

2010 No. 1618

HEALTH CARE AND ASSOCIATED PROFESSIONS

PHARMACY

**The General Pharmaceutical Council (Transfer of Property,
Rights and Liabilities, Fees and Grants) 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

Their Lordships make the following Order of Council in exercise of the powers conferred by paragraph 17 of Schedule 5 to the Pharmacy Order 2010(a).

PART 1

Introductory

Citation, commencement and interpretation

1.—(1) This Order may be cited as the General Pharmaceutical Council (Transfer of Property, Rights and Liabilities, Fees and Grants) Order of Council 2010 and comes into force on 27th September 2010.

(2) In this Order —

“the Order” means the Pharmacy Order 2010;

“regulatory activity”, in relation to the Society, means any activity undertaken by the Society in respect of its statutory functions under the 2007 Order, Parts 3 and 4 of the Medicines Act 1968(b), the Poisons Act 1972(c) and the Poisons Rules(d) or under the provisions of any other enactment which confers a regulatory function on the Society;

(a) S.I.2010/231.

(b) 1968 c.67.

(c) 1972 c.66.

(d) The Poisons Rules are rules made by the Secretary of State for Health under section 7 of the Poisons Act 1972 (c.66). The Rules currently in force are S.I.1982/218 as amended by S.I.1985/1077, 1968/10, 1986/1704, 1989/112 and 1992/2293.

“relevant staff” means individuals who are employed or engaged by the Society in connection with its regulatory activity immediately before the transfer date;

“relevant UK regulatory body” means—

- (a) a regulatory body within the meaning of article 3(1) of the Order;
- (b) Her Majesty’s Inspector of Prisons;
- (c) the Medicines and Healthcare Products Regulatory Agency; and
- (d) the NHS Counter Fraud and Security Management Division of the NHS Business Services Authority; and

“the transfer date” is 27th September 2010 being the date on which the regulatory activity of the Society is to be transferred to the Council under the Order.

Transfer of property, rights and liabilities

2.—(1) Subject to article 3, the property, rights and liabilities of the Society specified in Schedule 1 are to be transferred, on the transfer date, to the Council.

(2) The rights and liabilities referred to in paragraph (1) include the rights and liabilities relating to any relevant staff whose names are contained in the list compiled by the Society and certified by the Privy Council of staff whose employment with the Society is to transfer to the Council on the transfer date.

(3) The liabilities referred to in paragraph (2) comprise—

- (a) all salaries, wages and emoluments;
- (b) all statutory contributions;
- (c) all income tax deductible under PAYE;
- (d) all employer’s contributions; and
- (e) any other employment costs.

Liabilities not transferring

3. The following liabilities of the Society do not transfer to the Council on the transfer date—

- (a) any liability in tort in respect of any claim for damages for death or personal injury caused or alleged to have been caused before the transfer date;
- (b) any liability in respect of which the Secretary of State has given an indemnity to the Council; and
- (c) any liability arising in respect of the Royal Pharmaceutical Society of Great Britain Staff Pension Scheme.

Fees

4. The amount of money which is to be transferred from the Society to the Council on the transfer date in respect of a proportion of the regulatory fees collected by the Society in respect of persons entered in the 2007 registers and registered pharmacies entered in the premises register^(a) for the year 2010 is £4,130,000.00.

Grants

5. Schedule 2 makes provision in respect of the amount of money which is to be transferred from the Society to the Council on the transfer date in respect of the remainder of the grants specified in that Schedule which have been made by the Department of Health to the Society in connection with the establishment of the Council.

(a) See paragraph 1 of Schedule 5 to S.I.2010/231 for the definition of “the 2007 registers” and “the premises register”.

Supplementary provisions

6.—(1) Anything done by or in relation to the Society for the purposes of, or otherwise in connection with the property, rights or liabilities transferred under this Order is to have effect as if done in relation to the Council.

(2) Anything (which may include legal proceedings) which, when this Order takes effect, is in the process of being done by or in relation to the Society in connection with any of the property, rights or liabilities transferred under this Order is to have effect as if done by or in relation to, and may be continued by or in relation to, the Council.

(3) Any reference to the Society in any agreement (whether written or not), instrument or other document in connection with any property, rights or liabilities transferred under this Order, is to be treated as a reference to the Council.

(4) No right to terminate or vary a contract, arrangement or instrument is to operate or become exercisable, and no provision of any contract, arrangement or instrument is to operate or become exercisable or be contravened, by reason of any transfer under or other operation of this Order.

(5) The transfers provided for by this Order are to be made—

- (a) irrespective of any requirement for consent that would otherwise apply (whether arising under any enactment, instrument, agreement or otherwise); and
- (b) whether or not they would otherwise be capable of being transferred.

(6) A certificate given by the Clerk of the Privy Council issued, following consultation with the Society and with the Council, as to the effect of this Order is to be conclusive for all purposes.

Judith Simpson
Clerk of the Privy Council

SCHEDULE 1

Article 2(1)

Property, rights and liabilities transferring to the Council

Furniture, fittings, plant, equipment and machinery

1.—(1) The property, rights and liabilities which the Society has in relation to the items specified in sub-paragraph (2), in so far as these items are used by, or in connection with, the regulatory activity of the Society, are to pass to the Council on the transfer date.

(2) The items referred to in sub-paragraph (1) are—

- (a) the software, data and hardware relating to the 2007 registers and the premises register (“the Concept system”);
- (b) information relating to inspections of registered pharmacies in Great Britain contained in the Inspectors Record of Visits (“the IROV Database”);
- (c) the database relating to the Case Management System and the information contained in that database;
- (d) all computers, mobile telephones, data cards and electronic instruments used by relevant staff;
- (e) all office furniture including desks, chairs, filing cabinets used by relevant staff;
- (f) all goods, stocks, inventory, stores and raw materials used by or in connection with, or otherwise attributable to, the Society’s regulatory activity; and
- (g) all assets, whether tangible or intangible, purchased through money supplied by way of grants made by the Department of Health to the Society in relation to the Society’s work in preparing for the establishment of the Council.

Contracts and agreements

2.—(1) The property, rights and liabilities which the Society has in relation to the contracts and agreements specified in sub-paragraph (2), in so far as these relate to the regulatory activity of the Society, are to pass to the Council on the transfer date.

(2) The contracts and agreements referred to in sub-paragraph (1) are—

- (a) all maintenance contracts in respect of the Concept system;
- (b) all operating leases and maintenance contracts for cars, photocopiers, printers and other electronic equipment used by relevant staff;
- (c) all policies of insurance taken out and maintained by the Society in relation to the regulatory activity of the Council; and
- (d) all other contracts, agreements, arrangements, engagements, assignments and orders which relate to the regulatory activity of the Society.

Intellectual property and records

3.—(1) The intellectual property, rights and liabilities which the Society has in relation to the items specified in sub-paragraph (2), in so far as these relate to the regulatory activity of the Society, are to pass to the Council on the transfer date.

(2) The items referred to in sub-paragraph (1) are—

- (a) all books, records and other documents held by the Society in connection with the Society's regulatory activity (including any documents or records that are kept by means of a computer or other electronic device) including—
 - (i) information contained in the 2007 registers and the premises registers,
 - (ii) all records relating to persons who are or have been entered in the 2007 registers as a practising pharmacist or pharmacy technician,
 - (iii) all records relating to pre-registration students who have applied for entry in the 2007 registers as a practising pharmacist or pharmacy technician, and
 - (iv) all records relating to registered pharmacies entered in the premises register;
- (b) all records or evidence (including physical evidence obtained by an inspector appointed by the Society under section 9 of the Poisons Act 1972 in the exercise of any power under that section) held by the Society relating to any investigation or proceedings conducted by the Society against a person carrying on a retail pharmacy business at a registered pharmacy entered in the premises register;
- (c) all records or evidence (including physical evidence obtained by an inspector appointed by the Society under section 9 of the Poisons Act 1972) held by the Society in connection with any inspection conducted by such an inspector on behalf of or in conjunction with a relevant UK regulatory body which does not relate to the regulatory activity of the Society;
- (d) all records relating to the pre-registration exam and pre-registration students including the records of questions set in previous examinations and any questions set for future examinations;
- (e) all records and other data relating to the quality assurance of education and training provision;
- (f) all employment records relating to relevant staff;
- (g) all domain names registered by the Society in respect of the Council; and
- (h) all authorisations and quality assurance markings held by the Society in connection with the regulation of the retail pharmacy business carried on by registered pharmacies over the internet.

Grants

Grants to be transferred

1. The amount of money which is to be transferred from the Society to the Council on the transfer date in respect of—

- (a) the grant made to the Society by the Department of Health in England in respect of the costs incurred in preparing for the establishment of the Council is £981,007.98;
- (b) the grant made to the Society by the Secretary of State for Health in respect of the monitoring of controlled drugs is £172,608.00; and
- (c) the grant made by the Department of Health in England in respect of research into and the development of revalidation standards is £126,800.25.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order is made under paragraph 17 of Schedule 5 to the Pharmacy Order 2010 (S.I.2010/231) (“the Order”).

Article 1 makes provision for citation, commencement and interpretation.

Article 2 makes provision in respect of the transfer of the property, rights and liabilities specified in Schedule 1 from the Royal Pharmaceutical Society of Great Britain (“the Society”) to the General Pharmaceutical Council (“the Council”) on the day on which the regulatory activities of the Society are transferred to the Council by virtue of provisions in the Order (“the transfer date”). Article 2 also includes provision for the transfer from the Society to the Council of any rights and liabilities incurred by the Society in respect of any staff who were employed or engaged by the Society immediately before the transfer date and whose names are contained in the list compiled by the Society which, immediately prior to the making of this Order, has been certified by the Privy Council. Any queries regarding the list of names referred to in article 2 may be directed to Elaine Mulingani, Head of Private Office, at the Council.

Article 3 makes provision in respect of the liabilities of the Society that are not to transfer to the Council on the transfer date.

Article 4 makes provision in respect of the amount of the regulatory fees collected by the Society in respect of the year 2010 which is to transfer from the Society to the Council on the transfer date.

Article 5 makes provision in respect of the transfer of an amount to be paid by the Society to the Council in respect of any grants specified in Schedule 2 that have been paid to the Society in connection with the establishment of the Council.

Article 6 makes general supplementary provision in respect of things done by or in respect of any property, rights or liabilities transferring from the Society to the Council under this Order including the continuation against the Council of any legal proceedings brought against the Society in connection with such property, rights or liabilities. Article 6 also makes provision for any references to the Society included in any instrument, contract or document relating to any property, rights or liabilities transferring from the Society to the Council under this Order to be treated as references to the Council and for the transfers provided for by this Order to be made irrespective of any requirement for consent that would otherwise apply and whether or not they would otherwise be capable of being transferred.

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£4.00