



Isle of Man

Ellan Vannin

AT 10 of 1993

**ACCESS TO HEALTH RECORDS AND
REPORTS ACT 1993**



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**Isle of Man***Ellan Vannin*

ACCESS TO HEALTH RECORDS AND REPORTS ACT 1993

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AN ACT to establish a right of access to health records; to provide for the correction of inaccurate health records; to establish a right of access to medical reports prepared for employment or insurance purposes; and for connected purposes.

1 “Health record” and related expressions

[P1990/23/1]

- (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.¹
- (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, the general practitioner on whose list the patient is included); or
 - (ii) where the patient has no general practitioner, the Department;
 - (b) in the case of a record made by a health professional for purposes connected with the provision of health services by or on behalf of the Department under the *National Health Service Act 2001*, the Department;²
 - (c) in any other case, the health professional by whom or on whose behalf the record is held.

2 Right of access to health records

[P1990/23/3]

- (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[,] 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.³
- (2) Subject to section 3, where an application is made under subsection (1), the holder shall, within the requisite period, give access to the record, or the part of the record, to which the application relates —
 - (a) in the case of a record, by allowing the applicant to inspect the record or, where section 4 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 section 4 applies, an extract setting out 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 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) other than the following —
 - (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 prescribed maximum (within the meaning of section 5 of the *Data Protection Act 2002*); and⁴
 - (b) where a copy or 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) the requisite period is —
 - (a) where the application related 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; and
 - (b) in any other case, the period of 40 days beginning with that date.
- (6) Where —
 - (a) an application under subsection (1) does not contain sufficient information to enable the holder of the record to identify the

patient or to satisfy himself that the applicant is entitled to make the application; and⁵

- (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) 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.

3 Cases where access may be wholly excluded

- (1) and (2) [Repealed]⁶
- (3) Where an application is made under section 2(1), access shall not be given under section 2(2) 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.⁷

4 Cases where access may be partially excluded

[P1990/23/5]

- (1) Access shall not be given under section 2(2) 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 [or] of any individual; or⁸
- (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) does 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) does 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 2(2).

- (3) Access shall not be given under section 2(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 disclosed.⁹

5 Correction of inaccurate health records

[P1990/23/6]

- (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 2(2) 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), 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.

6 Duty of Department etc to take advice

[P1990/23/7]

- (1) The Department shall take advice from the appropriate health professional before it decides whether it is satisfied as to any matter for the purposes of this Act, or forms an opinion as to any matter for those purposes.¹⁰
- (2) In this section “the appropriate health professional” (except in relation to the Department where it is the holder of the record by virtue of section 1(2) (a)) means —
 - (a) where, for purposes connected with the provision of health services by the Department, 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 Department on the matter in question;¹¹
 - (b) where paragraph (a) does not apply but one or more medical or dental practitioners are available who, for purposes connected with the provision of health services by the Department, 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;¹²

- (c) where neither paragraph (a) nor paragraph (b) applies, a health professional who has the necessary experience and qualifications to advise the Department on the matter in question.¹³
- (3) In this section “the appropriate health professional”, in relation to the Department where it is the holder of the record by virtue of section 1(2)(a), means —
- (a) where the patient’s most recent general practitioner is available, that practitioner;
 - (b) where that practitioner is not available, a registered medical practitioner who has the necessary experience and qualifications to advise the Department on the matter in question.

7 Applications to the Court

[P1990/23/8]

- (1) Subject to subsection (3), where the High Court is satisfied, on an application 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) Where the holder of a health record decides whether it is satisfied as to any matter for the purposes of this Act, or forms an opinion as to any matter for those purposes, the powers of the court under subsection (1) include power to review that decision or opinion, and to make any order incidental to such a review.
- (3) The Court shall not entertain an application under subsection (1) 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 Department.
- (4) For the purposes of subsection (3), the Department 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.
- (5) For the purpose of determining any question whether an applicant is entitled to be given access under section 2(2) 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 otherwise.

8 Avoidance of certain contractual terms

[P1990/23/9]

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 2(2).

9 Access to medical reports

The Schedule shall have effect for the purpose of establishing a right of access by individuals to reports relating to themselves provided by medical practitioners for employment or insurance purposes.

10 Interpretation

[P1990/23/1, 2 and 11]

In this Act —

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

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

“**child**” [Repealed]¹⁴

“**the Department**” means the Department of Health and Social Care;¹⁵

“**general practitioner**” means a medical practitioner who is providing general medical services in accordance with arrangements made under section 27 of the *National Health Service (Isle of Man) Act 1948*;

“**health professional**” means any of the following —

- (a) a registered medical practitioner (including any person who is provisionally registered under section 15 or 21 of the Medical Act 1983 (an Act of Parliament) and is engaged in such employment as is mentioned in section 15(3) or 21(3) of that Act);
- (b) a registered dentist;
- (c) a registered nurse or midwife;
- (d) a member of a profession related or supplementary to medicine and specified in regulations made by the Department for the purposes of this definition, who fulfils such conditions (as to registration or otherwise) as may be so specified.

“**health record**” and “**holder**” (in relation to a health record) have the meanings given by section 1;

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

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

“**patient**”, in relation to a health record, means the individual in connection with whose care the record has been made.

11 Short title etc

- (1) This Act may be cited as the Access to Health Records and Reports Act 1993.
- (2) This Act shall come into operation on such day or days as the Department may by order appoint.¹⁶
- (3) Regulations under this Act shall not have effect unless they are approved by Tynwald.

SCHEDULE

ACCESS TO MEDICAL REPORTS

[P1988/28/1-9] Section 9

Interpretation

1. (1) In this Schedule —
 - “**the applicant**” means the person referred to in paragraph 3(1);
 - “**employment purposes**”, in the case of an individual, means the purposes in relation to the individual of any person by whom he is or has been, or is seeking to be, employed (whether under a contract of service or otherwise);
 - “**insurance purposes**”, in the case of an individual, means the purposes in relation to the individual of any person carrying on an insurance business with whom the individual has entered into, or is seeking to enter into, a contract of insurance, and “**insurance business**” and “**contract of insurance**” have the same meanings as in the *Insurance Act 2008*;¹⁷
 - “**medical practitioner**” means a fully registered person within the meaning of the *Medical Act 1985*;
 - “**medical report**”, in the case of an individual, means a report relating to the physical or mental health of the individual prepared by a medical practitioner who is or has been responsible for the clinical care of the individual.
- (2) Any reference in this Schedule to the supply of a medical report for employment or insurance purposes is a reference —
 - (a) to the supply of such a report for employment or insurance purposes which are purposes of the person who seeks to be supplied with it; or
 - (b) (in the case of a report that has already been supplied) to the supply of such a report for employment or insurance purposes which, at the time of its being supplied, were purposes of the person to whom it was supplied.
- (3) References in this Schedule to giving an individual access to a medical report or to a copy of it are to —
 - (a) making the report or a copy of it available for his inspection, or
 - (b) supplying him with a copy of it,

and where a copy is supplied at the request, or otherwise with the consent, of the individual the medical practitioner in question may charge a reasonable fee to cover the cost of supplying it.

(4) Any notification required or authorised to be given under this Schedule shall be given in writing, and may be given by post.

Right of access

2. It is the right of an individual to have access, in accordance with this Schedule to any medical report relating to the individual which is to be, or has been, supplied by a medical practitioner for employment purposes or insurance purposes.

Consent to applications for medical reports

3. (1) A person shall not apply to a medical practitioner for a medical report relating to an individual to be supplied to him for employment purposes or insurance purposes unless —

- (a) that person (“the applicant”) has notified the individual that he proposes to make the application; and
- (b) the individual has notified the applicant that he consents to the making of the application.

(2) Any notification under sub-paragraph (1)(a) must inform the individual of his right to withhold his consent to the making of the application, and of the following rights under this Schedule —

- (a) the rights under paragraphs 4(1) to (3) and 6(2) with respect to access to the report before or after it is supplied;
- (b) the right to withhold consent under paragraph 5(1); and
- (c) the right to request amendment of the report under paragraph 5(2),

as well as of the effect of paragraph 7.

Access to reports before they are supplied

4. (1) An individual who has given his consent under paragraph 3 to the making of an application is entitled, when giving his consent, to state that he wishes to have access to the report to be supplied in response to the application before it is so supplied; and if he does so, the applicant shall —

- (a) notify the medical practitioner of that fact at the time that the application is made; and
- (b) at the same time notify the individual of the making of the application;

and each such notification shall contain a statement of the effect of sub-paragraph (2).

- (2) Where a medical practitioner is notified by the applicant under sub-paragraph (1) that the individual in question wishes to have access to the report before it is supplied, the practitioner shall not supply the report unless —
- (a) he has given the individual access to it and any requirements of paragraph 5 have been complied with; or
 - (b) the period of 21 days beginning with the date of the making of the application has elapsed without his having received any communication from the individual concerning arrangements for the individual to have access to it.
- (3) Where a medical practitioner —
- (a) receives an application for a medical report to be supplied for employment purposes or insurance purposes without being notified by the applicant as mentioned in sub-paragraph (1), but
 - (b) before supplying the report receives a notification from the individual that he wishes to have access to the report before it is supplied,
- the practitioner shall not supply the report unless —
- (i) he has given the individual access to it and any requirements of paragraph 5 have been complied with, or
 - (ii) the period of 21 days beginning with the date of that notification has elapsed without his having received (either with that notification or otherwise) any communication from the individual concerning arrangements for the individual to have access to it.

Consent to supplying report and correction of errors

5. (1) Where an individual has been given access to a report under paragraph 4 the report shall not be supplied in response to the application in question unless the individual has notified the medical practitioner that he consents to its being so supplied.

(2) The individual is entitled, before giving his consent under sub-paragraph (1), to request the medical practitioner to amend any part of the report which the individual considers to be incorrect, misleading or incomplete; and, if the individual does so, the practitioner —

- (a) if he is to any extent prepared to accede to the request, shall amend the report accordingly;
 - (b) if he is to any extent not prepared to accede to it but the individual requests him to attach to the report a statement of the individual's views in respect of any part of the report which he declines to amend, shall attach such a statement to the report.
- (3) Any request made under sub-paragraph (2) shall be made in writing.

Retention of reports

6. (1) A copy of any medical report which a medical practitioner has supplied for employment purposes or insurance purposes shall be retained by him for at least 6 months from the date on which it was supplied.

(2) A medical practitioner shall, if so requested by an individual, give the individual access to any medical report relating to him which the practitioner has supplied for employment purposes or insurance purposes in the previous 6 months.

Exemptions

7. (1) A medical practitioner is not obliged to give an individual access in accordance with paragraph 1(3) to any part of a medical report whose disclosure —

- (a) would in the opinion of the practitioner be likely to cause serious harm to the physical or mental health of the individual or others, or
- (b) would indicate the intentions of the practitioner in respect of the individual.

(2) A medical practitioner is not obliged to give an individual access in accordance with paragraph 1(3) to any part of a medical report whose disclosure would be likely to reveal information about another person, or to reveal the identity of another person who has supplied information to the practitioner about that individual, unless —

- (a) that person has consented, or
- (b) that person is a health professional who has been involved in the case of the individual and the information relates to or has been provided by the professional in that capacity.

(3) Where it appears to a medical practitioner that sub-paragraph (1) or (2) is applicable to any part (but not the whole) of a medical report —

- (a) he shall notify the individual of that fact, and
- (b) references in the foregoing provisions of this Schedule to the individual being given access to the report are to his being given access to the remainder of it.

(4) Where it appears to a medical practitioner that sub-paragraph (1) or (2) is applicable to the whole of a medical report —

- (a) he shall notify the individual of that fact, but
- (b) he shall not supply the report unless he is notified by the individual that the individual consents to its being supplied;

and accordingly, if he is so notified, the restrictions imposed by paragraph 4(2) and (3) on the supply of the report do not have effect in relation to it.

Application to the Court

8. (1) If the High Court is satisfied on the application of an individual that any person, in connection with a medical report relating to that individual, has failed or is likely to fail to comply with any requirement of this Schedule, the Court may order that person to comply with that requirement.

(2) Where a medical practitioner forms an opinion for the purposes of paragraph 7(1)(a), the powers of the court under sub-paragraph (1) include power to review that opinion, and to make any order incidental to such a review.

Transitional provision

9. Nothing in this Schedule applies to a medical report prepared before the commencement of this Schedule.

ENDNOTES

Table of Legislation History

Legislation	Year and No	Commencement

Table of Renumbered Provisions

Original	Current

Table of Endnote References

¹ Subs (1) amended by Data Protection Act 2002 Sch 13.

² Para (b) amended by National Health Service (Amendment) Act 1995 Sch and by National Health Service Act 2001 Sch 4.

³ Subs (1) amended by Data Protection Act 2002 Sch 13.

⁴ Para (a) amended by Data Protection Act 2002 Sch 12.

⁵ Para (a) amended by Data Protection Act 2002 Sch 13.

⁶ Subss (1) and (2) repealed by Data Protection Act 2002 Sch 13.

⁷ Subs (3) amended by Data Protection Act 2002 Sch 12.

⁸ Subpara (i) amended by Data Protection Act 2002 Sch 13.

⁹ Subs (3) amended by Data Protection Act 2002 Sch 12.

¹⁰ Subs (1) amended by National Health Service (Amendment) Act 1995 Sch.

¹¹ Para (a) amended by National Health Service (Amendment) Act 1995 Sch.

¹² Para (b) amended by National Health Service (Amendment) Act 1995 Sch.

¹³ Para (c) amended by National Health Service (Amendment) Act 1995 Sch.

¹⁴ Definition of “child” repealed by Data Protection Act 2002 Sch 13.

¹⁵ Definition of “the Department” amended by SD155/10 Sch 4 and by SD2014/08.

¹⁶ ADO (whole Act) 1/7/1994 (SD188/94).

¹⁷ Definition of “insurance purposes” amended by Insurance Act 2008 Sch 8.