

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

COMMENTARY ON SECTIONS

Part 2 –Standards

Chapter 10 – Supplementary and General

Joint working

Section 120: Co-operation etc

271. *Section 120* places a duty on both the CHAI and the CSCI to co-operate with one another where it seems to them appropriate to do so for the efficient and effective discharge of their respective functions. This will in particular allow the CHAI and the CSCI to co-ordinate their work programmes.
272. *Subsection (2)* provides for regulations to prescribe circumstances where the CHAI and the CSCI must consult each other in relation to the proposed exercise of their functions. It is envisaged that in many of the instances where it would be desirable for the CSCI and the CHAI to co-operate, that they would do so without needing to be asked by the Secretary of State. However, there will be instances where co-operation will be essential and it is considered necessary to be able to make regulations to specify the circumstances in which co-operation may be necessary. Regulations may require the CHAI and the CSCI to consult each other before carrying out inspections of a particular type of service, for example, a mental health facility providing integrated health and social services provision, in order to reduce the burdens on those subject to inspection, or could require the CHAI and the CSCI to consult each other on the contents of their respective work programmes.
273. *Subsection (3)* gives the CHAI and the CSCI the power to delegate their functions to one another. *Subsection (4)* allows for the CHAI and the CSCI to enter budget-pooling arrangements, subject to prescribed conditions. It is anticipated that these conditions will relate to matters such as the requirement to keep proper accounts in respect of pooled funds.

Section 121: Reviews and investigations

274. *Subsection (1)* provides for the CHAI and the CSCI to conduct joint reviews and investigations with one another. This will allow for the joint inspection of bodies such as NHS Care Trusts.
275. *Subsection (2)* with *subsection (6)* provides that, without prejudice to any other powers which they may have, (for example by virtue of their general power to do anything which appears to them necessary or expedient in connection with the exercise of their respective functions) the CHAI may conduct a joint review, investigation or study

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with any other body (for example Audit Commission or the Housing Commission) that is carrying out a review or investigation relating to the functions of an NHS body. *Subsection (3)* makes the same provision for the CSCI where another body is conducting a review, investigation or study of the functions of a local authority. Following a joint review, investigation or study, the CHAI and the CSCI may publish, under *subsections (5) and (6)* a report in conjunction with the body they worked with.

Section 122: Joint Annual Reviews

276. *Section 122* allows the Secretary of State to make regulations that would specify that CSCI and CHAI must carry out a joint review and award a star rating of certain health and social care services provided jointly where a local authority and a health service body (such as an NHS trust or Primary Care Trust) have entered into a partnership arrangement under a section 31 of the Health Act 1999.
277. *Section 31* allows health and social care bodies, such as local authorities, primary care trusts (PCTs) and NHS trusts to form partnerships to improve the provision of health and social care services. This is used to provide services which involve elements of both health and social care provision. The key powers that section 31 provides are the abilities to pool funds and delegate functions to enable integrated provision and lead commissioning (where partners come to an agreement that one of them will take the lead in commissioning services for their mutual benefit). Many different types of health and social care services are provided under the arrangements and these can vary widely with respect to size and the amount of resource involved. Services commonly provided under a section 31 partnership include services for older people, rehabilitative care, child and adolescent healthcare and mental health services.
278. This section introduces a broad regulation making power that would enable Secretary of State to prescribe certain services for which a review should be carried out should this be deemed appropriate in the future. For example, regulations could specify that all jointly provided mental health services provided under a section 31 partnership should be subject to a joint annual review by the CHAI and the CSCI.
279. Such a joint review would enable a separate performance rating to be given for the jointly provided service, in addition to separate health and social care ratings. This would recognise the jointly provided service as something distinct and would be able to demonstrate whether it had added any value to the service provision.

Section 123: Power to assist

280. *Section 123* provides for the CHAI or the CSCI to assist other UK public authorities with the exercise of their functions. This will allow for the CHAI or the CSCI to provide assistance to each other, or to other bodies, for example, the Office for Standards in Education (OFSTED), the Housing Inspectorate or Her Majesty's Inspector of Prisons. Assistance could include matters such as seconding employees to the other inspectorate, assisting them in devising their inspection criteria or providing one off advice in relation to areas where the other body has expertise.

Arrangements with public authorities

Section 124: Arrangements with Ministers etc: CHAI

281. *Section 124* enables a Minister of the Crown to arrange for the CHAI to carry out any of its functions in relation to health schemes for which the Minister is responsible. For example, arrangements may be made between the CHAI and the Secretary of State for Defence in respect of provision of health care to the Armed Forces. *Subsection (2)* provides for the CHAI to also enter into similar arrangements with a Northern Ireland Minister for the Northern Irish health service.

Section 125: Arrangements with Ministers etc: CSCI

282. This section enables a Minister of the Crown to arrange for the CSCI to advise him with respect to services that are similar to English local authority social services. *Subsection 1(b)* also allows a Minister to request that the CSCI review, or conduct inspections in relation to social care services. For example, arrangements may be made between the CSCI and the Secretary of State for Defence in respect of provision of social care to members of the Armed Forces and their families stationed abroad. *Subsection (2)* provides for the CSCI to provide advice and assistance to a Northern Ireland Minister in respect of the provision of social services in Northern Ireland.

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

283. This section enables CHAI to provide advice and assistance to the Government of the Isle of Man and the States of Jersey and the States of Guernsey with respect to the provision of health care. Such advice and assistance would only be given upon the request of the authorities in the Islands. The terms and conditions of any such arrangements could include provision for payments to be made to the CHAI.

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

284. This section enables the same arrangements to be made between CSCI and the Isle of Man and Channel Islands as for CHAI in *section 126*.

Reports

Section 128: Reports: CHAI

285. This section places a duty on the CHAI to produce a report on the way it has exercised its functions during the financial year, on the provision of health care by and for NHS bodies in England and Wales and on what it has found in the course of exercising its functions under the CSA 2000.

Section 129: Reports: CSCI

286. This section places a duty on the CSCI to produce a report on the way it has exercised its functions during the financial year, and on what it has found in the course of exercising its functions during the year.
287. *Sections 128(4) and 129(4)* place both the CHAI and the CSCI under a duty to provide other additional reports and information on the exercise of their respective functions as the Secretary of State may request during the year.

Relationship with Government

Section 130: Duty to have regard to government policy: CHAI; and section 131: Duty to have regard to government policy: CSCI

288. These sections place duties upon the CHAI and the CSCI in exercising their respective functions to have regard to such aspects of government policy as the Secretary of State (and the Assembly with respect to certain functions of the CHAI) may direct. It is intended that such a direction would be used to direct the CSCI and CHAI to have regard to broad aspects of government policy - for example, in respect of the CSCI, improving the educational attainment of looked after children.

Section 132: Failure in discharge of functions: CHAI; and section 133: Failure in discharge of functions: CSCI

289. These sections provide that where the Secretary of State considers that the CHAI or the CSCI is significantly failing to discharge any of its functions, or to discharge them

properly then he is able to issue a direction to the CHAI or the CSCI with which it must comply.

Inquiries

Section 134: Inquiries: CHAI

290. *Section 134* provides for the Secretary of State or the Assembly to initiate a public or private inquiry into matters concerning the exercise of any of the CHAI's functions. *Subsection (1)* provides that the Secretary of State may initiate an inquiry in respect of the exercise of any matter connected with the exercise of the functions of the CHAI. *Subsection (2)* provides that the Assembly may do likewise in respect of any matter connected with the exercise of the functions of the CHAI in relation to health care by or for Welsh NHS bodies.
291. *Subsection (3)* gives the Secretary of State or the Assembly the power to make the inquiry wholly private, but where no such direction is given, *subsection (4)* enables the person holding the inquiry to make it wholly or partly private. This might be necessary, for example, to protect patient confidentiality.
292. *Subsection (5)* provides for section 250(2) to (5) of the Local Government Act 1972 to apply in relation to an inquiry undertaken in England or Wales. This will enable the person holding the inquiry to issue a summons requiring an individual to give evidence or produce any documents in their custody or under their control at a stated time and place. If that person fails to attend (for reasons other than not having the necessary expenses of their visit paid or tendered), they may be liable to a fine or imprisonment.
293. *Subsections (6) and (7)* require that reports of inquiries set up under the powers in this section should be published unless the Secretary of State or Assembly, as appropriate, decides, for good reason, that publication would be inappropriate. Grounds for not publishing might include, for example, publication being prejudicial to any ongoing criminal investigation.

Section 135: Inquiries: CSCI

294. This section makes the same provision for CSCI as *section 134* does for CHAI, with the exception that it does not allow the Assembly to initiate a public inquiry into the exercise of CSCI's functions because CSCI is an England only body.

Information

Section 136: Disclosure of information obtained by CHAI; and section 137: defence

295. *Section 136(2)* makes it a criminal offence for any person, including a member or employee of the CHAI, to knowingly or recklessly disclose confidential information that relates to or identifies an individual.
296. *Subsections (1) to (3)* of *section 137* set out a defence to the offence in section 136. It is a defence to prove that any of the circumstances listed in *subsection (2)* applied or that the person charged reasonably believed that they applied. It is also a defence to prove that the disclosure was made for a purpose in *subsection (3)*. One of the circumstances in *subsection (2)* is where the disclosure is made in a form in which the individual to which the information relates is not identified. *Subsection (4)* sets out when an individual is to be regarded as identified for the purposes of this defence.

Section 138: Information obtained by CHAI: supplementary

297. Subject to the provisions outlined in this section, the CHAI may use any information it obtains or is provided with during the course of its functions, for the purposes of any of its other functions, for example information obtained in relation to NHS health care

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provided by an independent hospital could be taken into account when dealing with issues relating to the registration of that hospital under the CSA 2000.

Section 139: Information obtained by CSCI: Supplementary

298. This section provides that the CSCI may use any information it obtains or is provided with during the course of its functions for the purposes of any of its other functions. For example, where the CSCI obtains information as a result of inspecting a children's home in exercise of its functions under Part II of the CSA 2000, that a child placed there may have suffered harm it may use this information to evaluate the performance of the local authority that placed the child there.

Section 140: Code of Practice CHAI and section 141: Code of Practice CSCI

299. *Sections 140* and *141* place CHAI and CSCI under a statutory duty to prepare and publish a code of practice in relation to how CHAI and CSCI will obtain, use, handle and disclose confidential personal information within their powers under legislation. This will ensure that such information is dealt with in an appropriate manner. In drawing up their codes CHAI and CSCI must consult with such persons as they deem appropriate.

Wales: Supplementary

Section 142: Annual reports of Assembly

300. *Section 142* places a duty on the Assembly to make an annual report or reports, of the way in which it has exercised its social care and health care functions in the Act, and its functions under the CSA 2000 in relation to the registration of independent health services and registered social care services in Wales, and its findings in the course of the exercise of those functions over the year.

Section 143: Use by the Assembly of information

301. *Section 143* allows the Assembly to use information it obtains in exercising functions listed in *subsection (2)*, namely its health and social care review functions under the Act and functions under the CSA 2000 and section 80 of the Children Act 1989 (inspection of children's homes) for the purpose of exercising any other of those functions listed in *subsection (2)*.

Section 144: Inquiries: Wales

302. *Section 144* applies where the Assembly holds an inquiry into any matter connected with its social care functions (which are all its functions under the CSA 2000 which equate to those of the CSCI and the CHAI and all its other functions which equate to those of the CSCI). In the same way as is provided by *sections 134* and *135* for inquiries in relation to the CHAI and the CSCI's functions, *subsections (2)* and *(3)* of this section enable the Assembly to direct any inquiry, or part of an inquiry, to be held in private, and where the Assembly does not direct, the person holding the inquiry may decide.

Section 145: Co-operation between Assembly and CHAI

303. *Section 145* places a duty on the CHAI and the Assembly to co-operate in order to ensure that their functions of reviewing and investigating health care under Part 2 of the Act are carried out efficiently and effectively.

General

Section 146: Offences by bodies corporate

304. This section provides that an individual may be held liable where a body corporate is judged to have committed an offence under this Part. *Subsection (2)* makes it clear that

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an individual may be proceeded against if they are a director, manager or secretary of a body corporate (or acting in such a capacity) found guilty of an offence, where the offence is judged to have occurred with their consent or connivance or be attributable to their neglect.

Section 147: Minor and consequential amendments

305. *Section 147* makes provision for *Schedule 9*, which makes minor and consequential amendments to other legislation. The following amendments are of particular note:
306. *Paragraph 8 of Schedule 9* amends the Children Act 1989 to make the CSCI responsible for notifying the Secretary of State of instances where it believes an individual has not been added to the Protection of Children Act or Protection of Vulnerable Adult lists, when they should have been. That Act is also amended to ensure that the CSCI is notified by the relevant local authority when a child dies whilst in local authority care.
307. *Paragraph 12* amends the Audit Commission Act 1998 (“the 1998 Act”). *Subparagraph (2)* provides for the Audit Commission to consult the CHAI, the CSCI and the Assembly when drawing up various codes of audit practice prescribing the way in which auditors are to carry out their functions. *Subparagraph (3)* provides that the Audit Commission must obtain the agreement of the CHAI before preparing or making any changes to provisions of a code applicable to the accounts of health service bodies that concern an auditor’s consideration of whether arrangements have been made for securing economy, efficiency and effectiveness in the use of resources. *Subparagraph (5)* provides for the Audit Commission to consult the CSCI and the Assembly when it is considering undertaking a study for improving economy, efficiency and effectiveness in services connected with English and Welsh local authority social services respectively.
308. *Subparagraph (6)* provides that the Audit Commission’s functions under section 33(1) of the 1998 Act of undertaking studies for improving economy, efficiency and effectiveness in the provision of services, and for improving the financial or other management of bodies do not (apart from functions of conducting studies on financial management) apply in relation to Primary Care Trusts, Strategic Health Authorities, and NHS trusts all or most of whose establishments are situated in England.
309. *Subparagraph (7)* provides for the Audit Commission to consult the CSCI when it is considering undertaking a study on the impact of statutory provisions, or directions or guidance given by a Minister, that are connected with English local authority social services and consult the Assembly where this concerns Welsh local authority social services.