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WELSH STATUTORY INSTRUMENTS

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**2003 No. 993**

**Commission For Health Improvement  
(Functions) (Wales) Regulations 2003**

**PART VI**

**RIGHTS OF ENTRY AND OBTAINING INFORMATION**

**Rights of entry**

**16.**—(1) Subject to the following paragraphs of this regulation, persons authorised in writing by the Commission may at any reasonable time enter and inspect relevant premises for the purposes of conducting clinical governance reviews, general reviews or investigations.

(2) Each person authorised by the Commission under paragraph (1) shall be furnished with written evidence of his or her authority and on applying for entry to relevant premises for the purposes specified in paragraph (1) shall, if so requested by the occupier of the premises or a person acting on his or her behalf, produce that evidence.

(3) A person authorised by the Commission under paragraph (1) shall not demand admission to relevant premises as of right unless the person or body which owns or controls the premises has been given reasonable notice of the intended entry.

(4) No person authorised by the Commission under paragraph (1) may enter any premises or part of premises used as residential accommodation for persons employed by any person or body, without first having obtained the consent of the persons residing in such accommodation.

(5) Subject to regulation 19, a person authorised by the Commission under paragraph (1) to enter relevant premises under this regulation may inspect and take copies of any documents which —

- (a) appear to him or her to be necessary for the purposes of the review or investigation in question; and
- (b) are held on the premises by —
  - (i) the person or body which owns or controls the premises;
  - (ii) a chairman, member, director or employee of that person or body;
  - (iii) any other person acting on behalf of that person or body; or
  - (iv) a member of a committee or sub-committee of any body concerned.

**Obtaining information and explanations**

**17.**—(1) Subject to regulation 19, in conducting a clinical governance review, a general review or an investigation the Commission or a person authorised by the Commission under regulation 16(1) may require a person to which paragraph (5) applies to produce any documents or information which appear to the Commission, or to the person authorised, to be necessary for the purposes of the review or investigation in question.

(2) Subject to regulation 19, in conducting a clinical governance review, a general review or an investigation the Commission or a person authorised by the Commission may, if it or he thinks it necessary, require a person to which paragraph (5) applies to give the Commission or, as the case may be, the person authorised an explanation of —

- (a) any matters which are the subject of the review or investigation; or
- (b) any documents or information inspected, copied or produced under paragraph (1) or regulation 16(5).

(3) The Commission may, if it considers it necessary require a person required to —

- (a) produce documents or information under paragraph (1); or
- (b) give an explanation under paragraph (2),

to attend before the Commission or a person authorised by the Commission under regulation 16(1) in person to produce the documents or information or give the explanation.

(4) The Commission or a person authorised under regulation 16(1) may not require a person to attend in person in accordance with paragraph (3) unless reasonable notice of the intended date of attendance has been given to that person.

(5) The person referred to in paragraphs (1) and (2) are —

- (a) an NHS body;
- (b) a chairman, member, director or employee of an NHS body, or any other person acting on behalf of such a body;
- (c) a member of a committee or sub-committee of an NHS body;
- (d) a service provider;
- (e) an employee of a service provider, or any other person acting on behalf of such a provider;
- (f) a person who provides or assists in the provision of, or is a member or an employee of a person or body who provides or assists in the provision of, services under the 1977 Act, or in connection with a pilot scheme under the 1977 Act, in accordance with a contract made with an NHS body, a service provider or a person to which sub-paragraph (g) applies;
- (g) a local authority which provides, or a person employed by local authority to provide, services under the 1977 Act, or in connection with a pilot scheme under the 1977 Act, in accordance with arrangements made by virtue of section 31(1) of the Act.

### **Information held by means of a computer or in any other electronic form**

**18.**—(1) In this regulation and in regulations 16 and 17, any reference to documents includes a reference to information held by means of a computer or in any other electronic form.

(2) Where the Commission or a person authorised under regulation 16(1) is exercising —

- (a) the right under regulation 16(5) to inspect and take copies of documents; or
- (b) the right under regulation 17(1) to require any person to produce documents,

and such documents consist of information held by means of a computer or in any other electronic form, the Commission or the person authorised may require any person having charge of, or otherwise concerned with the operation of, the computer or other electronic device holding that information to make that information available, or produce that information, in a visible and legible form.

### **Restrictions on disclosure of information to the Commission**

**19.**—(1) The Commission or a person authorised under regulation 16(1) shall not inspect or take copies of documents under regulation 16(5) to the extent that —

- (a) those documents consist of confidential information<sup>(1)</sup> which relates to and identifies a living individual, unless one or more of the conditions specified in paragraph (3) applies; or
  - (b) the inspection or copying of those documents involves the disclosure of information if that disclosure is prohibited by or under any enactment, unless paragraph (4) applies.
- (2) A person shall not be required to produce documents or information under regulation 17(1) or give an explanation under regulation 17(2) to the extent that the production of those documents or that information or the giving of that explanation discloses information —
- (a) which is confidential and which relates to and identifies a living individual, unless one or more of the conditions specified in paragraph (3) applies; or
  - (b) the disclosure of which is prohibited by or under any enactment, unless paragraph (4) applies.
- (3) The conditions referred to in paragraphs (1)(a) and (2)(a) are —
- (a) the information is disclosed in a form in which the identity of the individual cannot be ascertained;
  - (b) the individual consents to the information being disclosed;
  - (c) the individual cannot be traced despite the taking of all reasonable steps;
  - (d) in a case where the Commission is exercising its functions under section 20(1)(c), (d) or (db) of the Act<sup>(2)</sup> or regulation 2(e) of the Functions Regulations —
    - (i) it is not practicable to disclose the information in a form in which the identity of the individual cannot be ascertained;
    - (ii) the Commission considers that there is a serious risk to the health or safety of patients arising out of the matters which are the subject of the investigation; and
    - (iii) having regard to that risk and the urgency of the exercise of those functions, the Commission considers that the information should be disclosed without the consent of the individual.
- (4) This paragraph applies where —
- (a) the prohibition on the disclosure of information operates by reason of the fact that the information is capable of identifying an individual; and
  - (b) the information in question is in a form in which the identity of the individual cannot be ascertained.
- (5) In a case where the disclosure of information is prohibited by —
- (a) paragraph (1); or
  - (b) paragraph (2) and the prohibition operates by reason of the fact that the information is capable of identifying an individual,

the Commission or a person authorised by the Commission under regulation 16(1) may require the person holding the information to put the information in a form in which the identity of the individual concerned cannot be identified, in order that the information may be disclosed.

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(1) See section 23(6) of the 1999 Act for the definition of “confidential information”.

(2) Section 20(1)(db) was inserted by section 13(1) of the 2002 Act.