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Health, Care and Sport Committee

Report on the Legislative Consent Memorandum and supplementary Legislative Consent Memorandum for the Health Bill (UK Parliament legislation)

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Contents

Introduction 1
Health Bill 2
The Scottish Government's LCM and supplementary LCM 3
Consideration by the Delegated Powers and Law Reform Committee 4
Consideration by the Health, Care and Sport Committee 5
Conclusion 6

Health, Care and Sport Committee

To consider and report on matters falling within the responsibility of the Cabinet Secretary for Health and Care, and on matters relating to sport



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Introduction

1. The Health Bill ("the Bill") was introduced by the UK Government in the House of Commons on 14 May 2026. The Bill is currently at committee stage in the House of Lords.

2. A Legislative Consent Memorandum (LCM), was lodged on 23 June 2026 by Angela Constance MSP, Cabinet Secretary for Health and Care (LCM-S7-6). A supplementary LCM relating to the Bill, LCM-S7-6a was subsequently lodged on 4 November 2026.

3. Both the LCM and supplementary LCM were referred to the Health, Care and Sport Committee for consideration.

Health Bill

4. The main purpose of the Bill is to abolish NHS England (NHSE).

5. The Bill will transfer the functions of the NHSE to either Integrated Care Boards (ICBs) or the Department of Health and Social Care, including transferring some powers directly to the Secretary of State for Health and Social Care. For example, the Secretary of State would have new general powers to direct an ICB to carry out its functions that would be broader than powers NHSE currently has to direct an ICB to carry out its functions if an ICB is failing.

6. The Bill will also give effect to a number of reforms that were set out in the UK Government's 10-Year Health Plan for England and recommendations from Dr Penelope Dash's review of patient safety across the health and care landscape (the Dash Review).

7. The Bill aims to establish a Single Patient Record. Digital and data functions that are currently the responsibility of NHSE are also to be transferred or adapted to the Secretary of State or discontinued.

8. In addition, the explanatory notes to the Bill state that this will "deliver a range of targeted 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). "

The Scottish Government's LCM and supplementary LCM

9. In the original LCM (LCM-S7-6), the Scottish Government stated its 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 required the consent of the Scottish Parliament. The LCM provides detail on each of these clauses, stating that they contain provisions relating to health and social care, and are therefore within the legislative competence of the Scottish Parliament.

10. The UK Government's initial view was that clauses 2, 49(4), 50, 52, and 55, and Schedule 7, engaged the consent process. Due to lack of agreement over which provisions engage the legislative consent process, the original LCM did not include a motion on legislative consent, to allow for further discussions to take place between the Scottish and the UK Governments.

11. Following those discussions, the Scottish Government and UK Government reached a shared understanding of the provisions in the Bill that engage the legislative consent process, as follows (original numbering in brackets): 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.

12. Paragraphs 6 and 8 to 19 of the original LCM explain the effect of the clauses and Schedules using the original numbering. Paragraphs 9 to 23 of the supplementary LCM set out relevant amendments to the Bill since the original LCM was lodged, and discussions between the two governments.

13. The supplementary LCM states that, following discussions between Scottish Government officials and the Department of Health and Social Care, amendments have been secured which address initial concerns in relation to the operation of transfer schemes, the Single Patient Record, health and social care information systems and arrangements involving Scottish health bodies. The Bill in its current form "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".

Consideration by the Delegated Powers and Law Reform Committee

14. The Delegated Powers and Law Reform Committee (DPLRC) considered the original LCM at its meeting on 29 September 2026. The Committee did not publish a report on the original LCM.

15. Following amendments to the Bill, DPLRC considered the supplementary LCM at its meeting on 17 November 2026 and reported on it in its 19th Report, 2026.

16. As explained in DPLRC's report, clause 85 of the Bill confers powers on the Secretary of State to make consequential provision by regulations, including the ability to make consequential amendments to primary legislation.

17. DPLRC in its report stated that it is content with the power in principle. It is also content that the power is subject to the affirmative procedure when amending or repealing primary legislation, and otherwise that the negative procedure will apply.

Consideration by the Health, Care and Sport Committee

18. The Health, Care and Sport Committee considered both the LCM and supplementary LCM on 18 November 2026, when it heard from the Cabinet Secretary for Health and Care and Scottish Government officials.

19. In her remarks, the Cabinet Secretary explained that although the Bill is primarily about the organisation of health services in England, a small number of provisions require legislative consent. These relate mainly to health information systems, data sharing, commissioning arrangements and certain workforce functions.

20. The Cabinet Secretary stated that following negotiations at official level, the Scottish Government have secured statutory consent requirements for Scottish Ministers across key provisions including the establishment of relevant information systems affecting Scotland, transferring functions to Scottish public bodies or entering into certain arrangements with Scottish health boards.

21. Scottish Ministers will also have a formal role in decisions affecting relevant information systems and the use of information that is connected to Scotland, including powers to attach conditions relating to information requests, publication and disclosure.

22. The Cabinet Secretary stated that "the Scottish Government considers that the provisions that require the consent of this Parliament strike an acceptable balance between enabling practical co-operation and protecting devolved decision making".

Conclusion

23. The Health, Care and Sport Committee recommends to the Parliament that the draft legislative consent motion in LCM-S7-6a in the name of Angela Constance MSP, Cabinet Secretary for Health and Care, be approved.

