



## NHS Funding Bill HL Bill 96 of 2019–21

On 26 February 2020, the second reading and remaining stages of the NHS Funding Bill are scheduled to take place in the House of Lords.

### Summary

The [NHS Funding Bill](#) is a two-clause government bill intended to place a legal duty on the Government to guarantee a minimum level of revenue spending for the NHS in England in each year from 2020/21 to 2023/24 inclusive. The amounts specified rise from £127.0 billion in 2020/21 to £148.5 billion in 2023/24. These figures compare with £120.1 billion in 2019/20.

The bill would place into law a funding settlement for NHS England first announced by the then Prime Minister, Theresa May, in June 2018. This formed the basis of the NHS's *Long Term Plan*, published in January 2019. Legislation to enshrine the settlement in law was a commitment in both the Conservative Party 2019 general election manifesto and the Queen's Speech in December 2019.

The bill passed through its House of Commons stages unamended. Issues debated included:

- The funding amounts in the bill being set out in cash terms, not real terms (ie adjusted for inflation) meaning that if inflation exceeds expectations, the purchasing power of the settlement might be less than anticipated.
- That the bill only relates to revenue spending. Some speakers argued that other areas should also be covered, such as: capital spending; education and training; the local authority public health grant; and social care.
- The relationship between the bill and the aim of achieving “parity of esteem” for mental health services.
- The effect of the funding settlement on the NHS's ability to meet its performance targets.

The bill is a ‘money bill’. This means it can receive royal assent without being passed by the House of Lords, and also that the House of Commons is not obliged to consider any amendments made by the Lords. It is normal practice for such bills not to be committed to a committee stage in the Lords, instead going directly from second to third readings.

The bill is an example of the Government committing in primary legislation to an action which is already within its power.

Chris Smith | 11 February 2020

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## I. Introduction

The [NHS Funding Bill](#) would place a legal duty on the Government to guarantee a minimum level of revenue spending for the NHS in England in each financial year from 2020/21 to 2023/24 inclusive.<sup>1</sup> The specified minimum amounts are as follows, together with comparative figures for the two prior years:

**Table 1: Proposed Minimum Revenue Funding for NHS England Under the NHS Funding Bill<sup>2</sup>**

£ Billion	Existing Revenue Allocation	Minimum Revenue Allocation Under the Bill
2018/19	114.6	
2019/20	120.8	
2020/21		127.0
2021/22		133.3
2022/23		140.0
2023/24		148.5

Revenue (or resource) spending is the day-to-day cost of providing public services, including for example salaries, rents and utilities. The sums specified in the bill do not cover capital spending, which is investments in assets expected to be used for more than one year—including, for example, hospital building or improvement projects.<sup>3</sup> Nor do they include spending on social care, education and training, the local authority public health grant or regulation.<sup>4</sup>

## 2. Background

In June 2018, the then Prime Minister, Theresa May, announced a long-term funding commitment to the NHS.<sup>5</sup> It set out nominal annual budgets for NHS England which were very similar to those in table 1. The announcement stated that the (then) £33.2 billion increase in annual funding between 2018/19 and 2023/24 was equivalent to an increase of £20.5 billion in real terms.<sup>6</sup> Based on these figures, NHS England published a *Long Term Plan* setting out how it would operate over the following ten years.<sup>7</sup>

The bill would place these funding commitments into primary legislation. It was foreshadowed in the 2019 Conservative Party manifesto, which said that “within the first three months of our new term,

<sup>1</sup> [Explanatory Notes](#), p 2.

<sup>2</sup> *ibid*, p 3.

<sup>3</sup> Institute of Chartered Accountants in England and Wales, [The UK Central Government Public Financial Management System: A Guide for Stakeholders](#), 2017, p 15.

<sup>4</sup> House of Commons Library, ‘[NHS Funding Bill \(2019–20\)](#)’, 17 January 2020.

<sup>5</sup> Department of Health and Social Care, ‘[Prime Minister Sets Out Five-Year NHS Funding Plan](#)’, 18 June 2018.

<sup>6</sup> *ibid*.

<sup>7</sup> NHS England, [The NHS Long Term Plan](#), 7 January 2019.

we will enshrine in law our fully funded, long-term NHS plan”.<sup>8</sup> It was then also included in the December 2019 Queen’s Speech, which stated that “for the first time, the National Health Service’s multi-year funding settlement, agreed earlier this year, will be enshrined in law”.<sup>9</sup>

The Government has stated that the £33.9 billion increase in funding between 2018/19 and 2023/24 envisaged by the bill represents the “largest cash settlement in the NHS’s history”.<sup>10</sup> However, the fact checking website Full Fact found that, while this is correct in cash terms, after adjusting for inflation the rise is £20.5 billion, which was exceeded by a £24 billion real-terms increase between 2004/05 and 2009/10.<sup>11</sup>

### 3. Money Bill

The bill has been certified as a “money bill” within the meaning of the Parliament Act 1911.<sup>12</sup> This means it can receive royal assent without being passed by the House of Lords, and also that the House of Commons is not obliged to consider any amendments made by the Lords.<sup>13</sup> It is normal practice for such bills not to be committed to a committee stage in the Lords, instead going directly from second to third readings.<sup>14</sup>

### 4. Clauses

**Clause 1** sets out what the minimum funding amounts for the NHS in England would be for financial years 2020/21 to 2023/24 and specifies that these refer to revenue spending only. Under the bill, these amounts would represent both: (i) the minimum which the Secretary of State can propose as the department’s spending requirement for the year (its ‘mandate’); and also (ii) the minimum which HM Treasury must put before Parliament as the department’s planned spending (‘estimates’), having taken into account the department’s proposals.<sup>15</sup> The Government said that having requirements in place at two stages of the annual funding process provides a “double-lock”.<sup>16</sup>

**Clause 2** sets out the extent, commencement, expiry and short title of the bill. Healthcare is a devolved matter. The bill extends to England and Wales but will apply only to the NHS in England.<sup>17</sup> However, the increases in spending for the NHS will have implications for the funding allotted to Scotland, Wales and Northern Ireland via the ‘Barnett Formula’.<sup>18</sup>

<sup>8</sup> Conservative Party, [Conservative Party Manifesto 2019](#), November 2019, p 9.

<sup>9</sup> [HC Hansard, 19 December 2019, col 31.](#)

<sup>10</sup> [HC Hansard, 20 January 2020, col 45.](#)

<sup>11</sup> Claire Milne, ‘[The £20.5 Billion NHS England Spending Increase is the Largest Five Year Increase Since the Mid-2000s](#)’, Full Fact, 26 November 2019.

<sup>12</sup> [NHS Funding Bill](#), 5 February 2020, HL Bill 96 of session 2019–21, p 1.

<sup>13</sup> House of Lords, [Companion to the Standing Orders and Guide to the Proceedings of the House of Lords](#), 2017, p 142.

<sup>14</sup> *ibid*, p 111.

<sup>15</sup> [Explanatory Notes](#), pp 4–5.

<sup>16</sup> [HC Hansard, 4 February 2020, col 257.](#)

<sup>17</sup> [Explanatory Notes](#), p 4.

<sup>18</sup> The Barnett formula determines changes to funding allocations to the devolved administrations in relation to departmental spending. Under the formula, the devolved administrations “receive a population-based proportion of changes in planned UK government spending on comparable services in England”: HM Treasury, [Statement of Funding Policy: Funding the Scottish Parliament, National Assembly for Wales and the Northern Ireland Assembly](#), November 2015, p 9.

## 5. House of Commons Proceedings

### 5.1 Second Reading

The bill's second reading in the House of Commons took place on 27 January 2020.<sup>19</sup>

Introducing the bill, the Secretary of State for Health and Social Care, Matt Hancock, said that its purpose was to plan for the future and ensure that the NHS “will get the funding it needs in 2024”.<sup>20</sup>

Mr Hancock stressed that the sums contained in the bill were the minimum levels of funding, but actual spending could be more: he said they would set “a floor, but not a ceiling”.<sup>21</sup> He then listed some of the services which would be provided with the additional funds, including:<sup>22</sup>

- More GP appointments.
- New cancer screening and faster diagnosis.
- Prevention, detection and treatment of cardiovascular disease.
- Investments in innovative technology, such as genomics and artificial intelligence.

Mr Hancock stated that additional funding for training (for example of nurses) and for infrastructure is not covered by the bill and would therefore be over and above the amounts specified in it.<sup>23</sup>

Responding for Labour, the Shadow Secretary of State for Health, Jonathan Ashworth, described the bill as a “political gimmick”.<sup>24</sup> He argued that because the amounts in the bill were specified in cash terms, unexpected increases in inflation might mean that funding increases in real terms were not as high as anticipated.<sup>25</sup> He called for a wider multi-year funding plan which included staff training, capital spending and social care.<sup>26</sup> Mr Ashworth also suggested that the funding amounts in the bill would not be sufficient to enable the NHS to “deliver the aspirations of its long-term plan”.<sup>27</sup>

The second reading was agreed without division.<sup>28</sup> A programme motion for the bill was also agreed without division.<sup>29</sup>

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<sup>19</sup> [HC Hansard, 27 January 2020, cols 559–640.](#)

<sup>20</sup> *ibid*, col 561.

<sup>21</sup> *ibid*, col 564.

<sup>22</sup> *ibid*.

<sup>23</sup> *ibid*, cols 568–9. In his introduction to the December 2019 Queen's Speech, the Prime Minister, Boris Johnson, committed to “upgrading 20 hospitals and building 40 more”, and to increasing the number of nurses, primary care practitioners and doctors in the NHS: Prime Minister's Office, [Queen's Speech December 2019: Background Briefing Notes](#), 19 December 2019, p 4.

<sup>24</sup> [HC Hansard, 27 January 2020, col 571.](#)

<sup>25</sup> *ibid*, cols 571–2.

<sup>26</sup> *ibid*, col 577.

<sup>27</sup> *ibid*, col 572.

<sup>28</sup> *ibid*, col 640.

<sup>29</sup> *ibid*, cols 640–1.

## 5.2 Committee Stage

The bill had been certified as relating exclusively to England.<sup>30</sup> The House of Commons therefore resolved itself into a legislative grand committee (LGC) representing England, which sat on 4 February 2020.<sup>31</sup> No amendments were made in LGC. Details of the three amendments that were put to a division are provided below; all three were opposition amendments. This section does not cover those amendments that were debated at committee stage but not voted on.

### ***Amendment 2: Mental Health Services***

Amendment 2 was defeated on division by 300 votes to 163.<sup>32</sup> It would have required the Government to set out annually the amount actually spent on mental health services in each year, and its plans to achieve “parity of esteem” in mental health services.<sup>33</sup>

Moving the amendment on behalf of the Labour Party, Justin Madders (Labour MP for Ellesmere Port and Neston) said the Government’s aim to give mental health parity of esteem with physical health was “laudable”, and that the amendment was designed to provide this intention with “legislative teeth”.<sup>34</sup> Responding, the Minister of State for Health and Social Care, Edward Argar, said that the Government’s commitment to achieving parity of esteem was already enshrined in law in the Health and Social Care Act 2012. He also set out a number of other actions which the Government was taking to improve mental health services, including additional spending and a reform of the Mental Health Act 1983. These steps, he argued, would be sufficient to achieve the aim of parity of esteem.<sup>35</sup>

### ***Amendment 3: Capital Spending***

Amendment 3 was defeated on division by 298 votes to 161.<sup>36</sup> It would have prevented the Government from meeting the revenue spending set out in the bill by using funds from NHS capital budgets.<sup>37</sup> Moving the amendment, Mr Madders said that it was designed to provide certainty for NHS trusts on their overall funding, and to ensure that the NHS’s “maintenance backlog” could be tackled.<sup>38</sup> Responding, Mr Argar said transfers from capital to revenue spending were being phased out. However, he argued that “a degree of flexibility is required”, for example to allow an unspent capital budget to be transferred to revenue to benefit patients around the end of a financial year. He therefore opposed a “blanket ban set in legislation”.<sup>39</sup>

<sup>30</sup> House of Commons, [Speaker’s Signed Certificate](#), 17 January 2020.

<sup>31</sup> [HC Hansard, 4 February 2020, cols 212–77](#).

<sup>32</sup> *ibid*, cols 263–5.

<sup>33</sup> *ibid*, col 212.

<sup>34</sup> *ibid*, col 214.

<sup>35</sup> *ibid*, col 259.

<sup>36</sup> *ibid*, cols 268–71.

<sup>37</sup> *ibid*, col 212.

<sup>38</sup> *ibid*, col 218.

<sup>39</sup> *ibid*, col 258.

### **New Clause 4: Annual Statement on Performance**

New clause 4 was defeated on division by 293 votes to 162.<sup>40</sup> It would have required the Government to report annually on whether the NHS was meeting its performance targets and, if not, what steps the Government would take to ensure that they were met.<sup>41</sup> Moving the new clause, Mr Madders stated that it was designed to hold the Government to account on its promises to improve NHS performance against its targets.<sup>42</sup> Responding, Mr Argar said that the Government already publishes an annual report on NHS performance against its objectives. Moreover, he argued, the new clause was fundamentally about whether the funding amounts specified in the bill were sufficient. He said that they were, and that the new clause was therefore unnecessary.<sup>43</sup>

### **5.3 Remaining Stages**

As the bill was not amended in the first LGC, there was no report stage and the subsequent LGC agreed a consent motion without division. As a result of the timetable motion, there was no time for debate on third reading, which was also agreed without division.<sup>44</sup>

## **6. Analogous Legislation**

The bill places a spending commitment into primary legislation. Examples of other primary legislation which committed governments to actions already within their power include the following.

- The International Development (Official Development Assistance Target) Act 2015, which commits the Government to meeting the United Nations target of spending 0.7% of gross national income on overseas development assistance. This, however, was introduced as a private member's bill.
- The European Union (Withdrawal Agreement) Act 2020, which prevents ministers from agreeing to an extension to the transition period beyond December 2020.
- The Fiscal Responsibility Act 2010, which introduced rules to constrain the level of government borrowing and the path of government debt.

## **7. Further Information**

- House of Commons Library, '[NHS Funding Bill \(2019–20\)](#)', 17 January 2020
- Nuffield Trust, [Queen's Speech Debate: Health and Social Care](#), 16 January 2020
- Local Government Association, [NHS Funding Bill: Second Reading: House of Commons](#), 22 January 2020
- King's Fund, [Briefing: NHS Funding Bill](#), 3 February 2020

<sup>40</sup> [HC Hansard, 4 February 2020, cols 272–4.](#)

<sup>41</sup> *ibid*, col 213. For information on NHS targets, performance against them and current policy debates, see: House of Lords Library, [NHS and Social Care: Targets, Priorities and Pressures](#), 30 January 2020.

<sup>42</sup> [HC Hansard, 4 February 2020, cols 222.](#)

<sup>43</sup> *ibid*, cols 257–8.

<sup>44</sup> *ibid*, cols 275 and 277. For further details of the procedures followed as a result of the certification that the bill related exclusively to England, see House of Commons Library, [English Votes for English Laws](#), 20 June 2017, p 7.

- Ben Gershlick and David Finch, '[Where Does the 2019 Spending Round Leave Health and Social Care, and the Nation's Health Prospects?](#)', Health Foundation, 6 September 2019
- British Medical Association, '[NHS Funding Settlement: Is It Enough and How Should It Be Spent?](#)', August 2018
- Institute for Fiscal Studies, '[UK Health Spending](#)', 8 November 2019