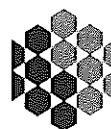


FROM THE MINISTER FOR HEALTH,
SOCIAL SERVICES AND PUBLIC SAFETY



Department of
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and Public Safety**

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Our Ref: AGY/433/2015

Date: 18 August 2015

Dear

Thank you for your letter dated 18th June 2015 asking for:

- Details, including the outcome, of the applications considered by the Confidentiality Advisory Group for England and Wales;
- Details of any cost benefit analysis that has been carried out in England and Wales and clarification of whether a cost benefit analysis will be carried out in Northern Ireland and, if not, the reasons why, and
- Information on how the Bill compares and contrasts to the legislation in England and Wales

Details of the applications considered, and the advice given to the Health Research Authority or the Secretary of State for Health, by the Confidentiality Advisory Group in England and Wales are recorded within the minutes of each meeting of the Group. Details of all applications that have received approval from the Health Research Authority or the Secretary of State for Health are held in a Register of approved applications. The Register contains a summary of the activity, details of the information approved and contact details for the applicant.

The minutes of meetings and the Register can be accessed via the following link: [CAG Advice and HRA/SofS Approval Decisions - Health Research Authority](#).

Whilst no specific cost benefit analysis on the operation of the legislation and the Confidentiality Advisory Group (or its predecessor bodies) has been carried out in England and Wales, these provisions have operated since 2001 and are viewed as enabling the flow of data between users and as a mechanism which, by providing a central determination by an expert body, reduces the need for local decision making and reviews with associated cost benefits.

No cost benefit analysis has been carried out in Northern Ireland. It is envisaged that the resources required to put these arrangements in place will not be significant and, as in England and Wales, they will enable data flows and remove ambiguity and mitigate risk around the sharing of information. The establishment of a committee will enable

discussions to take place centrally which can then be cascaded to individual organisations thus removing the need for local discussion and duplicated reviews around requests for access to service user information.

The differences between the draft NI Bill and the legislation in England and Wales are largely due to the integrated Health and Social Care system in Northern Ireland.

The attached table (Appendix A) compares and contrasts each provision of the GB legislation and NI Bill.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Simon', written in a cursive style.

SIMON HAMILTON MLA

Appendix A

Section of National Health Service Act 2006	England and Wales	Northern Ireland	Clause of the Health and Social Care (Control of Data Processing) Bill
251(1)	Secretary of State may make regulations for requiring or regulating processing of information for medical purposes in the interest of improving patient care or in the public interest	The Department may make regulations for requiring or regulating processing of information for medical or social care purposes in the interest of improving health and social care or in the public interest	1(1)
251(2)(a)	Makes provision to require information held by health service bodies to be released to the person to whom it relates, or principally relates, or a prescribed person acting on their behalf.	Not replicated Such access is already provided in other statute, in particular the Data Protection Act and the Freedom of Information Act	
251(2)(b)	Makes provision for requiring or authorising the disclosure or other processing of prescribed information. This provision extends to patient information in England and Wales	Replicated Makes provision for requiring or authorising the disclosure or other processing of information of recipients of healthcare services.	1(2)(a)

Section of National Health Service Act 2006	England and Wales	Northern Ireland	Clause of the Health and Social Care (Control of Data Processing) Bill
		Makes provision for authorising the disclosure or other processing of information of recipients of social care services	1(2)(b)
251(2)(c)	Provides a lawful basis for the processing of information	Replicated	1(2)(c)
251(2)(d)	Provides that the regulations may create offences	Replicated	1(2)(d)
		Makes provision that service user identifiable information may only be processed if authorisation is granted by the committee	1(3)
251(3)	Provides that section 251(1) and (2) are subject to 251(4) to (7)	Replicated	1(4)
251(4)	Provides regulations may not require the processing of patient identifiable information if it would be reasonably practical to achieve the purpose of the processing by other means.	Replicated	1(5)

Section of National Health Service Act 2006	England and Wales	Northern Ireland	Clause of the Health and Social Care (Control of Data Processing) Bill
251(5)	Provides that where provision has been made to require the processing of patient identifiable information, that provision is reviewed each year to determine that the requirement still exists and that the purposes of the processing could not reasonably be done by other means	Replicated	1(6)
251(6)	Provides that regulations may not make provision which will require the processing of patient identifiable information to determine the care and treatment of particular individuals.	Replicated	1(7)
251(7)	Ensures that regulations made under section 251 may not be inconsistent with the Data Protection Act.	Replicated	1(8)
251(8)	The fact that regulations may not be inconsistent with the DPA does not affect the provision in section 251(1)(c) that provides a lawful basis for	Replicated	1(9)

Section of National Health Service Act 2006	England and Wales	Northern Ireland	Clause of the Health and Social Care (Control of Data Processing) Bill
	the processing of information		
251(9)	Places an obligation on the Secretary of State for Health in England and Wales to consult such bodies as appear to represent the interests of those likely to be affected by regulations as he considers appropriate.	Not replicated The Department already has an obligation to consult under section 75 of the Northern Ireland Act and has in place a comprehensive consultation scheme.	
251(10)	Defines "patient information"	Replicated and extended to include social care information	1(10)
		Defines "relevant person" as a recipient of health services or social care services in NI	1(11)
251(11)	Defines "confidential patient information"	Replicated	1(12)
251(12)	Defines "medical purposes" and includes the management of social care services	Replicated but excludes management of social care services	1(13)
		Defines "social care purposes" and includes the management of social care services	1(14)

Section of National Health Service Act 2006	England and Wales	Northern Ireland	Clause of the Health and Social Care (Control of Data Processing) Bill
251(13)	Defines "health service body" and "processing"	Defines "processing". Definition of "health service body" not required for NI	1(15)
252(1)	Provides that there will continue to be a committee (this committee was established under section 61(1) of the Health & Social Care Act 2001)	Provides that the Department may make regulations to establish a committee	2(1)
252(2)	Requires that the views of the committee be sought in relation to regulations to be made under sections 251(1) or (5).	All regulations made under NI Bill will be subject to draft affirmative procedure. The views of the Committee will not be specifically sought but regulations will be consulted upon and subject to draft affirmative procedure	
252(3)	Provides that the Secretary of State (SoS) for Health in England and Wales may seek the views of the committee on the processing of patient or other information. In England and Wales this is necessary as the Advisory Group does not	Confers authority upon the committee to authorise the processing of information and impose conditions and undertakings on those authorisations	2(2)

Section of National Health Service Act 2006	England and Wales	Northern Ireland	Clause of the Health and Social Care (Control of Data Processing) Bill
	authorise the processing of information, instead making recommendations to the SoS who makes the final decision.		
252(4)	Sets out provisions which the regulations which will establish the Advisory Group may contain	Replicated and includes provision for the appointment, tenure and vacation of the office of a Chair and of other members	2(3)
252(5)	SoS must publish the views of the Advisory Group (see section 252(2))	Regulations may provide for the publication of authorisations given by the committee	2(3)(e)
252(6)	Defines "the health service", patient information" and "processing" for section 252	Interpretation provision is in clause 5	
		Provides that the Department must prepare and publish a Code of Practice which health and social care bodies must have regard to	3
		Regulations will be subject to draft affirmative procedure	4

Section of National Health Service Act 2006	England and Wales	Northern Ireland	Clause of the Health and Social Care (Control of Data Processing) Bill
		Defines "confidential information", "the Department", "information", "prescribed", "processing" and "relevant person".	5
		Short title and commencement	6

