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Boards
Health Board E-health Leads
Health Board Information Governance Leads
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Health Board Directors of Public Health
Directors of Pharmacy
Joint Chairs of Scottish GP IT Group
Chief Officers of IJB's
Health Board Medical Directors

5 June 2025

Dear Colleagues

KEY INFORMATION SUMMARY (KIS) – Letter of clarification – protected data

I am writing in relation to earlier guidance from Scottish Government which informs General Practitioners that explicit consent is no longer required to share KIS under UK GDPR 2018, which changed the legal basis for the purposes of sharing data for clinical care purposes.

A point of clarification has been sought on how that change interacts with earlier, separate pieces of legislation in relation to some protected data. Clarification was also requested on where responsibility lies in relation to data sharing between Health Boards and GPs as data controllers.

On UK GDPR 2018 and protected data under other legislation, the Scottish Government's position is as follows:

1. Data protection legislation consists of the UK GDPR and the Data Protection Act 2018 which require that the processing of personal data must be lawful and fair. To be lawful, the processing must satisfy one of the UK GDPR Article 6 grounds and, as the data concerns health and is special category data, it must also satisfy an Article 9 ground.
2. In addition to complying with data protection legislation, there may be legislation which requires explicit consent before sharing. For example, the [Gender Recognition Act 2004](#). Section 22 of the Gender Recognition Act 2004 makes it an offence for any individual who has obtained information about a person's gender identity in an official capacity to divulge that a person has, or has applied for, a gender recognition certificate or do anything that would make such a disclosure. There are some listed exceptions which allow protected information may be disclosed of which the most relevant here are with consent or "*the disclosure is in accordance with any provision of, or made by virtue of, an enactment other than this section.*"

3. As the [GMS/PMS](#) Regulations and the ECS and KIS Directions made under them require disclosure of patient records then any information relating to an application for a gender recognition certificate contained therein may be disclosed as being in accordance with a provision of an enactment. There is, therefore, no requirement to seek consent in these circumstances.

General Practitioners and other medical professionals must exercise professional judgement to determine what information should be shared, and follow all relevant legal requirements, including the common law and data protection law. It is advisable to keep disclosures to the minimum necessary for the purpose of direct care and treatment, and ensure you follow all relevant legal requirements.

Please note that helpful advice and guidance is also available on the GMC [website](#).

On joint data controllership, the joint controller agreement (JCA) outlines the role both Health Boards and GPs have as joint controllers and the JCA was put in place to recognise that GPs could not be considered sole data controllers.

With regard to a query that had been previously raised in relation to the mis-sharing of data originally extracted from a General Practice system, ICO and data protection law is clear that if Data Processors process the data in ways that are seen as a data breach against what the data controller has instructed, the Data Processor, and not the Controller, are accountable for that data breach.

For further clarity and guidance around this, I would refer you to the ICO <https://ico.org.uk/for-organisations/uk-gdpr-guidance-and-resources/controllers-and-processors/controllers-and-processors/>, and the underpinning frameworks that support information sharing across the NHS document: [Intra-NHSS Information Sharing Accord 2023 \(digihealthcare.scot\)](#).

We hope that this information has been useful and provides reassurance when sharing protected data for patient care.

We are also working with relevant colleagues to update the KIS guidance on lhub with the key messages from this letter.

Yours sincerely,



Roddy Macdonald
Deputy Director, Primary Care Capability