

Legislative Consent Memorandum

Health Bill

Background

1. This memorandum has been lodged by Angela Constance MSP, Cabinet Secretary for Health and Care, in accordance with Rule 9B.3.1(a) of the Parliament's standing orders.
2. The Health Bill ("the Bill") was introduced by the UK Government in the House of Commons on 14 May 2026. The Bill is available on the UK Parliament website at [Health Bill - Parliamentary Bills - UK Parliament](#).

Content of the Bill

3. The purpose of the Bill is to provide the legislative footing for the abolition of NHS England. The Bill will also give effect to a number of reforms and recommendations that were set out in the UK Government's [10 Year Health Plan](#) which was published on 3 July 2025, and [Dr Penny Dash's review](#) ("the Dash Review") of patient safety across the health and care landscape in England, which was published on 7 July 2025. The provisions of the Bill largely extend to England and Wales only, and apply to England, recognising that health is generally devolved.
4. The Bill includes provisions to:
 - Establish a Single Patient Record for patients in England and Wales;
 - Abolish NHS England and transfer its functions to either the Secretary of State or Integrated Care Boards (ICBs);
 - Provide for implementation of the Dash Review recommendations related to the Health Services Safety Investigation Body and Healthwatch England and Local Healthwatch organisations; and
 - Deliver measures aiming to support the devolution of decision making to a local level; to embed a greater role for patient voice in health and social care decision making; and to clarify governance and responsibilities for ICBs and providers (including foundation trusts and NHS trusts).

Provisions which require the consent of the Scottish Parliament

5. The Scottish Government is of the view that clauses 2, 49(4), 50, 52 to 55, 57, 68, 70, 71, Schedule 7 and paragraph 4 of Schedule 8 of the Bill require the consent

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of the Scottish Parliament. All of these clauses contain provisions relating to health and social care, and are therefore within the legislative competence of the Scottish Parliament.

6. Clauses 49(4), 50, 52 to 55 and 57, and Schedule 7 amend the Health and Social Care Act 2012. That Act extends largely to England and Wales only, with the exception of provisions set out in section 308(3) and (4), which also extend to Scotland. The provisions of the Health and Social Care Act 2012 which currently extend to Scotland relate to such matters as the role of NHS England and ICBs in respect of emergencies, certain public health functions, the Health and Care Professions Council and the Health and Care Professions Council.

7. Paragraph 4 of Schedule 8 of the Bill amends the Health and Social Care Act 2008. That Act also extends largely to England and Wales only, with the exception of provisions set out in section 169(2) and (3), which also extend to Scotland. The provisions of the Health and Social Care Act 2008 which currently extend to Scotland relate to such matters as arrangements between the Care Quality Commission and Ministers of the Crown and the regulation of the health professions.

8. Clause 2 gives the Secretary of State the power under subsection (1) to make schemes to transfer the property, rights and liabilities from NHS England. Transfers may be made to the Secretary of State, an Integrated Care Board (ICB), a company formed under section 223 of the National Health Service Act 2006, a Special Health Authority, an NHS trust, an NHS foundation trust, a Local Health Board or any other public body. This clause requires consent because a “public body” could include a Scottish public body.

9. Clause 49(4) inserts a new section 277G into the Health and Social Care Act 2012. New section 277G confers a power on the Secretary of State to delegate their “relevant information functions” (as defined in section 277G(4)) to others, namely a power to direct a public body which exercises functions in, or in relation to, England to exercise those functions on behalf of the Secretary of State. Where the Secretary of State gives a direction under this provision, this would not preclude the Secretary of State from exercising the function in respect of which the direction was given. “Relevant information functions” is defined as including functions under Chapter 2 of Part 9 of the Health and Social Care Act 2012.

10. Schedule 7 of the Bill extends Chapter 2 of Part 9 of the Health and Social Care Act 2012 to Scotland. Consent is required for clause 49(4) because the new section 277G enables the Secretary of State to delegate information-system functions whose legal and operational effect may extend to Scotland.

11. Clause 50 introduces Schedule 7. That Schedule makes amendments to Chapter 2 of Part 9 of the Health and Social Care Act 2012 to transfer functions of NHS England in relation to information systems to the Secretary of State, and to make additional changes relating to information systems. Clause 50 requires the consent of the Scottish Parliament because Schedule 7 also amends the extent of

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Chapter 2 of Part 9 of the Health and Social Care Act 2012 so that it extends to Scotland.

12. Clause 52 inserts new sections 294A and 294B into Part 11 of the Health and Social Care Act 2012. New section 294A enables the Secretary of State to make arrangements with the Scottish Ministers (or a Scottish health body) for the provision by the Secretary of State of services or facilities in connection with the processing of information for the purposes of the Scottish health service. Such arrangements may also involve the provision of services or facilities in connection with the processing of information for purposes of social care provision. These arrangements can be made on terms agreed between the parties, which may include terms as to payment. The purpose of this provision is to enable the Secretary of State to continue certain functions exercised by NHS England under section 270 of the Health and Social Care Act 2012 of providing services to the devolved administrations and the Crown Dependencies, such as systems delivery functions, including in connection with establishing information systems.

13. Clause 53 replaces section 295 of the Health and Social Care Act 2012 and omits section 296 of that Act. This clause requires the consent of the Scottish Parliament because it provides the statutory basis for cross-border commissioning arrangements so that, where appropriate and by agreement with the Scottish Ministers or a Scottish health body, the Secretary of State can commission services or facilities for the purposes of the Scottish health service.

14. Clause 54 replaces section 296A of the Health and Social Care Act 2012. Clause 54 requires the consent of the Scottish Parliament because the new section 296A enables the Secretary of State, by agreement with the Scottish Ministers to exercise on the Scottish Ministers' behalf certain education and training functions and to provide services or facilities in connection with that function. The education and training functions of the Scottish Ministers need to correspond to a function of the Secretary of State relating to the education and training of people to meet the workforce needs of the health service. This power will provide a statutory basis for collaborative arrangements between the Secretary of State and the Scottish Ministers (for example, shared administrative systems supporting postgraduate recruitment and training cycles).

15. Clause 55 inserts new section 296B into the Health and Social Care Act 2012. This enables the Secretary of State to direct a public body exercising functions in, or in relation to, England to exercise some or all of the Secretary of State's functions under arrangements made under section 295 (commissioning arrangements) or section 296A (education and training arrangements). Clause 55 requires consent because a direction issued by the Secretary of State under these provisions could include functions of the Scottish Ministers or a Scottish health body which the Secretary of State is exercising by arrangement made under section 295 or 296A. Section 296B(1)(b) also enables the Secretary of State to direct the body taking on such functions as to how to exercise those functions. This includes giving directions about the handling of information obtained in the course of carrying out those functions.

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16. Clause 57 contains definitions relevant to clauses 52 to 54 and, as such, requires the consent of the Scottish Parliament.

17. Clause 68 provides a power which enables the Secretary of State, by regulations, to make provision that is consequential on this Bill. This provision may be used to amend primary legislation passed by the Scottish Parliament. This regulation making power could be used to make provision which is consequential on the other provisions which require consent of the Scottish Parliament as described in this Memorandum. Clause 68 therefore requires the consent of the Scottish Parliament.

18. Clause 70 sets out the territorial extent of the Bill, that is the jurisdictions within which the Bill forms part of the law. This includes the provisions extending to Scotland and for a devolved purpose as described in this Memorandum, and therefore requires the consent of the Scottish Parliament.

19. Clause 71 makes provision for commencement of the Bill. Other than certain provisions which come into force on the day the Act is passed, or shortly thereafter, the Bill provides for the provisions to be commenced on a day appointed by the Secretary of State. Under clause 71 the provisions of the Bill referred to in this Memorandum which require the consent of the Scottish Parliament are to be commenced by the Secretary of State only. This clause requires the consent of the Scottish Parliament because it contains provisions for the commencement of clauses which also require that consent.

20. Schedule 8, paragraph 4 inserts a new section 51P into the Health and Social Care Act 2008. This provision protects protected material from being obtained through the exercise of statutory powers conferred by other enactments. New section 51P(1) and (2) provide that such powers may not be used to require the disclosure or seizure of protected material from the Care Quality Commission or from connected individuals. New section 51P(3) and (4) provide exceptions in relation to powers exercisable under an Act of the Scottish Parliament, and therefore this provision requires the consent of the Scottish Parliament.

21. The UK Government has set out its view that clauses 2, 49(4), 50, 52, and 55, and Schedule 7, engage the consent process. The Scottish Government broadly agrees with this analysis. However, it is the Scottish Government's view that clauses 53, 54, 57, 68, 70, 71 and Schedule 8, paragraph 4, also engage the legislative consent process and discussions are currently underway with the UK Government on those provisions.

Reasons for not making a recommendation on legislative consent

22. Although the Scottish Government has followed the development of the 10 Year Plan and has been kept up to date with developments towards the introduction

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of the Bill, the UK Government's initial legal devolution analysis on the Bill (shared on 9 April 2026) only flagged Clause 2 (transfer schemes) as requiring the Scottish Parliament's consent, with further advice arriving during the pre-election period. The Minister of State for Health and Secondary Care then wrote to the First Minister on 13 May 2026, the day prior to the Bill's introduction, confirming the UK Government's view on which clauses of the Bill require consent. The UK Government policy devolution analysis was shared with the Scottish Government on 8 June 2026, after the Bill's introduction.

23. As the Bill was substantially developed during the pre-election period and introduced before formation of a government in Scotland, and the policy devolution analysis was shared with the Scottish Government at such a late stage, further consideration must be undertaken, particularly on those provisions as set out above where the Scottish Government is of the view that legislative consent is required.

24. Discussions require to take place between the Scottish and UK Governments as to how it is intended that these provisions will operate in practice. These discussions will allow the Scottish Government to reach a concluded view as to whether to recommend to the Scottish Parliament that consent be given to the provisions requiring that consent.

25. The UK Government's failure to provide the Scottish Government with proper detail on this Bill in advance of its publication is an issue not confined to this Bill. Similarly, the UK Government's approach to delegated powers in this Bill also forms part of a pattern of behaviour. It is important that the UK Government changes this approach in order to ensure that the Scottish Parliament is able to provide an appropriate level of scrutiny to UK legislation that requires its consent.

26. Since the election the Scottish Government have received some policy commentary on the Bill, including the new clauses, and the Scottish Government has had more detailed calls with the Bill team. These will continue, and the Scottish Government will continue to raise the broader issues relating to the UK Government's approach to devolution in its legislative programme.

27. A motion on legislative consent will not be lodged for the time being, while these discussions with the UK Government take place. The Scottish Government is seeking to reach a view over the summer period, to allow sufficient time for Parliamentary scrutiny and amendments to be made, having been informed by the UK Government that the Bill is likely to move to House of Lords in the autumn.

Consultation

28. During 2025 the UK Government consulted widely on its 10 Year Health Plan in an exercise called [Change NHS](#). The Scottish Government was kept informed of plans and findings. The Scottish Government has not done any public consultation on the Bill given its purpose is largely to do with the abolition of NHS England.

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Financial implications

29. Clause 52 raises the possibility of payments from the Scottish Ministers of health boards to the Secretary of State for the processing of information.

Other relevant considerations

30. There are no other relevant considerations.

Post EU scrutiny

31. This legislation will not affect the Scottish Government's policy to maintain alignment with the European Union because it does not affect the Scottish Government's commitment to maintain and advance the high standards that Scotland shares with the EU. It does not affect access to EU markets for people, goods, and services. There are not potential implications for EU alignment associated with the United Kingdom Internal Market Act 2020 or Common Framework agreements.

Conclusion

32. The Scottish Government does not, at this stage, intend to lodge a Motion on Legislative Consent.

33. The Scottish Government intends to lodge a supplementary LCM in the autumn, stating whether it recommends that the Scottish Parliament consent or refuse consent to the relevant provisions of the Bill.

Scottish Government
June 2026

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