



# **INFORMATION SHARING AGREEMENT**

**Healthcare Improvement Scotland**

**and**

**The Independent Sector Complaints Adjudication Service**

April 2023

## Contents

<b>Introduction</b> .....	<b>4</b>
<b>1 Parties, Scope and Purpose</b> .....	<b>5</b>
1.1 <i>Name and details of the parties who agree to share information</i> .....	5
1.2 <i>Business and legislative drivers for sharing data</i> .....	5
1.2.1 <i>Purpose(s) of the information sharing</i> .....	6
1.2.2 <i>Legal basis for the processing and constraints</i> .....	6
<b>2 Description of the information to be shared</b> .....	<b>8</b>
<b>3 Description and manner of information sharing</b> .....	<b>9</b>
3.1 <i>Data flows</i> .....	9
3.2 <i>How data / information is to be accessed, processed and used</i> .....	10
3.3 <i>Summary of how decisions are going to be made with regards to the manner of the processing</i> .....	10
<b>4 Impact assessments and preparatory work</b> .....	<b>11</b>
<b>5 Privacy information (transparency requirement)</b> .....	<b>12</b>
<b>6 Accuracy of the information</b> .....	<b>13</b>
<b>7 Data retention and secure disposal</b> .....	<b>14</b>
<b>8 The rights of individuals</b> .....	<b>15</b>
8.1 <i>Subject access requests, FOI, data portability and other subject rights</i> .....	15
<b>9 Security, risk and impact of the processing</b> .....	<b>16</b>
9.1 <i>Agreed standards, codes of conduct and certifications</i> .....	17
<b>10 International transfers of personal data</b> .....	<b>18</b>
10.1 <i>List of countries where the data will be transferred to (if applicable)</i> .....	18
10.2 <i>Transferring personal data outside the UK</i> .....	18
<b>11 Implementation of the information sharing agreement</b> .....	<b>19</b>
11.1 <i>Dates when information sharing commences/ends</i> .....	19
11.2 <i>Training and communications</i> .....	19

## INFORMATION SHARING AGREEMENT HIS - ISCAS

11.3	<i>Information sharing instructions and security controls</i>	19
11.4	<i>Non-routine information sharing and exceptional circumstances</i>	19
11.5	<i>Monitoring, review and continuous improvement</i>	20
11.6	<i>Resolution of Disagreement</i>	20
<b>12</b>	<b>Sign-off</b>	<b>21</b>
	<i>Appendix 1: List of Work instructions, policies and procedures</i>	22
	<i>Definitions</i>	23
	<i>Legislation</i>	24
<b>13</b>	<b>Appendix 2: Data items and adequacy</b>	<b>25</b>

## Introduction

The parties to this agreement agree to lawfully and appropriately share information for reasons of public interest in order to ensure high standards of quality and safety of health care.

ISCAS is the recognised complaints management framework in the independent healthcare sector. ISCAS is a voluntary subscription scheme that includes the vast majority of all independent healthcare providers across the UK. The remit has recently been extended to include Private Patient Units (PPUs) and providers of Independent Ambulance Services. Since 2016 ISCAS has operated independently of any trade association and is currently owned by the Centre for Effective Dispute Resolution (CEDR).

HIS is the independent regulator of independent health care providers in Scotland. HIS was established under the National Health Service (Scotland) Act 1978.

In order to regulate independent healthcare, HIS works to the legislation listed at 1.2 below.

Further details of the purpose(s) for the sharing of information, and specific measures and controls relating to the sharing of information for those purposes are included as Schedules of this agreement. A list of these Schedules can be found at Appendix 1 of this agreement.

This Agreement is not enforceable in law and does not override or amend the existing statutory or common law responsibilities and functions of HIS and the Independent Sector Complaints Adjudication Service.

## 1 Parties, Scope and Purpose

### 1.1 Name and details of the parties who agree to share information

Legal name of parties subject to the ISA and Head Office address	Short name of the party	Role in this agreement: Data Controller or Data Processor (*)	ICO Registration
Healthcare Improvement Scotland	HIS	Data Controller	Z2608541
Independent Sector Complaints Adjudication Service	ISCAS	Data Controller	ZA083742

(\*) for Data Processor, please identify on behalf of what data controller(s)

### 1.2 Business and legislative drivers for sharing data.

HIS is the independent regulator of independent health care providers in Scotland. HIS was established under the National Health Service (Scotland) Act 1978.

In order to regulate independent healthcare, HIS works to the following legislation and guidelines:

- Health and Social Care Savings and Transitional Provisions (No. 2) Order
- Public Services Reform (Scotland) Act 2010
- The Healthcare Improvement Scotland (Applications and Registration) Regulations 2011
- The Healthcare Improvement Scotland (Fees) Regulations 2016
- The Healthcare Improvement Scotland (Inspections) Regulations 2011
- The Healthcare Improvement Scotland (Requirements as to Independent Health Care Services) Regulations 2011
- The Healthcare Improvement Scotland (Requirements for Reports) Regulations 2011
- The National Health and Social Care Standards
- The National Health Service (Scotland) Act 1978 (Independent Clinic) Amendment Order 2016
- The NHS Quality Improvement Scotland (Dissolution) Order 2011
- The Public Services Reform (Joint Inspections) (Scotland) Regulations 2011

## INFORMATION SHARING AGREEMENT HIS - ISCAS

- The Public Services Reform (Scotland) Act 2010 (Consequential Modifications) Order 2011

ISCAS provides a formal complaints adjudication process for independently-funded care provision (where the provider is an ISCAS subscriber). Although not identical, it provides a similar function to that of the Scottish Public Services Ombudsman for NHS care. ISCAS complaints therefore provide HIS with valuable information about the provider's quality of care and internal process for complaint resolution. HIS uses this information to meet its regulatory functions.

### 1.2.1 Purpose(s) of the information sharing

This exchange of information allows the relevant HIS staff to review the report / covering letter for possible follow-up action / use as supplementary information. The sharing of ISCAS complaints information is therefore helpful for HIS to gain intelligence about an independent healthcare service in Scotland.

Indicate how the data controllers will decide upon changes in the purpose(s) of the information sharing	Jointly or independently
	Jointly

Instructions for reaching agreement on any changes to purpose of the sharing are listed in the table in Appendix 1, called; List of Work instructions, policies and procedures.

### 1.2.2 Legal basis for the processing and constraints

Without detriment of any other legal basis that may be applicable (e.g. criminal investigation, etc.) the following are the core legal basis for each of the parties to process the data in this agreement:

Legal basis	Party
<ul style="list-style-type: none"> <li>• Personal data – Art. 6 1(e) processing is necessary for the performance of a task carried out in the public interest.</li> <li>• Special category personal data – Art 9 1(g) Processing is necessary for reasons of for reasons of substantial public interest.</li> </ul>	HIS

INFORMATION SHARING AGREEMENT HIS - ISCAS

<ul style="list-style-type: none"><li>• 6.1 (f) Legitimate Interest</li><li>• 9.2 (i) Public Interest</li></ul>	ISCAS
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**2 Description of the information to be shared**

Data category	Data Controller(s)	PD*
Personal data – name of patient, date of birth, and address of patient removed – unique reference number applied  <ul style="list-style-type: none"> <li>• Final report following Stage 3 ISCAS investigation</li> <li>• Covering letter sent to service provider</li> </ul>	ISCAS	Y
Special category data – name of patients, date of birth, and address of patient removed – unique reference number applied  <ul style="list-style-type: none"> <li>• Final report following Stage 3 ISCAS investigation</li> <li>• Covering letter sent to service provider</li> </ul>	ISCAS	Y
Confidential personal information [in event of patient whose care has been investigated is deceased] – name of patient, date of birth, and address of patient removed – unique reference number applied  <ul style="list-style-type: none"> <li>• Final report following Stage 3 ISCAS investigation</li> <li>• Covering letter sent to service provider</li> </ul>	ISCAS	N

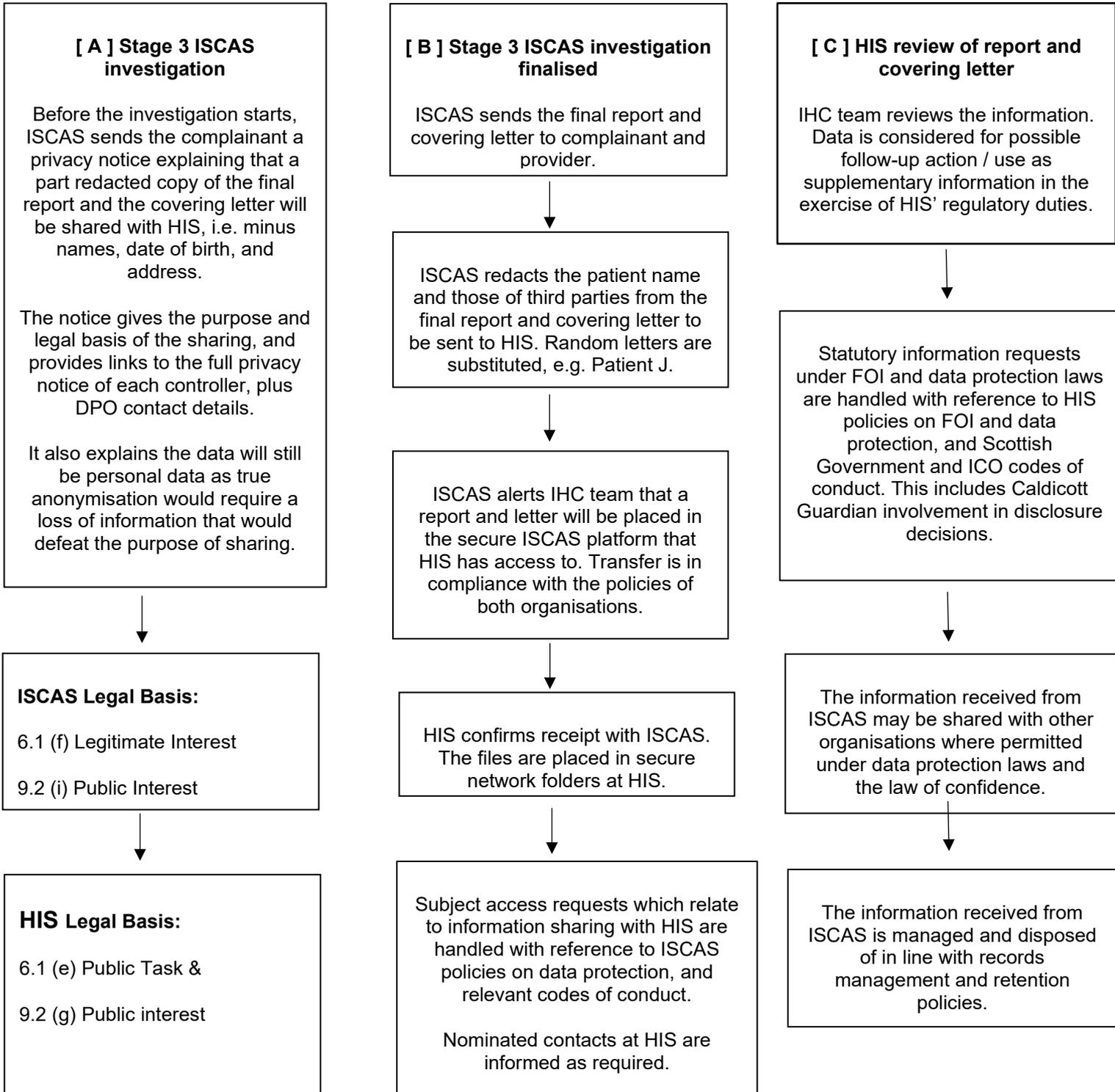
(\*) PD – refers to Personal Data in the sense given within the EU General Data Protection Regulation (GDPR) and the Data Protection (UK, 2018) Act.

The parties agree this is the minimum amount of data needed to properly fulfil the purposes of this agreement.

Appendix 2 (Data items and adequacy), contains the list of all relevant data items/fields which it has been agreed can be shared under this ISA, indicating the source and the recipients, and any relevant supporting statement for information that may raise questions on data minimisation.

**3 Description and manner of information sharing**

**3.1 Data flows**



**3.2 How data / information is to be accessed, processed and used**

Processing (descriptor)	Associated work instructions, policy or procedure (listed in Appendix 1) If applicable
<p>Following each stage 3 ISCAS investigation, the finalised report is sent to the complainant. A copy is also sent to the provider organisation along with a covering letter setting out any broad findings.</p> <p>As it is not necessary for HIS to know the complainant's name or any individuals involved in the case, ISCAS redact these details from the covering letter before uploading them to their secure portal to share with HIS.</p>	<p>See Appendix 1</p>
<p>HIS staff review the report / covering letter for possible follow-up action / use as supplementary information.</p> <p>This process allows HIS to understand the type of complaint or underlying details covering the quality of care provision within this part of the independent healthcare sector.</p>	<p>See Appendix 1</p>

**3.3 Summary of how decisions are going to be made with regards to the manner of the processing.**

Changes in the manner of the processing will be decided jointly, except for security measures - organisational or technical - of local nature. For example, local network settings will be decided independently. It is reasonable to expect that for practical reasons ISCAS will not search for joint approval with HIS for changes in the security controls of their ICT infrastructure.

The instructions for reaching agreement on changes, in the manner of the sharing is described in the policies listed in Appendix 1 (Instructions), particularly in the Data Access and Information Sharing Policy.

#### **4 Impact assessments and preparatory work**

As part of completing this document, the set of filter questions on the Scottish Information Sharing Toolkit – Data Impact Assessment (DPIA) was completed and no DPIA was required. DPIA reviews will be implemented by the responsible party. Deadlines and follow up to progress on those actions will be established as part of the DPIA review process.

## **5 Privacy information (transparency requirement)**

Information is available in the privacy notice on the ISCAS website, and in the HIS IHC and general privacy notices on the HIS website. Information is to be provided directly to complainants by ISCAS when a Stage 3 ISCAS investigation is about to start indicating that a part redacted copy of the final report will be shared with HIS.

HIS and ISCAS have considered the benefits and risks for patients, and determined not sharing this information will be detrimental for the interest of patients using independent healthcare services, and in some cases could have serious adverse consequences to their vital interests.

### List of relevant Fair Processing Notice(s)

- Healthcare Improvement Scotland Privacy Notice
- HIS Regulation of Independent Healthcare Privacy Notice
- ISCAS Privacy Policy

## 6 Accuracy of the information

All reasonable steps must be taken to ensure that anyone who has received information is notified of any relevant changes and if any inaccuracies are found the necessary amendments will be made.

Decisions about the deceased or data subjects should never be made by referring to inaccurate, incomplete or out-of-date information.

When sharing information, the following key identifiers will be used where available, to ensure that all partner organisations are referring to the same person(s):

- Investigation report reference number (using the numbering system below)

yyyy(##)ab/cd

where:

yyyy = year in which complaint received

## = sequence number

bb = patient initials

cd = provider initials

## **7 Data retention and secure disposal**

Personal data will be held, processed and then destroyed securely in accordance with the retention schedule of each partner organisation.

## **8 The rights of individuals**

### **8.1 Subject access requests, FOI, data portability and other subject rights**

Refer to processes for Subject access request, FOIs and Objection to processing (Links provided in Appendix 1).

SARs, objections to processing, and requests for rectification and erasure could be presented to either of the data controllers following their own process. The first recipient of such a request should contact the relevant Data Protection Officer in HIS or ISCAS.

The coordinating role in HIS will notify the IG team if an FOI has been received. The contact details are given in Appendix 1.

Data Portability rights are not applicable to the data shared, since it is not processed on Consent grounds.

Automated decisions and profiling are not used in this processing.

There is no direct marketing involved in this agreement.

## 9 Security, risk and impact of the processing

[ X ] All relevant Security Policies applicable to the parties and systems used in this proposal are available and listed in Appendix 1.

[ X ] A qualified Information Security Officer has reviewed the adequacy of the attached Security Policies and has advised on the technical and organisational security risk level.

[ X ] A suitable process to document and monitor the security risk described in the Information Security and Governance Policies listed in Appendix 1.

[ X ] A Data Protection Impact assessment has been produced and is available as listed in Appendix 1.

[ X ] A competent, independent and free of conflicts of interests Data Protection Officer has been designated to inform the Data Controllers on the adequacy of this agreement and the corresponding compliance and any residual risks documented in the Data Protection Impact Assessment.

The security measures put in place across the parties ensure that:

[ X ] Wherever special categories of data are processed the data will be encrypted at rest and in transit.

[ X ] only authorised individuals can access, alter, disclose or destroy data. This is achieved through the following work instructions, policies and procedures (also listed in Appendix 1):

### HIS

- HIS Data Protection Policy
- HIS Email Management Policy
- HIS Information Governance Policy
- HIS Information Security Policy
- HIS Records Management Policy
- HIS Records Retention and Disposal Policy

### ISCAS

- Owned by CEDR Services for provision of dispute resolution services
- CEDR's general policy on information security

## INFORMATION SHARING AGREEMENT HIS - ISCAS

[ X ] authorised individuals act only within the scope of their authority. This is achieved through the following work instructions, policies and procedures (also listed in Appendix 1):

### HIS

HIS policies listed immediately above.

### ISCAS

- ISCAS policies listed immediately above

[ X ] if personal data is accidentally lost, altered or destroyed, it can be recovered to prevent any damage or distress to the individuals concerned. This is achieved through the following work instructions, policies and procedures (also listed in Appendix 1):

### HIS

HIS policies listed immediately above.

### ISCAS

- ISCAS policies listed immediately above

The security controls applicable by each organisation will be:		Jointly agreed between the parties
	X	Independently decided by each party

### **9.1 Agreed standards, codes of conduct and certifications**

#### HIS

HIS relies on data and information systems to fulfil its responsibilities to patients, staff, NHS Scotland and the government. The HIS Information Security Policy establishes controls on these systems in line with ISO/IEC27001:2013 standard for Information Security

HIS also works using The Scottish Information Sharing Toolkit.

**10 International transfers of personal data**

Personal data shared in line with this agreement will be transferred to:

	EEA countries only
	Outwith EEA
X	Will not be transferred outside the UK

**10.1 List of countries where the data will be transferred to (if applicable).**

Not applicable.

**10.2 Transferring personal data outside the UK.**

Not applicable.

## 11 Implementation of the information sharing agreement

### 11.1 Dates when information sharing commences/ends

February 2023 – to be reviewed every 2 years

### 11.2 Training and communications

HIS staff all receive training in information governance and safe information handling, and in how to use our IT systems to process data. Our IT systems log any communication in written format to data subjects and if required telephone calls can also be logged. We have a HIS Privacy Notice and a HIS IHC Privacy Notice, which is on our website and has been shared with services which we regulate.

ISCAS staff all receive training in information governance and safe information handling, and in how to use our IT systems to process data. Our IT systems log any communication in written format to data subjects and telephone calls are logged. We have an ISCAS Privacy Notice, which is on our website.

The responsible managers detailed in the table below have overall responsibility for this ISA within their own organisations, and must therefore ensure the ISA is disseminated, understood and acted upon by relevant staff.

Information Sharing Partner Organisations	Responsible Manager
HIS	Tracy Birch – Senior Inspector
ISCAS	Graham Massie – Data Protection Officer

### 11.3 Information sharing instructions and security controls

All relevant information sharing instructions, including but not exclusively any work instructions, policies or procedures, are listed in Appendix 1 and accepted by all parties.

### 11.4 Non-routine information sharing and exceptional circumstances

All non-routine (information not discussed in this data sharing agreement) will first be discussed by HIS and ISCAS before any data is shared. Both parties will then discuss whether the sharing of this information is required to protect members of the public using services or staff working in services.

### **11.5 Monitoring, review and continuous improvement**

This information sharing will be reviewed annually. Both parties will monitor progress and performance of this agreement by having a discussion following the sharing of each item of information and quarterly telephone calls. A review of this document or any of the underpinning work instructions, can take place at any time provided both parties are in agreement.

### **11.6 Resolution of disagreement**

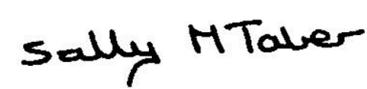
Any disagreement between HIS and ISCAS will normally be resolved at working level. The staff from the respective organisations who have been involved should attempt to resolve the matter. If this is not possible, it may be referred through those responsible for the management of this ISA, up to and including the Chief Executive of HIS and the Chief Executive of ISCAS who will then be jointly responsible for seeking a mutually satisfactory resolution.

INFORMATION SHARING AGREEMENT HIS - ISCAS

**12 Sign-off**

"We the undersigned agree to the details recorded in this Information Sharing Agreement; are satisfied that our representatives have carried out the preparatory work set out in the Information Sharing Tool-kit for Scotland and are committed to the ongoing monitoring and review of the scope, purpose and manner of the information sharing."

Name of the Party		Healthcare Improvement Scotland
Authorised signatory	Title and name	Lynsey Cleland
	Role	Director of Quality Assurance Directorate
Signature and date		 4.4.2023
Caldicott Guardian		George Fernie
Data Protection Officer		Alison Winning
Senior Information Risk Owner		Safia Qureshi

Name of the Party		Independent Sector Complaints Adjudication Service
Authorised signatory	Title and name	Sally Taber
	Role	Director
Signature and date		 26.5.2023
Data Protection Officer		Graham Massie
Senior Information Risk Owner		Graham Massie

**Appendix 1: List of Work instructions, policies and procedures**

Work instructions title	Organisation	Where to find this document (e.g. hyperlink)
HIS Data Protection Policy	HIS	<a href="http://thesource.nhsqis.scot.nhs.uk/my-workplace/policies-procedures/Pages/Data-Protection-Policy.aspx">http://thesource.nhsqis.scot.nhs.uk/my-workplace/policies-procedures/Pages/Data-Protection-Policy.aspx</a>
HIS Email Management Policy	HIS	<a href="http://thesource.nhsqis.scot.nhs.uk/my-workplace/policies-procedures/Pages/Email-Management-Policy.aspx">http://thesource.nhsqis.scot.nhs.uk/my-workplace/policies-procedures/Pages/Email-Management-Policy.aspx</a>
HIS Information Governance Policy	HIS	<a href="http://thesource.nhsqis.scot.nhs.uk/my-workplace/policies-procedures/Pages/Information-Governance-Policy.aspx">http://thesource.nhsqis.scot.nhs.uk/my-workplace/policies-procedures/Pages/Information-Governance-Policy.aspx</a>
HIS Information Security Policy	HIS	<a href="http://thesource.nhsqis.scot.nhs.uk/my-workplace/policies-procedures/Pages/Information-Security-.aspx">http://thesource.nhsqis.scot.nhs.uk/my-workplace/policies-procedures/Pages/Information-Security-.aspx</a>
HIS Records Management Policy	HIS	<a href="http://thesource.nhsqis.scot.nhs.uk/my-workplace/policies-procedures/Pages/Records-Management-Policy.aspx">http://thesource.nhsqis.scot.nhs.uk/my-workplace/policies-procedures/Pages/Records-Management-Policy.aspx</a>
HIS Records Retention and Disposal Policy	HIS	<a href="http://thesource.nhsqis.scot.nhs.uk/my-workplace/policies-procedures/Pages/Records-Retention-and-Disposal-Policy.aspx">http://thesource.nhsqis.scot.nhs.uk/my-workplace/policies-procedures/Pages/Records-Retention-and-Disposal-Policy.aspx</a>

The above table should list all:

- Instructions for reaching agreement on any changes to the purpose of the sharing.
- All applicable and relevant Information Security and Governance Policies
- All Data Protection Impact assessments

## Definitions

**HIS**, means Healthcare Improvement Scotland established under section 10 of the National Health Service (Scotland) Act 1978 (c. 29).

**GDPR**, means the General Data Protection Regulation, Regulation (EU) 2016/679.

**Data subject**, means an identified or identifiable natural person as per article 4(1) of GDPR.

**Partner organisations or parties**, means Healthcare Improvement Scotland, and the Independent Sector Complaints Adjudication Service.

**Information Consumer**, means the party or parties who receive the information.

**Information Provider**, means the party or parties who provide the information.

**Personal data**, means any information relating to an identified or identifiable living person ('data subject'); an identifiable living person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that living person. The obtaining, handling, use and disclosure of such information is principally governed by the General Data Protection Regulation 2016/679 and the Data Protection Act 2018, Article 8 of the Human Rights Act 1998, and the common law duty of confidentiality.

**Special category personal data**, means personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person's sex life or sexual orientation. Special category personal data can only be processed when a condition at article 9(2) applies.

**Consent**, means a clear affirmative act establishing a freely given, specific, informed and unambiguous indication of the data subject's agreement to the processing of personal data relating to him or her, such as by a written statement, including by electronic means, or an oral statement (see recital 32 of GDPR).

**Confidential Personal Information (CPI)**, means information that relates to an individual who can be identified from that information or that information and other information which is in the possession of HIS, and which was obtained by HIS on terms or in circumstances requiring it to be held in confidence.

**Identifiable information**, means information that relates to a living or deceased individual who can be identified from that information or that information and other information which is in the possession of, or likely to come into the possession of the Information Provider or Information Consumer.

## Legislation

Partner organisations must comply with all relevant legal requirements relating to the processing of information (particularly personal data and identifiable information).

The principal legislation is listed below and further explained in:

- Data Protection Act 2018
- The General Data Protection Regulation (2016/679)
- Human Rights Act 1998 (Article 8)
- Freedom of Information Act 2000
- Computer Misuse Act 1990

Other legislation may be relevant when sharing specific information.

Partner organisations must also comply with the common law duty of confidentiality.

NHS Scotland publishes a Code of Practice on Confidential Personal Information, which sets out the practice that HIS will follow in order to ensure compliance with these legal responsibilities in relation to CPI.

**13 Appendix 2: Data items and adequacy**

Data Item	Source	Recipients	Data minimisation justification	For data linkage only
All upheld or partially upheld Stage 3 adjudication decisions regarding ISCAS subscribing organisations (with the complainants' details pseudonymised)	ISCAS	HIS	Information required to allow HIS to determine importance of the intelligence being shared.	