EXPLANATORY MEMORANDUM TO

THE GENERAL MEDICAL COUNCIL (LICENCE TO PRACTISE) REGULATIONS ORDER OF COUNCIL 2009

SI 2009 No. 2739

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 Order approves the Regulations made by the General Medical Council on 10th September 2009 under their powers under the Medical Act 1983 ("the Act") in relation to the licensing of medical practitioners. The Regulations come into force on 16th November 2009, with exceptions described in regulation 1(2). (These exceptions relate to the requirements in the Act for medical practitioners to have adequate and appropriate indemnity arrangements, as those provisions are not yet in force.)

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

3.1 None

4. Legislative Context

4.1 The Regulations approved by this Order are the first to make provision in the following areas:

- Grant or refusal of a licence
- Withdrawal of a licence
- Restoration of a licence after withdrawal
- Referral to a Registration Panel
- Restoration for the purposes of section 41(7) of the Act

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 ("the GMC") is the independent regulator for doctors in the UK. Its main statutory objective is to protect, promote and maintain the health and safety of the public by ensuring proper standards in the practice of medicine. The Regulations scheduled to the current Order relate to the GMC's procedures for issuing licences to practise.

7.2 The principle of licensing is that medical practitioners previously required by UK law to be fully registered will also need to hold a licence to practise, whether they practise full time, part time, as a locum, privately or in the NHS, or whether they are employed or self-employed.

7.3 Most doctors who are currently registered will become licensed automatically when the GMC's Licence to Practise Regulations come into force on 16th November 2009, although it is possible to opt out of licensing and some doctors have chosen to do so. New registrants will also automatically become licensed when registered.

7.4 The introduction of licensing is the first step towards a new system called revalidation. Revalidation will require doctors to renew their licence to practise by demonstrating that they are up to date and fit to practise. The purpose of revalidation will be to give patients regular assurance that doctors registered with a licence are up to date and fit to practise.

- **Details of the proposed Regulations**

Regulation 2

7.5 Regulation 2 makes provision for the grant or refusal of a licence. Medical practitioners whose names appear on the register will automatically be granted a licence unless they have informed the Registrar otherwise before 16th November 2009. Practitioners registered after that date will automatically be granted a licence. Provision is also made for the grant of a licence to practitioners whose registration is not current at the date of coming into force, but which is restored after that date; and for any doctor holding registration without a licence to apply for one.

Regulation 3

7.6 Regulation 3 provides for the withdrawal of a licence where the medical practitioner so requests, if the Registrar is satisfied that it was

fraudulently, or otherwise incorrectly obtained. It also deals with cases of administrative breach in connection with the licensing requirements, and cases where the practitioner's registration is suspended or comes to an end other than upon a determination by a Fitness to Practise Panel or the imposition of an interim Order by an Interim Orders Panel. Procedural requirements apply in certain cases before the licence can be withdrawn.

Regulation 4

7.7 Regulation 4 provides for the restoration of a licence after withdrawal under regulation 3(1) or (2). Where the Registrar considers the fitness to practise of a practitioner applying for restoration of a licence may be impaired, the question may be referred for investigation. In that case, regulation 4(3) provides that the Registrar may decide not to take further action in relation to the application pending the matter's being referred back to the Registrar or considered by an Interim Orders Panel or a Fitness to Practise Panel.

Regulation 5

7.8. Regulation 5 gives the Registrar power to refer to a Registration Panel any question arising in relation to the grant, withdrawal or restoration of a licence, and to take the Panel's advice into account in reaching any decision.

Regulation 6

7.9 Regulation 6 provides for the restoration of a licence for the purposes of section 41(7) of the Act following the determination of a Fitness to Practise Panel that a practitioner's name should be restored to the register.

- **Consolidation**

7.10 These are new regulations and there is therefore no need for consolidation.

8. Consultation Outcome

8.1 The GMC conducted a public consultation on the LtP Regulations and associated guidance (as well as on a suite of related rules and regulations) between 21 Jan 2009 and 21 April 2009.

8.2 The consultation yielded 316 responses; 256 from individuals (mostly doctors) and 60 from organisations. The result of the consultation showed clear support for the GMC's proposals in relation to the introduction of licences. A full report of the consultation can be found on the GMC's website.

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 Licences to Practise Regulations on its website.

10. Impact

10.1 We anticipate that there will be a minimal impact on business, charities or voluntary bodies. There is no negative impact on equality issues. All employers of doctors requiring information about their employees' registration status already have access to a downloadable file, updated nightly, which lists all registered doctors. From the early hours of 16th November, the information accessed in this way will also show whether doctors hold a licence. Therefore, we do not anticipate any additional burden at this stage.

10.2 The purpose of the electronic registration & licensing information is to enable employers to check the credentials of new employees and locums. It is also available to the patients and the public to consult, too, via the GMC's website, so that they may be assured about the status of their doctors. The Department will be preparing a full impact assessment to support the final business case for revalidation.

10.3 As in 10.1, we do not anticipate a specific impact on the public sector.

11. Regulating small business

11.1 The legislation will only apply to small businesses if they employ licensed doctors and the points made at 10.1 are relevant here.

12. Monitoring and Review

12.1 These provide for the GMC to grant or refuse a license to practice to medical practitioners. The Regulations will be reviewed internally by the GMC after three years.

13. Contact

13.1 Rab Harkins at the Department of Health Tel: 0113 254 6788 or email: Rab.Harkins@dh.gsi.gov.uk can answer any queries regarding the instrument.