

EXPLANATORY MEMORANDUM TO
THE GENERAL MEDICAL COUNCIL (FITNESS TO PRACTISE)
(AMENDMENTS IN RELATION TO UNDERTAKINGS) RULES ORDER OF
COUNCIL 2007

2007 No. 3168

1. This explanatory memorandum has been prepared by Department of Health and is laid before Parliament by Command of Her Majesty.

2. Description

2.1. This Order approves rules made by the General Medical Council (GMC) which amend the General Medical Council (Fitness to Practise) Rules 2004 (the 2004 Rules). The new provisions set out the procedure for dealing with fitness to practise cases where a medical practitioner agrees undertakings as to their future conduct. The main features of the new provisions are that they will allow:

- the Registrar to refer an allegation of any type to Case Examiners before it has been referred to a committee or FTP Panel for consideration of undertakings
- Case Examiners to recommend that a medical practitioner be asked to comply with undertakings as to their future conduct
- Further action to be taken where there is a failure to agree undertakings, evidence of non-compliance with undertakings or further impairment of Fitness to Practise

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1. None.

4. Legislative Background

4.1. This replaces the existing provision in the 2004 Rules with regard to undertakings, extending it in the manner described paragraph 7 below. The Rules are the first exercise of the power contained in paragraph 1(2A) of Schedule 4 to the Medical Act 1983, which was inserted by article 57(1) of the Medical Act 1983 (Amendment) and Miscellaneous Amendments Order 2006 (S.I. 2006/1914) as from 19th October 2007.

5. Extent

5.1. This instrument applies to the United Kingdom.

6. European Convention on Human Rights

6.1. As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

Policy

7.1 The GMC is responsible for ensuring the fitness to practise of medical practitioners on its register. Currently allegations are usually referred to a Fitness to Practise panel to assess whether the practitioner's fitness to practise is impaired. However, there is an additional option known as "consensual disposal". This allows, where appropriate, the GMC and the medical practitioner concerned to agree binding undertakings rather than the case progressing to a full hearing.

7.2 Before these new amendments to the 2004 Rules, the option of consensual disposal was available in cases involving ill health or deficient performance but not in other cases of impaired fitness to practise. The Medical Act 1983 (Amendment) Order 2002 introduced a holistic approach to fitness to practise which removed the distinction between the way in which different types of impaired fitness to practise were dealt with. The Medical Act 1983 (Amendment) and Miscellaneous Amendments Order 2006 included a rule-making power which would allow the GMC to apply undertakings to all types of case of impaired fitness to practise, placing the power to enact rules to accept undertakings on a clear statutory footing. The new rule 10 of the 2004 Rules is the first exercise of this power. Undertaking are still not available as an option where there is a realistic chance of the doctor being erased if referred to a Fitness to Practise panel. Consensual disposal is an effective, timely and proportionate way of resolving concern and allows Fitness to Practise panels to focus on the more complex and serious allegations or those cases where matters are in dispute.

7.3 The GMC consulted on these proposals between 17 April and 17 July 2007. Details of the consultation were sent to approximately 200 stakeholders across the four UK countries and published on the GMC website. Consultation workshops were run in all four countries of the UK. The workshops have provided an opportunity for organisations to raise concerns or make suggestions. Representatives from a range of groups, including the medical defence organisations, Action against Medical Accidents and the King's Fund, contributed as part of the wider consultation. Additional workshops were held for GMC staff and for members of the Patient and Public Reference Group. In addition to the feedback from the workshops, written responses were received from approximately 40 organisations and individuals.

7.4 The majority of those who took part in the workshops or responded to the consultation supported the proposals.

8. Impact

8.1. A Regulatory Impact Assessment has not been prepared for this instrument as there is no impact on business, charities or voluntary bodies.

8.2. There are no identified costs to either the public or the Exchequer arising from this instrument.

9. Contact

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