

# HEALTH AND SOCIAL CARE ACT 2008

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## EXPLANATORY NOTES

### TERRITORIAL EXTENT

#### *Functions of Health Protection Agency in relation to biological substances*

#### **Part 6 – General**

#### *Section 162: Orders and regulations: Parliamentary control*

535. *Section 162* provides that all regulation and order making powers of the Secretary of State and the powers of the Privy Council to make an order approving rules made by the OHPA (section 109) and to make regulations about the membership of the OHPA (Schedule 6), will be subject to the negative resolution procedure, other than in the following cases:
- where subsection (3) or (4) applies, in which case the instrument must be approved by resolution of each House of Parliament; or
  - where the order is a commencement order under section 170, in which case there is no Parliamentary procedure.
536. *Subsection (3)* lists those orders and regulations of the Secretary of State which will be subject to affirmative resolution procedure. They are as follows:
- regulations defining “regulated activity” (section 8(1)) for the purposes of registration in respect of the provision of health or social care;
  - regulations under section 20 which provide for the establishment of a criminal offence carrying a maximum fine in excess of level 4 on the standard scale (currently £2,500);
  - regulations under section 43 modifying Chapter 2 of Part 1 (registration in respect of the provision of health or social care) of the Act in relation to newly regulated activities;
  - regulations made under section 87(1)(b) which provide for a penalty in excess of level 4 on the standard scale (currently £2,500);
  - the first regulations made under section 120 (additional responsibilities of responsible officers);
  - regulations making provision modifying the regulation of social care workers (section 124) or making provision modifying the functions of the GSSC in relation to the education and training of AMHPs (section 126); and
  - orders containing transitional or consequential provision (section 167) which amend or repeal any provision of an Act of Parliament.
537. *Subsection (4)* provides that the Privy Council may not, under section 109, make a statutory instrument approving rules of the OHPA that contain (either alone or with

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

other provision) provision for the piloting of legally qualified chairs, made by virtue of section 100(4), unless a draft has been approved by a resolution of each House of Parliament.