

Health Bill call for evidence: Submission from the Federation of Specialist Hospitals (FSH)

About us:

The FSH is a coalition of some of the country's best-known and most respected specialist hospitals, serving patients drawn from across the UK. Established in 2009, the Federation works to ensure the voice of specialist providers is heard as the NHS responds to the challenges and opportunities of modern medicine. Our members span a broad range of specialties, including oncology, orthopaedics, cardiology, respiratory medicine, neurology and neurosurgery, ophthalmology, gastroenterology and paediatrics.ⁱ

Summary:

The FSH is broadly supportive of the Government's ambitions to reduce bureaucracy, empower local commissioners and embed a 10-year planning horizon into the NHS. However, several elements of the draft Health Bill would benefit from further parliamentary scrutiny, particularly where they risk unintended consequences for specialised services and the patients who rely on them.

- **Centralisation of foundation trust governance:** The Bill introduces a significant expansion of Secretary of State powers over foundation trusts which risk undermining the autonomy on which specialist innovation depends. Whilst supporting appropriate oversight, we consider that these powers should be subject to greater scrutiny and exercised transparently, proportionately and only in exceptional circumstances.
- **Delegation of specialised services:** The FSH has identified several risks linked to the transfer of responsibility for specialised commissioning to ICBs in a context that is very different from that in which the reforms were initially devised. The Bill could play a helpful role in mitigating some of these risks by considering the following aspects:
 - Clarity on the appropriate footprint for the commissioning of specific services, and what will be commissioned where;
 - Continued national standards and policies to safeguard expectations around specialised services commissioning and delivery, supported by strong and empowered clinical leadership;
 - Considering a statutory basis for OPICs and a call for transparent operating standards;
 - Adequate commissioning capacity and capability within ICBs to enable them to deliver their statutory responsibilities; and
 - Sufficiently clear and transparent accountability mechanisms to ensure appropriate scrutiny of the new system.

This document sets out a number of considerations and potential amendments. The FSH looks forward to engaging with Members as the Bill progresses and is committed to working constructively with Government and DHSC/NHSE to help ensure the reforms are in the best interests of patients.

Foundation trust governance

1. **Secretary of State powers: The FSH seeks safeguards on the use of expanded intervention powers for FTs**

Specialist hospitals are among the clearest examples of what organisational autonomy can achieve. The freedom to innovate has enabled many to pioneer new treatments, care models and service developments that have subsequently benefited patients across the NHS. Several have also developed non-NHS income streams in a responsible way, through private patient activity, research partnerships and commercial ventures, using this income to reinvest in NHS care. Specialist hospitals also support the wider system through collaboration, partnership working and mutual aid arrangements. These examples demonstrate the value of carefully exercised freedoms and reinforce the importance of ensuring that any expansion of central powers does not inadvertently constrain the autonomy on which such innovation and reinvestment depend.

The draft Bill introduces significant changes to the governance of FTs, simultaneously expanding Secretary of State powers and reshaping the foundation trust model by:

- abolishing governors and members
- expanding Secretary of State powers over appointments, constitutions and governance arrangements
- introducing Secretary of State powers over expenditure controls and non-NHS income
- establishing powers to direct organisational transactions and convert failing foundation trusts back into NHS trusts.

This represents a significant centralisation of control and will narrow the gap between NHS Trusts and Foundation Trusts. In parallel with the Bill's passage through Parliament, the Advanced Foundation Trust model has been developed in NHS policy, which promotes the potential for greater freedoms for AFTs. The ambition of the AFT model may risk being undermined by the legislation's approach to FTs if adequate reassurance is not provided. While additional Secretary of State powers may well be exercised responsibly, legislation should not rest on that assumption. Parliament may wish to seek assurance whether sufficient safeguards exist to guard against undue political interference and how these powers are intended to operate alongside the new AFT model in practice.

As NHS England is absorbed into the Department of Health and Social Care, it is understandable that the Secretary of State will take on a greater oversight role. But stability is critical to the sustainability of the NHS: a 10-year plan is now under way, and providers and the wider health system need the opportunity to deliver it. The Bill should therefore set out more clearly when the Secretary of State's powers can be exercised. Those powers should be transparent, proportionate and reserved for exceptional circumstances; in particular, where arrangements put patient care, patient safety or equitable access to services at risk.

Suggested clarifications and amendments

- Will the Government clarify the circumstances in which Secretary of State powers may be exercised, and confirm that these powers will be used only where intervention is necessary and proportionate, including where patient care or patient safety is at risk?
- What safeguards will ensure that expanded Secretary of State powers remain transparent, proportionate and subject to appropriate independent scrutiny across future administrations?
- What assessment has the Government made of the impact of abolishing foundation trust governors on local accountability, public engagement and provider governance, and what mechanisms will provide equivalent independent challenge under the future model?

Suggested amendment: New Clause – Independent Advisory Panel on Foundation Trust Governance (to be inserted after Clause 36)

“(1) The Secretary of State must establish an independent advisory panel ("the Panel") to scrutinise decisions of the Secretary of State relating to—

(a) the appointment, suspension or removal of the chair or a non-executive director of an NHS foundation trust under paragraph 8(1) of Schedule 7 to the National Health Service Act 2006;

(b) the approval of amendments to the constitution of an NHS foundation trust under section 37 of that Act;

(c) the imposition of limits on the expenditure of an NHS foundation trust under section 42B of that Act;

(d) the approval under section 43(3D) of that Act of a proposal to increase the proportion of an NHS foundation trust's income attributable to activities other than the provision of goods and services for the purposes of the health service in England;

(e) the termination or appointment of the chair or any executive or non-executive director of an NHS foundation trust under section 57B(5) of that Act;

(f) the inclusion of conditions relating to governance in the licence of an NHS foundation trust under section 111 of the Health and Social Care Act 2012.

(2) Before exercising a function mentioned in subsection (1), the Secretary of State must seek the advice of the Panel.

(3) The Secretary of State must have regard to any advice given by the Panel under subsection (2).

(4) The Secretary of State must publish, in respect of each decision mentioned in subsection (1), a statement of the reasons for the decision, including the advice given by the Panel.”

Explanatory statement: This new clause would require the Secretary of State to seek and publish independent advice before exercising the Bill's principal new powers over foundation trust governance – including appointment and removal of trust chairs and directors, approval of constitutional changes, expenditure limits, approval of significant increases in a trust's non-NHS income, and intervention in failing trusts – providing a safeguard against the concentration of unchecked ministerial control over provider governance.

Continued delegation of specialised services

Responsibility for commissioning some specialised services was devolved to ICBs in the North West, East of England and the Midlands in April 2024 and to remaining regions in April 2025. NHSE's stated aim of delegation has always been “improving patient care and outcomes by enabling the planning and commissioning of services to be joined up at a population level across whole pathways of care i.e. across specialised and non-specialised services.”ⁱⁱⁱ

The FSH has worked closely with NHSE over recent years to help ensure that the delegation of specialised services is managed in a way that maximises the opportunity to deliver against this aim. However, there is concern about the implementation of reforms that were designed in a very different context to the one in which they are being delivered, including the abolition of NHSE and extensive and prolonged restructuring and consolidation of ICBs.

The draft Bill is the next phase in the process of delegation, and it is vital that it is optimised to support the delivery of a safe, effective and sustainable specialised commissioning function for the patients that need access to specialised services. Policy questions related to finance

will need to be dealt through “business as usual” engagement outside debate related to the Bill. However, there are a number of areas where there is an opportunity for the Bill to minimise the risks associated with changes to the specialised commissioning process and the transfer of responsibility for much specialised commissioning to ICBs.

- Clarity on the appropriate footprint for the commissioning of specific services, and what will be commissioned where;
- Continued national standards and policies to safeguard expectations around specialised services commissioning and delivery, supported by strong and empowered clinical leadership;
- Considering a statutory basis for OPICs and a call for transparent operating standards;
- Adequate commissioning capacity and capability within ICBs to enable them to deliver their statutory responsibilities; and
- Sufficiently clear and transparent accountability mechanisms to ensure appropriate scrutiny of the new system.

The Federation would appreciate careful consideration of the following points:

1. Delegation of specialised services: The FSH seeks clarity on the criteria and process for determining which services remain nationally commissioned

There are currently around 170 specialised services for rare and very rare conditions. Around 70 are already delegated to ICBs through NHS England arrangements, while approximately 100 ‘retained’ services remain nationally commissioned. The draft Bill transfers wider legal responsibility for commissioning services to ICBs, while allowing some highly specialised services to remain nationally commissioned by the Secretary of State. The exact split will be set out in regulations, with the list of services expected to be published during the passage of the Bill.

In the absence of this guidance, Parliament may wish to seek greater clarity on the future basis for determining the list of prescribed specialised services, including how new services will be defined and commissioned. The clinical leadership infrastructure has been downgraded substantially over the transition period. Many clinical reference groups, which are intended to draw on clinical and commissioning leadership, alongside patient and public input, to develop service specifications and consider the commissioning of new services, are no longer standing committees and it would be fair to say that they no longer sit at the heart of specialised commissioning. It is in the interest of patients that this infrastructure is strengthened further.

Historically, the services commissioned nationally have been set out in the National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012 and subsequent amending instruments, as the Bill's own Explanatory Notes confirm,ⁱⁱⁱ informed by advice from the Prescribed Specialised Services Advisory Group (PSSAG) and described in detail in NHS England's Prescribed Specialised Services Manual. Clause 12 continues this regulation-making power by substituting a new section 3B of the National Health Service Act 2006, under which the Secretary of State may prescribe services that must be commissioned nationally, having regard to the number of people who need them, their cost, and the number of providers able to deliver them.

However, the primary legislation says nothing about clinical input or public consultation. If the advisory infrastructure that historically informed both PSSAG and the Manual is already hollowed out, then even a commitment to maintain the process in principle may not be deliverable in practice without active investment and support to re-establish it. The FSH would

welcome confirmation that the advisory process behind these decisions – whether through PSSAG or a successor body – and any future Manual will continue to be informed by clinical input and public consultation [please also see later note on proposed amendment related to clinical leadership – point 4].

Suggested clarifications

- When will DHSC publish the list of specialised services that will remain nationally commissioned, and what criteria will be used to determine the allocation of services between national and delegated commissioning arrangements?
- Will DHSC publish additional analysis of the potential operational implications of further specialised commissioning reform, including through an updated Equality Impact Assessment?
- Will the Government confirm that the advisory process behind decisions to prescribe services for national commissioning – whether through PSSAG or a successor body – and any future Prescribed Specialised Services Manual will continue to be informed by clinical input and public consultation? Will the clinical infrastructure be strengthened to ensure strong and robust clinical leadership?

2. Commissioning capacity and capability: The FSH seeks assurance that transfer of responsibility to ICBs will be supported by sufficient specialist commissioning capability and capacity.

For our members, the key issue is not the transfer of responsibility for specialised commissioning to ICBs but whether sufficient commissioning capacity and capability will exist within the emerging model. To date, delegation has progressed unevenly across England and many commissioning functions continue to be housed in NHSE regional teams. Against a backdrop of extreme turbulence, uncertainty and successive restructures, commissioning expertise has also been reduced and some of the experienced specialised commissioning experts who oversaw the last major shift in specialised commissioning, into NHSE, are no longer around. Further consolidation of ICBs has recently been announced – greater clarity is essential on how ICBs will be enabled to deliver the required strategic commissioning services at the time the Bill goes live.

With a more local approach to commissioning specialised services, there is a risk of unwarranted variation. Clause 11, which would allow the Secretary of State to direct ICBs, including where they are not failing, may offer a mechanism for addressing concerns about inconsistent access to specialised services but there need to be clear operational arrangements in place to prevent such variation arising in the first place and these are not currently clear.

Although Offices for Pan-ICB Commissioning (OPICs) are not established in the Bill, they form a central part of NHS England's wider [direct commissioning](#) reforms. Their intended purpose is to provide regional commissioning infrastructure and create pooled centres of expertise to support collaborative commissioning arrangements. As OPICs are an NHSE administrative contract, Parliament has no opportunity to scrutinise their design, governance or resourcing, which presents challenges in ensuring that the Bill links effectively with operational design.

Specialist hospitals are broadly supportive of OPICs and their role in supporting specialised commissioning on a pan-ICB footprint, which is often more appropriate than commissioning by individual ICBs given the scale, complexity and cross-boundary nature of many specialised services. However, despite the planned transfer of specialised commissioning staff into

OPICs, some members remain concerned about whether sufficient capability and expertise will exist to fulfil their intended role, given the expertise already lost through successive restructures. Clear national guidance or operating standards for OPICs is currently lacking and could help ensure that specialised services are protected from short-term financial pressures and local priorities, while maintaining consistent commissioning arrangements across England. Indeed, if OPICs have no statutory basis and no published operating standards, then the entire infrastructure for consistent specialised commissioning (and avoidance of a postcode lottery) is being restructured with no statutory anchor and no detailed, agreed operational framework.

In addition, the relevant Equality Impact Assessment contains limited analysis of the potential operational implications for further delegation of specialised commissioning – a significant omission given the scale and complexity of the services involved. This gap partly reflects the fact that DHSC has yet to confirm which services will be delegated, but the uncertainty is itself a concern, given the pace of reform elsewhere.

Suggested clarifications and amendments

- How does the Government intend to ensure consistency of specialised commissioning arrangements across England, including through OPICs, specialised commissioning expertise and national coordination mechanisms?
- Would DHSC consider publishing national guidance for OPIC arrangements, alongside the strategic commissioning development programme, to support consistency of approach, access to specialist expertise and delivery of national service standards?

3. National standards: The FSH seeks assurance that national service specifications will continue to provide a national framework for specialised care and prevent a postcode lottery in access to services.

Care for patients with the most complex conditions is continually evolving, often through the development of new and more effective approaches to treatment and service delivery. As clinical practice advances, it cannot be assumed that today's model of care will remain appropriate in the future. This is particularly relevant in the context of the Government's 10-Year Health Plan, the delivery of which depends on sustained innovation across the NHS. The Bill contains no provision requiring national service specifications to continue, or requiring that they apply to delegated services.

As new approaches emerge, there must be a clear mechanism for ensuring that they are translated into consistent standards of care across the system. National service specifications have historically played this role in specialised commissioning, helping to ensure that best practice is adopted consistently regardless of which organisation is responsible for commissioning services. They should continue to provide a national framework for care. Parliament may therefore wish to consider how these standards will be maintained within a more delegated commissioning model, so that patients continue to have equitable access to specialised services and do not face a postcode lottery.

Suggested clarifications and amendments

- Will DHSC ensure that national service specifications continue to set the standard for specialised services, regardless of whether a service is nationally commissioned or delegated to ICBs?

- Will DHSC clarify how innovation will be supported, including how new evidence-based practices, technologies and models of care will be assessed, funded and scaled?

4. Clinical leadership: The FSH seeks amendments to Clause 15 and Schedule 10, extending the Bill's new duties on patient involvement in commissioning – covering services commissioned by the Secretary of State and by ICBs respectively – to cover clinical input too, so that continued clinical leadership is embedded in the planning and delivery of services regardless of who commissions them.

Given the complexity of care for patients with rare and complex conditions, and wider ambitions to ensure this care is fully integrated with wider patient pathways, it is essential that clinical leadership is at the heart of any changes. A once robust clinical leadership mechanism, with fully staffed Clinical Reference Groups (CRGs) and Programmes of Care (POCs), has been significantly diminished over time. It is essential that the clinical voice is put back at the heart of commissioning. Clinicians act as important advocates for patients and, as was intended through the initial establishment of CRGs and POCs, clinical leadership has worked hand in glove with patients to ensure that services are configured to deliver good patient outcomes.

Suggested clarifications and amendments

- Will DHSC set out how clinical leadership will be embedded in commissioning, including the future role, resourcing and authority of Clinical Reference Groups and programmes of care?

Suggested amendment: Clause 15, page 11, line 35, at end insert—

“(6) The Secretary of State must also make arrangements to secure that clinicians with relevant expertise are involved—

(a) in the planning of the commissioning arrangements,

(b) in the development and consideration of proposals by the Secretary of State for changes in the commissioning arrangements where the implementation of the proposals would have an impact on the matters mentioned in subsection (2)(b), and

(c) in decisions of the Secretary of State affecting the operation of the commissioning arrangements where the implementation of the decisions would (if made) have such an impact.”

Explanatory statement: Paragraph 42 of the Bill's Explanatory Notes confirms that Clause 15 requires the Secretary of State to involve patients, carers and representatives in three respects: the planning of commissioning arrangements, the development of proposals for changes affecting the delivery or range of services, and decisions affecting the operation of those arrangements.^{iv} This amendment would extend the same three-part duty to clinicians with relevant expertise, mirroring the patient involvement duty already provided for in the Bill.

Suggested amendment: Schedule 10, page 127, line 12, at end insert —

“(6) An integrated care board must also make such arrangements as it considers appropriate to secure the involvement of clinicians with relevant expertise in the matters mentioned in subsection (2).”

Explanatory statement: This amendment would require integrated care boards to involve clinicians with relevant expertise in the same matters they are already required to seek patient and public views on under new section 14Z45, extending the principle of clinical involvement to services delegated to ICBs.

5. Accountability and transparency: The FSH supports the publication of an annual report, laid before Parliament, on the performance of the NHS commissioning system established by this Bill, including the performance of specialised services.

Specialised commissioning is the foundation of care for patients with rare and complex conditions. Specialist hospitals are major providers of this care and recognise the complexity and fragile nature of many of these services.

The Bill abolishes NHS England and, with it, many of the accountability arrangements that have sat behind the commissioning system to date. Although these arrangements have not been routinely open to public or parliamentary scrutiny, their removal – without a clear replacement – leaves a gap that goes well beyond specialised services.

For services commissioned for patients with rare and complex conditions, this gap matters more than most: fragile, low-volume services are the hardest to scrutinise from outside, and the easiest for problems to go unnoticed in, yet reforms to specialised commissioning already lack transparent accountability and performance metrics. This concern is reflected in a recent FSH specialised commissioning survey, which found that 64% of respondents were dissatisfied or very dissatisfied with the transparency of commissioning decisions, and the same proportion were dissatisfied or very dissatisfied with communication from NHS England.

It is essential that accountability and performance information is made publicly available so that Parliament, providers and patients can be assured that NHS reform – and the delegation of specialised services in particular – is not adversely affecting outcomes or contributing to unwarranted variation in access to care. Parliament may therefore wish to consider whether the Secretary of State should be required to lay before Parliament an annual report covering both the performance of the newly developed commissioning landscape and the position of specialised services within it.

Suggested clarifications and amendments

- Will DHSC set out how the Secretary of State, Parliament, providers and patients will be able to scrutinise whether delegation is creating unwarranted variation or a postcode lottery for patients with rare and complex conditions?
- Will the Government commit to publishing an annual report, laid before Parliament, on the performance of the NHS commissioning system established by this Bill, including access, outcomes, variation, patient experience and the performance of specialised services?

Suggested amendment: New Clause – Annual report on the performance of the NHS commissioning system

"(1) Six months after the passage of this Act, and every 12 months thereafter, the Secretary of State must publish, and lay before Parliament, a report on the performance of the commissioning system established by this Act.

(2) A report under subsection (1) must contain an assessment of—

- (a) access, outcomes and patient experience across NHS-commissioned services, including any unwarranted variation between different populations and geographies;
 - (b) compliance with national standards, including service specifications, at national and Integrated Care Board level;
 - (c) the performance of specialised services, including any impact arising from the delegation of their commissioning to Integrated Care Boards;
 - (d) the exercise of the Secretary of State's functions under this Act, including functions previously exercised by NHS England.
- (3) A report under subsection (1) must, where relevant, identify specific areas of concern and the steps the Secretary of State or other relevant bodies propose to take in response."

Explanatory statement: This new clause would require the Secretary of State to publish an annual report on the performance of the NHS commissioning system established by this Act, including the performance of specialised services and the exercise of functions previously held by NHS England, ensuring that the abolition of NHS England's own accountability arrangements does not leave a gap in parliamentary scrutiny.

Looking ahead:

The FSH looks forward to working with Members as the Bill progresses through Parliament to help ensure specialised services and the patients who rely on them are fully considered within the emerging reforms. For further information please contact Louisa Johnson: louisa.johnson@specialisthospitals.org.

ⁱ FSH members: Great Ormond Street Hospital for Children NHS Foundation Trust; Liverpool Heart and Chest Hospital NHS Foundation Trust; Moorfields Eye Hospital NHS Foundation Trust; Queen Victoria Hospital NHS Foundation Trust; Royal Brompton and Harefield Hospitals; Royal National Orthopaedic Hospital NHS Trust; Royal Papworth Hospital NHS Foundation Trust; St Mark's Hospital and Academic Institute; The Christie NHS Foundation Trust; The Clatterbridge Cancer Centre NHS Foundation Trust; The Robert Jones and Agnes Hunt Orthopaedic Hospital NHS Foundation Trust; The Royal Marsden NHS Foundation Trust; The Royal Orthopaedic Hospital NHS Foundation Trust; The Walton Centre NHS Foundation Trust; Velindre University NHS Trust; West London NHS Trust.

ⁱⁱ NHS England: [Specialised commissioning 2024/25 – next steps with delegation to integrated care boards](#), December 2023 Board paper

ⁱⁱⁱ Health Bill, Explanatory Notes (HC Bill [2026-27] [009]) para 40 <https://publications.parliament.uk/pa/bills/cbill/59-02/0009/en/260009en.pdf> accessed 24 June 2026.

^{iv} Health Bill, Explanatory Notes (HC Bill [2026-27] [009]) para 42 <https://publications.parliament.uk/pa/bills/cbill/59-02/0009/en/260009en.pdf> accessed 24 June 2026.