

Time for a change? Legalising Assisted Dying in the UK

What if you were told your last days would be spent in suffering and pain? Should you be able to avoid this, if you choose? In this article, **Nataly Papadopoulos** discusses controversial medico-legal questions on assisted dying.



Mr Noel Conway and his wife.

Mr Conway is terminally ill and currently seeks a change of the law in England and Wales

Assisted dying refers to the situation where an individual is provided with the means, typically a lethal medication, to bring an end to his or her own life. The individual must be physically able to end his or her life with minimum, if any, third-party assistance. Whilst assisted dying is part of the broader and more common term 'euthanasia', meaning 'good death' (from Greek eu 'good' and thanatos 'death'), the two are distinct, as the latter involves a third party directly bringing about the death.

This research explores the law on assisted dying in England and Wales, and argues that the UK Parliament should legalise some form of assisted dying. There are two practical reasons that support this argument: the ever-increasing number of citizens travelling abroad for assisted dying, and public views favouring legalisation.

The Law around the World

In England and Wales, suicide and attempted suicide were only decriminalised in 1961, before which they were punished by religious, civil, and legal penalties. In failed suicide attempts, the common law imposed severe sanctions on the individual, the most

common being imprisonment and hard labour. The law not only failed to support and advise individuals who attempted and failed to commit suicide, but also required that they undergo trial. In successful suicides, the law imposed sanctions directed to what the deceased left behind: reputation and fortune. As with cases of failed suicides, the law's response lacked compassion, and had an impact on the family of the deceased.

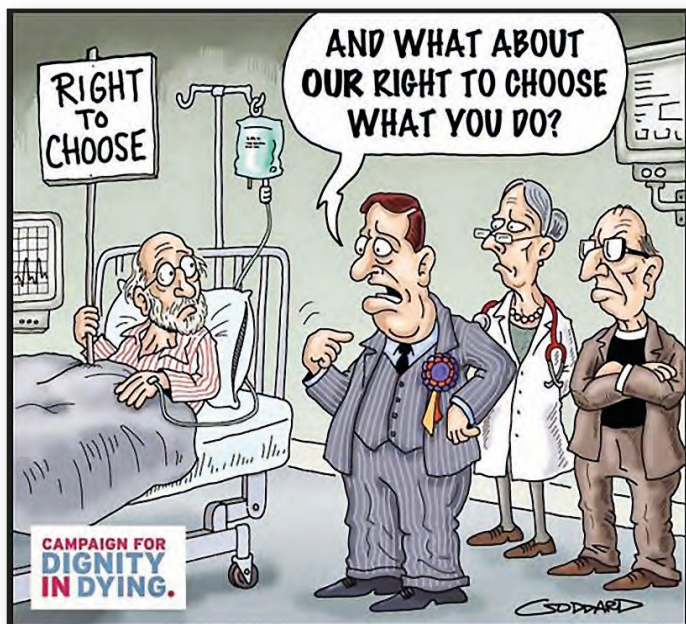
In 1961, the Suicide Act decriminalised suicide and attempted suicide, however assisting or encouraging suicide remains a criminal offence punishable by up to 14 years imprisonment. Examples that may fall under the offence include providing pills to a dying relative or friend, to relieve their suffering or for financial gain, or publishing suicide information online and encouraging users to commit suicide. In practice, however, individuals who provide assistance to individuals who desire and request assistance are not prosecuted under the 1961 Act. This is because under prosecutorial guidelines, which are not law, non-professional compassionate assistance is sometimes excused.

Outside of England and Wales, several countries and states permit some form of assisted dying. In 1997, the first physician-assisted dying law was enacted in the US state of Oregon, followed by a

Two Practical Justifications for Further Debate

The first justification is the increasing number of Britons travelling abroad to be assisted in dying, a practice called 'suicide tourism'. The most common destination is Switzerland, as at present, it is the only jurisdiction that permits assisted dying for non-nationals. Whilst euthanasia is a criminal offence in Switzerland, assisting or inciting suicide is prohibited only if carried out for 'selfish reasons'. Doctors are not directly involved, but they need to prescribe the necessary lethal drugs and to assess the mental capacity of the individual. Non-profit right-to-die voluntary organisations set their own requirements, and carry out most of the assisted suicides in Switzerland, with EXIT and Dignitas being the two largest. Data from Dignitas reveal that a high number of Britons have used the service, and that many others are members but have not yet used the service.

Under the law on assisted suicide in England and Wales, individuals who assist their loved ones to travel to Switzerland to die are not, in practice, prosecuted. This is despite the fact that their actions (e.g., booking plane tickets, acquiring the relevant medical records, or helping the individual to travel to Switzerland) fall under the 1961 Act offence. The first example in the UK of a Dignitas suicide that did not result in prosecution was the case of Daniel James in 2008. Applying the prosecutorial guidance and discretion, the decision was made that no sanctions would be imposed on his parents for assisting in his travel to Switzerland to die. Therefore, although 'suicide tourism' is generally excused under domestic law, simply excusing 'suicide tourism' and exporting the problem is an insufficient solution.



number of other US states, including Washington (2009), Vermont (2013), California (2015), Colorado (2016), and Washington D.C. (2017). Other Western countries have also enacted laws legalising assisted dying and/or euthanasia, including the Netherlands (2002), Belgium (2002), Luxembourg (2009), and Canada (2016). Switzerland has also permitted assisted suicide since 1942, but not under an official legal framework.

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Law Reform Attempts in England and Wales

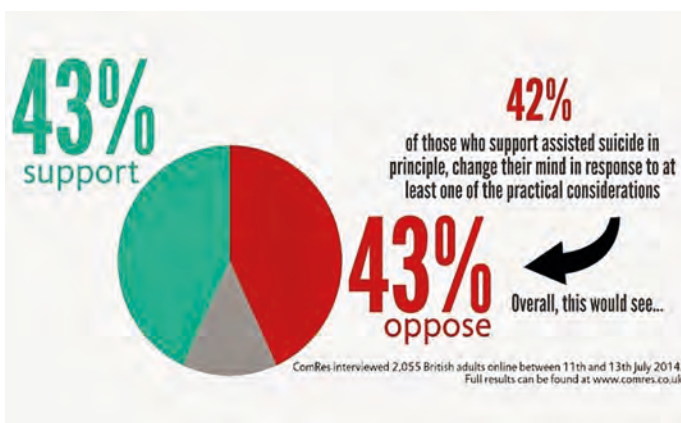
Several statutory reform bills, which are proposals introduced through and discussed in Parliament, have been proposed since 1961, yet all have been unsuccessful. The latest attempt, the Assisted Dying Bill 2013-14, was proposed in Parliament in May 2013, but eventually rejected by the House of Commons on 11 September 2015. Some members of the House of Commons were concerned about the value and sanctity of human life, and how this would have been affected by a potential legalisation of assisted dying.

Conversely, concerns were raised with regards to the financial and emotional pressure on 'vulnerable groups' (such as the elderly or the disabled) that may lead to requests for assistance in dying in order to relieve the 'burden' on relatives, friends, or the healthcare system and its resources.

Still others were concerned that assisted dying would break the Hippocratic Oath taken by doctors. Although several reform attempts have been made since 1961, I argue that further debate is needed and that legalisation of assisted dying should be pursued.

“Simply excusing 'suicide tourism' and exporting the problem is insufficient”

The argument of some individuals who wish to die – the most recent example being the legal cases of Noel Conway and Omid T – is that to travel abroad one needs to be physically and financially able, but also willing to die abroad in another country, away from one's family, friends, and home. The most important consideration, in my view, is that some individuals travel to Switzerland too early, before their mental or physical condition becomes such that may inhibit the journey, and as a result, their life is further shortened. These individuals need to be in a position to receive the medication unaided, and of course be able to travel to Switzerland. Thus, it can be argued that the



Two main points of concern need to be raised in relation to public views. First, it should be acknowledged that this is subjective evidence. Public opinion polls, questionnaires, and surveys can be biased due to many factors, including how the questions are asked and the background of the respondents. Therefore, these should be treated with caution. The second point is that, even assuming that we accept the validity of public opinion, this does not necessarily establish the need for change. However, the argument here is that public opinion shows the controversy and public attention around the issue of assisted dying, and highlights the need for further debate.

The argument put forward in this article is that the UK Parliament should engage in further debate on the potential legalisation of some form of assisted dying in the United Kingdom. The article discussed two practical justifications for this: the high number of individuals already travelling abroad to die, and the public views favouring legalisation.

It is time for the United Kingdom to act on the matter of assisted dying by using the experience of other countries and states that currently permit some form of assisted dying, in order to create a safe, workable, and appropriate framework. Certainly, there is the need for further research on the various practical and procedural aspects of assisted dying, as well as the need for a careful study and review of the cultural, political, and practical differences of the UK legal and policy approach in comparison with other jurisdictions that permit some form of assisted dying.

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Dignity in Dying campaigners outside the Houses of Parliament

Nataly Papadopoulou is a final-year PhD student in the School of Law, researching assisted dying and human rights. She is happy to be contacted about any aspect of this article written for Frontier at np224@le.ac.uk.