

2010 No. 1616

HEALTH CARE AND ASSOCIATED PROFESSIONS

PHARMACY

**The General Pharmaceutical Council (Statutory Committees and
their Advisers Rules) Order of Council 2010**

Made - - - - - *28th June 2010*

Laid before Parliament *5th July 2010*

Laid before the Scottish Parliament *5th July 2010*

Coming into force - - - *27th September 2010*

At the Council Chamber, Whitehall, the 28th day of June 2010

By the Lords of Her Majesty's Most Honourable Privy Council

The General Pharmaceutical Council^(a) has made the General Pharmaceutical Council (Statutory Committees and their Advisers) Rules 2010, which are set out in the Schedule to this Order, in exercise of the powers conferred by articles 18(2), 63(4), 64(8) and 66(1) of, and paragraph 5 of Schedule 1 to, the Pharmacy Order 2010^(b).

In accordance with article 66(3) of that Order, the General Pharmaceutical Council has, in relation to rules under Parts 4 and 7 of that Order, consulted such persons or organisations as it considered appropriate including persons and organisations listed in paragraphs (a) to (h) of article 66(3) of that Order.

By virtue of article 66(4) of that Order, such rules cannot come into force until approved by order of the Privy Council.

Their Lordships, having taken these Rules into consideration, are pleased to, and do, approve them.

This Order may be cited as the General Pharmaceutical Council (Statutory Committees and their Advisers Rules) Order of Council 2010 and comes into force on 27th September 2010.

Judith Simpson
Clerk of the Privy Council

(a) The Council was established by article 4 of the Pharmacy Order 2010 (S.I. 2010/231).

(b) S.I. 2010/231.

SCHEDULE

The General Pharmaceutical Council (Statutory Committees and their Advisers) Rules 2010

CONTENTS

PART 1

General

1. Citation and commencement
2. Interpretation

PART 2

Composition of the Statutory Committees

3. Composition of the statutory committees

PART 3

Functions of the Investigating Committee and the Fitness to Practise Committee

4. Additional functions of the Investigating Committee
5. Additional functions of the Fitness to Practise Committee

PART 4

Appointment and Removal of Statutory Committee Members

6. Appointments Committee
7. Eligibility of members and former members of the Council for appointment to statutory committees
8. Eligibility of employees of the Council and other persons for appointment to statutory committees
9. Required competencies for members of statutory committees
10. Standards and training for statutory committee members
11. Terms of office of statutory committee members
12. Resignation of statutory committee members
13. Reserve list
14. Suspension and removal of statutory committee members and persons on the reserve list
15. Casual vacancies
16. Power to co-opt members of statutory committees

PART 5

Provisions Relating to Meetings and Hearings

17. Secretaries of statutory committees
18. The composition of statutory committees at particular meetings or hearings
19. Provisions against bias
20. Voting

PART 6

Advisers and Their Advice

21. Functions of legal advisers
22. Functions of clinical advisers
23. Functions of specialist advisers
24. Requirement to give or repeat advice in public
25. Requirement to keep records of advice and interventions
26. Refusal by a statutory committee to accept advice
27. Questioning of witnesses

The General Pharmaceutical Council makes these Rules in exercise of the powers conferred by articles 18(2), 63(4), 64(8) and 66(1) of, and paragraph 5 of Schedule 1 to, the Pharmacy Order 2010.

In accordance with article 66(3) of that Order, the General Pharmaceutical Council has, in relation to rules under Parts 4 and 7 of that Order, consulted such persons or organisations as it considered appropriate including persons and organisations listed in paragraphs (a) to (h) of article 66(3) of that Order.

PART 1

General

Citation and commencement

1. These Rules may be cited as the General Pharmaceutical Council (Statutory Committees and their Advisers) Rules 2010 and come into force on 27th September 2010.

Interpretation

2. In these Rules—

“the Order” means the Pharmacy Order 2010;

“the Appeals Committee Rules” means the General Pharmaceutical Council (Appeals Committee) Rules 2010(a);

“Appointments Committee” means the committee established by the Council pursuant to its powers in article 4(7) of the Order for the purpose of exercising the functions conferred on it by these Rules and other functions delegated to it by the Council;

“the CHRE” means the Council for Healthcare Regulatory Excellence(b);

“criminal conduct allegation” means a complaint to, or concern of, the Council which gives rise to, or may give rise to, criminal proceedings under any enactment;

“disqualification allegation” means a complaint to, or concern of, the Council which gives rise to, or may give rise to, an inquiry under Part 4 of the Medicines Act 1968(c);

“final outcome” means, in relation to any proceedings where there are rights of appeal, the outcome of proceedings—

(a) These Rules are scheduled to S.I. 2010/1614.

(b) The Council for Healthcare Regulatory Excellence is established under Part 2 of the National Health Service Reform and Health Care Professions Act 2002 (c. 17). The Council’s name was changed by section 113 of the Health and Social Care Act 2008 (c.14) from the Council for the Regulation of Health Care Professionals to the Council for Healthcare Regulatory Excellence.

(c) 1968 c.67. Part 4 of the Act is amended by paragraph 1(8) of Schedule 4 to S.I. 2010/231.

- (a) once the period for bringing an appeal has expired without an appeal being brought; or
- (b) if an appeal is brought in accordance with those rights, once those rights have been exhausted;

“fitness to practise allegation” means a complaint to, or concern of, the Council which is an allegation for the purposes of article 52(1), 53(1) or 54(1) of the Order, as appropriate;

“lay member” means a member of a statutory committee who is not, and has never been, entered in the register of any regulatory body and does not hold qualifications which would entitle them to apply for entry in the Register under the Order;

“legally qualified” means, in relation to a person, that that person is—

- (a) a barrister, advocate or solicitor who falls within subparagraphs (i) or (ii) of article 61(2)(c) of the Order; or
- (b) a solicitor in Scotland who does not fall within paragraph (a);

“licensing body” means any body anywhere in the world which licenses or regulates any profession;

“registrant member” means a member of a statutory committee who is a registrant;

“Registration Rules” means the General Pharmaceutical Council (Registration) Rules 2010(a);

“spent conviction” means—

- (a) in relation to a conviction by a court in Great Britain, a spent conviction within the meaning given by the Rehabilitation of Offenders Act 1974(b);
- (b) in relation to a conviction by a court in Northern Ireland, a spent conviction within the meaning given by the Rehabilitation of Offenders (Northern Ireland) Order 1978(c);

“statutory committees” means the Investigating Committee, the Fitness to Practise Committee and the Appeals Committee.

PART 2

Composition of the Statutory Committees

Composition of the statutory committees

3.—(1) The Investigating Committee is to consist of—

- (a) a lay member who is the chair;
- (b) two lay members who are deputy chairs;
- (c) two other lay members; and
- (d) five registrant members.

(2) The Fitness to Practise Committee is to consist of—

- (a) a lay member who is the chair;
- (b) eight lay members who are deputy chairs;
- (c) eleven other lay members; and
- (d) twenty registrant members.

(3) The Appeals Committee is to consist of—

- (a) a lay member who is the chair;
- (b) two lay members who are deputy chairs;

(a) These Rules are scheduled to S.I. 2010/1617.

(b) 1974 c.53.

(c) S.I. 1978/1908 (N.I. 27).

(c) three other lay members; and

(d) six registrant members.

(4) The chairs and deputy chairs referred to in paragraphs (1)(a) and (b), (2)(a) and (b) and (3)(a) and (b) may be legally qualified.

(5) In the absence of the chair of a statutory committee at a meeting or hearing, one of the deputy chairs of that committee may perform the functions of the chair.

PART 3

Functions of the Investigating Committee and the Fitness to Practise Committee

Additional functions of the Investigating Committee

4.—(1) The Investigating Committee has the following additional functions—

(a) providing an annual report to the Council in respect of each calendar year, by a date specified by the Council, which is to include—

(i) trends, patterns and learning points observed from cases considered by the Investigating Committee,

(ii) details of the numbers of fitness to practise and disqualification allegations which were disposed of by the Investigating Committee by means of warnings and undertakings during that year, and

(iii) the reasons why the allegations referred to in sub-paragraph (ii) were not referred to the Fitness to Practise Committee;

(b) preparing, publishing and amending from time to time its referral criteria;

(c) determining whether or not disqualification allegations that have been referred to it should be referred to the Fitness to Practise Committee;

(d) considering criminal conduct allegations referred to it by the Registrar; and

(e) determining whether the Council should exercise its powers to bring criminal proceedings—

(i) in relation to criminal conduct allegations; and

(ii) in cases that have been referred to it as disqualification allegations.

(2) The Investigating Committee may not exercise its functions under paragraph (1)(e) or article 53(4) of the Order to bring criminal proceedings unless it is satisfied that—

(a) there is a real prospect of securing a conviction; and

(b) it is in the public interest to bring the proceedings.

Additional functions of the Fitness to Practise Committee

5. The Fitness to Practise Committee has the following additional functions—

(a) providing advice requested by the Registrar under rule 10(8) or (10) or 20(2) of the Registration Rules;

(b) providing advice to the Investigating Committee about the types of cases that should not be referred from that Committee to it;

(c) providing advice to the Appeals Committee under rule 9(1)(d) of the Appeals Committee Rules; and

(d) preparing, publishing and amending from time to time its approach to decision making in the form of Indicative Sanctions Guidance(a).

(a) The Guidance can be found on the Council's website at www.pharmacyregulation.org.

PART 4

Appointment and Removal of Statutory Committee Members

Appointments Committee

6. The Appointments Committee is to exercise the following functions in accordance with these Rules—

- (a) selecting and appointing appropriate persons to serve as members of the statutory committees including as chairs and deputy chairs;
- (b) where appropriate, suspending or removing from office members, including chairs and deputy chairs, of the statutory committees; and
- (c) overseeing procedures for the training, development, performance review and appraisal of members, including chairs and deputy chairs, of the statutory committees.

Eligibility of members and former members of the Council for appointment to statutory committees

7.—(1) Members of the Council may not be appointed to any of the statutory committees.

(2) Former members of the Council may be appointed to one of the statutory committees, provided that they have not held office as a member of the Council for a period of four years prior to the date of application for membership of the relevant statutory committee.

Eligibility of employees of the Council and other persons for appointment to statutory committees

8.—(1) An employee of the Council may not be appointed to any of the statutory committees.

(2) A person who is a member of one of the statutory committees may not be appointed to any of the other statutory committees.

(3) A person may not be appointed to a statutory committee if that person—

- (a) has at any time been subject to any investigation or proceedings concerning that person's professional conduct (including fitness to practise) conducted by any licensing body, other than the Council, the final outcome of which was—
 - (i) the person's suspension from a register held by that licensing body, and that suspension has not expired or been terminated,
 - (ii) the person's erasure from a register held by that licensing body or a decision that had the effect of preventing the person from practising the profession licensed or regulated by that licensing body, or
 - (iii) a decision that had the effect of only allowing the person to practise that person's profession subject to conditions, and those conditions have not expired or been terminated;
- (b) has at any time been subject to any investigation or proceedings concerning that person's professional conduct (including fitness to practise) by the Council, the final outcome of which was—
 - (i) the person's entry in the Register, or part of the Register, was suspended (including by an interim suspension order), and that suspension has not expired or been terminated,
 - (ii) the person's entry in the Register, or part of the Register, was removed, or
 - (iii) the person's entry in the Register, or part of the Register, was made subject to an order imposing conditions with which the person must comply (including an order for interim conditional entry), and those conditions have not expired or been terminated;

- (c) has at any time been subject to any investigation or proceedings relating to an allegation that the person's entry in the Register, or part of the Register, was fraudulently procured—
 - (i) in the course of which the person's entry in the Register, or part of the Register, was suspended, and that suspension has not expired or been terminated, or
 - (ii) the final outcome of which was the removal of the person's entry from the Register, or part of the Register;
- (d) has at any time been subject to any investigation or proceedings concerning the person's professional conduct (including fitness to practise) by—
 - (i) the Council, or
 - (ii) any other licensing body,
 and the Appointments Committee is satisfied that the person's membership of a statutory committee would be liable to undermine public confidence in the regulation of pharmacists or pharmacy technicians;
- (e) has at any time been convicted of an offence—
 - (i) in the United Kingdom where the final outcome of the proceedings was a sentence of imprisonment or detention, and the conviction is not spent,
 - (ii) in the United Kingdom where the final outcome of the proceedings was not a sentence of imprisonment or detention, the conviction is not spent, and the Appointments Committee is satisfied that the person's membership of a statutory committee would be liable to undermine public confidence in the regulation of pharmacists or pharmacy technicians, or
 - (iii) outside the United Kingdom and the Appointments Committee is satisfied that the person's membership of a statutory committee would be liable to undermine public confidence in the regulation of pharmacists or pharmacy technicians;
- (f) has received a formal caution for a criminal offence in the United Kingdom and the Appointments Committee is satisfied that the person's membership of a statutory committee would be liable to undermine public confidence in the regulation of pharmacists or pharmacy technicians;
- (g) has at any time been included in—
 - (i) any barred list within the meaning of the Safeguarding Vulnerable Groups Act 2006(a), or
 - (ii) any barred list within the meaning of the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007(b),
 unless that person was removed from the list either on the grounds that it was not appropriate for that person to have been included in it or as the result of a successful appeal;
- (h) is included in the children's list or the adults' list maintained under the Protection of Vulnerable Groups (Scotland) Act 2007(c);
- (i) has at any time been adjudged bankrupt, or sequestration of the person's estate has been awarded, and—
 - (i) the person has not been discharged, or
 - (ii) the person is the subject of a bankruptcy restrictions order or an interim bankruptcy restrictions order under Schedule 4A to the Insolvency Act 1986(d) or Schedule 2A

(a) 2006 c.47.

(b) S.I. 2007/1351 (N.I. 11).

(c) 2007 asp 14.

(d) 1986 c.45. Schedule 4A was inserted by section 257(2) of, and Schedule 20 to, the Enterprise Act 2002 (c.40).

to the Insolvency (Northern Ireland) Order 1989(a) or sections 56A to 56K of the Bankruptcy (Scotland) Act 1985(b),

and the Appointments Committee is satisfied that the person's membership of a statutory committee would be liable to undermine public confidence in the regulation of pharmacists or pharmacy technicians;

- (j) is a person to whom a moratorium period under a debt relief order under Part VIIA of the Insolvency Act 1986 (debt relief orders) applies, or is the subject of a debt relief restrictions order or an interim debt relief restrictions order under Schedule 4ZB to that Act(c) (debt relief restrictions order and undertaking), and the Appointments Committee is satisfied that the person's membership of a statutory committee would be liable to undermine public confidence in the regulation of pharmacists or pharmacy technicians;
- (k) is subject to—
 - (i) a disqualification order or disqualification undertaking under the Company Directors Disqualification Act 1986(d),
 - (ii) a disqualification order under Part II of the Companies (Northern Ireland) Order 1989(e),
 - (iii) a disqualification order or disqualification undertaking under the Company Directors Disqualification (Northern Ireland) Order 2002(f), or
 - (iv) an order made under section 429(2) of the Insolvency Act 1986(g) (disabilities on revocation of a county court administration order);
- (l) has at any time been removed from the office of charity trustee or trustee for a charity by an order made by the Charity Commissioners, the Charity Commission, the Charity Commission for Northern Ireland or the High Court on the grounds of any misconduct or mismanagement in the administration of the charity—
 - (i) for which that person was responsible or to which that person was privy, or
 - (ii) which was contributed to, or facilitated by, that person's conduct;
- (m) has at any time been removed from being concerned with the management or control of any body in any case where removal was by virtue of—
 - (i) section 7 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990(h) (powers of Court of Session to deal with management of charities), or
 - (ii) section 34(5)(e) of the Charities and Trustees Investment (Scotland) Act 2005(i) (powers of Court of Session);
- (n) has at any time been removed from office as the chair, or a member, convenor or director, of any public body on the grounds that it was not in the interests of, or conducive to the good management of, that body that the person should continue to hold that office; or
- (o) has at any time made a composition or arrangement with, or granted a trust deed for, the person's creditors and the person has not been discharged in respect of it.

(a) S.I. 1989/2405 (N.I.19); Schedule 2A was inserted by S.I. 2005/1455 (N.I. 10).

(b) 1985 c.66. Sections 56A to 56K were inserted by section 2(1) of the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3).

(c) 1986 c.45. Part VIIA was inserted by section 108(1) of, and Schedule 17 to, the Tribunals, Courts and Enforcement Act 2007 (c.15) ("the 2007 Act"); Schedule 4ZB was inserted by section 108(2) of, and Schedule 19 to, the 2007 Act.

(d) 1986 c.46.

(e) S.I. 1989/2404 (N.I. 18).

(f) S.I. 2002/3150 (N.I. 4); the relevant amending instrument is S.I. 2005/1454 (N.I. 9).

(g) Section 429(2) was amended by section 269 of, and paragraphs 1 and 15 of Schedule 23 to, the Enterprise Act 2002 (c.40).

(h) 1990 c.40; section 7 was repealed by the Charities and Trustee Investment (Scotland) Act 2005 (asp 10).

(i) 2005 asp 10.

Required competencies for members of statutory committees

9.—(1) The Appointments Committee is to advise the Council on the minimum competencies it considers are required for appointment as a chair, deputy chair or other member of a statutory committee.

(2) The Council is to determine the minimum competencies required for appointment as a chair, deputy chair or other member of a statutory committee.

(3) In giving advice as provided for in paragraph (1), the Appointments Committee is to have regard to best practice on competencies required for membership of quasi-judicial committees, as disseminated by the Judicial Studies Board or the CHRE (or any successor bodies).

(4) No person may be appointed as a chair, deputy chair or other member of a statutory committee unless that person possesses, or has demonstrated the ability to acquire within a reasonable period of time (as determined by the Appointments Committee), the minimum competencies determined by the Council.

Standards and training for statutory committee members

10.—(1) A member (B) of a statutory committee must—

- (a) attend all meetings and hearings at which B's presence is required unless there is a good reason for B not being able to do so;
- (b) prepare for any meeting or hearing by reading any papers issued to the members of the statutory committee beforehand;
- (c) if B is unable to attend a meeting or hearing at which B's presence is required, take all reasonable steps to give advance warning of B's absence to the secretary of the relevant statutory committee; and
- (d) comply with the code of conduct for statutory committee members approved and published by the Council.

(2) Each member of a statutory committee must undertake periodic training provided or arranged by the Council (which may be training provided by another body), for the purpose of assisting the member to carry out their role as a member of the relevant statutory committee.

(3) Each member of a statutory committee (including chairs and deputy chairs) must have their performance appraised periodically in accordance with arrangements determined by the Appointments Committee.

(4) The appraisal referred to in paragraph (3) must include consideration of the member's participation in training and attendance at meetings of the relevant statutory committee.

Terms of office of statutory committee members

11.—(1) The term of office of a member of a statutory committee (including a chair and a deputy chair) is to be four years.

(2) No member of a statutory committee (including a chair and a deputy chair) is to hold office as a member of that statutory committee for more than an aggregate period of eight years in any twenty year period.

Resignation of statutory committee members

12. A member of a statutory committee may resign from that committee at any time by notifying the Appointments Committee in writing.

Reserve list

13.—(1) The Appointments Committee must maintain a reserve list of appropriate persons who are eligible to serve as—

- (a) the chair of each of the statutory committees;

- (b) deputy chairs of each of the statutory committees; and
- (c) other members of each of the statutory committees (which is to include both prospective lay members and prospective registrant members).

(2) Persons may only be retained on the reserve list for a period of 3 consecutive years, after which time their suitability for continued inclusion in that list is to be reconsidered by the Appointments Committee.

(3) Persons on the reserve list who are eligible to serve as the chair of a statutory committee may be appointed as the chair, a deputy chair or a member of that statutory committee without further interview by the Appointments Committee, in the event that a vacancy arises on that statutory committee.

(4) Persons on the reserve list who are eligible to serve as a deputy chair of a statutory committee may be appointed as a deputy chair or a member of that statutory committee without further interview by the Appointments Committee, in the event that a vacancy arises on that statutory committee.

(5) Persons on the reserve list who are eligible to serve as a member of a statutory committee may be appointed as a member of that statutory committee without further interview by the Appointments Committee, in the event that a vacancy arises on that statutory committee.

(6) Persons on the reserve list may be invited to attend training provided or arranged by the Council (which may be training provided by another body) to maintain their suitability for continued inclusion on the reserve list.

(7) In the event that a member of a statutory committee (including a deputy chair but excluding a chair) is unable to sit to consider a case for any reason, persons on the reserve list who are eligible to serve as a chair, deputy chair or other member of that statutory committee may be co-opted on to that committee, if its chair decides that it is appropriate to do so, to serve as a member of that statutory committee (including as a deputy chair) for that particular case.

Suspension and removal of statutory committee members and persons on the reserve list

14.—(1) The Appointments Committee must remove from a statutory committee any member—

- (a) who resigns from membership of a statutory committee in accordance with these Rules;
- (b) whose term of office has expired;
- (c) who, in the case of a registrant member, has ceased to be entered in the Register;
- (d) who, in the opinion of the Appointments Committee,—
 - (i) has ceased to be an appropriate person to be a member of a statutory committee (for example, by reason of misconduct or a criminal conviction),
 - (ii) has seriously or persistently failed to meet the standards of performance, conduct, attendance or participation in training required of a member of a statutory committee in the ordinary course of a member’s duties,
 - (iii) is unable to perform the duties of a member because of ill health,
 - (iv) has improperly disclosed confidential information obtained by the member in the course of membership of a statutory committee,
 - (v) has brought the Council into disrepute,
 - (vi) has failed to comply with the code of conduct for statutory committee members approved and published on the Council’s website by the Council, or
 - (vii) should no longer continue to be a member of a statutory committee in the public interest.

(2) The Appointments Committee must remove from the reserve list any person—

- (a) who requests removal from the reserve list;
- (b) who, in the case of a potential registrant member, has ceased to be entered in the Register;
- (c) who, in the opinion of the Appointments Committee,—

- (i) has ceased to be an appropriate person to be on the reserve list (for example, by reason of misconduct or criminal conviction),
- (ii) would be unable to perform the duties of a member of a statutory committee because of ill-health,
- (iii) has brought the Council into disrepute, or
- (iv) should no longer remain on the reserve list in the public interest.

(3) The Appointments Committee may suspend a member of a statutory committee while investigations are being undertaken into that member's suitability to remain as a member of that statutory committee.

(4) The Appointments Committee must afford any member of a statutory committee, or any person on the reserve list, who is under investigation the opportunity to make written and oral representations before reaching a decision on whether to remove that member from the statutory committee or that person from the reserve list.

(5) The procedure for the suspension or removal of a member of a statutory committee, and the removal of a person from the reserve list, is to be—

- (a) drafted by the Appointments Committee and submitted to the Council for approval;
- (b) considered by the Council, who may decide to amend the relevant procedure prior to approving it; and
- (c) once approved by the Council, set out in writing by the Appointments Committee, and a copy of the relevant procedure must be given to every member of a statutory committee or person on the reserve list.

Casual vacancies

15. Where a vacancy occurs on a statutory committee as a result of the resignation, removal or death of a chair, deputy chair or other member of that statutory committee, the Appointments Committee must—

- (a) appoint a replacement chair, deputy chair or other member from the reserve list; or
- (b) where no suitable replacement member is available from the reserve list, appoint a replacement in accordance with these Rules.

Power to co-opt members of statutory committees

16.—(1) Subject to paragraphs (3) and (4), the chair of a statutory committee may, after consulting with a legal adviser to that committee, co-opt appropriate persons to act as members of that statutory committee where it is necessary or desirable to do so in order for that statutory committee to be able to dispose of a particular case.

(2) The power in paragraph (1) is in addition to the power in rule 13(7).

(3) No person may be co-opted as a member of a statutory committee unless that person possesses, or has demonstrated the ability to acquire within a reasonable period of time (as determined by the chair of the statutory committee to which it is proposed the person will be co-opted as a member), the relevant competencies determined by the Council.

(4) The following persons may not be co-opted as a member of a statutory committee—

- (a) a member of the Council;
- (b) a member of another statutory committee;
- (c) a member of the Appointments Committee; and
- (d) an employee of the Council.

PART 5

Provisions Relating to Meeting and Hearings

Secretaries of statutory committees

17.—(1) Each statutory committee is to be assisted by a secretary.

(2) No person may act as secretary to a statutory committee if that person is a member of the Council.

(3) No person acting as secretary to the Investigating Committee may act as secretary to the Fitness to Practise Committee.

(4) The secretary to a statutory committee is to be responsible for the administrative arrangements relating to the proceedings of that committee.

(5) The secretary to a statutory committee must, in consultation with the chair of the relevant statutory committee, select the legal, clinical and specialist advisers to advise the committee, as required in any particular case.

(6) The secretary to a statutory committee must keep a record, or ensure a record is kept, of all decisions made by the statutory committee and the reasons for them.

(7) The secretary to a statutory committee may not participate in the decision making of the statutory committee (and is not entitled to vote).

The composition of statutory committees at particular meetings or hearings

18.—(1) Subject to paragraph (2), the quorum for a meeting (other than a case management meeting) or a hearing of a statutory committee is three members which must include—

- (a) the chair or a deputy chair;
- (b) a lay member; and
- (c) a registrant member.

(2) Subject to paragraphs (4) to (7), the chair of the Fitness to Practise Committee must, having consulted the secretary of the Committee, and with regard to—

- (a) matters to be considered by the Committee; and
- (b) availability, experience and expertise of Committee members,

determine the particular size, composition and quorum of the Committee required for each hearing and any related meetings.

(3) Case management meetings of the statutory committees are to be conducted by the chair of the statutory committee which is holding the case management meeting.

(4) Where the chair of the Fitness to Practise Committee determines that only specified members of the Committee are required for a particular hearing and any related meetings, the chair must ensure that—

- (a) the chair or a deputy chair of the Committee is one of the specified members;
- (b) the quorum is not less than three; and
- (c) the number of registrant members who are members of that formation of the Committee does not exceed the number of lay members by more than one.

(5) The chair of the Fitness to Practise Committee must ensure that a member of the Committee who has sat in a formation of the Committee that has made an interim suspension order or an order for interim conditional entry in a particular case must not sit in subsequent proceedings in that case.

(6) Paragraph (5) does not apply where the subsequent proceedings relate solely to measures under article 56 of the Order.

(7) For the purposes of paragraph (5), where an interim suspension order or an order for interim conditional entry is made in the course of the proceedings to determine a case substantively, the rest of the proceedings to determine the case substantively are not “subsequent proceedings” even if the case is adjourned (for whatever reason).

(8) At any meeting or hearing of a statutory committee, the number of registrant members considering a case must not exceed the number of lay members by more than one.

Provisions against bias

19.—(1) No member of a statutory committee (or a formation of a statutory committee) may sit as a member considering a particular case, at any stage of the proceedings relating to that case, if that member has an actual, or potential, conflict of interest in relation to that case.

(2) The Registrar must establish, maintain and publish a register of the private interests of all members, including chairs and deputy chairs, of the statutory committees.

(3) Each member of the statutory committees must notify the Registrar immediately of any private interest that the member has not previously notified to the Registrar but which may need to be recorded in the register maintained under paragraph (2).

Voting

20.—(1) Decisions of a statutory committee must be taken by a simple majority of the members, with the chair not having a casting vote.

(2) If a member of a statutory committee abstains from a vote at a meeting or hearing of a statutory committee, the member’s abstention must be treated as a vote against the motion that has been put to the vote.

(3) Where the Fitness to Practise Committee is considering pursuant to article 54(1) of the Order whether or not a person’s fitness to practise is impaired, a tied vote is to be treated as a determination that the person’s fitness to practise is not impaired.

PART 6

Advisers and their Advice

Functions of legal advisers

21.—(1) A legal adviser—

- (a) must be present at all meetings of the Investigating Committee at which a decision is to be taken as to whether or not to—
 - (i) refer a case to the Fitness to Practise Committee, or
 - (ii) notify the Registrar that the Council should consider exercising any of its powers to bring criminal proceedings;
- (b) may be present at any other hearing before, or meeting of, a statutory committee, at the request of the chair or secretary of that statutory committee; and
- (c) may be present at any other meeting of, or hearing before, a committee of the Council which is not a statutory committee, at the request of the Registrar.

(2) The function of the legal adviser who is present at a meeting or hearing referred to in paragraph (1)(a) or (b) is to ensure that proceedings before the statutory committee are conducted fairly.

(3) The legal adviser who is present at a meeting or hearing referred to in paragraph (1) must—

- (a) advise the committee on questions of law that are referred to the legal adviser by members of the committee;

- (b) intervene to advise the committee on an issue of law where it appears to the legal adviser that, without the legal adviser's intervention, there is a possibility of an error of law being made;
 - (c) inform the committee immediately of any irregularity in the conduct of proceedings before it; and
 - (d) at the request of the chair, advise the committee on the structure, format and presentation of the reasons for a decision of that committee.
- (4) If the chair of—
- (a) the Fitness to Practise Committee; or
 - (b) the Appeals Committee,

is not legally qualified, a legal adviser must be present at a case management meeting of that Committee conducted by the chair of that Committee.

(5) At the request of the chair, the legal adviser who is present at a meeting or hearing of a committee referred to in paragraph (1) may be present during the private deliberations of a committee, but must not participate in the decision making of the committee (and is not entitled to vote).

Functions of clinical advisers

22.—(1) A clinical adviser—

- (a) must be present at any meeting of the Investigating Committee at which a decision is to be taken as to whether or not to refer a case to the Fitness to Practise Committee where the health of the person who is the subject of the case is to be, or is likely to be, considered;
- (b) may be present at any other meeting of the Investigating Committee where health related issues are to be, or are likely to be, considered;
- (c) must be present at any meeting of, or hearing before, the Fitness to Practise Committee where health related issues are to be, or are likely to be, considered;
- (d) may be present at any meeting of, or hearing before, the Appeals Committee at which health related issues are to be, or are likely to be, considered; and
- (e) may be present at any meeting of, or hearing before, a committee of the Council which is not a statutory committee at which health related issues are to be, or are likely to be, considered by that committee.

(2) The function of the clinical adviser who is present at a meeting or hearing referred to in paragraph (1) is to—

- (a) advise the committee on any issues within the clinical adviser's areas of medical expertise that may be referred to the clinical adviser by a member of that committee; and
- (b) intervene to advise the committee on an issue where it appears to the clinical adviser that, without the clinical adviser's intervention, there is a possibility of an error being made.

(3) A clinical adviser who is present at a meeting or hearing referred to in paragraph (1)(c) or (d) must not be present during the private deliberations of the committee.

(4) A clinical adviser must not participate in the decision making of any committee (and is not entitled to vote).

Functions of specialist advisers

23.—(1) A specialist adviser—

- (a) may be present at any meeting of the Investigating Committee at which issues falling within the specialist adviser's specialty, or related to it, are under consideration by the Committee;

- (b) may be present at any meeting of, or hearing before, the Fitness to Practise Committee at which issues falling within the specialist adviser's specialty, or related to it, are under consideration by the Committee;
- (c) may be present at any meeting of, or hearing before, the Appeals Committee at which issues falling within the specialist adviser's specialty, or related to it, are under consideration by the Committee; and
- (d) may be present at any meeting of, or hearing before, a committee of the Council which is not a statutory committee at which issues falling within the specialist adviser's specialty, or related to it, are under consideration by that committee.

(2) The function of a specialist adviser at a meeting or hearing referred to in paragraph (1) is to advise the committee on issues within the specialist adviser's areas of expertise that may be referred to the specialist adviser by a member of that committee.

(3) A specialist adviser who is present at a meeting or hearing referred to in paragraph (1)(b) or (c) must not be present during the private deliberations of the committee.

(4) A specialist adviser must not participate in the decision making of any committee (and is not entitled to vote).

Requirement to give or repeat advice in public

24.—(1) Subject to paragraphs (2) and (3), any advice tendered by a legal, clinical or specialist adviser at a meeting or hearing must be tendered in the presence of every party, or person representing a party, in attendance at the meeting or hearing.

(2) The requirement in paragraph (1) does not apply to meetings of the Investigating Committee.

(3) Where a statutory committee, or another committee of the Council which is not a statutory committee, has begun to deliberate on its decision and needs to obtain advice in the course of its deliberations, a legal adviser may tender advice to the committee notwithstanding the absence of the parties or any person representing a party.

(4) Where advice is tendered in the absence of the parties or their representatives in accordance with paragraph (3)—

- (a) the legal adviser must repeat the advice tendered to the committee before the parties, or any person representing a party, in attendance at the hearing; and
- (b) the parties or their representatives in attendance at the hearing must be provided with a reasonable opportunity to comment on the advice given by the legal adviser, before the committee makes its decision on the issue under consideration.

Requirement to keep records of advice and interventions

25.—(1) The secretary to a statutory committee must keep a record of any advice tendered to the committee by the legal, clinical or specialist adviser to that committee.

(2) The secretary to a statutory committee must keep a record of any interventions made by the legal adviser during the private deliberations of that committee.

(3) A record of any advice tendered by the legal, clinical or specialist adviser must be sent to the parties to the proceedings (that is, the Council and the appellant or person concerned, as the case may be) or their representatives, as appropriate, as soon as practicable after it has been tendered.

Refusal by a statutory committee to accept advice

26. Where any advice tendered by the legal, clinical or specialist adviser to a statutory committee is not accepted by that committee—

- (a) the chair of the committee must announce the reasons for not accepting the advice tendered; and
- (b) the secretary to the committee must—

- (i) keep a record of the advice tendered, and the reasons why the committee refused to accept that advice, and
- (ii) send a copy of the record of the advice tendered and the reasons why the committee refused to accept that advice, to the parties to the proceedings (that is, the Council and the appellant or person concerned, as the case may be) or their representatives, as appropriate.

Questioning of witnesses

27. A legal, clinical or specialist adviser advising a committee in accordance with these Rules may, with the permission of the chair of that committee, question any witnesses appearing before the committee.

Given under the official seal of the General Pharmaceutical Council this 3rd day of June 2010



Robert Nicholls CBE
Chair

Duncan Rudkin
Chief Executive

EXPLANATORY NOTE

(This note is not part of the Order)

This Order approves The General Pharmaceutical Council (Statutory Committees and their Advisers) Rules (“the Rules”) made by the General Pharmaceutical Council (“the Council”) under the Pharmacy Order 2010 (S.I. 2010/231). The Rules set out various matters relating to the constitution and composition of the three statutory committees of the Council (the Investigating Committee, the Fitness to Practise Committee and the Appeals Committee), and to the functions of advisers to the statutory committees and other committees of the Council.

Part 1 deals with preliminary matters, including commencement and interpretation and Part 2 sets out the composition of the statutory committees.

Part 3 confers additional functions on the Investigating Committee and the Fitness to Practise Committee. The additional functions of the Investigating Committee include the provision of an annual report to the Council, and the consideration and determination of various matters relating to allegations that have been referred to it. The additional functions of the Fitness to Practise Committee include the provision of advice to the Registrar, Appeals Committee and Investigating Committee on various matters.

Part 4 deals with matters relating to the appointment and removal of statutory committee members, and sets out a number of categories of person who will not be eligible for appointment as a statutory committee member. It provides that an Appointments Committee set up by the Council under its powers in article 4(7) of the Pharmacy Order 2010 is to be responsible for selecting and appointing, suspending and removing from office, and overseeing training, development and appraisal for chairs, deputy chairs and other members of statutory committees. Provision is made in respect of statutory committee members about their required competencies; the standards and attendance at meetings, hearings and training expected of them; their term of office; the procedure for resignation from office; and the circumstances in which the Appointments Committee may suspend or remove them from office. Provision is also made about how vacancies on a statutory committee are to be filled (including provision requiring the Appointments Committee to maintain a reserve list of statutory committee members) and providing a power for the chair of a statutory committee to co-opt members.

Part 5 contains provisions relating to meetings and hearings of the statutory committees, including a requirement for each statutory committee to have a secretary. Provision is made about the quorum of the statutory committees, and there is a requirement that at meetings or hearings of the statutory committees, the professional members should not be in a majority of more than one. There are also special arrangements relating to the composition of the Fitness to Practise Committee in certain circumstances. Additionally, there are provisions against bias and which set out that voting will be by simple majority.

Part 6 deals with the functions of legal, clinical and other specialist advisers to both statutory committees and other committees of the Council. There are requirements relating to the manner in which advice is to be tendered and recorded, and to the announcing and recording of decisions not to accept advice from professional advisers. Professional advisers are also given the power, with the permission of the chair of the relevant committee, to question witnesses.

© Crown copyright 2010

Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Carol Tullo, Controller of Her Majesty’s Stationery Office and Queen’s Printer of Acts of Parliament.

STATUTORY INSTRUMENTS

2010 No. 1616

HEALTH CARE AND ASSOCIATED PROFESSIONS

PHARMACY

The General Pharmaceutical Council (Statutory Committees and
their Advisers Rules) Order of Council 2010

£5.75