End of Life Assistance (Scotland) Bill

Professor H W Braden

You have listed various points we should address in turn.

Do you agree a person should be able to request end of life assistance from a registered medical practitioner?

No. This is a conclusion based in part on the specific comments below.

Are you satisfied with the two categories of people who would qualify to be assisted under the terms of the Bill?

I am uneasy about the critical wording “live independently” in section 4, paragraph 2(b) of the proposed Bill. The Explanatory note 22 does not clarify this ‘dependency … criteria’ further. People have dependencies of many kinds. Some are dependent on medication, dialysis and the like: they cannot live independently of drug companies or the N.H.S. Many old people cannot live independently of either nursing homes or home care (be it provided by family or professionally). Others require machinery to sustain life, from the very premature baby to those on ventilators. Of course many of these dependencies may not be in view, but who is precisely? The present Bill does not frame the intended persons eligible with adequate clarity nor do the accompanying Explanatory notes amplify this sufficiently.

Do you have any other considerations on the Bill not included in answers to the above questions?

I have three comments.

First, I am rather concerned that I can find no exploration of, or reflection on, the Netherlands example in the documentation associated with this Bill. (I had contacted both my MSP and List MSP's on this point at the consultation stage.) Surely a European example would be more apposite than the Oregon example (87 of the Explanatory notes) or the far more recent Washington State example (89 of the Explanatory notes). Both in size and culture I think this example warranted detailed consideration as being more relevant for Scotland. Hopefully such a study would also address the issue of possible under-reporting of the practice as well as the matter of abuse. (Are points 73 and 82 of the Policy Memorandum the best we can say on this latter point?) In many other areas (particular crimes for example) under-reporting is deemed a problem and an appraisal in this context seems wise. I understand the ‘slippery slope argument’ is dismissed by some (82 of the Policy Memorandum cites the Oregon example in this regard): I had hoped an independent study would shed light on this, either positively or otherwise.

If as a nation we are embarking on such a major change surely some impartial studies are called for. I am very disappointed that the route this Bill
has come has precluded such. Perhaps Parliament can commission such a study. Again one would hope for clear impartial research to inform both Parliament and the public on such an issue.

Second, the disagreement in The Times (April 23rd) between a large group of Scottish Palliative care experts and Ms MacDonald on the extent of this Bill (notably does the Bill countenance ‘euthanasia’) is worrying. It suggests a mismatch of intention between the Bill’s proposer and those one might suppose understand the meaning of ‘euthanasia’, again suggesting this Bill lacks clarity and precision.

Third, I am concerned with the ‘elephant in the room’, the unvoiced ‘appropriate means’ of section 1 paragraph 2 of the Bill. Are any means (qualified by ‘dignity’ and ‘minimum distress’) really in view? How does one decide whether a gun to the head or a massive electric shock meets this description or not? Who has experience in this? Point 62 of the Policy Memorandum tells me many patients experience ‘moderate to severe pain in the final 3 days of life’, and presumably this is in the context of all concerned wishing to alleviate suffering. If these practitioners with the best of intentions get it wrong why should those assisting the end of life of another be any different? Would this Bill, if approved, lead to the development of a particular medical specialist performing this task in clinics devoted to this task?

There is a genuine concern here both for those who might have to administer such ‘appropriate means’ and our society who must condone it. Surely if we are going to legislate we must be honest about what is entailed, however uncomfortable and unpalatable.

And so my opening conclusion follows. I believe this Bill lacks underpinning research of the consequences, is poorly framed, and is silent on key matters.

Thank you for your consideration.

Professor H W Braden
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