
STATUTORY INSTRUMENTS

2002 No. 2572

MEDICAL PROFESSION

The General Medical Council (Fitness to Practise Committees) (Amendment) Rules Order of Council 2002

<i>Made</i>	- - - -	<i>10th October 2002</i>
<i>Laid before Parliament</i>		<i>11th October 2002</i>
<i>Coming into force</i>	- -	<i>1st November 2002</i>

At the Council Chamber, Whitehall, the 10th day of October 2002
By the Lords of Her Majesty's Most Honourable Privy Council

Whereas in pursuance of paragraphs 19A, 20, 21, 21A, 21B and 22 of Schedule 1, and paragraphs 1, 5 and 5A (1), (2) and (3) of Schedule 4 to the Medical Act 1983⁽¹⁾, the General Medical Council have made the General Medical Council (Fitness to Practise Committees) (Amendment) Rules 2002.

And whereas by paragraph 24 of Schedule 1 and paragraph 1(5) of Schedule 4 to the said Act such Rules shall not come into force until approved by order of the Privy Council:

Now, therefore, Their Lordships, having taken the said Rules into consideration, are pleased to, and do hereby, approve the same as set out in the Schedule to this Order.

This Order may be cited as the General Medical Council (Fitness to Practise Committees) (Amendment) Rules Order of Council 2002, and shall come into force on 1st November 2002.

A. K. Galloway
Clerk of the Privy Council

(1) 1983 c. 54 as amended by the Medical (Professional Performance) Act 1995 (c. 51) and the Medical Act 1983 (Amendment) Order 2000 (S.I.2000/1803).

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SCHEDULE

THE GENERAL MEDICAL COUNCIL (FITNESS TO PRACTISE COMMITTEES) (AMENDMENT) RULES 2002

The General Medical Council in exercise of their powers under paragraphs 19A, 20, 21, 21A, 21B and 22 of Schedule 1 and paragraphs 1, 5 and 5A(1), (2) and (3) of Schedule 4 to the Medical Act 1983(2), and after consulting such bodies of persons representing medical practitioners as appeared to the Council to be requisite, hereby make the following Rules:—

Citation and commencement

1. These Rules may be cited as the General Medical Council (Fitness to Practise Committees) (Amendment) Rules 2002, and shall come into force on 1st November 2002.

Interpretation

2. In these Rules—

“the Professional Conduct Rules” means the General Medical Council Preliminary Proceedings Committee and Professional Conduct Committee (Procedure) Rules 1988(3);

“the Health Rules” means the General Medical Council Health Committee (Procedure) Rules 1987(4);

“the Performance Rules” means the General Medical Council (Professional Performance) Rules 1997(5);

“the Interim Orders Committee Rules” means the General Medical Council (Interim Orders Committee) (Procedure) Rules 2000(6);

“the Constitution of Fitness to Practise Committees Rules” means the General Medical Council (Constitution of Fitness to Practise Committees) Rules 1996(7);

“the Constitution of Interim Orders Committee Rules” means the General Medical Council (Constitution of Interim Orders Committee) Rules 2000(8).

Amendment of the Professional Conduct Rules

3. The Professional Conduct Rules shall be amended as follows:—

(a) in rule 2(1)—

(i) for the definition of “case relating to conviction” the following definition shall be substituted:—

““case relating to conviction” means a case where it is alleged that a practitioner has been convicted, whether while so registered or not, in the British Islands of a criminal offence, or has been convicted elsewhere of an offence which, if committed in England or Wales, would constitute a criminal offence;”;

(2) 1983 c. 54; the Act was amended by the Medical (Professional Performance) Act 1995 (c. 51) and by S.I. 2000/1803.

(3) Appended to S.I. 1988/2255, and amended by Rules appended to S.I. 1989/656, 1990/1587, 1994/3298, 1996/1218, 1997/1529, 2000/2034 and 2000/2051.

(4) Appended to S.I. 1987/2174, and amended by Rules appended to S.I. 1996/1219, 1997/1529, 2000/2034 and 2000/2051.

(5) Appended to S.I. 1997/1529, and amended by Rules appended to S.I. 2000/2034 and 2000/2051.

(6) Appended to S.I. 2000/2053.

(7) Appended to S.I. 1996/2125, and amended by Rules appended to S.I. 2000/2051.

(8) Appended to S.I. 2000/2052.

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- (ii) the definitions of “the Health Service Acts” and “person acting in a public capacity” shall be deleted; and
 - (iii) in the definition of “practitioner”, for the words “or section 42” the words “, 41A, 41B or 44(5)” shall be substituted;
- (b) for rule 5(1) the following rules shall be substituted:—
- “5. —Where information in writing is received by the Registrar from which it appears to him that a practitioner has been convicted of a criminal offence in the British Islands or has been convicted of an offence elsewhere which, if committed in England or Wales, would constitute an offence—
- (a) in a case of conviction for an offence which the Registrar considers to be a minor motoring offence, the case shall not proceed further;
 - (b) in a case of conviction where a custodial sentence has been imposed (but excepting any case where the sentence was suspended), the Registrar may refer the case direct to the Professional Conduct Committee for inquiry unless it is his opinion that such direct referral would not be in the public interest;
 - (c) in any other case of conviction including any case which the Registrar has determined not to refer direct to the Professional Conduct Committee under rule 5(1)(b), the Registrar shall refer the case to the medical screener.
- (1A) In a case where subparagraph (b) of paragraph (1) applies, the Registrar shall notify the practitioner as soon as practicable that the case has been referred to the Professional Conduct Committee.”;
- (c) rule 6(2) shall be deleted;
- (d) for rule 6(3) the following rules shall be substituted:—
- “(3) Unless the case is dealt with under the Health Committee (Procedure) Rules in pursuance of the proviso to rule 7 of these Rules, the medical screener shall refer to the Preliminary Proceedings Committee a case submitted to him under paragraph (1), if he is satisfied from the material available in relation to the case that it is properly arguable that the practitioner’s conduct constitutes serious professional misconduct.
- (3A) The medical screener shall seek the advice of a lay member appointed under rule 4(5) in relation to any case submitted to him under paragraph (1) which he does not propose to refer to the Preliminary Proceedings Committee, and he shall direct that no further action be taken in the case only if the lay member so consulted agrees.”;
- (e) rule 6(4)(b) shall be deleted;
- (f) in rule 6(5), for the words “statutory declaration” the word “complaint” shall be substituted;
- (g) after rule 6(6), the following paragraphs shall be added:—
- “(7) Subject to paragraph (8), an allegation of misconduct in a case relating to conduct may not be referred to the Preliminary Proceedings Committee under this rule if, at the time when the complaint was first made to the Council, more than five years had elapsed since the events giving rise to that allegation.
- (8) Where an allegation of misconduct in a case relating to conduct is made more than five years after the events giving rise to that allegation, the medical screener may nevertheless direct that the case be referred to the Preliminary Proceedings Committee if, in his opinion, the public interest requires this in the exceptional circumstances of that case.”;
- (h) in rule 11(3) the words “and, if the practitioner so elects, by another medical practitioner nominated by him,” shall be deleted;

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- (i) in rule 14, for the words “6(3)(a) or (d)” the words “6(3)” shall be substituted;
- (j) in rule 17, for the words “the Solicitor” the words “the Registrar” shall be substituted;
- (k) for rule 18 the following rule shall be substituted:—

“**18.**—(1) Where the Preliminary Proceedings Committee has referred a complaint or information or a conviction to the Committee for inquiry, the Chairman of the Preliminary Proceedings Committee may if he thinks fit postpone the holding of the inquiry to such later date or meeting of the Committee as he may determine.

(2) Where the Registrar has referred a conviction to the Committee for inquiry, he may if he thinks fit postpone the holding of the inquiry to such later date or meeting of the Committee as he may determine.

(3) The Registrar shall, as soon as may be after any decision to postpone an inquiry, give to all parties to whom a Notice of Inquiry has been sent notification of the decision, and shall inform them at that time or subsequently of the date fixed for the hearing of the postponed inquiry.”;

- (l) in rule 19(1), for the words “a complaint or information has been referred” the words “the Preliminary Proceedings Committee has referred a complaint or information or a conviction” shall be substituted;
- (m) for rule 19(3) the following rules shall be substituted:—

“(3) Where, after the Registrar has referred a conviction to the Committee for inquiry, it appears to him that the inquiry should not be held, he may direct that the inquiry shall not be held; and if at the time the direction is given no Notice of Inquiry has been sent, rule 17 shall not have effect.

(4) The Registrar shall, as soon as may be after any decision to cancel an inquiry, give notice thereof to the practitioner and to the complainant (if any).”;

- (n) in rule 22(3), for the words “the Solicitor” the words “the Registrar” shall be substituted;
- (o) in rule 37(1A), for the words “the Solicitor” the words “the Registrar” shall be substituted;
- (p) in rule 37(2), for the words “the Solicitor” the words “the Registrar” shall be substituted;
- (q) in rule 37(3), for the words “the Solicitor” the words “the Registrar” shall be substituted;
- (r) in rule 38(1)(a), for the words “the Solicitor shall, not later than six weeks” the words “the Registrar shall, not later than four weeks” shall be substituted;
- (s) in rule 51(2) the words “and, if the practitioner so elects, by another medical practitioner nominated by him,” shall be deleted; and
- (t) for rule 55 the following rule shall be substituted:—

“Record of proceedings

55.—(1) The Registrar shall arrange for the proceedings of the Professional Conduct Committee to be recorded by electronic means or otherwise.

(2) Any party to the proceedings shall, on application to the Registrar, be furnished with a copy of the record of any part of the proceedings at which the party was entitled to be present.

(3) Paragraphs (1) and (2) do not apply to the deliberations of the Committee.”.

Amendment of the Health Rules

- 4.** The Health Rules shall be amended as follows:—

- (a) in rule 2(1) the definitions of “the Health Service Acts” and “person acting in a public capacity” shall be deleted;
- (b) rule 6(2) shall be deleted;
- (c) rule 6(4)(c) shall be deleted;
- (d) in rule 6(4)(d), after the word “evidence” the words “, including medical evidence,” shall be inserted;
- (e) in rule 7(2) the words “and any medical practitioners nominated under rule 6(4)(c)” shall be deleted;
- (f) in rule 8(1), for the words “including any reports by medical practitioners nominated by the practitioner under rule 6(4)(c),” the words “and any reports of which the practitioner has been informed under rule 6(4)(b)(ii),” shall be substituted;
- (g) in rule 8(2) the words “, other than any made by a medical practitioner nominated under rule 6(4)(c),” shall be deleted;
- (h) in rule 8(3) the words “and any medical practitioners nominated under rule 6(4)(c)” shall be deleted in each case where they appear;
- (i) rule 8(6) shall be deleted;
- (j) in rule 8(7)—
 - (i) the words “and any medical practitioners nominated under rule 6(4)(c)” shall be deleted; and
 - (ii) the words “, subject to the provisions of paragraph (6)” shall be deleted;
- (k) in rule 9(3), after the words “under rule 8(4)”, there shall be inserted the words, “or has ceased to comply with recommendations as varied under paragraph (2),”;
- (l) rule 9(4) shall be deleted;
- (m) in the heading to rule 11, the words “by the Preliminary Proceedings Committee or by the Professional Conduct Committee” shall be deleted;
- (n) in rule 11(1), after the words “has been referred” the words “by the President, by the Committee on Professional Performance, by the Assessment Referral Committee,” shall be inserted;
- (o) in rule 11(2), after the words “on which” the words “the President, the Committee on Professional Performance, the Assessment Referral Committee,” shall be inserted;
- (p) in rule 28(1), for the words “either by the Preliminary Proceedings Committee or by the Professional Conduct Committee” the words “to the Committee” shall be substituted;
- (q) in rule 33G(b) the words “(with the omission of the references to reports by examiners nominated under rule 6(4)(c))” shall be deleted;
- (r) for rule 38 the following rule shall be substituted:—

“Record of proceedings

38.—(1) The Registrar shall arrange for the proceedings of the Committee to be recorded by electronic means or otherwise.

(2) Any party to the proceedings shall, on application to the Registrar, be furnished with a copy of the record of any part of the proceedings at which the party was entitled to be present.

(3) Paragraphs (1) and (2) do not apply to the deliberations of the Committee.”; and

- (s) Schedule 3 shall be deleted.

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Amendment of the Performance Rules

5. The Performance Rules shall be amended as follows:—

- (a) in rule 2(1) the definitions of “the Health Service Acts” and “person acting in a public capacity” shall be deleted;
- (b) in rule 3(3), after the words “rule 5(6), (7) and (8)” the words “and rule 6(8)” shall be added;
- (c) in rule 5—
 - (i) for paragraph (1)(b) the following paragraph shall be substituted:—
 - “(b) was received by the Council less than five years from the date of the events giving rise to it, save that where a complaint or information was received more than five years after the events giving rise to it, the medical screener may nevertheless take action under rule 6 if, in his opinion, the public interest requires this in the exceptional circumstances of the case; and”;
 - (ii) in paragraph (1)(c)(ii), for the words “may be” the word “is” shall be substituted;
 - (iii) paragraphs (3) to (5) shall be deleted; and
 - (iv) in paragraphs (6) to (8), for the words “further action”, wherever they appear, the word “action” shall be substituted;
- (d) for rules 6(2) and (3), the following rules shall be substituted:—
 - “(2) Where the conditions in rule 5(1) are satisfied and the circumstances specified in paragraph (1) apply, the medical screener shall direct the Registrar to notify the practitioner—
 - (a) of the complaint or information received; and
 - (b) where rule 4 applies, that the medical screener has also taken into account a complaint or information previously received by the Council.
 - (3) A notice under paragraph (2) shall include—
 - (a) copies of the complaint or information received;
 - (b) copies of any previous complaint or information which the medical screener has taken into account under rule 4;
 - (c) copies of any information about or observations on the case received in response to enquiries made under rule 5(2) and which the screener has taken into account when considering the case;
 - (d) a copy of these Rules; and
 - (e) a statement prepared by the medical screener of his reasons why an assessment needs to be carried out.
 - (3A) A notice under paragraph (2) shall invite the practitioner—
 - (a) to agree, within the period of 28 days of the notice being given or sent, that an assessment shall be carried out; and
 - (b) to submit within the same period any observations on the case.”;
- (e) in rule 6(4), for the words “paragraph (2)(b)” the words “paragraph (3A)(a)” shall be substituted;
- (f) for rule 6(5), the following rule shall be substituted:—
 - “(5) Where the practitioner does not agree within the period referred to in paragraph (3A)(a) that an assessment should be carried out, the medical screener may—

- (a) refer the case to the Assessment Referral Committee; or
- (b) on receiving the practitioner's observations under paragraph (3A)(b) or other information decide, subject to paragraph (8), that no further action needs to be taken in the case.”;
- (g) in rule 6(8), after the words “decide under”, the words “paragraph (5)(b) or” shall be inserted;
- (h) at the end of rule 6(10) the words “and shall state the medical screener's reasons for his decision where subparagraph (b) of paragraph (7) applies” shall be added;
- (i) the following additional paragraphs shall be added to the end of rule 8:—
 - “(7) Where an assessment is to include structured tests of the doctor's professional knowledge and skills, the case co-ordinator may appoint one or more additional members to the Assessment Panel, and those members shall be involved in the assessment only for the purposes of assessing the practitioner's performance in those tests and contributing in this respect to the report of the Panel under rule 13.
 - (8) The practitioner's performance in such tests may be assessed also by one or more of the members of the Panel appointed under paragraphs (1) to (6).
 - (9) The provisions of rules 10 and 11 shall not apply to any members of an Assessment Panel appointed under paragraph (7).”;
- (j) in rule 12 (1)(a), after the words “rule 6(4)”, the words “or rule 6(7)(a)” shall be added;
- (k) in rule 13(1)(a), after the words “under rule 6(1)” the words “or following the practitioner's agreement under rule 6(4) or (7)” shall be inserted;
- (l) at the end of rule 26(4) the words “and shall state the case co-ordinator's reasons for his decision where subparagraph (b) of paragraph (1) applies” shall be added;
- (m) in rule 30E(3), for the words “rules 5(4) and 6(2)(a)(ii)” the words “rule 6” shall be substituted;
- (n) in rule 31 the words “5(3),” shall be deleted;
- (o) in rule 32—
 - (i) in paragraph (a), for the words “rules 5(4)(c)(ii) and” the word “rule” shall be substituted;
 - (ii) for the words “rule 6(2)(b)” the words “rule 6(3A)(a)” shall be substituted;
 - (iii) for the words “rules 5(4)(b)(ii) and 6(2)(b)” the words “rule 6(3A)(a)” shall be substituted;
 - (iv) for the words “12(3)(b)”, wherever they appear, the words “12(3)(c)” shall be substituted;
- (p) rule 33(2) shall be deleted;
- (q) rule 34 shall be deleted;
- (r) in paragraph 9(1) of Schedule 1,
 - (i) after the word “adjourned” the words “or where paragraph 12(3)(b) of Schedule 3 or paragraph 14(3)(a) of Schedule 3 applies” shall be inserted; and
 - (ii) for the words “rules 5(4) and 6(2)(a)(ii)” the words “rule 6” shall be substituted;
- (s) for paragraph 10(a) of Schedule 1 the following paragraph shall be substituted:—
 - “(a) to submit to examination by one or more doctors chosen by the President from the persons nominated under Schedule 2 to the Health Rules;”;
- (t) for paragraph 12 of Schedule 1 the following paragraph shall be substituted:—

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“Record of proceedings

12.—(1) The Registrar shall arrange for the proceedings of the Committee to be recorded by electronic means or otherwise.

(2) Any party to the proceedings shall, on application to the Registrar, be furnished with a copy of the record of any part of the proceedings at which the party was entitled to be present.

(3) Paragraphs (1) and (2) do not apply to the deliberations of the Committee.”;

(u) for paragraphs 2A(1)(c) and (d) of Schedule 3 the following paragraphs shall be substituted:—

“(c) if satisfied that it is necessary for the protection of members of the public or is otherwise in the public interest or in the interests of the practitioner, replace an order for interim conditional registration with an interim suspension order having effect for the remainder of the term of the former; or

(d) if satisfied that the public interest, including the protection of members of the public or the interests of the practitioner would be adequately served by an order for interim conditional registration, replace an interim suspension order with an order for interim conditional registration having effect for the remainder of the term of the former.”;

(v) in paragraph 10(e) of Schedule 3, for the words “is seriously deficient” the words “has been seriously deficient” shall be substituted;

(w) the following additional subparagraph shall be added to the end of paragraph 10 of Schedule 3:—

“(j) the Committee shall announce any decisions taken under subparagraphs (h) and (i) in such terms as they think fit.”; and

(x) for paragraph 12(2) of Schedule 3 the following paragraph shall be substituted:—

“(2) Where the Committee is to hold a resumed hearing and, from information subsequently received, it appears to the case co-ordinator that—

(a) the practitioner is not complying with one or more requirement imposed on him as conditions of his registration, or

(b) for some other reason the Committee should resume their consideration of the case at an early date,

the case co-ordinator may direct that the Committee shall hold a resumed hearing at an earlier date than the date on which they might otherwise have held a resumed hearing.”.

Amendment of the Interim Orders Committee Rules

6. The Interim Orders Committee Rules shall be amended as follows:—

(a) the following additional paragraph shall be added to the end of rule 12:—

“(9) Notwithstanding any other provisions of this rule, an interim order may, subject to the prior written consent of the practitioner, be reviewed without an oral hearing, and in such cases—

(a) paragraphs (3), (4), (5) and (6) shall not apply,

(b) rule 6 shall not apply,

(c) it shall not be open to the Committee to exercise their powers under paragraphs (7)(b), (c), (d), or (e), or under paragraph (8),

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- (d) a decision under paragraph (7)(a) may be taken by the Chairman or Deputy Chairman of the Committee, on behalf of the Committee, having consulted, and with the agreement of, one other member of the Committee,
 - (e) if neither the Chairman nor the Deputy Chairman is available to take a decision under subparagraph (d), the decision may be taken by another member of the Committee authorised to act in this capacity by the President, and
 - (f) where the Chairman, Deputy Chairman or other member taking a decision under subparagraph (d) or (e) is a medical member, the other member of the Committee consulted shall be a lay member, and vice versa.”; and
- (b) for rule 16 the following rule shall be substituted:—

“Record of proceedings

16.—(1) The Registrar shall arrange for the proceedings of the Committee to be recorded by electronic means or otherwise.

(2) Any party to the proceedings shall, on application to the Registrar, be furnished with a copy of the record of any part of the proceedings at which the party was entitled to be present.

(3) Paragraphs (1) and (2) do not apply to the deliberations of the Committee.”.

Amendment of the Constitution of Fitness to Practise Committees Rules

7. The Constitution of Fitness to Practise Committees Rules shall be amended as follows:—

- (a) for rule 3(3) the following rule shall be substituted:—

“(3) The quorum of the Committee shall be three and shall include at least one medical and one lay member.”;
- (b) for rule 4(5) the following rule shall be substituted:—

“(5) The quorum of the Committee shall be three and shall include at least one medical and one lay member.”;
- (c) for rule 5(5) the following rule shall be substituted:—

“(5) The quorum of the Committee shall be three and shall include at least one medical and one lay member.”;
- (d) for rule 6(5) the following rule shall be substituted:—

“(5) The quorum of the Committee shall be three and shall include at least one medical and one lay member.”;
- (e) for rule 7(5) the following paragraph shall be substituted:—

“(5) The quorum of the Committee shall be three and shall include at least one medical and one lay member.”.

Amendment of the Constitution of Interim Orders Committee Rules

8. In the Constitution of Interim Orders Committee Rules, for rule 5 the following rule shall be substituted:—

“**5.** The quorum of the Committee shall be three and shall include at least one medical and one lay member.”

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Given under the official seal of the General Medical Council this eleventh day of September two thousand and two.

L.S.

Graeme Catto
President

EXPLANATORY NOTE

(This note is not part of the Order)

The Rules approved by this Order make amendments to the General Medical Council Preliminary Proceedings Committee and Professional Conduct Committee (Procedure) Rules 1988, the General Medical Council Health Committee (Procedure) Rules 1987, the General Medical Council (Professional Performance) Rules 1997, the General Medical Council (Interim Orders Committee) (Procedure) Rules 2000, the General Medical Council (Constitution of Fitness to Practise Committees) Rules 1996, and the General Medical Council (Constitution of Interim Orders Committee) Rules 2000.

These Rules:

- (a) remove the requirement for complaints to the Council to be supported by a sworn statement before the Council may act on them (rules 3(c), 4(b) and 5(c)(i)).
- (b) permit the Registrar of the Council to refer specified types of cases of conviction direct to the Professional Conduct Committee (rule 3(b)).
- (c) introduce a time limit of five years for complaints to be made to the Council for investigation under the conduct or performance procedures except in exceptional circumstances (rules 3(g) and 5(c)(i)).
- (d) permit proceedings of the various fitness to practise committees which consider cases to be recorded electronically (rules 3(t), 4(r), 5(t) and 6(b)).
- (e) modify the arrangements whereby doctors being investigated under the health procedures may provide medical evidence in their defence (rule 4(c) and (d)).
- (f) streamline the process for referring doctors to the Health Committee where such referral is deemed necessary (rule 4(i)).
- (g) streamline the procedures for requesting a doctor to undergo a performance assessment, where an assessment is deemed necessary (rule 5(c) to (g)).
- (h) provide that additional assessors may participate in a performance assessment for part of the assessment, if this is deemed appropriate (rule 5(i)).
- (i) remove the need for the Interim Orders Committee to meet every time it reviews a case; instead two members of the Committee may review certain cases on paper, without a hearing, if the doctor concerned agrees (rule 6(a)).
- (j) reduces the quorum of each of the fitness to practise committees which consider cases to three (rules 7 and 8).

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- (k) include sundry other minor corrections and amendments to improve the effectiveness of the procedures.