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Stuart McMillan MSP
Convener
Delegated Powers and Law Reform Committee
Scottish Parliament
Edinburgh
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16 January 2026

Dear Stuart,

ASSISTED DYING FOR TERMINALLY ILL ADULTS (SCOTLAND) BILL – SECTION 104 ORDER

Thank you for your letter of 14 January 2026, requesting further information on the section 104 Order currently under discussion with the UK Government, in relation to Liam McArthur's Assisted Dying for Terminally Ill Adults (Scotland) Bill. My responses are set out below.

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?

Provision in the Bill for the specification of approved substances is considered to be absolutely fundamental to the operation of the Bill, and, additionally, provision for identifying devices, as well as regulation of both substances and devices, is thought to be necessary for the Bill's workability. It was agreed with the UK Government that these would need to be dealt with by section 30 Order.

We recognise the importance of the provisions in the Bill related to the regulation of health professions involved in assisted dying and employment protections for people who refuse to be involved, and the inclusion of them in the section 30 Order was discussed with the UK Government. Their view was that, in order to respect the distinction between reserved and devolved matters, anything that could be dealt with by section 104 Order should be dealt with in that way, with changes to legislative competence being kept to a minimum. They considered that going further than that would not be in keeping with their own position of neutrality on the Bill.

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It was therefore agreed with the UK Government that these provisions, which are, arguably, not fundamental to the workability of the Bill, could potentially be dealt with by section 104 Order.

Are there other possible solutions that would involve greater scrutiny in the Scottish Parliament? What consideration is being given to those?

Our discussions with the UK Government to agree the provisions that could be dealt with by section 104 Order are ongoing. As part of those discussions, consideration is also being given to whether some of the provisions could, instead, be amended in such a way that they do not impinge on reserved matters. However, whilst no firm decisions have yet been reached, it is unlikely that this will be possible for all of the provisions being considered, given that some of them appear to sit firmly in reserved areas. In relation to those provisions, we are of the view that a section 104 Order is the only possible approach.


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?

We will continue to update the Scottish Parliament on our work to try to bring the Bill within legislative competence prior to the Stage 3 vote by letter to the Health, Social Care and Sport Committee (as the lead Committee for this Bill), copied to the Delegated Powers and Law Reform Committee and other relevant committees, as appropriate.

I am, of course, also happy to answer any further questions the Committee has, and hope that you find the above information helpful.

As requested, this letter is copied to the Health, Social Care and Sport Committee, the Constitution, Europe, External Affairs and Culture Committee and the Minister for Parliamentary Business.

Yours sincerely,



NEIL GRAY

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