

# HEALTH AND SOCIAL CARE ACT 2008

---

## EXPLANATORY NOTES

### TERRITORIAL EXTENT

#### *Interpretation*

#### **Part 2 – Regulation of Health Professions and Health and Social Care Workforce**

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

#### *Schedule 7*

308. *Schedule 7* is split into two parts. Part 1 makes amendments to the Medical Act 1983 and Part 2 makes amendments to the Opticians Act 1989. These have the effect of transferring to the OHPA the functions of the GMC and the GOC in relation to the adjudication of fitness to practise cases.
309. *Paragraph 4* inserts a new *section 35ZA* into the Medical Act 1983. This provides that the GMC may publish guidance on the factors that they consider to indicate:
- where a practitioner's fitness to practise is found to be impaired, what sanction would or would not be appropriate;
  - where a practitioner's fitness to practise is found not to be impaired, whether a warning should or should not be given regarding future conduct or performance;
  - and where a person has had his name erased from the register, whether their registration should be restored or not.
310. The GMC may also publish guidance on:
- the type of conditions to be imposed, where a practitioner's registration is to be made conditional;
  - the period of time for which a person's registration should be suspended or made conditional.
311. *Paragraph 30* inserts a new *section 13AA* into the Opticians Act 1989, providing that the GOC may publish similar guidance in relation to types of sanctions available, in cases involving those regulated by the Opticians Act 1989.
312. *Undersubsection (3)* of each of the new sections described above, the OHPA must take account of any guidance published by the GMC and the GOC under these powers (in their capacity as the body responsible for setting and maintaining the standards required of their registrants) when making decisions on what sanctions to impose in any particular case.
313. *Paragraph 11* inserts a new *section 40A* into the Medical Act 1983, allowing the GMC to refer a case to the High Court, or in Scotland the Court of Session, where it thinks that the OHPA has reached a finding relating to fitness to practise that is unduly lenient, and that it is necessary in the interests of public protection for it to take action. The

*These notes refer to the Health and Social Care Act 2008  
(c.14) which received Royal Assent on 21 July 2008*

new section sets out the decisions which can be referred and the timescales for such referrals. The provision is in place of the CRHP's power under section 29 of the Health Care Professions Act 2002 to refer equivalent decisions of the GMC's fitness to practise panels to the court.

314. *Paragraph 46* inserts a new *section 23I* into the Opticians Act 1989, allowing the GOC similar rights of referral.