

Health, Social Care and Sport Committee
The Scottish Parliament
Edinburgh
EH99 1SP

By email only: hscs.committee@parliament.scot

Date: 9 January 2026

Dear Convener,

Assisted Dying for Terminally Ill Adults (Scotland) Bill

Thank you for the opportunity to provide written views regarding the Scotland Act 1998 (Modification of Schedule 5) Order 2026 ("the Section 30 Order").

We have the following comments on the proposed use of the Section 30 order:

Scope and Framing of the Section 30 Order

We are concerned that the Section 30 order is very narrowly framed, both in terms of its time-limited nature, and the requirement that regulations made by the Scottish Ministers obtain the consent of the Secretary of State. While there is precedent for a time-limited Section 30 order, most notably in relation to the independence referendum, the necessity or justification for such a limitation in this context is unclear.

We question why this would be an issue that the Scottish Parliament can only revisit once? This restriction seems problematic if the current Bill fails or if future amendments are deemed desirable and it would be helpful to have further clarification from the Scottish Government as to why they have drafted the Section 30 Order on this basis.

Secretary of State Consent

The requirement for Secretary of State consent to Scottish regulations raises questions of precedent. If there is no clear precedent, this approach risks setting an undesirable one.

Conversely, we note the specific prohibition on making Secretary of State regulations subject to the consent of Scottish Ministers, which further underscores the asymmetry in these arrangements.



Conferral of Functions and Constitutional Considerations

Ordinarily, it would be unusual, if not incompetent, for the Scottish Parliament to confer functions upon a UK Government Minister, particularly to make subordinate legislation subject to Westminster control. However, there is no constitutional objection to a Section 30 order enabling the Scottish Parliament to confer such powers on the Secretary of State, as is proposed in paragraph 4A(2), subject to conditions, or to require Scottish subordinate legislation to be subject to Secretary of State consent as is proposed in paragraph 4A(1).

Section 104 Orders

Finally, the rationale for dealing with some issues via a Section 30 order and others via a Section 104 order, remains unclear. We suspect that time constraints before Stage 3 may explain this approach. As the Cabinet Secretary's letter¹ notes, provisions in the Bill addressing these matters will need to be removed before Stage 3, and the Scottish Government must provide Parliament with details of what is proposed for inclusion in the Section 104 order.

I hope that the above is of assistance to the committee. If the Society can assist further, please do not hesitate to contact us.

Yours sincerely,

Terri Cairns
Policy Executive
Law Society of Scotland

¹ [Assisted Dying Bill Section 30 Update Letter from Cabinet Secretary for Health and Social Care](#)