

EXPLANATORY MEMORANDUM TO
THE GENERAL MEDICAL COUNCIL (REGISTRATION APPEALS PANEL
PROCEDURE) RULES ORDER OF COUNCIL 2010

2010 No. 476

1. This Explanatory Memorandum has been prepared by the Department of Health and is laid before Parliament by Command of Her Majesty.
2. **Purpose of the instrument**
 - 2.1 The Rules scheduled to this Order replace Rules previously made by the General Medical Council ('the GMC') covering the procedures to be followed in relation to appeals against certain decisions by the GMC affecting doctors' registration with the GMC.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1. None
4. **Legislative Context**
 - 4.1. The GMC's statutory functions are set out in the Medical Act 1983, as amended ('the 1983 Act'). Schedules 3A and 3B to the 1983 Act prescribe the procedures relating to appeals by doctors against certain decisions by the GMC relating to their registration with the GMC and allows certain details to be prescribed in rules.
 - 4.2 The General and Specialist Medical Practice (Education, Training and Qualifications) Order 2010 (S.I. 2010/234)(the '2010 Order') transfers the statutory functions relating to the regulation of postgraduate medical education and training which were previously undertaken by the Postgraduate Medical Education and Training Board (PMETB), to the GMC. By virtue of that Order, PMETB is to be abolished. Those transferred functions include the consideration of appeals relating to such medical education and training.
 - 4.3 The 2010 Order amends Schedule 3A to the 1983 Act so as to add a number of new categories of appeal in relation to decisions by the GMC arising from the functions transferred from PMETB. The Rules scheduled to this Order set out the procedures to be followed both for those appeals and for all other registration appeals to the Registration Appeals Panel ("the Panel") of the GMC.
5. **Territorial Extent and Application**
 - 5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

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

7. Policy Background

- **What is being done and why**

7.1 The GMC is the independent regulator for doctors in the UK. Its statutory purpose is to protect, promote and maintain the health and safety of the public by ensuring proper standards in the practice of medicine. In order to practise medicine in the UK a doctor must be both registered and licensed with the GMC. The current Rules Order relates to the GMC's consideration of appeals from doctors against certain decisions by the GMC affecting their registration or eligibility for registration.

7.2 The purpose of the Rules is to prescribe the procedures to be followed by the Panel when considering such appeals.

- **Details of the proposed Rules**

Rule 1

7.3 This contains the citation and commencement for the Rules.

Rule 2

7.4 This provides definitions of the various terms used in the Rules.

Rule 3

7.5 This prescribes the "requisite period" within which certain decisions must be made by the GMC. By virtue of amendments made to Schedule 3A to the Act by the 2010 Order, failure by the GMC to make a decision within this period shall itself be treated as an appealable decision.

Rule 4

7.6 This provision enables the appointment of persons with relevant knowledge or experience as specialist advisors to assist a Panel in determining an appeal.

Rule 5

7.7 This requires the appellant to give the Registrar notice of appeal within 28 days of the decision being appealed against.

7.8 The rule also allows an appeal to be considered either at a hearing or a meeting, according to the stated preference of the appellant.

7.9 The rule also requires the appellant to pay any fee that may be payable under the relevant fees regulations when applying to have a decision appealed.

Rule 6

7.10 This rule sets out the requirements for exchanging documents once the appeal has been lodged. It provides that, in addition to the 28 days for lodging an appeal, the appellant has a further 56 days in which to submit relevant documentation in support of the appeal. Once the appellant's documentation has been received, the GMC must provide the appellant with documentation and submissions relating to its defence of the appeal.

Rule 7.

7.11 This rule enables a case manager or legally qualified panel chair to carry out case management functions prior to an appeal hearing in order to secure the just, expeditious and effective conduct of the appeal proceedings.

Rule 8

7.12 This rule requires the Registrar of the GMC to give the parties to the appeal and the Panel at least 28 days notice of the date of the meeting or hearing at which the appeal is to be considered.

Rule 9

7.13 This rule allows an appellant to withdraw an appeal at any time before it has been determined. It also allows a case manager or Panel chair to strike out an appeal for want of prosecution or because the appellant has failed to take certain action in pursuit of the appeal (for example, by failing to provide certain documents). No appeal can be struck out without all parties being given a 'reasonable opportunity' to make representations on the matter. If an appeal is struck out in this way, the appellant has three months in which to request that the appeal be reinstated.

Rule 10

7.14 This rule prescribes the Panel's procedures for considering the appeal.

Rule 11

7.15 This rule deals with cost orders which allow the RAP to order that a party shall pay the other party's reasonable costs of the appeal.

Rule 12

- 7.16 This rule covers representation at a hearing.

Rule 13

- 7.17 This rule makes provision for when the appellant is neither present nor represented at a hearing. In particular, it allows for the hearing to proceed if the panel is satisfied that all reasonable efforts have been made to give the appellant notice of the hearing.

Rule 14

- 7.18 This rule deals with the consideration of evidence by a Panel.

Rule 15

- 7.19 This rule deals with voting. It provides that decisions by a Panel shall be taken by a simple majority. No member of a panel may abstain from voting. Where the votes are equal, the chair of the Panel will have a casting vote.

Rule 16

- 7.20 This rule is about appeals held in public and in private. Under Schedule 3A to the 1983 Act, Panels are required to sit in public 'unless and to the extent that the rules provide otherwise'.
- 7.21 The default position will be that all oral appeals will be heard in public, but written appeals will be in private. The panel will have discretion to exclude the public from any part of an oral hearing where it is satisfied that this will cause no prejudice to the appellant and the circumstances outweigh the public interest in holding a public hearing.

Rule 17

- 7.22 This makes provision for the notification of Panel decisions and the reasons for the decisions, as well as notification of an appellant's further rights of appeal to the county court. It also provides for the parties to the appeal to be given a record of the proceedings.

Rule 18

- 7.23 This rule deals with the requirements for serving notices and documents to the appellant.

Rule 19

7.24 This rule allows the chair of a panel to correct ‘accidental errors’ in the determination of the panel at any time up to 28 days after the determination. These would be minor errors which are not material to the substance of the determination.

8. Consultation outcome

8.1 Between 27 October 2009 and 5 January 2010 the GMC consulted on a package of draft Rules and Regulations necessary as a result of the transfer of functions from PMETB to the GMC. This package included a draft of these Rules.

8.2 Details of the consultation were sent to 90 organisations. They included organisations representing doctors, the NHS and other healthcare providers, medical schools, deaneries and medical Royal Colleges and Faculties. Details of the consultation were also published on the GMC’s website. One month before the consultation closed, reminder letters were sent to those organisations that had not submitted comments.

8.3 The GMC received 27 responses to the consultation overall, of which 19 commented specifically on the draft of these Rules. These included responses from each of the key interest groups referred to above, as well as from individual doctors and the public.

8.4 Almost 90% of respondents unequivocally supported the Rules as drafted. A minority of respondents raised queries regarding the levying of fees for considering appeals, the provisions allowing for legally qualified chairs of Panels, and use of a casting vote for chairs in cases where the panel vote is split. Each of these provisions reflect operational practice undertaken by PMETB in relation to appeals that would previously have come within its remit. The GMC has undertaken to review its policy on these issues once it has gained experience of considering PMETB type cases.

8.5 The GMC has concluded that no changes are required to the draft Rules arising from the consultation responses. A detailed report of the consultation and the GMC’s response to the issues raised will be published on the GMC’s website from 16 February 2010.

9. Guidance

9.1 The Department of Health has not issued any guidance in relation to this Order.

10 Impact

10.1 There is minimal impact to business, charities or voluntary bodies.

10.2. There is no negative impact on equality issues. Under section 52A(1)(a) of the 1983 Act, the GMC is required, in any event, when reporting on the exercise of their functions, to include a description of the arrangements they have put in place to ensure they adhere to good practise in relation to equality and diversity.

10.3 There is no impact on the public sector.

11. Regulating small business

11.1 The legislation does not relate to small businesses.

12. Monitoring & review

12.1. The transfer of functions from PMETB will result in the GMC having to consider several new categories of appeal that would previously have fallen within the remit of PMETB. The procedures described in the Rules have been drafted to reflect this new work. They will be subject to monitoring and review to assess whether further changes are required in the light of operational experience of the procedures.

13. Contact

13.1 Matthew Fagg at the Department of Health (Tel: 0113 2546365 or email: Matthew.Fagg@dh.gsi.gov.uk) can answer queries regarding the instrument