EXPLANATORY MEMORANDUM TO

THE HEALTH AND CARE PROFESSIONS COUNCIL (CORONAVIRUS) (AMENDMENT) (NO. 2) RULES ORDER OF COUNCIL 2021

2021 No. 167

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 an amendment to the Health and Care Professions Council (HCPC) rules. The amendment ensures that the HCPC's processes can continue during the current COVID-19 pandemic and future emergencies. Emergency is defined as the kind described in section 19(1)(a) of the Civil Contingencies Act 2004 read with subsection (2)(a) and (b) of that section.

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 The Health and Care Professions (Coronavirus) (Amendment) Rules Order in Council 2021 (S.I. 2021/27) was laid before Westminster and the Scottish Parliament on 14 January 2021 and the permanent rule changes are due to come into force on 4 March 2021.

3.2 One of the rule changes will amend the Health and Care Professions Council (Investigating Committee) (Procedure) Rules 2003, the 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 by allowing the HCPC to serve notices and send documents electronically to registrants under these rules rather than by postal service. In addition, the HCPC would still retain its existing provision allowing it to serve notices and documents by post. Postal service would be used for those registrants who do not use electronic mail or where an e-mail address is not held by the regulator for a registrant.

3.3 The Delegated Powers and Law Reform Committee have identified an omission from the Health and Care Professions (Coronavirus) (Amendment) Rules Order in Council 2021 (S.I. 2021/27) in that the date a communication is to be considered as being sent was not included (whereas it had previously been included in relation to postal

service). This instrument corrects that by making provision for a communication to be treated as having been sent on the day it was posted or sent by electronic mail. This amendment will be brought into force by the Health and Care Professions Council (Coronavirus) (Amendment) (No. 2) Rules Order of Council 2021.

3.4 As the Health and Care Professions (Coronavirus) (Amendment) Rules Order in Council 2021 (S.I. 2021/27) are due to come into force on 4 March 2021 we have laid the Health and Care Professions Council (Coronavirus) (Amendment) (No. 2) Rules Order of Council 2021 before Parliament on 23 February 2021, ahead of the coming into force date of the earlier order. We are aware this is in breach of the 21 day rule. However, the HCPC requires this rule change to address the impact of the COVID-19 emergency on its operational procedures. If the above rule change is not implemented the HCPC will not be able to carry out some of its key processes and procedures, during the emergency period, until this rule change is implemented.

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)

3.5 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 The Health and Care Professions (Coronavirus) (Amendment) Rules Order in Council 2021 (S.I. 2021/27) was laid before Westminster and the Scottish Parliament on 14 January 2021 and come into force on 4 March 2021.

7.2 One of the rule changes in S.I 2021/27 will amend the Health and Care Professions Council (Investigating Committee) (Procedure) Rules 2003, the 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 by allowing the HCPC to serve notices and send documents electronically to registrants under these rules rather than by postal service. In addition, the HCPC will still retain its existing provision allowing it to serve notices and documents by post. Postal service

would be used for those registrants who do not use electronic mail or where an e-mail address is not held by the regulator for a registrant.

7.3 An omission has been identified from the Health and Care Professions (Coronavirus) (Amendment) Rules Order in Council 2021(S.I. 2021/27) in relation to the above rule change, in that the date a communication is to be considered as being sent was not included (whereas it had previously been included in relation to postal service). This instrument corrects that by making provision for a communication to be treated as having been sent on the day it was posted or sent by electronic mail. This amendment will be brought into force by the Health and Care Professions Council (Coronavirus) (Amendment) (No. 2) Rules Order of Council 2021.

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 rule change.

10. Consultation outcome

10.1 The HCPC ran a stakeholder consultation between 25 August 2020 and 8 September 2020 on its proposed rules changes. On 2 February 2021, the HCPC e-mailed the people who were sent the initial consultation survey to inform them that it would like to amend its rules to define the date a document is to be considered as been sent by post as the day of postage. Consultees were invited to send any comments to the HCPC on the amendment by 9 February 2021. The HCPC received no comments.

11. Guidance

11.1 No guidance has been published to accompany this specific rule change. However, to support rule changes introduced by the Health and Care Professions Council (Coronavirus) (Amendment) Rules Order of Council 2021(S.I. 2021/27), 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 An Equality or Financial Impact Assessment has not been undertaken for this specific amendment. However, Equality and Financial Impact Assessments were carried out by the HCPC ahead of the Health and Care Professions Council (Coronavirus) (Amendment) Rules Order of Council 2021(S.I. 2021/27) being laid before Parliament. 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 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.