

Education and Training Committee, 12 September 2013

Consultation on Rules for professional indemnity

Executive summary and recommendations

### **Introduction**

The Health Care and Associated Professions (Indemnity Arrangements) Order 2013 ('the Indemnity Order') will introduce a statutory requirement for registrants (other than social workers in England) to have in place a professional indemnity arrangement which provides appropriate cover as a condition of their registration with us.

To date we had expected that all the measures necessary for the HCPC to implement the requirement would be included in the Indemnity Order. However, the Department of Health has recently advised us that they are unable to include all of these measures in the Indemnity Order itself and that these will instead need to be made by exercising Rule making powers conferred by that Order.

Amendments to the HCPC's Registration and Fees Rules are therefore necessary. The exercise of Rule making powers is subject to a public consultation.

The attached draft consultation document sets out the HCPC's proposals and appends the draft Rules amendment Order. The draft Rules include provisions related to proposed increases to the HCPC's registration fees which are the subject of a separate consultation.

The consultation would run for five weeks (the maximum period possible on this occasion). However, the substance of the proposals has already been included in draft guidance for registrants which was recently the subject of a public consultation. This tight timescale is necessary to ensure that the Committee and the Council can agree the consultation outcomes and finalised Rules at their meetings in November and December 2013. The Rules would subsequently need to be laid at the Privy Council and then before Parliament before coming into effect from the 1 April 2014.

### **Decision**

The Committee is invited to agree and recommend to the Council the text of the draft consultation document (subject to minor editing amendments).

### **Background information**

- See separate paper about guidance for registrants on the agenda at this meeting.
- Our response to the consultation on the draft Indemnity Order can be found here:

<http://www.hcpc-uk.org/aboutus/consultations/external/index.asp?id=157>

### **Resource implications**

- Amending the consultation document as necessary.
- Making arrangements for the consultation including emailing a link to the consultation document to stakeholders.
- Writing up the outcomes of the consultation.

### **Financial implications**

- None.

### **Appendices**

- Draft amendments to the Health and Care Professions Council (Registration and Fees) Rules Order of Council 2003 – for consultation.

### **Date of paper**

2 September 2013

**Consultation on Rules for professional indemnity**

A consultation on proposed amendments to the Health and Care Professions Council (Registration and Fees) Rules Order of Council 2003 related to professional indemnity.

**Please note the proposed amendments to these Rules do not apply to the registration of social workers in England.**

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## 1. Introduction

- 1.1 We are the Health and Care Professions Council (HCPC). This consultation seeks the views of stakeholders on proposed amendments to the Health and Care Professions Council (Registration and Fees) Rules Order of Council 2003 (referred to in the remainder of this document as 'the Rules').
- 1.2 These amendments are about implementing the forthcoming statutory requirement for our registrants (other than social workers in England) to have in place a professional indemnity arrangement which provides appropriate cover as a condition of their registration with us.
- 1.3 We recently consulted on guidance for registrants about the requirement. See section three of this document for more information.
- 1.4 This requirement is being introduced by the Government via the Health Care and Associated Professions (Indemnity Arrangements) Order 2013 (referred to in the remainder of this document as 'the Indemnity Order'). Subject to parliamentary approval, the Indemnity Order will amend our governing legislation, the Health and Social Work Professions Order 2001 to introduce the statutory requirement.
- 1.5 At the time of launching this consultation, the Indemnity Order had yet to be laid before Parliament. We are consulting in preparation for the introduction of a statutory requirement, subject to subsequent parliamentary approval of the Indemnity Order.
- 1.6 **Please note that subject to parliamentary approval of the Indemnity Order, the statutory requirement to have in place a professional indemnity arrangement will not apply to social workers in England registered with us.** Social workers in Scotland, Wales and Northern Ireland will also be unaffected.
- 1.7 This consultation may be of interest to professional bodies; registrants who are affected by these proposals; and to employers.
- 1.8 The consultation runs from **18 September 2013 to 25 October 2013.**

## 2. About the HCPC

- 2.1 We are a regulator and were set up to protect the public. To do this, we keep a register of professionals who meet our standards for their professional skills and behaviour. Individuals on our register are called 'registrants'.
- 2.2 We currently regulate 16 professions.
- Arts therapists
  - Biomedical scientists
  - Chiropodists / podiatrists
  - Clinical scientists
  - Dietitians
  - Hearing aid dispensers
  - Occupational therapists
  - Operating department practitioners
  - Orthoptists
  - Paramedics
  - Physiotherapists
  - Practitioner psychologists
  - Prosthetists / orthotists
  - Radiographers
  - Social workers in England
  - Speech and language therapists

### **3. About professional indemnity**

#### **A statutory requirement**

- 3.1 Later in 2013 legislation will be introduced which will require registrants (other than social workers in England) to have a professional indemnity arrangement in place as a condition of their registration with us. The arrangement must provide 'appropriate cover' – this means an arrangement which provides cover appropriate to a registrant's practice, taking into account the nature and extent of its risks.

#### **Meeting the requirement**

- 3.2 Many registrants will work in an employed environment, for example, for the National Health Service (NHS), a local authority or in the independent sector, where their employer will indemnify them and/or they will have already made their own professional indemnity arrangements. This means that many registrants will already meet this requirement and will not need to take any further action.
- 3.3 Registrants can meet the requirement through one or more of the following.
- A professional indemnity arrangement through their employer.
  - A professional indemnity arrangement as part of being a member of a professional body, trade union or defence organisation.
  - A professional indemnity arrangement obtained directly through an insurer.

#### **Checking that an arrangement is in place**

- 3.4 From 1 April 2014, we will ask registrants at the point they renew their registration with us (every two years) to confirm that:
- they have a professional indemnity arrangement in place which provides appropriate cover; or
  - if they are not practising at the time of their renewal, that they understand the requirement will have such an arrangement in place when they begin to practise.

- 3.5 Applicants for registration will not need to have a professional indemnity arrangement in place when they apply. However, from 1 April 2014 they will be asked to confirm that they understand the requirement to have a professional indemnity arrangement in place which provides appropriate cover and that they will have such an arrangement in place when they begin to practise.
- 3.6 A registrant or applicant who was unable to complete the self-declaration would be unable to renew their registration or become registered with us.

### **More information**

- 3.7 We have recently consulted on draft guidance for registrants about professional indemnity. We have used the comments we received to revise the guidance and plan to publish this in the near future.
- 3.8 Please see the consultation document and draft guidance for more information about the statutory requirement, including its background and more about what it means for registrants.<sup>1</sup>

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<sup>1</sup> Please see:

<http://www.hcpc-uk.org/aboutus/consultations/closed/index.asp?id=158>

## 4. Our consultation proposal

- 4.1 We are proposing to amend the Rules as part of implementing the Indemnity Order.
- 4.2 The amendments are in line with what we set-out in our recent consultation on guidance for registrants on professional indemnity.
- 4.3 If implemented, the amendments to the Rules would mean the following.
- A requirement for a registrant to inform the Registrar if for any reason they cease to have in place a professional indemnity arrangement which provides appropriate cover. This expectation was included in the draft guidance we recently consulted on. Registrants do not need to tell us about routine changes, such as a change of provider or not having an arrangement in place because they are no longer working.
  - A power for the Registrar to send a notice to a registrant asking them to provide such evidence and information as might be necessary to demonstrate that they have an indemnity arrangement in place which provides appropriate cover. We propose that the notice should provide at least a 14 day period in which the registrant would be required to respond.
  - The main way in which we will ensure compliance is via registrants and applicants completing a self-declaration at the point they renew their registration, or apply for registration, with us (see paragraphs 3.4 to 3.6). Registrants will continue to be provided with approximately three months in which to complete their renewal.
  - We will not routinely ask registrants to send us certificates or other evidence of their professional indemnity arrangements. However, we anticipate that we may use the power described above between renewal periods if, for example, there are concerns that a registrant may not have a professional indemnity arrangement in place or that it may not provide appropriate cover.
  - If the evidence and information provided in response to a notice does not demonstrate that a registrant has an indemnity arrangement in place which provides appropriate cover; or where a registrant fails to respond to a notice within the period specified, the Registrar may remove the name of the registrant from the Register. We anticipate that, outside the renewal process, this power is likely to be used in very few cases. In line with the intent of the legislation, we expect that where appropriate we will use these administrative powers rather than referring a registrant to our fitness to practise process.



- Someone administratively removed from the Register would be able to apply for registration again, subject to completing an application form, paying the registration fee and demonstrating they meet the conditions of registration. This is very different from being struck off. 'Striking off' is a sanction as a result of our fitness to practise process. Someone struck off the Register is unable to apply to be considered for registration until at least five years have elapsed.
- However, we will consider taking fitness to practise action in more serious cases. For example, if a registrant:
  - makes a declaration that they have a professional indemnity arrangement in place when they do not;
  - registers, or renews their registration with us, but cancels their professional indemnity arrangement and fails to put alternative arrangements in place whilst continuing to practise; or
  - knowingly has in place a professional indemnity arrangement which does not provide appropriate cover.

4.4 A copy of the proposed amendments to our Rules can be viewed alongside this consultation document on our website.<sup>2</sup> The draft incorporates amendments related to our registration fees which at the time of launching this consultation were the subject of a separate consultation.<sup>3</sup>

4.5 A copy of our existing Rules is also available from our website.<sup>4</sup>

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<sup>2</sup> <http://www.hcpc-uk.org/aboutus/consultations/>

<sup>3</sup> <http://www.hpc-uk.org/aboutus/consultations/index.asp?id=160>

<sup>4</sup> <http://www.hpc-uk.org/aboutus/legislation/rules/>

## 5. How to respond to the consultation

- 5.1 We welcome your comments on any aspect of the proposals set out in this document.
- 5.2 Our consultation proposals are amendments to the Rules which are a consequence of the implementation of the Indemnity Order. The tight timescales for this piece of work are dictated by the introduction of that legislation. We are consulting for a shorter 5 week period to ensure that the necessary Rules will be in place from 1 April 2014.
- 5.3 The substance of these Rule changes were already included in our recent consultation on guidance for registrants. We intend to publish this guidance in advance of the amendments to the Rules and the introduction of the legislation in order to allow registrants sufficient time to understand the requirements and to make any additional professional indemnity arrangements should they need to.
- 5.4 You can respond to the consultation in the following ways.
- By completing our easy-to-use online survey:  
[URL here]
  - By emailing us at: [consultation@hcpc-uk.org](mailto:consultation@hcpc-uk.org)
  - By writing to us at the following address.
- Consultation on Rules for professional indemnity  
Policy and Standards Department  
Health and Care Professions Council  
Park House  
184 Kennington Park Road  
London  
SE11 4BU  
Fax: +44(0)20 7820 9684
- 5.5 Please note that we do not normally accept responses by telephone or in person. We normally ask that consultation responses are made in writing. However, if you are unable to respond in writing, please contact us on +44(0)20 7840 9815 to discuss any reasonable adjustments that would help you to respond.
- 5.6 Please complete the survey or send us your response by **25 October 2013**.
- 5.7 **Please contact us to request a copy of this document in Welsh or in an alternative format.**

- 5.8 Once the consultation period is completed, we will analyse the responses we receive. We will then publish a document which summarise the comments we received and explains the decisions we have taken as a result. This will be published on our website.

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## [SCHEDULE]

# The Health and Care Professions Council (Registration and Fees) (Amendment) Rules 2013

The Health and Care Professions Council makes the following Rules in exercise of the powers conferred by articles 7(1) and (2), 9(2), 11(1), (1A) and (1B), 33(7) and 41(2) of the Health and Social Work Professions Order 2001(a).

In accordance with articles 7(1) and (3) and 41(3) of that Order, the Health and Care Professions Council has consulted the Education and Training Committee and representatives of groups of persons it considers appropriate, including representatives of the groups listed in article 41(3) of that Order.

### **Citation and commencement**

1. These Rules may be cited as the Health and Care Professions Council (Registration and Fees) (Amendment) Rules 2013 and come into force on 1st April 2014.

### **Amendment of the Health Professions Council (Registration and Fees) Rules 2003**

2.—(1) The Health Professions Council (Registration and Fees) Rules 2003 are amended in as follows.

(2) After rule (11A (continuing professional development) insert:

#### **“Indemnity arrangements**

**11B.—(1)** A registrant must promptly inform the Registrar if for any reason the registrant ceases to have in force, in accordance with Article 11A of the Order, an indemnity arrangement which provides appropriate cover.

(2) The Registrar may at any time send a notice to a registrant requiring the registrant to submit to the Registrar—

- (a) evidence that the registrant has an indemnity arrangement which provides appropriate cover; and
- (b) such other information as the Registrar may reasonably require for the purpose of determining whether the registrant’s indemnity arrangement does provide appropriate cover;

within such time period as the Registrar may specify in the notice, which shall be at least 14 days beginning with the day on which the notice was sent.

(3) If—

- (a) having considered the evidence and information provided in response to a notice under paragraph (2), the Registrar is not satisfied that a registrant has an indemnity arrangement which provides appropriate cover; or
- (b) a registrant fails to respond to such a notice within the period specified in the notice;

the Registrar may remove the name of the registrant from the register.

(4) This rule does not apply to a registrant in respect of registration as a social worker in England.”.

(3) In rule 14 (registration fee)—

(a) in paragraph (1)(a), for “£76” substitute “£80”; and

(b) in paragraph (1)(b), for “£152” substitute “£160”.

(4) In rule 15 (renewal fee), in sub-paragraph (b), for “£152” substitute “£160”.

(5) In rule 15A (readmission fee), for “£267” substitute “£120 plus the registration fee prescribed by rule 14(1)(b)”.

(6) In rule 16 (restoration fee), for “£267” substitute “£120 plus the registration fee prescribed by rule 14(1)(b)”.

(7) In rule 16A (reduced fees), for “, readmission fee or restoration fee” substitute “or renewal fee”.

(8) In rule 17 (scrutiny fee)—

(a) in paragraph (1), for “£53” substitute “£56”; and

(b) in paragraph (2), for “£420” substitute “£440”.

Given under the official seal of the Health and Care Professions Council this \*\*\*

*Anna van der Gaag*  
Chair

*Marc Seale*  
Registrar