

2014 No. XXX

HEALTH CARE AND ASSOCIATED PROFESSIONS

DOCTORS

**The General Medical Council (Fitness to Practise) (Amendment)
Rules Order of Council 2014**

Made - - - - - *** 2014

Laid before Parliament *** 2014

Coming into force - - - *** 2014

At the Council Chamber, Whitehall the *** day of *** 2014

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

The General Medical Council has made the General Medical Council (Fitness to Practise) (Amendment) Rules 2014 which are set out in the Schedule to this Order, in exercise of the powers conferred by section 35CC(1) of, and paragraphs 1(1), (2) and (2A), 5A(1), (2), (3), (3A) and 5C(1) of Schedule 4 to, the Medical Act 1983(a).

The General Medical Council has consulted with such bodies of persons representing medical practitioners, and medical practitioners of any description, as appeared to the General Medical Council requisite to be consulted in accordance with paragraph 1(6), 5A(9) and 5C(9) of Schedule 4 to that Act.

By virtue of paragraph 1(7), 5A(9) and 5C(9) of Schedule 4 to that Act such Rules shall not come into force until approved by Order of the Privy Council.

Citation and commencement

1. This Order may be cited as the General Medical Council (Fitness to Practise) (Amendment) Rules Order of Council 2014 and comes into force on *** 2014.

Privy Council approval

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

(a) 1983 c.54. Section 35CC was inserted, and paragraphs 1 and 5A of Schedule 4 was substituted, by S.I. 2002/3135. Paragraph 5C of Schedule 4 was inserted by SI 2014/xxx.

SCHEDULE

Article 2

The General Medical Council (Fitness to Practise) (Amendment) Rules 2014

These Rules are made by the General Medical Council in exercise of the powers conferred by section 35CC(1) of, and paragraphs 1(1), (2) and (2A), 5A(1), (2), (3), (3A) and 5C(1) of Schedule 4 to, the Medical Act 1983.

The General Medical Council has consulted with such bodies of persons representing medical practitioners, and medical practitioners of any description, as appeared to the General Medical Council requisite to be consulted in accordance with paragraph 1(6), 5A(9) and 5C(9) of Schedule 4 to that Act.

Citation, commencement and interpretation

3.—(1) These Rules may be cited as the General Medical Council (Fitness to Practise) (Amendment) Rules 2014 and come into force on 25 June 2014.

(2) In these Rules, “the Fitness to Practise Rules” means the General Medical Council (Fitness to Practise) Rules 2004(a).

Amendments to the Fitness to Practise Rules

4.—(1) The Fitness to Practise Rules are amended as follows.

(2) In rule 2 (interpretation), after the definition of “application”, insert—

““assessment of knowledge of English” means an assessment which is designed to evaluate whether the practitioner has the necessary knowledge of English;”.

(3) In rule 7 (investigation of allegations)—

(a) after paragraph (3), insert—

“(3A) The Registrar may direct that the practitioner undertake an assessment of knowledge of English in accordance with Schedule 3.”;

(b) for paragraph (6), substitute—

“(6) Where the Registrar receives information that—

(a) the practitioner has failed to submit to, or comply with, an assessment under Schedule 1 or 2;

(b) having submitted to an assessment under Schedule 1, the practitioner has failed to comply with reasonable requirements imposed by the Assessment Team; or

(c) the practitioner has failed to undertake an assessment of knowledge of English in accordance with Schedule 3 or has undertaken such an assessment but has failed to provide the information requested in accordance with that Schedule,

the Registrar may—

(i) refer the allegation for determination by a FTP Panel,

(a) Scheduled to S.I. 2004/2608, which has been amended by S.I. 2007/3101, S.I. 2007/3168, S.I. 2008/1256, S.I. 2009/1182, S.I. 2009/1913 and S.I. 2013/815.

- (ii) in a case falling within sub-paragraph (b), refer the practitioner to a FTP Panel for the purposes of making a direction under paragraph 5A(3) of Schedule 4 to the Act, or
- (iii) in a case falling within sub-paragraph (c), refer the practitioner to a FTP Panel for the purposes of making a direction, if they think fit, under paragraph 5C(4) of Schedule 4 to the Act.”.

(4) In rule 10 (undertakings), in paragraph (6) after “Schedule 1 or 2” insert “or directing that the practitioner undertake an assessment of knowledge of English in accordance with Schedule 3”.

(5) In rule 11 (warnings), in paragraph (7), in sub-paragraph (d), after “Schedule 1 or 2” insert “or an assessment of knowledge of English in accordance with Schedule 3”.

(6) In rule 13A (investigation following referral), after “Schedule 1 or 2” insert “or directing that the practitioner undertake an assessment of knowledge of English in accordance with Schedule 3”.

(7) In rule 17 (procedure before a FTP Panel)—

(a) in paragraph (4)—

(i) in sub-paragraph (a), omit “or”,

(ii) in sub-paragraph (b), at the end, insert “or”, and

(iii) after sub-paragraph (b) insert—

“(c) that the practitioner undertakes an assessment of knowledge of English in accordance with Schedule 3.”;

(b) in paragraph (5), after “paragraph 4(b)” insert “or (c)”;

(c) after paragraph (7) insert—

“(7A)Where a practitioner has been referred under rule 7(6)(iii) for failure to undertake an assessment of knowledge of English, or for failure to provide the information requested in respect of that assessment the FTP Panel may dispose of the case, where it considers it appropriate to do so, by suspending the practitioner’s name from the register or imposing conditions on his registration in accordance with paragraph 5C(4) of Schedule 4 to the Act.”; and

(d) for paragraph (8), substitute—

“(8) Subject to paragraph (7) and (7A), where a practitioner has failed to submit to, or comply with, an assessment under Schedule 1 or 2, or has failed to undertake an assessment under Schedule 3 or has failed to provide the information requested in respect of that assessment, and—

(a) there is credible evidence before the FTP Panel that the practitioner’s fitness to practise is impaired,

(b) a reasonable request has been made by the Registrar to the practitioner that he undertake, submit to, or comply with the assessment, or provide information in accordance with Schedule 3 (as the case may be), and

(c) no reasonable excuse for such failure has been provided by the practitioner,

the FTP Panel may take such failure into account in determining the question of whether the practitioner’s fitness to practise is impaired.”.

(8) In rule 19 (functions of registrar)—

(a) in paragraph (a), omit “and”;

(b) in paragraph (b), at the end, insert “or”; and

(c) after sub-paragraph (b) insert—

“(c) direct that the applicant undertake an assessment of knowledge of English in accordance with Schedule 3.”.

(9) In rule 23 (action on receipt of a restoration application), in paragraph (1)—

(a) in sub-paragraph (a), omit “and”;

(b) in sub-paragraph (b), at the end, insert “or”; and

(c) after sub-paragraph (b) insert—

“(c) direct that the applicant undertake an assessment of knowledge of English in accordance with Schedule 3.”.

(10) In rule 24 (procedure at a restoration hearing), in paragraph (2), in sub-paragraph (g) after “Schedule 1 or 2” insert “or undertake an assessment of knowledge of English in accordance with Schedule 3”.

(11) In rule 37A (panel undertakings), in paragraph (1), after “Schedule 1 or 2” insert “or directing that the practitioner undertake an assessment of knowledge of English in accordance with Schedule 3”.

(12) In Schedule 1 (performance assessments)—

(a) after paragraph 1 insert—

“**1A.** In this Schedule a reference to the standard of the practitioner’s professional performance includes the standard of the practitioner’s knowledge of English, in particular, whether the practitioner has the necessary knowledge of English.”;

(b) after sub-paragraph (2) of paragraph 3 insert—

“(2A) For the purposes of assessing the standard of a practitioner’s professional performance, the Assessment Team may direct, in accordance with the provisions set out in Schedule 3, a practitioner to undertake an assessment of knowledge of English.”;

(c) after sub-paragraph (4) insert—

“(5) Where the practitioner has undertaken an assessment of knowledge of English following a direction under these Rules the results of the assessment must be included in the report referred to under sub-paragraph (4).”.

(13) After Schedule 2 (health assessments) insert—

“SCHEDULE 3

KNOWLEDGE OF ENGLISH ASSESSMENTS

1. The Registrar, Assessment Team or FTP Panel (as the case may be) may direct the practitioner to—

(a) undertake an assessment of knowledge of English and;

(b) to provide information in respect of that assessment as specified in the direction.

2. Where a direction is made under paragraph 1, the Registrar, Assessment Team or FTP Panel (as the case may be), must without delay serve a notice on the practitioner—

(a) requiring the practitioner to undertake an assessment of knowledge of English within such period as shall be specified in the notice, which period shall be no shorter than 30 days, and no longer than 90 days, beginning with the date of the notice, and

(b) specifying any information which the practitioner is required to provide in respect of that assessment.

3. Where a practitioner has undertaken an assessment under this Schedule and informed the relevant person of the information requested under paragraph 2(b), the Registrar, Assessment Team or FTP Panel (as the case may be) may make a request to the relevant person for disclosure of that information.

4. Where a request is made under paragraph 3 the relevant person shall disclose the information requested to the person making the request.

5. In this Schedule “relevant person” means the Registrar, Assessment Team or FTP Panel (as the case may be).”

Given under the official seal of the General Medical Council this 30th day of April 2014.

Peter Rubin
Chair

Niall Dickson
Chief Executive and Registrar

EXPLANATORY NOTE

(This note is not part of the Order)

This Order approves the Rules set out in the Schedule to it which amend the General Medical Council (Fitness to Practise) Rules 2004 (scheduled to S.I. 2004/2608) (“the 2004 Rules”).

Rule 2(3)(a) amends rule 7 of the 2004 Rules, enabling the Registrar to direct that a person undertakes an assessment of knowledge of English at the initial investigation stage where an allegation has been referred to Case Examiners.

Rule 2(3)(b) also amends rule 7 of the 2004 Rules, enabling the Registrar to refer a case to the Fitness to Practise Panel (FTP Panel) where a person has: failed to submit to a performance assessment, or having submitted to the assessment has failed to comply with the reasonable requests of the Assessment Team; failed to submit to a health assessment; or failed to submit to a language assessment.

Rule 2(4) amends rule 10 of the 2004 Rules, enabling the Registrar to direct a person to undertake an assessment of knowledge of English which the Registrar considers appropriate to the consideration of whether the practitioner has complied with any undertaking agreed in accordance with that rule.

Rule 2(5) amends rule 11 of the 2004 Rules, enabling the Investigation Committee to direct that a practitioner undertake an assessment of knowledge of English before determining whether a warning should be given to the practitioner following an allegation of impairment.

Rule 2(6) amends rule 13A of the 2004 Rules, enabling the Registrar to direct a person to undertake an assessment of knowledge of English after an allegation has been referred to the FTP Panel.

Rule 2(7)(a) amends rule 17 of the 2004 Rules, enabling the FTP Panel to direct a practitioner to undertake an assessment of knowledge of English before making a determination that a practitioner's fitness to practise is impaired.

Rule 2(7)(c) also amends rule 17 of the 2004 Rules, enabling the FTP Panel to suspend the practitioner's name from the register, or impose conditions on registration, where the practitioner has failed to comply with a direction by the Registrar to undertake an assessment of knowledge of English, or has failed to provide information requested in respect of that assessment.

Rule 2(7)(d) further amends rule 17 of the 2004 Rules, enabling the FTP Panel to take account of the fact that a practitioner has failed to submit to, or comply with, a performance, health or language assessment in determining whether a practitioner's fitness to practise is impaired.

Rule 2(8) amends rule 19 of the 2004 Rules, enabling the Registrar, prior to a review hearing, to direct that the practitioner undertake an assessment of knowledge of English.

Rule 2(9) amends rule 23 of the 2004 Rules, enabling the Registrar, upon receipt of an application for restoration made under section 41 of the Medical Act 1983, to direct that the applicant undertake an assessment of knowledge of English.

Rule 2(10) amends rule 24 of the 2004 Rules, enabling the FTP Panel to direct a practitioner to undertake an assessment of knowledge of English before making a determination whether to grant or refuse an application for restoration.

Rule 2(11) amends rule 37A of the 2004 Rules, enabling the Registrar to direct a person to undertake an assessment of knowledge of English which the Registrar considers appropriate to the consideration of whether the practitioner has complied with any undertaking agreed at a FTP Panel hearing or a review hearing.

Rule 2(12) amends Schedule 1 to the 2004 Rules, enabling the assessment of knowledge of English to be included as part of the professional performance assessments under that Schedule.

Rule 2 (13) inserts Schedule 3 into the 2004 Rules which makes provision for the process to be followed regarding assessments of knowledge of English.