

T: Siobhan Mackay - 07918702021

E: deputydirectornhs24andsassponsorship@gov.scot

Chief Executives  
eHealth Leads  
Primary Care Leads  
Information Governance Leads  
Directors of Pharmacy  
Joint Chairs of the Scottish GP IT Group  
Chief Officers of IJB's  
Medical Directors

21 September 2023

Dear colleagues

## **THE NATIONAL HEALTH SERVICE (SCOTLAND) ACT 1978**

### **THE EMERGENCY CARE SUMMARY AND KEY INFORMATION SUMMARY (SCOTLAND) DIRECTIONS 2023**

#### **Background**

At the start of the Covid-19 pandemic, the Scottish Government issued letters informing Health Boards that they may provide access to the Emergency Care Summary (ECS) data set to Dentists, Optometrists, and Pharmacists as part of their Covid-19 response, providing that it was practical to do so and Health Boards were satisfied that they could appropriately discharge their data protection obligations.

Prior to the pandemic, Primary Care officials were preparing Directions regarding the procedures for access to the data processed by the Emergency Care Summary ("ECS") system, and we are now returning to this work. In recent months we have re-engaged key stakeholders, including the Scottish GP Committee of the BMA (SGPC), and Health Boards, who have confirmed they are content for the ECS directions to be put in place to formalise access to this data, and the widened access to the ECS dataset accelerated during the pandemic.

#### **ECS and KIS directions**

Our intention is to formalise the existing arrangements put in place during Covid, and also to signal the end of the instruction issued under emergency circumstances, which no longer apply. We are thereby providing a formal framework for the sharing of this information in non-Covid/emergency circumstances, and ask NHS Boards to implement this locally by ensuring that ECS/KIS access is given to the relevant healthcare professionals covered in the Directions. The formalising of ECS/KIS data sharing by way of these Directions will replace both the initial CMO letter on ECS data sharing issued to Boards in 2004 (and a

number of iterations thereafter, including guidance on KIS), and the letters issued under emergency circumstances in March 2020.

The Directions will cover healthcare professionals, non-registered healthcare members of staff and management and administration members of staff employed or contracted to provide and support healthcare delivery to patients under the NHS, and working in line with organisation policies and confidentiality. This principally includes pharmacists, dentists and optometrists to whom access could be granted for the purposes of providing health care.

The directions formalising access to the ECS system will come into force on 2 October 2023. This measure is supported by the SGPC and the Royal College General Practitioners.

### **Key Information summary (KIS)**

On the advice of the Information Commissioner's Office (ICO), these directions are to formalise the sharing of both ECS and KIS, the extended record, where this is necessary for the care and treatment of a patient. It remains vital that there are appropriate data sharing agreements and protocols in place.

### **KIS Consent model**

In conjunction to the work on the directions, we have also reviewed the current model whereby explicit consent is required from the patient to create and share KIS. A letter will be issued in the coming weeks with further detail on this work and clarity on the KIS consent model.

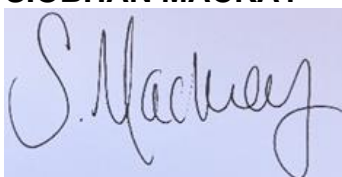
### **Future planning – policy aims and future aspirations**

The data sharing landscape has changed since the initial letters on ECS were issued in 2004, most notably with the introduction of UK GDPR, and the Covid 19 pandemic which showed the importance of technology. These changes have brought new opportunities for data sharing. Our intention is that formalising ECS/KIS directions for wider sharing across the health system will show a clear statement of intent and the direction of travel for enhanced and appropriate data sharing to better support patient care. We trust these directions provide Health Boards with clear vision and expectations on sharing data, where appropriate, for the benefit of patient care with the expanded multidisciplinary team, a key policy of the Scottish Government.

We are keen to understand how your plans for implementing the directions are progressed, and will contact you again in the new year to request an update.

Yours Sincerely,

Interim Deputy Director, Primary Care Capability  
**SIOBHAN MACKAY**



# THE NATIONAL HEALTH SERVICE (SCOTLAND) ACT 1978

## THE EMERGENCY CARE SUMMARY AND KEY INFORMATION SUMMARY (SCOTLAND) DIRECTIONS 2023

The Scottish Ministers, in exercise of the powers conferred by sections 2(5) and 105(7) of the National Health Service (Scotland) Act 1978(a), and of all other powers enabling them to do so, hereby give the following Directions:

### Citation and commencement and application

1.— (1) These Directions may be cited as the Emergency Care Summary and Key Information Summary (Scotland) Directions 2023 and come into force on 2 October 2023.

(2) These Directions are given to health boards in Scotland and apply in relation to Scotland only.

### Interpretation

2.— (1) In these Directions—

“the Act” means the National Health Service (Scotland) Act 1978;

“contractor” means a person who has entered into a GMS contract or a section 17C arrangement with a Health Board;

“Emergency Care Summary” means the information, in relation to a particular patient, which is specified in Schedule 1;

“GMS contract” means an agreement between a person and a Health Board which is subject to the terms of the GMS Regulations;

“GMS Regulations” means the National Health Service (General Medical Services Contracts) (Scotland) Regulations 2018(b);

“Health Board”, in relation to a contractor, means the Health Board with which the contractor has entered into a GMS contract or section 17C arrangement;

“health care professional” has the meaning given in regulation 8 of the Human Medicines Regulations 2012(c);

“Key Information Summary” means a summary of a patient’s medical history and wishes regarding their care and treatment which has been taken from their electronic medical record and contains information which is additional to the information contained in the Emergency Care Summary and which may contain, but is not limited to, the information specified in Schedule 2;

“management or administrative member of staff” means a person accessing the data for administrative or audit purposes or for the purpose of supporting a health care professional or non-registered health care member of staff in their care and treatment of the patient;

“non-registered health care member of staff” means a person who is not a health care professional but who requires to access the data for the purpose of providing care and treatment to the patient;

---

(a) c. 29. Section 105(7) has been amended by the Health Services Act 1980 (c. 53), Health and Social Services and Social Security Adjudications Act 1983 (c.41), and the Health Act 1999 (c. 8).

(b) S.S.I. 2018/66.

(c) S.I. 2012/1916. Regulation 8 was amended by the European Qualifications (Health and Social Care Professions) (Amendment etc.) (EU Exit) Regulations 2019/593 and the Children and Social Work Act 2017 (Consequential Amendments) (Social Workers) Regulations 2019/1094.

“PMS Regulations” means the National Health Service (Primary Medical Services Section 17C Agreements) (Scotland) Regulations 2018(a); and

“section 17C arrangement” means an arrangement to provide primary medical services which is set out in an agreement made under section 17C of the Act and is subject to the terms of the PMS Regulations.

(2) Unless defined by sub-paragraph (1) above, terms in these Directions have the meaning given to them by—

- (a) where the contractor has entered into a GMS contract with the Health Board, the GMS Regulations; or
- (b) where the contractor has entered into a section 17C arrangement with the Health Board, the PMS Regulations.

### **Emergency Care Summary and Key Information Summary Data**

3.— (1) A Health Board must, when necessary to do so for a purpose relating to care and treatment of a patient, request, from each of its contractors, the following data or access to it:

- (a) the patient’s Emergency Care Summary;
- (b) where the patient has one, the patient’s Key Information Summary.

(2) For the purpose of sub-paragraph (1), the health board may determine the most appropriate means of requesting the data or access to it, including by electronic means.

(3) A Health Board requesting data or access to data in accordance with sub-paragraph (1) must also ensure that they comply with the requirements of paragraph 69 of Schedule 6 (processing and access of data) of the GMS Regulations or, as the case may be, paragraph 37 of Schedule 1 (processing and access of data) of the PMS Regulations.

### **Further use of data by Health Board**

4.— (1) Any data received by a health board in response to a request made under these Directions may be made available to any of the following persons (or to persons carrying out functions on their behalf), but only for a purpose mentioned in paragraph 5:

- (a) any other territorial health board;
- (b) a special health board; or
- (c) The Common Services Agency.

(2) A health board may make arrangements for the following persons to have access to the data only for the purpose of providing health care or treatment to the patient, subject to sub-paragraph (3): -

- (a) a person providing general dental services in accordance with the Act;
- (b) a person providing pharmaceutical services in accordance with the Act;
- (c) a person providing general ophthalmic services in accordance with the Act;
- (d) any other person or body with whom the health board has entered into arrangements to provide care or treatment for the patient.

(3) A person mentioned in sub-paragraph (2) may only access the data where the health board and that person have entered into an agreement setting out how the data sharing arrangements will operate.

---

(a) S.S.I. 2018/67.

“PMS Regulations” means the National Health Service (Primary Medical Services Section 17C Agreements) (Scotland) Regulations 2018(a); and

“section 17C arrangement” means an arrangement to provide primary medical services which is set out in an agreement made under section 17C of the Act and is subject to the terms of the PMS Regulations.

(2) Unless defined by sub-paragraph (1) above, terms in these Directions have the meaning given to them by—

- (a) where the contractor has entered into a GMS contract with the Health Board, the GMS Regulations; or
- (b) where the contractor has entered into a section 17C arrangement with the Health Board, the PMS Regulations.

### **Emergency Care Summary and Key Information Summary Data**

3.— (1) A Health Board must, when necessary to do so for a purpose relating to care and treatment of a patient, request, from each of its contractors, the following data or access to it:

- (a) the patient’s Emergency Care Summary;
- (b) where the patient has one, the patient’s Key Information Summary.

(2) For the purpose of sub-paragraph (1), the health board may determine the most appropriate means of requesting the data or access to it, including by electronic means.

(3) A Health Board requesting data or access to data in accordance with sub-paragraph (1) must also ensure that they comply with the requirements of paragraph 69 of Schedule 6 (processing and access of data) of the GMS Regulations or, as the case may be, paragraph 37 of Schedule 1 (processing and access of data) of the PMS Regulations.

### **Further use of data by Health Board**

4.— (1) Any data received by a health board in response to a request made under these Directions may be made available to any of the following persons (or to persons carrying out functions on their behalf), but only for a purpose mentioned in paragraph 5:

- (a) any other territorial health board;
- (b) a special health board; or
- (c) The Common Services Agency.

(2) A health board may make arrangements for the following persons to have access to the data only for the purpose of providing health care or treatment to the patient, subject to sub-paragraph (3): -

- (a) a person providing general dental services in accordance with the Act;
- (b) a person providing pharmaceutical services in accordance with the Act;
- (c) a person providing general ophthalmic services in accordance with the Act;
- (d) any other person or body with whom the health board has entered into arrangements to provide care or treatment for the patient.

(3) A person mentioned in sub-paragraph (2) may only access the data where the health board and that person have entered into an agreement setting out how the data sharing arrangements will operate.

---

(a) S.S.I. 2018/67.

# THE NATIONAL HEALTH SERVICE (SCOTLAND) ACT 1978

## THE EMERGENCY CARE SUMMARY AND KEY INFORMATION SUMMARY (SCOTLAND) DIRECTIONS 2023

The Scottish Ministers, in exercise of the powers conferred by sections 2(5) and 105(7) of the National Health Service (Scotland) Act 1978(a), and of all other powers enabling them to do so, hereby give the following Directions:

### Citation and commencement and application

1.— (1) These Directions may be cited as the Emergency Care Summary and Key Information Summary (Scotland) Directions 2023 and come into force on 2 October 2023.

(2) These Directions are given to health boards in Scotland and apply in relation to Scotland only.

### Interpretation

2.— (1) In these Directions—

“the Act” means the National Health Service (Scotland) Act 1978;

“contractor” means a person who has entered into a GMS contract or a section 17C arrangement with a Health Board;

“Emergency Care Summary” means the information, in relation to a particular patient, which is specified in Schedule 1;

“GMS contract” means an agreement between a person and a Health Board which is subject to the terms of the GMS Regulations;

“GMS Regulations” means the National Health Service (General Medical Services Contracts) (Scotland) Regulations 2018(b);

“Health Board”, in relation to a contractor, means the Health Board with which the contractor has entered into a GMS contract or section 17C arrangement;

“health care professional” has the meaning given in regulation 8 of the Human Medicines Regulations 2012(c);

“Key Information Summary” means a summary of a patient’s medical history and wishes regarding their care and treatment which has been taken from their electronic medical record and contains information which is additional to the information contained in the Emergency Care Summary and which may contain, but is not limited to, the information specified in Schedule 2;

“management or administrative member of staff” means a person accessing the data for administrative or audit purposes or for the purpose of supporting a health care professional or non-registered health care member of staff in their care and treatment of the patient;

“non-registered health care member of staff” means a person who is not a health care professional but who requires to access the data for the purpose of providing care and treatment to the patient;

---

(a) c. 29. Section 105(7) has been amended by the Health Services Act 1980 (c. 53), Health and Social Services and Social Security Adjudications Act 1983 (c.41), and the Health Act 1999 (c. 8).

(b) S.S.I. 2018/66.

(c) S.I. 2012/1916. Regulation 8 was amended by the European Qualifications (Health and Social Care Professions) (Amendment etc.) (EU Exit) Regulations 2019/593 and the Children and Social Work Act 2017 (Consequential Amendments) (Social Workers) Regulations 2019/1094.

**Purposes for which data received under paragraph 4(1) may be used**

5. The purposes for which data as mentioned in paragraph 4(1) may be made available are:-

- (a) To allow a health care professional employed by or contracted to provide services for a person mentioned in paragraph 4(1) to access the data only for the purpose of providing health care or treatment to the patient;
- (b) To allow a non-registered health care member of staff employed by or contracted to provide services for a person mentioned in paragraph 4(1) to access the data only for the purpose of providing care and treatment to the patient or supporting a health care professional who is providing care or treatment to the patient; or
- (c) To allow a management or administrative member of staff employed by or contracted to provide services for a person mentioned in paragraph 4(1) to access the data for the purpose of:-
  - (i) supporting a health care professional or non-registered health care member of staff in their care and treatment of the patient;
  - (ii) undertaking an audit or system maintenance of any database on which the data is held;
  - (iii) responding to a data subject access right (within the meaning of the Data Protection Act 2018); or
  - (iv) providing anonymised management information.

**Further measures required in relation to data**

6. Without prejudice to a health board's requirement to comply with any legal obligation relating to data protection:-

- (a) a health board must ensure that any data shared in accordance with these Directions is encrypted using an appropriately secure method;
- (b) a health board must ensure that only people who have received appropriate data protection training can be granted access to the data to be shared or accessed in accordance with these Directions;
- (c) a health board must ensure that all those who access the data are assigned a unique username and password;
- (d) a health board must maintain an audit record of access to the data;
- (e) a health board must require anyone accessing the data to record the reason for access and must include that information in the audit record;
- (f) a health board must take the necessary steps to inform patients of their right to object to their data being processed;
- (g) a health board must have in a place a process to allow patients to exercise their data protection rights; and
- (h) a health board must put in place measures to ensure that the data set is kept up to date and accurate.



.....  
A Member of the Staff of the Scottish Ministers  
Primary Care Directorate

5th September 2023  
.....  
Edinburgh

## SCHEDULE 1

### EMERGENCY CARE SUMMARY

#### 1. Demographic information

- (a) Patient's first name;
- (b) Patient's surname;
- (c) Patient's date of birth;
- (d) Patient's Community Health Index number;
- (e) Patient's address;
- (f) Patient's telephone number; and
- (g) GP practice at which the patient is registered.

#### 2. Clinical information

- (a) Whether the patient has any known allergies;
- (b) Whether the patient has had any adverse reactions to medicine or treatment in the past;
- (c) Whether the patient has been prescribed any acute medications or whether they have done so within 6 months prior to receiving/the board making the request for data in accordance with these Directions; and
- (d) Whether the patient has been prescribed active repeat medications or whether they have done so within 1 year prior to receiving/the board making the request for data in accordance with these Directions.



## SCHEDULE 2

### KEY INFORMATION SUMMARY DATA

1. A care plan for the patient;
2. Contact details for the patient's next of kin;
3. Contact details for any carer which the patient has;
4. Any wishes or special instructions which the patient has expressed in relation to their care and treatment;
5. A management plan for any long-term condition which the patient has;
6. The patient's preferred place of care or treatment;
7. Any other information which is relevant to the care and treatment of the patient.

