

To place the National Data Guardian on a statutory footing

The Secretary of State for Health, when appointing Dame Fiona Caldicott as the first National Data Guardian on 13th November, said “I intend to put the National Data Guardian on a legal footing at the earliest opportunity”¹. This Bill is such an opportunity, given the explicit focus on the use of NHS numbers across Health and Social Care: where the NHS number is used, or must not be used, must clearly be within the remit of the National Data Guardian.

This amendment would facilitate the display of cross-party opinion in a discussion of (and, if incorporated, deliver on) the Secretary of State for Health’s commitment - given because, in his words, “we need to be as determined to guarantee personal data is protected as we are enthusiastic to reap the benefits of sharing it. Dame Fiona will oversee the safe use of people’s personal health and care information and hold organisations to account if there is any cause for concern, ensuring public confidence.”²

Clause 5 ensures there is GMC regulation of the National Data Guardian (accountable to Parliament). The final 3 amendments add the National Data Guardian to the oversight of NHS England, HSCIC and section 259 requirements.

In a conversation with DH they showed support for this amendment being discussed, but have not seen it to comment on substance.

Amendment:

Insert new Part 4, and renumber:

4 The National Data Guardian

In Part 9 of the Health and Social Care Act 2012 (health and adult social care services: information), after section 251B (as inserted by section 3 of this Act) insert—

251C The National Data Guardian:

(1) There shall be a National Data Guardian, appointed by the Secretary of State, who must seek to improve the practice followed in relation to the processing of the “consistent identifier” or any relevant information, in exercising functions and when providing advice to the Secretary of State or others.

(2) The National Data Guardian shall have the power to suspend or disqualify any relevant body from processing of the “consistent identifier” or any relevant information.

(3) The National Data Guardian may request from any relevant body specified information for the purpose of enabling the Guardian to ascertain whether the relevant

¹ <https://www.gov.uk/government/news/national-data-guardian-appointed-to-safeguard-patients-healthcare-information>

² *ibid*

body has had proper regard to the processing of the "consistent identifier"; to any relevant information; or to any advice given to the relevant body by the Secretary of State.

(4) The Secretary of State may by regulation impose requirements as to the processing of the "consistent identifier", or any relevant information, as the Secretary of State thinks fit for the purposes of clause 1, having regard to advice from the National Data Guardian.

(5) The National Data Guardian shall be a person registered under section 30 (1) of the Medical Act 1983.

Amend, National Health Service Act 2006 (1H) (3) to add:

(c) must have regard to advice from the National Data Guardian

Amend, Health and Social Care Act 2012, 253 (1) to add:

(e) the National Data Guardian

Amend, Health and Social Care Act 2012, 259 (1) (a), prepend at start:
with consent of the National Data Guardian,