EXPLANATORY MEMORANDUM TO

THE GENERAL MEDICAL COUNCIL (AMENDMENTS TO MISCELLANEOUS RULES AND REGULATIONS) ORDER OF COUNCIL 2015

2015 No. 1964

THE GENERAL MEDICAL COUNCIL (LEGAL ASSESSORS AND LEGALLY QUALIFIED PERSONS) RULES ORDER OF COUNCIL 2015

2015 No. 1958

THE GENERAL MEDICAL COUNCIL (CONSTITUTION OF PANELS, TRIBUNALS AND INVESTIGATION COMMITTEE) RULES ORDER OF COUNCIL 2015

2015 No. 1965

AND

THE GENERAL MEDICAL COUNCIL (CONSTITUTION OF THE MEDICAL PRACTITIONERS TRIBUNAL SERVICE) RULES ORDER OF COUNCIL 2015

2015 No. 1967

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department of Health and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument(s)

2.1 These four instruments amend various General Medical Council (GMC) Rules to implement the amendments made to the Medical Act 1983 by the General Medical Council (Fitness to Practise and Over-arching Objective) and Professionals Standards Authority for Health and Social Care (References to Court) Order 2015 ("the 2015 Order"):

- The GMC (Amendments to Miscellaneous Rules and Regulations) Rules Order of Council 2015 amends the GMC's Fitness to Practise Rules 2004 to establish the new Medical Practitioners Tribunal Service (MPTS). It also amends Rules which relate to the investigation of fitness to practise cases and proceedings before the Medical Practitioners Tribunal and the Interim Orders Tribunal.
- The GMC (Legal Assessors and Legally Qualified Persons) Rules Order of Council 2015 sets out the role and function of legal assessors (or as the case may be, a legally qualified person), which is primarily to give advice and guidance to the Registration Panels, Interim Orders Tribunal and Medical Practitioners Tribunal.
- The GMC (Constitution of Panels, Tribunals and Investigation Committee) Rules Order of Council 2015 provides for the constitution of the Registration

Panel and Registration Appeals Panel, Interim Orders Tribunal and Medical Practitioners Tribunal and the Investigation Committee of the General Medical Council.

- The GMC (Constitution of the Medical Practitioners Tribunal Service) Rules Order of Council 2015 makes provisions for the constitution of the MPTS, setting out the requirements, functions, and terms of office, and rules for appointment of members.

2.2 These Rules, scheduled to the Orders of Council, implement the amendments to the Act that enhance and protect the independence of decision making at the adjudication stage of fitness to practise procedures involving doctors by establishing the MPTS in statute. They also:

a) modernise, simplify and clarify a number of aspects of the legislative framework surrounding fitness to practise,

b) amend the Professional Standards Authority for Health and Social Care's (PSA) grounds for referring final fitness to practise decision to the High Court for consideration,

c) provide a right of appeal for the GMC against final fitness to practise decisions on the same grounds.

3. Matters of special interest to Parliament

Matters of special interest to the [Joint Committee on Statutory Instruments]

3.1 None.

Other matters of interest to the House of Commons

3.2 As the four instruments are subject to negative resolution procedure and have not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

4.1 The Medical Act 1983[1] "the Act" contains the legislative framework for the regulation of medical practitioners registered with the statutory regulator, the General Medical Council ("the GMC") in the UK. The GMC sets the standards of conduct, performance and behaviour that doctors are expected to meet in their practice.

4.2 Where those standards are not met, provision is made in the Act itself, and rules made under it, to enable the GMC to investigate and, if necessary, to restrict a doctor's practice. These procedures are known as the fitness to practise procedures.

4.3 The Act was most recently amended by the 2015 Order.

4.4 The amendments made to the Act by the 2015 Order provide the basis for the amendments to the GMC rules governing fitness to practise procedures, and in new rules, which for example set up the newly constituted Medical Practitioners Tribunals which replace the Fitness to Practise Panels.

[1] Medical Act 1983 c.54. http://www.legislation.gov.uk/ukpga/1983/54/contents

4.5 The fitness to practise procedures are set out in more detail in the General Medical Council (Fitness to Practise) Rules 2004[2] ("the 2004 Rules"). The 2004 rules have been amended by the rules scheduled to the General Medical Council (Amendments to Miscellaneous Rules and Regulations) Order of Council 2015.The GMC is required to both investigate fitness to practise concerns as well as to constitute fitness to practise panels to consider the evidence and adjudicate on whether a doctor's fitness to practise is impaired and, if so, whether any restriction on their practice is required.

4.6 The 2015 Order also made amendments to section 29 of, and inserted a new section 29A into, the NHS Reform and Health Professions Act 2002[3]. Under these provisions, the Professional Standards Authority for Health and Social Care (the Authority) can refer final decisions reached by Medical Practitioners Tribunals (previously called Fitness to Practise Panels) to the relevant Court (e.g. the High Court) if they considered that the decision was unduly lenient. The relevant Court may dismiss the case, quash the decision, substitute a new decision or remit the case back to the Medical Practitioners Tribunal which made the original decision.

5. Extent and Territorial Application

5.1 The four instruments extend to the whole of the United Kingdom.

5.2 The four instruments apply to the whole of the United Kingdom.

6. European Convention on Human Rights

6.1 As the four instruments are subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

7.1 Reform of the GMC's adjudication function has been a long term policy objective. The Fifth Report of the Shipman Inquiry recommended that the adjudication stage of the fitness to practise procedures be undertaken by a body independent of the GMC and that this body should appoint and train lay and medically qualified panellists and take on the task of appointing case managers and legal assessors as well as providing administrative support to hearings.

7.2 Following the publication of the White Paper, *Trust, Assurance and Safety* in 2007[4], the Health and Social Care Act 2008[5] established an independent body called the Office of the Health Professions Adjudicator (OHPA) to adjudicate on fitness to practise cases involving doctors and opticians. However, following consultation in 2010, it was decided not to proceed with the establishment of OHPA and to instead strengthen the independence of decision making by fitness to practise panel and interim orders panels while retaining the adjudication function within the GMC's

[2] Scheduled to S.I. 2004/2608. http://www.gmc-uk.org/about/legislation/ftp_legislation.asp
[3] NHS Reform and Health Care Professions Act 2002 http://www.publications.parliament.uk/pa/cm200102/cmbills/047/2002047.pdf
[4] Trust, Assurance and Safety –The Regulation of Health Professionals in the 21st Century, 2007, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/228847/7013.pdf
[5] Health and Social Care Act 2008, http://www.legislation.gov.uk/ukpga/2008/14/pdfs/ukpga_20080014_en.pdf

governance structure and modernise the adjudication procedures. Parliament abolished OHPA in the Health and Social Care Act 2012[6].

7.3 These GMC Rules Orders will amend the GMC Rules to implement the following amendments made via the 2015 Order, namely :

1. *Establishing the MPTS as a statutory committee of the GMC*

In particular by:

a) establishing the new Medical Practitioners Tribunal Service (MPTS) as a statutory committee of the GMC and its responsibility to arrange hearings before Medical Practitioners Tribunals.

b) implementing the MPTS's powers, responsibilities and duties, and strengthens the separation between the GMC's investigation and adjudication arms, and places Medical Practitioners Tribunals and Interim Orders Tribunals under the administrative control of the MPTS.

2. *Modernising the MPTS' adjudication function including strengthening the case management arrangements*

In particular by:

a) giving effect to the over-riding objective of the GMC when making rules relating to appointments to the MPTS and its tribunal procedures will be to secure that cases are dealt with fairly and justly.

b) to enhance pre-hearing case management arrangements the MPTS will be able to appoint case managers in fitness to practise proceedings, including using the chair of a Medical Practitioners Tribunal (where legally qualified) as case manager.

c) further supporting effective case management the MPTS by giving it the power to award costs, draw adverse inferences and refuse to admit evidence following a party's failure to comply with rules or directions or otherwise award costs for unreasonable behaviour in the conduct of the proceedings.

d) to support efficiencies in the hearing process, case managers will be able to adjourn hearings that are part-heard.

e) enabling the MPTS to appoint legal assessors in fitness to practise proceedings. The MPTS must appoint a legal assessor where the Tribunal chair is not legally qualified and will have discretion to do so in other cases. A legally qualified Tribunal chair will be required to inform the parties of certain advice given to the other tribunal members, including while they are considering issues in private.

f) enabling reviews without a hearing, where both parties are in agreement as to the outcome, subject to the power for a chair or tribunal to convene a hearing where they consider the agreed outcome is not sufficient to protect the public. This will also apply to reviews of interim orders.

[6] Health and Social Care Act 2012, http://www.legislation.gov.uk/ukpga/2012/7/contents/enacted

g) improving efficiency the GMC may provide notification of decisions relating to fitness to practise by email rather than letter, when an email address has been provided for this reason.

3. Addressing patient safety issues and enhancing confidence and accountability

In particular by:

a) implementing amendments to the Act in relation to professional performance assessments and health assessments, including provision for directions by Medical Practitioners Tribunals for non-compliance with such assessments to include up to 12 months suspension or up to three years conditional registration, and where relevant, corresponding amendments are made for knowledge of English assessments.

b) enable the GMC to request the disclosure of information or documents from a practitioner to assist with the investigation. Where a doctor fails to comply with such a request, the GMC will be able to refer the case to the MPTS for decisions as to whether to suspend that doctor or impose conditions for non-compliance on similar terms to those applicable to non-compliance in relation to assessments.

4. Clarifying a number of areas of the Medical Act to make the procedures simpler to understand

In particular by:

a) providing in Rules for undertakings to be agreed between the GMC and the practitioner during a fitness to practise hearing, after a finding of impairment has been made, and for a tribunal to take into account such undertakings.

b) enabling greater flexibility when carrying out professional performance and health assessments, enable individual assessors instead of teams and to enable the Registrar to direct the form and content of the assessment.

c) including specific rule-making powers in relation to allegations concerning facts that are more than five years old not to be investigated, except where investigation would be in the public interest.

d) where the GMC conducts provisional enquiries to assess whether a full investigation is necessary, remove the requirement to disclose details to the doctor's employer. The GMC will still be able to disclose information to an employer at this stage where considered necessary to do so.

Consolidation

7.4 The England & Wales, Northern Ireland and Scottish Law Commissions completed a wider review of the regulation of health and care professionals and made recommendations to consolidate and simplify the legislative framework. The Government is committed to consolidating and simplifying the legislation around health and care professional regulation when Parliamentary time allows. The Law Commissions' recommendations included enabling greater separation of functions in the fitness to practise procedures between investigation and adjudication as well as other modernisations. We consider that making these amendments now in relation to the way that fitness to practise decisions are made about doctors is a priority.

8. Consultation outcome

8.1 From 25th March to 20th May 2015, the GMC consulted on a UK-wide basis, on changes to the rules they follow when investigating complaints and the adjudication of making decisions at hearings about doctors.

8.2 The focus of the consultation was to complete a reform programme to improve and modernise how the GMC carry out investigations and adjudication, implementing the changes the UK Government made to the Medical Act 1983 in March 2015.

8.3 It covered six different areas:

- Formally separating the GMC's investigation and adjudication functions
- Streamlining and modernising the GMC's hearing process
- Making case management more effective
- Removing the need for parties to attend review hearings
- Making the GMC's investigation processes simpler and more effective
- Improving compliance and making assessments more effective

8.4 The GMC received 109 responses to their questionnaire: 71 were completed on their e-consult website; and 38 sent or emailed the consultation form to the GMC for uploading to the e-consult site.

8.5 The majority of respondents were in favour of the proposals saying they were logical given the operational separation of the GMC's investigation and adjudication functions. Respondents also welcomed the increased transparency provided by publishing criteria for the appointment of legally qualified chairs, and the provisions about these chairs giving legal advice and separating out the notice of allegation and notice of hearing.

8.6 A full GMC consultation response report[7] has been published at: http://www.gmc-uk.org/S60_Consultation_outcome_report.pdf_62959778.pdf

9. Guidance

9.1 The GMC will publish guidance as appropriate.

10. Impact

10.1 The impact on business, charities or voluntary bodies is minimal as it relates to the processes for fitness to practice investigations and hearings for individual registrants.

10.2 The impact on the public sector is minimal as it relates to the processes for fitness to practise investigations and hearings for individual registrants.

10.3 An Impact Assessment has not been prepared for these instruments.

11. Regulating small business

11.1 The legislation does not apply to activities that are undertaken by small businesses.

[7] Consultation report: Reforming our fitness to practise investigation and adjudication processes, 2015, http://www.gmc-uk.org/S60_Consultation_outcome_report.pdf_62959778.pdf

12. Monitoring & review

12.1 The Professional Standards Authority for Health and Social Care (PSA) conducts annual performance reviews of each of the health and care professional regulatory bodies, including the GMC. It is anticipated the PSA, when performing such reviews, will take into account the changes 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 the professional regulatory landscape.

13. Contact

13.1 Robert Duff at the Department of Health, Tel: 020 7210 5944 or email: robert.duff@dh.gsi.gov.uk, can answer any queries regarding the instrument.