EXPLANATORY MEMORANDUM TO THE

THE GENERAL MEDICAL COUNCIL (LEGAL ASSESSORS) RULES 2004

2004 No.2625

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

2. Description

2.1 These Rules relate to 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 make provision for the recording of advice given by a legal assessor where that the advice is not accepted by a committee or panel together with the decision not to accept the advice and the reasons for that decision.

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

3.1 None

4. Legislative Background

4.1 The General Medical Council (GMC) is required by paragraph 7(1) of Schedule 4 of the Medical Act 1983 (as substituted by article 14 of S.I. 2002/3135) to appoint legal assessors to advise the Investigation Committee, an Interim Orders Panel and a Fitness to Practise Panel.

4.2 These Rules are made by the Lord Chancellor, and in relation to proceedings in Scotland, the Secretary of State, in exercise of the powers conferred upon them by paragraph 7(3) and (4) of Schedule 4 to the Medical Act 1983 (as substituted by article 14 of S.I. 2002/3135). However, policy responsibility lies with the Department of Health.

4.3 Following consultation by both the GMC and the Department of Health, the Medical Act 1983 (Amendment) Order 2002 ('the Principal Order') was made under section 60 of the Health Act 1999. The Principal Order made fundamental changes to the GMC's structure and functions, parts of which have been implemented in 2003 by a range of rules such as S.I. 2002/3136 and 2003/1340-1344.

4.4 These Rules together with a number of other rules made by the GMC and approved by Orders of Council implement the new fitness to practise regime.

4.5 The other instruments are the:

The General Medical Council (Fitness to Practise) Rules Order of Council 2004

The General Medical Council (Fitness to Practise) (Disqualifying Decisions and Determinations by Regulatory Bodies) Procedure Rules of Council 2004

The General Medical Council (Voluntary Erasure and Restoration following Voluntary Erasure) Regulations Order of Council 2004

The General Medical Council (Restoration following Administrative Erasure) Regulations order of Council 2004

The General Medical Council (Constitution of Panels and Investigation Committee) Rules Order of Council 2004

The Medical Act 1983 (Amendment) Order 2002 (Transitional Provision) Order of Council 2004

5. Extent

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

Not applicable

7. Policy background

7.1 In May 2000, after several years of incremental change, the GMC began to develop wide ranging proposals to make it effective, inclusive and accountable. This review included proposals for modernising its fitness to practise procedures - the system through which concerns about a doctor's suitability to practise are investigated and adjudicated. This also occurred within the context of the Government establishing new regulatory councils for nursing and midwifery and the allied health professions.

7.2 The GMC consulted with patient and consumer groups, doctors, employers and a wide range of other organisations with an interest in reform, producing wide agreement between patient and professional interests. In July 2001, the Council agreed a package of constitutional and regulatory reforms and in November 2001 it agreed a further package of reforms to its fitness to practise procedures.

7.3 The Government welcomed these proposals as consistent with its overall aim of setting up a modern, comprehensive regulatory framework, with all regulatory bodies of the healthcare professions:

- Having as their main objective the need to safeguard the health and well-being of persons using the services of registrants;
- Being open and transparent in their procedures and requirements; and
- Having fair and fast decision making processes.

7.4 In May 2002 the Government launched a statutory consultation on a draft GMC Order to reform and modernise the GMC. The document contained proposals for radical reform in three key areas:

- Reform of the structure, constitution and governance of the GMC delivering a smaller, more effective and accountable Council with an increased proportion of lay members;
- A fundamental restructuring of the GMC's fitness to practise framework, to deliver more efficient and simplified procedures; and
- The implementation of revalidation, coupled with the introduction of a licence to practise, which will demonstrate that doctors are keeping themselves up to date.

7.5 There were around 70 consultation responses received, which was fewer than anticipated. However, a number of organisations said they had made their points during the earlier GMC consultation. A summary of the responses was published by the Department of Health in November 2002 when the revised Order was laid before Parliament. Copies are available in the Libraries of both Houses of Parliament.

7.6 In addition, in producing the new Fitness to Practise procedures, the GMC held 2 public consultations on the new procedures and guidance: the first between July and October 2003 and the second during May 2004.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

8.2 There are no identified costs to either the public or the Exchequer arising from this Instrument. The GMC appoints and pays legal assessors. The cost of regulation is met from registrants' fees which the GMC is authorised to charge for this purpose.

9. Contact

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