

PARLIAMENTARY DEBATES

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OFFICIAL REPORT

Sixth Delegated Legislation Committee

DRAFT CARE ACT 2014 AND CHILDREN AND FAMILIES ACT 2014 (CONSEQUENTIAL AMENDMENTS) ORDER 2015

Tuesday 24 March 2015

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The Committee consisted of the following Members:

Chair: SANDRA OSBORNE

Abbott, Ms Diane (*Hackney North and Stoke Newington*) (Lab)

Abrahams, Debbie (*Oldham East and Saddleworth*) (Lab)

† Doyle-Price, Jackie (*Thurrock*) (Con)

Hillier, Meg (*Hackney South and Shoreditch*) (Lab/Co-op)

Jackson, Glenda (*Hampstead and Kilburn*) (Lab)

Jones, Andrew (*Harrogate and Knaresborough*) (Con)

† Kwarteng, Kwasi (*Spelthorne*) (Con)

† Lamb, Norman (*Minister of State, Department of Health*)

† Mosley, Stephen (*City of Chester*) (Con)

† Murray, Sheryll (*South East Cornwall*) (Con)

† Nuttall, Mr David (*Bury North*) (Con)

† Penrose, John (*Lord Commissioner of Her Majesty's Treasury*)

† Reed, Mr Jamie (*Copeland*) (Lab)

† Robathan, Mr Andrew (*South Leicestershire*) (Con)

† Russell, Sir Bob (*Colchester*) (LD)

† Shannon, Jim (*Strangford*) (DUP)

† Wilson, Phil (*Sedgefield*) (Lab)

Wood, Mike (*Batley and Spen*) (Lab)

Katharine Gray, *Committee Clerk*

† **attended the Committee**

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Tuesday 24 March 2015

[SANDRA OSBORNE *in the Chair*]

Draft Care Act 2014 and Children and Families Act 2014 (Consequential Amendments) Order 2015

8.55 am

The Minister of State, Department of Health (Norman Lamb): I beg to move,

That the Committee has considered the draft Care Act 2014 and Children and Families Act 2014 (Consequential Amendments) Order 2015.

It is a pleasure to serve under your chairmanship, Mrs Osborne. I suspect that this will be my last outing as care Minister, so I want to say that it has been an enormous pleasure to work with all my colleagues on both sides. The order, while thorough, has a simple overarching purpose, namely, to make amendments to primary legislation for England consequent to new laws already passed by Parliament—mainly the Care Act 2014, but to a small extent the Children and Families Act 2014.

Part 1 of the Care Act 2014 is a crucial step in delivering the commitments in the Government's White Paper "Caring for our future: reforming care and support". It is the biggest reform of care law for some 65 years. It takes forward the recommendations of the Law Commission to consolidate 60 years of fragmented law into a single statute, refocusing the law around the person, not the service. The well-being of the individual is the central purpose of section 1 of the Care Act. The order before us today is part of the final step in the process. It disapplies legislation for England that is to be replaced by the Care Act and changes references to that legislation in other Acts to reflect the Care Act. For example, many of the core entitlements to social care services included in the National Assistance Act 1948 are disapplied for England by the order because they are to be replaced by the overarching duty and power to meet care and support needs included in sections 18 and 19 of the Care Act.

The Department of Health and the Department for Education have worked together to extend carer rights in key areas. Part 1 of the Care Act 2014 introduces improved rights for adult carers caring for adults, including a right to an assessment of their needs and to support. Sections 96 and 97 of the Children and Families Act 2014 amend the Children Act 1989 to introduce significant new rights for young carers and parent carers respectively. The new provisions will work together with those in the Care Act for assessing adults to enable services to co-ordinate their approaches to assessment and support for young carers and the people they care for.

The order therefore makes some amendments in consequence of the new provisions introduced by the Children and Families Act 2014. Because the previous legislation relating to carers is being replaced by a

combination of provisions in that Act and the Care Act 2014, it makes sense to deal with the necessary consequential amendments in a single order.

The order also includes some savings provisions that are necessary for transition from the old system to the new one. Essentially, the amendments in the schedule to the primary order turn off the old law in England, but for those currently in receipt of services, the order enables services to continue under the old law for up to one year, until those people move over to the new system. The savings provisions will work with separate transitional provisions to be made by another instrument and will ensure a smooth transition for those in receipt of services under the current law.

Lastly, I will briefly outline how the order fits into the broader context of statutory instruments under the Care Act 2014. I am sure that my colleagues are riveted by this explanation. Subject to parliamentary approval of the order, we will, as I have mentioned, be making a further transitional order that will complete the temporary legislative framework for local authorities and partners to move from old legislation to the Care Act. Subject to approval of the order, we will make a commencement order to commence formally the relevant provisions in the Care Act from 1 April 2015. We have also laid before Parliament the Care Act 2014 (Consequential Amendments) (Secondary Legislation) Order 2015, which makes similar amendments to secondary legislation as the order before us makes to primary legislation. This is subject to the negative procedure.

Jim Shannon (Strangford) (DUP): Will the Minister give way?

Norman Lamb: I will give way. It is an enormous pleasure to give way to my hon. Friend.

Jim Shannon: I thank the Minister for giving way. I know that this legislation is specifically for England and perhaps Wales as well, but one of the great interests that I have pursued in this House and elsewhere has been young carers. I see that the order refers to an assessment for young carers. Does that assessment involve financial help as well as physical help? When legislation comes in that is good and makes a change that we would like to see, does the Minister pass on the legislative change to Jim Wells, the responsible Assembly Minister in Northern Ireland, for example, to make him aware of what is going on here?

Norman Lamb: I am grateful for that intervention. It is an assessment of all their needs. On the question of liaison and co-ordination, officials work closely with colleagues in Northern Ireland and in the other devolved Administrations. The legislation will ease the movement of people receiving care from one part of the United Kingdom to another. That is a very positive thing, and it includes movement between England and Northern Ireland. We will be issuing a statement of principles of best practice very soon which will further that intent and has been agreed with the devolved Administration. The work between the Government and the devolved Administrations continues to ensure the ease of movement of people around the United Kingdom.

Stephen Mosley (City of Chester) (Con): My constituency is right on the England-Wales border and, of course, this delegated legislation applies only in England. Can the Minister clarify what happens where people traditionally cross the border between England and Wales for social care, as happens in Chester and north-east Wales?

Norman Lamb: As I said to the hon. Member for Strangford, the Care Act deals with the issue of people in residential care moving between England and Wales and the other parts of the United Kingdom. It is incredibly important to ensure that authorities on both sides of the border co-operate effectively not to put impediments in the way of people who perhaps want to move closer to loved ones. I mentioned the statement of best practice, which has been agreed between the Government and the devolved Administrations. I think it will also help in that regard.

Sir Bob Russell (Colchester) (LD): Will the Minister give way?

Norman Lamb: I cannot quite believe it. Everybody is trying to get in for the last time. It is an enormous pleasure to give way to my very good friend.

Sir Bob Russell: I am grateful to the Minister for giving way, because I was prompted to ask this question by the previous intervention. Is the Minister saying that when somebody moves, the documentation, the statementing, and the care package move with them? The reason I ask is because I have evidence from a military family in my constituency. When the family, who have a child with special needs, moved from one part of the country to the Colchester garrison, Essex county council refused to accept the care package, which flies in the face of all good reason. It also flies in the face of the armed forces covenant.

Norman Lamb: I take my hon. Friend's point extremely seriously. Local authorities should make sure that people's interests are protected in such circumstances. My responsibilities relate to the care of adults. This order, as I have explained, also covers necessary changes to other legislation consequent on the Children and Families Act 2014. The Care Act 2014 takes an important step forward in enabling adults who are receiving care to move around the country, because they will not, as currently happens, lose everything when they move from one area to another. Their package must be maintained until they receive a new assessment in their new area. That will make it much easier for families to manage the move from one part of the country to another.

Sir Bob Russell: If they have already been assessed and been judged to be worthy of this package, why do they have to go through a new assessment? That is the whole thrust of my question.

Norman Lamb: It is right that there needs to be a new assessment. The point is to ease the transition, but when someone moves closer to a son or a daughter who is contributing to supporting their mother or father, their care needs may change. Their circumstances may change. They may be in a ground floor flat rather than in an

upstairs flat in the previous area. It must be right to make a new assessment of their needs. The critical point in the Care Act is that universal eligibility criteria now apply. This removes the postcode lottery whereby different standards and eligibility criteria can apply in one area compared with another. It will also introduce a right to appeal against decisions made by the local authority, which is a new protection.

Mrs Osborne, I am one sentence away from the end so let me continue. I hope that this standard exercise of ensuring legislative coherence will not prove controversial and I commend this statutory instrument to the Committee.

9.6 am

Mr Jamie Reed (Copeland) (Lab): I thank the Minister for his comprehensive introduction to this rather long and complex order. I thank him also for his introduction of a non-aggression pact, which is gratefully received. I can exclusively reveal that I have no intention to serve a second term as a shadow Health Minister.

As has already been outlined, as technical and complicated as this order seems, it is in fact a rather standard exercise in legislative coherence, making sure that the implementation of the Care Act 2014 and the Children and Families Act 2014 is as smooth as possible and that there are no legislative gaps between various Acts coming into force and being repealed. The order seeks to ensure legal continuity. For example, it specifies that while the Care Act and Children and Families Act disapply any pre-existing social care provisions in England, these provisions will continue to apply in Wales until the Social Services and Well-being (Wales) Act 2014 comes into force, which I understand is likely to be a year from now.

The most important objective of this order, however, is that it enables services to continue for a time under the old laws, even though they are being replaced by the new measures in the Care Act and the Children and Families Act, to ensure a smooth transition for councils, users and their carers. People who are currently in receipt of services will be moved onto the new system at a natural point in time on a case-by-case basis. This is a welcome and logical principle.

However, the detail of how and in what circumstances the savings provisions will work is yet to be set out. I understand that they will follow the passage of today's order, which, as I am sure the Minister will expect, we do not oppose. It is worrying, however, and indicative of a kind of disregard for local authorities' capacity to carry out the very difficult tasks that we ask them to perform, that the transitional order spelling out the detail of these savings provisions will be published only a week before these reforms come into force, and that is assuming that the transitional order is published in the next day or two. I expect that the Minister will say, as his colleague in the other place did last week, that the transitional order will merely formalise an approach that the Government had already communicated in previously published statutory guidance. I still think, however, that lack of certainty about the detail of the transitional arrangements a mere week before part 1 of the Care Act is implemented will do little to ease its implementation and mitigate local authorities' concerns about their preparedness and capacity to manage the new system, especially in light of the massive cuts to their budgets. This is a materially important point.

[Mr Jamie Reed]

The Minister will also appreciate that publishing the transitional order no earlier than two days before the House dissolves makes it virtually impossible for Members to scrutinise this important piece of secondary legislation. I would welcome the Minister's explanation of why these regulations are being published so late in the day, any reassurance he can offer on the steps that Government are taking to assist councils which find themselves under an incredible amount of pressure in managing this transition, and, most importantly, how this will safeguard service users. We all want this to work in the best way possible.

9.9 am

Norman Lamb: I am grateful to the shadow Minister for confirming that he will not oppose the order. Looking at the numbers on his side, he is making a wise judgment.

With regard to his first substantive point, about timing, the order formalises an approach that we have already discussed and communicated. We set out the approach in the Care Act statutory guidance, published in October last year. We have done something that is pretty unprecedented with this legislation. We have had a joint implementation programme, which was led by the Department, working with the Local Government Association and the Association of Directors of Adult Social Services. We have been working with local authorities to support implementation of all aspects of the reforms, including transition to the new legal framework. It is a good try to suggest that we are springing the measure on local authorities, but it is simply not the case. Close collaborative working has taken place on all of it.

On the second point about the preparedness for the new provisions coming into force, the latest survey of local authority readiness by the LGA—not by the Government—shows that progress towards implementing part 1 of the Care Act from April this year is on track, and that confidence was high and improving in almost all areas. Some 97% of councils say that they are very or fairly confident that they will be able to deliver the Care Act reforms from April this year.

We have invested more than £5 million in developing a suite of support materials, learning modules and other tools to help councils with implementation of the

Act. That is in addition to £23 million of investment in regional and local support that we have provided this year. I hope that that reassures the shadow Minister. He makes the point about the financial position facing local authorities, but I note that the Labour party has no plan to increase funding for local authorities, or to ring-fence local government from its plans to cut public expenditure further.

Sir Bob Russell: Just so that it is put on the record, will the Minister confirm that there is a full slate of coalition MPs here, but five Members of Her Majesty's official Opposition are not? In future, perhaps debates on statutory instruments could be held later in the day because clearly they are having a lie-in this morning.

The Chair: Order. I am not sure that that is relevant to the conversation.

Norman Lamb: My hon. Friend the Member for Colchester, who is a close friend and colleague, introduces a slightly partisan element to the discussion. I will maintain the good, cordial relations that I have with my shadow Minister.

Sir Bob Russell: My right hon. Friend is a nice man.

Norman Lamb: Well, perhaps in contrast. I simply make the point that it is a bit of a hollow accusation to make that there have been cuts to local government when the Labour party offers no plan to change that by increasing funding for local government.

Mr Reed: The Minister has many gifts. Seeing into the future is not one of them. He will have to wait for the publication of our manifesto.

Norman Lamb: I am so excited by what the shadow Minister tempts us with. I hope that I have answered the questions that were put to me and I hope that the Committee supports the order.

Question put and agreed to.

9.13 am

Committee rose.