

# HEALTH AND SOCIAL CARE ACT 2012

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 7 – Regulation of Health and Social Care Workers**

1260. **Part 7** contains provisions relating to three distinct changes:
- a) the abolition of the General Social Care Council and the transfer of some of its functions to the Health Professions Council;
  - b) reforms to the funding, governance and functions of the Council for Healthcare Regulatory Excellence, which is to be given new powers to accredit voluntary registers; and,
  - c) the abolition of the Office of the Health Professions Adjudicator.
1261. **Schedule 15** makes further consequential and saving provisions in these areas.
1262. Unless otherwise stated, the following terms used in this Part have the meaning set out below:
- ‘the Council’ refers to the body currently known as the Health Professions Council which is renamed the Health and Care Professions Council by the Act;
  - ‘the Authority’ refers to the Professional Standards Authority for Health and Social Care (which is the new name of the Council for Healthcare Regulatory Excellence);
  - ‘the 2002 Act’ refers to the National Health Service Reform and Health Care Professions Act 2002;
  - ‘the 2001 Order’ refers to the Health Professions Order 2001, which is renamed the Health and Social Work Professions Order 2001 by the Act;
  - ‘the 2000 Act’ refers to the Care Standards Act 2000;
  - ‘the 1999 Act’ refers to the Health Act 1999; and
  - ‘the 1983 Act’ refers to the Mental Health Act 1983.
1263. This Part, in particular, provides for the abolition of the General Social Care Council and the transfer of its functions in relation to the regulation of social workers and the education and training of approved mental health professionals in England to the Health Professions Council. The Health Professions Council is renamed the Health and Care Professions Council to reflect its wider remit in regulating social workers in England as well as health professionals in the UK. The name ‘Health and Care Professions Council’ will be supported by a strapline which will specify the professions which the Council regulate, including social workers in England.

## **Orders under section 60 of the Health Act 1999**

### ***Section 209 – Power to regulate social workers etc. in England***

1264. This section amends the existing power under section 60 of the 1999 Act to provide a power for Her Majesty by Order in Council to regulate (and modify the regulation of) social workers, and social care workers, in England. The power enables primary legislation to be amended. This power replaces the Secretary of State's current power under section 124 of the Health and Social Care Act 2008 to regulate social workers, and social care workers, in England using secondary legislation. The definitions in *subsections (5) and (6)* are based on those in section 55 of the Care Standards Act 2000.
1265. The existing power under section 60 enables Her Majesty by Order in Council, amongst other things, to modify the regulation of certain specified health professions and to regulate any other profession which appears to Her to be concerned with the physical or mental health of individuals.
1266. *Subsections (11), (12) and (13)* amend section 60A of the 1999 Act to provide that proceedings before a regulatory body relating to social, or social care, workers in England should be subject to the civil standard of proof. This represents no change from the standard of proof used by the General Social Care Council.
1267. [Schedule 15](#), at paragraph 45, disapplies section 124 of the Health and Social Care Act 2008 in relation to England. Previously, section 124 of the Health and Social Care Act 2008 enabled the Secretary of State, by way of regulations, to regulate or modify the regulation of social workers and social care workers in England.

### ***Section 210 - Training etc. of approved mental health professionals in England***

1268. This section further amends section 60 of the 1999 Act to enable section 60 orders to modify the new functions of the Council in relation to the education and training of approved mental health professionals. Those functions are to be transferred to the Council from the General Social Care Council.
1269. Approved mental health professionals are professionals with particular expertise in mental health who are approved by local social services authorities to carry out certain important functions under the 1983 Act. It is, for example, approved mental health professionals who make the large majority of applications under the 1983 Act for people to be detained in hospital for assessment or treatment of their mental disorder. Most current approved mental health professionals are social workers, but the Mental Health (Approved Mental Health Professionals) (Approval) (England) Regulations 2008<sup>1</sup> provide that local social services authorities in England may also approve mental health and learning disability nurses, occupational therapists and practitioner psychologists. Those regulations also provide that those authorities may not approve new approved mental health professionals unless they have completed a training course approved by the General Social Care Council (or the Care Council for Wales).
1270. The extension of the power in section 60 replaces the power of the Secretary of State in section 126 of the Health and Social Care Act 2008 to make regulations modifying the General Social Care Council's functions in relation to approved mental health professionals' education and training.
1271. This amendment goes with some other changes to the 1999 Act made in other sections. Section 209 adds a new subsection (2ZE) to section 60 making clear that acting as an approved mental health professional does not fall within the definition of social work for the purposes of section 60 if the approved mental health professional is not a social worker. This is to ensure that healthcare professionals acting as approved mental health

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<sup>1</sup> Statutory Instrument: 2008 No. 1206

professionals are not required to register as social workers as well as members of the profession to which they belong.

1272. Similarly, new paragraph 1B to Schedule 3 to the 1999 Act (added by section 211(3)) specifies that a section 60 order may deal with the standards of conduct and performance expected of professionals and social care workers when acting as approved mental health professionals. That is particularly intended to avoid any suggestion that the normal standards of professional conduct and performance set by the Council (or another regulatory body) cannot apply to members of the profession concerned when acting as approved mental health professionals.

### ***Section 211 – Orders regulating social care workers in England: further provision***

1273. This section amends Schedule 3 to the 1999 Act in relation to the making of orders regulating (or modifying the regulation) of social care workers in England. The amendments broadly mirror the further provisions regarding regulations that can be made under section 124 of the Health and Social Care Act 2008 to regulate or modify the regulation of social care workers.
1274. *Subsection (2)* gives examples of the matters which a section 60 order could deal with when making provision about the regulation of social care workers in England. These provisions are subject to the limitations set out in *subsection (5)*. This prevents section 60 orders from being used to transfer to any other person certain functions in relation to social care workers in England which have been conferred on the Council or another regulatory body by an enactment.
1275. *Subsection (6)* amends paragraph 9 of Schedule 3 so that the Secretary of State's duty to consult before laying a draft section 60 order before Parliament equally applies in relation to section 60 orders dealing with social care workers in England.
1276. *Subsection (8)* provides that section 60 orders may also make provision in relation to those who are not currently registered as social care workers in England but are seeking to be, or have previously been, so registered; and in relation to those who engage in work which is connected to social care work in England (for example housing support workers).

## **The General Social Care Council**

### ***Section 212 – Abolition of the General Social Care Council***

1277. This section abolishes the General Social Care Council and consequentially amends section 54 of the Care Standards Act 2000, which established the General Social Care Council and the Care Council for Wales.
1278. The Care Council for Wales will continue in existence and will continue to regulate social workers and social care workers in Wales. Its legislative framework will be unchanged except for amendments consequential on the abolition of the General Social Care Council.

## **The Health and Care Professions Council**

### ***Section 213 – Regulation of social workers in England***

1279. This section amends the 2001 Order to provide for the Council to regulate social workers in England. The 2001 Order establishes, and provides the legislative framework for, the Council.
1280. *Subsection (2)* amends Schedule 3 to the 2001 Order to include social workers in England as a 'relevant profession'. This amendment is the means by which the Council will be required to regulate social workers in England.

1281. The membership of the Council is made up of registrant and lay members. As social workers in England will now be regulated by the Council, social workers should no longer be able to be lay members. *Subsection (5)* amends the definition of a lay member accordingly to exclude persons who are, or have been, registered as social workers with the General Social Care Council or the Care Councils of Wales, Scotland or Northern Ireland.

### ***Section 214 – The Health and Care Professions Council***

1282. This section provides that the Health Professions Council is to remain in existence and renames it the Health and Care Professions Council.

### ***Section 215 – Functions of the Council in relation to social work in England***

1283. This section amends the 2001 Order to make provision for the Council to regulate social workers in England.
1284. *Subsection (2)* amends article 3(5)(b) of the 2001 Order to extend the Council’s duty to co-operate with certain specified bodies. The bodies to which the duty is extended are public bodies or other persons concerned with the regulation of social work in England and the provision, supervision or management of the services of persons engaged in social work in England. *Subsection (3)* specifies that this duty includes, in particular, the Care Councils of Wales, Scotland and Northern Ireland.
1285. *Subsection (4)* amends article 3 of the 2001 Order to extend the existing power of the Council to make recommendations to the Secretary of State about healthcare professions which it believes should be regulated to also cover social care workers in England. The Council may also give guidance (to those with an interest) on what criteria should be considered in deciding whether social care workers in England should be regulated.
1286. *Subsections (5), (6), (10) and (13)* extend to social workers the current provisions in the 2001 Order which relate to visiting health professionals from relevant European states.
1287. *Subsections (7) and (8)* amend article 12 of the 2001 Order to enable the Council to recognise training undertaken in Wales, Scotland and Northern Ireland as sufficient for admission to its register as a social worker. Related to this, the Council is also given the power to assess training or professional experience in social work gained outside England but within the UK, and to compare this with the standard of proficiency it requires for admission to its register as a social worker.
1288. *Subsection (9)* inserts a new article 13B into the 2001 Order which places a duty on persons to register with the Council as a social worker in order to practise as a social worker in England. The duty will not apply to persons who are registered as a social worker with one of the Care Councils of Wales, Scotland and Northern Ireland and who are practising in England on a temporary basis.
1289. *Subsection (11)* provides that powers of the National Assembly for Wales under article 20 of the Order do not extend to the regulation of social workers in England.
1290. *Subsection (12)* amends article 39 of the 2001 Order. As a result of the changes to social work regulation, the offences under article 39 will apply in relation to social workers in England in the same way as they apply in relation to the other professions regulated by the Council. However, given that the relevant part of the Council’s register will be titled “social worker” rather than “social worker in England” a further amendment is necessary to ensure that a person who uses the title “social worker” as a result of being registered as a social worker with one of the Care Councils of Wales, Scotland and Northern Ireland will not commit an offence under article 39(1)(b).

***Section 216 – Appeals in cases involving social workers in England***

1291. This section amends articles 37 and 38 of the 2001 Order which relate to appeals against decisions of the Council (and its committees).
1292. *Subsection (2)* amends the definition of lay member in article 37 to exclude persons who are, or have been, registered as social workers with the General Social Care Council or one of the Care Councils of Wales, Scotland or Northern Ireland from the definition of lay member. This means that such a person may not be a lay member on a panel of the Council which is considering an appeal from a decision of the Council's Education and Training Committee. *Subsections (3) and (4)* provide that an appeal against a decision of the Education and Training Committee of the Council relating to a social worker in England must be heard in England.
1293. *Subsections (5) to (7)* amend article 38 to provide that all appeals from a decision of the Council to a court relating to a social worker in England are to be heard by either a county court or the High Court of Justice in England and Wales.

***Section 217 - Approval of courses for approved mental health professionals***

1294. This section concerns the transfer to the Council of the General Social Care Council's power under section 114A of the 1983 Act to approve training courses for people who are, or who wish to become, approved mental health professionals in England.
1295. The section inserts a new section 114ZA into the 1983 Act giving the Council the power to approve courses for people who are, or wish to become, approved mental health professionals in England. The new section also requires the Council to publish details of current and past approved courses.
1296. In practice, courses would actually be approved by the Council's Education and Training Committee, which is already responsible for approving training and education for the professions regulated by the Council. The Committee would also be able to arrange for other people to approve courses on the Council's behalf. It can already do this in relation to the Council's existing powers to approve education and training, although, in practice, it has not made any such arrangements.
1297. The rest of this section amends section 114A of the 1983 Act to remove the General Social Care Council's power to approve approved mental health professional courses. None of these changes affect the power of the Care Council for Wales to approve courses for people who are, or wish to become, approved mental health professionals in Wales. That power remains in section 114A.

***Section 218 - Exercise of function of approving courses, etc***

1298. This section amends the 2001 Order to reflect the Council's new role in approving approved mental health professional courses.
1299. The section amends article 3 of the 2001 Order to acknowledge the Council's new function and to say how the general duties set out in paragraph (5) of that article apply in relation to those approved mental health professionals who belong to a profession which is not regulated by the Council. The Council's general duties include having regard to the interests of people using the services of registrants, considering the differing interests of different categories of registrant, and co-operating with employers, training providers and other regulatory bodies. The effect of *subsection (3)* is that those general duties apply to non-registrant approved mental health professionals as if they were registrants.
1300. The section also amends the 2001 Order to deal with the process for approving approved mental health professional courses. The process is modelled closely on the existing provisions in articles 15 to 18 of the 2001 Order, which deal with the approval of education and training for the Council's registrants.

*These notes refer to the Health and Social Care Act 2012  
(c.7) which received Royal Assent on 27 March 2012*

1301. The section inserts a new article 15B into the 2001 Order, requiring the Council to set and publish the criteria to be applied when endorsing approved mental health professional courses. However, it also inserts a new article 15A which provides for the Council's Education and Training Committee, rather than the Council itself, to approve courses in accordance with those criteria. As explained above, the Education and Training Committee would be able, if it wished, to arrange for other people to approve courses on the Council's behalf.
1302. Between them, the new articles 15A and 15B then provide that the Education and Training Committee must ensure that universities and other bodies in the UK involved in providing approved mental health professional courses are told of the approval criteria. It must also take steps to satisfy itself that the approved mental health professional courses that universities and other bodies are providing meet the criteria. In doing so, the Education and Training Committee would be able to approve (or arrange for someone else to approve) UK institutions which it believes are properly organised and equipped to run these courses. Courses run by such approved institutions are the only approved mental health professional courses outside the UK which the Education and Training Committee would be able to approve.
1303. The new article 15B(5), together with other minor amendments made by this section, means that articles 16 to 18 of the 2001 Order apply to approved mental health professional courses in largely the same way as they apply to other education and training approved by the Council. As a result, article 16 would allow visitors appointed by the Council to visit institutions running, or proposing to run, approved mental health professional courses, and to report their findings to the Education and Training Committee. Article 17 would allow the Education and Training Committee or the Council to require information from such institutions. Article 18 would allow the Education and Training Committee to refuse or withdraw approval for an approved mental health professional course.
1304. The section also amends article 21 of the 2001 Order to make clear that the Council's standards of conduct, performance and ethics for its registrants (and would be registrants) must also cover the standards expected of them when acting as approved mental health professionals. Finally, the section extends the Secretary of State's powers under article 45 to provide financial assistance to the Council so that it can include grants or loans in connection with the approval of approved mental health professional courses.

***Section 219 - Arrangements with other health or social care regulators***

1305. This section amends the 2001 Order to enable the Council to make arrangements for the provision of administrative and other services to others who maintain a register of health or social work professionals or health or social care workers.
1306. This would enable the Council to provide assistance to holders of any registers of health or social care workers or professionals either within or outside the UK. The Council would therefore be able to support other persons and bodies in exercising control over the standards and performance of such professionals and workers to assist with the goal of protecting service users and the public.
1307. This section was commenced on Royal Assent to enable the Council to provide assistance, if such assistance is considered necessary and suitable arrangements are entered into, to the General Social Care Council prior to its abolition.

***Section 220 - References in enactments to registered health professionals, etc***

1308. This section makes amendments to various Acts to exclude social workers and social care workers in England from the definition of 'registered health care professional' and similar terms. This avoids the unintended consequence of social workers and social

care workers in England falling within such definitions by virtue of them falling to be regulated by the Council and coming within the remit of a section 60 order.

## **Role of the Secretary of State**

### ***Section 221 – Functions of the Secretary of State in relation to social care workers***

1309. This section amends section 67 of the 2000 Act to change certain functions of the Secretary of State.
1310. **Section 67** sets out the functions of the Secretary of State in relation to the training of social workers and social care workers in England. These functions include ascertaining what training is required by those who are, or who wish to become, social workers or social care workers and drawing up occupational standards for them.
1311. Following the transfer of the regulation of social workers in England to the Council, it will become the Council's responsibility to carry out similar functions. As such, *subsection (1)* provides that these Secretary of State functions do not extend to social workers registered by the Council.
1312. This section amends subsection (2) of section 67 of the 2000 Act to give the Secretary of State the function of encouraging persons to take part in courses approved by the Council for the purposes of being registered as a social worker in England.
1313. *Subsection (3)* provides that the Secretary of State may make arrangements with the Council for the latter to undertake the functions of the General Social Care Council in the period from Royal Assent of the Act to the abolition of the General Social Care Council and so was commenced at Royal Assent.

## **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.

*These notes refer to the Health and Social Care Act 2012  
(c.7) which received Royal Assent on 27 March 2012*

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

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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;
  - 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 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;

*These notes refer to the Health and Social Care Act 2012  
(c.7) which received Royal Assent on 27 March 2012*

- 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 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.

### **Consequential provision etc.**

#### ***Section 230 – Consequential provisions and savings, etc.***

1363. This section provides for the minor and consequential amendments to primary legislation set out in Parts 1 to 3 of Schedule 15 (part 7: consequential amendments and savings) to have effect. The section also enables the Privy Council, by Order, to make transitional, transitory or saving provision in connection with sections in this Part of the Act.
1364. *Subsections (3) to (5)* provide further detail on how an order made under *subsection (2)* will be made and the provisions it may contain.
1365. *Subsection (6)* ensures that section 60 orders will continue to be able to amend the 2001 Order including those parts inserted by this Act.

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

#### ***Section 231 - Abolition of the Office of the Health Professions Adjudicator***

1366. This section provides for the abolition of OHPA, for the transfer of its property, rights and liabilities to the Secretary of State and repeals the provisions in the Health and Social Care Act 2008, which establish OHPA and confer functions on it. It also brings into effect Part 4 of Schedule 15, which makes consequential amendments to a number of Acts and statutory instruments and makes savings provisions in connection with the abolition of OHPA.