

2004 No. 557

**NATIONAL HEALTH SERVICE, ENGLAND AND
WALES**

PUBLIC HEALTH, ENGLAND

**The Commission for Healthcare Audit and Inspection
(Explanation, Statements of Action and Co-operation)
Regulations 2004**

<i>Made</i> - - - -	<i>2nd March 2004</i>
<i>Laid before Parliament</i>	<i>8th March 2004</i>
<i>Coming into force</i> - -	<i>1st April 2004</i>

The Secretary of State for Health, in exercise of the powers conferred on him by sections 52(9) and (10), 69(1) and (2), 120(4) and 195(1) and (2) of the Health and Social Care (Community Health and Standards) Act 2003 (a), and of all other powers enabling him in that behalf, hereby makes the following Regulations:—

Citation, commencement, application and interpretation

1.—(1) These Regulations may be cited as the Commission for Healthcare Audit and Inspection (Explanation, Statements of Action and Co-operation) Regulations 2004 and shall come into force on 1st April 2004.

(2) These Regulations apply to England and Wales.

(3) In these Regulations—

“the Act” means the Health and Social Care (Community Health and Standards) Act 2003;

“relevant Primary Care Trust” means, in relation to an NHS trust (b) or NHS foundation trust(c), any Primary Care Trust the area of which falls wholly or partly within the area of the relevant Strategic Health Authority for that NHS trust or NHS foundation trust, where that Primary Care Trust has made arrangements to provide services with the NHS trust or NHS foundation trust;

“relevant Strategic Health Authority” means—

(a) in relation to a Primary Care Trust—

(i) where the area of the Primary Care Trust falls wholly within the area of a Strategic Health Authority, that Strategic Health Authority; or

(a) 2003 c. 43. See section 148 of the Act for the definition of “prescribed”.

(b) See section 148 of the Act for the definition of “NHS trust”.

(c) NHS foundation trusts are established under Part 1 of the Act.

- (ii) where the area of the Primary Care Trust falls within the areas of two or more Strategic Health Authorities, each of those Strategic Health Authorities; and
- (b) in relation to an NHS trust or NHS foundation trust, the Strategic Health Authority in the area of which all or most of the hospitals, establishments and facilities of the NHS trust or NHS foundation trust are situated;

“service provider” means a person who provides, has provided or is to provide health care for an NHS body (a).

(4) In this regulation, any reference to the area of a Primary Care Trust, or of a Strategic Health Authority, is a reference to the area for which the Primary Care Trust or Strategic Health Authority is established(b).

Power to require an explanation

2.—(1) The CHAI (c), or a person authorised by it, may require any of the persons prescribed in paragraph (4) to provide to the CHAI or the person so authorised (as the case may be) an explanation of—

- (a) any documents, records or items inspected, copied or provided under sections 66 to 68 of the Act;
- (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 Chapter 3 of Part 2 of the Act (“Chapter 3”),

in circumstances where the CHAI considers the explanation necessary or expedient for the purposes of Chapter 3.

(2) The CHAI or the person so authorised may require the explanation to be provided—

- (a) in person (unless the person required to provide the explanation is a body of persons corporate or unincorporate); or
- (b) in writing.

(3) Where the CHAI or the person so authorised requires the explanation to be provided in person, the explanation shall be provided at a time and place specified by the CHAI, and the CHAI shall give the person required to provide the explanation reasonable notice of that time and place.

(4) The persons prescribed are—

- (a) an NHS body;
- (b) a chairman, member, director or employee of an NHS body other than an NHS foundation trust;
- (c) a chairman, director or employee of an NHS foundation trust;
- (d) a member of a committee or sub-committee of an NHS body other than an NHS foundation trust;
- (e) a member of a committee or sub-committee of the board of directors of an NHS foundation trust;
- (f) a service provider;
- (g) a chairman, director or employee of a service provider;
- (h) a person (other than a person prescribed in sub-paragraph (g)) who is assisting a service provider in the provision of health care for an NHS body;
- (i) a local authority or a member or officer of a local authority;

(a) See section 149 of the Act as to how references to the provision of health care by one person for another person are to be construed. See section 45(2) of the Act for the definition of “health care”. See section 148 of the Act for the definition of “NHS body”.

(b) Primary Care Trusts are established by order made under section 16A of the National Health Service Act 1977 (c.49); Strategic Health Authorities are established by order made under section 8 of that Act.

(c) See section 148 of the Act for the definition of “the CHAI”.

- (j) an elected mayor of a local authority within the meaning of section 39(1) of the Local Government Act 2000 (a);
- (k) a person (other than a person prescribed above) who is assisting an NHS body in the exercise of its functions.

Statement as to action to be taken by an English NHS body or cross-border SHA

3.—(1) Where the CHAI has conducted —

- (a) under section 52(2)(c) of the Act, a review of, or investigation into, the provision of health care by or for a particular English NHS body or cross-border SHA (b); or
- (b) under section 52(3) of the Act, a review of the arrangements made by an English NHS body or cross-border SHA for the purpose of discharging its duty under section 45 of the Act,

and has published a report relating to that review or investigation, the English NHS body or cross-border SHA in question shall, in accordance with the following paragraphs, publish a statement as to the action it proposes to take as a result of the review or investigation (“the statement”).

(2) Before an English NHS body (other than an NHS foundation trust) or cross-border SHA publishes the statement, it shall obtain consent to publication from—

- (a) in the case of an NHS trust or Primary Care Trust, the relevant Strategic Health Authority;
- (b) in the case of a Strategic Health Authority, the Secretary of State;
- (c) in the case of a Special Health Authority performing functions only or mainly in respect of England, the Secretary of State;
- (d) in the case of a cross-border SHA, the Secretary of State and the Assembly (c),

(and the person from whom consent to publication is required is referred to below as the “appropriate person”).

(3) Where consent to publication is required under paragraph (2), the English NHS body or cross-border SHA shall, within the period of 28 days beginning with the date on which the CHAI’s report is published, prepare a draft of the statement and send the draft to the appropriate person with a request to that person to consent to publication in the form of the draft, or to propose changes to it.

(4) An English NHS body (other than an NHS foundation trust) shall publish the statement within the period of 7 days beginning with the date on which it is informed by the appropriate person that that person consents to publication of the statement in the form in which that body proposes to publish it (whether or not that form is different from the form of the draft sent to that person under paragraph (3)).

(5) A cross-border SHA shall publish the statement within the period of 7 days beginning with the date on which it is informed by the Secretary of State and the Assembly that those persons consent to publication of the statement in the form in which that cross-border SHA proposes to publish it (whether or not that form is different from the form of the draft sent to those persons under paragraph (3)) or, where the cross-border SHA is so informed by each of those persons on different dates, within the period of 7 days beginning with the later of those dates.

(6) An NHS foundation trust shall publish the statement within the period of 56 days beginning with the date on which the CHAI’s report is published.

(7) The English NHS body or cross-border SHA in question shall send a copy of the published statement to—

- (a) the CHAI;

(a) c. 22.

(b) See section 148 of the Act for the definitions of “English NHS body” and “cross-border SHA” (in the definition of “cross-border SHA”, it will be noted that “SHA” refers to a Special Health Authority and not to a Strategic Health Authority).

(c) See section 148 of the Act for the definition of “the Assembly”.

- (b) in the case of an NHS foundation trust, the regulator (a) and the relevant Primary Care Trust;
- (c) in the case of an NHS trust, the relevant Primary Care Trust and the Secretary of State;
- (d) in the case of a Primary Care Trust, the Secretary of State; and
- (e) any other person or body exercising statutory functions to whom the English NHS body or cross-border SHA in question considers that the statement should be copied.

Pooling of financial resources by the CHAI and the CSCI

4.—(1) The CHAI and the CSCI (b) may enter into arrangements under section 120(4) of the Act for the pooling of financial resources, if the two conditions prescribed in paragraphs (2) and (3) are met.

(2) The first condition is that the CHAI and the CSCI have entered into an agreement specifying—

- (a) the purposes for which the pooled resources (referred to below as the “pooled fund”) are to be used;
- (b) the contributions that they are each to make to the pooled fund;
- (c) any staff, goods, services or accommodation that either of them is to provide in connection with the arrangements;
- (d) the duration of the arrangements, and how the arrangements are to be reviewed, varied or terminated; and
- (e) how the pooled fund is to be managed and monitored, including provision for one of the CHAI or the CSCI (“the host partner”) to be responsible for the preparation of accounts for the pooled fund and for arranging the audit of those accounts.

(3) The second condition is that the host partner has appointed an officer to be responsible for submitting to the CHAI and the CSCI quarterly reports, an annual return about the income of, and expenditure from, the pooled fund, and such other information specified by the CHAI or the CSCI as will assist the CHAI or the CSCI (as the case may be) in monitoring the effectiveness of the arrangements.

Signed by authority of the Secretary of State

2nd March 2004

Warner
Parliamentary Under-Secretary of State,
Department of Health

(a) See section 148 of the Act for the definition of “regulator”, and see also section 2 of the Act.
(b) See section 148 of the Act for the definition of “the CSCI”.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision in relation to the functions of the Commission for Healthcare Audit and Inspection (“the CHAI”) established under section 41 of the Health and Social Care (Community Health and Standards) Bill 2003 (c. 43) (“the Act”).

Regulation 2 provides for the CHAI, or a person authorised by it, to be able to obtain an explanation of documents or information that the CHAI has obtained in the exercise of its functions under Chapter 3 of Part 2 of the Act.

Regulation 3 provides for an English NHS body or cross-border Special Health Authority to publish a statement as to the action that it proposes to take as a result of a review or investigation by the CHAI under section 52(2)(c) or 52(3) of the Act.

Regulation 4 prescribes conditions that must be fulfilled in relation to arrangements whereby the CHAI and the CSCI pool financial resources under section 120(4) of the Act.

A full regulatory impact assessment has not been produced for this instrument as it has no impact on the costs of business.

STATUTORY INSTRUMENTS

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