

STATUTORY INSTRUMENTS

2009 No. 000

HEALTH CARE AND ASSOCIATED PROFESSIONS

DOCTORS

**The General Medical Council (Registration Appeals Panel
Procedure) Rules Order of Council 2010**

Made - - - - 2010

Laid before Parliament []

Coming into force - - *** April 2010

At the Council Chamber, Whitehall, the [] day of [] 2010

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

Whereas, in exercise of their powers under paragraphs 2A(5) and 3(3) of Schedule 3A, and paragraph 3(1) of Schedule 3B to, the Medical Act 1983 **(1)** the General Medical Council has made the General Medical Council (Registration Appeal Panels Procedure) Rules 2010 as set out in the Schedule to this Order:

And whereas by paragraphs 2A(6) and 3(4) of Schedule 3A, and paragraph 3(5) of Schedule 3B to that Act, such Rules shall not come into force until approved by order of the Privy Council:

Now, therefore, Their Lordships, having taken these Rules into consideration, are pleased to, and do hereby approve them.

This Order may be cited as the General Medical Council (Registration Appeals Panels Procedure) Rules Order of Council 2010, and shall come into force on *** **April 2010**.

(1) 1983 c. 54. Schedule 3B was inserted by SI 2002/3135, article 11, and subsequently amended by SI 2006/1914, article 67.

SCHEDULE

THE GENERAL MEDICAL COUNCIL (REGISTRATION APPEAL PANELS PROCEDURE) RULES 2010

The General Medical Council, in exercise of their powers under paragraphs 2A(5) and 3(3) to Schedule 3A and paragraph 3(1) of Schedule 3B, to the Medical Act 1983 (a), and having consulted such bodies of persons representing medical practitioners and such medical practitioners as appeared to it requisite to be consulted pursuant to paragraph 3(8) of Schedule 3B to that Act, hereby make the following Rules:—

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1. Citation and commencement
2. Interpretation
3. Requisite periods
4. Selection of legal assessors and specialist advisers
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Citation and commencement

1. These Rules may be cited as the General Medical Council (Registration Appeal Panels Procedure) Rules 2010 and shall come into force on **1 April 2010**.

Interpretation

2. In these Rules- .

“the Act” means the Medical Act 1983 and unless the context otherwise requires, reference to a section or Schedule is to a section of or Schedule to the Act;

“appealable decision” means an appealable registration decision under paragraph 2 or 2A of Schedule 3A (registration appeals) (b) or a decision of a licensing authority under section 29F(1) (appeals) (c);

“appeal” means an appeal against an appealable decision or against the failure to notify of a decision within the requisite period pursuant to paragraph 3(2) or (3) of Schedule 3A, and references to “the appellant” shall be construed accordingly;

(a) 1983 c. 54, Schedules 3A and 3B were inserted by S.I. 2002/3135 (“the 2002 Order”). Paragraphs 2A(5) and 3(3) of Schedule 3A were inserted by S.I.2009/ .

“bundle” means the documents and information which a party is required to serve by virtue of rule 6(2) or (3) or which a party may serve by virtue of rule 6(4);

“Case Manager” means a legally qualified person appointed by the Registrar for the purposes of rule 7 or 9;

“Chair” means the Chair of the Panel;

“the Fees provisions” means rules made under article 24(5) of the General Specialist Medical Practice (Education, Training and Qualifications) Order 2003 or regulations made under section 34B(2) of the Act;

“GMC reference number” means, in relation to any individual medical practitioner, the number allocated and notified as such to that practitioner by the Registrar;

“legal assessor” means a person appointed under paragraph 7 of Schedule 4(d);

“legally qualified” in relation to any person means a person who holds a general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990, or who is an advocate or solicitor in Scotland, or a member of the Bar of Northern Ireland or a solicitor of the Court of Judicature of Northern Ireland;

“oral appeal” means an appeal considered at a hearing held in accordance with these Rules and at which the parties have the right to appear before the Panel;

“the 2010 Order” means the Postgraduate Medical Education and Training Order of Council 2010;

“Panel” means a Registration Appeals Panel constituted in accordance with rules made under paragraph 19C of Schedule 1 to the Act (registration appeals panels)(e);

“panellist” means a member of the Panel;

“party” means the appellant or the General Council (or their representatives), and references to “the parties” shall be construed accordingly;

“the Presenting Officer” means the representative of the General Council instructed by the Registrar to present the case on behalf of the General Council at any hearing before a Panel, and may include a solicitor or counsel;

“regulatory body” shall be construed in accordance with section 35C(9) (functions of the investigation committee);

“specialist adviser” means a person appointed by the Registrar under rule 4(1) for the purposes of advising a Panel in relation to issues relevant to the determination of the appeal; and

“written appeal” means an appeal considered on the papers at a meeting held in the absence of the parties.

Requisite periods

3. –

(1) For the purposes of paragraph 3(3) of Schedule 3A, the requisite period shall, subject to paragraph (2), be -

- (a) three months from receipt of an application for inclusion in the General Practitioner Register on the basis of eligibility by virtue of article 4(4) of the 2010 Order, or for inclusion in the Specialist Register on the basis of eligibility by virtue of article 8(3) or (4) of the 2010 Order; or

b) Schedule 3A was inserted by article 8 of the 2002 Order.

(c) Section 29F(1) was inserted by article 10 of the 2002 Order.

(d) Schedule 4 was substituted by article 14 of the 2002 Order.

(e) Paragraph 19C was inserted by article 5 of the 2002 Order.

(b) four months from receipt of an application for inclusion in the General Practitioner Register on the basis of eligibility by virtue of article 5 of the 2010 Order or for inclusion in the Specialist Register on the basis of eligibility by virtue of article 9 of the 2010 Order.

(2) Where any document required for the purpose of the application is missing when the Registrar receives the application, the period in paragraph (1) begins on the day on which the Registrar first has all the documents required for those purposes.

(3) Where the Registrar has failed to notify an applicant for inclusion in the General Practitioner Register or the Specialist Register of his decision in relation to an application referred to in paragraph (1) within the requisite period prescribed in paragraph (1), that failure to notify shall give rise to a right to appeal under paragraph 4 of Schedule 3A.

Selection of specialist advisers

4. –

(1) The Registrar may appoint persons who are specialist advisers for the purposes of advising a Panel in relation to issues relevant to the determination of the appeal.

(2) Members of the General Council shall not be eligible for appointment as a specialist adviser under paragraph (1).

(3) Before the opening of any meeting or hearing before a Panel, the Registrar may select one or more specialist advisers in order to advise the Panel at the meeting or hearing.

(4) The advice of a specialist adviser shall be given or repeated in the presence of the parties in attendance at the meeting or hearing.

Notice of appeal and form of appeal

5. –

(1) The appellant shall give the Registrar notice of appeal in accordance with paragraph 4(2) of Schedule 3A, which notice shall be in writing and shall include:-

(a) the appellant's name and GMC reference number;

(b) an address to which the Registrar is able to send to the practitioner notices and documents relating to the appeal;

(c) if the appellant has a preference whether the appeal shall proceed as a written appeal or an oral appeal, a statement confirming which the appellant prefers; and

(d) any fee payable under the Fees provisions.

(2) Upon receipt of a notice of appeal under paragraph (1), the Registrar shall decide whether the appeal shall proceed as a written appeal or as an oral appeal, and in doing so shall give effect to any preference expressed by the appellant.

(3) Having reached a decision under paragraph (2) as to the form of the appeal, the Registrar may at any time, if-

(a) the Registrar considers it to be reasonable in the circumstances of the case to do so; or

(b) the appellant subsequently expresses a preference or a further preference;

reconsider the matter and reach a fresh decision, giving effect to any preference expressed by the appellant.

Exchange of documents

6. –

(1) The appellant's paginated bundle shall be served on the General Council no later than 56 days after the last date for giving notice of appeal under paragraph 4(3) or (4) of Schedule 3A.

- (2) The appellant's bundle shall include the following:-
- (a) a copy of the appealable decision against which the appeal is brought or, where the appeal is against the failure to notify of a decision, then a copy of the application to which that failure relates;
 - (b) copies of the documents on which the appellant intends to rely in support of the appeal;
 - (c) any written submissions in support of the appeal; and
 - (d) if the appeal is an oral appeal, details of the witnesses (including the practitioner) on whom the appellant intends to rely and signed witness statements setting out the substance of their evidence.
- (3) As soon as reasonably practicable after receipt of the appellant's bundle, the General Council shall serve upon the appellant a paginated bundle which shall include:-
- (a) any documents and advice considered by the person making the appealable decision;
 - (b) where a meeting or hearing was held before a Registration Panel, a copy of any transcript or note taken of those proceedings;
 - (c) the General Council's written submissions on the appeal, if any;
 - (d) if the appeal is an oral appeal, details of the witnesses on whom the General Council intends to rely and signed witness statements setting out the substance of their evidence; and
 - (e) any other documents the General Council considers may be of assistance to the Panel in determining the appeal.
- (4) Nothing in paragraphs (2) and (3) shall prevent the parties from serving supplementary bundles where evidence relevant to the appeal becomes available after service of the bundles referred to in those paragraphs.
- (5) The Registrar shall, as soon as reasonably practicable thereafter, provide the Panel with copies of the appellant's and the General Council's bundles, and any supplemental bundle served in accordance with paragraph (4).

Directions

7. –

- (1) A Case Manager or, if legally qualified, the Chair of a Panel, may give directions in advance of a meeting or hearing in order to secure the just, expeditious and effective conduct of the appeal proceedings.
- (2) Directions issued under paragraph (1) may include, but are not limited to, such of the following as the Case Manager or Chair considers appropriate, having regard to any representations made by the parties:-
- (a) that each party serve on the other party and the Panel:-
 - (i) details of any witnesses on whom the party intends to rely and signed witness statements setting out the substance of their evidence,
 - (i) any documentary evidence in the party's possession or power relating to the appeal, and
 - (iii) skeleton arguments;
 - (b) that each party provide an estimate as to the likely length of the hearing and the date or dates on which they propose that the hearing should take place;
 - (c) that each party indicates, so far as is practicable -
 - (i) which facts or evidence are admitted and which facts or evidence remain in dispute,
 - (ii) whether any challenge is to be made as to the authenticity of any document supplied by the other party, and

- (iii) whether any preliminary legal arguments are to be made; and
- (d) time limits for compliance with any of the directions listed above.
- (3) The Case Manager or Chair shall serve on the parties and the Panel a record of any directions issued by him.

Notice of meeting or hearing

8. –

- (1) The Registrar shall, in accordance with paragraph (2), serve notice on the parties and the Panel, as soon as reasonably practicable following receipt of a notice of appeal and no later than 28 days before the date of the meeting or hearing at which the appeal is to be determined.
- (2) The notice shall:-
 - (a) specify whether the appeal is to proceed as a written appeal or as an oral appeal;
 - (b) specify the date, time and venue of the meeting or hearing;
 - (c) identify the persons selected to act as Chair of, and panellists on, the Panel considering and determining the appeal;
 - (d) inform the parties of the Panel's powers of disposal under paragraph 4(8) of Schedule 3A or paragraph 5 of Schedule 3B (powers of Registration Appeals Panels disposing of an appeal), as appropriate; and
 - (e) if the appeal is an oral appeal:-
 - (i) inform the appellant of their right to attend the hearing and to be represented at it in accordance with rule 12,
 - (ii) inform the appellant of the power of the Panel to proceed in their absence under rule 13, and
 - (iii) inform the appellant of their right to adduce evidence in accordance with rule 14.
- (3) Following service of a notice under paragraph (1), the Registrar may serve further notice altering the precise time and venue of the meeting or hearing no less than seven days before the date appointed for the meeting or hearing.

Withdrawal, strike out and postponement

9. –

- (1) An appellant may, on written application to the Registrar, withdraw his appeal at any time before it is determined.
- (2) Once an appellant has withdrawn his appeal a renewed application to appeal may not be made in respect of the same decision.
- (3) A Case Manager or, if legally qualified, the Chair of a Panel may, on application by the General Council or of their own motion:-
 - (a) strike out an appeal for want of prosecution; or
 - (b) make an order that an appeal will be struck out if specified steps are not taken within a specified time period, and may, on the expiry of such time period, strike out the appeal accordingly.
- (4) The appellant may within three months from the date of an order striking out his appeal under paragraph (3), by application in writing to the Registrar, request that their appeal be reinstated and the Case Manager or Chair may order that the appeal is reinstated accordingly.
- (5) Before the opening of any meeting or hearing of which notice has been served under rule 8, a Case Manager or, if legally qualified, the Chair of the Panel may, of their own

motion or upon the application of a party to the proceedings, postpone the meeting or hearing until such date and time as they think fit.

(6) Where a meeting or hearing has been postponed, the Registrar shall, as soon as practicable, notify the parties of the time, date and place at which the meeting or hearing is to take place or to resume.

(7) No appeal shall be struck out or meeting or hearing postponed under this Rule unless all parties have been given a reasonable opportunity to make representations on the matter.

Procedure before the Panel

10. –

(1) Subject to paragraphs (2) to (5), the Panel shall determine its own procedure when considering an appeal, and may give such directions regarding the conduct of the proceedings as it considers just.

(2) When considering an oral appeal:-

(a) the Panel shall hear and consider any preliminary legal arguments;

(b) the Chair of the Panel shall:-

(i) where the appellant is present, require the appellant to confirm their name and, where appropriate, their GMC reference number, or

(ii) otherwise, require the Presenting Officer to confirm the appellant's name and, where appropriate, the appellant's GMC reference number;

(c) the parties may address the Panel regarding the appeal and direct the Panel to any relevant evidence;

(d) where the Panel decides to receive oral evidence, witnesses shall be required to take an oath or to affirm, and:-

(i) shall first be examined by the party calling them,

(ii) may then be cross-examined by the opposing party,

(iii) may then be re-examined by the party calling them, and

(iv) may at any time be questioned by the Panel;

(e) the Panel may at any time receive further evidence and hear further submissions from the parties; and

(3) The Panel may at any time, whether of its own motion or upon the application of a party, adjourn the proceedings until such time and date as it thinks fit.

(4) The Panel may request clarification, further information or reports from either party or from any other person in respect of any matter which in its opinion is relevant to the appeal and any such information shall be served upon the parties who shall be given a reasonable opportunity to comment thereon.

(5) The Panel shall consider its decision on the appeal and shall deliver its decision and the reasons for its decision as soon as reasonably practicable.

Costs orders

11. –

(1) The Panel may, of its own motion or upon the application of a party to the proceedings:-

(a) order that a party should pay all of the other party's reasonable costs of the appeal, or such part of the other party's reasonable costs of the appeal as may be specified in the order;

(b) determine the amount of costs to be paid under such order; and

(c) determine the period within which any such costs must be paid.

(2) Where:-

(a) a party is seeking or intends to seek an order for payment of its costs, it shall serve upon the other party a schedule of costs no less than 24 hours before the meeting or hearing.

(b) the Panel otherwise determine to make an order for costs, it may require the receiving party to serve a schedule of costs upon the other party.

(3) When determining whether to make an order for costs, the Panel shall take into account:-

(a) any evidence adduced or submissions made by the parties in relation to the matters for consideration under paragraph (1); and

(b) any schedule of costs served in accordance with paragraph (2).

(4) The Panel shall consider its decision regarding any order for costs under this Rule and then deliver that decision and the reasons for that decision as soon as reasonably practicable.

Representation

12. –

(1) At a hearing, the appellant may be represented by —

(a) a solicitor or counsel;

(b) a representative from any professional organisation of which he is a member; or

(c) at the discretion of the Panel, a member of his family or other person.

(2) A person who gives evidence at a hearing shall not be entitled to represent or accompany the appellant at that hearing.

Absence of the appellant

13. –

Where the appellant is neither present nor represented at a hearing, the Panel may nevertheless proceed to consider and determine the appeal if it is satisfied that all reasonable efforts have been made to serve the appellant with notice of the hearing in accordance with these Rules.

Evidence

14. –

(1) Subject to paragraphs (2) and (3), the Panel may admit any evidence which they consider fair and relevant to the appeal, whether or not such evidence would be admissible in a court of law.

(2) No person shall give oral evidence at the hearing unless the Panel considers such evidence is desirable to enable it to discharge its functions.

(3) Production of a certificate purporting to be under the hand of a competent officer of a Court in the United Kingdom or overseas that a person has been convicted of a criminal offence or, in Scotland, an extract conviction, shall be conclusive evidence of the offence committed.

(4) Production of a certificate signed by an officer of a regulatory body that has made a determination about the fitness to practise of a person shall be conclusive evidence of the facts found proved in relation to that determination.

(5) The only evidence which may be adduced by the appellant in rebuttal of a conviction or determination certified in the manner specified in paragraph (3) or (4) is evidence for the purposes of proving that he is not the person referred to in the certificate or extract.

(6) The appellant may admit a fact or description of a fact, and a fact or description of a fact so admitted may be treated as proved.

(7) A copy of a document of which the original is admissible may be received by the Panel without strict proof.

Voting

15. –

(1) Decisions of the Panel shall be taken by simple majority.

(2) No member of the Panel may abstain from voting.

(3) Where the votes are equal, the Chair of the Panel shall have a casting vote.

Public and private hearings

16. –

(1) Subject to paragraphs (2), (3) and (4), the Panel, when considering an oral appeal, shall sit in public.

(2) The Panel shall deliberate in the absence of the parties.

(3) The Panel may of its own volition or upon the application of any witness or any of the parties, exclude the public from any part of the proceedings provided it is satisfied that—

(a) a decision to exclude the public causes no prejudice to the appellant;

(b) the particular circumstances of the case outweigh the public interest in holding a public hearing; and

(c) the decision is made after hearing representations from the parties.

(4) The Panel may exclude from the whole or part of any hearing, any person whose conduct, in its opinion, has disrupted or is likely to disrupt proceedings.

Notice of determination and publication

17. –

(1) As soon as reasonably practicable after an appeal has been determined, the Registrar shall serve notice upon the parties, which shall include:-

(a) a copy of the decision of the Panel and the reasons for the Panel's decision; and

(b) where the Panel has dismissed the appeal, information regarding the appellant's right to appeal against the Panel's decision under paragraph 5 of Schedule 3A.

(2) Any party to the proceedings shall, on application to the Registrar, be furnished with a copy of the record of any part of the proceedings at which he was entitled to be present, with the exception of any deliberations of the Panel which took place in camera.

(3) Any enquirer shall, on application to the Registrar, be entitled to a copy of the decision of the Panel and the reasons for the Panel's decision, with the exception of confidential matters concerning the physical or mental health of any person.

Service of notices and documents

18. –

(1) Any notice required to be given to the appellant under rule 8 or 17 shall be served in accordance with paragraph 6 of Schedule 3A.

(2) Subject to paragraph (1), any notice or document required to be served upon the appellant under these Rules may be served—

(a) by ordinary post; or

(b) by electronic mail to an electronic mail address that the appellant has notified to the Registrar as an address for communications.

- (3) If the appellant is represented by—
- (a) a solicitor, the notice or document may also be—
 - (i) sent or delivered to the solicitor’s practising address, or
 - (ii) sent by electronic mail to an electronic mail address of the solicitor; or
 - (b) a trade union or defence organisation, the notice or document may also be—
 - (i) sent or delivered to the trade union or defence organisation’s business address;
or
 - (ii) sent by electronic mail to an electronic mail address of the trade union or defence organisation, where the address has been notified to the Registrar as an address for communications.
- (4) The service of any notice or document under these Rules may be proved by—
- (a) a confirmation of posting issued by or on behalf of the Post Office, or other postal operator or delivery service;
 - (b) a confirmation of receipt of the notice or document sent by electronic mail; or
 - (c) a signed statement from any person serving the notice or document confirming that the notice or document was delivered to, sent to or left at—
 - (i) the appellant’s proper address;
 - (ii) the practising address or electronic mail address of the practitioner’s solicitor;
or
 - (iii) the business address or electronic mail address of the practitioner’s trade union or defence organisation.

Correction of errors

19. –

- (1) The Chair of the Panel may, at any time within the period of 28 days from the date of the Panel’s determination, correct accidental errors in the determination.
- (2) A correction made to a determination shall be deemed to be part of the determination and written notice of it shall be given, as soon as reasonably practicable, to the parties.

Revocation

20. –

The General Medical Council (Registration Appeals Panel Procedure) Rules 2005 are hereby revoked.

Given under the official seal of the General Medical Council this day of 2010.



**Peter Rubin
Chair**

Niall Dickson

Chief Executive and Registrar

EXPLANATORY NOTE

(This note is not part of the Order)