



**Intra NHS Scotland Information Sharing
Accord
Workforce**

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INTRODUCTION

1. The complexity of delivering high quality healthcare means there is a requirement to enable appropriate and seamless access to relevant NHS Scotland workforce information.
2. The increasing emphasis on multi-agency, cross boundary working requires organisations to be able to *securely* communicate and share *necessary, relevant, adequate, and proportionate* NHS Scotland workforce information, including personal data relating to NHS employees.
3. This requirement is underpinned by the Digital Health and Care Data Strategy and current laws and regulations, including the European Convention of Human Rights, the UK General Data Protection Regulation ('UK GDPR') the Data Protection Act 2018 and other confidentiality legislation, the Network and Information System Regulations 2018 (together the 'Privacy and Resilience Legislation'), the Public Bodies (Joint Working) (Scotland) Act 2014, and others, including the Health and Care (Staffing) (Scotland) Act 2019, the Official Statistics (Scotland) Order 2008 and the Once for Scotland NHSScotland Workforce and Partnership Information Network (PIN) Policies.
4. Confidential information about NHS Scotland employees is protected by common law and each individual employee's professional and contractual duties of confidentiality, in addition to the Privacy and Resilience Legislation.
5. All NHS organisations in Scotland are required to have Information Governance (IG) processes in place in accordance with the Scottish Government Cyber Resilience Framework and Scottish Information Sharing Toolkit..
6. Senior Information Risk Owners, Data Protection Officers and Caldicott Guardians are some designated roles within the wider NHS organisations involved in the governance, assurance and management of NHS personal data.
7. For the purposes of this Accord, NHS Scotland organisations refer to the organisations identified in Section 8 of this Accord.

SCOPE AND PURPOSE

8. This Accord has been developed to facilitate the legitimate, justifiable, and proportionate sharing of employee personal data between NHS Scotland organisations for the purposes of facilitating provision of health care systems as referenced, inter alia, in sections 2A, 12I, 12IA-12IU of the National Health Service (Scotland) Act 1978. This Accord should be used:
 - a. when there is a need to share or disclose data for the routine facilitation of workforce matters between NHS Scotland organisations for established purposes compatible with the National Health Service (Scotland) Act 1978 and other applicable legislation;
 - b. for exchange of data in connection with the management of the healthcare system in Scotland in respect of appropriate staffing, occupational health safety and wellbeing, learning and development and organisational development;
 - c. for exchange of data in connection with the publication of official workforce statistics,
 - d. when there is a need to share workforce data to aid and facilitate national recruitment and workforce planning requirements; and
 - e. when there is a need to rapidly and safely share data between NHS Scotland organisations in order to monitor and manage public health emergencies.
9. The scope of this Accord relates to the sharing of employee and workforce information and the exchange of information within the NHS in Scotland, between:
 - a. Organisations constituted by the National Health Service (Scotland) Act 1978 section 2(1)(a) (Health Boards), section 2(1)(b) (Special Health Boards) section 10 (Common Services Agency) and section 10A (Healthcare Improvement Scotland).

- b. Organisations/persons providing services under the National Health Service (Scotland) Act 1978 section 2CB (Functions of Health Boards outside Scotland)
- c. Organisations/persons providing services under the National Health Service (Scotland) Act 1978 sections 17C (Personal medical or dental services), 17CA (Primary medical service: persons with whom agreements may be made) & 17D (Personal dental services: persons with whom agreements may be made).
- d. Any other organisations/persons with whom the Scottish Ministers has:
 - (i) to whom the Scottish Ministers have given financial assistance,
 - (ii) with whom the Scottish Ministers have entered into arrangements or agreements,
 - (iii) with whom the Scottish Ministers have co-operated, or in respect of whose activities the Scottish Ministers have facilitated or co-operated, in relation to the provision of health and care services for NHS Scotland further to the National Health Service (Scotland) Act 1978 section 1A (Duty of the Scottish Ministers to promote health improvement).]

For example, this may include, but not be limited to, the sharing or disclosure of information between Health Boards (including Special Health Boards), Healthcare Improvement Scotland and the Common Services Agency, GPs, Dentists, Hospitals, Prison Medical Staff, Primary Care Contractors and Health and Social Care Directorates within the Scottish Government as part of routine workforce and employee management. Additional specific agreements may be in place in relation to workforce data sharing between NHS Scotland and other organisations.

This Accord is UK location agnostic if the data flow is required for an NHS Scotland function, service or task within the scope described in section 7 of this Accord. For the avoidance of doubt, all NHS Scotland data flows should comply with any relevant UK or Scottish laws and legislation, e.g., the Privacy and Resilience Legislation, the common law duty of confidentiality, etc.

10. The organisations listed in paragraph 8 have a statutory responsibility to provide or arrange for the provision of a range of healthcare, health improvement and health protection services under the National Health Services (Scotland) Act 1978 and the Public Services Reform Act (Scotland) 2010. Further detail on the use of workforce and employee data by each individual organisation is found in its employee privacy notices.
11. For the purposes of the processing in the scope of this Accord, data processing is typically undertaken under UK GDPR Articles 6(1)(b), 6(1)(c) or 6(1)(e) as the legal basis and relying on the conditions set out in Articles 9(2)(b) and/or 9(2)(h) for employment data which is also special category as described in Article 9(1) UK GDPR:
 - UK GDPR Article 6(1)(b) processing is necessary for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract.,
 - UK GDPR Article 6(1)(c) processing is necessary for compliance with a legal obligation to which the controller is subject.
 - UK GDPR Article 6(1)(e) processing is necessary for the performance of a task carried out in the public interest or in the exercise of official functions and section 8 of the Data Protection Act 2018.
 - UK GDPR Article 9(2)(b) processing is necessary for carrying out obligations for employment, social security or social protection law or a collective agreement.
 - UK GDPR Article 9(2)(h) processing is necessary for the purposes of preventive or occupational medicine, for the assessment of the working capacity of the employee, medical diagnosis, the provision of health or social care or treatment or the management of health or social care systems and services and section 10(1)(c) and Schedule 1(2) of the Data Protection Act 2018.

Other legal bases may be applicable depending on the situation, such as:

- UK GDPR Article 9(2)(i) processing for reasons of public health with a basis in law, and
- UK GDPR Article 9(2)(j) processing is necessary for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes in accordance with Article 89(1) based on domestic law which shall be proportionate to the aim pursued, respect the essence of the right to data protection and provide for suitable and specific measures to safeguard the fundamental rights and the interests of the data subject and section 10(1)(e) and Schedule 1(4) of the Data Protection Act 2018.

COMMON LAW DUTY OF CONFIDENTIALITY

12. The common law duty of confidentiality is a legal obligation that comes from case law, rather than an Act of Parliament. It has been built up over many years. It is an established requirement within professional codes of conduct and practice and is contained within staff NHS (Scotland) contracts, all of which may be linked to disciplinary procedures.
13. Organisations within this Accord are committed to follow the “NHS Scotland Duty of Confidentiality: Code of Practice.”

AGGREGATED (STATISTICAL) INFORMATION

14. Even in situations where information cannot identify an individual, it should be shared appropriately following the applicable governance policies and procedures, and in compliance with any existing legislation and statistical disclosure control protocols or, where applicable, approved through existing approval routes (e.g., the Public Benefit and Privacy Panel).

ANONYMISED AND PSEUDONYMISED INFORMATION

15. Anonymised information falls outside the scope of Privacy and Resilience Legislation. Pseudonymised data is within scope of Privacy and Resilience Legislation and should be treated in the same way as identifiable data as it may still be possible to identify individuals from such data, e.g., job families, unique job roles or statistical analyses within a small population.

WHAT DOES THIS MEAN FOR NHS SCOTLAND ORGANISATIONS?

16. In general terms, NHS Scotland organisations do not require explicit consent to share information between NHS Scotland organisations for the purpose of workforce/employee management, with the exception of information related to any referral to occupational health and wellbeing services.
17. NHS Scotland organisations are not required to develop Information Sharing Agreements in relation to data sharing under Privacy and Resilience Legislation. However, it is good practice to do so, in line with the Information Commissioner’s Office. Since 2017, Scottish Government, under delegation of duties by Scottish Ministers, mandated the use of the Scottish Information Sharing Toolkit for NHS Scotland organisations, wherever NHS health data is shared.
18. Organisations under this Accord should take an appropriate risk-based approach as to whether additional agreements are required, and wherever possible a pragmatic approach to Information Sharing Agreements must be followed, maximising the application of this umbrella Accord in conjunction with more specific underpinning Data Protection Impact Assessments as appropriate.
19. The parties to this Accord must comply with their legal obligations to produce and review the relevant Data Protection Impact Assessments and Data Processing Agreements where necessary. NHS Scotland organisations must ensure information is readily available to employees explaining their data rights and the use of their information through an accessible privacy notice.

RESPONSIBILITIES

20. It is recognised that most employees would reasonably expect that information relating to them will be shared appropriately within NHS Scotland organisations, in line with the NHS functions as noted in the 'Scope and Purposes' section of this Accord, and that sharing should be undertaken in line with technical and organisational safeguards as mandated by Privacy and Resilience Legislation.
21. NHS Scotland organisations provide these safeguards through demonstrable compliance with legislation and the implementation of Government guidance such as the Scottish Information Sharing Toolkit, NHS Code of Practice on Patient Confidentiality, the Scottish Government Records Management Code of Practice for Health, and NHS Scotland Workforce and Partnership Information Network (PIN) Policies.
22. NHS Scotland employee personal data must be shared on a strict 'need to know' basis with only the minimum necessary being shared, to ensure obligations under employment law and management of the workforce are met, including reporting to relevant central health workforce planning teams
23. Should a personal data breach or an information security breach occur, the organisations sharing data under this Accord must work promptly together to review, resolve, and learn from the breach in compliance with Privacy and Resilience Legislation and the Scottish Government Health and Care Directorates direction and guidance with regards to information security and incident management, including reporting.
24. Organisations operating under the auspices of NHS Scotland are responsible for ensuring that staff are trained in information/cyber security, information governance and data protection to an appropriate and reasonable level. Staff are responsible for ensuring that they comply with the training and organisational policies/procedures.
25. Data sharing/disclosure activities must be undertaken using agreed secure methods, these disclosures must be recorded, and the receiving organisation must assume responsibilities in line with requirements identified.
26. Information sharing among NHS Scotland organisations that involves processing outside the UK requires a separate underpinning Data Protection Impact Assessment and Data Processing Agreements to complement this Accord for such data sharing activities. NHS Scotland organisations utilising overseas processors for their own purposes or to provide services to other NHS organisations should ensure appropriate transfer assessments, impact assessments and processing agreements are in place, and that they are current and monitored for compliance.

GLOSSARY

Item	Description	Reference
<p>Anonymised (Anonymisation)</p>	<p>Information that has had the personal information rendered in such a manner that the individual is not or is no longer identifiable by the recipient of the data.</p>	<p>UK GDPR Recital 26.</p> <p>Further information on this topic may be obtained through the Information Commissioner’s website.</p>
<p>Caldicott Guardian</p>	<p>A Caldicott Guardian is a senior adviser within an NHS organisation in areas where Duty of Confidentiality is applicable.</p> <p>In Scotland Caldicott Guardians are appointed by Health Boards and each NHS Scotland organisation is required to have a Caldicott Guardian who assists the organisation to uphold the ethical and proportionate use of confidential patient information.</p>	<p>Digital Healthcare Scotland (digihealthcare.scot)</p>
<p>Common Law</p>	<p>Common law, which is also known as case law or precedent is law that has been developed by judges, courts and similar tribunals.</p>	
<p>Cyber resilience framework</p>	<p>The Scottish public sector action plan on cyber resilience sets a commitment to develop a public sector cyber resilience framework. This framework aims to provide a consistent way for Scottish public sector organisations to:</p> <ul style="list-style-type: none"> • assess their cyber resilience arrangements • identify areas of strength and weakness • gain reasonable confidence that they are adhering to minimum cyber resilience requirements, and • take informed decisions on how/whether to achieve higher levels of cyber resilience on a risk-based and proportionate basis. 	<p>Scottish public sector Cyber Resilience Strategy Action Plan</p> <p>Cyber resilience: framework and self-assessment tool.</p>

<p>Data Protection Act 2018</p>	<p>The Data Protection Act 2018 controls how personal information is used by organisations, businesses or the government.</p> <p>The Data Protection Act 2018 is the UK's implementation of the General Data Protection Regulation (GDPR).</p>	<p>Data Protection Act 2018</p>
<p>Data Protection Officers (DPO)</p>	<p>The Data Protection Officer (DPO) ensures, in an independent manner, that an organisation applies the laws protecting individuals' personal data. The designation, position and tasks of a DPO within an organisation are described in Articles 37, 38 and 39 of the UK GDPR,</p>	<p>UK GDPR Section 4 Articles 37, 38 and 39.</p> <p>Data protection officers ICO</p>
<p>European Convention on Human Rights (ECHR)</p>	<p>The European Convention on Human Rights (ECHR) is an international convention to protect human rights and political freedoms in Europe.</p>	<p>European Convention on Human Rights (coe.int)</p>
<p>Explicit Consent</p>	<p>A specific, informed, and unambiguous indication of an individual's wishes. The key difference is understood to be that explicit consent must be affirmed in a clear statement, whether oral or written.</p>	<p>What is valid consent? ICO</p>
<p>Information or Data Sharing Agreement</p>	<p>Is a document that sets out between different organisations the purpose of the data sharing, it covers what is to happen to the data at each stage, sets standards and helps all the parties to be clear about their respective roles.</p>	<p>Data sharing information hub ICO</p>
<p>National Health Service (Scotland) Act 1978</p>	<p>The main legislation providing the framework for the NHS in Scotland.</p>	<p>National Health Service (Scotland) Act 1978</p>
<p>NHS Scotland Code of Practice on Protecting Patients Confidentiality</p>	<p>The code sets out the standards and practice relating to confidentiality for all staff who work in or are under contract to the NHS in Scotland.</p>	<p>Digital Healthcare Scotland (digihealthcare.scot)</p>
<p>Privacy and Electronic Communication Regulation (2003) (PECR)</p>	<p>The Privacy and Electronic Communications (EC Directive) Regulations 2003 (PECR) implement the EU's ePrivacy Directive (Directive 2002/58/EC) and set out privacy rights relating to electronic communications.</p>	<p>Privacy and Electronic Communication Regulation (2003) (PECR)</p>

<p>Privacy and Resilience Legislation</p>	<p>Digital Health and Care Data Strategy as underpinned by current regulations, including the European Convention of Human Rights, UK Data Protection and Confidentiality legislation, the Public Bodies (Joint Working) (Scotland) Act 2014, the Patient Rights (Scotland) Act 2011 among others, including Network and Information System regulations - altogether known as Privacy and Resilience Legislation</p>	<p>Charter of patient rights and responsibilities - revised: June 2022 - gov.scot (www.gov.scot)</p> <p>Public Bodies (Joint Working) (Scotland) Act 2014 (legislation.gov.uk)</p> <p>Data Protection Act 2018 (legislation.gov.uk)</p>
<p>Pseudonymised (Pseudonymisation)</p>	<p>Pseudonymisation is where personal data has been manipulated so that personal data can no longer be attributed to a specific individual without the use of additional information, provided that such additional information is kept separately.</p>	<p>GDPR Article 4(5)</p> <p>ICO call for views: Anonymisation, pseudonymisation and privacy enhancing technologies guidance</p>
<p>Public Services Reform (Scotland) Act 2010</p>	<p>The overarching aim Public Services Reform (Scotland) Act 2010 is to simplify and improve Scotland's public services.</p>	<p>Public Services Reform (Scotland) Act 2010</p>
<p>Records Management Code of Practice</p>	<p>A guide to the required standards of practice in the management of records for those who work within or under contract to NHS organisations in Scotland.</p>	<p>The Scottish Governments Records Management Code of Practice Information page</p> <p>The Scottish Government Records Management Code of Practice for Health and Social Care 2020</p>
<p>Scottish Information Sharing Toolkit</p>	<p>The Scottish Information Sharing Toolkit is the standard for Scottish public sector bodies who have a need to share personal and non-personal information.</p>	<p>The Scottish Information Sharing Toolkit</p> <p>The Scottish Information Sharing Toolkit approach and tools.</p>
<p>The Security of Network & Information Systems Regulations (NIS Regulations)</p>	<p>The NIS Regulations set out standards security (both cyber and physical resilience) of network and information systems that are critical for the provision of essential services (transport, energy, water, health, and digital infrastructure services).</p>	<p>Security of Network & Information Systems Regulations (NIS Regulations)</p>

<p>UK General Data Protection Regulation (UK GDPR)</p>	<p>The UK General Data Protection Regulation (UK GDPR) is a regulation in domestic law on data protection and privacy for all individual citizens of the UK, organisations, businesses, or the government.</p> <p>The Data Protection Act 2018 is the UK's implementation of the General Data Protection Regulation (GDPR).</p>	<p><u>UK General Data Protection Regulation (UK GDPR)</u></p>
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