

Scottish Affairs Committee

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

Seventh Special Report of Session 2024–26

HC 1708

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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Publication

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Contacts

All correspondence should be addressed to the Clerk of the Scottish Affairs Committee, House of Commons, London SW1A 0AA. The telephone number for general enquiries is 020 7219 1810; the Committee's email address is scotaffcom@parliament.uk. You can follow the Committee on X (formerly Twitter) using [@CommonsScotAffs](https://twitter.com/CommonsScotAffs).

Seventh Special Report

The Scottish Affairs Committee published its Sixth Report of Session 2024–26, [Draft Scotland Act 1998 \(Modification of Schedule 5\) Order 2026](#) (HC 1652), on 23 January 2026. A letter and the Government Response were received on 9 February 2026 and are appended below.

Appendix 1: Letter from Kirsty McNeill MP, Parliamentary Under-Secretary of State for Scotland

I would like to thank you and the other members of the Committee for your report on the draft Scotland Act 1998 (Modification of Schedule 5) Order 2026, published on 23 January 2026.

As you know, this Order relates to the Assisted Dying for Terminally Ill Adults (Scotland) Bill. The Scottish Government considers that certain areas of the Bill are beyond the legislative competence of the Scottish Parliament and have requested that the UK Government take action to address these. This Order follows engagement with the Scottish Government, and is a limited and temporary technical change to the Scotland Act 1998.

This change, made in response to the request from the Scottish Government and in the spirit of good intergovernmental relations, will allow the Scottish Parliament to provide for the approval and regulation of substances and devices to be used in an assisted dying regime in Scotland, should it wish to do so.

The UK Government remains neutral on the matter of assisted dying - it is for MSPs in the Scottish Parliament to determine whether there should be an assisted dying regime in Scotland. UK Ministers do not influence or endorse any particular outcome of the consideration of the Bill before the Scottish Parliament.

The approach we have taken is a sensible and proportionate action which protects the devolution settlement, retains the integrity of the UK-wide medicines regime, and enables MSPs to vote on the matter of assisted dying with an understanding of how provisions on medicines and medical devices will be handled.

The limited and technical nature of the Order is also designed to ensure that UK Ministers retain an appropriate role in the overarching regulation of medicines and medical devices across the UK, which is a reserved matter. This is extremely important as it underpins the supply of medicines to patients, and the limited nature of the change will ensure that the overall integrity of the UK-wide medicines regime is retained whether or not the Scottish Parliament approves Liam McArthur MSP's Bill.

We understand and respect the Committee's interest in this Order. Please find enclosed our response to the Committee's conclusions and recommendations.

Appendix 2: Government Reponse

Recommendation/Conclusion 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.*

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.

Response: The UK Government will continue to provide the Scottish Affairs Committee and Parliament with updates on Scotland Act Orders relating to the Terminally Ill Adults (Scotland) Bill.

Scotland Act Orders are generally considered in a delegated legislation committee and subsequently by a motion put to the House, as is normal practice.

While the Government recognises the Committee has recommended that the Order is debated on the floor of the House of Commons, the debate has now been scheduled for a Delegated Legislation Committee.

Recommendation/Conclusion 2: *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 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.*

Response: In relation to consequential legislation that may be required in relation to the Assisted Dying for Terminally Ill Adults (Scotland) Bill, it would not be appropriate or possible for the UK Government to publish a draft order ahead of Stage 3, given the final form of the Bill will be unknown. The shape of consequential legislation will be dependent upon amendments to the Bill at Stage 3 and the final

form of the Bill, if and when passed. It is for MSPs to decide on the final form of the Bill. The Government notes that a section 104 order can only be made after a Bill receives Royal Assent.

The UK and Scottish Governments continue to engage and work closely on these matters.

The UK Government understands that the Scottish Government will seek the agreement of the UK Government to take forward a section 104 order if, and after, the Bill has passed, which will ensure that practitioners are protected should they choose to opt out of an assisted dying service. The UK Government is neutral on the policy of assisted dying and on this legislation, and notes the views on this matter. However, the Government is committed to making the devolution settlement work, and therefore expects to agree in principle to take forward such an order. It is too soon to state the exact scope and content of such an order for the reasons outlined above.

The UK Government also notes the desire to set standards for professionals working in an assisted dying service in Scotland. We will continue to liaise with the Scottish Government on this aspect of the Bill.

The UK Government notes that the Scottish Government Cabinet Secretary for Health and Social Care has committed to keeping the Scottish Parliament updated on intergovernmental discussions. The UK Government will also keep the Scottish Affairs Committee updated on this matter.

Recommendation/Conclusion 3: *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.*

Response: The Order's change to legislative competence is specifically designed to ensure that UK Ministers retain an appropriate role in the overarching regulation of medicines across the UK, which is a reserved matter. It is important to note that the Order does not confer powers directly. However, in enabling the Scottish Parliament to introduce provisions that could confer powers in this way, the approach maintains the integrity of the UK medicines regime and ensures the UK Government and appropriate medical bodies such as the MHRA retain authority and control over the UK-wide medicines regime.

Medicines regulation is a UK-wide process that has operated successfully for many years, providing consistency, clarity, and confidence for patients, practitioners, and industry. Regulatory

consistency is key to avoid a situation where an approved substance or device may be subject to different regulatory approaches, approval routes, monitoring, and surveillance across internal borders.

It is critical that regulatory consistency is maintained across the UK. This has been a key priority post-EU exit, where we have prioritised avoiding any divergence between regulatory approaches. Any divergence risks undermining clarity in law, creating complexity for practitioners and industry, and potentially affecting supply if manufacturers consider it overly burdensome to navigate divergent requirements in different jurisdictions.

Recommendation/Conclusion 4: *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.*

Response: While the circumstances are novel, in the sense that there are Private Member/Members' bills in the respective parliaments on this matter, on which both the UK and Scottish Governments are neutral - the UK Government considers the effect of this Order as appropriate and consistent with the devolution settlement. The Government acknowledges it is a narrow and time-limited Order.

Assisted dying is a complex policy area.

While assisted dying is largely devolved, it interacts with some reserved matters, such as medicines regulation. The drafting of the Order seeks to reflect that balance. The order accounts for the scenario where the Scottish Parliament may also consider powers to regulate substances and devices are needed. The Order provides the ability for the Scottish Parliament to confer functions on the Secretary of State relating to the regulation of medicines in the context of assisted dying. This approach reflects the reserved nature of medicines and the fact that the regulation of medicines is the responsibility of the UK Government and Parliament. As a time-limited Order, the Government considered that it would be appropriate to enable the Scottish Parliament, should it so wish, to confer such functions on the Secretary of State. This approach was agreed with the Scottish Government.

This Order is a narrow, technical, and limited section 30 order that does not fundamentally alter the devolution settlement. It enables competent provision to be included in a bill in a specific timeframe.

This is a sensible and proportionate action which protects those reserved matters while enabling MSPs to vote on the devolved matter of assisted dying with the understanding about how provisions considered outside of competence in relation to medicines and medical devices will be handled.

Recommendation/Conclusion 5: *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.*

Response: The Order gives the Scottish Parliament the ability to confer the power to Scottish Ministers to identify substances and devices for use in assisted dying, provided this is done by way of subordinate legislation made with the agreement of the Secretary of State. It also provides that the Scottish Parliament may confer powers on the Secretary of State to regulate such substances and devices, by subordinate legislation. These are separate matters and it is therefore not a choice of one or the other. However, it remains a matter for the Scottish Parliament to decide how to exercise its competence in this regard within the time-limits of the Order.

As the Committee notes, Acts of the Scottish Parliament routinely confer statutory powers on Scottish Ministers in line with the devolution settlement. However, in the very specific circumstances of this Bill, the UK Government considers it is appropriate to enable the Scottish Parliament to confer such powers directly on the Secretary of State. Whilst uncommon, there are some instances where Acts of the Scottish Parliament confer powers on the Secretary of State. For example, the Bankruptcy (Scotland) Act 2016 conferred regulation making powers on the Secretary of State in relation to cross-border insolvency. The Criminal Justice and Licensing (Scotland) Act 2010 also conferred power on the Secretary of State to apply to a court to prohibit the disclosure of information which the prosecutor is either required to disclose or proposes to disclose.

In the circumstances of this Order, the Governments agreed that as the regulation of medicines is the responsibility of the UK Government and the Secretary of State, it would be appropriate to enable the Scottish Parliament, should it so wish, to confer such functions on the Secretary of State. The Government considers it is appropriate that the UK Parliament scrutinises regulations made by UK Ministers, and reserved matters, and is consistent with the devolution settlement.

The UK Government also highlights that Scottish Ministers will still be accountable to the Scottish Parliament for regulations made with the consent of the Secretary of State.

Recommendation/Conclusion 6: *The way in which this draft Order has been time-limited is novel, and we draw this to the attention of the House.*

Response: 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, and the Scottish Government agrees, to anticipate what future legislation may be brought forward by the Scottish Parliament.

Recommendation/Conclusion 7: *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.*

Response: The section 30 Order only relates to the regulation making powers in the Bill that relate to medicines and medical devices. The Bill contains a range of other regulation making powers that are outside the scope of the section 30 Order.

If the Bill is passed, and contains regulation-making powers authorised by the section 30 Order, it would not be possible for the Scottish Parliament to amend or repeal those regulation-making powers in a future session. The time limits within the section 30 Order mean that this would no longer be within the Scottish Parliament's legislative competence to do.

However, should the Scottish Parliament include such provisions, the Scottish Ministers would be able to revoke or amend the regulations that had been made under those powers subject to the agreement of the Secretary of State, in the relevant instances.