Changes to legislation: *The Access to Health Records (Northern Ireland) Order 1993 is up to date with all changes known to be in force on or before 03 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

STATUTORY INSTRUMENTS

1993 No. 1250 (N.I. 4)

The Access to Health Records (Northern Ireland) Order 1993

- - - - - - *12th May 1993*

Introductory

Title and commencement N.I.

1.—(1) This Order may be cited as the Access to Health Records (Northern Ireland) Order 1993.

(2) This Order shall come into operation on such day as the Head of the Department may by order appoint[F1].

F1	fully excercised SR 1994/151

Interpretation N.I.

2.—(1) The Interpretation Act (Northern Ireland) 1954[F2] shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

(2) In this Order—

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

"care" includes examination, investigation, diagnosis and treatment;

Definition rep. with saving by 1998 c. 29

"the Department" means the Department of Health and Social Services;

[[F3]"general medical services contract" means a contract under Article 57 of the Health and Personal Social Services (Northern Ireland) Order 1972;**]**

Definition rep. by 2004 NI 2

[F4]...

"health service body" means—

(a) [F5]...

(b) a special health and **[**[F6]social care**]** agency established under the Health and Personal Social Services (Special Agencies) (Northern Ireland) Order 1990[F7]; or

(c) a **[**[F8]Health and Social Care trust**]** established under Article 10 of the Health and Personal Social Services (Northern Ireland) Order 1991[F9];

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

"make", in relation to such a record, includes compile;

Definition rep. with saving by 1998 c. 29

F2 1954 c. 33 (NI)
F3 2004 NI 2
F4 Words in art. 2(2) omitted (1.4.2022) by virtue of Health and Social Care Act (Northern Ireland) 2022 (c. 3), s. 8(1)(b), **Sch. 1 para. 153(2)(a)**; S.R. 2022/102, art. 2(b)
F5 Words in art. 2(2) omitted (1.4.2022) by virtue of Health and Social Care Act (Northern Ireland) 2022 (c. 3), s. 8(1)(b), **Sch. 1 para. 153(2)(b)**; S.R. 2022/102, art. 2(b)
F6 Words in Order substituted (1.4.2009) by Health and Social Care (Reform) Act (Northern Ireland) 2009 (c. 1), ss. 32, 34(3), **Sch. 6 para. 1(1)(a)** (with Sch. 6 para. 1(2)(3)); S.R. 2009/114, **art. 2**
F7 1990 NI 3
F8 Words in Order substituted (1.4.2009) by Health and Social Care (Reform) Act (Northern Ireland) 2009 (c. 1), ss. 32, 34(3), **Sch. 6 para. 1(1)(c)** (with Sch. 6 para. 1(3)); S.R. 2009/114, **art. 2**
F9 1991 NI 1

Main provisions

"Health record" and related expressions N.I.

3.—(1) In this Order "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;

[F10] . . .

(2) In this Order "holder", in relation to a health record, means—

[[F11](a) in the case of a record made by a health professional performing primary medical services under a general medical services contract made with [[F12]the Department] , the person or body who entered into the contract with [[F13]the Department] (or, in a case where more than one person so entered into the contract, any such person);

(aa) in the case of a record made by a health professional performing such services in accordance with arrangements under Article 15B of the Health and Personal Social Services (Northern Ireland) Order 1972 with [[F12]the Department] , the person or body which made the arrangements with [[F13]the Department] (or, in a case where more than one person so made the arrangements, any such person);]

(b) in the case of a record made by a health professional for purposes connected with the provision of [[F14]health care] by a health service body[[F11] (and not falling within sub-paragraph (aa))], 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 Order "patient", in relation to a health record, means the individual in connection with whose care the record has been made.

F10 with saving 1998 c. 29
F11 2004 NI 2
F12 Words in art. 3(2) substituted (1.4.2022) by Health and Social Care Act (Northern Ireland) 2022 (c. 3), s. 8(1)(b), **Sch. 1 para. 153(3)(a)**; S.R. 2022/102, art. 2(b)

F13 Words in art. 3(2) substituted (1.4.2022) by Health and Social Care Act (Northern Ireland) 2022 (c. 3), s. 8(1)(b), **Sch. 1 para. 153(3)(b)**; S.R. 2022/102, art. 2(b)

F14 Words in Order substituted (1.4.2009) by Health and Social Care (Reform) Act (Northern Ireland) 2009 (c. 1), ss. 32, 34(3), **Sch. 6 para. 1(1)(b)** (with Sch. 6 para. 1(3)); S.R. 2009/114, **art. 2**

Health professionals N.I.

4.—**[**[F15](1) In this Order, "health professional" has the same meaning as in the Data Protection Act 2018 (see section 204 of that Act).**]**

(3) The provisions of this Order shall apply in relation to health professionals in the public service of the Crown (in right both of Her Majesty's Government in Northern Ireland and Her Majesty's Government in the United Kingdom) as they apply in relation to other health professionals.

F15 Art. 4(1) substituted (25.5.2018) by Data Protection Act 2018 (c. 12), s. 212(1), **Sch. 19 para. 231** (with ss. 117, 209, 210); S.I. 2018/625, reg. 2(1)(g)

Right of access to health records N.I.

5.—(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—
Sub#paras.(a)#(d) rep. with saving by 1998 c. 29

(e) 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 Article 6, where an application is made under paragraph (1) 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 Article 7 applies, an extract setting out so much of the record as is not excluded by that Article;

(b) in the case of a part of a record, by allowing the applicant to inspect an extract setting out that part or, where Article 7 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 paragraph (2) 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**[**[F16] such maximum as may be prescribed for the purposes of this Article by regulations **[**[F17]made by the Department**]** ;**]** and

(b) where a copy of a record or extract is supplied to the applicant, a fee not exceeding the cost of making the copy and (where applicable) the cost of posting it to him.

(5) For the purposes of paragraph (2) 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 paragraph (1) does not contain sufficient information to enable the holder of the record to identify the patient or,[F18]. . . , 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,

paragraph (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.

F16 1998 c. 29
F17 Words in art. 5(4)(a) substituted (25.5.2018) by Data Protection Act 2018 (c. 12), s. 212(1), **Sch. 19 para. 232** (with ss. 117, 209, 210, Sch. 20 para. 57); S.I. 2018/625, reg. 2(1)(g)
F18 with saving 1998 c. 29

Cases where right of access may be wholly excluded N.I.

6. *Paras. (1)(2) rep. with saving by 1998 c. 29*

(3) Where an application is made under paragraph (1)(*e*) of Article 5, access shall not be given under paragraph (2) of that Article 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 N.I.

7.—(1) **[**[F19]Access shall not be given under Article 5(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[F19]. . . of any[F19]. . . 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 coming into operation of this Order.

(2) Paragraph (1)(*a*)(ii) 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 paragraph (1)(*b*) 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 Article 5(2).

(3) Where an application is made under paragraph (1)(*c*), (*d*) or (*e*) of Article 5, access shall not be given under paragraph (2) of that Article 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 paragraph (1)(*e*) of Article 5, access shall not be given under paragraph (2) of that Article 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 Department may by regulations provide that, in such circumstances as may be prescribed by the regulations, access shall not be given under Article 5(2) to any part of a health record which satisfies such conditions as may be so prescribed.

F19 1998 c. 29

Correction of inaccurate health records N.I.

8.—(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 Article 5(2) is inaccurate, he may apply to the holder of the record for the necessary correction to be made.

(2) On an application under paragraph (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 Article "inaccurate" means incorrect, misleading or incomplete.

Duty of health service bodies to take advice N.I.

9.—(1) A health service body shall take advice from the appropriate health professional before it decides whether it is satisfied as to any matter for the purposes of this Order, or forms an opinion as to the matter for those purposes.
Para. (2) rep. by 2004 NI 2

(3) In this Article "the appropriate health professional", in relation to a health service body[F20]. . . means—

(a) where, for purposes connected with the provision of **[**[F21]health care**]** 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 sub-paragraph (*a*) 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 sub-paragraph (*a*) nor sub-paragraph (*b*) applies, a health professional who has the necessary experience and qualifications to advise the body on the matter in question.

F20 2004 NI 2
F21 Words in Order substituted (1.4.2009) by Health and Social Care (Reform) Act (Northern Ireland) 2009 (c. 1), ss. 32, 34(3), **Sch. 6 para. 1(1)(b)** (with Sch. 6 para. 1(3)); S.R. 2009/114, **art. 2**

Supplementary

Applications to the court N.I.

10.—(1) Subject to paragraph (2), 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 Order, the court may order the holder to comply with that requirement.

(2) The court shall not entertain an application under paragraph (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.

(3) For the purposes of paragraph (2), 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 Order 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 Article 5(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.

(5) The jurisdiction conferred by this Article shall be exercisable by the High Court or a county court.

Avoidance of certain contractual terms N.I.

11. 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 Article 5(2).

Regulations N.I.

12. Any regulations under this Order shall be subject to negative resolution.

Consequential amendment N.I.

13. In section 33(6) of the Human Fertilisation and Embryology Act[F22] 1990 (general exceptions from subsection (5)) the word "or" at the end of paragraph (*g*) is hereby repealed and after paragraph (*h*) there shall be inserted "or

(i) under Article 5 of the Access to Health Records (Northern Ireland) Order 1993 (right of access to health records).".

F22 1990 c. 37

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View outstanding changes

Changes and effects yet to be applied to :

- Instrument am. (prosp.) by 1998 c. 29 s.74(1)Sch.15 para.17
- defns. of child and parental responsibility rev. in Pt- by 1998 c. 29 s.74(2)Sch.16 Pt.II
- art.3(1) rev. in pt. (prosp.) by 1998 c. 29 s.74(2)Sch.16 Pt.II