EXPLANATORY MEMORANDUM TO

THE HEALTH PROFESSIONS COUNCIL (PRACTICE COMMITTEES AND MISCELLANEOUS AMENDMENTS) RULES ORDER OF COUNCIL 2009

2009 No. 1355

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 The Rules ("the 2009 Rules") approved by this Order of the Privy Council revise the constitutional arrangements for the practice committees of the Health Professions Council ("HPC"). The 2009 Rules also make a number of miscellaneous amendments to rules of the HPC, which relate to the introduction of statutory regulation of practitioner psychologists.

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

3.1 None.

4. Legislative Context

4.1 The Health Professions Order 2001 ("the 2001 Order") established three practice committees of the HPC: the Investigating Committee, the Conduct and Competence Committee and the Health Committee. These committees are responsible for conducting the fitness to practise proceedings of the HPC. Previously, their constitutions were set out in part in Part 2 of Schedule 1 to the 2001 Order and in part in the Health Professions Council (Practice Committees)(Constitution) Rules 2003 ("the 2003 Rules").

4.2 Amendments have been made to the 2001 Order by the Health Care and Associated Professions (Miscellaneous Amendments and Practitioner Psychologists) Order 2009 ("the 2009 Order"). These amendments mean that fewer of the constitutional arrangements of the practice committees are to be set out in the 2001 Order and more are to be set out in Rules made by the HPC, which are subject to approval by the Privy Council. The 2009 Order also contains the revocation of the 2003 Rules.

4.3 The 2009 Order also provided for new constitutional arrangements for the Council itself. HPC's own constitution is now set out in a new constitution order, the Health Professions Council (Constitution) Order 2009, which comes into force on 1st July 2009, at the same time as the 2009 Rules. The 2009 Rules are therefore part of a package of new

governance arrangements for the HPC that come into force on that date.

4.4 The 2009 Order also included provisions relating to the introduction of statutory regulation of practitioner psychologists. Practitioner psychologists are psychologists working in one of seven areas of practice that generally require direct contact with patients or clients (clinical psychology, counselling psychology, educational psychology, forensic psychology, health psychology, occupational psychology, and sport and exercise psychology). As a consequence of the 2009 Order, the HPC will expand its register so that it contains a part for practitioner psychologists, and such psychologists will need to register with the HPC if they wish to call themselves by one of the professional titles associated with those seven areas of practice, for example "clinical psychologist". The introduction of statutory regulation of practitioner psychologists necessitates some consequential changes to HPC Rules.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

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

7. Policy background

- ***What is being done and why***

7.1 The White Paper *Trust, Assurance and Safety* put forward a number of reforms to the United Kingdom's system for the regulation of health care professionals. It proposed a number of changes to the constitutional arrangements for the Health Professions' Regulators in order to provide stakeholders with stronger assurance of their independence from government, employers and the health professionals themselves. This led to the changes to the 2001 Order which were made 2009 Order that will afford HPC greater autonomy over the running of its internal structures and committees.

7.2 The 2009 Rules set out the constitutional arrangements for the HPC's practice committees. They make provision with regard to the composition, quora and chairing arrangements for each committee, the criteria for appointment of committee members, and the criteria for suspending and removing members from office. There are new criteria for the disqualification, suspension and removal of practice committee members. These are similar to the criteria that have already been included in the Health Professions Council (Constitution) Order 2009 in relation to the appointment of members to the Council, and are also

similar to those that have been put in place for other Health Professions' Regulators. Accordingly, they are indicative of a significant degree of consensus on the appropriate grounds for restricting membership of Health Professions' Regulators and their statutory committees.

7.3 Membership of the practice committees will be public appointments made by the HPC, and council members themselves will not be able to be members of the practice committees. This is in line with the Government's view that the Council's of the Health Professions' Regulators should be more board-like and Council members should be focusing on strategy and the oversight of their executives. The practice committees will have a membership of up to 350 people, from which will be drawn panels to meet for particular hearings. The HPC already operates a panel system and similar panel systems are also already used by other Health Professions' Regulators. Such systems are thought to allow for more effective and efficient disposal of health and conduct cases than traditional practice committees.

7.4 There are further provisions to ensure that proceedings of the practice committees are not invalidated by disciplinary action against committee members. This is a standard provision to obviate the need to repeat such proceedings.

7.5 Amendments were made to the 2001 Order by the 2009 Order which reflected current practice with regard to gender neutral drafting (for example, the use of the term "chair" instead of "chairman") but as a consequence of these changes, some of the language in HPC's Rules is now inconsistent with the language used in its enabling legislation. A number of consequential amendments have been made essentially to correct this and to adopt the terminology now used in the 2009 Order.

7.6 An explanation is given of the policy background for the statutory regulation of practitioner psychologists in the Explanatory Memorandum prepared for the 2009 Order. The amendments to Rules in the 2009 Rules which relate to the introduction of statutory regulation of psychologists are in two categories: firstly, there are changes to the rules on eligibility for appointment to the HPC's Appeals Panels that hear registration appeals. These changes ensure that the 'lay' members of those panels have not been registered with any of the bodies that preceded the HPC as either a statutory or voluntary regulator of any of the professions that the HPC now regulates – and so bars individuals who have been full members of the British Psychological Society ("BPS") or the Association of Educational Psychologists ("AEP") from sitting as 'lay' members of the panels. This is to ensure that the 'lay' members of the panels do not have a professional background which would make it inappropriate for them to sit as a 'lay' member.

7.7 The 2009 Rules also make changes to the fees structure of the HPC in order to add practitioner psychologists into that structure in an appropriate manner. A number of members of the BPS and AEP will transfer automatically onto the HPC's register when it opens. Generally, registrants with the HPC pay an application fee when they join the register – which will not apply in the case of these "automatic transferers" – and a periodic fee at the start of each two year period for which they are due to be on the register. In order to space the registration cycles for the 14 professions regulated by the HPC at appropriate intervals (so that the HPC does not have to process renewal applications from all its registrants at the same time), the HPC has determined that the two year cycle for practitioner psychologists should generally run from 1st June in an odd numbered year. The HPC therefore needs to be able to levy an appropriate fee from the "automatic transferers" for the period leading up to 1st June 2011, whilst at the same time giving itself an opportunity to make a demand for a fee from these new registrants at an appropriate interval before the payment from them falls due. This interval will also give those "automatic transferers" who decide not to register with the HPC the chance to withdraw from its register before they become liable for a fee.

7.8 Accordingly, practitioner psychologists who automatically transfer to the HPC register from the BPS and AEP registers are given 'free' registration up until 31st October 2009 and then pay a reduced biannual fee from then up until 31st May 2011, reflecting the fact that their first payment relates to a 19 month registration cycle rather than the normal 2 years.

- ***Consolidation***

7.9 Parts 1 to 3 of the 2009 Rules are a self-standing set of Rules. There are no plans to consolidate the Rules amended by the amendments in Part 4 of the 2009 Rules.

8. Consultation outcome

8.1 The draft Health Professions Council (Practice Committees (Constitution) and Miscellaneous Amendments) Rules 2009 were published for consultation by the HPC on 20 February 2009. The consultation took place between 20 February 2009 and 13 April 2009. The consultation paper was published on the HPC's website and the HPC notified interested parties of the consultation.

8.2 Six responses were received from professional bodies and an education and training provider.

8.3 The package was welcomed overall and the following points were raised:

- Some respondents suggested amendments to the wording to help clarify the Rules on terms of office, disqualification, termination or suspension. The HPC considered that the existing wording was appropriate and that it was important that the wording of the Rules should be the same as those in the Health Professions Council (Constitution) Order 2009. For this reason, no changes were made to the terms of office, disqualification, termination or suspension provisions.

- Respondents also supported setting up a single non-statutory Fitness to Practise Committee. On 26 March 2009, the HPC Council agreed to establish this Committee. The purpose of the Committee is to perform a strategic oversight role over the functions of the Conduct and Competence, Investigating and Health Committees (known collectively as the 'Practice Committees'). This has been taken forward as a separate exercise that does not require changes to the Rules.

8.4 The HPC separately consulted on proposals to amend the Health Professions Council (Registration and Fees) Rules Order of Council 2003 in order to set the registration cycle for practitioner psychologists. The consultation took place between 2 April 2009 and 8 May 2009. The consultation paper was published on the HPC's website and the HPC notified interested parties of the consultation.

8.5 Six responses were received from professional bodies, an organisation representing psychology education providers and individuals.

8.6 The proposals for the registration cycle for practitioner psychologists were welcomed overall but the following points were also made:

- A comment from one respondent about the regulation of practitioner psychologists more generally.
- A comment from one respondent about the HPC registration fee.

8.7 The proposals for setting the registration cycle for practitioner psychologists were adopted and have been incorporated into the 2009 Rules. For simplicity, the two sets of Rules have been combined.

9. Guidance

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

10. Impact

10.1 The governance changes to the HPC result in only a minimal impact on business, charities or voluntary bodies. Appointments to the practice committees must be ratified by the HPC Council. The Council itself is subject to the HPC's Race Equality scheme, which affords protection of equality and diversity within the HPC's own workforce. This provides the necessary safeguards to ensure that there is no negative impact on equality issues. The impact of the introduction of statutory regulation of practitioner psychologists is analysed in the Impact Assessment for the 2009 Order.

10.2 The governance changes to the HPC do not impact on the public sector.

10.3 An Impact Assessment has not been prepared for this instrument.

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 three years.

13. Contact

Stuart Griffiths at the Department of Health Tel: 0113 254 5249 or email: Stuart.Griffiths@dh.gsi.gov.uk can answer any queries regarding the instrument.