

NATIONAL HEALTH SERVICE, ENGLAND

SOCIAL CARE, ENGLAND

Directions about the Arrangements to be made by Relevant Bodies in respect of Local Involvement Networks 2008

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

Application and commencement

1.—(1) These Directions apply to—

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

(2) These Directions shall come into force on 1st April 2008.

Interpretation

2. In these Directions—

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

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

“authorised representative” has the meaning given in paragraph 4(1);

“care services” has the meaning given in section 221(6) of the Act;

“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(d), the Adoption (Intercountry Aspects) Act 1999(e) or the Adoption and Children Act 2002(f); and
- (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(g);

“excluded premises” means—

- (a) parts of a care home which are not communal areas;

(a) 2006 c.41.

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

(c) 2007 c.28.

(d) 1989 c.41.

(e) 1999 c.18.

(f) 2002 c.38.

(g) 1976 c.36.

- (b) premises or parts of premises used as residential accommodation for employees of independent providers or services-providers;
- (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 licence;

“independent provider” has the meaning given in paragraph 3;

“local authority” has the meaning given in section 229(1) of the Act;

“local involvement network” means a person who, in pursuance of arrangements made under section 221(1) of the Act, is to carry on activities specified in section 221(2) of that Act;

“relevant arrangements” means arrangements made by a relevant body with an independent provider on or after 1st April 2008;

“relevant body” means—

- (a) a local authority;
- (b) an NHS trust;
- (c) a Primary Care Trust; or
- (d) a Strategic Health Authority;

“relevant service” means a service specified in Schedule 5 to the National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements) (England) Regulations 2002(a)(Secretary of State’s functions under section 3(1) of the 2006 Act exercisable by Strategic Health Authorities for the purpose of securing the provision of specified services);

“services-provider” has the meaning given in section 225(7) of the Act;

“social services functions” in relation to a local authority, has the meaning given in the Local Authority Social Services Act 1970(b).

Independent provider

3. In these Directions “independent provider” means—

- (a) 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;
- (b) 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;
- (c) in relation to a Primary Care Trust, a person providing a service, or assisting in providing a service, under arrangements made with the Trust under section 12 of the 2006 Act; and
- (d) in relation to a Strategic Health Authority, a person providing a relevant service, or assisting in providing a relevant service, under arrangements made with the Authority under section 12 of the 2006 Act,

and references to arrangements made with an independent provider are to be construed accordingly.

Duty on independent providers to allow entry by authorised representative

4.—(1) A relevant body must ensure that any relevant arrangements require the independent provider to allow an individual who is an authorised representative within the meaning of section 225(5) of the Act (“authorised representative”) to—

- (a) enter and view, and

(a) S.I. 2002/2375. Schedule 5 was inserted by S.I.2007/559.

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

(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 that sub-paragraph does not apply—

- (a) in respect of any premises, or parts of premises, if the presence of the 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 5;
- (c) in respect of excluded premises;
- (d) to observing the carrying-on of excluded activities;
- (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, and observe the carrying-on of activities on, the premises that the independent provider owns or controls is not acting reasonably and proportionately; or
- (h) if an authorised representative does not provide the independent provider with evidence that the representative is authorised in accordance with regulation 4 of the Local Involvement Networks (Duty of Services-Providers to Allow Entry) Regulations 2008.

(3) Where any premises, or parts of premises, are owned by an independent provider and controlled by another independent provider, then for the purpose of this paragraph, the independent provider who owns those premises, or parts of premises, is to be treated as not being an independent provider.

Viewing and observing activities

5. An authorised representative complies with this paragraph if—

- (a) any viewing, or observation, carried out by the representative is carried out for the purposes of carrying-on, under arrangements made under section 221(1) of the Act, of activities specified in section 221(2) of that Act; and
- (b) while that 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 does 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

6.—(1) A relevant body must ensure that any relevant arrangements comply with the provisions of this paragraph.

(2) The relevant arrangements must provide that where a request for information is made by a local involvement network (“the requesting person”) 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 requesting person within 20 working days following the date of receipt by the independent provider of the request for information.

(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 requesting person in a form in which the identity of an individual cannot be ascertained within 20 working days following the date of receipt by the provider of the request for information; or
 - (b) in any other case, within 20 working days following the date of receipt by the provider of the request for information, notify the requesting person that the provider is not required to disclose the information requested by the requesting person;
- (5) If the independent provider does not hold the information, the provider must notify the requesting person of this within 20 working days following the date of receipt by the provider of the request for information.
- (6) An independent provider is only required to provide information or notify the requesting person where—
- (a) the request for information is made in writing; and
 - (b) the information requested is, in the opinion of the requesting person, necessary for the effective carrying-on of the activities specified in section 221(2) of the Act that the requesting person is to carry on pursuant to arrangements made under section 221(2) of that Act.
- (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 paragraph applies to information requested by a local involvement network 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 purpose of this paragraph something is done by local involvement network if—
- (a) it is done by a person who, in pursuance of arrangements made under section 221(1) of the Act, is to carry on activities specified in section 221(2) of that Act; and
 - (b) it is done by that person in the carrying-on, under those arrangements, of activities so specified.

Signed by authority of the Secretary of State for Health

31st March 2008


Meredith Vivian
Member of the Senior Civil Service
Department of Health