Annex E: Consultation Questions

The consultation sets out a number of proposed amendments. Views are invited on the following:

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?

Yes ☐ No ☑

If No, please describe the approach you feel should be taken.

The consultation should make clear that is is possible that all Scottish public bodies will have access to up to date detailed address data on any citizens they have on file. Maintaining quality and accuracy of the information held on individuals is a principle of fair information processing, but at least as important is minimising access and sharing to what is necessary, and being transparent. In relation to the stated aim to improve research and statistics, we would like to see more details on the processing of the data. At the UK level, the Office of National Statistics has strong safeguards against uses of data outside its statistical remit, including for administrative purposes. The UK is also implementing a sophisticated system for the secure sharing of administrative data for research. The Scottish proposals seem very thin in comparison, which could increase the privacy risks.

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?

Yes ☐ No ☑

If No please explain why not?

The consultation lumps together some disparate concepts in a very misleading manner. It conflates existing provisions for assisting in the search for missing persons by their family and friends, with proposals to assist public bodies tracing people missing from administrative systems. From a privacy and data protection perspective these are worlds apart, and the actual proposals involve expanding very different types of data sharing. Solicitors and charities looking for missing people will be able to use address and postcodes to query the NHSRC, in addition to names as they do now. This does not appear to be problematic as long as there are enough practical safeguards.

According to the document, Scottish local authorities have legal responsibility for education and already use the NHSCR to track children missing from the education system. It is unclear in the paper whether they have a duty to account for every child or whether they chose to do so. The proposal would extend this data sharing to the UK Department for Education and local authorities in England and Wales.

Ensuring children receive an education is an important objective, but the proposals need more detail on the data sharing processes. It is unclear whether non-Scottish public bodies should be given access to such data on the basis of their legal obligations to ensure that all children are in education. In England and Wales it is the duty of the parents, not the State to ensure that children receive an education. Local authorities have a statutory duty to make arrangements to enable them to establish the identities, so far as it is possible to do so, of children in their area who are not receiving a suitable education. But this may not necessarily mean they have to track every child at all times. Children who are suitably
home schooled would not fall under this category, for example. A database of all under-18s in England and Wales - called Contactpoint - was shut down in 2010 due to privacy concerns among other reasons.

The proposed legislative changes do not include any limitation to the tracking of children for a specific reason, and could potentially be used for many other purposes in the future. In addition, we have received concerns from our members that these new provisions could be linked to the policy where every under-18 in Scotland will be assigned a "named person" who will have the power to "advise" and "inform" the child or handle matters about the child with the relevant authorities. The Regulations and LEARS Act already provide for access to children's data by all relevant parties and in our preliminary analysis it appears that the new proposals would not add any new data flows for named persons. But it would be very helpful if the response to the consultation clarified this point.

The proposal to share data with UK Visas and Immigration in order to trace people who receive treatment in the Scottish NHS without entitlement is not clear at all. It would appear that as present all "non-Scottish residents" must pay for their treatment, but the Scottish NHS has some arrangements to recover costs. It is not clear whether this means recovering monies from the NHS of England and Wales. The paper states that if those people leave Scotland the Scottish NHS wants to track them to bill them individually. But it is also unclear in the paper whether they mean people leaving both Scotland and the UK, or simply moving to England and Wales. It is also unclear whether British citizens would be treated differently from citizens of other countries. While recovering unpaid hospital bills may seem reasonable at face value, it would be important to understand the full picture. This matching can only work if UK Visas also shares information back with the Scottish authorities, and the consultation should provide a lot more information on the mechanics and legality of this data flow.

3) In order to allow citizens to make use myaccount 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?

The number of public bodies included in the schedule is very broad and if anything already difficult to justify. For example, it is not clear at all why organisations such as the Royal Botanic Garden require access to the data. The number and range of organisations that would be able to access the data is unacceptable. Each single organisation requiring access to the NHSRC should make the case on its own merits, demonstrating the need and proportionality of the arrangement and how the data will be used in practice, including the protection and security measures the organisation will take.

4) Do you consider that the proposals set out in paragraph 18 are an effective method to identify Scottish Tax payers?

Yes □ No [✓]

If No please describe the approach you feel should be taken.

The Scottish Rate of Income Tax (SRIT) will come into effect from April 2016 and HMRC will be responsible for identifying Scottish taxpayers and passing on the monies. The Scottish Government is seeking the ability to share NHSRC data – name, date of birth, postcode and gender – with HMRC to check that the individual resides in Scotland. Collecting the right amount of taxes is a core function of government, and we would not want to see the public purse deprived of income. But data sharing for any purpose, however legitimate, must be both justified and fair. Unfortunately the consultation paper
does not explain how the proposed process would work in any detail or the rationale for this particular arrangement. It simply says that there is currently no mechanism for identifying Scottish taxpayers, but not why other options are not preferred. At face value it would appear that HMRC already has home addresses for Scottish taxpayers and sending this data to Westminster will be a duplication.