

Health and Social Care Reform Bill 2015

AN ACT TO

Re-establish the Secretary of State's legal duty as to the National Health Service in England, end external healthcare contracts, and bring social care provision into the NHS.

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, in accordance with the provisions of the Parliament Acts 1911 and 1949, and by the authority of the same, as follows:—

PART 1: PROMOTION AND PROVISION OF THE HEALTH SERVICE IN ENGLAND

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

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

(a) in the physical and mental health of the people of England, and

(b) in the short and long term social care of the people of England, and

(c) in the quality of life of the people of England, and

(d) 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.

(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.

(3) The services provided pursuant to this Act and any other relevant acts shall be deemed to be provided in furtherance of the duty to provide or secure effective provision of services under subsection (1).

2. General power to provide services

(1) The Secretary of State may—

(a) provide such services as he considers appropriate for the purpose of discharging any duty imposed on him by this Act, and

(b) do anything else which is calculated to facilitate, or is conducive or incidental to, the discharge of such a duty.

3. Provision of particular services

(1) The Secretary of State must provide throughout England, to such extent as he considers necessary to meet all reasonable requirements—

(a) hospital accommodation,

(b) other accommodation for the purpose of any service provided under this Act,

(c) medical, dental, ophthalmic, nursing and ambulance services,

(d) psychiatric, psychotherapeutic, and mental health services,

- (e) maternity and pediatric care services, and other such services or facilities for the care of pregnant women, women who are breastfeeding and young children as he considers are appropriate as part of the health service,
- (f) short and long term care services for elderly, vulnerable, and disabled persons including, but not limited to, domiciliary care services,
- (g) crisis intervention, safeguarding, and social services,
- (h) such other services or facilities for the prevention of illness, the care of persons suffering from illness and the after-care of persons who have suffered from illness as he considers are appropriate as part of the health service,
- (i) such other services or facilities as are required for the diagnosis and treatment of illness,
- (j) such other services or facilities for the protection and care of vulnerable persons as he considers are appropriate as part of the health service.

4. Performance of functions outside of England

- (1) The Secretary of State may provide or secure the provision of anything mentioned in section 3(1) outside England.
- (2) The Secretary of State's functions may be performed outside England and Wales, in so far as they relate to—
 - (a) holidays for patients,
 - (b) the transfer of patients to or from Scotland, Northern Ireland, the Isle of Man or the Channel Islands, or
 - (c) the return of patients who have received treatment in England and Wales, to countries or territories outside the United Kingdom.

5. Exercise and distribution of functions

- (1) The Secretary of State may direct any of the bodies mentioned in subsection (2) to exercise any of his 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)(e).
- (2) The bodies are—
 - (a) a Health and Care Trust,
 - (b) a Clinical Commissioning Group,
 - (c) the National Institute for Health and Care Excellence,
 - (d) the Health and Social Care Information Centre, and
 - (e) any other body or person providing services in pursuance of arrangements made—
 - (i) by the Secretary of State,
 - (ii) by a Health and Care Trust,
 - (iii) by a Clinical Commissioning Group,
 - (iv) by the National Institute for Health and Care Excellence,
 - (v) by the Health and Social Care Information Centre, or

(vi) by a local authority.

(3) The Secretary of State may only exercise his powers defined within subsection (1) in the interests—

- (a) of protecting and promoting the health and care of patients and the public;
- (b) of any bodies mentioned in subsection (2) being free, in exercising their functions or providing services in accordance with their duties and powers, to do so in the manner that they consider best calculated to promote the comprehensive and integrated service referred to in section 1(1) of this Act; and
- (c) of ensuring co-operation between the bodies mentioned in subsection (2) in the exercise of their functions or provision of services.

(4) If the Secretary of State considers that there is a conflict between the matters detailed in subsection (3) and the discharge of his duties under section 1 of this Act, he must give priority to the duties under that section.

PART 2 HEALTH SERVICE BODIES AND LOCAL AUTHORITIES

6. Health and Care Trusts

(1) The NHS Commissioning Board will be abolished and replaced by nine regional Health and Care Trusts—

- (a) East of England Health and Care Trust,
- (b) East Midlands Health and Care Trust,
- (c) London Health and Care Trust,
- (d) North East Health and Care Trust,
- (e) North West Health and Care Trust,
- (f) South East Health and Care Trust,
- (g) South West Health and Care Trust,
- (h) West Midlands Health and Care Trust,
- (i) Yorkshire and the Humber Health and Care Trust.

(2) Health and Care Trusts will assume all of the functions and responsibilities of the NHS Commissioning Board including, but not limited to—

- (a) providing oversight and strategic supervision to Clinical Commissioning Groups,
- (b) enacting directives and implementing fiscal policy as directed by the Secretary of State,
- (c) maintaining their own budgets and setting their own priorities, within the overriding framework outlined by the Department of Health, and
- (d) holding contracts for General Practitioners, Dentists, and Optometrists.

7. Local authority relationships

(1) Health and Care Trusts will work with local authorities to set health and social care priorities and efficiently deliver services.

(2) Health and Care Trusts will assume all of the functions and responsibilities for social care from local authorities including, but not limited to—

- (a) mental health and wellbeing services,
- (b) support and assistance for carers,
- (c) public health services,
- (d) community support services,
- (e) disability care and support services,
- (f) child protection services,
- (g) residential and nursing home care services,
- (h) non-residential home care services,
- (i) other adult social care services, and
- (i) sexual health services.

PART 3 PROVISION AND DELIVERY OF SERVICES

8. Provision of care

(1) The Health and Care Trusts will be the primary providers of health and social care services throughout England, delivering this care through Clinical Commissioning Groups.

(2) Each Health and Care Trust must exercise its powers so as to provide primary services within its area, or secure their provision within its area.

(3) Clinical Commissioning Groups may—

- (a) provide primary services themselves (whether within or outside its area), or
- (b) make such arrangements for their provision (whether within or outside its area) as they consider appropriate, and may in particular make contractual arrangements with any public body within the National Health Service.

(4) Clinical Commissioning Groups—

- (a) will be under no legal obligation to foster markets, particularly where competition would not be effective in driving high standards and value for patients;
- (b) 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; and
- (c) are free so to commission such services from any public body within the National Health Service; and
- (d) will only be able to tender services to qualified providers if the NHS cannot provide that service at a reasonable cost and the tendered service is beneficial to the taxpayer and end user

(5) The National Health Service (Procurement, Patient Choice and Competition) (No.2) Regulations 2013 are repealed.

9. Primary services

(1) Primary services include, but are not limited to, the services listed in subsection 3(1).

PART 4 TRANSPARENCY AND SCRUTINY

10. Monitor

- (1) The objective of Monitor is to contribute to the achievement of a comprehensive and integrated health and social care service in England through the exercise of its functions.
- (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.
- (3) Monitor shall measure services and hold them to account against clinically credible and evidence-based outcome measures, not process targets.

11. 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 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.
- (4) In subsection (1), “contracts” includes documents presented in relation to the contracts, and sub-contracts.

12. Treaty requirements

- (1) No treaty which requires the United Kingdom—
 - (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 an Act of Parliament;
- (2) In subsection (1) —
 - (a) “to change” means to amend, repeal, introduce or otherwise to change;
 - (b) “NHS legislation” means any primary legislation passed by Parliament relating to the comprehensive and integrated health and social care service which must be continued under section 1(1) of the National Health Service Act 2006;
 - (c) “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 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).

PART 5 EXTERNAL CONTRACTS

13. Review of existing contracts

(1) All present contracts or agreements between—

- (a) the Department of Health or Department of Health bodies,
- (b) National Health Service bodies, and
- (c) local authorities

and non-public sector organisations to deliver health and social care services will be reviewed by the Secretary of State upon the passing of this Act.

(2) The Secretary of State may choose to—

- (a) immediately terminate the agreement with compensation,
- (b) reduce the contracted length of the agreement, or
- (c) allow the agreement to remain in place for the remaining period.

(3) Any compensation in subsection (2)a shall be determined by the Secretary of State.

(4) The Secretary of State will use his powers outlined in this section in a fair and justifiable manner, although his responsibilities in section 1 take precedence.

14. Contracts currently out to tender

(1) Any contracts to provide—

- (a) the Department of Health or Department of Health bodies,
- (b) National Health Service bodies, and
- (c) local authorities

with health or social care currently out to tender will be withdrawn.

15. Exceptional circumstances

(1) The Secretary of State may receive applications to allow new external contracts to deliver additional health and social care services.

(2) Applications may be made by—

- (a) the Department of Health or Department of Health bodies,
- (b) National Health Service bodies, and
- (c) local authorities.

(3) Applications must include—

- (a) evidence that all internal solutions have been considered, and
- (b) an audited financial assessment of the contract.

(4) The application must be published in the London Gazette.

(5) The Secretary of State shall publish his decision within sixty calendar days.

(6) The Secretary of State's responsibilities under section 1 of this Act always take precedence.

PART 6 HEALTH SERVICE DEBTS

16. Nationalising PFI debts

(1) The Treasury shall take ownership of all private finance initiative and public-private partnership debts held by any National Health Service bodies.

(2) The Treasury shall work with creditors to reduce and write off all debt covered in subsection 1.

17. Preventing future debt

(1) National Health Service bodies may not enter into new private finance initiative or public-private partnership agreements.

(2) Section 1 of the National Health Service (Private Finance) Act 1997 is repealed.

(3) Subsection (2) shall not affect agreements previously entered into by an NHS trust under section 1 of that Act.

(2) National Health Service bodies may only borrow money or accrue debt through the Treasury.

PART 7 REPEALS

18. Abolition of competition, pricing, licensing etc.

(1) Subject to an order made by the Secretary of State for Health, the provisions of Part 3 of the Health and Social Care Act 2012 shall be repealed, including:

(a) sections 62 to 71, including The National Health Service (Procurement, Patient Choice and Competition) (No. 2) Regulations 2013 made under section 75;

(b) sections 72 to 80;

(c) sections 81 to 114;

(d) sections 115 to 127;

(e) sections 128 to 133;

PART 8 SUPPLEMENTARY

19. Interpretation

(1) Expressions used in this Act which are also used 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.

20. Short title, commencement and extent

(1) This Act may be cited as the Health and Social Care Reform Act 2015.

(2) This Act shall come into force on 5th July 2015.

(3) This Act extends to England, except section 12 which extends to the United Kingdom.