EXPLANATORY MEMORANDUM TO

THE SCOTLAND ACT 1998 (MODIFICATION OF SCHEDULE 5) ORDER 2026

2026 No. [XXXX]

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Scotland Office and is laid before Parliament by Command of His Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Declaration

2.1 Douglas Alexander, Secretary of State at the Scotland Office confirms that this Explanatory Memorandum meets the required standard.

2.2 Rachel Irvine, Deputy Director for Constitutional Policy at the Scotland Office confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Cat Carrigan at the Scotland Office can be contacted by email at the following address with any queries regarding the instrument: enquiries@ukgovscotland.gov.uk.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 Schedule 5 to the Scotland Act 1998 lists the matters that are reserved to the UK Parliament. This Order will amend Part 3 of Schedule 5 to provide a time limited exception to reserved matters in respect of the identification and regulation of substances and devices for use in assisting terminally ill adults to voluntarily end their own lives (hereafter referred to as 'assisted dying'). This exception will apply to provision so long as it is contained in an Act of the Scottish Parliament that originates from a Bill passed on or before 7 May 2026.

4.2 Specifically, the Order provides that the Scottish Parliament may competently confer powers on the 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. Furthermore, the Order provides that the Scottish Parliament may competently confer powers on the Secretary of State to regulate such substances and devices, by subordinate legislation. 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, nor can any duties be imposed on the Secretary of State. In conferring powers to make subordinate legislation on the Scottish Ministers or Secretary of State, 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. However, the Scottish Parliament is not prevented from making provision with respect to the Parliamentary processes which are to apply to any subordinate legislation.

4.3 This is a technical and time-limited action which is being taken to enable the Scottish Parliament to further consider legislation on assisted dying, in its current Parliamentary session, with an understanding of how matters relating to the identification and regulation of substances and devices to be used within an assisted dying service can be addressed. These matters have been identified as matters which are currently outside the competence of the Scottish Parliament.

Where does the legislation extend to, and apply?

4.4 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is the United Kingdom.

4.5 The territorial application of this instrument (that is, where the instrument produces a practical effect) is the United Kingdom.

5. Policy Context

What is being done and why?

5.1 A Bill on assisted dying is currently before the Scottish Parliament. The Assisted Dying for Terminally Ill Adults (Scotland) Bill ("the Bill") is a Member's Bill, which was introduced by Liam McArthur MSP (Liberal Democrats) in March 2024, and passed the Stage 1 vote in the Scottish Parliament in May 2025. As introduced, the Bill would allow terminally ill adults, in Scotland, to lawfully request, and be provided with, assistance by health professionals to end their own life.

5.2 Section 29 of the Scotland Act 1998 provides that a provision of an Act of the Scottish Parliament is outside the competence of the Scottish Parliament, and so not law, if it relates to reserved matters. The UK Government and the Scottish Government consider that provision which allows for the identification and regulation of substances approved for use in an assisted dying service would relate to the reserved matter of medicines, medical supplies and poisons (section J4 of Schedule 5 to the Scotland Act 1998). The Bill currently before the Scottish Parliament contains such provision, in that it seeks to confer powers on the Scottish Ministers to specify substances approved for use in an assisted dying service. Similarly, both Governments agree that the identification and regulation of devices which may be used in the administration of such substances is also reserved and therefore, currently outside the competence of the Scottish Parliament.[1] The Bill currently before the Scottish Parliament would allow for the use of medical devices in the administration of substances.

5.3 The Scottish Government requested the UK Government agree to take legislative action to address this competence concern. The UK and Scottish Governments agree that the decision on whether to introduce assisted dying in Scotland is a matter for the Scottish Parliament. Both Governments recognise matters concerning substances and devices interact with reserved matters. The reserved consequences of an Act of the Scottish Parliament are often dealt with by way of consequential subordinate legislation under section 104 of the Scotland Act 1998. However, following discussions with the Scottish Government, the UK Government has agreed to make a limited, technical change to the Scotland Act 1998 by way of an order under section 30 of the Scotland Act 1998. This action will allow Members of the Scottish

[1] The identification and regulation of medical devices may relate to the reserved matters of product standards, safety and liability (section C8 of Schedule 5 to the Scotland Act 1998) and medicines, medical supplies and poisons (section J4 of Schedule 5 to the Scotland Act 1998).

Parliament to further consider the Bill with clarity as to how the matter of substances and devices, which may be used for assisted dying in Scotland, could be dealt with.

5.4 The Scottish Parliament will be enabled to confer powers to make regulations with respect to substances and devices. These powers can either be conferred on the Scottish Ministers, with the Secretary of State's agreement, or on the Secretary of State, depending on their purpose. The limited nature of this approach means that the Scottish Parliament is given the power needed to create an overall framework for the use of substances and devices in assisted dying. This approach would allow UK Ministers to maintain an appropriate role in the matter, in recognition of the need to maintain consistency for regulation of medicines and devices across the UK. This Order is being taken forward in recognition that both Governments are neutral on the matter of assisted dying and the understanding that whether to make such provision remains a matter for the Scottish Parliament.

5.5 The Scottish Parliament is due to be dissolved in April 2026 ahead of the Scottish Parliament elections in May 2026. This change to the Scotland Act 1998 is being made on a time-limited basis for the purposes of the Scottish Parliament considering the Bill prior to dissolution.

What was the previous policy, how is this different?

5.6 Whilst the UK and Scottish Governments are neutral on the policy of assisted dying, considering it to be a matter of conscience for the respective Parliaments to decide, the Governments recognise that legislation on assisted dying would likely involve the Scottish Parliament considering the identification and regulation of substances which may be used as part of the process of assisting terminally ill adults, who are eligible, in Scotland to end their own lives. However, the Governments agree that, currently, the Scottish Parliament cannot competently make provision in that regard due to it relating to reserved matters. The same is also the case with respect to devices.

5.7 The difference, as a consequence of this Order, is that the Scottish Parliament will have competence to make particular provision in respect of the identification and regulation of substances and devices for use in assisted dying, on a narrow and time-limited basis.

6. Legislative and Legal Context

How has the law changed?

6.1 The Scottish Parliament does not have the competence to make provision which relates to reserved matters. Schedule 5 to of the Scotland Act 1998, and specifically section J4, reserves the matter of medicines, medical supplies and poisons, which includes the subject matter of the Medicines Act 1968. Any provision that relates to this matter, or any other reservation, is outside the competence of the Scottish Parliament. It is a matter of agreement between the UK and Scottish Governments that it is outside the legislative competence of the Scottish Parliament to make provision in respect of the identification and regulation of substances and devices for use in assisted dying as such provision would relate to the reserved matters of product standards, safety and liability (section C8 of Schedule 5), and medicines, medical supplies and poisons (section J4 of Schedule 5).

6.2 This Order provides for a limited exception to the list of reserved matters in Schedule 5 of the Scotland Act 1998 in respect of the identification and regulation of substances and devices for use in assisted dying. This exception will allow the Scottish

Parliament to competently make provision in that regard, subject to certain requirements.

6.3 Following this Order, the Scottish Parliament will be able to:

- confer a power on the Scottish Ministers to identify substances and devices for use in assisting a terminally ill adult to voluntarily end their own life, by way of subordinate legislation. Such subordinate legislation must be made with the agreement of the Secretary of State.
- confer a power on the Secretary of State to regulate such substances and devices. The exception does not allow the Scottish Parliament to make any subordinate legislation made by the Secretary of State conditional upon the agreement of any person, including the Scottish Ministers nor does it allow for the imposition of any duties on the Secretary of State.

6.4 In conferring such powers to make subordinate legislation, the Scottish Parliament will not be able to mandate or restrict the content of the subordinate 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. However, the Scottish Parliament will be able to make provision with respect to the Parliamentary processes which are to apply to any subordinate legislation.

6.5 Finally, the exception being inserted into Schedule 5 contains a sunset clause such that the Scottish Parliament will only have the legislative competence to make provision if it is contained in an Act of the Scottish Parliament resulting from a Bill passed before 7 May 2026. In other words, the Scottish Parliament will have the competence to pass a Bill in its current Parliamentary session only.

6.6 This change to Schedule 5 to the Scotland Act 1998 is being made in the context of the Assisted Dying for Terminally Ill Adults (Scotland) Bill which is currently being considered by the Scottish Parliament and in recognition of the neutral position of both Governments on the matter of assisted dying. The limited and technical nature of the exception to the list of reservations in Schedule 5 is in recognition of the need for continued alignment across the UK in respect of the regulation of medicines and devices.

Why was this approach taken to change the law?

6.7 Both the UK Government and Scottish Government are neutral on the matter of assisted dying, considering it a matter for respective Parliaments. Both Governments recognise it is a complex policy with strong views on both sides of the debate.

6.8 The reserved consequences of an Act of the Scottish Parliament are often dealt with by way of subordinate consequential legislation under section 104 of the Scotland Act 1998. Section 104 Orders are a form of subordinate legislation scrutinised by the UK Parliament and, in relation to Scottish Parliament Bills, they can only be made after a Bill receives Royal Assent. However, the UK Government and Scottish Government have agreed to introduce a limited and technical Section 30 Order under the Scotland Act 1998 because this dual Parliament order aims to provide the Scottish Parliament with the necessary power to legislate on the identification and regulation of substances and devices used in assisted dying, solely for the purposes of allowing the Scottish Parliament to scrutinise the Bill currently before it. This change is designed to retain the overall integrity of the UK-wide regimes in respect of medicines and medical devices, while allowing the Scottish Parliament to consider whether it wishes to pass legislation which seeks to introduce assisted dying in Scotland, with the understanding of how these matters, which are considered outside of competence, will be handled.

7. Consultation

Summary of consultation outcome and methodology

7.1 No consultation has been carried out in relation to this Order. However, all amendments contained in this Order have the approval of the relevant UK Government departments and the Scottish Government.

8. Applicable Guidance

8.1 This instrument does not contain applicable guidance.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because this is a constitutional measure that concerns the conferral of legislative competence on the Scottish Parliament.

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities or voluntary bodies.

9.3 The legislation does not impact small or micro businesses.

9.4 There is no, or no significant, impact on the public sector.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 As the purpose of this Order is to amend the legislative competence of the Scottish Parliament, no monitoring or review of the effects of this Order are required by the UK Government. It is for the Scottish Parliament to consider how best to monitor and review legislation within its legislative competence. Any secondary legislation introduced as a consequence of legislation in the Scottish Parliament will be scrutinised in the normal way.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 In taking forward this Order the UK Government is clear that the decision on whether to amend, approve or otherwise consider legislation that is before the Scottish Parliament is a matter for the Scottish Parliament. This is a dual Parliament order made under Section 30 of the Scotland Act 1998 and therefore requires the approval of both the UK and Scottish Parliaments.

12. European Convention on Human Rights

12.1 The Secretary of State has made the following statement regarding Human Rights: "In my view the provisions of the Scotland Act 1998 (Modification of Schedule 5) Order 2026 are compatible with the Convention rights.".

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").