

## **Abolition of the duty of the State to provide the National Health Service in England: summary of legal analysis**

The Health and Social Care Bill 2011 would abolish both the general duty on the Secretary of State in place since 1946 to provide or to secure the provision of services in England for the purpose of promoting a comprehensive health service, and the specific duty on him or her to provide listed services. These duties are one of the fundamental legal bases, and arguably the most important legal basis, for the National Health Service.

The effect of the proposed changes would be that no body would have the duty to provide health services, either generally or specifically. Instead, a miscellany of weaker duties would be placed on and divided amongst three bodies, in that:

- the Secretary of State would have a duty in exercising functions in relation to the NHS Commissioning Board and commissioning consortia to “act with a view to securing” provision of services;
- the Board would have the “function” of “arranging” provision, and the duty in exercising functions in relation to commissioning consortia to “act with a view to securing”; and
- a commissioning consortium would have a duty to “arrange” for the provision of services to such extent as it considers necessary to meet the reasonable requirements of the persons for whom it has responsibility; and would not need to arrange provision of services or facilities focusing on, for example, pregnant women, young children and after-care, unless the consortium regarded such provision appropriate as part of a health service.