LEGISLATIVE CONSENT MEMORANDUM

HEALTH AND SOCIAL CARE (SAFETY AND QUALITY) BILL

Draft Legislative Consent Motion

1. The draft motion, which will be lodged by the Cabinet Secretary for Health and Wellbeing, is:

“That the Parliament agrees that the relevant provisions of the Health and Social Care (Safety and Quality) Bill, introduced as a Private Members’ Bill in the House of Commons on 2 July 2014, relating to the regulation of healthcare professionals, so far as these matters fall within the legislative competence of the Scottish Parliament, should be considered by the UK Parliament.”

Background

2. This memorandum has been lodged by Shona Robison, Cabinet Secretary for Health, Wellbeing and Sport under Rule 9.B.3.1(b) of the Parliament’s standing orders. The Health and Social Care (Safety and Quality) Bill (“the Bill”) was introduced as a Private Members’ Bill (PMB) in the House of Commons on 2 July 2014. The Bill can be found at:

http://services.parliament.uk/bills/2014-15/healthandsocialcaresafetyandquality.html

Content of the Health and Social Care (Safety and Quality) Bill

3. The measures in the Bill are intended to address concerns about the quality of care services, particularly following serious failures in care such as those at Mid-Staffordshire NHS Foundation Trust and at Winterbourne View private hospital.

4. The Bill has three distinct strands, which together seek to improve patient safety. Specifically, the Bill aims to:

- help prevent regulated health and social care services causing their users avoidable harm by ensuring that the requirements for registration with the Care Quality Commission (CQC) always cover safety;
- improve the linkage and sharing of patient information between health and social care services to help ensure safer, more effective and integrated care; by requiring the use of a consistent patient identifier (such as the NHS number) in an individual’s health and care records and to require the appropriate sharing of information in support of people’s care;
- give the various health and social care professionals an overarching objective of public protection

5. The overall effect of the Bill will be to place a statutory obligation on health and social care bodies to consider the protection of the public. In practice this is already considered as paramount in the provision of care in Scotland so there will be little practical effect in Scotland as a result of the LCM.
Provisions which relate to Scotland

6. Although the majority of the Bill’s provisions affect England and Wales only, the provisions in Section 5 of the Bill, which amend the National Health Service Reform and Health Care Professions Act 2002 (Professional Standards Authority for Health and Social Care) (“the 2002 Act”) in relation to the Professional Standards Authority for Health and Social Care (PSA) extend to Scotland. The PSA oversees the system of professional regulation in the United Kingdom. Certain provisions of the Schedule relate to professions for which regulation is devolved. As a consequence, the extension of these amendments to Scotland will require the legislative consent of the Scottish Parliament.

Reasons for seeking a LCM

7. There are nine regulatory bodies responsible for regulating 32 health and social care professions in the UK, consisting of approximately 1.44 million professionals. The primary purpose of professional regulation is to ensure public safety. This is achieved by setting standards of education, training, conduct and performance, ensuring that individuals keep their skills up to date, and investigating concerns about individual professionals and making disciplinary interventions where professionals fall short of the standards.

8. The PSA (formerly the Commission for Healthcare Regulatory Excellence) oversees the system of professional regulation and aims to protect the public, promote best practice and encourage excellence among the UK regulators.

9. For most of the currently regulated healthcare professions, regulation is reserved to the United Kingdom Parliament. However, for those that were not regulated at the time of devolution, regulation is devolved to the Scottish Parliament. At present this comprises operating department practitioners and practitioner psychologists, regulated by the Health and Care Professions Council (HCPC); dental nurses, dental technicians, clinical dental technicians and orthodontic therapists, regulated by the General Dental Council (GDC); and pharmacy technicians, regulated by the General Pharmaceutical Council (GPhC). The future regulation of further professions is also devolved. The regulation of the social care workforce is fully devolved and in Scotland is carried out by the Scottish Social Services Council.

10. The Bill seeks to give the regulatory bodies an overarching objective of public protection. This will include reference to maintaining public safety, public confidence in the relevant profession and proper professional standards and conduct.

11. This measure will require the regulators’ panels and committees dealing with fitness to practise issues to have regard to this overarching objective. Currently, not all the regulators have a main objective that applies in the exercise of their functions and for those that do, that objective is not consistently expressed.

12. Having a clear set of objectives is intended to provide clarity and consistency and this is intended to boost public confidence in the regulatory process. Linked to this, there are concerns that in certain circumstances professionals who are subject to regulatory action can avoid the most serious sanctions by demonstrating that they have learnt from their mistakes and are no longer a threat to public safety. This approach secures a continued focus on public protection whilst also ensuring that regulatory
bodies are able to act, where appropriate, in the absence of an explicit patient safety issue. For example, where a registrant has engaged in behaviour which may undermine public confidence in the profession such that it would make the public reluctant to seek their help, but the issue in itself was not related to professional competence. As a result the Bill will allow more serious sanctions to be justified in order to maintain public confidence in the profession and to uphold standards. The overarching objective is public protection, which is defined in the amendment to the 2002 Act as the following:

- Protecting, promoting and maintaining the health, safety and wellbeing of the public;
- Promoting and maintaining public confidence in the professions that the regulators regulate; and,
- Promoting and maintaining proper professional standards and conduct for members of those professions.

13. The amendments in the Schedule to the Bill also specify when Regulators’ committees or panels of those regulators should have regard to those objectives.

14. The provisions in the Bill are relevant to all the healthcare profession regulators in the UK (with the exception of the General Medical Council and the Pharmaceutical Society of Northern Ireland). The Bill also applies to the PSA, which oversees the system of professional regulation. A similar measure is already being implemented for the GMC, through secondary legislation.

15. As the GDC, HCPC and GPhC regulate professions whose regulation is devolved, these provisions, insofar as they relate to these bodies, are within the legislative competence of the Scottish Parliament. These changes will therefore require the consent of the Scottish Parliament.

Consultation

16. There has been no consultation in Scotland specifically on this Bill. However, the Law Commissions of Scotland, England and Wales and Northern Ireland consulted on proposals for major reform of all UK healthcare professional regulation in 2012. In the consultation on its proposals, the Scottish Law Commission noted that the question about the significance given to the need to promote public confidence attracted most responses. The report can be found at the following link:

http://www.scotlawcom.gov.uk/publications/reports/2010-present/

17. The Scottish Ministers believe that this Bill will go some way to addressing the concerns raised in the Law Commissions report on the protection of the public.

Financial / Resource implications

18. There are no financial or resource implications anticipated as a consequence of agreeing this LCM.

Conclusion

19. It is the view of the Scottish Government that it is in the best interests of the people of Scotland and good governance that the relevant provisions outlined above
which fall within the legislative competence of the Scottish Parliament be considered by the UK Parliament.

SCOTTISH GOVERNMENT
November 2014