

NATIONAL HEALTH SERVICE, ENGLAND

The NHS Business Services Authority (Awdurdod Gwasanaethau Busnes y GIG) Directions 2016

The Secretary of State for Health gives the following directions in exercise of the powers conferred by sections 7, 8, 192(6), 272(7) and (8), and 273(1) of the National Health Service Act 2006(a).

PART 1

General

Application, commencement and interpretation

1.—(1) These Directions apply to the NHS Business Services Authority (Awdurdod Gwasanaethau Busnes y GIG).

(2) These Directions apply in relation to England.

(3) These Directions shall come into force on 01 June 2016.

(4) In these Directions—

“the 2006 Directions” means the NHS Business Services Authority (Awdurdod Gwasanaethau Busnes y GIG) Directions 2006(b).

“accredited Counter Fraud Specialist” means a person accredited by the Counter Fraud Professional Accreditation Board(e);

“accredited Security Management Specialist” means a person accredited by the Security Management Professional Accreditation Board(d);

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

“the Authority” means the NHS Business Services Authority (Awdurdod Gwasanaethau Busnes y GIG)(e);

“counter fraud” means action taken for the purpose of preventing, detecting or investigating fraud, corruption or other unlawful activity;

“the NHS Bursary Scheme” means the NHS Bursary Scheme established pursuant to section 63 of the Health Services and Public Health Act 1968(f);

(a) 2006 c.41. Section 7 was amended by section 12 of the Health and Social Care Act 2012 (“the 2012 Act”); section 8 were amended by paragraph 5 of Schedule 4 to the 2012 Act. The powers exercised by the Secretary of State in giving these Directions are exercisable by the Secretary of State in relation to England only, by virtue of section 271(1) of the National Health Service Act 2006 (“the 2006 Act”).

(b) The Directions were made in March 2006. The directions are available at http://webarchive.nationalarchives.gov.uk/20120405095111/http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsLegislation/DH_084211.

(c) The Counter Fraud Professional Accreditation Board is a regulatory body financed and run by representatives from Association of Chief Police Officers, the Department of Work and Pensions, the Department of Health, Her Majesty’s Revenue and Customs, KPMG, the Local Government Association, the National Fraud Authority, the National Health Service and the UK Border Agency. Its purposes are to ensure the delivery of professional, accredited counter fraud training and academic study and that, once qualified those who are accredited maintain their professional standards.

(d) The Security Management Professional Accreditation Board is a regulatory body financed and run by the Department of Health whose purpose is to ensure the delivery of professional, accredited security management training and academic study and that, once qualified, those who are accredited maintain their professional standards.

(e) S.I.2005/2414, as amended by S.I.2006/632 and 2007/1201.

(f) 1968 c.46; relevant amendments to section 63 made by paragraph 12 of Schedule 5 to the 2012 Act.

“NHS Injury Benefits Scheme” means any scheme making provision for benefits for health staff in respect of injury or disease and established pursuant to section 10 of the Superannuation Act 1972(a), but excluding any scheme making provision for the early payment of a pensions, allowance or gratuity in respect of ill-health;

“NHS Pensions Scheme” means, any scheme making provision for pensions, allowances, gratuities or compensation for premature retirement for health staff and established pursuant to section 10 or section 24 of the Superannuation Act 1972, but excluding the NHS Injury Benefits Scheme;

“security management” means action taken for the purpose of protecting and improving the security of the persons, property and information referred to in paragraphs (a) to (f) of section 195(3) of the Act(b);

“Total Reward Statement” means an annual statement pertaining to an individual employed by an NHS body which sets out for their information the value of their contractual benefits as an employee and which, in particular, may include—

- (a) their base salary;
- (b) any overtime payments;
- (c) their sick pay entitlement;
- (d) their annual leave allowance;
- (e) a summary of their benefits under the NHS Pension Scheme if they are a member of the Scheme (“an Annual Benefit Statement”); and
- (f) any other allowances, expenses or payments to which they are entitled.

PART 2

Functions of the Authority

Maintenance of NHS Protect

2.—(1) The Authority must maintain a division called the “Counter Fraud and Security Management Service Division” to discharge its functions in relation to counter fraud and security management.

(2) The Division which may also be known as, and is referred to in these Directions as, “NHS Protect”.

3.—(1) The Authority must ensure—

- (a) that the managing director and each member of the senior management team of NHS Protect is a person with suitable experience of counter fraud or security management issues; and
- (b) that the appointment of the managing director is approved by the Secretary of State.

4. In this paragraph, “the senior management team” means the persons appointed by the managing director of NHS Protect to head each of the business units within that Division.

5. The Authority must ensure that all persons—

- (a) employed within NHS Protect; or
- (b) engaged to provide services to the Authority in relation to the Authority’s counter fraud and security management functions,

are appropriately trained and where such a person is directly involved in counter fraud work, that they are a trained and accredited Counter Fraud Specialist and, where such a person is directly

(a) 1972 c. 11.

(b) Section 195(3) was amended by paragraph 103(3) of Schedule 4 to the 2006 Act.

involved in a security management work, that they are a trained and accredited Security Management Specialist.

Accounts

6.—(1) The Authority must prepare and keep annual accounts in respect of each financial year which shall give a true and fair view of the income and expenditure and cash flows of the Authority for the financial year, and the state of affairs as at the end of the financial year.

(2) The accounts must, except where agreed with the Secretary of State in which case the exception shall be disclosed in the notes to the accounts, be prepared in accordance with—

- (a) guidance issued by the Department of Health and the Treasury as applicable to the accounts of Special Health Authorities; and
- (b) any other requests made by the Secretary of State.

Audit

7. The Authority must put in place arrangements for internal audit which are in accordance with Public Sector Internal Audit Standards.

Annual reports

8. The Authority must prepare an annual report in relation to its activities and send a copy of its report to the Secretary of State before the start of the summer recess of the House of Commons in the financial year following the financial year to which the report relates.

Land transactions

9.—(1) Subject to sub-paragraphs (2) to (5) of this paragraph, the Authority may exercise the powers of the Secretary of State under section 211(1) to (3) of the Act (acquisition, use and maintenance of property), in so far as it is necessary to enable it to secure and maintain such accommodation as it requires for the proper discharge of its functions.

(2) The powers mentioned in sub-paragraph (1) of this paragraph do not include the power of the Secretary of State to acquire land compulsorily.

(3) The Authority must not without the prior approval of the Secretary of State—

- (a) acquire or dispose of any land, or any interest in land, not falling within paragraph 3(b) of this direction, the value of which exceeds £50,000; or
- (b) acquire a leasehold interest where either—
 - (i) the term of the lease is less than one year and the rent payable exceeds £50,000; or
 - (ii) the term of the lease is not less than one year and the product of multiplying the number of years in the term by the amount of rent payable in the first year of the term exceeds £250,000.

(4) In sub-paragraph (3)(a) above, “value” means the value on a disposal by sale of the freehold interest with vacant possession on the open market.

(5) In sub-paragraph (3)(b) above, “the term” in relation to a leasehold interest acquired by way of assignment means the unexpired term.

10. The Authority must exercise the powers conferred on it by paragraph 9 consistently with—

- (a) the procedures and instructions for the time being in force and issued by the Department of Health Estates and Facilities except in so far as such procedures and instructions are inconsistent with the provisions of these Directions or by their nature could not be applicable to the Authority; and
- (b) the Authority’s Standing Financial Orders.

11. Where the exercise by the Authority of any power conferred on it by paragraph 9 requires—

- (a) the execution under seal of any document, the Authority must execute such document on behalf of the Secretary of State, under its own seal; or
- (b) the execution of a document otherwise than under seal, the Authority must make arrangements for an officer of the Authority who has been duly authorised for that purpose to sign the document for the Authority on behalf of the Secretary of State.

Functions of the Authority in relation to Counter Fraud and Security Management

12.—(1)The Authority must exercise (through NHS Protect) the functions in relation to counter fraud and security management specified in Schedule 1 to these Directions in accordance with instructions given by the Department of Health.

(2) In accordance with applicable laws, the Authority may use any data it holds to advance the exercise of the functions referred to in sub-paragraph (1) above.

Functions of the Authority in relation to the NHS Bursary, the NHS Injury Benefits Scheme, and the NHS Pension Scheme

13.The Authority must exercise the functions in relation to the NHS Bursary, the NHS Injury Benefits Scheme and the NHS Pension Scheme specified in Schedule 2 to these Directions.

Functions of the Authority in relation to Total Reward Statements

14.The Authority must exercise the functions in relation to Total Reward Statements specified in Schedule 3 to these Directions.

Functions of the Authority in relation to the Purchasing and Supply of Products to the Health Service

15.The Authority must exercise the functions in relation to the purchasing and supply of products to the health service (referred to in these Directions as “the NHS Supply Chain”), specified in Schedule 4 to these Directions.

Functions of the Authority in relation to the European Health Insurance Card

16.The Authority must exercise the function of administering the European Health Insurance Card Scheme(a).

Other functions of the Authority

17.The Authority may exercise the Secretary of State’s functions under—

- (a) section 12 of the Act (Secretary of State’s arrangements with other bodies); and
- (b) section 80 of the Act (supply of goods and services by the Secretary of State).

PART 3

Revocations

Revocations and saving and transitional provision

18.—(1) The directions specified in Schedule 5 are revoked.

(2) Paragraph 12 of Schedule 1 and direction 12 to the 2006 Directions, in so far as it relates to that paragraph, continue to have effect on and after the date these Directions come into force.

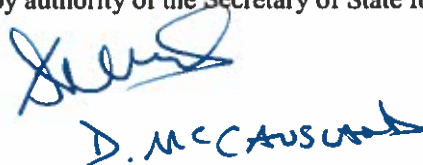
(a) Established pursuant to Regulation (EC) No. 631/2004.

(3) The Authority may continue to carry out the functions of Primary Care Trusts mentioned in paragraph 12 of Schedule 1 to the 2006 Directions (albeit those functions may be exercisable by another body by virtue of article 7 of the Health and Social Care Act 2012 (Commencement No.4, Transitional, Savings and Transitory Provisions) Order 2013(a)), in relation to sums or charges that were recoverable immediately before the date these directions come into force.

(4) Anything done under or for the purpose of paragraphs 2 to 14, 16, 18 and 19, and Schedules 1 to 3 and 5 (other than paragraph 12 of Schedule 1) to the 2006 Directions, has effect on or after the date these Directions come into force, as if done under or for the purposes of these Directions.

(5) In relation to paragraphs 6 and 7 of Schedule 1 to the 2006 Directions, the Authority may, despite the abolition of Primary Care Trusts and Strategic Health Authorities, continue to investigate, or take action to prosecute, any matter relating those bodies or their staff.

Signed by authority of the Secretary of State for Health



D. McCausland

01 June 2016.

Department of Health
A member of the Senior Civil Service

SCHEDULE 1

Direction 12

Functions of the Authority in relation to Counter Fraud and Security Management

Interpretation

1. In this Schedule—

“commissioning contracts” has the same meaning in section 6E of the Act(b);

“NHS body” means the Board(c), a clinical commissioning group(d), a Special Health Authority(e), an NHS trust, the National Institute for Health and Care Excellence(f) and the Health and Social Care Information Centre(g).

Functions

2. Provide advice to the Secretary of State pursuant to this paragraph or on specific instruction from the Department of Health on all matters concerning—

- (a) fraud, corruption and other unlawful activity in relation to the health service;
- (b) security management in the health service,

in a timely manner or within the timescales set out in the specific instruction.

3. The advice mentioned in paragraph 2 includes—

-
- (a) S.I. 2013/160 (C. 9).
 - (b) Section 6E was inserted by section 20(1) of the 2012 Act.
 - (c) “The Board” means the National Health Service Commissioning Board established by section 1H of the 2006 Act; see section 275(1) of the 2006 Act.
 - (d) Clinical commissioning groups are established under section 14D of the 2006 Act.
 - (e) Special Health Authorities are established under section 28 of the 2006 Act.
 - (f) The National Institute for Health and Care Excellence (NICE) is established by section 232 of the 2012 Act.
 - (g) The Health and Social Care Information Centre is established by section 252 of the 2012 Act.

- (a) advice in relation to criminal justice matters;
- (b) recommendations to the Secretary of State about the making of regulations relating to, or giving of directions to, NHS bodies which the Authority considers necessary or desirable; and
- (c) advice on proposals for the revision of strategy, policy or operational systems in the health service.

4. Provide advice and guidance to NHS bodies and local authorities pursuant to this paragraph or on specific instruction from the Department of Health on all matters relating to fraud, corruption and (in the case of NHS bodies) security including, in particular—

- (a) advice and guidance on action required to ensure compliance with directions given or regulations made by Secretary of State;
- (b) advice to the Board on terms and conditions to be included in commissioning contracts entered into by the Board or clinical commissioning groups,

in a timely manner or within the timescales set out in the specific instruction.

5. Recommend to NHS bodies, local authorities and the Secretary of State standards of best practice designed—

- (a) to prevent fraud, corruption and unlawful activity; and
- (b) (in the case of NHS bodies and the Secretary of State) to improve the management of security, and

take all appropriate actions to ensure that its recommendations are implemented.

6.—(1) Investigate fraud, corruption or other unlawful activities against or affecting—

- (a) the health service in England; or
- (b) the Secretary of State in relation to the Secretary of State's responsibility for the health service in England,

including investigations for the purposes of proceedings.

(2) In exercising the functions in sub-paragraph (1), NHS Protect must co-operate with the police, the Crown Prosecution Service and other enforcement agencies as required.

7.—(1) Take all appropriate action to prosecute—

- (a) fraud, corruption or other unlawful activity in, against or affecting the health service in England; and
- (b) cases of assault (whether physical or non-physical) on members of NHS staff.

(2) In this paragraph, "NHS staff" means any person who is employed by or engaged to provide services to the Board, a clinical commissioning group, a Special Health Authority, a NHS trust or NHS foundation Trust, the National Institute for Health and Care Excellence or the Health and Social Care Information Centre.

8. Promote improved security in NHS bodies and the Department of Health (including Public Health England) in relation to—

- (a) persons engaged in activities for the purposes of the health service function of that body;
- (b) patients and those accompanying patients on their premises; and
- (c) their property and information.

9. Obtain, monitor, collate and analyse such data held by any NHS body or local authority as the NHS Protect consider appropriate for the purposes of identifying trends and anomalies which may be indicative of fraud, corruption or other unlawful activities against or affecting the health service.

10.—(1) Produce a strategic plan, business plan and annual objectives to be approved by Secretary of State.

(2) In this paragraph—

- (a) strategic plan means a statement of the Authority's long term goals to meet its vision;
- (b) business plan means a statement of the Authority's annual goals; and
- (c) annual objectives means a statement of the tasks required to deliver the Authority's business plan.

11. Respond to requests for information from Secretary of State in relation to any matter listed in this Schedule.

12. Provide or secure the provision of appropriate training in—

- (a) measures connected with the prevention, detection and investigation of fraud, corruption or other unlawful activities; and
- (b) security matters,

to such persons employed or engaged to provide services to Secretary of State, NHS bodies or (in the case of matters referred to in paragraph (a)) local authorities, as NHS Protect consider appropriate.

13. Inspect and monitor the arrangements made by NHS bodies and local authorities, and by the Secretary of State, in relation to

- (a) fraud, corruption and other unlawful activity, and
- (b) (in the case of NHS bodies and the Secretary of State), in relation to security.

14. Provide information and assistance to the Board and clinical commissioning groups in connection with sections 192, 193 or 194.

15.—(1) Carry out the functions of the Secretary of State under section 194 of the Act in relation to—

- (a) forming the opinion that there is sufficient evidence to justify a prosecution under that section; and
- (b) signing certificates required under section 194(6) of the Act, as conclusive evidence of the date on which such evidence came to the Authority's knowledge.

(2) The person who signs a certificate required under section 194(6) of the Act must be a Senior Manager Agenda for Change Pay Band 8b or above.

SCHEDULE 2

Direction 13

Functions of the Authority in relation to the NHS Bursary Scheme, the NHS Injury Benefit Scheme and the NHS Pension Scheme

PART 1

Functions in relation to the NHS Bursary

1. Exercise all functions of the Secretary of State in relation to the operation of the NHS Bursary Scheme, and in particular to—

- (a) establish, in consultation with the Secretary of State, eligibility criteria for the payment of grants, fees and allowances under the NHS Bursary Scheme;
- (b) determine the amounts to be paid and the arrangements for making payments to a person who is entitled to receive a grant, fee or allowance under the NHS Bursary Scheme and to pay such sums as are due; and
- (c) provide annually to the Secretary of State a report on the grants, fees and allowances made under paragraph (b).

2.—(1) In exercising the functions in paragraph 1 the Authority must comply with article 24(1) of Directive 2004/38/EC of the European Parliament and of the Council of 29th April 2004 on the right of citizens of the Union and their family members to move and reside freely with the territory of the member States(a) (“the Directive”).

(2) In particular, it must where it is necessary in order to comply with paragraph (1) interpret the NHS Bursary Scheme in accordance with article 24(1) of the Directive by for example reading words into, or omitting words from, the Scheme.

(3) In complying with paragraphs (1) and (2) (and in accordance with article 24(2) of the Directive), the Authority is not obliged to grant maintenance aid for studies, including vocational training consisting in student grants or student loans, prior to the acquisition of permanent residence, to persons other than—

- (a) EEA migrant workers or EEA self-employed persons;
- (b) EEA frontier workers or EEA frontier self-employed persons;
- (c) persons who retain the status referred to in paragraphs (a) or (b); and
- (d) members of families of persons falling within paragraphs (a) to (c).

3. In exercising the functions in paragraph 1 the Authority must seek such appropriate and timely legal advice as it considers necessary in connection with—

- (a) the interpretation of the legislation and procedure relating to the administration of the NHS Bursary Scheme;
- (b) the conduct of litigation (whether actual or threatened); and
- (c) the conduct of matters in connection with the Health Service Commissioner.

4. Notify the Secretary of State forthwith of any matter (including actual or threatened litigation), which may, in the Authority’s opinion—

- (a) challenge or cast doubt upon the existing legislation, its interpretation or application; or
- (b) raise issues of financial or public policy,

in relation to the NHS Bursary Scheme.

5. Where the Authority notifies the Secretary of State of a matter in accordance with paragraph 3, it must—

- (a) consult with the Secretary of State about the conduct of the matter; and
- (b) ensure that the Secretary of State is kept informed of developments in, and the progress of, the matter.

6. Provide advice to the Secretary of State in relation to all matters concerning the NHS Bursary Scheme including in particular, actual or threatened litigation where issues of public policy or finance may arise.

7. Provide advice and guidance on the NHS Bursary Scheme to—

- (a) higher education institutions providing to students, eligible courses for the purposes of the NHS Bursary Scheme; and
- (b) students (including potential students).

8. Keep and maintain records of—

- (a) all applications for payments under the NHS Bursary Scheme; and
- (b) all students in receipt of payments under the NHS Bursary Scheme.

(a) OJ L158, 30.4.2004, p.77 to 123.

PART 2

Functions in relation to the NHS Injury Benefits Scheme and the NHS Pension Scheme

Interpretation

9. In this Part—

“the Schemes” means the “NHS Injury Benefits Scheme” and the “NHS Pension Scheme”.

Functions

10. Exercise all functions in relation to the Schemes conferred on the Secretary of State except the functions of making regulations and giving directions relating to the Schemes.

11. In exercising the functions in paragraph 10 the Authority must seek such appropriate and timely actuarial and legal advice as it considers necessary in connection with—

- (a) the interpretation of the legislation and procedures relating to the administration of the Schemes;
- (b) the conduct of litigation (whether actual or threatened); and
- (c) the conduct of matters in connection with the Pensions Ombudsman.

12. The Authority must notify the Secretary of State forthwith of any matter (including actual or threatened litigation), which may, in the Authority’s opinion—

- (a) challenge or cast doubt upon the existing legislation, its interpretation or application; or
- (b) raise issues of financial or public policy

in relation to the Schemes.

13. Where the Authority notifies the Secretary of State of a matter in accordance with paragraph 12, it must—

- (a) consult with the Secretary of State about the conduct of the matter; and
- (b) ensure that the Secretary of State is kept informed of developments in, and the progress of, the matter.

14. Provide advice to the Secretary of state in relation to all matters concerning the Schemes including in particular, actual or threatened litigation where issues of public policy or finance (including actuarial matters), may arise.

15. Provide advice and guidance to employers operating within the Schemes.

16. Give advice and make recommendations to the Secretary of State about the exercise by the Secretary of State of the Secretary of State’s functions of making regulations and giving directions relating to the Schemes.

17. Keep and maintain records of the members of the Schemes.

18. Promote awareness of the Schemes.

SCHEDULE 3

Direction 14

Functions of the Authority in relation to Total Reward Statements

Interpretation

1. In this Schedule, “Electronic Staff Record” means a record in relation to an individual employed by an NHS body which contains human resources information about that individual and

which is held and maintained electronically on the national human resources information system relating to the health service known as the Electronic Staff Record system.

Functions

2. Provide to each individual employed by an NHS body in relation to whom there is an Electronic Staff Record a Total Reward Statement.

3. Provide to each individual who is a member of the NHS Pension Scheme but in relation to whom there is no Electronic Staff Record, an Annual Benefit Statement.

4. Subject to paragraph 5, use the Electronic Staff Record system to obtain and process information to enable the Authority to exercise the function set out in paragraph 2.

5. Use the information obtained and processed by the Authority in the exercise of its functions in relation to the NHS Pension Scheme under direction 13 and Part 2 of Schedule 2 to exercise its function of providing an Annual Benefit Statement—

(a) under paragraph 3; or

(b) as part of a Total Reward Statement under paragraph 2.

6. Keep and maintain records of all Total Reward Statements and Annual Benefit Statements that are provided pursuant to paragraphs 2 and 3.

SCHEDULE 4

Direction 15

Functions in relation to the NHS Supply Chain

1. Ensure the provision of a cost effective storage and distribution service of a range of products required by the health service.

2. Develop and implement, with the approval of the Secretary of State, the most efficient and effective physical systems for the supply of goods to the health service.

3. Development and implement national framework agreements for the management of the purchasing and supply of clinical and non-clinical consumable products to the health service.

4. Procure—

(a) clinical and non-clinical consumable products; and

(b) services;

for the health service.

5. Advise and support the Secretary of State on all matters relating to the NHS Supply Chain work.

6. Work with Secretary of State to ensure the NHS Supply Chain operations are an integral part of supply strategies and policies for the health service.

7. Actively involve its customers in the development of services and seek to match the quality of services to customers' identified needs by continually seeking more efficient methods of operating.

8. Keep under review the scope for increasing activity through the NHS Supply Chain's main supply channel to an optimal level and make proposals to the Secretary of State.

9. Rationalise and improve information technology systems used by the NHS Supply Chain to allow for the production of better management information, more streamlined ordering systems and improvement in other administrative processes.

10. Work with the Secretary of State to encourage all suppliers to improve the quality of their product offer.

11. Offer the Authority's NHS Supply Chain services through a freely available, published catalogue that is updated regularly.

12. Include clear provision in the Authority's service statement in relation to the NHS Supply Chain (as set out in the catalogue referred to in paragraph 11), as to the scope and quality of its service, together with appropriate indicators or targets by which performance may be assessed.

13. Inform its customer about the availability, efficiency and cost of services and develop close relationships with end-users to help them determine their need.

14. Manage its available resources in a cost effective manner and secure the "best value" in all aspects of its operations.

15. Ensure that the management strategies in relation to the NHS Supply Chain reflect and contribute towards the achievement of the Secretary of State's policies, strategies and priorities.

SCHEDULE 5

Direction 18

Directions revoked

1. The 2006 Directions.

2. The NHS Business Services Authority (Awdurdod Gwasanaethau Busnes Y GIG) (Amendment) Directions 2007(a).

3. The NHS Business Services Authority (Awdurdod Gwasanaethau Busnes y GIG) (Amendment) Directions 2011(b).

4. The NHS Business Services Authority (Awdurdod Gwasanaethau Busnes y GIG) (Amendment) Directions 2012(c).

5. The NHS Business Services Authority (Awdurdod Gwasanaethau Busnes y GIG) (Amendment) Directions 2013(d).

(a) The Directions were signed on 5th October 2007.
(b) The Directions were signed on 29th March 2011.
(c) The Directions were signed on 20th September 2012.
(d) The Directions were signed on 28th March 2013.