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## DIRECTIONS

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### FOOD, ENGLAND

#### The Nursery Milk Scheme Directions to the NHS Business Services Authority (Awdurdod Gwasanaethau Busnes y GIG) 2022

The Secretary of State for Health and Social Care gives the following Directions in exercise of the powers conferred by sections 7, 8, 272(7) and (8) of the National Health Service Act 2006(a) and section 13(7) of the Social Security Act 1988(b).

#### Citation, application, commencement and interpretation

1.—(1) These Directions may be cited as the Nursery Milk Scheme Directions to the NHS Business Services Authority (Awdurdod Gwasanaethau Busnes y GIG) 2022.

(2) These Directions apply to England and come into force on 1st August 2022.

(3) In these Directions—

“Authority” means the NHS Business Services Authority (Awdurdod Gwasanaethau Busnes y GIG) established by the NHS Business Services Authority (Awdurdod Gwasanaethau Busnes Y GIG) (Establishment and Constitution) Order 2005(c);

“Counter Fraud Directions” means the Directions to NHS Trusts and Special Health Authorities in respect of Counter Fraud 2017;

“DHSC” means the Department of Health and Social Care;

“Directed Functions” means the functions referred to in paragraphs 2 to 6 of these Directions;

“Nursery Milk Scheme legislation” means all applicable laws and regulations relating to the administration of the Nursery Milk Scheme (as amended from time to time);

“Nursery Milk Scheme” means the scheme established by the Principal Regulations and set out in the Nursery Milk Scheme legislation;

“Principal Regulations” means the Welfare Food Regulations 1996(d);

“supplier” has the meaning given in regulation 2(1) of the Principal Regulations;

“UK GDPR” has the meaning given in section 3(10) of the Data Protection Act 2018(e).

#### Operation and administration of the Nursery Milk Scheme

2.—The Secretary of State directs the Authority to exercise the functions of the Secretary of State in relation to the operation and the administration of the Nursery Milk Scheme, and in particular to—

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(a) 2006 c. 41; section 7 was amended by section 21(1), (2), (3) and (4) of the Health and Social Care Act 2012 c. 7.

(b) 1988 c. 7; section 13 was substituted by section 185(1) of the Health and Social Care (Community Health and Standards) Act 2003.

(c) S.I. 2005/2414, as amended by S.I. 2006/632, 2007/1201, 2013/235, 2015/1862, 2017/959, 2018/378 and 2019/776.

(d) S.I. 1996/1434, as amended by S.I. 2000/694, 2004/696, 2005/3262, 2006/589, 2006/2818, 2015/917, 2015/1580, 2017/1032, 2018/378, 2020/267 and 2021/82.

(e) 2018 c. 12, as amended by S.I. 2019/419.

- (a) work with the Secretary of State to ensure that appropriate agreements and arrangements are put in place between the Authority and the Secretary of State detailing the administration and operation of the Nursery Milk Scheme, including specifications, key performance indicators and funding arrangements;
- (b) work and liaise with DHSC as appropriate;
- (c) carry out administrative functions relating to the supply of milk or dried milk under the Nursery Milk Scheme;
- (d) check the entitlement of and approve suppliers in accordance with regulation 19 of the Principal Regulations;
- (e) check claims and provide reimbursements in accordance with regulation 20 of the Principal Regulations;
- (f) request and receive any information or evidence in accordance with regulation 21 of the Principal Regulations;
- (g) handle any complaints about the Nursery Milk Scheme in line with the Authority's published complaints procedure;
- (h) take such action as is reasonably necessary for the purpose of preventing or detecting any fraudulent claims for reimbursement by suppliers or any other persons, in accordance with the Counter Fraud Directions; and
- (i) where the Authority suspects that fraudulent claims have been made, investigate those claims in accordance with the Counter Fraud Directions and, where appropriate, liaise with DHSC's fraud team and consider submitting a case file to the Crown Prosecution Service where criminal offences have been identified.

**Reliance on legal advice, policies and guidance**

3.—(1) In exercising the Directed Functions, the Authority must act in accordance with this paragraph.

(2) The Authority must have regard to such policies, advice or guidance of the Secretary of State as the Secretary of State may notify in writing to the Authority.

(3) The Authority must seek appropriate and timely legal advice in connection with—

- (a) the administration or operation of the Nursery Milk Scheme, including the interpretation of the Nursery Milk Scheme legislation and procedures relating to the administration of the Nursery Milk Scheme; and
- (b) the conduct of litigation, whether actual or threatened.

(4) The Authority must notify the Secretary of State forthwith of any matter (including actual or threatened litigation) in relation to the Nursery Milk Scheme which may—

- (a) challenge or cast doubt upon the existing Nursery Milk Scheme legislation, its interpretation or application; or
- (b) raise issues of public policy or finance in relation to the Nursery Milk Scheme.

(5) Where the Authority notifies the Secretary of State of a matter in accordance with sub-paragraph (4), 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) Upon request by the Secretary of State, the Authority must provide advice to the Secretary of State in relation to any matter concerning the Nursery Milk Scheme including in particular, actual or threatened litigation, or where issues of public policy or finance may arise.

## **Record-keeping and reports**

4.—(1) The Authority must keep and maintain records relating to the discharge of the Directed Functions, including—

- (a) all management and operational decisions;
- (b) documents relating to any litigation (whether actual or threatened);
- (c) complaints made by any person; and
- (d) applications and claims for reimbursement made under the Principal Regulations.

(2) The Authority must provide annually to the Secretary of State a written report on the operation of, and the claims paid under, the Nursery Milk Scheme, on a date specified by the Secretary of State.

## **Data protection**

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

(2) The processing of personal data by the Authority is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller pursuant to article 6(1)(e) of the UK GDPR namely to assess and respond to claims for assistance pursuant to section 13(4) of the Social Security Act 1988.

## **Transitional provisions**

6.—(1) The Authority must take reasonable steps to ensure that—

- (a) any parties affected by the transfer of the Nursery Milk Scheme to the Authority are informed of the Authority's new functions in relation to the Nursery Milk Scheme, of these Directions, and their effect; and
- (b) any provisions for continuity are implemented as soon as practicable after these Directions come into force.

(2) Cases that are already under investigation or subject to legal proceedings before these Directions come into force are to be investigated and proceeded against by the Secretary of State.

## **Use of third-party contractors**

7.—(1) The Authority may enter into an agreement with a third-party contractor to discharge the Directed Functions on behalf of the Authority.

(2) Where the Authority wishes to enter any agreements in accordance with sub-paragraph (1), it must—

- (a) consult with the Secretary of State about the terms of the agreement; and
- (b) obtain the approval of the Secretary of State in relation to the terms of the agreement and the entering into of the agreement.

(3) Where the Authority has entered into an agreement with a third-party contractor, the Authority must ensure that the contractor—

- (a) handles any complaints in line with the requirements outlined in the agreement;
- (b) develops and implements a claim validation and anti-fraud strategy, which complies with any requirements outlined in the agreement;
- (c) provides the services under the name of the "Nursery Milk Reimbursement Unit"; and
- (d) fulfils the record keeping obligations in paragraph 4.

(4) Where a person complains about the contractor's handling of a complaint under sub-paragraph (3)(a), the Authority must handle and respond to any follow-up complaints.

(5) Where the Authority has entered into an agreement with a third-party contractor, the Authority must—

- (a) keep and maintain records of any substantive decisions made by the contractor in relation to the Nursery Milk Scheme; and
- (b) take reasonable steps to ensure the third-party contractor is complying with its obligations under these Directions.

### **Review, revocation and suspension of these Directions**

8.—(1) The Secretary of State may review these Directions as considered appropriate.

(2) The Authority must operate the Nursery Milk Scheme and undertake the Directed Functions unless and until—

- (a) these Directions are revoked by a further direction; or
- (b) the Authority is instructed in writing by an officer of the DHSC authorised by the Secretary of State, giving reasonable notice to suspend or permanently cease a Directed Function.

Signed by authority of the Secretary of State for Health and Social Care.

A handwritten signature in black ink, appearing to read 'Kevin Dodds', enclosed within a hand-drawn oval shape.

27 July 2022

Kevin Dodds  
Member of the Senior Civil Service  
Department of Health and Social Care