

Children and Social Work Bill [HL]

SECOND
MARSHALLED
LIST OF AMENDMENTS
TO BE MOVED
ON REPORT

[Amendments marked ★ are new or have been altered]

Amendment
No.

After Clause 28

LORD WILLS
BARONESS WHEELER
LORD LOW OF DALSTON

52

Insert the following new Clause—

“Whistleblowing arrangement in relation to looked after children and children at risk

The Secretary of State shall issue a code of practice on whistleblowing arrangements which can be taken into account by courts and tribunals when the issue of whistleblowing arises in public bodies providing social services and children’s services, and local authorities, in relation to looked after children and children at risk.”

53

Insert the following new Clause—

“Public interest disclosure in relation to looked after children and children at risk

- (1) The Secretary of State may make regulations prohibiting a public body providing social services or children’s services, or a local authority, from discriminating against an applicant because it appears to that body that the applicant has made a protected disclosure under the Employment Rights Act 1996, in their previous employment by such a body, regarding the treatment by such a body of children at risk.
- (2) An “applicant”, in relation to such a body, means an individual who applies to that employer for—
 - (a) a contract of employment,
 - (b) a contract to do work personally, or
 - (c) appointment to an office or post.

After Clause 28 - continued

- (3) For the purposes of subsection (1), a public body providing social services or children's services, or a local authority, discriminates against an applicant if the employer refuses the applicant's application or in some other way treats the applicant less favourably than it treats or would treat other applicants in relation to the same contract, office or post.
- (4) Regulations under subsection (1) must be made by statutory instrument, and a statutory instrument containing such regulations may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament."

BARONESS ARMSTRONG OF HILL TOP

53A Insert the following new Clause—

“Post-removal counselling for parents and legal guardians

After section 19 of the Children Act 1989 insert—

“19A Post-removal counselling for parents and legal guardians

Where a child is permanently removed from the care of a birth parent or a child's guardian further to the powers under section 31 of the Children Act 1989 (care and supervision orders), a local authority must, so far as is reasonably practicable, provide a counselling service and commission therapeutic support for the parent or guardian of the child, in order to help them to keep any future children.””

LORD WILLS

53B Insert the following new Clause—

“Children's social care: pre-employment protection of whistle-blowers

- (1) Part 5A of the Employment Rights Act 1996 is amended as follows.
- (2) In the Part heading omit “in the Health Service”.
- (3) In section 49B, in the heading, at the beginning insert “The health service:”.
- (4) After section 49B insert—

“49C Children's social care: regulations prohibiting discrimination because of protected disclosure

- (1) The Secretary of State may make regulations prohibiting a relevant employer from discriminating against a person who applies for a children's social care position (an “applicant”) because it appears to the employer that the applicant has made a protected disclosure.
- (2) A “position” means a position in which a person works under—
 - (a) a contract of employment,
 - (b) a contract to do work personally, or
 - (c) the terms of an appointment to an office or post.
- (3) A position is a “children's social care position” if the work done in it relates to the children's social care functions of a relevant employer.

After Clause 28 - continued

- (4) For the purposes of subsection (1), a relevant employer discriminates against an applicant if the employer refuses the applicant's application or in some other way treats the applicant less favourably than it treats or would treat other applicants for the same position.
- (5) Regulations under this section may, in particular –
 - (a) make provision as to circumstances in which discrimination by a worker or agent of a relevant employer is to be treated, for the purposes of the regulations, as discrimination by the employer;
 - (b) confer jurisdiction (including exclusive jurisdiction) on employment tribunals or the Employment Appeal Tribunal;
 - (c) make provision for or about the grant or enforcement of specified remedies by a court or tribunal;
 - (d) make provision for the making of awards of compensation calculated in accordance with the regulations;
 - (e) make different provision for different cases or circumstances;
 - (f) make incidental or consequential provision, including incidental or consequential provision amending –
 - (i) an Act of Parliament (including this Act),
 - (ii) an Act of the Scottish Parliament,
 - (iii) a Measure or Act of the National Assembly for Wales, or
 - (iv) an instrument made under an Act or Measure within any of sub-paragraphs (i) to (iii).
- (6) Subsection (5)(f) does not affect the application of section 236(5) to the power conferred by this section.
- (7) “Relevant employer” means any of the following that are prescribed by regulations under this section –
 - (a) a local authority in England;
 - (b) a body corporate that, under arrangements made by a local authority in England under section 1 of the Children and Young Persons Act 2008, exercises children's social care functions;
 - (c) a person who, as a result of a direction under section 497A(4) or (4A) of the Education Act 1996 as applied by section 50 of the Children Act 2004 (local authorities in England: intervention by Secretary of State) exercises children's social care functions;
 - (d) the council of a county or county borough in Wales;
 - (e) a person who, as a result of a direction under any of sections 153 to 157 of the Social Services and Well-being (Wales) Act 2014, exercises children's social care functions;
 - (f) a council constituted under section 2 of the Local Government etc (Scotland) Act 1994.
- (8) A “local authority in England” means –
 - (a) a county council in England;
 - (b) a district council;
 - (c) a London borough council;
 - (d) the Common Council of the City of London (in their capacity as a local authority);
 - (e) the Council of the Isles of Scilly;
 - (f) a combined authority established under section 103 of the Local Democracy, Economic Development and Construction Act 2009.

After Clause 28 - continued

- (9) “Children’s social care functions” –
- (a) in relation to a relevant employer referred to in subsection (7)(a) to (c), means functions of a local authority in England under –
 - (i) any legislation specified in Schedule 1 to the Local Authority Social Services Act 1970 so far as relating to those under the age of 18;
 - (ii) sections 23C to 24D of the Children Act 1989, so far as not within sub-paragraph (i);
 - (iii) the Children Act 2004;
 - (iv) any subordinate legislation (within the meaning given by section 21(1) of the Interpretation Act 1978) under the legislation mentioned in sub-paragraphs (i) to (iii);
 - (b) in relation to a relevant employer referred to in subsection (7)(d) or (e), means any functions relating to the social care of children in Wales that are prescribed by regulations under this section;
 - (c) in relation to a relevant employer referred to in subsection (7)(f), means any functions relating to the social care of children in Scotland that are prescribed by regulations under this section.
- (10) The Secretary of State must consult the Welsh Ministers before making regulations under this section in reliance on subsection (7)(d) or (e) or (9)(b).
- (11) The Secretary of State must consult the Scottish Ministers before making regulations under this section in reliance on subsection (7)(f) or (9)(c).
- (12) For the purposes of subsection (5)(a) –
- (a) “worker” has the extended meaning given by section 43K, and
 - (b) a person is a worker of a relevant employer if the relevant employer is an employer in relation to the person within the extended meaning given by that section.”
- (5) In section 230(6) (interpretation of references to employees, workers etc) for “and 49B(10)” substitute “, 49B(10) and 49C(12)”.
- (6) In section 236(3) (orders and regulations subject to affirmative procedure) after “49B,” insert “49C;”.

BARONESS THORNTON

53C★

Insert the following new Clause –

“Legal aid: families with children experiencing domestic violence

In Regulation 33 of the Civil Legal Aid (Procedure) Regulations 2012, after paragraph (2) insert –

- “(2A) A general practitioner or other health professional may not charge for the provision of evidence of domestic violence or risk of domestic violence, where the domestic violence has taken place, or is at risk of taking place, in a family which includes children.””

Clause 29

LORD NASH

54 Page 20, line 25, at end insert—

“() Regulations under this section may not be used so as to remove any prohibition on a local authority in England arranging for functions to be carried out by a body whose activities are carried on for profit.”

55 Page 20, line 32, leave out subsections (6) and (7)

56 Page 21, line 1, leave out subsection (9)

LORD RAMSBOTHAM
LORD WATSON OF INVERGOWRIE
LORD WARNER
LORD LOW OF DALSTON

57 Leave out Clause 29

Clause 30

LORD RAMSBOTHAM
LORD WATSON OF INVERGOWRIE
LORD WARNER
LORD LOW OF DALSTON

58 Leave out Clause 30

After Clause 30

LORD NASH

59 Insert the following new Clause—

“Parliamentary procedure

- (1) Regulations under section 29 are subject to the negative resolution procedure if they only—
 - (a) relate to requirements imposed by subordinate legislation that was not subject to affirmative resolution procedure, or
 - (b) revoke earlier regulations under that section.
- (2) Any other regulations under section 29 are subject to the affirmative resolution procedure.
- (3) At the same time as laying a draft of a statutory instrument containing regulations under section 29 before Parliament, the Secretary of State must lay before Parliament a report—
 - (a) explaining how the regulations are expected to achieve the purpose mentioned in subsection (1) of that section, and
 - (b) confirming that the regulations are not expected to have a detrimental effect on the welfare of any child and explaining any measures that have been put in place to ensure that is the case.

After Clause 30 - continued

- (4) If regulations under section 29 are subject to the affirmative resolution procedure and would, but for this subsection, be treated for the purposes of the standing orders of either House of Parliament as a hybrid instrument, they are to proceed in that House as if they were not a hybrid instrument.
- (5) For the purposes of subsection (1)(a) subordinate legislation “was not subject to affirmative resolution procedure” if it was not subject to any requirement for a draft to be laid before, and approved by a resolution of, each House of Parliament.”

Clause 31

LORD WARNER

LORD WATSON OF INVERGOWRIE

- 60 Page 21, line 20, leave out “consult” and insert “consider the published advice of an independent review panel established to consider whether exemptions or modifications made under the regulations are likely adversely to affect any legislative safeguards or rights of children approved by Parliament, before consulting”

LORD NASH

- 61 Page 21, line 22, leave out subsections (2) and (3) and insert—
- “(2) Where a local authority in England asks the Secretary of State to make regulations under section 29 the Secretary of State must invite an expert panel to give advice about—
 - (a) the likely impact of the regulations on children, and
 - (b) the adequacy of any measures that will be in place to monitor their impact on children.
 - (3) The expert panel is to consist of—
 - (a) the Children’s Commissioner,
 - (b) Her Majesty’s Chief Inspector of Education, Children’s Services and Skills, and
 - (c) one or more other persons appointed by the Secretary of State to consider the request.
 - (3A) The Secretary of State may appoint a person under subsection (3)(c) to consider a request only if the Secretary of State thinks that the person has expertise relevant to the subject matter of the request.
 - (3B) Having invited the expert panel to advise, the Secretary of State must wait at least 6 weeks before making regulations under section 29 in response to the application.
 - (3C) Before making regulations under section 29 in response to the application, the Secretary of State must also publish any written advice given during that 6 week period by the expert panel.”

Clause 31 - continued

LORD WATSON OF INVERGOWRIE
LORD HUNT OF KINGS HEATH

62 Page 21, line 24, at end insert –
“() the Children’s Improvement Board,”

LORD NASH

63 Page 21, line 31, leave out “or the Secretary of State”

LORD RAMSBOTHAM
LORD WATSON OF INVERGOWRIE
LORD WARNER
LORD LOW OF DALSTON

64 Leave out Clause 31

Clause 32

LORD WATSON OF INVERGOWRIE
LORD HUNT OF KINGS HEATH

65 Page 21, line 42, at end insert –
“() In making regulations under section 29 in reliance on subsection (1), the Secretary of State must consider the published advice of the Children’s Improvement Board.”

LORD RAMSBOTHAM
LORD WATSON OF INVERGOWRIE
LORD WARNER
LORD LOW OF DALSTON

66 Leave out Clause 32

Clause 33

LORD NASH

67 Page 22, line 22, at end insert –
““child” means a person under the age of 18 (and “children” means people under the age of 18);”

LORD RAMSBOTHAM
LORD WATSON OF INVERGOWRIE
LORD WARNER
LORD LOW OF DALSTON

68 Leave out Clause 33

After Clause 33

BARONESS WALMSLEY
 LORD RAMSBOTHAM
 BARONESS WHEELER
 LORD JUDD

69 Insert the following new Clause—

“United Nations Convention on the Rights of the Child

- (1) Public authorities must, when exercising any function relating to safeguarding and promoting the welfare of children, have due regard to the United Nations Convention on the Rights of the Child and its Optional Protocols.
- (2) Any person whose functions are of a public nature must, in the exercise of any function relating to safeguarding and promoting the welfare of children, have due regard to the rights set out in the United Nations Convention on the Rights of the Child and its Optional Protocols.
- (3) Public authorities must publish a report, in a format accessible to children, on the steps they have taken to meet the requirement under subsection (1), every five years.
- (4) The references in this section to the United Nations Convention on the Rights of the Child are to the Convention on the Rights of the Child adopted by the General Assembly of the United Nations on 20th November 1989 (including any Protocols to that Convention which are in force in relation to the United Kingdom), subject to any reservations, objections or interpretative declarations by the United Kingdom for the time being in force.”

LORD DUBS
 THE LORD BISHOP OF DURHAM
 BARONESS SHEEHAN
 LORD WATSON OF INVERGOWRIE

70 Insert the following new Clause—

“Safeguarding unaccompanied refugee children

After section 67 of the Immigration Act 2016 (unaccompanied refugee children: relocation and support), insert—

“67A Strategy for safeguarding of unaccompanied refugee children

- (1) The Secretary of State must, by 1 May 2017, publish a strategy for the safeguarding of unaccompanied refugee children living in the United Kingdom, and children who have been identified for resettlement in the United Kingdom under section 67 of this Act.
- (2) In formulating the strategy, the Secretary of State must, in addition to other actions he or she considers relevant to the duty under subsection (1)—
 - (a) consult with all public agencies who may be required to provide services to child refugees, including the European Asylum Support Office, local government and the devolved administrations, for the purposes of enabling them to discharge their safeguarding duties towards those unaccompanied children, as set out in—

After Clause 33 - continued

- (i) section 17 of the Children Act 1989 (provision of services for children in need, their families and others),
 - (ii) section 47 of that Act (local authority's duty to investigate), and
 - (iii) the sections of that Act which deal with public agencies' housing and care-leaving responsibilities;
 - (b) evaluate the procedures for, and speed of, resettling those unaccompanied refugee children who have been identified for resettlement in the United Kingdom under section 67 of this Act;
 - (c) liaise with non-governmental bodies relevant to the implementation of the strategy;
 - (d) make recommendations on how to ensure the provision of full-cost reimbursement to agencies required to provide services under the strategy for whatever period is required to fulfil their duties.
- (3) The strategy must include—
- (a) how safeguarding will differ for those children covered by the strategy who have family members in the United Kingdom and those who do not;
 - (b) plans for coordinating operational activity with, and learning best practice from, the Syrian Vulnerable Person Resettlement Programme for the purposes of—
 - (i) expediting a speedy and safe transfer to the United Kingdom of the children who have been identified for resettlement in the United Kingdom under section 67 of this Act; and
 - (ii) involving local authorities in assessments prior to the arrival of those children, to ensure that safeguarding and other duties are fulfilled;
 - (c) plans for the publication of monthly updates on the progress of the strategy;
 - (d) plans to ensure that the Children's Commissioners of England, Wales, Scotland and Northern Ireland are able to make representations on behalf of children relocated under section 67 of this Act, as part of their statutory duty under section 2 of the Children Act 2004 (primary function: children's rights, views and interests), and for the government to consult with the Children's Commissioners of other countries about those countries' arrangements for the safeguarding of unaccompanied refugee children living in those countries;
 - (e) plans to provide an annual update to Parliament on the arrangements made to support refugee children in the United Kingdom covered by the strategy, which must include details of funding provided, staff deployed, local authorities involved and those children's legal status.”

After Clause 33 - continued

BARONESS HAMWEE
LORD WOOLF
BARONESS LAWRENCE OF CLARENDON
BARONESS WALMSLEY

71 Insert the following new Clause—

“Duty to have due regard to United Nations Convention on the Rights of the Child

- (1) A public authority must, in the exercise of its functions relating to safeguarding and the welfare of children, have due regard to the United Nations Convention on the Rights of the Child.
- (2) For the purposes of this section—
 - “public authority” has the same meaning as in section 6 of the Human Rights Act 1998, and
 - “United Nations Convention on the Rights of the Child” has the same meaning as in section 2A(2) of the Children Act 2004.”

Before Clause 34

LORD NASH

71A Insert the following new Clause—

“Social Work England

- (1) A body corporate called Social Work England is established.
- (2) Social Work England is referred to in this Part as “the regulator”.
- (3) Schedule (*Social Work England*) makes further provision about the regulator.
- (4) The Secretary of State may by regulations rename Social Work England.
- (5) Regulations under subsection (4) may include consequential amendments to any provision contained in or made under this or any other Act.”

71B Insert the following new Clause—

“Over-arching objective

- (1) The over-arching objective of the regulator in exercising its functions is the protection of the public.
- (2) The pursuit by the regulator of its over-arching objective involves the pursuit of the following objectives—
 - (a) to protect, promote and maintain the health, safety and well-being of the public;
 - (b) to promote and maintain public confidence in social workers in England;
 - (c) to promote and maintain proper professional standards for social workers in England.”

Clause 34

LORD NASH

71C Leave out Clause 34**Clause 35**

LORD NASH

71D Leave out Clause 35**Clause 36**

LORD NASH

71E Page 23, line 17, leave out subsection (1) and insert –

“(1) The regulator must keep a register of social workers in England.

(1A) The Secretary of State may by regulations require the regulator to keep a register of people who are undertaking education or training in England to become social workers.”

71F Page 23, line 22, after “The” insert “Secretary of State may by”**71G** Page 23, line 23, leave out paragraph (a) and insert –

“() authorise the regulator to appoint a member of staff as a registrar;
 () make provision about the functions of the registrar;”

71H Page 23, line 24, leave out “may”**71J** Page 23, line 26, at end insert –

“() the combination of the registers mentioned in subsections (1) and (1A);”

71K Page 23, line 36, leave out “fitness to be or to remain registered” and insert “any matter in connection with the register or registration”**71L** Page 23, line 37, at end insert –

“() evidence in legal proceedings of matters contained in the register
 (including provision for a certificate to be conclusive proof).”

Clause 37

LORD NASH

71M Page 24, line 2, leave out “Social worker regulations may” and insert “The Secretary of State may by regulations”**71N** Page 24, line 5, after “use” insert “, in relation to social work in England,”

Clause 38

LORD NASH

- 71P** Page 24, line 9, leave out subsection (1) and insert –
 “(1) The regulator must determine and publish professional standards for social workers in England.
 “(1A) If the regulator is required to keep a register of students, it must determine and publish standards of conduct or ethics for registered students.
 (1B) Before determining a standard under this section the regulator must –
 (a) consult such persons as the regulator considers appropriate, and
 (b) obtain the Secretary of State’s approval of the standard.”
- 71Q** Page 24, line 13, leave out “Social worker regulations may” and insert “The Secretary of State may by regulations”
- 71R** Page 24, line 14, after “standard” insert “under subsection (1)”
- 71S** Page 24, line 21, leave out subsection (4)

Clause 39

LORD NASH

- 71T** Page 24, line 27, leave out subsection (1) and insert –
 “(1) The regulator must, in relation to people who are or who wish to become social workers in England, determine and publish standards of education or training.
 (1A) Before determining a standard under this section the regulator must –
 (a) consult such persons as the regulator considers appropriate, and
 (b) obtain the Secretary of State’s approval of the standard.”
- 71U** Page 24, line 30, leave out “Social worker regulations may” and insert “The Secretary of State may by regulations”
- 71V** Page 24, line 31, leave out “accreditation” and insert “approval”
- 71W** Page 24, line 36, leave out “accreditation” and insert “approval”
- 71X** Page 24, line 39, leave out first “accreditation” and insert “approval”
- 71Y** Page 24, line 39, leave out second “accreditation” and insert “approval”
- 71YA** Page 24, line 40, leave out first “accreditation” and insert “approval”
- 71YB** Page 24, line 40, leave out second “accreditation” and insert “approval”

Clause 39 - continued

- 71YC** Page 24, line 41, at end insert –
 “() inspections in connection with the approval or continued approval of courses or qualifications (including provision for the appointment of people to carry out inspections);”
- 71YD** Page 24, line 41, at end insert –
 “() appeals against decisions in connection with approval;”
- 71YE** Page 24, line 42, at end insert –
 “() The provision that may be made under the regulations about the appointment of people to carry out inspections includes provision about –
 (a) payments to be made to those appointed;
 (b) staff, facilities or other assistance.”

Clause 40

LORD NASH

- 71YF** Page 25, line 2, leave out subsection (1) and insert –
 “(1) The regulator must –
 (a) make arrangements for protecting the public from social workers in England whose fitness to practise is impaired, and
 (b) make arrangements for taking other disciplinary action against social workers in England.
 (1A) The Secretary of State may by regulations require the regulator to make arrangements for taking disciplinary action against registered students.
 (1B) The Secretary of State may by regulations make further provision about –
 (a) fitness to practise as a social worker in England,
 (b) discipline of social workers in England or registered students, and
 (c) the arrangements to be made under subsection (1) or (1A).”
- 71YG** Page 25, line 7, at end insert “on behalf of the regulator”
- 71YH** Page 25, line 17, at end insert –
 “() publication of decisions.”
- 71YJ** Page 25, line 17, at end insert –
 “() The provision that may be made about persons appointed under the regulations includes provision about –
 (a) payments to those persons;
 (b) staff, facilities or other assistance.”

After Clause 40

LORD WILLS
 BARONESS WHEELER
 LORD LOW OF DALSTON

72 Insert the following new Clause—

“Whistleblowing arrangement in relation to social workers

The Secretary of State shall issue a code of practice on whistleblowing arrangements which can be taken into account by courts and tribunals when the issue of whistleblowing arises in public bodies employing registered social workers, and people who are registered as undertaking education or training in England to become social workers, in order to raise concerns about the work of a public body employing registered social workers.”

73 Insert the following new Clause—

“Public interest disclosure by social workers

- (1) The Secretary of State may make regulations prohibiting a public body employing registered social workers from discriminating against an applicant who is a registered social worker because it appears to that body that the applicant has made a protected disclosure under the Employment Rights Act 1996, in their previous employment.
- (2) An “applicant”, in relation to such a body, means an individual who applies to that employer for—
 - (a) a contract of employment,
 - (b) a contract to do work personally, or
 - (c) appointment to an office or post.
- (3) For the purposes of subsection (1), a public body employing registered social workers discriminates against an applicant if the employer refuses the applicant’s application or in some other way treats the applicant less favourably than it treats or would treat other applicants in relation to the same contract, office or post.
- (4) Regulations under subsection (1) must be made by statutory instrument, and a statutory instrument containing such regulations may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.”

Clause 41

LORD NASH

74 Page 25, line 19, leave out “Social worker regulations may” and insert “The Secretary of State may by regulations”

75 Transpose Clause 41 to before Clause 34

Clause 42

LORD NASH

- 76 Page 25, line 31, leave out subsection (1)
- 77 Page 25, line 33, leave out from beginning to “give” and insert “The Secretary of State may”
- 78 Page 25, line 38, leave out “regulations may” and insert “Secretary of State may by regulations”
- 79 Page 26, line 2, leave out “specified person” and insert “Secretary of State”
- 80 Page 26, line 5, leave out “specified person” and insert “Secretary of State”
- 81 Page 26, line 7, leave out “specified person’s” and insert “Secretary of State’s”
- 82 Transpose Clause 42 to after Clause 47

Clause 43

LORD NASH

- 83 Page 26, leave out lines 9 and 10 and insert –
- “(1) The regulator may publish or disclose information about any matter relating to its functions or give advice about any matter relating to its functions.
- (2) The Secretary of State may by regulations –
- (a) make provision requiring the regulator to publish or disclose information, or give advice, under subsection (1);
- (b) make other provision supplementing subsection (1).”
- 84 Transpose Clause 43 to after Clause 47

Clause 44

LORD NASH

- 85 Page 26, leave out lines 12 and 13 and insert –
- “(1) The regulator must where appropriate co-operate with the following in the exercise of its functions –
- (a) Social Care Wales,
- (b) the Scottish Social Services Council,
- (c) the Northern Ireland Social Care Council, and
- (d) any other person specified in regulations made by the Secretary of State.
- (2) Until section 67(3) of the Regulation and Inspection of Social Care (Wales) Act 2016 (anaw 2) comes fully into force, the reference in subsection (1)(a) to Social Care Wales is to be read as a reference to the Care Council for Wales.”

Clause 44 - continued

86 Transpose Clause 44 to after Clause 47

Clause 45

LORD NASH

87 Page 26, line 15, leave out subsections (1) to (3) and insert –

“() The Secretary of State may make a scheme for the transfer of property, rights and liabilities from the Health and Care Professions Council (the “old regulator”) to Social Work England.

() The things that may be transferred under a transfer scheme include –

- (a) property, rights and liabilities that could not otherwise be transferred;
- (b) property acquired, and rights and liabilities arising, after the making of the scheme.”

88 Page 26, line 31, leave out “The regulations may provide that”

89 Page 26, line 45, at end insert –

“() A transfer scheme may provide –

- (a) for modification by agreement;
- (b) for modifications to have effect from the date when the original scheme came into effect.”

90 Transpose Clause 45 to after Clause 50

Clause 46

LORD NASH

91 Page 27, line 9, leave out “Social worker regulations may” and insert “The Secretary of State may by regulations”

92 Page 27, line 15, leave out first “accreditation” and insert “approval”

93 Page 27, line 15, leave out second “accreditation” and insert “approval”

94 Page 27, line 17, leave out subsection (2)

95 Page 27, line 20, leave out subsection (3) and insert –

“(3) The regulator is responsible for setting the level of fees in accordance with any provision made by the regulations.

(3A) Before determining the level of any fee the regulator must –

- (a) consult any persons they consider appropriate, and
- (b) obtain the approval of the Secretary of State.”

Clause 46 - continued

- 96 Page 27, line 26, leave out “whoever is setting the fees to do so” and insert “the level of any fees to be set”
- 97 Page 27, line 28, at end insert –
- “(6) Regulations under this section may include provision about the collection and recovery of fees.
 - (7) The regulations must require the regulator to pay any fee income to the Secretary of State unless the Secretary of State, with the consent of the Treasury, directs otherwise.”

LORD HUNT OF KINGS HEATH

- 98 Page 27, line 28, at end insert –
- “(6) Regulations may not authorise fees to be increased by more than the rate of inflation (as measured by the Consumer Price Index), taking as a baseline the fees set by the Health and Care Professions Council on the day on which this Act is passed.”

Clause 47

LORD NASH

- 99 Page 27, leave out lines 30 to 32 at end insert –
- “(1) The Secretary of State may make grants to the regulator.
 - (2) A grant under this section may be made subject to any conditions the Secretary of State thinks are appropriate.”

After Clause 47

LORD NASH

- 100 Insert the following new Clause –
- “Information for Secretary of State**
- The regulator must provide any information that the Secretary of State requests in relation to the exercise of the regulator’s functions.”

- 101 Insert the following new Clause –
- “Oversight by the Professional Standards Authority for Health and Social Care**
- Schedule (*Oversight by the Professional Standards Authority for Health and Social Care*) contains amendments to give the Professional Standards Authority for Health and Social Care functions to oversee the regulator.”

Clause 48

LORD NASH

- 102 Page 27, line 35, leave out from beginning to “create” and insert “The Secretary of State may by regulations”

Clause 48 - continued

- 103 Page 27, line 41, leave out “the regulations” and insert “regulations under section 36 or 40”
- 104 Page 28, line 2, leave out “the regulations” and insert “regulations under section 36 or 40”
- 105 Page 28, line 3, leave out “If social worker regulations create an offence,”
- 106 Transpose Clause 48 to after Clause 40

Clause 49

LORD NASH

- 107 Page 28, line 7, leave out “Social worker regulations” and insert “Regulations under this Part”
- 108 Page 28, line 9, leave out “Social worker regulations” and insert “Regulations under this Part”
- 109 Page 28, line 10, leave out from “Crown” to end of line 11
- 110 Page 28, line 12, leave out subsection (3) and insert –
 “() Regulations under this Part may –
 (a) confer power on the regulator to make rules;
 (b) make provision in connection with the procedure for making those rules (including provision requiring the regulator to obtain the Secretary of State’s approval before making rules of a specified description).”
- 111 Page 28, line 14, leave out “social worker regulations” and insert “regulations under this Part”

Clause 50

LORD NASH

- 112 Page 28, line 20, leave out “social worker regulations” and insert “regulations under this Part”
- 113 Page 28, line 22, leave out “social worker regulations” and insert “regulations under this Part”
- 114 Page 28, line 24, at end insert –
 “() The duties imposed by subsections (1) and (2) do not apply –

Clause 50 - continued

- (a) to regulations under section (*Social Work England*) (renaming of Social Work England), or
- (b) where the regulations amend other regulations and, in the opinion of the Secretary of State, they do not make any substantial change.”

After Clause 50

LORD NASH

115 Insert the following new Clause –

“Parliamentary procedure for regulations

- (1) Regulations under section (*Social Work England*) (renaming of Social Work England) are subject to the negative resolution procedure.
- (2) Any other regulations under this Part are subject to the affirmative resolution procedure.”

LORD WARNER

LORD RAMSBOTHAM

LORD HUNT OF KINGS HEATH

BARONESS WALMSLEY

[As an amendment to Amendment 115]

116 Leave out from the start of subsection (1) to “regulations” in subsection (2)

LORD WARNER

LORD HUNT OF KINGS HEATH

LORD RAMSBOTHAM

BARONESS WALMSLEY

117 Insert the following new Clause –

“Time limit and review

- (1) This Chapter (sections (*Social Work England*) to 52), Schedule (*Social Work England*) and any regulations made under these provisions, shall cease to have effect at the end of the period of five years starting with the day on which they come into force, unless the conditions in subsections (2) and (3) have been met.
- (2) The conditions in this subsection are that –
 - (a) there has been an independent review of the effectiveness of these provisions, which has included consultation with representatives of the social work profession and other interested parties;
 - (b) a report of the review has been laid before Parliament, together with a response to the review by the Secretary of State.
- (3) The condition in this subsection is that the Secretary of State has, by regulations, made such changes to the provisions listed in subsection (1) as he or she considers necessary, having full regard to the findings of the review.
- (4) Regulations under subsection (3) must be made by statutory instrument, and may not be made unless a draft of the statutory instrument has been laid before, and approved by a resolution of, each House of Parliament.”

Clause 52

LORD NASH

- 118 Page 29, line 10, at end insert –
 ““professional standards” includes standards relating to –
 proficiency;
 performance;
 conduct and ethics;
 continuing professional training and development;”
- 119 Page 29, leave out lines 11 and 12 and insert –
 ““register” means a register mentioned in section 36(1) or (1A) (and related expressions are to be read accordingly);
 “register of students” means a register mentioned in section 36(1A)(and related expressions are to be read accordingly);”
- 120 Page 29, leave out lines 16 and 17 and insert –
 ““the regulator” has the meaning given by section (*Social Work England*);”

Clause 53

LORD NASH

- 121 Page 29, line 30, leave out “of social workers”
- 122 Page 29, line 31, leave out “of social workers”
- 123 Page 29, line 33, after “include” insert “further”
- 124 Page 29, line 39, at end insert –
 “() make provision about inspections in connection with the approval or continued approval of courses (including provision for the appointment of people to carry out inspections);”
- 125 Page 29, line 42, at end insert –
 “() make provision about appeals against decisions in connection with approval;”
- 126 Page 29, line 42, at end insert –
 “() make provision limiting the regulator’s power to approve courses run outside the United Kingdom to those run by institutions approved by the regulator or approved by a person with whom the regulator has made arrangements.”
- 127 Page 29, line 42, at end insert –
 “() The provision that may be made under the regulations about the appointment of people to carry out inspections includes provision about –

Clause 53 - continued

- (a) payments to be made to those appointed;
- (b) staff, facilities or other assistance.”

- 128 Page 29, line 43, leave out from “section 46” to end of line 44 and insert “(3) to (7) apply for the purposes of this section as they apply for the purposes of that section”
- 129 Page 30, line 1, leave out subsections (5) to (7)
- 130 Transpose Clause 53 to after Clause 40

Clause 54

LORD NASH

- 131 Page 30, line 18, leave out “the regulator of social workers” and insert “Social Work England”
- 132 Page 30, line 24, leave out “the regulator of social workers” and insert “Social Work England”
- 133 Page 30, line 27, leave out “the regulator of social workers” and insert “Social Work England”
- 134 Page 30, line 28, leave out from “section 46” to end of line 33 and insert “(3) to (7) of the Children and Social Work Act 2016 apply for the purposes of sub-paragraph (2B) as they apply for the purposes of that section.”
- 135 Transpose Clause 54 to after Clause 40

Clause 59

LORD NASH

- 136 Page 31, line 34, at end insert –
“() Sections 56, 57 and 58 extend to England and Wales and Scotland.”

After Clause 61

LORD NASH

- 137 Insert the following new Schedule –
“SCHEDULE
SOCIAL WORK ENGLAND

Status

- 1 (1) The regulator is not to be regarded –
(a) as a servant or agent of the Crown, or
(b) as enjoying any status, immunity or privilege of the Crown.

After Clause 61 - continued

- (2) The members and staff of the regulator are not to be regarded as Crown servants.

Members

- 2 The regulator is to consist of—
- (a) a chair appointed by the Secretary of State, and
 - (b) such other members as the Secretary of State may appoint.

Term of office

- 3 A member holds and vacates office in accordance with the terms of the member's appointment (subject as follows).
- 4 A member may resign by giving written notice to the Secretary of State.
- 5 The Secretary of State may by notice in writing remove a member who—
- (a) has without reasonable excuse failed to discharge the functions of his or her office, or
 - (b) in the opinion of the Secretary of State is otherwise unable or unfit to carry out his or her duties.

Remuneration and pensions

- 6 The regulator may pay to the members such remuneration, allowances and expenses as the Secretary of State may decide.
- 7 If required to do so by the Secretary of State, the regulator must—
- (a) pay such pensions or gratuities to or in respect of any member as the Secretary of State may decide;
 - (b) pay such sums as the Secretary of State may decide towards provision for the payment of pensions or gratuities to or in respect of any member.

Staff

- 8 (1) The regulator must appoint a person to be chief executive, but may only appoint a person who has been approved by the Secretary of State.
- (2) The chief executive is an employee of the regulator.
 - (3) The Secretary of State may appoint the first chief executive.
- 9 The regulator may appoint other staff.
- 10 (1) The regulator's staff may be appointed on such terms, including relating to remuneration and pension arrangements, as the regulator may decide.
- (2) The regulator must obtain the Secretary of State's approval for any terms relating to remuneration or pension arrangements.

Procedure

- 11 The regulator may determine its own procedure (including quorum).
- 12 No proceeding is invalidated by—
- (a) a vacancy in the office of chair, or
 - (b) a defect in the appointment of any member.

Delegation

After Clause 61 - continued

- 13 (1) The regulator may delegate functions to a committee, sub-committee, member or member of staff.
- (2) The functions that may be delegated under sub-paragraph (1) –
- (a) include the power conferred by that sub-paragraph, but
 - (b) do not include any power or duty to make rules.
- 14 (1) The regulator may delegate functions to any other person if –
- (a) the regulator considers that the delegation is likely to lead to an improvement in the exercise of its functions, and
 - (b) the person has agreed to the terms of the delegation.
- (2) The functions that may be delegated under sub-paragraph (1) do not include –
- (a) the power conferred by that sub-paragraph, or
 - (b) any power or duty to make rules.
- (3) The terms of a delegation under sub-paragraph (1) may include terms requiring payments by the regulator.
- 15 (1) A function may be delegated under paragraph 13 or 14 –
- (a) wholly or partly;
 - (b) generally or only in specified circumstances;
 - (c) unconditionally or subject to specified conditions.
- (2) A delegation does not prevent the regulator (or the person making the delegation, if different) from exercising the function or making other arrangements for its exercise.
- (3) A delegation does not affect any liability or responsibility of the regulator for the exercise of its functions.

Membership of committees and sub-committees

- 16 (1) A committee or sub-committee of the regulator may include persons who are not members of the regulator.
- (2) The regulator may pay such remuneration and allowances as the Secretary of State may determine to any person who –
- (a) is a member of a committee or sub-committee, but
 - (b) is not a member or member of staff of the regulator.

Annual reports and accounts

- 17 As soon as possible after the end of each financial year, the regulator must send the Secretary of State a report on the exercise of its functions during the year.
- 18 (1) The regulator must keep proper accounts and proper records in relation to the accounts.
- (2) The regulator must prepare a statement of accounts for each financial year.
- (3) The statement must be in such form as the Secretary of State may direct.
- (4) The regulator must send a copy of the statement to –
- (a) the Secretary of State, and
 - (b) the Comptroller and Auditor General,

After Clause 61 - continued

within the time period directed by the Secretary of State.

- (5) The Comptroller and Auditor General must –
- (a) examine, certify and report on the statement of accounts, and
 - (b) send a copy of the certified statement and of the report to the Secretary of State as soon as possible.
- 19 The Secretary of State must, in respect of each financial year, lay before Parliament a document consisting of –
- (a) the annual report sent under paragraph 17, and
 - (b) the certified statement of accounts and report sent under paragraph 18(5)(b).
- 20 In paragraphs 17 to 19 “financial year” means –
- (a) the period beginning with the day on which this Schedule comes fully into force and ending with the following 31 March, and
 - (b) every subsequent period of 12 months ending with 31 March.

Application of seal and evidence

- 21 The application of the regulator’s seal must be authenticated by the signature of –
- (a) a member of the regulator, or
 - (b) any other person who is authorised (generally or specially) for that purpose.
- 22 A document purporting to be duly executed under the seal of the regulator –
- (a) is to be received in evidence, and
 - (b) is to be treated as so executed unless the contrary is shown.

Disqualification

- 23 In Part 2 of Schedule 1 to the House of Commons Disqualification Act 1975 (bodies of which all members are disqualified), at the appropriate place insert –
- “Social Work England.”

Freedom of information

- 24 In Part 6 of Schedule 1 to the Freedom of Information Act 2000 (other public bodies and offices: general), at the appropriate place insert –
- “Social Work England.””

138 Insert the following new Schedule –

“SCHEDULE

OVERSIGHT BY THE PROFESSIONAL STANDARDS AUTHORITY FOR HEALTH AND SOCIAL CARE

- 1 The National Health Service Reform and Health Care Professions Act 2002 is amended as follows.
- 2 In section 25 (the Professional Standards Authority for Health and Social Care), in subsection (3), after paragraph (gb) (but before the “and” at the end) insert –
- “(gc) Social Work England”.

After Clause 61 - continued

- 3 (1) Section 25A (funding of the Authority) is amended as follows.
- (2) In subsection (1), after “regulatory body” insert “, other than Social Work England,”.
- (3) At the end of the heading insert “by bodies other than Social Work England”.

4 After section 25A insert—

“25AA Funding of the Authority by Social Work England

- (1) The Secretary of State must by regulations require Social Work England to pay the Authority periodic fees of such amount as the Secretary of State determines in respect of such of the Authority’s functions in relation to Social Work England as are specified in the regulations.
- (2) A reference in this section to the Authority’s functions does not include a reference to its functions under section 26A.
- (3) The regulations must, in particular, provide for the method of determining the amount of a fee under the regulations.
- (4) Before determining the amount of a fee under the regulations, the Secretary of State must request the Authority to make a proposal as to the amount of funding that it considers it requires in order to perform for the period to which the fee would apply such of its functions in relation to Social Work England as are specified in the regulations.
- (5) The Authority must—
 - (a) comply with a request under section (4), but
 - (b) before doing so, consult Social Work England.
- (6) Having received a proposal under subsection (5), the Secretary of State may consult Social Work England.
- (7) Having taken into account any representations from Social Work England, the Secretary of State must—
 - (a) make a proposal as to the amount of funding that the Secretary of State considers the Authority requires in order to perform for the period to which the fee would apply such of its functions in relation to Social Work England as are specified in the regulations, and
 - (b) determine in accordance with the method provided for under subsection (3) the amount of the fee that Social Work England would be required to pay.
- (8) The Secretary of State must—
 - (a) consult the Authority about the proposal under subsection (7)(a) and the determinations under subsection (7)(b), and
 - (b) consult Social Work England about the determination under subsection (7)(b) of the amount it would be required to pay.
- (9) Having taken into account such representations as it receives from consultees, the Secretary of State must—
 - (a) determine the amount of funding that the Authority requires in order to perform for the period to which the fee would apply such of its functions in relation to Social Work England as are specified in the regulations, and

After Clause 61 - continued

- (b) determine in accordance with the method provided for under subsection (3) the amount of the fee that Social Work England is to be required to pay.
 - (10) Regulations under this section requiring payment of a fee may make provision—
 - (a) requiring the fee to be paid within such period as is specified;
 - (b) requiring interest at such rate as is specified to be paid if the fee is not paid within the period specified under paragraph (a);
 - (c) for the recovery of unpaid fees or interest.
 - (11) The regulations may enable the Secretary of State to redetermine the amount of a fee provided for under the regulations, on a request by the Authority or Social Work England or on the Secretary of State’s own initiative.
 - (12) Before making regulations under this section, the Secretary of State must consult—
 - (a) the Authority,
 - (b) Social Work England, and
 - (c) such other persons as the Secretary of State considers appropriate.”
- 5 In section 25C (appointments to regulatory bodies) is amended as follows, in subsection (7), after “Northern Ireland” insert “or Social Work England”.
- 6 (1) Section 25D (power of regulatory bodies to establish voluntary registers) is amended as follows.
- (2) In subsection (1), after “regulatory body” insert “other than Social Work England”.
 - (3) In subsection (2), omit paragraph (b) and the “or” before it.
- 7 In section 25E (section 25D: interpretation), omit subsections (10) and (11).
- 8 In section 25F (establishment of voluntary register: impact assessment), in subsection (3)(c), for “, users of social care in England and users of social work services in England” substitute “and users of social care in England”.
- 9 In section 25G (power of the Authority to accredit voluntary registers), after subsection (9) insert—
- “(10) In this section “regulatory body” does not include Social Work England.”
- 10 In section 25H (accreditation of voluntary register: impact assessment), in subsection (3)(c), for “, users of social care in England and users of social work services in England” substitute “and users of social care in England”.
- 11 In section 25I (functions of the Authority in relation to accredited voluntary registers), in subsection (1)(a), omit “, users of social work services in England”.
- 12 (1) Section 26A (powers of Secretary of State and devolved administrations) is amended as follows.
- (2) In subsection (1D), omit paragraph (b).
 - (3) For subsection (1E) substitute—

After Clause 61 - continued

- “(1E) In subsection (1D), “unregulated social care worker in England” has the meaning given in section 25E.”
- 13 In section 27 (regulatory bodies and the Authority), in subsection (2), after “regulatory body” insert “other than Social Work England”.
- 14 In section 28 (complaints), in subsection (1), after “regulatory body” insert “other than Social Work England”.
- 15 (1) Section 29 (reference to disciplinary cases by the Authority to court) is amended as follows.
- (2) After subsection (2) insert—
- “(2A) This section also applies to any steps or decisions which are taken by Social Work England (or any of its committees or officers) in connection with fitness to practise or discipline and which are of a description specified in regulations made by the Secretary of State.”
- (3) For subsection (5A) substitute—
- “(5A) In relation to something that is a relevant decision as a result of subsection (2A), “the relevant court” means the High Court of Justice in England and Wales.”
- 16 (1) Section 38 (regulations and orders) is amended as follows.
- (2) In subsection (2), after “other than” insert “regulations under 29(2A) or”.
- (3) In subsection (3), after “28” insert “or 29(2A)”.

Children and Social Work Bill [HL]

SECOND
MARSHALLED
LIST OF AMENDMENTS
TO BE MOVED
ON REPORT

4 November 2016
