# General Practice Extraction Service (GPES)

## Summary

* The GPES is replacing and extending the large number of individual data provision notices (DPNs) currently required
* NHS Digital (NHSD) are assuming data controller rights for the extract – this was always the legal position, but not before exercised
* Patients can opt out completely via the Type 1 opt out (but this may be removed)
* Patients can opt out for research and planning via the National Data Opt-Out but only for identifiable data, not anonymous data, and GPES data will still be collected

## What is GPES?

Currently, the system for obtaining data for managing the health service from GPs and other data controllers who provide service has always been:

1. Secretary of state issues a Data Provision Notice (DPN) under sections 259(1)(a) and 259(1)(b) of the Health and Social Care Act 2012.
2. It’s extracted from the controller systems, generally with controllers having to switch it on
3. Type 1 opt-outs (no sharing beyond practice) are respected unless there is a COPI notice saying they should not (e.g. the current pandemic notice)
4. The National Data Opt-Out is respected, unless there is a COPI notice
5. Data is used for the specified purpose only

This means they are commonly extracting the same data multiple times and a lot (350 per year) of extracts need to be done.

GPES simplifies this to a smaller number of extractions, which can be then used for ANY purpose defined by NHSD – in other words, they become the data controller. This means that the National Data Opt-Out (NDOP) is NOT respected as in their view this is a direct care (a “planning of healthcare provision”) purpose. It *should* be respected for onward use, but NHSD appears to be taking the position that anonymised data isn’t personal data and therefore the NDOP only restricts them from using your identifiable data.

NHSD have stated they will be respecting patient Type 1 opt out where a patient does not want their record to leave the GP practice other than for direct care. Given the extraction is for Planning and Research and NHSD is adopting Controller responsibility, we will challenge NHSX's policy steer, NHSDs DPO and programme as well as their documented necessity to use the Type 1 optout rather than the national opt out option for patients to opt out of secondary uses, which seems most appropriate in this case which would meet the intentions of the GPDPR.

The initial data model, so you can see what they are extracting, is at the link below:

<https://nhs-prod.global.ssl.fastly.net/binaries/content/assets/website-assets/corporate-information/directions-and-data-provision-notices/data-provision-notices/general-practice-data-for-planning-and-research-dpn-appendix-b-data-model.pdf>

## Do we need to do anything?

Your privacy notices (if you’re using the one we sent out with the DPO briefings, revised from the initial GDPR pack), already has the use of data provision notices in it – so strictly speaking, no.

However, an information page for patients has been provided which we would recommend you link to from your privacy notices:

<https://digital.nhs.uk/data-and-information/data-collections-and-data-sets/data-collections/general-practice-data-for-planning-and-research>

The section that needs changing is shown in the appendix, with the recommended changes.

Prepare for a possible increase in type 1 opt-outs…

## Are the NHS now selling our patient’s data?

NHS Digital state on their pages “NHS Digital will never sell your data”.

The NHS data **was** sold to a number of companies at the start of the pandemic for pandemic research purposes, mostly for minimal sums such as £1 in the case of Palantir. This only came out following the government being taken to court to release the contract details, but since NHS Digital didn’t negotiate this contract, NHS Digitals statement is correct…

So, the answer is yes – but only in pseudonymised form at present, but patients will probably be re-identifiable simply because of the number of data points provided.

NHS Digital are also able to fulfil requests via the Data Access Request Service, which are subject to independent oversight by [IGARD](https://digital.nhs.uk/about-nhs-digital/corporate-information-and-documents/independent-group-advising-on-the-release-of-data).

## Do patients have an opt-out?

Sort of, but not really.

To opt out the patient must request type 1 opt-out – which means their data won’t be shared with other healthcare providers too, which is to their detriment. Another significant harmful consequence is that this also breaks HIE, because a type 1 opt-out has to opt them out of HIE. The first extract is being done on 1 July, so patients need to create a type 1 opt out by 23rd June.

The code used in EMIS is 9Nu0, SNOMED 827241000000103.

There is a form available for patients which is now being published in the press, so these will be the most likely thing you will receive.

<https://nhs-prod.global.ssl.fastly.net/binaries/content/assets/website-assets/data-and-information/data-collections/general-practice-data-for-planning-and-research/type-1-opt-out-form.docx>

The government has also previously stated its intent to remove type 1 opt-outs, so I would expect that to come down the line fairly quickly if a lot of patients start exercising type 1 opt-outs. The notice is clear they intend to review this, it states:

This may change in the future if NHS Digital is directed otherwise in the event of a change in policy following a review of Type 1 opt-outs by NHSx, with implementation being subject to consultation with the profession via the Joint GP IT Committee, a representative body comprised of elected members from RCGP and BMA.

It may also change if NHS Digital agrees with the British Medical Association (BMA) and the Royal College of General Practitioners (RCGP), and the Department of Health and Social Care (DHSC) that it has put in place appropriate organisational and technical measures and controls to enable it to collect and process pseudonymised Type 1 opt-out records by means which continue to uphold the Type 1 opt-out and do not enable the patient to be directly identified except for the purposes of their own care.

## Is there an “official” information page for us?

Yes:

<https://digital.nhs.uk/about-nhs-digital/corporate-information-and-documents/directions-and-data-provision-notices/data-provision-notices-dpns/general-practice-data-for-planning-and-research>

# Appendix - GP Standard Privacy Notice Changes

The section that needs changing is under statutory disclosures. It currently reads:

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| --- | --- | --- | --- | --- |
| [**NHS Digital**](https://digital.nhs.uk/) | NHS Digital **(previously known as the Health and Social Care Information Centre)** is anational information and technology partner to the health and social care system. NHS Digital use digital technology to transform the NHS and social care. NHS Digital carries out [**National Data collections/** extraction](https://digital.nhs.uk/data-and-information/data-collections-and-data-sets/data-collections) from the GP record. These include: **National Diabetes Audit (NDA)** - A national monitoring system, auditing the care of patients with diabetes. The data extracted for the purpose of NDA includes NHS Number, date of birth and postcode, as well as clinical parameters related to diabetes. NDA is a mandatory data extraction under section [254 of the Health and Social Care Act 2012](http://www.legislation.gov.uk/ukpga/2012/7/section/254/enacted), this means that we are compelled by law to share your data**Individual GP Level Data (IGPLD) -** A national monitoring system to enable NHS Digital to provide GPs with clinical information on the care provision for their patients. The data extracted includes the NHS number. **I**GPLD is a mandatory data extraction under [254 of the Health and Social Care Act 2012](http://www.legislation.gov.uk/ukpga/2012/7/section/254/enacted), this means that we are compelled by law to share your data**FGM)** - NHS Digital collects data on FGM within the NHS in England on behalf of the Department of Health (DH). Data collected is used to produce information that helps improve NHS and local authorities to improve on how they support women and girls who have had or, who are at risk of FGM.FGM Enhanced Dataset is a mandatory data extraction under section [254 of the Health and Social Care Act 2012](http://www.legislation.gov.uk/ukpga/2012/7/section/254/enacted), this means that we are compelled by law to share your data when required.The source of the information shared in this way is your electronic GP record. | All records held by the Practice will be kept for the duration specified in the [Records Management Codes of Practice for Health and Social Care](https://www.gov.uk/government/publications/records-management-code-of-practice-for-health-and-social-care) | The processing of **personal data is** permitted under the following paragraph:Article 6(1)(c) - processing for legal obligation. The processing of **special categories of personal data concerning health** is permitted under the following paragraph:Article 9 (2)(h) - processing is necessary for medical or social care treatment or, the management of health or social care systems and services**Related Legislation:**S[254 of the Health and Social Care Act 2012](http://www.legislation.gov.uk/ukpga/2012/7/section/254/enacted) | **You have the right to:*** To access, view or request copies of your personal information;
* request rectification of any inaccuracy in your personal information;
* restrict the processing of your personal information where:
* accuracy of the data is contested,
* the processing is unlawful or,
* where we no longer need the data for the purposes of the processing.

**Right to object:** You do not have the right to object as the sharing is a legal and professional requirement under the law.Whilst there is no right to object under 6(1)(c), NHS Digital respects Type 1 objections (9Nu0) present in the GP record and no data will be extracted and uploaded if so.**Right to complain:** If you are dissatisfied with the way the Practice processes your data, you have the right to appeal/complain. You may raise the issue with the Practice’s Data Protection Officer, contact details are given at section 6, or if not satisfied, with the Information Commissioner (ICO). The ICO can be contacted at:Information Commissioner’s Office Wycliffe House Water Lane Wilmslow Cheshire Tel: 0303 123 1113 or 01625 545 745Website: <https://ico.org.uk>  |

I recommend we add under the sentence “NHS Digital carries out National Data collections/ extraction from the GP record. These include: “:

**General Practice Extraction Service (GPES)**

This is an extraction of much of your GP data for use by the NHS centrally for planning and research. It is controlled by NHS Digital and is a statutory requirement upon your GP under [sections 259(1)(a) and 259(5) of the Health and Social Care Act 2012](https://www.legislation.gov.uk/ukpga/2012/7/section/259).

Further details for patients are provided at <https://digital.nhs.uk/data-and-information/data-collections-and-data-sets/data-collections/general-practice-data-for-planning-and-research>.