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Clare Haughey MSP  
Convener  
Health, Social Care and Sport Committee  
Scottish Parliament  
Edinburgh  
EH99 1SP

16 December 2025

Dear Clare

## **ASSISTED DYING FOR TERMINALLY ILL ADULTS (SCOTLAND) BILL – UPDATE ON LEGISLATIVE COMPETENCE CONSIDERATIONS**

I am writing to provide an update on the discussions between the Scottish Government and the UK Government with regard to the legislative competence issues with the Bill, as outlined in our [Memorandum](#) to the Committee last September, and taking account of further amendments to the Bill at Stage 2.

### **Section 30 Order**

Following extensive engagement, the Scottish and UK Governments have come to an agreement on the terms of a section 30 Order for the Bill. This Order will be laid imminently and covers the identification and regulation of the approved substance and medical devices for use in assisted dying.

This, as you will be aware, was a concern raised by the Scottish Government in our initial Memorandum, in which we identified section 15(8) of the Bill as appearing to relate to the reserved matter of medicines, medical supplies and poisons (section J4 of schedule 5 of the Scotland Act 1998).

Subsequent discussion with the UK Government, taking into consideration the changes to the Bill during Committee's Stage 2 considerations, mean that the section 30 Order also includes provision around medical devices, which may relate to the reserved matters of product standards, safety and liability (section C8 of schedule 5 of the Scotland Act 1998) and medicines, medical supplies and poisons (section J4 of Schedule 5 of the Scotland Act 1998).

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The section 30 Order will allow Members to consider how matters relating to substances and devices could be dealt with if the Bill is passed, enabling the Parliament to confer powers to make regulations either on the Scottish Ministers (with the Secretary of State's agreement) or on the Secretary of State, depending on their purpose.

The proposed Order provides the necessary competence to the Scottish Parliament on a time-limited basis to allow the Scottish Parliament to consider the Bill before it rises ahead of the Scottish Parliament elections in May. The Scottish Government remains neutral on assisted dying, which is a matter for the Scottish Parliament to decide upon.

### **Section 104 Order/Stage 3**

As you will be aware from our initial Memorandum and [critique](#) on Stage 2 amendments, there are other aspects of the Bill that raise issues of legislative competence which require further consideration by the Scottish Government and the UK Government as it progresses.

The following areas are currently under consideration for a potential section 104 Order:

- provisions in relation to regulation of professions involved in assisted dying, which may relate to the G2 reservation (regulation of health professions); and
- provisions in relation to employment protections for people who refuse to be involved in assisted dying, which may relate to the H1 reservation (employment and industrial relations), and potentially the G2 reservation.

It will be necessary to remove those sections of the Bill which are determined to be outwith competence during Stage 3 considerations, with the intention of these being addressed via a section 104 Order if the Bill passes, and discussion around which provisions would be required to be dealt with in this manner are continuing at pace between the Scottish Government and the UK Government

As Committee Members will be aware, it is important as the Bill undergoes further amendment at Stage 3 – as with any Bill – that no further provisions that could take it back without competence are agreed upon by Parliament.

We are aware that it will be necessary to provide greater detail on what it is proposed will be covered under the section 104 Order as far in advance as possible ahead of Stage 3 considerations and will endeavour to update the Committee further as soon as we are in a position to do so.



You may wish to note I have also written to Liam McArthur MSP, as Member-in-Charge of the Bill, in similar terms.

I hope that you find this information helpful.

Yours sincerely



**NEIL GRAY**

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