

## Appendix 3 – Legal Gateway Matrix

<b>Description</b>	This document contains a list of some of the relevant legislation that supports the data sharing in Connecting Care.
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<b>Last Updated by</b>	Helena Ashton
<b>Related Document</b>	Connecting Care Data Sharing Agreement v9.1

### 1. Introduction

In line with section 3.1 of the Data Sharing Agreement ‘regulatory controls on the use of information’, below is a matrix of legal gateways relied upon in relation to the Connecting Care portal and the organisations that share and access information held.

Any programme like Connecting Care, or any health and care project that involves information sharing of personal data, needs to have a legal basis, as well as lawful bases for doing so. This is required because each partner organisation is a statutory body, or it provides services for a statutory body, which means that it gets its powers and directions to carry out its functions and deliver services, including sharing the information needed to carry out these functions directly from legislation or a contract with a statutory body.

Section 2 lists the legal gateways (legislation) that may be used by the Connecting Care Partner Organisations, each organisation must decide on which legal gateway they rely on for each function that requires them to share/access data in Connecting Care.

Section 3 lists the processing justifications (lawful bases) that may be used by the Connecting Care Partners.

Section 4 lists other applicable legislation.

The Connecting Care Programme is compliant with legislation that governs the use of personal data; these are outlined in section 3.

Please note that the legal gateway information below is directly copied from the corresponding legislation.

## 2. Legal Gateway Matrix

Legislation	Legal gateway	Organisation
Health and Social Care (Quality & Safety) Act 2015	Section 3 (1),(2)(a)(b): (1) This section applies in relation to information about an individual that is held by a relevant health or adult social care commissioner or provider (“the relevant person”). (2) The relevant person must 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.	All commissioners and providers of health and care services to Adults.
Health & Social Care Act 2012	Section 195: (contains guidance about) specific duties of co-operation, including creating a Health and Wellbeing Board, which must, for the purpose of advancing the health and wellbeing of the people in its area, encourage persons who arrange for the provision of any health or social care services in that area to work in an integrated manner.	All commissioners and providers of health and care services.
Care Act 2014	Section 1: The general duty of a local authority, in exercising a function under this Part in the case of an individual, is to promote that individual’s well-being. Well-being in this Part includes: (b) physical and mental health and emotional well-being; (c) protection from abuse and neglect; (f) social and economic well-being;	Local authorities as commissioners and providers of health and care services to adults, and those commissioned to provide those services.
Care Act 2014	Section 3: Local authorities must exercise their functions under this Part with a view to ensuring the integration of care and support provision with health provision and health-related provision where it considers that this would — (a) promote the well-being of adults in its area with needs for care and support and the well-being of carers in its area, (b) contribute to the prevention or delay of the development by adults in its area of needs for care and support or the development by carers in its area of needs for support, or (c) improve the quality of care and support for adults, and of support for carers, provided in its area (including the outcomes that are achieved from such provision).	Local authorities as commissioners and providers of health and care services to adults, and those commissioned to provide those services.
Care Act 2014	Section 42: Enquiry by local authority (1) This section applies where a local authority has reasonable cause to suspect that an adult in its area (whether or not ordinarily resident there)— (a) has needs for care and support (whether or not the authority is meeting any of those needs),	Local authorities as commissioners and providers of health and care services to adults, and those commissioned

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	<p>(b) is experiencing, or is at risk of, abuse or neglect, and  (c) as a result of those needs is unable to protect himself or herself against the abuse or neglect or the risk of it.</p> <p>(2) The local authority must make (or cause to be made) whatever enquiries it thinks necessary to enable it to decide whether any action should be taken in the adult's case (whether under this Part or otherwise) and, if so, what and by whom.</p>	to provide those services.
The Children Act 1989	<p>Section 47(9)(11):  Where a local authority are conducting enquiries under this section, it shall be the duty of any person mentioned in subsection (11) to assist them with those enquiries (in particular by providing relevant information and advice).  The persons are—</p> <p>(a) any local authority;  (d) any clinical commissioning group, Local Health Board , Special Health Authority, National Health Service trust or NHS foundation trust; and  (e) any person authorised by the Secretary of State for the purposes of this section.</p>	Local Authorities conducting child protection enquiries and those that have a duty to assist (health bodies).
The Children Act 1989	<p>A local authority may also request help from those listed above in connection with its functions under Part 3 of the Act. Part 3 of the Act, which comprises of Sections 17-30:  (allows for local authorities to provide various types of support for children and families).  Section 17(5):  Every local authority—</p> <p>(a) shall facilitate the provision by others (including in particular voluntary organisations) of services which it is a function of the authority to provide by virtue of this section, or section 18, 20, 22A to 22C, 23B to 23D, 24A or 24B]; and  (b) may make such arrangements as they see fit for any person to act on their behalf in the provision of any such service.</p>	Local Authorities facilitating services to those identified as “in need” and those that are commissioned to provide the service.
The Children Act 2004	<p>Section 10:  Co-operation to improve well-being.</p> <p>(3) The arrangements are to be made with a view to improving the well-being of children in the local authority’s area so far as relating to—</p> <p>(a) physical and mental health and emotional well-being;  (b) protection from harm and neglect; (e) Social and economic well-being.</p> <p>(4) for the purposes of this section each of the following is a relevant partner:</p> <ul style="list-style-type: none"> <li>• District councils</li> <li>• The police</li> <li>• The probation service</li> <li>• Youth offending teams (YOTs)</li> </ul>	Local Authorities and relevant partners that have the remit to improve the well-being of children.

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	<ul style="list-style-type: none"> <li>• Health and Wellbeing Board.</li> <li>• Any clinical commissioning group for an area any part of which falls within the area of the authority</li> </ul>	
The Children Act 2004	<p>Section 11: Arrangements to safeguard and promote welfare. The section applies to:</p> <ul style="list-style-type: none"> <li>(a) a local authority in England;</li> <li>(b) a district council which is not such an authority;</li> <li>(bb) a clinical commissioning group;</li> <li>(d) a Special Health Authority, so far as exercising functions in relation to England, designated by order made by the Secretary of State for the purposes of this section;</li> <li>(f) an NHS trust all or most of whose hospitals, establishments and facilities are situated in England;</li> <li>(g) an NHS foundation trust;</li> <li>(h) the local policing body and chief officer of police for a police area in England;</li> <li>(k) a youth offending team for an area in England;</li> <li>(l) the governor of a prison or secure training centre in England (or, in the case of a contracted out prison or secure training centre, its director);</li> </ul>	Local Authorities and relevant partners that have a duty to safeguard and promote welfare of children.
Childcare Act 2006	<p>Section 1: General duties of local authority in relation to well-being of young children</p> <p>(1) an English local authority must—</p> <ul style="list-style-type: none"> <li>(a) improve the well-being of young children in their area, and</li> <li>(2) in this Act “well-being”, in relation to children, means their well-being so far as relating to— <ul style="list-style-type: none"> <li>(a) physical and mental health and emotional well-being;</li> <li>(b) protection from harm and neglect;</li> <li>(e) social and economic well-being.</li> </ul> </li> </ul>	Local authorities as commissioners and providers of health and care and services to children, and those commissioned to provide those services.
Childcare Act 2006	<p>Section 4: Duty of local authority and relevant partners to work together</p> <p>(1) For the purposes of this section each of the following is a relevant partner of an English local authority—</p> <ul style="list-style-type: none"> <li>(za) the “National Health Service Commissioning Board;”, and</li> <li>(a) a clinical commissioning group for an area any part of which falls within the area of the local authority;</li> <li>(b) the Secretary of State, in relation to his functions under section 2 of the Employment and Training Act 1973 (c. 50).</li> </ul>	Local authorities as commissioners and providers of health and care and services to children, and those commissioned to provide those services.

<b>Legislation</b>	<b>Legal gateway</b>	<b>Organisation</b>
Children and Families Act 2014	<p>Section 23: Places a duty on health bodies (CCGs, NHS Trust and NHS foundation trust) to bring certain children to local authority’s attention, where the health body has formed the opinion that the child has (or probably has) special educational needs or a disability.</p>	Health bodies and local authorities.
Children and Families Act 2014	<p>Section 25: Places a duty on a local authority to exercise its functions with a view to ensuring the integration of educational provision, training provision with health care and social care provision where it thinks that this would –</p> <ul style="list-style-type: none"> <li>(a) promote the well-being of children or young people in its area who have special education needs or a disability, or</li> <li>(b) improve the quality of special educational provision in its area or outside its area for children it is responsible for who have special educational needs</li> </ul>	Local authorities as commissioners and providers of health and care and services to children, and those commissioned to provide those services.
Crime and Disorder Act 1998	<p>Section 17: Duty to consider crime and disorder implications.</p> <ul style="list-style-type: none"> <li>(1) Without prejudice to any other obligation imposed on it, it shall be the duty of each authority to which this section applies to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area.</li> <li>(2) This section applies to a local authority, a joint authority, a local policing body, and others.</li> </ul>	Local authorities
Digital Economy Act 2017	<p>Section 35 (1)(2)(9)(10)(11)(12): Disclosure of information to improve public service delivery.</p> <ul style="list-style-type: none"> <li>(1) A specified person may disclose information held by the person in connection with any of the person’s functions to another specified person for the purposes of an objective which is a specified objective in relation to each of those persons.</li> <li>(2) In this section “specified person” means a person specified, or of a description specified, in Schedule 4</li> <li>(9) The first condition is that the objective has as its purpose— <ul style="list-style-type: none"> <li>(a) the improvement or targeting of a public service provided to individuals or households, or</li> <li>(b) the facilitation of the provision of a benefit (whether or not financial) to individuals or households.</li> </ul> </li> <li>(10) The second condition is that the objective has as its purpose the improvement of the well-being of individuals or households.</li> <li>(11) The reference in subsection (10) to the well-being of individuals or households includes— <ul style="list-style-type: none"> <li>(a) their physical and mental health and emotional well-being,</li> <li>(b) the contribution made by them to society, and</li> </ul> </li> </ul>	Local authorities as commissioners and providers of health and care and services, and those commissioned to provide those services.

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	<p>(c) their social and economic well-being.</p> <p>(12)The third condition is that the objective has as its purpose the supporting of—</p> <p>(a) the delivery of a specified person’s functions, or</p> <p>(b) the administration, monitoring or enforcement of a specified person’s functions.</p>	
Local Government Act 2000	<p>Section 2</p> <p>Promotion of well-being.</p> <p>(1) Every local authority are to have power to do anything which they consider is likely to achieve any one or more of the following objects—</p> <p>(b) the promotion or improvement of the social well-being of their area, and</p>	Local Authorities
National Health Service Act 1977	<p>Section 22:</p> <p>Co-operation between health authorities and local authorities.</p> <p>(1) In exercising their respective functions NHS bodies (on the one hand) and local authorities (on the other) shall co-operate with one another in order to secure and advance the health and welfare of the people of England and Wales.</p> <p>In this section “NHS body” means—</p> <p>(za) a Strategic Health Authority;</p> <p>(a) a Health Authority;</p> <p>(b) a Special Health Authority;</p> <p>(d) an NHS trust.]</p>	Health bodies and local authorities.
National Health Service Act 2006	<p>Section 82:</p> <p>Places a duty on NHS bodies and local authorities to co-operate with one another in order to secure and advance the health and welfare of the people of England and Wales.</p>	Health bodies and local authorities as commissioners and providers of health and care and services, and those commissioned to provide those services.
Special Education Needs and Disability Regulations 2014	<p>Section 6:</p> <p>Where the local authority secures an EHC needs assessment for a child or young person, it must seek the following advice and information, on the needs of the child or young person, and what provision may be required to meet such needs and the outcomes that are intended to be achieved by the child or young person receiving that provision—</p> <p>(c) medical advice and information from a health care professional identified by the responsible commissioning body;</p> <p>(d) psychological advice and information from an educational psychologist;</p> <p>(e) advice and information in relation to social care;</p>	Local authorities as commissioners and providers of health and care and services to children, and those commissioned to provide those services.

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	(f) advice and information from any other person the local authority thinks is appropriate; (h) advice and information from any person the child's parent or young person reasonably requests that the local authority seek advice from.	

### 3. The Connecting Care Programme : Compliance with data protection legislation

Information Legislation/Guidance	Appropriate justifications/conditions	Necessary to create the record	Valid condition to access
General Data Protection Regulation 2016	Art.6(1)(a) The data subject has given consent to the processing of his or her personal data for one or more specific purposes	No	Yes
General Data Protection Regulation 2016	Art.6(1)(c) Processing is necessary for compliance with a legal obligation to which the controller is subject	Yes	Yes
General Data Protection Regulation 2016	Art.6(1)(d) Processing is necessary in order to protect the vital interests of the data subject or of another natural person	No	Yes
General Data Protection Regulation 2016	Art.6(1)(e) Processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller	Yes	Yes
General Data Protection Regulation 2016	Art.9(2)(a) The data subject has given explicit consent to the processing of those personal data for one or more specified purposes, except where Union or Member State law provide that the prohibition referred to in paragraph 1 (processing of the 'special categories' of personal data shall be prohibited) may not be lifted by the data subject;	No	Yes
General Data Protection Regulation 2016	Art.9(2)(c) Processing is necessary to protect the vital interests of the data subject or of another natural person where the data subject is physical or legally incapable of giving consent;	No	Yes
General Data Protection Regulation 2016	Art.9(2)(h) Processing is necessary for the purposes of preventative or occupational medicine, for the assessment of the working capacity of the employee, medical diagnosis, the provision of health or social care or treatment or the management of health or social care systems and services on the basis of Union or Member State law or pursuant to contract with a health professional and subject to the conditions and safeguards referred to in paragraph 3;	Yes	Yes
General Data Protection Regulation 2016	Art.9(2)(i) Processing is necessary for reasons of public interest in the area of public health, such as protecting against serious cross-border threats to health or ensuring high standards of quality and safety of health care and of medicinal products or medical devices, on the basis of Union or Member State law which provides for suitable and specific measures to safeguard the freedoms of the data subject, in particular professional secrecy;	No	Yes



#### 4. The Connecting Care Programme: Compliance with general legislation

Information Legislation/Guidance	Appropriate justifications/restrictions	Necessary to create the record	Valid condition to access
Common Law Duty of Confidentiality	<p>Where information is held in confidence (confidential information should meet the 3 limb test (<b>quality and obligation of confidence and detriment to the provider</b>)) the consent of the individual concerned should normally be sought before further sharing. It is understood that implied consent is sufficient to meet this requirement.</p> <p>The circumstances where consent does not have to be gained would be:</p> <p>There is a robust public interest and where it is in the interest of an individual's health or in the interests of the person concerned.</p> <p>Where there is a legal requirement to do so, for example a court order or a statute (legislation).</p>	Yes	Yes
Human Rights Act 1998	<p>In the UK, human rights are protected by the Human Rights Act 1998. The Act gives effect to the human rights set out in the European Convention on Human Rights. Article 8 - the right to respect for a family and private life. An individual's home and correspondence is one of the rights protected by the Human Rights Act. This includes how personal data is held and protected.</p> <p>Any interference with these rights must be justified:</p> <p>There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.</p>		
Gender Recognition Act 2004 (UK)	<p>Section 22 of the Act makes it an offence to disclose 'protected information' when that information is acquired in an official capacity. 'Protected information' is defined as information about a person's application for gender recognition and a person's gender history after that person has changed gender under the Act. Section 22 also sets out a series of exceptions where disclosure is considered to be justified. These are further expanded and clarified by <i>The Gender Recognition (Disclosure of Information) (England, Wales and Northern Ireland) Order 2005</i>.</p>		
Human Fertilisation and Embryology Act 1990 (UK)	<p>Section 33A protects the confidentiality of information kept by clinics and the Human Fertilisation and Embryology Authority. Information may be accessed or disclosed only in the specific circumstances set out in the Act. Disclosing information that identifies the patient in other circumstances without the patient's prior consent is a criminal offence.</p>		

NHS Trusts and Primary Care Trusts (Sexually Transmitted Diseases) Directions 2000 (England)	These regulations provide that any information capable of identifying an individual who is examined or treated for any sexually transmitted disease, including HIV, shall not be disclosed, other than to a medical practitioner in connection with the treatment of the individual in relation to that disease or for the prevention of the spread of the disease.		
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