

These notes refer to the Health and Social Care (Community Health and Standards) Act 2003 (c.43) which received Royal Assent on 20 November 2003

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

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2 –Standards

Chapter 5 – Social Services: Functions of Csci

Provision of social services

Section 76: Introductory

187. This section places a duty on the CSCI to encourage improvement in the provision of local authority social services in England. It provides that in exercising its functions in respect of local authority social services, the CSCI will be concerned in particular with the availability, access, quality, effectiveness, management, economy and efficiency of these services, and also have regard to the need to promote and safeguard the rights and welfare of children and should consider in particular how local authorities are doing this. *Subsection 2(e)* also places a duty upon CSCI to be concerned with the availability and quality of information provided to the public about social care services. This applies to general information that is not specific to individual service users, such as leaflets about the different social care services that are available and telephone helpline services.
188. The Act defines English local authority social services at *section 148*. The definition of English local authority social services in the Act includes both local authority social services as defined in the Local Authority Social Services Act 1970 (“LASS Act”) and services provided under local authorities’ broad discretionary power under section 2(1)(b) of the Local Government Act 2000 where those services are similar to local authority social services as defined in the LASS Act.
189. Local authority social services are defined in the LASS Act as services provided under the enactment specified in Schedule 1 to that Act. Examples of local authority social services are child protection services, support services to elderly people to enable them to stay in their own homes and the provision of special equipment to help disabled people with their daily living needs. Section 2(1)(b) of the 2000 Act provides local authorities with a broad discretionary power to provide services calculated to improve the wellbeing of people in their area.

Section 77: Information and advice

190. *Section 77* places a duty on the CSCI to keep the Secretary of State informed about the social services provided by English local authorities. *Subsection (2)* allows for the CSCI to give advice to the Secretary of State on any matters connected with this subject as it sees fit. In particular, the CSCI may advise the Secretary of State of any changes to standards issued under section 23 of the CSA 2000 that, if made, could secure an improvement in the performance by local authorities in England of their adoption and

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fostering functions. These standards are National Minimum Standards that represent the minimum service level expected of local authorities in exercising their adoption and fostering functions. Similar National Minimum Standards are also issued under section 23 of the Care Standards Act (“CSA 2000”) in respect of adoption and fostering services provided by voluntary sector adoption and fostering agencies.

Section 78: Review of studies and research

191. This section enables the CSCI to evaluate work carried out by other bodies, such as academic institutions, into the provision of English local authority social services. The CSCI will be able to make a judgement on the lessons that may be learned from such work. The CSCI must publish a report of the work it undertakes in this area.

Section 79: Annual Reviews

192. *Section 79* gives the CSCI the function of undertaking an annual review of social services provided by every local authority England. This includes services ‘commissioned’ by a local authority. For example, a local authority might pay for an elderly person to be placed in a voluntary or private sector care home. In assessing how well a local authority is discharging its social services functions the CSCI will consider the extent to which ‘commissioned’ services meet the needs of those for whom they are have been ‘commissioned’.
193. Following each annual review of a local authority, the CSCI will award a performance rating (*subsection 2*). In practice this will mean the award of a ‘star rating’. ‘Star rating’ is not a term set out in the legislation. The star rating system was introduced by the Secretary of State in October 2001. Its aim is to provide a simple indicator of the level of performance of a local authority in its provision of social care services in any one year. The star ratings awarded for social services are included in the annual comprehensive performance assessment of local authorities.
194. *Subsections (3) and (4)* provide for the CSCI to devise and publish criteria against which these reviews will be carried out. The Secretary of State will approve such criteria. *Subsection (5)* places a duty upon CSCI to carry out any annual reviews under this section in accordance with any timetable that has been specified by the Secretary of State. The Secretary of State could specify for example that the reviews must be carried out to fit in with the timetable of the Comprehensive Performance Assessment (carried out annually of all local authorities) so that disruption to local authorities’ work was minimised.
195. When carrying out annual reviews the CSCI must take into account guidance issued to local authorities under section 7 of the LASS Act¹ (*subsection (6)*). *Subsection (7)* provides that when CSCI inspects a local authority’s adoption and fostering functions as part of an annual review it must also take into account standards published under section 23 of the CSA 2000 that relate to such functions (National Minimum Standards for local authority adoption and fostering services).
196. In order for the CSCI to carry out these reviews and investigations, *subsection (8)* enables the CSCI to inspect the local authority being reviewed or any person ‘commissioned’ on behalf of that local authority to provide a local authority social service.
197. *Section 79(8)*, together with *sections 81(8), 81(7) and 82(5)*, makes the same provision in relation to CSCI as *sections 50(6), 51(7), 52(9), 53(9) and 57(5)* make in relation to CHAI. This enables the Secretary of State, after consulting the CSCI, to issue regulations making provision as to any procedure that must be followed before the award of any performance rating or publication of any report. The purpose of such

¹ This is guidance issued by the Secretary of State to local authorities with regard to the exercise of their functions. Case law establishes that local authorities must comply with such guidance unless they have good reason not to do so.

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procedure is to give the reviewed body time to comment and for any comments to be considered by the CSCI.

Section 80: Other reviews and investigations

198. *Section 80* provides for the CSCI to review or investigate the provision by local authorities in England of social services in circumstances other than when the CSCI is conducting an annual review. Under this function the CSCI may, in particular, undertake a review of the social services provided by local authorities across the whole of England (*subsection 2(a)*), a review of one or more social services across the country, in a particular area or by a particular type of local authority (for example the provision of child protection services by local authorities in large cities) (*subsection 2(b)*), or the services (or any of them) provided by an individual local authority (*subsection 2(c)*). *Subsection (3)* provides that the CSCI must, where requested to do so by the Secretary of State, carry out a review of the local authority social services specified in the Secretary of State's request.

Section 81: Failings

199. This section gives the CSCI certain duties that it must carry out when, following a review or investigation, it judges that there are failings in the provision of social services by a local authority.
200. *Subsections (2)* and *(3)* provide that the CSCI must recommend certain measures that the Secretary of State should take where local authorities' social services have been awarded the lowest performance rating (currently a zero star) or where the CSCI judges that a local authority is failing to discharge its social services functions to an acceptable standard. Such measures might include the Secretary of State asking CSCI to monitor the local authority concerned more closely or use of the Secretary of State's powers of intervention (as set out in the Local Authority Social Services Act 1970 (section 7), the Children Act 1989 (section 81 and 84), the NHS and Community Care Act 1990 (section 50), the Local Government Act 1999 (section 15), and the Health and Social Care Act 2001 (section 46)). Following a request from the Secretary of State, the CSCI must undertake a further inspection of the local authority concerned and prepare a further report.
201. Where failings are of a less significant nature, *subsections (4)* and *(5)* provide for the CSCI to notify the local authority, setting out the detail of the failure, the action to be taken to rectify it, and the time by which by CSCI considers that this should be done. The CSCI must at this time inform the Secretary of State of the action it has taken.

Other functions

Section 82: Studies as to economy, efficiency etc.

202. *Section 82* replicates, for the CSCI, the powers that sections 33 and 34 of the Audit Commission Act 1998 give to the Audit Commission with respect to local authority social services.
203. *Subsection (1)* provides for the CSCI to carry out studies designed to enable it to make recommendations for improving economy, efficiency and effectiveness in the provision of local authority social services, and for improving the management of social services. These provisions will enable the CSCI to carry out value for money studies in a local authority's area. Where there are studies looking at the performance of an individual local authority's social services, or where there is a national study into one particular aspect of social service provision, these will be carried out by the CSCI.
204. The Audit Commission will retain powers enabling it to carry out studies of local authority social services. However, although this will mean that the functions of the Audit Commission and CSCI will overlap, it is envisaged that in practice they will

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exercise them in different circumstances. It is envisaged that in the future the CSCI will carry out studies that focus specifically on social services, calling on the assistance of the Audit Commission where necessary. Where the primary focus of a study is on local authority services other than social services, it is envisaged that such studies will be carried out by the Audit Commission, calling on the assistance of CSCI where necessary. *Subsection (5)* provides that CSCI must provide the National Audit Office with any material relevant to such a study.

Section 83: Joint working with the Audit Commission

205. *Section 83* provides that the Audit Commission and the CSCI may exercise jointly the functions given them by *section 82* of this Act and sections 33 and 34 of the Audit Commission Act. This section also imposes on the CSCI and the Audit Commission a duty to co-operate with one another when performing their respective functions in these areas (*subsection (2)*). *Subsection (3)* enables the Secretary of State to give guidance about their functions to both the CSCI and the Audit Commission. The object of such guidance will be to enable the Secretary of State to detail circumstances where he considers that the most appropriate use of public resources, and of the expertise of CSCI and the Audit Commission would be for either the Audit Commission or the CSCI to take the lead in work which could be undertaken by either of them.

Section 84: Additional functions

206. *Section 84* allows the Secretary of State to confer additional functions through regulations on the CSCI in respect of local authority social services in England. The social care sector is constantly changing, so this might necessitate giving additional functions to the CSCI which have not yet been identified and therefore cannot be dealt with on the face of the Act itself. The purpose of this power therefore is to ensure that sufficient flexibility is retained to ensure that the CSCI can be given additional functions by means of secondary legislation, where this would be desirable, in order to enable it to be responsive to changing trends in social services and social care provision.

Supplementary

Section 85: Criteria

207. This section provides for the Secretary of State to make regulations requiring the CSCI to devise and publish criteria to be used in relation to its functions under this Chapter (other than the annual review function in respect of which provision about criteria is made in *section 79*). The regulations will be used to specify exactly what functions CSCI will need to draw up inspection criteria for. The Secretary of State must approve the criteria prior to their publication.

Section 86: Fees and section 87: Reports and information

208. *Sections 86* and *87* refer to the levying of fees. *Section 86* provides for the CSCI to be able to determine and levy fees in relation to the exercise of such of its functions under *sections 79, 80* or *82* as may be prescribed. The CSCI may levy a fee upon the local authority (rather than the service provider) where it has exercised its functions under *sections 79, 80* or *82*, in relation to services commissioned by the local authority. *Subsection (5)* requires that the CSCI must consult appropriate persons before it devises the fee scale. Appropriate persons are likely to be local authorities in general or organisations representative of local authorities, such as the Local Government Association or the Association of Directors of Social Services. *Subsection (6)* provides for regulations allowing an independent panel to review in individual cases the amount chargeable by the CSCI for a particular service.
209. *Section 87* makes the same provision as respect as the provision of reports and other information to the public as *section 64* makes for the CHAI.

Section 88: Right of entry

210. This section allows persons authorised by the CSCI to enter premises which are used or are proposed to be used in the provision of an English local authority social service, or where the CSCI believes such use has or will be likely to take place (*subsection (2)*). Individuals authorised by the CSCI will not have the right, by virtue of this section, to enter private homes where social services are being provided. The powers given to CSCI inspectors by this section largely mirror those given to the CHAI inspectors by *section 66*.

Section 89: Right of entry: supplementary

211. This section gives persons authorised to enter premises under *section 86* rights to copy and inspect documents and remove them from the premises, interview persons working at the premises etc. The powers given to the CSCI inspectors by this section mirror those given to the CHAI inspectors by *section 67*.

Section 90: Power to require information etc

212. This section provides for the CSCI the same right to require information from the bodies specified in *subsection (2)* as *section 68* does for the CHAI.

Section 91: Power to require explanation

213. This section provides that the Secretary of State may make regulations to give the CSCI power to require an explanation of any documents or information it obtains under *sections 88 to 90* or of any matters that are the subject to the exercise of its functions under this Chapter. This section is identical to *section 69* in the CHAI provisions.