



# House of Commons

Thursday 14 July 2011

## PUBLIC BILL COMMITTEE PROCEEDINGS

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### HEALTH AND SOCIAL CARE (RE-COMMITTED) BILL

[ELEVENTH AND TWELFTH SITTINGS]

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Mr Simon Burns

*Agreed to* 192

Clause 149, page 138, line 3, at end insert—

( ) After paragraph 18D of that Schedule insert—

“18E(1) The constitution must provide for meetings of the board of directors to be open to members of the public.

(2) But the constitution may provide for members of the public to be excluded from a meeting for special reasons.”.

*Clause, as amended, agreed to.*

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Mr Simon Burns

*Agreed to* 193

Clause 156, page 141, line 34, at end insert—

( ) After section 35(3) of that Act (things the regulator must consider before deciding whether it is satisfied as to the matters in subsection (2)) insert—

“(3A) The regulator must not give an authorisation unless it is notified by the Care Quality Commission that it is satisfied that the applicant is complying with (so far as applicable) the requirements mentioned in section 12(2) of the Health and Social Care Act 2008 in relation to the regulated activity or activities the applicant carries on.

(3B) In subsection (3A), “regulated activity” has the same meaning as in section 8 of the Health and Social Care Act 2008.”.

*Clause, as amended, agreed to.*

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**Health and Social Care (Re-committed) Bill, *continued***

Mr Simon Burns

*Agreed to 194*

Clause 165, page 147, line 29, after ‘applicant’, insert ‘(that is an NHS foundation trust)’.

Mr Simon Burns

*Agreed to 195*

Clause 165, page 147, line 31, leave out paragraph (a).  
*Clause, as amended, agreed to.*

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Mr Simon Burns

*Agreed to 196*

Clause 166, page 148, line 12, after ‘applicant’, insert ‘(that is an NHS foundation trust)’.

Mr Simon Burns

*Agreed to 197*

Clause 166, page 148, line 13, after ‘must’, insert ‘—  
(a) be supported by the Secretary of State if B is an NHS trust, and  
(b) ’.

*Clause, as amended, agreed to.*

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Mr Simon Burns

*Agreed to 198*

Clause 176, page 155, line 10, leave out subsections (3) and (4).

Liz Kendall  
Emily Thornberry  
Owen Smith

*Not selected 49*

Page 155, line 6, leave out Clause 176.  
*Clause, as amended, agreed to.*

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Mr Simon Burns

*Agreed to 199*

Clause 178, page 157, line 36, at end insert ‘; and the Commission must inform the committee in writing of its response or proposed response to the advice.’.

Mr Simon Burns

*Agreed to 200*

Clause 178, page 158, line 31, after ‘discharge’, insert ‘,

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**Health and Social Care (Re-committed) Bill, continued**

and that the failure is significant’.

Mr Simon Burns

*Agreed to* 201

Clause 178, page 158, line 34, at end insert—

- ‘() In subsection (2A) of that section (inserted by section [*Failure to discharge functions*]), after “(1)” insert “or (1A)”.’.

Mr Simon Burns

*Agreed to* 202

Clause 178, page 158, line 37, at end insert—

- ‘() In subsection (4) of that section (inserted by section [*Failure to discharge functions*]), after “(1)” insert “, (1A)”.’.

Mr Simon Burns

*Agreed to* 203

Clause 178, page 158, line 37, at end insert—

- ‘() For the title to that section substitute “Failure by the Commission or Healthwatch England in discharge of functions”.’.

*Clause, as amended, agreed to.*

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Mr Simon Burns

*Agreed to* 205

Clause 179, page 160, line 5, at end insert—

- ‘() In Part 1 of Schedule 19 to the Equality Act 2010 (bodies subject to public sector equality duty), after the entry for the Health Service Commissioner for England insert—

“A Local Healthwatch organisation.”’.

*Clause, as amended, agreed to.*

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Mr Simon Burns

*Agreed to* 231

Schedule 15, page 363, line 10, at end insert—

- ‘(3) The regulations must make provision requiring a person who has power to appoint a member of an LHW to act with a view to securing that the members of the LHW (taken together) are representative of—

- (a) people who live in the LHW’s area,
- (b) people to whom care services are being or may be provided in that area, and
- (c) people from that area to whom care services are being provided in any place.

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**Health and Social Care (Re-committed) Bill, *continued***

- (4) In sub-paragraph (3), “care services” has the meaning given in section 221.’.

Mr Simon Burns

*Agreed to* **232**

Schedule **15**, page **364**, line **2**, at end insert—

- ‘(5) In making arrangements under this paragraph, an LHW must act with a view to securing that, so far as appropriate, the persons with whom it makes the arrangements (taken together) are representative of—
- (a) people who live in the LHW’s area,
  - (b) people to whom care services are being or may be provided in that area, and
  - (c) people from that area to whom care services are being provided in any place.
- (6) In sub-paragraph (5), “care services” has the meaning given in section 221.’.

Mr Simon Burns

*Agreed to* **204**

Schedule **15**, page **364**, line **17**, at end insert—

- ‘() A direction under sub-paragraph (4) may be varied or revoked by a subsequent direction.’.

*Schedule, as amended, agreed to.*

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Mr Simon Burns

*Agreed to* **230**

Clause **180**, page **160**, line **26**, at end insert—

- ‘() After that subsection insert—

- “(3A) A person to whom views are made known or reports or recommendations are made under subsection (2)(d) must, in exercising any function relating to care services, have regard to the views, reports or recommendations.”’.

*Clause, as amended, agreed to.*

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Mr Simon Burns

*Agreed to* **206**

Clause **189**, page **170**, line **23**, after ‘(8)’, insert ‘—

- ‘(a) ’.

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**Health and Social Care (Re-committed) Bill, continued**

Mr Simon Burns

*Agreed to 207*

- Clause 189, page 170, line 24, at end insert ‘, and  
(b) after paragraph (b) (but before the “and” immediately following it) insert—  
“(ba) involve the Local Healthwatch Organisation for the area of the responsible local authority;  
(bb) involve the people who live or work in that area;”, and  
(c) in paragraph (c) for “consult” substitute “involve”.’.

*Clause, as amended, agreed to.*

Mr Simon Burns

*Agreed to 208*

- Clause 190, page 171, line 18, after ‘to’, insert ‘—  
(a) ’.

Mr Simon Burns

*Agreed to 209*

- Clause 190, page 171, line 19, at end insert ‘, and  
(b) any guidance issued by the Secretary of State.’.

Mr Simon Burns

*Agreed to 210*

- Clause 190, page 171, line 19, at end insert—  
( ) In preparing a strategy under this section, the responsible local authority and each of its partner commissioning consortia must—  
(a) involve the Local Healthwatch Organisation for the area of the responsible local authority, and  
(b) involve the people who live or work in that area.’.

Mr Simon Burns

*Agreed to 211*

- Clause 190, page 171, line 36, leave out ‘relevant’.

Mr Simon Burns

*Agreed to 212*

- Clause 190, page 171, line 37, leave out ‘the most recent’ and insert ‘any’.

Mr Simon Burns

*Agreed to 213*

- Clause 190, page 171, line 39, after ‘section 116’, insert ‘which is relevant to the exercise of the functions’.

Mr Simon Burns

*Agreed to 214*

- Clause 190, page 171, line 40, leave out ‘the most recent’ and insert ‘any’.

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**Health and Social Care (Re-committed) Bill, *continued***

Mr Simon Burns

*Agreed to* **215**

Clause **190**, page **171**, line **41**, after ‘section 116A’, insert ‘which is so relevant’.

Mr Simon Burns

*Agreed to* **216**

Clause **190**, page **171**, leave out lines 42 to 45.

Mr Simon Burns

*Agreed to* **217**

Clause **190**, page **172**, line **3**, leave out from second ‘to’ to end of line 4 and insert

- (a) any assessment of relevant needs prepared by the responsible local authority and each of its partner commissioning consortia under section 116 which is relevant to the exercise of the functions, and
- (b) any joint health and wellbeing strategy prepared by them under section 116A which is so relevant.’.

*Clause, as amended, agreed to.*

*Clauses 191 to 193 agreed to.*

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 Mr Simon Burns

*Agreed to* **218**

Clause **242**, page **216**, line **37**, after ‘that’, insert ‘—  
( )’.

Mr Simon Burns

*Agreed to* **219**

Clause **242**, page **216**, line **39**, at end insert ‘, and  
( ) the failure is significant.’.

Mr Simon Burns

*Agreed to* **220**

Clause **242**, page **217**, line **8**, at end insert—  
‘( ) Where the Secretary of State exercises a power under subsection (1) or (3), the Secretary of State must publish reasons for doing so.’.

*Clause, as amended, agreed to.*

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 Mr Simon Burns

*Agreed to* **221**

Clause **265**, page **228**, line **25**, after ‘that’, insert ‘—  
( )’.

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Health and Social Care (Re-committed) Bill, *continued*

Mr Simon Burns

*Agreed to* 222

Clause 265, page 228, line 27, at end insert ‘, and  
( ) the failure is significant.’.

Mr Simon Burns

*Agreed to* 223

Clause 265, page 228, line 35, at end insert—  
‘( ) Where the Secretary of State exercises a power under subsection (1) or (3), the  
Secretary of State must publish reasons for doing so.’.

*Clause, as amended, agreed to.*

*Clause 285 agreed to.*

*Clause 286 agreed to on division.*

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Mr Simon Burns

*Agreed to* 224

Clause 295, page 245, line 45, leave out paragraph (j).

Mr Simon Burns

*Agreed to* 225

Clause 295, page 246, line 16, after ‘and’, insert ‘(subject to section 63(3))’.

*Clause, as amended, agreed to.*

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Liz Kendall  
Emily Thornberry  
Owen Smith  
Debbie Abrahams

*Not called* 50

Clause 297, page 247, line 17, at end insert—  
‘(1A) Section 28 comes into force in accordance with sections 28(3) and (4).’.

Mr Simon Burns

*Agreed to* 226

Clause 297, page 247, line 18, leave out subsection (2).

*Clause, as amended, and Clause 298 agreed to.*

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**Health and Social Care (Re-committed) Bill, *continued****NEW CLAUSES**Secretary of State's duty to promote comprehensive health service*

Mr Simon Burns

*Added NC1*

To move the following Clause:—

‘For section 1 of the National Health Service Act 2006 (Secretary of State’s duty to promote health service) substitute—

**“1 Secretary of State’s duty to promote comprehensive health service**

- (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 must exercise the functions conferred by this Act so as to secure that services are provided in accordance with this Act.
- (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.’.

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*Secretary of State's duty to keep health service functions under review*

Mr Simon Burns

*Added NC2*

To move the following Clause:—

‘In Part 13 of the National Health Service Act 2006, before section 248 (and the cross-heading preceding it) insert—

**“247AB Secretary of State’s duty to keep health service functions under review**

- (1) The Secretary of State must keep under review the effectiveness of the exercise by the bodies mentioned in subsection (2) of functions in relation to the health service in England.
- (2) The bodies mentioned in this subsection are—
  - (a) the Board;
  - (b) Monitor;
  - (c) the Care Quality Commission;
  - (d) the National Institute for Health and Care Excellence;
  - (e) the Health and Social Care Information Centre;
  - (f) Special Health Authorities.

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**Health and Social Care (Re-committed) Bill, *continued***

- (3) The Secretary of State may include in an annual report under section 247B the Secretary of State's views on the effectiveness of the exercise by the bodies mentioned in subsection (2) of functions in relation to the health service.”.

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*Secretary of State's duty as to research*

Mr Simon Burns

*Added NC3*

To move the following Clause:—

‘After section 1C of the National Health Service Act 2006, insert—

**“1CA Duty as to research**

“In exercising functions in relation to the health service, the Secretary of State must have regard to the need to promote—

- (a) research on matters relevant to the health service, and
- (b) the use in the health service of evidence obtained from research.”.

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*Secretary of State's duty as respects variation in provision of health services*

Mr Simon Burns

*Added NC4*

To move the following Clause:—

‘After section 12D of the National Health Service Act 2006 insert—

*“Miscellaneous*

**12E Secretary of State's duty as respects variation in provision of health services**

- (1) The Secretary of State must not exercise the functions mentioned in subsection (2) for the purpose of causing a variation in the proportion of services provided as part of the health service that is provided by persons of a particular description if that description is by reference to—
  - (a) whether the persons in question are in the public or (as the case may be) private sector, or
  - (b) some other aspect of their status.
- (2) The functions mentioned in this subsection are the functions of the Secretary of State under—
  - (a) sections 6E and 13A, and

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**Health and Social Care (Re-committed) Bill, *continued***

- (b) section 67 of the Health and Social Care Act 2011 (requirements as to procurement, patient choice and competition).”.
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*General duties: supplementary*

Mr Simon Burns

*Added NC5*

To move the following Clause:—

- (1) This section applies for the purposes of this Part.
  - (2) “Anti-competitive behaviour” means behaviour which would (or would be likely to) prevent, restrict or distort competition and a reference to preventing anti-competitive behaviour includes a reference to eliminating or reducing the effects (or potential effects) of the behaviour.
  - (3) “Health care” means all forms of health care provided for individuals, whether relating to physical or mental health, with a reference in this Part to health care services being read accordingly; and for the purposes of this Part it does not matter if a health care service is also an adult social care service (as to which, see section 57).
  - (4) “The NHS” means the comprehensive health service continued under section 1(1) of the National Health Service Act 2006, except the part of it that is provided in pursuance of the public health functions (within the meaning of that Act) of the Secretary of State or local authorities.
  - (5) A reference to the provision of health care services for the purposes of the NHS is a reference to their provision for those purposes in accordance with that Act.
  - (6) Nothing in section 56 requires Monitor to do anything in relation to the supply to persons who provide health care services of goods that are to be provided as part of those services.’.
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*Standard condition as to transparency in setting and application of certain criteria*

Mr Simon Burns

*Added NC6*

To move the following Clause:—

- (1) The standard conditions applicable to any licence under this Chapter must include a condition requiring the licence holder to—
  - (a) set transparent eligibility and selection criteria, and
  - (b) apply those criteria in a transparent way to persons who, having a choice of persons from whom to receive health care services for the purposes of the NHS, choose to receive them from the licence holder.
- (2) “Eligibility or selection criteria”, in relation to a licence holder, means criteria for determining—
  - (a) whether a person is eligible, or is to be selected, to receive health care services provided by the licence holder for the purposes of the NHS, and

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**Health and Social Care (Re-committed) Bill, *continued***

- (b) if the person is selected, the manner in which the services are provided to the person.’.
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*Consultation: further provision*

Mr Simon Burns

*Added NC7*

To move the following Clause:—

- ‘(1) For the purpose of securing that the prices payable for the provision of health care services for the purposes of the NHS are such as to result in a fair level of pay for providers of the services, the National Health Service Commissioning Board and Monitor must, in exercising functions under section 117, have regard to—
- (a) differences in the costs incurred in providing health care services for the purposes of the NHS to persons of different descriptions, and
  - (b) differences between providers with respect to the range of health care services that they provide for those purposes.
- (2) In exercising functions under section 117(5), the Board and Monitor must act with a view to securing the standardisation throughout England of the specification of health care services in the national tariff under section 115(1)(a).
- (3) In exercising functions under section 117(10A), Monitor and the Board must act with a view to securing the standardisation throughout England of the specification of health care services in rules provided for in the national tariff under section 115(3)(b).
- (4) In carrying out the duty under subsection (2) or (3), the Board and Monitor must have regard to whether, or to what extent, standardisation is likely to have a significant adverse impact on the provision of health care services for the purposes of the NHS.’.
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*Failure to discharge functions*

Mr Simon Burns

*Added NC8*

To move the following Clause:—

- ‘(1) In section 82 of the Health and Social Care Act 2008 (failure by Commission to discharge functions), in subsection (1), at the end insert “,
- and that the failure is significant.”
- (2) After subsection (2) of that section insert—
- “(2A) But the Secretary of State may not give a direction under subsection (1) in relation to the performance of functions in a particular case.”
- (3) After subsection (3) of that section insert—
- “(4) Where the Secretary of State exercises a power under subsection (1) or (3), the Secretary of State must publish the reasons for doing so.”

**Health and Social Care (Re-committed) Bill, *continued***

- (4) In section 161 of that Act (orders, regulations and directions: general provisions), in subsection (3), before “any power of the Secretary of State to give directions” insert “(subject to section 82(2A))”.
- (5) In section 165 of that Act (directions), at the beginning of subsection (2) insert “Subject to subsection (3),”.
- (6) After that subsection insert—
  - “(3) A direction under section 82 must be given by regulations or by an instrument in writing.”.

*Clauses of, and Schedules to, the Bill, in respect of which the Bill was re-committed, as amended, to be reported.*

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