



Health Bill [HL]: Committee Stage Report

RESEARCH PAPER 09/67 20 July 2009

This is an account of the House of Commons Committee Stage of the Health Bill [HL] prepared for the Report Stage of the Bill due on 12 October 2009. It supplements Research Papers 09/48 and 09/49, which were prepared for the Second Reading of the Bill in the Commons on 8 June 2009.

The Bill covers a range of policy areas: the NHS Constitution, Quality Accounts, Direct Payments, Innovation Prizes, Trust Special Administrators, the Secretary of State's powers to suspend chairs and members of certain health bodies, tobacco control, pharmacy, complaints about social care for adults, and disclosure of information by Her Majesty's Revenue and Customs.

When introduced into the Commons, the Bill contained a clause relating to Foundation Trusts and their income from private patients. This clause had been voted into the Bill against Government wishes during its passage through the Lords, where the Bill was introduced. The clause has now been voted out, its removal constituting the only change to the Bill made at the Commons Committee Stage.

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Research Paper 09/67

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Summary

There was only one change to the Bill during its passage through Committee in the Commons. That was the removal of the clause enabling exemptions to the limit on income from private patients that applies to NHS Foundation Trusts. The clause had been voted into the Bill against Government wishes during its passage through the Lords.

There were seven divisions on amendments moved by the Conservatives, in some cases with support from the Liberal Democrats and in some cases not. Three related to the NHS Constitution, two to Direct Payments, one to pharmacy and one to the private patient cap. The last took place before the clause was voted out by a division on *clause stand part*, which brought the total number of divisions to eight.

Although the debates in Committee on the tobacco control provisions were relatively short, both the Conservatives and the Liberal Democrats said that they were likely to be the most contentious parts of the Bill. Both considered them more suitable for debate on the floor of the House than in Committee, the Conservatives announcing that they would allow a free vote on Report. Because of this and because some of the issues are likely to be raised again on Report, the coverage given to the tobacco control provisions in this paper is relatively detailed.

1 Introduction

The *Health Bill [HL]* was introduced in the House of Lords by Lord Darzi on 15 January 2009.

The Government introduced a number of amendments during the Bill's passage through the House of Lords in response to concerns raised during the debates. A clause enabling exemptions to the limit on private patient income for Foundation Trusts, a topic not covered in the original Bill, was also introduced following a division on Third Reading in the House of Lords in which the Government was defeated. The Bill thus entered the Commons in a slightly different form from that in which it was introduced.

Detailed information on the provisions in the Bill and the background to them can be found in the following Library Research Papers prepared for Second Reading in the Commons.

- Research Paper 09/48, Health Bill [HL] (excluding tobacco provisions)
- Research Paper 09/49, Health Bill [HL] Tobacco Control Provisions

No oral evidence was taken by the Committee. All written submissions related to the Bill's tobacco controls. The final list of memoranda submitted to the Committee is set out in Appendix 2 to this paper.

Further information, including the Library Research Papers, is available on the Library's *Bill Gateways* pages.¹ The Parliamentary website on *Progress of Bills* provides links to the different versions of the Bill, its explanatory notes and to the debates on it, as well as the memoranda submitted to the Public Bill Committee.²

2 Second Reading

The Second Reading of the Bill in the House of Commons was on 8 June 2009. Andy Burnham, the newly appointed Secretary of State for Health, introduced the debate. Stephen O'Brien, speaking for the Conservatives, said that they supported the Second Reading³ and Sandra Gidley, speaking for the Liberal Democrats, said that they would not vote against it.⁴ Andy Burnham made clear the Government's opposition to the new clause on the private patient cap.⁵

Although consisting of only five clauses and one schedule, the tobacco control provisions contained in Part 3 of the Health Bill dominated the second reading debate.

Andy Burnham, set out the Government's position on the prohibition of tobacco displays at point-of-sale. He said that although the number of people who smoke in England is at an all-time low, there were still too many young people taking up smoking.⁶ He confirmed that the Department of Health would be considering a broader review of tobacco control policy later this year.⁷ He reiterated the significance of the Government's evidence-base for the proposed prohibition. He drew attention to a study by Cancer Research UK in 2008 which had reviewed two decades' worth of research on the influence that point-of-sale displays have on smoking among young people. He also highlighted research from Stanford University's School of Medicine, published in 2004, which showed that removing point of sale

¹ <http://webapplications.parliament.uk/BillGateways/session/2008-09/bill/health.html>

² <http://services.parliament.uk/bills/2008-09/health.html>

³ HC Deb 8 June 2009 c614

⁴ HC Deb 8 June 2009 c578

⁵ HC Deb 8 June 2009 c545

⁶ HC Deb 8 June 2009 c549

⁷ HC Deb 8 June 2009 c551

displays and advertising could reduce the likelihood of smoking among children by as much as 50 per cent, even when other factors, such as parental smoking, are taken into account.⁸ In respect of the economic impact on small businesses of the proposed prohibition on tobacco displays, he argued that it was not the Government's intention to make it harder for small businesses to survive, but that action had to be taken to reduce the number of young people smoking. In his judgment, this could be done without threatening the livelihood of small businesses.⁹

In setting out the Government's position on tobacco vending machines, he said that it would introduce stricter controls to ensure that only adults could purchase cigarettes from vending machines. However, if restrictions failed to stop underage sales, it would consider imposing an outright ban on tobacco vending machines.¹⁰ This was, in the Government's view, a proportionate response to the problem.¹¹

Andrew Lansley, speaking for the Conservatives, thought the prohibition on tobacco displays in shops would prove to be the most contentious issue in the Bill.¹² He confirmed that Conservative members would be given a free vote on those issues relating to public health.¹³ He said that the Conservative health team agreed with the Government, that more should be done to stop smoking, particularly among the young, but measures had to be supported by the evidence. He said that the Conservatives would call for two new measures to be included in the Bill. First, a ban of tobacco vending machines from public areas of licensed premises. Second, a ban on proxy purchasing of tobacco products, to bring tobacco inline with alcohol where it is already an offence to buy or attempt to buy alcohol on behalf of an individual aged 18 years or younger.¹⁴

Speaking for the Liberal Democrats, Sandra Gidley criticised the absence of a comprehensive tobacco strategy which meant that they were being asked to consider what appeared to be a random set of initiatives.¹⁵ Rather than introduce new measures, she said that more should be done to tighten the existing law.¹⁶ She also called for: greater penalties for shopkeepers who sell tobacco to underage people; an outright ban on tobacco vending machines; and for the issue of tobacco smuggling to be properly addressed.¹⁷ In respect of tobacco displays at point of sale, Sandra Gidley argued that a more compromising approach should be adopted, through the introduction of plain packaging.¹⁸

3 Summary of Committee Stage Debates

The Bill was programmed to have 8 committee sittings, beginning on Tuesday 16 June and ending on Thursday 25 June 2009. All sittings were held.

In the passages quoted below, Mike O'Brien and Gillian Merron gave the Government's views; Stephen O'Brien and Mike Penning spoke for the Conservatives, Sandra Gidley and

⁸ HC Deb 8 June 2009 cc550-551

⁹ HC Deb 8 June 2009 c548

¹⁰ HC Deb 8 June 2009 cc551-552

¹¹ HC Deb 8 June 2009 c551

¹² HC Deb 8 June 2009 c560

¹³ HC Deb 8 June 2009 c561

¹⁴ HC Deb 8 June 2009 c561

¹⁵ HC Deb 8 June 2009 c573

¹⁶ HC Deb 8 June 2009 c573

¹⁷ HC Deb 8 June 2009 cc574-575

¹⁸ HC Deb 8 June 2009 c574

John Pugh for the Liberal Democrats. The text of each topic begins with a very brief summary of the Bill's provisions.

3.1 The NHS Constitution

The Bill: The Bill requires NHS bodies to have regard to the Constitution in performing NHS functions. It sets out duties of the Secretary of State in relation to the production and publication of the Constitution and its Handbook, including duties to review and revise them. It also requires the Secretary of State to publish and lay before Parliament every three years a report on the impact of the Constitution. The Constitution and its Explanatory Handbook are not directly part of the Bill. They were published as separate documents in January 2009.

Committee Stage: All Parties were generally in support of the NHS Constitution despite particular concerns and the Conservatives' expressed policy in favour of an independent NHS Board. No amendments were passed but three, moved by the Conservatives, were pressed to a division. The debates on the Constitution were held during the first and second sittings on 16 June 2009.¹⁹ Those leading up to the three divisions are described below.

Parliamentary Approval and Status of the Constitution

The first of the three divisions on the NHS Constitution was about Parliamentary approval of the Constitution. Stephen O'Brien argued that Parliament had been sidelined. Not only had Parliament had no opportunity to debate the contents of the Constitution but the document was launched in a closed signing ceremony at No. 10, where it was given legitimacy by the hand of the Prime Minister. However, in the Lords the Government had, rightly, accepted that the guiding principles of the Constitution could not be changed except by regulations.²⁰ This meant that there was now an illogicality in the legislation; if Parliament could be invoked to change the guiding principles, then surely it should be involved to establish them. He also queried the way that the document could be enforced.

Mike O'Brien replied that the Constitution was a declaratory document whose contents had already been decided by Parliament. It was useful in itself and could also be referred to in the courts once the legislation was passed. However, the Government was not creating a whole series of new avenues in which the law could intrude. As for the question of whether Parliament needed to debate the measure, it was effectively doing so. There had been no sidelining of Parliament, which had a role in determining the legislation underpinning the constitution.

Sandra Gidley opposed the main thrust of the amendment. She said that she was worried about the attitude that both Houses of Parliament always had to approve everything. She thought that the proposed Conservative amendment provided greater rather than less potential for the Constitution to become a political football in the future, the opposite of what she thought the Conservatives intended.

The division was technically on the first of two amendments moved by Stephen O'Brien, which were debated together and which he said should be understood together. They would have removed the reference to the NHS Constitution as a document defined by its date (January 2009) and replaced it with a reference to a document approved by each House of Parliament. The amendment was defeated: Ayes 5 (Conservatives); Noes 8 (Labour). The two Liberal Democrat Members of the Committee did not vote.²¹

¹⁹ PBC 16 June 2009 c4-82

²⁰ Library Research Paper 09/48 describes the Bill's passage through the Lords.

²¹ The debate leading up to the division was in PBC Deb 16 June c4-16

NHS Principles (NHS Plan 2000 version) should be listed on the face of the Bill

The second division was about putting the core principles of the NHS onto the face of the Bill. The debate was not only about obtaining Parliamentary scrutiny of the principles in the NHS Constitution but also about which set of principles should be used.

Stephen O'Brien argued that the NHS Plan set out 10 NHS core principles but the Government had "chipped away" at them since then. Several of the Plan's core principles were not listed in the NHS Constitution. In particular: *public funds for healthcare will be devoted solely to NHS patients* had been replaced by *public funds for healthcare will be devoted solely to the benefit of the people that the NHS serves*; *the NHS will respond to different needs of different populations* had fallen off the agenda in such specific terms; *the NHS will support and value its staff* had been ditched; and the phrase *health inequalities*, which had been specifically and explicitly addressed in the Plan, did not appear in the Constitution's core principles.

Responding for the Government, Mike O'Brien, said that he could reassure the Committee that no principles from the NHS Plan had gone missing from the Constitution. Where they did not appear as principles, they were reflected elsewhere in the Constitution, either as pledges or as rights. The consultation document issued in summer 2008 specifically explained how each of the 10 NHS Plan principles had been incorporated into the Constitution.

Sandra Gidley supported the Conservatives on this issue.

The division was on an amendment (debated with two related amendments) that contained the NHS principles as listed in the *NHS Plan 2000*.²² The amendment was defeated Ayes: 7 (Conservatives and Liberal Democrats); Noes: 8 (Labour).

Impact of the Handbook on NHS Services

The third division was on an amendment that would have enabled the review of the NHS Handbook, which is due to take place in three years time, to address its impact on NHS services. The proposed amendment mentioned in particular dentistry, audiology and podiatry. Stephen O'Brien, who moved the amendment, explained that he had chosen three areas in which Government had "consistently underperformed". (This was taken with an amendment about cost savings resulting from the Constitution and one about the bodies to be consulted when the Handbook and Statement of accountability are reviewed.)

In his response Mike O'Brien defended the Government's record on the three areas concerned. He also mentioned, in response to one of the related amendments, that the total cost from the inception to the completion of the Constitution was just under £1 million.

Sandra Gidley expressed doubts about the amendment.

The amendment was defeated: Ayes: 5 (Conservatives); Noes: 9 (Labour and Liberal-Democrat).²³

Other issues raised:

A number of other amendments were moved but none was successful. Issues raised included:

²² The debate was in PBC on 16 June c17-26. The division was later; PBC 16 June c50.

²³ PBC 16 June 2009 c73-78.

- The status of the Constitution²⁴
- Status of the Handbook and Statement of Accountability²⁵
- Independence of the NHS, including the Conservative argument for an independent NHS Board;²⁶
- To whom the NHS Constitution applies;²⁷
- Definition of NHS services;²⁸
- Availability of the NHS Constitution in formats accessible to people with disabilities;²⁹
- Revision of the Constitution whenever it became inconsistent with legislation;³⁰
- Review of the NHS Constitution after one year;³¹
- The role of Local Involvement Networks (LINKs) in relation to the Constitution;³²
- The definition of carers in the Bill;³³
- The Statement of Accountability and whether it should be treated in the same way as the Handbook;³⁴
- Timing of the reports on the NHS Constitution.³⁵

3.2 Quality Accounts

The Bill: The Bill requires all healthcare providers working for the NHS to publish a Quality Account once a year. The Bill does not itself prescribe what information is to be contained in a Quality Account but makes provision for Regulations to do so. It also enables regulations to be made exempting bodies from all or parts of the requirements relating to publishing a Quality Account. The Bill contains various such requirements; for example, corrections must be made if the Care Quality Commission or a Strategic Health Authority points them out and Quality Accounts must be made available to any person requesting a copy.

Committee Stage: All Parties supported the provisions relating to Quality Accounts. A number of Conservative amendments were moved but these were mostly probing amendments, made within a framework of support for the provisions. The Liberal Democrats also supported the provisions. But there were some concerns, including a general one about lack of detailed information about what this new form of data would look like. There were no

²⁴ PBC 16 June 2009 c26-38

²⁵ PBC 16 June 2009 c41-44

²⁶ PBC 16 June 2009 c44-49

²⁷ PBC 16 June 2009 c50-55

²⁸ PBC 16 June 2009 c55

²⁹ PBC 16 June 2009 c56-59

³⁰ PBC 16 June 2009 c59-60

³¹ PBC 16 June 2009 c61-62

³² PBC 16 June 2009 c63-67

³³ PBC 16 June 2009 c67-70

³⁴ PBC 16 June 2009 c72-3

³⁵ PBC 16 June 2008 c79-81

divisions relating to Quality Accounts and no amendments were made. The debates on them took place during the third and part of the fourth sittings of the Committee on 18 June 2009.³⁶

Issues raised included:

- Widening the scope of the Quality Accounts;³⁷
- Which organisations would be required to publish Quality Accounts;³⁸
- Means of publication (e.g. on a website) and whether publication could be combined with annual reports;³⁹
- The role of the Care Quality Commission and of LINKs in the validation or correction of Quality Accounts;⁴⁰
- Consultation on the development of Quality Accounts;⁴¹
- Whether Quality Accounts would be published as league tables;⁴²

3.3 Direct Payments

The Bill: The Bill makes provision for the introduction of Direct Payments. These are payments made directly to a patient (or a nominated person) for purchasing health care services. The Bill requires that they be made only with the patient's consent and only through pilot schemes. It does not introduce the pilot schemes directly but makes provision for Regulations to empower the Secretary of State to do so. It makes various provisions about coverage, terms and conditions etc and also provides for decisions about the future of Direct Payments following a review of pilot schemes by the Secretary of State.

Committee Stage: Both the Conservatives and the Liberal Democrats supported the provisions on Direct Payments. The Conservatives said that they had been calling for them since 2004. The Liberal Democrats said that they had always supported them in social care and very much welcomed them in health care. No amendments were passed but there were two divisions on amendments moved by the Conservatives. The debates on Direct Payments took place on 23 June 2009 during part of the fourth and part of the fifth sittings.⁴³

Human Rights

The first division was on an amendment moved by the Conservatives designed to ensure that healthcare provided under Direct Payment arrangements constituted a public function for the purposes of section 6 of the *Human Rights Act 1998*.

Stephen O'Brien, who moved the amendment, was especially concerned about cases where a patient might commission a type of care, or care from a type of provider, that was unusual. Sandra Gidley said that she supported the amendment.

³⁶ PBC 18 June 2009 c85-128

³⁷ PBC 18 June 2009 c85-93 and 99

³⁸ PBC 18 June 2009 c93-96

³⁹ PBC 18 June 2009 c99-103

⁴⁰ PBC 18 June c103-111

⁴¹ PBC 18 June c111-112

⁴² PBC 18 June 2009 c112-113

⁴³ PBC 18 June 2009 c128-148 and 23 June c151-167

Mike O'Brien responded that the Secretary of State's duty to provide a comprehensive and free health service under the *National Health Service Act 2006* was a core public function. The Government considered that, when providing services in fulfilment of that duty, independent providers of NHS-funded health care were carrying out public functions. The Government did not consider that any distinction could be drawn between the situation where the Secretary of State directly entered into a contract with an independent provider of health services - as permitted by section 12 of the *NHS Act 2006* – and the current situation, where the patient entered into a contract with an independent provider of health care services under the proposed legislation.

The amendment was defeated. Ayes 5 (Conservatives and Liberal Democrat); Noes 9 (Labour).⁴⁴

Parliamentary Scrutiny of Regulations

The second division was about bringing regulations about Direct Payments (those under New Clause 12B) under the affirmative resolutions procedure. Stephen O'Brien, who moved the amendment, argued that the affirmative resolution procedure was necessary in order to enable Parliament to have a chance to debate the substance of the Direct Payments pilot schemes.

Mike O'Brien gave the Committee the assurance that any large-scale decision about national roll-out or not proceeding with Direct Payments would come back under the affirmative resolutions procedure but the detailed regulations about the rules would be subject to the negative resolutions procedure after a 12-week consultation. He argued that many of the rules would be very detailed and would probably have to be amended in the light of the pilots. Applying the affirmative procedure would quite likely clog up the House for a significant period of time.

The amendment was defeated: Ayes: 5 (Conservatives); Noes: 10 (Labour and Liberal Democrats)

Other issues Raised

The Conservatives and Liberal Democrats each moved a number of other amendments. None was successful.

Issues relating to Direct Payments raised during these debates included those listed below. Apart from the first one they were all raised during the same debate in the fourth sitting when a large number of amendments were taken together.⁴⁵

- The extent to which patients would genuinely be empowered to commission their own care;⁴⁶
- The balance of risk between patient autonomy and accountability for the use of public funds;
- The position of carers;

⁴⁴ PBC 18 June 2009 c131-133

⁴⁵ The issues are listed in the order in which they moved and introduced -except for Sandra Gidley's amendment, which was taken at the end. The debate during which these issues were raised, including the Minister's reply took place during the fourth sitting, PBC 18 June 2009 c133-148.

⁴⁶ PBC 18 June 2009 c128131

- The notice period for withdrawing Direct Payments;
- The relationship between Direct Payment and Top-ups;
- Whether PCTs would be able to keep any savings and whether they would be subsidised for any loss;
- Why urgent care is not being included in the piloting of direct Payments;
- The responsibilities of a patient as employer;
- Community services and tariff payments;
- Prisoners;
- Complementary therapies;
- Purchase of care across national borders;
- The right of a patient to refuse a Direct Payment in practice (moved by Sandra Gidley).

During the fifth sitting there were further amendments and among the issues raised were the following:

- Appeals and overpayments;⁴⁷
- Duration of pilots;⁴⁸
- Evaluation of the pilots and their impact on health inequalities;⁴⁹
- The powers in the Bill for provisions in the *NHS Act 2006* to be amended, modified or repealed by order (in new section 12C);⁵⁰
- The power to commission support services;⁵¹
- Jurisdiction of the Health Service Commissioner.⁵²

3.4 Innovation Prizes

The Bill: The Bill enables the Secretary of State to award prizes to promote innovation in the provision of health services.

Committee Stage: The brief debate on innovation prizes was during the fifth sitting on 23 June.⁵³ There were no divisions. A number of amendments were moved but none was passed. Issues raised included:

- How widely available the prizes would be, their scope and whether they could be paid in instalments;⁵⁴

⁴⁷ PBC 23 June 2009 c151-154

⁴⁸ PBC 23 June 2009 c154-155

⁴⁹ PBC 23 June 2009 c155-160

⁵⁰ PBC 23 June 2009 c160-162

⁵¹ PBC 23 June 2009 c162-3

⁵² PBC 23 June 2009 c163-165

⁵³ PBC 23 June 2009 c167-177

- The role of the committee providing advice about the awarding of prizes.⁵⁵

3.5 Trust Special Administrators

The Bill: The Bill provides for the appointment of a Trust Special Administrator to take over, for a limited period, the functions of an NHS Trust, a de-authorised NHS Foundation Trust, or the provider functions of a Primary Care Trust.

Committee Stage: There was a brief debate on Trust Special Administrators during the fifth sitting on 23 June 2009.⁵⁶ There were no divisions. A number of amendments were moved but none was passed. Issues raised included:

- The criterion for the Secretary of State to appoint a Trust Special Administrator, in particular whether it should be necessary for the NHS or just “appropriate” – the latter being the Bill’s wording;⁵⁷
- Whether staff should be consulted before a Trust Special Administrator is appointed;⁵⁸
- The timing of the Trust Special Administrator’s report to Parliament.⁵⁹

3.6 Suspension of NHS and Other Health Appointments

The Bill: The Bill would enable the Secretary of State to suspend and temporarily replace chairs and other members of certain NHS and other health bodies.

Committee Stage: There was a brief debate about powers of suspension during the fifth sitting on 23 June 2009,⁶⁰ which consisted of numerous amendments proposed by the Conservatives, on which there were very brief exchanges between the mover and Mike O’Brien, the Government spokesman. There were no divisions and no amendments were passed. A number of the amendments moved related to specific health bodies. More general issues raised included:

- Guidance about the use of these powers, including guidance about appeals;⁶¹
- Safeguards against the Secretary of State’s powers of suspension;⁶²
- The degree to which the provisions are retrospective.⁶³

3.7 Tobacco Control

The Bill: The Bill would give power to the Secretary of State, the Welsh Ministers and the Department of Health, Social Services and Public Safety in Northern Ireland (DHSSPSNI) to make separate regulations on when and where tobacco specialist tobacconists may be exempt from the legislation banning tobacco advertising.

The Bill would (subject to certain exclusions) prohibit the display of tobacco products at the point of sale in the course of a business (i.e. in shop gantries). The Bill would also amend

⁵⁴ PBC 23 June 2009 c167-173

⁵⁵ PBC 23 June 2009 c173-177

⁵⁶ PBC 23 June 2009 c177-182

⁵⁷ PBC 23 June 2009 c177-180

⁵⁸ PBC 23 June 2009 c180-181

⁵⁹ PBC 23 June 2009 c181-182

⁶⁰ PBC 23 June 2009 c177-182

⁶¹ PBC 23 June 2009 c183-185

⁶² PBC 23 June 2009 c187-190

⁶³ PBC 23 June 2009 c194

the *Children and Young Persons (Protection from Tobacco) Act 1991* and the *Children and Young Persons (Protection from Tobacco) (Northern Ireland) Order 1991* to give power by regulations to the Secretary of State, the Welsh Ministers and the DHSSPSNI to prohibit or impose requirements on the sale of tobacco products from vending machines.

It is the Government's intention that measures to remove tobacco displays would not come into force until 2011 for larger shops and 2013 for smaller businesses. This is to allow smaller retailers time to adjust and refit their shops. Restrictions on vending machines would come into force in 2011, and their effectiveness in reducing underage sales would be reviewed over at least two years to see whether a full ban would be necessary and proportionate.

Committee Stage: The tobacco control provisions contained in Part 3 of the Bill were considered on 23 June 2009 during the sixth sitting of the Committee. In addition, two new tobacco clauses were considered on 25 June 2009 during the eighth sitting of the Committee.

Both opposition parties welcomed the underlying principle of the Bill's tobacco controls; the need to reduce underage smoking and to help those wanting to quit smoking. However, they questioned the strength of the Government's evidence. Mike Penning, Shadow Minister for Health, reiterated that Conservative Members would be given a free vote on the tobacco control provisions.⁶⁴ John Pugh thought that the tobacco provisions were probably best discussed on the Floor of the House.⁶⁵ Consequently, amendments debated in Committee were withdrawn and not pressed to a vote.

Tobacco displays at point of sale

In speaking to amendment 89, Mike Penning said it was a probing amendment on the statutory definition of a 'requested' display of a tobacco product. He argued that as currently drafted, clause 21 was too vague and required further definition.⁶⁶ He also questioned whether the legislation would work in practice; he was concerned that clause 21 would be too onerous on retailers. He said that evidence published to date was insufficient to support a ban on point of sale tobacco displays. He was also concerned that such a prohibition would encourage the black market for cigarettes.⁶⁷ In supporting the amendment, John Pugh thought that the definition of 'requested display' as an entity in law was obscure.⁶⁸

Gillian Merron defended the Government's evidential case in support of clause 21, drawing on a range of research studies included in the Cancer Research UK's 2008 report. She said that the requested display provision was needed to make sure that people could see a legal product before they bought it, but reiterated that the Government would use regulations under new section 7B(3) to make sure that no offences would be committed when shopkeepers sell, or show, tobacco to a customer and other people see it. She also confirmed that the Government was working closely with retail organisations such as the Association of Convenience Stores, the National Federation of Retail Newsagents, the Local Authority Co-ordinators of Regulatory Services, and others, to develop practical and workable regulations, which would keep the cost of covering up tobacco displays to a minimum.⁶⁹

⁶⁴ PBC 23 June 2009 c.195

⁶⁵ PBC 23 June 2009 c.196

⁶⁶ PBC 23 June 2009 cc.195-196

⁶⁷ PBC 23 June 2009 c. 195

⁶⁸ PBC 23 June 2009 c.196

⁶⁹ PBC 23 June 2009, c.198

In withdrawing the amendment, Mike Penning made it clear that he would return to the issue on Report. The Opposition's other amendment, which sought to expunge clause 21 altogether from the Bill, was not selected.

Tobacco vending machines

Five amendments were tabled by the Opposition in respect of clause 22 and the restrictions, or prohibition, of tobacco vending machines. However, only amendment 91 was actually debated in Committee and subsequently withdrawn without division. The other four amendments were either not called or not moved.

Amendment 91 sought to compel the Governments of England and Wales to regulate vending machines but was, to all intents and purposes, a probing amendment. Mike Penning said that tobacco was a legal product and as such, people should have the right to purchase cigarettes from a vending machine but they should not be used by children. He acknowledged that some 22 countries in Europe had prohibited the sale of tobacco from vending machines, but felt that such an approach was too draconian. The tobacco and vending machine industries should be given the opportunity, with the technology available today, to come forward with proposals.⁷⁰

John Pugh argued that the amendment simply did not go far enough. He said that both in Committee and on Report the Liberal Democrats would support the British Heart Foundation's attempt to eradicate tobacco vending machines altogether.⁷¹

Gillian Merron reiterated the Government's intention to introduce new regulations on vending machines from October 2011 to ensure that under-age sales are prevented. She said that draft regulations for consultation would be ready as soon as possible.⁷² The probing amendment was withdrawn.

Proxy purchasing

Mike Penning and Stephen O'Brien moved new clause 1 to make it an offence to purchase tobacco products on behalf of children (known as 'proxy purchasing'). Mike Penning argued for parity between alcohol and tobacco in the way that the law treats proxy purchasing.⁷³

Sandra Gidley said that the Liberal Democrats had great sympathy for the spirit of the amendment, believing action had to be taken since most children receive their cigarettes from black-market, under-the-counter sources. However, they had some concerns that the amendment did not go far enough.⁷⁴

Whilst the Minister of State, Gillian Merron, agreed that it was unacceptable for children to obtain cigarettes from other people, she thought that the proposed new clause would not address the problem. She argued that the clause would be both difficult to enforce and ineffective, since it would only apply when an individual specifically purchased tobacco on behalf of a child. It would not, for example, cover cases where friends share a packet of cigarettes or parents give a child a cigarette from their own pack.⁷⁵ However, she confirmed

⁷⁰ PBC 23 June 2009 c.200

⁷¹ PBC 23 June 2009 c.202

⁷² PBC 23 June 2009 c.203

⁷³ PBC 25 June 2009 c.279

⁷⁴ PBC 25 June 2009 c.280

⁷⁵ PBC 25 June 2009 c.s280-281

that she would examine the full range of effective measures that the Government could take in its tobacco control strategy.⁷⁶

Due to a formality, it fell to the Committee to decide that the new clause should not be read a second time.⁷⁷ Mike Penning said that if the Government did not table its own amendment on proxy purchasing, he would move a similar amendment on Report.⁷⁸

It is relevant that during the Bill's passage through the House of Lords, a similar amendment on proxy purchasing had been moved by Earl Howe in Grand Committee.⁷⁹ That amendment had also been withdrawn.

Plain packaging

Sandra Gidley and John Pugh moved new clause 10, to impose plain packaging for all tobacco products. Under the new clause the Secretary of State would have the power to make regulations to restrict the use of branding, including the shape and colour of tobacco products and their packaging. In speaking to the amendment, Sandra Gidley argued that tobacco packaging was an important part of tobacco marketing, communicating attitudes such as style and glamour to the young would-be smoker – in short, it was a form of advertising. She referenced the fact that Lord Patel had twice moved a similar amendment in the House of Lords, during Grand Committee and again on Report. On both occasions the amendment was withdrawn but not before it had provoked a great deal of debate.⁸⁰

Gillian Merron gave a commitment on the Government's behalf to develop the evidence on plain packaging and keep the issue of tobacco packaging under review.⁸¹ New clause 10 was withdrawn.

Another new clause on tobacco smuggling was tabled by Mike Penning and Stephen O'Brien but was not selected.

3.8 Pharmacy

The Bill: The Bill makes three broad provisions relating to pharmacy: i) new arrangements for entry to a Primary Care Trust's list of NHS pharmaceutical services providers, which would include a requirement for a PCT to carry out a pharmaceutical needs assessment for its area and for it to have regard to this assessment when deciding whether to grant an application to be on its list; ii) new powers for PCTs to issue notices and penalties (though regulations); and iii) a new power for PCTs to provide pharmaceutical services themselves in certain circumstances.

Committee Stage: The pharmacy provisions were debated during the fifth sitting on 23 June 2009.⁸² There was one division – on the issue of rural needs. Various other amendments were moved but, like the one on rural needs, none was passed.

⁷⁶ PBC 25 June 2009 c.283

⁷⁷ PBC 25 June 2009 c.285

⁷⁸ PBC 25 June 2009 c.283

⁷⁹ HL Deb 9 March 2009 cc403-404GC

⁸⁰ HL Deb 11 March 2009 cc440-152GC and HL Deb 6 May 2009 cc603-607

⁸¹ PBC 25 June 2009 c.306

⁸² PBC 23 June 2009 c2003-228

Rural needs

Stephen O'Brien moved the amendment that led to the division. He argued that regulations should be able to stipulate different criteria for urban and rural areas (in relation to the pharmaceutical needs assessment that the Bill would require PCTs to carry out for their areas). He referred in particular to the "extensive use of dispensing doctors" made by people in rural areas – an issue that had been raised at greater length in the immediately preceding debate in Committee that day (on different amendments relating to pharmaceutical needs assessments). Mike O'Brien, speaking for the Government, agreed that there were differences between urban and rural areas but argued that the amendment moved by the Conservatives would create a two-tier assessment system, which he did not think was the right approach.

The amendment was defeated: Ayes: 5 (Conservatives and Liberal Democrat); Noes: 8 (Labour).⁸³

Other issues raised

Various issues relating to drawing up a pharmaceutical needs assessment were raised, including:

- Specifically including local need for dispensing doctors; consultation with patients, LINKs and members of the public; whether there should be pilot schemes before pharmaceutical needs assessments are rolled out nationally; and appeals by pharmaceutical service providers against the content of a needs assessment.⁸⁴

A number of issues were raised in relation to applications to be on a PCT's list of NHS pharmaceutical services providers. These included:

- Whether a PCT can grant applications to provide services from privately arranged services or aspirational services that the PCT is not in a position to commission (an issue raised by the Pharmaceutical Services Negotiating Committee);⁸⁵
- Patient consultation;⁸⁶
- Compliance with the electronic prescription service;⁸⁷
- Whether PCTs should be obliged to consider the impact that granting an application would have on existing services;⁸⁸

In addition amendments were moved, and there was a debate, on:

- the provisions relating to penalties for a services provider's breach of arrangements with a PCT;⁸⁹
- the provisions to enable PCTs themselves to provide pharmaceutical services – during the debate on this issue Mike O'Brien said that the Government had no intention of enabling PCTs to have a long-term role in providing drugs directly; the

⁸³ PBC 23 June 2009 c210-211

⁸⁴ PBC 23 June 2009 c 203-210

⁸⁵ PBC 23 June 2009 c212-215

⁸⁶ PBC 23 June 2009 c215-216

⁸⁷ PBC 23 June 2009 c216-220

⁸⁸ PBC 23 June 2009 c220-223

⁸⁹ PBC 23 June 2009 c223-225

aim of the provision was to enable PCTs to provide services in special situations, such as in an outbreak of pandemic flu or when there was no suitable alternative provider.⁹⁰

3.9 Complaints about privately arranged adult social care

The Bill: The Bill would extend the remit of the Commission for Local Administration, allowing it to investigate complaints about adult social care which is privately arranged or funded.

Committee Stage: The debates on the new complaints system took place during the Committee's sixth and seventh sittings on 23 and 25 June 2009 respectively. There were no divisions. A number of amendments were moved by the Conservatives but subsequently withdrawn.

Issues raised included:

- Widening the remit of the Commission to cover complaints about children's social care;⁹¹
- Which representatives should be able to complain on behalf of a service-user;⁹²
- Extending the time limit of 12 months in which a complaint can be made to a Commissioner;⁹³
- Whether every investigation conducted by a Commissioner should be in private;
- Providing the Commission with a discretion to inform the Care Quality Commission, the local authority, the police and the Secretary of State about immediate and urgent concerns in relation to a complaint.⁹⁴
- Whether, following an investigation, the Commission should have a discretion to make recommendations to other persons including the Care Quality Commission, the local authority, the Secretary of State, and the Department of Health.⁹⁵
- Whether the Member of Parliament in whose constituency the complaint relates should be sent the Commissioner's statement.⁹⁶

3.10 Private Patient Cap for NHS Foundation Trusts

The Bill: The Bill as introduced into the House of Lords in January 2009 did not contain any provisions relating to the "private patient cap". A new clause voted into the Bill during the Bill's passage through the House of Lords would have enabled the Secretary of State to create exceptions to the cap. (This limits the amount of income from private patients that NHS Foundation Trusts are allowed to earn to the proportion of private to public income that

⁹⁰ PBC 23 June 2009 c225-228

⁹¹ PBC 23 June 2009 c228-223

⁹² PBC 23 June 2009 c238-239

⁹³ PBC 23 June 2009 c239-241

⁹⁴ PBC 25 June 2009 c250-253

⁹⁵ PBC 25 June 2009 c253-255

⁹⁶ PBC 25 June 2009 c255-256

they received in the base year 2002-03). The Government was opposed to the new clause but said that it was committed to reviewing the cap in the future.⁹⁷

Committee Stage: The clause relating to the private patient cap for NHS Foundation Trusts was removed from the Bill following a division on *clause stand part* during the eighth (and last) sitting. Before that there was a division on an amendment moved by the Conservatives that would have strengthened the provision in the clause. The amendment and *clause stand part* debate were taken together and the debate was relatively short.⁹⁸

The amendment, moved by Stephen O'Brien, would have required the Secretary of State to make provision by regulations for exceptions to the private patient cap (as distinct from only enabling him or her to do so). (The amendment would have substituted a *must* for a *may*.) Stephen O'Brien argued that the cap was iniquitous, limiting Foundation Trusts arbitrarily to the proportion of private to public income that they received in the base year 2002-03, the year before the first Foundation Trusts were authorised.

Sandra Gidley said that she supported the amendment.

Mike O'Brien explained the Government's position: It was not iniquitous to limit the amount of private funding that trusts could access; the question was how that limit should be put in place and where it should be. Thus there were significant disagreements between the Conservative Front Bench and the Government on the issue. The Government did accept that there was an issue that needed to be addressed. But the clause was not the answer. An exemption-based system would not remove the cap's underlying rule that the private income of an NHS Foundation Trust should be limited to levels set in 2002-03. It was the underlying rule that needed to be examined.

The divisions were taken one after the other. Voting on the amendment was Ayes: 6 (Conservatives and Liberal Democrat); Noes: 9 (Labour). On *clause stand part*, the voting was reversed.

3.11 Disclosure of Information by Her Majesty's Revenue and Customs

The Bill: The Bill would allow HMRC to disclose, in an anonymised form, information collected for income tax purposes relating to GPs' and dental practitioners' earnings and expenses.

Committee Stage: The clause allowing HMRC to disclose in an anonymised form information relating to GPs' and dental practitioners' earnings and expenses was briefly debated during the eight sitting. There were no divisions and no amendments were made. A number of Conservative amendments were proposed but none was successful.⁹⁹

The proposed amendments dealt with the appropriate level of accountability and public scrutiny as well as issues of confidentiality, in particular whether an individual could be identified.

Mike O'Brien gave an assurance on behalf of the Government that the process of anonymisation would ensure that there was "no possibility whatsoever" of any details or information being linked to any individual or practice. The Conservatives also proposed introducing tighter criminal sanctions for disclosure of such information but the Government argument was that, in the form proposed, the Conservative amendment would have

⁹⁷ HL Deb 12 May 2009 c940

⁹⁸ PBC 25 June 2009 c265-271

⁹⁹ PBC 25 June 2009 c271-277

prevented information about earnings and expenses being made available, which was the whole point of the clause.

3.12 Other Issues

Various new clauses were proposed but none was successful. They included the following topics:

- Cross border pharmaceutical services;¹⁰⁰
- Charges to overseas visitors;¹⁰¹
- Accessible information (NHS information and accessibility for disabled patients);¹⁰²
- Proxy purchasing of tobacco products;¹⁰³
- Plain packaging for tobacco products;¹⁰⁴
- Decriminalisation of pharmaceutical errors;¹⁰⁵
- Nicotine replacement therapy.¹⁰⁶

¹⁰⁰ PBC 25 June 2009 c285-288

¹⁰¹ PBC 25 June 2009 c288-297

¹⁰² PBC 25 June 2009 c297-300

¹⁰³ PBC 25 June 2009 c.270-283 see section 3.7 of this Paper

¹⁰⁴ PBC 25 June 2009 c300-306

¹⁰⁵ PBC 25 June 2009 c306-309

¹⁰⁶ PBC 25 June 2009 c309-310

Appendix 1 – Membership of the Committee

Chairmen: Mr Edward O'Hara, John Bercow

Clerk: Mr Stanton

16 Members

Creagh, Mary

(Wakefield)

Cunningham, Mr Jim

(Coventry South)

Gidley, Sandra

(Romsey)

Hall, Patrick

(Bedford)

Horam, Mr John

(Orpington)

Merron, Gillian

(Lincoln)

Naysmith, Dr Doug

(Bristol North West)

O'Brien, Mr Mike

(North Warwickshire)

O'Brien, Mr Stephen

(Eddisbury)

Penning, Mike

(Hemel Hempstead)

Pugh, Dr John

(Southport)

Slaughter, Mr Andy

(Ealing, Acton and Shepherd's Bush)

Turner, Mr Andrew

(Isle of Wight)

Turner, Dr Desmond

(Brighton, Kemptown)

Waltho, Lynda

(Stourbridge)

Wilson, Mr Rob

(Reading East)

Appendix 2 - Memoranda for the Public Bill Committee

Reference No.	Organisation	Publication Date
H 01	Imperial Tobacco UK (ITUK)	16 June 2009
H 02	Association of Convenience Stores (ACS)	16 June 2009
H 03	Tobacco Manufacturers' Association (TMA)	16 June 2009
H 04	The Imported Tobacco Products Advisory Council	16 June 2009
H 05	Cancer Research UK	16 June 2009
H 06	Tobacco Retailers Alliance	16 June 2009
H 07	The British Heart Foundation	16 June 2009
H 08	Action on Smoking and Health (ASH)	16 June 2009
H 09	British Retail Consortium (BRC)	18 June 2009
H 10	Japan Tobacco International (JTI)	23 June 2009
H 11	British Medical Association (BMA)	23 June 2009
H 12	Sinclair Collis	23 June 2009
H 13	National Federation of Retail Newsagents (NFRN)	23 June 2009
H 14	The National Association of Cigarette Machine Operators (NACMO)	25 June 2009