Draft Order in Council laid before Parliament under section 62(9) of the Health Act 1999, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2009 No. 000

HEALTH CARE AND ASSOCIATED PROFESSIONS

The Health Professions (Hearing Aid Dispensers) Order 2009

Made - - - - 2009

Coming into force in accordance with article 1(2) and (3)

At the Court at Buckingham Palace, the day of 2009

Present,

The Queen's Most Excellent Majesty in General Council

This Order in Council is made in exercise of the powers conferred by sections 60 and 62 of, and Schedule 3 to, the Health Act 1999(**a**).

The Secretary of State published a draft Order and invited representations as required by paragraph 9(1) of Schedule 3 to that Act.

The period of three months mentioned in paragraph 9(2) of that Schedule expired before a draft of this Order in Council was laid before Parliament.

A draft of this Order in Council has been approved by resolution of each House of Parliament, in accordance with section 62(9) of that Act.

Accordingly, Her Majesty is pleased, by and with the advice of Her Privy Council, to make the following Order in Council:

Citation and commencement

1.—(1) This Order may be cited as the Health Professions (Hearing Aid Dispensers) Order 2009.

(**a**) 1999 c.8. Section 60 has been amended by: the National Health Service Reform and Health Care Professions Act 2002 (c.17) ("the 2002 Act"), section 26(9); the Health and Social Care Act 2008 (c.14) ("the 2008 Act"), Schedule 8, paragraph 1, and Schedule 10, paragraph 10; and S.I. 2002/253 and 254. Section 62 has been amended by: the National Health Service (Consequential Provisions) Act 2006 (c.43), Schedule 1, paragraphs 194 and 197, and Schedule 4; and the 2008 Act, Schedule 8, paragraph 2, and Schedule 10, paragraph 11. Schedule 3 has been amended by: the 2002 Act, section 26(10); the Health and Social Care (Community Health and Standards) Act 2003 (c.43), Schedule 11, paragraph 67, and Schedule 14, Part 4; the Health Act 2006 (c.28), section 33 and Schedule 9; the 2008 Act, Schedule 8, paragraphs 3 to 10 (although paragraph 10 is not yet in force); and S.I. 2002/254.

(2) This article and articles 2 to 6 come into force on the day after the day on which this Order is made.

(3) Articles 7 to 11 come into force on 1st April 2010.

Interpretation

2. In this Order—

"the 1968 Act" means the Hearing Aid Council Act 1968(**a**);

"the 2001 Order" means the Health Professions Order 2001(**b**);

"the HAC" means the Hearing Aid Council(**c**);

"the HPC" means the Health Professions Council established under article 3 of the 2001 Order;

"the residual period" means the period beginning on 1st April 2010 and ending on the day before the day on which section 123(1) of the Health and Social Care Act 2008 comes into force.

Regulation of dispensers of hearing aids

3. This Order makes provision in respect of the regulation of the profession of dispensers of hearing aids by the HPC.

Transitional, transitory and saving provisions

4.—(1) In connection with the commencement of any provision of this Order, the Privy Council may by order make such transitional, transitory or saving provisions as it considers appropriate.

(2) The power to make an order under paragraph (1) may be exercised—

(a) so as to make different provision—

(i) with respect to different cases or different classes of cases, or

(ii) in respect of the same case or class of case for different purposes;

(b) in relation to all cases to which the power extends or in relation to all those cases subject to specified exceptions; or

(c) so as to make any supplementary, incidental or consequential provisions which the Privy Council considers necessary or expedient.

Privy Council procedures etc.

5.—(1) The power of the Privy Council to make an order under article 4(1) may be exercised by any two or more members of the Privy Council.

(2) The making of an order under article 4(1) shall be sufficiently signified by an instrument signed by the Clerk of the Privy Council.

(3) The power to make an order under article 4(1) shall be exercisable by statutory instrument.

(4) For the purposes of section 1 of the Statutory Instruments Act 1946(**d**) (definition of "Statutory Instrument"), the power in article 4(1) is to be taken to be conferred by an Act of Parliament.

(**a**) 1968 c.50.
(**b**) S.I.2002/254.
(**c**) The Hearing Aid Council is established by section 1(1) of the 1968 Act.
(**d**) 1946 c.36; section 1 has been amended by the Government of Wales Act 1998 (c.38), Schedule 12, paragraph 2.

(5) Where an order of the Privy Council under this Order is signified by an instrument purporting to be signed by the Clerk of the Privy Council, that shall be evidence, and in Scotland sufficient evidence, of—

(a) the fact that the order was duly made; and

(b) the order's terms.

Transitory and transitional provisions relating to the introduction of registration of hearing aid dispensers by the HPC

6.—(1) The HPC and the HAC shall enter into arrangements (which may include financial arrangements) to facilitate the introduction of arrangements for the regulation of hearing aid dispensers by the HPC arising out of this Order.

(2) The arrangements entered into under paragraph (1) shall include arrangements to ensure that all the names in the HAC register which are to be entered in the HPC register with effect from 1st April 2010 are so entered.

(3) If on 31st March 2010, a person's name is included in the HAC register, the person shall be registered in the part of the HPC register which relates to hearing aid dispensers with effect from 1st April 2010.

(4) If on 31st March 2010, there is an outstanding application for a person's name to be entered in the HAC register (including an application for restoration to that register), the HPC—

(a) may determine that the person's name is to be entered in the part of the HPC register which relates to hearing aid dispensers; and

(b) shall dispose of the matter in such manner as it considers just.

(5) Where a person who is registered in the HPC register pursuant to paragraph (3), notifies the HPC in writing no later than 10th May 2010 that they do not wish to be registered in the HPC register, the HPC must—

(a) remove that person's name from the HPC register; and

(b) treat that person as not having been so registered.

(6) Where a person is registered in the HPC register pursuant to paragraph (3) or (4), the person's home address shall not be published in the HPC register without the person's consent.

(7) If on 31st March 2010, a person's name is included in the HAC register but—

(a) a penalty has been imposed on that person and no appeal is made within 28 days of the notification of that penalty; or

(b) the person is the subject of, or is being investigated with a view to the issue of, proceedings which could lead to the imposition of a penalty,

the HPC shall dispose of the matter (including any proceedings) in such manner as it considers just.

(8) As from 1st April 2010, no appeal lies under section 9(1) of the 1968 Act to the High Court or, in Scotland, the Court of Session in respect of the imposition of a penalty.

(9) Paragraph (10) applies in a case where—

(a) a penalty has been imposed before 1st April 2010; and

(b) an appeal against the imposition of that penalty could have been made under section 9(1) of that Act but for paragraph (8).

(10) An appeal lies against the imposition of the penalty referred to in paragraph (9) in accordance with article 38 of the 2001 Order as if the penalty had been imposed by an order or decision of the Conduct and Competence Committee of the HPC.

(11) In this article—

"the HAC register" means the register of dispensers of hearing aids maintained by the HAC under section 2(1)(a) of the 1968 Act;

"the HPC register" means the register established and maintained by the HPC under article 5 of the 2001 Order;

"penalty" means a penalty imposed under section 7(1)(i) to (iv) of the 1968 Act.

Amendments to the 2001 Order

7.—(1) The 2001 Order is amended as follows.

(2) In article 13 (transitional provisions relating to admission to the register)—

(a) in paragraph (1), for "This article applies to a person" substitute "This paragraph applies to a person who is not a person specified in paragraph (1A)";

(b) after paragraph (1), insert—

"(1A) This paragraph applies to a person who applies for admission to the register as a hearing aid dispenser on or after 1st April 2010.";

(c) in paragraph (2), for "this article" substitute "paragraph (1)".

(3) After article 39 insert—

"Offence: hearing aid dispensers

39A.—(1) Subject to paragraph (2), a person who is not a registered hearing aid dispenser must not perform the functions of a dispenser of hearing aids.

(2) Paragraph (1) does not apply where the person performing those functions is—

(a) registered in the Specialist Register as having a specialty in otolaryngology, oto rhino laryngology or ENT surgery; or

(b) performing them as part of a course of education or training approved by the Council under article 15(5)(a) for persons wishing to become registered hearing aid dispensers or as part of an examination so approved.

(3) Any person who contravenes paragraph (1) is liable on summary conviction to a fine of an amount not exceeding level 5 on the standard scale.

(4) In this article—

"registered hearing aid dispenser" means a person who is registered in the register as a hearing aid dispenser;

"the Specialist Register" means the register of that name kept by the General Medical Council.".

(4) In paragraph 1A of Schedule 1(**a**) (the Health Professions Council and committees: membership)—

(a) in sub-paragraph (1)(b)(i), for "or the BPS register" substitute ", the BPS register or the HAC register";

(b) after sub-paragraph (1), insert—

"(1A) In sub-paragraph (1), "the HAC Register" means the register of dispensers of hearing aids maintained by the Hearing Aid Council under section 2(1)(a) of the Hearing Aid Council Act 1968.".

(5) In Schedule 3 (interpretation)—

(a) in paragraph 1, in the definition of "relevant professions", after "dietitians;", insert "hearing aid dispensers;";

(b) after paragraph 1, insert—

"**1A.**—(1) For the purposes of this Order, a person ("P") performs the functions of a dispenser of hearing aids if P—

(**a**) Paragraph 1A is inserted by S.I.2009/1182.

(a) assesses or tests an individual's hearing; or

(b) prescribes a hearing aid for an individual,

with a view to the sale, whether by P or another, of a hearing aid to, or for the use of, that individual and "hearing aid dispenser" shall be construed accordingly.

(2) In sub-paragraph (1)—

"hearing aid" means an electronic device, designed to be placed outside or within the ear, which processes and amplifies sounds using electro-acoustic or electro-magnetic systems in order to compensate for hearing loss;

"sale" means supply by way of retail sale or by way of hire but does not include a sale to a person acquiring for the purposes of trade.".

Powers of the HAC during the residual period

8. The HAC shall have power to do anything during the residual period which is calculated to facilitate the dissolution of the HAC.

Financial and audit matters

9.—(1) The Secretary of State may prepare a statement of the HAC's accounts in respect of the residual period.

(2) Where a statement of accounts is prepared under paragraph (1), the Secretary of State must —

(a) send a copy of those accounts to the Comptroller and Auditor General; and

(b) publish those accounts as soon as may be after the duty under paragraph (3)(a) has been complied with.

(3) The Comptroller and Auditor General must—

(a) examine, certify and report on the accounts sent to him under paragraph (2);

(b) lay a copy of those accounts and the report on them before each House of Parliament.

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

10. 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, after the entry "Part 14 – Practitioner Psychologists" add the following entry: "Part 15-Hearing Aid Dispensers";

(b) in column 2, after the entry "Clinical Psychologist, Counselling Psychologist, Educational Psychologist, Forensic Psychologist, Health Psychologist, Occupational Psychologist, Practitioner Psychologist, Registered Psychologist, Sport and exercise Psychologist." and opposite the entry in column 1 added by paragraph (a) add the following entry: "Hearing Aid Dispenser".

Amendment of the European Communities (Recognition of Professional Qualifications) Regulations 2007

11. In the column headed "competent authority" in Part 1 of Schedule 1 to the European Communities (Recognition of Professional Qualifications) Regulations 2007(**b**)(regulated professions-professions regulated by law or public authority), for "Hearing Aid Council" substitute "Health Professions Council".

(**a**) S.I. 2003/1571; the relevant amending instruments are S.I. 2004/2522 and 2009/1182.
(**b**) S.I.2007/2781.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order designates hearing aid dispensers as one of the professions regulated under the Health Professions Order 2001 (S.I.2002/254)("the principal Order"). This is as a consequence of the abolition of the Hearing Aid Council ("the HAC") by section 123 of the Health and Social Care Act 2008 (c.14).

Article 2 makes interpretation provisions, article 3 explains that this Order makes provision in respect of the regulation of the profession of dispensers of hearing aids by the Health Professions Council ("the HPC"), article 4 allows for the making of transitional provisions and article 5 prescribes procedures for making orders of the Privy Council under the provisions of this Order.

Hearing aid dispensers will be required to register in the register maintained by the HPC under article 5 of the principal Order ("the HPC Register"), and arrangements are to be made under article 6 of this Order so that practitioners in the existing register maintained by the HAC are to be transferred to the HPC Register-although their home addresses are not to appear in the HPC Register without their consent (article 6(6)). Outstanding applications to go on to the HAC register will be dealt with by the HPC (article 6(4)). Persons not wishing to be transferred onto the HAC Register can apply to come off that register within 40 days (article 6(5)). Disciplinary cases being dealt with by the HAC before the transfer will be dealt with by the HPC in such manner as they see fit (article 6(7)). Article 6(8), (9) and (10) makes provision as regards outstanding appeals. The HPC and the HAC will be under a duty under article 6(1) to enter into prior arrangements to ensure that the necessary transfers take place.

Article 7 contains the amendments to the principal Order relevant to the designation of hearing aid dispensers as a regulated profession. In particular, the definition of a "relevant profession" for the purposes of the principal Order is expanded to include hearing aid dispensers which is defined in terms of people supplying hearing aids by way of retail sale or hire (article 7(5)).

Article 7(2) ensures that the transitional provisions which normally apply when new professions are regulated by the HPC will not apply in this case.

Article 7(3) makes it a criminal offence for a person to perform the functions of a dispenser of hearing aids without being on the HPC Register. The offences are not committed by specialists in otolaryngology, oto rhino laryngology or ENT surgery or by persons undertaking a course of education or training approved by the HPC.

Article 7(4) prevents a person who was on the register kept by the HAC from being a lay member of the HPC.

Article 8 ensures that the HAC will be able to perform any function relating to its dissolution during the period starting when the HPC takes on the HAC's regulatory functions and ending when the HAC is finally dissolved. Article 9 makes provision in respect of the preparation of the HAC's accounts for that period.

Article 10 amends the Health Professions (Parts of and Entries in the Register) Order of Council 2003 (S.I.2003/1571) to create both a new Part of the HPC's register and a protected title for hearing aid dispensers.

Article 11 makes a consequential amendment in relation to change in competent authority for hearing aid dispensers. By this amendment, the Council is designated as the authority responsible for processing applications for entry to Part 14 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. This is in accordance with Council Directive

2005/36/EC on a second general system for the recognition of professional education and training, as amended and extended.

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.

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