

Scottish Affairs Committee

Draft Scotland Act 1998 (Modification of Schedule 5) Order 2026

Sixth Report of Session 2024–26

HC 1652

Scottish Affairs Committee

The Scottish Affairs Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Scotland Office (including (i) relations with the Scottish Parliament and (ii) administration and expenditure of the offices of the Advocate General for Scotland (but excluding individual cases and advice given within government by the Advocate General)) and its associated public bodies.

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The Committee is one of the departmental select committees, the powers of which are set out in House of Commons Standing Orders, principally in SO No. 152. These are available on the internet via www.parliament.uk.

Publication

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Contents

	Introduction	1
1	Background	2
	The reserved powers model	2
	What are section 30 orders?	2
	The Assisted Dying for Terminally Ill Adults (Scotland) Bill	4
	Legislative competence	5
2	Draft Scotland Act 1998 (Modification of Schedule 5) Order 2026	7
	A bifurcated approach to resolving competence issues	7
	The role of UK Ministers	9
	Time limit	11
	Conclusions and recommendations	13
	Formal minutes	15
	List of Reports from the Committee during the current Parliament	16

Introduction

1. This report examines the draft Scotland Act 1998 (Modification of Schedule 5) Order 2026 ('the draft Order'), which the UK Government laid before Parliament on 17 December 2025. The draft Order concerns the Assisted Dying for Terminally Ill Adults (Scotland) Bill ('the Bill'), currently being considered by the Scottish Parliament. The draft Order proposes—in a narrow and time-limited way—to extend the law-making powers of the Scottish Parliament, to enable the Bill to become law, if the Scottish Parliament so decides.¹
2. Orders made under section 30(2) of the Scotland Act, such as this, are relatively rare. There have been none in the last decade. Such orders bring about a change to the devolution settlement and are products of intergovernmental cooperation, both subjects fall under this Committee's constitutional oversight function. Indeed, predecessor Scottish Affairs Committees have scrutinised previous Scotland Act orders.² As such, we wrote to the UK Government after the draft Order was laid, seeking clarification on a number of points related to its legal and constitutional implications.³
3. We note the relevant report of the Joint Committee on Statutory Instruments, which did not raise any concerns about the draft Order.⁴
4. This report is intended to inform the parliamentary debates on the draft Order, by drawing both Houses' attention to some of its features which we consider are unusual and have merited scrutiny. Our focus relates solely to the constitutional and intergovernmental aspects of the draft Order, and does not extend to the policy question of assisted dying. As a Committee, we remain neutral on this policy issue, and respect that it is properly a matter for the Scottish Parliament to decide.
5. We trust this report is helpful in informing Parliament's consideration of the draft Order.

1 The Bill is distinct from the Terminally Ill Adults (End of Life) Bill progressing separately through the UK Parliament.

2 See Scottish Affairs Committee, [The Referendum on Separation for Scotland: The proposed section 30 Order—Can a player also be the referee?](#) Sixth Report of Session 2012–13, HC 863

3 Letter from the Chair to the Scotland Office regarding the draft section 30 order, [6 January 2026](#)

4 Joint Committee on Statutory Instruments, [Forty-fourth Report of Session 2024–26, HC291-xliv / HL Paper 247](#)

1 Background

The reserved powers model

6. The Scottish Parliament was created by statute and does not have unlimited law-making power, under the Scotland Act 1998's reserved powers model. This means that there are some subjects which the Scottish Parliament cannot make laws about, known as reserved matters. Only the UK Parliament can enact primary legislation that relates to reserved matters. If the Scottish Parliament attempts to legislate beyond those limits, the validity of that legislation can then be challenged in the courts.
7. Schedule 5 of the Scotland Act 1998 provides an exhaustive list of reserved matters. This provides for the core division of policy responsibility between the devolved and the non-devolved institutions.

What are section 30 orders?

8. The boundary between devolved and reserved matters is not fixed. It was envisaged from the outset of devolution that the legislative competence of the Scottish Parliament could evolve in response to political developments. This can be achieved through further Acts of the UK Parliament (for example, the Scotland Acts 2011 and 2016), or through an Order in Council made under section 30 of the Scotland Act 1998.⁵
9. Section 30 orders take the form of statutory instruments and allow for the temporary or permanent modification of reserved matters. Such an order can only be made if both Houses of Parliament and the Scottish Parliament agree, safeguarding against unilateral changes to the devolution settlement. Each legislature is invited to either approve or reject the draft order, and there is no opportunity for either Parliament to amend the text.
10. Such orders are useful because, under the Scotland Act 1998, if a Bill passed by the Scottish Parliament contains a provision that falls outside of legislative competence, it is 'not law' insofar as the limits on legislative competence are exceeded. The provision in question would have no legal effect. Competence can be challenged before Royal Assent by either the

5 House of Commons Library, [Scottish Devolution: Section 30 Orders](#), Research Briefing CBP8738, 15 June 2022

Lord Advocate or the Advocate General for Scotland, through a reference to the UK Supreme Court. It could also be challenged after Royal Assent via the Scottish courts (for example in judicial review proceedings).

11. Section 30 orders are not the only means of altering the powers of the Scottish Parliament or Scottish Ministers. The UK Government’s own Devolution Guidance states that while modification to Schedule 5 may be the most obvious route to achieve policy aims, it advises civil servants to consider alternative approaches which could prove preferable.⁶ Alternative approaches include orders made under either section 63 or section 108 of the Scotland Act 1998. A section 63 order would have the effect of maintaining the relevant reservation but devolving to the Scottish Government responsibility for implementation and related casework.⁷ An order under section 108 provides for specific functions to be taken by a UK Government Minister instead of by the Scottish Government.⁸ Notably, neither approach affects legislative competence.
12. Section 30(2) orders are used infrequently. Between 1999 and 2015 there were 16 cases, but there have been none in the decade since. Most have made minor adjustments, while others have been more substantial. The most high-profile section 30 order, made in 2013, granted the Scottish Parliament a conditional and time-limited power to hold an independence referendum.⁹ This followed a political agreement reached between the then UK and Scottish Governments—the 2012 ‘Edinburgh Agreement’.¹⁰
13. The UK Government’s Devolution Guidance Note states that a section 30 order can be initiated by either the Scottish Government or the UK Government, but that both Governments need to agree both the principle and the detail before it can be pursued.¹¹ In practice, the text of the draft instrument is typically pre-agreed by the UK and Scottish Governments before it is laid.

6 UK Government, [Devolution Guidance Note 14](#), (accessed 16 January 2026)

7 For example, the [Scotland Act 1998 \(Transfer of Functions to the Scottish Ministers etc.\) Order 2020](#), under section 63 of the Scotland Act, devolved some of the implementation of a job grant to young unemployed people in Scotland.

8 UK Government, [Devolution Guidance Note 14](#), (accessed 16 January 2026)

9 [The Scotland Act 1998 \(Modification of Schedule 5\) Order 2013 \(SI 2013/242\)](#)

10 UK Government, [Agreement between the United Kingdom Government and the Scottish Government on a referendum on independence for Scotland](#), 15 October 2012

11 UK Government, [Devolution Guidance Note 14](#), (accessed 16 January 2026)

The Assisted Dying for Terminally Ill Adults (Scotland) Bill

14. There is currently no legal basis in Scots law for ‘assisted dying’. The Assisted Dying for Terminally Ill Adults (Scotland) Bill was introduced in the Scottish Parliament in March 2024. It would allow terminally ill adults in Scotland, who are eligible, to seek assistance by health professionals to end their own life. The Bill is not a Scottish Government bill; it was introduced by Liam McArthur, a Liberal Democrat MSP. At the time of this report’s publication, the Bill awaits stage three consideration—the final stage of the legislative process in the Scottish Parliament. There is no confirmed date for this scrutiny stage to take place. As currently drafted, the Bill has four main parts:
- i. The first part limits eligibility for assisted dying, including limiting it to terminally ill adults.
 - ii. The second part sets out the process someone must go through if they wish to receive medical assistance to end their life.
 - iii. The third part is concerned with the practicality of lawfully assisting people to end their life, including conscientious objection and protecting medical professionals against criminal prosecution or civil action.
 - iv. The fourth part includes final provisions, including the offence of coercion, reporting and monitoring, and a five-year review duty.¹²
15. This Bill is entirely distinct from the Terminally Ill Adults (End of Life) Bill, which is currently being considered by the UK Parliament, and would implement a separate assisted dying regime in England and Wales.¹³ Both the UK and Scottish Governments have adopted a formal position of neutrality on the policy issue of assisted dying, indicating that it is a matter of conscience.¹⁴ This policy neutrality applies to both Bills before the UK and Scottish Parliaments.

12 Scottish Parliament, [Assisted Dying for Terminally Ill Adults \(Scotland\) Bill](#), 2024

13 UK Parliament, [Terminally Ill Adults \(End of Life\) Bill](#), (accessed 15 January 2026)

14 [The draft Scotland Act 1998 \(Modification of Schedule 5\) Order 2026](#)

Legislative competence

16. Before a Bill is introduced, the Scottish Parliament's Standing Orders require that both the Presiding Officer and the member in charge of a Bill (usually a Scottish Government Minister) must make a statement on whether they believe the Bill falls within the Parliament's legislative competence.¹⁵ When the Assisted Dying Bill was first introduced, both Mr McArthur and the Scottish Parliament's Presiding Officer said they believed the Bill was within the Parliament's legislative competence.¹⁶
17. However, the Scottish Government did not reach the same conclusion. As the Bill is a Member's bill, it was not subject to vetting by the Scottish Government's law officers prior to its introduction, which is the longstanding convention for government bills.¹⁷ In a memorandum to the Scottish Parliament committee scrutinising the Bill (the Health, Social Care and Sport Committee), issued after the Bill was introduced in September 2024, the Scottish Government said it believed there were competence issues. These concerns initially fell broadly into two categories:
- i. The Scottish Government identified one section of the Bill (section 15), which it believed was definitely beyond the Scottish Parliament's competence. This section sets out "how" medical professionals would "provide assistance" to a terminally ill person who has asked for help to die. It would give Scottish Ministers the power to specify in regulations the drugs, substances, or devices to be used to assist someone to die. The memorandum indicates that this relates to the reserved matter of 'medicines, medical supplies and poisons'.
 - ii. The Scottish Government identified three further provisions that it believed *may* be beyond legislative competence. These are sections 4, 6 and 7, which may relate to the 'regulation of health professions', which is a reserved matter.¹⁸

15 Scottish Parliament, [Standing Orders of the Scottish Parliament: Rule 9.3 accompanying documents](#), (accessed 16 January 2026)

16 Alison Johnstone MSP is the elected Presiding Officer of the Scottish Parliament. The Presiding Officer is the impartial speaker who chairs debates, maintains order and represents the Parliament; Scottish Parliament, [Statements on legislative competence: Assisted Dying for Terminally Ill Adults \(Scotland\) Bill](#), 27 March 2024

17 Scottish Government, [Scottish Ministerial Code: 2025 Edition](#), 13 October 2025

18 Scottish Parliament, [Assisted Dying Bill for Terminally Ill Adults SG Memorandum](#), 30 September 2024

18. In subsequent correspondence to the Health Committee on 16 December 2025 the Scottish Government identified an *additional* area which presented a potential competence issue:

- iii.** The Scottish Government identified provisions in relation to employment protections for people who refused to be involved in assisted dying (the ‘conscientious objection’ provision in section 18), which may relate to the ‘regulation of health professions’ and ‘employment and industrial relations’ reservations.¹⁹

¹⁹ Letter from the Scottish Government to Health, Social Care and Sport Committee regarding assisted dying, [16 December 2025](#)

2 Draft Scotland Act 1998 (Modification of Schedule 5) Order 2026

19. The draft Scotland Act 1998 (Modification of Schedule 5) Order 2026 is narrowly drafted, and only deals with one of the competence issues discussed in the previous chapter—that relating to the ‘medicines, medical supplies and poisons’ reservation. The draft Order would amend Schedule 5 of the Scotland Act 1998 to provide a time limited exception to this reservation and allow the Scottish Parliament to confer powers on Scottish Ministers or the Secretary of State to identify substances and devices for use in assisted dying. The UK Government said the draft Order would allow MSPs to “further consider the Bill with clarity as to how the matter of substances and devices, which may be used for assisted dying in Scotland, could be dealt with”.²⁰ The draft Order’s confinement to just one of the competence questions, and the manner in which it resolves that question, gives rise to the issues set out in the following sections.

A bifurcated approach to resolving competence issues

20. In a letter sent to the Scottish Parliament’s Health, Social Care and Sport Committee on 16 December 2025, the Scottish Government indicated that the two Governments are adopting a bifurcated approach to addressing the legislative competence issues.²¹ This draft section 30 order will be used only to resolve the issues related to medicines and medical devices.
21. In the cases of the outstanding reservations relating to the regulation of medical professions and employment and industrial relations, the identified competence issues are expected to be resolved by, firstly, removing

20 [Draft explanatory Memorandum the Scotland Act 1998 \(Modification of Schedule 5\) Order 2026](#)

21 Letter from the Scottish Government to Health, Social Care and Sport Committee regarding assisted dying, [16 December 2025](#)

the relevant provisions from the Bill at Stage 3 consideration, and then addressing the resultant legislative gaps with a section 104 order (making consequential provision) if and when the Bill has passed.

22. The two types of orders are made at different stages in the legislative process and are scrutinised differently. A section 30 order is usually made before any Act of the Scottish Parliament is passed, and with the formal approval of the Scottish Parliament. By contrast, a section 104 order is made after an Act of the Scottish Parliament is passed, and without a formal decision in the Scottish Parliament.
23. We asked the UK Government why it decided to take this approach, proposing a section 30 order to address one competency issue and section 104 to address the others. The UK Government provided three reasons:
 - i. It would allow the Scottish Parliament to debate and consider “with clarity” how the matter of substances and devices related to an assisted dying regime in Scotland could be dealt with; whereas a section 104 order can only make consequential provision, *after* the Bill receives Royal Assent.
 - ii. A section 104 order cannot be used to confer the power to make subordinate legislation, which is appropriate, given that the policy intention is that substances and devices will be prescribed by further regulations, rather than being put on the face of the Bill.
 - iii. A section 104 order would not be appropriate for some of the identified issues because, according to the UK Government, the matter of substances and medical devices is a “core” aspect of the Bill, rather than an issue that might arise as a consequence.²²
24. On resolving the potential competence issues related to the ‘regulation of health professionals’ or ‘employment and industrial relations’, the UK Government clarified that it does not anticipate further section 30 orders in connection with the Bill, and told us it:

[...] continues to engage with the Scottish Government on the Bill and the other areas the Scottish Government have identified. These other issues of legislative competence require further consideration by both governments in line with the respective governments’ neutral position. We will keep the Committee updated on Scotland Act Orders. The decision on whether to pass the Bill, and in what form, is a matter for the Scottish Parliament.²³

22 Letter from the Parliamentary Under-Secretary of State for Scotland to the Chair, [9 January 2026](#)

23 Letter from the Parliamentary Under-Secretary of State for Scotland to the Chair, [9 January 2026](#)

25.

CONCLUSION

We welcome the UK Government's commitment to keep the Committee up to date on any future Scotland Act orders related to the Assisted Dying for Terminally Ill Adults (Scotland) Bill.

26.

RECOMMENDATION

Given the constitutional significance of this draft section 30 Order, it should be debated on the floor of the House of Commons, rather than in a delegated legislation committee.

27.

CONCLUSION

We note the Government's rationale that this draft Order will enable the Scottish Parliament to legislate "with clarity" as to how the Bill's reserved interactions can be dealt with. However, a consequence of the Government's bifurcated approach is that this clarity would not be afforded in respect of the remaining competence issues, if the relevant provisions are to be removed from the Bill and dealt with after Royal Assent by way of section 104 orders. The UK Government could remove this uncertainty by publishing in draft any section 104 orders in good time before the Stage 3 debate.

The role of UK Ministers

28.

The draft Order allows the Scottish Parliament to confer delegated powers in connection with the substances and devices to be used in an assisted dying regime in two ways:

- i. Delegated powers may be conferred on Scottish Ministers, but would be exercisable *only with the Secretary of State's agreement*; this, effectively, provides the UK Government with a 'veto' over some detailed aspects of the assisted dying regime; or
- ii. Delegated powers may be conferred directly on the Secretary of State, who may exercise them *with or without the agreement of Scottish Ministers*.

29.

We asked the UK Government to explain why it considers that the Secretary of State needs to retain control in what would notionally become a devolved area. In response, the Government said such an approach was necessary to retain an "appropriate role in the overarching regulation of medicines across the UK, which is a reserved matter, and operates on a UK wide basis". It justified this on the basis that it is "critical" that regulatory consistency is maintained across the UK, to avoid a situation where an approved substance or device is subject to different regulation across internal borders within the UK. The Government also identified a desire for

regulatory consistency between any assisted dying scheme operating in Scotland and, if passed, its equivalent scheme in England and Wales. Any divergence, it said, would have:

significant implications for the MHRA, as the UK-wide regulator. They would be required to monitor and enforce divergent systems across two jurisdictions. In addition, it would be burdensome and complex for industry, practitioners, and patients to navigate, potentially creating risks for patient safety and overall implementation.²⁴

30. We asked if the Government was aware of any other instances of the Scottish Parliament legislating to confer regulation-making powers on UK Ministers. In response, the Government identified only one example—the Bankruptcy (Scotland) Act 2016—which conferred regulation-making powers in connection with a narrow range of cross-border insolvency issues.

31. The Government also stressed that a requirement for UK Ministerial consent “is not a novel feature in legislation, and the exercise of executive functions across legislation is often accompanied by requirements to consult or seek the agreement of other bodies or parties”.²⁵ However, it acknowledged that *section 30 orders* have not previously been used to enable the Scottish Parliament to confer powers on UK Ministers, or to give UK Ministers a veto over Scottish Ministers’ regulation-making powers in a devolved area.

32. CONCLUSION

The manner in which the draft Order confers powers is, in effect, circular: powers are nominally transferred to the Scottish Parliament, only for the Secretary of State to retain the ultimate say over how those powers are used.

33. CONCLUSION

This approach has been agreed between the two Governments, and we offer no view as to whether it is appropriate in this specific instance. However, we wish to highlight that it is novel. It represents a departure from the constitutional default: that if a subject matter has been devolved, the Scottish Parliament confers regulatory powers on Scottish Ministers, who in turn are answerable to the Scottish Parliament as to how those powers are exercised.

24 Letter from the Parliamentary Under-Secretary of State for Scotland to the Chair, [9 January 2026](#)

25 Letter from the Parliamentary Under-Secretary of State for Scotland to the Chair, [9 January 2026](#)

34. CONCLUSION

It is not yet clear whether the Scottish Parliament will opt to confer on the Secretary of State the power to make regulations, or to instead give that power to the Scottish Ministers but with a veto for the Secretary of State, as the draft Order permits. We note that delegating power directly to the Secretary of State would be highly unusual in an Act of the Scottish Parliament, and would mean that the resulting regulations would not be subject to scrutiny by MSPs.

Time limit

- 35.** The proposed Order is also time limited, to the extent that the Scottish Parliament would only have the legislative competence to make provision in the specified area if it is contained in an Act of the Scottish Parliament passed before 7 May 2026.²⁶
- 36.** Time-limiting a section 30 order is not itself new. The Order made in 2013 granting the Scottish Parliament a conditional power to legislate for an independence referendum was time limited, requiring that any such referendum had to take place before the end of 2014.
- 37.** The time limit included in this draft section 30 Order is slightly different, however. The draft Order will effectively expire if the current Bill does not complete its final stages before the Scottish Parliamentary elections. If the Scottish Parliament wished to reintroduce a similar or identical bill after the May elections, the competence issue would be unresolved.
- 38.** We asked the UK Government to explain the rationale for this time limit. In response, it told us:

The time-limited nature of the Order reflects the circumstances of the Bill before the Scottish Parliament, specifically the forthcoming end of the current 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 by the Scottish Parliament.²⁷

- 39.** From this response, it is clear the UK Government is willing to devolve competence to legislate on the issue of assisted dying in respect of the specific Bill currently before the Scottish Parliament—an approach the Scottish Government has agreed to.

26 [Draft explanatory Memorandum the Scotland Act 1998 \(Modification of Schedule 5\) Order 2026](#)

27 Letter from the Parliamentary Under-Secretary of State for Scotland to the Chair, [9 January 2026](#)

40. We also queried how the time limit would affect any subsequent amendments which the Scottish Parliament might decide to make to the primary legislation further down the line. The Government clarified in response that if the Bill passes its final stage, the resulting delegated powers themselves will not be time limited. However, it is less clear what could happen if, for example, the Scottish Parliament wished to change the regulation-making powers in the Act themselves.

41. **CONCLUSION**

The way in which this draft Order has been time-limited is novel, and we draw this to the attention of the House.

42. **RECOMMENDATION**

During the debate on the draft Order, the UK Government should clarify whether the Scottish Parliament would, under this section 30 Order, be able to amend or repeal the Act's regulation-making powers in a future Scottish Parliamentary session.

Conclusions and recommendations

Draft Scotland Act 1998 (Modification of Schedule 5) Order 2026

1. We welcome the UK Government's commitment to keep the Committee up to date on any future Scotland Act orders related to the Assisted Dying for Terminally Ill Adults (Scotland) Bill. (Conclusion, Paragraph 25)
2. Given the constitutional significance of this draft section 30 Order, it should be debated on the floor of the House of Commons, rather than in a delegated legislation committee. (Recommendation, Paragraph 26)
3. We note the Government's rationale that this draft Order will enable the Scottish Parliament to legislate "with clarity" as to how the Bill's reserved interactions can be dealt with. However, a consequence of the Government's bifurcated approach is that this clarity would not be afforded in respect of the remaining competence issues, if the relevant provisions are to be removed from the Bill and dealt with after Royal Assent by way of section 104 orders. The UK Government could remove this uncertainty by publishing in draft any section 104 orders in good time before the Stage 3 debate. (Conclusion, Paragraph 27)
4. The manner in which the draft Order confers powers is, in effect, circular: powers are nominally transferred to the Scottish Parliament, only for the Secretary of State to retain the ultimate say over how those powers are used. (Conclusion, Paragraph 32)
5. This approach has been agreed between the two Governments, and we offer no view as to whether it is appropriate in this specific instance. However, we wish to highlight that it is novel. It represents a departure from the constitutional default: that if a subject matter has been devolved, the Scottish Parliament confers regulatory powers on Scottish Ministers, who in turn are answerable to the Scottish Parliament as to how those powers are exercised. (Conclusion, Paragraph 33)

6. It is not yet clear whether the Scottish Parliament will opt to confer on the Secretary of State the power to make regulations, or to instead give that power to the Scottish Ministers but with a veto for the Secretary of State, as the draft Order permits. We note that delegating power directly to the Secretary of State would be highly unusual in an Act of the Scottish Parliament, and would mean that the resulting regulations would not be subject to scrutiny by MSPs. (Conclusion, Paragraph 34)
7. The way in which this draft Order has been time-limited is novel, and we draw this to the attention of the House. (Conclusion, Paragraph 41)
8. During the debate on the draft Order, the UK Government should clarify whether the Scottish Parliament would, under this section 30 Order, be able to amend or repeal the Act's regulation-making powers in a future Scottish Parliamentary session. (Recommendation, Paragraph 42)

Formal minutes

Wednesday 21 January 2026

Members present

Patricia Ferguson, in the Chair

Lillian Jones

Mr Angus MacDonald

Douglas McAllister

Susan Murray

Kirsteen Sullivan

Draft Scotland Act 1998 (Modification of Schedule 5) Order 2026

Draft Report (*Draft Scotland Act 1998 (Modification of Schedule 5) Order 2026*), proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 42 read and agreed to.

Resolved, That the Report be the Sixth Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

Ordered, That embargoed copies of the Report be made available (Standing Order No. 134).

Adjournment

Adjourned till Monday 26 January at 9.00 am, in Glasgow.

List of Reports from the Committee during the current Parliament

All publications from the Committee are available on the [publications page](#) of the Committee's website.

Session 2024–26

Number	Title	Reference
4th	The future of Scotland's oil and gas industry	HC 459
3rd	Problem drug use in Scotland follow-up: Glasgow's Safer Drug Consumption Facility	HC 630
2nd	Scotland's space sector follow-up: launch	HC 671
1st	The financing of the Scottish Government	HC 456
6th Special	The future of Scotland's oil and gas industry: Government Response	HC 1603
5th Special	Scotland's space sector follow-up: launch: Government Response	HC 1495
4th Special	Problem drug use in Scotland follow-up: Glasgow's Safer Drug Consumption Facility: Government Response	HC 1485
3rd Special	The Financing of the Scottish Government: Government response	HC 1357
2nd Special	Scotland's space sector: Government response	HC 801
1st Special	Science and Scotland: Government response	HC 800