

# Health, Social Care and Sport Committee

14th Meeting, 2021 (Session 6), Tuesday,  
19 April 2022

## Supplementary Legislative Consent Memorandum – Health and Care Bill

### Note by the clerk

#### Introduction

1. The [Health and Care Bill](#) is a UK Government Bill introduced in the House of Commons on 6 July 2021.
2. The UK Parliament will not normally legislate on matters devolved to the Scottish Parliament without its consent; this is often referred to as the Sewel Convention. [Chapter 9B of the Parliament's Standing Orders](#) sets out the rules and procedures for seeking legislative consent under the convention.
3. The Health and Care Bill falls under Rule 9B.1.1 of the Standing Orders, as it will impact on areas devolved to the Scottish Parliament and on the executive competence of the Scottish Ministers.
4. For any views of the Parliament to be considered at Westminster, it must conclude its considerations before the last amending stage (report stage in the second house). At the time of writing, this is expected on 21 February.
5. The Scottish Government lodged the original [Legislative Consent Memorandum \(LCM\)](#) in relation to the Health and Care Bill on 31 August 2021. That LCM withheld consent to the whole Bill, pending suitable amendments by the UK Government.
6. The LCM was considered by the Committee on [5 October 2021](#). The Committee's [report](#) on the LCM stated:

*“The Committee reserves its position on whether to recommend consent be given to the Health and Care Bill pending receipt of a further, supplementary memorandum from the Scottish Government”.*
7. The Scottish Government lodged two supplementary LCMs on [9 December 2021](#) and on [27 January 2022](#).
8. These supplementary LCMs were considered by the Committee on [8 February 2022](#). The Committee's report on the supplementary LCMs stated:

*“With respect to the relevant provisions of the Health and Care Bill, introduced in the House of Commons on 6 July 2021 relating to:*

- *regulation of healthcare and associated professions;*
- *food labelling for consumers;*
- *international healthcare arrangements;*
- *Medicine Information Systems;*
- *virginity testing offences: Scotland;*
- *Secretary of State’s power to transfer or delegate functions;*
- *information about payments etc. to persons in the health care sector;*  
*and*
- *Hymenoplasty offences: Scotland;*

*the Committee agrees with the recommendations of the Scottish Government that, insofar as these matters fall within the legislative competence of the Scottish Parliament or alter the executive competence of the Scottish Ministers, they should be considered by the UK Parliament.”*

9. The Scottish Government lodged a further supplementary LCM on [12 April 2022](#).
10. Humza Yousaf, Cabinet Secretary for Health and Social Care and Scottish Government officials will give evidence on the supplementary LCM at today’s meeting.

## **Legislative Consent Process**

### **Legislative Consent Memorandum**

11. When a Bill that will impact on areas devolved to the Scottish Parliament goes through the UK Parliament, the Scottish Government will normally prepare a Legislative Consent Memorandum (LCM). This explains how the Bill will affect Scotland and why, for example the Bill may:
  - change the law on a “devolved matter” (an area of policy which the UK Parliament has devolved to the Scottish Parliament); or
  - alter the “legislative competence” of the Scottish Parliament (its powers to make laws) or the “executive competence” of Scottish Ministers (their powers to govern).
12. The Health, Social Care and Sport Committee has been designated by the Parliamentary Bureau as lead committee to consider the Health and Care Bill supplementary LCMs and report its views to the Parliament.

### **Supplementary Legislative Consent Motion**

13. As with the original LCM, if the Scottish Government recommends in its supplementary LCM that consent be given, it will normally be decided by a motion taken in the Chamber known as a Supplementary Legislative Consent Motion.

This motion is usually drafted by the Scottish Government. If, however, the Scottish Government does not recommend consent be given, a debate on the supplementary LCM may be scheduled in the Chamber.

14. In this case, the Scottish Government has noted in the supplementary LCM, lodged on 12 April 2022, that it is content to recommend that the Scottish Parliament grants legislative consent to the new clause:

- Commercial dealings in organs for transplantation: extra-territorial offences.

15. Further information on the Scottish Government's reasons for the position outlined above is detailed below and in the LCM itself.

## Health and Care Bill

16. The [Explanatory Notes](#) on the Bill state that the “purpose of the Health and Care Bill is to give effect to the policies that were set out as part of the NHS's recommendations for legislative reform following the Long Term Plan and in the White Paper ‘Integration and Innovation: Working together to improve Health and Social Care for all’ published in February 2021”.

17. The provisions in the Bill that apply to Scotland and where the UK Government previously requested legislative consent relate to:

- Medicine Information Systems
- International healthcare arrangements
- Regulations of healthcare and associated professions
- Food information for consumers: power to amend retained EU law
- Virginity testing offences: Scotland
- Secretary of State's power to transfer or delegate functions
- Hymenoplasty offences: Scotland
- Information about payments etc to persons in the health care sector.

18. The Scottish Parliament passed Legislative Consent Motion S6M-03054 on 10 February 2022, and granted legislative consent to those provisions.

## Scottish Government Legislative Consent Memorandum

### Supplementary LCM (S6-5c) lodged 12 April 2022

19. The UK Government tabled an amendment, on 28 March 2022, to insert a new clause into the Health and Care Bill which extends to Scotland. This clause relates to Commercial dealings in organs for transplantation: extra-territorial offences.

20. Although the amendment was voted through in the House of Commons on 30 March 2022, and subsequently passed in the House of Lords on 5 April 2022, the final form of the Bill has not yet been published. The Scottish Government advises the newly introduced provision (commercial dealings in organs for transplantation: extra-territorial offences) is therefore named, rather than referenced by clause number.

21. A [supplementary LCM](#) was lodged by Humza Yousaf MSP, Cabinet Secretary for Health and Social Care, on 12 April 2022.

22. The LCM states—

“The Scottish Government is supportive of the policy intent of this amendment. Although there is little evidence of there being a significant issue with patients seeking to pay for organs abroad, there are long waiting times for some organs so it is always possible that some patients will be tempted to do so; and that those organs may come from donors who have been exploited in some way due to needing money (or possibly even being forced to donate an organ without consent), and may not be receiving the full care we would expect an organ donor to receive.”

23. It goes on to explain:

“The Scottish Government therefore recommends the Scottish Parliament gives its consent to this amendment.”

## Decisions

**24. After considering today’s evidence from the Cabinet Secretary, Members are invited to consider what views to include in the Committee report.**

**25. Members are invited to agree to consider a draft report on the supplementary LCM by correspondence.**

**Clerks to the Committee**

**14 April 2022**