

## SCHEDULE 2

Article 3(2)

### Amendments to the Health Professions Order 2001

#### Amendment of article 3

1. In article 3 (the Health Professions Council and its Committees)—
  - (a) for paragraph (5) substitute the following paragraphs—

“(5) In exercising its functions, the Council shall—

    - (a) have proper regard for—
      - (i) the interests of persons using or needing the services of registrants in the United Kingdom, and
      - (ii) any differing interests of different categories of registrants;
    - (b) co-operate, in so far as is appropriate and reasonably practicable, with public bodies or other persons concerned with—
      - (i) the employment (whether or not under a contract of service) of registrants,
      - (ii) the education or training of registrants or other health care professionals,
      - (iii) the regulation of, or the co-ordination of the regulation of, other health or social care professionals,
      - (iv) the regulation of health services, and
      - (v) the provision, supervision or management of health or education services.

(5A) In carrying out its duty to co-operate under paragraph (5)(b), the Council shall have regard to any differing considerations relating to practising as a registrant which apply in England, Scotland, Wales or Northern Ireland.

(5B) In paragraph (5), “other health care professionals” means persons regulated by a body mentioned in section 25(3) of the National Health Service Reform and Health Care Professions Act 2002<sup>(1)</sup> (which relates to the Council for Healthcare Regulatory Excellence), other than the Council.”;
  - (b) omit paragraph (7);
  - (c) before paragraph (8) insert the following paragraph—

“(7A) The Council shall be constituted as provided for by order of the Privy Council, subject to Part 1 of Schedule 1.”;
  - (d) in paragraph (8), after “of the Council” insert “and orders of the Privy Council under paragraph (7A)”;
  - (e) in paragraph (17)(a), after “the Secretary of State” insert “and the Scottish Ministers”.

#### Amendment of article 5

2. In article 5 (establishment and maintenance of register), in paragraph (3)(a), omit “the Conduct and Competence Committee in addition to”.

#### Amendment of article 13

3. In article 13<sup>(2)</sup> (transitional provisions relating to admission to the register), in paragraph (1)—

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(1) 2002 c.17.

(2) Amended by S.I. 2004/2033.

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- (a) for sub-paragraph (c) substitute—
  - “(c) who has never been registered in respect of that profession—
    - (i) under the 1960 Act or this Order,
    - (ii) in the case of an operating department practitioner, in the AODP register, or
    - (iii) in the case of a practitioner psychologist, in the BPS register or the AEP register; and”;
- (b) in sub-paragraph (d), after “two years” add “, or in the case of practitioner psychologists three years,”.

#### **Amendment of article 21**

4. In article 21 (Council’s functions in respect of fitness to practise, ethics and other matters), in paragraph (3)(a), omit “standards or” and “the Conduct and Competence Committee in addition to”.

#### **Amendment of article 22**

5. In article 22 (allegations), in paragraph (1)(a), omit “or” at the end of paragraph (iv) and after paragraph (v) insert—

- “(vi) the Independent Barring Board including the person in a barred list (within the meaning of the Safeguarding Vulnerable Groups Act 2006 or the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007), or
- (vii) the Scottish Ministers including the person in the children’s list or the adults’ list (within the meaning of the Protection of Vulnerable Groups (Scotland) Act 2007);”.

#### **Amendment of article 25**

6. In article 25 (Council’s power to require disclosure of information)—

- (a) in paragraph (1)—
  - (i) for “them in” substitute “the Council or any of its Practice Committees in”, and
  - (ii) for “a Practice Committee” substitute “the Council”;
- (b) in paragraph (5), for “the Practice Committee in respect of the allegation with which it is dealing” substitute “a Practice Committee with regard to the person concerned”; and
- (c) omit paragraph (6).

#### **Amendment of article 27**

7. In article 27 (the Conduct and Competence Committee), omit paragraph (a) and the “and” at the end of that paragraph.

#### **Amendment of article 32**

8. In article 32 (investigation of allegations: procedural rules), in paragraph (4), for “Chairman” substitute “chair”.

#### **Amendment of article 37**

9. In article 37(3) (appeals against decisions of the Education and Training Committee)—

- (a) in paragraph (5)—

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(3) Amended by S.I. 2007/3101.

- (i) in sub-paragraph (a), after “an appeal” insert “and for the membership of any panel considering such an appeal on the Council’s behalf”,
  - (ii) in sub-paragraph (c)(ii), omit “(who shall not be a registered medical practitioner)”, and
  - (iii) in sub-paragraph (g), for “Chairman” substitute “chair”; and
- (b) after paragraph (5) insert the following paragraph—
- “(5A) For the purposes of paragraph (5), “lay member” means a person who is not and never has been—
- (a) a registrant or registered under the 1960 Act;
  - (b) a member of the Association of Operating Department Practitioners, the Association of Educational Psychologists or the British Psychological Society; or
  - (c) a registered medical practitioner.”

#### **Amendment of article 39**

10. In article 39 (offences), in paragraph (2)(a), for “13(1)(b)” substitute “13(1)(d)”.

#### **Amendment of article 41**

11. In article 41 (rules and orders)—
- (a) in paragraph (1), after “this Order” insert “, apart from rules made solely under paragraph 17 of Schedule 1,”; and
  - (b) in paragraph (3), after “this Order,” insert “ apart from rules made solely under paragraph 17 of Schedule 1,”.

#### **Amendment of article 42**

12. In article 42 (exercise of powers by the Privy Council)—
- (a) after paragraph (2) insert the following paragraph—

“(2A) For the purposes of section 1 of the Statutory Instruments Act 1946 (definition of “Statutory Instrument”), any power of the Privy Council to make an order under this Order is to be taken to be conferred by an Act of Parliament.”; and
  - (b) for paragraph (3) substitute the following paragraphs—

“(3) A statutory instrument that contains an order made by the Privy Council, other than an order made under article 48(2) or under paragraph 19, 20 or 21 of Schedule 2, shall—

    - (a) where paragraph (3A) applies, be subject to annulment in pursuance of a resolution of either House of Parliament or a resolution of the Scottish Parliament; or
    - (b) where paragraph (3A) does not apply, be subject to annulment in pursuance of a resolution of either House of Parliament.

(3A) This paragraph applies to a statutory instrument containing—

    - (a) an order under article 6(3) that includes measures relating to the regulation of operating department practitioners or practitioner psychologists; or
    - (b) an order approving rules under article 5(2)(b), 7(2)(c) or (d), 9(2), 10, 19, 26(3), 30(9), 32, 33(4) or 37(4) that include measures relating to the regulation of operating department practitioners or practitioner psychologists.”

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### **Substitution of article 44**

13. For article 44 (annual reports) substitute the following article—

#### **“Annual reports, statistical reports and strategic plans**

44.—(1) The Council shall publish, by such date in each year as the Privy Council shall specify—

- (a) a report on the exercise of its functions which includes a description of the arrangements that the Council has put in place to ensure that it adheres to good practice in relation to equality and diversity (and for these purposes “equality” and “diversity” have the meanings given in section 8(2) of the Equality Act 2006 (equality and diversity));
- (b) a statistical report which indicates the efficiency and effectiveness of, and which includes a description of, the arrangements which the Council has put in place under article 21(1)(b) to protect members of the public from registrants whose fitness to practise is impaired, together with the Council’s observations on the report; and
- (c) a strategic plan for the Council in respect of such number of years as the Council shall determine.

(2) The Council shall submit copies of the reports and the plan published under paragraph (1) to the Privy Council and the Privy Council shall lay copies of the reports and the plan before each House of Parliament and before the Scottish Parliament.”

### **Amendment of article 46**

14. In article 46 (accounts of the Council)—

(a) for paragraph (3) substitute the following paragraph—

“(3) The Council shall ensure that the persons it appoints are eligible for appointment as statutory auditors under Part 42 of the Companies Act 2006(4) (statutory auditors).”;

(b) in paragraph (4)(b), for “the Privy Council and to the Comptroller and Auditor General” substitute “the Privy Council, the Comptroller and Auditor General and the Auditor General for Scotland”; and

(c) in paragraph (7), after “House of Parliament” insert “and the Scottish Parliament”.

### **Amendment of Schedule 1**

15.—(1) Schedule 1 (the Health Professions Council and committees) is amended in accordance with this paragraph.

(2) In Part 1(5), for paragraphs 1 to 12 substitute the following paragraphs—

#### **“Membership: general**

1A.—(1) The Council shall consist of—

- (a) registrant members, that is members who are registrants; and
- (b) lay members, that is members who—

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(4) 2006 c.46.

(5) Part 1 has been amended by the Health and Social Care (Community Health and Standards) Act 2003, Schedule 12, paragraph 8, the Health Act 2006, Schedule 8, paragraph 48, and Schedule 9, and by S.I. 2004/2033.

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- (i) are not and never have been registrants or registered under the 1960 Act or in the AODP register, the AEP register or the BPS register; and
  - (ii) do not hold qualifications which would entitle them to apply for registration under this Order.
- (2) The members of the Council shall be appointed by the Privy Council.
- (3) The Privy Council shall ensure that, at any time, at least one member of the Council lives or works wholly or mainly in each of England, Scotland, Wales and Northern Ireland.
- (4) Before the Privy Council directs the Appointments Commission under section 60(1) of the Health Act 2006 to exercise any function of the Privy Council relating to the appointment of members of the Council, the Privy Council shall consult the Council.

### **Matters for the order of the Privy Council under article 3(7A)**

- 1B.**—(1) An order under article 3(7A) shall include provision with regard to—
- (a) the numbers of registrant members and lay members of the Council;
  - (b) the terms of office for which members of the Council are appointed, and the order may provide that these are to be determined by the Privy Council, on appointment;
  - (c) the grounds on which persons are to be disqualified from appointment as registrant or lay members of the Council;
  - (d) the appointment of a chair of the Council and the chair’s term of office, and the order may provide that the term is to be determined by whoever makes the appointment as chair, on appointment;
  - (e) deputising arrangements in respect of the chair;
  - (f) the quorum of the Council; and
  - (g) the circumstances in which members cease to hold office or may be removed or suspended from office.
- (2) But an order under article 3(7A) must not include any provision which would have the effect that a majority of the members of the Council would be lay members.
- (3) An order under article 3(7A) may include provision with regard to—
- (a) the maximum period for which a member of the Council may hold office as a member during a specified period;
  - (b) the maximum period for which a member of the Council may serve as chair of the Council during a specified period;
  - (c) the education and training of members of the Council, and the order may provide for the Council to include the requirements with regard to education and training of its members in standing orders, and for those standing orders to provide for—
    - (i) that education and training to be the responsibility of another body, and
    - (ii) those requirements to be set and varied by that body from time to time;
  - (d) the attendance of members of the Council at meetings of the Council; and
  - (e) the effect (if any) of any vacancy in the membership of the Council or any defect in the appointment of a member.
- (4) An order under article 3(7A) may make different provision for different cases or different classes of case and may contain such incidental, consequential, transitional, transitory, saving or supplementary provisions as appear to the Privy Council to be necessary or expedient.”

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(3) For paragraph 13, substitute the following paragraph—

“**13.**—(1) Subject to any provision made by this Order or under this Order (otherwise than by standing orders), the Council may by standing orders make provision in respect of—

- (a) its procedure;
- (b) the performance of its functions;
- (c) the constitution of its committees and sub-committees, other than the statutory committees;
- (d) the procedure of any of its committees or sub-committees;
- (e) the performance by any of its committees or sub-committees of their functions; and
- (f) the standards of education, training, attendance and performance expected of the members of its committees and sub-committees.

(2) Standing orders of the Council may make provision with regard to the provisional suspension of a member of the Council from office, pending the taking of a decision about the suspension or removal from office of the member in accordance with the provisions of an order under article 3(7A).”

(4) In paragraph 14 (which relates to non-statutory committees and declarations of interests), omit sub-paragraph (3).

(5) In paragraph 15 (which relates to voting), in sub-paragraph (2), for “Chairman” substitute “chair”.

(6) In paragraph 16 (powers of the Council)—

- (a) omit sub-paragraph (2)(g); and
- (b) omit sub-paragraphs (6) and (7).

(7) In paragraph 17 (Education and Training Committee), for sub-paragraphs (1) and (2) substitute the following sub-paragraphs—

“(1) Subject to any provision made by this Order, the Council shall by rules make provision with regard to the constitution of the Education and Training Committee, and those rules shall include provision with regard to—

- (a) its size and membership;
- (b) the appointment, suspension and removal of its members;
- (c) its chair, including the deputising arrangements for its chair; and
- (d) the quorum at its meetings.

(2) The rules may make provision for a body (including a committee of the Council other than the Education and Training Committee) to assist the Council in connection with the exercise of any function relating to the appointment of members or particular members of the Education and Training Committee, including any function relating to tenure of office or suspension or removal from office.

(2A) The Council shall have regard, where appropriate, when appointing non-Council members to the Education and Training Committee, to the guidance issued by the Commissioner for Public Appointments.

(2B) Subject to any provision made by or under this Order, including provision made by standing orders of the Council made under paragraph 13(d), the Education and Training Committee may regulate its own procedure.”

(8) For paragraph 18 (which relates to the constitution of Practice Committees), substitute the following paragraph—

“**18.**—(1) Subject to any provision made by this Order, the Council shall by rules make provision with regard to the constitution of each Practice Committee, and those rules shall include provision with regard to—

- (a) its size and membership;
- (b) the appointment, suspension and removal of its members;
- (c) its chair, including the deputising arrangements for its chair; and
- (d) the quorum at its meetings.

(2) Where the rules provide for one or more panels of members of a Practice Committee to perform functions of the Committee, the provision required by sub-paragraph (1)(d) includes provision with regard to the quorum at meetings of those panels.

(3) The rules may make provision for a body (including a committee of the Council which is not one of the Practice Committees) to assist the Council in connection with the exercise of any function relating to the appointment of members or particular members of a Practice Committee, including any function relating to tenure of office or suspension or removal from office.

(4) Subject to any provision made by or under this Order, including provision made by standing orders of the Council made under paragraph 13(d), each Practice Committee may regulate its own procedure.”

(9) In paragraph 19 (which relates to supplemental matters relating to Practice Committees)—

- (a) omit sub-paragraphs (1) to (4), (6), (9) and (11); and
- (b) in sub-paragraph (8), for “Chairman” substitute “chair”.

### **Amendment of Schedule 3**

**16.** In Schedule 3(6) (interpretation), in paragraph 1—

- (a) after the definition of “the 1960 Act” insert the following definition—

““the 2009 Order” means the Health Care and Associated Professions (Miscellaneous Amendments and Practitioner Psychologists) Order 2009;”;

- (b) insert the following definition at the appropriate place in the alphabetical order—

““enactment” has the same meaning as in Schedule 3 to the Health Act 1999;”;

- (c) insert each of the following definitions at the appropriate place in the alphabetical order—

““AEP register” means the aggregate of the entries in the membership list maintained by the Association of Educational Psychologists (which held its inaugural meeting at the London School of Economics on 14th April 1962 and was founded on that date(7)) that relate to full members of the Association;”;

““BPS register” means the aggregate of the entries in the register maintained by the British Psychological Society (which was incorporated by Royal Charter on 26th February 1965(8)) that relate to holders of practising certificates who are full members of one or more of the divisions of the Society in respect of the following branches of psychology: clinical psychology; counselling psychology; educational

(6) Schedule 3 has been amended by [S.I. 2003/3148](#) and [2004/1947](#) and [2033](#).

(7) The Association of Educational Psychologists is at 4 The Riverside Centre, Frankland Lane, Durham, DH1 5TA.

(8) The British Psychological Society is at St Andrews House, 48 Princess Road East, Leicester, LE1 7DR. The Society’s Royal Charter has been amended six times, and is available, in its amended form, on the Society’s website at [www.bps.org.uk](http://www.bps.org.uk).

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psychology; forensic psychology; health psychology; occupational psychology; and sport and exercise psychology;”;

““practitioner psychologists” means clinical psychologists, counselling psychologists, educational psychologists, forensic psychologists, health psychologists, occupational psychologists and sport and exercise psychologists, and this group of professions is to be treated as a single profession for the purposes of this Order;”;

- (d) in the definition of “relevant professions”, after “physiotherapists;” insert “practitioner psychologists;”;
- (e) omit the definitions of “alternate member”, “corresponding registrant member”, “lay member” and “registrant member”.

### **Temporary measures pending the introduction of the new composition of the Council**

17.—(1) In Schedule 1(9) (the Health Professions Council and committees)—

- (a) in paragraph 1 (which relates to membership of the Council)—
    - (i) in sub-paragraph (1)(c), before “13 members” insert “subject to sub-paragraph (2A),”;
    - (ii) in sub-paragraph (2), before “The Council” insert “Subject to sub-paragraph (2A),” and
    - (iii) after sub-paragraph (2) insert the following sub-paragraph—

“(2A) The Council need not appoint an alternate member for a particular registrant member, where to do so would require it to hold a by-election, and in these circumstances there shall be no alternate member for that registrant member (and the number of alternate members of the Council shall be reduced accordingly) unless or until an election (including a by-election) needs to be held to replace that registrant member.”;
  - (b) in paragraph 2(2), before “The election scheme shall provide” insert “Subject to paragraph 1(2A),”;
  - (c) in paragraph 9 (tenure of members)—
    - (i) in sub-paragraph (1), before “Each member’s term” insert “Subject to sub-paragraphs (1A) and (1B),”;
    - (ii) after sub-paragraph (1) insert the following sub-paragraphs—

“(1A) The term of office of any registrant or alternate member who holds office on 8th July 2009 shall expire at the end of 8th July 2010 or on the coming into force of the first order of the Privy Council under article 3(7A), whichever is the sooner.

(1B) The full term of office of any registrant or alternate member who ceases to be a member before 8th July 2009 and whose vacancy remains unfilled at the end of 8th July 2009 shall, for the purposes of paragraph 8(2), be treated as if it would have expired at the end of 8th July 2010 or on the coming into force of the first order of the Privy Council under article 3(7A), whichever is the sooner.”
- (2) In Schedule 2 (transitional provisions), omit paragraph 6 (which relates to the tenure of office of members following the end of the second transitional period).

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(9) These measures which, by virtue of article 1(2)(c), will come into force on the day after the day on which this Order is made will take effect until the repeal of the provisions that they amend.



**Potential temporary measures if registration of practitioner psychologists is introduced before the reform of the composition of the Council**

18. In Part 1 of Schedule 1(10) (the Health Professions Council)—
- (a) in paragraph 1(1)—
    - (i) in paragraph (a), for “13 members who are” substitute “14 members who, subject to sub-paragraph (5), are”,
    - (ii) in paragraph (b), for “12 members” substitute “13 members”, and
    - (iii) in paragraph (c), for “13 members” substitute “14 members who, subject to sub-paragraph (5), are”;
  - (b) in paragraph 1, after sub-paragraph (4) insert the following sub-paragraph—

“(5) On the coming into force of paragraph 18(a) of Schedule 2 to the 2009 Order, the Privy Council shall appoint a person to be the first registrant member and a person to be the first alternate member in respect of the part of the register which relates to practitioner psychologists.”;
  - (c) in paragraph 2(1), after “1(2A)” insert “and (5)”;
  - (d) in paragraph 2(2)—
    - (i) in paragraph (a)(i), for “be elected for” substitute “represent”, and
    - (ii) in paragraph (c), omit “elected”;
  - (e) in paragraph 3, for “or the AODP register” substitute “, the AODP register, the AEP register or the BPS register”; and
  - (f) in paragraph 9 (which relates to tenure of members)—
    - (i) in sub-paragraph (1), for “Subject to sub-paragraphs (1A) and (1B),” substitute “Subject to sub-paragraphs (1A) to (1C),” and
    - (ii) after sub-paragraph (1B) insert the following sub-paragraph—

“(1C) The terms of office of—

      - (a) the first registrant member and the first alternate member appointed in respect of the part of the register which relates to practitioner psychologists; and
      - (b) the corresponding additional lay member,

shall expire at the end of 8th July 2010 or on the coming into force of the first order of the Privy Council under article 3(7A), whichever is the sooner.”

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(10) The amendments in this paragraph will become redundant if statutory regulation of registered psychologists is commenced after the commencement of paragraph 12(2) of this Schedule.