POLICY NOTE

THE GENERAL DENTAL COUNCIL (FITNESS TO PRACTISE) (AMENDMENT) RULES ORDER OF COUNCIL 2016

2016 No. 902

The above Instrument was made in exercise of powers conferred by sections 27(6A), 27A(13), 27AA, 27AB(1), 36N(6A), 36O(13), 36OA, 36OB(1), 50C(5) and (6) of, and paragraph 2(1)(b) of Schedule 3 and paragraph 2(1)(b) of Schedule 4B to the Dentists Act 1984. The Instrument is subject to negative procedure.

Background

1. The rules scheduled to and approved by this Instrument, amend General Dental Council (GDC) Rules in relation to fitness to practise, education, registration and registration appeals. These Rules have been made by the GDC in exercise of powers conferred by the Dentists Act 1984 ("the Act"). The 1984 Act was amended this year by the General Dental Council (Fitness to Practise etc) Order 2016 (S.I. 2016/496) ("the 2016 Order"), which came into force on 13th April 2016.

2. The provisions in the 1984 Act relate to the regulation of dentists and dental care professionals (clinical dental technicians, dental hygienists, dental nurses, dental technicians, dental therapists, and orthodontic therapists) by the GDC and are reserved to Westminster. Those relating to regulation in Scotland of dental nurses, dental technicians, clinical dental technicians and orthodontic therapists are considered to fall within the legislative competence of the Scottish Parliament. This is because these professions have been regulated since the coming into force of the Scotland Act 1998.

Policy Objective

3. The policy behind this instrument is to enable the GDC to take timely, fair and proportionate action through their fitness to practise processes when dental professionals do not meet the required standards.

4. The Instrument provides the GDC with new powers in respect of fitness to practise functions and include:

- To provide for Case Examiners to consider allegations of impairment of fitness to practise and decide how a case should proceed at the end of the investigation stage of the fitness to practise process. It is anticipated that this will lead to the swifter resolution of fitness to practise cases.
- To give Case Examiners power to agree undertakings with registrants (a current function of the Investigating Committee). This means in appropriate cases, instead of referring a person to a full fitness to practise hearing, they can instead agree with the registrant, certain conditions of practise.
- To provide for the review of cases closed at the end of the investigation stage.
- To provide for the review of a determination that an allegation does not amount to an allegation of impairment of fitness to practise.
- To review a decision to issue a warning to a registrant.

6. Further details on the proposed changes are set out in the attached Department of Health Explanatory Memorandum, in paragraph 7, headed "policy background".

Consultation

7. The GDC carried out a public consultation between 17 November 2014 and 12 January 2015. An online consultation survey was published on the GDC's website at http://gdc-uk.org/GDCcalendar/Consultations/Pages/Consultation-on-changes-to-the-GDCs-Fitness-to-Practise-Rules-2006.aspx and a number of interested parties were informed, including patient groups, professional bodies and trades unions, and employers, on 17 November 2014.

8. The GDC received 11 responses from organisations and 30 from individuals. The proposals were generally well supported and there were no major areas of disagreement. The majority of the 41 respondents to the consultation were supportive of the proposals and considered that the changes would produce significant improvements to the way GDC manages cases (key points detailed in paragraphs 8.5 – 8.9 of the DH Explanatory Memorandum).

Guidance

9. The GDC will publish guidance on its website in relation to the measures introduced by the Instrument including an explanation of undertakings and when they might be agreed and of the role the Case Examiners will have within the GDC's regulatory regime. Guidance will also be drafted specifically for the Case Examiners explaining their functions and role in greater detail (these guidance documents will also be published). Information will be provided to those registrants who are given a warning following an investigation on the procedure for seeking a review. Information about the review process as it applies at other decision points will be provided to both complainants and registrants.

Impact Assessment and Financial Implications

10. The impact on business is expected to be beneficial. An impact assessment was carried out and submitted in respect of the 2016 Order (S.I. 20016/496). This indicated a net benefit to business over 10 years of approximately £21 million, approximately 2m per annum. There is no impact on the public sector, charities or voluntary bodies.

Monitoring and Review

11. The Professional Standards Authority for Health and Social Care (PSA) conducts annual performance reviews of each of the health and care professional regulatory bodies. It is anticipated the PSA, when performing such reviews, will take into account the changes to the fitness to practise procedures introduced by this Instrument and provide insight into the effect of these measures. The Department will also keep these measures in view as part of its role in developing and maintaining the professional regulatory landscape.

Scottish Government Health and Social Care Directorates
15 June 2016