

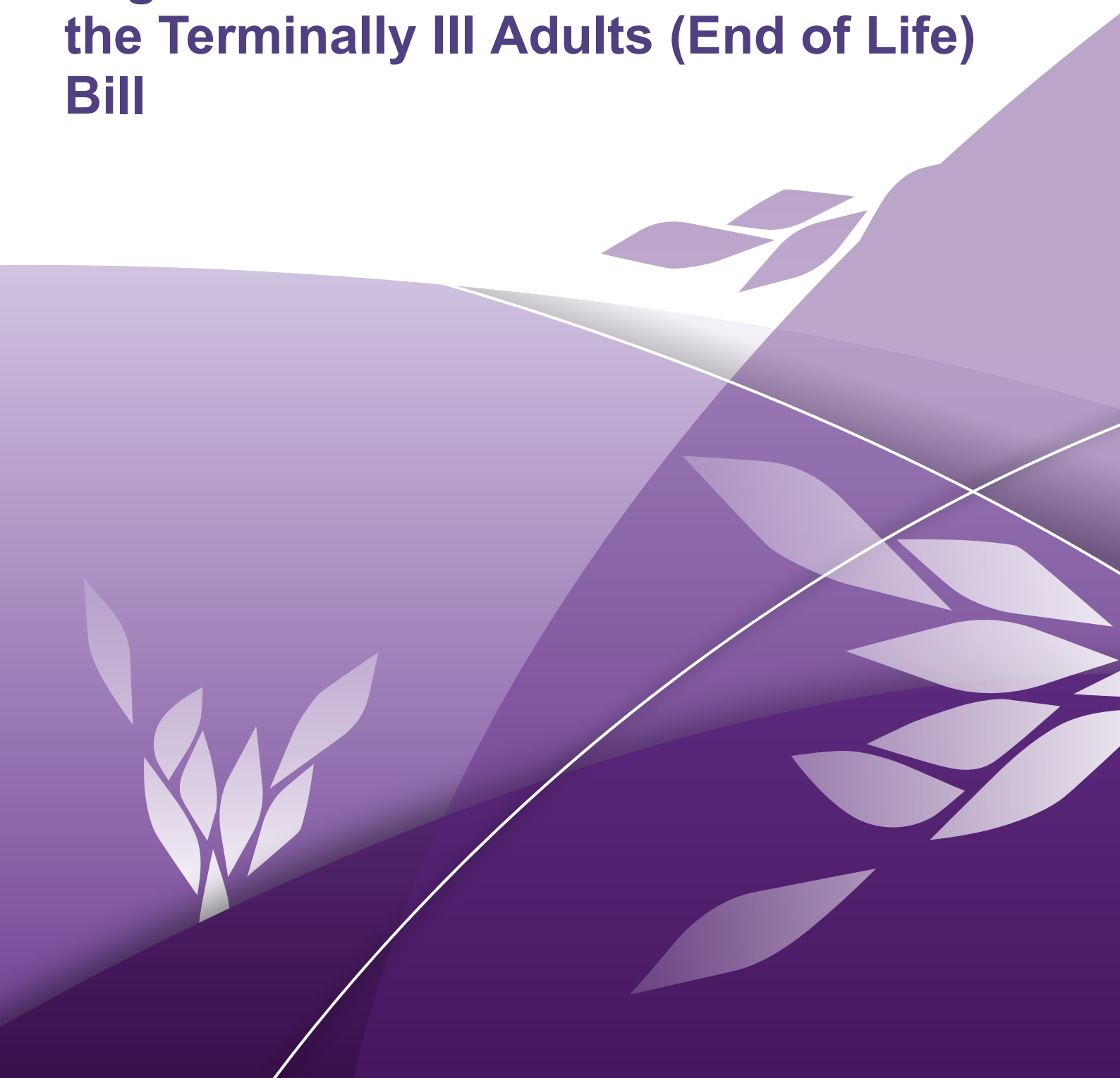


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Health, Social Care and Sport Committee

Legislative Consent Memorandum on the Terminally Ill Adults (End of Life) Bill



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Health, Social Care and Sport Committee

To consider and report on matters falling within the responsibility of the Cabinet Secretary for Health and Social Care.

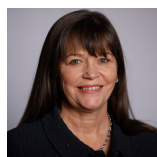


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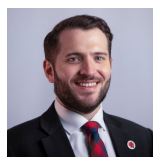


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Committee Membership



Convener
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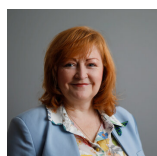
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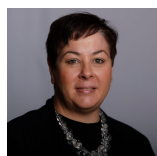
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Brian Whittle
Scottish Conservative
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Introduction

1. At its meeting on [23 September 2025](#), the Committee considered the [Legislative Consent Memorandum](#) ("LCM") lodged by the Scottish Government in respect of the [Terminally Ill Adults \(End of Life\) Bill](#) ("the Bill").
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 10 October 2024.
3. 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 extends the scope of some of the provisions of the Bill to Scotland. The Bill is currently at committee stage in the House of Lords.
4. The purpose of the Bill is to make 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.
5. Under the Sewel Convention, the UK Parliament does not normally legislate on devolved matters, or to alter the legislative competence of the Parliament or the executive competence of the Scottish Government, without the consent of the Scottish Parliament. Consent is given by means of a resolution of the Parliament.
6. 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.
7. As such, legislative consent memorandum LCM-S6-62 was lodged on 27 August 2025 by Neil Gray MSP, Cabinet Secretary for Health and Social Care, and referred to the Health, Social Care and Sport Committee for scrutiny.
8. The LCM states that 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, these can relate to the provision of information to users or providers of these services. Clause 43 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. Analysis prepared for the Bill's sponsor concluded that clause 43 did not trigger the need for consent of the Scottish Parliament. However, 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 - namely, 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".

10. 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.
11. The Scottish Government's position is that the Scottish Parliament could make such provision within its devolved competence and that a LCM is therefore required.

Committee consideration

Delegated Powers and Law Reform Committee consideration

12. The LCM was considered by the Delegated Powers and Law Reform Committee (DPLRC) on [23 September 2025](#) and again at its meeting on [7 October 2025](#).
13. Following its initial meeting on 23 September 2025, the DPLR Committee noted that exercise of the power is likely to have a very limited impact on the law relating to devolved matters, given the provision does not regulate the advertisement of any voluntary assisted dying (“VAD”) services which might exist in Scotland. The Committee also noted that it is a very wide power, which enables any provision which could be made by an Act of Parliament (subject to the limitations set out in s43(4)). Notably, this means that the power can be used to create criminal offences, and to modify other Acts of Parliament or Acts of the Scottish Parliament. The DPLR Committee also had further questions around exceptions to the prohibition on advertising.
14. The DPLR Committee agreed to write to the Scottish Government and the Bill’s sponsor, Kim Leadbeater MP, to request further information about the power. They received a response from the Scottish Government on [29 September 2025](#), and a response from Lord Falconer and Kim Leadbeater MP on [6 October 2025](#).
15. The DPLR Committee concluded that it was content with the explanation provided and subsequently published its report on [8 October 2025](#).
16. Its report concludes that the Committee is content with the powers conferred on the Secretary of State.

Health, Social Care and Sport Committee consideration

17. In preparation for scrutiny of the LCM, clerks to the Committee wrote to selected stakeholders to request their written views on the LCM. A number of respondents indicated that they had no comments to make on the LCM.
18. However, the Committee received a written submission from [Alzheimer Scotland](#) which raised a number of points regarding the LCM.

This submission highlighted the importance of careful alignment between any UK and Scottish Parliament legislation on assisted dying to avoid "confusion, duplication, or conflict" and to ensure clarity for "those engaged in delivering or considering accessing provisions under assisted dying legislation, regardless of where they are in the UK".

Furthermore, the submission emphasised the need for a clear distinction to be made between prohibited commercial promotion that may result in exploitation, and

permitted factual information and, to this end, the need for robust definitions to be set out within the legislation.

The submission also highlighted concerns regarding implications of the provisions covered by the LCM related to Article 10 of the European Convention on Human Rights, stating:

” While limitations may be justified to protect vulnerable individuals from inducement, they must be proportionate and clearly defined. A rigid UK-level prohibition may conflict with how Scotland wishes to allow patient information to be disseminated or public awareness to be raised and this may in turn result in limitations to freedom of expression or patient rights. Indeed, a prohibition that inadvertently prevents patients from accessing factual information about their legal rights risks being disproportionate.

The submission also recommended that clear mechanisms should be set out to establish how prohibitions would be applied and overseen in Scotland.

19. The Committee took oral evidence from the Cabinet Secretary for Health and Social Care, Neil Gray MSP, and supporting officials, at its meeting on [23 September 2025](#).

20. In his opening statement, the Cabinet Secretary highlighted that his evidence would be focused on the LCM and should not, in any way, be interpreted as a wider comment or opinion on the Bill that was the subject of the LCM or on the corresponding legislation currently under consideration in the Scottish Parliament.

21. The Cabinet Secretary outlined that the purpose of clause 43 is described as being to protect vulnerable people from experiencing pressure and to prevent national suicide prevention strategies from being undermined by unethical advertising or promotion of any VAD service in England and Wales. He told the Committee:

” By consenting to that provision, the Scottish Parliament would be agreeing that the service introduced could not be promoted in Scotland. That is the wish of the UK Parliament, which I believe should determine if and where the English and Welsh assisted dying service is to be advertised. The Scottish Government’s view is that clause 43 is for a purpose that falls within the legislative competence of the Scottish Parliament, considering the schedule 5, section C7 reservation in the Scotland Act 1998...

...It does not reserve advertising generally. As such, we believe that the Scottish Parliament’s consent is required for clause 43, and that it should be given so that we do not find ourselves in a situation where the English and Welsh assisted dying service can be advertised in Scotland but not in England and Wales.

22. Following his opening statement, the Cabinet Secretary was then asked by Patrick Harvie MSP whether he was confident that the provision would apply only to what would commonly be understood as advertising and could not result in prohibitions being placed on the publication of, for example, arguments about the policy merits of the legislation or how services should be delivered, or the provision of factual information regarding the service.

23. The Cabinet Secretary responded as follows:

” That is my expectation. As it is legislation in the United Kingdom Parliament, it is not an area that I have control over—it is for members of the UK Parliament to determine—but my expectation would be as Mr Harvie has outlined. We have lodged the LCM to ensure that we are in line with other parts of the UK on advertising and promotion as opposed to the production of factual information.

Conclusion

24. The Committee recommends that the Parliament agree to a legislative consent motion in similar terms to the draft motion included in the draft LCM-S6-62.

