

Assisted Dying for Terminally Ill Adults (Scotland) Bill

Delegated Powers Memorandum

Introduction

1. This Delegated Powers Memorandum has been prepared by the Non-Government Bills Unit, on behalf of Liam McArthur MSP, the member in charge of the Bill, in accordance with Rule 9.3.3B of the Parliament's Standing Orders in relation to the Assisted Dying for Terminally Ill Adults (Scotland) Bill ("the Bill"). It describes the purpose of each of the subordinate legislation provisions in the Bill and outlines the reasons for seeking the proposed powers.
2. The following other accompanying documents are published separately:
 - Explanatory Notes (SP Bill 46–EN);
 - a Financial Memorandum (SP Bill 46–FM);
 - a Policy Memorandum (SP Bill 46–PM);
 - statements on legislative competence made by the Presiding Officer and Liam McArthur MSP (SP Bill 46–LC).
3. This Memorandum has been prepared in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Parliament.

Outline of Bill provisions

4. The Bill makes it lawful for a terminally ill adult who meets specified eligibility criteria to voluntarily request, and be given, assistance by health professionals to end their life. The Bill establishes an assessment process and facilitates the provision of assistance to eligible terminally ill adults to end their life by self-administered means. The Bill is in 33 sections and has 5 schedules.
5. Sections 1 to 3 deal with the eligibility criteria which must be met in order for a terminally ill adult to be able to request, and be provided with, assistance to end their life in accordance with the provisions of the Bill.

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6. Sections 4 to 14 set out the preliminary procedural steps which must be taken, and how eligibility will be assessed and determined, in order for a person to be given assistance to end their life.

7. Sections 15 to 20 deal directly with the provision of assistance to an eligible terminally ill adult for them to end their life by self-administered means, and the requirements after an assisted death has occurred. This includes setting out that the Bill does not compel anyone to participate in the process if they have a conscientious objection to doing so and providing that it is not a crime to provide an eligible person with assistance where the requirements of the Bill have been met, and that there is also no mirroring civil liability.

8. Sections 21 to 33 deal with various general and final provisions which include making it an offence to coerce or unduly pressure a terminally ill adult into requesting an assisted death, provisions relating to the collection and reporting of data and statistics, the publication of an annual report, and a requirement to review the Act after five years of operation. Section 28 deals with the regulation-making powers in the Bill and sets out which Parliamentary procedure each power is subject to.

9. Schedules 1 to 4 contain the forms which are required to be completed, signed and witnessed at various stages of the process. These consist of a first and second declaration form, in which a terminally ill adult is requesting an assisted death, two medical assessment statement forms, to be completed by registered medical practitioners, and a final statement form, to be completed after a death has taken place. Schedule 5 sets out reasons why a person is disqualified from being a witness or proxy for the purposes of the Bill.

10. Further information about the Bill's provisions is contained in the Explanatory Notes, Policy Memorandum and Financial Memorandum.

Rationale for subordinate legislation

11. The Bill contains ten delegated powers provisions (nine regulation-making powers and one power to issue guidance), described in more detail below.

12. The Bill contains a "Regulation-making powers" section (section 28) which sets out the procedure relevant for each power taken. Section 28 further allows the Scottish Ministers to make incidental, supplementary, consequential, transitional, transitory or saving provision when making any regulations under the delegated powers set out in the Bill. This is to provide the Scottish Ministers with sufficient powers to ensure the effective operation of the assisted dying scheme, whatever stage of the process a terminally ill adult may be at.

13. The Bill establishes a new lawful process for providing assistance to terminally ill adults to voluntarily end their own life. The Bill does not amend existing legislation, and the powers contained in the Bill are new, with no existing powers being amended or

repealed. The powers are explained in detail in the following paragraphs, but in considering if and how provision should be set out in subordinate legislation rather than on the face of the Bill the Member has had regard to—

- the need to strike a balance between the importance of ensuring full Parliamentary scrutiny of the core provisions of the Bill and making proper use of Parliamentary time;
- the relatively better position of the Scottish Ministers when compared with an individual Member in making decisions on the best use of public resources to meet objectives;
- the possible requirement to make further provision over time, as the new legislation establishes itself, to ensure that where a need is identified to address practical matters of detail, or to make other refinements so as to assist the effective operation of the Bill, or where other unexpected circumstances arise which require a legislative solution, then these can be readily taken forward by means of subordinate legislation.

14. The delegated powers provisions are listed below, with a short explanation of what each power allows, why the power has been taken in the Bill, and why the selected form of Parliamentary procedure has been considered appropriate.

Delegated powers

Section 4(5)(a): Request for assistance: first declaration

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: First regulations affirmative, any subsequent regulations negative

Provision

15. Section 4 sets out the process a terminally ill adult must follow to make a first declaration that they wish to be provided with assistance to end their life. The section establishes the role of the “coordinating registered medical practitioner” who is the doctor that will take on the lead role in overseeing the assisted dying process for a particular terminally ill adult, and who will be the first of up to two doctors who will assess whether a person is eligible and can be provided with assistance to end their life. The coordinating registered medical practitioner also witnesses the signing of the first and second declaration forms, attends on the day of the planned death and provides an approved substance to the terminally ill adult to take to end their life (or authorises another registered medical practitioner or registered nurse to do so), completes a final statement after an assisted death, and is responsible for ensuring that all relevant forms are recorded on the adult’s medical records.

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16. Section 4(5) defines a “coordinating registered medical practitioner” for the purposes of the Bill as: in subsection (5)(a), “a registered medical practitioner who has such qualifications and experience as the Scottish Ministers may by regulations specify”; and, in subsection (5)(b), a registered medical practitioner who has confirmed with the terminally ill adult that they are willing to act as the coordinating registered medical practitioner and fulfil the functions of that role as provided for in the Bill (in practice it is expected that the coordinating registered medical practitioner may often be a terminally ill adult’s GP or specialist care doctor).

Reason for taking power

17. The Bill creates the role of, and defines for the purposes of the Bill, a “coordinating registered medical practitioner”. “Registered medical practitioner” is a term defined in the Interpretation and Legislative Reform (Scotland) Act 2010 as, “a fully registered person within the meaning of the Medical Act 1983 (c. 54) who holds a licence to practise under that Act.” The 1983 Act established a mandate for the General Medical Council to maintain a register of doctors in the UK.

18. The Member believes that coordinating registered medical practitioners might require a particular level of experience to fulfil the role provided for in the Bill. This is to ensure that the public and anyone wishing to access assistance can have the fullest confidence that the assisted dying process is carried out in the safest way possible. Medical doctors already have to meet a number of requirements in order to be fully registered and hold a licence to practice. A full registration with a licence to practise enables them to either move on to the second year of the Foundation Programme in an approved training programme, or to work in unsupervised medical practice in the NHS or UK private practice. However, an additional level of experience (that might be for example that the coordinating registered medical practitioner should have completed foundation year two or be a specialist in the person’s terminal illness) might be considered necessary for the coordinating registered medical practitioner to have in order to fulfil the role set out in the Bill (as explained above). Such qualifications and experience are most appropriately left for Scottish Ministers to determine and regulate for via secondary legislation. It is further considered 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 Bill therefore requires (in section 4(6)) that any regulations made under this section are consulted on.

Choice of procedure

19. Section 28(3)(a) provides that regulations under section 4(5)(a) that specify for the first time what qualifications and experience a coordinating registered medical professional should have are subject to the affirmative procedure. The level of scrutiny that this procedure provides to the Parliament reflects the significance of this safeguard in the assisted dying process. Section 28(2) sets out that subsequent regulations are subject to the negative procedure. It is expected that Scottish Ministers, when first deciding on the level of qualifications and experience for the coordinating registered

medical practitioner, which is a key role in the assisted dying process provided for by the Bill as outlined above, will cover all aspects of it comprehensively. This is underpinned by the above mentioned requirement to consult with relevant stakeholders, thus further ensuring that qualifications and other requirements on the level of experience that doctors performing this important role in the process should have are considered exhaustively and set appropriately. However, some adjustments may need to be made over time as the assisted dying scheme develops and evolves. Any such later adjustments would require the making of further regulations. The Member considers that the negative procedure is the appropriate level of scrutiny for such modifying regulations that ensures the best use of Parliament's time. Finally, it is worth noting that the Scottish Ministers are required to consult appropriate stakeholders prior to the making of any regulation under this provision of the Bill, even those subject to the negative procedure.

Section 5(3): Requirement for proof of identity

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Negative

Provision

20. Section 5 requires a terminally ill adult to provide two forms of proof of identity to the coordinating registered medical practitioner and witness when making a first declaration to request assistance to end their life. This is to enable the coordinating registered medical practitioner and witness to establish the requesting person's identity and to ensure that there is no dispute that the person making the declaration is who they say they are and who the doctor and witness believes them to be. Section 5(3) gives Scottish Ministers the power to make regulations to specify what forms of proof of identity are acceptable for this purpose.

Reason for taking power

21. Rather than set out an exhaustive list of acceptable forms of proof of identity on the face of the Bill, it was considered appropriate to leave this level of detail to secondary legislation. This will allow the Scottish Ministers to ensure consistency with other similar processes and make it easier for the list to be amended in future if considered necessary, thus providing flexibility.

Choice of procedure

22. Under section 28(2), regulations made under section 5(3) are subject to the negative procedure. The power set out in section 5(3), enabling the Scottish Ministers to specify what forms of proof of identity are acceptable to allow a person to prove their identity when requesting assistance to end their life under Bill provisions, is administrative in nature and not of such significance as to require the affirmative procedure. The negative procedure is therefore considered to be appropriate.

Section 6(6)(a): Medical practitioners' assessments

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: First regulations affirmative, any subsequent regulations negative

Provision

23. Section 6 makes provision for two registered medical practitioners to assess, independently of each other, whether a terminally ill adult who has made a first declaration for assisted dying meets the requirements under the Bill to be provided with assistance to die. The process involves the coordinating registered medical practitioner assessing the adult first, and, if satisfied, referring the person to an independent registered medical practitioner for a second assessment. This second assessment is concerned with assessing that the adult is terminally ill (i.e. that they are suffering from an advanced and progressive disease, illness or condition from which they are unable to recover and that can reasonably be expected to cause their premature death), has sufficient capacity to make the request, and that they are acting of their own free will, without coercion or undue pressure. Section 6(6)(a) mirrors the similar provision set out above in section 4(5)(a) for the coordinating registered medical practitioner. It enables the Scottish Ministers to make regulations specifying what qualifications and experience a registered medical practitioner must have in order to fulfil the role set out in the Bill for the independent registered medical practitioner. Note that the role of the independent registered medical practitioner is more limited than that of the coordinating registered medical practitioner, as it is confined to conducting a second assessment of the terminally ill adult as described above.

Reason for taking power

24. This power is taken on a similar basis as that set out above for section 4(5)(a) – as applicable to the role of the independent registered medical practitioner (i.e. that Scottish Ministers are better placed to determine, in consultation with relevant health bodies, whether the power needs to be used and, if so, how).

Choice of procedure

25. Although the role of the independent registered medical practitioner is more limited than that of the coordinating registered medical practitioner, it is a crucial part of the process of assessing whether the terminally ill adult is able to be provided with assistance. Only if both registered medical professionals are of the view that the person is terminally ill, has capacity, and has made the first declaration voluntarily and without coercion and undue pressure, can the person move on to the next step in the process. It is therefore considered important that any qualifications and experience that Scottish Ministers determine the independent doctor should have (after consulting with relevant stakeholders) are subject to appropriate Parliamentary scrutiny. Therefore, the same approach has been taken as is the case with regulations made under section 4(5)(a). Therefore, under section 28(3)(a) of the Bill first regulations under this provision are

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made subject to the affirmative procedure, and as set out in section 28(2), any subsequent regulations made are subject to the negative procedure. Again, all regulations made under the power are subject to the consultation requirement.

Section 15(8): Provision of assistance

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Provision

26. Section 15 deals with the provision of assistance to a terminally ill adult who has been assessed as being eligible under the provisions in the Bill so that they can voluntarily end their life by self-administered means. Section 15(1) details that the coordinating registered medical practitioner, or an authorised medical practitioner, can provide the terminally ill adult with an approved substance to end their own life, provided that the conditions set out in subsections (2) and (3) are met. Section 15(8) sets out that such an approved substance means “such drug or other substance as is specified by the Scottish Ministers by regulations”.

Reason for taking power

27. The Member considers it appropriate that any substance used to lawfully provide assistance to a terminally ill adult to voluntarily end their own life should be regulated by the Scottish Ministers and approved by the Scottish Parliament. 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. As explained in paragraph 7 of the Policy Memorandum, the Scottish Ministers can approve only such substances under section 15(8) that are not regulated by or under the Misuse of Drugs Act 1971 or the Medicines Act 1968 or if, if they are so regulated, their use for assisted dying purposes has been approved under those Acts. The Member further considers that setting out what an approved substance is for the purpose of this Bill by way of regulations provides for legal certainty.

Choice of procedure

28. Section 28 provides that regulations under section 15(8) are subject to the affirmative procedure. This is considered appropriate, given that this power is concerned with what substance or substances can be provided to, and used by, an eligible terminally ill adult to end their own lives. It should be noted that sections 19 and 20 of the Bill provide that it is not a crime to provide assistance to a terminally ill adult under the provisions set out in the Bill. Therefore, only providing an approved substance, as set out in regulations laid by Scottish Ministers and approved by the Scottish Parliament, would be lawful. The provision of an unapproved substance would remain unlawful.

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29. As such, given the importance of ensuring that only lawfully available and appropriate substances are used, that will result in a humane and as pain free death as is possible, it is considered that the affirmative procedure is the appropriate level of parliamentary scrutiny and approval.

Section 23(1): Guidance

Power conferred on: Scottish Ministers

Power exercisable by: Guidance

Parliamentary procedure: None

Provision

30. Section 23(1) enables the Scottish Ministers to prepare and publish guidance regarding the operation of the Bill. It is intended that this would be guidance of a practical nature. This acknowledges that guidance of a distinctly clinical nature should be a matter for the GMC and other regulatory and professional health bodies. Section 23(2) lists some areas on which guidance may be issued, and subsection (3) requires Ministers to consult with any organisations/people they consider relevant and appropriate. Subsection (4) requires anyone carrying out functions under the Act to have regard to any guidance issued. Subsection (5) allows Ministers to revise guidance (any revised guidance must be published).

Reason for taking power

31. The Member is aware that providing for eligible terminally ill adults to be lawfully provided with assistance to end their own life will be a significant step and will see Scotland become the first part of the UK to have a legalised model of assisted dying in place. Although care has been taken to shape the provisions in the Bill, using experience from jurisdictions where assisted dying is lawful, the Member thinks it prudent to allow for the Scottish Ministers to be able to issue guidance on practical operational matters, as health professionals and health services in Scotland begin to operate the assisted dying process, and provide assistance to terminally ill adults to end their lives. This allows the Scottish Ministers to react and respond to practical experience and to consult the views of health professionals and bodies. The Member thinks it equally important that the public and anyone who may wish to consider and/or enter the assisted dying process is aware of and well informed about the process (section 23(2)(e) includes the provision of information about the assisted dying process for the public and terminally ill adults as guidance which the Scottish Ministers may prepare and publish),

Choice of procedure

32. The Scottish Ministers require this power to make guidance relevant to the Bill as detailed above. As such, given it makes provision for guidance and not regulation, no procedure is considered necessary. Guidance does not have the force of law, so requiring the Parliament to scrutinise guidance would not, in the Member's view, be an effective use of Parliamentary time.

Section 24(5): Provision of information by Public Health Scotland to Scottish Ministers

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Negative

Provision

33. Section 24 requires Public Health Scotland (PHS) to report specified information annually to the Scottish Government. The information required is set out in section 24(2) and relates to the number of declarations made and the number of assisted deaths that take place. The data is to be broken down by various characteristics set out in section 24(3). The report is also to include, where known, reasons given by terminally ill adults for requesting, or cancelling a request, for being provided with assistance to end their life. Section 24(5) enables the Scottish Ministers to regulate to amend (add, vary or remove) the information that PHS must include in the report, as set out in section 24(2), and/or the characteristics by which the data must be broken down, as set out in section 24(3). The purpose of the PHS report is to inform annual reports, and a five-year review report, which the Bill requires the Scottish Government to publish (see sections 26 and 27). Note that section 24(4) states that the PHS report to the Scottish Ministers must not contain information that would, or might, disclose the identity of a person. In other words, the information provided to the Scottish Government by PHS must be anonymous. Therefore, any subsequent regulations must not amend the information and/or characteristics to be reported in any way that disclosed the identity of a person.

Reason for taking power

34. It is considered appropriate for the Bill to set out statistical information that the Member in charge of the Bill believes PHS should collect and report to the Scottish Government, to inform the Government's annual reports and five-year review report. However, while the Member has made best efforts to set out what he considers to be relevant information, it is possible that changes may be required over time, for example to respond to experience of the implementation and operation of the Act, or to respond to feedback from health professionals, patients and their families, or to societal changes. The power provided in section 24(5) reflects that it is considered that any such changes would be more efficiently and effectively made by secondary legislation, rather than by requiring the primary legislation to be amended.

Choice of procedure

35. The power provided in section 24(5) to add, vary or remove the data which PHS must collect, and the characteristics by which the data must be broken down, is considered to be broadly administrative and therefore it is considered that the negative procedure affords an appropriate level of scrutiny.

Section 25(1): Provision of information to Public Health Scotland

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Provision

36. Section 25 requires the Scottish Ministers to make regulations for the information detailed above (in section 24 of the Bill – the information PHS must report to the Scottish Government) to be provided to PHS.

37. The Bill requires various data to be gathered during the assisted dying process to assist and support health professionals in operating the assisted dying scheme and added to the terminally ill adult's medical record. This data is captured on forms set out in schedules 1-3 of the Bill (a first and second declaration form and first and second medical practitioner's statements), as well as a final statement, to be completed after the person's death and in the form set out in schedule 4). Some of the data captured includes personal data (including sensitive data relating to state of health) of the terminally ill adult making the request for end-of-life assistance, along with personal data of health professionals involved, required witnesses to the first and second declaration forms, and any proxy who may sign first and/or second declaration forms on behalf of the terminally ill adult.

38. PHS is to report anonymised statistical information related to the data captured during the process and stored in medical records to the Scottish Government, as detailed above. Provision is therefore required regarding how relevant information is to be provided to PHS to enable it to fulfil its own duty to report to the Scottish Government. As set out in subsection (2), regulations may contain provision about what information must be provided and by whom, and the circumstances in which the information must or may not be provided.

39. Subsection (3) enables the Scottish Ministers, by way of regulations made under section 25(1), to include a prohibition on the disclosure of information and to make it an offence to breach such a prohibition. Where regulations made under this section create an offence, subsection (4) sets limits through setting out that they may only be publishable by summary conviction and setting a maximum penalty and fine.

40. Subsection (5) contains a consultation requirement prior to making regulations.

Reason for taking power

41. The Member considers that the Scottish Government, in consultation with relevant health partners, is best placed to regulate for how the information required by PHS is to be provided to PHS. This source information will be included in the terminally ill adults' medical records and so will in many cases be held by medical practices, doctors (including GPs) and the coordinating register medical practitioner in particular.

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The Member considers that the Scottish Ministers require this power as he recognises that the data collection and collation (including anonymising it) at source sits likely best at whatever operational level the service is delivered, and therefore any detail on this is best left to the Scottish Ministers. Further to this, PHS is the body responsible at national level for the public health domains of health improvement, health protection and health care improvement, and is already supported by a range of data and intelligence functions. The Member is aware that PHS has extensive experience of gathering and using patient data for the purpose of creating health statistics. It currently does so for the purpose of creating abortion statistics, and the Member envisages that the data gathering for assisted dying purposes will likely follow similar established routes.

42. The power in section 25 is therefore sought to strike the right balance between the importance of collecting data to enable PHS to provide statistical information to the Scottish Government (with the ultimate aim to better inform considerations of the Bill's implementation) and the need for flexibility, achieving the most efficient outcome and ensuring that only strictly necessary data is provided to PHS. There are limits placed on the power, ensuring that it can only be provided for the purpose of the preparation of annual reports under section 24 of the Bill. As part of ensuring that only strictly necessary data is collected in the safest possible way, the Scottish Ministers require a power to make provision for the creation of a relevant offence. Subsections (3) and (4) however provide strict limits on the scope of such an offence.

Choice of procedure

43. Section 28(3)(c) provides that regulations under section 25(1) are subject to the affirmative procedure. This is considered the appropriate level of Parliamentary scrutiny for regulations which relate to source personal and special category data. This should provide reassurance that established, understood and appropriate methods of providing the information will be used, and ensure source data will be anonymised before being sent to PHS. This should ensure that the methods/process that will be used are appropriately secure, reliable and robust.

Section 30: Modification of declarations and statements

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Negative

Provision

44. Section 30 allows the Scottish Ministers to make regulations to modify the forms set out in schedules 1 – 4 of the Bill. These are the forms which record the various parts of the process and confirm outcomes where appropriate. They are: first declaration (where a terminally ill adult makes a first request to be provide with assistance); first medical practitioner's statement (assessing all aspects of the eligibility of the adult, and the voluntary nature of the request); second medical practitioner's statement (assessing eligibility regarding state of health and capacity, and the voluntary nature of the

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request); second declaration (where a terminally ill adult makes a second, final, request to be provided with assistance); and the final statement (which captures various details after taking an approved substance has resulted in death).

Reason for taking power

45. The forms set out in schedules 1-4 capture important information which will support and enable registered medical practitioners to be able to carry out the roles provided for in the Bill, in particular the process of assessing a terminally ill adult's eligibility to be provided with assistance to end their life. The Member recognises that these forms may require modification from time to time to react to practical experience, minor administrative matters, or other changes in circumstance. The power is therefore required to provide for the forms to be able to be changed via secondary legislation, rather than requiring changes to the primary legislation, or the risk of outdated or unsuitable forms continuing to be used.

Choice of procedure

46. As the modification of forms set out in schedules 1-4 of the Bill is expected to be a largely administrative matter (i.e. relating to how the forms are laid out, or varying types of information captured), and not altering any substantive requirement of the processes provided for under the Bill, it is considered that the negative procedure is appropriate.

Section 31(1): Ancillary provision

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative procedure if adding to, replacing or omitting any part of the text of an Act, otherwise negative procedure

Provision

47. Section 31(1) enables the Scottish Ministers by regulations to make any incidental, supplementary, transitional, transitory or savings provision they consider appropriate (including modifying any enactment and making different provision for different purposes) so as to give full effect to the Bill or any provision made under it.

Reason for taking power

48. As with any new body of law, the Bill may give rise to a need for a range of ancillary provision. While the Member has given careful consideration to the provisions of the Bill, it does represent a sizeable piece of legislation, which also requires significant engagement on the part of the Scottish Ministers to ensure that it can be fully and effectively operated. This power ensures that issues of an ancillary nature clearly within the scope and policy intention of the Bill which may arise can be dealt with effectively by the Scottish Ministers. Without such a power it would be necessary to

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return to the Parliament with another Bill to deal with any minor matters to properly give effect to a Bill already passed by the Parliament.

Choice of procedure

49. As set out in section 28(3)(d), regulations made under section 31(1) which add to, replace or omit any part of the text of an Act are subject to the affirmative procedure. Otherwise, and as set out in section 28(2), regulations made under this section are subject to the negative procedure. That approach is typical for ancillary powers of this type and reflects the fact that the Parliament should be able to carefully scrutinise any amendments to primary legislation, while ancillary changes to subordinate legislation are likely to be of a more technical nature and so merit a lesser degree of parliamentary scrutiny.

Section 32(2): Commencement

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Laid, no procedure

Provision

50. Section 32(1) specifies those provisions of the new Act which are to come into force on the day after Royal Assent (section 28 (regulation-making powers), section 29 (interpretation), section 31 (ancillary provision), section 32 (commencement), and section 33 (short title). The reason for sections coming into force the day after Royal Assent relates to section 4 of the Interpretation and Legislative Reform (Scotland) Act 2010¹, “Exercise of powers before commencement of Act of the Scottish Parliament” and will enable the Scottish Ministers to make any necessary preparation it considers necessary and appropriate before the regulation-making powers come into force.

51. Section 32(2) provides that the other remaining provisions are to come into force on such day as the Scottish Ministers may by regulations appoint.

Reason for taking power

52. It would not be advisable for the Bill’s substantive provisions to come into force immediately following Royal Assent. A period of time will be required for the Scottish Government and health services and professionals to prepare for the introduction of assisted dying in Scotland as provided for in the Bill (hence certain provisions coming into force the day after Royal Assent as explained above). The Member therefore considers that the Scottish Ministers are best placed to determine when the remaining provisions of the Bill should suitably be commenced. This will allow the Scottish Ministers to ensure any necessary preparatory work, and any subordinate legislation and/or guidance is in place to allow the assisted dying process to operate effectively,

¹ [Interpretation and Legislative Reform \(Scotland\) Act 2010 \(legislation.gov.uk\)](https://legislation.gov.uk).

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and for anyone who may wish to be provided with assistance to end their life to be made aware of, and understand, the new lawfully availability of assisted dying. It is usual practice for such commencement provisions to be dealt with by subordinate legislation.

53. Such provisions may require making transitional or transitory provision, or the saving of repealed or amended provisions, to allow for a smooth transfer. It is usual to enable such provision in conjunction with a power to commence the provisions of a Bill.

Choice of procedure

54. Commencement regulations bring into force provisions, the substance of which have already been considered by the Scottish Parliament during the passage of the Bill. Any regulations under this section will be laid before the Scottish Parliament as soon as practicable after being made (and in any event before the legislation is due to come into force).

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