

Post legislative scrutiny of Health and Social Care Act, 2012

26 April 2012

Health and Social Care Act 2012

[Baroness Deech](#) (Crossbench)

To ask Her Majesty's Government whether they have any plans for post-legislative scrutiny of the Health and Social Care Act 2012.

[Earl Howe](#) (Parliamentary Under Secretary of State (Quality), Health; Conservative)

My Lords, all government Bills receive post-legislative scrutiny within five years of receiving Royal Assent. However, I can reaffirm the commitment that I made at the Second Reading and Committee stages of the passage of the Health and Social Care Bill. Although five years would normally elapse prior to the Department of Health undertaking post-legislative scrutiny of a Bill, we will bring that forward to three years for the Health and Social Care Act 2012.

[Baroness Deech](#) (Crossbench)

My Lords, I am grateful to the Minister for his reply. However, does he agree that the reputation of this House rests largely on its ability to scrutinise, and that there is still insufficient capacity for this House, not a department, to carry out post-legislative scrutiny? Does he further agree that the Health and Social Care Act is very different in the end from what was proposed? It aroused huge concern and must be a number one candidate for monitoring, not necessarily by the department but by this House to ensure the appearance of total objectivity.

[Earl Howe](#) (Parliamentary Under Secretary of State (Quality), Health; Conservative)

My Lords, I am in tune with the sentiments that the noble Baroness has expressed. I am sure that she will be in no doubt that my department will be monitoring the implementation of the Act very closely. Of course Ministers will continue to provide information to Parliament—for example in response to Questions and in Select Committees and, indeed, in debates if noble Lords put down Motions. I am sure that we will provide a lot of information both on the implementation of the Act and on health and social care more widely in the months and years ahead.

Baroness McIntosh of Hudnall (Labour)

I wonder if the noble Earl can explain a remark that he made early in his original Answer to the noble Baroness, Lady Deech, when he said that all government Bills are subject to post-legislative scrutiny within five years. I am sure that that is true in some way, but not in a way that I personally understand, and I am sure that it is not entirely clear to the House in what way such scrutiny is carried out. It certainly is not what is commonly meant by post-legislative scrutiny—that all Bills should be subject to it.

Earl Howe (Parliamentary Under Secretary of State (Quality), Health; Conservative)

My Lords, my understanding is that formal post-legislative scrutiny is a relatively new invention. It came in under the previous Administration in, I think, 2008. So until now there have been very few if any—there may have been one or two, a handful—of formal post-legislative scrutiny processes. But we will, of course, see this as a more regular feature going forward.

Lord Mawhinney (Conservative)

My Lords, my noble friend has just reconfirmed that post-legislative scrutiny will take place in three years—that puts it in 2015. Can he tell your Lordships' House whether the Government have a policy to have that scrutiny before or after the general election which is alleged to be taking place that year?

Earl Howe (Parliamentary Under Secretary of State (Quality), Health; Conservative)

My Lords, the plan is to conduct the post-legislative scrutiny three years from Royal Assent, so it will no doubt fall immediately prior to what one assumes will be the date of the next general election.

Lord Campbell-Savours (Labour)

By whom is this post-legislative scrutiny on a five-year basis being conducted?

Earl Howe (Parliamentary Under Secretary of State (Quality), Health; Conservative)

My Lords, it will be conducted by the Health Select Committee of another place. The process is that the Department of Health will submit a memorandum to the Health Select Committee and that memorandum will include a preliminary assessment of how the Act has worked out in practice relative to the objectives and benchmarks identified during the passage of the Bill.

Lord Patel (Crossbench)

My Lords, the noble Earl said in response to the Question of the noble Baroness, Lady Deech, that in the interim period the department will be undertaking scrutiny of the work of the bodies set up. Can he tell the House how the results of that scrutiny will be reported to Parliament?

[Earl Howe](#) (Parliamentary Under Secretary of State (Quality), Health; Conservative)

My Lords, the performance of the health service will be very visible as we go along: we will have the NHS Commissioning Board producing its annual report; each clinical commissioning group will be publishing an annual report; directors of public health must produce an annual report; the Secretary of State has to report annually on the overall performance of the health service; and HealthWatch England has to publish an annual report. So there will be no shortage of transparency along the way.

[Baroness Jolly](#) (Liberal Democrat)

My Lords, as for the Health and Social Care Act, scrutiny was, of course, done by this House. However, there is still more to be done, because there is quite a lot of secondary legislation still to come down the track. Can the Minister give the House some indication of how many pieces of secondary legislation are still to come, when they might be introduced and what areas they will cover?

[Earl Howe](#) (Parliamentary Under Secretary of State (Quality), Health; Conservative)

My Lords, I cannot yet give my noble friend a precise number, but before the House breaks up in the summer we hope to lay a number of statutory instruments. Some will come into force this October, others are designed to come into force next April, but we will of course be consulting, where appropriate, on all of those and I shall be happy to give the House further information when I have it.

[Baroness Masham of Ilton](#) (Crossbench)

My Lords, does the Minister agree that HealthWatch has been left in limbo? Would he agree to a fast-track legislative scrutiny?

[Earl Howe](#) (Parliamentary Under Secretary of State (Quality), Health; Conservative)

I do not agree that HealthWatch has been left in limbo; in fact, only this morning I was attending a round table of pathfinder local healthwatches and witnessing for myself the tremendous energy and enthusiasm that they were devoting to HealthWatch. So the short answer to the noble Baroness is no, I think the process as regards HealthWatch is very much on track.

[Baroness Thornton](#) (Labour)

My Lords, my question follows on very nicely from that of the noble Baroness, Lady Masham, because "No decision about me without me" was the Government's mantra when they first introduced the White Paper and the Bill. I would like to know not only how soon that mantra might become a reality but also, in terms of post-legislative scrutiny, how the Minister thinks that post-legislative scrutiny might be carried out to allow independent scrutiny given that the two bodies that will essentially control the funding for the patients' voice, HealthWatch, are the Care Quality Commission and local government—in other words, government bodies?

Earl Howe (Parliamentary Under Secretary of State (Quality), Health; Conservative)

My Lords, we should not forget the capacity of Parliament, particularly the Health Select Committee in another place, to conduct scrutiny whenever it chooses. Indeed, your Lordships' House could if it wished configure itself in a way to conduct scrutiny of any aspect of the Health and Social Care Act.