



Berkshire

davidoliver372@googlemail.com Follow

David on Twitter @mancunianmedic

Cite this as: *BMJ* 2021;374:n1916<http://dx.doi.org/10.1136/bmj.n1916>

Published: 04 August 2021

## ACUTE PERSPECTIVE

## David Oliver: Is more statutory power for the health secretary to intervene in the NHS wise?

David Oliver *consultant in geriatrics and acute general medicine*

One controversial feature of the recent health and care bill is the intention to confer greater statutory powers on the health and social care secretary to intervene more directly in NHS operational matters. For NHS staff, leaders, and organisations, this seems unwise. But I can understand why politicians want to wrest back more control over the NHS, to be deployed when it suits the ministerial, government, or party agenda.

In terms of these additional powers, what does the bill provide for? The explanatory notes, doubtless aiming to reassure, tell us that “the powers conferred by this new section are not intended to be powers that the secretary of state would use frequently to intervene in the affairs of NHS England . . . [which] will remain an arm’s length body and will therefore continue to exercise the majority of its functions as it does now.”<sup>1</sup>

They explain that the annual mandate from the health secretary to NHS England (enshrined in the Health and Social Care Act 2012) will remain the main mechanism used to set ambitions and priorities for NHS England.<sup>2</sup> The new powers would be used only to supplement the mandate by allowing the health secretary, “where he or she deems it appropriate, to set direction and to intervene in relation to NHS England’s functions. Directions could be issued on specific matters or on a standing basis.” Any direction or intervention would have to be published “in a transparent way,” “in the public interest,” and “in written form.”

The bill also gives the health secretary more power to direct public health interventions “to ensure the system can respond rapidly to emerging issues as they arise”—clearly with the recent pandemic response and the creation of a new National Institute for Health Protection in mind, although since the 2012 legislation most public health functions have been the remit of directors based in local government.

The proposed law would also give the health secretary fairly sweeping powers to intervene in reconfiguring local services, issue binding directions, and request information. It would also “confer a power to intervene in cases of significant failure of NHS England to carry out any of its functions.”

It’s easy to see the genesis of such changes. Andrew Lansley’s 2012 act deliberately made the NHS Commissioning Board (subsequently “NHS England,” which the new bill will make a statutory entity) a non-departmental arm’s length body and limited formal political control over its direction, operations, or delivery.<sup>2</sup> Public Health England was created as

an executive agency of the Department of Health, directly accountable to the health secretary, but it still seems to have been made a scapegoat by politicians now planning to replace it for failings in the pandemic response.<sup>3</sup>

With a powerful, sharp, and politically savvy operator at the helm of NHS England in the form of the just departed Simon Stevens—described by the *Health Service Journal* as “the most important figure in the NHS since Bevan”—politicians have no doubt been frustrated by their relative lack of control over operational matters or delivery of government policy priorities.<sup>4</sup> Amanda Pritchard’s appointment to the role has been welcomed by many in the NHS, as she has devoted her career to it. But will be interesting to see what degree of autonomy she is afforded or how challenging she is allowed to be.

Once statute, the new act will also provide for 42 new integrated care systems (ICSs) for local interagency leadership on population health, as well as public health and care planning and delivery. This reorganisation may lead to some local service reconfigurations that are politically unpopular or to public health decisions that fly in the face of national politics. Despite the greater focus on localism, ICS leaders will remain constrained by the national roles of NHS England and Health Education England in support, direction, performance, financial frameworks, and workforce planning.

With over £130bn of public money spent on the NHS each year and with ministers often blamed by the press and public for failings in delivery or planning (even in areas they don’t directly control), it’s easy to see why the government wants more power to intervene. The NHS’s scale means that it can’t be free from party politics. But ministers’ recent track record in operational matters during the pandemic has been unimpressive next to NHS professionals on the ground.

For the good of the service and our patients I’d like to see less, not more, ministerial control and more trust in experts at the local and national level. The King’s Fund has described the bill as a “threat to the operational independence of the NHS.”<sup>5</sup> There’s still time to influence the final legislation.

Competing interests: See [bmj.com/about-bmj/freelance-contributors](http://bmj.com/about-bmj/freelance-contributors).

Provenance and peer review: Commissioned; not externally peer reviewed.

1 Department of Health and Social Care. Health and Care Bill—explanatory notes. 6 Jul 2021. <https://publications.parliament.uk/pa/bills/cbill/58-02/0140/en/210140en.pdf>

- 2 King's Fund. The NHS after the Health and Social Care Act. [https://www.kingsfund.org.uk/projects/new-nhs?gclid=CjwKCAjwlrqHBhByEiwAnLmYUNn-mzmd\\_59Tn7pdNnPP9rq13SUN50a\\_zjIN9KltQCIOEl6StsqDVihocS4cQAvD\\_BwE](https://www.kingsfund.org.uk/projects/new-nhs?gclid=CjwKCAjwlrqHBhByEiwAnLmYUNn-mzmd_59Tn7pdNnPP9rq13SUN50a_zjIN9KltQCIOEl6StsqDVihocS4cQAvD_BwE)
- 3 Iacobucci G. Public Health England is axed in favour of new health protection agency. *BMJ* 2020;370:m3257. <https://www.bmj.com/content/370/bmj.m3257>. doi: 10.1136/bmj.m3257 pmid: 32816824
- 4 McLellan A. Stevens has been the most important figure in NHS history since Bevan. *Health Serv J* 2021 Apr 29. <https://www.hsj.co.uk/policy-and-regulation/stevens-has-been-the-most-important-figure-in-nhs-history-since-bevan/7029999.article>
- 5 King's Fund. The Health and Care Bill: a threat to the operational independence of the NHS? 9 Jul 2021. <https://www.kingsfund.org.uk/blog/2021/07/health-and-care-bill-independence-nhs>