

TERMINALLY ILL ADULTS (END OF LIFE) BILL

Supplementary Delegated Powers Memorandum

Introduction

1. The Sponsor has tabled amendments to the Terminally Ill Adults (End of Life) Bill for Lords Committee stage, including amendments to delegated powers in relation to the replacement of the coordinating and independent doctor. This supplementary memorandum has been prepared for the Delegated Powers and Regulatory Reform Committee to assist with its scrutiny of the Bill.
2. As the Government is neutral on the Bill, the Government has not provided a justification for why the powers have been taken or parliamentary procedure being applied but have instead provided consideration of matters which may affect whether Parliament considers these appropriate.
3. Should the Sponsor table relevant further amendments to the delegated powers in the Bill, the Government will publish further supplementary memoranda on these.

Amendments to Delegated Powers

Amendments to clause 14(1): Replacing the coordinating doctor on death etc.

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary Procedure: Negative Procedure

Context and Purpose

4. The sponsor amendment to clause 14(1) changes the power for the Secretary of State to make provision for the replacement of a coordinating doctor who dies or is unable or unwilling to carry out their functions under the Bill after a first declaration has been witnessed by them. The amendment clarifies the regulation-making power so that it applies in any case where the coordinating doctor needs to be replaced, rather than the power being potentially restricted to where the coordinating doctor is unable or unwilling to act due to death or illness.
5. The purpose of this power remains to make provision:
 - a. relating to the appointment, with the agreement of the person who made the first declaration, of a replacement coordinating doctor who meets the requirements of clause 11(8) and is able and willing to carry out the functions of the coordinating doctor; and

- b. to ensure continuity of care for that person despite the change in coordinating doctor (whatever the cause for the coordinating doctor ceasing to act).

Rationale for taking the power

6. It is understood that this amendment has been made to meet the recommendations of the Delegated Powers and Regulatory Reform Committee, which pointed to the apparent duplication between the delegated powers contained in clause 14(1) and those in clause 15(4). The Delegated Powers and Regulatory Reform Committee observed that the subject matter of this power was entirely within the scope of the identical power in clause 15(4). Whilst the identical power in clause 15(4) has been removed in a separate amendment, this amendment ensures that the power in clause 14(1) is clarified so that provision can be made for replacing the coordinating doctor in a wider range of circumstances than their death or illness.

Consideration of the procedure

7. As previously, regulations made under this clause are subject to the negative procedure. While the Government is neutral on the choice of the regulation making procedure, this level of parliamentary scrutiny reflects accepted practice in other legislation given the technical nature of the matters to be addressed in regulations, and the need to respond to any future changes to NHS structures and procedures.

Deletion of clause 15(4) and insertion of clause 15(2A): replacing the coordinating or independent doctor where unable or unwilling to continue to act

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary Procedure: Negative Procedure

Context and Purpose

8. It is understood that the purpose of the sponsor amendment to remove clause 15(4) is to meet the recommendations of the Delegated Powers and Regulatory Reform Committee, which pointed to the apparent duplication between the delegated powers contained in clause 14(1) and those in clause 15(4). The Delegated Powers and Regulatory Reform Committee observed that the subject matter of this power was entirely within the scope of the identical power in clause 15(4).
9. The purpose of the sponsor amendment to insert clause 15(2A) is to enable the Secretary of State to make provision about circumstances in which a coordinating

or independent doctor who is unable or unwilling to continue to carry out their functions is not required under subsection (2) to give notice to that effect. The circumstances that may be specified would include (but would not be limited to) circumstances where the doctor was too ill to give notice. This power can be used to make provision about what is to happen when it is not possible for the outgoing doctor to give notice. Provision which can be made under this new power is not within the scope of the power in clause 14(1).

Rationale for taking the power

10. It is understood that the power in clause 15(2A) has been taken to enable provision to be made about circumstances in which a coordinating or independent doctor who is unable or unwilling to continue to carry out their functions is not required under subsection (2) to give notice to that effect. The sponsor explains that the circumstances that may be specified would include (but would not be limited to) circumstances relating to the illness of the doctor concerned. Regulations under this power can make clear when the responsibilities of the outgoing doctor cease in such circumstances (and consequently when the responsibilities of the incoming replacement doctor commence).

Consideration of the procedure

11. As previously, regulations made under this clause are subject to the negative procedure. While the Government is neutral on the choice of the regulation making procedure, this level of parliamentary scrutiny reflects accepted practice in other legislation given the technical nature of the matters to be addressed in regulations, and the need to respond to any future changes to NHS structures and procedures.

Department of Health and Social Care

10 November 2025