

Council, 26 March 2009

Health Professions Council (Constitution) Order 2009

Executive summary and recommendations

### **Introduction**

The Department of Health is consulting on the Health Professions Council (Constitution) Order 2009. This Order makes provisions for the constitution of the new Council, subject to parliamentary approval of the Health Care and Associated Professions (Miscellaneous Amendments) Order 2009.

A draft response to the consultation is attached. A copy of the consultation document is appended.

### **Decision**

The Council is invited to agree the text of the consultation response (subject to any amendments suggested at this meeting) for submission to the Department of Health.

### **Background information**

Please note that in the printed consultation document Question 4 reads: 'Do you agree that service as a member since 1 July 2007 should be discounted in aggregating a Council member's service?' However the text above explains that service since 1 July 2007 will be counted in the aggregate total; service **before** 1 July 2007 will, however, be discounted.

### **Resource implications**

None

### **Financial implications**

None

### **Appendices**

Health Professions Council (Constitution) Order 2009 – A paper for consultation

### **Date of paper**

27 February 2009

17 April 2009

## **Health Professions Council response to the Department of Health consultation on the Health Professions Council (Constitution) Order 2009**

The Health Professions Council welcomes the opportunity to respond to this consultation.

The Health Professions Council is a statutory UK wide regulator of healthcare professionals governed by the Health Professions Order 2001. We regulate the members of 13 healthcare professions. We maintain a register of health professionals, set standards for entry to our register, approve education and training programmes for registration and deal with concerns where a health professional may not be fit to practise. Our main role is to protect the health and wellbeing of those who use or need to use our registrants' services.

We welcome the proposed changes to our constitution outlined in the consultation document.

We have structured our comments around each individual consultation question.

### **Q1. Do you agree that the Council should consist of 10 registrant members and 10 lay members? If not, please specify which reasons you disagree with and explain why?**

We agree that Councils should have a parity of registrant and lay members, to avoid any public perception of professional bias.

We further agree with the reduction in the total number of Council members. This change will mean that not every profession we regulate will be directly represented on the Council. However, each profession will be represented within our Committees. We are confident that, alongside our existing arrangements for ensuring professional and lay input into our decision making, this change will not have any detrimental impact upon our ability to make appropriate decisions.

### **Q2. Do you agree that the Privy Council / Appointments Commission should determine the duration of the term of office of each HPC Council member, on appointment? If not, please specify which reasons you disagree with explain why.**

We agree that the Appointments Commission should determine the duration of term of office of each Council member. We believe that this will ensure continuity and stability, particularly in the transition period from the old Council.

**Q3. Do you agree that no members should hold office for more than an aggregate of 8 years during any period of 20 years? If not, please specify which reasons you disagree with and explain why.**

We agree. We believe that this proposal strikes the right balance between continuity and the need to bring in new members with new perspectives and ideas.

**Q4. Do you agree that service as a member before 1 July 2007 should be discounted in aggregating a Council member's service? If not, please specify which reasons you disagree with and explain why.**

We agree that service on the Council before 1 July 2007 should be discounted in aggregating a Council member's service, and that service after 1 July 2007 should be taken into account.

We believe that this arrangement will help to ensure continuity of 'corporate memory' between the new and old Councils.

**Q5. Do you agree that the HPC should have the flexibility to make arrangements for the provision of education and training of Council members with another body? If not, please specify which reasons you disagree with and explain why.**

We agree.

**Q6. Do you agree with the reasons for disqualifying a person from appointment as a member of the Council? If not, please specify which reasons you disagree with and explain why.**

We agree.

**Q7. Do you agree with the reasons given for removing or suspending members from office? If not, please specify which reasons you disagree with and explain why.**

We agree.

**Q8. Do you agree that the term of office of the Chair should be determined by the Privy Council? If not, please specify which reasons you disagree with and explain why.**

We agree.

**Q9. Do you agree with the reasons why a member should cease to be Chair? If not, please specify which reasons you disagree with and explain why.**

We agree.

**Q10. Do you agree with the deputising arrangements in respect of the Chair? If not, please specify which reasons you disagree with and explain why.**

We agree.

**Q11. Do you agree that the quorum of the Council shall be 11? If not, please specify which reasons you disagree with and explain why?**

We agree.

**Q12. Do you agree with the provisions that prevent Council proceedings being invalidated? If not, please specify which reasons you disagree with and explain why.**

We agree with these provisions and consider them to be sensible and pragmatic.

## **Conclusion**

We hope that you find these comments useful. Should you wish to discuss any of our comments then please do not hesitate to contact us.

Yours sincerely,

Michael Guthrie  
Acting Director of Policy and Standards



# **Health Professions Council (Constitution) Order 2009**

*A paper for consultation*

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**Circulation List**

**Description** This draft order sets out a proposed constitution for the HPC. It provides details of the composition of the council, the terms of office of council members, and criteria for the disqualification, suspension and removal of members from office

**Cross Ref** Health Care and Associated Professions (Miscellaneous Amendments) Order 2009

**Superseded Docs**

**Action Required** Send response/comments to DH

**Timing** **consultation closes on 17 April 2009**

**Contact Details** HPC Consultation  
Professional Standards Division  
Room 2N12, Quarry House  
Quarry Hill, Leeds  
LS2 7UE  
  
[www.dh.gov.uk/consultations/liveconsultations/fs/en](http://www.dh.gov.uk/consultations/liveconsultations/fs/en)

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## HPC (Constitution) Order 2009 - consultation

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# Health Professions Council (Constitution) Order 2009

*A Paper for consultation*

**Prepared by Niall McDermott**



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# Executive summary

The draft Order attached to this paper sets out a proposed constitution for the Health Professions Council (HPC). It makes provision in respect of:

- Composition of the Council;
- Terms of office of Council members;
- Standing orders in respect of the education and training of members;
- Criteria for disqualification for appointment as a member;
- Circumstances in which a member may be removed from office;
- Circumstances in which a member may be suspended from office;
- Provisions for the appointment, terms of office and cessation of the office of Chair to the Council;
- Deputising arrangements in respect of the chair;
- Quorum of the Council;
- Effect of vacancies etc. on the Council on the validity of proceedings.

# 1. Introduction

- 1.1 The White Paper *Trust, Assurance and Safety – The Regulation of Health Professionals in the 21<sup>st</sup> Century* (published in 2007) set out a substantial programme of reform to the United Kingdom's system for the regulation of health care professionals. This was based on consultation on the two reviews of professional regulation published in 2006: *Good Doctors, Safer Patients* and *The Regulation of the Non-Medical Health Care Professions*.
- 1.2 Chapter one of the White Paper (Assuring independence: the governance and accountability of the professional regulators) included a number of recommendations in relation to the constitution of the professional regulators. These were that:
- The Councils of the regulatory bodies should have, as a minimum, parity of membership between lay and professional members, to ensure that purely professional concerns are not thought to dominate their work;
  - To dispel the perception that Councils are overly sympathetic to the professionals they regulate, Council members should be independently appointed; and
  - To enable Councils to focus more effectively on strategy and the oversight of their executives, they should become smaller and more board-like, with greater consistency of size and role across regulatory bodies.
- 1.3 Legislation amending the constitutional arrangements for the other Health Care Regulators, in line with these recommendations, was put forward in the Health Care and Associated Professions (Miscellaneous Amendments) Order 2008 SI 2008/1774. These reforms will be continued in the Health Care and Associated Professions (Miscellaneous Amendments) Order 2009 that is to be laid before both the United Kingdom and Scottish Parliaments in early 2009. The consultation on the Health Care and Associated Professions (Miscellaneous Amendments) Order 2009 closed on 25 March 2008.

## HPC (Constitution) Order 2009 - consultation

- 1.4 Responses to the consultations on both these pieces of legislation indicate overall support for the constitutional amendment proposals.
- 1.5 Subject to Parliamentary and Privy Council approval of the Health Care and Associated Professions Order 2009, it will be necessary for a new constitution order to be prepared for the HPC. A draft constitution Order, made pursuant to the new powers that are expected to be included in the Health Professions Order 2001 SI 2002/254, is published with this paper.

## 2. The HPC (Constitution) Order 2009

### Composition of the Council

2.1 As outlined above the White Paper recommended that Councils should be smaller than at present, with as a minimum parity between lay and professional members. The response to the consultation on the Health Care and Associated Professions (Miscellaneous Amendments) Order 2009 supports this move. The draft HPC constitution order therefore proposes a Council of 20 members, made up of 10 lay members and 10 registrant members. This represents a reduction from the current 28 members.

**Q1 Do you agree that the Council should consist of 10 registrant members and 10 lay members? If not, please specify which reasons you disagree with and explain why.**

### Terms of office of members

2.2 The draft Order makes provision for the duration of the term of office of each member to be determined by the Privy Council on appointment. It is expected that all Council members will generally be appointed for a term of four years, but the first round of appointments will be staggered so that only a third of the Council will come up for reappointment in any year. It is also possible for a variety of reasons that a vacancy could occur during this reappointment cycle. It will be a matter between the Council and the Privy Council (in practice, all the Privy Council's functions relating to appointment are to be delegated to the Appointments Commission by a set of directions, a draft of which is attached to this document) whether the person appointed to the vacancy should be appointed for four years, or only until the end of the term of office of the vacancy. This provision will give the Privy Council/Appointments Commission the necessary flexibility to determine the terms of office in these circumstances.

**Q2 Do you agree that the Privy Council/Appointments Commission should determine the duration of the term of office of each HPC Council member, on appointment? If not, please specify which reasons you disagree with and explain why.**

2.3 Whilst recognising the need for continuity and stability, it is also necessary for the organisation to develop and adapt to meet changing circumstances. As part of this process it is important that new Council members are brought into the Council, bringing with them fresh ideas. The draft Order therefore provides that no Council member should serve any more than 8 years in any period of 20 years.

**Q3 Do you agree that no member should hold office for more than an aggregate of 8 years during any period of 20 years? If not, please specify which reasons you disagree with and explain why.**

2.4 It is open to the current members of the Council, whether lay or professional, to apply for appointment to the new Council. It is proposed that no member should serve any more than an aggregate of 8 years in any twenty. If this 8 year period starts from the date of the new Council, it is potentially possible for members to have served well over 11 years by the end of their appointments. It is therefore proposed that service on the current Council since 1 July 2007 should be taken into account when calculating the aggregate period. However, any service prior to 1 July 2007 will be discounted. The appointments process undertaken by Appointments Commission will ensure that adequate safeguards will be in place to ensure a range of appropriately qualified and diverse appointments are made, to ensure the continued development of the organisation.

**Q4 Do you agree that service as a member since 1 July 2007 should be discounted in aggregating a Council member's service? If not please specify which reasons you disagree with and explain why.**

## Education and training of members

2.5 It is important that Council members are provided with sufficient education and training in order to meet their responsibilities. The draft constitution order requires the HPC to make provision through standing orders in respect of the education and training requirements for Council members. The Order also allows for those standing orders to provide that education and training can be the responsibility of another body. The HPC will therefore be able to arrange for the education and training of its members, or make arrangements with another body, thereby giving greater flexibility to the Council.

**Q5 Do you agree that the HPC should have the flexibility to make arrangements for the provision of education and training of Council members with another body? If not, please specify which reasons you disagree with and explain why.**

## Disqualification for appointment as a member

2.6 Article 5 makes provision to disqualify certain categories of people, for example those who have been convicted of certain types of offences from being members of the HPC.

**Q6 Do you agree with the reasons for disqualifying a person from appointment as a member of the Council? If not, please specify which reasons you disagree with and explain why.**

## Removal and suspension of members from office

2.7 Articles 6 and 7 make provision for circumstances in which the Privy Council/Appointments Commission may remove or suspend members. This ensures that the body that makes the appointments are also responsible for removal and suspension and provides a clear process that is independent of the Council itself. There are, however, provisions to allow the HPC in certain circumstances, to suspend a member pending the taking of a decision by the Privy Council/Appointments Commission.

**Q7 Do you agree with the reasons given for removing or suspending members from office? If not, please specify which reasons you disagree with and explain why.**

### **Appointment, term of office and cessation of office of the chair**

2.8 The draft Order makes provision at Article 8 for the appointment of the Chair of the Council to be by the Privy Council/Appointments Commission. It also provides for the term of office as Chair to be determined by the Privy Council/Appointments Commission, but that it should be no longer than the person would serve as a member of the HPC Council. Further provision is also made for the circumstances in which a person must cease to be the Chair.

**Q8 Do you agree that the term of office of the Chair should be determined by the Privy Council? If not, please specify which reasons you disagree with and explain why.**

**Q9 Do you agree with the reasons why a member should cease to be Chair? If not, please specify which reasons you disagree with and explain why.**

### **Deputising arrangements in respect of the chair**

2.10 Article 9 makes provision in the event that the Chair is likely to be absent for any period. If the chair is absent from a meeting, the Council make nominate another member to serve as chair for that meeting. If however, it is likely that the chair will be absent for a longer period, the Council may nominate a member to act as “deputy chair” during the absence of the chair. Further provision is made for the deputy chair to cease acting in that role.

**Q10 Do you agree with the deputising arrangements in respect of the Chair? If not, please specify which reasons you disagree with and explain why.**



**Quorum of the Council, effect of vacancies on the validity of proceedings etc.**

2.11 Articles 10 and 11 make provision relating to the proceedings of the Council. The quorum of the Council in order for valid decisions to be made is 11. Special provisions are made to prevent the Council proceedings being invalidated due to a vacancy on the Council, or because of a defect on the appointments process for a member, or that a member has been suspended or removed.

**Q11 Do you agree that the quorum of the Council shall be 11? If not, please specify which reasons you disagree with and explain why.**

**Q12 Do you agree with the provisions that prevent Council proceedings being invalidated? If not, please specify which reasons you disagree with and explain why.**

## 3. Consultation next steps

- 3.1 Individuals and organisations are invited to submit comments on any issues dealt with in the draft Order attached to this paper.

### Response to the Consultation

- 3.2 Replies to this consultation should be received no later than 17 April 2009
- 3.3 Please respond using the question template provided on the website. If you cannot access the question template, please e-mail the address below or write to us and we will send the consultation document and/or template to you. If you e-mail your response please do not send a duplicate hard copy.
- 3.4 The document is available on the Department of Health website at <http://www.dh.gov.uk/consultations/liveconsultations> .
- 3.5 You can respond by e-mail to [HRDListening@dh.gsi.gov.uk](mailto:HRDListening@dh.gsi.gov.uk). You may also respond in writing to:

HPC Constitution Order consultation  
Department of Health  
Room 2N12  
Quarry House  
Quarry Hill  
Leeds  
LS2 7UE

Attachments to e-mails should be in Microsoft word or rich text format only please.

- 3.6 Please indicate whether you are replying as an individual or on behalf of an organisation or group of people. Your response may be made public, but if you would prefer it to remain private please make this clear in your reply.

- 3.7 The information provided in response to this Consultation will be reviewed by the Department to inform thinking on the wording of the draft Order.

## 4 The Consultation Process

### Criteria for consultation

4.1 This consultation follows the 'Government Code of Practice', in particular we aim to:

- formally consult at a stage where there is scope to influence the policy outcome;
- consult for at least 12 weeks with consideration given to longer timescales where feasible and sensible;
- be clear about the consultations process in the consultation documents, what is being proposed, the scope to influence and the expected costs and benefits of the proposals;
- ensure the consultation exercise is designed to be accessible to, and clearly targeted at, those people it is intended to reach;
- keep the burden of consultation to a minimum to ensure consultations are effective and to obtain consultees' 'buy-in' to the process;
- analyse responses carefully and give clear feedback to participants following the consultation;
- ensure officials running consultations are guided in how to run an effective consultation exercise and share what they learn from the experience.

4.2 The full text of the code of practice is on the Better Regulation website at:

<http://www.berr.gov.uk/whatwedo/bre/consultation-guidance/page44420.html>

### Comments on the consultation process itself

4.3 If you have concerns or comments which you would like to make relating specifically to the consultation process itself please

**contact**      Consultations Coordinator  
Department of Health  
3E48, Quarry House  
Leeds  
LS2 7UE

**e-mail**        [consultations.co-ordinator@dh.gsi.gov.uk](mailto:consultations.co-ordinator@dh.gsi.gov.uk)

**Please do not send consultation responses to this address.**

## Confidentiality of information

- 4.4 We manage the information you provide in response to this consultation in accordance with the Department of Health's **Information Charter** accessible at:  
[http://www.dh.gov.uk/en/FreedomOfInformation/DH\\_088010](http://www.dh.gov.uk/en/FreedomOfInformation/DH_088010)
- 4.5 Information we receive, including personal information, may be published or disclosed in accordance with the access to information regimes (primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).
- 4.6 If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

## HPC (Constitution) Order 2009 - consultation

- 4.7 The Department will process your personal data in accordance with the DPA and in most circumstances this will mean that your personal data will not be disclosed to third parties.

## Summary of the consultation

- 4.8 A summary of the response to this consultation will be made available before or alongside any further action, such as laying legislation before Parliament, and will be placed on the Consultations website at <http://www.dh.gov.uk/en/Consultations/Responsestoconsultations/index.htm>

## Annex A

### Summary of Consultation Questions

#### The HPC (Constitution) Order 2009

##### Composition of the Council

**Q1** Do you agree that the Council should consist of 10 registrant members and 10 lay members? If not, please specify which reasons you disagree with and explain why.

##### Terms of office of members

**Q2** Do you agree that the Privy Council/Appointments Commission should determine the duration of the term of office of each Council member, on appointment? If not, please specify which reasons you disagree with and explain why.

**Q3** Do you agree that no member should hold office for more than an aggregate of 8 years during any period of 20 years? If not, please specify which reasons you disagree with and explain why.

**Q4** Do you agree that service as a member since 1 July 2007 should be discounted in aggregating a Council member's service?

##### Education and training of members

**Q5** Do you agree that the HPC should have the flexibility to make arrangements for the provision of education and training of Council members with another body? If not, please specify which reasons you disagree with and explain why.

##### Disqualification for appointment as a member

**Q6** Do you agree with the reasons for disqualifying a person from appointment as a member of the Council? If not, please specify which reasons you disagree with and explain why.

#### Removal and suspension of members from office

**Q7** Do you agree with the reasons given for removing or suspending members from office? If not, please specify which reasons you disagree with and explain why.

#### Appointment, term of office and cessation of office of the Chair

**Q8** Do you agree that the term of office of the Chair should be determined by the Council? If not, please specify which reasons you disagree with and explain why.

**Q9** Do you agree with the reasons why a member should cease to be Chair? If not, please specify which reasons you disagree with and explain why.

#### Deputising arrangements in respect of the Chair

**Q10** Do you agree with the deputising arrangements in respect of the Chair? If not, please specify which reasons you disagree with and explain why.

#### Quorum of the Council, effect of vacancies on the validity of proceedings etc.

**Q11** Do you agree that the quorum of the Council shall be 11? If not, please specify which reasons you disagree with and explain why.

**Q12** Do you agree with the provisions that prevent Council proceedings being invalidated? If not, please specify which reasons you disagree with and explain why.

## Annex B



# Draft Constitution Order

## Annex C

### Draft Appointments Directions