



Clare Haughey MSP
Convener
Health, Social Care and Sport
Committee
c/o Clerk to the Committee

Liam McArthur MSP

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Dear Clare

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

Thank you for your letter providing me with the opportunity to provide my view on the [draft Scotland Act \(Modification of Schedule 5\) Order 2026](#), which relates to my Assisted Dying for Terminally Ill Adults (Scotland) Bill, prior to Committee consideration of the draft Order at its meeting on 20 January 2026. I thank the Committee for its consideration of the draft Order (and am also aware that the draft Order will be considered by the Delegated Powers and Law Reform Committee).

I note that the [Explanatory Notes](#) for the draft Order provide a comprehensive and helpful summary, of both the background to the Order and why it is required, and the purpose and function of the Order. I also refer to the [letter](#) to the Committee from the Scottish Government's Cabinet Secretary for Health and Social Care on 16 December 2025, which stated that a draft section 30 Order was imminent, and that a potential section 104 Order is also under consideration to address other issues of legislative competence identified by the Scottish Government.

As is stated in the Bill's accompanying documents and was comprehensively considered and discussed during scrutiny at stages 1 and 2, the Bill sets out a process for a terminally ill adult to follow to access assistance to end their own life, which includes (in section 15) provision about the end-of-life process. Section 15 allows the Scottish Ministers to regulate to specify substances which can then be provided to, and used by, a terminally ill adult to enable them to legally and voluntarily end their life. Section 22 of the Bill ("Limitations on effect of Act") puts it beyond doubt that the

Scottish Ministers can approve such substances by way of regulations only if they are not regulated by or under the Misuse of Drugs Act 1971 or the Medicines Act 1968 or, if they are so regulated, their use for the purposes of assisted death has been approved under those Acts. These are subject matters which are reserved to the UK Parliament under the Scotland Act 1998.

As you will be aware, section 30 Orders under the Scotland Act have been made several times since 1999 in situations where the Scottish and UK Governments consider them necessary to enable Scottish legislation to be implemented effectively. I have always been clear that, in order to achieve a truly comprehensive assisted dying scheme, something else would likely need to happen. In the Policy Memorandum which accompanied the Bill when introduced, I addressed this issue, stating:

“This could be if for example the use of certain regulated medicines or controlled drugs were to be brought within the executive competence of the Scottish Ministers, or by way of a transfer of legislative power through amendment of Schedule 5 (or Schedule 4) of the Scotland Act 1998. The Member understands there are various possible routes to ensure that, including the agreement of a Section 30 Order under the Scotland Act 1998. A Section 30 Order is a type of subordinate or secondary legislation which can be used to increase or restrict, temporarily or permanently, the Scottish Parliament’s legislative competence. It does this by altering the list of reserved powers set out in Schedule 5, and/or the protections against modification set out in Schedule 4 of the Scotland Act. Section 30 Orders can be initiated either by the Scottish or UK Governments but require approval by the House of Commons, House of Lords and the Scottish Parliament before becoming law.”

A draft order of this kind was therefore anticipated from the outset of my work on this Bill, and the Committee will be aware that undertakings that such an Order would be forthcoming were given to me and the Committee during the scrutiny of the Bill to date. I place on record my thanks to the Scottish and UK governments for their engagement and work in bringing forward the Order, the contents of which have been agreed by both governments.

The draft Order amends Part 3 of Schedule 5 to provide a time limited exception to reserved matters in respect of the identification and regulation of substances and devices for use in assisting terminally ill adults to voluntarily end their own lives. It allows the Scottish Parliament to confer powers on the Scottish Ministers to identify substances and devices subject to UK legislation for use in assisted dying, provided this is done by way of subordinate legislation made with the agreement of the Secretary of State. It also allows the Scottish Parliament to confer powers on the Secretary of State to regulate such substances and devices, by subordinate legislation.

The Explanatory Note to the Order states:

“This is a technical and time-limited action which is being taken to enable the Scottish Parliament to further consider legislation on assisted dying, in its current

Parliamentary session, with an understanding of how matters relating to the identification and regulation of substances and devices to be used within an assisted dying service can be addressed. These matters have been identified as matters which are currently outside the competence of the Scottish Parliament.”

I very much welcome the draft Order being laid as, as is set out in the Explanatory Notes which accompany the draft Order, its agreement by the Scottish and UK parliaments will, “...allow Members of the Scottish Parliament to further consider the Bill with clarity as to how the matter of substances and devices, which may be used for assisted dying in Scotland, could be dealt with.”

I am, of course, aware of the different views among members on the issue of assisted dying, and that, while the Bill has passed stage 1 and completed stage 2, that we will soon be debating further amendments on the Bill at stage 3, before a final vote on whether to pass the Bill, as amended. I have always been respectful of views on this most sensitive of issues. I encourage all members to support this draft Order, as it will, if agreed by both parliaments, help to ensure that our Parliament can fully debate the Bill and proposed amendments at stage 3, and vote on whether to pass the Bill, with the knowledge that, if passed, the Scottish Parliament will have the necessary powers to give full effect to the end-of -life process in the Bill. The draft Order, if passed, will ensure that Scottish Ministers will be able to regulate to approve from a range of substances and medical devices for use in assisted dying. Greater detail on the proposed contents of the section 104 Order, as is expected in due course from both the UK and Scottish governments, will also reassure members on how issues relating to the regulation of professions and employment protections for those involved in assisted dying.

I therefore urge the Committee to indicate its support for agreeing the draft section 30 Order to the Parliament, and that the Parliament will subsequently agree the draft Order. I understand that it would then be considered by both Houses of the UK Parliament, and, should the draft Order be agreed, would then be considered by the Privy Council.

Yours,



Liam McArthur