EXPLANATORY MEMORANDUM TO

THE HEALTH AND CARE PROFESSIONS COUNCIL (MISCELLANEOUS AMENDMENT) RULES ORDER OF COUNCIL 2023

2023 No. 995

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department of Health and Social Care (DHSC) and is laid before Parliament by Command of His Majesty.

2. Purpose of the instrument

2.1 This instrument will allow the practice committees and the appeal panel of the Health and Care Professions Council (HCPC) to hold meetings or hearings using audio and/or video conferencing facilities outside of emergency periods. In addition, in person meetings and hearings will continue to be available.

2.2 This instrument also makes changes to the fees charged by the HCPC for scrutinising and processing applications for admission to its register, for renewal of registration and for readmission or restoration to its register. The proposed increase in fees will enable HCPC to continue to discharge its statutory functions and effectively regulate 15 health care professions across the UK.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The extent of this instrument (that is, the jurisdictions which the instrument forms part of the law of) is England and Wales, Scotland and Northern Ireland.

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales, Scotland and Northern Ireland.

5. European Convention on Human Rights

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

6. Legislative Context

6.1 This instrument is being made to amend the law to realise the long-term benefits of having flexibility to hold remote hearings after a successful trial of remote hearings on an emergency basis during the Covid-19 pandemic. The change in law will increase the prospect of access to a fair hearing for registrants and give the HCPC greater flexibility in how it carries out its regulatory functions.

6.2 The instrument also amends the Health and Care Professions Council (Registration and Fees) Rules 2003, changing the fees HCPC charges for scrutinising and processing applications for admission to its register, for renewal of registration and

for readmission or restoration to its register. HCPC's fees were previously updated from July 2021.

7. Policy background

What is being done and why?

7.1 Firstly, the HCPC's rules will be amended to give three committees and one appeal panel of the HCPC a discretionary power to hold meetings and hearings using audio and video conferencing facilities. During the Covid-19 pandemic restrictions at times prevented attendance in person at hearings, and the HCPC had to adapt to the changing environment. This was achieved via a change to their rules which allowed practice committees of the HCPC and the appeal panel to hold meetings or hearings using audio and/or video conferencing facilities during emergency periods, such as during the Covid-19 emergency. During the Covid-19 emergency period, the HCPC found that holding hearings by audio and/or video conference offered greater flexibility and efficiency and wish to continue the option of having these benefits, for both themselves and its registrants, on an ongoing basis.

7.2 Secondly, the HCPC's renewal, restoration and readmission fees will be increased, as will the scrutiny and processing fees connected with registration. HCPC registrants' fees renew over a rolling 2-year cycle. HCPC last increased its renewal fee from £90 to £98.12 per year in 2021.

7.3 HCPC consulted in late 2022 to raise its fees initially based on a 20% increase, however it now proposes an increase of a reduced percentage, in order for the increases to not exceed CPI inflation over the past two years. HCPC proposes for an:

- increase of £18.24 to the annual renewal fee. This will increase the registration fee from £98.12 to £116.36 per annum (£232.72 for the 2-year cycle);
- increase of £9.12 per year for the first two years of registration, for applicants who have qualified in the previous two years (50% graduate discount) from £49.06 to £58.18 per annum or £116.36 for the 2-year cycle;
- increase of £27.36 in readmission and restoration fees from £147.18 to £174.54;
- increase of £12.77 in scrutiny fees for applicants from approved UK programmes from £68.68 to £81.45; and
- increase of £100.33 in scrutiny fees for all other applicants from £539.65 to £639.98.

7.4 The increase in fees is required to ensure the HCPC can continue to discharge its statutory functions effectively. The previous fee increase in 2021, which was reduced from HCPC's initial proposal, has not fully addressed its structural financial deficit and although HCPC has made efficiency improvements, the value of the last fee increase has been eroded by inflation. It is currently using reserves to plug a structural financial deficit and without a fee rise the HCPC risks going into negative reserves in 2026, which would put at risk the sustainability of the organisation and have serious implications for patient and public safety. Its renewal cycle means that the new fees would not be paid by most registrants until 2024 and 2025 – four years after the last fee rise. HCPC has informed DHSC that it would look for more modest, regular fee reviews in the future.

7.5 HCPC has kept the proposed increase to the minimum necessary to allow it to address its structural funding deficit, meet its statutory obligations, improve performance

against the standards set by the Professional Standards Authority and to continue with essential further improvements in registration and fitness to practise. However, HCPC had anticipated the fee increases to start earlier than now planned (1 July 2023 as opposed to 9 November 2023) and has indicated it will need to seek funding to cover the gap. In the longer term, implementation of the legislative reform programme for HCPC will enable it to move to more modest, regular fee reviews.

7.6 HCPC intends to increase its fees from 9 November 2023 subject to Parliamentary approval.

Explanations

What did any law do before the changes to be made by this instrument?

7.7 The practice committees and appeal panel of the HCPC could previously only hold in-person hearings.

7.8 The renewal, restoration and readmission fees charged by the HCPC were previously at the rates of:

- annual renewal fee of £98.12;
- readmission fee of £147.18;
- restoration fee of £147.18;
- for the first two years of registration, for applicants from approved programmes who have qualified in the previous two years (50% graduate discount) fee of £49.06 per annum;
- scrutiny fee for applicants from approved programmes of £68.68; and
- scrutiny fee for all other applicants of £539.65.

Why is it being changed?

7.9 HCPC would like to continue realising the benefits for both themselves and its registrants that remote hearings can offer in some scenarios. Benefits include the speed of the process and therefore more effective regulation, a lessened financial impact on attendees, reducing the time needed away from work for participants, increased engagement in the process, enabling easier participation for attendees with mobility or mental health conditions and the ability to fulfil the wishes of registrants should they prefer to take part in a hearing remotely. Remote hearings will not be mandatory and in person meetings and hearings will still be available.

7.10 HCPC is self-funding and requires an increase in funding to enable it to continue to discharge its statutory functions and effectively regulate 15 health care professions across the UK.

What will it now do?

7.11 This S.I will allow the practice committees of the HCPC and the appeal panel to hold meetings or hearings using audio and/or video conferencing facilities. In person meetings and hearings will continue to be available.

7.12 It will also enable HCPC to increase its renewal, restoration and readmission fees from 9 November to the amounts outlined in paragraph 7.3.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act 2018.

9. Consolidation

9.1 HCPC will publish a consolidated version of the legislation on its website.

10. Consultation outcome

10.1 The HCPC ran a 12-week online stakeholder consultation between 31 August 2021 and 23 November 2021 on its proposal to hold virtual hearings on an ongoing basis. The HCPC received 630 responses to its consultation, 608 responses by individuals and 22 on behalf of 20 separate organisations. Of the 608 individual responses, 560 were HCPC registered professionals.

10.2 13% of respondents to the consultation were supportive of the HCPC holding remote hearings on an ongoing basis and provided reasons as to why remote hearings should continue. 86% of respondents to the consultation were not fully supportive of the HCPC holding remote hearings, outside of emergency periods, and provided reasons as to why remote hearings may not be appropriate. However, some respondents, who opposed remote hearings on an ongoing basis, had conflated the issue of the HCPC having an express power to hold hearings remotely, with an intention that the HCPC would hold all hearings remotely, which was not the proposal by the HCPC. Decisions on remote hearing will be made on a case-by-case basis by the HCPC dependent on factors relevant to the case.

10.3 The HCPC will introduce a set of principles to support its decision-making about whether a hearing should be held in-person, remotely or using a hybrid approach. The principles the HCPC will introduce are as follows:

a) any evidence that suggests the integrity, fairness or smooth running of the hearing may be impacted by holding it in a particular format;
b) whether there are reasonable adjustments or special measures required to allow a participant to engage fully and effectively in the proceedings, which may benefit from the hearing being held in a particular format;
c) the view of the registrant;
d) any technical, logistical, personal or circumstantial barriers that might prevent a participant engaging effectively in proceedings if the hearing is not held in a particular format; and
e) any features of the case which makes it particularly difficult for it to be held in a particular format.

10.4 For final fitness to practise hearings the HCPC will take a balanced starting point, weighing evidence against each of the principles in coming to a decision around the location of each hearing. For other types of fitness to practise hearings, and for registration hearings, the starting point will be that hearings will take place remotely, unless evidence submitted against the principles suggests a different approach should be considered. The principles developed by the HCPC respond to the concerns raised by consultation respondents by allowing individual circumstances and preferences to be considered in coming to a decision about the location of each hearing.

10.5 The HCPC has committed to monitoring the impacts of its decision and will keep its approach under review as it is introduced.

10.6 The HCPC's consultation analysis is available here[1].

10.7 In relation to the changes in fees, HCPC ran a public consultation from 22 September to 15 December 2022. which is available at HCPC's website[2]. The consultation sought the views of stakeholders on proposals to increase the fees charged for registration. A total of 9,509 responses were received to the consultation. Approximately 98% (9,343) of these responses were from HCPC registered professionals, equating to approximately 3% of our register. The paper submitted to HCPC's Council on the analysis of the consultation is available here[3].

10.8 88% of respondents did not support HCPC's proposal to increase its renewal fees from £98.12 to £117.74 per year, however, 45% of survey respondents said they understood or were neutral about the rationale for the requested increase. 72% of respondents thought that the HCPC should retain the 50% UK graduate discount for the first two years of registration. To mitigate the impact of the proposed fee rise, 62.5% of respondents supported the HCPC promotion of tax relief; 57% supported the spread of direct debits payments; 76% supported HCPC working with employers to secure better protected continuous professional development time; 62% supported improved communications and engagement by HCPC with registrants and stakeholders; and 64% supported developing further a compassionate approach to regulation. The fee increases have been reduced slightly since the consultation was published to ensure they do not exceed the CPI inflation rate over the previous 2 years (May 2021-May 2023). Although consultation feedback was based on slightly higher fees the difference between the consulted fees and the proposed fees is minimal (e.g. £1.38 difference for the annual registration fee) that the consultation feedback is still considered reliable of the views of those who participated.

10.9 Given the previous criticism of the previous fees increases, HCPC has undertaken proactive and extensive engagement with stakeholders including unions, professional bodies and Parliamentarians, including from Scotland where regulation of two of the professions within HCPCs scope are devolved to Scotland, to understand the likely impact of its proposed fee rise. HCPC's engagement has included the rationale for the fees decision, the reasons for it and the mitigating support it will provide to its registrants. HCPC reported that feedback on their engagement has been positive regarding their open and honest approach.

11. Guidance

11.1 The HCPC's current guidance on remote hearings, which is available here[4], will be updated shortly to take into account the changes to the HCPC's rules.

11.2 The information relating to fees on HCPC's website will be updated ahead of the fee-rise coming in to force.

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[1] https://www.hcpc-uk.org/globalassets/meetings-attachments3/council-meeting/2022/may/enc-07---remote-hearings-consultation.pdf

[2] https://www.hcpc-uk.org/globalassets/consultations/2022/hcpc-fees/consultation-on-changes-to-fees-consultation-document.pdf

[3] https://www.hcpc-uk.org/globalassets/meetings-attachments3/council-meeting/2023/february/enc-05---registration-fees-consultation.pdf

[4] https://www.hcpts-uk.org/aboutus/publications/hcpts-remote-hearing-guidance/

12. Impact

12.1 HCPC, as part of developing its proposals, carried out a full Equalities Impact Assessment prior to the launch of the consultation and is published at HCPC's website.[5] Following the consultation, HCPC subsequently updated its proposals, including a revision of the figure by which fees will rise. HCPC has updated the conclusions of the Equalities Impact Assessment, which are included here[6]. These two documents, taken together, represent HCPC's Equalities Impact Assessment of the final proposals for changes to its fees.

12.2 The impact assessment establishes that there is no significant impact on business, charities or voluntary bodies.

12.3 The impact assessment also sets out that there is no significant impact on the public sector.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses. The legislation only applies to individuals regulated by the HCPC.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is that the HCPC will keep its rules and guidance under review. HCPC regularly reviews the fees that it charges to ensure that they are in line with the global costs of regulating people on its register. These fee increases will meet HCPC's funding needs over the medium term. In the longer term, the legislative changes through the regulatory reform agenda will enable it to move to more modest, regular fee reviews.

14.2 The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, Will Quince has made the following statement, "The duty under section 28 of the Small Business, Enterprise and Employment Act 2015, for a Minister of the Crown to make provision for review in secondary legislation, does not apply. This is because this is an Order of His Majesty's Privy Council approving rules made by the HCPC".

15. Contact

15.1 Julie Nichols, DHSC (Telephone: 0113 254 6568 or email: Julie.Nichols@dhsc.gov.uk) can be contacted with any queries regarding the instrument.

15.2 Phil Harper, Deputy Director of Professional Regulation, DHSC can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Minister of State for Health and Secondary Care, Will Quince, DHSC can confirm that this Explanatory Memorandum meets the required standard.

[5] https://www.hcpc-uk.org/globalassets/resources/2023/consultation-on-changes-to-fees-analysis-and-decisions.pdf#page=49
[6] https://www.hcpc-uk.org/consultation-on-changes-to-fees-eia-july-2023/