

Council, 25 September 2014

Consultation on Rules for professional indemnity

Executive summary and recommendations

Introduction

The Health Care and Associated Professions (Indemnity Arrangements) Order 2014 ('the Indemnity Order') has introduced a statutory requirement for our registrants (other than social workers in England) to have a professional indemnity arrangement in place as a condition of their registration with us. The arrangement must provide appropriate cover – this means an arrangement which provides cover appropriate to a registrant's own practice, taking into account the nature and extent of its risks. The requirement has been introduced so that if a service user is harmed in some way because of the negligence of a registrant, the service user will be able to recover any compensation they may be entitled to.

In order to implement the requirement fully, we need to amend our Health and Care Professions Council (Registration and Fees) Rules 2003, a process which is subject to public consultation. The attached draft consultation document sets out our proposals together with the draft Rules amendment Order which is appended to this cover sheet. The proposed amendments, if implemented, would mean that we would be able to ask registrants and applicants to complete declarations about their professional indemnity arrangements. We would also be able to take appropriate action where a registrant did not have a professional indemnity arrangement in place, or where a professional indemnity arrangement did not provide appropriate cover.

The consultation would run for five weeks. These amendments are in line with our guidance 'Professional indemnity and your registration' which we already consulted on in 2013. The proposed changes to our Rules are about implementing the policy approach outlined in that guidance, rather than adding any additional requirements. This tight timescale is necessary to ensure that the Education and Training Committee and the Council can agree the consultation outcomes and finalised Rules at their meetings in November and December 2014. The Rules would subsequently need to be laid at Privy Council, before coming into effect from the 1 April 2015.

The attached draft consultation document and draft Rules amendment Order were considered and recommended to Council by the Education and Training Committee at its meeting in September 2014.

Decision

The Council is invited to agree the text of the draft consultation document and Rules (subject to minor editing amendments and formal legal scrutiny).

Background information

- Professional indemnity section of the HCPC website: www.hcpc-uk.org/registrants/indemnity/

Resource implications

- Amending the consultation document as necessary.
- Making arrangements for the consultation including emailing a link of the consultation document to stakeholders.
- Writing up the outcomes of the consultation.

Financial implications

- None.

Appendices

- Draft amendments to the Health and Care Professions Council (Registration and Fees) Rules Order 2003 – for consultation.

Date of paper

11 September 2014

Appendix

STATUTORY INSTRUMENTS

2015 No. 000

HEALTHCARE AND ASSOCIATED PROFESSIONS

HEALTH PROFESSIONS

The Health and Care Professions Council (Registration and Fees)(Amendment) Rules Order of Council 2015

Made - - - - - 2015

Coming into force - - [] 2015

At the Council Chamber, Whitehall the [] day of [] 2015

By the Lords of Her Majesty's Most Honourable Privy Council

The Health and Care Professions Council has made the Health and Care Professions Council (Registration and Fees) (Amendment) Rules 2015, which are set out in the Schedule to this Order, in exercise of the powers under articles 7(1) and (2), 9(2), 11A(4), (5) and (6) and 41(2) of the Health and Social Work Professions Order 2001⁽¹⁾.

In accordance with article 7(1) and (3) and 41(3) of that Order, the Health and Care Professions Council has consulted the Education and Training Committee and representatives of groups of persons it considers appropriate, including representatives of the groups listed in article 41(3) of that Order.

In accordance with article 41(1) and 42(1) of that Order, such Rules shall not come into force until approved by Order of the Privy Council.

Citation and commencement

1. This Order may be cited as the Health and Care Professions Council (Registration and Fees) (Amendment) Rules Order of Council 2015 and shall come into force on [] 2015.

Privy Council Approval

2. Their Lordships, having taken these Rules into consideration, are pleased to and do approve them.

Richard Tilbrook
Clerk of the Privy Council

(1) S.I. 2002/254. The title of this statutory instrument was amended by section 213(6) of the Health and Social Care Act 2012 (c. 7).

SCHEDULE

Article 2

The Health and Care Professions Council (Registration and Fees) (Amendment) Rules 2015

The Health and Care Professions Council makes the following Rules in exercise of its powers under articles 7(1) and (2), 9(2), 11A(4), (5) and (6) and 41(2) of the Health and Social Work Professions Order 2001⁽²⁾.

In accordance with articles 7(1) and (2) and 41(3) of that Order, the Health and Care Professions Council has consulted the Education and Training Committee and representatives of groups of persons it considers appropriate, including representatives of the groups listed in article 41(3) of that Order.

Citation and commencement

1. These Rules may be cited as the Health and Care Professions Council (Registration and Fees) (Amendment) Rules 2015 and come into force on [date] 2015.

Amendment of the Health Professions Council (Registration and Fees) Rules 2003

- 2.—(1) The Health Professions Council (Registration and Fees) Rules 2003 are amended as follows.
(2) After rule 11A (continuing professional development) insert—

“Cessation of appropriate cover under an indemnity arrangement

11B.—(1) A registrant must notify the Registrar in writing forthwith if for any reason the registrant ceases or will cease to have in force in relation to the registrant for the purpose of complying with article 11A of the Order, appropriate cover under an indemnity arrangement.

- (2) If a registrant fails to comply with sub-paragraph (1)—
- (a) the Education and Training Committee may remove that person from the register; or
 - (b) the person’s fitness to practise may be treated for the purposes of article 22(1)(a)(i) as being impaired by reason of misconduct, and the Council may accordingly refer the matter to, persons appointed by it under article 22(5)(b)(i) (where rules under article 23 provide) or to a Practice Committee under article 22(5)(b)(ii).

Information required on indemnity arrangements

11C.—(1) The Registrar may in accordance with sub-paragraph (3) serve notice on a registrant to provide information to the Registrar for the purposes of determining whether, at any time, there is in force in relation to the registrant an indemnity arrangement which provides appropriate cover for the purpose of complying with article 11A of the Order.

- (2) A notice served under sub-paragraph (2) must specify—
- (a) the information or evidence required to determine that the registrant has in force in relation to that registrant, an indemnity arrangement which provides appropriate cover for the purpose of complying with article 11A of the Order;
 - (b) such other information as the Registrar may reasonably require for the purpose of determining whether the registrant’s indemnity arrangement provides appropriate cover; and
 - (c) the time period for complying with the notice, which shall be not be less than seven days beginning with the day on which the notice was sent.

(2) S.I. 2002/254.

- (3) The Registrar may remove the registrant from the register where—
- (a) having considered any evidence or information provided in response to a notice under paragraph (2), the Registrar is not satisfied that a registrant has an indemnity arrangement which provides appropriate cover; or
 - (b) a registrant fails to comply with a notice served under sub-paragraph within the period specified in the notice.
- (4) This rule does not apply to a registrant in respect of registration as a social worker in England.”

Given under the official seal of the Health and Care Professions Council this [] day of the [] 2015

Anna van der Gaag
Chair

Marc Seale
Registrar

EXPLANATORY NOTE

(This note is not part of the Order)

Consultation on Rules for professional indemnity

A consultation on proposed amendments to the Health and Care Professions Council (Registration and Fees) Rules 2003 related to professional indemnity.

Please note the proposed amendments to these Rules do not apply to social workers in England.

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1. Introduction

- 1.1 We are the Health and Care Professions Council (HCPC). This consultation seeks the views of stakeholders on proposed amendments to the Health and Care Professions Council (Registration and Fees) Rules 2003 ('the Rules').
- 1.2 These amendments are about implementing the statutory requirement for our registrants (other than social workers in England) to have a professional indemnity arrangement in place as a condition of their registration with us. The arrangement must provide appropriate cover – this means an arrangement which provides cover appropriate to a registrant's own practice, taking into account the nature and extent of its risks. This requirement was introduced by the Health Care and Associated Professions (Indemnity Arrangements) Order 2014 ('the Indemnity Order') on 17 July 2014.
- 1.3 The proposed amendments, if implemented, would mean that we would be able to ask registrants and applicants to complete declarations and provide information about their professional indemnity arrangements. We would also be able to take appropriate action where a registrant did not have a professional indemnity arrangement in place or one which did not provide appropriate cover, or where a registrant failed to provide information when required to do so.
- 1.4 We have published guidance and frequently asked questions on our website about this requirement.¹
- 1.5 This consultation may be of interest to registrants who are affected by these proposals; professional bodies; and employers.
- 1.6 The consultation runs from **x** to **x**.
- 1.7 **Please note that the proposed changes to our Rules will not apply to social workers.**

¹ For further information, please see our website: www.hcpc-uk.org/registrants/indemnity/

2. About the HCPC

- 2.1 We are a regulator and were set up to protect the public. To do this, we keep a register of health and care professionals who meet our standards for their professional skills and behaviour. Individuals on our register are called 'registrants'.
- 2.2 We currently regulate 16 health and care professions.
- 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
 - Speech and language therapists

3. About professional indemnity

A statutory requirement

- 3.1 In July 2014, legislation was introduced which means that all registrants (other than social workers in England) must have a professional indemnity arrangement in place as a condition of their registration with us. The arrangement must provide 'appropriate cover' – this means an arrangement which provides cover appropriate to a registrant's own practice, taking into account the nature and extent of its risks.

Meeting the requirement

- 3.2 Many registrants will work in an employed environment, for example, for the National Health Service (NHS), a local authority or in the independent sector, where their employer will indemnify them and / or they will have already made their own professional indemnity arrangements. This means that many registrants already meet this requirement and will not have needed to take any further action.
- 3.3 Registrants can meet the requirement through one or more of the following.
- A professional indemnity arrangement through their employer.
 - A professional indemnity arrangement as part of being a member of a professional body, trade union or defence organisation.
 - A professional indemnity arrangement obtained directly through an insurer.
- 3.4 We have published separate guidance and frequently asked questions on our website to explain more about what this requirement means for registrants and applicants for registration.²

Checking that an arrangement is in place

- 3.5 Once Rules are agreed and in place, we will ask registrants at the point they renew their registration with us (every two years) to confirm that:
- they have a professional indemnity arrangement in place which provides appropriate cover; or
 - if they are not practising at the time of their renewal, that they understand the requirement and will have such an arrangement in place when they begin to practise.

² For further information, please see our website: www.hcpc-uk.org/registrants/indemnity/

- 3.6 Applicants for registration will not need to have a professional indemnity arrangement in place when they apply. However, in future they will be asked to confirm that they understand the requirement to have a professional indemnity arrangement in place which provides appropriate cover and that they will have such an arrangement in place when they begin to practise.
- 3.7 A registrant or applicant who was unable to complete the declaration would be unable to renew their registration or become registered with us.

4. Our consultation proposal

- 4.1 We are proposing to amend the Rules as part of implementing the Indemnity Order.
- 4.2 The amendments are in line with the approach we have set out in our guidance: 'Professional indemnity and your registration'. We consulted on a draft of this guidance in 2013. The proposed changes to our Rules are about implementing the policy approach outlined in that guidance, rather than adding any additional requirements.
- 4.3 If implemented, the amendments to the Rules would mean the following.
- A requirement for a registrant to inform the Registrar if for any reason they cease to have in place a professional indemnity arrangement which provides appropriate cover. However, registrants do not need to tell us about routine changes, such as a change of provider or not having an arrangement in place because they are no longer practising.
 - A power for the Registrar at any time to send a notice to a registrant asking them to provide such evidence and information as might be necessary to demonstrate that they have an indemnity arrangement in place which provides appropriate cover. We propose that the notice should provide at least a seven day period in which the registrant would be required to respond.
 - We anticipate that, outside of registration renewal, we may use the power described above if, for example, there are concerns that a registrant may not have a professional indemnity arrangement in place or that it may not provide appropriate cover.
 - If the evidence and information provided in response to a notice does not demonstrate that a registrant has an indemnity arrangement in place which provides appropriate cover, or where a registrant fails to respond to a notice within the period specified, the Registrar may remove the name of the registrant from the Register. We anticipate that, outside of registration renewal, this power is likely to be used only in very few instances.
 - The main way in which we will ensure compliance, however, will be via registrants and applicants completing a declaration at the point when they either renew or apply for registration with us (see paragraphs 3.5 to 3.7). Registrants will continue to be provided with approximately three months in which to complete their renewal. We will not routinely ask registrants to send us certificates or other evidence of their professional indemnity arrangements.

- Someone administratively removed from the Register (as a result of not completing the declaration or because of non-compliance) would be able to apply for registration again, subject to completing an application form, paying the registration fee and demonstrating they meet the conditions of registration.
 - Administrative removal is very different from being struck off. 'Striking off' is a sanction as a result of our fitness to practise process. Someone struck off the Register is unable to apply for restoration to the register until at least five years have elapsed. We may consider taking fitness to practise action in more serious cases, for example, those that involve dishonesty.
- 4.4 A copy of the proposed amendments to our Rules can be viewed alongside this consultation document on our website.³ A copy of our existing Rules is also available from our website.⁴
- 4.5 Subject to the outcomes of the consultation and the parliamentary process, we anticipate that the Rules will be in place from early 2015-2016.

³ [Insert relevant link]

⁴ For further information on our existing Rules, please see our website: www.hpc-uk.org/aboutus/legislation/rules/

5. How to respond to the consultation

5.1 The statutory requirement which affects most of our registrants is now in place and we have previously consulted on guidance which we have now published. As a result, we are consulting on our proposed Rules for a shorter five week period. This will ensure that we can introduce the new declarations for registrants and applicants within a reasonable timeframe.

5.2 We welcome your comments on any aspect of the proposals set out in this document.

5.3 You can respond to the consultation in the following ways.

- By completing our easy-to-use online survey:
[URL here]
- By emailing us at: consultation@hcpc-uk.org
- By writing to us at the following address.

Consultation on Rules for professional indemnity
Policy and Standards Department
Health and Care Professions Council
Park House
184 Kennington Park Road
London
SE11 4BU
Fax: +44(0)20 7820 9684

5.4 We do not normally accept responses by telephone or in person. We normally ask that consultation responses are made in writing so that we can accurately record what the respondent would like to say. However, if you are unable to respond in writing, please contact us on +44(0)20 7840 9815 to discuss any reasonable adjustments that would help you to respond.

5.5 Please complete the survey or send us your response by **x**. We look forward to receiving your comments.

5.6 **Please contact us to request a copy of this document in Welsh or in an alternative format.**

5.7 Once the consultation period is completed, we will analyse the responses we received. We will then publish a document which details the comments received and explains the decisions we have taken as a result. This will be published on our website.

5.8 If you prefer your response not to be made public, please indicate this when you respond.