

**EXPLANATORY MEMORANDUM TO  
THE PROFESSIONAL STANDARDS AUTHORITY FOR HEALTH AND SOCIAL  
CARE (FEES) REGULATIONS 2015**

**2015 No .400**

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 The purpose of this instrument is to enable the Professional Standards Authority for Health and Social Care (the “Authority”) to become self-funding, by requiring the professional regulators that the Authority oversees (the “Regulatory Bodies”) to pay to the Authority a fee of such amount as is determined by the Privy Council under the methodology set out in the instrument.<sup>1</sup>

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

- 3.1 This instrument will impose a fee on each Regulatory Body for the first time. The amount of the fee imposed each year may increase or decrease, depending on: (a) what funding the Authority requests in the proposal that it will make to the Privy Council each year (in respect of which the Authority must have previously consulted with the Regulatory Bodies); and (b) how the overall funding required is apportioned between the Regulatory Bodies, based on their number of registrants (i.e., the people whose names appear on the register maintained by that Regulatory Body), which may vary from year to year.

4. **Legislative Context**

- 4.1 Section 224(1) of the Health and Social Care Act 2012 (the “2012 Act”) provides for the Authority to become funded by the Regulatory Bodies by inserting a new provision (section 25A) into the National Health Service Reform and Health Care Professions Act 2002.
- 4.2 Section 224(1) requires that, subject to the approval of Parliament, the Privy Council must make regulations requiring each Regulatory Body to pay periodic fees to the Authority. Under these Regulations, the fees will be payable on an annual basis. The regulations must also set out the functions of the Authority in respect of which the

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<sup>1</sup> The Regulatory Bodies comprise the General Chiropractic Council, the General Dental Council, the General Medical Council, the General Optical Council, the General Osteopathic Council, the General Pharmaceutical Council, the Health and Care Professions Council, the Nursing and Midwifery Council and the Pharmaceutical Society of Northern Ireland.

fees are to be paid (i.e., the specific roles and responsibilities of the Authority which are to be covered by the fees, for example, its ability to refer professional disciplinary cases to the court or its ability to investigate and report on the performance of a Regulatory Body). The regulations must also set out the methodology for determining the level of fees to be paid by each Regulatory Body. The methodology in these Regulations provides that the fee payable by each Regulatory Body will be determined by apportioning the funding required by the Authority (as determined by the Privy Council) between the Regulatory Bodies based on their number of registrants.

## **5. Territorial Extent and Application**

5.1 This instrument applies to all of the United Kingdom.

5.2 Please note that the instrument will also be laid in the Scottish Parliament.

## **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**

- *What is being done and why*

7.1 In 2010, the Department of Health conducted a review of its Arm's-Length Bodies as part of the wider changes to the NHS. The study found no compelling reason for the Authority (then the Council for Healthcare Regulatory Excellence/CHRE), to continue to be funded by the Government and Devolved Administrations. Instead, the review recommended that the Authority be funded through a compulsory levy (or fee) on the Regulatory Bodies that it oversees. This would realise savings of over £3 million per annum to the public purse, whilst realising the Government's policy intention to increase accountability and transparency across Government, while reducing the number, and associated costs to the taxpayer, of public bodies. It was considered necessary to impose a compulsory fee through legislation in order to ensure that the future funding of the Authority is secure.

7.2 The 2012 Act has been used to achieve this policy objective, by inserting a new provision into the National Health Service Reform and Health Care Professions Act 2002, as explained in paragraph 4.1 above.

7.3 The public has not expressed particular interest in this policy to date, as the main affected parties are the Regulatory Bodies overseen by the Authority. We do not expect notable media interest in this, even if the Regulatory Bodies do decide to pass on the costs of the fees to individual registrants, as the increased cost per registrant is estimated to be in the region of £2.92 (as discussed further below).

7.4 The policy is an important part of the Government's policy intention of having the Authority become self-funding.

## **8 Consultation outcome**

- 8.1 The public consultation on the proposed Regulations ran for 8 weeks, closing on 28 November 2014. Pre-consultation discussions with the Authority and the Regulatory Bodies on the policy took place between 2012 and 2014. Therefore, it was considered appropriate not to hold a 12-week consultation period in this case.
- 8.2 The consultation sought views on the methodology for setting the fee, and other matters connected with the payment of the fee (for example, the deadline for paying it), as the overall policy intention to make the Authority self-funding was set out in the 2012 Act. There were 22 responses to the consultation, including from the Authority, the nine Regulatory Bodies, as well as three trade unions, three Royal Colleges and several representative or trade bodies, some of which are in the Devolved Administrations.

### Views on the policy

- 8.3 Seven of the 22 respondents disagreed with the policy intent to make the Authority self-funding. However, this policy intention was enshrined in legislation in the 2012 Act, which was consulted upon and has been through due parliamentary processes. Whilst there has been some delay in enacting the provisions to make these Regulations under section 224 of that Act, the Government has always been clear that these Regulations would be made and that the Authority would become funded by a fee on the Regulatory Bodies. This consultation therefore was about the methodology which the Privy Council will use to determine the fees (and connected matters); it was not about the policy as to whether the Authority should be self-funding or about the role of the Authority.
- 8.4 In relation to the methodology for determining the fees, just over a third of respondents (eight) agreed with the methodology proposed. Just over a third of respondents (nine) disagreed, with some expressing concerns that the Regulatory Bodies with the highest number of registrants would be disadvantaged. In response to this, the Department has acknowledged that those Regulatory Bodies which have a greater number of registrants will pay more, but has noted that there is a strong relationship between registrant numbers and the number of professional disciplinary cases that the Authority refers to the courts, which is a major driver of cost for the Authority. The Department therefore considers the methodology to be fair.
- 8.5 The Department also consulted on what functions of the Authority should be covered by the fee. Just over two-thirds of respondents (fifteen) agreed with the functions proposed to be included.

### Impact on equality and the family test

- 8.6 The Consultation also asked a specific question relating to whether the implementation of the policy would have an adverse impact on equality. Just over a third of respondents (eight) raised concerns about the impact of the fee on individuals, concerned that the policy would have a disproportionate impact on women and those who are low paid. There was also criticism that the Department had not undertaken an Equalities Impact Assessment or had had sufficient regard for impacts on equality.

- 8.7 When developing this policy, officials considered the impact that the implementation of this policy could have on equality. The Department judged, however, that a full equality impact assessment would be better informed and more useful with the benefit of the views from stakeholders, which is why the views of stakeholders were specifically sought in the consultation. In response to the concerns expressed regarding the equality impact, the Department has noted that, if the cost of the fees are passed onto registrants, this should not have a significant detrimental impact on individuals as the estimated increased cost per registrant is circa £2.92 per year, as set out in the Impact Assessment.
- 8.8 The Department also assessed the policy against the Family Test, which was introduced after we had published the consultation. It concluded that this policy will not impact families under any of the limbs of that test.

#### Timing

- 8.9 Some of the Regulatory Bodies expressed concerns that they would be unable to raise the money necessary in time to pay the first fees due, particularly if they decided to raise registrant fees, as each Regulatory Body has a distinct process to go through to amend their legislation in order to make changes to registrant fees.
- 8.10 The Department recognised that there could be practical implementation issues for the Regulatory Bodies. Therefore, the first fees will be payable in respect of an 8 month period starting on 1 August 2015.

#### Payment period for the fee

- 8.11 Most respondents disagreed with the suggested payment period of 15 days for the fee, saying that this was too short a timeframe. In response to this, the Department amended the Regulations to extend the payment period to 30 days.

#### Rise in registrant fees and affordability concerns

- 8.12 A number of respondents were concerned that the fee would have to be covered by raising registrant fees. The Department notes that it is a decision for each Regulatory Body to make as to whether to pass on the cost of the new fee to registrants, though the Department accepts that the ability of the Regulatory Bodies to raise funds to pay the new fee through other means may be limited.
- 8.13 The Department is aware that at least some of the Regulatory Bodies are intending to raise their fees to cover the fee payable to the Authority. The General Medical Council has already factored the cost of the fee into their latest fee rises. However, some of the Regulatory Bodies have indicated that they will not be raising registrants' fees. As set out in the accompanying Impact Assessment, the estimated increased cost per registrant, if the Regulatory Bodies did decide to pass on the costs of the fee, is circa £2.92 per year.

#### Quality of the Impact Assessment and analysis

- 8.14 The Department prepared a full initial Impact Assessment, which was published alongside the consultation document. There was some concern expressed by respondents to the consultation about the Impact Assessment and the quality of analysis. However, the Regulatory Policy Committee (RPC) gave the Impact Assessment a ‘green’ rating, confirming that it is fit-for-purpose.
- 8.15 There was also some concern expressed about a lack of options appraisal in the analysis. A number of options were considered by the Department and the Authority in the early stages of policy development. However, most of these options were found to contain an element of cross-subsidy in funding across the nine Regulatory Bodies. Cross-subsidy is not directly prohibited by the HM Treasury guidance ‘Managing Public Money’, but is normally classified as a form of taxation and therefore is considered inappropriate in most cases. Consequently, these options were not included in the detailed analysis in the consultation, as this could have clouded the analysis of options that were genuinely workable.

## **9. Guidance**

- 9.1 No guidance will be published.

## **10. Impact**

- 10.1 The impact on business, charities or voluntary bodies is limited to what the Department estimates will be a small increase in individual registrant fees (circa. £2.92 per registrant per year) should the Regulatory Bodies choose to pass on the costs of the new fees to their registrant members.
- 10.2 The impact on the public sector is an estimated realisation of savings of over £3 million per annum.
- 10.3. An Impact Assessment is attached to this memorandum and is published alongside the Explanatory Memorandum on [www.legislation.gov.uk](http://www.legislation.gov.uk).

## **11. Regulating small business**

- 11.1 The legislation applies to small business.
- 11.2 The fee may result in an increase in registration fees for healthcare professionals, if the Regulatory Bodies choose to pass onto registrants the cost of the fee. As the vast majority of private sector healthcare enterprises are small or micro businesses, we would expect that the Regulatory Bodies may not consider it feasible to exclude such registrants when apportioning the cost burden. We cannot predict exactly how the fee will be applied as a rate per professional, but the estimated cost per registrant, as assessed in the Impact Assessment, is relatively low (circa £2.92 per registrant, per year) and so we do not expect that it will disproportionately impact small or micro businesses.

## **12. Monitoring and review**

- 12.1 The fee-setting process will occur annually and the fee will be payable in respect of a 12 month period (the “chargeable period”) from 1 April to 31 March of the following year. The initial chargeable period, however, will be an 8 month period from 1 August 2015 to 31 March 2016. The level of the fee imposed on each Regulatory Body will be determined by the Privy Council subject to consultation with them. The intended outcome is for the Authority to have a secure stream of funding for the coming years.

### **13. Contact**

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