

National Health Service (Amended Duties and Powers) Bill [HL]

EXPLANATORY NOTES

Explanatory notes to the Bill, prepared by Lord Owen, the Member in charge of the Bill, are published separately as HL Bill 26 – EN.

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CONTENTS

- 1 Secretary of State's duties to promote and provide a comprehensive and integrated health service
- 2 Abolition of the duties of autonomy
- 3 Concurrent duty of and commissioning by the NHS Commissioning Board
- 4 Secretary of State's duty as to provision of certain services
- 5 Powers of directions to Quangos and other bodies
- 6 Monitor
- 7 Amendment to competition requirements
- 8 Public register of NHS contracts
- 9 Treaty requirements
- 10 Interpretation
- 11 Short title, commencement and extent

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TO

Re-establish the Secretary of State's legal duty as to the National Health Service in England, Quangos and related bodies.

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1 Secretary of State's duties to promote and provide a comprehensive and integrated health service

For section 1 of the National Health Service Act 2006 (Secretary of State's duty to promote comprehensive health service) substitute—

"1 Secretary of State's duty as to the health service

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(1) It shall be the duty of the Secretary of State to promote in England a comprehensive and integrated health service designed to secure improvement—

- (a) in the physical and mental health of the people of England, and
- (b) in the prevention, diagnosis and treatment of illness, and for that purpose to provide or secure the effective provision of services in accordance with this Act.

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(2) The services so provided must be free of charge except in so far as the making and recovery of charges is expressly provided for, by or under any enactment, whenever passed.

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(3) The services provided pursuant to this Act and to the Health and Social Care Act 2012, howsoever or by whom so ever provided, secured or arranged, shall be deemed to be provided in furtherance of the duty to provide or secure effective provision of services under subsection (1)."

2 Abolition of the duties of autonomy

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Sections 1D and 13F of the National Health Service Act 2006 (duties as to promoting autonomy) are repealed.

3 Concurrent duty of and commissioning by the NHS Commissioning Board

- (1) Section 1H(2) of the National Health Service Act 2006 is repealed.
- (2) In section 1H(3) of that Act, for “For the purpose of discharging that duty”, substitute “For the purpose of furthering the duty of the Secretary of State under section 1(1).”

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4 Secretary of State’s duty as to provision of certain services

- (1) Section 3 of the National Health Service Act 2006 is amended as follows.
- (2) Before subsection (1) insert—
 - “(A1) The Secretary of State must provide, or secure the effective provision of, throughout England, to such extent as he considers necessary to meet all reasonable requirements, the accommodation, services and facilities set out in subsection (1)(a) to (f).”
- (3) In subsection (1), before “A” insert “For that purpose,”.

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5 Powers of directions to Quangos and other bodies

- (1) The Secretary of State may direct any of the bodies mentioned in subsection (2) to exercise any functions relating to the health service which are specified in the directions, and may also give directions to any such body about its exercise of any functions or about its provision of services under arrangements referred to in subsection (2)(h). 15
- (2) These bodies are — 20
 - (a) the National Health Service Commissioning Board,
 - (b) a clinical commissioning group,
 - (c) a Special Health Authority,
 - (d) an NHS trust,
 - (e) an NHS foundation trust, 25
 - (f) the National Institute for Health and Care Excellence,
 - (g) the Health and Social Care Information Centre, and
 - (h) any other body or person providing services in pursuance of arrangements made —
 - (i) by the Secretary of State under section 12 of, 30
 - (ii) by the Board or a clinical commissioning group under section 3, 3A, 3B, 4 of or Schedule 1 to,
 - (iii) by a local authority for the purpose of the exercise of its functions under or by virtue of section 2B or 6C(1) of or Schedule 1 to, or 35
 - (iv) by the Board, a clinical commissioning group or a local authority by virtue of section 7A of, 35
- (3) In exercising his power under subsection (1), the Secretary of State must have regard to the desirability, so far as consistent with the interests of the health service and relevant to the exercise of the power in all circumstances — 40
 - (a) of protecting and promoting the health of patients and the public;
 - (b) of any bodies mentioned in subsection (2) being free, in exercising its functions or providing services in accordance with its duties and

- powers, to do so in the manner that it considers best calculated to promote the comprehensive and integrated service referred to in section 1(1) of the National Health Service Act 2006; and
- (c) of ensuring co-operation between the bodies mentioned in subsection (2) in the exercise of their functions or provision of services. 5
- (4) If, in having regard to the desirability of the matters referred to in subsection (3) the Secretary of State considers that there is a conflict between those matters and the discharge of his duties under section 1 of the National Health Service Act 2006, he must give priority to the duties under that section.
- 6 Monitor** 10
- (1) The Health and Social Care Act 2012 is amended as follows.
- (2) After section 61 insert—
- “61A Monitor’s objective**
- (1) The objective of Monitor is to contribute to the achievement of a comprehensive and integrated health service in England through the exercise of its functions. 15
- (2) In exercising its main duty and other functions Monitor must act in accordance with that objective and in a manner consistent with the performance by the Secretary of State of his duties contained in sections 1 and 3 of the National Health Service Act 2006.” 20
- (3) Section 62(9) is repealed.
- 7 Amendment to competition requirements**
- (1) Section 75 of the Health and Social Care Act 2012 (requirements as to procurement, patient choice and competition) is amended as follows.
- (2) For paragraph (c) of subsection (1) substitute— 25
- “(c) are free so to commission such services which best serve patients’ interests and with no impediments to beneficial co-operation to increase integration, improve quality or reduce inequalities;”.
- (3) After paragraph (c) of subsection (1), insert— 30
- “(d) will have a full range of options and will be under no legal obligation to foster markets, particularly where competition would not be effective in driving high standards and value for patients.”
- (4) The National Health Service (Procurement, Patient Choice and Competition) (No. 2) Regulations 2013 are repealed. 35
- 8 Public register of NHS contracts**
- (1) Each NHS body shall establish and maintain a public register of contracts entered into by it in relation to the provision of health services.

- (2) The register shall be available electronically and for inspection by the public at all reasonable hours and copies of the documents on the register shall be provided on request at reasonable cost.
- (3) The Secretary of State shall make regulations to make further provision regarding the public register. 5
- (4) In subsection (1) “contracts” includes documents presented in relation to the contracts, and sub-contracts.

9 Treaty requirements

- (1) No treaty which requires the United Kingdom – 10
- (a) to change; or
- (b) to limit the powers of the United Kingdom in respect of, NHS legislation shall be signed or agreed unless any such changes or limits have been approved by –
- (i) in relation to England, an Act of Parliament;
- (ii) in relation to Scotland, an Act of the Scottish Parliament; 15
- (iii) in relation to Wales, an Act of the National Assembly for Wales; and
- (iv) in relation to Northern Ireland, an Act of the Northern Ireland Assembly.
- (2) In subsection (1) – 20
- “to change” means to amend, repeal, introduce or otherwise to change;
- “NHS legislation” means any primary legislation passed by Parliament, the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly, and any secondary legislation enacted by the Secretary of State or any of the devolved administrations, relating to – 25
- (a) as regards England, the comprehensive health service which must be continued under section 1(1) of the National Health Service Act 2006;
- (b) as regards Scotland, the comprehensive and integrated health service that must be continued under section 1(1) of the National Health Service (Scotland) Act 1978; 30
- (c) as regards Wales, the comprehensive health service that must be continued under section 1(1) of the National Health Service (Wales) Act 2006; and 35
- (d) as regards Northern Ireland, the integrated health services and personal social services that must be provided or secured under Article 4 of the Health and Personal Social Services (Northern Ireland) Order 1972;
- “treaty” means a written agreement between States or between States and international organisations which is binding under international law and includes any protocol, annex or schedule to or an amendment or replacement of such an agreement and includes a regulation, rule, measure, decision or similar instrument made under a treaty, which has the effect mentioned in subsection (1). 40 45

10 Interpretation

Expressions used in this Act which are also in the National Health Service Act 2006 and in the Health and Social Care Act 2012 shall have the same meanings as the meanings given to those expressions under those Acts.

11 Short title, commencement and extent

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- (1) This Act may be cited as the National Health Service (Amended Duties and Powers) Act 2013.
- (2) This Act shall come into force on the day on which it is passed.
- (3) This Act extends to England, except section 9 which extends to England and Wales, Northern Ireland and Scotland.

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