-policy-prosecutors-respect-cases-encouraging-or-assisting-suicide>

<sup>7</sup> <https://www.cps.gov.uk/publication/assisted-suicide>

## COMPATIBILITY OF THE CURRENT LAW WITH THE EUROPEAN CONVENTION ON HUMAN RIGHTS (ECHR)

44. Since 2014, the courts have given judgment in two cases where the legislation criminalising assisting suicide was challenged. In each case, the claimants sought a declaration, by way of judicial review, that the offence under section 2 of the 1961 Act was incompatible with their rights under Article 8 of the ECHR, that is, it interfered with their right to a family life.

### **Tony Nicklinson and Paul Lamb<sup>8</sup>**

45. On 31 July 2013, the Court of Appeal dismissed the appeals brought by Jane Nicklinson (the widow of Tony Nicklinson who was substituted as the claimant following her husband's death) and Paul Lamb. They appealed against the Court of Appeal's decision to the Supreme Court.
46. In June 2014, the Supreme Court dismissed their appeal.
47. The appellants pursued their case further in the European Court of Human Rights but the Strasbourg Court issued a decision 16 July 2015 declaring their applications inadmissible.

### **Noel Conway<sup>9</sup>**

48. Mr Conway sought, by way of judicial review, a declaration from the High Court that section 2(1) of the 1961 Act was incompatible with his rights under Article 8(1), ECHR. (right to family life) but was unsuccessful.
49. Mr Conway's appeal against the decision of the High Court was dismissed by the Court of Appeal on 27 June 2018. On 27 November 2018, the Supreme Court did not give Mr Conway permission to appeal against the Court of Appeal's decision.

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<sup>8</sup> R (on the application of Nicklinson and another) (AP) v Ministry of Justice [2014] UKSC 38:

<https://www.supremecourt.uk/cases/docs/uksc-2013-0235-judgment.pdf>

NICKLINSON AND LAMB v. THE UNITED KINGDOM (App nos 2478/15 and 1787/15) EtCrTHR:

[https://hudoc.echr.coe.int/eng#{"itemid":\["001-156476"\]}](https://hudoc.echr.coe.int/eng#{)

<sup>9</sup> Regina (Conway) v Secretary of State for Justice [2018] EWCA Civ 1431: <https://www.judiciary.uk/wp-content/uploads/2018/06/conway-judgment-27062018.pdf>

R (on the application of Conway) (Appellant) v Secretary of State for Justice (Respondent) (SC refusal):

[www.supremecourt.uk/docs/r-on-the-application-of-conway-v-secretary-of-state-for-justice-court-order.pdf](https://www.supremecourt.uk/docs/r-on-the-application-of-conway-v-secretary-of-state-for-justice-court-order.pdf)



## **DISTINCTION BETWEEN ASSISTED DYING AND WITHDRAWAL OF LIFE-SUSTAINING TREATMENT**

50. The withholding or withdrawal of medical treatment that has no curative or beneficial effect is often confused with the act of deliberately killing a patient or assisting a suicide. However, an adult with capacity can refuse any form of medical treatment, even if it may result in their death, and, under the Mental Capacity Act 2005<sup>10</sup>, they can also make an advance decision setting out what they want to happen to them if they lose capacity in the future. But section 62 of the 2005 Act makes clear that it does not change the law on murder, manslaughter or assisted suicide.
51. If a person loses capacity, treatment decisions will be made in the best interests of that person. Sometimes this will mean that medical treatment, which is no longer beneficial to the person, should be withdrawn.

## **END OF LIFE CARE**

52. The debate on this issue is sometimes characterised as a choice between legalising assisted dying on the one hand and high-quality end of life care on the other but the two are not mutually exclusive. Whatever the position in terms of the criminal law, the Government believes that everyone approaching the end of life should receive high quality care that reflects their individual needs, choices and preferences.
53. The Government's "Choice Commitment"<sup>11</sup> on end of life care sets out what everyone should expect, in addition to the actions being taken by the Government to make high-quality personalised care a reality for all.
54. As withdrawal of life-sustaining treatment and end of life care are separate issues to assisted suicide, this call for evidence does not extend to seeking evidence on these subjects, other than where evidence is also relevant to assisted suicide.

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<sup>10</sup> <https://www.legislation.gov.uk/ukpga/2005/9/contents>

<sup>11</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/536326/choice-response.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/536326/choice-response.pdf)

# **INTERNATIONAL PERSPECTIVE**

## **Evidence from other jurisdictions**

56. Some jurisdictions have experience of legalised assisted suicide including certain US States, notably Oregon, where assisted dying has been legal since 1997, Canada, the Netherlands, Belgium and Switzerland.
57. There has been some debate on the evidence on the impacts of approaches to assisted suicide in other countries.
58. The Government recognises that it can be difficult to provide empirical evidence but would welcome any evidence on the existence, operation of and impacts (positive and negative) of approaches to assisted suicide in other countries.

## **CALL FOR EVIDENCE QUESTIONS**

59. This document is intended to obtain evidence of the impact of the most recent changes to legislation across the world and to changing attitudes to assisted suicide amongst the public and professional bodies in England and Wales.

**Q1. Can you provide, or are you aware of, any evidence of the impact (positive or negative) of the current law on assisted suicide?**

**Q3. Can you provide, or are you aware of, any evidence relating to the operation of assisted suicide in other countries?**

**Q3. Can you provide, or are you aware of, any evidence relating to the potential impact (positive or negative) of any changes to the existing law on assisted suicide?**

**Q4. Is there any other evidence, relevant to assisted suicide, that you wish to provide?**

# ABOUT YOU

Please use this section to tell us about yourself

<b>Full name</b>	
<b>Job title</b> or capacity in which you are responding to this call for evidence (e.g. member of the public etc.)	
<b>Date</b>	
<b>Company name/organisation</b> (if applicable):	
<b>Address</b>	
<b>Postcode</b>	
If you would like us to acknowledge receipt of your response, please tick this box	<input type="checkbox"/> (please tick box)
Address to which the acknowledgement should be sent, if different from above	

**If you are a representative of a group**, please tell us the name of the group and give a summary of the people or organisations that you represent.

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