EXPLANATORY MEMORANDUM TO

THE HEALTH PROFESSIONS COUNCIL (REGISTRATION AND FEES) (AMENDMENT) (No. 2) RULES 2010 ORDER OF COUNCIL 2011

2011 No. 210

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 approves the Health Professions Council (Registration and Fees) (Amendment) (No. 2) Rules 2010 ("the 2010 Rules"). The amendments set out in the Rules make changes to the Health Professions Council (Registration and Fees) Rules 2003 to remove the requirement for prospective registrants to submit a health reference from a registered medical practitioner when seeking admission to the register maintained by the Health Professions Council (HPC). In future applicants will be required to make a declaration that their physical and mental health does not impair their fitness to practise their profession.

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

3.1 None

4. Legislative Context

4.1 The Health Professions Council ("the HPC") was established under the provisions of the Health Professions Order 2001 (SI 2002/254). Under powers conferred by article 7 of that Order the HPC may make Rules concerning registration, renewal and re-admission process, and registration fees. These are set out in the Health Professions Council (Registration and Fees) Rules 2003 (SI 2003/1572) ("the 2003 Rules"). The 2010 Rules make amendments to the 2003 Rules. However, in accordance with articles 41(1) and 42(1) of the Health Professions Order 2001, the Rules cannot come into force until approved by Order of the Privy Council. The 2010 Rules include measures relating to the regulation of operating department practitioners and practitioner psychologists. Accordingly, articles 42(3) and (3A) have the effect that this instrument is to be laid before both Houses of Parliament and the Scottish Parliament.

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 the 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 Under the provisions of the Health Professions Order 2001 a person seeking admission to the register maintained by the HPC is required to satisfy the HPC's Education and Training Committee that he or she is capable of safe and effective practice (article 9(2)(b)), which is judged against criteria prescribed under article 5. These include evidence that the applicant is of 'good health' and 'good character'. The 2003 Rules provide that an applicant for admission must complete and sign the application form and declare whether they have any condition that would affect their ability to practise. Additionally, the 2003 Rules require a health reference from a doctor as to whether the individual has any condition that would affect his or her ability to practise the profession safely and effectively.

7.2 In 2006/07 the Disability Rights Commission ("DRC") investigated barriers faced by disabled people entering the nursing, teaching, and social work professions. In 2007 the DRC published a report called 'Maintaining Standards: Promoting Equality', which concluded that health standards have a negative impact upon disabled people's access to regulated professions; lead to discrimination; and deter and exclude disabled people from entry to these professions. The report recommended that all health requirements should be revoked, on the basis that health requirements have not been proven to provide protection for the public.

7.3 In response to the DRC report, the Department of Health (DH) commissioned the Council for Healthcare Regulatory Excellence (CHRE) to provide advice on the health regulators' requirements regarding registrants' health. The CHRE made five recommendations:

- The language of 'good health' should be overhauled and replaced with a single requirement of fitness to practise on initial entry to the register.

- Consideration should be given to changing the regulatory bodies' legislative frameworks so that they have a single fitness to practise committee.

- Regulatory bodies should consider the most proportionate means of ascertaining the information they need to determine whether those seeking entry to their registers are fit to practise.

- Regulatory bodies should consider how they can best explain to registrants and potential registrants that health is only considered in relation to their capability to practise safely and effectively, and will not be used to

unfairly discriminate against them or place them at disadvantage.

- Regulatory bodies should make sure appropriate guidance is given to those who look to and interpret the regulatory body requirements and standards for practice, particularly in education and training institutions.

7.4 Following the CHRE Report, HPC reviewed the health reference requirement as to whether it was the best way to determine whether those seeking entry to the Register are fit to practise. It found that there had only been a few times when information included in a health reference had raised potential concerns. The small number of applicants refused registration on the grounds of health suggested that the public would not be at greater risk of harm if the health reference currently signed by a doctor was changed to a self-declaration. Also the purpose of the health reference from a medical practitioner has often been misunderstood, and could be seen as a potential barrier by people seeking admission to the Register.

7.5 HPC therefore proposes to replace the requirement for applicants to submit a health reference from a registered medical practitioner with a requirement for all those seeking entry to the register to make a self-declaration that the applicant's physical and mental health do not impair the applicant's fitness to practise the profession to which the application relates.

- Consolidation

7.6 HPC has no plans to consolidate amendments to its rules at this stage but will keep the position under review

8. Consultation outcome

8.1 HPC consulted between January and April 2010. A copy of its consultation document was sent to over 400 stakeholders, including professional bodies and education and training providers. The consultation was also advertised on its website.

8.2 77 responses were received; 29 from individuals and 48 from organisations. There was a large majority in favour of the proposals. (A copy of the consultation report can be found at www.hpc-uk.org)

9. Guidance

9.1 HPC publish a number of guidance documents including *Guidance on health and character* and *A disabled person's guide to becoming a health professional* as well as guidance notes that accompany the application forms. HPC will update this guidance to reflect the amendments.

10. Impact

10.1 The impact on business, charities or voluntary bodies is estimated to be of minimal cost. Removing the requirement for a health reference from a registered medical practitioner is likely to reduce the associated costs of doctor's fees and personal travel for individual applicants. The amendments will also remove potentially misleading and discriminatory provisions.

10.2 The impact on the public sector is minimal

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 as it relates to individual practitioners. However in so far as it may affect those self-employed practitioners, this will be in a positive way as it releases them from the burden of obtaining a medical reference as described under 10.1

12. Monitoring & review

12.1 HPC will continue to monitor and review its Rules in the light of practice and experience.

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.

EXECUTIVE NOTE

THE HEALTH PROFESSIONS COUNCIL (REGISTRATION AND FEES) (AMENDMENT) (No. 2) RULES 2010 ORDER OF COUNCIL 2011

SI 2011/ 210

1. This Order approves the Health Professions Council (Registration and Fees) (Amendment) (No. 2) Rules 2010 ("the 2010 Rules"). The Rules were made by the Health Professions Council (HPC) under the powers conferred by article 7(1) and (2)(c) and (d) of the Health Professions Order 2001. The amendments set out in the Rules make changes to the Health Professions Council (Registration and Fees) Rules 2003 to remove the requirement for prospective registrants to submit a health reference from a registered medical practitioner when seeking admission to the register maintained by the HPC. In future, applicants will be required to make a declaration that their physical and mental health does not impair their fitness to practise their profession.

2. The Order includes measures relating to the regulation of operating department practitioners and practitioner psychologists by the HPC. The regulation of these professions is not reserved in terms of the Scotland Act 1998. These provisions are therefore within the legislative competence of the Scottish Parliament.

3. Accordingly, articles 42(3) and (3A) of the Health Professions Order 2001 have the effect that this Order is subject to annulment in pursuance of a resolution of either House of Parliament or of the Scottish Parliament. The instrument is therefore subject to negative resolution procedure and will be laid simultaneously before both Parliaments by the Privy Council.

Policy Objectives

4. The overall policy objectives of these Rules are set out in the attached DH Explanatory Memorandum, in paragraph 7, headed "Policy background".

Consultation

5. HPC consulted on the proposals between January and April 2010. A copy of its consultation document was sent to over 400 stakeholders, including professional bodies and education and training providers. The consultation was also advertised on its website.

6. 77 responses were received; 29 from individuals and 48 from organisations. There was a large majority in favour of the proposals. (A copy of the consultation report can be found at www.hpc-uk.org)

Guidance

7. HPC publish a number of guidance documents including *Guidance on health and character* and *A disabled person's guide to becoming a health professional* as well as guidance notes that accompany the application forms. HPC will update this guidance to reflect the amendments**.**

Impact Assessment and Financial Implications

8. Paragraphs 10 and 11 of the attached DH Explanatory Memorandum relate to the impact and financial implications of these Orders.

Monitoring and Review

9. HPC will continue to monitor and review its Rules in the light of practice and experience.

Scottish Government Health Directorates
February 2011