

# NATIONAL HEALTH SERVICE REFORM AND HEALTH CARE PROFESSIONS ACT 2002

---

## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 2: Health care professions**

#### **The Council for the Regulation of Health Care Professionals**

#### *Section 26: Powers and duties of the Council: general*

149. *Section 26* sets out the powers and duties to be exercised by the Council in carrying out the functions given to it by *section 25*. The Council is given the power to do what is necessary or expedient in carrying out its functions. It can investigate and report on the performance of a regulatory body and make recommendations to a regulatory body about the way the regulatory body performs its functions.
150. *Subsections (3) and (4)* provide that the Council may not intervene in the determination of ‘fitness to practise’ cases or allegations made to regulatory bodies which could become fitness to practise cases. An exception to this rule is provided by *section 28*, which deals with complaints about regulatory bodies. At the conclusion of a fitness to practise case, the Council would only be able to intervene by referring the case to the High Court (or its Scottish or Northern Irish equivalent) if it felt that this was desirable for the protection of members of the public (this is provided for in *section 29(4)*).
151. *Subsection (5)* limits the range of the functions of the Royal Pharmaceutical Society of Great Britain in which the Council can take an interest to those which have to do with professional regulation. This reflects the unique nature of the Royal Pharmaceutical Society of Great Britain, which is the professional body for pharmacists as well as their regulator. *Subsection (6)* reflects the parallel situation in Northern Ireland with the Pharmaceutical Society of Northern Ireland.
152. *Subsection (9)* amends section 60(1) of the Health Act, to include the Council within the scope of this section so that the Council’s legal framework, like that of the regulatory bodies themselves, can be updated if changed circumstances call for this in the future.
153. In particular, this subsection would allow an Order under section 60 of the Health Act to modify the Council’s functions, powers and duties, to modify the list of regulatory bodies which fall within the scope of the Council and to alter the range of functions of a particular regulatory body which were covered.
154. The power to modify the legal framework of professional self-regulation under section 60 of the Health Act is circumscribed by paragraphs 7 and 8 of Schedule 3 to the Health Act, which provide for example that existing regulatory bodies cannot be abolished, have a lay majority imposed on them or have any of the key functions of a regulator (which are defined in paragraph 8) taken away from them. In addition, *subsection (10)* further restricts the provision which a future section 60 Order can make. *Subsection (10)* provides that a future section 60 Order cannot give the Secretary of

*These notes refer to the National Health Service Reform and Health Care Professions Act 2002 (c.17) which received Royal Assent on 25 June 2002*

State more powers of direction over the Council. This is intended as a safeguard to the Council's independence from Government.