
6a — Consultation on Proposed Amendments to the GMC Fitness to Practise Rules to support OHPA Transitional Arrangements — Annex A

Draft General Medical Council Consultation - Amendments to the GMC Fitness to Practise Rules 2004 following the establishment of the Office of the Health Professions Adjudicator

1. We are consulting on a package of proposed amendments to the GMC Fitness to Practise Rules 2004 to prepare for the transfer of our statutory responsibility for hearing cases against doctors (the adjudication function) to the Office of the Health Professions Adjudicator (OHPA).

The General Medical Council

2. The General Medical Council is the independent regulator for doctors in the UK. Our statutory purpose is to protect, promote and maintain the health and safety of the public by ensuring proper standards in the practice of medicine. In short, our job is to ensure that patients can have confidence in doctors. We do that by controlling entry to the medical register and setting the educational standards for medical schools.

3. We also determine the principles and values that underpin good medical practice and we take firm but fair action where those standards have not been met and concerns are raised regarding a doctor's fitness to practise.

Background

4. Under the current fitness to practise procedures, the GMC is responsible both for investigating fitness to practise concerns regarding a doctor (known as the investigation stage) and conducting the Fitness to Practise Panels which are responsible for determining whether any action should be taken on a doctor's registration (known as the adjudication stage).

5. A degree of separation between the investigation stage and the adjudication stage was achieved when the current procedures were introduced in 2004. However, there has been a perception that this separation has not gone far enough to assure the public or the profession of the independence of Fitness to Practise Panel decision-making.

6. To address this issue, the Health and Social Care Act 2008 made provision for the establishment of OHPA to conduct adjudication in cases where healthcare professional regulators consider one of their registrant's fitness to practise to be impaired. We will be the first regulator to transfer our adjudication function to the new body once the provisions within the Health and Social Care Act are commenced.

Why is this consultation process taking place?

7. The transfer of the adjudication function to a separate body has necessitated the development of new procedural rules. OHPA are in the process of developing their procedural rules to govern the adjudication stage and are consulting on these between 4 August and 27 October 2010. OHPA are also consulting on their long term ambitions for developing their procedural rules. Both these consultation papers are available on OHPA's website.

8. The GMC's Fitness to Practise Rules consequently need amending to reflect the transfer of adjudication from the GMC to OHPA. However, as the GMC will retain responsibility for investigating any concerns relating to a doctor's fitness to practice and referring cases as necessary to OHPA, the elements of the Fitness to Practise Rules which govern the investigation stage of the process will still be necessary with minor amendments. This consultation paper outlines the proposed approach to amending the Fitness to Practise Rules and summarises the proposed changes.

Proposed approach

9. OHPA have indicated that they intend to adopt the sections of the Fitness to Practise Rules relevant to the adjudication function with some minor adaptations in the first instance. Consequently we are only proposing to make those changes which are necessary to the Fitness to Practise Rules to ensure that the process functions without disruption once OHPA's new rules are in place.

10. We believe that this approach presents the least risk to the effective conduct of both investigation and adjudication during the transition period when OHPA initially assumes operational control. Further improvements can be pursued as appropriate once OHPA is effectively conducting hearings on a routine basis.

Summary of changes

11. The proposed changes broadly fall into three categories:

- a. Amendments to remove rules relating to functions which will transfer to OHPA.
- b. Rules that will need to be retained with minor amendment to allow the Investigation Committee to continue to function.
- c. Amendments to reflect the new relationship between the Regulator and the Adjudicator.

12. The detail of all the proposed changes is contained in Annex A, however a summary of the changes in each of these categories are discussed below.

Amendments to remove rules relating to functions which will transfer to OHPA

13. OHPA will assume responsibility for the conduct of hearings before Fitness to Practise Panels and Interim Orders Panels. Consequently, we are proposing that the sections of the Fitness to Practise Rules which relate to the adjudication stage be removed. This includes pre-hearing case management, procedure at a restoration hearing, the appointment of specialist advisers, procedure following a new allegation and the procedures to be followed before a Panel (at both a substantive and review hearing).

Rules that will need to be retained with minor amendments to allow the Investigation Committee to continue to function

14. A number of the rules relate to hearings before the Investigation Committee as well as hearings before a Fitness to Practise Panel or Interim Orders Panel. We are proposing to retain these rules in the same form but removing the reference to either Panel. This will allow the Investigation Committee to continue to hold hearings.

15. This category includes rules relating to evidence, preliminary legal arguments, the power of the Committee to proceed in the absence of the practitioner, the right of a practitioner to be represented, the record of decisions, joinder, postponements and adjournments, notes and transcripts of proceedings, witnesses and voting.

16. We are, however, proposing an additional change in this category to update the terminology relating to vulnerable witnesses in Rule 36 following the passage of the Equality Act 2010 through Parliament.

Amendments to reflect the new relationship between the Regulator and the Adjudicator

17. In this category are a number of rules where responsibility for activities within the adjudication stage will be divided. These largely reflect the Regulator's role in presenting the case to the Adjudicator.

18. The proposals in this category largely maintain the current procedures, however will refer to 'the Adjudicator' rather than 'a Fitness to Practise Panel' or 'an Interim Orders Panel'. These include the rules which govern the functions of the Registrar in relation to cautions, convictions and determinations, the review of decisions, breaches of undertakings or conditions and the procedure for the cancellation of a hearing.

Amendment to the Medical Act 1983

19. We are also consulting on an amendment to the Medical Act 1983. In discussion with OHPA it has become apparent that both OHPA and the GMC will have a statutory obligation to notify a doctor that action has been taken on their registration once a Fitness to Practise Panel or Interim Orders Panel has considered a case.

20. This arrangement will ensure that a doctor will receive full notice that a direction to restrict or remove registration has been issued by OHPA and that this direction has been implemented by the GMC. However the Medical Act 1983 allows doctors to appeal any direction to restrict or remove registration within 28 days of receipt of the notification of the direction from the GMC. As the appealable decision will be made by OHPA we believe that this is inconsistent and may introduce potential delay. Consequently, we are proposing to pursue an amendment to the Medical Act so that OHPA's notification has bearing on the appeals process.

Amendments to other relevant secondary legislation

21. Fitness to Practise Panellists and Legal Assessors currently hold functions which are governed by rules other than the Fitness to Practise Rules 2004. We are also proposing to amend this separate legislation in the same way to reflect the new arrangements with OHPA. The separate legislation we are seeking to make amendments to includes:

- a. The General Medical Council (Legal Assessors) Rules 2004.
- b. The General Medical Council (Fitness to Practise) (Disqualifying Decisions and Determinations by Regulatory Bodies) Procedure Rules Order of Council 2004.
- c. The General Medical Council (Constitution of Panels and Investigation Committee) Rules Order of Council 2004.
- d. The General Medical Council (Licence to Practise) Regulations Order of Council 2009.
- e. The General Medical Council (Restoration following Administrative Erasure) Regulations Order of Council 2004.
- f. The General Medical Council (Voluntary Erasure and Restoration following Voluntary Erasure) Regulations Order of Council 2004.
- g. The General Medical Council (Constitution) Order 2008.
- h. Form and Content of the Registers Regulations 2010

22. The proposed changes to these statutory instruments all fall within the same categories that we have outlined for the amendments to the Fitness to Practise Rules. The detail of the proposed changes are contained in Annex B.

Consultation questions

23. Do you agree with the approach taken in changing the rules? If not please provide your comments.
24. Do you wish to comment on any of the individual changes to the rules? If so please provide your comments.
25. Do you agree with the proposed change to update the terminology in Rule 36 to reflect the Equality Act 2010?
26. Do you believe there are any other changes to the rules we should include at this time? If so please provide your comments.
27. Do you agree that the notification of a decision to take action on a medical practitioner's registration from OHPA should have a bearing on the appeal period? If not please provide your comments.
28. Do you consider that the proposed changes to the rules will have an adverse impact on any particular groups? If so please provide your comments regarding which groups and how you believe they will be impacted.

How to comment

29. You can take part in an online version of the consultation, or you can download the main consultation document and respond in writing, either by e-mailing or by sending your response to:

James Ewing
Policy and Planning Officer — Fitness to Practise
The General Medical Council
350 Euston Road
London
NW1 3JN

e-mail: ftpconsultation@gmc-uk.org

30. This consultation runs from **4 August to 27 October 2010**.

Further information

31. A full explanation of the proposed amendments to the Fitness to Practise Rules is set out in Annex A. The details of the proposed changes to the other relevant secondary legislation and to the Medical Act 1983 is set out in Annex B. The current GMC Fitness to Practise Rules are at Annex C.
32. Further information regarding the current GMC Fitness to Practise Rules 2004 can be found on the GMC's website: <http://www.gmc-uk.org/>

33. Details of OHPA's consultation on their initial procedural rules as well as their ambitions for further changes in the longer term can be found on their website:

<http://ohpa.org.uk/>

34. If you have any questions about the consultation please contact James Ewing on 020 7189 5146 or by e-mail at ftpconsultation@gmc-uk.org.

Proposed Changes to the GMC Fitness to Practise Rules 2004

1. We are consulting on a package of proposed amendments to the GMC Fitness to Practise Rules 2004 to prepare for the transfer of statutory responsibility for hearing cases against doctors (the adjudication function) to the Office of the Health Professions Adjudicator (OHPA). The consultation document explains why we are consulting and how you can comment on the proposed amendment to the Rules.
2. The changes we are proposing to make to the GMC Fitness to Practise Rules 2004 are detailed below. Details of the changes we are proposing to make to the Medical Act 1983 and the other secondary legislation which governs separate aspects of our fitness to practise procedures are contained in Annex B.

Rule 2 — Interpretation

3. We propose to remove the references to 'application', 'Case Manager', 'FTP Panel', 'Interim Orders Panel', 'Panel', 'specialist health adviser' and 'specialist performance adviser' as these functions will transfer to OHPA.

Rule 3 — Appointment of panels of advisers, assessors and examiners

4. We propose to remove the reference to 'advisers' in the rule title and remove sub-paragraphs (2), (4), (5) and (6) which relate to the selection and appointment of specialist performance and health advisers as it will be the responsibility of OHPA to ensure that panels are properly advised.
5. While sub-paragraph (3) will remain important in regard to Council members not being eligible for appointment as a performance or health assessor, we intend to remove reference to sub-paragraph (2) regarding specialist performance or health advisers as it will be for OHPA to specify who may be eligible to be appointed in these roles.

Rule 5 — Functions of the Registrar in relation to cautions, convictions and determinations

6. The reference to 'a FTP Panel' will need to be amended to 'the Adjudicator' to reflect the new adjudication arrangements.

Rule 6 — Referral to Interim Orders Panel

7. The reference to 'Interim Orders Panel' in the title will not reflect the terminology used in the Medical Act 1983 as amended and is therefore inappropriate. We propose to replace the title with 'Referral to the Adjudicator for consideration of making an interim order'.
8. The reference to 'an Interim Orders Panel' in the text of the rule is also inappropriate for the same reason and we propose to replace this with 'the Adjudicator'.

Rule 7 — Investigation of allegations

9. We are proposing to amend this rule to reflect the terminology used in the Health and Social Care Act 2008 replacing the references to 'a FTP Panel' with 'the Adjudicator' and referencing the relevant sections of the Medical Act 1983 once it has been amended.

Rule 8 — Consideration by Case Examiners

10. Reference to 'a FTP Panel' in sub-paragraph (2)(d) and 'an Interim Orders Panel' in sub-paragraph (6) will no longer be appropriate once OHPA assumes responsibility for the adjudication function and we propose both are amended to 'the Adjudicator'.

Rule 9 — Consideration by the Committee

11. Reference to 'a FTP Panel' in sub-paragraph (d) will no longer be appropriate once OHPA assumes responsibility for the adjudication function and we propose this be amended to 'the Adjudicator'.

Rule 10 — Undertakings

12. The reference to 'a FTP Panel' in sub-paragraphs (1), (5) and (8) will need to be amended to 'the Adjudicator' to reflect the new arrangements.

Rule 11 — Warnings

13. The reference to 'a FTP Panel' at sub-paragraphs (2), (6)(c) and (10) will need to be amended to 'the Adjudicator' to reflect the new arrangements.

Rule 12 — Review of decisions

14. We propose the reference to 'a FTP Panel' at sub-paragraph (1)(b) be amended to 'the Adjudicator' to reflect the new arrangements.

Rule 13 — Relevant date for the purposes of section 35A and 35B of the Act

15. As responsibility for the conduct of hearings will transfer to OHPA we are proposing to remove sub-paragraph (b) which refers to 'Interim Orders Panel' and amend the reference to 'a FTP Panel' in sub-paragraph (d) to 'the Adjudicator' to reflect the terminology used in the Medical Act 1983 as amended. This will capture referrals for interim orders as well as substantive Fitness to Practise hearings.

Rule 13A — Investigation following referral

16. We propose that the reference to 'a FTP Panel' be replaced with 'the Adjudicator' to reflect the terminology in the Medical Act 1983 as amended.

Rule 14 — Appointment of specialist advisers

17. We propose to remove this rule from the Fitness to Practise Rules as the appointment of specialist advisers will be for OHPA.

Rule 15 — Notice of hearing

18. OHPA will be responsible for issuing the notice of hearing in future as well as for specifying the information they require from the GMC on referral. As these matters will be in OHPA's rules, we are proposing to remove rule 15 from the Fitness to Practise Rules.

Rule 16 — Case Management

19. The responsibility for appointing an independent Case Manager to handle pre-hearing procedural matters such as the exchange of skeleton arguments will transfer to OHPA and consequently we are proposing to remove this rule from the Fitness to Practise Rules.

Rule 17 — Procedure before a FTP Panel

20. This rule relates to the detailed procedure to be followed at a Fitness to Practise Panel hearing which will be the responsibility of OHPA. Consequently, we are proposing to remove this rule from the Fitness to Practise Rules.

Rule 18 — Application of Part 5

21. We propose the reference to 'an FTP Panel' be amended to 'the Adjudicator' to reflect that OHPA will be conducting Review Hearings.

Rule 19 — Functions of the Registrar

22. The reference to 'a FTP Panel' should be amended to 'the Adjudicator' to reflect the new arrangements.

Rule 20 — Notice of Review Hearings

23. As with the Notice of hearing (rule 15), OHPA's rules will specify the information that the GMC will be required to serve on the doctor and on OHPA such as the details of any allegations as well as the information that OHPA itself must issue relating to the arrangements for any hearing. Consequently, we are proposing to remove this rule from the Fitness to Practise Rules.

Rule 21 — Early review hearing

24. OHPA's rules will contain the procedure for either a doctor or the GMC to request an early review hearing and we are proposing that this rule be removed from the Fitness to Practise Rules.

Rule 21A — Procedure following referral of a new allegation

25. This rule governs the procedure at a review hearing where a new allegation has been referred. This will be the responsibility of OHPA and, consequently, we propose to remove it from the Fitness to Practise Rules.

Rule 22 — Procedure at a Review Hearing

26. This rule governs the procedure at a review hearing. This will be the responsibility of OHPA and, consequently, we propose to remove rule 22 from the Fitness to Practise Rules.

Rule 23 — Action on receipt of a restoration application

27. Following the amendments to the Medical Act 1983 by Schedule 7 of the Health and Social Care Act, the GMC will be required to refer any application for restoration to OHPA, however we propose that some investigation may be necessary prior to referring the case on and we therefore propose to retain sub-paragraph (1) of this rule.

Rule 24 — Procedure at a restoration hearing

28. The conduct of restoration hearings will be the responsibility of OHPA and, consequently, we are proposing to remove rule 24 from the Fitness to Practise Rules.

Rule 25 — Initial consideration (of Interim Orders)

29. The procedure to be followed in relation to a referral by the Registrar to OHPA for the consideration of making an interim order will be contained in OHPA's rules. Consequently, we are proposing to remove rule 25 from the Fitness to Practise Rules.

Rule 26 — Notice of hearing

30. As with the Notice of hearing for substantive and review hearings (rules 15 and 20), OHPA's rules will specify the information that the GMC will be required to serve on the doctor and on OHPA such as the details of any allegations as well as the information that OHPA itself must issue relating to the arrangements for any Interim Orders Panel hearing. Consequently we are proposing to remove this rule from the Fitness to Practise Rules.

Rule 27 — Procedure at an interim orders hearing

31. OHPA's rules will specify the procedure to be followed at an interim orders hearing and we are therefore proposing to remove this rule.

Rule 28 — Cancellation of a hearing

32. The procedure to be followed in making the decision to cancel a referral to OHPA and thereby cancel a hearing will still be necessary in those instances where cases can be resolved consensually or new evidence comes to light which suggests that a hearing is no longer appropriate. We are therefore proposing to amend this rule to reflect OHPA's operational responsibility for the conduct of hearings by replacing the references to 'the Panel', 'a Panel' or 'the Interim Orders Panel' with 'the Adjudicator'.

Rule 29 — Postponements and adjournments

33. Following the transition of adjudication to OHPA, the decision to postpone or adjourn a hearing before a Fitness to Practise Panel or an Interim Orders Panel will be a matter for OHPA and will be addressed in their rules.

34. However, provisions to postpone or adjourn Investigation Committee hearings will still be required and we are proposing that sub-paragraph (2) be amended to remove the words 'or Panel' from the rule so that it only relates to Investigation Committee hearings.

Rule 30 — Preliminary legal arguments

35. OHPA will be making rules regarding preliminary legal arguments. However these provisions will still be required to govern the procedure at Investigation Committee hearings. Consequently, we propose to the references to 'or Panel' from this rule so that it relates to Investigation Committee hearings only.

Rule 31 — Absence of the practitioner

36. Following the transition of adjudication to OHPA, provisions for dealing with the absence of the practitioner at a Fitness to Practise Panel hearing or Interim Orders Panel hearing will be a matter for OHPA. However, provisions will still be necessary to govern Investigation Committee hearings. Consequently, we are proposing that the words 'or Panel' be removed so that it relates to Investigation Committee hearings only.

Rule 32 — Joinder

37. Following the transition of adjudication to OHPA, provisions to allow a Fitness to Practise Panel or an Interim Orders Panel to consider two or more allegations against a medical practitioner or consider allegations against two or more medical practitioners at the same time will be contained in OHPA's rules. However, provisions will still be necessary to allow the Investigation Committee to consider two or more allegations against a medical practitioner or allegations against two or more medical practitioners at the same time. Consequently, we are proposing that the current rule be amended to remove any references to impairment as the Investigation Committee do not make determinations on such matters and be replaced with the following:

Joinder

32.

The Registrar may, of his own motion or upon the application of a party to the proceedings, direct that the Committee consider and determine together

- (a) two or more allegations against the same practitioner; or
- (b) allegations against two or more practitioners,

where it would be just to do so.

Rule 33 — Representation

38. OHPA will be making rules regarding representation before Fitness to Practise Panel hearings and Interim Orders Panel hearings. However, provisions governing the right of a medical practitioner to be represented at an Investigation Committee hearing will still be necessary. Consequently, we propose to omit references to 'or Panel' from this rule so that it relates to Investigation Committee hearings only.

Rule 34 — Evidence

39. OHPA will be making rules regarding evidence before Fitness to Practise Panel hearings and Interim Orders Panel hearings. However, provisions governing what evidence may be considered will still be required for Investigation Committee hearings. Consequently, we propose to omit references to 'or Panel' and 'or FTP Panel' from this rule so that it only relates to the Investigation Committee procedures.

40. As it is exceptional for the Investigation Committee to hear oral evidence we propose, for the sake of clarity, to include a new sub-paragraph 34(2) as follows:

Notwithstanding the provisions of rules 35 and 36, no person shall give oral evidence at the hearing unless the Committee considers such evidence is desirable to enable it to discharge its functions.

41. The current sub-paragraph 34(1) will, consequently, require amending to include the words 'and (3)' after 'Subject to paragraph (2)'.

42. In the current sub-paragraph (5), reference to 'paragraph (3) or (4)' will need to be amended to read 'paragraph (4) or (5)'.

43. Sub-paragraph (6) will also no longer be relevant to Investigation Committee hearings which do not make findings of fact and we propose it be removed.

44. Additionally, as a result of the removal of rule 16, the GMC will have no arrangements in place for case management procedures for the Investigation Committee and the reference to case management in sub-paragraphs (9) and (11) will need to be removed.

45. Similarly sub-paragraph (12)(a) relating solely to Fitness to Practise Panel hearings will also need to be omitted.

Rule 35 — Witnesses

46. OHPA will be making rules regarding witnesses before Fitness to Practise Panel hearings and Interim Orders Panel hearings. However, the Investigation Committee may also hear witness evidence in exceptional circumstances. Consequently, we propose to remove references to 'or Panel' from this rule so that it relates to Investigation Committee hearings only.

47. Similarly we are proposing to remove the words from 'or Panel' to the end of the sub-paragraph (2)(d) as this section relates solely to the conduct of Fitness to Practise Panel hearings.

Rule 36 — Vulnerable Witnesses

48. OHPA will be making rules regarding vulnerable witnesses before Fitness to Practise Panel hearings and Interim Orders Panel hearings. However, as the Investigation Committee may in exceptional circumstances hear oral evidence, provisions regarding vulnerable witnesses will still be required.

49. Additionally, with the passage of the Equality Act 2010, the previous terminology used in this rule may need updating. However, the timetable for commencement of the relevant provisions in the Equality Act has yet to be specified and we intend to keep this under review. If the relevant provisions of the Equality Act are commenced, we would propose to amend the wording of this rule as follows:

Vulnerable witnesses

36.

(1) In proceedings before the Committee, the following may, if the quality of their evidence is likely to be adversely affected as a result, be treated as a vulnerable witness —

- (a) any witness under the age of 17 at the time of the hearing;
- (b) any witness with a physical or mental impairment within the meaning of the Equality Act 2010 who requires assistance to give evidence;
- (c) any witness, where the allegation against the practitioner is of a sexual nature and the witness was the alleged victim;
and

(d) any witness who complains of intimidation.

Rule 37 — Record of decisions of the Committee or Panel

50. OHPA will be making rules regarding the record of decisions following Fitness to Practise Panel hearings and Interim Orders Panel hearings. However, a provision to govern the record of decisions made at Investigation Committee hearings will still be required. Consequently, we propose to remove references to 'or Panel' from this rule and from the rule title so that it relates to the Investigation Committee only.

Rule 37A — Panel undertakings

51. OHPA will be able to agree undertakings offered by practitioners appearing before Fitness to Practise Panel hearings and we propose therefore that the title of this rule is amended to read 'Adjudicator undertakings' and in sub-paragraphs (1), (2) and (3) references to rules 17(2)(m) and 22(h) is replaced with the relevant section of OHPA's rules. Reference to 'a FTP Panel' would also need to be amended to read 'the Adjudicator'.

Rule 38 — Voting

52. OHPA will be making rules regarding voting at Fitness to Practise Panel hearings. However, provisions to govern the voting procedure at Investigation Committee hearings will still be required. Consequently, we propose to remove references to 'or of a Panel' and 'or Panel' from this rule so that it relates to Investigation Committee hearings only. Additionally sub-paragraph (5) will need to be removed as it relates to decisions that only a Fitness to Practise Panel can make and is therefore not relevant to the Investigation Committee.

Rule 39 — Notes and transcripts of proceedings

53. OHPA will be making rules regarding the requirement to record the conduct of proceedings at Fitness to Practise Panel hearings and Interim Orders Panel hearings. However, provisions relating to how Investigation Committee hearings are recorded and notes taken will still be necessary. Consequently, we propose to remove references to 'or Panel' from this rule so that it relates to the Investigation Committee only.

Rule 41 — Attendance of the public

54. OHPA will be making rules regarding the attendance of the public at Fitness to Practise Panel hearings and Interim Orders Panel hearings. However, provisions to govern the circumstances under which the public may attend Investigation Committee hearings will still be required. Consequently, we propose to remove references to 'or a Panel', 'or Panel' and 'or FTP Panel' from this rule so that it relates to the Investigation Committee only.

55. Additionally, sub-paragraph (3)(a) relates to a Fitness to Practise Panel decision and is not relevant to Investigation Committee hearings. We therefore propose to remove this together with the reference to sub-paragraph 3(a) in sub-paragraph (6).

56. Similarly sub-paragraphs (4) and (5) also relate solely to Fitness to Practise Panel hearings and we propose that they are removed. The reference to paragraph 5 in sub-paragraph 6 consequently will also need to be removed.

Rule 42 — Exclusion from proceedings

57. OHPA will be making rules regarding the power for Fitness to Practise Panels and Interim Orders Panels to exclude persons from the hearing. However, in certain circumstances it may also be necessary to exclude individuals from Investigation Committee hearings if their conduct is likely to disrupt the hearing. Consequently, we propose to remove references to 'or Panel' from this rule so that it relates to Investigation Committee hearings only.

Consequential Changes to other Secondary Legislation and Further Amendment to the Medical Act 1983

58. We are consulting on a package of proposed amendments to the Medical Act and other secondary legislation to prepare for the transfer of statutory responsibility for the adjudication function to the Office of the Health Professions Adjudicator (OHPA). The consultation document explains why we are consulting and how you can comment on the proposed amendment.

59. The changes we are proposing to make to the Medical Act and other secondary legislation are detailed below. Details of the changes we are proposing to make to the Fitness to Practise Rules 2004 are contained in Annex A.

The Medical Act 1983

60. In discussion with OHPA it has become apparent that both OHPA and the GMC will have a statutory obligation to notify a doctor that action has been taken on their registration once a Fitness to Practise Panel or Interim Orders Panel has considered a case.

61. This arrangement will ensure that a doctor will receive full notice that a direction to restrict or remove registration has been issued by OHPA and that this direction has been implemented by the GMC. However, the Medical Act 1983 allows doctors to appeal any direction to restrict or remove registration within 28 days of receipt of the notification of the direction from the GMC. As the appealable decision will be made by OHPA we believe that this is inconsistent and may introduce potential delay.

62. Consequently, we are proposing an amendment to the Medical Act so that OHPA's notification has bearing on the appeals process.

The General Medical Council (Legal Assessors) Rules 2004

Rule 1 — Citation, commencement and interpretation

63. In the definition of 'legal assessor' we propose that the reference to 'Interim Orders Panels and Fitness to Practise Panels' be omitted and the words 'and paragraph 4(7) of Schedule 3A to the 1983 Act (proceedings before the Registration Appeals Panel)' be inserted immediately after '(proceedings before the Investigation Committee)'.

64. We propose that, in the definition of 'Panel', the reference to 'an Interim Orders Panel' and 'or a Fitness to Practise Panel' are omitted and the words 'Registration Appeals Panel' be inserted.

Rule 3 — Attendance of legal assessors

65. The reference to 'Interim Orders Panels and Fitness to Practise Panels' will be inappropriate as these functions will transfer to OHPA but reference to Registration Appeals Panels is required to reflect the functions to be retained by the GMC. Consequently, we propose that these are omitted and the words 'and paragraph 4(7) of Schedule 3A to the 1983 Act (proceedings before the Registration Appeals Panel)' are inserted immediately after '(proceedings before the Investigation Committee – legal assessors)'.

The General Medical Council (Fitness to Practise) (Disqualifying Decisions and Determinations by Regulatory Bodies) Procedure Rules Order of Council 2004

Rule 2 — Interpretation

66. The definition of 'FTP Panel' will no longer be relevant as this function will transfer to OHPA and we propose that this be omitted.

67. We propose that reference to 'a FTP Panel' in the definition of 'the Presenting Officer' be omitted.

Rule 3 — Referral of cases

68. We propose to remove the reference to 'a FTP Panel' in accordance with rule 5 and replace it with 'the Adjudicator'.

Rule 4 — Notice of Hearing

69. The technical information regarding the hearing will need to be considered as part of OHPA's rules. We propose therefore to omit Rule 4 in its entirety.

Rule 5 — Procedure before a FTP Panel

70. We propose that Rule 5 be omitted as this function will transfer to OHPA.

Rule 6 — General

71. This rule will need to be reviewed once OHPA's rules are finalised.

The General Medical Council (Constitution of Panels and Investigation Committee) Rules Order of Council 2004

Rule 2 — Interpretation

72. Within the definition of 'Panel' we propose to remove the reference to 'an Interim Orders Panel' and 'or a Fitness to Practise Panel' as constitution of panels for these purposes will transfer to OHPA.

Rule 4 — Constitution of Panels

73. We propose to remove sub-paragraph (4) as this relates to the function of Fitness to Practise Panels, responsibility for which will transfer to OHPA.

The General Medical Council (Licence to Practise) Regulations Order of Council 2009

Regulation 2 — Grant or refusal of a licence

74. We propose that the wording in parentheses in sub-paragraph 1(d) '(functions of a Fitness to Practise Panel)' should be removed.

75. We propose that references to 'an Interim Orders Panel' or 'a Fitness to Practise Panel' in sub-paragraph 5 will require amendment to reflect the relevant sections of OHPA's rules which relate to Fitness to Practise Panel hearings and Interim Orders Panel hearings as these functions will transfer to OHPA.

Regulation 4 — Restoration of a licence after withdrawal

76. We propose that references to 'an Interim Orders Panel' or 'a Fitness to Practise Panel' in sub-paragraph (3) will require amendment to reflect the relevant sections of OHPA's rules which relate to Fitness to Practise Panel hearings and Interim Orders Panel hearings as these functions will transfer to OHPA.

Regulation 6 — Restoration for the purposes of section 41(7)

77. The reference in regulation 6 to 'a Fitness to Practise Panel' should be substituted with 'the Adjudicator'.

78. The explanatory notes will also require amendment to reflect the new arrangements.

The General Medical Council (Restoration following Administrative Erasure) Regulations Order of Council 2004

Regulation 2 — Interpretation

79. Reference to 'the Fitness to Practise Rules' and the associated definition will require replacing with a reference to the new OHPA rules.

80. Reference to 'FTP Panel' will be inappropriate as this function will transfer to OHPA and we propose this definition is omitted.

Regulation 4 — Restoration procedure where fitness to practise issues arise

81. We propose to substitute reference to 'a FTP Panel', 'the FTP Panel' and 'the FTP Panel's' with 'the Adjudicator' or 'the Adjudicator's' as appropriate as responsibility for the conduct of Fitness to Practise Panel and Interim Order Panel hearings will transfer to OHPA.

82. In sub-paragraph (8) we propose that reference to rule 24 Part 6 of the Fitness to Practise Rules be amended to reflect the wording of OHPA's new rules as a consequence of the proposal to omit rule 24 from the Fitness to Practise Rules.

83. In sub-paragraph (10) we propose the words 'or the FTP Panel' be removed and the word 'or' inserted between the words 'the Case Examiners' and 'the Committee'. OHPA's rules will need to make provision for them to notify the Registrar and the applicant of a decision by the Adjudicator to grant or reject a restoration application.

Regulation 6 — Transitional arrangements

84. Following transfer of the adjudication function to OHPA, the current transitional provisions will no longer be relevant and should be omitted. However, new transitional arrangements will be required to deal with applications made under the current rules but which have not been determined by the date that the new rules come into force.

The General Medical Council (Voluntary Erasure and Restoration following Voluntary Erasure) Regulations Order of Council 2004

Regulation 2 — Interpretation

85. Reference to 'the Fitness to Practise Rules' and the associated definition will require replacing with a reference to the new OHPA rules.

86. Reference to 'FTP Panel' will be inappropriate as this function will transfer to OHPA and we propose this definition is omitted.

Regulation 3 — Voluntary erasure applications

87. We propose that references to 'a FTP Panel' or 'the FTP Panel' or 'a FTP Panel under the Fitness to Practise Rules' be replaced with 'the Adjudicator' as this function will transfer to OHPA.

Regulation 5 — Restoration procedure where fitness to practice issues arise

88. We propose that references to 'a FTP Panel', 'the FTP Panel' and 'the FTP Panel's' be replaced with 'the Adjudicator' or 'the Adjudicator's' as appropriate as responsibility for the conduct of Fitness to Practise Panel and Interim Order Panel hearings will transfer to OHPA.

89. In sub-paragraph (8) we propose that reference to rule 24 Part 6 of the Fitness to Practise Rules be amended to refer to the appropriate part of OHPA's rules as a consequence of the proposal to omit rule 24 from the Fitness to Practise Rules.

Regulation 7 — Transitional arrangements

90. Following transfer of the adjudication function to OHPA these transitional provisions will no longer be relevant and should be omitted. However, new transitional arrangements will be required to deal with applications made under the current rules but which have not been determined by the date that the new rules come into force.

GMC Constitution Order 2008

Regulation 5 — Disqualification from appointment as a member

91. In sub-paragraph (j) we propose to insert the word ‘brought’ immediately after the words ‘the person’s fitness to practise’ to reflect the position that the GMC will continue to bring fitness to practise proceedings but they will be determined by OHPA.

92. In sub-paragraph (l) we are proposing to remove the words ‘Interim Orders Panels and Fitness to Practise Panels’ and insert the words ‘and the Adjudicator’ after ‘the Investigation Committee’ to reflect the new arrangements.

93. In sub-paragraph (m) insert the words ‘or the Adjudicator’ as a new category (iii) after (ii).

Regulation 6 — Removal of members from office

94. In sub-paragraph (e) we propose to insert the word ‘brought’ immediately after the words ‘the member’s fitness to practise’ to reflect the position that the GMC will continue to bring fitness to practise proceedings but they will be determined by OHPA.

95. In sub-paragraph (g) we are proposing to remove the words ‘Interim Orders Panels and Fitness to Practise Panels’ and insert the words ‘and the Adjudicator’ after ‘the Investigation Committee’.

Regulation 7 — Suspension of members from office

96. In sub-paragraph (c) we propose to insert the words ‘or the Adjudicator’ as a new category (iii) after (ii).

Form and Content of the Registers Regulations 2010

We are also proposing to make minor and consequential amendments to these regulations.