4.19pm 5.57 pm

Local Government and Public Involvement in Health Bill

July 23rd 2007

8.47 pm

House again in Committee.

Clause 223 [*Arrangements under section 222(1)*]:

[*Amendment No. 238LF not moved.*]

Column 642

Earl Howe moved Amendment No. 238M:

> Clause 223, page 155, line 24, at end insert "nor a provider of local care services"

The noble Earl said: The purpose of this amendment is very simple. It would obviate the difficulty of having, as a host organisation, a person or body directly concerned with providing local care services. Why should that situation pose a difficulty? The difficulty, of course, is that it would present a financial conflict of interest. One activity performed by a LINk will be to contribute to commissioning decisions about local care services. Another activity will be to scrutinise those services. If a host is an entity that is being scrutinised, if it is a provider of services that the LINk wishes to criticise publicly or if it is an organisation that is competing to provide care services that the LINk is assessing, it would be impossible for that entity to provide impartial support to the LINk. The conflict of interest at the very least puts the host in a difficult position. The host might, for example, wish to influence a commissioning decision in its own favour, or provide critical reports on a rival service provider, but would be constrained from doing so by virtue of its role as a host. Similarly, the host, as the secretariat for a LINk, could find itself accidentally in possession of information that might be commercially sensitive and directly useful to it; for example, information relating to a rival service provider. It surely cannot be appropriate for that situation to arise.

The Minister may well talk to us about Chinese walls being created within a host organisation. I want to hear more about what these walls would look like before being reassured that there might be ways around the problems I have just outlined. I am concerned that unless the issue is addressed we are storing up problems for both LINks

and host organisations, which would be unfair for them. This amendment provides a simple way forward.

In this group I shall also speak to Amendments Nos. 238VA, 238VCA and 238ZZAA. Clauses 224 and 225 cover the duties of service providers to respond to and allow entry to local involvement networks. When we look at who falls within the definition of service provider, the list is surprisingly short. Why is that? Why does it not include, for example, independent treatment centres where NHS patients are treated? Why should it not include a private care home where individuals are being looked after at the expense of a local authority? There is a provision in each of the clauses to make regulations. Can the Minister say whether regulations will bring such service providers within the scope of these statutory duties?

Naturally, this is a probing amendment. I fully appreciate that care homes present particular sensitivities. I am not suggesting that all parts of a care home should be open to members of a LINk to enter as a right. The privacy of residents must be respected. I would be glad if the Minister could tell us what exactly the intention is as regards care homes in the context of the duties contained in these two clauses. In particular, what would be the role and remit of a LINk outside the boundaries of its own local authority, when services had been commissioned out-of-area?

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Amendment No. 238VCA contains an unfortunate double misprint. I speak to the amendment only in passing because the noble Baroness, Lady Neuberger, will be covering the matter of commissioning in a substantive way. For the benefit of the Committee, the word "proscribed" should be "prescribed" and the phrase "by regulations" should read "in regulations." The amendment, if taken with Amendment No. 238SB, is otherwise self-explanatory. I beg to move.

Baroness Neuberger: I support everything that the noble Earl, Lord Howe, has said. I shall add a few words on Amendment No. 238SB. This deals with the matter of commissioners, to which the noble Earl referred. The reason for this amendment is that we are, as the Minister has already said, in a fast-moving scenario in terms of health service structures. This legislation is all about service providers, but commissioners make many of the decisions. Some would say that they make all the decisions. Commissioners are, themselves, changing. We will, after all, see more GP-practice-based commissioning, where GPs are also providers. PCTs commission, but are also providers. Commissioners commission from independent treatment centres and voluntary sector organisations, which often fail to respond. Unless commissioners also have a duty to respond to the LINks' concerns, this system may well be full of holes and somewhat inadequate.

This is a probing amendment to find out what the Minister thinks will be the case with commissioners. I hope the Minister will be able to reassure us that this was simply some kind of oversight.

Baroness Howe of Idlicote: I shall speak to the two amendments in my name, which are also probing amendments. In Amendment No. 238Y, after "local authority" we seek to add the words,

> "a person or body providing services to or on behalf of the National Health Service or of a local authority".

It is an attempt to gain a clearer vision of who is involved. In Amendment No. 238Z, we seek to leave out paragraph (e), which seems to give rather too much leeway to the Secretary of State by covering everything. If the Secretary of State fails to name all the service providers, he has a fall-back position. That seems a little over-heavy and I question whether it is really necessary. If it is, it tends to indicate that the issue may not have been thought through quite as fully as it should have been. I have also added my name to many of the other amendments in this group.

Baroness Andrews: These amendments raise some important issues and I am pleased to have the chance to discuss them. We have talked about the importance of the role of the host. It establishes the independence of a LINk and is vital in providing support, advice and experience according to local circumstances. I can see that there is a tension, but we think that it can be resolved and I hope to explain how. We certainly want organisations that are critically well versed in matters relating to health and social care to have the opportunity to bid for the job as a host. That is only common sense.

I understand noble Lords' anxieties about conflicts of interest. However, it will be commonplace for the organisations that are most likely to want to pitch for

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this work to be in the field. For example, Age Concern may provide bathing services under a contract with a local authority and, at the same time, it may have a contract to provide host support to a LINk. Age Concern currently provides support to PPI forums without its interests causing difficulties. We know that the current providers of support to PPI forums—the not-for-profit support organisations which have tremendous knowledge and experience—would be interested in acting as hosts. They have certainly been very interested in the story so far. However, so important do we consider this issue to be that the model contract deals with it explicitly. Indeed, the model tender requirements set out that the host will need to demonstrate that it can identify and manage any conflict of interest in delivering the contract, stating any interest that it has, and a protocol is in place to address those interests.

weak

Amendment No. 238M seeks to include providers of local care services under the list of organisations that should not be eligible. I hope that I have explained not only why we

think that they should be eligible but why they would be well placed to provide the service. Crucially, the local authority will have to take an objective and robust view as to which organisation is best able to deliver the support. We know that some organisations will wish to provide support to LINks and they may also be involved in the delivery of health and care services. We believe not that they are unsuitable but that they may be very suitable indeed. However, local authorities will have to be transparent and clear. When they discuss the relative merits of these bodies, they will have to show that they best fit the criteria. They will performance-manage the delivery. As we discussed earlier, if they fail to satisfy the contract requirements, ultimately the contract can be terminated.

There are safeguards in the process, not least because the overview and scrutiny committee is well placed to review the hosting arrangements, and the LINk will form part of the performance-management of the host. I believe that the safeguards that are built in are pretty robust. We have advice available to ensure that all organisations have a structure in place to guarantee openness and transparency. Agencies such as the NHS Centre for Involvement, the Centre for Public Scrutiny and the National Council for Voluntary Organisations can all be involved in helping to determine what will go into making an independent organisation with knowledge, sensitivity and understanding of the issues.

9 pm

Amendment No. 238V and the amendments in the name of the noble Baroness, Lady Howe, Amendments Nos. 238Y and 238Z, all address the need to expand the scope and reach of LINks to ensure that all who should be monitored by a LINk can be. They seek to change the definition of "services-provider" to include any provider of a publicly funded service. Noble Lords asked where an organisation such as a private care home fits in? These amendments would mean that independent third sector providers would be named in the Bill as bodies that have to both respond to LINks reports and recommendations and allow LINks representatives to enter and view. That is important, because LINks powers ought to be able to cut across

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the whole field, but while we agree with the principle we feel that is important to provide for it in ways that are sensitive to differences in the nature of organisations.

We are clear that independent providers should provide access and information just as public sector bodies do, but it is not our intention to place such legislative duties on the independent sector. That is not appropriate. However, we will ensure that independent providers in either health or social care comply with LINks powers by ensuring that the commissioners of services include that requirement in their contracts through directions made by the Secretary of State for Health. So, there will be accountability and responsibility in line with wider government policy not to place further statutory burdens on the independent sector—as was also the case with the current patients' forums.

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I turn to Amendments Nos. 238VA and 238ZZAA, which also seek to change the definition of "services-provider" to include the independent sector and all services commissioned within the local authority's area, even if they are provided outside the area. I can reassure the Committee that the amendments are not necessary as the activities of a LINk relate to local care services in a local authority's area. Clause 222(5) covers care services provided in the authority's area and those provided, in any place, for people from the area. So, services commissioned within the local authority's area will include those that people received outside the area where they live.

Finally, I turn to Amendments Nos. 238SB and 238VCA, on which the noble Baroness, Lady Neuberger, particularly spoke. The definition of "services-provider" is given in Clause 224(2), and it includes both commissioners and providers of health and social care, which should take care of the noble Baroness's anxiety on that point.

Earl Howe: That was a helpful reply from the Minister, for which I am most grateful. Its only disappointing aspect was that she was a little cursory in referring to the protocols that would be set up to avoid the impact of conflicts of interest where they arise. I am sure that we have sufficient time to examine the draft documents that the noble Baroness has circulated; I shall try to give them more justice than I have been able to so far. Yet these are potentially important issues, and we do not want to walk into a situation where they arise frequently. One can imagine that they might, if the host organisation was of a certain kind.

I was grateful to hear the Minister talk about the contractual obligations to be imposed on independent sector providers, which would indirectly ensure that they were exposed to the light of day as regards the powers of LINks to enter and view those sorts of premises; that clarification was helpful.

Baroness Andrews: I take the point about protocols, and I commit to writing to the noble Earl to see whether, in the time between now and Report, we can find some examples of protocols that might be being designed.

Baroness Howe of Idlicote: I very much want to read what the noble Baroness said but I still have a lingering doubt at the back of my mind about some

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areas. However admirable, and indeed they are admirable, the various organisations and the national voluntary bodies that she mentions, it could just be that the relationship between the local authority and one of these bodies was just a little too cosy and the relationship could be a little too easy. I ask the Minister to bear that point in mind.

Earl Howe: The noble Baroness, Lady Howe, makes an important point. We will wish to study carefully what the Minister has said. I am grateful to her for her offer as regards the protocols. I beg leave to withdraw the amendment.

Amendment, by leave, withdrawn.

[*Amendment No. 238N not moved.*]

Earl Howe moved Amendment No. 238P:

Clause 223, page 155, line 34, at end insert—

"(5A) The Secretary of State shall by regulations specify conditions upon which payments under subsection (5) may be made.

(5B) The conditions in subsection (5A) shall, in particular, relate to—

(a) governance arrangements, and(b) arrangements for dealing with potential conflicts of interest,

within a local involvement network."

The noble Earl said: One of the least satisfactory aspects of the Government's proposals for LINks, as has been said many times, is their vagueness and lack of tangible substance. In relation to the Bill, local involvement networks are rather like ghosts at the feast; they are invisible and barely defined in any material sense. The Government's argument, which I do not in anyway dismiss because I believe it has something genuine going for it, is that Ministers want to leave it up to LINks to decide how best to set themselves up and they do not want to be prescriptive in legislation about matters of this nature.

In another place there was a fair bit of debate about amendments designed to introduce an element of prescriptiveness on what a LINk should be and how it should be constituted. Apart from the fact that such amendments are most unlikely to commend themselves to the Minister, I was personally not convinced that this approach was the right one. I have therefore not tabled an amendment of quite that sort. Nevertheless, I remain troubled that what we are contemplating doing through the Bill is to allow structures and organisations to be set up with absolutely no means of guaranteeing that they are fit and proper bodies to be in receipt of public money. Indeed, we have no idea at all about the kinds of organisation to which the money will be going. If the legislation leaves it totally open as to what a LINk can be and how it can behave in terms of its internal operations, then I suggest we are not being responsible as legislators for the way in which the public purse is to be dispensed. There really must be a minimum set of conditions laid down before that can happen.

The Minister may well argue that all this will be dealt with in the arrangements made by host organisations and that clearly no public money will be dispensed by a host until it is satisfied that the body set up to

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represent patients and the public is fit for purpose. Of course we trust that that will be the case, but is it enough for us to leave it entirely to host organisations to sort all this out? Do we not have a responsibility to say to those host organisations, "You can work within your own parameters, but there are two or three things on which you must satisfy yourselves absolutely before parting with any public money, and on which you cannot compromise"?

A LINk has to have some recognised system of governance to receive public money. I am not saying what that system should be. There are several possible options. But there have to be appointed or elected officers and a constitution that makes it clear what the rules of the LINk are. We cannot do without those things. Somebody or some identifiable group of people has to be accountable for what the LINk does in terms of its public activities, as well as how it operates internally. I suggest that the Secretary of State should make regulations which specify simply that without being any more prescriptive or detailed. I also suggest that although it is not the business of the Secretary of State to dictate who should or should not be a member of a LINk, we have to recognise that for any organisation in receipt of public funds, considerations of propriety do matter in the way it operates internally. In particular, for an area such as this, there have to be clear ways of dealing with conflicts of interests. If literally anyone at all can be a member of a LINk it is obvious that conflicts of this kind are going to arise. They need to be dealt with in some way that is satisfactory. In other words, a LINk should not be allowed to let this issue go by default. If it does, it will fail to do those things for which it was set up, which are to represent the views of patients and the public in a fair and unbiased manner.

I need take only one example to illustrate the importance of what I am talking about. Under the Bill it is perfectly possible for a provider of local care services to be a member of a LINk. If an organisation such as BUPA, for example, whose staff are "people" under the Bill, were to be a member of a LINk at a time when it was bidding to provide health services or had already secured a contract to do so, there would need to be procedures to recognise and deal with that conflict of interest in order that the LINk's activities in relation to the bid or the contact were fair and seen to be fair. There is no single way of achieving this, although one excellent way has been suggested to me, about which I can tell the Minister later if she is interested. The point here is that conflicts of interest, whatever form they take, will inhibit arms-length, unbiased input from LINks. That has to be avoided.

This amendment is minimalist. It would bind the Secretary of State only in the sense that he would be obliged to make regulations which addressed the issues of governance and conflicts of interest without being prescriptive in either case and which made such minimum stipulations about those matters in relation to LINks as he saw fit. I beg to move.

Lord Rea: I wish to speak briefly to Amendment No. 238Q. It is self-explanatory. Its purpose is to provide independence of the host organisation and, through it, LINks from the local authority. In other

words, to use my noble friend's own words, to stop them being a creature of the local authority: he who pays the piper must not call the tune. We want this to be in the Bill so that if this direction is not obeyed the local authority will be committing an offence and can be called to account for it. I do not need to say much more. The noble Baroness knows exactly what she is going to say and we look forward to hearing it.

Baroness Neuberger: I follow on with a brief word on Amendment No. 238S. Following what the noble Earl, Lord Howe, and the noble Lord, Lord Rea, have already said, there are concerns around the Chamber about conflicts of interest and how these relationships are going to work. We have tabled an amendment which suggests that a link could have the power to direct the actions of the host in pursuance of some of the arrangements. The reason for this relates to what the Minister said earlier on, which is that the host is a servant of the LINk. How does the LINk have power over an unco-operative host? The unco-operative host may have a conflict of interest because it is already a provider of services. Does the LINk have the capacity to "fire" the host? This point was made very powerfully to me by Robin Tuck, the chairman of Kensington and Chelsea patients' forum. His view is very clear. He says that in the proper discharge of its duties, for instance, a LINk needs to commission research about what is happening on its patch. It will have to do that if it is going to make sense of what is going on. How can it do that if it does not hold the budget? The host holds the budget, but what if the host does not agree with the LINk about the need for such research, at least in part because the host is a provider of services and does not want them looked at too closely? Surely the LINk must have the power to compel the host to fund research or whatever else is required. In other words, it must be the LINk that has the power in this relationship rather than the host if the LINk is to be effective. It would be good to be given some clarification on this issue.

9.15 pm

Baroness Andrews: My noble friend is quite wrong because sometimes I do not know what I am going to say. I am departing from my note here and I hope that my officials do not fall out of the Box in horror. I shall try to follow it as much as is appropriate. These are important amendments, but I think that reluctantly the noble Earl and I shall have to disagree about them. He is wrestling powerfully with the notion of a wraithlike creature here, but I know that as we go through the amendments, things will become clearer. I can see the thinking behind the noble Earl's amendment in the context of governance and conflicts of interest, but the problem lies in the notion of imposing a structure on the LINk. No matter how tempting it is to lay down a set of critical elements of what should be in place, we remain sure that it is not appropriate in the context of what we are trying to create. It should not be for the Government or Parliament to take the responsibilities away in this area, or for any body other than a LINk to determine its governance arrangements.

The noble Earl said that everyone would have to have some form of constitutional or elected office. There may be models which are co-operatives or

where there is a slightly more fluid arrangement. The problem is that once we start prescribing governance models, we will get into the sort of detail from which it would be difficult to move. It would resemble the problems we had with the patients' forums when their functions were set out in the detail of the legislation. Every LINk will need to address different factors depending on geography, demography and local healthcare arrangements. Given that, I am afraid that regulations could hinder these processes rather than help them.

I know that this response will be disappointing to the noble Earl, so I should make it clear that I accept that the LINks will need support and guidance to enable them to come to decisions about issues such as governance and conflicts of interest. It is certainly our intention to make those resources available and to help them all we can. The nature of the negotiations that will go into settling the contract to agree the governance arrangements for LINks will have to ensure that no one single organisation can dominate. That will be part of the challenge of management, and it will be a challenge because the membership of the LINks will be wide-ranging. On the other hand, there is a strength in that. LINks will be able to accommodate special interests more readily than a patients' forum, which had a much more limited membership. Further, it is true of any statutory institution that it has to be able to manage potential conflicts of interest by ensuring that interests are recorded in accordance with standards in public life as made clear in the Nolan principles. We will provide examples of best practice to support the LINks in that context.

I know that my noble friend anticipated my response, and it is true that Amendment No. 238Q is not required. The local authority has no power to influence the activities of a host or a LINk other than through the terms of the contract. We will set out in guidance what is an appropriate role for the local authority and host, but the guidance will certainly not dictate governance arrangements, terms of reference, ways of working, priorities or programmes. The notion of independence will be very substantial and not at all wraithlike. It will be clear that the local authority cannot influence the arrangements, and the host organisation will be accountable to the local authority in terms of performance management as its contract manager for the support costs. The LINk will be accountable to the public to demonstrate the effective spend of its budget, for example.

On Amendment No. 238S, I note with interest the desire of the noble Baroness, Lady Neuberger, to put into the statute that:

> "A local involvement network shall have the power to direct the actions of H in pursuance of the arrangements under section 222(1)".

The first point to make clear is that the arrangements are of a contractual nature and will be made between the local authority and the host. Our expectation is that there will be dual accountability. It is interesting to consider the medical analogy here. The host can reject a parasite, and there is something of a duality here. On the one hand the host will be accountable to the local authority in terms of the delivery of the

contract arrangements, while on the other hand it will be accountable to the LINk for delivering support. We are setting out our expectations in this respect in the model contract and supporting guidance.

The noble Baroness has raised some interesting issues and I should like to think further about them. I am not saying that I will come back and subscribe to the scenario, but over the summer we will have an opportunity to consider some of the tensions and possibilities. With that, I hope she will not move her amendment.

Earl Howe: That was a slightly disappointing reply although it was not wholly unexpected. The principal point I was trying to make is that each LINk has to have some form of governance if it is to have a voice that can be ascribed to it; otherwise what is to distinguish a LINk from simply an informal and disparate group of people who happen to be in communication with each other? Even co-operatives have to have some form of governance. We cannot have a body with no governance at all; we cannot have an organisation with no formalities associated with it. This is the point I was driving at. We cannot channel public money into an area that literally has no basis for being an entity of any kind. I am troubled that we are trying to be so flexible with the Bill that we may end up being less scrupulous than we should be on the use of public funds.

Baroness Andrews: Perhaps I can reassure the noble Earl. I quite agree with him; I cannot conceive of an organisation that does not have a governance structure or responsible people identified with whom to form a relationship for the delivery of the contract. The only question on which we disagree is whether we should try through regulations and the role of the Secretary of State to formulate anything like that on the face of the Bill. That is what divides us.

I am also interested in the possibility of being told later how it will all work—the contracts, the conflicts of interest via BUPA, the question the noble Earl raised and the offer he made.

Earl Howe: I shall certainly be glad to follow that up. I beg leave to withdraw the amendment.

Amendment, by leave, withdrawn.

[*Amendments Nos. 238Q to 238QA not moved.*]

Baroness Neuberger moved Amendment No. 238R:

Clause 223, page 155, line 36, at end insert—

"( ) Nothing in the arrangements shall prevent a local involvement network from—

(a) making collaborative arrangements with another local involvement network; or(b) utilising monies received from H for such a purpose."

The noble Baroness said: Again, this is a probing amendment. Almost all the amendments today have been probing amendments. It seeks to test out whether some LINks can make collaborative arrangements with other LINks; whether they can use the money that they get from the hosts for this purpose in order, perhaps, to form themselves into a representative body, either regional or national; and whether the hosts can stop them doing that—in other words, whether there are no limits on what they may do.

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If they are going to do that, there will need to be some basic principles. The Involvement Network suggests that these should apply to LINks, hosts, local authorities and NHS health and social care commissioners and providers, and that the principles should include being committed to working positively with other LINks and other bodies of whatever nature involved in commissioning, supporting or otherwise improving the health and well-being of local communities and communities of interest. It suggests that that will need some kind of national network.

Ministers have suggested that the proposed National Voices project or the already existing NHS Centre for Involvement could replace some of the functions that the Commission for Patient and Public Involvement in Health now serves or that some kind of joint body of LINks could create. However, it is rather difficult to see how either the new National Voices project or the NHS Centre for Involvement could play the same kind of direct part in protecting the independence of LINks in the same way that LINks banding together could do. One of the reasons for that is that neither is set up or funded to fulfil that function, or was expected to have the same direct connection with LINks as the commission has at the moment with patient forums. National Voices is still some way from being established, while the national centre is a Department of Health contractor and so, you could argue, not appropriate to be a national independent body for LINks.

If there is to be a system with LINks, there remains a clear need for an independent national body to promote patient involvement as well as promoting some of the broader issues around health and social care on behalf of all the people involved in that world. LINks need to be allowed to work together and to use the money they get from hosts to do so. It may be an extension of the present National Association of Patient Forums or it may be some other model that might suffice, but we need to be clear that there is nothing to stop them doing that or using money from hosts to do it. I beg to move.

Earl Howe: I believe and hope that the Minister will reassure the Committee that there is nothing to prevent LINks from forming collaborative arrangements if they wish to do so. The reason I am worried about this is the wording of Clause 222. When a host organisation makes arrangements to deliver the activities listed in that clause in a local area, it will be obliged to look at what the clause says. It refers to activities that are wholly and exclusively focused on local care services. A national or regional umbrella organisation for LINks would inevitably have a wider purview than the local area of an individual LINk. The benefit of such a body would, as we have heard, enable LINks to share ideas and best practice, provide information, co-ordinate efforts and generally promote good communication between members.

LINKs are almost certain to want a national voice. For example, there may well be occasions when a national survey on some particular aspect of healthcare is called for. To the extent that an individual LINk contributes to that activity by means of a financial subscription, it will not be directing its budget to those activities prescribed for it in Clause 222. How should a

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host organisation view that eventuality, if it were to happen? The Minister may give perfectly sincere assurances on this, but against a literal interpretation of the clause, the host organisation might well find itself in some difficulty. There should be an explicit mandate in the Bill to create a national representative body—not necessarily in terms of this precise amendment, but something along those lines—because otherwise my fear is that someone will come along and accuse local involvement networks, and possibly also their hosts, of acting ultra vires. We ought to put the matter beyond doubt.

Baroness Howe of Idlicote: I hope the noble Earl, Lord Howe, will be proved wrong, and that the Minister will be able to reassure us. This is an important idea. There has been a lot of criticism recently that the third—that is, voluntary—sector has become almost too much part of state activity, and therefore its ability to be creative and think ahead of time about what will need attention will be stifled. It is indeed the voluntary sector that gets busy in those areas first. I see here a possibility, with co-operation and some basic funding, for new ideas and for harnessing the LINks in a way that is of national importance and picks out some of the issues that will be of crucial importance for the future. I hope the Minister will be able to assure us of that.

9.30 pm

Baroness Andrews: This is an interesting and sympathetic proposal. We have always made it clear that LINks can work together on issues that they think go beyond their boundaries. We certainly would not wish the legislation to get in the way of that type of activity. For that reason, the key here is to ensure that legislation does not inadvertently restrict the possibilities. I believe that if they were to come together, regionally or nationally, it would help them to share intelligence about what works.

The noble Earl has drawn my attention to the wording of the clause, but I was anyway going to propose that we take the Bill away and look at it. The last thing we want is for the Bill to create barriers, so I am grateful to him for identifying that issue.

The noble Baroness, Lady Neuberger, asked whether there was anything to stop the LINks using their funding either to form regional associations or join a national association. We probably would not want to mandate them to join a national association but there is nothing to stop them using their resources, if they so wish, to come together and form one, although some may not wish to and others may wish to be part of a loose confederation. However, we would welcome this happening and for those reasons I support the noble Baroness's amendment.

Baroness Neuberger: I thank the Minister for her response. I am grateful to the noble Earl, Lord Howe, for pointing out the difficulty, which I had not spotted. It needs to be sorted out, so I am extremely grateful to the Minister for saying that she will take the Bill away and look at it. Given the assurances that there is nothing to stop the LINks getting together and using the money they get from the hosts to pay subscriptions,

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or whatever. I am enormously grateful and reassured. I beg leave to withdraw the amendment.

Amendment, by leave, withdrawn.

[Amendment No. 238S not moved.]

Clause 223 agreed to.

[*Amendment No. 238SA not moved.*]

Clause 224 [*Duties of services-providers to respond to local involvement networks*]:

[*Amendment No. 238SB not moved.*]

Earl Howe moved Amendment No. 238T:

> Clause 224, page 155, line 42, leave out "dealing with" and insert "responding to"

The noble Earl said: I shall speak also to Amendments Nos. 238U and 238UA. The heading of Clause 224 is:

> "Duties of services-providers to respond to local involvement networks".

However, when we read on we find that this is not quite what the clause says. In delineating the regulations which the Secretary of State may make, it refers first to

services providers responding to requests for information from a LINk. That is fine. But then, in relation to reports or recommendations made by a LINk or by another services provider, the words "responding to" are replaced by "dealing with". What is the significance of that? I can "deal with" a report or recommendation by ignoring it altogether and putting it in the wastepaper basket. I can "deal with" it by reading it, disagreeing with it and taking no further action. In other words, I can deal with it without having to account to anyone else about what I have done and why. I am not sure that it is appropriate or in the spirit of the clause to have the words "dealing with" in this context, which is why I suggest that the words "responding to" might be better. It will be helpful to hear what the Government have in mind to put in regulations here.

On Amendment No. 238UA, we come back to the issue of outcomes as opposed to mere processes. Services providers are to have duties conferred on them to respond to requests for information and to deal with reports and recommendations; but nowhere here is there any sense that they are supposed to take action to improve services where there is a clear case for doing so. Not all reports or recommendations from a LINk will be persuasive but when they are, someone ought to be concerned with taking the recommendations forward, otherwise the whole exercise might just as well not have been started. I should be glad if the Minister could reassure me on this point. I beg to move.

Baroness Andrews: At one level, Amendments Nos. 238T and 238U address a detailed semantic issue, the like of which we always enjoy. If we unpick them, noble Lords will see that the change is unnecessary as well as undesirable. However, the noble Earl has done an excellent job in pointing out the difference between "dealing with" and "responding to", but the merit in this case lies in "dealing with" for almost exactly the reasons that he put forward.

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I know that he thinks that "dealing with" has a negative connotation, suggesting that a service provider would not have to provide LINks with a proper response. However, that is not the case, because "dealing with" covers everything that could be put in regulations on responding to a report. It allows also for regulations to state what a services provider should do if it received a report or recommendation, but was not the body that was required to respond to it.

Commissioners of services should respond to reports and recommendations as they are ultimately responsible for the services that are provided within an area. They are certainly best placed to deal with a strategic report. If the report were to be sent to the provider, the regulations could place a duty on that service provider to forward it to the relevant body that commissioned the services.

The use of the phrase "dealing with" is deliberate, because it gives a wider power than "responding to". It allows for services providers to pass reports to the relevant body with a duty to respond. It therefore gives more purchase on the system than does merely "responding to". I hope that the noble Earl will accept that.

I turn to Amendment No. 238UA and the proposal to take a power to allow regulations to impose a duty on a body receiving recommendations from a LINk to demonstrate that, where relevant, it has acted to improve services in response. I completely agree that a PCT or local authority receiving a report from a LINk should be required to take some action and certainly should respond to the LINk. We intend that a local authority or PCT be obliged to acknowledge receipt of a report or recommendation, and supply an explanation of the action that it intends to take or why it does not intend to take any action.

Those bodies receiving reports and recommendations will need to take account of many factors when considering a LINk's ideas—many of them may not be known to the LINk. Not every LINk recommendation if followed would necessarily lead to improvements in services, and the bodies responsible for the services would need to take a view on whether the advice was followed.

I hope that the noble Earl, bearing in mind that slight complication within the actions, will feel able to withdraw his amendment.

Earl Howe: Perhaps I may "deal with" with the Minister's helpful reply by thanking her for it. I am in part reassured by what she said, because if that is the Government's intention as regards framing the regulations, we can rest assured that the appropriate actions will be laid down. I beg leave to withdraw the amendment.

Amendment, by leave, withdrawn.

[*Amendments Nos. 238U to 238VCA not moved.*]

Clause 224 agreed to.

Clause 225 [*Duties of services-providers to allow entry by local involvement networks*]:

Earl Howe moved Amendment No. 238VD:

Clause 225, page 156, line 22, leave out "view" and insert "inspect"

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The noble Earl said: I shall speak also to Amendments Nos. 238VE and 238W. Clause 225 deals with the duties placed on services providers to allow authorised representatives of local involvement networks to enter and view their premises and to observe the activities taking place within those premises. I think that we need to understand a little more closely from the Minister what this duty will amount to in practice.

First, on the word "view", those who used to be members of community health councils and those who are currently members of patient forums will tell you that one of the essential features of their functions and powers was the right not only to enter premises but to carry out detailed inspections, part of which could well involve talking to service users and staff. The ability to talk to users and staff is absolutely vital, because without that it is well nigh impossible to gauge the quality of the service being provided. When negligent care is discovered by PPI forums, it is usually as a consequence of disclosure by a patient or a member of staff to a forum member.

If I have a concern about the word "view", it is that it suggests something rather more remote and passive than the word "inspect". If an estate agent takes me to view a house, I expect to be able to look round it without necessarily being allowed to spend time there investigating the state of the plumbing. A viewing, in ordinary language, is not the same thing as an inspection. Patient forums have the right to enter and inspect, as did CHCs before them. Why is not the word "inspect" used here as well, and what significance should we attach to that?

Secondly, I return to what LINks will be there to do. When they decide to enter and view premises, they will not be there simply to observe the activities going on within them. The point of entering is to monitor the quality and effectiveness of the services being provided. I believe that there is a strong case for having that explicitly stated in the Bill. As the Bill stands, the duty on services providers will extend only to allowing authorised representatives to enter, view and observe. Without a purposive context to this, I would worry that certain services providers might take it upon themselves to deny LINks members a full opportunity to gather the kind of information that they need from the visit. The amendment would strengthen the duty by making it clear that it is not sufficient to allow a nominal sort of viewing or observation by LINks members; it is necessary also to facilitate them in carrying out their task.

I turn finally to Amendment No. 238W, to which the noble Baroness, Lady Howe, will speak more fully. I simply want to say this. I understand that the Government propose to make provision in regulations that visits to premises by authorised representatives may not take place unless the LINk has previously notified the appropriate regulatory body of its intention and the regulator has not objected. I can quite see why we should want to avoid inundating services providers with inspections and visits from myriad inspecting bodies. However, I seriously question whether a blanket limitation of the kind proposed is the right way to go.

If LINks are to have any credibility at all with the local community, they need to have their own visiting regime, including the ability to make spot visits where

there is an urgent concern. The scope for such visits to make a difference to the quality of care is considerable, but if you hedge those visits about with bureaucratic processes and permissions from a remote national body, that potential will be greatly diluted. Indeed, the extent of the restrictions that the Secretary of State can impose through the regulation-making power is so great that I wonder what, if any, freedom of movement will be left to LINks at the end of it all. Patient forum members will tell you that visits to premises are important both to raise public confidence in the NHS and for public safety. The regulations are likely to create a wall between local people and the services that they pay for. I believe that that wall would undermine public confidence in patient and public involvement and in the independence of LINks. I beg to move.

9.45 pm

Baroness Masham of Ilton: If noble Lords watched the "Panorama" programme on care homes earlier this year, they would have seen why this amendment is necessary. If noble Lords did not see that programme, they really should, especially the Minister. What is the point of bodies such as LINks if they have no powers, especially no inspection powers?

Baroness Howe of Idlicote: This group of amendments strikes at the core of our concern. Frankly, one is given the impression that the powers of LINks will be considerably less than the powers of PPI forums and that their ability to be heard will be less, which is perhaps even more important. One should not forget that the Commission for Patient and Public Involvement in Health was a national body that could amplify any concern that a PPI forum might have had in the past. It had considerable power, exercised with considerable responsibility. I believe that there was not a single complaint as a result of the visits, which says quite a lot.

Amendment No. 238W is about the conditions to be satisfied before a duty arises in a particular place. It is rather insulting and belittling that one will be subjected to those conditions. I understand that it is a matter of security in a private care home that is being inspected. "Inspection" must be the word that is used if we are to have any confidence in this. The position seems to be: "It may be one, two or three people, we are not quite certain and goodness only knows how many people you are going to consult".

I am particularly impressed with the nursing side. The Royal College of Nursing is not really impressed with some of the suggestions and does not see them as likely to provide the comfort that we are looking for. I shall not say any more because the noble Earl, Lord Howe, has put the matter so well and my noble friend has made a very graphic point about the television programme. I echo her view that, if possible, the Minister should see it. Other noble Lords and I believe that this matter is very much the key to whether this is going to work and whether we can regard the new organisation as an equal, if not better organisation, which looks after the different interests of people, which actually delivers and which is not seen as a fairly amorphous body without any teeth.

Baroness Neuberger: The amendment goes to the heart of this legislation. We are all deeply concerned that LINks will not have powers. It is clear that regulations will be written that are likely to restrict, very considerably, what LINks can do in terms of inspection. We are all extremely worried by that.

I wish to draw two things to the Minister's attention. One is that there appears to be a desire to limit the hours when LINks members can inspect or visit. That seems quite serious because it more or less prevents any opportunity for spot checks. If you talk to members of patient forums and people who have been involved in any kind of inspection and monitoring of any service, they will tell you that one thing that you need to have is a right, if you like, to make spot checks to see that things have not been prepared so that they look better than they normally are. I would be very grateful if the noble Baroness could clarify that point in her response.

The other thing is a point that I raised at Second Reading with the noble Lord, Lord Hunt, about the idea that on Healthcare Commission inspections, which can be both spot checks and arranged visits, a LINk person or patient representative should go along as part of that team. The noble Lord, Lord Hunt, said that he would take that away and look at it. As far as I am aware, the Healthcare Commission is not opposed to that idea at all. If we really want to strengthen the role of LINks in monitoring and inspecting our services, that is one way to do so, but they need to have a right to inspect when they want as well.

Baroness Andrews: These are indeed important amendments and I want to reassure noble Lords in different ways. I am grateful to them for raising the issue, because it merits clarity and debate.

Obviously, the issues that Amendment No. 238VD raises came up quite a lot at Second Reading. It is important to state here, as was stated then, that in practical terms "view" and "inspect" mean much the same thing and that the use of "view" does not in any way diminish the power that LINks have to enter services. I hear what the noble Lord says about "view" sounding rather passive, but the term was chosen specifically to recognise that LINk participants are not inspectors or regulators. The term "inspect" relates to professional regulatory bodies such as the Healthcare Commission. Those involved in LINks are lay people and, as such, are able to take the patient and user perspective. There is not any diminishment of power from the patient forums and I suggest that noble Lords reconsider their arguments because of that. However, I am keen to be helpful and, because noble Lords are clearly of a mind that this is an important matter, I will take it away and think it through.

Amendments Nos. 238VE and 238XA both seek to ensure that LINks can monitor services when they visit them. Again, I understand the purpose of these amendments; we have already considered it. That is why Clause 225(4)(a) states that any visit by a LINk must be,

> "carried out for the purposes of carrying-on",

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LINks activities. Clause 222(2) lists one of the LINks' activities as,

> "enabling people to monitor, and review, the commissioning and provision of local care services".

I hope that that meets the point raised by the noble Lord and that he will not press his amendment, because it is captured in the Bill.

I turn to Amendments Nos. 238W and 238X. We think that the power to interview and observe is very important for LINks to be effective. The power of LINks extends beyond that of patient forums to cover social care as well as health. We also believe that it is important to take account of some key issues when providing for LINk members to enter and view services to protect service users' safety and dignity, as well as to safeguard the smooth operation of services. Clause 285 therefore sets out some areas where detail is required when the Secretary of State makes regulations in respect of those powers. Amendments Nos. 238W and 238X seek to remove the power to make these conditions and safeguards.

I accept that it appears that we are giving LINks power with one hand and taking it away with the other, so it is very important to be clear. The power to enter premises is a formidable one and rarely given; giving it to members of the public is extremely significant. I am sure that noble Lords agree that we cannot be lax enough simply to allow the power to be used without safeguards. We have to bear in mind the fact that it is not just the power to enter premises; it is the power to enter premises where ill, vulnerable and distraught people are receiving treatment.

Subsection (2)(a) allows for conditions to be satisfied before the duty arises. This will enable the Secretary of State to make regulations that state, for example, that a LINk must inform the regulator before undertaking a visit to a services provider. I understand what noble Lords have said and I take the point made by the noble Baroness, Lady Masham. This is part of a cross-government gatekeeper initiative that, with the best of intentions, aims to reduce the burden on front-line service providers and to prevent duplication, endless visits and people having to stop looking after people, which is much more important, in order to take someone around, facilitate discussions and so on. We think

that it is particularly appropriate in the case of LINks that their visits should be co-ordinated with the work of the regulator to ensure that there is no duplication of effort.

These details would be set out in regulations and specify areas where we do not expect people to enter and view, such as in children's premises, and so on. We intend to publish draft regulations and conduct a full consultation on them before we lay them in Parliament.

Amendment No. 238X seeks to remove subsection (3), which would allow for limitations on the right to enter and view premises. For example, we would intend that a LINk should visit only when appropriate—that is, when services are being provided. Equally, it is important to retain the ability to provide some detail on the number of LINk members visiting premises—for example, it could become clear that it would be appropriate to have a minimum of two LINk members on each

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visit. I take the point made by the noble Baroness, Lady Neuberger, at Second Reading. I will follow that up, because it has interesting potential.

I believe that the powers set out in Clause 225 represent important parameters on the duty, but I am conscious that noble Lords have spoken with one voice on the importance of unannounced visits. I am not making any promises, because this is part of a cross-government attempt to rationalise the way in which inspections are made, but I will take this matter away and talk to officials and Ministers about this and come back on Report to make our recommendations.

I should say that all those involved in this part of the LINks role will have to have the right skills, receive the right training, be cleared by the CRB and be able to demonstrate understanding of patient confidentiality. It is a serious undertaking and we are putting serious measures in place to ensure that it is done properly.

Baroness Masham of Ilton: Perhaps I may intervene before the noble Earl winds up. I cannot see that visitors will endlessly pour into care homes with vulnerable patients who are sometimes never visited. It is a different matter when patients are visited by family and friends, but many people are put in suspect homes and are vulnerable. It is surely our duty to ensure that someone goes in to check the food and to see whether patients are being hit. That is protecting people. These LINk people will have so much to do that they will not have much time.

Baroness Andrews: One thing that I did not make clear was that LINks will be able to enter and view only communal areas of residential care homes and residential nursing homes. However, I take the noble Baroness's point—there may not be lots of LINks visits, but people go into care homes for many different reasons, not least CSCI inspectors, who make unannounced visits. It is a question of getting a balance between being able to offer the sort of insight and potential protection for vulnerable people and

not overburdening hard-working and dedicated staff and taking them away from their front-line responsibilities.

Earl Howe: I am sure that we all understand that conditions have to be attached to these visits; there is no argument about that. The question is how narrow or wide the conditions should be. I am grateful to the Minister for saying that she will look again at the issues underlying the amendments in this group. There is considerable unanimity among noble Lords from all sides of the Committee on these matters. I do not wish to delay the Committee, so I hope that we can progress these discussions during the Recess. I beg leave to withdraw the amendment.

Amendment, by leave, withdrawn.

[*Amendments Nos. 238VE to 238ZZAA not moved.*]

10 pm

On Question, Whether Clause 225 shall stand part of the Bill?

Baroness Meacher: I will introduce a very different note. I should first declare an interest. I am the chairman of a mental health trust in east London and my organisation would fall within the remit of a local

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involvement network. Nevertheless, I hope that my brief remarks will be constructive and will support the Minister in her deliberations about Part 14.

In declaring my interest in this matter, I make very clear my strong commitment to service-user involvement in service provision. In mental health we have been working long and hard to involve our service users in a meaningful and fulfilling way. Indeed when I became chairman of the trust, one of my first actions was to create a service-user sub-committee of the trust board at the very highest level of the organisation. In that committee the various representatives of our many service-user forums across the trust come together with board directors to discuss policy and any issues of concern to those service-user representatives.

In questioning the inclusion of LINks in this legislation for health services, I emphasise that I am an advocate of user and public involvement. However, I believe that Part 14 requires some more work before it is set is stone. The creation of LINks to ensure public involvement in the monitoring of social care facilities—the social care homes and nursing homes to which the noble Baroness, Lady Masham, referred—where such visits are lacking, may prove a helpful way forward. My concerns in relation to this are limited to the health services, and in particular the mental health services.

Clause 225 places on the service providers a duty to allow entry by local involvement networks to,

> "view and observe the carrying-on of activities on premises owned or controlled by the services-provider",

as mentioned by the noble Earl, Lord Howe. If LINks are to be established and have a right of entry to view the staff and patients on wards, I would strongly support the Government's provision that some restrictions will need to be placed upon that right. However, I have an apparently controversial view within this House that there should not be another body whose members will visit hospital wards at this time before further detailed work is done; I strongly emphasise that work. By it, as I will say later on in relation to other clauses, what I mean is that these LINks should be piloted and evaluated, and we should be absolutely sure that they are effective and efficient and work to the benefit of patients and service users before we find these things being brought into play.

Why do I take this view? We know that there are already inordinate numbers of bodies charged with visits to hospitals and hospital wards for one reason or another. The number 56 has been referred to in relation to the total number of bodies that come into health services for inspections and monitoring. I just want to mention five. The Mental Health Act Commission undertakes announced and unannounced visits to wards to inspect the operation of the Mental Health Act 1983. It checks on care and treatment of detained patients.

When the commission has merged with the Healthcare Commission, I understand that its ward visits and interviews with patients will continue. The Healthcare Commission visits hospital wards, as other noble Lords have mentioned. Again, those visits can be announced or unannounced. Mental Health Act managers regularly visit wards. They are members of the public rather

than NHS professionals. Apart from undertaking appeals at the request of patients, those managers are concerned about the standard and quality of care of patients and the individual patient's experience of that care.

Mental health review tribunal members have a right to see patients on the ward. The new boards of governors of foundation trusts also need to have access to wards and other facilities that are managed by the trust. Those bodies, like LINks, represent patients, service users, carers and the public. That is the nub of what I feel so strongly about. I will say more about these boards in relation to other clauses.

The noble Baroness, Lady Neuberger, suggested—helpfully, I think—that a LINk member might joint a Healthcare Commission visit. However, the boards of governors will want to join those visits. There really is a duplication here in relation to the health sector but not, I fully accept, in relation to social services. Both sets of people—service

users, carers and the public—will go around assuming that they are the key body that represents users, carers and the public; they will monitor services, feed back to providers, want their views to be taken seriously and so on. How will all that work?

Unlike care homes, hospital wards are overwhelmed by visits from inspectors and monitoring bodies and governors add the all-important voice of service users and carers. If LINks also visit wards, they will risk duplicating precisely what governing bodies will be doing. The wards really cannot cope with that sort of duplication.

Leaving inspection on one side, wards are under the most incredible pressures these days—greater pressures than they have ever experienced—because the in-patient population is ever more challenging: more and more patients are managed within the community even when they have very severe psychotic symptoms. Only the most ill and high-risk people ever get into a hospital ward these days.

The value added of every inspection—every monitoring visit—should be carefully assessed to ensure that the benefit to patients and service users really does outweigh the distraction of staff from the job in hand and disruption to those very disturbed patients.

I hope that the Minister will agree to commission work to analyse the many demands on hospital wards and how best to avoid duplication by LINks and boards of governors of foundation trusts in particular before pressing ahead with Clause 225.

Baroness Andrews: I am grateful for that contribution, not least because the noble Baroness is so experienced; I pay tribute to her for her work in the mental health field. I will not repeat my speaking notes on the clause.

I am very aware, from our previous debate, that the sort of issue that the noble Baroness raised is precisely the sort of reason why we have been advocating the gatekeeper function. We must be very careful about what could happen. There are clearly tensions in this situation. She is absolutely right that there should be a guarantee that if this sort of opportunity is offered, it must be of benefit to the institution as well as being

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right for the LINk. I take that point entirely. We can also learn from experience. These powers were those of the patients' forums. It is important for us and all potential LINk organisations to be able to look at this.

Baroness Meacher: Our own PPI chairman has decided that PPI is not the place to be. She has become a member of a board of governors and plans to pursue her PPI functions through it. That is interesting because people here have talked about LINks replacing PPI. In my experience on the ground, boards of governors are replacing PPI. That is, perhaps, something to think about.

Baroness Andrews: That is part of the evolutionary nature of the boards of governors. The relationship between boards of governors and LINks must converge rather than duplicate. We want to see foundation trusts joining LINks and contributing to their research, and vice versa. There must be synergy here; that is common sense. This is something we want the local authorities to urge the host to do. Maybe you could put it in a contract. One of the protocols would be that you were not duplicating the work of people who had other relationships with the sector. That is absolutely right.

With regard to the mental health function in particular, since LINks are bringing together social care and health, we will have for the first time a convergence of interests, although I would not say that it will be seamless. It is likely that more consumer interests will overlap in relation to mental health than in other parts of the health and social care services. It is possible that giving LINks powers to enter and view, particularly when it comes to mental health, will bring a slightly different dimension to it. I do not know; I will leave that for the noble Baroness to think about.

The noble Baroness has made a very powerful contribution. As I said, we do not intend that anyone undertake this role without the right skills and training, or if they cannot learn from the best experience. We have not finalised all the details. We will be looking at this in relation to regulations on which we will consult. There is certainly time to tease out some of these implications.

Clause 225 agreed to.

Clause 226 [*Local involvement networks: referrals of social care matters*]:

[*Amendment No. 238AA not moved.*]

Clause 226 agreed to.

Clause 227 [*Local involvement networks: annual reports*]:

Baroness Neuberger moved Amendment No. 238AB:

> Clause 227, page 158, line 41, leave out "person preparing it" and insert "members of the local involvement network"

The noble Baroness said: This is another probing amendment. As regards the LINk's annual report, we have replaced the Bill's reference to the phrase "person preparing it", and replaced it with "members of the local involvement network". We would argue that the LINk, corporately, has the duty to prepare an annual report. We would like to hear what the Minister has to

say about this. We are probing whether the Government would be content for a person

such as a parent to take such responsibility. Surely the LINk should take responsibility. If the LINk is to mean anything, its members must have views about all this, and so should have a duty to prepare and produce an annual report. Essentially it belongs to them. I very much hope that the Minister can reassure me on this matter. I beg to move.

Baroness Masham of Ilton: Who is going to receive the report?

Baroness Andrews: That is a devastating question; I will think about it while I am answering the first question. I am not entirely certain that I will give the noble Baroness much satisfaction on this. It comes back to the rather circular argument about the LINks not being on the face of the Bill. Amendments Nos. 238AB and 239ZA seek to make it a requirement that once the annual report has been drafted it should be distributed in such a manner as members of the local involvement network, having had regard to any guidance issued by the Secretary of State, consider appropriate. As the clause is currently drafted, the person preparing the report should have regard to the guidance, and the noble Baroness has asked us to change that.

10.15 pm

There are problems with mentioning the members of LINks in the Bill because, as we said, the notion of membership may be conditional. We do not wish to pre-empt LINks in organising their governance structure and ways of working—as I said, some may want a notion of "membership" and others may not. However, there is a further complexity. Although it is somewhat complex—that is quite an admission—Clause 227 has been drafted carefully to ensure that someone is always responsible for writing an annual report for LINks. Usually, the host will assist the LINk in the preparing the annual report. However, the provision is drafted as it is because at times a LINk may not be in place—for example, when the host has recently been set up and the LINk's structure is not yet defined and it has not yet begun to undertake its activities. In that case, the host will still be expected to cover in its annual report the activities that it has undertaken.

It would not be workable to accept Amendments Nos. 238AB and 239ZA because members of a LINk may not necessarily be available to decide how an annual report should be distributed. Therefore, we think it appropriate that whoever drafts the annual report should have regard to the statutory guidance in deciding how it should be distributed. Perhaps we could think about making some sort of reference to that in the guidance. With regard to who will receive the report, it will certainly be made available to the general public—that is the whole point of the exercise—and it will also go to the overview and scrutiny committee, the local authority, the PCT, the other partners and the Secretary of State. Therefore, it will have a wide circulation.

Baroness Masham of Ilton: What about Members of Parliament?

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Baroness Andrews: Why not Members of Parliament, and Peers?

Baroness Neuberger: When the noble Baroness admitted that the drafting of Clause 227 was somewhat complex, she provided a moment of satisfaction for those of us who have struggled to understand what it means. That was very nice. She also said that she envisaged a situation where a host might prepare the annual report because the LINk did not yet exist. Can the noble Baroness foresee a situation where, for some reason or another, a local authority might appoint a host but a LINk either might not come into existence quickly or might not come into existence at all? How would that work? I had not thought about it until she mentioned it, but it seems to me that it is worth testing whether that is a possibility and, if so, how the structure would then operate.

Baroness Andrews: That is an interesting question. The nature of the contract that the local authority would hold with the host would require the host to facilitate and enable the LINk. Therefore, if the host were so hopeless that it never "got it together", I would say that the LINk should start again with another host.

With regard to the timing, I would hope that a host would not be in the position of writing an annual report a year after it had set up. Again, that would be a cause for concern. We have not set timetables on this because in some areas—large rural areas, for example—it might be difficult to establish a mechanism for people to come together and there would be a loss of virtual activity. However, perhaps I may come back to the noble Baroness on that important point.

Baroness Howe of Idlicote: Perhaps I may ask one more brief question on this. The Minister said that lots of people would be very happy to see the report but, in the past, it has not been unknown for reports to be sat on or, for one reason or another, not to have seen the light of day either at all or until a big fuss has been made. I should like reassurance that that could not happen or that something in the regulations would prevent it.

Baroness Andrews: A LINk report that covered the entire spectrum of health and social care, with every significant and small body representing a sector, would have to be taken seriously. We are creating a unique organisation here. However, perhaps I may think about the nature of the distribution and the nature of the response to the reports.

Baroness Neuberger: I am grateful to the Minister for everything that she said. She rightly says that she has not wholly reassured me, particularly as we get back yet again to the membership of LINks. Nevertheless, I am enormously grateful that she is taking some of this away to look at again, especially the issue that came up through her response about what happens if a LINk does not come into existence, or takes a long time to do so. We would all be concerned about that, but I am enormously grateful to her, and with that I beg leave to withdraw the amendment.

Amendment, by leave, withdrawn.

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Baroness Andrews moved Amendment No. 239:

> Clause 227, page 158, line 42, after "State" insert "that may be in force at the time"

The noble Baroness said: I shall move and speak to the government amendments and to Amendment No. 239A. I will start with that, as the power for the Secretary of State to make directions about what a LINks annual report includes is important.

The power will not mean that a LINk cannot include issues and matters that it thinks are important, as a LINk is an independent mechanism and can of course highlight areas that it thinks should be made public. Indeed, it could do so at any time—definitely not only in the annual report. The power enables the Secretary of State to seek the views of LINks on matters that may be of particular importance. For example, it may be that the Department of Health would welcome insights from LINks in developing policies on issues of access to services, or on the impact of legislation such as the Disability Discrimination Act.

Similarly, the Secretary of State may well wish to be able to take a holistic view of specific aspects of LINks activities; for example, how many people from vulnerable groups have been involved in them. That insight could only be achieved by requiring all LINks to provide information on the same topic. Essentially, then, we are looking for the ability for LINks to populate their reports in a way that enables us to make comparison.

I now turn to a number of technical amendments to Part 14 of the Bill. Since consideration of the Bill in the other place, its drafting has been reviewed to ensure that a consistent approach is adopted to any provisions relating to directions and guidance. As a result, some amendments are needed to Clause 227 to ensure consistency with the rest of the Bill. Clause 227 deals with LINks' annual reports; subsection 3(a) enables the Secretary of State to give directions about the matters dealt with in a LINks annual report, and subsection 2(d) means that regard must be had to,

> "guidance issued by the Secretary of State",

on how a LINks annual report is to be made "publicly available".

Amendments Nos. 240, 241 and 242 therefore do two things between them. First, they remove the express requirement for directions and guidance under the clause to be in writing, which is to ensure consistency with the rest of the Bill. However, directions and

guidance under the clause will still have to be in writing, since subsection (11) requires them to be published.

Secondly, they remove the express power to vary or revoke guidance given for the purposes of the clause. That is also to ensure consistency with the rest of the Bill. Such an express power is considered unnecessary since guidance may generally be issued, varied or revoked without statutory authority. As a result, including such an express power under this clause might wrongly lead the reader to conclude that there was no power to vary or revoke guidance under other provisions of the Bill.

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Finally, Amendment No. 239 provides that the guidance to be referred to when preparing an annual report is the guidance,

> "in force at that time".

This clarifies the obligation where guidance has been amended over the course of time. Without that clarification, a reader might at first think that the reference was to the guidance in force when the local authority made the arrangements with the LINks host. I beg to move.

Earl Howe: It is a little unusual to have a reply to an opposition amendment before the amendment has even been spoken to, but I revel in that luxury while thanking the noble Baroness for what she said about Amendment No. 239A. That largely satisfied my curiosity, as this was a probing amendment and I felt that in the light of her remarks about the independence of LINks it was a little strange that we should have a power of direction from the Secretary of State over what the LINks had to include in their annual reports. Nevertheless, I can see that in some circumstances there could be merit in this idea, just so long as it is not carried to excess, as then it could constitute an unreasonable infringement into the independence of LINks.

On Question, amendment agreed to.

[*Amendments Nos. 239ZA and 239A not moved.*]

Baroness Andrews moved Amendments Nos. 240 to 242:

> Clause 227, page 160, line 3, leave out ", or issue guidance,"

> Clause 227, page 160, leave out line 4

Clause 227, page 160, line 5, leave out ", or guidance issued,"

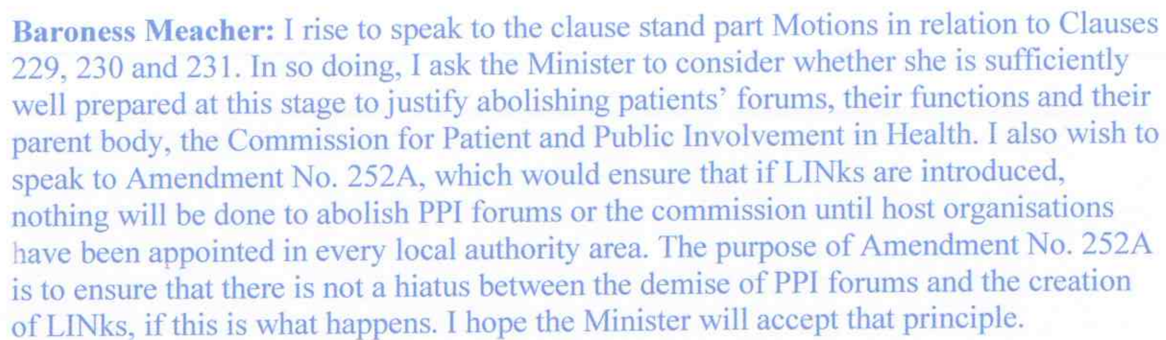
On Question, amendments agreed to.

Clause 227, as amended, agreed to.

Clause 228 agreed to.

Clause 229 [*Abolition of Patients' Forums*]:

On Question, Whether Clause 229 shall stand part of the Bill?



Baroness Meacher: I rise to speak to the clause stand part Motions in relation to Clauses 229, 230 and 231. In so doing, I ask the Minister to consider whether she is sufficiently well prepared at this stage to justify abolishing patients' forums, their functions and their parent body, the Commission for Patient and Public Involvement in Health. I also wish to speak to Amendment No. 252A, which would ensure that if LINks are introduced, nothing will be done to abolish PPI forums or the commission until host organisations have been appointed in every local authority area. The purpose of Amendment No. 252A is to ensure that there is not a hiatus between the demise of PPI forums and the creation of LINks, if this is what happens. I hope the Minister will accept that principle.

I want to focus on the clause stand part Motions. In so doing, I fully accept that patients' forums have been restricted to monitoring health service providers; they have not had a remit for commissioning bodies, as others have mentioned, social care providers or institutions

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in the criminal justice system, which provide a form of service for many of the most disadvantaged people. There is therefore a need to fill the gaps in the system. I am just not yet convinced that LINks are the best way to do that, and I am not sure how anyone else can be convinced with the present state of knowledge. My main concern is that the world has moved on while the preparatory work has been undertaken for the introduction of LINks. The Government in their paper on local government networks, creating a stronger voice in health and social care, claim that LINks differ from previous systems as they are based on broad networks rather than small specialist groups involving representatives from organisations as well as individuals. Indeed, the Minister indicated that LINks are some incredibly new and unique form of organisation, but I have to say that that statement is not really correct. The model already in place in foundation trusts is similarly based on broad networks and involves representatives from organisations as well as individuals. Indeed, the whole idea of these boards of governors and the membership is that they should cover every conceivable small group, BME community group and so on.

The Government envisage that all health provider trusts will be foundation trusts by 2008 and that all foundation trusts will have boards of governors, sometimes called members councils, comprising patients, service users, carers, members of the public, representatives of voluntary organisations and, as I have mentioned, BME communities and so forth. The majority of board members are elected by the thousands of public and staff members who have been signed up to each foundation trust. The regulatory authority expects each foundation trust to have between 5,000 and 8,000 members. That is roughly what has been said in relation to LINks; that they should have thousands of members and all the little groups and voluntary organisations. My understanding is that primary care trusts will also become foundation trusts, with boards of governors and a broad membership, so we are all going to be hunting in the same pool, the same borough, if you like, for these thousands of members and for every conceivable group to sign up.

These clauses in the Bill provide for the abolition of patients' forums to make way for the proposed LINks. My suggestion is that in the health sector it may be more sensible to retain patients' forums at this stage while the LINks pilots, to which I have already referred, are undertaken, while they are evaluated and while the boards of governors are evaluated. They have never been evaluated, so perhaps they are not the right way forward—I am simply saying that we do not know. The question concerning me is whether the introduction of LINks to the health service, as I referred to in relation to the previous debate, will duplicate the structure as well as the work of boards of governors.

10.30 pm

The House of Commons Health Committee report 2006-07 rightly pointed out that the foundation trust system is still in its infancy. I would be the first to say that foundation trust boards of governors will take several years to find their feet, to operate really effectively in representing the interests of patients, service users and carers and to ensure that services respond to those

interests and needs. A Peer I was talking to over dinner said that similar organisations that he is aware of have taken 10 years to settle down and be really effective. This is the sort of issue that all of us need to be aware of; these things do not just happen overnight. My point here is that these PPI boards need to be evaluated before anything further is done. Indeed, the Government's regulator, Monitor, warned of the same problem of duplication.

The situation may not be helped if there are two sets of bodies struggling to find their feet. On the face of it there are possible advantages in either of these two systems. Maybe LINks will be better than boards of governors. Certainly on paper they appear to be more independent. But as I understand these two sets of systems, the boards of governors look to me to be very much stronger and more effective potentially for patients, service users, carers and everybody else.

The crucial element here is that LINks do not appear to have any powers; what they have is activities. I will just go through some of the powers and responsibilities of these boards of governors—they are quite interesting. These boards, comprising more than 50 per cent of users and carers, elected quite interesting bodies. The boards of governors must be consulted on forward planning by the board of directors and the board of directors must have regard to their views. They have to explain if they do not put those views into effect. The board of governors must approve the appointment of the chief executive of the trust. The process of this incredibly important appointment must be made under the scrutiny of these boards of governors. The board of governors hires and fires the chairman of these trusts. Will a trust chairman allow the board of directors to disregard the governors in any respect? I do not think so. This is a masterstroke by the Government. It will ensure that every health trust board, whether a commissioner or provider, will in future take full account of their patient service user, carer and public representatives.

The board of governors, we are told, will represent the interests of the trust's thousands of members and partner organisations in the governance of the trust. The board of governors will hold the board of directors to account for the performance of the trust; that is, the quality of services delivered to patients and service users. The role of LINks appears rather weak by comparison. We are told that they will have a role in promoting and supporting the involvement of people in the commissioning, provision and scrutiny of services. They will be obtaining the views of people about their need for, and experiences of, services. There is no indication that those views will be taken seriously, although the Minister made a useful contribution on that issue. They will be enabling people to monitor and review the commissioning and provision of services. As I have said before, there is a terrible fear of duplication here. They will make their views known to the people responsible for commissioning, providing, managing and scrutinising those services. But they will be at arm's length. The boards of governors are going to be right there; these trusts cannot ignore them. They are independent and they are right there, with these powers and they can report direct to the regulator if they are not happy with the way the trust board treats them.

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The foundation trust boards of governors will regard all the roles of the LINks as essential to the exercise of their powers. The roles under the two systems may look different on paper because the boards of governors have defined powers whereas LINks will have defined activities, but in reality the LINks may simply turn out to be a less powerful form of boards of governors. Certainly the questions relevant to LINks set out on page 18 of the Government's consultation document are precisely the questions that boards of governors will be addressing. But my main point in speaking to these clause stand part motions is that none of us is yet in a position to know whether LINks will have

any real value for the health service over and above what we have in the boards of governors.

I shall mention briefly two further issues. In abolishing the Commission for Patient and Public Involvement in Health, the Government apparently have no plans to create a national body in its place to support the work of the LINks. Noble Lords have already had a bit of a discussion about that, but in my view a national body is essential, and it is of no little interest that the boards of governors have not had a national body. So the Foundation Trust Network, the national body supporting foundation trusts, is now going through the process of setting up a national body to support the boards of governors. If there is going to be a national body for the LINks, we shall then have two national bodies for patient, service user, carer and public user bodies apparently duplicating each other's work.

Again, and most important, I repeat that the crucial point is that we need pilots and evaluation. I am sure that we all agree that patient and public involvement is central to achieving the high quality services we want, but none should underestimate the difficulties of organising this work, particularly in the mental health field. In my experience, PPI forums have struggled desperately to operate effectively. Rushing into the establishment of LINks, albeit after a lot of discussion and consultation, is a very high-risk strategy. I hope that the noble Baroness will give consideration to the points I have raised.

Lord Rea: Perhaps I may speak briefly to Amendment No. 252A, which the noble Baroness did mention early on in her speech. It seeks simply to ensure that the LINks are up and running before the current fora and the commission are abolished. The changeover from the old system to the new could be compared with runners in a relay race. If it is done in a hurry, the baton may be dropped and the runners will lose touch with each other. I suggest that there should be a whole lap in which the two systems run together before the baton is handed over. It should be done when the skills and experience of the fora and the commission have been handed over properly so that the LINks are functioning well before we say goodbye to the old system.

Earl Howe: I had prepared a great deal to say about these clauses, but I am going to spare the Committee the pleasure of hearing those remarks, although I may bring them back at the Report stage. For now I shall

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confine myself to just a few brief comments. In her letter of 9 July the Minister said that it was not possible to adapt the current system because of the way that forums are set down in legislation. She said that one would have to change their statutory basis completely. I think I need to understand a little better why that is. It does not seem to be a proposition that is self-evident, and the advantage of that approach as opposed to the one taken by the Government is that it would have afforded a measure of continuity, the lack of which endangers the good will of the volunteers in the field.

I want to comment on Amendment No. 252A. The abolition of patient forums, we understand, is set for 31 March 2008 and from the Minister's letter of 9 July it seems inevitable that we are facing a gap between their disappearance and the arrival of LINks, the very thing that many of us most want to avoid. In her letter the Minister said:

> "We do not believe that a small gap will be a serious concern".

I disagree with her on that very strongly. I do not know what she means by a small gap—perhaps she will tell us—but it has to be a cause of concern that any kind of gap in the provision of patient and public involvement is considered acceptable to her department.

My questions to the Minister are these. Has a gap been built into the department plans? What steps is the Minister taking to make sure such a gap is avoided? What, if any, financial or organisational obstacles exist to militate against the desirable aim of achieving the smooth transition that many of us want to see?

Baroness Neuberger: I, too, had prepared a quite lengthy speech for these clause stand part debates but, like the noble Earl, Lord Howe, I shall address only a few points because we are running so late.

On the letter from the Minister of 9 July, I, too, am very concerned about the gap. It is extraordinary for the Minister to say that she does not believe that a small gap is of serious concern. I believe it is a very serious concern and noble Lords all round the Chamber are clear that it is of serious concern. I say that for two reasons. First, if we are serious about patient and public involvement, the shortest of gaps will destroy the drive to do it better and just discourage people. Secondly—the Minister was well aware I was going to raise this point because I have raised it privately with her and the Minister in the other place, Ann Keen—the abolition of the patient forums and treating the volunteers who are part of those patient forums in such a cavalier way is unacceptable. To say that it does not matter if there is a gap suggests that we are better off without them than with them. It is an extraordinary thing for the Government to do.

The Minister knows that I have had many representations made to me by members of patient forums. She also knows that I have this new and somewhat strange role as volunteering champion for the Prime Minister. I find myself now in an impossible position as far as the treatment of volunteers in this arena is concerned. The hundreds of people making representations should not be treated in this way.

I hope the Minister will be able to reassure us that such a gap will not occur and that there will be continuity in patient and public involvement. Even if the systems change and the

two run in parallel, as the noble Baroness, Lady Meacher, thinks they will, I hope there will be continuity in patient and public involvement and no gap. Therefore the date of March 2008 does not need to stand.

Baroness Howe of Idlicote: I shall add my words extremely briefly. I have listened to the debate with considerable interest because it summarises the real concerns that we all feel. My noble friend Lady Meacher has made some very interesting points that are well worth considering. We must not have a gap. Equally, what is being suggested shows a vague lack of appreciation of the numbers of bodies and the number of duplications involved. We do not know what they are and it would seem very sensible to carry out research before any gap occurs. Abolition must not take place if we are to have any credibility, as the noble Baroness, Lady Neuberger, said. There is time to do that research, to see what is happening and to see whether there is a suitable existing national body. I am as equally convinced as my noble friend that there is a need for a national body, not only the PPIs.

It would be a good idea if the Minister could say something to the body which is to be finally abolished after nine resurrections, shall we say. It has done its duty, as it saw it. It might have been yet another example of something ill-considered that was set up far too quickly before it had to be rethought, but that is not its fault. It has been extremely helpful in briefing the rest of us, along with all the people who have written to us from all sorts of different medical, voluntary and patient bodies.

I hope that there will be some rethinking on the whole issue for the benefit of everyone, not least the Government, and that someone will try to say something nice about the national body to it directly.

Baroness Andrews: I too have a massive speaking note, which I shall discard and try to address as quickly as possible the significant points that have been raised.

I start with the case made by the noble Baroness, Lady Meacher. I know she thinks that LINks are unnecessary and will duplicate the work of foundation trust boards. They are not unnecessary, for all the reasons I have given in the course of the debate today. They will not overlap with the foundation trust boards, which are doing something very different. They are institution-based, while LINks are area-based and cover social care and healthcare. LINks will include organisations that might have an almost marginal attachment to health, and yet whose members will be affected by health provision. The bodies will do different things in different ways. Although I understand the noble Baroness's anxiety, she should not worry about it in the way she is.

I repeat what I said earlier: the business of conversions, co-option and co-operation will be the way forward. We are talking about new animals. I remember, when we were debating the passage of the National Health Service reorganisation Bill, we discussed in great detail

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who would constitute the boards and what they would do. Now here we are, worrying about whether they will overlap with an organisation that is fundamentally different. No doubt we will come back to some of this on Report, but I hope that in the mean time the noble Baroness and I can talk some more about it privately.

The noble Earl, Lord Howe, asked why we need something separate; why we cannot just evolve a system. He also asked key questions about the transition. The reason we need something new in legislation is simply because LINks are different from PCTs. A patients' forum was established for every trust, while LINks will cover an area. Forums are generally small organisations of seven or eight members, while there is much greater scope for LINks and a different governance arrangement. Forums have been established for NHS institutions, while LINks will look at both healthcare and social care. We have not spoken today about just how significant a change that is, and how maddening and frustrating it has been over the years that healthcare and social care have been separate, with all the disability that that has built into the system. LINks will support capacity in the local and voluntary sectors in different ways and will tap into the excellent work and experience that already exists. For all those reasons this is a fresh start.

We want a transition that is as smooth and easy as possible. I take the noble Baroness's point that people have made a commitment, and once you lose your purpose as a volunteer it is easy never to return. It is very difficult to recapture that enthusiasm, and local authorities must think about that as they move into contracting organisations, since those are the people who will deliver for them.

When I spoke about a small gap, I was trying to be as honest and realistic with noble Lords as possible, maybe to take them into my confidence. We could not realistically expect to establish new bodies without some sort of changeover, and it was better to admit the possibility that not every LINk would be up and running in March next year rather than to be overconfident. We must be careful. We are trying to learn from experience.

CHC → Forum

As for how small is a small gap, it is difficult to quantify. There were two reasons why we have had to move in this way. I will not go through the clause stand part but will move instead to the substance of the amendment. We have been in this situation since 2004. There has been a great deal of uncertainty and anxiety. We have not exactly rushed into this but there has been a build-up of anxiety, which we need to address and resolve. For the past two years, forum members have said to us, "Whatever you decide, decide quickly because we need to move on". That is an important point. We are creating a new system with a fresh start—a step change.

What will we do to achieve a smooth transition? I will not go through all the detail but it includes everything that we set out in the letter to noble Lords. We knew that the timing would be contentious so we put activity in place early on to inform and mobilise people. Local authorities need to be thinking about hosts. Three-quarters of them already have someone in place whose responsibility it is to identify the host.

We have put a raft of activities in place to inform stakeholders; we have been holding regional events over the past couple of months with key stakeholders and there is the work of the early adopter projects. Many local authorities are starting work to warm up the potential host market and will report back to us. Many are planning to run events as well as mapping local activity and bringing together local partners, but the crucial thing is to have the host in place. There is considerable interest from organisations that would like to do that and we will shortly be providing them with model contracts. Local authorities will be under a statutory duty to make contractual arrangements. We are soon to write to all local authorities attaching the model specification. After that, the documentation will make it clear that local authorities can carry out activity now to kick-start the arrangements.

Activities include identifying lead personnel; identifying prospective host organisations; raising awareness among potential hosts; telling the media what LINks will do; trying to suss out who might be interested in being a host; putting in place a draft timetable and project plan; keeping track of the progress of the Bill; bringing stakeholders together; and mapping who will be involved. Local authorities will be encouraged to get together with neighbouring authorities to talk about jointly procuring a host organisation to support more than one LINk, for example.

I have spoken about the regional rotas. There is a monthly newsletter. We are working with the Centre for Public Scrutiny, the Healthcare Commission, CSCI, the care services improvement partnerships, the NHS National Centre for Involvement, and so on.

Procurement work starts in August. Some local authorities have already done this, giving them time to have in place contracts with hosts prior to the closure of forums. There is much to be done. There is also anxiety and uncertainty, and it is our job to build confidence and overcome that. It is a major change, which is why we are working across the field.

On Amendment No. 252A, of course I understand why noble Lords are anxious about this issue, and I applaud them for it. We intend to commence the legislation in such a way as to support a straightforward move into LINks. If the amendment were accepted, however, all patient forums, as well as the Commission for Patient and Public Involvement in Health, would remain in place until every local authority had made contractual arrangements for LINk activities. If even one local authority was slow to establish a LINk for its area, every other area would have to run two systems in parallel. That would be very impractical; the same people would be involved and it would be very expensive to scrutinise the same services. It does not make sense.

DH

? Misunderstood!

Over the next two or three months, the picture will become much clearer. When we come back on Report, there will be more clarity and visibility about the progress that has been made.

Baroness Neuberger: The Minister made a valiant attempt to tell us that all will be well. She told us how all the local authorities were finding hosts and how CSCI and everybody else was involved, but what she did not say, which seems key, is that the patient forums,

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which are the early adopters and are trying to move towards becoming LINks, are asking why the pace is so rapid. There seems to be a great impetus within the Department of Health to have the mergers and the changes in the various regulatory and arm's-length bodies in place by March 2008. However, those early adopter patient forums are saying, in terms, "This is too fast. We can't do it at that pace". It is fine for the local authorities to be active—it is absolutely great if they are trying to find hosts—but if the early adopters are saying that it is too fast and if the right reverend Prelate the Bishop of Peterborough is saying, "Come on, guys, let's go for evolution, not revolution", do we not have to listen a little harder?

Baroness Andrews: We listened in particular to the patient forums saying that they wanted closure and an end to uncertainty. That is what has inspired what we are trying to do. I am not sure what there would be to gain from delay, because people find ways of spinning things out. Timetables are important. We could have had many more early adopters. All over the country, people were really interested not in being pilots, because these are not pilots, but in testing out the way things might happen in the future. However, I am listening to what the noble Baroness says. We will certainly have an opportunity to talk to the early adopters during the summer.

Baroness Meacher: The Minister did not respond to the point about the need for pilots. She just said that delaying would not be a good idea. The one reason for allowing a little more time would be to give the Government the time not just to have some more early adopters but also to set up and pilot some LINks in a particular area, really making sure that they can work in the social care and other sectors. It will be incredibly difficult to turn them into effective and efficient organisations—this is tough territory. It will be a pity if, in five years, they are being wound up as yet another failure, but I have to say that it is difficult to anticipate that they will not be in that position unless they are piloted.

Baroness Andrews: They were not piloted, I think, because we thought that the lessons about new ways of working were better and more effectively learnt by a more iterative process. The trouble with pilots is that they often take a long time, to be evaluated not least, and they test everything at the same time, whereas we were looking for a way in which different sorts of organisation could test different bits of a new system. That is my understanding at least.

Clause 229 agreed to.

Clauses 230 and 231 agreed to.

Clause 232 [*Duty to consult users of health services*]:

Earl Howe moved Amendment No. 242ZA:

Clause 232, page 162, line 35, after "services" insert "and members of the public"

The noble Earl said: I shall speak also to Amendment No. 242A. I pointed out at Second Reading that, in one particular respect, Clause 232 did something which was highly regrettable. It is to that issue that I return. Section 11 of the Health and Social Care Act 2001,

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which became Section 242 of the NHS Act 2006, placed a duty on NHS bodies to ensure that service users are,

"involved in and consulted on",

the planning of the provision of health services and any proposed changes in those services. I paraphrase the duty slightly, but the words that I wish to emphasise here are "involved in".

11 pm

Clause 232 amends Section 11—if I may continue to call it that—and in so doing removes the words "involved in", keeping only the words "consulted on". There is an obvious irony in the fact that a Bill that contains "involvement" in its title should remove that very concept from a key part of the Bill. Why have the Government done this? According to the Minister's letter of 9 July, it was because of the judicial review in the case of north-east Derbyshire, when the judge found it difficult to perceive any real difference between "involve" and "consult", so "involve" has been taken out. In her letter, the Minister said that she did not think that anything would be lost by doing that. I must respectfully beg to differ with her on that—and, equally respectfully, with the judge in the case of north-east Derbyshire.

There really is a material difference between involvement and consultation; that difference can most easily be described in terms of the before and after duties. The before duty is about the NHS having a dialogue with patients and the public when proposals are first being formulated. "Involvement" is the word that describes how patients and the public develop ideas as equal partners with the NHS. Consultation—the after duty—is what happens when that initial planning stage is over. It is about giving people the opportunity to comment on plans that have already been formulated.

I think that we all understand the difference between the two processes. To take an example, involvement in a review of a service for older people would include setting the review's terms of reference and suggesting what extra services might be needed so they could be considered as the review rolled out. Consultation on such a review would mean commenting afterwards on a set of fully formed proposals. There is a potential source of confusion here because commenting afterwards is provided for already in Section 7 of the Health and Social Care Act 2001 and its accompanying regulations. This is the section now translated into the 2006 NHS Act, which obliges NHS bodies to consult the local overview and scrutiny committee on developments and variations in services. It is true that the Section 7 duty applies to substantial variations and developments in services, whereas Section 11 applies much more generally, but it is most confusing to have "consult" in both contexts. If it is intended to mean the same thing in both cases, it seems rather pointless—because, if people have been consulted about a substantial variation as it has developed, what on earth is the point of consulting them again after their views have been taken account of? If, on the other hand, it is intended that in Clause 232 "consult" should in practice mean "involve", surely that is the word that should be brought back into the drafting.

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Why has the change been made? I am certainly not clear about it—and, as I have said, it is a change that is likely to generate confusion in all quarters.

The point of Amendment No. 242ZA is to widen the definition of those who should be consulted to those members of the public who may not be direct users of services but who nevertheless have an interest in them. This might, for example, include parents of children who are users or friends and carers of people with mental health problems. In fact, it could include anyone with an interest in improving care services, which is surely what we would expect to happen if, to take a typical case, primary care services were being reconfigured in a particular area. It is not just the users of those services who have an interest in what is decided but a much wider group of people, including those whom those services are not properly reaching. I beg to move.

Baroness Morgan of Drefelin: I am not sure I can give the noble Earl the comfort that he seeks. I shall do my best, but I fear that we may need another round of letters. Amendment No. 242ZA seeks to ensure that the duty on NHS bodies to consult, which is set out in Clause 232, is a duty to consult not only users of services but the public in general, as he explained. That is, however, unnecessary, as this is already captured by new subsection (1F) in Clause 232, which defines a "user" of health services as,

> "someone to whom those services are being or may be provided".

I entirely understand his point about relatives or carers. I might have to read *Hansard* and think carefully about the point he is making to see whether the definition encompasses the additional groups he is talking about.

On Amendment No. 242A, I am not sure I can help the noble Earl. I am not at all surprised that he raises this point and I am very interested in the points he makes. This amendment seeks to retain the original wording of Section 11 of the Health and Social Care Act 2001, which has since become Section 242 of the consolidated NHS Act 2006, which gives NHS bodies a duty to involve and consult patients and the public. On the noble Earl's analysis, I can confirm that during a judicial review into Section 11 in north-east Derbyshire, the judge found it difficult to perceive any real difference between "involve" and "consult". We have taken this on board and have revised the section, not to reduce the requirement but rather to clarify our expectations of the NHS. We have retained "consult" because it fully reflects what we want the NHS to do, which is to seek the views of patients and the public in the planning of the provision of services and in developments of proposals, and to ensure that people are consulted on decisions affecting the operation of services. I am happy to write to noble Lords explaining the legal basis for the use of "consult". and demonstrate that this fully covers all the activities that are described in the old Section 242 under "involve and consult".

I think this is a good time to mention one of the ways we are strengthening the duty of consultation. We are placing a requirement on NHS bodies to have regard to statutory guidance issued by the Secretary of State. Currently this is not the position and we

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think explicit expectations set out in guidance will provide considerable help to the NHS in fulfilling the duty.

The guidance will set out clearly examples of when it is appropriate to consult under Section 242 and what form that consultation should take. This will clarify what the expectations are for NHS organisations to comply with their duties and perform better user engagement. The work to deliver the guidance to Section 242 will cover a range of stakeholder consultations and will include regional road shows and reference group workshops. That engagement activity will include input into the early drafts of the guidance and the testing of the text as it develops. The Department of Health is very confident that the statutory guidance will go a long way to support more effective involvement and consultation. With an undertaking to write further, I hope that at this stage the noble Earl will consider withdrawing his amendment.

Earl Howe: I am grateful to the noble Baroness for her reply and for her offer to write to me, which I look forward to. Some of her latter remarks on Amendment No. 242A were rather like dancing on the head of a pin. The arguments she advances seem, if I may say so, rather circular—and is it a good use of parliamentary time to amend a legislative provision from "involve" to "consult" and then issue guidance to say that "consult" actually means "involve"? I say to her very humbly that the law has to be clear. The man

and the woman in the street needs to know to what they are entitled, and the NHS needs to know what it is supposed to be doing: nobody gains by having obscure language. I still think the clause needs to be clearer in the Bill and I have little doubt that we will return to the issue at a later stage, regardless of the letter that the Minister has kindly undertaken to send. I beg leave to withdraw the amendment.

Amendment, by leave, withdrawn.

[*Amendments Nos. 242A and 242B not moved.*]

Earl Howe moved Amendment No. 242C:

> Clause 232, page 162, line 37, leave out "significant"

The noble Earl said: I will also speak Amendment No. 242D. The amendment poses what I consider to be an extremely difficult set of questions. I would like, first, to direct to the Minister's attention to the regulations made under Section 7 of the Health and Social Care Act 2001. These refer to when an NHS body is thinking about a substantial development of local health services or a substantial variation in the provision of a service, and provides that it must in those circumstances consult the overview and scrutiny committee of a local authority. Specifically, it says that:

> "Where a local NHS body has under consideration any proposal for a substantial development of the health service in the area off a local authority, or for a substantial variation in the provision of such service, it shall consult the overview and scrutiny committee of that authority".

Let us take an example. There is, let us imagine, a proposal to develop renal services in a local authority area. Even if the proposal is not substantial or significant, under new Section 1B(a) of the Bill, planning to address it will still require consultation with patients. If it leads to proposals that are significant—that is,

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having a substantial impact on delivery of services—it will require consultation under new Section 1B(b). If it starts to involve a substantial development or substantial variation. it will require public consultation with the overview and scrutiny committee under Section 7 of the Health and Social Care Act.

The first question is: at what point during the consideration of this proposal on renal services does Section 7 kick in? The answer has to be: as soon as it is understood that the proposal is for a substantial development or variation in the provision of a service. But what does that mean? In the context of Section 7 of the Health and Social Care Act, case law has helped to define what is meant by "substantial" variation and development. On the one hand, there is case law, and on the other, with the passing of this Bill, there will be statute law. As a result, we potentially have two different definitions to wrestle with:

"substantial" as understood in the light of existing case law; and "significant" contained in Clause 232. We could, therefore, have a situation where it is considered that a change proposal or an operational decision is not going to have substantial impact on the delivery of services, but where nevertheless two apparently competing definitions come into play. One may dictate, under new Section 1B(b) and (c) that consultation with patients is not required and the other may dictate that consultation with the overview and scrutiny committee is required. At the very least, the situation is fiendishly complicated. It will lead to all sorts of confusion in the NHS and among LINks members—confusion which is likely only to be settled by a court of law. I really would like the Minister to explain how she envisages all that working.

Setting that confusion to one side for the moment, what is wrong with the insertion of "significant"? In brief, it is that it will constrain dialogue between the health service and local communities in an unhelpful way. We surely want a grown-up relationship between both parties. We want mutual understanding and the kind of embedded public involvement recommended in the report of the Bristol inquiry. The insertion of "significant" is detrimental to that.

On Amendment No. 242D, there may be an argument for excluding operational decisions that are not significant. However, I have to ask the Minister where the evidence is that this has been a problem in the four or five years since the Health and Social Care Act came into force. I am not aware that it has been a problem; on the contrary, it seems likely that a better understanding of the operational difficulties of the NHS would make public expectations more realistic. In the absence of such evidence, it would seem foolish to dispense with the only means that the NHS and the public have to sit down together and solve the problems of the NHS in a grown-up way. Constraining that dialogue stifles the sort of relationship that I have just referred to and is counterproductive. I beg to move.

11.15 pm

Baroness Neuberger: Amendment No. 242E is consequential on Amendments Nos. 242C and 242D. The noble Earl, Lord Howe, has made the case powerfully on why the use of the word "significant" is a mistake. North-east Derbyshire has caused a lot of trouble here

and it is clear that the Department of Health feels that it would have been easier to win the day in court if "significant" were included. However, I refer the Minister to the views of Candy Morris, of the South East Coast Strategic Health Authority, and Richard Stein, a lawyer, in their evidence to the Health Select Committee in the other place. Both argued that there was no need to amend the law relating to the duty to consult, because if the Department of Health approached that in the right spirit, it would work fine.

The noble Earl is saying that we need to approach this in the right spirit and in a grown-up way. Putting in "significant" would raise all sorts of questions about who decides what

is significant—is this change or that change significant? That is not a grown-up way of proceeding. All of us in the Committee take this matter seriously and I hope that we will get some considerable comfort from the Minister.

Baroness Howe of Idlicote: I reinforce that point, because it is significant. The admirable way in which it has been illustrated and described makes one realise even more how important it is to sort this matter out.

Baroness Morgan of Drefelin: I hope that I, too, can enter these discussions in the right spirit. I stress that we take these issues very seriously. I intend to consider carefully the amendments and the points raised by noble Lords and, I hope, to engage in further discussions before Report. This is an extremely important issue.

Section 242 of the NHS Act, as it stands, is a wide-ranging duty and currently provides no sense of scale to enable NHS bodies to apply the duty meaningfully. Furthermore, without some kind of threshold, that duty has the potential to bring about that often-heard complaint of consultation fatigue. It is with a view to that challenge that the word "significant" has been introduced. By inserting a threshold, we are aiming to ensure that consultation under Section 242 for English bodies is fulfilled when there is a change that has a substantial impact on the range of services and the manner of their delivery. Without these thresholds, NHS bodies would have to consult patients and the public on even the most minor changes. However, I have heard very clearly the points made around the Chamber and, as I have said, we would like to consider further these amendments and remit further before Report.

Earl Howe: I am grateful to the Minister for saying that she will do that. That is most helpful. As the noble Baroness, Lady Neuberger, said, this whole issue is about approaching the involvement and consultation exercise in the right spirit and in a real sense, the way that the Government have amended Section 11 is missing the point of patient and public involvement. If the dialogue between local communities and health and social care providers is as it should be, there will be a greater understanding of the constraints under which such services operate—a point made by Wanless in his report—and therefore much more realistic demands from the public. If that relationship is mature, you will not get the NHS overburdened by excessive amounts

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of trivial consultation. I hope this is an area we can progress between now and Report. I beg leave to withdraw the amendment.

Amendment, by leave, withdrawn.

[*Amendments Nos. 242D to 242F not moved.*]

Clause 232 agreed to.

Clause 233 [*Primary Care Trusts: reports on consultation*]:

Earl Howe moved Amendment No. 242G:

Clause 233, page 163, line 36, after "the" insert "public"

The noble Earl said: I will speak also to the other amendments in this group, Amendments Nos. 242H, 242HA and 242J. In this final group of amendments we have reached Clause 233, which relates to PCTs and the reports that they are to be required to make on any consultations that they may have carried out. I begin with a very simple issue flagged up in Amendment No. 242G. What do the Government mean by consultation? Consultation in the minds of most of us is a public process. If we take the Bill as it is, a PCT might be allowed to suppose that it could confine its consultations to an internal audience, merely sounding out the views of trusts, GPs or local authorities. That kind of narrow exercise would not meet most people's ideas of a proper consultation. I think the Bill needs to be clearer about this.

In Amendment No. 242HA, I am raising another issue. I must apologise to the Committee that the amendment is rather clumsily shoehorned into Clause 233 in this fashion. I should have taken the time to compose a completely separate new clause to deal with the point, which is to ask the Minister why, if PCTs have a duty to report on consultations, no corresponding duty is placed on strategic health authorities. Strategic health authorities, as we know, are directly responsible for commissioning a range of services, not least specialist and tertiary services. A duty to consult is quite rightly imposed on them in Clause 232. Why should they not have to account for such consultations in a transparent and public way exactly as PCTs will have to do?

Finally, in Amendments Nos. 242H and 242J, I want to flag up a particularly serious concern about the kind of commissioning that may or may not be covered by this clause. In subsection (3)(e), the Secretary of State is given a power to define what counts as a commissioning decision and he can do so by using his powers of direction. I worry about this on several levels. First, the Secretary of State can act without any public consultation and without the discipline of any parliamentary process. Secondly, there is a huge potential here to erode the accountability of the NHS to the public over a period. What is the Minister's response to that and in what way do the Government intend this power of direction to be used? I beg to move.

Baroness Morgan of Drefelin: Amendment No. 242G seeks to make it explicit that the duty on PCTs to report on consultation should relate specifically to consultation with the public. I shall deal with that first. I can see that this amendment is a genuine attempt to clarify the position. However, it inadvertently narrows what the Bill provides. Our intention is that consultation should relate to consultation of the public

but it also relates to other groups, including stakeholders and staff. I do not see the need

to prescribe so explicitly that it should be public consultation and I therefore hope that the amendment will not be pressed.

I shall offer some words of explanation about Amendments Nos. 242H and 242J. As Clause 233 (3) makes clear, we wish to provide PCTs with some explicit requirements about matters relating to the new duty to report on consultation. The noble Earl asked about direction-making powers. The direction-making power that is identified in the amendment enables the Secretary of State to set out what kind of commissioning decisions are appropriate for the report. That is a question of reporting rather than what constitutes a commissioning decision.

In every year a PCT will make hundreds of commissioning decisions about local services. We clearly do not want to create a duty that places by default such a heavy burden of reporting that it prevents a PCT doing its job effectively. However, we want to ensure that key decisions about, for example, the prioritisation of resources across the whole population of a PCT area, or how services per se are configured in the area, certainly should be reported upon.

We think that directions are the right vehicle for setting out these requirements, backed up by guidance. The guidance, which is part of the same package to which I referred in an earlier debate, is currently being prepared and itself will be a product of wide ranging involvement and consultation.

I now turn to Amendment No. 242HA, which proposes to place a duty on strategic health authorities to report on their compliance with the Section 242 duty to consult and to report on what influence people's views have had on decisions. Perhaps I should remind noble Lords that SHAs are not service providers or commissioners; they are the organisations that are responsible for the performance management of local NHS organisations and are not responsible themselves for services. Bearing that in mind, it will be the SHA that will be looking to see that PCTs and trusts have complied appropriately with the requirements of Section 242 rather than fulfilling it itself.

We have put the duty to report firmly on the PCT specifically because it is the PCT that controls the vast majority of money in the NHS and which makes decisions about the use of resources and how that affects the way in which a specific population receives its health services. It is the relationship between the PCT and the population whom it serves that needs to be developed and supported.

PCTs need to be more open and accountable to local people and the duty to report on consultations is a tangible way in which PCTs can demonstrate that what they are doing is in the best interests of local

people. Strategic health authorities have a different role altogether. Although they are listed in the consultation requirements of Section 242—it was Section 11—it does not

impact on them as they are not directly responsible for the planning or provision of services.

I hope that my comments have been helpful and that the noble Earl will feel able to withdraw the amendment.

Earl Howe: I shall reflect very carefully on what the Minister said about strategic health authorities. I apologise to the Committee if I said anything misleading. It was my firm impression that strategic health authorities were intimately involved in specialised commissioning groups and that therefore they were eminently appropriate bodies to have to report on those activities.

Baroness Morgan of Drefelin: It would be useful for the record to clarify the position on strategic health authorities. The advice I have had is very clear and it might be helpful if I were to write to the noble Earl between now and Report, setting out exactly, and in rather more detail than the hour permits, the whole question of strategic health authorities.

Earl Howe: I am very grateful to the noble Baroness, as I was, incidentally, for her remarks on Amendments Nos. 242H and 242J, which usefully explained the meaning of those parts of the clause, which I had, I must admit, misconstrued. I note what the noble Baroness said about public consultation. I agree that the public may not be the only audience for consultation exercises and that there are other groups who would, in the normal course, be included.

I wanted to flag up the undesirability of an overly narrow consultation exercise. That, as a matter of custom and practice, would be equally undesirable. I thank the noble Baroness for her reply. I beg leave to withdraw the amendment.

Amendment, by leave, withdrawn,

[*Amendments Nos. 242H to 242J not moved.*]

Clause 233 agreed to.

Clause 234 agreed to.

Schedule 17 agreed to.

Baroness Morgan of Drefelin: I beg to move that the House do now resume.

Moved accordingly, and, on Question, Motion agreed to.

House resumed.

House adjourned at 11.32 pm.