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## STATUTORY INSTRUMENTS

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# 1991 No. 1707 (N.I. 14)

## The Access to Personal Files and Medical Reports (Northern Ireland) Order 1991

- - - - - 24th July 1991

### PART I INTRODUCTORY

#### **Title and commencement**

1.—(1) This Order may be cited as the Access to Personal Files and Medical Reports (Northern Ireland) Order 1991.

(2) This Part shall come into operation on the expiration of 2 months from the day on which this Order is made, Part III shall come into operation on the expiration of 5 months from that day and Part II shall come into operation on such day or days as the chief executive member may by order appoint.

#### **Interpretation**

2. The Interpretation Act (Northern Ireland) 1954 shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

*PART II (Arts. 3#5) rep. with saving by 1998 c. 29*

### PART III ACCESS TO MEDICAL REPORTS

#### **Interpretation of Part III**

6.—(1) In this Part—

“the applicant” means the person referred to in Article 8(1);

“care” includes examination, investigation or diagnosis for the purposes of, or in connection with, any form of medical treatment;

“employment purposes”, in the case of any 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);

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“health professional” has the same meaning as in<sup>F1</sup> the Data Protection Act 1998<sup>F1</sup>;

<sup>F2</sup>“insurance purposes”, in the case of any individual who has entered into, or is seeking to enter into, a contract of insurance with an insurer, means the purposes of that insurer in relation to that individual;

“insurer” means—

- (a) a person who has permission under Part 4 of the Financial Services and Markets Act 2000 to effect or carry out contracts of insurance; or
- (b) an EEA firm of the kind mentioned in paragraph 5(d) of Schedule 3 to that Act, which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12 of that Schedule) to effect or carry out relevant contracts of insurance.]

<sup>F2</sup>“medical practitioner” means a person registered under the Medical Act 1983;

“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.

<sup>F2</sup>(1A) The definitions of “insurance purposes” and “insurer” in paragraph (1) must be read with—

- (a) section 22 of the Financial Services and Markets Act 2000;
- (b) any relevant order under that section; and
- (c) Schedule 2 to that Act.]

<sup>F2</sup>(2) Any reference in this Part to the supply of a medical report for employment or insurance purposes shall be construed—

- (a) as a reference to the supply of such a report for employment or insurance purposes which are purposes of the person who is seeking to be supplied with it; or
- (b) (in the case of a report that has already been supplied) as a reference 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.

<b>F1</b>	1998 c.29
<b>F2</b>	SI 2001/3649

### **Right of access to certain medical reports**

7.—(1) It shall be the right of an individual to have access, in accordance with the provisions of this Part, 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.

(2) Nothing in this Part applies to a medical report prepared before the coming into operation of this Part.

### **Consent to applications for medical reports for employment or insurance purposes**

8.—(1) A person shall not apply to a medical practitioner for a medical report relating to any individual to be supplied to him for employment 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.

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(2) Any notification given under 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 Part , namely—

- (a) the rights arising under Articles 9(1) to (3) and 11(2) with respect to access to the report before or after it is supplied;
- (b) the right to withhold consent under Article 10(1); and
- (c) the right to request the amendment of the report under Article 10(2),

as well as of the effect of Article 12.

### **Access to medical reports before they are supplied**

9.—(1) An individual who gives his consent under Article 8 to the making of an application shall be 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 when 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 paragraph (2).

(2) Where a medical practitioner is notified by the applicant under 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 Article 10 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 or insurance purposes without being notified by the applicant as mentioned in 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 Article 10 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.

(4) References in this Article and Article 10 to giving an individual access to a medical report are references 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 practitioner may charge a reasonable fee to cover the costs of supplying it.

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### **Consent to supplying of medical report and correction of errors**

**10.**—(1) Where an individual has been given access to a report under Article 9 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 shall be entitled, before giving his consent under paragraph (1), to request the medical practitioner to amend any part of the report which the individual considers to be incorrect or misleading; and, if the individual does so, the practitioner—

- (a) if he is to any extent prepared to accede to the individual's 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 is declining to amend, shall attach such a statement to the report.
- (3) Any request made by an individual under paragraph (2) shall be made in writing.

### **Retention of reports**

**11.**—(1) A copy of any medical report which a medical practitioner has supplied for employment 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 or insurance purposes in the previous 6 months.

(3) The reference in paragraph (2) to giving an individual access to a medical report is a reference to—

- (a) making a copy of the report 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 practitioner may charge a reasonable fee to cover the costs of supplying it.

### **Exemptions**

**12.**—(1) A medical practitioner shall not be obliged to give an individual access, in accordance with the provisions of Article 9(4) or 11(3), to any part of a medical report whose disclosure 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 would indicate the intentions of the practitioner in respect of the individual.

(2) A medical practitioner shall not be obliged to give an individual access, in accordance with those provisions, 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 the individual, unless—

- (a) that person has consented; or
- (b) that person is a health professional who has been involved in the care 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 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 preceding Articles of this Part to the individual being given access to the report shall be construed as references to his being given access to the remainder of it;

and other references to the report in Articles 9(4), 10(2) and 11(3) shall similarly be construed as references to the remainder of the report.

(4) Where it appears to a medical practitioner that 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 by the individual, the restrictions imposed by Article 9(2) and (3) on the supply of the report shall not have effect in relation to it.

#### **Application to the county court**

**13.** If a county 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 Part, the court may order that person to comply with that requirement.

#### **Notifications under Part III**

**14.—**(1) Any notification required or authorised to be given under this Part—

(a) shall be given in writing; and

(b) may be given by post.

(2) In its application to paragraph (1)(b), section 24(1) of the Interpretation Act (Northern Ireland) 1954 shall have effect with the omission of the word “registering”.

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*Schedule rep. by 1998 c. 29*

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