

HEALTH AND SOCIAL CARE ACT 2012

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 9 – Health and adult social care services: information

Chapter 1 – Information standards

Section 250 – Powers to publish information standards

1398. This section enables the Secretary of State or the NHS Commissioning Board to set information standards for health services or adult social care in England.
1399. *Subsection (1)* empowers the Secretary of State or the NHS Commissioning Board to prepare and publish an information standard. Other bodies may assist with the preparation of standards but the decision to publish a standard rests with Secretary of State or the Board.
1400. *Subsection (2)* defines an information standard as a document containing standards that relate to the processing of information. These may include technical standards, data standards or information governance standards. Technical standards could relate to the specification of systems and may, for example, include messaging, system interoperability or security requirements. Data standards include defining the structure and type of information to be recorded, for example how to record dates of birth or a clinical condition. Information governance standards could relate to policies, procedures or guidelines on information processing.
1401. *Subsections (3) and (4)* prescribe the limits of the Secretary of State or the Board's powers to publish standards in relation to the provision of NHS, health or adult social care services in England.
1402. *Subsection (5)* clarifies that a published standard must include guidance on, for example, which types of organisation it is relevant to and on how to implement the standard.
1403. *Subsection (6)* identifies which bodies must have regard to published information standards. These are the Secretary of State, the Board, public bodies exercising functions in connection with health services or adult social care and anyone providing publicly funded health services or adult social care commissioned by or on behalf of a public body.
1404. *Subsection (7)* defines the terms used in this section. For example, "processing" has the same meaning as in the Data Protection Act 1998. This is a broad definition that captures a range of activity involving information including obtaining, holding, recording, using and sharing.

Section 251 – Information standards: supplementary

1405. *Subsection (1)* places a duty on the Secretary of State or the Board to consult those they determine should be consulted before publishing an information standard.

1406. *Subsection (2)* enables the Secretary of State or the Board to adopt existing information standards that are appropriate but have been prepared or published by someone else.

Chapter 2 - The Health and Social Care Information Centre

Establishment and general duties

Section 252 - The Health and Social Care Information Centre

1407. This section establishes the Health and Social Care Information Centre. It also gives effect to Schedule 18.

Schedule 18 – The Health and Social Care Information Centre

1408. This Schedule deals with the constitution of the Information Centre; in many respects it makes similar provision to that made by Schedule 1 for the NHS Commissioning Board, Schedule 8 for Monitor, and Schedule 16 for NICE.
1409. [Paragraph 1](#) sets out the membership requirements for the Information Centre. Paragraphs 2, 3, 4 and 5 set out provisions relating to the appointment of non-executive directors to the Information Centre, including their tenure, ability to be suspended or removed from post by the Secretary of State, and their remuneration (which is to be determined by the Secretary of State).
1410. [Paragraph 6](#) relates to the appointment of the Information Centre's employees. The
1411. Information Centre requires the approval of the Secretary of State to its policies on the payment of remuneration, allowances, pensions or gratuities before the Centre can make any such payment to an employee.
1412. [Paragraph 7](#) enables the Information Centre to establish committees or sub-committees. Paragraph 8 allows the Centre to regulate its own procedure. Paragraph 9 concerns the exercise of functions by the Information Centre.
1413. [Paragraph 10](#) confers supplementary powers on the Information Centre. It requires the Centre to obtain the approval of the Secretary of State before it can form, participate in or invest in companies.
1414. [Paragraph 11](#) concerns finance arrangements with the Secretary of State.
1415. [Paragraph 12](#) sets out a requirement for the Information Centre to publish an annual report, a copy of which must be laid before Parliament and a copy sent to the Secretary of State. The Secretary of State also has the ability to ask the Information Centre to prepare other reports or provide information at other times, for example as required for in-year monitoring of the Centre's performance and use of central funding.
1416. [Paragraphs 13, 14 and 15](#) relate to the Information Centre's accounts. Paragraph 14 includes an obligation on the Comptroller and Auditor General to report on the Centre's annual accounts and lay copies of both the annual accounts and the report before Parliament.
1417. [Paragraph 16](#) relates to the Information Centre's seal. Paragraph 17 confirms the Centre's status as a non-Crown body.

Section 253 - General duties

1418. This section sets out the general duties of the Information Centre. The Information Centre must have regard to information standards published by or guidance issued by the Secretary of State or the NHS Commissioning Board. It must exercise its functions effectively, efficiently and economically and seek to minimise the burdens it imposes on others, for example, as a result of collecting or analysing information. The Centre

must also have regard to the need to promote the effective, efficient and economic use of resources in the provision of health and adult social care services in England.

Functions: information systems

Section 254 - Powers to direct the Information Centre to establish information systems

1419. This section provides the Secretary of State or the NHS Commissioning Board with powers to require the Information Centre to put in place systems for collecting or analysing information. The Secretary of State may direct the Centre to collect or analyse information having considered that it is necessary or expedient for the Secretary of State to have the resulting information in connection with the provision of health services or adult social care in England. The Board may direct the Centre to collect or analyse information having considered that it is necessary or expedient for the Board to have the resulting information in relation to its exercise of functions in connection with the provision of NHS services. Before making such directions, the Secretary of State or the Board are required to consult the Centre so that it can advise on options and methodology. For example, the Centre could advise that it already collects or analyses the information.
1420. *Subsection (7)* ensures that the Information Centre can charge the Board a reasonable fee for complying with a direction given by the Board to establish a system for the collection or analysis of information.

Section 255 - Powers to request the Information Centre to establish information systems

1421. This section provides for someone other than the Secretary of State or the NHS Commissioning Board to request the Information Centre to set up a system for the collection or analysis of information.
1422. The request may be mandatory if made by a principal body such as Monitor, the Care Quality Commission or NICE, or another body specified in regulations.
1423. Regulations may prescribe when the Centre may exercise discretion not to comply with a mandatory request, for example in respect of an information collection or analysis that is highly technical or specialised or would significantly impact on core functions the Centre was already exercising.
1424. The Secretary of State or the NHS Commissioning Board may direct the Centre to comply with a non-mandatory request made by a body outside England or not to comply with a non-mandatory request made by any person. The Centre would have discretion to refuse other requests for information if, for example, the requestor had not had regard to the code of practice on confidentiality (see section 263) or followed the Centre's advice or guidance, or collecting the information would significantly affect other core functions the Centre was exercising. When considering whether to accept a request, the Centre would also need to take into account its general duty to seek to minimise burdens on others.

Section 256 – Requests for collection under section 255: confidential information

1425. This section restricts the circumstances where a person may make a confidential collection request to the Information Centre. The section defines a confidential collection request as a request relating to information which identifies an individual or from which the identity of a person could be discovered (other than an individual who provides health care or adult social care). Such a request can only be made where the requestor is a principal body able to make a mandatory request (such as Monitor, CQC or NICE) or in the other circumstances set out in the section, for example, where the information may be lawfully disclosed to the requestor.

Section 257 – Requests under section 255: supplementary

1426. This section places a duty on the Information Centre to publish procedures for the making of requests for the collection or analysis of information and for reconsidering any requests that are refused. *Subsection (3)* allows the Centre to charge a reasonable fee to cover the cost of establishing a system. *Subsection (4)* places a duty on a person considering making a request to consult the Centre before making that request, so that it can advise on options and methodology. The Centre must publish details of all requests (including mandatory requests) for information the Centre is required or decides to collect. This will help to inform any person considering making a request about existing collections and will help to avoid duplicate requests.

Section 258 – Information systems: supplementary

1427. This section places a duty on the Information Centre to consult prior to establishing a new system for collecting or analysing information. This includes consulting the person who required or requested the collection or analysis, bodies from whom the Centre would require or request information and likely end users of the collected or analysed information. The section also provides for the Centre to be able to destroy information that it has collected or derived from a collection (for example through analysing it) when there is no longer a need to retain it.

Section 259 - Powers to require and request provision of information

1428. This section provides the Information Centre with powers to require or request those set out in *subsection (2)* to provide the Centre with any information it considers it necessary or expedient for the Centre to have for any function it exercises by virtue of Chapter 2.
1429. *Subsection (2)* specifies that such bodies may be health or social care bodies or organisations providing health services or adult social care in England under arrangements with a public body. When information is needed from bodies other than those described in *subsection (2)*, the Centre may request the desired information and may make a payment in respect of the cost of complying with the request (*subsection (6)*).
1430. *Subsection (3)* limits the ability of the Centre to require confidential person- identifiable information from bodies providing publicly funded health or adult social care services. The Centre may only require provision to it of confidential person- identifiable information where it has been requested to do so by a principal body such as NICE, CQC or Monitor or where the person requesting the information could have required the disclosure of the information in any case. *Subsection (4)* makes clear that the Centre may request such information from a health or social care body or publicly funded provider of health or adult social care services, but there is no obligation to provide it.
1431. *Subsection (5)* obliges the bodies defined in *subsection (2)* to provide information required pursuant to subsection (1)(a) in a form specified by the Centre within a specified period.
1432. *Subsection (8)* requires the Centre to publish a procedure for notifying health or social care bodies and other persons about information collections and *subsection (9)* requires the Centre to co-operate with other bodies authorised to collect information. The intention is to minimise the burden on the providers of information.
1433. *Subsection (10)* specifies that those providing information to the Centre are not in breach of confidentiality but are subject to any express restrictions on disclosure of information in other legislation.

Section 260 - Publication of information

1434. This section requires the Information Centre to generally publish the information it collects or may derive from a collection (for example information that is generated

following analysis of collected information). Information which identifies or enables identification of a person must not be published unless that person is a “relevant person”. “Relevant person” is defined in *subsection (7)* as a provider of health care or adult social care or a body corporate. In relation to information which identifies (or enables the identification of) a relevant person, *subsection (2)(a)* sets out that the Centre must take into account the public interest as well as the interests of the relevant person in deciding whether it is appropriate for the information to be published. As set out in *subsection (2)(c)*, if the Centre considers that information it collects fails to meet information standards and publication would not be in the public interest, the Centre must not publish it. Directions from the Secretary of State or the Board may also prohibit publication of information, or, in the case of information identifying or enabling the identification of a relevant person, directions may require the Centre to publish it.

1435. *Subsection (6)* provides for the Centre to consider the need to publish information in easily accessible formats, taking into account who will use the information and the uses to which the information is likely to be put. Where the form, manner and timing of publication is specified in a direction or mandatory request, the Centre must comply with the specifications and may comply with such specifications in other requests. Where there is no such specification or in addition to complying with a specification, the Centre has discretion under *subsection (5)* regarding the manner, form and timing of publication.

Section 261 – Other dissemination of information

1436. This section gives the Information Centre power to disseminate information it collects if the information is of a type described in *subsection (2)*. This enables information to be disseminated (shared with a specific person or body rather than published in the public domain) to particular persons or groups of persons if it is already required to be published. Information that fails to meet information standards may also be disseminated if the Centre considers dissemination to be in the public interest. In addition, the Centre may disseminate information which is in a form which would identify, or enable the identification of a relevant person if the Centre considers it appropriate after considering the public interest and the interests of the body identified. “Relevant person” is previously defined as a provider of health care or adult social care or a body corporate. A direction by the Secretary of State or the NHS Commissioning Board which prohibits publication of certain information (as set out in *section 262(2)(d)*) could enable or require dissemination of that same information.
1437. *Subsection (4)* provides that the Centre may also disseminate information which it collects pursuant to a direction or request to establish an information system to any person to whom the information could have been disclosed by the person from whom the Centre collected the information.
1438. *Subsections (5) and (6)* set out circumstances where the Centre may disclose information. The question whether the Centre may disclose information sometimes requires consideration of the position at common law. Common law needs to be considered where a disclosure is intended to protect the welfare of an individual, is made to a body exercising public functions for the purposes of those functions, or where disclosure relates to the investigation of a crime. A disclosure may not be made for these purposes if common law would prohibit it. This is consistent with requirements for the disclosure of information by the NHS Commissioning Board and CCGs. But *subsection (7)* makes it clear that nothing in this section is intended to prevent the Centre from relying on any other power or authority that it may have under other legislation to disseminate information, for example, an approval under the Health Service (Control of Patient Information) Regulations 2002 (S.I. 2002/1434).
1439. *Subsection (8)* makes clear that any “passing back” of information to a person who initiated a collection or analysis of information is to be treated as dissemination and

is therefore subject to the limits on what may be disseminated and to whom imposed by this chapter.

Section 262 – Other dissemination: directions and requests under sections 254 and 255

1440. This section makes provision for the Secretary of State or the NHS Commissioning Board to be able to require through directions under section 254 that the Information Centre disseminates certain information it has obtained as a result of complying with the direction. The Secretary of State or the Board can require this where the information obtained by the Centre must be published under section 260, the information identifies or could lead to the identification of an individual (such as a patient) or a health or social care body or body corporate (such as a hospital trust) and the individual or body has consented to the dissemination, or the information falls within section 260(2)(c). In the case of information from which a health or social care body or body corporate could be identified, the Secretary of State or the Board also has power to direct the Centre to disseminate the information provided the direction giver has taken into account the public interest, as well as the interests of the body in considering whether it is appropriate to give the direction.
1441. *Subsection (4)* enables anyone to request that the Centre use its powers to disseminate information that it obtains as a result of complying with that person's request to collect or analyse information under section 255. *Subsection (5)* enables anyone to request that the Centre does not use its powers to disseminate information obtained by complying with a direction or request by that person.
1442. *Subsection (7)* enables the Secretary of State, Board or a person who has made a request for the collection or analysis of information to include in the direction or request details of to whom they wish the information to be disseminated, as well as the form, manner and timing of dissemination.

Section 263 – Code of practice on confidential information

1443. This section requires the Information Centre to publish a code of practice for health or social care bodies (or those providing publicly funded health or social care) on how to handle person-identifiable or other confidential information. It requires the Centre to consult with (and obtain the approval of) the Secretary of State and the NHS Commissioning Board before publishing the Code. Provision is also made in the section for the Centre to consult anyone else about the Code whom the Centre considers appropriate.

Section 264 - Information Register

1444. This section requires the Information Centre to publish a register containing details of the information the Centre collects or may derive from a collection, for example, following analysis of the information. The register would also need to contain details from other information collections or analyses undertaken by other bodies that have been authorised by the Secretary of State or the NHS Commissioning Board. The record of information collected or analysed will be complementary to the record of all mandatory and other requests with which the Centre is obliged or decides to comply. Together these will provide a reference source for bodies seeking to obtain information on what information is collected and may already be available.

Section 265 - Advice or guidance

1445. This section gives the Information Centre discretion to advise bodies described in *subsection (2)* on issues relating to the collection, analysis, publication or other dissemination of information. The section also requires the Centre to provide advice or guidance to any person or body it is requested to advise by the Secretary of State or the NHS Commissioning Board.

1446. This is intended to help minimise duplication and burdens relating to information collection. In particular, the Secretary of State is required to request advice on ways of minimising the burden of information collections on health or social care bodies and other persons at least once every 3 years.
1447. *Subsections (5) and (6)* require any health or social care body or other provider of health services or adult social care to whom advice or guidance is given to have regard to the advice or guidance when exercising functions or providing services in connection with the provision of health or adult social care.

Functions: quality of health and adult social care information

Section 266 - Assessment of quality of information

1448. This section requires the Information Centre to publish periodic reports on the extent to which the information it collects meets published information standards.

Section 267 - Power to establish an accreditation scheme

1449. This section enables the Secretary of State, through regulations, to make provision for a scheme to accredit (kite-mark) organisations that act as information intermediaries. Such accreditation schemes may be run by the Information Centre or by any other body specified by the Secretary of State in regulations.
1450. Regulations may provide a body operating an accreditation scheme with the power to establish the accreditation procedure, set accreditation criteria, keep the accreditation scheme under review and charge those applying for accreditation reasonable fees.
1451. Regulations may also specify that a body operating an accreditation scheme must publish details of the accreditation process, including the criteria that must be met for accreditation, provide an appeals process when an application for accreditation is refused and provide those applying for accreditation with advice.
1452. *Subsection (5)* defines the types of bodies that may apply for accreditation under a scheme.

Functions: other

Section 268 - Database of quality indicators

1453. This section enables the Secretary of State, through regulations, to task the Information Centre with establishing, maintaining and publishing a database of quality indicators relating to health and adult social care services in England. Quality indicators are factors by reference to which performance by service providers can be measured.

Section 269 – Power to confer functions in relation to identification of GPs

1454. Regulations made under this section would enable the Information Centre to carry out functions in relation to issuing GPs with doctor index numbers. Doctor index numbers enable GPs to prescribe drugs to patients and are also used in connection with the management and monitoring of prescribing in primary care.

Section 270 - Additional functions

1455. This section enables the Information Centre to carry out or supply additional income generation functions or services. An additional function can only be undertaken by the Centre if it involves or is connected with the collection, analysis, publication or other dissemination of information. The additional function must not significantly interfere with a function the Centre exercises as a result of this or any other Act. The Centre may charge, and may do so on an appropriate commercial basis, for any services it provides pursuant to the functions conferred by *subsection (1)*.

Section 271 - Arrangements with other bodies

1456. This section enables the Information Centre to make arrangements with other bodies to carry out services on its behalf.

Section 272 - Failure by Information Centre to discharge any of its functions

1457. This section enables the Secretary of State to take action if he considers that the Information Centre is failing to discharge any of its functions properly (including doing so by failing to discharge them consistently with what the Secretary of State considers to be in the interests of the health service in England or (as the case may be) with what otherwise appears to the Secretary of State to be the purpose for which the functions are conferred). The failure must be significant. The Secretary of State is given the power to direct the Centre to discharge the functions within specified timescales and in the way that the Secretary of State directs. If the Centre fails to comply with such a direction the Secretary of State may discharge the functions himself or may make arrangements for another body to do so. Where the Secretary of State takes action under this section, he must publish reasons for doing so.

Section 273 - Protection from personal liability

1458. This section applies existing legislation so that the members and staff of the Information Centre are protected from personal liability whilst carrying out functions on behalf of the Centre.

General and supplementary

Section 274 - Powers of the Secretary of State or Board to give directions

1459. This section enables the Secretary of State or the NHS Commissioning Board, through regulations, to give certain directions. These directions could require:
- a) a health or social care body to exercise an information function of the Information Centre (for example the Centre's function of requiring other health or social care bodies to provide information);
 - b) the Centre or another health or social care body to exercise an information function of the Secretary of State or the Board;
 - c) the Centre to exercise an information function of a health or social care body;
 - d) the Centre to carry out systems delivery functions of the Secretary of State or the Board that are exercisable in relation to the development or operation of information or communications systems.
1460. This section could be used, for example, to provide in regulations for the Secretary of State or the Board to direct that another body should collect information that the Centre could be mandated to collect (a direction under a) above). An example could be where there is no intention to publish or disseminate the information that is to be collected or analysed more widely, other than for a single, primary use. It might be an inefficient use of the Centre's resources for it to collect or analyse information solely for the purpose of passing the information to another body. Similarly, it may be more efficient for the Centre to collect certain information instead of this being done as an ancillary function by another health or social care body (a direction under (c) above).
1461. *Subsection (2)* ensures that the Secretary of State or the Board is able to direct the Centre about *how* it is to perform functions it is directed to undertake under *subsection (1)*.
1462. *Subsections (6) and (7)* make provision for the Centre to be appropriately resourced for exercising Secretary of State or Board functions in relation to information or communications systems. Where a direction giving power relating to a systems delivery

function is conferred on the Secretary of State, the regulations must ensure that a direction could include provision for payments to be made to the Centre. Where such a power is conferred on the Board, the regulations must ensure that a direction will enable the Centre to charge the Board a reasonable fee for carrying out the function which is the subject of the direction.

Section 275 - Interpretation of this Chapter

1463. This section defines terms used in Chapter 2.

Section 276 - Dissolution of predecessor body

1464. This section provides for the abolition of the Special Health Authority known as the Health and Social Care Information Centre.

Section 277 - Consequential provision

1465. This section gives effect to Schedule 19 (part 9: consequential amendments) which contains consequential amendments to a range of statutory provisions to ensure that the Information Centre is referenced appropriately. It includes, for example, changes to the Freedom of Information Act 2000 and Access to Health Records Act 1990 so that relevant provisions in the Acts would continue to apply to the re-established Centre and information it holds. It also includes a change to the Health Act 2009, so that the Centre would have a duty to have regard to the NHS Constitution.