In response to the above, I am pleased to submit my evidence for consideration by the Committee.

Addressing the questions set out by the Committee –

1. I DO agree that a person should be able to request end of life assistance from a registered medical practitioner under strictly controlled circumstances.
2. I AM SATISFIED with the requirements for age and connection with Scotland as set out in the Bill – this is in recognition that the age of adulthood in Scotland is 16.
3. I AM SATISFIED with the two categories of people who would qualify to be assisted under the terms of the Bill.
4. Regarding the “several stage consent and verification process”, I have reservations and would prefer to see some latitude in very specific circumstances. Please refer to the notes below.
5. I DO consider the level and nature of the safeguards as set out in the Bill to be appropriate and adequate.
6. YES – I do have other considerations not included in the above answers.

Notes

These notes need to be read in conjunction with the details of the Bill. Paragraph numbers are as per the Bill.

At 6(1)(b), 8(2)(c) & 10(2) – “must be in writing and signed”

What if the ‘requesting person’ can neither write nor sign their name?

I can envisage two sets of circumstances where this could arise –

1. Where someone is illiterate and can neither read nor write.
2. Where someone with a degenerative condition, such as Motor Neuron Disease, that has progressed to such a point that they can no longer write, nor sign their name.

Would it be acceptable (within the terms of the Bill) to have the request typed up and the ‘requesting person’ either makes their mark or indicates their assent in some other way?

‘Advance Statement with regard to Future Medical Treatment’ [Adults with Incapacity (Scotland) Act 2000]
In the case of any degenerative condition where the ‘requesting person’ is no longer able to communicate (such as Motor Neuron Disease) but has made a valid ‘Advance Statement’ and lodged a copy with their medical practitioner, could this document be taken into consideration and given the force of law? If
someone has made their wishes clear in a formal way whilst they were able to communicate, it can not be right that they are then denied access to assistance because they have since lost the facility to communicate in the way envisaged in the Bill.

At 8(1)(c) & 11(2) – time scales

What if the ‘requesting person’ wants to exercise the option – but not have it enacted just yet?

The Bill sets out a finite time scale. The second request must be made between 15 and 30 days of the ‘requesting person’ being informed that the first request has been approved [8(1)(c)] - and the end of life assistance must be provided within 28 days of the ‘requesting person’ being informed that the second request has been approved [11(2)].

This presents possible problems at the two extremes.

1. If the ‘requesting person’ accepts that they are likely to die in the short term and is suffering really severe pain, then the best part of 3 months could seem an awfully long time to have to wait. Accepting that the built in safeguards are necessary, is there any way to expedite this process?

2. If the ‘requesting person’ has a progressive degenerative condition and recognizes at an early stage the debilitating nature of their illness, they may want to set up the process whilst they are still capable of so doing but not want to envisage enactment within a maximum of about 4 months? They have dilemma – move too soon and they may have to let it lapse and start again – move too late and they may not be able to comply with stringent conditions of writing and signing the 2\textsuperscript{nd} request!

For example in the case of Motor Neuron Disease, we know that the rate of progress is difficult to predict. There may be an average time span between diagnosis and conclusion but there is a wide variance between the shortest and the longest.

Why have such a limited maximum time scale? Surely it would be acceptable to leave the commitment open ended with a proviso that the request be simply reaffirmed within 12 moths of the approval of the first request. Although the act stipulates that the ‘requesting person’ has to be terminally ill and is therefore expected to die within 6 months, forecasting the outcome is not an exact science. The ‘requesting person’ could still revoke the request at any time.

At 10(3) – “expiry of at least two clear days”

Having got to point of agreement as per clause 10, why wait another two clear days?

With the checks and balances already built in, and with ample opportunity to
revoke the request, why impose another 2 day delay? If someone is in extreme distress and has battled through the process, they may be desperate to have it over and done with. This strikes me as an imposition too far!

At 7(2)(d) and subsequently – reference is made to “a psychiatrist”

**Does the Bill adequately define the term ‘psychiatrist’?**

This is not defined in Clause 12 Interpretations. I suggest that this should refer back to qualifications and/or registration in a similar vein as applies to the ‘registered medical practitioner’.

**Conclusion**

I fully support this proposed legislation on the grounds that –

- It is permissive in that would enable people who qualify to seek help, should they choose to do so. No one is obligated to do anything against their own judgment.
- It respects the dignity and autonomy of the individual competent adult.
- It presents a humane solution to what can be a very painful and distressing situation.
- It has reasonable and appropriate safeguards to ensure the request is the settled will of the ‘requesting person’ and that it has not been made as the result of pressure from any source whatsoever.

I sincerely hope that Scotland will, once again, lead the way with a piece of enlightened legislation.

Innes McOwan

31 March.2010