

NATIONAL HEALTH SERVICE, ENGLAND

The National Health Service Litigation Authority Directions 2013

The Secretary of State for Health, in exercise of the powers conferred by sections 7(1), 8(1), 272(7) and (8) of the National Health Service Act 2006(a) gives the following Directions.

Citation, commencement, application and interpretation

1.—(1) These Directions may be cited as the National Health Service Litigation Authority Directions 2013.

(2) These Directions come into force on 1st April 2013.

(3) These Directions are given to the National Health Service Litigation Authority established by the National Health Service Litigation Authority (Establishment and Constitution) Order 1995 (b).

(4) These Directions apply in relation to England only.

(5) In these Directions—

“the Act” means the National Health Service Act 2006;

“the 2012 Act” means the Health and Social Care Act 2012(c);

“the Authority” means the National Health Service Litigation Authority established by the National Health Service Litigation Authority (Establishment and Constitution) Order 1995;

“action plan” means a plan drawn up by an NHS body for the purpose of addressing any concerns identified in advice or support given under direction 2(1)(a) or (g) or any weaknesses identified by an assessment carried out in relation to a practitioner employed by that body, and includes a reference to any training programme which is drawn up for that purpose;

“alert system” means a way in which NHS bodies and others can be made aware of a practitioner or other person providing health care services whose performance or conduct could place patients or staff at serious risk;

“assessment” means an assessment carried out under these Directions in relation to the performance of a practitioner who is employed by an NHS body, with respect to the provision of services under the Act by that practitioner, or with respect to that practitioner’s assistance in the provision of such services, and includes the referral of that practitioner for particular tests or procedures to a body other than the body carrying out the assessment;

“NHS body” means the Board(d), a clinical commissioning group(e), the Health and Social Care Information Centre(f), the National Institute for Health and Care Excellence(g), an NHS trust(h), an NHS foundation trust(i), and a Special Health Authority(j);

(a) 2006 c. 41. By virtue of section 271(1) of the National Health Service Act 2006 (“the 2006 Act”) the functions of the Secretary of State under those sections as exercised in making these Directions are exercisable only in relation to England. Section 7 has been amended by section 21 of the Health and Social Care Act 2012 (c.7) (“the 2012 Act”). Section 8 has been amended by section 55(1) of, and paragraph 5(1) and (2) of Schedule 4 to, the 2012 Act.

(b) Established by S.I. 1995/2800; amended by S.I. 2002/2621, S.I. 2005/503 and 1445, S.I. 2012/1641 and S.I. 2013/295.

(c) 2012 c.7.

(d) Established by section 1H(1) of the 2006 Act (which was inserted by section 9(1) of the 2012 Act).

(e) Established under section 14D of the 2006 Act (inserted by section 25(1) of the 2012 Act).

(f) Established by section 252(1) of the 2012 Act.

(g) Established by section 232(1) of the 2012 Act.

(h) See section 25 of the 2006 Act.

(i) See section 30 of the 2006 Act. Section 30 has been amended by section 159(1) of the 2012 Act.

(j) See section 28 of the 2006 Act. Section 28 has been amended by section 55(1) of, and paragraph 13 of Schedule 4 to, the 2012 Act.

“practitioner” means a medical practitioner, a dental practitioner or an individual pharmacist providing, or assisting in the provision of, services under the Act;

“regulatory body” means a regulatory body listed in section 25(3) of the National Health Service Reform and Health Care Professions Act 2002(a);

“related activity” means the making of a report or recommendation arising out of advice or support given under direction 2(1)(a) or (g), an assessment or the approval of an action plan.

(6) In these Directions, a reference to a practitioner being employed by an NHS body includes a reference to that practitioner having entered into arrangements with that body for the provision of services under the Act, or to the practitioner being employed, or having contracted with, a body which has entered into arrangements with an NHS body for the provision of such services.

Directions to the Authority regarding the exercise of functions known collectively as the National Clinical Assessment Service

- 2.—(1) The Secretary of State directs the Authority to exercise the following functions—
- (a) to support NHS bodies that are concerned about the performance of an individual practitioner;
 - (b) to provide advice and guidance on the handling of concerns about practitioners’ performance and to monitor the effectiveness of such advice and guidance;
 - (c) to promote research which the Authority considers will contribute to improvements in the handling of concerns about practitioners’ performance;
 - (d) to report to and advise the Secretary of State on matters affecting the handling of concerns about practitioners’ performance;
 - (e) to issue good practice guidance and other guidance for the handling of concerns about practitioners’ performance by NHS bodies in relation to—
 - (i) the services under the Act which such practitioners provide, or
 - (ii) the services under the Act which they assist in providing;
 - (f) to determine who may refer practitioners to the Authority, or other bodies acting on its behalf, for the purposes of an assessment and to determine the criteria for the making of such referrals and for their acceptance by the Authority;
 - (g) to provide advice, support and agree action plans in relation to practitioners referred to the Authority;
 - (h) to determine criteria, methods and procedures for the carrying out of assessments and related activities and for the drawing up of action plans;
 - (i) to carry out assessments and related activities or to arrange for other persons to carry out any of those functions on its behalf;
 - (j) to monitor the diversity of practitioners referred to the Authority;
 - (k) in liaison with the Medical Royal Colleges and Faculties, specialist societies, and any other interested parties whom the Authority may decide to consult, to establish and maintain a list of professional and lay persons who are authorised to carry out assessments in whole or in part (“authorised assessors”);
 - (l) in relation to assessments carried out by the Authority, to appoint one or more authorised assessors (whether as employees or contractors of the Authority) to carry out the assessments;
 - (m) to arrange, or approve, training for authorised assessors or for those who wish to become authorised assessors;

(a) 2002 c.17; section 25(3) was amended by paragraph 17 of Schedule 10 to the Health and Social Care Act 2008 (c.14), paragraph 10 of Schedule 4 to S.I. 2010/231 and paragraph 56(6) of Schedule 15 to the Health and Social Care Act 2012.

- (n) to review the carrying out of assessments and related activities by the Authority and other persons on its behalf in order to ensure consistency in the way in which assessments are carried out and in the contents of reports, recommendations and action plans, and to ensure compliance with legal obligations;
 - (o) to work in partnership with, and to liaise with, the Care Quality Commission^(a) and any regulatory body whom the Authority may decide to consult in developing policies to ensure that overlap between the respective activities of these bodies and of the Authority is kept to a minimum and that effective channels of communication exist at both national and local levels; and
 - (p) to respond to requirements of the Secretary of State including—
 - (i) establishing and operating effective alert systems and associated databases;
 - (ii) assisting in resolving suspensions and exclusions by NHS bodies and non NHS bodies of practitioners;
 - (iii) providing advice to NHS bodies who are considering the suspension or exclusion of a practitioner;
 - (iv) monitoring and reporting on national suspensions and exclusions; and
 - (v) providing advice to NHS bodies in respect of the application of existing guidance and legislation relating to concerns about practitioners' performance.
- (2) The Secretary of State directs the Authority that it may—
- (a) consider and, where appropriate, endorse guidance issued by other bodies concerning the handling of concerns about the performance of practitioners;
 - (b) in relation to an assessment which it carries out under paragraph (1)(i), refer the practitioner who is the subject of the assessment to another body for particular tests or procedures notwithstanding that the individual who is to carry out the tests is not an authorised assessor;
 - (c) in relation to an assessment which is to be carried out by another person under paragraph (1)(i), include provision in those arrangements to the effect that the other person may make such a referral; and
 - (d) request payment from non NHS bodies in relation to services provided under this direction.

(3) Disclosure of personal data in connection with the performance of the functions that the Authority is directed to perform under this direction is required under these Directions for the purposes of section 35(1) of the Data Protection Act 1998^(b) (disclosures required by law or made in connection with legal proceedings).

Directions relating to the handling and processing of claims arising from liabilities transferred to the Secretary of State

3. The Authority is directed to handle and process any claims, and make payments in respect of any such claims (including payments of damages, payments in settlement of a claim, payments of legal costs incurred by the Secretary of State and any legal costs incurred by a claimant which the Secretary of State has been ordered to pay), arising from any liability of a Primary Care Trust^(c), a Strategic Health Authority^(d) or the Health Protection Agency^(e) which—

- (a) is transferred to the Secretary of State by a property transfer scheme made under section 300 of the 2012 Act; and

(a) Established by section 1 of the Health and Social Care Act 2008 (c.14).
 (b) 1998 (c.29).
 (c) Primary Care Trusts are abolished by section 34(1) of the 2012 Act.
 (d) Strategic Health Authorities are abolished by section 33(1) of the 2012 Act.
 (e) The Health Protection Agency is abolished by section 56(1) of the 2012 Act

- (b) which, prior to 1st April 2013, would have fallen to be dealt with under a scheme established by the National Health Service (Clinical Negligence Scheme) Regulations 1996(a) or the National Health Service (Liabilities to Third Parties Scheme) Regulations 1999(b).

Directions relating to the handling and processing of claims arising from liabilities of the Secretary of State relating to the exercise of functions by Public Health England

4. The Authority is directed to handle and process any claims, and make payments in respect of any such claims (including payments of damages, payments in settlement of a claim, payments of legal costs incurred by the Secretary of State and any legal costs incurred by a claimant which the Secretary of State has been ordered to pay), arising from any liabilities—

- (a) of the Secretary of State in relation to those functions exercised by Public Health England, an executive agency of the Department of Health; and
- (b) which are liabilities to which a scheme established by the National Health Service (Clinical Negligence Scheme) Regulations 1996 or the National Health Service (Liabilities to Third Parties Scheme) Regulations 1999 would apply if the Secretary of State were a member of such a scheme.

Directions relating to the handling and processing of claims relating to the activities of Jimmy Savile

5. The Authority is directed to—

- (a) handle and process any claims, and make payments in respect of any such claims (including payments of damages, payments in settlement of a claim, and payments of legal costs) arising from any liability of an NHS trust, NHS foundation trust or the Secretary of State which relates to the activities of Jimmy Savile (“Jimmy Savile claims”);
- (b) discuss the Jimmy Savile claims with a representative of the Secretary of State at meetings to be held on a date specified by the Secretary of State each month; and
- (c) agree with the Secretary of State, in advance, such decisions with respect to the handling of, the settlement of, and payments in respect of, the Jimmy Savile claims as the Secretary of State may specify.

Transitional provision

6. An alert notice issued by a Strategic Health Authority pursuant to direction 4 of the Healthcare Professionals Alert Notices Directions 2006(c) which, as of 1st April 2013, has not been revoked in accordance with those Directions, is to continue to be treated as a validly issued notice.

Signed by authority of the Secretary of State for Health

Date: 28th March 2013

Name
Member of Senior Civil Service
Department of Health

(a) S.I. 1996/251; amended by S.I. 1997/527, 1999/1274, 2000/2341, 2002/1073, 2002/2469, 2004/696, 2005/604, 2006/3087 and 2013/497.
(b) S.I. 1999/873; amended by S.I. 2000/2385, 2002/2469, 2004/696, 2005/604 and 2012/1641.
(c) These Directions came into force on 6th December 2006.