EXPLANATORY MEMORANDUM TO

THE GENERAL MEDICAL COUNCIL (FITNESS TO PRACTISE) (AMENDMENT) RULES ORDER OF COUNCIL 2009

2009 No. 1913

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

2.1 The Rules scheduled to this Order amend Rules made by the General Medical Council ('the GMC') which make provision for the procedures to be followed in relation to their fitness to practise proceedings.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Context

4.1 GMC governance changes introduced by the General Medical Council (Constitution) Order 2008 (SI 2008/2554) replaced the office of President of the GMC with the post of Chair. The current amendments to the General Medical Council (Fitness to Practise) Rules 2004 (scheduled to SI 2004/2608) reflect this and other policy changes.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 As this instrument is 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 The General Medical Council is the independent regulator for doctors in the UK. Its statutory purpose is to protect, promote and maintain the health and safety of the public by ensuring proper standards in the practice of medicine. The current Rules Order relates to its procedures for regulating fitness to practise.

7.2 These procedures were introduced in November 2004, following extensive consultation, with the bringing into force of relevant sections of the Medical Act 1983, accompanied by the GMC (Fitness to Practise) Rules 2004 (scheduled to S.I.2004/2608) ("the Rules").

7.3 The Rules have since been extended to allow for agreed disposal of complaints at the investigation stage ("consensual disposal") by way of undertakings. The civil standard of proof has also been introduced to the handling of evidence. Further improvements were identified from operational experience and are given effect in the Rules scheduled to the current Order.

7.4 The GMC's objectives in seeking the changes detailed below are:

a. ensuring that their fitness to practise procedures are fair, objective, transparent and free from unlawful discrimination;

b. ensuring that their fitness to practise procedures are effective; a number of the proposed amendments are intended to address ambiguities in the current framework which potentially jeopardise the effective management and progression of cases through GMC's procedures;

c. ensuring the efficiency of GMC's procedures, for example, by removing the requirement for hearings which do not add any value to the process and which do not contribute to patient safety.

- **Details of the proposed amendments to the Rules**

Amendment of rule 4

7.5 This gives the Registrar a power to filter out vexatious complaints on initial consideration. Criteria will be developed and consulted on as to the use of this power, but it is intended to avoid potentially resource-intensive processing of the type of complaint involving, for example, an unreasonable number of complaints about a single doctor which do not raise concerns about his fitness to practise. Rule 4 is also amended to give the Registrar an express power to carry out preliminary investigations before determining whether or not to investigate a complaint about events allegedly occurring more than five years ago.

Amendment of rule 11

7.6 This replaces 'as reasonably practicable' for 'as practicable' to ensure consistency with the wording used elsewhere in the Rules.

Substitution of rule 12

7.7 This extends the circumstances in which a case may be reviewed and gives the Registrar the power to review investigation stage decisions, removing the President's former powers of review. It also clarifies the categories of decision which may be reviewed.

7.8 The grounds that may trigger a review will be extended to cover any case in which there is reason to believe the decision is, or may be, "flawed" either procedurally, legally or factually. This is wide enough to cover cases in which the administrative handling has resulted in a flawed decision, as well as cases in which there has been an error of judgement or reasoning on behalf of the decision-maker. The existing ground of "new evidence or information" is retained; and it remains the case that the review must be necessary for the protection of the public, prevention of injustice to the practitioner, or otherwise in the public interest.

7.9 The substituted rule also introduces a time limit: a decision would not be reviewed more than two years after it was made except in exceptional circumstances. The GMC believes that this is a proportionate response, providing fairness and a degree of certainty to doctors undergoing the fitness to practise procedures, while allowing the GMC to take action, where necessary, in the public interest.

New rule 13A

7.10 This introduces an express power to require a doctor to undergo a health or performance assessment following referral to a Fitness to Practise panel.

Amendment of rule 17

7.11 This clarifies that the Fitness to Practise panel should hear submissions on the imposition of an immediate order following a finding of impairment and decision to impose a sanction.

New rule 21A

7.12 This clarifies the GMC's current procedure for hearings which combine both a review hearing and the hearing of new allegations.

Substitution of rule 28

7.13 This makes express provision to cancel an Investigation Committee hearing when, for example, a doctor who initially declined to accept a warning, subsequently confirms that he is willing to accept one to avoid unnecessary hearings.

7.14 The substituted rule also provides that, on the cancellation of a referral to a Fitness to Practise panel or to the Investigation Committee, the case may be remitted to the case examiners who, in addition to the power to conclude the case, may invite the doctor to accept a warning or agree undertakings.

Amendment of rule 29

7.15 This provides that the power to postpone hearings lies with a member of the Investigation Committee, rather than the President.

Substitution of rule 40

7.16 This introduces new provisions for the service of notice and documents, so that notice may be served on a practitioner's solicitor as well as on the practitioner's registered address when the doctor is represented. This will facilitate the effective service of documents on doctors in certain circumstances. It also introduces a new provision to allow for the service of notice and documents by electronic mail.

Amendments relating to Panel Undertakings

7.17 Rule 17(2)(m) provides that a Fitness to Practise panel may take account of any written undertakings entered into by the practitioner so as to make it clear that panels can only enter into binding written undertakings at stage three of the adjudication process, following a finding of impairment.

7.18 A new rule 37A is also inserted in order to provide an express framework for managing undertakings agreed at the adjudication stage, in order to bring them in line with undertakings agreed at the investigation stage.

Terminology

7.19 The definitions of 'lay' and 'practitioner' are amended to reflect the removal of the concept of limited registration (rule 2). The reference to 'President' in the Rules is removed (rule 2) to reflect the role of President has been replaced by Chair of Council and that the Chair does not exercise any casework functions. References in the Rules to 'GMC registration number' are replaced by the term 'GMC reference number' which is the official GMC terminology for a doctor's unique identifier so as to bring the terminology in the Rules in line with other rules, regulations and guidance produced by the GMC (rule 9, amending rules 17, 22, 24 and 27 of the Rules).

- ***Consolidation***

7.20 The rules contained in this instrument amend the General Medical Council (Fitness to Practise) Rules 2004.

7.21 There are no plans to consolidate the Rules.

8. Consultation outcome

8.1 The GMC consulted for a period of two months from 19 March to 22 May 2009. Details of the consultation were circulated to around 150 key interest groups. Details of the consultation were also published on the GMC's website. In addition, during the consultation the GMC also held meetings with the Medical Defence Union and the Medical Protection Society.

8.2 The GMC received 43 responses; 28 responses were from organisations which included medical defence organisations, patient organisations, the medical royal colleges and other healthcare organisations; 15 responses were received from individual doctors, lawyers, GMC panellists and members of the public.

8.3 The majority of responses were generally supportive of the package of proposed amendments. Many of the proposed amendments are of a fairly technical nature and attracted relatively little comment. However, a number of organisations, in particular the medical defence organisations made detailed comments on certain proposals.

8.4 As a result of responses to the consultation the GMC has made a number of changes to the draft amendment order.

- The GMC has decided not to proceed with a proposed amendment to rule 3(5) regarding the appointment of performance advisers.
- The wording of rule 12 has been revised to emphasise the two-stage test for review decisions.
- The wording of rule 40 has been revised to highlight that service on solicitors or a defence organisation must be by prior agreement.
- The wording of rule 28 has been amended to qualify the GMC's powers following the cancellation of a referral to a hearing.

8.5 A detailed explanation of the GMC's policy response to the opinions expressed in response to the consultation has been published on the GMC's website http://www.gmc-uk.org/about/council/papers/2009_07.asp.

9. Guidance

9.1 The Department of Health has not issued any guidance in relation to this Order.

9.2 The General Medical Council publish guidance relating to its Fitness to Practise Rules on its website

10. Impact

10.1 There is minimal impact to business, charities or voluntary bodies. There is no negative impact on equality issues.

10.2 There is no impact on the public sector.

11. Regulating small business

11.1 The legislation does not apply to small businesses.

12. Monitoring and Review

12.1 The intended outcome of the changes is to provide greater clarity and fairness to the Fitness to Practise procedures for example by extending the power to review decisions at the investigation stage and to filter out vexatious complaints. As with all GMC procedures, the impact of the proposed changes will be subject to ongoing audit through the GMC's quality assurance process.

13. Contact

13.1 Mike Lewis at the Department of Health Tel: 0113 254 6146 or email: Mike.lewis@dh.gsi.gov.uk can answer any queries regarding the instrument.