

STATES OF JERSEY



ASSISTED DYING (P.95/2021): AMENDMENT

Lodged au Greffe on 9th November 2021
by Deputy K.F. Morel of St. Lawrence
Earliest date for debate: 23rd November 2021

STATES GREFFE

ASSISTED DYING (P.95/2021): AMENDMENT

1 PAGE 3, PARAGRAPH (d) –

After the words ‘Ministers to’ delete the remaining paragraph and substitute the following –

“lodge final proposals (to include all processes and safeguards on assisted dying) for debate by the States Assembly, prior to the preparation of instructions for the Legislative Drafting Office, with the debate on such proposals to take place by October 2022, and with a view to draft legislation being available for debate by the States by the end of March 2023”.

DEPUTY K.F. MOREL OF ST. LAWRENCE

Note: After this amendment, the proposition would read as follows –

THE STATES are asked to decide whether they are of opinion –

having regard to the key recommendation of the Citizen’s Jury on Assisted Dying:

- (a) to agree, in principle, with the Jury that assisted dying should be permitted in Jersey; and that
 - (i) the Government of Jersey should make arrangements for the provision of an assisted dying service that is available to a person aged 18 or over who:
 - (1) has a voluntary, clear, settled and informed wish to end their own life; and
 - (2) has capacity to make the decision to end their own life; and
 - (3) has been diagnosed with a terminal illness, which is expected to result in unbearable suffering that cannot be alleviated and is reasonably expected to die within six months; *or*, has an incurable physical condition, resulting in unbearable suffering that cannot be alleviated;
 - (ii) an assisted dying service in Jersey may provide assistance in dying in one of the following two ways:
 - (1) either by physician assisted suicide – whereby a registered medical professional may prescribe lethal drugs at the request of a person, who meets defined eligibility criteria, to enable that person to self-administer the drugs to end their own life; or by

- (2) voluntary euthanasia - where a person who meets the defined eligibility criteria has their life ended, at their voluntary request, by a registered medical practitioner; and
- (iii) an assisted dying service in Jersey should be subject to the following safeguards:
 - (1) assisted dying should be permitted with the direct assistance of registered medical practitioners and registered nurses only;
 - (2) the law should provide for a conscientious objection clause so that any nurse, medical practitioner or other professional is not under a legal duty to participate in assisted dying;
 - (3) assisted dying should be subject to a mandatory period of reflection;
 - (4) a withdrawal of request should be permitted at any time; and
 - (5) assisted dying should only be permitted at pre-approved locations.
- (b) to agree, in the event that paragraph (a) is adopted, that assisted dying should be available to Jersey residents only;
- (c) to agree in the event that paragraph (a) is adopted, that assisted dying should be subject to a pre-approval process which, subject to further consultation, may involve a decision made by a court or specialist tribunal; and
- (d) to request the Council of Ministers to lodge final proposals (to include all processes and safeguards on assisted dying) for debate by the States Assembly, prior to the preparation of instructions for the Legislative Drafting Office, with the debate on such proposals to take place by October 2022, and with a view to draft legislation being available for debate by the States by the end of March 2023.

REPORT

There are unlikely to be any propositions during a States Member's tenure that are as difficult and emotive as [P.95/2021](#). Assisted Dying is not only a moral issue that interconnects with some of the most long-held social and religious beliefs: that of the life of human beings being sacrosanct and that nobody should ever take another human's life.

The matter of Assisted Dying was one that found its expression in Jersey during the elections of 2018 and my view on it now is the same as my view of it then, namely, that at the highest level of principle, I am in favour of it. However, I retain strong reservations about the process, systems and safeguards surrounding it and question whether Jersey is able to deliver these in a wholly appropriate and incorruptible manner, to the extent that no person would be able to access Assisted Suicide unless they were wholly eligible, had experienced no coercion and were entirely committed to the process on their own grounds. I also stated during the election that I do not believe the process for bringing in an Assisted Dying regime should be rushed.

It is with this in mind that I have lodged this amendment.

The amendment seeks to insert an extra stage into the procedure that would see Assisted Dying becoming permissible in law. The reason for this is solely to give the States Assembly the greatest possible level of control over, and understanding of, the proposed processes that would be created to enable an Assisted Dying regime to operate in Jersey. I believe that this issue is one that needs to be handled by the Assembly with the greatest level of respect and a deep understanding that if we get this wrong, then people will die without themselves being entirely in control of their own fate. This assertion needs to be set against the reality that someone who engages with an Assisted Dying process and sees it through to completion, is not able to complain or raise problems later. There is no comeback from the completion of an Assisted Dying process.

Importantly, there are concerns about the processes in use in other jurisdictions that have operated Assisted Dying regimes for many years:

In his 2016 paper, [The Conflict between Open-Ended Access to Physician-Assisted Dying and the Protection of the Vulnerable: Lessons from Belgium's Euthanasia Regime for the Canadian Post-Carter Era](#), Professor Trudo Lemmens of Toronto University Faculty of Law, writes that there "are two types of slippery slope about which critics have expressed concern: a "practical slippery slope" and a "logical slippery slope". The practical slippery slope refers to "the concern that even carefully crafted criteria will, over time, be reinterpreted or ignored, leading to euthanasia or assisted suicide of people never contemplated at the outset." The logical slippery slope refers to the risk that once the door is opened to legalization of PAD [Physician Assisted Suicide] in one area, pressure will be created with resulting expansion in other areas originally not contemplated."

The paper continues to make it clear that reporting mechanisms in the Netherlands and Belgium are subject to "underreporting" and "errors in reporting", it also states that "physicians continue to practice PAD without consent."

There are many examples of academics and regulators who study Assisted Suicide practices becoming unhappy with the processes and procedures in use by existing

regimes and it is these concerns that this amendment is designed to address at the pre-legislative stage.

The amendment requires that the States Assembly sees in advance of a second debate, a view of the entire proposed Assisted Dying system and the ways in which it will work. We will then be able to scrutinise those process and procedures carefully. Only once this process is complete and will the States Assembly then move to viewing the draft legislation within a third debate.

I believe this will ensure that the legislative and procedural process will then be sufficiently lengthened to provide all islanders with comfort that should an Assisted Dying regime be created in the island, that it will have been tested and scrutinised sufficiently to ensure that loopholes don't exist and that all safeguards are sufficient.

I strongly believe that this subject, above all others, deserves such careful and deliberate treatment to ensure we get it right and so avoid the untimely deaths of Islanders in the future.

Financial and manpower implications

Outside of the debate time of the Assembly and the related administrative costs, the additional financial and manpower impact of this amendment would be minor, as the work detailed in this amendment would need to be undertaken in order to produce instructions for the legislative drafters, whether the amendment passes or not.

Should there be amendments to the legislative drafting instructions resulting from the next debate, the manpower implication would be less than if such amendments were raised at a later stage in the process (i.e. by reference back or rejection of the draft legislation).