

Legislative Consent Memorandum

Terminally Ill Adults (End of Life) Bill

Background

1. This memorandum has been lodged by Neil Gray MSP, Cabinet Secretary for Health and Social Care, in accordance with Rule 9B.3.1 (c) of the Parliament's Standing Orders.

2. The Terminally Ill Adults (End of Life) Bill was introduced by Kim Leadbeater MP as a Private Member's Bill in the House of Commons on 16 October 2024. The Bill is available on the UK Parliament website via this link: [Terminally Ill Adults \(End of Life\) Bill](#).

Content of the Bill

3. The Terminally Ill Adults (End of Life) Bill makes provision for a terminally ill person living in England or Wales, aged 18 and above, with capacity, who has been ordinarily resident in England or Wales for 12 months, and who is registered with a GP practice in England or Wales, to be given - on request - assistance to end their own life.

4. During the House of Commons' report stage, which took place from 16 May to 20 June 2025, several amendments were agreed, including amendment 77, which extend the scope of some of the provisions of the Bill to Scotland.

5. The provisions of the Bill extended to Scotland by amendment 77 were as follows:

- Clause 31(8)(no obligation to provide assistance etc)
- Clause 37 (regulation of approved substances and devices for self-administration)
- Clause 43 (prohibition on advertising)
- Clause 54 (regulations)
- Clause 56 (interpretation)
- Clause 57 (extent)
- Clause 58 (commencement)
- Clause 59 (short titles)
- Schedule 3 (protection from detriment)

6. The Scottish Government understands that analysis prepared for the Bill's sponsor (Kim Leadbeater) indicates that the legislative consent process is not

engaged by any of the provisions listed above. The Scottish Government agrees with that assessment on all but one: Clause 43 (prohibition on advertising).

Provisions which require the consent of the Scottish Parliament

7. The Bill is a relevant Bill under Rule 9B.1.1 of the Standing Orders, as the Scottish Government considers it makes provision applying to Scotland for purposes within the legislative competence of the Scottish Parliament.

8. Clause 43 makes provision requiring the Secretary of State to make regulations prohibiting the publication, printing, distribution or designing (anywhere) of advertisements whose purpose or effect is to promote a voluntary assisted dying (VAD) service, and prohibiting causing the publication, printing, distribution or designing of such advertisements. There is scope for exemptions. For example, the provision of information to users or providers of these services. It also provides that regulations made under this section may make any provision that could be made by an Act of Parliament. Clause 54(3) of the Bill provides that regulations under clause 43 can only be made if a draft has been laid before and approved by a resolution of each of the House of Commons and House of Lords. Clause 43 also provides that any regulations may not amend this Act and must provide that any offence created by the regulation is punishable with a fine. A VAD service, for the purposes of this clause, means the service as set out in accordance with the Act (i.e. VAD services in England and Wales).

9. The analysis prepared for the sponsor concluded that clause 43 did not trigger the need for consent of the Scottish Parliament.

10. The Scottish Government's position differs in that in its view clause 43 (prohibition on advertising) appears to be for a purpose within the legislative competence of the Scottish Parliament.

11. Section C7 of Part II of Schedule 5 of the Scotland Act 1998 reserves regulation of (among other things) "(e) misleading and comparative advertising, except regulation specifically in relation to food, tobacco and tobacco products". Clause 43 is concerned with advertising that promotes the assisted dying service, which would be a control on advertising such a service in general rather than being concerned with consumer protection around misleading and comparative advertising. The Scotland Act is designed in such a way that anything which is not reserved is devolved.

12. It appears, from the records that are publicly available, that the rationale for clause 43 is preventing unethical advertisement of the VAD service, which could put pressure on vulnerable people or be seen to be undermining national suicide prevention strategies.

13. The provision is concerned with the advertising in Scotland of the assisted dying scheme in England and Wales. There is potential that people in Scotland could access the VAD service in England and Wales by taking action to meet its eligibility requirements. The Scottish Government's position is that the Scottish Parliament could make such provision within its devolved competence and so a LCM is required.

14. A draft motion seeking consent to clause 43 is included below, as it is considered the most appropriate means by which the prohibition on advertising in Scotland of the England and Wales VAD service should be made. The relevant provision is clear that the VAD services it refers to are specifically those offered under the Bill (i.e. provision in England and Wales) and it was the will of the House of Commons that advertising of VAD services in England/Wales be prohibited in England, Wales and Scotland.

Reasons for recommending legislative consent

15. Seeking legislative consent is consistent with the Scottish Government's approach to protecting devolution and the role of the Scottish Parliament. It also addresses the potential anomaly that could be created, where the advertising of the England and Wales VAD services would be allowed in Scotland, while prohibited in England and Wales.

16. The Scottish Government therefore recommends that consent is given to clause 43.

Consultation

17. Given the Bill is a Private Member's Bill and the provision at hand refers to the prohibition on advertising of the England and Wales VAD service, there has been no consultation undertaken on the behalf of the Scottish Government.

Financial implications

18. No financial implications are anticipated from the prohibition on advertising of England and Wales VAD service in Scotland.

Other relevant considerations

19. Usual practice would have been for an inter-governmental agreement to have taken place prior to the lodging of relevant provisions, however, given this is a Private Member's Bill, on which the UK Government has a position of neutrality, the usual timescales and processes have not been adhered to.

20. Given devolution analysis prepared for Ms Leadbeater indicated that no provisions were relevant, and that these provisions were subject to a free vote during

report stage, she did not make an approach until after her Bill passed its third reading.

21. For that reason, and given the need for the Scottish Government to carry out its own considerations, this LCM has not been lodged within the usual timescales.

Post EU scrutiny

22. These provisions are not relevant to the Scottish Government's policy to maintain alignment with the EU.

Conclusion

23. Given that the relevant provision, clause 43, is concerned with the prohibition of advertising of the England and Wales VAD service, and that the House of Commons has made clear its will that this prohibition should be enacted, the Scottish Government recommends that a motion to consent is passed by the Scottish Parliament. While noting that there is a difference in position between the Scottish Government and the Bill's sponsor (Kim Leadbeater) on whether clause 43 requires consent, for the reasons outlined above, the Scottish Government is nonetheless seeking legislative consent.

Draft motion on legislative consent

24. The draft motion, which will be lodged by the Cabinet Secretary for Health and Social Care, is:

"That the Parliament agrees that the relevant provisions of the Terminally Ill Adults (End of Life) Bill, introduced on 16 October 2024, and subsequently amended, relating to the prohibition on advertising of the England and Wales Voluntary Assisted Dying Service, so far as these matters fall within the legislative competence of the Scottish Parliament, should be considered by the UK Parliament."

Scottish Government
August 2025

This Legislative Consent Memorandum relates to the Terminally Ill Adults (End of Life) Bill (UK legislation) and was lodged with the Scottish Parliament on 27 August 2025

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