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STATUTORY INSTRUMENTS

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**1989 No. 251 (S.27)**

**RIGHTS OF THE SUBJECT**

**The Access to Personal Files (Social Work) (Scotland) Regulations 1989**

*Made* - - - - - *22nd February 1989*

*Coming into force* - - - - - *1st April 1989*

The Secretary of State, in exercise of the powers conferred on him by section 3(1), (2), (3) and (6) of the Access to Personal Files Act 1987<sup>(1)</sup>, having consulted in accordance with section 3(4) of that Act such bodies representing social work authorities as he thought appropriate, hereby makes the following Regulations a draft of which has been laid before and approved by resolution of each House of Parliament:—

**Citation, extent, commencement and interpretation**

1.—(1) These Regulations may be cited as the Access to Personal Files (Social Work) (Scotland) Regulations 1989, shall extend to Scotland only and shall come into force on 1st April 1989.

(2) In these Regulations, unless the context otherwise requires—

“the Act” means the Access to Personal Files Act 1987;

“care” includes examination, investigation and diagnosis;

“dental practitioner” and “medical practitioner” mean, respectively, a person registered under the Dentists Act 1984<sup>(2)</sup> and the Medical Act 1983<sup>(3)</sup>;

“health board” means a board constituted under section 2 of the National Health Service (Scotland) Act 1978<sup>(4)</sup>;

“health professional” means any person listed in the Schedule to these Regulations;

“social work functions” means the functions of a social work authority specified in section 2(2) of the Social Work (Scotland) Act 1968<sup>(5)</sup>;

“social work authority” has the meaning given by paragraph 2(4) of Schedule 2 of the Act.

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(1) 1987 c. 37; section 3(6) contains a definition of “prescribed”.

(2) 1984 c. 24

(3) 1983 c. 54

(4) 1978 c. 29

(5) 1968 c. 49

(3) In these Regulations, unless the context otherwise requires, any reference to a numbered regulation is a reference to the regulation bearing that number in these Regulations and any reference in a regulation to a numbered paragraph is to the paragraph of that regulation bearing that number.

### **Rights of access to personal information**

2.—(1) Subject to regulations 3, 4, 8, 9 and 10, a social work authority shall be obliged—

- (a) to inform any individual whether the accessible personal information<sup>(6)</sup> held by them includes personal information<sup>(7)</sup> of which that individual is the subject, and
- (b) to give that individual access to any personal information of which he is the subject.

(2) A social work authority shall have complied with their obligation under paragraph (1)(b) if they supply the individual with a copy of any personal information of which he is the subject, but if the social work authority give the individual access to that information by a means other than supplying him with a copy of it, they shall in addition be obliged to supply the individual with a copy of such part of that information as he may require.

(3) If—

- (a) a social work authority supply an individual with a copy of any personal information of which he is subject, and
- (b) that information is expressed in terms which are not intelligible without explanation,

the information shall be accompanied by an explanation of those terms.

### **Request for information**

3.—(1) A social work authority shall not be obliged under regulation 2 to inform an individual or to give access to any information, except in response to a request in writing and on payment of such fee (not exceeding £10) as they may require.

(2) A request under both sub-paragraphs of regulation 2(1) shall be treated as a single request and a request to be informed under sub-paragraph (a) of regulation 2(1) shall, in the absence of any indication to the contrary, be treated as extending also to being given access to any personal information under sub-paragraph (b).

### **Further information required**

4. A social work authority shall not be obliged to comply with a request under regulation 3 unless they are supplied with such information as they may reasonably require in order to satisfy themselves as to the identity of the person making the request and to locate the information which he seeks.

### **Another individual involved**

5. If any accessible personal information in respect of which a social work authority have received a request under regulation 3 contains information relating to another individual who can be identified from that information (other than an individual to whom regulation 8(5)(b) or regulation 10(3)(a) applies), the social work authority, within 14 days of receiving the request under regulation 3, or, if later, of receiving the information referred to in regulation 4, shall in writing inform that other individual of the request and that the accessible personal information contains information relating to him, and ask that other individual whether he consents to the information relating to him being disclosed to the person making the request.

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(6) “Accessible personal information” is defined in section 2(3) of the Act.

(7) “Personal information” is defined in section 2(2) of the Act.

### **Time limit for complying with the request for information**

6. A social work authority shall comply with a request under regulation 3 within 40 days of receiving the request or, if later, receiving the information referred to in regulation 4 and, in a case where it is required, the consent asked for in accordance with regulation 5.

### **Information to which access is to be given**

7. The information to which access is to be given pursuant to a request under regulation 3 shall be the information held at the time when the request is received except that it may take into account any amendment or deletion made between that time and the time when access is given being an amendment or deletion that would have been made regardless of the receipt of the request.

### **Exemption from access to personal health information from a health professional**

8.—(1) This regulation applies to information as to the physical or mental health of an individual which—

- (a) originated from, or was supplied to the social work authority by or on behalf of, a health professional, or
- (b) the social work authority believe to have originated from, or to have been supplied to them by or on behalf of, a health professional.

(2) In this regulation “appropriate health professional” means—

- (a) the medical practitioner or dental practitioner who is currently, or was most recently, responsible for the clinical care of the individual who is the subject of the information, in connection with the matters to which the information which is the subject of the request relates; or
- (b) where there is more than one such practitioner, the practitioner who is the most suitable to advise on the matters to which the information which is the subject of the request relates; or
- (c) where there is no practitioner available falling within sub-paragraph (a) or (b) above, a health professional who has the necessary experience and qualifications to advise on the matters to which the information which is the subject of the request relates.

(3) Within 14 days of receiving a request under regulation 3, or, if later, receiving the information referred to in regulation 4 the social work authority shall in writing inform

- (a) the health board concerned, if the information to which this regulation applies originated from or was supplied by, or if the social work authority believe it to have originated from or to have been supplied by, a health professional in the course of his employment (whether under a contract of service or for services) with that health board, and
- (b) in any other case, the person who appears to the social work authority to be the appropriate health professional,

that a request has been made and that the accessible personal information contains information to which this regulation applies.

(4) A social work authority shall save as provided by paragraph (5) be exempted from the obligation imposed by regulation 2(1)(b) insofar as it relates to information to which this regulation applies, if before the end of the 40 day period provided for by regulation 6 the health board referred to in paragraph 3(a) or the appropriate health professional informs the social work authority in writing that the information to which this regulation applies must not be disclosed because its disclosure would be likely to—

- (a) cause serious harm to the physical or mental health of the individual who is the subject of the information or any other person, or

- (b) disclose to the individual who is the subject of the information the identity of another individual (who has not consented to the disclosure of the information) either as a person to whom the information or part of it relates or as the source of the information or enable that identity to be deduced by the individual who is the subject of the information either from the information itself or from a combination of that information and other information which the individual who is the subject of the information has or is likely to have.

(5) If the health board referred to in paragraph 3(a) or the appropriate health professional informs the social work authority in accordance with paragraph (4) that the information to which this regulation applies must not be disclosed, the obligation imposed by regulation 2(1)(b) shall nonetheless apply—

- (a) to so much of the information sought by the request as can be supplied without causing such serious harm, or enabling the identity of another individual to be disclosed or deduced, whether by the omission of names or other particulars or otherwise; and
- (b) if the only individual whose identity is likely to be disclosed or deduced (as mentioned in paragraph 4(b)) is a health professional who has been involved in the care of the individual who is the subject of the information, and the information relates to the health professional or was supplied by him in that capacity.

#### **Exemptions from access to information from reporters to children's panels**

**9.—(1)** This regulation applies to information in the possession of the social work authority originating from or supplied by a Reporter to a Children's Panel in pursuit of his statutory duties, other than information referred to in paragraph (2).

(2) This regulation does not apply to information which the individual who requests access to it is in any event entitled to receive from the Reporter to the Children's Panel in performance of the Reporter's statutory duties.

(3) Within 14 days of receiving a request under regulation 3 or, if later, receiving the information referred to in regulation 4, the social work authority shall in writing inform the appropriate Reporter to the Children's Panel that request has been made and that the accessible personal information contains information to which this regulation applies.

(4) A social work authority shall, save as provided by paragraph (5), be exempted from the obligation imposed by regulation 2(1)(b) if, before the end of the 40 day period provided for by regulation 6, the Reporter informs that authority in writing that the information to which this regulation applies must not be disclosed, because its disclosure would be likely to—

- (a) cause serious harm to the physical or mental health or emotional condition of the individual who is the subject of the information or any other person,
- (b) disclose to the individual, who is the subject of the information, the identity of another individual (who has not consented to the disclosure of the information) either as a person to whom the information or part of it relates or as the source of the information or would enable that identity to be deduced by the individual who is the subject of the information either from the information itself or from a combination of that information and other information which the individual, who is the subject of the information, has or is likely to have, or
- (c) prejudice the prevention or detection of a crime or the apprehension or prosecution of offenders (where the information is held for these purposes).

(5) If the appropriate Reporter informs the social work authority in accordance with paragraph (4) that the information to which this regulation applies must not be disclosed, the obligation imposed by regulation 2(1)(b) shall nonetheless apply to so much of the information sought by the request as can be supplied, whether by the omission of names or other particulars or otherwise, without causing such

serious harm, or enabling the identity of another individual to be disclosed or deduced, or prejudicing the prevention or detection of a crime or the apprehension or the prosecution of offenders.

### **Exemptions from access to other information**

**10.**—(1) As regards accessible personal information to which regulations 8 and 9 do not apply, a social work authority shall be exempted from the obligation imposed by regulation 2(1)(b) if any of the conditions set out in paragraphs (2) to (6) is met.

(2) The condition in this paragraph is that the carrying out of the social work functions of the social work authority would be likely to be prejudiced by reason of the fact that serious harm to the physical or mental health or emotional condition of the individual who is the subject of the information or any other person would be likely to be caused; but the condition in this paragraph shall not apply to so much of the information sought by the request as can be supplied without causing such serious harm, whether by the omission of names or other particulars or otherwise.

(3) The condition in this paragraph is that the identity of another individual (who has not consented to the disclosure of the information) either as a person to whom the information or part of it relates or as the source of the information, would be likely to be disclosed to or deduced by the individual the subject of the information or any other person who is likely to obtain access to it, either from the information itself or from a combination of that information and other information which the individual the subject of the information or such other person has, or is likely to have; but the condition in this paragraph shall not apply—

- (a) if the only individual whose identity would be likely to be disclosed or deduced is or has been employed by the social work authority in connection with their social work functions or has provided to the authority for reward a service similar to a service provided by the social work authority in the exercise of their social work functions and the information relates to him or he supplied the information in his official capacity, or as the case may be, in connection with the provision of that service, or
- (b) to so much of the information sought by the request as can be supplied without enabling the identity of another individual to be disclosed or deduced, (which may be done by the omission of names or other particulars or otherwise).

(4) The condition in this paragraph is that the information is held by the social work authority for the purposes of—

- (a) the prevention or detection of crime, or
- (b) the apprehension or prosecution of offenders

and the application of regulation 2(1)(b) to the information would be likely to prejudice either or both of the matters mentioned in sub-paragraphs (a) and (b) above.

(5) The condition in this paragraph is that the information consists of information the disclosure of which is prohibited or restricted by or which came into the possession of the social work authority by virtue of—

- (i) section 45 of the Adoption (Scotland) Act 1978<sup>(8)</sup>,
- (ii) regulation 24 of the Adoption Agencies (Scotland) Regulations 1984<sup>(9)</sup>,
- (iii) Rule 230 of the Act of Sederunt (Rules of Court) (Consolidation and Amendment) 1965<sup>(10)</sup>,
- (iv) paragraphs 9, 24 and 28 of the Act of Sederunt (Adoption of Children) 1984<sup>(11)</sup>,

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<sup>(8)</sup> 1978 c. 28

<sup>(9)</sup> S.I.1984/988

<sup>(10)</sup> S.I. 1965/321; Rule 230 was amended by S.I. 1984/997

<sup>(11)</sup> S.I. 1984/1013

- (v) section 60(4) of the Education (Scotland) Act 1980<sup>(12)</sup>,
- (vi) proviso (bb) to regulation 7(2) of the Education (Record of Needs) (Scotland) Regulations 1982<sup>(13)</sup>.

(6) The condition in this paragraph is that the information consists of information in respect of which a claim to confidentiality as between client and professional legal adviser could be maintained in legal proceedings.

### **Rectification and erasure of inaccurate information**

**11.**—(1) If an individual who is the subject of accessible personal information regards that information, or part of it, as inaccurate, he may by notice in writing require the social work authority holding the information to rectify or erase the information he regards as inaccurate.

(2) A social work authority shall not be obliged to take any action in response to a notice under paragraph (1) unless the notice—

- (a) supplies sufficient information for the social work authority to locate the information regarded as inaccurate,
- (b) specifies in what respect the individual regards that information as inaccurate, and
- (c) specifies how the individual considers the local social work authority should rectify the information or what part of the information he considers the social work authority should erase.

(3) An individual who serves a notice under paragraph (1) shall be entitled to submit with the notice such written evidence of the inaccuracy of the information referred to in the notice as he considers appropriate.

(4) If, following a notice under paragraph (1), a local social work authority is satisfied that the information specified in the notice is inaccurate, that social work authority shall rectify or erase—

- (a) the inaccurate information, and
- (b) any information held by them containing an expression of opinion which appears to the social work authority to be based on the inaccurate information.

(5) If, following a notice under paragraph (1), the social work authority are not satisfied that the information specified in the notice is inaccurate, the social work authority shall place with the information regarded as inaccurate by the individual who served the notice, a written note that the individual regards that information as inaccurate.

(6) If a social work authority—

- (a) rectify any information under paragraph (4), or
- (b) place a written note with any information under paragraph (5),

the social work authority shall give the individual who is the subject of the information access to the rectified information or the written note, as the case may be, without the payment of any fee.

(7) A social work authority shall have complied with their obligation under paragraph (6) if they supply the individual with a copy of the rectified information or the note as the case may be, but if the social work authority give the individual access to that rectified information or the written note by a means other than supplying him with a copy of it, they shall in addition be obliged to supply the individual with a copy of such of that rectified information or the written note as he may require.

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<sup>(12)</sup> 1980 c. 44; section 60(4) was amended by section 4 of the Education (Scotland) Act 1981 (c. 58)

<sup>(13)</sup> S.I. 1982/1222

## Review of decisions

**12.**—(1) An individual who is the subject of information held by a social work authority and who is aggrieved by any decision of that authority concerning his access to, or rectification or erasure of, that information, may within 28 days of his being notified of the decision require that decision to be reviewed by a committee of three members of that authority appointed for that purpose, not more than one of whom may be a member of the committee established under section 2(1) of the Social Work (Scotland) Act 1968<sup>(14)</sup>.

(2) An individual who under paragraph (1) has required the review of a decision may make representations to the members of the social work authority appointed for the purposes of the review, in writing and, if he so wishes, orally before them.

St Andrew's House,  
Edinburgh  
22nd February 1989

*Michael B Forsyth*  
Parliamentary Under Secretary of State, Scottish  
Office

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

## SCHEDULE

Regulation 1

## HEALTH PROFESSIONALS

Description	Statutory Derivation (where applicable)
Registered medical practitioner	Medical Act 1983 <b>(15)</b> , section 55.
Registered dentist	Dentists Act 1984 <b>(16)</b> , section 53(1) and (3).
Registered optician	Opticians Act 1985 <b>(17)</b> , section 30(1).
Registered pharmaceutical chemist	Pharmacy Act 1954 <b>(18)</b> , section 24(1) and (2).
Registered nurse, midwife or health visitor	Nurses, Midwives and Health visitors Act 1979 <b>(5)</b> , section 10.
Registered chiropodist, dietician, occupational therapist, orthoptist or physiotherapist (subject to the Note below)	Professions Supplementary to Medicine Act 1960 <b>(19)</b> , section 1(2).
Clinical psychologist, child psychotherapist or speech therapist	
Art therapist or music therapist employed by a health board	
Scientist employed by such a board as head of department	
<p><i>Note</i> This category shall be construed as not including any person belonging to a profession specified in the first column which, by virtue of an Order under section 10 of the Professions Supplementary to Medicine Act 1960, is for the time being treated as if it were not mentioned in section 1(2) of that Act and as including any person belonging to a profession not specified therein which is for the time being treated by virtue of such an Order as if it were mentioned therein.</p>	

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations provide for individuals to have access to information relating to themselves held by social work authorities.

Provided that an individual applies in writing and pays the appropriate fee (regulation 3) and supplies sufficient information to establish his identity and enable the social work authority to locate the information (regulation 4), a social work authority is obliged to tell him whether they hold any information on him and to give him access to that information (regulation 2).

(15) 1983 c. 54

(16) 1984 c. 24

(17) 1958 c. 32

(18) 1954 c. 61

(5) 1968 c. 49

(19) 1960 c. 66; section 1(2) was amended by S.I. 1966/990 and 1986/630



**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

If the information in respect of which an application has been received refers to another individual, the social work authority must within the specified time, seek the consent of that other individual to the information being disclosed (regulation 5).

The information supplied must be that held at the time the request is made (regulation 7) and must be supplied within the specified time (regulation 6).

Provision is made for certain information to be exempt from disclosure (regulations 8 , 9 and 10), for inaccurate information to be rectified or erased (regulation 11) and for the review of decisions, by members of the social work authority (regulation 12).