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## Mapping the manifestos--health and social care

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**Public Law analysis: What are the political parties' plans for the health and social care sector should they be elected? Maria Nicholas, director and solicitor at Guile Nicholas, explores the pledges of the major parties.**

### **Although the main arguments around health policy focus on funding, what are the legal challenges facing any incoming government around health and care?**

The only parties suggesting significant changes to the law around health and care are Labour and the Green Party. They propose repealing the Health and Social Care Act 2012 (HSCA 2012) altogether. The Liberal Democrats say they would repeal the parts of HSCA 2012 that 'make NHS services vulnerable to forced privatisation through international agreements on free markets in goods and services'.

No party comments negatively on the new Care Act 2014 (CA 2104) or the forthcoming introduction to cap the cost of social care, which will take effect in April 2016 (although UKIP refers in its manifesto to the cap being £35,000, rather than £72,000 which is what it will be set at in April 2016).

All parties promote the integration of health and social care, although there is no real detail in any of their manifestos as to how this would be achieved. If this is seen through in a meaningful way, CA 2014 may well require amending--with a pooling of health and social care budgets the NHS may share the legal duty to provide social care services, or at the very least want to have a say in how budgets are spent meeting those duties. CA 2014 would therefore require a thorough review, despite having only come into force on 1 April 2015.

### **What are the key points of difference between the parties when it comes to health and care policy?**

All main parties pledge increased funding for the NHS. UKIP also pledges increased funding for social care. Aside from the differing figures, the key policy differences are:

- o Labour, the Liberal Democrats and the Green Party pledge to repeal or part-repeal HSCA 2012, to reverse 'privatisation of the NHS through the back door'. The Conservative Party and UKIP do not make any mention of this in their manifestos. SNP and Plaid Cymru are against privatisation.
- o Although all main parties make reference to mental health, the Liberal Democrats lead with it, and pledge a number of things including publishing a national well-being strategy, and establishing a mental health research fund.
- o In terms of integration of health and social care, the Liberal Democrats go the furthest in saying that they would shift full responsibility for care policy and funding to the Department of Health, and secure local agreement on full pooling of budgets between the NHS and care services with a target date of 2018.
- o The way in which an increase in spending will be sourced is also a key difference. For example, Labour will fund its health and social care spending through a mansion tax, a levy on tobacco firms, and by tackling tax avoidance. The Conservatives simply say they can do it

- because of their 'long-term economic plan' but they do not go into the detail of this in their manifesto. UKIP will fund it through saving money through who can access the NHS, and a sovereign wealth fund from any tax revenue received from shale oil and gas exploration.
- o UKIP intends to focus on who is able to access NHS care, and suggests that for non-urgent medical treatment, the person must have permanent residency and have paid taxes in the UK for five years.

### **Some parties wish to repeal HSCA 2012, would this be possible? What would this mean in practice?**

HSCA 2012 introduced clinical commissioning groups (CCGs) (replacing primary care trusts (PCTs)) and put GPs 'at the heart of commissioning'. It also formally introduced competition within the NHS by making CCGs responsible for deciding which provider would provide the best care (and, arguably, at the best price). HSCA 2012 has been unpopular with health professionals and, for example, the British Medical Association has campaigned for it to be repealed, arguing that it is leading to the fragmentation of the NHS. Arguably, it also dilutes accountability, and makes joined-up working with social care services more difficult--something that all parties say they wish to promote.

Labour and the Green Party wish to repeal HSCA 2012 altogether, because they do not agree with the 'competition regime' it introduced. Labour also wishes to cap profits for private health bodies at 5%; the Green Party wants no profits. The Liberal Democrats say they would repeal the parts of HSCA 2012 that 'make NHS services vulnerable to forced privatisation through international agreements on free markets in goods and services'.

It is possible to repeal HSCA 2012, but it will be no small feat. As well as establishing CCGs and dissolving PCTs, responsibility was given to local authorities to commission local public health services. Budgets were transferred, as were staff--the entire system has been reconfigured. In practice, repealing HSCA 2012 would require reversing all of these changes and causing further upheaval to the health system.

It is not clear from either the Labour Party's or the Green Party's manifestos whether they intend to revert to the old system of PCTs, or if they have something else in mind. Equally, the Liberal Democrats are not specific about the parts they would repeal, and what they would replace those parts with. Whatever steps are taken, it will certainly take time and money to action, but that does not make it impossible to do.

### **To what extent is health a devolved issue? How might things look in devolved regions?**

Health and social care are devolved issues in the UK. This means that although the election in May 2015 may determine who holds power in Westminster, Scotland, Wales and Northern Ireland can still decide for themselves how to manage their own health and social care.

However, Westminster still holds the purse strings and what devolved regions wish to do is very much limited by their budgets.

The devolved regions, in particular Wales and Scotland, are of course more left-leaning. They are, for example, opposed to privatisation of the NHS, and oppose further cuts to health and social care services. Both Plaid Cymru and the SNP object to the inclusion of the UK (in particular the NHS) in the EU-US free trade deal, the Transatlantic Trade and Investment Partnership, as it is thought this will make it more difficult for governments to regulate their own markets for public benefit.

The SNP in particular is pressing for significant increases to funding in the NHS in the UK--£9.5bn above inflation by 2020/21, higher than any nationwide party has pledged.

Due to devolution, things are unlikely to change in the devolved regions. The biggest difference for the devolved regions is arguably that under a Conservative Westminster government they may have less funding to action what they wish to within health and social care (although the Conservatives may say otherwise in their manifesto).

## **In the event of a coalition, would there be any natural bedfellows when it comes to health and care policy?**

Leaving funding aside, the primary issues in the parties' health and social care policies appear to be the level of privatisation (if any) of the NHS, and the extent of integration of health and social care.

It seems likely that the Liberal Democrats, SNP, Plaid Cymru or the Green Party would support Labour in repealing HSCA 2012. There may be some complication if the Liberal Democrats maintain their current position of only wishing to repeal parts of HSCA 2012, and so whether or not Labour could see this through will depend on the strength of their government or any coalition they form. As things stand, they will face opposition on this from the Conservatives and UKIP (and possibly from the Liberal Democrats).

In terms of the integration of health and social care, it is difficult to say at this stage who might become 'bedfellows' because there is so little detail in the manifestos as to how this would be brought about, and it is therefore difficult to predict who will agree with whom. From the sparse information the various parties have set out, it would seem that Labour and the Liberal Democrats are most in favour of integration, but it will be a huge task to take on, and I wonder if it may get left behind what some may perceive as other more pressing needs.

In terms of funding, a Labour coalition with the SNP, Plaid Cymru or the Green Party may see Labour being pressured to increase health and social care funding, with the Liberal Democrats pressing for an increase in mental health in particular.

Ultimately, the SNP and Plaid Cymru will not be much affected by English health and social care policy, although perhaps they will lend support to certain policies in return for what they seek for themselves in their own devolved regions.

Currently Labour and the Conservatives are stating they do not wish to enter into a coalition with any party, but the reality of the situation on 8 May 2015 once all votes are counted may mean they have no choice.

*Interviewed by Nicola Laver.*

*The views expressed by our Legal Analysis interviewees are not necessarily those of the proprietor.*