



SECONDARY LEGISLATION SCRUTINY COMMITTEE **National Health Service (Procurement, Patient Choice and** **Competition) Regulations 2013** **Written Evidence**

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Lord Owen – Written Evidence

I gather that the Statutory Instrument related to the Health & Social Care Act will be going to the Lords Secondary Legislation Scrutiny Committee on 5th March and you need to be told about the significance of this legislation. In my view the most important aspect of the Regulations relates to the commitment given in the House of Lords by Earl Howe during the passage of the Bill (ref: <http://www.publications.parliament.uk/pa/ld201212/ldhansrd/text/120306-0001.htm>) when he said "Clinicians will be free to commission services in the way they consider best. We intend to make it clear that commissioners will have a full range of options and that they will be under no legal obligation to create new markets, particularly where competition would not be effective in driving high standards and value for patients. This will be made absolutely clear through secondary legislation and supporting guidance as a result of this Bill."

When I heard him make this statement I assumed, as I think everyone else in the Lords at the time must have assumed, that this pledge would be incorporated within the Regulations. I was extremely disturbed to find that it was not. The mood of the House over competition policy and particularly the commissioning process was that more should have been included on the face of the Bill but with the commitment to include what was seen as concessions in the Regulation I was ready, somewhat reluctantly, for the matter to be dealt with in secondary legislation. It is my view that this legislation should be withdrawn until this pledge by Earl Howe and the pledge by the then Secretary of State Andrew Lansley given in February 2012 to the CCGs is specifically included.

I note that a petition to this effect has been set in motion by 38 Degrees and I have signed it.

I have now seen a recent letter that Earl Howe has sent to his colleagues in the House of Lords. The letter states that the Section 75 Regulations "enshrine the principle that it is Commissioners who are best placed to determine requirements for improving services and to decide which provider or providers are best able to deliver those requirements." What the letter does not state is that in making these decisions, Commissioners must abide by all of the Regulations and any failure to do so will be investigated and remedied by Monitor. It was because of our concern over this ambiguity and potential conflict that we attached importance to Earl Howe's commitment in the House of Lords when he said, "This will be made absolutely clear through secondary legislation and supporting guidance as a result of this Bill'.

I have just seen a legal opinion obtained by 38 Degrees that if the Regulations are passed unamended they would break the promises made by Ministers last year.

It has been suggested that an amendment along the following lines to Section 14 of the Health and Social Care Act 2012 would help clarify the situation.

"Each Clinical Commissioning Group may arrange for the provision of such services or facilities as it considers appropriate for the health service that relate to securing

Lord Owen – Written Evidence

improvement in (a) the physical and mental health of the persons for whom it has responsibility, or (b) the prevention, diagnosis and treatment of illness in those persons."

This wording could be incorporated into Regulation 2, which should then state that the remainder of the Regulations applicable to CCGs would only apply when a CCG decides that it is appropriate to consider tendering a service or facility to more than one provider. This amendment would make it absolutely clear that CCGs will be free to commission services in the way they consider best, without having to rely on obscure wording in the current Regulations. Obscure wording that we do not know how it will be interpreted by Monitor.

I hope it is within the terms of reference of your Committee to both recommend the present Regulation be withdrawn and suggest alternative wording for any new Regulation.

Yours sincerely

The Rt Hon Lord Owen CH FRCP

Baroness Warnock – Written Evidence

I hope you will draw to the attention of the Committee the assurances given to parliament on February 13 /2012,n which now seem to have been breached.. Mary Warnock [Baroness Warnock DBE]

Rosie Cooper MP – Written Evidence

I have been contacted by West Lancashire constituents in relation to the regulations (SI257) published by the Government under Section 75 of the Health and Social Care Act 2012. I am writing to you in your capacity as Chairman of the Lords Secondary Legislation Scrutiny Committee.

Assurances were given by ministers during the passage of the Bill through Parliament that it did not mean the privatisation of the NHS, that local people would have the final say in who provided their NHS.

An examination of the new regulations, however, reveals that local commissioners, the new Clinical Commissioning Groups, will have no power to resist Monitor's demands, will be less able to introduce quality criteria, in addition to cost criteria, into the contracts they are required to let, and will have less opportunity to consult local people about their plans.

In just a few days, over 15,000 people have signed a petition asking for these significant changes to our health service to be debated fully in the Houses of Parliament.

I hope you will ensure that the committee is made fully aware of the important and significant differences between the assurances given by Ministers during the passage of the Bill and these regulations as proposed by the current Secretary of State.

Yours sincerely

Rosie Cooper MP

West Lancashire

38 Degrees – Written Evidence

I understand that the Lords' Secondary Legislation Scrutiny Committee will be discussing the regulations laid by the Government under Section 75 of the Health and Social Care Act at your meeting on 5th March.

I am writing to draw your attention to two relevant petitions. The first is hosted on the 38 Degrees main website (<https://secure.38degrees.org.uk/nhs-section75>) and it states:

Our NHS is precious – we don't want it privatised.

Jeremy Hunt's plan to force local doctors to open up almost all NHS services to private companies are anti-democratic and break government promises made last year.

Please ensure his plan, contained in the NHS Competition regulations (SI 257), is subject to a full debate and vote, on the floor of both Houses of Parliament. Please do all you can to ensure that they are defeated or withdrawn.

At 11.30 am on 26th February, less than 24 hours after the petition was launched, the petition count was: **98,170**

The other petition was started by a 38 Degrees member (<http://you.38degrees.org.uk/petitions/petition-to-stop-new-nhs-competition-regulations-si257-being-passed>) and states:

We, the undersigned, call on both Houses of Parliament to ensure the NHS Competition regulations (SI 257) made under the Health and Social Care Act 2012, are subject to a full debate, and vote, on the floor of both Houses of Parliament, and that they are defeated or withdrawn.

At 11.30 am on 26th February the petition count was: **15,769**

I hope this goes some way to demonstrate not just the level of public interest in your committee's role and responsibility, but that these regulations merit special attention and are not simply implemented without thorough scrutiny.

Considering the significant levels of public interest displayed by 38 Degrees members, I thought it might be helpful to meet face to face to discuss this. Or, I could deliver the petition directly to you, at a time of your choosing. Please do let me know what you would find most helpful.

David Babbs,

Executive Director, 38 Degrees

Steve Adshead – Written Evidence

I have been notified by the Socialist Health Authority that the above regulations will be going to the Lords Secondary Legislation Scrutiny Committee on 5th March and that this Committee will then report to the House before it passes into law.

The country has been led to believe that the regulations are necessary because of EU laws on competition in the internal market; however, the NHS' European Office, who are experts in EU healthcare legislation, have said that these new laws should not interfere with a member state's right to organise and provide public services to their citizens.

I would suggest that as the NHS has as its goal the production of health capital rather than financial profits, therefore, the rules of the common market do not apply. In business the two forms of capital are treated entirely differently. The health and well being of employees is treated as an intangible asset of a company, whereas its financial and material resources are considered to be its tangible assets. In theory, these different forms of capital can be converted, one into the other, but they should remain as distinct as the church and the state within the eyes of the law.

I am therefore concerned that this piece of legislation is unsafe and leads the EU as whole and its member states into dangerous territory that we will all live to regret.

Please ask the committee to reconsider the passage of this bill.

Yours Steve Adshead, RNMH MSc

Charlotte Allen – Written Evidence

I am writing to encourage the Scrutiny Committee to look seriously at the secondary legislation to the regulations SI 257 under section 75 of the NHS and Health Care Act 2012.

Charlotte Allen

Martin Allen – Written Evidence

I have become aware of the regulations which appear to require competitive tendering of all NHS services. I believe this is a back door privatisation in effect. It is well documented that such tendering privileges low price bids which often do not provide quality. When talking about health care quality cannot be compromised.

I urge you to carefully look at the regulations in your to scruting secondary legislation. It appears the 'devil' is in the detail when it comes to this legislation.

Thankyou.

Martin Allen

Alan Allport – Written Evidence

I understand that on 5th March your committee will be discussing the regulations as set out by the Government under Section 75 of the 2012 Health & Social Care Act.

When the Health & Social Care Act went through Parliament, Ministers made repeated assurances that NHS services would not be obliged to be put out to tender, and that the health regulator Monitor would not have powers to enforce such a move. For instance, Mr Andrew Lansley wrote to prospective CCGs "Many of you may have read that you will be forced to ... put services out to tender. This is absolutely not the case." Similarly Lord Howe assured the Lords that, "Clinicians will be free to commission services in the way they consider best. We intend to make it clear that commissioners will have a full range of options and that they will be under no legal obligation to create new markets."

To the contrary, the proposed regulations stipulate that all new contracts must be put out to competitive tender, and that Monitor will have the power to decide when commissioners have breached competition regulations. These proposed regulations are thus in direct contradiction of assurances made in Parliament during passage of the Act. If they come into force the NHS will become subject to EU competition law, and an irrevocable change in its status will have occurred.

Accordingly, I hope you will convey to their Lordships that these regulations merit special attention and close scrutiny.

Yours sincerely,

Alan Allport

Jane Anderson – Written Evidence

I write in my capacity as Chair of the British HIV Association (BHIVA), the UK professional association for people who are involved in the care of people living with or affected by HIV. Our Association produces the treatment guidelines and defines the standards of care for HIV for the UK. Within the 2013 BHIVA Standards of Care for people with HIV we make it clear that people with HIV should have full opportunities to be active partners in their care, both at the individual level of care and its quality, and in the design and planning of the services that deliver care.

It has been brought to the attention of the Association that secondary legislation is being proposed which relates to the way in which market forces may affect the NHS and its services. We are concerned that the legislation under consideration may impact adversely on the ability of commissioners to introduce quality criteria, in addition to cost criteria, into the contracts they are required to let. We also understand that this legislation may mean that there is less opportunity for commissioners to consult local people about their plans.

The British HIV Association would be most concerned if secondary legislation under section 75 of the Health and Social Care Act 2012 undermines any aspect of either the currently very high standards of care for people with HIV in the UK or the ability of people to engage in decision making about care delivery.

I would be most grateful if my concerns could be brought to the attention of the House of Lords Committee when it considers this legislation at its meeting on March 5th.

Yours sincerely

Jane Anderson

Chair, British HIV Association

Elaine Andre – Written Evidence

I'm writing because I'd like to put my name to total support for keeping the NHS . I've been fortunate to have very little needed the NHS, having had a long and healthy life. but it is one of the precious British contributions to the modern world. it hasn't been and can't be perfect. but whatever difficulties have been encountered, we must safeguard both the principles and the practice: it is our gift from those in the past, and must be our gift to the future generations.

Yours sincerely,

Elaine Andre

Sandra Ash – Written Evidence

I understand the above legislation is due to be considered by you imminently. I am deeply worried about the negative impact it will have on the NHS. I believe it will amount to privatisation of the NHS and will be an additional expense and layer of bureaucracy for hard pressed doctors. Please ensure proper scrutiny of this legislation along with a full debate and vote is complete before this gets any closer to implementation.

Sincerely,

Sandra Ash

Patricia Astle – Written Evidence

I understand the above regulations (Secondary legislation under Section 75 of the Health and Social Care Act 2012) will be discussed by the Lords' Secondary Legislation Committee on 5 March and I am writing to ask you to draw the committee's attention to their radical nature.

The regulations will restrict Clinical Commissioning Groups to awarding contracts without competition in only exceptional circumstances and will give Monitor power to enforce competition which will inevitably lead to procurement being subject to EU competition law. During the passage of the Health and Social Care Bill assurances were made to parliament and the public that this would not be the case and this is in contradiction to a commitment made by Andrew Lansley in early 2012 in a letter to leaders of all prospective CCGs.

There is an assumption in the regulations that greater choice of providers is always in the best interests of users of health care services, however, there is no evidence that competition has a positive effect on health outcomes.

Administration for this competitive market will add further billions to the cost of the health service on top of the massive increase in cost that occurred with the introduction of the internal market.

I hope it is possible for there to be parliamentary debate about these fundamental changes to the NHS.

Yours faithfully,

Patricia Astle

Anne Baldwin – Written Evidence

I want my so called 'Greater Huddersfield Commissioning Group' to be able to take account of a wide range of factors when deciding how to spend my taxes. I want them to prioritise patient satisfaction, accessibility and the complexities of geography in this diverse area. I also want them to be able to favour not-for-profit suppliers, those who pay a living wage and those who are prepared to train staff fully at their own cost. I believe the best way of making sure this can happen is by ensuring the above regulations are debated as fully as possible by Parliament. I hope you will ensure this happens.

Yours faithfully,

Anne Baldwin

Peter Bamford – Written Evidence

I would be very grateful if you would pass on to the Secondary Legislation Scrutiny Committee my concerns regarding the aforementioned regulations which relate to the procurement of NHS services.

Firstly, that this Instrument should be drawn to the attention of the House under (2) (a) of the Terms of Reference of this Committee for the following reasons:

This instrument is politically important, in that the regulations will impact every member of the public in England who uses the National Health Service; that the extent of debate inside Parliament together with the number of amendments offered, debated, and made to the Health and Social Care Act 2012 provides evidence of its political importance; that announcements by members of Her Majesty's Official Opposition subsequent to the passage of the aforementioned act strongly indicate continued political importance; that the continued existence and activities of individuals and organisations opposing the aforementioned act further demonstrates its political importance; that it makes changes in contradiction to statements and assurances previously made by Government Ministers and others in and outside of Parliament.

This instrument is legally important in that it introduces competition law into the procurement of NHS services for and on behalf of the public. (See also below, regarding (2) (c).

This Instrument gives rise to major issues of public policy, which must be of interest to the House in that it makes significant changes to the management, operation and services of the National Health Service in England, a service used by the overwhelming majority of the public; in a manner which will impact the ways in which such services are procured, delivered, and chosen by every such member of the public; and makes changes in contradiction to statements and assurances previously made by Government Ministers and others in and outside of Parliament.

Secondly, that this Instrument should be drawn to the attention of the House under (2) (b) of the Terms of Reference of this Committee for the following reasons:

Subsequent to the enactment of the Health and Social Care Act 2012 and immediately previous to the laying of this Instrument before Parliament, a report produced by a Public Enquiry under the Chairmanship of Sir Robert Francis and commissioned by the previous Secretary of State for Health was published. I submit the contents of this highly important document form changed circumstances.

The Committee will be aware of the enormity of the events at the Mid-Staffordshire NHS Foundation Trust which are recorded in a previous report under the same chairman, and which prompted this report to be commissioned.

The Francis Report 2013 makes 290 recommendations (Vol 3 Chapter 27 Table of Recommendations). Her Majesty's Government has acknowledged the significance of the events and of the report; but is yet to respond in full. Nevertheless, it has laid this

Instrument before the House and it seems highly likely that this Instrument may come into force before the Francis' report recommendations have been duly considered and responses proposed.

The Francis Report recommends inter alia a number of changes (for example, Recommendations numbers 124-127, 129-132 and others) relating to procurement, and other recommendations relating to the role of "Monitor".

Manifestly, the passage of this legislation should not be completed before a full impact assessment of the Francis Report has been completed, detailed responses to his recommendations have been put forward, and these regulations duly amended by Her Majesty's government. Failure to do this will lead to additional costs and effort for the NHS to implement subsequent changes. Moreover the regulations in this Instrument may hinder or even prevent the implementation of Sir Robert Francis' recommendations: leading to more unnecessary and unnecessarily early deaths and unnecessary suffering.

Thirdly, that this Instrument should be drawn to the attention of the House under (2) (c) of the Terms of Reference of this Committee for the following reasons:

This Instrument may inappropriately implement European Union competition legislation, thereby eventually restricting or eliminating the ability of commissioning bodies to procure services as per the Health and Social Care Act 2012, or as per the Francis Report recommendations, or as per the will of the English people as expressed through Parliament.

Fourthly, that this Instrument should be drawn to the attention of the House under (2) (d) of the Terms of Reference of this Committee for the following reasons:

The Instrument may imperfectly achieve its policy objectives, or those of the Health and Social Care Act 2012 in that:

The regulations could have wide-reaching implications with regard to the the mix of providers of NHS-funded services. The regulations ban "any restrictions on competition that are not necessary", which is a broad definition and one which may be subject to persistent legal challenge. Further, they state that contracts may only be awarded without tender for "technical reasons, or reasons connected with the protection of exclusive rights" or "reasons of extreme urgency".

The regulations are to come into effect simultaneous with significant changes brought about by the Health and Social Care Act 2012 and changes brought about by the programme of 'savings and efficiencies'

under Sir David Nicholson. It is well known that attempts to implement multiple programmes of change concurrently inevitably creates unplanned and unexpected impacts on service and on each programme of work. Such impacts will increase costs, reduce both effectiveness and efficiency, cause delays, and increase resource requirements. In the NHS, where the service is health, such impacts will be - directly or indirectly - increase suffering and unnecessary (early) deaths.

Furthermore, - though I accept from lack of experience that this may be normal in the drafting of such instruments - there is no evidence of funding to cover the implementation and then on-going costs of this Instrument. Beyond that, the Instrument is not supported as

a major programme of change by a risk register, has no implementation timescales (it is assumed to be in effect from “Day 1” when it comes into force), has no statement of work or project plan, and no clarity of ownership of responsibilities and accountabilities for implementation or on-going service. As someone who has been engaged in the governance of programmes of change, I am quite honestly aghast at this absence of information.

Over and above this, the Instrument demands that NHS management and General Practitioners - who are, after all, supposedly leading commissioning of services according to the Health and Social Care Act

2012 - will in practice have to focus on compliance with these regulations relative to provision of best quality care to their

patients. It is improbable that General Practitioners have adequate

experience to accomplish this, and the Instrument makes no provision for training. The Instrument thus conflicts with policy and is inconsistent between its own Requirements and its Objectives.

It is arguable that this Instrument is in conflict with assurances given by ministers during the passage of the Health and Social Care Bill through Parliament that it did not mean the privatisation of the NHS and that local people would have the final say in who provided their NHS services, by creating requirements for virtually all commissioning done by the National Commissioning Board (NCB) and Clinical Commissioning Groups (CCGs) to be carried out through competitive bidding, which will have the effect of forcing through privatisation regardless of the will of local people. Moreover, these regulations contain legal powers for Monitor to enforce such privatisation spontaneously or at the request of private companies that lost bids.

It is also arguable that the General Requirements of this Instrument conflict with the Objectives of this Instrument, in that the results of competitive bidding may not, either generally or in individual cases, permit or secure any or all of the following (a) securing the needs of the people who use the services, (b) improving the quality of the services, or (c) improving efficiency in the provision of the services.

The regulations as set out in this Instrument clearly conflict with promises and assurances made by the then Secretary of State for Health, Andrew Lansley on Feb 16th 2012 when he assured General Practitioners (and by implication, the general public regarding the expressed concerns of General Practitioners) that:

“You will have the freedom, with your new powers and responsibilities, to commission services in ways that meet the best interests of your patients. You will, for example, be able to determine where integrated services are required and commission them accordingly.”

And

“You will be able to work with existing providers of health and care services to deliver better results for patients”

And

Peter Bamford – Written Evidence

“I know many of you may have read that you will be forced to fragment services, or to put services out to tender. This is absolutely not the case.”

This absolutely is the case, as set out in these regulations.

For the reasons set out above, I request that this Statutory Instrument may be drawn to the special attention of the House. I would wish to recommend for the reasons set out above that this Statutory Instrument be set aside until a later date, or at least until the recommendations of the Francis Report have been fully considered and detailed actions agreed and planned: at which time the regulations should be drawn to the special attention of both Houses.

Yours Sincerely,

Peter Bamford

Geoff Bar – Written Evidence

You will be aware that we were given assurances by ministers and guidance that suggested competition would be used judiciously and in a restrained manner in the NHS. These SIs contradict that reassurance – the reality is very different. It seems that the government now plans to open the whole NHS up to private ownership (privatisation). could you please ensure that that this is debated on the floor of the House.

Yours

Geoff Barr

Alison Barkshire – Written Evidence

I write to express my outrage at the proposed legislation. Assurances were given by ministers during the passage of the Bill

through Parliament that it did not mean the privatisation of the NHS, that local people would have the final say in who provided their NHS.

MPs and the public have been lied to - yet again, about the Government's intentions for the NHS.

These regulations will require virtually all commissioning done by the National Commissioning Board (NCB) and Clinical Commissioning Groups (CCGs) to be

carried out through competitive markets, which will have the effect of forcing through privatisation regardless of the will of local people. All this will incur significant cost, at precisely the time that the Government demands huge, unrealistic savings. Even where a service area meets the criteria for non tendering the track record of the private companies indicates that they will contest this, which will involve huge legal costs, so in practice most CCGs will be forced into tendering all services.

The regulations contain legal powers for Monitor to enforce the privatisation spontaneously or at the request of private companies that lost bids.

It is difficult to see how some of the key aspects of the Francis report recommendations will be able to be implemented.

IN short these regulations are a travesty and anti democratic. You should all hang your heads in shame - something you do not seem to understand. ALL Lords and MPs with financial interests in private health companies should be forbidden from voting on these regulations. UK seems to be aspiring to becoming the most corrupt government in the world.

Alison Barkshire

Simon Barley – Written Evidence

I am concerned to read in the press and elsewhere that the above Regulations are to be implemented without debate in either House.

May I urge you to ensure that there is a full debate at the earliest opportunity, so that the government's previous promises to protect the National element of the NHS are challenged, and that, as previously, full competition in accordance with EU law is not permitted.

Yours sincerely

Simon Barley

Patrick Bateson – Written Evidence

The Lords' Secondary Legislation Committee will be discussing at their meeting on 5 March the regulations laid before the House by the Government under Section 75 of the National Health Service (Procurement, Patient Choice and Competition) Regulations 2013) made under Section 75 of the Health & Social Care Act 2012.

If secondary legislation is passed, it appears that the new Clinical Commissioning Groups will be less able to introduce quality criteria when assessing quotations for contracts and will have less opportunity to consult locally. This contravenes what was promised when the Health and Social Care Act was discussed.

I hope that you will ensure that their Lordships know that these regulations merit special attention.

Professor Sir Patrick Bateson FRS

Richard and Beatrice – Written Evidence

We understand that you provide the last chance for ensuring that the NHS Competition regulations (SI 257) made under the Health & Social Care Act 2012, are subject to a full debate, and vote, on the floor of both Houses of Parliament.

We are very concerned that these regulations are likely to be the final straw for many of our NHS hospitals and clinics that have already been damaged by too much costly marketisation and cuts.

Please could you use your powers to bring this about.

Many thanks

Richard and Beatrice

Chris Beazer – Written Evidence

I urge the committee to look at the detail of the statutory instrument SI 257 because of its importance in negating assurances given during the passage of the bill through parliament that it did not mean the privatisation of the NHS and that local people would have the final say in who provided their NHS. The regulations published contain legal powers for Monitor to enforce the privatisation spontaneously or at the request of private companies that lost bids. They would also make it impossible to fulfil some of the key thrust of the Francis report recommendations.

Regards

Chris Beazer

Richard Benson and Anne Leonard – Written Evidence

The introduction of regulations re privatisation of NHS services on an unprecedentedly short time scale is a cynical attempt to by-pass the changes fought for and achieved at such length and with such determination during the passage of the H&SC Act last year.

The new regulations reinstate precisely those parts of the Bill which were found to be anathema to most politicians, even those within the coalition government, as well as to the general public, and, of course, they are entirely at variance with the underlying principles of the NHS - a system of publically funded and delivered health care which has always had the support of its beneficiaries, i.e. the vast majority of the general public.

They are particularly alarming at a time when the private sector is coming under scrutiny at so many levels for suspected malpractice and ruthless profiteering, and when commercial confidentiality law makes such public scrutiny increasingly difficult.

There was never a mandate for the developments opened up in these proposed regulations; indeed, if the Conservative Party's intentions had been made clear prior to the General Election, we would have had a very different election outcome.

These regulations are an act of sabotage not only against the NHS, but against democracy itself.

They must not be allowed to pass into law.

Anne Leonard

Richard Benson

John Berge – Written Evidence

Dear Sir, I have been alerted to the fact that secondary legislation to the Health & Social Care Act 2012 will require all virtually all commissioning done by the National Commissioning Board or the Clinical Commissioning Groups will have to be carried out through competitive tendering. Furthermore I understand that Monitor will have legal powers to enforce privatization at the request of private health providers. This is contrary to what the Government promised in the when the bill was debated in the House Commons when it made assurances that local people would have the final say in who provided their NHS.

I would ask the Upper House to seriously consider the appropriateness of the Secondary Legislation in view of the promises made by the Government.

Yours faithfully,

John Berge

George Berger – Written Evidence

My name is George Berger (PhD). I am a retired teacher of philosophy from the Netherlands, now living in Uppsala Sweden. This morning I heard from some of my many British friends and professional associates about the rapidly approaching legislation that will allow the NHS to be split into smaller units, which shall be sold by a market competition process, and in some cases sold directly, without this tender process.

I hope this will not occur. In 1971 I was so impressed by the efficiency, financial arrangement, and high quality of care, that I moved from the United States to the Netherlands, where care was neither tax-based nor privatised. It worked well until 1 Jan 2006, when it was privatised using a form of "regulated competition." Service decreased rapidly. I was forced to leave the Netherlands for Sweden, in order to get the necessary care for a life-threatening illness. I survived, but others in situations similar to mine have not.

I would hate to see a closely related problematic structure arise in the UK. Not only would this potentially harm many residents of the UK, but it would encourage the further deterioration of many, if not all, EU healthcare systems. I hope you and your government will not enact the laws needed to regulate this life-threatening transition. Thank you.

Yours truly, George Berger

Lynn Bindman – Written Evidence

I understand that the Statutory Instrument SI257 will be going to the Lords Secondary Legislation Scrutiny Committee on 5th March; this Committee will then report to the House.

I am extremely concerned about this SI and think it will wreck the NHS. I urge the committee to look seriously at the Secondary Legislation and report it to the House as meriting special attention.

The special points of concern are:

1. Assurances were given by ministers during the passage of the Bill through Parliament that it did not mean the privatisation of the NHS, that local people would have the final say in who provided their NHS.

2. The regulations just published break these promises by creating requirements for virtually all commissioning done by the National Commissioning Board (NCB) and Clinical Commissioning Groups (CCGs) to be carried out through competitive markets, which will have the effect of forcing through privatisation regardless of the will of local people. They contain legal powers for Monitor to enforce the privatisation spontaneously or at the request of private companies that lost bids.

Yours truly,

Lynn Bindman

Graham Birkin – Written Evidence

Please do what you can to hinder the compulsory competitive tendering provision which is proposed for NHS services. You will have some influence via the SI scrutiny legislation.

Graham Birkin

Stephen Blomfield – Written Evidence

I am gravely concerned by the regulations that the Government is proposing to introduce under section 75 of the NHS Act.

I understand that these proposed regulations will require local health commissioners to put out NHS provider services to tender in an open market, consisting of both private health groups and publicly funded health services.

As it is hard to see how private services, which will be required to operate for profit, can match public health services unless they either (1) offer a lower quality of health provision, or (2) employ health care staff at a significantly lower pay scales and/or worse working conditions, or (3) cut dangerous corners with health and safety issues, it seems folly to set up this tendering system. We have seen numerous examples within the health services and other public services (e.g. prisons), where such a process has led to deplorable outcomes, which have proved expensive to rectify. Moreover, private services will have an unfair advantage, in that they do not have obligations to train their health staff.

The NHS has suffered for many years from constant interference by both labour and conservative-liberal administrations, which have been determined to push through radical changes to its management and structure. Little or no account is taken of the ensuing mayhem, the demoralisation of staff and the impoverishment of patient care. On top of all this, many hospitals are now saddled with debts from ill-advised PFI projects.

I earnestly hope that your Secondary Legislation Committee will give these new regulations close scrutiny and advise the government to reconsider its proposals. The NHS would benefit greatly from a period of calm reflection.

Yours faithfully,

Dr Stephen Blomfield

(retired Consultant Child & Adolescent Psychiatrist)

T Booth – Written Evidence

T Booth – Written Evidence

This secondary legislation should be debated in an open forum and not passed without scrutiny.

T Booth

Chris Brace – Written Evidence

With regard to regulation (SI257) s.75 Health and Social Care Act I have several serious concerns. The devil is always in the detail; these regulations in particular dramatically limit the powers of local commissioning organisations to determine the best provider, through a proper commissioning process taking the opinions of local people into account. This is contrary to assurances given to ministers when the Bill was debated in parliament "There is absolutely nothing in the Bill that permits the transfer of NHS activities to the private sector" Andrew Lansley (13.3.12, Hansard) It would appear that the absolute opposite is the case, as regulation 10 gives Monitor a duty to promote competition and the power to overturn the decisions of commissioning organisations, giving the lie to yet another ministerial assurance: "Clinicians will be free to commission in the way they consider best" - Lord Howe (6.3.12)

This use of regulations to radically alter the outcome of the parliamentary process is harmful to democracy, already damaged as promises made by the party in government not to reorganise the NHS were broken when the Bill was enacted.

I therefore urge the Government and parliament to ensure that these regulations are subject to committee scrutiny and to a full debate and vote on the floor of both Houses of Parliament.

Chris Brace

Dorothy F. Brady – Written Evidence

I wish to add my opposition to the newly published details regarding tendering of services in the NHS. The fact that CCGs and NCGs are to put out to tender these services will deny local people of their rights to consultation and agreement and in effect will push through privatisation despite government assurances to the contrary.

Yours sincerely,

Dorothy F. Brady

Arthur and Judy Breens – Written Evidence

The above SI will be going to the Lords Secondary Legislation Scrutiny Committee on 5th March.

We think that this is very important. Please look carefully at this Secondary Legislation.

Please report it to the House as requiring special attention.

My wife and I are in our late sixties and this legislation makes us fear for our healthcare in our remaining years. We were promised restrictions to favour established NHS providers.

This promise has been broken.

Very many thanks

Arthur and Judy Breens

Denise Bretherton – Written Evidence

We were told that the NHS would not be forced to open up services to competition. But there is a piece of secondary legislation about to be nodded through, without a debate, which will do just this.

The Secondary legislation under Section 75 of the Health and Social Care Act 2012 will be going to the Lords Secondary Legislation Scrutiny Committee soon.

The effect of this piece of secondary legislation will be to lock the NHS into the market and subject it to EU competition law.

Why is this being allowed without debate this is completely contrary to what we have been told Why is this serious secondary piece of legislation and not be debated and aired publically I would ask that this debate be held.

Denise Bretherton

British Medical Association – Written Evidence

The British Medical Association (BMA) is an independent trade union and voluntary professional association which represents doctors from all branches of medicine across the UK.

I write to draw the Committee's attention to the above regulations, which have generated much concern about the potential impact on procurement practice in the NHS. This is an extremely important matter that highlights very serious concerns about the role of choice and competition in the health service, which are at heart of the Government's NHS reform agenda.

According to the Government, these regulations 'impose requirements on the National Health Service Commissioning Board and the clinical commissioning groups (CCGs) in order to ensure good practice in relation to the procurement of health care services for the purposes of the NHS, to ensure the protection of patients' rights to make choice regarding their NHS treatment and to prevent anti-competitive behaviour by commissioners with regard to such services.'

During the legislative stages of the Health and Social Care Act 2012, we raised concerns about the Government's proposals for changes to procurement, patient choice and competition in the NHS. We were particularly worried that the ability through regulations to require adherence to good practice in relation to procurement – where good practice presumes a need for competition – would prevent the cooperation between commissioners and existing providers that is in the interests of improved patient care.

After passage of the Act, the BMA submitted a detailed responses to the Department's of Health's consultation on the draft regulations in October 2012 and we also had input towards discussion at a Social Partnership Forum level.¹ A number of key concerns that we raised to tighten up the draft regulations were taken on board by the Government in its response to the consultation.

However, it quite clear that there are a number of growing concerns about the intent of these regulations; whether the regulations diverge from prior assurances that the Government has given; and the applicability of EU competition law.

We have repeatedly argued that CCGs should be able to place contracts with the most suitable providers without fear of being accused of anti-competitive behaviour. We feel it imperative for CCGs to be free to design new clinical pathways in the best interests of patients, built around integration of services, inclusivity and partnership. Whilst the Government stated on a number of occasions during passage of Act that commissioners would have the freedom to decide which services they would tender, and that regulations would not impose compulsory competitive tendering requirements on commissioners, it is evident that greater clarity around the intent of the regulations is urgently needed.

As there are such a wide range of views on the implications of the legislation, we believe that there is a pressing need for a debate, which would afford the Government the opportunity to clarify the intended scope of these regulations.

¹ The SPF brings together NHS Employers, NHS trade unions and the DH to discuss the development and implementation of the workforce implications of policy

Jonathan Broad – Written Evidence

I am writing as a nurse and training doctor to urge that you consider the importance of the proposed regulation of section seventy five of the Health and Social Care Act 2012 (henceforth HSCA 2012). The statutory instrument proposed in this secondary legislation strongly undermines the important conditions of the many amendments of the HSCA 2012, principally that the NHS should not be forced to privatise many of its services. This statutory instrument does just that, and in doing so undermines both the democratic procedure and the NHS itself. The act was passed only with significant amendments, and this threatens to significantly reverse the most important safeguards devised in those crucial moments.

I would therefore emphasise most sincerely the importance that this secondary legislation is considered in both houses and given due discussion. The scrutiny of your committee is paramount to this process. I trust that you will give due weight to this decision.

Yours faithfully,

Jonathan Broad BSc

Richard Brooke-Powell – Written Evidence

May I bring to your attention the matter of the clause SI 257 under Section 75 of the Health & Social Care Act 2012. It causes me great concern.

These new measures will be brought in on 1st April 2013 and go much further towards privatising the NHS than ministers implied when the legislation was going through Parliament.

I implore you to arrange for this matter to be discussed/debated in both Houses of Parliament.

Very few people that I know were aware of the full implications of this aspect of the Act. Everyone I have contacted has reacted with shock and sadness, at its implications as well as the way it has not been aired in public or in Parliament.

We are extremely worried that these regulations will supersede existing arrangements between NHS bodies, and just about all commissioning done by the CCGs, and force them to be done under a market framework under the remit of the EU competition law.

Statements by Andrew Lansley when he was Health Minister led me to believe that this method of commissioning would never be allowed to happen, so I am astonished to find out that the opposite could well be about to occur.

I am very concerned about this and have signed a petition along with thousands of others, who are signing at the rate of about 200 people per hour at this present time, although this will probably increase exponentially as awareness spreads.

Thank you for your attention to this matter.

Yours faithfully,

Richard Brooke-Powell

Mary Brooks – Written Evidence

Mary Brooks – Written Evidence

As a UK citizen I request that this secondary legislation be properly consulted on and debated by Parliament.

Mary Brooks

Iain Bruce – Written Evidence

One of the reassurances with which I have grown up over the last 65 years is that, under the NHS, I will be treated by doctors whose sole interest is in providing the most appropriate treatment available free from any consideration of profit or loss. Both parties in the present Government gave manifesto assurances that this regime would continue and that there would be no question of privatisation. I have read, however, of the proposals under regulations on Section 75 of the Health and Social Care Act that would render such assurances void. I understand that the Lords' Secondary Legislation Scrutiny Committee will be discussing the regulations laid by the Government under Section 75 of the new NHS Act at their meeting on 5 March and would urge them to reject such provisions as would open the NHS to competition under EU legislation. I understand that the health regulator, Monitor, would be powerless to resist 'marketisation'.

Given the Government's pledges and given the overwhelming voice of public opinion in its wish to protect the NHS from the interests of big business - pharmaceutical companies, commissioned organisations such as Capita and so on - I hope you will pass my concerns to their Lordships. The NHS is far too precious an organisation to be left to the vagaries of the short-termism and self-interestedness of the market.

Yours faithfully,

Iain Bruce

Martin Brunet – Written Evidence

I am writing concerning the regulations (SI257) under Section 75 of the NHS and Health Care Act 2012, published by the Government on 13th February 2013.

My understanding is that these regulations will force any new service within the NHS, or change of service provision, to be opened up to the full competition of the market regardless of the wishes of the local population, and that it will give significant new rights to private companies to bid for the right to provide NHS services. I also understand that these regulations could be passed without a full debate by parliament.

These proposals represent a significant and radical change to the National Health Service, and so I am writing to express my concerns that such a matter should be scrutinised thoroughly by parliament prior to being passed into law, and ask that you could give this serious consideration.

Yours faithfully,

Martin Brunet

Elizabeth Bunce – Written Evidence

As a gratefully retired GP with forty years service to the NHS I am writing to express my dismay at the proposed legislation introducing compulsory competition in NHS provision. Has the government learned nothing from the debacle of privatisation in the care sector and in cleaning and catering provision in the NHS.

I would be the first to admit some changes need to be made but having lived through fund holding, the so-called Darzi clinics, the total lack of any continuity of care in primary care, the disbanding of wellfunctioning primary care teams in the interests of "economy" any change needs to be carefully piloted and evaluated not rushed through by dogma and political expediency.

I am appalled by the deceit practised by this government over its plans for the NHS "safe in their hands" I don't think so.

During my last few years of working I felt completely disenfranchised and unheard, now I am likely to be a patient rather than a provider I am simply terrified

Elizabeth Bunce(formerly Dr Elizabeth Anstey)

Vera Burgess – Written Evidence

I understand that tomorrow is the last day for submissions to the Committee regarding the Regulations, above.

I understand that the committee will be examining the regulations and In light of the enormous public concern about the implications of these regulations. I would like to request that you recommend that the committee get a full debate in the House of Lords.

Yours faithfully

Vera Burgess

Mark Burton – Written Evidence

Please would you convey to the noble Lords my very serious concern over the Secondary legislation under Section 75 of the Health and Social Care Act 2012 which goes before the Secondary Legislation Scrutiny Committee on 5th March.

This new legislation will tie the NHS into compulsory competition, effectively destroying the basic principles of the service which has always put meeting needs above private profit and going against promises made by the government in their manifesto, the coalition agreement and during the passing of the primary legislation, that the NHS would not suffer privatisation. This will undo the basic principles of our national health service.

The use of secondary legislation in this context is essentially an undercover operation which seems to be a deliberate attempt to mislead the public.

Thank you for your attention.

Mark Burton

Joanna Busza – Written Evidence

I am deeply concerned about the radical nature of the regulations laid by the Government under Section 75 of the new NHS Act. The stipulations in the new regulations suggest that local commissioners (the new Clinical Commissioning Groups) will have no power to resist the health regulator Monitor's demands and this will reduce the capacity of commissioners to introduce quality criteria, to consult local people about plans, and generally to wield control over their local NHS bodies. This is a worry development and will open the NHS up to a greater degree of privatisation than would be acceptable to many people in the UK.

I trust this will be debated in full, and opposed by as many people in a position to do as possible, as it would clearly contravene the spirit in which the NHS was established, not to mention the will of a significant proportion of the UK's population.

Yours Faithfully,

Joanna Busza

Senior Lecturer, Sexual & Reproductive Health

Department of Population Studies

London School of Hygiene and Tropical Medicine

Les Byrom – Written Evidence

The statutory instrument is in the Lords on 5th March, I am very concerned about the implications for a properly managed public service in my area.

Having been a non executive director of two local NHS trusts in this area, I know the concern the service has about the possibility of ' any qualified provider' taking on the direct provision of NHS services, I am particularly concerned about mental health commissioning and acute hospital services.

The statutory instrument would open up the prospect of compulsory tendering to the private sector, a move the Government has assured the public would not happen.

I hope these proposals will be subjected to scrutiny by e secondary legislation committee.

Les Byrom

Sefton Metropolitan Borough Council - Member for Victoria Ward

Mike Caits – Written Evidence

May I bring to your attention the matter of the clause SI 257 under Section 75 of the Health & Social Care Act 2012. It causes me great concern.

These new measures will be brought in on 1st April 2013 and go much further towards privatising the NHS than ministers implied when the legislation was going through Parliament.

I implore you to arrange for this matter to be discussed/debated in both Houses of Parliament.

Very few people that I know were aware of the full implications of this aspect of the Act. Everyone I have contacted has reacted with shock and sadness, at its implications as well as the way it has not been aired in public or in Parliament.

We are extremely worried that these regulations will supercede existing arrangements between NHS bodies, and just about all commissioning done by the CCGs, and force them to be done under a market framework under the remit of the EU competition law.

Statements by Andrew Lansley when he was Health Minister led me to believe that this method of commissioning would never be allowed to happen, so I am astonished to find out that the opposite could well be about to occur.

I am very concerned about this and have signed a petition along with thousands of others, who are signing at the rate of about 200 people per hour at this present time, although this will probably increase exponentially as awareness spreads.

Thank you for your attention to this matter.

Yours faithfully,

Mike Caits MA (Hons)

Mike & Christine Campbell – Written Evidence

You will be aware of the mounting anger regarding regulations (SI 257) of the Health and Social Care Act being pushed through in a way which many people believe is highly undemocratic and which, in effect, will force through compulsory tendering of NHS services.

Bearing in mind the following statements by

Andrew Lansley MP: “There is absolutely nothing in the Bill that promotes or permits the transfer of NHS activities to the private sector.” (13/3/12, Hansard2)

Andrew Lansley MP, 12.02.12, letter to Clinical Commissioning Groups: “I know many of you have read that you will be forced to fragment services, or put them out to tender. This is absolutely not the case. It is a fundamental principle of the Bill that you as commissioners, not the Secretary of State and not regulators – should decide when and how competition should be used to serve your patients interests..”

Simon Burns MP: “...it will be for commissioners to decide which services to tender...to avoid any doubt—it is not the Government’s intention that under clause 67 [now 75] that regulations would impose compulsory competitive tendering requirements on commissioners, or for Monitor to have powers to impose such requirements.” (12/7/11, Hansard, c4423)

Lord Howe: “Clinicians will be free to commission services in the way they consider best. We intend to make it clear that commissioners will have a full range of options and that they will be under no legal obligation to create new markets....” (6/3/12, Hansard4)

.... Please can you use whatever powers you have to force some kind of debate of this in parliament, or via appropriate select committee procedures.

Thank you

Yours sincerely

Mike & Christine Campbell

Fiona Campbell – Written Evidence

I am writing to ask if you will invite your committee's members to give special attention to this piece of secondary legislation. It goes much further than the provisions on the face of the Act and appears to contradict assurances given by the Government during the passage of the Act in relation to competitive tendering for NHS services. It therefore deserves to be properly debated by the House of Lords.

Yours sincerely,

Fiona Campbell

Amber Carpenter – Written Evidence

I am very concerned about the implications of the secondary legislation around the revisions to the laws around the NHS.

It looks very much as if the Compulsory Tendering Regulations amount to a de facto privatisation of the NHS - in particular by insisting (para 4, esp. b and c) on the unwarranted and unnecessary prioritization of 'patient choice' over other much more relevant factors in considering bids; and further, by bringing delivery of NHS services under commercial competition law.

Such considerations have not generally proved most efficient or fair in delivery and distribution of health care, and the further practical implications of conforming to them can easily be wider and more significant than might at first appear.

Please would you make sure that this matter is given the utmost careful attention upon consideration by the House of Lords Secondary Legislation Scrutiny Committee?

With best regards,

Amber Carpenter

Maggie Carr – Written Evidence

The NHS is a revered achievement loved by the people of this country and the staff who work within it. Yet the NHS is in grave danger of falling into private hands and we will lose the organisation. We will revert to medicine for the wealthy and privileged sector. Most of the poorer people will not be able to afford decent medical care.

You have the power to halt this decline. Please seek a full debate in both Houses of Parliament on the new regulations going through this month. Without your action, there will not be a full discussion in Parliament and the NHS, as we know it, will be lost. I am extremely worried that this great organisation will be subject to private companies.

Best wishes

Maggie Carr

Carole Carrick – Written Evidence

I believe the people of the united kingdom have the right to decide the future of our NHS...please pass this on to the relevant persons of my desire as UK citizen and voter that I do not want the NHS to go private. Thank you, Carole Carrick

Gina Carrick – Written Evidence

The NHS makes me proud to be British. I am a Nurse who specialises in HIV in Central London.

I feel that the changes being proposed will damage the NHS, just as the competitive market introduced by the Tories in the 80's did.

The NHS should remain publically funded where the PATIENT not BUSINESS or MONEY MAKING is the major concern.

Please vote to prevent these changes being implemented.

SAVE OUR NHS!!

Yours Hopefully,

Gina Carrick

Research Nurse

RM Carter – Written Evidence

Please would whoever is responsible ENSURE that the above-mentioned Act is at the very least debated in the House of Lords. The people of this country are having their National Health Service dismantled without full coverage of what is really happening. The wool is being pulled over their eyes by government spokespersons pronouncing that we would be getting better health care when they knew and know that this is the opposite of the truth. This Act is a catastrophe for the English people and it is not their fault that the finances are in the state they are in. The face of Britain and its reputation in the world is damaged by the destruction of the free at the moment of need health care.

PLEASE, PLEASE, at the very least, ensure that this is debated in the House of Lords.

Thanking you in advance for your co-operation Yours Truly

Mrs, R.M. Carter

Bob Cartwright – Written Evidence

I am raising concerns about the implications of Regulations SI 257 and asking you to recommend they get a full debate in the Lords.

My concerns are (SI 257) are likely to be the final straw for many of our NHS hospitals and clinics, already damaged by too much costly marketisation and cuts.

The new regulations render the content of the CCG Constitution largely irrelevant to the NHS privatisation they are designed to accomplish.

Right now, the government is trying to sneak through secondary legislation (under Section 75 of the Health & Social Care Act) to force virtually every part of the NHS to be opened up to compulsory competitive markets, open to the private sector.

Please ensure a full debate is given.

Thank you in the hope you can respond to my request.

Cllr Bob Cartwright

Derbyshire Dales District Council

Judith Cefalas – Written Evidence

- On 13th February 2013 the Government published the regulations (SI 257) under Section 75 of the Health and Social Care Act 2012

<http://www.legislation.gov.uk/uksi/2013/257/contents/made>

The above represents privatisation of the NHS. I am writing to protest this and any similar cynical attempts to achieve privatisation in the strongest possible terms. A flourishing NHS, free at the point of need, underpins a healthy and potentially prosperous, caring society. Without it we will be reduced to a Third World country where poverty and death are an average experience.

Judith Cefalas

Frances Cetti – Written Evidence

I'm very concerned that on 5 March the Lords' Secondary Legislation Committee will be discussing the regulations of Section 75 of the new NHS Act.

When presenting the Health & Social Care Act ministers reassured us to that NHS services would never be forced onto the market (and into private hands), and the health regulator Monitor would not have the power to force services into the competitive tendering process. It followed that the NHS would not be subject to EU competition law, and therefore there would be no change in its status. But this secondary legislation appears to lay down that the new Clinical Commissioning Groups will not have the power to resist Monitor's demands, and will be less able to introduce quality criteria, safeguarding services, into their contracts, and will have less opportunity to consult local people first.

Since this openly contravenes what ministers told Parliament, can you ensure their Lordships are aware that these regulations merit special attention and debate?

Yours faithfully,

Frances Cetti (Dr.)

Suzanna Challenger – Written Evidence

I am writing to ask that you emphasise the importance of SI 257 when it goes before the Lords Secondary Legislation Scrutiny Committee on 5th March. The regulations contained therein would pave the way for the privatisation of the NHS. As such, it is of crucial importance that such far-reaching changes be scrutinised to the utmost degree before legislation is considered and I urge you to ensure that this scrutiny takes place.

Yours faithfully,

Suzanna Challenger

Bob Chapman – Written Evidence

I notice that the Lords' Secondary Legislation Committee will be discussing the regulations laid by the Government under Section 75 of the New NHS Act 1 at their meeting on 5th March.

Please note the serious nature of these regulations.

The Health & Social Act went through parliament with weak comments that our NHS would be forced into private ownership. Claims were then made that it followed that our NHS would not therefore be subject to EU competition Law, and therefore no irrevocable in its status was being made.

New regulations clearly show that local commissioners, CCG's will have no power to oppose monitors demands, and local people will not be consulted.

There is a direct contravention of what was said in parliament.

Please will you draw this matter to our lordships attention.

Yours faithfully,

Bob Chapman

Robert Cheeseman – Written Evidence

I'd be grateful if you would pass on to the Secondary Legislation Scrutiny Committee my concerns regarding the above Statutory Instrument. Under Section 3 of Part 2 of the instrument, it says:

Procurement: general requirements

3.—(1) When procuring health care services for the purposes of the NHS (including taking a decision referred to in regulation 7(2)), a relevant body must comply with paragraphs (2) to (4).

(2) The relevant body must—

(a) act in a transparent and proportionate way, and

(b) treat providers equally and in a non-discriminatory way, including by not treating a provider, or type of provider, more favourably than any other provider, in particular on the basis of ownership.

(3) The relevant body must procure the services from one or more providers that—

(a) are most capable of delivering the objective referred to in regulation 2 in relation to the services, and

(b) provide best value for money in doing so.

(4) In acting with a view to improving quality and efficiency in the provision of the services the relevant body must consider appropriate means of making such improvements, including through—

(a) the services being provided in an integrated way (including with other health care services, health-related services, or social care services),

(b) enabling providers to compete to provide the services, and

(c) allowing patients a choice of provider of the services.

This in effect forces those people in charge of procuring services, to procure ALL healthcare services in an open and competitive market, an eventuality that the Health Secretary has previously stated would never happen. I have concerns that the consequence of this will, in effect, be the privatisation of the NHS and may result in purchase of services that are not in the best interests of those who will have healthcare provided by them, the consequence of which may be substandard care and at worst, harm. While I acknowledge that the instrument says patients should be given a choice of provider, there is no guarantee that the patients' choice will be the one that is selected, creating the illusion of patient involvement.

I contend further that these measures may not achieve the instrument's intended objective. As stated in Section 2 of Part 2 of the instrument:

Procurement: objective

2. When procuring health care services (a) for the purposes of the NHS (including taking a decision referred to in regulation 7(2)), a relevant body must act with a view to—

- (a) securing the needs of the people who use the services,
- (b) improving the quality of the services, and
- (c) improving efficiency in the provision of the services.

As we have seen recently, market forces have led to examples of DECREASED quality and efficiency rather than INCREASED as intended by the instrument, most notably in the 'horsemeat' scandal. Market forces have pressed companies so tight that the quality of the product has been inferior and led to outright fraud.

In short I do not feel that this instrument is in the interests of the public and that the objective of the instrument may not be met by the terms of its general requirements.

I appreciate that you have a busy schedule, but given that the instrument comes into effect on 1st April 2013, I would be grateful if you give this matter your fullest attention and treat it with the utmost urgency for the sake of the Health of the Nation.

Yours Sincerely,

Dr Robert C Cheeseman, MBChB (Hons)

Deborah Chinn – Written Evidence

I would very much urge you to advise the Lords Secondary Legislation Scrutiny Committee on 5th March to look carefully at the Secondary legislation proposed under Section 75 of the Health and Social Care Act 2012.

The secondary legislation contradicts assurances made by the Health minister about preserving the integrity of the NHS. Compulsory tendering is not in the best interests of NHS patients and will allow for rapid privatisation of the NHS.

I am writing as an NHS consultant who is increasingly concerned about the government's political agenda to undermine the NHS as a public sector institution.

Yours

Deborah Chinn

Mariette Clare – Written Evidence

I understand that the Government is proposing new regulations for CCGs which will come under your scrutiny. The Government and Andrew Lansley in particular gave assurances that the competitive aspect of the new rules for the NHS would be applied judiciously and would allow for local variation and choice. The proposed regulations run entirely contrary to these earlier statements, and impose strict obligations on CCGs to put all services out to tender regardless of appropriateness. I very much hope that you will be able to oppose these clauses which have the appearance of smuggling back into law some of the NHS reorganisation plans which the Government had agreed to remove. I am of the view that this will result in quite disastrous fragmentation for the NHS; but just as importantly I believe that the means by which this is being done is exceedingly bad for democracy

Yours sincerely

Mariette Clare

Tony and Meg Clay – Written Evidence

We understand that your Committee will be scrutinising the Statutory Instrument for the above regulations on 5 March.

We would urge your Committee to look extremely seriously at the Secondary Legislation as it seems to contradict the assurances given by Ministers during the passage of the Bill through Parliament, which gave the view that Compulsory Tendering Regulations would not lead to privatisation of the NHS and that local people would have the final say in who provided their NHS.

We are very concerned that the Regulations require virtually all commissioning done by the NCB and CCG's should be carried out through competitive markets, effectively creating a privatised NHS regardless of the wishes of local people.

Furthermore, we are concerned that Monitor will be tasked with enforcing privatisation of its own volition, or at the request of private companies who lost bids.

Thank you for your attention.

Yours sincerely,

Tony and Meg Clay

David L Cohan – Written Evidence

(see http://www.publications.parliament.uk/pa/ld201212/ldhansrd/text/120306-0001.htm#column_1691)

The section 75 regulations for the Health and Social Care Act that are shortly to be laid before Parliament, will do the exact opposite of Lord Howe’s assurances made to the Lords’ as quoted below

“commissioners would not have to create markets against the interests of patients. Clinicians will be free to commission services in the way they consider best. We intend to make it clear that commissioners will have a full range of options and that they will be under no legal obligation to create new markets, particularly where competition would not be effective in driving high standards and value for patients. As I have already explained, this will be made absolutely clear through secondary legislation and supporting guidance as a result of the Bill. The Bill already creates duties on commissioners to secure continuous improvement in the quality of services, reduce inequalities and promote integrated services. The Government intend to complement these by making it explicit through regulations under Clause 73 of the Bill that commissioning decisions must be in the best interests of patients, those decisions must be transparent and commissioners will be accountable for them. We would expect the NHS Commissioning Board to maintain guidance to support commissioners in these decisions, based on the available evidence and drawing on academic research.”

It seems to me that either Lord Howe appears to have misled Parliament or the government has introduced new policy without debate.

In either case, it is outrageous for these regulations are passed with no further opportunity for Parliamentarians to debate and vote on a fundamental change to the way health services are commissioned and provided in this country.

I therefore urge the Legal Scrutiny Committee to require these regulations to be debated.

Yours faithfully

Dr David L Cohan

Consultant Physician

Northwick Park Hospital

Brian Cole – Written Evidence

A Statutory Instrument in relation to this goes to the Lords Secondary Legislation Scrutiny Committee on March 5th.

May I urge you to suggest the committee look at it in detail. If they do this I am sure they will see that it needs special attention and debate since it appears to lock the entire NHS into the Market and subject it to EU competition law. I do not believe anyone can seriously intend this to happen.

Yours truly

(Dr) Brian Cole.

Heather Cole – Written Evidence

I understand that the Lords' Secondary Legislation Scrutiny Committee will be discussing the regulations laid by the Government under Section 75 of the new NHS Act (1) at their meeting on 5 March.

During the passage of the Health and Social Care Act through the Government constantly reassured us that there was no possibility of NHS services being forced into 'the market', and that the health regulator Monitor would not have powers to enforce such a change. It followed that the NHS would not therefore be subject to EU competition law, and thus no irrevocable change was being made to its status.

However, examination of the new regulations reveals that local commissioners, the new Clinical Commissioning Groups, will have no power to resist Monitor's demands, will be less able to introduce quality criteria, in addition to cost criteria, into the contracts they are required to let, and will have less opportunity to consult local people about their plans.

Since this is in direct contravention of what was said to Parliament, and effectively the NHS will be privatised, please ensure this receives special attention

As a GP who is keen to leave working for the NHS ASAP because of the ridiculous reforms, and knowing many many very good and experienced Drs who are either retiring early or emigrating because of being constantly treated like potential criminals (eg revalidation, only imposed on Drs although more nurses have caused harm , and multiple CRB checks costing the taxpayer millions) and totally unnecessary targets that detract from actual patient care, in favour of form filling

This government needs to sit up and listen and realise the devastating effect it is having on NHS staff and do something before it is too late and there is nobody left to staff the NHS.

Yours faithfully,

Dr Heather Cole

MB BS

MRCGP

Michel Coleman – Written Evidence

The National Health Service (Procurement, Patient Choice and Competition) Regulations 2013, laid under Section 75 of the Health and Social Care Act 2012

The Legislation Scrutiny Committee of the House of Lords will apparently discuss this regulation on 5 March 2013.

Secondary legislation of this type would normally be expected to pass on a resolution without debate on the floor of the house. On this occasion, such debate should occur.

This statutory instrument would lead to fundamental change in the nature of the National Health Service. In debates during the passage of the primary Act during 2011-2012, the Rt Hon Andrew Lansley, then Secretary of State, and Earl Howe assured Parliament that NHS services could not be forced into the market, and that Monitor would not have the power to enforce commissioners to use the market. This regulation overturns those assurances, and it should not be allowed to pass without debate.

Under the regulation, Clinical Commissioning Groups would not have the power to resist Monitor's demands to force NHS services into the market. They will have less power to introduce quality criteria into the contracts they must let, and they will have less opportunity to consult local people. For example, contracts could only be awarded without tender for "technical reasons, or reasons connected with the protection of exclusive rights" or for "reasons of extreme urgency". Monitor could also enforce privatisation, either on its own initiative, or at the request of private companies.

I trust you will see the force of these arguments, and that you will ensure their Lordships are aware that this draft regulation should be openly debated, not passed on a simple resolution without the opportunity for challenge.

Yours faithfully,

Michel Coleman

Professor of Epidemiology and Vital Statistics

Cancer Research UK Cancer Survival Group

Department of Non-Communicable Disease Epidemiology

London School of Hygiene and Tropical Medicine

Rich Colley – Written Evidence

I am writing to express my concern that the above legislation in effect privatises the NHS. This would be in direct contravention of assurances provided by the Government that this was not the Act's purpose and in the absence of any mandate from the people to carry out such an act. I understand that this Statutory Instrument will be going to the Lords' Secondary Legislation Scrutiny Committee on March 5th. It seems of the utmost urgency that this matter is addressed at this meeting, so that the full impact of the legislation may be firmly established.

Thank you for taking the time to read this email.

Best regards

Rich Colley

Rob Colley – Written Evidence

I wish to express my deep concern about the privatisation of the NHS - I understand action is being taken without a proper mandate from the people and I feel this should be properly debated before action is taken.

Best Regards

Rob Colley

Angela Collins – Written Evidence

Dear Clerk of the Secondary Legislation Scrutiny Committee,

I would be very grateful if you would pass on to the Secondary Legislation Scrutiny Committee my concerns regarding the aforementioned regulations which relate to the procurement of NHS services. I am sure these have been brought to your attention by many others and I wish to add my voice to theirs.

This is politically important, in that the regulations will impact every member of the public in England who uses the National Health Service and legally important in that the regulations introduce competition law into the procurement of NHS services for and on behalf of the public.

The Francis Report 2013 makes 290 recommendations (Vol 3 Chapter 27 Table of Recommendations). Her Majesty's Government has acknowledged the significance of the events and of the report; but is yet to respond in full. Nevertheless, it has laid these regulations before the House and it seems highly likely that they may come into force before the Francis' report recommendations have been duly considered and responses proposed.

These regulations conflict with assurances given by ministers during the passage of the Health and Social Care Bill through Parliament that it did not mean the privatisation of the NHS and that local people would have the final say in who provided their NHS services, by creating requirements for virtually all commissioning done by the National Commissioning Board (NCB) and Clinical Commissioning Groups (CCGs) to be carried out through competitive bidding, which will have the effect of forcing through privatisation regardless of the will of local people. Moreover, these regulations contain legal powers for Monitor to enforce such privatisation spontaneously or at the request of private companies that lost bids.

For these reasons, I request that this Statutory Instrument may be drawn to the special attention of the House.

Yours Sincerely,

Angela Collins

Henry P Connelly – Written Evidence

I wish to draw your urgent attention to Statutory Instrument, SI257, which will force through the privatisation of the NHS - without fair debate, and against the assurances made that local people would have the final say about who their NHS services would be provided by.

Please ensure that this Statutory Instrument and that its far-reaching implications are drawn fully to the attention of the Lords Secondary Legislation Scrutiny Committee.

Yours faithfully,

Henry P Connelly

Michael Cook – Written Evidence

Many of us in this area are extremely concerned by the provisions in the secondary legislation under section 75 of the Health and Social Care Act 2012, which are to come before the appropriate committee of the House of Lords shortly. We urge that these provisions should be examined very carefully before irreparable damage is done.

Respectfully

Michael Cook

Mary Cooper – Written Evidence

This Statutory Instrument (SI) will be going to the Lords Secondary Legislation Scrutiny Committee on 5th March; this Committee will then report to the House.

Please emphasise its importance so it will encourage them to look seriously at the Secondary Legislation and then hopefully report it to the House as meriting special attention.

Thanking you for your attention,

Mary Cooper

Richard Cooper – Written Evidence

I am extremely concerned that legislation will be passed shortly which will privatise the NHS. This service is treasured by the people of this country because it means those who cannot afford to pay for healthcare still receive health treatment. The NHS should not become a business. I, along with millions of other ordinary people, will suffer if the democratic process continues to be abused and this legislation, which nobody voted for, is simply "nodded through". Please can you ensure there is a debate in the House of Lords about this.

Yours faithfully

Richard Cooper

Phil Coppard – Written Evidence

I understand that these regulations will come before the Select Committee for scrutiny next Tuesday. I trust that the Committee will examine them against the background of the troubled passage of the Act which they seek to give effect to, the assurances given by Ministers to secure the passage of that legislation, and also how these regulations impact on the original, stated purpose of that legislation.

I am dismayed that Ministers do appear to have lied to Parliament and to the public at large to conceal the true intentions of their restructuring of the NHS. I do not oppose in principle the introduction of private sector providers into, and alongside, the NHS. Carefully handled, and for clinical reasons, that has its place. However, these regulations effectively mandate wholesale competition for all NHS services.

During the lengthy debate over the passage of the Health and Social Care Act I heard no evidence that wholesale competition would improve the things that people really care about in the NHS. But, it turns out, once the Act is now passed into law, that exposing the NHS to wholesale competition is indeed Ministers' ideological position, unsupported by evidence. What people really care about is a commitment to public service, loyalty, high staff morale and high quality of existing facilities in their own community, all things that are likely to be damaged by wholesale competition. Really, do you not think that the public has had enough of the big multinational corporations – SERCO, A4E, Atos – plundering the British State for profits while actual human-scale care fails.

It seems to me that mandating competition for all services is a complete negation of even the original, fundamental, stated purpose of this legislation, which was to place decisions about health provision back in the hands of doctors and clinicians. Doctors were supposed to be being freed to exercise their judgement on what was best for patients. These regulations will mean, rather, that the bureaucracy will take over, and doctors will be fettered by the strictures of competition law which has its own, different logic.

I come from a background of a long career in local government having recently retired after 12 years as Chief Executive of an urban Authority serving a deprived community. During the 1980s and 1990s I witnessed the effects of introducing compulsory competition into local authority services. That legislation did not improve those services. It did cheapen them. It also destroyed staff morale, it completely distorted the shape of actual service provision because of the need to reduce costs to the cheapest level. All intangible qualities of existing services were lost as having no monetary value. And it further depressed wage levels in an already depressed local economy as people competed to save their own jobs. God forbid that this same fate is inflicted on our treasured NHS.

I fervently believe that these regulations represent a disaster for the culture of our NHS and will be profoundly damaging. I urge the Select Committee to do what it can to reject them,

Yours faithfully,

Phil Coppard OBE

Gillian Core – Written Evidence

I am writing to request that you demand a full debate on the NHS Competition regulations (SI 257). As an employee of the NHS I feel very concerned that if these proposals are passed we will, in effect, sanction the privatisation of the NHS. I recently had to use NHS services with a member of my family and felt proud to live in this country which has developed such a wonderful system for health care when needed. I feel very concerned about the consequences for universal healthcare, free at the point of delivery, if many services are provided by private companies which are inevitably influenced by profit. I am astonished that we are risking losing a system that has rightly become the envy of the world.

Please oppose the introduction of these regulations.

Yours sincerely,

Gillian Core MBE

Jonathan Coulter – Written Evidence

I am unhappy with the Regulations currently laid before Parliament implementing Section 75 of the Health and Social Care Act 2012 and write to request that the Scrutiny Committee refers them to a

FULL DISCUSSION IN PARLIAMENT

My objection is that the Statements and Assurances given while the Bill was going through Parliament have not been respected in the detail now published. I am also concerned that the arrangements as published will prevent Clinical Commissioning Groups (CCGs) will find it almost impossible to build relationships and plan for services long-term.

WHY HAS THIS HAPPENED?

Our elected representatives, and also the second chamber should have the opportunity of considering these changes,

Yours faithfully,

Jonathan Coulter

Chris Cowsley – Written Evidence

re:SI 2013/257, The National Health Service (Procurement, Patient Choice and Competition) Regulations 2013, and

Lords Hansard 6Mar2012:Column 1689 et seq with particular reference to the assurances to commissioners promised to your house in Column 1691:

I wish to draw to your Lordships attention my following 4 concerns:

1. These regulations contradict assurances given to your Lordships prior to the bill being enacted in that commissioners will in fact "continue to face risk of legal challenge when they decided not to open services up to competition"

Instead of giving commissioning groups discretion to use competition where they feel it is in their patients' interest, it severely limits single source commissioning to cases where there is no other choice.

2. Far from ensuring that commissioning decisions "must be transparent and commissioners will be accountable for them" there is a serious risk that without additional provisions Commercial Confidentiality will obscure both clinical and financial transparency.

The regulations should include explicit measures to ensure Freedom of Information provisions that apply to bodies spending public money follow that money through third parties.

3. A decision that a contract be awarded to clinical members of a CCG on the basis that they are best placed to provide those services to their patients, especially where it reflects the preference of a body of patients, should not be arbitrarily excluded by Regulation 6-(1).

4. For the purposes of fair competition, the awarding of a contract such as that described in 3. above should be considered on a par with a private company using 'in house' services as part of its own business, rather than as the awarding of a contract.

Thank you.

Chris Cowsley

Brian Cox – Written Evidence

I understand that the Lords Secondary Legislation Scrutiny Committee will be considering the above Statutory Instrument going to the Lords on 5th March. This Section of the Health and Social Care Bill will create the requirement for virtually all commissioning done by the NHS National Commissioning Board (NCB) and Clinical Commissioning Groups (CCGs) to be carried out through competitive markets, which will have the effect of forcing through privatisation regardless of the will of local people or the views of local clinicians.

This is an extremely serious and wide ranging measure that runs counter to the will of the House of Commons and for which the Government has no democratic mandate. It is also in contradiction to the assurances given by Government following widespread public consultation and extensive debate in the both the Commons and the Lords.

I urge your Committee to give detailed consideration of this measure and to considering reporting this statutory instrument to the House as meriting special attention.

Yours sincerely

Best wishes

Brian Cox

David Cox – Written Evidence

I am told that these Regulations will have the effect of requiring virtually all health care commissioning by either the NCB or CCGs to go to competitive tender, and where tenders are won by the public sector also give Monitor powers to enforce privatisation (of their own volition or at the request of private companies making losing bids).

This breaches undertakings (given during the passage of the Bill) that the legislation did not mean privatisation, and that local people will have the final say on who provides their NHS services. With NCB and CCGs also depending increasingly on private sector consultancies for commissioning advice it is difficult to see that a public NHS will still exist.

I would ask that these issues are brought to the attention of the Lords Secondary Legislation Scrutiny Committee.

Professor David Cox OBE

Ex Chair of South Birmingham Primary Care Trust

Bonnie Craven – Written Evidence

I understand the above legislation is due to be considered by you imminently. I am deeply worried about the negative impact it will have on the NHS. I believe it will amount to privatisation of the NHS and will be an additional expense and layer of bureaucracy for hard pressed doctors. Please ensure proper scrutiny of this legislation along with a full debate and vote is complete before this gets any closer to implementation.

Sincerely,

Bonnie Craven

Jillian Creasy – Written Evidence

I am deeply concerned about the proposal to force commissioning groups to put all services out to tender. This is a huge step further than putting selected services out to tender (which in my opinion was already bad enough) and amounts to full scale privatisation of NHS provision. At the very least, it should be properly scrutinised and debated, not slipped through legislation. How can we trust a government which makes important changes to policy in what appears to be an rapid and underhand way?

Please ensure this decision gets the public airing it deserves.

Yours

Dr Jillian Creasy, GP in Sheffield.

Robert Crick – Written Evidence

Please advise their Lordships to scrutinise this regulation closely. It appears to contradict the assurances given at the time when the Bill was going through Parliament. It appears to remove from CCGs any autonomy over the criteria they can apply when commissioning services. Is it necessary to make competitive tendering compulsory? This was not expected by public and Parliament. Thank you.

Robert Crick

Joan Crookes – Written Evidence

I am very concerned at possible developments concerning the NHS and the fact that legislation being considered by the House of Lords may completely reverse what the public has been assured is a safeguarding of the NHS. I fear that we shall see privatisation of all services if all of them, even those which are working efficiently, will be forcibly put out to tender. We already have evidence of what happens to the level of service when profit is the motive. I cite the Dispatches programme which showed how Virgin Care, a company with no experience at all in care provision, reduced services in order to make profit and the patients suffered. I urge you to send these proposals back to the House for further debate.
Yours sincerely, Joan Crookes

Andrea L Crozier – Written Evidence

Please ensure that section 75 of the Health and Social Care Act 2012 is subject to DETAILED scrutiny by the Scrutiny Committee. Statements and assurances given during the passage of the Bill* have not been respected in the detail now published. This is a destructively wilful attempt to privatise the NHS by the back door and **MUST NOT BE ALLOWED TO BECOME LAW**. This government has **NO MANDATE** for the wholesale destruction of the NHS it seems determined to implement!

*v. Hansard, 13.3.12, Mr Andrew Lansley: "There is absolutely nothing in the Bill that promotes or permits the transfer of NHS activities to the private sector." Please also see the detailed recommendations (now gone through on a nod, in spite of massive public protest) for the future of the South London Trust, and, in particular, those relating to the future of Queen Mary's Hospital, Sidcup.

Yours faithfully,

Andrea L. Crozier M.A.

Andrew Cummin – Written Evidence

I have just learnt about these regulations which would appear to run counter to previous assurances we were given. I would be grateful if you would ensure that they are not implemented without change.

Andrew Cummin

Bela Cunha – Written Evidence

Please stop the Secondary Legislation under Section 75 of the National Health Act. It breaks all the promises given regarding privatization. We do not want privarization to be forced upon us. We were promised the final say.

Bela Cunha (Mrs)

Luke Cusick – Written Evidence

I urge that this secondary legislation under Section 75 of the Health & Social Care Act is debated properly in the house of commons. This back door privatisation of the NHS is unacceptable

Regards

Luke Cusick

Anna Daiches – Written Evidence

I would like to express my objection to these regulations as I believe they will have the effect of forcing through privatisation of the NHS regardless of the will of local people. I would stress the importance of careful consideration by the Lords Secondary

Legislation Scrutiny Committee in order for them to report to the house that the legislation merits special attention.

Dr Anna Daiches

Clinical Director

Lancaster University

Celia Davies – Written Evidence

Please bear in mind that the regulations as drafted are causing widespread concern. They need to strengthen and reaffirm points which emerged from the consultation and are contained in the Government's response. They should be amended to

- To clarify that the fundamental aim is and must at all times be to secure best value for patients
- To recognise and state clearly that best it can be in the interests of patients to restrict competition as well at times as to allow it
- To affirm that the role of Monitor is not to promote competition but to anti-competitive behaviour where this can be shown to work against the interests of patients

The regulations should also recognise provisions in CCG constitutions, in the NHS constitution and in the 2012 Act which require consultation with and respect for the wishes of local people. Furthermore, they should do nothing which would interfere with relevant recommendations contained in the Francis Report.

Yours faithfully

Celia Davies

Professor Emerita of Health Care

The Open University

Owen Davies – Written Evidence

I have learned that the Lords' Secondary Legislation Committee will be discussing these regulations laid by the Government under Section 75 of the new NHS Act at their meeting on 5 March.

I believe that these regulations are a betrayal of promises given by the government during the passage of the Health & Social Care Act through Parliament. We were assured that NHS services would not be forced to be put out for "market testing", and that the health regulator Monitor would not have powers to enforce such a move. It followed that the NHS would not therefore be subject to EU competition law, and therefore no irrevocable change in its status was being made.

However, it is now clear that under the new regulations local Clinical Commissioning Groups will be less able to introduce quality criteria, in addition to cost criteria, into the contracts they are required to let, and will have less opportunity to consult local people about their plans. I can only conclude that this is an attempt to force CCGs to privatise important parts of the HNS.

Since this is in direct contravention of what was said to Parliament, I hope you will be able to ensure their Lordships are advised that these regulations merit special attention so they can be changed or withdrawn

Yours faithfully,

Owen Davies

Sue Davies – Written Evidence

Please consider debating the new regulations that are in the process of going through parliament.

We are facing a possible change in the rulings about competition in the NHS. There is now a proposal to make competition mandatory rather than being a question of local choice in the awarding of contracts.

These new regulations will not allow local freedom to decide when to use competition, at all. This would force the CCG's to tender everything rather than making local choices about the best services for their patients.

Please be aware of the legislation that could quietly creep through and make privatisation compulsory.

See

http://www.opendemocracy.net/files/Section%2075%20parliamentary%20briefing%20Feb%202013_0.pdf

For the full argument and recommendations please read this document.

I hope this will lead to a full debate in the House of Lords.

Many thanks,

Sue Davies

Alison Dean – Written Evidence

This has only come to my attention today, so I apologise for the unstructured nature of this communication. I am a Commissioning Manager with a PCT, moving into a CCG shortly.

CCGs come into existence on 1st April. They have a very lean staff structure with no spare personnel capacity. CCGs will not be able to add the competitive tendering of large numbers of services to existing workloads without either ignoring statutory functions or taking extreme risks with patient safety and quality of care. It is time consuming and resource intensive in terms of staff time to carry out an effective and legal tender. The government is aware I am sure of the potential of legal challenges by unsuccessful bidders if a tender is not, open, transparent and fair, following procurement rules. We do not have the staff to manage the existing system at the same time as tendering large parts of it.

If carried through this will result in chaos, endless legal challenges and wasted resources that should instead be used to improve patient care.

Yours sincerely

Alison Dean

J C A Derrick – Written Evidence

J C A Derrick – Written Evidence

This appears to fly in the face of what was promised during the passage of the act so require very detailed consideration.

J C A Derrick FRCS(Ed)

Sada Deshmukh – Written Evidence

I have been informed that The National Health Service (Procurement, Patient Choice and Competition) Regulations 2013 will be considered by the Lords Secondary Legislation Scrutiny Committee on 5th March. I believe you will personally be examining the regulations before the Committee considers them, and I hope you will recommend to the Committee that they in turn recommend that the regulations get a full debate on the floor of the House of Lords.

I am very concerned about the regulations as I believe they break the reassurances offered to parliament and to the local Clinical Commissioning Groups, that the Health and Social Care Act allowed local choice about when to use competition.

These new regulations do not appear to allow local freedom to decide when to use competition, and I think it is therefore vital that the regulations get debated in the House of Lords so that all interested Lords get a chance to consider the full implications of the Regulations, and so that the Government is forced to explain the provisions within them in light of their previous reassurances.

Regards,

Sada Deshmukh,

Ann Marie Dick – Written Evidence

The above Statutory Instrument, which goes to the Lords' Secondary Legislation Scrutiny Committee on 5th March, is of fundamental importance to the future of the National Health Service. I would urge you to critically examine the Secondary Legislation and, and report it to the House as meriting special attention and full debate.

Yours faithfully,

Ann Marie Dick

Roz Dixon – Written Evidence

With regards to the discussion on the 5th March by the Lords' Secondary Legislation Scrutiny Committee of the regulations laid by the Government under Section 75 of the new NHS Act (1).

During the passage of the Health and Social Care Act through Parliament ministers constantly reassured us that there was no possibility of NHS services being forced into 'the market', and that the health regulator Monitor would not have powers to enforce such a change. It followed that the NHS would not therefore be subject to EU competition law, and thus no irrevocable change was being made to its status.

Examination of the new regulations suggests local commissioners, the new Clinical Commissioning Groups, will have no power to resist Monitor's demands, will be less able to introduce quality criteria, in addition to cost criteria, into the contracts they are required to let, and will have less opportunity to consult local people about their plans.

Please could their Lordships be requested to give these regulations special attention.

Yours faithfully,

Roz Dixon

Judith Dodds – Written Evidence

I am very concerned about the wide-ranging implications of SI 257 (statutory regulations related to the Health & Social Care Act) which are due to be scrutinised by your committee.

Given the immense effect this legislation will have on the NHS I feel it should be properly debated by the House of Lords and would be grateful for your consideration of this matter.

Yours faithfully,

Judith Dodds (Dr)

Ann Donlan – Written Evidence

I notice that the Lords' Secondary Legislation Committee will be discussing the regulations laid by the Government under Section 75 of the new NHS Act(I) at their meeting on 5 March

.I should like to draw to your attention the radical nature of these regulations. During the passage of the Health & Social Care Act through Parliament ministers constantly uttered soothing remarks to the effect that there was no possibility of NHS services being forced to be put to the market, and that the health regulator Monitor would not have powers to enforce such a move. It followed that the NHS would not therefore be subject to EU competition law, and therefore no irrevocable change in its status was being made.

However, an examination of the new regulations reveals that local commissioners, the new Clinical Commissioning Groups, will have no power to resist Monitor's demands, will be less able to introduce quality criteria, in addition to cost criteria, into the contracts they are required to let, and will have less opportunity to consult local people about their plans.

Since this is in direct contravention of what was said to Parliament, I hope you will be able to ensure their Lordships know that these regulations merit special attention and amendment to ensure that local people retain the right to be consulted and the will of Parliament is fulfilled.

Yours faithfully,

Ann Donlan

Chris Donnison – Written Evidence

S.75 of the HSCA 2012 contradicts the Government's assurance that the Act would not force GP's to contract services to commercial providers. The Statutory Instrument does just that and will entail privatisation of a substantial part of the NHS by sleight of legislative hand.

It is essential that this issue is addressed at the Lords' Secondary Legislation Scrutiny Committee on March 5th.

Yours sincerely

Chris Donnison

Emma Rodriguez Dos Santos – Written Evidence

Re. Secondary Legislation Scrutiny Committee and discussing regulations laid by Government under Section 75 of the new NHS Act (1) at their meeting on 5 March.

It now becomes clear that assurances given by ministers about not increasing competition between providers, and not increasing private providers' market share, will not be fulfilled by the thrust of the secondary legislation.

Already last year the public involvement in Any Qualified Provider process was left to Local Involvement Networks (LINKs) members (the only patient voice invited) and these volunteers had to be computer literate and had to wade through the various providers' submissions e.g. 87 different providers in total for one adult hearing service contract. These were barely readable and not printable for reasons of 'commercial sensitivity', even though we all signed confidentiality clauses. I.e. it was actually quite unrealistic for most people to have a say and I spent many hours just trying to wrestle some login details out of the IT dept. A volunteer in the community would simply have given up.

For the areas that did not get involved (e.g. 3 out of 5 on Merseyside), there was no public scrutiny at all except for people internal to the NHS who are being 'told' to make the provider pool as wide as possible.

CCGs are similarly being pushed towards tendering out all kinds of services, believing that this is cost-effective and unbiased. The secondary legislation shows that Monitor will have more than the role it was initially defined, in one of the first promises made, i.e. that its powers were relevant to Foundation Trusts financial accountabilities and no powers to impact on locally elected and governed CCGs in their remit to make decisions about services needed for their communities and their local health needs.

The public are already losing faith in the NHS, its workers either soldier on because they have pensions locked up in it, or they are resigning/retiring in droves, leaving massive staff shortages that no organisation will be able to fill without looking to expertise from outside the UK, meaning more training required and more watchdog layers at the taxpayers expense.

It is vital that this secondary legislation is re-thought and restrictions are put in place immediately.

Yours sincerely

Emma Rodriguez Dos Santos.

Peter Dowd – Written Evidence

I would urge careful consideration of these regulations which appear at odds with commitments given by ministers about the the issue of privatisation of health services and local opinion/ wishes about service delivery.

Regards,

Peter Dowd

Nicola Dowling – Written Evidence

I am writing to express my concerns re the above legislation currently making it's way through parliament. I am a working GP and feel very misled by the government regarding their declared intentions re restricting competition within the NHS. The above legislation forcing the CCGs to consider AQP when tendering out services is contrary to reassurances given by Andrew Lansley when he was originally pushing the act through parliament and I believe it will be extremely damaging. It is contrary to the founding principles of the NHS of which and the vast majority of my colleagues are extremely proud.

I implore you to put a halt to this secondary legislation, Yours sincerely, Dr Nicola Dowling

Greg Dring – Written Evidence

The secondary legislation connected with the Health and Social Care Act 2012 undoes all the promises made by government ministers and Lords. It will bring about the privatisation of the NHS, exactly what Lords promised would not happen. Therefore, it should be thoroughly debated in the house. I write in the hope that you can schedule this debate in a way to allow that,

Greg Dring

Greg Dropkin – Written Evidence

Please ensure that the NHS Procurement Regulations SI 257 receive full scrutiny in the Lords, bearing in mind their far-reaching implications and the direct contradiction with assurances given by Ministers during the debate on the Health & Social Care Act that it did not mean the privatisation of the NHS, that local people would have the final say in who provided their NHS.

Further details here:

<http://www.hsj.co.uk/news/policy/government-tendering-rules-will-lead-to-big-shake-up-in-services-lawyers-warn/5055338.article?>

It would be outrageous for these Regulations to be enacted without a full consideration of their consequences for patient care in view of the Francis Report into Mid-Staffordshire.

Yours,

Greg Dropkin

Tim Duckett – Written Evidence

It's my understanding that the Lords' Secondary Legislation Scrutiny Committee is due to discuss the regulations laid by the Government under Section 75 of the new NHS Act (1) at the meeting of 5th March.

I'd like to draw your attention to the direct contradiction between assurances given to Parliament that there would be no possibility of NHS services being made subject to EU competition law; and the wording of the Regulations as they have been tabled. It now appears that Clinical Commissioning Groups will have no ability to prevent exactly that scenario from occurring.

This is a radical change which deserves detailed scrutiny. I hope you will be able to ensure that the Committee is able to give these regulations the attention that they deserve.

Yours faithfully,

Tim Duckett

Richard Easterbrook – Written Evidence

I am writing to express my concern that the NHS will become subject to EU competition law if Secondary Legislation is passed under Section 75 of the Health and Social Care Act.

As this development was not fully discussed at the time of the Act I would be grateful if you would draw their Lordships attention to the importance of this legislation for the future of the NHS, and ask that the matter be debated further in Parliament.

Yours sincerely

Richard Easterbrook

Brian Edwards – Written Evidence

I have been informed that the Lords' Secondary Legislation Committee will be discussing the regulations laid by the Government under Section 75 of the new NHS Act at their meeting on 5th March. The proposed regulations appear to prevent the new Commissioning Groups being able to introduce quality criteria ,in addition to cost criteria into the new contracts. This would effectively lock the NHS into the market and subject to EU competition law. As this directly contradicts what was said in Parliament I would ask that you ensure that their Lordships know that, for this reason, these regulations need special attention.

Yours sincerely,

Brian Edwards

Jane Edwards and Tony Tigwell – Written Evidence

We strongly urge your Committee to scrutinise the new regulations of this Act when it next meets.

Thank you,

Yours faithfully.

Jane Edwards and Tony Tigwell

Janet Egan – Written Evidence

I am very concerned about the proposed SI 257 regulations as I understand that these will compel the NHS to become opened up to marketisation. This seems to me to be contrary to assurances previously given to Parliament that this process would not be compulsory.

For this reason, will you recommend the referral of this issue for a full and proper debate in the Lords?

Please let me know if you would like me to provide you with any more information.

I appreciate your time and help in this matter.

Kind regards

Janet Egan

Duncan Enright – Written Evidence

Surely the requirement for competitive tendering breaks the assurances given by ministers during the passing of the bill that it would be up to local communities to decide who provides NHS services? This amounts to forced privatisation of the NHS, again specifically against the assurances given by ministers. Can you inform the scrutiny process accordingly please?

Duncan Enright

Graham Estop – Written Evidence

I trust that you will discuss the proposed regulation for the Health and Social Care Act 2012 that appears to require almost all services be put out to tender. This is at odds with the original assurances of the Government, and wishes of the general public, that services remain provided by the National Health Service as much as possible, especially when the NHS in-house services are already doing a good job. It should be at the discretion of CCGs, suggestedly, which services should be put out to competitive tender.

Thank you for your consideration of these issues.

Yours faithfully

Graham Estop

(Mental Health worker and NHS patient).

Chris Evans – Written Evidence

May I bring to your attention the matter of the clause SI 257 under Section 75 of the Health & Social Care Act 2012. It causes me great concern.

These new measures will be brought in on 1st April 2013 and go much further towards privatising the NHS than ministers implied when the legislation was going through Parliament.

I implore you to arrange for this matter to be discussed/debated in both Houses of Parliament.

Very few people that I know were aware of the full implications of this aspect of the Act. Everyone I have contacted has reacted with shock and sadness, at its implications as well as the way it has not been aired in public or in Parliament.

We are extremely worried that these regulations will supercede existing arrangements between NHS bodies, and just about all commissioning done by the CCGs, and force them to be done under a market framework under the remit of the EU competition law.

Statements by Andrew Lansley when he was Health Minister led me to believe that this method of commissioning would never be allowed to happen, so I am astonished to find out that the opposite could well be about to occur.

I am very concerned about this and have signed a petition along with thousands of others, who are signing at the rate of about 200 people per hour at this present time, although this will probably increase exponentially as awareness spreads.

Thank you for your time....

Yours faithfully,

Chris Evans

George Farrelly – Written Evidence

I am a GP. I am not a member of a political party. I work hard trying to provide a good service to our patients in Tower Hamlets.

I am grateful when policy makers come up with policies which support us in doing a good, sustainable job.

Unfortunately, in recent years this has not been the case. All too often, the politicians and DH have introduced policies and directives which make our job harder.

The Health and Social Care Bill is a prime example. It is difficult not to feel contempt for the political class and for Parliament. Politicians do not seem to understand how the various parts of the NHS work. They have misled each other to pass this Bill.

The NHS Competition regulations (SI 257) made under the Health & Social Care Act 2012 are a case in point. Assurances were made to CCGs (of which I am a member) that we would not be compelled to put out all services to competitive tendering, and now we see that these regulations contradict these assurances. This is an act of deception.

Please ensure that this is debated fully, preferably in both Houses.

Best wishes,

George Farrelly

Shirley Fawcett – Written Evidence

I am writing to you to draw your urgent attention to the abovementioned Statutory Instrument, SI257, which if made law will have the effect of forcing through privatisation of the NHS - without debate, and in complete opposition to all the promises given and assurances made that local people would have the final say about who their NHS services would be provided by.

I urge you in the strongest possible terms to ensure that this Statutory Instrument is subjected to proper and effective scrutiny and that its far-reaching implications, both for health care and for the democratic process itself, are drawn fully to the attention of the Lords Secondary Legislation Scrutiny Committee.

Should this fail to happen, the whole of our society will be failed in a very serious way.

Yours truly,

Shirley Fawcett

Gene Feder – Written Evidence

Despite assurances from Government ministers that competitive tendering for NHS contracts would not be compulsory for CCGs, this secondary legislation to the NHS and Social Care Act makes this a requirement for CCGs.

Such a substantial change requires parliamentary debate, not automatic adoption.

Thank you for ensuring that happens

Yours sincerely

Gene Feder MD FRCGP

Professor of primary health care

Centre for academic primary care

School of Social and Community Medicine

University of Bristol

Anna Feintuck – Written Evidence

Health care has always been one of the things I am proudest of in the UK.

I am grateful when policy makers come up with policies which support healthcare providers in doing a good, sustainable job.

Unfortunately, in recent years this has not been the case. All too often, the politicians and DH have introduced policies and directives which make their job harder.

The Health and Social Care Bill is a prime example. It is difficult not to feel contempt for the political class and for Parliament. Politicians do not seem to understand how the various parts of the NHS work. They have misled each other to pass this Bill.

The NHS Competition regulations (SI 257) made under the Health & Social Care Act 2012 are a case in point. Assurances were made to CCGs that they would not be compelled to put out all services to competitive tendering, and now we see that these regulations contradict these assurances. This is an act of deception.

Please ensure that this is debated fully, preferably in both Houses.

Best wishes,

Anna Feintuck.

Nick Finer – Written Evidence

I write to urge you to investigate and expose the abuse of parliamentary procedures by the attempt to force CCGs to put all tenders out to private contractors. This was not in the primary legislation and assurances were given by government that there would be no compulsion on CCGs to open tenders to private contractors. There is already evidence of the downgrading of patient care from pilot privatisation for example in the field of diabetes, with the withdrawal of evidence-based and essential patient education services as private providers aim to maximise their profits for their director and shareholders.

Nick Finer

Consultant Endocrinologist and Bariatric Physician

University College London Hospitals

UCLH Centre for Weight Loss, Metabolic and Endocrine Surgery

Alastair Fischer – Written Evidence

With respect to scrutiny of secondary legislation to implement section 75 of the Health and Social Care Act 2012, I wish to make the following observations as a professional economist.

Change is necessary in the NHS, but that does not necessarily mean the market is the best way to do that.

- If there were a free market for health, the NHS would not exist. Even in countries with less state control than the UK, such as the USA, have more non-market mechanisms than market ones. Almost all regulation is aimed at imperfections of the market.
- The burgeoning literature in experimental economics emphasises the enormous roles that trust, cooperation and fairness play in economic matters. All three of these characteristics are non-market concepts, and often hostile towards market solutions.
- Trust in a practitioner, as in all human relationships, is not generally improved by competition.
- Cooperation is necessary in integrated care and has good theoretical and experimental backing (see for examples the games of “chicken” and “prisoners dilemma” in game theory). Cooperation is the antithesis of competition.
- Humans regularly and eagerly put fairness before efficiency.

All three characteristics are ubiquitous in health care.

The market for lemons” which led to a Nobel prize for George Akerlof (backed by good experimental data as well as a solid theoretical base) is perhaps the most important of the arguments in respect of privatisation or marketisation. Here is its pertinent conclusion: in a competitive market where quality is exceeding hard to measure, the introduction of competition will lower costs by causing quality to fall to a minimum. While the new Act requires competition to be on quality, it will be virtually impossible to specify in contracts all the salient aspects of quality, let alone measure or police them. In practice, the cut-corners winners of many if not most of the bidders for contracts are likely to cause falls in the quality of care across the board in the NHS. It will take time to show up in the UK, but the persistence of market-only solutions has led the USA now to have among the lowest life expectancy of all the OECD countries, and it is still going backwards. And the USA spends almost three times as much as the UK per head on healthcare.

It is not only Adam Smith who would turn in his grave at the predicted outcomes of the new Act. A large and respected body of economics would back the concern. We must view marketisation of the NHS with great alarm and a feeling of trepidation.

For these reasons, I ask your Committee not to allow section 75 of the Act to be implemented.

Alastair Fischer PhD

Peter Fisher – Written Evidence

I am advised that the Lord's Secondary Legislation Committee will be considering the regulations laid by the Government under Section 75 of the Health & Social Care Act 2012 at its meeting on 5th March.

It is essential that these regulations are given detailed examination at this stage and procedure chosen that will ensure their Lordships are enabled and encouraged to give them very careful scrutiny in view of their radical nature.

Contrary to reassurances given earlier during the passage of the Bill it is now apparent that Section 75 would if unamended remove any discretion the Clinical Commissioning Groups might have with regard to putting services out to tender and make it inevitable that EU competition law would be fully applicable.

This would make such a major and probably irreversible change in our health care system that it must not be allowed to pass unchallenged.

Yours faithfully

Peter Fisher FRCP

President, NHS Consultants' Association

Michael Fitchett – Written Evidence

I am a GP and was until recently a PEC Chair in Tower Hamlets

I am DEEPLY worried by these regulations. From my experience I can see they will delay high quality care, open the NHS up to legal challenges left right and centre and take away any Commissioning clout GPs and other colleagues develop.

I am on the verge of leaving the NHS because of this and other changes and after 15 years contributions this would be a shame.... but this will be the final straw.

As a GP appraiser I see 20 GPs a a year for a detailed discussion and I can safely say that we are all cracking and struggling to provide the care we would like to our patients. if this regulation is included I am afraid the system will fail and good Doctors will simply walk away.

Yours with grave concern

Dr Michael Fitchett

John Fletcher – Written Evidence

I am extremely concerned at the recently published regulations (SI 257) under section 75 of the Health and Social Care Act 2012 which the House of Lords will be scrutinizing as of 5th March

The government is renegeing on its previous promises not to subject Clinical and other Commissioning Groups to EU competition law which will overirde the choices and preferences of local NHS users in favour of commercial health corporations tendering for NHS contracts. The regulations contain legal powers for Monitor to enforce the privatisation of NHS provision spontaneously or at the request of private companies that lost bids. This will push up costs and lower quality, with patients health and even lives put at risk. This will lead and is designed to lead to the 'Americanization' of the UK Health service in the interests of the private heath providers and multi-nationals and at a time when the extortionate and inefficient nature of the US system has been exposed for all to see.

I urge the Lords Scrutiny Committee to look closely at these regulations that entail the breaking of promises previously made to Parliament and to resist these changes that favour corporate interests, which have been brought in by the backdoor.

Yours,

John Fletcher

Associate Professor

University of Warwick

Jonathan Folb – Written Evidence

I understand that the Lords' Secondary Legislation Scrutiny Committee will be considering the regulations under Section 75 of the new NHS Act, on 5 March.

I am very concerned that these regulations will remove the discretion of the new Clinical Commissioning Groups to decide when it may or may not be in the public interest to award contracts based on a competitive tendering process. During the passage of the Health and Social Care Bill into law, critics were repeatedly reassured that this would not occur. To pass these regulations now, with no opportunity for parliamentary debate, would I believe be an outrageous breach of faith. I would like to request that these important regulations receive the proper attention through a full debate in parliament.

Yours sincerely,

Dr Jonathan Folb

Consultant Microbiologist, Liverpool

James Fox – Written Evidence

I am extremely concerned to learn the second part of the health bill is going through following altercations without further debate in the house. I understand this bill will make it mandatory for all services to be put out on the open market for competitive tender. Previously we have been given assurances by ministers and guidance that suggested competition would be used judiciously and in a restrained manner. This new bill directly contradicts this assurance.

Regards

Dr James Fox

Child Psychiatry SpR, The Royal Free Hospital

Chris Frith – Written Evidence

Please can you consider referring this back to parliament as I consider tendering needs to be only on big projects, say £200,000 plus as this will otherwise cost the NHS millions and delay grass root innovation which we are trying to do in CCGs on a shrinking pittance?

What is the proposed date of implementation of this legislation?

bw

Chris Frith

Herefordshire GP

Julie George – Written Evidence

I am deeply concerned about the Section 75 regulations currently being proposed for the NHS. Despite assurances given by Lord Howe and Andrew Lansley that the Bill would allow co-operation and commissioning based on evidence of best practice, the section 75 regulations for the Health and Social Care Act that are shortly to be laid before Parliament will do the exact opposite. They will require Clinical Commissioning Groups to invite bids from all sectors for each service, regardless of what local patients or clinicians prefer and whether or not it is in the best interest of the local population.

As a public health specialist working with the NHS, I am concerned that Lord Howe appears to have misled Parliament. In any case, the section 75 regulations should not be laid before Parliament with no opportunity for Parliamentarians to debate and vote on this fundamental change to the way health services are commissioned and provided in this country.

I therefore urge the Legal Scrutiny Committee to require these regulations to be debated.

Yours faithfully

Julie George

Barbara Giles – Written Evidence

This secondary legislation is completely contrary to the assurances that were given during the passage of the Health and Social Care Act. As far as competition, privatisation of the NHS and the powers of Monitor are concerned, this legislation is in direct contravention of what was said to parliament. I would like to be assured that the proposals are given careful scrutiny by the committee and debated by parliament.

Yours faithfully

Barbara Giles

Anna Gilmore – Written Evidence

Anna Gilmore – Written Evidence

I am emailing to request that the section 75 regulations are debated and do not bypass the democratic process.

Yours faithfully

Anna Gilmore

Professor of Public Health

Mr & Mrs TR Glen – Written Evidence

With reference to the meeting to be held 5th March 2013, whereby the regulations laid by the Government under Section 75 of the new NHS Act will be discussed.

My wife and I trust that there will be no moves by the health regulator Monitor to put NHS services to the market, and it will not be given the option or power to force same.

We understand that the new Clinical Commissioning Groups' powers have been somewhat diluted, and that their ability to consult and consider what's best for the people will be impaired.

Uppermost in their Lordship's minds must be that the highly regarded NHS has been funded for generations by the taxpayers, many of them survivors of both World Wars: it belongs to them, so Privatisation in any form must be resisted, being tantamount to grand larceny if allowed.

In addition; any adverse conditions imposed would be in contravention of what was said in Parliament and would be a betrayal as well as larceny.

Yours faithfully,

Mr & Mrs T.R.Glen

Colin Godber – Written Evidence

I would like to echo the many requests that you draw Their Lordships attention to the regulations being slipped through in the secondary legislation in relation to the 2012 NHS Act and request them to subject this to full debate and scrutiny.

You will be aware that the original Act met with such opposition that it was halted for a period of "consultation" during which there were repeated assurances that commissioning would be clinically driven through better integration and collaboration across local services.
T

These reassurances reiterated that market mechanisms like tendering might play a part in the commissioning process but would not drive it. Without such reassurance the Act would never have got through. Parts of the secondary legislation relating to the approval role of Monitor appear to contradict this and to have been scheduled in a way that that would encourage their passage through the Committee without debate. Such debate, and public awareness, of it is clearly crucial.

One key lesson of the Francis Report was that the preoccupation of Monitor with the "business model" of the Staffordshire Trust blinded it and those seeking to meet its criteria to the gross clinical failure of the hospital. Passage of this bit of legislation would make a mockery of all the rhetoric that was used to get this Act through and confirm the view that despite its serious efforts the Lords have been hoodwinked by a cabal of Market idea other at Number 10.

I write as a retired clinician of some distinction and know that these views would have been endorsed (albeit better expressed) by my father, one of the original architects of the NHS, who saw the mess that prevailed before it.

Colin Godber

Moira Gommon – Written Evidence

I am writing to you to ask that you will raise with the Lords' Secondary Legislation Scrutiny Committee on 5th March the issue of the regulations identified in the heading above which I believe will result in the privatisation of the NHS and of local people not having the final say in who provides their NHS.

Assurances were given by ministers during the passage of the Bill through Parliament that the Bill did not mean the privatisation of the NHS and that local people would have the final say in who provided their NHS.

However, the regulations just published break these promises by creating requirements for virtually all commissioning done by the National Commissioning Board (NCB) & Clinical Commissioning Groups (CCGs) to be carried out through competitive markets, which will have the effect of forcing through privatisation regardless of the will of local people. The Regulations also contain legal powers for Monitor to enforce the privatisation regardless of the will of local people.

I hope that you will be successful in raising this issue with the Lords Committee.

Thank you

Moira Gommon

Caroline Goyder – Written Evidence

I understand that the Lords' Secondary Legislation Scrutiny Committee will be discussing the regulations laid by the Government under Section 75 of the new NHS Act (1) at their meeting on 5 March.

I should like to draw to your attention the radical nature of these regulations. During the passage of the Health and Social Care Act through Parliament ministers constantly reassured us that there was no possibility of NHS services being forced into 'the market', and that the health regulator Monitor would not have powers to enforce such a change. It followed that the NHS would not therefore be subject to EU competition law, and thus no irrevocable change was being made to its status.

However, examination of the new regulations reveals that local commissioners, the new Clinical Commissioning Groups, will have no power to resist Monitor's demands, will be less able to introduce quality criteria, in addition to cost criteria, into the contracts they are required to let, and will have less opportunity to consult local people about their plans. Since this is in direct contravention of what was said to Parliament, I hope you will be able to ensure their Lordships know that these regulations merit special attention and are not simply implemented without contradiction and change.

Yours faithfully,

Caroline Goyder

Eleanor Grant – Written Evidence

I have worked in the NHS for nearly 30 years (I am a clinical psychologist) and I care deeply about what is happening to it.

I am writing to ask you to demand a full debate and vote on the NHS Competition regulations (SI 257). These regulations will further damage the NHS by insisting on market competition regardless of local opinion. This is further privatising the NHS, contrary to all previous assurances by the coalition.

Please demand a debate and vote so that they do not become law without scrutiny and debate.

<http://www.sochealth.co.uk/wp-content/uploads/2013/02/konp-section-75-parliamentary-briefing-february-2013-si257.pdf>

Thank you.

Eleanor Grant

Clinical Psychologist

Norfolk and Suffolk NHS Foundation Trust

Ray Gray – Written Evidence

I am writing to you on behalf of the North Yorkshire & Humberside members of UNISON to raise our urgent concerns about Statutory Instrument 257: the National Health Service (Procurement, Patient Choice and Competition) Regulations 2013.

We understand that the Secondary Legislation Scrutiny Committee will be discussing these regulations, laid by the government under Section 75 of the Health and Social Care Act, at their meeting on 5 March.

We believe that these regulations need to be reconsidered due to the significant disparity between the public statements of ministers and the content of the regulations.

During the passage of the Health and Social Care Act – through both Houses of Parliament – ministers repeatedly offered reassurances that the Act would permit sufficient flexibility for the new clinical commissioning groups to decide themselves which services to tender. For example, in the Commons, Simon Burns MP stated on 12 July 2011 that

“...it will be for commissioners to decide which services to tender...to avoid any doubt—it is not the Government’s intention that under clause 67 [now 75] that regulations would impose compulsory competitive tendering requirements on commissioners, or for Monitor to have powers to impose such requirements.”

And in the Lords, Earl Howe stated on 6 March 2012 that

“clinicians will be free to commission services in the way they consider best. We intend to make it clear that commissioners will have a full range of options and that they will be under no legal obligation to create new markets.”

In contrast however, proposed regulations 5, 10 and 12 bind the hands of commissioners, and regulations 13-17 confirm the strength of Monitor’s role in enforcing these rules.

Regulation 5 is particularly radical: effectively, it only permits a contract to be awarded without competition in the event of an “emergency”. This is a much narrower restriction than suggested in the Parliamentary debates and proposed in the Department of Health’s Best Value for Patients public consultation that led directly to these regulations.

In addition, UNISON has had engagement through the Staff Passport Group of the NHS Social Partnership Forum with both the Department of Health and Monitor, and these regulations also seem to run contrary to these discussions on how the Act will be implemented.

In summary, there is a contradiction between the intentions of the Act as expressed by ministers and the consequences of the regulations.

The regulations therefore need to be reconsidered and rewritten. UNISON calls on the Committee to ensure that there is a full and proper debate to allow this to happen.

Yours, Ray Gray

Nina Gray-Lyons – Written Evidence

Statements and assurances made whilst the Health and Social Act was going through Parliament have not been respected in the detail now published re. Section 75. Our MPs and members of the House of Lords must surely have an opportunity of examining matters now and ask why this change has occurred.

Nina Gray-Lyons

Jon Griffith – Written Evidence

Competitive tendering

It looks as if – possibly through a drafting error – an obligation is being proposed on CCGs to put all services out to competitive tendering, rather than permission to do so, should the CCG wish.

Labour members of the Committee will probably vote against this, in line with existing party policy.

The position of Liberal Democrat and Conservative members of the Committee is less clear – I'm wondering if they understand what they would be voting for?

It will be unwelcome among many CCGs, who wish to retain the right to choose between competitive tendering in some cases, and more locally sensitive strategies in others.

The CCGs are becoming daily more influential in their constituencies, so a vote in favour of this measure, in turn, is likely to have some consequences for both Coalition parties in electoral terms.

Best wishes

Jon Griffith

Richard Grimes – Written Evidence

I would be very grateful if you would pass onto the Secondary Legislation Scrutiny Committee my concerns about the recently published regulations relating to sections 75, 76, 77 and 304(9) and (10) of the Health and Social Care Act 2012.

I am a twice elected Foundation Trust governor and a patient representative on the Patient Forum of my local Clinical Commissioning Group, I do not represent either group, and I am writing this letter in a personal capacity.

However, as a patient representative I hope that you recognise that I have regular contact with NHS patients and that the concerns I express are typical of the majority of the patients I meet.

Throughout the passage of the Health and Social Care Act through parliament, patients were reassured that the bill would not privatise NHS services and that there would not be competition for competition's sake. It is very clear that the SI 257 regulations have been written with the intention of introducing a full scale market in the NHS with competition as the central aim. This was not mentioned in either of the Coalition parties' manifestos, and there were multiple reassurances in Parliament from government ministers that the Act would not bring in a full scale market.

However, the SI 257 regulations say that **every** NHS service will have to be openly tendered. They say that if a service is not tendered then providers will be able to take a complaint to Monitor (the sector regulator) which will have the power to change locally determined commissioning intentions.

The regulations also says that Monitor will able to initiate an investigation without a complaint. This means that local Clinical Commissioning Groups will have no power at all to determine who will provide local NHS services.

Further, as a Foundation Trust governor I am aware that my trust provides many services which are inter-connected, and the loss of one service for competition's sake could make other services unsustainable. The local Clinical Commissioning Group is aware of this and commissions accordingly for the benefit of patients, the SI 257 regulations will make it very difficult for the Clinical Commissioning Group to do this.

It is very clear to me that these regulations are not in the interests of patients and should be withdrawn.

The National Health Service (Procurement, Patient Choice and Competition) Regulations 2013 go against all the reassurances given by ministers in Parliament during the passage of the Health and Social Care Act. I hope you will agree with me that these regulations are so far-ranging and will have such an effect on the public that they should not be brought about through secondary legislation, but should be subject to full Parliamentary scrutiny and amendment by elected Parliamentarians.

Dr Richard Grimes

Robert Grundy – Written Evidence

Dear Sir,

I am very concerned that the regulations being enacted relating to competition in Commissioning Health Services fly in the face of the assurances from Mr Landsley when the Nhs Bill was being debated.

Please can these regulations be subjected to the closest examination and can they be debated again by the House of Lords.

Yours sincerely,

Dr Robert Grundy

R F Gunstone – Written Evidence

The Lords' Secondary Legislation Committee is due to discuss the regulations laid by the Government under Section 75 of the new NHS Act .Amongst other things these regulations state that commissioners “In acting with a view to improving quality and efficiency in the provision of the services the relevant body must consider appropriate means of making such improvements, including through—

- (a) the services being provided in an integrated way (including with other health care services, health-related services, or social care services),
- (b) enabling providers to compete to provide the services, and
- c) allowing patients a choice of provider of the services

I am concerned about this promotion of competition. During the passage of the Health & Social Care Act through Parliament ministers offered assurance that there was no possibility of NHS services being forced to be put to the market, and compete, and that the health regulator Monitor would not have powers to enforce such a move. Therefore the NHS would not be subject to EU competition law. The new regulation reverses this assurance.

While some believe competition will improve patient care many of us know cooperation in the struggle against disease is necessary.

The “competition” always present in a health service is the competing needs of various patients.... which patient is in the greatest danger and for which patient does the treatment available have the best chance of success? These questions can surely be answered only by the clinical team with the patient . In the new Bill the duty of Monitor was among, other things, to promote competition between providers in the hope that providers, aiming for better reward to their Trust, will be “incentivised” to work well. I hope it does not sound too pious to claim that there is a huge incentive in the work itself and in patient contact.

I do hope the House of Lords will discuss this matter in detail remembering especially the hazards of competing commercial providers whose first duty is to their shareholders. I welcome the emphasis on integration in paragraph a)

Yours faithfully

R F Gunstone

Alan Gwynn – Written Evidence

No doubt you will get a few emails re the issue of the Secondary legislation under Section 75 of the Health and Social Care Act 2012 as the GP blogosphere has been pretty active.

I can't say that I fully understand the legal issues – however any enforcement of the use of competitive tendering and the private sector for NHS service provision completely goes against the promises that were made by the Govt in the 'pause'. I guess that there really might be an agenda to privatise tranches of the NHS after all without actually telling anyone. Not only is this disingenuous I genuinely believe that we won't realise the increased efficiency that the NHS needs to service a future of increased demand.

Dr Alan Gwynn

GP Cirencester

Patricia Hall – Written Evidence

Given serious concerns regarding the impact of this secondary legislation on the NHS, specifically, it's privatisation, I urge you to consider reporting this to the House as meriting special attention.

Yours faithfully,

Dr Patricia Hall

Senior Clinical Psychologist

Sheffield Children's Hospital

Jim Hardy – Written Evidence

Dear Members,

I write as a practising GP.

I understand that the Secondary Legislation Scrutiny Committee will shortly be addressing proposed changes to the Act that go against the previous assurances given by Andrew Lansley, Earl Howe and others that Clinical Commissioning Groups would not be obliged to place every service under competitive tender.

There are already a number of examples of the folly of adopting this approach (the scandal of Out Of Hours GP services and the disastrous tendering of some general practices which have subsequently gone bust).

I would urge you to ensure that CCGs can continue to use discretion and therefore opt for proven Quality, rather than always being forced to choose cheap short term destructive options in the name of competition.

Dr Jim Hardy

Peter Harrison – Written Evidence

I am writing to express my concern about the implications of this secondary legislation concerning the NHS. I am very concerned that the regulations in Section 75 of the Act prevent Clinical Commissioning Groups from awarding contracts without opening them up for competitive tender on a market basis. This contradicts the assurances Ministers such as Andrew Lansley made that this would not be the case, when the NHS and Health Care was going through Parliament.

I would like to request that the Lords' Secondary Legislation Scrutiny Committee send the regulations for reconsideration when they discuss them next Tuesday (5th March).

your sincerely

Peter Harrison

Nick Hawkes – Written Evidence

I understand that the Lords' Secondary Legislation Scrutiny Committee will be discussing the regulations laid by the Government under Section 75 of the new NHS Act (1) at their meeting on 5 March.

The proposed regulations will have incredibly far-reaching consequences. They are not only outwith primary legislation, but are in contradiction to statements made in support of the primary legislation. It is not appropriate in a democracy for law to be made in this way via secondary legislation. They ought to have obtained a mandate. I am essentially a public servant, and would support any NHS reform based on the public's consent.

Please can you let their Lordships know about this so that they might pay special attention in this case to use their powers and responsibilities with democracy in mind.

Yours sincerely,

Dr Nick Hawkes

Mary Hawking – Written Evidence

I'm a GP – and a user of NHS services.

This SI mandates competitive commercial tenders for – apparently - all services commissioned by the NHS whether by NHS CB or CCGs.

This would appear to be contrary to assurances previously given by HMG, and also to the outcomes of the consultation last year

<https://www.wp.dh.gov.uk/publications/files/2013/02/securing-the-best-value-for-patients-consultation-response.pdf>

In the circumstances - and seeing the inevitable effect on the ability of CCGs to commission services without incurring very high transitional action costs (the bane of the US health services) could I respectfully suggest that this SI should be subjected to full parliamentary scrutiny, in both houses, and time be allocated to this?

Mary Hawking

Ellen Hawley – Written Evidence

I am deeply concerned about the proposed regulations governing competition in healthcare commissioning, which, if allowed to become operative, will contradict every assurance that was given about the Health and Social Care Bill not forcing privatisation when the bill was still under consideration. I hope you will ensure that they get a full debate in the Lords.

Ellen Hawley

Help the Hospices – Written Evidence

I am writing with regards to the Committee's forthcoming consideration of the National Health Service (Procurement, Patient Choice and Competition) Regulations 2013 laid by the Government under Section 75 of the Health and Social Care Act 2012.

Help the Hospices is the national membership body for hospice care, representing 218 local charitable hospices around the UK. For many years hospices have worked as part of a plural healthcare environment and in partnership with the NHS and other providers have delivered high quality care to patients. However, we are concerned that these regulations could create requirements for virtually all commissioning done by the NHS Commissioning Board and Clinical Commissioning Groups (CCGs) to be carried out through competitive markets. For example:

- Regulation 5 suggests that awarding a contract without competition can effectively only be done for technical reasons or for reasons of 'extreme urgency' – a much narrower restriction than previously suggested.
- Regulations 10 (2) presumes that competitive tendering is always appropriate. For example, it suggests that the NHS Commissioning Board or a Clinical Commissioning Group would not be able to make a new arrangement with a hospice, as opposed to putting out the services to tender, as this would be regarded as anti-competitive behaviour. This may not always be effective or achieve the desired outcome.

As currently drafted, we fear that the regulations could make it increasingly difficult for smaller providers, such as hospices, to engage with the NHS on a fair and equitable basis.

Hospice care is perhaps the single most significant area of healthcare in which charities are the major provider of care rather than the NHS. Local hospices are generally not commissioned in the same way as other NHS funded care. They frequently receive a contribution from the NHS towards the costs of the care that they provide to the local community, but that contribution is only very rarely linked to particular services or volumes. The 'price' they are paid by the NHS for these services is in no way cost reflective. On average, hospices fund over 60% of the care they provide from charitable sources.

Charities have accountabilities that are different to the NHS. In particular, the primary obligation of any charity is the deliver its charitable objectives. Charitable hospices generate significant amounts of social capital, engaging communities in a number of different ways – be that through fundraising, volunteering or the wider sense of the hospice belonging to the community. In a more competitive environment, intelligent commissioning should also give consideration to social value, as required by the Public Services (Social Value) Act 2013, which is currently not referenced within the Regulations.

I enclose our responses to Monitor's consultation on guidance for commissioners on commissioner requested services and the Monitor Fair Playing Field consultation, which expand on these issues in more detail.

The regulations also appear to contradict assurances given by ministers during the passage of the Bill through Parliament. For example:

Help the Hospices – Written Evidence

In a House of Lords debate on 6 March 2012, Lord Howe said *“Clinicians will be free to commission services in the way they consider best. We intend to make it clear that commissioners will have a full range of options and that they will be under no legal obligation to create new markets... this will be made absolutely clear through secondary legislation and supporting guidance as a result of the Bill”*.

In a letter to the Clinical Commissioning Groups on 12 February 2012, Andrew Lansley said that *“It is a fundamental principle of the Bill that you as commissioners, not the Secretary of State and not regulators – should decide when and how competition should be used to serve your patients interests”*.

I would be grateful if you could bring our concerns to the attention of their Lordships to aid their consideration of these important regulations.

Kyron Hodgetts – Written Evidence

This is contrary to the promises laid out by the then minister and other senior officials that commissioners won't be forced to do anything they don't want to.

I beleive this is a betrayal of parliament and a betrayal of the population I urge you to force a vote of SI257

Kind regards

Kyron Hodgetts

Keith Hodgson – Written Evidence

I am extremely concerned over the implications of proposed secondary legislation under Section 75 of the Health and Social Care Act 2012 specifically regulations (SI257).

Despite repeated assurances during the passage of the Bill through parliament that this Bill would not lead to the privatisation of the NHS, and that local commissioning groups would be free to determine how to let contracts, the effect of these proposed regulations will be to force the national commissioning board and local commissioning groups to undertake widespread compulsory competitive tendering.

I do not believe there is a democratic mandate for this and I do not believe the general public wish to see the wholesale privatisation of our NHS.

I would request that you draw my concerns to the appropriate authorities in parliament.

Yours faithfully,

Keith Hodgson M.Sc.

Robert and Sarah Holland

These regulations should be withdrawn for 4 reasons:-

1. They are contrary to promises and statements by Government Ministers during passage of the Bill through Parliament. They therefore are entirely against the democratic process.

2. They make it impossible for GPs in Clinical Commissioning Groups to carry out their role in the interests of patients. They should be free to choose when it is in patients' interests to put contracts out to competitive tender.

3. The immensely complex process of putting tenders out for competition would be wasteful of resources when patients' wishes in this area are clear. We all wish that Airedale hospital be the main provider of Hospital services for the next few years. The high standard of services there has been applauded by local MPs and Minister Mr Hunt in the local Press.

Our GPs have good relationships with clinical specialists there. The hospital is far more accessible to the largely rural Craven and Ripon Areas than other possible competitors.

We are not seeking for one contract with Airedale only, but they should be the main service provider as at present.

4. Patients from the CCG area have discussed the situation with our local CCG for this area on several occasions and via various channels. The summary is, we do not wish any change imposed on local GP commissioners by Central Government. They are not in a position to dictate what is in our interests.

Robert and Sarah Holland

Terry Holland – Written Evidence

I am writing to express my grave concern about the above legislation.

Despite there being repeated assurances from the government that the NHS will not be privatised it seems that an attempt is being made to push through the 'back door' without ANY mandate from the people to do this.

I find this frankly appalling as I'm sure most of the population would if it was common knowledge. I hope this email is acted upon and the legislation is halted and correctly debated as is fit in a democratic society.

Yours sincerely

Terry Holland

Pat Holmes – Written Evidence

I refer to the above legislation which, as you know, will be discussed by the Lords Secondary Legislation Committee at their meeting on March 5th 2013 specifically discussing the regulation laid by the government under Section 75 Of the new NHS Act. I

During the passage of the Health and Social Care Act through Parliament, ministers were at great pains to reassure that there was no possibility of NHS services being forced to be put to the market, and that the health regulator, Monitor, would not have powers to enforce such a move.

Lord Howe, in the Lords, said "Clinicians will be free to commission services in the way they consider best.....they will be under no legal obligation to create new markets.....this will be made absolutely clear through secondary legislation"

The then Secretary of State, Andrew Lansley, wrote to all CCG's, " I know many of you may have read that you will be forced to fragment services or to put services out to tender. This is absolutely not the case....The health regulator Monitor would not have any power to force you to...you will have the freedom to work with whoever you want to in commissioning services....you will be free from top-down interference"

It followed that the NHS would not therefore be subject to EU competition law and therefore no irrevocable change in its status was being made.

However, an examination of the new regulations reveals local commissioners, the new Clinical Commissioning groups will have no power to resist Monitor's demands, will be less able to introduce quality criteria, in addition to cost criteria, into contracts they are required to let, and will have less opportunity to consult local people about their plans.

This is directly the opposite of what was said to Parliament.

Can I urge you please, to ensure their Lordships are aware these regulations require particular attention in order to safeguard the integrity of the regulations and the word of Ministers to Parliament and the Lords.

Yours faithfully

Pat Holmes

Alice Hood – Written Evidence

I am writing as the senior policy officer responsible for public services at the Trades Union Congress (TUC). This email concerns the National Health Service (Procurement, Patient Choice & Competition) Regulations 2013, SI257, published under Section 75 of the Health and Social Care Act 2012 on 13 February 2013.

Given the nature and seriousness of these regulations and the way in which they contradict statements made by Government ministers during the passage of the Act, it is essential that they are subject to a full debate and vote in Parliament. I am writing to ask you to draw these concerns to the attention of members of the Secondary Legislation Scrutiny Committee and the wider House.

The regulations appear to directly contradict assurances made by Government ministers during the passage of the Act that the legislation would not mean the introduction of compulsory competitive markets in the NHS and that local people and commissioners would have the final say in who provided their NHS.

For instance, Lord Howe said in March 2012: “Clinicians will be free to commission services in the way they consider best. We intend to make it clear that commissioners will have a full range of options and that they will be under no legal obligation to create new markets....” (6/3/12, Hansard)

The regulations undermine these commitments by creating requirements for virtually all commissioning by the National Commissioning Board (NCB) and Clinical Commissioning Groups (CCGs) to be carried out through competitive markets. This could have the effect of forcing through privatisation regardless of the will of local people or the CCGs’ assessment of local needs. If CCGs do not comply, the regulations enable Monitor to enforce the privatisation either under their own initiative or at the request of private companies that lost bids – again, undermining commitments made by Ministers during the passage of the Act.

The regulations could also undermine the ability to implement a number of key recommendations of the Francis report into the failings at Mid Staffordshire NHS Trust.

I would be grateful if you could bring these concerns to the attention of the members of the committee.

With kind regards

Alice Hood

Senior Policy Officer, Organisation and Services Dept, TUC

Bryony Hopkinshaw – Written Evidence

I understand that on the 5th March, the Lords' Secondary Legislation Committee will discuss the regulations laid by the Government under Section 75 of the new NHS Act. As a final year medical student about to start working in the NHS, I am extremely concerned about the consequences of passing the regulations in question.

I understand that clinical commissioning groups will have their powers restricted by Monitor, will be limited in their ability to consider contracts on the basis of quality rather than cost, and will have decreased opportunity to consult local people. This is in direct opposition to what was promised during debate on the Health & Social Care Act; ministers made assurances that NHS services would not be forced to be put to market, nor be subject to EU competition law.

On the basis of these concerns, please ensure that their Lordships give particular scrutiny to these regulations.

Yours faithfully,

Bryony Hopkinshaw

Nick Hopkinson – Written Evidence

I am writing to express concern about the regulations (SI 257) under Section 75 of the Health and Social Care Act 2012 that have been introduced. In contrast to assurances given to parliament that local clinical commissioning groups would be able to choose whether to introduce competitive tendering for services these regulations will instead render this compulsory for almost all activities of the English NHS.

I would therefore ask you to direct the house to give them particular consideration to ensure that they are properly debated.

Dr Nick Hopkinson

MA PhD FRCP

Senior Lecturer and Hon Consultant Chest Physician

National Heart and Lung Institute

Royal Brompton Hospital

Julie Hoskin – Written Evidence

I am writing to express my concern at the changes to the promises made to NHS staff, patients and the general population of the UK. The government insisted it was not privatisation through the back door and those cynics among us never believed them. How disappointing to be proved right!

Please can this matter be awarded the appropriate level of scrutiny and not merely rubber stamped through, sincerely, Julie Hoskin (RGN/RM/IP)

William House – Written Evidence

I am writing to express my serious concern about the secondary legislation under Section 75 of the Health and Social Care Act 2012 due to be considered TODAY.

I am advised that this set of regulations will significantly reduce the freedom of Clinical Commissioning Groups and of the Commissioning Board to commission services favoured by local groups and the local population through imposing competitive tendering under EU rules. This is a very serious step that further erodes 'localism' and is likely to have the effect of progressive transfer of NHS services to commercial providers even if this is against the will of local commissioners and the local population. I believe that government does not have a popular mandate for doing this and these additional regulations are contrary to assurances given by Ministers on numerous occasions. It is therefore vital that this matter is given serious consideration by parliament with debating time commensurate to its high importance to the people. Otherwise, this will be seen as privatisation of the NHS via the 'back door'.

With best wishes,

Dr William House

GP and previously GP commissioner

Bath and North East Somerset

Alexandra Howlett – Written Evidence

We understand that you provide the last chance for ensuring that the NHS Competition regulations (SI 257) made under the Health & Social Care Act 2012, are subject to a full debate, and vote, on the floor of both Houses of Parliament.

We are very concerned that these regulations are likely to be the final straw for many of our NHS hospitals and clinics that have already been damaged by too much costly marketisation and cuts.

Please could you use your powers to bring this about.

Yours sincerely,

Alexandra Howlett

Bob Hudson – Written Evidence

I'd be grateful if you would pass on to the Secondary Legislation Scrutiny Committee my concerns regarding the above Statutory Instrument. Under Section 3 of Part 2 of the instrument, it says:

Procurement: general requirements

3.—(1) When procuring health care services for the purposes of the NHS (including taking a decision referred to in regulation 7(2)), a relevant body must comply with paragraphs (2) to (4).

(2) The relevant body must—

(a) act in a transparent and proportionate way, and

(b) treat providers equally and in a non-discriminatory way, including by not treating a provider, or type of provider, more favourably than any other provider, in particular on the basis of ownership.

(3) The relevant body must procure the services from one or more providers that—

(a) are most capable of delivering the objective referred to in regulation 2 in relation to the services, and

(b) provide best value for money in doing so.

(4) In acting with a view to improving quality and efficiency in the provision of the services the relevant body must consider appropriate means of making such improvements, including through—

(a) the services being provided in an integrated way (including with other health care services, health-related services, or social care services),

(b) enabling providers to compete to provide the services, and

(c) allowing patients a choice of provider of the services.

This in effect forces those people in charge of procuring services, to procure ALL healthcare services in an open and competitive market, an eventuality that the Health Secretary has previously stated would never happen. I have concerns that the consequence of this will, in effect, be the privatisation of the NHS and may result in purchase of services that are not in the best interests of those who will have healthcare provided by them, the consequence of which may be substandard care and at worst, harm. While I acknowledge that the instrument says patients should be given a choice of provider, there is no guarantee that the patients' choice will be the one that is selected, creating the illusion of patient involvement.

Bob Hudson – Written Evidence

I contend further that these measures may not achieve the instrument's intended objective. As stated in Section 2 of Part 2 of the instrument:

Procurement: objective

2. When procuring health care services (a) for the purposes of the NHS (including taking a decision referred to in regulation 7(2)), a relevant body must act with a view to—

- (a) securing the needs of the people who use the services,
- (b) improving the quality of the services, and
- (c) improving efficiency in the provision of the services.

As we have seen recently, market forces have led to examples of DECREASED quality and efficiency rather than INCREASED as intended by the instrument, most notably in the 'horsemeat' scandal. Market forces have pressed companies so tight that the quality of the product has been inferior and led to outright fraud.

In short I do not feel that this instrument is in the interests of the public and that the objective of the instrument may not be met by the terms of its general requirements.

I appreciate that you have a busy schedule, but given that the instrument comes into effect on 1st April 2013, I would be grateful if you give this matter your fullest attention and treat it with the utmost urgency for the sake of the Health of the Nation.

Yours Sincerely,

BOB HUDSON VERY CONCERNED CITIZEN

Dave Hughes – Written Evidence

Dave Hughes – Written Evidence

Time to stop private sector take over of our NHS no one has asked for this policy it is tory party dogma gone mad

STOP IT NOW

Thanks

Dave Hughes

Val Hudson – Written Evidence

REF: Statutory Instrument 257 - The National Health Service (Procurement, Patient Choice and

Competition) Regulations 2013 - Made 11th February 2013

I'd be grateful if you would pass on to the Secondary Legislation Scrutiny Committee my concerns regarding the above Statutory Instrument. Under Section 3 of Part 2 of the instrument, it says:

Procurement: general requirements

3.—(1) When procuring health care services for the purposes of the NHS (including taking a decision referred to in regulation 7(2)), a relevant body must comply with paragraphs (2) to (4).

(2) The relevant body must—

(a) act in a transparent and proportionate way, and

(b) treat providers equally and in a non-discriminatory way, including by not treating a provider, or type of provider, more favourably than any other provider, in particular on the basis of ownership.

(3) The relevant body must procure the services from one or more providers that—

(a) are most capable of delivering the objective referred to in regulation 2 in relation to the services, and

(b) provide best value for money in doing so.

(4) In acting with a view to improving quality and efficiency in the provision of the services the relevant body must consider appropriate means of making such improvements, including through—

(a) the services being provided in an integrated way (including with other health care services, health-related services, or social care services),

(b) enabling providers to compete to provide the services, and

(c) allowing patients a choice of provider of the services.

This in effect forces those people in charge of procuring services, to procure ALL healthcare services in an open and competitive market, an eventuality that the Health Secretary has previously stated would never happen. I have concerns that the consequence of this will, in

effect, be the privatisation of the NHS and may result in purchase of services that are not in the best interests of those who will have healthcare provided by them, the consequence of which may be substandard care and at worst, harm. While I acknowledge that the instrument says patients should be given a choice of provider, there is no guarantee that the patients' choice will be the one that is selected, creating the illusion of patient involvement.

I contend further that these measures may not achieve the instrument's intended objective. As stated in Section 2 of Part 2 of the instrument:

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2. When procuring health care services (a) for the purposes of the NHS (including taking a decision referred to in regulation 7(2)), a relevant body must act with a view to—

- (a) securing the needs of the people who use the services,
- (b) improving the quality of the services, and
- (c) improving efficiency in the provision of the services.

As we have seen recently, market forces have led to examples of DECREASED quality and efficiency rather than INCREASED as intended by the instrument, most notably in the 'horsemeat' scandal. Market forces have pressed companies so tight that the quality of the product has been inferior and led to outright fraud.

In short I do not feel that this instrument is in the interests of the public and that the objective of the instrument may not be met by the terms of its general requirements.

I appreciate that you have a busy schedule, but given that the instrument comes into effect on 1st April 2013, I would be grateful if you give this matter your fullest attention and treat it with the utmost urgency for the sake of the Health of the Nation.

Yours Sincerely,

VAL HUDSON VERY CONCERNED CITIZEN

Joanna Hughes – Written Evidence

Please please scrutinise these regulations and refer them to the house. They breach the assurances which were offered to parliament and to Clinical Commissioning Groups about local freedoms not to expose the NHS to full competition.

Yours faithfully, Joanna Hughes

Michelle Hughes – Written Evidence

I am urging you to emphasise the importance of the Statutory Instruments to the Secondary Legislation Scrutiny Committee and encourage them to look seriously at the Secondary Legislation and report it to the House as meriting special attention and not send it through on the nod.

An examination of the new regulations revealed that local commissioners, the new Clinical Commissioning Groups, will have no power to resist Monitor's demands, will be less able to introduce quality criteria, in addition to cost criteria, into the contracts they are required to let, and will have less opportunity to consult local people about their plans.

It is so important to keep the NHS accessible and available to all regardless of wealth or postcode.

Yours faithfully

Michelle Hughes

Julie Parton-Hurd – Written Evidence

I understand that the Lords' Secondary Legislation Scrutiny Committee will be discussing the regulations laid by the Government under Section 75 of the new NHS Act at their meeting on 5 March.

I should like to draw to your attention the radical nature of these regulations. During the passage of the Health and Social Care Act through Parliament ministers constantly reassured the public that there was no possibility of NHS services being forced into 'the market', and that the Health Regulator Monitor would not have powers to enforce such a change.

It followed that the NHS would not therefore be subject to EU competition law, and thus no irrevocable change was being made to its status.

However, examination of the new regulations reveals that local commissioners, the new Clinical Commissioning Groups, will have no power to resist Monitor's demands, will be less able to introduce quality criteria, in addition to cost criteria, into the contracts they are required to allow, and will have less opportunity to consult local people about their plans.

Since this is in direct contravention of what was said to Parliament, I hope you will be able to ensure their Lordships know that these regulations merit special attention and are not simply implemented without very substantial revisions to protect our NHS. The best case scenario would be if this legislation is totally withdrawn.

Yours faithfully,

Julie Parton-Hurd

Valerie Iles – Written Evidence

I understand that SI 257, going to the Lords Secondary Legislation Scrutiny Committee on 5th March.

I believe this creates requirements for virtually all commissioning done by the National Commissioning Board (NCB) and Clinical Commissioning Groups (CCGs) to be carried out through competitive markets.

This appears to be contrary to assurances given by the government during the passage of the Bill and if, as I understand, it contains legal powers for Monitor to enforce the privatization at the request of private companies that have been unsuccessful in the bid process, this will make it almost impossible for commissioners to make commissioning decisions on any basis other than price.

This directly opposes the thrust of the Francis report, with its emphasis on quality of care, and its express insistence that this must not be demoted to a secondary consideration after financial aspects.

Given the assurances about the will of local people being taken into account, and the recommendations of the Francis report, may I ask that you look seriously at the Secondary Legislation and report it to the House as meriting special attention?

Yours sincerely,

Valerie Iles

John Illingworth – Written Evidence

I am writing to ask that the Secondary Legislation Scrutiny Committee considers this SI very closely indeed.

It has considerable implications for the future of the NHS, but has been very difficult for citizens to locate the draft SI in order to comment on it effectively.

It appears on first sight to undermine assurances that were given to Parliament and the Public during the passage of the Health & Social Care Act.

Cllr John Illingworth

Chair: Leeds City Council Scrutiny Committee for Health & Adult Social Care

Catherine Ingham – Written Evidence

I am greatly concerned that, despite assurances given by ministers during the passage of the Bill through Parliament that it did not mean the privatisation of the NHS and that people would have the final say in who provided their services, the the regulations just published break these promises by creating requirements for virtually all commissioning done by the National Commissioning Board (NCB) and Clinical Commissioning Groups (CCGs) to be carried out through competitive markets. This will have the effect of forcing through privatisation regardless of the will of local people.

As the mother of two adult sons with Cystic Fibrosis I am greatly concerned as to how their currently excellent but very expensive care will be provided in the free market.

I ask you to ensure that this Statutory Instrument (SI) is debated as fully as possible to prevent even more of our Health Service being sold off to the highest bidder.

Yours faithfully

Catherine Ingham

Ray Jackson – Written Evidence

It is my earnest desire that the Lords do give "proper time" to fully examine and debate to the rather late introduction of SI (275), and its consequences in relation to Health and Social Care Act 2013.

Little time has been granted to the Public to fully absorb and lobby our representatives, especially in view of the fact that SI 275 is on reading, totally at variance to previous Ministers statements to the "the house " and in response to MP's questions during earlier debates in respect of an "openmarket " within our NHS.

PLEASE BRING THIS TO THE ATTENTION OF THE COMMITTEE

Yours Ray Jackson

Poppy James – Written Evidence

This is to ask you to press for full parliamentary scrutiny of the proposed secondary legislation dealing with competition under the terms of the Health and Social Care Act. This worries me greatly because I want my local health services to reflect the needs and preferences of the local people and the local area. I want to play my part in helping to shape these services and it seems to me that this will be much more difficult if local health service commissioners are tied into Europe wide or even global competition. I don't think it is fair to expect local groups to have to compete with corporations according to rules that were designed for large companies. This goes against what was said about localism in the general election and I don't believe the government has an electoral mandate to force this upon us.

Yours sincerely,

Poppy James, painter

Rhiann Jamieson – Written Evidence

I am writing in relation to proposed regulations to the Health and Social Care Act, section 75, which refer to competition in the NHS.

We were given assurances by ministers when the unpopular Health Care reforms were being discussed that any competition in the NHS would be used in a restrained manner. These regulations completely contradict that, and in fact the reality is something quite different.

Members of the British public did not vote for these reforms. They also suggest that we were lied to by ministers last year when discussing the reforms.

It would be entirely undemocratic to allow these reforms to pass without a debate.

Yours sincerely

Rhiann Jamieson

Penelope Jarrett – Written Evidence

I understand that there is a Lords Committee on March 5th which will be discussing regulations relating to the Health and Social Care Act (2012). I am particularly concerned about those regarding competition and requirements for tendering which will severely limit the freedom of choice of our Clinical Commissioning Groups (CCGs). The GPs on the CCGs have proceeded in good faith, assured by Government Ministers that they will be able to make decisions appropriate to local needs. These instruments would render their efforts meaningless.

Here in Lewisham we have already seen local commissioners' views ignored by the Secretary of State for Health. I would not want this to happen nationally.

Please ensure that their Lordships understand the importance of the regulations, and do not let them pass without proper debate and voting.

Dr. Penelope Jarrett, G.P.

Christine Jarvis – Written Evidence

I was really shocked to realise today that in spite of all the assurances that changes to the NHS would not lead to its privatisation that most of the commissioning done by the National

Commissioning Board (NCB) and Clinical Commissioning Groups (CCGs) is going to be carried out through competitive markets. This will in effect privatise the health service and lead to provision by the cheapest providers regardless of quality. Please ensure that health care continues to be provided by NHS staff and that the NHS does not turn into a mere commissioning body. The prospect of having health care provided in this piecemeal fashion is truly alarming.

This is a very serious matter - please make sure that the Committee looks very closely at this and considers its implications.

Yours sincerely,

Christine Jarvis.

William Jeffrey – Written Evidence

As a member of the Patient Representative Group and the Commissioning Group, I find I have to object strongly at the unprofessional way that has been taken to introduce the Regulations.

"As you can see I am concerned about these new regulations and suggest they are given Full Scrutiny by the House before being implemented."

You're sincerely

Cllr William Jeffrey

Stella Joel – Written Evidence

I am writing to object to the bill going through parliament regarding the NHS. This, despite Andrew Lansley's assurances otherwise, set out that all commissioning must be done through competitive markets which effectively imposes privatisation on the NHS. This urgently needs to be debated publicly so that there is openness about the affect of this on our health service.

I am writing to raise my concern that the competitive nature of tendering will limit the quality of the service with financial aspts governing decision making. The removal of the possibility of an in house NHS tendering system will be removed from this legislation -even if local people wish to choose this. Competitive tendering favours streamlined simple operations but does not provide for those with more complex needs where those patients may get lost between outside provider and NHS comissioning system. I am concerned about how equality of those who are disabled will be managed within a competitive tendering process- with those with disabilities not being adequately catered for within complex patient pathways where accountability will or is likely to become muddied.

I am also concered at the lack of clarity for where there is a conflict of interest between GP who may own compaines tendering for work - and also be part of the comissioning process.

yours sincerely

Stella Joel

Coral Jones – Written Evidence

Regulations SI 257 under Section 75 of the Health and Social Care Act were laid before parliament on the 13th of February.

I understand these regulations will be examined by the House of Lords shortly.

Please urge the Lords and Ladies involved to oppose the introduction of these regulations. Section 75 regulations open up the NHS to compulsory tendering, a process by which private health care companies and their legal firms can threaten CCGs with legal action if CCGs choose local NHS providers over private firms. This will destroy any notion of a 'level playing field' in provision of health care and militate against local doctors and patients being able to decide local services. This is directly contrary to statements made by Andrew Lansley in February 2012.

Yours sincerely,

Dr Coral Jones

GP City & Hackney CCG

Ruth Kaufman – Written Evidence

I understand that this is the address to write to in order to contact the Lords' Secondary Legislation Committee; and I understand that they will be discussing the regulations laid by the government under Section 75 of the 2012 NHS Act at their meeting on 5 March.

My understanding is that these regulations would force NHS services to be put to the market, and that they would limit the opportunities for consultation and for a range of criteria beyond cost. This is privatisation by the back door; it is profoundly undemocratic, and goes against the assurances given by Ministers.

It is also potentially an enormous drain on the NHS. Procurement by competitive tender is enormously burdensome on both the commissioners and the providers; it diverts management attention; and it is rarely possible to evidence subsequent long-term savings. As Chair of a medium-sized charity that provides counselling services that are in part funded through statutory contracts, I would be horrified to see competitive tendering enforced on a wider range of services. As a user of the NHS, I do not want choice: I want a reliable local service provided by people whose only motivation is to do a good job.

May I ask you to pass this message on to those responsible, to ensure that the regulations are subject to full and appropriate scrutiny.

Yours faithfully,

Ruth Kaufman

Lesley Kay – Written Evidence

As I read it, this legislation bears no relationship to the reassurances we were all given during the passage of the health and social care bill. Many conservative and lib dem politicians, including my MP Guy Opperman said that competition would not be universally introduced, but only in selected areas. This legislation appears to open every significant health service contract to compulsory competition which threatens integrated healthcare, is likely to cost a fortune in legal fees, and is completely contrary to assurances we were given

Lesley Kay

Suzanne Keene – Written Evidence

Please refer the implementation of the NHS regulations in section 75 of the Health and Social Care Act 2012 for full debate in Parliament.

These regulations are completely contrary to specific assurances given by Andrew Lansley and others about the Government's intentions. They MUST be fully debated.

kind regards

Suzanne Keene

Tim Kent – Written Evidence

I am writing to express my serious concern about proposed governmental changes to the NHS and the way that core health services are supplied and by which agencies. As a member of the public and an employee within the NHS my understanding is that we given assurances by ministers and guidance that suggested competition would be used judiciously and in a restrained manner.

I work in East London where there is a very high level of deprivation, poverty and socio-economic-health related difficulties, health services need to be provided equitably and made within reach of the whole community. It is likely that only certain services may prove attractive or profitable to private sector organisations, leaving statutory services to mop up the large minority of people with chronic conditions, health related psychological difficulties and medically unexplained symptoms. My concern is that with the dismantling of the NHS as we know it there is already a lack of careful planning in relation to the direction and shape of clinical commissioning. As an experienced clinician with over twenty years experience in health and social services i urge you strongly to consider a more careful, scrutinous and timely exploration of which services can possibly benefit from being opened up to market forces and for what reasons. Political ideology is not satisfactory evidence that free market forces will in any way ensure the adequate provision of health services accross a very unequal society.

yours sincerely,

Tim Kent

Psychotherapist and Clinical Coordinator / A&E project lead.

City and Hackney Primary Care Psychotherapy Consultation Service.

Specialist and Adult Mental Health Services

Tavistock and Portman NHS Foundation Trust

Karen King – Written Evidence

I write to you concerning the SI which I understand will be going to Committee on 5th March. Given the importance of the matter and that today is the last day, I urgently request that this be debated fully and not just go through 'on the nod'.

Thank you,

Yours faithfully,

Karen King

Jack Kirwan – Written Evidence

Please consider very carefully, and hopefully reject, the government's attempt to impose a strict obligation on CCGs to put all services out to competitive tender or Any Qualified provider, except in an "emergency". This contradicts assurances we were given by Andrew Lansley, Earl Howe and others that CCGs would not be obliged to use competition and they would be free to choose when to use it.

Regards,

Jack Kirwan

Trudy Klauber – Written Evidence

The Public has been given assurance by minutes and through guidance that imposing any qualified provider tendering would only be used in a restrained manner and judiciously.

It now seems that, without debate or vote, the government is imposing an **OBLIGATION ON CLINICAL COMMISSIONING GROUPS (CCGs)** to put all provider services in the NHS out to competitive tender.

This not only means the wholesale entry of private sector into the NHS – taking a profit margin on their tenders, it threatens opportunities for full and comprehensive clinical training of doctors nurses and other allied health professionals and it is **NOT DEMOCRATICALLY DONE**. Andrew Lansley gave reassurances at the time of the passing go the Health and Social Care ACT and they are not being followed up. Inded the contrary is the case. Thet “listening” which gave rise to publicity on this natter, among others, is now gone.

Trudy Klauber

Consultant Child and Adolescent Psychotherapist

Brenda Knopf – Written Evidence

I am deeply dismayed to hear of the threat of privatisation of the N.H.S with regulations under section 75 of the health and social care Act 2012 I trust the Lords' committee will prevent such a disaster when they discuss the matter on March 5th

yours sincerely

Brenda Knopf

Martin Knott – Written Evidence

I am told that the secondary regulations that you are now considering breaks MPs promises which gave the NHS certain advantages when services were put to tender.

The continued opening up of the tendering procedure means that almost any company is eligible to tender and win, where they are cheaper, parts of our services.

I should point you to the events in North Wales. The renal services there have been in three different private hands in recent years. Each of the companies has given up the contract in turn. The matters came to a head when all the private employees walked out. The operation has now been returned to the NHS. Who will exist to do such work when the Act of destruction has been passed to law?

The present NHS woes arise from one main cause. The setting of unrealistic underfunded targets achieved by completing the required paperwork to evidence little more than the completion of forms. The same thing has happened with the "horse crisis"; no need for due diligence so long as the correct forms are in place.

Please help us, we love the NHS.

Martin Knott

Meri Koivusalo – Written Evidence

I understand that the Lords' Secondary Legislation Scrutiny Committee will be discussing the regulations laid by the Government under Section 75 of the new NHS Act (1) at their meeting on 5 March.

There has been lack of clarity with respect to the extent to which European Union competition and procurement law apply to Health and Social Care Bill. On the basis of what is proposed it seems rather clear that the government willingly introduces government procurement obligations to the field and for contractual arrangements within the NHS. It is also clear that these Regulations do not reasonably or adequately reflect the intentions of parliament during the passage of the Health and Social Care Bill.

It would be important to discuss the matter before adopting the legislation due to the fact that similar type of requirements in Finnish government procurement law have led to problems and necessities for revision. It may not be wise for the United Kingdom government to willingly repeat similar mistakes and introduce legislation with known problems in practice within other countries leading in effect to further developments in the field to avoid application of such legislation as has been the case in Sweden. In this context it would be appropriate for the government to have a further discussion on the matter so as to ensure that all aspects are appropriately understood when decisions are made as it would be short-sighted to introduce legislation which has already led to challenges in other countries. Furthermore, if the government knows this and actually seeks for further reforms this should be explicit and publicly debated so as to save resources and accountability for the people it serves.

When competition was introduced as part of Health and Social Care Bill, arguments for this were made on the basis of competition on quality - not price. Yet what EU government procurement provisions effectively introduce is competition on the basis of price, not quality, which is reflected and explicit also in the proposed Regulation. In this respect the Regulation does not reflect the "label" or what was promised when Health and Social Care Bill was passed.

The role of Monitor is also unclear as it is likely that European providers would make their claim to formal competition authorities, European Court of Justice or possibly compensation in the context of bilateral investment agreements, should government retract from stated policies later. In Finland contracts have been frequently taken to the courts and challenged by private providers, which have lost them. There has also been a more moral concern and resentment over benefits from tax management for foreign providers in comparison to national providers. Further discussion should be held with respect to relationship of the provisions suggested to bilateral investment agreements so as to ensure that Clinical Commissioning Groups will not be subject to compensation claims in the field of trade and investment policy.

As the intentions of the Regulations appear to contradict the intentions of parliament in relation to the Health and Social Care Act, would you please ask members of the Secondary Legislation Scrutiny Committee to consider representations discussing these matters during their examination of the Regulations and in their final report so as to ensure that decisions

Meri Koivusalo – Written Evidence

are made on the basis of available information rather than assumptions, hopes and expectations.

yours sincerely,

Meri Koivusalo, MD, PhD

Senior Researcher

Sebastian Kraemer – Written Evidence

Section 75 of the Health and Social Care Act 2012 imposes a strict obligation on CCGs to put all services out to competitive tender or Any Qualified provider, except in an "emergency".

This contradicts assurances given by Andrew Lansley, Earl Howe and others that CCGs would not be obliged to use competition and they would be free to choose when to use it.

Please scrutinise this carefully, bearing in mind the fundamental principles of a national health service. It is not a commercial undertaking, it is a public service that irons out differences in capabilities, health and wealth within the population. That is the point of it.

kind regards

Sebastian Kraemer

FRCP FRCPsych FRCPCH

Consultant Psychiatrist

Whittington Hospital

Edward Lake – Written Evidence

As a doctor working within the NHS I am writing to you to express the grave concerns I have for the SI257 regulations, secondary legislation to the health and social care bill which I believe you are due to examine shortly. These new regulations seem to go against assurances from the government about the nature of a competitive market in relation to the NHS.

I believe that these new regulations will be very damaging to the NHS and spell the beginning of privatisation by the back door.

I urge you to make sure that these new regulations receive proper scrutiny in the form of full debate in the House of Lords.

Dr Edward Lake

Tom Lake – Written Evidence

I write in connection with the Government's secondary legislation - SI 257 re procurement and contracts in the NHS.

I believe the regulations as published to be contrary to assurances given by the Government during the passage of the bill through the House of Lords, and very far-reaching in its consequences for our NHS. I therefore ask that you put it forward for special attention. It merits full debate in both houses of Parliament, in my opinion.

Sincerely,

Tom Lake

Ann Lambert – Written Evidence

I feel very strongly that the latest attack on our NHS under section 75 of the Health and Social Care Act urgently needs to be stopped.

We need to preserve our NHS free at the point of need for future generations.

Could you please organise with other MPs to sign an Early Day Motion to address this at the earliest opportunity?

Ann Lambert

Mark Lambert – Written Evidence

I understand you are preparing the legislative timetable for secondary legislation relating to the health and social care act- I wish to draw your attention to the proposed regulations relating to competitive tendering.

As reported, this appears to be far more wide reaching than ministers gave assurances about in the preparation of the bill, and will greatly restrict the capacity of CCGs to act.

i would be grateful if you would draw this matter to the attention of the House with a view to a fuller debate on the matter.

Thank you for your consideration

Dr Mark Lambert

Hugh D Langford – Written Evidence

I would be grateful if you would draw the House of Lords Secondary Legislation Scrutiny Committee's attention to the importance of the above-mentioned regulations which, if not challenged and defeated, will go a long way towards the effective privatisation of the NHS.

sincerely,

Hugh D Langford

Eric Leach – Written Evidence

Assurances were given by Ministers during the passage of the Bill that it did not mean privatisation of the NHS, and that local people would have the final say in who provides their NHS.

The regulations just published break these promises by creating requirements for virtually all commissioning done by the National Commissioning Board (NCB) and Clinical Commissioning Groups (CCGs) to be carried out through competitive markets, which will have the effect of forcing through privatisation regardless of the will of the people. They contain legal powers for Monitor to enforce this privatisation spontaneously or at the request of private companies that lost bids.

This would make it impossible to fulfil some of the key thrusts of the Francis Report recommendations.

Yours faithfully,

Eric Leach

Rachel Leah – Written Evidence

Can I add my voice to those expressing major concern over the apparent creeping privatisation of the NHS which current legislation seems to be allowing.

In contrast, the NHS should be safeguarded to continue to be the service for ALL that it was set up to be.

Rachel Leah

David Lee – Written Evidence

I am writing to add my voice to those who have raised concerns about this statutory instrument and in the hope that the Committee will consider the merit of these regulations being subject to more detailed scrutiny.

In brief, these regulations as drafted run directly counter to a number of specific undertakings given in public and parliament by Ministers during the passage of the Health and Social Care Bill. It seems there is an important principle at stake : can Ministers win support in parliament for a controversial bill based on a certain set of commitments, but then dispense with inconvenient undertakings with impunity when regulations are being made?

Yours sincerely

David Lee

Martha Leigh – Written Evidence

I am writing to ask you not to put through Section 75 of the Health and Social Care Act which places an obligation on Clinical Commissioning Groups to put all services to competitive tender and to any qualified provider. This measure would strengthen the market approach to health care which I know as a GP leads to inferior and fragmented services where financial considerations override the welfare of the patient. One example of this is the prevention of Hackney GPs from running their out of hours service and enabling the dreadful Harmoni Service to tender .

Hackney GPs are only too willing to take on the responsibility of running the out of hours service because they are dismayed and distressed at the poor service given by Harmoni. Another example is the inferior service given by the London Independent Hospital in Stepney to the patients of Tower hamlets. The London Independent has been allowed to take NHS patients in some of its departments but actually turns down the complex and expensive ones who then have to be re-referred to the Royal London or Barts.

Yours sincerely,

Martha Leigh

Rita Leighton – Written Evidence

I believe it is likely that certain points regarding the EU regulations on competitive tendering are likely to be put into law without proper discussion by the full House of Lords. This would be catastrophic for our National Health Service, which must be allowed to take quality of service into consideration when awarding contracts for care, both medical and social.

Please ensure that this possibility is made known, and that the Legislation is debated by the full House, not just the Committee.

Yours faithfully,

Rita Leighton.

Anne Leonard – Written Evidence

The introduction of regulations re privatisation of NHS services on an unprecedentedly short time scale is a cynical attempt to by-pass the changes fought for and achieved at such length and with such determination during the passage of the H&SC Act last year.

The new regulations reinstate precisely those parts of the Bill which were found to be anathema to most politicians, even those within the coalition government, as well as to the general public, and, of course, they are entirely at variance with the underlying principles of the NHS - a system of publically funded and delivered health care which has always had the support of its beneficiaries, i.e. the vast majority of the general public.

They are particularly alarming at a time when the private sector is coming under scrutiny at so many levels for suspected malpractice and ruthless profiteering, and when commercial confidentiality law makes such public scrutiny increasingly difficult.

There was never a mandate for the developments opened up in these proposed regulations; indeed, if the Conservative Party's intentions had been made clear prior to the General Election, we would have had a very different election outcome.

These regulations are an act of sabotage not only against the NHS, but against democracy itself.

They must not be allowed to pass into law.

Anne Leonard

Michael Levine – Written Evidence

Dear Sir,

I am very disturbed at the news of the new regulation which changes the Health and Social Care Bill to make all services in the NHS subject to compulsory subjection to the European Competition Law. If my doctor wishes me to see a particular consultant, who he knows, then I wish to see that consultant whether or not another consultant is cheaper. Only in this way can I benefit from my long standing relationship with my GP which has given me confidence in his judgement.

Yours Sincerely

Michael Levine PhD

Kevin Liles – Written Evidence

I am very concerned that the new NHS Act will strategically weaken, not strengthen, the NHS. I speak from 25 years of being a Director within the NHS in various posts to do with business planning, competitive tendering, contracting, fundholding, LIFT, PFI, commissioning and the move to make all provider Trusts into Foundation Trusts ~ which effectively puts 95% of the workforce a pen stroke away from working within the NHS but not being employed by the NHS.

It is dangerous enough to put the NHS budget into the hands of small minded, but well meaning businessmen (GPs); without exploiting their naivety to play the game of reducing NHS public provision in favour of private provision. Surely we have learnt many lessons from the poor business legacies we have created from all those activities in my first paragraph, to know we need to a very serious raincheck on the new commissioning arrangements before putting integrated provision at long term risk.

Yours sincerely

Kevin Liles

John Lipetz – Written Evidence

I understand that this piece of statute is to be discussed by your committee on March 5th. I have with colleagues had a careful look at the proposed secondary legislation under this section of the H & SC Act. The proposals in it run counter to the assurances given by Andrew Lansley MP and Lord Howe at the time the Act was presented to parliament. The proposals in this legislation would ensure that NHS services will be forced to be put out to tender or provided by any qualified provider. Monitor as the health regulator would be required to ensure that the market approach is applied in all circumstances. The NHS as a result will become subject to EU competition law, a change that would be irrevocable.

Having looked carefully at the proposed legislation it is clear that Clinical Commissioning Groups will not be able to do other than comply with what the National Commissioning Board and Monitor demand. As a result doctors will not be able to make their own judgment of what is required in terms of the most effective treatment for their patients care. So the reference to patient choice in the heading is just a mockery of the real situation. Cost rather than quality is likely to result in a market situation and CCGs will not be able to respond to the local population through effective consultation.

This secondary legislation is, I understand, being presented in the negative form. However, given what I've pointed out above, it needs to be publicly debated in committee and really ought to be subject to debate on the floor of the House. I hope that you will do all you can to ensure that the matter is dealt with appropriately in public, particularly given that it directly contravenes what ministers said when the Bill that became an Act was being debated.

Yours faithfully.

John Lipetz

Co-chair, Keep Our NHS Public

Kate Lockwood – Written Evidence

I oppose the Health secretary's intention to put all healthcare out to tender on the market, despite assurances from Lansley to the contrary. healthcare is not a product that can be bought and sold for profit, healthcare is about delivery of high quality services by trained professionals for good health outcomes not financial profit for private companies. this is perverse and will undermine health care quality and the public health. it will also cost the government dearly in votes as the public wise up to this renege on an assurance, not least to insult our intelligence. I am a patient and a doctor with 30 years NHS experience.

Dr Kate Lockwood

Consultant Psychiatrist,

East London Foundation Trust

Colin Thomas – Written Evidence

I wish to express my deep concern over your possible imminent decision on 5th March to remove any protection of NHS services from open market competition.

The decision will seal the NHS within European Competition Law and, by an irrevocable change in the legal status of the NHS, enable Monitor to enforce competition upon Clinical Commissioning Groups.

Colin Lomas

Denise Longman – Written Evidence

May I bring to your attention the matter of the clause SI 257 under Section 75 of the Health & Social Care Act 2012. It causes me great concern.

These new measures will be brought in on 1st April 2013 and go much further towards privatising the NHS than ministers implied when the legislation was going through Parliament.

I implore you to arrange for this matter to be discussed/debated in both Houses of Parliament.

Very few people that I know were aware of the full implications of this aspect of the Act. Everyone I have contacted has reacted with shock and sadness, at its implications as well as the way it has not been aired in public or in Parliament.

We are extremely worried that these regulations will supercede existing arrangements between NHS bodies, and just about all commissioning done by the CCGs, and force them to be done under a market framework under the remit of the EU competition law.

Statements by Andrew Lansley when he was Health Minister led me to believe that this method of commissioning would never be allowed to happen, so I am astonished to find out that the opposite could well be about to occur.

I am very concerned about this and have signed a petition along with thousands of others, who are signing at the rate of about 200 people per hour at this present time, although this will probably increase exponentially as awareness spreads.

Thank you for your attention to this matter.

Yours faithfully,

Denise Longman

Francesca Lorriman – Written Evidence

I am writing both as an ongoing patient of the NHS and having worked as a biochemist for the NHS for 20 years in various capacities - my last post in Oncology at Charing Cross Hospital before I took medical retirement due to ill health.

I have seen the influence of privatisation, and it not only breaks up the unity of the NHS, the sharing of experience and the quality of work but it also undermines the enthusiasm and efforts of the individuals working within the NHS.

It is essential that the NHS is kept as a unified enterprise and no major change is made without wide consultation..

Yours sincerely,

(Dr) Francesca Lorriman

Rosemary Loshak – Written Evidence

I am writing to request that you bring the attention of the above committee to the serious matter of the Statutory Instrument under Section 75 of the Health and Social Care Act 2012, which I understand is to be debated in the Committee on 5th March 2013.

I consider this matter of the utmost importance, and wish to ensure that it is fully debated, so that all views have an opportunity to be heard. I hope that their Lordships will take full account of the strength of public opinion about the growth of competition, and of market practices within the NHS. I have experienced the beginnings of these processes which will open up a range of local health services to competition from the private sector, and have found them already to be damaging to patient health and well-being.

It is vital that these matters are given sufficient time and serious thought in thorough debate by their Lordships.

Thank you for your attention to this matter,

Yours sincerely

Rosemary Loshak.

Linda and Jonathan Lovell – Written Evidence

As Members of the Socialist Health Association we write to you today to encourage you to emphasize the importance of the Statutory Instrument {SI} concerning the above which will be going to the Lords Secondary Legislation Scrutiny Committee on March 5th. We hope the Committee will look seriously at the Secondary Legislation and report it to the House as meriting special attention.

Yours Faithfully

Linda and Jonathan Lovell

Heather Lyall – Written Evidence

The Lords will be discussing the regulations laid by the government under Section 75 of the new NHS act on the 5th of March .

It appears that Monitor , regardless of the reassuring comments made by ministers during the passage of the bill , will now be able to enforce NHS services to be subject to EU competition law . The new CCGs will have no power to resist Monitors demands , will be less able to effectively introduce quality criteria in addition to cost criteria in the contracts and will have less opportunity to consult local people about their needs.

I feel this was in direct contravention to what was said in Parliament .

Please make sure their Lordships are aware of the regulations and the effect they will have on local and national health services.

Regards

Heather Lyall

Anthony Lynch – Written Evidence

Please will you take this matter very seriously onto the floor of the Lords so that a full debate may give the possibility of saving us from some of the worst aspects of the privatization of the NHS.

Yours sincerely and respectfully,

(Dr)Anthony Lynch.

Alison Macfarlane – Written Evidence

I understand that the Lords' Secondary Legislation Scrutiny Committee will be discussing the regulations laid by the Government under Section 75 of the new NHS Act (1) at its meeting on 5 March.

As a public health professional I am concerned that these Regulations do not reasonably and adequately reflect the intentions of parliament during the passage of the Health and Social Care Bill or the undertakings given by the Government to Parliament, the professions and the public. They will undermine the ability of general practitioners to offer choice to the public. Although we have been assured that there will be 'No decision about me without me', under the regulations, the decisions would be made by tendering processes.

Ministers made it clear during the passage of the Bill that commissioners would not be required to submit to full market forces and that the health regulator Monitor would not have powers to enforce such a change. We understood from Ministerial statements during the passage of the Bill that the NHS would not be subject to EU competition law, but what is now suggested in Regulations appears to result to a profound change to the NHS commissioning process that was not apparent from Ministerial statements during the passage of the Bill.

The Regulations appear to suggest that Clinical Commissioning Groups be required to submit to a process governed by EU competition law and that this process would be enforced by Monitor. This process would substantially increase the costs of commissioning; reduce the ability of CCGs to focus on quality rather than price. Commercial confidentiality, would reduce public involvement in the commissioning process in violation of the NHS Constitution and 14Z2 (Public involvement and consultation by clinical commissioning groups) of the Health and Social Care Act.

As the intentions of the Regulations appear to contradict the intentions of parliament in relation to the Health and Social Care Act, would you please ask members of the Secondary Legislation Scrutiny Committee to consider these representations during their examination of the Regulations and in their final report?

Alison Macfarlane BA Dip Stat C Stat FFPH

Professor of Perinatal Health

Jonathan Mackay – Written Evidence

Why on earth is monitor being given unlimited power to force commissioning groups to allow any willing provider to tender for whatever they wish to cherrypick?

This is contrary to assurances given by ministers and lords.

Jonathan Mackay

Bruce Mackenzie – Written Evidence

Greetings, and I write briefly to draw your attention to Secondary Legislation (under the above-named Act) that is due for consideration by the Scrutiny Committee on 5 March 2013.

The content of the Statutory Instrument (S.I.) - in that it virtually contradicts previous pledges concerning non-privatisation and EU competition regulation within the NHS - demands specific and detailed attention by the Scrutiny Committee. I hope this will be high on the agenda for your 5 March meeting, with a recommendation following to ensure that the Lords will subsequently debate the legislation changes proposed with all vigour. Thankyou.

Best regards/peace,

Bruce Mackenzie

Jane Mandlik – Written Evidence

I wish to object to the regulations currently laid before Parliament implementing Section 75 of the Health and Social Care Act 2012. I am requesting that the Scrutiny Committee refers these regulations to full discussion in Parliament. The reason why the regulations should be referred is that statements and assurances given while the Bill was going through Parliament have not been respected in the detail now published. So our elected representatives and the second chamber should have the opportunity of looking at matters properly and asking why this change has taken place.

Yours faithfully.

Jane Mandlik

David Margolies – Written Evidence

I am disturbed by reading Section 75 of the Health and Social Care Act of 2012. It changes the character of the Act to make competition in effect compulsory at every level. Like many other people, I had been led to believe by government statements that competition would be encouraged but not that it would be compulsory.

One effect of this change is severely to disable groups already within the NHS from competing for contracts, not simply on costs, but on the value of their experience, established modes of working and contacts with other groups. In health terms this enshrines inefficiency, clearly contrary to purposes of the Act. Furthermore, if the negative effects are later recognised, the provisions of European commercial law make it extraordinarily difficult then to restrict competition.

In the light of the sweeping nature of the changes and the fact that they were not signalled in the Act, I urge the Committee to send them for reconsideration.

Yours faithfully,

David Margolies

Julius Marstrand – Written Evidence

As a Patient Governor of an acute Hospital Trust I am concerned about the proposed Regulations SI257, under Section 75 of the NHS and Health Care Act 2012, particularly in the aftermath of the Francis Report. These Regulations appear to contradict assurances given by the Secretary of State during the passage of the Bill through Parliament that “There is absolutely nothing in the Bill that promotes or permits the transfer of NHS activities to the private sector.” (13/3/12 Hansard) and various other similar assurances.

If there was nothing actually in the Bill that promotes or permits the transfer of NHS activities to the private sector, Regulations that do precisely this must be contrary to both the letter and the spirit of the Act. Since they appear to reverse the expressed intention of the Secretary of State and the Act, they need to be especially carefully considered by their Lordships. I trust you will ensure they are aware of this.

We are already entering a very uncertain period with the breaking up of PCTs and replacement of most of their commissioning functions by CCGs. This is the worst possible time to be adding further uncertainty to the health service by introducing fundamental changes to the principles and processes on which commissioning is based.

Furthermore, the Francis Report identified the separation of regulation of the health sector between different Regulatory bodies, in particular Monitor and the CQC, as being one of the reasons Regulators failed to avert the disaster at Mid-Staffordshire Hospital. It would be completely inappropriate to give Monitor additional powers at this time - which might conflict with the CQCs responsibilities for ‘ensuring the quality of care’ - to over-rule the CQC, CCGs and other commissioners, independent Foundation Trusts, like ours and locally-based Health Overview & Scrutiny Committees and impose any requirements to go out to open tender against the wishes of any of these bodies, or local populations. If this happens Parliament will be directly responsible for any future catastrophes like Mid-Staffordshire.

As the former General Manager of a company which built many GPs surgeries and some hospital buildings, I am also acutely aware of the risks of the competitive tendering process – particularly for public services, but even for many private contractors. The numerous Hospital PFI fiascos and the recent failure of the government to manage the West Coast Mainline bidding process properly, are prime examples of these risks.

Sincerely,

Julius Marstrand

Pamela Martin – Written Evidence

I understand that statutory instruments are due for consideration by the Lords' Secondary legislation Committee at the meeting of 5th march. I am concerned that these would radically affect how commissioning of services would take place throughout the NHS. I believe the complexity of this issue and the ramifications should the proposals go through require a full debate. I would be grateful if you could ensure their Lordships are aware of this.

Respectfully

Dr Pamela Martin

Mary Marzillier – Written Evidence

I am writing to you to draw your urgent attention to the abovementioned Statutory Instrument, SI257, as above, which if made law will have the effect of forcing through privatisation of the NHS - without debate, and in complete contradiction to all the promises given and assurances made that local people would have the final say about who their NHS services would be provided by.

I urge you in the strongest possible terms to ensure that this Statutory Instrument is subjected to proper and effective scrutiny and that its far-reaching implications, both for health care and for the democratic process itself, are drawn fully to the attention of the Lords Secondary Legislation Scrutiny Committee.

Our NHS is too important to lose simply because we did not give it sufficient scrutiny.

Yours sincerely,

Mary Marzillier

Rachael Maskell – Written Evidence

I am writing to you to raise urgent concerns about regulations SI2571 published under Section 75 of the Health and Social Care Act 2012. These secondary instruments were published on the 13th February 2013.

Unite believes that these regulations should not be allowed to pass into law and that they should be subject to a full public debate in both houses in parliament.

These regulations appear to directly contradict numerous assurances made by the Government during the passing of the Act, that the legislation would not mean the privatisation of the NHS and that local people would have the final say in who provided their NHS (see Annex B).

The regulations just published break these promises by creating requirements for virtually all commissioning done by the National Commissioning Board (NCB) and Clinical Commissioning Groups (CCGs) to be carried out through competitive markets (Annex A). Unite believes that this will have the effect of forcing through privatisation regardless of the will of local people as cash strapped local NHS organisations are forced to compete with loss leading bids from powerful multinational corporations. If CCGs do not comply, the regulations contain legal powers for Monitor to enforce the privatisation spontaneously or at the request of private companies that lost bids.

Unite also believes that these regulations would make it impossible to fulfil some of the key thrust of the Francis report recommendations.

Given the seriousness of our concerns, Unite believes that these regulations merit special attention. Please ensure that all members of your committee are aware of these concerns and that they are drawn to the attention of the whole House.

Yours Faithfully

Rachael Maskell

Head of Health

Unite the Union

Susan Masters – Written Evidence

I'm writing to request you subject the secondary additions to the Health and Social Care Act 2012 to full scrutiny in the House Of Lords.

The terms of the additions (in particular SI287 of Section 75) contradict assurances given by Andrew Lansley to the CCGs that the ACT would not force them to fragment services and put them all out to competitive tender. They also go up against promises made by Lord Howe in the House Of Lords that clinicians would be under no obligations to create new markets and generally contradict promises made by the Conservative Government that the impact of the legislation would be to allow clinicians to decide whether open tender was appropriate for the needs of their patients.

The NHS is one of the cornerstones of British public service provision and I feel it's important such a change of direction in the impact of this legislation receives proper consideration.

Your sincerely

Susan Masters

John Matthews – Written Evidence

I am writing to express my concern that secondary legislation may be passed that will contradict the assurances given by Andrew Lansley that competition will not be enforced in the NHS but that the deciding principle should be what is in the best interest of patients rather than providers

John Matthews

Clinical Chair

NHS North Tyneside CCG

Maxine Mathews – Written Evidence

This looks deeply worrying to me. Please ensure that the legislation mentioned is properly scrutinised by the public in general and the House of Commons in particular.

yours sincerely

Maxine Mathews

Martin Mayer – Written Evidence

I wish to add my name to the growing list of opponents to the competition provisions of this Statutory Instrument Regulations which will further open up our NHS to outsourcing and competition. This will be neither beneficial in terms of patient care nor cost efficiency. Indeed the likelihood is, as the British Rail model of privatisation has shown, that the cost to the British taxpayer will be higher to run a privatised NHS rather than a publicly owned one. The previous Labour Government's experimentation with privatisation (specialist hip replacement units etc) proved that private NHS operations were costing up to 700% more than if carried out under a directly owned NHS.

I like most members of the British public love our publicly owned NHS and am very proud of it. I believe a privatised NHS is less accountable and will lead to a fragmented service bogged down with a bureaucracy of cost and profit allocation which will risk patient health. This is right wing ideology no more. I ask all of you on the House of Lords Secondary Legislation Scrutiny Select Committee to stop it.

Yours sincerely

Martin Mayer

UNITE The Union Executive Council member

Peter Mayer – Written Evidence

I am told that these Regulations will have the effect of requiring virtually all health care commissioning by either the NCB or CCGs to go to competitive tender, and where tenders are won by the public sector also give Monitor powers to enforce privatisation (of their own volition or at the request of private companies making losing bids).

This breaches undertakings (given during the passage of the Bill) that the legislation did not mean privatisation, and that local people will have the final say on who provides their NHS services. With NCB and CCGs also depending increasingly on private sector consultancies for commissioning advice it is difficult to see that a public NHS will still exist.

I would ask that these issues are brought to the attention of the Lords Secondary Legislation Scrutiny Committee.

Peter Mayer MA FRCP

David McAvoy – Written Evidence

Andrew Lansley assured CCGs in writing that they would not be forced to put services out to tender. The proposed secondary legislation will do just that. The NHS must not be destroyed by lies and stealth. Please do not allow these regulations to go through on the nod.

David McAvoy, a concerned and angry citizen.

Steve McGinnity – Written Evidence

I wish to register my deep concern regarding the tabling of Secondary Legislation under Section 75 of the Health and Social Care Act 2012.

This Statutory Instrument will go to the Lord's Secondary Legislation Scrutiny Committee on 5th. March, if enacted it will make it impossible to fulfill some of the key thrusts of of the Francis Report recommendations.

In particular it will allow competitive tendering of virtually all services inside the NHS which will over time erode the very foundations of this incredibly important organisation which has underpinned and defined British society for over sixty years.

I would ask that this legislation be debated in the Parliament to allow all members to have a rational discussion on the full implications of enactment and also that the electorate be made fully aware of its impact on the NHS system.

Sincerely,

CLLR. Steve McGinnity.

Julia McNeal – Written Evidence

A friend has drawn my attention to this matter. I received her message on returning home this evening 25th Feb and I hope that you will be able to consider my response.

First of all, I am shocked by the very short timescale for consultation on a matter which goes to the heart of the nature of our Health Service and will radically affect its future.

It would seem that the way in which this matter is being handled as well as the content of policy -- policy in the guise of 'regulation' - suggests that it is being introduced in an underhand way, through the back door.

I am encouraged that the House of Lords is able to scrutinise such secondary legislation. I therefore hope that there will be no rubber stamping and the proposed regulations will receive probing and detailed attention and that the major issues which they raise will indeed be revealed, scrutinised and challenged when they are considered on 5th March.

Yours sincerely

Mrs Julia McNeal

John McVicar – Written Evidence

Section 75 Privatising the NHS through the back door

- Last week the Government published new regulations (SI257) under Section 75 of the Health & Social Care Act 2012
- Assurances were given by ministers during the passage of the Bill through Parliament that it did not mean the privatisation of the NHS, that local people would have the final say in who provided their NHS.
- The regulations just published break these promises by creating requirements for virtually all commissioning done by the National Commissioning Board (NCB) and Clinical Commissioning Groups (CCGs) to be carried out through competitive markets, which will have the effect of forcing through privatisation regardless of the will of local people. They contain legal powers for Monitor to enforce the privatisation spontaneously or at the request of private companies which lost bids.
- They would also make it impossible to fulfil some of the key thrust of the Francis report recommendations. What ministers say

Andrew Lansley MP: “There is absolutely nothing in the Bill that promotes or permits the transfer of NHS activities to the private sector.” (13/3/12, Hansard2)

Andrew Lansley MP, 12.02.12, letter to Clinical Commissioning Groups: “I know many of you have read that you will be forced to fragment services, or put them out to tender. This is absolutely not the case. It is a fundamental principle of the Bill that you as commissioners, not the Secretary of State and not regulators – should decide when and how competition should be used to serve your patients interests.”

Simon Burns MP: “...it will be for commissioners to decide which services to tender...to avoid any doubt—it is not the Government’s intention that under clause 67 [now 75] that regulations would impose compulsory competitive tendering requirements on commissioners, or for Monitor to have powers to impose such requirements.” (12/7/11)

Lord Howe: “Clinicians will be free to commission services in the way they consider best. We intend to make it clear that commissioners will have a full range of options and that they will be under no legal obligation to create new markets....” (6/3/12, Hansard4)

But what do the proposed regulations say?

According to David Lock QC, the regulations as a whole have the effect of closing down the current option of an in-house commissioning process, even if local people wish it. This option has been taken in a number of cases, including since the passage of the Act⁵. Ministers have confirmed that at the present time such arrangements are legal and would not give rise to challenge under EU Procurement law⁶.

These regulations will lock the NHS into the market and subject to EU competition law.

An examination of the new regulations reveals that local commissioners, the new Clinical Commissioning Groups, will have no power to resist Monitor’s demands, will be less able to

John McVicar – Written Evidence

introduce quality criteria, in addition to cost criteria, into the contracts they are required to let, and will have less opportunity to consult local people about their plans.

Since this is in direct contravention of what was said to Parliament, I hope you will be able to ensure their Lordships know that these regulations merit special attention so they do not just slip through on the nod. The current section 75 proposal is frankly deceitful given recent governmental assurances (above) and the fact that no one voted for such measures.

"The NHS is safe in our hands. No top down reforms." not "The NHS is ripe for privatization."

I feel that it is crucial that such a radical reform must be fully debated and if possible withdrawn or significantly amended. I know that this has not been done for 10 years in the Lords or 30 years in Commons but it is the last chance to affect the implementation of this infamous Health and Social Care Act 2012.

How dare they! Their arrogance and disregard for democratic process beggars belief.

Yours faithfully,

John McVicar

(Member : Bungay Medical Practice Patient Reference Group - Suffolk)

Danielle Mercey – Written Evidence

Lord Howe assured Members of the House of Lords that:

“commissioners would not have to create markets against the interests of patients. Clinicians will be free to commission services in the way they consider best. We intend to make it clear that commissioners will have a full range of options and that they will be under no legal obligation to create new markets, particularly where competition would not be effective in driving high standards and value for patients. As I have already explained, this will be made absolutely clear through secondary legislation and supporting guidance as a result of the Bill. The Bill already creates duties on commissioners to secure continuous improvement in the quality of services, reduce inequalities and promote integrated services. The Government intend to complement these by making it explicit through regulations under Clause 73 of the Bill that commissioning decisions must be in the best interests of patients, those decisions must be transparent and commissioners will be accountable for them. We would expect the NHS Commissioning Board to maintain guidance to support commissioners in these decisions, based on the available evidence and drawing on academic research.”

(see http://www.publications.parliament.uk/pa/ld201212/ldhansrd/text/120306-0001.htm#column_1691)

However, the section 75 regulations for the Health and Social Care Act that are shortly to be laid before Parliament and will automatically become law 40 days later, will do the exact opposite of Lord Howe’s assurances, and similar comments made by Andrew Lansley, in that they will require Clinical Commissioning Groups to invite bids from all sectors for each service, regardless of what local patients or clinicians prefer and whether or not it is in the best interest of the local population.

As a doctor working with the NHS, I am horrified that Lord Howe appears to have misled Parliament. If not, then the government has changed its mind in a very substantial way.

In either case, it will be outrageous if the section 75 regulations are merely laid before Parliament with no opportunity for Parliamentarians to debate and vote on this fundamental change to the way health services are commissioned and provided in this country.

I therefore urge the Legal Scrutiny Committee to require these regulations to be debated, not merely (as it seems to those in the NHS and outside Parliament) ‘sneaked in’ without comment.

Yours faithfully

Danielle Mercey

Jim Metcalfe – Written Evidence

Dear Sir,

It may already be too late but I would like to draw your attention to the regulations laid down by the government in relation to the above and the concerns of myself and my colleagues in relation to these. Bearing in mind the recent examples of the results of placing greater emphasis on cost than on quality of care we would hope that their Lordships will give serious consideration to the need for a shift in the emphasis to quality of care.

Yours faithfully

Jim Metcalfe

Adrian Midgley – Written Evidence

This seems to be a large change which should not be made without careful discussion in public.

The period for comment and debate appears to have been unusually short. This is undesirable even if it is said to only be an appearance.

The change seems undesirable, to me.

I have been informed that the The National Health Service (Procurement, Patient Choice and Competition) Regulations 2013 will be considered by the Lords Secondary Legislation Scrutiny Committee on 5th March. I believe you will personally be examining the regulations before the Committee considers them, and I hope you will recommend to the Committee that they in turn recommend that the regulations get a full debate on the floor of the House of Lords.

Adrian Midgley

Julia Mikardo – Written Evidence

I am writing to express my concern about the section 75 regulations on NHS competition that are due to be debated in the House of Lords tomorrow.

It is clear that there is a significant disjunction between what the government have been saying about the issue of competition in the Bill and what is being proposed in the Statutory Instruments.

Government ministers previously made clear statements denying that services would be put out on the open market.

"CCGs will not be forced to fragment services, or to put services out to tender. This is absolutely not the case ... The healthcare regulator Monitor would not have the power to force you to ... You will have the freedom to work with whoever you want to in commissioning services ... You will be free from top-down interference."

"We will introduce measures to protect the NHS from any threat of takeover from US-style healthcare providers by insulating the NHS from the full force of competition law."

We now find that these regulations are making it mandatory for all services to be put out on the open market for competitive tender.

As a senior clinician in the NHS, working in the field of Child & Adolescent Mental Health, I cannot express too strongly my dismay at the direction the government is taking. To quote Polly Toynbee in last Friday's Guardian:

'compulsory marketising of everything regardless of local need is ideologically propelled vandalism'

I already have experience of trying to work with private providers who have won a local tender for a particular service. It is complex and challenging trying to develop a seamless partnership approach across an NHS and private provider, and this adds unnecessary complications to the care of young people with mental health issues who are already extremely vulnerable.

Do we really want to leave depressed, traumatised children, young people and their families to the mercy of the markets?

I request that the House of Lords seriously re-considers the step they are being asked to make.

Julia Mikardo

Consultant Child & Adolescent Psychotherapist

CFCC, Richmond CAMHS

Barry Mills – Written Evidence

I am emailing to express my opposition to and concern about the privatisation legislation of section 75. Under this legislation the NHS, which recently saved my partner's life, would be privatised. I urge you to do all in your power to prevent this. In a referendum, the majority of citizens would vote against it.

Yours Faithfully,

Barry Mills

Jennifer Mindell – Written Evidence

Lord Howe assured Members of the House of Lords that:

“commissioners would not have to create markets against the interests of patients. Clinicians will be free to commission services in the way they consider best. We intend to make it clear that commissioners will have a full range of options and that they will be under no legal obligation to create new markets, particularly where competition would not be effective in driving high standards and value for patients. As I have already explained, this will be made absolutely clear through secondary legislation and supporting guidance as a result of the Bill. The Bill already creates duties on commissioners to secure continuous improvement in the quality of services, reduce inequalities and promote integrated services. The Government intend to complement these by making it explicit through regulations under Clause 73 of the Bill that commissioning decisions must be in the best interests of patients, those decisions must be transparent and commissioners will be accountable for them. We would expect the NHS Commissioning Board to maintain guidance to support commissioners in these decisions, based on the available evidence and drawing on academic research.”

(see http://www.publications.parliament.uk/pa/ld201212/ldhansrd/text/120306-0001.htm#column_1691)

However, the section 75 regulations for the Health and Social Care Act that are shortly to be laid before Parliament and will automatically become law 40 days later, will do the exact opposite of Lord Howe’s assurances, and similar comments made by Andrew Lansley, in that they will require Clinical Commissioning Groups to invite bids from all sectors for each service, regardless of what local patients or clinicians prefer and whether or not it is in the best interest of the local population.

As a doctor working with the NHS, I am horrified that Lord Howe appears to have misled Parliament. If not, then the government has changed its mind in a very substantial way.

In either case, it will be outrageous if the section 75 regulations are merely laid before Parliament with no opportunity for Parliamentarians to debate and vote on this fundamental change to the way health services are commissioned and provided in this country.

I therefore urge the Legal Scrutiny Committee to require these regulations to be debated, not merely (as it seems to those in the NHS and outside Parliament) ‘sneaked in’ without comment.

Yours faithfully

Dr Jennifer Mindell, BSc, MB BS, PhD, FFPH, FRCP

Clinical senior lecturer

Health and Social Surveys Research Group

Research Department of Epidemiology and Public Health, UCL

Ed Moran – Written Evidence

I am an NHS medical consultant. I have experienced first hand the needless complexities and resultant impact upon core NHS services of contracting "profitable" areas of healthcare to private providers. Whilst many "straightforward" patients may enjoy certain improvements (better food, reduced risk of cancellation) I have seen complex patients private providers refuse to touch receiving substandard care from denuded NHS departments as a result.

After the "listening period" a couple of years ago many of us in the service were reassured by the government that quality and coherence, rather than competition per se, would be the drivers behind commissioning. Much in the press recently has suggested that the secondary legislation due before the houses shortly is not consistent with these assurances, making NHS commissioners vulnerable to EU competition law and forcing fragmentation of effective integrated service.

Doctors are of course famously reactionary. We strongly opposed even the introduction of the NHS! However contemporary physicians are very different beasts. We constantly reinvent our practice in line with new evidence. We would be embracing these changes had we been presented with evidence of their effectiveness. In the absence of such evidence could I ask that you merely hold the government to account with respect to the assurances they gave us 2 years ago.

Many thanks,

Yours faithfully,

Ed Moran,

Consultant in Infectious Disease

Lisa Mulherin – Written Evidence

I have received a series of emails from organisations and individuals in Leeds in the last two days who are concerned about the proposals set out in the draft secondary legislation to require virtually all commissioning by the National Commissioning Board (NCB) and Clinical Commissioning Groups (CCGs) to be undertaken through compulsory competitive tender. These concerns are compounded by the legal powers for Monitor to enforce privatisation if commissioning is not carried out through competitive markets.

Assurances were given by ministers during the lengthy passage of the Health and Social Care Bill through Parliament that it would not mean the privatisation of the NHS. The regulations under Section 75 just published break those promises.

I understand that this Statutory Instrument will be going to the Lords Secondary Legislation Scrutiny Committee on 5th March. I would like you to draw these concerns to the members of the Lords Secondary Legislation Scrutiny Committee on my behalf and on behalf of the groups and individuals in Leeds who have contacted me as the Executive Board Member for Leeds City Council and the Chair of the Leeds Health and Wellbeing Board in the last few days.

It is essential that the Lords review these proposals with great care as the regulations under Section 75 outlined above appear to have the potential to wreak havoc with our National Health Service.

Yours faithfully,

Councillor Lisa Mulherin

Daryl Mullen – Written Evidence

I would like to register my disquiet of the effects of opening up all of the NHS's services to competition. The above mentioned secondary legislation will have wide ranging effects.

Ministers repeatedly assured Parliament the CCGs and the NCB could commission services based on quality.

The effect of these regulations make ministers reassurances meaningless.

I feel Parliament and the British people have been seriously misled.

Dr Daryl Mullen

Lawrie Nerva – Written Evidence

Please take account of the fact that "Writing to CCGs in February 2012, Mr Lansley said "it is a fundamental principle of the bill that you as commissioners, not the Secretary of State and not regulators, should decide when and how competition should be used to serve your patients' interests. The healthcare regulator, Monitor, would not have the power to force you to put services out to competition".

Please keep me posted.

Lawrie Nerva

John Newman – Written Evidence

I understand that Section 75 of this act will be discussed by the Lords' Secondary Regulations Committee at their meeting to be held on 5th March.

Ministers have made many reassurances that the Health and Social Care Act would not lead to the 'marketisation' of the NHS. But it appears that these regulations will give Monitor power to demand that the the new Clinical Commissioning Groups (CCG's) instigate a contracting out of services to companies whose sole aim is to maximise profit for directors, senior management and shareholder benefit.

I would urge the committee to reject these regulations to ensure the future integrity the NHS as a service, and the future and security of good patient care. Staff morale is already low and cannot be improved or rescued by the constant driving down of costs (privatisation) and fragmentation.

Sincerely,

John Newman

Nancy Newsome – Written Evidence

Please refer this secondary legislation back to the House Of Commons where it can be properly debated and scrutinised. I do not agree that the govt has a mandate to push for all commissioning contracts to be put out to tender as this will lead to the privatisation of the NHS by the 'back door' and I think had the majority of MPs known this legislation was to be presented in this way many of them would have voted against the initial NHS restructuring bill that was put before the House.

Thank you

Nancy Newsome

James Nicholson-Smith – Written Evidence

I have received information today that I find very very alarming in relation to the Health & Social Care Act 2012.

The government has hidden the most vicious legislation on NHS privatisation, not in the Act itself, but in the secondary legislation. This will tie the NHS into full privatisation and into the EU competition laws – the market. If that happens it will be almost impossible to reverse the legislation.

I also understand that the government are trying to force this through and say its “not open to discussion”. I do not believe that this has been properly debated in the commons and if it is indeed true that underhanded privatisation provisions have been tucked into proposed legislation, I believe this to constitute “misleading” the population.

Kind regards,

James Nicholson-Smith

Barbara Norden – Written Evidence

I am aware that you are due to examine the regulations under Section 75 of the Government's NHS Act. It has come to my attention that, despite assurances to the contrary, our Government now intends to give the health regulator Monitor the power to compel local clinical commissioning groups to put any and all health services out to tender to the private sector, bringing them under EU competition rules.

I find it interesting that this Government makes a great show of wanting to "repatriate" powers from Brussels, while at the same time it is happy to use European legislation when it suits the purpose of promoting privatisation. This is blatant hypocrisy.

There are also indications that quality of service will not always be put before cost. I am not opposed in principle to certain services (for example in mental health or the care of long term conditions) being taken over by not-for-profit organisations, but this is mainly because in some cases they do it better.

I realise that our economy has been fleeced, and we have to live with the consequences, and I cannot deny that the NHS can be wasteful and unwieldy. But providing vital and emergency care on a for-profit basis is, frankly, dangerous, unless very strictly governed as in some European countries (and I don't see that in the legislation). I believe we are in real danger of defaulting into the American model -- an expensive and unfair health care system. (The US still spends a considerably higher proportion of GDP on health care).

Like many people, I feel betrayed by this development. I hope that you will find a way to turn it around.

Yours sincerely

Barbara Norden

Brian Oosthuysen – Written Evidence

I am writing about the possibility that the passage of the Statutory Instrument that will be going to the Lords Secondary Scrutiny Committee on 5th March will result in the promises being made earlier by ministers as the bill went through parliament that it did not mean the privatisation of the NHS and that local people would have the final say, will be broken.

I would like to register my outrage in the strongest possible manner if this promise is indeed broken and that virtually all commissioning will be carried out through competitive markets. Local people **MUST** have the final say.

Thank you

Brian Oosthuysen

County Councillor, Gloucestershire

John Orchard – Written Evidence

Please can you pass on to their Lordships Committee this request that a full debate is allowed for the measures concerning the changes to the commissioning within the NHS due on 5th March. This is far too important a measure to be allowed through without their Lordships being able to challenge and question these proposed measures that appear to be going back on what the Noble Lord Howe assured the House when they were first raised in the Health and Social Care Bill.

Yours faithfully,

John Orchard

Oyinlola Oybode – Written Evidence

The changes presently being put forward by Jeremy Hunt on commissioning are contrary to all the Government has said it would do. It is essential that these are fully debated and voted. Please ensure that Parliament has the chance to do so. John Adams

I would like to add my voice to those who have written to urge the Legal Scrutiny Committee to debate the section 75 regulations for the Health and Social Care Act. Concerns are being raised among healthcare professionals that these regulations would take power away from clinical commissioning groups and their patients to make decisions about where to award health care contracts- forcing the choice of providers to be made with cost as the only criterion. This appears to contradict statements made in parliament previously.

Best wishes,

Dr Oyinlola Oyebode

Specialist Registrar in Public Health

David Paintin – Written Evidence

The Lords' Secondary Legislation Committee will be discussing the regulations laid by the Government under Section 75 of the new NHS Act at their meeting on 5 March.

I and many others who have spent their working lives in the NHS are very concerned by the radical nature of these regulations. These conflict strongly with the reassurances given by Ministers during the passage of the Health & Social Care Act through Parliament. Peers and members of the Commons were assured that the NHS was not being extensively privatised and that Clinical Commissioning Groups would not be obliged to expose all NHS services to competitive tender and that the health regulator Monitor would not have powers to enforce this process. This was widely interpreted as meaning that not all clinical services would be subject to EU competition law, and some services would continue to be provided by staff directly employed by the local NHS.

These proposed regulations show that Parliament was misled. The new Clinical Commissioning Groups, will have no power to resist Monitor's demands and will be less able to balance cost and quality when making contracts. They will also be less able to consult local people about their plans.

I hope you will be able make their Lordships aware that these regulations merit special attention and should not be accepted in their present form.

Yours faithfully,

David Paintin, Hon FFSRH, FRCOG,

Emeritus Reader in Obstetrics & Gynaecology

Imperial College School of Medicine at St Mary's.

K Panama – Written Evidence

I note that there is a contradiction in the legislation proposed. It says that local people will ultimately decide who provides their service and then elsewhere says that everything must be put out to tender, essentially privatising and removing local control.

Please bring this to the attention of the Committee.

Yours sincerely,

Dr. K. Panama

David Parker – Written Evidence

I imagine that you can hardly fail to be aware that the legislation which you are to look at on March 5th betrays the promises made by the government about privatisation of the NHS and allowing localities to determine which health providers will be used.

There never was a mandate for the NHS primary legislation and this now compounds the lack of regard for democratic practice. It will be an immeasurable scandal if this legislation passes without a major debate.

Yours sincerely

David Parker

Calum Paton – Written Evidence

I am appalled to find that the present secondary legislation appears as if the amendments to the HSCA following the 'pause' had never happened.

Enforcing competition except when 'technical' reasons apply will destroy the prospects for integrated care and indeed safe care following the Francis Report.

If all services procured by the NCB and CCGs are subject to competition, then the viability of otherwise viable hospitals will be threatened.

Best,

Calum Paton

Professor of Health Policy

Keele University

Lesley Pavitt – Written Evidence

I object strongly to the idea that commissioners have to tender to private companies for health service delivery. it will break up the basic concept of a seamless service to patients
Please ask the committee to reconsider

Lesley Pavitt

Gerald Penny – Written Evidence

I am very concerned about the implications of these regulations. I regret that I am deeply suspicious of the government's intentions regarding the (our!) NHS. I ask you to recommend that these regulations get a full debate in the House of Lords.

I am yours faithfully

Dr Gerald Penny

Tim Penrice – Written Evidence

I am writing to alert you to something very important that is about to happen. There are regulations about to go through parliament, without debate, as they are secondary legislation to the health and Social Care Act.

These regulations affect section 75 of the act, on competition. They appear to impose a strict obligation on CCGs to put all services out to competitive tender or Any Qualified provider, except in an "emergency". This contradicts assurances we were given by Andrew Lansley, Earl Howe and others that CCGs would not be obliged to use competition and they would be free to choose when to use it.

"Any member of parliament could lay a "prayer" to start a motion to attempt to annul them within this timeframe. There seems to be plenty of appetite for such a process. With enough support, this could trigger a debate and potentially a vote in one of the houses. A statutory instrument of this nature hasn't been successfully annulled for over 10 years in the Lords and over 30 years in the Commons [21], and it will require mass action to effect a change against such odds"

Please take what action is required to to restrict tendering of services in the name of competition. That way privatisation lies and with it profit and loss. Our loss.

Sincerely

Tim Penrice

Justin Peter – Written Evidence

I have grave reservations that this bill will unfairly promote competition within the NHS. This will promote profit ahead of patient care. I feel this part of the bill should be debated openly in parliament.

Yours Sincerely

Dr Justin Peter

Theresa Peters – Written Evidence

URGENT ACTION: Statutory Instructions **HAVE TO BE LOOKED AT!**

I live in Harrow and have just been **ALERTED** to the **INFAMOUS** Health and Social Care Act 2012 being formalised on 25th February without **MY** consent!

I belong to several groups fighting for our NHS. I want no decision made about me **OR** for me--without **PUBLIC DEBATE**.

'It will survive as long as there are folk left with the faith to fight for it.' -- Aneurin Bevan

Yours Faithfully,

Theresa Peters

Mick Phythian – Written Evidence

On 13th February 2013 the Government published the regulations (SI257) under Section 75 of the NHS and Health Care Act 2012.

Assurances were given by ministers during the passage of the Bill through Parliament that it did not mean the privatisation of the NHS, that local people would have the final say in who provided their NHS.

The regulations just published break these promises by creating requirements for virtually all commissioning done by the National Commissioning Board (NCB) and Clinical Commissioning Groups (CCGs) to be carried out through competitive markets, which will have the effect of forcing through privatisation regardless of the will of local people.

They contain legal powers for Monitor to enforce the privatisation spontaneously or at the request of private companies that lost bids. They would also make it impossible to fulfil some of the key thrust of the Francis report recommendations.

It is important that Lords Secondary Legislation Scrutiny Committee meeting on 5th March 2013 is aware of these matters and acts upon them. Can you bring it to their attention please?

Many thanks,

Dr Mick Phythian

Isobel Pick – Written Evidence

I am writing to urge you to scrutinize very carefully the secondary legislation currently going through parliament following the Health and Social Care Act.

These regulations affect section 75 of the act, on competition. They appear to impose a strict obligation on CCGs to put all services out to competitive tender or Any Qualified provider, except in an "emergency". This contradicts assurances we were given by Andrew Lansley, Earl Howe and others that CCGs would not be obliged to use competition and they would be free to choose when to use it.

I am very afraid that these regulations will lead to the increasing fragmentation of the National Health Service, a postcode lottery of service provision and loss of control over service provision by clinicians.

In addition, we were given assurances by ministers that suggested competition would be used judiciously and in a restrained manner. These SIs contradict that reassurance – the reality is very different.

Those reassurances were given because the government knows that breaking up the NHS is an unpopular policy and has been opposed by clinicians across the country as endangering service provision. It is outrageous that the government now introduces this unpopular policy via secondary legislation, hoping for this to be passed without proper debate or scrutiny.

I hope you will do your job on behalf of all those who depend on the NHS and work for it.

Yours sincerely

Isobel Pick

Rachel Pinder – Written Evidence

I wish to register my very strong objection to the terms of the Health & Social Care Act 2012 which will force the NHS to operate fully within a market framework and under the remit of EU competition law.

I am a clinician and manager within the NHS, helping to provide dental care for people with special needs. In both my roles I can appreciate the need for efficiency in the provision of care, but I also know that for too much NHS time and money is spent on non-clinical matters.

The new proposals will exacerbate this. When a service is working well, providing excellent care which is also good value for money and is valued by the local population, why should time and money be wasted on looking for alternatives?

The time has come to let the NHS get on with looking after patients. I am no dinosaur and realise that things need to develop within the NHS and that many aspects of practice need to change. But these measures will result in the death of the NHS that so many of us have struggled to preserve, as we believe it is an example of the best that a fair society can offer its citizens.

Yours faithfully

Rachel Pinder

Community Health Services

Somerset Partnership NHS Foundation Trust

Somerset Primary Care Dental Service Headquarters

Victoria Pite – Written Evidence

On 13th February 2013 the Government published the regulations (SI257) under Section 75 of the NHS and Health Care Act 2012 I

<http://www.legislation.gov.uk/uksi/2013/257/contents/made>

Assurances were given by ministers during the passage of the Bill through Parliament that it did not mean the privatisation of the NHS, that local people would have the final say in who provided their NHS.

The regulations just published break these promises by creating requirements for virtually all commissioning done by the National Commissioning Board (NCB) and Clinical Commissioning Groups (CCGs) to be carried out through competitive markets, which will have the effect of forcing through privatisation regardless of the will of local people. They contain legal powers for Monitor to enforce the privatisation spontaneously or at the request of private companies that lost bids. They would also make it impossible to fulfil some of the key thrust of the Francis report recommendations.

I am very concerned about what appears to me to be a sleight of hand regarding the assurances given and the reality of the secondary legislation and hope I can bring, through you, some pressure to bear on the progress of this legislation through the Lords by making it a matter requiring special attention.

Yours sincerely

Victoria Pite

Neil Pride – Written Evidence

I have been informed the above Scrutiny committee will shortly be considering new regulations laid by the Government in secondary legislation as above.

I understand these regulations carry the requirement to advertise almost every NHS service to any bidder and so will be subject to European Union law. I have followed the progress of the Health and Social Care Act fairly closely over the last 2 years, and the possibility of being subject to EU law has been raised frequently because of its obvious great importance in helping or hindering the development of a better integrated service with stable staffing to the patients for whom the NHS exists.

I have no knowledge of what private arrangements may have been made earlier by members of the House of Lords; I can only state my opinion as a retired medical physician, that not debating this highly important new legislation would be a disaster for the future NHS.

Yours faithfully, Neil Pride

Jennifer Prosser – Written Evidence

Please tell the Secondary Legislation Scrutiny Committee that I am extremely concerned about these regulations. My understanding is that these regulations introduce competition law into the procurement of NHS services. This clearly contradicts what Andrew Lansley made to General Practitioners.

“You will have the freedom, with your new powers and responsibilities, to commission services in ways that meet the best interests of your patients. You will, for example, be able to determine where integrated services are required and commission them accordingly.”

And

“You will be able to work with existing providers of health and care services to deliver better results for patients”

And

“I know many of you may have read that you will be forced to fragment services, or to put services out to tender. This is absolutely not the case.”

This absolutely is the case, as set out in these regulations.

Please draw this “Statutory Instrument” to the special attention of the House. The British Public did not vote to privatise the NHS. Please note this. I heard today that we have just spent 50 million pounds on the West Coast franchise fiasco. This bill surely will lead to more of this!! It is complete nonsense. We had a cheap, effective and universal healthcare system in this country. I am completely and utterly enraged that our elected representatives should have messed with this.

Yours Sincerely,

Jennifer Prosser

David and Jean Ransley – Written Evidence

My wife and I urgently request that both Houses of Parliament be urged to ensure that the NHS Competition Regulations (SI 257) made under the Health and Social Care Act 2012 be subject to full debate, and in order to honour the pledges made by Andrew Lansley when he said last year ‘There is nothing in the Bill that promotes or permits the transfer of the NHS to the private sector ‘(Hansard 13/03/12) we trust that this amendment will be defeated.

Yours truly,

David and Jean Ransley

Irene Ratcliffe – Written Evidence

I am raising concerns about the implications of Regulations SI 257 and asking you to recommend they get a full debate in the Lords.

My concerns are (SI 257) are likely to be the final straw for many of our NHS hospitals and clinics, already damaged by too much costly marketisation and cuts.

The new regulations render the content of the CCG Constitution largely irrelevant to the NHS privatisation they are designed to accomplish.

Right now, the government is trying to sneak through secondary legislation (under Section 75 of the Health & Social Care Act) to force virtually every part of the NHS to be opened up to compulsory competitive markets, open to the private sector.

Please ensure a full debate is given.

Thank you in the hope you can respond to my request.

Cllr Irene Ratcliffe (RGN retired)

Gordon Read – Written Evidence

I am the convenor in Devon of nearly 5000 people who signed the 38 Degrees petition to Clinical Commissioning Groups (CCGs) to protect the NHS from unnecessary disruption. In the NEW Devon area (the whole geographical county less Torbay and South Hams) the CCG affirmed that it was their intention to maintain stability and only tender for services when good enough provision was unavailable. That affirmation was based on a letter of 16 February 2012 to all CCGs from the then Secretary of State, Mr Lansley, assuring them there would be no pressure to tender for all services. It was a similar affirmation to one made in the House of Lords debate on the H&SC Bill by Earl Howe and appeared, to those of us following the debate in Hansard, a key reason why Lib Dem peers acceded to the passing of that Bill.

It appears to us, and I have been busy with emails from our members on that topic, that that the secondary legislation now proposed would undermine the genuineness of those affirmations and that the matter needs to be put again to the House.

Gordon Read

Julie Reay – Written Evidence

We are a Unison Branch in a Hospital that is struggling to become a Foundation Trust. It serves the local population and is generally well regarded. Most residents in the Kingston area want their services to be provided locally and by the hospital they regard as their own. They also want services in the community provided by local, accountable organisations.

The regulations around implementing the competition parts of the Health Act and contain a number of sections that make the use of tendering for services more likely, which will negate patient choice, something the Government has made a great deal of.

UNISON believes that these regulations need to be reconsidered due to the significant disparity between the public statements of ministers and the content of the regulations, Ministers have given the impression that there will be freedom around commissioning for the new CCGs, where they can respond to local circumstances, if this part of the Act is not amended that will not be possible.

In addition, proposed regulations 5, 10 and 12 bind the hands of commissioners, and regulations 13-17 confirm the strength of Monitor's role in enforcing these rules.

Regulation 5 is particularly radical: effectively, it only permits a contract to be awarded without competition in the event of an "emergency". This is a much narrower restriction than suggested in the Parliamentary debates and proposed in the Department of Health's Best Value for Patients public consultation that led directly to these regulations.

The regulations therefore need to be reconsidered and rewritten. UNISON calls on the Committee to ensure that there is a full and proper debate to allow this to happen.

Thank you for your attention to this matter

Julie Reay

Branch Organiser

Unison

Judy Redman – Written Evidence

I am writing to you as Clerk of the Lords Secondary Legislation Scrutiny Committee to express my very deep concern at the intent and likely impact of the secondary legislation to the Health and Social Care Act 2012, identified as 2013 No 257 - The National Health Service (Procurement, Patient Choice and Competition) Regulations 2013) (<http://www.legislation.gov.uk/uksi/2013/257/made>). I would also like to request that particular attention is paid to this SI when it goes to the committee on 5 March 2013.

Whereas during passage of the Health and Social Care Bill through Parliament, ministers assured the public that the new legislation would not lead to privatisation of the NHS and that local people would have the final say in NHS provision, this secondary legislation clearly makes it impossible to make such guarantees.

This is because the National Commissioning Board (NCB) and Clinical Commissioning Groups (CCGs) will be required to conduct almost all commissioning of services through competitive markets. This is likely to have the effect of forcing through privatisation regardless of the will of local people.

The regulations also contain legal powers for Monitor to enforce the privatisation spontaneously or at the request of private companies that lost bids.

I am very concerned that the effect of this is that it will be impossible to fulfil some of the key thrust of the Francis report recommendations.

Yours faithfully

Judy Redman

Margaret and Malcolm Reid – Written Evidence

We are very concerned to learn that the Government seems to be determined to circumvent the key thrust of the Francis report's recommendations. Apparently, they are creating requirements for all NCBs and CCGs to carry out commissioning competitively. We have specifically requested that our CCG , wherever possible, commissions from our local NHS Trust.

WE DO NOT WANT OUR NHS PRIVATISED. WE DO NOT WANT AN AMERICAN STYLE OF, SO CALLED, HEALTH PROVISION.

We would urgently request that the Lords Secondary Legislation Scrutiny Committee remembers that the party manifestos, even that of the Tories, did not advocate privatisation of the NHS.

Yours faithfully,

Margaret and Malcolm Reid

Karen Reissman – Written Evidence

I am really concerned that regulations are being pushed through parliament without full debate which could have wide-reaching implications on the mix of providers of NHS-funded services.

The rules ban “any restrictions on competition that are not necessary”.

They say contracts can only be awarded without tender for “technical reasons, or reasons connected with the protection of exclusive rights” or for “reasons of extreme urgency”

I do not think this is what was argued when the health and social care act was put through parliament. I would ask that if this is being proposed it is subject to full parliamentary scrutiny by being primary legislation not regulations.

Karen Reissmann

Chris Remington – Written Evidence

I am writing to you on as a UNISON member and user of the NHS, to raise urgent concerns about Statutory Instrument 257: the National Health Service (Procurement, Patient Choice and Competition) Regulations 2013.

I understand that the Secondary Legislation Scrutiny Committee will be discussing these regulations, laid by the government under Section 75 of the Health and Social Care Act, at their meeting on 5 March.

I believe that these regulations need to be reconsidered due to the significant disparity between the public statements of ministers and the content of the regulations.

During the passage of the Health and Social Care Act – through both Houses of Parliament – ministers repeatedly offered reassurances that the Act would permit sufficient flexibility for the new clinical commissioning groups to decide themselves which services to tender.

For example, in the Commons, Simon Burns MP stated on 12 July 2011 that

“...it will be for commissioners to decide which services to tender...to avoid any doubt—it is not the Government’s intention that under clause 67 [now 75] that regulations would impose compulsory competitive tendering requirements on commissioners, or for Monitor to have powers to impose such requirements.” [1]

And in the Lords, Earl Howe stated on 6 March 2012 that

“clinicians will be free to commission services in the way they consider best. We intend to make it clear that commissioners will have a full range of options and that they will be under no legal obligation to create new markets.” [2]

In contrast however, proposed regulations 5, 10 and 12 bind the hands of commissioners, and regulations 13-17 confirm the strength of Monitor’s role in enforcing these rules.

Regulation 5 is particularly radical: effectively, it only permits a contract to be awarded without competition in the event of an “emergency”. This is a much narrower restriction than suggested in the Parliamentary debates and proposed in the Department of Health’s Best Value for Patients public consultation that led directly to these regulations.

In addition, UNISON has had engagement through the Staff Passport Group of the NHS Social Partnership Forum with both the Department of Health and Monitor, and these regulations also seem to run contrary to these discussions on how the Act will be implemented.

In summary, there is a contradiction between the intentions of the Act as expressed by ministers and the consequences of the regulations.

The regulations therefore need to be reconsidered and rewritten. I would request that the Committee ensures that there is a full and proper debate to allow this to happen.

Yours Sincerely,

Chris Remington

Caitlin Rice – Written Evidence

Lord Howe assured Members of the House of Lords that:

“commissioners would not have to create markets against the interests of patients. Clinicians will be free to commission services in the way they consider best. We intend to make it clear that commissioners will have a full range of options and that they will be under no legal obligation to create new markets, particularly where competition would not be effective in driving high standards and value for patients. As I have already explained, this will be made absolutely clear through secondary legislation and supporting guidance as a result of the Bill. The Bill already creates duties on commissioners to secure continuous improvement in the quality of services, reduce inequalities and promote integrated services. The Government intend to complement these by making it explicit through regulations under Clause 73 of the Bill that commissioning decisions must be in the best interests of patients, those decisions must be transparent and commissioners will be accountable for them. We would expect the NHS Commissioning Board to maintain guidance to support commissioners in these decisions, based on the available evidence and drawing on academic research.”

(see http://www.publications.parliament.uk/pa/ld201212/ldhansrd/text/120306-0001.htm#column_1691)

However, the section 75 regulations for the Health and Social Care Act that are shortly to be laid before Parliament and will automatically become law 40 days later, will do the exact opposite of Lord Howe’s assurances, and similar comments made by Andrew Lansley, in that they will require Clinical Commissioning Groups to invite bids from all sectors for each service, regardless of what local patients or clinicians prefer and whether or not it is in the best interest of the local population.

I am horrified that Lord Howe appears to have misled Parliament. If not, then the government has changed its mind in a very substantial way.

In either case, it will be outrageous if the section 75 regulations are merely laid before Parliament with no opportunity for Parliamentarians to debate and vote on this fundamental change to the way health services are commissioned and provided in this country.

I therefore urge the Legal Scrutiny Committee to require these regulations to be debated, not merely (as it seems to those in the NHS and outside Parliament) ‘sneaked in’ without comment.

Yours faithfully,

Caitlin Rice

David Rice – Written Evidence

I have just found out what is being planned for the section 75 regulations for the Health and Social Care Act. This seems completely undemocratic to me and may be misleading Parliament. I urge the Legal Scrutiny Committee to require these regulations to be debated.

Yours Sincerely,

David Rice

Maggie Richardson – Written Evidence

I am alarmed that the Statutory Instrument on the Secondary Legislation on Section 75 of the Health and Care Act is being put forward without debate.

As I understand it, this could have serious consequences in the form of automatically privatising our NHS.

This seems to be getting pushed through quietly without people's knowledge, and even though I try, I find it difficult to discover what's going on.

Please raise this matter for debate by the Lords, and encourage its withdrawal, as it breaks the promises given to the nation regarding privatisation in the past.

Thank you.

Yours sincerely,

Mrs Maggie Richardson

Joseph Robert – Written Evidence

I am writing to you as a concerned citizen, to raise urgent concerns about Statutory Instrument 257: the National Health Service (Procurement, Patient Choice and Competition) Regulations 2013.

I understand that the Secondary Legislation Scrutiny Committee will be discussing these regulations, laid by the government under Section 75 of the Health and Social Care Act, at their meeting on 5 March.

I believe that these regulations need to be reconsidered due to the significant disparity between the public statements of ministers and the content of the regulations.

During the passage of the Health and Social Care Act – through both Houses of Parliament – ministers repeatedly offered reassurances that the Act would permit sufficient flexibility for the new clinical commissioning groups to decide themselves which services to tender.

For example, in the Commons, Simon Burns MP stated on 12 July 2011 that

“...it will be for commissioners to decide which services to tender...to avoid any doubt—it is not the Government’s intention that under clause 67 [now 75] that regulations would impose compulsory competitive tendering requirements on commissioners, or for Monitor to have powers to impose such requirements.” [1]

And in the Lords, Earl Howe stated on 6 March 2012 that

“clinicians will be free to commission services in the way they consider best. We intend to make it clear that commissioners will have a full range of options and that they will be under no legal obligation to create new markets.” [2]

In contrast however, proposed regulations 5, 10 and 12 bind the hands of commissioners, and regulations 13-17 confirm the strength of Monitor’s role in enforcing these rules.

Regulation 5 is particularly radical: effectively, it only permits a contract to be awarded without competition in the event of an “emergency”. This is a much narrower restriction than suggested in the Parliamentary debates and proposed in the Department of Health’s Best Value for Patients public consultation that led directly to these regulations.

In summary, there is a contradiction between the intentions of the Act as expressed by ministers and the consequences of the regulations.

The regulations therefore need to be reconsidered and rewritten. I would ask the Committee to ensure that there is a full and proper debate to allow this to happen.

Yours

Joseph Robert

Angela Roberts – Written Evidence

I would like to voice my opinion and upset regarding what seems to be the chipping away at our National Health Service. I am a community nurse and am distressed to find that I am collecting data for audit more than I am spending special quality time with vulnerable patients. Patients who are relying on me to deliver the best care I can. I appreciate there must be change and we should all be cost conscious only to find the absolute injustice of management roles not doing their bit, And then most insultingly I find the NHS seems to be using more and more private companies to deliver 'care'. The whole system is totally fragmented with many so called specialist services overlapping each other and no-one knowing who is doing what - what must the patients think?

I can only urge you that there should be some debate on legislation and Please for goodness sake ask the nurses on the front line. You may be surprised how much we actually know and how dedicated most of us really are.

Sincerely

Angela Roberts

Jane Roberts – Written Evidence

I am emailing to urge that the Lords Secondary Legislation Scrutiny Committee examines carefully the Statutory Instrument that will be coming to it on the 5th March concerning S 75 of the Health and Social Care Act.

I trust that peers will take very seriously the fact that explicit assurances given repeatedly by ministers that the then Health and Social Care Bill have been broken. This has profound implications for trust in our democracy.

Ministers made clear during the passage of the Health and Social Care Bill that would not mean privatisation of the NHS and that commissioners, to be led locally by GPs, would have the final say in what services that they would procure on behalf of patients. GPs, it was suggested, were the ones best placed to know what services would be in the best interests of their patients. Yet now, I learn, that the regulations just published stipulate that virtually all commissioning done by the NHSCB and CCGs must be undertaken within a competitive market. This was emphatically not the undertaking given at the time.

In view of this, I urge that peers scrutinise the legislation with the utmost care and scepticism, and that the committee report that the matter merits special attention in the House.

Yours truly

Dr Jane Roberts, FRCPsych, DBE

Sean Robinson – Written Evidence

The Lords' Secondary Legislation Committee will be discussing the regulations laid by the Government under Section 75 of the new NHS Act at their meeting on 5 March.

These regulations are radical. During the passage of the Health & Social Care Act ministers informed the House and the media that there was no possibility of NHS services being forced to be put to the market, and that the health regulator Monitor would not have powers to enforce such a move.

However, local commissioners, the new Clinical Commissioning Groups, will have no power to resist Monitor's demands, will be less able to introduce quality criteria, in addition to cost criteria, into the contracts they are required to let, and will have less opportunity to consult local people about their plans.

Since this is in direct contravention of what was said to Parliament, please ensure that Peers are aware that these regulations merit special attention.

Yours faithfully,

Sean Robinson

Eddie Robson – Written Evidence

I am alarmed to see that, in spite of promises that the Health And Social Care Bill did not mean the privatisation of the NHS, the regulations just published for commissioning NHS services appear to do precisely this by making it mandatory for nearly all services to be subject to a competitive market.

The extent to which this government has run roughshod over public opinion on this issue - first by promising no reorganisation of the NHS, then by promising that the reorganisation it was carrying out would not amount to privatisation - means this cannot go unscrutinised. Indeed there may be a case that ministers have misled Parliament over the issue. These regulations demand special attention, I feel.

Eddie Robson

Martin Ross – Written Evidence

Your meeting on 05 March

I am writing to alert you to the following:

Ministers assured Parliament during the passage of the above Act, when still a Bill:

No possibility of NHS services being forced to put out to the market;

“Monitor” would have no powers to enforce such a move;

The NHS would therefore not become subject to EU completion law;

Therefore, no irrevocable change to its status.

PLEASE BE AWARE THAT THE ABOVE SECONDARY LEGISLATION DOES NOT APPEAR TO ABIDE BY THOSE ASSURANCES.

I IMPLORE YOU: PLEASE SCRUTINISE IT MOST CAREFULLY, IN THE LIGHT OF WHAT I HAVE WRITTEN.

We place our trust in you.

Martin ross.

Steve Rothman – Written Evidence

Given the seriousness of, and public interest in, issues of NHS privatisation and competition, it seems inappropriate to use secondary legislation to bring forward what seems to be a major opening-up of the NHS to private companies.

Can I please urge you both to support full Parliamentary debate of, and a vote on, the new regulations: (SI257) under Section 75 of the Health & Social Care Act 2012?

Should they be debated, can I also urge you, Mr Arbuthnot, to vote against them, in accordance with the previously stated government position. I quote:

Andrew Lansley MP: “There is absolutely nothing in the Bill that promotes or permits the transfer of NHS activities to the private sector.” (13/3/12, Hansard)

- Andrew Lansley MP, 12.02.12, letter to Clinical Commissioning Groups: “I know many of you have read that you will be forced to fragment services, or put them out to tender. This is absolutely not the case. It is a fundamental principle of the Bill that you as commissioners, not the Secretary of State and not regulators – should decide when and how competition should be used to serve your patients interests.”

- Simon Burns MP: “...it will be for commissioners to decide which services to tender...to avoid any doubt—it is not the Government’s intention that under clause 67 [now 75] that regulations would impose compulsory competitive tendering requirements on commissioners, or for Monitor to have powers to impose such requirements.” (12/7/11, Hansard, c442)

- Lord Howe: “Clinicians will be free to commission services in the way they consider best. We intend to make it clear that commissioners will have a full range of options and that they will be under no legal obligation to create new markets...” (6/3/12, Hansard)

On a personal note, having many American friends and colleagues I know from talking with them that a privatised health service is not the way to go.

Thank you.

Yours sincerely,

Steve Rothman.

Matthew Rowley – Written Evidence

I am aware that the Government on 13th February 2013 published the regulations (SI257) under Section 75 of the NHS and Health Care Act 2012

I am concerned that this regulation will affect the NHS service delivery, and indeed the Governments own commitments, as follows:

- Assurances were given by ministers during the passage of the Bill through Parliament that it did not mean the privatisation of the NHS, that local people would have the final say in who provided their NHS.
- The regulations just published break these promises by creating requirements for virtually all commissioning done by the National Commissioning Board (NCB) and Clinical Commissioning Groups (CCGs) to be carried out through competitive markets, which will have the effect of forcing through privatisation regardless of the will of local people.

They contain legal powers for Monitor to enforce the privatisation spontaneously or at the request of private companies that lost bids.

- They would also make it impossible to fulfil some of the key thrust of the Francis report recommendations.

I am aware that this Statutory Instrument will be going to the Lords Secondary Legislation Scrutiny Committee on 5th March; this Committee will then report to the House.

I would urge the Committee to look seriously at the Secondary Legislation and hopefully report the above concerns to the House as meriting special attention.

regards

Matthew Rowley

Royal College of Nursing – Written Evidence

With a membership of over 410,000 registered nurses, midwives, health visitors, nursing students, health care assistants and nurse cadets, the Royal College of Nursing (RCN) is the voice of nursing across the UK and the largest professional union of nursing staff in the world. RCN members work in a variety of hospital and community settings in the NHS and the independent sector. The RCN promotes patient and nursing interests on a wide range of issues by working closely with the Government, the UK parliaments and other national and European political institutions, trade unions, professional bodies and voluntary organisations.

During the passage of the Bill the RCN, amongst other things, campaigned to ensure that:

- Care is not fragmented, leading to inequalities in provision and an inability for clinicians and health providers to collaborate
- The quality of patient care is not detrimentally affected by forced price competition

We had raised significant concerns about the language used within the Bill, in its early inceptions, where Monitor was given direct guidance to ‘promote competition’ between providers. The RCN argued that such an approach would serve to fragment services by vastly increasing numbers of providers and place NHS services at the risk of being ‘cherry picked’ by private providers.

It was in this light that the RCN welcomed Government amendments which we believed reversed this guidance and directs Monitor to ‘prevent anti-competitive’ behaviour. The RCN was pleased to see the Department of Health Minister, Earl Howe, provide assurances that parameters would be provided through secondary legislation which would make clear the role of Monitor and other agencies in carrying out this duty.

The RCN does not oppose independent or third sector involvement in the provision of services. Recent history shows independent sector involvement in NHS provision has been most successful where it has been delivered in collaboration with local NHS providers and commissioners, for example, in the field of palliative care. Collaboration and integration of any private provision alongside NHS providers is crucial to any policy on choice; and they must be at the forefront of thinking for all commissioners.

Since this secondary legislation has now been laid before parliament the RCN is concerned that some of these concerns still remain, as the secondary legislation now stands. The scope for a service not being open for competition, or put out to tendering, is extremely narrow.

The RCN is concerned that in focusing on competition, particularly price competition, then quality standards will become of secondary consequence. The issue of promoting and regulating competition must not hinder Monitor from the most important issue of regulating a national health service which delivers integrated, collaborative and comprehensive care. The RCN believes that the unfettered proliferation of privately provided services, as enabled by the Bill and through policy such as Any Qualified Provider (AQP), could reduce the NHS to a provider of only the most unprofitable services, merely acting as a safety net or infrastructure framework.

The RCN sees a crucial role for Monitor and other regulators in the NHS as part of an effective system of checks and balances to ensure quality. With an increased emphasis being placed upon competition, the relationship between Monitor and the Care Quality Commission will be vital to maintain quality.

Lessons from previous NHS failures, where the focus upon quality care was lost, must be learnt and applied to any future reform. Quality of care and patient safety depend upon safe staffing levels and a climate, or culture, of openness and transparency. In the light of the recent Francis inquiry, where the importance of transparency at all levels of the service was stressed, we are increasingly concerned that moves to promote and increase competition within the NHS will do damage to potential collaboration between NHS providers. Focus on competition must not be at the expense of a focus on collaboration and integration.

The Government is relying on using competition as a lever to drive up standards, which is risky. Collaboration and integration are equally good levers to achieve the same goal and have less costly and destructive consequences.

The reforms must not lead to a position where the market is so skewed against the NHS and moves away from collaboration and integration to market-based price competition. The RCN believes that the unfettered proliferation of privately provided services, as enabled by the Act and through policy such as Any Qualified Provider (AQP) and the Patient Choice Agenda, could reduce the NHS to a provider of only the most unprofitable services, merely acting as a safety net or infrastructure framework. This must not be allowed to be the case.

Royal College of Paediatrics and Child Health

I am writing to you with regard to Statutory Instrument 257 *The National Health Service (Procurement, Patient Choice and Competition) Regulations 2013*, which pertains to the requirements placed upon the National Health Service Commissioning Board and Clinical Commissioning Groups (CCGs), when procuring services on behalf of the NHS.

The RCPCH seeks clarity about the following paragraphs, which appear to conflict with assurances previously provided by Ministers regarding 'any qualified providers' and patient choice. The relevant paragraphs are:

(page 2)

When procuring health care services for the purpose of the NHS (including taking a decision referred to in regulation 2(2)), a relevant body must comply with paragraphs (2) to (4):

- *treat providers equally and in a non-discriminatory way, including by not treating a provider, or type of provider, more favourably than any other provider, in particular on the basis of ownership.*

and

(page 3)

The services are to be determined as capable of being provided by a single provider only when –

(a) for technical reasons, or for reasons connected with the protection of exclusive rights, the contract may be awarded only to that provider; or

(b) (only if it is strictly necessary) for reasons of extreme urgency brought about by events unforeseeable by, and not attributable to, the relevant body, it is not possible to award the contract to another provider within the time available to the relevant body for securing the provision of the services.

These paragraphs appear to imply that all new contracts for services will be open to competition from 'any qualified provider', regardless of circumstance, aside from the two caveats above. Even aside from the potentially enormous costs of this process, such a blanket approach concerns us because of the potentially destabilising influences on the NHS. This statutory instrument seems to allow for a situation in which a demonstrably successful service, run through and NHS provider, is forced to compete with the private sector, potentially against the wishes of commissioners – something the then Secretary of State for Health, Andrew Lansley specifically gave guarantees on.

We also remain concerned that the guidance provided in the Statutory Instrument provides insufficient detail to provide reassurance about the credentials of a 'qualified' provider.

Yours sincerely

Dr Hilary Cass

President

Royal College of Psychiatrists – Written Evidence

I am writing as President of the Royal College of Psychiatrists, the leading medical authority on mental health in the UK, and the professional and education body for psychiatrists, to express my concern about The National Health Service (Procurement, Patient Choice and Competition) Regulations 2013 (SI No.257), which were laid before Parliament on 13 February 2013.

In affecting part 75 of the Health and Social Care Act 2012 Regulation 5 appears to impose a strict obligation on Clinical Commissioning Groups (CCGs) to put all services out to competitive tender other than under very strictly defined circumstances. As medical professionals we are not against all forms of competition but I am wary of imposing it in all circumstances.

These regulations pose a significant risk to the freedom of CCGs to make decisions about the care they consider to be best for patients and communities, and will affect their opportunity to built on long-term relationships with providers, as well as the possibility of commissioning through a in-house process, even if this is what people in the local community were to prefer.

In all of our meetings with Ministers and officials during the passage of the Health and Social Care Act, and during debates on the floor of both Houses, we were assured that the legislation would not lead to the introduction of wholesale competition, and that CCGs would have the discretion to decide when competition should be used.

- Andrew Lansley MP: “There is absolutely nothing in the Bill that promotes or permits the transfer of NHS activities to the private sector.” (13/3/12, Hansard²)
- Andrew Lansley MP, 12.02.12, letter to Clinical Commissioning Groups: “I know many of you have read that you will be forced to fragment services, or put them out to tender. This is absolutely not the case. It is a fundamental principle of the Bill that you as commissioners, not the Secretary of State and not regulators – should decide when and how competition should be used to serve your patients interests..”
- Simon Burns MP: “...it will be for commissioners to decide which services to tender...to avoid any doubt – it is not the Government’s intention that under clause 67 [now 75] that regulations would impose compulsory competitive tendering requirements on commissioners, or for Monitor to have powers to impose such requirements.” (12/7/11, Hansard, c442³)

I strongly implore the committee to seek clarification from the Department of Health about the effect of these regulations, especially in relation to Earl Howe’s pledge that “Clinicians will be free to commission services in the way they consider best. We intend to make it clear that commissioners will have a full range of options and that they will be under no legal obligation to create new markets...” (6/3/12, Hansard⁴)

² <http://www.publications.parliament.uk/pa/cm201212/cmhansrd/cm120313/debtext/120313-0002.htm>

³ <http://www.publications.parliament.uk/pa/cm201011/cmpublic/health/110712/pm/110712s01.htm>

⁴ <http://www.publications.parliament.uk/pa/ld201212/ldhansrd/text/120306-001.htm>

Royal College of Psychiatrists – Written Evidence

We are also concerned about regulations 10, 12 and 13-17 which appear to make restriction of competition illegal, to force commissioners to use the market in considering waiting times and to give Monitor sweeping powers to enforce conditions around competition.

I hope that the Scrutiny Committee will draw to the attention of the House that Statutory Instrument No.257 is in danger of imposing competition on the new commissioning process, something which could lead to fragmentation of services, and have a detrimental effect on the care of mental health patients.

Yours Sincerely

Professor Sue Bailey OBE

President, Royal College of Psychiatrists

Royal College of Midwives – Written Evidence

On 5th March 2013, the House of Lords Secondary Legislation Scrutiny Committee will be considering the National Health Service (Procurement, Patient Choice and Competition) Regulations 2013, made under section 75 of the Health and Social Care Act 2012.

The Royal College of Midwives (RCM) is concerned that, if passed without adequate scrutiny, the regulations will result in virtually all NHS services being commissioned through competitive markets. The regulations appear to contradict assurances given by Government ministers that compulsory competitive tendering arrangements would not be imposed on commissioners.

If applied to maternity care, this will inevitably lead to the fragmentation of services. The RCM is calling for these regulations to be subject to scrutiny committee and full debate in both houses of Parliament.

What the regulations stipulate

Under new regulations, being brought in under section 75 of the Health and Social Care Act, from 1st April 2013, commissioners will be required to advertise new contracts for the provision of healthcare services. Commissioners will only be able to award a contract without competition in emergency situations or when no other provider is capable of providing the same services. Whilst previously commissioners were encouraged to commission services through competitive tendering, the new regulations will require them to do so for almost all services.

The regulations give Monitor the power to decide when commissioners have breached competition regulations, to set aside contracts entered into by commissioners, to stop arrangements that Monitor deems to be flawed and to impose competitive tendering and any qualified provider (AQP) arrangements.

The regulations have the effect of making competition the default approach, whilst imposing a challenging burden of proof on commissioners wishing to restrict competition (commissioners wishing to allow competition will not have to justify their actions).

Ministerial assurances

The regulations are at variance with previous ministerial statements – made during the passage of the Health and Social Care Act - on commissioning arrangements:

- In July 2011, the then minister Simon Burns insisted that “it will be for commissioners to decide which services to tender... to avoid any doubt – it is not the Government’s intention that under clause 67 (now 75) that regulations would impose compulsory competitive tendering requirements on commissioners, or for Monitor to have powers to impose such requirements”.
- The then Secretary of State, Andrew Lansley, wrote to commissioners in February 2012 to assure them that: “It is a fundamental principle of the Bill that you as commissioners, not the Secretary of State and not regulators – should decide when and how competition should be used to serve your patients interests”.
- The following month, the health minister Earl Howe reiterated the Government’s position: “Clinicians will be free to commission services in the way

they consider best. We intend to make it clear that commissioners will have a full range of options and that they will be under no legal obligation to create new markets”.

It is very difficult to see how these statements can be reconciled with the regulations set out under section 75 of the Act.

Impact on maternity services

The RCM is particularly concerned as to what the impact of the regulations will be on the provision of maternity services. In most parts of the country, it is only NHS providers that are able to offer all women the full range of services across the maternity pathway, from the antenatal period, through labour and birth to the postnatal period.

By delivering services across the maternity care pathway, NHS maternity providers are also able to provide services that are integrated across community and acute settings and which offer women continuity of care. This is consistent with national policy, as set out in the Government’s mandate to the NHS Commissioning Board, which requires the Commissioning Board to work with partners to ensure that: “every woman has a named midwife who is responsible for ensuring she has personalised, one-to-one care throughout pregnancy, childbirth and during the postnatal period, including additional support for those who have a maternal health concern.”

The most effective way of ensuring that women are cared for by a named midwife is by commissioning one provider to deliver care across the pathway. This is how most maternity care is commissioned, but under the new regulations this could be ruled out because it effectively restricts competition. The problem is that most independent maternity providers (of whom there are very few anyway) do not provide the full range of maternity care to all women, irrespective of medical and social risk factors. If commissioners are required to open up elements of the maternity care pathway to competition then situations may arise where either private and voluntary providers lack the means to provide the full range of care – securing insurance cover is likely to remain a challenge for some non-NHS providers – or are intent on ‘cherry picking’ the least expensive and risky elements of care, such as antenatal classes or breastfeeding support (as per AQP policy).

Unless these regulations are subject to proper scrutiny and debate, there is a real risk that they will lead to the fragmentation of maternity care and also make it harder to implement the commitment in the NHS Mandate to ensuring more women are cared for by a named midwife.

Conclusion

Left unchecked, the regulations under section 75 of the Act will impose a requirement on commissioners to open up almost all NHS services to competitive tendering. This flatly contradicts assurances made by ministers during the passage of the Health and Social Care Act. If applied to maternity care, it will lead to the fragmentation of services and make it harder to implement key elements of Government policy, such as ensuring women are cared for by a named midwife.

The RCM therefore calls for the regulations to be subject to proper scrutiny and full debate in both houses of Parliament.

Ray Rumsby – Written Evidence

At their meeting on 5 March, the Lords' Secondary Legislation Scrutiny Committee will be discussing the regulations laid by the Government under Section 75 of the new NHS Act 1. I would wish the Committee's members to consider urgently and in depth what these regulations are likely to mean for future health provision in this country.

Previously, Ministers offered reassurances that clinicians would be fully able to commission services "in the way they consider best", while being "under no obligation to create new markets". Indeed, Parliament was told that a major purpose of the secondary legislation was to clarify such points.

However, despite the rhetoric of localism and clinical choice, according to the new regulations as drafted, Clinical Commissioning Groups will be less able to introduce quality criteria, in addition to cost criteria, into the contracts they are required to let. They will have less opportunity to consult local people about their plans. The CCGs will have no power to resist Monitor's demands, while Monitor's own role has been subtly modified. The legislation for scrutiny by the Committee has major implications for the awarding of contracts and their contestation in the courts under EU competition law, which was not intended to refer to public health provision across an entire country.

These regulations seem to contravene what was said to Parliament. I hope you will be able to ensure that their Lordships give special attention to these matters, given the present risk of fragmenting the care of public health through 'bidding wars', and of expensive, time-wasting, retributive court cases that can only damage the effective care of patients.

Yours faithfully,

Ray Rumsby

L Sahu – Written Evidence

I would like to ensure that the imposition of more regulation on CCGs on how they commission services by insisting on tender which turns this into a private NHS and prevents building up good interactions with secondary care colleagues and robust local services fit for purpose and encourages cherry picking.

Dr L Sahu

Wendy Savage – Written Evidence

I understand that these are due to be paid before the House of Lords Scrutiny Committee on 5th March. We are very concerned about these and think they merit the attention of the whole house. During the passage of the Health and Social Care Bill ministers in both houses reassured members of parliament that GPs in CCGs would have freedom to select the best services but we think these regulations are drafted in such a way that they will not have such freedom. Locking the NHS into European Competition Law would be disastrous for the NHS. We urge the committee to include the whole House in the debate about these crucial changes.

I am unclear about the entire procedure. Are these dealt with in the Commons before they come to the Lords or vice versa? Wendy Savage

Co-chair of Keep Our NHS Public Steering Group

Wendy Savage MBBCh FRCOG MSc(Public Health Hon DSc)

Isobel Scarborough – Written Evidence

Please insist that what was in the manifesto for the current parties in power is upheld

NHS is a national organisation giving an excellent service and is not for grabs by those who want to make profits

Monies available need to be spent on care not lining investors pockets

THIS is DESPERATELY important

Isobel Scarborough

Rosemary Scott – Written Evidence

I am writing to raise my concerns about the effects of the secondary legislation on the health and social care bill, which would in normal circumstances be passed without debate.

It has been drawn to my attention that the process of local commissioning for health services by the CCGs will have a requirement to put the service out to tender. This introduction of compulsory involvement of the commercial market in healthcare will remove any question of planning to provide health services locally. The commercial healthcare organisations (mostly based outside the UK) have the capacity to run loss-leaders when bidding for services (as already manifested in pathology and in the Hinchingsbrooke outsourcing experiment). They also have experience in tendering which is part of their core commercial function. Existing healthcare providers, while being cheap, experienced and flexible in providing the actual healthcare, will be at a major disadvantage due to their limited experience in this kind of negotiation, and the need to do this management work effectively in spare time from running the existing service.

The risks of commercial involvement are that the provider can withdraw from the contract without damage to itself (as with Southern Cross and the Hinchingsbrooke example), and whereas at present there is a structure to pick up the pieces, this will not be the case if large-volume services are outsourced and the existing services shut down or dispersed.

CCGs need to be in a position to exercise caution about the promises of commercial providers to provide services more cheaply than the NHS. The tenders and subsequent contracts will be written in such a way that the commercial provider only needs to stick to the letter of the contract. It is very hard to write a contract that actually covers everything - the PFI deals have shown this, in that later adjustments always come at a greatly increased cost. And when a commercial provider has a monopoly, it can just put up the price.

The NHS does not split easily into saleable parts, and coordination and planning are required to make sure that the pieces join up. To take an example,

Ireland had outsourced cervical cytology to an American firm. The provider's response to the provisions of the contract were to refer the most marginally borderline lesion for further investigation (to absolutely escape the possibility of a false-negative screening result), thus putting an unprecedented pressure on colposcopy services, which had not been part of the contract. False-negatives are an accepted part of a screening programme, it would otherwise be a diagnostic not a screening service. Overloading another part of the service carries the risk that the diagnosis of severe lesions will be delayed.

Please initiate procedures to ensure that the legislation is debated.

yours faithfully

Rosemary Scott

Richard Seaford – Written Evidence

Given that Section 75 so blatantly contradicts assurances given by Lord Howe and others, one can only assume that the government has been engaged in dishonesty so vast in its consequences as to bring our whole parliamentary system into disrepute (quite apart from the fact that the wholesale commercialisation of the NHS was prudently omitted from the last Conservative manifesto). Surely the issue should be debated and section 75 removed.

With best wishes

Professor Richard Seaford

Richard Selley – Written Evidence

I note that the Secondary Legislation under Section 75 of the Health and Social Care Act 2012 will be going to the Lords Secondary Legislation Scrutiny Committee on 5th March.

I am seriously concerned that the NHS is "en route" to becoming totally privatised.

Please try to ensure that this SI is positive and will be debated in the House.

In my view it is essential that quality criteria are given prime importance by the CCG's and that local opinion on health matters is able to be heard.

Sincerely.

Richard Selley

Rosanna Selway – Written Evidence

I am writing to implore you to do everything you can to stop the amendments to section 75 regarding the regulations on NHS competition.

They appear to impose a strict obligation on CCGs to put all services out to competitive tender or Any Qualified provider, except in an "emergency". This contradicts assurances we were given by Andrew Lansley, Earl Howe and others that CCGs would not be obliged to use competition and they would be free to choose when to use it.

We were given assurances by ministers and guidance that suggested competition would be used judiciously and in a restrained manner. These SIs contradict that reassurance and will create an irreversible system based on profit instead of care, likely causing atrophy and despondency amongst staff and patients. Please do not allow this to pass, fight back against the pressure of the bullies and the people whose lifestyles place them beyond the real affects of such thoughtless changes on ordinary people - stand up for integrity and not business for the sake of us all.

Yours faithfully,

Rosanna Selway

Deborah J Sharp – Written Evidence

I write to implore you in the strongest possible terms to put a stop or at least make major changes to this legislation that is currently making its way through parliament.

These SIs will make it impossible for CCGs to commission anything without a tender or going through AQP except in an emergency. It injects the market and competition into the heart of the NHS at a stroke. As a result, CCGs will have our freedom curtailed to build long-term relationships with providers and to commission care as we see fit. Patient care will suffer.

This draconian imposition is in contrast to the reassurances given by ministers and guidance during debates during the passage of the Act. The regulations as a whole have the effect of closing down the current option of an in-house commissioning process, even if local people wish it.

These regulations sweep all existing arrangements between NHS bodies, and just about all commissioning done by the CCGs, into a market framework - and thus into the remit of EU competition law,. Once this is triggered, private providers gain rights which make halting their encroachment financially - and thus politically - virtually impossible.

We were given assurances by ministers and guidance that suggested competition would be used judiciously and in a restrained manner.

These SIs contradict that reassurance making the reality very different.

Yours sincerely

Deborah J Sharp BM BCh FRCGP PhD

Professor of Primary Health Care

Centre for Academic Primary Care

School of Social and Community Medicine

University of Bristol

Joel Shea – Written Evidence

The new regulation about the NHS being proposed by the Government causes me and my community great concern. May I recommend a full debate on it in the Lords? I am sure I have not addressed you in the correct and formal way, and for that I apologise.

Joel Shea

Helen Simmons – Written Evidence

Please be kind enough to pass on, to the Secondary Legislation Scrutiny Committee, my worries regarding the above relating to procurement of NHS services.

The Instrument should be drawn to the attention of the House under (2) (a) of the Terms of Reference of this Committee for the following reasons:

Primarily, the Instrument is politically important as the regulations will impact every person in England who uses the National Health Service.

The amount and extent of debate in Parliament and the sheer number of amendments offered, debated, and then made to the Health and Social Care Act 2012 shows clear evidence of its political importance.

Announcements by members of Her Majesty's Official Opposition after the passage of the aforementioned Act show it has continued political importance.

The continued and increasing existence and activities of individuals and organisations opposing the Act again show its continued political importance.

Of huge importance is that it makes changes, in contradiction to statements and assurances previously given by Government Ministers and others both inside and outside of Parliament.

Also, the Instrument is legally important as it will introduce competition law into the procurement of NHS services for and on behalf of the public.

It brings up major issues of public policy, which must surely be of interest to the House as it makes major and significant changes to the operation, management and services of the National Health Service in England. This is a service used by the vast majority of the public, and it will change it in a way that will impact how services are procured, delivered, and chosen by every member of the public and all in contradiction to statements and assurances previously made the government and others inside and outside of Parliament.

Of major importance is that this Instrument should be drawn to the attention of the House under (2) (c) of the Terms of Reference of this Committee for the following reasons: it may inappropriately implement European Union competition legislation, thus restricting, or completely putting a stop to, the ability of commissioning bodies to procure services as per the Health and Social Care Act 2012, or as per the will of the English people as expressed through Parliament.

This Instrument should be drawn to the attention of the House under (2) (d) of the Terms of Reference of this Committee for the following reasons:

The Instrument may imperfectly achieve its policy objectives, or those of the Health and Social Care Act 2012 as the regulations could have far-reaching implications with regard to the mix of providers of NHS-funded services. The regulations ban “any restrictions on competition that are not necessary” which is a broad and woolly statement and could be

subject to much legal challenge. Additionally, the regulations state that contracts may only be awarded without tender for “technical reasons, or reasons connected with the protection of exclusive rights” or “reasons of extreme urgency”.

The regulations as set out in this Instrument clearly conflict with promises and assurances made by the then Secretary of State for Health, Andrew Lansley on Feb 16th 2012 when he assured General Practitioners (and by implication, the general public regarding the expressed concerns of General Practitioners) that:

“You will have the freedom, with your new powers and responsibilities, to commission services in ways that meet the best interests of your patients. You will, for example, be able to determine where integrated services are required and commission them accordingly.”

And

“You will be able to work with existing providers of health and care services to deliver better results for patients”

And

“I know many of you may have read that you will be forced to fragment services, or to put services out to tender. This is absolutely not the case.”

But this is absolutely the case, as set out in these regulations.

For the reasons set out above, I request that this Statutory Instrument may be drawn to the special attention of the House. I would wish to recommend for the reasons set out above that this Statutory Instrument be set aside until a later date, or at least until the recommendations of the Francis Report have been fully considered and detailed actions agreed and planned: at which time the regulations should be drawn to the special attention of both Houses.

I include my apologies for any clumsy wording of my request, as I’m not used to writing formally to our law-makers and am completely unfamiliar with any proper etiquette required for these matters. I am, however, deeply concerned about the loss of a truly national health service in England to the detriment of the health of all in England.

Yours sincerely

Helen Simmons

Timothy Simmons – Written Evidence

I'm writing to you to draw your attention to Statutory Instrument 257, an amendment to the Health and Social Care Act 2012. A link to the text of the SI is here http://www.legislation.gov.uk/ukSI/2013/257/pdfs/ukSI_20130257_en.pdf.

My reading of this is that it will force the NHS to open itself to much more competition from private providers, contrary to reassurances given to healthcare workers and patients at the time of the Bill's original passing. As an oncologist, the detriment to patient care if this is passed is clear and frightening - more fragmentation of services, cancer patients being subjected to different providers for endoscopy, scanning, and surgery, currently all provided by the same team, together with the lack of accountability, "ownership" of the patient, poor information flow and increased cost which would go hand in hand with such fragmentation.

I would be grateful if you could do what you could to achieve a debate and vote on this matter in the House, ensure their Lordships are given the chance to scrutinise this major change to the law.

Yours faithfully,

Dr Timothy Simmons MB ChB MRCP FRCR

Tim Slade – Written Evidence

I have read that the Lords' Secondary Legislation Committee will be discussing the regulations laid by the Government under Section 75 of the new NHS Act 1 at their meeting on 5 March.

From this same source I have read that these regulations will damage or remove the ability of the new Clinical Commissioning Groups to resist demands by the regulatory body, or to require cost or quality criteria as clauses in the contracts that they let.

This concerns me a great deal, and I would like to add my voice to the others that I believe are addressing you in asking for this legislation to receive special attention, rather than unscrutinised passage.

Yours faithfully,

Tim Slade.

Phil Smith – Written Evidence

I am writing to express my reaction of feeling appalled beyond belief at the implication that the secondary legislation in relation to this Act can increase Monitor's powers to force the drive towards privatisation, implicitly reducing the ability of CCGs to negotiate contracts favourable to all and further eroding the ability of the public in any region to influence the planning and provision of health services which are supposedly for their benefit. We are beginning to appreciate the true ideological forces behind this Act, Currently, the NHS seems safe in no one's hands, and there has never been a greater need for full and proper debate.

Yours sincerely

Phil Smith

Alan Smyth – Written Evidence

I understand that the Lords' Secondary Legislation Committee will be discussing the regulations proposed by the Government under Section 75 of the Health & Social Care Act 2012, at their meeting on 5 March.

The proposed secondary legislation will allow "Monitor" the new health regulator to require clinical commissioning groups to put core NHS services out to tender on the open "market". The NHS will therefore be subject to EU competition law and the "outsourcing" policy of the current government will be enforced in perpetuity. This is in direct contravention of reassuring statements to the contrary, made by the government front bench when the Health and Social Care Bill was passing through parliament. Clinical Commissioning Groups, may be unable to introduce quality criteria, in addition to criteria based solely on cost, into contracts and will have less opportunity to consult local people about their plans.

This is a the most significant change to the way the NHS has provided services to patients since its inception 60 years ago. I understand this regulation may be approved under the "negative procedure" (goes through on the nod). I would ask you to urge their Lordships to ensure this is debated fully because of the important public interest at stake. I believe this has not been done for 10 years in the Lords or 30 years in Commons but, in view of the irreparable damage which may be done to the NHS – now is the time for such a debate.

Yours faithfully

Professor Alan Smyth

Professor of Child Health, University of Nottingham

Co-ordinating Editor, Cochrane Cystic Fibrosis & Genetic Disorders Group

Director, Medicines for Children Research Network East (MCRN East)

Karin Smyth – Written Evidence

I understand this legislation is to be considered this week. Section 75 will change NHS service provision in a way that was vehemently denied by the Government during the passage of the Health and Social Care Act and has not received due attention by the public, NHS staff and other health care specialists or our elected representatives. I request that this secondary legislation is given more attention by the House of Commons, particularly in the light of the Francis Report.

Yours

Karin Smyth

Elizabeth Spring – Written Evidence

I am writing to express concerns re the regulations laid by the Government under Section 75 of the new NHS Act, to be discussed by the Lords' Secondary Legislation Committee on 5th March.

I believe that the possibility of NHS services being further put to market is profoundly worrying. Inevitably financial rather than health outcomes will be the drivers of choice and decision making. Partnership work across the public, private and voluntary sectors will become more difficult as providers compete for funding. Preventions-based services crossing social care and health will diminish yet further, despite all the evidence that joined up provision is far more effective for long term health outcomes.

During the passage of the Health & Social Care Act through Parliament, ministers reiterated that there was no possibility of NHS services being forcibly put to the market, and that the health regulator Monitor would not have powers to enforce such a move. It followed that the NHS would not therefore be subject to EU competition law, and therefore no irrevocable change in its status was being made.

The new regulations do not ensure that local commissioners, the new Clinical Commissioning Groups, will have powers to act autonomously despite Monitor's recommendations. This means that commissioners will have to be even more cost driven and will be less able to introduce meaningful quality criteria weighting, into the contracts they are required to let. This also reduces the opportunity to consult local people about their plans, or to ensure preventions services are delivered as a the first stage in cost cutting, as this involves an early funding input before savings can be evidenced and built upon.

I hope you will be able to ensure their Lordships are aware that these regulations merit special attention and further expert consultation across the health, social care, service user/expert patient and voluntary sectors.

Yours faithfully,

Elizabeth Spring

Andrew Sprod – Written Evidence

When Andrew Lansley was Health Secretary, his Health and Social Care Act contained a provision that the NHS Commissioning Board (NHSCB) and Clinical Commissioning Groups (CCGs), who commission health services, must not use anti-competitive behaviour which is against the interests of people who use such services.

This raised concerns among those of us in the NHS that this requirement might be used as a back door to privatisation of the NHS.

In response to these concerns, Lansley wrote in the guidance to prospective commissioners the following,

"I know many of you may have read that you will be forced to fragment services, or to put services out to tender. This is absolutely not the case. It is a fundamental principle of the Bill that you as commissioners, not the Secretary of State and not regulators, should decide when and how competition should be used to serve your patients' interests. The healthcare regulator, Monitor, would not have the power to force you to put services out to competition."

I remember at the time of this statement, I was somewhat reassured. Prior to that I felt that the proposals set out in the Health and Social Care Bill, appeared to give the green light to fragment and break up the NHS wholesale. However, Lansley's and others' statements appeared to inform the public that the tendering process would be up to commissioners and that they would be under no legal obligation to create new markets where this was not considered necessary, it was stated by Simon Burns MP:

"...it will be for commissioners to decide which services to tender...to avoid any doubt—it is not the Government's intention that under clause 67 [now 75] that regulations would impose compulsory competitive tendering requirements on commissioners, or for Monitor to have powers to impose such requirements." (12/7/11, Hansard, c4423)

That seemed pretty clear, and, I'm sure you can understand, appears to be fairly reassuring that the Government actually was not using this Act as a means to rapidly sell off the NHS by creating an unnecessary competitive market where it was not necessary and to leave commissioning decisions solely in the hands of local commissioners and/or the National Commissioning Board where appropriate.

However, I understand that in a shameless change of direction, the government is trying to put through a new set of regulations using negative resolution that will force practically all contracting to be competitive, and using this method to do it will prevent parliamentary scrutiny because it automatically becomes law in 40 days after 1 April.

We already have the majority of community health provision in Cornwall, and a substantial amount in Devon being transferred to Social Enterprise organisations which are not strict NHS entities. Here is a further attempt to fragment and privatise the service and the provisions in the Regulations appear to be extremely biased towards private companies forcing commissioners to put any service out to tender even if they are providing excellent

high quality, effective and efficient services at good value for money. The denials about a privatisation agenda have been looking pretty thin for some time, but this lays bare the agenda that they are pursuing.

You will understand that, firstly, I am extremely concerned that statements by Secretary of State for Health, Ministers of Health and coalition MPs gave the impression that the Act would not open up the NHS to being forced into creating competitive markets, when the Regulations recently published are a direct contradiction of those previous statements, i.e. we have been misled over the past 18 months by these very senior members of the current Government.

Secondly, I am extremely concerned that the process of going down this route is through an extremely undemocratic procedure with no effective parliamentary scrutiny.

However, I understand that there is a procedure to prevent this automatic procedure; MPs can request a motion to annul the change within the period of 40 days, ("laying a prayer") and if this gets sufficient support from MPs, a debate in the house can be forced.

My main concern is that this Act needs full and proper scrutiny, particularly in light of the scope and scale of the likely consequences of these Regulations and the fact that the public and parliament have been misled by previous statements by the architects of this Act.

I am writing to ask that this motion be annulled and that full and proper independent Scrutiny of this Act and Regulations is undertaken. It is essential that appropriate parliamentary discussion time can be allocated to this extremely important issue.

Looking forward to your support to prevent the breaking up of the NHS in the absence of appropriate scrutiny.

Yours sincerely,

Andrew Sprod

Nick Staveley Stanley – Written Evidence

I understand that the above-mentioned secondary legislation will be considered by the LSLSC on the 5th March 2013. As an NHS patient who has undergone 10 surgical operations requiring a general anaesthetic, within the last five years, I wish to register the strongest complaint that I possibly can concerning this potentially bad piece of legislation that the Government is trying to smuggle under the radar at ridiculously short notice.

If it means that NHS Health facilities/specializations will have to tender against private healthcare firms, and the lowest bidder automatically wins the tendering process, it could lead to a very sly privatisation of what should be a public body that offers a complete range of good healthcare services to the public - in fact, a wonderful institution!

If this tendering is made mandatory it will weaken the NHS either by

(1) making the NHS quote unrealistically low prices in order to win the contracts or (2) by taking away a contract, or contracts, that the NHS were quite capable of fulfilling - resulting in less and less use being placed on a particular department and that department eventually ceasing to exist as a result.

The NHS isn't exactly smelling of roses at this moment in time. Indeed I have directly experienced diabolical care and a direct perception that only money matters and the patient no longer comes first! But eight out of those ten operations, that I have undergone, have been conducted by really good conscientious medical professionals who are a credit to their profession and do place their patients first! They are all under enough pressure as it is - and this sneaky bill will only place them under yet more pressure. How much do think they can all stand before they go the way of Stafford General Hospital?

Remember, if you, or members of your family or loved ones, are suddenly taken seriously ill or are involved in a really bad (traffic?) accident. Then paramedics will attend and you will be rushed (by default setting), via an ambulance, to an NHS hospital.

Yes, you or your loved ones! Have a good think about that and have a good think about the effects of Government "Tampering". It could just mean life or death!

Should this ill-considered legislation be given the green light, I can only see it harming the NHS and impacting upon the lives (or deaths) of patients! So I would be very grateful indeed if you would place my concerns before your committee.

Thank-you.

Yours most sincerely,

Nick Staveley Stanley

Philip Stevens – Written Evidence

This Regulation, if passed, would force Commissioning Groups to go to tender on all contracts. This would be contrary to firm pledges that Commissioning Groups should be able to choose whether to go out to tender or not. Please prevent this from happening.

Philip Stevens

Elizabeth Stephenson – Written Evidence

I am writing to express my concern that the above legislation in effect privatises the NHS. This would be in direct contravention of assurances provided by the Government that this was not the Act's purpose and in the absence of any mandate from the people to carry out such an act. I understand that this Statutory Instrument will be going to the Lords' Secondary Legislation Scrutiny Committee on March 5th.

It seems of the utmost urgency that this matter is addressed at this meeting, so that the full impact of the legislation may be firmly established.

Thank you for taking the time to read this email.

Elizabeth Stephenson

Colin Stiff – Written Evidence

I would be very grateful if the House of Lords would scrutinize the moves to open up the NHS to competitive tendering.

When the NHS works so well and is so cost effective compared with other systems , why break it up ?

Is this what ordinary people want ?

Or is this move designed to benefit the rich at the expense of the general populace?

With many thanks,

Colin Stiff

Anthony Stoll – Written Evidence

I have been informed that the The National Health Service (Procurement, Patient Choice and Competition) Regulations 2013 will be considered by the Lords Secondary Legislation Scrutiny Committee on 5th March. I believe you will personally be examining the regulations before the Committee considers them, and I hope you will recommend to the Committee that they in turn recommend that the regulations get a full debate on the floor of the House of Lords.

I am very concerned about the regulations as I believe they break the reassurances offered to parliament and to the local Clinical Commissioning Groups, that the Health & Social Care Act allowed local choice about when to use competition.

These new regulations do not appear to allow local freedom to decide when to use competition, and I think it is therefore vital that the regulations get debated in the House of Lords so that all interested Lords get a chance to consider the full implications of the Regulations, and so that the Government is forced to explain the provisions within them in light of their previous reassurances.

Yours &c.

Anthony Stoll

Ruth Suckling – Written Evidence

I understand that the Lords' Secondary Legislation Scrutiny Committee will be considering the regulations under Section 75 of the new NHS Act, on 5 March.

I am very concerned that these regulations will remove the discretion of the new Clinical Commissioning Groups to decide when it may or may not be in the public interest to award contracts based on a competitive tendering process.

During the passage of the Health and Social Care Bill into law, critics were repeatedly reassured that this would not occur.

To pass these regulations now, with no opportunity for parliamentary debate, would I believe be an flagrant breach of faith.

I urge parliament to ensure these important regulations receive proper attention through full debate in parliament.

Yours sincerely,

Dr Ruth Suckling

Specialist Registrar Emergency Medicine, Liverpool

John Sullivan – Written Evidence

It has become apparent that the government intend to marketise which is an indirect privatisation of the NHS, and will fundamentally change the benefits of the NHS to ordinary people and take vital resources from the NHS by way of profits for the private companies that will have the legal right to demand they are allowed to tender for any and all NHS services.

This scenario has been denied by both Tory and Liberal ministers on repeated occasions , therefore in effect the coalition government has been at best misleading the British people or at worst blatantly lying to the British people.

We are supposed to live in a democracy where the people have the right to choose via the ballot box at general elections on such major issues as the indirect privatisation or commercialisation of the NHS.

At no stage in the manifesto of either of the coalition parties were these changes presented to the British people therefore the government do not have a mandate for these changes, and as a consequence the members of the lords who are supposedly there to protect democratic control and temper the activities of any government. Have no option but to vote down these fundamental and irreversible changes to the NHS, until the British people are allowed to proffer an opinion via the ballot box, if our democracy is to survive.

The NHS is far more important to many millions of us than the in or out question on Europe, therefore if the coalition felt it is right we have an in or out vote on Europe, we are owed the democratic right of a yes or no on our NHS.

I say our NHS because the NHS belongs to the people of the United Kingdom and is not the property of the government to do with it as it feels fit, without meaningful consultation via the ballot box with the people they are supposed to represent. Particularly as I repeat they have no democratic mandate for these changes, and the majority of the people and members of the medical profession are fundamentally opposed to these measures.

I therefore plead with members of the lords to vote out these proposals and demand that these changes should be presented to the British people for their input, via the ballot box in a referendum or general election.

If these proposals are allowed through, then in effect democracy is dead in this United Kingdom.

John Sullivan

Sharon Sweeney – Written Evidence

I would like to request a debate on this in the Houses of Parliament as I fear the tendering process will be unwieldy and lead to an increased privatisation of our NHS.

Yours faithfully

Sharon Sweeney

David Symes – Written Evidence

May I join the many concerned commentators who have already contacted you regarding SI 2013 257 (The National Health Service Procurement, Patient Choice and Competition Regulations).

Not only would this complete the long drawn out process of privatisation of a once well run cost efficient public service but I believe will be anti democratic and an outright denial of previous reassurances given by the former Secretary of State for Health and other leading members of the current coalition government.

As a consequence, if enforced - without debate - I think it would rightly be considered as Ultra Vires should those now requesting such a debate be so persuaded to pursue in law.

Regards

David Symes

Sidney Syson – Written Evidence

I am emailing in connection with the regulations laid by the Government under Section 75 of the new NHS Act The National Health Service (Procurement, Patient Choice and Competition) Regulations 2013) which the Lords' Secondary Legislation Committee will be discussing at their meeting on 5 March.

I remember that while the Health & Social Care Act was going through Parliament ministers maintained that there was no possibility of NHS services being forced to be put to the market, and that the health regulator Monitor would not have powers to enforce such a move. It followed that the NHS would not therefore be subject to EU competition law, and therefore no irrevocable change in its status was being made.

It would appear from the new regulations that Clinical Commissioning Groups will have no power to resist Monitor's demands, will be less able to introduce quality criteria, in addition to cost criteria, into the contracts they are required to let.

In view of this I hope you will be able to ensure their Lordships know that these regulations merit special attention.

Yours faithfully,

Sidney Syson

Honorary Teaching Fellow

Department of Mathematics and Control Engineering

Coventry University

Miriam Taegtmeyer – Written Evidence

I understand that the Lords' Secondary Legislation Scrutiny Committee will be considering the regulations under Section 75 of the new NHS Act, on 5 March. I am very concerned that these regulations will remove the discretion of the new Clinical Commissioning Groups to decide when it may or may not be in the public interest to award contracts based on a competitive tendering process. During the passage of the Health and Social Care Bill into law, critics were repeatedly reassured that this would not occur. I would like to request that these important regulations receive proper attention through full debate in parliament.

Yours sincerely,

Dr Miriam Taegtmeyer

Senior Clinical Lecturer

Liverpool School of Tropical Medicine

Paul Taylor – Written Evidence

Various contacts have drawn my attention to the fact that this Secondary Legislation does NOT accord with the way the Health & Social Care Act was presented to Parliament.

Specifically, it seems NHS service are being forced into the market even where this is not the will of stakeholders. This is not what I and others understood to be the case.

I trust you will give all due scrutiny to this significant inconsistency in the Legislation.

Thank you for your attention.

Yours faithfully,

Dr Paul C Taylor.

David Taylor-Gooby – Written Evidence

I wish to object in the strongest possible terms to the rapid and almost underhand way these regulations are being introduced. They are of fundamental importance to the way the NHS is being run, and merit further consideration from the whole House.

I am a member of a Clinical Commissioning Group and we are struggling to make the system work in the face of constrained resources. I accept that if a service does not deliver we should seek alternative providers, but I cannot understand why if we are happy with a service we must be obliged to put it out to tender.

I have spoken to colleagues and this proposal is going to place unnecessary bureaucratic burdens on us at a time when we are endeavouring to make our operation more efficient and reduce bureaucracy. This will slow up our procurement process and require additional organisation.

We also believe in the transparency proposals in the Francis Report but if we are to deal with a range of private providers who are unwilling to divulge information for reasons of commercial confidentiality we will never be able to achieve this.

This measure requires full scrutiny and should not simply be "nodded through".

Yours sincerely

David Taylor-Gooby

Ivan Thompson – Written Evidence

I am worried about the effect that the new regulations may have, and feel they will lead to the undoing of the most civilised project ever devised by humanity - the NHS. They should be given full scrutiny by the House before being implemented and an American type system is instituted.

Yours faithfully,

Ivan Thompson

Stewart V Thompson – Written Evidence

Stewart V Thompson – Written Evidence

No compulsory tendering!!! Let local people decide. No privatisation of the NHS!

Stewart V Thompson

Sally Thorpe – Written Evidence

I am emailing you asking that these regulations are put forward for full scrutiny in Parliament. I helped fight off 9 community hospitals being put out to tender in Gloucestershire last year - we stopped it but under these regulations that would not be possible.

The regulations will require that virtually all commissioning done by the National Commissioning Board (NCB) and Clinical Commissioning Groups (CCGs) to be carried out through competitive markets, which will have the effect of forcing through privatisation regardless of the will of local people. In Gloucestershire we did not want our services privatised

Please put these regulations through for Parliamentary scrutiny

Sally Thorpe

Tina – Written Evidence

Tina – Written Evidence

I am writing to express my concern that the above legislation in effect privatises the NHS. This would be in direct contravention of assurances provided by the Government that this was not the Act's purpose and in the absence of any mandate from the people to carry out such an act. I understand that this Statutory Instrument will be going to the Lords'

Secondary Legislation Scrutiny Committee on March 5th. It seems of the utmost urgency that this matter is addressed at this meeting, so that the full impact of the legislation may be firmly established.

Thank you for taking the time to read this email."

Tina

Neil Todd – Written Evidence

I work as a Clinical Director in an NHS Foundation Trust with responsibility for provision of pathology services to 2 health communities in North Yorkshire.

I am becoming increasingly disturbed at the current government obsession that increased competition in the provision of NHS services must inevitably lead to improvements in quality and safety of patient care. Where is the evidence to support this assertion? My experience of fragmented care involving new private providers is exactly the opposite with cost reduction driving down quality and safety to the detriment of patients.

The biggest problem our management team currently face in driving up the quality of our services is total uncertainty as to whether we have a future and unfair competition from private providers who do not have any responsibility for providing extended elements of service provision, such as training and research, which are expected of traditional NHS providers. All too often private pathology consists of test results in isolation with little in the way of expert interpretation and clinical support to users of the service.

The general view professionally in pathology is that open competition will be a disaster for provision of quality pathology services in England and is not in the interests of patients. Despite this we seem to be heading inexorably in this direction as exemplified by the provisions of the Section 75 regulations which appear to go against all of the reassurance offered by the Government to secure passage of the Health and Social Care Act during 2012.

I would urge you to review the provisions of these regulations and call the Government to account if you share my views as to their lack of compatibility with the assurance given in public last year by Health Ministers.

Yours sincerely,

Dr Neil Todd

Clinical Director Laboratory Medicine.

Stephen Townsley – Written Evidence

I understand from national publicity that you are the person to email regarding the consideration of regulations being examined on the 5th March 2013 concerning section 75 of the Health and Social Care Act 2012.

Like many people I am concerned that the quality of healthcare is maintained in a situation where private providers are allowed to compete to provide NHS services. I was led to believe from ministerial statements that the health regulator (Monitor) would not be given powers to force competition of this kind on local commissioning groups.

However the new regulations would seem to undermine this process forcing local clinical commissioners to accept full competition in the market for health. As this would appear to conflict with the promises made to electors in Parliament I would be grateful if their lordships took special care in ensuring that the regulations do enact only those powers that the people believed Parliament was considering.

Thank you for your time.

Stephen Townsley

Trades Union Congress – Written Evidence

Going To Work is a campaigning website, run by the Trades Union Congress. It has 35,000 subscribers in the UK and abroad. We are concerned about the regulations for section 75 of the Health and Social Care Act (SI 257), laid before Parliament by the Secretary of State for Health, Jeremy Hunt.

During the passage of the Health and Social Care Act the TUC worked with health unions and Royal Colleges to raise serious concerns about the way in which the legislation opens up the NHS to a market-based system with an emphasis on competition rather than collaboration.

Ministers gave numerous assurances during debates on the Bill and in correspondence that the legislation was not designed to force compulsory competitive markets onto the NHS, and that local commissioners would be free to make decisions in the best interest of patients.

Earl Howe said on 6 March 2012: “commissioners would not have to create markets against the interests of patients. Clinicians will be free to commission services in the way they consider best. We intend to make it clear that commissioners will have a full range of options and that they will be under no legal obligation to create new markets, particularly where competition would not be effective in driving high standards and value for patients. this will be made absolutely clear through secondary legislation and supporting guidance as a result of the Bill.” (Hansard col 1691)

However, the regulations published as SI 257 completely fail to deliver on these assurances. They draw almost all NHS commissioning into a market framework, potentially opening it up to EU competition law. The circumstances in which commissioners are permitted not to tender (5) are extremely narrowly drafted, limited to ‘reasons of extreme urgency’ and unspecified ‘technical reasons’. These restrictions would rule out the current option – which has been successfully exercised since the passage of the Act – to use an in-house commissioning process, even where that is what local people support. The regulations also give Monitor the power to enforce competition, including at the request of private companies.

We asked our members if they agreed with these concerns, and in less than 24 hours, over 1,000 have responded with their comments on the regulations proposed. We have been surprised by the speed of response, and have collated all of them here into one document, which we would like to submit to the Committee ahead of your meeting.

As you will see from the responses attached, members of the public and NHS staff are concerned that the imposition of such strict requirements to use competition will lead to fragmentation of services. Competition will undermine the collaboration that is essential for good quality care, and will waste resources on transaction costs and fees. The lack of transparency around private providers could also make it difficult to deliver on some of the key recommendations of the Francis report, such as minimum safe staffing levels.

The strength of feeling shown in the responses collated here supports our call for a full debate and scrutiny of the regulations.

Tim Treuherz – Written Evidence

I understand that these regulations will come before the Secondary Legislation Scrutiny Committee on March 5. The purpose of this letter is to ask you to draw these regulations to the attention of the House.

The Health and Social Care Act 2012 establishes the NHS Commissioning Board and clinical commissioning groups throughout England. CCGs are under a duty to ‘arrange’ for the provision of certain health services. They also have a power to arrange for the provision of other services. Similar provisions apply to the Board. There is no express duty in the Act to commission services through the market, only to ‘arrange’.

The general effect of the regulations is that, when making their arrangements for the provision of health services, CCGs will almost always have to conduct a tendering exercise in the market. They will not generally be allowed to make a decision to remain with an existing NHS provider without going to the market, even if they wished to remain with that provider for sound clinical reasons, or because a majority of patients in their area had expressed a preference for an existing NHS provider. It appears that the only exception would be through the use of reg 5 (award of a new contract without a competition), which would not generally permit a CCG to make such a decision.

This is contrary to the policy aims of the Act which are to make provision for GP led commissioning and patient choice. These aims were reflected in the comments of many speakers during the passage of the Bill through parliament.

For example, Earl Howe, Parliamentary Under-Secretary of State said -

‘... commissioners would not have to create markets against the interests of patients. Clinicians will be free to commission services in the way they consider best. We intend to make it clear that commissioners will have a full range of options and that they will be under no legal obligation to create new markets, particularly where competition would not be effective in driving high standards and value for patients. As I have already explained, this will be made absolutely clear through secondary legislation and supporting guidance as a result of the Bill’.

The effect of the regulations, expressed in these terms, would be to deprive commissioners of what Earl Howe called their ‘full range of options’ and indeed place on them a ‘legal obligation to create new markets’, even where they considered that ‘competition would not be effective in driving high standards and value for patients.’

The regulations would give Monitor and the need to restrict anti-competitive behaviour primacy over local choice through commissioning decisions made by CCGs. It would place Monitor at the centre of commissioning, rather than CCGs made up of local GPs.

The enabling powers in section 75 would permit an exemption to allow CCGs to make decisions to leave health services with an existing NHS provider. Section 75(4) of the 2012 Act provides that the regulations may provide for the requirements imposed, (that is, the requirements in the regulations as to procurement, patient choice and competition) or such

Tim Treuherz – Written Evidence

of them as are prescribed, not to apply in relation to arrangements of a prescribed description. So the regulations could, and in my view must, make express provision to ensure that they did not apply in circumstances where a CCG wished to remain with an existing NHS provider.

Expressed in the wording of the committee's terms of reference, these regulations are clearly politically important. They give rise to issues of public policy likely to be of interest to the House in that they do not accord with the commitments given by Earl Howe and indeed by other ministers in both Houses of Parliament. They imperfectly achieve the policy objective of the Act, that of giving GPs through CCGs, powers and duties to make arrangements for the provision of health services, because they restrict the options available to CCGs in one particular respect. For these reasons, I ask you to draw these regulations to the attention of the House.

Yours sincerely

Tim Treuherz

Rona Truslove – Written Evidence

Rona Truslove – Written Evidence

Would like to register my objection to the privatisation of the NHS and should be a debate on SI257 in both Commons and Lords to save the NHS.

Regards

Rona Truslove

Isabel Tucker – Written Evidence

I am writing to request that the above legislation be thoroughly debated in the House of Lords. It contains clauses that, if passed into law, will mean that the National Health Service is opened up to full competition and, therefore, effectively privatised. This was not made clear either to the public or the House of Commons, and so a debate in the House of Lords is essential, in order to clarify the consequences of the legislation.

I look forward to hearing from you.

Yours faithfully,

Isabel Tucker

PJ Turner – Written Evidence

I am writing to express my extreme concern about the above, I presume draft, regulations which I understand will be considered by the above Scrutiny Committee on 5th March. My concern arises from the fact that the regulations as drafted appear to break assurances given to Parliament and local Clinical Commissioning Groups that the Health and Social Care Act would allow local choice about when to use competition. This apparent breach of those assurances is a matter of considerable concern not just to myself but to many people I have spoken to locally and in view of this I do hope that when you come to consider the regulations you will recommend to the Committee that the regulations are fully debated on the floor of the House of Lords.

Yours sincerely,

PJTurner

Susie Turner – Written Evidence

I am very concerned about the regulations as I believe they break the reassurances offered to parliament and to the local Clinical Commissioning Groups, that the Health & Social Care Act allowed local choice about when to use competition.

These new regulations do not appear to allow local freedom to decide when to use competition, and I think it is therefore vital that the regulations get debated in the House of Lords so that all interested Lords get a chance to consider the full implications of the Regulations, and so that the Government is forced to explain the provisions within them in light of their previous reassurances.

Regards,

Susie Turner

Alan Tyldesley – Written Evidence

To whom it may concern

My attention has been drawn to these draft regulations, due for scrutiny in the House of Lords soon. My reading of these proposals suggest they have very far reaching impact on the procurement of services for the NHS, and need a full debate. Please can you ask those members of parliament who undertake scrutiny of these regulations to consider fully the potential impact, which could lead to very widespread extension of private provision of services to the NHS.

Alan Tyldesley

Maureen Ukairo – Written Evidence

I herewith object to the Regulations currently laid before Parliament implementing Section 75 of the Health and Social Care Act 2012 and write to request that the Scrutiny Committee refers them to a

FULL DISCUSSION IN PARLIAMENT

My objection is that the Statements and Assurances given while the Bill was going through Parliament have not been respected in the detail now published.

WHY HAS THIS HAPPENED?

Our elected representatives, and also the second chamber should have the opportunity of considering these changes,

Yours faithfully,

Maureen Ukairo

UNISON – Written Evidence

I am writing to you on behalf of UNISON, the largest health trade union representing more than 400,000 people working in the health service, to raise urgent concerns about Statutory Instrument 257: the National Health Service (Procurement, Patient Choice and Competition) Regulations 2013.

We understand that the Secondary Legislation Scrutiny Committee will be discussing these regulations, laid by the government under Section 75 of the Health and Social Care Act, at their meeting on 5 March.

UNISON believes that these regulations need to be reconsidered due to the significant disparity between the public statements of ministers and the content of the regulations.

During the passage of the Health and Social Care Act – through both Houses of Parliament – ministers repeatedly offered reassurances that the Act would permit sufficient flexibility for the new clinical commissioning groups to decide themselves which services to tender.

For example, in the Commons, Simon Burns MP stated on 12 July 2011 that

“...it will be for commissioners to decide which services to tender...to avoid any doubt—it is not the Government’s intention that under clause 67 [now 75] that regulations would impose compulsory competitive tendering requirements on commissioners, or for Monitor to have powers to impose such requirements.”

And in the Lords, Earl Howe stated on 6 March 2012 that

“clinicians will be free to commission services in the way they consider best. We intend to make it clear that commissioners will have a full range of options and that they will be under no legal obligation to create new markets.”

In contrast however, proposed regulations 5, 10 and 12 bind the hands of commissioners, and regulations 13-17 confirm the strength of Monitor’s role in enforcing these rules.

Regulation 5 is particularly radical: effectively, it only permits a contract to be awarded without competition in the event of an “emergency”. This is a much narrower restriction than suggested in the Parliamentary debates and proposed in the Department of Health’s Best Value for Patients public consultation that led directly to these regulations.

In addition, UNISON has had engagement through the Staff Passport Group of the NHS Social Partnership Forum with both the Department of Health and Monitor, and these regulations also seem to run contrary to these discussions on how the Act will be implemented.

In summary, there is a contradiction between the intentions of the Act as expressed by ministers and the consequences of the regulations.

The regulations therefore need to be reconsidered and rewritten. UNISON calls on the Committee to ensure that there is a full and proper debate to allow this to happen.

Ardashir Vakil – Written Evidence

I am writing to urge you to put the question below to debate and to have a vote on it in Commons and Lords.

These regulations affect section 75 of the act, on competition. They impose a strict obligation on CCGs to put all services out to competitive tender or Any Qualified provider, except in an "emergency".

This contradicts assurances we were given by Andrew Lansley, Earl Howe and others that CCGs would not be obliged to use competition and they would be free to choose when to use it.

Ardashir Vakil

Barbara Veale – Written Evidence

I am very concerned that the above regulations demonstrate that the statements and assurances given by ministers in both Houses when the bill was going through the parliamentary processes have not been respected. These regulations, as drafted, will lead to the privatisation of our NHS. It is vital that they are referred back for full discussion by our elected representatives and the Lords.

Please ensure that this is done. Thank you.

Yours faithfully,

Barbara Veale

Sandra Wall – Written Evidence

There are rumours that, despite assurances to the contrary, there will be enforced tendering for all services by the CCGs. This is totally contrary to the wishes of the bulk of the electorate, and the provisions as we understood them of the Bill, which did not force the CCGs to tender. Please ensure that the issues are clearly discussed in the debate.

Sandra Wall

Lesley Walton – Written Evidence

I am writing to you as Clerk of the Legislation Scrutiny Committee, due to my deep concern over legislation under the Health and Social Care Act 2012 Section 75 (SI257). Although I live in Wales I not only have many relatives and friends in England, but indeed care about the welfare of all.

It seems clear to me that all the assurances given by ministers in the past mean nothing as it is clear that the regulations just published break these promises. As the requirements mean virtually all commissioning has to be carried out through competitive markets, and powers will exist which will allow the opinions of local people to be ignored, then one can only deduce that in effect the Bill was voted through based on information that was simply not true.

There are people who cannot now, and never will be able to afford private health. These moves would just take us back to dreadful Victorian times where good health would be achieved only through much wealth. So this a completely unacceptable situation and will put the health and welfare of millions at risk. This must not be allowed to happen.

Yours sincerely,

Lesley Walton

Anne Ward – Written Evidence

I was shocked to read Polly Toynbee's article in the Guardian and to realise that assurances given assurances by ministers and guidance that suggested competition for healthcare provision would be used judiciously and in a restrained manner is about to be overturned.

I urge you strongly to reconsider and to promote debate about this.

As an NHS Consultant, I have already experienced first hand the fragmentation in patient care that results in tendering bits of them out to the private sector, which is not managed by the same Clinical Governance structure as the NHS.

I am not against competition per se, but healthcare is not a commodity and there needs to be discretion applied when it is entertained. This discretion is removed in the new legislation.

Please could I hear what you intend to do - time is short.

Best wishes

Dr Anne Ward

Phillada Ware – Written Evidence

I am extremely concerned by the proposals for the so called "reform" of the NHS. I am now 76, and over most of my lifetime I have had excellent care from the NHS, as have had my children and grandchildren. It would be a tragedy if an institution which is the envy of the world should be undermined by the desire for profit.

Yours sincerely

Phillada Ware

Jeanne Warren – Written Evidence

It has come to my attention that the committee will be discussing the regulations laid by the Government under Section 75 of the 2012 NHS Act on 5th March.

It appears that these regulations are in direct contravention of promises made when the Bill became law last year. At that time Andrew Lansley wrote in a letter to prospective CCGs, "I know many of you may have read that you will be forced to fragment services, or to put services out to tender. This is absolutely not the case." And Earl Howe assured the Lords that, "Clinicians will be free to commission services in the way they consider best. We intend to make it clear that commissioners will have a full range of options and that they will be under no legal obligation to create new markets."

The proposed regulations say exactly the opposite, that all new contracts must be put out to competitive tender and that Monitor will have the power to decide when commissioners have breached competition regulations.

Since this is in direct contravention of what was said to Parliament, I hope you will convey to their Lordships that these regulations merit special attention so they do not just slip through without scrutiny.

Yours faithfully,

Jeanne Warren

Mark Waters – Written Evidence

I truly hope you are being inundated with letters, emails and phone calls about this issue.

I am a GP in Hereford City - and have had great reservations about this legislation since the Bill was first published.

The Bill is now an Act, and many of my concerns are now being manifest. Most of all, my concern that the legislation would force CCGs to involve private providers widely in the NHS.

You will hopefully be familiar already with the reassurances given during the passage of the Bill through Parliament:

Andrew Lansley MP: “There is absolutely nothing in the Bill that promotes or permits the transfer of NHS activities to the private sector.” (13/3/12, Hansard)

Andrew Lansley MP, 12.02.12, letter to Clinical Commissioning Groups: “I know many of you have read that you will be forced to fragment services, or put them out to tender. This is absolutely not the case. It is a fundamental principle of the Bill that you as commissioners, not the Secretary of State and not regulators – should decide when and how competition should be used to serve your patients interests..”

Simon Burns MP: “...it will be for commissioners to decide which services to tender...to avoid any doubt—it is not the Government’s intention that under clause 67 [now 75] that regulations would impose compulsory competitive tendering requirements on commissioners, or for Monitor to have powers to impose such requirements.” (12/7/11, Hansard, c442)

Lord Howe: “Clinicians will be free to commission services in the way they consider best. We intend to make it clear that commissioners will have a full range of options and that they will be under no legal obligation to create new markets....” (6/3/12, Hansard)

However, according to David Lock QC, the regulations as a whole have the effect of closing down the current option of an in-house commissioning process, even if local people wish it. This option has been taken in a number of cases, including since the passage of the Act . Ministers have confirmed that at the present time such arrangements are legal and would not give rise to challenge under EU Procurement law .

These regulations sweep all existing arrangements between NHS bodies, and just about all commissioning done by the CCGs, into a market framework . - and thus into the remit of EU competition law,. Once this is triggered, private providers gain rights which make halting their encroachment financially – and thus politically – virtually impossible.

Regulation 5 - awarding a contract without competition can, effectively, only be done in an ‘emergency’, a much narrower restriction than suggested in the parliamentary debate.

Mark Waters – Written Evidence

Regulation 10 makes whatever Monitor judges to be an “unnecessary” restriction of competition, illegal. It thus effectively closes down the current option of one state body (i.e. the NHS Commissioning Board or a Clinical Commissioning Group) merely making a new arrangement (not contract) with another – i.e. an NHS Trust.

Regulation 12 forces commissioners to use the market to meet waiting time considerations, in contravention of assurances offered to CCGs during the passage of the Act when they were told they would have discretion and could also consider quality issues. This regulation also ignores the summary of the DH’s own consultation which highlighted that waiting time considerations should not be used to override quality considerations.

Part 3 Regulations 13-17, covering Monitor’s powers The sweeping (and time unlimited) statutory powers given to Monitor enable it to decide when the CCG has breached regulations (Regulation 14), to end any arrangements the CCG has come to and to impose their own (Regulation 15) – including the criteria governing selection of suppliers, and more fundamentally, the decision about whether to use competitive methods like tendering and AQP at all. Under these regulations Monitor will have sweeping statutory power to enforce (as yet unseen) guidance, whereas the current guidance is not legally binding.

These very significant regulations should be debated in Parliament and not simply approved by the Scrutiny Committee. I have written to my MP (Jesse Norman) about this. I would also like to register my feelings with your committee.

Thank you for your attention,

Dr Mark Waters FRCGP

Cantilupe Surgery

Hereford

Anna Watkinson-Powell – Written Evidence

I am extremely concerned that the NHS Competition regulations (SI 257) made under the Health and Social Care Act 2012 should be subject to a full debate and vote on the floor of both Houses of Parliament and should be defeated and withdrawn.

These regulations would require virtually all health provision to be carried out in competitive markets, regardless of the wishes of either local people, GPs or local Clinical Commissioning Groups. They contradict assurances that were given by health ministers during the passage of the Act that it did not mean the privatisation of the NHS, and that local people would have the final say in who provided their NHS.

I am a medical student and one of tomorrow's doctors and I am extremely concerned that opening up the NHS to competition will lead to fragmented care and a lack of continuity for patients, despite their increasingly complex needs. The purchasing power of the NHS will be lost and we will be left with an expensive and bureaucratic health system and there is no evidence that opening up the market to multiple private providers improves patient care; indeed, it is likely to lead to the opposite. Furthermore, such a move could widen health inequalities across the UK and create much uncertainty and disruption for patients and those working in the health service. It would also lead to poorer working conditions for staff, with many private firms cutting costs using low wages and job instability.

Post-Francis report, the emphasis should be on quality, communication and collaboration, all of which will be threatened if these regulations go through. The NHS allocates resources according to need, using an evidence-based approach grounded in the concept of equity.

Parliament must defeat this legislation before April 1st.

Yours faithfully,

Anna Watkinson-Powell

Sonja Watsham – Written Evidence

I wish to exercise my right to raise an objection to the regulations currently laid before Parliament implementing section 75 of the Health and Social Care Act 2012. I am very concerned that statements and assurances given while the Bill was going through Parliament have not been respected in the detail now published. For this reason, I urge the Scrutiny Committee to refer these regulations to full discussion in Parliament, in order for our elected representatives and the Second Chamber to have the opportunity of looking at matters properly and asking why this change has taken place.

I hope to hear tomorrow that such discussions will be taking place.

Sonja Watsham

Cathy Watson – Written Evidence

I am writing to request that your scrutiny committee give serious consideration to this Section of the Health and Social Care Act 2012 as it will lock the NHS into a market situation and make it subject to EU competition law. Very few people want this in the UK, apart from the large health corporations which will benefit enormously as the expense of service users. I hope you will advise the committee members that the consequences of allowing this to happen will be catastrophic, especially for those with chronic and complex conditions, which are unlikely to be cherry-picked by these corporations, and which are likely to become Cinderella services in the NHS.

Kind regards

Cathy Watson

Marcus Weatherby – Written Evidence

I am writing to express my concern that the above legislation in effect privatises the NHS. This would be in direct contravention of assurances provided by the Government that this was not the Act's purpose and in the absence of any mandate from the people to carry out such an act. I understand that this Statutory Instrument will be going to the Lords' Secondary Legislation Scrutiny Committee on March 5th. It seems of the utmost urgency that this matter is addressed at this meeting, so that the full impact of the legislation may be firmly established.

Thank you for taking the time to read this email.

Marcus Weatherby

Christine Spencer Weatherley – Written Evidence

Can you please give me your assurances that every opportunity for debate and public scrutiny of this matter is going to be taken.

I am a little concerned that the government is using this as a method of stabbing the NHS in the back...and not allowing the public to challenge the actions.

I am sure you will hear from many other concerned citizens

Christine Spencer Weatherley

D Wells – Written Evidence

I understand the secondary legislation scrutiny committee will consider this legislation at a meeting on 5th March.

It appears that the proposed regulations will give Monitor powers to compel local commissioning groups to award contracts to commercial providers on the basis of price, and will reduce or eliminate their ability to use other criteria. In these and other aspects it seems inconsistent with assurances given by ministers during the passage of the Act, that marketisation/privatisation would not be forced on commissioners.

I hope you will be able to ensure that their Lordships are fully aware of the significance of these regulations so that they can receive full and proper scrutiny.

Yours faithfully

D. Wells

Alan Wenban-Smith – Written Evidence

I am told that these Regulations will have the effect of requiring virtually all health care commissioning by either the NCB or CCGs to go to competitive tender, and where tenders are won by the public sector also give Monitor powers to enforce privatisation (of their own volition or at the request of private companies making losing bids).

This breaches undertakings (given during the passage of the Bill) that the legislation did not mean privatisation, and that local people will have the final say on who provides their NHS services. With NCB and CCGs also depending increasingly on private sector consultancies for commissioning advice it is difficult to see that a public NHS will still exist.

I would ask that these issues are brought to the attention of the Lords Secondary Legislation Scrutiny Committee.

Alan Wenban-Smith

Chairman, West Midlands Socialist Health Association (former Chairman Birmingham Health Authority)

Gill Westcott – Written Evidence

I see that the Lords Secondary Legislation Committee will be discussing the regulations laid by the government under Section 75 of the Health and Social Care Act at their meeting on 5th March

I notice that these regulations directly contradict assurances given during the passage of the Act, that the choices Commissioning Groups make would not be subject to challenges under EU competition law, which would make decisions based on quality rather than price far more problematic. Ministers said that there was no possibility of compelling NHS services to be determined in the market and that the health regulator Monitor would not have powers to enforce such a move. However, it appears that just such a change is being proposed in the new regulations. The new Clinical Commissioning Groups will have no power to resist Monitor's demands, will be less able to introduce quality criteria into the contracts they are required to let, and will have less opportunity to consult local people about their plans.

This is in direct contradiction to what was said in Parliament, and I very much hope that the Members of the House of Lords will be able to debate and discuss these measures in full.

yours sincerely

Gill Westcott

Nick White – Written Evidence

Nick White – Written Evidence

Please look carefully at the secondary legislation of the health social care bill

*Secondary legislation under Section 75 of the Health and Social Care Act 2012

I feel there are issues not highlighted by the government that need discussing in parliament!

Yours

Nick White

Ian Wild-Grant – Written Evidence

I understand this is to be debated in the Lords on Monday.

I have benefited freely from the NHS all my life. Now approaching 'old age' (I am 58), I have advanced osteo-arthritis in one knee which will require 2 major operations, and for which I am currently receiving free NHS physio to stave this off as I am 'too young'. I have hypertension, high blood pressure, COPD (mild), osteoporosis, ENT issues under investigation, and I am Bipolar.

I see my GP monthly or more often - over the last 2 weeks she has ordered 3 lots of blood tests to try to get to the bottom of recent symptoms. From June til January I saw my Consultant Psychiatrist fortnightly or spoke to him on the phone - frequently at 6.45 on a Friday night which was the first moment he got in the week to ring me. He worked very hard to prevent me being admitted as an in-patient, which, having been there once before, I know I would have hated, and he said he had done it to save money and because there was no room but I know he did it because he cared - at one point when I was refusing to take a particularly nasty pharmaceutical drug unless a properly trained Psych Consultant sat in my armchair in my front room and persuaded me why I should, he drove 25 minutes across Leicester to do this.

You simply do not get this level of care anywhere else. We must act now to preserve our NHS. I urge you to ensure the Lords consider fully all the implications of this measure.

With love from Ian Wild-Grant.

Elizabeth Williams – Written Evidence

I understand that the above SI will be considered by the House of Lords Secondary Legislation Scrutiny Committee on 5th March. I am writing to urge you to report it to the House as meriting special attention. It appears to open up much NHS commissioning to compulsory competitive tendering or similar competitive procedures, which is contrary to assurances given by the Government when the Health and Social Care Act 2012 was going through Parliament. Most voters do not want further private-sector involvement in the NHS, and it is important that their wishes are not overridden through secondary legislation without the fullest possible scrutiny by Parliament.

Yours faithfully

Elizabeth Williams

Barry Winter – Written Evidence

Barry Winter – Written Evidence

Please think again about the forthcoming legislation and changes to the NHS.

It could be a total disaster.

Barry Winter

Victoria Wishart – Written Evidence

I am an ST4 doctor and fully in support of a bit to scrutinise the proposed legislation. The NHS is not a 'business', it can never make the government profit, but every one of us who works and pays tax contributions pays for the NHS, as well as many other things. If the government feels it needs to privatise the NHS now after

60 years, might I ask where exactly is the money going?

Victoria Wishart

Maggie Winters – Written Evidence

I am concerned that the regulations under Section 75 of the Health and Social Care Act 2012 are in contravention of the spirit of the Act as articulated by the Secretary of State for Health in his communication with prospective CCGs of 16 February 2012 and of promises made by the Prime Minister and others. My fear is that CCGs will be obliged to act in a way they had not been aware of when they were formed, and put virtually all NHS services for which they are responsible out to competitive tender. I beg the Lords Secondary Legislation Scrutiny committee to review these regulations very, very thoroughly in the light of assurances given by the government to Parliament and the electorate when the Act was going through Parliament.

Yours sincerely

Maggie Winters

Joyce Woosley – Written Evidence

When the Statutory Instrument goes to the House of Lords Secondary Legislation Scrutiny Committee, please ask for it to be reported to the House as meriting special attention.

Joyce Woosley

Elizabeth B Worrall – Written Evidence

I would ask you to refer Section 75 of this secondary legislation concerning the Health and Social Care Act of 2012 back to parliament for full discussion.

I believe that Section 75 undermines any future continuation of our NHS .

*It undermines any assurances given during the passage of the act that the founding principles of the NHS will be preserved.

*It will lead to total commercialisation of the NHS.

*It prevents the Clinical commissioning groups from acting as we were promised that would do when the Act was passed.

This secondary legislation exposes the original deceitful purpose of the Health and Social Care Act.

Yours faithfully

Elizabeth B Worrall

Peter Worrall – Written Evidence

I would ask you to refer Section 75 of this secondary legislation concerning the Health and Social care Act of 2012 back to parliament for full discussion.

In my view Section 75 undermines any future continuation of our precious NHS.

1. It guarantees total commercialisation of the NHS
2. It undermines any assurances given during the passage of the Act that the founding principles of the NHS will be preserved.
3. It negates any pretence of local action underpinning the organisational structure of the Act.

This regulatory instruction exposes the deceitfully ideological purpose behind the Act.

Yours faithfully

Peter Worrall

Keith & Christine Yates et al – Written evidence

Dear Sir/Madam,

It has been brought to our attention that despite assurances from the Prime Minister, the NHS is to be privatised by the back door.

This government gave no indication in their manifesto that this was to happen and in fact stated that the NHS was safe in Conservative hands.

Should you get away with this we can tell you this country will never forgive the Tories for what they have done to an institution so dear to the vast majority of the people who live here.

If the Health Secretary believes he can handle this in the same way he dealt with the issues surrounding the right wing press he really does need to think again.

Yours faithfully

Rob & Barbara Hunter

Keith & Christine Yates

Benedict Young – Written Evidence

It has been brought to my notice that the Lords Secondary Legislation Scrutiny Committee will shortly be reviewing the National Health Service (Procurement, Patient Choice and Competition) Regulations 2013.

I hope you will forgive me for contacting you direct about this -- something which is not, to my knowledge, a standard mode of public engagement with government structures. However, it seems to me that this is an exceptionally important piece of secondary legislation, since it in effect opens NHS tendering to full competition effectively based on price alone, and does not incorporate any notion of public value [I have in mind part 2, Sect. 3, Subsect. 3 (a) and (b)].

May I thus express my hope that all possible effort be made to give the Members the opportunity to give this SI the scrutiny it deserves -- which we may indeed hope includes referral back to the lower house.

Sincerely,

Dr. Benedict Young

Kym Ypres-Smith – Written Evidence

I wish to register my strong objections to the new regulations under Section 75 of the act, as follows:

The Francis Report has given great detail about improvements which need to be made to the NHS, and in UNISON's view the regulations will not be compatible with those aims. There needs to be further time spent on finding a better solution

- These regulations go much further towards privatising the NHS than was originally implied when the legislation went through Parliament last year. Certainly, my members and local constituents are not in favour of this; witness the successful campaign against the Gloucestershire social enterprise by Stroud Against the Cuts
- MPs have an obligation to resist any further fragmentation of the NHS, as otherwise its core values will be under threat. Particular attention should be given to the powers of Monitor to force an issue even when it is against the will of the local people
- Last year, the NHS was a star turn in our Olympic opening ceremony, yet we were already aware of the events which had taken place in Mid Staffs – if we cannot repair the NHS adequately, we have failed the people of this country
- The NHS is in danger of suffering a slow death through over-regulation and cost-cutting which is being dressed up as “efficiency savings”. We need the right sort of help now

Please take these views into consideration; this branch of UNISON represents the interests of over 3,000 healthcare workers in the county.

With best wishes

Kym Ypres-Smith

Branch Secretary

UNISON

Template #1 – received from 75 people

Template #1 – received from 75 people

Secondary legislation under Section 75 of the Health and Social Care Act 2012

I notice that the Lords' Secondary Legislation Scrutiny Committee will be discussing the regulations laid by the Government under Section 75 of the new NHS Act 1 at their meeting on 5 March.

I write to request that the Committee send these regulations for reconsideration. The reason is that there is a significant disjunction between the public statements of ministers and the content of the regulations.

Ministers said:

Andrew Lansley MP: “There is absolutely nothing in the Bill that promotes or permits the transfer of NHS activities to the private sector.” (13/3/12, Hansard)

- Andrew Lansley MP, 12.02.12, letter to Clinical Commissioning Groups: “I know many of you have read that you will be forced to fragment services, or put them out to tender. This is absolutely not the case. It is a fundamental principle of the Bill that you as commissioners, not the Secretary of State and not regulators – should decide when and how competition should be used to serve your patients interests..”
- Simon Burns MP: “...it will be for commissioners to decide which services to tender...to avoid any doubt—it is not the Government’s intention that under clause 67 [now section 75] that regulations would impose compulsory competitive tendering requirements on commissioners, or for Monitor to have powers to impose such requirements.” (12/7/11, Hansard, c442)
- Lord Howe: “Clinicians will be free to commission services in the way they consider best. We intend to make it clear that commissioners will have a full range of options and that they will be under no legal obligation to create new markets....” (6/3/12, Hansard)
- Nick Clegg: “That's why I have been absolutely clear: there will be no privatisation of the NHS. The NHS has always benefited from a mix of providers, from the private sector, charities and social enterprises, and that should continue... It's not the same as turning this treasured public service into a competition-driven, dog-eat-dog market where the NHS is flogged off to the highest bidder.” 26/5/11

The regulations

The regulations break these promises by creating requirements for virtually all commissioning done by the National Commissioning Board (NCB) and Clinical Commissioning Groups (CCGs) to be carried out through competitive markets regardless of the will of local people. They contain legal powers for Monitor to enforce the privatisation spontaneously or at the request of private companies which lost bids.

Template #1 – received from 75 people

They would also make it impossible to fulfil some of the key thrust of the Francis report recommendations.

According to David Lock QC, the regulations as a whole have the effect of closing down the current option of an in-house commissioning process, even if local people wish it. This option has been taken in a number of cases, including since the passage of the Act . Ministers have confirmed that at the present time such arrangements are legal and would not give rise to challenge under EU Procurement law .

Regulation 5 - awarding a contract without competition can, effectively, only be done in an 'emergency', a much narrower restriction than suggested in the parliamentary debate.

Regulation 10 makes whatever Monitor judges to be an "unnecessary" restriction of competition, illegal. It thus effectively closes down the current option of one state body (i.e. the NHS Commissioning Board or a Clinical Commissioning Group) merely making a new arrangement (not contract) with another – i.e. an NHS Trust.

Regulation 12 forces commissioners to use the market to meet waiting time considerations, in contravention of assurances offered to CCGs during the passage of the Act when they were told they would have discretion and could also consider quality issues. This regulation also ignores the summary of the DH's own consultation which highlighted that waiting time considerations should not be used to override quality considerations.

Part 3 Regulations 13-17, covering Monitor's powers

The sweeping (and time unlimited) statutory powers given to Monitor enable it to decide when the CCG has breached regulations (Regulation 14), to end any arrangements the CCG has come to and to impose their own (Regulation 15) – including the criteria governing selection of suppliers, and more fundamentally, the decision about whether to use competitive methods like tendering and AQP at all. Under these regulations Monitor will have sweeping statutory power to enforce (as yet unseen) guidance, whereas the current guidance is not legally binding.

In summary, therefore, there is a contradiction between the intention of the Act as expressed by ministers and the consequences of the regulations.

The regulations need to be reconsidered and rewritten.

Template #2 – received from 1,682 people

Template #2 – received from 1,682 people

I note that the Lords' Secondary Legislation Scrutiny Committee will be discussing the regulations laid by the Government under Section 75 of the new NHS Act at their meeting on 5 March.

(The National Health Service (Procurement, Patient Choice and Competition) Regulations 2013) made under Section 75 of the Health & Social Care Act 2012)

I should like to draw your attention to the radical nature of these regulations.

During the passage of the Health & Social Care Act through Parliament ministers repeatedly reassured the public and Parliament that there was no possibility of NHS services being forced to be put to the market, and that the health regulator Monitor would not have powers to enforce such a move.

It followed that the NHS would not therefore be subject to EU competition law, and therefore no irrevocable change in its status was being made.

However, an examination of the new regulations reveals that local commissioners, the new Clinical Commissioning Groups, will have no power to resist Monitor's demands, and will have a severely limited ability to introduce quality criteria, in addition to cost criteria, into the contracts they are required to let, and will have less opportunity to consult local people about their plans.

Since this is in direct contravention of what was said to Parliament, I hope you will be able to ensure their Lordships know that these regulations merit special attention so they do not just slip through without close scrutiny and public debate.

Template #3 – received from 29 people

I would be very grateful if you would pass on to the Secondary Legislation Scrutiny Committee my concerns regarding the aforementioned regulations which relate to the procurement of NHS services.

Firstly, that this Instrument should be drawn to the attention of the House under (2) (a) of the Terms of Reference of this Committee for the following reasons:

This instrument is politically important, in that the regulations will impact every member of the public in England who uses the National Health Service; that the extent of debate inside Parliament together with the number of amendments offered, debated, and made to the Health and Social Care Act 2012 provides evidence of its political importance; that announcements by members of Her Majesty's Official Opposition subsequent to the passage of the aforementioned act strongly indicate continued political importance; that the continued existence and activities of individuals and organisations opposing the aforementioned act further demonstrates its political importance; that it makes changes in contradiction to statements and assurances previously made by Government Ministers and others in and outside of Parliament.

This instrument is legally important in that it introduces competition law into the procurement of NHS services for and on behalf of the public. (See also below, regarding (2) (c).

This Instrument gives rise to major issues of public policy, which must be of interest to the House in that it makes significant changes to the management, operation and services of the National Health Service in England, a service used by the overwhelming majority of the public; in a manner which will impact the ways in which such services are procured, delivered, and chosen by every such member of the public; and makes changes in contradiction to statements and assurances previously made by Government Ministers and others in and outside of Parliament.

Secondly, that this Instrument should be drawn to the attention of the House under (2) (b) of the Terms of Reference of this Committee for the following reasons:

Subsequent to the enactment of the Health and Social Care Act 2012 and immediately previous to the laying of this Instrument before Parliament, a report produced by a Public Enquiry under the Chairmanship of Sir Robert Francis and commissioned by the previous Secretary of State for Health was published. I submit the contents of this highly important document form changed circumstances.

The Committee will be aware of the enormity of the events at the Mid-Staffordshire NHS Foundation Trust which are recorded in a previous report under the same chairman, and which prompted this report to be commissioned.

The Francis Report 2013 makes 290 recommendations (Vol 3 Chapter 27 Table of Recommendations). Her Majesty's Government has acknowledged the significance of the events and of the report; but is yet to respond in full. Nevertheless, it has laid this Instrument before the House and it seems highly likely that this Instrument may come into

Template #3 – received from 29 people

force before the Francis' report recommendations have been duly considered and responses proposed.

The Francis Report recommends inter alia a number of changes (for example, Recommendations numbers 124-127, 129-132 and others) relating to procurement, and other recommendations relating to the role of "Monitor".

Manifestly, the passage of this legislation should not be completed before a full impact assessment of the Francis Report has been completed, detailed responses to his recommendations have been put forward, and these regulations duly amended by Her Majesty's government. Failure to do this will lead to additional costs and effort for the NHS to implement subsequent changes. Moreover the regulations in this Instrument may hinder or even prevent the implementation of Sir Robert Francis' recommendations: leading to more unnecessary and unnecessarily early deaths and unnecessary suffering.

Thirdly, that this Instrument should be drawn to the attention of the House under (2) (c) of the Terms of Reference of this Committee for the following reasons:

This Instrument may inappropriately implement European Union competition legislation, thereby eventually restricting or eliminating the ability of commissioning bodies to procure services as per the Health and Social Care Act 2012, or as per the Francis Report recommendations, or as per the will of the English people as expressed through Parliament.

Fourthly, that this Instrument should be drawn to the attention of the House under (2) (d) of the Terms of Reference of this Committee for the following reasons:

The Instrument may imperfectly achieve its policy objectives, or those of the Health and Social Care Act 2012 in that:

The regulations could have wide-reaching implications with regard to the the mix of providers of NHS-funded services. The regulations ban "any restrictions on competition that are not necessary", which is a broad definition and one which may be subject to persistent legal challenge. Further, they state that contracts may only be awarded without tender for "technical reasons, or reasons connected with the protection of exclusive rights" or "reasons of extreme urgency".

The regulations are to come into effect simultaneous with significant changes brought about by the Health and Social Care Act 2012 and changes brought about by the programme of 'savings and efficiencies' under Sir David Nicholson. It is well known that attempts to implement multiple programmes of change concurrently inevitably creates unplanned and unexpected impacts on service and on each programme of work. Such impacts will increase costs, reduce both effectiveness and efficiency, cause delays, and increase resource requirements. In the NHS, where the service is health, such impacts will be - directly or indirectly - increase suffering and unnecessary (early) deaths.

Furthermore, - though I accept from lack of experience that this may be normal in the drafting of such instruments - there is no evidence of funding to cover the implementation and then ongoing costs of this Instrument. Beyond that, the Instrument is not supported as a major programme of change by a risk register, has no implementation timescales (it is assumed to be in effect from "Day 1" when it comes into force), has no statement of work or project plan, and no clarity of ownership of responsibilities and accountabilities for

Template #3 – received from 29 people

implementation or ongoing service. As someone who has been engaged in the governance of programmes of change, I am quite honestly aghast at this absence of information.

Over and above this, the Instrument demands that NHS management and General Practitioners - who are, after all, supposedly leading commissioning of services according to the Health and Social Care Act 2012 - will in practice have to focus on compliance with these regulations relative to provision of best quality care to their patients. It is improbable that General Practitioners have adequate experience to accomplish this, and the Instrument makes no provision for training. The Instrument thus conflicts with policy and is inconsistent between its own Requirements and its Objectives.

It is arguable that this Instrument is in conflict with assurances given by ministers during the passage of the Health and Social Care Bill through Parliament that it did not mean the privatisation of the NHS and that local people would have the final say in who provided their NHS services, by creating requirements for virtually all commissioning done by the National Commissioning Board (NCB) and Clinical Commissioning Groups (CCGs) to be carried out through competitive bidding, which will have the effect of forcing through privatisation regardless of the will of local people. Moreover, these regulations contain legal powers for Monitor to enforce such privatisation spontaneously or at the request of private companies that lost bids.

It is also arguable that the General Requirements of this Instrument conflict with the Objectives of this Instrument, in that the results of competitive bidding may not, either generally or in individual cases, permit or secure any or all of the following (a) securing the needs of the people who use the services, (b) improving the quality of the services, or (c) improving efficiency in the provision of the services.

The regulations as set out in this Instrument clearly conflict with promises and assurances made by the then Secretary of State for Health, Andrew Lansley on Feb 16th 2012 when he assured General Practitioners (and by implication, the general public regarding the expressed concerns of General Practitioners) that:

“You will have the freedom, with your new powers and responsibilities, to commission services in ways that meet the best interests of your patients. You will, for example, be able to determine where integrated services are required and commission them accordingly.”

And

“You will be able to work with existing providers of health and care services to deliver better results for patients”

And

“I know many of you may have read that you will be forced to fragment services, or to put services out to tender. This is absolutely not the case.”

This absolutely is the case, as set out in these regulations.

For the reasons set out above, I request that this Statutory Instrument may be drawn to the special attention of the House. I would wish to recommend for the reasons set out above that this Statutory Instrument be set aside until a later date, or at least until the recommendations of the Francis Report have been fully considered and detailed actions agreed and planned: at which time the regulations should be drawn to the special attention of both Houses.

Template #4 – received from 44 people

Template #4 – received from 44 people

Dear Sir/Madam

I am aware that the Government on 13th February 2013 published the regulations (SI257) under Section 75 of the NHS and Health Care Act 2012

I am concerned that this regulation will affect the NHS service delivery, and indeed the Governments own commitments, as follows:

- Assurances were given by ministers during the passage of the Bill through Parliament that it did not mean the privatisation of the NHS, that local people would have the final say in who provided their NHS.
- The regulations just published break these promises by creating requirements for virtually all commissioning done by the National Commissioning Board (NCB) and Clinical Commissioning Groups (CCGs) to be carried out through competitive markets, which will have the effect of forcing through privatisation regardless of the will of local people.
- They contain legal powers for Monitor to enforce the privatisation spontaneously or at the request of private companies that lost bids.
- They would also make it impossible to fulfil some of the key thrust of the Francis report recommendations.

I am aware that this Statutory Instrument will be going to the Lords Secondary Legislation Scrutiny Committee on 5th March; this Committee will then report to the House.

I would urge the Committee to look seriously at the Secondary Legislation and hopefully report the above concerns to the House as meriting special attention.

Thank you.