

# **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 clause 43. 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 for the parliamentary procedure being applied, but has instead provided consideration of matters which may affect whether Parliament considers these appropriate.
3. Should the Sponsor table further relevant amendments to the delegated powers in the Bill, the Government will publish further supplementary memoranda on these.

### **Amendments to delegated powers**

#### **Amendments to clause 43: prohibition on advertising**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations made by Statutory Instrument*

*Parliamentary Procedure: Draft Affirmative Procedure*

### **Context and Purpose**

4. Clause 43, as drafted, requires the Secretary of State, via regulations, to make provision prohibiting: the publication, printing, distribution or designing of advertisements whose purpose or effect is to promote a voluntary assisted dying (VAD) service, or causing the publication (etc) of such advertisements (cl 43(1)). The regulations may contain exceptions (cl 43(2)) and may make any provision that could be made by an Act of Parliament (cl 43(3)), subject to the restrictions in subsection (4).
5. In its report, the Delegated Powers and Regulatory Reform Committee raised concerns about the scope of the current powers in clause 43. The Committee recommended the prohibition against advertising and offence of breaching it be on the face of the Bill, and the delegated power limited to providing for exceptions. It recommended the regulations remain subject to the affirmative

procedure. The Committee also recommended the Henry VIII power in clause 43(3) be removed.

6. The Sponsor has tabled multiple amendments in relation to advertising and clause 43. Amendment 771AA removes subsections (1) to (4) of clause 43. The amendments do not change subsection (5), which defines "*voluntary assisted dying service*" for the purposes of clause 43.
7. Amendment 771AA removes the delegated power in clause 43(1), which required the Secretary of State to make regulations making provision about prohibiting VAD advertisements. Amendment 771AA sets out offences in relation to VAD advertisements on the face of the Bill, which are contained in new subsections (1), (2), (3), (4) and (4A).
8. Amendment 771AA removes subsection (2). Please see paragraph 11 below, which provides further detail on the new Schedule inserted by amendments 771AA and 943.
9. Amendment 771AA removes subsection (3), which provided that regulations made under clause 43 may make any provision that could be made by an Act of Parliament. This delegated power has not been replaced.
10. Amendment 771AA removes subsection (4), which previously provided for constraints on the delegated power. This has, in part, been replaced by new subsection (4C) of amendment 771AA which sets out the penalties a person who commits an offence under clause 43 may be liable to.
11. Amendments 771AA and 943 insert a new Schedule (*Advertising: further provision*). Paragraph 1 contains defences to the offences under clause 43, including a specific defence in paragraph 1(1)(a). Paragraph 1(1)(b) contains a new delegated power, which enables the Secretary of State to specify additional defences for the purpose of paragraph 1. This power is subject to the affirmative procedure (see amendment 865C).
12. Paragraphs 2 and 3 of the Schedule provide some exceptions for: (a) internet service providers; and (b) audiovisual services and radio broadcasting, respectively.
13. Paragraph 4 of the Schedule makes direct amendments to the Communications Act 2003.

#### Rationale for taking the power

14. It is understood that these amendments have been tabled to meet the recommendations of the Delegated Powers and Regulatory Reform Committee. This includes amendments 771AA and 943 which place the offences, exceptions and defences on the face of the Bill, in recognition of the Committee's concerns.
15. The Henry VIII power in cl 43(3) has been removed and has not been replaced. The Committee may wish to note that amendment 943 directly amends the Communications Act 2003; this requires Ofcom to take on new functions in relation to regulation of VAD advertisements on TV, radio and on-demand programme services, in line with its current remit. Additionally, amendment 681C provides that where an act relating to advertisement of a VAD service would not be an offence under clause 43, because of paragraph 1 of the Schedule, the act is not an offence under the Suicide Act 1961.
16. A delegated power in para 1(1)(b) of the new Schedule has been retained for the purpose of specifying further defence(s) to the offences under cl 43. This power will allow Government to, for example, address advances or changes in the advertising market which may give rise to a need to specify further defences via secondary legislation.

#### Consideration of the procedure

17. Regulations made under the new Schedule are subject to the affirmative procedure (see amendment 865C). While the Government is neutral on the choice of the regulation making procedure, this level of Parliamentary scrutiny reflects the Committee's concerns about the significant public interest in matters related to assisted dying.

**Department of Health and Social Care**

**XX March 2026**