

NHSCR Consultation
National Records of Scotland
1/2/9 Ladywell House
Ladywell Road
EDINBURGH
EH12 7TF

25 February 2015

Dear Sir or Madam

Consultation on Proposed Amendments to the NHS Central Register (Scotland) Regulations 2006

The UK Information Commissioner has responsibility for promoting and enforcing various pieces of legislation, including the Data Protection Act 1998 (DPA). He is independent from government and upholds information rights in the public interest, promoting openness by public bodies and data privacy for individuals by providing guidance to individuals and organisations, solving problems where he can and taking appropriate action where the law is broken. The Commissioner welcomes the opportunity to respond to this consultation on proposed amendments to the NHS Central Register (Scotland) Regulations 2006 (the Regulations), given his role in promoting compliance with the DPA. As there are points to be raised that cannot be addressed in reply to the consultation's questions, this response is given in the form of a letter rather than within the questionnaire.

The Registrar General was granted powers in section 57 of the Local Electoral Administration and Registration Services (Scotland) Act 2006 (LEARS) to create and maintain a register of individuals (commonly known as the NHSCR) in order to facilitate the carrying out of functions of Health Boards, the Common Services Agency and local authorities. The sets of information that may be contained in the register are defined in section 57(3) of LEARS. In section 57(4), the Registrar General is given the power to disclose information from the register to a wider range of bodies as prescribed within Regulations. The Registrar General is now proposing that the Regulations are amended to extend the range of bodies with which information can be shared.

The consultation document states that the proposed amendments seek to:

- Improve the quality of the information held within the NHSCR;
- Assist with the tracing of certain persons (e.g., children missing within the education system and foreign individuals who may not have settled outstanding accounts before leaving the country);
- Extend the ability to access online services using Myaccount to a wider range of public services;
- Enable the identification of Scottish tax payers to ensure the accurate allocation of tax receipts associated with the Scottish Rate of Income Tax to Scotland.

Before considering the proposed amendments in detail, we wish to draw attention to a concern that neither the current Regulations nor the proposed amendments specify explicitly the purposes for disclosure taking place. Furthermore, at present, it may appear that the points listed above have been identified as possible benefits arising from the proposed amendments rather than driving them.

This review of the Regulations is an ideal opportunity to provide more clarity and better prescribe the rationale for disclosure. The ICO therefore recommends that the Regulations are amended to add a column to the Schedule 2 table, specifying the purposes for which the various disclosures may be made. This is particularly important to cover situations where a request is made by a listed body without the consent of the data subject and may also allay some privacy concerns or misinterpretation about how these data may be used. Furthermore, prior to agreeing the Regulations, a Privacy Impact Assessment (PIA) should be undertaken for any of the above elements which have not yet been subject to a PIA. These PIAs should draw upon the responses to the consultation and any existing PIA should be reviewed in the light of the responses¹.

Improve the quality of the information held within the NHSCR

The DPA requires that all data controllers must ensure that personal data shall be accurate and, where necessary, kept up to date. Although the NHSCR is the most

¹ Please see the ICO's [Privacy Impact Assessment Code of Practice](#).

authoritative record of individuals in Scotland, elements of the Register are not complete (for example, address information is only held for around 30% of the population). By adding the Community Health Index Postcode (CHIP) to the NHSCR and by matching and sharing both it and the Unique Property Reference Number, it is anticipated that the quality of the Register and the records held will be improved. This would assist all data controllers in these sectors in meeting with the requirements of the fourth data protection principle, namely, that personal data should be accurate and kept up to date where necessary. However, where inaccurate data have been obtained from a third party, the fourth principle will not have been breached if, having regard to the purpose or purposes for which the data were obtained and further processed, the data controller has taken reasonable steps to ensure the accuracy of the data.

We note that the NHSCR is currently populated with address data but only where the individual concerned has consented for this to be shared by the local authority. The proposal to use the CHIP to populate the NHSCR with up to date addresses would be a shift away from the current consensual model and the ICO has concerns as to whether there is a sufficient public interest justification to meet the 'necessity test' to enable reliance on any of the other conditions contained in the DPA that are required to be met for the processing to be compliant. This is an area that would certainly benefit from the more detailed analysis of a PIA.

Assist with the tracing of certain persons (e.g. children missing within the education system and foreign individuals who may not have settled outstanding accounts before leaving the country)

The Registrar General already has the power from the current Regulations to disclose information to charities and solicitors to assist them in tracing missing persons and it is stated within the consultation document that this is for purposes such as locating legatees. It is intended to extend this power to other bodies to trace other individuals and the consultation document indicates that this would be for the purposes of tracing children missing from the education system and any foreign individuals who may not have settled accounts before leaving the country. As indicated in our introductory remarks, these indicative purposes are not *explicitly* stated within the consultation document. We therefore strongly recommend that the Regulations are amended so as to specify and limit the purposes of sharing clearly within the legislation.

The findings of various Public Inquiries have identified a lack of information sharing as a contributory factor in the ill-treatment or death of children and vulnerable young people in the UK. The cases of Victoria Climbié and others serve as a tragic reminder of the need to be able to locate those who go missing from education across the UK and formal processes to be engaged by education authorities may assist with the tracing of missing children and young people more effectively. With regard to the recovery of NHS costs, the DPA already recognises the need for effective and efficient use of public funds with its exemption at section 29 in relation to Crime and Taxation. This proposed amendment would remove any legislative bar for the Registrar General to share information with UK Visas & Immigration in an attempt to locate those owing the public purse following health treatment. However, it is unclear how such sharing might result in cost recovery if the individual is no longer in the UK and a foreign address is not held here.

Prior to the implementation of these proposals, and as indicated above, full PIAs drawing upon the responses to this consultation should be undertaken. A decision to proceed with the proposed amendment should be based upon due consideration of the public benefit in relation to the privacy risk to individuals and any subsequent sharing should be undertaken under strict procedures, including strict control over the level of access such external agencies may or may not have to the data. The ICO has received separate assurances that external bodies availing themselves of this facility will not have direct access to the data but will work via a conduit such as a local authority or health board and this should be clarified in guidance.

Extend the ability to access online services using Myaccount to a wider range of public services

As part of the authentication procedure for Myaccount, local authorities and health service bodies using the system have the power to access the NHSCR for the purpose of authentication after obtaining the consent of the service user. It is proposed that this is extended to other public bodies to enable them to offer digital services to their service users through Myaccount.

While the ICO has no specific view on the extension of Myaccount to other bodies, we would question the inclusion of bodies where repeated interaction is unlikely or limited to more general enquiries rather than the actual provision of services. Inclusion should be based on interaction of sufficient frequency so as to justify integration into Myaccount and, thereby, access to the Unique Citizen

Reference Number (UCRN) generated by the NHSCR on registration. Whilst it is understood that any disclosure would remain at the discretion of the Registrar General, it may be appropriate to reconsider the list of bodies as part of the PIA process. In assuring a privacy friendly approach, the ICO would highlight the work we have done with the UK Cabinet Office on the GOV.UK Verify service, which works on a federated basis. Whilst not extolling this as the best approach, it is an example of a privacy-by-design approach to ID management in the public sector from which undoubtedly lessons could be learned. Recently, the Identity Assurance Programme Privacy and Consumer Advisory Group issued a set of principles for discussion: <https://gds.blog.gov.uk/2012/04/24/identityand-privacy-principles/> . Although not yet ratified by the full board, these principles clearly set out the main precepts of user control and transparency which underpin the entire programme. The case for the IDA Programme is that it builds in privacy using the federated approach and can more easily scale compared to an approach of developing a central database over time.

Enable the identification of Scottish tax payers to ensure the accurate allocation of tax receipts associated with the Scottish Rate of Income Tax to Scotland

The Scotland Act 2012 extended the tax-raising powers of the Scottish Parliament and a Scottish Rate of Income Tax will come into effect from 2016. HMRC will collect the tax on behalf of the Scottish Parliament and has the responsibility for identifying Scottish taxpayers correctly. In order to assist HMRC with this task, and because the NHSCR is considered the most complete register of individuals in Scotland, it is proposed that the Registrar General provides HMRC with the name, date of birth, postcode and gender of individuals and, thereby, avoid the need for a separate register of Scottish taxpayers.

Section 29(3) of the DPA exempts personal data from the non-disclosure provisions where the disclosure is for the assessment or collection of any tax and the application of those provisions in relation to the disclosure would be likely to prejudice any of the matters mentioned in that subsection. However, reliance on this exemption can only be on a case-by-case basis so for more systematic data sharing a stronger statutory framework would be required. We therefore agree that the disclosure to HMRC to assist in its duty to prepare a Register of Scottish Taxpayers should be covered within the Regulation. Nevertheless and as with the other extensions to the use of the NHSCR, the revised Regulation should specify precisely for what purposes disclosure to HMRC will be permitted.

Notwithstanding the above, the ICO recommends that this process is also subject to a rigorous PIA to determine whether this is the most effective mechanism to achieve the purpose. Specifically, the ICO suggests that the current proposal should be time-bound and that HMRC considers how it might develop internal procedures to ensure its records are kept up to date, as required by Principle 4 of the DPA. This would eliminate the need for on-going data sharing in this regard.

Other Considerations

The consultation is worded in a manner which implies any service provider listed within the Regulation will have direct access to the data. We have been assured separately that this will not be the case. Instead, only limited data will be shared by the Registrar General to recipients in accordance with Principle 3 of the DPA which requires the processed data to be adequate, relevant and not-excessive. This is welcome, as are the assurances given in paragraph 17 of the consultation that any such sharing will take place under formal data sharing agreements. These agreements should conform to the ICO's statutory Code of Practice on Data Sharing as a minimum standard².

Finally, we note the concerns reported recently in the media in respect of the proposals in that they will effectively turn the UCRN into a national identity number. Whilst the ICO are neither for nor against the creation of a national identity number *per se* we do advocate against the creeping use of such unique identifiers to the extent that they could become the national identity number by default. It is worth noting that the EU [Data Protection Directive 95/46/EC](#), contains a provision at Article 8 (7) that: *Member states shall determine the conditions under which a national identification number or any other identifier of general application may be processed*. If we are to have a national identity number this should be the subject of proper debate and be accompanied by suitable safeguards. It should not just happen by default.

In respect of safeguards, it is worth noting that under section 41A(2)(a) of the DPA, the Information Commissioner has the power to audit the UK IDA programme mentioned above. Given the legal basis on which the Registrar General is established, it may be that the NHSCR would be caught by section 41A of the DPA. However, we shall investigate this further to provide a definitive view, especially if the database becomes more central to ID management across the public sector in Scotland.

² Please see the ICO's [Data Sharing Code of Practice](#).

The ICO is content for this submission to be made public and to be contacted in the future to discuss any matters raised in more detail.

Yours faithfully

Ken Macdonald
Assistant Commissioner for Scotland & Northern Ireland