



Access to Health Records Act 1990

CHAPTER 23

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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:—

Preliminary

1.—(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;

“Health record”
and related
expressions.

but does not include any record which consists of information of which the individual is, or but for any exemption would be, entitled to be supplied with a copy under section 21 of the Data Protection Act 1984 (right of access to personal data).

1984 c. 35.

(2) In this Act “holder”, in relation to a health record, means—

- (a) in the case of a record made by, or by a health professional employed by, a general practitioner—
 - (i) the patient's general practitioner, that is to say, the general practitioner on whose list the patient is included; or

(ii) where the patient has no general practitioner, the Family Practitioner Committee or Health Board on whose medical list the patient's most recent general practitioner was included;

- (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.

Health
professionals.

2.—(1) In this Act "health professional" means any of the following, namely—

- (a) a registered medical practitioner;
- (b) a registered dentist;
- (c) a registered optician;
- (d) a registered pharmaceutical chemist;
- (e) a registered nurse, midwife or health visitor;
- (f) a registered chiropodist, dietician, occupational therapist, orthoptist or physiotherapist;
- (g) a clinical psychologist, child psychotherapist or speech therapist;
- (h) an art or music therapist employed by a health service body; and
- (i) a scientist employed by such a body as head of a department.

1983 c. 54.

(2) Subsection (1)(a) above shall be deemed to include any person who is provisionally registered under section 15 or 21 of the Medical Act 1983 and is engaged in such employment as is mentioned in subsection (3) of that section.

1960 c. 66.

(3) If, after the passing of this Act, an order is made under section 10 of the Professions Supplementary to Medicine Act 1960, the Secretary of State may by order make such consequential amendments of subsection (1)(f) above as may appear to him to be necessary or expedient.

(4) The provisions of this Act shall apply in relation to health professionals in the public service of the Crown as they apply in relation to other health professionals.

Main provisions

Right of access to
health records.

3.—(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—

- (a) the patient;
- (b) a person authorised in writing to make the application on the patient's behalf;
- (c) where the record is held in England and Wales and the patient is a child, a person having parental responsibility for the patient;
- (d) where the record is held in Scotland and the patient is a pupil, a parent or guardian of the patient;

- (e) where the patient is incapable of managing his own affairs, any person appointed by a court to manage those affairs; and
- (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.

(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 the maximum prescribed under section 21 of the Data Protection Act 1984; and 1984 c. 35.
- (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, in the case of an application made otherwise than by the patient, 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.

Cases where right of access may be wholly excluded.

4.—(1) Where an application is made under subsection (1)(a) or (b) of section 3 above and—

- (a) in the case of a record held in England and Wales, the patient is a child; or

(b) in the case of a record held in Scotland, the patient is a pupil, access shall not be given under subsection (2) of that section unless the holder of the record is satisfied that the patient is capable of understanding the nature of the application.

(2) Where an application is made under subsection (1)(c) or (d) of section 3 above, access shall not be given under subsection (2) of that section unless the holder of the record is satisfied either—

- (a) that the patient has consented to the making of the application; or

(b) that the patient is incapable of understanding the nature of the application and the giving of access would be in his best interests.

(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.

Cases where right of access may be partially excluded.

5.—(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 of the patient or of any other 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) Where an application is made under subsection (1)(c), (d), (e) or (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—

- (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.

(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.

6.—(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.

Correction of inaccurate health records.

(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.—(1) A health service body or Family Practitioner Committee 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.

Duty of health service bodies etc. to take advice.

(2) In this section "the appropriate health professional", in relation to a health service body (other than a 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.

(3) In this section "the appropriate health professional", in relation to a Family Practitioner Committee or a 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 Committee or Board on the matter in question.

Supplemental

Applications to
the court.

8.—(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.

Avoidance of
certain contractual
terms.

9. 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.—(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.

Regulations and orders.

(2) Any power to make regulations or orders 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.

11. In this Act—

Interpretation.

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

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

“child” means an individual who has not attained the age of 16 years;

“general practitioner” means a medical practitioner who is providing general medical services in accordance with arrangements made under section 29 of the National Health Service Act 1977 or section 19 of the National Health Service (Scotland) Act 1978;

1977 c. 49.
1978 c. 29.

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

“health service body” means—

(a) a health authority within the meaning of the National Health Service Act 1977;

(b) a Health Board;

(c) a State Hospital Management Committee constituted under section 91 of the Mental Health (Scotland) Act 1984; or

1984 c. 36.

(d) a National Health Service trust first established under section 5 of the National Health Service and Community Care Act 1990 or section 12A of the National Health Service (Scotland) Act 1978;

1990 c. 19.

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

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

“parental responsibility” has the same meaning as in the Children Act 1989.

1989 c. 41.

12.—(1) This Act may be cited as the Access to Health Records Act 1990.

Short title, commencement, and extent.

(2) This Act shall come into force on 1st November 1991.

(3) This Act does not extend to Northern Ireland.