

EXPLANATORY MEMORANDUM TO
THE HEALTH AND CARE PROFESSIONS (PUBLIC HEALTH
SPECIALISTS AND MISCELLANEOUS AMENDMENTS) ORDER 2015

2015 No. [XXXX]

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

2. Purpose of the instrument

2.1 This Order introduces statutory regulation for public health specialists who are not statutorily regulated in that capacity by another body, such as the General Medical Council or General Dental Council. Public health specialists (amongst other things) provide and manage health education programs that help individuals, families, and their communities maximize and maintain healthy lifestyles and can emanate from various backgrounds. The Order also makes it an offence for a person to use the protected title ‘public health specialist’ unless that person is registered with a statutory regulator. The opportunity is also taken to make a number of miscellaneous amendments to legislation governing the regulation of health care professionals.

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

3.1 This draft Order supersedes the previous draft Order which was laid before Parliament on 23rd February 2015 and the Scottish Parliament on 23rd February 2015 and published on 23rd February 2015 (ISBN 9780111129883). This was necessary in order to (i) correct errors (including the references to the name and registered office of the Public Health Register Company), and (ii) remove a provision which was otiose.

4. Legislative Context

4.1 Statutory regulation of public health specialists is introduced for the whole of the United Kingdom. The Public Health Register¹ has been operating a system of voluntary regulation of public health specialists and practitioners, which came about after the public health specialty was opened up to professionals from backgrounds other than medicine or dentistry (nonmedical public health specialists). The Public Health Register was established in March 2003 for public health specialists from backgrounds other than dentistry or medicine who have either completed the national training programme in public health, or who have compiled a portfolio demonstrating that they meet the competencies required to practice as a public health specialist. It was also open to public health specialists from medical and dental backgrounds.

4.2 In 2009, DH commissioned Dr Gabriel Scally to undertake a review of the regulation of nonmedical public health specialists. In November 2010, the

¹ The Public Health Register (Company No. 04776439) is a private company limited by guarantee. Its registered office is 18C McLaren Building, 46 Priory Queensway, Birmingham, B4 7LR.

Scally Review made a number of recommendations in the Review of the Regulation of Public Health Professionals (Nov 2010)². The review recommended that the Health and Care Professions Council (previously known as the Health Professions Council) should regulate public health specialists in addition to the other professions under its remit, which the Government accepted. During the passage of the Health and Social Care Bill 2012 through Parliament, and after detailed discussions with stakeholders, Ministers decided it would be appropriate to introduce statutory regulation for this group. This decision was announced in January 2012 alongside the publication of the Public Health Outcomes Framework³.

4.3 The decision was also confirmed in the House of Lords by Baroness Northover during debate on the Health and Social Care Bill on 29 February 2012.⁴ She said:

"In response to the concerns raised here, the Government have announced their intention to require non-medical public health specialists to be subject to regulation by the Health Professions Council. We will discuss the implementation timetable with interested parties and expect that the necessary changes will be made under the powers in Section 60 of the Health Act 1999."

4.4 In a debate on 7 February 2012⁵ on the regulations prescribing mandatory functions for local authorities to commit to regulation being in place by the end of 2014, Earl Howe repeated the existing commitment to regulation of this group.

4.5 The Health and Care Professions Council⁶ will be the statutory regulator for public health specialists unless a person is subject to regulation in that capacity by another regulator. Certain statutory regulators of other health professionals recognise that their registrants are also qualified to practise in public health. In the case of medical practitioners, registrants can be registered in the specialist register maintained by the General Medical Council as having a speciality in public health medicine; and in the case of dentists, registrants with a specialty in dental public health, are included in the specialist list maintained by the General Dental Council.

4.6 Initially statutory regulation was intended to include only those public health specialists with backgrounds other than medical and dental. The rationale was that these doctors and dentists were already subject to statutory regulation. This has been extended to include other health care professionals. In the case of nurses, pharmacists and members of other professions regulated by the Health and Care Professions Council, the respective regulators can

² Review of the Regulation of Public Health Professionals November 2010 Paper copy available from the house of Commons libraries <https://www.gov.uk/.../publications/review-of-the-regulations-of-public-health-professionals>

³ <https://www.gov.uk/government/news/public-health-outcomes> Paper copies available from the House of Common libraries

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<http://www.publications.parliament.uk/pa/ld201212/ldhansrd/text/120229-0002.htm>

⁵ <http://www.publications.parliament.uk/pa/ld201212/ldhansrd/text/120207-wms0001.htm#12020768000185>

⁶ This Council was established under article 3 of the Health and Social Work Order 2001 (2002/254).

annotate the entries in their registers, to indicate that a registrant has qualifications and/or competence in the field of public health.

4.7 Those who are registered with the Nursing Midwifery Council, General Pharmaceutical Council or Pharmaceutical Society of Northern Ireland, with an annotation recognising their specialist public health qualification, will be able to use the protected title of public health specialist, without having to register with the Health and Care Professions Council, bringing them in line with public health specialists on the General Medical Council and General Dental Council registers. This exemption will also apply to public health specialists who are already registered with the Health and Care Professions Council e.g. as a dietician with the appropriate annotation against their entry in the register.

4.8 There are transitory arrangements to facilitate the transfer of public health specialists on the voluntary register held by Public Health Register to the relevant part of the Health and Care Professions Council register. The Health and Care Professions Council (amongst other things) will be able to determine if a person's name should be entered on its register, and will have the power to determine what should happen in cases where a person is subject to proceedings by the Public Health Register (fitness to practise issues) which have not been concluded by the 30th June 2016.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

The Parliamentary Under-Secretary of State for Health Dr Dan Poulter MP has made the following statement regarding Human Rights:

In my view the provisions of the Health Care and Associated Professions (Public Health Specialists and Miscellaneous Amendments) Order 2015 are compatible with the Convention rights.

7. Policy background

What is being done and why?

7.1 Statutory regulation of public health specialists, as with any group of professions, allows statutory standards of practice to apply, in order to ensure safe and effective conduct, and provides for the operation of statutory fitness to practise procedures to investigate and deal with cases of impaired fitness to practise. In consequence, the public can have greater confidence that individuals practising the profession are competent and fit to do so.

7.2 Further detail about why statutory regulation for public health specialists has taken the form it has is given in the Consultation Report <https://www.gov.uk/government/consultations/public-health-specialists-regulation>. In summary:

- Public health was originally a medical specialty. In order to become a public health specialist, a doctor completed a 5 year national training programme overseen by the General Medical Council (GMC) and the Faculty. In 2000 the training programme was extended to professionals from backgrounds other than medicine with appropriate qualifications and experience. Public health is now a multi-disciplinary specialty. Approximately 50 per cent of public health specialists are from medical or dental backgrounds. The rest are from a variety of professional backgrounds including environmental health, nursing and microbiology.
- Public health specialists from a medical background are subject to statutory regulation through the General Medical Council and dental public health specialists are regulated through the General Dental Council, which provides public protection from poor practice. In addition, a number of public health specialists have maintained their registration with the Nursing and Midwifery Council, General Pharmaceutical Council and the Pharmaceutical Society of Northern Ireland, which again provides public protection. However, about 75 per cent of public health specialists currently on the voluntary UKPHR register are not subject to statutory regulation.
- In response to the Consultation, it was accepted that where a public health specialist was also subject to statutory regulation by the Nursing and Midwifery Council, the General Pharmaceutical Council, the Pharmaceutical Society of Northern Ireland and the HCPC (in respect of another health profession regulated by the HCPC), that they could still use the title of public health specialist provided that such registrants were recognised by their regulator as having a specialty in public health.

7.3 Public health specialists, regardless of their background, undertake a broad range of functions that could, potentially pose a risk to the public. As well as advising on population health measures that could significantly impact on the health of the local population, public health specialists provide advice to individuals during outbreaks of infectious diseases, have responsibility for dispensing medicine and in cases of tuberculosis advise the patient on treatment options. Directors in Public Health in local authorities are also involved in the commissioning of clinical care services in their local area, for individuals with certain medical conditions – including services for sexual health, and drug or alcohol misuse.

7.4 It has been decided not to define “scope of practice” of public health specialists in the Health and Social Work Order 2001 – which does not define it in relation to other professions it regulates. In practice, registration will be open to a person who is appropriately qualified, whose fitness to practise is not impaired and will fulfil the obligations associated with registration (e.g. payment of fees). As originally proposed, the regulator will be the Health and Care Professions Council. The Health and Care Professions Council aims to work collaboratively with professions to ensure that it can offer an efficient and unified service whilst focusing on individual differences between the professions. The Health and Care Professions Council has the remit and expertise to approve and maintain high standards of education and continuing good practice, based on the requirements for safe and effective practice.

7.5 The proportion of public health specialists from backgrounds other than medicine or dentistry has grown and there is now a significant proportion in senior public health roles, including Directors in Public Health in local authorities. Whilst this is entirely right, it does mean that there are some people making significant decisions that could impact the health of a local population who are not subject to statutory regulation.

7.6 The Government has therefore decided to extend public protection by introducing statutory regulation to those public health specialists not currently registered with a statutory healthcare regulator.

7.7 In relation to miscellaneous amendments to the Health and Social Work Professions Order 2001, in light of a recent decision of the High Court *Okeke v NMC* 2013 EWHC, the Order makes amendments to clarify the legal position in relation to striking off orders in health or lack of competence cases, to align the HCPC's position with that of the NMC. Amendments made by the Order also end the practice of HCPC members sitting on registration appeal panels, thereby removing conflicts of interest.

8. Consultation outcome

8.1 The Department ran a consultation from 4 September to 14 November 2014. In addition to asking questions about the detail of the Section 60 Order, the consultation also asked for views on the Department's decision to extend statutory regulation through the Health and Care Professions Council.

8.2 The Department received 168 responses from a range of stakeholder organisations and from individuals. Whilst there was broad support for the provisions of the Section 60 Order, there was a more mixed response to the questions on the identity of the regulator, with a significant minority in support of the United Kingdom Public Health Register. However the majority of key stakeholder organisations supported the proposal to regulate through the Health and Care Professions Council and we are going to proceed on that basis, with two changes.

8.3 Firstly, small number of respondents, including the Nursing and Midwifery Council and the General Pharmaceutical Council, argued that public health specialists who have retained registration with a regulator other than the HCPC should not be required to have dual registration.

8.4 The Department has also decided to that the protected title will be 'public health specialist'.

9. Guidance

9.1 No guidance will be produced

10. Impact

10.1 There is an impact on business, charities or voluntary bodies, if registrants work in the private sector, through payment of registration fees. As

a charitable body, the Public Health Register may experience a reduction in registrants if public health specialists do not renew their membership.

10.2 The impact on the public sector is a cost on the Health and Care Professions Council to set up and maintain the register. Registrants will need to pay an annual fee and we estimate almost all registrants work in the public sector.

10.3 An Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum on www.legislation.gov.uk. The Order lies within the scope of the One-In, Two-Out framework and has been validated by the RPC as having a direct cost to business of £0.00m per year.

11. Regulating small business

11.1 The legislation applies to small business, but only insofar as there may be some self-employed private sector public health specialists. The Impact Assessment provides evidence to suggest the number of self-employed private sector public health specialists is very small.

12. Monitoring & review

12.1 Health and Care Professions Council will be able to monitor the number of registrants and the impact of this regulation through its registration processes. Better Regulation Guidance by the Department for Business, Innovation & Skills advises a timespan of 3-5 years for an evaluation, which this policy will be subject to. DH will work with HCPC to evaluate the effectiveness of this Order.

13. Contact

Alison Ross at the Department of Health Tel: 020 7210 6308 or email: Alison.ross@dh.gsi.gov.uk can answer any queries regarding the instrument.