

To consider

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

Issue

1. This paper invites Council to consider, as the basis for public consultation, draft Rules and Regulations relating to the assimilation of the functions of PMETB into the GMC.

Recommendation

2. To approve, as the basis for consultation:
- a. The draft General Medical Council (Award of Certificate) Rules (paragraphs 13-17).
 - b. The draft General Medical Council (Applications for General Practice or Specialist Registration) Regulations (paragraphs 18-19).
 - c. The draft General Medical Council (Registration Appeals Panel Procedure) Rules (paragraphs 20-44).
 - d. The draft General Medical Council (Constitution of Panels and Investigation Committee (Amendment) Rules (paragraphs 45-46).

Further information

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

Background

4. Key aim two in our 2009 Business Plan is to promote and develop postgraduate medical education and training in the UK, through joint work with PMETB as the competent authority, in preparation for the merger of PMETB with the GMC. This includes putting in place all necessary preparatory work to integrate the statutory functions of PMETB into the GMC.
5. At its meeting on 8 July 2009 Council considered the terms of our response to a consultation by the Department of Health for England (DH (E)) on the draft legislation that will merge PMETB with the GMC. In effect, the draft legislation transfers the PMETB's duties and powers to the GMC by incorporating them into the Medical Act 1983 (the 1983 Act).
6. The approach taken in preparing the legislation has been that PMETB's duties and powers should be transferred to us more or less as they stand. In addition, consistent with the general approach of the 1983 Act, PMETB's duties and powers would, on transfer, be stated as far as possible as broad principles. The underpinning details would be set out in secondary legislation in the form of statutory rules and regulations, supported by guidance. This approach was necessary in order to meet the timetable for the merger. It also had the advantage of allowing legislative provisions to be updated more readily as future requirements change.
7. The DH(E) consultation closed on 28 August 2009. The consultation proposals commanded overwhelming support from respondents. The draft legislation is expected to go through the parliamentary process during the autumn.
8. In the meantime we have been working closely with PMETB and DH(E) colleagues to develop the more detailed suite of rules and regulations that will set out how our procedures will operate following the merger. This paper invites Council to consider the draft rules and regulations.

Discussion

Rules and regulations: general approach

9. Like the GMC, PMETB currently has an extensive suite of rules and regulations which govern its procedures. These range from rules about the operation of PMETB committees, rules governing standards and requirements for the award of Certificates of Completion of Training in a specialty, rules governing the approval of training, fees rules and rules dealing with appeals against PMETB decisions. In all, there are nine sets of extant rules and regulations. Most of these will cease to have effect once the merger takes place. In some cases, the functions they describe will also become obsolete. For example, the PMETB committees will cease to exist and their functions will be absorbed within our own Board structure. For this reason we will not need to replicate all of PMETB's existing rules and regulations.

10. In addition, transitional arrangements contained within the Section 60 Order which will assimilate PMETB's functions into the GMC provide that some of the rules, regulations and decisions made by PMETB will continue to apply following the merger until such time as we are ready to revisit them. For example, the standards and requirements for postgraduate education and training established by PMETB will continue to have effect following the merger as if they had been established by the GMC, and they will remain in force unless and until we set new standards and requirements. Similarly, PMETB's existing Fees Rules will remain in force until such time as the Council makes new GMC Fees Regulations. These transitional arrangements will help to ensure business continuity around the time of the merger. They also limit the number of new rules and regulations that we need to make before the merger can take place.

11. The rules and regulations that need to be made or amended are:

- a. The General Medical Council (Award of Certificates) Rules (Annex A).
- b. The General Medical Council (Application for General Practice or Specialist Registration) Regulations (Annex B).
- b. The General Medical Council (Registration Appeals Panel Procedure) Rules (Annex C).
- c. The General Medical Council (Constitution of Panels and Investigation Committee) (Amendment) Rules Order (Annex D).
- d. The GMC Form and Content of the Register Regulations.

12. As with the changes to the Act, we have tried, where possible and practicable, to incorporate PMETB's current procedures into the structures of our existing rules and regulations, while allowing flexibility for future change. This will help to ensure a measure of continuity in the short term, and give us the time and scope to understand what might be needed in the medium term once the merger has begun to bed down.

The General Medical Council (Award of Certificate) Rules (Annex A)

13. Section 34G of the 1983 Act (as amended by the Section 60 Order) deals with doctors who have an 'acquired right' to practise as a general practitioner in the UK. The term 'acquired rights' derives from the Directive on the recognition of professional qualifications (2005/36/EC). In short, it means that doctors who were once eligible to work as general practitioners do not lose their eligibility simply because the eligibility criteria have subsequently changed.

14. Under section 34G of the 1983 Act the Council is required to make rules covering the procedure to be followed and the evidence required in support of an application for a certificate confirming a doctor's acquired right to practise in the UK.

15. Section 34K of the 1983 Act (as amended) deals with the arrangements for awarding and withdrawing Certificates of Completion of Training (CCT). The Council is required to make rules covering the procedure to be followed and the evidence required in support of an application for a CCT.

16. The draft General Medical Council (Award of Certificate) Rules at Annex A cover both acquired rights certificates and CCTs. They have been prepared in collaboration with colleagues at PMETB (who currently deal with the award of these certificates) and DH(E) lawyers. They incorporate or adapt the relevant elements of PMETB's current Award of Certificate Rules. Our approach has been to use the Rules to provide the basic legal framework setting out the rights and duties of the parties. Additional detail will be set out in operational guidance.

17. Council is invited to approve the draft Rules as the basis for consultation.

Recommendation: To approve the draft General Medical Council (Award of Certificate) Rules at Annex A.

The General Medical Council (Applications for General Practice or Specialist Registration) Regulations (Annex B)

18. At present, evaluation of a doctor's eligibility for inclusion in the specialist register or the GP register 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.

19. Section 34E of the 1983 Act (as amended) requires the GMC to make regulations governing the procedure to be followed in relation to applications for inclusion in the GP register and the specialist register. As with the other rules and regulations discussed in this paper, the draft regulations at Annex B provide the legal framework of rights and duties required by the Act. They set out the evidence required in support of applications, the time limits to be complied with, the basis upon which applications are determined and the notification of decisions. They draw upon the essential elements of the relevant PMETB rules. Further operational detail will be provided in separate guidance.

Recommendation: To approve the draft General Medical Council (Applications for General Practice or Specialist Registration) Regulations.

The General Medical Council (Registration Appeals Panel Procedure) Rules (Annex C)

20. The 1983 Act already provides for Registration Appeals Panels (RAPs) to consider appeals by doctors against certain types of registration decision taken by the GMC. The appealable registration decisions are specified in the Act, and the GMC (Registration Appeal Panels Procedure) Rules set out the arrangements for hearing such appeals.

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

22. Following the merger, PMETB type appeals will be considered by our RAPs in accordance with our Registration Appeal Panels Procedure Rules. The grounds for appeal will be listed in the 1983 Act (as amended). For the most part, these replicate the existing grounds of appeal to PMETB Appeals Panels.

23. The current statutory provisions governing GMC and PMETB appeals are broadly similar. There are, however, some important differences in the type of cases that come before the GMC and PMETB, and in the way they are managed by the different organisations at an operational level. Although it is important to ensure overall consistency and coherence in the way that RAPs will, in future, approach all cases, it would be imprudent simply to shoe-horn all PMETB type appeals into the existing GMC approach. We therefore need to amend our existing RAP rules to give us a measure of flexibility. In the short term this will help to ease the assimilation of unfamiliar work into the GMC. It will also give us the opportunity to gain experience of different approaches and take properly informed decisions about the best way forward in the longer term.

24. The principal changes to the existing Rules are set out below.

Rule 3: Requisite periods

25. The Section 60 Order provides for the GMC to make rules governing the periods within which certain decisions must be made on an application. Failure by the GMC to make a decision within the 'requisite period' shall itself be treated as an appealable decision. The requisite periods set out in regulation 3 mirror our existing obligations under the Act and Directive 2005/36/EC.

Rule 4: Selection of specialist advisers

26. Rule 4 is a new provision which enables the appointment of persons with relevant knowledge or experience as specialist advisers to assist an RAP in determining an appeal. This mirrors an equivalent provision in the current PMETB Appeals Rules.

Rule 5: Notice of appeal and form of appeal

27. GMC registration appeals are currently all dealt with through hearings at which the appellant is entitled to be present. By contrast, PMETB appeals may be dealt with either at a hearing or at a meeting without the parties to the appeal being present. Rule 5 imports the PMETB approach into the GMC system by providing for either approach, according to the stated preference of the appellant.

28. PMETB Rules provide for PMETB to charge a fee to cover the cost an appeal. The GMC does not currently impose a fee on appellants. The Section 60 Order makes provision for the GMC to charge fees for appeals and this will be reflected in the relevant Fees Rules. Rule 5 simply requires the appellant to pay any fee payable under the Fees Rules. Following the merger we will continue to levy a fee for those appeals that would previously have been considered by PMETB appeal processes. There will continue to be no appeal fee for the category of GMC type appeals that already fall within the remit of the RAPs. We will review the position once we have further experience of handling PMETB appeal casework.

29. Rule 5 requires appellants to give notice of their appeal within 28 days of the decision against which they wish to appeal, but they are not, at that stage, required to provide the grounds for, or evidence in support of, the appeal. This reflects the requirements of Schedule 3A of the 1983 Act. Although the period of 28 days for lodging the appeal is shorter than the three months currently permitted under the PMETB arrangements, it should be noted that PMETB appellants must also, within that period, submit relevant documents and arguments in support of the appeal or the appeal may be struck out.

Rule 6: Exchange of documents

30. Rule 6 sets out the requirements for exchanging documents once the appeal has been lodged. It provides that in addition the 28 days for lodging an appeal, the appellant has a further 56 days in which to submit relevant documentation in support of the appeal. Once the appellant's documentation has been received, the GMC must provide the appellant with documentation and submissions relating to its defence of the appeal.

Rule 7: Directions

31. One of the features of PMETB Appeal Panels is the role of the Director of Appeals and of the chairs of panels in the case management of appeals prior to, during and following the appeal meeting or hearing. PMETB's approach requires the Director of Appeals and the panel chairs to be legally qualified. The experience of PMETB colleagues is that the type and complexity of cases considered make it important to be able to have legal input of this kind in the management of cases.

32. The GMC does not currently have a Director of Appeals function. Nor do we require chairs of RAPs to be legally qualified, though a number of them are. The pre and post hearing management of cases is undertaken by our administrative staff. Legal advice during the course of a hearing is provided by an independent legal assessor.

33. Rule 7 provides for a legally qualified case manager or panel chair to carry out case management functions in order 'to secure the just, expeditious and effective conduct of the appeal proceedings'. This includes, but is not limited to, giving directions in relation to the submission of evidence and skeleton arguments, and directions relating to the agreed the facts in the case.

34. Rule 7 does not require us to use this type of case management function for every appeal. We do not propose to use it for GMC type appeals for the time being. The intention is to provide continuity in the management of PMETB type appeals in the short term, and give us the opportunity to assess the merits of both approaches before deciding on the most suitable model. For those GMC type appeals where we do not use legally qualified chairs and case managers we will continue to use legal assessors to provide legal advice at hearings.

Rule 8: Notice of meeting or hearing

35. Rule 8 requires the Registrar of the GMC to give the parties to the appeal and the RAP at least 28 days notice of the date of the meeting or hearing at which the appeal is to be considered.

Rule 9: Withdrawal, strike out and postponement

36. Rule 9 is a new provision imported from the existing PMETB appeals arrangements to assist the efficient disposal of cases. It provides for an appellant to withdraw an appeal at any time before it has been determined. It also allows a Case Manager or RAP Chair to strike out an appeal for want of prosecution or because the appellant has failed to take certain steps (for example provide relevant documents) within a specified period. No appeal can be struck out without all parties being given a 'reasonable opportunity' to make representations on the matter. If an appeal is struck out in this way, the appellant has three months in which to request that the appeal be reinstated.

Rules 10 - 14:

37. Rule 10 sets out the procedures for considering the appeal. Rule 11 deals with cost orders which allow the RAP to order that a party shall pay the other party's reasonable costs of the appeal. Rule 12 covers representation at a hearing. Rule 13 makes provision for when the appellant is neither present nor represented at a hearing. Rule 14 deals with the consideration of evidence by an RAP. These are substantially unchanged from the current appeal rules.

Rule 15: Voting

38. Rule 15 provides that decisions by RAPs shall be taken by simple majority. No member may abstain from voting. Under the current RAP rules, where the votes are equal, the Panel must decide the issue against the appellant. There is no casting vote for the Chair of the Panel. In practice, RAPs have comprised three members. The issue of a split vote has therefore not arisen.

39. Rule 15 of the amended draft Rules propose that the Chair of the Panel shall have a casting vote. This reflects the current PMETB arrangements where there are Panels of four and the Chair does have a casting vote.

40. The quorum for GMC Registration Appeal Panels (as specified in the General Medical Council (Constitution of Panels and Investigation Committee) (Amendment) Rules is currently three. We do not intend to change this. For operational purposes we will continue to constitute panels of three for GMC type cases. For PMETB cases, however, we will, for the time being, maintain PMETB current policy of having panels of four (but with a quorum of three). The practical effect of this is that the possibility of a split vote requiring the Chair to exercise a casting vote will only arise in PMETB cases. This approach will enable us to maintain the continuity of PMETB's current arrangements during transition period immediately following the merger. It will also give us the opportunity to take a view on our preferred approach in the light of experience of both systems.

Rule 16: Public and private hearings

41. GMC RAPs are required by the 1983 Act to sit in public 'unless and to the extent that the rules provide otherwise'. PMETB oral appeals are also heard in public, but written appeals are in private. In future, the default position is that all oral appeals will be heard in public, but written appeals will be in private.

Rule 17: Notice of determination and publication

42. Rule 17 makes provision for the notification of RAP decisions and the reasons for decisions, as well as notification of an appellant's further rights of appeal to the county court. It also provides for parties to the appeal to be furnished with a record of proceedings.

Rule 18: Service of notices and documents

43. Rules 18 deals with the requirements for serving notices and documents to the appellant.

Rule 19: Correction of errors

44. This is a new rule imported from the PMETB's procedures. It allows the Chair of a Panel to correct 'accidental errors' in the determination of the Panel at any time up to 28 days after the determination. These would be minor errors which are not material to the substance of the determination.

Recommendation: To approve the draft General Medical Council (Registration Appeals Panel Procedure) Rules.

The General Medical Council (Constitution of Panels and Investigation Committee)(Amendment) Rules (Annex D)

45. These Rules describe the way which GMC committees and panels must be constituted.

46. Paragraphs 29 –32 above discuss our proposals to allow for legally qualified persons to chair RAPs when PMETB type appeals are being considered. Our proposed amendments to the Constitution of Panels and Investigation Committee Rules will provide for this.

Recommendation: To approve the draft General Medical Council (Constitution of Panels and Investigation Committee) (Amendment) Rules.

The GMC Form and Content of the Register Regulations.

47. The Form and Content of the Register Regulations describe the form in which the register is to be kept and the information it contains.

48. The Section 60 Order will amend the 1983 Act so as to provide for the GP Register to distinguish between different categories of persons who are eligible to be included in that register by virtue of their acquired rights. As a result, we need to make a minor amendment to the Form and Content of the Register Regulations. The nature of the amendment is not such that we need to consult before making the change. Council will, in due course, be asked formally to make the amended regulations. We will bring the duly amended regulations to Council to approve, when we have completed our consultation on the other rules and regulations discussed in this paper. Council will then be invited to approve the full suite of rules and regulations in one go.

Next steps

49. Subject to any comments from members on the draft rules and regulations annexed to this paper, we will consult publicly on our proposals between the end of October 2009 and January 2010. This is slightly shorter than the three month consultation period we would normally undertake. However, we are mindful that the key policy issues underpinning the rules and regulations have already been the subject of a DH(E) consultation in relation to the Section 60 Order. The rules and regulations simply give operational effect to those principles.

50. Following the consultation, Council will be invited to make the rules and regulations. The precise timing of this will depend upon the passage of the Section 60 Order through Parliament, since we will not have the power to make the rules and regulations until the Section 60 process is complete. The rules and regulations will then be submitted to the Privy Council for approval with a view to them coming into force in April 2010.

Resource implications

51. The consultation will be managed in-house using the e-consultation facility on our website. The principal stakeholders will be alerted. There are no significant resource implications.

Equality

52. An impact assessment was undertaken by DH(E) as part of its Section 60 consultation process. We will use the questions in our consultation on the rules and regulations to identify any further issues that may arise.