

20 February 2026

Dear Annabel,

Thank you for your letter. I understand the main concerns that you have raised in relation to Liam McArthur's Assisted Dying for Terminally Ill Adults (Scotland) Bill. I recognise that, were the Bill to be passed by the Scottish Parliament, it will be a significant clinical change from the way services are currently delivered at the end of life, including palliative care services. The Cabinet Secretary for Health and Social Care is also very aware of these issues.

I agree that any assisted dying service, if Parliament were to legislate in this area, would need to be clinically safe, acceptable and workable for all concerned in Scotland. Should the Bill be passed, it would be essential to involve clinicians, including those providing palliative care and care around death, as well as others involved in service delivery, in the development of any guidance required to support implementation.

On the issue of legislative competence, as I am sure you are aware, it is the Scottish Government's view, as set out in the [memorandum](#) to the Health, Social Care and Sport Committee in September 2024, that there are provisions within the Bill that may be outside the legislative competence of the Scottish Parliament.

As set out in the memorandum, of particular concern is section 15(8), which gives power to the Scottish Ministers to specify, in regulations, a drug or other substance as an "approved substance" (to be provided to the terminally ill adult to end their own life). This appears to relate to the reserved matter of medicines, medical supplies and poisons (section J4 of schedule 5 of the Scotland Act 1998). Concerns were also raised around other provisions, such as qualifications and experience of registered medical practitioners, as well as conscientious objection provisions, potentially being outwith competence.

While the Scottish Government and the office of the Chief Medical Officer remains neutral on Mr McArthur's Bill, Scottish Government officials undertook to engage with the UK Government to try and resolve those legislative competence issues after the Parliament voted to pass the Bill at its Stage 1 vote in May last year. Work has taken place at pace to fulfil that commitment and a section 30 Order was agreed with the UK Government that gives the Scottish Parliament limited competence to legislate in relation to the identification and regulation of substances and devices for use in assisting terminally ill adults to voluntarily end their own lives.

As set out in the Cabinet Secretary's [letter](#) of the 16 January to the Delegated Powers and Law Reform Committee, provision in the Bill for the specification of approved substances is considered to be absolutely fundamental to the operation of the Bill and, additionally,

provision for identifying devices, as well as regulation of both substances and devices, is thought to be necessary for the Bill's workability. It was on that basis that it was agreed with the UK Government that these points would need to be dealt with by section 30 Order. This was approved by the Scottish Parliament on 5 February 2026, and is currently being considered by the UK Parliament.

As part of the Scottish Government's explanation to the Scottish Parliament around that section 30 Order, it was set out that the Order only goes some way to resolving the legislative competence issues with the Bill, and there will still be a need for a section 104 Order or other measures to resolve the remaining issues (recognising the UK Government's view that changes to legislative competence should, in general, be kept to a minimum and that, particularly in this case, going further than that which is necessary to ensure the workability of the Bill would not be in keeping with their position of neutrality on assisted dying).

Discussions around this are still ongoing, with a particular focus on the training, qualifications and experience provisions at sections 4(5)(a), 6(6)(a) and 15(8)(a) and provisions relating to employment duties, rights and protections at section 18.

Section 15(1A) of the Bill, which was added by Stage 2 amendment, is also considered to potentially fall outside the competence of the Scottish Parliament, but there are also practical issues with this provision and so the proposal is that, for practical reasons, that provision should be removed from the Bill by way of amendment at Stage 3.

The Scottish Parliament Information Centre has provided a very useful [explainer](#) on Orders made under section 30 and section 104 of the Scotland Act 1998. By their nature, section 104 Orders are made as a consequence of an Act of the Scottish Parliament, and so would need to be agreed to be laid in the UK Parliament after the Royal Assent of the Bill, should it pass. As such, and in order to ensure any Bill passed by the Scottish Parliament is within legislative competence, it will be necessary to remove provisions from the Bill during Stage 3 considerations.

I understand that this has raised concerns, and that you are seeking reassurances and clarity around what a future section 104 Order will cover. Ultimately, a section 104 Order will be for the UK Government to lay before the UK Parliament, although the Scottish Government would continue to work closely with the UK Government, should the Bill pass, to seek agreement on the final content of such an Order.

Further to the above, you may also wish to note that the Cabinet Secretary wrote a [letter](#) to the Health, Social Care and Sport Committee on 4 February to set out the approach that the Scottish Government will be taking at Stage 3 of the Bill's passage through the Scottish Parliament.

In summary, given the Scottish Government's neutral position, it has been confirmed that amendments will be prepared to try to ensure that the Bill is within the legislative competence of the Scottish Parliament, as well as amendments aimed at ensuring the Bill is technically and practically workable (so long as these do not stray into ethical areas). However, the intention is that the Scottish Government will only lodge those amendments that are in consequence of the section 30 Order. The remainder of the amendments prepared will be offered to Mr McArthur to lodge, if he wishes to do so.

I hope that you find the above information helpful.

Yours sincerely,



Professor Sir Gregor Smith
Chief Medical Officer for Scotland