



The Scottish Parliament  
Pàrlamaid na h-Alba

Published 30 January 2026  
SP Paper 983  
13th Report, 2026 (Session 6)

# **Delegated Powers and Law Reform Committee Comataidh Cumhachdan Tiomnaichte is Ath-leasachadh Lagh**

## **Delegated powers in the Assisted Dying for Terminally Ill Adults (Scotland) Bill (as amended at Stage 2)**



**Published in Scotland by the Scottish Parliamentary Corporate Body.**

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# Delegated Powers and Law Reform Committee

The remit of the Delegated Powers and Law Reform Committee is to consider and report on the following (and any additional matter added under Rule 6.1.5A)—

(a) any—

(i) subordinate legislation laid before the Parliament or requiring the consent of the Parliament under section 9 of the Public Bodies Act 2011;

(ii) [deleted]

(iii) pension or grants motion as described in Rule 8.11A.1; and, in particular, to determine whether the attention of the Parliament should be drawn to any of the matters mentioned in Rule 10.3.1;

(b) proposed powers to make subordinate legislation in particular Bills or other proposed legislation;

(c) general questions relating to powers to make subordinate legislation;

(d) whether any proposed delegated powers in particular Bills or other legislation should be expressed as a power to make subordinate legislation;

(e) any failure to lay an instrument in accordance with section 28(2), 30(2) or 31 of the 2010 Act;

(f) proposed changes to the procedure to which subordinate legislation laid before the Parliament is subject;

(g) any Scottish Law Commission Bill as defined in Rule 9.17A.1; and

(h) any draft proposal for a Scottish Law Commission Bill as defined in that Rule.

(i) any Consolidation Bill as defined in Rule 9.18.1 referred to it in accordance with Rule 9.18.3.

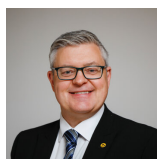


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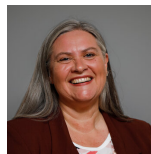
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**Katy Clark**  
Scottish Labour



**Roz McCall**  
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and Unionist Party



**Jeremy Balfour**  
Independent

# Introduction

1. At its meeting on 27 January 2026<sup>i</sup>, the Delegated Powers and Law Reform Committee considered the delegated powers in the [Assisted Dying for Terminally Ill Adults \(Scotland\) Bill](#) ("the Bill") as amended at Stage 2.
2. This Members' Bill was introduced by Liam McArthur MSP on 27 March 2024 and completed Stage 2 on 25 November 2025. The lead committee was the Health, Social Care and Sport Committee.

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<sup>i</sup> Stuart McMillan MSP submitted his apologies for this meeting.

# Background

3. The Committee considered the delegated powers in the Bill at Stage 1 at its meetings on 28 May and 10 September 2024. The Committee published its [report](#) on 20 September 2024. The Committee was content with all of the delegated powers in the Bill, subject to recommending adjustments to the consultation requirements in sections 4(5)(a) and 6(6)(a), and the addition of a consultation requirement to section 15(8).
4. Following Stage 2, five new delegated powers have been added to the Bill and five powers have been revised. The Member has therefore lodged a [Supplementary Delegated Powers Memorandum](#) (“sDPM”) which explains the additional and revised delegated powers.
5. The Committee is required by Rule 9.7.9(b) of the Standing Orders to consider and report to the Parliament on new or substantially altered delegated powers after Stage 2.

# Review of relevant powers

## Section 4(5)(a): Power to specify the training, qualifications and experience of a “coordinating registered medical practitioner”

**Power conferred on: Scottish Ministers**

**Power exercisable by: Regulations made by Scottish statutory instrument**  
**Parliamentary procedure: First regulations affirmative, any subsequent regulations negative**

**Revised or new power: Revised**

### Provision

6. The “coordinating registered medical practitioner” is the doctor who will oversee the assisted dying process for the person who is seeking assistance. Section 4(5) defines a “coordinating registered medical practitioner” as “a registered medical practitioner who has such training, qualifications and experience as the Scottish Ministers may by regulations specify” and who has confirmed with the terminally ill adult that they are willing to act as the coordinating registered medical practitioner.
7. The power was adjusted at Stage 2 so that Scottish Ministers must (rather than may) specify what training (in addition to qualifications and experience) a registered medical practitioner must have in order to act as a co-ordinating registered medical practitioner.

### Committee consideration

8. The power has been adjusted in two respects; first to require Scottish Ministers to make regulations, instead of leaving it to their discretion and second, by adding “training” to the matters which may be specified in addition to qualifications and experience. These are modest adjustments.
9. At Stage 1, the Committee recommended that the Bill be amended to include a statutory requirement to consult the Chief Medical Officer for Scotland and the General Medical Council before the power is exercised. The Committee notes that this recommendation has not been reflected in the Bill as amended.
10. **The Committee reiterates its Stage 1 recommendation that the Bill be amended to include a statutory requirement to consult the Chief Medical Officer for Scotland and the General Medical Council before the power is exercised.**

## Section 6(6)(a): Power to specify the training, qualifications and experience of an “independent registered medical practitioner”

**Power conferred on: Scottish Ministers**

**Power exercisable by: Regulations made by Scottish statutory instrument**

**Parliamentary procedure: First regulations affirmative, any subsequent regulations negative****Revised or new power: Revised****Provision**

11. The “independent registered medical practitioner” is the doctor who is responsible for assessing whether the person who has requested assistance to end their own life is terminally ill, has sufficient capacity to make the request, and is acting of their own free will, absent coercion or pressure.

**Committee consideration**

12. Section 6(6)(a) mirrors the provision in section 4(5)(a) and has been adjusted in the same respects. Scottish Ministers are now required to make regulations specifying what training, qualifications and experience a registered medical practitioner must have in order to fulfil the role of “independent registered medical practitioner”. These are modest adjustments.
13. At Stage 1, the Committee recommended that the Bill be amended to include a statutory requirement to consult the Chief Medical Officer for Scotland and the General Medical Council before the power is exercised. The Committee notes that this recommendation has not been reflected in the Bill as amended.

- 14. The Committee reiterates its Stage 1 recommendation that the Bill be amended to include a statutory requirement to consult the Chief Medical Officer for Scotland and the General Medical Council before the power is exercised.**

**Section 12(5)(e): signing by proxy: new definition of “proxy”****Power conferred on: Scottish Ministers****Power exercisable by: Regulations made by Scottish statutory instrument****Parliamentary procedure: Negative****Revised or new power: New****Provision**

15. Section 12 applies where a terminally ill adult, intending to make a first or second declaration, declares that they are unable to sign their own name (for example, due to a physical impairment) and authorises a proxy to sign on their behalf.
16. At introduction, the Bill provided that proxies had to be solicitors, advocates, or justices of the peace. After amendments at Stage 2, the Bill now provides that a proxy is a person who:
- has known the person who intends to make the declaration personally for a period of at least 2 years, or

- is a person of a description specified by the Scottish Ministers by regulations.
17. Schedule 5 of the Bill continues to disqualify family members, persons who would benefit financially from the person's death and medical professionals who have been involved in the treatment of the terminally ill person.
  18. Regulations under section 12(5)(e) are subject to negative procedure.

### **Committee consideration**

19. This amendment reflects practical concerns raised by the legal profession at Stage 1 regarding the role of solicitors in the assisted dying process. The power is significant because it is capable of affecting core safeguards; in particular, the power to define categories of proxies is not merely administrative in nature and could materially alter who may act in this sensitive role. In light of this, the Committee considers the affirmative procedure would be more appropriate, given the ethical and legal implications of the power.

20. **The Committee considers that the affirmative procedure should apply to regulations under section 12(5)(e), given the sensitivity and potential impact on safeguards.**

### **Section 14B(2): Advocacy service standards**

#### **Power conferred on: Scottish Ministers**

#### **Power exercisable by: Regulations made by Scottish statutory instrument**

#### **Parliamentary procedure: Affirmative**

#### **Revised or new power: New**

#### **Provision**

21. Sections 14A and 14B were inserted into the Bill at Stage 2. Section 14A provides that every individual who is considering requesting assistance to end their own life has a right of access to independent advocacy.
22. Advocacy services are services of support and representation that are to be made available for the purpose of enabling an individual to whom they are provided to effectively and safely request assistance, including emotional, legal and procedural guidance; ensuring the individual's rights, autonomy, and wellbeing are prioritised; acting where the individual's rights are at risk of being breached; preventing undue influence; and ensuring that the individual's decisions are voluntary and autonomous. This advocacy is to be provided by independent trained professionals.
23. Inserted section 14B(1) of the Bill (as amended) provides that any provider of independent advocacy services under section 14A must comply with the advocacy service standards. Section 14B(2) requires the Scottish Ministers to set out those standards in regulations.

### **Committee consideration**

24. As the Bill places a duty on the Scottish Ministers to ensure that independent advocacy services are available, it appears logical and coherent that Ministers should also have the power to set standards for those services. Matters of this level of operational detail would ordinarily be set out in subordinate rather than primary legislation.
25. Delegating the power in this way allows a degree of flexibility, which may be necessary as standards are likely to evolve in line with best practice and professional requirements. The Committee therefore agrees that conferring this power on Ministers strikes an appropriate balance between flexibility and oversight, with the use of the affirmative procedure providing an appropriate level of parliamentary scrutiny.

**26. The Committee is content with the power in principle and with the choice of affirmative procedure.**

### **Section 15(8)(a): Power to specify the training, qualifications and experience of an “authorised medical practitioner”**

**Power conferred on: Scottish Ministers -**

**Power exercisable by: Regulations made by Scottish statutory instrument**

**Parliamentary procedure: First regulations affirmative, any subsequent regulations negative**

**Revised or new power: New**

#### **Provision**

27. Section 15 of the Bill makes provision for a terminally ill adult to secure their own clinically assisted death by being provided with an approved substance, with which the adult may end their own life. Only a coordinating registered medical practitioner or an authorised health professional may provide an approved substance to a terminally ill adult. Section 15(8) defines “authorised health professional”. As amended at Stage 2, that provision requires such persons to have the training, qualifications and experience specified by the Scottish Ministers in regulations.

#### **Committee consideration**

28. Section 15(8)(a) mirrors the approach taken in sections 4(5)(a) and 6(6)(a), which make provision in relation to the training, qualifications and experience of coordinating registered medical practitioners and independent registered medical practitioners. As a result of the Stage 2 amendment, the Scottish Ministers are now required to specify, by regulations, the training, qualifications and experience that an “authorised health professional” must have. The Committee is content with these modest adjustments to the delegated power.

**29. The Committee is content with the power, as revised.**

### **Section 15(8)(b): Power to specify an approved substance**

**Power conferred on: Scottish Ministers**

**Power exercisable by: Regulations made by Scottish statutory instrument**  
**Parliamentary procedure: Affirmative**

**Revised or new power: Revised**

**Provision**

30. Section 15 of the Bill makes provision for a terminally ill adult to secure their own clinically assisted death by being provided with an approved substance, with which the adult may end their own life. Section 15(8)(b) provides that an “approved substance” is to be “such drug or other substance as is specified by the Scottish Ministers by regulations”.
31. As amended at Stage 2, section 15(8)(b) now requires the Scottish Ministers to consult such persons as they consider appropriate before laying before the Scottish Parliament a draft of regulations specifying an approved substance.

**Committee consideration**

32. The addition of a consultation requirement strengthens the safeguarding framework within the Bill by ensuring that clinical, ethical and safety considerations inform the exercise of the power. At Stage 1, the Committee recommended that the Bill be amended to include a statutory requirement to consult the Chief Medical Officer for Scotland before the power is exercised. While the Chief Medical Officer is not expressly mentioned, the Member-in-charge explained during Stage 1 that he “fully expects” the Chief Medical Officer to be amongst the persons consulted but does not consider it necessary to be prescriptive as to the persons to be consulted.

33. **The Committee welcomes the addition of a statutory consultation requirement. However, the Committee also reiterates its Stage 1 recommendation, that the Bill be amended to include a statutory requirement to consult the Chief Medical Officer for Scotland before regulations are made under this power.**

**Section 20A(1): Provision of assistance outwith National Health Service**

**Power conferred on: Scottish Ministers**

**Power exercisable by: Regulations made by Scottish statutory instrument**  
**Parliamentary procedure: Laid, no procedure**

**Revised or new power: New**

**Provision**

34. Section 20A(1) places a duty on the Scottish Ministers to make regulations governing the provision of assisted dying outwith the National Health Service. The regulations may, in particular—
  - set out the role of Healthcare Improvement Scotland,

- set out the role of the Care Inspectorate, and
  - specify settings or services in which assisted dying must not be provided.
35. Before laying a draft of the regulations before the Scottish Parliament, the Scottish Ministers must consult such persons as they consider appropriate. Regulations under this power are not subject to parliamentary procedure.

### Committee consideration

36. The Member who introduced the amendment explained at Stage 2 that the purpose of inserting section 20A was to enable provision to be made to regulate circumstances in which assisted dying might be provided outwith the National Health Service, as is the case in other countries. The power was described as a “belt-and-braces” measure, intended to ensure appropriate safeguards in relation to patient safety and the quality of service where assisted dying services are delivered other than by the NHS.
37. If assisted dying is to be provided outwith the NHS, it would appear sensible for Ministers to have the ability to make regulatory provision governing those arrangements. In that context and having regard to the stated intention of ensuring patient safety and service quality, the Committee considers that the delegation of power appears acceptable in principle.
38. The reference in section 20A(3) to the laying of a draft of the regulations suggests that it was intended that regulations under this power would be subject to affirmative parliamentary procedure, and that the absence of any such procedure is likely to arise from the failure to make a corresponding amendment to section 28 of the Bill. At Stage 2, a consequential amendment (amendment 63) was moved which would have applied the affirmative procedure, but it was not agreed to. The Committee recommends that this be rectified.

- 39. The Committee is content with the power in section 20A(1) in principle but recommends that the Bill be amended so that regulations made under this power are subject to the affirmative procedure.**

### **Section 22B: Code of practice on interaction with palliative and end of life care services**

**Power conferred on: Scottish Ministers**

**Power exercisable by: Code of Practice**

**Parliamentary procedure: None**

**Revised or new power: New**

### **Provision**

40. Sections 22A and 22B were inserted into the Bill at Stage 2. Section 22A places a duty on the Scottish Ministers to assess and report on the likely impact of the provisions of the Act on hospices and providers of palliative and end of life care

services as soon as practicable after the Bill receives Royal Assent. The assessment must consider the likely impact on the staffing of hospices and palliative and end of life care services, including the training and support that will be required, the operation of existing palliative and end of life care services, including those provided by non-statutory providers, existing funding streams for palliative and end of life care services and the regulation and scrutiny of palliative and end of life care.

41. New section 22B places a duty on the Scottish Ministers to publish a Code of Practice as soon as reasonably practicable after carrying out an assessment under section 22A making provision about the interaction between assistance provided in accordance with the Act and support provided by hospices and providers of palliative and end of life care.
42. In preparing the Code of Practice, the Scottish Ministers must consult persons who appear to them to represent the interests of hospices and providers of palliative and end of life care and such other persons as they consider appropriate.

### **Committee consideration**

43. In the sDPM, the Member-in-charge explains that, on his understanding, the duty to publish a Code of Practice under section 22B is intended to form part of an approach to assessing and managing the impact of the Act on hospices and providers of palliative and end of life care. The Member understands the Code is intended to support the practical interaction between assisted dying services and existing provision, rather than to establish new legal requirements.
44. The Committee notes that Codes of Practice are not ordinarily subject to parliamentary procedure. Given the limited and guidance-based nature of the power, the fact that the matters to be covered are set out on the face of the Bill, and the requirement to consult those with an interest, the Committee is content.

**45. The Committee is content with the power in principle and that it is not subject to any parliamentary procedure.**

### **Section 23(1): Guidance**

**Power conferred on: Scottish Ministers**

**Power exercisable by: Guidance**

**Parliamentary procedure: None**

**Revised or new power: Revised**

### **Provision**

46. Section 23(1) enables the Scottish Ministers to prepare and publish guidance regarding the operation of the Bill. Section 23(2) lists some matters which the guidance must cover, and subsection (3) requires Ministers to consult with trade unions and professional bodies who appear to them to represent the interests of persons who may carry out functions under this Act, and such other persons as

they consider appropriate. Subsection (4) requires anyone carrying out functions under the Act to have regard to any guidance issued. Subsection (5) allows Ministers to revise guidance (any revised guidance must be published).

47. At Stage 2, section 23 was amended so that Scottish Ministers “must” rather than “may” prepare and publish guidance and “must” rather than “may” include provision in the guidance as set out in section 23(2). Subsection (3) was also amended at Stage 2 so that Scottish Ministers must consult specifically with trade unions and professional bodies who appear to them to represent the interests of persons who may carry out functions under this Act, in addition to such as other persons as they consider appropriate.

### **Committee consideration**

48. The Committee was content with this power at Stage 1. The revisions do not substantively alter the nature or substance of the power. The Committee welcomes the addition of a statutory consultation requirement.

- 49. The Committee is content with the power, as revised and welcomes the addition of a statutory consultation requirement.**

### **Section 32: Commencement**

#### **Power conferred on: Scottish Ministers**

#### **Power exercisable by: Regulations made by Scottish statutory instrument**

#### **Parliamentary procedure: Laid, no procedure**

#### **Revised or new power: Revised**

#### **Provision**

50. Section 32(1) specifies those provisions of the new Act which are to come into force on the day after Royal Assent. Section 32(2) provides that the other remaining provisions are to come into force on such day as the Scottish Ministers may by regulations appoint.
51. At Stage 2 section 32(1) was amended to add section 14A (right to advocacy), section 14B (advocacy service standards), and section 22A (offence of advertising assisted dying) to the list of provisions that come into force on the day after Royal Assent. This is so that regulations under those sections can be put in place before the substantive provisions of the assisted dying scheme are in force.

### **Committee consideration**

52. These are matters which need to be put in place in preparation for the substantive provisions of the Act being commenced. The Committee is therefore content with the approach to commencement.

- 53. The Committee is content with the delegated power, as revised.**

