

Financial Provisions Bill Briefing

What the clause in the Bill means

Given the major reorganisation of health bodies in Northern Ireland, the clause in the bill will update the definition of a 'relevant NHS body' in Northern Ireland for the purposes of the Comptroller and Auditor General's data matching powers through substituting the reference in Article 4D(6)(b)(i) of the Audit and Accountability (NI) Order 2003 to Article 90 of the Health and Social Services (Northern Ireland) Order 1972, which has been repealed by the Health and Social Care (Reform) Act (Northern Ireland) 2009, with the corresponding reference in the 2009 Act.

The Serious Crime Act 2007 inserts provisions in the Audit and Accountability (NI) Order 2003 providing the Comptroller and Auditor General with the power to carry out data matching exercises for the purpose of assisting in the prevention and detection fraud.

Data matching involves comparing pieces of data or information held by one body against the other records held by the same or another body. This allows potentially fraudulent claims and payments to be identified for investigation

Under his data matching powers, the Comptroller and Auditor General can obtain data from Northern Ireland public sector bodies for data matching and disclose the results to them for investigation. This includes health services bodies. Article 4D (6)(b)(i) of the Audit and Accountability (NI) Order 2003 provides the definition of a 'relevant NHS body' in Northern Ireland that can receive data matches involving patient data – 'a body to which Article 90 of the Health and Social Services (Northern Ireland) Order 1972 applies'. A major reorganisation of NI health bodies under the Health and Social Care (Reform) Act (Northern Ireland) 2009 means that the reference to the 1972 Order is no longer appropriate.

What the financial effects are

None.

By way of general information, the C&AG's data matching exercises incur costs for the NIAO and the bodies following up the matches, but these are far outweighed by the savings identified. Also, data matching has a deterrent effect.

Current position

The current position is that the C&AG can continue to request patient data from NI health bodies for a data matching exercise but can no longer disclose the results of data matching exercises involving patient data to these bodies for follow up. This effectively means that patient data cannot currently be used in data matching exercises.

Reason for change

The purpose of the clause in the bill is to restore the position enacted under the Serious Crime Bill 2007 by updating the definition of a health services body in Northern Ireland following the restructuring of the health sector in 2009. This will enable the C&AG, if he so decides, to carry out a data matching exercise using patient data and disclose the results to the relevant health services bodies for appropriate follow up.

Impact of the change

Realignment of the C&AG's data matching powers with those enacted in 2007.

Positions in other jurisdictions

In the other parts of the UK, the public audit agencies (comprising the Audit Commission, Audit Scotland and the Auditor General for Wales) have data matching powers also enabling the use of patient data in exercises to assist in the prevention and detection of fraud, and the disclosure of the results of these exercises to the relevant NHS bodies. For each of these public audit agencies, 'relevant NHS body' extends not just to those in their own jurisdiction, but to those in the other parts of the United Kingdom.

Schedule 7 of the Serious Crime Act 2007 sets out data matching in England, Wales and Northern Ireland. The powers rest with the Audit Commission in England, the Auditor General for Wales in Wales and the Comptroller and Auditor General in Northern Ireland. In each jurisdiction, patient data can be obtained for data matching and the results disclosed to the relevant health services bodies, which are defined by reference to statute.

Provisions inserted in the Public Finance and Accountability (Scotland) Act 2000 by section 97 of the Criminal Justice and Licensing (Scotland) Act 2010 provide Audit Scotland with the power to conduct data matching. In similarity with the other parts of the UK, it can obtain patient data for data matching to assist with the prevention and detection fraud. As the restructuring of the health service in Northern Ireland preceded the enacting of the Scottish legislation, the latter defines a 'relevant Health Services body' in Northern Ireland by reference to paragraphs (a) to (e) of section 1(5) of the Health and Social Care (Reform) Act (Northern Ireland) 2009. This is the same reference as that being inserted into the NI legislation by the Financial Provisions Bill.

Why is this Bill the most suitable legislative vehicle?

There is no other current vehicle that would be suitable. It is considered that this matter is in accordance with the purpose of the bill as it is a routine matter that has no impact on the overall quantum of Government expenditure in Northern Ireland.

Why is this provision considered non controversial?

The clause is not seeking to adjust the C&AG's data matching powers but to update the definition of a 'relevant NHS Body' in Article 4D of the Audit and Accountability (NI) Order 2003.

Possible questions

Why was Article 4D of the Audit and Accountability (NI) Order 2003 not amended by the Health and Social Care (Reform) Act (Northern Ireland) 2009?

NIAO is not aware why a consequential amendment for this matter was not included in the 2009 Act. [Parliamentary Counsel involved in drafting the 2009 Act may have insight to this.]

NIAO only became aware that the legislation may require amendment in 2009 when the C&AG was considering using his data matching powers to participate in an exercise involving patient data being run by the Audit Commission. At the same time, and unrelated, the Office was asked to confirm the reference to 'relevant health services body' in Article 4D for application in legislation being drafted to provide Audit Scotland with data matching powers. NIAO sought advice from the Departmental Solicitor's Office, which identified that Article 4D needed updated to refer to the 2009 Act (which was then in place).

Has the C&AG used patient data in data matching?

The first use of the C&AG's new data matching powers was in the 2008-09 National Fraud Initiative run by the Audit Commission. This did not involve the use of patient data. The possible use of patient data arose in 2009 when the NIAO considered participating in another exercise being planned by the Audit Commission. It was at that point the Office established that Article 4D of the Audit and Accountability (NI) Order required updating. Given the absence of statutory authority to disclose the results of data matching involved patient data to health and social care bodies in Northern Ireland, no data matching of patient data has been conducted by the C&AG in this area.

What controls exist in the legislation for using patient data?

Data matching provisions allow for patient data to be matched to prevent and detect fraud. There are however limitations on how this data can be used and disclosed. Patient data cannot go beyond NHS bodies and their auditor, and patient data cannot be provided to the C&AG under the voluntary scheme within the provisions.

The Comptroller and Auditor General will only choose data sets to be matched where he has reasonable evidence that fraud is likely to be found as a result of matching those data sets.