

HEALTH AND SOCIAL CARE ACT 2008

EXPLANATORY NOTES

TERRITORIAL EXTENT

Regulation of social care workforce

Section 124: Regulation of social care workers

382. [Section 124](#) enables the Secretary of State (in relation to England) and the Welsh Ministers (in relation to Wales) to make regulations modifying the regulation of social care workers. Regulations may amend or repeal any enactment (subject to paragraphs 3 and 8 of Schedule 9). [Subsection \(3\)](#) defines “social care worker” by reference to the definition in section 55 of the Care Standards Act 2000.
383. [Subsection \(4\)](#) makes it clear that certain matters are covered by the references to the regulation of social care workers and are therefore within the scope of regulations under section 124. Paragraphs (a) and (b) cover social care workers who fall within the definition in section 55 of the Care Standards Act 2000 but who are not yet subject to registration, those who have applied for registration but are not yet registered, and those who have been, but are no longer, registered. Paragraph (c) makes it possible (if thought necessary or expedient in the future) to regulate activities carried on by persons who are not social care workers in connection with activities carried on by social care workers.
384. It is intended that regulations will be made to enable the legislative framework governing the social care workforce to be kept up to date, to take account of changing public expectations of the workforce and to take account of the workforce’s own views about the development of their regulation. New responsibilities can also be given to the Councils.
385. [Schedule 9](#) supplements section 124.

Schedule 9: Regulation of social care workers

386. [Paragraph 2](#) of the Schedule gives examples of the matters which may be dealt with in regulations. Regulations may make changes to any aspect of the regulation of the social care workforce, subject to the limitations in [paragraphs 3](#) and [8](#).
387. [Paragraph 3](#) prevents the amendment by regulations of section 55 of the Care Standards Act 2000 which contains the definition of “social care worker” and is used for the purposes of section 124 and the Schedule. But it permits the amendment or repeal of any other provision of the Act or any other enactment, instrument or document.
388. [Paragraph 4](#) enables regulations to make provision for the delegation of functions, including the power to make, confirm or approve subordinate legislation. This paragraph enables regulations to confer the power on the Councils to make rules, and to make provision for any such rules to be confirmed or approved. Currently, the Care Standards Act 2000 enables the Councils to make rules about issues detailed in Part 4 of that Act. Any such rules are subject to the approval of the appropriate Minister.

389. *Paragraph 5(a)* provides for regulations to make provision about the charging of fees. It is intended that where fees are charged, the level of those fees will not exceed the costs incurred in exercising the function to which the fees relate.
390. *Paragraph 6* enables regulations made by the Secretary of State to confer functions on Ministers of the Crown. It also enables regulations made by the Welsh Ministers to confer functions on the Welsh Ministers. For example, regulations might enable a Minister to pay grants to a body. Any conferment of functions would be subject to *paragraph 8*.
391. *Paragraph 7* limits the new criminal offence that can be created using this power to one which, on summary conviction, leads to a fine not exceeding level 5 on the standard scale.
392. *Paragraph 8* provides that regulations cannot abolish either the GSCC or the CCW. Paragraphs 8(2) and (3) state that regulations may not transfer to any other person certain functions conferred on the Councils (or any of their committees or officers) by the Care Standards Act 2000. These functions are: the keeping of the register of social care workers; determining standards of education and training required as a condition of registration; giving advice about standards of conduct and performance; and administering procedures relating to misconduct, removal from registration and similar matters.
393. *Paragraph 9* obliges the Secretary of State, before making regulations under section 124 (in relation to England), to consult persons appearing to him appropriate to represent social care workers affected by the regulations and to represent those provided with services by them and to consult other persons that the Secretary of State considers it appropriate to consult. The consultation will be on the basis of the draft regulations. The Secretary of State must publish these in draft three months before they are laid before Parliament. Following consultation, the draft regulations will be laid before Parliament (as originally drafted or with appropriate amendments) accompanied by a report about the consultation. Draft regulations will be subject to Parliamentary scrutiny under the affirmative procedure.
394. *Paragraph 10* imposes requirements, similar to those contained in paragraph 9, upon the Welsh Ministers in relation to the procedure for making regulations in relation to Wales.

Section 125: Standard of proof in proceedings relating to registration of social care worker

395. *Section 125* makes provision for the civil standard of proof to be used in any proceedings which relate to a social care worker's suitability to be or remain registered. The civil standard is to be used in all such proceedings whether before the GSCC or the CCW, or before one of their committees or any of their officers. It ensures that the civil standard of proof is applied consistently by all of the health and social care professions' regulatory bodies.
396. *Subsection (4)* prevents regulations made under section 124 from amending section 125 or making any provision that is inconsistent with the requirement to adopt the civil standard of proof. This means that any change to the requirement to use the civil standard can only be made through another Act of Parliament.