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# ***Health and Social Care Bill: Committee Stage Report***

This is a report on the Committee Stage of the Health and Social Care Bill, Bill 9 of 2007-08. (As amended in Committee and published for the report stage, the Bill is Bill 52 of 2007-08.) This report has been produced in response to a recommendation of the Modernisation Committee in its report on *The Legislative Process* (HC 1097, 2005-06).

The Bill covers a wide range of topics but has a particular focus on the regulation of organisations and individuals involved in health and adult social care services. Among other measures included in the Bill are those designed to prevent the spread of infectious diseases and the risk of contamination; and arrangements to make one off payments to all expectant mothers in the final stages of pregnancy.

The Committee approved a large number of detailed Government amendments and four Government new clauses, none of them giving rise to major controversies.

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## **Summary of main points**

This was a relatively uncontroversial Bill. There was no division on Second Reading and no division on any of the Government amendments and new clauses introduced in committee, most of which were included at that stage because discussions with the relevant bodies were not finished at the time the Bill was introduced into the House of Commons.

The Bill has been described as a “portmanteau” Bill by the Government and thus covers a wide range of issues without an overarching theme. The debates in committee tended to reflect this. There were a large number of (failed) amendments and debates on specific issues raised by the opposition parties. Although most of these concerned Parts 1 and 2 of the Bill, that is, the parts of that deal with the regulation of health and social care and of the health and social care professions, the Conservatives and Liberal Democrats both supported the general principles behind these two parts of the Bill, and the Bill as a whole.



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# I Progress of Bill

## A. Bill Summary

The Health and Social Care Bill deals with a wide range of issues and has been described by the Government as a “portmanteau” Bill.

Part 1 of the Bill would merge three existing bodies to form a new Care Quality Commission. The existing bodies are: the Commission for Social Care Inspection, which regulates social services, the Healthcare Commission, which regulates health services and the Mental Health Act Commission, whose function is to safeguard the interests of people detained under the Mental Health Act 1983. The new Commission would have the power to require NHS bodies to register with it; unlike most social service providers and independent healthcare providers, NHS bodies have not so far been subject to such a requirement.

Part 2 deals regulation of individuals in health and social care professions. It contains numerous specific measures, some of which implement recommendations of the Shipman enquiry, which criticised the current system of self-regulation by the medical profession.

Part 2 includes provision to change the standard of proof in fitness to practise cases from the criminal to the civil (for those professions not already using the civil standard). This would mean that unfitness would be judged on the balance of probabilities rather than beyond reasonable doubt. It would also create a new, separate adjudication body, the Office of the Health Professions Adjudicator, which would take over the adjudication functions (but not registration and other functions) of the General Medical Council (with whom doctors have to register in order to practise) and the General Optical Council (with whom opticians have to register).

Other measures in Part 2 include: amending the powers of the existing Council for Healthcare Regulatory Excellence (which is an overarching body covering the work of nine regulatory bodies, including the GMC and the GOC); providing for more lay representation on the councils of the relevant regulatory bodies such as the GMC; and providing for a *Responsible Officer* to help identify and handle cases of poor professional performance in organisations employing or contracting with doctors.

The Government has highlighted two other priority areas covered by the Bill: modernising the *Public Health (Control of Disease) Act 1984*, to help prevent the spread of infectious diseases and the risk of contamination (Part 3 of the Act); and the provisions to make a one off payment to all expectant mothers in the final stages of pregnancy (Part 4 of the Act).

Other measures in the Bill (contained in Part 5) include:

- A change to the general “duty of quality” in the NHS
- the transfer of the Global Sum for Pharmaceutical Services

- the power to extend membership of NHS indemnity schemes
- the extension of Direct Payments
- the abolition of the Liability of Relatives rules
- changes to “Ordinary Residence” in relation to the National Assistance Act 1948
- the creation of a power for the Secretary of State to give financial assistance to social enterprises
- the creation of the National Information Governance Board for Health and Social Care
- the abolition of the National Biological Standards Board and the transfer of its functions to the Health Protection Agency
- legislative cover for performance management and routine feedback to parents as part of the National Child Measurement Programme

The territorial extent of the provisions varies. For example, regulation of the professions is mostly UK-wide while regulation for organisations is mostly confined to England, with separate provisions for Wales (most of which were added at the Committee stage.)

Library Research Paper 07/81, written for the Second Reading, provides further background information.<sup>1</sup>

The Library’s Bill Gateways pages provide information on the progress of Bills and links to relevant material.<sup>2</sup>

The Department of Health has deposited documents in the Library on the delegated powers in the Bill. These include its memorandum for the Delegated Powers and Regulatory Reform Select Committee<sup>3</sup> and a more detailed pack to supplement that memorandum.<sup>4</sup> The latter includes draft regulations on the Health in Pregnancy Grant. Draft regulations on the National Child Measurement Programme, together with a covering note, have also been deposited in the Library.<sup>5</sup>

## **B. Passage through the House**

The *Health and Social Care Bill* was introduced into the House of Commons on 15 November 2007 and was published the following day. The Second Reading was on 26 November 2007. There was no division on Second Reading as both the Conservatives and the Liberal Democrats said that they supported the Bill in principle.

At the conclusion of the Second Reading, there was a Programme Motion and a Money Resolution. The Programme Motion set Thursday 24 January 2008 as the deadline for the conclusion of proceedings in the Public Bill Committee and enabled the Committee to sit twice on the first sitting day. The Money Resolution specifically mentioned the *health*

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<sup>1</sup> <http://hcl1.hclibrary.parliament.uk/wdw/rp/RPlist.asp?rpyear=2007>

<sup>2</sup> <http://services.parliament.uk/bills/2007-08/healthandsocialcare.html>

<sup>3</sup> Dep 2008-0077: Part I

<sup>4</sup> Dep 2008-0077 Part II

<sup>5</sup> Dep 2008-0158

*in pregnancy grant* as well as 'other' government expenditure resulting more generally from the Act.

There was no Ways and Means Resolution at this stage although there was one after the Committee Stage had started, on 15 January 2008, on which there was a short debate. The Resolution authorised the Office of the Health Professions Adjudicator, a new body that would be created by provisions in the Bill, to charge fees.<sup>6</sup> For more information about this, see *Debates in Committee* below.

The Committee first met on 8 January. It agreed to hold twelve sittings, meeting twice a day, twice a week, up to and including 24 January. All these sittings were held. During the first three sittings, the Committee heard oral evidence from the following bodies (listed in the order in which they appear in the proceedings of the Committee). This evidence was heavily quoted during the Committee debates.

- Commission for Healthcare Audit and Inspection
- Commission for Social Care Inspection
- Mental Health Act Commission
- Health Protection Agency
- Lady Justice Smith (who chaired the Shipman enquiry)
- General Medical Council
- British Medical Association
- 'Which?'
- Local Government Association
- National Childbirth Trust
- Department of Health

The Committee also received written evidence.

Members of the Committee are listed in full at the end of this Paper. There were five Conservative Members and two Liberal Democrats. Apart from the Minister, Ben Bradshaw, and the Government Whip, Steve McCabe, there were eight Labour Members. Stephen O'Brien, the Shadow Minister for Health, was the spokesman for the Conservatives. The two Liberal Democrat Members of the Committee, Sandra Gidley and Greg Mulholland, were both Liberal Democrat Shadow Ministers for Health.

## **C. Overview of Committee Stage**

Over 50 Government Amendments and four Government new clauses were agreed without division during the Bill's passage through Committee. They included:

- numerous amendments and two new clauses relating to Wales
- amendments and a new clause relating to fees chargeable by the new Office of the Health Professions Adjudicator and functions that it would take over taking

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<sup>6</sup> HC Deb 15 January 2008 c796-808

over functions from the General Medical Council and the General Optical Council and the fees payable to it;

- a new Clause to clarify the existing power of the Commission for Healthcare Regulatory Excellence in relation to individual complaints;
- an amendment to enable the new Office of the Health Professions Adjudicator to have an official seal;
- minor amendments to the public health provisions to remove obsolete references to rating districts.

The Government explained that the changes relating to Wales and those relating to the Office of the Health Professions Adjudicator were introduced at Committee Stage because they were still under discussion with other bodies at the time the Bill was introduced into the House of Commons (see below).

While agreeing to the broad aims of the Bill, the opposition parties raised a number of issues and expressed concern at some of the Government's responses. They proposed well over 100 amendments and new clauses. A few were not selected and many were grouped. None was successful. There were 13 divisions on non-government amendments and new clauses. They all related to Parts 1 and 2 of the Bill, that is, to the proposed new Care Quality Commission for regulating adult health and social care and to the proposals for regulating health professions.

The overwhelming focus of the debates was on the regulatory aspects of the Bill in Parts 1 and 2. The *health in pregnancy grant* in Part 4 of the Bill also attracted a good deal of attention although there were no divisions or amendments to that part of the Bill.

Of the nine sittings used for debating the clauses in the Bill, four were devoted to the establishment of the Care Quality Commission (Part 1 of the Bill) and almost two were devoted to the regulation of healthcare professions (Part 2 of the Bill). There was a brief debate, including a Government amendment, on public health protection (Part 3 of the Bill), and a longer debate of just over one sitting on the Health in Pregnancy Grant (part 4 of the Bill). Less than one sitting, the last one, was devoted to the ten or so specific provisions in Part 5 of the Bill. Although most of these received a brief mention, that sitting also covered the end of the debate on the Health in Pregnancy Grant and the general provisions (on commencement, extent etc.) in Part 6 of the Bill.

The issues raised are outlined in the following section.

## **II Issues raised in Committee**

The following account aims to summarise some of the broad issues, focusing on those on which there was a division, or a long debate. Some Government points of clarification or commitments for the future are also mentioned. Please note that this paper covers a selection of issues and does not cover every issue raised on every clause.

All Government amendments and new clauses were successful without a division and all other amendments and new clauses failed. All divisions were thus in favour of the

Government. Because of this, the outcome of amendments, new clauses, divisions and issues raised are not mentioned each time in the account of the debates set out below.

References to Government amendments and Government new clauses are underlined so that they can be distinguished from the rest.

Unless otherwise indicated, the issues mentioned below are listed in chronological order next to the clause to which they related. (The column numbers relate to the debate on the whole clause not necessarily just to the issue mentioned.) Part 4 of the Bill on the Health in Pregnancy Grant, a social security benefit, is briefly mentioned in chronological order and is also covered by a separate section of this paper (Part IV)

## **A. Care Quality Commission (Part 1 of the Bill) <sup>7</sup>**

The Care Quality Commission would be a new body for England that would replace and merge the functions of three existing Commissions: the Mental Health Act Commission (MHAC), the Commission for Social Care Inspection (CSCI) and the Healthcare Commission (HC).

The new body would have some additional functions, in particular NHS services would be subject to registration for the first time and it would have tougher enforcement powers such as the power to issue penalty notices. The Healthcare Commission's function of dealing with second tier individual complaints would not be carried forward.<sup>8</sup> Although the Bill provides for the broad functions to be carried over, many of the details such as the services that would have to register and the registration requirements would be prescribed in Regulations.

The proposed new requirement for NHS bodies to register and the new general enforcement powers were not singled out in the debates<sup>9</sup> although the loss of the Healthcare Commission's complaints function did receive some attention.

Issues raised include the following:

### ***Clause 1 and schedule 1 cc109-142***

**Concerns about the merger of the three bodies:** A number of concerns were raised about the merger, for example, that it was premature; that social care and mental health functions of CSCI and the MHAC would be submerged, particularly if funding for the new Commission was not adequate; and that the costs of transition were unclear.

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<sup>7</sup> PBC Fourth Sitting, 10 January (Afternoon); Fifth Sitting 15 January (Morning); Sixth Sitting 15 January (Afternoon); Seventh Sitting 17 January (Morning); and Eighth sitting 17 January (Afternoon); PBC cc109-354

<sup>8</sup> See the Minister's statement in c121. Regulated activities will be prescribed in Regulations but the Bill's definition of healthcare would enable NHS bodies to be covered.

<sup>9</sup> Enforcement issues were raised in connection with Healthcare Associated Infections.

On costs, the Minister said that the £7 million quoted in the Bill's Impact Assessment was only the cost of establishing the Care Quality Commission. The £140 million mentioned in the Explanatory Notes was an estimate of the transition costs, many of which had already been realised. The £60 million quoted by the Government represented the annual savings to be achieved through the Bill resulting from the commitment to reduce the costs of all public service regulation by a third. The Government expected to recoup the overall costs of transition within three years. By the time the new Commission was established, it expected that the HC and the CSCI would be operating within a combined budget of £145 million. Including the MHAC functions, that would mean a total budget of £151 million.<sup>10</sup>

In response to the concerns about social and mental health functions being submerged, the Minister said that many of the issues remained to be decided and that the Government had wanted to avoid placing the new regulator into a straitjacket. Nevertheless it expected that many of the functions about which members of the committee were concerned, for example the quality ratings undertaken by CSCI, would be able to continue under the legislation. The MHAC's visiting powers were in fact retained in the Bill and the Government expected that they would continue with their current regularity.<sup>11</sup>

**Appointments of the Chairman and the Board:** The appointments process gave rise to a number of concerns, in particular that the appointments might not be independent of government (see also independence below) and that they might not reflect equality and disability discrimination principles. There were several proposals on this issue, including a requirement, in one proposed Conservative amendment, for pre-appointment scrutiny of the chair by the Health Select Committee.

The Minister said that appointments to the Care Quality Commission would be made by the Appointments Commission and regulated by the Commissioner for Public Appointments. He therefore did not believe that it was necessary for the Select Committee to have an additional scrutiny role. However, the Government were preparing a list of appointments that would be suitable for pre-appointment scrutiny. The list would be agreed with the Liaison Committee and, where appropriate, with the Commissioner for Public Appointments so Members should wait for the outcome of that process.<sup>12</sup>

### ***Clause 2 cc 142-187***

**Involvement of patients and public:** Both Conservatives and Liberal Democrats argued in favour of tighter statutory requirements relating to patient and public involvement.

The Minister replied that schedule 1(6) made clear that the Commission had a duty to establish at least one advisory panel and the Government expected that that mechanism would cover patients' and users' views. However, given the views expressed by

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<sup>10</sup> PBC 10 January 2008 c120-121

<sup>11</sup> PBC 10 January 2008 c123

<sup>12</sup> PBC 10 January 2008 c136

Committee members and in the oral evidence, the Government was reflecting on the issues but a statutory relationship with LINKs,<sup>13</sup> as one amendment proposed, was probably not the right approach.

The Minister undertook to come back to the Committee at a later stage with clearer thinking on the issue<sup>14</sup> but in a later debate on clause 20, he said that he was still reflecting on the question of public and patient involvement.<sup>15</sup> There was also a brief debate on this in relation to the Conservatives' proposed New Clauses 8 and 9 relating to their policy for establishing a body called Healthwatch as a national consumer voice for patients and service users.<sup>16</sup>

**Lack of independence from government:** One of the major themes throughout the debates was that the new body would not be independent enough from government. Both Conservatives and Liberal Democrats raised concerns about this issue and there were two **DIVISIONS** (1 and 2) on the issue of independence, in which they both voted against the Government.<sup>17</sup>

**Removal of economic regulation function:** The Conservatives argued in favour of separating out the economic regulation function and placing it with Monitor (the name for the regulator of NHS Foundation Trusts). They argued that the need to drive efficiency from an economic point of view might conflict with the need to warn about the potential of declining standards. This issue was raised again in later debates, for example on clauses 42 and 50. The Minister disagreed, arguing that there was a strong correlation between high performance on financial management in respect of care quality; the new body should continue to have responsibility for both efficiency and quality.

**Rights-based approach and advocacy:** Both Conservatives and Liberal Democrats argued in favour of strengthening the duties of the Commission in relation to protecting the rights of individuals and in providing advocacy services. The Government argued that the wording of the Bill already provided for safeguarding the rights and welfare of vulnerable people and that it was not appropriate for the new Commission to provide advocacy services in individual cases.

### **Clause 5 cc193-204**

**Human Rights Act and independent sector care homes "loophole":** During the debate on clause 1 the Conservatives had raised the question of the human rights "loophole", under which private care homes could evict residents without breaching article 8 of the Convention<sup>18</sup> but the main debate on this issue was in relation to an amendment to clause 5 and a new clause proposed by Kelvin Hopkins (Labour), the aim of which was to ensure that everyone in any type of care home was protected under the

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<sup>13</sup> Local Involvement Networks (known as LINKs), which are being created to represent patients public under the *Local Government and Public Involvement in Health Act 2000*.

<sup>14</sup> PBC 10 January 2008 c152

<sup>15</sup> PBC 17 January 2008 c272

<sup>16</sup> PBC 24 January 2008 c527-30

<sup>17</sup> PBC 15 January 2008 c175

<sup>18</sup> See, for example c130 and c135.

*Human Rights Act 1998*. Both the Conservatives and the Liberal Democrats supported him but he was not successful in obtaining Government support.

The Minister said that there were problems with extending the definition of “public authority” under the *Human Rights Act* to contractual arrangements made by individuals that were strictly private, as proposed in the amendment. The Government was committed to ensuring that independent sector care homes were covered by the *Human Rights Act* and it hoped to address this in the forthcoming British Bill of Rights and Responsibilities, which would allow it to deal with the issue in the wider context of the “public authority” definition under the Act.<sup>19</sup>

On 6 February 2008 the Joint Committee on Human Rights published a report on the *Health and Social Care Bill* calling on the Government to tackle the issue. This included its own draft amendments to the Bill.<sup>20</sup>

**Definition of healthcare:** Members raised a range of topics on the question of which services could be regulated by the new Commission under the definition contained in clause 5, including public health services relating to eg smoking cessation and alcohol abuse; cosmetic surgery; assessment of need for benefit purposes; GP premises; and informal carers. While clarifying some points relating to the specific issues raised, the Minister said that the Government would shortly consult on what specific activities would be regulated by the Commission<sup>21</sup> and would also consult on the registration requirements.<sup>22</sup>

**Standards of nutrition and healthcare associated or acquired infections (HCAI):** Several amendments were proposed by the opposition parties on these issues and there were three divisions on these issues during the debates on clause 16.

These included amendments to make explicit provision in the Bill about nutritional standards and to create parity with HCAI in the importance attached to nutritional standards (proposed by the Liberal Democrats). The Minister argued that the Bill implicitly covered nutrition by mentioning safety and quality of care, which in most cases, would be jeopardised by malnutrition. The opposition parties did not accept the Government’s approach and there were two **DIVISIONS** (3 and 5) on malnutrition amendments.<sup>23</sup>

On HCAI, an amendment proposed by the Conservatives sought to strengthen the Bill’s provisions by requiring the Commission to report annually to Parliament about the action that it had taken on the prevention and control of HCAI. There was a **DIVISION** (4) on this amendment<sup>24</sup> and also another **DIVISION** (6) on an amendment attempting to detail items that should be included in the HCAI code of practice. The Liberal Democrats

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<sup>19</sup> PBC 10 January c135 and 15 January 2008 cc 200-202.

<sup>20</sup> See Joint Committee on Human Rights Press Notice on the Health and Social Care Bill, 6 February 2008: [http://www.publications.parliament.uk/pa/reports\\_recent.htm](http://www.publications.parliament.uk/pa/reports_recent.htm)

<sup>21</sup> PBC 15 January 2008 c216

<sup>22</sup> PBC 15 January 2008 c220

<sup>23</sup> PBC 15 January 2008 c243 and c254-5

<sup>24</sup> PBC 15 January c254

expressed reservations about the latter and did not vote on it but supported the Conservatives on the former.<sup>25</sup>

### ***Clauses 42-44 cc298-317***

**Reviews:** There was a long debate on the Commission's various review powers. The Minister explained that the new Commission would be able to conduct urgent reviews on issues that it thought were matters of safety or quality in the initial 12 month phase. But, given the substantial registration process that would need to be established within the first year, the Government believed that there should be a transition period during which it did not conduct the special reviews.<sup>26</sup> Both Conservatives and Liberal Democrats voted to bring in the special review powers immediately on Royal Assent. The DIVISION (13) was reported with clause 158 (on commencement),<sup>27</sup> to which the proposed amendment related, although it was discussed with clause 44.

### ***Clause 62 and schedule 4 cc329-330***

**Wales:** Government New Clause 13 was taken at this stage. This was the first Government amendment to the Bill taken during the Committee Stage. The Minister explained that Government New Clause 13 (Avoidance of unreasonable burdens in exercise of regulatory powers) had been requested by Welsh Ministers. They wanted to take the opportunity of the Bill to introduce enforcement powers for Wales that would mirror many of those that the Bill proposes for the Care Quality Commission in England. But they had said that they wanted a little time to think through the implications of doing so.<sup>28</sup>

The Minister made the same point in relation to the large number of Government amendments to schedule 5 (a schedule called *Further amendments relating to Part 1*).<sup>29</sup> The response of the opposition parties was to note the amendments but they did question the consistency of approach between Wales and England.<sup>30</sup> Government New Clause 14 (Provision of information by Auditor General for Wales) also related to Wales and was taken with the amendments to schedule 5.

There was also a brief debate relating to Wales, including the Minister's explanation of differences between the Bill's provisions relating to Wales and England, when clauses 46-48 & schedule 3 were taken.<sup>31</sup>

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<sup>25</sup> PBC 17 January 2008 c269

<sup>26</sup> PBC 17 January 2008 c 310

<sup>27</sup> PBC 24 January 2008 c523

<sup>28</sup> PBC 17 January 2008 c329

<sup>29</sup> PBC 17 January 2008 c336

<sup>30</sup> PBC 17 January 2008 c336 and 350

<sup>31</sup> PBC 17 January 2008 c317-324

***Schedule 5 introduced by clause 89 c335-351 (see also Wales above)***

**Complaints:** The Conservatives, supported by the Liberal Democrats, expressed concerns about the abolition of the existing Healthcare Commission's second tier appeal function for individual complaints, in particular how much of an increased workload this would mean for the Health Care Ombudsman. The position of self-funders in care homes was another concern. On the former, the Minister said that the ombudsman strongly supported what the Government was trying to do.<sup>32</sup> On the latter he said that the Government was still actively considering the options. It had only just finished the consultation on the complaints system and would publish its response "shortly".<sup>33</sup>

## **B. Regulation of health professions (Part 2 of the Bill)**

### **1. The Office of the Health Professions Adjudicator**

The Office of the Health Professions Adjudicator (OHPA) would be a new body with UK-wide responsibilities. It would take over the adjudication function of the General Medical Council (in relation to doctors) and of General Optical Council (in relation to opticians) in fitness-to-practise cases. At least initially, it would deal only with these two bodies (who would continue to exercise their registration and other functions).

A Government Ways and Means Resolution to enable the new body to charge fees to the General Medical Council and the General Optical Council was debated on 15 January 2008.<sup>34</sup> Related Government amendments and Government New Clause 7 were introduced in Committee. These are mentioned briefly below.

Issues raised included:

***Schedule 6 introduced by clause 91 cc357-367***

***Independence from Government*** The Conservatives argued that the OHPA should be set up on the same terms as the GMC in order to give it the confidence of the professions and the public. Although it had a certain degree of independence, in terms of its finances it had a duty to report to the Secretary of State. The issue was pressed to a **DIVISION** (7).<sup>35</sup> On this occasion Sandra Gidley (Liberal Democrat) voted with the Government and Greg Mulholland (Liberal Democrat) did not vote.

***Official seal:*** A Government amendment to schedule 6 would enable the OHPA to have an official seal.<sup>36</sup>

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<sup>32</sup> PBC 17 January 2008 c347

<sup>33</sup> PBC 17 January 2008 c348

<sup>34</sup> HC Deb 15 January 2008 c796-808.

<sup>35</sup> PBC 22 January c362

<sup>36</sup> PBC 22 January 2008 c366

**Schedule 7 introduced by clause 92 cc367-372**

**Fees chargeable by the OHPA** Most of the debate on this issue took place on the floor of the House at the time of the Ways and Means Resolution on 15 January, when the Government explained that these provisions were being introduced at a late stage because discussions with the relevant bodies had not been concluded when the Bill was introduced.<sup>37</sup> The Conservatives expressed concern at the level of fees that would be required and also that the Government would have power over the levy.<sup>38</sup>

The first of the Government amendments relating to the transfer of powers from the GMC and the GOC were introduced as amendments to schedule 7, on which there was little debate. Government amendments relating to the power to charge fees were taken with clause 157 (extent),<sup>39</sup> as was Government New Clause 7 on fees chargeable by the OHPA,<sup>40</sup> when the Conservatives referred back to the debate on their amendments on the independence of the OHPA.

**Clause 93 cc372-378**

**Only legally qualified to be chairs:** Both Conservatives and Liberal Democrats argued in favour of introducing a requirement that only those who are legally qualified should be eligible to be chairs of fitness-to-practise panels. The Minister said that he agreed that a legal chair might add some discipline to the proceedings, which could be helpful in lengthy and complex cases but he was not convinced that the panel would need a legally qualified chair in every case of fitness to practise. There was a **DIVISION** (8) on this issue when both Conservatives and Liberal Democrats voted against the Government.<sup>41</sup>

**Clauses 101-102 cc381-386**

**Duty to respond to representations made by the GMC and the GOC** There was a brief debate and a **DIVISION** (9) on this issue.<sup>42</sup> Both Conservatives and Liberal Democrats voted against the Government.

**2. Other issues relating to the regulation of health and social care professions****Schedule 8 introduced by clause 103 cc386-394**

**Functions to be transferred to new General Pharmaceutical Council only to be regulatory ones:** In response to a proposed amendment on this issue, the Minister said that it was based on a misunderstanding as the scope of section 60 of the *Health Act 1999* that schedule 8 would amend was confined to regulation anyway. There was a

<sup>37</sup> HC Deb 15 January 2008 c796-808.

<sup>38</sup> See, for example, PBC 24 January 2008 c523

<sup>39</sup> PBC 24 January 2008 c522-3

<sup>40</sup> PBC 24 January 2008 c524

<sup>41</sup> PBC 22 January 2008 c378

<sup>42</sup> PBC 22 January 2008 c385-6 (Division)

**DIVISION** (10) on this issue. Both Conservatives and Liberal Democrats voted against the Government.<sup>43</sup> (This relates to the Government's plan to split the functions of the Royal Pharmaceutical Society of Great Britain, leaving it with responsibility for leadership and representation of the profession while its regulatory functions would be transferred to a new body.)

#### **Clause 104 cc403-411**

**Standard of proof:** There was no division on the standard of proof but the Conservatives proposed amendments designed to mitigate the impact of the Bill's provisions on moving over to the civil standard from the criminal one (for those professions, including doctors, who do not already use the civil standard). While agreeing with the Government that the standard of proof should change, the Conservatives argued that some sort of sliding scale should be introduced into the Bill. They made similar arguments in relation to social workers on an amendment that they proposed to clause 115, which was debated with clause 104.

#### **Clauses 105-109 cc412-425**

##### **The Council for Healthcare Regulatory Excellence**

The Council for Healthcare Regulatory Excellence (CHRE) is an existing body whose role would be affected by the Bill. (In particular it would lose its role in dealing with cases where existing regulatory bodies are considered "too lenient".) However, the change brought in by the Government in Committee was to clarify an aspect of its existing role. Government New Clause 6, which amends section 26 (3) of the *National Health Service Reform and Healthcare Professions Act 2002*, was debated with clause 105, when the Minister explained that it was designed to clarify that the CHRE could investigate individual cases solely for the purpose of providing general reports on the performance of regulatory bodies.<sup>44</sup> It was formally added to Bill later in the proceedings.<sup>45</sup>

#### **Clauses 110-111cc425-436**

**Responsible Officers:** The Bill would provide for regulations to require designated bodies to nominate or appoint "Responsible Officers" who would have statutory duties in relation to the medical profession, for example, to consider whether concerns about fitness to practise case should be referred to the General Medical Council. The Conservative and Liberal Democrats argued that there should be provisions in the Bill requiring such officers to be medically qualified. The Minister replied that it was the Government's intention that "responsible Officers" should be medically qualified and a registered medical practitioner. That would be laid down in regulations. The role would require extra support and extra resources, which would be provided through the comprehensive spending review to be announced in autumn 2008.<sup>46</sup> In a **DIVISION** (11)

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<sup>43</sup> PBC 22 January 2008 c389

<sup>44</sup> PBC 22 January 2008 cc415-7

<sup>45</sup> PBC 24 January 2008 c524

<sup>46</sup> PBC 22 January 2008 c431 and 433.

on an amendment on the issue, both Conservatives and Liberal Democrats voted against the Government.<sup>47</sup>

***Clause 114 and schedule 9 cc439-442***

**Regulation of social care workers:** The Conservatives expressed concern that provisions in the Bill relating to the regulation of social care workers who are not currently so defined might eventually be extended to domestic or private arrangements (such as informal carers). The Conservatives pressed their amendment on this issue to a **DIVISION** (12) in the hope of persuading the Government to examine the issue more closely. The Liberal Democrats did not vote.

**C. Public Health Protection (Part 3 of the Bill)**

***Clause 120 and schedule 11***

The Minister explained that Government amendments to schedule 11 were designed to remove and replace obsolete references to 'rating districts' (which no longer exist) in the *Public Health (Control of Diseases) Act 1984*.

**D. Health in Pregnancy Grant (Part 4 of the Bill)**

***Clauses 121-128***

This social security benefit is covered in a separate section of this paper- see part III below. There were no amendments or divisions to this Part of the Bill.

**E. Miscellaneous (Part 5 of the Bill)**

***Clauses 129-148***

There were no successful amendments or divisions relating to Part 5 of the Bill. Provisions in Part 5 are listed in the summary of the Bill at the beginning of this paper.

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<sup>47</sup> PBC 22 January 2008 c434

### **III Health in Pregnancy Grant (Part 4 of the Bill)**

#### **A. Second Reading debate**

At Second Reading, the Shadow Secretary of State for Health, Andrew Lansley, said that in the light of recent guidance published by the National Institute for Health and Clinical Excellence stating that interventions to improve nutrition were likely to have the greatest effect if delivered before conception and during the first 12 weeks of pregnancy, it was questionable whether the Grant was the best way to support nutrition in pregnancy.<sup>48</sup>

The Liberal Democrat spokesperson, Sandra Gidley, called the Grant “a bit of a gimmick” and asked for reassurance that it would not be introduced at the expense of investment in maternity services.<sup>49</sup>

Responding for the Government, the Minister of State at the Department of Health, Ben Bradshaw, denied that the Health in Pregnancy Grant was a gimmick, adding that it would be “an enormous help to [women] in those last few months of pregnancy when they have to make difficult choices about spending priorities.”<sup>50</sup>

#### **B. Committee Stage**

Oral evidence relating to the proposals in Part 4 of the Bill was given during the third sitting of the Public Bill Committee on 10 January 2008.<sup>51</sup> The clauses were considered at the 11<sup>th</sup> and 12<sup>th</sup> sittings of the Committee on 24 January 2008.<sup>52</sup>

##### **1. Evidence**

Memoranda referring to the Health in Pregnancy Grant were submitted by the National Childbirth Trust (NCT), the Twins and Multiple Births Association (TAMBA), the premature baby charity BLISS, and the Patients Association.

The NCT supports the payment of the Health and Pregnancy Grant as a universal benefit, but argues that the Government should be explicit about what it is meant to achieve. It argues that the grant should be payable at an earlier stage – possibly from around 12 weeks of pregnancy – in order to have the maximum effect on improving maternal diet.<sup>53</sup> The NCT also believes that payments on a weekly or monthly basis would be more likely to result in improvements to diet than a lump sum payment.<sup>54</sup>

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<sup>48</sup> HC Deb 26 November 2007 c37

<sup>49</sup> HC Deb 26 November 2007 cc65-66

<sup>50</sup> HC Deb 26 November 2007 c104

<sup>51</sup> PBC Deb 10 January 2008 cc85-92; 102-106

<sup>52</sup> PBC Deb 24 January 2008 cc455-491

<sup>53</sup> These points were also emphasised in subsequent oral evidence to the Public Bill Committee, the NCT's Policy Officer, Rosemary Dodds: PBC Deb 10 January 2008 cc85-92

<sup>54</sup> Memorandum H&SC 18

TAMBA, BLISS and the Patients Association all argue that the Grant should be paid on a per expected child basis rather than on a per pregnancy basis, citing scientific evidence on the additional nutritional requirements associated with multiple birth pregnancies.<sup>55</sup>

In oral evidence to the Public Bill Committee, the Minister of State at the Department of Health, Ben Bradshaw, said that the Health in Pregnancy Grant was “not solely about nutrition”, but was also meant to tie in with specific health advice from the 25<sup>th</sup> week of pregnancy and to help address “the general pressures that women, particularly less well-off women, are under, and the pressures immediately before and after birth”.<sup>56</sup>

## 2. Secondary legislation

A draft of *The Health in Pregnancy Grant (Entitlement, Amount and Administration) Regulations* was released by HM Treasury on 7 January 2008.<sup>57</sup> Regulation 3 provides that the “health professional” from whom a woman is to receive advice must be a registered medical practitioner, a registered nurse, or a registered midwife. Regulation 4 provides that a woman is to be treated as *not* being in Great Britain or Northern Ireland if she is not “ordinarily resident” in the United Kingdom, or if she does not have a “right to reside” in the UK. Regulation 10 confirms that the amount of the Grant is to be £190 per pregnancy.

## 3. Amendments to Part 4 of the Bill

There were no amendments made to Part 4 of the Bill.

## 4. Other debates

The Liberal Democrat spokesperson, Greg Mulholland, tabled an amendment to clause 121 to allow the Health in Pregnancy Grant to be paid from the 16<sup>th</sup> week of pregnancy, citing evidence presented by the National Childbirth Trust and others regarding the importance of nutrition during the early stages of pregnancy.<sup>58</sup> In response, the Minister (Ben Bradshaw) emphasised again that the Grant was not solely about nutrition, and came “on top of a number of other financial measures that the Government have introduced to help pregnant women, including assistance earlier in pregnancy.”<sup>59</sup> He noted that other countries, including Finland, France and Belgium, had introduced similar universal grants payable around the same stage in pregnancy, and mentioned research by St Thomas’s Hospital that showed that women suffer more stress over money worries in the later stages of pregnancy, thereby risking complications.<sup>60</sup> The Minister also argued that women would be less likely to seek professional advice earlier in pregnancy, and that take-up of the Grant would consequently be lower. Mr Mulholland withdrew the amendment, but felt that that the Government had still not justified its position.<sup>61</sup>

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<sup>55</sup> Memoranda H&SC 20, H&SC 23 and H&SC 30, respectively

<sup>56</sup> PBC Deb 10 January 2008 cc104-105

<sup>57</sup> [http://www.hm-treasury.gov.uk/documents/taxation\\_work\\_and\\_welfare/family/tax\\_pregnancy\\_grant.cfm](http://www.hm-treasury.gov.uk/documents/taxation_work_and_welfare/family/tax_pregnancy_grant.cfm)

<sup>58</sup> PBC Deb 24 January 2008 c455

<sup>59</sup> PBC Deb 24 January 2008 c460

<sup>60</sup> PBC Deb 24 January 2008 c461

<sup>61</sup> PBC Deb 24 January 2008 c462

In the subsequent stand part debate on clause 121, Opposition and Liberal Democrat members accused the Government of shifting its position on the purpose of the Grant, and argued that insufficient evidence had been presented to show that the Grant as proposed would achieve the best outcomes for pregnant women.<sup>62</sup>

## IV Members of the Committee

*Chairmen:* Derek Conway, † Mr. Jim Hood

- † Bradshaw, Mr. Ben (*Minister of State, Department of Health*)
- † Browning, Angela (*Tiverton and Honiton*) (Con)
- † Burden, Richard (*Birmingham, Northfield*) (Lab)
- † Cooper, Rosie (*West Lancashire*) (Lab)
- † Crabb, Mr. Stephen (*Preseli Pembrokeshire*) (Con)
- † Gidley, Sandra (*Romsey*) (LD)
- † Hesford, Stephen (*Wirral, West*) (Lab)
- † Hopkins, Kelvin (*Luton, North*) (Lab)
- † Jenkins, Mr. Brian (*Tamworth*) (Lab)
- † Kumar, Dr. Ashok (*Middlesbrough, South and East Cleveland*) (Lab)
- † McCabe, Steve (*Lord Commissioner of Her Majesty's Treasury*)
- † Mallaber, Judy (*Amber Valley*) (Lab)
- † Milton, Anne (*Guildford*) (Con)
- † Moffatt, Laura (*Crawley*) (Lab)
- † Mulholland, Greg (*Leeds, North-West*) (LD)
- † O'Brien, Mr. Stephen (*Eddisbury*) (Con)
- † Wright, Jeremy (*Rugby and Kenilworth*) (Con)

John Benger, Celia Blacklock, *Committee Clerks*

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<sup>62</sup> PBC Deb 24 January 2008 cc472-488