

2013 No. 815

HEALTH CARE AND ASSOCIATED PROFESSIONS

DOCTORS

**The General Medical Council (Fitness to Practise and
Constitution of Panels and Investigation Committee)
(Amendment) Rules Order of Council 2013**

<i>Made</i> - - - -	7th April 2013
<i>Laid before Parliament</i>	10th April 2013
<i>Coming into force</i> - -	8th May 2013

At the Council Chamber, Whitehall, the 7th day of April 2013

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

The General Medical Council has made the General Medical Council (Fitness to Practise and Constitution of Panels and Investigation Committee) (Amendment) Rules 2013 which are set out in the Schedule to this Order, in exercise of the powers conferred by section 35CC(1) of, paragraphs 19A to 19E and 23B of Schedule 1 to, and paragraph 1 of Schedule 4 to, the Medical Act 1983(a).

In accordance with paragraph 1(6) of Schedule 4 to that Act, the General Medical Council has consulted with such bodies of persons representing medical practitioners, and such medical practitioners, as appeared to the General Medical Council requisite to be consulted.

By virtue of paragraph 24 of Schedule 1 and paragraph 1(7) of Schedule 4 to that Act such Rules shall not have effect 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 and Constitution of Panels and Investigation Committee) (Amendment) Rules Order of Council 2013 and comes into force on 8th May 2013.

(a) 1983 c. 54. Section 35CC and paragraphs 19A to 19E, 23B and 24 of Schedule 1 were inserted, and paragraph 1 of Schedule 4 was substituted, by S.I. 2002/3135. Section 35CC was amended by S.I. 2008/3131, paragraph 19B of Schedule 1 was amended by S.I. 2006/1914 and paragraph 1 of Schedule 4 was amended by S.I. 2006/1914.

Privy Council approval

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

Richard Tilbrook
Clerk of the Privy Council

SCHEDULE

The General Medical Council (Fitness to Practise and Constitution of Panels and Investigation Committee) (Amendment) Rules 2013

These Rules are made by the General Medical Council in exercise of the powers conferred by section 35CC(1) of, paragraphs 19A to 19E and 23B of Schedule 1 to, and paragraph 1 of Schedule 4 to, the Medical Act 1983.

In accordance with paragraph 1(6) of Schedule 4 to that Act, the General Medical Council has consulted with such bodies of persons representing medical practitioners, and such medical practitioners, as appeared to the General Medical Council requisite to be consulted.

Citation, commencement and interpretation

1.—(1) These Rules may be cited as the General Medical Council (Fitness to Practise and Constitution of Panels and Investigation Committee) (Amendment) Rules 2013 and come into force on 8th May 2013.

(2) In these Rules—

“the Fitness to Practise Rules” means the General Medical Council (Fitness to Practise) Rules 2004(a); and

“the Constitution of Panels and Investigation Committee Rules” means the General Medical Council (Constitution of Panels and Investigation Committee) Rules 2004(b).

Amendments to the Fitness to Practise Rules

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

(2) In rule 2 (interpretation), in the definition of “Case Manager”, after “rule 16” insert “and 29(1)”.

(3) In rule 4 (initial consideration and referral of allegations)—

(a) in paragraph (2), for “paragraph (5)” substitute “paragraphs (3) to (5)”;

(b) after paragraph (2), insert—

“(2A) Where the Registrar considers that an allegation does not fall within section 35C(2) of the Act the Registrar must notify the maker of the allegation (if any) accordingly.”; and

(c) in paragraph (3), omit sub-paragraph (a).

(4) In rule 11 (warnings)—

(a) in paragraph (7), for paragraphs (a) and (b) substitute—

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

(b) Scheduled to S.I. 2004/2611, which has been amended by S.I. 2005/402, S.I. 2009/2751 and S.I. 2010/474.

- “(a) the Presenting Officer must outline the allegation and the facts upon which it is based and may adduce any relevant—
 - (i) documentary evidence, or
 - (ii) where the Committee considers such evidence is necessary to enable it to discharge its functions under paragraph (6), oral evidence; and
 - (b) the practitioner may respond to the allegation and may adduce any relevant—
 - (i) documentary evidence, or
 - (ii) where the Committee considers such evidence is necessary to enable it to discharge its functions under paragraph (6), oral evidence;”.
- (5) In rule 16(6) (case management)—
 - (a) for paragraph (f) substitute—
 - “(f) that a witness is to give evidence-in-chief by way of oral evidence;” and
 - (b) after paragraph (f), insert—
 - “(fa)that two or more allegations against the same practitioner or more than one practitioner are listed for consideration and determination together by the Panel in accordance with rule 32;
 - (fb) where the parties agree, that the oral evidence of a witness is to be given by means of a video link or a telephone link;”.
- (6) In rule 17(2) (procedure before a FTP Panel)—
 - (a) for paragraph (c) substitute—
 - “(c) the Chair of the FTP Panel must enquire whether the Presenting Officer wishes to amend the particulars of the allegation, and if the Presenting Officer so wishes the FTP Panel must consider whether to amend the particulars under paragraph (3);” and
 - (b) for paragraph (g) substitute—
 - “(g) the practitioner may make submissions as to whether sufficient evidence has been adduced to find some or all of the facts proved and whether the hearing should proceed no further as a result, and the FTP Panel must consider any such submissions and announce its decision as to whether they should be upheld;”.
- (7) For rule 26(2)(a) (notice of hearing) substitute—
 - “(a) inform the practitioner of the allegation and the facts upon which it is based;
 - (aa) specify the date, time and venue of the hearing;
 - (ab) inform the practitioner of the practitioner’s right to appear before the Interim Orders Panel and be heard, and to be represented in accordance with rule 33;”.
- (8) In rule 28 (cancellation of a hearing)—
 - (a) in paragraphs (1) and (2), for “a member of the Committee” substitute “a medical or a lay Case Examiner”; and
 - (b) in paragraph (3)—
 - (i) for “person making the decision” substitute “Case Examiner”, and
 - (ii) in sub-paragraph (c), for “by the Case Examiners in accordance with rule 10 or 11” substitute “by a medical and a lay Case Examiner under rule 10 or 11”.
- (9) In rule 29 (postponements and adjournments) —
 - (a) for paragraph (1) substitute—
 - “(1) Before the opening of any hearing of which notice has been served on the practitioner in accordance with these rules—
 - (a) in the case of a Committee hearing, a member of the Committee may, of the member’s own motion or upon the application of a party to the proceedings, postpone the hearing until such time and date as the member thinks fit; or

- (b) in the case of a Panel hearing, the Case Manager may, of the Case Manager’s own motion or upon the application of a party to the proceedings, postpone the hearing until such time and date as the Case Manager thinks fit.”; and
- (b) after paragraph (4), insert—

“(5) Where, on the resumption of an adjourned Committee or Panel hearing, a panellist will not be present who was present prior to the adjournment or a panellist will be present who was not present prior to the adjournment, the Committee or Panel (as the case may be) may, having taken into account any representations made by or on behalf of the parties, issue such directions as they consider necessary in the interests of justice about the following—

- (a) the stage at which the hearing is to be resumed; and
- (b) any special procedure which must be followed (including varying an existing direction or the order of proceedings under these Rules).”.

- (10) For rule 30 (preliminary legal arguments) substitute—

“Preliminary legal arguments

30. Where the Committee or a Panel considers and determines any preliminary legal argument, such determination is to bind any subsequent Committee or Panel considering the case notwithstanding that any panellist present at the original hearing is not present at the subsequent hearing, or that any panellist present at the subsequent hearing was not present at the original hearing, unless the subsequent Committee or Panel considers that—

- (a) there has been a material change in circumstances and that it is in the interests of justice to reconsider the matter; or
- (b) it is otherwise in the interests of justice to do so.”.

- (11) In rule 32 (joinder), after “The Committee or Panel may”, insert “, after having regard to any relevant directions given by a Case Manager,”.

- (12) In rule 34 (evidence)—

- (a) in paragraph (1), omit “Subject to paragraph (2),”;
- (b) omit paragraph (2);
- (c) in paragraph (9)—
 - (i) in sub-paragraph (a), at the end, insert “and”,
 - (ii) in sub-paragraph (b), omit “and”, and
 - (iii) omit sub-paragraph (c);
- (d) after paragraph (9), insert—

“(9A) Within 14 days of a list or document being provided under paragraph (9), the party to whom it is provided (“the receiving party”) must notify the other party if the receiving party requires any relevant person to attend to give oral evidence or to be available for cross-examination in relation to the subject matter of or making of any document.

(9B) Where a document that is the subject of a notification under paragraph (9A) is a witness statement and the receiving party intends to apply to the Committee or Panel under paragraph (11)(c) for the witness concerned to give evidence-in-chief by way of oral evidence, the notification must include a notice to that effect and give reasons for the intended application.”;

- (e) in paragraph (10)—
 - (i) for “(9)(c)” substitute “(9A)”, and
 - (ii) after oral evidence, in the first place where it appears, insert “in relation to the subject matter of or making of a document other than a signed witness statement containing a statement of truth”;
- (f) for paragraph (11) substitute—

“(11) A Committee or Panel must receive into evidence a signed witness statement containing a statement of truth as the evidence-in-chief of the witness concerned, unless—

- (a) the parties have agreed;
- (b) a Case Manager has directed; or
- (c) the Committee or Panel decides, upon the application of a party or of its own motion,

that the witness concerned is to give evidence-in-chief by way of oral evidence;”;

(g) for paragraph (12) substitute—

“(12) The standard of proof in any proceedings before the Committee or a FTP Panel is that applicable to civil proceedings.”; and

(h) after paragraph (12), insert—

“(13) A party may, at any time during a hearing, make an application to the Committee or Panel for the oral evidence of a witness to be given by means of a video link or a telephone link.

(14) When considering whether to grant an application by a party under paragraph (13), the Committee or Panel must—

- (a) give the other party an opportunity to make representations;
- (b) have regard to—
 - (i) any agreement between the parties, or
 - (ii) in the case of a Panel hearing, any relevant direction given by a Case Manager; and
- (c) only grant the application if the Committee or Panel consider that it is in the interests of justice to do so.”.

(13) In rule 35(2) (witnesses)—

- (a) in sub-paragraph (a), at the beginning, insert “if giving oral evidence-in-chief;”;
- (b) in sub-paragraphs (b) and (c), omit “then”.

(14) For rule 37 (record of decisions of the Committee or Panel) substitute—

“Record of decisions of the Committee or Panel

37. The Committee or Panel must—

- (a) record in writing their decision and the reasons for their decision; and
- (b) provide a copy of the decision and reasons to the Registrar.”.

Amendments to the Constitution of Panels and Investigation Committee Rules

3.—(1) The Constitution of Panels and Investigation Committee Rules are amended as follows.

(2) In rule 2 (interpretation)—

(a) in the appropriate place, insert—

““the Act” means the Medical Act 1983;”;

(b) in the definition of “panellist”, after “Panel”, insert “, a Registration Panel”.

(3) In rule 4 (constitution of panels), for paragraph (4) substitute—

“(4) Nothing in paragraph (3) is to prevent—

- (a) a panellist who sat on a Fitness to Practise Panel in proceedings relating to the fitness to practise of any person from acting as a panellist on a subsequent Fitness to Practise Panel—

- (i) in proceedings in which the Panel is to determine whether or not to make a direction under section 35D(5), (6), (8), (10) or (12) of the Act relating to that person, or
 - (ii) in proceedings relating to an application for restoration of that person's name to the register;
 - (b) a panellist who sat on an Interim Orders Panel in proceedings relating to a person from acting as a panellist on a subsequent Interim Orders Panel in proceedings in which the Panel is to review an order under section 41A(2) or (9) of the Act^(a) in respect of that person; or
 - (c) a person who acted as Case Manager in accordance with Rule 16 of the General Medical Council (Fitness to Practise) Rules 2004 in any proceedings from acting as Chair of the Panel at the substantive hearing in the same proceedings.”
- (4) For rule 6 (quorum) substitute—

“Quorum

6. The quorum of a Panel, a Registration Panel or the Committee is to be three panellists, including the Chair, of whom—

- (a) at least one must be a medical panellist; and
- (b) at least one must be a lay panellist.”

Saving provisions

4.—(1) The amendments made by rule 2(4) do not apply to proceedings before the Investigation Committee where the Presenting Officer begins to outline the allegation and facts in accordance with rule 11(7) of the Fitness to Practise Rules less than 28 days after the coming into force of these Rules.

(2) The amendments made by rule 2(12) do not apply to proceedings before the Investigation Committee where the Presenting Officer begins to outline the allegation and facts in accordance with rule 11(7) of the Fitness to Practise Rules less than 56 days after the coming into force of these Rules.

(3) The amendments made by rule 2(12) do not apply to proceedings before a Panel (within the meaning of rule 2 of the Fitness to Practise Rules) where the hearing has commenced less than 56 days after the coming into force of these Rules.

Given under the official seal of the General Medical Council this 19th day of March 2013



Peter Rubin
Chair

Niall Dickson
Chief Executive and Registrar

(a) Section 41A was substituted by S.I. 2002/3135 and amended by S.I. 2006/1914.

EXPLANATORY NOTE

(This note is not part of the Order)

The Rules scheduled to this Order amend the General Medical Council (Fitness to Practise) Rules 2004 (scheduled to S.I. 2004/2608) (“the Fitness to Practise Rules”) and the General Medical Council (Constitution of Panels and Investigation Committee) Rules 2004 (scheduled to S.I. 2004/2611) (“the Constitution Rules”).

Rule 2 amends the Fitness to Practise Rules.

Paragraphs (2) and (9)(a) make provision for the postponing of fitness to practise hearings under rule 29 of the Fitness to Practise Rules by a Case Manager appointed under rule 16.

Paragraph (3) amends rule 4 of the Fitness to Practise Rules to remove the requirement to notify a practitioner when a complaint is closed on the ground that it does not raise a question of impairment under section 35C(2) of the Medical Act 1983(a).

Paragraph (4) amends rule 11(7) of the Fitness to Practise Rules to provide that documentary evidence may be admitted before the Investigation Committee (“the Committee”) without a requirement for the Committee to consider whether such evidence is desirable to enable it to discharge its functions. It makes a further change so that oral evidence shall not be admitted unless the Committee considers that such evidence is necessary to enable it to discharge its functions.

Paragraphs (5)(a), (12)(c) to (f) and (13) make amendments to introduce a presumption that a witness statement shall stand as a witness’ evidence-in-chief. The amendment to rule 34(11) requires the Committee or a Fitness to Practise or Interim Orders Panel (“a Panel”) to accept witness statements as evidence-in-chief unless the parties agree, a Case Manager directs, or the Committee or Panel decide otherwise. Rule 16 is amended to introduce an express power for a Case Manager to issue a direction to permit evidence-in-chief by way of oral evidence. Amendment is made to rule 34(9), and a new rule 34(9A) and (9B) introduced, to provide that notice must be given where a party intends to apply to the Committee or Panel for a witness to give evidence-in-chief orally.

Paragraphs (5)(b) and (11) make express provision in rule 16(6)(f) permitting a Case Manager to issue a direction for two or more allegations against one or more practitioners to be listed for consideration together at the same hearing, and that any such direction shall be taken into account by the Committee or Panel when considering the exercise of their power of joinder under rule 32.

Paragraph (6) amends the procedure before a Fitness to Practise Panel set out in rule 17 of the Fitness to Practise Rules. Paragraph (6)(a) removes the requirement, at the start of a hearing, for the particulars of the allegation against the practitioner to be read out, and introduces a requirement for the Chair of the panel to ask if the Presenting Officer wishes to apply for the particulars to be amended, and to consider any such application accordingly. Paragraph (6)(b) amends rule 17(2)(g) to provide that the practitioner may make submissions after the Council has presented its evidence that there is insufficient evidence to find some or all of the facts proved and that the hearing should proceed no further as a result.

Paragraph (7) amends the formal requirements for notices of hearing before an Interim Orders Panel in rule 26(2)(a). The requirement to particularise the allegation and the facts upon which it is based is substituted with a requirement to inform the practitioner of the allegation and the facts upon which it is based.

Paragraph (8) amends the procedure for cancellation of fitness to practise hearings in rule 28 to provide that cancellation decisions are to be made by a Case Examiner in place of a member of the Committee.

(a) 1983 c. 54. Section 35C(2) was substituted by S.I. 2002/3135.

Paragraph (9)(b) amends rule 29 to provide that, on the resumption of an adjourned Committee or Panel hearing, if a panellist will not be present who was present prior to the adjournment or a panellist will be present who was not present prior to the adjournment, the Committee or Panel (as the case may be) may issue such directions as they consider necessary in the interests of justice about: the stage at which the hearing is to be resumed; and any special procedure which must be followed (including varying an existing direction or the order of proceedings under these Rules).

Paragraph (10) amends rule 30 which provides that determinations in respect of preliminary legal arguments are binding on subsequent panels considering the case subject to a proviso. The proviso for circumstances in which the subsequent panel considers, on legal advice, that the preliminary legal issue has been wrongly decided is substituted with a proviso that reconsideration of the issue can take place in circumstances in which the Committee or Panel consider that there has been a material change in circumstances and it is in the interest of justice to do so, or where it is otherwise in the interests of justice to do so.

Paragraph (12)(a) and (b) removes the rule in rule 34(2) which prohibits a Committee or Panel from admitting evidence which would not be admissible in criminal proceedings in England unless the Committee or Panel are satisfied that their duty of making due inquiry into the case before them makes its admission desirable.

Paragraph (12)(h) makes provision for applications to a Committee or Panel for oral evidence to be given by means of video link or telephone link.

Paragraph (14) removes the requirement for the secretary to a Committee or Panel to record and publish the panel's decision, and places the obligation on the panel to record the decision itself. Section 35B(4) of the Medical Act 1983(a) makes provision regarding publication of the decision.

Rule 3 amends the Constitution Rules.

Paragraph (3) makes provision enabling panellists to sit on review hearings before a Fitness to Practise Panel or Interim Orders Panel or restoration hearings, or to act both as a Case Manager and panellist in a case, notwithstanding the provisions of rule 4(3) of the Constitution Rules which provides that no panellist shall sit on the substantive hearing of a case which the panellist has previously considered or adjudicated on in another capacity.

Paragraph (4) amends the provisions in rule 6 relating to quorum to clarify that a quorum of a Panel or the Committee is to be three panellists, including the Chair, of whom at least one must be a medical panellist and at least one must be a lay panellist.

Rule 4 makes saving provisions in relation to the amendments made by rule 2(4) and (12).

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(a) Section 35B(4) was substituted by S.I. 2006/1914.

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