

This Statutory Instrument which supersedes the Further Education Student Records (Scotland) Regulations 1990 (1660 (S.160)) previously published on 8.8.90 is issued free of charge to all known recipients.

STATUTORY INSTRUMENTS

1990 No. 1560 (S.160)

EDUCATION, SCOTLAND

**The Further Education Student
Records (Scotland) Regulations 1990**

<i>Made</i>	- - - -	<i>25th July 1990</i>
<i>Laid before Parliament</i>		<i>8th August 1990</i>
<i>Coming into force</i>	- -	<i>1st October 1990</i>

The Secretary of State, in exercise of the powers conferred on him by section 2 of the Education (Scotland) Act 1980(1), and of all other powers enabling him in that behalf, hereby makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Further Education Student Records (Scotland) Regulations 1990 and shall come into force on 1st October 1990.

Interpretation

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

“the Act” means the Education (Scotland) Act 1980;

“appropriate person” means, in respect of information relating to a student—

(a) the student, where—

(i) he is not less than 16 years of age; or

(ii) he is less than 16 years of age, and a parent of the student consents to his request;

(b) a parent of the student, where the student is less than 18 years of age;

(c) a parent of the student, where the student is not less than 18 years of age but is not in the opinion of the education authority capable of understanding the relevant information in respect of which access or rectification is sought,

and for the purpose of this definition “parent” in paragraph (a) and (b) has the same meaning as in the Act and in paragraph (c) includes a person legally entitled to administer the student’s affairs or who appears to the education authority to have assumed actual responsibility for the student;

“personal information” means information which relates to a living individual who can be identified from that information (or from that and any other information in the possession of the authority keeping the record) and includes any expression of opinion about the individual;

“student” means the individual to whom information relates, being a person who receives, or has received, further education provided by the education authority.

(2) 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.

Information to which these Regulations apply

3.—(1) Subject to the following paragraphs, the information to which these Regulations apply is personal information which—

- (a) is held in a record kept by an education authority for the purpose of the discharge, in relation to further education, of their functions under section 1 of the Act; and
- (b) relates to a person who receives, or has received, further education provided by the education authority.

(2) These Regulations do not apply to personal information which is data to which the Data Protection Act 1984(2) applies.

(3) These Regulations do not apply to personal information which was recorded by the education authority before the date when these Regulations come into force except to the extent that access to that information is required to make intelligible information recorded on or after that date.

Requirement to give access to information

4.—(1) Subject to the following provisions of this regulation, and to regulations 5 to 9, an education authority shall upon request in writing by an appropriate person give him access to information relating to a student free of charge by such means as the education authority think fit.

(2) The requirements of paragraph (1) only arise where the person requesting the information has supplied such information as the authority may reasonably require to establish that he is an appropriate person and to locate the information which he seeks.

(3) The requirements of paragraph (1) apply to information held at the date of the receipt of the request, but if any correction, addition or erasure is made between that time and the time when the information is supplied, the education authority shall give access also to the information as so amended.

(4) When an education authority are required by paragraph (1) to comply with a request, they shall, subject to paragraph (5), do so—

- (a) in relation to any information other than information to which regulation 7 or 8 applies, and subject to regulation 9, within 40 days of the date of receiving the request or (if later) the date of receiving any information referred to in paragraph (2);
- (b) in relation to any information to which regulation 7 or 8 applies, within 20 days of receiving an opinion under that regulation, or within the time limit specified in sub-paragraph (a) above if later.

(2) 1984 c. 35.

(5) Where the information to be supplied under paragraph (1) includes any information to which regulation 6 applies, the education authority shall give access within the time limit specified in paragraph (4) to so much of the information to which regulation 6 applies as may be supplied without consent in accordance with regulation 6(5), and where any consent is received they shall give access to the information to which the consent applies within 20 days of receiving the consent, or within the time limit specified in paragraph (4) if later.

Circumstances where information need not be disclosed

5.—(1) An education authority shall not be required to give access under regulation 4(1) to information—

- (a) kept, and intended to be kept, by an employee of the education authority solely for his own use;
- (b) contained in a copy of a reference given by the education authority or one of its employees to a person who has requested it in connection with an application by a student for employment, education or training;
- (c) contained in a record of needs kept under section 60 of the Act;
- (d) in respect of which a claim to confidentiality between client and professional legal adviser could be maintained in legal proceedings;
- (e) which has been supplied to the education authority by a person, other than an employee of the education authority, subject to a legal obligation that it shall not be disclosed;
- (f) to the extent that its disclosure would in the opinion of the education authority be likely to cause serious harm to the physical or mental health of the student or any other person, but this provision is subject to paragraphs (2) and (3);
- (g) to the extent that its disclosure would in the opinion of the education authority be likely to prejudice the prevention or detection of crime or the apprehension or prosecution of offenders, but this provision is subject to paragraph (3).

(2) In relation to information to which regulation 7 applies, the opinion of the health board or appropriate health professional obtained under that regulation shall be applied for the purpose of paragraph (1)(f) in place of that of the education authority.

(3) In relation to information to which regulation 8 applies, the opinion of the Reporter obtained under that regulation shall be applied for purposes of paragraph (1)(f) or (g) in place of that of the education authority.

Consent required for access to information disclosing identity of another individual

6.—(1) Subject to paragraph (2), this regulation applies to information which would in the opinion of the education authority be likely to disclose to the person who requests access to it the identity of a living individual (other than the student or the person who requests access) either as a person to whom the information applies or as the source of the information or to enable that identity to be deduced by the person who requests access either from the information itself or from a combination of that information and other information which the person who requests access is likely to have.

(2) In relation to information to which regulation 7 or 8 applies, the opinion of the health board, appropriate health professional or Reporter obtained under that regulation shall be applied for the purpose of paragraph (1) in place of that of the education authority.

(3) Subject to paragraphs (4) and (5), the education authority shall not be required to give access under regulation 4(1) to information to which this regulation applies unless consent to giving access has been obtained from the individual whose identity may be disclosed or deduced.

(4) Paragraph (3) does not apply—

- (a) where the individual whose identity may be disclosed or deduced is employed by the education authority in pursuance of its functions relating to education and the information relates to him, or he was the source of it, in his capacity as such employee;
- (b) in relation to information to which regulation 7 applies, where the individual whose identity may be disclosed or deduced is a health professional who has been involved in the care of the student and the information relates to the health professional or was supplied by him in that capacity.

(5) Nothing in this regulation shall excuse the education authority from giving access under regulation 4(1) to as much of the information concerned as can be given access to without being likely to disclose the individual's identity or to enable it to be deduced, whether by omission of names or other particulars or otherwise.

(6) Where this regulation applies the education authority shall -

- (a) where regulation 7 or 8 does not apply to the information, within 14 days of receiving the request to give access to information under regulation 4(1), or of receiving the information referred to in regulation 4(2) where that provision applies;
- (b) where regulation 7 or 8 applies to the information, within 14 days of receiving an opinion under that regulation,

in writing inform the individual whose identity may be disclosed or deduced (if he can be found) of the request and that his identity may be disclosed or deduced, and ask that individual if he consents to access to the information being given to the person who requests access to it.

Opinion required before giving access to personal health information obtained for a health professional

7.—(1) This regulation applies to information as to the physical or mental health of a student which the education authority believe to have originated from a health professional, or to have been supplied to them by or on behalf of a health professional.

(2) An education authority shall not be required to give access under regulation 4(1) to information to which this regulation applies unless the education authority have obtained the opinion—

- (a) in the case of information which appears to have originated from a health professional employed by a health board, of the health board;
- (b) in any other case, of the appropriate health professional,

on whether—

- (i) disclosure of any of the information would be likely to have the effect specified in regulation 5(1)(f); and
- (ii) disclosure of any of the information would be likely to have the effect specified in regulation 6(1).

(3) Where this regulation applies, the education authority shall, within 14 days of receiving the request to give access to information under regulation 4(1), or of receiving the information referred to in regulation 4(2) where that provision applies, in writing inform the health board or appropriate health professional whose opinion is required that the request has been made and request an opinion for the purposes of this regulation, and the education authority shall give the health board or appropriate health professional such information as is appropriate to enable such an opinion to be given.

(4) Where such an opinion is obtained, it shall be applied for the purpose of regulation 5(1)(f) as read with regulation 5(2), and for the purpose of regulation 6(1) as read with regulation 6(2).

(5) In this regulation, and in regulation 6, “health professional” means a person listed in the Schedule to these Regulations.

(6) In this regulation, and in regulations 5 and 6, “appropriate health professional” means the person appearing to the education authority to be—

- (a) the medical practitioner or dental practitioner who is currently or was most recently responsible for the clinical care of the student 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.

Opinion required before giving access to information obtained from the Reporter to a Children’s Panel

8.—(1) This regulation applies to information relating to a student which the education authority believe to have originated from a Reporter to a Children’s Panel acting in pursuance of his statutory duties, or to have been supplied to them by or on behalf of such a Reporter so acting.

(2) An education authority shall not be required to give access under regulation 4(1) to information to which this regulation applies unless the education authority have obtained the opinion of the Reporter on whether -

- (a) disclosure of any of the information would be likely to have the effect specified in regulation 5(1)(f);
- (b) disclosure of any of the information would be likely to have the effect specified in regulation 5(1)(g); and
- (c) disclosure of any of the information would be likely to have the effect specified in regulation 6(1).

(3) Where this regulation applies, the education authority shall, within 14 days of receiving the request to give access to information under regulation 4(1), or of receiving the information referred to in regulation 4(2) where that provision applies, in writing inform the Reporter that the request has been made and request an opinion for the purposes of this regulation, and the education authority shall give the Reporter such information as is appropriate to enable such an opinion to be given.

(4) Where such an opinion is obtained it shall be applied for the purposes of regulation 5(1)(f) and (g) as read with regulation 5(3), and for the purpose of regulation 6(1) as read with regulation 6(2).

Modification of requirements of the Regulations for examination information

9.—(1) This regulation applies to information consisting of marks or other information held by an education authority—

- (a) for the purposes of determining the results of an examination or of enabling the results of any such examination to be determined; or
- (b) in consequence of the determination of any such results.

(2) Where the period mentioned in regulation 4(4)(a) begins before the results of the examination are announced that period shall be extended until—

- (a) the end of five months from the beginning of that period; or
- (b) the end of forty days after the date of the announcement, whichever is the earlier.

(3) For the purpose of this regulation the results of an examination shall be treated as announced when they are published or (if not published) when they are first made available or communicated to the candidate in question.

(4) In this regulation “examination” includes any process for determining the knowledge, intelligence, skill or ability of a person by reference to his performance in any test or other activity, or by assessing his performance in activities over a period of time.

Rectification and erasure of inaccurate information

10.—(1) This regulation applies where an appropriate person requests in writing the education authority holding information to which the education authority would be required to give him access under regulation 4(1) to rectify or erase any of that information which he regards as inaccurate.

(2) An education authority shall not be required to take any action in response to a request to rectify or erase information unless the person making the request—

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

(3) If the education authority are satisfied that the information to which the request relates is inaccurate, the 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 authority to be based on the inaccurate information.

(4) If the education authority are not satisfied that the information to which the request relates is inaccurate, the authority shall place with the information a written note stating that the person who made the request regards that information as inaccurate and indicating in what respect he regards it as inaccurate.

(5) If an education authority—

- (a) rectify any information under paragraph (3); or
- (b) place a written note with any information under paragraph (4),

the authority shall give the person who requested rectification a copy of the rectified information or of the written note, as the case may be, without the payment of any charge.

Review of decisions

11. Where a person within 28 days of being notified of a decision refusing a request by him under regulation 4(1) or regulation 10(1) requests in writing that the decision be reviewed, the education authority shall make arrangements for the review of the decision by a sub-committee of their education committee, none of whose members took part in making the decision to be reviewed, and shall give the person who made the request the opportunity to make oral or written representations to the sub-committee.

St. Andrew's House,
Edinburgh
25th July 1990

Ian Lang
Minister 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 7(5)

HEALTH PROFESSIONALS

Description	Statutory Derivation (where applicable)
Any medical practitioner registered under the Medical Act 1983 ⁽³⁾	Medical Act 1983, Parts II, III and IV.
Registered dentist	Dentists Act 1984 ⁽⁴⁾ , section 53(1).
Registered optician	Opticians Act 1989 ⁽⁵⁾ , section 36(1).
Registered pharmaceutical chemist	Pharmacy Act 1954 ⁽⁶⁾ , section 24(1).
Registered nurse, midwife or health visitor	Nurses, Midwives and Health Visitors Act 1979 ⁽⁷⁾ , section 10.
Registered chiropodist, dietician, occupational therapist, orthoptist or physiotherapist (subject to the Note below)	Professions Supplementary to Medicine Act 1960 ⁽⁸⁾ , 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 require education authorities to give “appropriate persons” access to personal information in records held by them relating to further education students, past and present, and requires them on request by such persons to correct any such information which is inaccurate. They provide also for certain exemptions from these requirements.

The “appropriate persons” who are to be given access to the information on request, and who may request correction of it, are—

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- (3) 1983 c. 54.
 - (4) 1984 c. 24.
 - (5) 1989 c. 44.
 - (6) 1954 c. 61.
 - (7) 1979 c. 36.
 - (8) 1960 c. 66; section 1(2) was amended by S.I.1966/990 and 1986/630.

- (a) the student himself, where he is at least 16 years old, or where he is under 16 and a parent or guardian has consented to his request;
- (b) a parent or guardian of the student, where the student is under 18, or where the student is not capable of understanding the information.

Regulation 3 defines the information to which the Regulations apply. It excludes information held on computer, access to which is governed by the Data Protection Act 1984. The Regulations do not apply to information in records compiled before they come into force, except so far as access to such information is needed to make intelligible information recorded after the Regulations come into force.

Regulation 4 imposes the obligation to give access to information, where an appropriate person applies in writing and supplies information sufficient to establish that he is an appropriate person and to locate the information requested. Regulation 4 also lays down the time limits within which the education authority must give access to information.

Regulation 5 provides for circumstances where information is exempt from access.

Regulation 6 provides that, subject to certain exceptions, information which reveals the identity of a third party as a subject or source of the information should not be disclosed without the third party's consent. It obliges the education authority to seek such consent if the third party can be found.

Regulation 7 makes particular provision for information which has originated from a health professional, that is a medical practitioner, dentist or member of one of the other health professions listed in the Schedule to the Regulations. Such information is not to be disclosed unless the opinion of the Health Board (where the information came from a health board employee) or an appropriate health professional (in any other case) has been obtained for the purpose of determining whether the information would be likely to cause serious harm to a person's health, so as to be exempt from disclosure under regulation 5(1)(f), or would be likely to disclose a third party's identity, so that consent is required under regulation 6. The education authority is obliged to seek such an opinion. Where such an opinion is obtained the education authority must comply with it.

Regulation 8 makes particular provision for information which has been requested from the Reporter to a Children's Panel. Such information is not to be disclosed unless the opinion of the Reporter has been obtained for the purpose of determining whether the information would be likely to cause serious harm to a person's health, so as to be exempt from disclosure under regulation 5(1)(f), or would be likely to prejudice the prevention or detection of crime or the apprehension or prosecution of offenders, so as to be exempt from disclosure under regulation 5(1)(g), or would be likely to disclose a third party's identity, so that consent is required under regulation 6. The education authority is obliged to seek such an opinion. Where such an opinion is obtained the education authority must comply with it.

Regulation 9 extends in certain circumstances the time limits for giving access to information relating to examinations.

Regulation 10 provides for the correction on request of inaccurate information.

Regulation 11 provides for review of decisions refusing access to information, or refusing to correct information, where the person who requested access or correction requests a review. The review is to be conducted by a sub-committee of the education authority, none of whose members took part in the original decisions.