



Access to Health Records Act 1990

1990 CHAPTER 23

An Act to establish a right of access to health records by the individuals to whom they relate and other persons; to provide for the correction of inaccurate health records and for the avoidance of certain contractual obligations; and for connected purposes. [13th July 1990]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Modifications etc. (not altering text)

C1 Act: transfer of functions (1.7.1999) by [S.I. 1999/672, art. 2, Sch. 1](#)

Preliminary

1 “Health record” and related expressions.

- (1) In this Act “health record” means a record which—
- (a) consists of information relating to the physical or mental health of an individual who can be identified from that information, or from that and other information in the possession of the holder of the record; and
 - (b) has been made by or on behalf of a health professional in connection with the care of that individual;
- F1
- (2) In this Act “holder”, in relation to a health record, means—
- [F2(a) in the case of a record made by a general practitioner (other than an employed practitioner), or by a health professional employed by such a general practitioner—
 - (i) the general practitioner on whose list the patient is included (or, where the patient is included on the list of a medical practice consisting of

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two or more partners who are general practitioners, any such partner);
or

(ii) where the patient is not on any such list, the [^{F3}Primary Care Trust,]Health Authority or Health Board by arrangement with whom a general practitioner last treated him;]

- (b) in the case of a record made by a health professional for purposes connected with the provision of health services by a health service body, the health service body by which or on whose behalf the record is held;
- (c) in any other case, the health professional by whom or on whose behalf the record is held.

(3) In this Act “patient”, in relation to a health record, means the individual in connection with whose care the record has been made.

Textual Amendments

F1 Words in s. 1(1) repealed (1.3.2000) by 1998 c. 29, s. 74(2), **Sch. 16 Pt. I**; S.I. 2000/183, art. 2(1)

F2 S. 1(2)(a) substituted (1.4.1998) by 1997 c. 46, s. 41(10), **Sch. 2 Pt. I para. 66(2)**; S.I. 1998/631, art. 2(1)(b), **Sch. 2**

F3 Words in s. 1(2)(a)(ii) inserted (1.10.2002) by 2002 c. 17, s. 2(5), **Sch. 2 Pt. 2 para. 59(2)**; S.I. 2002/2478, **art. 3(1)(a)(d)** (subject to arts. 3(3) and 4)

[^{F4}2 Health professionals.

In this Act “health professional” has the same meaning as in the Data Protection Act 1998.]

Textual Amendments

F4 S. 2 substituted (1.3.2000) by 1998 c. 29, s. 74(2), **Sch. 16 Pt. I**; S.I. 2000/183, **art. 2(1)**

Main provisions

3 Right of access to health records.

(1) An application for access to a health record, or to any part of a health record, may be made to the holder of the record by any of the following, namely—

- ^{F5}(a)
- ^{F5}(b)
- ^{F5}(cc)
- ^{F5}(e)
- [^{F6}(ee) where the record is held in Scotland and the patient is incapable, within the meaning of the Adults with Incapacity (Scotland) Act 2000 (asp 4) in relation to making or authorising the application, any person entitled to act on behalf of the patient under that Act.]
- (f) where the patient has died, the patient’s personal representative and any person who may have a claim arising out of the patient’s death.

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- (2) Subject to section 4 below, where an application is made under subsection (1) above the holder shall, within the requisite period, give access to the record, or the part of a record, to which the application relates—
- (a) in the case of a record, by allowing the applicant to inspect the record or, where section 5 below applies, an extract setting out so much of the record as is not excluded by that section;
 - (b) in the case of a part of a record, by allowing the applicant to inspect an extract setting out that part or, where that section applies, so much of that part as is not so excluded; or
 - (c) in either case, if the applicant so requires, by supplying him with a copy of the record or extract.
- (3) Where any information contained in a record or extract which is so allowed to be inspected, or a copy of which is so supplied, is expressed in terms which are not intelligible without explanation, an explanation of those terms shall be provided with the record or extract, or supplied with the copy.
- (4) No fee shall be required for giving access under subsection (2) above other than the following, namely—
- (a) where access is given to a record, or part of a record, none of which was made after the beginning of the period of 40 days immediately preceding the date of the application, a fee not exceeding [^{F7}such maximum as may be prescribed for the purposes of this section by regulations under section 7 of the Data Protection Act 1998]; and
 - (b) where a copy of a record or extract is supplied to the applicant, a fee not exceeding the cost of making the copy and (where applicable) the cost of posting it to him.
- (5) For the purposes of subsection (2) above the requisite period is—
- (a) where the application relates to a record, or part of a record, none of which was made before the beginning of the period of 40 days immediately preceding the date of the application, the period of 21 days beginning with that date;
 - (b) in any other case, the period of 40 days beginning with that date.
- (6) Where—
- (a) an application under subsection (1) above does not contain sufficient information to enable the holder of the record to identify the patient or, ^{F8} . . . , to satisfy himself that the applicant is entitled to make the application; and
 - (b) within the period of 14 days beginning with the date of the application, the holder of the record requests the applicant to furnish him with such further information as he may reasonably require for that purpose,
- subsection (5) above shall have effect as if for any reference to that date there were substituted a reference to the date on which that further information is so furnished.

Textual Amendments

F5 S. 3(1)(a)-(e) repealed (1.3.2000) by 1998 c. 29, s. 74(1), **Sch. 16 Pt. I** (with Sch. 14 para. 17(1)(a)); S.I. 2000/183, **art. 2(1)**

F6 S. 3(1)(ee) inserted (S.) (1.4.2002) by 2000 asp 4, s. 88(2), **Sch. 5 para. 21**; S.S.I. 2001/81, art. 3, **Sch. 2**

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- F7** Words in s. 3(4) substituted (1.3.2000) by 1998 c. 29, s. 74(1), **Sch. 15 para. 12** (with Sch. 14 para. 17(1)(a)); S.I. 2000/183, **art. 2(1)**
- F8** Words in s. 3(6)(a) repealed (1.3.2000) by 1998 c. 29, s. 74(1), Sch. 4 para. 17(1), **Sch. 16 Pt. I** (with Sch. 14 para. 17(1)(a)); S.I. 2000/183, **art. 2(1)**

4 Cases where right of access may be wholly excluded.

^{F9}(1)

^{F9}(2)

(3) Where an application is made under subsection (1)(f) of section 3 above, access shall not be given under subsection (2) of that section if the record includes a note, made at the patient’s request, that he did not wish access to be given on such an application.

Textual Amendments

- F9** S. 4(1)(2) repealed (1.3.2000) by 1998 c. 29, s. 74(2), **Sch. 16 Pt. I**; S.I. 2000/183, art. 2(1)

5 Cases where right of access may be partially excluded.

- (1) Access shall not be given under section 3(2) above to any part of a health record—
 - (a) which, in the opinion of the holder of the record, would disclose—
 - (i) information likely to cause serious harm to the physical or mental health ^{F10} . . . of any ^{F10} . . . individual; or
 - (ii) information relating to or provided by an individual, other than the patient, who could be identified from that information; or
 - (b) which was made before the commencement of this Act.

- (2) Subsection (1)(a)(ii) above shall not apply—
 - (a) where the individual concerned has consented to the application; or
 - (b) where that individual is a health professional who has been involved in the care of the patient;

and subsection (1)(b) above shall not apply where and to the extent that, in the opinion of the holder of the record, the giving of access is necessary in order to make intelligible any part of the record to which access is required to be given under section 3(2) above.

- (3) [^{F11}Access shall not be given under section 3(2) to any part of a health record] which, in the opinion of the holder of the record, would disclose—
 - (a) information provided by the patient in the expectation that it would not be disclosed to the applicant; or
 - (b) information obtained as a result of any examination or investigation to which the patient consented in the expectation that the information would not be so disclosed.

(4) Where an application is made under subsection (1)(f) of section 3 above, access shall not be given under subsection (2) of that section to any part of the record which, in the opinion of the holder of the record, would disclose information which is not relevant to any claim which may arise out of the patient’s death.

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- (5) The Secretary of State may by regulations provide that, in such circumstances as may be prescribed by the regulations, access shall not be given under section 3(2) above to any part of a health record which satisfies such conditions as may be so prescribed.

Textual Amendments

- F10** Words in s. 5(1)(a)(i) repealed (1.3.2000) by 1998 c. 29, s. 74(2), **Sch. 16 Pt. I**; S.I. 2000/183, **art. 2(1)**
- F11** Words in s. 5(3) substituted (1.3.2000) by 1998 c. 29, s. 74(1), **Sch. 15 para. 13**; S.I. 2000/183, **art. 2(1)**

6 Correction of inaccurate health records.

- (1) Where a person considers that any information contained in a health record, or any part of a health record, to which he has been given access under section 3(2) above is inaccurate, he may apply to the holder of the record for the necessary correction to be made.
- (2) On an application under subsection (1) above, the holder of the record shall—
- (a) if he is satisfied that the information is inaccurate, make the necessary correction;
 - (b) if he is not so satisfied, make in the part of the record in which the information is contained a note of the matters in respect of which the information is considered by the applicant to be inaccurate; and
 - (c) in either case, without requiring any fee, supply the applicant with a copy of the correction or note.
- (3) In this section “inaccurate” means incorrect, misleading or incomplete.

7 Duty of health service bodies etc. to take advice.

- (1) A health service body ^{F12} . . . shall take advice from the appropriate health professional before they decide whether they are satisfied as to any matter for the purposes of this Act, or form an opinion as to any matter for those purposes.
- (2) In this section “the appropriate health professional”, in relation to a health service body (other than a [^{F13}Primary Care Trust,][^{F14}Health Authority or] Health Board which is the holder of the record by virtue of section 1(2)(a) above), means—
- (a) where, for purposes connected with the provision of health services by the body, one or more medical or dental practitioners are currently responsible for the clinical care of the patient, that practitioner or, as the case may be, such one of those practitioners as is the most suitable to advise the body on the matter in question;
 - (b) where paragraph (a) above does not apply but one or more medical or dental practitioners are available who, for purposes connected with the provision of such services by the body, have been responsible for the clinical care of the patient, that practitioner or, as the case may be, such one of those practitioners as was most recently so responsible; and
 - (c) where neither paragraph (a) nor paragraph (b) above applies, a health professional who has the necessary experience and qualifications to advise the body on the matter in question.

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- (3) In this section “the appropriate health professional”, in relation to a [^{F13}Primary Care Trust,]^{F15}Health Authority or] Health Board which is the holder of the record by virtue of section 1(2)(a) above, means—
- (a) where the patient’s most recent general practitioner is available, that practitioner; and
 - (b) where that practitioner is not available, a registered medical practitioner who has the necessary experience and qualifications to advise the [^{F13}Primary Care Trust,]^{F16}Health Authority or Health Board] on the matter in question.

Textual Amendments

- F12** Words in s. 7(1) repealed (28.6.1995 for certain purposes and otherwise at 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 5(1), 8(1), Sch. 1 Pt. III para. 119(3)(a), **Sch. 3** (with Sch. 2 paras. 6, 16)
- F13** Words in s. 7 inserted (1.10.2002) by 2002 c. 17, s. 2(5), **Sch. 2 Pt. 2 para. 59(3)**; S.I. 2002/2478, **art. 3(1)(a)(d)** (subject to arts. 3(3), 4)
- F14** Words in s. 7(2) inserted (28.6.1995 for certain purposes and otherwise at 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), **Sch. 1 Pt. III para. 119(3)(b)** (with Sch. 2 paras. 6, 16)
- F15** Words in s. 7(3) substituted (28.6.1995 for certain purposes and otherwise at 1.4.1996) by 1995 c. 17, s. 2(1)(3), 8(1), **Sch. 1 Pt. III para. 119(3)(c)(i)** (with Sch. 2 paras. 6, 16)
- F16** Words in s. 7(3)(b) substituted (28.6.1995 for certain purposes and otherwise at 1.4.1996) by 1995 c. 17, s. **2(1)(3)**, 8(1) Sch. 1 Pt. III para. 119(3)(c)(ii) (with Sch. 2 paras. 6, 16)

Supplemental

8 Applications to the court.

- (1) Subject to subsection (2) below, where the court is satisfied, on an application made by the person concerned within such period as may be prescribed by rules of court, that the holder of a health record has failed to comply with any requirement of this Act, the court may order the holder to comply with that requirement.
- (2) The court shall not entertain an application under subsection (1) above unless it is satisfied that the applicant has taken all such steps to secure compliance with the requirement as may be prescribed by regulations made by the Secretary of State.
- (3) For the purposes of subsection (2) above, the Secretary of State may by regulations require the holders of health records to make such arrangements for dealing with complaints that they have failed to comply with any requirements of this Act as may be prescribed by the regulations.
- (4) For the purpose of determining any question whether an applicant is entitled to be given access under section 3(2) above to any health record, or any part of a health record, the court—
 - (a) may require the record or part to be made available for its own inspection; but
 - (b) shall not, pending determination of that question in the applicant’s favour, require the record or part to be disclosed to him or his representatives whether by discovery (or, in Scotland, recovery) or otherwise.
- (5) The jurisdiction conferred by this section shall be exercisable by the High Court or a county court or, in Scotland, by the Court of Session or the sheriff.

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9 Avoidance of certain contractual terms.

Any term or condition of a contract shall be void in so far as it purports to require an individual to supply any other person with a copy of a health record, or of an extract from a health record, to which he has been given access under section 3(2) above.

10 Regulations and orders.

- (1) Regulations under this Act may make different provision for different cases or classes of cases including, in particular, different provision for different health records or classes of health records.
- (2) Any power to make regulations ^{F17}. . . under this Act shall be exercisable by statutory instrument.
- (3) Any statutory instrument containing regulations under this Act or an order under section 2(3) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Textual Amendments

F17 Words in s. 10(2) repealed (1.3.2000) by 1998 c. 29, s. 74(2), **Sch. 16 Pt. I**; S.I. 2000/183, **art. 2(1)**

11 Interpretation.

In this Act—

“application” means an application in writing and “apply” shall be construed accordingly;

“care” includes examination, investigation, diagnosis and treatment;

^{F18}
. . .

“general practitioner” means a medical practitioner who is [—

- (a) ^{F19}providing general medical services in accordance with arrangements made under section 29 of the ^{M1}National Health Service Act 1977 or section 19 of the ^{M2}National Health Service (Scotland) Act 1978; or
- (b) performing personal medical services in accordance with arrangements made under section 28C of the 1977 Act or section 17C of the 1978 Act]

[^{F20}“Health Authority” means a Health Authority established under section 8 of the National Health Service Act 1977;]

“Health Board” has the same meaning as in the National Health Service (Scotland) Act 1978;

“health service body” means—

- [^{F21}(a) [^{F22}a Strategic Health Authority, Health Authority][^{F23}, Special Health Authority or Primary Care Trust];]
- (b) a Health Board;
- (c) a State Hospital Management Committee constituted under section 91 of the ^{M3}Mental Health (Scotland) Act 1984; or
- (d) a National Health Service trust first established under section 5 of the ^{M4}National Health Service and Community Care Act 1990 or section 12A of the National Health Service (Scotland) Act 1978;

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“information”, in relation to a health record, includes any expression of opinion about the patient;

“make”, in relation to such a record, includes compile;

F24

[^{F25}“Primary Care Trust” means a Primary Care Trust established under section 16A of the National Health Service Act 1977;]

[^{F26}“Special Health Authority” means a Special Health Authority established under section 11 of the National Health Service Act 1977.]

[^{F27}“Strategic Health Authority” means a Strategic Health Authority established under section 8 of the National Health Service Act 1977.]

Textual Amendments

- F18** Definitions of “child” and “parental responsibility” repealed (1.3.2000) by 1998 c. 29, s. 74(2) Sch. 16 Pt. I; S.I. 2000/183, art. 2(1)
- F19** Words in definition of “general practitioner” in s. 11 substituted for sub paras. (a)(b) and immediately preceding them (1.4.1998) by 1997 c. 46, s. 41(10), Sch. 2 Pt. I para. 66(3); S.I. 1998/631, art. 2(1)(b), Sch. 2
- F20** Definition of “Health Authority” inserted (28.6.1995) by 1995 c. 17, s. 2(1), Sch. 1 Pt. III para. 119(4)(a) (with Sch. 2 paras. 6, 16)
- F21** Para. (a) in definition of “health service body” substituted (28.6.1995) by 1995 c. 17, s. 2(1), Sch. 1 Pt. III para. 119(4)(b) (with Sch. 2 paras. 6, 16)
- F22** S. 11: words in para. (a) of definition of “health service body” substituted (1.10.2002) by S.I. 2002/2469, reg. 4, Sch. 1 Pt. 1 para. 17(a)
- F23** Words in the definition of “health service body” in s. 11 substituted (E.W.) (8.2.2000) by S.I. 2000/90, art. 3(1), Sch. 1 para. 25(a)
- F24** Definitions of “child” and “parental responsibility” repealed (1.3.2000) by 1998 c. 29, s. 74(2) Sch. 16 Pt. I; S.I. 2000/183, art. 2(1)
- F25** Definition of “Primary Care Trust” inserted (E.W.) (8.2.2000) by S.I. 2000/90, art. 3(1), Sch. 1 para. 25(b)
- F26** Definition of “Special Health Authority” inserted (28.6.1995) by 1995 c. 17, s. 2(1), Sch. 1 Pt. III para. 119(4)(c) (with Sch. 2, paras. 6, 16)
- F27** S. 11: definition of “Strategic Health Authority” inserted (1.10.2002) by S.I. 2002/2469, reg. 4, Sch. 1 Pt. 1 para. 17(b)

Marginal Citations

- M1** 1977 c. 49.
- M2** 1978 c. 29.
- M3** 1984 c. 36.
- M4** 1990 c. 19.

12 Short title, commencement, and extent.

- (1) This Act may be cited as the Access to Health Records Act 1990.
- (2) This Act shall come into force on 1st November 1991.
- (3) This Act does not extend to Northern Ireland.

Status:

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