



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

## 2003 CHAPTER 43

### PART 2

#### STANDARDS

#### CHAPTER 10

##### SUPPLEMENTARY AND GENERAL

##### *Joint working*

#### **120 Co-operation etc**

- (1) The CHAI and the CSCI must co-operate with each other where it seems to them appropriate to do so for the efficient and effective discharge of their respective functions.
- (2) The CHAI and the CSCI must, in prescribed circumstances, consult each other in relation to the proposed exercise of their functions.
- (3) The CHAI and the CSCI may each delegate to the other any of its functions to be exercised by the other on its behalf.
- (4) The CHAI and the CSCI may, subject to such conditions as may be prescribed, enter into arrangements for the pooling of financial resources whenever they consider it appropriate to do so.

#### **121 Reviews and investigations**

- (1) The CHAI and the CSCI may exercise any of their powers to conduct reviews and investigations under this Part in conjunction with each other.

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*Status: This is the original version (as it was originally enacted).*

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- (2) The CHAI may conduct a review or investigation under this Part, or undertake a study under section 57, in conjunction with a review, investigation or study relating to any functions of an NHS body, or to any health care provided by or for an NHS body, which is being conducted by any other public authority.
- (3) The CSCI may conduct a review or investigation under this Part, or a study under section 82 in conjunction with a review, investigation or study relating to any other functions of a local authority which is being conducted by any other public authority.
- (4) Where a review, investigation or study is being conducted by the CHAI in conjunction with any other authority pursuant to this section, any report which under this Part the CHAI is required to publish in relation to the review, investigation or study may consist of a joint report by the CHAI and the other authority as to all the matters being investigated by both of them.
- (5) Where a review, investigation or study is being conducted by the CSCI in conjunction with any other authority pursuant to this section, any report which under this Part the CSCI is required to publish in relation to the review, investigation or study may consist of a joint report by the CSCI and the other authority as to all the matters being investigated by both of them.
- (6) This section is without prejudice to any other powers of the CHAI or the CSCI.

## **122 Joint annual reviews**

- (1) Regulations made by the Secretary of State may provide that, where services of a description specified in the regulations are provided under arrangements under section 31 of the Health Act 1999 (c. 8), the CHAI and the CSCI shall jointly—
  - (a) review the provision by the parties to the arrangements of such services as may be specified in the regulations;
  - (b) award a performance rating in respect of those services.
- (2) The regulations may provide that the CHAI and the CSCI are to exercise their functions under this section—
  - (a) at such times as may be specified in the regulations;
  - (b) by reference to criteria determined by the CHAI and the CSCI and approved by the Secretary of State.
- (3) The regulations may require the CHAI and the CSCI to publish a report after conducting a review under this section.

## **123 Power to assist**

- (1) The CHAI or the CSCI may if it thinks it appropriate to do so provide assistance to any other public authority in the United Kingdom for the purpose of the exercise by that authority of its functions.
- (2) Assistance provided by the CHAI or the CSCI under this section may be provided on such terms, including terms as to payment, as it thinks fit.

*Arrangements with public authorities***124 Arrangements with Ministers etc: CHAI**

- (1) Arrangements may be made between the CHAI and a Minister of the Crown —
  - (a) for the CHAI to perform any of its functions in relation to any prescribed health scheme for which the Minister has responsibility; or
  - (b) for the CHAI to provide services or facilities in so far as they are required by the Minister in connection with any such health scheme.
- (2) Arrangements may be made between the CHAI and a Northern Ireland Minister—
  - (a) for the CHAI to perform on behalf of the Minister any functions of the Minister which—
    - (i) correspond to any functions of the CHAI; and
    - (ii) relate to the Northern Irish health service;
  - (b) for the CHAI to provide services or facilities in so far as they are required by the Minister in connection with the exercise by him of any such functions.
- (3) Arrangements under this section may be made on such terms and conditions as may be agreed between the parties to the arrangements.
- (4) Those terms and conditions may include provision with respect to the making of payments to the CHAI in respect of the cost to it of performing or providing any functions, services or facilities under the arrangements.
- (5) Any arrangements under subsection (2)(a) are not to affect the responsibility of the Northern Ireland Minister on whose behalf any functions are exercised.
- (6) In this section—

“health scheme” means any scheme which appears to the Secretary of State to be a health or medical scheme paid for out of public funds;

“Northern Ireland Minister” includes the First Minister, the deputy First Minister and a Northern Ireland department;

“Northern Irish health service” means any of the health services under any enactment which extends to Northern Ireland and which corresponds to section 1(1) of the 1977 Act.

**125 Arrangements with Ministers etc: CSCI**

- (1) Arrangements may be made between the CSCI and a Minister of the Crown—
  - (a) for the CSCI to advise the Minister with respect to the provision of any services for which the Minister has responsibility which are similar to English local authority social services; or
  - (b) for the CSCI to review, and conduct inspections in relation to, the provision of any such services.
- (2) Arrangements may be made between the CSCI and a Northern Ireland Minister for the CSCI to advise and assist the Northern Ireland Minister with respect to the provision of any services for which the Minister has responsibility which are similar to English local authority social services.
- (3) Arrangements under this section may be made on such terms and conditions as may be agreed between the parties to the arrangements.

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- (4) Those terms and conditions may include provision with respect to the making of payments to the CSCI in respect of the cost to it of performing or providing any functions, services or facilities under the arrangements.
- (5) In this section “Northern Ireland Minister” has the same meaning as in section 124.

## **126 Arrangements with the Isle of Man and Channel Islands: CHAI**

- (1) The CHAI may make arrangements with—
- (a) the Government of the Isle of Man,
  - (b) the States of Jersey, or
  - (c) the States of Guernsey,
- for the CHAI to advise and assist that authority with respect to the provision of health care by them or on their behalf.
- (2) The terms and conditions of arrangements under this section may include provision with respect to the making of payments to the CHAI in respect of the cost to it of performing or providing any functions, services or facilities under the arrangements.

## **127 Arrangements with the Isle of Man and Channel Islands: CSCI**

- (1) The CSCI may make arrangements with—
- (a) the Government of the Isle of Man,
  - (b) the States of Jersey, or
  - (c) the States of Guernsey,
- for the CSCI to advise and assist that authority with respect to the provision of any services which are similar to English local authority social services.
- (2) The terms and conditions of arrangements under this section may include provision with respect to the making of payments to the CSCI in respect of the cost to it of performing or providing any functions, services or facilities under the arrangements.

### *Reports*

## **128 Reports: CHAI**

- (1) As soon as possible after the end of each financial year the CHAI must make a report on each of the following—
- (a) the way in which it has exercised its functions during the year;
  - (b) the provision of health care by or for NHS bodies;
  - (c) what it has found in the course of exercising its functions during the year in relation to the persons for whom it is the registration authority under the Care Standards Act 2000 (c. 14).
- (2) The CHAI must lay before Parliament a copy of each report made under this section.
- (3) The CHAI must send a copy of each report made under this section to the Secretary of State and the Assembly.
- (4) The CHAI must also provide the Secretary of State with such reports and information relating to the exercise of its functions as he may from time to time request.

**129 Reports: CSCI**

- (1) As soon as possible after the end of each financial year the CSCI must make a report on each of the following—
  - (a) the way in which it has exercised its functions during the year;
  - (b) what it has found in the course of exercising its functions during the year.
- (2) The CSCI must lay before Parliament a copy of each report made under this section.
- (3) The CSCI must send a copy of each such report to the Secretary of State.
- (4) The CSCI must also provide the Secretary of State with such reports and information relating to the exercise of its functions as he may from time to time require.

*Relationship with government***130 Duty to have regard to government policy: CHAI**

- (1) In exercising any of its functions the CHAI must have regard to such aspects of government policy as the Secretary of State may direct.
- (2) Subsection (1) does not apply in relation to any of the CHAI's functions under section 48(1), 49, 51 or 53.
- (3) In exercising any of its functions under any of the sections referred to in subsection (2) —
  - (a) where the exercise relates to the provision of health care by or for an English NHS body or cross-border SHA, the CHAI must have regard to such aspects of government policy as the Secretary of State may direct; and
  - (b) where the exercise relates to the provision of health care by or for a Welsh NHS body, the CHAI must have regard to such aspects of the Assembly's policy as the Assembly may direct.
- (4) In relation to any function conferred on the CHAI under subsection (1)(a) of section 58, regulations under that section may do either or both of the following—
  - (a) they may disapply subsection (1) of this section in relation to that function;
  - (b) they may require the CHAI, in exercising the function in relation to the provision of health care by or for a Welsh NHS body, to have regard to such aspects of the Assembly's policy as the Assembly may direct.
- (5) A direction under this section—
  - (a) must be given in writing;
  - (b) may be varied or revoked by a further direction under this section.

**131 Duty to have regard to government policy: CSCI**

- (1) In exercising any of its functions the CSCI must have regard to such aspects of government policy as the Secretary of State may direct in writing.
- (2) A direction given under this section may be varied or revoked by a further such direction.

**132 Failure in discharge of functions: CHAI**

- (1) Where the Secretary of State considers that the CHAI is to a significant extent—
  - (a) failing to discharge any of its functions under this Act; or
  - (b) failing properly to discharge any of those functions;
 he may give a direction to the CHAI.
- (2) The Secretary of State must consult the Assembly before giving a direction under this section in respect of a failure which—
  - (a) relates to any function of the CHAI under section 48(1), 49, 51 or 53; and
  - (b) relates to the provision of health care by or for a Welsh NHS body.
- (3) Regulations under section 58 may, in relation to any function conferred on the CHAI under subsection (1)(a) of that section, provide that—
  - (a) the Assembly, and not the Secretary of State, may give directions to the CHAI under subsection (1);
  - (b) the Assembly, as well as the Secretary of State, may give directions to the CHAI under subsection (1).
- (4) The CHAI must comply with any direction given to it under this section.
- (5) A direction given under this section—
  - (a) must be given in writing;
  - (b) may be varied or revoked by a further direction under this section.

**133 Failure in discharge of functions: CSCI**

- (1) Where the Secretary of State considers that the CSCI is to a significant extent—
  - (a) failing to discharge any of its functions under this Act or the Children Act 1989 (c. 41), or
  - (b) failing properly to discharge any of those functions,
 he may give it a direction in writing.
- (2) The CSCI must comply with any such direction.
- (3) A direction given under this section may be varied or revoked by a further such direction.

*Inquiries***134 Inquiries: CHAI**

- (1) The Secretary of State may cause an inquiry to be held into any matter connected with the exercise by the CHAI of any of its functions.
- (2) The Assembly may cause an inquiry to be held into any matter connected with the exercise by the CHAI of any of its functions in relation to any health care provided by or for a Welsh NHS body.
- (3) Before an inquiry is begun, the Secretary of State or (in the case of an inquiry under subsection (2)) the Assembly may give a direction that it be held in private.

- (4) Where no such direction has been given, the person holding the inquiry may if he thinks fit hold it, or any part of it, in private.
- (5) Subsections (2) to (5) of section 250 of the Local Government Act 1972 (c. 70) (powers in relation to local inquiries) apply in relation to an inquiry under this section as they apply in relation to a local inquiry under that section.
- (6) The report of the person holding the inquiry is to be published, unless the Secretary of State or (in the case of an inquiry under subsection (2)) the Assembly considers that there are exceptional circumstances which make publication inappropriate.
- (7) Publication under subsection (6) is to be in such manner as the Secretary of State or (in the case of an inquiry under subsection (2)) the Assembly considers appropriate.

### **135 Inquiries: CSCI**

- (1) The Secretary of State may cause an inquiry to be held into any matter connected with the exercise by the CSCI of any of its functions (under any enactment).
- (2) Before an inquiry is begun, the Secretary of State may give a direction that it be held in private.
- (3) Where no such direction has been given, the person holding the inquiry may if he thinks fit hold it, or any part of it, in private.
- (4) Subsections (2) to (5) of section 250 of the Local Government Act 1972 (c. 70) (powers in relation to local inquiries) apply in relation to an inquiry under this section as they apply in relation to a local inquiry under that section.
- (5) The report of the person holding the inquiry is to be published, unless the Secretary of State considers that there are exceptional circumstances which make publication inappropriate.
- (6) Publication under subsection (5) is to be in such manner as the Secretary of State considers appropriate.

### *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.

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- (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.



**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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*Status: This is the original version (as it was originally enacted).*

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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.

*Wales: supplementary*

#### **142 Annual reports of Assembly**

As soon as possible after the end of each financial year of the Assembly, the Assembly must make and publish a report or reports on—

- (a) what it has found during the year in the course of exercising—
  - (i) its functions under Chapter 4 and 6 of this Part (other than any function of making regulations);
  - (ii) its functions exercisable by virtue of section 5(b) and 8(1) to (3) of the Care Standards Act 2000 (c. 14);
- (b) the way in which the Assembly has during the year exercised those functions.

#### **143 Use by Assembly of information**

- (1) The Assembly may use any information it obtains, or documents produced to it, in the course of exercising any function of the Assembly referred to in any paragraph of subsection (2) for the purposes of any function of the Assembly referred to in any other paragraph of that subsection.
- (2) The functions of the Assembly referred to in subsection (1) are—
  - (a) its functions under Chapter 4 of this Part;
  - (b) its functions under Chapter 6 of this Part;
  - (c) its functions exercisable by virtue of section 5(b) or 8(1) to (3) of the Care Standards Act 2000 (c. 14);
  - (d) its functions under section 80 of the Children Act 1989 (c. 41).
- (3) References to functions in subsection (2) do not include functions of making regulations.

#### **144 Inquiries: Wales**

- (1) This section applies where, under section 35 of the Government of Wales Act 1998 (c. 38), the Assembly causes an inquiry to be held into any matter relevant to the exercise of—

- (a) its functions under Chapter 4 or 6 of this Part (other than any function of making regulations);
  - (b) its functions under section 87 of the Children Act 1989.
- (2) Before an inquiry is begun, the Assembly may give a direction that it be held in private.
- (3) Where no such direction has been given, the person holding the inquiry may if he thinks fit hold it, or any part of it, in private.
- (4) The report of the person holding the inquiry is to be published, unless the Assembly considers that there are exceptional circumstances which make publication inappropriate.
- (5) Publication under subsection (4) is to be in such manner as the Assembly considers appropriate.

#### **145 Co-operation between Assembly and CHAI**

- (1) The Assembly and the CHAI must co-operate with each other for the efficient and effective discharge of any relevant function.
- (2) For the purposes of subsection (1), a relevant function is—
- (a) any function of the CHAI under Chapter 3 of this Part;
  - (b) any function of the Assembly under Chapter 4 or 6 of this Part (other than any function of making regulations);
  - (c) any function of the CHAI under the Care Standards Act 2000;
  - (d) any function of the Assembly exercisable by virtue of section 5(b) or 8(1) to (3) of the Care Standards Act 2000.

#### *General*

#### **146 Offences by bodies corporate**

- (1) This section applies where any offence under this Part is committed by a body corporate.
- (2) If the offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—
- (a) any director, manager, or secretary of the body corporate, or
  - (b) any person who was purporting to act in any such capacity,
- he (as well as the body corporate) shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.
- (3) The reference in subsection (2) to a director, manager or secretary of a body corporate includes a reference—
- (a) to any other similar officer of the body; and
  - (b) where the body is a local authority or NHS body, to any officer or member of the authority or NHS body.

**147 Minor and consequential amendments**

Schedule 9 (which makes minor and consequential amendments relating to this Part) has effect.

**148 Interpretation of Part 2**

In this Part—

“Audit Commission” means the Audit Commission for Local Authorities and the National Health Service in England and Wales;

“the CHAI” means the Commission for Healthcare Audit and Inspection;

“cross-border SHA” means a Special Health Authority not performing functions only or mainly in respect of England or only or mainly in respect of Wales;

“the CSCI” means the Commission for Social Care Inspection;

“English local authority social service” means—

- (a) a service which is provided, in any place, by a local authority in England in the exercise of any of its social services functions;
- (b) a service which is provided, in any place, by another person pursuant to arrangements made by a local authority in England in the exercise of its social services functions;
- (c) a service which—
  - (i) is provided, in any place, by a local authority in England, or by another person pursuant to arrangements made by a local authority in England, under section 2(1)(b) of the Local Government Act 2000 (c. 22); and
  - (ii) is similar in nature to a service which could be provided by the authority in the exercise of any of its social services functions.

“English NHS body” means—

- (a) a Primary Care Trust;
- (b) a Strategic Health Authority;
- (c) an NHS trust all or most of whose hospitals, establishments and facilities are situated in England;
- (d) an NHS foundation trust;
- (e) a Special Health Authority performing functions only or mainly in respect of England;

“financial year”, in relation to the CHAI or the CSCI, means—

- (a) the period beginning with the date on which that body is established and ending with the next 31st March following that date; and
- (b) each successive period of twelve months ending with 31st March;

“health care” has the meaning given by section 45(2);

“local authority” has the same meaning as in the Local Authority Social Services Act 1970 (c. 42) (see section 1 of that Act);

“Minister of the Crown” has the same meaning as in the Ministers of the Crown Act 1975 (c. 26);

“NHS body” means—

- (a) an English NHS body;
- (b) a Welsh NHS body;
- (c) a cross-border SHA;

- “NHS trust” has the same meaning as in Part 1 of the 1977 Act;
- “personal records” includes medical records;
- “prescribed” means prescribed by regulations made by—
- (a) the Secretary of State;
  - (b) in the case of sections 63, 75 and 101, the Assembly;
- “regulator” means the Independent Regulator of NHS Foundation Trusts;
- “social services functions” has the same meaning as in the Local Authority Social Services Act 1970;
- “Welsh local authority social service” means—
- (a) a service provided, in any place, by a local authority in Wales in the exercise of any of its social services functions;
  - (b) a service provided, in any place, by another person pursuant to arrangements made by a local authority in Wales in the exercise of its social services functions;
  - (c) a service which—
    - (i) is provided, in any place, by a local authority in Wales, or by another person pursuant to arrangements made by a local authority in Wales, under section 2(1)(b) of the Local Government Act 2000 (c. 22); and
    - (ii) is similar in nature to a service which could be provided by the authority in the exercise of any of its social services functions;
- “Welsh NHS body” means—
- (a) a Local Health Board;
  - (b) an NHS trust all or most of whose hospitals, establishments and facilities are situated in Wales;
  - (c) a Special Health Authority performing functions only or mainly in respect of Wales.

#### **149 References to the provision of health care**

- (1) For the purposes of this Part, a person provides health care for another person if he provides it—
  - (a) at the direction of the other person;
  - (b) in accordance with, or by virtue of, an agreement or arrangements made by the other person (whether or not with the person providing the health care); or
  - (c) otherwise on behalf of the other person.
- (2) References in this section to the provision of health care include references to its provision jointly with another person.