

Health, Social Care and Sport Committee

7th Meeting, 2021 (Session 6), Tuesday, 5 October 2021

Legislative Consent Memorandum – Health and Care Bill

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). However, best practice is for the Committee to report ahead of the last amending stage in the first house where possible. At the time of writing, this is expected to begin in early November.
5. Humza Yousaf, Cabinet Secretary for Health and Social Care and Scottish Government officials will attend the meeting to give evidence on the LCM.

Legislative Consent Process

Legislative Consent Memorandum

6. 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).
7. The Health, Social Care and Sport Committee has been designated by the Parliamentary Bureau as lead committee to consider the Health and Care Bill LCM and report its views to the Parliament.
 8. The Scottish Government lodged a [Legislative Consent Memorandum](#) in relation to the Health and Care Bill on 31 August 2021.

Legislative Consent Motion

9. If the Scottish Government recommends in its LCM that consent be given, it will normally be decided by a motion taken in the Chamber known as a 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 LCM may be scheduled in the Chamber.
10. In this case, the Scottish Government has noted in its Legislative Consent Memorandum that it does not intend to lodge a Legislative Consent Motion for the Bill, recommending that legislative consent should not be given on this occasion. Further information on the Scottish Government’s reasons for this is detailed below and in the LCM itself.
11. The Scottish Government has noted in its LCM that, if during the remaining stages of the Bill at Westminster, appropriate amendments are provided which address the concerns raised, a supplementary LCM with a final position on consent may be lodged. This would come back to the Committee for further consideration.

Health and Care Bill

12. 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”.
13. The provisions in the Bill that apply to Scotland and where the UK Government has requested legislative consent relate to:
 - The Secretary of State’s power to transfer or delegate functions
 - International healthcare arrangements
 - Food information for consumers
 - Power to amend retained EU law
 - Professional regulation
 - Medicines Information Systems.

Scrutiny by other Scottish Parliament Committees

Delegated Powers and Law Reform Committee

14. The Delegated Powers and Law Reform Committee (DPLRC) considered the LCM on 28 September 2021 and, although it has yet to publish it at time of writing, is expected to publish its report prior to the Committee taking evidence from the Cabinet Secretary.

Scottish Government Legislative Consent Memorandum

15. A legislative consent memorandum was lodged by Humza Yousaf MSP, Cabinet Secretary for Health and Social Care, on 31 August 2021.

16. The LCM states—

“At this time, the Scottish Government cannot recommend to the Scottish Parliament that it gives its consent to the Bill. While aspects of the Bill are not contentious (section 2 on pages 1 and 2), there are several that impinge on the legislative competence of the Scottish Parliament and the executive competence of the Scottish Ministers: these are Medicines Information Systems; Secretary of State’s Power to Transfer or Delegate Functions; International Healthcare; Regulations of healthcare and associated professions; Advertising of less healthy food and drink; Food information for consumers; and power to amend retained EU law.”

17. It goes on to explain that:

“The Scottish Government has requested that the UK Government make amendments that would respect devolved competence by requiring the statutory consent of the Ministers is sought before new powers in these areas are exercised. The Scottish Government has made this request as the new powers have implications for how policy is delivered in Scotland and for the transfer of Scottish patient data to another jurisdiction, where the Scottish Government’s and NHS Scotland’s ability to act in accordance with their responsibility for rights and freedoms of the population of Scotland (including confidentiality and security of such data) would be lost.”

18. The LCM further states:

“The Scottish Government’s position, which has been explained to the UK Government, is that, if satisfactory amendments should be made to the Bill to respect the devolution settlement, the Scottish Government may be able to recommend that the Scottish Parliament consents to the Bill. If, during the remaining stages of the Bill, appropriate amendments are provided which

address concerns, a supplementary memorandum with a final position on consent may be lodged”.

19. As the Scottish Government is not recommending that the Parliament give its consent, a draft legislative consent motion is not included with the LCM.

Decisions

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

21. Members are invited to agree to consider a draft report on the LCM in private at a future meeting.

Clerks to the Committee

30 September 2021