

These notes refer to the Health and Social Care (Community Health and Standards) Act 2003 (c.43) which received Royal Assent on 20 November 2003

HEALTH AND SOCIAL CARE (COMMUNITY HEALTH AND STANDARDS) ACT 2003

EXPLANATORY NOTES

THE ACT

6. The Act is in 6 Parts:

Part 1 of the Act establishes NHS foundation trusts – a new form of NHS organisation. The Command Paper *Delivering the NHS Plan: Next steps on investment, next steps on reform*¹ set out the Government’s proposals to give greater freedoms to NHS organisations and details of the proposals for NHS foundation trusts were set out in *A Guide to NHS foundation trusts*².

NHS foundation trusts will not be subject to direction by the Secretary of State. Instead, an Independent Regulator will monitor their performance. NHS foundation trusts will be part of the NHS but they will have greater financial and management freedoms including freedoms to retain surpluses and to invest in delivery of new services, to manage and reward their staff flexibly and to access a wider range of options for capital funding. Each NHS foundation trust will have a Board of Governors responsible for representing the interests of the local community, staff and local partner organisations.

The characteristics of NHS foundation trusts are set out in [section 1](#) and [Schedule 1](#) and their functions are set out in [sections 14](#) to 22. [Sections 2](#) and 3 and [Schedule 2](#) concern appointments to and general duties of the Independent Regulator of NHS foundation trusts.

Part 2 deals with matters relating to quality and standards in health and social care.

Chapter 1 of this Part establishes two new regulatory bodies – the Commission for Healthcare Audit and Inspection (the CHAI) and the Commission for Social Care Inspection (the CSCI). The intention to set up the new inspectorates was announced in *Delivering the NHS Plan*³ and the proposed role and functions of which were set out in *The Commission for Healthcare Audit and Inspection and the Commission for Social Care Inspection - a statement of purpose*⁴. Both inspectorates are established as executive non-departmental public bodies. Chapter 1 also abolished the National Care Standards Commission (“the NCSC”) and the Commission for Health Improvement (“CHI”). The majority of the NCSC’s functions transferred to the CSCI, with the exception of those functions relating to the provision of independent healthcare, which transferred to the CHAI. All of the CHI’s functions transferred to the CHAI.

[Chapter 2](#) imposes a duty of quality on all NHS bodies that provide or commission health care, and provides for the standards which are to be taken into account by NHS bodies in discharging the duty of quality and by the CHAI in reviewing health care provision.

¹ For copies – website address: www.doh.gov.uk/deliveringthenhsplan/index.htm

² For copies - website address: www.doh.gov.uk/nhsfoundationtrusts/index.htm

³ ISBN 0215004884 Available from The Stationery Office. Website address: <http://www.tso.co.uk/>

⁴ For copies – website address: www.doh.gov.uk/statementofpurpose/index.htm

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Chapter 3 sets out the functions of the CHAI. Under the Chapter, the CHAI is able to carry out general reviews of health care across NHS bodies in England and Wales. However, reviews and investigations of health care provided by or for particular NHS bodies in Wales are the responsibility of the Assembly under Chapter 4.

Chapter 5 sets out the functions of the CSCI which is an England only body.

In Chapter 6, the Act confers functions on the National Assembly for Wales (“the Assembly”) in relation to social care similar to those conferred upon the CSCI.

Chapter 7 sets out the functions under Parts 1 and 2 of the Care Standards Act 2000 (“the CSA 2000”) which have transferred to the CHAI and CSCI. Chapter 8 provides for other functions of the CSCI.

Chapter 9 deals with the handling of complaints relating to the provision of NHS health care and local authority social services.

Finally, Chapter 10 provides supplementary and general provisions in relation to the CHAI and CSCI, for example providing for joint working between both Commissions.

Part 3 deals with the recovery of NHS charges. This part of the Act provides for the NHS to recover hospital treatment and/or ambulance costs where people receive compensation for injuries. This is an expansion of the current scheme for traffic accident cases as set out in the Road Traffic (NHS Charges) Act 1999. The costs would be recovered from the compensator and not the patient receiving the NHS treatment.

Although the provisions follow very closely those of the 1999 Act, there are some changes being introduced in the way the scheme will operate. There are three of particular note. Firstly, the provision of ambulance services to the injured person as a result of the injury for which compensation is paid will be brought within the scope of the expanded cost recovery scheme. Secondly, formal findings of contributory negligence, if made by a court or endorsed through certain specified court processes or as part of a settlement of the claim through a prescribed mediation process, will be taken into account when calculating the amount of NHS charges recoverable. Thirdly, compensators who wish to appeal against a certificate of charges will be able to seek to have the requirement that any charges due must be paid before such an appeal can be made waived on the grounds of exceptional financial hardship.

Part 4 of the Act makes provision for primary dental and primary medical services.

For dentistry, the Act introduces a new duty on Primary Care Trusts (“PCTs”) and Local Health Boards (“LHBs”) to provide or secure the provision of primary dental services. The Act also provides for PCTs, LHBs and the Assembly to carry out prescribed public dental health functions. It provides for a general dental services contract to be made between PCTs and LHBs and general dental practitioners and dental corporations. The Act also abolishes the Dental Practice Board (“DPB”). Finally, the Act replaces the charging provisions in respect of dental patients in the 1977 Act.

For medical services, the Act also introduces a new duty on PCTs and LHBs to provide or secure the provision of primary medical services. The Act provides for a general medical services contract to be entered into by PCTs and LHBs and general medical practices.

Part 4 of the Act also repeals Part 1 of the Primary Care Act 1997 regarding pilot schemes for personal medical and personal dental services. It makes changes to the provisions regarding “permanent” personal medical and dental services under sections 28C to 28EE of the 1977 Act.

Part 5 of the Act provides for the replacement of the Welfare Food Scheme, a scheme originally set up to provide milk and vitamins to mothers and children during a time of

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food rationing. Changes are made to the way an Order in Council can be made for the Welfare Food Scheme provisions to be replicated for Northern Ireland.

This part of the Act also provides for the Secretary of State to delegate his function of making appointments to certain health and care bodies to a Special Health Authority.

The Act amends the list provisions in both the Protection of Children Act and the Care Standards Act 2000 (for the Protection of Vulnerable Adults list) so that the requirement to obtain a yearly list check is removed for certain groups.

Finally, this Part provides for the abolition of the Public Health Laboratory Service Board (“the PHLS”) and makes minor amendments to other legislation.

Part 6 of the Act contains a number of financial, supplementary and consequential provisions.