

Merger of PMETB with the GMC: Report on the GMC Consultation on draft Rules and Regulations

Introduction

1. In April 2010 the Postgraduate Medical Education and Training Board (PMETB) will merge with the GMC. All of the regulatory functions currently undertaken by PMETB in relation to postgraduate medical education and training will transfer to the GMC.
2. In January 2010 the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2010 (the 'Section 60 Order') which will bring about the merger completed its passage through Parliament.
3. The Section 60 Order provides for the transfer of PMETB functions to the GMC, but the detail of how these functions are carried out will be contained in subordinate rules, regulations and associated guidance.
4. Between 27 October 2009 and 5 January 2010 we conducted a public consultation on the required rules and regulations. This report sets out the conclusions of the consultation process.

Consultation issues

5. The consultation focused on whether the draft rules and regulations appropriately addressed the rights and responsibilities of those affected by them (principally doctors and the GMC). We invited comments on three main areas:
 - a. The principles that informed our approach to drafting the rules and regulations.
 - b. The content of the draft rules and regulations.
 - c. Whether the rules and regulations would have an adverse impact on particular groups.

Methodology

6. We wrote to 90 organisations inviting them to respond to the consultation. They included organisations representing doctors, the NHS and other healthcare providers, medical schools, deaneries and medical Royal Colleges and Faculties. Approximately one month before the consultation closed, reminder letters were sent to those organisations that had not submitted comments. Responses could be lodged using our online e-consultation facility, by post or by email. This report takes account of responses submitted via all of these means.

7. The consultation posed ten questions relating to the draft rules and regulations. Some respondents did not answer the questions and commented instead on other issues relating to the merger. We have not included these comments in the statistical analysis of the responses given below. This was to avoid misrepresenting the comments and distorting the analysis. Instead, where appropriate, we have referred to any salient points in the appropriate section of this report.

Breakdown of responses

8. The majority of respondents can be classified under our four key interest groups; patients and the public, doctors, NHS and other healthcare providers, and medical schools and medical Royal Colleges. We also received two responses from other regulatory bodies. These are classified in this report as 'Other'.

9. We received 27 responses to the consultation. Of these, 20 were from organisations and seven were from individuals, most of whom were doctors. Table 1 below shows the breakdown of respondents with reference to the GMC's four key interest groups.

10. The number of respondents was relatively low by comparison with some other GMC consultations. This is perhaps explained by the subject matter and the technical nature of the rules and regulations we were consulting on.

Table 1: Consultation responses by category of respondents

Respondent category	Response #
Doctors	8
Medical schools, Royal Colleges and Faculties	13
NHS organisations and other employers	3
Patients and Public	1
Other respondents	2
Total	27

Summary of findings

11. Overall, the responses received endorsed our approach to the draft rules and regulations. The Royal College of Radiologists commented that our approach was 'fair sensible and proportionate as well as being practical as a way forward' to merge two bodies. PMETB commented that 'it is important to stress the positive engagement and expertise' which has informed the development of the rules. The response went on to say that this is 'another encouraging sign for the success of the merger'.

12. The remainder of this report will consider the responses to the individual consultation questions.

General principles for rules and regulations: Consultation Questions 1 and 2

13. Our approach to preparing the draft rules and regulations was governed by four key principles: continuity; flexibility; fairness, and minimalism.

14. We needed to provide for a smooth transition of PMETB functions to the GMC with the minimum of disruptive change in the short term (continuity). We needed flexibility so that we would not be hampered in making improvements to procedures in the longer term (flexibility). That flexibility needed to be exercised fairly so that doctors' rights and responsibilities were guaranteed (fairness). The rules and regulations had to contain only the elements that were necessary to ensure those rights and responsibilities. They had to avoid the sort of operational detail that might build excessive bureaucracy and rigidity into our processes (minimalism). At the same time, we acknowledged that there would need to be transparency about how such operational detail would work and this would be addressed through separate guidance.

15. In Question 1 we asked respondents whether they agreed or disagreed with the principles underpinning our approach, or whether they were unsure. If the principles were not the correct ones, respondents were asked in Question 2 to say what they should be.

Summary statistics

16. Table 2 presents a breakdown of the responses to Question 1.

Table 2: Responses to Question 1 by number of respondents

Question: 1 Do you agree that the principles that have informed our approach to preparing the rules and regulations are the right ones?	
Answer Option	Response #
Yes	20
No	1
Not sure	0
Total	21

17. Respondents overwhelmingly agreed that we had used the right principles.

18. Of the 21 responses received, nine represented the opinions of medical schools, Royal Colleges and Faculties. We received one response from a member of the public, two from the NHS and other healthcare providers, and two responses from individuals and organisations in the category 'Other'. All agreed that we had used the right principles.

19. Seven responses came from individual doctors or organisations representing doctors. The only dissenting voice came from this group.

Discussion

20. Despite the fact that only one person said that we had not used the right principles, seven respondents used Question 2 to comment further on those principles.

21. The one respondent who had disagreed with our approach in fact acknowledged under Question 2 that 'continuity, flexibility, fairness and minimalism are certainly valid points'. That respondent's concern related to the quite separate matter of GMC collaboration with the medical Royal Colleges over the redesign of postgraduate examinations.

22. Others commented that the principles 'are entirely appropriate' (Faculty of Occupational Medicine) and welcomed them as 'guaranteeing doctors' rights and responsibilities' (Joint Committee on Surgical Training (JCST)).

23. The Royal College of Physicians pointed to the need for an additional principle of 'transparency' and asked where people would go for guidance. We have acknowledged the need for transparency within our principles and said that we will publish supplementary guidance to assist doctors with matters which fall outside the legal framework specified in the rules and regulations (consultation document paragraph 20).

24. The Royal College of Radiologists wanted there to be 'assurance' for applicants who would have applied to the PMETB that they will not suddenly be considered against different criteria after the merger. This is addressed in three main ways. First, the Section 60 Order includes a number of saving and transitional provisions to protect the position of individuals whose applications are already in train at the time of the merger. Second, the Order also provides that the standards of education and training established by PMETB will remain in force following the merger until such time as the GMC decides to set new standards. The Council of the GMC will shortly be asked to endorse the current PMETB standards. Third, within the principle of 'continuity' we have said that, as far as possible, the procedural requirements of the rules and regulations operated by PMETB will be continued by the GMC in the immediate term. This approach is reflected in the rules and regulations we have drafted.

25. There was concern that the 'principle of "fairness" may be compromised marginally by the adoption of (different) PMETB fee structures e.g. for appeals' (Royal College of Physicians of Edinburgh). This refers to the fact that PMETB currently charges a fee to doctors appealing against decisions it has made. The GMC does not charge a fee for appeals to Registration Appeals Panels (RAPs) against GMC decisions.

26. Following the merger, both GMC and PMETB type appeals will be heard by RAPs. In the short term there will continue to be a fee charged to doctors lodging appeals in PMETB type cases. The fees will be the same as those currently charged by PMETB. Appeals in GMC type cases will continue to be free.

27. This means some unevenness in our approach to different types of case and the possible perception of unfairness. However, it upholds the principle of continuity immediately following the merger. It will give us time to gain experience of PMETB type appeals and consider the appropriate course for the future.

28. Finally, the JCST said that the principles should include appropriate provision for the protection of the public. This is, of course, enshrined in the GMC's statutory objective to protect, promote and maintain the health and safety of the public by ensuring proper standards in the practice of medicine.

GMC (Award of Certificates) Rules: Consultation Questions 3 and 4

29. The Award of Certificates Rules describe the procedures to be followed and the evidence that doctors must provide before the GMC can issue a certificate of 'acquired rights' or a Certificate of Completion of Training (CCT).¹ The Rules incorporate the essential elements of the requirements currently applied by PMETB.

30. In Question 3 we asked respondents whether they agreed or disagreed that the rights and responsibilities set out in the Award of Certificates Rules were appropriate. If they were not, respondents were asked in Question 4 to say what was missing or inappropriate.

Summary statistics

Table 3: Responses to Question 3 by number of respondents

Question: 3	
Do you agree that the rights and responsibilities set out in the Award of Certificates Rules are appropriate?	
Answer Option	Response #
Yes	18
No	0
Not sure	2
Total	20

31. 18 out of 20 respondents to this question agreed that the rights and responsibilities set out in the Award of Certificates Rules were appropriate. The respondents included the NHS and other healthcare organisations, patients and the public (one response), individuals and organisations representing doctors, medical

¹ The term acquired rights derives from the European Directive on the recognition of professional qualifications (2005/36/EC). This Directive sets out the minimum training requirements for doctors across the EEA and provides for their qualifications to be recognised by other EEA countries. A certificate of acquired rights means that a doctor who was previously eligible to work as a general practitioner does not lose that eligibility simply because the eligibility criteria have subsequently changed.

A CCT confirms that a doctor has completed UK specialty or GP training. A doctor awarded a CCT is eligible for inclusion in the general practitioner (GP) or specialist register which is a prerequisite for consideration for appointment to a consultant post or, in the case of a GP, to work as a general practitioner.

schools and medical Royal Colleges and Faculties, and two 'Other' respondents. Nobody said that the Rules, as drafted, were inappropriate

Discussion

32. Although no respondents opposed the draft Rules, several offered supplementary comments.

33. The Faculty of Occupational Medicine, the Royal College of Paediatrics and Child Health and the JCST all expressed concern about the future role of the Colleges and whether their role would change. Our plan is that, for the short term at least, the role of the Colleges will remain unchanged after functions transfer from PMETB.

34. An individual doctor stated that the Rules do not specify 'a timescale for consideration of the application or of the decision being communicated to the applicant by the Registrar'. The Section 60 Order does not require the GMC to process an application within a specified period. However, our published service standards will apply. In addition, Rule 7(2) requires the Registrar to notify the applicant of his decision 'as soon as reasonably practicable'.

GMC (Applications for General Practice and Specialist Registration) Regulations: Consultation Questions 5 and 6

35. In order to work as a general practitioner (GP) in the NHS a doctor must be listed in the GP register. To be appointed as a consultant in the NHS, a doctor must be listed in the specialist register.

36. At present, the evaluation of a doctor's eligibility for inclusion in the GP or specialist registers is undertaken by PMETB. Once eligibility has been established, the GMC's task is simply to include the doctor's name in the relevant register. Following the merger, the GMC will carry out both the assessment of eligibility and the process of registration.

37. The draft Applications for General Practice and Specialist Registration Regulations provide the legal framework for how the new process will work.

38. In Question 5 we asked respondents whether they agreed or disagreed that the rights and responsibilities set out in the Regulations were appropriate. If they were not, respondents were asked in Question 6 to say what was missing or inappropriate.

Summary statistics

Table 4: Responses to Question 5 by number of respondents

Question: 5	
Do you agree that the rights and responsibilities set out in the Applications for General Practice and Specialist Registration Regulations are appropriate?	
Answer Option	Response #
Yes	15
No	4
Not sure	1
Total	20

39. Three quarters of all respondents agreed that the rights and responsibilities set out in the draft regulations were appropriate. Of the four respondents who did not think they were appropriate, two represented doctors, one represented the NHS and other healthcare providers, and one was from the category 'Other'. All nine respondents representing medical schools, Royal Colleges and Faculties endorsed the Regulations as drafted.

Discussion

40. Of those who did not support the regulations, two respondents (both doctors) said that the standards for GP and specialist training established by PMETB should be redesigned in collaboration with the medical Royal Colleges. However, the standards for training are outside the scope of this consultation. These regulations deal with the registration application procedures for doctors who have met the standards. GMC may wish to revisit the standards at some point following the merger, but has decided that, in the short term at least, it will assist business continuity and be less disruptive to postgraduate training to continue with the standards inherited from PMETB. It should be noted that the JCST also pointed to the opportunity created by the merger to begin 'afresh', but concluded that the draft regulations were an appropriate starting point.

41. An NHS employer expressed concern about the equivalence to UK standards of the training undertaken in the EEA and how this was assessed. Again, this falls outside the scope of these regulations.

42. A doctor who was unsure about the regulations queried the timescales for determining applications and notifying applicants of the outcome. Under rule 3 of the Registration Appeal Panels Procedure Rules (see paragraphs 47 - 59 of this report) an applicant for GP or Specialist Registration must be notified of the decision on his or her application within the 'requisite period'. This is defined as being within three months of the GMC receiving the completed application, or four months in the case of certain EEA applications. These timescales correspond with the maximum permitted periods specified in the Medical Act for determining many other types of registration application. In practice, however, completed applications are likely to be processed much more quickly in accordance with our published service standards. In addition, rule 8(3) of the Applications for General Practice and Specialist Registration Regulations requires the Registrar to notify an applicant of his decision as 'soon as reasonably practicable'.

43. The BMA supported the regulations, but queried the inclusion of personal or professional references among the list of evidence to be submitted under regulation 5(3) and recommended that this be removed. However, confirmation of the posts held and experience gained by applicants will sometimes be provided in the form of such references. We therefore take the view that it would be unhelpful for the GMC to preclude consideration of such evidence where we can be confident of the veracity of the information. The regulation permits doctors to provide such references, but does not require it.

44. JCST commented that the regulations 'set out the requirements in a plainer and more succinct manner' than previous regulations and gave 'more scope for the format of applications...and what can be required'.

45. A contrasting view came from the Royal College of Radiologists which noted that the regulations were more specific and detailed than the provisions contained in Article 14 of the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003 and the associated rules under which PMETB has operated. The College sought reassurance that these more detailed requirements were not a prescriptive and exhaustive list of the evidence needed in support of an application. That is correct. The regulations have been prepared in consultation with PMETB to reflect what happens in practice. They are intended to be a flexible and inclusive, but not an exhaustive, list of the evidence that may be provided in support of different types of application.

46. In its response the Faculty of Occupational Medicine asked about the process for issuing statements of eligibility for inclusion in the specialist or GP registers as referred to in regulation 5(1)(h) and as previously issued by PMETB. We will describe the process in separate guidance.

GMC (Registration Appeals Panel Procedure) Rules: Consultation Questions 7 and 8

47. The Medical Act 1983 currently provides for GMC Registration Appeals Panels (RAPs) to consider appeals by doctors against certain types of registration decision taken by the GMC. The list of appealable decisions is set out in Schedule 3A of the Act. The Registration Appeals Panel Procedure Rules describe the arrangements for hearing such appeals.

48. Appeals against PMETB decisions are currently considered by PMETB Appeals Panels operating under the Postgraduate Medical Education and Training Board (Appeals) Rules 2008.

49. Following the merger, PMETB type appeals will be considered by GMC RAPs under the GMC Registration Appeals Panel Procedure Rules. The rules are being amended to reflect this.

50. In Question 7 we asked respondents whether they agreed or disagreed that the rights and responsibilities set out in the amended rules were appropriate. If they were not, respondents were asked in Question 8 to say what was missing or inappropriate.

Summary statistics

Table 5: Responses to Question 7 by number of respondents.

Question: 7	
Do you agree that the rights and responsibilities set out in the Registration Appeals Panels Procedures Rules are appropriate?	
Answer Option	Response #
Yes	17
No	1
Not sure	1
Total	19

51. 17 out of 19 respondents to Question 7 agreed that the rights and responsibilities set out in the rules were appropriate.

Discussion

52. The only outright opposition to the amended rules was from the Royal College of Physicians of Edinburgh. The College noted that rule 5 would enable a different approach to be taken to the charging of fees for appeals, depending on whether the appeal was a GMC type appeal or a PMETB type appeal. We acknowledge the differences in approach and explain the reasons for this in paragraphs 25 - 27 of this report. Once the merger is complete we will be in a better position to understand the operational issues associated with PMETB type cases and then to review our policy.

53. The College also refers to the 'requirement for all chairs' of RAPs to be legally qualified. It considered that this would restrict the opportunity for other suitably experienced individuals to contribute to this aspect of the GMC's work. In fact, although the rules allow for the Chairs of panels to be legally qualified, they do not require it in every case. In practice, we will begin by ensuring that legally qualified Chairs are used in PMETB type cases, but this will not be a requirement in GMC type cases. This reflects the advice from PMETB colleagues that legally qualified Chairs are essential in PMETB type cases because of the complexity of the issues involved. Once we have gained experience of these cases we will be in a position to review our requirements. In the short term, however, it would be imprudent for us to disregard PMETB's advice. The rules have therefore been designed to give us an element of flexibility now and in the future.

54. The College's third concern relates to the introduction of a casting vote for the Chair of an RAP. Again, this reflects the advice we have received from PMETB which has traditionally used panels of four members (including the Chair) and where there is the possibility of a split vote.

55. However, the quorum (the bare minimum number of members required for any panel) for RAPs will continue to be three. For operational purposes, we will continue to constitute panels of three for all GMC type cases. A split vote requiring the Chair to exercise a casting vote will therefore only arise in PMETB type cases.

56. This approach will enable us to maintain the continuity of PMETB's current arrangements during the transition period following the merger and then review our policy in the light of experience of both systems. Other respondents welcomed the fact that the rules recognised this 'need for flexibility and the inclusion of PMETB best practice into new GMC-led procedures' (NHS Employers).

57. Some respondents sought reassurance on certain points. A doctor said that appellants should always be given the option to attend an appeal. Indeed, this will always be the case. They will also be able to give evidence at the discretion of the panel (rule 14(2)).

58. The JCST supported the rules as drafted, but wanted to see specialty specific representation on panels as a matter of course. The range of cases which come before RAPs means that this will not always be relevant. However, the rules allow for 'specialist advisers' to be appointed 'for the purposes of advising a Panel in relation to issues relevant to the determination of the appeal' (rule 4(1)).

59. Finally, PMETB noted that the 'appeals elements of the preparations for merger have benefited from a positive dialogue between GMC and PMETB' officers. It was noted, however, that the rules did not include a provision equivalent to that which exists in PMETB's current appeals rules allowing PMETB's Director of Appeals to set aside the decision of an appeal panel in certain limited circumstances. We have taken legal advice on this point, and have been instructed that the primary legislation under which the rules are made (the Medical Act) would not permit this.

GMC (Constitution of Panels and Investigation Committee (Amendment) Rules

60. The Constitution of Panels Rules describe the way in which various GMC committees and panels must be constituted.

61. In the previous section of this report we referred to changes in the arrangements for RAPs covering the use of legally qualified Chairs. Amendments to the Constitution of Panels Rules will provide for this. These amendments are of a minor, technical nature. They were set out in the consultation document but respondents were not asked any questions about the rules and no comments were received.

Impact of the rules and regulations on particular groups: Consultation Questions 9 and 10

62. Question 9 asked whether the rules and regulations would have an adverse impact on any particular groups. If so, respondents were invited to provide further details and say how that effect might be mitigated (Question 10).

Summary statistics

Table 6: Responses to Question 9 by number of respondents

Question: 9	
Do you think that the approach we have taken to the underlying principles, and to the details, of the draft rules and regulations described in this consultation will have an adverse impact on any particular groups?	
Answer Option	Response #
Yes	7
No	9
Not sure	2
Total	18

63. Only 9 of the respondents to Question 9 stated that the rules and regulations would not have an adverse impact on particular groups.

64. However, the responses to Question 10 suggest that the way Question 9 had been phrased had served to confuse some respondents. For example, one organisation answered 'yes' to Question 9, indicating that the rules and regulations would affect some groups adversely. But the accompanying comments in Question 10 stated that 'I am not aware of any potential difficulties'. Another organisation that answered 'yes' went on to say: 'We support moves towards a successful merger and the rules and regulations required to make this real, using the expertise and experience of both organisations to make for a seamless transfer of statutory powers.' A third organisation, which had commented favourably about the details of the rules and regulations in response to earlier questions, nevertheless indicated in Question 9 that they would have an adverse impact on some groups. It then went on to say that it was keen to see 'rules and regulations that are fit for purpose and, while fair to the doctors concerned, provide a sufficiently robust framework for the protection of the public'.

65. Two respondents (the Royal College of Paediatrics and Child Health and the Faculty of Sexual and Reproductive Healthcare) commented on the inaccessibility of the legislation, both in the Medical Act and in the wording of the rules and regulations.

66. But only two respondents identified specific groups who might be disadvantaged by the rules and regulations. A doctor noted that the most vulnerable groups would include those with health (particularly mental health) problems and suggested that the rules and regulations should mention such groups. Although they are not mentioned, the GMC will be under a public law duty to operate its procedures in a way that is fair and non-discriminatory.

67. The same respondent also referred to the potentially prohibitive cost of appeals for some doctors and questioned whether these could be reimbursed. The Locum Doctors Association shared this view, describing appeal fees as 'restrictive, unfair and counterproductive'. Our intention to review the issue of appeal fees is discussed earlier in this report. In addition, the Medical Act provides for an RAP to 'make such order as to costs...as they think fit' (Schedule 3A, paragraph 4(8)). In practice, this is likely to occur where there has been serious maladministration or poor conduct in the appeal proceedings by either side.

68. Finally, a respondent commenting on behalf of an organisation asserted that medical Royal College representation on the GMC would lead to the rules and regulations having 'an adverse impact on locums and all minority/diversity doctors'.

Conclusions and next steps

69. The responses to the consultation show a high level of overall support both for the principles underpinning our approach to the rules and regulations and to the detail of those rules and regulations.

70. From the comments received we have not identified any changes that need to be made to the draft rules and regulations preparatory to the merger taking place. There are, nevertheless, a number of areas where they will need to be supplemented with operational guidance.

71. The comments also confirm our view that following the merger we will need to review a number of aspects of our procedures which may result in amendments to the rules and regulations. The issues for consideration include, but are not limited to, the use of legally qualified Chairs at appeal hearings, the issue of appeal fees and the composition of RAPs.

72. In addition, the responses point to the need for the GMC to work closely with its partners as it takes on the task of setting the standards for and regulating postgraduate medical education and training.