

These notes refer to the Lords Amendments to the Health and Social Care Bill, as brought from the House of Lords on 2nd July 2008 [Bill 132]

HEALTH AND SOCIAL CARE BILL

EXPLANATORY NOTES ON LORDS AMENDMENTS

INTRODUCTION

1. These explanatory notes relate to the Lords Amendments to the Health and Social Care Bill, as brought from the House of Lords on 2nd July 2008. They have been prepared by the Department of Health 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.
2. These notes, like the Lords Amendments themselves, refer to HL Bill 33, the Bill as first printed for the Lords.
3. These 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 effect of the Lords Amendments.
4. All the Lords Amendments were in the name of the Minister or accepted by the Government.

These notes refer to the Lords Amendments to the Health and Social Care Bill, as brought from the House of Lords on 2nd July 2008 [Bill 132]

COMMENTARY ON LORDS AMENDMENTS

Lords Amendments 1, 2, 3 and 5

5. Lords Amendment 1 would pave the way for Lords Amendments 2, 3 and 5 by omitting subsections (3) to (5) from **clause 2**.

6. Lords Amendment 2 would then insert a new clause after clause 2 providing that the main objective of the Care Quality Commission (“the Commission”), in carrying out its functions, is to protect and promote the health, safety and welfare of people who use health and social care services. The general purposes for which the Commission is to perform its functions, which are currently set out in clause 2(5), are reflected in subsection (2) of the new clause. Subsection (3) of the new clause would provide a definition of health and social care services for the purposes of Chapter 1 of the Bill. Lords Amendment 5 would insert at the end of the Chapter a new clause referring to this definition.

7. Lords Amendment 3 would insert a further new clause setting out matters to which the Commission must have regard. This is an amended version of the current clause 2(3) and (4). Subsection (1)(b) would require the Commission to have regard to experiences of people who use health and social care services and their families and friends, to replace what is currently clause 2(3)(b). Subsection (1)(c) would introduce a new requirement for the Commission to have regard to views expressed about the provision of health and social care services in their areas by local involvement networks. Subsection (1)(d) would require the Commission to have regard to the need to protect and promote the rights of people who use health and social care services including, in particular, the rights of people detained under the Mental Health Act 1983 or deprived of their liberty under the Mental Capacity Act 2005. This would replace what is currently clause 2(3)(d).

Lords Amendments 4, 24 and 25

8. Lords Amendment 4 would insert a new clause which would require the Commission to publish a statement on user involvement, following consultation with such people as the Commission considered appropriate. The statement would have to include the Commission’s proposals for promoting awareness among service users and carers of its functions and for promoting and engaging in discussion with them both about the provision of health and social care services and about the way in which the Commission exercises its functions. The statement would also have to set out the Commission’s proposals for ensuring that proper regard is had to the views expressed by service users and carers and for arranging for any of its functions to be exercised by, or with the assistance of, service users and carers. The Commission would be free to revise the statement from time to time but would have to consult again on any revision and publish the revised version.

These notes refer to the Lords Amendments to the Health and Social Care Bill, as brought from the House of Lords on 2nd July 2008 [Bill 132]

9. Lords Amendments 24 and 25 would amend **clause 79** to require the Commission to report, as part of the annual report required by that clause, on what steps it had taken to implement the proposals in its statement on user involvement.

Lords Amendments 6, 9 and 11

10. Lords Amendments 6, 9 and 11 relate to registered managers. Lords Amendment 6 would amend **clause 13** by imposing an express obligation on the Commission to cancel the registration of a manager in respect of a regulated activity where there was no longer a registered service provider in respect of that activity, or a registered manager condition ceased to apply to the registration of the service provider. Lords Amendment 9 would make a consequential amendment to **clause 22**. It would prevent the Commission from being required to notify a registered manager of a proposal to cancel his registration in the circumstances covered by Lords Amendment 6.

11. Lords Amendment 11 would amend **clause 30** in relation to offences by managers. A person who is a registered manager would be guilty of an offence if he continued to manage the activity during a period in which his registration was suspended, unless another person had been registered as a manager in his place. As under existing clause 30(3)(b), a registered manager would also be guilty of an offence if he continued to manage the activity while the registration of the service provider was suspended, if he knew or could reasonably be expected to know of the suspension. A person whose registration as a manager had been cancelled would be guilty of an offence if he continued to manage the activity after cancellation, but only if a service provider remained registered in respect of the activity, a registered manager condition was still in place and no new registered manager had been appointed.

Lords Amendment 7

12. Lords Amendment 7 to **clause 13** would give the Commission discretion to determine what other offences, in addition to those listed in subsection (2)(a) to (c), should be capable of leading to the cancellation of someone's registration, instead of these other offences being prescribed by regulations made by the Secretary of State.

Lords Amendment 8

13. Lords Amendment 8 would clarify that regulations under **clause 16** that set registration requirements relating to the handling of complaints and disputes could also make provision as to learning lessons from those complaints and disputes. For example, such regulations could require a service provider to maintain arrangements for ensuring that lessons learnt from justified complaints are properly applied.

These notes refer to the Lords Amendments to the Health and Social Care Bill, as brought from the House of Lords on 2nd July 2008 [Bill 132]

Lords Amendment 10

14. Lords Amendment 10 to **clause 25** (warning notice) would correct a drafting error in subsection (2)(c), which should refer to securing compliance with any relevant requirements (as defined in subsection (7)), rather than merely the provisions of Chapter 2.

Lords Amendments 12 and 13

15. Lords Amendments 12 and 13 would clarify the drafting of **clause 38** (death of registered person) and **clause 39** (power to modify Chapter in relation to newly regulated activities) respectively.

Lords Amendment 14

16. Lords Amendment 14 to **clause 39** would enable the registration provisions in Chapter 2 to be modified in their application to Crown services, if these became subject to registration. See note on Lords Amendment 27.

Lords Amendments 15, 16, 20, 21, 28, 29, 30 and 31

17. Lords Amendment 31 is an amendment to **clause 92** (general interpretation of Part 1). It would define health care commissioned by a Primary Care Trust and adult social services commissioned by an English local authority as meaning health care or adult social services provided by other people pursuant to arrangements made by the Trust or local authority. Lords Amendments 15, 16, 20, 21, 28, 29 and 30 would replace references to “pursuant to arrangements made” with “commissioned”, wherever such references appear in **clause 42**, **clause 60** and **clause 92**.

Lords Amendment 17

18. Lords Amendment 17 to **clause 43** would remove the power of the Secretary of State to modify documents of the Commission which set out the frequency of reviews under clause 42. These documents would still require the Secretary of State’s approval.

Lords Amendments 18 and 19

19. Lords Amendment 18 would amend **clause 44** to impose a duty on the Commission, after carrying out a special review or investigation, to consider whether its report raised matters making it appropriate for the Commission to exercise its powers under **clause 49** to advise the Secretary of State. The amendment would make clear that this duty would not affect or duplicate the duties the Commission has under **clause 46** (in relation to a failing English local authority). Lords Amendment 19 would make a consequential change to clause 44(5).

These notes refer to the Lords Amendments to the Health and Social Care Bill, as brought from the House of Lords on 2nd July 2008 [Bill 132]

Lords Amendment 22

20. Lords Amendment 22 to **clause 65** would enable the Welsh Ministers and the Commission to share information for the purpose of fulfilling their obligation under that clause to co-operate in the interests of the efficient and effective discharge of their functions.

Lords Amendment 23

21. Lords Amendment 23 would remove from **clause 77** the power of the Secretary of State to specify by order when the Commission must publish programmes setting out the reviews, investigations and studies it proposes to conduct under **clause 44, clause 50 and clause 53**.

Lords Amendment 26

22. Lords Amendment 26 would remove from **clause 81** the power of the Secretary of State to make regulations prescribing the manner in which the new Commission is to make and publish its plans for charging fees.

Lords Amendment 27

23. Lords Amendment 27 would insert a new clause after clause 91 to enable the provisions of Chapters 2, 3 and 6 to apply to the Crown. If services such as prison health care or military hospitals provided by Defence Medical Services became subject to registration or review, individuals, such as civil servants who are in the service of the Crown as public servants, could be prosecuted under the Act in the same way as private individuals, private organisations and their staff. The Crown would not, however, be liable to criminal prosecution in relation to offences under those Chapters, although the High Court could find that the Crown had acted unlawfully following a judicial review. Subsection (5) would enable the Secretary of State, in the interests of national security, to limit the powers of entry and inspection conferred by **clauses 58 and 59** so far as relating to premises held or used by or on behalf of the Crown.

Lords Amendment 32

24. Lords Amendment 32 to **clause 111** would remove the Secretary of State's power of direction in relation to the Council for Healthcare Regulatory Excellence ("CHRE").

Lords Amendments 33, 34, 55, 57, 58 and 59

25. Lords Amendments 33, 34, 55, 57, 58 and 59 were tabled in response to concerns expressed in the Sixth Report of the Lords Delegated Powers and Regulatory Reform Committee ("the DPRRC"). The Committee recommended that regulations conferring responsibilities on responsible officers under new section 45B of the Medical Act 1983 (as inserted by **clause 114**) and **clause 115** should be subject to the affirmative resolution procedure on their first exercise by each of the appropriate authorities. These amendments would amend **clauses 114, 154, 155 and 156** accordingly.

These notes refer to the Lords Amendments to the Health and Social Care Bill, as brought from the House of Lords on 2nd July 2008 [Bill 132]

Lords Amendment 35

26. Lords Amendment 35 would insert a new subsection (5) into **clause 116**. This amendment would require the appropriate Minister, when making regulations in relation to the sharing of information about health care workers between specified bodies, to have regard to the importance of avoiding unfair prejudice to health care workers against whom unsubstantiated allegations are made.

Lords Amendments 36, 60, 75, 76, 78, 85, 86, 87, 88 and 89

27. Lords Amendment 36 would insert a new clause providing for the dissolution of the Hearing Aid Council and the repeal of the Hearing Aid Council Act 1968 and the Hearing Aid Council (Extension) Act 1975. The clause would prevent the dissolution of the Council from taking effect before an Order in Council under section 60 of the Health Act 1999 making provision for the regulation of private hearing aid dispensers had come into force. Lords Amendments 75, 76 and 78, which amend **Schedule 8**, would make the necessary amendments to section 60 of, and Schedule 3 to, the Health Act 1999 to enable the relevant section 60 Order to be made. The intention is that private hearing aid dispensers, currently regulated by the Hearing Aid Council, will, by virtue of a section 60 Order, become regulated by the Health Professions Council, which was established by the Health Professions Order 2001. Employers of private hearing aid dispensers will cease to be regulated.

28. Subsection (5) of the new clause inserted by Lords Amendment 36 would allow the Secretary of State to make an order for the transfer of any property, rights and liabilities of the Hearing Aid Council to another regulatory body or the Secretary of State. Subsection (6) defines that other body as the body which is designated by the Order in Council made under section 60 as being responsible for the regulation of private hearing aid dispensers.

29. Lords Amendment 60 would amend **clause 161** so as to provide for the new clause inserted by Lords Amendment 36 to extend to England and Wales, Scotland and Northern Ireland. Lords Amendments 85 to 89 would amend **Schedule 15** so as to include various repeals consequential on the dissolution of the Hearing Aid Council.

Lords Amendments 37 and 39

30. Lords Amendment 37 to **clause 123** would limit the regulation-making power under new section 45C (health protection regulations: domestic) of the Public Health (Control of Disease) Act 1984 (“the Public Health Act 1984”) so that a restriction or requirement relating to the disposal of a dead body would be by way of cremation or burial only.

31. Lords Amendment 39 to **clause 123** would make it clear that the justice of the peace’s order-making power under new section 45H of the Public Health Act 1984, so far as relating to the disposal of dead bodies, would relate only to cremation or burial.

These notes refer to the Lords Amendments to the Health and Social Care Bill, as brought from the House of Lords on 2nd July 2008 [Bill 132]

Lords Amendment 38

32. Lords Amendment 38 to **clause 123** would replace new section 45F(7) of the Public Health Act 1984 with two new subsections. Like section 45F(7), the first new subsection would require that regulations under section 45C of the Public Health Act 1984 make available a right of review for special restrictions or requirements imposed by virtue of a decision taken under the regulations which are capable of continuing in force in relation to any person, thing or premises for more than a specified period. The second new subsection would provide that where the restriction or requirement imposed was isolation, detention or quarantine of a person, the maximum period prior to review and the maximum interval between reviews would be 28 days. In addition, for such measures, the review would be automatic, in that it would take place without any need for an application.

Lords Amendments 40 and 41

33. Lords Amendments 40 and 41 to **clause 123** would amend new section 45L (period for which Part 2A order may be in force) of the Public Health Act 1984 to limit the period for which a Part 2A order could impose detention, isolation or quarantine of a person to a maximum of 28 days. The amendments would also limit any extension of those measures to no more than 28 days. They would also provide a power to shorten these maximum periods further by regulations.

Lords Amendments 42 and 43

34. Lords Amendments 42 and 43 to **clause 123** relate to notice to be given of an application for a justice of the peace's order. Lords Amendment 42 would insert a new subsection after subsection (2) of new section 45M (procedure for making, varying and revoking Part 2A orders) of the Public Health Act 1984. This new subsection would require the Secretary of State and the Welsh Ministers to make regulations specifying the persons to whom notice must be given. Lords Amendment 43 would consequentially amend section 45M(3) so that the exception referred to in section 45M(3) (for an order to be made without a person having been given notice if the justice considers it necessary) would extend to cover notice required to be given by the regulations required by Lords Amendment 42.

Lords Amendments 44, 45 and 46

35. Lords Amendment 45 to **clause 123** (in respect of new section 45Q (Parliamentary control) of the Public Health Act 1984) would require the first set of regulations made under new section 45L(4) of the Public Health Act 1984 to be subject to the affirmative procedure.

36. Lords Amendment 46 to **clause 123** (also in respect of new section 45Q) would require that the first set of regulations made under new section 45N (power to make further provision by regulations) of the Public Health Act 1984 be subject to the affirmative procedure, in line with the recommendation of the DPRRC. Lords Amendment 44 is consequential on Lords Amendment 46.

These notes refer to the Lords Amendments to the Health and Social Care Bill, as brought from the House of Lords on 2nd July 2008 [Bill 132]

Lords Amendment 47

37. Lords Amendment 47 to **clause 123** (in respect of new section 45Q of the Public Health Act 1984) would exclude regulations made under the emergency procedure in new section 45R of the Public Health Act 1984 from being subject to the hybrid instrument procedure where they otherwise might be.

Lords Amendment 48

38. Lords Amendment 48 to **clause 126** would substitute two new subsections for subsection (6) to provide for sections 121E and 121F of the Social Security Administration Act 1992 to be amended so as to apply in relation to the functions of HMRC relating to the Health in Pregnancy Grant. This would allow DWP and HMRC to share information to help develop and refine policies for pregnant women.

Lords Amendment 49

39. Lords Amendment 49 to **clause 129** would substitute two new subsections for subsection (6) to provide for sections 115D and 115E of the Social Security Administration (Northern Ireland) Act 1992 to be amended to the same effect as Lords Amendment 48.

Lords Amendments 50, 63, 64, 65, 90 and 91

40. Lords Amendment 50 would insert, after clause 134, a new clause which would amend section 164 of the National Health Service Act 2006 (“the NHS Act”) and section 88 of the National Health Service (Wales) Act 2006 (“the NHS (Wales) Act”). These sections make provision relating to the making or varying of determinations on the remuneration of those providing NHS pharmaceutical services. Under section 164, remuneration may be determined by the Secretary of State or by persons appointed by the Secretary of State, referred to in the legislation as “determining authorities”. Where the Secretary of State devolves this function to determining authorities, he is required to do so via an “instrument of appointment”. The legislation provides that this “instrument of appointment” may be, but is not required to be, set out in regulations. Similar powers are conferred on the Welsh Ministers under section 88 of the NHS (Wales) Act. The new clause would amend section 164 of the NHS Act to remove this discretion in the case of services which are provided pursuant to the power in section 126 of the NHS Act. It would also make a similar amendment to section 88 of the NHS (Wales) Act in relation to services provided pursuant to section 80 of that Act. The new provisions would require the Secretary of State and the Welsh Ministers respectively to set out an instrument of appointment in respect of these services in regulations.

41. Lords Amendments 63, 64 and 65 would make consequential amendments to **clause 163** (providing for the amendments to the NHS (Wales) Act to be commenced by the Welsh Ministers) and Lords Amendments 90 and 91 consequential amendments to **Schedule 15** (repeals).

These notes refer to the Lords Amendments to the Health and Social Care Bill, as brought from the House of Lords on 2nd July 2008 [Bill 132]

Lords Amendments 51 and 61

42. Lords Amendment 51 would insert a new clause providing that where a private or voluntary sector care home provides accommodation together with nursing or personal care to a person under arrangements made with a local authority (or, in Northern Ireland, the Department of Health, Social Services and Public Safety) under certain statutory provisions the provider is taken to be exercising a function of a public nature under section 6(3)(b) of the Human Rights Act 1998. This would mean that such providers are required to act compatibly with rights under the European Convention on Human Rights when providing these services. The clause would therefore enable a care home resident whose care had been arranged by a local authority (or the relevant Northern Ireland department) to bring proceedings against the provider under the Human Rights Act 1998 if the provider breaches the resident's rights under the Convention. Lords Amendment 61 to **clause 161** would specify that this new clause extended to England and Wales, Scotland and Northern Ireland.

Lords Amendments 52 and 56

43. Lords Amendments 52 and 56 would insert a new subsection (4) into **clause 154** to provide that any rules made by the Office of the Health Professions Adjudicator ("the OHPA") concerning the running of a pilot scheme for legally qualified chairs of its panels would require approval by affirmative resolution of both Houses of Parliament.

Lords Amendments 53 and 54

44. Lords Amendments 53 and 54 to **clause 154** would make any regulations made under clause 16 (regulation of regulated activities), or clause 83(1)(b) (penalty notices: supplemental provision), subject to affirmative procedure where the regulations provided for a maximum fine, or a penalty, in excess of level 4 on the standard scale (currently £2,500). This would give effect to a recommendation of the DPRRC.

Lords Amendment 62

45. Lords Amendment 62 to **clause 162** (commencement) would prevent the commencement provisions in clause 162(1)(b) from applying to **clause 106** and **Schedule 8**, which contain changes to the powers to make Orders in Council under section 60 of the Health Act 1999.

Lords Amendment 66

46. Lords Amendment 66 would amend **paragraph 3** of **Schedule 1** to require the Secretary of State, in appointing the chair and other members of the Commission, to ensure that they include people with experience and knowledge relating to health care, social care and the Mental Health Act 1983. Such experience and knowledge could, for example, include experience a person has gained by involvement with groups who represent service users or carers.

These notes refer to the Lords Amendments to the Health and Social Care Bill, as brought from the House of Lords on 2nd July 2008 [Bill 132]

Lords Amendment 67

47. Lords Amendment 67 would make a minor amendment to **paragraph 26 of Schedule 5** (further amendments relating to Part 1) to reflect the fact that the Children and Young Persons Bill, referred to in that paragraph, is not now expected to receive Royal Assent until after the Health and Social Care Bill.

Lords Amendment 68

48. Lords Amendment 68 to **Schedule 5** would allow the Welsh Ministers to use any information obtained in exercising specified functions for the purposes of any of their other specified functions. These would include functions under the Mental Capacity Act 2005 and the Mental Health Act 1983.

Lords Amendments 69, 70, 71 and 84

49. Lords Amendments 69, 70, 71 and 84 to **Schedule 5** and **Schedule 15** (repeals) would make a number of consequential amendments to other legislation necessitated by the dissolution of the Commission for Healthcare Audit and Inspection and the Commission for Social Care Inspection; and would replace these with references to the Care Quality Commission.

Lords Amendment 72

50. Lords Amendment 72 to **Schedule 5** would amend section 227 of the Local Government and Public Involvement in Health Act 2007 to add the Commission to the list of people to whom local involvement networks must send copies of their annual reports.

Lords Amendments 73 and 74

51. Lords Amendments 73 and 74 would make minor drafting changes to **Schedule 7** (which contains textual amendments of the Medical Act 1983 and the Opticians Act 1989 consequential on the creation of the OHPA).

Lords Amendment 77

52. Lords Amendment 77 to **Schedule 8** would insert a reference to “a Northern Ireland department” into paragraph 5 of Schedule 3 to the Health Act 1999. This would allow an Order in Council under section 60 of the Health Act 1999 to confer functions on or modify the functions of a Northern Ireland department. This would bring the position in relation to Northern Ireland departments into line with the ability to confer functions on or modify the functions of Ministers of the Crown, as well as the Scottish Ministers and the Welsh Ministers.

Lords Amendments 79, 80 and 81

53. Lords Amendments 79, 80 and 81 would make minor drafting corrections to **Schedule 9**, which concerns the regulation of social care workers.

These notes refer to the Lords Amendments to the Health and Social Care Bill, as brought from the House of Lords on 2nd July 2008 [Bill 132]

Lords Amendment 82

54. Lords Amendment 82 to **Schedule 10** (further amendments relating to Part 2) would add a reference to proceedings before the OHPA into section 26(3)(a) of the National Health Service Reform and Health Care Professions Act 2002, thereby ensuring that CHRE would not be able to take action in relation to the case of any individual where there were or had been proceedings before the OHPA. This would ensure that section 26(3)(a) continues to operate in the same way after the OHPA is set up as at present.

Lords Amendment 83

55. Lords Amendment 83 to **Schedule 10** would make a consequential amendment to the National Assembly for Wales (Disqualification) Order 2006. The need for this amendment arises from the creation of the OHPA and the change of name of the Council for the Regulation of Health Care Professionals. The amendment would have the effect of members of both the OHPA and CHRE being disqualified from membership of the National Assembly for Wales.

HEALTH AND SOCIAL CARE BILL

EXPLANATORY NOTES ON LORDS AMENDMENTS

*These notes refer to the Lords Amendments to the Health and Social Care
Bill as brought from the House of Lords
on 2nd July 2008 [Bill 132]*

*Ordered, by The House of Commons,
to be Printed, 2nd July 2008.*

© Parliamentary copyright House of Commons 2008
*Applications for reproduction should be made in writing to the Information Policy Team,
Office of Public Sector Information, Kew, Richmond, Surrey TW9 4DU*

PUBLISHED BY AUTHORITY OF THE HOUSE OF COMMONS
LONDON - THE STATIONERY OFFICE
Printed in the United Kingdom by
The Stationery Office Limited

£x.00