

The legal duty of the State to provide a National Health Service in England

This document sets out the exact text of the provisions of the general and specific ministerial duties to provide health services in England, as contained in the National Health Service Acts of 1946, of 1977 and of 2006; alongside the exact text of the 2006 Act in these and associated respects if the Health and Social Care Bill was to be enacted.

(1) The general duty to provide services

Section 1 of the National Health Service Act 1946:

“(1) It shall be the duty of the Minister of Health (hereafter in this Act referred to as ‘the Minister’) to promote the establishment in England and Wales of a comprehensive health service designed to secure improvement in the physical and mental health of the people of England and Wales and the prevention, diagnosis and treatment of illness, and for that purpose to provide or secure the effective provision of services in accordance with the following provisions of this Act.

(2) The services so provided shall be free of charge, except where any provision of this Act expressly provides for the making and recovery of charges.”

Section 1 of the National Health Service Act 1977:

“(1) It is the Secretary of State's duty to continue the promotion in England and Wales of a comprehensive health service designed to secure improvement—
(a) in the physical and mental health of the people of those countries, 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 shall 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.

Section 1 of the National Health Service Act 2006 (currently in force):

“(1) The Secretary of State must continue the promotion in England of 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.

(2) The Secretary of State must for that purpose provide or secure the provision of services in accordance with this Act.

(3) 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."

Section 1 of the National Health Service Act 2006 as it would read if the Health and Social Care Bill¹ was enacted:

"(1) The Secretary of State must continue the promotion in England of 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.*

(2) For that purpose, the Secretary of State—

- (a) has the public health functions conferred by this Act, and*
- (b) in exercising functions in relation to a body mentioned in subsection (2A), must act with a view to securing the provision of services for the purposes of the health service in accordance with this Act.*

(2A) Those bodies are—

- (a) the National Health Service Commissioning Board;*
- (b) commissioning consortia;*
- (c) local authorities (as respects their public health functions)."*

(2B) In this Act— [omitted, as relating to public health functions]

(3) The services provided as part of the health service in England 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."

(2) The specific duty to provide services

Section 3(1) of the National Health Service Act 1946:

"(1) As from the appointed day, it shall be the duty of the Minister to provide throughout England and Wales, to such extent as he considers necessary to meet all reasonable requirements, accommodation and services of the following descriptions, that is to say:-

- (a) hospital accommodation;*
- (b) medical [defined to include surgical], nursing and other services required at or for the purposes of hospitals;*

¹ This is based on the version of the Bill that is described on the Westminster Parliament's website as the "latest Bill", "as amended in public committee", and is available here: <http://www.publications.parliament.uk/pa/cm201011/cmbills/177/11177.i-vii.html>. The Committee last considered the Bill on 31st March 2011, and each web page (it seems) is marked as "Revised 1 April".

*(c) the services of specialists, whether at a hospital, a health centre provided under Part III of this Act or a clinic or, if necessary on medical grounds, at the home of the patient;
and any accommodation and services provided under this section are in this Act referred to as 'hospital and specialist services'."*

Section 3(1) of the National Health Service Act 1977:

"(1) It is the Secretary of State's duty to provide throughout England and Wales, 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, nursing and ambulance services;

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

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

Section 3(1) of the National Health Service Act 2006:

"(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) such other 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,

(e) 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,

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

Section 3(1) of the National Health Service Act 2006 as it would read if the Health and Social Care Bill was enacted:

"A commissioning consortium must arrange for the provision of the following to such extent as it considers necessary to meet the reasonable requirements of the persons for whom it has responsibility—

- (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) such other services or facilities for the care of pregnant women, women who are breastfeeding and young children as the consortium considers are appropriate as part of the health service,*
- (e) 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 the consortium considers are appropriate as part of the health service,*
- (f) such other services or facilities as are required for the diagnosis and treatment of illness.”*

(3) The NHS Commissioning Board

A new section 1D of the 2006 Act would be inserted by Clause 5 of the Bill:

- (1) There is to be a body corporate known as the National Health Service Commissioning Board (“the Board”).*
- (2) The Board is subject to the duty under section 1(1) concurrently with the Secretary of State except in relation to the part of the health service that is provided in pursuance of the public health functions of the Secretary of State or local authorities.*
- (3) For the purpose of discharging that duty, the Board—*
 - (a) has the function of arranging for the provision of services for the purposes of the health service in England in accordance with this Act, and*
 - (b) in exercising functions in relation to commissioning consortia, must act with a view to securing the provision of services for those purposes in accordance with this Act.*
- (4) Schedule A1 makes further provision about the Board.”*