

Contents

Reference documents	3	The application process	8
From the Health Professions Order 2001:	3	Flowchart for a successful application	9
From the 1999 Health Act section 60 (1) (b)	5	The application process	9
A note about interpretation	5	Meeting dates of Council	9
Introduction	3	Frequently asked questions	9
Part A of the assessment	3	How should an applicant occupation liaise with the HPC?	9
Part B of the assessment	4	Will there be an appeals process if an application fails?	9
1. The occupation must cover a discrete area of activity displaying some homogeneity	4	Will the applicant occupation have to pay an application fee?	9
2. The occupation must apply a defined body of knowledge	4	Does the HPC fund the costs of an application?	9
3. The occupation must practise based on evidence of efficacy	4	Does every part of the application have to be completed?	9
4. The occupation must have at least one established professional body which accounts for a significant proportion of that occupational group	4	Does the applicant occupation have to hold a ballot of its members?	9
5. The occupation must operate a voluntary register(s)	5	Will the Council help my applicant occupation communicate about regulation to members?	9
6. The occupation must have defined routes of entry to the profession	5	Will members of the applicant occupation have to have police checks?	9
7. The occupation must have independently assessed entry qualifications	5	Will the applicant occupation continue accrediting courses and institutions?	9
8. The occupation must have standards of conduct, performance and ethics	5	If my occupation is regulated, does the HPC replace my professional body?	9
9. The occupation must have Fitness to Practise procedures to enforce those standards	5	Do all the representative organisations working with an applicant occupation have to agree to regulation for an application to succeed?	9
10. The occupation must require commitment to continuous professional development (CPD)	5	My applicant occupation is unlikely to have a new Part of the Register for itself alone: it will either join a currently regulated profession or other unregulated professions. Does this mean it won't be represented or that the occupation will not be self-regulating?	9
Additional considerations	5		
Impact on Council's ability to carry out its functions effectively	6		
Protected titles and transitional arrangements ("grandparenting")	6		
Views of others	7		

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From the Health Professions Order 2001:

6. - (1) The register shall be divided into such parts as the Privy Council may by order determine, on a proposal by the Council or otherwise, and in this Order, references to parts of the register are to the parts so determined.
- (2) There shall be one or more designated titles for each part of the register indicative of different qualifications and different kinds of education or training and a registrant is entitled to use whichever of those titles, corresponding to the part of the register in which he is registered, as is appropriate in his case.
- (3) Subject to article 7, the Privy Council may by order, on a proposal by the Council or otherwise, make such other provision in connection with the register as it considers appropriate and in particular may provide for -
- (a) *the register to include entries indicating the possession of qualifications (whether or not they are approved qualifications) or competence in a particular field or at a particular level of practice, or for the use of a particular category of entry to be discontinued;*
- (b) *persons to be registered in one or more parts of the register by virtue of having been included in the register maintained under the 1960 Act;*
- (c) *the recording of additional entries by virtue of their having been in the register maintained under the 1960 Act;*
- (d) *a specified part of the register to be closed, as from a date specified in the order, so that on or after that date no further person may become registered in that part;*
- (e) *a specified part of the register to be sub-divided into two or more parts, or for two or more parts to be combined into one;*
- (f) *persons to be registered in one or more parts of the register by virtue of having been registered in a part or parts of the register which have been closed, sub-divided or combined;*
- (g) *the recording in Welsh of titles, qualifications and other entries referred to in this paragraph in respect of those members of the professions regulated by this Order whose registered address is in Wales.*
- (4) The Privy Council, except where acting in accordance with a proposal made by the Council, shall consult the Council before making, varying or revoking any order under this article.
- (5) Before making any proposal referred to in paragraph (1) or (3), the Council shall consult representatives of any group of persons who appear likely to be affected by the proposed order.

From the 1999 Health Act section 60 (1) (b):

PART III

MISCELLANEOUS AND SUPPLEMENTARY

Miscellaneous

- Regulation of health care and associated professions.
60. - (1) Her Majesty may by Order in Council make provision-
- (a) modifying the regulation of any profession to which subsection (2) applies, so far as appears to Her to be necessary or expedient for the purpose of securing or improving the regulation of the profession or the services which the profession provides or to which it contributes,
- (b) regulating any other profession which appears to Her to be concerned (wholly or partly) with the physical or mental health of individuals and to require regulation in pursuance of this section.

A note about interpretation

This document is based on the decisions that were published by the Council in its "Key Decisions" document following its public consultation in summer 2002, along with development work undertaken since then with potential applicant occupations and the Department of Health. As a result of this development work, there are some areas where the Council's thinking has moved on, and consequently, there are differences between this document and "Key Decisions". The most obvious of these areas is that references to Codes of Conduct and Standards of Ethics have been replaced with references to Standards of Conduct, Performance and Ethics, which reflects the language of the Health Professions Order. No change that has been made affects the substance of the Council's approach. However, in the event of any perceived conflict between this document and "Key Decisions", this document should be relied upon.

The Health Professions Council, unlike its predecessor body, was expressly designed to be able to take on the regulation of health professions beyond the 12 covered at its inception, without the need for primary legislation.

The Health Professions Order 2001 said:

“Article 3 (17)—

The Council may—

- (a) make recommendations to the Secretary of State concerning any profession which in its opinion should be regulated pursuant to section 60(1)(b) of the Health Act 1999; and*
- (b) give such guidance as it sees fit to such persons as seem to it to have an interest in such regulation on the criteria to be taken into account in determining whether a profession should be so regulated.”*

In line with Article 3(b), this leaflet provides guidance for interested parties on the criteria that the Council will generally apply in deciding whether to recommend to the Secretary of State that it should begin regulation of a profession. If the Secretary of State decides that the Council should begin regulation, the Government will legislate accordingly. It is important to note that the legislative process can take considerable time, as it requires both Parliamentary time and specialist legal resources.

This may involve setting up a new Part of the Register, along with a new Protected Title. However, it may well make more sense for a profession to be regulated as a distinct subsection within an already extant Part of the Register, or for two or more new professions to be regulated together as a new Part of the Register. One of the aims of the legislation that created the Council was to limit its size, in order to ensure it was able to act effectively, and this will be taken into account by the Secretary of State. It would benefit applicant occupations, the Health Professions Council and others if, when groups representing practitioners working in similar fields, who might share common practices, were to liaise with each other at an early stage in order to explore the possibility of joint regulation.

The Council wishes to remind interested parties that the purpose of regulation is to protect the public. Although members of an occupation may consider that they will benefit from regulation by the Council, they will need to recognise that regulation will cost them money, time and effort. This document sets out some of the requirements that the Council makes of applicant occupations seeking regulation, and in doing so, gives an indication of the issues with which the Council is concerned. More information on the work of the Council and the requirements made of individual professionals can be found in the other leaflets and brochures that the Council publishes.

The Council will generally use a two part assessment as the primary means by which it will decide whether to recommend an occupation for regulation. When notifying its decision to the Secretary of State, the Council will also report on some additional considerations that are explained later on. In the first part of the

assessment, it will determine whether it considers a profession is, in principle, eligible to be regulated by the Health Professions Council. This part is designed to ensure that the Council retains a focus on the health, and to a lesser extent the social care, professions. In the second part, it will determine whether, in practice, it should regulate professions that it has determined to be eligible. Normally, the Council will generally apply the criteria in the two parts of the assessment to determine whether or not to recommend a profession for regulation. The Council will make its final decision on whether to recommend an applicant occupation for regulation by a formal vote at a Council meeting.

The Council expects that it will generally only assess professions to determine whether to recommend them for regulation if the professions have themselves applied to the Council to be regulated. However, the Council has legal powers to make recommendations even where a profession has not applied, which it could in principle make use of, if it felt this were necessary to protect the public.

The Council has decided that occupations consisting of only a small number of individuals should not be barred from regulation on this ground alone. However, size may be a consideration for the Secretary of State in deciding whether a successful applicant occupation should have its own Part of the Register, should join as a distinct subsection within an extant Part of the Register, or should join a new Part of the Register at the same time as one or more other successful applicant occupations.

Finally, the Health Professions Council may choose to appoint a Council member and a senior member of the executive staff to work with applicant occupations, to ensure effective communication.

Part A of the assessment

The Council will first assess whether an occupation is eligible for regulation. Only those occupations involving at least one of the following activities are eligible:

- Invasive procedures
- Clinical intervention with the potential for harm
- Exercise of judgement by unsupervised professionals which can substantially impact on patient health or welfare

Additionally, occupations where these activities are already regulated by other means will be ineligible. This includes occupations that already have a regulator (such as nurses and medical practitioners) or do not make independent clinical judgements. In general, the Council regulates health workers who are not otherwise supervised, practising autonomously, making professional and independent judgments on treatment, and taking full responsibility for their actions.

Part B of the assessment

The criteria that the Council will apply in Part B of the assessment were settled following a public consultation in the summer of 2002. The criteria will each have equal weight. Each occupation wishing to be regulated will be required to:

1. Cover a discrete area of activity displaying some homogeneity
2. Apply a defined body of knowledge
3. Practise based on evidence of efficacy
4. Have at least one established professional body which accounts for a significant proportion of that occupational group
5. Operate a voluntary register
6. Have defined routes of entry to the profession
7. Have independently assessed entry qualifications
8. Have standards in relation to conduct, performance and ethics
9. Have Fitness to Practise procedures to enforce those standards
10. Be committed to continuous professional development (CPD)

1. The occupation must cover a discrete area of activity displaying some homogeneity

This criterion covers **what a profession's scope of practice is**. The Council will assess applications for evidence that demonstrates that the applicant occupation practises activities that:

- Are distinctly its own
- Are common across the occupation
- Are distinct from the scope of practice of other occupations, although there may be some overlap

2. The occupation must apply a defined body of knowledge

The *body of knowledge* criterion covers **what a profession does**. Frequently, the *body of knowledge* of a health profession will overlap those of other professions. However, each profession that the Council regulates has its own distinct *body of knowledge* and applications will not be successful if the Council considers that the applicant occupation has not provided sufficient evidence to demonstrate that it, too, has a distinct *body of knowledge*.

3. The occupation must practise based on evidence of efficacy

This criterion covers **how a profession practises**. The Council recognises the centrality of evidence-based practice to modern health care and will assess applicant occupations for evidence that demonstrates that:

- Their practice is subject to research into its effectiveness. Suitable evidence would include publication in journals that are accepted as learned by the health sciences and/or social care communities

- There is an established scientific and measurable basis for measuring outcomes of their practice. This is a minimum—the Council welcomes evidence of there being a scientific basis for other aspects of practice and the *body of knowledge* of an applicant occupation
- It subscribes to the ethos of evidence-based practice, including being open to changing treatment strategies when the evidence is in favour of doing so

4. The occupation must have at least one established professional body which accounts for a significant proportion of that occupational group

This criterion covers **how a profession has established itself**. The Council will assess applications for evidence that there is at least one established professional body. The Council will assess the application for evidence that membership of the body or bodies accounts for a significant proportion—at least 25%—of the occupation's practitioners. Suitable evidence for the existence of established professional body or bodies would include:

- A constitution or rules
- Minutes
- Standing Orders for the body or bodies and committees
- Election Rules and results

Where there is more than one professional body or representative organisation for an applicant occupation, the Council will additionally seek evidence that all the bodies are involved in, and supportive of, the application process. The Council would welcome evidence of the existence of a steering group with representatives from all the bodies, and that a fair and effective decision-making process is in place. The Council would expect to work primarily with such a steering group and would also expect evidence that the steering group, and not an individual professional body, was involved in drawing up the application for regulation.

The Council will also seek evidence that practitioners who do not belong to the professional body or bodies or representative organisation(s) are also supportive of the application. If any of these practitioners are likely not to have followed the applicant occupation's entry routes as described in sections 6 and 7 below, then the Council will require information about likely grandparenting requirements.

5. The occupation must operate a voluntary register(s)

This criterion covers **how a profession accounts for its members**. The Council's Register is its primary mechanism for protecting the public. The Council will seek to assess whether workers in an applicant occupation have accepted the principles, benefits and obligations of registration, by enrolling on a voluntary register or registers. The Council will require evidence that the voluntary register(s) cover at least 25% of an applicant occupation's workforce. These requirements are a minimum and the Council would consider very favourably evidence of plans to inform an applicant occupation's practitioners of the consequences of regulation by the Council. Such plans should cover issues that will be of particular importance to those members, particularly:

- Fees and other potential financial implications
- Regulation of the practice of the profession's members. As explained in the introduction, members of the profession will be subject to the Council's regulatory authority, which it will exercise to protect the public.
- Arrangements for applying for entry to the Council's Register
- Protection of title
- Fees and other potential financial implications

The Council has published leaflets on these topics.

6. The occupation must have defined routes of entry

This criterion covers **how a profession ensures its practitioners have the requisite knowledge and skills on entry**. The Council will assess evidence of how entry to the applicant occupation is controlled. The Council will seek evidence that only individuals who have chosen defined routes of entry are recognised as being practitioners of the profession, in the eyes of educational institutions, employers, professional bodies and (where appropriate) the public at large. The Council will also assess evidence that the applicant occupation either already has a Subject Benchmark from the Quality Assurance Agency or equivalent body, or intends to work towards one as part of the process of becoming a regulated profession.

7. The occupation must have independently assessed entry qualifications

This criterion covers **how a profession ensures its recognised qualifications are valid**. The Council will require evidence that there are qualifications that are recognised as being a necessity for entry to the profession, awarded by recognised educational institutions and independently assessed and monitored through a system of quality control.

8. The occupation must have standards of conduct, performance and ethics

This criterion covers how a profession ensures high standards. The Council will assess evidence that an applicant occupation has written standards of conduct, performance and ethics, covering the behaviour it expects of practitioners. The standards should cover similar ground to the Council's standards, and include health, character and competence, among other topics.

9. The occupation must have Fitness to Practise procedures to enforce those standards

This criterion covers how a profession polices the behaviour of its practitioners. The Council will assess evidence that an applicant occupation has a system for disciplining practitioners on its voluntary register (including striking-off) when it is determined that they are unfit to practice by reason of:

- Incompetence
- Misconduct
- Health

The Council will assess evidence of written procedures covering the administration of the system, and requires applicant occupations to submit anonymised information regarding cases that have been dealt with through the system.

10. The occupation must require commitment to continuous professional development (CPD)

This criterion covers how a profession ensures its practitioners engage in life-long learning. The Council is committed to the principles underpinning CPD, and will be requiring all registrants to undertake CPD from 2006. Many of the currently regulated professions run CPD schemes at present. The Council will therefore be seeking evidence from applicant occupations that they are also committed to the principles of CPD. Suitable evidence would include written details of planned or existing CPD schemes.

Additional considerations

When the Council reports on its decision on whether to recommend an applicant occupation for regulation to the Secretary of State, it will also report on some additional considerations that the Secretary of State may wish to take into account in deciding how to proceed. It is important to understand that these considerations will not be taken into account by the Council in deciding whether to recommend an applicant occupation for regulation, as they do not directly relate to the Council's main objective of public protection. However, no such restriction exists on the Secretary of State, who is at liberty to take these considerations into account.

The additional considerations are:

- Impact on Council's ability to carry out its functions effectively
- Protected titles and transitional arrangements ("grandparenting")
- Views of others

Impact on Council's ability to carry out its functions effectively

The Council must try to ensure that changes to its constituent professions do not prevent it from being able to continue to carry out its core functions effectively. It will discuss this in its report to the Secretary of State accompanying its recommendation for an application. The most direct impact a profession is likely to have on the Council's operations is through the contribution of individuals to support its decision-making and operational processes.

The Council needs individuals from each of the regulated professions to work with it for it to be able to run its operational and decision-making processes. Without the support and time of individual practitioners from the professions, the Council cannot function effectively. The Council looks to each of the professions it regulates to supply competent individuals to act as Council and Committee Members and in supporting the Council's work in education and training and regulation of registrants.

Each new Part of the Register that is opened requires the appointment of three Council Members: a Registrant Member, an Alternate Member and a Lay Member. Initial appointments to each of these posts will be made by the Secretary of State. Subsequently, the Registrant and Alternate Member posts will be subject to elections, as is the case with the current Parts of the Register. The Lay Member will continue to be appointed by the Privy Council. The increase in the Council's size that results from the opening of a new Part of the Register will be taken into account by the Secretary of State in deciding how to proceed, should the decision be to regulate an applicant occupation.

An additional consideration is that the Council's work must be undertaken in all of the four home countries of the UK: England, Scotland, Wales and Northern Ireland.

Every applicant occupation should set out how they expect to ensure that they are able to contribute, on an ongoing basis, the requisite number of competent staff to enable the Council to continue to discharge its functions effectively (but see the note at the beginning of this section).

It should be noted that the substantial personnel requirements of the Council's running mean that applicant occupations with fewer than about 1,000 members may find it particularly difficult to make this case. However, the Council does not believe that, simply because an applicant occupation has a small number of members, it should not be regulated, and indeed the Council currently regulates a number of professions with small numbers of members.

These are:

- Arts Therapists (about 2,000)
- Clinical Scientists (about 3,300)
- Orthoptists (about 1,300)
- Prosthetists and Orthotists (about 800)

A number of occupational groups seeking regulation in the past have determined that their numbers were too low to support regulation as a distinct profession. Some have chosen, therefore, to seek regulation as a distinct new subsection within a profession already being regulated. Clinical Scientists and Arts Therapists are both examples of professions currently regulated by the Council that cover several modalities.

Protected titles and transitional arrangements ("grandparenting")

Each of the professions regulated by the Council has at least one protected title. Only individuals on the Council's Register are entitled to make use of this title; anyone else doing so is committing a criminal offence. The Council expects applicant occupations to suggest a title for protection in this manner as part of their application, and will discuss its views of the designated title in its report to the Secretary of State accompanying its recommendation.

The key principles to consider are as follows:

- The names of the Parts and Subsections of the Register are the titles that are protected, with some variations. The Council wishes to see these titles become the commonly accepted descriptors for the professions it regulates, both now and in the future.
- The Council thinks that the more titles it tries to protect, the less clear the public will be about who is on the Register and who is not, and this is supported by the market research that the Council has undertaken as part of its public consultation in 2002.
- The Council does, however, protect some titles that are in very common use but are not Parts or Subsections of the Register. These are Art Psychotherapist (used by many Art Therapists), Dietician (a common alternate spelling of Dietitian), Physical Therapist (a common variant of Physiotherapist), and Speech Therapist (a common variant of Speech and Language Therapist).
- Finally, the Council has decided not to make Arts Therapist (the name of a part of the Register) a Designated Title, as it is not in common use as a title.

When the Council begins regulation of a profession that it had not previously regulated, it will also begin protection of at least one title that was not previously protected. This could result in people who have previously been using that title in their professional practice being prevented from doing so in the future, because they are not on the Council's Register. Normally, the only way in which someone can gain entitlement to the use of a protected title is through passing a course that the Council has approved.

However, it may well be inappropriate to expect someone who has been practising under a title for many years safely and effectively to take such a course in order to continue their practice.

Consequently, the Council has provision to institute transitional arrangements (also called grandparenting) for those professionals who are not currently on the applicant occupation's register(s) to join the Council's Register without passing an approved course. Only professionals who can demonstrate that they are fit to practise will be able to gain entry to the Register in this way. The determination of who can enter via transitional arrangements is a complex area, and further information is available from the HPC in separate documents that specifically with this issue.

Transitional arrangements can be controversial, as they raise issues of public protection and inequitable treatment of groups of professionals. It is therefore important that applicant occupations consider the likely grandparenting requirements they will have, including reading carefully the other information that the HPC has provided, estimating the numbers of individuals likely to be affected, making a careful assessment of likely areas for controversy, and developing a strategy that takes such areas into account.

Views of others

The Council will not be running a public consultation on behalf of the applicant occupation. There is no legal requirement to do this, and a public consultation is likely to be held for any applicant occupation whose application is approved by the Secretary of State. However, applicant occupations are encouraged to communicate with stakeholders during the application process, especially in view of the criteria 4 and 5 above.

Although the Council will not be running a consultation, it will not simply ignore any written representations that it receives in the course of the application process. It will include a summary of any submissions from other organisations or individuals regarding the regulation of the applicant occupation in its report to the Secretary of State. The Council will consider all such submissions, and will consider submissions from the following organisations and individuals as having particular weight:

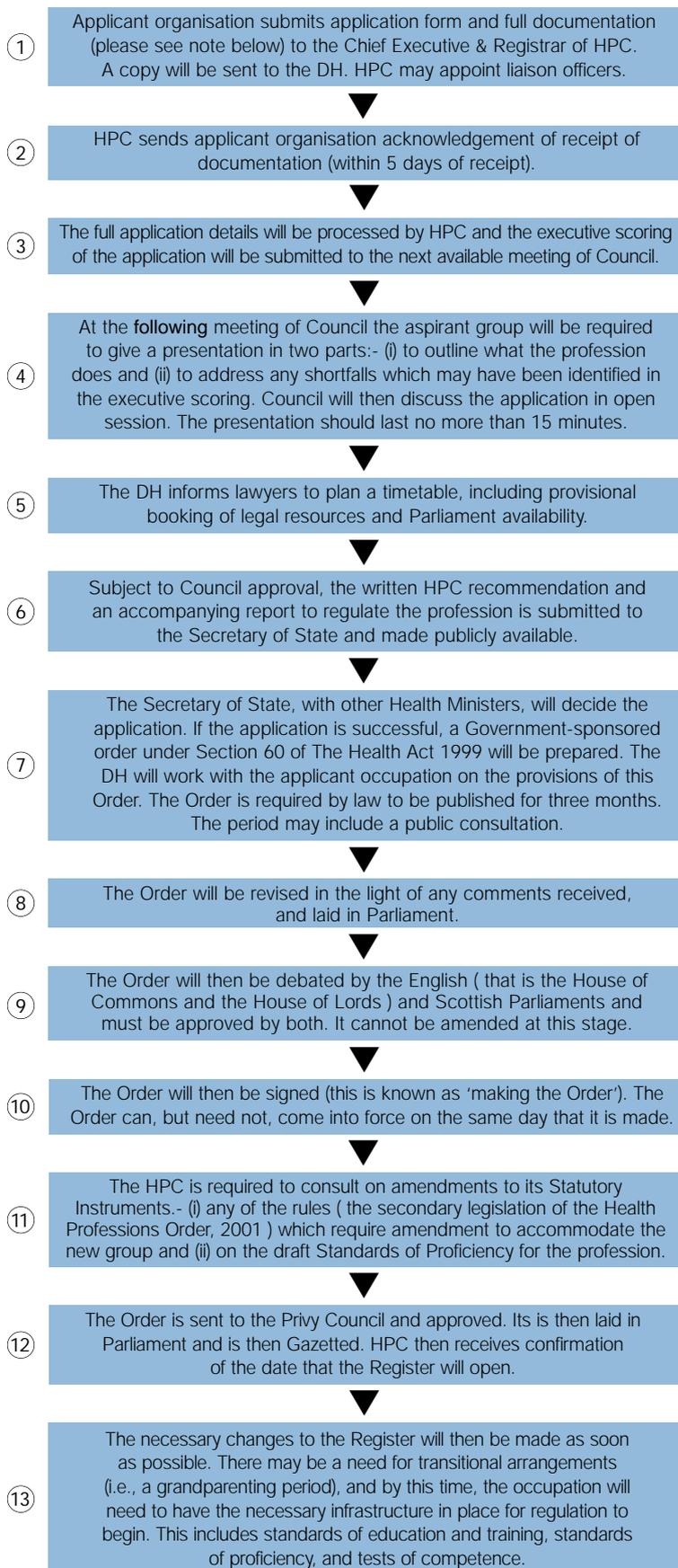
- Patients, users and clients
- Other regulated professions
- Local, national and central government departments and bodies
- Elected and other political representatives
- Practitioners of the applicant occupation

The Council will take into account both supportive and opposing representations. Particular attention will be paid to comments on the implications of regulation for public protection.

The application process

Flowchart for a successful application

This flowchart demonstrates a successful application for regulation by the HPC:



*Meeting dates of Council are available on the Website - www.hpc-uk.org

The application process

The application should consist of 62 copies (each bound in a file) of the summary of the application, and the application form. Each copy must contain a one page summary of how the applicant occupation meets each of the 10 criteria in Part B of the Assessment.

In addition, the full submission (3 copies) of the application must be submitted. The full submission should consist of the application form, evidence of how each of the criteria are met and relevant supporting documentation.

As an independent regulator HPC will not engage in liaising with other authorities or organisations on behalf of the applicant profession.

Applicant professions are strongly advised to make separate contact with the Department of Health.

Meeting dates of Council

Please note that the Council dates are adhered to where possible. On occasions it may be necessary to change the date and venue for a meeting, the decision to do this rests with the Council. The HPC website (www.hpc-uk.org) provides up to date information on meetings of Council.

Generally, Council will consider only one application from an aspirant profession/organization at any meeting. On submission of a formal application, the aspirant profession/organization will be advised of the proposed timetable involved.

This section sets out answers to the most frequently asked questions about applications for regulation by the Council.

How should an applicant occupation liaise with the HPC?

The Council may choose to assign a Council Member and a senior member of its staff to liaise with each applicant occupation. To arrange this, please contact the Council in writing.

Will there be an appeals process if an application fails?

The Council will not hold an appeals process. However, it is for the Secretary of State to decide whether a particular profession should be regulated by the Council. It should also be noted that an occupation is able to re-apply if an application fails, but the Council's decision will stand unless new or changed information is presented.

Will the applicant occupation have to pay an application fee?

No. There is no fee to pay at any stage. However, there are fees payable by individual members of all professions regulated by the Council in relation to registration.

Does the HPC fund the costs of an application?

No. While there is no fee to pay at any stage, the Council cannot fund the costs of applications. A potential applicant occupation should take the likely costs of applying into consideration before deciding to seek regulation.

Does every part of the application have to be completed?

Yes. However, the Council will not necessarily always decide to recommend against regulation of a profession if its application does not satisfy all the criteria.

Does the applicant occupation have to hold a ballot of its members?

While there is no legal obligation to do this, an application that is supported by members of the applicant occupation is more likely to succeed. A ballot, preferably following a communications campaign that sets out all the consequences of regulation for members, is excellent evidence of this.

Will the Council help my applicant occupation communicate about regulation to members?

The Council welcomes the opportunity to assist in this, and can supply speakers, write articles, provide leaflets and other documents, participate in interviews and review copy, subject to resource availability.

Will members of the applicant occupation have to have police checks?

The Council requires all its registrants to declare any cautions or convictions on registration, and runs checks on professionals returning to practice who have left the profession for a minimum period of time (currently five years). It should be noted that courses that have a component of clinical practice check students' police records as a matter of routine.

Will the applicant occupation continue accrediting courses and institutions?

The Council expects to work with education providers in approving courses. It also expects to work with other bodies, such as the Quality Assurance Agency and Workforce Development Councils. So far as possible, consistent with its obligations, the Council will seek to minimise duplication of effort. Full details of how the approvals process works for courses leading to registration with HPC may be found on the website at www.hpc-uk.org/education

If my occupation is regulated, does the HPC replace my professional body?

No. The Council is a regulator whose legal obligation is public protection, while professional bodies have quite different roles and responsibilities, not the least of which is representation of the interests of their members.

Do all the representative organisations working with an applicant occupation have to agree to regulation for an application to succeed?

No, although it is very much preferable if most do. However, if there is significant dissent among representative organisations, if the organisations have not been consulted and if there is no steering group or other joint working arrangements for the application process, the Council is likely to recommend against an application. Additionally, it will discuss any dissenting representations in its report to the Secretary of State.

My applicant occupation is unlikely to have a new Part of the Register for itself alone: it will either join a currently regulated profession or other unregulated professions. Does this mean it won't be represented or that the occupation will not be self-regulating?

Absolutely not. Registrant Council Members are elected, and the electorate is the whole of the relevant Part of the Register. Additionally, uni-professional matters handled by the HPC are always dealt with by the relevant members of individual professions, and not merely by registrants in the relevant part of the Register.

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Please return your completed application form and
any additional information to:



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London SE11 4BU

[t] 020 7582 0866 [f] 020 7820 9684

[e] education@hpc-uk.org [w] www.hpc-uk.org

document reference: 20041201bEDUSTRATGuidance for Aspirant Groups, December 2004