

SCHEDULE 1

Article 4(3)

Delegated functions under Part 10 of the NHS Act

Interpretation

1. In this Schedule—

“accredited Counter Fraud Specialist” means a person accredited by the Counter Fraud Professional Accreditation Board⁽¹⁾ or similar organisation providing counter fraud prevention, detection and investigation accreditation to government departments;

“authorised officer” means officers authorised under paragraph 4(1);

“the delegated functions” means the functions delegated to the Authority under paragraph 2(1);

“designated officer” means an officer designated pursuant to paragraph 3(1) and, in respect of any given authorisation granted to or being considered in relation to a senior officer or authorised officer, “the designated officer concerned” means the designated officer who is considering or who granted that authorisation.

Delegation of functions

2.—(1) The Secretary of State directs pursuant to section 7 of the NHS Act that the functions of the Secretary of State under sections 197⁽²⁾ (notice requiring production of documents) and 198 (production of documents) of the NHS Act are to be exercisable by the Authority, subject to the requirements of this Schedule.

(2) The Secretary of State further directs that the delegated functions are to be exercised on behalf of the Authority by its authorised officers, as provided for in this Schedule.

(3) For the purposes of section 199(3) of the NHS Act (which provides for the level of seniority of an officer to be specified in directions), an officer is a senior officer if the officer is of a grade within or above Agenda for Change pay band 7.

Designated officers

3.—(1) The Authority must designate officers to undertake its functions under paragraph 4, and other functions of designated officers under this Schedule.

(2) A designated officer must be an accredited Counter Fraud Specialist.

(3) A designated officer discharging functions of the Authority under paragraph 4 must be of a grade above Agenda for Change pay band 8b.

(4) A designated officer discharging other functions under this Part must be of a grade within or above Agenda for Change pay band 8b.

Authorising senior officers

4.—(1) The Authority is to authorise such of its senior officers meeting the fitness requirement in paragraph 5 as it may require to act on its behalf in the exercise of the delegated functions.

(1) The Counter Fraud Professional Accreditation Board is a non-statutory regulatory body financed, and run by representatives from, in particular, the Department of Work and Pensions and its agencies, the Department of Health, certain local government bodies, HM Revenue and Customs, and the UK Passport Agency, and hosted by the University of Portsmouth, with the purposes of ensuring the delivery of professional counter fraud training and academic study and that, once qualified, those who are accredited maintain their professional standards.

(2) Section 197 was amended by section 55(1) of, and paragraph 105 of Part 9 of Schedule 4 to, the Health and Social Care Act 2012.

Status: This is the original version (as it was originally made).

(2) The Authority may revoke such an authorisation if it is satisfied having regard to all relevant circumstances that it is appropriate to do so.

Fitness requirements for authorised officers

5. A senior officer meets the fitness requirement if the officer is an officer—
- (a) whom the designated officer concerned considers has the knowledge, skills and experience necessary to exercise the delegated functions; and
 - (b) who is an accredited Counter Fraud Specialist.

Records of authorised officers

- 6.—(1) The Authority must establish and maintain a record in respect of all authorised officers.
- (2) The record referred to in sub-paragraph (1) must include—
- (a) the name of the authorised officer;
 - (b) a statement that the authorised officer is an accredited Counter Fraud Specialist;
 - (c) the name of the designated officer concerned;
 - (d) the date that the authorisation under paragraph 4 was granted; and
 - (e) where appropriate, the date on which the authorisation was revoked.

Statement of authority

- 7.—(1) The Authority must issue an authorised officer with a written statement providing evidence of that officer's authority to act in the exercise of the delegated functions.
- (2) The statement issued under sub-paragraph (1) must include—
- (a) the name and business address of the authorised officer;
 - (b) a statement that the officer is authorised to act in the exercise of the delegated functions which must include the date on which the officer was authorised to exercise the delegated functions;
 - (c) the signature of the designated officer concerned;
 - (d) the name and logo of the Authority; and
 - (e) a reference to the officer's authorisation being granted by virtue of Part 10 of the NHS Act.

Production of statement

8. An authorised officer exercising the delegated functions must produce the statement issued to that officer in accordance with paragraph 7, or a copy of it—
- (a) at the time of serving a notice under section 197(2) of the NHS Act (notice requiring the production of documents); or
 - (b) when requiring a person under section 198(6) of the NHS Act (statement required upon failure to produce documents) to state, to the best of that person's knowledge and belief, where documents are.

Requirement for specific authorisations in relation to personal records

9.—(1) An authorised officer must obtain a specific authorisation from a designated officer (other than that authorised officer) before acting in the exercise of the delegated functions in relation to personal records⁽³⁾.

(2) A specific authorisation must be applied for in relation to each personal record or group of personal records sought in any one investigation.

(3) A specific authorisation given under sub-paragraph (1) may apply only to the personal record or group of personal records in respect of which the application for that authorisation was made.

(4) An authorised officer must comply with any conditions imposed by a specific authorisation in relation to personal records.

Procedure for specific authorisations

10.—(1) An authorised officer seeking a specific authorisation in relation to personal records must complete a form provided to that authorised officer for that purpose by a designated officer.

(2) A designated officer must consider the application having regard to all relevant matters and in particular—

- (a) the description of the documents sought;
- (b) the reasons for the application;
- (c) whether or not each document sought is necessary for the purposes of the exercise of the delegated functions; and
- (d) the description of the proposed arrangements for the safeguarding of the documents whilst in the possession or under the control of the Authority.

Records of specific authorisations in relation to personal records

11. The Authority must establish and maintain records of all applications for specific authorisations in relation to personal records, including details of whether or not the specific authorisation was granted.

Production of evidence of specific authorisation in relation to personal records

12. Where an authorised officer has a specific authorisation to act in the exercise of the delegated functions in relation to personal records, that authorised officer must, in addition to producing the statement issued to that authorised officer in accordance with paragraph 7, or a copy of it, produce evidence of that specific authorisation—

- (a) at the time of serving a notice under section 197(2) of the NHS Act (notice requiring production of documents); or
- (b) when requiring a person under section 198(6) of the NHS Act (statement required upon failure to produce documents) to state, to the best of that person's knowledge and belief, where documents are.

Content of notices

13.—(1) A notice to be served under section 197 of the NHS Act by the Authority must in addition to meeting the requirements of section 197(4) to (6) and (9) of the NHS Act, include—

(3) "Personal records" for these purposes is defined in section 210(1) of the National Health Service Act 2006.

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- (a) the name and address of the NHS body, health service provider, NHS contractor, public health service contractor, or statutory health body (as the case may be), whom the Authority has reasonable grounds to suspect has possession or control of the documents sought;
- (b) the job title and, if known, the name of the person who the Authority believes is accountable for the documents;
- (c) a reference to the notice's being served pursuant to Part 10 of the NHS Act;
- (d) details of the arrangements for the production of the documents including the place at which the documents are to be produced;
- (e) notification of the penalties for failing to comply with a notice;
- (f) the name, business address and signature of the authorised officer serving the notice; and
- (g) the name and the logo of the Authority.

(2) For the purposes of this paragraph, the terms “NHS body”, “health service provider”, “NHS contractor”, “public health service contractor”, and “statutory health body” have the meanings given in subsections (2), (4), (5), (5A) and (6) respectively of section 196(4) of the NHS Act (persons and bodies about which provision is made in Part 10 of that Act).

(4) Subsection (2) was amended, and subsection (5A) was inserted, by section 55(1) of and paragraph 104 of Part 9 of Schedule 4 to, the Health and Social Care Act 2012 (c. 7) (“the 2012 Act”). See also amendment made to the definition “NHS body” in section 275(1) of the NHS Act by section 55(1) of, and paragraph 138 of Part 12 of Schedule 4 to, the 2012 Act.