

Assisted Dying Bill [HL]

AMENDMENTS TO BE MOVED IN COMMITTEE OF THE WHOLE HOUSE

Clause 1

LORD SANDHURST
LORD CARLILE OF BERRIEW

Page 1, line 6, at end insert –

“(za) is terminally ill as defined in section 2;”

Member’s explanatory statement

This new paragraph adds a requirement that the High Court itself must be satisfied that the applicant is terminally ill as defined by the Act.

LORD CARLILE OF BERRIEW

Page 1, line 15, at end insert –

“(3) If the High Court (Family Division) is not satisfied beyond reasonable doubt that all the criteria in subsection (2) have been met, it must inform the parties that no order will be made and the basis for that decision.”

Clause 2

LORD CARLILE OF BERRIEW

Page 1, line 18, leave out “a registered medical practitioner” and insert “at least two registered medical practitioners, with one of whom the person has been registered for medical care for at least six months immediately prior to making the declaration at section 1(2)(b) and at least one of whom has diagnosed the terminal illness and treated the person in relation to that terminal illness,”

Clause 3

LORD SANDHURST
LORD CARLILE OF BERRIEW

Page 2, line 2, after “(2)” insert “to be heard and determined by a judge of that Division”

Member's explanatory statement

This adds the requirement that it must be a High Court judge of the Family Division who hears and determines the application and confirms by order that the relevant requirements have been satisfied.

Page 3, line 9, at end insert –

“(10) Rules of Court must provide that –

- (a) an application to the Court under the provisions of this section shall only be heard before and determined by a High Court judge of the Family Division, which description shall not include those appointed to sit as Deputy High Court judges;
- (b) the judge hearing the application must –
 - (i) if he or she considers it appropriate and necessary, give directions that the application be served upon any person who appears to have a sufficient interest in the application and its determination and hear evidence and accept representations from any person having such an interest;
 - (ii) in any case where it appears appropriate, request the Official Solicitor to investigate as soon as practicable and report to the court and make representations upon all such matters relating to the application and the evidence before the court as may assist in reaching a true and just determination upon the application.”

Member's explanatory statement

This amendment makes it obligatory for there to be specific Rules of Court governing the making, hearing and determination of such applications, that these may not be delegated to Deputy High Court judges and that the judge shall have express power to ensure that potentially interested parties are served who may then be heard and that the Judge may seek the full assistance of the Official Solicitor.

LORD CARLILE OF BERRIEW

Page 3, line 9, at end insert –

- “(10) For the purposes of the effective determination of applications under this section the President of the High Court (Family Division) must issue Practice Directions to ensure –
- (a) that the judge responsible for each application will hold a directions hearing prior to the substantive application proceedings;
 - (b) that sufficient hearing time will be allowed for the Court to hear evidence to determine whether the requirements of subsections (1) to (5) of this section have been met;
 - (c) that objections by interested parties will be heard;
 - (d) that all parties (including interested parties) have a proper and proportionate opportunity to be heard;
 - (e) that counsel to the Court may be appointed to ensure the fair and effective hearings of all issues before the Court.”

Member's explanatory statement

The purpose of this amendment is to ensure that applications are decided in full knowledge of all material evidence, and with counsel to the Court to assist in appropriate circumstances.

After Clause 3

LORD CARLILE OF BERRIEW

Insert the following new Clause –

“Capacity of an applicant

For the purposes of this Act, an applicant has capacity commensurate with a decision to end his or her own life and a clear, settled, informed and voluntary intention to do so if he or she –

- (a) is not suffering from any impairment of, or disturbance in, the functioning of the mind or brain or from any condition which might cloud or impair his or her judgement;
- (b) is able to communicate clearly an intention to end his or her life;
- (c) has maintained over a reasonable period of time, of no less than four weeks, a firm and unchanging intention to end his or her life;
- (d) is not the subject of influence by, or a sense of obligation or duty to, others;
- (e) fully understand the implications for himself and for others of the premature ending of his life.”

Insert the following new Clause –

“Consideration by the High Court

- (1) The court must make no order in favour of assisting the death of a person making a declaration under section 3 unless it is satisfied beyond reasonable doubt that that person has a clear, voluntary, settled and informed wish to end his or her life and has the capacity to make the decision to end his or her life.
- (2) In considering whether a person has a clear, voluntary, settled and informed wish to end his or her life and has the capacity to make the decision to end his or her own life, the court may have regard to such matters as it deems appropriate which shall include but are not limited to –
 - (a) any submissions made by the person making the declaration, or by a lawyer or other representative carrying a duty of the utmost good faith to that person;
 - (b) the evidence of such medical practitioners as have submitted statements containing a diagnosis and predicted course of that person’s terminal illness;
 - (c) the evidence of specialists qualified in the assessment of mental capacity;
 - (d) the evidence of specialists in the management of terminal illness;
 - (e) the evidence of persons who have known the person making the declaration over a reasonable period of time and are familiar with his or her character and personality or with any personal, domestic or social situations or considerations which may have a bearing on the request;
 - (f) the evidence of interested parties whose intervention the court considers likely to be of assistance in reaching a decision.

After Clause 3 - continued

- (3) If the court is satisfied that the requirements of subsection (1) have been met, it shall make an order authorising prescription of the drugs necessary to enable the person to end his or her own life, and may appoint another person to deliver those drugs under the terms set out in section 4.”

Clause 4

LORD CARLILE OF BERRIEW

Page 3, line 34, leave out paragraph (c)

Clause 5

LORD CARLILE OF BERRIEW

Page 4, line 27, after “A” insert “judge or other”

LORD SANDHURST
LORD CARLILE OF BERRIEW

Page 4, line 29, at end insert –

- “(2) For the avoidance of doubt “person” in this section includes a High Court judge.”

Member’s explanatory statement

This makes it plain that High Court judges will be entitled to avail themselves of the provision for conscientious objection and opt out of having to hear and determine such applications.

Clause 6

LORD CARLILE OF BERRIEW

Page 4, line 32, at end insert –

- “(1A) A person who is in breach of the requirements of this Act will be guilty of a criminal offence and will be subject to a sentence of up to 14 years imprisonment.”

Clause 10

LORD CARLILE OF BERRIEW

Page 7, line 11, leave out “3” and insert “1(2)(b)”

Page 7, line 15, leave out “3” and insert “1(2)(b)”

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8 November 2021
