

2004 No. 2033

HEALTH CARE AND ASSOCIATED PROFESSIONS

HEALTH PROFESSIONS

**The Health Professions (Operating Department Practitioners and
Miscellaneous Amendments) Order 2004**

Made - - - - - *27th July 2004*

Coming into force in accordance with article 1(2)

At the Court at Buckingham Palace, the 27th day of July 2004

Present,

The Queen's Most Excellent Majesty in Council

Whereas the Secretary of State and the Scottish Ministers published a draft Order and invited representations as required by paragraph 9(1) and (3) of Schedule 3 to the Health Act 1999(a):

And whereas the period of three months mentioned in paragraph 9(4) of that Schedule expired before a draft of this Order in Council was laid before Parliament and the Scottish Parliament:

And whereas a draft of this Order in Council has been approved by resolution of each House of Parliament and approved by resolution of the Scottish Parliament in accordance with section 62(10) of the Health Act 1999:

Now, therefore, Her Majesty, in exercise of the powers conferred upon Her by sections 60 and 62(4) of that Act, and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:

Citation, commencement, extent and interpretation

1.—(1) This Order may be cited as the Health Professions (Operating Department Practitioners and Miscellaneous Amendments) Order 2004.

(2) This article and Part 2 shall come into force forthwith upon the making of this Order, and the other provisions of this Order shall come into force on such days as the Secretary of State may specify.

(3) Different days may be specified under paragraph (2) for different purposes, and any day so specified shall be caused to be notified in the London, Edinburgh and Belfast Gazettes published not later than one week before that day.

(4) The extent of any amendment of any enactment or instrument contained in this Order is the same as that of the enactment or instrument amended, but article 7 applies to England only.

(5) In this Order—

“the 2001 Order” means the Health Professions Order 2001(a);

“AODP register” means Part 1 of the register of operating department practitioners maintained by the Association of Operating Department Practitioners(b);

“the Council” means the Health Professions Council established under article 3 of the 2001 Order;

“the register” means the register established and maintained under article 5 of the 2001 Order.

PART 1

OPERATING DEPARTMENT PRACTITIONERS

Arrangements for transfer of ODPs to the register

2.—(1) The Council and the Association of Operating Department Practitioners shall enter into arrangements to ensure that all the names in the AODP register which are to be entered in the register on the day article 3(3)(f) of this Order comes into force are so entered.

(2) If—

(a) the Council has determined—

(i) pursuant to the arrangements mentioned in paragraph (1), and

(ii) in accordance with paragraph 25 of Schedule 2 to the 2001 Order(c) that a person’s name is to be entered in the register; and

(b) solely as a consequence of that determination that name has been removed from the AODP register,

then notwithstanding paragraph 25(1) of Schedule 2 to the 2001 Order, that person’s name is to be entered in the register on the day article 3(3)(f) of this Order comes into force.

ODP amendments to the 2001 Order

3.—(1) For article 13(1) of the 2001 Order (transitional provisions relating to admission to the register) substitute—

“13.—(1) This article applies to a person—

(a) who applies for admission to the register under article 9(1);

(b) who is not registered on the date of coming into force of an order made under article 6(1) which relates to the profession in respect of which he is applying to be registered;

(c) who has never been registered in respect of that profession—

(i) under the 1960 Act or this Order, or

(ii) in the case of an ODP, on the AODP register; but

(a) S.I. 2002/254 as amended by S.I. 2003/3148.

(b) The Association of Operating Department Practitioners is at Lewes Enterprise Centre, 112 Malling Street, Lewes, East Sussex, BN17 2RJ. As a consequence of the coming into force of article 3 of this Order, Part 1 of their register of operating department practitioners is to be transferred to the Health Professions Council, Park House, 184 Kennington Park Road, London SE11 4BU.

(c) Paragraph 25 is inserted into Schedule 2 of the 2001 Order by article 3 of this Order.

- (d) who applies for admission to the register in respect of that profession within the period of two years beginning with the date mentioned in sub-paragraph (b) (“the relevant period”).”.
- (2) In Part I of Schedule 1 to the 2001 Order (the Health Professions Council)—
 - (a) in paragraph 1(1)—
 - (i) in paragraph (a), for “12 members” substitute “13 members”,
 - (ii) in paragraph (b), for “11 members” substitute “12 members”, and
 - (iii) in paragraph (c), for “12 members” substitute “13 members”; and
 - (b) in paragraph 3, after “Act”, insert “or the AODP register”.
- (3) In Schedule 2 to the 2001 Order (transitional provisions)—
 - (a) in paragraph 1, after “first constituted,” insert “and thereafter, after article 3 of the ODP Order comes into force and until the end of the second transitional period,”;
 - (b) in paragraph 3(1)—
 - (i) after “the Council shall” insert “after article 3 of the ODP Order comes into force”,
 - (ii) in paragraph (a), for “12 members” substitute “13 members”,
 - (iii) in paragraph (b), for “11 members” substitute “12 members”, and
 - (iv) in paragraph (c), for “12 members” substitute “13 members”;
 - (c) after paragraph 3(4) insert—

“(4A) Following consultation of persons who appear to it to be representative of operating department practitioners, the Privy Council shall appoint one practitioner member from among persons who were registered in the AODP register immediately before this sub-paragraph comes into force, or who were removed from that register pursuant to article 2 of the ODP Order.”;
 - (d) in paragraph 3(6) after “Act”, insert “or the AODP register”;
 - (e) in paragraph 20(2)(b), after “CPSM” add “or the Association of Operating Department Practitioners”;
 - (f) after paragraph 24 add—

“Provisions on ODPs - register

25.—(1) Subject to sub-paragraph (2), if on the day before this paragraph comes into force a person’s name is included in the AODP register, he shall be registered in Part 13 of the register with effect from the day this paragraph comes into force.

(2) If on the day this paragraph comes into force there is an outstanding application for a person’s name to be entered into the AODP register (including an application for restoration to that register), the Council—

- (a) may determine that his name is to be entered in the register; and
- (b) shall dispose of the matter in such manner as it considers just.

26. Where a person is registered in Part 13 of the register pursuant to paragraph 25, his home address shall not be published in the register without his consent.

Provisions on ODPs - fitness to practise

27. If on the day before paragraph 25 comes into force a person’s name is included in the AODP register but his registration is suspended (whether temporarily or permanently) or he is the subject of proceedings which, but for the closure of the AODP register, could have led to his removal or suspension from the AODP register, the Council—

- (a) may determine that his name is not to be entered in the register; and

- (b) shall dispose of the matter (including any proceedings) in such manner as it considers just.”.
- (4) In Schedule 3 to the 2001 Order (interpretation)—
- (a) after the definition of “alternate member” insert the following definition—
- ““AODP register” means Part 1 of the register of operating department practitioners maintained by the Association of Operating Department Practitioners;”;
- (b) after the definition of “national” insert the following definition—
- ““the ODP Order” means the Health Professions (Operating Department Practitioners and Miscellaneous Amendments) Order 2004;”;
- (c) in the definition of “relevant professions”, after “occupational therapists”, insert “operating department practitioners”.

Amendment of the European Communities (Recognition of Professional Qualifications) (Second General System) Regulations 2002

4. In Part 1 of Schedule 2 to the European Communities (Recognition of Professional Qualifications) (Second General System) Regulations 2002(a) (regulated professions – professions regulated by law or public authority)—

- (a) in the column headed “profession”, before “State Registered Paramedic” insert “Operating Department Practitioner”; and
- (b) in the column headed “designated authority”, opposite “Operating Department Practitioner” in the column headed “profession”, insert “Health Professions Council”.

PART 2

MISCELLANEOUS AMENDMENTS

Amendment of the Blood Tests (Evidence of Paternity) Regulations 1971

5. In the definition of “sampler” in regulation 2(1) of the Blood Tests (Evidence of Paternity) Regulations 1971(b) (interpretation), for “medical laboratory technician” substitute “biomedical scientist”.

Amendment of the Magistrates’ Courts (Blood Tests) Rules 1971

6. In the definition of “sampler” in rule 2(1) of the Magistrates’ Courts (Blood Tests) Rules 1971(c) (which relates to interpretation), for “medical laboratory technician” substitute “biomedical scientist”.

Amendment of the National Health Service (Professions Supplementary to Medicine) Regulations 1974

7. In regulation 3(1) of the National Health Service (Professions Supplementary to Medicine) Regulations 1974(d) (employment of officers), for “medical laboratory technician,” substitute “biomedical scientist.”.

(a) S.I. 2002/2934.

(b) S.I. 1971/1861; the relevant amending instrument is S.I. 2001/773.

(c) S.I. 1971/1991; the relevant amending instrument is S.I. 2001/776.

(d) S.I. 1974/494; the relevant amending instruments are S.I. 1978/1090, 2000/523 and 880, and 2003/1590.

Amendment of the National Health Service (Professions Supplementary to Medicine) (Scotland) Regulations 1974

8. In regulation 3 of the National Health Service (Professions Supplementary to Medicine) (Scotland) Regulations 1974(a) (employment of officers)—

- (a) for “chiroprapist,” at the first place where it occurs, substitute “chiroprapist or podiatrist,”; and
- (b) for “medical laboratory technician,” at the first place where it occurs, substitute “biomedical scientist.”

Amendment of the European Communities (Recognition of Professional Qualifications) Regulations 1991

9. In the column headed “profession” in Part 1 of Schedule 1 to the European Communities (Recognition of Professional Qualifications) Regulations 1991(b) (professions regulated by law or public authority)—

- (a) insert “BIOMEDICAL SCIENTIST” after “ARTS THERAPIST”;
- (b) substitute “CHIROPODIST OR PODIATRIST” for “CHIROPODIST”; and
- (c) omit “MEDICAL LABORATORY TECHNICIAN”.

Further amendments to the 2001 Order

10.—(1) In article 10(5) of the 2001 Order (renewal of registration and readmission), for “Article 9(4) to (6)”, substitute “Article 9(5) to (7)”.

(2) In article 37(10) of the 2001 Order (appeals against decisions of the Education and Training Committee), for “a sheriff” substitute “to the sheriff in whose sheriffdom the person’s address in the register is (or if he were registered would be) situated”.

(3) In article 38(1)(b) of the 2001 Order (appeals), for “a sheriff” substitute “the sheriff in whose sheriffdom the person’s address in the register is (or if he were registered would be) situated”.

(4) In article 47 of the 2001 Order (inquiry by the Privy Council)—

- (a) in paragraph (7)—
 - (i) after “costs” at both places where it occurs insert “or expenses”, and
 - (ii) in sub-paragraph (b), after “Privy Council” insert “in Scotland as a debt and in England, Wales and Northern Ireland”;
- (b) in paragraph (8)—
 - (i) after “costs” at both places where it occurs insert “or expenses”, and
 - (ii) omit the words from “and every such” to “in the order”; and
- (c) for paragraph (9) substitute—

“(9) For the purposes of paragraph (8), orders—

 - (a) as to costs in England and Wales or Northern Ireland may by leave of the High Court be enforced in the same manner as orders of the High Court to the same effect; and
 - (b) as to expenses in Scotland may by leave of the Court of Session be enforced in the same manner as decrees of the Court of Session to the same effect.”.

(5) In Schedule 3 to the 2001 Order (interpretation)—

- (a) in the definition of “parties”, for “53” substitute “47”;

(a) S.I. 1974/549; the relevant amending instruments are S.S.I. 2000/202 and S.I. 2003/1590.

(b) S.I. 1991/824; the relevant amending instruments are S.I. 2000/1960, and 2002/880, 881 and 3051.

- (b) in the definition of “relevant professions”—
 - (i) for “chiropractors;” substitute “chiropractors and podiatrists;” and
 - (ii) for “medical laboratory technicians;” substitute “biomedical scientists;” in the appropriate alphabetical place.

Amendments to the Health Professions (Parts of and Entries in the Register) Order of Council 2003

11. In Schedule 1 to the Health Professions (Parts of and Entries in the Register) Order of Council 2003(a) (parts of the register)—

- (a) in column 1—
 - (i) for “Chiropractors (Chiropractors and Podiatrists)” substitute “Chiropractors and Podiatrists”, and
 - (ii) for “Medical Laboratory Technicians (Biomedical Scientists)” substitute “Biomedical Scientists”; and
- (b) in column 2, for “Medical Laboratory Technician (Biomedical Scientist)” substitute “Biomedical Scientist”.

A. K. Galloway
Clerk of the Privy Council

(a) S.I. 2003/1571.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order designates operating department practitioners as one of the professions regulated under the Health Professions Order 2001 (“the principal Order”). A number of amendments are made to the principal Order and related legislation as a consequence of this – and in addition this Order makes a number of other, miscellaneous amendments to, or relating to, the principal Order.

Part 1 of the Order contains the amendments relevant to the designation of operating department practitioners as a regulated profession. The definition of a “relevant profession” for the purposes of the principal Order is expanded to include operating department practitioners (article 3(4)) and the membership of the Health Professions Council (“the Council”) is expanded to include an operating department practitioner registrant member. As a consequence, the Council is also to have an extra alternate member and an extra lay member (article 3(2)). Similar provision is made in respect of the transitional period to which Schedule 2 of the principal Order applies (article 3(3)(a) to (d)).

Powers are also taken so that the Privy Council may provide by order for the transfer of employees from the AODP to the Council (article 3(3)(e)).

Operating department practitioners will be required to register in the register maintained under article 5 of the principal Order (“the HPC Register”), and arrangements are to be made so that practitioners in Part 1 of the existing voluntary register maintained by the Association of Operating Department Practitioners (“the AODP”) are, except in certain circumstances, to be transferred to the HPC Register – although their home addresses are not to appear in the HPC Register without their consent (article 3(3)(f)). The Council and the AODP will be under a duty to enter into prior arrangements to ensure that the necessary transfers take place (article 2, which is to come into force before article 3).

Persons who were not on the AODP Register will, for a two year period, be able to seek registration on the basis of relevant practice, training and experience, even though they do not satisfy the requirement of having an approved qualification (article 3(1) which amends article 13 of the principal Order).

As a consequence of operating department practitioners becoming a regulated profession, the Council is designated as the authority responsible for processing applications for entry to Part 13 of the HPC Register from migrants having similar qualifications recognised in the European Economic Area or Switzerland – and for authorising those migrants to practise in the United Kingdom in accordance with Council Directive 92/51/EEC on a second general system for the recognition of professional education and training^(a), as amended and extended^(b) (article 4).

Part 2 of this Order contains some miscellaneous amendments to the principal Order and related legislation. Medical laboratory technicians are to be known instead as biomedical scientists (articles 5, 6, 7, 8(b), 9(a) and (c), 10(5)(b)(ii) and 11(a)(ii) and (b)) and the designation for chiropodists in the principal Order is modified to cover podiatrists (article 10(5)(b)(i)), with consequential changes being made elsewhere (articles 8(a), 9(b) and 11(a)(i)). Amendments are also made to provisions of the principal Order relating to appeals and Privy Council inquiries to ensure that expenses are recoverable in Scotland and that appeals to the sheriff in Scotland will be to the sheriff in whose sheriffdom the appellant’s address in the register is (or if he were registered would be) situated (article 10(2) to (4)). Two drafting errors are also corrected (article 10(1) and (5)(a)).

^(a) OJ No. L209, 24.7.1992, p.25.

^(b) The Directive was last amended by Directive 2001/19/EC (OJ No. L 206, 31.7.2001, p.1) and was extended to Switzerland by the Agreement between the European Community and its Member States of the one part, and the Swiss Confederation of the other, on the free movement of persons, signed at Luxembourg on 21 June 1999 (OJ No. L 114, 30.4.2002, p.6).

A full regulatory impact assessment of the impact this instrument will have on public services and business is available from Christine Holmes, Health Regulation Branch, Department of Health, Romm 2N35B, Quarry House, Leeds LS2 7UE. Email christine.holmes@doh.gsi.gov.uk.

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