

## ASSISTED DYING BILL 2023

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### Explanatory Memorandum

1. This Bill is promoted by Dr Allinson MHK.
2. *Clause 1* contains the short title of the resulting Act.
3. *Clause 2* provides for the commencement of the resulting Act by appointed day order.
4. *Clause 3* defines terms to be used in the resulting Act, including key concepts such as “capacity” and “terminal illness”.
5. *Clause 4* enables certain persons who are terminally ill to request and be lawfully provided with assistance to end their life. Such persons must have capacity and have a clear and settled intention to end their life. Under the *Capacity Act 2023*, a person lacks capacity in relation to a matter if at the material time the person is unable to make a decision for themselves in relation to the matter because of an impairment of, or a disturbance in the functioning of, the mind or brain.
6. *Clause 5* clarifies what constitutes terminal illness for the purposes of the resulting Act and provides that a person with a terminal illness is only to be treated as terminally ill for the purposes of the resulting Act if the person is reasonably expected to die within 6 months as a consequence of the terminal illness.
7. *Clause 6* makes provision about the declaration a terminally ill person must make to evidence their clear and settled intention to end their life. The declaration must be witnessed and also countersigned by 2 registered medical practitioners who must both be satisfied that the person making it has been fully informed of the palliative, hospice and other care which is available to them but that the person nevertheless has a clear and settled intention to end their own life which has been reached voluntarily, on an informed basis and without coercion or duress.
8. *Clause 7* sets out how and by whom assistance in dying may be given. Medicine prescribed for that purpose may not be given for 14 days following the day when the person’s declaration took effect (which can be reduced to 7 days if the person is not expected to survive for more than a month).
9. *Clause 8* deals with conscientious objection. No person is required to participate in anything authorised by the resulting Act if they have a conscientious objection.
10. *Clause 9* provides that health care professionals must not initiate discussions about assisted dying or suggest that a person seeks assistance to end their life.

- 11 *Clause 10* confirms that a person who provides assistance in accordance with the resulting Act does not commit an offence and makes consequential amendments to the *Criminal Code 1872* and the *Criminal Law Act 1981*.
- 12 *Clause 11* makes consequential provision about inquests (no inquest is needed only because a person died as a result of lawful assistance under the resulting Act) and civil registration (where a regulation-making provision is to be inserted in the *Civil Registration Act 1984* regarding the registration of deaths which arise from assisted dying).
- 13 *Clause 12* enables the Department of Health and Social Care to make codes of practice covering the assessment of a person's intention to end their life, including the assessment of capacity and other factors which may affect such a decision.
- 14 *Clause 13* requires the Department of Health and Social Care to monitor the operation of the resulting Act and to report about it annually, and to provide a copy of the report to Tynwald.
- 15 *Clause 14* creates a number of offences under the resulting Act.
- 16 The Bill involves an increase in expenditure. The consent of the Treasury has been obtained under section 10 of the *Treasury Act 1985*.
- 17 In the opinion of the member moving the Bill its provisions are compatible with the Convention rights within the meaning of the Human Rights Act 2001.



*Ellan Vannin*

## ASSISTED DYING BILL 2023

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*Ellan Vannin*

## ASSISTED DYING BILL 2023

1 A **BILL** to enable certain adults who are terminally ill to be provided at their  
 2 request with specified assistance to end their own life; and for connected  
 3 purposes.

BE IT ENACTED by the King’s Most Excellent Majesty, by and with the advice and consent of the Council and Keys in Tynwald assembled, and by the authority of the same, as follows:—

### 4 1 Short title

5 The short title of this Act is the Assisted Dying Act 2023.

### 6 2 Commencement

7 (1) This Act, apart from section 1, this section and the defined term  
 8 “Department” in section 3(1), comes into operation on such day or days  
 9 as the Department may by order appoint.

10 Tynwald procedure – laying only.

11 (2) An order under subsection (1) may include such supplemental,  
 12 incidental, consequential and transitional provisions as appear to the  
 13 Department to be necessary or expedient.

### 14 3 Interpretation

15 (1) In this Act —

16 “**assisting health professional**” has the meaning given in section 7(13);

17 “**attending doctor**” has the meaning given in section 6(1)(b)(i);

18 “**capacity**” is to be construed in accordance with the *Capacity Act 2023*;

19 “**Department**” means the Department of Health and Social Care;

20 “**independent doctor**” has the meaning given in section 6(1)(b)(ii);

21 “**registered medical practitioner**” has the same meaning as in the *Health Care*  
 22 *Professionals Act 2014*;

23 “**registered nurse**” means a member of the profession of nursing who is  
 24 registered in the register maintained under article 5 of the Nursing and

1 Midwifery Order 2001<sup>1</sup> made under sections 60 and 62(4) of the Health  
2 Act 1999<sup>2</sup> (of Parliament);

3 “**registered pharmacist**” means a person who is registered in —

- 4 (a) Part 1 (pharmacists) of the register maintained under article 19 of  
5 the Pharmacy Order 2010<sup>3</sup> made under sections 60 and 62(4) and  
6 (4A) of the Health Act 1999 (of Parliament); or  
7 (b) the register of pharmaceutical chemists for Northern Ireland  
8 maintained under articles 6 and 9 of the Pharmacy (Northern  
9 Ireland) Order 1976<sup>4</sup> made under paragraph 1 of Schedule 1 to the  
10 Northern Ireland Act 1974<sup>5</sup> (of Parliament);

11 “**registered psychiatrist**” means a registered medical practitioner who is  
12 registered in the specialist register kept under section 34D of the Medical  
13 Act 1983<sup>6</sup> (of Parliament) to undertake general psychiatry or old age  
14 psychiatry;

15 “**relative**”, in relation to any person, means —

- 16 (a) the spouse or civil partner of that person;  
17 (b) any lineal ancestor, lineal descendant, sibling, aunt, uncle or  
18 cousin of that person or the person’s spouse or civil partner; or  
19 (c) the spouse or civil partner of any relative mentioned in paragraph  
20 (b),

21 and for the purposes of deducing any such relationship a spouse or civil  
22 partner includes a former spouse or civil partner; and

23 “**terminal illness**” has the meaning given in section 5(1)(a).

- 24 (2) The Department may by regulations amend, omit or add defined terms  
25 in subsection (1) where it considers it necessary or expedient to keep  
26 references to UK legislation in defined terms up to date.

27 Tynwald procedure – affirmative.

- 28 (3) Regulations under subsection (2) may modify, adapt or amend any  
29 provision of this Act to give effect to such a revision of defined terms.

#### 30 **4 Assisted dying**

- 31 (1) A person who is terminally ill may request and lawfully be provided  
32 with assistance to end their own life.  
33 (2) Subsection (1) only applies where the person —

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<sup>1</sup> SI 2002/253

<sup>2</sup> 1999 c.8

<sup>3</sup> SI 2010/231

<sup>4</sup> SI 1976/1213

<sup>5</sup> 1974 c.28

<sup>6</sup> 1983 c.54

- 1 (a) has capacity;
- 2 (b) has a clear and settled intention to end their own life;
- 3 (c) has made a declaration to that effect in accordance with section 6;
- 4 and
- 5 (d) on the day the declaration is made —
- 6 (i) is aged 18 or over; and
- 7 (ii) has been ordinarily resident in the Island for not less than
- 8 one year.

9 **5 Terminal illness**

- 10 (1) For the purposes of this Act, a person is terminally ill if that person —
- 11 (a) has been diagnosed by a registered medical practitioner as having
- 12 an inevitably progressive condition which cannot be reversed by
- 13 treatment (a “terminal illness”); and
- 14 (b) as a consequence of that terminal illness, is reasonably expected to
- 15 die within 6 months.
- 16 (2) Treatment which only relieves the symptoms of an inevitably
- 17 progressive condition temporarily is not to be regarded as treatment
- 18 which can reverse that condition.

19 **6 Declaration**

- 20 (1) For the purposes of this Act, a terminally ill person has a clear and
- 21 settled intention to end their own life if —
- 22 (a) the person has made and signed a declaration to that effect in the
- 23 form in the Schedule in the presence of a witness (who must not
- 24 be a relative of the person or directly involved in the person’s care
- 25 or treatment) who signed the declaration in the person’s presence;
- 26 and
- 27 (b) that declaration has been countersigned by —
- 28 (i) the registered medical practitioner from whom the person
- 29 has requested assistance to end their life (“the attending
- 30 doctor”), who must not be a relative of the person; and
- 31 (ii) another registered medical practitioner (“the independent
- 32 doctor”) who is neither a relative of the person nor a
- 33 relative, partner or colleague in the same practice or
- 34 clinical team, of the attending doctor,
- 35 neither of whom may also be the witness required under
- 36 paragraph (a).
- 37 (2) Where a person is unable to sign the declaration required by subsection
- 38 (1), another person may sign it on their behalf if so directed by the
- 39 terminally ill person, provided that the person signing it is not the

1 witness, the attending doctor or the independent doctor (each as referred  
2 to in subsection (1)).

3 (3) A person signing a declaration on behalf of a terminally ill person must  
4 do so in the person's presence and the requirements of this section  
5 requiring the declaration to be witnessed and countersigned apply as if  
6 the declaration had been signed by the terminally ill person themselves.

7 (4) The independent doctor must be suitably qualified.

8 (5) The attending doctor (but not the independent doctor) may be, but need  
9 not be, the registered medical practitioner who diagnosed that the person  
10 is terminally ill or first informed the person of that diagnosis.

11 (6) Before countersigning a person's declaration the attending doctor and  
12 the independent doctor, having separately examined the person and the  
13 person's medical records and each acting independently of the other,  
14 must be satisfied that the person —

15 (a) is terminally ill;

16 (b) has the capacity to make the decision to end their own life; and

17 (c) has a clear and settled intention to end their own life which has  
18 been reached voluntarily, on an informed basis and without  
19 coercion or duress.

20 (7) Where either the attending doctor or the independent doctor has doubts  
21 as to the capacity of the person who has made the decision to end their  
22 own life to make that decision, the doctor having such doubts may ask a  
23 registered psychiatrist for their opinion as to such capacity.

24 (8) Before giving an opinion under subsection (7), the psychiatrist must  
25 examine the person who has made the decision to end their own life and  
26 the person's medical records.

27 (9) Subsection (6) has effect despite subsections (7) and (8) and the  
28 psychiatrist's opinion is given only to assist the attending doctor or the  
29 independent doctor (as the case may be) in determining the capacity of  
30 the person to make the decision to end their own life.

31 (10) In deciding whether to countersign the declaration, the attending doctor  
32 and the independent doctor must be satisfied that the person making it  
33 has been fully informed of the palliative, hospice and other care which is  
34 available to that person.

35 (11) A declaration under this section shall be valid and take effect from the  
36 day that it is countersigned by the independent doctor.

37 (12) A person who has made a declaration under this section may revoke it at  
38 any time and such revocation need not be in writing.

39 (13) For the purpose of subsection (4), an independent doctor is suitably  
40 qualified if that doctor holds such qualification or has such experience in



- 1                    respect of the diagnosis and management of terminal illness as the  
2                    Department may specify in regulations.  
3                    Tynwald procedure – approval required.

## 4        **7        Assistance in dying**

- 5                    (1)        The attending doctor of a person who has made a valid declaration may  
6                    prescribe medicine for that person to enable that person to end their own  
7                    life.  
8                    (2)        Medicine prescribed under subsection (1) may only be delivered to the  
9                    person for whom they are prescribed –  
10                    (a)        by the attending doctor; or  
11                    (b)        by –  
12                    (i)        another registered medical practitioner;  
13                    (ii)       a registered nurse; or  
14                    (iii)      a registered pharmacist,  
15                    who has been authorised to do so by the attending doctor.  
16                    (3)        The medicine must not be delivered until –  
17                    (a)        after the assisting health professional has confirmed that the  
18                    person has not revoked and does not wish to revoke their  
19                    declaration; and  
20                    (b)        after a period of not less than 14 days has elapsed since the day on  
21                    which the person’s declaration took effect.  
22                    (4)        If the attending doctor and the independent doctor agree that a person’s  
23                    death from terminal illness is reasonably expected to occur within one  
24                    month of the day on which a declaration takes effect, the period specified  
25                    in subsection (3)(b) is reduced to 7 days.  
26                    (5)        The person for whom medicine has been prescribed under subsection (1)  
27                    must decide whether to self-administer the medicine or to request an  
28                    assisting health professional to administer the medicine to them on their  
29                    behalf.  
30                    (6)        In respect of medicine which has been prescribed for a person under  
31                    subsection (1) which is to be self-administered, an assisting health  
32                    professional may –  
33                    (a)        prepare that medicine for self-administration by that person;  
34                    (b)        prepare a medical device which will enable that person to self-  
35                    administer the medicine; and  
36                    (c)        assist that person to ingest or otherwise self-administer the  
37                    medicine,  
38                    but the decision to self-administer medicine and the final act of doing so  
39                    must be taken by the person for whom the medicine has been prescribed.

- 1 (7) In respect of medicine which has been prescribed for a person under  
2 subsection (1) which an assisting health professional has agreed to  
3 administer on behalf of the person for whom it has been prescribed, the  
4 assisting health practitioner may administer the medicine by intravenous  
5 injection given specifically for the purpose for it was prescribed.
- 6 (8) If medicine prescribed for a person under subsection (1) has been self-  
7 administered or administered by an assisting health professional, the  
8 assisting health professional must remain with the person until the  
9 person has died.
- 10 (9) For the purpose of subsection (8), the assisting health professional is to  
11 be regarded as remaining with the person if the assisting health  
12 professional is in close proximity to, but not necessarily in the same room  
13 as, the person.
- 14 (10) The Department may by regulations specify –  
15 (a) the medicines which may be prescribed under this section;  
16 (b) the form and manner in which such prescriptions are to be issued;  
17 and  
18 (c) the manner and conditions under which such medicines are to be  
19 dispensed, stored, transported, used and destroyed.
- 20 Tynwald procedure – approval required.
- 21 (11) Regulations under subsection (10)(c) shall provide that an assisting  
22 health professional –  
23 (a) must only deliver medicine prescribed under this section to the  
24 person for whom the medicine has been prescribed immediately  
25 before its intended use; and  
26 (b) in the event that the person decides that the medicine is not to be  
27 self-administered or otherwise administered, must immediately  
28 remove the medicine from that person and, as soon as reasonably  
29 practicable, return it to the pharmacy from which it was  
30 dispensed.
- 31 (12) Regulations under subsection (10) may –  
32 (a) make different provision for different purposes; and  
33 (b) include consequential, incidental, supplementary or transitional  
34 provisions.
- 35 (13) In this section, “assisting health professional” means the attending  
36 doctor or a person authorised by the attending doctor in accordance with  
37 subsection (2)(b).

1 **8 Conscientious objection**

2 A person shall not be under any duty (whether by contract or arising from any  
3 statutory or other legal requirement) to participate in anything authorised by  
4 this Act to which that person has a conscientious objection.

5 **9 Assisted dying not to be initiated by health care professional**

6 (1) A person must not in the course of carrying out functions as a health care  
7 professional in relation to any person —

8 (a) initiate any discussion with the person that, in substance, is about  
9 assisted dying; or

10 (b) make any suggestion to the person that, in substance, is a  
11 suggestion that the person seeks assistance to end their life under  
12 this Act.

13 (2) Subsection (1) does not prevent a health care professional from —

14 (a) discussing with a person, at the person's request, assisted dying  
15 under this Act; or

16 (b) providing information to a person, at the person's request, about  
17 assisted dying under this Act.

18 (3) The contravention of subsection (1) by a health care professional does  
19 not, of itself, amount to the commission of an offence under section 14(2).

20 (4) However, subsection (3) does not preclude the taking of disciplinary  
21 proceedings or other regulatory action for professional misconduct in  
22 relation to the health care professional concerned.

23 (5) In this section, "health care professional" has the same meaning as in the  
24 *Health Care Professionals Act 2014*.

25 **10 Criminal liability**

26 (1) A person who provides any assistance in accordance with this Act shall  
27 not be guilty of an offence.

28 (2) In the *Criminal Code 1872*, after section 22 (excusable homicide), insert —

29 **"22AA Assisted dying**

30 | No punishment or forfeiture shall be incurred by any person who shall  
31 | kill another person in the provision of assistance to that other person in  
32 | accordance with the *Assisted Dying Act 2023*."

33 (3) In the *Criminal Law Act 1981*, after section 2 (abetment of suicide),  
34 insert —

1 **“2A Assisted dying**

2 Section 2 does not apply to any person in respect of the provision of  
3 assistance to another person in accordance with the *Assisted Dying Act*  
4 *2023.*”.

5 **11 Inquests, death certification etc.**

6 (1) A person is not to be regarded as having died in circumstances to which  
7 section 6(1)(a) (duty to hold inquest) of the *Coroners of Inquests Act 1987*  
8 applies only because the person died as a consequence of the provision  
9 of assistance in accordance with this Act.

10 (2) In the *Civil Registration Act 1984*, after section 43 (regulations), insert —

11 **“43A Regulations: assisted dying**

12 | (1) The Department may make regulations —

13 | (a) providing for any provision of this Act relating to the  
14 registration of deaths to apply in respect of deaths which  
15 arise from the provision of assistance in accordance with  
16 the *Assisted Dying Act 2023* with such modifications as may  
17 be prescribed in respect of —

18 | (i) the information which is to be provided concerning  
19 such deaths;

20 | (ii) the form and manner in which the cause of such  
21 deaths is to be certified; and

22 | (iii) the form and manner in which such deaths are to be  
23 registered;

24 | (b) requiring the Registrar General to prepare at least once  
25 each year a report providing a statistical analysis of deaths  
26 which have arisen from the provision of assistance in  
27 accordance with the *Assisted Dying Act 2023*;

28 | (c) containing such incidental, supplemental and transitional  
29 provisions as the Department considers appropriate.

30 Tynwald procedure – approval required.

31 | (2) Any regulations made under subsection (1)(a)(ii) shall provide for  
32 the cause of death to be recorded as the terminal illness that gave  
33 rise to the deceased person’s eligibility for assisted dying.

34 | (3) Any report prepared by the Registrar General in accordance with  
35 regulations made under subsection (1)(b) shall be laid before  
36 Tynwald.”.

## 12 Codes of practice

- (1) The Department may issue one or more codes of practice in connection with —
- (a) the assessment of whether a person has a clear and settled intention to end their own life, including —
    - (i) assessing whether the person has capacity to make such a decision;
    - (ii) recognising and taking account of the effects of depression or other psychological disorders that may impair a person's decision making; and
    - (iii) the information which is made available on treatment and end of life care options available to them and of the consequences of deciding to end their own life; and
  - (b) such other matters relating to the operation of this Act as the Department considers appropriate.
- Tynwald procedure – laying only.
- (2) Before issuing a code under this section the Department shall consult such persons as it considers appropriate.

## 13 Monitoring

The Department shall —

- (a) monitor the operation of the Act, including compliance with its provisions and any regulations or code of practice made under it;
- (b) publish an annual report on the operation of the Act; and
- (c) submit a copy of the report to Tynwald.

## 14 Offences

- (1) A person commits an offence if the person —
- (a) makes or knowingly uses a false instrument which purports to be a declaration made under section 6 by another person; or
  - (b) wilfully conceals or destroys a declaration made under section 6 by another person.
- (2) A person (A) commits an offence if, in relation to another person (B) who is seeking to make or has made a declaration under section 6, A knowingly or recklessly provides a medical or other professional opinion in respect of B which is false or misleading in a material particular.
- (3) A person guilty of an offence under subsection (1)(a) which was committed with the intention of causing the death of another person is liable, on conviction on information, to custody for life or a fine or both.

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- (4) Unless subsection (3) applies, a person convicted of an offence under this section is liable —
- (a) on conviction on information, to custody for a period not exceeding 5 years or a fine or both;
  - (b) on summary conviction, to custody for a term not exceeding 6 months or a fine not exceeding level 3 on the standard scale or both.

1

## SCHEDULE

2

[Section 6]

3

## FORM OF DECLARATION

4

## Declaration: Assisted Dying Act 2023

5

Name of declarant:

6

Date of Birth:

7

Address:

8

9

(1) I have [*condition*], a terminal illness from which I am expected to die within 6 months of the date of this declaration.

10

11

(2) The attending doctor and independent doctor identified below have each fully informed me about that diagnosis and prognosis and the treatments available to me, including pain control and palliative care.

12

13

14

(3) Having considered all this information, I have a clear and settled intention to end my own life and, in order to assist me to do so, I have asked my attending doctor to prescribe medicine for me for that purpose.

15

16

17

(4) I make this declaration voluntarily and in the full knowledge of its significance.

18

19

(5) I understand that I may revoke this declaration at any time.

20

21

Signature:

22

Date:

23

24

Witness

25

Name of witness:

26

Address:

27

28

29

This declaration was signed by or on behalf of [*name of declarant*] in my presence and signed by me in [*their*] presence.

30

31

32

Signature:

33

Date:

34

35

**Countersignature: attending doctor**

- 1 I confirm that [*name*], who at the date of this declaration is [*age*] years  
2 of age and has been ordinarily resident in the Isle of Man for [*time*]:
- 3 (a) is terminally ill and that the diagnosis and prognosis set above is  
4 correct;
  - 5 (b) has the capacity to make the decision to end their own life; and
  - 6 (c) has a clear and settled intention to do so, which has been reached  
7 on an informed basis, without coercion or duress, and having  
8 been informed of the palliative, hospice and other care which is  
9 available to [*them*].

10 Signature:

11 Date:

12 Name and Address of attending doctor:

13

14

15 ***Countersignature: independent doctor***

16 I confirm that [*name*], who at the date of this declaration is [*age*] years  
17 of age and has been ordinarily resident in the Isle of Man for [*time*]:

- 18 (a) is terminally ill and that the diagnosis and prognosis set above is  
19 correct;
- 20 (b) has the capacity to make the decision to end their own life; and
- 21 (c) has a clear and settled intention to do so, which has been reached  
22 on an informed basis, without coercion or duress, and having  
23 been informed of the palliative, hospice and other care which is  
24 available to [*them*].

25 Signature:

26 Date:

27 Name and Address of independent doctor:





IN THE KEYS

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**ASSISTED DYING BILL 2023**

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**A BILL** to enable certain adults who are terminally ill to be provided at their request with specified assistance to end their own life; and for connected purposes.

Introduced pursuant to leave granted  
by the Keys under Standing Order 4.4  
on 24th May 2022

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DR ALLINSON

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JUNE 2023