
EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes amendments to the framework legislation for the regulation of dentists, dental care practitioners, pharmacists, pharmacy technicians and the professions regulated by the Health Professions Council (“HPC”). It also adds a further group of professionals, practitioner psychologists, to the list of professions regulated by the HPC, and makes amendments, for all types of registered health care professionals, relating to the protection of children and vulnerable adults.

Regulation of practitioner psychologists

Statutory registration of psychologists is limited to practitioners in one or more of the following branches of psychology: clinical psychology, counselling psychology, educational psychology, forensic psychology, health psychology, occupational psychology, and sport and exercise psychology. Such psychologists, referred to collectively as “practitioner psychologists”, will be entitled to registration with the HPC if they are suitably qualified and their fitness to practise is not impaired. The use of certain protected titles is restricted to registrants. There are transitional provisions, which include provisions allowing for the transfer of some existing members of the British Psychological Society (“BPS”) and the Association of Educational Psychologists (“AEP”) onto the HPC register – although the HPC has a discretion to refuse registration to psychologists whose registration with the BPS or AEP has been suspended, or if they are subject to proceedings which could lead to their suspension or removal from the BPS or AEP register. Psychologists who have never been on the BPS or AEP registers will be able to register under special arrangements that for three years allow existing practitioners to register with the HPC on the basis of their qualifications and experience, even if their qualifications are not amongst those recognised by the HPC, subject to their satisfying a test of competence, where appropriate. There is also some consequential updating of legislation to take account of the new arrangements for statutory regulation (article 5, paragraphs 3, 9(b), 10, 16 and 18 of Schedule 2 and Part 1 of Schedule 4 and paragraphs 3 to 8, 10 and 11 of Schedule 5).

Protection of vulnerable children and adults

The Protection of Vulnerable Groups (Scotland) Act 2007 is amended so as to require the Scottish Ministers to notify the statutory regulators of health care professions, giving appropriate details, where an individual has been barred from regulated work with children or vulnerable adults, or where they are considering barring someone. The Scottish Ministers are also required to notify health care professions regulators if the individual becomes no longer barred (Paragraph 12 of Schedule 5).

The Safeguarding Vulnerable Groups Act 2006 is amended so as to require the Independent Barring Board (“IBB”) to notify the statutory regulators of health care professions about barring entries and their consideration of them. That Act is also amended to allow those regulators to apply for relevant information from the IBB, and conversely, these regulators are also given duties to refer relevant information to the IBB (paragraph 9 of Schedule 5).

The Dentists Act 1984 (“the 1984 Act”), the Health Professions Order 2001 (“the 2001 Order”) and the Pharmacists and Pharmacy Technicians Order 2007 (“the 2007 Order”) are amended so that the inclusion of a person in a barred list kept by the IBB, or in the children’s list or adults’ list by the Scottish Ministers, becomes a reason for finding that an individual registrant’s fitness to practise is impaired (paragraphs 7 and 8 of Schedule 1, paragraph 5 of Schedule 2 and paragraph 18 of

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Schedule 3). There are also changes to the fitness to practise rules of a number of statutory regulators of health care professions to ensure that barring entries can be accepted as conclusive proof of the fact that they have been made, and as proof also of the findings that led to the barring entries (Part 2 of Schedule 4).

Other changes relating to the regulation of dentists and dental care professionals

Schedule 1 contains other amendments to the 1984 Act. The General Dental Council (GDC) is to be re-constituted as provided for by Order of the Privy Council. Instead of a mix of elected registrant and appointed lay members, all its members will be appointed. There are transitional measures allowing the reappointment of the President of the old Council as chair of the new Council. If the Privy Council, which is the body responsible for the appointment of Council members, directs the Appointments Commission to carry out any of its appointment functions, it must consult the GDC first. The GDC is responsible for appointing its own statutory committee members but is given new powers to seek the assistance of other bodies with these appointment functions. The GDC is given powers to regulate the procedures of its committees and sub-committees by standing orders, subject to the requirements of legislation – but subject to such standing orders or to legislation, the committees and sub-committees may regulate their own procedures by standing orders. The new constitutional arrangements also include revised duties of co-operation with stakeholders and new arrangements for the registration and publication of GDC members' private interests (article 7 and paragraphs 1 to 3, 6, 10, 12 and 13 of Schedule 1, and Part 4 of Schedule 4).

Section 2B of the 1984 Act is revised so that it contains the new arrangements for annual reports. There are three reports that the GDC has to produce: an annual report that includes a description of the arrangements that they have in place to ensure that they adhere to good practice in relation to equality and diversity, a statistical report relating to their fitness to practise functions and a strategic plan. As regards annual accounts, these will now also need to be sent to the Auditor General for Scotland (paragraphs 4 and 5 of Schedule 1).

Section 51 of the 1984 Act is amended so as to clarify the procedural requirements for orders approving fitness to practise rules, and so as to extend the powers of the Scottish Parliament so that all Orders of the Privy Council that approve rules of the GDC that are for the regulation of dental care professionals are subject to the negative resolution procedure in the Scottish Parliament, if they relate to matters within the legislative competence of the Scottish Parliament, as well as to the negative resolution procedure in the United Kingdom Parliament (paragraph 11 of Schedule 1).

Other changes relating to the regulation of the professions regulated by the Health Professions Council

Schedule 2 contains further amendments to 2001 Order. The HPC is to be re-constituted as provided for by Order of the Privy Council. Instead of a mix of elected members who are registrants and appointed lay members, all its members will be appointed, and the former system of alternate members for the registrant members is discontinued. There is a transitional provision which allows the existing elected membership of the HPC to remain in place, without the need for further elections, pending the introduction of the new Council. The elections which would otherwise have been held in 2009 are cancelled, and there are transitional arrangements allowing for the reappointment of the President of the old Council as the chair of the new Council. If the Privy Council, which is the body responsible for appointing the membership of the HPC, directs the Appointments Commission to carry out any of the Privy Council's appointment functions, it must consult the HPC first. The constitutional arrangements for the statutory committees of the HPC are revised. These have to be set out in rules, with less of the detail, and fewer committee functions, included in the 2001 Order itself. The HPC's statutory committees are given express powers to regulate their own procedures by standing orders, subject to the requirements of legislation. The HPC will be responsible for appointing the members of these committees, but are given powers to seek the assistance of other

bodies with these appointment functions. The new constitutional arrangements also include revised duties of co-operation with stakeholders (article 8, paragraphs 1, 2, 4, 6 to 9(a), 11, 15 and 17 of Schedule 2 and Part 5 of Schedule 4).

Article 42 of the 2001 Order has been revised so that orders of the Privy Council under that Order which are subject to the negative resolution procedure in the United Kingdom Parliament and which are for the regulation of, or approve rules which are for the regulation of, operating department practitioners or practitioner psychologists will also be subject to the negative resolution procedure in the Scottish Parliament (paragraph 12 of Schedule 2).

Article 44 of the 2001 Order is revised so that it contains the new arrangements for annual reports. There are three reports that the HPC has to produce: an annual report that includes a description of the arrangements that it has in place to ensure that it adheres to good practice in relation to equality and diversity, a statistical report relating to its fitness to practise functions and a strategic plan. As regards annual accounts, there is an updating of the reference to the auditors to take account of changes introduced in the Companies Act 2006, and a new requirement to submit accounts to the Auditor General for Scotland (paragraphs 13 and 14 of Schedule 2).

Other changes relating to the regulation of pharmacists and pharmacy technicians

Schedule 3 contains further amendments to the 2007 Order. There are new arrangements for the annual reports that the Royal Pharmaceutical Society of Great Britain (“RPSGB”) will need to produce. These are: an annual report that includes a description of the arrangements that it has in place to ensure that it adheres to good practice in relation to equality and diversity; and a statistical report relating to its fitness to practise functions. When statutory regulation of pharmacy technicians is introduced, there will be a new requirement to lay these reports before the Scottish Parliament. As regards annual accounts, there is an updating of the reference in the Order to the Society’s auditors to take account of changes introduced in the Companies Act 2006. The new constitutional arrangements also include changes to the RPSGB’s duties of co-operation with stakeholders (paragraphs 3(b) and (c) and 4 of Schedule 3).

Statutory regulation of pharmacy technicians, which previously applied only in relation to England and Wales, is extended to Scotland, and a number of consequential changes are made in connection with that extension, and in connection with the rule changes necessary to facilitate the opening of the statutory register for pharmacy technicians (paragraphs 1, 3(a), 4, 7 to 10, 15, 16, 17(b), 19(b) and (c), 20 to 23, 24(b) and 26(b) of Schedule 3 and Part 3 of Schedule 4).

Two sets of temporary measures are introduced which relate to circumstances where a major emergency such as one involving the loss of human life or illness has occurred, is occurring or is about to occur. The Registrar of the RPSGB is given powers to register temporarily fit, proper and suitably experienced people to act as pharmacists, and is also given powers to annotate pharmacists’ registration entries to give them additional prescribing rights. The Registrar can attach conditions to the registration of those temporarily registered under these arrangements, and may remove both temporary registrations and temporary annotations at any time, without going through the normal fitness to practise procedures. Both temporarily registrations and temporary annotations under these arrangements will cease if the Secretary of State advises the Registrar that the circumstances that gave rise to the need for these emergency measures no longer exist (paragraphs 2, 6, 11, 12, 14 and 17).

Article 69 of the 2007 Order has been revised so that orders of the Privy Council under the Order which are subject to the negative resolution procedure in the United Kingdom Parliament and which are for the regulation of, or approve rules which relate to the regulation of, pharmacy technicians will also be subject to a negative resolution procedure in the Scottish Parliament (paragraph 25 of Schedule 3).

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Miscellaneous

Some miscellaneous updating amendments, and consequential amendments arising out of earlier Orders under section 60 of the Health Act 1999, are set out in Part 6 of Schedule 4 and in paragraphs 1 and 2 of Schedule 5. The Order also includes provisions which allow for the making of further transitional, transitory or saving provisions by order of the Privy Council, and in connection with Privy Council procedures (articles 9 and 10).

An impact assessment has been prepared in relation to this Order and is available from the Department of Health, Quarry House, Quarry Hill, Leeds LS2 7UE.