

NHS FUNDING BILL

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the NHS Funding Bill as brought from the House of Commons on 5 February 2020 (HL Bill 96).

- These Explanatory Notes have been prepared by the Department of Health and Social Care to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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Overview of the Bill

- 1 The Bill sets out in legislation the current long-term funding settlement for the NHS, as set out in the NHS Long Term Plan (LTP), published January 2019.
- 2 The Bill makes two main provisions to:
 - Place a duty on the Secretary of State to ensure that the sums paid to NHS England for revenue spending do not fall below the amounts specified in the LTP Funding Settlement for the remaining financial years of that settlement, up to and including the financial year 2023/24.
 - Place a legal duty on the Treasury to ensure that the annual Supply Estimates for the Department of Health and Social Care (DHSC) are consistent with the amounts of NHS England funding for each financial year.
- 3 These provisions cease to have effect at the end of the financial year 2023/24.

Policy background

The role of the Department of Health and Social Care in NHS funding

- 4 NHS England (NHSE) receives its funding from the Department of Health and Social Care (DHSC). Under section 13A of the National Health Service Act 2006 (the “2006 Act”), the Secretary of State must publish and lay before Parliament a “Mandate” before the start of each financial year.
- 5 Under section 223D of the 2006 Act, the Secretary of State must set limits on the total capital and revenue resource use of NHSE (which includes capital and revenue resource for use of Clinical Commissioning Groups (CCGs)) for each financial year. These limits must be specified in the mandate. NHSE is under a duty to ensure that its and CCGs’ revenue and capital resource use does not exceed these limits (section 223D(2) and (3) of the 2006 Act). The Secretary of State may also specify such limits for subsequent financial years (section 13A(4) of the 2006 Act).

The role of Her Majesty’s Treasury in NHS funding

- 6 The Crown is charged with the management of all the revenue of State, and with all the payments for public service. Departments (as representatives of the Crown) are required to present to Parliament their requirements for the financing of public services, which they do by presenting estimates of their expenditure, known as “Supply Estimates”. Parliament will then vote on whether to authorise that expenditure and therefore provide the ways and means to meet it.
- 7 Under a long-standing convention, departmental Supply Estimates must be approved by the Treasury before they are presented to Parliament and must be fully consistent with Treasury budgetary controls.
- 8 Most departments’ Estimates (including DHSC’s) are then presented to Parliament by the Treasury as a single publication¹. The Commons then considers the Estimates put forward by the government and confirms authorisation of the amounts in the Estimates through passing Supply and Appropriation Acts annually which grant the supply of funding from the Consolidated Fund to Departments.

¹ This year’s estimates can be found at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/800671/main_estimates_2019-20_web.pdf. Separate figures in relation to NHSE are included at page 129.

The Long Term Plan funding settlement

- 9 In June 2018, the Government announced its intention to work with the NHS in England to develop a ten-year plan for the health service, underpinned by an increase in funding for the NHS in England amounting to a £33.9 billion per year increase in cash terms by the financial year 2023/24. This funding settlement was set out at Autumn Budget 2018.
- 10 This long-term funding commitment aimed to provide the NHS with financial certainty allowing it to plan for the next decade.
- 11 The NHS Long Term Plan was published in January 2019. It sets out how the NHS will develop over the next 10 years, including a move to more integrated care, a greater focus on prevention and changes to ensure financial sustainability.
- 12 The table below sets out NHS England’s revenue funding for each year up to (and including) 2023-24. These figures include the Government’s funding settlement for the Long Term Plan.

NHS England revenue budget	2018-2019	2019-2020	2020-2021	2021-2022	2022-2023	2023-2024
Total budget (£bn) in cash terms	114.6	120.8	127.0	133.3	140.0	148.5

Legal background

- 13 The relevant legal background is explained in the policy background section of these Notes.

Territorial extent and application

- 14 Clause 2 sets out the territorial extent of the Bill, which describes the jurisdictions in which the Bill forms part of the law. The extent of a Bill can be different from its application. Application is about where a Bill produces a practical effect.
- 15 Healthcare is a devolved matter. The Bill extends to England and Wales but will apply only to the NHS in England.
- 16 There is a convention that Westminster will not normally legislate with regard to matters that are within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly without the consent of the legislature concerned.
- 17 The matters to which the provisions of the Bill relate are not within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly, and no legislative consent motion is being sought in relation to any provision of the Bill. If there are amendments relating to matters within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly, the consent of the relevant devolved legislature(s) will be sought for the amendments.
- 18 See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom. The table also summarises the position regarding legislative consent motions and matters relevant to Standing Orders Nos. 83J to 83X of the Standing Orders of the House of Commons relating to Public Business.

Commentary on provisions of Bill

Clause 1: Funding Settlement for the Health Service in England

- 19 Subsection (1) sets out the duty on the Secretary of State to allot to NHSE, as a minimum, the amount of funding for each financial year set out in the table below.

Financial Year	Amount
Ending with 31 st March 2021	£127,007,000,000
Ending with 31 st March 2022	£133,283,000,000
Ending with 31 st March 2023	£139,990,000,000
Ending with 31 st March 2024	£148,467,000,000

- 20 The funding settlement, announced in January 2019, referred only to revenue spending for NHSE. It is the intention that this Bill also only covers NHS England revenue spending. As such subsection (2) confers a duty on the Secretary of State to ensure this funding is only used as revenue resource, rather than as capital resource.
- 21 The 2006 Act (section 13A) states that NHSE is subject to an annual “mandate”, which the Secretary of State must publish and lay before Parliament before the start of each financial year. The mandate must specify the limits that the Secretary of State has decided on NHSE’s capital and revenue resource use for that financial year as set out in section 223D of the 2006 Act.
- 22 Subsection (2) requires the Secretary of State to specify such limits on capital and revenue resource use under section 223D of the 2006 Act as the Secretary of State considers necessary to ensure that the amounts specified in the table in subsection (1) are used only as revenue resource.
- 23 Estimates are the documents presented to Parliament by the Treasury setting out the Government’s plans for spending for the relevant year. Estimates take into account Departments’ proposed Departmental Expenditure Limits, Annually Managed Expenditure and Total Managed Expenditure grouping the planned expenditure for each department in accordance with these categories. The Treasury lays the Estimates before Parliament for its approval and once approved the relevant limits are subsequently set out in Supply and Appropriation Acts which provide statutory authority for the amounts of resources sought in the Estimates and therefore for most departmental expenditure.
- 24 Subsection (3) puts a duty on the Treasury to ensure that the Department of Health and Social Care Estimates laid before Parliament are consistent with the amounts of revenue resource funding for NHSE for the relevant year, as set out in the table in subsection (1).
- 25 Subsection (4) defines an “allotment to the health service in England” as an allotment under section 223B(2) of the National Health Service Act 2006 or a new allotment under section 223B(3) of the National Health Service Act 2006. This ensures that the duty in subsection (1) on the Secretary of State applies to any allotment in the relevant financial years.
- 26 Section 223B(1) of the 2006 Act provides that the Secretary of State must pay to NHSE sums not exceeding the amount allotted for that year towards meeting the expenditure of NHSE.

Clause 2: Extent, commencement, expiry and short title

- 27 Subsection (1) sets out the territorial extent of the Bill, that is the jurisdictions within which the Bill forms part of the law.
- 28 The Bill extends to England and Wales only.
- 29 Subsection (2) provides that the provisions of the Bill come into force on the day that the Act is passed.
- 30 Subsection (3) provides that the legislation will expire at the end of 31st March 2024. This reflects the fact that the Bill makes provision in relation to NHSE funding for the financial years 2020/21 to 2023/24 only.
- 31 Subsection (4) states the Bill's short title as the 'NHS Funding Act 2020'.

Commencement

- 32 The Bill comes into force on the day on which it is passed.

Financial implications of the Bill

- 33 The Bill will have financial implications, in that it will put the Secretary of State and Her Majesty's Treasury under a legal duty to allot a certain amount of money to NHS England in line with the table in paragraph 19 of these explanatory notes.
- 34 The Bill will thereby commit the Government to a minimum level of funding for NHS England. This funding has been agreed with Her Majesty's Treasury.

Parliamentary approval for financial costs or for charges imposed

- 35 A Commons money resolution was required for the Bill. A money resolution is required where a Bill gives rise to, or creates functions that could be used so as to give rise to, new charges on the public revenue (broadly speaking, new or increased public expenditure).
- 36 In terms of expenditure, the duty on the Secretary of State to allocate certain amounts to NHS England, supported by the duty on the Treasury to ensure that DHSC's Estimates are consistent with these amounts, will mean that the Bill creates a legal requirement to increase the funding allocated to NHS England. Whilst it will remain the case that the actual appropriation of the amounts will occur as a result of the supply process, the legal requirements to achieve that appropriation for the purposes of making the allocation to NHS England will be generated by the Bill. To cover the expenses arising from the imposition of these new duties, a money resolution that sanctions expenditure charged upon moneys to be provided by Parliament was required.

Compatibility with the European Convention on Human Rights

37 The Parliamentary Under Secretary of State for Health and Social Care, Baroness Blackwood of North Oxford, has made a statement under section 19(1)(a) of the Human Rights Act 1998 that, in her view, the provisions of the Bill are compatible with the Convention rights. The Department of Health and Social Care does not consider that the provisions of the Bill engage Convention rights.

Related documents

38 The following documents are relevant to the Bill and can be read at the stated locations:

- National Health Service Act 2006: <https://www.legislation.gov.uk/ukpga/2006/41/contents>
- National Health Service Long Term Plan: <https://www.longtermplan.nhs.uk/wp-content/uploads/2019/08/nhs-long-term-plan-version-1.2.pdf>

Annex A – Territorial extent and application in the United Kingdom

39 The Bill extends to England and Wales but will apply only to the NHS in England.² No provisions of the Bill have effect outside England.

Provision	Extends to E & W and applies to England ?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of the National Assembly for Wales?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion sought?
1 Funding Settlement for the Health Service in England								
Subsection 1	Yes	No	No	No	Yes	Yes	Yes	No
Subsection 2	Yes	No	No	No	Yes	Yes	Yes	No
Subsection 3	Yes	No	No	No	Yes	Yes	Yes	No
Subsection 4	Yes	No	No	No	Yes	Yes	Yes	No
2 Extent, commencement, expiry and short title								
Subsection 1	NA	NA	NA	NA	NA	NA	NA	NA
Subsection 2	NA	NA	NA	NA	NA	NA	NA	NA
Subsection 3	NA	NA	NA	NA	NA	NA	NA	NA
Subsection 4	NA	NA	NA	NA	NA	NA	NA	NA

Subject matter and legislative competence of devolved legislatures

40 In the opinion of the UK Government, the subject matter of the Bill is within the devolved competence of the Welsh, Scottish and Northern Irish legislatures because it relates to health. Health policy and funding is controlled by the respective Devolved Administrations.

41 Health is within the competence of the National Assembly of Wales because it is not a reserved matter under Schedule 7A of the Government of Wales Act 2006. It is within the competence of the Scottish Parliament because it is not a reserved matter under Schedule 5 of the Scotland Act 1998. It is within the competence of the Northern Ireland Executive because it is neither reserved under Schedule 3 to the Northern Ireland Act 1998 nor excepted under Schedule 2 to that Act.

² References in this Annex to a provision being within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly are to the provision being within the legislative competence of the relevant devolved legislature for the purposes of Standing Order No. 83J of the Standing Orders of the House of Commons relating to Public Business.

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