

HEALTH AND SOCIAL CARE ACT 2012

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 7 – Regulation of Health and Social Care Workers

The Professional Standards Authority for Health and Social Care

1314. The following sections concern changes to the Council for Healthcare Regulatory Excellence, which will become the Professional Standards Authority for Health and Social Care.

Section 222 - The Professional Standards Authority for Health and Social Care

1315. This section changes the name of the Council for Healthcare Regulatory Excellence to the Professional Standards Authority for Health and Social Care, and makes amendments to the National Health Service Reform and Health Care Professions Act 2002 required as a result of the change of name.
1316. The name change reflects its new functions in overseeing the Health and Care Professions Council, and its new power to accredit voluntary registers of unregulated health professionals and unregulated health care workers in the UK, and unregulated social care workers in England.
1317. The Council for Healthcare Regulatory Excellence was established by section 25 of the 2002 Act and its functions are set out in sections 25 to 29 of that Act. It is currently responsible for the scrutiny and quality assurance of the nine health professional regulatory bodies in the UK, namely the General Medical Council, the General Dental Council, the General Optical Council, the General Osteopathic Council, the General Chiropractic Council, the General Pharmaceutical Council, the Pharmaceutical Society of Northern Ireland, the Nursing and Midwifery Council and the Health Professions Council (which is renamed the Health and Care Professions Council by this Act).

Section 223 - Functions of the Authority

1318. This section makes amendments to the 2002 Act to make changes to the functions of the Authority.
1319. Given that the Health and Care Professions Council will take on the regulation of social workers in England, the regulatory bodies which the Authority will have functions in relation to will include a regulatory body that regulates social workers in England. This necessitates a number of changes to the Authority's functions in the 2002 Act.
1320. *Subsections (1), (2), (6) and (14)* amend sections 25 and 26B of, and paragraph 16 of Schedule 7 to, the 2002 Act to provide for those functions of the Authority which relate to the interests of patients or the health, safety and well-being of patients to instead relate to the interests, or the health, safety and well-being, of users of health care, users of social care in England and users of social work services in England.

1321. *Subsection (3)* inserts a new subsection into section 26A of the 2002 Act to empower the Secretary of State to request advice from the Authority on matters connected with the social work profession, or social care workers, in England and requires the Authority to comply with the request. Section 26A already empowers the Secretary of State, the Welsh Ministers, the Scottish Ministers and the Department of Health, Social Services and Public Safety in Northern Ireland to ask the Authority for advice on any matter connected with a health care profession and to require the Authority to investigate and report on any matter in relation to which it has functions. *Subsection (4)* imposes a new duty on the Secretary of State, the Welsh Ministers, the Scottish Ministers and the Department of Health, Social Services and Public Safety in Northern Ireland to pay a fee, determined by the Authority, for any advice requested, or investigations or reports commissioned, under section 26A.
1322. Under section 29 of the 2002 Act, the Authority has the power to refer to court final fitness to practise decisions taken in relation to registered professionals by the regulatory bodies, where it considers that a decision is unduly lenient or should not have been made, and where it considers that a referral would be desirable for the protection of the public. As the regulation of social workers in England is being transferred to the Health and Care Professions Council, the Authority's powers under section 29 will extend to decisions taken in relation to social workers in England. *Subsection (10)* amends section 29 to provide that, when the Authority refers a decision about a social worker in England to a court, it must be referred to the High Court of Justice in England and Wales. This is to prevent decisions about social workers in England being referred to the Court of Session in Scotland or the High Court of Justice in Northern Ireland, which would not be appropriate.
1323. *Subsections (7) and (8)* amend section 27 of the 2002 Act. Under [section 27](#), the Authority has powers to direct regulatory bodies to make rules.
1324. The duties on the Secretary of State under this section to:
- a) lay a draft of an order setting out directions the Authority has given requiring a regulatory body to make rules before both Houses of Parliament, and
 - b) make regulations about the procedure to be followed in relation to the giving of directions by the Authority,
- are conferred instead on the Privy Council. As before, orders made under this section are subject to the affirmative resolution procedure, and regulations made under this section are subject to the negative resolution procedure.

Section 224 - Funding of the Authority

1325. This section inserts a new section 25A into the 2002 Act, which provides for changes to the way in which the Authority is funded.
1326. New section 25A places a duty on the Privy Council to make regulations requiring each regulatory body listed in section 25(3) of the 2002 Act to pay periodic fees in respect of such of the functions of the Authority as are specified in the regulations (with the exception of those functions relating to the provision of advice, investigations and reports under section 26A and its functions in relation to voluntary registration under new sections 25G to 25I).
1327. The regulations will be subject to consultation with the Authority, the regulatory bodies and such other persons as the Privy Council considers appropriate. The regulations will be subject to parliamentary control under the negative resolution procedure in the Westminster Parliament and, where they contain matters which fall within the legislative competence of the Scottish Parliament, the Scottish Parliament.
1328. The amount of the fees to be paid by the regulatory bodies will be determined by the Privy Council in accordance with these regulations. The section sets out the process

and consultation that the Privy Council must undertake in determining the fees which must be paid by the regulatory bodies, and makes further specific provision about the matters that may be dealt with in the regulations.

1329. *Subsection (4)* of this section gives the Authority a new power to borrow money for the purposes of, or in connection with, its functions from persons other than the Secretary of State, the National Assembly for Wales, the Scottish Ministers or the Department of Health, Social Services and Public Safety in Northern Ireland.

Section 225 - Power to advise regulatory bodies, investigate complaints etc.

1330. This section inserts a new section 25B into the 2002 Act. It empowers the Authority to provide advice or auditing services to the regulatory bodies, or to bodies with functions that correspond to those of the regulatory bodies, whether or not these relate to health or social care.
1331. A compulsory fee, determined by the Authority, will be paid by the bodies to which it provides advice. However, the Authority may only provide advice or auditing services under new section 25B if doing so would assist it in the performance of its functions, apart from its function of providing advice, reports or investigations to the Secretary of State or the devolved administrations under section 26A.
1332. *Subsections (2) and (3)* amend the power under section 28 of the 2002 Act which enables the Secretary of State to make regulations about the investigation by the Authority of complaints made to it about the regulatory bodies. The Secretary of State's power to make regulations will be conferred on the Privy Council instead. These regulations, as now, will be subject to the affirmative resolution procedure.

Section 226 - Accountability and governance

1333. This section amends Schedule 7 to the 2002 Act to make changes to the way in which members of the Authority are appointed, to its constitution, and to its accountability and governance provisions.
1334. Previously:
- the chair of the Authority was appointed by the Privy Council,
 - three non-executive members were appointed by the Secretary of State, and
 - one non-executive member was appointed by each of the Scottish Ministers, the Welsh Ministers and the Department of Health, Social Services and Public Safety in Northern Ireland.
1335. *Subsection (2)* of this section provides that the three Secretary of State appointments are Privy Council appointments. The number of executive members is also reduced from two to one.
1336. *Subsection (4)* amends paragraph 10 of Schedule 7 to the 2002 Act to confer on the Authority the power to determine the remuneration and allowances of its members and committee or sub-committee members, to determine the pensions of the chair and other members of the Authority, and to determine whether any compensation should be payable to an ex-chair of the Authority.
1337. *Subsections (3) and (6)* amend paragraphs 6 and 15 of Schedule 7 to the 2002 Act to provide for the following of the Secretary of State's current powers to be conferred instead on the Privy Council:
- the power to make regulations about appointments to the Authority and the appointment of, constitution of, and exercise of functions by its committees and sub-committees. These regulations will be subject to the negative resolution procedure;

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(c.7) which received Royal Assent on 27 March 2012*

- the power to determine the form of accounts which must be kept by the Authority;
 - the power to determine the form of the annual accounts which must be prepared by the Authority; and
 - the power to determine the period after the end of the financial year within which the Authority must send a copy of its annual accounts to the Comptroller and Auditor General.
1338. The Authority is no longer required to send copies of its annual accounts to the Secretary of State.
1339. *Subsection (7)* places a new duty on the Authority to publish a strategic plan for the coming financial year (and for such subsequent years as it may determine) by a date determined by the Privy Council. The Authority must also lay its strategic plans before the four UK parliaments and assemblies as soon as possible after the end of the financial year.

Section 227 - Appointments to regulatory bodies

1340. This section inserts a new section 25C into the 2002 Act which makes provision in relation to Privy Council appointments to the regulatory bodies and Privy Council and other appointments to the Authority.
1341. The Privy Council is given the power to appoint members of the regulatory bodies (with the exception of the Pharmaceutical Society of Northern Ireland) under their various governing enactments, and to appoint the chair and three non-executive members of the Authority. The Privy Council's appointments functions in relation to members of the regulatory bodies and the chair of the Authority were delegated to the Appointments Commission by means of directions made under powers in the Health Act 2006. Given that the Appointments Commission is abolished by this Act, it will not carry out such appointments on the Privy Council's behalf, and a new approach to the making of Privy Council appointments to the regulatory bodies and the Authority is needed.
1342. Therefore, new section 25C empowers the Privy Council and a regulatory body to make arrangements for the regulatory body in question (or a third party, such as a recruitment agency) to assist the Privy Council to make appointments to that regulatory body (including the appointment of chairs of the regulatory bodies and the determination of the terms of office of members and chairs). It empowers the Authority to assist the Privy Council to make appointments to both the Authority and to the regulatory bodies. It also empowers the Privy Council to make arrangements with any other person to assist it to make appointments to the Authority or the regulatory bodies. In each case, however, the function of making the appointment rests with the Privy Council.
1343. The Scottish Ministers, the Welsh Ministers and the Department of Health, Social Services and Public Safety in Northern Ireland each have the power to appoint one non-executive member of the Authority and, in subsections (4) to (6) of new section 25C the Authority is given the power to make arrangements with the Scottish Ministers, the Welsh Ministers and the Department of Health, Social Services and Public Safety in Northern Ireland for the Authority to assist them in making these appointments.

Section 228 – Establishment of voluntary registers

1344. This section inserts new sections 25D, 25E and 25F into the 2002 Act.
1345. Section 25D empowers the regulatory bodies to establish and maintain voluntary registers of persons who are or have been unregulated health professionals and unregulated health care workers in the UK, and unregulated social care workers in England. With the exception of the Health and Care Professions Council, this power is limited to establishing and maintaining voluntary registers of groups whose work

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supports or relates to the work of the profession which the body regulates. The terms “voluntary register”, “unregulated health professional”, “unregulated health care worker” and “unregulated social care worker in England” are defined in section 25E.

1346. Section 25E defines ‘voluntary register’ for the purposes of section 25D. A voluntary register is a register of persons who are not required by any enactment to be on that register in order to use a title, practise a profession, engage in health care work in the UK or social care work in England or undertake certain studies. It is defined in such a way that, should one or more of the administrations in England, Scotland, Wales or Northern Ireland decide to make it compulsory for persons in that part of the UK to be on a particular register in order to do one or more of these things, that register would still be regarded as a voluntary register in so far as it registers persons in other parts of the UK (in relation to which no requirement to be on that register exists). It is also defined in such a way that, if an enactment makes it compulsory for a person to be on a particular register in order to carry out work or practice of a particular kind but only for a specific purpose, that register will remain a voluntary register. An example would be if a statutory instrument required a person to be on a particular register in order to work as a health care support assistant in the NHS in England (but not in order to work as a health care support assistant outside the NHS in England).
1347. Under section 25D, regulatory bodies may also establish and maintain voluntary registers of certain students. This power, for each regulatory body, is limited to establishing and maintaining voluntary registers of persons studying to become a member of a profession regulated by that body or in relation to which that body maintains a voluntary register, or studying to engage in work as an unregulated health care worker or unregulated social care worker in England in relation to which that body maintains a voluntary register.
1348. All of the regulatory bodies have a UK-wide scope, with the exception of the General Pharmaceutical Council, which is the regulator of pharmacists, pharmacy technicians and pharmacy premises in Great Britain, and the Pharmaceutical Society of Northern Ireland, which is the regulator of pharmacists and pharmacy premises in Northern Ireland. The General Pharmaceutical Council may only establish and maintain voluntary registers under section 25D for persons who are, or have been, engaged in work or participating in studies in Great Britain, and the Pharmaceutical Society of Northern Ireland may only establish and maintain voluntary registers for persons who are, or have been, engaged in work or participating in studies in Northern Ireland. The exception to this is where the General Pharmaceutical Council and Pharmaceutical Society of Northern Ireland jointly establish a voluntary register, which can have UK-wide scope.
1349. Section 25D also provides a power for the regulatory bodies to establish and maintain a voluntary register jointly with another regulatory body. Where voluntary registers are joint, the regulatory bodies maintaining that register will remain subject to the same limits on the types of register which can be maintained, and their geographical scope, as would apply to each regulatory body maintaining a register individually (with the limited exception described above in relation to a joint register maintained by the General Pharmaceutical Council and the Pharmaceutical Society of Northern Ireland).
1350. Subsection (12) of section 25D provides that persons requesting registration, or the renewal of registration, on a voluntary register maintained by a regulatory body must pay a fee determined by the regulatory body.
1351. Section 25F imposes a duty on each regulatory body to carry out an impact assessment prior to establishing a voluntary register under section 25D. It provides that the regulatory body must have regard to any appropriate guidance in carrying out the assessment; must consider, in particular, the likely impact on potential registrants, employers of potential registrants and users of health care and English social care and social work services; must publish its impact assessment; and must have regard to the impact assessment in deciding whether to establish a voluntary register. The regulatory

body must also consult such persons as it considers appropriate before establishing a voluntary register.

Section 229 - Accreditation of voluntary registers

1352. This section inserts new sections 25G, 25H and 25I into the 2002 Act, and makes other amendments to the 2002 Act which relate to the Authority's new functions under these new sections.
1353. Section 25G empowers the Authority to accredit voluntary registers. Accreditation refers to formal recognition by the Authority that a voluntary register meets certain specified criteria that it sets relating to the operation and governance of voluntary registers.
1354. More specifically, the Authority is given the power to, on an application by a regulatory body or other person who maintains a voluntary register, take any steps it considers to be appropriate in order to establish whether the register meets its accreditation criteria. The Authority's accreditation criteria will be set from time to time and subsection (2) of section 25G sets out a number of particular matters which the Authority may include in its accreditation criteria.
1355. The Authority must publish its accreditation criteria, and it has the power to publish a list of accredited registers.
1356. The Authority may review accredited registers to determine whether they continue to meet the accreditation criteria, and may remove, suspend or impose conditions on the accreditation of a register if it is not satisfied that the criteria continue to be met.
1357. The Authority may determine the fee to be paid by persons or bodies maintaining voluntary registers for accreditation, and may refuse or remove accreditation if the fee is not paid.
1358. Section 25H imposes a duty on the Authority to carry out an impact assessment prior to accrediting a voluntary register under section 25G. It provides that the Authority must have regard to any appropriate guidance in carrying out the assessment; must consider, in particular, the likely impact on registrants and potential registrants, employers of registrants and potential registrants, and users of health care and English social care and social work services; may request information from the person or body who maintains the voluntary register in order to carry out the assessment (and may refuse to accredit the register in the case of non-compliance with this request); may publish its impact assessment; and must have regard to the impact assessment in deciding whether to accredit a voluntary register. It must also consult such persons as it considers appropriate prior to accrediting a register.
1359. Section 25I confers three new functions on the Authority. These are:
- to promote the interests of users of health care in the UK, users of social care in England, users of social work services in England, and other members of the public in relation to the maintenance or operation of accredited voluntary registers;
 - to promote best practice in the maintenance and operation of accredited voluntary registers; and
 - to develop principles of good governance for voluntary registers and encourage keepers of voluntary registers to follow these.
1360. *Subsections (2) to (5)* of this section amend section 26 of the 2002 Act to provide that the Authority's powers under section 26(2) (as limited by section 26(3)) extend to any person who maintains an accredited voluntary register, not just to regulatory bodies.
1361. *Subsection (6)* amends section 26A of the 2002 Act to empower the Secretary of State to request advice from the Authority on any matter connected with the accreditation

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of voluntary registers, and obliges the Authority to comply with this request. The Scottish Ministers, Welsh Ministers and Department of Health, Social Services and Public Safety in Northern Ireland are also empowered to request advice from the Authority (and the Authority must comply with this request) on any matter connected with the accreditation of voluntary registers, apart from voluntary registers concerned with unregulated social care workers in England or students of social work or social care work in England. As with the other requests for advice etc that are made under section 26A, a fee of such amount as is determined by the Authority must be paid for such advice.

1362. *Subsections (7) to (9)* amend section 26B of the 2002 Act to provide that the Authority's duties to provide or publish information about the Authority's exercise of its functions and to consult the public on matters relevant to the exercise of its functions do not extend to its functions relating to accreditation of voluntary registers. However, new subsection (1B) provides that the Authority has the power to provide or publish information about the exercise of its functions relating to the accreditation of voluntary registers.