



# Health and Social Care Act 2008

## 2008 CHAPTER 14

### PART 2

#### REGULATION OF HEALTH PROFESSIONS AND HEALTH AND SOCIAL CARE WORKFORCE

##### *The Office of the Health Professions Adjudicator*

#### **98 The Office of the Health Professions Adjudicator**

- (1) There is to be a body corporate known as the Office of the Health Professions Adjudicator (referred to in this Part as “the OHPA”).
- (2) The OHPA is to have functions in relation to the professions regulated by—
  - (a) the Medical Act 1983 (c. 54), and
  - (b) the Opticians Act 1989 (c. 44).
- (3) Schedule 6 (which makes further provision about the OHPA) has effect.

#### **99 Functions under Medical Act 1983 and Opticians Act 1989**

Schedule 7 (which contains amendments of the Medical Act 1983 and the Opticians Act 1989 providing for certain functions under those Acts relating to adjudication to be exercisable by the OHPA) has effect.

#### **100 Fitness to practise panels**

- (1) The functions which the OHPA has under the Medical Act 1983 and the Opticians Act 1989 are to be discharged by fitness to practise panels constituted in accordance with this section.
- (2) A fitness to practise panel is to consist of—
  - (a) a chair selected from the list of persons eligible to serve as chairs provided for by section 101(1)(a),

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- (b) a lay member selected from the list of persons eligible to serve as lay members provided for by section 101(1)(b) (the “lay members list”),
  - (c) a professionally qualified member selected from the list of persons eligible to serve as professionally qualified members provided for by section 101(1)(c) (the “professionally qualified members list”), and
  - (d) such additional members (if any) selected from the lay members list or the professionally qualified members list as may be required by rules.
- (3) Rules may make further provision about the selection of fitness to practise panels in relation to any proceedings.
- (4) Rules under subsection (3) may in particular make provision requiring the selection in specified circumstances of a chair who is legally qualified for the purposes of section 101(2)(a), and may provide for pilot schemes under which chairs who are legally qualified for those purposes are, or are not, selected for such proceedings as may be determined in accordance with the rules.
- (5) In this section “rules” means rules made by the OHPA.

### **101 Lists of persons eligible for membership of fitness to practise panels**

- (1) For the purposes of section 100, the OHPA must appoint, or arrange for the appointment of, persons to lists of—
- (a) persons eligible to serve as chairs,
  - (b) persons eligible to serve as lay members, and
  - (c) persons eligible to serve as professionally qualified members.
- (2) The list of persons eligible to serve as chairs is to consist of—
- (a) persons who are legally qualified,
  - (b) persons who are also included on the list of persons eligible to serve as lay members, and
  - (c) persons who are also included on the list of persons eligible to serve as professionally qualified members.
- (3) Rules may make provision about the keeping of the lists including provision about—
- (a) the division of a list into parts, and
  - (b) the information which is to appear on a list in relation to a person appointed to that list.
- (4) No person may be appointed to a list unless the person satisfies such requirements as may be prescribed by rules.
- (5) Rules made by virtue of subsection (4) must make provision about—
- (a) the qualifications which a person must have in order to be “legally qualified” for the purposes of subsection (2)(a), and
  - (b) the experience which a person must have and the training which a person must have undertaken in order to be eligible for appointment to the list of persons eligible to serve as chairs by virtue of subsection (2)(b) or (c).
- (6) A member of the OHPA may not be appointed to a list.
- (7) A person appointed to a list holds and vacates office in accordance with the terms of the person’s appointment.

(8) In this section “rules” means rules made by the OHPA.

## **102 Further provisions about listed persons**

- (1) The OHPA—
  - (a) may pay to any person included on a list such fees, allowances and expenses as it may determine, and
  - (b) may pay to any person whom it proposes to include on a list such allowances and expenses as it may determine in connection with the provision of training for the person by virtue of subsection (2)(b).
- (2) The OHPA—
  - (a) must provide, or arrange for the provision of, such training for persons included on a list as it may determine, and
  - (b) may provide, or arrange for the provision of, such training for persons whom it proposes to include on a list as it may determine.
- (3) The OHPA must—
  - (a) establish and maintain a system for the declaration and registration of private interests of persons included on a list, and
  - (b) publish entries recorded in that register of interests.
- (4) In this section “list” means any of the lists kept under section 101(1).

## **103 Legal assessors**

- (1) The OHPA must appoint, or arrange for the appointment of, persons to be legal assessors.
- (2) The legal assessors are appointed for the purpose of giving advice to the OHPA’s fitness to practise panels on questions of law arising in proceedings before them.
- (3) To be eligible for appointment as a legal assessor a person must have such qualifications and satisfy such other conditions as are specified by rules.
- (4) A legal assessor appointed under this section—
  - (a) may be appointed either generally or for any particular proceedings or class of proceedings, and
  - (b) holds and vacates office in accordance with the terms of the assessor’s appointment.
- (5) The OHPA may pay such fees, allowances and expenses to a legal assessor appointed under this section as it may determine.
- (6) Rules may make—
  - (a) provision about the functions of legal assessors appointed under this section, and
  - (b) provision for a fitness to practise panel not to be advised by a legal assessor if the chair of the panel is legally qualified for the purposes of section 101(2)(a).
- (7) In this section “rules” means rules made by the OHPA.

#### **104 Clinical and other specialist advisers**

- (1) The OHPA may appoint, or arrange for the appointment of, persons to be clinical advisers.
- (2) Any clinical advisers are appointed for the purpose of giving advice to the OHPA's fitness to practise panels on issues relating to health that arise in proceedings before them.
- (3) The OHPA may also appoint, or arrange for the appointment of, persons to act as specialist advisers on issues on which the OHPA considers that specialist knowledge is required.
- (4) Any specialist advisers are appointed for the purpose of giving advice to the OHPA's fitness to practise panels on issues falling within the advisers' speciality arising in proceedings before them.
- (5) To be eligible for appointment as a clinical adviser or specialist adviser a person must have such qualifications and satisfy such other conditions as are specified by rules.
- (6) An adviser appointed under subsection (1) or (3)—
  - (a) may be appointed either generally or for any particular proceedings or class of proceedings, and
  - (b) holds and vacates office in accordance with the terms of the adviser's appointment.
- (7) The OHPA may pay such fees, allowances and expenses to an adviser appointed under subsection (1) or (3) as it may determine.
- (8) Rules may make provision about the functions of advisers appointed under subsection (1) or (3).
- (9) In this section "rules" means rules made by the OHPA.

#### **105 Procedural rules**

- (1) The OHPA must make rules about—
  - (a) the procedure to be followed in connection with the making of referrals to the OHPA under the Medical Act 1983 (c. 54) or the Opticians Act 1989 (c. 44), and
  - (b) the procedure to be followed, and the rules of evidence to be observed, in proceedings before the OHPA's fitness to practise panels.
- (2) Subject to subsection (4), rules under this section may make such provision as the OHPA considers appropriate including provision about—
  - (a) preliminary hearings,
  - (b) the giving of directions to parties as to the conduct of proceedings and the consequences of failure to comply with such directions,
  - (c) a fitness to practise panel taking account of undertakings given by the person to whom the proceedings relate,
  - (d) voting by fitness to practise panels, including the taking of decisions by majority and the conferral of a casting vote on the chair,
  - (e) the award and assessment of costs and expenses, and

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- (f) the circumstances in which fitness to practise panels may review their own decisions.
- (3) Rules about the award and assessment of costs and expenses may—
- (a) require that regard be had to a person’s ability to pay when considering the making of an award against that person,
  - (b) include provision for all or part of the costs or expenses of the representative of a party to proceedings to be disallowed by reason of that representative’s conduct of the proceedings, and
  - (c) provide for an award in respect of costs and expenses to be recoverable as if it had been adjudged to be paid by court order.
- (4) Rules under this section must make—
- (a) provision for securing that—
    - (i) notice that proceedings are to be brought is given to the person to whom the proceedings relate, and
    - (ii) notice of any decision of a fitness to practise panel is given to the parties to the proceedings and to the registrar of the regulatory body which regulates the profession of which the person to whom the proceedings relate is a member,within such time and in such manner as is specified in the rules,
  - (b) provision giving each party to proceedings the opportunity, if the party so requests, to put the party’s case at a hearing,
  - (c) provision entitling each party to be represented at any hearing by a person falling within a description of persons specified in the rules, and
  - (d) provision for proceedings to be held in public except and to the extent that the rules provide otherwise.

## **106 Administration of oaths and issuing of witness summonses etc.**

- (1) For the purpose of proceedings before a fitness to practise panel of the OHPA in England and Wales or in Northern Ireland—
- (a) the panel may administer oaths, and
  - (b) any party to the proceedings may apply for the issue of a witness summons directing a person to attend the panel in order to give evidence or to produce a document.
- (2) No person shall be compelled under any such summons to give any evidence or produce any document which that person could not be compelled to give or produce on the trial of an action.
- (3) Section 36 of the Supreme Court Act 1981 (c. 54) and section 67 of the Judicature (Northern Ireland) Act 1978 (c. 23) (which provide a special procedure for the issue of such a summons so as to be in force throughout the United Kingdom) apply in relation to proceedings before a fitness to practise panel in England and Wales or, as the case may be, in Northern Ireland as those provisions apply in relation to causes or matters in the High Court.
- (4) For the purpose of proceedings before a fitness to practise panel of the OHPA in Scotland—
- (a) the panel may administer oaths, and

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- (b) the Court of Session, on the application of any party to the proceedings, has the like power as in any action in that court—
  - (i) to grant warrant for the citation of witnesses and havers to give evidence or to produce documents before the panel and for the issue of letters of second diligence against any witness or haver failing to appear after due citation,
  - (ii) to grant warrant for the recovery of documents, and
  - (iii) to grant commissions to persons to take the evidence of witnesses or to examine havers and receive their exhibits and productions.

### **107 Duty to inform the public**

- (1) For the purpose of ensuring that members of the public are informed about the OHPA and the exercise by it of its functions, the OHPA must publish or provide in such manner as it thinks fit information about the OHPA and the exercise of its functions.
- (2) Without prejudice to the generality of subsection (1), the OHPA must publish in such manner as it thinks fit, and within such time as may be specified in rules, decisions of its fitness to practise panels.
- (3) But the OHPA may withhold from publication—
  - (a) information concerning the physical or mental health of a person which the OHPA considers to be confidential, and
  - (b) other information which is of a description specified in rules.
- (4) Nothing in subsection (1) or (2) authorises or requires the publication or provision of information if the publication or provision of that information—
  - (a) is prohibited by any enactment, or
  - (b) would constitute or be punishable as a contempt of court.
- (5) In this section “rules” means rules made by the OHPA.

### **108 Duty to consult**

The OHPA must from time to time seek the views of—

- (a) members of the public,
  - (b) bodies which appear to the OHPA to represent the interests of patients,
  - (c) the General Medical Council and the General Optical Council, and
  - (d) any other bodies which appear to the OHPA to represent the professions regulated by the Medical Act 1983 (c. 54) or the Opticians Act 1989 (c. 44),
- on matters relevant to the exercise by it of its functions.

### **109 OHPA rules: supplementary**

- (1) This section applies to the power of the OHPA to make rules under any of sections 100, 101, 103, 104, 105 and 107.
- (2) The power may be exercised—
  - (a) so as to make different provision for different cases or different classes of case or different provision in respect of the same case or class of case for different purposes of this Act,

- (b) either in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or
  - (c) so as to make any supplementary, incidental, consequential, transitional, transitory or saving provision which the OHPA considers necessary or expedient.
- (3) Before making rules the OHPA must consult—
  - (a) the Council for Healthcare Regulatory Excellence,
  - (b) if the rules affect the profession regulated by the Medical Act 1983, the General Medical Council and any other bodies which appear to the OHPA to represent that profession,
  - (c) if the rules affect the professions regulated by the Opticians Act 1989, the General Optical Council and any other bodies which appear to the OHPA to represent those professions,
  - (d) bodies which appear to the OHPA to represent the interests of patients, and
  - (e) such other persons as the OHPA considers appropriate.
- (4) Rules do not come into force until they have been approved by order of the Privy Council.
- (5) The Privy Council may approve rules—
  - (a) as submitted to them, or
  - (b) subject to such modifications as appear to them to be necessary.
- (6) Where the Privy Council propose to approve rules subject to modifications, they must—
  - (a) notify the OHPA of the modifications they propose to make, and
  - (b) consider any observations which the OHPA may make on the modifications.

## **110 Fees payable by General Medical Council and General Optical Council**

- (1) The Secretary of State must with the approval of the Treasury make regulations requiring each of the regulatory bodies to pay to the OHPA periodic fees in respect of the discharge by the OHPA of its functions.
- (2) The regulations must provide for the amount of the fees to be determined by the OHPA in accordance with the regulations.
- (3) The regulations must require the OHPA to exercise its powers under the regulations with a view to ensuring that its chargeable costs are met by fees payable under the regulations and, accordingly, that the fees payable by each regulatory body cover—
  - (a) so much of the OHPA's chargeable costs as are treated by the regulations as being attributable to the OHPA's functions under the relevant regulatory Act, and
  - (b) an apportionment between the regulatory bodies of so much of the OHPA's chargeable costs as are not treated by the regulations as being attributable to the OHPA's functions under that Act or the other relevant regulatory Act.
- (4) For the purposes of subsection (3), the OHPA's "chargeable costs" are the costs incurred by the OHPA under or for the purposes of this Act or any other enactment, other than costs—
  - (a) incurred before such day as may be specified in the regulations, or

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- (b) incurred for a purpose specified in the regulations.
- (5) The regulations must provide that no fee is to be payable unless the OHPA has—
  - (a) notified the regulatory bodies of its proposed determination as to the amount of the fees payable by them,
  - (b) considered any representations made by the regulatory bodies in relation to the proposed determination, and
  - (c) notified each of the regulatory bodies of the OHPA’s determination of the amount payable by that body (which may be more or less than the amount proposed).
- (6) The regulations may require the OHPA to obtain the approval of the Treasury in relation to the amount of any fee.
- (7) The regulations may—
  - (a) make provision as to the times at which fees are to be paid;
  - (b) enable a determination to be varied, replaced or revoked;
  - (c) provide that if the whole or any part of a fee payable under the regulations is not paid by the time when it is required to be paid under the regulations, the unpaid balance from that time carries interest at the rate determined by or in accordance with the regulations;
  - (d) make provision as to the recovery of fees.
- (8) Before making regulations under this section, the Secretary of State must consult the regulatory bodies and such other persons as the Secretary of State considers appropriate.
- (9) In this section—
  - “regulatory body” means the General Medical Council or the General Optical Council;
  - “relevant regulatory Act” means—
    - (a) in relation to the General Medical Council, the Medical Act 1983 (c. 54), and
    - (b) in relation to the General Optical Council, the Opticians Act 1989 (c. 44).

*Amendments of Part 3 of Health Act 1999*

**111 Extension of powers under s. 60 of Health Act 1999**

Schedule 8 (which contains amendments of section 60 of, and Schedule 3 to, the 1999 Act) has effect.

**112 Standard of proof in fitness to practise proceedings**

After section 60 of the 1999 Act insert—

**“60A Standard of proof in fitness to practise proceedings**

- (1) The standard of proof applicable to any proceedings to which this subsection applies is that applicable to civil proceedings.
- (2) Subsection (1) applies to any proceedings before—



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- (a) the Office of the Health Professions Adjudicator, or
- (b) a committee of a regulatory body, a regulatory body itself or any officer of a regulatory body,

which relate to a person’s fitness to practise a profession to which section 60(2) applies.

- (3) In subsection (2) “regulatory body” means the body (or main body) responsible for the regulation of a profession to which section 60(2) applies.
- (4) An Order in Council under section 60 may not—
  - (a) amend this section, or
  - (b) make any provision that is inconsistent with subsection (1).”

### *The Council for Healthcare Regulatory Excellence*

## **113 The Council for Healthcare Regulatory Excellence**

- (1) The Council for the Regulation of Health Care Professionals is to be known instead as the Council for Healthcare Regulatory Excellence.
- (2) Accordingly, in section 25 of the 2002 Act (which establishes the Council), in subsection (1), for “the Council for the Regulation of Health Care Professionals” substitute “the Council for Healthcare Regulatory Excellence”.
- (3) After subsection (2) of that section insert—
  - “(2A) The main objective of the Council in exercising its functions under subsection (2)(b) to (d) is to promote the health, safety and well-being of patients and other members of the public.”

## **114 Constitution etc. of Council**

- (1) Schedule 7 to the 2002 Act (which contains provisions relating to the Council) is amended as follows.
- (2) For paragraph 4 substitute—
  - “4 The Council is to consist of—
    - (a) a chair appointed by the Privy Council,
    - (b) one non-executive member appointed by the Scottish Ministers,
    - (c) one non-executive member appointed by the Welsh Ministers,
    - (d) one non-executive member appointed by the Department of Health, Social Services and Public Safety in Northern Ireland,
    - (e) three non-executive members appointed by the Secretary of State, and
    - (f) two executive members appointed in accordance with paragraph 11.”
- (3) In paragraph 6—
  - (a) for paragraph (a) substitute—
    - “(a) the conditions to be fulfilled for appointment as chair or other member of the Council,”

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- (b) in paragraph (b), for “chairman and other members” substitute “chair and non-executive members”, and
  - (c) before the “and” at the end of paragraph (b) insert—
    - “(ba) the appointment of a member as deputy chair and the circumstances in which that member ceases to hold, or may be removed from, office as deputy chair.”.
- (4) In paragraph 10, for “chairman” (wherever occurring) substitute “chair”.
- (5) For paragraph 11 substitute—
- “11 (1) The Council may appoint the executive members referred to in paragraph 4(f) on such terms and conditions as the Council may determine.
- (2) The executive members must be employees of the Council.
- (3) Any decision of the Council under sub-paragraph (1) must be taken by the members appointed under paragraph 4(a) to (e).
- (4) The Council may appoint such other employees as it considers appropriate on such terms and conditions as it may determine.”
- (6) In paragraph 16 after sub-paragraph (1) insert—
- “(1A) The report must state—
- (a) how the Council, in exercising its functions, has promoted the health, safety and well-being of patients and other members of the public, and
  - (b) how far, in the opinion of the Council, each regulatory body has complied with any duty imposed on it to promote the health, safety and well-being of such persons.”

## **115 Powers and duties of Council**

In section 26 of the 2002 Act (powers and duties of the Council: general), for subsection (4) substitute—

- “(4) Subsection (3) does not prevent the Council from—
- (a) taking action under section 28,
  - (b) where section 29 applies, taking action under that section after the regulatory body’s proceedings have ended, or
  - (c) investigating particular cases with a view to making general reports on the performance by the regulatory body of its functions or making general recommendations to the regulatory body affecting future cases.”

## **116 Powers of Secretary of State and devolved administrations**

(1) After section 26 of the 2002 Act insert—

### **“26A Powers of Secretary of State and devolved administrations**

- (1) The Secretary of State, the Welsh Ministers, the Scottish Ministers or the relevant Northern Ireland department may request the Council for advice on

any matter connected with a profession appearing to the person making the request to be a health care profession; and the Council must comply with such a request.

(2) The Secretary of State, the Welsh Ministers, the Scottish Ministers or the relevant Northern Ireland department may require the Council to investigate and report on a particular matter in respect of which the Council's functions are exercisable.

(3) In this section “the relevant Northern Ireland department” means the Department of Health, Social Services and Public Safety in Northern Ireland.”

(2) In section 26 of the 2002 Act (powers and duties of the Council: general), omit subsections (7) and (8) (which are superseded by subsection (1) of this section).

## **117 Duty to inform and consult the public**

After section 26A of the 2002 Act insert—

### **“26B Duty to inform and consult the public**

- (1) For the purpose of ensuring that members of the public are informed about the Council and the exercise by it of its functions, the Council must publish or provide in such manner as it thinks fit information about the Council and the exercise of its functions.
- (2) Nothing in subsection (1) authorises or requires the publication or provision of information if the publication or provision of that information—
  - (a) is prohibited by any enactment, or
  - (b) would constitute or be punishable as a contempt of court.
- (3) In subsection (2) “enactment” has the same meaning as in Part 2 of the Health and Social Care Act 2008.
- (4) The Council must from time to time seek the views of—
  - (a) members of the public, and
  - (b) bodies which appear to the Council to represent the interests of patients, on matters relevant to the exercise by it of its functions.”

## **118 Reference of cases by Council to court**

(1) Section 29 of the 2002 Act (reference of disciplinary cases by Council to court) is amended as follows.

(2) In subsection (1)—

(a) for paragraph (a) substitute—

“(a) a direction of—

- (i) the Health Committee of the Royal Pharmaceutical Society of Great Britain under article 51 of the Pharmacists and Pharmacy Technicians Order 2007 (powers concerning registration), or
- (ii) the Disciplinary Committee of that Society under article 52 of that Order (powers concerning

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registration) or under section 80 of the Medicines Act 1968 (power to disqualify and direct removal from register),”

- (b) omit paragraph (c),
- (c) in paragraph (e) omit the words from “(other than a determination” to the end,
- (d) omit paragraph (f),
- (e) for paragraph (g) substitute—
  - “(g) any step taken—
    - (i) by the Professional Conduct Committee of the General Osteopathic Council under section 22 of the Osteopaths Act 1993 (which relates to action to be taken in cases of allegations referred to the Professional Conduct Committee), or
    - (ii) by the Health Committee of the General Osteopathic Council under section 23 of that Act (which relates to action to be taken in cases of allegations referred to the Health Committee),”
- (f) for paragraph (h) substitute—
  - “(h) any step taken—
    - (i) by the Professional Conduct Committee of the General Chiropractic Council under section 22 of the Chiropractors Act 1994 (which relates to action to be taken in cases of allegations referred to the Professional Conduct Committee), or
    - (ii) by the Health Committee of the General Chiropractic Council under section 23 of that Act (which relates to action to be taken in cases of allegations referred to the Health Committee),” and
- (g) for paragraph (j) substitute—
  - “(j) any corresponding measure taken in relation to a member of a profession regulated by the Health Professions Order 2001, under that Order.”

(3) For subsection (5) substitute—

“(5) In subsection (4), the “relevant court” —

- (a) in the case of a person who (in accordance with the rules applying to the body making the relevant decision) was, or was required to be, notified of the relevant decision at an address in Scotland, means the Court of Session,
- (b) in the case of a person who (in accordance with the rules applying to the body making the relevant decision) was, or was required to be, notified of the relevant decision at an address in Northern Ireland, means the High Court of Justice in Northern Ireland, and
- (c) in the case of any other person, means the High Court of Justice in England and Wales.”

(4) In subsection (6) for the words from “four weeks beginning with the last date” to the end substitute “40 days beginning with the day which is the last day on which the practitioner concerned can appeal against the relevant decision”.

- (5) Section 29(1)(c) of the 2002 Act has effect until the coming into force of the repeal of that provision by this Act as if the words “otherwise than by reason of his physical or mental health” were omitted.
- (6) Section 29(1)(f) of the 2002 Act has effect until the coming into force of the repeal of that provision by this Act as if the words from “, other than a direction” to the end were omitted.

*Conduct and performance of medical practitioners and other health care workers*

**119 Responsible officers and their duties relating to medical profession**

After Part 5 of the Medical Act 1983 (c. 54) insert—

**“PART 5A**

**RESPONSIBLE OFFICERS**

**45A Requirement to nominate or appoint responsible officer**

- (1) The appropriate authority may by regulations make provision for or in connection with requiring designated bodies to nominate or appoint persons who are to have such responsibilities as may be conferred on them by virtue of section 45B.
- (2) A person who is so nominated or appointed by a designated body is to be known as its responsible officer (but this is subject to any provision made by virtue of subsection (5)(e)).
- (3) In this Part “designated body” means—
  - (a) a body falling within any description of bodies prescribed for the purposes of this section, or
  - (b) any other body prescribed for those purposes.
- (4) The descriptions of bodies, or particular bodies, that may be so prescribed are descriptions of bodies, or particular bodies, appearing to the appropriate authority—
  - (a) to provide, or arrange for the provision of, health care, or
  - (b) to employ or contract with medical practitioners.
- (5) Regulations under this section may make provision—
  - (a) for conditions that must be satisfied in relation to a person if that person is to be nominated or appointed as, or remain as, a responsible officer of a designated body,
  - (b) authorising or requiring a designated body to nominate or appoint more than one responsible officer,
  - (c) for a single person to be nominated or appointed as the responsible officer for each of two or more designated bodies where those bodies are satisfied as to the prescribed matters,
  - (d) requiring a designated body that has a responsible officer to provide to the officer, or, if that designated body does not employ the

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- officer, to the employer of the officer, funds and other resources necessary for enabling the officer to discharge the officer's prescribed responsibilities as a responsible officer for the designated body,
- (e) for the persons nominated or appointed as mentioned in subsection (1) to be known by such name as is prescribed, and
  - (f) for making such amendments of any enactment as appear to the appropriate authority to be required in connection with any provision made by virtue of paragraph (e).
- (6) The conditions imposed under subsection (5)(a) may in particular include a requirement for the designated body to consult the General Council before nominating or appointing any person as a responsible officer for the body.
- (7) Regulations under this section may in prescribed cases provide that a responsible officer for a designated body is to be nominated by the appropriate authority instead of the designated body.
- (8) In this section—
- “enactment” includes any provision of, or any instrument made under, Northern Ireland legislation;
  - “health care” means services provided to individuals for or in connection with the prevention, diagnosis or treatment of illness;
  - “illness” has the same meaning as in section 25(1) of the Health Act 2006.

#### **45B Responsibilities of responsible officer**

- (1) Regulations under section 45A may make provision for or in connection with—
- (a) conferring on the responsible officer or officers for a designated body responsibilities relating to the evaluation of the fitness to practise of medical practitioners having a prescribed connection with that body, and
  - (b) requiring a responsible officer for a designated body to co-operate with the General Council, any of its committees, or any persons authorised by the General Council, in connection with the exercise by any of them of functions under Part 3A or 5 of this Act.
- (2) Where a designated body has more than one responsible officer, regulations under section 45A may make provision for or in connection with the division of prescribed responsibilities among those officers, including provision for the division to be determined by the designated body.
- (3) The power by virtue of subsection (1)(a) to prescribe the connection between a medical practitioner and a designated body includes, in particular, power to prescribe a connection based on any of the following circumstances—
- (a) the practitioner being employed by the designated body,
  - (b) the practitioner providing services to the designated body,
  - (c) the practitioner being employed by a person who provides services to the designated body,
  - (d) the practitioner providing services in the geographical area in relation to which the designated body exercises functions in relation to the provision of the health service, or

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*Status: This is the original version (as it was originally enacted).*

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- (e) the practitioner being employed by or providing services to, or pursuant to arrangements made by, a body which is located in the geographical area in relation to which the designated body exercises functions in relation to the provision of the health service but is not itself a designated body.
- (4) A designated body may confer on any of its responsible officers such powers as it considers appropriate to enable the officer to discharge any of the officer's prescribed responsibilities as a responsible officer for the body.
- (5) If a designated body requires any of its responsible officers to carry out any functions other than the officer's prescribed responsibilities, it must in doing so have regard to the officer's prescribed responsibilities.
- (6) In this section "the health service" means—
  - (a) the health service as defined by section 275(1) of the National Health Service Act 2006 or section 206(1) of the National Health Service (Wales) Act 2006,
  - (b) the health service as defined by section 108(1) of the National Health Service (Scotland) Act 1978, or
  - (c) any of the health services under any enactment which extends to Northern Ireland and which corresponds to section 1(1) of the National Health Service Act 2006.

#### **45C Regulations under section 45A: further provisions**

- (1) Regulations under section 45A may—
  - (a) create offences punishable on summary conviction by a fine not exceeding level 5 on the standard scale, and
  - (b) create other procedures for enforcing any provisions of the regulations.
- (2) Regulations under section 45A may require a designated body or a responsible officer to have regard to any guidance given from time to time by the appropriate authority or any other prescribed person in relation to the nomination or appointment of responsible officers or their prescribed responsibilities.
- (3) Regulations under section 45A may make provision requiring—
  - (a) a body which employs, or is provided with services by, a medical practitioner, or which arranges for others to be provided with services by a medical practitioner, but which is not a designated body, or
  - (b) a medical practitioner,to provide, to the responsible officer with prescribed responsibilities relating to that medical practitioner or to the designated body for which the officer is a responsible officer or, if that designated body does not employ the responsible officer, to the employer of the officer, funds and other resources necessary for enabling the responsible officer to discharge the officer's prescribed responsibilities relating to that medical practitioner.
- (4) Regulations under section 45A may make provision for or in connection with requiring prescribed persons to supply information or produce documents to a responsible officer in connection with the discharge of the prescribed responsibilities of the responsible officer.

**45D Crown application**

- (1) This Part binds the Crown.
- (2) No contravention by the Crown of any provision of this Part or regulations made under this Part makes the Crown criminally liable; but the High Court (or, in Scotland, the Court of Session) may declare unlawful any act or omission of the Crown which constitutes such a contravention.
- (3) The provisions of this Part apply to persons in the service of the Crown as they apply to other persons.
- (4) Nothing in this section affects Her Majesty in her private capacity; and this subsection is to be read as if section 38(3) of the Crown Proceedings Act 1947 (meaning of Her Majesty in her private capacity) were contained in this Act.

**45E Regulations under section 45A: supplementary provisions**

- (1) The power of the Secretary of State to make regulations under section 45A is exercisable by statutory instrument.
- (2) Before making any regulations under section 45A, the Secretary of State must consult—
  - (a) the Scottish Ministers, if the regulations extend to Scotland, and
  - (b) the Welsh Ministers, if the regulations apply to Wales.
- (3) A statutory instrument that—
  - (a) contains regulations made by the Secretary of State under section 45A, and
  - (b) is not subject to a requirement that a draft of the instrument be laid before, and approved by a resolution of, each House of Parliament,is subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) The Secretary of State may not make a statutory instrument containing (whether alone or with other provision) the first regulations under section 45A that include provision made by the Secretary of State by virtue of section 45B unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (5) The power of the Department of Health, Social Services and Public Safety in Northern Ireland to make regulations under section 45A is exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979.
- (6) A statutory rule that—
  - (a) contains regulations made by the Department of Health, Social Services and Public Safety in Northern Ireland under section 45A, and
  - (b) is not subject to a requirement that a draft of the statutory rule be laid before, and approved by a resolution of, the Northern Ireland Assembly,is subject to negative resolution within the meaning of section 41(6) of the Interpretation Act (Northern Ireland) 1954.



- (7) The Department of Health, Social Services and Public Safety in Northern Ireland may not make a statutory rule containing (whether alone or with other provision) the first regulations under section 45A that include provision made by the Department by virtue of section 45B unless a draft of the statutory rule has been laid before, and approved by a resolution of, the Northern Ireland Assembly.
- (8) Regulations under section 45A may make different provision for different cases.

#### **45F Interpretation of Part 5A**

In this Part—

“the appropriate authority” means—

- (a) in relation to England and Wales or Scotland, the Secretary of State, or
- (b) in relation to Northern Ireland, the Department of Health, Social Services and Public Safety in Northern Ireland;

“designated body” has the meaning given by section 45A(3);

“prescribed” means prescribed by regulations under section 45A.”

#### **120 Additional responsibilities of responsible officers: England and Wales and Northern Ireland**

- (1) Regulations under this section may confer on a responsible officer nominated or appointed for the purposes of regulations under section 45A of the Medical Act 1983 (c. 54) (requirement to nominate or appoint responsible officer) additional responsibilities that relate to—
  - (a) the entry by the designated body into contracts of employment with medical practitioners or into contracts for the provision of services by such practitioners,
  - (b) the monitoring of the conduct or performance of medical practitioners who have a prescribed connection with the designated body, or
  - (c) ensuring that appropriate action is taken in response to concerns about such conduct or performance,but do not relate to the regulation under that Act of the medical profession.
- (2) Subject to subsection (3), the power to make regulations under this section is exercisable—
  - (a) in relation to England, by the Secretary of State,
  - (b) in relation to Wales, by the Welsh Ministers, or
  - (c) in relation to Northern Ireland, by the Department of Health, Social Services and Public Safety in Northern Ireland.
- (3) In relation to cross-border bodies, the power to make regulations under this section is exercisable by the Secretary of State after consultation with the Welsh Ministers.
- (4) For the purposes of this section a “cross-border body” is a body which—
  - (a) performs (and only performs) functions in respect of England and Wales, and
  - (b) does not perform functions mainly in respect of England or mainly in respect of Wales.

- (5) Sections 45A(5)(d), 45B(2) to (5) and 45C(1), (3) and (4) of the Medical Act 1983 (c. 54) (provisions that may be included in regulations under section 45A of that Act and responsibilities of responsible officers) apply in relation to regulations under this section as they apply in relation to regulations under section 45A of that Act but as if—
- (a) references to prescribed responsibilities were references to responsibilities conferred by regulations under this section,
  - (b) the reference in section 45B(2) to regulations under section 45A were a reference to regulations under this section, and
  - (c) the reference in section 45B(3) to subsection (1)(a) of that section were a reference to subsection (1)(b) of this section.
- (6) Subject to subsection (7), regulations under this section may require a designated body or a responsible officer to have regard to any guidance given from time to time by the Secretary of State, the Welsh Ministers or the Department of Health, Social Services and Public Safety in Northern Ireland (as the case may be), or by any other person prescribed by the regulations, in relation to responsibilities conferred on responsible officers by the regulations.
- (7) In relation to cross-border bodies, the reference in subsection (6) to the Secretary of State is to be read as a reference to the Secretary of State after consultation with the Welsh Ministers.
- (8) Expressions used in this section and in Part 5A of the Medical Act 1983 (responsible officers) have the same meaning in this section as in that Part.

## **121 Co-operation between prescribed bodies**

- (1) The appropriate Minister may by regulations make provision for or in connection with requiring a designated body to co-operate with any other designated body in connection with—
- (a) the sharing of information which relates to the conduct or performance of any health care worker and which may show that that worker is likely to constitute a threat to the health and safety of patients,
  - (b) the provision of information in response to requests for information from any other designated body about the conduct or performance of any health care worker,
  - (c) the consideration of any issues which arise as a result of the acts mentioned in paragraphs (a) and (b), and
  - (d) the taking of any prescribed steps following such consideration.
- (2) Regulations under this section may make provision requiring a designated body to disclose the information referred to in subsection (1)(a) and any information disclosed under subsection (1)(b) to any other designated body in prescribed circumstances, or in circumstances where it appears to that body that the prescribed conditions are satisfied, whether or not the disclosure of information has been requested.
- (3) Regulations under this section may—
- (a) create offences punishable on summary conviction by a fine not exceeding level 5 on the standard scale, and
  - (b) create other procedures for enforcing any provisions of the regulations.

- (4) Regulations under this section may require a designated body to have regard to any guidance given from time to time by the appropriate Minister or any other prescribed person.
- (5) In making regulations under this section the appropriate Minister must have regard to the importance of avoiding unfair prejudice to health care workers against whom unsubstantiated allegations are made.
- (6) In this section—
- “the appropriate Minister” means the Secretary of State except that, in relation to co-operation by a Welsh health body or a Welsh social services body, it means the Welsh Ministers;
  - “designated body” means—
    - (a) any body which is a designated body for the purposes of Part 5A of the Medical Act 1983 (c. 54), and
    - (b) any other body prescribed for the purposes of this section;
  - “health care” has the meaning given by section 45A(8) of the Medical Act 1983;
  - “health care worker” means—
    - (a) any person who is a member of a prescribed profession concerned with the physical or mental health of individuals, or
    - (b) any person who—
      - (i) is employed by a designated body,
      - (ii) provides services to a designated body, or
      - (iii) is employed by a person who provides services to a designated body,
- for purposes connected with the provision of health care;
- “prescribed” means prescribed by regulations under this section;
- “Welsh health body” means—
  - (a) a Welsh NHS body, as defined by section 148 of the Health and Social Care (Community Health and Standards) Act 2003 (c. 43), or
  - (b) any other person providing or arranging for the provision of health care in Wales;
- “Welsh social services body” means—
  - (a) the council of a county or county borough in Wales, or
  - (b) a body engaged in the provision of Welsh local authority social services, as defined by section 148 of the Health and Social Care (Community Health and Standards) Act 2003.

## **122 Ss. 120 and 121: Crown application**

- (1) Sections 120 and 121 bind the Crown.
- (2) No contravention by the Crown of any provision of either of those sections or regulations made under them makes the Crown criminally liable; but the High Court may declare unlawful any act or omission of the Crown which constitutes such a contravention.
- (3) The provisions of those sections apply to persons in the service of the Crown as they apply to other persons.

- (4) Nothing in this section affects Her Majesty in her private capacity; and this subsection is to be read as if section 38(3) of the Crown Proceedings Act 1947 (c. 44) (meaning of Her Majesty in her private capacity) were contained in this Act.

### *Hearing Aid Council*

#### **123 Dissolution of Hearing Aid Council**

- (1) The Hearing Aid Council is dissolved.
- (2) The Hearing Aid Council Act 1968 (c. 50) and the Hearing Aid Council (Extension) Act 1975 (c. 39) cease to have effect.
- (3) An order under section 170(3) may not appoint a day for the coming into force of—
- (a) subsection (1), or
  - (b) subsection (2), so far as relating to the profession mentioned in section 60(2)(ca) of the Health Act 1999 (c. 8),
- unless the following conditions are met.
- (4) Those conditions are—
- (a) that an Order in Council under section 60 of the Health Act 1999 (regulation of health care and associated professions) has made provision by virtue of subsection (2)(ca) of that section (regulation of dispensers of hearing aids), and
  - (b) that the day appointed under section 170(3) is not earlier than the day on which the Order in Council, so far as making such provision, comes into force.
- (5) The Secretary of State may by order make provision for the transfer of property, rights and liabilities of the Hearing Aid Council to any relevant regulatory body or to the Secretary of State.
- (6) For that purpose a “relevant regulatory body” is any body which under an Order in Council under section 60 of the Health Act 1999 (c. 8) is responsible for the regulation of the profession mentioned in subsection (2)(ca) of that section.

### *Regulation of social care workforce*

#### **124 Regulation of social care workers**

- (1) The appropriate Minister may by regulations make provision modifying the regulation of social care workers, so far as appears to the appropriate Minister to be necessary or expedient for the purpose of securing or improving their regulation or the services which they provide or to which they contribute.
- (2) Schedule 9 (which makes further provision about regulations under this section) has effect.
- (3) In this section and that Schedule—
- “the appropriate Minister” means—
- (a) in relation to England, the Secretary of State, and
  - (b) in relation to Wales, the Welsh Ministers;

“social care worker” means a person who falls within any of paragraphs (a) to (d) of subsection (2) of, or paragraphs (a) to (g) of subsection (3) of, section 55 of the Care Standards Act 2000 (c. 14) (which sets out the persons who are, or may by virtue of regulations be treated as, social care workers for the purposes of Part 4 of that Act).

- (4) The references in subsection (1) to the regulation of social care workers include references to—
- (a) the regulation of social care workers of a description in relation to which no provision for registration for the time being applies,
  - (b) the regulation of those seeking registration as social care workers of any description or of persons who were, but are no longer, registered as social care workers of any description, and
  - (c) the regulation of activities carried on by persons who are not social care workers but which are carried on in connection with the activities carried on by social care workers.

## **125 Standard of proof in proceedings relating to registration of social care worker**

- (1) The standard of proof applicable to any proceedings to which this subsection applies is that applicable to civil proceedings.
- (2) Subsection (1) applies to any proceedings before a committee of a Council, a Council itself or any officer of a Council which relate to a person’s suitability to be or remain registered as a social care worker of any description.
- (3) In subsection (2)—
  - (a) references to a Council are references to the General Social Care Council or the Care Council for Wales, and
  - (b) “social care worker” has the same meaning as in section 124.
- (4) Regulations under section 124 may not—
  - (a) amend this section, or
  - (b) make any provision that is inconsistent with subsection (1).

### *Approved mental health professionals*

## **126 Education and training of approved mental health professionals**

- (1) The appropriate Minister may by regulations make provision modifying the functions of the General Social Care Council or the Care Council for Wales in relation to the education and training of persons who are or wish to become approved mental health professionals.
- (2) The power to make regulations under subsection (1) may be exercised by amending, repealing or applying (with or without modifications) any provision of any enactment and any other instrument or document.
- (3) Paragraphs 4 to 6 and 9 and 10 of Schedule 9 apply to the making of regulations under subsection (1) as they apply to the making of regulations under section 124 but as if the references in paragraphs 9 and 10 to social care workers were references to approved mental health professionals.

(4) In this section—

“the appropriate Minister” means—

- (a) in relation to the General Social Care Council, the Secretary of State, and
- (b) in relation to the Care Council for Wales, the Welsh Ministers;

“approved mental health professional” has the same meaning as in section 114 of the Mental Health Act 1983 (c. 20);

“functions” includes powers and duties.

### *General*

## **127 Further amendments relating to Part 2**

Schedule 10 (which contains further amendments relating to this Part) has effect.

## **128 Interpretation of Part 2**

In this Part—

“the 1999 Act” means the Health Act 1999 (c. 8);

“the 2002 Act” means the National Health Service Reform and Health Care Professions Act 2002 (c. 17);

“enactment” means an enactment contained in, or in an instrument made under—

- (a) an Act of Parliament,
- (b) an Act of the Scottish Parliament,
- (c) a Measure or Act of the National Assembly for Wales, or
- (d) Northern Ireland legislation;

“the OHPA” means the Office of the Health Professions Adjudicator.