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STATUTORY INSTRUMENTS

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**1991 No. 2295 (S.190)**

**RIGHTS OF THE SUBJECT**

**The Access to Health Records (Steps to Secure Compliance  
and Complaints Procedures) (Scotland) Regulations 1991**

*Made* - - - - *14th October 1991*  
*Laid before Parliament* *28th October 1991*  
*Coming into force* - - *18th November 1991*

The Secretary of State, in exercise of the powers conferred on him by sections 8(2) and (3) and 10(1) of the Access to Health Records Act 1990<sup>(1)</sup> and of all other powers enabling him in that behalf, hereby makes the following Regulations:

**Citation, commencement, extent and interpretation**

1.—(1) These Regulations may be cited as the Access to Health Records (Steps to Secure Compliance and Complaints Procedures) (Scotland) Regulations 1991, shall come into force on 18th November 1991 and shall extend to Scotland only.

(2) In these Regulations—

“the Act” means the Access to Health Records Act 1990;

“the 1978 Act” means the National Health Service (Scotland) Act 1978<sup>(2)</sup>;

“applicant” means a person who has made an application under section 3 or 6 of the Act;

“court” means the Court of Session or the sheriff;

“date of the complaint” means the day after that on which the applicant sends by post or delivers by hand the complaint to the holder of the health record in respect of which the complaint is made.

**Steps to be taken before the court entertains an application**

2. The steps to be taken before the court entertains an application under section 8(1) of the Act are—

(a) that the person concerned has applied to the holder under whichever of section 3 or 6 of the Act applies; and

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(1) 1990 c. 23.  
(2) 1978 c. 29.

- (b) that he has thereafter, in accordance with regulation 5, made a complaint under regulation 3 or 4 that the holder has failed to comply with a requirement of the Act, and has either received the report specified in regulation 6 or has received no response within 3 months from the date of the complaint.

### **Complaints: health service hospitals**

**3.—**(1) This regulation applies where an application has been made under section 3 or 6 of the Act in respect of a health record made by or on behalf of a health professional in connection with health care given to an individual in a health service hospital.

(2) In a case to which this regulation applies an applicant who wishes to complain that any requirement of the Act has not been complied with shall give a written notice of complaint to the person to whom complaints are to be made in accordance with arrangements specified in directions given to Health Boards under section 2(5) of the 1978 Act<sup>(3)</sup> or to NHS trusts under paragraph 6(2) (e) of Schedule 7A to the 1978 Act<sup>(4)</sup> for the purposes of the Hospital Complaints Procedure Act 1985<sup>(5)</sup>.

(3) In this regulation the expression “health service hospital” means a hospital for the management of which a Health Board is responsible or which is vested in a National Health Service trust established under section 12A of the 1978 Act<sup>(6)</sup>.

### **Complaints: other than health service hospitals**

**4.** In a case other than one to which regulation 3 applies, an applicant who wishes to complain that any requirement of the Act has not been complied with shall give a written notice of complaint to the holder of the health record to whom the application was

### **Complaints: contents and time limits**

**5.—**(1) Any complaint made under regulation 3 or 4 shall include the following information:—

- (a) the name and address of the applicant;
- (b) the name and address of the person to whom the health record relates (if different from the applicant) and the authority of the applicant to make application for
- (c) the date on which the application for access was made to the holder;
- (d) the grounds on which the complaint is made, specifying the requirements of the Act with which the applicant alleges that the holder has failed to comply.

(2) In a case where the complaint made is that the holder has failed—

- (a) to make a correction to information contained in a health record; or
- (b) to note on the record the matters in respect of which the applicant considered the record to be inaccurate; or
- (c) to supply the applicant with a copy of the correction or note under section 6(2) of the Act within a period of one month of the date of the application to have the record corrected,

the time limit within which a complaint shall be made to the holder shall be 3 months from the date of the application to have the record corrected.

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<sup>(3)</sup> Section 2(5) was amended by the National Health Service and Community Care Act 1990 (1990 c. 19) (“the 1990 Act”) Schedule 9, paragraph 19(1).

<sup>(4)</sup> Schedule 7A was inserted by the 1990 Act, section 32 and Schedule 6.

<sup>(5)</sup> 1985 c. 42.

<sup>(6)</sup> 1978 c. 29; section 12A was inserted by the 1990 Act, section 31.

(3) In all other cases the complaint shall be made to the holder within 3 months of the making of the application for access.

**Action following receipt of complaint**

6. Not later than 3 months from the date of the complaint the holder of the health record shall report to the applicant in the form prescribed in the Schedule to these Regulations—

- (a) the response to the complaint; and
- (b) either—
  - (i) any action taken as a result of the complaint to comply with a requirement of the Act; or
  - (ii) where no such action has been taken, the reasons for taking no action.

St Andrew's House, Edinburgh  
14th October 1991

*Michael B. Forsyth*  
Minister of State, Scottish Office

## SCHEDULE

Regulation 6

Report under regulation 6 of the Access to Health Records (Steps to Secure Compliance and Complaints Procedures) (Scotland) Regulations 1991

Name and address of applicant

Name and address of holder of health record

Name and address of health professional who advised  
the holder under section 7 of the Access to Health  
Records Act 1990 (if applicable)

Date of application for access to or amendment of  
health record

Date of complaint regarding non-compliance with the  
Access to Health Records Act 1990

Here state the response to the complaint and either any action taken as a result of the complaint to comply with a requirement of the Act or, where no such action has been taken, the reasons for taking no action.

Date

Signature of person who prepared report

*Note:* If you consider that the holder of your health record has not complied with the terms of the Access to Health Records Act 1990 you may apply to the court within one year from the date of this report to order compliance with the provisions of the Act.

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## EXPLANATORY NOTE

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

These Regulations, which extend to Scotland only, prescribe the steps which a person who has made application to a record holder for access to his health records, or those of another person on whose behalf he is acting, must take before that person can apply to the court under section 8(1) of the Access to Health Records Act 1990 (c. 23) making a complaint that the holder of the record has failed to comply with any requirement of the Act.

These Regulations also prescribe the action to be taken by holders of health records following receipt of a complaint and the information to be given to the complainant on the completion of the investigation in the form of the report prescribed in the Schedule to the Regulations.

These Regulations also specify the time limits for making a complaint and a time limit for investigation and reporting.