

National Health Service Bill

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Bill 37 56/1

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B I L L

TO

Re-establish the Secretary of State’s legal duty as to the National Health Service in England and to make provision about the other duties of the Secretary of State in that regard; to make provision about the administration and accountability of the National Health Service in England; to repeal section 1 of the National Health Service (Private Finance) Act 1997 and sections 38 and 39 of the Immigration Act 2014; to make provision about the application of international law in relation to health services in the United Kingdom; and for connected purposes.

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:—

PART 1

SERVICES, ADMINISTRATION AND ACCOUNTABILITY

Duties of the Secretary of State

1 Secretary of State’s duties as to the 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

(1) It shall be the duty of the Secretary of State to promote in England a comprehensive 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.

(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 Secretary of State shall exercise the functions referred to in subsection(1) with a view to integrating the provision of health services and of social care services in accordance with this Act.

(4) The comprehensive health service referred to in subsection (1) is for the purposes of—

(a) Protocol (No 26) to the Treaty on European Union (Services of General Interest), a non-economic service of general interest; and

(b) the World Trade Organization’s General Agreement on Trade in Services, a service supplied in the exercise of governmental authority as a service supplied neither on a commercial basis, nor in competition with one or more suppliers.”

2 Abolition of the duties of autonomy

Sections 1D and 13F of the National Health Service Act 2006 (duties as to promoting autonomy) are repealed.

Duties as to certain services

3 Secretary of State’s duty to provide certain services

(1) For section 3 of the National Health Service Act 2006 (Duties of clinical commissioning groups as to commissioning certain health services) substitute—

“3 Secretary of State’s duty to provide certain services

(1) The duty of the Secretary of State under section 1(1) to provide or secure the effective provision of services includes—

(a) the duty of the Secretary of State imposed by subsection (2) below,

(b) the functions in relation to high security psychiatric services in accordance with section 4 below;

(c) the functions in Part 4 (medical services), Part 5 (dental services), Part 6 (Ophthalmic services) and Part 7 (Pharmaceutical services and local pharmaceutical services) below;

(d) the functions in relation to other services in accordance with section 5 below;

(e) the functions in relation to public health under section 6 below; and

(f) the functions in relation to information services in accordance with section 7(2).

(2) It is the Secretary of State’s duty to provide throughout England, to such extent as the Secretary of State 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, nursing, ambulance and mental health services;

(d) such other facilities for the care of expectant and nursing mothers and young children as the Secretary of State considers are appropriate as part of the health service;

(e) such 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 the Secretary of State considers are appropriate as part of the health service;

(f) such other services as are required for the diagnosis and treatment of illness.

(3) The Secretary of State may provide or secure the provision of anything mentioned in subsection (2) above outside England.

(4) Subsection (2) does not affect the provisions of Parts 4 to 7 (which relate to arrangements with practitioners for the provision of medical, dental, ophthalmic and pharmaceutical services).”

(2) Section 3 (Duties of clinical commissioning groups as to commissioning certain health services) and section 3A (Power of clinical commissioning groups to commission certain health services) of the National Health Service Act 2006 are repealed.

4 High security psychiatric services

In section 4(1) of the National Health Service Act 2006, for the words “The Board must arrange for the provision of” substitute the words “The Secretary of State’s duty under section 1(1) includes a duty to provide and maintain”.

5 Other services

Schedule 1 to the National Health Service Act 2006 is repealed and substituted by Schedule 1 to this Act.

6 Public health functions

(1) The Secretary of State must throughout England—

- (a) protect the public from disease or other dangers to health;
- (b) improve the health of the people; and
- (c) reduce health inequalities,

as an integral part of the comprehensive health service referred to in section

1(1) of the National Health Service Act 2006.

(2) For the purposes of the duty under subsection 1(a) above, the Secretary of State shall—

- (a) conduct research or such other steps as the Secretary of State considers appropriate for advancing knowledge and understanding;
- (b) provide microbiological or other technical services (whether in laboratories or otherwise);
- (c) provide vaccination, immunisation or screening services;
- (d) provide other services or facilities for the prevention, diagnosis or treatment of physical and mental illness;
- (e) provide training;
- (f) provide evidence-based information and advice;
- (g) make available the services of any person or any facilities.

(3) For the purposes of the duty under subsection 1(b) above, the Secretary of State shall—

- (a) provide evidence-based information and advice;
- (b) provide services or facilities designed to promote healthy living (whether by helping individuals to address behaviour that is detrimental to health or in any other way);
- (c) provide services or facilities for the prevention, diagnosis or treatment

of physical and mental illness;

(d) provide assistance (including financial assistance) to help individuals to minimise any risks to health arising from their accommodation or environment;

(e) provide or participate in the provision of training for persons working or seeking to work in the field of health improvement;

(f) make available the services of any person or any facilities;

(g) promote healthy schools, including the appointment of health professionals designated as public health advisers to schools and to the school population and the adoption of standards;

(h) promote healthy workplaces.

(4) For the purposes of the Secretary of State's functions under this Act the Secretary of State shall establish and maintain systems for the collection, monitoring, analysis and publication of information and data about the planning and provision of community, primary care and acute services and about inequalities in—

(a) access to health services;

(b) outcomes achieved by the provision of health services;

(c) social factors (including employment, housing and family circumstances) which may affect health;

(d) lifestyle factors (including diet, exercise, use of tobacco, consumption of alcohol, and misuse of drugs or solvents) which may affect health,

and in exercising the Secretary of State's other functions under this Act the Secretary of State shall have regard to such information and data, and to the need to reduce such inequalities.

(5) The Secretary of State shall make regulations requiring any other body or

person performing functions under enactments specified in those regulations to have regard to such information and data and to the need to reduce such inequalities.

(6) Regulations under this section shall provide for the Secretary of State to delegate the duties under section 6(1) and Schedule 1 to a Special Health Authority to be known as Public Health England; to NHS England; and, in relation to their area, to a local authority or Health Board under a public health scheme referred to in section 9(5)(b)(ii) below.

Administration

7 Distribution of functions

(1) The Secretary of State shall establish by orders under section 28 of the National Health Service Act 2006 Special Health Authorities to be known as—

- (a) the National Health Service England Authority, with Regional Committees, in accordance with and having the functions delegated to it and referred to in section 8 below;
- (b) Public Health England, having the functions delegated to it in accordance with regulations under section 6 above;
- (c) the Health and Social Care Information Centre, in accordance with and having the functions delegated to it in accordance with regulations, including the collection, analysis, use and dissemination of information and the issuing of administrative identification numbers.

(2) Part 9 (Health and Social Care Services: Information) of the Health and Social Care Information Act 2012 shall be repealed upon the making of an order in relation to subsection 7(1)(c).

8 NHS England and Regional Committees

(1) Subject to section 24(3) below, the National Health Service Commissioning Board is abolished.

(2) The Special Health Authority known as The National Health Service England Authority (referred to in this Act as “NHS England”) established pursuant to section 7(1)(a) above shall have a number of Regional Committees covering the whole of England.

(3) The Secretary of State shall make regulations in relation to the establishment of NHS England and its Regional Committees, including their membership, appointments, pay and allowances, staff, committees and sub-committees.

(4) NHS England shall exercise on behalf of the Secretary of State—

(a) the duty in section 1(1), and, to the extent relevant, the Secretary of State’s duty under section 3(2), of the National Health Service Act 2006, by providing or securing effective provision of the services or facilities referred to in subsection (5) below in accordance with regulations made by the Secretary of State;

(b) the functions in Parts 4 to 7 of the National Health Service Act 2006 for the provision of medical, dental, ophthalmic and pharmaceutical services, provided that the power to make arrangements for primary medical services with any person under section 83(2) shall not extend to entering into contracts with commercial companies;

(c) the functions under section 6 in relation to public health and under Schedule 1 in accordance with regulations made by the Secretary of State.

(5) The services or facilities referred to in subsection (4)(a) are—

- (a) dental services of a prescribed description;
- (b) services or facilities for members of the armed forces or their families;
- (c) services or facilities for persons who are detained in a prison or in other accommodation of a prescribed description;
- (d) such other services or facilities as may be prescribed that—
 - (i) support Health Boards and other Special Health Authorities in discharging their functions, or
 - (ii) are more appropriate for NHS England to provide or secure effective provision of rather than the Secretary of State or Health Boards.

(6) In deciding for the purposes of subsection (5)(d)(ii) whether it would be appropriate, the Secretary of State must have regard to—

- (a) the number of individuals who require the provision of the service or facility;
- (b) the cost of providing the service or facility;
- (c) the number of persons able to provide the service or facility; and
- (d) the financial implications of NHS England providing or securing effective provision of the service rather than any of the other persons or bodies mentioned in that subsection.

(7) Before deciding whether to make regulations under subsection (4)(a), the Secretary of State must—

- (a) obtain advice appropriate for that purpose, and
- (b) consult NHS England.

(8) The reference in subsection (5)(b) to members of the armed forces is a reference to persons who are members of—

- (a) the regular forces within the meaning of the Armed Forces Act 2006, or
- (b) the reserve forces within the meaning of that Act.

(9) The Secretary of State may also make regulations containing directions to NHS England relating to its functions under this section in accordance with section 12 below.

(10) NHS England shall perform its functions through its Regional Committees, save to the extent that regulations provide otherwise.

(11) The Secretary of State may make regulations under subsection (10) where the Secretary of State considers that it is more appropriate for a service or facility to be provided, or for its effective provision to be secured, on a national basis rather than on regional bases.

(12) NHS England shall in relation to its functions under this section also have the additional functions set out in Schedule 3.

(13) In this Act, “health service body” means any of the following—

- (a) NHS England, including one or more of its Regional Committees,
- (b) a Health Board,
- (c) a Special Health Authority,
- (d) a Local Health Board,
- (e) a Health Board constituted under section 2 of the National Health Service (Scotland) Act 1978 (c. 29),
- (f) a Special Health Authority constituted under that section,
- (g) a Health and Social Services Board constituted under the Health and Personal Social Services (Northern Ireland) Order 1972 (S.I. 1972/1265

- (N.I.14)),
- (h) the Common Services Agency for the Scottish Health Service,
- (i) the Wales Centre for Health,
- (j) the Care Quality Commission,
- (k) NICE,
- (l) the Health and Social Care Information Centre,
- (m) the Scottish Dental Practice Board,
- (n) the Secretary of State,
- (o) the Welsh Ministers,
- (p) the Scottish Ministers,
- (q) Healthcare Improvement Scotland,
- (r) the Northern Ireland Central Services Agency for the Health and Social Services established under the Health and Personal Social Services (Northern Ireland) Order 1972,
- (s) a special health and social services agency established under the Health and Personal Social Services (Special Agencies) (Northern Ireland) Order 1990 (S.I. 1990/247 (N.I.3)),
- (t) a Health and Social Services trust established under the Health and Personal Social Services (Northern Ireland) Order 1991 (S.I. 1991/194 (N.I.1)),
- (u) the Department of Health, Social Services and Public Safety.

(14) An arrangement made by NHS England under this section shall not be regarded as giving rise to contractual rights or liabilities and the Public Contracts Regulations 2006 shall not apply to it.

9 Health Boards

(1) There shall be Health Boards for areas of England established in accordance

with subsections (2) to (4) and Schedule 2.

(2) One or more local authorities, including elected mayors, may prepare and submit to the Secretary of State a draft scheme for the approval of the Secretary of State in accordance with regulations for—

- (a) establishing a Health Board for the area of the authority or authorities, including its membership;
- (b) transferring functions to and for the transparent performance of services by the Health Board; and
- (c) management within the Health Board.

(3) It shall be the duty of the National Health Service Commissioning Board, and of clinical commissioning groups, NHS trusts and NHS foundation trusts in the area of such authority or authorities to cooperate with and assist them in preparing the draft scheme.

(4) Regulations shall—

- (a) require the desirability of minimising disruption to the provision of services, and to patients, clinicians and other staff employed in providing health services, to be considered in the preparation of the draft scheme;
- (b) provide that any other person in such an area, including patients, clinicians and other staff employed in providing health services, voluntary organisations, trade unions and holding a post in a university that is related to health, may participate in preparing the draft scheme;
- (c) set out the procedure for preparation, submission and approval of the draft scheme, including provisions relating to non-submission and re-

submission, and may require the draft scheme to include proposals for a constitution for the Health Board;

(d) confer on the Secretary of State a power to adopt a scheme in default of submission or re-submission, or where the power under section 9(2) is not exercised;

(e) impose a duty on the Secretary of State to approve or adopt such schemes no later than 1 January 2019.

(5) A Health Board shall have the following functions—

(a) the duty to exercise on behalf of the Secretary of State the duty in section 1(1) of the National Health Service Act 2006 by exercising the functions of the Secretary of State under the following provisions of that Act—

(i) section 3(2)(a) and (b), with respect to the provision of hospital and other accommodation for the purposes of any service provided under the Act;

(ii) section 3(2)(c), with respect to the provision of medical, dental, nursing, ambulance and mental health services;

(iii) section 3(2)(d), with respect to the provision of facilities for the care of expectant and nursing mothers and young children;

(iv) section 3(2)(e), with respect to the provision of facilities for the prevention of illness and the aftercare of persons who have suffered from illness;

(v) section 3(2)(f), with respect to the provision of such other services as are required for the diagnosis and treatment of illness;

(vi) Schedule 1 of this Act, with respect to the other services referred to therein, and

(vii) Schedule 3 of this Act, with respect to the additional functions set out therein,

and for those purposes to assess needs, plan services to meet those needs, set clinical standards, match funding to delivery, capture information to support the various stages of the cycle, and ensure accountability;

(b) the duty to prepare jointly with the local authority or authorities for its area in accordance with regulations—

(i) a public health scheme for the purposes of exercising the functions of the Secretary of State under section 6(1) above, in consultation with Public Health England and NHS England; and

(ii) an integration scheme for the purposes of integrating the provision of health services and of social care services, and of more closely integrating health-related services;

(6) The Secretary of State may also make regulations containing directions to Health Boards relating to their functions under this section in accordance with and subject to section 12.

(7) “Health service body” has the same meaning as in section 8(13) above.

(8) An arrangement made by a Health Board under this section shall not be regarded as giving rise to contractual rights or liabilities and the Public Contracts Regulations 2006 shall not apply to it.

(9) In exercising its functions, a Health Board shall consult with and have regard to the views of the local Community Health Council established under section 17.

10 Administration of medical, dental, ophthalmic and pharmaceutical services

It is the duty of each Health Board—

- (a) to administer the arrangements made under Parts 4 to 7 of the National Health Service Act 2006 for the provision of medical, dental, ophthalmic and pharmaceutical services for the area of the Board, and
- (b) to perform such other administrative functions relating to those services as may be prescribed in regulations made by the Secretary of State.

11 Special Health Authorities

(1) If the Secretary of State considers that a special body should be established for the purpose of performing any functions which the Secretary of State may direct the body to perform on behalf of the Secretary of State, or on behalf of NHS England (including on behalf of one or more of its Regional Committees) or of a Health Board the Secretary of State may by order establish a body for that purpose in accordance with section 28 (Special Health Authorities) of the National Health Service Act 2006.

(2) An order under subsection (1) shall be accompanied by a statement explaining how bureaucracy will be reduced as a consequence of such an order.

(3) Section 28A of the National Health Service Act 2006 is repealed.

12 Directions

(1) Subject to subsections (3) and (6), 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)(f).

(2) These bodies are—

- (a) NHS England, including any or all of its Regional Committees,
- (b) a Health Board,
- (c) a Special Health Authority,
- (d) the National Institute for Health and Care Excellence,
- (e) the Health and Social Care Information Centre, and
- (f) any other body or person providing services in pursuance of prescribed arrangements.

(3) In exercising the 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—

- (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 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.

(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 duties under section 1 of the National Health Service Act 2006, the Secretary of State must give priority to the duties under that section.

(5) Directions under this section must be contained in regulations, except in an emergency, but cannot as directions modify the terms of any enactment.

(6) Nothing in this section, or in any other provision of this Act, shall affect the ability of staff in any health service body or local authority to perform their duties other than to the highest standards of professional and scientific independence, rigour and integrity; and their professional autonomy and right to participate in scientific and public debate on matters relating to health and health services is guaranteed.

Abolition of bodies following approval of draft schemes

13 Abolition of clinical commissioning groups

(1) Subject to section 24(3) below, clinical commissioning groups are abolished.

(2) Chapter A2 of the National Health Service Act 2006 (Clinical Commissioning Groups) (sections 14A to 14Z24) is repealed.

(3) On the day this section is commenced by order made under section 24 the property, rights and liabilities of clinical commissioning groups shall vest in the Secretary of State or in any other health service body determined by him in accordance with regulations made under this section.

14 Abolition of NHS trusts

(1) Subject to section 24(3) below, the Secretary of State shall exercise the power under paragraph 28(1) of Schedule 4 of the National Health Service Act 2006 to dissolve by order all NHS trusts.

(2) The following provisions of Part 3 of Schedule 4 of the National Health Service Act 2006 (NHS trusts established under section 25: Dissolution) shall apply to dissolution under subsection (1)—

- (a) paragraph 28(3) (such prior consultation as may be prescribed),
- (b) paragraph 29 (transfer by order of properties, liabilities and employed staff to himself or an NHS body), and
- (c) paragraph 30 (responsibility for continued payment of pension, allowances and gratuities).

(3) Chapter 3 of Part 2 of the National Health Service Act 2006 (Health Service Bodies: NHS trusts) is repealed, including Schedule 4 except for paragraphs 28, 29 and 30, and including Schedule 5 thereof (Financial provision about NHS trusts).

(4) Part 4 (NHS foundation trusts and NHS trusts) of the Health and Social Care Act 2012 is repealed.

15 Abolition of NHS foundation trusts

(1) Subject to section 24(3) below, NHS foundations trusts are abolished.

(2) Chapter 5 of Part 2 of the National Health Service Act 2006 (Health Service Bodies: NHS foundation trusts) is repealed.

(3) On the day this section is commenced by order under section 24 the property, rights and liabilities of NHS foundation trusts shall vest in the Secretary of State or in any other health service body determined by him in accordance with regulations made under this section.

16 Terms and conditions of staff transfers

(1) The Secretary of State shall make regulations determining the terms and conditions relating to the transfer of staff as the result of the abolition of any of the bodies referred to in sections 13, 14 and 15, including terms and conditions relating to eligibility for redundancy payments.

(2) Before making those regulations, the Secretary of State shall consult with representatives of those staff.

(3) In making those regulations, the Secretary of State shall have regard to the need to minimise loss of skills and disruption.

Accountability

17 Community Health Councils

(1) It shall be the duty of the Secretary of State to establish in accordance with this section a Council for the area of each Health Board or separate Councils for such separate parts of the areas of those Boards as the Secretary of State thinks fit; and such a council shall be called a Community Health Council (and is hereafter referred to as a “Council”).

(2) It shall be the duty of a Council—

(a) to represent the interests in the health service of the public in its area; and

(b) to perform such other functions as may be conferred on it under Schedule 4.

(3) Schedule 4 (Community Health Councils) shall have effect.

PART 2

REGULATION OF HEALTH AND ADULT SOCIAL SERVICES

18 Abolition of Monitor, competition, licensing, pricing, health special administration etc

- (1) Subject to subsection (2), Monitor is abolished.
- (2) Subsection (1) shall come into effect by order made by the Secretary of State.
- (3) An order under subsection (2) shall also repeal the provisions of Part 3 (Regulation of health and adult social care services) of the Health and Social Care Act 2012, including—

- (a) sections 62 to 71 (Chapter 1, Monitor), including The National Health Service (Procurement, Patient Choice and Competition) (No. 2) Regulations 2013 made under section 75;
- (b) sections 72 to 80 (Chapter 2, Competition);
- (c) sections 81 to 114 (Chapter 3, Licensing);
- (d) sections 115 to 127 (Chapter 4, Pricing);
- (e) sections 128 to 133 (Chapter 5, Health Special Administration);
- (f) sections 134 to 146 (Chapter 6, Financial assistance in special administration cases); and
- (g) sections 147 to 150 (Chapter 7, Miscellaneous).

19 Continuity of mandatory services

Conditions in a licence issued to an NHS foundation trust by Monitor pursuant to section 87(3) of the Health and Social Care Act 2012 which purport to have the effect by April 2016 of modifying, de-designating or ceasing services which that trust was obliged to provide under its previous authorisation given

pursuant to section 35 of the National Health Service Act 2006 shall be void and of no effect.

PART 3

NATIONAL TERMS AND CONDITIONS

20 Collective bargaining of terms and conditions

(1) It shall be the duty of the Secretary of State to enter into negotiation with trade unions representing the persons engaged in providing NHS services (in this section referred to as ‘NHS workers’), and of each category of NHS workers as appear to him distinct, with a view to concluding with those trade unions agreements providing for the establishment and maintenance of the joint machinery specified below. In the event of a failure to agree any of the foregoing matters, the matters in question shall be referred to the Chair of the Central Arbitration Committee to appoint an arbitrator who shall arbitrate such dispute(s) and whose decision shall be final.

(2) The joint machinery referred to shall provide for —

(a) the representation therein (and in every subcommittee thereof) of equal numbers of representatives of those trade unions and of representatives of those entities which engage NHS workers to provide NHS services (in this section referred to as ‘NHS employers’ which expression shall include an entity which is independent of the NHS other than by virtue of its provision of services to it) together with a representative of the Secretary of State;

(b) the settlement by negotiation of the terms of engagement to work of all categories of NHS workers, the termination of such engagement, and the conditions of their work, including, for the avoidance of doubt, procedures for the protection of whistle-blowers, procedures for disciplining NHS workers, matters relating to pensions, training, health, safety and welfare at work, and all other matters for which the parties wish to provide;

(c) provision for reference to binding arbitration in default of agreement on the matters referred to above and in such cases as may be determined by or under the agreements reached; and

(d) consultation on the organisation and conduct of NHS services and other matters of mutual interest to NHS employers and NHS workers arising out of or relating to the organisation and conduct of NHS services.

(3) To the extent that NHS employers and the relevant trade unions are satisfied that the arrangements -

(a) of the NHS Staff Council and the Agenda for Change system;

(b) of the Doctors' and Dentists' Review Body; and

(c) applying to other NHS workers not covered by that system or Body,

fulfil the requirements of the joint machinery, no further negotiation for the establishment of such joint machinery for NHS workers suitably covered by those arrangements shall be necessary.

(4) The Secretary of State shall be provided with a copy of every of agreement establishing the joint machinery and of any instrument varying the terms of such joint machinery and shall be provided with a copy of every agreement reached by such joint machinery and shall have the power, to the extent that he considers it desirable, to make an Order to impose upon those NHS employers and those NHS workers to which any such agreement relates, such terms of such agreement as the Secretary of State he may think appropriate, and any such imposition may be enforced by civil and/or criminal sanction as may be specified in the Order.

(5) In this section 'NHS services' means health services in England for the purposes of the health service continued under section 1(1) of the National Health Service Act 2006.

(6) For the avoidance of doubt, in this section 'NHS worker' includes a worker employed by, or supplied to an NHS employer by an employment agency and 'NHS employer' includes a person or entity contracted to provide services to an NHS employer or to another entity providing services to an NHS employer.

PART 4

PRIVATE FINANCE INITIATIVE

21 Centralisation and reduction of PFI obligations

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

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

(3) The financial obligations of an—

(a) NHS trust under externally financed development agreements and associated agreements; and

(b) NHS foundation trust under similar agreements,
shall become the obligations of the Treasury in accordance with regulations made under this section.

(4) The agreements referred to in subsection (3) above shall be published by the NHS trust and the NHS foundation trust, as the case may be.

(5) The Treasury shall assess and explain the financial obligations of each NHS trust and NHS foundation trust under each such agreement and shall lay a report before each House of Parliament by 31 December 2017 setting out its proposals for reducing those obligations.

PART 5

CHARGING IMMIGRANTS FOR NHS SERVICES

22 Abolition of the Immigration Health Charge

(1) Sections 38 and 39 of the Immigration Act 2014 are repealed.

(2) Article 4(c) of the Immigration Act 2014 (Commencement No. 3, Transitional and Saving Provisions) Order 2014 is revoked.

PART 6

TREATIES

23 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—

(i) in relation to England, an Act of Parliament;

(ii) in relation to Scotland, an Act of the Scottish Parliament;

(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) The Secretary of State shall review the United Kingdom's international legal obligations with a view to establishing whether any of them impose requirements or conditions that affect—

(a) the competence of Parliament or the devolved legislatures; or

(b) the performance of the Secretary of State's functions, the functions of the devolved authorities, or the functions of health service bodies, in relation to the health service, including to NHS legislation.

(3) If, whilst conducting that review, the Secretary of State is of the view that there are such obligations the report referred to in subsection (5) shall include—

(a) an explanation of each such obligation and its operation in practice; and

(b) an evaluation of how, if at all, such obligations have affected the provision and organisation of the health service.

(4) Whilst conducting the review the Secretary of State shall consult with the devolved authorities.

(5) The Secretary of State shall lay before Parliament no later than 31st December in any year an annual report setting out the results of the review, the matters referred to in subsection (3) above, the results of consultations under subsection (4) above and any statements requested by the devolved authorities to be included in the report in relation to such matters.

(6) In this section—

(a) “to change” means to amend, repeal, introduce or otherwise to change;

(b) “devolved authorities” means the Scottish Ministers, the Welsh Ministers and a Minister within the meaning of the Northern Ireland Act 1998 or a Northern Ireland department;

(c) “devolved legislatures” means the Scottish Parliament, the National Assembly for Wales and the Northern Ireland Assembly;

(d) “health service” means—

(i) as regards England, the comprehensive health service which must be continued under section 1(1) of the National Health Service Act 2006;

(ii) 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;

(iii) as regards Wales, the comprehensive health service that must be continued under section 1(1) of the National Health Service

(Wales) Act 2006; and

(iv) 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;

(e) “NHS legislation” means any primary legislation passed by Parliament or the devolved legislatures, and any secondary legislation enacted by the Secretary of State or the devolved authorities relating to the health service;

(f) “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).

PART 7

TECHNICAL PROVISIONS

24 Commencement and transitional arrangements

(1) Section 1 of this Act shall come into force on the day on which this Act is passed.

(2) Subject to subsection (3) below, the other provisions of this Act shall be brought into force on such day as the Secretary of State may by order appoint that is not later than twelve months from the day on which this Act is passed; and

different days may be appointed for different provisions and for different purposes (including different areas).

(3) Section 8(1) (abolition of The National Health Service Commissioning Board), section 13(1) (abolition of clinical commissioning groups), section 14(1) (abolition of NHS trusts) and section 15 (abolition of NHS foundation trusts) shall not be brought into force until approval or adoption of a scheme by the Secretary of State pursuant to regulations made under section 9(4) above.

25 Further and consequential amendments etc

In consequence of this Act the Secretary of State may make regulations containing further amendments, repeals, revocations, transitional and transitory modifications and savings.

26 Financial provisions

(1) *There is to be paid out of money provided by Parliament—*

(a) any expenditure incurred under or by virtue of this Act by the Secretary of State, and

(b) any increase attributable to this Act in the sums payable under any other Act out of money so provided.

(2) There is to be paid into the Consolidated Fund any sums received by the Secretary of State by virtue of this Act.

27 Parliamentary control of delegated legislation

Regulations and orders made under this Act, save as otherwise provided for in any other enactment, and excluding orders made under section 24, shall be made by statutory instrument and may not be made unless a draft of the instrument containing them has been laid before, and approved by a resolution of, each House of Parliament.

28 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.

29 Short title and extent

(1) This Act may be cited as the National Health Service Act 2016.

(2) This Act extends to England, and, in relation to section 23, to Scotland, Wales and Northern Ireland.

SCHEDULES

SCHEDULE 1

Section 5

FURTHER PROVISIONS ABOUT THE SECRETARY OF STATE AND SERVICES

Medical inspection of pupils

- 1 The Secretary of State must provide for the medical inspection at appropriate intervals of pupils in attendance at schools maintained by local education authorities and for the medical treatment of such pupils.
- 2 (1) The Secretary of State may, by arrangement with any local education authority, provide for any medical inspection or treatment of—
- (a) senior pupils in attendance at any educational establishment, other than a school, which is maintained by the authority and at which full-time further education is provided, or
 - (b) any child or young person who, in pursuance of section 19 or 319 of the Education Act 1996 (c. 56), is receiving primary or secondary education otherwise than at a school.
- (2) The Secretary of State may, by arrangement with the proprietor of any educational establishment which is not maintained by a local education authority, provide for any medical inspection or treatment of junior or senior pupils in attendance at the establishment.
- (3) Sub-paragraphs (1) and (2) do not affect the Secretary of State's powers apart from those sub-paragraphs.

3 An arrangement under paragraph 2(1)(b) may provide for payments by the proprietor in question.

4 A local education authority may not make an arrangement under paragraph 2(1)(a) unless the governing body of the educational establishment agrees to the arrangement.

5 (1) Sub-paragraph (2) applies to—

(a) each local education authority, in respect of the schools which it maintains (other than foundation, voluntary or foundation special schools), and

(b) each governing body of a foundation, voluntary or foundation special school, in respect of the school.

(2) The local education authority or governing body must make available to the Secretary of State such accommodation as is appropriate for the purpose of assisting him to make provision under paragraph 1 in relation to the pupils in attendance at the schools or school in question.

6 In paragraphs 1 to 5 any expression to which a meaning is given for the purposes of the Education Act 1996 (c. 56) or the School Standards and Framework Act 1998 (c. 31) has that meaning.

7 Any charge made under regulations under this Act in respect of the supply of drugs, medicines or appliances must be disregarded for the purposes of paragraphs 1 and 2.

Supply of blood and other human tissues

8 The Secretary of State must for the purposes of the health service—

- (a) collect, screen, analyse, process and supply blood or other tissues,
- (b) prepare blood components and reagents, and
- (c) facilitate tissue and organ transplantation.

Weighing and measuring of children

9 The Secretary of State may, by arrangement with any local education authority, provide for the weighing and measuring of junior pupils in attendance at any school which is maintained by the authority.

10 The Secretary of State may, by arrangement with the proprietor of any school which is not maintained by a local education authority, provide for the weighing and measuring of junior pupils in attendance at that school.

11 The Secretary of State may, by arrangement with any person who is registered under Chapter 2 of Part 3 of the Childcare Act 2006 in respect of early years provision, provide for the weighing and measuring of young children for whom childcare is provided by that person.

12 In paragraphs 9 and 10 any expression to which a meaning is given for the purposes of the Education Act 1996 or the School Standards and Framework Act 1998 has the same meaning as in that Act; and paragraph 11 any expression to which a meaning is given for the purposes of Part 3 of the Childcare Act 2006 has the same meaning as in that Part.

13 The Secretary of State may by regulations—

- (a) authorise the disclosure by any person with whom arrangements under paragraphs 9 to 11 made, to any person carrying out the weighing or measuring, of prescribed information relating to the

children concerned,

(b) require any weighing and measuring provided for by the Secretary of State under paragraphs 9 to 11 to be carried out in a prescribed manner and after compliance with any prescribed requirements,

(c) make provision authorising any resulting information relating to a child, together with any advisory material authorised by or under the regulations, to be communicated in a prescribed manner to a person who is, or is treated by the regulations as being, a parent of the child, and

(d) make other provision regulating the processing of information resulting from any weighing or measuring provided for by the Secretary of State under paragraphs 9 to 11.

14 Regulations made under paragraph 13 may require any person exercising functions in relation to any weighing or measuring to which the regulations apply or in relation to information resulting from such weighing or measuring to have regard to any guidance given from time to time by the Secretary of State.

15 In paragraph 13(d), “processing”, in relation to information, has the same meaning as in the Data Protection Act 1998.

16 Regulations under paragraph 13 cannot include provision by virtue of section 272(8)(a) of the National Health Service Act 2006 amending or repealing an Act.

Contraceptive services

17 The Secretary of State must arrange, to such extent as the Secretary of State considers necessary to meet all reasonable requirements, for—

- (a) the giving of advice on contraception,
- (b) the medical examination of persons seeking advice on contraception,
- (c) the treatment of such persons, and
- (d) the supply of contraceptive substances and appliances.

Provision of vehicles for disabled persons

18 The Secretary of State may provide vehicles (including wheelchairs) for persons appearing to him to be persons who have a physical impairment which has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities.

- 19 (1) Sub-paragraphs (2) and (3) apply in respect of—
- (a) a vehicle provided under paragraph 18 and
 - (b) a vehicle belonging to a person mentioned in that paragraph.
- (2) The Secretary of State may—
- (a) adapt the vehicle to make it suitable for the circumstances of the person in question,
 - (b) maintain and repair the vehicle,
 - (c) take out insurance policies relating to the vehicle and pay any duty with which the vehicle is chargeable under the Vehicle Excise and Registration Act 1994 (c. 22),
 - (d) provide a structure in which the vehicle may be kept, and provide all material and execute all works necessary to erect the structure.
- (3) The Secretary of State may make payments by way of grant towards costs incurred by a person mentioned in paragraph 18 in respect of any matter mentioned in sub-paragraph (4) in relation to the vehicle.
- (4) The matters are—
- (a) the taking of action referred to in sub-paragraph (2),

(b) the purchase of fuel for the purposes of the vehicle, so far as the cost of the purchase is attributable to duties of excise payable in respect of the fuel, and

(c) the taking of instruction in the driving of the vehicle.

(5) The powers under sub-paragraph (2) and sub-paragraph (3) may be exercised on such terms and subject to such conditions as the Secretary of State may determine.

20 Regulations may provide for any incidental or supplementary matter for which it appears to the Secretary of State necessary or expedient to provide in connection with—

(a) the taking of action under paragraph 19(2), or

(b) the making of any payment under paragraph 19(3).

SCHEDULE 2

Section 9

HEALTH BOARDS

Establishment

1 A Health Board shall be established by order of the Secretary of State and when exercising that power the Secretary of State shall secure—

(a) that the regions determined in pursuance of those provisions together comprise the whole of England and that no region includes part only of any area; and

(b) that the provision of health services in each region can conveniently be associated with a university which has a school of medicine or

with two or more such universities.

2 An order made under this Schedule shall contain such provisions for the transfer of officers, property, rights and liabilities as the Secretary of State thinks fit.

3 It is the Secretary of State's duty before making an order to consult with respect to the order—

(a) combined local authorities which have entered into agreements for the purposes of the Cities and Local Government Devolution Act 2016;

(b) such other bodies as the Secretary of State may recognise as representing officers who in the opinion of the Secretary of State opinion are likely to be transferred or affected by transfers in pursuance of the order;
and

(c) such other bodies as the Secretary of State considers are concerned with the order.

Membership

4 The members of a Health Board—

(a) shall be as set out in the scheme approved by the Secretary of State under section 9, or

(b) where a scheme is adopted by the Secretary of State shall be in accordance with the following provisions of this Schedule.

5 The chair shall be appointed by the Secretary of State; and the vice-chair shall be appointed by the chair, officer members and non-officer members.

6 The officer members referred to in paragraph 7(a) below and the non-officer members referred to in paragraph 8(a) below shall be appointed jointly by

the local authority and the Regional Committee of NHS England having considered any nominations made pursuant to paragraph 9 below; and the officer members referred to in paragraph 8(b) below shall be appointed *ex officio*.

7 The officer members shall consist of—

- (a) a chief officer; a medical officer; a finance officer; a nurse officer; an officer who has responsibility for primary care services, community health services and mental health services; an officer who has responsibility for workforce and organisational development; an officer who has responsibility for the strategic and operational planning of the provision of health services; and an officer who has responsibility for therapies and health science; and
- (b) the director of public health for the local authority; the director of adult social services for the local authority and the director of children's services for the local authority.

8 The non-officer members shall consist of—

- (a) a person with clinical expertise; a local councillor; a voluntary organisation member; a trade union member; and a person who holds a post in a university that is related to health; and
- (b) and such other persons, or representatives of such other persons, appointed by the Health Board up to a limit imposed by regulations.

9 Any person may make nominations to the local authority and the Regional Committee of NHS England for persons to be appointed officer members or non-officer members.

SCHEDULE 3

Sections 8(12) and 9(5)(a)(vii)

NHS ENGLAND AND HEALTH BOARDS: ADDITIONAL FUNCTIONS

1 In relation to their functions under sections 8 and 9, NHS England and a Health Board, as the case may be, shall exercise on behalf of the Secretary of State the duty in section 1(1) by exercising the functions of the Secretary of State under provisions prescribed in regulations which relate to—

- (a) arrangements for the conduct of, or assistance by grants or otherwise to any person for the conduct of, research;
- (b) payment of travelling expenses;
- (c) arrangements with a voluntary organisation, and exceptional and short-term arrangements with any other person or body not being a health service body, for that organisation, person or body to provide or assist in providing any service under the Act, but subject to the provisions of this Act, in particular section 1(4);
- (d) making available to certain persons and bodies (including voluntary organisations) facilities and services of persons employed in connection with such facilities;
- (e) agreement of terms and the making of payments in respect of facilities or services provided;
- (f) supply of goods, services and other facilities to NHS England, other Health Boards and other public bodies and carrying out maintenance work in connection with any land or building the maintenance of which is a local authority responsibility;
- (g) making available to persons providing general medical services, general dental services, general ophthalmic services or

pharmaceutical services such goods, materials and other facilities as may be prescribed;

(h) making available any services or other facilities and the services of employed persons to enable NHS England, Health Boards and other public bodies to discharge their functions relating to social services, education and public health;

(i) making available in premises provided under the Act, such facilities as are regarded as required for clinical teaching and for research connected with clinical medicine or clinical dentistry; and

(j) other prescribed matters necessary for exercising the functions of NHS England or the Health Board.

SCHEDULE 4

Section 17

COMMUNITY HEALTH COUNCILS

1 Provision may be made by regulations as to—

(a) the membership of Councils (including the election by members of a Council of a chairman of the Council);

(b) the proceedings of Councils;

(c) the staff, premises and expenses of Councils;

(d) the consultation of Councils by Health Boards with respect to such matters and on such occasions as may be prescribed;

(e) the furnishing of information to Councils by Health Boards and the rights of members of Councils to enter and inspect premises controlled by Health Boards;

(f) the consideration by Councils of matters relating to the operation of the health service within their areas and the giving of advice by Councils to Health Boards on such matters;

(g) the preparation and publication of reports by Councils on such matters and the furnishing and publication by Health Boards of comments on the reports; and

(h) the functions to be exercised by Councils in addition to the functions exercisable by them by virtue of paragraph (a) of the preceding subsection and the preceding provisions of this subsection; and the Secretary of State may pay to members of Councils such travelling and other allowances (including compensation for loss of remunerative time) as the Secretary of State may determine with the consent of the Minister for the Civil Service.

2 It shall be the duty of the Secretary of State to exercise the power to make regulations in pursuance of paragraph 1(a) so as to secure as respects each Council that—

(a) at least one member of the Council is appointed by each local authority of which the area or part of it is included in the Council's area and at least half of the members of the Council consist of persons appointed by the Health Board;

(b) at least one third of the members of the Council are appointed in a prescribed manner by bodies (other than public bodies) of which the activities are carried on otherwise than for profit;

(c) the other members of the Council are appointed by such bodies, in such manner and after such consultations as may be prescribed; and

(d) no member of the Council is also a member of a Health Board or Special Health Authority; but nothing in this sub-paragraph shall affect the validity of anything done by or in relation to a Council during any period during which, by reason of a vacancy in the membership of the Council or a defect in the appointment of a

member of it, a requirement included in regulations in pursuance of this subsection is not satisfied.

3 The Secretary of State may by regulations—

(a) provide for the establishment of a body—

(i) to advise Councils with respect to the performance of their functions and to assist Councils in the performance of their functions, and

(ii) to perform such other functions as may be prescribed; and

(b) make provision as to the membership, proceedings, staff, premises and expenses of the said body;

and the Secretary of State may pay to members of the said body such travelling and other allowances (including compensation for loss of remunerative time) as the Secretary of State may determine with the consent of the Minister for the Civil Service.

4 In this Schedule-

“local authority” means in England a county council; a district council, other than a council for a district in a county for which there is a county council; a London borough council; the Council of the isles of Scilly; or the Common Council of the City of London; and

“area” in relation to a Council, means the locality for which it is established, whether that locality consists of the area or part of the area of a Health Board or such an area or part together with the areas or parts of the areas of other Health Boards; and the area of a Council must be such that no part of it is separated from the rest of it by territory not included in the area.