

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

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 2 –Standards**

#### *Chapter 9 - Complaints*

#### *Section 113: Complaints about health care*

239. *Section 113* gives the Secretary of State and the Assembly powers to make regulations about the handling and consideration of complaints.
240. *Subsection (1)* sets out what matters may be the subject of complaints under the regulations. It includes the provision of services by an English NHS body or cross-border Special Health Authority under a partnership arrangement made by it under section 31 of the Health Act 1999 in relation to the exercise of the health-related functions of a local authority. That section allows the NHS and local authorities to work together by enabling them to pool resources, delegate functions from one to another and enables a single provider to provide both health and local authority services. The intention is that a person receiving both health and local authority services from a health body under such an arrangement will be able to complain to that health body even if the complaint is about the local authority services which it provides.
241. *Subsection (2)* gives the Assembly the same power in respect of Welsh NHS bodies as the Secretary of State has in relation to English NHS bodies and cross border bodies in *subsection (1)*.
242. By *subsection (3)*, the regulations may provide for who may consider a complaint. It is envisaged that in both England and Wales regulations will provide that the complaint be made to the health care provider which is the subject of the complaint, where an attempt will be made to investigate and resolve the matter. If this is not possible, the second stage will involve consideration by the CHAI and by an independent lay person in England. In Wales, if further investigation under the complaints procedure is felt to be warranted, this will be conducted by an independent panel for complaints.
243. It is envisaged that the focus of the CHAI's role in the second stage of the complaints procedure in England will be to establish the facts pertinent to a complaint in order to identify how, and by whom, the complaint is most likely to be resolved to the satisfaction of the complainant and the body or persons complained about. Following the CHAI's assessment of an individual case, it is envisaged that it will decide what, if any, further action, and by whom, is appropriate. Options likely to be available to the CHAI include: making recommendations to the NHS body complained about in relation to further action that may be needed locally to resolve the complaint; full investigation by the CHAI, either by itself or by any independent panel established or engaged by the CHAI; referral for consideration by other agencies (for example a professional

*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*

regulatory body); referral, subject to agreed criteria, for consideration by the Health Service Commissioner or no further action to be taken.

244. In Wales, it is envisaged that an independent lay person, with the benefit of independent clinical advice if necessary, will determine how a complaint that has not been dealt with to the patient's satisfaction by the NHS body complained about, should proceed. The options open to the independent lay person are likely to include, as set out above in relation to CHAI in England, making recommendations to the NHS body in question about further action that may be taken to resolve the complaint locally; full investigation by an independent panel; referral for consideration by other agencies; referral, subject to agreed criteria, for consideration by the Health Service Commissioner; or no further action. The principal difference in the way that Wales will deal with NHS complaints is that it is not currently envisaged that there will be a role for CHAI. As set out above, it is envisaged that an independent lay person and, if convened, an independent panel will fulfil the same role in relation to NHS complaints in Wales as CHAI will in England.
245. The regulations may, by virtue of *subsection (4)*, provide for a complaint or any matter raised by a complaint to be referred to a Health Service Commissioner for consideration as to whether to investigate the complaint under the Health Service Commissioners Act 1993, or to any other person or body, such as the police or a professional regulatory body, for them to decide whether to take any action themselves.