

# Health Professions Council

## Proposed Rule Changes

### 1. Introduction

The Council previously agreed that the Council's rules should be reviewed to identify any changes which need to be made prior to the end of the second transitional period in July 2005 or changes which were otherwise desirable.

In conducting that review we have considered the need for amendments which have been identified based upon HPC's experience of operating with the existing Rules for nearly two years and, as HPC was the first regulator to make rules on the basis of the reforms to regulation introduced by the Health Act 1999, the rules which have been subsequently made by or for other regulators. In particular, some regulators have been permitted to include in their fitness to practise rules provisions which were originally sought by HPC but which we unable to secure at the time.

### 2. Time critical amendments

The only time critical amendment that has been identified is the need to revise the HPC (Practice Committees) (Constitution) Rules 2003. Those rules only provide for membership of the three Practice Committees up to the end of the second transitional period and therefore must be amended before then.

It is therefore proposed that the HPC (Practice Committees) (Constitution) Rules 2003 should be amended so that Rule 5(1), which currently provides for the terms of office of all members to end at the end of the second transitional period to provide for members to be appointed for fixed terms of two years or the end of their term as a member of the Council if that occurs at an earlier date.

In addition, the following changes are also proposed to those Rules:

In Rule 2 (interpretation) that the definition of "second transitional period" is deleted as that phrase will no longer occur in the body of the Rules;

That Rule 8 (meetings) is amended so that

1. the number of meetings which each Committee must hold by virtue of rule 8(1) is reduced from four to two a year; and
2. a new provision is inserted at the end of Rule 8 allowing the Committees to transact business by electronic means.

### 3. Other changes

At the time the HPC (Registration and Fees) Rules 2003 were drafted the government's lawyers required the forms which were to be used to apply for or renew registration to be specified in those Rules. In consequence, even the most minor change to those forms requires new Rules to be made, a cumbersome process which other regulators have since been allowed to abandon.

It is therefore proposed that:

1. Rule 4 (1), which requires application for registration to be made in the form specified in Schedule 1;
2. Rule 11(1) which requires an application for the renewal of his registration in the form specified in Schedule 2;
3. Rule 4(2)(a) which requires a reference as to the good character of the applicant to be given on the form specified in Schedule 3; and
4. Rule 4(2)(b) which requires a reference as to the physical and mental health of the applicant given on the form specified in Schedule 4

should all be amended to remove the reference to the specified form and the associated Schedules be deleted.

Once the Council has approved the final CPD arrangements, new but limited Rules will be needed to support the CPD regime. Those Rules have already been consulted upon, can be drafted before the final form of the CPD arrangements is known and could be included in the HPC (Registration and Fees) Rules. To avoid the need for a further rules change in the near future, we recommend that such a proposal is discussed with the DH.

The new General Medical Council (Fitness to Practise) Rules 2004 contain provisions which HPC would have liked to include in the HPC (Investigating Committee) (Procedure Rules) 2003, HPC (Conduct and Competence Committee) (Procedure Rules) 2003 and HPC (Health Committee) (Procedure Rules) 2003 at the time that they were drafted. Those provisions relate to:

1. the joinder of allegations and registrants;
2. the protection of vulnerable witnesses; and
3. the exclusion of disruptive individuals from hearings.

It is therefore proposed that the three sets of HPC Procedure Rules should be amended to include the following provisions:

## **“Joinder**

[ ]. The Committee may consider and determine together—

- (a) two or more allegations against the same health professional; or
- (b) allegations against two or more health professionals,

where it would be just to do so.”

## **“Vulnerable witnesses**

[ ]. (1) In proceedings before the Committee, the following may, if the quality of their evidence is likely to be adversely affected as a result, be treated as a vulnerable witness—

- (a) any witness under the age of 17 at the time of the hearing;
- (b) any witness with a mental disorder within the meaning of the Mental Health Act 1983;
- (c) any witness who is significantly impaired in relation to intelligence and social functioning;
- (d) any witness with physical disabilities who requires assistance to give evidence;
- (e) any witness, where the allegation against the practitioner is of a sexual nature and the witness was the alleged victim; and
- (f) any witness who complains of intimidation.

(2) Subject to any representations from the parties and the advice of the Legal Assessor, the Committee may adopt such measures as it considers desirable to enable it to receive evidence from a vulnerable witness.

(3) Measures adopted by the Committee may include, but shall not be limited to—

- (a) use of video links;
- (b) use of pre-recorded evidence as the evidence-in-chief of a witness, provided that the witness is available at the hearing for cross-examination and questioning by the Committee;
- (c) use of interpreters (including signers and translators) or intermediaries;
- (d) use of screens or such other measures as the Committee consider necessary in the circumstances, in order to prevent—

- (i) the identity of the witness being revealed to the press or the general public; or
- (ii) access to the witness by the health professional; and
- (e) the hearing of evidence by the Committee in private.

(4) Where—

- (a) the allegation against a health professional is based on facts which are sexual in nature;
- (b) a witness is an alleged victim; and
- (c) the health professional is acting in person,

the health professional shall only be allowed to cross-examine the witness in person with the written consent of the witness.

(5) If, in the circumstances set out in paragraph (4) a witness does not provide written consent, the health professional shall, not less than seven days before the hearing, appoint a legally qualified person to cross-examine the witness on his behalf and, in default, the Council shall appoint such a person on behalf of the health professional.”

**“Exclusion from proceedings**

[ ]. The Committee may exclude from any hearing any person whose conduct, in their opinion, is likely to disrupt the orderly conduct of the proceedings.”