

**2004 No.664**

**CHILDREN AND YOUNG PERSONS, ENGLAND AND  
WALES**

**PUBLIC HEALTH, ENGLAND AND WALES**

**SOCIAL CARE, ENGLAND AND WALES**

**The Health and Social Care (Community Health and Standards)  
Act 2003 (Commission for Healthcare Audit and Inspection and  
Commission for Social Care Inspection) (Transitional and  
Consequential Provisions) Order 2004**

*Made* - - - - *9th March 2004*

*Laid before Parliament* *10th March 2004*

*Coming into force* - - *1st April 2004*

The Secretary of State, after consulting, where appropriate, the National Assembly for Wales, in exercise of the powers conferred upon him by sections 200(1) and (3) and 201(1) of the Health and Social Care (Community Health and Standards) Act 2003<sup>(a)</sup> and of all other powers enabling him in that behalf, and after consulting the Council on Tribunals in accordance with section 8 of the Tribunals and Inquiries Act 1992<sup>(b)</sup>, hereby makes the following Order:—

**Citation, commencement, interpretation and application**

1.—(1) This Order may be cited as the Health and Social Care (Community Health and Standards) Act 2003 (Commission for Healthcare Audit and Inspection and Commission for Social Care Inspection) (Transitional and Consequential Provisions) Order 2004 and shall come into force on 1st April 2004.

(2) In this Order—

“the 2000 Act” means the Care Standards Act 2000<sup>(c)</sup>;

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

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<sup>(a)</sup> 2003 c.43; the powers are exercised by the appropriate authority, who is defined in section 199(2)(b)(i) as the Secretary of State in relation to section 42 (the Commission for Social Care Inspection), and in section 199(2)(b)(iv) as the Secretary of State after consulting the Assembly in relation to section 41 (the Commission for Healthcare Audit and Inspection) and section 44 (abolition of former regulatory bodies).

<sup>(b)</sup> 1992 c. 53.

<sup>(c)</sup> 2000 c. 14.

“the NCSC” means the National Care Standards Commission<sup>(a)</sup>.

(3) The amendment or revocation of any provision by this Order has the same application as the provision being amended or revoked.

(4) Articles 9 to 14 apply to England only.

### **Consequential amendments and revocations**

2. The enactments specified in Schedule 1 are amended as there specified.

3. In the enactments specified in column 1 of Schedule 2, in the provisions specified in column 2, there is inserted in the appropriate alphabetical position—

““Commission” means the Commission for Social Care Inspection;”<sup>(b)</sup>.

4. In the enactments specified in column 1 of Schedule 3, in the provisions specified in column 2, for “Commission for Health Improvement” there is substituted “Commission for Healthcare Audit and Inspection”.

5. In the enactments specified in column 1 of Schedule 4, in the provisions specified in column 2, for “National Care Standards Commission” there is substituted “Commission for Social Care Inspection”.

6. The National Care Standards Commission (Director of Private and Voluntary Health Care) Regulations 2002<sup>(c)</sup> are hereby revoked.

7. The National Care Standards Commission (Membership and Procedure) Regulations 2001<sup>(d)</sup> are hereby revoked.

8. Articles 3 to 5 of the Health Act 1999 (Supplementary and Consequential Provisions) Order 1999<sup>(e)</sup> are hereby revoked.

### **NCSC – accounts and report– consequential provisions**

9.—(1) The Secretary of State must prepare the annual accounts of the NCSC in respect of the year beginning on 1st April 2003 and ending on 31st March 2004 (“the financial year 2003-2004”) in such form as he considers appropriate.

(2) The Secretary of State must send copies of those annual accounts to the Comptroller and Auditor General.

(3) The Comptroller and Auditor General must examine, certify and report on the annual accounts and must lay copies of the accounts and of his report before Parliament.

(4) The CSCI and the CHAI must provide to the Secretary of State such information and other assistance as he may require to enable him to carry out the duty in paragraph (1).

10.—(1) As soon as possible after the end of the financial year 2003-2004, the Secretary of State must make a report on the exercise by the NCSC of its functions during that financial year.

(2) The report made under paragraph (1) must be published in a manner which the Secretary of State considers appropriate.

(3) The CSCI and the CHAI must provide to the Secretary of State such information and other assistance as he may require to enable him to carry out the duty in paragraph (1).

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<sup>(a)</sup> The National Care Standards Commission was established by section 6 of the Care Standards Act 2000 (c. 14)(“the 2000 Act”).

<sup>(b)</sup> The Commission for Social Care Inspection is established by section 42 of the Health and Social Care (Community Health and Standards) Act 2003 (c. 43) (“the Act”). The functions of the National Care Standards Commission under Part 2 of the 2000 Act are transferred either to the Commission for Social Care Inspection or to the Commission for Healthcare Audit and Inspection in accordance with section 102 of the Act.

<sup>(c)</sup> S.I. 2002/603.

<sup>(d)</sup> S.I. 2001/1042, as amended by S.I. 2002/880, S.I. 2002/881, S.I. 2002/2469 and S.I. 2003/1590.

<sup>(e)</sup> S.I. 1999/2795.

### **Functions of the NCSC under Part 2 of the 2000 Act – transitional provisions**

11.—(1) Anything which immediately before 1st April 2004 is in the process of being done by or in relation to the NCSC may, if it relates to any function transferred under section 102(1) of the Act, be continued by or in relation to the transferee.

(2) Anything done (or having effect as if done) by or in relation to the NCSC before 1st April 2004 for the purpose of, or in connection with, any function transferred under section 102(1) of the Act is, so far as is required for continuing its effect, to have effect as if done by, or in relation to, the transferee.

(3) Any reference to the NCSC in any document constituting or relating to anything to which paragraph (1) or (2) applies in relation to a function is, so far as is required for giving effect to those provisions, to be construed as reference to the transferee.

(4) In this article “transferee”, in relation to a function, means the body to which the function is transferred under section 102(1).

### **Functions of the NCSC under Part 3 of the 2000 Act – transitional provisions**

12.—(1) Anything which immediately before 1st April 2004 is in the process of being done by or in relation to the NCSC may, if it relates to any Part 3 function of that Commission, be continued by the CSCI under the relevant analogous function.

(2) Anything done by or in relation to the NCSC before 1st April 2004 for the purpose of, or in connection with, any Part 3 function of that Commission is, so far as is required for continuing its effect, to have effect as if done by, or in relation to, the CSCI under the relevant analogous function.

(3) Any reference to the NCSC in any document constituting or relating to anything to which paragraph (1) or (2) applies in relation to a function is, so far as is required for giving effect to those provisions, to be construed as a reference to the CSCI.

(4) In this article,

(a) “Part 3 function” means—

- (i) requiring information under section 45(1)(a) of the 2000 Act,
- (ii) an inspection carried out by a person authorised under section 45(1)(b) or any action carried out under regulations made under section 45(4) of the 2000 Act,
- (iii) a report made under section 47(1) of the 2000 Act,
- (iv) a report made under section 47(3) or 47(4)(a) of the 2000 Act, and
- (v) a notice given under section 47(4)(b) of the 2000 Act; and

(b) “relevant analogous function” means—

- (i) in relation to the Part 3 function referred to in sub-paragraph (a)(i), information given under section 90(1) of the Act,
- (ii) in relation to the Part 3 functions referred to in sub-paragraph (a)(ii), an investigation carried out under section 80(a) of the Act,
- (iii) in relation to the Part 3 function referred to in sub-paragraph (a)(iii), action taken under section 81(3)(a) of the Act,
- (iv) in relation to the Part 3 functions referred to in sub-paragraph (a)(iv), information given under section 77(1) of the Act, and
- (v) in relation to the Part 3 function referred to in sub-paragraph (a)(v), action taken under section 81(4) of the Act.

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(a) See section 88 of the Act for right of entry.

### Other functions of the NCSC – transitional provisions

13.—(1) Anything which immediately before 1st April 2004 is in the process of being done by or in relation to the NCSC may, if it relates to any function conferred on the NCSC by section 2A of the Protection of Children Act 1999(a) (“the 1999 Act”), be continued by the relevant transferee.

(2) Anything done by or in relation to the NCSC before 1st April 2004 for the purpose of, or in connection with, any function conferred on the NCSC under section 2A of the 1999 Act, is, so far as is required for continuing its effect, to have effect as if done by, or in relation to, the relevant transferee.

(3) Any reference to the NCSC in any document constituting or relating to anything to which paragraph (1) or (2) applies in relation to a function is, so far as is required for giving effect to those provisions, to be construed as a reference to the relevant transferee.

(4) In this article —

- (a) “CHAI function” means a function under section 2A of the 1999 Act carried out on the basis of evidence obtained by the NCSC in the exercise of its functions under Part 2 of the 2000 Act which have been transferred to the CHAI under section 102(1) of the Act;
- (b) “CSCI function” means a function under section 2A of the 1999 Act carried out on the basis of evidence obtained by the NCSC in the exercise of its functions under Part 2 of the 2000 Act which have been transferred to the CSCI under section 102(1) of the Act; and
- (c) “relevant transferee” means—
  - (i) in relation to a CHAI function, the CHAI, and
  - (ii) in relation to a CSCI function, the CSCI.

14.—(1) Anything which immediately before 1st April 2004 is in the process of being done by or in relation to the NCSC may, if it relates to any function conferred on that Commission under any enactment(b) other than a function referred to in articles 11 to 13 may, so far as is required for completing that process, be continued by the CSCI as though that enactment conferred that function on the CSCI.

(2) Anything done (or having effect as if done) by or in relation to the NCSC before 1st April 2004 for the purpose of, or in connection with, any function conferred on that Commission under any enactment other than a function referred to in articles 11 to 13 is, so far as is required for continuing its effect, to have effect as if done by, or in relation to, the CSCI as though that enactment conferred that function on the CSCI.

(3) Any reference to the NCSC in any document constituting or relating to anything to which paragraph (1) or (2) applies in relation to a function is, so far as is required for giving effect to those provisions, to be construed as a reference to the CSCI.

Signed by authority of the Secretary of State for Health

9th March 2004

*Stephen Ladyman*  
Parliamentary Under Secretary of State,  
Department of Health

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(a) 1999 c.14.

(b) See functions conferred under or by virtue of: sections 65 and 87 of the Children Act 1989 (c. 41); the Care Standards Act 2000 (Commencement No. 9 (England) and Transitional and Savings Provisions) Order 2001 (S.I. 2001/3852); the Fostering Services Regulations 2002 (S.I. 2002/57); the Protection of Children and Vulnerable Adults and Care Standards Tribunal Regulations 2002 (S.I. 2002/816); the Care Standards Act 2000 (Commencement and Transitional Provisions) (Amendment No. 2) (England) Order 2002 (S.I. 2002/3210); the Voluntary Adoption Agencies and Adoption Agencies (Miscellaneous Amendments) Regulations 2003 (S.I. 2003/367); and the Whole of Government Accounts (Designation of Bodies) Order 2003 (S.I. 2003/489).

## Amendments consequential on Part 2 of the Health and Social Care (Community Health and Standards) Act 2003

### *Public Interest Disclosure (Prescribed Persons) Order 1999*

1. In the first column of the Schedule to the Public Interest Disclosure (Prescribed Persons) Order 1999(a), for “National Care Standards Commission” substitute “Commission for Healthcare Audit and Inspection or the Commission for Social Care Inspection”(b).

### *Redundancy Payments (Continuity of Employment in Local Government, etc) (Modification) Order 1999*

2. In Schedule 1 to the Redundancy Payments (Continuity of Employment in Local Government, etc) (Modification) Order 1999(c) (employment to which this order applies: employers immediately before the relevant event), in section 10 (miscellaneous bodies) after paragraph 17A insert—

“17B. The Commission for Healthcare Audit and Inspection.

17C. The Commission for Social Care Inspection.”.

### *Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000*

3.—(1) In regulation 1(2) of the Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000(d) (citation, commencement and interpretation), after paragraph (f) of the definition of “health service body” insert—

“(g) the Commission for Healthcare Audit and Inspection established by section 41 of the Health and Social Care (Community Health and Standards) Act 2003.”.

(2) In regulation 5(1)(d) (disqualification for appointment: chairman and non-officer members), at the beginning, insert “subject to sub-paragraph (dza),”.

(3) After regulation 5(1)(d), insert—

“(dza) he is a person whose tenure of office as the chairman or as a member of the Commission for Healthcare Audit and Inspection has been terminated because the Secretary of State was satisfied that one of the conditions specified in paragraph 3(6)(a) or (b) of Schedule 6 to the Health and Social Care (Community Health and Standards) Act 2003 was satisfied in relation to him;”

### *Private and Voluntary Health Care (England) Regulations 2001*

4. In regulation 2(1) of the Private and Voluntary Health Care (England) Regulations 2001(e) (interpretation) there is inserted in the appropriate alphabetical position—

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

(a) S.I.1999/1549, as amended by S.I. 2003/1993 and S.I. 2002/1555.

(b) See section 5 of the 2000 Act for the definition of registration authority. Section 5 was amended by paragraph 17 of Schedule 9 to the Act.

(c) S.I.1999/2277, as amended by S.I. 2000/1042, S.I. 2001/866, S.I. 2002/532 and S.I. 2002/1397

(d) S.I.2000/89, as amended by S.I. 2001/2631, S.I.2001/3787, S.I. 2002/38, S.I. 2002/557, S.I. 2002/880, S.I. 2002/881, S.I. 2002/2375, S.I. 2002/2469, S.I. 2002/2861, S.I. 2003/1616 and S.I. 2004/18

(e) S.I.2001/3968, as amended by S.I. 2002/865.

***The National Care Standards Commission (Registration) Regulations 2001***

5. In regulation 2(1) of the National Care Standards Commission (Registration) Regulations 2001(a) (interpretation) there is inserted in the appropriate alphabetical position—

““Commission” means the Commission for Healthcare Audit and Inspection or the Commission for Social Care Inspection;”.

***Race Relations Act 1976 (Statutory Duties) Order 2001***

6. In Schedule 1 to the Race Relations Act 1976 (Statutory Duties) Order 2001(b) the words “The Commission for Health Improvement.” are omitted.

***The Protection of Children and Vulnerable Adults and Care Standards Tribunal Regulations 2002***

7.—(1) The Protection of Children and Vulnerable Adults and Care Standards Tribunal Regulations 2002(c) are amended in accordance with this paragraph.

(2) In regulation 1(2) (citation, commencement and interpretation)—

- (a) in the definition of “appropriate authority”, for “Commission” substitute “Commission for Social Care Inspection”;
- (b) in the definition of “the Commission”, for “National Care Standards Commission” substitute “Commission for Social Care Inspection or the Commission for Healthcare Audit and Inspection”(d); and
- (c) in the definition of “registration authority”, for “Commission” substitute “Commission for Healthcare Audit and Inspection or the Commission for Social Care Inspection”.

***Commission for Patient and Public Involvement in Health (Membership and Procedure) Regulations 2002***

8. In regulation 5(4) of the Commission for Patient and Public Involvement in Health (Membership and Procedure) Regulations 2002(e) (disqualification for appointment) after subparagraph (g) insert—

- “(h) the Commission for Healthcare Audit and Inspection;
- (i) the Commission for Social Care Inspection.”.

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(a) S.I.2001/3969, as amended by S.I.2002/865, S.I. 2002/2469, S.I. 2003/369, S.I. 2003/1845 and S.I. 2003/2323.

(b) S.I.2001/3458.

(c) S.I. 2002/816, as amended by S.I. 2003/626, S.I. 2003/1060 and S.I. 2003/2043.

(d) The Commission for Healthcare Audit and Inspection was established by section 41 of the Act. The functions of the National Care Standards Commission under Part 2 of the Care Standards Act 2000 are transferred either to the Commission for Social Care Inspection or to the Commission for Healthcare Audit and Inspection in accordance with section 102 of the Act.

(e) S.I.2002/3038.

## SCHEDULE 2

Article 3

Enactments where there is inserted in the appropriate alphabetical position ““Commission” means the Commission for Social Care Inspection;”

<i>Title of Enactment</i>	<i>Provision to be amended</i>
The Care Homes Regulations 2001 <b>(a)</b>	Regulation 2(1)
The Children’s Homes Regulations 2001 <b>(b)</b>	Regulation 2(1)
The Fostering Services Regulations 2002 <b>(c)</b>	Regulation 2(1)
Nurses Agencies Regulations 2002 <b>(d)</b>	Regulation 2(1)
The Residential Family Centres Regulations 2002 <b>(e)</b>	Regulation 2(1)
The Domiciliary Care Agencies Regulations 2002 <b>(f)</b>	Regulation 2(1)
The Voluntary Adoption Agencies and the Adoption Agencies (Miscellaneous Amendments) Regulations 2003 <b>(g)</b>	Regulation 1(2)
The National Care Standards Commission (Fees and Frequency of Inspections) (Adoption Agencies) Regulations 2003 <b>(h)</b>	Regulation 2(1)

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- (a)** S.I. 2001/3965, as amended by S.I. 2002/865, S.I. 2003/534, S.I. 2003/1590, S.I. 2003/1703 and S.I. 2003/1845.  
**(b)** S.I.2001/3967, as amended by S.I. 2002/865 and S.I. 2002/2469.  
**(c)** S.I. 2002/57, as amended by S.I. 2002/865 and S.I. 2002/2469.  
**(d)** S.I.2002/3212, as amended by S.I. 2003/2323.  
**(e)** S.I.2002/3213.  
**(f)** S.I. 2002/3214, as amended by S.I. 2003/2323.  
**(g)** S.I.2003/367.  
**(h)** S.I. 2003/368.

### SCHEDULE 3

Article 4

Enactments where for “Commission for Health Improvement” there is substituted “Commission for Healthcare Audit and Inspection”

<i>Title of Enactment</i>	<i>Provisions to be amended</i>
Welsh Language Schemes (Public Bodies) Order 2001 <b>(a)</b>	The Schedule to the Order
Commission for Patient and Public Involvement in Health (Functions) Regulations 2002 <b>(b)</b>	Regulation 3(a) Regulation 4(a) Regulation 5(a)
National Assembly for Wales (Disqualification) Order 2003 <b>(c)</b>	Part 1 of the Schedule to the Order
Whole of Government Accounts (Designation of Bodies) Order 2003 <b>(d)</b>	The Schedule to the Order
Health Protection Agency (Yr Asiantaeth Diogelu Iechyd) Regulations 2003 <b>(e)</b>	Paragraph (2)(i) of the definition of “health service body” in regulation 1
NHS Professionals Special Health Authority Regulations 2003 <b>(f)</b>	Paragraph (3)(d) of the definition of “health service body” in regulation 1

### SCHEDULE 4

Article 5

Enactments where for “National Care Standards Commission” there is substituted “Commission for Social Care Inspection”

<i>Title of Enactment</i>	<i>Provision to be amended</i>
Commission for Patient and Public Involvement in Health (Functions) Regulations 2002 <b>(g)</b>	Regulation 3(b) Regulation 4(b) Regulation 5(b)
Whole of Government Accounts (Designation of Bodies) Order 2003 <b>(h)</b>	The Schedule to the Order

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- (a) S.I.2001/2550.  
 (b) S.I.2002/3007, as amended by S.I. 2003/497 and S.I. 2003/2044.  
 (c) S.I.2003/437.  
 (d) S.I.2003/489.  
 (e) S.I.2003/506.  
 (f) S.I.2003/3060.  
 (g) S.I.2002/3007, as amended by S.I. 2003/497 and 2003/2044.  
 (h) S.I.2003/489.



## **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order makes amendments and revocations consequential on Part 2 of the Health and Social Care (Community Health and Standards) Act 2003 (“the Act”). Part 2 of the Act is concerned with the establishment and functions of the Commission for Healthcare Audit and Inspection (“the CHAI”) and the Commission for Social Care Inspection (“the CSCI”). Each of the new bodies has transferred to it some of the functions formerly conferred on the National Care Standards Commission (“NCSC”), which was established under the Care Standards Act 2000, and is abolished under the Act. The CHAI will now also carry out functions formerly carried out by the Commission for Health Improvement (“CHI”) which was established under the Health Act 1999 and which is also abolished under the Act. The Order also makes necessary transitional provisions.

Articles 2 to 5 and Schedules 1 to 4 amend references to NCSC or CHI in secondary legislation to either the CHAI or the CSCI as appropriate.

Articles 6 and 7 revoke statutory instruments which made provision concerning the NCSC.

Article 8 revokes certain articles of a statutory instrument which made provision concerning the CHI.

Articles 9 and 10 make consequential provisions allowing the Secretary of State to take action in relation to the NCSC’s accounts and annual report for the financial year 2003-2004.

Article 11 makes transitional provisions for functions transferred from the NCSC to either the CHAI or the CSCI.

Article 12 makes transitional provisions for functions formerly carried out by the NCSC in relation to local authorities which will now be carried out by the CSCI.

Article 13 makes transitional provisions for functions formerly carried out by the NCSC in relation to the Protection of Children Act 1999 which will now be carried out by either the CHAI or the CSCI.

Article 14 makes transitional provisions for other functions formerly carried out by the NCSC which will now be carried out by the CSCI.





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