Health, Care and Sport Committee
Wednesday 18 November 2026
11th Meeting, 2026 (Session 7)

Legislative consent memoranda on the Health Bill (UK Legislation)

Note from the Clerk

1. On 23 June 2026, a Legislative Consent Memorandum (LCM), LCM-S7-6 was lodged by Angela Constance MSP, Cabinet Secretary for Health and Care in relation to the UK Government's Health Bill ("the Bill").

2. A supplementary LCM relating to the Bill, LCM-S7-6a was lodged on 4 November 2026.

3. Both the LCM and supplementary LCM have been referred to the Health, Care and Sport Committee.

Health Bill

4. The Bill was introduced by the UK Government in the House of Commons and had its first reading in May 2026.The Bill and associated documents can be viewed on the UK Parliament website.

5. The main purpose of the Bill would be to abolish NHS England (NHSE) and transfer its functions 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.

6. The Bill would adapt NHSE's various responsibilities for, and powers over, the NHS in England and transfer them to the Secretary of State. 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.

7. Digital and data functions that are currently the responsibility of NHSE would also be transferred or adapted to the Secretary of State or discontinued.

8. The Bill would also:

    - Enable a single patient record to be created that summarises patient health information in one place. The bill would enable the Secretary of State to legally require all NHS providers (including GPs) to disclose data to allow it to be combined in a single patient record. This would be visible to patients and clinicians providing care, be subject to existing data protection legislation, and like other NHS data, have the potential to be approved for sharing with public and private researchers. The Secretary of State would have the power to set fines for non-compliance.

- Implement changes to the patient safety landscape recommended by the Dash review, including bringing the Health Services Safety Investigations Body into the Care Quality Commission.

- Make changes to the flexibility and governance of local NHS organisations.

- Abolish Healthwatch and transfer local Healthwatch functions to ICBs and local authorities.

- Change who is represented on ICBs, remove the requirement for integrated care partnerships to be set up, and reform the statutory requirements for local health and wellbeing strategy and planning.

- Remove the requirement for NHS foundation trusts to have a council of governors and members, and transfer governors' powers to appoint foundation trust chairs to the Secretary of State.

- Make other changes to the governance of NHS trusts and foundation trusts, including a new power for the Secretary of State to "de-authorise" foundation trusts (which would revert to NHS trust status).

- Change how financial objectives are set across the system. Instead of system-wide targets, the Secretary of State would be able to set objectives for individual ICBs and specified partner trusts. The bill would give to the Secretary of State, NHS England's current powers to set capital and revenue resource limits and issue expenditure directions for ICBs, partner trusts and foundation trusts.

- Transfer responsibility for commissioning primary care services from NHS England to ICBs. The changes would formalise arrangements already largely operating through delegation since 2022-2023.

- Introduce new powers for the Secretary of State to make regulations imposing duties on ICBs in relation to waiting times, patient choice, and appeals concerning commissioned NHS services. The measures would require ICBs to protect and promote patient choice rights and enable the Secretary of State to investigate and enforce compliance where ICBs fail to meet these obligations.

9. **Members will wish to note that most of the provisions in the Bill would extend to England and Wales only, and apply to England, as health policy is devolved. There are some provisions in the bill that would extend UK-wide.**

10. The Bill is currently at committee stage in the House of Lords.

Legislative consent procedure

11. Under the Sewel Convention, the UK Parliament does not normally legislate on devolved matters, or to alter the legislative competence of the Parliament or the executive competence of the Scottish Government, without the consent of the

Scottish Parliament. Consent is given by means of a resolution of the Parliament in the chamber.

12. Under Chapter 9B of the Standing Orders, the Scottish Government must lodge a legislative consent memorandum (LCM) in relation to each UK Parliament Bill that contains a provision ("relevant provision") that would require the Parliament's consent under the Convention. Sometimes the Scottish Government may be required to lodge one or more supplementary LCMs during the passage of a Bill. It is also possible for an LCM to be lodged by an individual MSP.

13. Every LCM lodged is referred to a lead committee for scrutiny, and may also be referred to other committees. If the Bill confers power on the Scottish Ministers to make subordinate legislation, the Delegated Powers and Law Reform Committee (DPLRC) must also consider the LCM and may report on it to the lead committee.

14. Once the lead committee has reported, the Scottish Government normally lodges a motion on legislative consent for consideration in the Chamber. Such a motion may give consent to relevant provision in the Bill, refuse consent to such provision, or a mixture of the two. A draft of the motion is normally included in the LCM.

The Scottish Government's LCM and supplementary LCM

15. As stated in the LCM (LCM-S7-6), 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 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.

16. The UK Government's view as per the original LCM was that clauses 2, 49(4), 50, 52, and 55, and Schedule 7, engage 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.

17. The initial LCM of May 2026 also noted that "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."

18. The supplementary LCM (LCM-S7-6a) explains that the numbering of the Bill has changed as a result of amendments made during its passage in the UK Parliament. It further confirms that "the Scottish Government and UK Government now have 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.

19. 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.

20. 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".

21. In contrast to the original LCM, the supplementary LCM "welcomes the constructive engagement […] and the willingness to consider amendments to address concerns".

22. **The Scottish Government therefore recommends that the Scottish Parliament consents to the relevant provisions of the Bill**, and provides the following draft motion, to be lodged by the Cabinet Secretary for Health and Care—

> "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."

Scrutiny by DPLR Committee

23. 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**.

24. **The DPLRC will consider the supplementary LCM on Tuesday 17 November and expects to report shortly thereafter. The report will be circulated to Members as soon as it is available.**

Evidence session

25. At this meeting, the Committee will take evidence on the LCM and supplementary LCM from the Cabinet Secretary for Health and Care and her officials—

    - Robert Henderson, Head of Health and Social Care Intergovernmental Relations
    - Lucy Mcmichael, Solicitor and Head of Branch, Scottish Government Legal Directorate

Decision

26. After hearing from the Cabinet Secretary, the Committee will be invited to decide what recommendation to make to the Parliament – in particular, whether to recommend agreement to the Scottish Government's draft motion (see paragraph 22).

27. **Members will wish to note that any decision at this meeting to recommend consent or otherwise would be one in principle as the Committee has not yet been able to consider any report of the DPLR Committee on the supplementary LCM if one is produced**.

28. **If any report is available in time for this meeting, it will be circulated to Members beforehand, or the clerk will provide an oral report on the findings of the DPLR Committee if this is possible**.

Report

29. The Committee is required to report to the Parliament on the LCM and supplementary LCM. One option is for the Committee to agree to consider a draft report, in private, at its next meeting. Alternatively, it could delegate responsibility to the Convener to finalise the wording of a short, factual report reflecting the outcome of today's meeting and publish this without further recourse to the Committee.

Action

30. Members are invited to discuss the LCM and supplementary LCM with the Cabinet Secretary and then decide whether to recommend, in principle, that consent should be given to the relevant provisions in the Bill.

31. **Once the report of the DPLR Committee on the supplementary LCM has been received, it will be circulated to Members who will be asked to confirm whether their decision today stands or needs to be revisited. If the Committee has been able to review any report of the DPLR Committee on the supplementary LCM or has received an oral report from the clerk on this, Members can take a final decision at this meeting.**

32. The question on whether to agree with this Committee's recommendation will then be a matter for the Parliament as a whole on a later date.

Clerks to the Committee
November 2026

ANNEX

This Legislative Consent Memorandum relates to the Health Bill (UK Parliament legislation) and was lodged with the Scottish Parliament on 23 June 2026

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

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

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.

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

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.

This Legislative Consent Memorandum relates to the Health Bill (UK Parliament legislation) and was lodged with the Scottish Parliament on 23 June 2026

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

This Legislative Consent Memorandum relates to the Health Bill (UK Parliament legislation) and was lodged with the Scottish Parliament on 23 June 2026

Health Bill – Legislative Consent Memorandum

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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).

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

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.

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

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

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

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.

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

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

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

Health Bill – Supplementary Legislative Consent Memorandum

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