

HEALTH AND SOCIAL CARE (SAFETY AND QUALITY) ACT 2015

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Section 3 – Duty to share information

17. This section inserts new section 251B (duty to share information) into Part 9 of the HSCA 2012.
18. Subsection (1) of section 251B sets out the scope of the duty under subsection (2), namely that it applies in relation to information about an individual that is held by the ‘relevant person’ (that is, a ‘relevant health or adult social care commissioner or provider’ as defined in new section 251C(2)).
19. Subsection (2) imposes a duty on the relevant person to ensure that the information is disclosed to (a) persons working for the relevant person, and (b) any other relevant health or adult social care commissioner or provider with whom the relevant person communicates about the individual.
20. Subsections (3) to (6) provide qualifications to the duty in subsection (2).
21. Subsection (3) provides that the duty only applies so far as the relevant person considers that the disclosure is (a) likely to facilitate the provision to the individual of health services or adult social care in England, and (b) in the individual’s best interests. New section 251C(5) expands upon the provision in (a). The term ‘best interests’ in subsection (3)(b) bears its ordinary meaning, and is not to be construed in accordance with section 4 of the Mental Capacity Act 2005, which provides for what is in a person’s best interests for the purposes of that Act.
22. Subsection (4) provides for certain criteria which, if the relevant person reasonably considers one or more apply, mean the relevant person need not comply with the new duty. The criteria are: (a) the individual objects, or would be likely to object, to the disclosure of the information; (b) the information concerns, or is connected with, the provision of health services or adult social care by an ‘anonymous access provider’ (as defined in new section 251C(6)); (c) for any other reason the relevant person is not reasonably able, or should not be required, to comply with the new duty. Criterion (b), interpreted in light of section 251C(6), will apply where the individual is receiving health or adult social care services anonymously, whether from the ‘relevant person’ or another commissioner or provider, for example services relating to sexual health or any other sensitive services. The effect of criterion (c) is that if, for any other reason, the relevant person is not reasonably able, or should not be required, to comply with the duty, then the duty will not apply. Other reasons may include where the cost of compliance for the body would be too burdensome or disproportionately high. For example, some small or voluntary organisations may not have the capacity or infrastructure to comply with this duty, in which case they should not be required to do so.

*These notes refer to the Health and Social Care (Safety and Quality)
Act 2015 (c.28) which received Royal Assent on 26th March 2015*

23. Subsection (5) means that the relevant person must still comply with any applicable provisions of the DPA and any common law duty of care or confidence, and that this section does not permit doing anything inconsistent with the DPA or those common law duties.
24. Subsection (6) means that if the relevant person would be required to do anything under subsection (4) which is already required under a common law duty of care, then the requirement under subsection (4) does not arise. This is for clarity and certainty as to the legal basis of certain obligations and to avoid any unnecessary duplication of obligations. Therefore, if disclosure of the information is already required under a common law duty of care then the effect of subsection (6) is that the legal basis of the requirement will arise from the common law duty of care, not the new duty in subsection (4). Any enforcement and remedies would therefore be in common law.