

Draft Order in Council laid before Parliament and the Scottish Parliament under section 62(9) and (10) of the Health Act 1999 for approval by resolution of each House of Parliament and by the Scottish Parliament.

DRAFT STATUTORY INSTRUMENTS

2014 No.

HEALTH CARE AND ASSOCIATED PROFESSIONS

DOCTORS AND OTHER HEALTH AND SOCIAL CARE PROFESSIONALS

The General Medical Council (Fitness to Practise etc.) and the
Professional Standards Authority for Health and Social Care
(Referrals to Court) Order 2014

Made - - - - - ***
Coming into force - - - - - ***

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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.

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(2) of that Schedule expired before a draft of this Order in Council was laid before Parliament and the Scottish Parliament.

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(9) and (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 etc.) and the Professional Standards Authority for Health and Social Care (Referrals to Court) Order 2014.

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

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

PART 2

The General Medical Council

Over-arching objective

2.—(1) In section 1 of the Medical Act (the GMC: constitution etc.), for subsection (1A) 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
- (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), for “that required by” substitute “the over-arching objective under”.

PART 3

The Medical Practitioners Tribunal Service

Establishment of the MPTS as a committee of General Medical Council

3.—(1) In section 1 of the Medical Act (the GMC: constitution etc.), in subsection (3), before the words beginning “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—

““the MPTS” means the Medical Practitioners Tribunal Service;”.

(4) In Part 3 of Schedule 1 to that Act (committees of the GMC), 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.

(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) 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 his appointment 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 has been carrying out functions relating to fitness to practise proceedings, the General Council may appoint as chair of the MPTS, for such period as they may determine, the person who, immediately before that commencement, was the chair 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 specify, such of the functions of the MPTS as the Council specify (and for enabling the MPTS so to delegate).

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

- (a) 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 another member of the MPTS;
- (b) the maximum period for which a member of the MPTS may hold office during a specified period;
- (c) the maximum period for which a member of the MPTS may serve as chair of the MPTS during a specified period;
- (d) 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;
- (e) the attendance of members of the MPTS at meetings of the MPTS;
- (f) the effect (if any) of any vacancy in the membership of the MPTS or any defect in the appointment of a member.

(9) The MPTS must maintain a system for the declaration and registration of private interests of their members.

(10) The MPTS must publish in such manner as they see fit entries recorded in the register of members' private interests.

(11) In this paragraph, "registrant member" and "lay member" each have the same meaning as in paragraph 1A.

(12) 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."

(5) In paragraph 15 of that Schedule (standing orders of the GMC), 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(8)(d)."

(6) In paragraph 16 of that Schedule (officers of the GMC), 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.

4.—(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 3(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 and the preceding cross-heading in each case.

(3) After paragraph 19F of that Schedule (inserted by article 3(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;

(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 may be appointed to a panel list;
- (b) a person who serves as a member of an Interim Orders Tribunal 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) In exercising a function, a Medical Practitioners Tribunal or Interim Orders Tribunal must have regard to the over-arching objective of the General Council under section 1(1A).

(10) 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.

(11) 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.

(12) The MPTS must maintain a system for the declaration and registration of private interests of persons appointed to a panel list.

(13) The MPTS must publish in such manner as they see fit entries recorded in the register of appointees' private interests.

(14) 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.

(15) In this paragraph, "registrant member" and "lay member" each have the same meaning as in paragraph 1A.

(16) 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 3 and 4: consequential provision

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

- (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), for “19A, 19B, 19C, 19D or 19E” substitute “19B, 19C or 19D”.

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

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

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

(6) 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)”.

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

(8) 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”.

(9) In section 44(5) of that Act—

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

(b) for “the Panel’s” substitute “the Tribunal’s”.

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

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

6.—(1) In section 35C of the Medical Act (functions of the Investigation Committee), 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”.

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

(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 him 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 on him as a condition such as is mentioned in subsection (9)(a),”.

(14) For subsection (11) substitute—

“(11) Where—

- (a) a direction that a person’s registration be subject to conditions has been given under—
 - (i) subsection (2), (5) or (8) above, or
 - (ii) rules made by virtue of paragraph 5A(3) of Schedule 4 to this Act, but
- (b) the matter has not been referred under subsection (9A) above,
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 matter has been referred to a Medical Practitioners Tribunal and the Tribunal have yet to hold a hearing to consider the matter, but the person concerned and the General Council have agreed in writing to the terms of a direction, revocation or variation which could be made under subsection (5), (6), (8), (10) or (12)—

- (a) the chair of the Tribunal (instead of the Tribunal) may give, vary or revoke a direction on the agreed terms; or
- (b) if the chair 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) Where the chair of a Tribunal acts in reliance on subsection (13)(a), the direction, revocation or variation is to be treated for the purposes of this Act as if it had been made by the Tribunal under the subsection in question.”

(17) In section 35E of the Medical Act (provisions supplementary to section 35D)—

- (a) in subsections (1), (4) and (5), for “a Fitness to Practise Panel” substitute “a Medical Practitioners Tribunal”, and
- (b) in subsection (1), for “the Registrar” substitute “the MPTS”.

(18) In paragraph 9 of Schedule 4 to that Act (proceedings before Investigation Committee etc: extension of time for appealing)—

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

Interim orders

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

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

(2) In section 41A of that Act (interim orders), 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 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 on a referral under subsection (A1), or a Medical Practitioners Tribunal on its 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, in each place it appears, for “an Interim Orders Panel or a Fitness to Practise Panel” substitute “an Interim Orders Tribunal or a Medical Practitioners Tribunal”.

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

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

(6) After that subsection insert—

“(4A) Where a matter has been referred to an Interim Orders Tribunal or a Medical Practitioners Tribunal and the Tribunal have yet to hold a hearing to consider the matter but the person concerned and the General Council have agreed in writing to the terms of an order which could be made under subsection (3)—

- (a) the chair of the Tribunal (instead of the Tribunal) may make an order on the agreed terms; or
- (b) if the chair 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.

(4B) Where the chair of a Tribunal acts in reliance on subsection (4A)(a), the order is to be treated for the purposes of this Act as if it had been made by the Tribunal under subsection (3).”

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

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

8. Before paragraph 1 of Schedule 4 to the Medical Act (and the preceding cross-heading) insert—

“Overriding objective of rules

A1. The overriding objective of the General Council in exercising the power to make rules under this Schedule is to secure that cases are dealt with fairly and justly; and where the General Council consider that there is a conflict between meeting the objective under this paragraph and meeting the objective under section 1(1A), they must give priority to meeting the objective under this paragraph.”

Proceedings in fitness to practise cases: procedural rules

9.—(1) 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 (the cross-heading preceding which becomes “Procedure of and evidence before the Investigation Committee, Medical Practitioners Tribunals and Interim Orders Tribunals”), 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 consideration of a matter by a Medical Practitioners Tribunal or Interim Orders Tribunal may include provision for—

- (a) the Investigation Committee, the Registrar or any other officer of the General Council to continue to investigate the matter; and
 - (b) the withdrawal of the matter in cases or circumstances specified in the rules or where it appears to the Registrar that the matter should be withdrawn for some other reason.”
- (3) In sub-paragraph (3) 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 “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”,
 - (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 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 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) In paragraph 2 of that Schedule (oaths etc.)—

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

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

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

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

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

(11) 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”.

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

Proceedings in fitness to practise cases: undertakings

10.—(1) In paragraph 1 of Schedule 4 to the Medical Act (proceedings before the Investigation Committee etc: procedure, evidence etc.), after sub-paragraph (2A) insert—

“(2B) Rules made under this paragraph in connection with the consideration by a Medical Practitioners Tribunal of an allegation may include provision—

- (a) for enabling the General Council, in such circumstances as may be specified in the rules, to accept undertakings that the person concerned offers to give;
- (b) for enabling the Tribunal to take any such undertakings into account; and
- (c) with respect to the procedure to be followed where any such undertakings are breached.

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

- (a) for enabling a Medical Practitioners Tribunal, where they find that a person’s fitness to practise is impaired, to agree with the person concerned that he will comply with such undertakings as the Tribunal consider appropriate;
- (b) with respect to the procedure to be followed where any such undertakings are breached.

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

- (a) for enabling or requiring a Medical Practitioners Tribunal to review the undertakings;
- (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
- (b) for accordingly enabling the giving of a direction by a Medical Practitioners Tribunal under section 35D where there is a failure to comply with requirements contained in the undertakings.

(2E) For the purposes of sub-paragraph (2D), the rules may apply section 35D 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 include a reference to that section as so applied.”

- (2) In section 35B of the Medical Act (publications etc. by GMC), in subsection (4)—
- (a) omit the “and” preceding paragraph (g), and
 - (b) after that paragraph insert—
 - “(h) undertakings that have been accepted in accordance with rules made by virtue of paragraph 1(2B) of that Schedule, and
 - (i) undertakings that have been agreed in accordance with rules made by virtue of paragraph 1(2C) of that Schedule.”

Assessments of professional performance or health

11.—(1) In paragraph 5A of Schedule 4 to the Medical Act (the cross-heading before which becomes “Professional performance assessments and health assessments”), 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 (and, where it is to be carried out by an Assessment Team, the constitution and proceedings of the Team);
 - (b) the form or content of the assessment.
- (2ZA) The General Council may make rules as to—
- (a) the procedures to be followed in carrying out an assessment by virtue of this paragraph;
 - (b) the procedures to be followed following the making of a report on the assessment.”
- (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 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 the matter to the MPTS for them to arrange for the matter to be considered by a Medical Practitioners Tribunal, and
 - (b) if he does so, must without delay serve on the person 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 the matter to the MPTS for them to arrange for the matter 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 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 has failed to submit to that assessment or to comply with requirements imposed in respect of that assessment, the Tribunal must consider the matter.

(3D) The Medical Practitioners Tribunal, on their consideration of a matter pursuant to 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) 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) after "for him to refer it to" insert "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) for “their” substitute “the”.
- (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

12.—(1) In paragraph 5A of Schedule 4 to the Medical Act (professional performance assessments: knowledge of English), 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 paragraph 5C of Schedule 4 to the Medical Act (knowledge of English assessments), 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”.

(4) After that sub-paragraph insert—

“(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.”

(5) In sub-paragraph (2) of that paragraph, in paragraphs (a) and (b), omit “registered”.

(6) 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 the matter to the MPTS for them to arrange for the matter to be considered by a Medical Practitioners Tribunal.”

(7) 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 the matter to the MPTS for them to arrange for the matter 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 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 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 the matter.”

(8) 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 pursuant to sub-paragraph (3B) or (3C) may”, and
- (b) in paragraph (b), for “the Fitness to Practise Panel” substitute “the Tribunal”.
- (9) In sub-paragraph (5) of that paragraph, for “the Fitness to Practise Panel” substitute “the Medical Practitioners Tribunal”.
- (10) 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), after “for him to refer it to” insert “the MPTS for them to arrange for”, and
 - (d) in that paragraph, for “be disposed of” substitute “dispose of it”.

Assessments: consequential provision

13.—(1) In section 31 of the Medical Act (power to make regulations with respect to the registers), in subsection (9), 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 whether the assessment was carried out, whether any requirements imposed in respect of the assessment were complied with and, 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), 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 whether the assessment was carried out, whether any requirements imposed in respect of the assessment were complied with and, if the assessment was carried out, the results of the assessment.”

(3) In section 35B of that Act (notification and disclosure by GMC), 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;”.

(4) In section 35D of that Act (functions of a Medical Practitioners Tribunal), in subsections (4)(c), (9)(a)(iii) and (11)(b), 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.”), 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”.

(9) In section 41 of that Act (restoration to the register), 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 whether the assessment was carried out, whether any requirements imposed in respect of the assessment were complied with and, 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), 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), 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)—

- (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)—

- (a) omit “section 40 of” in each place it appears, and
- (b) in sub-paragraph (1), for “subsection (5)” substitute “subsection (5)(a), (b) or (c)”.

(16) In that paragraph, in sub-paragraphs (1) and (3)—

- (a) before “5C(4)” insert “5A(3D) or”,
- (b) omit “or under rules made by virtue of paragraph 5A(3) above”,
- (c) for “that section” substitute “section 35D”, and
- (d) after “paragraph 10” insert “, 10A”.

(17) In paragraph 12 of that Schedule (recording of directions for suspension or conditional registration)—

- (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

14.—(1) In paragraph 7 of Schedule 4 to the Medical Act (legal assessors), 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, where they consider it appropriate to do so, 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.

(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).”

(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, including any function relating to holding that position or being suspended or removed from that position.”

(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”.

Case managers

15. 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, including any function relating to holding that position or being suspended or removed from that position.

(5) 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;
- (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).

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

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

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

Disclosure of information

16.—(1) In section 35A of the Medical Act (GMC’s power to require disclosure of information), 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 (6) of that section, for “Subsection (1) above does not” substitute “Subsections (1) and (1A) above do not”.

(3) 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 the matter to the MPTS for them to arrange for the matter 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 the matter 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 a reference to that sub-paragraph as so applied.”

Appeals by persons subject to decisions by Tribunals

17.—(1) In section 40 of the Medical Act (the title to which becomes “Appeals by persons subject to decisions by Tribunals”), 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), after “refer it to” insert “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.”

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

Appeals by the General Medical Council

18. 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 to agree to an undertaking under rules made by virtue of paragraph 1(2D) of Schedule 4 (undertaking following a finding of impaired fitness to practise); and
- (c) a decision under paragraph 5A(3D) or 5C(4) of Schedule 4 giving—
 - (i) a direction for suspension;
 - (ii) a direction for conditional registration;
- (d) 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;
- (e) a decision not to give a direction under section 35D;
- (f) a decision under section 41 giving a direction that a person’s name be restored to the register;
- (g) 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 it 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) If the General Council bring an appeal under this section, the Registrar must without delay serve notification of the appeal on the Professional Standards Authority for Health and Social Care (“the Authority”); and this requirement is in addition to such requirements relating to service of proceedings as are imposed by rules of court.

(8) If the Authority refers a case under section 29 of the National Health Service Reform and Health Care Professions Act 2002 (“the 2002 Act”) relating to a decision within subsection (1)(c), (ca) or (cb) of that section, or a decision within subsection (2)(a) of that section not to take a disciplinary measure under a provision referred to in subsection (1)(c), (ca) or (cb) of that section, the General Council may not bring an appeal under this section against the decision.

(9) If the Authority applies to the relevant court to become an interested party in proceedings on an appeal under this section, the Authority may, as part of the application, seek to add to the grounds on which the appeal is being brought; and where the court grants an application for there to be additional grounds, the proceedings on those grounds are to be treated as if they were proceedings on a reference that the Authority had made to the court under section 29 of the 2002 Act.

(10) If the General Council withdraw an appeal under this section, or abandon one or more of the grounds on which it is being brought, and the Authority is an interested party in the proceedings on the appeal, the Authority may apply to the relevant court for the proceedings, or (as the case may be) the proceedings on the abandoned grounds, to continue as if they were proceedings on a reference that the Authority had made to the court under section 29 of the 2002 Act.

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

Referrals to court by the Professional Standards Authority for Health and Social Care

19.—(1) In section 29 of the National Health Service Reform and Health Care Professions Act 2002 (reference of disciplinary cases by Professional Standards Authority for Health and Social Care to court), 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 decision by a Medical Practitioners Tribunal of the General Medical Council to agree to an undertaking under rules made by virtue of paragraph 1(2D) of Schedule 4 to the Medical Act 1983 following a finding that a person’s fitness to practise is impaired,
- (cb) a direction by a Medical Practitioners Tribunal of the General Medical Council under paragraph 5A(3D) or 5C(4) of that Schedule 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 they consider 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 “40 days beginning with” 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, 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), (ca) or (cb) or a relevant decision within subsection (2)(a) not to take a disciplinary measure under a provision referred to in subsection (1)(c), (ca) or (cb), remit the case to the Medical Practitioners Tribunal Service for it to arrange for a Medical Practitioners Tribunal so to dispose of the case.”

(8) At the end of that section insert—

“(9) If the Authority refers a case of a relevant decision such as is mentioned in subsection (8)(d) to the court, it must without delay serve on the General Medical Council notification of the reference; and this requirement is in addition to such requirements relating to service of proceedings as are imposed by rules of court.

(10) If the General Medical Council bring an appeal under section 40A of the Medical Act 1983 against a decision, the Authority may not refer the case relating to that decision under this section.

(11) Where the relevant court, on an application by the General Medical Council as the respondent in a case under this section, allows additional grounds on the appeal, the proceedings on those additional grounds are to be treated as if they were proceedings on an appeal that the Council had brought under section 40A of the Medical Act 1983.

(12) If the Authority withdraws a reference under this section, or abandons one or more of the grounds on which the reference is being made, and the General Medical Council is the respondent in the case, the Council may apply to the relevant court for the proceedings, or (as the case may be) the proceedings on the abandoned grounds, to continue as if they were proceedings on an appeal that the Council had brought under section 40A of the Medical Act 1983.

(13) Where rules under paragraph 1 of Schedule 4 to the Medical Act 1983 provide, by virtue of sub-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.”

Restoration of names to the register

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

(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 it 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, it must arrange for the application to be determined by a Medical Practitioners Tribunal.”

(5) In subsection (10) of that section, for “the Registrar” substitute “the MPTS”.

(6) In subsection (11) of that section, after “for that direction to be” insert “referred to the MPTS for it to arrange for the direction to be”.

Annual reports of the MPTS

21. 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 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), 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 of a description specified in the rules made by it that relates to a person's fitness to practise.

(8) Where the rules include provision by virtue of any 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), 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), at the end insert—

"(10) In exercising a function, a Registration Appeals Panel must have regard to the overarching objective of the General Council under section 1(1A)."

(2) In that paragraph, in sub-paragraph (7), for "a Fitness to Practise Panel" substitute "the Investigation Committee (where, in the case of paragraph 7, the Committee is considering giving a warning to a person)".

(3) In Schedule 3B to that Act (licence to practise and revalidation: appeals), in paragraph 3(4), for "a Fitness to Practise Panel" substitute "the Investigation Committee (where, in the case of paragraph 7, the Committee is 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 ";

(e) by sending it to an electronic mail 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 electronic mail may be proved by an electronic mail that acknowledges receipt of it."

Appeal of review orders

25. In paragraph 11 of Schedule 4 to the Medical Act (proceedings before Investigation Committee etc: appeal of review orders), in sub-paragraphs (1) and (3)—

(a) for "section 35D(2)" substitute "section 35D", and

(b) from 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 Schedule 4 to the Medical Act (proceedings before Investigation Committee etc.), in paragraph 3—

- (a) in paragraph (a), omit “or the General Council” and “or the Council”,
- (b) in paragraph (b), omit “or to the General Council” and “or the Council”, and
- (c) omit “or Council” in each place it appears.

(2) In paragraph 3(3)(b) of Schedule 3B to that Act (licence to practise and revalidation: appeals), omit “the Solicitor to”.

(3) In paragraph 13 of Schedule 4 to that Act, 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.

(3) For the purposes of section 1 of the Statutory Instruments Act 1946, 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 to make provision as outlined below and consequential changes.

Article 2 provides for a new over-arching objective for the General Medical Council (“the GMC”) in place of their existing main objective.

Articles 3 to 5 establish the Medical Practitioners Tribunal Service (“the MPTS”) as a statutory committee of the GMC to strengthen the separation between their investigation and adjudication arms, and place fitness to practise and interim orders tribunals (formerly fitness to practise and interim orders panels and also statutory committees of the GMC) under the administrative control of the MPTS. Provision is made for the tribunals to be required to have regard to the GMC’s over-arching objective in the exercise of their functions.

Article 6 amends the review powers of fitness to practise tribunals, including by introducing provision to ensure that reviews can be carried out before the expiry of sanctions and to enable reviews without a hearing where both parties are in agreement as to the outcome.

Article 7 includes provision enabling reviews of interim orders without a hearing where both parties are in agreement as to the outcome.

Article 8 makes provision for there to be an overriding objective for the making of procedural rules for fitness to practise proceedings of securing that cases are dealt with fairly and justly.

Article 9 amends the GMC’s rule-making powers to make express provision for investigations to continue once fitness to practise proceedings have started and for cases to be withdrawn. Provision is also made for rules to include provision for preliminary hearings and for 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 for unreasonable behaviour.

Article 10 confers express power to provide in rules for undertakings to be accepted by tribunals and for the consequences of breaches.

Articles 11 to 13 make express provision for health assessments alongside professional performance assessments and for sanctions for non-compliance with such assessments (i.e. suspension or conditional registration). Where relevant, corresponding amendments are made for knowledge of English assessments.

Article 14 provides for the MPTS to appoint legal assessors in fitness to practise proceedings.

Article 15 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 16 confers power on the GMC to require practitioners to provide information as part of investigations (subject to certain exceptions) and to impose suspension or conditional registration in the event of non-compliance.

Article 17 makes consequential provision relating to appeals by practitioners.

Articles 18 and 19 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 referral. The PSA's grounds for referral are also amended, and the same grounds are applicable to the GMC's power of appeal.

Article 20 makes consequential changes relating to applications for restoration to the register.

Article 21 provides for annual reports of the MPTS to be published and to be laid before Parliament.

Article 22 makes express provision for the rejection of vexatious allegations, 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 provision for Registration Appeals Panels to be required to have regard to the GMC's over-arching objective in the exercise of their functions.

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 which extends its effect until the final outcome of that appeal takes effect.

Article 26 makes minor corrections.