

## Stage 3 Briefing

# Assisted Dying for Terminally Ill Adults (Scotland) Bill

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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.

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

The Assisted Dying for Terminally Ill Adults Bill (“the Bill”)<sup>1</sup> was introduced as a Member’s Bill by Liam McArthur MSP on 27 March 2024. We submitted written evidence to the Health, Social Care and Sport Committee of the Scottish Parliament (the lead committee) in August 2024.<sup>2</sup> We provided oral evidence as part of the lead committee’s stage 1 consideration of the Bill on 12 November 2024.<sup>3</sup> The Health, Social Care and Sport Committee’s stage 1 Report on the Assisted Dying for Terminally Ill Adults Bill (the Stage 1 Report)<sup>4</sup> was published on 30 April 2025. We note that the lead committee has chosen to make no overall recommendation concerning the General Principles of the Bill.<sup>5</sup> We issued a briefing<sup>6</sup> ahead of the Stage 1 debate on 13 May 2025. The Parliament agreed the general principles of the Bill on 13 May 2025.

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<sup>1</sup> [Assisted Dying for Terminally Ill Adults \(Scotland\) Bill](#)

<sup>2</sup> [Written Evidence](#)

<sup>3</sup> [Minutes for Health, Social Care and Sport Committee 31st Meeting, 2024 Tuesday, November 12, 2024 | Scottish Parliament Website](#)

<sup>4</sup> [Stage 1 report: Assisted Dying for Terminally Ill Adults \(Scotland\) Bill](#)

<sup>5</sup> Stage 1 Report, at para 5

<sup>6</sup> [Stage 1 Briefing](#)

The Lead Committee considered the Bill at stage 2 on 25 November 2025. The Bill as amended was published on 26 November 2025.<sup>7</sup>

We welcome the opportunity to consider and provide comment on the Bill ahead of the Stage 3 proceedings scheduled for 10 and 17 March 2026.

### General comments

We recognise that the subject matter of the Bill raises moral and ethical questions and will undoubtedly prompt much public and parliamentary discussion. We are not in a position, nor would it be appropriate for us, to comment on the ethical and moral aspects of the Bill, and whether or not to legislate in this area is a matter for Parliament. This has been our position since the introduction of this Bill, and in relation to previous attempts to legislate in this area. Our position remains neutral on the subject matter of the Bill

### Section 2 – definition of ‘terminally ill’

It is important that there is clarity and certainty in the law. This is particularly the case where the law relates to a matter such as assisted dying- the legislation must provide a workable framework for all those involved.

We consider that there are a number of terms used within section 2 which may be difficult to interpret and apply in certain clinical scenarios, and on which we would welcome further clarification. These include:

- the implications of an individual refusing treatment, for example chemotherapy;
- what is meant by recovery for the purposes of this section.

In the absence of clarification, there is a risk that certain clinical scenarios not intended to fall within scope may do so.

We would welcome further discussion on these definitional issues during stage 3 and suggest that examples or scenarios may help illustrate how the test is intended to operate in practice. We note similar concerns have been raised in the context of the Terminally Ill Adults (End of Life) Bill.<sup>8</sup>

We note the Bill has been amended at stage 2, making it clear that having a disability and/or mental health condition does not, in itself, amount to being ‘terminally ill’.<sup>9</sup>

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<sup>7</sup> [Bill as amended](#)

<sup>8</sup> [TIA-CLADD-eligibility-briefing-for-HL-Committee-stage-February-2026.pdf](#)

<sup>9</sup> [Assisted Dying for Terminally Ill Adults \(Scotland\) Bill: A summary of stage 2 proceedings](#)

## Section 3 – eligibility criteria

Section 3 makes provisions for the eligibility criteria in order to be provided with assistance. In terms of section 3, a terminally ill adult is eligible to be lawfully provided with assistance to end their own life if they:

- (a) are ordinarily resident in Scotland and have been so resident for at least 12 months before the date of the first declaration (see section 4),
- (b) are registered as a patient with a medical practice in Scotland, and
- (c) have capacity to request that assistance.

The Bill as amended at stage 2 provides at section 29 that an “adult” for the purposes of the Bill is a person who is aged 18 or over.<sup>10</sup>

We outlined our concerns in relation to section 3 of the Bill in our Stage 1 briefing.<sup>11</sup> Section 3(2)(a) proposes that a person has capacity to make a request if the person is not suffering from any mental disorder which might affect the making of the request. ‘Mental disorder’ is defined by reference to section 328 of the Mental Health (Care and Treatment)(Scotland) Act 2003.<sup>12</sup> This could potentially be a very broad definition. As above, we would welcome further discussion on these definitional issues during stage 3 and suggest that examples or scenarios may help illustrate how the test is intended to operate in practice.

### Proposed new section after section 5- “Advance care directive”

We note **amendment 149** in the name of Brian Whittle MSP, which would add a new section to the Bill making provision for an adult who has made a first declaration to provide an advance care directive about their care wishes.

We identified deficiencies in the law relating to advance directives generally in Scotland in our 2022 paper on Advance choices, and medical decision-making in intensive care situations.<sup>13</sup> In particular, we highlighted the lack of statutory provision in Scotland and made proposals for reform. We consider that this is an area where careful and comprehensive reform is required, potentially in the context of ongoing work to amend Adults with Incapacity legislation. We have significant reservations regarding adding this provision to the Bill at stage 3, and regarding the approach of legislating only for advance care directives for those accessing assisted dying.

We do not support amendment 149.

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<sup>10</sup> [Bill as amended](#), s29

<sup>11</sup> [Stage 1 Briefing](#)

<sup>12</sup> Section 2(3) of the Bill as amended after stage 2

<sup>13</sup> <https://www.lawscot.org.uk/media/5lgaghgz/22-05-19-adwg-report-final.pdf>

## Section 12 – proxies

Section 12 provides that if the terminally ill adult is unable to sign their own name, a proxy may be authorised to sign on their behalf. We highlighted concerns around section 12 of the Bill in our stage 1 briefing,<sup>9</sup> and highlighted our view that solicitors should not be proxies as provided for in the Bill as introduced.<sup>14</sup> We note the Bill as amended after stage 2 removes the reference to solicitors, advocates and justices of the peace as categories of persons who can act as proxies, and adds the provision that the proxy must have known the individual for two years.<sup>15</sup>

We note that this amendment will allow anyone who has known the person for 2 years and is not otherwise disqualified under the Bill to sign as a proxy. This excludes health professionals treating the person in relation to their terminal illness (schedule 5), but includes a very wide range of people such as friends and neighbours.

We have reservations regarding the practicality of expecting most individuals to be in a position to confirm that a person seeking to end their life fully understands the “nature and effect” of making the declaration, as required under section 12(4)(a) of the Bill as amended after stage 2. This requirement may, in effect, place the proxy in the position of assessing capacity and any related legal effect, an assessment for which many proxies will not be suitably qualified and which goes beyond a purely facilitative role.

We therefore welcome **amendment 94**<sup>16</sup> in the name of Liam McArthur MSP, which removes the need for the proxy to be satisfied the person making the declaration ‘understands the nature and effect of the declaration’, and replaces it with the provision that the proxy has read the declaration to the individual making it. This is similar to the approach in the Requirements of Writing (Scotland) Act 1995, an established procedure for the signing of wills where there are physical signing difficulties. We support this amendment.

We note **amendment 191** in the name of Jeremy Balfour MSP, which would provide that nothing in section 12 places a duty on a solicitor, advocate or legal professional to act as a proxy in relation to assistance to end life. Given the removal of solicitors, advocates and justices of the peace as categories of persons who can act as proxies from the Bill at stage 2, we are unclear on why these provisions are required and would welcome further clarification.

We also note **amendment 192** in the name of Fergus Ewing MSP, which would require signing by proxy to take place in the presence of a practising solicitor. We note that it is already a requirement that a first declaration under section 4 and a second declaration under section 10 are witnessed by the coordinating medical

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<sup>14</sup> [Written Evidence](#)

<sup>15</sup> [Bill as amended](#), s12(5)(d)

<sup>16</sup> [Previous DL 2 March](#)

practitioner and another witness. It is unclear why the presence of a solicitor would also be required.

### Section 14A-B- Advocacy Services

We note the amendments made to the Bill at stage 2 introducing a right to advocacy under the Bill. While we recognise the value of independent advocacy and remain neutral on its inclusion in principle, we consider the clauses added to the Bill at stage 2 to be extensive, novel, and potentially inconsistent with the broader structure of the Bill. The Mental Health (Care and Treatment) (Scotland) Act 2003 already provides a clear statutory model for advocacy, placing duties on local authorities and Health Boards to ensure provision. That model is well established and supported by a recognised set of standards and guidance. Replicating, expanding, or reframing these duties within this Bill may create duplication, inconsistency, or unintended consequences.

Section 14A(4) sets out multiple, distinct requirements. It is unclear how these obligations would operate in practice or how independent advocates would be expected to discharge them, particularly given the potential burden and the wide scope of the duties proposed. We question whether these subclauses are necessary, given that the opening provision already captures the core intention of ensuring that persons have access to appropriate advocacy support. In addition, we note that the inclusion of a requirement relating to the provision or facilitation of legal advice<sup>17</sup> is unusual and falls out with the ordinary functions of independent advocacy services as understood within existing statutory frameworks. Advocacy services typically support individuals to express their views and safeguard their rights, but they do not ordinarily provide legal advice. Introducing such a role may create confusion about the boundaries between advocacy and regulated legal services, with risks for both advocates and the individuals they support.

We therefore welcome **amendments 198- 204** in the name of Ross Greer MSP, which we consider will help clarify the scope of the role of advocacy within the Bill.

We note that **amendment 259** in the name of Ross Greer MSP would amend section 23 to provide that guidance issued by the Scottish Ministers under that section must include guidance provision about the support and representation to be provided by advocacy services. Whilst we consider that further guidance on this matter is likely to be helpful, we do note that the specific matters referred to in the sub-clauses include terms which are not used elsewhere in the Bill, such as “voluntary and autonomous decision-making”. We consider that there are risks arising from introducing substantial new concepts via statutory guidance that go beyond existing statutory advocacy frameworks and may create operational

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<sup>17</sup> Assisted Dying for Terminally Ill Adults (Scotland) Bill S14A(4)(a)(i)

challenges. We would welcome clarification as to why the detailed requirements are considered necessary at this stage.

### Lawful provision of assistance to end life (sections 15-20)

It is not sufficiently clear how the medication to be provided is to be understood by reference to current medico-legal principles. We have set out these medico-legal principles in some detail in our written evidence. Our comments concluded there will be significant consequences dependant on whether or not assisted dying is considered a 'reasonable treatment option.' This is another area where we consider that discussion during stage 3 proceedings could provide assistance.

### Further Comments - Legislative Competence

At the outset, consideration needs to be given as to whether the Bill itself is competent under the Scotland Act 1998 ("the 1998 Act"). The Presiding Officer and Liam McArthur MSP, the member in charge of the Bill, have given statements<sup>18</sup>, that in their view, the Bill would be within the legislative competence of the Scottish Parliament. They have, however, not given reasons for their view.

The Scottish Government has set out their view that the Bill is out with the legislative competence of the Scottish Parliament.<sup>19</sup> Section 29 of the 1998 Act prevents any Act of the Scottish Parliament becoming law if it is outside of the legislative competence of the Parliament. An act will be outside of competence if, amongst other things, 'it is incompatible with any of the Convention rights ...'<sup>20</sup>. Section 29 of the 1998 Act also provides that a provision is outside competence so far as it relates to reserved matters. There are ongoing concerns as to whether provisions in the Bill as currently drafted might be argued to be out with competence as they relate to reserved matters of the regulations of the professions, misuse of drugs or medicines, however, these matters would ultimately be for the court to decide.

It is recognised in the Policy Memorandum of the Bill<sup>21</sup> that an order under Section 30 of the 1998 Act or similar would be required to achieve a truly comprehensive assisted dying scheme. The Cabinet Secretary for Health and Social Care addressed the requirement of a Section 30 Order in correspondence to the lead Committee in December 2025.<sup>22</sup> The letter confirms the Scottish and UK Governments have agreed a Section 30 Order to temporarily extend the Scottish Parliament's powers to it can legislate on reserved matters relating to the

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<sup>18</sup> <https://www.parliament.scot/bills-and-laws/bills/assisted-dying-for-terminally-ill-adults-scotland-bill/introduced#topOfNav>

<sup>19</sup> [Assisted Dying Bill for Terminally Ill Adults SG Memorandum](#), as referred to at para 414 of the stage 1 report.

<sup>20</sup> Ibid section 29(2)(d)

<sup>21</sup> Policy Memorandum, paras 8-10

<sup>22</sup> [Assisted Dying Bill Section 30 Update Letter from Cabinet Secretary for Health and Social Care](#)

regulation of substances and medical devices for assisted dying, enabling MSPs to consider these provisions at stage 3. It also confirms that other areas of the Bill, including regulation of health professions, remain outside competence and may require removal at stage 3 and subsequent resolution through Section 104 order if the Bill is passed. In his letter of 5 March, the Cabinet Secretary confirmed that the UK Government has indicated that it is content, in principle, to take forward a Section 104 Order.<sup>23</sup>

### Our comments on the Section 30 Order

The lead committee requested written views on the proposed use of the Section 30 order, which we provided in January 2026.<sup>24</sup> We raised concerns 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. The UK Government explained the time-limit '*reflects the circumstances of the Bill before the Scottish Parliament, the end of the legislative session ahead of the Scottish Parliament elections this year. It is not for the UK Government to anticipate what future legislation may be brought forward before the Scottish Parliament.*'<sup>25</sup>

We questioned why this would be an issue that the Scottish Parliament can only revisit once. We have concerns that the restriction seems problematic if the current Bill fails or if future amendments to a future Bill or Act 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. We note the recommendation from the Scottish Affairs Committee for the UK Government to clarify whether the Scottish Parliament would, under the section 30 order, be able to repeal or amend the Act's regulation-making powers in a future Scottish Parliamentary session.<sup>26</sup>

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.

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

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<sup>23</sup> [Assisted Dying Bill letter with update on Legislative Competence and Stage 3 Approach from Cabinet Secretary Health and Social Care](#)

<sup>24</sup> [Law Society of Scotland regarding Section 30 Order](#)

<sup>25</sup> [committees.parliament.uk/publications/51084/documents/283269/default/](#)

<sup>26</sup> [Draft Scotland Act 1998 \(Modification of Schedule 5\) Order 2026](#) 42

conditions, or to require Scottish subordinate legislation to be subject to Secretary of State consent as is proposed in paragraph 4A(1).

### [Our comments on the proposed section 104 Order](#)

In regards to the Section 104 Order, we highlighted to the lead committee that the rationale for dealing with some issues via a Section 30 order and other via a Section 104 order were unclear. The UK Government has issued reasoning for this within the Draft Scotland Act 1998 (Modification of Schedule 5) Order 2026.<sup>27</sup> The reasoning includes allowance for the Scottish Parliament to debate and consider how the matter of substances and devices could be dealt with, whereas a section 104 order can only make consequential provision, after the Bill receives Royal Assent. Section 104 orders cannot be used to confer the power to make subordinate legislation, and the policy intention of the Bill is that substances and devices will be prescribed by further regulation, rather than within the Bill. The Government provided that some issues would not be appropriately addressed by a section 104 order, as they are 'core issues' rather than issues that might arise consequently, including the matter of substances and medical devices.<sup>28</sup>

### [Section 22 of the Bill](#)

Section 22 of the Bill, which provides that provisions of the Bill which relate to reserved matters are of no effect, raises questions of whether this would be an acceptable way of ensuring that the provisions within the Bill are within the legislative competence of the Scottish Parliament. Section 22 does no more than re-state what section 29 of the Scotland Act already provides. It uses a similar drafting technique to the one used in the UNCRC case (2021 UKSC 42)<sup>20</sup> which criticised and disapproved of leaving it to the courts to interpret the provisions of a Bill in such a way as to bring them within legislative competence. We note that amendment 113 in the name of the Cabinet Secretary would remove section 22 from the Bill. The Cabinet Secretary has noted in his correspondence to the Lead Committee that "Given that a section 30 Order has been agreed, and work is in train in relation to a section 104 order, it would seem that the stated purpose of this provision has been removed."

### [Conclusion](#)

In our previous comments, we highlighted that the possibility of a Section 30 order should not be used as the basis for stating that the Bill was within the legislative competence of the Scottish Parliament. At the time of writing ahead of the start of stage 3 proceedings, the order remains in draft. Provisions remain within the Bill which the Scottish Government considers relate to reserved matters. We reiterate the Cabinet Secretary's comments regarding the need for the Scottish Parliament to consider its responsibility for ensuring that legislation is within its competence.

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<sup>27</sup> [Draft Scotland Act 1998 \(Modification of Schedule 5\) Order 2026](#)

<sup>28</sup> Letter from the Parliamentary Under-Secretary of State for Scotland to the Chair, [9 January 2026](#)

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