Health and Social Care (National Data Guardian) Act 2018

2018 CHAPTER 31

1 National Data Guardian for Health and Social Care

(1) The Secretary of State must appoint an individual to hold office as the National Data Guardian for Health and Social Care (in this Act, "the Data Guardian").

(2) The Data Guardian may publish guidance about the processing of health and adult social care data in England.

(3) The following must have regard to such guidance—

(a) a public body exercising functions that relate to the health service, adult social care or adult carer support in England;

(b) a person (other than a public body) providing—

(i) services as part of the health service,

(ii) adult social care, or

(iii) adult carer support,

pursuant to arrangements with a public body falling within paragraph (a).

(4) The Data Guardian must keep under review any guidance that has been published and has effect.

(5) The Data Guardian may revise any guidance as the Data Guardian considers appropriate, but if any guidance is revised, the guidance must be published as revised.

(6) Before publishing any guidance, the Data Guardian must consult such persons as the Data Guardian considers appropriate.

(7) The Data Guardian may give advice and information about, and assistance in relation to, the processing of health and adult social care data in England.

(8) The power to publish guidance or to give advice, information and assistance may (as well as being exercised in relation to all cases to which it extends) be exercised in relation to—

(a) those cases subject to specified exceptions, or

(b) particular cases or classes of case.

(9) Nothing in subsection (3) requires a public body or person to have regard to guidance that is not relevant to the functions of the body or the activities of the person that are mentioned in that subsection.

(10) Schedule 1 makes further provision about the Data Guardian.

2 Interpretation

(1) This section applies for the purposes of section 1 and this section.

(2) "Adult carer support" means support provided to a carer under Part 1 of the Care Act 2014.

(3) "Adult social care"—

(a) includes all forms of personal care and other practical assistance provided for individuals aged 18 or over who, by reason of age, illness, disability, pregnancy, childbirth, dependence on alcohol or drugs, or any other similar circumstances, are in need of such care or other assistance;

(b) does not include anything provided—

(i) by virtue of any of sections 23C to 24D of the Children Act 1989;

(ii) by an establishment or agency for which Her Majesty's Chief Inspector of Education, Children's Services and Skills is the registration authority under section 5 of the Care Standards Act 2000;

(iii) by virtue of section 3 of the Adoption and Children Act 2002.

(4) "Carer" has the meaning given in section 10 of the Care Act 2014.

(5) "The health service" means the health service continued under section 1(1) of the National Health Service Act 2006.

(6) "Health and adult social care data" means information (however recorded) that—

(a) relates to—

(i) the physical or mental health or condition of an individual, the diagnosis of his or her condition or his or her care or treatment;

(ii) adult social care provided to an individual (or an assessment for such care);

(iii) adult carer support provided to an individual (or an assessment for such support),

whether or not the identity of the individual is ascertainable, or

(b) is to any extent derived, directly or indirectly, from such information.

(7) "Processing" has the meaning given in section 1(1) of the Data Protection Act 1998.

(8) "Public body" means a body or other person whose functions—

(a) are of a public nature, or

(b) include functions of that nature,

but in the case of paragraph (b), the body or person is a public body to the extent only of those functions.

3 Consequential amendments

Schedule 2 contains amendments that are consequential on this Act.

4 Extent

This Act extends to England and Wales only.

5 Commencement

(1) This Act comes into force on such day as the Secretary of State may by regulations appoint.

(2) Regulations made under this section are to be made by statutory instrument.

6 Short title

This Act may be cited as the Health and Social Care (National Data Guardian) Act 2018.