



Department  
of Health

# The Health and Care Professions (Public Health Specialists and Miscellaneous Amendments) Order 2015

## A consultation

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# **The Health and Care Professions (Public Health Specialists and Miscellaneous Amendments) Order 2015**

## **A Consultation**

Prepared by the Public Health Policy and Strategy Unit, Department of Health, England

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# Executive summary

In January 2012, following the agreement of Health Ministers in the Devolved Administrations, the UK Government announced that public health specialists from backgrounds other than medicine and dentistry should be regulated by the Health and Care Professions Council (HCPC). Public health specialists can currently register on a voluntary basis with the UK Public Health Register (UKPHR)<sup>1</sup>. Those who are medical practitioners or dentists with a specialty in public health medicine and public dental health are already required to register with the General Medical Council (GMC) or the General Dental Council (GDC) but can also register voluntarily with the UKPHR as public health specialists.

The HCPC currently regulates 15 different health professions across the UK and in England only, it also regulates social workers. It sets standards of education, performance and conduct, and can initiate as appropriate fitness to practise proceedings against registrants.

The consultation document sets out the reasons why the Government's preferred regulator for this group is the HCPC and asks some specific questions about the draft Section 60 Order which will amend the Health and Social Work Professions Order 2001 to statutorily regulate public health specialists by this means. The draft Order attached sets out proposals for the statutory regulation of public health specialists. It is made under powers in Section 60 of, and Schedule 3 to, the Health Act 1999, as amended. Under these provisions, legislation by means of an Order in Council, can be made in relation to the regulation of new healthcare professions.

In addition, in light of a recent decision of the High Court, we are seeking to clarify the existing legal position in relation to striking-off orders in health or lack of competence cases, to align the HCPC's position on this issue with that of the Nursing and Midwifery Council (NMC).

We are also seeking to end the practice of Health & Care Professions Council members sitting on registration appeal panels, thereby removing any potential conflicts of interest.

In line with the Government's preferred option the draft Order:

- designates public health specialists as one of the professions regulated under the Health and Social Work Professions Order 2001 (S.I. 2002/254)
- makes arrangements for the transfer of entries in the UKPHR register which relate to public health specialists, to the relevant part of the register of kept by the HCPC
- includes transitional arrangements in respect of outstanding matters, such as the registration of (including suspension and removal from the register) a person at the point of transfer

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<sup>1</sup> A private company limited by guarantee. Company No.4776439

- amends the Health and Social Work Professions Order 2001 (S.I. 2002/254) to make transitional provision relating to admissions to its register for those persons who apply within a two year period and satisfy other conditions, to be admitted to the HCPC register (“grandparenting” provision)
- other consequential amendments to the Health and Social Work Professions Order 2001 (S.I. 2002/254) and related legislation.
- Amends article 30 of the Order to allow the HCPC to review a Suspension Order or Conditions of Practice Order in certain circumstances, subject to certain conditions. This amendment is necessary to ensure that the Health Committee and the Conduct and Competence Committee can make a striking-off order in certain circumstances.
- amends article 37 of the Order to remove the requirement for a Council member to chair the Registration Appeals Panel.
- amends the HPC (Registration Appeals) Rules Order of Council 2003 to remove the requirement for a member of the Council to be appointed chair of the appeals committee. It also makes a number of technical amendments following the renaming of the HPC as the HCPC.

The issues on which we are seeking views are:

- Whether the HCPC is the right organisation to regulate public health specialists from backgrounds other than medicine or dentistry (para 2.11) or whether this should be done by another body
- whether outstanding UKPHR fitness to practise cases at the time of transfer should be investigated and determined by the HCPC under the HCPC’s rules (para 3.6)
- a grandparenting period of two years to allow non-medical public health specialists who are not registered or eligible to be registered with the UKPHR to apply for registration. (para 3.8)
- protection of the title “public health specialist” for those registered by the HCPC (para 3.19)
- whether the defined specialist category should be retained (para 3.22)
- the impact of public health specialists from a non-medical or dental background being required to register with the HCPC and the consequences this might have for those registered with a professional body other than the HCPC
- changes to the governance arrangements of the HCPC to take account of recent court rulings (para 3.31)

# Chapter 1: Introduction

- 1.1 This consultation is made on behalf of all four UK Health Departments. Consultation is required by virtue of paragraphs 9(1) and (3) of Schedule 3 to the Health Act 1999. Section 60 Orders are subject to Parliamentary scrutiny through the affirmative resolution procedure, which means that it will be debated in both Houses. As the regulation of new groups of healthcare professionals since the Scotland Act 1998 is a devolved matter for Scotland, the draft Order must be laid in the Scottish Parliament. Regulation of healthcare professionals is also devolved in Northern Ireland but in practise there has been an agreement that such regulation is best done on a UK wide basis (except for pharmacy). While there is no legislative requirement for the draft Order to be laid before either the Northern Ireland Assembly, or the National Assembly for Wales, the policy proposals in this document have the support of Ministers in Northern Ireland and Wales and the outcome of the consultation will be reported to all UK Ministers.
- 1.2 This consultation document summarises the outstanding policy issues on which we seek views. These issues are set out in Chapter 2 and 3.
- 1.3 An economic assessment of the impact of the proposed policy has not been prepared as it is thought that the proposal will have no impact on business.
- 1.4 Questions for consultation are included throughout the document and are summarised in Annex B. **We welcome general comments as well as specific responses to the questions.**
- 1.5 This consultation closes on 14<sup>th</sup> November 2014. You can contribute to the consultation by responding in three ways:
  - email: [consultationregulationnonmedicalphspecialists@dh.gsi.gov.uk](mailto:consultationregulationnonmedicalphspecialists@dh.gsi.gov.uk)
  - post: Department of Health  
Room 165  
Richmond House  
79 Whitehall  
London  
SW1A 2NS
  - online: <http://consultations.dh.gov.uk>

## Chapter 2: Background

- 2.1 Historically, the majority of public health specialists in the UK have come from medical or dental backgrounds and are regulated by the General Medical Council (GMC) or the General Dental Council (GDC). Over recent years, however, there has been a move towards encouraging people from a wide range of backgrounds to become public health specialists. These individuals, known as non-medical public health specialists, are not currently subject to statutory regulation in their role as public health specialists, although there is a system of voluntary registration through the UK Public Health Register (UKPHR).
- 2.2 Non-medical public health specialists can be from a range of backgrounds, such as microbiology, nursing, environmental health but all will have either completed the national specialty training programme, with a curricula approved by the GMC, or will have been approved at consultant level via submission of a portfolio of evidence through the UKPHR.
- 2.3 Doctors who are registered as having a specialty in public health medicine are regulated by the GMC; and dentists who are included in the specialist lists held by the GDC as having a specialty in dental public health are regulated by the GDC. These bodies are UK wide. Public health specialists who are not also dentists or doctors do not have a statutory regulator for their public health function (for example some public health specialists might have a nursing background and are regulated to protect the public by the Nursing and Midwifery Council as nurses but not as public health specialists). These public health specialists have the option of registering as such with the UKPHR but this is not a statutory regulator. In summary, there are three UK- wide regulatory bodies (two of which are statutory regulators) for public health specialists
- the General Dental Council (GDC) - a statutory regulator, which regulates dentists and professions complimentary to dentistry such as dental nurses, dental technicians, dental hygienists, dental therapists, clinical dental technicians and orthodontic therapists;
  - the General Medical Council (GMC) – a statutory regulatory body, which regulates doctors; and
  - UKPHR – a private limited company which holds a voluntary register for public health specialists from a non-medical background. Voluntary registration is also open to doctors or dentists.
- 2.4 In 2009, DH commissioned Dr Gabriel Scally to undertake a review of the regulation of non-medical public health specialists. In November 2010, the Scally Review made a number of recommendations in *Review of the Regulation of Public Health Professionals* (Nov 2010)<sup>2</sup>. The review recommended that the then Health Professions Council should regulate public health specialists as an additional profession. The Scally Review was published alongside the DH consultation document *Healthy Lives, Healthy People: Our*

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<sup>2</sup> Review of the Regulation of Public Health Professionals November 2010  
<https://www.gov.uk/.../publications/review-of-the-regulations-of-public-health-professionals>

strategy for public Health in England 2010<sup>3</sup>, which asked for further views on Dr Scally's report.

- 2.5 In July 2011, in response to consultation DH published *Healthy Lives Healthy People – Update and way forward*<sup>4</sup>. The summary of responses to the consultation stated:

*“Of those respondents who expressed a view on regulation, there was more support for some form of statutory regulation than for a voluntary system, but across all respondents there was no dominant view about who should operate such a register, whether voluntary or statutory. The most commonly suggested organisations were the Faculty of Public Health, the UK Public Health Register and the Health Professions Council.”*

- 2.6 Noting that the public health profession strongly supported regulation, and after inviting further evidence from the profession and listening to the debates during the passage of the Health and Social Care Bill, Ministers decided to accept the recommendations from the Scally Review to regulate public health specialists through the HCPC.

- 2.7 In February 2012, DH published *Government Response to the House of Commons Health Committee Report on Public Health (Twelfth Report of Session 2010 -12)*. The Committee had made the following recommendation in relation to Directors of Public Health:

*“The Government argues that the involvement of Public Health England in the appointment of Directors of Public Health will be sufficient to ensure that those appointed are appropriately qualified and trained. The Committee does not agree; it believes that there should be a statutory requirement for Directors of Public Health to be a member of an appropriate professional register.”* (HC 1048, paragraph 96) 22.

- 2.8 In response, DH said:

*“The Government agrees, given the critical leadership role that public health consultants play in protecting the public from harm, that it is essential that all public health consultants have in place an appropriate system to ensure the highest quality of decision making. On 23 January 2012, the Secretary of State announced that the Government would legislate to rectify the anomaly which means that non- medical public health consultants fall outside the statutory regulatory system. The Health Professions Council will regulate this group to ensure consistent standards across the whole profession. We will bring forward legislation under section 60 of 1999 Health Act, following appropriate periods of consultation and consideration by both the Scottish and the UK Parliaments”*

- 2.9 The decision was confirmed in the House of Lords by Baroness Northover during debate on the Health and Social Care Bill on 29 February 2012. She said:

*“The Government have announced their intention to require non-medical public health specialists to be subject to regulation by the Health and Care Profession Council. We will discuss the implementation timetable with interested parties and*

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<sup>3</sup> Healthy Lives Healthy People: Our Strategy for Public Health in England <https://www.gov.uk/.../healthy-lives-healthy -people-our-strategy-for-public-health-in-england>

<sup>4</sup> <https://www.gov.uk/government/publications/healthy-lives-healthy-people-update-and-way-forward>

*expect the necessary changes to be made under the powers in Section 60 of the Health Act 1999.”*

- 2.10 The Health and Care Professions Council (HCPC) regulates the following professions: arts therapists, biomedical scientists, chiropodists / podiatrists, clinical scientists, dieticians, hearing aid dispensers, occupational therapists, operating department practitioners, orthoptists, paramedics, physiotherapists, practitioner psychologists, prosthetists / orthotists, radiographers, social workers in England and speech and language therapists. It has developed systems and processes to handle the complexities that this brings to statutory regulation. It sets standards of education, training, performance and conduct.
- 2.11 Although the commitment has been reaffirmed several time since January 2012, the most recent being in the update on the public health workforce strategy published in June 2014. DH acknowledges that it has been some time since this decision was made and that there have been some changes, including the UKPHR being awarded accredited voluntary register status by the Professional Standards Authority.
- 2.12 For this reason, in this revised consultation document, the Government asks additional questions regarding the preferred choice of regulator and extends the period for responses by 4 weeks The consultation now closes on 14<sup>th</sup> November 2014.
- 2.13 However, the Government remains of the view that the HCPC is best placed to regulate this group of professionals for a number of reasons:
- It is an established statutory regulator with a track record of regulating a range of professional groups and taking on the regulation of new professions
  - The generic procedures the HCPC has in place for handling conduct, health and other issues means that its framework is flexible and adaptable to the integration of a new profession
  - HCPC's capacity means that it provides good value for money with a fee of £80 per year

Question 1. Do you agree with the Department's decision that the HCPC should be the statutory regulator for public health specialists from backgrounds other than medicine or dentistry? If not, why not?

Question 2. Do you think that public health specialists should be regulated by another body? If so, who and why?

- 2.14 This consultation does not cover routes for registration, standards of proficiency, standards of education and training, the registration cycle for specialists or grandparenting criteria as these will be subject to separate consultations by the new regulator.. This consultation does, however, include the proposed length of the grandparenting period.

# Chapter 3. Proposed reforms by the draft Section 60 Order

- 3.1 Subject to responses to this consultation, the Government proposes to extend statutory regulation, through the Health and Care Professions Council (HCPC), to non-medically qualified and dental] public health specialists under powers in Section 60 of the Health Act 1999.
- 3.2 There are a number of policy and implementation questions on which we seek views in this consultation:
- Outstanding UKPHR fitness to practise cases at the time of transfer to be investigated and determined by the HCPC in accordance with the Health and Social Work Order 2001 (S.I. 2002/254) (para 3.6)
  - A grandparenting period of two years to allow non-medical public health specialists who are not registered or eligible to be registered with the UKPHR to apply for registration (para 3.8)
  - Protection of the title "public health specialist" for those registered by the HCPC (para 3.19)
  - Whether or not to retain the defined specialist category (para 3.22).
- 3.3 It is anticipated, subject to consultation and the legislative process, that, if the HCPC is to be the statutory regulator, it will open its register by the end of 2015.

## Citation and commencement

- 3.4 Article 1 of the draft Order allows for certain provisions of the Order to come into force when the order is made and for the others to come into force on a day appointed by the Privy Council by order.

## Interpretation

- 3.5 Article 2 of the draft Order defines certain terms used in the Order.

## Transitional arrangements – Outstanding cases

- 3.6 We propose that any outstanding matters, including cases that are under investigation before UKPHR's Investigation Panel are to be referred to the Investigation Committee of the HCPC to determine; and that any outstanding cases before the UKPHR's Fitness to Practise Panel should also be determined by the HCPC.
- 3.7 In both instances, the HCPC will consider and make its final determination in accordance with the Health and Social Work Professions Order 2001 (S.I. 2002/254). The HCPC will

also determine applications made to UKPHR by public health specialists for restoration to UKPHR's register received prior to the transfer of non-medical public health specialists to HCPC, but not determined by that time.

Question 3: Do you agree that outstanding UKPHR fitness to practise cases at the time of transfer should be investigated and determined by the Health and Care Professions Council in accordance with the Health and Social Work Professions Order 2001 (S.I. 2002/254)? If not, why not?

## Transitionals – Grandparenting

- 3.8 Where a profession is statutorily regulated for the first time, it is usual practise to permit practitioners outside of voluntary regulation a period in which they could apply to join a statutory register, and this period is referred to as “grandparenting”. During the period of “grandparenting” the legal restrictions on who is able to practise the profession do not exist. In summary, people who do not hold an approved qualification, or who were not already voluntarily registered or eligible to be voluntarily registered but who were practising as a non-medical public health specialist before the HCPC Register opens, may be eligible to apply for registration with the HCPC.
- 3.9 Article 13 of the Health and Social Work Professions Order 2001 (S.I. 2002/254) contains the transitional provisions relating to admission to the register in respect of “grandparenting”. An application can be made by a person for admission to the relevant part of the register under article 9. The time limits for making the application are specified in relation to each of the relevant profession. This period is usually two years. The Education and Training Committee of the HCPC have to be satisfied (with or without requiring a test of competence) that:
- an individual can demonstrate that they have been in practice for three out of the five years prior to the opening of the Register (or its equivalent on a part time basis), during which they have been engaged in the ‘lawful, safe and effective practice of the profession in respect of the profession for which registration is required’; or
  - where an individual has not met the time in practice requirement above but satisfies the HCPC that through additional training and experience acquired in the United Kingdom or elsewhere, the individual meets the full range of standards of proficiency required for registration in respect of the profession for which registration is required.
- 3.10 Grandparenting applications are assessed on a case-by-case basis by professional assessors against the relevant criteria and a decision made about whether an applicant can be registered. As the UKPHR have routes to registration which have recognised the

competencies of those already in the workforce who have not undertaken the 'standard route', we anticipate that the extent of grandparenting is likely to be limited. We are proposing a period of two years from the opening of the HCPC register in which grandparenting applications can be made.

- 3.11 The recognition of specialist status route and assessment of defined specialists (both of which are retrospective routes which recognise individuals already in specialist roles) would not be necessary after grandparenting has closed. Once the title is protected, those already in practise should already be registered.

Q4: Do you agree that the grandparenting period for registration as a public health specialist should be two years?

## Transitional, transitory and savings provisions – Privy Council powers

- 3.12 Article 3 of, and Schedule 1 to, the draft Order makes provision in respect of the regulation of public health specialists by the HCPC. Article 5 allows the Privy Council to make appropriate supplementary transitional, transitory and savings provisions by order as are considered necessary in connection with the commencement of the Order. Article 6 deals with the powers of the Privy Council to make subordinate legislation under the Order (including orders under article 1) and the procedures the Privy Council is required to follow when making such legislation. It stipulates that those powers are exercisable only by Statutory Instrument.

## The transferred register

- 3.13 Article 4 of the draft Order makes provision for the HCPC and United Kingdom Public Health Register (UKPHR) to enter into arrangements (which may include financial arrangements) to transfer the UKPHR's register of public health specialists to the HCPC. It also provides for the transfer of the register from the UKPHR to the HCPC so that all those people on the UKPHR register, other than practitioners and dual registrants with the General Medical Council (GMC) or General Dental Council (GDC), on the day before the date of transfer would be automatically transferred to the register held by the HCPC. It also allows for applications made to the UKPHR for admission to its register of public health professionals but not determined by the time of transfer to be determined by the HCPC.
- 3.14 Provision is also made for individuals to have their names removed from the register if they write to the HCPC within 40 days of the date of transfer and preventing the HCPC

from publishing any registrant public health specialists' home address without the consent of that person.

- 3.15 Entries on the UKPHR public health practitioner register will not transfer to the HCPC.

## Dual registration

- 3.16 Once statutory registration is introduced, non-medical public health specialists will be required to register with the HCPC in order to practise. Specialists who are doctors and dentists (and who are already in the relevant specialist register or list) will remain regulated by their respective regulators and will not need to register with the HCPC.
- 3.17 Registrants who are dual qualified and also registered by the Nursing and Midwifery Council, General Pharmaceutical Council or Chartered Institute of Environmental Health, for example, will be able to continue their initial registration should they wish but, in order to be registered as public health specialists, must be registered with the HCPC. Whether they need or want to be dual registered will be an individual decision for them. The requirement will be that if someone is practising as a non-medical public health specialist they should have HCPC registration (but this would in no way prevent them from being registered elsewhere as well).

Q5: Is the impact of these public health specialists being required to register with the HCPC of significant consequence?

- 3.18 There is nothing to preclude a doctor or dentist being registered with more than one regulator. If, for example, the GDC investigates and then makes a finding against a doctor, the GMC would not be precluded from considering the findings of the GDC to decide whether the GMC should take its own action. The expectation would be that whichever regulator investigates the matters, they would ensure that the other regulator is kept up to date, and, when a decision is made, then take such action as they would think appropriate. The same would apply to the HCPC with a doctor who may be registered with them and also the GMC.

## Offence – public health specialists

- 3.19 Each of the professions regulated by the HCPC has at least one title which is protected in law. This means that only someone who is registered in the part of the HCPC register which relates to their profession can use that protected title. The HCPC has powers to prosecute those who use a protected title without being appropriately registered. The *Review of the Regulation of Public Health Professionals* (November 2010) recommended

that the titles ‘consultant in public health’ and ‘director of public health’ should be protected. We do not propose to protect these titles as they are occupational titles rather than professional titles, so would not be suitable for protection. We have decided to recommend the protected title of public health specialist. Protecting the adjectival title ‘non-medical public health specialist’ for instance would mean that individuals could potentially use the ‘stem’ title of ‘public health specialist’ without registration with any of the regulators, as long as they did not use ‘non-medical’ in front of it. Given that public health specialists registered with the HCPC will be equivalent to those registered with the GMC or GDC, we do not see any benefit in distinguishing between public health specialists from medical or other backgrounds.

- 3.20 We propose to make an exception in relation to those medical practitioners who can register with the GMC in the specialists register as having a speciality in public health medicine or dentists who can be included in the specialist list held by the GDC as having a speciality in dental public health. In these cases, no offence is committed if they use the protected title “public health specialist”.
- 3.21 PHE, acting on behalf of the Secretary of State, has a statutory duty<sup>5</sup> for joint appointments of Directors of Public Health (DPH). PHE will not currently regard an applicant for a DPH post as suitable unless s/he has the appropriate registration with the GMC, the GDC or the UKPHR. In future, a public health specialist will need to be registered with the GMC, GDC or HCPC to be considered eligible for these posts. Doctors who have a specialty in public health medicine will remain registered with the GMC and dentists who have a specialty in dental public health will remain registered with the GDC, although they can also register as a public health specialist with the HCPC if they so wish.

Q6. Do you agree that “public health specialist” should become a protected title?

## Defined specialists

- 3.22 People who currently register with the UKPHR as defined specialists are public health specialists who have chosen to specialise in a narrower area of public health practice at some stage during their career. Defined specialists are required to show evidence of knowledge across the full breadth of public health to the same standard as generalists. In addition, defined specialists will demonstrate current competencies in some particular areas of practice at a higher level than that required to be demonstrated by generalists, usually reflecting their highly specialised professional experience in service or academic

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<sup>5</sup> Section 30, Health and Social Care Act 2012

environments. If defined specialists have previously registered via these routes, under the provisions in the draft Order, they will transfer to that part of the HCPC register that relates to public health specialists.

3.23 There has been some debate about whether defined specialists should be separately distinguished in the HCPC register from those who have completed 'generalist' training (or been assessed as equivalent) and whether the sector sees the defined specialist portfolios as a short-lived, transitional route to registration or, alternatively, it considers that there is a continued need to produce new defined specialists in the workforce going forward.

3.24 We have identified two options:

- a. Defined specialists transfer to the HCPC Register and are registered with other specialists, with access to the same protected title. At the end of the grandparenting period the only way for someone to become registered is via completing an approved programme which meets the standards of a 'generalist specialist'.
- b. Defined specialists transfer to the HCPC and are separately distinguished. A separate title is protected for defined specialists with standards of proficiency relating to defined specialists. The routes to registration for defined specialists remain open after grandparenting (subject to remaining approved).

Question 7: Which of these options, if either, do you think is appropriate?

## Changes to the composition of a panel considering registration appeals

3.25 Under the HCPC's legislation, a decision to refuse an application for registration or readmission to the register, or to refuse the renewal of an existing registration, may be appealed - 'an appeal against decision of an Education and Training Committee' (article 37 of the Health and Social Work Professions Order 2001).

3.26 A registration appeal will be considered, either at a meeting or a hearing, by a panel appointed by the Council (a registration appeal panel). Legislation requires each registration appeal panel to include a serving Council member as the Chair.

3.27 The Council has a formal and defined role within the governance structure of the HCPC. It is essential that the independence of the Council is maintained by ensuring that there is a clear separation between the Council's oversight functions and the operational functions of the Registrar and executive.

- 3.28 It is proposed that that the requirement for Council member to chair an appeal panel should be removed (see Schedules 1 and 2 to the draft Order).
- 3.29 This would maintain a clear separation of duties between the operational and governance functions of the HCPC to ensure impartiality and avoid any suggestion of a perceived or actual bias. It is also expected that registration appeal panel hearings would be dealt with more swiftly by not having to rely on the availability of a limited number of trained Council members.
- 3.30 The overall aim of this proposed change is to reinforce the impartiality of the panels, ensure consistency in approach and ensure decision-making is more transparent.

Question 8: Do you agree that the requirement for a Council member to chair the Registration Appeal Panel should be removed?

## Clarification on powers of panels to make striking-off orders in health and lack of competence Fitness-to-Practise cases

- 3.31 Where a panel has considered a case and determines that a registrant's Fitness-to-Practise is impaired, it may impose one of a number of sanctions. These include, in the most serious cases, making an order striking the registrant's name from the register (a striking-off order) where it is considered that such a step is the only proportionate means of adequately protecting the public or acting in the public interest.
- 3.32 Where the sanction is an order for a period of suspension or for the registrant to be the subject of conditions of practice, it will be reviewed prior to its expiry date and, amongst other options, could be extended or varied.
- 3.33 Where a panel determines that a registrant's Fitness-to-Practise is impaired due to their health or lack of competence, until recently it was considered that the current legislation did allow the panel to impose a striking-off order, but only after the registrant had been the subject of continuous suspension or conditions of practice for a period of two years.
- 3.34 A recent decision of the High Court interpreted the legislation to suggest that a panel cannot make a striking-off order in a health or lack of competence case (at the first hearing or on any subsequent review) unless, at the time of the original decision to impose a sanction, the registrant has been the subject of a continuous substantive suspension or conditions of practice order for at least two years. The effect of the drafting

in article 30(1)(b) was commented on in the case of *Okeke v NMC* 2013 EWHC which threw doubt on the existing law.

- 3.35 Consequently, the HCPC, which has parallel provisions to those of the NMC, wishes to clarify the existing legal position by amending the provision and aligning its position on this issue with the NMC.
- 3.36 The proposed amendment (at paragraph 7 of Schedule 1 to the draft Order) is a clarification of the exiting legal position. It would make it clear that the sanction of a striking-off order is an option for consideration by a panel reviewing a suspension order or a conditions of practice order in a health or lack of competence Fitness-to-Practise case, provided the registrant has been the subject of a continuous substantive suspension order or conditions of practice order for a period of at least two years.

Question 9: Do you agree that a HCPC panel should have the power to make a striking off order in a health or lack of competence case provided the registrant has been the subject of a continuous substantive suspension or conditions of practice order for at least two years?

## Chapter 4. The costs and benefits of the proposed order

- 4.1 An economic assessment of the impact of the proposed policy has not been prepared as the order regulates the title 'public health specialist' (or whatever title is decided upon), rather than the activities that public health specialists engage in. In creating a protected title, the order would only affect those who currently call themselves 'public health specialists'. Therefore, the impact on business only applies if there was a self-employed contractor who was called 'Public Health Specialist'.
- 4.2 A survey by the Centre for Workforce Intelligence<sup>6</sup> of public health specialists found that of the 574 respondents, 21 (3.7%) worked in either the private sector or the independent (self-employed) sector. Further, 5 of these 21 respondents were registered solely with UKPHR, that is, only 5 out of 21 respondents that stated they work independently or in the private sector were non-medical public health specialists. The remaining 16 were registered with the General Medical Council and therefore out of scope.
- 4.3 Applying these proportions we believe there are potentially 10 non-medical public health specialists working in the private sector (including independent, self-employed persons.) The impact on business is sufficiently small that an economic assessment is not necessary. This position has been discussed and agreed with the Regulatory Policy Committee.

Q10. Is our estimate of the numbers of non-medical public health specialists working in the independent or private sector reasonable?

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<sup>6</sup> <http://www.cfwi.org.uk/publications/the-cfwi-public-health-consultant-and-specialist-staff-survey-2013>

# Annex A: The consultation process

## Criteria for consultation

This consultation aims to:

- formally consult at a stage where there is scope to influence the outcome;
- consult for a proportionate period
- be clear about the 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 effectiveness and to obtain consultees' 'buy-in' to the process;
- analyse responses carefully and give clear feedback to participants following the consultation;
- ensure officials are guided on how to run an effective consultation exercise and share what they learn from the experience.

## Comments on the consultation process itself

If you have concerns or comments that 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

We manage the information you provide in response to this consultation in accordance with the Department of Health's [Information Charter](#).

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).

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.

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 responses to the consultation

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>

## Consultation response

The response will outline how the responses to the consultation have been addressed in the production of the final Order to be laid before Parliament. Parliament will debate the Order and will if it chooses approve the Order. The Order must also be approved by the Scottish Parliament..

# Annex B: Consultation questions and response form

Question 1. Do you agree with the Department's decision that the HCPC should be the statutory regulator for public health specialists from backgrounds other than medicine or dentistry? If not, why not?

Question 2. Do you think that public health specialists should be regulated by another body? If so, who and why?

Question3: Do you agree that outstanding UKPHR fitness to practise cases at the time of transfer should be investigated and determined by the Health and Care Professions Council in accordance with the Health and Social Work Order 2001 (S.I. 2002/254)? If not, why not?

Question 4: Do you agree that the grandparenting period for registration as a public health specialist should be two years?

Question 5: Is the impact of these public health specialists being required to register with the HCPC of significant consequence?

Question 6: Do you agree that "public health specialist" should become a protected title?

Question 7: Which of these options for defined specialists, if either, do you think is appropriate?

Question 8: Do you agree that the requirement for a Council member to chair Registration Appeal Panels should be removed?

Question 9: Do you agree that a HCPC panel should have the power to make a striking-off order in a health or lack of competence case provided the registrant has been the subject of a continuous substantive suspension or conditions of practice order for at least two years?
Question 10: Is our estimate of the numbers of non-medical public health specialists working in the independent or private sector reasonable?