

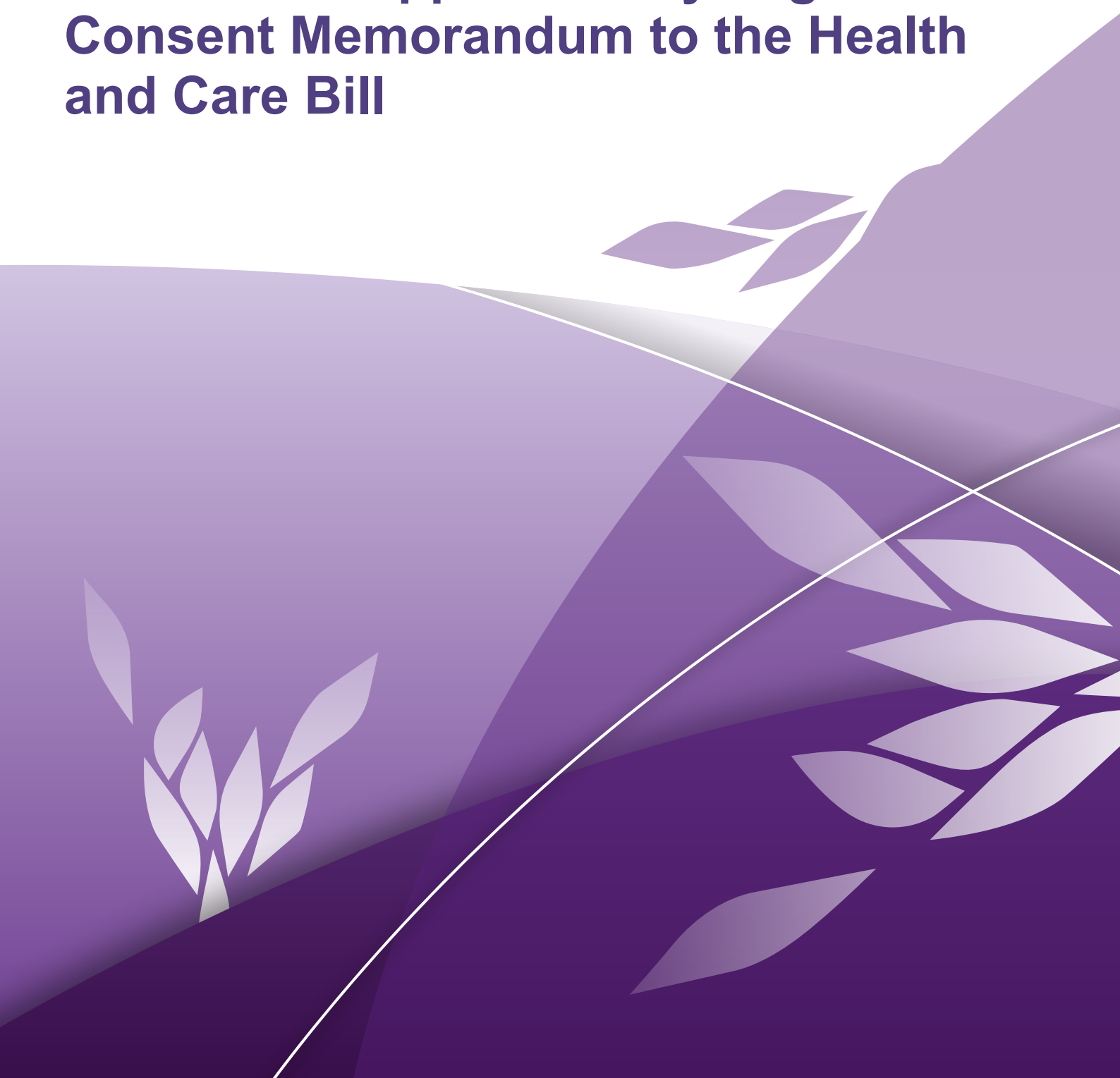


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Health, Social Care and Sport Committee

Additional supplementary Legislative Consent Memorandum to the Health and Care Bill



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Health, Social Care and Sport Committee

To consider and report on matters falling within the responsibility of the Cabinet Secretary for Health and Social Care and matters relating to drugs policy.



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Executive summary

1. This report details the Health, Social Care and Sport Committee's consideration of the additional supplementary Legislative Consent Memorandum on the [UK Health and Care Bill](#), lodged on [12 April 2022](#).

2. With respect to the relevant provisions of the Health and Care Bill, introduced in the House of Commons on 28 March 2022 relating to:

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

the Committee agrees with the recommendations of the Scottish Government that, so far as these matters fall within the legislative competence of the Scottish Parliament, they should be considered by the UK Parliament.

Background

3. The [UK Health and Care Bill](#) ("the Bill") was introduced in the House of Commons on 6 July 2021.
4. The Cabinet Secretary for Health and Social Care, Humza Yousaf MSP, lodged a [Legislative Consent Memorandum](#) on the Health and Care Bill on 31 August 2021, under Rule 9.B.3.1(a) of the Parliament's Standing Orders. That LCM withheld consent to the whole Bill, pending suitable amendments by the UK Government.
5. The LCM was considered by the Committee on [5 October 2021](#). The Committee's [report](#) on the LCM concluded:
 - ” 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.
6. The Scottish Government lodged two supplementary LCMs on [9 December 2021](#) and on [27 January 2022](#), following amendments made to the Bill by the UK Government.
7. These LCMs were considered by the Committee on [8 February 2022](#). The Committee's [report](#) on the supplementary LCMs concluded:
 - ” 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.
8. This report will consider and make a recommendation on the additional supplementary LCM.
9. The original LCM advised the UK Government describes the principal purpose of the Bill as follows:
 - ” The main purpose of the 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.
10. As health is devolved in Scotland, the majority of the provisions in the Bill apply to England and Wales only. The main provisions of the Bill are broadly categorised under the four following themes:
 1. Working together collaboratively and supporting integration;

2. Reducing Bureaucracy;
 3. Ensuring public confidence and accountability; and
 4. Additional proposals to support social care, public health, and quality and safety
11. The Bill originally contained the following provisions which apply to Scotland and where the UK Government has requested legislative consent:
- The Secretary of State's power to transfer or delegate functions;
 - International healthcare arrangements;
 - Food information for consumers: power to amend retained EU law;
 - Regulation of healthcare and associated professions; and
 - Medicines Information Systems
12. Legislative consent in the following additional areas was requested by the UK Government, and these were included in previous supplementary LCMs:
- Virginity testing;
 - Hymenoplasty offences; and
 - Information about payments etc. to persons in the health care sector.
13. A further additional provision, which will apply to Scotland, has been added by further amendment. The UK Government has requested legislative consent in the following additional area:
- Commercial dealings in organs for transplantation: extra-territorial offences.
14. Although this amendment was voted through in the first round of 'ping pong'ⁱ 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 newly introduced provision (commercial dealings in organs for transplantation: extra-territorial offences) is therefore named, rather than referenced by clause number.
15. The amendment introduces additional criminal offences where a person who is habitually resident in Scotland or who is a UK national travels outside the UK to either buy or in any way arrange a form of reward for an organ; with the new clause making provision for those offences in Scotland via amendments to the Human Tissue (Scotland) Act 2006.
16. As offences in relation to the donation of organs or other body parts is a devolved matter, the legislative consent of the Scottish Parliament is needed for it to cover Scotland and appropriate amendments made to the Human Tissue (Scotland) Act

ⁱ 'Ping-pong' refers to the to and fro of amendments to Bills between the House of Commons and the House of Lords.

2006.

17. This amendment would allow for progress towards implementation of the Council of Europe Convention against Trafficking in Human Organs (which the UK signed in 2015, but has not as yet ratified).
18. The Scottish Government advised that although there is little evidence of there being a significant issue in Scotland with patients seeking to pay for organs abroad, it is always possible that some patients will seek to do so and that those organs may come from donors who have been exploited in some way (or possibly even being forced to donate an organ without consent). It goes on to note:
 - ” We would hope that, if supported, this new clause would help to deter anyone from considering travelling outside of the UK to pay for an organ. Therefore, we anticipate prosecutions of offences to be minimal.

Consideration by the Health, Social Care and Sport Committee

19. The Committee took evidence on the additional supplementary LCM from the Cabinet Secretary for Health and Social Care and his officials on 19 April 2022.
20. During oral evidence the Cabinet Secretary highlighted the "piecemeal" way in which the Bill and the UK Government's engagement on it with the Scottish Government have been handled. He advised he has written to the UK minister, Mr. Argar, to express "my concern about having to make several requests for valuable parliamentary time to be spent considering the legislation".
21. Full details of the Committee's discussion with the Cabinet Secretary for Health and Social Care can be found in the Committee [Official Report](#) of 19 April 2022.

Commercial dealings in organs for transplantation: extra-territorial offences

22. Supplementary LCM S6-5c notes that the UK Government has sought agreement the Scottish Government to take action to criminalise commercial dealings in organs for transplantation: extra-territorial offences.
23. As with any new offence that is created, the Scottish Government will work with the Crown Office and Procurator Fiscal Service and Police Scotland on implementation.
24. The Cabinet Secretary advised that although there is no evidence to suggest that the small number of people who live in Scotland who have organ transplants abroad pay for their organs, the Scottish Government is committed to tackling unethical organ donation practices.
25. The Cabinet Secretary further explained that the amendment would help to deter anyone who may in future consider travelling abroad and paying for an organ, and it would "allow progress to be made towards implementation of the Council of Europe Convention against Trafficking in Human Organs".
26. When asked what else the Scottish Government was doing to increase the number of organ donors in Scotland, and therefore help limit the risk of commercial dealings with regard to organ transplants, the Cabinet Secretary highlighted the [Donation and Transplantation Plan for Scotland: 2021-2026](#). He noted the Scottish Government is:
 - ” ...working to ensure that we are encouraging people from as many diverse backgrounds as possible to come forward for organ donation, which is key. We know that in many instances, people of similar ethnic backgrounds will be a better match for organ donation. I hope that if there are more people from more diverse backgrounds, that that will militate against the need—or perception that there is a need—for someone to have to go to another country where there are donors with their ethnic background in order to get a possible match. ¹
27. With regard to stakeholder engagement, the Cabinet Secretary advised that

because of the way in which the UK Government's amendment has been brought forward and the requirement for an LCM, there has been a very limited amount of consultation. He noted this was a "source of our frustration, which, in turn, limits our ability to consult". However, he advised:

- ” The national group on organ donation has managed to take a view, and no concerns have emerged. In principle, we are in agreement with what the amendment seeks to do. However, if we had had more time—if the process had been done in a more structured and less ad hoc way—we would have been able to have more meaningful and deeper consultation with a variety of stakeholders. ²

Conclusions and recommendations

28. The Committee notes the recommendation of the Scottish Government that consent be given to this new clause relating to commercial dealings in organs for transplantation: extra-territorial offences.

29. With respect to the relevant provisions of the Health and Care Bill, introduced in the House of Commons on 28 March 2022 relating to:

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

the Committee agrees with the recommendations of the Scottish Government that, so far as these matters fall within the legislative competence of the Scottish Parliament, they should be considered by the UK Parliament.

- 1 [Health, Social Care and Sport Committee Official Report, 19 April 2022, COL29](#)
- 2 [Health, Social Care and Sport Committee Official Report, 19 April 2022, COL29](#)

