



## THE SCOTTISH OFFICE

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Our Ref: AC/S/22

7 October 1991

Dear Sir or Madam

#### ACCESS TO HEALTH RECORDS ACT 1990

1. This circular sets out the main provisions of the Access to Health Records Act 1990 and the steps which health boards, NHS Trusts and health professionals within or contracted to the NHS, should take to ensure compliance with the Act when it comes into operation on 1 November 1991. The booklet enclosed with this circular gives guidance on the procedures to be followed in allowing access to the records and in dealing with complaints. Other bodies providing health care and health professionals outwith the NHS may find the guidance helpful in making their own arrangements.

#### Background

2. At present patients have a statutory right of access only to their computerised health records. This right is established by the Data Protection Act 1984. The Access to Health Records Act 1990 will now give patients a statutory right of access, with certain safeguards, to their **manual health records made after 1 November 1991**. Neither of these Acts affects the duty of health boards, NHS Trusts, health professionals and all those employed in or contracted to the NHS to ensure the confidentiality of patients' personal health records; the Chief Administrative Medical Officer or the nominated deputy will continue to have a responsibility for confidential issues, security and access to personal health information held by health boards. Nor are they intended to inhibit health professionals from giving informal access to patients who ask to see their records.

3. This circular and the guidance booklet attached are concerned with the formal process under the Act. However, health boards and health professionals already have discretion to give patients access to their health records informally. The Management Executive wishes to encourage voluntary informal access. Informal access will be in accordance with the principles and spirit of the Act and will have benefits for both patients and health professionals in that it will help to foster good relations between them and avoid the need for formal and time consuming administrative processes. Health boards, if they have not already done so, will now wish to consider in discussion with local health professions the promotion of voluntary informal access at the point of service as a part of the normal treatment and care of patients in the NHS.

### Application for Access

4. To exercise this new right patients are required to make a written application to the health professional or body holding the record requesting access to their manual health records. A patient can authorise a representative to make a written application for access. Parents can request access to their child's health record but in granting access a health professional or any other person or body holding the record will have to give consideration to the rights of the child to confidentiality. Where the affairs of a patient are being managed by another person appointed by a Court it may be necessary for that person to have access. Similarly, where the patient has died, a relative or any person with a claim arising from the patient's death may be given access to the records subject to certain conditions.

### Contracts

5. The Act nullifies any term or condition of a contract requiring an individual to give anyone else access to their health records.

### Providing Access

6. The time limit for allowing access to a health record all or part of which has been made within the 40 day period prior to the date of the application is 21 days. In all other cases the time limit is 40 days.

7. No charge can be made for giving access to a record, or part of a record, which was made within the period commencing 40 days prior to the date of the application. Where access is given to a record which was made prior to the period of 40 days from the date of the application, the health professional or holder may charge a fee not exceeding the maximum prescribed under the Data Protection Act 1984 (currently £10). The charge within that maximum is at the health professional's or holder's discretion. A separate charge may be made where a copy of a record or an extract is supplied to the applicant but the charge must not exceed the cost of copying and (where applicable) the cost of posting the copy to him.

8. There are certain exemptions to access being granted. Access can be withheld to the whole or part of a record where disclosure of the information might cause serious physical or mental harm to the individual or to any other person, or where there would be disclosure of information about an identifiable third party without the consent of that person. Access may also be withheld where a parent has applied for access to a child's health record but where access is not considered to be in the child's best interests. A health board or NHS Trust must take advice from the responsible health professional before deciding whether to refuse or restrict access.

### Inaccuracies

9. If a patient considers that the information contained in his or her health record is inaccurate they can ask for the record to be corrected. If there is a difference over the accuracy or completeness of what is contained in the record and the difference cannot be resolved the record should be noted accordingly. The patient should be given a copy of the correction or note free of charge.

## Complaints

10. If a patient or other applicant considers that the health professional or other holder of the health record has failed to give proper access or to comply with any other provision of the Act, the patient or applicant should make a complaint to the health professional or holder in the first instance. In the case of complaints to a health board or NHS Trust the complaint should be dealt with in accordance with arrangements made under the Direction made by the Secretary of State under the Hospital Complaints Procedure Act 1985. In all other cases the complaint should be dealt with informally but it will have to be apparent to the patient or any other applicant that the complaint is being investigated fairly and within a reasonable time or any time which may be set by the Secretary of State. However, patients and other applicants have a right of access to the Courts but before doing so the applicant is required to pursue any arrangements that may be established by regulation to deal with complaints about non-compliance. In the event of the case proceeding to court, the court may inspect the health records before deciding if the applicant should have access. The Secretary of State will consider whether such regulations are necessary.

## Next Steps

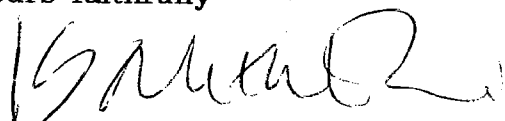
11. Health professionals will now require to give consideration to compiling records on the assumption that new records made after the Act comes into force will be open to access by the individual concerned. This should not, however, detract from the need to record the information necessary for the provision of health care and in the patient's best interests nor should it compromise the need to continue to ensure the confidentiality of patients personal health information.

12. Health boards, NHS Trusts, general practitioners and other health professionals should make arrangements to ensure procedures are in place to deal efficiently and timeously with applications and complaints and that, as far as possible, these have the confidence of patients. Health boards should make use of the procedures under the Hospital Complaints Procedure Act 1985 where this is appropriate. Where a procedure is required to be adapted to deal with complaints under the Act, action should be taken to ensure that the arrangements will be able to run smoothly when the Act comes into force.

13. References to the formal access provisions under the Act and to any informal access arrangements should be incorporated in advice notes and booklets for patients and given wide distribution.

14. The booklet attached to the circular gives guidance on the arrangements for allowing access to manual records and should be drawn to the attention of all health professionals as soon as possible. Any enquiries about the circular should be addressed to Walter Hunter, Room 104 at the above address (Tel 031-244 2399).

Yours faithfully



ISABELLE LOW  
Director of Health Care

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**ACCESS TO HEALTH RECORDS ACT 1990**

**A GUIDE FOR THE NHS**

**The Scottish Office  
National Health Service in Scotland  
Management Executive**

# A GUIDE TO ACCESS TO HEALTH RECORDS ACT 1990

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## CHAPTER 1: BACKGROUND TO THE ACT

1. The Access to Health Records Act 1990 received its Royal Assent on 13 July 1990 and comes into operation on 1 November 1991.
2. The Act gives individuals the right of access, subject to certain specific exemptions, to manual health records containing information about themselves. This right of access extends only to records made on or after 1 November 1991, except in certain circumstances. Health records kept on computer are already accessible to the patient by virtue of section 21 of the Data Protection Act 1984 as modified by the Subject Access Modification Order 1987.
3. The effect of the Act is similar to that of the Data Protection Act and extends the established principles and procedures of patient access to cover all health records. Access can be denied only in certain specified circumstances and then only to the sensitive parts of the record. The Act does not introduce major changes of policy for NHS bodies or for health professionals. The Code of Practice on the Confidentiality of Personal Information is still extant; and the CAMO's role as the source of advice on all aspects of disclosure of hospital records is not affected and remains unchanged.

## CHAPTER 2: OUTLINE OF THE ACT

The provisions of the Act are outlined in the following paragraphs. They are not intended to be a full statement of the law, precise details of which can be found in the Access to Health Records Act 1990.

**Section 1** defines the scope of the Act. It applies to records relating to the physical or mental health of an identifiable individual which have been made by a health professional in connection with the care and treatment of that person. It excludes records to which there is access under the provisions of the Data Protection Act 1984 (ie computerised records). It defines the 'holder' of the record to whom applications for access can be made.

**Section 2** defines "health professional" for the purposes of the Act. (A fuller definition is contained in Chapter 3, paragraph 5).

**Section 3** defines those who can apply for access. In addition to the patient, these include a person authorised in writing by the patient; parents and guardians and those appointed by a court to manage the patient's affairs; personal representatives of a deceased patient; and any person with a claim arising from the patient's death. It also sets out the period within which access is to be given and the circumstances in which a fee may be charged.

**Section 4** ensures that information will not be disclosed to an applicant who is not the patient against the patient's wishes or interests.

**Section 5** sets out the circumstances in which the right of access may be restricted. These include circumstances in which the information might cause serious physical or mental harm to any person or disclose information about an identifiable third party without his consent. This section also provides that, even in the absence of written confirmation of his wishes, a patient's information will not be disclosed if he has provided it in the expectation that it would remain confidential.

**Section 6** allows anyone who has been allowed to see a record to ask for the correction of inaccuracies and allows the holder of the record to either correct the record, or if he does not agree that the record is inaccurate, to note on the record the subject of the disagreement, and to provide the applicant with a copy of the record free of charge.

**Section 7** imposes a duty on health service bodies to take advice from the appropriate health professional before forming an opinion on any matter pertaining to the Act, for example, withholding information.

**Section 8** gives an applicant a right of action in the Courts if the holder has not complied with the requirements of the Act. But the applicant must first pursue any arrangements or take such steps to deal with complaints of non-compliance referred to in regulations. If a case proceeds to court, the court may inspect the health records before deciding whether the application should have access.

**Section 9** makes ineffective any terms or conditions of a contract requiring an individual to provide any other person with a copy of his health record to which he has been given access under this Act.

**Section 10** specifies the procedures for making orders or regulations under the Act.

**Section 11** defines certain terms used in the Act. It should be noted that although applications under the Act must be in writing, there is no stipulation that this should be by the hand of the applicant.

**Section 12** specifies the commencement date for the Act of 1 November 1991. The Act has only limited application to records made before that date.

**Note:** There is nothing in the Act which prohibits or precludes any voluntary arrangements whereby health professionals exercise their existing discretion to allow their patients to see what has been entered in their health records.

## CHAPTER 3: DEFINITIONS

### What is a health record?

1. The Act defines a "health record" in section 1(1) as meaning information prepared by or on behalf of a health professional relating to the physical or mental health of an individual who is receiving care or treatment. In the Act "care" includes examination, investigation, diagnosis and treatment. These are the only relevant definitions. If the record is not made in connection with the care of an individual, it does not fall within this definition. The definition applies only to records of individuals who can be identified from the information. If information has been detached from the identity of the person to whom it relates, for example, in the context of research, that information will not be a record to which the Act applies.

### What records are subject to the Right of Access?

2. The Act is not confined to health records held for the purposes of the National Health Service ("the NHS") but applies equally to the private health sector and to health professionals' private practice records. It also applies, for example, to the records of employers who hold information relating to the physical or mental health of their employees if the record has been made in connection with the care of the employee; and also to medical audit records if the patient is identifiable.

3. NHS patients registered with general practitioners normally have a continuous record which follows them through life. More than one doctor may be involved in compiling the record. Information recorded by health professionals in the course of treatment in hospitals may not have the same continuity approach given that different records may be held for different episodes of treatment in different departments or hospitals. Patients exercising their rights of access are entitled to access to the whole record, subject to the constraints in Chapter 4 and not solely the episode of treatment quoted by the applicant in order to identify the relevant record. Where the patient wishes to exercise Right of Access under the Act to different records, different applications may be required.

### What records are not subject to the Right of Access

4. The Act will not apply to a record made before 1 November 1991 except where access is necessary to make intelligible any part of a record made after that date; or a record about the physical or mental health of an individual which has been made in connection with the investigation of a criminal offence, fitness for employment, compensation or litigation. Medical reports made in connection with insurance or by employers with a view to assessing the health of prospective employees are covered by the Access to Medical Reports Act 1988. There is no overlap between the two Acts.

### Who has a duty under the Act to give Access?

5. Obligations under the Act are, in general, placed on the holder of the record and section 1(2) defines the "holder". To ensure that decisions about access are made by appropriately qualified health professionals in the NHS, the Act provides for access to be given by the health service body (defined in section 11) after consultation with the

appropriate health professional (see section 7). The definition of "health professional" in section 2 includes registered medical practitioners, registered dentists, registered pharmacists, registered opticians, registered nurses, midwives and health visitors, registered chiropodists, dieticians, occupational therapists, orthoptists, physiotherapists, clinical psychologists, child psychotherapists, speech therapists and art or music therapists employed by a health service body. Scientists employed by a health service body as heads of department also come within the definition of health professional.

6. The duty to give a patient access to his health record is not imposed on each of the health professionals in the NHS who adds to that record. For example in a hospital the patient's record will be compiled by different health professionals all adding different information. To ensure that decisions about access are made by appropriately qualified professionals, the Act provides for access to be given by the health service body after consultation with the appropriate health professional, normally the medical or dental practitioner responsible for the clinical care of the patient during the period to which the application refers.

7. In relation to records made by GPs (including General Dental Practitioners) or health professionals or other staff on behalf of the GP, employed by them, the duty is placed on the GP whose list contains the patient's name. Where the patient is not currently on a GP's list, the health board in whose area the patient's most recent GP practised is responsible. Where the record was made by a health professional employed by or contracted to provide health services for a health board or NHS trust, it is that Board or NHS trust which is required to meet the statutory obligation. In any other case, the duty lies on the health professional by whom or on whose behalf the record is held. This latter case will cover the records of most people who receive private medical services.

#### **Who has the right of access?**

8. The right of access is principally for the patient, and this is provided for in section 3(1) of the Act. The patient can also authorise another person in writing to make an application. There are other circumstances in which someone else has the right of access to a health record and these include -

8.1 where the patient is a child, parents may be given access but there will be a need to consider the rights of the child to confidentiality;

8.2 where a patient is incapable of managing his own affairs and it may be necessary for the person appointed by the court to manage that person's affairs to have access; and

8.3 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 may have a right of access to the relevant part of the deceased's health record.

Subsection (3) of section 5 prevents access to a health record by a person other than the patient where the holder is of the opinion that the patient gave the information or underwent the relevant examination or

investigation in the expectation that the information would not be disclosed to the applicant.

Note: Where a patient is unable to manage his own affairs the Act allows application to be made only by a person appointed by the Court. Where an adult with a learning disability is being cared for by a parent or relative who has not been appointed by the Court, the carer will not be able to exercise any Right of Access under the Act. Health professionals will need to consider whether, and the extent to which, informal voluntary access should be given.

## **CHAPTER 4: PROVIDING ACCESS**

### **Applications for access**

1. It is anticipated that in most cases patients will orally request access to their records in the course of treatment by a GP or in a hospital, and that the health professional responsible for that treatment will allow the patient to inspect the records at that time and possibly discuss them. Such a request will not constitute an application under the Act.

2. In the absence of voluntary disclosure arrangements the patient may request right of access under the Act. An application under the Act is required to be made in writing (see section 11) but the Act does not require that this be by the direct hand of the applicant. Staff should be prepared to assist patients with their applications. NHS bodies may wish to use a standard form for this purpose. A model form is enclosed at Appendix 1. NHS and other bodies may wish to designate an officer to receive applications.

### **Timetable for Access**

3. Access under the Act is to be given within "the requisite period" which is defined in section 3(5). Where the record has been added to within the previous 40 days, the period for giving access is 21 days from the date of the application. In other cases, the period is 40 days. Where the holder of the record asks for any further information on the application he must do so within 14 days of the application and "the requisite period" runs from the date on which the further information is provided.

### **Inspecting and copying the record**

4. Although applicants may be asked for some details to help identify the relevant record they will be entitled to see as much information as is recorded subject to the modifications set out in paragraphs 5 to 11 below.

5. Access under the Act, in accordance with section 3(2), can be met in one of two ways. Either the applicant is allowed to inspect the record or the relevant part of it, or to inspect an extract setting out the part of the record which the applicant is entitled to see. In either case the applicant may be supplied with a copy of the record or extract and an explanation of any terms which are not intelligible. The health professional should give a simple and clear explanation of the meaning of the record whether or not clarification has been requested.

### **Corrections**

6. Where an applicant considers that on inspection of the record the information is inaccurate or incomplete he or she can apply to have the record corrected by the health professional. The health professional must give consideration to the request and if satisfied correct the inaccurate information. If agreement on the alleged inaccuracy is not reached the part of the record in dispute should be noted. The applicant must be provided with a copy of the correction and note without charge.

## **Fees and Charges**

7. Where the record or any part of it was made within the period beginning 40 days prior to the application no fee is required. A fee not exceeding that set for Data Protection Access (currently £10) may be charged when the record has not been added to in the 40 days prior to the application being made. Where the applicant is given a copy of the record or extract the holder may make a charge not exceeding the cost of making the copy and the cost of posting it to him.

8. A patient receiving continuing care whose records have not been updated in the last 40 days can exercise his rights following the next booked appointment or by seeking a new appointment to ensure that his records are added to in a way which will allow access without the payment of a fee. Holders of records should determine their policy on fees in respect of patients receiving continuing care who are between appointments.

### **When may access be modified or denied?**

9. Section 5(1) sets out three cases where access is not to be given to any part of a health record. These are:

9.1 where in the opinion of the holder of the record giving access would disclose information likely to cause serious harm to the physical or mental health of the patient or of any other individual;

9.2 where in the opinion of the holder of the record giving access would disclose information relating to or provided by an individual other than the patient who could be identified from that information;

9.3 where the part of the health record was made before the commencement of the Act on 1 November 1991.

10. There are no exceptions to the first rule but there are exceptions to the second and third rules. The second rule does not apply and access can be given where the individual who would be identified has consented to the application or where the individual who could be identified is a health professional who is or has been involved in the care of the patient. The third rule does not apply if in the opinion of the holder of the record access needs to be given to part of the record made before 1 November 1991 to enable the applicant to understand that part of the record to which the right of access applies. The applicant will be entitled to inspect, or be supplied with a copy of, an extract rather than the whole record where section 5 applies.

11. Section 3 gives the right of access to the patient or a person authorised in writing by the patient. Section 4(1) allows the holder of the record to deny an applicant's request for access when the holder has formed the view that the patient authorising the access has not understood the meaning of the authorisation.

12. Section 4(2) covers patients who are children. The Act defines a child as a person under the age of 16 years. The recently enacted Age of Legal Capacity (Scotland) Act 1991 also makes provision for any reference to 'pupil' (other than in the context of education) in any other Act to be taken as referring to a person under the age of 16 years. This allows a child who, in the view of the responsible health

professional, is capable of understanding what the application is about to prevent a person having parental responsibility from having access to the record. (Under the Age of Legal Capacity (Scotland) Act a person under the age of 16 years can consent on his own behalf to any surgical, medical or dental procedure or treatment if in the opinion of the health professional that person is capable of understanding the nature of the treatment). Where the patient is under 16 and is not considered by the health professional to be capable of understanding the nature of the application, the holder of the record is entitled to deny access if it were not felt to be in the patient's best interests.

13. Section 4(3) deals with the case where the patient has died and enables such a patient, before death, to request that a note be included in the record that he did not wish access to be given.

**Note:** The Secretary of State has a power in section 5(5) to make regulations specifying circumstances in which access is not to be given to any part of the health record which satisfies conditions prescribed in those regulations. No exercise has yet been made of this power.

## CHAPTER 5: COMPLAINTS

1. Section 8 gives an applicant a right of action in the Court of Session or Sheriff Court if the applicant considers that the holder of the record has not complied with any requirement of the Act. Subsection (2) of section 8 gives the Secretary of State power to prescribe by regulations certain steps which the applicant must take to secure compliance with the Act before the Court may entertain an application and the regulations may require a holder of health records to make arrangements for dealing with complaints. Subsection (4) of section 8 gives the Court a power to inspect the record or part of it itself for the purpose of determining whether an applicant is entitled to be given access but this would not mean that the applicant or his representatives would be entitled to see that part of the record prior to determination.

**Note:** At the time of preparation of this document no regulations under section 8 have been made. NHS bodies will be notified if such regulations are made. In other cases consideration is being given to requiring a complaint to be made in the first instance to the record holder to whom the application was made. In the absence of regulations an application to secure compliance may be made direct to the Courts.

## **CHAPTER 6: PROCEDURES FOR ACCESS**

### **NHS Hospitals and Trusts**

1. The arrangements for access to health records can be most simple applied when the records have been prepared in anticipation of full access by patients subject to the health professional's discretion with regard to the non-disclosure of harmful or third party information. Allowing patients to have information in the course of their treatment, at the discretion of the health professional principally responsible for their clinical care, will avoid the cost of formal procedures. In circumstances where voluntary arrangements do not exist, or access has been refused, patients may wish to exercise their rights by making an application under the Act. All such applications should be processed formally and in compliance with the statutory requirements.

2. NHS hospitals and Trusts may wish to refer to the guidelines for access to manual personal health information at Appendix 2.

### **General Practice Records**

3. The simplest arrangement for providing access to General Practice records is as part of the consultation process. Some General Practitioners already provide access on a voluntary basis and there is nothing in the Act to prohibit arrangements of this nature.

4. In circumstances where voluntary arrangements are not in operation patients may seek to exercise their rights under the Act to see their records. Applications will normally be to the patient's current General Practitioner or, if the patient has no current General Practitioner, application may be made to the appropriate health board. General Practitioners may wish to adapt the model form at Appendix 1 for local use.

5. The formal procedures for compliance with the Act in respect of General Practice records are simpler than for applications in respect of hospital records. The General Practitioner is identified by the Act as the holder of the record and is therefore spared the requirement to take advice from an appropriate health professional. Where there is no current General Practitioner, applications for access should be directed to the health board who will be obliged to seek the advice of the patient's most recent general practitioner or, where that practitioner is not available, a registered medical practitioner who has the necessary qualifications to advise the board. As a matter of good professional practice, general practitioners will wish to take account of views of other health professional and other staff employed by or attached to their practices who may have contributed to the record, including any hospital based staff where this is appropriate.

6. General Practitioners may wish to refer to Appendix 2 in respect of formulating their own local procedures for handling applications for access to health records.

## CHAPTER 7: OTHER LEGISLATION

### 1. Other legislation affecting access to records include

- The Data Protection Act 1984, section 21, allows patients access to health records kept on computer, although certain information is exempt by virtue of the Data Protection Act (Subject Access Modification) Order 1987.
- The Access to Personal Files Act 1987 gives individuals a right of access to records not held on computer (so called "manual records") held by local authorities and local social services authorities for the purposes, respectively, of their housing and social services functions.
- The Access to Medical Reports Act 1988 provides that an employer or insurance company cannot seek a medical report on an individual for employment or insurance purposes from the doctor responsible for that individual's care and treatment, without the individual's knowledge and consent. The individual has the right to see the report before it is passed to the employer/insurance company by the doctor commissioned to prepare the report. The individual also has the rights to request that corrections be made, and to refuse permission for the report to be passed on to the employer/insurance company.

## CHAPTER 8: FURTHER HELP AND ADVICE

1. This guide has been prepared to assist health boards and others in the compliance of the provisions of the Access to Health Records Act. It is assumed that health service bodies will wish to adapt and reinforce the guidance as appropriate for local needs.
2. Health professionals may wish to raise with their professional bodies any issues of ethical or professional concern.

APPLICATION FOR ACCESS TO HEALTH RECORDS  
(ACCESS TO HEALTH RECORDS ACT 1990)

1. Personal Details

Patient Surname .....

Forename(s) .....

Address .....

.....

.....

Date of birth ...../...../.....

NHS No if known .....

or

Community Health Index No if known .....

or

Hospital reference No if known .....

or

Any Other Medical Reference No .....

2. Details of the record to be accessed

Hospital/General Practice/Clinic .....

Record in respect of treatment for .....  
(state condition/illness)

during the period from .....to.....  
(approximate date)

3. Details of applicant (if different from above)

Surname .....

Forename(s) .....

Address .....

.....

.....

4. Declaration

I declare that the information given by me is correct to the best of my knowledge and that I am entitled to apply for access to the health record referred above under the terms of the Access to Health Records Act 1990.

- \* I am the patient.
- \* I have been asked to act by the patient and attach the patient's written authorisation.
- \* I am the parent/guardian and the patient is under age 16 and [is incapable of understanding the request] [has consented to my making this request].
- \* I am the deceased patients personal representative and attach confirmation of my appointment by a Court to manage the patient's affairs.
- \* I have a claim arising from the patient's death on the grounds that .....

Signed ..... Date .....

\* delete as appropriate

5. Certification

I certify that I am (Name) .....  
of (Address) .....

and that I have known the applicant named above for        years as an employee/client/patient

and have witnessed the applicant sign this form.

Signed ..... Date .....

6. Official Use Only

Health Professional

Advising (Name) .....

Access provided on (date) .... / .... / ....

Fee (£10) received/not appropriate

Signature .....

Date .....

Further action:

	YES	NO
Corrections requested	<input type="checkbox"/>	<input type="checkbox"/>
Applicants notified outcome:	<input type="checkbox"/>	<input type="checkbox"/>
Copies provided	<input type="checkbox"/>	<input type="checkbox"/>
Copying charge (£.....)	<input type="checkbox"/>	<input type="checkbox"/>
Fee to Access received (£.....)	<input type="checkbox"/>	<input type="checkbox"/>

Comments

Signature .....

Date .....

tick appropriate box.

**GUIDELINES FOR ACCESS TO HOSPITAL RECORDS IN ACCORDANCE  
WITH THE ACCESS TO HEALTH RECORDS ACT 1990**

**Administration**

1. Each access application must be examined to confirm its validity and that the prescribed fee if required (see para 6) has been paid. The statutory time limit for providing access commences from the date when the application has been accepted as valid and the fee if appropriate has been received. Receipt of a valid application should be logged.
2. The application may be made by a patient, by a person authorised by the patient, by the parent or guardian of the patient, by a person, by a person authorised to act on behalf of the patient, a deceased patient's personal representative or a person who might have a claim arising from the patient's death. Confirmation that the applicant is authorised or has a right of access must be made.
3. Where the applicant is not the patient, the applicant should have access to only the information which would otherwise have been made available to the patient; or which is in the best interests of the patient. Where the patient has died, disclosure will be subject to any recorded wishes of the deceased patient.
4. If the application does not contain sufficient information to identify the applicant and/or the person to whom the records relate, the holder must be asked for further details within 14 days.
5. Where a patient's treatment has been completed and their record has not been added to in the 40 days preceding the application, the period within which a response has to be made is 40 days. For a patient whose treatment is continuing or whose record has been added to in the last 40 days a response must be given within 21 days.
6. The Act requires that access be given without a fee being required (but a charge maybe made to cover the cost of any photocopying and where appropriate the cost of posting it). In circumstances where the patient's treatment has been completed and the records were updated more than 40 days before, the Act allows that a fee may be charged which is not to exceed the sum prescribed under the Data Protection Act 1984 (currently £10) in addition to any photocopying or postage charges where applicable.

**Consultation with Health Professionals**

7. Where the holder of the records is a health service body (defined in section 11 as a health board within the meaning of the National Health Service (Scotland) Act 1978 or a National Health Service Trust), that body must take advice from the appropriate health professional about any matter on which they are to form an opinion under the Act.
8. The holder should obtain the record so that the appropriate health professional can be identified and the papers referred for his advice.
9. The appropriate health professional is normally the medical or dental practitioner (normally the consultant or the most recent GP) who has

clinical responsibility for the particular episode of treatment to the record of which the applicant seeks to have access. This practitioner should seek the views of other health professionals who have had a significant input to the patient's care. If the particular practitioner is not available or has not had clinical responsibility for the patient, the holder should seek the advice of the health professional who seems most appropriate to advise on the application eg another doctor or dentist, a nurse, midwife, health visitor or a clinical psychologist. Where the holder is a health board, guidance should be sought from the CAMO who has overall responsibility for medical records and confidentiality.

10. The appropriate Health Professional should advise on

10.1 Whether access should be allowed or limited to prevent the disclosure of seriously harmful or third party information.

10.2 Whether in connection with an application for access to a child's record the child is capable of understanding the nature and purpose of the application.

10.3 Whether access would be in the best interests or wishes of the patient.

10.4 Whether access to a part of the record preceding 1 November 1991 should be allowed to make intelligible that part of the record to which access will be given under the Act.

10.5 Whether the applicant should be allowed to inspect the record itself or should be shown an extract setting out so much of the record as it not excluded from access. If an extract is to be shown this must be prepared by the health professional.

10.6 Whether it is necessary for the health professional to be present when the record or extract is inspected (in order to provide any explanation or counselling) or if this can be supervised by a lay administrator.

10.7 Whether access should be given by posting the record or extract to the applicant together with any necessary explanation.

**Note:** When an applicant has a claim which may arise from the patient's death only relevant information should be disclosed. The circumstances in which access may be limited or excluded are those set out in 10.1, 10.2 and 10.3. The fact that a record has not been prepared in anticipation that it might be opened to the patient is no justification for denying access under the Act.

#### Arrangements for disclosure

11. In arranging the disclosure of information it may not be easy for the health professional to decide whether letting the patient see the information about himself might result in serious harm to him or another person. The underlying principle of the Act is that people should be able to know what is recorded about them. The limitation is about serious harm and the holder may only withhold so much information as is likely to cause serious harm.

12. The fact that information has been withheld could be as harmful to patients as the information itself. Holders may not wish to volunteer the fact that information has been withheld. If confronted with a direct request as to whether access has been given to the whole of the record a holder is entitled to respond that the requirements under the Act as to access have been fully complied with and may wish to refer to a summary of rights under the Act and provide the applicant with a copy of these. (See Appendix 3). Consideration should be given to whether the applicant should be offered counselling to allay anxieties.

13. Where the health professional advises that an explanation or counselling is required, or where harmful information has been withheld, an appointment should be made for the applicant to inspect the record or extract with the health professional (or his deputy).

14. Where the health professional advises that the access can be supervised without the attendance of a health professional an appointment should be made for supervision by a lay administrator. In these circumstances the lay administrator must not see the applicant's record nor comment or advise on the contents. If the applicant raises enquiries an appointment with a health professional should be offered.

15. Following the conclusion of the inspection the application form should be noted and attached to the record.

### **Corrections**

16. An applicant can apply for inaccuracies in the record to be corrected. The health professional should either make the necessary correction or if he does not agree that the record is inaccurate make a note in the relevant part of the record of the matters alleged to be inaccurate. The applicant must be provided, without charge, with a copy of the correction or the note. Although the Act is not specific in the way in which a correction should be made, care must be taken not to simply obliterate information which may have significance for the future care and treatment of the patient or for litigation purposes. [Time limit in Regulations]

### **Copies**

17. The holder may make a charge to cover the administrative costs incurred in meeting the applicant's request for copies of the records he has seen. This charge should not exceed the cost of copying it, and if appropriate, the cost of posting the copy to the applicant.

### **Complaints**

18. Applicants should be advised that the Act provides a right of action in the Courts if the holder of the record has failed to comply with the Act. It also provides that the applicant must avail himself of any arrangements required under regulations made by the Secretary of State for dealing with complaints of non-compliance before making an application to the Courts.

19. [At the time of preparation no regulations under section 8 have been made. NHS bodies will be notified if such regulations are made. In other cases consideration is being given to requiring a complaint to be made in the first instance to the record holder to whom the application

was made. In the absence of regulations an application to secure compliance may be made direct to the courts.] Complainants should be advised how to contact the designated officer for complaints in the unit concerned and should be given every assistance in framing their complaint].

**Disposal**

20. When all administrative action has been taken the record should be returned to the appropriate location.

## **ACCESS TO HEALTH RECORDS ACT 1990**

### **INFORMATION FOR PATIENTS**

#### **Your Rights Under The Act**

- . You can ask your doctor, dentist or any health professional who has been treating you to see the records that he has made about your health. He may agree to do so and discuss these with you but the Access to Health Records Act gives you a right of access to your health records made on or after 1 November 1991; and which are not stored on a computer. You already have a right of access to records held on computer under the Data Protection Act 1984.

#### **Who Can Apply To See The Records**

- . You can make your own application to see your records or you can authorise someone else to make application and to look at them for you. A parent or guardian, a patient representative, or a person appointed by a Court can also apply. You can apply to see the record of a person who has died if you have a claim arising from that person's death.
- . But a parent can only see a child's record if the child gives consent or is too young, ill or mentally handicapped to understand the application. Even then access can be denied if the health professional considers that disclosure would not be in that child's best interests.

#### **What Records Can You See**

- . You can apply to see records written by hospital doctors, general practitioners, dentists, opticians, pharmacists, nurses, midwives, health visitors, occupational therapists, physiotherapists, clinical psychologists, child psychologists, chiropodists, dieticians, speech therapists, art or music therapists employed by a health board and scientists employed as head of a department of a health board.
- . Applications for access must be made in writing to the person who holds your record and this will normally be either the Health Board or your general practitioner or dentist.

#### **Your Rights**

- . The Act gives a right of access to see and, if you wish, receive a copy of your health records unless the record holder believes that doing so could cause serious harm to your physical or mental health or that of any other person or would identify someone else who does not want information about them held in the record to be disclosed. However, this person who could be identified could not prevent you from having access to that information if he or she were a doctor or other health professional who had been involved in caring for you.
- . You can ask the record holder or health professional to correct inaccurate or incomplete information. If the record holder agrees that the information is inaccurate or incomplete he or she will correct

the record and give you a copy without charge. If the record holder does not agree that the information is inaccurate he or she will make a note of the record of the point you have drawn to their attention.

- . If a record holder decides not to let you see your records because they may cause serious harm to your physical and mental health they do not have to tell you that information has been withheld.
- . If you are refused access to your records or you think that the holder has not complied with the Act you can complain. The Health Board or your local Health Council will be able to help you with your complaint. If you are not satisfied with the result of your complaint then you may appeal to the Courts.

### Confidentiality

- . You have a right to expect that holders of your health records will maintain confidentiality and that they must be satisfied that any person who makes an application to see your records is entitled to have access. This may mean that the holder may have to ask you about your identity, but they may also have to make other enquiries to confirm a right of access.

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