

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

1025. Part 7 contains provisions relating to three distinct changes:

- a) the abolition of the General Social Care Council and the transfer of some functions to the Health Professions Council;
- b) reforms to the 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 Healthcare Professions Adjudicator.

1026. Schedule 14 makes further provision in these areas. 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 will be renamed the Health and Care Professions Council by the Bill;
- ‘the Authority’ refers to the Professional Standards Authority for Health and Social Care (which will be the new name of the Council for Healthcare Regulatory Excellence);
- ‘the 2001 Order’ refers to the Health Professions Order 2001, which will be renamed the Health and Social Work Professions Order 2001 by the Bill;
- ‘the 2002 Act’ refers to the National Health Service Reform and Health Care Professions Act 2002;
- ‘the 1999 Act’ refers to the Health Act 1999; and
- ‘the 1983 Act’ refers to the Mental Health Act 1983.

1027. *Abolition of the General Social Care Council and transfer of its functions*. The following clauses deal with 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 will be 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 Council has confirmed to the Government that the name ‘Health and Care Professions Council’ will be supported by a strapline which will clarify the professions which the Council will regulate, including social workers in England.

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

## **Clause 193 – Power to regulate social workers etc. in England**

1028. This clause 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 through secondary legislation. The power enables primary legislation to be amended by means of that secondary legislation. This power replaces the Secretary of State's current power under section 124 of the Care Standards Act 2000 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.

1029. 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.

1030. *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.

1031. Schedule 14, paragraph 40 dis applies 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.

### ***Clause 194 - Training etc. of approved mental health professionals in England***

1032. This clause 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 transferred to the Council from the General Social Care Council by clause 201.

1033. 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.

1034. This amendment goes with some other changes to the 1999 Act made in other clauses. Clause 193 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 professionals are not required to register as social workers as well as members of the profession to which they belong.

1035. Similarly, clause 195 adds a new paragraph 1B to Schedule 3 to the 1999 Act to say 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.

***Clause 195 – Orders regulating social care workers in England: further provision***

1036. This clause 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 made under section 124 of the Care Standards Act 2000 to regulate or modify the regulation of social care workers.

1037. *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.

1038. *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.

1039. *Subsection (8)* sets out 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**

### **Clause 196 – Abolition of the General Social Care Council**

1040. This clause abolishes the General Social Care Council by means of amending section 54 of the Care Standards Act 2000, which established the General Social Care Council and the Care Council for Wales.

1041. 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**

### **Clause 197 – Regulation of social workers in England**

1042. This clause amends the 2001 Order to provide for the Health and Care Professions Council to regulate social workers in England. The 2001 Order establishes, and provides the legislative framework for, the Council.

1043. *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.

1044. 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.

1045. *Subsection (6)* renames the 2001 Order as the ‘Health and Social Work Professions Order 2001’.

### **Clause 198 – The Health and Care Professions Council**

1046. This clause provides that the Health Professions Council is to remain in existence and renames it the Health and Care Professions Council.

- **Clause 199 – Functions of the Council in relation to social work in England**

1047. This clause amends the 2001 Order to make provision for the Council to regulate social workers in England.

1048. *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 Scotland, Wales and Northern Ireland.

1049. *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.

1050. *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.

1051. *Subsections (7) and (8)* amend article 12 of the 2001 Order to enable the Council to recognise training undertaken in Scotland, Wales 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.

1052. *Subsection (9)* inserts a new section 13B into the 2001 Order which places a new 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 with one of the Care Councils of Scotland, Wales and Northern Ireland and who are practising in England on a temporary basis.

1053. *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.

1054. *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 Scotland, Wales and Northern Ireland will not commit an offence under article 39(1)(b).

## **Clause 200 – Appeals in cases involving social workers in England**

1055. This clause amends articles 37 and 38 of the 2001 Order which relate to appeals against decisions of the Council (and its committees).

1056. *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.

1057. *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.

### ***Clauses 201 - Approval of courses for approved mental health professionals***

1058. This clause concerns the transfer to the Council of the General Social Care Council's power under section 114A of the Mental Health Act 1983 to approve training courses for people who are, or who wish to become, approved mental health professionals in England.

1059. 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 1 say that local social services authorities in England may also approve mental health and learning disability nurses, occupational therapists and practitioner psychologists. Those regulations also say 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).

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1060. The clause 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

1061. 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.

1062. The rest of this clause 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.

***Clauses 202 - Exercise of function of approving courses, etc***

1063. This clause amends the 2001 Order to reflect the Council's new role in approving approved mental health professional courses.

1064. The clause 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.

1065. The clause 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.

1066. The clause 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 saying that it is the Council's Education and Training Committee, rather than the Council itself, which is 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.

1067. Between them, the new articles 15A and 15B then say 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.

1068. The new article 15B(5), together with other minor amendments made by this clause, 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.

1069. The clause 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 clause 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.

### **Clause 203 - Arrangements with other health or social care regulators**

1070. This clause 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.



1071. 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.

1072. This clause is to be 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.

### **Clause 204 - References in enactments to registered health professionals, etc**

1073. This clause 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**

#### **Clause 205 – Functions of the Secretary of State in relation to social care workers**

1074. This clause amends section 67 of the Care Standards Act 2000 (the 2000 Act) to change certain functions of the Secretary of State.

1075. 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.

1076. 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.

1077. This clause 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.

1078. *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 Bill to the abolition of the General Social Care Council.