

Publishing Directions

The Health and Social Care white paper proposes to enhance DHSC's powers to issue Directions to NHS England. Directions are not new, and have been used in the NHS for a long time.

Directions are a form of formal instruction, in some cases tertiary legislation, where the Secretary of State (or one of their staff, exercising their authority¹) or a lawfully authorised statutory body can write a letter to another body Directing them to do something. In this context, they are distinct from but very similar to Directions issued around breaches of spending limits.²

For a Spending Direction, Parliament is required to be notified. For most other Directions, publication is distinctly *ad hoc*.

To take NHS Digital as an example, there is no complete chronological or even alphabetised list of the Directions which they must follow, but rather a list of lists,³ each list having no obvious order⁴ – and there is no reasonable way to know which Directions have been issued when, which have been updated, or which have been withdrawn.

A single (NHS) register of Who has Directed Whom about What, and When

The Bill should require that Directions are published in a single location, with full clarity on the date of publication – whether this is on legislation.gov.uk (which has process for Directions after EUExit additions), in Parliament (as for spending Directions), or as a register/collection on GOV.UK.

Directions should not come into effect until they have been published in this single location.

The approach to publishing Directions chosen by NHS Digital shows “transparency” can be largely obfuscatory. If such obfuscation is not the policy intent, there must be a register of Directions where obfuscation is impossible.

(As an aside, the main change seemingly proposed in the white paper is the level of agreement required from NHS England for a DHSC Direction. In practice, this seems unlikely to change anything substantive, though it may make the Secretary of State feel better.)

¹ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/948560/NHS_APMS_Amendment_No_2_Directions_2020.pdf

² https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/876882/29032020-sofs-to-perm-sec-ministerial-direction.pdf

³ <https://digital.nhs.uk/about-nhs-digital/corporate-information-and-documents/directions-and-data-provision-notice>

⁴ <https://digital.nhs.uk/about-nhs-digital/corporate-information-and-documents/directions-and-data-provision-notice/nhs-england-directions>