

<b>Agenda item:</b>	<b>8</b>
<b>Report title:</b>	<b>Revisions to the Amendment orders implementing changes to the Medical Act 1983</b>
<b>Report by:</b>	<b>Anna Rowland</b> , Assistant Director of Policy, Business Transformation and Safeguarding, Fitness to Practise <a href="mailto:arowland@gmc-uk.org">arowland@gmc-uk.org</a> , 020 7189 5077
<b>Action:</b>	<b>To consider</b>

## Executive summary

On 31 December 2015 we implemented changes to modernise the investigation and adjudication of fitness to practise cases and published our amended Rules that were approved by Council, then agreed with the Department of Health and approved by the Privy Council.

Following this, staff identified typographical errors in the final published version of the Fitness to Practise Rules post-implementation, and the Department of Health has agreed to correct these errors.

## Recommendations

Council is asked to:

- a** Note the corrections to be made to the Fitness to Practise Rules, by way of an Amendment Order.
- b** Agree to delegate authority to the Chair of Council and to approve the final Amendment Order making corrections to the Fitness to Practise Rules and affix the Corporate Seal.

## Amendments to the Fitness to Practise Rules

- 1 In 2015 we modernised our investigation and adjudication functions with Parliament approving changes to the Medical Act 1983 in March 2015 and changes to our Rules in December 2015.
- 2 We worked closely with the Department of Health to prepare the draft rules that were approved by the Privy Council and implemented on 31 December 2015. In the post-implementation period, staff identified typographical and other minor errors in the final published version. There errors arose during the short window for agreeing a final approved version of the amendment orders with the Department of Health before commencing the Parliamentary approval process.
- 3 We have raised this with the Department and it has been agreed that the errors can be corrected by a further Amendment Order to the Rules published on 31 December 2015. This will have no impact on the new powers or processes already in place.
- 4 We have commented on an initial draft of this order and will be working the Department over the coming weeks to finalise this.

## Corrections

- 5 The previous draft Amendment Order, approved by Council in 2015, is at [Annex A](#) with the errors marked with explanatory comments. The further Amendment Order to the Rules will be drafted to list these corrections.
- 6 In summary, the corrections address:

### *Terminology*

- Rules 27 and 34 - changing 'panels' to 'tribunals'.
- Rule 17(3) – changing 'General Medical Council' to 'General Council'.
- Rule 22(5)(b) and 22A(1)(i) – changing 'direction' to 'order' to reflect the terminology of s41A of the Act.

### *Cross-referencing*

- Rules 17(5)(b)(ii) and 22(4)(b)(ii) – amending references to undertakings provisions to make the drafting consistent across both rules.
- Rule 22A – adding reference to s35D(8) of the Medical Act 1983.
- Rule 28 – correcting references to relevant paragraphs of rule 28.

### *Typographical errors*

- Rules 17(9) and 34(4)(b)(ii) and Schedule 1(2) – correcting minor typos.
- Rule 20 – amending the notice of review period from ‘no later than 20 days before the hearing’ to the standard ‘28 days’ – and deleting the previous rule 20(2), as intended.

### *Other*

- Rule 2 (definitions) - an amendment to the definition of ‘Assessment team’ which will allow us the intended maximum flexibility in how many assessors make up a team (reflecting powers under the Medical Act 1983 for the team to be constituted as directed by the Registrar).

## M8 – Revisions to the Amendment Orders implementing changes to the Medical Act 1983

## M8 – Annex A

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### STATUTORY INSTRUMENTS

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**2015 No. XXXX**

## **HEALTH CARE AND ASSOCIATED PROFESSIONS**

### **DOCTORS**

#### **The General Medical Council (Amendments to Miscellaneous Rules and Regulations) Order of Council 2015**

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

*Laid before Parliament* \*\*\*

*Coming into force* - - - \*\*\*

At the Council Chamber, Whitehall, the \*\*\* day of \*\*\*

By the Lords of Her Majesty's Most Honourable Privy Council

The General Medical Council has made the General Medical Council (Amendments to Miscellaneous Rules and Regulations) Rules 2015 which are set out in the Schedule to this Order, in exercise of the powers conferred by section 35CC(1) and (4) to (7) of, and paragraphs 19B to 19D and 19G of Schedule 1 to, and paragraphs 1(1), (2ZA), (2ZB), (2A), (2B) to (2E), (3), (4) and (4B) to (4D), 5A(1), (2ZC) and (2ZE), 5C(1) and (2), and 7A(6) and (9) of Schedule 4 to, the Medical Act 1983(a).

In accordance with paragraph 1(6) of Schedule 4 to the Medical Act 1983, the General Medical Council has consulted with such bodies of persons representing medical practitioners, and such medical practitioners, as appeared to the General Medical Council requisite to be consulted.

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(a) 1983 c.54. Section 35CC was substituted by article 13 of S.I. 2002/3135 and amended by paragraph 18 of Schedule 1 of S.I. 2008/3131 and article 22(1) of S.I. 2015/794. Paragraphs 19B to 19D and 23B of Schedule 1 were substituted by article 5(3) of S.I.2002/3135. Paragraph 19B was also amended by article 3(2) of S.I. 2006/1914. Paragraph 19G of Schedule 1 was added by article 3(3) of S.I. 2015/794. Schedule 4 was substituted by S.I. 2002/3135. Paragraph 1(1) of Schedule 4 was amended by article 8(1) of S.I. 2015/794. S.I. 2015/794 added the following paragraphs to Schedule 4: paragraph 1(2ZA) was added by article 8(2); paragraphs 1(2ZB), (2B) to (2E) by article 9(1); paragraphs 1(3), (4) and (4B) to (4D) by article 8; paragraphs 5C(1) and (2) by article 11; paragraphs 5A(1), (2ZC) to (2ZE) by article 10; and 7A(6) and (9) by article 14. In making the Rules in the Schedule, the General Medical Council has given effect to the overriding objective in paragraph 1(1A) of Schedule 4 to the Medical Act 1983.

By virtue of paragraph 24 of Schedule 1 and paragraphs 1(7) and 7A(10) of Schedule 4 to that Act the Rules are not to have effect until approved by order of the Privy Council(a).

### **Citation and commencement**

1. This Order may be cited as the General Medical Council (Amendments to Miscellaneous Rules and Regulations) Order of Council 2015 and comes into force on xxxx 2015.

### **Privy Council approval**

2. Their Lordships, having taken the Rules and Regulations in the Schedule into consideration, are pleased to and do approve them.

*Richard Tilbrook*  
Clerk of the Privy Council

## **SCHEDULE**

Article 2

### **The General Medical Council (Amendments to Miscellaneous Rules and Regulations) Rules 2015**

These Rules are made by the General Medical Council in exercise of the powers conferred by sections 35CC(1) and (4) to (7) of, and paragraphs 19B to 19D and 19G of Schedule 1 to, and paragraphs 1(1), (2ZA), (2ZB), (2A), (2B) to (2E), (3), (4) and (4B) to (4D), 5A(1), (2ZC) and (2ZE), 5C(1) and (2), and 7A(6) and (9) of Schedule 4 to, the Medical Act 1983(b).

In accordance with paragraph 1(6) of Schedule 4 to the Medical Act 1983, the General Medical Council has consulted with such bodies of persons representing medical practitioners, and such medical practitioners, as appeared to the General Medical Council requisite to be consulted.

### **Citation and commencement**

1. These Rules may be cited as the General Medical Council (Amendments to Miscellaneous Rules and Regulations) Rules 2015 and come into force on xxx 2015.

## **PART 1**

### **Amendments to the General Medical Council (Fitness to Practise) Rules 2004**

#### **Amendments to the General Medical Council (Fitness to Practise) Rules 2004**

2. The General Medical Council (Fitness to Practise) Rules 2004(c) are amended in accordance with rules 3 to 51.

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- (a) Paragraph 24 was substituted by article 5(3) of S.I. 2002/3135 and also amended by article 4(5) of S.I. 2015/794.  
 (b) 1983 c.54. Section 35CC was substituted by article 13 of S.I. 2002/3135 and amended by, paragraph 18 of Schedule 1 of S.I. 2008/3131 and article 22(1) of S.I. 2015/794. Paragraphs 19B to 19D, 23B and 24 of Schedule 1 were substituted by article 5(3) of S.I.2002/3135. Paragraph 19B was also amended by article 3(2) of S.I. 2006/1914.. Paragraph 19G of Schedule 1 was added by article 3(3) of S.I. 2015/794. Schedule 4 was substituted by S.I. 2002/3135. Paragraph 1(1) of Schedule 4 was amended by article 8(1) of S.I. 2015/794. S.I. 2015/794 added the following paragraphs to Schedule 4: paragraph 1(2ZA) was added by article 8(2); paragraphs 1(2ZB), (2B) to (2E) by article 9(1); paragraphs 1(3), (4) and (4B) to (4D) by article 8; paragraphs 5C(1) and (2) by article 11; paragraphs 5A(1), (2ZC) to (2ZE) by article 10; and 7A(6) and (9) by article 14. In making the Rules in the Schedule, the General Medical Council has given effect to the overriding objective in paragraph 1(1A) of Schedule 4 to the Medical Act 1983.  
 (c) S.I. 2004/2608.

**Amendment of rule 2****3. In rule 2 (interpretation)—**

(a) in the definition of “Assessment Team”, omit “three or more”;

~~(a)(b)~~ in the definition of “Case Examiner”, for “28(3)(c)” substitute “28(2)(b)”;

~~(b)(c)~~ for the definition of “Case Manager”, substitute—

““Case Manager” means a person appointed by the MPTS under paragraph 7A(1) of Schedule 4 to the Act;”;

~~(e)(d)~~ omit the definitions of—

- (i) “FTP Panel”;
- (ii) “Interim Orders Panel”;
- (iii) “Legal Assessor”;
- (iv) “Panel”;
- (v) “the Presenting Officer”;
- (vi) “specialist health adviser”;
- (vii) “specialist performance adviser”;

~~(d)(e)~~ in the definition of “panellist”, omit “or a Panel”;

~~(e)(f)~~ at the appropriate place in the alphabetical order, insert—

““costs” includes fees, charges, disbursements or expenses;

“Interim Orders Tribunal” means an Interim Orders Tribunal constituted under rules made under paragraph 19G of Schedule 1 to the Act;

“Medical Practitioners Tribunal” means a Medical Practitioners Tribunal constituted under rules made under paragraph 19G of Schedule 1 to the Act;

“MPTS” means the Medical Practitioners Tribunal Service constituted under rules made under paragraph 19F of Schedule 1 to the Act;

“non-compliance matter” means a matter (including one in respect of which a direction has been made pursuant to paragraph 5A(3D) or 5C(4) of Schedule 4 to the Act or a matter being considered under section 35D that relates to such a direction) that has been referred to the MPTS for them to arrange for consideration by a Medical Practitioners Tribunal pursuant to any of section 35A(6C) of, paragraph 5A(3)(a) or (3A)(b), 5C(3)(a) or (3A)(b) of Schedule 4 to, the Act;

“representative for the GMC” means a barrister, solicitor or other legal representative instructed by the Registrar to present the case on behalf of the General Council at any hearing before a Tribunal or Committee;

“Tribunal” means a Medical Practitioners Tribunal or an Interim Orders Tribunal;”.

**Amendment of rule 3****4. For rule 3 (appointment of panels of advisers, assessors and examiners), substitute—****“Appointment of assessors and examiners****3.—(1) The Registrar may appoint—**

- (a) a panel of medical and lay performance assessors for the purposes of carrying out performance assessments in accordance with Schedule 1; and
- (b) a panel of medical examiners for the purposes of carrying out health assessments in accordance with Schedule 2.

(2) Members of the General Council are not eligible for appointment to a panel appointed under paragraph (1).”.

#### **Amendment of rule 4**

5. In paragraph (5) of rule 4 (initial consideration and referral of allegations), after “public interest” omit “, in the exceptional circumstances of the case,”.

#### **Amendment of rule 5**

6. In paragraphs (1) and (2) of rule 5 (functions of the Registrar in relation to cautions, convictions and determinations)(a), for “a FTP Panel” substitute “the MPTS for them to arrange for it to be considered by a Medical Practitioners Tribunal”.

#### **Amendment of rule 6**

7. For rule 6 (referral to Interim Orders Panel), substitute—

##### **“Referral to Interim Orders Tribunal**

6. If, at any stage, the Registrar is of the opinion that an Interim Orders Tribunal should consider making an interim order in relation to a practitioner, he shall refer the allegation to the MPTS for them to arrange for it to be considered by such a Tribunal accordingly.”.

#### **Amendment of rule 7**

8. Omit paragraph (6) of rule 7 (investigation of allegations).

#### **Amendment of rule 8**

9.—(1) Rule 8 (consideration by Case Examiners)(b) is amended as follows.

(2) In paragraph (1), for “28(3)(c)” substitute “28(2)(b)”.

(3) In sub-paragraph (d) of paragraph (2), for “for determination by a FTP Panel” substitute “to the MPTS for them to arrange for determination by a Medical Practitioners Tribunal”.

(4) In paragraph (6), for “Interim Orders Panel” substitute “Interim Orders Tribunal”.

#### **Amendment of rule 9**

10. For paragraph (d) of rule 9 (consideration by the Committee), substitute—

“(d) refer the allegation to the MPTS for them to arrange for determination by a Medical Practitioners Tribunal; or”.

#### **Amendment of rule 10**

11.—(1) Rule 10 (undertakings) is amended as follows.

(2) In paragraph (1), for “a FTP Panel”, substitute “the MPTS for them to arrange for it to be determined by a Medical Practitioners Tribunal”.

(3) In paragraph (5), for “a FTP Panel”, substitute “the MPTS for them to arrange for it to be determined by a Medical Practitioners Tribunal”.

(4) In sub-paragraph (a) of paragraph (7), for “invite the practitioner” substitute “write to the practitioner inviting him”.

(5) In paragraph (8)—

(a) in sub-paragraph (a), for “letter” substitute “written invitation”;

(b) for sub-paragraph (c), substitute—

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(a) Paragraph (2) was last amended by Rules Scheduled to S.I. 2009/1182.

(b) Paragraphs (1) and (2) were amended by Rules Scheduled to S.I. 2009/1913 and S.I. 2007/3168, respectively.

- “(c) the practitioner’s health, performance or knowledge of English has deteriorated, or otherwise gives rise to further concern regarding his fitness to practise,”;
- (c) for the full out words “the Registrar may refer the allegation for determination by a FTP Panel” substitute “the Registrar may refer the allegation to the MPTS for them to arrange for determination by a Medical Practitioners Tribunal”.

### **Amendment of rule 11**

**12.**—(1) Rule 11 (warnings)(a) is amended as follows.

(2) In paragraph (2), for “considered by a FTP Panel” substitute “referred to the MPTS for them to arrange for it to be considered by a Medical Practitioners Tribunal”.

(3) In sub-paragraph (c) of paragraph (6), for “for determination by a FTP Panel” substitute “to the MPTS for them to arrange for determination by a Medical Practitioners Tribunal”.

(4) In sub-paragraph (a) of paragraph (7), for “Presenting Officer” substitute “representative for the GMC”.

(5) In sub-paragraph (a) of paragraph (10), for “a FTP Panel” substitute “the MPTS for them to arrange for it to be determined by a Medical Practitioners Tribunal”.

### **Amendment of rule 12**

**13.** For sub-paragraph (b) of paragraph (1) of rule 12 (review of decisions), substitute—

“(b) a decision not to refer an allegation to the Committee or to the MPTS for them to arrange for it to be considered by a Medical Practitioners Tribunal,”.

### **Amendment of rule 13**

**14.** For rule 13 (relevant date for the purpose of sections 35A and 35B of the Act), substitute—

#### **“Relevant date for the purpose of sections 35A and 35B of the Act**

**13.** For the purposes of sections 35A and 35B of the Act, the relevant date shall be the day on which the earliest of the following occurs—

- (a) the decision of the Registrar to carry out investigations under rule 7(2);
- (b) the referral of an allegation to the MPTS for them to arrange for it to be considered by an Interim Orders Tribunal;
- (c) the referral of an allegation for consideration by the Case Examiners under rule 8;
- (d) the referral of an allegation to the MPTS for them to arrange for it to be considered by a Medical Practitioners Tribunal;
- (e) the making of a direction that an assessment of the practitioner’s performance or health be carried out in accordance with Schedule 1 or 2 or that the practitioner undertake an assessment of knowledge of English in accordance with Schedule 3.”.

### **Amendment of rule 13A**

**15.** In rule 13A (investigation following referral)(b) for “a FTP Panel” substitute “the MPTS for them to arrange for it to be considered by a Medical Practitioners Tribunal”.

### **Omission of rule 14**

**16.** Omit rule 14 (appointment of specialist advisers).

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(a) Paragraph (4) was amended by Rules Scheduled to S.I. 2013/815.

(b) Rule 13A was inserted by Rules Scheduled to S.I. 2009/913.

**Amendment of rule 15**

**17.** For rule 15 (notice of hearing), substitute—

**“Notice**

**15.—**(1) After an allegation or non-compliance matter has been referred to the MPTS for them to arrange for it to be considered by a Medical Practitioners Tribunal under rule 17 or 17ZA (as the case may be)—

- (a) the Registrar shall give notice to the practitioner of—
  - (i) the allegation against the practitioner and the facts upon which it is based; or
  - (ii) the non-compliance matter; and
- (b) the MPTS shall serve a notice of hearing on the practitioner—
  - (i) specifying the date, time and venue of the hearing,
  - (ii) informing the practitioner of his right to attend the hearing and to be represented at it in accordance with rule 33,
  - (iii) informing the practitioner of the power of the Medical Practitioners Tribunal to proceed in his absence under rule 31,
  - (iv) informing the practitioner of his right to adduce evidence in accordance with rule 34 and to call and cross-examine witnesses, and
  - (v) informing the practitioner of the Medical Practitioner Tribunal’s powers of disposal under section 35D, section 38, section 41A of, and paragraph 5A(3D) or 5C(4) of Schedule 4 to, the Act (as the case may be).

This is subject to rule 16.

(2) Unless the practitioner consents to a lesser period of notice being given or the Registrar or MPTS considers it in the public interest for there to be such a lesser period, a notice referred to in paragraph (1) shall be given by the Registrar or MPTS (as the case may be) at least 28 days before the hearing.”.

**Amendment of rule 16**

**18.—**(1) Rule 16 (case management)(a) is amended as follows.

(2) In paragraph (1), for “Registrar” substitute “MPTS”.

(3) After paragraph (1), insert—

“(1A) The power to give directions under the provisions of this rule may also be exercised by—

- (a) the Chair of a Medical Practitioners Tribunal, where the Chair is appointed as a Case Manager for proceedings before that Tribunal; or
- (b) the Medical Practitioners Tribunal itself,

and references to a Case Manager in these Rules are to be construed accordingly.”.

(4) In paragraph (2)—

- (a) for “a FTP Panel for” substitute “the MPTS for them to arrange for it to be considered by a Medical Practitioners Tribunal at”;
- (b) for “Registrar” substitute “MPTS”; and
- (c) for “case review” substitute “pre-hearing meeting”.

(5) In paragraph (3), for “case review” substitute “pre-hearing meeting”;

(6) In paragraph (4), for “case review” substitute “pre-hearing meeting”.

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(a) Paragraph (6)(fa) was amended by Rules Scheduled to S.I. 2013/815.

- (7) Omit paragraph (5).
- (8) In paragraph (6)—
- (a) for sub-paragraph (a) substitute—
    - “(a) that each party disclose to the other in advance of the hearing—
      - (i) any documentary evidence in their possession or power relating to the allegation,
      - (ii) details of the witnesses (including the practitioner but not experts) on whom they intend to rely and signed witness statements setting out the substance of their evidence,
      - (iii) a curriculum vitae of any expert on whom they intend to rely, together with a written report setting out the substance of that expert’s evidence, and
      - (iv) skeleton arguments;”;
  - (b) for paragraph (f) substitute—
    - “(f) that a witness of fact is to give evidence-in-chief by way of oral evidence pursuant to rule 34(11);”;
  - (c) in paragraph (fa), for “Panel” substitute “Tribunal”;
  - (d) for paragraph (g) substitute—
    - “(g) a direction that a particular witness of fact should be treated as a vulnerable witness, and directions as to how the evidence of such a witness should be obtained or presented to the Medical Practitioners Tribunal;”;
  - (e) in paragraph (h), for “case review” (twice) substitute “pre-hearing meeting”, and at the end of that paragraph, omit “and”; and
  - (f) after paragraph (i), add—
    - “(j) a direction determining any preliminary legal argument (where the direction is given by the Tribunal itself);
    - (k) a direction that the Tribunal consider whether to admit such evidence as is specified in that direction.”.
- (9) In paragraph (7), for “case review” substitute “pre-hearing meeting”.
- (10) After paragraph (7), insert—
- “(7A) Directions issued by the Case Manager shall be binding on the parties and on any subsequent Tribunal considering the case, unless the Tribunal considers that—
    - (a) there has been a material change in circumstances; or
    - (b) it is not in the interests of justice for that to be the case.”.
- (11) Omit paragraph (8).

## **New rules 16A and 16B**

19. After rule 16, insert—

### **“Powers of Medical Practitioners Tribunal in respect of failure to comply with Rules or directions**

**16A.**—(1) Paragraph (2) applies where, in a matter referred to the MPTS for them to arrange for consideration by a Medical Practitioners Tribunal under rule 17, 22 or 24 (as the case may be) on or after the relevant date, a party fails to comply with—

- (a) these Rules, or
- (b) a direction which was issued on or after that date by the Tribunal or the Case Manager.

For these purposes, the “relevant date” is the date this provision comes into force.

(2) Where there is a failure referred to in paragraph (1), a Medical Practitioners Tribunal may in respect of that failure—

- (a) draw adverse inferences;
- (b) refuse to admit evidence where the failure relates to the admissibility of that evidence; and
- (c) award costs in accordance with rule 16B (a costs award).

### **Costs awards**

**16B.**—(1) A Medical Practitioners Tribunal may make a costs award under rule 16A(2)(c), following an application from either party or of its own initiative.

(2) A costs award is an order that one party or their representative (“the paying party”) pay the costs of the other party (“the receiving party”), where the paying party’s conduct of the proceedings has been unreasonable.

(3) Before making a costs award, a Medical Practitioners Tribunal shall receive any evidence and hear any submissions from the parties, in particular with regard to—

- (a) any rule, tribunal or case manager direction with which it is claimed a party has failed to comply; and
- (b) the conduct which it is claimed is unreasonable.

(4) Where a Medical Practitioners Tribunal makes a costs award, it shall announce its decision and give its reasons for it.

(5) Where a costs award is made, the amount of costs payable under it shall be assessed by a Case Manager after—

- (a) the receiving party has, within a period of 28 days commencing with the conclusion of the proceedings in which the costs award was made, served a schedule of costs on both—
  - (i) the Case Manager, and
  - (ii) the paying party;
- (b) the paying party has, within a period of 28 days commencing with receipt of the receiving party’s schedule of costs, served their response in writing to that schedule and evidence of their ability to pay on both—
  - (i) the Case Manager, and
  - (ii) the receiving party.

(6) Following receipt of the paying party’s response and evidence referred to in sub-paragraph (b) of paragraph (5), the Case Manager shall, having regard to the paying party’s ability to pay, make the assessment referred to in that paragraph. This is subject to paragraphs (7) and (8).

(7) Where the Case Manager considers it appropriate, he may—

- (a) postpone the assessment referred to in paragraph (5);
- (b) extend the period of 28 days referred to in sub-paragraph (a) or (b) (or as the case may be under both sub-paragraphs) of paragraph (5).

(8) The Case Manager may proceed with the assessment of the amount of costs payable regardless of any failure or delay by either party in serving their schedule of costs under sub-paragraph (a) of paragraph (5) or a response under sub-paragraph (b) of that paragraph.

(9) The MPTS shall serve notification of the Case Manager’s assessment of the amount of costs payable upon the parties.

(10) A costs award shall be enforced 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).

(11) Unless the Case Manager directs otherwise, the paying party under a costs award shall pay the costs assessed under it within 14 days of service upon that party of the Case Manager's assessment of those costs.”.

#### **Amendment to heading of Part 4**

**20.** For the heading to Part 4 (Procedure of a FTP Panel), substitute “Procedure of a Medical Practitioners Tribunal”.

#### **Amendment of rule 17**

**21.** For rule 17 (procedure before a FTP Panel), substitute—

##### **“Procedure before a Medical Practitioners Tribunal**

**17.**—(1) A Medical Practitioners Tribunal shall consider any allegations referred to it in accordance with these Rules, and shall dispose of the case in accordance with sections 35D, 38 and 41A of the Act.

(2) The order of proceedings at the hearing before a Medical Practitioners Tribunal shall be as follows—

- (a) the Medical Practitioners Tribunal shall hear and determine any preliminary legal arguments;
- (b) the Chair of the Medical Practitioners Tribunal shall—
  - (i) where the practitioner is present, require the practitioner to confirm his name and GMC Reference Number,
  - (ii) where the practitioner is not present, require the representative for the GMC to confirm the practitioner's name and GMC Reference Number;
- (c) the Chair of the Medical Practitioners Tribunal shall enquire whether the representative for the GMC wishes to amend the particulars of the allegation, and if that representative so wishes, the Medical Practitioners Tribunal shall consider whether to amend the particulars under paragraph (6);
- (d) the Chair of the Medical Practitioners Tribunal shall enquire whether the practitioner wishes to make any admissions;
- (e) where facts have been admitted, the Chair of the Medical Practitioners Tribunal shall announce that such facts have been found proved;
- (f) where facts remain in dispute, the representative for the GMC shall open the case for the General Council and may adduce evidence and call witnesses in support of it;
- (g) the practitioner may make submissions as to whether sufficient evidence has been adduced to find some or all of the facts proved and whether the hearing should proceed no further as a result, and the Medical Practitioners Tribunal shall consider any such submissions and announce its decision as to whether they should be upheld;
- (h) the practitioner may open his case and may adduce evidence and call witnesses in support of it;
- (i) the Medical Practitioners Tribunal shall hear any submissions from the parties as to the facts to be found proven by the Medical Practitioners Tribunal in the light of the evidence adduced pursuant to sub-paragraphs (f) and (h);
- (j) the Medical Practitioners Tribunal shall consider and announce its findings of fact and shall give its reasons for those findings;
- (k) the Medical Practitioners Tribunal shall receive further evidence and hear any further submissions from the parties as to whether, on the basis of any facts found proved, the practitioner's fitness to practise is impaired;

- (l) the Medical Practitioners Tribunal shall consider and announce its finding on the question of whether the fitness to practise of the practitioner is impaired, and shall give its reasons for that decision;
- (m) the Medical Practitioners Tribunal may receive further evidence and hear any further submissions from the parties as to the appropriate sanction, if any, to be imposed or, where the practitioner's fitness to practise is not found to be impaired, the question of whether a warning should be imposed;
- (n) the Medical Practitioners Tribunal shall consider and announce its decision as to the sanction or warning, if any, to be imposed or undertakings to be taken into account (in accordance with paragraphs (3) to (5)) and shall give its reasons for that decision;
- (o) the Medical Practitioners Tribunal shall receive any further evidence and hear any further submissions from the parties as to whether an order for immediate suspension or immediate conditions should be imposed on the practitioner's registration, before considering and announcing whether it shall impose such an order and its reasons for that decision;
- (p) the Medical Practitioners Tribunal shall consider and announce whether to make an order under section 41A(3) of the Act in respect of any interim order in place in respect of the practitioner;
- (q) the Medical Practitioners Tribunal shall, if appropriate, consider whether to make a costs award under rule 16B.

(3) Paragraph (4) applies where a Medical Practitioners Tribunal finds that a practitioner's fitness to practise is impaired and the practitioner has agreed with the General Medical Council to comply with such written undertakings (including any limitations on his practice) as the General Council considers appropriate.

(4) In the circumstances referred to in paragraph (3), a Medical Practitioners Tribunal may, provided the conditions in paragraph (5) are satisfied, take any undertakings referred to in paragraph (3) into account in deciding how to dispose of a case.

(5) Those conditions are—

- (a) the Medical Practitioners Tribunal considers the undertakings referred to in paragraph (3) are sufficient to protect patients and protect the public interest; and
- (b) the practitioner has expressly agreed to the Registrar disclosing details of those undertakings (save those relating exclusively to the health of the practitioner) to—
  - (i) any person by whom the practitioner is employed to provide medical services or with whom he has an arrangement to do so,
  - (ii) any person from whom the practitioner is seeking employment or an arrangement to provide medical services, and
  - (iii) any other person who requests information about the practitioner's registration status.

(6) Where, at any time, it appears to the Medical Practitioners Tribunal that—

- (a) the allegation or the facts upon which it is based and of which the practitioner has been notified under rule 15, should be amended; and
- (b) the amendment can be made without injustice,

it may, after hearing the parties, amend the allegation in appropriate terms.

(7) At any stage in the proceedings before making a determination that a practitioner's fitness to practise is impaired, the Medical Practitioners Tribunal may, having regard to the nature of the allegation under consideration, adjourn and direct that—

- (a) an assessment of the practitioner's performance or health be carried out in accordance with Schedule 1 or 2; or
- (b) the practitioner undertakes an assessment of knowledge of English in accordance with Schedule 3.

(8) On receipt of an assessment report produced further to a direction under paragraph (7)(a) or (b), the Medical Practitioners Tribunal may—

- (a) proceed to consider and determine the allegation in accordance with paragraph (2); or
- (b) refer the allegation to the Registrar for consideration by the Case Examiners in accordance with rule 10(2).

(9) At any stage before making its decision as to sanction or warning, the Medical Practitioners Tribunal may adjourn for further information or reports to be obtained in order to assist it in exercising its functions.

### **Procedure at a non-compliance hearing**

**17ZA.**—(1) The order of proceedings at a hearing to consider a non-compliance matter is to be as follows—

- (a) the Medical Practitioners Tribunal shall hear and determine any preliminary legal arguments;
- (b) the Chair of the Medical Practitioners Tribunal shall—
  - (i) where the practitioner is present, require the practitioner to confirm his name and GMC Reference Number,
  - (ii) where the practitioner is not present, require the representative for the GMC to confirm the practitioner's name and GMC Reference Number;
- (c) the representative for the GMC shall—
  - (i) inform the Medical Practitioners Tribunal of the background to the case,
  - (ii) direct the attention of the Medical Practitioners Tribunal to any relevant evidence, and may adduce evidence and call witnesses in relation to the question of whether—
    - (aa) the practitioner has failed to submit to, or comply with, an assessment under Schedule 1 or 2;
    - (bb) having submitted to an assessment under Schedule 1, the practitioner has failed to comply with requirements imposed in respect of that assessment;
    - (cc) the practitioner has failed to undertake an assessment of knowledge of English in accordance with Schedule 3 or has undertaken such an assessment but has failed to provide the information requested in accordance with that Schedule;
    - (dd) the practitioner has failed to provide information required from him under section 35A(1A) of the Act;
- (d) the practitioner may, in response, adduce evidence and call witnesses in relation to any question addressed by the representative for the GMC under sub-paragraph (ii) of paragraph (c);
- (e) in respect of any question referred to in sub-paragraph (ii) of paragraph (c), the Medical Practitioners Tribunal must consider any evidence referred to in that sub-paragraph and paragraph (d) and announce its finding on that question and shall give its reasons for that finding;
- (f) the Medical Practitioners Tribunal may receive further evidence and hear any further submissions from the parties as to its decision whether to make a direction under paragraph 5A(3D) or 5C(4) of Schedule 4 to the Act;
- (g) the Medical Practitioners Tribunal shall consider any evidence and submissions referred to in paragraph (f) and announce its decision (with reasons) as to the making, or otherwise, of a direction referred to in that paragraph;

- (h) the Medical Practitioners Tribunal shall, before announcing (with reasons) its decision whether or not to impose an order for immediate suspension or immediate conditions on the practitioner's registration, receive and consider any further evidence in that regard from the parties;
- (i) the Medical Practitioners Tribunal may consider whether to make an order under section 41A of the Act and announce its decision in that regard.”.

#### **Amendment of rule 17A**

**22.** For rule 17A (notification of determination of FTP Panel) substitute—

##### **“Notification of determination of Medical Practitioners Tribunal**

**17A.** The Registrar shall notify the maker of the allegation (if any) of the Medical Practitioners Tribunal's determination in respect of a case, and the manner in which it disposed of that case.”.

#### **Amendment of rule 18**

**23.** For rule 18 (application of Part 5), substitute—

##### **“Application of Part 5**

**18.—(1)** This Part shall apply to any hearing (a review hearing) at which a Medical Practitioners Tribunal is to determine whether or not to make a direction under section 35D(5), (6), (8), (10) or (12) of the Act.

(2) For the purposes of paragraph (1), where a referral is made to the MPTS for them to arrange for a consideration by a Medical Practitioners Tribunal at a review hearing under rule 37A(3), the requirements contained in undertakings taken into account by the Medical Practitioners Tribunal under rule 17(4) or rule 22(3) are to be treated as if they were requirements specified in a direction under section 35D(2)(c).”.

#### **Amendment of rule 19**

**24.** For rule 19 (functions of Registrar), substitute—

##### **“Functions of Registrar**

**19.** Prior to the opening of a review hearing, the Registrar shall consider the directions made by a Medical Practitioners Tribunal at any previous hearing in respect of the practitioner, and may—

- (a) make such enquiry or procure the production of such expert or other report as he considers necessary;
- (b) direct that the practitioner undergo an assessment of his—
  - (i) performance or health in accordance with Schedule 1 or 2, or
  - (ii) knowledge of English in accordance with Schedule 3.”.

#### **Amendment of rule 20**

**25.—(1)** Rule 20 (notice of review hearing) is amended as follows.

(2) For the title, substitute “Notice”.

(3) For paragraph (1) and (2), substitute—

“(1) No later than 208 days before the hearing under rule 22 or 22A (as the case may be)—

- (a) the MPTS shall serve on the practitioner notice of the review hearing—
    - (i) specifying the direction made at the previous hearing and the grounds for the same,
    - (ii) stating the matters set out at rule 15(1)(b)(i) to (iv),
    - (iii) indicating the subsection of section 35D of the Act under which the Medical Practitioners Tribunal is proposing to act, and the powers available to the Medical Practitioners Tribunal under that section,
    - (iv) requesting that the practitioner notify the MPTS, within 14 days of the date of the notice, whether he wishes to attend the hearing, and
    - (v) inviting the practitioner, if he chooses not to attend the hearing, to make written representations to be received by the MPTS no later than 14 days before the hearing; and
  - (b) the Registrar shall provide the practitioner with—
    - (i) a copy of any statement, report or other document which has not previously been sent to the practitioner or his representative and which is relevant to the question whether a direction should be made under this Part or the terms on which it should be made,
    - (ii) where an early review hearing is to be held, the information that makes such an early review desirable.”.
- (4) In paragraph (3), for “FTP Panel” substitute “Medical Practitioners Tribunal”.

#### **Amendment of rule 21**

**26.** In rule 21 (early review hearing), for “a FTP Panel for” substitute “the MPTS for them to arrange for it to be considered by a Medical Practitioners Tribunal at”.

#### **Amendment of rule 21A**

- 27.**—(1) Rule 21A (procedure following referral of a new allegation<sup>(a)</sup>) is amended as follows.
- (2) In paragraph (1)—
- (a) for “FTP Panel, it” substitute “MPTS for them to arrange for it to be considered by a Medical Practitioners Tribunal, the Tribunal”;
  - (b) for “17(2)(a) to (i)” substitute “17(2)(a) to (j)”.
- (3) In paragraph (2), for “FTP Panel” substitute “Medical Practitioners Tribunal”.

#### **New rule 21B**

**28.** After rule 21A, insert—

##### **“Review on the papers**

**21B.**—(1) A matter must be considered on the papers where it has been referred to the MPTS for them to arrange for it to be considered by a Medical Practitioners Tribunal at a review hearing and the MPTS receives confirmation in writing from the practitioner and the Registrar that the parties agree to the terms of a direction, revocation or variation which that Tribunal could make under section 35D(5), (6), (8), (10) or (12) of the Act.

(2) Consideration on the papers under paragraph (1) may be carried out by the Chair of the Medical Practitioners Tribunal, or the Tribunal itself.

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(a) Rule 21A was inserted by Rules Scheduled to S.I. 2009/1913.

(3) Where the Chair of the Medical Practitioners Tribunal or the Tribunal itself determines that the Tribunal should hold a hearing to consider the matter and the MPTS arrange a hearing for that purpose in accordance with section 35D(13), the other provisions of this Part are to apply for the purposes of that hearing.”.

## **Amendment of rule 22**

**29.** For rule 22 (procedure at a review hearing), substitute—

### **“Procedure at a review hearing**

**22.**—(1) The order of proceedings at a review hearing shall be as follows—

- (a) the Medical Practitioners Tribunal shall hear and determine any preliminary legal arguments;
- (b) the Chair of the Medical Practitioners Tribunal shall—
  - (i) where the practitioner is present, require the practitioner to confirm his name and GMC Reference Number,
  - (ii) where the practitioner is not present, require the representative for the GMC to confirm the practitioner’s name and GMC Reference Number;
- (c) the representative for the GMC shall—
  - (i) inform the Medical Practitioners Tribunal of the background to the case, and the sanction previously imposed,
  - (ii) direct the attention of the Medical Practitioners Tribunal to any relevant evidence and may adduce evidence and call witnesses in relation to the practitioner’s fitness to practise or his failure to comply with any requirement imposed upon him as a condition of registration;
- (d) the practitioner may present his case and may adduce evidence and call witnesses in support of it;
- (e) the Medical Practitioners Tribunal shall receive further evidence and hear any further submissions from the parties as to whether the fitness to practise of the practitioner is impaired or whether the practitioner has failed to comply with any requirement imposed upon him as a condition of registration;
- (f) the Medical Practitioners Tribunal shall consider and announce its finding on the question of whether the fitness to practise of the practitioner is impaired or whether the practitioner has failed to comply with any requirement imposed upon him as a condition of registration, and shall give its reasons for that decision;
- (g) the Medical Practitioners Tribunal may receive further evidence and hear any further submissions from the parties as to its decision whether to make a direction under section 35D(5), (6), (8), (10) or (12) of the Act;
- (h) the Medical Practitioners Tribunal shall consider and announce its decision as to the direction, if any, to be made or undertakings to be taken into account (in accordance with paragraphs (2) to (4)) and shall give its reasons for that decision;
- (i) the Medical Practitioners Tribunal shall, if appropriate, consider whether to make a costs award under rule 16B.

(2) Paragraph (3) applies where a Medical Practitioners Tribunal finds that a practitioner’s fitness to practise is impaired and the practitioner has agreed with the General Council to comply with such written undertakings (including any limitations on his practice) as the General Council considers appropriate.

(3) In the circumstances referred to in paragraph (2), a Medical Practitioners Tribunal may, provided the conditions in paragraph (4) are satisfied, take any undertakings referred to in paragraph (2) into account in deciding how to dispose of a case.

(4) Those conditions are—

- (a) the Medical Practitioners Tribunal considers the undertakings referred to in paragraph (2) to be sufficient to protect patients and protect the public interest; and
  - (b) the practitioner has expressly agreed to the Registrar disclosing details of those undertakings (save those relating exclusively to the health of the practitioner) to—
    - (i) any person by whom the practitioner is employed to provide medical services or with whom he has an arrangement to do so,
    - (ii) any person from whom the practitioner is seeking such employment or such an arrangement, and
    - (iii) any other person who requests information about the practitioner's registration status.
- (5) Where, prior to the Medical Practitioners Tribunal making a finding under rule 22(1)(f), a review hearing is adjourned under rule 29(2), the Medical Practitioners Tribunal—
- (a) must consider whether to make a direction under section 35D(5)(a), (8)(a), or (12)(c) of the Act and announce its decision in that regard; and
  - (b) may consider whether to make an order ~~direction~~ under section 41A of the Act and announce its decision in that regard.

### **Procedure at a non-compliance review hearing**

**22A.**—(1) The order of proceedings at a review hearing to consider a non-compliance matter is to be as follows—

- (a) the Medical Practitioners Tribunal shall hear and determine any preliminary legal arguments;
- (b) the Chair of the Medical Practitioner Tribunal shall—
  - (i) where the practitioner is present, require the practitioner to confirm his name and GMC Reference Number,
  - (ii) where the practitioner is not present, require the representative for the GMC to confirm the practitioner's name and GMC Reference Number;
- (c) the representative for the GMC shall—
  - (i) inform the Medical Practitioners Tribunal of the background to the case, and the sanction previously imposed,
  - (ii) direct the attention of the Medical Practitioners Tribunal to any relevant evidence in accordance with paragraph (d);
- (d) the representative for the GMC may adduce evidence and call witnesses in relation to the practitioner's compliance or otherwise with an assessment under Schedule 1, 2 or 3, or with a request for information under Schedule 3, or under section 35A(1A) of the Act or with any requirement imposed upon him as a condition of registration;
- (e) the practitioner may, in response, adduce evidence and call witnesses in relation to any matter addressed by the representative for the GMC under paragraph (c)(ii) or (d);
- (f) in respect of any matter referred to in paragraph (d), the Medical Practitioners Tribunal shall consider any evidence and submissions referred to in paragraphs (d) and (e) and announce its finding on that matter and give reasons for that finding;
- (g) where the Medical Practitioners Tribunal is considering whether to make a direction under section 35D(5), (6), (8), (10) or (12) of the Act, it may receive further evidence and hear further submissions from the parties in that respect;
- (h) the Medical Practitioners Tribunal shall consider any evidence and submissions referred to in paragraph (g) and announce its decision (with reasons) as to the making, or otherwise, of a direction referred to in that paragraph.

- (i) the Medical Practitioners Tribunal may consider and announce whether to make an ~~an order direction~~ under section 41A of the Act.”.

### **Amendment of rule 23**

**30.** For rule 23 (action on receipt of a restoration application), substitute—

#### **“Action on receipt of a restoration application**

**23.**—(1) Upon receipt of an application for restoration made under section 41 of the Act—

- (a) the Registrar shall refer the matter to the MPTS for them to arrange for it to be considered by a Medical Practitioners Tribunal; and
- (b) the Registrar may—
  - (i) make such investigations, and obtain such information, documents or reports as he considers appropriate,
  - (ii) direct that the applicant undergo an assessment of his performance or health in accordance with Schedule 1 or 2,
  - (iii) direct that the applicant undertake an assessment of knowledge of English in accordance with Schedule 3.

(2) At least 28 days before the hearing before a Medical Practitioners Tribunal to consider his application—

- (a) the MPTS shall serve upon the applicant a notice of the hearing complying with paragraph (4); and
- (b) the Registrar shall provide to the applicant a copy of any statement, report or other document the General Council has obtained which has not previously been sent to the applicant or his representative and which is relevant to the question whether the applicant’s name should be restored to the register.

(3) If any statement, report or other document is subsequently obtained by the General Council which is relevant to the Medical Practitioners Tribunal’s decision whether to direct that the applicant’s name be restored to the register, the applicant shall be given a reasonable opportunity of responding before the Medical Practitioners Tribunal makes a decision.

(4) The notice referred to in paragraph (2)(a) shall—

- (a) specify the matters set out at rule 15(1)(b)(i) to (iv);
- (b) request that the applicant notify the MPTS, within 14 days of the date of the notice, whether he wishes to attend the hearing;
- (c) invite the applicant, if he chooses not to attend the hearing, to make written representations to be received by the MPTS no later than 14 days before the hearing;
- (d) where the applicant has made a previous unsuccessful application, inform him of the Medical Practitioners Tribunal’s power to suspend indefinitely his right to make further applications for restoration under section 41(9) of the Act; and
- (e) where the applicant has made a previous unsuccessful application and chooses not to attend the hearing, invite him to make written representations on the issue of indefinite suspension of his right to make further applications, to be received by the MPTS no later than 14 days before the hearing.”.

**Amendment of rule 24**

- 31.**—(1) Rule 24 (procedure at a restoration hearing)(a) is amended as follows.
- (2) In paragraph (1), for “FTP Panel” substitute “Medical Practitioners Tribunal”.
- (3) For sub-paragraph (a) to (c) of paragraph (2), substitute—
- “(a) the Medical Practitioners Tribunal shall hear and determine any preliminary legal arguments;
  - (b) the Chair of the Medical Practitioners Tribunal shall—
    - (i) where the applicant is present, require the applicant to confirm his name and GMC Reference Number,
    - (ii) where the applicant is not present, require the representative for the GMC to confirm the applicant’s name and GMC Reference Number;
  - (c) the representative for the GMC shall—
    - (i) address the Medical Practitioners Tribunal as to the background of the case and the circumstances in which the applicant’s name was erased from the register,
    - (ii) direct the attention of that Tribunal to any relevant evidence and may adduce evidence and call witnesses in relation to the practitioner’s fitness to practise;
- (4) In sub-paragraphs (d) to (i) of paragraph (2), for “FTP Panel”, in each place it appears, substitute “Medical Practitioners Tribunal.”.

**Amendment of rule 25**

- 32.**—(1) Rule 25 (initial consideration) is amended as follows.
- (2) For paragraph (1), substitute—
- “(1) This Part applies where an allegation has been referred by the Registrar to the MPTS for them to arrange for an Interim Orders Tribunal to consider whether to make or review an interim order.”.
- (3) In sub-paragraphs (a) and (b) of paragraph (2), for “an Interim Orders Panel” substitute “the MPTS for them to arrange for it to be considered by an Interim Orders Tribunal”.

**Amendment of rule 26**

- 33.** For rule 26 (notice of hearing), substitute—

**“Notice**

- 26.**—(1) Prior to the initial or any review hearing relating to an interim order, and within such time before the hearing as is reasonable in the circumstances of the case—
- (a) the Registrar shall—
    - (i) set out the reasons why it is necessary to make or review an interim order,
    - (ii) provide a copy of any written evidence obtained by the General Council which is relevant to the question of whether or not an interim order should be made or reviewed, and
    - (iii) in relation to a review hearing, provide a copy of the order to be reviewed; and
  - (b) the MPTS shall serve a notice of hearing on the practitioner—
    - (i) specifying the date, time and venue of the hearing,

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(a) Paragraph (1) was amended by Rules Scheduled to S.I. 2014/1270.

- (ii) informing the practitioner of the practitioner's right to appear before the Interim Orders Tribunal and be heard, and to be represented in accordance with rule 33,
- (iii) informing the practitioner of the power of the Interim Orders Tribunal to proceed in his absence under rule 31,
- (iv) informing the practitioner of the Interim Orders Tribunal's powers of disposal under section 41A of the Act,
- (v) requesting the practitioner to notify the MPTS as soon as possible whether he intends to attend the hearing, and
- (vi) inviting the practitioner, if he chooses not to attend the hearing, to submit any written representations, within such period as is reasonable in the circumstances and as is specified in the notice, to the MPTS.

### **Interim order review on the papers**

**26A.**—(1) A matter shall be considered on the papers where it has been referred to the MPTS for them to arrange for it to be considered by an Interim Orders Tribunal at a review hearing and the MPTS receives confirmation in writing from the practitioner and the Registrar that the parties agree to the terms of an order which that Tribunal could make under section 41A(3) of the Act.

(2) The terms referred to in paragraph (1) may include the maintenance, revocation or variation of an existing order.

(3) Consideration on the papers under paragraph (1) may be carried out by the Chair of the Interim Orders Tribunal or the Tribunal itself.

(4) Where, the Chair of the Interim Orders Tribunal or the Tribunal itself determines that the Tribunal should hold a hearing to consider the matter and the MPTS arrange a hearing for that purpose in accordance with section 41(3A)(b), the other provisions of this Part are to apply for the purposes of that hearing.”.

### **Amendment of rule 27**

**34.**—(1) Rule 27 (procedure at an interim orders hearing) is amended as follows.

(2) In paragraph (1), for “Interim Orders Panel” substitute “Interim Orders Tribunal”.

(3) For paragraph (2), substitute—

“(2) No person shall give oral evidence at a hearing unless the Interim Orders Tribunal considers such evidence is necessary to enable it to discharge its functions.”.

(4) In paragraph (3)—

(a) for “Interim Orders Panel” substitute “Interim Orders Tribunal”;

(b) in sub-paragraph (b) of that paragraph, omit “, after consultation with the Legal Assessor,”.

(5) In paragraph (4)—

(a) for sub-paragraphs (a) and (b), substitute—

“(a) the Interim Orders Tribunal shall hear and determine any preliminary legal arguments;

(b) the Chair of the Interim Orders Tribunal shall announce that the hearing has commenced and shall—

(i) where the practitioner is present, require the practitioner to confirm his name and the GMC Reference Number,

(ii) where the practitioner is not present, require the representative for the GMC to confirm the practitioner's name and GMC Reference Number;”;

(b) in sub-paragraph (c), for “Presenting Officer” substitute “representative for the GMC”;

- (c) in sub-paragraphs ~~(c) and~~ (e), for “Interim Orders Panel” substitute “Interim Orders Tribunal”;
- (d) for sub-paragraph (f), substitute—
  - “(f) where the practitioner gives oral evidence, the representative for the GMC and the members of the Interim Orders Tribunal may put questions to him; and”;
- (e) in sub-paragraph (g), for “Interim Orders Panel” substitute “Interim Orders Tribunal”.
- (6) In paragraph (5), for “Interim Orders Panel” substitute “Interim Orders Tribunal”.
- (7) Omit paragraph (6).

### Amendment of rule 28

**35.**—(1) Rule 28 (cancellation of a hearing) is amended as follows.

(2) For the title, substitute “Withdrawal of a matter”.

(3) In paragraph (1), for “hearing should be cancelled” substitute “matter (or part of it) should be withdrawn”.

(4) For paragraphs (2) and (3), substitute—

“(2) Where paragraph ~~(1) or~~ (3) applies, a Case Examiner may decide that—

- (a) all or part of a matter referred to in that paragraph should be withdrawn; or
- (b) in the case of a matter that has been referred to a Medical Practitioners Tribunal, other than a non-compliance matter, the matter should be referred for consideration by a medical and lay Case Examiner under rule 10 or 11.

(3) This paragraph applies where, after a matter has been referred to a Medical Practitioners Tribunal or Interim Orders Tribunal and before the opening of the hearing before the Tribunal, a Case Examiner decides that the matter (or part of it) should not be considered by a Medical Practitioners Tribunal or that an Interim Orders Tribunal should not consider making an order.”.

(5) In paragraph (4), for “paragraph (3)” substitute “paragraphs (2) ~~and (3)~~”.

### Amendment of rule 29

**36.**—(1) Rule 29 (postponements and adjournments)(a) is amended as follows.

(2) In paragraph (1)(b), for “Panel” substitute “Tribunal”.

(3) In paragraph (2), for “Panel” substitute “Tribunal”.

(4) For paragraphs (3) and (4), substitute—

“(3) Where a hearing before a Committee has been adjourned under paragraph (2), a member of the Committee may, upon the application of a party to the proceedings, further adjourn the hearing until such time and date as the member thinks fit.

(3A) Where a hearing before a Tribunal, other than a review hearing under rule 22 or 22A, has been adjourned under paragraph (2), the Case Manager may, upon the application of a party to the proceedings, further adjourn the hearing until such time and date as the Case Manager thinks fit.

(3B) No hearing shall be postponed or adjourned under paragraphs (1) to (3A) unless the parties have been given a reasonable opportunity to make representations on the matter.

(3C) On consideration of an adjournment application under paragraph (3) or (3A), the member of the Committee or Case Manager (as the case may be), may, where he considers it appropriate, direct that the matter be dealt with by the Committee or Tribunal considering the matter.

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(a) Paragraph (1) and (5) were amended by Rules Scheduled to S.I. 2013/815.

- (4) Where a hearing has been postponed or adjourned under paragraphs (1) to (3A)—
- (a) the Registrar, in the case of a Committee hearing;
  - (b) the MPTS, in the case of a Tribunal hearing,
- shall, as soon as practicable, notify the parties of the time, date and place at which the hearing is to take place or to resume.”.
- (5) In paragraph (5)—
- (a) for “Panel” (twice) substitute “Tribunal”;
  - (b) after “panellist” (twice) insert “or tribunal member”.

#### **Amendment of rule 30**

- 37.** In rule 30 (preliminary legal arguments)—
- (a) for “Panel” (three times) substitute “Tribunal”;
  - (b) after “panellist” (twice) insert “or tribunal member”.

#### **Amendment of rule 31**

- 38.** In rule 31 (absence of practitioner), for “Panel” substitute “Tribunal”.

#### **Amendment of rule 32**

- 39.** In rule 32 (joinder)(a), for “Panel” substitute “Tribunal”.

#### **Amendment of rule 33**

- 40.**—(1) Rule 33 (representation) is amended as follows.
- (2) In sub-paragraph (c) of paragraph (1)—
    - (a) for “Panel” substitute “Tribunal”;
    - (b) after “other” insert “suitable”.
  - (3) In paragraph (3)—
    - (a) for “Presenting Officer” substitute “representative for the GMC”;
    - (b) for “Panel” substitute “Tribunal”.

#### **Amendment of rule 34**

- 41.**—(1) Rule 34 (evidence)(b) is amended as follows.
- (2) In paragraphs (1), (7), (8), (9B), (10), (11) (twice), (13), (14) (three times) for “Panel” substitute “Tribunal”.
  - (3) In paragraphs (9) and (12), for “FTP Panel” substitute “Medical Practitioners Tribunal”.
  - (4) In paragraph (11), after “witness concerned” insert “, including the practitioner.”.

#### **Amendment of rule 35**

- 42.**—(1) Rule 35 (witnesses) is amended as follows.
- (2) For sub-paragraph (d) of paragraph (2), substitute—
 

“(d) may at any time be questioned by the Committee or Tribunal.”.
  - (3) In paragraphs (3) to (6), for “Panel” substitute “Tribunal” in each place it occurs.

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(a) Rule 32 was amended by Rules Scheduled to S.I. 2013/815.

(b) Paragraphs (1), (9) and (11) were amended by Rules Scheduled to S.I. 2013/815.

**Amendment of rule 36**

- 43.**—(1) Rule 36 (vulnerable witnesses) is amended as follows.
- (2) In paragraph (1)—
- (a) for “Panel” substitute “Tribunal”; and
  - (b) in sub-paragraph (a) of that paragraph, for “17” substitute “18”.
- (3) For paragraph (2), substitute—
- “(2) Upon hearing representations from the parties, the Committee or Tribunal shall adopt such measures as it considers desirable to enable it to receive evidence from a vulnerable witness.”.
- (4) In paragraph (3), for “Panel” (four times) substitute “Tribunal”.
- (5) In paragraph (5), for “General Council” substitute “MPTS”.

**Amendment of rule 37**

**44.** In rule 37 (record of decisions of the Committee or Panel)(a) for “Panel” (twice including the heading) substitute “Tribunal”.

**Amendment of rule 37A**

- 45.** For rule 37A (panel undertakings), substitute—

**“Tribunal undertakings**

**37A.**—(1) Where undertakings have been taken into account by a Medical Practitioners Tribunal under rule 17(4) or 22(3), the Registrar may carry out any investigation that is, in the Registrar’s opinion, appropriate to the consideration of—

- (a) whether the practitioner has complied with any undertakings in place; or
  - (b) the practitioner’s fitness to practise.
- (2) For the purposes of an investigation referred to in paragraph (1), the Registrar may in particular—
- (a) request the provision of reports;
  - (b) make a relevant direction.
- (3) A relevant direction is one directing that the practitioner—
- (a) undergo an assessment of his performance or health in accordance with Schedule 1 or Schedule 2; or
  - (b) undertake an assessment of knowledge of English in accordance with Schedule 3.
- (4) Where, as a result of information received by the General Council, it appears to the Case Examiners that any undertakings taken into account under rule 17(4) or 22(3) should be varied or cease to apply, they shall inform the Registrar accordingly and the Registrar shall—
- (a) write to the practitioner inviting them to comply with such varied undertakings as appear to the Case Examiners to be appropriate; or
  - (b) direct that the undertakings should no longer apply.
- (5) The Registrar may refer the matter to the MPTS for them to arrange for determination by a Medical Practitioners Tribunal under Part 5 of these Rules where the Registrar receives information that—

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(a) Rule 37 was amended by Rules Scheduled to S.I. 2013/815.

- (a) the practitioner has not, within the period of 28 days from the date of the written invitation (or such further period as the Registrar may allow), agreed to comply with the undertakings with which the practitioner was invited to comply under paragraph (4)(a);
- (b) the practitioner has failed to observe an undertaking taken into account by a Medical Practitioners Tribunal under rule 17(4) or 22(3) or which, having been taken into account under rule 17(4) or 22(3) has been varied following an invitation to comply with it under paragraph (4)(a); or
- (c) the practitioner's health, performance or knowledge of English has deteriorated, or otherwise gives rise to further concern regarding his fitness to practise."

#### **Amendment of rule 38**

**46.**—(1) Rule 38 (voting) is amended as follows.

(2) In paragraphs (1), (3) and (4), for "Panel" substitute "Tribunal".

(3) For paragraph (2), substitute—

"(2) No Chair of the Committee or Tribunal may exercise a casting vote."

(4) For paragraph (5), substitute—

"(5) Where a Medical Practitioners Tribunal is considering—

- (a) an application to restore a person's name to the register; or
- (b) submissions made by a practitioner under rule 17(2)(g),

and the votes are equal, it shall decide the issue against that person or that practitioner."

#### **Amendment of rule 39**

**47.** For rule 39 (notes and transcript of proceedings), substitute—

##### **"Notes and transcript proceedings**

**39.**—(1) The Registrar shall arrange for the proceedings of the Committee to be recorded by electronic or other means.

(2) The MPTS shall arrange for the proceedings of the Tribunal to be recorded by electronic or other means.

(3) Any party to the proceedings shall, on application to the Registrar or MPTS (as the case may be), be furnished with a copy of the written transcript of any part of the proceedings at which he was entitled to be present.

(4) Paragraphs (1) to (3) shall not apply to the deliberations of the Committee or Tribunal.  
".

#### **Amendment of rule 41**

**48.**—(1) Rule 41 (attendance of the public) is amended as follows.

(2) In paragraphs (1) and (2), for "FTP Panel", substitute "Medical Practitioners Tribunal".

(3) For paragraph (4), substitute—

"(4) Where it is considering an allegation or a non-compliance matter, the Medical Practitioners Tribunal may revoke an interim order in public."

(4) In paragraphs (3), (5), (6) and (7), for "Panel" substitute "Tribunal".

#### **Amendment of rule 42**

**49.** In rule 42 (exclusion from proceedings), for "Panel" substitute "Tribunal".

**Amendment of Schedule 1**

**50.**—(1) Schedule 1 (Performance Assessments) is amended as follows.

(2) For paragraph 1 (interpretation), substitute—

**“Interpretation**

**1.**—(1) In this Schedule “assessment” means—

- (a) in the case of a practitioner, an assessment of the standard of a practitioner’s professional performance;
- (b) in the case of a person applying for restoration to the register by virtue of section 31(8) or 31A(1)(c) or under section 41 of the Act, 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.

(2) References to a “practitioner” in this Schedule include, unless other<sup>wise</sup> specified, a person referred to in sub-paragraph (1)(b).”.

(3) Omit paragraph 2.

(4) For paragraph 3 (proceedings and procedures of assessment teams), substitute—

**“Proceedings and procedures of the assessment**

**3.**—(1) The Assessment Team or, as the case may be, the individual performance assessor shall, having regard to the nature of the practitioner’s employment or as appropriate previous employment, adopt such procedures as appear necessary in order to assess the standard of the practitioner’s professional performance. This is subject to sub-paragraphs (2) to (4) and any directions given by the Registrar under paragraph 5A(2) of Schedule 4 to the Act.

(2) The Assessment Team or the individual performance assessor (as the case may be) may seek advice or information from any person who might, in the opinion of the Assessment Team, assist them in carrying out that assessment.

(3) The Assessment Team or the individual performance assessor (as the case may be) shall disclose to the practitioner any written information or opinion received by the Assessment Team or the individual performance assessor (as the case may be) which in their opinion may influence their assessment of the standard of that practitioner’s professional performance, and shall afford that practitioner a reasonable opportunity to respond.

(4) The Assessment Team or individual performance assessor (as the case may be) shall produce a report on the standard of the practitioner’s performance which shall, where the Registrar so requires, express—

- (a) an opinion as to whether the practitioner is fit to practise either generally or on a limited basis; and
- (b) any recommendations as to the management of the case.

(5) Where the practitioner has undertaken an assessment of knowledge of English, following a direction given by the Registrar as part of an assessment of that practitioner’s professional performance under this Schedule, the results of that assessment shall be included in the report referred to in sub-paragraph (4).

(6) An assessment of a practitioner’s knowledge of English, directed by the Registrar as part of an assessment of that practitioner’s professional performance under this Schedule is to be undertaken in accordance with the provisions set out in Schedule 3.”.

**Amendment of Schedule 2**

**51.**—(1) Schedule 2 (Health Assessments) is amended as follows.

(2) For paragraph 1 to that Schedule, substitute—

“1.—(1) In this Schedule “assessment” means an assessment of the physical or mental condition of the practitioner.

(2) Reference to a “practitioner” in this Schedule include, unless otherwise stated, a person applying for restoration by virtue of section 31(8) or 31A(1)(c) or under section 41 of the Act.”.

(3) In paragraph 2, for “invite” substitute “direct”.

(4) For paragraph 3, substitute—

“3. The Registrar shall make arrangements for any assessment directed under paragraph 2 to be carried out.”.

### **Amendment of Schedule 3**

**52.**—(1) Schedule 3 (Knowledge of English Assessments), is amended as follows.

(2) For paragraph 1, substitute—

“1.—(1) The Registrar, Assessment Team or Medical Practitioners Tribunal (as the case may be) may direct the practitioner to—

(a) undertake an assessment of knowledge of English and;

(b) provide information in respect of that assessment as specified in the direction.

(2) References to a “practitioner” in this Schedule include, unless otherwise stated, a person applying for restoration by virtue of section 31(8) or 31A(1)(c), or under section 41, of the Act.”.

(3) In paragraphs 2, 3 and 5, for “FTP Panel” substitute “Medical Practitioners Tribunal”.

## **PART 2**

### **Consequential Amendments**

### **Amendment of the General Medical Council (Restoration following Administrative Erasure) Regulations 2004**

**53.**—(1) The General Medical Council (Restoration following Administrative Erasure) Regulations 2004(a) are amended as follows.

(2) In regulation 2 (interpretation)—

(a) omit the definition of “FTP Panel”;

(b) at the appropriate place in the alphabetical order, insert—

““Medical Practitioners Tribunal” means a Medical Practitioners Tribunal constituted under rules made under paragraph 19G of Schedule 1 to the Act;

“MPTS” means the Medical Practitioners Tribunal Service constituted under rules made under paragraph 19F of Schedule 1 to the Act;”.

(3) In regulation 4 (restoration procedure where fitness to practise issues arise)—

(a) for sub-paragraph (b)(iii) of paragraph (3), substitute—

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

(b) for sub-paragraph (c) of paragraph (5), substitute—

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(a) Scheduled to the General Medical Council (Restoration following Administrative Erasure) Regulations Order of Council 2004 (S.I. 2004/2612). There are amendments to the Regulations which are not relevant to this Instrument.

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

(c) for paragraphs (7) to (10), substitute—

“(7) Where the Case Examiners or the Committee decide to refer a restoration application to the MPTS for them to arrange for it to be considered by Medical Practitioners Tribunal, the Registrar shall, as soon as reasonably practicable, write to the applicant—

- (a) notifying him of that decision, together with the reasons for it; and
- (b) stating that the application will proceed before a Medical Practitioners Tribunal unless he notifies the Registrar in writing within the period of 28 days from the date of the letter that he wishes to withdraw his application.

(8) Where the applicant does not withdraw his application under paragraph (7)(b), a Medical Practitioners Tribunal shall consider the application in accordance with rule 24 of Part 6 of the Fitness to Practise Rules.

(9) If a Medical Practitioners Tribunal decides to reject a restoration application, then the applicant may not make a further restoration application until the expiry of—

- (a) a period of 12 months from the date of the Medical Practitioners Tribunal’s decision; or
- (b) such other period as the Medical Practitioners Tribunal may specify.

(10) Where the Case Examiners, the Committee or a Medical Practitioners Tribunal—

- (a) decide to grant a restoration application, then they shall inform the Registrar who shall, as soon as reasonably practicable, restore the applicant’s name to the register and notify him in writing that his name has been restored; or
- (b) decide to reject a restoration application, then they shall inform the Registrar who shall, as soon as reasonably practicable, notify the applicant of—
  - (i) the decision to reject the restoration application,
  - (ii) the reasons for that decision, and
  - (iii) the applicable period under paragraph (9)(a) or (b).”.

(4) In regulation 6 (transitional arrangements)—

- (a) in sub-paragraph (c) of paragraph (3), for “FTP Panel” substitute “Medical Practitioners Tribunal”;
- (b) in sub-paragraph (c)(i)(aa) of paragraph (4), for “for consideration by a FTP Panel” substitute “to the MPTS for them to arrange for it to be considered by a Medical Practitioners Tribunal”;
- (c) in paragraph (d) of paragraph (4), for “FTP Panel” substitute “Medical Practitioners Tribunal”;
- (d) in paragraph (5), for “FTP Panel” (twice) substitute “Medical Practitioners Tribunal”.

#### **Amendment of the General Medical Council (Voluntary Erasure and Restoration following Voluntary Erasure) Regulations 2004**

**54.**—(1) The General Medical Council (Voluntary Erasure and Restoration following Voluntary Erasure) Regulations 2004(a) are amended as follows.

(2) In regulation 2 (interpretation)—

- (a) omit the definition of “FTP Panel”;
- (b) at the appropriate place in the alphabetical order, insert—

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(a) Scheduled to General Medical Council (Voluntary Erasure and Restoration following Voluntary Erasure) Regulations Order of the Council 2004 (S.I. 2004/2609). There are amendments to the Regulations which are not relevant to this Instrument.

““Medical Practitioners Tribunal” means a Medical Practitioners Tribunal constituted under rules made under paragraph 19G of Schedule 1 to the Act;

“MPTS” means the Medical Practitioners Tribunal Service constituted under rules made under paragraph 19F of Schedule 1 to the Act;”.

(3) In regulation 3 (voluntary erasure applications)—

(a) for sub-paragraph (c) of paragraph (3) substitute—

“(c) refer the application to the MPTS for them to arrange for it to be determined by a Medical Practitioners Tribunal under paragraph (8); or”;

(b) for paragraph (4) substitute—

“(4) The Registrar shall refer an erasure application to a medical and a lay Case Examiner for determination where any of the following apply—

(a) the Registrar receives information (including any information provided in accordance with paragraph (2)), that the practitioner is subject to any proceedings or has committed any act or omission that might render him liable to be referred to the General Council for investigation or consideration of his fitness to practise;

(b) an allegation against the practitioner is being investigated in order to decide whether it should be referred to the MPTS for them to arrange for it to be considered by a Medical Practitioners Tribunal under the Fitness to Practise Rules;

(c) an allegation against the practitioner has been referred to the MPTS for them to arrange for it to be considered by a Medical Practitioners Tribunal under the Fitness to Practise Rules but the hearing before that Tribunal has not yet commenced.”;

(c) for paragraph (8), substitute—

“(8) Where, on the date the Registrar receives an erasure application, an allegation against the practitioner has been referred to the MPTS for them to arrange for it to be considered by a Medical Practitioners Tribunal under the Fitness to Practise Rules and the hearing before the Medical Practitioners Tribunal has commenced, the Registrar shall refer the application to the MPTS for them to arrange for it to be determined by the Medical Practitioners Tribunal, and the application shall be determined by the Medical Practitioners Tribunal accordingly.”.

(4) In regulation 5 (restoration procedure where fitness to practise issues arise)—

(a) for sub-paragraph (b)(iii) of paragraph (3), substitute—

“(iii) refer the matter to the MPTS for them to arrange for it to be considered by a Medical Practitioners Tribunal;”;

(b) for sub-paragraph (c) of paragraph (5), substitute—

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

(c) in paragraph (7)—

(i) for “for consideration by a FTP Panel” substitute “to the MPTS for them to arrange for it to be considered by a Medical Practitioners Tribunal”, and

(ii) in sub-paragraph (b) of that paragraph, for “FTP Panel” substitute “Medical Practitioners Tribunal”;

(d) in paragraph (8), for “FTP Panel” substitute “Medical Practitioners Tribunal”;

(e) in paragraph (9) substitute—

“(9) If a Medical Practitioners Tribunal decides to reject a restoration application, then the applicant may not make a further restoration application until the expiry of—

(a) a period of 12 months from the date of that Tribunal’s decision; or

(b) such other period as that Tribunal may specify.”;

(f) in paragraph (10), for “FTP Panel” substitute “Medical Practitioners Tribunal”.

**Amendment of the General Medical Council (Licence to Practise and Revalidation) Regulations 2012**

**55.**—(1) The General Medical Council (Licence to Practise and Revalidation) Regulations 2012(a) are amended as follows.

(2) In regulation 2 (interpretation), at the appropriate place in the alphabetical order, insert—

““Interim Orders Tribunal” means an Interim Orders Tribunal constituted under rules made under paragraph 19G of Schedule 1 to the Act;

“Medical Practitioners Tribunal” means a Medical Practitioners Tribunal constituted under rules made under paragraph 19G of Schedule 1 to the Act;

“MPTS means the Medical Practitioners Tribunal Service constituted under rules made under paragraph 19F of Schedule 1 to the Act;”.

(3) For paragraph (7) of regulation 3 (grant or refusal of licence), substitute—

“(7) Where, pursuant to section 35C(8) (functions of the Investigation Committee), a referral has been made to the MPTS for them to arrange for an Interim Orders Tribunal or a Medical Practitioners Tribunal to consider making an interim order under section 41A (interim orders) in relation to the applicant, the Registrar may decide to take no further action in relation to the application until the decision of the tribunal and the outcome of any application to the relevant court under section 41A(10), is known.”.

(4) For paragraph (9) of regulation 5 (restoration of licence after withdrawal), substitute—

“(9) Where, pursuant to section 35C(8) (functions of the Investigation Committee), a referral has been made to the MPTS for them to arrange for an Interim Orders Tribunal or a Medical Practitioners Tribunal to consider whether to make an interim order under section 41A (interim orders) in relation to the applicant, the Registrar may decide to take no further action in relation to the application until the decision of the tribunal and the outcome of any application to the relevant court under section 41A(10) is known.”.

(5) In regulation 8 (restoration for the purposes of section 41(7)), for “Fitness to Practise Panel” substitute “Medical Practitioners Tribunal”.

**Amendment of the General Medical Council (Fitness to Practise) (Disqualifying Decisions and Determinations by Regulatory Bodies) Procedure Rules 2004**

**56.**—(1) The General Medical Council (Fitness to Practise) (Disqualifying Decisions and Determinations by Regulatory Bodies) Procedure Rules 2004(b) are amended as follows.

(2) In rule 2 (interpretation)—

(a) omit the definitions of “FTP Panel” and “the Presenting Officer”;

(b) at the appropriate place in the alphabetical order, insert—

““Medical Practitioners Tribunal” means a Medical Practitioners Tribunal constituted under rules made under paragraph 19G of Schedule 1 to the Act;

“MPTS” means the Medical Practitioners Tribunal Service constituted under rules made under paragraph 19F of Schedule 1 to the Act;

“representative for the GMC” means a barrister, solicitor or other legal representative instructed by the Registrar to present the case on behalf of the General Council at any hearing before a Tribunal or Committee;”.

(3) In rule 3 (referral of cases), for “for consideration by a FTP Panel” substitute “to the MPTS for them to arrange for it to be considered by a Medical Practitioners Tribunal”.

(a) Scheduled to S.I. 2012/2685. There are amendments to the Rules which are not relevant to this Instrument.

(b) Scheduled to the General Medical Council (Fitness to Practise) (Disqualifying Decisions and Determinations by Regulatory Bodies) Procedure Rules Order of Council 2004 (S.I. 2004/2607). There are amendments to the Rules which are not relevant to this Instrument.

(4) For rules 4 to 6 (notice of hearing, procedure before FTP Panel and general respectively), substitute—

**“Notice of hearing**

**4.** Where a matter has been referred to the MPTS for them to arrange for it to be considered by a Medical Practitioners Tribunal under rule 3, the MPTS shall give no less than 28 days notice of the hearing to the practitioner—

- (a) specifying the date, time and venue of the hearing;
- (b) informing him of his right to attend the hearing and to be represented at the hearing in accordance with rule 33 of the Fitness to Practise Rules;
- (c) informing him of the power of the Medical Practitioners Tribunal to proceed in his absence under rule 31 of the Fitness to Practise Rules; and
- (d) informing him of the Medical Practitioners Tribunal’s powers of disposal under section 44(5) of the Act.

**Procedure before a Medical Practitioners Tribunal**

**5.** Where a matter has been referred to the MPTS for them to arrange for it to be considered by a Medical Practitioners Tribunal under rule 3, the order of proceedings before the Medical Practitioners Tribunal shall be as follows—

- (a) the Chairman of the Medical Practitioners Tribunal shall—
  - (i) where the practitioner is present, require the practitioner to confirm his name and GMC Reference Number,
  - (ii) where the practitioner is not present, require the representative for the GMC to confirm the practitioner’s name and GMC Reference Number;
- (b) the representative for the GMC shall open the case for the General Council and shall present details of the disqualifying decision or determination and the facts upon which it is based and, where the Medical Practitioners Tribunal considers such evidence is desirable to enable it to discharge its functions under this rule may adduce any relevant oral or documentary evidence;
- (c) the practitioner may open his case and, where the Medical Practitioners Tribunal considers such evidence is desirable to enable it to discharge its functions under this rule, may adduce any relevant oral or documentary evidence and may adduce evidence and call witnesses in support of it;
- (d) the parties may make such further submissions as the Medical Practitioners Tribunal may allow;
- (e) the Medical Practitioners Tribunal shall consider and announce its findings of fact;
- (f) the Medical Practitioners Tribunal may receive further evidence and hear any further submissions from the parties as to whether the Medical Practitioners Tribunal should suspend the practitioner’s registration in accordance with section 44(5) of the Act;
- (g) the Medical Practitioners Tribunal shall consider and announce its decision as to whether to suspend the practitioner’s registration in accordance with section 44(5) of the Act and shall give reasons for its decision; and
- (h) in making its decision, the Medical Practitioners Tribunal shall, where appropriate, take into account the practitioner’s previous fitness to practise history with the General Council or any other regulatory body.

**General**

**6.** Where a matter has been referred to a Medical Practitioners Tribunal under rule 3, rules 28 to 31, 33 to 35 and 37 to 42 of the Fitness to Practise Rules shall apply as if—

- (a) references to a Tribunal were references to a Medical Practitioners Tribunal;
- (b) references to the Committee were omitted;
- (c) references to an allegation were references to a matter referred to the MPTS for them to arrange for it to be considered by a Medical Practitioners Tribunal under rule 3;
- (d) rules 28(1)(b) and 29(1)(a) of the Fitness to Practise Rules were omitted;
- (e) in rule 34(9), the words “or directed by a Case Manager” were omitted;
- (f) rule 34(14)(b)(ii) of the Fitness to Practise Rules was omitted;
- (g) rules 41(3)(a), 41(4) and 41(5) were omitted; and
- (h) in rule 41(6) of the Fitness to Practise Rules—
  - (i) the words “Subject to paragraph (5)” were omitted, and
  - (ii) the words “paragraph (3)(b)” were substituted for the words “paragraph (3)(a) or (b).”.

### Transitional

**57.** Rule 5 does not apply to an allegation referred to in rule 4(5) of the General Medical Council (Fitness to Practise) Rules 2004 which is first made or which first comes to the attention of the General Council before the coming into force of these Rules.

**58.** Rule 18(10) does not apply to a direction issued by the Case Manager under rule 16 of the General Medical Council (Fitness to Practise) Rules 2004 before the coming into force of these Rules.

**59.** The requirements contained in any undertaking taken into account by a Fitness to Practise Panel under rule 17(2)(m) or rule 22(h) of the General Medical Council (Fitness to Practise) Rules 2004 (“the 2004 Rules”) as in force immediately before the coming into force of these Rules, shall be treated as if they were requirements contained in an undertaking taken into account under rule 17(4) or rule 22(3) of the 2004 Rules<sup>(a)</sup> for the purposes of the amendment to those Rules made by rule 23 of these Rules.

Given under the official seal of the General Medical Council this xxxx day of xxxx 2015

*Terence Stephenson*  
Chair

*Niall Dickson*  
Chief Executive and Registrar

### EXPLANATORY NOTE

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

This Order approves the General Medical Council (Amendments to Miscellaneous Rules and Regulations) Rules 2015 (“the 2015 Rules”) which have been made by the General Medical Council and are contained in the Schedule to the Order.

Part 1 of the 2015 Rules amends the General Medical Council (Fitness to Practise) Rules 2004 (“the 2004 Rules”) (rules 3 to 51) to give effect to the establishment of the new Medical Practitioners Tribunal Service (“MPTS”) and its responsibility to arrange hearings before Medical

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(a) Rule 17(4) and rule 22(3) of the General Medical Council (Fitness to Practise) Rules 2004 are amended by rule 21 and 28 (respectively) of this Instrument.

Practitioner Tribunals (which replace Fitness to Practise Panels) and Interim Orders Tribunals (which replace Interim Orders Panels).

Part 1 also makes amendments to the 2004 Rules which relate to the investigation of fitness to practise cases and proceedings before the Medical Practitioners Tribunal and the Interim Orders Tribunal. In particular—

- (a) rule 4 amends rule 3 of the 2004 Rules to remove the power to appoint specialist advisers;
- (b) rule 5 amends rule 4(5) of the 2004 Rules to remove the reference to exceptional circumstances;
- (c) rule 11 amends rule 10 of the 2004 Rules by amending the grounds for referral of a Case Examiner undertakings case to a Medical Practitioners Tribunal to include instances where there has been a deterioration in a practitioner's knowledge of English;
- (d) rule 17 amends rule 15 of the 2004 Rules to provide that the notice of hearing will be served by the MPTS and the notice of allegation will be served by the Registrar; similar amendments are made to the notice provisions for review, restoration and Interim Orders Tribunal hearings at rules 25 (amending rule 20 of the 2004 Rules), 30 (amending rule 23 of the 2004 Rules) and 33 (amending rule 26 of the 2004 Rules);
- (e) rule 18 makes amendments to the case management provisions in rule 16 of the 2004 Rules, including providing that case management may be carried out by a Chair or the Tribunal itself and that case management decisions are binding on the parties;
- (f) rule 19 inserts new rules 16A and 16B into the 2004 Rules; rule 16A relates to the powers of the Medical Practitioners Tribunal in respect of a failure to comply with rules or directions, enabling a Tribunal to draw adverse inferences, refuse to admit evidence and award costs; rule 16B makes provision for the award of costs and the procedure for the assessment of costs by a Case Manager;
- (g) rule 21 substitutes rule 17 of the 2004 Rules, which provides for proceedings before the Medical Practitioners Tribunal and includes new powers for the GMC to agree undertakings with the doctor; it also introduces a new rule 17ZA of the 2004 Rules which makes provision for the procedure at a hearing before a Medical Practitioners Tribunal to deal with non-compliance by a practitioner with a direction to undergo an assessment under Schedule 1, 2 or 3 of the 2004 Rules or a requirement to provide information;
- (h) rule 27 introduces a new rule 21B of the 2004 Rules relating to reviews of directions made by Medical Practitioners Tribunals taking place on the papers, where the parties agree to the terms of a direction;
- (i) rule 28 substitutes rule 22 of the 2004 Rules, which provides for the procedure at a review hearing conducted by a Medical Practitioners Tribunal and includes new powers for the GMC to agree undertakings with the doctor; it also introduces a new rule 22A of the 2004 Rules which makes provision for the procedures at a non-compliance review hearing before a Medical Practitioners Tribunal;
- (j) rule 32 introduces a new 26A of the 2004 Rules which makes similar provisions for reviews of orders made by Interim Orders Tribunals to take place on the papers;
- (k) rule 35 amends rule 29 of the 2004 Rules to allow a Case Manager to direct a further adjournment in a part-heard Medical Practitioners Tribunal hearing and an Investigation Committee member to make such a direction in a part-heard Investigation Committee hearing;
- (l) rule 44 makes amendments to rule 37A of the 2004 Rules, including amending the grounds for referral of a Tribunal undertakings case for review before a Medical Practitioners Tribunal to include where there has been a deterioration of a doctor's knowledge of English;
- (m) rule 46 of the 2015 Rules substitutes rule 39 of the 2004 Rules and deals with the provision of notes and transcripts of proceedings before the Medical Practitioners Tribunal;

- (n) rule 49 amends Schedule 1 of the 2004 Rules regarding procedures relating to the assessment of a practitioner's performance, including allowing for an Assessment Team or individual performance assessor to carry out a performance assessment.
- (o) Rules 50 and 51 make minor changes to Schedules 2 and 3 of the 2004 Rules regarding the proceedings and procedure relating to assessment of health and knowledge of English.

Part 2 of the 2015 Order makes consequential amendments to—

- (a) the General Medical Council (Restoration following Administrative Erasure) Regulations 2004;
- (b) the General Medical Council (Voluntary Erasure and Restoration following Voluntary Erasure) Regulations 2004; and
- (c) the General Medical Council (Fitness to Practise) (Disqualifying Decisions and Determinations by Regulatory Bodies) Procedure Rules 2004

to reflect the establishment of the Medical Practitioners Tribunal Service and the newly constituted Medical Practitioners Tribunals and Interim Orders Tribunals.

In making the 2015 Rules, the General Medical Council has given effect to the overriding objective of paragraph 1(1A) of Schedule 4 to the Medical Act 1983 (c.54). That paragraph requires the General Medical Council, when making rules with respect to the procedure to be followed in proceedings before a Medical Practitioners Tribunal or an Interim Orders Tribunal, or with respect to the procedure to be followed by the Investigation Committee when deciding whether to give a warning under section 35C(6) of the Act, to secure that the Tribunal or Committee (as the case may be) deals with cases fairly and justly.