EXPLANATORY MEMORANDUM TO

THE GENERAL MEDICAL COUNCIL (MISCELLANEOUS AMENDMENTS) ORDER OF COUNCIL 2017

2017 No. 1049

1. Introduction

1.1 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(s)

2.1 This Order of Council approves Rules made by the General Medical Council (the "GMC") which amend The General Medical Council (Fitness to Practise) Rules 2004[1] (the "2004 Rules") and The General Medical Council (Constitution) Order 2008 ("the 2008 Order").[2]

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

4.1 The Medical Act 1983[3] ("the Act") contains the legislative framework for the regulation of medical practitioners registered with the statutory regulator, the GMC in the UK. The GMC sets the standards of conduct, performance and behaviour that doctors are expected to meet in their practice.

4.2 Where those standards are not met, provision is made in the Act itself, and rules made under it, to enable the GMC to investigate and, if necessary, to restrict a doctor's practice. These procedures are known as the fitness to practise procedures.

4.3 The Act was most recently amended by the General Medical Council (Fitness to Practise and Over-arching Objective) and Professionals Standards Authority for Health and Social Care (References to Court) Order 2015 ("the 2015 Order").[4]

4.4 The amendments made to the Act by the 2015 Order provide the basis for the amendments to the GMC rules governing fitness to practise procedures, and for new rules, which for example set up the newly constituted Medical Practitioners Tribunals which replace the Fitness to Practise Panels.

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[1] Scheduled to S.I. 2004/2608.
[2] S.I. 2008/2554.
[3] Medical Act 1983 c.54. http://www.legislation.gov.uk/ukpga/1983/54/contents
[4] Scheduled to S.I 2015/794

4.5 The 2004 Rules were substantially amended by The General Medical Council (Amendments to Miscellaneous Rules and Regulations) Rules Order of Council 2015[5] as part of the implementation of changes made to the Medical Act 1983 by the 2015 Order. The fitness to practise procedures are set out in detail in the 2004 Rules[6]. The Rules approved by this Order make a number of technical and consequential amendments to the 2004 Rules which were not previously made. In particular, rule 20 of the 2004 Rules is amended to clarify that the time frame for serving notice of a review hearing is 28 days before the hearing, rather than 20 days which was inadvertently changed by the General Medical Council (Amendments to Miscellaneous Rules and Regulations) Rules Order of Council 2015.

4.6 The Rules approved by this Order also make consequential amendments the 2008 Order to reflect the changes made by the 2015 Order, so that references are made to the new Medical Practitioners Tribunals (previously Fitness to Practise Panels) and Interim Orders Tribunals (previously Interim Orders Panels); and the revised powers for undertakings are also included.

5. Extent and Territorial Application

5.1 The extent of this instrument is the whole of the United Kingdom.

5.2 The territorial application of this instrument is the whole 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 Reform of the GMC's adjudication function has been a long term policy objective. The Fifth Report of the Shipman Inquiry recommended that the adjudication stage of the fitness to practise procedures be undertaken by a body independent of the GMC and that this body should appoint and train lay and medically qualified panellists and take on the task of appointing case managers and legal assessors as well as providing administrative support to hearings.

7.2 Following the publication of the White Paper, *Trust, Assurance and Safety* in 2007[7], the Health and Social Care Act 2008[8] established an independent body called the Office of the Health Professions Adjudicator (OHPA) to adjudicate on fitness to practise cases involving doctors and opticians. However, following consultation in 2010, it was decided not to proceed with the establishment of OHPA and to instead strengthen the independence of decision making by fitness to practise panel and interim orders panels while retaining the adjudication function within the GMC's governance structure and modernise the adjudication procedures. Parliament abolished OHPA in the Health and Social Care Act 2012[9].

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[5] Scheduled to S.I. 2015/1964.
[6] Scheduled to S.I. 2004/2608. http://www.gmc-uk.org/about/legislation/ftp_legislation.asp
[7] Trust, Assurance and Safety –The Regulation of Health Professionals in the 21st Century, 2007, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/228847/7013.pdf
[8] Health and Social Care Act 2008, http://www.legislation.gov.uk/ukpga/2008/14/pdfs/ukpga_20080014_en.pdf
[9] Health and Social Care Act 2012, http://www.legislation.gov.uk/ukpga/2012/7/contents/enacted

7.3 The GMC Rules Orders amended the GMC Rules to implement the following amendments made via the 2015 Order, namely :

1. *Establishing the MPTS as a statutory committee of the GMC*
2. *Modernising the MPTS' adjudication function including strengthening the case management arrangements*
3. *Addressing patient safety issues and enhancing confidence and accountability*
4. *Clarifying a number of areas of the Medical Act to make the procedures simpler to understand*

7.4 The explanatory memorandum[10] with further details of the amendments made by the GMC Rules Orders that came into force on the 31st December 2015, was published at: http://www.legislation.gov.uk/uksi/2015/1964/memorandum/contents

Consolidation

7.5 The England & Wales, Northern Ireland and Scottish Law Commissions completed a wider review of the regulation of health and care professionals and made recommendations to consolidate and simplify the legislative framework. The Law Commissions' recommendations included enabling greater separation of functions in the fitness to practise procedures between investigation and adjudication as well as other modernisations. The amendments made to the Act by the 2015 Order in relation to the way that fitness to practise decisions are made goes some way to meeting those recommendations, and has provided the basis for the amendments to the GMC Rules that have implemented the changes to governing fitness to practise procedures.

8. Consultation outcome

8.1 The GMC held a full UK wide public consultation from the 25 March to 20 May 2015, on changes to the rules they follow when investigating complaints and the adjudication of making decisions at hearings about doctors. A full GMC consultation response report[11] was published in 2015 at: http://www.gmc-uk.org/S60_Consultation_outcome_report.pdf_62959778.pdf]

8.2 Hardcopy can be requested for in writing to: The General Medical Council, Regent's Place, 350 Euston Road, London NW1 3JN

8.3 For this Order there was no consultation under paragraph 1(6) of Schedule 4 to the Medical Act 1983 as the amendments made by this Order are not substantive. The amendments are technical and consequential in nature, and reflect changes made to terminology by the 2015 Order, and form part of the larger implementation exercise of the matters consulted on previously by the GMC in 2015.

9. Guidance

9.1 The GMC guidance will be amended and published as appropriate.

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[10] Explanatory Memorandum GMC Rules Orders 2015; http://www.legislation.gov.uk/uksi/2015/1964/memorandum/contents

[11] Consultation report: Reforming our fitness to practise investigation and adjudication processes, 2015, http://www.gmc-uk.org/S60_Consultation_outcome_report.pdf_62959778.pdf

10. Impact

10.1 The impact on business, charities or voluntary bodies is minimal as it relates to the processes for fitness to practice 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 these instruments.

11. Regulating small business

11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

12.1 The Professional Standards Authority for Health and Social Care (PSA) conducts annual performance reviews of each of the health and care professional regulatory bodies, including the GMC. It is anticipated the PSA, when performing such reviews, will take into account the changes and provide insight into the effect of these measures. The Department will also keep these measures in view as part of its role in developing the professional regulatory landscape.

13. Contact

13.1 Robert Duff at the Department of Health, Tel: 020 7210 5944 or email: robert.duff@dh.gsi.gov.uk, can answer any queries regarding the instrument.