

Health and Care Bill

EXPLANATORY NOTES ON LORDS AMENDMENTS

What these notes do

- 1 These Explanatory Notes relate to the Lords Amendments to the Health and Care Bill as brought from the House of Lords on 24 March 2022.
- 2 These Explanatory Notes have been prepared by the Department of Health and Social Care in order to assist the reader of the Bill and the Lords amendments, and to help inform debate on the Lords amendments. They do not form part of the Bill and have not been endorsed by Parliament.
- 3 These Explanatory Notes refer to HL Bill 71, the Bill as first printed for the Lords.
- 4 These Explanatory Notes need to be read in conjunction with the Lords amendments and the text of the Bill. They are not, and are not meant to be, a comprehensive description of the Lords amendments.
- 5 Lords Amendments 1 to 10, 12 to 28, 31 to 47, 49 to 50, 52 to 56, 58 to 65, 67 to 79, 82 to 84, 93 to 94, 95 to 104, 106 to 107, and 110 to 129 were tabled in the name of the Minister.
- 6 Lords Amendments 11, 30 and 108 were tabled by Baroness Thornton and were opposed by the Government.
- 7 Lords Amendment 29 was tabled by Baroness Cumberledge and was opposed by the Government.
- 8 Lords Amendments 48 was tabled by Lord Blencathra and was opposed by the Government.
- 9 Lords Amendment 51 was tabled by Baroness Pitkeathley and was opposed by the Government.
- 10 Lords Amendments 57, 66, 89 and 109 were tabled by Lord Hunt of Kings Heath and were opposed by the Government.
- 11 Lords Amendment 80 was tabled by Baroness Wheeler and was opposed by the Government.
- 12 Lords Amendment 81 was tabled by Lord Lansley and was opposed by the Government.
- 13 Lords Amendments 85-88 were tabled by Lord Crisp and were opposed by the Government.
- 14 Lords Amendment 90 was tabled by Baroness Finlay of Llandaff and was opposed by the Government.
- 15 Lords Amendment 91 was tabled by Baroness Hollins and was agreed by the Government.
- 16 Lords Amendment 92 was tabled by Baroness Sugg and was opposed by the Government.
- 17 Lords Amendment 95 was tabled by Lord Sharkey and was agreed by the Government.

- 18 Lords Amendment 105 was tabled by Lord Bradley and was opposed by the Government.
- 19 In the following Commentary, an asterisk(*) appears in the heading of any paragraph that deals with a non-Government amendment.

Commentary on Lords amendments

Lords Amendment after Clause 2: Spending on mental health

Lords Amendment 1

- 20 Lords Amendment 1 would insert new a new clause 'Spending on Mental Health' into the Bill, which would require the Secretary of State, before the start of the financial year, to publish any governmental expectations around increases in mental health spending by NHS England and integrated care boards, including the amount and proportion of expenditure by NHS England and integrated care boards during the year relating to mental health. It would also require NHS England to include in its annual report information about such spending.

Lords Amendments to Clause 4: NHS England mandate: cancer outcome targets

Lords Amendment 2 to 4

- 21 Lords Amendments 2, 3 and 4 would amend Clause 4 to replace the requirement that NHS England's mandate must include objectives for cancer treatment, with a requirement that the mandate must include objectives relating to outcomes for cancer patients. The amendment would also make clear that the objectives over which the cancer outcomes objectives have priority are those which relate specifically to cancer.

Lords Amendment after Clause 4: Duties as to reducing inequalities

Lords Amendment 5

- 22 Lords Amendment 5 would insert a new clause 'Duties as to reducing inequalities' into the Bill, which would extend NHS England's duty in relation to the reduction of inequalities in access to health services to cover 'persons' before they are 'patients'. It would also make it explicit that the duty to have regard to the need to reduce inequalities in outcomes for patients covers the effectiveness of the services provided, the safety of the services provided and the quality of the experience undergone by patients.

Lords Amendment after Clause 4: Duties in respect of research

Lords Amendment 6

- 23 Lords Amendment 6 would insert a new clause 'Duties in respect of research: business plan and annual report etc' into the Bill, which would clarify that NHS England's duty to promote research in the exercise of its functions includes doing so by facilitating research.
- 24 This new clause would also amend the existing provisions in the NHS Act 2006 for NHS England to publish a business plan and annual report so that they must include an explanation of how NHS England proposes to discharge, or has discharged, its duty to facilitate or otherwise promote research.

Lords Amendments to Clause 5: NHS England: wider effect of decisions

These Explanatory Notes relate to the Lords Amendments to the Health and Care Bill as brought from the House of Lords on 24 March 2022 (Bill 293)

Lords Amendments 7 to 8

- 25 Lords Amendments 7 to 8 would amend NHS England's duty to have regard to the wider effect of decisions in relation to the health and well-being of the people of England and the quality of services provided to individuals, which has been described by the Department and NHS England operationally as part of the 'triple aim' duty. It would provide that this duty includes having regard to the effects of decisions in relation to health inequalities.

Lords Amendment after Clause 5: NHS England: Duties in relation to climate change

Lords Amendment 9

- 26 Lords Amendment 9 would insert a new clause 'NHS England: duties in relation to climate change' into the Bill, which would require NHS England, in exercising its functions, to have regard to certain matters relating to the environment, including climate change.

Lords Amendment after Clause 6: Information about inequalities

Lords Amendment 10

- 27 Lords Amendment 10 would require NHS England to publish a statement describing the powers that certain NHS bodies (integrated care boards, English NHS Trusts and NHS Foundation Trusts) have, to process information relating to inequalities and to express its view on how those powers should be exercised. The annual reports for the relevant bodies would need to state how far their functions have been exercised consistently with those views.

Lords Amendments to Clause 14: Integrated Care Boards: Establishment

Lords Amendment 11*

- 28 Lords Amendment 11 would seek to ensure that conflict of interest rules which apply to integrated care boards would apply to commissioning sub-committees of Integrated Care Boards.

Lords Amendments to Clause 16: Integrated Care Boards: Commissioning hospital and other health services

Lords Amendment 12

- 29 Lords Amendment 12 would specifically require integrated care boards to commission such services or facilities for palliative care (including specialist palliative care) as they consider appropriate for meeting the reasonable requirements of the people for whom they have responsibility.

Lords Amendments to Clause 20: Integrated Care Boards: General functions

Lords Amendments 13 to 14

- 30 Lords Amendment 13 would extend the duty on integrated care boards, so that their duty to have regard to the need to reduce inequalities in access to health services for patients extends to cover 'persons' before they are 'patients'.
- 31 Lords Amendment 14 would make it explicit that the duty to have regard to the need to reduce inequalities in outcomes for patients covers the effectiveness of the services provided,

These Explanatory Notes relate to the Lords Amendments to the Health and Care Bill as brought from the House of Lords on 24 March 2022 (Bill 293)

the safety of the services provided and the quality of the experience undergone by patients

Lords Amendments 15

- 32 Lords Amendment 15 would clarify that an integrated care board's duty to promote research in the exercise of its functions includes doing so by facilitating research.

Lords Amendments 16 to 17

- 33 Lords Amendments 16 to 17 would provide that the duty to have regard to the wider effect of decisions in relation to the health and well-being of the peoples of England and the quality of services provided to individuals (which has been described by the Department and NHS England operationally as part of the 'triple aim') also includes having regard to the effects of decisions in relation to health inequalities.

Lords Amendment 18

- 34 Lords Amendment 18 would require integrated care boards, in exercising their functions, to have regard to certain matters relating to the environment, including climate change.

Lords Amendment 19

- 35 Lords Amendment 19 would require an integrated care board to keep under review the skills, knowledge and experience that it is necessary to have on the board and take steps to address or mitigate shortcomings.

Lords Amendments 20 to 22

- 36 Lords Amendments 20 to 22 would make explicit certain requirements of the joint forward plan for an integrated care board and its partners to:
- describe the health services that the board proposes to commission over the next five years.
 - explain how the board proposes to discharge its general duties under sections 14Z34 to 14Z44 (rather than just some of those sections).
 - set out any steps that the integrated care board proposes to take to address the particular needs of children or young persons under the age of 25.

Lords Amendments 23 to 25

- 37 Lords Amendments 23 to 25 would make explicit certain requirements of the annual report for an integrated care board to:
- explain how it has discharged its general duties under sections 14Z34 to 14Z44 and 14Z47A.
 - explain how far it has exercised its functions consistently with views expressed by NHS England in the latest statement published under section 13SA(1) ('views about how functions relating to inequalities information should be exercised').
 - include information about spending that relates to mental health.

Lords Amendment 26

These Explanatory Notes relate to the Lords Amendments to the Health and Care Bill as brought from the House of Lords on 24 March 2022 (Bill 293)

- 38 Lords Amendment 26 would require that the annual performance assessment of each integrated care board by NHS England must, in particular, include an assessment of how well the board has discharged its duty to promote research and the use of evidence obtained from research.

Lords Amendment to Clause 29: NHS England regulatory functions

Lords Amendment 27

- 39 Lords Amendment 27 would be consequential on the insertion into section 13U of the NHS Act 2006 of a duty for NHS England to include additional matters in its annual report.

Lords Amendment before Clause 35: Duties in respect of research

Lords Amendment 28

- 40 Lords Amendment 28 would amend the NHS Act 2006 to clarify that the Secretary of State's existing duty to promote research, in exercising functions in relation to the health service, includes doing so by facilitating research.

Lords Amendment to Clause 35: Report on assessing and meeting workforce needs

Lords Amendment 29*

- 41 Lords Amendment 29 would require the Secretary of State to lay a report before Parliament describing the system in place for assessing and meeting the workforce needs of the health, social care and public health services in England. The report must include independently verified assessments of current and future workforce numbers required to deliver care to the population in England. This report would take into account economic projections made by the Office for Budget Responsibility and NHS England. Health Education England would be required to assist in the preparation of the report and consult with certain bodies in order to prepare such a report.

Lords Amendment to Clause 40: Reconfiguration of services

Lords Amendment 30*

- 42 Lords Amendment 30 would remove Clause 40 ('Reconfiguration of services: intervention powers') from the Bill.

Lords Amendments to Clause 45: NHS Trusts: wider effects of decisions

Lords Amendments 31 to 32

- 43 Lords Amendments 31 to 32 would amend the duty on NHS Trusts to have regard to the wider effect of decisions in relation to the health and well-being of the peoples of England and the quality of services provided to individuals, which has been described by the Department and NHS England operationally as part of the 'triple aim' duty. It would provide that this duty includes having regard to the effects of decisions in relation to health inequalities.

Lords Amendment after Clause 45: NHS Trusts: Duties in relation to climate change

Lords Amendment 33

- 44 Lords Amendment 33 would insert a new clause 'NHS duties in relation to climate change'

These Explanatory Notes relate to the Lords Amendments to the Health and Care Bill as brought from the House of Lords on 24 March 2022 (Bill 293)

into the Bill, which would require NHS Trusts, in exercising their functions, to have regard to certain matters relating to the environment, including climate change.

Lords Amendments to Clause 54: Capital Spending Limits for NHS Foundation Trusts

Lords Amendment 34 to 37

- 45 Lords Amendments 34 to 37 would mean that any order imposing a limit on the capital expenditure of an NHS Foundation Trust may only relate to a single financial year (rather than spanning more than one financial year). Although the limit must relate to the whole financial year, the order imposing it may be made part-way through that year.

Lords Amendments to Clause 59: NHS Foundation Trusts: wider effects of decisions

Lords Amendments 38 to 39

- 46 Lords Amendments 38 to 39 would amend the duty on NHS Foundation Trusts to have regard to the wider effect of decisions in relation to the health and well-being of the peoples of England and the quality of services provided to individuals, which has been described by the Department and NHS England operationally as part of the 'triple aim' duty. It would provide that this duty includes having regard to the effects of decisions in relation to health inequalities.

Lords Amendment after Clause 59: NHS Foundation Trusts: Duties in relation to climate change

Lords Amendment 40

- 47 Lords Amendment 40 would insert a new clause ('NHS foundation trusts: duties in relation to climate change') into the Bill, which would require NHS Foundation Trusts, in exercising their functions, to have regard to certain matters relating to the environment, including climate change.

Lords Amendment to Clause 67: Wider effects of decisions: Licensing of health care providers

Lords Amendments 41

- 48 Lords Amendment 41 would provide that references in new subsection (2)(da) of section 96 (limits on functions to set or modify license conditions) of the Health and Social Care Act 2012, which relates to effects of a decision in relation to certain matters, also includes its effects in relation to inequalities with respect to those matters.

Lords Amendments to Clause 70: Procurement Regulations

Lords Amendments 42 to 46

- 49 Lords Amendments 41 to 46 would change the principal regulation-making power in relation to procurement so that regulations under the power would have to include the following:
- procurement processes and objectives;
 - the steps to be taken when following a competitive tendering process;
 - provision for the purposes of ensuring transparency, fairness and that

These Explanatory Notes relate to the Lords Amendments to the Health and Care Bill as brought from the House of Lords on 24 March 2022 (Bill 293)

compliance can be verified, and for the purposes of managing conflicts of interest.

- 50 There would also be a requirement for NHS England to publish such guidance as it considers appropriate about compliance with any procurement regulations that are made.

Lords Amendment to Clause 71: Procurement Regulations

Lords Amendment 47

- 51 Lords Amendment 47 would mean that Procurement Regulations made under new section 12ZB of the NHS Act 2006 (as inserted by Clause 70 of the Bill) would be subject to the affirmative procedure.

Lords Amendment after Clause 71: Health service procurement supply chains

Lords Amendment 48*

- 52 Lords Amendment 48 would insert a new clause ('Health service procurement and supply chains: genocide convention and obligations') into the Bill, which would require the Secretary of State to make regulations for the purposes of ensuring that procurement of all goods and services for the purposes of the health service in England is consistent with the United Kingdom's obligations under the Convention on the Prevention and Punishment of the Crime of Genocide. Procurement would not be consistent if a Minister of the Crown has assessed that there is a serious risk of genocide in the sourcing region.

Lords Amendments after Clause 77: Meaning of 'Health' in NHS Act 2006

Lords Amendment 49

- 53 Lords Amendment 49 would amend section 275(1) (interpretation) of the NHS Act 2006 to clarify that references in the Act to "health" includes mental health (unless the context otherwise requires). The natural meaning of health is capable of including "mental health" but this amendment would avoid potential confusion created by inconsistent references to mental health in existing provisions of the Act.

Lords Amendment to Clause 79: Abolition of Local Education Training Boards

Lords Amendment 50

- 54 Lords Amendment 50 would be consequential on Clause 79(3) of the Bill, which omits paragraph (c) of section 100(4) of the Care Act 2014.

Lords Amendment after Clause 80: Carers and safe discharge from hospital

Lords Amendment 51*

- 55 Lords Amendment 51 would insert a new clause into the Bill which places a duty on the responsible NHS body to consult the patient and their carer or potential carer when a patient is discharged from hospital and to cooperate with the local authority in relation to their existing duties under current legislation.

These Explanatory Notes relate to the Lords Amendments to the Health and Care Bill as brought from the House of Lords on 24 March 2022 (Bill 293)

Lords Amendments before Clause 81: Information about payments etc to persons in the health care sector

Lords Amendments 52 to 54

- 56 Lords Amendment 52 to 54 would insert three new clauses ('Information about payments etc to persons in the health care sector') into the Bill to enable to Secretary of State to make regulations requiring manufacturers, commercial suppliers, and connected persons to either publish or provide the Secretary of State with information about payments made or other benefits provided by them to people in the health care sector. This power would include making provision for the enforcement of such requirements relating to information about payments and other benefits including the imposition of civil penalties. The Secretary of State would need to obtain the consent of the Scottish Ministers, the Welsh Ministers or the Department of Health in Northern Ireland (as appropriate) before making provision within devolved legislative competence in such regulation.

Lords Amendment to Clause 87: Medicine Information Systems

Lords Amendment 55

- 57 Lords Amendment 55 would allow Scottish Ministers to ensure that any powers or duties conferred on Scottish Ministers in relation to their role in collecting information for Medicine Information Systems can be delegated to certain health bodies in Scotland.

Lords Amendment to Clause 88: Transfer and delegation of functions

Lords Amendment 56

- 58 Lords Amendment 56 would clarify that the Secretary of State's powers to transfer or delegate functions, under Part 3 of the Bill, apply only in relation to England-only and cross-border Special Health Authorities (and not Wales-only Special Health Authorities).

Lords Amendment to Clause 89: Power to transfer functions between bodies

Lords Amendment 57*

- 59 Lords Amendment 57 would prevent the Secretary of State from making regulations under Clause 89 which transferred the functions of the Health and Social Care Information Centre (known as NHS Digital) which are set out under Part 9 of the Health and Social Care Act 2012.

Lords Amendments to Clause 92: Transfer schemes in connection with regulations

Lords Amendments 58 to 59

- 60 Lords Amendments 58 to 59 would remove the Scottish Ministers, a Northern Ireland department and the Welsh Ministers from the list of persons to whom property etc can be transferred via a scheme made under Clause 92, and would remove Welsh NHS trusts from the list of persons to whom property etc can be transferred via a scheme made under Clause 92.

Lords Amendments to Clause 94: Consultation on draft regulations

Lords Amendment 60 to 63

These Explanatory Notes relate to the Lords Amendments to the Health and Care Bill as brought from the House of Lords on 24 March 2022 (Bill 293)

- 61 Lords Amendments 60 to 61 would require the Secretary of State to obtain consent of, rather than consulting with, the Scottish Ministers, the Welsh Ministers or a Northern Ireland department (as appropriate) before making provision within devolved legislative or executive competence in regulations made under clause 89 or 90. Such consent is capable of being provided before commencement of the clause 94. .

Lords Amendments to Clause 111: Prohibition on disclosure of HSSIB material

Lords Amendment 65

- 62 Lords Amendments 65 would make a technical amendment to reflect the fact that consent of the Secretary of State under section 8 of the Northern Ireland Act 1998 is given in relation to an Assembly Bill rather than an Assembly Act.

Lords Amendment 66*

- 63 Lords Amendment 66 would remove the provision allowing coroners to require the disclosure of protected material from the Health Services Safety Investigations Body (HSSIB).

Lords Amendments after Clause 133: Chapter 2: Hymenoplasty Offences

Lords Amendments 67 to 78

- 64 Lords Amendments 67 to 78 would insert a new Chapter into the Bill ('Hymenoplasty offences'). This new chapter would make it an offence under the law in England and Wales, Scotland and Northern Ireland for a person to carry out hymenoplasty or to make an offer to carry out hymenoplasty. It would also make it an offence to aid, abet, counsel or procure the carrying out of hymenoplasty. The offences carry extra-territorial jurisdiction. The offence would be triable either way and carry a maximum 5 year custodial sentence on indictment and an unlimited fine, or both.

Lords Amendments to Clause 136: International healthcare arrangements

Lords Amendment 79

- 65 Lords Amendment 79 would make a drafting change to reflect the fact that consent of the Secretary of State under section 8 of the Northern Ireland Act 1998 is given in relation to an Assembly Bill rather than an Assembly Act.

Lords Amendment to Clause 140: Cap on care costs for charging purposes

Lords Amendment 80*

- 66 Lords Amendment 80 would remove Clause 140 (Cap on care costs for charging purposes) from the Bill.

Lords Amendment after Clause 141: Cap on care costs for charging purposes

Lords Amendment 81*

- 67 Lords Amendment 81 would insert a new clause ('Commencement of section 15 and 16 of the Care Act 2014') into the Bill, which would require the Secretary of State to make regulations to ensure that all provisions under sections 15 and 16 of the Care Act 2014, which relate to the

These Explanatory Notes relate to the Lords Amendments to the Health and Care Bill as brought from the House of Lords on 24 March 2022 (Bill 293)

cap on care costs, have come into force before 1 April 2023.

Lords Amendments after Clause 143 and after Schedule 16: Human Fertilisation and Embryology

Lords Amendment 82

- 68 Lords Amendment 82 would insert a new clause ('Storage of gametes and embryos') into the Bill to introduce a new schedule ('Storage of gametes and embryos') relating to the storage of gametes (eggs and sperm) and embryos. This would amend the Human Fertilisation and Embryology Act 1990 act by changing the maximum statutory storage period from 10 years to 55 years, containing 10-year consent renewal periods, for gametes and embryos to be used in fertility treatment.

Lords Amendments after clause 148

Lords Amendment 83

- 69 Lords Amendment 83 would insert a new clause ('Child safeguarding etc in health and care: policy about information sharing') into the Bill. This would require the Secretary of State to publish and lay before Parliament, within one year of the clause coming into force, a report describing the Government's policy in relation to information-sharing by or with authorities with children's health and social care functions, for purposes relating to children's health or social care or the safeguarding or promotion of the welfare of children.
- 70 It is envisaged that the report would be laid by the Secretary of State for Education since the matters to which the report pertains falls within the remit of the Department for Education.

Lords Amendment 84

- 71 Lords Amendment 84 would insert a new clause ('Licensing of cosmetic procedures') into the Bill. This would confer a power on the Secretary of State to make regulations to establish a licensing regime in connection with non-surgical cosmetic procedures.

Lords Amendments 85* to 88*

- 72 Lords Amendments 85 to 88 would insert four new clauses ('Tobacco products statutory scheme') into the Bill, which would require the Secretary of State to carry out a consultation about a statutory scheme for the regulation of prices and profits of tobacco manufacturers and importers.

Lords Amendment 89*

- 73 Lords Amendment 89 would insert a new clause ('Appropriate consent to transplantation activities when travelling abroad') into the Bill, which would be aimed at ensuring that where individuals travel abroad to receive organ donations, there must be informed consent with no coercion or financial gain for the donation of the organs. The clause therefore aims to prohibit organ tourism which involves either forced organ harvesting or black market organ trafficking.

Lords Amendment 90*

Lords Amendment 90 would insert a new clause ('Dispute resolution in children's palliative care') into the Bill, which would aim to ensure that, where there is a difference of opinion between a parent of a child with a life-limiting illness and a doctor responsible for the child's treatment, disputes will be able to engage effective mediation.

These Explanatory Notes relate to the Lords Amendments to the Health and Care Bill as brought from the House of Lords on 24 March 2022 (Bill 293)

Lords Amendment 91*

- 74 Lords Amendment 91 would insert a new clause ('Mandatory training on learning disability and autism') into the Bill, which would require all health and social care staff to undertake training on learning disability and autism. The Secretary of State would also be required to publish a code of practice for specialist training on learning disability and autism.

Lords Amendment 92*

- 75 Lords Amendment 92 would insert a new clause ('Medical Termination of Pregnancy') into the Bill, which would amend the Abortion Act 1967 to allow the medication for early medical abortion to take place in the home (in England) of the pregnant woman where the pregnancy has not exceeded 10 weeks. It would also permit registered medical practitioners to prescribe the medication for early medical abortion from their homes (in England). This would maintain the existing provisions of at-home early medical abortion following a telephone or video consultation with a clinician, which were adopted in March 2020.

Lords Amendments to Clause 150: Regulations

Lords Amendment 93

- 76 Lords Amendment 93 would provide for regulations made under Part 3 of the Bill, relating to the power to transfer or delegate functions, and those made under the powers which would be inserted by amendment 52, relating to the reporting and publication of information about payments and other benefits provided to persons in the health care sector, to be able to make different provision for different parts of the UK.

Lords Amendment 94

- 77 Lords Amendment 94 would require regulations made under the powers which would be inserted by amendment 52, relating to the reporting and publication of information about payments and other benefits provided to persons in the health care sector, to be subject to the affirmative procedure.

Lords Amendment 95*

- 78 Lords Amendment 95 would require regulations made under the powers in clause 136, on international healthcare arrangements, to be subject to the affirmative procedure.

Lords Amendment 96

- 79 Lords Amendment 96 would require regulations on cosmetic licensing to be subject to the affirmative procedure.

Lords Amendments to Clause 152: Extent

Lords Amendment 97

- 80 Lords Amendment 97 would provide for the powers relating to the reporting and publication of information about payments and other benefits provided to persons in the health care sector to extend to the whole of the United Kingdom.

Lords Amendment 98

- 81 Lords Amendment 98 would provide for the powers relating to the storage of gametes and embryos to extend to the whole of the United Kingdom.

These Explanatory Notes relate to the Lords Amendments to the Health and Care Bill as brought from the House of Lords on 24 March 2022 (Bill 293)

Lords Amendment 99

- 82 Lords Amendment 99 would provide that the offences relating to virginity testing in Scotland and the offences relating to hymenoplasty in Scotland extend to Scotland only. It would also provide that the offences relating to virginity testing in Northern Ireland and the offences relating to hymenoplasty in Northern Ireland extend to Northern Ireland only.

Lords Amendments to Clause 153: Commencement

Lords Amendment 100

- 83 Lords Amendment 100 would provide for the provisions on the storage of gametes and embryos to be commenced on 1 July 2022.

Lords Amendment 101

- 84 Lords Amendment 101 would provide for the provisions relating to the advertising of less healthy food and drink to come into force two months after Royal Assent, instead of on 1 January 2023. The prohibitions contained in them would not apply until 1 January 2023 as a result of other amendments but this amendment would enable regulations to be in place beforehand.

Lords Amendments 102 and 103

- 85 Lords Amendments 102 and 103 would provide for commencement, three months after Royal Assent, of the new clause which would be inserted by amendment 83 concerning government policy in relation to information-sharing by or with authorities with health and social care functions, for purposes relating to children's health or social care or the safeguarding or promotion of the welfare of children.

Lords Amendment to Schedule 1: Renaming of NHS Commissioning Board

Lords Amendment 104

- 86 Lords Amendment 104 is consequential on Clause 1 renaming the National Health Service Commissioning Board to 'NHS England', and ensures that references to the NHS Commissioning Board in the Armed Forces Act 2006 as amended by the Armed Forces Act 2021, will be references to NHS England following the commencement of the merger clauses.

Lords Amendment to Schedule 2: Constitution of integrated care boards

Lords Amendment 105*

- 87 Lords Amendment 105 would require each integrated care board to include at least one member with expertise and knowledge of mental health as an ordinary member specified in its constitution.

Lords Amendments to Schedule 4: Integrated care systems: minor and consequential amendments

Lords Amendments 106 to 107

- 88 Lords Amendments 107 to 108 are consequential on Clause 4 which established integrated care boards. They would amend references in the Armed Forces Act 2006 and the Police, Crime and Sentencing Act 2022 to clinical commissioning groups to instead refer to integrated care boards.

These Explanatory Notes relate to the Lords Amendments to the Health and Care Bill as brought from the House of Lords on 24 March 2022 (Bill 293)

Lords Amendment to Schedule 6: Intervention powers in relation to the reconfiguration of NHS services

Lords Amendment 108*

- 89 Lords Amendment 108 would remove Schedule 6 ('Intervention power over the reconfiguration of NHS services') from the Bill.

Lords Amendment to Schedule 14: Prohibition on disclosure of HSSIB provisions: exceptions

Lords Amendment 109*

- 90 Lords Amendment 109 would remove the provision allowing coroners to require the disclosure of protected material from the Health Service Safety Investigations Body (HSSIB).

Lords Amendments to Schedule 16: VirginitY testing: consequential amendments

Lords Amendments 110 to 121

- 91 Lords Amendments 110 to 121 would be consequential on Lords Amendments 67 to 78, which would insert a new chapter ('Hymenoplasty offences') into the Bill.

Lords Amendments after Schedule 16: Storage of gametes and embryos

Lords Amendment 122

- 92 Lords Amendment 122 would amend the Human Fertilisation and Embryology Act 1990 to change the maximum statutory storage period from 10 years to 55 years, containing 10-year consent renewal periods, for gametes and embryos to be used in fertility treatment.

Lords Amendments to Schedule 17: Advertising of less healthy food and drink

Lords Amendments 123 to 124

- 93 Lords Amendment 123 would ensure that the watershed on television advertising of unhealthy food and drink would take effect from 1 January 2023. Lords Amendment 124 would allow the Secretary of State to defer beyond 1 January 2023 the date when the watershed on television advertising of unhealthy food and drink begins to apply.

Lords Amendments 125 to 126

- 94 Lords Amendment 125 would ensure that the watershed on advertising of unhealthy food and drink in on demand programme services would take effect from 1 January 2023. Lords Amendment 126 would allow the Secretary of State to defer beyond 1 January 2023 the date when the watershed on advertising of unhealthy food and drink in on-demand programme services begins to apply.

Lords Amendments 127 to 128

- 95 Lords Amendment 127 would ensure that the prohibition on online advertising of unhealthy food and drink would take effect from 1 January 2023. Lords Amendment 128 would allow the Secretary of State to defer beyond 1 January 2023 the date when the prohibition on online advertising of unhealthy food and drink begins to apply.

These Explanatory Notes relate to the Lords Amendments to the Health and Care Bill as brought from the House of Lords on 24 March 2022 (Bill 293)

Lords Amendment after Schedule 17: Cosmetic regulation

Lords Amendment 129

- 96 Lords Amendment 129 would insert a new Schedule ('Licensing of cosmetic procedures') setting out some of the things that may be included in regulations establishing a licensing regime relating to non-surgical cosmetic procedures.

Financial Effects of Lords Amendments

- 97 The measures under Amendments 52, 53 and 54 may result in cost from establishing systems to collect and publish information about industry payments to the healthcare sector.
- 98 The costs of banning hymenoplasty fall on the public sector, on business and on civil society organisations. In the public sector there will be costs to the police and criminal justice system, and costs to the NHS and to social care providers.
- 99 Information from police stakeholders is that only those directly working on honour based abuse (HBA) crimes, or in some public protection roles, would need to be familiar with this legislation. As noted below, there are very few HBA related cases each year, and so the number of police who would need to be familiar with the legislation is very small.
- 100 As an illustration, if between 50 - 100 police in England were required to spend 1 hour reading the statutory guidance, then this would lead to a familiarisation costs of between £1000 and £2000 to the police.
- 101 There may also be a cost to the police of investigating this new criminal offence. However, given the lack of information on the prevalence of hymenoplasty, very low rates of reporting honour abuse crimes and issues around meeting the threshold of intelligence required to take forward a criminal investigation this cost has not been estimated. Given these varying factors, we cannot put a sensible figure on the justice costs to courts and prisons.
- 102 There are two regulators who could potentially incur costs as a result of the hymenoplasty legislation. The Care Quality Commission (CQC) who monitor, inspect and regulate services to make sure they meet fundamental standards of quality and safety and the General Medical Council (GMC) who regulate doctors.
- 103 The CQC do not expect to incur any additional costs once the ban on hymenoplasty is implemented. The detail on cost for the GMC is yet to be finalised but we envisage a minimal cost for updating guidance and familiarisation. GMC is funded by registrant subscriptions.
- 104 It is not yet determined how the NHS will ensure that the relevant staff members are made aware of the new hymenoplasty legislation. The costs estimated below relate to one likely scenario, informed by discussions with stakeholders at NHS England and Health Education England, that :
- the curriculum of the mandatory NHS safeguarding training is updated to include hymenoplasty, and potentially
 - Health Education England (HEE) produce a short non mandatory training course containing further information on hymenoplasty and safeguarding.
- 105 As a maximum cost for updating and commissioning training materials, we assume that new

These Explanatory Notes relate to the Lords Amendments to the Health and Care Bill as brought from the House of Lords on 24 March 2022 (Bill 293)

content and a 15 min video is commissioned at a cost of £40,000 in total. There will be no additional costs to the NHS from staff undertaking updated mandatory safeguarding courses. These are undertaken by all NHS staff on a rolling basis in any case. However, there would be a cost to the NHS from staff completing an additional 15 minute training course, we believe that this may total 10 members of staff per trusts, and include midwives and gynaecologists. This is averaged at £13.50 per 5 min video, £135 in total per trust and a total of £32,000 for all Trusts.

106 We also assume that GPs will need similar training, with one GP in every Primary Care Network being trained and estimate this to be around £10,000. This gives the total cost to the NHS of £82,000.

107 This is an uncertain cost. In particular, uptake for a non-mandatory course is difficult to predict as it would be available for free to all within the NHS. Uptake beyond the safeguarding leads is likely to dependent external factors, for example if the content were publicised by an article in specialist media like the Nursing Times or promoted in emails to members by professional bodies like RCOG. Given the low staff unit cost for undertaking this voluntary training, a sensitivity analysis has not been undertaken.

108 With regards to Lords Amendment 91 on Mandatory Training on Learning Disability and Autism, costs will be incurred by regulated health and social care providers to roll out the training. The cost associated with this amendment and the mandatory training itself will be heavily influenced by the drafting of the Code of Practice and the guidance it will include.

109 The regulations made under the measures under amendments 84, 96 and 129 may result in costs but these will be subject to extensive stakeholder engagement.

110 Lords Amendment 80 means that Local Authority contributions would count towards an individual's care cap, this will increase the cost of the overall reforms by about £900m per year in steady state (including Barnett consequentials) if you keep all other parameters the same.

111 Lords Amendment 81 would force the commencement of Adult Social Care charging reform by 1 April 2023. This would have financial consequences as we would have to implement this reform earlier than planned. If Lords Amendment 80 continues to stand part of the Bill, Lords Amendment 81 would also force the additional £900m annual spend.

These Explanatory Notes relate to the Lords Amendments to the Health and Care Bill as brought from the House of Lords on 24 March 2022 (Bill 293)

Health and Care Bill

EXPLANATORY NOTES ON LORDS AMENDMENTS

These Explanatory Notes relate to the Lords Amendments to the Health and Care Bill as brought from the House of Lords on 24 March 2022.

Ordered by the House of Commons to be printed, 24 March 2022

© Parliamentary copyright 2022

This publication may be reproduced under the terms of the Open Parliament Licence which is published at www.parliament.uk/site-information/copyright

PUBLISHED BY AUTHORITY OF THE HOUSE OF COMMONS