

**EXPLANATORY MEMORANDUM TO**  
**THE HEALTH AND CARE PROFESSIONS COUNCIL (CORONAVIRUS)**  
**(AMENDMENT) RULES ORDER OF COUNCIL 2021**

**2021 No. 27**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by the Department of Health and Social Care and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

**2. Purpose of the instrument**

- 2.1 The Order contains amendments to the Health and Care Professions Council (HCPC) Rules. The amendments ensure that the HCPC's processes can continue during the current COVID-19 pandemic and future emergencies.
- 2.2 Specifically, this order is made under the Health Professions Order 2001 amending the rules contained in the Health and Care Professions Council (Investigating Committee) (Procedure) Rules 2003, Health and Care Professions Council (Conduct and Competence Committee) (Procedure) Rules 2003, the Health and Care Professions Council (Health Committee) (Procedure) Rules 2003 and the Health Professions Council (Registration Appeals) Rules 2003.

**3. Matters of special interest to Parliament**

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

- 3.1 This Order will come into force within 49 days of being laid before Parliament.

*Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)*

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

**4. Extent and Territorial Application**

- 4.1 The territorial extent of this instrument is the United Kingdom.
- 4.2 The territorial application of this instrument is the United Kingdom.

**5. European Convention on Human Rights**

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

**6. Legislative Context**

- 6.1 This instrument is being made in accordance with the HCPC's powers, as set out in the Health Professions Order 2001, to make rules in accordance with its core

regulatory functions. Further detail as to the various enabling provisions used is set out below.

## **7. Policy background**

### *What is being done and why?*

- 7.1 This instrument is being made in order to allow the HCPC to amend its operating procedures during an emergency period.
- 7.2 The Rules amend the procedural rules for the HCPC's three Practice Committees, which conduct fitness to practise proceedings, and the procedural rules for its Appeal Panel, which hears appeals against registration decisions.
- 7.3 The amendments to all four sets of procedural rules are in similar form and make two changes. They provide for the service by electronic means of notices and other documents relating to fitness to practise and appeals proceedings and enable the Practice Committees and Appeal Panel to conduct hearings and meetings by audio or video conference in an emergency. The amendment also allows that where a hearing is being held by audio or video conferencing, the Committee may order that the hearing is to be held in private.

## **8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union**

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

## **9. Consolidation**

- 9.1 The HCPC will inform its registrants of the rules changes.

## **10. Consultation outcome**

- 10.1 The HCPC held a stakeholder consultation between 25 August 2020 and 8 September 2020 on its proposed Rules. A range of stakeholders were notified about the consultation including professional bodies; unions; service user representatives and the Professional Standards Authority. The responses to the consultation were broadly supportive of the proposed Rules changes.

## **11. Guidance**

- 11.1 The HCPC has published remote hearing guidance on its website. The guidance is available at: <https://www.hcpts-uk.org/aboutus/publications/hcpts-remote-hearing-guidance/>

## **12. Impact**

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 The HCPC has undertaken Equality and Financial Impact Assessments of the amendments to its Rules. The Equality Impact Assessment (EIA) identified potential barriers to participating fully and fairly in the fitness to practise process. Those barriers might be caused by lack of access to or inability to use email or remote hearing technology, as well as inadequate accommodation or lack of privacy in which

to undertake a remote hearing. There may also be impacts on participants with mental health conditions, or those who are vulnerable, who may find undertaking a remote hearing from their home, without access to the usual support services, isolating and stressful. The EIA also identified that its ability to provide reasonable adjustments may be reduced if adjustments cannot be accommodated in soft copy documents, correspondence sent by email or in a remote environment. The HCPC has taken steps to ensure barriers to access are reduced and that it can continue to support parties effectively throughout the fitness to practise process. Pre-hearing case management conferences and technical support checks allows it to identify and resolve any potential issues with participants' engagement in a remote hearing in advance of the hearing and familiarise parties with the technology. The HCPC's Tribunal Centre in London may be used as a 'virtual hub' for participants who require additional support or who do not have access to the necessary technology. In addition, its usual video conferencing facilities remain available. The HCPC has developed specific guidance for panel members on remote hearings, including ensuring the welfare of participants during the hearing, and its Remote Hearings Guidance document includes further guidance on hearing and witness management. The HCPC retains the provision to hold physical hearings and send hard copy notices and documents, and it will continue to do so where appropriate to ensure all participants have full and fair access to the fitness to practise process. The HCPC will continue to seek feedback on its hearings, identify any trends or themes emerging that relate to EDI and review its processes accordingly.

- 12.4 The Financial Impact Assessment indicates that there is an increased cost to conducting hearings remotely, resulting from the additional time required to undertake a remote hearing. This is offset by the costs saved on room hire, expenses, travel and accommodation. The introduction of electronic service will also deliver a saving in terms of reduced printing and postage costs.
- 12.5 The full impact assessments are available on request to the HCPC. Details of how to contact HCPC can be found on its website: <https://www.hcpc-uk.org/contact-us/>

### **13. Regulating small business**

- 13.1 The legislation does not apply to activities that are undertaken by small businesses.

### **14. Monitoring & review**

- 14.1 The approach to monitoring of this legislation is that the HCPC will keep the rules under review.

### **15. Contact**

- 15.1 Kathryn Flynn at the Department of Health and Social Care Telephone: 0113 2545967 or email: [Kathryn.Flynn@dhsc.gov.uk](mailto:Kathryn.Flynn@dhsc.gov.uk) can be contacted with any queries regarding the instrument.
- 15.2 Mark Bennett at the Department of Health and Social Care can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Minister of State (Minister for Care) at the Department of Health and Social Care can confirm that this Explanatory Memorandum meets the required standard.