

The National Health Service Reinstatement Bill, February 2015

How does the second version differ from the first?

The first version of the NHS Reinstatement Bill was put out for consultation at the end of August 2014. Since last summer, we have received dozens of responses from individuals and organisations in emails, meetings and phone calls. We have been heartened by the vast majority of these responses and our thinking has benefitted enormously from them. We have now prepared a second version of Bill.

We summarise below 11 issues arising out of what appear to us to be the main comments or concerns expressed during the consultation and how we have sought to respond to them in the second version of the Bill. The first two relate mainly to terminology, the subsequent issues are more substantive.

District Health Authorities and Family Health Services Committees

In the second version of the Bill, the name of the geographically-based public bodies responsible for planning and providing health services would be “Health Boards”, rather than “District Health Authorities”. This is the term used in Scotland and Wales. Health Boards would also be responsible for the administration of the arrangements for provision of medical, dental, ophthalmic and pharmaceutical services for their area, and so the idea of Family Health Services Committees has been omitted (Clauses 9 and 10).

Commissioning

The brief summary of the first version of the Bill stated that it would end virtually all commissioning. What was meant by that was that abolition of the purchaser-provider split required the mechanism of contracting to end. It was not intended to mean that the essential tasks of assessing and planning services would end. This second version clarifies this (Clause 9(5)(a)).

Integrating health and social care

The first version of the Bill did not include provisions on integrating health and social care (as its focus was on reversing twenty five years of marketisation). There appears to be much support for integrating health and social care and so the second version of the Bill includes provisions to do this, based on the Scottish approach using “integration schemes” (Clause 1, and Clause 9(5)(b)(ii)). The Bill also draws on the membership structure of the Health and Well-being Boards (Schedule 4).

Public health functions

Much concern has been expressed over what is happening to provision of public health services. Public health functions were highlighted but detailed provisions were not set out in the first version of the Bill. Although it seems that a consensus is yet to emerge for improving the situation, Clause 6 of this second version offers a suggestion. It would strengthen the two public health protection and improvement duties of the Secretary of State, flesh out and develop the current skeletal duty to reduce inequalities and bring the three duties together as an integral part of the NHS. Regulations would require other parts of government to have regard to the need to reduce inequalities, including as regards social and lifestyle factors. These duties would then be delegated to Public Health England which would be established as a Special Health Authority; and to a local authority or Health Board under a public health scheme under Clause 9(5)(b)(ii) in accordance with regulations. How public health functions would be exercised in any given area would therefore be based on 'bottom up' proposals from the local authority and Health Board in that area, in consultation with Public Health England.

Commencement and reorganisation

Concerns have been expressed about "another top-down re-organisation". These are genuine concerns, but the 2012 Act dismantled the NHS to allow the market in and what remains is not organised. Neither is it coherent, effective and efficient. Legislation is therefore necessary to reinstate the NHS as a comprehensive service where the profit motive does not belong.

Clause 23 of the first version of the Bill gave flexibility to the Secretary of State in the timescale for its implementation. This second version goes further, in three respects (see especially Clause 9):

- the transfer of planning and service provision functions to Health Boards as geographically-based public bodies – including their membership, performance of their functions and their internal management – would be led from the 'bottom up' by the local authority, or by a combination of local authorities, including elected mayors;
- clinical commissioning groups, NHS trusts, NHS foundation trusts and NHS England would have a duty to assist local authorities in those tasks; and
- the groups and trusts would not be abolished, and NHS England would not revert to a Special Health Authority, until those tasks had been completed, with a proposed cut-off date of 1st January 2018.

It also allows flexibility in the definition of areas of Health Boards, so that these could be based on combinations of authorities where there is local support (for example in London or Greater Manchester).

The cut-off date is clearly important. If it is too soon, the risk of not carrying out those tasks well is increased; if it is too late, the risk of vested interests seeking to delay implementation increases.

Commercial companies providing primary medical services

Commercial companies, such as United Health and Virgin, are currently allowed to provide primary medical (i.e., GP) services under contracts known as Alternative Personal Medical Services (APMS) contracts. The second version of the Bill would prohibit APMS contracts in future, so GP services would be provided under general medical services (GMS) contracts and personal medical services (PMS) contracts (Clause 8(4)(b)).

Exceptional use of private companies

Concerns have been expressed that provisions in the first version which permitted exceptional use of private companies could in some way mean that a reinstated NHS would remain exposed to international and/or EU rules on trade in services. The different countries of the UK should be free to choose the NHS they want, and the NHS Reinstatement Bill is intended to be a clear statement of that choice in England. Those provisions are not therefore included in the second version.

Private Finance Initiative (PFI)

The first version of the Bill did not include any provisions about PFI. The second version includes new provisions to centralise and reduce PFI NHS debts (Clause 21).

Charges on immigrants

The Immigration Act 2014 contains provisions requiring certain immigrants to pay for NHS services. The first version of the Bill did not cover this. The second version would repeal those provisions (Clause 22).

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