This Supplementary Legislative Consent Memorandum relates to the Health Bill (UK Parliament legislation) and was lodged with the Scottish Parliament on 4 November 2026

Supplementary 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(c) of the Parliament's standing orders. It should be read in conjunction with the Scottish Government's previous memorandum on the Bill (LCM-S7-6).

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).

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Provisions which require the consent of the Scottish Parliament

5. The clauses and Schedules in the original Bill print and LCM were numbered differently, and the numbering of the Bill has changed as a result of amendments made during its passage in the UK Parliament. With original numbering in brackets, the numbering of relevant clauses for Scotland which require legislative consent are set out in this paragraph. The Scottish Government and UK Government now have a shared understanding of the provisions in the Bill that engage the legislative consent process. The Scottish Government and the UK Government are now in agreement that clauses 2 (2), 54(4) (49(4)), 55 (50), 58 (52), 59 (53), 60 (54), 61 (55), 63 (57), 85 (68), 87 (70), 88 (71) and Schedule 8 (Schedule 7) require legislative consent because they fall within the legislative competence of the Parliament by making provision in relation to devolved health matters, and alter the executive competence of the Scottish Ministers by introducing consent requirements for the Scottish Ministers. Legislative consent is no longer required for Schedule 9, paragraph 4 (Schedule 8, paragraph 4) as this Schedule has been removed from the Bill in its entirety due to amendments to remove it tabled by the UK Government.

6. The UK Government's previous position was that clauses 59 (53), 60 (54), 63 (57), 85 (68), 87 (70) and 88 (71) did not require legislative consent. The Scottish Government's position has been, and continues to be, that those clauses do require legislative consent. The UK Government has now indicated agreement with the Scottish Government view.

7. Paragraphs 6 and 8 to 19 of the original LCM explain the effect of the clauses and Schedules using the original numbering.

8. Clause 54 inserts a new section 277G into the Health and Social Care Act 2012 ("the 2012 Act"). The new provision allows the Secretary of State to delegate information functions to a public body exercising functions in, or in relation to, England. Those information functions include functions under Chapter 2 of Part 9 of the 2012 Act concerning health and social care information systems. Clause 55 and Schedule 8 extend those information-system functions to Scotland. Clause 54 would permit the Secretary of State to delegate those functions which are capable of affecting Scotland. The clause therefore requires legislative consent. The UK Government's position, which was clarified after the lodging of the original LCM, is that though delegation under this clause is an internal matter for the Secretary of State, the possibility of such delegation would be agreed with the Scottish Ministers during the consent process in Schedule 8 for the establishment of the information systems. The Scottish Government has accepted this explanation and is no longer seeking that the clause be amended with the addition of a consent mechanism. The Scottish Government is still, however, of the opinion that the clause needs the consent of the Scottish Parliament as it relates to the power set out in Schedule 8 to establish information systems, which engages legislative consent because it extends to Scotland and confers functions capable of affecting devolved health and social care activity. The UK Government agrees with this assessment.

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9. On 21 October 2026 the UK Government tabled amendments[1] to the Bill. Amendments 1 to 3 were debated on 28 October 2026. The amendments relevant to this LCM are:

- 1–3 amend clause 2
- 181 amends clause 58
- 183 amends clause 59
- 151 and 152 amend paragraph 5 of Schedule 8
- 153-155 amend paragraphs 10 and 11 of Schedule 8
- 157 amends paragraph 25 of Schedule 8
- 287 amends clause 87

10. Clause 2 enables the Secretary of State to make transfer schemes in connection with the abolition of NHS England, including the transfer of property, rights and liabilities to specified bodies. As originally introduced, the clause permitted transfers to Scottish public bodies without any statutory role for Scottish Ministers. Amendments 1 to 3 (agreed to in the House of Lords on 28 October 2026) amended clause 2 to require the Secretary of State to seek the consent of the Scottish Ministers before making a transfer scheme which transfers property, rights and liabilities from NHS England to a Scottish public body, and to provide a definition of "Scottish public body". These amendments require legislative consent because they alter the executive competence of the Scottish Ministers.

11. Clause 55 introduces Schedule 8, which amends Chapter 2 of Part 9 of the Health and Social Care Act 2012. The clause and Schedule 8 confers powers on the Secretary of State to establish and operate health and social care information systems and extends those powers to Scotland. Both Governments accept that this clause requires legislative consent because it introduces Schedule 8 which in turn makes provision within the devolved areas of health and social care in Scotland. Following discussions between the Governments, the amendments described in paragraphs 13 - 17 and 22 have been tabled so that the Secretary of State may establish and operate an information system for the purposes of health care or adult social care in Scotland only with the consent of the Scottish Ministers. These amendments enable the Scottish Ministers to impose conditions relating to requests for information, publication and disclosure of information.

12. Schedule 8 makes substantive amendments to Chapter 2 of Part 9 of the Health and Social Care Act 2012 concerning health and social care information functions. Both Governments agree that the Schedule itself engages legislative consent because it extends to Scotland and confers functions capable of affecting devolved health and social care activity.

[1] Health Bill - Revised Marshalled List of Amendments | UK Parliament

13. Amendments 151 and 152 amend paragraph 5 of Schedule 8 to provide that the Secretary of State can establish information systems relating to Scotland only with the consent of an appropriate national authority. Consent may be given subject to conditions as to making of requests for, publication of and disclosure of information. The amendments provide a definition that the appropriate national authority in Scotland is the Scottish Ministers. These amendments require the consent of the Scottish Parliament because they alter the executive competence of the Scottish Ministers. The Scottish Government considers the new consent mechanism to be a significant improvement on the original version, although officials have noted a residual policy question regarding whether fresh consent would be required if an information system were subsequently changed in a material way. These amendments are due to be debated in the House of Lords imminently.

14. Amendment 157 amends paragraph 25 of Schedule 8 to provide a further consequential definition of “appropriate national authority” which in Scotland is the Scottish Ministers. The amendment is needed for the purposes of amendments 151 and 152. This amendment is due to be debated in the House of Lords imminently.

15. Amendments 153 – 155 amend paragraphs 10 and 11 of Schedule 8 to provide that the Secretary of State’s power to request information for purposes relating to the establishment or operation of an information system relating to Scotland is subject to any conditions imposed by the Scottish Ministers when they consented to the system. These amendments require legislative consent because it alters the executive competence of the Scottish Ministers. The amendments will be debated in the House of Lords imminently.

16. Clause 58 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 enter into arrangements with devolved administrations and certain devolved bodies for the provision of information-processing services in connection with the Scottish health service, or the provision of social care in, or in relation to, Scotland. In addition, new section 294B allows the Secretary of State to delegate functions under such arrangements to a public body in England. This clause provides a statutory basis for the continuation of services currently provided by NHS England and for future collaborative arrangements. Amendment 181 has been tabled in the UK Parliament amending clause 58 to require the consent of Scottish Ministers before arrangements may be entered into by the Secretary of State with a Scottish health body. Both Governments are now agreed that legislative consent is required because the clause provides for arrangements in the devolved areas of health and social care, and provides that the consent of the Scottish Ministers is required before the Secretary of State can enter into an arrangement with a Scottish health body. The UK Government takes the view that the ability of the Secretary of State to delegate functions under the new section 294B is an internal administrative matter, and that the possibility of such delegation can be agreed with the Scottish Ministers during the consent process the in new section 294A. The Scottish Government has accepted this explanation and no longer seeks section 294B to be amended with the addition of a consent mechanism. The Scottish Government is still, however, of the opinion that section 294B needs the consent of the

Scottish Parliament as it relates to the power set out in section 294A, which itself engages legislative consent because it extends to Scotland and confers functions capable of affecting devolved health and social care activity. The UK Government agrees with this assessment. Amendment 181 is due to be debated in the House of Lords imminently.

17. Clause 59 replaces section 295 of the Health and Social Care Act 2012 and omits section 296 of that Act. Both Governments are agreed that the clause requires legislative consent because the clause enables the Secretary of State to enter into commissioning arrangements with devolved administrations and devolved health bodies, and extends to Scotland. Amendment 183 amends clause 59 to require the Secretary of State to obtain the consent of the Scottish Ministers before making arrangements to commission services with a Scottish health body. Both Governments agree that this amendment requires legislative consent because it alters the executive competence of the Scottish Ministers. This amendment is due to be debated in the House of Lords imminently.

18. Clause 60 replaces section 296A of the Health and Social Care Act 2012. Clause 60 enables the Secretary of State and devolved administrations to enter into arrangements regarding education and training functions relating to the health workforce. Currently, Scottish Ministers work with NHS England to support the delivery of programmes such as four nations recruitment and operation of medical. It would be expected that the governance around such arrangements would continue as this power is conferred to the Secretary of State. The provision may be used to support joint programmes, shared systems and collaborative administrative functions. Both Governments agree that the clause engages the legislative consent process because it concerns devolved education and workforce functions and alters executive competence of the Scottish Ministers.

19. Clause 61 inserts new section 296B into the Health and Social Care Act 2012. This enables the Secretary of State to delegate to 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 61 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. As with clauses 54 and 58, this engages legislative consent because it extends to Scotland and confers functions capable of affecting devolved health and social care activity. The UK Government agrees with this assessment.

20. Clause 63 contains definitions relevant for the purposes of clauses 58, 59, 60 and 61. The definitions relate to the commissioning of services and facilities, and what is a public body, the Scottish Health Service and a Scottish health body. As those

clauses require legislative consent as described above, both Governments agree that clause 63 also requires legislative consent for the same reasons.

21. Clause 85 enables the Secretary of State to make consequential provision by regulations, including amendments to 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 the consent of the Scottish Parliament as described in this Memorandum. As those provisions are within the legislative competence of the Scottish Parliament or alter the executive competence of the Scottish Ministers clause 85 therefore also requires the consent of the Scottish Parliament. Both Governments agree on that position.

22. Clause 87 sets out the territorial extent of the Bill. It includes the provisions extending to Scotland and for a devolved purpose as set out in this memorandum, and therefore requires legislative consent. Both governments agree that clause 87 engages the legislative consent process due to it making extent provision for the clauses which themselves require legislative consent. Amendment 287 amends clause 87, to change the extent of new section 295 of the Health and Social Care Act 2012 (inserted by clause 59) so as to allow the Secretary of State to make arrangements with the devolved administrations to commission services anywhere in the United Kingdom. This amendment will be debated in the house of Lords imminently.

23. Clause 88 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 88 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.

Reasons for recommending legislative consent

24. Since the lodging of the original LCM, Scottish Government officials have undertaken extensive engagement with the Department of Health and Social Care on the provisions of the Bill which engage legislative competence.

25. As a result of those discussions, and as set out above, a number of amendments have been secured which address concerns identified by the Scottish Government in relation to the operation of transfer schemes, the Single Patient Record, health and social care information systems and arrangements involving Scottish health bodies.

26. In particular, the Bill now provides a statutory role for the Scottish Ministers before relevant health and social care information systems may be established or operated in relation to Scotland and before certain functions may be exercised in relation to Scottish public authorities and Scottish health bodies.

27. The Scottish Government recognises that a limited degree of uncertainty remains regarding the circumstances in which the Scottish Ministers might be asked to consent to future changes to information systems established under the Bill. However, the Scottish Government considers that this residual risk is slight, is significantly reduced by the amendments already secured, and may be further mitigated through conditions attached to consent and through intergovernmental engagement.

28. Taking account of the amendments secured, the Scottish Government considers that the Bill now contains sufficient safeguards around information requests, publication and disclosure, and an appropriate role for the Scottish Ministers in relation to the relevant devolved matters.

29. The Scottish Government therefore recommends that the Scottish Parliament consents to the relevant provisions of the Bill.

Consultation

30. During 2025 the UK Government consulted widely on its 10 Year Health Plan[2] through the Change NHS engagement exercise.

31. Since the Bill's introduction, the Scottish Government has engaged extensively with UK Government officials regarding the provisions engaging devolved competence and their practical operation.

32. Given that the Bill principally concerns the abolition of NHS England and reforms to health services in England, the Scottish Government has not undertaken a separate public consultation on the Bill.

Financial implications

33. The financial implications identified in the original LCM remain unchanged.

34. Clause 58 provides for arrangements under which services or facilities may be provided in connection with the processing of information, potentially including arrangements involving payment by the Scottish Ministers or Scottish health bodies.

35. No additional financial implications arise directly from the amendments secured during the Bill's passage.

[2] 10 Year Health Plan for England | GOV.UK

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Other relevant considerations

36. The amendments secured through discussions with the UK Government provide a clearer statutory role for the Scottish Ministers in areas engaging the legislative competence of the Parliament and improve the operation of the relevant provisions from a devolution perspective.

37. The Scottish Government welcomes the constructive engagement undertaken by UK Government officials following introduction of the Bill and the willingness to consider amendments to address concerns raised during discussions.

Post EU scrutiny

38. This legislation does not affect the Scottish Government's policy of maintaining alignment with the European Union where appropriate.

39. The provisions of the Bill do not affect access to European Union markets for people, goods or services and do not give rise to implications for Common Frameworks or the operation of the United Kingdom Internal Market Act 2020.

Conclusion

40. The Scottish Government lodged the original LCM on 23 June 2026, which did not make a recommendation on legislative consent, pending further engagement with the UK Government and consideration of the relevant provisions.

41. Following extensive discussions between Scottish Government and UK Government officials, a number of amendments have been secured which address the principal concerns identified by the Scottish Government.

42. The Scottish Government considers that the relevant provisions of the Bill now provide a sufficient role for the Scottish Ministers.

43. The Scottish Government therefore recommends that the Scottish Parliament agrees that the relevant provisions of the Health Bill should be considered by the UK Parliament.

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Draft motion on legislative consent

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

> "That the Parliament, noting that the UK Health Bill, introduced in the House of Commons on 14 May 2026, makes provision that falls within the legislative competence of the Parliament and alters the executive competence of the Scottish Ministers, agrees to give consent to such provision as is made by clauses 2, 54(4), 55, 58, 59, 60, 61, 63, 85, 87, 88 and Schedule 8."

Scottish Government
November 2026

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Health Bill – Supplementary Legislative Consent Memorandum

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