EXPLANATORY MEMORANDUM TO

The Pharmacy (1976 Order) (Amendment) Order (Northern Ireland) 2012

SR No. 308

1. Introduction

1.1. This Explanatory Memorandum has been prepared by the Department of Health, Social Services and Public Safety ("the Department") to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.

1.2. The Statutory Rule is made under section 56 of, and Schedule 4 to, the Health and Personal Social Services Act (Northern Ireland) 2001 and is subject to the draft affirmative resolution procedure.

2. Purpose

2.1. The Statutory Rule amends the Pharmacy (Northern Ireland) Order 1976 ("the principal Order") to make provision for the reconstitution of the Council of the Pharmaceutical Society of Northern Ireland (the Council) and the extension of the Council's regulation making powers in relation to discipline and fitness to practise matters, investigations and appeals and the recording in the register of fitness to practise and continuing professional development matters.

2.2. The Council is given various duties in respect of publications, including publication of annual accounts and an annual report. It is to set the professional standards expected of registered persons and is given powers to obtain information from third parties about a particular registered person. The Council may also publish any information about the fitness to practise of a registered person where it is in the public interest to do so.

2.3. The Council is under a duty to set and promote the standards of continuing professional development necessary for a registered person to achieve and maintain those standards of proficiency, to adopt a framework setting out the requirements and conditions in respect of a registered person’s continuing professional development and to make regulations in respect of persons who fail to comply with the requirements or conditions of the framework.

2.4. The principal Order as amended establishes a Scrutiny Committee of the Council which will be constituted in accordance with regulations made by the Council and will deal with fitness to practise matters. The amending provisions also enable the Council to appoint other committees of the Council.

2.5. The amendments to the principal Order contained in this Statutory Rule also makes provision for the reconstitution of the Statutory Committee and the extension of its powers in relation to discipline and fitness to practise matters.

2.6. Provision is included about what it means for fitness to practise to be impaired and a framework is set out within which allegations of

impairment are to be considered. Procedural arrangements for dealing with fitness to practise cases are set out. The Scrutiny Committee has power to deal with the case by way of issuing warnings or advice. In addition, the Statutory Committee may suspend registered persons or attach conditions to their entry in the register and may also direct that the name of the registered person be struck off the register. Provision also exists for the review of earlier decisions to suspend a registered person or to impose conditions on their entry in the register.

2.7. Provision is also made for interim orders suspending a registered person's entry in the register or attaching temporary conditions to an entry in the register while an investigation is ongoing. If a person's name has been struck off the register for fitness to practise reasons, there are arrangements for restoration to the register in defined circumstances.

2.8. Provision is made for voluntary removal from the register including refusal of applications where there are outstanding fitness to practise proceedings in respect of the registered person.

2.9. Provision is also made for appeals to the High Court against appealable fitness to practise decisions and in respect of when fitness to practise decisions are to take effect – including provision for temporary measures pending the outcome of an appeal, if a decision is being appealed.

2.10. Provision is made relating to the use of legal, clinical and other specialist advisers in proceedings before the Statutory Committee and Scrutiny Committee and for dealing with witness summonses and orders for the production of documents, which may be enforced through the courts.

2.11. There are also Transitional provisions in relation to outstanding registration cases, disciplinary proceedings, and applicants for registration or restoration who are subject to directions given under the principal Order prior to the coming into operation of this Statutory Rule.

3. Background

3.1. In the Statutory Rule the Department exercises powers conferred by section 56 of, and Schedule 4 to, the Health and Personal Social Services Act (Northern Ireland) 2001. It legislates for recommendations in the White Paper - Trust Assurance and Safety and seeks to update the legislative framework under which the Pharmaceutical Society of Northern Ireland (the Society) operates.

4. Consultation

4.1. In accordance with the requirements of paragraph 9 of Schedule 4 to the Health and Personal Social Services Act (Northern Ireland) 2001 a consultation on the draft Order ran for a period of 3 months from 16th March 2011 to 22nd June 2011. A total of 21 responses were received. In general, feedback was very supportive of the proposed legislative changes. A copy of the Consultation Report has been published on the Department's website.

5. Equality Impact

5.1. As the measures have no adverse impact upon section 75 of the Northern Ireland Act 1998 the Department has concluded that it is not necessary to submit this matter to a full EQIA.

6. Regulatory Impact

6.1. A Regulatory Impact Assessment was not carried out at this stage given that regulations will follow setting out the details of the new arrangements. A full Regulatory Impact Assessment will be available when the regulations are put out to consultation.

7. Financial Implications

7.1. The cost impact of the Order for the Society may be significant. The Society has reassured the Department that it has anticipated the additional costs within its operational budget.

8. Section 24 of the Northern Ireland Act 1998

8.1. This Order does not breach section 24 of the Northern Ireland Act 1998, as it is not incompatible with any of the convention rights or community law, and it does not discriminate against a person on the grounds of religious or political opinion. Nor does the Order modify or amend any of the enactments stated in section 7 of the Northern Ireland Act 1998.

9. EU Implications

9.1. Not applicable.

10. Parity or Replicatory Measure

10.1. This Order seeks to bring the regulatory legislative framework under which the Society operates closer in line with the legislation under which the General Pharmaceutical Council operates - The Pharmacy Order 2010.

11. Additional Information

11.1. Not applicable