



Health and Safety Executive		Operational Circular	
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Target Audience
All HSE Inspectors

ACCESS TO HEALTH RECORDS ACT 1990

This OC provides guidance on the Access to Health Records Act 1990 which comes into force on 1 November 1991.

Guidance

- 1 The effect of the Act will be to give an individual, or their legally recognised representative, the right of access to any health record made in respect of themselves. This is a right over and above any informal access to their health records that EMAS staff may feel it is useful to give to individuals.
- 2 The Act will apply to individual health records kept by EMAS staff and by doctors appointed under regulations by EMAS. It covers records made by **or on behalf** of 'health professionals' eg doctors, nurses, physiotherapists.
- 3 This guidance is not a substitute for the Act itself and EMAS staff should make sure that they are familiar with it. Copies of the Act will be made available to EMAS staff in their offices.
- 4 Separate guidance has been issued by MSHQ to Appointed Doctors.

Implications for EMAS

- 5 In the Act an application for access has to be in writing. However, where it is convenient to do so, EMAS staff are encouraged to give access to records immediately on receipt of an oral request.
- 6 The Act is not retrospective. Only health records or entries in health records made after 1 November 1991 are covered by the provisions of the Act. Access to the entire health record or a particular part may be requested and must be made available within certain time limits. If the record or part record was made available within the period of 40 days prior to the date of the application then it must be made available within 21 days; otherwise it must be made available within 40 days after the application.

7 There is no provision for access to records made after the commencement of the Act **unless the record holder** thinks that it is necessary to make sense of later parts of the record. This will be at the discretion of the health professional (S/EMAs, ENAs, etc) making and keeping the record.

8 Only 2 reasons for withholding access to health records made after 1 November 1991 are allowed. Access can be withheld if the health professional keeping the record is of the opinion that disclosure would be likely to cause serious harm, physical or mental, to the individual. It can also be withheld if access would disclose information relating to another individual allowing him or her to be identified without his or her consent - unless that person is also a health professional involved in the care of the individual.

9 It is not enough to make access possible, information in the record must also be understandable and an explanation must be given with the record/copy if necessary. EMAS staff should try to make their records intelligible to a lay'reader as far as possible. This will remove the need to provide explanations later.

10 EMAS staff must be careful to observe the terms of the Act regarding who may be given access to records and under what circumstances. This is especially important when applications are made by people other than the individual concerned. The conditions are spelt out quite clearly in the Act.

11 If, after seeing their health record, someone requests an amendment to their record the record holder must either -

- 1) amend the record if they are satisfied that the requested amendment is correct; or
- 2) if they are not satisfied that the amendment is correct they must note in the record the individual's requested amendment.

The applicant must be given a copy of the amendment or note.

12 EMAS staff must be careful not to refuse access unreasonably. If access is improperly withheld an individual may apply to the court who can order the record holder to give access.

13 EMAS staff should note Section 9 of the Act which makes ineffective any contractual term requiring employees to allow employers or anyone else access to their personal health records.

Fees

14 Provision is made in the Act to charge a fee for allowing access to a health record and a fee to cover the cost of making and posting a copy. However the present HSE policy is not to charge for any fees for this as the cost of raising invoices etc is greater than the income generated. This may be reviewed if requests for access are numerous.

15 Appointed Doctors may levy the charges laid down in the Act for access to health

records and for any copies supplied.

Action

16 SEMAs, EMAs and ENAs supplying access to or copies of health records are asked to keep a record of the number of such requests, the time spent and the number of copies provided. This information will be used to review the need to make a charge.

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ASI headings

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