

Council, 6 July 2017

Section 60 Order priorities

Executive summary and recommendations

Introduction

Section 60 of the Health Act 1999 is the mechanism by which the Government can bring forward secondary legislation to amend the legislation of the nine professional regulators overseen by the Professional Standards Authority (PSA), including the HCPC.

At its meeting on the 24 May 2017 the Council agreed 'that it would consider the HCPC's section 60 order priorities at a future meeting' (paragraph 8.8 of the draft minutes).

The attached paper outlines some priorities for a future Section 60 Order, should there be future opportunity for secondary legislation.

Decision

The Council is invited to discuss the attached paper.

Background information

None

Resource implications

None as a result of this paper

Financial implications

None as a result of this paper

Appendices

None

Date of paper

23 June 2017

Section 60 Order priorities

1. Introduction

- 1.1 Section 60 of the Health Act 1999 is the mechanism by which the Government can bring forward secondary legislation to amend the legislation of the nine professional regulators overseen by the Professional Standards Authority (PSA), including the HCPC.
- 1.2 At its meeting on the 24 May 2017 the Council agreed 'that it would consider the HCPC's section 60 order priorities at a future meeting' (paragraph 8.8 of the draft minutes).

2. Priorities

- 2.1 The following are the priority changes that the Executive considers should be made to the Health and Social Work Professions Order 2001 ('the Order'), should there be future opportunity for secondary legislation.¹
- 2.2 Some of the changes mirror those included in a recent Section 60 Order which amended the legislation of the Nursing and Midwifery Council (NMC).² The HCPC's legislation is in many respects similar to the NMC's.
- 2.3 Not included in the table at this stage, is putting the Health and Care Professions Tribunal Service (HCPTS) on a statutory footing. This would mirror the evolution of the Medical Practitioners Tribunal Service (MPTS) which is now a statutory committee of the General Medical Council (GMC). This might be something to be considered in the future, in light of our experience of operating the HCPTS.

¹ These priorities were outlined in a presentation to the Council in July 2016: <http://www.hcpc-uk.org/assets/documents/100050A9Enc05-Reforminghealthandcareprofessionalregulation.pdf>

² The HCPC's response to the Department of Health consultation on the NMC Section 60 Order can be found here: <http://www.hcpc-uk.org/assets/documents/1000508FHPCresponsetoDHconsultationonamendmentstoNMClegislation.pdf>

Proposed change	Commentary
<p>A single fitness to practise committee for adjudication (combining the conduct and competence and health committees)</p>	<p>Where the Investigating Committee concludes that there is a case to answer, it must refer the matter for hearing by the Conduct and Competence Committee or the Health Committee. Allegations of incorrect or fraudulently procured entry are heard by the Investigating Committee itself.</p> <p>Combining the Conduct and Competence and Health Committees would allow allegations to be dealt with 'in the round'. Investigating Committee panels have to make an early decision about which Committee should deal with a case. This can mean that cases are subsequently cross-referred between the committees, for example, where it becomes apparent that there is no evidence of an impairment by reason of health, delaying the progress of cases unnecessarily.</p> <p>Other regulators, including the NMC and GMC, already have a single fitness to practise committee.</p>
<p>Removing the requirement for a council member to Chair a registration appeal hearing</p>	<p>A Council member, who must not be a member of the Education and Training Committee, is required to Chair registration appeal hearings.</p> <p>This is contrary to the principle applied elsewhere (in the education, fitness to practise and registration processes) of separation between Council members' roles in setting policy and assuring overall performance and 'transactional' decision making in each process.</p> <p>It is proposed that the requirement should be removed and, in line with fitness to practise, Council members made ineligible for appointment to appeals panels. Partners would chair panels.</p>

Clarifying the law on striking-off in cases where a registrant has been continuously suspended or subject to conditions of practice for more than two years	<p>In lack of competence and health cases striking off is not available to panels. A registrant has to be continually suspended or their registration subject to conditions of practice for two years or more before striking off becomes available.</p> <p>This provision has been successfully used by HCPC panels. However, a previous section 60 Order amended the NMC's legislation on this point, owing to concerns that the provision was not sufficiently clear. This change would therefore bring the Order into line with the NMC's legislation, mitigating any potential risk of challenge.</p>
Allowing Northern Ireland qualified solicitors to be appointed as legal assessors	<p>Legal assessors provide advice to fitness to practise panels on matters of law and procedure.</p> <p>The Order currently only permits a Barrister in Northern Ireland to be appointed as a legal assessor but does not permit a Northern Ireland registered solicitor. This is an obvious omission from the legislation which it is suggested should be corrected.</p>
Allowing fitness to practise panels the discretion to decide whether a suspension or conditions of practice order should be reviewed prior to its expiration.	<p>All cases which result in suspension or conditions of practice orders are required to be reviewed before their expiration.</p> <p>In a small number of cases, a review may not serve any practical purpose. We therefore propose that, in line with some other regulators, panels should have the discretion as to whether to direct a review is necessary in each case. We anticipate that in the majority of cases a review will continue to be appropriate because a panel will need to review whether the protection of the public requires a further order to be made.</p>

<p>Allowing the Investigating Committee to issue warnings and advice</p>	<p>This would allow an Investigating Committee Panel to issue warnings and advice in cases where it has determined that there is no case to answer. Panels already issue learning points in cases where there is a realistic prospect of proving the matter but not of establishing impairment of fitness to practise. This change would formalise these arrangements. It would also be consistent with some other regulators including the NMC.</p>
<p>Allowing the Investigating Committee to agree undertakings</p>	<p>Where a case to answer decision was reached, this would allow the Investigating Committee, in appropriate cases, to agree undertakings with the registrant. Undertakings are an agreement between the regulator and registrant about their future practice and might include, for example, restrictions on what they can and cannot do and commitments to practise under supervision or to carry out training. In cases where an undertaking is not appropriate, a referral would be made to the fitness to practise committee. In cases where an undertaking was breached, appropriate action could be taken including referral to the fitness to practise committee.</p> <p>The ability to agree undertakings would increase the consensual disposal options available in the fitness to practise process, potentially providing an appropriate and timely means of disposing of appropriate cases without the need for a costly, contested hearing. It would be consistent with some other regulators including the NMC and the GMC.</p>