

# Health and Care Bill

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## MARSHALLED LIST OF MOTIONS TO BE CONSIDERED ON CONSIDERATION OF COMMONS REASONS AND AMENDMENTS

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*[The page and line references are to HL Bill 71, the bill as first printed for the Lords]*

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### MOTION A

#### Clause 14

#### LORDS AMENDMENT 11

**11** Page 12, leave out lines 3 to 6 and insert –

- “(4) Each integrated care board must set out in its constitution –
- (a) the arrangements for managing conflicts and potential conflicts of interest in such a way as to ensure that they do not, and do not appear to, affect the integrity of the board’s decision-making processes,
  - (b) the process by which any appointment of a member to the integrated care board or any appointment to any committee or sub-committee of the integrated care board that has a commissioning function must be made so as to avoid the appointment of anyone who would be perceived to have a conflict or potential conflict of interest, and
  - (c) the arrangements for ensuring that no member of any committee or sub-committee of the integrated care board who has a conflict or potential conflict of interest obtains access to information that might be perceived to favour the interest or potential interest.”

#### COMMONS DISAGREEMENT AND AMENDMENT IN LIEU

*The Commons disagree to Lords Amendment 11 but propose Amendment 11A as an amendment in lieu –*

**11A** Page 138, line 35, at end insert –

- “(4) If the constitution includes provision under this paragraph allowing committees or sub-committees to exercise commissioning functions, the constitution must –
- (a) provide for the members of any such committee or sub-committee to be approved or appointed by the chair of the integrated care board, and
  - (b) prohibit the chair from approving or appointing someone as a member of any such committee or sub-committee (“the candidate”) if the chair considers that the appointment could reasonably be regarded as undermining the independence of the health service because of the candidate’s involvement with the private healthcare sector or otherwise.
- (5) In sub-paragraph (4) “commissioning functions” means the functions of an integrated care board in arranging for the provision of services as part of the health service.”

**A** Lord Kamall to move, That this House do not insist on its Amendment 11 and do agree with the Commons in their Amendment 11A in lieu.

## MOTION B

### Clause 35

#### LORDS AMENDMENT 29

**29** Page 42, leave out lines 14 to 19 and insert –

- “(1) The Secretary of State must, at least once every two years, lay a report before Parliament describing the system in place for assessing and meeting the workforce needs of the health, social care and public health services in England.
- (2) This report must include –
- (a) an independently verified assessment of health, social care and public health workforce numbers, current at the time of publication, and the projected workforce supply for the following five, ten and 20 years; and
  - (b) an independently verified assessment of future health, social care and public health workforce numbers based on the projected health and care needs of the population for the following five, ten and 20 years, taking account of the Office for Budget Responsibility long-term fiscal projections.
- (3) NHS England and Health Education England must assist in the preparation of a report under this section.
- (4) The organisations listed in subsection (3) must consult health and care employers, providers, trade unions, Royal Colleges, universities and any other persons deemed necessary for the preparation of this report, taking full account of workforce intelligence, evidence and plans provided by local organisations and partners of integrated care boards.”

## COMMONS REASON

*The Commons disagree to Lords Amendment 29 for the following Reason –*

**29A** *Because there is already a clause in the Bill about reporting in relation to workforce and it is not necessary to impose further or different reporting duties on that topic.*

**B** **Lord Kamall to move, That this House do not insist on its Amendment 29, to which the Commons have disagreed for their Reason 29A.**

**B1★** **Baroness Cumberlege to move, as an amendment to Motion B, at end insert “, and do propose Amendment 29B in lieu –**

**29B** Page 42, leave out lines 14 to 19 and insert –

- “(1) The Secretary of State must, at least once every three years, lay a report before Parliament describing the system in place for assessing and meeting the workforce needs of the health, social care and public health services in England.
- (2) This report must include –
- (a) an independent assessment of health and social care workforce numbers, current at the time of publication, and the projected workforce supply for the following five, ten and 15 years, and
  - (b) an independent assessment of future health and social care workforce numbers based on the projected health and care needs of the population for the following five, ten and 15 years, taking account of the Office for Budget Responsibility long-term fiscal projections.
- (3) NHS England and Health Education England must assist in the preparation of a report under this section.
- (4) The organisations listed in subsection (3) must consult health and care employers, providers, trade unions, Royal Colleges, universities and any other persons deemed necessary for the preparation of this report, taking full account of workforce intelligence, evidence and plans provided by local organisations and partners of integrated care boards.””

## MOTION C

## Clause 40 and Schedule 6

## LORDS AMENDMENTS 30 AND 108

**30** Leave out Clause 40

## COMMONS REASON

*The Commons disagree to Lords Amendment 30 for the following Reason –*

**30A** *Because it is appropriate for the Secretary of State to have greater powers to scrutinise and intervene in NHS reconfigurations given the Secretary of State’s accountability to Parliament in relation to these matters.*

108 Leave out Schedule 6

### COMMONS REASON

*The Commons disagree to Lords Amendment 108 for the following Reason –*

108A *Because it is appropriate for the Secretary of State to have greater powers to scrutinise and intervene in NHS reconfigurations given the Secretary of State’s accountability to Parliament in relation to these matters.*

**C★ Lord Kamall to move, That this House do not insist on its Amendments 30 and 108, to which the Commons have disagreed for their Reasons 30A and 108A.**

**C1★ Baroness Thornton to move, as an amendment to Motion C, at end insert “, and do propose Amendments 30B and 108B as amendments to the words so restored to the Bill –**

30B Clause 40, page 48, line 42, at end insert –

“(1A) In section 272(6) of that Act (regulations), omit the “or” at the end of paragraph (b) and after paragraph (c) insert “or

“(d) regulations under paragraph 6A of Schedule 10A.””

108B Schedule 6, page 198, line 34, at end insert –

“6A (1) A direction under this Schedule may only be given if made in regulations.

(2) No direction may be given under this Schedule unless the Secretary of State has reasonable grounds to believe that the proposal for reconfiguration would be in the best interests of patients.””

### MOTION D

#### After Clause 71

#### LORDS AMENDMENT 48

48 Insert the following new Clause –

**“Health service procurement and supply chains: genocide convention obligations**

(1) The Secretary of State must by regulations make provision for the purposes of ensuring that procurement of all goods and services for the purposes of the health service in England is consistent with the United Kingdom’s obligations under the Convention on the Prevention and Punishment of the Crime of Genocide.

(2) For the purposes of subsection (1), procurement is not consistent if a Minister of the Crown has assessed that there is a serious risk of genocide in the sourcing region.

(3) A Minister of the Crown must make an assessment as to whether there is serious risk if the chair of a relevant select committee of either House of Parliament requests one, and must complete such assessment within two months.”

## COMMONS DISAGREEMENT AND AMENDMENT IN LIEU

*The Commons disagree to Lords Amendment 48 but propose Amendment 48A as an amendment in lieu –*

**48A** Page 49, line 3, at end insert the following new Clause –

**“Review into NHS supply chains**

- (1) The Secretary of State must carry out a review into the risk of slavery and human trafficking taking place in relation to people involved in NHS supply chains.
- (2) The Secretary of State may determine which NHS supply chains to consider as part of the review or otherwise limit the scope of the review.
- (3) But the review must at least consider a significant proportion of NHS supply chains for cotton-based products in relation to which companies formed under section 223 of the National Health Service Act 2006 (taken as a whole) exercise functions.
- (4) The Secretary of State must publish and lay before Parliament a report on the outcome of the review before the end of the period of 18 months beginning with the day on which this section comes into force.
- (5) The report must describe –
  - (a) the scope of the review, and
  - (b) the methodology used in carrying out the review.
- (6) The report must include any views of the Secretary of State as to steps that should be taken to mitigate the risk mentioned in subsection (1).
- (7) NHS England must assist in the carrying out of the review or the preparation of the report under this section, if requested to do so by the Secretary of State.
- (8) In this section –
  - “health service in England” means the health service continued under section 1(1) of the National Health Service Act 2006;
  - “NHS supply chain” means the supply chain for providing goods or services for the purposes of the health service in England;
  - “slavery and human trafficking” has the meaning given by section 54(12) of the Modern Slavery Act 2015.”

**D** Lord Kamall to move, That this House do not insist on its Amendment 48 and do agree with the Commons in their Amendment 48A in lieu.

**D1★** Lord Blencathra to move, as an amendment to Motion D, at end insert “and do propose Amendment 48B in lieu –

**48B** After Clause 40, insert the following new Clause –

**“Health service procurement and supply chains: modern slavery**

The Secretary of State must by regulations make provision for the purposes of ensuring that procurement of all goods and services for the purposes of the health service in England avoids modern slavery.”

## MOTION E

### After Clause 80

#### LORDS AMENDMENT 51

51 Insert the following new Clause –

#### “Carers and safe discharge from hospital

- (1) This section applies where –
  - (a) a person (“the patient”) is a qualifying hospital patient at a hospital, and
  - (b) the responsible NHS body considers that it is unlikely to be safe to discharge the patient from hospital unless care provided by one or more carers is available to the patient.
- (2) It is the duty of the responsible NHS body to –
  - (a) consult the patient about their preferences regarding their care following discharge from hospital, and
  - (b) take reasonable steps to identify and consult any carer or potential carer of the patient about to be discharged.
- (3) The NHS body must consult any carer or potential carer identified under subsection (2) to ascertain –
  - (a) whether the carer is able, and is likely to continue to be able, to provide care for the patient needing care, and
  - (b) whether the carer is willing, and is likely to continue to be willing, to do so.
- (4) Having consulted the carer, the NHS body must cooperate with the local authority in relation to their duties under the Care Act 2014, the Health and Care Act 2006 and the Children Act 1989.
- (5) For the purposes of this section –
  - (a) a “qualifying hospital patient” means a person being accommodated at –
    - (i) a health service hospital, or
    - (ii) an independent hospital in pursuance of arrangements made by an NHS body,
 who is receiving (or who has received or is expected to receive) care.
  - (b) a “carer” means any person, including any child under the age of 18, who provides or intends to provide care in respect of a patient to whom the NHS may provide services, but a person is not to be regarded as a carer if they provide or intend to provide care under or by virtue of a contract, or as voluntary work.”

#### COMMONS DISAGREEMENT AND AMENDMENT IN LIEU

*The Commons disagree to Lords Amendment 51 but propose Amendment 51A as an amendment in lieu –*

**51A** Page 70, line 20, leave out “omit section 74 and” and insert—  
“(a) for section 74 substitute—

**“74 Discharge of hospital patients with care and support needs**

- (1) Where a relevant trust is responsible for an adult hospital patient and considers that the patient is likely to require care and support following discharge from hospital, the relevant trust must, as soon as is feasible after it begins making any plans relating to the discharge, take any steps that it considers appropriate to involve—
    - (a) the patient, and
    - (b) any carer of the patient.
  - (2) In performing the duty under subsection (1), a relevant trust must have regard to any guidance issued by NHS England.
  - (3) For the purposes of this section, a relevant trust is responsible for a hospital patient if the relevant trust manages the hospital.
  - (4) In this section—
    - “adult” means a person aged 18 or over;
    - “carer” means an individual who provides or intends to provide care for an adult, otherwise than by virtue of a contract or as voluntary work;
    - “relevant trust” means—
      - (a) an NHS trust established under section 25 of the National Health Service Act 2006, or
      - (b) an NHS foundation trust.”;
- (b) omit”.

**E** Lord Kamall to move, That this House do not insist on its Amendment 51 and do agree with the Commons in their Amendment 51A in lieu.

## MOTION F

### Clause 89

#### LORDS AMENDMENT 57

**57** Page 83, line 23, at end insert—  
“(3A) Regulations under this section may not transfer a function as defined in Part 9 of the Health and Social Care Act 2012.”

#### COMMONS REASON

*The Commons disagree to Lords Amendment 57 for the following Reason –*

**57A** *Because the Amendment would limit the power to transfer functions under the Bill.*

**F** Lord Kamall to move, That this House do not insist on its Amendment 57, to which the Commons have disagreed for their Reason 57A.

**F1★** Lord Hunt of King’s Heath to move, as an amendment to Motion F, at end insert

**“and do propose Amendment 57B in lieu –**

**57B** Page 83, line 23, at end insert –

“(3A) Regulations under this section may not transfer a function under sections 252 and 253 of, and Schedule 18 to, the Health and Social Care Act 2012.””

## MOTION G

### Clause 140

#### LORDS AMENDMENT 80

**80** Leave out Clause 140

#### COMMONS DISAGREEMENT AND AMENDMENTS IN LIEU

*The Commons disagree to Lords Amendment 80 but propose Amendments 80A to 80N as amendments in lieu –*

**80A** Page 116, line 41, leave out from beginning to end of line 9 on page 117 and insert –

- “(a) in relation to eligible needs met by a local authority, to any amount the local authority charged the adult under section 14(1)(a) or 48(5) for meeting those needs;
- (b) in relation to eligible needs met by a person other than a local authority, to what the cost of meeting those eligible needs would have been to the local authority that was the responsible local authority when the needs were met.”

**80B** Page 117, leave out lines 13 and 14 and insert “at any time after a local authority was required to carry out a needs assessment that resulted in the preparation of a personal budget or an independent personal budget for the adult”

**80C** Page 117, line 25, after “Where” insert “, following a determination under section 13(1),”

**80D** Page 117, leave out lines 30 to 32 and insert –

- “(b) the adult has at any time either –
  - (i) asked a local authority that was, at that time, the responsible local authority, to prepare an independent personal budget, or
  - (ii) had needs met by a local authority as mentioned in section 24(1).”

**80E** Page 117, leave out lines 37 to 42 and insert –

- “(a) the current cost to the local authority of meeting those needs,
- (b) how much of that cost the adult will be required to pay under section 14(1)(a), and
- (c) the balance, if any, of the cost referred to in paragraph (a).”

**80F** Page 117, leave out lines 45 to 48 and insert –

- “(a) the current cost to the local authority of meeting those eligible needs,
- (b) how much of that cost the adult will be required to pay under section 14(1)(a), and”



- 80G** Page 118, line 3, after “adult” insert “has needs which a local authority is required or decides to meet as mentioned in section 24(1) and”
- 80H** Page 118, leave out lines 5 and 6 and insert—  
“(a) what the current cost would be to the responsible local authority of meeting those eligible needs, and”
- 80I** Page 118, leave out lines 9 to 13
- 80J** Page 118, line 17, leave out from beginning to “(but” in line 18 and insert “what the current cost would be to the responsible local authority of meeting the adult’s eligible needs”
- 80K** Page 118, line 21, after “authority” insert “or at any time when the adult has needs which a local authority is required or decides to meet as mentioned in section 24(1)”
- 80L** Page 118, line 22, leave out paragraph (b)
- 80M** Page 118, line 32, leave out subsections (7) and (8) and insert—  
“(7) In section 31 (adults with capacity to request direct payments), in subsection (1), for paragraph (a) substitute—  
“(a) a personal budget for an adult specifies an amount under section 26(1)(c) in respect of any needs, and”  
(8) In section 32 (adults without capacity to request direct payments), in subsection (1), for paragraph (a) substitute—  
“(a) a personal budget for an adult specifies an amount under section 26(1)(c) in respect of any needs, and”.”
- 80N** Clause 153, page 129, line 14, at end insert—  
“(5A) In relation to section (cap on care costs for charging purposes), different days may be appointed under subsection (4) for different areas.”
- G** **Lord Kamall to move, That this House do not insist on its Amendment 80 and do agree with the Commons in their Amendments 80A to 80N in lieu.**
- G1★** **Baroness Wheeler to move, as an amendment to Motion G, leave out from “House” to end and insert “do insist on its Amendment 80, do disagree with the Commons in their Amendments 80A to 80N in lieu, and do propose Amendments 80P and 80Q instead of the words so left out of the Bill—**
- 80P** After Clause 139, insert the following new Clause—  
**“Cap on care costs for charging purposes**  
(1) The Secretary of State may by regulations amend the Care Act 2014 as regards how “costs accrued in meeting eligible needs” for the purposes of section 15 of that Act are to be determined.  
(2) The regulations must ensure that any costs incurred by any local authority to meet eligible needs are included within that determination.  
(3) The regulations are to have effect in accordance with a timetable specified in the regulations.

- (4) The regulations may not be made unless –
- (a) the results of the Trailblazer pilot schemes have been evaluated, and the Secretary of State has laid that evaluation before Parliament, and
  - (b) the Secretary of State has completed a further general impact assessment covering distributional regional analysis, regional eligibility, and the effect of the care cap on disabled adults under 40.
- (5) The regulations must ensure that no charges may be imposed under section 14 for any adult under the age of 40 with a disability.”

**80Q** Clause 150, page 128, line 20, at end insert –

“(ca) regulations under section (*Cap on care costs for charging purposes*);”

**G2★** **Lord Lansley to move, as an amendment to Motion G, at end insert “, and do propose Amendment 80R to the words so restored to the Bill –**

**80R** Page 117, line 22, at end insert –

“(b) in subsection (4) at the end insert –

“(c) specify the amount by reference to a percentage of the adult’s financial resources as assessed by the local authority (see section 17).””

## MOTION H

### After Clause 140

#### LORDS AMENDMENT 81

**81** Insert the following new Clause –

#### “Commencement of sections 15 and 16 of the Care Act 2014

The Secretary of State must make regulations under section 127(1) of the Care Act 2014 (commencement) to ensure that all provisions under sections 15 and 16 of that Act have come into force before 1 April 2023.”

#### COMMONS REASON

*The Commons disagree to Lords Amendment 81 for the following Reason –*

**81A** *Because it could affect financial arrangements to be made by the Commons, and the Commons do not offer any further reason, trusting that this Reason may be deemed sufficient.*

**H** **Lord Kamall to move, That this House do not insist on its Amendment 81, to which the Commons have disagreed for their Reason 81A.**

## MOTION J

## After Clause 148

## LORDS AMENDMENTS 85 TO 88

85 Insert the following new Clause –

**“Tobacco products statutory scheme: consultation**

- (1) The Secretary of State must, no later than six months after this Act is passed, consult and report on the desirability of making a scheme (referred to in this section and section (*Tobacco products statutory scheme: supplementary*) as a statutory scheme) for one or more of the following purposes –
  - (a) regulating, for the purposes of improving public health, the prices which may be charged by any manufacturer or importer of tobacco products for the supply of any tobacco products;
  - (b) limiting the profits which may accrue to any manufacturer or importer in connection with the manufacture or supply of tobacco products;
  - (c) providing for any manufacturer or importer of tobacco products to pay to the Secretary of State an amount calculated by reference to sales or estimated sales of those products (whether on the basis of net prices, average selling prices or otherwise) to be used for the purposes of reducing smoking prevalence and improving public health.
- (2) The consultation must ask for views on a draft statutory scheme (or alternative draft schemes), which may, in particular, make any provision mentioned in subsections (3) to (6).
- (3) The draft scheme or schemes may provide for any amount representing sums charged by any manufacturer or importer to whom the scheme applies, in excess of the limits determined under the scheme, for tobacco products covered by the scheme to be paid by that person to the Secretary of State within a specified period.
- (4) The draft scheme or schemes may provide for any amount representing the profits, in excess of the limits determined under the scheme, accruing to any manufacturer or importer to whom the scheme applies in connection with the manufacture or importation of tobacco products covered by the scheme to be paid by that person to the Secretary of State within a specified period.
- (5) The draft scheme or schemes may provide for any amount payable in accordance with the scheme by any manufacturer or importer to whom the scheme applies to be paid to the Secretary of State within a specified period.
- (6) The draft scheme or schemes may –
  - (a) prohibit any manufacturer or importer to whom the scheme applies from varying, without the approval of the Secretary of State, any price charged by the manufacturer or importer for the supply of any tobacco product covered by the scheme, and

- (b) provide for any amount representing any variation in contravention of that prohibition in the sums charged by that person for that product to be paid to the Secretary of State within a specified period.
- (7) The Secretary of State must lay the report before Parliament and a Minister of the Crown must arrange to make a statement to each House of Parliament setting out in detail any steps which will be taken to implement the findings of the report.”

#### COMMONS REASON

*The Commons disagree to Lords Amendment 85 for the following Reason –*

**85A** *Because it is unnecessary to impose a legal duty to carry out a consultation in relation to the subject-matter of this Amendment.*

**86** Insert the following new Clause –

**“Tobacco products statutory scheme: supplementary**

- (1) The Secretary of State may make any provision he or she considers necessary or expedient for the purpose of enabling or facilitating –
  - (a) the introduction of a statutory scheme of the type mentioned in section (*Tobacco products statutory scheme: consultation*), or
  - (b) the determination of the provision to be made in a proposed statutory scheme.
- (2) The provision may, in particular, require any person to whom such a scheme may apply to –
  - (a) record and keep information;
  - (b) provide information to the Secretary of State in electronic form.
- (3) The Secretary of State must –
  - (a) store electronically the information which is submitted in accordance with this provision;
  - (b) ensure that information submitted in accordance with this provision is made publicly available on a website, taking the need to protect trade secrets duly into account.
- (4) Where the Secretary of State is preparing to make or vary a statutory scheme, he or she may make any provision he or she considers necessary or expedient for transitional or transitory purposes which could be made by such a scheme.”

#### COMMONS REASON

*The Commons disagree to Lords Amendment 86 for the following Reason –*

**86A** *Because it could affect financial arrangements to be made by the Commons, and the Commons do not offer any further reason, trusting that this Reason may be deemed sufficient.*

87 Insert the following new Clause—

**“Tobacco products statutory scheme: enforcement**

- (1) The provisions of this section apply if, following consultation under section (*Tobacco products statutory scheme: consultation*), legislation is enacted which enables the making of a statutory scheme.
- (2) Regulations may provide for a person who contravenes any provision of the scheme, including any regulations or directions made under the scheme, to be liable to pay a penalty to the Secretary of State.
- (3) The penalty may be—
  - (a) a single penalty not exceeding £5 million;
  - (b) a daily penalty not exceeding £500,000 for every day on which the contravention occurs or continues.
- (4) Regulations may provide for any amount required to be paid to the Secretary of State by virtue of any provision in the scheme reflecting section (*Tobacco products statutory scheme: consultation*) (4) or (6)(b) to be increased by an amount not exceeding 50 per cent.
- (5) Regulations may provide for any amount payable to the Secretary of State by virtue of any provision in the scheme reflecting section (*Tobacco products statutory scheme: consultation*) (3), (4), (5) or (6)(b) (including such an amount as increased under subsection (4) of this section) to carry interest at a rate specified or referred to in the regulations.
- (6) Provision may be made by regulations for conferring on manufacturers and importers a right of appeal against enforcement decisions taken in respect of them in pursuance of the scheme, section (*Tobacco products statutory scheme: consultation*), (*Tobacco products statutory scheme: supplementary*), and this section.
- (7) The provision which may be made by virtue of subsection (6) includes any provision which may be made by model provisions with respect to appeals under section 6 of the Deregulation and Contracting Out Act 1994, reading—
  - (a) the references in subsections (4) and (5) of that section to enforcement action as references to action taken to implement an enforcement decision, and
  - (b) in subsection (5) of that section, the references to interested persons as references to any persons and the reference to any decision to take enforcement action as a reference to any enforcement decision.
- (8) In subsections (6) and (7), “enforcement decision” means a decision of the Secretary of State or any other person to—
  - (a) require a specific manufacturer or importer to provide information to him or her,
  - (b) limit, in respect of any specific manufacturer or importer, any price or profit,
  - (c) refuse to give his or her approval to a price increase made by a specific manufacturer or importer, or
  - (d) require a specific manufacturer or importer to pay any amount (including an amount by way of penalty) to him or her,and in this subsection “specific” means specified in the decision.

- (9) A requirement or prohibition, or a limit, under section (*Tobacco products statutory scheme: consultation*), may only be enforced under this section and may not be relied on in any proceedings other than proceedings under this section.
- (10) Subsection (9) does not apply to any action by the Secretary of State to recover as a debt any amount required to be paid to the Secretary of State under section (*Tobacco products statutory scheme: consultation*) or this section.
- (11) The Secretary of State may by order increase (or further increase) either of the sums mentioned in subsection (3)."

#### COMMONS REASON

*The Commons disagree to Lords Amendment 87 for the following Reason –*

**87A** *Because it is consequential on Lords Amendment 86, and the Commons do not offer any further Reason, trusting that this Reason may be deemed sufficient.*

**88** Insert the following new Clause –

**“Tobacco products statutory scheme: controls: supplementary**

- (1) The provisions of this section apply if, following consultation under section (*Tobacco products statutory scheme: consultation*), legislation is enacted which enables the making of a statutory scheme.
- (2) Any power conferred on the Secretary of State by legislation enacted which enables the making of a statutory scheme, and by section (*Tobacco products statutory scheme: supplementary*) may be exercised by –
  - (a) making regulations, or
  - (b) giving directions to a specific manufacturer or importer.
- (3) Regulations under subsection (2)(a) may confer power for the Secretary of State to give directions to a specific manufacturer or importer; and in this subsection “specific” means specified in the direction concerned.
- (4) In this section and sections (*Tobacco products statutory scheme: consultation*), (*Tobacco products statutory scheme: supplementary*) and (*Tobacco products statutory scheme: enforcement*) –
  - “tobacco product” means a product that can be consumed and consists, even partly, of tobacco;
  - “manufacturer” means any person who manufactures tobacco products;
  - “importer” means any person who imports tobacco products into the United Kingdom with a view to the product being supplied for consumption in the United Kingdom or through the travel retail sector, and contravention of a provision includes a failure to comply with it.”

#### COMMONS REASON

*The Commons disagree to Lords Amendment 88 for the following Reason –*

**88A** *Because it is consequential on Lords Amendment 86, and the Commons do not offer any further Reason, trusting that this Reason may be deemed sufficient.*

**J** **Lord Kamall to move, That this House do not insist on its Amendments 85 to 88, to which the Commons have disagreed for their Reasons 85A to 88A.**

**J1★** Lord Crisp to move, as an amendment to Motion J, at end insert “, and do propose Amendment 88B in lieu –

**88B** Insert the following new Clause –

**“Smokefree 2030 consultations**

- (1) The Secretary of State must, no later than the relevant date, consult on –
  - (a) any recommendations of the independent review into tobacco control announced by the Secretary of State on 4 February 2022 which in the opinion of the Secretary of State require consultation before implementation, and
  - (b) any other options for tobacco control considered appropriate by the Secretary of State.
- (2) The Secretary of State and the Treasury must, no later than the relevant date, consult on one or more statutory schemes to regulate the price of tobacco products which fund delivery of –
  - (a) the Government’s Smokefree 2030 ambition,
  - (b) a reduction of inequalities related to health, and
  - (c) improvements in public health.
- (3) In subsections (1) and (2) the relevant date is the earlier of –
  - (a) the last day of the period of 6 months beginning with the day on which this Act is passed;
  - (b) the last day of the period of 3 months beginning with the day on which the report of the independent review referred to in subsection (1) is published;
  - (c) 31 December 2022.
- (4) The Secretary of State must lay reports before Parliament on the consultations carried out under subsections (1) and (2) and a Minister of the Crown must, within 12 weeks of completion of the consultation, arrange to make a statement to each House of Parliament setting out in detail any steps which will be taken to implement the findings of the reports, and the proposed timescales for doing so.”

## MOTION K

### After Clause 148

#### LORDS AMENDMENT 89

**89** Insert the following new Clause –

**“Appropriate consent to transplantation activities when travelling abroad**

- (1) Section 32 of the Human Tissue Act 2004 (prohibition of commercial dealings in human material for transplantation) is amended in accordance with subsections (2) to (6).

- (2) In subsection (1), after paragraph (e) insert –
- “(f) travels outside the United Kingdom to a country or part of a country where explicit consent is not required for the legal donation of controlled material which does not meet the criteria in subsection (1A)(a) to (c) and receives any controlled material, for the purpose of transplantation, without –
    - (i) the free, informed and specific consent of a living donor, or
    - (ii) the free, informed and specific consent of the donor’s next of kin, where the donor is unable to provide consent;
  - (g) travels outside the United Kingdom to a country or part of a country where explicit consent is required for the legal donation of controlled material and receives any controlled material for the purpose of transplantation where the material was obtained without –
    - (i) the free, informed and specific consent of a living donor, or
    - (ii) the free, informed and specific consent of the donor’s next of kin, where the donor is unable to provide consent;
  - (h) travels outside the United Kingdom to a country or part of a country and receives any controlled material for the purpose of transplantation for which, in exchange for the removal of controlled material –
    - (i) the living donor, or a third party, receives a financial gain or comparable advantage, or
    - (ii) where the controlled material comes from a deceased donor, a third party receives financial gain or comparable advantage.”
- (3) After subsection (1) insert –
- “(1A) The Secretary of State must publish an annual assessment of countries where, explicit consent is not required for the legal donation of controlled material, determining whether each of those countries –
    - (a) provides a formal, publicly funded scheme for opting out of deemed consent for donation of controlled material,
    - (b) provides an effective programme of public education to its population on the deemed consent system and the opt-out scheme which delivers a high level of public understanding of both, and
    - (c) is not considered to be committing Genocide by resolution of the House of Commons.
  - (1B) In paragraph (h) in subsection (1), the expression “financial gain or comparable advantage” does not include compensation for loss of earnings and any other justifiable expenses caused by the removal or by the related medical examinations, or compensation in case of damage which is not inherent to the removal of controlled material.



- (1C) Subsection (1E) applies if—
- (a) an act which forms part of an offence under subsection (1) takes place outside the United Kingdom, but
  - (b) the person committing the act has a close connection with the United Kingdom.
- (1D) For the purposes of subsection (1C)(b), a person has a close connection with the United Kingdom if, and only if, the person was one of the following at the time the acts or omissions concerned were done or made—
- (a) a British citizen;
  - (b) a British overseas territories citizen;
  - (c) a British National (Overseas);
  - (d) a British Overseas citizen;
  - (e) a person who under the British Nationality Act 1981 was a British subject;
  - (f) a British protected person within the meaning of that Act;
  - (g) an individual ordinarily resident in the United Kingdom;
  - (h) a body incorporated under the law of any part of the United Kingdom;
  - (i) a Scottish partnership.
- (1E) Where this subsection applies, proceedings for the offence may be taken in any criminal court in England and Wales or Northern Ireland.”
- (4) In subsection (3), after “subsection (1)” insert “(a) to (e)”.
- (5) In subsection (4), after “subsection (1)” insert “(a) to (e)”.
- (6) After subsection (4) insert—
- “(4A) A person guilty of an offence under subsection (1)(f) to (h) shall be liable—
- (a) on summary conviction—
    - (i) to imprisonment for a term not exceeding 12 months,
    - (ii) to a fine not exceeding the statutory maximum, or
    - (iii) to both;
  - (b) on conviction on indictment—
    - (i) to imprisonment for a term not exceeding 9 years,
    - (ii) to a fine, or
    - (iii) to both.”

(7) In section 34 of the Human Tissue Act 2004 (information about transplant operations), after subsection (2) insert—

“(2A) Regulations under subsection (1) must require specified persons to—

    - (a) keep patient identifiable records for all instances of UK citizens who have received transplant procedures performed outside the United Kingdom; and
    - (b) report instances of transplant procedures performed on UK citizens outside the United Kingdom to NHS Blood and Transplant.

- (2B) Regulations under subsection (1) must require NHS Blood and Transplant to produce an annual report on instances of UK citizens receiving transplant procedures outside the United Kingdom.””

COMMONS DISAGREEMENT AND AMENDMENT IN LIEU

*The Commons disagree to Lords Amendment 89 but propose Amendment 89A as an amendment in lieu –*

**89A** Page 123, line 35, at end insert the following new Clause –

**“Commercial dealings in organs for transplantation: extra-territorial offences**

- (1) After section 32 of the Human Tissue Act 2004 insert –

**“32A Offences under section 32 committed outside UK**

- (1) If –
- (a) a person who is habitually resident in England and Wales, or who is a UK national and not habitually resident in Northern Ireland, does an act outside the United Kingdom,
  - (b) the act, if done in England and Wales, would constitute an offence under section 32(1), and
  - (c) the controlled material to which the act relates is controlled material consisting of or including a human organ,
- the person is guilty in England and Wales of that offence.
- (2) In this section “United Kingdom national” means an individual who is –
- (a) a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen,
  - (b) a person who under the British Nationality Act 1981 is a British subject, or
  - (c) a British protected person within the meaning of that Act.”

- (2) After section 20 of the Human Tissue (Scotland) Act 2006 insert –

**“20A Offences under section 20 committed outside UK**

- (1) If –
- (a) a person who is habitually resident in Scotland, or who is a UK national and not habitually resident in Northern Ireland, does an act outside the United Kingdom, and
  - (b) the act, if done in Scotland, would constitute an offence under section 20(1), and
  - (c) the part of the human body to which the act relates consists of or includes a human organ,
- the person is guilty in Scotland of that offence.
- (2) In this section “United Kingdom national” means an individual who is –
- (a) a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen,
  - (b) a person who under the British Nationality Act 1981 is a British subject, or
  - (c) a British protected person within the meaning of that Act.

- (3) Where a person outside the United Kingdom commits an offence under section 20(1) the person may be prosecuted, tried and punished for the offence—
  - (a) in a sheriff court district in which the person is apprehended or in custody, or
  - (b) in a sheriff court district determined by the Lord Advocate, as if the offence had been committed in that district.
- (4) Where subsection (3) applies, the offence is, for all purposes incidental to or consequential on the trial and punishment, deemed to have been committed in that district.
- (5) In this section “sheriff court district” is to be construed in accordance with section 307(1) of the Criminal Procedure (Scotland) Act 1995 (interpretation).”

**K Lord Kamall to move, That this House do not insist on its Amendment 89 and do agree with the Commons in their Amendment 89A in lieu.**

## MOTION L

### After Clause 148

#### LORDS AMENDMENT 90

**90** Insert the following new Clause—

**“Dispute resolution in children’s palliative care**

- (1) This section applies where there is a difference of opinion between a parent of a child with a life-limiting illness and a doctor responsible for the child’s treatment about—
  - (a) the nature (or extent) of specialist palliative care that should be made available for the child, or
  - (b) the extent to which palliative care provided to the child should be accompanied by one or more disease-modifying treatments.
- (2) Where the authorities responsible for a health service hospital become aware of the difference of opinion they must take all reasonable steps—
  - (a) to ensure that the views of the parent, and of anyone else concerned with the welfare of the child, are listened to and taken into account;
  - (b) to make available to the parent any medical data relating to the child reasonably required to obtain evidence to inform the parent’s proposals for the child’s treatment (including obtaining an additional medical opinion);
  - (c) to allow the provider of an alternative treatment that is being advocated by the parent to provide evidence, in person or remotely, to the mediation process and subsequently to the court;
  - (d) to demonstrate the reasons that significant harm would be likely to be caused by the proposed treatment; and
  - (e) where the two parties are unable to resolve their difference of opinion, to allow for a mediation process, acceptable to both parties, between the parent and the senior doctor with overall clinical responsibility.

- (3) Nothing in subsection (2) requires, or may be relied upon so as to require, the provision of any specific treatment by a doctor or institution, and in particular nothing in subsection (2) –
- (a) requires the provision of resources for any particular course of treatment; or
  - (b) requires a doctor to provide treatment that the doctor considers likely to be futile or harmful, or otherwise not in the best interests of the child.
- (4) In this section –
- “child” means an individual under the age of 18;
  - “health service hospital” has the meaning given by section 275 of the National Health Service Act 2006 (interpretation);
  - “parent” means a person with parental responsibility for a child within the meaning of the Children Act 1989.
- (5) Nothing in this section affects –
- (a) the principle of the best interests of the child,
  - (b) the law about the appropriate clinical practice to be followed as to –
    - (i) having regard to the child’s own views, where they can be expressed; and
    - (ii) having regard to the views of anyone interested in the welfare of the child, whether or not a person concerned with the welfare of the child within the meaning of this section.”

#### COMMONS DISAGREEMENT AND AMENDMENT IN LIEU

*The Commons disagree to Lords Amendment 90 but propose Amendment 90A as an amendment in lieu –*

**90A** Page 127, line 39, at end insert the following new Clause –

#### **“Review into disputes relating to treatment of critically ill children**

- (1) The Secretary of State must arrange for the carrying out of a review into the causes of disputes between (on the one hand) persons with parental responsibility for a critically ill child and (on the other) persons responsible for the provision of care or medical treatment for the child as part of the health service in England.
- (2) The Secretary of State must publish and lay before Parliament a report on the outcome of the review, within one year beginning with the date on which this section comes into force.
- (3) In this section –
  - “child” means a person aged under 18;
  - “health service in England” means the health service continued under section 1(1) of the National Health Service Act 2006;
  - “parental responsibility” has the meaning given by section 3 of the Children Act 1989.”

**L** Lord Kamall to move, That this House do not insist on its Amendment 90 and do agree with the Commons in their Amendment 90A in lieu.

**L1★** Baroness Finlay of Llandaff to move, as an amendment to Motion L, at end insert “, and do propose Amendment 90B as an amendment to Commons Amendment 90A –

**90B** After subsection (1) insert—

- “(1A) The review must take written and oral evidence from—
- (a) parents, and
  - (b) professionals,
- who have been involved in such disputes, including disputes that have not progressed to court.”

## MOTION M

### After Clause 148

#### LORDS AMENDMENT 91

**91** Insert the following new Clause—

#### **“Mandatory training on learning disability and autism**

- (1) In regulation 18(2) of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 (S.I. 2014/2936), for sub-paragraph (a) substitute—
  - “(a) receive—
    - (i) such appropriate support, training, professional development, supervision and appraisal as is necessary to enable them to carry out the duties they are employed to perform, and
    - (ii) in particular, training on learning disability and autism, appropriate to their role, as set out in the code of practice issued by the Secretary of State under section (*Mandatory training on learning disability and autism*) of the Health and Care Act 2022,”.
- (2) With regard to training on learning disability and autism, the Secretary of State must prepare and publish a code of practice (“the code”) containing guidance addressing—
  - (a) the content of mandatory training and its co-production,
  - (b) the appropriate levels of training required across staff roles,
  - (c) the co-delivery of training,
  - (d) the in-person delivery of training,
  - (e) the accreditation of training,
  - (f) the procurement of training,
  - (g) the monitoring and evaluation of the impact of training, and
  - (h) the implementation of mandating of training across regulated health and social care providers.
- (3) The Secretary of State must seek the participation of and consult such persons and bodies as they consider appropriate—
  - (a) in preparing the code, and
  - (b) in revising it.
- (4) The Secretary of State may not issue the code or any revision unless a draft has been laid before and approved by a resolution of each House of Parliament.

- (5) The Secretary of State must review the code every three years and lay the findings before Parliament.
- (6) In this section—
- “appropriate to their role” has the meaning given by the code;
  - “autism” means a spectrum of disorders which start in childhood, the clinical manifestations of which include atypical social communication and social interaction and restricted, repetitive patterns of behaviour;
  - “in person” means training delivered live, by people, in the presence of the trainee;
  - “learning disability” means a disability which includes a significantly reduced ability to understand new or complex information or to learn new skills, with a reduced ability to cope independently, which started before adulthood, with a lasting effect on development.”

#### COMMONS AMENDMENT

*The Commons agree with the Lords in their Amendment 91 and propose Amendment 91A as an amendment thereto –*

**91A** Line 2, leave out subsections (1) to (6) and insert—

- “(1) The Health and Social Care Act 2008 is amended in accordance with subsections (2) to (6).
- (2) In section 20 (regulation of regulated activities), after subsection (5) insert—
- “(5ZA) Regulations under this section must require service providers to ensure that each person working for the purpose of the regulated activities carried on by them receives training on learning disability and autism which is appropriate to the person’s role.”
- (3) After subsection (5C) (as inserted by section 145) insert—
- “(5D) In subsection (5ZA)—
- “learning disability” has the meaning given by section 1(4) of the Mental Health Act 1983;
  - “service provider” means a person registered under this Chapter as a service provider in respect of a regulated activity.”
- (4) After section 21 insert—
- “21A Learning disability and autism training: code of practice**
- (1) The Secretary of State must issue a code of practice about compliance with requirements imposed by virtue of section 20(5ZA) (requirements relating to training on learning disability and autism).
- (2) The code must make provision about—
- (a) the content of training;
  - (b) training appropriate to different roles;
  - (c) circumstances in which it is appropriate for training to be delivered in person;

- (d) the involvement of people with learning disability, autistic people, or their carers, in the provision of training;
    - (e) accreditation of training;
    - (f) procurement of training;
    - (g) monitoring and evaluation of the impact of training;
  - (3) The code may make different provision for different cases or circumstances.
  - (4) The Secretary of State must, at least once every five years –
    - (a) review the code, and
    - (b) lay before Parliament a report setting out the findings of the review.”
- (5) In section 22 (consultation in relation to code of practice under section 21) –
  - (a) for the heading substitute “Codes of practice: consultation and Parliamentary scrutiny”;
  - (b) in subsection (1), after “21” insert “or 21A”;
  - (c) in subsection (2), after “21” insert “or 21A”;
  - (d) in subsection (3), after “(2)” insert “in relation to a draft of a code or revised code under section 21”;
  - (e) after subsection (5) insert –
    - “(5A) Where, following consultation under subsection (1) or (2) in relation to a draft of a code or revised code under section 21A, the Secretary of State decides to proceed with the draft (in its original form or with modifications), the Secretary of State must lay a copy of the draft before Parliament.
    - (5B) The Secretary of State may not issue the code or revised code if, within the 40-day period, either House of Parliament resolves not to approve it.
    - (5C) In this section “40-day period” means –
      - (a) the period of 40 days beginning with the day on which the draft is laid before Parliament, or
      - (b) if the draft is not laid before each House on the same day, the period of 40 days beginning with the later of the days on which it is laid before Parliament.
    - (5D) For the purposes of subsection (5C), no account is to be taken of any whole days that fall within a period during which –
      - (a) Parliament is dissolved or prorogued, or
      - (b) either House of Parliament is adjourned for more than four days.”
- (6) In section 25 (effect of code under section 21 and guidance under section 23) –
  - (a) in the heading, after “s. 21” insert “or 21A”;
  - (b) in subsection (1), for “A code of practice under section 21” substitute “Codes of practice under sections 21 and 21A”;
  - (c) in subsection (2),
    - (i) for “A code of practice under section 21 or” substitute “Codes of practice under sections 21 and 21A and”;
    - (ii) for “is” substitute “are”;

- (d) in subsection (3), after “21” insert “or 21A”.
- (7) Until the first regulations made by virtue of section 20(5ZA) of the Health and Social Care Act 2008 (as inserted by subsection (2)) come into force –
  - (a) the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 (S.I. 2014/2936) (“the 2014 regulations”), and
  - (b) the Health and Social Care Act 2008,
 are to be read as if regulation 18 of the 2014 regulations contained such requirements.”

**M** Lord Kamall to move, That this House do agree with the Commons in their Amendment 91A as an amendment to Lords Amendment 91.

## MOTION N

### After Clause 148

#### LORDS AMENDMENT 92

92 Insert the following new Clause –

**“Permitted locations for abortion treatment**

- (1) The Abortion Act 1967 is amended as follows.
- (2) In subsection 1(3) after the first “section” insert “, or section 1A of this Act”.
- (3) After section 1 insert –

**“1A Approved places**

- (1) The home of a registered medical practitioner is approved as a class of place for treatment for the termination of pregnancy for the purposes only of prescribing the medicines known as Mifepristone and Misoprostol to be used in treatment carried out in the manner specified in subsection (3).
- (2) The home of a pregnant woman who is undergoing treatment for the purposes of termination of her pregnancy is approved as a class of place where the treatment for termination of pregnancy may be carried out where that treatment is carried out in the manner specified in subsection (3).
- (3) The treatment must be carried out in the following manner –
  - (a) the pregnant woman has –
    - (i) attended an approved place,
    - (ii) had a consultation with an approved place via video link, telephone conference or other electronic means, or
    - (iii) had a consultation with a registered medical practitioner, nurse or midwife via video link, telephone conference or other electronic means; and
  - (b) the pregnant woman is prescribed Mifepristone and Misoprostol to be taken for the purposes of the termination of her pregnancy and the gestation of the pregnancy has not exceeded nine weeks and six days at the time the Mifepristone is taken.



- (4) Nothing in this section should be taken to affect any approval otherwise made by the Secretary of State under subsections 1(3) or 1(3A) of this Act.
- (5) For the purposes of this section –
  - “approved place” means a hospital in England or Wales, as authorised under section 1(3) of this Act, or a place in England or Wales approved under that section;
  - “home” means, in the case of a pregnant woman, the place in England or Wales where a pregnant woman has her permanent address or usually resides or, in the case of a registered medical practitioner, where a registered medical practitioner has their permanent address or usually resides.””

#### COMMONS DISAGREEMENT AND AMENDMENT IN LIEU

*The Commons disagree to Lords Amendment 92 but propose Amendment 92A as an amendment in lieu –*

**92A** Page 127, line 39, at end insert the following new Clause –

#### **“Early medical termination of pregnancy**

- (1) Section 1 of the Abortion Act 1967 is amended as follows.
- (2) In subsection (3), for “subsection” substitute “subsections (3B) to”.
- (3) In subsection (3A) –
  - (a) the words from “includes” to the end become paragraph (a);
  - (b) after that paragraph insert –
    - “(b) is not limited by subsections (3C) and (3D).”
- (4) After subsection (3A) insert –
  - “(3B) Subsections (3C) and (3D) apply where –
    - (a) the treatment referred to in subsection (3) consists of the prescription and administration of medicine, and
    - (b) the registered medical practitioner terminating the pregnancy is of the opinion, formed in good faith, that, if the medicine is administered in accordance with their instructions, the pregnancy will not exceed ten weeks at the time when the medicine is administered (or in the case of a course of medicine, when the first medicine in the course is administered).
  - (3C) If the usual place of residence of the registered medical practitioner terminating the pregnancy is in England or Wales, the medicine may be prescribed from that place by the registered medical practitioner.
  - (3D) If the pregnant woman’s usual place of residence is in England or Wales and she has had a consultation (in person, by telephone or by electronic means) with a registered medical practitioner, registered nurse or registered midwife about the termination of the pregnancy, the medicine may be self-administered by the pregnant woman at that place.””

**N** Lord Kamall to move, That this House do not insist on its Amendment 92 and do agree with the Commons in their Amendment 92A in lieu.

**N1★** Baroness Eaton to move, as an amendment to Motion N, at end insert “, and do propose Amendment 92B as an amendment to Commons Amendment 92A –

**92B** At end insert “subject to subsection (3E).

(3E) The consultation referred to in subsection (3D) must take place in person if the pregnant woman is aged under 18 years.”

## MOTION P

### Clause 150

#### LORDS AMENDMENT 95

**95** Page 128, line 20, at end insert –  
“(ca) regulations under section 136;”

#### COMMONS DISAGREEMENT AND AMENDMENT IN LIEU

*The Commons disagree to Lords Amendment 95 but propose Amendment 95A as an amendment in lieu –*

**95A** Page 112, line 27, leave out paragraphs (c) and (d) and insert –  
“(c) for subsection (4) substitute –

“(4) A statutory instrument containing regulations under this Act may not be made by the Secretary of State unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.”;

(d) omit subsection (5);

(e) after subsection (5) insert –

“(5A) Regulations made by the Scottish Ministers under section 2A are subject to the affirmative procedure (see Part 2 of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10)).

(5B) A statutory instrument containing regulations under section 2A may not be made by the Welsh Ministers unless a draft of the instrument has been laid before and approved by a resolution of Senedd Cymru.

(5C) Regulations may not be made by a Northern Ireland department under section 2A unless a draft of the regulations has been laid before and approved by a resolution of the Northern Ireland Assembly.”

**P** Lord Kamall to move, That this House do not insist on its Amendment 95 and do agree with the Commons in their Amendment 95A in lieu.

## MOTION Q

## Schedule 2

## LORDS AMENDMENT 105

- 105** Page 137, line 30, at end insert –  
“(d) at least one member with expertise and knowledge of mental health in the integrated care board’s area.”

## COMMONS DISAGREEMENT AND AMENDMENT IN LIEU

*The Commons disagree to Lords Amendment 105 but propose Amendment 105A as an amendment in lieu –*

- 105A** Page 137, line 41 at end insert –  
“(5A) The chair must exercise the approval function mentioned in subparagraph (1)(b) with a view to ensuring that at least one of the ordinary members has knowledge and experience in connection with services relating to the prevention, diagnosis and treatment of mental illness.”

**Q** **Lord Kamall to move, That this House do not insist on its Amendment 105 and do agree with the Commons in their Amendment 105A in lieu.**

# Health and Care Bill

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MARSHALLED LIST OF MOTIONS TO BE CONSIDERED  
ON CONSIDERATION OF COMMONS REASONS AND AMENDMENTS

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*4th April 2022*

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