Draft Order in Council laid before Parliament and the Scottish Parliament under paragraphs 1 and 2 of Schedule 7 to the Scotland Act 1998, for approval by resolution of each House of Parliament and of the Scottish Parliament.

DRAFT STATUTORY INSTRUMENTS

2026 No.

CONSTITUTIONAL LAW

DEVOLUTION, SCOTLAND

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

Made - - - - ***

Coming into force in accordance with article 1(1)

At the Court at Buckingham Palace, the day of

Present,

The King's most excellent Majesty in Council

This Order is made by His Majesty in Council in exercise of the power conferred upon Him by section 30(2) of the Scotland Act 1998(**a**).

In accordance with paragraphs 1 and 2 of Schedule 7 to that Act(**b**) a draft of this Order has been—

(a) laid before and approved by a resolution of each House of Parliament; and

(b) laid before and approved by a resolution of the Scottish Parliament.

Accordingly His Majesty, by and with the advice of His Privy Council, makes the following Order.

Citation, commencement and extent

1.—(1) This Order may be cited as the Scotland Act 1998 (Modification of Schedule 5) Order 2026 and comes into force on the day after the day on which it is made.

(2) This Order extends to England and Wales, Scotland and Northern Ireland.

(**a**) 1998 c. 46.

(**b**) Paragraphs 1 and 2 of Schedule 7 have been modified by paragraph 3(2) of schedule 4 to the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10).

Assisted dying: identification and regulation of substances and devices

2. In Part 3 of Schedule 5 to the Scotland Act 1998 (reserved matters: general provisions), after paragraph 4 insert—

"Assisted dying: identification and regulation of substances and devices

4A (1) This Schedule does not reserve the conferral of a power on the Scottish Ministers to identify, by way of subordinate legislation made with the agreement of the Secretary of State, substances or devices for use in assisting terminally ill adults to voluntarily end their own lives.

(2) This Schedule does not reserve the conferral of a power on the Secretary of State to regulate such substances or devices by way of subordinate legislation made without the agreement of the Scottish Ministers or any other person (except Parliament).

(3) The exceptions created by sub-paragraphs (1) and (2) apply only in relation to a provision that is contained in an Act of the Parliament resulting from a Bill passed on or before 7 May 2026.

(4) The exceptions created by sub-paragraphs (1) and (2) do not apply in relation to a provision that—

(a) mandates or restricts—

(i) the substances or types of substances that may be identified;

(ii) the devices or types of devices that may be identified;

(iii) how the substances or devices may be regulated;

(b) mandates or restricts the period within which subordinate legislation may be made or agreed to;

(c) imposes a duty on the Secretary of State.

(5) In sub-paragraph (4)(c), the reference to imposing a duty on the Secretary of State does not include reference to—

(a) requiring that subordinate legislation be made by statutory instrument to which the Statutory Instruments Act 1946(**a**) applies, or

(b) providing that subordinate legislation may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.".

Name
Clerk of the Privy Council

(**a**) 1946 c. 36.

EXPLANATORY NOTE

(This note is not part of the Order in Council)

This Order modifies Schedule 5 to the Scotland Act 1998 (c. 46). Schedule 5 defines reserved matters for the purposes of that Act (matters which are outside the legislative competence of the Scottish Parliament).

Article 2 provides for a general exception to the list of reserved matters in Schedule 5. This exception 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. The conferral of competence on the Scottish Parliament is time limited in that it only extends to provision contained in an Act of the Scottish Parliament which results from a Bill passed by the Parliament before 7 May 2026.

The exception is limited to the extent that it allows the Scottish Parliament to:

- confer a power on the Scottish Ministers to identify substances or devices, by way of subordinate legislation with the agreement of the Secretary of State, and
- confer a power on the Secretary of State to regulate such substances or devices, by way of subordinate legislation.

In conferring powers to make subordinate legislation, the Scottish Parliament may not mandate or restrict the content of such legislation, or the period within which such subordinate legislation may be made or, as the case may be, agreed to by the Secretary of State.

Any conferral of power on the Secretary of State to make subordinate legislation may not be made conditional upon the agreement of any person, including the Scottish Ministers. Further, the conferral of competence does not extend to imposing any duty on the Secretary of State. However, this does not prevent the Scottish Parliament making provision with respect to the Parliamentary processes which are to apply to any subordinate legislation.

An impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sectors is foreseen.

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