CONTENTS
Written evidence reported to the House.
Clauses 234 to 236 agreed to, one with amendments.
Schedule 17 agreed to.
Clauses 237 to 241 agreed to, some with amendments.
Clause 242, as amended, under consideration when the Committee adjourned till this day at One o’clock.
Members who wish to have copies of the Official Report of Proceedings in General Committees sent to them are requested to give notice to that effect at the Vote Office.

No proofs can be supplied. Corrigenda slips may be published with Bound Volume editions. Corrigenda that Members suggest should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor's Room, House of Commons,

not later than

Monday 4 April 2011

STRICT ADHERENCE TO THIS ARRANGEMENT WILL GREATLY FACILITATE THE PROMPT PUBLICATION OF THE BOUND VOLUMES OF PROCEEDINGS IN GENERAL COMMITTEES
The Committee consisted of the following Members:

**Chairs:** Mr Jim Hood, † Mr Mike Hancock, Mr Roger Gale, Dr William McCrea

† Abrahams, Debbie (*Oldham East and Saddleworth*) (Lab)
† Barron, Mr Kevin (*Rother Valley*) (Lab)
† Blenkinsop, Tom (*Middlesbrough South and East Cleveland*) (Lab)
† Brine, Mr Steve (*Winchester*) (Con)
† Burns, Mr Simon (*Minister of State, Department of Health*)
† Burstow, Paul (*Minister of State, Department of Health*)
† Byles, Dan (*North Warwickshire*) (Con)
† Crabb, Stephen (*Preseli Pembrokeshire*) (Con)
† de Bois, Nick (*Enfield North*) (Con)
† James, Margot (*Stourbridge*) (Con)
† Kendall, Liz (*Leicester West*) (Lab)
† Lefroy, Jeremy (*Stafford*) (Con)
† Morgan, Nicky (*Loughborough*) (Con)
† Morris, Grahame M. (*Easington*) (Lab)
† Poulter, Dr Daniel (*Central Suffolk and North Ipswich*) (Con)
† Pugh, John (*Southport*) (LD)
† Shannon, Jim (*Strangford*) (DUP)
† Smith, Owen (*Pontypridd*) (Lab)
† Soubry, Anna (*Broxtowe*) (Con)
† Sturdy, Julian (*York Outer*) (Con)
† Thornberry, Emily (*Islington South and Finsbury*) (Lab)
† Twigg, Derek (*Halton*) (Lab)
† Wilson, Phil (*Sedgefield*) (Lab)

Chris Stanton, Mark Etherton, Committee Clerks

† attended the Committee

Turner, Karl (*Kingston upon Hull East*) (Lab)
† Twigg, Derek (*Halton*) (Lab)
† Wilson, Phil (*Sedgefield*) (Lab)
Public Bill Committee

Thursday 31 March 2011
(Morning)

[MR MIKE HANCOCK in the Chair]

Health and Social Care Bill

Written evidence to be reported to the House

HS 125 Wendy Barker
HS 126 Urology Trade Association
HS 127 Save the NHS Now (Ealing)
HS 128 The Bed Bug Foundation
HS 129 Monitor
HS 130 All Party Parliamentary Group on Eye Health and Visual Impairment
HS 131 Urology User Group Coalition
HS 132 Abbott Medical Optics, Alcon, Rayner and Bausch and Lomb
HS 133 Council of Deans of Health
HS 134 Institute of Chartered Secretaries and Administrators
HS 135 British Society of Hearing Aid Audiologists
HS 136 Dr Philip Howard
HS 137 Dr Franz Schembri Wismayer
HS 138 Institute of Healthcare Management
HS 139 Changing Faces

9.1 am

The Chair: I welcome Members; we are now quorate.
This is our last day. I take this opportunity to thank everyone for their co-operation and assistance in making it such a joyful occasion. I am sure that there will be more to say this afternoon.

Derek Twigg (Halton) (Lab): On a point of order, Mr Hancock. You may have picked up on newspaper reports earlier in the week that tell of delays and possible changes to the Bill. You may know of an extensive report in The Times, of which I have a copy, that is headlined “Cameron puts brake on NHS reforms”.

The Minister of State, Department of Health (Paul Burstow): It is a report.

The Chair: I suggest to the hon. Gentleman that he should dream on if he thinks that I have any influence over the way in which the Government treat the Committee.

Is it not a point of order for me, but as Chair of the Committee I would be very unhappy if substantial changes were made to the Bill that had not been properly scrutinised by the Committee. I hope that we can all be fair about it. I say to Ministers that if changes are to be made, the place to make them is in Committee, so that we can give them proper scrutiny. I believe that there will be widespread disappointment in the outside world if further changes are not properly scrutinised.

Derek Twigg: Further to that point of order, Mr Hancock. I find your remarks extremely helpful. I spoke of protecting the Committee, and you clearly said that the Committee should have been informed. Ministers can tell us this morning that there will not be changes to the Bill further down the line, or that there will.

The Chair: It is for Ministers to decide how they treat the Committee, but I urge them to treat it with respect and pay proper courtesy to its members, who have devoted a lot of time to the Bill.

Emily Thornberry (Islington South and Finsbury) (Lab): Further to that point of order, Mr Hancock. I find your remarks extremely helpful. I spoke of protecting the Committee, and you clearly said that the Committee should have been informed. Ministers can tell us this morning that there will not be changes to the Bill further down the line, or that there will.

The Chair: It is for Ministers to decide how they treat the Committee, but I urge them to treat it with respect and pay proper courtesy to its members, who have devoted a lot of time to the Bill.

Emily Thornberry: I beg to move amendment 656, in clause 234, page 196, line 20, at end insert—

‘(4A) An information standard under subsection (1) must state the need for explicit patient consent for the disclosure of patient information, in accordance with the common law duty of confidentiality, unless the information has been anonymised or pseudonymised.’.

Clause 234

Powers to publish information standards

Emily Thornberry: I beg to move amendment 656, in clause 234, page 196, line 20, at end insert—

‘(4A) An information standard under subsection (1) must state the need for explicit patient consent for the disclosure of patient information, in accordance with the common law duty of confidentiality, unless the information has been anonymised or pseudonymised.’.
The Chair: With this it will be convenient to discuss the following: amendment 659, in clause 238, page 198, line 43, at end add—

‘(7) The powers under this section refer exclusively to data which has been anonymised or pseudonymised or for which explicit consent for its use for these specified purposes has been obtained in accordance with the common law duty of confidentiality.’.

Amendment 651, in clause 242, page 200, line 41, at end insert—

‘(2A) The powers under this section refer exclusively to data which has been anonymised or pseudonymised or for which explicit consent for its use for these specified purposes has been obtained in accordance with the common law duty of confidentiality.’.

Emily Thornberry: The Opposition want to make a series of amendments to this part of the Bill. For those Members who do not have their copy of the Bill open yet, I should say that this part of the Bill is headed “Health and adult social care services: information” and that the first chapter is headed “Information standards—this is part of what the Government have called their “information revolution”.

We have had conversations with the British Medical Association, and there is considerable concern about the need to protect patient confidentiality. The three amendments amend three different clauses and would protect patient confidentiality. They would ensure that there is no change to the existing requirement that any—[Interruption.]

The Chair: Order. Ministers, I really do want to hear what the hon. Lady is saying, so could you be just a little quieter.

Emily Thornberry: The purpose of the amendments is to ensure that there is no change to the current requirement that any disclosure, exchange, processing or transmission of confidential information have the consent of the patient or lawful proxy, subject to existing exceptions.

The concerns are that there is a lack of protection for patients’ identifiable data, because no clause makes it explicit that existing standards of confidentiality will be maintained. The amendments would provide assurance to doctors and patients that any data collection will be subject to existing legal and ethical standards of confidentiality.

Obviously, confidentiality plays an essential role in the relationship between health professionals and their patients. We do not want significant damage to be caused to health care as a result of the trust between patients and doctors being eroded. Fears that their data may be shared with others, including central Government, may result in patients withholding important information. That may not only affect their health, but have implications for the wider health service.

Will the Minister clarify how the standards proposed in the clause relate to existing and well established documents that provide guidance and set standards in the NHS? Those documents include the NHS code of practice on confidentiality, the care record guarantee and guidance for health care professionals from their regulatory bodies.

Amendment 659 has the same effect as amendment 656, but refers to clause 238. The clause appears to enable the Secretary of State or the board to authorise the collection of data without reference to any information governance controls or explanation as to why new powers to collect data are necessary.

In addition, data can be collected for an extremely broad purpose—that is, in connection with the provision of health services. The clause appears to run contrary to a number of Data Protection Act 1998 requirements, including the requirements that data should be obtained for a specified purpose and that any disclosure must be lawful in a broader sense and respect other legal restrictions on disclosure—for example, the common duty of confidentiality.

Furthermore, once the data are collected, it is not clear how long they will be retained or whether they will be transferred to third parties. The BMA expressed the view that removing the rights of patients and health care professionals in relation to the control of sensitive information is likely to fall foul of article 8 of the European convention on human rights.

Amendment 651 has the same effect and refers to clause 242. That clause is extremely permissive, which is a worry. It enables the Information Centre to require a health or social care body to provide it with any information without reference to confidentiality.

Paul Burstow: I take this opportunity to address concerns that come through in a series of amendments that the hon. Lady and other Opposition Members have tabled to this part of the Bill. In a way, the points she has raised touch on the thread of that concern, which the BMA has been aired with the Government and, I suspect, the Opposition. We are certainly listening to these points and we are sensitive to them.

The intention behind the amendments is right. This is about preserving patient and service user confidentiality, which I am sure Members on both sides of the Committee want to continue. We would certainly not want to see the Information Centre breaching confidentiality by publishing information about individual patients or service users. Subsection 243(1), which will be amended later, makes it clear that that is prohibited. Re-establishing the Information Centre in primary legislation presents an opportunity to ensure that the provisions are as strong as they need to be, and that was the basis on which we drafted the clauses.

Benefits can be gained from bringing information together for analysis, and in determining the role of the Information Centre we have carefully considered the safeguards that need to apply. It has for a long time been necessary to collect information that identifies individuals for a range of purposes, including tracking outcomes of care and treatment, medical research and public health analysis. Names and addresses are never needed, but other information such as a unique identifier, date of birth and postcode often are. Without those details, it is not possible to link information about the same individual obtained from different sources or at different times.

Many important purposes are already supported under regulations made under section 251 of the National Health Service Act 2006. They include purposes carried out by the existing Information Centre, and also by
many other bodies. Without the powers in the Bill, the Information Centre would have to continue working under the arrangements in the 2006 Act to obtain the Secretary of State’s permission to do as the Secretary of State directed, which is nonsensical. The Government believe that bringing the collection and linking of information together in one place will enable strong controls to be put in place to safeguard information and reduce the number of flows of confidential information around the system, therefore strengthening confidentiality management overall.

In addition to the standards published by the board or the Secretary of State, and the guidance under clause 240 to which the Information Centre must have regard, the centre is required to publish its procedures for requests, and has powers and duties to give advice and guidance. However, given the importance that the Government attach to the issue, we will continue to consider whether the requirements are sufficient to provide the transparency that is needed.

Derek Twigg: The Minister said that the Government are continuing to consider transparency. Does he have a deadline for when they will reach a conclusion on that?

Paul Burstow: My point is simply that the Government are and will continue to be responsive to, and listen to, the points that are made to us, and that is why in the correspondence and discussions in which we are engaged with the BMA, we will listen clearly and carefully to its concerns. I hope that today’s considerations will go a long way, if not all the way, to addressing the concerns that people following our proceedings might have. That is why I cannot give you a precise, hard end point at which we will stop listening. It is important that the Government continue to listen throughout the passage of the Bill.

Derek Twigg: No one is saying that the Minister should not continue to listen during the passage of the Bill. From what the Minister says, I understand that the Government have not come to any firm conclusions at this stage, and that they will listen carefully. What are they doing, however, about listening to what has been said today in Committee? The Minister has said that he has read in the papers today about the amendments that will come in the Lords, but what is he doing about listening today to what is being said today?

Paul Burstow: Later we will debate Government amendments to subsequent clauses in this part of the Bill, and those amendments address the sorts of concerns that have been expressed to the Government. They ensure that the intention of the clauses, which is that patient confidential information should not be released, is covered even more clearly. I want to deal with that important aspect in a moment.

Members will be aware of the report by the Academy of Medical Sciences published in January 2011: “A new pathway for the regulation and governance of health research.” It recommended the establishment of national safe havens or honest brokers to be taken forward urgently. The report referred also to the 2008 data-sharing review published by the Information Commissioner and the director of the Wellcome Trust, which had made similar recommendations. The changes we propose for the Information Centre will create such an honest broker role in statute for the first time. The provisions would empower it to collect confidential and identifiable information, and to link information from different sources and over time, but the Information Centre will not be permitted to disclose information that might identify any individual patient or service user without further statutory permission.

9.15 am

Amendment 651 seeks to prevent the Information Centre from collecting anything other than de-identified information without the explicit consent of the individual concerned. Amendment 656 seeks to achieve the same goal by specifying an information standard that would impose the same requirements as the common law in respect of confidentiality. Amendment 659 again seeks to achieve the goal of constraining what the Information Centre collects by limiting what directions the Secretary of State and the NHS commissioning board may provide. As I have explained, the amendments would prevent the Information Centre from having the central role of honest broker in the data collection and linkage, and that strengthens the approach to confidentiality across the system. I stress that this is about strengthening confidentiality across the system. The Bill, as drafted, prohibits the Information Centre from publishing information that identifies individual service users. Indeed, in many cases that information will be confidential and publication would be unlawful.

We will shortly discuss Government amendments to clause 243, and ancillary amendments to clauses 238 and 239. They will further limit the circumstances in which the Information Centre can be directed, or choose to disseminate, any identifiable patient or service user information it collects, with confidentiality restrictions that are stronger and less flexible than those that are currently imposed by common law. Information, if used effectively, can provide enormous public benefits, and the Government are clear that it is essential that we free information from the organisational silos where it currently sits. We also believe, however, that that needs to be more tightly controlled than it has been in the past. For those reasons, and with that explanation and those reassurances, I hope that the hon. Lady will feel able to withdraw her amendments. If she does not, I will urge my colleagues to support them.

Emily Thornberry: In summary, as I understand it, the Minister does not want to amend the Bill today, but he may want to amend the Bill later. He understands that there may be some difficulties, that the Committee is to be satisfied with the answer that we have heard today and that he is not prepared to address the issue properly. It would seem that the Government are not prepared to address the Bill as a whole. In the circumstances, I will withdraw the amendments in the same spirit.

Amendment, by leave, withdrawn.

Paul Burstow: I beg to move Government amendment 672, in clause 234, page 196, line 29, at end insert—

‘(c) any person (other than a public body) who provides health services, or adult social care in England, to which the information standard relates pursuant to
arrangements made with a public body exercising functions in connection with the provision of such services or care.’.

I am happy to present this amendment to clause 234. Before I do that, however, I would like to observe that what I believe we are trying to do in debating these clauses is to ensure that the clauses do as the Government claim in their explanatory notes and as I have explained to the Committee. The intention, and the way in which the clauses are drafted, is very clear: common law still applies, the existing data protection law still applies, the Human Rights Act 1998 still applies and the Bill imposes greater controls than have hitherto applied. To suggest, therefore, that there is some tardiness or churlishness in the way in which I have responded is unfortunate.

The purpose of amendment 672 is to make it clear that any information standards set out under clause 234 apply to any organisation providing publicly funded health or social care services, whether commissioned by or on behalf of a public body such as the NHS commissioning board, local authorities, or otherwise.

Amendment 672 agreed to.

Amendments made: 673, in clause 234, page 197, line 8, after ‘section’ insert ‘7A or’.—(Paul Burstow.)

Clause 234, as amended, ordered to stand part of the Bill.

Clause 235

INFORMATION STANDARDS: SUPPLEMENTARY

Emily Thornberry: I beg to move amendment 657, in clause 235, page 197, line 19, at end insert ‘including healthcare professionals and have regard to their advice’.

The purpose of the amendment is obvious: to ensure that there is clinical input into decisions taken with regard to information standards. If information standards are to be promoted in the NHS, it is important that there should be clinical input in the process, to ensure that the standards evolve from the best existing practice. Where there are established standards, they should be incorporated rather than replaced.

Paul Burstow: Clause 235 is all about consultation, so it would be surprising if the intention behind it was not to give effect to what is behind the hon. Lady’s amendment. The clause does exactly what the hon. Lady asks. In that sense, the amendment is unnecessary, and I will explain why.

Amendment 657 seeks to ensure that health professionals are appropriately consulted when information standards are prepared. Hon. Members are right that when appropriate, the Information Centre should consult health professionals. However, the amendment goes too far in suggesting that health professionals should be consulted on all information standards, and that those preparing a standard should have regard to the advice of health professionals, regardless of its relevance to those health professionals. In addition, I was surprised to see no mention of patients in the amendment. Clearly, if the hon. Lady is concerned about whether the consultation powers in clause 235 are sufficient, that aspect should have been tested too. I am more than happy to give the necessary assurances on that as well.

Let us remember that it is the Health and Social Care Information Centre, not just the health information centre. Information standards will come in many shapes and sizes, and will include social care or technical IT standards that are of no interest to health professionals, at least not in most cases. The intention is to consult all those who have an interest, but it is important to remember that health professionals are only one of a number of groups—including patients—that may have an interest, and that it may well be a different group whose voice should be listened to in respect of a particular standard. Clause 235 already places a clear requirement on both the Secretary of State and the NHS commissioning board to consult relevant persons before publishing an information standard.

Emily Thornberry: It would be helpful if the Minister could give an undertaking that where there are existing, established standards, they should be incorporated rather than replaced.

Paul Burstow: Earlier, the hon. Lady referred to the Department of Health code of practice, the national information governance care records guarantee and so on. They all consistently set out the confidentiality requirements regarding consent and so on that should be followed. However, all recognise that statutory authority overrides confidentiality when necessary. As the system moves from a non-statutory basis, with the Information Centre, to a statutorily established Information Centre, we should ensure that we do not lose sight of those documents.

I hope the hon. Lady and other hon. Members are reassured that the clause, which is all about consultation, certainly does ensure that health professionals and other relevant persons are properly consulted before the publication of information standards.

Emily Thornberry: I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 235 ordered to stand part of the Bill.

Clause 236

THE HEALTH AND SOCIAL CARE INFORMATION CENTRE

Question proposed, That the clause stand part of the Bill.

Emily Thornberry: As the clause concerns the establishment of the Health and Social Care Information Centre, I will take this opportunity to make some general remarks about it. It is right to put on record that we welcome and agree with the Government’s aspirations that people should have greater access to and control of their health and social care records, and more control of their care. We also welcome and agree with the aspirations that patients should have more access to information about treatments and conditions so that they can look after their own and their family’s health and lifestyle, that information should be easy to compare and that greater use should be made of information generated by patients and service users, with the aim of making the
NHS and social care systems more responsive. If the proposals mean that a larger and more diverse group of providers must present information to the public, again, we welcome that aspiration.

However, I will be asking questions later about the implications of the proposals for patient confidentiality, as well as about how the data will be used and who will request it. There are concerns about whether funding will be available to bring about the necessary change and fulfill the Government’s aspirations. The Government’s plans pose a huge technical challenge that we believe will entail substantial costs. We would like to know whether they have assessed how much it is likely to cost and where the money is likely to come from. Will the Minister give us more detail on how greater access to patient records will be achieved and how quickly he thinks it will happen?

In light of the Minister’s commitment in the White Paper to move “away from a culture in which information has been held close and recorded in forms that are difficult to compare, to one characterised by openness, transparency and comparability”, I seek some clarity on the funding of two important information sources. The first is the general lifestyle survey. It has been carried out every year on behalf of a number of Departments by the Office for National Statistics, which has done a good job but whose funding seems to have been withdrawn by the NHS Information Centre.

The GLS provides information on a wide variety of topics, particularly public health. It is one of the most detailed research exercises of its kind, involving 15,000 households, and has run almost continuously since 1971. It provides data that are comparable year on year, so the information is particularly vital to measuring long-term trends. It has been reported that the NHS Information Centre has decided to axe its contribution of £300,000, meaning that the survey will end. I understand that the head of the UK Statistics Authority, Sir Michael Scholar, has written to the Health Secretary to object. Sir Michael has said publicly:

“The ONS, who, following extensive consultation with the users of their statistics, have just completed their post-budget cuts business plan, have no funds available to make up this shortfall without damaging their own vital economic and social statistics. The decision by the NHS Information Centre will, therefore, result in the immediate discontinuation of long-established National Statistics on smoking, drinking, health conditions and use of health services...The Statistics Authority is concerned that the abrupt discontinuation of a time series on topics as central to public policy as smoking prevalence and alcohol consumption will seriously undermine the UK’s ability to monitor key trends affecting public health.”

That is a concerning statement. Given that we are discussing a policy initiative that is supposed to be in line with the Government’s stated intention to have a culture of openness, transparency and comparability, I wonder how cutting the fund is consistent with that policy objective.

It also emerged this week that the Department of Health intends to withdraw its funding for the health and NHS satisfaction questions in the British social attitudes survey. The BSA survey—[ Interruption.] If the Ministers would like me to stop for a moment so they can discuss it, I would have no problem.

The Minister of State, Department of Health (Mr Simon Burns): The hon. Lady might be interested to know that I was telling my hon. Friend the Minister that we had this debate yesterday in Westminster Hall when she gave the winding-up speech for the Opposition. Yesterday afternoon I fully addressed and corrected, though I say so myself, the misconceptions that she is reiterating today.

9.30 am

Emily Thornberry: The right hon. Gentleman’s contribution yesterday is not forgotten. He will soon find himself quoted by me, because further questions arose from his so-called answers yesterday.

The survey, which the respected National Centre for Social Research has carried out annually since 1983, is perhaps the most important piece of ongoing independent research in its field. It provides comparable year-on-year data from an extensive research base. The cynical might ask, as they did yesterday, what are the Government afraid of from year-on-year extensive research? Are they expecting differences between the service provided by the NHS now and that provided before?

At its best the survey is perhaps the only independent barometer of satisfaction with the NHS, and certainly the only measure that goes back 25 years. The removal of funding looks suspiciously like a deliberate attempt to ensure that there is no way to measure satisfaction with the NHS before and after the Government’s reorganisation. That is a central point, particularly in the light of the reports today in The Times that the Prime Minister is putting the brake on NHS reforms. The Government have said a lot about the need for information to be more widely used and freely available—we agree—so why are they doing this? [ Interruption.]

The Chair: Order. It is very difficult to hear what is going on if hon. Members are talking, and it is discourteous to the Member speaking.

Emily Thornberry: Thank you, Mr. Hancock.

The Government have said a lot about the need for information to be more widely used and freely available to change how the Government and public services function. I applaud the idea, but that cannot happen if information is simply not collected. In yesterday’s Adjournment debate on public satisfaction with the NHS, the Minister denied that a decision had been made on funding for the survey, if he remembers saying that. [ Interruption. ] The right hon. Gentleman obviously cannot hear what I am saying now because he is speaking to a Back Bencher, which is unfortunate, but he did say it.

The Chair: I think you should repeat it.

Emily Thornberry: I think that perhaps I should, Mr Hancock. In yesterday’s Adjournment debate on public satisfaction with the NHS, the Minister denied that a decision had been made on funding for the survey.

Mr Burns indicated assent.
Emily Thornberry: Will he explain why the King’s Fund announced that it will step in to provide the funding in the Government’s place? If the Government have not cut the funding, why does the King’s Fund think that it is taking over the job?

Jeremy Lefroy (Stafford) (Con): I want to make one brief point about information, which arises out of the experience of the Mid Staffordshire NHS foundation trust and the ongoing Francis inquiry.

Concern was raised in the evidence to the inquiry, and in particular in the medical press, about standardised mortality ratios, and I want to highlight that as an area that should be looked into. It is not that they are not needed—there is a clear requirement for more accurate information to be produced on such matters—but I ask that, whatever the outcome of the Bill, the Health and Social Care Information Centre makes it a priority to ensure that the sort of statistics produced on mortality ratios are more and more accurate and become leaders in international best practice. I say that because there has been some controversy over the figure originally produced for the Mid Staffordshire trust, which suggested that between 400 and 1,200 excess deaths had occurred. The way that the information was first produced and then reported gave rise to concern. Without the work of Cure the NHS, led by Julie Bailey, the problems would perhaps never have been brought to the public’s attention.

The publication of the standardised mortality ratio launched the initial investigation. Clearly, those statistics play an important role in monitoring the NHS. If they are going to be used, they must be refined more. Is it intended that the Health and Social Care Information Centre will engage in the sort of research that will ensure that we have world-leading statistical indicators that will enable the public and patients to monitor their trusts in future?

Paul Burstow: I welcome the opportunity to enter into this debate. I have heard no arguments that the clause should not stand part of the Bill—rather than a discussion of its merits or demerits, hon. Members have explored some of the issues that spin from it. I am grateful to the hon. Member for Islington South and Finsbury for listing a host of areas where we share a common aspiration. That is helpful. She is right that we set out those aspirations in the consultation we published last year, “Liberating the NHS: An Information Revolution”. We intend to translate them into practical action. These clauses are part of that.

As the hon. Lady rightly said, for far to long we have had systems that hoard information rather than share it and often that hoarding has not been in the public interest. We are therefore determined to make sure that far more information is freely available for comparison, so that people can make informed judgments about the performance of the NHS as a whole and of adult social care, and can make choices about their own treatment options. That is at the heart of the changes.

The hon. Lady asked about funding for the lifestyle survey and the social attitudes survey. My answer will probably disappoint her, but at this stage no decisions have been made on the funding, and certainly none to withdraw it. It is therefore not entirely clear why the King’s Fund made its announcement, because there has been no decision to withdraw funding. Discussions on the Information Centre’s continued role and funding are ongoing as part of the budget and business planning process. That is not yet settled. We are not into the new financial year. As soon as we are those matters will be clear. They will be published and put into the public domain.

Emily Thornberry: I have listened with interest to the hon. Gentleman’s comments. I am sure that the King’s Fund will follow them with interest too. Can he tell us when a decision will be made about the funding of the British social attitudes survey?

Paul Burstow: All I can tell the hon. Lady today is that the matter is under consideration. We expect to make those decisions in time for the start of the new financial year, which we are nearing, so we are near to the point where those business plans will be finalised. As soon as the information is available, I will be more than happy to ensure that the hon. Lady receives a letter with the answer to that question.

Emily Thornberry: I do not know whether the Minister is a regular reader of “Health Policy Insight”, but it states that it can exclusively reveal that the Department of Health has terminated its funding of the health and NHS satisfaction survey. That seems to be in the public realm now, but the Minister seems to be the last person to hear about it.

The Chair: Mr Burstow, I do not know where this is taking us, but perhaps you can answer it once and leave it at that.

Paul Burstow: I think I am being invited to go down another of those paths. I will be honest and say that the magazine to which she refers is not part of my bedside reading—[Hon. Members: “It is a blog.”] I will ensure that I take a closer look at it. It would be wrong to comment on something that I have not seen, so I will decline to do so at this point.

Emily Thornberry: Will the hon. Gentleman therefore do me the courtesy of writing to me on the subject?

Paul Burstow: I gave an undertaking to write to the hon. Lady before she intervened. I give her that undertaking again. She also asked about the pace at which we are moving toward greater access to patient records. Work is already taking place from the bottom up to drive that forward, and by setting clear information standards we can ensure that progress is accelerated.

I hope that I have reassured Members. I will write if I have not covered all the points they made.

Question put and agreed to.
Clause 236 accordingly ordered to stand part of the Bill.
Schedule 17 agreed to.

Clause 237

General duties

Emily Thornberry: I beg to move amendment 658, in clause 237, page 197, line 34, leave out subsections (b), (c) and (d).

The amendment is clearly probing. We seek to generate a discussion of the nature of the guidance that will be issued. On the face of it, the clause is general—the hint is in the title. It states that
Emily Thornberry: In exercising its functions the Information Centre must have regard to—

(a) the information standards published by the Secretary of State or the Board under section 234,
(b) such guidance issued by the Secretary of State as the Secretary of State may require,
(c) such guidance issued by the Board as the Board may require, and
(d) the need to promote the effective, efficient and economic use of resources in the provision of health services and of adult social care in England.

It could not be more general. We would like more information about it and about the Information Centre.

Paul Burstow: The hon. Lady seeks to probe the amendment is more about giving greater freedom to the Information Centre than about the involvement of the Secretary of State.

The amendment seeks to free the Information Centre from having regard to guidance that is issued by the Secretary of State or the NHS commissioning board. It would also remove a duty “to promote the effective, efficient and economic use of resources in the provision of health services and of adult social care”.

I am surprised that, in probing the nature of the Secretary of State’s guidance, the Opposition consider it appropriate to remove references to delivering such things in effective, efficient and economic ways. That is quite puzzling. Perhaps the hon. Lady will explain.

Emily Thornberry: As the Minister has some difficulty understanding what Opposition is about, I will explain that our role, as we understand it, is to hold the Government to account and to ask difficult questions. It is not to set out an alternative Bill; unfortunately, we are not in a position to do that. We have simply to probe the collection, analysis and publication of information. That is quite puzzling. Perhaps the hon. Lady will explain.

Paul Burstow: Having spent 13 years working on the opposite side of Committees, I am grateful for that lesson about how to discharge the functions of Her Majesty’s loyal Opposition. Although the hon. Lady suggests that the Opposition have not been providing an alternative to the Bill, what they have been doing is persistently and consistently painting a narrative that relates to the fantasy Bill—the alternative Bill—not to the real one.

Liz Kendall (Leicester West) (Lab): Will the Minister give way?

Paul Burstow: In a moment. The amendment was moved by the hon. Member for Islington South and Finsbury. I would not wish to move on to all sorts of other matters that are not really part of the clause.

The Chair: Order. I, for one, would like to hear what the Minister has to say.

9.45 am

Paul Burstow: This is the last sitting of the Committee, and an element of that is coming through. We have all come to enjoy each other’s company so much.

Establishing the Information Centre as a statutory body, no longer subject to the whim of the Secretary of State, puts it on a far firmer footing. It is only by virtue of that step that we are having any of these debates about information governance in the first place. Although I can reassure the hon. Lady and other hon. Members that the Government have no intention of interfering in the centre’s day-to-day work, there will be matters on which it is entirely appropriate for the Secretary of State or the board to issue guidance to which the Information Centre should be obliged to have regard. For example, the Secretary of State remains accountable to this House for the governance of the centre; he will need to issue guidance on corporate governance requirements and have the centre take heed. Similarly, the NHS commissioning board may issue guidance on promoting patient involvement or innovation, to which the centre should also have regard.

Finally, let me draw Members’ attention to the deletion of subsection (1)(d). One of the centre’s key functions, as envisaged in the White Paper, was to reduce the burden of data collections. The hon. Lady asked earlier about the appropriate use of resources and how we make sure that the centre conducts its functions appropriately, and the provisions are part of how we do that. The Information Centre has functions relating to the collection, analysis and publication of information. Giving it a general duty to promote the effective, efficient and economic use of resources in performing those functions seems an eminently sensible step. The language may be bland, but the intention is important for the clause and the Bill. To suggest that the centre’s advice should not have regard to effectiveness, efficiency and economy when it advises those seeking to collect information is surely not the right approach, and I am sure that it is not what the hon. Lady intends.

Owen Smith (Pontypridd) (Lab): What powers will the new Information Centre have to compel different providers in the NHS to gather data and provide them to the centre?
Paul Burstow: Later clauses relate specifically to the centre’s relationship with the providers of information, to the advice and guidance that it will be able to give and to the circumstances in which it might be able to require information to be provided. I will deal with those matters when we reach the relevant clauses, if I may.

Emily Thornberry: May I ask the Minister one further question and perhaps give him a moment to catch his breath? I should perhaps have asked him before whether he could provide assurances that the guidance in subsection (1)(b) and (c) in particular will not override the existing standards of confidentiality.

Paul Burstow: Yes. I can most certainly give that guarantee; there is no doubt about that. That harks back to my remarks on the first group of Opposition amendments we debated today.

Clause 242, which we will debate later, deals with the matters raised by the hon. Member for Pontypridd. Concern has been expressed about whether the Information Centre will be involved in hospital standardised mortality indicators. The centre will have a key role in developing and producing standardised mortality indicators for public inspection. With those answers, I hope that the hon. Lady will withdraw her probing amendment.

Emily Thornberry: I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 237 ordered to stand part of the Bill.

Clause 238

POWERS TO DIRECT INFORMATION CENTRE TO ESTABLISH INFORMATION SYSTEMS

Amendment made: 674, in clause 238, page 198, line 37, after ‘section’ insert ‘A’ or.—(Paul Burstow.)

Paul Burstow: I beg to move amendment 675, in clause 238, page 198, line 43, at end insert—

‘( ) A direction under subsection (1) may require the Information Centre to disseminate information (other than by publishing it) only if the Centre is authorised to do so by section 243 or authorised or required to do so by or under any other provision of this or any other Act.’.

The Chair: With this it will be convenient to discuss amendment 676, in clause 239, page 199, line 9, at end insert—

‘( ) A request under subsection (1) may request the Information Centre to disseminate information (other than by publishing it) only if the Centre is authorised to do so by section 243 or authorised or required to do so by or under any other provision of this or any other Act.’.

Paul Burstow: These are not minor and technical amendments, but substantive amendments, which reflect the fact that the Government are listening to concerns and, where appropriate, acting on them. A primary role of the Information Centre is to collect and publish information for everyone to access and use. Information that the Information Centre collects and cannot publish is set out under clause 243 and includes, as I am sure we would all expect, information that might identify individual patients or service users. Amendments 675 and 676 clarify that directions made under clause 238 and requests made under clause 239 cannot specify that information should be collected and disseminated as an alternative to publication, other than in limited circumstances set out in clause 243. The amendments also clarify that the restrictions on disseminating information imposed under clause 243 should not interfere with the right of any other lawful authority to disseminate under other legislative provisions.

The key point is that the measure is a further tightening of the requirements to protect confidential patient information, which is dealt with in clause 243. The amendments necessarily tighten that in ways I hope will reassure many of those who have raised concerns about this part of the Bill. When we discuss clause 243, we will look at the circumstances where it should be possible for a direction or a request to specify that information might be disseminated and not published, and the circumstances where the Information Centre should have discretion to disseminate non-identifiable information that it cannot publish.

It is worth noting that we are putting the Information Centre on a firmer footing, based in primary legislation, which enables us to discuss these important provisions and set them in legislation that is stronger than common law. It is important to many hon. Members and to those who are following our proceedings to ensure that there are appropriate constraints on how powers are used. I hope that the amendments will receive the Committee’s support.

Emily Thornberry: I have been interested to hear the Minister’s remarks. I do not know whether I should make my brief comments now, in response to what he said, or on clause stand part. However, as I am on my feet, I shall speak now.

Will the Minister consider putting in the Bill limitations applying to any request to collect information that could be used to identify individual patients, even though collecting such information could be valuable in certain types of analysis? There will be times when using information in a particular way means that an individual patient could be identified and that would be of some value. However, will the Minister consider including limitations to that request? It is important. I can see from the civil servants that I may be pushing an open door.

Paul Burstow: When we come to clause 243, I will draw attention to the fact that that is already in the Bill. Amendment 675 agreed to.

Clause 238 ordered to stand part of the Bill.

Clause 239

POWERS TO REQUEST INFORMATION CENTRE TO ESTABLISH INFORMATION SYSTEMS

Amendment made: 676, in clause 239, page 199, line 9, at end insert—

‘( ) A request under subsection (1) may request the Information Centre to disseminate information (other than by publishing it) only if the Centre is authorised to do so by section 243 or authorised or required to do so by or under any other provision of this or any other Act.’.—(Paul Burstow.)
Emily Thornberry: I beg to move amendment 660, in clause 239, page 199, line 19, at end insert—

'(4A) Nothing in this section shall have the effect of rendering lawful any exchange of information currently prohibited under current law.'

The purpose of the amendment is to ensure that there is no change to the requirement for any disclosure, exchange, processing or transmission of confidential information and that the consent of the patient or lawful proxy is required unless subject to current exceptions. Again, it is an attempt to ensure that the public can be confident that the current laws of confidentiality will continue to apply under the new system that the Government want to introduce under the Bill.

The clause allows any person to request the Information Centre to establish systems for the collection, analysis, publication and dissemination of information. That includes mandatory requests from Monitor, the Care Quality Commission, NICE and any other person specified in subsequent regulations. The clause provides extremely wide powers on information sharing, and concerns have been raised that there is no reference to patient confidentiality or information governance controls on information sharing. The explanatory notes state in paragraph 1356 on page 229 that a request from a private person or body must satisfy existing regulations under section 251 of the National Health Service Act 2006. What is the definition of a “private body or person”, and why does that requirement not apply to all requests made to the Information Centre? Perhaps the Minister will explain that, because it is a potential lacuna, and we are worried about it.

This is a fundamental point regarding the protection of patient confidentiality. Patient information must remain subject to appropriate safeguards to protect confidentiality and to maintain public trust in a confidential health service. The liberal use of identifiable data described in the clause threatens the therapeutic relationship between doctors and patients, and we seek specific reassurance. When read cold, the clause seems very permissive, and is worrying.

Paul Burstow: Clause 239 enables any person to request the Information Centre to “establish and operate a system for the collection, analysis and publication or other dissemination of information” specified. It is worth saying at the start that the Bill does not need to set out new requirements for information governance controls, because they are already required under data protection, human rights and confidentiality law. The Bill includes explicit provisions to set information standards, which will require consultation, and cover information governance. That will become legally binding on health and social care organisations.

Amendment 660 raises issues that are already covered to some degree in clause 234. The amendment would prevent the Information Centre from accepting a request to collect anything when there is a barrier in law, and we accept that that should be the case when there are statutory prohibitions on data sharing—for example, on gender reassignment cases. As I explained, however, that would prevent the Information Centre from having a central role as honest broker for data collection and linkage that strengthens the approach to confidentiality across the system that the Government believe is desirable. It is essential to marry that role with the appropriate safeguards to ensure proper protection of patient confidentiality. I have set out the arrangements in some detail, and we will return to them on later clauses, especially clause 243 which covers specific aspects of that concern. I hope that the hon. Lady is reassured.

The hon. Lady asked specifically about definitions of “private organisations” and how they might be treated differently. I want to ensure that when we come to clause 243 I give her a clear answer to reassure her, but there is no intention that they should be treated more favourably under the clause.

Emily Thornberry: Many of us are concerned about who will be allowed to get their hands on the information, who can request it, and what controls there will be. Perhaps we can debate the matter when we come to clause 243, because it throws up some important issues. I will be happy if I obtain reassurance then. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

10 am

Emily Thornberry: I beg to move amendment 661, in clause 239, page 199, line 23, leave out subsection (6).

The Chair: With this it will be convenient to discuss Amendment 661, in clause 239, page 199, line 25, at end insert

‘except that all such requests must be in accordance with the Data Protection Act 1998.’

Emily Thornberry: Clause 239 covers powers to request the information centre to establish information systems. It provides a list, and subsection (6) allows the Secretary of State to “direct the Information Centre to comply with a request specified in the direction which was made by a person outside the United Kingdom.”

That is a bit strange, particularly given how few resources we think the Information Centre will have. Will there be any restrictions? With which requests made by foreigners from outside the United Kingdom will the Secretary of State direct the Information Centre to comply? The Minister ought to give us a little more detail about that. Will he give us an example of a reasonable request?

On amendment 661, the clause also commits the Secretary of State to direct the Information Centre to comply with a request from a person outside the UK, so will the Minister give assurances that such requests must comply with the Data Protection Act 1998? The Act is clear that personal data must not be transferred outside the European Union without adequate protection for the rights of data subjects equivalent to that provided by the Act.

Paul Burstow: The amendments relate to some important issues, but I hope I can reassure the hon. Lady and other hon. Members that they are not necessary.

Amendment 661 would ensure that the Data Protection Act applies to any request for information made to the Information Centre from overseas. I confirm that the Data Protection Act has, and will continue to have, full effect, so the amendment is unnecessary.
Amendment 663 would remove the power for the Secretary of State or the NHS commissioning board to direct the Information Centre to comply with requests from outside the UK. The power is essential to ensure the Information Centre will continue with valuable work in collaboration with the World Health Organisation and across the European Union. I reassure the hon. Lady and other hon. Members that no information that could identify individual patients or service users would be released by the Information Centre in response to such requests. Indeed, both our data protection law and our common law make it unlawful for the Secretary of State or the NHS commissioning board to direct or for the Information Centre to comply with a request to disclose information on such a basis.

I hope, therefore, that the hon. Lady is reassured and that she will withdraw her amendment.

Emily Thornberry: I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Emily Thornberry: I beg to move amendment 662, in clause 239, page 199, line 41, leave out paragraph (d).

The amendment would remove the provision to define a “relevant body” as “such other persons as may be prescribed in regulations.”

It is another very vague statement on which it would be a good idea if we had more understanding. Will the Minister clarify the scope of paragraph (d) and assure the Committee that no regulation will be made to require the information centre to establish information systems in response to a request from non-NHS bodies such as pharmaceutical companies? Will the Minister explain the limitation of the term “system” and confirm that it could not include mandating information collection through any single or limited number of information providers such as software systems?

Paul Burstow: The amendment would remove the flexibility that is needed to add bodies able to make requests of the information centre for data collections that must be complied with.

Although there are no plans to give such authority to any other body, it is subject to change. Without the flexibility of a regulation-making power, change could only be effected through primary legislation.

At this point, I could say how interesting it is that we have had an information centre for a long time. It is established as a special health authority, so it is very much at the beck and call of the Secretary of State. Removing the flexibility that the clause provides would effectively stitch it into a legislative straitjacket. It is not worth going much further on that point at the moment, but I assure the hon. Lady that it is our intention to keep that flexibility.

With regard to relevant bodies and the list of organisations that can make mandatory requests, the regulations will be subject to the negative procedure. Even so, such regulations are required to be laid before Parliament for a period of 40 days after being made, during which time they are subject to parliamentary scrutiny and can be debated.

Emily Thornberry: I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Amendment made: 677, in clause 239, page 199, line 42, leave out ‘provided for individuals’.——(Paul Burstow.)

Question proposed, That the clause, as amended, stand part of the Bill.
Debbie Abrahams (Oldham East and Saddleworth) (Lab): I want to put on record my concerns about this clause and preceding and subsequent clauses, and the unintended consequences that might result. Information is power. We heard from the Minister that data that are collected can sometimes be too abundant, but limitations on the data that we collect, how they are analysed and how they are disseminated can have profound consequences. For example, if data had not been available during the 1980s, publication of the Black report would have been the first time that issues such as health inequalities, socio-economic inequalities and the difference between different groups of the population, especially the north-south health divide, were raised.

Members should consider the effects of limiting the collection, analysis and dissemination of information. Members will also remember how that report was held up and published in quite disgraceful circumstances. I wanted to put that on record and to raise my concern that the Secretary of State and the information centre must have regard to the guidance.

The way in which this Bill has been presented suggests that the Secretary of State is removing political control from the NHS and its business. That is a key way in which he is having a direct influence over the data that will be collected, which, in turn, will affect policy for the NHS and what lies beyond.

Owen Smith: I have a number of questions that follow on from points made by my hon. Friends. The establishment of the Information Centre is an excellent idea in principle and I endorse everything that my hon. Friend the Member for Islington South and Finsbury said earlier on about the intentions behind it. However, what consideration have the Government given to the fact that the work of the Information Centre might be hamstrung as the centre becomes inundated with the requests that will flow as a result of the framing of the clause, which refers to the ability of any person to make a request for information? That suggests that the Government want to be open and transparent about how they will be judged. It will be set out in a transparent way at the outset. There is also provision in this part of the Bill for reasonable charges. Clause 240 refers to reasonable charges.

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that again. These three clauses—we are about to come to the other two—interlock, providing greater transparency and the safeguard of not overloading the system with trivial or inappropriate requests.

Owen Smith: That answers some of the questions I asked. My final question: does the Minister anticipate that the charging regime laid out in the regulations will be designed simply to cover the costs of the provision of that information, or does he anticipate that the Information Centre will at some point make a profit?

Paul Burstow: The Information Centre will be able to make reasonable profits from charging for its services, but these services are unlikely to include the sale of information. The information that the centre will be able to release will generally be published without charge, so it will not interact with freedom of information or the reuse of public sector information regulations. Instead, services may include advice or guidance, support for data quality improvements and so on. The Information Centre will also be expected to publish procedures that cover charges. Again, therefore, there will be greater transparency from the outset as to how those charges are framed in the first place.

Finally, the hon. Gentleman asked for an estimate of the proportion of information from commercial sources, but there is no estimate at this stage. Because there will be requirements for publishing reports, accounts and so on as time goes forward, that information will be clearly in the public domain. As I have already said, we expect that most requests will come from public bodies involved in health and social care and mostly from the Secretary of State and from the NHS commissioning board.

Owen Smith: Does the Minister anticipate, therefore, that once the Information Centre is set up, the NHS will no longer need to buy in lots of information from other sources, as it has done over recent years from, for example, Dr Foster Intelligence? That has obviously become a profitable business as a result of NHS information. Will the provision obviate the need to employ a body such as, but not necessarily, Dr Foster Intelligence?

Paul Burstow: I am grateful for the invitation to speculate, but I will resist the temptation to answer that speculative, hypothetical question at this stage. The Bill provides for a range of scenarios, but it also sets out considerable safeguards for those scenarios. I will not speculate as to whether commercial sources of data will be used. In some cases, they may be necessary, because that may be the only way to obtain the relevant information.

Question put and agreed to.

Clause 239, as amended, accordingly ordered to stand part of the Bill.

Clause 240 ordered to stand part of the Bill.

The Chair: We will be adjourning in three minutes, so for the benefit of hon. Members who have not been on such a Committee previously, this afternoon’s debate will finish at 4 o’clock, but that does not mean that the business will have been concluded by then. There will then be the procedure of moving amendments and clauses that we have not reached, so there may be votes after 4 o’clock. While the debate finishes at 4 o’clock, proceedings could go past 4, because of the wind-up of the rest of the business. I wanted to clarify that position, so that nobody is in the dark.

Clause 241

INFORMATION SYSTEMS: SUPPLEMENTARY

Paul Burstow: I beg to move amendment 678, in clause 241, page 200, line 31, leave out ‘must’ and insert ‘may’.

The amendment is a technical one to make it clear that provided the Information Centre has come to a decision, information that has been collected, or information derived from such information, no longer needs to be retained and may be destroyed by the Information Centre.

Amendment 678 agreed to.

Clause 241, as amended, ordered to stand part of the Bill.

Clause 242

POWERS TO REQUIRE AND REQUEST PROVISION OF INFORMATION

Amendments made: 679, in clause 242, page 200, line 34, leave out ‘a health or social care body’ and insert ‘any person mentioned in subsection (1A)’.

Amendment 680, in clause 242, page 200, line 38, at end insert—

‘(1A) Those persons are—

(a) a health or social care body;

(b) any person (other than a public body) who provides health services, or adult social care in England, pursuant to arrangements made with a public body exercising functions in connection with the provision of such services or care.’.

Amendment 681, in clause 242, page 200, line 39, leave out ‘A health or social care body must comply with’.

Amendment 682, in clause 242, page 200, line 40, after ‘(1)(a)’ insert ‘must be complied with’.—(Paul Burstow.)

Paul Burstow: On a point of order, Mr Hancock, will amendments 683 and 684, which were not moved just then, be dealt with at a later stage?

The Chair: We have to deal with amendment 652 first, and we will then move on to amendment 685 and then amendments 683 and 684. That is the peculiar way in which the system works. We have reached 10.25 am, so unfortunately we must now adjourn.

10.25 am

The Chairman adjourned the Committee without Question put (Standing Order No. 88).

Adjourned till this day at One o’clock.