
DIRECTIONS

NATIONAL HEALTH SERVICE, ENGLAND

SOCIAL CARE, ENGLAND

The Arrangements to be made by Relevant Bodies in respect of Local Healthwatch Organisations Directions 2013

The Secretary of State gives the following Directions in exercise of the powers conferred by section 7A of the Local Authority Social Services Act 1970(a) and sections 8, 272(7) and (8) and 273(1) and (4) of the National Health Service Act 2006(b).

Citation, commencement, application and interpretation

1.—(1) These Directions may be cited as the Arrangements to be made by Relevant Bodies in respect of Local Healthwatch Organisations Directions 2013 and come into force on 1st April 2013.

(2) These Directions apply to—

- (a) NHS trusts(c), most or all of whose hospitals, establishments and facilities are situated in England; and
- (b) local authorities(d).

(3) In these Directions—

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

“the 2007 Act” means the Local Government and Public Involvement in Health Act 2007(e);

“authorised representative” means an authorised representative within the meaning of section 225(5) of the 2007 Act(f) (duties of services-providers to allow entry by Local Healthwatch organisations or contractors);

“care services” has the meaning given in section 221(6) of the 2007 Act(g) (local arrangements in relation to health services and social services);

“independent provider” means—

- (a) in relation to an NHS trust, a person providing a service, or assisting in providing a service, under the 2006 Act under arrangements made by an NHS trust;

(a) 1970 c.42 (“the 1970 Act”). Section 7A was inserted by section 50 of the National Health Service and Community Care Act 1990 (c.19).

(b) 2006 c.41 (“the 2006 Act”). Section 8 was amended by paragraph 5 of Schedule 4 and paragraphs 1 and 3 of Schedule 14 to the Health and Social Care Act 2012 (c.7) (“the 2012 Act”). There are no relevant amendments to section 273(4). The powers under the 2006 Act exercised by the Secretary of State in giving these Directions are exercisable only in relation to England by virtue of section 271(1) of the 2006 Act.

(c) NHS trusts are established by the Secretary of State under section 25 of the 2006 Act. Section 25 is repealed by section 179(2) of the 2012 Act.

(d) See section 1 of the 1970 Act for the meaning of “local authority”. Section 1 was amended, so far as relevant, by section 195(1) of the Local Government Act 1972 (c.70). The 1970 Act has effect in the Isles of Scilly as if the Council of the Isles of Scilly were a local authority for the purposes of that Act - see section 12 of that Act and S.I. 1980/328.

(e) 2007 c.28 (“the 2007 Act”).

(f) Section 225(5) is amended by section 186(6) and (7) of the 2012 Act.

(g) There are no relevant amendments to section 221(6).

(b) in relation to a local authority, a person providing a service, or assisting in providing a service, under arrangements made by a local authority in pursuance of its social services functions^(a);

“local authority arrangements” means arrangements made by a local authority under section 221(1) of the 2007 Act (health services and social services);

“Local Healthwatch arrangements” has the meaning given by section 222 of the 2007 Act^(b) (arrangements under section 221(1): Local Healthwatch organisations);

“Local Healthwatch contractor” has the meaning given by section 223 of the 2007 Act^(c) (prescribed provision to be included in arrangements under section 221(1));

“relevant arrangements” means arrangements made by a relevant body with an independent provider;

“relevant body” means an NHS trust or a local authority;

“section 221 activities” means activities specified in section 221(2) of the 2007 Act^(d) (patient and public involvement in health and social care);

“the relevant section 221 activities” means—

(a) in relation to a Local Healthwatch organisation or an authorised representative who is authorised by such an organisation, the section 221 activities that that organisation is to carry on under local authority arrangements; and

(b) in relation to a Local Healthwatch contractor or an authorised representative who is authorised by such a contractor, the section 221 activities that that contractor is to carry on under Local Healthwatch arrangements;

“working day” means any day except for a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday (in England) under the Banking and Financial Dealings Act 1971^(e).

Duty on independent providers to allow entry by authorised representatives

2.—(1) A relevant body must ensure that any relevant arrangements require the independent provider to allow an authorised representative to—

- (a) enter and view, and
- (b) observe the carrying-on of activities on,

premises owned or controlled by that independent provider.

(2) The relevant arrangements must provide that the duty on the independent provider referred to in sub-paragraph (1) does not apply—

- (a) in respect of any premises, or parts of premises, if the presence of an authorised representative on those premises, or those parts of premises, would compromise—
 - (i) the effective provision of care services, or
 - (ii) the privacy or dignity of any person;
- (b) if the authorised representative does not comply with paragraph 3 of these Directions;
- (c) in respect of excluded premises;
- (d) to observing the carrying-on of excluded activities;

(a) See section 1A of the 1970 Act for the meaning of “social services functions”. Section 1A was inserted by section 102(3) of the Local Government Act 2000 (c.22).

(b) Section 222 is amended by section 183 of the 2012 Act. See in particular section 222(2B) which is substituted by section 183(2) of the 2012 Act.

(c) Section 223 is amended by section 184 of the 2012 Act. The definition of “Local Healthwatch contractor” is inserted by section 184(1) and (6)(d) of that Act – see section 223(3).

(d) Section 221(2) is amended by section 182(1) to (4) of the 2012 Act.

(e) 1971 c.80.

- (e) to entering and viewing premises, or parts of premises, for the purpose of observing the carrying-on of excluded activities;
- (f) in respect of any premises, or parts of premises, at any time when care services are not being provided on those premises or those parts of premises;
- (g) if, in the opinion of the independent provider, the authorised representative in seeking to enter and view, or observe the carrying-on of activities on, premises is not acting reasonably and proportionately;
- (h) if an authorised representative does not provide the independent provider with evidence that the representative is authorised in accordance with regulation 12 of the Local Authorities (Public Health Functions and Entry to Premises by Local Healthwatch Representatives) Regulations 2013(a).

(3) Where any premises, or parts of premises, are owned by an independent provider and controlled by another independent provider, sub-paragraph (1) applies only to relevant arrangements with the independent provider who controls those premises, or those parts of premises.

(4) In this paragraph—

“excluded activities” means any activities provided in pursuance of—

- (a) the social services functions of a local authority so far as relating to persons aged under 18;
- (b) the functions, in so far as not covered by paragraph (a), conferred on or exercised by a local authority under the Children Act 1989(b), the Adoption (Intercountry Aspects) Act 1999(c) or the Adoption and Children Act 2002(d); or
- (c) the functions, in so far as not covered by paragraph (a), continuing to be exercisable by a local authority under the Adoption Act 1976(e);

“excluded premises” means—

- (a) parts of a care home which are not communal areas;
- (b) premises or parts of premises used as residential accommodation for employees of independent providers or relevant bodies;
- (c) premises which are occupied by one or more persons as their home and which at least one of those persons occupies under a tenancy or a licence.

Viewing and observing activities

3.—(1) An authorised representative may carry out any viewing, or observation, only for the purposes of the carrying-on of the relevant section 221 activities.

(2) While an authorised representative is on any premises as a result of an independent provider having complied with a duty imposed by virtue of relevant arrangements, the representative must not act in any way that compromises—

- (i) the effective provision of care services, or
- (ii) the privacy or dignity of any person.

Provision of information

4.—(1) A relevant body must ensure that any relevant arrangements comply with this paragraph.

(a) S.I. 2013/351.
 (b) 1989 c.41.
 (c) 1999 c.18.
 (d) 2002 c.38.
 (e) 1976 c.36.

(2) The relevant arrangements must provide that where a request for information is made by a Local Healthwatch organisation or a Local Healthwatch contractor to an independent provider, the provider must respond as specified in sub-paragraphs (3) to (6).

(3) If the independent provider holds the information requested and it is not exempt information, the provider must provide that information to the person making the request within 20 working days beginning with the date of receipt by the independent provider of the request.

(4) If the independent provider holds the information and it is exempt information, the provider must—

- (a) if sub-paragraph (8) applies, provide the information requested to the person making the request in a form in which the identity of an individual cannot be ascertained within 20 working days beginning with the date of receipt by the provider of the request; or
- (b) in any other case, within 20 working days beginning with the date of receipt by the provider of the request, notify the person making the request that the provider is not required to disclose the information.

(5) If the independent provider does not hold the information, the provider must notify the person making the request of this within 20 working days beginning with the date of receipt by the provider of the request.

(6) An independent provider is only required to provide information or notify the person making the request where—

- (a) the request for information is made in writing; and
- (b) the request makes it clear that the information requested is, in the opinion of the person making the request, necessary for the effective carrying-on by that person of the relevant section 221 activities.

(7) Information is exempt information if it is—

- (a) confidential and relates to a living individual, unless the individual consents to the information being disclosed;
- (b) prohibited from disclosure by any enactment or order of a court; or
- (c) prohibited or restricted from disclosure by any rule of common law.

(8) This sub-paragraph applies to information requested by a Local Healthwatch organisation or a Local Healthwatch contractor that is exempt information because of —

- (a) the application of sub-paragraph (7)(a), or
- (b) the application of sub-paragraph (7)(b) or (c) because the information is capable of identifying an individual,

and which can be disclosed in a form from which the identity of the individual to whom that information relates or is capable of identifying cannot be ascertained.

(9) For the purposes of this paragraph, something is done by the requesting person if it is done by that person in the carrying-on of the relevant section 221 activities.

Reports and recommendations- single independent provider

5.—(1) A relevant body (“A”) must ensure that any relevant arrangements comply with this paragraph and paragraph 6.

(2) The relevant arrangements must provide that where a Local Healthwatch organisation or a Local Healthwatch contractor (“the referrer”) has, in the carrying-on of the relevant section 221 activities, made a report or recommendation to an independent provider (“P”), P must respond in accordance with these Directions.

(3) Subject to paragraph 6, unless it is agreed by P and the referrer that, in all the circumstances, it is not expedient for P to do so, P must within 20 working days beginning with the date of receipt of the report or recommendation—

- (a) acknowledge receipt to the referrer;

- (b) provide an explanation to the referrer of any action P intends to take in respect of the report or recommendation or an explanation of why P does not intend to take any action in respect of that report or recommendation; and
- (c) provide A with copies of the report or recommendation and the explanation referred to in paragraph (b).

(4) Where it is agreed by P and the referrer that, in all the circumstances, it is not expedient for P to comply with the duty in sub-paragraph (3) within 20 working days, P must comply with that duty within 30 working days beginning with the date of receipt of the report or recommendation.

Reports and recommendations - more than one independent provider

6.—(1) Where the report or recommendation referred to in paragraph 5(2)—

- (a) appears to P to have been sent to more than one independent provider; or
- (b) relates to a care service in respect of which there is more than one relevant independent provider,

P must, unless sub-paragraph (2) applies, take the steps specified in paragraph 5(3) within 30 working days beginning with the date of receipt of the report or recommendation.

(2) This sub-paragraph applies where persons who are relevant independent providers in respect of a report or recommendation agree that one of those persons, being P, may act on their behalf in relation to that report or recommendation.

(3) In a case where sub-paragraph (2) applies, P must, within 30 working days of the latest date on which the report or recommendation referred to in sub-paragraph (2) was received by one of the providers referred to in that sub-paragraph, provide to the referrer—

- (a) an explanation of any action any of those providers intends to take in respect of that report or recommendation; or
- (b) an explanation of why none of those providers intends to take any action in respect of that report or recommendation.

(4) If P receives a report or recommendation from a Local Healthwatch organisation or a Local Healthwatch contractor, P must send a copy of the report or recommendation to any other person who appears to P to be a relevant independent provider in respect of that report or recommendation and who appears not to have received that report or recommendation, or a copy of it.

(5) If P receives a copy of a report or recommendation from an independent provider, P must send a copy to any other person who appears to P to be a relevant independent provider in respect of that report or recommendation and who appears not to have received a copy of it.

(6) Where P is required to acknowledge receipt or provide an explanation, P must do so in writing.

(7) The relevant arrangements must provide—

- (a) that the duties referred to in paragraph 5(3) and (4) and in sub-paragraphs (1) and (3) to (6) do not apply where a report or recommendation relates wholly to excluded services; and
- (b) that where a report or recommendation relates partly to excluded services, paragraph 5(3) and (4) and sub-paragraphs (1) and (3) to (6) apply only to that part of the report or recommendation that does not relate to those services.

(8) In this paragraph—

“excluded services” means services which are not care services in respect of which the referrer is carrying on the relevant section 221 activities;

“P” is to be construed in accordance with paragraph 5(2);

“relevant independent provider”, in relation to a report or recommendation, means an independent provider who provided, or assisting in providing, the care service to which the report or recommendation relates;

“the referrer” is to be construed in accordance with paragraph 5(2).

Revocation

7. The Directions about the Arrangements to be made by Relevant Bodies in respect of Local Involvement Networks 2008(a) are revoked.

Signed by authority of the Secretary of State for Health



Andrew Larter
A member of the Senior Civil Service
Department of Health

28 March 2013

(a) These Directions were given by the Secretary of State on 31st March 2008, a copy is available at http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/@dh/@en/documents/digitalasset/dh_083833.pdf.