POLICY NOTE

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

S.I. 2023/995

The above instrument was made in exercise of the powers conferred by articles 7(1) and (2)(c), 26(3), 32(1), (2) and (4), 37(4) and (5)(i) and 41(2) of the Health Professions Order 2001 (S.I. 2002/254). The instrument is subject to negative procedure.

Summary Box

To provide the Health and Care Professions Council (HCPC) with the power to increase fees charged for processing and scrutinising applications for admission to its register, for renewal of registration and for readmission or restoration to the register.
To allow the HCPC to hold practice committee and appeals panel hearings remotely.

Policy Objectives

This instrument 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.

The instrument also amends 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 to allow the practice committees and appeal panel of the HCPC to hold meetings or hearings using audio and/or video conferencing facilities on a permanent basis outside of emergency periods.

The practice committees and appeal panel of the HCPC could previously only hold in-person hearings. During the Covid-19 pandemic restrictions, the rules were changed to allow the practice committees and appeal panel to hold hearings or meetings using audio and/or video conferencing facilities. This S.I. will introduce hearings and meetings using audio and/or video conferencing facilities on a permanent basis outside of emergency periods. Benefits have included a speedier process, a lessened financial impact on attendees, reducing the time needed away from work for participants, increased engagement in the process, 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. In addition, in-person meetings and hearings will also continue to be available.

While the provisions in the Health Professions Order 2001 relating to the regulation of arts therapists, biomedical scientists, chiropodists / podiatrists, clinical scientists, dieticians, hearing aid dispensers, occupational therapists, orthoptists, paramedics, physiotherapists, prosthetists/orthotists, radiographers and speech and language therapists by the HCPC are reserved to the UK Parliament, those relating to the regulation in Scotland of operating department practitioners and practitioner psychologists are considered to fall within the legislative competence of the Scottish Parliament.

This is because operating department practitioners and practitioner psychologists have been regulated since the coming into force of the Scotland Act 1998. Whilst these two professions fall under devolved competence, a uniform approach across all professions regulated by the HCPC will ensure consistency throughout the U.K.

EU Alignment Consideration

There are no alignment issues with the part of the SI which relates to the introduction of hearings and meetings using audio and/or video conferencing facilities.

With regard to the part of the SI which relates to the increase in registration fees, the underlying EU Directive is the Mutual Recognition of Professional Qualifications Directive 2005/36/EC. On EU Exit, the new regime for recognition of professional qualifications was set out by the European Qualifications (Health and Social Care professions) (Amendment etc.) (EU Exit) Regulations 2019. The fee rises in this instrument include increases in annual registration fees, the rate of which are the same for all registrants no matter their country of qualification. In relation to scrutiny fees (i.e., the fee charged for assessing an initial application for registration), there are separate fees for UK and non-UK applications which have both risen. This is not a change in policy from prior to EU exit where EU and non-EU applicants both paid a higher scrutiny fee than UK applicants.

Consultation

Fee Rise: The HCPC consulted between 22 September and 15 December 2022. The consultation sought the views of stakeholders on proposals to increase the fees charged for registration and renewal. The HCPC received 9509 complete responses to the online consultation, of which 98% (9,343) were from HCPC registrants, which is equivalent to just under 3% of their register. The HCPC received responses from 34 organisations, including professional and representative bodies, employers, and trade unions. The HCPC also received responses from 132 individuals who were not HCPC registrants: mainly students or people in the process of applying for HCPC registration.

88% of respondents were opposed to the £19.62 increase to the registration fee on which the HCPC consulted. However, 45% of survey respondents say they understood or were neutral about the rationale for the requested increase. The fee increase has been reduced slightly since the consultation was published to £18.24 to ensure the rise did not exceed the Consumer Price Index (CPI) inflation rate over the previous two years (May 2021 – May 2023). Although consultation feedback was based on a slightly higher fee, the difference between the consulted fee and the proposed fee is minimal (e.g., £1.38 difference for the annual registration fee) so the consultation feedback is still considered a reliable reflection of the views of those who participated.

Due to the fact that the HCPC had anticipated that the fee increases would commence earlier in the year than planned (1 July 2023 as opposed to 10 November 2023) it has indicated that it may need to seek funding to cover the shortfall. The Minister of State for Health has assured the Cabinet Secretary for NHS Recovery, Health and Social Care that the UK Government will not seek any contribution from the Scottish Government should this be necessary.

Given previous concerns raised regarding previous fee increases, the HCPC has undertaken proactive and extensive engagement with stakeholders including unions, professional bodies and parliamentarians.

Further details of the consultation outcome are set out in the attached Department of Health and Social Care Explanatory Memorandum, in the section headed "Consultation Outcome".

The original consultation can be found at this link: consultation-on-changes-to-fees-consultation-document.pdf (hcpc-uk.org)

The Consultation analysis can be found at this link: consultation-on-changes-to-fees-analysis-and-decisions.pdf (hcpc-uk.org)

Remote Hearings: 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 a permanent 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.

13% of respondents to the consultation were supportive of the HCPC holding virtual hearings on a permanent basis and provided reasons as to why virtual hearings should be introduced permanently. 86% of respondents to the consultation were not fully supportive of the HCPC holding remote hearings on a permanent basis, outside of emergency periods, and provided reasons as to why virtual hearings may not be appropriate.

However, some respondents, who opposed remote hearings on a permanent 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 hearings will be made on a case-by-case basis by the HCPC dependent on factors relevant to the case.

The HCPC has fully reviewed and considered the feedback received and in response has decided to introduce a set of principles to support decision-making about whether a hearing should be held in-person, remotely or using a hybrid approach. As set out in the consultation analysis, 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.

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 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.

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

The HCPC's remote hearings consultation analysis can be found at this link: enc-07---remote-hearings-consultation.pdf (hcpc-uk.org)

Guidance

Neither the Scottish Government nor the Department of Health and Social Care have issued guidance in relation to these rules. However, information relating to fees on the HCPC's website will be updated ahead of the fee rise coming into force.

The HCPC has published guidance on remote hearings. The guidance can be found at this link: HCPTS | HCPTS Remote Hearing Guidance (hcpts-uk.org)

Impact Assessments

HCPC has prepared an impact assessment on the changes to fees, which can be found at this link: consultation-on-changes-to-fees-analysis-and-decisions.pdf (hcpc-uk.org)

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 will be available to view at this link: https://www.hcpc-uk.org/consultation-on-changes-to-fees-eia-july-2023/.

The impact assessment establishes that there is no significant impact on business, charities or the public sector.

Financial Effects

The Cabinet Secretary for NHS Recovery, Health and Social Care confirms that no Business and Regulatory Impact Assessment (BRIA) is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Scottish Government
Chief Nursing Officer Directorate

September 2023