

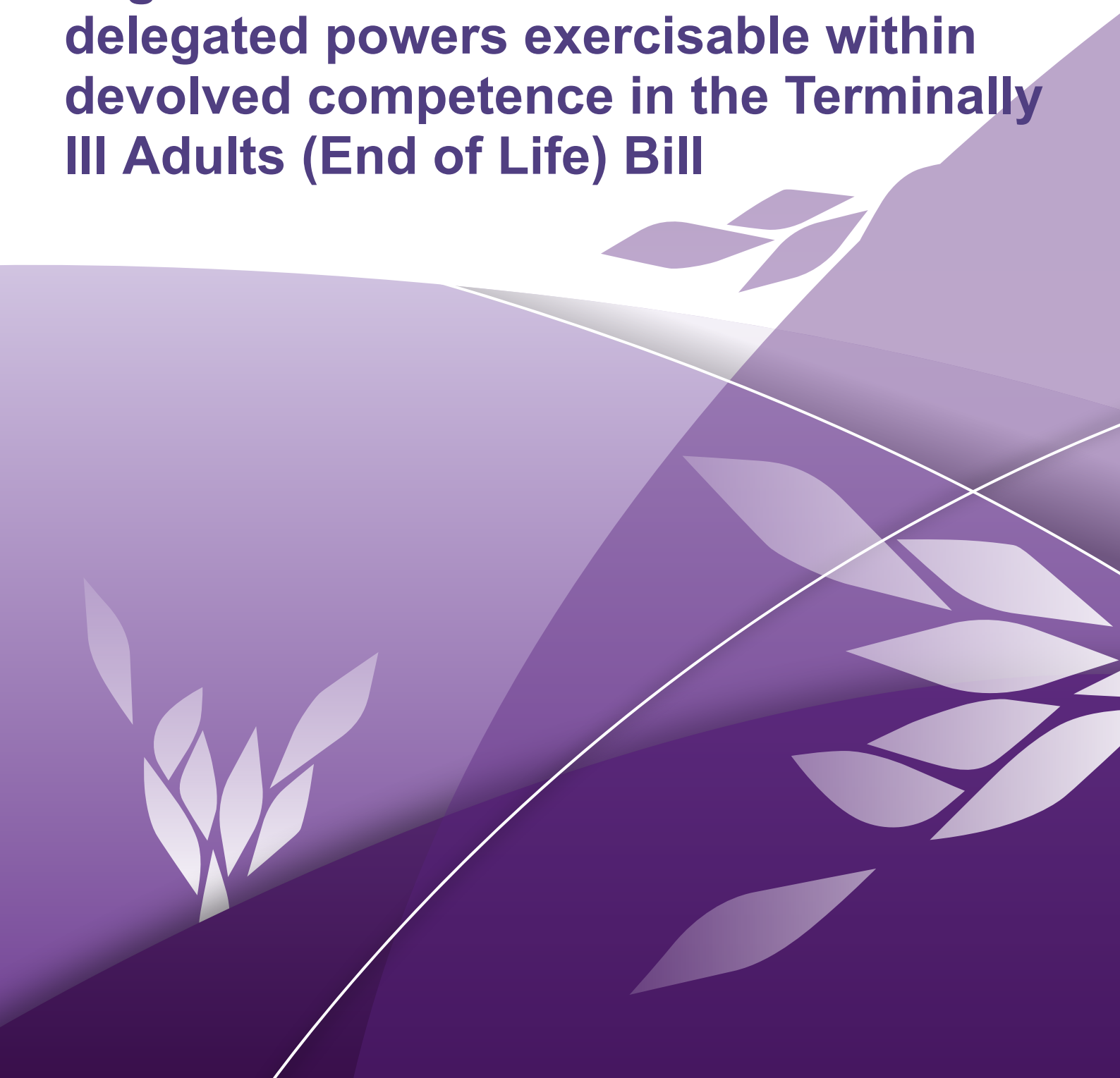


The Scottish Parliament
Pàrlamaid na h-Alba

Published 8 October 2025
SP Paper 886
73rd Report, 2025 (Session 6)

Delegated Powers and Law Reform Committee

Legislative Consent Memorandum: delegated powers exercisable within devolved competence in the Terminally Ill Adults (End of Life) Bill



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Delegated Powers and Law Reform Committee

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;

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

(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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Introduction

1. This report considers the delegated powers that are exercisable within devolved competence in the [Terminally Ill Adults \(End of Life\) Bill](#) (“the Bill”) which is currently proceeding through the UK Parliament.
2. The Committee is considering the [Legislative Consent Memorandum](#) (“LCM”) for the Bill in terms of its wider remit contained in Rule 6.11.1(b) of the Standing Orders which provides that the remit of the Committee includes considering and reporting on proposed powers to make subordinate legislation in particular bills “or other proposed legislation”. The Committee and its predecessor Committee have considered powers conferred on UK Ministers in devolved areas in various bills over the course of sessions 5 and 6.
3. The Committee considered this LCM at its meetings of 23 September and 7 October 2025ⁱ.

ⁱ Stuart McMillan MSP, Roz McCall MSP and Jeremy Balfour MSP submitted apologies for the meeting of 7 October 2025. Rona Mackay MSP substituted for Stuart McMillan MSP, and Oliver Mundell MSP substituted for Roz McCall MSP.

The Bill

4. The Bill makes provision for a terminally ill person living in England and 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 assistance to end their own life on request.
5. The Bill was introduced in the House of Commons on 16 October 2024. It is currently at the stage of a second reading in the House of Lords, which began on 12 September 2025. As the Bill is still progressing through the UK Parliament, it is subject to amendment. The Committee may therefore need to consider a supplementary LCM in due course.
6. During the House of Commons' report stage, which took place from 16 May to 20 June 2025, several amendments were agreed. These included amendment 77, which extended the scope of some of the provisions of the Bill to Scotland. As a result, while most of the current Bill applies only to England and Wales, some of it applies to Scotland and/or Northern Ireland. The following provisions apply to Scotland:
 - 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).
7. According to the LCM, the Scottish Government understands that the Bill's sponsor does not consider that the legislative consent process is engaged by any of the provisions listed above. The Scottish Government agrees with that analysis, except insofar as clause 43 is concerned. Clause 43 enables a prohibition on advertising, which extends throughout the UK. The LCM explains that matters relating to advertising are generally devolved to the Scottish Parliament, unless they relate to Section C7 of the Scotland Act 1998, which reserves matters relating to consumer protection, including the regulation of misleading and comparative advertising. The Scottish Government does not consider that the Bill relates to such matters. The Committee agrees that clause 43 engages the legislative consent process. In addition, clause 58, insofar as it relates to commencement of clause 43, also engages the legislative consent process.
8. The Scottish Government recommends consent to the relevant provisions (i.e.

clause 43). The LCM states that there is potential that people in Scotland could access the voluntary assisted dying (“VAD”) service in England and Wales by taking action to meet its eligibility requirements. The Scottish Government considers that consenting to clause 43 is the most appropriate means by which the prohibition on advertising in Scotland of the England and Wales VAD service should be made. It considers that consenting to this clause would address the potential anomaly that could otherwise be created, where the advertising of the England and Wales VAD services would be allowed in Scotland, while prohibited in England and Wales.

9. The lead committee for the LCM is the Health, Social Care and Sport Committee.

Delegated Powers

10. The powers in the Bill which are relevant to this Committee's remit are contained in clause 43 (prohibition on advertising) and clause 58 (commencement).
11. All three of those powers which may be exercised within the Scottish Parliament's legislative competence are conferred on the Secretary of State:
 - Clause 43(1) - power of the Secretary of State to make regulations prohibiting advertisements to promote services relating to VAD under the Bill
 - Clauses 58(3) and 58(6) - power of the Secretary of State to make regulations on commencement, and to make transitional or saving provision in connection with the coming into force of any provision of the Bill. These are interconnected, and as such, considered together.
12. The UK Government has published a [Delegated Power Memorandum](#) ("DPM") to accompany the Bill. The DPM explains in each case the purpose of the power, why a delegated power is appropriate, and the parliamentary procedure that has been selected.
13. As is normal for UK bills, the Scottish Government has not published a delegated powers memorandum. The Scottish Government's view on the relevant clauses is set out in the LCM.
14. At its meeting on 23 September 2025, the Committee agreed to send questions [to the Scottish Government](#) and [to the Bill's sponsor Kim Leadbeater MP](#), in relation to the delegated power at clause 43, as discussed below.
15. Responses were [received from the Scottish Government](#) and [Bill sponsors Lord Falconer and Kim Leadbeater MP](#).

Review of relevant powers

Clause 43: Prohibition on advertising – regulations to prohibit advertisements promoting a voluntary assisted dying service.

Power conferred on: Secretary of State

Power exercisable by: Regulations

Parliamentary procedure: Affirmative

Provision

16. Clause 43(1) imposes a duty on the Secretary of State to make regulations prohibiting advertisements to promote services relating to voluntary assisted dying under the Bill.
17. Specifically, regulations created under clause 43(1) must prohibit:
 - a. The publication, printing, distribution or designing (anywhere) of advertisements whose purpose or effect is to promote a voluntary assisted dying service;
 - b. Causing the publication, printing, distribution or designing of such advertisements.
18. Subsection (2) of clause 43 provides that the regulations may contain certain exceptions, such as the provision of certain information to users or providers of services.
19. Subsection (3) sets out that regulations under clause 43 may make any provision that may be made by an Act of Parliament. This confirms that the regulation making power under clause 43 is a Henry VIII power. This power is limited slightly, however, by subsection (4) of clause 43, which states that regulations made under this clause may not amend the Bill itself, and must provide that any offence created by regulation is punishable with a fine.
20. Regulations made under this power are subject to the draft affirmative procedure. This is set out in subsection (3) of clause 54.

Committee consideration

21. At its meeting on 23 September, the 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. As such, the power might be considered incidental to the regulation of VAD services in England & Wales.
22. 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.
23. In addition, the power enables exceptions to the prohibition on advertising to be set

out in regulations (under section 43(2)). However, little indication is given in the Bill or accompanying documents of the principles which might inform the policy around exceptions.

24. The Committee agreed to ask the Scottish Government and the Bill's sponsor, Kim Leadbeater MP, for further information about the power.
25. The Committee asked the Scottish Government why it considers it appropriate to recommend consent to such a wide power, particularly in light of the views expressed in the [House of Lords Delegated Powers and Regulatory Reform Committee's 32nd Report of Session 2024-26](#) on the Bill, drawing the attention of the House to aspects of the clause, and recommending various changes be made.
26. Similarly, the Committee asked the Bill's sponsor, Kim Leadbeater MP, why such a wide power is considered appropriate, and whether consideration has been given to limiting it, particularly in light of the views expressed in that Report by the House of Lords Delegated Powers and Regulatory Reform Committee.
27. The Scottish Government [responded as follows](#):

” "The purpose of Clause 43 is stated to be to prevent pressure from being put on vulnerable people, or the undermining of national suicide prevention strategies, through the unethical advertisement of the England and Wales service.

By consenting to this provision, the Scottish Parliament would be agreeing that that service, if introduced in England and Wales, could not be promoted in Scotland and therefore closing a possible gap.

The Scottish Government's recommendation that the Scottish Parliament consents to clause 43 is primarily based on the substance of the provision, not the scope of the enabling power, which will be determined by the UK Parliament. Our role is to ensure that the devolution settlement is protected and I was grateful that, during our meeting on 2 September, Kim Leadbeater MP noted her willingness to work constructively with the Scottish Government and Scottish Parliament to gain the required consent.

As you noted in your letter, the exercise of the power in clause 43 is likely to have a very limited impact on the law relative to devolved matters, given that the relevant provision is concerned with the prohibition of advertising of the England and Wales voluntary assisted dying service, albeit in Scotland, and not with assisted dying services as a whole.

I have also noted the views expressed by the House of Lords Delegated Powers and Regulatory Reform Committee's report. I am aware that the scope of powers in the Terminally Ill Adults (End of Life) Bill was subject to scrutiny as it passed through the House of Commons and has been raised as an issue of significance in the House of Lords.”

28. The Committee is content with that explanation. As the Scottish Government's response notes, the UK Parliament will scrutinise thoroughly the delegation of the power to the Secretary of State, given that the principal impact is on the law of England & Wales. The Scottish Government also confirms its view that the exercise of the power is likely to have a very limited impact on the law relating to devolved

matters in Scotland.

29. The Bill's [sponsors responded](#):

” "Clause 43 (Prohibition on advertising – regulation to prohibit advertisements promoting a voluntary assisted dying service) was accepted into the Bill during the Commons' Report Stage. This broadly achieves the desired policy to ensure voluntary assisted dying advertising will be prohibited, though (as drafted) it leaves much of the further detail about the prohibitions to be provided for in future regulations made by the Secretary of State.

We believe these regulation-making powers are necessary to provide flexibility in respect of potential changes to the advertising landscape. If, for instance, future regulations need to provide for further exceptions or defences to advertising prohibitions, there would likely then need to be corresponding amendments to the Communications Act 2003 and/or Suicide Act 1961 to help ensure the regimes align. There is no intention to change the current affirmative procedure.

That said, after seeking further technical advice from the Government on this matter, and recommendations published by the House of Lords Delegated Powers and Regulatory Reform Committee, we are looking at further amendments which would provide more detail on exceptions and/or defences to Clause 43's prohibitions on assisted dying advertisements.

Ahead of the next stage of the bill's progress in the House of Lords, we have provided provisional instructions to officials to work up amendments that set out what these exceptions/defences may look like. The additional detail required to prepare these new amendments necessitates further technical work by the Government.

To inform this drafting we have also met with the Advertising Standards Authority and Ofcom to better understand how they would approach enforcing a ban and what they may need to aid enforcement if further details were on the face of the bill.

We anticipate that, if we are to make further amendments to the prohibition on advertising in the bill, they will be tabled ahead of Committee stage in the House of Lords (Friday 14 November)."

30. The Committee is content with the power. It also agreed to ask the Bills sponsors to keep it updated on the development of any amendments ahead of the House of Lords Committee Stage.

31. In terms of parliamentary procedure, any regulations made under the power are subject to the draft affirmative procedure. The DPM explains that this is considered to provide an appropriate level of scrutiny as it will enable a debate and vote in both Houses of the UK Parliament, so that the impacts of the regulations can be subject to appropriate parliamentary scrutiny. The Committee is content that use of the affirmative procedure will enable sufficient scrutiny of the exercise of this power.

32. **The Committee is content with the power conferred on the Secretary of**

State in principle and that it is subject to the affirmative procedure.

Clause 58(3) and (6): Commencement – powers to make regulations about commencement and related ancillary provision

Power conferred on: Secretary of State

Power exercisable by: Regulations

Parliamentary procedure: None

Provision

33. Clause 58 makes provision about commencement of the Bill. Subsections (1)-(2) of the clause set out when specific provisions of the Bill come into force. Subsection (3) provides that the Secretary of State may by regulations appoint the day or days that provisions of the Bill not mentioned in subsections (1)-(2) come into force.
34. Clause 58(6) provides the Secretary of State with the power to make transitional or saving provision in connection with the coming into force of any provision of the Bill.

Committee consideration

35. The DPM notes that this power has been taken given the significant work that will likely need to be undertaken on the implementation of the provisions of the Bill, if the Bill is passed. It notes the significant work associated with developing, and if applicable publishing, regulations, guidance, and codes of practice.
36. The Committee notes that it is usual to confer a power to make saving and transitional provisions in connection with the coming into force of an Act, in order to enable provision to be implemented in an orderly and appropriate manner. It is clear at the time of the Committee's consideration of the LCM what provision these powers will be used to make. It is the view of the Committee that these powers cannot be used to make substantive provisions of the sort that might require further scrutiny.
37. Clause 58 is a standard commencement, transitional and saving provision. If the Parliament is content to give its consent for the substantive provision in the Bill, the Committee considers that it would be reasonable and appropriate for it also to consent to the taking of standard commencement and ancillary powers to give effect to the Bill. As such, the Committee is content.

38. **The Committee is content with the powers conferred on the Secretary of State in principle, and that they are not subject to any parliamentary procedure.**

