

Skills for Care's National Minimum Data Set for Social Care (NMDS-SC)

Data Protection: Layer 2 Fair Processing Notice

Who we are and what we do

Skills for Care is the national workforce development organisation for adult social care in England, and is part of the sector skills council Skills for Care & Development.

Skills for Care

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www.skillsforcare.org.uk Registered Charity 1079836

Data Protection Act 1998 Data Controller registration no. Z6220820

Skills for Care's nominated representative for the purposes of the Data Protection Act is David Towns, Company Secretary, at the above address

We work alongside people who use services, carers, social care workers, employers and a range of other stakeholders to ensure that the social care workforce is able to meet the changing needs of the people who use these services, now and in the future. We work to reduce vacancy rates and encourage new entrants, improve recruitment and retention rates, increase numbers of staff with relevant qualifications and skills, and modernise the workforce.

To do this, we need to have accurate information about social care providers, the services they offer and the workers who deliver the services. The National Minimum Data Set for Social Care (NMDS-SC Online) collects the information needed.

What is the NMDS-SC?

The NMDS-SC is a method for collecting and analysing information about the social care workforce in England. It is operated by Skills for Care and was developed in partnership with the Department of Health, the Department for Education & Skills (now Department for Children, Schools & Families), the General Social Care Council (GSCC), the Commission for Social Care Inspection (CSCI), the Social Care Institute for Excellence (SCIE), NHS National Workforce Projects, the Local Government Association (LGA), the Learning & Skills Council (LSC) and other major organisations and employer bodies in social care.

The NMDS-SC was launched in October 2005 and can now be completed online, or on paper for employers who do not have internet access. It is designed to collect workforce information from private and voluntary sector organisations, local authorities, and other employers of social care workers including the NHS and individuals employing their own care and support workers.

Completion of the NMDS-SC is not mandatory and all data are submitted voluntarily by employers.

The NMDS-SC dataset is in two parts:

1. **Organisational data** – this includes contact details, legal status of business, Investors in People status, numbers of people at the establishment (workplace), the jobs they do, numbers of starters and leavers, the range of services offered and the types of service users.
2. **Worker data** - includes the gender, date of birth, National Insurance Number, home post code, ethnic group, disability status, job role, pay, hours worked, sickness absence and qualifications of each worker. **Note that individuals' names, addresses and contact details are not collected in the dataset.**

Under the Data Protection Act 1998, the information about workers is defined as personal data. A full list of the items in the NMDS-SC dataset can be found in Appendix C of the NMDS-SC 3rd Layer Fair Processing Notice or the NMDS-SC Online website www.nmds-sc-online.org.uk.

Why are we collecting this information?

The NMDS-SC was designed to address the chronic lack of information about the social care workforce. Without reliable information, it is not possible to plan ahead and make the case for resources to recruit, develop and train the social care workforce that our society needs now and in the future. With an ageing population, we need to plan now to meet future social care needs. The NMDS-SC already is and will continue to inform plans for recruiting people in the future, the qualifications and skills they will need, and in some cases to argue for the necessary funding.

The information is analysed in aggregated form. This means that data from individual organisations and on individual workers are combined so that analyses show information about the group as a whole without identifying any individual worker or organisation. The analyses produced are freely available on the NMDS-SC Online website as reports, and are used by government, local authorities, employers and other organisations, academics and individuals to research and understand how social care is delivered and by whom.

Why do we need information about individual workers?

Date of birth is collected for two reasons: to calculate workers' ages, an important piece of information for workforce planning, and to create a unique reference for each worker (see next section).

National Insurance Number (NINO) is encrypted in combination with **date of birth** to create a unique reference number for each worker. The NMDS-SC does not collect workers' names and addresses, because it does not need to *identify* individual workers. However, individual workers do need to be *distinguished* from one another, for three reasons:

- so that each individual is not counted more than once,
- to find out how much social care depends on the same people working in more than one job, and
- to understand how people move from job to job, and in and out of social care work settings.

Using the NINO in combination with date of birth is the most efficient way to *distinguish* workers from each other without *identifying* them (NINO cannot be used on its own, as some NINOs are duplicated). In August 2005, the Department for Work & Pensions NINO Board gave Skills for Care permission to use the NINO for the purpose of internal data matching only, and not for linking to any other data, including data which could enable individuals to be identified. Once the unique reference number is created, the NINO can only be retrieved by running decryption algorithms which are only available to a small number of technical staff at Skills for Care's third party system supplier.

Home postcode is used for one purpose only: in conjunction with workplace postcode, to look at how far people travel to work. This is also important information for workforce planning.

Ethnic group and disability is important for equality and diversity monitoring, and enables assessment of the extent to which the workforce reflects the culture and diversity of the community it serves.

The **other information** gives us a detailed picture of the workers' job roles, employment status, pay, hours, time in the workforce and qualifications held and being worked towards, all of which are an essential basis for planning for the future at national, regional and local levels.

The Data Protection Act 1998

Under the Data Protection Act 1998, the worker data is **personal data**, except ethnicity and disability, which is **sensitive personal data**. Skills for Care operates the NMDS-SC in accordance with the Data Protection Act. Prior to the development of the NMDS-SC Online system, Skills for Care clarified with the Information Commissioner's Office that the workers' employer and Skills for Care are **Data Controllers in Common**. This means that both parties share a pool of personal data, each processing the information independently of the other.

Skills for Care's registration under the Data Protection Act outlines the purpose for which data is to be used and can be viewed at www.ico.gov.uk/tools_and_resources/register_of_data_controllers.aspx. It is the responsibility of every employer providing worker data to the NMDS-SC to ensure that the employer complies with the Data Protection Act. Organisations should if necessary update their data protection registration with the Information Commissioner's Office to reflect their Data Controller in Common status.

As Data Controllers in Common, employers providing worker information need to meet the fair processing conditions laid out in Schedules 2 and 3 of the Act.

- Schedule 2 applies to the **personal data**, which is deemed fairly processed if the worker has given his/her consent or if the processing is deemed necessary for the legitimate interests of the Data Controller or for a limited number of other reasons.
- Schedule 3 applies to the **sensitive personal data**, which is deemed fairly processed if the worker has given his/her explicit consent or if the processing is deemed necessary for employment-related purposes, equalities and diversity monitoring or for a limited number of other reasons.

For further information on Schedules 2 and 3, see Appendix A of the NMDS-SC 3rd Layer Fair Processing Notice or the relevant sections of the Data Protection Act 1998 at www.opsi.gov.uk/acts/acts1998/19980029.htm

Employers should take a view about their obligations under the Act with regard to the fair processing of the worker data to be provided to the NMDS-SC. If an employer feels that the processing meets one or more of the necessary conditions set out in the Act, there is no need to obtain consent (for personal data) and/or explicit consent (for sensitive personal data) from individual workers. If on the other hand an employer feels that, to meet the fair processing conditions, the consent of each worker should be obtained before providing any sensitive personal information to the NMDS-SC, or any personal information at all, then appropriate consent needs to be sought.

- Consent for providing **personal data** is *'any freely given specific and informed indication of wishes and which the data subject (i.e. worker) signifies his/her wishes'*. An employer needs to be confident that there has been *'active communication'* with workers about the contents of the NMDS-SC and that they consent to this information being provided.
- Consent for providing **sensitive personal data** needs to be *'explicit'* and *'absolutely clear'*. The worker's consent must be clear and cover items such as the specific details of processing, the data to be processed and the purpose for processing.

There are two ways to achieve consent: **opting-out** where workers are invited to inform the employer if they wish their individual data to be withheld from the NMDS-SC, and **opting-in** where workers are invited to give permission for their individual data to be included in NMDS-SC. See Appendix A of the NMDS-SC 3rd Layer Fair Processing Notice for further information and suggested approaches to opting-out and opting-in.

Irrespective of whether or not they need to obtain consent, employers should inform their workers that they will be providing data to the NMDS-SC.

Who can access NMDS-SC data about individual workers?

Worker data (and individual organisational data) in the NMDS-SC can **only** be accessed by the following:

1. the establishment which has submitted the data,
2. the parent organisation, if there is one, and if permission has been given by the establishment,
3. a small number of key Skills for Care business support staff who are responsible for assisting establishments and maintaining the NMDS-SC, and
4. staff at Skills for Care's third party system supplier, for system development, support and management.

Skills for Care will keep all worker data safe and secure and will not pass any personal details to third parties unless legally obliged to do so.

CSCI-registered establishments may, if they chose, share NMDS-SC information about individual workers with the Commission for Social Care Inspection (CSCI) as input into the Annual Quality Assurance Assessment (AQAA), so that the same information does not have to be supplied separately for each organisation. In a similar way, when worker registration takes effect, an employer may also choose to share NMDS-SC worker data with the General Social Care Council (GSCC). In both cases the employer retains responsibility for fair processing under the Data Protection Act.

Data Security

NMDS-SC Online uses SSL (Secure Sockets Layer) cryptographic protocol technology to provide secure communications via the internet. This is a robust and trusted solution used for many internet banking, e-commerce, secure e-mail systems etc. and have been endorsed by financial organisations such as Visa, Mastercard and American Express. The technology utilises industry standard 128-bit encryption.

Data access, non-participation and withdrawal

Under the Data Protection Act, each worker has the right to access, and to make corrections and changes to, the information about him/her held in the NMDS-SC (this can be done via the Worker Report available from NMDS-SC Online). Each worker also has the right to request that their details in full or part are not submitted to the NMDS-SC by the employer. It is the responsibility of the employer to establish whether consent is required. If consent is sought, each worker (data subject) must have the right to withdraw consent. Moreover, it is the responsibility of the employer to inform workers of their rights, and to implement any withdrawal of a worker's consent.

An establishment can withdraw from the NMDS-SC system at any time and an individual worker can remove his/her consent at any given time. This will be effective immediately, with the current record being removed. However, such an action is not retrospective, as historical data will be retained on the system (see retention of data below).

The Data Protection Act gives workers (data subjects) a general right of access to personal information which relates to them. Subject access requests made to Skills for Care will be dealt within 40 days on receipt of the relevant fee and the information necessary to confirm the identity of the data subject and to locate the data.

Requests made to Skills for Care under the Freedom of Information Act 2000 will be processed in accordance with the Act. Skills for Care is not required to seek an establishment's permission to release information if requested to do so under the Act. Any information released will comply with relevant legislation, using exemption as appropriate, such as not releasing personal or commercially sensitive information.

Retention of data

Current data is held on the system until it is modified or deleted by an establishment or until Skills for Care is requested to modify or delete it on the establishment's behalf. If a worker leaves, the employing establishment should remove the individual from the system at the next update. Once an individual, or an establishment, is deleted from the current data in the system then they are removed completely from the current data.

Every month an analytical snapshot is taken of all the data held on this system. This information is retained indefinitely, so that data on changes in the workforce and the skills and knowledge of workers can be accumulated over time. In the long term, it is intended that historical NMDS-SC data will be stored in the Social Sciences Archive at the University of Essex.

For further information, queries or complaints please contact in the first instance the NMDS-SC Help Line on 0845 873 0129 or email nmds@skillsforcare.org.uk