

# **NATIONAL HEALTH SERVICE (AMENDED DUTIES AND POWERS) BILL**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON CLAUSES**

1. Clause 1 replaces section 1 of the National Health Service Act 2006 (“the 2006 Act”) with a new section which places a statutory duty on the Secretary of State to ensure that the National Health Service (“the NHS”) is a service that operates on the basis of social solidarity and to ensure that arrangements for the provision of health services in England between commissioners and providers of health services provide for effective co-operation between different providers under the 2006 Act and between providers of health services and community care services. This clause retains the existing ministerial responsibility of the Secretary of State to Parliament, and the existing requirement relating to services being provided free of charge.
2. Clause 2 introduces a new section 2C into the 2006 Act to provide that the Secretary of State must exercise his powers under this Act to promote the NHS as an efficient service based on mutual cooperation and social solidarity; and that procurement of health services shall be appropriate for the purposes of the NHS.
3. Clause 3 replaces section 3 of the NHS Act with a new section which places a duty on the Secretary of State to make arrangements for the provision of those NHS services set out in section 3(1). It also allows the Secretary of State to delegate performance of that duty to the National Health Service Commissioning Board (“the Board”), known as NHS England, and to clinical commissioning groups. The section further allows the Secretary of State to give directions to the Board and to about the discharge of any of the Secretary of State’s duties that are delegated under this section.
4. Clause 4 replaces section 4 of the 2006 Act with a new section which places a duty on the Secretary of State to make arrangements for the provision of high security mental health services and allows the Secretary of State to delegate the performance of that duty to the Board.

*These notes refer to the National Health Service (Amended Duties and Powers) Bill  
as introduced in the House of Commons on 2 July 2014 [Bill 18]*

5. Clause 5 replaces section 8 of the 2006 Act with a new section which extends the number of NHS bodies to which the Secretary of State has the power to give directions.
6. Clause 6 replaces section 9 of the 2006 Act with a new section which makes provision about NHS contracts. It defines an “NHS contract” as an arrangements between one health service body (“the commissioner”) and another (“the provider”) for the provision of goods or services required for the purposes of the commissioner’s functions. It defines “health service bodies” for these purposes and makes provision relating to the making of NHS contracts and the role of the Secretary of State in the case of a dispute arising in respect of such contracts. The clause also enables the NHS to take advantage of exemptions to procurement obligations as set out in the European Union Directive 2014/24/EU.
7. Clause 7 replaces section 43 of the 2006 Act with a new section which allows the Secretary of State to set a general cap for the income that an NHS foundation trust can earn from providing services to patients outside the NHS (known as the “private patient income cap”). The proposed sub-section 43(7)(b) also permits the Secretary of State to determine that an individual NHS foundation trust should have a different cap to the cap set generally for NHS foundation trusts under section 43(7)(a). The clause also requires NHS foundation trusts to demonstrate that the provision of health services to patients outside the NHS does not have any adverse impact on the ability of the trust to carry on its principal purpose and that health service patients who are provided with services by the trust benefit from the trust’s provision of such services.
8. Clause 8 amends Schedule 4 to the 2006 Act to apply a broadly similar regime to NHS trusts concerning the provision of health services to patients outside the NHS as is provided for under clause 7 of the Bill for NHS foundation trusts.
9. Clause 9 provides that no legally enforceable procurement obligations shall be imposed on NHS commissioners in relation to any arrangement which is proposed to take effect or takes effect by way of an NHS contract. It amends the Public Contracts Regulations 2006 so as to remove NHS contracts (as that term is defined in section 9 of the 2006 Act) from the scope of these Regulations.
10. Clauses 10 and 11 amend the Health and Social Care Act 2012 to remove the competition functions from Monitor and to exclude the NHS from the provisions of the Competition Act 1998.
11. Clauses 12 and 13 require the consent of the Secretary of State to mergers or major property transactions by NHS foundation trusts.
12. Clause 14 provides that no ratification of the proposed Transatlantic Trade and Investment Partnership Treaty shall cause any legally enforceable procurement or

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competition obligations to be imposed on any NHS body entering into any arrangement for the provision of health services in any part of the health service.

13. Clause 15 defines the extent of the Act and provides for it to come into force three months after it has been passed.

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