



# Health and Social Care (Community Health and Standards) Act 2003

## 2003 CHAPTER 43

### PART 2

#### STANDARDS

#### CHAPTER 10

#### SUPPLEMENTARY AND GENERAL

VALID FROM 01/04/2004

#### *Information*

#### **136 Disclosure of information obtained by CHAI**

- (1) This section applies to information which—
  - (a) has been obtained by the CHAI on terms or in circumstances requiring it to be held in confidence; and
  - (b) relates to and identifies an individual.
- (2) Subject to section 137, a person is guilty of an offence if he knowingly or recklessly discloses information to which this section applies during the lifetime of the individual to which it relates.
- (3) A person guilty of an offence under this section is liable—
  - (a) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding the statutory maximum, or to both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

*Status: Point in time view as at 28/02/2004. This version of this cross heading contains provisions that are not valid for this point in time.*

*Changes to legislation: There are currently no known outstanding effects for the Health and Social Care (Community Health and Standards) Act 2003, Cross Heading: Information. (See end of Document for details)*

- (4) For the purposes of subsection (1)(b), information obtained by the CHAI, or any person authorised by it, is to be regarded as identifying an individual if that individual can be identified—
- (a) from that information, or
  - (b) from that information and from other information obtained by the CHAI or any person authorised by it.

### 137 Section 136: defence

- (1) It is a defence for a person charged with an offence under section 136 to prove that at the time of the alleged offence—
- (a) any of the circumstances in subsection (2) applied in relation to the disclosure in question; or
  - (b) he reasonably believed that they applied.
- (2) The circumstances referred to in subsection (1)(a) are that—
- (a) the disclosure was made in a form in which the individual to whom it relates is not identified;
  - (b) the disclosure was made with the consent of the individual to whom the information relates;
  - (c) the information disclosed had previously been lawfully disclosed to the public;
  - (d) the disclosure was made under or pursuant to regulations under section 113 (complaints about health care);
  - (e) the disclosure was made in accordance with any enactment or court order;
  - (f) the disclosure was necessary or expedient for the purposes of protecting the welfare of any individual;
  - (g) the disclosure was made to any body or person in circumstances where it was necessary or expedient for the person or body to have the information for the purpose of exercising his or its functions under any enactment.
- (3) It is also a defence for a person charged with an offence under section 136 to prove that the disclosure was made—
- (a) for the purposes of facilitating the exercise of any functions of the CHAI (under any enactment);
  - (b) in connection with the investigation of a criminal offence (whether or not in the United Kingdom);
  - (c) for the purpose of criminal proceedings (whether or not in the United Kingdom).
- (4) For the purposes of subsection (2)(a), information disclosed by a person is not to be regarded as being in a form in which an individual is not identified if the individual can be identified—
- (a) from that information, or
  - (b) from that information and from other information disclosed by the CHAI, by any person authorised by it or by any of its members or employees.

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### **138 Information obtained by CHAI: supplementary**

- (1) The CHAI may, subject to section 136, use any information it obtains, or documents or records produced to it, in the course of exercising any of its functions for the purposes of any of its other functions.
- (2) Where subsection (3) applies, the CHAI may disclose any information obtained by it notwithstanding any rule of common law which would otherwise prohibit or restrict the disclosure.
- (3) This subsection applies where—
  - (a) in the case of information relating to an individual, the circumstances in paragraph (a) or (b) of subsection (2) of section 137 apply in relation to the disclosure;
  - (b) in any case, the circumstances in any of paragraphs (c) to (g) of that subsection apply in relation to the disclosure; or
  - (c) in any case, the disclosure is made as specified in paragraph (a), (b) or (c) of subsection (3) of that section.
- (4) Subsection (4) of section 137 applies for the purposes of subsection (3)(a) above.

### **139 Information obtained by CSCI: supplementary**

The CSCI may use any information it obtains, or documents or records produced to it, in the course of exercising any of its functions for the purposes of any of its other functions.

### **140 Code of practice: CHAI**

- (1) The CHAI must prepare and publish a code in respect of the practice it proposes to follow in relation to confidential personal information.
- (2) The code must in particular make provision about the CHAI's obtaining, handling, use and disclosure of confidential personal information.
- (3) Before publishing the code, the CHAI must consult such persons as it considers appropriate.
- (4) The CHAI must keep the code under review and, if it considers it appropriate, from time to time publish a revised code (and references in this section to the code include any revised code).
- (5) For the purposes of this section “confidential personal information” means information which—
  - (a) is obtained by the CHAI on terms or in circumstances requiring it to be held in confidence; and
  - (b) relates to and identifies an individual.

### **141 Code of practice: CSCI**

- (1) The CSCI must prepare and publish a code in respect of the practice it proposes to follow in relation to confidential personal information.

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- (2) The code must in particular make provision about the CSCI's obtaining, handling, use and disclosure of confidential personal information.
- (3) Before publishing the code, the CSCI must consult such persons as it considers appropriate.
- (4) The CSCI must keep the code under review and, if it considers it appropriate, from time to time publish a revised code (and references in this section to the code include any revised code).
- (5) For the purposes of this section "confidential personal information" means information which—
  - (a) is obtained by the CSCI on terms or in circumstances requiring it to be held in confidence; and
  - (b) relates to and identifies an individual.

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