



In Focus

NHS (Charitable Trusts Etc) Bill HL Bill 89 of 2015–16

The [NHS \(Charitable Trusts Etc\) Bill](#) is a private member's bill tabled by Wendy Morton (Conservative MP for Aldridge-Brownhills), and sponsored in the House of Lords by Baroness Massey of Darwen (Labour). The Bill has completed all of its stages in the House of Commons, and is due to have its second reading in the House of Lords on 26 February.

The Bill has two main purposes. Firstly, it makes provision to remove the Secretary of State's powers to appoint trustees for NHS charities (those linked to NHS bodies). Secondly, it makes provision to transfer to the new Great Ormond Street Hospital Children's Charity the right to a royalty in relation to performances or publications of the play *Peter Pan* by JM Barrie.

Background and Key Provisions

The Bill is supported by the Government, and aims to fulfil a commitment made in 2014 under the Coalition Government to provide greater independence for NHS charities.¹ As detailed in the Explanatory Notes on the Bill prepared by the Department of Health, NHS charities are charities regulated under charity law, but are also linked to NHS bodies and bound by NHS legislation. They are charitable trusts established under NHS legislation and have as their trustee an NHS body—such as a foundation trust—or trustees appointed by the Secretary of State for an NHS body. The Secretary of State also has statutory powers to transfer trust property NHS charities hold. As such they are distinct from independent charities established solely under charity law.² Currently, there are approximately 260 NHS charities operating across the sector, which collectively hold around £2 billion of assets and receive a combined annual income of around £330 million.³

A number of the largest NHS charities, and the Association of NHS Charities, have called for reform as a result of concern that the current legislative framework limits NHS charities' freedom to grow and better support their beneficiaries.⁴ It has been suggested that ministerial involvement in these charities may discourage donors, and could be seen to undermine the independence that is required by charity law.⁵ Indeed, the Charity Commission has stated that dual regulation under both NHS and charity legislation made it difficult for NHS charities to achieve and demonstrate that independence.⁶

As a result, clause 1 of the Bill would repeal the Secretary of State's power to appoint trustees to certain NHS bodies in England. Clause 2 would enable the Secretary of State to provide by order for trust property held by trustees appointed to the relevant NHS trusts and NHS foundation trusts to be transferred to the trust prior to the trustees' appointments being revoked. Clause 3 of the Bill would transfer the royalties for the performance or publication of the play *Peter Pan* by JM Barrie to the new Great Ormond Street Hospital Children's Charity.

Progress of the Bill

Speaking to her Bill at second reading in the House of Commons, Ms Morton said:

Fundamentally, the NHS (Charitable Trusts Etc) Bill seeks to support the work of NHS charities. First, and very specifically, it makes provision to confer the rights to the “Peter Pan” royalties on the new Great Ormond Street Hospital Children’s Charity. That will enable it to take full advantage of the move to independent status, providing greater freedom to attract additional funding and reduce bureaucracy, by leaving it under the sole authority of the Charity Commission. By repealing the powers of the Secretary of State for Health to appoint trustees to NHS bodies in England and to appoint special trustees in England, the Bill draws to a conclusion the transition process for NHS charities, which are expected to move either to an independent model or to a corporate model. It creates certainty and clarity within the existing complex bureaucratic structure. It provides greater freedoms to attract additional funding and gives trustees much greater protection from liability.⁷

Responding for the Labour Party, Justin Madders (MP for Ellesmere Port and Neston) described the Bill as “straightforward and sensible”, and said that Labour MPs were “keen to support” the measures.⁸ The Minister for Community and Social Care, Alistair Burt, also confirmed the Government’s support for the Bill:

[T]he Government have listened to the NHS charities and given them what they asked for. [...] This Bill makes good on the Government’s decision to repeal the Secretary of State’s powers to appoint trustees to NHS bodies. They are no longer needed. It also provides powers for the Secretary of State to transfer, by regulations, property from the appointed trustees to their linked trust, if any Secretary of State-appointed trustees are still in place when those powers are repealed. [...] The Government are supportive of the Bill’s intentions, not because it delivers what we want, but because it helps to deliver the model and freedom that charities themselves have asked for.⁹

The Bill was not amended during public bill committee in the House of Commons. A number of amendments were discussed at report stage, but none was moved to a division. The Bill received its third reading on 22 January 2016, again without division.

Further Reading

- House of Commons Library, [NHS \(Charitable Trusts Etc\) Bill](#), 15 January 2016

¹ [Explanatory Notes to the Bill](#), p 2.

² *ibid.*

³ House of Commons Library, [NHS \(Charitable Trusts Etc\) Bill](#), 15 January 2016, p 3.

⁴ [Explanatory Notes to the Bill](#), p 3.

⁵ House of Commons Library, [NHS \(Charitable Trusts Etc\) Bill](#), 15 January 2016, p 3.

⁶ [Explanatory Notes to the Bill](#), p 2.

⁷ [HC Hansard, 6 November 2015, col 1242.](#)

⁸ *ibid.*, [col 1275.](#)

⁹ *ibid.*, [cols 1287–88.](#)

Library In Focus are compiled for the benefit of Members of the House of Lords and their personal staff, to provide impartial, politically balanced briefings on a selection of topical subjects. Authors are available to discuss the contents of the Notes with the Members and their staff but cannot advise members of the general public.

Any comments on In Focus should be sent to the Head of Research Services, House of Lords Library, London, SW1A 0PW or emailed to purvism@parliament.uk.