



Department  
of Health

# Health and Care Professions Council (Constitution) (Amendment) Order.

*A paper for consultation*

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**Jamie Samuel**  
**Professional Standards Division**

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## Note

The consultation on the changes to the constitution orders for the Health and Care Professions Council (HCPC) will last for 12 weeks closing on Wednesday 9<sup>th</sup> October 2013.

# Executive summary

- The health professions regulatory bodies are independent statutory bodies whose role it is to set and enforce standards of professional competence, conduct and ethics for individual health professionals.
- In February 2011, the Government published the Command Paper *Enabling Excellence: Autonomy and Accountability for Healthcare Workers, Social Workers and Social Care Workers*. The paper sets out the Government's vision for the future of workforce regulation, including increasing the independence and accountability of the regulatory bodies.
- Following the publication of *Enabling Excellence*, the Council for Healthcare Regulatory Excellence (CHRE), now known as the Professional Standards Authority (PSA), was commissioned to lead a sector wide review of the cost-efficiency and effectiveness of each regulator within its remit. As an initial part of this work it was asked to look at whether there was a case for reducing the size of the governing councils of the regulators.
- The PSA published an interim report, *Board size and effectiveness: advice to the Department of Health regarding health professional regulators*, on these two issues in September 2011<sup>1</sup>. The report is available at: [www.professionalstandards.org.uk](http://www.professionalstandards.org.uk)
- The report recommended that 'boards with a range of 8-12 members are associated with greater effectiveness. The report indicates that a move to smaller councils across the health professional regulators would be possible without compromising effectiveness. Evidence suggests that smaller sized groups are able to communicate more effectively and reach decisions more quickly than larger ones.
- The Department considers that there is merit in the arguments put forward by the PSA and intends, subject to the outcome of consultation, to implement its recommendations.
- The draft order attached to this document proposes a revised constitution in relation to HCPC only. It makes provisions in respect of reducing the size of the governing council from 20 to 12.
- In the PSA's report, the governing councils of the regulatory bodies are referred to as 'boards'. In this consultation document where direct quotes from the report have been used the term 'board' is retained, however, in the remainder of the document, the term 'governing council' has been used as 'council' is the term used in the legislation concerning the constitutions of the regulatory bodies.

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<sup>1</sup> Board and size and effectiveness: advice to the Department of Health regarding health professional regulators, Council for Healthcare Regulatory Excellence, 2011

# Introduction

- 1 In 2007, the previous administration published a White Paper *Trust, Assurance and Safety – The Regulation of Healthcare Professionals in the 21<sup>st</sup> Century*<sup>2</sup>. This paper set out a series of measures to ensure the independence of the professional regulators, including proposals to reform the constitution of their governing councils.
- 2 *Trust, Assurance and Safety* proposed that those council members of regulatory bodies who, at the time, were elected by their registrants should instead be appointed by the Appointments Commission. Since the publication of *Trust, Assurance and Safety*, all the health professions regulatory bodies have moved to a system of appointed members.
- 3 In February 2011, the Government published the Command Paper *Enabling Excellence: Autonomy and Accountability for Healthcare Workers, Social Workers and Social Care Workers*<sup>3</sup>. The paper sets out the Government's vision for the future of workforce regulation which includes increasing the independence and accountability of the regulatory bodies.
- 4 Following this, the Professional Standards Authority (PSA) was commissioned to lead a sector wide review of the cost-efficiency and effectiveness of each regulator within its remit. As an initial part of this work it was asked to look whether there was a case for reducing the size of the governing councils of the regulators.
- 5 In order to do this, the PSA looked at a number of studies and highlighted what it sees as the most important characteristics of an effective board. The PSA published its interim report, *Board size and effectiveness: advice to the Department of Health regarding health professional regulators*<sup>4</sup>, in September 2011. The full report is available at: [www.professionalstandards.org.uk](http://www.professionalstandards.org.uk)

## **SIZE OF GOVERNING COUNCIL**

- 6 Based on a review of literature and its own experiences in overseeing the regulators, the PSA found a number of benefits to having smaller governing councils. These included the following:
  - Larger boards struggle to involve themselves in operational management issues that should be delegated to the executive, therefore a smaller size of council helps them to focus their efforts on core governance issues;
  - Governing councils cannot operate in a 'board-like' manner if they are too large; and
  - Smaller sized groups are able to communicate more effectively and reach decisions more quickly than larger ones.

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<sup>2</sup> Trust, Assurance and Safety – The Regulation of Healthcare Professionals in the 21<sup>st</sup> Century, Department of Health, 2007

<sup>3</sup> Enabling Excellence: Autonomy and Accountability for Healthcare Workers, Social Workers and Social Care Workers, Department of Health, 2011

<sup>4</sup> Board and size and effectiveness: advice to the Department of Health regarding health professional regulators, Council for Healthcare Regulatory Excellence, 2011

- 7 The PSA also looked at the board size of organisations in other sectors including the private sector and found that in recent years there was a similar trend towards smaller boards. The Eversheds Board Report in 2011<sup>5</sup> found that ‘better performing companies tended to have fewer directors’ and that ‘directors interviewed were largely unsurprised by this finding, noting the benefits of smaller boards as; greater focus on the key issues; better management from the Chair; quicker decision making; and better overall dynamics between board members’
- 8 The PSA report concluded that ‘a council of around 8 to 12 members is likely to be most conducive to effectiveness’.
- 9 Currently, the majority of the regulatory bodies have between 12 and 14 members, with the General Medical Council (GMC) reducing the size of its council from 24 members to twelve in January 2013 after public consultation and the General Dental Council (GDC) due to reduce the size of its council from 24 members to 12 members in October 2013 after a public consultation.
- 10 The Government wishes to consult on making a reduction to the council size of the HCPC, from 20 members to 12.

#### Devolved administrations

- 11 There is currently a requirement, laid out in primary legislation, for the regulatory bodies to have at least one member of their council living or working in each of England, Northern Ireland, Scotland and Wales. We consider that this will still be achievable and remain appropriate with reduced council sizes.
- 12 For example, the PSA has a board of seven non-executive members and one executive member. Currently, three of the non-executive members are appointed by the Devolved Administrations.
- 13 We do not intend to make any changes to the legislation around this issue.

#### Role of the council

- 14 The PSA’s interim report also looked in some detail at the role of a governing council or board in a wide range of different sectors and organisations. From its review, it describes the following as the main functions of a governing council or board:
  - Strategic leadership and strategic decision making;
  - Stewardship, including holding the executive to account;
  - External relations and accountability; and
  - Board maintenance.
- 15 The roles and functions listed above are not specifically itemised in the legislation although they are implicitly encompassed by the statutory framework. However, we think they are

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<sup>5</sup> The Eversheds Board Report: Measuring the impact of board composition on company performance, Eversheds Press Release, 8 July 2011



relevant to the regulatory bodies and that these functions are an important part of how their governing councils function.

- 16 Certain other functions of the regulatory bodies and their governing councils are set out in legislation and include setting standards of education, training, conduct and performance. These are usually more operational matters and are commonly delegated by the governing council to the regulatory body's executive. However, the governing council does have a role around the strategic leadership and decision making relating to these areas.
- 17 This consultation does not propose to make any changes to the roles or functions of the regulatory bodies.

### Representation

- 18 The PSA report also highlights the need for a shift in thinking around the concept of the 'representativeness' of governing councils. The PSA argues that:

*'Small boards cannot 'represent' all relevant constituencies or stakeholders, but nor should they attempt to do so. Rather boards should demonstrate the knowledge, understanding and awareness to properly take into account relevant interests, but they should not attempt to 'represent' them'*

- 19 We need to continue to recognise that the governing councils are not there specifically to represent professions or stakeholders. Rather, the focus should be on the knowledge, understanding and ability to take into account relevant views of interested parties as part of the competences required of council members.

### Parity

- 20 Parity of lay and registrant members on their governing councils is important for the councils' credibility as the PSA explains:

*"The councils would struggle to perform their oversight responsibilities if they lacked the knowledge and skills that professional members brought with them. In the same way, they would struggle to acquire and demonstrate insight into patient and public experience, and the independence and flexibility of thinking that are central to credibility if they had no suitably skilled public members"*

- 21 We are not therefore planning to change the requirement for parity of lay and registrant members.

# The HCPC

- 22 The HCPC is a health and social care professions regulatory body, and its key function is to protect the public. It delivers this function by keeping a register of health and social professionals who meet requisite standards for their training, professional skills, behaviour and health. The HCPC currently regulates arts therapists, biomedical scientists, chiropodists / podiatrists, clinical scientists, dietitians, 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.
- 23 In November 2011, in line with the recommendations by the PSA, the Department consulted on reducing the council membership of the GMC, the GDC and the Nursing and Midwifery Council (NMC). In light of the responses to the consultation processes, it was decided to reduce the council membership of all three councils to twelve members. The change to the GMC's council came into force in January 2013, the NMC's came into force in May 2013 and the change to GDC's council will come into force in October 2013. It was decided at the time the HCPC were not in a position to reduce the size of their council. This was because in 2011 the HCPC were fully occupied, working on a number of projects, including taking on responsibility for the regulation of social workers in England, following the passage of the Health and Social Care Bill. It was therefore agreed by Ministers that the amendment to the HCPC's Constitution Order should take place following the transfer of the General Social Care Council's functions to the HCPC. This has now happened and the vast majority of social workers have transferred to the HCPC register.
- 24 As the HCPC is no longer in a transition, the Department considers that it now makes sense to make changes to the HCPC's council, bringing it in line with the PSA recommendations
- 25 We are therefore proposing to amend the HCPC's constitution order to reduce the size of their governing council to 12 members.

# Proposed amendments

## Size of governing council

26 The PSA is of the view that evidence indicates that smaller board sizes allow the board to focus on its function of strategic oversight and leadership and holding the executive to account in an effective manner. We agree, and therefore we are proposing, that the governing councils of the HCPC be reduced to 12 members, which is the highest point of the range of 8 – 12 recommended by the PSA in their report. We would welcome views on whether this gives the regulators adequate scope to ensure effective governance of all their functions.

**Q1 Do you agree that smaller councils will be able to provide the necessary expertise in organisational governance?**

**Q2 Do you agree that the size of the governing council of the HCPC should be between 8 and 12 members?**

**Q3 Do you agree with the proposal reduce the HCPC's governing council to twelve, which is the highest point in this range? If not, what size do you believe the governing council of the HCPC should be and why?**

## Quorum

27 The quorum is the minimum number of members who must be present to make valid council decisions.

28 The quorum is normally 50% of the total number of members plus one.

29 If the council of the HCPC were to reduce in size to twelve members we would expect that the quorum would be seven.

**Q4 Do you agree that the quorum of a council should be 50% of the total plus one?**

## Equality

30 The Department of Health and the HCPC are covered by the Equality Act 2010, and, specifically, the Public Sector Equality Duty.

31 The new Duty covers the following protected characteristics: age; disability; gender reassignment; pregnancy and maternity; race (includes ethnic or national origins, colour or nationality); religion or belief (includes lack of belief); sex and sexual orientation.

32 There are three parts to the Duty and public bodies must, in exercising their functions, have due regard to all of them. They are:

- the need to eliminate unlawful discrimination, harassment and victimisation;
- advance equality of opportunity between people who share a protected characteristic and people who do not; and
- promote good relations between people who share a protected characteristic and those who do not.

33 We have considered equalities issues whilst producing the draft orders and our initial screening suggests that the proposed changes will not have any significant impact on any of the equalities strands.

**Q5 Do you think there are any additional equalities issues that need to be considered?**

### **Costs and benefits**

34 The Health and Social Care Act provided for the Appointments Commission to be abolished, this happened on 31<sup>st</sup> October 2012. The Act also contains powers to enable the regulatory bodies and the PSA to assist the Privy Council in fulfilling its appointments function in relation to the regulatory bodies. In practice, this means that the health professions regulatory bodies will manage their own appointments processes and follow good practice guidelines produced by the PSA, with the Privy Council then making the final appointments. This change is contained in the Health and Social Care Act 2012 and the costs and benefits of this were considered as part of its accompanying Impact Assessment.

**Q6 Do you have views or evidence as to the likely effect on costs or the administrative burden of the proposed changes?**

**Q7 Do you think there are any benefits that are not already discussed relating to the proposed changes?**

35 Attached to this consultation is a copy of the draft order for the changes to the constitution of the HCPC.

**Q8 Do you have any comments on the draft order itself?**

### **Transitional provisions**

36 The draft order makes certain transitional provisions relating to the changes discussed above. The Department is not consulting on these provisions, as they are necessary to

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deliver the changes envisaged by the draft order. However, to aid understanding we explain the effect of the transitional provision below.

- 37 The draft order will deliver a newly constituted HCPC Council. The practical effect of this is that in terms of office, all current HCPC Council members will be able to reapply to be members of the new HCPC Council, but their tenure will not automatically be carried across.

# Summary of consultation questions

## **Question 1**

Do you agree that smaller councils will be able to provide the necessary expertise in organisational governance?

## **Question 2**

Do you agree that the size of the governing council of the HCPC should be between 8 and 12 members?

## **Question 3**

Do you agree with the proposal reduce the HCPC's governing council to twelve, which is the highest point in this range? If not, what size do you believe the governing council of the HCPC should be and why?

## **Question 4**

Do you agree that the quorum of a council should be 50% of the total plus one?

## **Question 5**

Do you think there are any additional equalities issues that need to be considered?

## **Question 6**

Do you have views or evidence as to the likely effect on costs or the administrative burden of the proposed changes?

## **Question 7**

Do you think there are any benefits that are not already discussed relating to the proposed changes?

## **Question 8**

Do you have any comments on the draft order itself?

# Responding to this Consultation

## Consultation Process

This document launches a consultation on amendments to the HCPC constitution.

The consultation is being run, as far as is practical, in accordance with the Cabinet Office Code of Practice on Consultations (reproduced below). The closing date for the consultation is 9 October 2013

There is a full list of the questions we are asking in this consultation at the summary of consultation questions section of this document and there is a questionnaire on the Gov.UK website which can be printed and sent by post to: **HCPC consultation, 2N10 Quarry House Quarry Hill, Leeds LS2 7UE.**

Alternatively, comments can be sent by e-mail to: **hrdlistening@dh.gsi.gov.uk**

You may also complete the online consultation response document at <http://consultations.dh.gov.uk>

It will help us to analyse the responses if respondents fill in the questionnaire but responses that do not follow the structure of the questionnaire will be considered equally. It would also help if responses were sent in Word format, rather than pdf.

## Criteria for consultation

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 a sufficient period;
- 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.

The full text of the code of practice is on the Better Regulation website at: [www.bis.gov.uk/policies/better-regulation/consultation-guidance](http://www.bis.gov.uk/policies/better-regulation/consultation-guidance)

## Confidentiality of information

We manage the information you provide in response to this consultation in accordance with the Department of Health's Information Charter ([www.dh.gov.uk/en/FreedomOfInformation/DH\\_088010](http://www.dh.gov.uk/en/FreedomOfInformation/DH_088010)).

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 the consultation responses

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 Gov.UK website ([www.gov.uk](http://www.gov.uk)).