

EXPLANATORY MEMORANDUM TO

THE HEALTH AND SOCIAL CARE (COMMUNITY HEALTH AND STANDARDS) ACT 2003 (COMMISSION FOR HEALTHCARE AUDIT AND INSPECTION AND COMMISSION FOR SOCIAL CARE INSPECTION) (CONSEQUENTIAL PROVISIONS) ORDER 2004

1. This explanatory memorandum has been prepared by the Department of Health and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 This instrument makes amendments, and a repeal and a revocation consequential on the establishment of the Commission for Healthcare Audit and Inspection (“the CHAI”), the Commission for Social Care Inspection (“the CSCI”) and the abolition of the Commission for Health Improvement (“the CHI”).

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Background

4.1 Chapter 1 of Part 2 of the Health and Social Care (Community Health and Standards) Act 2003 (c. 43) (“the Act”) establishes two new regulatory bodies, the CHAI and the CSCI. Chapter 1 also abolishes the CHI and the National Care Standards Commission (“the NCSC”). By virtue of the Act, the majority of the NCSC’s functions, including those under the Care Standards Act 2000 (c. 14), transfer to the CSCI, except for those functions that relate to the provision of independent healthcare, which are transferred to the CHAI. All of the CHI’s functions transfer to the CHAI.

4.2 Chapter 3 of Part 2 makes provision for the functions of the CHAI. The CHAI’s general function is to encourage the improvement of healthcare by and for NHS bodies. Under that Chapter, the CHAI is able to carry out general reviews of health care across NHS bodies in England and Wales. However, reviews and investigations of health care provided by or for particular NHS bodies in Wales are the responsibility of the National Assembly for Wales (“the Assembly”) (Chapter 4 of Part 2 refers).

4.3 Chapter 5 sets out the functions of the CSCI. The CSCI’s general function is to encourage improvement in the provision of local authority social services in England. In exercising those functions, the CSCI is concerned, in particular, with the availability, access, quality, effectiveness, management, economy and efficiency of local authority social services, and it shall also

have regard to the need to promote and safeguard the rights and welfare of children.

4.4 This instrument is being made under section 201(1) of the Act. Its purpose is to make consequential changes to legislation following the abolition of the CHI and the establishment of the CHAI and the CSCI.

4.5 By virtue of section 199(2)(b)(iv) of the Act, before making an order under section 201(1), in so far as that order relates to the CHAI and the abolition of the former regulatory bodies, the Secretary of State is required to consult the Assembly. Consultation has taken place and there were no points that the Assembly wished to raise.

4.6 The following commentary summarises the general effect of the draft Order and describes its context.

Commentary on Article 2(1) of the draft Order

4.7 Sub-paragraph (a). This substitutes a reference to the CHAI for the reference to the CHI in section 33(6)(c) of the Audit Commission Act 1998 (c. 18) (studies for improving economy etc. in services). The effect of this amendment is that in the case of health service bodies, the Audit Commission must first consult the CHAI instead of the CHI before undertaking or promoting a relevant study under that section.

4.8 Sub-paragraph (b). This adds a reference to the CSCI and substitutes a reference to the CHAI for the current reference to the CHI in the definition of Crown bodies for the purposes of section 48 of the Copyright, Designs and Patents Act 1988 (c. 48) (material communicated to the Crown in the course of public business). This section applies where literary, dramatic, musical or artistic work has, in the course of public business, been communicated to the Crown by or with the agreement of the copyright owner and the Crown owns or has custody or control of a document or other material in which the work is recorded. The section makes provision for the Crown to copy and issue copies of the work for the purpose for which it was communicated to the Crown or for a related purpose which could reasonably have been anticipated by the owner without infringing copyright. This is provided that the work has not previously been published otherwise than under that section.

4.9 Sub-paragraph (c). This substitutes a reference to the CHAI for the reference to the CHI in the list of health service bodies who may be party to an NHS contract under section 4 of the National Health Service and Community Care Act 1990 (c. 19) and for connected purposes. Like substitution is made in relation to the bodies specified in section 21(2) of that Act (schemes for meeting losses and liabilities etc. of certain health service bodies). That section provides for the making of a scheme to meet losses, expenses and liabilities arising from loss or damage to the property of the bodies concerned and to meet liabilities to third parties for loss, damage or injury as a result of the exercise of functions by those bodies.

4.10 Sub-paragraph (d). Section 20 of the National Health Service Reform and Health Care Professions Act 2002 (c. 17) establishes the Commission for Patient and Public Involvement in Health (“the CPPIH”). Subsection (6) places a duty on CPPIH to report to those it considers most appropriate matters of concern connected with patient safety or welfare where it is not satisfied that this is being dealt with or it is not satisfied about the way in which this is being handled. The draft Order substitutes the reference in subsection (7) to the CHAI for the CHI as one of the bodies to whom the CPPIH might report a matter under that section.

4.11 Sub-paragraph (e). This amendment adds the CHAI, in place of the CHI, and adds the CSCI to the list of bodies that are subject to obligations and duties under section 71 of the Race Relations Act 1976 (c. 74) (specified authorities: general statutory duty). In particular, those bodies must, when carrying out their respective functions, have due regard to the need to eliminate unlawful racial discrimination and to promote equality of opportunity and good relations as respects persons of different racial groups.

4.12 Sub-paragraph (f). The effect of this amendment is to exempt vehicles owned by the CHAI or the CSCI, when being driven under their respective control, from the requirement under section 143 of the Road Traffic Act 1988 (c. 52) to be insured or secured against third-party risks.

4.13 Sub-paragraph (g). The effect of this amendment is to include vehicles used or kept on a road by the CHAI or the CSCI in the descriptions of exempt vehicles in Schedule 2 of the Vehicle Excise and Registration Act 1994 (c. 22). The CHAI and the CSCI will be exempt from the requirement under that Act to pay vehicle excise duty for such vehicles and from connected provisions under that Act.

Commentary on Article 2(2) of the draft Order

4.14 This paragraph repeals and revokes the references, where they occur, to the CHI in primary and subordinate legislation.

5. Extent

5.1 The instrument applies to all of the United Kingdom. The extent of any amendment, repeal or revocation made by this instrument is the same as the provision being amended, repealed or revoked.

6. European Convention on Human Rights

6.1 Dr. Stephen Ladyman, Parliamentary Under-Secretary of State for Health, has made the following statement regarding human rights:

In my view the provisions of the draft Health and Social Care (Community Health and Standards) Act 2003 (Commission for Healthcare Audit and Inspection and Commission for Social Care Inspection) (Consequential Provisions) Order 2004 are compatible with the Convention rights.

7. Policy Background

7.1 The intention of this instrument is to ensure that the same provision is made for the CHAI as was made in relation to the CHI in the legislation which is the subject of the draft Order, and that consistent provision is made in relation to the CSCI, where appropriate.

7.2 The changes are consequential upon substantive provisions that were debated during the passage of the Bill. This instrument is not considered to be controversial in its effect and the Department of Health does not expect it to attract significant public interest. In addition to the Assembly, the CHAI and the CSCI have each been consulted regarding the draft Order, and had no points that they wished to raise. The Scottish Executive and the Northern Ireland Department of Health, Social Services and Public Safety are also aware.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

8.2 The impact on the public sector is that the Department of Health considers that this instrument will not result in any additional costs to public sector organisations or the Exchequer.

9. Contact

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can answer any queries regarding the instrument.