Home Office

Detention Services Order 01/2016

The Protection, Use and Sharing of Medical Information Relating to People Detained Under Immigration Powers

Process**:** To provide information to staff and suppliers on the protection, use and sharing of confidential clinical information

Implementation Date**:** April 2016 (reissued May 2016)
Review Date: May 2018

Contains Mandatory Instructions

For Action: Home Office staff, suppliers operating in immigration removal centres, pre-departure accommodation and short-term holding facilities, escort contractors and Home Office caseworkers.

For Information:

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Processes Affected: Processes relating to the storage, protection, use and sharing of confidential medical information

Assumptions: All staff will have the necessary knowledge to follow these procedures.

Notes: This DSO incorporates DSO 13/2012 (Access to medical information during escort) and DSO 16/2012 (Independent Advisory Panel on Deaths in Custody's Information Sharing Statement) which have been withdrawn.

This DSO does not cover information sharing arrangements relating to the transfer of time served Foreign National Offenders from a prison to an IRC. A separate information sharing request template is part of the risk assessment process.

Issued: May 2016
Version: 2.0

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Contents

Introduction

1. This detention services order (DSO) provides information for all Home Office staff (Border Force, Immigration Enforcement, UK Visas and Immigration), healthcare staff, medical practitioners and centre supplier staff on making and handling requests for information pertinent to a detainee's clinical requirements and personal safety (" medical information"). It also provides guidance to staff who work within or under contract to NHS organisations who are covered by separate guidance concerning confidentiality and patients' consent to the use of their health records. This guidance can be found at:

   https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/200146/Confidentiality_-_NHS_Code_of_Practice.pdf

2. For the purposes of this instruction, a medical practitioner in an Immigration Removal Centre (IRC) is as set out in Detention Centre Rule 33, ie one vocationally trained as a general practitioner (clinician) and fully registered within the meaning of the Medical Act 1983 (or another registered medical practitioner in accordance with Detention Centre Rules 33(7) or (10)). The definition in the Detention Centre Rules includes both a registered medical practitioner and a registered nurse (as both are defined in the Interpretation Act).

3. References to "centre" in this document cover IRCs, short-term holding facilities (STHFs) where these are covered by NHS commissioning) and pre-departure accommodation, as well as in-country and overseas escorts.

4. SystmOne (a centrally-hosted clinical computer system for healthcare) is currently in place in all IRCs and residential STHFs in England[1]. From July 2017 it will be replaced by a new IT system covering the whole secure and detained estate in England (including prisons and immigration detention) which will support the transfer of clinical information between centres and with community based settings. SystmOne is not in place in Scotland (Dungavel) or Northern Ireland (Larne).

Policy

5. **While access to "medical in confidence" information is subject to the control and protection of the Data Protection Act 1998 – which among other things requires information sharing to be fair and lawful – that Act does not prohibit the sharing of information.** Individuals have a duty to consider information sharing where it is relevant to the identification of a risk of self harm/suicide or to an individual's healthcare needs.

6. The Independent Advisory Panel on Deaths in Custody has produced a statement (Annex A), which outlines the risks of not sharing information and how the Data Protection Act, subject to concomitant parameters, does not prohibit the sharing of information. The statement has been endorsed by the Information

[1] Connectivity issues in Campsfield have delayed the deployment for SystmOne there but these issues are being addressed. Campsfield will be an early recipient for the replacement for SystmOne.

Commissioner as well as members of the Ministerial Board. The statement also has the support of the General Medical Council.

7. Chapter 55.3.1 of the Enforcement Instructions and Guidance (EIG), factors influencing a decision to detain, requires that all relevant factors be taken into account when considering the need for initial or continued detention. Relevant factors include whether the person has a history of physical or mental ill health. Chapter 55.10, persons considered unsuitable for detention, includes information about categories of people suitable for detention only in very exceptional circumstances including those suffering from serious medical conditions or serious mental illness which cannot be satisfactorily managed within detention.

8. Proper management of healthcare needs and effective prevention of self-harm or suicide requires information to be transferred, when appropriate, across agencies.

9. Rule 33(4) of the Detention Centre Rules 2001 requires that the health care teams shall observe all applicable professional guidelines relating to medical confidentiality.

10. Advice to medical practitioners from the General Medical Council on disclosing information for administrative purposes (defined as purposes other than the provision of their care or local clinical audit) states that, as a general rule, they should seek a patient's express consent before disclosing identifiable information.[2] **In seeking consent, it is essential that the purpose of the information sharing is made explicit and the person understands what will happen to their information.** Express consent necessitates a person understanding the purpose of the information sharing, what information would be shared, confirmation that the information being shared would not go beyond the current agreed purpose and that the information would be stored appropriately and for no longer than is necessary for that purpose (see attached consent form, Annex B). Caseworkers must ensure that a system is in place to review the retention of such information to ensure that it is not kept for longer than is necessary. The person should also be advised that they can withdraw consent at any time. It is important to recognise that where someone is judged to lack capacity there is a duty to make best interest decisions on their behalf; it is important that capacity is assessed as people have a right to make decisions for themselves which others may view as potentially deleterious.

11. If a person refuses to give consent for information to be shared, healthcare staff should continue to check this with the person at each appointment. "Blanket" consent to share information cannot be requested. It is not, for example, possible for a person to be asked to give consent to share unspecified health information with unspecified organisations for an unspecified period of time.

12. Sharing information without consent may be necessary and appropriate under some circumstances such as where there is evidence of a serious health risk to the patient or a significant risk of harm to others. Circumstances under which

[2] http://www.gmc-uk.org/Confidentiality__disclosing_records_for_financial_and_admin_purposes.pdf_58822304.pdf

information may be shared without consent are likely to be very exceptional. Where sensitive information is shared without consent, one or more of the conditions for processing set out in Schedules 2 and 3 of the Data Protection Act 1998 (DPA) must apply. Section 3 of Schedule 3 to the DPA allows the sharing of information in order to protect the vital interests of the data subject or another person. Where information is shared without consent this needs to be recorded, indicating why the information was shared, what information was shared and with whom.

13. In England, Public Health England, NHS England and the Home Office have agreed (December 2014 partnership agreement for immigration detention) that "the three organisations will co-operate fully in relation to the disclosure and exchange of information, intelligence, evidence, policy formulation and documentation in accordance with relevant legislation and case law". The agreement also states that "given the overriding need to protect the interests of patients and the public, it is important that the three organisations have complete trust and confidence in each other and are willing to share relevant information subject to any legislative constraints." This document sets out the overarching principles relating to information sharing while recognising the need for compliance with relevant data protection legislation and respect for patient confidentiality.

14. A separate agreement between Public Health England (PHE) and the Home Office (May 2015) covers information sharing by the Home Office with PHE relating to current or former detainees who are or could be infected with an infectious disease.

15. The service specification for the provision of primary care services in centres (and, for mental health, also secondary care) requires each healthcare provider to have a policy for handling Personal Data and sharing of patient information. Patient consent will be routinely sought for sharing of relevant information. Healthcare providers are required to have a patient consent form and a policy on information sharing; staff must be given guidance on information sharing relevant to detainees. All healthcare staff are required to undertake Information Governance training as part of induction and annual mandatory training; this covers information sharing, legislative frameworks, consent and the need for compliance with NHS minimum standards in respect of information governance.

16. In the case of detainee transfers, it is a mandatory requirement that detainees are transferred from the centre with their medical records (see DCR 2001 33 (9).

17. In Scotland healthcare forms part of the main specification for Dungavel IRC and in Northern Ireland (Larne STHF) it forms part of the escorting contract. Both contracts require compliance with DSOs to the extent that they relate to Scotland and Northern Ireland. The requirements of the Data Protection Act apply throughout the UK.

Purpose

18. The decision to detain or release from detention, or to remove from the UK, is taken by the Home Office. Immigration case owners must consider all available and relevant information in making a decision or recommendation about initial/ongoing detention or removal. As a general rule, individuals are assumed to be fit to be removed/fit to fly unless there are indications to the contrary, i.e. where information has been provided to the Home Office that the detained person has a condition(s) that prevents their immediate removal. This information may be received from the detainee or their representative, their registered healthcare professional, or from a registered healthcare professional working in an IRC.

19. Where a medical practitioner considers it necessary or appropriate in particular cases to state that a person is not fit to be removed/fly ("this person is not fit to be detained/removed because…"), the immigration case owner will consider this information and, in light of all the circumstances of the case, decide on the most appropriate way forward.

20. Information may be volunteered to the Home Office on an IS91 Part C form. Alternatively, the case owner may need to request further information to enable him or her to properly consider the case.

21. This guidance sets out the circumstances in which information might be requested, by who and from who, the type of information that might be requested and the processes that must be followed to ensure that issues of confidentiality and data protection are appropriately respected and detainee welfare assured.

Procedures – fit to detain and fit to be removed/fly

22. Any significant changes to the physical or mental health of a detainee that may impact on the decision to detain or remove must be notified to the Home Office case owner as a matter of urgency using the IS 91 Part C form by centre staff (supplier or Home Office).

<u>Informed consent</u>

23. **The assumption is that a person is fit for continued detention or fit to be removed unless there is clinical evidence to the contrary.** If information is volunteered to the Home Office that a person is not fit to remain in detention or to fly, responsibility for obtaining consent for the sharing of any relevant medical records with the Home Office rests with the person or agency sharing it and not with the Home Office. This will include ensuring that the person has specifically given informed consent to the use of their information by case owners as part of the decision making process for continued detention or removal. Healthcare/medical professionals might, for example, want to ensure that Home Office or centre supplier security staff are aware of relevant health issues that might affect their interaction with that detainee; this would need informed consent and for the person to clearly understand who the information will be shared with and for what purpose. Only the minimum identifiable information

necessary to satisfy the purpose for which it is required should be made available, and only to those entitled to receive it.[3]

Without informed consent

24. Under the NHS England specifications for healthcare providers in IRCs ("Primary Care service specification for detention centres: Section 2 Scope 2.2 Health intervention management (expectations on delivery levels linked to the centre function and detainee length of stay"), medical practitioners can be asked to provide advice on whether a detainee is fit to be removed/fly; this information will be requested in the context of a Home Office decision to remove a detainee and providing information would be deemed to be in the best interest of the patient (see para 29).

25. **The assumption is that a person fit to be detained is fit to be removed unless there is clinical evidence to the contrary.** If, however, a person raises healthcare concerns as a reason for removal to be delayed or halted, the case owner/case working team via the onsite Home Office Immigration Enforcement (HOIE) team, is responsible for seeking sufficient healthcare information from the centre healthcare provider to enable proper consideration to be given (see following paragraphs). It is not necessary or appropriate for the Home Office to receive "medical in confidence" information unless this is volunteered by the person concerned.

26. Such advice will include a statement from the doctor that there is either no medical reason known to the doctor that prevents removal ("*this person has been assessed and I deem him/her fit to be removed")* or, that the detainee is not fit to be removed. Where a clinician is stating that a detainee is not fit to be removed, they should also provide a prognosis on when they may become fit to be removed/fly, an assessment of the clinical risk of flying and for details of any mitigating actions that would enable removal to take place safely, e.g. provision of oxygen or a medical escort[4] (*this person has been assessed and I do not deem him/her to be fit to be removed/fly at the present time. I assess, however, that he/she may become fit to be removed/fly in the next xxx days/weeks or with the provision of a [mitigating action e.g. a medical escort]*" (see section 6 of the International Air Transport Association medical manual.[5]))

27. The healthcare provider is expected to submit such a statement and supporting information to the Home Office within 24 hours of request. Where additional information is being provided (such as in relation to mitigating actions), this should be provided within two working days of the request.

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[3] Section 35 of The Data Protection Act 1998 covers disclosures required by law or made in connection with legal proceedings. The NHS guidance referenced at para 1 of this DSO also covers Legal Restrictions on Disclosure, Legally Required to Disclose and Legally Permitted to Disclose.

[4] A decision as to whether or not a medical escort is required will have been considered in the case of all detainees and a medical escort provided in cases where it is considered necessary. A medical escort is not required simply because a detainee is on medication. The requirement for a medical escort will have been considered at several stages throughout the removal process and the healthcare team at the centre fully involved and informed of the decision.

[5] The International Air Transport Association medical manual can be found at http://www.iata.org/publications/Documents/medical-manual.pdf

28. In cases where there is no mitigation, clinicians may be asked to give the potential timescale within which a detainee may become fit to be removed in order to inform decisions on the continuing suitability of detention.

29. The specific informed consent of the detainee is not necessarily required before a statement is obtained about a person's fitness to be removed/ fly, the reasons for such an assessment, possible mitigating actions or a prognosis of when a person may become fit to be removed/fly. This is because the Data Protection Act 1998 permits the processing of data (including sensitive personal data) in various circumstances, including where the processing is necessary to protect the vital interests of the data subject, where processing is necessary for the administration of justice or for the exercise of any functions of a government department.

Procedures - access to confidential medical information during escort

30. The centre's healthcare team will present the detainee's healthcare record (or a copy of it) to the escorting team. In some instances, this may be a short summary of the healthcare record (discharge summary).

31. Such documentation must be placed in a sealed envelope or bag clearly marked with the detainee's name and "Medical records – medical in confidence" must be clearly marked on the outside. The medical record/discharge summary is a confidential document and is the property of the detainee. Escort staff must hold this documentation until the end of the escort, when it must be handed over to a medical professional, reception staff (if the detainee is being transferred to another centre), another escorting team or, in the case of an unescorted removal, to the detainee at the point of boarding the aircraft. Where a detainee is released or handed over following removal, the medical record/discharge summary should be given to the detainee before s/he is handed over to the receiving authority.

32. Receipt of this documentation must be recorded on the Person Escort Record (PER) by the escorting team. If the documentation is not handed over, the Escorting Supplier Control Centre Manager should be contacted for guidance.

33. Where a detainee is accompanied by a medical escort, centre healthcare staff must provide medical escorts with a handover that includes information on medication and ongoing care or treatment relevant to the flight/escort and any known relevant conditions. Consent to share this information will have been obtained earlier in the process and, in obtaining consent, the person will have been told that information may be shared with other healthcare providers when required (see para 29 for details of when information might be shared without specific informed consent). Any information about other medication or conditions must be sealed in a "medical in confidence" envelope. It is vital that the information provided is accurate and up to date.

34. Envelopes marked "medical in confidence" must only be opened by a medical practitioner and only where there is a good reason for doing so. They must be resealed by the medical practitioner once he or she no longer needs access to them.

35. If a person on escort complains of feeling unwell, the escorting staff have access to a triage line or the 999 emergency number. In the case of a medical emergency during escort where no medical escort is present, the escort team should divert to the nearest appropriate healthcare facility and hand the detainee's medical records/discharge summary to the responding medical professional/clinical team. The team should liaise with the Detainee Escorting and Population Management Unit (DEPMU) during any such medical emergency. In the case of a medical emergency and where a medical escort is present, the medical escort (but not a non-medical escort) may need to refer to the medical record/discharge summary whilst en route to the nearest appropriate healthcare facility.

36. The medical records must not be opened by the attending/escorting medic in order simply to identify in advance any potential issues during escort (para 31 explains the details that need to have been shared with medical escorts by centre healthcare staff in order to ensure that they have all necessary and relevant information).

Sharing information about medication and handling medicines during escort

37. If a detainee does not need to take any medication during escort, escort staff do not need to be provided with any information concerning his or her medication; such information will be contained in the confidential medical record. If a detainee self-administers their medication, they should be given sufficient for the journey and this should be noted on the PER. Otherwise, provision for medication to be given during the journey needs to be made. Subject to the time of collection, the dosing schedule of the medicine and the clinician's judgement, the detainee may be given their medication before leaving the centre.

38. For in-country moves, medication which does not need to be taken during the escort will be handed to the escorting staff for storage, signed for and stored by escorting staff until handed over to the receiving centre, authority or other escort. The receipt of this medication on arrival or handover should be recorded on the PER.

39. For overseas moves, any medication for a detainee's use beyond the duration of the escort (i.e. arrival in their destination country) should where possible be put into the detainee's hold luggage. On charter flights where it is not possible to put the medication into detainee's hold luggage, it should be given to the detainee personally at the point of handover to the receiving country's authorities. If medication needs to be taken during the escort then the detainee should normally self-administer (e.g. insulin, asthma inhalers, angina sprays, pain relief) subject to appropriate risk assessments. Such requirements should be clearly documented on the PER and if they are used this should be noted on the PER; this should include the time the dose needs to be taken and whether water/food is required.

40. Details of medications which may be required during the journey should be included in the information provided to escorts. This information should clearly show the dosage and timing of doses including where medicines may be needed on an irregular or "when required" basis. The centre healthcare team/discharging

medical team will have considered any possible risk of self harm with such medicines and will have decided whether the usual amount supplied in-possession needs to be restricted during transit, allowing for unexpected delays.

41. Medication for the duration of the escort should be provided as individually labelled patient-named supplies. The Detainee Custody Officer/Detainee Escort Officer is required to hand the labelled medication to the detainee at the scheduled time, give the detainee access to food/drink (as per medication instruction) and watch the medication being taken. This should be recorded on the PER.

42. Where a detainee is on medication within Schedules 2, 3 and 4 to the Misuse of Drugs Regulations, or has the medication administered other than by oral means, prior assessment of the individual's needs will have been referred to/considered in conjunction with the escorting supplier and, where appropriate, a suitably skilled medical professional will have been allocated to the escort.

43. In general, detainees who normally self-administer should do so during the escort. In some instances, healthcare staff may determine that a detainee needs to be accompanied by a suitably skilled medical professional who will be responsible for administering/supervising his or her medication. Where a medical escort is required, the centre's healthcare team will have completed a Discharge Advice Note (DAN) form (Annex C) within the 24 hours prior to collection and attached a printed drug sheet/chart in order to reduce the risk of transcription errors. The medication, DAN form and drug sheet/chart must be placed in an envelope or bag with the detainee's name and "Medication/DAN" clearly marked on the outside. The DAN requests information which would not be on a drug chart/sheet but will assist the medical escort in their role.

44. Where concerns are raised during an escorted removal, the medically trained staff in attendance should make an assessment as to whether the removal should go ahead; all concerns should also be recorded on an IS91 Part C form.

Revision History

Review date	Reviewed by	Review outcome	Next review
May 2016	Emily Jarvis	Change to the length of time medical information can be stored for	May 2018

Annex A – Independent Advisory Panel (IAP) on Deaths in Custody Information Sharing Statement

Proper management of healthcare needs and effective prevention of self-harm, suicide risk or harm to others requires information to be transferred smoothly across criminal justice agencies. This statement is designed to promote greater sharing of information while at the same time ensuring compliance with the relevant law.

The failure to share relevant information appropriately within the criminal justice system can lead to deaths or serious injuries. This in turn can lead to legal liability and/or serious reputational damage. There is a duty to consider information sharing where it is relevant to the identification of a risk of self harm/suicide, violence to others or an individual's healthcare needs. It is therefore important for staff within the criminal justice system to contact their line managers and/or legal teams if they are unsure whether information should be shared, rather than simply withholding it. Line managers or lawyers will be able to provide advice on whether information can be shared. The Data Protection Act 1998 does not prohibit the sharing of information, but requires it to be fair and lawful.

Annex B – Authority for Release of Healthcare/medical Information

I,_____hereby give my informed consent for a copy of my healthcare/medical information to be released to the Home Office.

I confirm that I have had explained to me and fully understand that this (i.e. the purpose for this information sharing) is in conjunction with my immigration matters and may be shared with other agencies (from the list below) as deemed necessary by the Home Office after I sign this form.

I understand that the information I have allowed to be released to the Home Office will be treated in confidence but may be disclosed to other government departments, agencies, foreign governments and other bodies for immigration purposes.

Details:

I confirm that I have had explained to me the reason why my information may be shared.

Details:

I confirm that I have had explained to me how this information will be stored/secured and how it will be disposed of when it is no longer necessary for the above purpose/purposes.

Details:

I am aware that I reserve the right to withdraw my consent at any time; and I can do this by notifying the Healthcare team myself

Signature:
Name:
Date:

For personnel obtaining consent:

I have explained to the detainee and checked their understanding of what this information will be used for - **Yes**

I have explained to the detainee and checked their understanding about how this information will be stored/secured and how it will be disposed of when it is no longer necessary for the above purpose/purposes - **Yes**

I have explained to the detainee and checked that they understand who will have access to this information - **Yes**

This has been done by using a language translation service or a language understood by the detainee - **Yes/No**

Details of this……

Person seeking consent – name and signature:

Organisation:

Contact number:

Date:

Annex C – Discharge Advice Notice

Healthcare Handover to Escorting Officers
Discharge Advice Notice (DAN 01)

Detainee Name	
CID Number	
Date of Escort	

Medication Prescribed (delete as appropriate)	Yes / No
Medication required during escort (delete as appropriate)	Yes / No
Any allergies	
IRC Healthcare Contact Name and Number	

List of Medications
1.
2.
3.
4.
5.

Insert / Attach Photo of Detainee here

Details must be completed for each different type of medication

Name of Medication (generic)	
Name of Detainee	
Special Instructions	

Name of Medication (generic)	
Name of Detainee	
Special Instructions	

Name of Medication (generic)	
Name of Detainee	
Special Instructions	

Name of Medication (generic)	
Name of Detainee	
Special Instructions	

Name of Medication (generic)	
Name of Detainee	
Special Instructions	

Centre Healthcare
Sign…….

Date…….

Print Name/Grade……..

Escort
Sign…….

Date…….

Print Name/Grade……..

Second Stage Escort
Sign…….

Date…….

Print Name/Grade……..