

## **Health and Social Care Bill 2011**

### **Statement on Liberal Democrat amendments**

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There have been suggestions that the Liberal Democrats have proposed to remove the competition chapter from the Health and Social Care Bill (Part 3, Chapter 2, Clauses 70-81). This is not the case.

Rather, the amendments described by Nick Clegg and Shirley Williams in their letter of 27 February 2012 would remove the duty of the Competition Commission to carry out reviews (Clauses 78-80), but would leave intact the rest of the competition chapter, such as:

- the concurrent functions of Monitor and the Office of Fair Trading under the Competition Act 1998 and Part 4 of the Enterprise Act 2002;
- the power of the Secretary of State to make regulations relating to procurement, patient choice and competition (Clause 73), and investigations into anti-competitive behaviour by the NHS Commissioning Board and clinical commissioning groups (Clause 74); and
- Clause 77 (Mergers involving NHS foundation trusts) which would apply Part 3 of the Enterprise Act 2002 which (according to the Explanatory Notes to the Bill) applies the general merger control regime for enterprises in the UK to NHS foundation trusts where it would otherwise be uncertain as to whether those provisions would apply to them.

The additional amendments go in the right direction, but we note that they have been reportedly described by the government as 'insignificant'. In the context of the Bill as a whole, the core policy remains in place. Moreover, further amendments to the competition chapter would be ineffective because both European and domestic competition law would still apply to the provision of health services under the Bill.

We remain particularly concerned that the Bill would establish the legal basis for providing fewer NHS services, for introducing charges for services that are currently free under the NHS, and for excluding people from health services through secondary legislation and, possibly, under mandated but unclear patient eligibility and selection criteria which require urgent clarification.

See [briefing note 15](#), dated 28 February 2012.