EXPLANATORY MEMORANDUM TO

THE GENERAL SOCIAL CARE COUNCIL (TRANSFER OF REGISTER AND ABOLITION – TRANSITIONAL AND SAVING PROVISION) ORDER OF COUNCIL 2012

2012 No. 1480

1. This explanatory memorandum has been prepared by the Department of Health and is laid before Parliament by Command of Her Majesty.

   This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 Provisions in Part 7 of the Health and Social Care Act 2012 (the 2012 Act) abolish the General Social Care Council (GSCC) and provide for the Health Professions Council, which is renamed the Health and Care Professions Council (HCPC), to regulate social workers in England. Part 7 also provides for the HCPC to approve the training, in England, of those who are or wish to become Approved Mental Health Professionals (AMHPs). The purpose of this instrument is to make transitional provisions relating to the commencement of the provisions referred to above.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 An unintended consequence of the transfer of the regulation of social workers in England to the HCPC is that the Chair of the Council for Healthcare Regulatory Excellence (CHRE) - Baroness Pitkeathley - will no longer meet the conditions for being a member of the CHRE. This is because she has previously worked as a social worker in England (though she was never subject to regulation) and the regulations governing appointments to the CHRE do not allow anyone who has previously been a member of a profession regulated by one of the bodies overseen by the CHRE to be appointed to its Council

3.2 The CHRE is itself going through a period of reform. The Health and Social Care Act 2012 makes a number of provisions in respect of CHRE including:

- a change to its name (to the Professional Standards Authority for Health and Social Care);
- a change in its funding arrangements so that in future it be will funded by the regulatory bodies it oversees rather than by the Government;
- changes to its governance arrangement; and,

- the introduction of new functions, such as the accreditation of voluntary registers and a role in appointments to the regulatory bodies.

3.3 The CHRE has been clear that it considers Baroness Pitkeathley's continued leadership to be key to retaining consistency and stability during this period of change.

3.4 The Order allows Baroness Pitkeathley to continue in her role with the CHRE during this period of change by "switching off" the disqualification in relation to the holder of the post of chair (the post she holds) on the day that section 213 of the Health and Social Care Act 2013 comes into force. It makes the same provision for those who hold the post of non-executive member on that day. The Order also makes provision for the disqualification to remain switched off, in relation to those post holders, if they are immediately reappointed to their posts, upon expiry of their current terms of office.

4. Legislative Context

4.1 Sections 211 to 221 of the Health and Social Care Act 2012 provide for the HPC to regulate social workers in England and approve the training in England of those who are, or wish to become, AMHPs. The provisions include:

- Changing the name of the Health Professions Council to the Health and Care Professions Council (HCPC);
- Changing the name of the Health Professions Order 2001 to the Health and Social Work Professions Order 2001;
- Amending that Order to require the HCPC to regulate social workers in England;
- Abolishing the GSCC; and,
- Transferring the function of approving training in England for individuals who are or who wish to become AMHPs.

4.2 The Health and Social Care Act 2012 (Commencement No.1 and Transitory Provision) Order 2012 commences the provisions in the 2012 Act which provide for the transfer of the regulation of social workers in England from the GSCC to the HCPC on the 1st August.

4.3 This Order makes transitional and savings provisions related to the commencement of the above provisions including the processes to be followed for:

- open conduct cases where decisions are still required;
- suspended registrations;
- barring orders;
- outstanding applications for registration;
- existing GSCC fitness to practise proceedings; and,
- approving pre-registration social work courses.

4.4 Provisions allowing the HCPC and GSCC to make arrangements for the transfer of the register, and related documents, come into force immediately. This is to allow for a smooth transfer of the function and to avoid potential gaps in the regulation of social workers which may affect the safety of those using social work services. All other provisions will come into force on 1 August 2012.

4.5 The National Health Service Reform and Health Care Professions Act 2002 provides for the Council for Healthcare Regulatory Excellence (CHRE) to have oversight of the HPC's regulatory functions which will, from the 1st August 2012, include the regulation of social workers in England. This impacts on who can act as Chair or a non-executive member of the CHRE under the CHRE (Appointments, Procedures etc) Regulations 2008 by "disqualifying" anyone who is a member of a profession regulated by one the bodies overseen by it. This order includes transitional provisions to enable current members of CHRE to remain in post notwithstanding the disqualification provision.

4.6 The related Health and Social Care Act 2012 (Consequential Provision – Social Workers) Order 2012, (which makes consequential provisions in relation to the commencement of the above provisions and is made by the Secretary of State), will be laid on the same day as this Order.

5. Territorial Extent and Application

5.1 This instrument extends to England and Wales, Scotland and Northern Ireland.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The GSCC is an Executive Non-Departmental Public Body responsible for the regulation of social workers in England. The majority of its funding is provided by the Department of Health.

7.2 The Department of Health's Review of its arms length bodies, *Liberating the NHS, Report of the Arm's-Length Bodies Review* published on the 26th July 2010, concluded that there was no compelling reason for the GSCC to remain in the arms length bodies sector, and that there were potentially significant benefits from putting the regulation of social workers on a similar footing to the regulation of health professions.

7.3 The report announced the Government's intention to abolish the GSCC and transfer the regulation of social workers in England to the Health Professions Council (HPC). The HPC is independent of the

Department and funded, on a cost recovery basis, through registrant fees.

7.4 The 2012 Act also makes a number of changes to the governance and functions of the CHRE, including bringing the regulation of the social workers in England within its remit (as a consequence of the HCPC becoming responsible for the regulation of the profession). In order to maintain the stability of the CHRE during this period we have made provision to enable the current Chair of the CHRE to remain in post and to be reappointed. Having previously worked as social worker (albeit before the profession was regulated), the current Chair would otherwise no longer meet the conditions of appointment.

8. Consultation outcome

8.1 No formal consultation on these provisions is considered necessary.

8.2 The sections of the 2012 Act for which this order makes transitional and savings provisions have been subject to debate in both Houses of Parliament.

9. Guidance

9.1 None.

10. Impact

10.1 As this is a transitional Order, we do not expect it to have any impact beyond that of the sections of the 2012 Act which provide for the HCPC to regulate social workers in England and approve the training for AMHPs . The impact of the transfer has been considered as part of the Impact Assessment for the Health and Social Care Act 2012, (pages 133 -135), which can be found at -

http://www.parliament.uk/documents/impact-assessments/IA11-038.pdf

11 Regulating small business

11.1 The legislation does not apply to small business.

12 Monitoring & review

12.1 As this order contains only transitional and savings provisions related to the transfer of the GSCC's functions relating to the regulation of social workers no formal monitoring or review are considered necessary.

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12.2 The HCPC's regulation of social workers in England will be subject to monitoring and annual review by the CHRE which oversees the health and social care professional regulatory bodies. In addition, the legislative framework for the regulation of health professionals in England and social workers in England is currently subject to review by the Law Commission.

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