
4b

To consider

Licences to Practise and Associated Regulations

Issue

1. Making regulations associated with the introduction of licences to practise.

Recommendations

2.
 - a. To make the General Medical Council (Licence to Practise) Regulations 2009 (paragraphs 11-23 and Annex A).
 - b. To make the revised GMC Registration Fees Regulations, effective from 16 November 2009 (paragraphs 24-25 and Annex B).
 - c. To make the rules and regulations, and agree the procedures, at Annex C (paragraphs 26-27 and Annex C).

Further information

3. If you require further information about this paper, please contact us by email: gmc@gmc-uk.org or tel. 0161 923 6602

Background

4. Key Aim Three of the 2009 Business Plan is to enhance assurance that licensed doctors are up to date and fit to practise by introducing licences to practise and preparing for revalidation.
5. We plan to introduce licences to practise on 16 November 2009. When they have been activated, doctors who wish to practise in the UK will need to be registered with a licence to practise.
6. On 21 January 2009 we launched a consultation on our approach to the introduction of licences. The consultation focused on two separate but related areas – draft guidance for doctors on how licences will operate; and draft statutory regulations on the procedures for granting, withdrawing and restoring licences.
7. Comments were also sought on a number of relatively minor changes to other statutory rules and regulations unconnected with licences but which are necessary in order to take account of recent changes to the Medical Act 1983.
8. The report on the outcome of the consultation was considered by Council on 8 July 2009, and the conclusions of the report, supporting our approach to licences, were endorsed (item 6a). Council also approved the related licence to practise guidance for doctors.
9. Council was not, at that time, asked to make the regulations because further work was required by the Department of Health (England). That work has now been completed.
10. On 11 March 2009, the Resources Committee agreed a fee level of £410 for registration with a licence, and £145 for registration without a licence. On 21 April 2009, the Committee agreed a range of other policy and operational changes necessary to support the introduction of licences. The new fee levels, and operational changes, need to be incorporated in the GMC Registration Fees Regulations and approved by Council.

Discussion

General Medical Council (Licence to Practise) Regulations 2009

11. The Licence to Practise Regulations at Annex A set out the statutory process for granting, refusing, withdrawing and restoring a licence to practise.
12. The draft Regulations were approved for consultation by Council in November 2008. We have made a number of changes to the draft regulations. In part, this recognises the views of those responding to the consultation who said that they found them legalistic and inaccessible. The fact that they are statutory regulations with the force of law means that there are certain legal constraints on, and conventions about, the way matters are expressed and how the document is presented. Even so, they still need to be comprehensible.

13. In finalising the Regulations we have also worked closely with, and taken advice from DH(E) lawyers. The revised Regulations take account of the advice we have received.

14. We have also tried to simplify the arrangements for granting, withdrawing and restoring a licence to practise. In November 2008, Council agreed that:

a. All doctors who are registered when the licence to practise is introduced will have the option of taking registration with a licence to practise, registration without a licence to practise, or voluntarily relinquishing their registration.

b. Doctors who had not previously held full registration with the GMC and who were registering for the first time would also be required to take a licence to practise. They would not be able to apply for registration without a licence.

c. Doctors who had previously held full registration and sought to restore their names to the register following the introduction of licensing would have the option of taking registration with a licence or without a licence.

15. The consultation results reported to Council in July 2009 endorsed this approach and the policy is reflected in the Regulations. We have, however, made some significant changes in the way this is expressed in the Regulations. In part, this is in order to simplify the Regulations and the operational processes they describe. The changes also seek to reflect the fact that, in future, the principal currency of doctors' GMC status will be the licence to practise, not registration. It therefore makes sense that, in most circumstances, doctors will automatically be licensed unless they request otherwise. The net effect of these amendments, as described in regulation 2(1), is that in most cases, the default position will be to grant a licence if a doctor is eligible to receive one. Regulation 2(1) therefore provides that when licences are introduced:

a. All doctors registered at the time licences are introduced will be granted a licence unless they request otherwise.

b. All new registrants will be granted a licence to practise.

c. All doctors who are restored to the register following removal for reasons unconnected with fitness to practise (for example, they may have voluntarily relinquished their registration, or been erased for non-payment of fees) will automatically be granted a licence unless they request otherwise.

d. Doctors whose names have been erased from the register by a Fitness to Practise Panel before the introduction of licences will, if restored to the register, be granted a licence to practise, unless they request otherwise. This will have the effect of restoring them to the position prior to their erasure.

- e. Doctors suspended from the register by a Fitness to Practise Panel before the introduction of licences will, when the suspension is lifted, be granted a licence to practise unless they request otherwise. This will have the effect of restoring them to the position prior to their erasure.

Licence to Practise Regulations and fitness to practise matters

16. The Medical Act 1983 provides that, once licences are introduced, doctors whose registration is erased or suspended under our fitness to practise procedures will automatically have their licence withdrawn for the duration of the erasure or suspension. Their licence will be reinstated if the suspension is lifted or they are restored to the register.
17. Following the same principles, those doctors who hold registration (without a licence to practise) at the time they are erased or suspended by a Fitness to Practise Panel will, when the suspension is lifted or they are restored to the register, be reinstated to the position prior to their erasure or suspension, namely registration without a licence to practise. However, under regulation 2(2) of the Licence to Practise Regulations they would be able to apply for a licence.
18. The other significant change concerns Regulation 2(2)-(4). We had originally proposed that, where the Registrar received an application for a licence to practise and it appeared that the practitioner's fitness to practise may be impaired, the matter must be referred for investigation under the fitness to practise procedures. The Registrar could not take any further action on the application until the matter was referred back to him following the fitness to practise investigation.
19. In the revised Regulations, we have given the Registrar an element of discretion. The Registrar 'may refer the matter for investigation' and, where the Registrar has made such a referral, the Registrar 'may decide to take no further action' on the application until the matter is referred back to him following the fitness to practise investigation. There are two reasons for allowing this discretion.
20. First, fitness to practise action will bite upon a doctor's registration, not the licence to practise, although, as explained above, if the doctor's registration is erased or suspended, the licence will automatically be withdrawn. It is quite possible, therefore, that a matter relating to impaired fitness to practise will already be under investigation when the application for a licence is made. If that was the case there would be no point in requiring the Registrar to refer the same matter for investigation again. Giving the Registrar the discretion to decide upon the need for the referral is therefore appropriate.

21. Second, there may be some cases where a referral for investigation under the fitness to practise procedures is made, but it is unlikely that the matter will result in action against the doctor's registration. An example might be a conviction for a minor motoring offence. In such a case, deferring consideration of the application for a licence to practise until the fitness to practise investigation is complete could have a disproportionate impact since it would prevent the doctor from working in the meantime. However, in granting the application for a licence, the public interest would be protected because we would still have at our disposal the full range of fitness to practise sanctions against the doctor's registration (including interim orders).

22. In proposing this approach, we have been mindful of how the lack of discretion available to the Registrar in cases of doctors proceeding from provisional to full registration has sometimes resulted in unfairness to doctors who found themselves unable to continue with their Foundation Programme training while minor matters were investigated. Council agreed a solution to that problem on 26 March 2009 (agenda item 8). We have adopted the same approach here.

23. The other changes made to the Regulations consulted upon are of a minor, technical nature and do not affect our policy approach.

Recommendation: To make the General Medical Council (Licence to Practise) Regulations 2009.

GMC Fees Regulations

24. The revised GMC Registration Fees Regulations are at Annex B. The principal changes to the current version of the Regulations are:

a. The annual fee for retaining registration with a licence is £410; registration without a licence is £145; and the fee for restoration to the Register following administrative erasure is £300. All other fees remain at current levels.

b. Fees will be adjusted on a pro rata basis when doctors move between registration with a licence and registration without a licence. The revised fee will be calculated using the number of calendar days registered with and without a licence. We will issue a refund or additional fee notice as appropriate. Refunds following voluntary erasure or death will be calculated on the same daily basis.

c. When a doctor is suspended, our normal billing arrangements will be put on hold until the suspension is lifted.

d. The lower income discount will be available to doctors holding registration with a licence and registration without a licence.

e. An additional payment option of direct debit in 10 instalments will be offered to doctors.

25. The only other changes are some minor tidying up of the Fees Regulations which do not affect our current policy.

Recommendation: To make the revised GMC Registration Fees Regulations, effective from 16 November 2009.

Miscellaneous changes unconnected with the licence to practise

26. Our consultation also invited comments on a series of minor changes to a suite of rules, regulations and procedures that had become necessary as a result of changes to the 1983 Act. They are set out at Annex C. They tidied up obsolete references and ensured consistency between primary and secondary legislation.

27. The only substantive change to existing policy and procedures concerned the General Medical Council (Registration Appeals Panel Procedure) Rules. Until now, registration appeals have been heard in private. Changes to Schedule 3B of the 1983 Act mean that they must in future be held in public 'unless and to the extent that the rules provide otherwise'. The issue was, therefore, not whether the change to the 1983 Act should be incorporated into the rules, but how it should be done. The approach adopted mirrors that used for fitness to practise hearings.

Recommendation: To make the rules and regulations, and agree the procedures, at Annex C.

Next steps

28. Before the licence to practise can be introduced on 16 November 2009, the Licence to Practise Regulations will need to be approved by the Privy Council. The other rules and regulations requiring Privy Council approval will be made at the same time.

Resource implications

29. There are no resource implications arising from the recommendations.

Equality

30. An Equality Impact Assessment was undertaken as part of the licence to practise consultation reported to Council in July 2009.