

# HEALTH AND SOCIAL CARE ACT 2012

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 9 – Health and adult social care services: information**

#### **Chapter 2 - The Health and Social Care Information Centre**

#### **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.