

HEALTH AND SOCIAL CARE ACT 2012

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 7 – Regulation of Health and Social Care Workers

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 2008¹

¹ Statutory Instrument: 2008 No. 1206

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

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 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).