



Delegated Powers and Law Reform Committee

Clare Haughey MSP

Convener, Health, Social Care and Sport Committee

14 January 2026

Dear Clare,

The Scotland Act 1998 (Modification of Schedule 5) Order 2026 (Draft SI)

The Delegated Powers and Law Reform Committee considered the above draft section 30 Order at its meeting on 13 January 2026 and agreed to write to the lead committee and Scottish Government in relation to it.

The Committee agreed that none of the technical or legal reporting grounds considered by the Committee (as set out at Rule 6.11.1 of Standing Orders) were engaged by the draft Order.

However, the Committee considered that, ahead of your committee's scrutiny of the instrument, it might be helpful to set out some issues your committee may wish to explore related to other subordinate legislation linked to the Assisted Dying for Terminally Ill Adults (Scotland) Bill. As set out in [the letter to you from the Cabinet Secretary for Health and Social Care](#) on 16 December 2025, the Scottish Government considers that a section 104 Order in the UK Parliament is required to cover aspects not covered by the section 30 Order.

As you know, a section 104 Order enables UK Ministers to make provision that they consider is necessary or expedient in consequence of Scottish Parliament legislation, including by amending reserved UK legislation. Such orders are subject to parliamentary procedure only at Westminster, meaning the Scottish Parliament has no formal role in their scrutiny. Such Orders are the responsibility of UK Ministers.

The issues that you may wish to explore are:

1. What factors are being taken into account in the choice of solution to the legislative competence issues the Scottish Government sees in the Bill, and, in particular, why are only some of the legislative competence issues the Scottish Government sees in the Bill being addressed by the section 30

Order, while others are being left to a section 104 Order, which this Parliament can't formally scrutinise?

2. Are there other possible solutions that would involve greater scrutiny in the Scottish Parliament?
3. What consideration is being given to those?
4. How does the Scottish Government propose to keep the Scottish Parliament as involved and as informed as possible as these matters are further considered, including in relation to a section 104 Order process?

The Committee is also writing to the Scottish Government in similar terms, but considered it would be helpful to set these questions out to your committee at this point too, given the timescales for scrutiny of the draft Order.

Yours sincerely,



Stuart McMillan MSP
Convener