

# HEALTH AND SOCIAL CARE ACT 2012

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

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

##### **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.

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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.
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.

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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.