

Second Reading Briefing House of Lords

Terminally Ill Adults (End of Life) Bill

September 2025

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Introduction

The Law Society of Scotland is the professional body for over 13,000 Scottish solicitors.

We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

We welcome the opportunity to consider and provide comments on the Terminally Ill Adults (End of Life) Bill as brought forward from the Commons¹ (“the Bill”) ahead of the Second Reading in the House of Lords scheduled for 12 September 2025. We have the following comments to put forward for consideration.

The briefing includes the following key points:

- We adopt a neutral position on the subject matter of the Bill.
- We have concerns regarding the time constraints for parliamentary scrutiny, the lack of detail in the Bill, and public misunderstanding regarding the scrutiny role of the House of Lords. We call for careful scrutiny by the House of Lords and for the widest possible consultation on all matters extending to Scotland proposed to be left to regulations, codes of practice and other guidance.
- We support robust, accessible and independent safeguards within the Bill, as well as strong independent monitoring and review mechanisms to uphold the rule of law.
- We call for clarification on the policy and legislative intention behind extending certain provisions of the Bill to Scotland at Report Stage in the House of Commons, and on the engagement with Scottish Government on these matters.
- We recommend that the practical effect of having two different assisted dying regimes is discussed with the Scottish Government, including in particular for patients living near the border and doctors working across the border who would be working under two different regimes.
- We have a number of specific comments on those provisions of the Bill which now extend to Scotland.

¹ <https://bills.parliament.uk/publications/61635/documents/6735>

General Comments

Our policy approach to assisted dying

Our approach to policy issues is directed by our statutory aims under the Solicitors (Scotland) Act 1980, namely to represent the interests of the solicitors' profession in Scotland and the interests of the public in relation to that profession, and by the regulatory objectives of the Legal Services (Scotland) Act 2010, namely:

- supporting the constitutional principle of the rule of law and the interests of justice
- protecting and promoting the interests of consumers and the public interest generally
- promoting access to justice and competition in the provision of legal services
- promoting an independent, strong, varied and effective legal profession
- encouraging equal opportunities within the legal profession and promoting and maintaining adherence to professional principles

We do not adopt a position on the moral and ethical issues of assisted dying. Whether or not to legislate in this area is a matter for Parliament. Our position remains neutral on the subject matter of the Bill, and on the subject matter of the Assisted Dying for Terminally Ill Adults (Scotland) Bill² currently being considered by the Scottish Parliament.³

We therefore focus our comments on the practical and legal aspects of the Bill, and specifically on those clauses which extend to Scotland.

Parliamentary scrutiny and consultation

Important questions about how the scheme provided for under the Bill would work must be addressed during the Bill's legislative passage to ensure that any law that is passed is fit for purpose.

We share the concerns expressed by others⁴ that the Bill leaves substantial details about how the scheme would operate to be dealt with in secondary legislation and guidance that may receive less scrutiny.

² <https://www.parliament.scot/bills-and-laws/bills/s6/assisted-dying-for-terminally-ill-adults-scotland-bill>

³ Our work on the Assisted Dying for Terminally Ill Adults (Scotland) Bill is available here: <https://www.lawscoot.org.uk/research-and-policy/influencing-the-law-and-policy/our-input-to-parliamentary-bills/bills-202324/assisted-dying-for-terminally-ill-adults-scotland-bill/>

⁴ See the briefing issued by the Law Society of England and Wales ahead of the Second Reading in the House of Lords

We support the widest possible consultation on all matters extending to Scotland proposed to be left to regulations, codes of practice and other guidance, and emphasise that these materials must be published before any legislation fully enters into force and be subject to regular evaluation and review to ensure they remain fit for purpose.⁵

We have also been concerned to note some degree of public misunderstanding regarding the scrutiny role of the House of Lords. In our view it is both appropriate and necessary for the House of Lords to carefully scrutinise and- if considered appropriate- amend the Bill in line with its role as a revising chamber. We note that the Salisbury Convention applies only to manifesto Bills⁶ and not to Private Members' Bills.

Safeguards, monitoring and review mechanisms

To the extent that it relates to Scotland, the Bill must have robust, accessible and independent safeguards, as well as strong independent monitoring and review mechanisms to uphold the rule of law.⁷

Extension to Scotland

The Bill as introduced in the House of Commons applied only to England and Wales. At Report Stage, an amendment in the name of Kim Leadbeater MP was accepted which had the effect of extending Clause 31(8) and Schedule 3, Clause 37, Clause 43, Clause 54 and Clauses 56-59 to Scotland. Ms Leadbeater indicated that the amendment was in line with guidance she had received from legal experts and intended to secure “overall coherence with the statute book”.⁸

We note that a Legislative Consent Memorandum (LCM) in respect of the Bill has now been lodged in the Scottish Parliament by Neil Gray MSP, Cabinet Secretary for Health and Social Care.⁹ The legislative consent process is engaged where a Bill makes provision applying to Scotland for purposes within the legislative competence of the Scottish Parliament. The LCM for the Bill indicates that the Scottish Government considers that Clause 43 (prohibition on advertising) makes provisions within the legislative competence of the Scottish Parliament. The LCM notes that analysis prepared for Ms Leadbeater indicated that legislative consent was not required for this provision. The Scottish Government is recommending that consent is given to clause 43.

⁵ This is in line with the recommendation made by the Law Society of England and Wales ahead of committee stage in the House of Commons: <https://www.lawsociety.org.uk/contact-or-visit-us/press-office/press-releases/safeguards-needed-if-bill-on-assisted-dying-is-to-become-law>

⁶ [The evolution of the Salisbury convention - House of Lords Library](#)

⁷ This is in line with the recommendation made by the Law Society of England and Wales ahead of committee stage in the House of Commons: <https://www.lawsociety.org.uk/contact-or-visit-us/press-office/press-releases/safeguards-needed-if-bill-on-assisted-dying-is-to-become-law>

⁸ HC Hansard, 13 June 2025, col 1247

⁹ [Legislative Consent Memorandum](#)

We welcome Ms Leadbeater's commitment to working with the devolved administrations.¹⁰ We would welcome further clarification on the policy and legislative intention behind extending these provisions of the Bill to Scotland. We would welcome clarification on the extent to which there has been engagement between the sponsors of the Bill and the Scottish Government, and between the UK Government and the Scottish Government, in respect of these provisions and their practical operation.

As noted above, the Assisted Dying for Terminally Ill Adults (Scotland) Bill is currently being considered by the Scottish Parliament. If passed, this Bill would provide for a scheme of assisted dying in Scotland. There are a number of significant differences between the scheme proposed in the Bill, and the scheme set out in the Assisted Dying for Terminally Ill Adults (Scotland) Bill. If both Bills are passed, different scheme for assisted dying will operate on each side of the border. This creates the potential for operational difficulties and unintended consequences. We recommend that the practical effect of having two different regimes is discussed with the Scottish Government, including in particular for patients living near the border and doctors working across the border who would be working under two different regimes.

We have discussed these issues with the Law Society of England and Wales, who share our concerns and agree with the above recommendations. We understand that the Law Society will issue its own briefing on the Bill.

Comments on clauses of the Bill which extend to Scotland

Clause 31(8) and Schedule 3

Clause 31 of the Bill provides that no person is under any duty to participate in the provision of assistance in accordance with the Bill. Clause 31(8) and Schedule 3 amend the Employment Rights Act 1996 to make provisions to protect employees and other workers from being subject to any detriment for exercising or proposing to exercise a right under Clause 31 not to participate in an activity or perform a function under the Bill, or conversely from participating in the provision of assistance in accordance with the Bill.

Clause 31(8) and Schedule 3 extend to England and Wales and Scotland.

We have no specific comments to add on this clause, but repeat the general observations about policy, legislative extent and coordination between England & Wales and Scotland set out above.

Clause 37

Clause 37 requires the Secretary of State to make regulations about approved substances. An "approved substance" is defined in Clause 27 and covers drugs or other substances specified for the purposes of the Bill. Clause 37 specifies that

¹⁰ HC Hansard, 13 June 2025, col 1247

the such regulations must make provision about: the supply or offer for supply, or administration, of approved substances; the transportation, storage, handling and disposal of approved substances; the keeping of records of matters relating to approved substances; and enforcement (which must include imposing civil penalties) and may make provision about other matters specified in the Clause.

Regulations under this clause must be laid in draft before and approved by a resolution of each House of Parliament.¹¹

Clause 37 extends to England and Wales, Scotland and Northern Ireland.

We have no specific comments to add on this clause, but repeat the general observations about policy, legislative extent and coordination between England & Wales and Scotland set out above.

Clause 43

Clause 43 requires the Secretary of State to make regulations prohibiting advertising whose purpose or effect is to promote a voluntary assisted dying service. These regulations may contain exceptions.

Regulations under this clause must be laid in draft before and approved by a resolution of each House of Parliament.¹²

Clause 43 extends to England and Wales, Scotland and Northern Ireland.

See our comments above regarding the legislative consent process in respect of this provision.

Clause 54

Clause 54 relates to regulation-making powers within the Bill.

We note that, where regulations made under the Bill would extend to Scotland, there appears to be no requirement to consult with the Scottish Ministers prior to making such regulations.

Clauses 56-59

These are general and final provisions concerning Regulations, interpretation, extent, commencement and short title. We have commented on some of these matters as they relate to specific provisions above.

In relation to commencement, we note that in terms of clause 58(4) if any provision of the Bill has now been fully brought into force before the end of the period of four years beginning with the day on which this Bill is passed, that provision (so far as not already in force) comes into force at the end of that period. This would appear to apply to the provisions of the Bill which extend to Scotland.

¹¹ Clause 54(3)

¹² Clause 54(3)

We consider that this is an unusual provision, and we do have some concerns as to whether it will be workable in practice given the likely complexity of establishing a regime for voluntary assisted dying- particularly where much of the detail of the scheme is to be left to regulations. We support the Law Society's recommendation that that regulations, codes of practice and other guidance on core issues must be in place before the Bill enters into force.¹³

¹³ See the briefing issued by the Law Society of England and Wales ahead of the Second Reading in the House of Lords



For further information, please contact:

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