



Department of Health & Social Care

Department of Health and Social
39 Victoria Street
London SW1H 0EU

Amanda Pritchard
Chief Executive
NHS England

1 February 2023

Dear Amanda,

1. NHS England De-Identified Data Analytics and Publication Directions 2023

- 1.1 I am writing on behalf of the Secretary of State for Health and Social Care (**the Secretary of State**) to provide Directions to NHS England.
- 1.2 These Directions are given in exercise of the powers conferred by sections 254(1), 260(2)(d), 261(2)(e) and 304(9) to (12) of the Health and Social Care Act 2012¹ (**the 2012 Act**) and sections 13ZC and 272(7) and (8) of the National Health Service Act 2006² (**the 2006 Act**).
- 1.3 These Directions are to be known as the **NHS England De-Identified Data Analytics and Publication Directions 2023** and come into force on 1 February 2023 (**the Transfer Date**).
- 1.4 These Directions are supplemental to directions given under or treated as given under section 254 of the 2012 Act by the Secretary of State or NHS England to the Health and Social Care Information Centre (known as NHS Digital) before the Transfer Date or given by the Secretary of State to NHS England on or after the Transfer Date.

2. Background

- 2.1 The functions conferred on NHS Digital under directions under section 254 of the 2012 Act are transferred to NHS England under the Health and Social Care Information Centre (Transfer of Functions, Abolition and Transitional

¹ 2012 c.7 ("the 2012 Act").

² 2006 c.41. Section 13ZC was inserted by section 45 of the Health and Care Act 2022 (c. 32).

Provisions) Regulations 2023³ (**the Transfer Regulations**)⁴ on the Transfer Date.

- 2.2 Prior to the Transfer Date, NHS Digital de-identified data it had obtained pursuant to directions under section 254 of the 2012 Act and shared that de-identified data with NHS England, including the de-identified data set out in the Data Sharing Agreements (**DSAs**) referenced in Annex A to these Directions.
- 2.3 From the Transfer Date, NHS England will itself obtain data pursuant to directions under section 254 of the 2012 Act, and additionally hold both the data obtained by NHS Digital pursuant to directions under section 254 and the de-identified data referred to in paragraph 2.2, and the DSAs will come to an end.
- 2.4 Prior to the Transfer Date, where NHS Digital obtained data pursuant to directions under section 254 of the 2012 Act which was subsequently to be disseminated to and published by NHS England, NHS Digital was directed not to publish that data. Without these Directions, from the Transfer Date, that restriction on publishing data would, as a result of the Transfer Regulations, apply to NHS England in circumstances where this was not intended when those directions were originally issued.

3. Purpose

The purpose of these Directions (**Purpose**) is to:

- 3.1 require NHS England in accordance with these Directions to establish:
 - 3.1.1 arrangements for the governance of the ongoing processing of the data obtained by NHS Digital under section 254 of the 2012 Act and previously de-identified and shared by NHS Digital with NHS England, and
 - 3.1.2 a framework for the future analysis, linkage and de-identification of data obtained by NHS England pursuant to directions under section 254 of the 2012 Act and the transfer of that de-identified data into secure NHS England de-identified data environments for analysis by NHS England,

where it is necessary or expedient for NHS England to have the information that may be obtained from the processing and analysis of the de-identified data in relation to its exercise of functions in connection with the provision of health services⁵; and

- 3.2 lift prohibitions on publication by NHS England, of data obtained before or after the Transfer Date, pursuant to directions given under section 254 of the

³ <https://www.legislation.gov.uk/ukxi/2023/98/made>

⁴ S.I. 2023/98.

⁵ As defined in section 253(3) of the 2012 Act.

2012 Act before the Transfer Date, where it is necessary or expedient for NHS England to publish that information for specified purposes.

4. Establishing and operating information systems

- 4.1 Subject to paragraphs 4.2 and 4.3 below, the Secretary of State directs NHS England to establish and operate systems for:
 - 4.1.1 the analysis, including linkage, of the data obtained pursuant to directions under section 254 of the 2012 Act,
 - 4.1.2 the de-identification of that data, and
 - 4.1.3 the further analysis by NHS England of the de-identified data, as may be required by the Secretary of State, or as NHS England determines is necessary to achieve the Purpose.
- 4.2 NHS England is directed to analyse and de-identify data under the systems established under paragraph 4.1.1 and 4.1.2 of these Directions, but only where the purpose of the processing is:
 - 4.2.1 covered by a Data Protection Impact Assessment approved by or on behalf of the NHS England Senior Information Risk Officer,
 - 4.2.2 described in a privacy notice published on the NHS England website and
 - 4.2.3 published in a data use register published on the NHS England website.
- 4.3 NHS England is directed to analyse data under the systems established under paragraph 4.1.3 of these Directions, but only where:
 - 4.3.1 the data to be analysed has been de-identified, such that an individual cannot be directly identified either from the data to be accessed or analysed or from the results of the analysis carried out;
 - 4.3.2 the data is held in a secure de-identified data environment under NHS England's control, which is technically and organisationally segregated from:
 - 4.3.2.1 the data environments in which any source identifying data is contained, and
 - 4.3.2.2 the data environments in which the source identifying data is de-identified; and
 - 4.3.3 the analysis is for a purpose that:
 - 4.3.3.1 is not incompatible with the purpose for which the identifying data was obtained under the relevant directions,
 - 4.3.3.2 does not breach any restriction contained within those directions, and

4.3.3.3 falls within the Purpose set out in paragraph 3.1 above.

5. Publication of data obtained under these Directions

For the purposes of section 260(2)(d) of the 2012 Act, information that is obtained by complying with these Directions is specified as information falling within that provision (and the prohibition in section 260(1) on publishing information applies accordingly to it), except for the publication of anonymous statistical data:

5.1 as may be required by the Secretary of State;

5.2 which NHS England determines is necessary or expedient to publish in relation to its exercise of functions in connection with the provision of health services; or

5.3 which the Chief Statistician of NHS England considers is in the public interest to publish in accordance with the Code of Practice for Statistics.⁶

6. Dissemination

In accordance with section 261(2)(e) of the 2012 Act, despite the prohibition on publication under paragraph 5, the power in section 261(1) of the 2012 Act (power to disseminate) applies to the information that is obtained by complying with these Directions.

7. Variation to previous directions regarding restrictions on publication

7.1 In relation to directions given to NHS Digital before the Transfer Date (the **Original Directions**) specifying descriptions of information under section 260(2)(d) (that must not be published), that information is specified (as not for publication), except for the publication of anonymous statistical data:

7.1.1 which NHS England determines is necessary or expedient to publish for the purposes of discharging its statutory functions or to improve public accessibility to the information; or

7.1.2 which the Chief Statistician of NHS England considers is in the public interest to publish in accordance with the Code of Practice for Statistics,

(and the duty in section 260(1) to publish the information therefore applies), and those Original Directions are varied accordingly.

7.2 These Directions supplement the Original Directions, the provisions of which will continue in force, as amended by these Directions from the date above.

8. Priorities, Policies, Guidance and Governance

8.1 The Secretary of State directs NHS England to exercise the functions described above in accordance with the priorities and policies of the

⁶ <https://code.statisticsauthority.gov.uk/> Section 260

Secretary of State as the Secretary of State may notify in writing from time to time to NHS England.

- 8.2 NHS England must have regard to any guidance issued by the Secretary of State when exercising its functions under these Directions insofar as they are given under section 13ZC of the 2006 Act⁷.

9. Requirement for these Directions

- 9.1 In accordance with section 254(2)(b) of the 2012 Act, the Secretary of State considers that it is in the interests of the health service in England and the recipients or providers of adult social care in England for these Directions to be given.
- 9.2 In accordance with section 254(5) of the 2012 Act, NHS England has been consulted before these Directions have been given.
- 9.3 In accordance with section 13ZC(5) of the 2006 Act, the Secretary of State considers that it is in the public interest for these Directions to be given.

10. Duration

NHS England is directed to carry out functions under these Directions, including to operate the information systems established under paragraph 4 of these Directions, unless and until this requirement is revoked by a further direction in accordance with timescales and arrangements decided by the Secretary of State following consultation with NHS England.

11. Review of these Directions

These Directions will be reviewed annually. This review will include consultation with NHS England.

Yours sincerely



Louise Greenrod

Deputy Director of Data Policy and Digital Oversight

Signed by authority of the Secretary of State

Date signed: 1 February 2023

⁷ For guidance on other functions under these Directions see section 274A of the 2012 Act.

ANNEX A