



The Scottish Parliament
Pàrlamaid na h-Alba

Delegated Powers and Law Reform Committee

Liam McArthur MSP
By email

T1.01
Chamber Office
EDINBURGH
EH99 1SP

Direct Tel: 0131-348-5212
(RNID Typetalk calls welcome)
(Central) Textphone: 0131-348-5415
DPLR.Committee@parliament.scot

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Dear Liam

Assisted Dying for Terminally Ill Adults (Scotland) Bill at Stage 1

The Delegated Powers and Law Reform Committee considered the delegated powers in the above Bill at its meeting on 28 May and agreed to write to you to seek further explanation on the following provisions.

Section 4(5)(a): Request for assistance: first declaration, and Section 6(6)(a): Medical practitioners' assessments

These powers enable the Scottish Ministers to make regulations specifying what qualifications and experience a registered medical practitioner must have in order to fulfil the role of “coordinating registered medical practitioner” or “independent registered medical practitioner” under the Bill.

Paragraph 18 of the [Delegated Powers Memorandum](#) (“DPM”) states that it is “important that the Scottish Ministers consult with relevant bodies as they consider appropriate, such as the General Medical Council and British Medical Association, to ascertain whether any such further qualifications and/or experience are considered appropriate and/or necessary and, if so, what they should be.”

The powers in section 4(5)(a) and 6(6)(a) are therefore subject to a requirement that Scottish Ministers must “consult such persons as they consider appropriate.”

The Committee asks the Member **why these sections do not require specific persons or bodies, such as the General Medical Council and/or the Chief Medical Officer for Scotland, to be consulted?**

The Committee also noted that these powers will be subject to the affirmative procedure upon first use and the negative procedure thereafter. The Committee asks **why the Member does not consider it appropriate to make every use of these powers subject to the affirmative procedure, given the significance of the roles of coordinating registered medical practitioners and independent registered medical practitioners within the assisted dying process provided for by the Bill?**

Section 15(8): Provision of assistance

Section 15 of the Bill makes provision to enable a terminally ill person to secure their own clinically assisted death by being provided with “an approved substance”. Section 15(8) defines “approved substance” as “such drug or other substance as is specified by the Scottish Ministers by regulations”. It therefore confers power on the Scottish Ministers to approve a substance which may be used for that purpose.

Paragraph 27 of the DPM states that “The Scottish Ministers, acting on the advice of their medical advisers, will be best placed to identify any such substances for approval by way of regulations.”

The Committee asks **why this power has not been made subject to a statutory requirement to consult the Chief Medical Officer for Scotland?**

Section 31(1): Ancillary provision

The Committee noted that this power will be subject to the affirmative procedure if it is used to amend an Act, and otherwise the negative procedure will apply. The Committee asks **why the Member does not consider that every use of this power should be subject to the affirmative procedure, given the significance and highly sensitive nature of the issues with which this Bill is concerned, and, by extension, the potential significance and sensitive nature of any ancillary provision which might be made under it?**

Section 32(2): Commencement

The Committee noted that Section 28 (regulation-making powers), section 29 (interpretation), section 31 (ancillary provisions), section 32 (commencement) and section 33 (short title) come into force the day after Royal Assent. Section 32 enables the Scottish Ministers, by regulations, to bring the remaining provisions of the Bill into force on such day as the Scottish Ministers may appoint.

The Committee expressed concern about the commencement of the substantive sections of the Bill in circumstances where there is no “approved substance” available to bring about assisted death. Specifically, the Committee was concerned that there might be a perception amongst the public that assisted dying would become available upon commencement of the Act when, in fact, it will not be possible unless and until some other contingency has occurred.

The Committee therefore asks **what consideration has the Member given to legal transparency in this regard, and the public perception regarding the practical consequences of commencing the Act?**

Finally, the Committee is mindful that the Scottish Ministers will play a key role in the implementation of the Act through the making of regulations whilst other prominent individuals,

such as the Chief Medical Officer for Scotland, will likely require to provide advice on various aspects of implementation. Section 18(1) of the Bill provides that “An individual is not under any duty (whether arising from any statutory or other legal requirement) to participate in anything authorised by this Act to which that individual has a conscientious objection”.

The Committee can envisage a situation in which either the relevant Scottish Minister or another prominent individual, such as the Chief Medical Officer for Scotland, might conscientiously object to assisted dying. **The Committee would welcome the Member’s thoughts on the potential problems which might arise in such a situation and how they might be addressed?**

I would be grateful if you could please email your response to dplr.committee@parliament.scot by **Friday, 19 July 2024**. The Committee will then consider your response at a future meeting and report on the delegated powers in the Bill to the lead committee.

Yours sincerely

Stuart McMillan MSP
Convener of the Delegated Powers and Law Reform Committee