

Council, 20 May 2009

The Health Professions Council (Practice Committees (Constitution) and Miscellaneous Amendments) Rules 2009 consultation response

Executive summary and recommendations

Introduction

We consulted on the 'Health Professions Council (Practice Committees (Constitution) and Miscellaneous Amendments) Rules 2009' from 20 February 2009 to 13 April 2009.

The attached paper contains the responses to the consultation.

Decision

The Council is invited to approve

- the text of the consultation response document and agree for it to be published on the HPC website; and
- the Health Professions Council (Practice Committees (Constitution) and Miscellaneous Amendments) Rules 2009

Background information

The consultation document is available to download from <http://www.hpc-uk.org/aboutus/consultations/closed/index.asp?id=78>

Resource implications

None

Financial implications

None

Appendices

Health Professions Council (Practice Committees (Constitution) and Miscellaneous Amendments) Rules 2009

Date of paper

6 May 2009

The Health Professions Council (Practice Committees (Constitution) and Miscellaneous Amendments) Rules 2009

Responses to our consultation

Introduction

We consulted on the 'Health Professions Council (Practice Committees (Constitution) and Miscellaneous Amendments) Rules 2009' from 20 February 2009 to 13 April 2009. These Rules were in preparation for 'The Health Care and Associated Professions (Miscellaneous Amendments) Order 2009' which amended the Health Professions Order 2001, including making the changes necessary to bring practitioner psychologists into statutory regulation by the Health Professions Council.

The changes made to the 'Health Professions Order 2001' by the Department of Health mean that the Conduct and Competence, Investigating and Health Committees (known collectively as the 'Practice Committees') no longer have a strategic oversight role, but will continue to meet in panels to consider fitness to practise allegations. The proposed amendments to the relevant Practice Committee Rules reflect this change.

The change is in line with government policy to provide greater flexibility for the governance arrangements of the regulators.

You can find a copy of the consultation document on our website:
<http://www.hpc-uk.org/aboutus/consultations/closed/index.asp?id=78>

This document

In this document, we firstly consider the responses to the consultation. We then go on to explain the decision we have made as a result of those responses.

Respondents

The consultation letter was sent to a variety of different stakeholders and was also made available to download from our website.

We received six responses to the consultation. The organisations who responded were the Association for Perioperative Practice (AfPP); the College of Operating Department Practitioners (CODP); the Council of Deans of Health; the Chartered Society of Physiotherapy (CSP); the Institute of Biomedical Science; and The Institute of Chiropractors and Podiatrists.

We would like to thank all those who responded to this consultation for their time and comments. Where we have quoted from these organisations in the text, we have attributed the quotation.

Your responses

All respondents supported setting up a single Fitness to Practise Committee which would have a strategic oversight role. The respondents also offered their support for the proposed amendments to the Rules. The Council of Deans of Health said they ‘...strongly support the setting up of a single fitness to practise committee’.

Whilst offering their overall support, some respondents sought clarification of certain aspects of the Rules and others suggested amendments to the wording to help clarify the Rules.

Some respondents queried the length of term that committee members could serve. The AfPP queried why it was considered appropriate for committee members to serve up to an aggregate of eight years out of a possible twenty year period. They said the HPC should make sure that sufficient committee members are recruited who have a full understanding of all aspects of professional practice. They also said the system should allow for recruitment from any new professions regulated in the future. The Institute of Chiropractors and Podiatrists said the duration of the term of office should be statutorily determined rather than determined on appointment.

Part 3 of the proposed Rules include provisions for the disqualification, termination and suspension of members of the Practice Committees.

Three of the respondents suggested some points required clarification. The Institute of Chiropractors and Podiatrists said the clause ‘...in the course of which’ should be removed from 7(e) because any action should only be taken after an investigation or proceeding.

The Council of Deans of Health said the clause relating to ‘...adverse physical or mental health’ (7(i)) may be understood as discriminatory. They said clarification was required on what the HPC would consider as ‘...adverse physical or mental health’.

The CSP made specific comments about some of the referencing in part 3 of the proposed Rules. They suggested making reference to convictions outside the UK should be included in 6(b); however, this is referred to in 6(m). They also said that removal of Chair or membership from ‘...professional or membership organisations’ should be included along with charitable organisations or public bodies in sections 6(c) and (d).

The CSP said 7(2) and 7(3) refer to ‘...paragraph 1’. They said this should be made clearer by changing it to refer to ‘...paragraph 7(1)’.

The CSP said Rule 7 and Rule 8 should be consistent about the way membership of a committee would be informed they have been suspended or had their membership terminated. Rule 8(1) states that a member suspended from office would have their ‘...notice served in writing’. The CSP said this should also be included in 7(1) if the Council terminates the committee membership.

Our decision

The changes proposed in the consultation are in line with the provisions in 'The Health Professions Council (Constitution) Order 2009' and must be fair and equitable. This Order reforms the HPC Council and specifies the terms and rules that the Council will operate under. The changes have also been made with the regulation of practitioner psychologists in mind. We think it is important that the wording of the Rules should be the same as those in this order. For this reason, we have decided that no changes will be made to the terms of office, disqualification, termination or suspension.

We received a small number of comments about the drafting of the rules, including terminology and referencing. We will review the draft rules to ensure consistency and make any changes necessary.

We are pleased that a number of respondents supported setting up a single non-statutory Fitness to Practise Committee. On 26 March 2009, the Council agreed to establish this Committee. The purpose of the Committee is to perform a strategic oversight role over the functions of the Conduct and Competence, Investigating and Health Committees (known collectively as the 'Practice Committees'). The Committee will set the HPC's Fitness to Practise strategy and policy and ensure that it is put in to operation by the Executive and subsequently monitored by the Committee. The Practice Committees are statutory and will only hear fitness to practise cases.

**The Health Professions Council (Practice Committees (Constitution) and
Miscellaneous Amendments) Rules 2009**

The Health Professions Council makes the following Rules in exercise of its powers under article 26(3), 32(1) and 37(4) of, and paragraphs 18(1), and 18(2) of Schedule 1 to, the Health Professions Order 2001, having consulted in accordance with article 41(3) of that Order.

**PART 1
Introductory**

Citation and commencement

1. These Rules may be cited as the Health Professions Council (Practice Committees (Constitution) and Miscellaneous Amendments) Rules 2009 and shall come into force on *** 2009.

Interpretation

2. In these Rules—

“final outcome” in relation to any proceedings where there are rights of appeal, means the outcome of the proceedings—

- (a) once the period for bringing an appeal has expired without an appeal being brought; or
- (b) if an appeal is brought in accordance with those rights, once those rights have been exhausted;

“licensing body” means—

- (a) any body, other than the Council, anywhere in the world that licenses or regulates any profession;
- (b) the Council for the Professions Supplementary to Medicine, prior to its abolition by virtue of the Order;

“lay member” means a member who—

- (a) is not and never has been a registrant, or registered under the 1960 Act or in the AODP register, the AEP register or the BPS register; and
- (b) does not hold a qualification that would entitle them to apply for registration under the Order;

“member”, unless the context otherwise requires, means a member of a Statutory Committee and includes the chair, a deputy chair or a panel chair;

“the Order” means the Health Professions Order 2001;

“spent conviction” means—

- (a) in relation to a conviction in a court in Great Britain, a conviction that is a spent conviction for the purpose of the Rehabilitation of Offenders Act 1974; or
- (b) in relation to a conviction by a court in Northern Ireland, a conviction that is a spent conviction for the purposes of the Rehabilitation of Offenders (Northern Ireland) Order 1978.

PART 2

Practice Committee

Practice Committees

3.—(1) Each Practice Committee shall consist of not more than 350 members, none of whom is a member of the Council, appointed by the Council.

(2) Members of a Practice Committee may only participate in proceedings of the committee when they are invited to attend by the Registrar or by a person authorised by the Registrar to invite them.

(3) The panel of members invited to participate in any proceedings of a Practice Committee in accordance with paragraph (2) may, at those proceedings, perform any function of that Practice Committee that it is reasonable for them to perform.

(4) The Council shall determine the duration of the term of office of members of the Practice Committees on their appointment.

(5) No person may be a member of one or more Practice Committees for more than an aggregate of 8 years during any period of 20 years but, for the purpose of the computing that aggregate, any service as a member of a Practice Committee prior to 1st July 2007 shall be discounted.

(6) The quorum for any proceedings of a Practice Committees is 3 members, of which at least one must be—

- (a) a registrant from the same part of the register as any person who is the subject of the proceedings;
- (b) a lay member; and
- (c) a panel chair (who may also count as the registrant or lay person mentioned in sub-paragraphs (a) and (b)).

Chairing of the Practice Committees

4.—(1) The Council shall appoint, from among the members of each of the Practice Committees, persons to act as chair of the committee of which they are a member (“panel chairs”).

(2) A person serving as a panel chair of a Practice Committee shall cease to be a panel chair—

- (a) if the member ceases to be a member of the Practice Committee in question;

- (b) if the member resigns as chair or panel chair, which they may do at any time by a notice in writing to the Council or, in the case of a panel chair, the committee;
- (c) if, by a majority at a quorate meeting, the Council votes to terminate the member's appointment as a panel chair.

Validity of panel proceedings

5.—(1) The validity of any panel proceedings shall not be affected by—

- (a) a panel member whom the Council must remove from the committee under rule 7(1)(b) to (f) participating in the proceedings;
- (b) a panel member whom the Council has removed under rule 7(1) having participated in the proceedings; or
- (c) a panel member who has been suspended by the Council under rule 8(1) or (2) having participated in the proceedings.

(2) Notwithstanding paragraph (1)(a), a panel member whom the Council must remove from a committee under rule 7(1)(b) to (f) is not entitled to participate in panel proceedings of the committee, pending the member's removal from the committee by the Council.

PART 3

Disqualification, termination and suspension of members

Disqualification from appointment

6. A person is disqualified from appointment as a member if that person—

- (a) has at any time been convicted of an offence involving dishonesty or deception in the United Kingdom and the conviction is not a spent conviction;
- (b) has at any time been convicted of an offence in the United Kingdom, and—
 - (i) the final outcome of the proceedings was a sentence of imprisonment or detention, and
 - (ii) the conviction is not a spent conviction;
- (c) has at any time been removed—
 - (i) from the office of charity trustee or trustee for a charity by an order made by the Charity Commissioners, the Charity Commission, the Charity Commission for Northern Ireland or the High Court on the grounds of any misconduct or mismanagement in the administration of the charity—
 - (aa) for which the person was responsible or to which the person was privy, or

- (bb) which the person by their conduct contributed to or facilitated, or
- (ii) under—
 - (aa) section 7 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (powers of Court of Session to deal with management of charities), or
 - (bb) section 34(5)(e) of the Charities and Trustee Investment (Scotland) Act 2005 (powers of the Court of Session),from being concerned with the management or control of any body;
- (d) has at any time been removed from office as the chair, member, convenor or director of any public body on the grounds, in terms, that it was not in the interests of, or conducive to the good management of, that body that the person should continue to hold that office;
- (e) at any time has been adjudged bankrupt or sequestration of the person's estate has been awarded, and—
 - (i) the person has not been discharged, or
 - (ii) the person is the subject of a bankruptcy restrictions order or an interim bankruptcy restrictions order under Schedule 4A to the Insolvency Act 1986 or Schedule 2A of the Insolvency (Northern Ireland) Order 1989 (which relate to bankruptcy restriction orders and undertakings);
- (f) has at any time made a composition or arrangement with, or granted a trust deed for, the person's creditors and the person has not been discharged in respect of it;
- (g) is subject to—
 - (i) a disqualification order or disqualification undertaking under the Company Directors Disqualification Act 1986,
 - (ii) a disqualification order under Part II of the Companies (Northern Ireland) Order 1989 (company directors disqualification),
 - (iii) a disqualification order or disqualification undertaking under the Company Directors Disqualification (Northern Ireland) Order 2002, or
 - (iv) an order made under section 429(2) of the Insolvency Act 1986 (disabilities on revocation of a county court administration order);
- (h) has been included by—

- (i) the Independent Barring Board in a barred list (within the meaning of the Safeguarding Vulnerable Groups Act 2006 or the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007), or
 - (ii) the Scottish Ministers in the children's list or the adults' list (within the meaning of the Protection of Vulnerable Groups (Scotland) Act 2007);
- (i) has at any time been subject to any investigation or proceedings concerning the person's fitness to practise by any licensing body, the final outcome of which was—
 - (i) the person's erasure from a register held by the licensing body or a decision that had the effect of preventing the person from practising the profession licensed or regulated by the licensing body,
 - (ii) the person's suspension from a register held by the licensing body, and that suspension has not been terminated, or
 - (iii) a decision that had the effect of only allowing the person to practise that profession subject to conditions, and those conditions have not been lifted;
- (j) has at any time been subject to any investigation or proceedings concerning the person's fitness to practise by the Council, in the course of which or where the final outcome was that—
 - (i) the person was removed from or struck off the register (for a reason connected to the person's fitness to practise),
 - (ii) the person's registration in the register was suspended (including by an interim suspension order) and that suspension has not been terminated,
 - (iii) the person's registration in the register was made conditional upon their compliance with any requirement (including an interim conditions of practice order) and that requirement has not been lifted, or
 - (iv) the person's registration in the register was annotated by virtue of a caution order and that order is still in force;
- (k) has at any time been subject to any investigation or proceedings relating to an allegation that the person's entry in the register was fraudulently procured, the final outcome of which was the removal of the person's entry in the register;
- (l) is or has at any time been subject to any investigation or proceedings concerning the person's fitness to practise by—
 - (i) any licensing body, or
 - (ii) the Council,

and the Council is satisfied that the person's membership of the committee would be liable to undermine public confidence in the regulation of registrants;
or

- (m) has at any time been convicted of an offence elsewhere than in the United Kingdom and the Council is satisfied that the person's membership of the committee would be liable to undermine public confidence in the regulation of registrants.

Termination of committee membership

7.—(1) A member shall be removed from office by the Council, if—

- (a) the member resigns, which a member may do at any time by a notice in writing to the Council;
- (b) in the case of a member who is —
 - (i) a registrant, that member's registration lapses, or
 - (ii) a lay member, that member no longer satisfies the criteria for being a lay member;
- (c) the member becomes a person of the type mentioned in rule 6(a), (b) or (e) to (h) whether or not they thereafter cease to be such a person;
- (d) the member becomes a person of the type mentioned in rule 6(c) or (d);
- (e) in the case of a registrant, the member becomes the subject of any investigation or proceedings concerning the member's fitness to practise by the Council, in the course of which or as a result of which—
 - (i) the member is struck off the register,
 - (ii) the member's registration in the register is suspended,
 - (iii) the member's registration in the register is made conditional upon the member's compliance with any requirement, or
 - (iv) the person's registration in the register is annotated by virtue of a caution order, and the proceedings relating to that particular sanction have reached their final outcome;
- (f) in the case of a registrant, the member becomes subject to any investigation or proceedings relating to an allegation that the person's entry in the register was fraudulently procured or incorrectly made, the final outcome of which is the removal of the person's entry in the register;
- (g) the Council is satisfied that the member's level of attendance at meetings of the committee falls below a minimum level of attendance acceptable to the Council, having regard to—

- (i) any recommended minimum levels of attendance that the Council has set in its standing orders, and
 - (ii) whether or not there were reasonable causes for the member's absences;
- (h) the Council is satisfied the member has failed, without reasonable cause, to undertake satisfactorily the requirements with regard to education and training for members that apply to that member and which the Council has included in its standing orders;
- (i) the Council is satisfied that the member is no longer able to perform their duties as a member of the committee because of adverse physical or mental health;
- (j) the Council is satisfied that the member's continued membership of the committee would be liable to undermine public confidence in the regulation of registrants.
- (2) A member who becomes, or may become, a person to whom paragraph (1)(b) to (f) applies must notify the Council in writing of that fact as soon as the person becomes aware of it.
- (3) Any member or employee of the Council may notify the Council if they are of the view that the Council may need to exercise its functions under paragraph (1).

Suspension of committee membership

8.—(1) The Council may suspend a member from office by a notice in writing served on the member—

- (a) if the Council has reasonable grounds for suspecting that the member has become a person to whom rule 7(1)(b)(ii) to (d) applies, for the purposes of determining whether or not the member has become such a person;
- (b) while the Council is considering whether or not it is satisfied as to the matters set out in rule 7(1)(g) to (j);
- (c) if the member is subject to any investigation or proceedings concerning the member's fitness to practise by—
 - (i) any licensing body, or
 - (ii) the Council,

and the Council is satisfied that it would not be appropriate for the member to continue to participate in proceedings of the committee while the investigation or proceedings concerning the member's fitness to practise is or are ongoing;

- (d) if the member is the subject of any investigation or proceedings concerning whether the member's entry in the register was fraudulently procured or incorrectly made and the Council is satisfied that it would not be appropriate for the member to continue to participate in proceedings of the committee

while the investigation or proceedings concerning the member's entry in the register is or are ongoing;

(e) if the member is subject to any investigation or proceedings in the United Kingdom relating to a criminal offence, or in any other part of the world relating to an offence which, if committed in any part of the United Kingdom, would constitute a criminal offence, and—

(i) either—

(aa) the investigation or proceedings relate to an offence involving dishonesty or deception, or

(bb) the final outcome of the investigation or proceedings may be that the person is sentenced to a term of imprisonment or detention, and

(ii) the Council is satisfied that it would not be appropriate for the member to continue to participate in proceedings of the committee while the investigation or proceedings is or are ongoing.

(2) The Council shall suspend a member from office by notice in writing served on the member if the member is the subject of an order under article 31 of the Order (interim orders by a Practice Committee).

(3) The notice in writing under paragraph (1) or (2) shall set out the reasons for the suspension and the duration of the period of suspension, which shall (in the first instance) not be for more than 6 months.

(4) The Council—

(a) may at any time suspend a member by it; and

(b) shall review any suspension of a member by it after 3 months from the start of the period of suspension, if requested to do so by the suspended member.

(5) Following a review, the Council may—

(a) terminate the suspension; or

(b) if that review is within 3 months of the end of a period of suspension, extend the suspension for a further period of up to 6 months from the date on which the suspension would otherwise come to an end.

(6) The Council shall notify the suspended member in writing of the outcome of any review and that notice in writing shall include the reasons for any decision taken.

PART 4

Miscellaneous amendments and revocations

Interpretation of Part 4

9. In this Part—

“Appeals Rules” means The Health Professions Council (Registration Appeals) Rules 2003;

“Conduct and Competence Committee (Procedure) Rules” means The Health Professions Council (Conduct and Competence Committee) (Procedure) Rules 2003;

“Health Committee (Procedure) Rules” means The Health Professions Council (Health Committee) (Procedure) Rules 2003;

“Investigating Committee (Procedure) Rules” means The Health Professions Council (Investigating Committee) (Procedure) Rules 2003;

Amendments to the Investigating Committee (Procedure) Rules

10.—(1) In rule 2 of the Investigating Committee (Procedure) Rules (interpretation), for the definition of “Chairman” substitute ““Chair” means the chair of any panel of members conducting proceedings on behalf of the Committee”.

(2) In rule 7 of the Investigating Committee (Procedure) Rules (preliminary meetings)—

(a) In paragraph (1)—

- (i) for “Chairman” substitute “Chair”,
- (ii) for “it or he considers appropriate” substitute “the Committee or the Chair considers appropriate”,
- (iii) for “its or his opinion” substitute “the opinion of the Committee or the Chair”; and

(b) in paragraph (2) for “Chairman” substitute “Chair”.

(3) In rule 8 of the Investigating Committee (Procedure) Rules (conduct of hearing)—

- (a) In paragraph (4)(a), for “Chairman” substitute “Chair”;
- (b) In paragraph (4)(c), for “Chairman” substitute “Chair”; and
- (c) In paragraph (4)(e), for “Chairman” substitute “Chair”.

(4) In rule 10 of Investigating Committee (Procedure) Rules (extension of time limits) for “Chairman where he” substitute “Chair where the Chair”.

Amendments to the Conduct and Competence Committee (Procedure) Rules and Health Committee (Procedure) Rules

11.—(1) In Rule 2 of the Conduct and Competence Committee (Procedure) Rules and of the Health Committee (Procedure) Rules (interpretation), for the definition of “Chairman” substitute ““Chair” means the chair of any panel of members conducting proceedings on behalf of the Committee”.

(2) In rule 7 of the Conduct and Competence Committee (Procedure) Rules and of the Health Committee (Procedure) Rules (preliminary meetings)—

(a) In paragraph (1)—

- (i) for “Chairman” substitute “Chair”,
- (ii) for “it or he considers appropriate” substitute “the Committee or the Chair considers appropriate”,
- (iii) for “its or his opinion” substitute “the opinion of the Committee or the Chair”; and

(b) in paragraph(2) for “Chairman” substitute “Chair”.

(3) In rule 10 of the Conduct and Competence Committee (Procedure) Rules and of the Health Committee (Procedure) Rules (conduct of hearing)—

- (a) In paragraph (4)((a), for Chairman” substitute “Chair”;
- (b) In paragraph (4)((c), for Chairman” substitute “Chair”; and
- (c) In paragraph (4)((e), for Chairman” substitute “Chair”.

(4) In rule 13 of the Conduct and Competence Committee (Procedure) Rules and of the Health Committee (Procedure) Rules (review of orders and applications for restoration to the register)—

(a) In paragraph (8)—

- (i) for “Chairman substitute “Chair”,
- (ii) for “it or he considers appropriate” substitute “the Committee or the Chair considers appropriate”,
- (iii) for “its or his opinion” “the opinion of the Committee or the Chair”; and

(b) in paragraph (9) for “Chairman substitute “Chair”;

(5) In rule 14 of the Conduct and Competence Committee (Procedure) Rules and of the Health Committee (Procedure) Rules (extension of time limits) for “Chairman where he” substitute “Chair where the Chair”.

Amendment to the Appeals Rules

12.—(1) In rule 2 of the Appeals Rules (interpretation), for the definition of “chairman” substitute ““Chair” means the Chair of an Appeal Panel;”.

(2) In rule 9 of the Appeals Rules (consideration by Appeal Panel)—

(a) for paragraph (3) substitute:

“(3) An Appeal Panel shall comprise not fewer than three members appointed by the Council and shall include—

- (a) a person who is registered in the same part of the register as that in which the appellant is, or is applying to be, registered;
- (b) a person who—
 - (i) is not and never has been a registrant, or registered under the 1960 Act or in the AODP register, the AEP register or the BPS register; and
 - (ii) does not hold a qualification that would entitle them to apply for registration under the Order;
- (c) where the health of the appellant is in issue, a registered medical practitioner.”;
- (b) in paragraph (4), for “Chairman” substitute “Chair of an Appeal Panel (and may also count as the registrant or lay person mentioned in paragraphs (3)(b)(i) and (ii))”;
- (c) in paragraph (6) for “Chairman” substitute “Chair”; and
- (d) after paragraph (6) insert—

“(7) The members of an Appeal Panel, other than the Chair, shall be appointed from among the members of the Practice Committees.
- (8) A person—
 - (a) is not eligible to be appointed to, or sit as a member of, an Appeal Panel if that person is disqualified or suspended from membership of the Council or a Practice Committee; and
 - (b) shall cease to be a member of an Appeal Panel if—
 - (i) the member resigns, which the member may do at any time by notice in writing to the Council,
 - (ii) the Council votes (by a majority at a quorate meeting) to terminate the member’s appointment, or
 - (iii) the member ceases to be a member of the Council or a Practice Committee.”.

Revocations

13. The Health Professions Council (Practice Committees) (Constitution) Rules 2003 and rule 3 of the Health Professions Council (Practice Committees and Registration) (Amendment) Rules 2005 are revoked.