

Letter to the House of Commons and House of Lords Joint [Committee on Human Rights](#), in relation to the [Health and Care Bill 2021-22](#)

By email to jchr@parliament.uk

13 July 2021

Health and Care Bill: implications for human rights

Dear Madam or Sir,

The purpose of this email is to draw the Committee's attention to the implications of the Health and Care Bill which is due to have its second reading in the House of Commons on 14 July (tomorrow) for the right to life and the right to health in England.

The Committee will note that the Bill proposes in clause 15 to remove from [section 3 of the NHS Act 2006](#) the qualified legal duty to arrange provision of medical services. As the qualified duty to secure provision of primary medical services is retained elsewhere in the Bill (Schedule 3, paragraph 3, new section 82B), removal of the duty in section 3 relates to non-primary medical services, which are basically those provided at a hospital (the title to clause 15 notwithstanding). If the Bill is enacted, non-primary services will have to be arranged through the power in section 3A. Section 3 of the 2006 Act and its predecessors have been the principal legal basis upon which the failure of the NHS to provide services may be challenged in court.

(By way of background, the government had a qualified legal duty to provide hospital medical services "throughout England" from 1946 until 2012. Under the Health and Social Care Act 2012, this duty was repealed and 200+ clinical commissioning groups (CCGs) were given under s.3 of the 2006 NHS Act a duty to arrange provision of medical, and other key services and facilities, such as nursing and ambulance services, and hospital and other accommodation. The duty to arrange provision of these services and facilities will pass under the Bill to 42 public-private Integrated Care Boards.)

A similar duty to arrange provision of ophthalmic services is also to be removed from section 3.

You will note as well that the provision in the current section 3(1C) aimed at ensuring that emergency services are provided for everyone present in the commissioner's area, which is operationalised and supplemented in the NHS Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012 (where it extends to ambulance and accident as well as to emergency services), will also be removed.

The specific removal of these legal duties and provisions engages the duty to provide an effective framework as part of the positive obligation to secure the right to life to which the Committee drew attention in its [2019-21 7th report](#) (The Government's response to COVID-19: human rights implications, paragraph 65).

There are also several other aspects of the major reorganisation entailed by the Bill that are extremely concerning, and which bear on the issue of whether the duty to provide an effective framework for protection of the right to life is being complied with, such as introduction of the concept of "core responsibility" for a "group of people" in accordance with enrolment rules made by NHS England, and the power of NHS England to make rules as to what services will not be provided and who might or might not be eligible. I attach a document which provides more information on these and other matters which I have co-written with Professor Allyson Pollock.

Moreover, the consequence of failing to put in place an effective framework could very well also lead to both of the two 'very exceptional circumstances' arising where the acts or omissions of a healthcare provider may be engaged, namely where (1) a systemic or structural dysfunction in hospital services resulting in a patient being deprived of access to life-saving emergency treatment which the authorities knew about or ought to have known about, and (2) an individual patient's life is knowingly put in danger by denial of access to life-saving emergency treatment.

I trust that the Committee will share my concern about these proposals and I urge it to consider how it might address the matter as soon as possible.

I would be grateful if you would acknowledge this email, and assure me that it will be drawn to the Committee's attention. Many thanks.

Yours faithfully,

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