
DIRECTIONS

NATIONAL HEALTH SERVICE, ENGLAND

The National Health Service Litigation Authority (Amendment) Directions 2019

The Secretary of State for Health and Social Care, in exercise of the powers conferred by sections 7(1), 8(1), 272(7) and (8)(b) 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 (Amendment) Directions 2019.

(2) These Directions come into force on the day after the day on which they are signed.

(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 2013 Directions” means the National Health Service Litigation Authority Directions 2013(c).

Amendments to the 2013 Directions

2.—(1) In direction 1(5) (citation, commencement, application and interpretation) of the 2013 Directions—

(a) for the definition of “alert system” substitute—

“means a way in which NHS bodies and others can be made aware of—

(a) a healthcare professional; or

(b) a person holding themselves out as a healthcare professional,

who poses a significant risk of harm to patients, staff or the public and may continue to work in the NHS or seek work in the NHS;”;

(b) at the appropriate place insert—

“healthcare professional” means any person who is a member of a profession which is regulated by a regulatory body;

(2) In direction 2(1)(p)(i) (directions to the Authority regarding the exercise of functions known collectively as the National Clinical Assessment Service) of the 2013 Directions, after “associated databases” insert “in accordance with the Schedule to these Directions”.

(a) 2006 c.41. By virtue of section 271(1) of the National Health Service Act 2006 the functions of the Secretary of State as exercised in making these Directions are exercisable only in relation to England. Section 7 was amended by section 21 of the Health and Social Care Act 2012 (c.7). Sections 8, 272 and 273 have been amended but the amendments are not relevant to these Directions.

(b) S.I. 1995/2800; amended by S.I. 2002/2621, 2005/503 and 1445, 2012/1641, 2013/295, 2014/3090, 2015/137 and 2017/150. The National Health Service Litigation Authority operates under the name of “NHS Resolution”.

(c) These Directions were signed on 28th March 2013 and were amended by the National Health Service Litigation Authority (Amendment) Directions 2013, signed on 5th November 2013, and the National Health Service Litigation Authority (Amendment) Directions 2015, signed on 9th March 2015. These Directions are available from <https://www.gov.uk/government/collections/nhs-litigation-authority-directions>, or by writing to The Department of Health and Social Care, Resolution and Maternity Branch, 39 Victoria Street, SW1H 0EU.

(3) At the end of the 2013 Directions insert the following Schedule—

“SCHEDULE

Direction 2(1)(p)(i)

Requirements Regarding the Establishment and Operation of Effective Alert Systems and Associated Databases

Interpretation

1. In this Schedule—

“alert notice” means a notice issued by the Authority which states that a named individual poses a significant risk of harm to patients, staff or the public and may continue to work in the NHS or seek work in the NHS;

“organisation which provides services to, or on behalf of, an NHS body” includes where the services are the subject of a direct arrangement between the organisation (“A”) and an NHS body, or an indirect arrangement between A and another organisation (“B”), where B has entered into an arrangement with an NHS body to provide services to, or on behalf of, the NHS body and then into a further arrangement with A under which A provides the services;

“primary care services” means services provided as part of the health service pursuant to arrangements made by the Board under Parts 4 to 7 of the Act;

“the data protection legislation” has the same meaning as in the Data Protection Act 2018 (see section 3 of that Act);

“work in the NHS” means—

- (a) employment by, or engagement to provide services to, an NHS body,
- (b) employment by, or engagement to provide services to, any organisation which provides services to, or on behalf of, an NHS body; and
- (c) providing or performing, or assisting in the provision or performance of, primary care services.

Responsibility for the issue of alert notices

2. The Authority must designate a person to take responsibility for the issue, monitoring and revocation of alert notices in accordance with these Directions.

Request to the Authority to issue an alert notice

3.—(1) A request may be made where an NHS body, or an organisation which provides services to, or on behalf of, an NHS body, has reasonable grounds to believe that—

- (a) any healthcare professional who is or has been employed or engaged—
 - (i) to provide services to, or on behalf of, the NHS body,
 - (ii) to provide services to any organisation which provides services to, or on behalf of, the NHS body, or
 - (iii) by a person or body with which that NHS body or that organisation has made arrangements for the provision or performance of primary care services,

poses a significant risk of harm to patients, staff or the public and may continue to work in the NHS or seek work in the NHS; or

- (b) a person may—
 - (i) hold themselves out to be a healthcare professional,
 - (ii) seek work in the NHS in that capacity, and

- (iii) pose a significant risk of harm to patients, staff or the public.
- (2) The request must be made in writing by—
 - (a) the Chief Executive of the body making the request;
 - (b) an executive board member of the body making the request;
 - (c) a person acting under the instruction of the Chief Executive or executive board member of the body making the request;
 - (d) a person acting in an equivalent capacity to that of a Chief Executive or executive board member in an organisation making the request; or
 - (e) a person acting under the instruction of a person under paragraph (d) in an organisation making the request.
- (3) The request must—
 - (a) provide the full name, last known address, and last known email address, if any, of the individual who is the subject of the proposed alert notice, and
 - (b) contain a summary of the circumstances which gave rise to the request, including—
 - (i) all relevant information about the individual which supports the request,
 - (ii) an assessment of the relevant risks, and
 - (iii) what action the body making the request has already taken in respect of the individual concerned, including any referral of the individual to the relevant regulatory body.

Issue of an alert notice

- 4.—**(1) The Authority may decide to issue an alert notice—
- (a) when requested to do so by—
 - (i) an NHS body, or
 - (ii) any organisation which provides services to, or on behalf of, an NHS body, provided that, in addition to the Authority being satisfied of the matters in sub-paragraph (2), the request is made in the circumstances and form set out in paragraph 3; or
 - (b) in any other circumstances which it considers it appropriate to do so, provided that the Authority is satisfied as to the matters specified in sub-paragraph (2).
- (2) Before deciding to issue an alert notice under sub-paragraph (1), the Authority must be satisfied that—
- (a) a healthcare professional (or a person holding themselves out to be a healthcare professional)—
 - (i) poses a significant risk of harm to patients, staff or the public, and
 - (ii) may continue to work in the NHS or seek work in the NHS; and
 - (b) the public interest in issuing an alert notice outweighs the likely adverse effect to the individual who is the subject of the notice.
- (3) An alert notice must identify the individual to whom it relates by giving as much of the following information as is possible—
- (a) the individual’s full name, last known address, and last known email address, if any;
 - (b) the individual’s national insurance number;
 - (c) the individual’s registration number if they are registered with a professional body; and
 - (d) a description of the capacity in which the individual is, or was, employed or engaged to provide services and in which it is thought possible that they might seek work in the NHS.

(4) The Authority must, within the period of seven days beginning with the date of the decision made under sub-paragraph (1), send the alert notice to—

- (a) the National Medical Director for the NHS Executive Group^(a);
- (b) the Regional Medical Directors^(b) who, in relation to a particular geographical region, act in that capacity for all of the following bodies—
 - (i) the Board^(c),
 - (ii) Monitor^(d), and
 - (iii) the National Health Service Trust Development Authority^(e);
- (c) the Chief Medical Officer of the Department of Health and Social Care;
- (d) the member of staff of the Welsh Government designated by the Welsh Ministers as the Chief Medical Officer for Wales;
- (e) the Chief Medical Officer of the Scottish Administration;
- (f) the Chief Medical Officer of the Department of Health in Northern Ireland;
- (g) where applicable, the body which requested it; and
- (h) the body which regulates the profession or purported profession of the individual to whom the alert notice relates.

(5) The Authority may send, or provide electronic access to, the alert notice to any NHS body, or other organisation which provides services to, or on behalf of, an NHS body, which, in the opinion of the Authority, may be approached by the subject of the alert notice with a view to working in the NHS.

Informing the subject of an alert notice that an alert notice has been issued

5.—(1) The Authority must, within the period of seven days beginning with the date of the decision made under paragraph 4(1), send a letter in accordance with sub-paragraph (2), to the individual who is the subject of the alert notice.

(2) The letter referred to in sub-paragraph (1) must—

- (a) enclose a copy of the alert notice;
- (b) contain a summary of the reasons for the decision to issue the alert notice; and
- (c) be sent to the individual's last known address or email address.

Challenging an alert notice

6. The person who is the subject of an alert notice may challenge it by sending written representations to the Authority.

Monitoring and revocation of alert notices

7.—(1) The Authority must keep under review any alert notice which it has issued and must, at intervals of no more than three months, consider in respect of each notice whether it should be revoked.

(a) The NHS Executive Group sits across NHS England and NHS Improvement. See: <https://www.england.nhs.uk/about/nhs-executive-group/>. NHS England is referred to in legislation as the Board and is commonly referred to as NHS England. The Board was established by section 1H of the National Health Service Act 2006 (c.41). NHS Improvement is the operational name for the organisation which brings together Monitor and the NHS Trust Development Authority. Monitor was established by section 61 of the Health and Social Care Act 2012 (c.7). The NHS Trust Development Authority is a Special Health Authority established under section 28 of the National Health Service Act 2006.

(b) The Regional Medical Directors are responsible to the National Medical Director of the NHS Executive Group.

(c) The Board was established by section 1H of the National Health Act 2006.

(d) Monitor was established by section 61 of the Health and Social Care Act 2012.

(e) The NHS Trust Development Authority is a Special Health Authority established under section 28 of the National Health Service Act 2006.

(2) The duty in sub-paragraph (1) includes an obligation, so far as is reasonably practicable, to ensure that the information held by the Authority in relation to an alert notice is up to date.

(3) In any case where the Authority considers that the circumstances which gave rise to the issuing of the alert notice no longer apply (whether as a result of information supplied to it by the subject of the notice or otherwise), it must, within seven days of reaching that conclusion, revoke the notice by sending a notice in writing to all those to whom the alert notice was sent including the person who is the subject of that alert notice.

Records of alert notices

8.—(1) The Authority must keep a record of—

- (a) any alert notice which it has issued and not revoked; and
- (b) any alert notice which it has revoked;

for as long as the Authority considers it necessary to do so.

Data protection

9.—(1) Nothing in these Directions authorises the disclosure of, or provision of access to, information which would—

- (a) contravene the data protection legislation; or
- (b) be inconsistent with the common law duty of confidence.”

Signed by authority of the Secretary of State for Health and Social Care

Date: 16 December 2019

William Vineall
Member of the Senior Civil Service
Department of Health and Social Care