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DRAFT STATUTORY INSTRUMENTS

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**2015 No.**

**HEALTH CARE AND ASSOCIATED PROFESSIONS**

**The General Medical Council (Fitness to Practise and Over-arching Objective) and the Professional Standards Authority for Health and Social Care (References to Court) Order 2015**

*Made* - - - - - *\*\*\**

*Coming into force in accordance with article 1(2) and (3)*

**CONTENTS**

**PART 1**

**Preliminary**

- |    |   |   |
|----|---|---|
| 1. | Citation, commencement and interpretation | 3 |
|----|---|---|

**PART 2**

**The Medical Practitioners Tribunal Service**

- |     |  |    |
|-----|--|----|
| 2.  | Establishment of the MPTS as a committee of the General Medical Council                      | 3  |
| 3.  | Medical Practitioners Tribunals and Interim Orders Tribunals: establishment etc.             | 5  |
| 4.  | Articles 2 and 3: consequential provision  | 7  |
| 5.  | Allegations of impaired fitness to practise: consideration by Medical Practitioners Tribunal | 7  |
| 6.  | Interim orders   | 10 |
| 7.  | Proceedings in fitness to practise cases: overriding objective of procedural rules           | 11 |
| 8.  | Proceedings in fitness to practise cases: procedural rules                                   | 11 |
| 9.  | Proceedings in fitness to practise cases: undertakings                                       | 14 |
| 10. | Assessments of professional performance or health  | 15 |
| 11. | Assessments of knowledge of English  | 17 |
| 12. | Assessments: consequential provision   | 19 |
| 13. | Legal assessors  | 21 |
| 14. | Case managers  | 22 |
| 15. | Disclosure of information  | 23 |
| 16. | Appeals by persons subject to decisions by Tribunals   | 23 |
| 17. | Appeals by the General Medical Council   | 24 |

18.	References to court by the Professional Standards Authority for Health and Social Care	26
19.	Restoration of names to the register	27
20.	Annual reports of the MPTS	28

### PART 3

#### The General Medical Council: over-arching objective

21.	The over-arching objective	28
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### PART 4

#### Other matters relating to fitness to practise

22.	Investigation Committee: vexatious allegations, facts more than 5 years old, reviews	30
23.	Registration Appeals Panels	30
24.	Service of notification of decisions by email	31
25.	Appeal of review orders	31
26.	Minor corrections etc.	31

### PART 5

#### Supplementary

27.	Orders by the Privy Council: procedure	31
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At the Court at Buckingham Palace, the 000 day of 000

Present,

The Queen's Most Excellent Majesty in Council

This Order in Council is made in exercise of the powers conferred by sections 60 and 62(4) and (4A) of, and Schedule 3 to, the Health Act 1999(a).

The Secretary of State and the Scottish Ministers published a draft Order and invited representations as required by paragraph 9(1) and (3) of Schedule 3 to the Health Act 1999.

The period of three months mentioned in paragraph 9(4) of that Schedule expired before a draft of this Order in Council, together with a report about consultation, was laid before Parliament and the Scottish Parliament.

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(a) 1999 c.8. Section 60 was amended by paragraph 16 of Schedule 5 to the Nursing and Midwifery Order 2001 (S.I. 2002/253); section 26(9) of the National Health Service Reform and Health Care Professions Act 2002 (c.17); paragraph 1 of Schedule 8 to the Health and Social Care Act 2008 (c.14); sections 209, 210 and 213 of, and paragraphs 60 and 72 of Schedule 15 to, the Health and Social Care Act 2012 (c.7); paragraph 7 of Schedule 4 to the Pharmacy Order 2010 (S.I. 2010/231); paragraph 43 of Schedule 34 to the Human Medicines Regulations 2012 (S.I. 2012/1916). Section 62 was amended by paragraph 1 of Schedule 4 to the National Health Service (Consequential Provisions) Act 2006 (c.43); and paragraph 2 of Schedule 8 to the Health and Social Care Act 2008. Section 62(4) and (4A) was substituted by paragraph 11 of Schedule 10 to the Health and Social Care Act 2008. Schedule 3 was amended by section 26(10) of the National Health Service Reform and Health Care Professions Act 2002; paragraph 8(b) of Schedule 4 to the Health and Social Work Professions Order 2002 (S.I. 2002/254); paragraph 67 of Schedule 11, and paragraph 1 of Schedule 14, to the Health and Social Care (Community Health and Standards) Act 2003 (c.43); Schedule 9 to the Health Act 2006 (c. 28); paragraphs 4 to 10 of Schedule 8, and paragraph 1 of Schedule 15, to the Health and Social Care Act 2008; section 211 of, and paragraphs 61 and 72 of Schedule 15 to, the Health and Social Care Act 2012.

A draft of this Order in Council has been approved by resolution of each House of Parliament and of the Scottish Parliament in accordance with section 62(10) of the Health Act 1999.

Accordingly, Her Majesty is pleased, by and with the advice of Her Privy Council, to make the following Order in Council:

## PART 1

### Preliminary

#### **Citation, commencement and interpretation**

**1.**—(1) This Order may be cited as the General Medical Council (Fitness to Practise and Overarching Objective) and the Professional Standards Authority for Health and Social Care (References to Court) Order 2015.

(2) This article and article 27 come into force on the day after the day on which this Order is made.

(3) The other provisions of this Order come into force on such day as the Privy Council may by order appoint; and different days may be appointed for different purposes.

(4) If an amendment made by article 21 is brought into force before article 3, any reference in the amendment to a Medical Practitioners Tribunal is, pending the commencement of article 3, to be read as a reference to a Fitness to Practise Panel of the General Medical Council.

(5) The Privy Council may by order make transitional, transitory or saving provision in connection with the commencement of a provision of this Order.

(6) In this Order, “the Medical Act” means the Medical Act 1983(a).

## PART 2

### The Medical Practitioners Tribunal Service

#### **Establishment of the MPTS as a committee of the General Medical Council**

**2.**—(1) In section 1 of the Medical Act (the GMC: constitution etc.), in subsection (3)(b), before “constituted in accordance with” insert—

“(g) the Medical Practitioners Tribunal Service (“the MPTS”),”.

(2) In subsection (3A) of that section, omit “paragraphs (c), (d) and (e) of”.

(3) In section 55(1) of that Act (interpretation), at the appropriate place insert—

(4) ““the MPTS” means the Medical Practitioners Tribunal Service;”.

(5) In Part 3 of Schedule 1 to that Act (committees of the GMC)(c), before paragraph 23 (and the preceding cross-heading) insert—

#### **“Medical Practitioners Tribunal Service**

**19F.**—(1) The MPTS are to be constituted as provided by rules made under this paragraph by the General Council.

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(a) 1983 c.54. A number of amendments were made by Schedules 6 and 7 to the Health and Social Care Act 2008 (c.14) to provisions of the Medical Act 1983 amended by this Order but those amendments were not commenced and have now been repealed by section 231 of the Health and Social Care Act 2012 (c.7).

(b) Section 1(3) and (3A) as substituted by S.I. 2002/3135 was amended by S.I. 2006/1914 and S.I. 2008/3131.

(c) Part 3 of Schedule 1 was amended by S.I. 2002/3135 and S.I. 2006/1914.

(2) Rules under this paragraph must secure that only persons who are not members of the General Council are to be members of the MPTS.

(3) Rules under this paragraph must include provision with regard to—

- (a) the numbers of registrant members and lay members of the MPTS;
- (b) (subject to sub-paragraph (6)) the appointment of members of the MPTS and the terms of office for which members are appointed, and the rules may provide that these are to be determined by whoever makes the appointment as member, on appointment;
- (c) the grounds (in addition to that mentioned in sub-paragraph (2)) on which a person is to be disqualified from appointment as a registrant or lay member of the MPTS;
- (d) (subject to sub-paragraph (6)) the appointment of a chair of the MPTS and the chair's term of office, and the rules may provide that the term is to be determined by whoever makes the appointment as chair, on appointment;
- (e) deputising arrangements in respect of the chair;
- (f) the quorum at meetings of the MPTS;
- (g) the circumstances in which a member of the MPTS ceases to hold office or may be removed or suspended from office.

(4) Provision by virtue of sub-paragraph (3)(a) must secure that the registrant members of the MPTS do not form a majority of the members.

(5) The chair of the MPTS is, by virtue of being appointed as such, an officer of the General Council.

(6) Where, immediately before the commencement of this paragraph, a committee of the General Council constituted under paragraph 25 have been carrying out functions relating to fitness to practise proceedings, the General Council—

- (a) may appoint as the chair of the MPTS, for such period as the Council may determine, the person who, immediately before the commencement of this paragraph, was the chair of that committee, and
- (b) may appoint as a member of the MPTS other than the chair, for such period as the Council may determine, a person who, immediately before the commencement of this paragraph, was a member of that committee.

(7) Rules under this paragraph may include provision for enabling the General Council to direct the MPTS to delegate to the chair of the MPTS, or to such other officer of the Council as the Council determine, such of the functions of the MPTS as the Council determine (and for enabling the MPTS so to delegate).

(8) Rules under this paragraph may include provision with regard to criteria which a person must satisfy (whether in relation to qualifications, experience, competencies or other matters) in order to be eligible for appointment as chair or as another member of the MPTS; and the rules may, in particular, require the General Council to set and publish those criteria.

(9) Rules under this paragraph may include provision with regard to—

- (a) the maximum period for which a member of the MPTS may hold office during a specified period;
- (b) the maximum period for which a member of the MPTS may serve as chair of the MPTS during a specified period;
- (c) the education and training of members of the MPTS, and the rules may provide for the General Council to include the requirements with regard to education and training of members of the MPTS in standing orders, and for those standing orders to provide for—
  - (i) the education and training to be the responsibility of another body, and
  - (ii) those requirements to be set and varied by that body from time to time;

- (d) the attendance of members of the MPTS at meetings of the MPTS;
  - (e) the effect (if any) of any vacancy in the membership of the MPTS or any defect in the appointment of a member.
- (10) The MPTS must maintain a system for the declaration and registration of private interests of their members.
- (11) The MPTS must publish in such manner as they see fit entries recorded in the register of members' private interests.
- (12) In this paragraph, "registrant member" and "lay member" each have the same meaning as in paragraph 1A.
- (13) Rules under this paragraph may make different provision for different cases or different classes of case and may contain such incidental, consequential, transitional, transitory, saving or supplementary provisions as appear to the General Council to be necessary or expedient."
- (6) In paragraph 15 of that Schedule (standing orders of the GMC)(a), in sub-paragraph (3), at the end insert " , except in so far as is necessary for enabling standing orders to make provision with regard to the financial affairs of the MPTS or to make provision by virtue of paragraph 19F(9)(c)."
- (7) In paragraph 16 of that Schedule (officers of the GMC)(b), after sub-paragraph (3) insert—
- “(3A) A deputy or assistant registrar who is authorised in accordance with provision made by virtue of paragraph 19F(7) to act on behalf of the MPTS may not, while so authorised, act for the Registrar in any matter.”

#### **Medical Practitioners Tribunals and Interim Orders Tribunals: establishment etc.**

- 3.—**(1) In section 1 of the Medical Act (GMC: constitution etc.), in subsection (3)—
- (a) omit paragraphs (b) and (f), and
  - (b) after paragraph (g) (inserted by article 2(1)) insert—
    - “(h) one or more Medical Practitioners Tribunals,
    - (i) one or more Interim Orders Tribunals.”.
- (2) In Part 3 of Schedule 1 to that Act (committees of the GMC), omit paragraphs 19A and 19E(c) and the preceding cross-heading in each case.
- (3) After paragraph 19F of that Schedule (inserted by article 2(4)) insert—

#### **“Medical Practitioners Tribunals and Interim Orders Tribunals**

**19G.—**(1) Medical Practitioners Tribunals and Interim Orders Tribunals are to be constituted as provided by rules made under this paragraph by the General Council.

- (2) Rules under this paragraph must include provision with regard to—
- (a) the appointment by the MPTS of persons to—
    - (i) a list of persons eligible to serve as the chair of a Medical Practitioners Tribunal or Interim Orders Tribunal;
    - (ii) a list of persons eligible to serve as a registrant member of either such Tribunal;
    - (iii) a list of persons eligible to serve as a lay member of either such Tribunal;

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(a) Paragraph 15 of Schedule 1 was amended by S.I. 2006/1914, 2008/1774 and S.I. 2008/3131.  
 (b) Paragraph 16 of Schedule 1 was amended by S.I. 2002/3135 and 2008/1774.  
 (c) Paragraphs 19A and 19E of Schedule 1 were substituted by S.I. 2002/3135.

- (b) the determination by the MPTS of the terms on which a person holds a position on a list referred to in paragraph (a) (a “panel list”) and of the grounds on which the MPTS may suspend or remove a person from holding a position on a panel list;
  - (c) the selection by the MPTS of persons who are on a panel list to serve as the chair and the other members of a Medical Practitioners Tribunal or Interim Orders Tribunal;
  - (d) the quorum for a Medical Practitioners Tribunal or Interim Orders Tribunal.
- (3) A person appointed to a panel list within sub-paragraph (2)(a)(ii) or (iii) may also be appointed to a panel list within sub-paragraph (2)(a)(i).
- (4) Rules under this paragraph must secure that—
- (a) only a person who is not a member of the General Council, the Investigation Committee, a Registration Panel or a Registration Appeals Panel, or who is not an officer of the General Council, may be appointed to a panel list;
  - (b) a person who serves as a member of an Interim Orders Tribunal, or as a member of a Medical Practitioners Tribunal in arrangements made under section 41A(A1), may not serve as a member of a Medical Practitioners Tribunal in any subsequent proceedings in the case concerned.
- (5) Rules under this paragraph may provide for a person to be appointed to a panel list either generally or only for particular proceedings or a particular class of proceedings.
- (6) Rules under this paragraph must provide that a person appointed to a panel list holds and ceases to hold a position on the list in accordance with the terms of that person’s appointment.
- (7) Rules under this paragraph may include provision with regard to criteria which a person must satisfy (whether in relation to qualifications, experience, competencies or other matters) in order to be eligible for appointment to a panel list or for selection to serve as the chair of a Medical Practitioners Tribunal or Interim Orders Tribunal; and the rules may, in particular, require the MPTS to set and publish those criteria.
- (8) Rules under this paragraph may also make provision for a body (including a committee of the General Council which is not one of the statutory committees) to assist the MPTS in connection with the exercise of functions conferred on the MPTS by virtue of sub-paragraph (2)(a) or (b).
- (9) The MPTS must provide or arrange for the provision of—
- (a) such training as they may determine for persons appointed to a panel list;
  - (b) such training as they may determine for persons whom they propose to appoint to a panel list.
- (10) Rules under this paragraph may include provision with regard to the effect (if any) of any defect in the appointment of a person to a panel list or in the selection of a person to serve as the chair or another member of a Medical Practitioners Tribunal or an Interim Orders Tribunal.
- (11) The MPTS must maintain a system for the declaration and registration of private interests of persons appointed to a panel list.
- (12) The MPTS must publish in such manner as they see fit entries recorded in the register of appointees’ private interests.
- (13) There are to be paid to persons appointed to a panel list such remuneration and such travelling, subsistence or other expenses as the General Council may allow.
- (14) In this paragraph, “registrant member” and “lay member” each have the same meaning as in paragraph 1A.
- (15) Rules under this paragraph may make different provision for different cases or different classes of case and may contain such incidental, consequential, transitional, transitory, saving or supplementary provisions as appear to the General Council to be necessary or expedient.”

## Articles 2 and 3: consequential provision

**4.**—(1) In Part 3 of Schedule 1 to the Medical Act (committees of the GMC), in paragraph 23 (membership)(a)—

- (a) for “paragraphs 19A, 19C and 19E” substitute “paragraph 19C”,
- (b) in paragraphs (a) and (c), omit “an Interim Orders Panel,” and “or a Fitness to Practise Panel”, and
- (c) omit paragraph (b) (but not the following “and”).

(2) In paragraph 23B of that Schedule (quorum)(b), for “19A, 19B, 19C, 19D or 19E” substitute “19B, 19C or 19D”.

(3) In paragraph 23C of that Schedule (assistance with appointment functions)(c), after “paragraph 23B” insert “or under paragraph 19F”.

(4) After that paragraph insert—

“**23D.** The overriding objective of the General Council in exercising the power to make rules under paragraph 19F or 19G is to secure that Medical Practitioners Tribunals and Interim Orders Tribunals deal with cases fairly and justly.”

(5) In paragraph 24 of that Schedule (requirement for Privy Council approval of rules)(d), for “19A, 19B, 19C, 19D or 19E” substitute “19B, 19C, 19D, 19F or 19G”.

(6) In paragraph 25 of that Schedule (supplementary provisions relating to committees)(e), in sub-paragraph (2), for “paragraph 23” substitute “paragraphs 19B, 19C, 19D, 19F, 19G and 23”.

(7) In sub-paragraph (3) of that paragraph, after “any committee of the Council” insert “(other than the MPTS or a Medical Practitioners Tribunal or Interim Orders Tribunal)”.

(8) In sub-paragraph (4) of that paragraph, after “rules made” insert “under paragraph 19F(3)(f) or 19G(2)(d) or”.

(9) In sections 35B(4), 38(1), (2) and (4), 44(5), 47(4) and 53(2) of the Medical Act, for “Fitness to Practise Panel”, in each place it appears, substitute “Medical Practitioners Tribunal”.

(10) In section 44(5) of that Act—

- (a) for “the Panel” substitute “the Tribunal”, and
- (b) for “the Panel’s” substitute “the Tribunal’s”.

(11) In sections 35B(4) and 47(4) of that Act, for “Interim Orders Panel” substitute “Interim Orders Tribunal”.

(12) In section 35CC of that Act (provisions supplementary to section 35C)(f), after subsection (1) insert—

“(1A) The reference in subsection (1) to an officer of the General Council does not include a reference to the chair of the MPTS or any other officer of the Council to whom functions of the MPTS have been delegated by virtue of paragraph 19F(7) of Schedule 1.”

## Allegations of impaired fitness to practise: consideration by Medical Practitioners Tribunal

**5.**—(1) In section 35C of the Medical Act (functions of the Investigation Committee)(g), in subsection (5)(b), after “refer the allegation to” insert “the MPTS for them to arrange for the allegation to be considered by”.

(2) In subsections (4), (5), (6) and (7) of that section, for “Fitness to Practise Panel”, in each place it appears, substitute “Medical Practitioners Tribunal”.

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(a) Paragraph 23 of Schedule 1 was amended by S.I. 2006/1914.

(b) Paragraph 23B of Schedule 1 was substituted by S.I. 2002/3135.

(c) Paragraph 23C of Schedule 1 was inserted by S.I. 2008/1774.

(d) Paragraph 24 of Schedule 1 was substituted by S.I. 2002/3135.

(e) Paragraph 25 of Schedule 1 was amended by S.I. 2000/1803, S.I. 2002/3135 and S.I. 2008/3131.

(f) Section 35CC was substituted by S.I. 2002/3135.

(g) Section 35C was substituted by S.I. 2002/3135 and amended by S.I. 2006/1914, S.I. 2008/3131 and S.I. 2014/1101.

(3) In section 35D of that Act (the title to which becomes “Functions of a Medical Practitioners Tribunal”)(a), in subsection (1)—

(a) for “section 35C” substitute “section 35C(5)(b)”, and

(b) for “a Fitness to Practise Panel,” substitute—

“the MPTS—

(a) the MPTS must arrange for the allegation to be considered by a Medical Practitioners Tribunal, and

(b) ”.

(4) In subsection (2) of that section—

(a) for “Where the Panel” substitute “Where the Medical Practitioners Tribunal”, and

(b) in paragraph (c), for “the Panel” substitute “the Tribunal”.

(5) In subsections (4), (5), (6), (9) and (12) of that section, for “a Fitness to Practise Panel” substitute “a Medical Practitioners Tribunal”; and in subsections (3), (5), (10) and (12) of that section, for “the Panel”, in each place it appears, substitute “the Tribunal”.

(6) In subsection (4) of that section, for “subsection (5) below applies” substitute “subsections (4A) and (4B) below apply”.

(7) After that subsection insert—

“(4A) The Tribunal may direct that the direction is to be reviewed by another Medical Practitioners Tribunal prior to the expiry of the period of suspension; and, where the Tribunal do so direct, the MPTS must arrange for the direction to be reviewed by another Medical Practitioners Tribunal prior to that expiry.

(4B) The Registrar may, at any time prior to the expiry of the period of suspension, refer the matter to the MPTS for them to arrange for the direction to be reviewed by a Medical Practitioners Tribunal prior to that expiry; and, where a matter is referred to the MPTS under this subsection, the MPTS must arrange for the direction to be reviewed by a Medical Practitioners Tribunal.”

(8) In subsection (5) of that section—

(a) for “In such a case” substitute “On a review arranged under subsection (4A) or (4B)”,

(b) omit the “or” following paragraph (b),

(c) in paragraph (c), after “the expiry of the current period of suspension” insert “or from such date before that expiry as may be specified in the direction”, and

(d) after that paragraph insert

“; or

(d) revoke the direction for the remainder of the current period of suspension.”.

(9) In subsection (7) of that section—

(a) for “a Fitness to Practise Panel have” substitute “a Medical Practitioners Tribunal have”,

(b) for “a Fitness to Practise Panel shall” substitute “the Registrar shall refer the matter to the MPTS for them to arrange for a Medical Practitioners Tribunal to”, and

(c) for paragraph (a) substitute—

“(a) the person makes a request to the Registrar for there to be such a review;”.

(10) In subsection (8) of that section—

(a) for “On such a review the Panel may” substitute “Where a matter is referred to the MPTS under subsection (7), the MPTS must arrange for the direction to be reviewed by a Medical Practitioners Tribunal; and on such a review, the Tribunal may”, and

(b) in paragraph (c), for “the Panel” substitute “the Tribunal”.

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(a) Section 35D was substituted by S.I. 2002/3135 and amended by S.I. 2014/1101.



- (11) In subsection (9) of that section—
- (a) for paragraph (b) substitute—
 

“(b) the Registrar is of the opinion that that person has failed to comply with any requirement imposed on the person as such a condition,”, and
  - (b) for “subsection (10)” substitute “subsection (9A)”.
- (12) After subsection (9) of that section insert—
- “(9A) The Registrar may refer the matter to the MPTS for them to arrange for the direction to be reviewed by a Medical Practitioners Tribunal; and, where a matter is referred to the MPTS under this subsection, the MPTS must arrange for the direction to be reviewed by a Medical Practitioners Tribunal.”
- (13) In subsection (10) of that section, for “In such a case” substitute “Where, on a review arranged under subsection (9A), the Tribunal judge the person concerned to have failed to comply with a requirement imposed as a condition such as is mentioned in subsection (9)(a),”.
- (14) For subsection (11) substitute—
- “(11) Where, in a case which does not come within subsection (9) above, a direction that a person’s registration be subject to conditions has been given under subsection (2), (5) or (8) above or paragraph 5A(3D) or 5C(4) of Schedule 4 to this Act, subsections (11A) and (11B) below apply.
- (11A) The Tribunal may direct that the direction is to be reviewed by another Medical Practitioners Tribunal prior to the expiry of the period for which the conditions apply; and, where the Tribunal do so direct, the MPTS must arrange for the direction to be reviewed by another Medical Practitioners Tribunal prior to that expiry.
- (11B) The Registrar may, at any time prior to the expiry of the period for which the conditions apply, refer the matter to the MPTS for them to arrange for the direction to be reviewed by a Medical Practitioners Tribunal; and, where a matter is referred to the MPTS under this subsection, the MPTS must arrange for the direction to be reviewed by a Medical Practitioners Tribunal.”
- (15) In subsection (12) of that section, for “In such a case” substitute “On a review arranged under subsection (11A) or (11B)”.
- (16) After that subsection insert—
- “(13) Where a Medical Practitioners Tribunal have yet to hold a hearing to consider a case in which they would have the power to give or make a direction, revocation or variation under subsection (5), (6), (8), (10) or (12) above, but the person concerned and the General Council have agreed in writing to the terms of such a direction, revocation or variation—
- (a) the Tribunal, on considering the matter on the papers, or the chair of the Tribunal, on doing so instead of the Tribunal, may give a direction or make a revocation or variation on the agreed terms; or
  - (b) if the Tribunal or chair (as the case may be) acting under paragraph (a) determines that the Tribunal should hold a hearing to consider the matter, the MPTS must arrange for a hearing of the Tribunal for that purpose.
- (14) A direction, revocation or variation given or made under subsection (13)(a) by a Tribunal or the chair of a Tribunal is to be treated for the purposes of this Act as if it had been given or made by the Tribunal under subsection (5), (6), (8), (10) or (12) above (as the case may be).”
- (17) In section 35E of the Medical Act (provisions supplementary to section 35D)(a)—
- (a) in subsection (1), for “a Fitness to Practise Panel” substitute “a Medical Practitioners Tribunal”,

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(a) Section 35E was substituted by S.I. 2002/3135 and amended by S.I. 2006/1914 and S.I. 2014/1101.

- (b) in that subsection, for “the Registrar” substitute “the MPTS”, and
- (c) in subsections (4) and (5), for “a Fitness to Practise Panel has” substitute “a Medical Practitioners Tribunal have”.

(18) After subsection (1) of that section insert—

“(1A) Where, under section 35D, a Medical Practitioners Tribunal—

- (a) give a direction or make a variation as mentioned in subsection (1),
- (b) give a direction that a suspension be terminated,
- (c) revoke a direction for conditional registration or a condition imposed by such a direction, or
- (d) decide not to give a direction,

the MPTS shall forthwith serve on the Registrar and the Professional Standards Authority for Health and Social Care notification of the direction, variation, revocation or decision.

(1B) A notification under subsection (1A) must state whether, in giving the direction or making the variation, revocation or decision, the Tribunal took any undertakings into account in accordance with rules containing provision by virtue of paragraph 1(2C) of Schedule 4.”

(19) In paragraph 9 of Schedule 4 to that Act (extension of time for appealing)(a)—

- (a) in paragraph (a) after “the Registrar” insert “or the MPTS”,
- (b) in paragraph (b) after “the Registrar is” insert “or (as the case may be) the MPTS are”,
- (c) after “the Registrar” insert “or (as the case may be) the MPTS”, and
- (d) for “he thinks” substitute “he or they think”.

## **Interim orders**

**6.**—(1) In section 35C of the Medical Act (functions of the Investigation Committee), in subsection (8)—

- (a) for “an Interim Orders Panel or a Fitness to Practise Panel”, in each place it appears, substitute “an Interim Orders Tribunal or a Medical Practitioners Tribunal”,
- (b) after “refer the matter to” insert “the MPTS for them to arrange for”, and
- (c) omit “for the Panel”.

(2) In section 41A of that Act (interim orders)(b), before subsection (1) insert—

“(A1) Where a matter is referred under section 35C(8) to the MPTS, the MPTS must arrange for an Interim Orders Tribunal or a Medical Practitioners Tribunal to decide whether to make an order as mentioned in that provision.”

(3) In subsection (1) of that section—

- (a) for “Where an Interim Orders Panel or a Fitness to Practise Panel” substitute “Where an Interim Orders Tribunal or a Medical Practitioners Tribunal in arrangements made under subsection (A1), or a Medical Practitioners Tribunal on their consideration of a matter,”, and
- (b) for “the Panel”, in each place it appears, substitute “the Tribunal”.

(4) In subsections (2), (3), (6) and (9) of that section, for “an Interim Orders Panel or a Fitness to Practise Panel”, in each place it appears, substitute “an Interim Orders Tribunal or a Medical Practitioners Tribunal”.

(5) After subsection (3) of that section insert—

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(a) Schedule 4 was substituted by S.I. 2002/3135.

(b) Section 41A was substituted by S.I. 2002/3135 and amended by S.I. 2006/1914.

“(3A) Where an Interim Orders Tribunal or a Medical Practitioners Tribunal have yet to hold a hearing to consider a case in which they would have the power to make an order under subsection (3) above, but the person concerned and the General Council have already agreed in writing to the terms of such an order—

- (a) the Tribunal, on considering the matter on the papers, or the chair of the Tribunal, on doing so instead of the Tribunal, may make an order on the agreed terms; or
- (b) if the Tribunal or chair (as the case may be) acting under paragraph (a) determines that the Tribunal should hold a hearing to consider the matter, the MPTS must arrange for a hearing of the Tribunal for that purpose.

(3B) An order made under subsection (3A)(a) by a Tribunal or the chair of a Tribunal is to be treated for the purposes of this Act as if it had been made by the Tribunal under subsection (3).”

(6) In subsection (4) of that section—

- (a) for “any Panel” substitute “a Tribunal”,
- (b) for “the Panel”, in the first place it appears, substitute “the Tribunal”, and
- (c) omit the words from “; and for the purposes” to the end.

(7) In subsection (5) of that section, for “the Registrar” substitute “the MPTS”.

### **Proceedings in fitness to practise cases: overriding objective of procedural rules**

7. In Schedule 4 to the Medical Act (the title to which becomes “Proceedings before the Investigation Committee, Medical Practitioners Tribunals and Interim Orders Tribunals”), in paragraph 1, after sub-paragraph (1) insert—

“(1A) The overriding objective of the General Council in making rules under this Schedule with respect to the procedure to be followed in proceedings before a Medical Practitioners Tribunal or an Interim Orders Tribunal, or with respect to the procedure to be followed by the Investigation Committee when deciding whether to give a warning under section 35C(6), is to secure that the Tribunal or Committee (as the case may be) deals with cases fairly and justly.”

### **Proceedings in fitness to practise cases: procedural rules**

8.—(1) In paragraph 1 of Schedule 4 to the Medical Act (the cross-heading preceding which becomes “Procedure of and evidence before the Investigation Committee, Medical Practitioners Tribunals and Interim Orders Tribunals”)(a), in sub-paragraph (1)—

- (a) omit “for the Investigation Committee, Interim Orders Panels and Fitness to Practise Panels”,
- (b) in paragraph (a), for “, an Interim Orders Panel or a Fitness to Practise Panel” substitute “or the MPTS”,
- (c) after that paragraph (but before the following “and”) insert—
  - “(aa) the arrangements by the MPTS for a Medical Practitioners Tribunal or Interim Orders Tribunal to consider a matter;”, and
- (d) in paragraph (b), for “that Committee or such a Panel” substitute “the Investigation Committee or a Medical Practitioners Tribunal or Interim Orders Tribunal”.

(2) After sub-paragraph (2) of that paragraph insert—

“(2ZA) Rules made under this paragraph in connection with the referral of a matter to, or the consideration of a matter by, a Medical Practitioners Tribunal or Interim Orders Tribunal may include provision for—

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(a) Paragraph 1 of Schedule 4 was amended by S.I. 2006/1914.

- (a) the Investigation Committee to continue to investigate the matter after the referral is made or consideration by the Tribunal has begun (as the case may be); and
- (b) the withdrawal of the matter (or part of it) by the Investigation Committee if they decide that the matter (or part of it) should not be considered by a Medical Practitioners Tribunal or they are of the opinion that an Interim Orders Tribunal should not consider making an order.

(2ZB) Section 35CC(1) applies to functions of the Investigation Committee by virtue of sub-paragraph (2ZA) as it applies to their functions under section 35C.”

(3) In sub-paragraph (3) of that paragraph—

- (a) for “an Interim Orders Panel or a Fitness to Practise Panel” substitute “an Interim Orders Tribunal or a Medical Practitioners Tribunal”, and
- (b) for “the Panel”, in each place it appears, substitute “the Tribunal”.

(4) In sub-paragraph (4) of that paragraph—

- (a) for “a Fitness to Practise Panel” substitute “a Medical Practitioners Tribunal”,
- (b) for “a Panel”, in each place it appears, substitute “a Tribunal”, and
- (c) for “the Panel” substitute “the Tribunal”.

(5) After that sub-paragraph insert—

“(4A) Rules made under this paragraph in connection with any proceedings before a Medical Practitioners Tribunal may include provision for preliminary hearings.

(4B) Rules made under this paragraph in connection with any proceedings before a Medical Practitioners Tribunal or Interim Orders Tribunal which include provision with respect to the consequences of a failure to comply with those rules or with directions given by the Tribunal or a case manager appointed under paragraph 7A may, in particular—

- (a) where the failure relates to the admission of evidence, enable the Tribunal to refuse to admit the evidence and enable a case manager appointed under paragraph 7A to direct the Tribunal to consider whether to admit the evidence;
- (b) confer power on the Tribunal to draw adverse inferences;
- (c) confer power on the Tribunal to award costs (or, in Scotland, expenses).

(4C) Rules made under this paragraph in connection with any proceedings before a Medical Practitioners Tribunal or Interim Orders Tribunal may include provision for the award of costs (or, in Scotland, expenses) in a case where a party’s, or a party’s representative’s, conduct of the proceedings has been unreasonable.

(4D) Provision by virtue of sub-paragraph (4B)(c) or (4C) may, in particular, include—

- (a) provision for assessment or taxation of costs (or, in Scotland, taxation of expenses);
- (b) provision for a wasted costs order (or, in Scotland, wasted expenses order);
- (c) provision requiring regard to be had to a party’s ability to pay;
- (d) provision conferring on either party a right of appeal against an award of costs to the High Court (or, in Scotland, against an award of expenses to the Court of Session);
- (e) provision for the enforcement of an award of costs (or, in Scotland, expenses) in the same manner as if the award had been made by order of the county court (or, in Scotland, by decree of the sheriff court or, in Northern Ireland, by order of a county court).”

(6) After sub-paragraph (4D) of paragraph 1 of that Schedule (inserted by paragraph (5) above) insert—

“(4E) Rules made under this paragraph in connection with any proceedings before a Medical Practitioners Tribunal or Interim Orders Tribunal may contain such provisions as appear to the General Council expedient for securing that, where the chair of the Tribunal is

a legally qualified person and the chair advises the Tribunal on any question of law as to evidence, procedure or any other matter specified in the rules, the chair shall either—

- (a) so advise in the presence of every party, or person representing a party, to the proceedings who appears at the proceedings, or
- (b) inform every such party or person of the advice that the chair has tendered, if the advice is tendered after the Tribunal have begun their deliberations, whether by including the advice in the Tribunal's decision or by some other means,

and the rules may also contain such incidental and supplementary provisions as appear to the General Council expedient.

(4F) In sub-paragraph (4E), “legally qualified person” means a person who satisfies the criteria set under paragraph 7(1C) in relation to legal qualifications and legal experience.”

(7) In paragraph 2 of that Schedule (oaths etc.)—

- (a) for “an Interim Orders Panel”, in each place it appears, substitute “an Interim Orders Tribunal”,
- (b) for “a Fitness to Practise Panel”, in each place it appears, substitute “a Medical Practitioners Tribunal”, and
- (c) for “or Panel”, in each place it appears, substitute “or Tribunal”.

(8) In paragraph 3 of that Schedule (validity of meetings where different members attend different meetings)—

- (a) in paragraph (a), for “an Interim Orders Panel or a Fitness to Practise Panel” substitute “a Medical Practitioners Tribunal or an Interim Orders Tribunal”,
- (b) in that paragraph, omit “or the General Council” and “or the Council”,
- (c) in that paragraph, for “the Committee, a Panel” substitute “the Committee or a Tribunal”,
- (d) in paragraph (b), after “refer the case to” insert “the MPTS for them to arrange for”,
- (e) in that paragraph, for “a Fitness to Practise Panel” substitute “a Medical Practitioners Tribunal”,
- (f) in that paragraph, omit “or to the General Council” and “or the Council”,
- (g) in that paragraph, omit “for the Panel”,
- (h) for “Committee, Panel”, in each place it appears, substitute “Committee or Tribunal”, and
- (i) omit “or Council” in each place it appears.

(9) Omit paragraph 3A of that Schedule (reference and transfer of cases to Investigation Committee).

(10) In paragraph 10 of that Schedule (taking effect of directions etc.)(a), in sub-paragraph (1), for “a Fitness to Practise Panel”, in each place it appears, substitute “a Medical Practitioners Tribunal”.

(11) In paragraph 10B of that Schedule (language cases: directions for suspension or conditional registration)(b), in sub-paragraph (1), for “the Fitness to Practise Panel” substitute “the Medical Practitioners Tribunal”.

(12) In paragraph 13 of that Schedule (meaning of “party”), for “an Interim Orders Panel or Fitness to Practise Panel” substitute “a Medical Practitioners Tribunal or Interim Orders Tribunal”.

(13) In section 43 of the Medical Act (the title to which becomes “Proceedings before the Investigation Committee, Medical Practitioners Tribunals and Interim Orders Tribunals”)(c), for “Interim Orders Panels and Fitness to Practise Panels” substitute “Medical Practitioners Tribunals and Interim Orders Tribunals”.

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(a) Paragraph 10 of Schedule 4 was amended by S.I. 2006/1914.

(b) Paragraph 10B of Schedule 4 was inserted by S.I. 2014/1011.

(c) Section 43 was substituted by S.I. 2002/3135.

(14) In section 44 of that Act (effect of disqualification in another relevant European State on registration in UK)(a), in subsection (5)(b), after “paragraphs 1, 2,” insert “3,”.

### **Proceedings in fitness to practise cases: undertakings**

**9.—**(1) In paragraph 1 of Schedule 4 to the Medical Act (proceedings before the Investigation Committee etc: procedure, evidence etc.), for sub-paragraph (2A) substitute—

“(2A) Rules made under this paragraph may include provision—

- (a) for enabling the Investigation Committee, whether before or after a matter has been referred to a Medical Practitioners Tribunal (but before the Tribunal’s hearing of the matter has begun), and in such circumstances as may be specified in the rules, to agree with the person concerned that the person will comply with such undertakings as the Committee consider appropriate; and
- (b) with respect to the procedure to be followed where any such undertakings are breached.

(2B) Section 35CC(1) applies to the functions of the Investigation Committee by virtue of sub-paragraph (2A) as it applies to their functions under section 35C.

(2C) Rules made under this paragraph may include provision—

- (a) for enabling the General Council, where a Medical Practitioners Tribunal find that a person’s fitness to practise is impaired, to agree with the person concerned that the person will comply with such undertakings as the Council consider appropriate;
- (b) for enabling a Medical Practitioners Tribunal to take any such undertakings into account;
- (c) with respect to the procedure to be followed—
  - (i) where there is a breach of any such undertakings, or
  - (ii) where the General Council consider that any such undertakings should no longer apply and that a direction under section 35D should instead be given.

(2D) Rules making provision by virtue of sub-paragraph (2C)(c) may, make provision—

- (a) for enabling or requiring a Medical Practitioners Tribunal to review whether the undertakings should continue to apply;
- (b) for treating the requirements contained in the undertakings as if they were requirements specified in a direction given under section 35D(2)(c); and
- (c) for enabling a Medical Practitioners Tribunal to give a direction under section 35D—
  - (i) where there is a breach of any such undertakings, or
  - (ii) where the General Council consider that any such undertakings should no longer apply.

(2E) For the purposes of sub-paragraph (2D), the rules may apply sections 35D and 35E with such modifications, and may make such consequential modifications of this Act, as the Council think fit; and accordingly where the rules make such provision, references in this Act to section 35D or 35E include a reference to that section as so applied.”

(2) In section 35B of the Medical Act (publications etc. by GMC)(b), in subsection (4)(g), after “paragraph 1(2A)” insert “or (2C)”.

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(a) Section 44 was substituted by S.I. 2002/3135 and amended by S.I. 2007/3101.

(b) Section 35B was substituted by S.I. 2002/3135 and amended by S.I. 2006/1914.

## Assessments of professional performance or health

**10.**—(1) In paragraph 5A of Schedule 4 to the Medical Act (the cross-heading before which becomes “Professional performance assessments and health assessments”)(a), in sub-paragraph (1), in paragraph (a)—

- (a) in sub-paragraph (ii), for “a Fitness to Practise Panel” substitute “a Medical Practitioners Tribunal”, and
- (b) for “an assessment of the standard of a registered person’s professional performance” substitute “an assessment of a kind referred to in sub-paragraph (1A)”.

(2) After sub-paragraph (1) of that paragraph insert—

“(1A) The assessments referred to in sub-paragraph (1) are—

- (a) in the case of a registered person, an assessment of the standard of a person’s professional performance;
- (b) in the case of a person applying under section 41, or by virtue of section 31(8) or 31A(1)(c), for his name to be restored to the register, an assessment of the standard of professional performance of which the person would be capable if the person’s name were to be restored to the register;
- (c) in either case, an assessment of the person’s physical or mental health.”

(3) For sub-paragraph (2) of that paragraph substitute—

“(2) An assessment by virtue of this paragraph is to be carried out in accordance with such directions as the Registrar may give as to—

- (a) whether the assessment is to be carried out by an Assessment Team or by an individual assessor;
- (b) the form or content of the assessment.

(2ZA) Where the assessment is to be carried out by an Assessment Team, the Team—

- (a) must include at least one fully registered person selected by the Registrar; and
- (b) is otherwise to be constituted in accordance with directions given by the Registrar.

(2ZB) Where the assessment is to be carried out by an individual assessor, the assessor must be a fully registered person selected by the Registrar.

(2ZC) The General Council may make rules as to—

- (a) the appointment of fully registered persons and of other persons to a list of persons eligible to be members of an Assessment Team and the appointment of fully registered persons to a list of persons eligible to be individual assessors;
- (b) the procedure to be followed in carrying out an assessment by virtue of this paragraph;
- (c) the procedure to be followed following the making of a report on an assessment carried out by virtue of this paragraph.

(2ZD) Where there are rules made under sub-paragraph (2ZC)(a), a person selected under sub-paragraph (2ZA)(a) or (2ZB) must be a person who is included in the applicable list of eligible persons provided for in the rules.

(2ZE) The General Council may make rules authorising the Assessment Team which, or individual assessor who, is to carry out an assessment by virtue of this paragraph to determine the procedure to be followed in carrying out the assessment in so far as it is not provided for in rules under sub-paragraph (2ZC)(b).”

(4) After sub-paragraph (2A) of that paragraph insert—

“(2B) An assessment of a person’s physical or mental health may include an assessment of the person’s physical or mental health at any time prior to the assessment and may

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(a) Paragraph 5A of Schedule 4 was amended by S.I. 2014/1011.

include an assessment of the person's physical or mental health at the time of the assessment."

(5) For sub-paragraphs (3) and (3A) of that paragraph substitute—

"(3) If the Registrar is of the opinion that a registered person who is required to submit to an assessment by virtue of this paragraph has failed to submit to that assessment or to comply with requirements imposed in respect of the assessment, the Registrar—

- (a) may refer that matter to the MPTS for them to arrange for it to be considered by a Medical Practitioners Tribunal, and
- (b) if he does so, must without delay serve on the person concerned a notification of the making of such a referral.

(3A) If the Investigation Committee are of the opinion that a registered person who is required to submit to an assessment by virtue of this paragraph has failed to submit to that assessment or to comply with requirements imposed in respect of that assessment—

- (a) the Investigation Committee may direct the Registrar to refer that matter to the MPTS for them to arrange for it to be considered by a Medical Practitioners Tribunal; and
- (b) the Registrar, having been given a direction under paragraph (a), must make the referral to the MPTS and must without delay serve on the person concerned a notification of the making of the referral.

(3B) Where a matter is referred to the MPTS under sub-paragraph (3) or (3A), the MPTS must arrange for the matter to be considered by a Medical Practitioners Tribunal.

(3C) Where a Medical Practitioners Tribunal, having given a direction by virtue of this paragraph to require a registered person to submit to an assessment, are of the opinion that the person concerned has failed to submit to that assessment or to comply with requirements imposed in respect of that assessment, the Tribunal must consider that matter.

(3D) The Medical Practitioners Tribunal, on their consideration of a matter under sub-paragraph (3B) or (3C), may, if they think fit—

- (a) direct that the person's registration in the register is to be suspended (that is to say, is not to have effect) during such period not exceeding twelve months as may be specified in the direction; or
- (b) direct that the person's registration is to be conditional on the person's compliance, during such period not exceeding three years as may be specified in the direction, with such requirements so specified as the Tribunal think fit to impose for the protection of members of the public or in the person's interests.

(3E) Where, under sub-paragraph (3D), the Tribunal give a direction for suspension or a direction for conditional registration, the MPTS must without delay serve on the person concerned notification of the direction and of the person's right to appeal against it under sub-paragraph (5).

(3F) Where, under sub-paragraph (3D), the Tribunal give a direction for suspension or a direction for conditional registration, or where the Tribunal decide not to give a direction under that sub-paragraph, the MPTS must without delay serve on the Registrar and the Professional Standards Authority for Health and Social Care notification of the direction or decision.

(3G) While a person's registration in the register is suspended by virtue of a direction under sub-paragraph (3D)—

- (a) the person is to be treated as not being registered in the register notwithstanding that the person's name still appears in it, but
- (b) sections 31A, 35C, 35CC, 35D, 35E and 39 are to continue to apply to the person."

(6) In sub-paragraph (5) of that paragraph—

- (a) for "a Fitness to Practise Panel", in each place it appears, substitute "a Medical Practitioners Tribunal",



- (b) for “by virtue of sub-paragraph (3)” substitute “under sub-paragraph (3D)”, and
- (c) for “the Panel” substitute “the Tribunal”.
- (7) In that sub-paragraph, in paragraph (c)—
  - (a) for “the Registrar for him to refer it to” substitute “the MPTS for them to arrange for”, and
  - (b) for “be disposed of” substitute “dispose of it”.
- (8) After that sub-paragraph insert—
 

“(5A) Subject to paragraph 9, an appeal under sub-paragraph (5) must be brought before the end of 28 days beginning with the date on which notification of the direction was served under sub-paragraph (3E).”
- (9) In sub-paragraph (6) of that paragraph—
  - (a) after “Assessment Team” insert “or an individual assessor”, and
  - (b) in paragraph (b), after “the Team” insert “or the assessor”.
- (10) In sub-paragraphs (7) and (8) of that paragraph—
  - (a) after “Assessment Team” insert “or an individual assessor”, and
  - (b) omit “their”.
- (11) In paragraph 5B of Schedule 4 to the Medical Act (issue of warrant), in sub-paragraph (1)—
  - (a) after “Assessment Team” insert “or an individual assessor”, and
  - (b) after “the team” insert “or assessor”.
- (12) In sub-paragraph (2) of that paragraph, after “themselves”) insert “, or (as the case may be) an individual assessor (who must, if so required, produce documents identifying himself),”.

### **Assessments of knowledge of English**

- 11.**—(1) In paragraph 5A of Schedule 4 to the Medical Act (professional performance assessments), in sub-paragraph (10), omit “registered”.
- (2) In sub-paragraph (11) of that paragraph, after “But an assessment” insert “of a person’s professional performance”.
- (3) In sub-paragraph (12) of that paragraph, for “shall not be carried out by an Assessment Team” substitute “shall not be undertaken as part of an assessment carried out by virtue of this paragraph”.
- (4) After that sub-paragraph insert—
 

“(13) The General Council may by rules provide that an assessment of a person’s knowledge of English undertaken as part of an assessment of the person’s professional performance by virtue of this paragraph is to be undertaken in accordance with such provision as is made in rules under paragraph 5C(2) subject to such modifications as the General Council consider necessary or expedient.”
- (5) In paragraph 5C of Schedule 4 to the Medical Act (knowledge of English assessments)(a), in sub-paragraph (1), in paragraph (a)—
  - (a) in sub-paragraph (ii), for “a Fitness to Practise Panel” substitute “a Medical Practitioners Tribunal”, and
  - (b) after “a registered person” insert “or a person seeking restoration to the register”.
- (6) After that sub-paragraph insert—

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(a) Paragraph 5C of Schedule 4 was inserted by S.I. 2014/1011.

“(1A) The reference in sub-paragraph (1) to a person seeking restoration to the register is a reference to a person applying under section 41, or by virtue of section 31(8) or 31A(1)(c), for the person’s name to be restored to the register.”

(7) In sub-paragraph (2) of that paragraph—

- (a) in paragraph (a), omit “by such persons”, and
- (b) in paragraphs (a) and (b), omit “registered”.

(8) In sub-paragraph (3) of that paragraph—

- (a) before “person who is required to undertake” insert “registered”,
- (b) omit “may”, and
- (c) for paragraph (a) (but not the following “and”) substitute—

“(a) may refer that matter to the MPTS for them to arrange for it to be considered by a Medical Practitioners Tribunal,”.

(9) After that sub-paragraph insert—

“(3A) If the Investigation Committee are of the opinion that a registered person who is required to undertake an assessment of that person’s knowledge of English has failed to undertake that assessment or has undertaken the assessment but has failed to provide the information requested in respect of that assessment—

- (a) the Investigation Committee may direct the Registrar to refer that matter to the MPTS for them to arrange for it to be considered by a Medical Practitioners Tribunal; and
- (b) the Registrar, having been given a direction under paragraph (a), must make the referral to the MPTS and must without delay serve on the person concerned a notification of the making of the referral.

(3B) Where a matter is referred to the MPTS under sub-paragraph (3) or (3A), the MPTS must arrange for the matter to be considered by a Medical Practitioners Tribunal.

(3C) If a Medical Practitioners Tribunal, having given a direction by virtue of this paragraph to require a person to undertake an assessment of that person’s knowledge of English, are of the opinion that the person concerned has failed to undertake that assessment or has undertaken the assessment but has failed to provide the information required in respect of that assessment, the Tribunal must consider that matter.”

(10) In sub-paragraph (4) of that paragraph—

- (a) for the words from the beginning to “they may” substitute “The Medical Practitioners Tribunal, on their consideration of a matter under sub-paragraph (3B) or (3C) may”, and
- (b) in paragraph (b), for “the Fitness to Practise Panel” substitute “the Tribunal”.

(11) In sub-paragraph (5) of that paragraph—

- (a) for “the Fitness to Practise Panel” substitute “the Medical Practitioners Tribunal”, and
- (b) for “the Registrar” substitute “the MPTS”.

(12) After that sub-paragraph insert—

“(5A) Where, under sub-paragraph (4), the Medical Practitioners Tribunal give a direction for suspension or a direction for conditional registration, or where the Tribunal decide not to give a direction under that sub-paragraph, the MPTS must without delay serve on the Registrar and the Professional Standards Authority for Health and Social Care notification of the direction or decision.”

(13) In sub-paragraph (7) of that paragraph—

- (a) for “a Fitness to Practise Panel”, in each place it appears, substitute “a Medical Practitioners Tribunal”,
- (b) for “the Panel” substitute “the Tribunal”,
- (c) in paragraph (c), for “the Registrar for him to refer it to” substitute “the MPTS for them to arrange for”, and

- (d) in that paragraph, for “be disposed of” substitute “dispose of it”.

**Assessments: consequential provision**

**12.—**(1) In section 31 of the Medical Act (power to make regulations with respect to the registers), in subsection (9)(a), after paragraph (b) insert—

“; and

- (c) where such a person is required to submit to or undertake an assessment by virtue of paragraph 5A or 5C of Schedule 4, for requiring the Registrar or the General Council or a committee of the Council to take into account—
  - (i) whether the assessment was carried out,
  - (ii) whether any requirements imposed in respect of the assessment were complied with, and
  - (iii) if the assessment was carried out, the results of the assessment”.

(2) In section 31A of that Act (voluntary removal from any of the registers)(b), after subsection (1B) insert—

“(1C) Regulations under subsection (1)(c) above may include provision, where the person concerned is required to submit to or undertake an assessment by virtue of paragraph 5A or 5C of Schedule 4, for requiring the General Council or a committee of the Council to take into account—

- (a) whether the assessment was carried out,
- (b) whether any requirements imposed in respect of the assessment were complied with, and
- (c) if the assessment was carried out, the results of the assessment.”

(3) In section 35B of that Act (notification and disclosure by GMC)(c), in subsection (4), after paragraph (d) insert—

“(da) decisions of a Medical Practitioners Tribunal to make a direction under paragraph 5A(3D) or 5C(4) of Schedule 4 and decisions of a Medical Practitioners Tribunal under section 35D that relate to such a direction;”.

(4) In section 35D of that Act (functions of a Medical Practitioners Tribunal)(d), in subsections (4)(c) and (9)(a)(iii), for “rules made by virtue of paragraph 5A(3)” substitute “paragraph 5A(3D) or 5C(4)”.

(5) In subsections (5)(b), (6), (10)(a) and (12)(a) of that section, after “a health case or language case” insert “or a case of suspension under paragraph 5A(3D) or 5C(4) of Schedule 4”.

(6) In section 38 of that Act (the title to which becomes “Power to order immediate suspension etc.”)(e), in subsections (1) and (2), for “rules made by virtue of paragraph 5A(3)” substitute “paragraph 5A(3D) or 5C(4)”.

(7) In subsection (3) of that section—

- (a) in paragraph (a), in sub-paragraph (i), after “10” insert “, 10A or 10B”,
- (b) in that paragraph, omit sub-paragraph (ii) and the preceding “or”, and
- (c) in paragraph (b), for “paragraph 5A(4) of that Schedule” substitute “paragraph 5A(5) or 5C(7) of Schedule 4”.

(8) In subsection (4) of that section, for “the Registrar” substitute “the MPTS”.

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(a) Section 31(9) was amended by S.I. 2002/3135, S.I. 2006/1914 and S.I. 2010/234.

(b) Section 31A was inserted by section 2 of the Medical (Professional Performance) Act 1995 (c.51) and amended by S.I. 2002/3135 and S.I. 2010/234.

(c) Section 35B was substituted by S.I. 2002/3135.

(d) Section 35D was substituted by S.I. 2002/3135 and amended by S.I. 2014/1101.

(e) Section 38 was substituted by S.I. 2002/3135.

(9) In section 41 of that Act (restoration to the register)(a), after subsection (6) insert—

“(6A) Where the applicant is required to submit to or undertake an assessment by virtue of paragraph 5A or 5C of Schedule 4, a Medical Practitioners Tribunal, before deciding whether to give a direction under subsection (1), shall take into account—

- (a) whether the assessment was carried out,
- (b) whether any requirements imposed in respect of the assessment were complied with, and
- (c) if the assessment was carried out, the results of the assessment.”

(10) In section 41C of that Act (effect of directions or orders on licence to practise)(b), in subsection (1), omit “or under rules made by virtue of paragraph 5A(3) of Schedule 4 to this Act”.

(11) In section 47 of that Act (appointment to be held only by fully registered and licensed person), in subsection (4)(a)(ii), for “rules made by virtue of paragraph 5A(3)” substitute “paragraph 5A(3D) or 5C(4)”.

(12) In paragraph 8 of Schedule 4 to the Medical Act (service of notifications of decisions)(c), in sub-paragraph (1)—

- (a) after “paragraph”, in the second place it appears, insert “5A(3), (3A) or (3E) or”, and
- (b) after “5C(3)” insert “, (3A)”.

(13) In paragraph 9 of that Schedule (extension of time for appealing)(d)—

- (a) in paragraph (a), after “paragraph” insert “5A(3E) or”,
- (b) before “5C(7)” insert “5A(5) or”, and
- (c) omit “or under rules made by virtue of paragraph 5A(3) above”.

(14) After paragraph 10 of that Schedule insert—

“**10A.**—(1) A direction for suspension or for conditional registration given by a Medical Practitioners Tribunal under paragraph 5A(3D) is to take effect—

- (a) where no appeal under paragraph 5A(5) is brought against the direction within the time specified in paragraph 5A(5A), on the expiration of that time;
- (b) where such an appeal is so brought but is withdrawn or dismissed for want of prosecution, on the withdrawal or dismissal of the appeal;
- (c) where such an appeal is so brought and is not withdrawn or dismissed for want of prosecution, if and when the appeal is dismissed.

(2) Where the time for appealing against a direction is extended by an authorisation under paragraph 9—

- (a) sub-paragraph (1) is to apply to the direction as if the reference in paragraph (a) to the time specified in paragraph 5A(5A) were a reference to that time as so extended; and
- (b) if the authorisation is given after the expiration of the time specified in paragraph 5A(5A), the direction is deemed not to have taken effect on the expiration of that time,

and any reference in this Act to the time when such a direction takes effect in accordance with this paragraph is to be construed accordingly.”

(15) In paragraph 11 of that Schedule (timing of suspension or conditional registration)(e), in sub-paragraph (1)—

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(a) Section 41 was substituted by S.I. 2002/3135 and amended by S.I. 2006/1914.  
(b) Section 41C was substituted by S.I. 2002/3135.  
(c) Paragraph 8 of Schedule 4 was amended by S.I. 2007/3101 and S.I. 2014/1011.  
(d) Paragraph 9 of Schedule 4 was amended by S.I. 2014/1011.  
(e) Paragraph 11 of Schedule 4 was amended by S.I. 2014/1011.

- (a) for “section 35D(2)” substitute “section 35D”,
  - (b) before “5C(4)” insert “5A(3D) or”,
  - (c) omit “or under rules made by virtue of paragraph 5A(3) above”,
  - (d) for “subsection (5)” substitute “subsection (5)(a), (b) or (c)”, and
  - (e) for “that section” substitute “section 35D”.
- (16) In sub-paragraph (3) of that paragraph—
- (a) for “section 35D(2)” substitute “section 35D”,
  - (b) before “5C(4)” insert “5A(3D) or”,
  - (c) omit “or under rules made by virtue of paragraph 5A(3) above”, and
  - (d) for “that section” substitute “section 35D”.
- (17) In paragraph 12 of that Schedule (recording of directions for suspension or conditional registration)(a)—
- (a) before “5C(4)” insert “5A(3D) or”, and
  - (b) omit “or under rules made by virtue of paragraph 5A(3) of this Schedule”.

### **Legal assessors**

- 13.**—(1) In paragraph 7 of Schedule 4 to the Medical Act (legal assessors)(b), in sub-paragraph (1)—
- (a) omit paragraph (b),
  - (b) omit paragraph (c) and the preceding “or”,
  - (c) for “them” substitute “the Committee”,
  - (d) for “the Panel” substitute “the Committee”, and
  - (e) omit the words from “and shall be” to the end.
- (2) After that sub-paragraph insert—
- “(1A) The General Council must set and publish the criteria which a person must satisfy (whether in relation to qualifications, experience, competencies or other matters) in order to be eligible for appointment under sub-paragraph (1).”
- (3) After sub-paragraph (1A) of that paragraph (inserted by paragraph (2) above) insert—
- “(1B) The MPTS must appoint a person as an assessor to a Medical Practitioners Tribunal or an Interim Orders Tribunal for the purpose of advising the Tribunal on questions of law arising in proceedings before them—
- (a) if the chair of the Tribunal is not a legally qualified person, or
  - (b) in any other case where they consider it appropriate to do so.
- (1C) The MPTS must set and publish the criteria which a person must satisfy (whether in relation to qualifications, experience, competencies or other matters) in order to be eligible for appointment under sub-paragraph (1B).
- (1D) In sub-paragraph (1B), “legally qualified person” means a person who satisfies such criteria as are set under sub-paragraph (1C) in relation to legal qualifications and legal experience.”
- (4) After sub-paragraph (2) of that paragraph insert—
- “(2A) The General Council may make rules containing provision for a body (including a committee of the General Council which is not one of the statutory committees) to assist the MPTS in connection with the exercise of any function relating to the appointment of a person as an assessor.”

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(a) Paragraph 12 of Schedule 4 was amended by S.I. 2014/1011.

(b) Paragraph 7 of Schedule 4 was amended by S.I. 2006/1914.

- (5) In sub-paragraph (4) of that paragraph—
- (a) for “an Interim Orders Panel or a Fitness to Practise Panel” substitute “a Medical Practitioners Tribunal or an Interim Orders Tribunal”, and
  - (b) for “a Panel” substitute “a Tribunal” and for “the Panel”, in each place it appears, substitute “the Tribunal”.
- (6) In section 44 of the Medical Act (effect of disqualification in another relevant European State on registration in UK)(a), in subsection (5)(b), before “8” insert “7,”.

## **Case managers**

### **14. After paragraph 7 of Schedule 4 to the Medical Act insert—**

#### **“Case managers**

**7A.—**(1) For the purpose of conducting the management of cases before a Medical Practitioners Tribunal, the MPTS may appoint persons as case managers.

(2) A person may be appointed as a case manager either generally or for any particular proceedings or class of proceedings; accordingly, when appointing a person as a case manager for particular proceedings, the MPTS may appoint—

- (a) a person whom they have already appointed generally or for proceedings of the class in question, or
- (b) a person whom they have not already appointed but wish to appoint for the particular proceedings.

(3) The MPTS must set and publish the criteria which a person must satisfy (whether in relation to qualifications, experience, competencies or other matters) in order to be eligible for appointment under this paragraph.

(4) The General Council may make rules containing provision for a body (including a committee of the General Council which is not one of the statutory committees) to assist the MPTS in connection with the exercise of any function relating to the appointment of a person as a case manager.

(5) The chair of a Medical Practitioners Tribunal may be appointed as a case manager for the proceedings before that Tribunal if the chair satisfies such criteria as are set under sub-paragraph (3) in relation to legal qualifications and legal experience.

(6) The General Council may make rules as to the functions of case managers appointed under this paragraph including, without prejudice to the generality of the powers to make such rules, provision—

- (a) enabling the case manager to give directions (including directions as to the adjournment of proceedings);
- (b) requiring directions given by the case manager to be treated as binding except in cases or circumstances specified in the rules;
- (c) (where the rules include provision by virtue of paragraph 1(4D)(a)) enabling the case manager to assess costs (or, in Scotland, to tax expenses or, in Northern Ireland, to tax costs) and requiring the case manager to have regard to a party’s ability to pay.

(7) Nothing in this paragraph prevents a Medical Practitioners Tribunal from themselves collectively conducting the management of the case before them.

(8) The General Council may pay to persons appointed under this paragraph such remuneration as the Council may determine.

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(a) Section 44 was substituted by S.I. 2002/3135 and amended by S.I. 2007/3101.

(9) Rules made under this paragraph may also contain such incidental and supplementary provisions as appear to the General Council expedient.

(10) Rules under this paragraph do not come into force until approved by order of the Privy Council.”

### **Disclosure of information**

**15.**—(1) In section 35A of the Medical Act (GMC’s power to require disclosure of information)(a), after subsection (1) insert—

“(1A)The Registrar may by notice in writing require a practitioner, within such period as is specified in the notice, to supply such information or produce such documents as the Registrar considers necessary—

- (a) for the purpose of assisting the General Council or any of their committees or the Registrar in carrying out functions in respect of the practitioner’s fitness to practise;
- (b) for the purpose of assisting the Registrar in carrying out functions in respect of identifying whether the practitioner is a person registered by virtue of section 18A(1)(b).”

(2) In subsection (5) of that section, after “subsection (1)” insert “or (1A)”.

(3) In subsection (6) of that section, for “Subsection (1) above does not” substitute “Subsections (1) and (1A) above do not”.

(4) After subsection (6B) of that section insert—

“(6C) If a person fails to comply with a requirement imposed under subsection (1A), the Registrar may refer that matter to the MPTS for them to arrange for it to be considered by a Medical Practitioners Tribunal.

(6D) Where a matter is referred to the MPTS under subsection (6C), the MPTS must arrange for it to be considered by a Medical Practitioners Tribunal.

(6E) Sub-paragraphs (3D) to (5A) of paragraph 5A of Schedule 4 apply to a matter being considered by a Medical Practitioners Tribunal under subsection (6D) as if it were a matter being considered by the Tribunal under sub-paragraph (3B) of that paragraph; and a reference in this Act to any of sub-paragraphs (3D) to (5A) of that paragraph is to be read as including a reference to that sub-paragraph as so applied.”

### **Appeals by persons subject to decisions by Tribunals**

**16.**—(1) In section 40 of the Medical Act (the title to which becomes “Appeals by persons subject to decisions by Tribunals”)(b), in subsection (1), for “a Fitness to Practise Panel”, in each place it appears, substitute “a Medical Practitioners Tribunal”.

(2) In subsection (7) of that section—

- (a) for “a Fitness to Practise Panel”, in each place it appears, substitute “a Medical Practitioners Tribunal”, and
- (b) in paragraph (d), for “the Registrar for him to refer it to” substitute “the MPTS for them to arrange for”.

(3) After that subsection insert—

“(7A) Where a case is referred under subsection (7)(d) to the MPTS, the MPTS must arrange for the case to be disposed of by a Medical Practitioners Tribunal in accordance with the directions of the court.”

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(a) Section 35A was substituted by S.I. 2002/3135 and amended by S.I. 2006/1914 and S.I. 2008/1774.

(b) Section 40 was substituted by S.I. 2002/3135 and amended by S.I. 2006/1914, S.I. 2007/3101 and S.I. 2010/234.

(4) In subsection (9) of that section, for “a Fitness to Practise Panel” substitute “a Medical Practitioners Tribunal”.

### **Appeals by the General Medical Council**

**17.**—(1) After section 40 of the Medical Act insert—

#### **“Appeals by General Council**

**40A.**—(1) This section applies to any of the following decisions by a Medical Practitioners Tribunal—

- (a) a decision under section 35D giving—
  - (i) a direction for suspension, including a direction extending a period of suspension;
  - (ii) a direction for conditional registration, including a direction extending a period of conditional registration;
  - (iii) a direction varying any of the conditions imposed by a direction for conditional registration;
- (b) a decision under paragraph 5A(3D) or 5C(4) of Schedule 4 giving—
  - (i) a direction for suspension;
  - (ii) a direction for conditional registration;
- (c) a decision under section 35D—
  - (i) giving a direction that a suspension be terminated;
  - (ii) revoking a direction for conditional registration or a condition imposed by such a direction;
- (d) a decision not to give a direction under section 35D;
- (e) a decision under section 41 giving a direction that a person’s name be restored to the register;
- (f) a decision not to give a direction under paragraph 5A(3D) or 5C(4) of Schedule 4.

(2) A decision to which this section applies is referred to below as a “relevant decision”.

(3) The General Council may appeal against a relevant decision to the relevant court if they consider that the decision is not sufficient (whether as to a finding or a penalty or both) for the protection of the public.

(4) Consideration of whether a decision is sufficient for the protection of the public involves consideration of whether it is sufficient—

- (a) to protect the health, safety and well-being of the public;
- (b) to maintain public confidence in the medical profession; and
- (c) to maintain proper professional standards and conduct for members of that profession.

(5) The General Council may not bring an appeal under this section after the end of the period of 28 days beginning with the day on which notification of the relevant decision was served on the person to whom the decision relates.

(6) On an appeal under this section, the court may—

- (a) dismiss the appeal;
- (b) allow the appeal and quash the relevant decision;
- (c) substitute for the relevant decision any other decision which could have been made by the Tribunal; or
- (d) remit the case to the MPTS for them to arrange for a Medical Practitioners Tribunal to dispose of the case in accordance with the directions of the court,



and may make such order as to costs (or, in Scotland, expenses) as it thinks fit.

(7) In this section and section 40B, “relevant court” has the meaning given by section 40(5).

#### **Appeal under section 40A: role of Professional Standards Authority for Health and Social Care**

**40B.**—(1) If the General Council bring an appeal under section 40A—

- (a) the Registrar must without delay give notice of the appeal to the Professional Standards Authority for Health and Social Care (“the Authority”); and
- (b) the Authority may not refer the case to which the appeal relates under section 29 of the National Health Service Reform and Health Care Professions Act 2002 (“the 2002 Act”).

(2) The Authority may, in spite of subsection (1)(b), become a party to the appeal by giving notice to that effect to the relevant court, the General Council and the person to whom the relevant decision relates; and—

- (a) the Authority does not require the permission of the relevant court to become a party to the appeal; and
- (b) accordingly, any provision of rules of court requiring an application for such permission does not apply to the Authority.

(3) Having become a party to an appeal under section 40A by virtue of subsection (2) of this section, the Authority may make representations or file evidence in the appeal at any time before the end of the hearing of the appeal; but where it does so at a time which would, but for this subsection, have been in breach of a time limit imposed by rules of court, the relevant court may impose such conditions as it thinks fit.

(4) The matters which the Authority may raise on an appeal under section 40A include any matter which it could have raised on a reference of the case under section 29 of the 2002 Act.

(5) Where the Authority raises matters on an appeal under section 40A, the General Council and the person to whom the relevant decision relates have the same opportunity to respond as they would have if the Authority had raised the matters on a reference of the case under section 29 of the 2002 Act (and the General Council and person concerned had accordingly been respondents by virtue of subsection (7) of that section).

(6) If the General Council wish to withdraw an appeal under section 40A or, having agreed the terms of a settlement of the appeal with the person concerned, wish the appeal to be disposed of on those terms, they must give notice of their wish to the Authority (whether or not the Authority is a party to the appeal).

(7) The Authority, having received a notice under subsection (6), must by notice inform the relevant court, the General Council and the person concerned whether it wishes the proceedings on the appeal to continue.

(8) Where the Authority gives notice under subsection (7) that it wishes the proceedings to continue, they are to continue but are, from the time when the Authority gives its notice to the relevant court under subsection (7), to be treated as proceedings on a reference made by the Authority to the court under section 29 of the 2002 Act.

(9) In a case within subsection (8), the Authority must give notice to the relevant court, the General Council and the person concerned specifying the grounds of its case; and the General Council and the person concerned (as respondents to the appeal by virtue of section 29(7) of the 2002 Act) have the opportunity to respond accordingly.

(10) A requirement in this section to give a notice to a specified person is in addition to such requirements as are imposed by rules of court in relation to the persons to whom notice is to be given; and the giving of notice under this section is subject to such other requirements relating to the giving of notices as are imposed by rules of court.”

(2) In paragraph 11 of Schedule 4 to the Medical Act (timing of suspension or conditional registration), at the end insert—

“(5) A reference in this paragraph to an appeal under this Act does not include a reference to an appeal under section 40A.”

### **References to court by the Professional Standards Authority for Health and Social Care**

**18.**—(1) In section 29 of the National Health Service Reform and Health Care Professions Act 2002 (reference of disciplinary cases by the Professional Standards Authority for Health and Social Care to court)(a), in subsection (1)(c), for “a Fitness to Practise Panel” substitute “a Medical Practitioners Tribunal”.

(2) In subsection (1) of that section, after paragraph (c) insert—

“(ca) a direction by a Medical Practitioners Tribunal of the General Medical Council under paragraph 5A(3D) or 5C(4) of Schedule 4 to the Medical Act 1983 for suspension of a person’s registration or for conditional registration,”.

(3) For subsection (4) of that section substitute—

“(4) Where a relevant decision is made, the Authority may refer the case to the relevant court if it considers that the decision is not sufficient (whether as to a finding or a penalty or both) for the protection of the public.

(4A) Consideration of whether a decision is sufficient for the protection of the public involves consideration of whether it is sufficient—

- (a) to protect the health, safety and well-being of the public;
- (b) to maintain public confidence in the profession concerned; and
- (c) to maintain proper professional standards and conduct for members of that profession.”

(4) In subsection (6) of that section—

(a) after “the end of the period of” insert—

“—

(a) ”, and

(b) at the end insert

“, or

(b) in the case of a relevant decision against which it is not possible for the practitioner concerned to appeal, 56 days beginning with the day on which notification of the decision was served on the person to whom the decision relates.”

(5) In subsection (7) of that section, in paragraph (b), after “the body which made the relevant decision” insert “(as well as the person to whom the decision relates)”.

(6) After that subsection insert—

“(7A) In a case where the relevant decision is taken by a committee, the reference in subsection (7)(b) to the body which made the decision is to be read as a reference to the body of which it is a committee.”

(7) In subsection (8) of that section, at the end of paragraph (d) insert “or, in the case of a relevant decision within subsection (1)(c) or (ca) or a relevant decision within subsection (2)(a) or (c) not to take a disciplinary measure under a provision referred to in subsection (1)(c) or (ca), remit the case to the Medical Practitioners Tribunal Service for them to arrange for a Medical Practitioners Tribunal so to dispose of the case.”

(8) After that subsection insert—

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(a) 2002 c.17; section 29 was amended by S.I. 2002/3135, S.I. 2004/1771, S.I. 2005/848, S.I. 2005/2011, S.I. 2010/1621 and by section 118 of the Health and Social Care Act 2008 (c.14) and paragraphs 62 and 73 of Schedule 15 to the Health and Social Care Act 2012 (c.7).

“(9) Where rules under paragraph 1 of Schedule 4 to the Medical Act 1983 provide, by virtue of paragraph 1(2E) of that Schedule, for the application of section 35D of that Act, the reference in subsection (1)(c) of this section to section 35D of that Act includes a reference to that section as so applied.

(10) The reference in subsection (1)(ca) to paragraph 5A(3D) of the Medical Act 1983 includes a reference to that provision as applied by section 35A(6E) of that Act.”

(9) After that section insert—

#### **“References under section 29: role of the General Medical Council**

**29A.**—(1) If the Authority makes a reference under section 29 of a case involving a relevant decision such as is mentioned in subsection (8)(d) of that section—

- (a) the Authority must without delay give the General Medical Council notice of the reference; and
- (b) the General Medical Council may not bring an appeal under section 40A of the Medical Act 1983 against the decision.

(2) Where the General Medical Council is the respondent in the case of a reference under section 29, the matters which it may raise on the reference include any matter that it could have raised on an appeal against the relevant decision under section 40A of the Medical Act 1983.

(3) If the General Medical Council is the respondent in the case of a reference under section 29, and the Authority either wishes to withdraw the reference or, having agreed the terms of a settlement of the case with the person to whom the relevant decision relates, wishes the case to be disposed of on those terms, the Authority must give notice of its wish to the Council.

(4) The General Medical Council, having received a notice under subsection (3), must by notice inform the relevant court, the Authority and the person concerned whether it wishes the proceedings on the reference to continue.

(5) Where the General Medical Council gives notice under subsection (4) that it wishes the proceedings to continue, they are to continue but, from the time when the Council gives its notice to the relevant court under subsection (4), are to be treated as proceedings on an appeal made by the Council under section 40A of the Medical Act 1983.

(6) In a case within subsection (5), the General Medical Council must give notice to the relevant court, the Authority and the person concerned specifying the grounds of its case; and—

- (a) the person concerned has the opportunity to respond accordingly, and
- (b) the Authority has the opportunity to become a party to the appeal by virtue of section 40B(2) of the Medical Act 1983.

(7) A requirement in this section to give a notice to a specified person is in addition to such requirements as are imposed by rules of court in relation to the persons to whom notice is to be given; and the giving of notice under this section is subject to such other requirements relating to the giving of notices as are imposed by rules of court.

(8) In this section, “relevant court” and “relevant decision” each have the same meaning as in section 29.”

#### **Restoration of names to the register**

**19.**—(1) In section 41 of the Medical Act (restoration of names to the register)(a), in subsections (1), (3), (6), (7), (9), (10) and (11), for “Fitness to Practise Panel” substitute “Medical Practitioners Tribunal”.

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(a) Section 41 was substituted by S.I. 2002/3135 and amended by S.I. 2006/1914.

- (2) In subsection (2) of that section, omit “to a Fitness to Practise Panel”.
- (3) In subsection (3) of that section, after “refer the application to” insert “the MPTS for them to arrange for the application to be determined by”.
- (4) After that subsection insert—
  - “(3A) Where an application is referred under subsection (3) to the MPTS, they must arrange for the application to be determined by a Medical Practitioners Tribunal.”
- (5) After subsection (8) of that section insert—
  - “(8A) Where a Medical Practitioners Tribunal give a direction under subsection (1), the MPTS must without delay serve on the Registrar and the Professional Standards Authority for Health and Social Care notification of the direction.”
- (6) In subsection (10) of that section, for “the Registrar” substitute “the MPTS”.
- (7) In subsection (11) of that section, after “for that direction to be” insert “referred to the MPTS for them to arrange for the direction to be”.

### **Annual reports of the MPTS**

**20.** After section 52A of the Medical Act insert—

#### **“Annual reports of the MPTS**

**52B.**—(1) The MPTS must publish, by such date in each year as the Privy Council specifies—

- (a) a report on the nature and volume of cases referred to the MPTS;
- (b) a report on the exercise of the MPTS’s functions which includes a description of the arrangements that the MPTS have put in place to ensure that they adhere to good practice in relation to equality and diversity (and for these purposes “equality” and “diversity” each have the meaning given in section 8(2) of the Equality Act 2006);
- (c) a report on the points of learning which the MPTS have identified and their proposals for addressing each of those points.

(2) The MPTS must submit copies of the reports published under subsection (1) to the Privy Council; and the Privy Council must lay copies of the reports before each House of Parliament.”

## **PART 3**

### **The General Medical Council: over-arching objective**

#### **The over-arching objective**

**21.**—(1) In section 1 of the Medical Act (the GMC: constitution etc.), for subsection (1A)(a) substitute—

“(1A) The over-arching objective of the General Council in exercising their functions is the protection of the public.

(1B) The pursuit by the General Council of their over-arching objective involves the pursuit of the following objectives—

- (a) to protect, promote and maintain the health, safety and well-being of the public,
- (b) to promote and maintain public confidence in the medical profession, and

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(a) Subsection (1A) of section 1 was inserted by S.I. 2002/3135.

- (c) to promote and maintain proper professional standards and conduct for members of that profession.”
- (2) In section 34H(2) of that Act (objectives of GMC in establishing standards of postgraduate medical education and training)(a), for “that required by section 1(1A)” substitute “the over-arching objective”.
- (3) In section 35C of that Act (functions of the Investigation Committee)(b), after subsection (6) insert—
- “(6A) In deciding whether to give a warning under subsection (6), the Investigation Committee must have regard to the over-arching objective.”
- (4) In section 35E of that Act (provisions supplementary to section 35D)(c), after subsection (3) insert—
- “(3A) In exercising a function under section 35D, a Medical Practitioners Tribunal must have regard to the over-arching objective.”
- (5) In section 41 of that Act (restoration of names to the register)(d), after subsection (11) insert—
- “(12) In exercising a function under this section, a Medical Practitioners Tribunal must have regard to the over-arching objective.”
- (6) In section 44 of that Act (effect of disqualification in another relevant European State on registration in UK)(e), after subsection (5) insert—
- “(5A) In deciding whether to give a direction under subsection (5)(a), a Medical Practitioners Tribunal must have regard to the over-arching objective.”
- (7) In paragraph 23D of Schedule 1 to that Act (overriding objective of GMC in making rules about constitution of MPTS and Tribunals) (inserted by article 4(4)), at the end insert “; and where the General Council consider that there is a conflict between meeting the objective under this paragraph and the over-arching objective, they must give priority to meeting the objective under this paragraph.”
- (8) In paragraph 1 of Schedule 4 to that Act (fitness to practise proceedings: procedure, evidence etc.)(f), after sub-paragraph (1A) (inserted by article 7) insert—
- “(1B) Where the General Council consider that there is a conflict between meeting the objective under sub-paragraph (1A) and the over-arching objective, they must give priority to meeting the objective under sub-paragraph (1A).”
- (9) In that paragraph, after sub-paragraph (2E) (inserted by article 9(1)) insert—
- “(2F) Where rules made under this paragraph include provision under sub-paragraph (2A)(a), the Investigation Committee or such person as is by virtue of sub-paragraph (2B) exercising the function conferred by the provision must, in exercising the function, have regard to the over-arching objective.
- “(2G) Where rules made under this paragraph include provision under sub-paragraph (2C)(b), or provision under sub-paragraph (2C)(c) of the kind mentioned in sub-paragraph (2D), a Medical Practitioners Tribunal must, in exercising the function conferred by the provision, have regard to the over-arching objective.”
- (10) In paragraph 5A of that Schedule (professional performance assessments and health assessments)(g), after sub-paragraph (3G) (inserted by article 10(5)) insert—

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(a) Section 34H was inserted by S.I. 2010/234.

(b) Section 35C was substituted by S.I. 2002/3135 and amended by S.I. 2006/1914, S.I. 2008/1774, S.I. 2008/3131 and S.I. 2014/1101.

(c) Section 35E was substituted by S.I. 2002/3135 and amended by S.I. 2006/1914 and S.I. 2014/1101.

(d) Section 41 was substituted by S.I. 2002/3135 and amended by S.I. 2006/1914.

(e) Section 44 was substituted by S.I. 2002/3135 and amended by S.I. 2007/3101.

(f) Paragraph 1 of Schedule 4 was amended by S.I. 2006/1914.

(g) Paragraph 5A of Schedule 4 was amended by S.I. 2014/1011.

“(3H) In deciding whether to give a direction under sub-paragraph (3D), a Medical Practitioners Tribunal must have regard to the over-arching objective.”

(11) In paragraph 5C of that Schedule (knowledge of English assessments)(a), after sub-paragraph (4) insert—

“(4A) In deciding whether to give a direction under sub-paragraph (4), a Medical Practitioners Tribunal must have regard to the over-arching objective.”

(12) In section 55 of the Medical Act, after subsection (1) insert—

“(1A) References in this Act to the over-arching objective are to the over-arching objective of the General Council under section 1(1A) (read with section 1(1B)).”

## PART 4

### Other matters relating to fitness to practise

#### **Investigation Committee: vexatious allegations, facts more than 5 years old, reviews**

**22.**—(1) In section 35CC of the Medical Act (provisions supplementary to section 35C)(b), after subsection (3) insert—

“(4) Rules under paragraph 1 of Schedule 4 may make provision for section 35C(4) to (8) not to apply in relation to an allegation if the Investigation Committee consider the allegation to be vexatious.

(5) Rules under paragraph 1 of Schedule 4 may make provision for section 35C(4) to (8) not to apply in relation to an allegation if—

- (a) at the time when the allegation is made, more than five years have elapsed since the most recent events giving rise to the allegation, and
- (b) the Investigation Committee consider that it would not be in the public interest to investigate the allegation.

(6) Rules including provision by virtue of subsection (4) or (5) must provide that, where section 35C(4) to (8) does not apply in relation to an allegation, the Investigation Committee must serve notification of the decision on the person making the allegation (if any).

(7) Rules under paragraph 1 of Schedule 4 may make provision as to circumstances in which the Investigation Committee may review a decision made by them of a description specified in the rules that relates to a person’s fitness to practise.

(8) Where the rules include provision by virtue of any of subsections (4) to (7), the reference in subsection (1) to the functions of the Investigation Committee under section 35C is to be read as including a reference to the functions conferred by such provision.”

(2) In paragraph 8 of Schedule 4 to the Medical Act (service of notifications of decisions)(c), in sub-paragraph (1), at the end insert “or by virtue of section 35CC(6)”.

#### **Registration Appeals Panels**

**23.**—(1) In paragraph 4 of Schedule 3A to the Medical Act (registration and training: appeals from appealable registration decisions)(d), in sub-paragraph (7), for “a Fitness to Practise Panel” substitute “the Investigation Committee (where, in the case of paragraph 7, the Committee are considering giving a warning to a person)”.

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(a) Paragraph 5C of Schedule 4 was inserted by S.I. 2014/1011.

(b) Section 35CC was inserted by S.I. 2002/3135.

(c) Paragraph 8 of Schedule 4 was amended by S.I. 2007/3101 and S.I. 2014/1011.

(d) Schedule 3A was inserted by S.I. 2002/3135; paragraph 4 was amended by S.I. 2010/234.

(2) In Schedule 3B to that Act (licence to practise and revalidation: appeals)(a), in paragraph 3(4), for “a Fitness to Practise Panel” substitute “the Investigation Committee (where, in the case of paragraph 7, the Committee are considering giving a warning to a person)”.

#### **Service of notification of decisions by email**

**24.**—(1) In paragraph 8 of Schedule 4 to the Medical Act (service of notifications of decisions), in sub-paragraph (2)—

- (a) omit the “or” preceding paragraph (d), and
- (b) after that paragraph insert  
“; or
- (e) by sending it to an email address which the person provides for the purpose of fitness to practise proceedings”.

(2) At the end of that paragraph insert—

“(6) For the purposes of this paragraph, service of a notice sent by email is effected only if there is an electronic receipt showing that the email has been opened (or if the recipient acknowledges receipt in some other way).”

#### **Appeal of review orders**

**25.** In paragraph 11 of Schedule 4 to the Medical Act (proceedings before Investigation Committee etc: appeal of review orders)(b), in sub-paragraphs (1) and (3), for the words from “the direction takes effect” to the end substitute

“—

- (a) the direction takes effect in accordance with paragraph 10, 10A or 10B above,
- (b) where on an appeal under this Act against the direction the MPTS arrange for the matter to be disposed of by a Medical Practitioners Tribunal, the Tribunal dispose of the matter and their decision on doing so takes effect, or
- (c) an appeal under this Act against the direction is determined (otherwise than by the dismissal of the appeal or by the disposal of the matter by a Medical Practitioners Tribunal).”

#### **Minor corrections etc.**

**26.**—(1) In paragraph 3(3)(b) of Schedule 3B to the Medical Act (licence to practise and revalidation: appeals), omit “the Solicitor to”.

(2) In paragraph 13 of Schedule 4 to that Act (proceedings before the Investigation Committee etc: meaning of “party”), omit “the Solicitor to”.

## **PART 5**

### **Supplementary**

#### **Orders by the Privy Council: procedure**

**27.**—(1) A power of the Privy Council to make an order under this Order is exercisable by statutory instrument.

(2) The power may be exercised by two or more members of the Privy Council.

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(a) Schedule 3B was inserted by S.I. 2002/3135; paragraph 3 was amended by S.I. 2006/1914.

(b) Paragraph 11 of Schedule 4 was amended by S.I. 2014/1101.

(3) For the purposes of section 1 of the Statutory Instruments Act 1946(a), the power is to be taken to be conferred by Act of Parliament.

(4) The making of an order under this Order is sufficiently signified by an instrument signed by the Clerk of the Privy Council.

(5) An instrument containing an order under this Order purporting to be signed by the Clerk of the Privy Council is evidence (and, in Scotland, sufficient evidence) of the fact that the order was duly made and of its terms.

*Name*  
Clerk of the Privy Council

### **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order amends the Medical Act 1983 (“the Act”) to make provision as outlined below and consequential changes.

Articles 2 to 4 establish the Medical Practitioners Tribunal Service (“the MPTS”) as a statutory committee of the General Medical Council (“the GMC”) to strengthen the separation between the GMC’s investigation and adjudication arms, and place Medical Practitioners Tribunals and Interim Orders Tribunals (formerly fitness to practise and interim orders panels) under the administrative control of the MPTS. The overriding objective of the GMC when making rules relating to appointments to the MPTS and its tribunals is to secure that cases are dealt with fairly and justly.

Article 5 amends the review powers that are to be exercisable by Medical Practitioners Tribunals, including by introducing provision to ensure that reviews can be carried out before the expiry of tribunal directions and to enable reviews without a hearing where both parties are in agreement as to the outcome.

Article 6 includes provision enabling reviews of interim orders without a hearing where both parties are in agreement as to the outcome.

Article 7 makes provision for there to be an overriding objective for the making of certain procedural rules of securing that cases are dealt with fairly and justly.

Article 8 amends the Act to include specific rule-making powers for investigations to continue once MPTS proceedings have started and for cases referred to the MPTS to be withdrawn. Provision is also made for rules to include provision for preliminary hearings and in relation to the consequences of failure to comply with rules and directions (which may include refusal to admit evidence, the drawing of adverse inferences and the award of costs). Provision is made for rules to provide for costs to be awarded on account of unreasonable behaviour. Provision is also made for rules to require a legally qualified Tribunal chair to inform the parties of certain advice given by the chair to the Tribunal.

Article 9 amends the Act in relation to powers to provide in rules for undertakings to be agreed between the GMC and a practitioner and for the consequences of breaches, including specific provision for undertakings to be agreed during a fitness to practise hearing, after a finding of impairment has been made, and for a tribunal to take into account such undertakings.

Articles 10 to 12 make amendments to the Act in relation to professional performance assessments and include express provisions relating to health assessments, including provision for directions by Medical Practitioners Tribunals for non-compliance with such assessments to include up to 12

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(a) 1946 c.36.



months' suspension or up to three years' conditional registration; and, where relevant, corresponding amendments are made for knowledge of English assessments.

Article 13 provides for the MPTS to appoint legal assessors in fitness to practise proceedings. The MPTS must appoint a legal assessor in the case of a Tribunal where the chair is not legally qualified and have discretion to do so in other cases.

Article 14 provides for the MPTS to appoint case managers in fitness to practise proceedings and for such case managers to have the power to give directions.

Article 15 confers power on the GMC to require practitioners to provide information or produce documents (subject to certain exceptions) for certain purposes and to refer the case to the MPTS for them to arrange for a Medical Practitioners Tribunal to consider whether to impose a suspension or conditional registration in the event of non-compliance.

Article 16 makes consequential provisions relating to appeals by practitioners.

Articles 17 and 18 introduce a power for the GMC to bring appeals against fitness to practise decisions alongside the power of the Professional Standards Authority for Health and Social Care ("the PSA") to refer such decisions to the higher courts under section 29 of the National Health Service Reform and Health Care Professions Act 2002. Provision is made to ensure that there can be only one such appeal or reference. The PSA's grounds for reference are also amended, and the same grounds are applicable to the GMC's power of appeal.

Article 19 makes consequential changes relating to applications for restoration to the register.

Article 20 provides for annual reports of the MPTS to be published by them and to be laid before Parliament by the Privy Council.

Article 21 provides for a new over-arching objective for the GMC in place of their main objective and for regard to be had to it by the Investigation Committee, when considering whether to give a warning or agree undertakings, and by Medical Practitioners Tribunals.

Article 22 amends the Act to include specific rule-making powers for the rejection of vexatious allegations and for allegations concerning facts that are more than five years old not to be investigated, except where investigation would be in the public interest, and for the review of investigation decisions.

Article 23 makes consequential provision in relation to Registration Appeals Panels.

Article 24 makes provision to enable service of statutory notices relating to fitness to practise by electronic mail.

Article 25 makes provision to ensure a direction for suspension or conditional registration will continue in effect during an appeal against a review decision until the final outcome of that appeal takes effect.

Article 26 makes minor corrections.

A full impact assessment has not been produced for this instrument as no or no significant impact on the private sector or civil society organisations is foreseen. A report on the Consultation in relation to the Secretary of State's proposals to make this Order is available at <https://www.gov.uk/government/consultations/changing-how-the-gmc-decides-on-doctors-fitness-to-practise>.





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<http://www.legislation.gov.uk/id/ukdsi/2015/9780111128091>