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Social Care aspects of the *Health and Social Care (Community Health and Standards) Bill*

Bill 70 of 2002/03

This paper considers the proposed reforms to social care inspection in this Bill (chapters 1, and 5 to 10 of part 2 and related schedules). The Bill proposes the creation of the Commission for Social Care Inspection (CSCI), which will takeover the current duties of the Social Services Inspectorate (SSI), including Joint Reviews with the Audit Commission, and those of the National Care Standards Commission (NCSC) relating to social care.

A key feature of the proposed CSCI is that it will be independent, whereas at present the SSI is part of the Department of Health. The CSCI is intended to enhance social care inspection, increase public accountability, and improve value for money.

The CSCI will apply to England only, although the Bill makes provision for the National Assembly for Wales to have similar functions as the CSCI.

The provisions in the Bill covering NHS foundation trusts are dealt with in RP 03/38. Other health aspects of the Bill are covered in a separate Library paper.

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Summary of main points

In regard to social care, the *Health and Social Care (Community Health and Standards) Bill* proposes to create a single inspectorate body for England called the Commission for Social Care Inspection (CSCI).

The CSCI will takeover the work of the Social Services Inspectorate (SSI), including the SSI's Joint Review work it undertakes in conjunction with the Audit Commission, and those functions of the National Care Standards Commission (NCSC) relating to social care.

A key feature of the CSCI is that it will be independent of Government. Although the NCSC and the Audit Commission are independent, the SSI is part of the Department of Health.

As part of its duties in inspecting local authority social services, it is intended that the CSCI will be responsible for issuing performance ratings. Although the nature of the rating is unspecified in the Bill, the Government has indicated that it will take the form of a star rating. This will be a continuation of the system currently used by the SSI.

In the case of a local authority which is considered to be "failing", the CSCI has to inform the Secretary of State of that fact, and recommend any special measures which it thinks the Secretary of State should take. If the failings are judged to be "not substantial", CSCI may instead give the local authority a notice of its failing, action it considers necessary to remedy the problems and a deadline to complete such action, and additionally inform the Secretary of State that it has given such instructions.

It is proposed that the CSCI may, at the request of the Home Secretary, inspect secure training centres.

The Bill proposes changes to the *Care Standards Act 2000* that will give the CSCI increased powers during inspections of premises, such as allowing the CSCI to inspect at any time (rather than only during an inspection) records and documents at an establishment or agency.

The Bill proposes that the CSCI should make an annual report to Parliament as soon as possible at the end of the financial year.

It is the intention of the Bill that functions similar to those proposed for the CSCI are conferred on the National Assembly for Wales, although Wales will continue to have a number of separate bodies relating to social care inspection.

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I Introduction

The *Health and Social Care (Community Health and Standards) Bill* is a wide ranging piece of proposed legislation, encompassing proposals relating to foundation hospitals, a new inspectorate for health care, and a new inspectorate for social care. It is the last of these which this Research Paper focuses on. There are separate Library papers on the other aspects of the Bill.

At present, there are two main bodies involved in the inspection and regulation of social care. The National Care Standards Commission (NCSC) was formed as a consequence of the *Care Standards Act 2000*, and is responsible for the registration of social care providers, and the inspection of some social care services. The Social Services Inspectorate (SSI) of the Department of Health is responsible for assessing the performance of local authority social services, and was established in 1985. In addition, the SSI works with the Audit Commission to undertake Joint Reviews of local authority social services.

The placing of this legislation before Parliament came just under a year after the Department of Health published its document *Delivering the NHS Plan: next steps on investment, next steps on reform*.¹

In this document, the Department explained that the current system of inspection of social care had evolved rapidly, but was fragmented and therefore was burdensome for front-line staff, and reduced clarity for the public.²

In order to ensure clearer public accountability, the Department of Health proposed reforming the inspection of social services through the creation of a single inspectorate called the Commission for Social Care Inspection (CSCI). This new organisation would be formed from the merger of the SSI and those functions of the NCSC relating to social care. It would also include the SSI's Joint Review work.

The Government also highlighted the role that the CSCI would play in improving quality and value for money in the *Spending Review 2002*.³

¹ Department of Health, *Delivering the NHS Plan: Next steps on investment, next steps on reform*, April 2002, Cm 5503

² Department of Health, *Delivering the NHS Plan: Next steps on investment, next steps on reform*, April 2002, Cm 5503, para 10.5

³ HM Treasury, *Spending Review 2002*, Cm 5570

II Background and rationale

A. Existing arrangements for inspection

Under the current arrangements for the inspection of social care in England, responsibility is split between three bodies:

- National Care Standards Commission (NCSC). Responsible for registering, inspecting and regulating social care using national minimum standards set by the Government;
- Social Services Inspectorate (SSI). Its task is to evaluate the quality and performance of local authority social services in regard to their statutory responsibilities and provide guidance to councils. It also assists Ministers in carrying out their responsibilities for personal social services, and exercises statutory powers on behalf of the Secretary of State for Health. The SSI is part of the Department of Health; and,
- Audit Commission. Works with the SSI through the Joint Review approach to assess local authorities' performance and use of resources in the discharge of their social services functions.

1. National Care Standards Commission

The NCSC was established as a result of the *Care Standards Act 2000*. The NCSC is an independent public body set up to regulate social care and private and voluntary health care services throughout England. It commenced inspection and regulation duties from 1 April 2002, taking over the role which had previously been the responsibility of health authorities and local authorities.

The NCSC regulates social care and independent healthcare services in accordance with statutory regulations and national minimum standards that have been issued by the Department of Health. National minimum standards were introduced in order to remove regional differences in regulatory standards and inspection methods that had occurred under the previous structure of inspection.

The NCSC's functions are to:

- register, inspect and regulate social care and private healthcare providers, using national minimum standards set by the Government. In applying the standards the Commission looks for evidence that providers' facilities, resources, policies, workforce, services and activities are leading to positive outcomes and experiences for service users and patients;
- take enforcement action where breaches of regulations occur or where service users are at risk;
- advise the Secretary of State on the availability and quality of the services it regulates;
- deal with complaints about regulated services; and,

- through the Children's Rights Director, safeguard and promote the rights and welfare of children who are provided with regulated children's services.

The following are currently required to register with the NCSC: care homes; children's homes; residential family centres; domiciliary care agencies; nurses' agencies; independent fostering agencies; voluntary adoption agencies; and, independent healthcare establishments.

In addition, the NCSC undertakes the inspection of local authority fostering services, local authority adoption services, and the welfare arrangements in boarding schools, residential special schools and further education colleges.

The NCSC is responsible for:

- encouraging improvement in the quality of care services across the country;
- reporting to Government on the provision and quality of registered social care services across the country;
- advising Government on any changes it thinks should be made to the national minimum standards; and,
- providing better and more accessible information about independent healthcare and social care services for members of the public.

Research paper 00/52, entitled *The Care Standards Bill*, provides further information on the legislation which introduced the NCSC.⁴

2. Social Services Inspectorate

The SSI is a government inspectorate which was set up in 1985 as a professional division within the Department of Health, and is currently part of the Directorate for Children, Older People and Social Care Services in the Department.

The role of the SSI is to evaluate the quality and performance of social services authorities in the practice and delivery of their statutory responsibilities for social services, to assist councils in sustaining continuous improvement in their performance, assist Ministers in carrying out their responsibilities for personal social services, and exercise statutory powers on behalf of the Secretary of State for Health.⁵

⁴ House of Commons Library website, <http://hcl1.hclibrary.parliament.uk/rp2000/rp00-052.pdf>

⁵ Department of Health website, <http://www.doh.gov.uk/cos/ssi/chiefssi.htm>

The Department of Health states that the SSI's main functions are to:

- undertake an assessment of the performance of all local councils using performance indicators, in-year monitoring and evidence from any recent inspections and joint reviews;
- carry out a rolling programme of inspections that are proportionate to the council's performance—this includes inspection of children's services in all councils;
- make judgments about the performance of children's services and adult services, to inform the overall star rating of a council's social services functions. The social care star rating contributes to the comprehensive performance assessment of the local council;
- contribute to action planning with local councils following the comprehensive performance assessment and agree performance improvement targets for social services – and in cases where performance falls well below acceptable levels, advise the Secretary of State on the action required to achieve improvements;
- undertake joint reviews with the Audit Commission to assess the local council's performance and use of resources in the discharge of their social services functions;
- work jointly with a wide range of inspectorates and Government bodies where there are common or shared interests in services for children and adults.⁶

The work of the Social Services Inspectorate is undertaken through:

- social care regional offices which help local councils to implement the Government's social care policies and monitor their performance;
- inspection groups who regularly inspect the quality of aspects of social services in each local council;
- the SSI/Audit Commission Joint Review team who assess how well each local council with social services responsibilities serves their population;
- inspectors based in the Department's policy branches who provide professional advice and expertise to Ministers and policy makers.⁷

3. Joint Reviews between the SSI and Audit Commission

The Audit Commission works with the SSI through a Joint Review team, under the directions of the *Audit (Miscellaneous Provisions) Act 1996*, which established a Joint

⁶ Department of Health, *Statement of Purpose: The Commission for Healthcare Audit and Inspection (CHAI) and the commission for Social Care Inspection (CSCI)*, 29 January 2003 (hereafter *Statement of Purpose*), para 1.13, pp 5–6). See:

<http://www.doh.gov.uk/statementofpurpose/sopchaicsci.pdf>

⁷ Department of Health, *The Social Services Inspectorate: Who we are and what we do*, July 2001, paras 2.2 and 2.4—2.5, p 5

Review approach between the two organisations. Joint Reviews aim to improve social services by identifying and promoting policies, management and practice which are achieving better outcomes and better value. Joint Reviews provide an “independent assessment of how well the public is being served by social services locally”.⁸

The Joint Review approach “brings together the expertise of SSI and the Audit Commission to check on the efficiency of local councils in delivering all their social services functions. It is a fully integrated team led by the Review Director on behalf of both organisations”.⁹

The Audit Commission’s main functions in relation to health and social care are to:

- appoint auditors to all local NHS bodies and local authorities who report on: an audited body’s financial statements, the financial aspects of corporate governance, and arrangements to manage performance, including those for ensuring economy efficiency and effectiveness;
- develop national studies designed to improve the economy, efficiency and effectiveness of services; and,
- undertake a programme of joint reviews with the Social Services Inspectorate to assess local authorities performance and use of resources in the discharge of their social services functions.

The Audit Commission also leads the comprehensive performance assessment of local authorities, and action planning to ensure that they address priority areas for improvement.¹⁰

B. Rationale for reforming social care inspection

1. A single independent regulator

The Department of Health has explained that “the existing regulators have all carried out important work either to help identify ways in which health and social care services might be improved or to make sure services provided by the independent sector meet appropriate standards”. Nevertheless, it added that “the Government believes better regulation arrangements are possible”.¹¹

⁸ Joint Review Website: <http://www.joint-reviews.gov.uk/>

⁹ Department of Health, *The Social Services Inspectorate: Who we are and what we do*, 2003 edition, para 4.7, p 12

¹⁰ Department of Health, *Statement of Purpose: The Commission for Healthcare Audit and Inspection (CHAI) and the commission for Social Care Inspection (CSCI)*, 29 January 2003 (hereafter *Statement of Purpose*), paras 1.6 to 1.7, pp3–4. See: <http://www.doh.gov.uk/statementofpurpose/sopchaicsci.pdf>

¹¹ *Statement of Purpose*, para 1.14, p 6

In April 2002, the Department of Health published its agenda for fulfilling the *NHS Plan* (which had been published in July 2000). The new document, entitled *Delivering the NHS Plan: next steps on investment, next steps on reform*, set out how the inspection of social services would be reformed through the establishment of a new inspectorate, the CSCI. The Department said that:

10.5 In order to ensure clearer public accountability we will strengthen the system of inspection for health and social services. The current system has evolved rapidly. But early experience is demonstrating that the arrangements are fragmented. This is burdensome on front line staff and also creates a lack of clarity for the public.

[...]

10.10 ... Changes are needed in social services ... There is fragmentation and confusion. The Social Services Inspectorate (SSI) and the National Care Standards Commission both play a role in the inspection of social care services. The SSI is part of the Department of Health with its own Chief Inspector. The NCSC is a non-departmental public body with responsibilities for regulating social care (and private health care) to national standards.

10.11 We now propose to establish a single inspectorate for social services formed from a merger of the two existing organisations. The Commission for Social Care Inspection will:

- carry out local inspections of all social care organisations – public, private and voluntary – including care homes to ensure national standards and publish reports of these inspections;
- register services that meet national standards;
- carry out inspections of local authority social service departments;
- validate all published performance assessment statistics on social care;
- publish the star ratings for social service authorities, with the ability to recommend special measures where there are persistent problems;
- publish an annual report to Parliament on national progress on social care and an analysis of where resources have been used.¹²

The introduction of the CSCI introduces two key changes from the current structure of social care inspection: a single inspectorate body; and an inspectorate independent of government.

The establishment of the CSCI will end what the Department of Health calls “the present fragmented arrangements”¹³ by merging all of the work of the SSI (including the Joint Review work of the SSI with the Audit Commission), and the functions of the NCSC

¹² Department of Health, *Delivering the NHS Plan: Next steps on investment, next steps on reform*, April 2002, Cm 5503

¹³ Department of Health, *The Commission for Social Care Inspection Frequently Asked Questions*, website. See: <http://www.doh.gov.uk/csci/faq.htm>

relating to social care (the Commission for Healthcare Audit and Inspection (CHAI) will assume that part of the NCSC's work relating to health care).¹⁴

Commenting on the publication of the proposal, Alan Milburn, the Secretary of State for Health, said that “at a national level, legislation will be introduced to establish a new tough independent healthcare regulator/inspectorate covering both the NHS and the private sector, with a new Chief Inspector of Healthcare—not appointed by Ministers and reporting annually to Parliament. An equivalent body will be created for social services”.¹⁵

Jacqui Smith, Minister of State for Health responsible for social care, long term care, disability and mental health, recently said that “the creation of CSCI will mean that for the first time there will be a single independent body to ensure joined up and effective regulation of both independent and public sector social care services”.¹⁶

Further information on the new arrangements was provided to the House in September 2002:

Mr. Burstow: To ask the Secretary of State for Health if the National Care Standards Commission and the Social Services Inspectorate will be abolished and their functions transferred to the Health and Social Care Inspectorate. [72150]

Jacqui Smith [holding answer 23 July 2002]: As my right hon. Friend, the Secretary of State announced on 19 April, we plan to set up two new independent inspectorates, the Commission for Healthcare Audit and Inspection and the Commission for Social Care Inspection. These new bodies will further strengthen the system for inspecting health and social care, ensure clearer public accountability and rationalise the number of bodies regulating health and social care.

The Commission for Social Care Inspection will create a single comprehensive Inspectorate for social care, bringing together the inspection functions of the social services inspectorate, including a number of their function with the Audit Commission, and the National Care Standards Commission (NCSC) and including the regulation of social care providers. The NCSC and the social services inspectorate will continue with their existing work until the new body goes live.¹⁷

¹⁴ *Statement of Purpose*, p 2

¹⁵ Department of Health Press Release 2002/0192, *Delivering The NHS Plan—The Next Steps On Investment And Reform*, 18 April 2002. See: <http://www.info.doh.gov.uk/doh/IntPress.nsf/page/2002-0192?OpenDocument>

¹⁶ Department of Health Press Release 2003/0040, *Health Minister Lord Hunt Announces Next Steps For New Independent Health And Social Care Inspectorates*, 29 January 2003.

¹⁷ HC Deb 26 September 2002 c390W

As the Department of Health highlighted in their full Regulatory Impact Assessment of the Bill, “no formal consultation has taken place [in regard to establishing CSCI] although discussions have taken place with key external stakeholders and the bodies affected continue to be closely involved in the development of the new inspectorate”.¹⁸

2. Improving value for money

The Government has argued that, in regard to the CSCI, “better regulation has a key role in driving up the quality of services”.¹⁹ In the Department of Health’s statement on taking forward the *NHS Plan*, it said that the CSCI will “have a key role in driving up standards and strengthening accountability between social services and the public”.²⁰

In his statement on the 2002 Spending Review, Gordon Brown, the Chancellor of the Exchequer, highlighted the role that the CSCI would play in ensuring that value for money was being achieved, as part of a wider move to increase the role that independent audit and inspection would play in Government. He told the House:

... We have a special duty to make sure public money is spent efficiently and we are as determined to secure value for money as we are to secure money for services.

So ... with independent audit and statutory inspection, departments and agencies will be fully accountable for performance against targets: so in addition to the new Police Standards Unit, we are creating the new Health and Social Care Inspectorates and a reformed Criminal Justice System inspection regime and a single housing inspectorate.²¹

The 2002 Spending Review white paper set out the importance of the value for money aspect further:

The Government is committed to ensuring that both existing and new spending is targeted to deliver value for money and achieve the outcomes that the public want and expect. The quality of public services depends not just on how much the Government spends but also on how effectively it spends it. New resources must be matched with reform to deliver results, in which the modernisation of public service delivery is crucial. Effective public service delivery requires the devolution of power to service providers to encourage flexibility and creativity, particularly in meeting consumer demands and responding to local circumstances. However, discretion for public service providers must be constrained by clear long-term goals and proper accountability arrangements. The principles

¹⁸ Department of Health, *Full Regulatory Impact Assessment: Health and Social Care (Community Health and Standards) Bill*, 14 March 2003, Annex B, para 30

¹⁹ *Statement of Purpose*, p 1

²⁰ Department of Health, *Delivering the NHS Plan: Next steps on investment, next steps on reform*, April 2002, Cm 5503, para 10.12

²¹ HC Deb 15 July 2002 c25

underpinning this 'new localism' aim to ensure that public service providers have the discretion to innovate and improve the services they provide, constrained by the need to reach high minimum standards. Successful public services will increasingly involve a new focus on responding to and satisfying the demands of the customer.

[...]

The second principle is that there must be independent and effective arrangements for audit and inspection to hold departments and agencies accountable for performance against these [public service agreement] targets. These arrangements should separate responsibility for setting standards from responsibility for assessing whether they are being achieved:

[...]

- in social care, the work of the Social Services Inspectorate and the National Care Standards Commission will be integrated in a single independent inspectorate for social care services, which also publishes the performance 'star' ratings for local councils with social services responsibilities.²²

C. Interim arrangements

The CSCI will not have any formal powers until the Bill has been enacted, and it is not expected to be fully operational until April 2004. However, the Department of Health has proposed that CSCI should run in "shadow form" once the Bill has had its second reading.

The shadow CSCI, in conjunction with the Department of Health, will need to design and prepare for the implementation of their inspection and assessment methodologies before April 2004. In the meantime, the Audit Commission, NCSC, and SSI will continue their relevant work programmes. However, the intention is that these programmes will be coordinated so that "the migration to CSCI is as smooth as possible".²³

Denise Platt, the Chief Inspector of the Social Services Inspectorate, recently said that, until the CSCI can formally take on its responsibilities, "the SSI, the Joint Review team and the NCSC will work closely together in shadow form so that the benefits of the new Commission can be realised as quickly as possible. It is hoped that in 2003 a joint annual report will be produced".²⁴

²² HM Treasury, *Spending Review 2002*, Cm 5570, paras 1.30 and 1.34, pp 10 and 12

²³ *Statement of Purpose*, para 3.1, p 11

²⁴ Department of Health, Social Services Inspectorate, *Modern Social Services: a commitment to reform—The 11th Annual Report of the Chief Inspector of Social Services 2001—02*, July 2002, para 1.16, p 9

The Department of Health explained that:

There will be three distinct phases in the establishment and governance of CHAI and CSCI. The first phase will run from the announcement of the creation of the bodies through to the appointment of the Shadow Chairs. The second phase will be from the appointment of the Shadow Chairs through to the Second Reading of the Bill. The final phase is from Second Reading—the point at which CHAI and CSCI can employ staff and commence work in a shadow capacity—through to CSCI and CHAI becoming operational. During this phase, both commissions will be operating in shadow form.²⁵

On 4 March, the Department of Health issued an advertisement seeking applicants to the post of Chair and also commissioners, noting that “it is expected that five Commissioners will be appointed”. Remuneration for the Chair will be between £45,000 and £70,000 per annum, and the postholder will be expected to work at least 2½ days a week for the CSCI. The commissioners’ time commitment will be at least 2 days per month for which they will receive remuneration of £5,294 per annum. The advertisement said that appointment terms will be for up to 4 years, “although a further term may be offered subject to consistently good performance in the role”.²⁶ The deadline for applications to the post of Chair was 10 March 2003, and for the commissioners’ posts the deadline was 28 March 2003.

The CSCI will have a chief executive responsible for its general functions, whose title will be the “Chief Inspector of Social Care”. It is the intention of the Department of Health to appoint a chief executive designate in Spring 2003.²⁷ A Children’s Rights Director will also be appointed, although his functions will be prescribed in regulations, which have yet to be published. However, the Government has explained that their intention is that “the children’s rights director should ensure that the regulatory aspect of the CSCI’s work takes full account of children’s rights and welfare in relation to its regulatory work under Part II of the CSA [*Care Standards Act*] 2000”.²⁸

A CSCI website has been created by the Department of Health, and is available at:

<http://www.doh.gov.uk/csci/index.htm>

²⁵ *Statement of Purpose*, para 3.2, p 11

²⁶ Department of Health recruitment advert, *Commission For Social Care Inspection: Chair and Commissioners*, 4 March 2003, see:
http://www.doh.gov.uk/csci/chair_commissioners_advert.pdf

²⁷ *Statement of Purpose*, Annex A, p 12

²⁸ Bill 70-EN, para 139, p 20

III Social care aspects of the Bill

The part of the Bill which considers matters relating to social care (primarily CSCI) is the subject of this research paper. However, the majority of the Bill's clauses relate to health matters, including CSCI's sister organisation, CHAI, as well as other health service issues including the creation of NHS Foundation Trusts. These issues are addressed in separate Library papers.

A. Territorial coverage of the Bill

The CSCI will operate in England only, although the Bill confers on the National Assembly for Wales social care functions similar to those of the CSCI. Social care inspection in Wales will continue to be undertaken by the Care Standards Inspectorate for Wales (CSIW) and the Social Services Inspectorate for Wales (SSIW), whilst the Audit Commission in Wales will continue to carry out value for money studies.

B. The main provisions of the Bill

1. Establishing the CSCI

Clause 37 establishes the CSCI, simply stating "there is to be a body corporate known as the Commission for Social Care Inspection". Schedule 6 makes further provision about the CSCI, such as relating to the Chairman and other members.

Paragraph 2 of schedule 6 sets out the general powers and duties of the CSCI, namely:

- (1) The CSCI may do anything which appears to it to be necessary or expedient for the purpose of, or in connection with, the exercise of its functions.
- (2) That includes, in particular—
 - (a) co-operating with other public authorities in the United Kingdom,
 - (b) acquiring and disposing of land and other property,
 - (c) entering into contracts, and
 - (d) providing training.
- (3) It is the duty of the CSCI to carry out its functions effectively, efficiently and economically.

Paragraphs 3 and 4 of schedule 6 set out the arrangements for the members of the CSCI. The CSCI will be headed by a Chairman and several commissioners, who will be appointed by the Secretary of State. The Secretary of State will also have the power to remove those from office. The Secretary of State is able, by regulations, to make provision for the appointment of the Chairman and other members of the CSCI (such as the number to be appointed), and the tenure of office. The Secretary of State shall determine the remuneration and allowances (including pensions and severance compensation) payable to the chairman and members of the CSCI.

Clause 38, as detailed in schedule 7, allows for the transfer of property, rights and liabilities (including employment rights and liabilities) to the CSCI from the NCSC, Audit Commission and the Crown.

Clause 39 abolishes the NCSC, which was established by the *Care Standards Act 2000*, whose social care functions are transferred to the CSCI (and whose remaining functions relating to health care are transferred to CHAI).

2. The work of the CSCI

Clause 72 provides an introduction to the work of the CSCI. It says that the CSCI will have the “general function of encouraging improvement in the provision of English local authority social services”. In undertaking its functions, the CSCI will be “concerned in particular with the availability, access, quality, effectiveness, management of the services, as well as the economy and efficiency of the provision of these services. The CSCI will also have regard to the need to safeguard and promote the rights and welfare of children and should consider in particular how local authorities are doing this”.

Clause 73 states that it is the responsibility of the CSCI to keep the Secretary of State informed about the provision of English local authority social services, and that the CSCI may at any time give advice, either offering it or on request, to the Secretary of State on connected matters. The Bill says that, in particular, the CSCI may advise the Secretary of State of any changes to the National minimum standards issued under section 23 of the *Care Standards Act 2000* that could secure an improvement in the performance by local authorities in England of their adoption and fostering functions. In addition, the CSCI may give advice to the Secretary of State or any local authority regarding the establishment or conduct of a pending or ongoing inquiry by the Secretary of State or the local authority in relation to the provision of English local authority social services.

Clause 74 allows the CSCI to review work carried out by other bodies, such as studies and research (including the methods used and the validity of the conclusions drawn), in relation to the provision of English local authority social services, and to publish a report following such a review where the CSCI thinks it is appropriate.

Clause 80 permits the Secretary of State to confer additional functions on the CSCI through regulations (in relation to the provision of local authority social services). This is intended to ensure that the CSCI is “responsive to future developments in the field of public sector performance assessment”.²⁹

Clause 81 states that the CSCI must have regard to those aspects of government policy as the Secretary of State may direct, and that the Secretary of State may, after consultation

²⁹ EN-70, para 234

with the CSCI, make regulations which require it devise and publish (with the consent of the Secretary of State) the criteria used in the exercise of its functions, other than those relating to annual reviews and investigations in clause 75 (see below).

Clause 82 allows the Secretary of State to issue the CSCI with a written direction when he considers that the CSCI is failing to discharge or failing to properly discharge any of its functions, and the CSCI must comply with this direction which can be varied or revoked by another direction.

Clause 83 allows the CSCI to levy fees on local authorities for its work in relation to reviews and investigations and studies regarding economy, efficiency and effectiveness. The CSCI must consult with appropriate people (such as individual local authorities or representative organisations) before it devises a fee scale. The Secretary of State, however, may by regulation appoint a person or panel to review the amount charged by the CSCI for a particular service, and may impose a reduced fee.

Clause 84 states that the CSCI must make available its reports, and that such reports may be purchased for a “reasonable fee” determined by the CSCI. The CSCI may also charge a fee it considers appropriate when it provides any other information relevant to the discharge of its function when this information has been requested by an individual.

Clause 99 transfers to the CSCI the NCSC’s functions relating to children’s homes, care homes, residential family centres, domiciliary care agencies, nurses agencies, fostering agencies, voluntary adoption agencies, and adoption support agencies. These are defined in the Bill as “registered social services”.

Schedule 12 repeals in part the *Care Standards Act 2000* relating to adoption and fostering functions, namely Part 3. The sections repealed are those which gave the NCSC the function of inspecting local authority adoption and fostering services. Clause 72 of the Bill provides the CSCI with the general powers to inspect local authority social services. These powers will also allow the CSCI to inspect local authority adoption and fostering services. The elements of Part 3 of the *Care Standards Act 2000* which have been retained provide for the Secretary of State of State to make regulations with regard to relevant functions and also to make regulations prescribing the frequency with which relevant functions must be inspected.

Clause 102 amends the *Care Standards Act 2000* so that the CSCI, rather than the Secretary of State, determines fees in respect of its functions under Part 2 of that Act. However, the CSCI is required to consult with those likely to be liable for the fees, and obtain the consent of the Secretary of State before it introduces them. Alternatively, the Secretary of State may by regulations determine the fee payable to the CSCI, although he would be required to consult the CSCI and appropriate persons before introducing the fee.

Clause 104 amends the *Care Standards Act 2000* to introduce a new and specific definition of children’s home. At present, section 4 of the Act refers to the description of an “establishment” in the Act being, among other things, “a children’s home” in

subsection (8)(a). The Bill adds to the Act the phrase “a children’s home providing accommodation for the purpose of restricting liberty”, which means children’s homes which provide secure accommodation. 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 of the Bill, however, the CSCI will take on both roles.

Clauses 107 and 108 enables the CSCI to inspect two particular types of establishment. Clause 107 allows the CSCI to inspect boarding schools and colleges, which is currently the responsibility of the NCSC under the *Children Act 1989*.

Clause 108 allows the CSCI to inspect secure training centres, but only if the Home Secretary requests the CSCI so to do. However, the terms of the inspections (and any fees payable to the CSCI) will be determined by agreement between the Home Secretary and the CSCI.

Clause 124 allows the Secretary of State to initiate a public inquiry into any matter concerned with the exercise of the CSCI of any of its functions. Such an inquiry may be held wholly in private if the Secretary of State so determines. Alternatively the person holding the inquiry may decide that all or part of the inquiry should be held in private. Any such inquiry would be conducted under sections 2 to 5 of the *Local Government Act 1972* (as they apply to a local inquiry under that section).

Much of schedule 8 replaces references to other bodies made in earlier legislation with references to the CSCI.

3. Reviews and investigations

a. Annual reviews and investigation

Clause 75 requires the CSCI to undertake an annual review of the social services provided by every local authority, whether they are provided by the local authority itself or “commissioned” i.e. purchased from a third party provider on its behalf. The CSCI is able to carry out an inspection of both the local authority being reviewed and any person undertaking “commissioned” work.

Sub-clause 5 states that the CSCI must take into account guidance issued to local authorities under section 7 of the *Local Authority Act 1970*. Sub-clause 6 highlights the inspection of adoption and fostering services, and says that the CSCI must take into account the standards prepared and published from time to time under section 23 of the *Care Standards Act 2000*.

The criteria upon which an annual review is based are to be devised by the CSCI and have to be approved by the Secretary of State. The CSCI must publish the criteria devised and approved.

The Bill states that, after the review, the CSCI must award a performance rating, although it does not state the form that this rating will take. However, the explanatory notes state that “in practice this will mean the award of a ‘star rating’”.³⁰ The star rating system was introduced to reviews of local authority social services by the Secretary of State in October 2001. Explaining their introduction, Mr Milburn said:

These tables [of social services performance indicators] remove the excuses for unacceptable variations in performance. This is not primarily about money. It is about management and organisation. And that is the value of these tables. They expose those areas where performance needs to improve. I know there will always be arguments about the details in the tables and the methodology behind them but for me—and I hope for you too—there is a simple principle at stake here—the public who use our public services have a right to know how well those services are doing in comparison with others.

... Accessible information for the users of public services is essential if we are to design services around the needs of users. That is what we are doing with schools and hospitals. And it is what we must now do for social services.

I know that current tables are far from perfect and are far too complicated. So I can announce today that we plan next year for a new approach which will provide more easily accessible information to the public about social services performance. From next year, we will bring together the existing performance data with information from inspections and in-year monitoring. The result will be a more rounded assessment of each council’s performance.

Just as we have recently done for hospitals this year, so from next year each council will receive a star rating for its overall social services performance. There will be separate ratings for adult and children’s services. We will work with the LGA and the ADSS on the details of the new system. I believe profoundly that it will help councils to improve their performance”.³¹

There are four ratings possible from zero stars (the lowest rating) to three stars (the highest rating). Currently, the SSI produces star ratings for local authority social services, and issued the first set in May 2002. These were refreshed in November 2002.

As well as providing greater information for those who use local authority social services, the star ratings have implications for the managers of those social services, further details of which can be found in the consideration of clause 77 below.

³⁰ EN-70, para 220

³¹ Speech by the Rt Hon Alan Milburn MP, Secretary of State, to the Annual Social Services Conference 19 October 2001

b. *Other reviews and investigations*

Clause 76 means that, in addition to annual reviews, the CSCI may undertake more general reviews of local authority social services in circumstances other than when the CSCI is conducting an annual review. It may review:

- the overall provision of social services by local authorities' across England;
- 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); or,
- the services (or any of them) provided by an individual local authority.

The Secretary of State can also request that the CSCI conducts a review into the provision of social services by a specified local authority. The clause states that if a review or investigation conducted under this section, then the CSCI "must publish such report as it thinks appropriate".

c. *"Failings" and the response of CSCI to them*

Clause 77 details the course of action CSCI is required to take if it judges that there are failings in the provision of social services by a local authority. In the case of an annual review, this is considered to be the case if CSCI awards the lowest performance rating (assumed to be a zero star rating). More generally, this can be the case if the CSCI "considers that a local authority in England is failing to discharge any of its social services functions to an acceptable standard". In either case, the CSCI must inform the Secretary of State of that fact, and recommend any special measures which it considers the Secretary of State should take. Such special measures are likely to include closer monitoring of the local authority by the CSCI or use of the Secretary of State's special powers of intervention. 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.

However, if the failure to discharge is "not substantial", the CSCI may instead give the local authority a notice which specifies the respects in which the CSCI considers that the local authority is failing, the action which the CSCI considers the authority should take to remedy the failure, and the time by which such action must be taken. The CSCI must inform the Secretary of State of the action it has taken against the local authority.

d. *Information*

Clause 128 allows the CSCI to 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 derived from an inspection of a children's home may also be used to evaluate the performance of the local authority who placed the child there.

4. Audit functions and working with the Audit Commission

Clauses 78 and 79 relate to how the CSCI will undertake work previously conducted by the Audit Commission. Clause 78 is based on parts of sections 33 and 34 of the *Audit Commission Act 1998*, which state:

33. (1) The Commission shall undertake or promote comparative and other studies designed to enable it to make recommendations-
- (a) for improving economy, efficiency and effectiveness in the provision of local authority services and of other services provided by bodies subject to audit; and
 - (b) for improving the financial or other management of bodies subject to audit.

[...]

34. (1) In addition to the studies referred to in section 33(1), the Commission shall undertake or promote studies designed to enable it to prepare reports as to the impact-
- (a) of the operation of any particular statutory provision or provisions,
 - or
 - (b) of any directions or guidance given by a Minister of the Crown (whether pursuant to any such provision or otherwise),
- on economy, efficiency and effectiveness in the provision of local authority services and of other services provided by bodies subject to audit other than health service bodies, or on the financial management of such bodies.
- (2) The Commission shall publish or otherwise make available its report of the results of any study under this section, and shall send a copy of any such report to the Comptroller and Auditor General.

Clause 78 of the Bill, which makes reference only to local authority social services, states:

- (1) The CSCI may promote or undertake comparative or other studies designed to enable it to make recommendations—
 - (a) for improving economy, efficiency and effectiveness in the discharge by local authorities in England of their social services functions;
 - (b) for improving the management of such local authorities in their discharge of those functions.
- (2) The CSCI may also promote or undertake studies designed to enable it to prepare reports as to the impact of—
 - (a) the operation of any particular statutory provisions, or
 - (b) any directions or guidance given by a Minister of the Crown (whether pursuant to any such provision or otherwise),
 on economy, efficiency and effectiveness in the discharge by local authorities in England of their social services functions.

- (3) The CSCI must publish or otherwise make available—
 - (a) any recommendations made by it under subsection (1);
 - (b) at least a summary of the result of any studies under this section.

The clause will allow the CSCI to carry out value for money studies in the 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.

However, the Bill does not repeal or amend sections 33 and 34 of the Audit Commission Act 1998. Indeed, the Audit Commission will retain powers enabling it to undertake studies of local authority social services, meaning there is the potential for overlap of the Audit Commission and CSCI's work. The explanatory notes say:

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.³²

There will be joint working between the CSCI and the Audit Commission, in a similar manner to the current process of joint working between the SSI and the Audit Commission through the Joint Reviews. Clause 79 provides for the CSCI and the Audit Commission to exercise jointly their powers under clause 78 and sections 33 and 34 of their respective legislation. The clause states that the two bodies must co-operate when performing their respective functions in this regard. Further, the Secretary of State is able to provide guidance to the CSCI and the Audit Commission in this respect, for example by issuing guidance on which of the two organisations should take the lead on an inquiry.

In Schedule 8, for which provision is made under clause 134, paragraph 10(2) amends the *Audit Commission Act 1998* so that, in preparing and reviewing a code of audit practice prescribing the way in which auditors are to carry out their functions under the 1998 Act, for bodies other than health service bodies, the Audit Commission will consult both such associations of local authorities as appear to the Commission to be concerned and, now, also the CSCI and, adds that it should consult the NAW as well as such bodies of accountants as appear to the Commission to be appropriate. This amends subsections 7b and 7c of section 4 of the *Audit Commission Act 1998*.

Paragraph (10)(9) of Schedule 8 deletes the existing section 37 of the *Audit Commission Act 1998*, which allowed the Secretary of State to request the Audit Commission to assist in any study designed to improve economy, efficiency, effectiveness and quality of performance in the discharge of social services functions by local authorities. Instead, the

³² EN-70 para 232

new section 37 intended by this part of schedule 8 sets out that the Audit Commission “may provide assistance” to the CSCI in the discharge of its functions under chapter 5 of the Bill, into which clauses 78 and 79 fall. The Bill also allows the Audit Commission to charge the CSCI for its services under the new section 37 of the *Audit Commission Act 1998*.

Paragraph 10(10)(a) of Schedule 8 of the Bill amends the *Audit Commission Act 1998* so that the Audit Commission may share with the CSCI or the NAW, as is relevant, information relating to a particular body or other person obtained by the Commission or an auditor, or by a person acting on behalf of the Commission or an auditor pursuant to any provision of the *Audit Commission Act 1998* or in the course of any audit or study under any such provision.

5. Powers to acquire information

a. Right of entry

Clause 85 allows CSCI-authorized individuals to enter and inspect premises owned or controlled by a local authority, or which are used, or proposed to be used, by any person in connection with the provision of a local authority social service, or which the CSCI reasonably believes to have been used, or proposed to be used. The CSCI does not, however, have the right of entry to premises used wholly or mainly as a private dwelling where social services are being provided.

Clause 86 allows CSCI-authorized individuals who have entered premises to inspect and take copies of any documents or records (including personal records) relevant to the discharge by the local authority of its social services functions, and inspect and remove from the premises any other item. Anyone working at the premises, or anyone accommodated or cared for, with their consent, can be interviewed.

b. Power to require information and explanation

Clause 87 gives the CSCI the authority to require a local authority, a person providing a local authority social service for a local authority or any NHS body to provide it with any information, documents, records or any other items relating to the discharge of the social service function of a local authority, and which the CSCI considers necessary for it to undertake its functions. This means that records kept on a computer must be provided in legible form.

Clause 88 provides that the Secretary of State may make regulations that give the CSCI the power to require an explanation (which may include at such time and places that are prescribed) from prescribed persons regarding any document, records or items inspected or information provided under clauses 85 to 87, or any matters which are the subject of the exercise of any functions of the CSCI, when the CSCI considers such explanation is necessary or expedient for its purposes.

Anyone who hinders the work of the CSCI in respect of clauses 85 to 88, without reasonable excuse, is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

Clause 105 amends section 31 of the *Care Standards Act 2000*. The Bill inserts a new subsection 1A which specifies the power of CSCI inspectors to acquire, at any time, copies of any records or other documents necessary for the CSCI to discharge its functions from a person who carries on or manages an establishment or agency. 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.

Subsection 3(a) of the clause amends the *Care Standards Act 2000* so that copies of medical records can be taken when inspecting a premises (at present, section 31 of the Act states an authorised person may “inspect and take copies of any documents or records (other than medical records)”). Subsection 3(b) of clause 105 amends the Act so that an authorised person may interview in private any person “working”, rather than “employed” as the Act currently states, at a premises. This will enable inspectors to interview temporary and agency staff contracted by a provider as well as permanent employees.

6. Social care complaints

Clause 111 states that the Secretary of State may make regulations concerning the procedure for complaints against local authority social services. The explanatory notes provide guidance on the form the Government expects these regulations to take:

“It is envisaged that the first stage will involve a representation (or 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 and when this stage is not resolved satisfactorily, the second stage, involving the CSCI, will follow”.³³

Subsection 2 of the clause states that these regulations may make provision for circumstances in which a complaint may or may not be considered. Relevant considerations detailed in subsection 3 may include a time limit on making complaints, who may make a complaint and which complaints can be heard. Subsection 2 also allows regulations to include the procedure following the making of a complaint and how it is to be considered, what documents or information are needed to accompany a complaint, and also the action to be taken and the making of a report about a complaint. The regulations may also permit a complaint to be referred to another person or body (specifically, subsection 5 provides for complaints to be made to the local government ombudsman).

The regulations may allow for a complaint to be made against the local authority to whom the complaint is made, the CSCI or a review panel. The regulations may allow the person or body considering the complaint to charge a fee, although in any particular case this fee may be subject to review by an independent panel.

Schedule 12 states that the Bill will repeal section 7B of the *Local Authority Social Services Act 1970*, which is superseded by clause 111. Section 7B makes provision for regulations providing that local authorities must put in place procedures for dealing with representations.

Clause 113 relates to complaints under the *Children Act 1989*, as these complaints are not covered by clause 111. The clause would amend the *Children Act 1989* to allow the CSCI to further consider complaints which have already been considered by a local authority under the *Children Act 1989*, and for the CSCI to charge a fee (the level of which may be subject to review).

7. Joint working

a. Joint working between CSCI and CHAI

Clause 116 places a duty on both the CHAI and the CSCI to co-operate with one another where it seems appropriate to do so for the efficient and effective discharge of their respective functions, with the aim of allowing the two organisations to co-ordinate their work programmes. Regulations may prescribe the circumstances in which the CSCI and the CHAI must consult each other in relation to the proposed exercise of their functions. The CSCI may delegate their functions to the CHAI, and *vice versa*, and the two organisations may pool their budgets subject to prescribed conditions (it is expected that these conditions will relate to the requirement to keep matters such as proper accounts in respect of pooled funds).

Clause 117 makes provision for the CSCI and the CHAI to undertake joint reviews and investigations with one another, so allowing for the joint inspection of bodies such as NHS Care Trusts. The CSCI will be able to publish the report of a joint review together with the organisation involved.

b. Other joint working involving CSCI

Clause 118 allows the CSCI to provide assistance to any public body in the UK to assist it in the exercise of its functions, including the seconding of employees, and allows the CSCI to charge a fee for its assistance.

Clause 120 enables a Minister of the Crown to arrange for the CSCI to advise him with respect to the provision of any services for which he has responsibility and which are similar to English local authority social services, or the CSCI to review and inspect the

³³ EN-70, para 274

provision of such 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. The clause also specifically allows for arrangements to be made between the CSCI and a Northern Ireland Minister for the CSCI to advise and assist the Northern Ireland Minister with respect to the provision of any services for which the Minister has responsibility which are similar to English local authority social services.

8. Annual reports

Clause 122 makes provision that the CSCI, as soon as possible after the end of each financial year, must make a report on the way in which it has exercised its functions during the year, and what it has found in the course of exercising those functions. A copy of this report must be laid before Parliament and also sent to the Secretary of State. The CSCI must also provide the Secretary of State with such reports and information relating to the exercise of its functions as he may request during the year.

9. Functions of the National Assembly for Wales

Clauses 89 to 98 provide the details of the provision of social services relating to the National Assembly for Wales (NAW). As with clause 72 relating to the CSCI, clause 89 states that “the Assembly has the general function of encouraging improvement in the provision of Welsh local authority social services”. Clause 90 provides for Wales the same requirement as clause 74 for England in regard to reviewing research and studies.

Clause 91 is most similar to clause 76, although it permits the NAW to assess performance against criteria which may lead to the award of a performance rating. Clause 91 means that the NAW is able to undertake periodic (for example, annual) reviews of local authority social services and award a performance rating although, unlike clause 75 for England, there is no requirement on the NAW to perform an annual review of the social services provided by each local authority in Wales.

Clause 92 provides for Wales similar, but not identical, provisions to those in clauses 78 and 79 for England, which relate to value for money studies and joint working with the Audit Commission.

Clause 94, as clause 72 states for England, requires that the NAW be “concerned in particular” with the availability, access, quality, effectiveness, management of the services, as well as the economy and efficiency of the provision of these services. The NAW will also have regard to the need to safeguard and promote the rights and welfare of children and should consider in particular how local authorities are doing this.

Clause 95 and 96 concern the right of entry, and clauses 97 and 98 relate to the power to require information and explanation. Clauses 96 to 98 make provision for Wales as clauses 86 to 88 do for England.

Clause 106 amends the *Care Standards Act 2000* so that the NAW 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. This clause is similar to clause 101, which amends the *Care Standards Act 2000* in respect of the CSCI.

Clause 112 provides for complaints against Welsh local authority social services in similar terms as clause 111 does for English local authority social services.

Clause 129 places a duty on the NAW to make and publish as soon as possible after the end of each financial year a report on its functions relating to the way it has exercised its social care functions and its functions under the *Care Standards Act 2000* in regard to registered social care services in Wales, and also its findings in the course of exercising those functions. This report may also include matters relating to health in this Act and also the *Care Standards Act 2000*. This clause is similar to clause 122, which relates to the CSCI; however, unlike clause 122, the clause does not provide provision for within-year reports to be produced by the NAW.

Clause 130 allows the NAW to use any information it obtains or documents produced to it during the course of the exercise of any function relating to NHS health and care social services in this Bill, and the relevant sections relating to its functions of the *Care Standards Act 2000* and the *Children Act 1989*. Although similar to clause 128 for the CSCI, this clause has the added feature that it allows the NAW to use information relating to any of the functions of the Welsh equivalent of the CSCI and also the CHAI.

Clause 131 makes a similar provision for Wales as clause 124 does for England. The NAW may cause an inquiry to be held into any matter relevant to the exercise of its functions relating to social care (and also health care) under this Bill, and its functions under the relevant section of the *Children Act 1989*. The NAW may determine that the inquiry is held wholly in private, or the person holding the inquiry may decide to hold all or part of the inquiry in private. The inquiry's report is to be published in a manner determined by the NAW, unless the NAW considers that there are exceptional circumstances which make publication inappropriate.

Clause 131 is operated under section 35 of the *Government of Wales Act 1998*, subsection 1 of which states that "the Assembly may cause an inquiry to be held into any matter relevant to the exercise of any of its functions". Further, subsection 2 of section 35 states that, as with clause 124 of this Bill relating to England, "subsections (2) to (5) of section 250 of the *Local Government Act 1972* (witnesses and costs at local inquiries) shall apply in relation to an inquiry held under subsection (1) as if it were a local inquiry held under that section and the Assembly were the Minister causing it to be held".³⁴

³⁴ *Government of Wales Act 1998*, chapter 38

10. Commencement of the Bill

Clause 177 states that the provisions of Parts 1 to 5 of the Bill, and clause 175 and schedule 12 will come into force through a commencement order.

C. The cost of establishing the CSCI

According to the explanatory notes to the Bill, the cost of setting up the CSCI will be £7 million. It is estimated that the running costs for the CSCI are £143 million; it is assumed that these are the annual running costs, although the explanatory notes do not state this. For Wales, because no changes to the structures of social care functions will be made, “any additional costs will be minimal”.³⁵

D. Regulatory Impact Assessment

The explanatory notes state that Department of Health officials have consulted the Cabinet Office, the Small Business Service, the devolved administrations and key stakeholders over development of the Bill’s Regulatory Impact Assessments (RIA). In respect of the CSCI (and also CHAI), the explanatory notes state:

Health and social care bodies are currently subject to a number of elements of regulation and assessment or inspection. The Commission for Healthcare Audit and Inspection and the Commission for Social Care Inspection will draw those elements together to provide more powerful, coherent and independent inspection arrangements. It is not anticipated that these will add to the administrative burden on private or voluntary health and social care bodies.³⁶

The full RIA sets out the implications of establishing the CSCI in greater detail:

The proposals to set up two new inspectorates bring together the functions of the various bodies currently involved in inspection and regulation of health and social care services. This should provide a greater coherence to the regulation and inspection arrangements. The total number of visits/inspections should fall, putting fewer burdens on staff. There are no anticipated compliance issues and the effect on competition issues should be limited. Discussions have taken place with key stakeholders and bodies affected and these will continue. The Commission for Healthcare Audit and Inspection (CHAI) will extend to England and Wales. The Commission for Social Care Inspection (CSCI) will cover only England, with similar social care functions performed by the NAW in Wales.³⁷

³⁵ EN-70, paras 422-423

³⁶ EN-70, para 429

³⁷ Department of Health, *Full Regulatory Impact Assessment: Health and Social Care (Community Health and Standards) Bill*, 14 March 2003, para 13.

In regard to the costs on service providers in the field in which the CSCI operates, the RIA states that:

There will be no significant impact on small business since the regulatory arrangements of the Care Standards Act will continue as before ... The main difference will be that the registration authority responsible for this work will no longer be the NCSC, but will be CHAI for independent healthcare providers and CSCI for independent social care providers. Whilst the new inspectorates will be able to charge fees for their regulatory activity, these are expected to be on a similar basis to the fee structure currently operated by the NCSC. There will be some reduction in bureaucracy as service providers (which could be classed as small businesses) will fall within the remit of one or other of the new inspectorates rather than several regulatory or supervisory bodies as now ... [Establishing the CSCI] would reduce the administrative burden on some service providers by reducing the number of inspections by different bodies to which they are subject. To this extent they could result in a slight lowering of existing barriers to entry.³⁸

E. Compliance with the European Convention on Human Rights

The Secretary of State for Health made the following statement on 12 March 2003 in regard to the entire Bill: “In my view the provisions of the *Health and Social Care (Community Health and Standards) Bill* are compatible with the Convention rights”.³⁹ This statement complied with Section 19 of the *Human Rights Act 1998*.⁴⁰

Specifically, in regard to the CSCI aspects of the Bill, the explanatory notes state that:

The Department [of Health] does not consider, save for the two areas discussed here, that the main provisions of Part 2 give rise to any Convention issues. The provisions of this part give various rights to the CHAI, the CSCI and the National Assembly for Wales (NAW) to enter and inspect premises, to inspect and take copies of documents and to require information (including in certain circumstances medical information) and an explanation of information or documents obtained by the Commissions, or the Assembly in connection with the exercise of their functions under the Bill. These requirements may constitute an interference with Article 8 of the Convention (rights to private and family life). The Department is of the view that such interference is justified.

³⁸ Department of Health, *Full Regulatory Impact Assessment: Health and Social Care (Community Health and Standards) Bill*, 14 March 2003, Annex B, paras 24-25

³⁹ EN-70, para 441

⁴⁰ Section 19 of the *Human Rights Act 1998* states that “(1) A Minister of the Crown in charge of a Bill in either House of Parliament must, before Second Reading of the Bill-(a) make a statement to the effect that in his view the provisions of the Bill are compatible with the Convention rights (‘a statement of compatibility’); or (b) make a statement to the effect that although he is unable to make a statement of compatibility the government nevertheless wishes the House to proceed with the Bill. (2) The statement must be in writing and be published in such manner as the Minister making it considers appropriate”.

These provisions ... pursue a number of legitimate aims. The purpose of the powers is to enable the Commissions (or, in Wales, the NAW) to assess the performance of NHS bodies and local authorities in connection with the provision of healthcare and local authority social services[,] monitor the safety and reliability of the services which they provide and their compliance with regulatory requirements, to assess quality standards and to ensure financial probity and that public money is being properly spent[.] In the Department's view, the powers are proportionate. Appropriate limitations and restrictions are imposed by the Bill (in particular the Bill provides that the powers may only be exercised where this is necessary or expedient for the body to exercise the power), or by will be imposed by regulations in the case of the power to require an explanation. The Department therefore takes the view that these clauses are compatible with Article 8 of the Convention. The Department also considers, for the same reasons, that these powers are compatible with Article 1 of the First Protocol.

The Department also considers that the provisions of Chapter 9 of this Part which relate to the handling of complaints relating to NHS healthcare and local authority social services comply with the requirements of Article 6 of the Convention (right to a fair trial).⁴¹

⁴¹ EN-70, paras 434-436

IV Responses

At the time of writing, there has been little specific reaction published to these aspects of the Bill. Two responses are reproduced below:

A. Association of Directors of Social Services (ADSS)

Information supplied by e-mail, received 8 April 2003.

In the spirit of openness, accountability and commitment to continuous improvement, ADSS continues to work effectively with the Department of Health (DH) and the Social Services Inspectorate (SSI) on all aspects of performance assessment, monitoring, inspection and review. Our comments for the research paper are therefore known to DH and SSI colleagues and are the subject of continuing discussions. We would summarise our view on the new arrangement as follows.

Clearer “arms length” inspection functions as anticipated by the Commission for Social Care Inspection (CSCI) will gain credibility with the public. A strong CSCI will be good for people who use social care services and as a result, good for social care. Local Authorities are working ever more closely with health to meet Government and local objectives and we anticipate that the CSCI will work in close collaboration with the Commission for Healthcare Audit and Inspection (CHAI). The duty of cooperation between the two bodies and the ability to undertake joint reviews and inspections will ensure that standards, criteria and processes are joined up appropriately.

In the implementation of the new arrangements, it will be important that experience on the ground picked up by CSCI is used to influence the development of DH policy. Moreover, lack of consistency between the demands for regular and one off information from the front line is a risk and ongoing work will be needed to ensure overall coherence.

We are committed to continued work with DH and SSI colleagues on these matters and again do lend overall support to the underlying policy objectives.

B. United Kingdom Home Care Association (UKHCA)

Information supplied by telephone, received 1 May 2003

The UKHCA was supportive of the idea of bringing social care inspection together in a single organisation, although it did not agree with the proposal to create a separate commission each for health care and for social care.

The association believed that the Bill could have gone further in regard to the coverage of inspection, in particular the status of independent community health services, specifically home nursing, which is not regulated and where there are not any proposals to do so.

Given the upheaval in the sector generally, UKHCA was of the opinion that it was better that the changes proposed in the Bill will not add further pressures, but the association did welcome the fact that the public sector would, as a result of the Bill, be regulated in the same way as the private sector.

The UKHCA welcomed the changes that are offered in the Bill in regard to the Protection of Vulnerable Adults List and the Protection of Children Act List, but felt that the Bill may have missed the opportunity to tidy up some existing aspects of primary legislation in regard to these lists which, although given statutory force in the *Care Standards Act 2000*, had yet to come into force due to technical difficulties.

Appendix: Abbreviations used

ADSS	Association of Directors of Social Services
CHAI	Commission for Healthcare Audit and Inspection
CSCI	Commission for Social Care Inspection
NAW	National Assembly for Wales
NCSC	National Care Standards Commission
RIA	Regulatory Impact Assessment
SSI	Social Services Inspectorate
UKHCA	United Kingdom Home Care Association