EXPLANATORY MEMORANDUM TO

THE HEALTH PROFESSIONS COUNCIL (CONSTITUTION) (AMENDMENT) ORDER 2013

2013 No. 3004

1. This explanatory memorandum has been prepared by the Department of Health and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This Order ("the 2013 Order") amends the Health Professions Council (Constitution) Order 2009 (S.I. 2009/1345 ("the 2009 Order"). The 2013 Order-

(a) renames the 2009 Order the "Health and Care Professions Council (Constitution) Order 2009" to reflect the fact that the Health Professions Council was renamed the Health and Care Professions Council by section 214 of the Health and Social Care Act 2012 (c. 7);

(b) reduces the constitution of the Health and Care Professions Council from 20 members to 12 members;

(c) reduces the quorum of that Council from 11 to 7.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 The Council of the Health and Care Professions Council is constituted in accordance article 3(7A) of, and paragraph 1B of Schedule 1 to, the Health and Social Work Professions Order 2001 (formerly the Health Professions Order 2001 but renamed by section 213 of the Health and Social Care Act 2012) and Part 2 of the Health Professions Council (Constitution) Order 2009 (S.I. 2009/13450).

5. Territorial Extent and Application

5.1 The 2013 Order extends and applies to the whole of the United Kingdom.

6. European Convention on Human Rights

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

7. Policy background

7.1 In 2011, the Department of Health published a command paper *Enabling Excellence: Autonomy and Accountability for Healthcare Workers, Social Workers and Social Care Workers*. This paper set out proposals for the regulatory system for healthcare workers across the UK and social workers in England. The command paper can be found at the following link:

http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/documents/digitalasset/dh_124374.pdf

7.2 Following the command paper, the Department wrote to the Professional Standards Authority for Health and Social Care (PSA) asking for its advice on the merits of moving to smaller councils for regulatory bodies as a way of delivering more board-like and effective governance.

7.3 In September 2011, the PSA reported on this issue in its report *Board size and effectiveness: advice to the Department of Health regarding professional regulators.* It recommended the optimum size, to be conducive to effectiveness, for council membership was between eight and twelve members.

7.4 Based on a review of literature and its own experiences in overseeing the regulators the PSA found a number of benefits in having smaller governing councils. These included the following:

- Smaller boards struggle to involve themselves in operational management issues that should be delegated to the executive, therefore a smaller size of council helps them to focus their efforts on core governance issues;

- Governing councils cannot operate in a 'board-like' manner if they are too large; and

- Smaller sized groups are able to communicate more effectively and reach decisions more quickly than larger ones.

7.5 The full report can be found at www.professionalstandards.org.uk.

7.6 The HCPC now has the largest Council, following the changes to the GMC and GDC. The HCPC's council was not reduced at the same time as the GMC and the GDC as it was fully occupied working on a number of projects, including taking on responsibility for the regulation of social workers in England following the passage of the Health and Social Care Bill. It was therefore agreed by Ministers that the amendment to the HCPC's Constitution Order should take place following the transfer of the General Social Care Council's functions to the HCPC. This has now happened.

8. Consultation outcome

8.1 The consultation document, Health and Care Professions Council (Constitution) (Amendment) Order. *A paper for consultation* was posted on the Gov.UK and the Department of Health's Citizen Space website and consultation ran from 18 July 2013 to 9 October 2013.

8.2 The consultation concerned the changes to the Council's constitution and quorum. The technical changes to the name of the 2009 Order were not part of that consultation, but the Health and Care Professions Council have been consulted about them and it has signified that it is content.

8.3 In response to the consultation, we received 7 responses from the education sector, the health sector and professional bodies.

8.4 71% of the respondents disagreed with the proposed reduction of the membership to the HCPC's council, while 29% agreed.

8.5 While the majority of respondents disagreed with the proposals there is still strong evidence as provided by the PSA report which found that smaller board sizes allow the board to focus on its function of strategic oversight, leadership and holding the executive to account.

8.6 Taking into consideration the relatively small number of respondents to the consultation, it was felt the evidence in PSA's report outweighed the evidence gathered through this consultation process and recommend the HCPC's council should be reduced to 12 members which is at the higher end of the scale recommended by the PSA in its report, HCPC agree with this recommendation and the GDC, GMC and NMC have all recently reduced their councils to 12.

8.7 A full analysis of the consultation responses will be made available on the GOV.UK website.

9. Guidance

9.1 The Department of Health has not issued any guidance in relation to this order.

10. Impact

10.1 There is no or minimal impact on business, charities or voluntary bodies.

10.2 An Impact Assessment has not been prepared for this instrument as the cost impact is likely to be minimal.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 This legislation will be subject to internal review within the Department of Health after 3 years.

13. Contact

Jamie Samuel at the Department of Health Tel: 0113 254 6747l: Jamie.Samuel@dh.gsi.gov.uk