

The Health Bill

House of Lords, 2nd reading, 13 October 2026

Clause 40 (Joint working and delegation arrangements)

Briefing Note

Proposed amendments to clause 40¹

1. In clause 40(3)(a), page 28, line 17, which would insert a new section 65Z5(1A) into the National Health Service Act 2006, delete “person” in paragraph (e) of subsection (1A), and replace with “public body”.
2. Page 28, lines 20-24, omit clause 40(3)(d) and (e).
3. In clause 40(3), line 20, insert a new paragraph (d) -
“(d) omit subsection (6).”
4. In clause 40(4), line 28, replace “persons” with “public bodies”.
5. In clause 40(4), line 36, replace “persons” with public bodies.
6. In clause 40(4), lines 37-38, omit “of persons”.

Summary

These amendments would ensure that the Secretary of State is not given powers to delegate his or her NHS functions to, and pool funds with, a private company, and in so doing to escape liability.

¹HL Bill 52, as brought from the Commons, 9 September 2026

Background

Section 65Z5 of the NHS Act 2006 (Joint working and delegation arrangements) was inserted by section 71 of the Health and Social Care Act 2022. It empowers NHS England (NHSE), integrated health boards, NHS trusts and foundation trusts, and “such other body as may be prescribed” to arrange for any of their functions to be exercised by, or jointly with, one of more of those NHS or prescribed bodies, or upper tier local authorities, or combined local authorities. Rights and liabilities (including liabilities in tort) arising out of the exercise of those functions by such a body are only enforceable by or against that body (s.65Z5(6)). Pooling of funds and joint committees of these public bodies are permitted (s.65Z6).

Section 65Z5 is being amended by clause 40 of the Bill because NHSE will be abolished. However, whilst empowering the Secretary of State to make such arrangements in place of NHSE, clause 40 would extend the scope of the power. In particular, it would empower him or her to delegate any of their NHS functions to a private company prescribed in regulations. This would have the effects of making such a company, and not the Secretary of State, legally liable for any failings, and of allowing pooled funds and setting up committees with the company.

These amendments would ensure that the Secretary of State does not have the power to delegate NHS functions to private companies.

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