LORDS AMENDMENTS IN LIEU OF, CONSEQUENTIAL ON, OR TO, CERTAIN COMMONS AMENDMENTS

[The page and line references are to Bill 123, the Bill as first printed for the Commons.]

Clause 48

COMMONS AMENDMENT 11

11 Leave out Clause 48

LORDS AGREEMENT AND AMENDMENTS IN LIEU OF WORDS LEFT OUT OF THE BILL

The Lords agree with the Commons in their Amendment 11, and do propose Amendments 11B and 11C in lieu of the words so left out of the Bill—

Before Clause 73

11B Insert the following new Clause—

“Human Rights Act 1998: provision of regulated care or support etc to be public function

(1) This section applies where—

(a) in England, a registered care provider provides care and support to an adult or support to a carer, in the course of providing—

(i) personal care in a place where the adult receiving the personal care is living when the personal care is provided, or

(ii) residential accommodation together with nursing or personal care;

(b) in Wales, a person registered under Part 2 of the Care Standards Act 2000 provides care and support to an adult, or support to a carer, in the course of providing—
(i) personal care in a place where the adult receiving the personal care is living when the personal care is provided, or

(ii) residential accommodation together with nursing or personal care;

(c) in Scotland, a person provides advice, guidance or assistance to an adult or support to a carer, in the course of a care service which is registered under section 59 of the Public Services Reform (Scotland) Act 2010 and which consists of the provision of—

(i) personal care in a place where the adult receiving the personal care is living when the personal care is provided, or

(ii) residential accommodation together with nursing or personal care;

(d) in Northern Ireland, a person registered under Part 3 of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003 provides advice, guidance or assistance to an adult or services to a carer, in the course of providing—

(i) personal care in a place where the adult receiving the personal care is living when the personal care is provided, or

(ii) residential accommodation together with nursing or personal care.

In this section “the care or support” means the care and support, support, advice, guidance, assistance or services provided as mentioned above, and “the provider” means the person who provides the care or support.

(2) The provider is to be taken for the purposes of section 6(3)(b) of the Human Rights Act 1998 (acts of public authorities) to be exercising a function of a public nature in providing the care or support, if the requirements of subsection (3) are met.

(3) The requirements are that—

(a) the care or support is arranged by an authority listed in column 1 of the Table below, or paid for (directly or indirectly, and in whole or in part) by such an authority, and

(b) the authority arranges or pays for the care or support under a provision listed in the corresponding entry in column 2 of the Table.

<table>
<thead>
<tr>
<th>Authority</th>
<th>Provisions imposing duty or conferring power to meet needs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Local authority in England</td>
<td>Sections 2, 18, 19, 20, 38 and 49 of this Act.</td>
</tr>
<tr>
<td>Local authority in Wales</td>
<td>Part 4 and section 189 of the Social Services and Well-being (Wales) Act 2014.</td>
</tr>
<tr>
<td></td>
<td>Section 51 of this Act.</td>
</tr>
</tbody>
</table>
(4) In this section—

“local authority in England” means a local authority for the purposes of this Part;

“local authority in Wales” means a local authority for the purposes of the Social Services and Well-being (Wales) Act 2014;

“local authority in Scotland” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994;

“nursing care”, for England, Wales and Northern Ireland, has the same meaning as in the Health and Social Care Act 2008 (Regulated Activities) Regulations 2010, as amended from time to time;

“personal care”—

(a) for England, Wales and Northern Ireland, has the same meaning as in the Health and Social Care Act 2008 (Regulated Activities) Regulations 2010, as amended from time to time;

(b) for Scotland, has the same meaning as in Part 5 of the Public Services Reform (Scotland) Act 2010, as amended from time to time.”

Clause 124

11C Page 106, line 37, at end insert—

“(ba) section (Human Rights Act 1998: provision of regulated care or support etc to be public function) (Human Rights Act 1998: provision of regulated care or support etc to be public function);”
After Clause 72

COMMONS AMENDMENT 32

32 Insert the following new Clause—

“Part 1 appeals

(1) Regulations may make provision for appeals against decisions taken by a local authority in the exercise of functions under this Part in respect of an individual (including decisions taken before the coming into force of the first regulations made under this subsection).

(2) The regulations may in particular make provision about—
(a) who may (and may not) bring an appeal;
(b) grounds on which an appeal may be brought;
(c) pre-conditions for bringing an appeal;
(d) how an appeal is to be brought and dealt with (including time limits);
(e) who is to consider an appeal;
(f) matters to be taken into account (and disregarded) by the person or body considering an appeal;
(g) powers of the person or body deciding an appeal;
(h) what action is to be taken by a local authority as a result of an appeal decision;
(i) providing information about the right to bring an appeal, appeal procedures and other sources of information and advice;
(j) representation and support for an individual bringing or otherwise involved in an appeal;
(k) investigations into things done or not done by a person or body with power to consider an appeal.

(3) Provision about pre-conditions for bringing an appeal may require specified steps to have been taken before an appeal is brought.

(4) Provision about how an appeal is to be dealt with may include provision for—
(a) the appeal to be treated as, or as part of, an appeal brought or complaint made under another procedure;
(b) the appeal to be considered with any such appeal or complaint.

(5) Provision about who is to consider an appeal may include provision—
(a) establishing, or requiring or permitting the establishment of, a panel or other body to consider an appeal;
(b) requiring an appeal to be considered by, or by persons who include, persons with a specified description of expertise or experience.

(6) Provision about representation and support for an individual may include provision applying any provision of or made under section 68, with or without modifications.

(7) The regulations may make provision for—
(a) an appeal brought or complaint made under another procedure to be treated as, or as part of, an appeal brought under the regulations;

(b) an appeal brought or complaint made under another procedure to be considered with an appeal brought under the regulations;

(c) matters raised in an appeal brought under the regulations to be taken into account by the person or body considering an appeal brought or complaint made under another procedure.

(8) The regulations may include provision conferring functions on a person or body established by or under an Act (including an Act passed after the passing of this Act); for that purpose, the regulations may amend, repeal, revoke or otherwise modify an enactment.

(9) Regulations may make provision, in relation to a case where an appeal is brought under regulations under subsection (1)—

(a) for any provision of this Part to apply, for a specified period, as if a decision (“the interim decision”) differing from the decision appealed against had been made;

(b) as to what the terms of the interim decision are, or as to how and by whom they are to be determined;

(c) for financial adjustments to be made following a decision on the appeal.

(10) The period specified under subsection (9)(a) may not begin earlier than the date on which the decision appealed against was made, or end later than the date on which the decision on the appeal takes effect.”

LORDS AGREEMENT, AMENDMENT TO THE COMMONS AMENDMENT AND CONSEQUENTIAL AMENDMENTS

The Lords agree with the Commons in their Amendment 32, and do propose Amendment 32A as an amendment thereto, and Amendments 32C and 32D as consequential Amendments to the Bill—

32A Line 51, leave out “revoke or otherwise modify an enactment” and insert “or revoke an enactment, or provide for an enactment to apply with specified modifications”

Clause 35

32C Page 32, line 5, leave out “revoke or otherwise modify an enactment” and insert “or revoke an enactment, or provide for an enactment to apply with specified modifications”

Clause 119

32D Page 103, line 42, leave out “revoke or otherwise modify an enactment” and insert “or revoke an enactment, or provide for an enactment to apply with specified modifications.”
Clause 118

COMMONS AMENDMENT 40

40 Page 102, line 19, at end insert—

“(3A) After subsection (7) of that section insert—

“(8) Where the administrator recommends taking action in relation to another NHS foundation trust or an NHS trust, the references in subsection (5) to a commissioner also include a reference to a person to which the other NHS foundation trust or the NHS trust provides services under this Act that would be affected by the action.”.”

LORDS DISAGREEMENT AND AMENDMENTS IN LIEU

The Lords disagree with the Commons in their Amendment 40, but do propose Amendments 40B to 40E in lieu—

40B Page 102, line 19, at end insert—

“(3A) In subsection (5)(a) of that section, for “would achieve the objective set out in section 65DA(1)(a)” substitute “—

(i) would achieve the objective set out in section 65DA(1)(a), and

(ii) would do so without harming essential services provided for the purposes of the NHS by any other NHS foundation trust or NHS trust that provides services under this Act to the commissioner,”.”

(3B) After subsection (7) of that section insert—

“(8) Where the administrator recommends taking action in relation to another NHS foundation trust or an NHS trust, the references in subsection (5) to a commissioner also include a reference to a person to which the other NHS foundation trust or the NHS trust provides services under this Act that would be affected by the action.

(9) A service provided by an NHS foundation trust or an NHS trust is an essential service for the purposes of subsection (5) if the person making the statement in question is satisfied that the criterion in section 65DA(3) is met.

(10) Section 65DA(4) applies to the person making the statement when that person is determining whether that criterion is met.”

40C Page 102, line 21, at end insert—

“(4A) In subsection (4)(a) of that section, for “would achieve the objective set out in section 65DA(1)(a)” substitute “—

(i) would achieve the objective set out in section 65DA(1)(a), and

(ii) would do so without harming essential services provided for the purposes of the NHS by any other NHS foundation trust or NHS trust that provides services under this Act to the commissioner,”.”
40D  Page 102, line 27, at end insert—

“(8) A service provided by an NHS foundation trust or an NHS trust is an essential service for the purposes of subsection (4) if the person making the statement in question is satisfied that the criterion in section 65DA(3) is met.

(9) Section 65DA(4) applies to the person making the statement when that person is determining whether that criterion is met.”

40E  Page 103, line 25, leave out from beginning to end of line 26 and insert—

“(2) In subsection (4)(a)(ii) of that section, omit “or NHS trust”.

(3) In subsection (7) of that section, omit “or an NHS trust” and “or the NHS trust”.

(4) In subsection (8) of that section, omit “or an NHS trust”.”

COMMONS AMENDMENT 42

42  Page 103, line 22, at end insert—

“(ba) in that paragraph, after sub-paragraph (7) insert—

“(8) Omit subsection (8).”

LORDS DISAGREEMENT AND AMENDMENTS IN LIEU

The Lords disagree with the Commons in their Amendment 42, but do propose Amendments 42B and 42C in lieu—

42B  Page 102, line 14, leave out subsection (3)

42C  Page 103, line 20, leave out paragraph (b) and insert—

“(b) in paragraph 15(4), in the new subsection (2A) to be inserted into section 65F of the National Health Service Act 2006, in paragraph (a), for “would achieve the objective set out in section 65DA(1)(a)” substitute “—

(i) would achieve the objective set out in section 65DA(1)(a), and

(ii) would do so without harming essential services provided for the purposes of the NHS by any other NHS foundation trust that provides services under this Act to the commissioner,”,

(ba) in paragraph 15(4), after the new subsection (2C) to be inserted into that section, insert—

“(2D) Where the administrator recommends taking action in relation to another NHS foundation trust, the references in subsection (2A) to a commissioner also include a reference to a person to which the other NHS foundation trust provides services under this Act that would be affected by the action.
(2E) A service provided by an NHS foundation trust is an essential service for the purposes of subsection (2A) if the person making the statement in question is satisfied that the criterion in section 65DA(3) is met.

(2F) Section 65DA(4) applies to the person making the statement when that person is determining whether that criterion is met.

(bb) in paragraph 15, after sub-paragraph (7) insert—

“(8) Omit subsections (8) to (10).”

Clause 121

COMMONS AMENDMENT 46

46 Page 105, line 6, at end insert—

“(ia) regulations under section (Part 1 appeals) which include provision that amends or repeals a provision of an Act of Parliament.”

LORDS DISAGREEMENT AND AMENDMENTS IN LIEU

The Lords disagree with the Commons in their Amendment 46, but do propose Amendments 46B to 46E in lieu—

46B Page 105, line 6, at end insert—

“(ia) the first regulations under section (Part 1 appeals) (Part 1 appeals);

(ib) subsequent regulations under that section which include provision that amends or repeals a provision of an Act of Parliament, or provides for a provision of an Act of Parliament to apply with modifications;”

46C Page 104, line 41, after “Parliament” insert “, or provides for a provision of an Act of Parliament to apply with modifications”

46D Page 105, line 11, after “Parliament” insert “, or provides for a provision of an Act of Parliament to apply with modifications”

46E Page 105, line 13, at end insert—

“(4A) Subsection (4) does not apply to a statutory instrument which contains regulations or an order within paragraph (e), (ib) or (l) of that subsection, if the regulations or order are within the paragraph in question only because they include provision that applies an Act of Parliament with modifications for the purpose of making saving, transitional or transitory provision.”
LORDS AMENDMENTS IN LIEU OF, CONSEQUENTIAL ON, OR TO, CERTAIN COMMONS AMENDMENTS TO THE CARE BILL

Ordered, by The House of Commons, to be Printed, 8 May 2014.