Consultation on proposed amendments to the National Health Service Central Register (Scotland) Regulations 2006

The Law Society of Scotland’s response
February 2015
Introduction

The Law Society of Scotland aims to lead and support a successful and respected Scottish legal profession. Not only do we act in the interests of our solicitor members but we also have a clear responsibility to work in the public interest. That is why we actively engage and seek to assist in the legislative and public policy decision making processes. To help us do this, we use our various Society committees which are made up of solicitors and non-solicitors to ensure we benefit from knowledge and expertise from both within and out with the solicitor profession.

The Privacy Law and Health and Medical Law Sub-committees of the Law Society of Scotland, welcome the opportunity to consider the Scottish Government consultation on the proposed amendments to the National Health Service Central Register (Scotland) Regulations 2006.

The joint committees have the following comments to put forward:

General comments

1) Where data relating to a citizen is held it should be accurate. Do you agree that the approach suggested at paragraphs 9-11 is an effective approach to achieving this?

Comments: We believe, and agree, that where data is held on an individual it must be accurate. Data must not be held without the full consent of the individual concerned, given the nature of the information to be recorded and the primary purpose of the retention of this. However, we do recognise that such information may prove benefits to the delivery of service and would support the Scottish Governments Digital Participation Charter.

We note that the consultation at paragraph 9 states that currently NHSCR only holds address information for 30% of the population and individuals have to provide consent to their local authority for this to be added to the record. We would suggest therefore that an inference could be made that, currently, 70% of the population prefer for their detailed address not to be held.
We further note that an unsubstantiated statement is made in paragraph 11 that the holding of detailed address information for each and every individual would improve the delivery of services to an individual. We question, does this justify removing an individual’s right (which would happen by implementation of the proposed regulations) to withhold highly detailed address information from the register? (The assumption being that the NRS address information would update the NHSCR postal address information to 100%.)

2) We propose to extend the current ability to trace persons a) who go missing whilst in education and b) who should pay for treatment provided by the NHS. Do you agree with these proposal set out in paragraphs 12-13?

Comments: The proposals set out in paragraphs 12 & 13 appear reasonable. We do note that there are already provisions to support the tracing of persons. However, we suggest that the proposed extension to the current ability to trace persons may be used by other agencies, other than the NHS, to trace and attempt to recover debt. Is there to be any protection / restrictions to prevent this?

We also suggest that the wording of the proposed changes in the legislation in Annex A: Schedule 2, Section 8, column 2 (b) body which may refer to itself as a 'charity' in Scotland is inconsistent with Paragraph 12 which states ‘.....enabling charities involved in the tracing of missing persons.’. It would appear to us to suggest that any charity (not necessarily involved in the tracing of missing persons) could therefore apply for access to the additional information. The wording of the regulation change should reflect clearly those charities specifically dealing with the tracing of missing persons.

3) In order to allow citizens to make use my account for a wider group of services (beyond health and local government), as set out in paragraphs 14-16, we propose to provide access to the bodies named in draft Schedule 3 (Annex B). Are there any additional service providers who you feel should be included?

Comments: We would suggest that the reasoning behind the proposed regulations is unclear as to why the personal details of ‘myaccount’ users should be made available to all of those bodies in draft Schedule 3 in order to extend services to these users? Myaccount users voluntarily enter personal data in order to access specific information currently available online (for example job applications in some health boards require application
through myaccount); it would appear a breach of privacy for an individual’s myaccount data to be accessed and used by the bodies suggested without the active (as opposed to passive) permission of the user. We cannot suggest any additional service providers which we believe should be included.

4) Do you consider that the proposals set out in paragraph 18 are an effective method to identify Scottish Tax payers? If No please describe the approach you feel should be taken.

Comments: Yes, if the NRS records updated the NHSCR records to 100% of the population. However, we would suggest that identifying Scottish Tax payers is not necessarily the role or purpose of the NHSCR.