

**EXPLANATORY MEMORANDUM TO
THE HEALTH PROFESSIONS COUNCIL (CONSTITUTION)
ORDER 2009**

2009 No. 1345

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 will revise the constitutional arrangements of the Health Professions (HPC). The Council will consist of 10 lay and 10 appointed members, all of whom will be appointed by the Privy Council (although in practice the Privy Council's appointments functions will be delegated to the Appointments Commission). This Order also sets out the criteria for disqualification from appointment to the HPC, the circumstances in which its members may be suspended or removed from office, and the chairing arrangements for the HPC.

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

3.1 None

4. Legislative Context

4.1 The Health Profession Order 2001 (the 2001 Order) established the constitutional arrangements for the HPC. Before 1st July 2009, the constitution was set out, essentially, in Schedule 1 to the 2001 Order. It provided that the Council was to be made up of 26 members in total: 1 member chosen to represent each of the 13 professions regulated by the HPC (all of whom had to be registered with the HPC) and 13 lay persons appointed by the Privy Council (in practice, by the Appointments Commission). In addition 1 alternate member was chosen to represent each of the 13 professions regulated by the HPC, should the registrant member that they shadowed be unable to attend meetings.

4.2 Amendments were recently made to revise the constitutional arrangements set out in the 2001 Order by the Health Care and Associated Professions (Miscellaneous Amendments and Practitioner Psychologists) Order 2009 (SI 2009/1182) ("the 2009_Order"). Notably, the 2009 Order provided for the constitution of the HPC to be set out in a separate Order of the Privy Council, rather than the 2001 Order, for its members simply to be registrant and lay members (although a lay majority is ruled out), and for all the members of the Council to be appointed by the Privy Council (in practice, by the Appointments Commission). This Order is the new separate Order.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

- 6.1 As this 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 The White Paper *Trust, Assurance and Safety* put forward a programme of reform to the system of regulation for the health care professions. The main emphasis of the reforms was to increase accountability of the Health Professions' Regulators whilst at the same time increasing their independence from Government.
- 7.2 Chapter One of the White Paper (*Assuring independence: the governance and accountability of the professional regulators*) included a number of recommendations in relation to the constitutions of the Health Professions' Regulators. These were that:
- The Councils of the Regulators should have, as a minimum, parity of membership between lay and professional members, to ensure that purely professional concerns are not thought to dominate their work;
 - To enhance public confidence in the Health Professions Regulators, council members should be independently appointed;
 - To enable councils to focus more effectively on strategy and the oversight of their executives, they should become smaller and more board-like, with greater consistency of size and role across regulatory bodies.
- 7.3 This Order provides for a smaller Council, with parity of lay and professional membership (reducing from 26 to 20 members – 10 of which will be lay members and 10 registrant members). The smaller council will, therefore, be able to act strategically in a board-like manner. In addition, parity in lay and professional membership will dispel any perceptions that the HPC may act partially towards its registrants.
- 7.4 The terms of office of Council members will be determined by the Privy Council on appointment, although in practice this function will be delegated to the Appointments Commission. It is envisaged that members will be appointed for a term of four years from the start of the new constitution, but the flexibility of allowing the Appointments Commission to determine terms of office on appointment will allow for flexibility over matters such as determining the duration of appointments to fill vacancies. It will also allow the Appointments Commission to make staggered appointments, as happens with other Health Professions' Regulators. This independent appointments process will enhance confidence in the HPC.
- 7.5 The Appointments Commission will also be responsible, on behalf of the Privy Council, for the suspension or removal from office of members, in accordance with criteria set out in the Order. However, the HPC may provisionally suspend its members under its own standing orders, pending the outcome of the Appointment Commission's consideration of the matter. This Order also allows the Appointments Commission to stay its own consideration of whether or not to suspend a member while the HPC is carrying out its own investigation. A balance is therefore struck between the independence of the Regulator, the HPC, and the effectiveness of independent oversight of the Regulator.

- **Consolidation**

7.7 This is a self-standing instrument that does not amend other legislation.

8. Consultation outcome

- 8.1 The Health Professions Council (Constitution) Order was published in draft for public consultation on 16 January 2009. It ran for 12 weeks, and consultation closed on 17 April . The consultation document was issued to professional and representative bodies as well as being posted on the Department of Health's website. 20 responses were received,
- 8.2 There was widespread support for the key features of the proposed new HPC Constitution. However, there were concerns raised in the consultation as to the composition of the Council namely, a desire for there to be reserved places for each of the professions regulated by the HPC.
- 8.3 As regards the issue of reserved places, the Working Group chaired by Niall Dickson in 2008 looking at Enhancing Confidence in Healthcare Professional Regulators, made a number of recommendations on the size and composition of Councils of Health Professions Regulators. In particular, it recommended that:
- No group should have guaranteed places on the council; and
 - Members, including those who are registrants, should be appointed because of their knowledge, experience and judgement.

In light of these clear recommendations it was considered that there was not sufficient justification for departing from the Government's established position on this issue.

8.4 A full analysis of the consultation responses is posted on the Department of Health website.

9. Guidance

9.1 The Department of Health has not issued any guidance in relation to this Order.

10. Impact

- 10.1 There is minimal impact business, charities or voluntary bodies. There is no negative impact on equality issues.
- 10.2 There is no impact on the public sector.
- 10.3 An Impact Assessment is attached to this Memorandum.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 This legislation will be subject to internal review within the Department of Health after 3 years.

13. Contact

Stuart Griffiths at the Department of Health Tel: 0113 254 5249 or email: Stuart.Griffiths@dh.gsi.gov.uk can answer any queries regarding the instrument.

Summary: Intervention & Options		
Department /Agency: Department of Health	Title: Impact Assessment of the Health Professions Council (HPC) Constitution Order 2009	
Stage: Implementation	Version: 1.0	Date: May 2009
Related Publications: White Paper - "Trust, Assurance and Safety"		

Available to view or download at:

<http://www.dh.gov.uk>

Contact for enquiries: **Stuart Griffiths**

Telephone: **0113 254 5249**

What is the problem under consideration? Why is government intervention necessary?
 To enhance public confidence in the HPC, strengthening their ability to act independently and strategically. Government intervention is necessary to secure the legislative changes required to reconstitute the HPC Council with parity of lay and professional appointed membership, to guard against perceptions that Health Regulator Councils are partial to professionals. A smaller sized council will enable the HPC Council to act strategically in a board-like manner.

What are the policy objectives and the intended effects?
 Key objective: to enhance public confidence in the HPC and to enable its Council to act more strategically. This will be achieved by setting out the constitutional arrangements of the HPC in a new Constitution Order making a number of changes to the governing structure of the HPC including a move to a smaller, fully appointed council. This is intended to enhance public confidence in the work of the HPC.

What policy options have been considered? Please justify any preferred option.
 The policy options considered were (1) do nothing - discarded as no improvements would be made, and, (2) provide for the HPC Council's constitution, contained in an Order of the Privy Council, to detail revised proposals for governance - including lay and professional membership parity, and appointment of members by the Privy Council. It was decided to adopt option 2 as this provided a flexible approach that allowed the constitution of the Council to reflect the number and range of registrants, and to provide the clear basis for the appointment, removal, and suspension of members.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? June 2011

Ministerial Sign-off For final proposal/implementation stage Impact Assessments:
I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.
 Signed by the responsible Minister:
 Date:

Summary: Analysis & Evidence

Policy Option: OPTION2
(over Opt 1)

Description: Adoption of a smaller, fully appointed Council for the HPC

COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups' – in this case, the HPC Costs of Option 1: £200K fixed, £360K annual, total (by yr 5): Cost of Option 2: £60K fixed, £177K annual, Difference in costs of Option 2 over Option 1: -£140K fixed, -£182 annual – total NPV (by yr 5) £650K (saving).	
	One-off	Y		
	£ -£140k	1		
	Average Annual Cost (excluding one-off)			
	£ -£182k		Total Cost (PV)	£ - 650K
Other key non-monetised costs by 'main affected groups'				

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups' The benefits cannot be monetised	
	One-off	Y		
	£ .			
	Average Annual Benefit (excluding one-off)			
	£		Total Benefit (PV)	£
Other key non-monetised benefits by 'main affected groups' HPC enjoys enhanced confidence as a Regulator through a smaller council, independently appointed, safer treatment of service users, improved treatment and management of regulated professionals.				

Key Assumptions/Sensitivities/Risks The HPC is assumed to have an unchanged number of meetings / year and unchanged costs per Council Member. Administrative costs of training a smaller, fully appointed council assumed to be less than training a larger Council (based on inability to predict whether existing members would be re-elected or re-appointed)

Price Base Year 2009	Time Period Years 5	Net Benefit Range (NPV) £	NET BENEFIT (NPV Best estimate)
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What is the geographic coverage of the policy/option?		UK		
On what date will the policy be implemented?		July 2009		
Which organisation(s) will enforce the policy?		HPC		
What is the total annual cost of enforcement for these organisations?		£		
Does enforcement comply with Hampton principles?		Yes		
Will implementation go beyond minimum EU requirements?		No		
What is the value of the proposed offsetting measure per year?		£		
What is the value of changes in greenhouse gas emissions?		£		
Will the proposal have a significant impact on competition?		No		
Annual cost (£-£) per organisation (excluding one off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices)		(Increase - Decrease)	
Increase of £	Decrease of £	Net Impact	£

Key	Annual costs and benefits	(Net) Present
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[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

Background

The White Paper *Trust, Assurance and Safety – the Regulation of Health Professionals in the 21st Century* (published in February 2007) set out a substantial programme of reform to the United Kingdom's system for the regulation of health care professionals. This was based on consultation on the two reviews of professional regulation published in 2006: *Good Doctors, Safer Patients* and the *Regulation of the Non-Medical Health Care Professions*.

Over recent years, most of the Health Care Regulators have made changes to provide greater reassurance that they are even-handed in their deliberations and decisions but perceived dependence, or attachment to, a particular interest has continued to weaken or threaten confidence in those actions. The composition of the Regulators is central to those perceptions.

The White Paper therefore proposed that:

- The Councils of the regulatory bodies should have, as a minimum, parity of membership between lay and professional members, to ensure that purely professional concerns are not thought to dominate their work;
- To enhance public confidence in the health care professional regulators, Council members will be independently appointed; and,
- To enable councils to focus more effectively on strategy and the oversight of their executives, they will become smaller and more board-like, with greater consistency of size and role across regulatory bodies.

Legislation amending the constitutional arrangements for the other Health Care Regulators, in line with these recommendations, was put forward in the Health Care and Associated Professions (Miscellaneous Amendments) Order 2008 SI No. 1774. These reforms will be continued in the Health Care and Associated Professions (Miscellaneous Amendments and Practitioner Psychologists) Order 2009.

Before this programme of reform each Health Regulator Council consisted of a number of lay members appointed by the Privy Council (who in practice delegate this task to the Appointments Commission) and a number of registrant members who are elected by the registrants themselves, or sometimes nominated by educational bodies. In future all members of Councils will be appointed by the Privy Council. All organisations need to adapt to changing circumstances over time. These amendments will make it easier for changes to be made to a regulatory body's overall governing structure in the future.

This Impact Assessment accompanies the publication of a Consultation on the proposed changes to the HPCs Constitution and will be revised in light of any changes to the Constitution that arise following receipt of the results of this consultation.

HPC Constitution Order

The HPC is a Health Regulator, and was set up to protect the public. They deliver this function by keeping a register of health professionals who meet requisite standards for their training, professional skills, behaviour and health. The HPC currently regulate 13 health professions: Arts therapists, Biomedical scientists, Chiropodists/podiatrists, Clinical scientists, Dietitians, Occupational therapists, Operating department practitioners, Orthoptists, Paramedics, Physiotherapists, Prosthetists/orthotists, Radiographers, Speech and language therapists. From July 2009 the HPC will also regulate practitioner psychologists.

This Order, which is made pursuant to the powers conferred by the Health Professions Order 2001, allows the Privy Council to provide by Order for the numbers of lay and registrant members on the HPC

Council, their terms of office, arrangements for appointing a chair, and provisions with respect to the suspension or removal of members. In particular, it provides for a smaller Council for the HPC than is in place at present.

The Order provides for the new Council of the HPC to consist of 20 members made up of 10 lay and 10 professional members. This is a reduction in Council membership from the current 28 members (made up of one representative from each of the professions currently regulated by the HPC and 13 lay members) plus a president. In addition, there are 13 alternate professional members who attend Council and Committee meetings in the absence of the 13 representatives.

Consultation

The proposed new constitution was published for public consultation between 16 January and 17 April 2009. Respondents were asked to fill in a questionnaire response form and return either electronically or by post to the Department of Health. In total 20 responses were received by the closing date. Overall the consultation supported the proposed constitution. A copy of the report of the consultation can be found on the Department of Health website

Estimated costs associated with change in governance

The figures below have been provided by the HPC themselves, and reflect expenditure in relation to the current Council, and expected changes to this expenditure to be delivered by the reforms.

Current Council

Average attendance allowance for members	£5,238
Average expenses for members	£3,095

Total attendance costs (42* x £5238)	£220,000
Total expenses costs (42 x £3095)	£130,000

Annual costs for current council	£350,000
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Admin costs of appointments in 2008/9	£10,000
Admin costs of elections in 2009**	£200,000

Admin costs of elections in other years	£40,000
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New Council

Estimated attendance costs (20 x £5238)	£104,760
Estimated expense costs (20 x £3095)	£61,904

Annual costs of new Council	£166,664
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Estimated costs of appointments in 2009	£60,000
Estimated costs of appointments in year 2	£10,000

Projected savings

Savings year one (£560,000 - £236,664)	£323,336
Savings ongoing (£400,000 - £236,664)	£163,336

* HPC used 42 Council members, alternates and Non council committee members in 2007/8

**In addition to normal elections to Council, HPC is due to run elections in 2009 for all 13 alternates

Administrative costs of training a smaller, fully appointed council assumed to be less than training a larger Council (based on inability to predict whether existing members would be re-elected or re-appointed)

Estimated benefits associated with change in governance (non-monetary)

Estimated benefits

Parity of membership between lay and professional members, and independently appointed Council members, will enhance confidence in the HPC.

A smaller Council will allow the HPC to focus more effectively on strategy and the oversight of its executive, acting in a more board-like manner.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	No	Yes
Small Firms Impact Test	No	Yes
Legal Aid	No	Yes
Sustainable Development	No	Yes
Carbon Assessment	No	Yes
Other Environment	No	Yes
Health Impact Assessment	No	Yes
Race Equality	No	Yes
Disability Equality	No	Yes
Gender Equality	No	Yes
Human Rights	No	Yes
Rural Proofing	No	Yes

Competition Assessment

No issues have been identified

Small Firms Impact Test

No impact on small firms

Legal Aid

No legal issues identified

Sustainable development

No issues identified

Carbon Assessment

No impact

Other environment

No environmental issues identified

Health Impact Assessment

No issues identified

Race/Disability/Gender Equality

In drafting the Order, we have considered the possible impact on equality issues (age, disability,

gender, race, religion or belief, and sexual orientation) of each of the policies described in this

Impact Assessment. When exercising the powers to appoint delegated to them by the Privy Council the directions providing the Appointments Commission with such authority oblige them: (i) to apply good practice in relation to equality and diversity issues, and (ii) make appointments which reflect the desirability for the HPC to have persons a range of backgrounds, qualifications, competencies, interests and experience on its Council.

Human Rights

No issues identified

Rural Proofing

No issues identified