

Dear Deputy Doublet

I am writing to you as Chair of the relevant Scrutiny Panel with regard to the above Proposition.

The Report and Proposition is a comprehensive document which is clearly intended as a basis for instructing the Law Draftsman. Being such a detailed document, it is tempting to assume that an objective assessment of the entire position has been set out in a clear and balanced way, and that any points of detail can be picked up when the draft Law is presented to the States in due course. Whilst this may theoretically be the case, it can also be argued that concerns should have been raised at this juncture and not when the draft law is presented.

It is therefore important that a thorough scrutiny of the proposition and its report is undertaken before approving the principles of such a fundamental proposition, particularly in view of the moral and ethical principles involved. In the latter respect, it is regrettable that the Council of Ministers, perhaps guided by the views of the current Health Minister, has chosen to relegate the findings of the Ethical Review to a couple of lines in Appendix 1.

It is also regrettable that opinions on certain underlying principles are treated as unarguable when other opinions on such principles are equally valid. As an example, the statement that "Assisted Dying is not suicide" is treated as valid (appendix 1, P.173) when at the same time it is recognised that this statement is contrary to the views of a similar number who hold the opposite opinion. What should be argued is that the legal definition of suicide could be amended to exclude Assisted Dying.

If I were a States' Member, I would be minded to propose a couple of minor amendments along the following lines.

In paragraph (a)(5) after the words "their own life" add the words "and such capacity is verified by an independent psychologist"

Paragraph 290 of the Report accompanying the proposition deems the patient to have capacity unless proved otherwise. This is a dangerous principle, in that the only person to decide this would appear to be the patient whose capacity is being questioned, and they are hardly likely to oppose their own view. It could be argued that the Coordinating Doctor could make such an assessment, but that doctor is likely to be more qualified in assessing the physical condition of the patient than their mental state. What is needed is an assessment by a person qualified in determining mental capacity. The report of this person should be presented in evidence to the Tribunal mentioned in Appendix A.

In part (c) replace the words "the person deems" with the words "which in the opinion of two separate doctors confirm"

Whilst the intentions of paragraph (c) appear reasonable, there have been cases in other jurisdictions where persons suffering from conditions such as anorexia deem their condition so intolerable that they wish to end their lives. There are others suffering, perhaps temporarily, from acute forms of depression, who may find their lives intolerable and wish to put an end to it.

It cannot be said that paragraph (a)(v) offers any protection, since the person concerned may well have the capacity to make such a decision, however ill-judged it may be. It could be argued that the medical conditions just described are not incurable, but that judgement should be made by a qualified medical practitioner and not the patient.

Whilst some comfort may be derived from the content of the report accompanying the Proposition, it is the wording of the Proposition which must ultimately be relied upon, and hence there is need for absolute clarity on this important point.

On a positive note I am aware of the approval in principle of additional resourcing to be made available for palliative care. However I note with concern the caveats contained on pp.24-5 of the Report and in particular that “these metrics may not have been fully realised at the point of consideration of the draft law”. I am aware from previous experience that optimistic intentions are often delayed in implementation, usually due to financial constraints, and I would like to see some safeguard built in to ensure that this does not occur in this instance.

I hope that the Scrutiny Panel in particular will take note of these views in trying to ensure that the draft legislation, when it is drawn up, provides for the safeguards, which were deemed essential as part of the original proposition, to be clearly maintained, and that future generations of States Members will resist the temptation to water down such safeguards and/or widen the scope of persons eligible for Assisted Dying. I would also urge States Members not to introduce any such legislation in advance of the U.K., since it would be in everyone’s interests for the legislation in both jurisdictions to be similar and avoid any opportunity for ‘health tourism’.

Yours sincerely

Terry Le Sueur