

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

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### Part 2 –Standards

##### *Chapter 1 – Regulatory Bodies*

##### *Sections 41 and 42: The Commission for Healthcare Audit and Inspection and the Commission for Social Care Inspection*

144. The Command Paper *Delivering the NHS Plan: Next steps on investment, next steps on reform*<sup>1</sup> set out the Government’s intention to create a new Commission for Healthcare Audit and Inspection (“the CHAI”) which would have responsibility for the review and inspection of providers of NHS health care and also for the registration under the CSA 2000 of independent providers of health care in England, and a new Commission for Social Care Inspection (“the CSCI”) which would have responsibility for inspecting local authority social services in England and also for the registration under the CSA 2000 of providers of social care services in England.
145. *Schedule 6* deals with the constitution of the CHAI. In particular it provides that the appointment of the chairman and members of the CHAI will be carried out by a Special Health Authority, which is directed to do so by the Secretary of State. It is envisaged that the Special Health Authority in question will be the NHS Appointments Commission or any similar successor body. *Schedule 7* makes the same provision for the CSCI as *Schedule 6* does for the CHAI with the following notable exceptions.
- *Paragraph 3* provides for the membership of the CSCI but gives no role to the Assembly in the appointment and removal from office of members. This is because the CSCI will be an England only body.
  - *Paragraph 5* provides for the staffing of the CSCI. *Subparagraph (2)* provides that the CSCI must appoint a member of staff as a Children’s Rights Director, whose role will be prescribed in regulations. The intention is that the Children’s Rights Director should ensure that the CSCI’s work takes full account of children’s rights and welfare.
  - *Paragraph 9* allows the Secretary of State to make payments to the CSCI and to make the payments subject to conditions. Again, because the CSCI is an England only body there is no role for the Assembly in this process.

#### Reviews of NHS health care in England and Wales – overview

146. In relation to NHS health care in England and Wales, responsibility is divided between the CHAI and the Assembly. The Assembly remains primarily responsible for

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<sup>1</sup> For copies – website address: [www.doh.gov.uk/deliveringthenhsplan/index.htm](http://www.doh.gov.uk/deliveringthenhsplan/index.htm)

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reviewing the provision of health care by and for NHS bodies in Wales (Chapter 4). CHAI has responsibility for reviewing the provision of health care by and for NHS bodies in England and cross-border Special Health Authorities (Chapter 3). However, CHAI also has some functions relating to the review of the overall provision of health care across England and Wales (see [sections 49](#) and [51](#)); and could in the future be given further functions relating to England and Wales ([section 58](#)).

## **Chapter 2 - Nhs Health Care: Introductory**

### **Section 45: Quality in health care**

147. [Section 45](#) places a duty on all NHS bodies to ensure that appropriate arrangements are in place to monitor and improve the quality of health care they provide or commission. This replaces the current duty of quality in [section 18](#) of the Health Act 1999. Under [subsection \(2\)](#), “health care” includes the promotion and protection of public health, whereas in the Health Act 1999 it was limited to services for or in connection with the prevention, diagnosis or treatment of illness.
148. [Subsection \(3\)](#) states that ‘illness’ has the same meaning as in [section 128\(1\)](#) of the 1977 Act, that it includes mental disorder within the meaning of the Mental Health Act 1959 and any injury or disability requiring medical or dental treatment or nursing.

### **Section 46: Standards set by Secretary of State**

149. [Section 46](#) gives the Secretary of State the power to prepare and publish a statement of standards in relation to the provision of health care by and for English NHS bodies and cross-border Special Health Authorities. It is envisaged that these standards are likely to be informed by Government National Service Frameworks (NSFs)<sup>2</sup>, guidance issued by the National Institute for Clinical Excellence (NICE)<sup>3</sup> and other relevant sources.
150. [Subsection \(4\)](#) makes it clear that English NHS bodies and cross-border Special Health Authorities should take these standards into account in making arrangements under [section 45](#). [Section 54\(2\)](#) enables the CHAI to advise the Secretary of State or the Assembly of any changes that it considers should be made in relation to these standards.

### **Section 47: Standards set by the Assembly**

151. As accountability for NHS provision in Wales rests with the Assembly, [section 47](#) provides for the Assembly to publish its own statement of standards.
152. As with standards published by the Secretary of State, it is likely that NSF guidance and NICE guidelines will inform the Assembly standards. [Subsection \(4\)](#) operates in the same manner with respect to Welsh NHS bodies as [subsection \(4\) of section 46](#) does in respect of English NHS bodies and cross-border Special Health Authorities. The CHAI may advise the Assembly under [section 54\(2\)](#) of any changes it considers should be made to the standards.

## **Chapter 3 - Nhs Health Care: Functions of Chai**

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

#### **Section 48: Introductory**

153. [Section 48](#) gives the CHAI the function of encouraging improvement in NHS health care by or for all NHS bodies. Under this section, the CHAI will be able to give information or advice to NHS bodies or others who provide NHS health care. It states that the CHAI,

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2 The objective of Government National Service Frameworks (NSFs) is to tackle particular health issues, for example mental health, by setting out aims to improve particular services or care provided.

3 NICE is a special health authority set up to give advice on best clinical practice to NHS clinicians, to those commissioning NHS services and to patients and carers.

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in exercising its functions under *sections 49 to 56*, shall be concerned in particular with the availability of and access to, the quality and effectiveness, and the economy and efficiency of health care provided by or for NHS bodies, and with the need to safeguard and promote the rights and welfare of children. CHAI shall also be concerned with the availability and quality of information provided to the public about the health care, such as generic information that is not specific to individual patients or service users, such as leaflets, hospital signage and other patient and service user information, such as information about medical conditions generally.

#### ***Section 49: National Performance Data***

154. This section enables the CHAI to publish data on the performance of NHS bodies and other persons who provide health care, across NHS bodies in England and Wales.

#### ***Section 50: Annual Reviews***

155. *Section 50* gives the CHAI the function of undertaking annual reviews, taking the statement of standards (as provided for in *section 46*) into account, of the provision of health care by and for each English NHS body and each cross-border Special Health Authority. Following each annual review of a body, the CHAI will award a performance rating. *Subsections (2) and (3)* provide for the CHAI to devise and publish criteria against which these reviews will be carried out. The Secretary of State will approve such criteria.

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

156. This section gives the CHAI a function of conducting reviews across England and Wales of health care generally or of particular kinds of health care, for example, national cancer services. CHAI may undertake such reviews under its own initiative or at the request of the Secretary of State, who must first consult the Assembly before making a request.
157. *Sections 51(6), 52(7), 53(9), 54(9) and 57(5)* enable the Secretary of State, after consulting the CHAI, to issue regulations making provision as to any procedure that must be followed before the award of any performance rating under *section 50* or publication of any report under *sections 52 to 54* in order to give the reviewed body time to comment and for any comments to be considered by CHAI. Such regulations could specify, for example, the numbers of days that NHS bodies would have to respond to draft reports issued by CHAI under differing circumstances, and could in particular require the CHAI to take into account any material observations made by NHS bodies about apparent factual errors in draft reports.

#### ***Section 52: Reviews and Investigations: England***

158. *Section 52* provides for the CHAI to review or investigate health care provided by or for English NHS bodies and cross-border Special Health Authorities with a view to making a report. The CHAI may also review the arrangements made by such bodies under *section 45* to monitor and improve the health care they provide or commission. English NHS bodies may provide health services on behalf of Welsh NHS bodies, and where this occurs the Assembly may review and investigate such services under *section 68*. This also applies in respect of cross-border Special Health Authorities.
159. The CHAI may undertake reviews either under its own initiative or at the request of the Secretary of State.

#### ***Section 53: Failings***

160. Where the CHAI considers that there are significant failings in the health care provided by or for NHS bodies, *subsections (2), (4) and (6)* oblige the CHAI to make a report to the Secretary of State, the Assembly or the Regulator as appropriate. *Subsections (3),*

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(5) and (7) enable the CHAI to recommend that the appropriate authority take special measures to improve the health care provided. Such measures could include calling on the CHAI to undertake a re-inspection of the body concerned or other practical assistance or organisational support.

#### ***Section 54: Functions relating to the Secretary of State and Assembly***

161. *Section 54* places a duty on the CHAI to keep the Secretary of State, in relation to English or cross-border NHS bodies, and the Assembly in relation to Welsh NHS bodies, informed about health care provided by or for NHS bodies.
162. *Subsection (2)* allows for the CHAI, where it considers it timely or appropriate, to give advice to the Secretary of State or the Assembly on any particular changes which it thinks should be made in order to secure improvements in the quality of NHS health care including in relation to the statement of standards referred to in *sections 46* and *47*.

#### ***Section 55: Reviews of data***

163. This section enables the CHAI to review the quality of any data collected by others on health care provided by and for NHS bodies and to make a report of its findings.

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

164. *Section 56* gives the CHAI the function of promoting the effective co-ordination of reviews or assessments by public bodies or other persons which undertakes reviews of the provision of health care by or for English NHS bodies and cross border Special Health Authorities. It is envisaged that the Assembly will perform this function in relation to Welsh NHS bodies under its powers in the 1977 Act.

#### **Other functions**

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

165. This section enables the CHAI to carry out comparative or other studies for improving economy, efficiency and effectiveness in the exercise of any of the functions of English NHS bodies with the exception of Special Health Authorities (which are to be reviewed in this respect by the National Audit Office).
166. The Audit Commission, under section 33(1) of the Audit Commission Act 1998 previously carried out such studies in relation to these bodies. *Paragraphs 12(6) and (8) of Schedule 9* of the Act removes all of these bodies - apart from NHS foundation trusts, which are not currently within the scope of those provisions - from the scope of section 33(1) and (4) and 35 of the 1998 Act.
167. Within Wales, the function of carrying out these studies remains with the Audit Commission. However, in carrying out reviews and investigations generally, the Assembly is required under *section 70* to be concerned with the economy and efficiency of the provision of health care. It is envisaged that the Audit Commission will continue to work with the Assembly in relation to reviews and investigations of health care by or for Welsh NHS bodies.

#### ***Section 58: Additional functions***

168. It is envisaged that the CHAI may need to be given additional functions with respect to the provision of health care by or for NHS bodies or for the improvement of economy, efficiency and effectiveness in the exercise of the functions of English NHS bodies, in the future. This section therefore makes provision for such functions to be given by regulations.

## **Supplementary**

### ***Section 59: Criteria***

169. This section provides for the Secretary of State or the Assembly as appropriate to make regulations requiring the CHAI to devise and publish statements of criteria to be used by it in exercising its functions under *sections 48(1), 49, 51 or 52*, in relation to health care provided by and for NHS bodies.
170. The Secretary of State may also make such regulations with respect to the exercise of the CHAI's functions under *sections 52, 56, 57 and 58(1)*.
171. The regulations may require the CHAI to obtain the consent of the appropriate authority before publishing any such statement. Before making any such regulations the appropriate authority must first consult the CHAI.

### ***Section 62: Fees and section 63:Fees: Wales***

172. *Section 62(1)* provides a power for the CHAI to be able to make and publish provision requiring persons to pay fees in relation to the exercise of prescribed functions under this Chapter. *Section 62(1)(a)* provides for it to be able to charge fees to NHS bodies and cross border Special Health Authorities, and *section 62(1)(b)* provides for it to be able to charge fees to any person of a prescribed description who provides health care for an English NHS body or cross border Special Health Authority.
173. Similar powers in relation to the exercise of the CHAI's functions in relation to Welsh NHS bodies are provided under *section 63*. Therefore, the CHAI may not charge a Welsh NHS body under the provisions of *section 62(1)(b)* and may not charge an English NHS body or cross border Special Health Authority under *section 63(1)(b)*. By *subsection (5)* of both sections, CHAI is under a duty to consult appropriate persons before specifying any provisions.
174. *Subsection (6)* of both sections confers a regulation making power on the appropriate authority to prescribe the manner in which CHAI's fees are to be made and published and to enable the appropriate authority to specify the matters that CHAI must take into account before it determines any fee.
175. *Subsection (7)* of both sections will allow the appropriate authority to make provisions for an independent person or panel to review the charge levied by CHAI in a particular case, and to substitute a lesser one if they deem it appropriate.

### ***Section 66: Right of entry***

176. This section provides that individuals authorised by the CHAI may enter and inspect premises that are owned or controlled by an NHS body or which are used or proposed to be used for any purpose connected with the provision of health care by or for NHS bodies, or the discharge of functions of those bodies.

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

177. *Subsection (1)* allows a person (authorised to enter and inspect premises by virtue of *section 66*) to inspect and copy relevant documents or records. It also allows inspectors to interview any person working at the premises or any patients or persons receiving health care that consent to be interviewed. Inspectors may also require relevant records or other documents on the premises to be produced for inspection, and where they are stored on computer, for them to be produced in a legible, not encrypted, form. *Subsection (4)* imposes a requirement to assist an inspector and permits the inspector to take such measurements and photographs and make such recordings as he considers necessary to enable him to exercise his powers under *section 66*.



### ***Section 68: Power to require documents and information***

178. *Section 68* confers on the CHAI a general power to require information and documents from the bodies or persons listed in *subsection (2)* irrespective of whether or not the CHAI is conducting an inspection, where such information relates to the provision of health care by or for an NHS body or the discharge of functions of an NHS body and where the CHAI considers it necessary or expedient to have the information or documents for its purposes under this Chapter.
179. *Subsection (2)(c)* gives the CHAI the right to require information or documents from a local authority. This will enable the CHAI to obtain information or documents kept by a local authority for its own purposes, where that information is relevant to the exercise of the CHAI's functions under this Chapter. For example, the CHAI might request information as to how quickly the local authority responds to requests by an NHS trust to assess the social services needs of persons ready to be discharged from hospital.

### ***Section 69: Power to require explanation***

180. Under this section, regulations may make provision for the CHAI to require a prescribed person to provide it with an explanation of any documents or information it obtains under *sections 66 to 68* or any matters which are the subject of the CHAI's functions under this Chapter. *Subsection (2)* enables these regulations to set the requirement that individuals must be present at a specified place to give an explanation. The CHAI will use this power to enable it to discuss with those responsible any matters of concern that its inspections have brought to light.
181. *Sections 67(5), 68(4) and 69(3)* make it an offence for a person to obstruct the exercise of any of the CHAI's powers under these sections or to fail to comply with any requirement. The penalty on summary conviction is a fine not exceeding level 4 (£2500) on the standard scale.

## ***Chapter 4 – Nhs Health Care: Functions of National Assembly for Wales***

### **Reviews and investigations**

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

182. The Commission for Health Improvement undertook reviews of, and investigations into, health care provided by NHS bodies both in England and Wales. This section provides for the Assembly to exercise these functions in relation to health care by or for Welsh NHS bodies. Under section 63 of the Government of Wales Act 1998, the Assembly has the power to delegate its inspection function to its staff. It is the stated intention of the Assembly to set up an internal unit to carry out this function.
183. In the same way that *section 51* provides for particular matters to be considered by the CHAI in undertaking its review and investigation functions, *subsection (4)* provides that the Assembly shall be concerned with the availability of and access to, the quality and effectiveness and the economy and efficiency of health care provided by and for Welsh NHS bodies, the availability and quality of information provided to the public about the health care and the need to safeguard and promote the rights and welfare of children.

#### ***Section 71: Reporting to Secretary of State and the Regulator***

184. English NHS bodies may provide health services on behalf of Welsh NHS bodies, and where this occurs the Assembly may review and investigate these services under *section 70*. Where the Assembly detects significant failings in the provision of services by an English NHS body or cross-border Special Health Authority, *section 71* provides that the Assembly must report this to the Secretary of State. If the Assembly detects failings relating to NHS foundation trusts it will be required to report the same to the

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Regulator. *Section 145* provides that the Assembly must co-operate with the CHAI for the efficient and effective discharge of their respective functions. This means that the Assembly and CHAI will need to co-operate in particular in order to avoid any unnecessary overlap between the inspections and reviews that each carry out.

185. Any reports so provided by the Assembly under *section 71* may include recommendations that the Secretary of State or the Regulator, as the case may be, take special measures with a view to improve the health care provided.

### **Ancillary powers**

***Section 72: Right of entry, section 73: Right of entry: supplementary, section 74: Power to require documents and information and section 75: Power to require explanation***

186. *Sections 72 to 75* make the same provision with respect to powers of entry and powers to obtain documents and information in relation to the Assembly as *sections 66 to 69* do in relation to the CHAI.

### ***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 fostering functions. These standards are National Minimum Standards that represent

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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 Act<sup>4</sup> (*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

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<sup>4</sup> 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.

***Chapter 6 – Social Services: Functions of National Assembly for Wales***

**Provision of social services**

***Section 92: General function***

214. *Section 92* confers a general function upon the Assembly of encouraging improvement in the provision of Welsh local authority social services. The same provision is made as respects the CSCI for England by *section 76*.

***Section 93: Reviews of studies and research***

215. The powers given to the CSCI in *section 78* are replicated in this section for the Assembly.

***Section 94: Reviews and investigations***

216. *Section 94* gives the Assembly similar functions of undertaking reviews and investigations of Welsh social services authorities to those is given to the CSCI in relation to English authorities under *sections 79* and *80*. However, the provisions are less prescriptive under *section 94* to take account of the fact that the Assembly is itself also a central governmental body and to provide it with the flexibility to decide how to discharge its function of undertaking reviews and investigations. For example: the Assembly does not have a duty to undertake annual reviews, it may (rather than must) award performance ratings to local authorities, and no provision is necessary to provide links between the Assembly and a central governmental body.

***Section 95: Studies as to economy, efficiency etc***

217. This section provides powers for the Assembly in relation to Welsh social services authorities (in the same way that *section 82* does for the CSCI in relation to English

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authorities), that are similar to those conferred upon the Audit Commission by sections 33 and 34 of the Audit Commission Act 1998. *Subsection (1)* provides for the Assembly to promote or undertake studies designed to enable it to make recommendations for improving economy, efficiency and effectiveness in the provision of local authority social services ('value for money' studies), and for improving the management of social services. *Subsection (3)* provides that the Assembly must publish, or otherwise make available, its recommendations and a report resulting from these studies. *Subsection (4)* provides that the Assembly and the Audit Commission must co-operate with each other with respect to their similar functions.

### **Section 96: Additional Functions**

218. Where the Secretary of State confers additional functions on the CSCI by regulations under *section 84*, *section 96* provides that the Assembly may make regulations to confer such functions on itself in relation to the provision of Welsh social services.

### **Section 97: General considerations**

219. This section sets out the matters with which the Assembly must in particular be concerned in the exercise of its functions under the preceding social care sections of the Act.

### **Ancillary powers**

#### **Section 98: Right of Entry, section 99: Right of entry: supplementary, section 100: Power to require information, section 101: Power to require explanation**

220. The powers given to the CSCI in *sections 88, 89, 90* and *91* in relation to English social services authorities are replicated in these sections for the Assembly in relation to Welsh authorities.

### **Chapter 7 – Functions under the Care Standards Act 2000**

221. The National Care Standards Commission ("NCSC") was established by the Care Standards Act 2000 ("CSA 2000") to regulate specified types of social care and private and voluntary health care services in England. Its functions were set out in Parts 1 to 3 and Part 8 of the CSA 2000.
222. Regulation is dealt with in Part 2 of the CSA 2000. The types of service subject to regulation under Part 2 are collectively defined in the Act as "establishments and agencies". Persons wishing to carry on establishments and agencies of the types required to be regulated must apply to be registered in respect of the establishment or agency which they wish to carry on. Under section 11 of the CSA 2000, it is a criminal offence to carry on or manage an establishment or agency subject to registration requirements without having registered with the registration authority.
223. Where an establishment or agency applies to register under the CSA 2000, it is assessed whether it meets the applicable regulatory requirements under the CSA 2000 or other legislation. In deciding this, the regulator is obliged to take into account the requirements of any National Minimum Standards applying to the service in question issued by the Secretary of State under section 23 of the CSA 2000. The registration authority may grant or refuse an application to register an establishment or agency or may register it subject to conditions. The establishment or agency may appeal to an independent tribunal against the refusal of registration or the imposition of conditions.
224. The registration authority will periodically re-inspect the establishment or agency to ensure that appropriate standards continue to be maintained. Section 14 of the CSA 2000 provides that the registration authority may cancel registration in the circumstances set out in that section. Section 20 sets out an urgent cancellation procedure whereby

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the registration authority may apply to a justice of the peace for an order cancelling registration, or varying any conditions imposed as to registration.

225. The types of establishment and agency currently regulated under the Act are as follows:
- residential and nursing homes,
  - children's homes,
  - private and voluntary hospitals and clinics,
  - fostering agencies,
  - independent medical agencies,
  - domiciliary care agencies,
  - nurse agencies,
  - residential family centres and
  - voluntary adoption agencies.

## **Functions of CHAI and CSCI**

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

226. This section transfers to the CHAI the responsibility for regulating independent hospitals, independent clinics and independent medical agencies, and transfers to the CSCI the responsibility for regulating children's homes, residential and nursing homes, residential family centres, domiciliary care agencies, nurses agencies, fostering agencies, voluntary adoption agencies and adoption support agencies (defined in [section 107](#) of the Act as 'registered social care services'). The NCSC is abolished by [section 44](#) of the Act.
227. Part 3 of the CSA 2000 gave the NCSC the function of inspecting local authority adoption and fostering services. These are defined as 'relevant services' by section 43 of the CSA 2000. In carrying out such inspections, the NCSC was obliged to take account of national minimum standards issued under section 23 of that Act. This part of the CSA 2000 is repealed in part (see [Schedule 14](#)).
228. [Chapter 5](#) of this Act provides the CSCI with general powers to inspect local authority social services. These powers also allow the CSCI to inspect local authority adoption and fostering services. The separate powers of inspection with regard to adoption and fostering services in Part 3 of the Care Standards Act are, therefore, no longer needed. The elements of Part 3 that have been retained provide for the Secretary of State to make regulations with regard to relevant services and also to make regulations prescribing the frequency with which relevant services must be inspected by CSCI.
229. [Subsection \(4\)](#) transfers the inspection of relevant services, previously carried out by the NCSC, to CSCI for any interim period before CSCI takes on its general powers to inspect local authority social services under [Chapter 5](#).

### ***Section 105: Fees***

230. Fees are currently chargeable in respect of registered social care services and independent health care services under the CSA 2000. They are set out in regulations made by the Secretary of State. This section amends section 113 of the CSA 2000 to provide for the CHAI and the CSCI to determine fees in respect of their respective functions under Part 2 of that Act. Both Commissions and the Secretary of State must consult appropriate persons before fees devised by them come into effect ([subsections \(5\) and \(6\)](#) of the new [section 113A](#)). [Subsection \(4\)](#) of the new [section 113A](#) provides



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that Secretary of State must approve any fees determined by either Commission before they come into effect.

## **Miscellaneous**

### ***Section 106: Meaning of “independent medical agency”***

231. For the avoidance of doubt *section 106* amends section 2(4) of the CSA 2000 to make clear that the term ‘independent medical agency’ neither includes independent clinics nor independent hospitals. The term “independent clinic” in the CSA 2000 refers to an establishment in which one or more medical practitioners provide services other than those that would render the establishment an independent hospital.

### ***Section 107: Children’s homes providing secure accommodation***

232. This section amends the CSA 2000 so that children’s homes providing secure accommodation will require registration by the CSCI. Previously such combined services had to be registered with the NCSC to operate and with the Secretary of State to provide secure accommodation. Under the provisions in the Act the CSCI took on both the registration role of the NCSC and the Secretary of State’s function of assessing suitability to provide secure accommodation.

### ***Section 108: Information and inspection***

233. *Subsection (2)* of this section amends section 31 of the CSA 2000 to give inspectors the power to require at any time, from a person who carries on or manages an establishment or agency, copies of any medical or other personal records or other documents, insofar as is necessary to enable the registration authority – the CHAI or the CSCI in England, the Assembly in Wales - to discharge its functions. Where these documents or records are stored on a computer they must be produced in a legible form. Currently inspectors may only inspect such documents or records when they are already engaged in the inspection of an establishment or agency.
234. *Subsections (3)(a)* and *(4)* also amend section 31 to enable inspectors to inspect and take copies of medical and other personal records when inspecting a premises. *Subsection 3(b)* replaces the inspectors’ power to interview anyone ‘employed’ at premises with a power to interview anyone ‘working’ there. This will enable inspectors to interview temporary and agency staff contracted by a provider as well as permanent employees.

### ***Section 109: Assembly: duties relating to children***

235. *Section 109* amends the CSA 2000 so that the Assembly must have particular regard to the need to safeguard and promote the rights and welfare of children in the exercise of its regulatory functions under that Act.

## ***Chapter 8 – Other Functions of Csci***

### ***Section 110: Boarding schools and colleges***

236. This section transfers to the CSCI the responsibilities of the NCSC with respect to boarding schools and colleges. This means that the CSCI has responsibility for inspecting such establishments.

### ***Section 111: Boarding schools and colleges: reports***

237. This section amends section 87 of the Children Act 1989 (welfare of children accommodated in independent schools) to make clear that the CSCI and the National Assembly for Wales must each publish reports in relation to the exercise of their functions under that section where they carry out an inspection. They must also make

such reports available for inspection and send a copy of the report to the school in question.

### **Section 112: Secure training centres**

238. Secure training centres accommodate children aged under 18 who are sentenced to Detention and Training Orders under the Crime and Disorder Act 1998 section 73 (since consolidated into section 100 of the Powers of Criminal Courts (Sentencing) Act 2000), and children sentenced under sections 90 and 91 of the Powers of Criminal Courts (Sentencing) Act 2000 (for 'grave crimes'). The Home Office is responsible for secure training centres. This section enables the CSCI to enter into an agreement to inspect secure training centres if they are asked to do so by the Home Secretary. The arrangements they may enter into with the Home Secretary may specify such things as frequency with which inspections must be carried out and the criteria that will be used in inspections.

## **Chapter 9 - Complaints**

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

239. *Section 113* gives the Secretary of State and the Assembly powers to make regulations about the handling and consideration of complaints.
240. *Subsection (1)* sets out what matters may be the subject of complaints under the regulations. It includes the provision of services by an English NHS body or cross-border Special Health Authority under a partnership arrangement made by it under section 31 of the Health Act 1999 in relation to the exercise of the health-related functions of a local authority. That section allows the NHS and local authorities to work together by enabling them to pool resources, delegate functions from one to another and enables a single provider to provide both health and local authority services. The intention is that a person receiving both health and local authority services from a health body under such an arrangement will be able to complain to that health body even if the complaint is about the local authority services which it provides.
241. *Subsection (2)* gives the Assembly the same power in respect of Welsh NHS bodies as the Secretary of State has in relation to English NHS bodies and cross border bodies in *subsection (1)*.
242. By *subsection (3)*, the regulations may provide for who may consider a complaint. It is envisaged that in both England and Wales regulations will provide that the complaint be made to the health care provider which is the subject of the complaint, where an attempt will be made to investigate and resolve the matter. If this is not possible, the second stage will involve consideration by the CHAI and by an independent lay person in England. In Wales, if further investigation under the complaints procedure is felt to be warranted, this will be conducted by an independent panel for complaints.
243. It is envisaged that the focus of the CHAI's role in the second stage of the complaints procedure in England will be to establish the facts pertinent to a complaint in order to identify how, and by whom, the complaint is most likely to be resolved to the satisfaction of the complainant and the body or persons complained about. Following the CHAI's assessment of an individual case, it is envisaged that it will decide what, if any, further action, and by whom, is appropriate. Options likely to be available to the CHAI include: making recommendations to the NHS body complained about in relation to further action that may be needed locally to resolve the complaint; full investigation by the CHAI, either by itself or by any independent panel established or engaged by the CHAI; referral for consideration by other agencies (for example a professional regulatory body); referral, subject to agreed criteria, for consideration by the Health Service Commissioner or no further action to be taken.

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

#### ***Section 114: Complaints about social services***

246. *Section 114* gives regulation making powers to the Secretary of State and to the Assembly to establish procedures for making complaints about social services. These will replace the current complaints procedures set up under section 7B of the Local Authority Social Services Act 1970, which is repealed (see *Schedule 14*).
247. *Subsections (1) and (3)* respectively give to the Secretary of State (as regards England) and to the Assembly (as regards Wales) the power to make regulations which make provision about the handling and consideration of complaints about local authority social services. They set out what complaints can be considered under the regulations. This includes complaints about the provision of services by a local authority or other person under a partnership arrangement under section 31 of the Health Act 1999 in relation to the functions of an NHS body. The intention is that a person receiving both health and local authority services from a local authority under such an arrangement will be able to complain to that local authority even if the complaint is about health services which it provides.
248. *Subsection (2)* allows for the regulations to make provision for who will consider a complaint in England and *subsection (4)* allows for the regulations to make provision for who will consider a complaint in Wales. It is envisaged that in both England and Wales, the first stage of the procedure will involve a complaint being made to the local authority concerned, where an attempt will be made to resolve the matter informally. If this is not possible, the complaint may be followed up with a formal investigation. If the complaint is still not resolved satisfactorily, the second stage, involving consideration by the CSCI for complaints in England and an independent panel for complaints in Wales, will follow.
249. *Subsection (5)* provides for complaints, or any matter raised by a complaint, to be referred elsewhere: regulations may in particular provide for a complaint, or any matter raised by a complaint, 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 England, or 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. In each case it will be for the Commissioner to consider whether to investigate the complaint or matter. Otherwise the complaint, or matter raised by the complaint, may be referred to any other body so that it can decide whether to take any action.
250. *Subsection (6)* precludes regulations made under this section from making provision for complaints and representations capable of being made under the Children Act complaints procedure under sections 24D and 26 of that Act. The separate Children Act

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complaints procedure is being maintained, with provision for the further consideration of such complaints being made by [section 116](#).

251. Section 24D requires local authorities to establish procedures for dealing with complaints about the services provided by them under the Children Act for young people who have been looked after by them as they move towards independent living; section 26 requires local authorities to establish procedures for complaints about the discharge of their functions under Part 3 of the Children Act which is about local authority support for children and families.

### ***Section 115: Complaints regulations: supplementary***

252. [Section 115](#) sets out supplementary provisions relating to both health and social care complaints regulations.
253. *Subsection (2)* provides for regulations to be made to specify such matters as who may make a complaint and to whom, the complaints which may or may not be made, and the procedure for making, handling and considering a complaint.
254. *Subsection (3)* is concerned with the making of a payment in relation to the consideration of a complaint. It is envisaged that regulations under this provision would provide for any payment to be made to CHAI or CSCI in respect of the costs incurred by it. Regulations could also provide for an amount charged in a particular case to be made subject to review by an independent panel.
255. *Subsection (4)* enables the regulations to make provision requiring persons or bodies handling complaints to make information available to the public about the procedures to be followed under the regulations.
256. *Subsection (5)* enables the regulations to authorise the production or disclosure of information or documents. Where it would not be possible owing to common law duties of confidentiality to disclose relevant information about a complaint to the body which is to consider it under the regulations, or to the body to which a complaint is to be referred for consideration under other provisions, *subsection (5)* allows for the regulations to make the disclosure lawful. This provision will not override the specific provisions of the Data Protection Act 1998, to the effect that information relating to an individual must not be disclosed without the consent of that individual unless it is necessary to do so for any of the reasons specified in the Act.
257. Regulations made under *subsection (6)* may provide for a situation in which a complaint raises matters which fall to be considered both under regulations made under [section 113](#) or [114](#), and also under another complaints procedure. The regulations may provide that the complaint may be made under the regulations, and that insofar as it concerns matters falling to be considered under the other procedure, it shall be treated as having been raised in a complaint made under the other procedure (e.g. regulations may provide that a complaint may be made to an NHS body about both NHS and local authority services, and that the complaint about local authority services shall be treated as having been made under the regulations made under [section 114](#)). In this way, the complainant will be able to make his complaint to only one body, with both sets of procedures being activated. It is also envisaged that the two procedures will thereafter operate as far as possible in parallel so that for the complainant it appears as one system.

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

258. [Section 116](#) inserts two new sections, 26ZA and 26ZB, into the Children Act 1989 which provide for the further consideration of complaints made under the Children Act complaints procedure that have not been resolved by the local authority concerned. [Section 26ZA](#) is concerned with complaints about local authorities in England; [section 26ZB](#) makes similar provisions for complaints about Welsh local authorities.

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259. The Children Act complaints procedure is established under section 24D and section 26 of the Children Act. Section 24D requires local authorities to establish procedures for dealing with complaints about the services provided by them under the Children Act for young people who have been looked after by them as they move towards independent living; section 26 requires local authorities to establish procedures for complaints about the discharge of their functions under Part 3 of the Children Act which is about local authority support for children and families.
260. Under the current Children Act complaints procedure, if a complaint has not been resolved after consideration by the local authority and the independent person appointed to assist in the consideration of such complaints, the local authority must on the request of the complainant set up a panel that includes at least one independent person to consider the complaint. The intention is that the regulations made under *section 26ZA*, inserted by *section 114*, will replace the panel stage with a new procedure for further consideration, initially by the CSCI.
261. *Section 26ZA(3)* concerns payment. The intention is that any payments for the further consideration of complaints would be paid by the local authority to the CSCI. An independent panel may review the amount chargeable and substitute a lesser amount if it thinks fit.
262. By *section 26ZA(4)* the regulations may authorise the disclosure of information relevant to a complaint to a person or body who is considering the complaint or to a Local Commissioner, that is a Local Commissioner under Part 3 of the Local Government Act 1974 who is a member of the Commission for Local Administration in England, when a complaint is referred to him under the regulations. Such a disclosure may be authorised notwithstanding any rule of common law of confidentiality that would otherwise prohibit or restrict it. This provision will not override the specific obligations under the Data Protection Act 1998, namely, that information relating to an individual must not be disclosed without the consent of that individual unless it is necessary to do so for any of the reasons specified in the Act. This is consistent with provisions made in *section 113*.
263. *Section 116(2)* inserts *section 26ZB* into the Children Act 1989. It broadly replicates for Wales the provision of *section 26ZA* except that it makes provision for unresolved complaints to be considered further by an independent panel.
264. *Section 116(3)* amends 26A of the Children Act which is concerned with advocacy services. The section imposes a duty on local authorities to provide assistance, including assistance by way of representation, for children and young persons making complaints under section 24D and section 26 of the Children Act. The new *section 26A(2A)* extends the duty to cover the provision of assistance where complaints are further considered under *sections 26ZA* and *26ZB*.

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

265. *Section 117* makes provision for certain complaints about special guardianship support services to be considered under the Children Act complaints procedure. The new *section 26(3C)* of the Children Act 1989 extends the duty placed on local authorities by section 26(3) to establish a complaints procedure to include complaints made to the authority about the discharge by the authority of such functions under section 14F (special guardianship support services) as may be specified in regulations. The section specifies who may make such a complaint under the procedure.
266. Special guardianship orders, made under section 14A of the Children Act 1989, are intended to meet the needs of children who cannot live with their birth parents, for whom adoption is not appropriate, but who could still benefit from a legally secure placement. It is intended that regulations under section 14F of the Act (special guardianship support services) will ensure that local authorities offer a range of support services to



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be available where appropriate for special guardians and children subject to special guardianship order, their parents and others such as members of the birth family.

267. The intention is that the regulations made under *section 26(3C)* will require the Children Act complaints procedure to apply where a complaint is about a support service that is provided for the direct benefit of a child subject to a special guardianship order. In all other cases complaints will be made under the social services complaints procedure under *section 114*.
268. This replaces the power to make regulations about handling complaints about special guardianship support services contained in section 14G of the Children Act 1989, which is repealed by this amendment.

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

269. *Section 118* amends the Health Service Commissioners Act 1993 to enable the Commissioners to consider complaints from individuals who are dissatisfied with the way in which a complaint has been handled under the regulations made under *section 113*.

### ***Section 119: Complaints: data protection***

270. *Section 119* makes the CHAI, the CSCI and other persons charged under the regulations with consideration of complaints, exempt from the subject information provisions of the Data Protection Act 1998 to the extent to which application of those provisions would be likely to prejudice the proper discharge of the function of considering the complaint. The subject information provisions of the Data Protection Act allow for individuals except in certain defined circumstances to seek and obtain information which is held on them by others. Section 31 of the Data Protection Act provides an exemption from these provisions by reference to a number of different categories of regulatory function exercised by public bodies.

## ***Chapter 10 – Supplementary and General***

### **Joint working**

#### ***Section 120: Co-operation etc***

271. *Section 120* places a duty on both the CHAI and the CSCI to co-operate with one another where it seems to them appropriate to do so for the efficient and effective discharge of their respective functions. This will in particular allow the CHAI and the CSCI to co-ordinate their work programmes.
272. *Subsection (2)* provides for regulations to prescribe circumstances where the CHAI and the CSCI must consult each other in relation to the proposed exercise of their functions. It is envisaged that in many of the instances where it would be desirable for the CSCI and the CHAI to co-operate, that they would do so without needing to be asked by the Secretary of State. However, there will be instances where co-operation will be essential and it is considered necessary to be able to make regulations to specify the circumstances in which co-operation may be necessary. Regulations may require the CHAI and the CSCI to consult each other before carrying out inspections of a particular type of service, for example, a mental health facility providing integrated health and social services provision, in order to reduce the burdens on those subject to inspection, or could require the CHAI and the CSCI to consult each other on the contents of their respective work programmes.
273. *Subsection (3)* gives the CHAI and the CSCI the power to delegate their functions to one another. *Subsection (4)* allows for the CHAI and the CSCI to enter budget-pooling arrangements, subject to prescribed conditions. It is anticipated that these conditions

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will relate to matters such as the requirement to keep proper accounts in respect of pooled funds.

### **Section 121: Reviews and investigations**

274. *Subsection (1)* provides for the CHAI and the CSCI to conduct joint reviews and investigations with one another. This will allow for the joint inspection of bodies such as NHS Care Trusts.
275. *Subsection (2)* with *subsection (6)* provides that, without prejudice to any other powers which they may have, (for example by virtue of their general power to do anything which appears to them necessary or expedient in connection with the exercise of their respective functions) the CHAI may conduct a joint review, investigation or study with any other body (for example Audit Commission or the Housing Commission) that is carrying out a review or investigation relating to the functions of an NHS body. *Subsection (3)* makes the same provision for the CSCI where another body is conducting a review, investigation or study of the functions of a local authority. Following a joint review, investigation or study, the CHAI and the CSCI may publish, under *subsections (5)* and *(6)* a report in conjunction with the body they worked with.

### **Section 122: Joint Annual Reviews**

276. *Section 122* allows the Secretary of State to make regulations that would specify that CSCI and CHAI must carry out a joint review and award a star rating of certain health and social care services provided jointly where a local authority and a health service body (such as an NHS trust or Primary Care Trust) have entered into a partnership arrangement under a section 31 of the Health Act 1999.
277. *Section 31* allows health and social care bodies, such as local authorities, primary care trusts (PCTs) and NHS trusts to form partnerships to improve the provision of health and social care services. This is used to provide services which involve elements of both health and social care provision. The key powers that section 31 provides are the abilities to pool funds and delegate functions to enable integrated provision and lead commissioning (where partners come to an agreement that one of them will take the lead in commissioning services for their mutual benefit). Many different types of health and social care services are provided under the arrangements and these can vary widely with respect to size and the amount of resource involved. Services commonly provided under a section 31 partnership include services for older people, rehabilitative care, child and adolescent healthcare and mental health services.
278. This section introduces a broad regulation making power that would enable Secretary of State to prescribe certain services for which a review should be carried out should this be deemed appropriate in the future. For example, regulations could specify that all jointly provided mental health services provided under a section 31 partnership should be subject to a joint annual review by the CHAI and the CSCI.
279. Such a joint review would enable a separate performance rating to be given for the jointly provided service, in addition to separate health and social care ratings. This would recognise the jointly provided service as something distinct and would be able to demonstrate whether it had added any value to the service provision.

### **Section 123: Power to assist**

280. *Section 123* provides for the CHAI or the CSCI to assist other UK public authorities with the exercise of their functions. This will allow for the CHAI or the CSCI to provide assistance to each other, or to other bodies, for example, the Office for Standards in Education (OFSTED), the Housing Inspectorate or Her Majesty's Inspector of Prisons. Assistance could include matters such as seconding employees to the other inspectorate, assisting them in devising their inspection criteria or providing one off advice in relation to areas where the other body has expertise.

## **Arrangements with public authorities**

### ***Section 124: Arrangements with Ministers etc: CHAI***

281. *Section 124* enables a Minister of the Crown to arrange for the CHAI to carry out any of its functions in relation to health schemes for which the Minister is responsible. For example, arrangements may be made between the CHAI and the Secretary of State for Defence in respect of provision of health care to the Armed Forces. *Subsection (2)* provides for the CHAI to also enter into similar arrangements with a Northern Ireland Minister for the Northern Irish health service.

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

282. This section enables a Minister of the Crown to arrange for the CSCI to advise him with respect to services that are similar to English local authority social services. *Subsection 1(b)* also allows a Minister to request that the CSCI review, or conduct inspections in relation to social care services. For example, arrangements may be made between the CSCI and the Secretary of State for Defence in respect of provision of social care to members of the Armed Forces and their families stationed abroad. *Subsection (2)* provides for the CSCI to provide advice and assistance to a Northern Ireland Minister in respect of the provision of social services in Northern Ireland.

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

283. This section enables CHAI to provide advice and assistance to the Government of the Isle of Man and the States of Jersey and the States of Guernsey with respect to the provision of health care. Such advice and assistance would only be given upon the request of the authorities in the Islands. The terms and conditions of any such arrangements could include provision for payments to be made to the CHAI.

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

284. This section enables the same arrangements to be made between CSCI and the Isle of Man and Channel Islands as for CHAI in *section 126*.

## **Reports**

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

285. This section places a duty on the CHAI to produce a report on the way it has exercised its functions during the financial year, on the provision of health care by and for NHS bodies in England and Wales and on what it has found in the course of exercising its functions under the CSA 2000.

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

286. This section places a duty on the CSCI to produce a report on the way it has exercised its functions during the financial year, and on what it has found in the course of exercising its functions during the year.
287. *Sections 128(4) and 129(4)* place both the CHAI and the CSCI under a duty to provide other additional reports and information on the exercise of their respective functions as the Secretary of State may request during the year.

## **Relationship with Government**

### ***Section 130: Duty to have regard to government policy: CHAI; and section 131: Duty to have regard to government policy: CSCI***

288. These sections place duties upon the CHAI and the CSCI in exercising their respective functions to have regard to such aspects of government policy as the Secretary of State

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(and the Assembly with respect to certain functions of the CHAI) may direct. It is intended that such a direction would be used to direct the CSCI and CHAI to have regard to broad aspects of government policy - for example, in respect of the CSCI, improving the educational attainment of looked after children.

***Section 132: Failure in discharge of functions: CHAI; and section 133: Failure in discharge of functions: CSCI***

289. These sections provide that where the Secretary of State considers that the CHAI or the CSCI is significantly failing to discharge any of its functions, or to discharge them properly then he is able to issue a direction to the CHAI or the CSCI with which it must comply.

## **Inquiries**

***Section 134: Inquiries: CHAI***

290. *Section 134* provides for the Secretary of State or the Assembly to initiate a public or private inquiry into matters concerning the exercise of any of the CHAI's functions. *Subsection (1)* provides that the Secretary of State may initiate an inquiry in respect of the exercise of any matter connected with the exercise of the functions of the CHAI. *Subsection (2)* provides that the Assembly may do likewise in respect of any matter connected with the exercise of the functions of the CHAI in relation to health care by or for Welsh NHS bodies.
291. *Subsection (3)* gives the Secretary of State or the Assembly the power to make the inquiry wholly private, but where no such direction is given, *subsection (4)* enables the person holding the inquiry to make it wholly or partly private. This might be necessary, for example, to protect patient confidentiality.
292. *Subsection (5)* provides for section 250(2) to (5) of the Local Government Act 1972 to apply in relation to an inquiry undertaken in England or Wales. This will enable the person holding the inquiry to issue a summons requiring an individual to give evidence or produce any documents in their custody or under their control at a stated time and place. If that person fails to attend (for reasons other than not having the necessary expenses of their visit paid or tendered), they may be liable to a fine or imprisonment.
293. *Subsections (6) and (7)* require that reports of inquiries set up under the powers in this section should be published unless the Secretary of State or Assembly, as appropriate, decides, for good reason, that publication would be inappropriate. Grounds for not publishing might include, for example, publication being prejudicial to any ongoing criminal investigation.

***Section 135: Inquiries: CSCI***

294. This section makes the same provision for CSCI as *section 134* does for CHAI, with the exception that it does not allow the Assembly to initiate a public inquiry into the exercise of CSCI's functions because CSCI is an England only body.

## **Information**

***Section 136: Disclosure of information obtained by CHAI; and section 137: defence***

295. *Section 136(2)* makes it a criminal offence for any person, including a member or employee of the CHAI, to knowingly or recklessly disclose confidential information that relates to or identifies an individual.
296. *Subsections (1) to (3)* of *section 137* set out a defence to the offence in section 136. It is a defence to prove that any of the circumstances listed in *subsection (2)* applied or that the person charged reasonably believed that they applied. It is also a defence to prove that

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the disclosure was made for a purpose in *subsection (3)*. One of the circumstances in *subsection (2)* is where the disclosure is made in a form in which the individual to which the information relates is not identified. *Subsection (4)* sets out when an individual is to be regarded as identified for the purposes of this defence.

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

297. Subject to the provisions outlined in this section, the CHAI may use any information it obtains or is provided with during the course of its functions, for the purposes of any of its other functions, for example information obtained in relation to NHS health care provided by an independent hospital could be taken into account when dealing with issues relating to the registration of that hospital under the CSA 2000.

### ***Section 139: Information obtained by CSCI: Supplementary***

298. This section provides that the CSCI may use any information it obtains or is provided with during the course of its functions for the purposes of any of its other functions. For example, where the CSCI obtains information as a result of inspecting a children's home in exercise of its functions under Part II of the CSA 2000, that a child placed there may have suffered harm it may use this information to evaluate the performance of the local authority that placed the child there.

### ***Section 140: Code of Practice CHAI and section 141: Code of Practice CSCI***

299. *Sections 140* and *141* place CHAI and CSCI under a statutory duty to prepare and publish a code of practice in relation to how CHAI and CSCI will obtain, use, handle and disclose confidential personal information within their powers under legislation. This will ensure that such information is dealt with in an appropriate manner. In drawing up their codes CHAI and CSCI must consult with such persons as they deem appropriate.

## **Wales: Supplementary**

### ***Section 142: Annual reports of Assembly***

300. *Section 142* places a duty on the Assembly to make an annual report or reports, of the way in which it has exercised its social care and health care functions in the Act, and its functions under the CSA 2000 in relation to the registration of independent health services and registered social care services in Wales, and its findings in the course of the exercise of those functions over the year.

### ***Section 143: Use by the Assembly of information***

301. *Section 143* allows the Assembly to use information it obtains in exercising functions listed in *subsection (2)*, namely its health and social care review functions under the Act and functions under the CSA 2000 and section 80 of the Children Act 1989 (inspection of children's homes) for the purpose of exercising any other of those functions listed in *subsection (2)*.

### ***Section 144: Inquiries: Wales***

302. *Section 144* applies where the Assembly holds an inquiry into any matter connected with its social care functions (which are all its functions under the CSA 2000 which equate to those of the CSCI and the CHAI and all its other functions which equate to those of the CSCI). In the same way as is provided by *sections 134* and *135* for inquiries in relation to the CHAI and the CSCI's functions, *subsections (2)* and *(3)* of this section enable the Assembly to direct any inquiry, or part of an inquiry, to be held in private, and where the Assembly does not direct, the person holding the inquiry may decide.



### ***Section 145: Co-operation between Assembly and CHAI***

303. *Section 145* places a duty on the CHAI and the Assembly to co-operate in order to ensure that their functions of reviewing and investigating health care under Part 2 of the Act are carried out efficiently and effectively.

### **General**

### ***Section 146: Offences by bodies corporate***

304. This section provides that an individual may be held liable where a body corporate is judged to have committed an offence under this Part. *Subsection (2)* makes it clear that an individual may be proceeded against if they are a director, manager or secretary of a body corporate (or acting in such a capacity) found guilty of an offence, where the offence is judged to have occurred with their consent or connivance or be attributable to their neglect.

### ***Section 147: Minor and consequential amendments***

305. *Section 147* makes provision for *Schedule 9*, which makes minor and consequential amendments to other legislation. The following amendments are of particular note:
306. *Paragraph 8* of *Schedule 9* amends the Children Act 1989 to make the CSCI responsible for notifying the Secretary of State of instances where it believes an individual has not been added to the Protection of Children Act or Protection of Vulnerable Adult lists, when they should have been. That Act is also amended to ensure that the CSCI is notified by the relevant local authority when a child dies whilst in local authority care.
307. *Paragraph 12* amends the Audit Commission Act 1998 (“the 1998 Act”). *Subparagraph (2)* provides for the Audit Commission to consult the CHAI, the CSCI and the Assembly when drawing up various codes of audit practice prescribing the way in which auditors are to carry out their functions. *Subparagraph (3)* provides that the Audit Commission must obtain the agreement of the CHAI before preparing or making any changes to provisions of a code applicable to the accounts of health service bodies that concern an auditor’s consideration of whether arrangements have been made for securing economy, efficiency and effectiveness in the use of resources. *Subparagraph (5)* provides for the Audit Commission to consult the CSCI and the Assembly when it is considering undertaking a study for improving economy, efficiency and effectiveness in services connected with English and Welsh local authority social services respectively.
308. *Subparagraph (6)* provides that the Audit Commission’s functions under section 33(1) of the 1998 Act of undertaking studies for improving economy, efficiency and effectiveness in the provision of services, and for improving the financial or other management of bodies do not (apart from functions of conducting studies on financial management) apply in relation to Primary Care Trusts, Strategic Health Authorities, and NHS trusts all or most of whose establishments are situated in England.
309. *Subparagraph (7)* provides for the Audit Commission to consult the CSCI when it is considering undertaking a study on the impact of statutory provisions, or directions or guidance given by a Minister, that are connected with English local authority social services and consult the Assembly where this concerns Welsh local authority social services.