

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

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2 –Standards

Chapter 3 - Nhs Health Care: Functions of Chai

Supplementary

Section 59: Criteria

169. This section provides for the Secretary of State or the Assembly as appropriate to make regulations requiring the CHAI to devise and publish statements of criteria to be used by it in exercising its functions under *sections 48(1), 49, 51 or 52*, in relation to health care provided by and for NHS bodies.
170. The Secretary of State may also make such regulations with respect to the exercise of the CHAI's functions under *sections 52, 56, 57 and 58(1)*.
171. The regulations may require the CHAI to obtain the consent of the appropriate authority before publishing any such statement. Before making any such regulations the appropriate authority must first consult the CHAI.

Section 62: Fees and section 63:Fees: Wales

172. *Section 62(1)* provides a power for the CHAI to be able to make and publish provision requiring persons to pay fees in relation to the exercise of prescribed functions under this Chapter. *Section 62(1)(a)* provides for it to be able to charge fees to NHS bodies and cross border Special Health Authorities, and *section 62(1)(b)* provides for it to be able to charge fees to any person of a prescribed description who provides health care for an English NHS body or cross border Special Health Authority.
173. Similar powers in relation to the exercise of the CHAI's functions in relation to Welsh NHS bodies are provided under *section 63*. Therefore, the CHAI may not charge a Welsh NHS body under the provisions of *section 62(1)(b)* and may not charge an English NHS body or cross border Special Health Authority under *section 63(1)(b)*. By *subsection (5)* of both sections, CHAI is under a duty to consult appropriate persons before specifying any provisions.
174. *Subsection (6)* of both sections confers a regulation making power on the appropriate authority to prescribe the manner in which CHAI's fees are to be made and published and to enable the appropriate authority to specify the matters that CHAI must take into account before it determines any fee.

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

175. *Subsection (7)* of both sections will allow the appropriate authority to make provisions for an independent person or panel to review the charge levied by CHAI in a particular case, and to substitute a lesser one if they deem it appropriate.

Section 66: Right of entry

176. This section provides that individuals authorised by the CHAI may enter and inspect premises that are owned or controlled by an NHS body or which are used or proposed to be used for any purpose connected with the provision of health care by or for NHS bodies, or the discharge of functions of those bodies.

Section 67: Right of entry: supplementary

177. *Subsection (1)* allows a person (authorised to enter and inspect premises by virtue of *section 66*) to inspect and copy relevant documents or records. It also allows inspectors to interview any person working at the premises or any patients or persons receiving health care that consent to be interviewed. Inspectors may also require relevant records or other documents on the premises to be produced for inspection, and where they are stored on computer, for them to be produced in a legible, not encrypted, form. *Subsection (4)* imposes a requirement to assist an inspector and permits the inspector to take such measurements and photographs and make such recordings as he considers necessary to enable him to exercise his powers under *section 66*.

Section 68: Power to require documents and information

178. *Section 68* confers on the CHAI a general power to require information and documents from the bodies or persons listed in *subsection (2)* irrespective of whether or not the CHAI is conducting an inspection, where such information relates to the provision of health care by or for an NHS body or the discharge of functions of an NHS body and where the CHAI considers it necessary or expedient to have the information or documents for its purposes under this Chapter.
179. *Subsection (2)(c)* gives the CHAI the right to require information or documents from a local authority. This will enable the CHAI to obtain information or documents kept by a local authority for its own purposes, where that information is relevant to the exercise of the CHAI's functions under this Chapter. For example, the CHAI might request information as to how quickly the local authority responds to requests by an NHS trust to assess the social services needs of persons ready to be discharged from hospital.

Section 69: Power to require explanation

180. Under this section, regulations may make provision for the CHAI to require a prescribed person to provide it with an explanation of any documents or information it obtains under *sections 66* to *68* or any matters which are the subject of the CHAI's functions under this Chapter. *Subsection (2)* enables these regulations to set the requirement that individuals must be present at a specified place to give an explanation. The CHAI will use this power to enable it to discuss with those responsible any matters of concern that its inspections have brought to light.
181. *Sections 67(5)*, *68(4)* and *69(3)* make it an offence for a person to obstruct the exercise of any of the CHAI's powers under these sections or to fail to comply with any requirement. The penalty on summary conviction is a fine not exceeding level 4 (£2500) on the standard scale.