EXPLANATORY MEMORANDUM TO THE GENERAL MEDICAL COUNCIL (FITNESS TO PRACTISE AND CONSTITUTION OF PANELS AND INVESTIGATION COMMITTEE) (AMENDMENT) RULES ORDER OF COUNCIL 2013

2013 No. 815

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 General Medical Council (GMC) is the regulator for doctors in the United Kingdom, ensuring that registrants adhere to standards and requirements for the safe and effective practice of medicine. This Order approves rules made by the GMC, which amend the General Medical Council (Fitness to Practise) Rules 2004**a** ("the Fitness to Practise Rules") and General Medical Council (Constitution of Panels and Investigation Committee) Rules 2004**b** ("the Constitution of Panels and Investigation Committee Rules").

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

3.1 None.

4. Legislative Context

4.1 The Medical Act 1983 (section 35CC(1), paragraphs 19Ato 19E and 23B of Schedule 1 and paragraph 1 to Schedule 4) empowers the GMC to make rules in relation to these matters.

5. Territorial Extent and Application

5.1 This instrument applies to the whole of the United Kingdom.

6. European Convention on Human Rights

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

7. Policy background

7.1 These rule changes will amend the procedures followed by the GMC when investigating concerns about doctors' fitness to practise and how cases are heard by fitness to practise panels. They aim to improve and modernise

a Scheduled to S.I. 2004/2608.
b Scheduled to S.I. 2004/2611.

the procedures and make the pre-hearing and hearing stages shorter, simpler and more flexible. They have been subject to a consultation exercise and further information about this and a link is available at paragraph 8.1.

7.2 These rules make the following changes to the Fitness to Practise Rules and the Constitution of Panels and Investigation Committee Rules:

Fitness to Practise Rules

- Providing for the postponement of fitness to practise hearings so that decisions to postpone Fitness to Practise Panel hearings may be made by a Case Manager appointed.

- Removing the requirement to notify a practitioner when a complaint is closed on the ground that it does not raise a question of impairment under section 35C(2) of the Medical Act 1983.

- Currently before any evidence is admitted at a hearing of the Investigation Comitteee ("the Committee") must consider whether such evidence is desirable to enable it to discharge its functions. Amendment is made so that documentary evidence may be admitted before the Committee without having to meet that requirement but that oral evidence shall not be admitted unless the Committee considers that such evidence is necessary to enable it to discharge its functions.

- Introducing a presumption that witness statements shall stand as a witness' evidence-in-chief. The Committee or a Fitness to Practise or Interim Orders Panel would accept witness statements as evidence-in-chief unless the parties agree, a Case Manager directs, or the Committee or Panel decide otherwise. Notice must be given where a party intends to apply to the Committee or Panel for a witness to give evidence-in-chief orally.

- Permitting a Case Manager to issue a direction for two or more allegations against one or more practitioners to be listed for consideration together at the same hearing, and that any such direction shall be taken into account by the Committee or Panel when considering the exercise of their power of joinder.

- Removing the requirement at the start of a hearing for the particulars of the allegation against the practitioner to be read out and introducing a requirement for the Chair of the panel to seek submissions as to whether the Presenting Officer wishes to apply for the particulars to be amended.

- Current provisions enable a practitioner to make submissions after the Council has presented its evidence at a Fitness to Practise Panel hearing, to the effect that there is insufficient evidence to find the facts proved or to support a finding of impairment. This has been amended to provide that the practitioner may make submissions that there is insufficient evidence to find some or all of the facts proved and that the hearing should proceed no further as a result.

- Amending the formal requirements for notices of hearing before an Interim Orders Panel so that the requirement to particularise the allegation and the facts upon which it is based is substituted with a requirement to inform the practitioner of the allegation and the facts upon which it is based.

- Amending the procedure for cancellation of fitness to practise hearings to provide that cancellation decisions are made by a Case Examiner in place of a member of the Committee.

- Providing that, on the resumption of an adjourned Committee or Panel hearing, if a panellist will not be present who was present prior to the adjournment or a panellist will be present who was not present prior to the adjournment, the Committee or Panel (as the case may be) may issue such directions as they consider necessary in the interests of justice about: the stage at which the hearing is to be resumed; and any special procedure which must be followed (including varying an existing direction or the order of proceedings under these Rules)

- Current provisions have the effect that determinations in respect of preliminary legal arguments are binding on subsequent panels considering the case subject to a proviso. The proviso for circumstances in which the subsequent panel considers, on legal advice, that the preliminary legal issue has been wrongly decided is substituted with a proviso that reconsideration of the issue can take place in circumstances in which the Committee or Panel consider that there has been a material change in circumstances and it is in the interest of justice to do so, or where it is otherwise in the interests of justice to do so.

- Removing the rule that prohibits a Committee or Panel from admitting evidence which would not be admissible in criminal proceedings in England unless the Committee or Panel are satisfied that their duty of making due inquiry into the case before them makes its admission desirable.

- Allowing for applications to a Committee or Panel for oral evidence to be given by means of video link or telephone link. In considering such applications a Committee or Panel shall have regard to any representations by or agreement of the parties, and in the case of a Panel, any direction by a Case Manager.

- Removing the requirement for the secretary to a Committee or Panel to record and publish the panel's decision, and placing the obligation on the panel to record the decision itself.

Constitution of Panels and Investigation Committee Rules

- Enabling panellists to sit on review hearings or restoration hearings before a Panel, or to act both as a Case Manager and Chair in a case, notwithstanding the provisions of Rule 4(3) of the Constitution of Panels and Investigation Committee Rules which provides that no panellist shall sit on a substantive hearing of a case in which the panellist has previously considered or adjudicated on in another capacity.

- Clarifying that a quorum of a Panel or the Committee is to be three panellists, including the Chair, of whom at least one must be a medical panellist and at least one must be a lay panellist.

8. Consultation outcome

8.1 The GMC published the rules in draft for public consultation across Great Britain from14 May 2012 to 6 August 2012. 37 responses were

received from a range of organisations and individuals. The responses showed broad support for the proposals. The GMC has produced a report summarising the views expressed in response to the consultation and describing how these have been taken into account. This consultation report was approved by the GMC's Council on 27th September 2012 and is available on its website: http://www.gmc-uk.org/06c___Report_on_the_Outcome_of_Consultation.pdf_49966192.pdf

9. Guidance

9.1 The Department of Health has not issued guidance in relation to these Rules. However, the GMC plans to publicise the effect of the changes through its website and through its monthly bulletin which is sent to all of their registrants.

10. Impact

10.1 The impact on business, charities or voluntary bodies is minimal as it relates to the processes for fitness to practise 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 this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The GMC will keep the Rules amended by this legislation under review.

13. Contact

Rhian Wells at the Department of Health Tel: 0113 254 5719 or email: Rhian.wells@dh.gsi.gov.uk can answer any queries regarding the instrument.