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STATUTORY INSTRUMENTS

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**1989 No. 206**

**The Access to Personal Files (Social Services) Regulations 1989**

**Citation, commencement, interpretation and extent**

1.—(1) These Regulations may be cited as the Access to Personal Files (Social Services) Regulations 1989 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 (1) and the Medical Act 1983 (2);

“health authority” has the same meaning as in section 128(1) of the National Health Service Act 1977 (3); and “health professional” means any person listed in the Schedule to these Regulations.

(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.

(4) These Regulations apply to England and Wales.

**Right of access to personal information**

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

(a) to inform any individual whether the accessible personal information (4) held by them includes personal information (5) 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 local social services 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 local social services 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 of that information as he may require.

(3) If—

(a) a local social services authority supplies an individual with a copy of any personal information of which he is the 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.

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(1) 1984 c. 24

(2) 1983 c. 54

(3) 1977 c. 49. This definition was substituted by paragraph 11 of Schedule 3 to the Health and Social Security Act 1984 (c. 48)

(4) See the definition of “accessible personal information” in section 2(3) of the Act.

(5) See the definition of “personal information” in section 2(2) of the Act.

### **Request for information**

3. A local social services 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; but 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 local social services 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 local social services 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 9(3)(a) applies), the local social services 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.

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

6. A local social services 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 local social services authority by or on behalf of, a health professional, or (b) the local social services 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 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 local social services authority shall in writing inform of the request and that the accessible personal information contains information to which this regulation applies—
- (a) the health authority concerned, if the information to which this regulation applies originated from or was supplied by, or if the local social services authority believes 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 authority, and
  - (b) in any other case, the person who appears to the local social services authority to be the appropriate health professional.
- (4) A local social services authority shall 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 authority referred to in paragraph (3) (a) or the appropriate health professional informs the local social services authority in writing that the information to which this regulation applies must not be disclosed because its disclosure—
- (a) would be likely to 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) would be likely to 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 authority referred to in paragraph (3)(a) or the appropriate health professional informs the local social services 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 the subject of the information and the information relates to him or he supplied the information in his capacity as a health professional.

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

9.—(1) As regards accessible personal information to which regulation 8 does not apply, a local social services authority shall be exempted from the obligation imposed by regulation 2(1)(b) if any of the conditions set out in paragraphs (2) to (7) is met.

(2) The condition in this paragraph is that the carrying out of the social services functions (6) of the local social services 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 local social services authority in connection with that authority's social services functions or has provided for reward a service similar to a service provided by the local social services authority in the exercise of that authority's social services 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, whether by the omission of names or other particulars or otherwise.

(4) The condition in this paragraph is that the information is held by the local social services 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 a report given or to be given to the court by the local social services authority in the course of any proceedings to which the Magistrates' Courts (Children and Young Persons) Rules 1988 (7) apply where, in accordance with the provision of those Rules, the information may be withheld by the court in whole or in part from the individual who is the subject of the information.

(6) The condition in this paragraph is that the information consists of information the disclosure of which is prohibited or restricted by—

- (a) sections 50 or 51 of the Adoption Act 1976 (8),
- (b) regulation 11 of the Education (Special Educational Needs) Regulations 1983 (9),
- (c) regulation 6 or 14 of the Adoption Agencies Regulations 1983 (10),
- (d) rules 9, 21, 22 or 53 of the Adoption Rules 1984 (11), or
- (e) rules 9, 21, 22 or 32 of the Magistrates' Courts (Adoption) Rules 1984 (12).

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(6) See Schedule 1, paragraph 2(5) of the Act and section 3(1) of the Local Authority Social Services Act 1970 (c. 42) for the meaning of "social services functions".

(7) S.I.1988/913

(8) 1976 c. 36

(9) S.I. 1983/29

(10) S.I. 1983/1964

(11) S.I. 1984/265

(12) S.I. 1984/611

(7) The condition in this paragraph is that the information consists of information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.

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

**10.**—(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 local social services authority holding the information to rectify or erase the information which he regards as inaccurate.

(2) A local social services 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 local social services 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 services authority should rectify the information or what part of the information he considers the local social services 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 services authority are satisfied that the information specified in the notice is inaccurate, that local social services 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 local social services authority to be based on the inaccurate information.

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

(6) If a local social services authority—

- (a) rectify any information under paragraph (4), or
- (b) place a written note with any information under paragraph (5), the local social services 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 local social services 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 local social services 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.

### **Review of decisions**

**11.**—(1) An individual who is the subject of information held by a local social services 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,

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not more than one of whom may be a member of the committee established under section 2(1) of the Local Authority Social Services Act 1970 **(13)**.

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

17th February 1989

*K Clarke*  
One of Her Majesty's Principal Secretaries of  
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