



# Health and Social Care (Community Health and Standards) Act 2003

## 2003 CHAPTER 43

### PART 2

#### STANDARDS

#### CHAPTER 1

##### REGULATORY BODIES

#### **41 The Commission for Healthcare Audit and Inspection**

- (1) There is to be a body corporate known as the Commission for Healthcare Audit and Inspection (in this Part referred to as the CHAI).
- (2) Schedule 6 (which makes further provision about the CHAI) has effect.

#### **42 The Commission for Social Care Inspection**

- (1) There is to be a body corporate known as the Commission for Social Care Inspection (in this Part referred to as the CSCI).
- (2) Schedule 7 (which makes further provision about the CSCI) has effect.

#### **43 Transfer of property etc to CHAI and CSCI**

Schedule 8 (which makes provision for the transfer of property, rights and liabilities to the CHAI and the CSCI) has effect.

#### **44 Abolition of former regulatory bodies**

- (1) The Commission for Health Improvement is abolished.

- (2) The National Care Standards Commission is abolished.

## CHAPTER 2

### NHS HEALTH CARE: INTRODUCTORY

#### 45 Quality in health care

- (1) It is the duty of each NHS body to put and keep in place arrangements for the purpose of monitoring and improving the quality of health care provided by and for that body.
- (2) In this Part “health care” means—
- (a) services provided to individuals for or in connection with the prevention, diagnosis or treatment of illness; and
  - (b) the promotion and protection of public health.
- (3) In subsection (2)(a), “illness” has the meaning given by section 128(1) of the 1977 Act.

#### 46 Standards set by Secretary of State

- (1) The Secretary of State may prepare and publish statements of standards in relation to the provision of health care by and for English NHS bodies and cross-border SHAs.
- (2) The Secretary of State must keep the standards under review and may publish amended statements whenever he considers it appropriate.
- (3) The Secretary of State must consult such persons as he considers appropriate—
- (a) before publishing a statement under this section;
  - (b) before publishing an amended statement under this section which in the opinion of the Secretary of State effects a substantial change in the standards.
- (4) The standards set out in statements under this section are to be taken into account by every English NHS body and cross-border SHA in discharging its duty under section 45.

#### 47 Standards set by Assembly

- (1) The Assembly may prepare and publish statements of standards in relation to the provision of health care by and for Welsh NHS bodies.
- (2) The Assembly must keep the standards under review and may publish amended statements whenever it considers it appropriate.
- (3) The Assembly must consult such persons as it considers appropriate—
- (a) before publishing a statement under this section;
  - (b) before publishing an amended statement under this section which in the opinion of the Assembly effects a substantial change in the standards.
- (4) The standards set out in statements under this section are to be taken into account by every Welsh NHS body in discharging its duty under section 45.

## CHAPTER 3

### NHS HEALTH CARE: FUNCTIONS OF CHAI

#### *Healthcare provided by and for NHS bodies*

#### **48**     **Introductory**

- (1) The CHAI has the general function of encouraging improvement in the provision of health care by and for NHS bodies.
- (2) In exercising its functions under subsection (1) and sections 49 to 56 in relation to such provision, the CHAI shall be concerned in particular with—
  - (a) the availability of, and access to, the health care;
  - (b) the quality and effectiveness of the health care;
  - (c) the economy and efficiency of the provision of the health care;
  - (d) the availability and quality of information provided to the public about the health care;
  - (e) the need to safeguard and promote the rights and welfare of children; and
  - (f) the effectiveness of measures taken for the purpose of paragraph (e) by the body in question and any person who provides, or is to provide, health care for that body.

#### **49**     **National performance data**

The CHAI has the function of publishing data relating to the provision of health care by and for NHS bodies.

#### **50**     **Annual reviews**

- (1) In each financial year the CHAI must conduct a review of the provision of health care by and for—
  - (a) each English NHS body, and
  - (b) each cross-border SHA,and must award a performance rating to each such body.
- (2) The CHAI is to exercise its function under subsection (1) by reference to criteria from time to time devised by it and approved by the Secretary of State.
- (3) The CHAI must publish the criteria devised and approved from time to time under subsection (2).
- (4) In exercising its functions under this section in relation to any health care the CHAI must take into account the standards set out in statements published under section 46.
- (5) For the purposes of this section the CHAI may, subject to this Part, conduct an inspection of—
  - (a) the body being reviewed; and
  - (b) any person who provides, or is to provide, health care for that body (wherever the health care is or is to be provided).

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- (6) The Secretary of State may, after consulting the CHAI, by regulations make provision as to the procedure to be followed in respect of the making of representations to the CHAI before the award of a performance rating under this section.

## **51 Reviews: England and Wales**

- (1) The CHAI has the function of conducting reviews of—
- (a) the overall provision of health care by and for NHS bodies;
  - (b) the overall provision of particular kinds of health care by and for NHS bodies;
  - (c) the provision of health care, or a particular kind of health care, by and for NHS bodies of a particular description.
- (2) If the Secretary of State so requests, the CHAI must conduct—
- (a) a review under subsection (1)(a);
  - (b) a review under subsection (1)(b) of the overall provision of a kind of health care specified in the request; or
  - (c) a review under subsection (1)(c) of the provision of health care, or health care of a kind specified in the request, by or for NHS bodies of a description so specified.
- (3) The Secretary of State must consult the Assembly before making a request under subsection (2).
- (4) In conducting a review under this section in relation to any health care the CHAI must take into account—
- (a) the standards set out in statements published under section 46, where the health care is provided by or for an English NHS body or cross-border SHA;
  - (b) the standards set out in statements published under section 47, where the health care is provided by or for a Welsh NHS body.
- (5) For the purposes of this section the CHAI may carry out an inspection of—
- (a) any NHS body; and
  - (b) any person who provides, or is to provide, health care for an NHS body (wherever the health care is or is to be provided).
- (6) Where the CHAI conducts a review under this section it must publish a report.
- (7) The Secretary of State may, after consulting the CHAI, by regulations make provision as to the procedure to be followed in respect of the making of representations to the CHAI before the publication of a report under this section.

## **52 Reviews and investigations: England**

- (1) The CHAI has the function of conducting other reviews of, and investigations into, the provision of health care by and for English NHS bodies and cross-border SHAs.
- (2) The CHAI may in particular under this section conduct—
- (a) a review of the overall provision of health care by and for English NHS bodies and cross-border SHAs;
  - (b) a review of the overall provision of a particular kind of health care by and for English NHS bodies and cross-border SHAs;

- (c) a review of, or investigation into, the provision of any health care by or for a particular English NHS body or cross-border SHA.
- (3) The CHAI has the function of conducting reviews of the arrangements made by English NHS bodies and cross-border SHAs for the purpose of discharging their duty under section 45.
  - (4) If the Secretary of State so requests, the CHAI must conduct—
    - (a) a review under subsection (2)(a);
    - (b) a review under subsection (2)(b) of the overall provision of a kind of health care specified in the request;
    - (c) a review or investigation under subsection (2)(c), or a review under subsection (3), in relation to the provision of such health care by or for such body as may be specified in the request.
  - (5) In exercising its functions under this section in relation to any health care the CHAI must take into account the standards set out in statements published under section 46.
  - (6) For the purposes of this section the CHAI may carry out an inspection of—
    - (a) any English NHS body or cross-border SHA; and
    - (b) any person who provides, or is to provide, health care for such a body (wherever the health care is or is to be provided).
  - (7) Where the CHAI conducts a review or investigation under this section it must publish a report.
  - (8) The Secretary of State may, after consulting the CHAI, by regulations make provision as to the procedure to be followed in respect of the making of representations to the CHAI before the publication of a report under this section.
  - (9) The Secretary of State may by regulations require an NHS body to publish a statement as to the action it proposes to take as a result of any review or investigation conducted under this section in relation to it.
  - (10) Regulations under subsection (9) may make provision—
    - (a) as to the matters with which a statement under the regulations must deal;
    - (b) as to the time by which any such statement must be published;
    - (c) requiring an NHS body, before publishing any such statement, to obtain the consent of any person specified in the regulations;
    - (d) requiring the NHS body publishing any such statement to send a copy of it to any person so specified.

## 53 Failings

- (1) This section applies where the CHAI conducts—
  - (a) a review under section 50 or 51; or
  - (b) a review or investigation under section 52.
- (2) The CHAI must make a report to the Secretary of State if it is of the view that—
  - (a) there are significant failings in relation to the provision of health care by or for an English NHS body or cross-border SHA;
  - (b) there are significant failings in the running of an English NHS body or cross-border SHA; or

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- (c) there are significant failings in the running of any body, or the practice of any individual, providing health care for an English NHS body or cross-border SHA.
- (3) A report made to the Secretary of State under subsection (2) may include a recommendation that, with a view to remedying the failings in question, the Secretary of State take special measures in relation to—
- (a) in a case falling within paragraph (a) or (b) of subsection (2), the English NHS body or cross-border SHA in question;
  - (b) in a case falling within paragraph (c) of that subsection, any person, other than a Welsh NHS body, referred to in that paragraph.
- (4) The CHAI must also report to the Assembly where it is of the view that—
- (a) there are significant failings in relation to the provision of health care by or for a Welsh NHS body;
  - (b) there are significant failings in the running of a Welsh NHS body; or
  - (c) there are significant failings in the running of any body, or the practice of any individual, providing health care for a Welsh NHS body.
- (5) A report made to the Assembly under subsection (4) may include a recommendation that, with a view to remedying the failings in question, the Assembly take special measures in relation to—
- (a) in a case falling within paragraph (a) or (b) of subsection (4), the Welsh NHS body in question; and
  - (b) in a case falling within paragraph (c) of that subsection, any person, other than an English NHS body or cross-border SHA, referred to in that paragraph.
- (6) The CHAI must also make a report to the regulator where it is of the view that—
- (a) there are significant failings in relation to the provision of health care by or for an NHS foundation trust;
  - (b) there are significant failings in the running of an NHS foundation trust; or
  - (c) there are significant failings in the running of any body, or the practice of any individual, providing health care for an NHS foundation trust.
- (7) A report made to the regulator under subsection (6) may include a recommendation that, with a view to remedying the failings in question, the regulator take special measures in relation to the NHS foundation trust in question.
- (8) A report under this section must give the CHAI's reasons for its view and for any recommendation made.
- (9) The Secretary of State may, after consulting the CHAI, by regulations make provision as to the procedure to be followed in respect of the making of representations to the CHAI before the publication of a report under this section.

#### **54 Functions relating to Secretary of State and Assembly**

- (1) The CHAI is to keep the appropriate authority informed about the provision of health care by and for any NHS body.
- (2) The CHAI may at any time give advice to the appropriate authority on any matter connected with the provision of such health care (including, in particular, advice on

any changes which it thinks should be made to the standards under section 46 or 47 for the purpose of securing improvement in the quality of the health care).

- (3) When requested to do so by the appropriate authority, the CHAI must give the authority advice or information on such matters connected with the provision of health care by or for any NHS body as may be specified in the request.
- (4) The CHAI may give advice to the appropriate authority or any NHS body about the establishment or conduct of any inquiry held, or to be held, by the authority or the body in relation to the provision of health care by or for that body.
- (5) In this section, the “appropriate authority” means—
  - (a) the Secretary of State, in relation to the provision of health care by or for an English NHS body or cross-border SHA; or
  - (b) the Assembly, in relation to the provision of health care by or for a Welsh NHS body.

## **55 Reviews of data**

- (1) The CHAI may review—
  - (a) the quality of data obtained by others in relation to the provision of health care by and for NHS bodies;
  - (b) the methods used in the collection and analysis of such data; and
  - (c) the validity of conclusions drawn from such data.
- (2) Where the CHAI conducts a review under this section it must publish a report.

## **56 Co-ordination of reviews**

The CHAI has the function of promoting the effective co-ordination of reviews or assessments carried out by public bodies or other persons in relation to the provision of health care by or for English NHS bodies and cross-border SHAs.

### *Other functions*

## **57 Studies as to economy, efficiency etc**

- (1) The CHAI has the function of promoting or undertaking comparative or other studies designed to enable it to make recommendations for improving economy, efficiency and effectiveness in the exercise of any of the functions of an English NHS body, other than a Special Health Authority (whether the functions are exercised by the English NHS body or by another person).
- (2) The CHAI may exercise its function under subsection (1) in relation to a body on the CHAI’s own initiative or at the request of the body concerned.
- (3) For the purposes of this section the CHAI may carry out an inspection of—
  - (a) any English NHS body other than a Special Health Authority;
  - (b) any person exercising the functions of such a body.
- (4) The CHAI must publish its recommendations and the result of any studies under this section.

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- (5) The Secretary of State may, after consulting the CHAI, by regulations make provision as to the procedure to be followed in respect of the making of representations to the CHAI before the publication of any recommendations or the result of any studies under this section.
- (6) The CHAI's functions under this section may be exercised on its behalf by the Audit Commission, if the Audit Commission and the CHAI so agree.
- (7) Where the Audit Commission exercises functions under subsection (6), it shall do so on such terms, including terms as to payment, as the CHAI and the Audit Commission may agree.

## **58 Additional functions**

- (1) The Secretary of State may by regulations provide that the CHAI is to have such additional functions as may be prescribed in relation to—
  - (a) the provision of health care by or for NHS bodies;
  - (b) the improvement of—
    - (i) economy, efficiency and effectiveness in the exercise of the functions of English NHS bodies; and
    - (ii) the financial or other management, or operations, of English NHS bodies.
- (2) The Secretary of State must consult the regulator before making provision under subsection (1) in relation to NHS foundation trusts.
- (3) The Secretary of State must obtain the consent of the Assembly before making provision under subsection (1)(a) in relation to health care provided by or for a Welsh NHS body other than health care provided by or for an English NHS body or cross-border SHA.

### *Supplementary*

## **59 Criteria**

- (1) The Secretary of State may, after consulting the CHAI, make regulations requiring the CHAI to devise and publish statements of criteria to be used in—
  - (a) the exercise of any of its functions under section 48(1), 49, 51 or 53 in relation to the provision of health care by or for an English NHS body or cross-border SHA;
  - (b) the exercise of any of its functions under section 52, 56, 57 or 58(1)(b).
- (2) The Assembly may, after consulting the CHAI, make regulations requiring the CHAI to devise and publish statements of criteria to be used in the exercise of its functions under section 48(1), 49, 51 or 53 in relation to the provision of health care by or for a Welsh NHS body.
- (3) In relation to any function conferred on the CHAI under subsection (1)(a) of section 58, regulations under that section may provide that any one or more of the following provisions of this section shall have effect as if it included a reference to the exercise of that function—
  - (a) subsection (1)(a);



- (b) subsection (1)(b);
  - (c) subsection (2).
- (4) Regulations under this section may require the CHAI—
- (a) to consult any person specified in the regulations before publishing a statement under subsection (1) or (2);
  - (b) to obtain the consent of the Secretary of State before publishing a statement under subsection (1);
  - (c) to obtain the consent of the Assembly before publishing a statement under subsection (2).

## **60 Provision of material**

- (1) The CHAI must, on request, provide the Comptroller and Auditor General with any material relevant to a review or investigation under sections 50 to 52 or a study under section 57.
- (2) The CHAI must, on request, provide the regulator with—
- (a) any material which is relevant to a review or investigation under sections 50 to 52 and relates to the provision of health care by or for an NHS foundation trust;
  - (b) any material which is relevant to a study under section 57 and relates to an NHS foundation trust.

## **61 Co-operation between CHAI and the regulator**

- (1) The CHAI and the regulator must co-operate with each other in the exercise of their respective functions under Part 1 and this Chapter.
- (2) In particular, for the purposes of subsection (1)—
- (a) the CHAI must keep the regulator informed about the provision of health care by and for NHS foundation trusts;
  - (b) the regulator must give to the CHAI any information it has about the provision of health care by or for an NHS foundation trust which it considers would assist the CHAI in the discharge of its functions.

## **62 Fees**

- (1) The CHAI may from time to time make and publish provision—
- (a) requiring an English NHS body or cross-border SHA to pay a fee in respect of the exercise by the CHAI, in relation to that body or to health care provided by or for that body, of such of its functions under this Chapter as may be prescribed;
  - (b) requiring a person of a prescribed description who provides health care for an English NHS body or cross-border SHA to pay a fee in respect of the exercise by the CHAI, in relation to the health care so provided by that person, of such of its functions under this Chapter as may be prescribed.
- (2) The CHAI may not under subsection (1)(b) require a Welsh NHS body to pay a fee.
- (3) The amount of a fee payable under provision under subsection (1) shall be such as may be specified in, or calculated or determined under, the provision.

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- (4) Provision under subsection (1) may include provision—
  - (a) for different fees to be paid in different cases, or classes of case;
  - (b) for different fees to be paid by persons of different descriptions;
  - (c) for the amount of a fee to be determined by the CHAI in accordance with specified factors;
  - (d) for the time by which a fee must be paid.
- (5) Before making any provision under subsection (1) the CHAI must consult such persons as appear to it appropriate.
- (6) The Secretary of State may by regulations make provision as to—
  - (a) the manner in which provision under subsection (1) is to be made and published;
  - (b) the matters to be taken into account by the CHAI before making the provision.
- (7) The Secretary of State may by regulations make provision for an independent person or panel to review the amount charged under subsection (1) in any particular case and, if that person or panel thinks fit, to substitute a lesser amount for that amount.
- (8) For the purpose of determining the fee payable by a person or body under subsection (1), the person or body must provide the CHAI with such information, in such form, as the CHAI may require.
- (9) A fee payable by virtue of this section may, without prejudice to any other method of recovery, be recovered summarily as a civil debt.

### **63 Fees: Wales**

- (1) The CHAI may from time to time make and publish provision—
  - (a) requiring a Welsh NHS body to pay a fee in respect of the exercise by the CHAI, in relation to that body or to health care provided by or for that body, of such of its functions under this Chapter as may be prescribed;
  - (b) requiring a person of a prescribed description who provides health care for a Welsh NHS body to pay a fee in respect of the exercise by the CHAI, in relation to the health care so provided by that person, of such of its functions under this Chapter as may be prescribed.
- (2) The CHAI may not under subsection (1)(b) require an English NHS body or cross-border SHA to pay a fee.
- (3) The amount of a fee payable under provision under subsection (1) shall be such as may be specified in, or calculated or determined under, the provision.
- (4) Provision under subsection (1) may include provision—
  - (a) for different fees to be paid in different cases, or classes of case;
  - (b) for different fees to be paid by persons of different descriptions;
  - (c) for the amount of a fee to be determined by the CHAI in accordance with specified factors;
  - (d) for the time by which a fee must be paid.
- (5) Before making any provision under subsection (1) the CHAI must consult such persons as appear to it appropriate.

- (6) The Assembly may by regulations make provision as to—
  - (a) the manner in which provision under subsection (1) is to be made and published;
  - (b) the matters to be taken into account by the CHAI before making the provision.
- (7) The Assembly may by regulations make provision for an independent person or panel to review the amount charged under subsection (1) in any particular case and, if that person or panel thinks fit, to substitute a lesser amount for that amount.
- (8) For the purpose of determining the fee payable by a person or body under subsection (1), the person or body must provide the CHAI with such information, in such form, as the CHAI may require.
- (9) A fee payable by virtue of this section may, without prejudice to any other method of recovery, be recovered summarily as a civil debt.

#### **64 Reports and information**

- (1) The CHAI must make copies of any report published by it under this Chapter available for inspection at its offices by any person at any reasonable time.
- (2) Any person who requests a copy of such a report is entitled to have one on payment of such reasonable fee (if any) as the CHAI considers appropriate.
- (3) The CHAI may charge a person such reasonable fee as it considers appropriate where it provides him, at his request, with any other information relevant to the discharge of the CHAI's functions under this Chapter.

#### **65 Co-operation between CHAI and the Audit Commission**

The CHAI and the Audit Commission must co-operate with each other in relation to matters in respect of which both have functions.

#### **66 Right of entry**

- (1) A person authorised to do so by the CHAI may, if the CHAI considers it necessary or expedient for the purposes of this Chapter, at any reasonable time enter and inspect—
  - (a) any premises owned or controlled by an NHS body;
  - (b) any other premises used, or proposed to be used, for any purpose connected with—
    - (i) the provision of health care by or for an NHS body, or
    - (ii) the discharge of any of the functions of an NHS body.
- (2) A person who proposes to exercise any power of entry or inspection conferred by this section must if so required produce some duly authenticated document showing his authority to exercise the power.

#### **67 Right of entry: supplementary**

- (1) A person authorised by virtue of section 66 to enter and inspect premises may, if he considers it necessary or expedient for the purposes of this Chapter—

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- (a) inspect, take copies of and remove from the premises any documents or records (including personal records);
  - (b) inspect any other item and remove it from the premises;
  - (c) interview in private—
    - (i) any person working at the premises;
    - (ii) any person receiving health care there who consents to be interviewed; and
  - (d) make any other examination into the state and management of the premises and treatment of persons receiving health care there.
- (2) The power in subsection (1)(a) includes—
- (a) power to require any person holding or accountable for documents or records kept on the premises to produce them; and
  - (b) in relation to records which are kept by means of a computer, power to require the records to be produced in a form in which they are legible and can be taken away.
- (3) A person authorised by virtue of subsection (1)(a) to inspect any records is entitled to have access to, and to check the operation of, any computer and any associated apparatus or material which is or has been in use in connection with the records in question.
- (4) A person authorised by virtue of section 66 to enter and inspect any premises may—
- (a) require any person to afford him such facilities and assistance with respect to matters within the person’s control as are necessary to enable him to exercise his powers under section 66 or this section; and
  - (b) take such measurements and photographs and make such recordings as he considers necessary to enable him to exercise those powers.
- (5) Any person who without reasonable excuse—
- (a) obstructs the exercise of any power conferred by section 66 or this section, or
  - (b) fails to comply with any requirement of section 66 or this section,
- is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

## **68 Power to require documents and information etc**

- (1) The CHAI may at any time require any person specified in subsection (2) to provide it with any information, documents, records (including personal records) or other items—
- (a) which relates or relate to—
    - (i) the provision of health care by or for an NHS body, or
    - (ii) the discharge of any of the functions of an NHS body; and
  - (b) which the CHAI considers it necessary or expedient to have for the purposes of this Chapter.
- (2) The persons referred to in subsection (1) are—
- (a) the NHS body;
  - (b) any person providing health care for, or exercising functions of, the NHS body;
  - (c) a local authority.

- (3) The power in subsection (1) to require the provision of records includes, in relation to records kept by means of a computer, power to require the provision of the records in legible form.
- (4) Any person who without reasonable excuse fails to comply with any requirement imposed by virtue of this section is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

## **69 Power to require explanation**

- (1) The Secretary of State may by regulations make provision requiring prescribed persons to provide to the CHAI, or to persons authorised by it, an explanation of—
  - (a) any documents, records or items inspected, copied or provided under sections 66 to 68,
  - (b) any information provided under those sections, or
  - (c) any matters which are the subject of the exercise of any functions of the CHAI under this Chapter,
 in circumstances where the CHAI considers the explanation necessary or expedient for the purposes of this Chapter.
- (2) Regulations under subsection (1) may require explanations to be provided at such times and places as may be specified by the CHAI.
- (3) Any person who without reasonable excuse fails to comply with any requirement imposed by virtue of this section is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

## **CHAPTER 4**

### NHS HEALTH CARE: FUNCTIONS OF NATIONAL ASSEMBLY FOR WALES

#### *Reviews and investigations*

## **70 Reviews and investigations relating to Wales**

- (1) The Assembly has the function of conducting reviews of, and investigations into, the provision of health care by and for Welsh NHS bodies.
- (2) The Assembly may in particular under this section conduct—
  - (a) a review of the overall provision of health care by and for Welsh NHS bodies;
  - (b) a review of the overall provision of a particular kind of health care by and for Welsh NHS bodies;
  - (c) a review of, or investigation into, the provision of any health care by or for a particular Welsh NHS body.
- (3) The Assembly has the function of conducting reviews of the arrangements made by Welsh NHS bodies for the purpose of discharging their duty under section 45.
- (4) In exercising its functions under this section in relation to any health care the Assembly shall be concerned in particular with—
  - (a) the availability of, and access to, the health care;

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- (b) the quality and effectiveness of the health care;
- (c) the financial or other management of the health care and the economy and efficiency of its provision;
- (d) the availability and quality of information provided to the public about the health care;
- (e) the need to safeguard and promote the rights and welfare of children; and
- (f) the effectiveness of measures taken for the purpose specified in paragraph (e) by the body in question and any person who provides, or is to provide, health care for that body,

and must take into account the standards set out in statements published under section 47.

- (5) For the purposes of this section the Assembly may carry out an inspection of—
  - (a) any Welsh NHS body;
  - (b) any other person who provides, or is to provide, health care for a Welsh NHS body (in Wales or elsewhere).
- (6) Where the Assembly conducts a review under this section it must publish a report.

## **71 Reporting to Secretary of State and regulator**

- (1) The Assembly must report to the Secretary of State where, after conducting a review or investigation under section 70, it is of the view that—
  - (a) there are significant failings in relation to the provision of health care by or for an English NHS body or cross-border SHA;
  - (b) there are significant failings in the running of an English NHS body or cross-border SHA; or
  - (c) there are significant failings in the running of any body, or the practice of any individual, providing health care for an English NHS body or cross-border SHA.
- (2) A report under subsection (1) may include a recommendation that, with a view to remedying the failings, the Secretary of State take special measures in relation to—
  - (a) the English NHS body or cross-border SHA; and
  - (b) in a case falling within paragraph (c) of subsection (1), any person, other than a Welsh NHS body, referred to in that paragraph.
- (3) The Assembly must report to the regulator where, after conducting a review or investigation under section 70, it is of the view that—
  - (a) there are significant failings in relation to the provision of health care by or for an NHS foundation trust;
  - (b) there are significant failings in the running of an NHS foundation trust; or
  - (c) there are significant failings in the running of any body, or the practice of any individual, providing health care for an NHS foundation trust.
- (4) A report under subsection (3) may include a recommendation that, with a view to remedying the failings, the regulator take special measures in relation to the NHS foundation trust.
- (5) A report under this section must give the Assembly's reasons for its view and for any recommendation made.

### *Ancillary powers*

#### **72 Right of entry**

- (1) A person authorised to do so by the Assembly may, if the Assembly considers it necessary or expedient for the purposes of this Chapter, at any reasonable time enter and inspect—
  - (a) any premises owned or controlled by a Welsh NHS body;
  - (b) any other premises used, or proposed to be used, for any purpose connected with—
    - (i) the provision of health care by or for a Welsh NHS body; or
    - (ii) the discharge of any of the functions of a Welsh NHS body.
- (2) A person who proposes to exercise any power of entry or inspection conferred by this section must if so required produce some duly authenticated document showing his authority to exercise the power.

#### **73 Right of entry: supplementary**

- (1) A person authorised by virtue of section 72 to enter and inspect premises may, if he considers it necessary or expedient for the purposes of this Chapter—
  - (a) inspect, take copies of and remove from the premises any documents or records (including personal records);
  - (b) inspect any other item and remove it from the premises;
  - (c) interview in private—
    - (i) any person working at the premises;
    - (ii) any person receiving health care there who consents to be interviewed; and
  - (d) make any other examination into the state and management of the premises and treatment of persons receiving health care there.
- (2) The power in subsection (1)(a) includes—
  - (a) power to require any person holding or accountable for documents or records kept on the premises to produce them; and
  - (b) in relation to records which are kept by means of a computer, power to require the records to be produced in a form in which they are legible and can be taken away.
- (3) A person authorised by virtue of subsection (1)(a) to inspect any records is entitled to have access to, and to check the operation of, any computer and any associated apparatus or material which is or has been in use in connection with the records in question.
- (4) A person authorised by virtue of section 72 to enter and inspect any premises may—
  - (a) require any person to afford him such facilities and assistance with respect to matters within the person's control as are necessary to enable him to exercise his powers under section 72 or this section; and
  - (b) take such measurements and photographs and make such recordings as he considers necessary to enable him to exercise those powers.
- (5) Any person who without reasonable excuse—
  - (a) obstructs the exercise of any power conferred by section 72 or this section, or

(b) fails to comply with any requirement of section 72 or this section, is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

#### **74 Power to require documents and information**

- (1) The Assembly may at any time require any person specified in subsection (2) to provide it with any information, documents, records (including personal records) or other items—
  - (a) which relates or relate to—
    - (i) the provision of health care by or for a Welsh NHS body; or
    - (ii) the discharge of any of the functions of a Welsh NHS body; and
  - (b) which the Assembly considers it necessary or expedient to have for the purposes of this Chapter.
- (2) The persons referred to in subsection (1) are—
  - (a) the Welsh NHS body;
  - (b) any person providing health care for, or exercising functions of, the Welsh NHS body;
  - (c) a local authority in Wales.
- (3) The power in subsection (1) to require the provision of records includes, in relation to records kept by means of a computer, power to require the provision of the records in legible form.
- (4) Any person who without reasonable excuse fails to comply with any requirement imposed by virtue of this section is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

#### **75 Power to require explanation**

- (1) The Assembly may by regulations make provision requiring prescribed persons to provide to the Assembly, or to persons authorised by it, an explanation of—
  - (a) any documents, records or items inspected, copied or provided under sections 72 to 74,
  - (b) any information provided under those sections, or
  - (c) any matters which are the subject of the exercise of any function of the Assembly under section 70, andin circumstances where the Assembly considers the explanation necessary or expedient for the purposes of this Chapter.
- (2) Regulations under subsection (1) may require explanations to be provided at such times and places as may be specified by the Assembly.
- (3) Any person who without reasonable excuse fails to comply with any requirement imposed by virtue of this section is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.



## CHAPTER 5

### SOCIAL SERVICES: FUNCTIONS OF CSCI

#### *Provision of social services*

#### **76 Introductory**

- (1) The CSCI has the general function of encouraging improvement in the provision of English local authority social services.
- (2) In exercising its functions under subsection (1) and sections 77 to 81 in relation to the provision of such services the CSCI shall be concerned in particular with—
  - (a) the availability of, and access to, the services;
  - (b) the quality and effectiveness of the services;
  - (c) the management of the services;
  - (d) the economy and efficiency of their provision and their value for money;
  - (e) the availability and quality of information provided to the public about the services;
  - (f) the need to safeguard and promote the rights and welfare of children; and
  - (g) the effectiveness of measures taken by local authorities for the purpose specified in paragraph (f).

#### **77 Information and advice**

- (1) The CSCI is to keep the Secretary of State informed about the provision of English local authority social services.
- (2) The CSCI may at any time give advice to the Secretary of State on any matter connected with the provision of English local authority social services.
- (3) The CSCI may in particular under subsection (2) give advice to the Secretary of State on any changes which it thinks should be made, for the purpose of securing improvement in the quality of services provided by local authorities in England in the exercise of the functions referred to in section 43(3)(a) and (b) of the Care Standards Act 2000 (c. 14) (adoption and fostering functions), in the standards prepared and published from time to time under section 23 of that Act.
- (4) When requested to do so by the Secretary of State, the CSCI must give him advice or information on such matters connected with the provision of English local authority social services as may be specified in the request.
- (5) The CSCI may give advice to the Secretary of State or any local authority in England about the establishment or conduct of any inquiry held, or to be held, by the Secretary of State or the authority in relation to the provision of English local authority social services.

#### **78 Review of studies and research**

- (1) The CSCI may review—
  - (a) studies and research undertaken by others in relation to the provision of English local authority social services;

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- (b) the methods used in such studies and research; and
- (c) the validity of the conclusions drawn from such studies and research.

(2) Where the CSCI conducts a review under this section it must publish a report.

## **79 Annual reviews**

- (1) In each financial year the CSCI must conduct a review of the English local authority social services which are provided by, or pursuant to arrangements made by, each local authority in England.
- (2) After conducting a review under subsection (1) in respect of a local authority the CSCI must award a performance rating to that authority.
- (3) The CSCI is to exercise its functions under this section by reference to criteria from time to time devised by it and approved by the Secretary of State.
- (4) The CSCI must publish the criteria devised and approved from time to time under subsection (3).
- (5) The CSCI is to exercise its functions under this section in any financial year in accordance with any timetable specified in relation to that year by the Secretary of State.
- (6) In exercising its functions under this section the CSCI must take into account guidance issued to local authorities under section 7 of the Local Authority Social Services Act 1970 (c. 42).
- (7) In exercising its functions under this section in relation to the functions referred to in section 43(3)(a) and (b) of the Care Standards Act 2000 (c. 14) (adoption and fostering functions), the CSCI must take into account the standards prepared and published from time to time under section 23 of that Act.
- (8) For the purposes of this section, the CSCI may carry out an inspection of—
  - (a) the local authority being reviewed;
  - (b) any person providing an English local authority social service pursuant to arrangements made by the authority.
- (9) The Secretary of State may, after consulting the CSCI, by regulations make provision as to the procedure to be followed in respect of the making of representations to the CSCI before the award of a performance rating under this section.

## **80 Other reviews and investigations**

- (1) The CSCI has the function of conducting other reviews of, and investigations into, the provision of English local authority social services.
- (2) The CSCI may in particular under this section conduct—
  - (a) a review of the overall provision of English local authority social services;
  - (b) a review of the provision of any English local authority social service of a particular description; or
  - (c) a review of, or investigation into, the provision of any English local authority social service by a particular person or persons.
- (3) If the Secretary of State so requests, the CSCI must conduct—

- (a) a review under subsection (2)(a);
  - (b) a review under subsection (2)(b) of an English local authority social service of such description as may be specified in the request; or
  - (c) a review or investigation under subsection (2)(c) in relation to the provision of such services as may be specified in the request by such person, or persons of such description, as may be so specified.
- (4) In exercising its function under this section the CSCI must take into account guidance issued to local authorities under section 7 of the Local Authority Social Services Act 1970 (c. 42).
- (5) In exercising its function under this section in relation to the functions referred to in section 43(3)(a) and (b) of the Care Standards Act 2000 (c. 14) (adoption and fostering functions), the CSCI must take into account the standards prepared and published from time to time under section 23 of that Act.
- (6) For the purposes of this section, the CSCI may carry out an inspection of—
- (a) any local authority in England;
  - (b) any other person providing an English local authority social service.
- (7) Where the CSCI conducts a review or investigation under this section, it must publish a report.
- (8) The Secretary of State may, after consulting the CSCI, by regulations make provision as to the procedure to be followed in respect of the making of representations to the CSCI before the publication of a report under this section.

## **81 Failings**

- (1) This section applies where the CSCI conducts—
- (a) a review under section 79; or
  - (b) a review or investigation under section 80.
- (2) If under section 79 the CSCI awards the lowest performance rating to a local authority, the CSCI must—
- (a) inform the Secretary of State of that fact; and
  - (b) recommend any special measures which it considers the Secretary of State should take.
- (3) If (in a case where subsection (2) does not apply) the CSCI considers that a local authority in England is failing to discharge any of its social services functions to an acceptable standard, it must—
- (a) inform the Secretary of State of that fact; and
  - (b) recommend any special measures which it considers the Secretary of State should take.
- (4) However, in a case falling within subsection (3), if the CSCI considers that the failure is not substantial, it may instead—
- (a) give the local authority a notice under subsection (5); and
  - (b) inform the Secretary of State that it has done so.
- (5) A notice under this subsection is a notice which specifies—
- (a) the respects in which the CSCI considers that the local authority is failing;

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- (b) the action which the CSCI considers the authority should take to remedy the failure; and
  - (c) the time by which the CSCI considers the action should be taken.
- (6) Where under subsection (2)(b) or (3)(b) the CSCI has recommended that the Secretary of State take special measures in relation to a local authority, the CSCI must, if the Secretary of State so requests—
- (a) undertake a further review under section 80 in relation to the authority; and
  - (b) include in its report under subsection (7) of that section a report on such matters as the Secretary of State may specify.
- (7) The Secretary of State may, after consulting the CSCI, by regulations make provision as to the procedure to be followed in respect of the making of representations to the CSCI before the publication of a report under this section.

#### *Other functions*

### **82 Studies as to economy, efficiency etc**

- (1) The CSCI has the function of promoting or undertaking comparative or other studies designed to enable it to make recommendations—
- (a) for improving economy, efficiency and effectiveness in the discharge by local authorities in England of their social services functions;
  - (b) for improving the management of such local authorities in their discharge of those functions.
- (2) The CSCI may also promote or undertake studies designed to enable it to prepare reports as to the impact of—
- (a) the operation of any particular statutory provisions, or
  - (b) any directions or guidance given by a Minister of the Crown (whether pursuant to any such provision or otherwise),
- on economy, efficiency and effectiveness in the discharge by local authorities in England of their social services functions.
- (3) For the purposes of this section the CSCI may carry out an inspection of any local authority in England.
- (4) The CSCI must publish—
- (a) any recommendations made by it under subsection (1);
  - (b) the result of any studies under this section.
- (5) The Secretary of State may, after consulting the CSCI, by regulations make provision as to the procedure to be followed in respect of the making of representations to the CSCI before the publication of any recommendations or the result of any studies under this section.
- (6) The CSCI must, on request, provide the Comptroller and Auditor General with any material relevant to a study under this section.

### **83 Joint working with Audit Commission**

- (1) The CSCI and the Audit Commission may (without prejudice to any other power they may have to do so) exercise jointly their respective functions under section 82 above and sections 33 and 34 of the Audit Commission Act 1998 (c. 18).
- (2) The CSCI and the Audit Commission must co-operate with each other with respect to the exercise of their respective functions under section 82 above and sections 33 and 34 of the Audit Commission Act 1998.
- (3) The Secretary of State may give guidance to the CSCI and the Audit Commission as to which of them should promote or undertake studies which could be promoted or undertaken by either of them.
- (4) The CSCI and the Audit Commission must take any such guidance into account in the exercise of their functions.

### **84 Additional functions**

The CSCI is to have such additional functions as may be prescribed in relation to the provision of English local authority social services.

### *Supplementary*

### **85 Criteria**

The Secretary of State may, after consulting the CSCI, make regulations requiring the CSCI—

- (a) to devise and publish statements of the criteria to be used in the exercise of any of its functions under this Chapter (other than section 79);
- (b) to consult any person specified in the regulations before publishing any such statement; and
- (c) to obtain the consent of the Secretary of State before publishing any such statement.

### **86 Fees**

- (1) The CSCI may from time to time make and publish provision requiring a local authority in England to pay a fee in respect of the exercise by the CSCI, in relation to that authority or to an English local authority social service provided by, or pursuant to arrangements made by, that authority, of such of its functions under section 79, 80 or 82 as may be prescribed.
- (2) The amount of a fee payable by virtue of provision under subsection (1) shall be such as may be specified in, or calculated or determined under, the provision.
- (3) Provision under subsection (1) may include provision—
  - (a) for different fees to be paid in different cases, or classes of case;
  - (b) for different fees to be paid by persons of different descriptions;
  - (c) for the amount of a fee to be determined by the CSCI in accordance with specified factors;
  - (d) for the time by which a fee must be paid.

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- (4) The Secretary of State may by regulations make provision as to—
  - (a) the manner in which provision under subsection (1) is to be made and published;
  - (b) the matters to be taken into account by the CSCI before making the provision.
- (5) Before making any provision under subsection (1) the CSCI must consult such persons as appear to it appropriate.
- (6) The Secretary of State may by regulations make provision for an independent person or panel to review the amount chargeable under subsection (1) in any particular case and, if that person or panel thinks fit, to substitute a lesser amount for that amount.
- (7) For the purpose of determining the fee payable by a local authority under subsection (1) it must provide the CSCI with such information, in such form, as the CSCI may require.
- (8) A fee payable by virtue of this section may, without prejudice to any other method of recovery, be recovered summarily as a civil debt.

## **87 Reports and information**

- (1) The CSCI must make copies of any report published by it under this Chapter available for inspection at its offices by any person at any reasonable time.
- (2) Any person who requests a copy of such a report is entitled to have one on payment of such reasonable fee (if any) as the CSCI considers appropriate.
- (3) The CSCI may charge a person such reasonable fee as it considers appropriate where it provides him, at his request, with any other information relevant to the discharge of the CSCI's functions under this Chapter.

## **88 Right of entry**

- (1) A person authorised to do so by the CSCI may, if the CSCI considers it necessary or expedient for the purposes of this Chapter, at any reasonable time enter and inspect—
  - (a) any premises owned or controlled by a local authority in England; or
  - (b) any premises falling within subsection (2), other than premises used wholly or mainly as a private dwelling.
- (2) The premises referred to in subsection (1)(b) are premises—
  - (a) which are used, or proposed to be used, by any person in connection with the provision of an English local authority social service; or
  - (b) which the CSCI reasonably believes to be so used, or proposed to be so used.
- (3) A person who proposes to exercise any power of entry or inspection conferred by this section must if so required produce some duly authenticated document showing his authority to exercise the power.

## **89 Right of entry: supplementary**

- (1) A person authorised by virtue of section 88 to enter and inspect premises may, if he considers it necessary or expedient for the purposes of this Chapter—

- (a) inspect, take copies of and remove from the premises any documents or records (including personal records) relating to the discharge by the local authority of its social services functions;
  - (b) inspect any other item and remove it from the premises;
  - (c) interview in private—
    - (i) any person working at the premises; or
    - (ii) any person accommodated or cared for there who consents to be interviewed; and
  - (d) make any other examination into the state and management of the premises and treatment of persons accommodated or cared for there.
- (2) The power in subsection (1)(a) includes—
- (a) power to require any person holding or accountable for documents or records kept on the premises to produce them; and
  - (b) in relation to records which are kept by means of a computer, power to require the records to be produced in a form in which they are legible and can be taken away.
- (3) A person authorised by virtue of subsection (1)(a) to inspect any records is entitled to have access to, and to check the operation of, any computer and any associated apparatus or material which is or has been in use in connection with the records in question.
- (4) A person authorised by virtue of section 88 to enter and inspect premises may—
- (a) require any person to afford him such facilities and assistance with respect to matters within the person's control as are necessary to enable him to exercise his powers under section 88 or this section; and
  - (b) take such measurements and photographs and make such recordings as he considers necessary to enable him to exercise those powers.
- (5) Any person who without reasonable excuse—
- (a) obstructs the exercise of any power conferred by section 88 or this section, or
  - (b) fails to comply with any requirement of section 88 or this section,
- is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

## **90 Power to require information etc**

- (1) The CSCI may at any time require any person specified in subsection (2) to provide it with any information, documents, records (including personal records) or other items—
- (a) which relates or relate to the discharge by a local authority in England of its social services functions; and
  - (b) which the CSCI considers it necessary or expedient to have for the purposes of this Chapter.
- (2) The persons referred to in subsection (1) are—
- (a) the local authority;
  - (b) a person providing an English local authority social service for the authority; or
  - (c) any NHS body.

- (3) The power in subsection (1) to require the provision of information includes, in relation to records kept by means of a computer, power to require the provision of the records in legible form.
- (4) Any person who without reasonable excuse fails to comply with any requirement imposed by virtue of this section is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

## **91 Power to require explanation**

- (1) The Secretary of State may by regulations make provision requiring prescribed persons to provide to the CSCI, or to persons authorised by it, an explanation of—
  - (a) any documents, records or items inspected, copied or provided under sections 88 to 90,
  - (b) any information provided under those sections, or
  - (c) any matters which are the subject of the exercise of any functions of the CSCI under this Chapter,in cases where the CSCI considers the explanation necessary or expedient for the purposes of this Chapter.
- (2) Regulations under subsection (1) may require explanations to be provided at such times and places as may be specified by the CSCI.
- (3) Any person who without reasonable excuse fails to comply with any requirement imposed by virtue of this section is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

## **CHAPTER 6**

### **SOCIAL SERVICES: FUNCTIONS OF NATIONAL ASSEMBLY FOR WALES**

#### *Provision of social services*

## **92 General function**

The Assembly has the general function of encouraging improvement in the provision of Welsh local authority social services.

## **93 Reviews of studies and research**

- (1) The Assembly may review—
  - (a) studies and research undertaken by others in relation to the provision of Welsh local authority social services;
  - (b) the methods used in such studies and research; and
  - (c) the validity of conclusions drawn from such studies and research.
- (2) Where the Assembly conducts a review under this section it must publish such report as it considers appropriate.



## **94      Reviews and investigations**

- (1) The Assembly has the function of conducting reviews of, and investigations into, the way in which local authorities in Wales discharge their social services functions.
- (2) The Assembly may in particular under this section conduct—
  - (a) a review of the overall provision of Welsh local authority social services;
  - (b) a review of the provision of any Welsh local authority social service of a particular description; or
  - (c) a review of, or investigation into, the provision of any Welsh local authority social service by a particular person or persons.
- (3) The Assembly may in a review under subsection (2)—
  - (a) assess performance against criteria;
  - (b) award performance ratings.
- (4) For the purposes of this section the Assembly may carry out an inspection of—
  - (a) any local authority in Wales;
  - (b) any other person providing a Welsh local authority social service.
- (5) Where the Assembly conducts a review or investigation under this section, it must publish a report.
- (6) The Assembly may by regulations require a local authority in Wales to pay a fee to the Assembly in respect of the exercise of the Assembly's function under this section in relation to the functions referred to in section 43(3)(a) and (b) of the Care Standards Act 2000 (c. 14) (adoption and fostering functions).
- (7) A fee under this section shall be of such amount, and shall be payable at such a time, as may be specified in the regulations.
- (8) A fee payable by virtue of this section may, without prejudice to any other method of recovery, be recovered summarily as a civil debt.

## **95      Studies as to economy, efficiency etc**

- (1) The Assembly has the function of promoting or undertaking comparative or other studies designed to enable it to make recommendations—
  - (a) for improving economy, efficiency and effectiveness in the discharge by local authorities in Wales of their social services functions;
  - (b) for improving the management of such local authorities in the discharge of those functions.
- (2) The Assembly may also promote or undertake studies designed to enable it to prepare reports as to the impact of the operation of any particular statutory provisions on economy, efficiency and effectiveness in the discharge by local authorities in Wales of their social services functions.
- (3) The Assembly must publish or otherwise make available—
  - (a) any recommendations made by it under subsection (1); and
  - (b) a report on the result of any studies under this section.

- (4) The Assembly and the Audit Commission must co-operate with each other with respect to the exercise of their respective functions under this section and sections 33 and 34 of the Audit Commission Act 1998 (c. 18).

## 96 Additional functions

The Assembly shall have such additional functions in relation to the provision of Welsh local authority social services as—

- (a) correspond to functions conferred on the CSCI by or under this Act; and
- (b) are specified by the Assembly in regulations.

## 97 General considerations

- (1) This section applies for the purpose of the exercise by the Assembly of its functions—
  - (a) under sections 92 to 95; and
  - (b) under regulations under section 96.
- (2) The Assembly shall be concerned in particular with—
  - (a) the availability of, and access to, the services;
  - (b) the quality and effectiveness of the services;
  - (c) the management of the services;
  - (d) the economy and efficiency of their provision and their value for money;
  - (e) the availability and quality of information provided to the public about the services;
  - (f) the need to safeguard and promote the rights and welfare of children; and
  - (g) the effectiveness of measures taken by local authorities for the purpose specified in paragraph (f).

### *Ancillary powers*

## 98 Right of entry

- (1) A person authorised to do so by the Assembly may, if the Assembly considers it necessary or expedient for the purposes of this Chapter, at any reasonable time enter and inspect—
  - (a) any premises owned or controlled by a local authority in Wales;
  - (b) any premises falling within subsection (2), other than premises used wholly or mainly as a private dwelling.
- (2) The premises referred to in subsection (1)(b) are premises—
  - (a) which are used, or proposed to be used, by any person in connection with the provision of a Welsh local authority social service; or
  - (b) which the Assembly reasonably believes to be so used, or proposed to be so used.
- (3) A person who proposes to exercise any power of entry or inspection conferred by this section must if so required produce some duly authenticated document showing his authority to exercise the power.

**99 Right of entry: supplementary**

- (1) A person authorised by virtue of section 98 to enter and inspect premises may, if he considers it necessary or expedient for the purposes of this Chapter—
  - (a) inspect, take copies of and remove from the premises any documents or records (including personal records) relating to the discharge by the local authority of its social services functions;
  - (b) inspect any other item and remove it from the premises;
  - (c) interview in private—
    - (i) any person working at the premises; or
    - (ii) any person accommodated or cared for there who consents to be interviewed; and
  - (d) make any other examination into the state and management of the premises and treatment of persons accommodated or cared for there.
- (2) The power in subsection (1)(a) includes—
  - (a) power to require any person holding or accountable for documents or records kept on the premises to produce them; and
  - (b) in relation to records which are kept by means of a computer, power to require the records to be produced in a form in which they are legible and can be taken away.
- (3) A person authorised by virtue of subsection (1)(a) to inspect any records is entitled to have access to, and to check the operation of, any computer and any associated apparatus or material which is or has been in use in connection with the records in question.
- (4) A person authorised by virtue of section 98 to enter and inspect premises may—
  - (a) require any person to afford him such facilities and assistance with respect to matters within the person's control as are necessary to enable him to exercise his powers under section 98 or this section;
  - (b) take such measurements and photographs and make such recordings as he considers necessary to enable him to exercise those powers.
- (5) Any person who without reasonable excuse—
  - (a) obstructs the exercise of any power conferred by section 98 or this section, or
  - (b) fails to comply with any requirement of section 98 or this section,is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

**100 Power to require information**

- (1) The Assembly may at any time require any person specified in subsection (2) to provide it with any information, documents, records (including personal records) or other items—
  - (a) which relates or relate to the discharge by a local authority in Wales of its social services functions; and
  - (b) which the Assembly considers it necessary or expedient to have for the purpose of any of its functions under this Chapter.
- (2) The persons referred to in subsection (1) are—
  - (a) the local authority;

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- (b) a person providing a Welsh local authority social service for the authority; or
  - (c) any NHS body.
- (3) The power in subsection (1) to require the provision of information includes, in relation to records kept by means of a computer, power to require the provision of the records in legible form.
- (4) Any person who without reasonable excuse fails to comply with any requirement imposed by virtue of this section is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

### **101 Power to require explanation**

- (1) The Assembly may by regulations make provision requiring prescribed persons to provide to the Assembly, or to persons authorised by it, an explanation of—
- (a) any documents, records or items inspected, copied or produced under sections 98 to 100,
  - (b) any information provided under those sections, or
  - (c) any matters which are the subject of the exercise of any functions of the Assembly under this Chapter,
- in cases where the Assembly considers the explanation necessary or expedient for the purposes of this Chapter.
- (2) Regulations under subsection (1) may require explanations to be provided at such times and places as may be specified by the Assembly.
- (3) Any person who without reasonable excuse fails to comply with any requirement imposed by virtue of this section is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

## **CHAPTER 7**

### FUNCTIONS UNDER THE CARE STANDARDS ACT 2000

#### *Functions of CHAI and CSCI*

### **102 Transfer of functions to CHAI and CSCI**

- (1) The functions of the National Care Standards Commission under Part 2 of the Care Standards Act 2000 (c. 14) (registration and standards) are transferred in accordance with subsections (2) and (3).
- (2) Its functions under that Part are transferred to the CHAI insofar as they relate to—
- (a) independent hospitals;
  - (b) independent clinics; and
  - (c) independent medical agencies.
- (3) Its functions under that Part are transferred to the CSCI insofar as they relate to—
- (a) children’s homes;
  - (b) care homes;
  - (c) residential family centres;

- (d) domiciliary care agencies;
  - (e) nurses agencies;
  - (f) fostering agencies;
  - (g) voluntary adoption agencies; and
  - (h) adoption support agencies.
- (4) In relation to any period after the coming into force of this subsection but before the coming into force of sections 80 and 81, the functions of the National Care Standards Commission under Part 3 of that Act are transferred to the CSCI.

### 103 General functions of CHAI

In the Care Standards Act 2000 (c. 14), after section 5 insert—

#### “5A General duties of Commission for Healthcare Audit and Inspection

- (1) The Commission for Healthcare Audit and Inspection (referred to in this Act as “the CHAI”) shall have the general duty of keeping the Secretary of State informed about—
  - (a) the provision in England of independent health services; and
  - (b) in particular, the availability and quality of the services.
- (2) The CHAI shall have the general duty of encouraging improvement in the quality of independent health services provided in England.
- (3) The CHAI shall make information about independent health services provided in England available to the public.
- (4) When asked to do so by the Secretary of State, the CHAI shall give him advice or information on such matters relating to the provision in England of independent health services as may be specified in his request.
- (5) The CHAI may at any time give advice to the Secretary of State on—
  - (a) any changes which the CHAI thinks should be made, for the purpose of securing improvement in the quality of independent health services provided in England, in the standards set out in statements under section 23;
  - (b) any other matter connected with the provision in England of such services.
- (6) In the exercise of its functions under this Act the CHAI must have particular regard to the need to safeguard and promote the rights and welfare of children.
- (7) The Secretary of State may by regulations confer additional functions on the CHAI in relation to the provision in England of independent health services.
- (8) In this section “independent health services” means services of the kind provided by persons for whom the CHAI is the registration authority.”

### 104 General functions of CSCI

In the Care Standards Act 2000, after section 5A (inserted by section 103 above) insert—

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*Status: This is the original version (as it was originally enacted).*

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### **“5B General duties of Commission for Social Care Inspection**

- (1) The Commission for Social Care Inspection (referred to in this Act as “the CSCI”) shall have the general duty of keeping the Secretary of State informed about—
  - (a) the provision in England of registered social care services; and
  - (b) in particular, the availability and quality of the services.
- (2) The CSCI shall have the general duty of encouraging improvement in the quality of registered social care services provided in England.
- (3) The CSCI shall make information about registered social care services provided in England available to the public.
- (4) When asked to do so by the Secretary of State, the CSCI shall give him advice or information on such matters relating to the provision in England of registered social care services as may be specified in his request.
- (5) The CSCI may at any time give advice to the Secretary of State on—
  - (a) any changes which the CSCI thinks should be made, for the purpose of securing improvement in the quality of registered social care services provided in England, in the standards set out in statements under section 23;
  - (b) any other matter connected with the provision in England of registered social care services.
- (6) In the exercise of its functions under this Act the CSCI must have particular regard to the need to safeguard and promote the rights and welfare of children.
- (7) The Secretary of State may by regulations confer additional functions on the CSCI in relation to the provision in England of registered social care services.
- (8) In this section, “registered social care services” means services of the kind provided by persons for whom the CSCI is the registration authority.”

### **105 Fees**

- (1) The Care Standards Act 2000 (c. 14) is amended as follows.
- (2) After section 113 insert—

#### **“113A Fees payable under Part 2**

- (1) The CHAI and the CSCI may each from time to time make and publish provision determining the amount of any fee payable to it under Part 2.
- (2) Provision under subsection (1) may include provision—
  - (a) for different amounts to be payable in different cases, or classes of case;
  - (b) for different amounts to be payable by persons of different descriptions.

- (3) Before the CHAI or the CSCI makes any provision under subsection (1) it must consult such bodies as appear to it to be representative of the persons liable to pay the fee.
  - (4) No provision may be made under subsection (1) without the consent of the Secretary of State.
  - (5) If the Secretary of State considers it necessary or desirable to do so, he may by regulations make provision determining the amount of a fee payable to the CHAI or the CSCI under Part 2 instead of the amount for which provision is made under subsection (1).
  - (6) Before making any regulations under subsection (5) in respect of fees payable to the CHAI or the CSCI, the Secretary of State shall consult that body and such other persons as appear to him to be appropriate.”
- (3) In section 12 (applications for registration), in subsection (2), for “a fee of the prescribed amount” substitute “a fee of the amount determined under section 113A, where the registration authority is the CHAI or the CSCI, or of the prescribed amount, where the registration authority is the Assembly.”
  - (4) In section 15 (other applications), in subsection (3) for “a fee of such amount as may be prescribed” substitute “a fee of—
    - (a) the amount determined under section 113A, where the registration authority is the CHAI or the CSCI; or
    - (b) the prescribed amount, where the registration authority is the Assembly.”
  - (5) In that section, in subsection (5)—
    - (a) for “subsection (3)” substitute “subsection (3)(b)”; and
    - (b) for “the registration authority” substitute “the Assembly”.
  - (6) In section 16 (regulations about registration), for subsection (3) substitute—

“(3) Persons registered under this Part must also pay to the registration authority, at such time as may be prescribed, an annual fee—

    - (a) of such amount as may be determined under section 113A, where the registration authority is the CHAI or the CSCI; and
    - (b) of such amount as may be prescribed, where the registration authority is the Assembly.”
  - (7) In section 22(7)(i) (fees in respect of notification of variation of corporate ownership etc), for the words from “of a fee” to the end substitute “, in respect of any notification required to be made by virtue of paragraph (h), of a fee of—
    - (i) such amount as may be determined under section 113A, where notification is made to the CHAI or the CSCI; or
    - (ii) the prescribed amount, where notification is made to the Assembly”.

*Miscellaneous***106 Meaning of “independent medical agency”**

In section 2(5) of the Care Standards Act 2000 (c. 14) (an “independent medical agency” does not include an independent clinic), after “clinic” insert “or an independent hospital”.

**107 Children’s homes providing secure accommodation**

- (1) In section 4 of the Care Standards Act 2000 (c. 14) (basic definitions), in subsection (8) (a) (references to a description of establishment), after “children’s home” insert “, a children’s home providing accommodation for the purpose of restricting liberty,”.
- (2) In section 22 of that Act (regulations), in subsection (8) (regulations relating to children’s homes)—
  - (a) omit paragraph (a), and
  - (b) in paragraph (b), for “mentioned in paragraph (a)” substitute “of restricting liberty”.

**108 Information and inspection**

- (1) Section 31 of the Care Standards Act 2000 (inspections by persons authorised by registration authority) is amended as follows.
- (2) After subsection (1), insert—
 

“(1A) The power under subsection (1) to require the provision of information includes—

  - (a) power to require the provision of copies of any documents or records (including medical and other personal records); and
  - (b) in relation to records kept by means of a computer, power to require the provision of the records in legible form.”
- (3) In subsection (3)—
  - (a) in paragraph (b), for “(other than medical records)” substitute “(including medical and other personal records)”; and
  - (b) in paragraph (d), for “employed” substitute “working”.
- (4) In subsection (6), omit “and inspect any medical records relating to his treatment in the establishment”.

**109 Assembly: duties relating to children**

In section 8 of the Care Standards Act 2000 (general functions of the Assembly), at the end insert—

- “(6) The Assembly must have particular regard to the need to safeguard and promote the rights and welfare of children in the exercise of—
- (a) its functions exercisable by virtue of section 5(b) and subsections (1) to (3) of this section; and
  - (b) any other functions exercisable by the Assembly corresponding to functions exercisable by the CSCI in relation to England.”



## CHAPTER 8

### OTHER FUNCTIONS OF CSCI

#### 110 Boarding schools and colleges

The functions of the National Care Standards Commission under section 87 of the Children Act 1989 (c. 41) (welfare of children accommodated in boarding schools and colleges) are transferred to the CSCI.

#### 111 Boarding schools and colleges: reports

In section 87 of the Children Act 1989, after subsection (9) insert—

“(9A) Where the Commission or the National Assembly for Wales exercises the power conferred by subsection (5) in relation to a child, it must publish a report on whether the child’s welfare is adequately safeguarded and promoted while he is accommodated by the school or college.

(9B) Where the Commission or the National Assembly for Wales publishes a report under this section, it must—

- (a) send a copy of the report to the school or college concerned; and
- (b) make copies of the report available for inspection at its offices by any person at any reasonable time.

(9C) Any person who requests a copy of a report published under this section is entitled to have one on payment of such reasonable fee (if any) as the Commission or the National Assembly for Wales (as the case may be) considers appropriate.”

#### 112 Secure training centres

- (1) The CSCI and the Secretary of State may make arrangements for the CSCI to conduct inspections of secure training centres in England.
- (2) Inspections under this section shall be on such terms, including terms as to payment of the CSCI, as the CSCI and Secretary of State may agree in the arrangements.
- (3) In this section, “secure training centre” has the same meaning as in section 43(1)(d) of the Prison Act 1952 (c. 52).

## CHAPTER 9

### COMPLAINTS

#### 113 Complaints about health care

- (1) The Secretary of State may by regulations make provision about the handling and consideration of complaints made under the regulations about—
  - (a) the exercise of any of the functions of an English NHS body or a cross-border SHA;
  - (b) the provision of health care by or for such a body;

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*Status: This is the original version (as it was originally enacted).*

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- (c) the provision of services by such a body or any other person in pursuance of arrangements made by the body under section 31 of the Health Act 1999 (c. 8) in relation to the exercise of the health-related functions of a local authority.
- (2) The Assembly may by regulations make provision about the handling and consideration of complaints made under the regulations about—
- (a) the exercise of any of the functions of a Welsh NHS body;
  - (b) the provision of health care by or for a Welsh NHS body;
  - (c) the provision of services by a Welsh NHS body or any other person in pursuance of arrangements made by the body under section 31 of the Health Act 1999 in relation to the exercise of the health-related functions of a local authority.
- (3) Regulations under this section may provide for a complaint to be considered by one or more of the following—
- (a) an NHS body;
  - (b) the CHAI;
  - (c) an independent lay person;
  - (d) an independent panel established under the regulations;
  - (e) any other person or body.
- (4) Regulations under this section may make provision for a complaint or any matter raised by a complaint—
- (a) to be referred to a Health Service Commissioner for him to consider whether to investigate the complaint or matter under the Health Service Commissioners Act 1993 (c. 46) (and to be treated by him as a complaint duly referred to him under section 10 of that Act);
  - (b) to be referred to any other person or body for him or it to consider whether to take any action otherwise than under the regulations.

#### **114 Complaints about social services**

- (1) The Secretary of State may by regulations make provision about the handling and consideration of complaints made under the regulations about—
- (a) the discharge by a local authority in England of any of its social services functions;
  - (b) the provision of services by another person pursuant to arrangements made by such an authority in the discharge of those functions;
  - (c) the provision of services by such an authority or any other person in pursuance of arrangements made by the authority under section 31 of the Health Act 1999 in relation to the functions of an NHS body (within the meaning of that section).
- (2) Regulations under subsection (1) may provide for a complaint to be considered by one or more of the following—
- (a) the local authority in respect of whose functions the complaint is made;
  - (b) the CSCI;
  - (c) an independent panel established under the regulations;
  - (d) any other person or body.

- (3) The Assembly may by regulations make provision about the handling and consideration of complaints made under the regulations about—
- (a) the discharge by a local authority in Wales of any of its social services functions;
  - (b) the provision of services by another person pursuant to arrangements made by such an authority in the discharge of those functions;
  - (c) the provision of services by such an authority or any other person in pursuance of arrangements made by the authority under section 31 of the Health Act 1999 (c. 8) in relation to the functions of an NHS body (within the meaning of that section).
- (4) Regulations under subsection (3) may provide for a complaint to be considered by one or more of the following—
- (a) the local authority in respect of whose functions the complaint is made;
  - (b) an independent panel established under the regulations;
  - (c) any other person or body.
- (5) Regulations under this section may provide for a complaint or any matter raised by a complaint—
- (a) in the case of regulations under subsection (1), to be referred to a Local Commissioner under Part 3 of the Local Government Act 1974 (c. 7) who is a member of the Commission for Local Administration in England for him to consider whether to investigate the complaint or matter under that Part (and to be treated as if it had been duly made under section 26 of that Act);
  - (b) in the case of regulations under subsection (3), to be referred to a Local Commissioner under Part 3 of the Local Government Act 1974 who is a member of the Commission for Local Administration in Wales for him to consider whether to investigate the complaint or matter under that Part (and to be treated as if it had been duly made under section 26 of that Act);
  - (c) to be referred to any other person or body for him or it to consider whether to take any action otherwise than under the regulations.
- (6) Regulations under this section may not make provision about complaints capable of being considered as representations under section 24D or section 26 of the Children Act 1989 (c. 41).

## 115 Complaints regulations: supplementary

- (1) Regulations under subsection (1) or (2) of section 113 or under subsection (1) or (3) of section 114 (“the regulations”) may, without prejudice to the generality of the subsection under which they are made, make the following provision.
- (2) The regulations may make provision about—
- (a) the persons who may make a complaint;
  - (b) the complaints which may, or may not, be made under the regulations;
  - (c) the persons to whom complaints may be made;
  - (d) complaints which need not be considered;
  - (e) the period within which complaints must be made;
  - (f) the procedure to be followed in making, handling and considering a complaint;
  - (g) matters which are excluded from consideration;

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*Status: This is the original version (as it was originally enacted).*

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- (h) the making of a report or recommendations about a complaint;
  - (i) the action to be taken as a result of the complaint.
- (3) The regulations may require—
- (a) the making of a payment, in relation to the consideration of a complaint under the regulations, by any person or body in respect of whom the complaint is made;
  - (b) any such payment to be—
    - (i) made to such person or body as may be specified in the regulations; and
    - (ii) of such amount as may be specified in, or calculated or determined under, the regulations;
  - (c) an independent panel to review the amount chargeable under paragraph (a) in any particular case and, if the panel thinks fit, to substitute a lesser amount.
- (4) The regulations may require any person or body who handles or considers complaints under the regulations to make information available to the public about the procedures to be followed under the regulations.
- (5) The regulations may also—
- (a) provide for different parts or aspects of a complaint to be treated differently;
  - (b) require the production of information or documents in order to enable a complaint to be properly considered;
  - (c) authorise the disclosure of information or documents relevant to a complaint to a person or body—
    - (i) who is considering a complaint under the regulations; or
    - (ii) to whom a complaint has been referred;
 and any such disclosure may be authorised notwithstanding any rule of common law that would otherwise prohibit or restrict the disclosure.
- (6) The regulations may make provision about complaints which raise both matters falling to be considered under the regulations and matters falling to be considered under other statutory complaints procedures, including in particular provision for—
- (a) enabling such a complaint to be made under the regulations; and
  - (b) securing that matters falling to be considered under other statutory complaints procedures are treated as if they had been raised in a complaint made under the appropriate procedures;
- and in this subsection “statutory complaints procedures” means procedures established by or under any enactment.

## **116 Further consideration of representations under the Children Act 1989**

- (1) In the Children Act 1989 (c. 41), after section 26 (representations) insert—

### **“26ZA Representations: further consideration**

- (1) The Secretary of State may by regulations make provision for the further consideration of representations which have been considered by a local authority in England under section 24D or section 26.
- (2) The regulations may in particular make provision—

- (a) for the further consideration of a representation by the Commission for Social Care Inspection (“the CSCI”);
  - (b) for a representation to be referred by the CSCI for further consideration by an independent panel established under the regulations;
  - (c) about the procedure to be followed on the further consideration of a representation;
  - (d) for the making of recommendations about the action to be taken as the result of a representation;
  - (e) about the making of reports about a representation;
  - (f) about the action to be taken by the local authority concerned as a result of the further consideration of a representation;
  - (g) for a representation to be referred by the CSCI back to the local authority concerned for reconsideration by the authority;
  - (h) for a representation or any matter raised by the representation to be referred by the CSCI—
    - (i) to a Local Commissioner in England for him to consider whether to investigate the representation or matter under Part 3 of the Local Government Act 1974 as if it were a complaint duly made under section 26 of that Act; or
    - (ii) to any other person or body for him or it to consider whether to take any action otherwise than under the regulations.
- (3) The regulations may require—
- (a) the making of a payment, in relation to the further consideration of a representation under this section, by any local authority in respect of whose functions the representation is made;
  - (b) any such payment to be—
    - (i) made to such person or body as may be specified in the regulations;
    - (ii) of such amount as may be specified in, or calculated or determined under, the regulations;
  - (c) an independent panel to review the amount chargeable under paragraph (a) in any particular case and, if the panel thinks fit, to substitute a lesser amount.
- (4) The regulations may also—
- (a) provide for different parts or aspects of a representation to be treated differently;
  - (b) require the production of information or documents in order to enable a representation to be properly considered;
  - (c) authorise the disclosure of information or documents relevant to a representation—
    - (i) to a person or body who is further considering a representation under the regulations; or
    - (ii) to a Local Commissioner in England (when a representation is referred to him under the regulations);
 and any such disclosure may be authorised notwithstanding any rule of common law that would otherwise prohibit or restrict the disclosure.

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*Status: This is the original version (as it was originally enacted).*

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(5) In this section, “Local Commissioner in England” means a Local Commissioner under Part 3 of the Local Government Act 1974 (c. 7), who is a member of the Commission for Local Administration in England.”

(2) After section 26ZA of that Act (as inserted by subsection (1)) insert—

**“26ZB Representations: further consideration (Wales)**

(1) The Secretary of State may by regulations make provision for the further consideration of representations which have been considered by a local authority in Wales under section 24D or section 26.

(2) The regulations may in particular make provision—

- (a) for the further consideration of a representation by an independent panel established under the regulations;
- (b) about the procedure to be followed on the further consideration of a representation;
- (c) for the making of recommendations about the action to be taken as the result of a representation;
- (d) about the making of reports about a representation;
- (e) about the action to be taken by the local authority concerned as a result of the further consideration of a representation;
- (f) for a representation to be referred back to the local authority concerned for reconsideration by the authority.

(3) The regulations may require—

- (a) the making of a payment, in relation to the further consideration of a representation under this section, by any local authority in respect of whose functions the representation is made;
- (b) any such payment to be—
  - (i) made to such person or body as may be specified in the regulations;
  - (ii) of such amount as may be specified in, or calculated or determined under, the regulations; and
- (c) for an independent panel to review the amount chargeable under paragraph (a) in any particular case and, if the panel thinks fit, to substitute a lesser amount.

(4) The regulations may also—

- (a) provide for different parts or aspects of a representation to be treated differently;
- (b) require the production of information or documents in order to enable a representation to be properly considered;
- (c) authorise the disclosure of information or documents relevant to a representation to a person or body who is further considering a representation under the regulations;

and any such disclosure may be authorised notwithstanding any rule of common law that would otherwise prohibit or restrict the disclosure.”

- (3) In section 26A of that Act (requirement on local authorities to provide assistance for persons making representations under section 24D and section 26), after subsection (2) insert—

“(2A) The duty under subsection (1) includes a duty to make arrangements for the provision of assistance where representations under section 24D or 26 are further considered under section 26ZA or 26ZB.”

## **117 Representations relating to special guardianship support services**

- (1) In section 26 of the Children Act 1989 (c. 41) (representations), after subsection (3B) insert—

“(3C) The duty under subsection (3) extends to any representations (including complaints) which are made to the authority by—

- (a) a child with respect to whom a special guardianship order is in force,
- (b) a special guardian or a parent of such a child,
- (c) any other person the authority consider has a sufficient interest in the welfare of such a child to warrant his representations being considered by them, or
- (d) any person who has applied for an assessment under section 14F(3) or (4),

about the discharge by the authority of such functions under section 14F as may be specified by the Secretary of State in regulations.”

- (2) Section 14G of that Act (special guardianship support services: representations) shall cease to have effect.

## **118 Complaints about handling of complaints**

In section 3 of the Health Service Commissioners Act 1993 (c. 46) (remit of Commissioners), after subsection (1D) insert—

“(1E) Where a complaint is duly made to a Commissioner by or on behalf of a person that the person has sustained injustice or hardship in consequence of maladministration by any person or body in the exercise of any function under section 113 of the Health and Social Care (Community Health and Standards) Act 2003 (complaints about health care), the Commissioner may, subject to the provisions of this Act, investigate the alleged maladministration.”

## **119 Complaints: data protection**

In section 31 of the Data Protection Act 1998 (c. 29) (regulatory activity) at the end insert—

“(6) Personal data processed for the purpose of the function of considering a complaint under section 113(1) or (2) or 114(1) or (3) of the Health and Social Care (Community Health and Standards) Act 2003, or section 24D, 26, 26ZA or 26ZB of the Children Act 1989, are exempt from the subject information provisions in any case to the extent to which the application of those provisions to the data would be likely to prejudice the proper discharge of that function.”

## CHAPTER 10

### SUPPLEMENTARY AND GENERAL

#### *Joint working*

#### **120 Co-operation etc**

- (1) The CHAI and the CSCI must co-operate with each other where it seems to them appropriate to do so for the efficient and effective discharge of their respective functions.
- (2) The CHAI and the CSCI must, in prescribed circumstances, consult each other in relation to the proposed exercise of their functions.
- (3) The CHAI and the CSCI may each delegate to the other any of its functions to be exercised by the other on its behalf.
- (4) The CHAI and the CSCI may, subject to such conditions as may be prescribed, enter into arrangements for the pooling of financial resources whenever they consider it appropriate to do so.

#### **121 Reviews and investigations**

- (1) The CHAI and the CSCI may exercise any of their powers to conduct reviews and investigations under this Part in conjunction with each other.
- (2) The CHAI may conduct a review or investigation under this Part, or undertake a study under section 57, in conjunction with a review, investigation or study relating to any functions of an NHS body, or to any health care provided by or for an NHS body, which is being conducted by any other public authority.
- (3) The CSCI may conduct a review or investigation under this Part, or a study under section 82 in conjunction with a review, investigation or study relating to any other functions of a local authority which is being conducted by any other public authority.
- (4) Where a review, investigation or study is being conducted by the CHAI in conjunction with any other authority pursuant to this section, any report which under this Part the CHAI is required to publish in relation to the review, investigation or study may consist of a joint report by the CHAI and the other authority as to all the matters being investigated by both of them.
- (5) Where a review, investigation or study is being conducted by the CSCI in conjunction with any other authority pursuant to this section, any report which under this Part the CSCI is required to publish in relation to the review, investigation or study may consist of a joint report by the CSCI and the other authority as to all the matters being investigated by both of them.
- (6) This section is without prejudice to any other powers of the CHAI or the CSCI.



**122 Joint annual reviews**

- (1) Regulations made by the Secretary of State may provide that, where services of a description specified in the regulations are provided under arrangements under section 31 of the Health Act 1999 (c. 8), the CHAI and the CSCI shall jointly—
  - (a) review the provision by the parties to the arrangements of such services as may be specified in the regulations;
  - (b) award a performance rating in respect of those services.
- (2) The regulations may provide that the CHAI and the CSCI are to exercise their functions under this section—
  - (a) at such times as may be specified in the regulations;
  - (b) by reference to criteria determined by the CHAI and the CSCI and approved by the Secretary of State.
- (3) The regulations may require the CHAI and the CSCI to publish a report after conducting a review under this section.

**123 Power to assist**

- (1) The CHAI or the CSCI may if it thinks it appropriate to do so provide assistance to any other public authority in the United Kingdom for the purpose of the exercise by that authority of its functions.
- (2) Assistance provided by the CHAI or the CSCI under this section may be provided on such terms, including terms as to payment, as it thinks fit.

*Arrangements with public authorities***124 Arrangements with Ministers etc: CHAI**

- (1) Arrangements may be made between the CHAI and a Minister of the Crown —
  - (a) for the CHAI to perform any of its functions in relation to any prescribed health scheme for which the Minister has responsibility; or
  - (b) for the CHAI to provide services or facilities in so far as they are required by the Minister in connection with any such health scheme.
- (2) Arrangements may be made between the CHAI and a Northern Ireland Minister—
  - (a) for the CHAI to perform on behalf of the Minister any functions of the Minister which—
    - (i) correspond to any functions of the CHAI; and
    - (ii) relate to the Northern Irish health service;
  - (b) for the CHAI to provide services or facilities in so far as they are required by the Minister in connection with the exercise by him of any such functions.
- (3) Arrangements under this section may be made on such terms and conditions as may be agreed between the parties to the arrangements.
- (4) Those terms and conditions may include provision with respect to the making of payments to the CHAI in respect of the cost to it of performing or providing any functions, services or facilities under the arrangements.

(5) Any arrangements under subsection (2)(a) are not to affect the responsibility of the Northern Ireland Minister on whose behalf any functions are exercised.

(6) In this section—

“health scheme” means any scheme which appears to the Secretary of State to be a health or medical scheme paid for out of public funds;

“Northern Ireland Minister” includes the First Minister, the deputy First Minister and a Northern Ireland department;

“Northern Irish health service” means any of the health services under any enactment which extends to Northern Ireland and which corresponds to section 1(1) of the 1977 Act.

### **125 Arrangements with Ministers etc: CSCI**

(1) Arrangements may be made between the CSCI and a Minister of the Crown—

- (a) for the CSCI to advise the Minister with respect to the provision of any services for which the Minister has responsibility which are similar to English local authority social services; or
- (b) for the CSCI to review, and conduct inspections in relation to, the provision of any such services.

(2) Arrangements may be made between the CSCI and a Northern Ireland Minister for the CSCI to advise and assist the Northern Ireland Minister with respect to the provision of any services for which the Minister has responsibility which are similar to English local authority social services.

(3) Arrangements under this section may be made on such terms and conditions as may be agreed between the parties to the arrangements.

(4) Those terms and conditions may include provision with respect to the making of payments to the CSCI in respect of the cost to it of performing or providing any functions, services or facilities under the arrangements.

(5) In this section “Northern Ireland Minister” has the same meaning as in section 124.

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

(1) The CHAI may make arrangements with—

- (a) the Government of the Isle of Man,
- (b) the States of Jersey, or
- (c) the States of Guernsey,

for the CHAI to advise and assist that authority with respect to the provision of health care by them or on their behalf.

(2) The terms and conditions of arrangements under this section may include provision with respect to the making of payments to the CHAI in respect of the cost to it of performing or providing any functions, services or facilities under the arrangements.

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

(1) The CSCI may make arrangements with—

- (a) the Government of the Isle of Man,

- (b) the States of Jersey, or
- (c) the States of Guernsey,

for the CSCI to advise and assist that authority with respect to the provision of any services which are similar to English local authority social services.

- (2) The terms and conditions of arrangements under this section may include provision with respect to the making of payments to the CSCI in respect of the cost to it of performing or providing any functions, services or facilities under the arrangements.

### *Reports*

#### **128 Reports: CHAI**

- (1) As soon as possible after the end of each financial year the CHAI must make a report on each of the following—
  - (a) the way in which it has exercised its functions during the year;
  - (b) the provision of health care by or for NHS bodies;
  - (c) what it has found in the course of exercising its functions during the year in relation to the persons for whom it is the registration authority under the Care Standards Act 2000 (c. 14).
- (2) The CHAI must lay before Parliament a copy of each report made under this section.
- (3) The CHAI must send a copy of each report made under this section to the Secretary of State and the Assembly.
- (4) The CHAI must also provide the Secretary of State with such reports and information relating to the exercise of its functions as he may from time to time request.

#### **129 Reports: CSCI**

- (1) As soon as possible after the end of each financial year the CSCI must make a report on each of the following—
  - (a) the way in which it has exercised its functions during the year;
  - (b) what it has found in the course of exercising its functions during the year.
- (2) The CSCI must lay before Parliament a copy of each report made under this section.
- (3) The CSCI must send a copy of each such report to the Secretary of State.
- (4) The CSCI must also provide the Secretary of State with such reports and information relating to the exercise of its functions as he may from time to time require.

### *Relationship with government*

#### **130 Duty to have regard to government policy: CHAI**

- (1) In exercising any of its functions the CHAI must have regard to such aspects of government policy as the Secretary of State may direct.
- (2) Subsection (1) does not apply in relation to any of the CHAI's functions under section 48(1), 49, 51 or 53.

- (3) In exercising any of its functions under any of the sections referred to in subsection (2) —
- (a) where the exercise relates to the provision of health care by or for an English NHS body or cross-border SHA, the CHAI must have regard to such aspects of government policy as the Secretary of State may direct; and
  - (b) where the exercise relates to the provision of health care by or for a Welsh NHS body, the CHAI must have regard to such aspects of the Assembly's policy as the Assembly may direct.
- (4) In relation to any function conferred on the CHAI under subsection (1)(a) of section 58, regulations under that section may do either or both of the following—
- (a) they may disapply subsection (1) of this section in relation to that function;
  - (b) they may require the CHAI, in exercising the function in relation to the provision of health care by or for a Welsh NHS body, to have regard to such aspects of the Assembly's policy as the Assembly may direct.
- (5) A direction under this section—
- (a) must be given in writing;
  - (b) may be varied or revoked by a further direction under this section.

### **131 Duty to have regard to government policy: CSCI**

- (1) In exercising any of its functions the CSCI must have regard to such aspects of government policy as the Secretary of State may direct in writing.
- (2) A direction given under this section may be varied or revoked by a further such direction.

### **132 Failure in discharge of functions: CHAI**

- (1) Where the Secretary of State considers that the CHAI is to a significant extent—
  - (a) failing to discharge any of its functions under this Act; or
  - (b) failing properly to discharge any of those functions;
 he may give a direction to the CHAI.
- (2) The Secretary of State must consult the Assembly before giving a direction under this section in respect of a failure which—
  - (a) relates to any function of the CHAI under section 48(1), 49, 51 or 53; and
  - (b) relates to the provision of health care by or for a Welsh NHS body.
- (3) Regulations under section 58 may, in relation to any function conferred on the CHAI under subsection (1)(a) of that section, provide that—
  - (a) the Assembly, and not the Secretary of State, may give directions to the CHAI under subsection (1);
  - (b) the Assembly, as well as the Secretary of State, may give directions to the CHAI under subsection (1).
- (4) The CHAI must comply with any direction given to it under this section.
- (5) A direction given under this section—
  - (a) must be given in writing;
  - (b) may be varied or revoked by a further direction under this section.

**133 Failure in discharge of functions: CSCI**

- (1) Where the Secretary of State considers that the CSCI is to a significant extent—
  - (a) failing to discharge any of its functions under this Act or the Children Act 1989 (c. 41), or
  - (b) failing properly to discharge any of those functions,he may give it a direction in writing.
- (2) The CSCI must comply with any such direction.
- (3) A direction given under this section may be varied or revoked by a further such direction.

*Inquiries***134 Inquiries: CHAI**

- (1) The Secretary of State may cause an inquiry to be held into any matter connected with the exercise by the CHAI of any of its functions.
- (2) The Assembly may cause an inquiry to be held into any matter connected with the exercise by the CHAI of any of its functions in relation to any health care provided by or for a Welsh NHS body.
- (3) Before an inquiry is begun, the Secretary of State or (in the case of an inquiry under subsection (2)) the Assembly may give a direction that it be held in private.
- (4) Where no such direction has been given, the person holding the inquiry may if he thinks fit hold it, or any part of it, in private.
- (5) Subsections (2) to (5) of section 250 of the Local Government Act 1972 (c. 70) (powers in relation to local inquiries) apply in relation to an inquiry under this section as they apply in relation to a local inquiry under that section.
- (6) The report of the person holding the inquiry is to be published, unless the Secretary of State or (in the case of an inquiry under subsection (2)) the Assembly considers that there are exceptional circumstances which make publication inappropriate.
- (7) Publication under subsection (6) is to be in such manner as the Secretary of State or (in the case of an inquiry under subsection (2)) the Assembly considers appropriate.

**135 Inquiries: CSCI**

- (1) The Secretary of State may cause an inquiry to be held into any matter connected with the exercise by the CSCI of any of its functions (under any enactment).
- (2) Before an inquiry is begun, the Secretary of State may give a direction that it be held in private.
- (3) Where no such direction has been given, the person holding the inquiry may if he thinks fit hold it, or any part of it, in private.
- (4) Subsections (2) to (5) of section 250 of the Local Government Act 1972 (c. 70) (powers in relation to local inquiries) apply in relation to an inquiry under this section as they apply in relation to a local inquiry under that section.

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*Status: This is the original version (as it was originally enacted).*

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- (5) The report of the person holding the inquiry is to be published, unless the Secretary of State considers that there are exceptional circumstances which make publication inappropriate.
- (6) Publication under subsection (5) is to be in such manner as the Secretary of State considers appropriate.

### *Information*

#### **136 Disclosure of information obtained by CHAI**

- (1) This section applies to information which—
  - (a) has been obtained by the CHAI on terms or in circumstances requiring it to be held in confidence; and
  - (b) relates to and identifies an individual.
- (2) Subject to section 137, a person is guilty of an offence if he knowingly or recklessly discloses information to which this section applies during the lifetime of the individual to which it relates.
- (3) A person guilty of an offence under this section is liable—
  - (a) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding the statutory maximum, or to both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.
- (4) For the purposes of subsection (1)(b), information obtained by the CHAI, or any person authorised by it, is to be regarded as identifying an individual if that individual can be identified—
  - (a) from that information, or
  - (b) from that information and from other information obtained by the CHAI or any person authorised by it.

#### **137 Section 136: defence**

- (1) It is a defence for a person charged with an offence under section 136 to prove that at the time of the alleged offence—
  - (a) any of the circumstances in subsection (2) applied in relation to the disclosure in question; or
  - (b) he reasonably believed that they applied.
- (2) The circumstances referred to in subsection (1)(a) are that—
  - (a) the disclosure was made in a form in which the individual to whom it relates is not identified;
  - (b) the disclosure was made with the consent of the individual to whom the information relates;
  - (c) the information disclosed had previously been lawfully disclosed to the public;
  - (d) the disclosure was made under or pursuant to regulations under section 113 (complaints about health care);
  - (e) the disclosure was made in accordance with any enactment or court order;

- (f) the disclosure was necessary or expedient for the purposes of protecting the welfare of any individual;
  - (g) the disclosure was made to any body or person in circumstances where it was necessary or expedient for the person or body to have the information for the purpose of exercising his or its functions under any enactment.
- (3) It is also a defence for a person charged with an offence under section 136 to prove that the disclosure was made—
- (a) for the purposes of facilitating the exercise of any functions of the CHAI (under any enactment);
  - (b) in connection with the investigation of a criminal offence (whether or not in the United Kingdom);
  - (c) for the purpose of criminal proceedings (whether or not in the United Kingdom).
- (4) For the purposes of subsection (2)(a), information disclosed by a person is not to be regarded as being in a form in which an individual is not identified if the individual can be identified—
- (a) from that information, or
  - (b) from that information and from other information disclosed by the CHAI, by any person authorised by it or by any of its members or employees.

### **138 Information obtained by CHAI: supplementary**

- (1) The CHAI may, subject to section 136, use any information it obtains, or documents or records produced to it, in the course of exercising any of its functions for the purposes of any of its other functions.
- (2) Where subsection (3) applies, the CHAI may disclose any information obtained by it notwithstanding any rule of common law which would otherwise prohibit or restrict the disclosure.
- (3) This subsection applies where—
- (a) in the case of information relating to an individual, the circumstances in paragraph (a) or (b) of subsection (2) of section 137 apply in relation to the disclosure;
  - (b) in any case, the circumstances in any of paragraphs (c) to (g) of that subsection apply in relation to the disclosure; or
  - (c) in any case, the disclosure is made as specified in paragraph (a), (b) or (c) of subsection (3) of that section.
- (4) Subsection (4) of section 137 applies for the purposes of subsection (3)(a) above.

### **139 Information obtained by CSCI: supplementary**

The CSCI may use any information it obtains, or documents or records produced to it, in the course of exercising any of its functions for the purposes of any of its other functions.

**140 Code of practice: CHAI**

- (1) The CHAI must prepare and publish a code in respect of the practice it proposes to follow in relation to confidential personal information.
- (2) The code must in particular make provision about the CHAI's obtaining, handling, use and disclosure of confidential personal information.
- (3) Before publishing the code, the CHAI must consult such persons as it considers appropriate.
- (4) The CHAI must keep the code under review and, if it considers it appropriate, from time to time publish a revised code (and references in this section to the code include any revised code).
- (5) For the purposes of this section “confidential personal information” means information which—
  - (a) is obtained by the CHAI on terms or in circumstances requiring it to be held in confidence; and
  - (b) relates to and identifies an individual.

**141 Code of practice: CSCI**

- (1) The CSCI must prepare and publish a code in respect of the practice it proposes to follow in relation to confidential personal information.
- (2) The code must in particular make provision about the CSCI's obtaining, handling, use and disclosure of confidential personal information.
- (3) Before publishing the code, the CSCI must consult such persons as it considers appropriate.
- (4) The CSCI must keep the code under review and, if it considers it appropriate, from time to time publish a revised code (and references in this section to the code include any revised code).
- (5) For the purposes of this section “confidential personal information” means information which—
  - (a) is obtained by the CSCI on terms or in circumstances requiring it to be held in confidence; and
  - (b) relates to and identifies an individual.

*Wales: supplementary*

**142 Annual reports of Assembly**

As soon as possible after the end of each financial year of the Assembly, the Assembly must make and publish a report or reports on—

- (a) what it has found during the year in the course of exercising—
  - (i) its functions under Chapter 4 and 6 of this Part (other than any function of making regulations);
  - (ii) its functions exercisable by virtue of section 5(b) and 8(1) to (3) of the Care Standards Act 2000 (c. 14);
- (b) the way in which the Assembly has during the year exercised those functions.



**143 Use by Assembly of information**

- (1) The Assembly may use any information it obtains, or documents produced to it, in the course of exercising any function of the Assembly referred to in any paragraph of subsection (2) for the purposes of any function of the Assembly referred to in any other paragraph of that subsection.
- (2) The functions of the Assembly referred to in subsection (1) are—
  - (a) its functions under Chapter 4 of this Part;
  - (b) its functions under Chapter 6 of this Part;
  - (c) its functions exercisable by virtue of section 5(b) or 8(1) to (3) of the Care Standards Act 2000 (c. 14);
  - (d) its functions under section 80 of the Children Act 1989 (c. 41).
- (3) References to functions in subsection (2) do not include functions of making regulations.

**144 Inquiries: Wales**

- (1) This section applies where, under section 35 of the Government of Wales Act 1998 (c. 38), the Assembly causes an inquiry to be held into any matter relevant to the exercise of—
  - (a) its functions under Chapter 4 or 6 of this Part (other than any function of making regulations);
  - (b) its functions under section 87 of the Children Act 1989.
- (2) Before an inquiry is begun, the Assembly may give a direction that it be held in private.
- (3) Where no such direction has been given, the person holding the inquiry may if he thinks fit hold it, or any part of it, in private.
- (4) The report of the person holding the inquiry is to be published, unless the Assembly considers that there are exceptional circumstances which make publication inappropriate.
- (5) Publication under subsection (4) is to be in such manner as the Assembly considers appropriate.

**145 Co-operation between Assembly and CHAI**

- (1) The Assembly and the CHAI must co-operate with each other for the efficient and effective discharge of any relevant function.
- (2) For the purposes of subsection (1), a relevant function is—
  - (a) any function of the CHAI under Chapter 3 of this Part;
  - (b) any function of the Assembly under Chapter 4 or 6 of this Part (other than any function of making regulations);
  - (c) any function of the CHAI under the Care Standards Act 2000;
  - (d) any function of the Assembly exercisable by virtue of section 5(b) or 8(1) to (3) of the Care Standards Act 2000.

*General***146 Offences by bodies corporate**

- (1) This section applies where any offence under this Part is committed by a body corporate.
- (2) If the offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—
- (a) any director, manager, or secretary of the body corporate, or
  - (b) any person who was purporting to act in any such capacity,
- he (as well as the body corporate) shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.
- (3) The reference in subsection (2) to a director, manager or secretary of a body corporate includes a reference—
- (a) to any other similar officer of the body; and
  - (b) where the body is a local authority or NHS body, to any officer or member of the authority or NHS body.

**147 Minor and consequential amendments**

Schedule 9 (which makes minor and consequential amendments relating to this Part) has effect.

**148 Interpretation of Part 2**

In this Part—

“Audit Commission” means the Audit Commission for Local Authorities and the National Health Service in England and Wales;

“the CHAI” means the Commission for Healthcare Audit and Inspection;

“cross-border SHA” means a Special Health Authority not performing functions only or mainly in respect of England or only or mainly in respect of Wales;

“the CSCI” means the Commission for Social Care Inspection;

“English local authority social service” means—

- (a) a service which is provided, in any place, by a local authority in England in the exercise of any of its social services functions;
- (b) a service which is provided, in any place, by another person pursuant to arrangements made by a local authority in England in the exercise of its social services functions;
- (c) a service which—
  - (i) is provided, in any place, by a local authority in England, or by another person pursuant to arrangements made by a local authority in England, under section 2(1)(b) of the Local Government Act 2000 (c. 22); and
  - (ii) is similar in nature to a service which could be provided by the authority in the exercise of any of its social services functions.

“English NHS body” means—

- (a) a Primary Care Trust;

- (b) a Strategic Health Authority;
  - (c) an NHS trust all or most of whose hospitals, establishments and facilities are situated in England;
  - (d) an NHS foundation trust;
  - (e) a Special Health Authority performing functions only or mainly in respect of England;
- “financial year”, in relation to the CHAI or the CSCI, means—
- (a) the period beginning with the date on which that body is established and ending with the next 31st March following that date; and
  - (b) each successive period of twelve months ending with 31st March;
- “health care” has the meaning given by section 45(2);
- “local authority” has the same meaning as in the Local Authority Social Services Act 1970 (c. 42) (see section 1 of that Act);
- “Minister of the Crown” has the same meaning as in the Ministers of the Crown Act 1975 (c. 26);
- “NHS body” means—
- (a) an English NHS body;
  - (b) a Welsh NHS body;
  - (c) a cross-border SHA;
- “NHS trust” has the same meaning as in Part 1 of the 1977 Act;
- “personal records” includes medical records;
- “prescribed” means prescribed by regulations made by—
- (a) the Secretary of State;
  - (b) in the case of sections 63, 75 and 101, the Assembly;
- “regulator” means the Independent Regulator of NHS Foundation Trusts;
- “social services functions” has the same meaning as in the Local Authority Social Services Act 1970;
- “Welsh local authority social service” means—
- (a) a service provided, in any place, by a local authority in Wales in the exercise of any of its social services functions;
  - (b) a service provided, in any place, by another person pursuant to arrangements made by a local authority in Wales in the exercise of its social services functions;
  - (c) a service which—
    - (i) is provided, in any place, by a local authority in Wales, or by another person pursuant to arrangements made by a local authority in Wales, under section 2(1)(b) of the Local Government Act 2000 (c. 22); and
    - (ii) is similar in nature to a service which could be provided by the authority in the exercise of any of its social services functions;
- “Welsh NHS body” means—
- (a) a Local Health Board;
  - (b) an NHS trust all or most of whose hospitals, establishments and facilities are situated in Wales;
  - (c) a Special Health Authority performing functions only or mainly in respect of Wales.

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*Status: This is the original version (as it was originally enacted).*

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#### **149 References to the provision of health care**

- (1) For the purposes of this Part, a person provides health care for another person if he provides it—
  - (a) at the direction of the other person;
  - (b) in accordance with, or by virtue of, an agreement or arrangements made by the other person (whether or not with the person providing the health care); or
  - (c) otherwise on behalf of the other person.
- (2) References in this section to the provision of health care include references to its provision jointly with another person.