

# Health Bill [HL]

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## COMMONS AMENDMENTS

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*[The page and line refer to Bill 97 as first printed for the Commons.]*

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### Before Clause 15

1 Insert the following new Clause—

#### **“De-authorisation of NHS foundation trusts**

(1) In the National Health Service Act 2006 after section 52 insert—

##### **“52A Application of sections 52B to 52E**

(1) Sections 52B to 52E apply to—

- (a) an NHS foundation trust authorised under section 35 on an application under section 33;
- (b) an NHS foundation trust established under section 56 to which subsection (2) applies.

(2) This subsection applies to an NHS foundation trust if—

- (a) at least one of the trusts on whose application the NHS foundation trust was established was an NHS foundation trust within subsection (1)(a), or was an NHS trust all or most of whose hospitals, establishments and facilities were in England, or
- (b) the NHS foundation trust is the result of a succession of mergers under section 56, any of which involved an NHS foundation trust within subsection (1)(a) or an NHS trust all or most of whose hospitals, establishments and facilities were in England.

##### **52B De-authorisation: regulator’s notice**

(1) The regulator may give the Secretary of State a notice under this section if it is satisfied that—

- (a) an NHS foundation trust to which this section applies is contravening or failing to comply with, or has contravened or failed to comply with, any term of its authorisation or any requirement imposed on it under any enactment, and

- (b) the seriousness of the contravention or failure, or, if there has been more than one, of any of them taken together, is such that it would justify the Secretary of State making an order under section 52D.
- (2) The notice must be in writing.
  - (3) With the notice the regulator must give the Secretary of State a report stating the reasons why it is satisfied as mentioned in subsection (1).
  - (4) Before giving a notice under this section, the regulator must consult first the Secretary of State (unless the notice follows a request by the Secretary of State under section 52E) and then –
    - (a) the trust,
    - (b) any Strategic Health Authority in whose area the trust has hospitals, establishments or facilities, and
    - (c) any other person to which the trust provides goods or services under this Act and which the regulator considers it appropriate to consult.

#### **52C Grounds for de-authorisation notice**

- (1) In determining under section 52B(1)(b) whether the making of an order would be justified, and in determining whether to give a notice under that section, the regulator must consider these matters (among others) –
  - (a) the health and safety of patients;
  - (b) the quality of the provision by the trust of goods and services;
  - (c) the financial position of the trust;
  - (d) the way it is being run.
- (2) The regulator must publish guidance as to the matters (including those mentioned in subsection (1)) that it proposes to consider in making those determinations.
- (3) Before publishing any guidance under this section, including any revised guidance, the regulator must consult –
  - (a) the Secretary of State,
  - (b) each NHS foundation trust to which this section applies,
  - (c) each NHS trust intending to make an application to become an NHS foundation trust, and
  - (d) such other persons as the regulator considers appropriate.

#### **52D De-authorisation**

- (1) If the regulator gives notice under section 52B in relation to a trust, the Secretary of State must make an order for it to cease to be an NHS foundation trust.
- (2) An order made under subsection (1) must specify the date when it is to take effect, which must be within the period of 5 working days beginning with the day on which it is made.

- (3) On an order under subsection (1) taking effect in relation to a body, it ceases to be an NHS foundation trust and a public benefit corporation and becomes a National Health Service trust.
- (4) The order must specify, in relation to the trust, the matters mentioned in paragraph 5(1)(a) to (c) of Schedule 4 and, where the trust has a significant teaching commitment, the matters mentioned in paragraph 5(1)(d).
- (5) The order may provide for any provision under subsection (4) specifying the number of executive directors and non-executive directors to take effect at the end of a period specified in the order.
- (6) Schedule 8A makes further provision about trusts in respect of which an order is made under subsection (1).
- (7) If it appears to the Secretary of State to be necessary in order to comply with provision made under subsection (4), or made by regulations under paragraph 4 of Schedule 4, the Secretary of State may by order—
  - (a) terminate the office of any executive or non-executive director of the trust;
  - (b) appoint a person to be an executive or non-executive director of the trust.
- (8) Within seven days after the day on which the Secretary of State makes an order under subsection (1) the regulator must publish its report under section 52B(3).
- (9) In this section “working day” means any day which is not Saturday, Sunday, Christmas Day, Good Friday or a day which is a bank holiday in England and Wales under the Banking and Financial Dealings Act 1971.

#### **52E Secretary of State’s request**

- (1) If it appears to the Secretary of State that there are grounds for the regulator to be satisfied as mentioned in section 52B(1), the Secretary of State may request the regulator in writing to consider exercising its power to give a notice under that section.
- (2) A request under this section must—
  - (a) specify the NHS foundation trust to which it relates, and
  - (b) state the grounds relied on by the Secretary of State.
- (3) The Secretary of State must lay before Parliament any request under this section.
- (4) If within the required period the regulator does not give a notice under section 52B in response to a request under this section, it must, within that period, publish its reasons for not doing so with a statement as to how it has complied with section 52C(1).
- (5) The required period is—
  - (a) 14 days beginning with the day after the regulator receives the request, or
  - (b) any longer period specified in the request.

(6) The Secretary of State may by order extend or further extend the required period.”

(2) Schedule 2 (which inserts Schedule 8A to the National Health Service Act 2006, which makes provision about de-authorized NHS foundation trusts) has effect.”

#### Clause 15

2 Page 13, leave out lines 20 and 21 and insert—

“(5) Schedule 8A makes further provision about trusts in respect of which an order is made under subsection (1).”

#### Clause 16

3 Page 17, line 15, leave out Clause 16

#### Clause 18

4 Page 22, line 25, leave out “Chapter 5A does” and insert “sections 52B to 52E and Chapter 5A do”

5 Page 22, line 36, at end insert—

“( ) section 52D(1) or (7) or 52E(6),”

6 Page 22, line 37, leave out “or (4)” and insert “, (4) or (5)”

7 Page 22, line 39, at end insert “52D(1), 52E(6),”

8 Page 23, line 2, leave out “10A” and insert “8A”

9 Page 23, line 3, after “section” insert “52D(1) or”

10 Page 23, line 12, after “section” insert “52D(1) or”

#### Clause 22

11 Page 26, line 4, leave out “or imposing requirements in relation to”

#### After Clause 32

12 Insert the following new Clause—

#### “Private patient income of mental health foundation trusts

(1) Section 44 of the National Health Service Act 2006 (c. 41) (private health care) is amended as follows.

(2) In subsection (2)—

(a) after “not greater than” insert “— (a)”;

(b) at the end insert “, or

(b) in the case of a mental health foundation trust designated under subsection (2A), that proportion or 1.5% if greater.”

(3) After subsection (2) insert –

“(2A) An authorisation of an NHS foundation trust which was an NHS trust must designate it as a mental health foundation trust for the purposes of this section if it appears to the regulator that it provides goods or services only or mainly for the prevention, diagnosis or treatment of any disorder or disability of the mind or for the benefit in any other way of people suffering from a disorder or disability of the mind.”

13 Insert the following new Clause –

**“Payments in respect of costs of optical appliances**

“Section 180(2)(c) of the National Health Service Act 2006 (c. 41) (payments in respect of costs of optical appliances for persons aged 60 or over) is omitted.”

**Clause 34**

14 Page 32, line 35, leave out Clause 34

**Clause 39**

15 Page 35, line 40, at end insert –

“( ) section (*Payments in respect of costs of optical appliances*);”

**Clause 40**

16 Page 36, leave out lines 30 to 33

**Schedule 2**

17 Page 39, line 24, leave out “10” and insert “8”

18 Page 39, line 25, leave out “10A” and insert “8A”

19 Page 39, leave out lines 28 to 31 and insert –

“(1) This Schedule applies to a body which is an NHS trust by virtue of an order made under section 52D(1) or 65E(1) (a “de-authorisation order”).”

20 Page 40, line 7, at beginning insert –

“( ) This paragraph is subject to any provision made under section 52D(4) or (7) or 65L(4) or (5).”

21 Page 40, line 11, leave out “order under section 65E(1)” and insert “de-authorisation order”

22 Page 40, line 17, at beginning insert –

“( ) This paragraph applies only to a body which is an NHS trust by virtue of an order made under section 65E(1), and is subject to any provision made under section 65L(4).”

23 Page 40, line 20, leave out “order under section 65E(1)” and insert “de-

authorisation order”

- 24** Page 40, line 36, leave out “order under section 65E(1)” and insert “de-authorisation order”

**Schedule 6**

- 25** Page 68, line 18, column 2, at end insert –

“Section 180(2)(c).”