STATUTORY INSTRUMENTS

2004 No.2625

HEALTH CARE AND ASSOCIATED PROFESSIONS

DOCTORS

The General Medical Council (Legal Assessors) Rules 2004

Made - - - -	*11th October 2004*
Laid before Parliament	*11th October 2004*
Coming into force - -	*1st November 2004*

The Lord Chancellor and, in relation to proceedings in Scotland, the Secretary of State, in exercise of the powers conferred upon them by section 43 of, and paragraph 7(3) and (4) of Schedule 4 to, the Medical Act 1983(**a**), and of all other powers enabling them in that behalf, hereby make the following Rules:

Citation, commencement and interpretation

1.—(1) These Rules may be cited as the General Medical Council (Legal Assessors) Rules 2004 and shall come into force on 1st November 2004.

(2) In these Rules—

"the 1983 Act" means the Medical Act 1983;

"Committee" means the Investigation Committee, in circumstances where it is considering giving a warning to a person under section 35C(6) of the Act;

"hearing" means proceedings of the Committee or a Panel that have been constituted as a hearing at which the parties to the proceedings may attend or be represented;

"legal assessor" means a person appointed under paragraph 7(1) of Schedule 4 to the 1983 Act(**b**) (proceedings before the Investigation Committee, Interim Orders Panels and Fitness to Practise Panels – legal assessors);

"Panel" means an Interim Orders Panel or a Fitness to Practise Panel.

Functions of legal assessors

2. Legal assessors shall have the following functions—

(a) advising the Committee or a Panel on questions of law arising in proceedings before them, and in particular a legal assessor shall, in such proceedings—

(**a**) 1983 c.54. Section 43, which is as substituted by article 13 of S.I. 2002/3135, is cited for introducing Schedule 4 to the 1983 Act but contains no separate enabling provisions. Paragraph 7(3) and (4) of Schedule 4 to the 1983 Act are as substituted by article 14 of S.I. 2002/3135.

(**b**) Paragraph 7(1) is as substituted by article 14 of S.I. 2002/3135.

(i) advise the Committee or the Panel on any question of law that is referred to him by the Committee or the Panel, and

(ii) intervene to advise the Committee or the Panel on an issue of law where it appears to him that, without his intervention, there is the possibility of a mistake of law being made, and

(iii) intervene to advise the Committee or the Panel of any irregularity in the conduct of the proceedings which comes to his knowledge; and

(b) advising on the drafting of decisions of the Committee or a Panel (notwithstanding that legal assessors will not themselves be parties to those decisions).

Attendance of legal assessors

3. In all proceedings in which a legal assessor must, by virtue of paragraph 7(1) of Schedule 4 to the 1983 Act (proceedings before the Investigation Committee, Interim Orders Panels and Fitness to Practise Panels – legal assessors), be appointed, the Committee or Panel conducting those proceedings shall not hold any meeting or hearing in respect of those proceedings in the absence of the legal assessor appointed in those proceedings.

Advice of legal assessors tendered at hearings

4.—(1) Any advice tendered by a legal assessor on a question of law at a hearing shall, subject to paragraph (2), be tendered in the presence of every party, or person representing a party, in attendance at the hearing.

(2) Where the Committee or a Panel—

(a) has begun to deliberate on its decision; and

(b) considers that it would be prejudicial to the discharge of its functions for the advice of the legal assessor to be tendered in the presence of the parties or their representatives,

the advice may be tendered in the absence of the parties or their representatives.

(3) Where advice is tendered in the absence of the parties or their representatives in accordance with paragraph (2), the legal assessor who tendered that advice shall—

(a) as soon as practicable after the completion of the deliberations inform each of the parties (or their representatives) in attendance at the hearing of the advice he gave, together with any question which led to that advice; and

(b) subsequently record those matters in writing and give a copy to those parties or their representatives.

(4) Copies of written advice made for the purposes of paragraph (3) shall be available, on application, to every party to the proceedings who does not attend, and is not represented at, the hearing to which the advice relates.

Advice of a legal assessor outside a hearing which the Committee or a Panel does not accept

5. Where, in proceedings but not at a hearing, a legal assessor tenders advice on a question of law to the Committee or a Panel which the Committee or the Panel does not accept—

(a) a record shall be made by the legal assessor of the advice given (together with any question which led to that advice), and of the decision not to accept it, together with the reasons for that decision; and

(b) a copy of the record shall be given to every party to the proceedings or their representatives.

Revocations

6. The following Rules are hereby revoked —

(a) the General Medical Council (Legal Assessors) Rules 1980(**a**);

(b) the General Medical Council (Legal Assessors) (Amendment) Rules 1997(**b**);

(c) the General Medical Council (Legal Assessors) (Amendment) Rules 2000(**c**); and

(d) the General Medical Council (Legal Assessors) Amendment (Scotland) Rules 2000(**d**).

Signed by authority of the Lord Chancellor

David Lammy
Parliamentary Under-Secretary of State,
Department for Constitutional Affairs

6th October 2004

Signed by authority of the Secretary of State for Health

Warner
Parliamentary Under-Secretary of State,
Department of Health

11th October 2004

EXPLANATORY NOTE

(This note is not part of the Order)

This Order sets out the functions of legal assessors appointed in proceedings of the following committees of the General Medical Council: the Investigation Committee; an Interim Orders Panel or a Fitness to Practise Panel. It also provides for legal assessors to attend certain meetings and hearings of these committees, and it contains measures relating to the tendering of advice by them at such meetings or hearings. It also makes provision for the recording of advice given by a legal assessor where that that advice is not accepted by a committee or panel together with the decision not to accept the advice and the reasons for that decision.

(**a**) S.I. 1980/941.
(**b**) S.I 1997/1861.
(**c**) S.I. 2000/1881.
(**d**) S.S.I 2000/308.

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