

Consultation on draft amendments to rules:

- The GPhC (Statutory Committees and their Advisers) Rules 2010;
- The GPhC (Fitness to Practise and Disqualification etc.) Rules 2010; and
- The GPhC (Registration) Rules 2010

19 April 2012 to 12 July 2012

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Consultation on draft amendments to rules

Introduction and overview

- i. The General Pharmaceutical Council (GPhC) has been the regulator for pharmacists, pharmacy technicians and registered pharmacies since September 2010. We aim to take a proportionate approach to delivering on our regulatory responsibilities, focusing on outcomes and standards. Alongside this, we continue to look at how we can work more efficiently, while maintaining the quality of outcomes that the public and pharmacy professionals have a right to expect.
- ii. With these aims in mind, we are proposing changes to the rules governing our statutory committees, the advisers to those committees, our fitness to practise proceedings, and the evidence of identity we require as part of our registration process. The changes are intended to give more flexibility, to enable us to respond to workload, and to provide clarity on some points, based on our operational experience to date.
- iii. The proposed amendments would affect:
 - The General Pharmaceutical Council (Statutory Committees and their Advisers) Rules 2010 (S.I. 2010/1616)
<http://www.legislation.gov.uk/uksi/2010/1616/contents/made>
 - The General Pharmaceutical Council (Fitness to Practise and Disqualification etc.) Rules 2010 (S.I. 2010/1615)
<http://www.legislation.gov.uk/uksi/2010/1615/contents/made>
 - The General Pharmaceutical Council (Registration) Rules 2010 (S.I. 2010/1617)
<http://www.legislation.gov.uk/uksi/2010/1617/contents/made>.
- iv. The GPhC's statutory committees are established under the Pharmacy Order 2010 to undertake aspects of our regulatory functions. They are the Investigating Committee, the Fitness to Practise Committee and the Appeals Committee.
- v. We would very much like to hear from those with information and views, to test our thinking and to make sure we understand the impact of the proposed changes. Please let us know your thoughts about any or all of the proposals described in this consultation document.
- vi. The consultation will run for 12 weeks and close on 12 July 2012. During this time we would welcome feedback from individuals and organisations. We will send this document to a range of stakeholder organisations, including professional representative bodies and employers.

- vii. Further copies of this document are available to download from our website (www.pharmacyregulation.org/getinvolved/consultations/currentconsultation/index.aspx) or you can contact us if you would like us to send you a copy of the document in an alternative format (for example in a larger font or in an alternative language).

1. How to respond to this consultation

- 1.1 You can respond to this consultation in a number of ways:

Online, by going to our website

<http://www.pharmacyregulation.org/getinvolved/consultations/currentconsultations/index.aspx>

By email, by completing the form at the end of the document and sending it to consultations@pharmacyregulation.org

By post, sending it to:

Draft Amendments to Rules consultation, Consultation Response, Governance Team, General Pharmaceutical Council, 129 Lambeth Road, London, SE1 7BT.

Responses must be received by **12 July 2012**.

Comments on the consultation process itself

- 1.2 If you have concerns or comments that you would like to make relating specifically to the consultation process itself, please send them to:

Email feedback@pharmacyregulation.org

or

Address Draft Amendments to Rules consultation process, Governance team, General Pharmaceutical Council, 129 Lambeth Road, London SE1 7BT

Please do not send consultation responses to this address.

Report of this consultation

- 1.3 Once the consultation period is completed, we will analyse the responses we receive and the Council will take these into account when making its decisions. We will also publish a summary of the responses we receive, including a list of respondents and explanation of the decisions we have taken. This will be available on our website, www.pharmacyregulation.org.

2. Background

- 2.1 The General Pharmaceutical Council (GPhC) is the regulator for pharmacists, pharmacy technicians and registered pharmacy premises in Great Britain. It is our job to protect, promote and maintain the health, safety and well-being of members of the public, and in particular those members of the public who use or need the services of pharmacy professionals or the services provided at a registered pharmacy.
- 2.2 Our principal functions include:
- ◆ approving qualifications for pharmacists and pharmacy technicians and accrediting education and training providers
 - ◆ maintaining a register of pharmacists, pharmacy technicians and pharmacy premises
 - ◆ setting standards for conduct, ethics, proficiency, education and training, and continuing professional development (CPD)
 - ◆ establishing and promoting standards for the safe and effective practice of pharmacy at registered pharmacies
 - ◆ establishing fitness to practise requirements and monitoring pharmacy professionals' fitness to practise
 - ◆ dealing fairly and proportionately with complaints and concerns.
- 2.3 We aim to ensure that regulation is fair and proportionate – in line with the level of risk posed to public health, safety and wellbeing – and not over-burdensome. We want it to be flexible enough to respond to the changing demands made of the profession and to allow for innovation at the same time as maintaining high-quality practice.
- 2.4 The GPhC's main governing legislation is the Pharmacy Order 2010 (S.I. 2010/231). More detailed provisions relating to our regulatory functions are set out in statutory instruments called 'rules'. The GPhC's rules are made under the Pharmacy Order 2010.
- 2.5 For further information on the work of the GPhC, please visit www.pharmacyregulation.org.

3. Amendments to the GPhC Statutory Committees and their Advisers Rules

- 3.1 The amendments proposed in this section would affect The General Pharmaceutical Council (Statutory Committees and their Advisers) Rules 2010 (S.I. 2010/1616) <http://www.legislation.gov.uk/ukSI/2010/1616/contents/made>. References to specific rules refer to the GPhC Statutory Committees and their Advisers Rules 2010.

Size of statutory committees

- 3.2 The GPhC has three statutory committees:

Investigating Committee – this committee considers allegations that a registrant’s fitness to practise is impaired and decides whether to refer the case to the Fitness to Practise Committee for a full inquiry. The Investigating Committee also considers whether the GPhC should institute criminal proceedings under any of its enforcement powers.

Fitness to Practise Committee - this committee makes decisions in cases where a registrant's fitness to practise may be impaired, for reasons concerning their conduct, performance or health. The Fitness to Practise Committee also considers allegations that a pharmacy owner should be disqualified and that premises should be removed from the register of pharmacy premises.

Appeals Committee – this committee considers appeals against decisions relating to registration or to approval of education providers, as listed in article 39 of the Pharmacy Order 2010.

- 3.3 We propose to amend the rules (rule 3) to allow us to adjust the size of our statutory committees if required, within set limits. This should give us more flexibility to respond to workload and help to avoid any difficulties in listing cases due to the unavailability of panellists. We would nevertheless ensure that the number of lay members of a committee was at least equal to the number of registrant members.
- 3.4 We are proposing generous maximum sizes for the statutory committees: 14 members of the Investigating Committee (currently 10); 60 members of the Fitness to Practise Committee (currently 40), and 20 members of the Appeals Committee (currently 12). We do not envisage increasing the committees to their maximum size straightaway but this should allow us to recruit additional committee members if necessary to meet future needs, without needing to first change the rules. The minimum proposed sizes for the committees would be low, again to provide flexibility to respond to workload: six members of the Investigating Committee, 12 members of the Fitness to Practise Committee, and six members of the Appeals Committee. The actual size of each statutory committee would be determined from time to time by the Appointments Committee (see paras 3.20-3.21).

- 3.5 In the case of the Fitness to Practise Committee and the Appeals Committee, the committee would constitute a pool from which members would be drawn to make up panels for hearings (see proposed changes to rule 18, paras 3.34-3.38).
- 3.6 In the case of the Investigating Committee, this does not hold hearings with panels and there is no statutory power for the committee chair to determine the quorum for a particular meeting. However, by virtue of rule 18(1), the quorum of the Investigating Committee is three members. This means that it would be possible to run more than one Investigating Committee at once, if necessary.

Question 1

Do you agree with the proposal to set minimum and maximum sizes of the statutory committees?

Investigating Committee and Fitness to Practise Committee functions

- 3.7 We propose removing the current requirement for the Investigating Committee to make an annual report to the Council (rule 4). We believe this would reduce duplication of effort, as this report can be regarded in essence as a sub-set of the fitness to practise report which is incorporated in the GPhC's annual report under Sch 1, para 8(1)(b) of the Pharmacy Order 2010. This means that the flow of information would not be lost; instead, reporting on the Investigating Committee's functions would be through the main fitness to practise report and through the regular coverage of fitness to practise functions in the performance monitoring reports considered at Council meetings. This would allow the Council, and other interested parties, to look at the fitness to practise process as a whole rather than looking at the Investigating Committee in isolation. It would also bring the GPhC's arrangements more in line with those of other health professions regulators. Learning points arising from the Investigating Committee's work are covered by the committee raising feedback points or issues which are considered and responded to by staff within the fitness to practise function.

Question 2

Do you agree with the proposal to remove the requirement for a separate Investigating Committee report to the Council?

- 3.8 Rules 4(1)(e) & (2) currently give the Investigating Committee the function of determining whether the GPhC should institute criminal proceedings relating to criminal conduct allegations or disqualification allegations under Part 4 of the Medicines Act 1968 (relating to registered pharmacy premises). Before determining whether the GPhC should bring criminal proceedings, the Investigating Committee must be satisfied that there is a real prospect of securing a conviction and that it is in the public interest to bring the proceedings.

- 3.9 We propose revising these provisions to say that the Investigating Committee should determine whether to notify the Registrar that the Council should consider exercising any of its powers to bring criminal proceedings. The Registrar would then apply the tests of whether there was a real prospect of securing a conviction and whether it would be in the public interest to bring the proceedings, in the light of the committee's advice and in accordance with the Council's prosecution policy.
- 3.10 The Pharmacy Order (Sch 1, para 3(2)(b)) gives the Council power to 'institute criminal prosecutions under any enactment'. The Order also creates a number of offences eg. obstructing an inspector (art 12), failure to comply with an improvement notice (art 14(1)), and offences relating to the register such as making a false representation as to being a registrant (art 38). Proceedings under article 38 may be begun within six months of the time when sufficient evidence to justify a prosecution came to the Council's knowledge (or, in Scotland, within six months of when sufficient evidence to justify a prosecution came to the prosecutor's knowledge) provided that no proceedings are begun after the expiry of two years from the date of commission of the offence. Consistent with the GPhC's values and regulatory principles, we aim to select the most proportionate and cost-effective approach to addressing problems. In the case of criminal matters within our remit this usually means seeking alternatives to prosecution, such as securing voluntary compliance or using fitness to practise proceedings. However, exceptions to this general approach are possible and prosecution will be considered when appropriate.
- 3.11 Under art 52(1), when we have an allegation that a registrant's fitness to practise is impaired, the Registrar must, except in such instances as the Council states in rules, refer the matter to the Investigating Committee. The Investigating Committee must then decide whether the allegation should be considered by the Fitness to Practise Committee (art 53(1)). The Investigating Committee must also notify the Registrar if it considers that the Council should consider exercising any of its powers to bring criminal proceedings (art 53(4)). Similarly, if a case is referred to the Fitness to Practise Committee and that committee considers that the Council should consider exercising any of its powers to bring criminal proceedings, it must notify the Registrar (art 54(9)). So, under the Pharmacy Order, either the Investigating Committee or Fitness to Practise Committee may consider an allegation that a registrant's fitness to practise is impaired and must notify the Registrar if they consider that the Council should consider bringing criminal proceedings under any enactment.
- 3.12 The Council has delegated power to the Registrar to make decisions on conducting proceedings brought by the GPhC, and on instituting criminal prosecutions under any enactment. The Registrar must exercise these powers in a way which is consistent with relevant legislation and with the Council's policies. The Registrar would therefore make any decision as to whether criminal proceedings should be instituted, in line with the Council's prosecution policy. This includes applying the 'real prospect' and 'public interest' tests set down by the Crown Prosecution Service, within the GPhC context.
- 3.13 When we look at the Statutory Committees & their Advisers Rules, however, the situation becomes more complicated. The rules give the Investigating Committee the

functions of determining whether the GPhC should institute criminal proceedings relating to criminal conduct allegations or disqualification allegations but the committee must not exercise these functions unless it is satisfied that there is a real prospect of securing a conviction and that it is in the public interest to bring the proceedings. There is no equivalent requirement for the Fitness to Practise Committee to apply these tests before notifying the Registrar.

- 3.14 It seems an unnecessary duplication for the Investigating Committee to apply the same two-stage test as the Registrar would apply when determining whether criminal proceedings should be instituted, hence the proposed rule change. The Registrar would have the option of seeking any additional input required when making this decision, including external legal advice. This arrangement would minimise delay by avoiding duplication and by allowing these tests to be applied at any time, without the need to wait for a committee meeting – a relevant consideration, given that there is a statutory time limit on the institution of criminal proceedings under the Pharmacy Order.

Question 3

Do you agree with the proposal to remove the requirement for the Investigating Committee to determine whether the GPhC should consider instituting criminal proceedings, after the committee has applied the ‘real prospect’ and ‘public interest’ tests?

- 3.15 We are proposing some further amendments to ensure a clearer separation of functions between the Council and the statutory committees and to increase consistency between the GPhC’s rules and those of other regulators.
- 3.16 Under rule 4(1)(b), the Investigating Committee itself currently determines the criteria relating to the types of cases that should be referred from the Investigating Committee to the Fitness to Practise Committee. The fitness to practise system is based on a proper separation between those who set the policy framework (ie. the Council) and those who apply those policies to individual cases (ie. the statutory committees). In line with this separation, it would seem that the Council, as the regulatory body, is best placed to provide guidance on the criteria for referral of cases from the Investigating Committee to the Fitness to Practise Committee, rather than the committee agreeing these itself. This would be in keeping with the Council’s overall responsibilities and accountability. It would facilitate the discharge of one of the Council’s principal functions under art 4(3)(f) of the Pharmacy Order ie. ensuring the continued fitness to practise of registrants, as well as promoting the safe and effective practice of pharmacy by registrants (art 4(3)(d)). It would also be consistent with arrangements in other health professions regulators. The Investigating Committee and the Fitness to Practise Committee would each have a statutory function of advising the Council on its guidance on the referral criteria, so as to ensure that the committees’ experience can inform the guidance.
- 3.17 This would entail a consequential amendment to rule 9(3)(a) of the Fitness to Practise & Disqualification Rules – see para 4.2.

Question 4

Do you agree that the Council should provide guidance on the criteria for referral of cases from the Investigating Committee to the Fitness to Practise Committee?

Question 5

Do you agree that both committees should advise the Council on the content of guidance on the criteria for referral of cases from the Investigating Committee to the Fitness to Practise Committee?

- 3.18 The Fitness to Practise Committee itself currently agrees the indicative sanctions guidance that it applies (rule 5(d)). In line with the proposal above, we think it would be more appropriate, and more consistent with arrangements in other health professions regulators, for the Council to provide guidance about the sanctions that particular classes of cases should attract, to inform the Fitness to Practise Committee's approach to decisions.
- 3.19 There would be no adverse impact on transparency, since the Council would publish its guidance and would use evidence from the GPhC's cases and cases concerning other regulators to inform the development of the guidance. In addition, the Fitness to Practise Committee would have a statutory function of advising the Council on the content of the guidance.

Question 6

Do you agree that the Council should provide guidance to inform the Fitness to Practise Committee's approach to decisions on sanctions?

Question 7

Do you agree that the Fitness to Practise Committee should advise the Council on the content of guidance to inform the committee's approach to decisions on sanctions?

Appointments Committee functions

- 3.20 The GPhC has an Appointments Committee which has responsibility for the recruitment, appointment and performance review of statutory committee members. Although the Appointments Committee is a non-statutory committee, it has functions which are specified in the rules. No Council members serve on the Appointments Committee.
- 3.21 We propose amending the rules to allow us to adjust the size of our statutory committees, within set limits, so that we can respond to workload (see paras 3.2-3.6).

In line with this change, the Appointments Committee would determine the size of each statutory committee, within the limits stated in the rules.

Question 8

Do you agree that the Appointments Committee should determine the size of each statutory committee, within the limits stated in the rules?

Common membership of Appeals and Fitness to Practise Committees

3.22 The rules (rule 8(2)) state that no member of a statutory committee may be appointed to another statutory committee. We propose amending the rules to allow some common membership of the Appeals Committee and the Fitness to Practise Committee. The Appeals Committee receives few cases, meaning that members of this committee may find it more difficult than others to maintain and develop their skills. This could be mitigated by having some common membership of the Appeals Committee and Fitness to Practise Committee, bearing in mind the degree of commonality in the skills and knowledge required in these committees. Both committees may need to consider issues relating to whether a person's fitness to practise is currently impaired, and therefore need to be up to date with case law in this area. Both committees also need skills in assessing evidence and coming to reasoned decisions. There would be no common membership of the Investigating and Fitness to Practise Committees: this is prohibited by the Pharmacy Order (Sch 1, para 5(4)(b)), whereas the Order does not prohibit Appeals Committee members from also being members of the Fitness to Practise Committee. Also, we are not seeking common membership of the Investigating and Appeals Committees, as the commonality in the skills and knowledge required is not as great between these two committees.

3.23 The provisions in rules of other health professions regulators suggest that having common membership of the Appeals Committee and Fitness to Practise Committee would be workable. In fact, it would seem unusual to have rules forbidding such common membership. We would of course have to be careful to avoid any conflicts of interest arising from common membership by ensuring that a panellist assigned to an appeals case had not been involved in the case as a fitness to practise panellist. Given the small number of cases involved, this would seem manageable.

Question 9

Do you agree with the proposal to allow some common membership of the Appeals Committee and the Fitness to Practise Committee?

Cautions

3.24 The rules (rule 8(3)(f)) refer to whether a person has received a 'formal caution' for a criminal offence. The Parliamentary Joint Committee on Statutory Instruments has advised that this should simply refer to a 'caution'. We propose to make this change.

Competencies for members and procedure for suspension or removal

- 3.25 We propose removing the current specification (rules 9(1) & (3)) that the Appointments Committee should advise the Council on the minimum competencies for statutory committee members. The intention is to increase flexibility as to how the competencies are developed, while retaining the requirement for the Council to determine such competencies (rule 9(2)). In practice, it is envisaged that the executive will develop draft proposals for statutory committee chair, deputy chair and member competencies in consultation with the Appointments Committee, for the Council's approval but this would not be specified in the rules, so as to allow for any future changes.
- 3.26 Similarly, we propose removing the requirement (rule 14(5)) that the procedure for suspension and removal of statutory committee members should be drafted by the Appointments Committee and, once approved, be set out in writing by the Appointments Committee. We would retain the requirement for the Council to approve the procedure and the requirement that, once the procedure is approved, a copy must be given to every statutory committee member and person on the reserve list. Again, this is to provide greater flexibility. In practice, we would envisage this procedure being developed with input from the Appointments Committee and, once approved, being distributed to statutory committee members and those on the reserve list by the office.

Question 10

Do you agree that the rules should provide flexibility about how the competencies for statutory committee members and the procedure for suspension and removal are developed, while retaining the requirement for the Council to determine these matters?

Statutory committee members' terms of office

- 3.27 We propose rewording rule 11(1) to specify that the term of office of statutory committee members would be up to four years. The current wording provides only for a term of exactly four years, which is too inflexible. We are not seeking to change the provision that a member of a committee may serve for up to eight years in total, during any 20 year period (rule 11(2)) but simply to provide more flexibility in the term for which a member is appointed.
- 3.28 At present, if a member wants to serve for less than four years, they can only do so by resigning before the end of their term. It is also possible that the Appointments Committee might want to appoint someone for a shorter term. For example, if a member had already served a four year term, they might be reappointed for a further two year term, so as to strike a balance between retaining experience and bringing in new members. If, at the end of that two year term, they wished to continue, they could potentially be offered another two year term, bringing them up to the maximum of eight years served.

Question 11

Do you agree with the proposal to provide more flexibility in statutory committee members' terms of office?

Reserve lists

- 3.29 If we advertise for statutory committee members and find that we have more appointable applicants than we have vacancies, those people who were considered appointable but were not actually appointed are asked if they would like to join a reserve list. This means that, if a committee member resigns, we can appoint someone from the reserve list without going through a separate recruitment process, so it is cost-effective.
- 3.30 We propose replacing the current provision for separate lists of reserve chairs, deputy chairs and members (rule 13(1)) with a power to maintain a single reserve list which may include persons who are considered appointable to serve as a chair, deputy chair or member of a statutory committee. Keeping a single list should provide greater flexibility when filling vacancies as some people may be appointable to more than one position. However, persons on the reserve list would not actually be appointed to more than one committee unless it was to provide common membership of the Appeals Committee and Fitness to Practise Committee (see paras 3.22-3.33).
- 3.31 We do not intend to have any reserve chairs of the Fitness to Practise Committee. This Committee would have up to eight deputy chairs so, if the position of chair was vacant, we anticipate that the Appointments Committee would appoint a chair from among the deputies or by open recruitment.

Question 12

Do you agree with the proposal to have a single reserve list for the statutory committees?

Secretaries to statutory committees

- 3.32 We propose removing the requirement that 'No person acting as secretary to the Investigating Committee may act as secretary to the Fitness to Practise Committee' (rule 17(3)), so that any member of the statutory committees secretariat may act as secretary to any committee as required, allowing us to work more efficiently.
- 3.33 We are conscious that there may be concerns about the potential for a committee's arrangements to be influenced inappropriately if the person acting as secretary to the Fitness to Practise Committee has also acted as secretary to the Investigating Committee at an earlier stage in a case. The secretary's role is to provide a professional secretariat service to the committee but not to have any substantive role in the disposal of cases. As set out in rules 17(4) and (7), the secretary is responsible for the administrative arrangements relating to a committee's proceedings but may not

participate in the committee's decision-making and is not entitled to vote. The secretary must, in consultation with the committee chair, select advisers to advise a committee in any particular case (rule 17(5)) but this, again, is an administrative process of finding the advisers with the most relevant skills and knowledge from amongst those available. Nevertheless, to allay concerns, we propose stipulating that anyone who acts as secretary to the Investigating Committee in relation to a fitness to practise allegation must not act as secretary to the Fitness to Practise Committee in any proceedings in connection with that allegation.

Question 13

Do you agree with the proposal to allow members of the statutory committees secretariat to act as secretary to any committee as required, provided that anyone who acts as secretary to the Investigating Committee in relation to a fitness to practise allegation must not act as secretary to the Fitness to Practise Committee in any proceedings in connection with that allegation?

Composition of committees at particular meetings or hearings

- 3.34 We propose that the chair of the Appeals Committee should be able to determine, subject to certain requirements, the size and composition of a particular committee tasked with hearing a certain case or cases. This would be analogous to the existing role of the chair of the Fitness to Practise Committee (rule 18(2)), and arises from our proposal to set maximum sizes for the statutory committees (see paras 3.2-3.6).
- 3.35 This change would allow the chair of the Appeals Committee to determine the particular size and composition of the panel for a hearing, provided that:
- the chair or the deputy chair of the committee was one of the members;
 - the quorum was not less than three; and
 - the number of registrant members did not exceed the number of lay members by more than one.
- 3.36 The standard quorum for any of the statutory committees is three (rule 18(1)), unless the chair determines a different quorum for a particular meeting or hearing. The panel will usually comprise three members. However there may be exceptional circumstances (which, being exceptional, cannot be defined) where it may be appropriate to have more than three panel members. These arrangements should provide flexibility when needed, while ensuring that we do not use larger panels unnecessarily.
- 3.37 In the case of the Investigating Committee, this does not hold hearings with panels and there is no statutory power for the chair to determine the quorum for a particular meeting. However, by virtue of rule 18(1), the quorum of the Investigating Committee is three members.

- 3.38 As part of these changes, we propose rewording rule 18(6) such that it no longer refers to 'measures' under article 56 of the Pharmacy Order (Interim orders) but uses other terms. This is not intended to alter the effect of rule 18(6) but simply to avoid confusion with measures under article 60 of the Pharmacy Order (Interim measures pending a direction taking effect).

Question 14

Do you agree that the chair of the Appeals Committee should be able to determine the size and composition of a committee tasked with hearing a certain case or cases?

Requirement for legal adviser

- 3.39 Currently, the rules oblige the Investigating Committee to have a legal adviser present at all meetings where a decision is to be taken as to whether or not to refer a case to the Fitness to Practise Committee, or to notify the Registrar that the GPhC should consider exercising any of its powers to bring criminal proceedings (rule 21(1)).
- 3.40 This means that the Investigating Committee must have a legal adviser present even when the committee chair is legally-qualified, potentially creating unnecessary expense. By contrast, a non-legally qualified chair of the Fitness to Practise Committee (for example, sitting on a principal hearing) has a choice of whether the Fitness to Practise Committee is assisted by a legal adviser. We propose to amend the rules such that the chair of any statutory committee, whether or not legally-qualified, has the option of having a legal adviser present.
- 3.41 It may be argued that a legal adviser fulfils a different role from that expected of a legally-qualified chair; for example, an adviser might be thought to be more detached in their view than the chair. However, we see the question to consider as being 'is there a danger that the committee may, without having the benefit of a legal adviser, fall into error in relation to the law?'. If the answer is no, because the chair is legally qualified, then having a legal adviser would be unnecessary in terms of benefit to the committee and in terms of the cost of regulation.
- 3.42 The intention would not be that we should always have a legally qualified chair but to provide flexibility. The key consideration would be whether there is a danger that the committee may fall into error in relation to the law. The proposed changes would also be more consistent with the requirements in rules relating to the Fitness to Practise Committee.
- 3.43 Our preferred option is that the chair of any of the statutory committees, whether or not legally qualified, has the option of having a legal adviser present but an alternative would be to state an exception in the rules such that the Investigating Committee must have a legal adviser present if its chair is not legally qualified and the committee is to consider whether to refer a case to the Fitness to Practise Committee or whether to

notify the Registrar that the GPhC should consider bringing criminal proceedings. We would welcome views on both options.

Question 15

Do you agree that the chair of a statutory committee, whether or not legally qualified, should have the option of having a legal adviser present?

Question 16

If not, do you agree that the chair of a statutory committee, whether or not legally qualified, should have the option of having a legal adviser present but that, if the Investigating Committee's chair is not legally qualified, it must have a legal adviser present when considering whether to refer a case to the Fitness to Practise Committee or whether to notify the Registrar that the GPhC should consider bringing criminal proceedings?

4. Amendments to the GPhC Fitness to Practise and Disqualification etc Rules

- 4.1 The amendments proposed in this section would affect The General Pharmaceutical Council (Fitness to Practise and Disqualification etc) Rules 2010 (S.I. 2010/1615) <http://www.legislation.gov.uk/uksi/2010/1615/contents/made>. References to specific rules refer to the GPhC Fitness to Practise and Disqualification etc Rules 2010.
- 4.2 We propose making some changes to these rules which are consequential to the amendments proposed to the GPhC Statutory Committees and their Advisers Rules 2010. These result from the proposed changes to the arrangements for secretaries to the statutory committees (see paras 3.32-3.33) and the proposal that the Council should produce guidance on the criteria for referral of cases from the Investigating Committee to the Fitness to Practise Committee (see paras 3.25-3.17).

Representation

- 4.3 The GPhC Fitness to Practise and Disqualification etc Rules make provision for persons to be represented at fitness to practise hearings by a legal representative, a defence organisation or a trade union (rule 40(2)). We propose including a definition of 'defence organisation' in these rules, to provide greater clarity for the organisations concerned, the persons they represent and the GPhC.
- 4.4 The draft amendment we are proposing would allow a person to be represented by a representative of a body corporate or partnership which advises, assists or defends applicants, registrants or pharmacy owners in respect of matters to be determined by the Fitness to Practise Committee.

Question 17

Do you agree with the proposed definition of 'defence organisation'?

5. Amendments to the GPhC Registration Rules

- 5.1 The amendments proposed in this section would affect the General Pharmaceutical Council (Registration) Rules 2010 (S.I. 2010/1617) <http://www.legislation.gov.uk/uksi/2010/1617/contents/made>. References to specific rules refer to the GPhC Registration Rules 2010.

Identity checks and Crown copyright

- 5.2 We have become aware that some applicants for registration have had difficulty obtaining a 'true copy', certified by a notary or solicitor, of an official certificate (of birth, marriage or civil partnership) or a passport. This is because solicitors have declined to certify photocopies of such documents on the grounds that they are Crown copyright and protected under the Copyright, Designs and Patents Act 1988. It seems likely that this situation has arisen from a combination of revised guidance issued by the Home Office and increased awareness of this issue as a result of recent changes to licensing arrangements under the UK Government Licensing Framework.
- 5.3 The GPhC Registration Rules (rule 10(3)) require an applicant for registration as a pharmacist or pharmacy technician to provide evidence of their identity in the form of their passport, a true copy of their passport certified by a notary or solicitor, or another document which is considered acceptable by the Registrar. A certified copy of the applicant's passport or birth certificate may also be required as evidence of their date of birth.
- 5.4 Where an applicant wishes to use a registered name which is different from the name on their evidence of identity, the applicant may also be required to provide the relevant certificate of marriage or civil partnership, or a true copy of it certified by a notary or solicitor. A certified copy of a passport is also required as evidence of nationality or of rights acquired by virtue of marriage or civil partnership to a national of a relevant European State.
- 5.5 Under section 163 of the Copyright, Designs and Patents Act 1988, works that qualify for Crown copyright receive the same copyright protections as are conferred on other works. The Act gives the copyright owner the exclusive right to do certain acts in relation to the owner's work. Copyright is infringed if a person copies the work without the licence of the copyright owner.
- 5.6 In relation to the copying of official certificates, guidance on the National Archives website indicates that these certificates are subject to Crown copyright. The guidance states: 'you must not use reproductions of certificates to provide evidence of birth, death, marriage or civil partnership. Where a copy is required to provide evidence that

an event was registered you must order an official certificate ('extract' in Scotland) from a local registration office or General Register Office'^a.

- 5.7 Since 30 September 2010, the use and re-use of public sector information has been subject to new arrangements under the UK Government Licensing Framework^b. These arrangements provide for an Open Government Licence for public sector information that would otherwise be subject to Crown copyright. They also set out specific exemptions, one of which excludes the application of the Open Government Licence to 'identity documents such as the British Passport'. However, only the front cover of a UK passport is Crown copyright; the contents may be copied^c.
- 5.8 It is clearly important for public protection that we minimise the possibility of anyone getting on to our register using a false identity. To do this, we need to be able to obtain evidence of identity without infringing Crown copyright, as well as being able to require an applicant to produce their original documents in person where we believe this is appropriate.
- 5.9 Where we can, we also want to make the process of applying for registration more straightforward and cheaper for applicants. We therefore propose amending the GPhC Registration Rules to allow us to:
- accept copies of official certificates obtained from the General Register Office for England & Wales or for Scotland, without the need for certification of these as a true copy;
 - for official certificates which were not originally issued by the General Register Office for England & Wales or for Scotland, accept copies certified by a notary, solicitor, or Commissioner for Oaths;
 - accept copies of passports, certified by a notary, solicitor, or Commissioner for Oaths, which do not include the front cover of the passport; and
 - require additional information where appropriate, including the production of original documents by the applicant in person, for the purposes of verification.
- 5.10 These changes should avoid any breach of Crown copyright and avoid the need for applicants to obtain further verification of copies of official certificates obtained from the General Register Office. They would also allow members of the Institute of Legal Executives (ILEX) to certify true copies of passports, as ILEX members are entitled to use the title 'Commissioner for Oaths'.

^a <http://www.nationalarchives.gov.uk/information-management/our-services/copyright-guidance.htm> (accessed 10 January 2012)

^b <http://www.cabinetoffice.gov.uk/news/government-removes-barrier-to-public-data-use> (accessed 10 January 2012)

^c <http://webarchive.nationalarchives.gov.uk/+/http://www.nationalarchives.gov.uk/documents/information-management/reproduction-british-passport.pdf> (accessed 10 January 2012)

Question 18

Do you agree with the proposed changes to the arrangements for identity checks?

Question 19

Do you have any other comments you wish to make?

The draft GPhC (Amendment of Miscellaneous Provisions) Rules 2012 are at appendix 1.

Response to the consultation on draft amendments to rules

The consultation asks a series of questions, which are set out here.

You can fill in this questionnaire or go to our website and fill in an online version there.

www.pharmacyregulation.org/getinvolved/consultations/currentconsultation/index.aspx

If you fill in this questionnaire, please send your completed form to:

email consultations@pharmacyregulation.org

address Draft Amendments to Rules consultation, Consultation Response, Governance Team, General Pharmaceutical Council, 129 Lambeth Road, London, SE1 7BT.

If your answer/s take up more than the space allotted, you can attach extra pages if you wish. Please indicate which question/s any extra pages relate to.

Responses must be received by 12 July 2012.

First, we would like to ask you for some background information. This will help us to understand the views of specific groups, individuals and/or organisations and enables us to better respond to those views.

Are you responding:

- As an individual – Please go to section A
- On behalf of an organisation – Please go to section B

Section A - Responding as an individual

Please supply the following details:

Your name:

Address:

Email:

Where do you live?

- England
- Scotland
- Wales
- Northern Ireland
- Other (please give details)

Are you responding as:

- A pharmacy professional – Please go to section A1
- A member of the public
- Other (please give details)

Section A1 - Pharmacy professionals

Are you a:

- Pharmacist
- Pharmacy technician

Please select the option below which best describes the area in which you primarily work

- Community pharmacy
- Hospital pharmacy
- Primary care organisation
- Pharmacy education and training
- Pharmaceutical industry
- Other (please give details)

Section B: Responding on behalf of an organisation

Please supply the following details:

Your name:

Job title:

Organisation:

Address:

Email:

Contact tel:

Is your organisation a:

- Pharmacy organisation
- Non-pharmacy organisation

Please choose an option below which best describes your organisation

- Body/organisation representing professionals
- Body/organisation representing patients/the public
- Body/organisation representing trade/industry
- Community pharmacy
 - Corporate multiple
 - Independent
- NHS organisation/group
- Research, education and/or training organisation
- Government department/organisation
- Regulatory body
- Other (please give details)

All information in responses, including personal information, may be subject to publication or disclosure in accordance with the access to information regimes (primarily the Freedom of Information Act 2000, the Data Protection Act 1998 and the Environmental Information Regulations 2004).

If you want your response to remain confidential, you should explain why you regard the information you have provided as confidential. However, we cannot give an assurance that confidentiality can be maintained in all circumstances.

An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the GPhC.

Your response to this consultation may be published in full or in a summary of responses.

Responses to the consultation will be anonymised if they are quoted. Individual contributions will not be acknowledged unless specifically requested.

The GPhC is a data controller registered with the Information Commissioner's Office. The GPhC makes use of personal data to support its work as the regulatory body for pharmacists, pharmacy technicians and retail pharmacy premises in Great Britain. Data may be shared with third parties in pursuance of the GPhC's statutory aims, objectives, powers and responsibilities under the Pharmacy Order 2010, the rules made under the Order and other legislation. Personal data may be processed for purposes including (but not limited to) updating the register, administering and maintaining registration, processing complaints, compiling statistics and keeping stakeholders updated with information about the GPhC. Information may be passed to organisations with a legitimate interest including (but not limited to) other regulatory and enforcement authorities, NHS trusts, employers, Department of Health, universities and research institutions. Please note that the GPhC will not share your personal data on a commercial basis with any third party.

Questions

We are particularly interested in your views on the following points, although we welcome comments on any issues that you wish to raise in the relation to the draft amendments to the GPhC's rules.

Question 1

Do you agree with the proposal to set minimum and maximum sizes of the statutory committees?

(see paras 3.2-3.6 of the consultation document)

- Yes
- No
- Don't know

Comments:

Question 2

Do you agree with the proposal to remove the requirement for a separate Investigating Committee report to the Council?

(see para 3.7 of the consultation document)

- Yes
- No
- Don't know

Comments:

Question 3

Do you agree with the proposal to remove the requirement for the Investigating Committee to determine whether the GPhC should consider instituting criminal proceedings, after the committee has applied the 'real prospect' and 'public interest' tests?

(see paras 3.8-3.14 of the consultation document)

- Yes
- No
- Don't know

Comments:

Question 4

Do you agree that the Council should provide guidance on the criteria for referral of cases from the Investigating Committee to the Fitness to Practise Committee?

(see paras 3.15-3.17 of the consultation document)

- Yes
- No
- Don't know

Comments:

Question 5

Do you agree that both committees should advise the Council on the content of guidance on the criteria for referral of cases from the Investigating Committee to the Fitness to Practise Committee?

(see paras 3.15-3.17 of the consultation document)

- Yes
- No
- Don't know

Comments:

Question 6

Do you agree that the Council should provide guidance to inform the Fitness to Practise Committee's approach to decisions on sanctions?

(see paras 3.18-3.19 of the consultation document)

- Yes
- No
- Don't know

Comments:

Question 7

Do you agree that the Fitness to Practise Committee should advise the Council on the content of guidance to inform the committee's approach to decisions on sanctions?

(see paras 3.18-3.19 of the consultation document)

- Yes
- No
- Don't know

Comments:

Question 8

Do you agree that the Appointments Committee should determine the size of each statutory committee, within the limits stated in the rules?

(see paras 3.20-3.21 of the consultation document)

- Yes
- No
- Don't know

Comments:

Question 9

Do you agree with the proposal to allow some common membership of the Appeals Committee and the Fitness to Practise Committee?

(see paras 3.22-3.23 of the consultation document)

- Yes
- No
- Don't know

Comments:

Question 10

Do you agree that the rules should provide flexibility about how the competencies for statutory committee members and the procedure for suspension and removal are developed, while retaining the requirement for the Council to determine these matters?

(see paras 3.25-3.26 of the consultation document)

- Yes
- No
- Don't know

Comments:

Question 11

Do you agree with the proposal to provide more flexibility in statutory committee members' terms of office?

(see paras 3.27-3.28 of the consultation document)

- Yes
- No
- Don't know

Comments:

Question 12

Do you agree with the proposal to have a single reserve list for the statutory committees?

(see paras 3.29-3.31 of the consultation document)

- Yes
- No
- Don't know

Comments:

Question 13

Do you agree with the proposal to allow members of the statutory committees secretariat to act as secretary to any committee as required, provided that anyone who acts as secretary to the Investigating Committee in relation to a fitness to practise allegation must not act as secretary to the Fitness to Practise Committee in any proceedings in connection with that allegation?

(see paras 3.32-3.33 of the consultation document)

- Yes
- No
- Don't know

Comments:

Question 14

Do you agree that the chair of the Appeals Committee should be able to determine the size and composition of a committee tasked with hearing a certain case or cases?

(see paras 3.34-3.38 of the consultation document)

- Yes
- No
- Don't know

Comments:

Question 15

Do you agree that the chair of a statutory committee, whether or not legally qualified, should have the option of having a legal adviser present?

(see paras 3.39-3.43 of the consultation document)

- Yes (Please go to question 17)
- No (Please go to question 16)
- Don't know (Please go to question 16)

Comments:

Question 16

If not, do you agree that the chair of a statutory committee, whether or not legally qualified, should have the option of having a legal adviser present but that, if the Investigating Committee's chair is not legally qualified, it must have a legal adviser present when considering whether to refer a case to the Fitness to Practise Committee or whether to notify the Registrar that the GPhC should consider bringing criminal proceedings?

(see paras 3.39-3.43 of the consultation document)

- Yes
- No
- Don't know

Comments:

Question 17

Do you agree with the proposed definition of 'defence organisation'?

(see paras 4.3-4.4 of the consultation document)

- Yes
- No
- Don't know

Comments:

Question 18

Do you agree with the proposed changes to the arrangements for identity checks?

(see paras 5.2-5.10 of the consultation document)

- Yes
- No
- Don't know

Comments:

Question 19

Do you have any other comments you wish to make?

DRAFT

 STATUTORY INSTRUMENTS

2012 No.**HEALTH CARE AND ASSOCIATED PROFESSIONS****PHARMACY**
The General Pharmaceutical Council (Amendment of Miscellaneous Provisions) Rules Order of Council 2012

<i>Made</i> - - - -	2012
<i>Laid before Parliament</i>	2012
<i>Laid before the Scottish Parliament</i>	2012
<i>Coming into force</i> - -	2012

At the Council Chamber, Whitehall, the [] day of [] 2012

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

The General Pharmaceutical Council^(a) has made the General Pharmaceutical Council (Amendment of Miscellaneous Provisions) Rules 2012 which are set out in the Schedule to this Order, in exercise of the powers conferred by articles 23(1)(a) and (c), 61(1) and (2)(c), 63(4) and 66(1)(c) of, and paragraph 5 of Schedule 1 to, the Pharmacy Order 2010^(b).

In accordance with article 66(3) of that Order, the General Pharmaceutical Council has, in relation to rules under Parts 4 to 7 of that Order, consulted such persons and organisations as it considered appropriate including the persons and organisations listed in sub-paragraphs (a) to (h) of article 66(3) of that Order.

By virtue of article 66(4) of that Order, such rules cannot come into force until approved by order of the Privy Council.

Citation and commencement

1. This Order may be cited as the General Pharmaceutical Council (Amendment of Miscellaneous Provisions) Rules Order of Council 2012 and comes into force on [date] 2012.

^(a) The Council was established by article 4 of the Pharmacy Order 2010 (S.I.2010/231).

^(b) See article 3(1) of the Pharmacy Order 2010 for the meaning of "prescribed".

Council approval

2. Their Lordships, having taken the Rules contained in the Schedule into consideration, are pleased to and do approve them.

[Name of signatory]
Clerk of the Privy Council

SCHEDULE

Article 2

The General Pharmaceutical Council (Amendment of Miscellaneous Provisions) Rules 2012

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The General Pharmaceutical Council makes these Rules in exercise of the powers conferred by articles 23(1)(a) and (c), 61(1) and (2)(c), 63(4) and 66(1)(c) of, and paragraph 5 of Schedule 1 to, the Pharmacy Order 2010^(c).

In accordance with article 66(3) of that Order, the General Pharmaceutical Council has, in relation to rules under Parts 4 to 7 of that Order, consulted such persons and organisations as it considered appropriate including the persons and organisations listed in sub-paragraphs (a) to (h) of article 66(3) of that Order.

PART 1

General

Citation

1. These Rules may be cited as the General Pharmaceutical Council (Amendment of Miscellaneous Provisions) Rules 2012.

Commencement

2. These Rules come into force on [date] 2012.

PART 2

Amendments of the General Pharmaceutical Council (Statutory Committees and their Advisers) Rules 2010

Interpretation of this Part

3. In this Part “the Statutory Committees and their Advisers Rules” means the General Pharmaceutical Council (Statutory Committees and their Advisers) Rules 2010^(d).

Composition of the statutory committees

4. —(1) Rule 3 of the Statutory Committees and their Advisers Rules (composition of the statutory committees) is amended as follows.

(2) In paragraph (1) (the Investigating Committee)—

^(c) S.I. 2010/231.

^(d) Scheduled to S.I. 2010/1616.

- (a) insert “and” at the end of sub-paragraph (b);
 - (b) for sub-paragraph (c) substitute—
 - “(c) not fewer than three and not more than eleven other members who may be lay members or registrant members.”; and
 - (c) omit sub-paragraph (d).
- (3) In paragraph (2) (the Fitness to Practise Committee)—
- (a) for sub-paragraph (b) substitute—
 - “(b) not fewer than three and not more than eight lay members who are deputy chairs; and”;
 - (b) for sub-paragraph (c) substitute—
 - “(c) not fewer than eight and not more than fifty one other members who may be lay members or registrant members.”; and
 - (c) omit sub-paragraph (d).
- (4) In paragraph (3) (the Appeals Committee)—
- (a) insert “and” at the end of sub-paragraph (b);
 - (b) for sub-paragraph (c) substitute—
 - “(c) not fewer than three and not more than seventeen other members who may be lay members or registrant members.”; and
 - (c) omit sub-paragraph (d).
- (5) After paragraph (3) insert—
- “(3A) The number of lay members of each committee (including the chair and deputy chairs) must be at least the same as the number of registrant members.”.

Additional functions of the Investigating Committee

5.—(1) Rule 4 of the Statutory Committees and their Advisers Rules (additional functions of the Investigating Committee) is amended as follows.

- (2) In paragraph (1)—
- (a) omit sub-paragraph (a);
- (b) for sub-paragraph (b) substitute—
 - “(b) providing advice to the Council about the content of any guidance to be issued by the Council about the circumstances in which allegations should be referred to the Fitness to Practise Committee.”; and
- (c) for sub-paragraph (e) substitute—
 - “(e) determining whether to notify the Registrar that the Council should consider exercising any of its powers to bring criminal proceedings—
 - (i) in relation to criminal conduct allegations; and
 - (ii) in cases that have been referred to it as disqualification allegations.”.
- (3) Omit paragraph (2).

Additional functions of the Fitness to Practise Committee

6. In rule 5 of the Statutory Committees and their Advisers Rules (additional functions of the Fitness to Practise Committee)^(e)—

- (a) for paragraph (b) substitute—
 - “(b) providing advice to the Council about the content of the guidance referred to in rule 4(1)(b);” and

^(e) Rule 5 is amended by S.I. 2011/1367.

(b) for paragraph (d) substitute—

“(d) providing advice to the Council about the content of any guidance to be issued by the Council about sanctions that particular classes of cases before the Fitness to Practise Committee should attract.”.

Appointments Committee

7. In rule 6 of the Statutory Committees and their Advisers Rules (Appointments Committee)—

(a) renumber the existing provision as paragraph (1);

(b) after that paragraph insert—

“(2) In exercising the functions under paragraph (1)(a), the Appointments Committee must ensure that the requirements of rule 3 as to the size and composition of each statutory committee are met.”.

Eligibility for appointment to more than one statutory committee

8.—(1) Rule 8 of the Statutory Committees and their Advisers Rules (eligibility of employees of the Council and other persons for appointment to statutory committees) is amended as follows.

(2) For paragraph (2) substitute—

“(2) A person may not be appointed to be at the same time—

(a) a member of the Investigating Committee, and

(b) a member of another statutory committee.”

(3) In paragraph (3)(f), for “formal caution” substitute “caution”.

Roles in setting of required competencies for members of statutory committees

9. In rule 9 of the Statutory Committees and their Advisers Rules (required competencies for members of statutory committees), omit paragraphs (1) and (3).

Period of membership of a statutory committee

10. For rule 11 of the Statutory Committees and their Advisers Rules substitute—

“Period of membership of a statutory committee

11. No person—

(a) may be appointed as a member of a particular statutory committee (including a chair and deputy chair) for a term of office that is longer than four years;

(b) may serve as a member of the same committee for more than a total of eight years in any twenty year period.”.

Reserve list

11.—(1) Rule 13 of the Statutory Committees and their Advisers Rules (reserve list) is amended as follows.

(2) For paragraph (1) substitute—

“(1) The Appointments Committee must maintain a reserve list of persons who are eligible to serve as a member of one or more statutory committees.”.

(3) After paragraph (1) insert—

“(1A) In relation to any person whose name appears on the reserve list, the Appointments Committee must specify—

(a) the statutory committee or statutory committees to which appointment may be appropriate;

(b) whether any appointment would be as a registrant member or as a lay member;

- (c) whether appointment as a chair or deputy chair of the Investigating Committee may be appropriate;
 - (d) whether appointment as a deputy chair of the Fitness to Practise Committee may be appropriate;
 - (e) whether appointment as a chair or deputy chair of the Appeals Committee may be appropriate.
- (1B) In relation to any person whose name appears on the reserve list, where—
- (a) both the Fitness to Practise Committee and the Appeals Committee are specified as statutory committees to which the person’s appointment may be appropriate, and
 - (b) the person is appointed to one of those committees,
- the person’s name may be retained on the reserve list for the purpose of appointment to the other committee.”.
- (4) For paragraph (3) substitute—
- “(3) The Appointments Committee may appoint a person to fill a vacancy that arises on a statutory committee if—
- (a) the matters specified in the reserve list under paragraph (1A) in respect of that person show that the person is suitable for the vacancy; and
 - (b) the Appointments Committee considers that it would be appropriate to make the appointment.”
- (5) Omit paragraphs (4) and (5).
- (6) For paragraph (7) substitute—
- “(7) Where a member of a statutory committee other than the chair is unable to sit to consider a case for any reason, the chair of the committee may co-opt a person whose name appears on the reserve list to serve as a member of the committee (including as a deputy chair) for that particular case if—
- (a) that committee is specified as a statutory committee to which the person’s appointment may be appropriate; and
 - (b) the chair considers that it would be appropriate for the person to serve as a member of the committee.”.

(7) After paragraph (7) insert—

“(8) A person may not be co-opted under paragraph (7) to be at the same time—

 - (a) a member of the Investigating Committee, and
 - (b) a member of another statutory committee.”.

Suspension and removal of statutory committee members and persons on the reserve list

12.—(1) Rule 14 of the Statutory Committees and their Advisers Rules (suspension and removal of statutory committee members and persons on the reserve list) is amended as follows.

- (2) In paragraph (1)—
- (a) in sub-paragraph (a), for “a statutory committee” substitute “the statutory committee in question”;
 - (b) in sub-paragraph (b), after “term of office” insert “for the statutory committee in question”; and
 - (c) in sub-paragraph (d)—
 - (i) in paragraphs (i), (ii) and (vii), for “a statutory committee” substitute “the statutory committee in question”;
 - (ii) in paragraph (iv), for “a statutory committee” substitute “any statutory committee”.
- (3) For paragraph (5) substitute—
- “(5) The Council must determine the procedure for—
- (a) the suspension or removal of a member of a statutory committee; and
 - (b) the removal of a person from the reserve list,

and must prepare and issue a statement of that procedure to each committee member and person on the reserve list.”.

Power to co-opt members of statutory committees

13.—(1) Rule 16 of the Statutory Committees and their Advisers Rules (power to co-opt members of statutory committees) is amended as follows.

(2) After paragraph (3) insert—

“(3A) A person may not be co-opted under paragraph (1) to be at the same time—

- (a) a member of the Investigating Committee, and
- (b) a member of another statutory committee.”.

(3) In paragraph (4)—

- (a) after “The following” insert “other”; and
- (b) omit sub-paragraph (b).

Secretaries of statutory committees

14. In rule 17 of the Statutory Committees and their Advisers Rules (secretaries of statutory committees), for paragraph (3) substitute—

“(3) A person who acts as secretary to the Investigating Committee in relation to a fitness to practise allegation must not act as secretary to the Fitness to Practise Committee in any proceedings before the Fitness to Practise Committee in connection with that allegation.”.

Composition of statutory committees: general

15. For rule 18 of the Statutory Committees and their Advisers Rules substitute—

“Composition of statutory committees: general

18.—(1) Subject to any determination made under rule 18A(1) or 18B(1) in respect of any particular meeting or hearing, the quorum for a meeting (other than a case management meeting) or a hearing of a statutory committee is three members.

(2) The members must include—

- (a) the chair or a deputy chair;
- (b) a lay member; and
- (c) a registrant member.

(3) At any meeting or hearing of a statutory committee, the number of registrant members considering a case must not exceed the number of lay members (including the chair and deputy chair) by more than one.

(4) Case management meetings of the statutory committees are to be conducted by the chair of the statutory committee which is holding the case management meeting.”.

Composition of Fitness to Practise and Appeals Committees: further provision

16. After rule 18 of the Statutory Committees and their Advisers Rules insert—

“Composition of Fitness to Practise Committee: further provision

18A.—(1) The chair of the Fitness to Practise Committee may, having consulted the secretary of the Committee, and with regard to—

- (a) the matters to be considered by the Committee; and
- (b) the availability, experience and expertise of Committee members,

determine the particular size, composition and quorum of the Committee required for each hearing and any related meetings (other than any case management meeting).

(2) Where the chair determines that only specified members of the Committee are required for a particular hearing and any related meetings, the chair must ensure that—

- (a) the chair or a deputy chair is one of those members;
- (b) the quorum determined by the chair is not less than three;
- (c) the number of registrant members who are members of that formation of the Committee does not exceed the number of lay members (including the chair and deputy chair) by more than one; and
- (d) any member who has sat in a formation of the Committee that has made an interim suspension order or an order for interim conditional entry in a particular case does not sit in subsequent proceedings in that case.

(3) Paragraph (2)(d) does not apply where the subsequent proceedings are held solely for the purposes of determining under article 56 of the Order whether to make, confirm, vary, replace or revoke an interim suspension order or an order for interim conditional entry.

Composition of Appeals Committee: further provision

18B.—(1) The chair of the Appeals Committee may, having consulted the secretary of the Committee, and with regard to—

- (a) the decision appealed against and the matters set out in the Notice of Appeal; and
- (b) the availability, experience and expertise of Committee members,

determine the particular size, composition and quorum of the Committee required for each hearing and any related meetings (other than any case management meeting).

(2) Where the chair determines that only specified members of the Committee are required for a particular hearing and any related meetings, the chair must ensure that—

- (a) the chair or a deputy chair is one of those members;
- (b) the quorum determined by the chair is not less than three; and
- (c) the number of registrant members who are members of that formation of the Committee does not exceed the number of lay members (including the chair and deputy chair) by more than one.”.

Functions of legal advisers

17.—(1) Rule 21 of the Statutory Committees and their Advisers Rules (functions of legal advisers) is amended as follows.

(2) In paragraph (1)—

- (a) omit sub-paragraph (a); and
- (b) in sub-paragraph (b), omit “other”.

(3) In paragraph (2), for “paragraph (1)(a) or (b)” substitute “paragraph (1)(b)”.

(4) Omit paragraph (4).

PART 3

Amendments of General Pharmaceutical Council (Fitness to Practise and Disqualification etc.) Rules 2010

Interpretation of this Part

18. In this Part “the Fitness to Practise Rules” means the General Pharmaceutical Council (Fitness to Practise and Disqualification etc.) Rules 2010^(f).

Meaning of “secretary”

19.—(1) Rule 2 of the Fitness to Practise Rules (interpretation) is amended as follows.

(2) In paragraph (1), for the definition of “secretary” substitute—

““secretary”—

- (a) except in relation to references to the secretary of the Investigating Committee, means the secretary to the Committee; and
- (b) in relation to either the Committee or the Investigating Committee, means the person who is for the time being acting as secretary to that Committee;”.

(3) In paragraph (2)—

(a) for sub-paragraph (a)(ii) substitute—

“(ii) the secretary;”;

(b) for sub-paragraph (b)(i) substitute—

“(i) the secretary to the Investigating Committee;”.

Procedures of the Investigating Committee

20. In rule 9 of the Fitness to Practise Rules (procedures of the Investigating Committee), in paragraph (3)(a), for paragraph (ii) substitute—

“(ii) have regard to any guidance issued by the Council about the circumstances in which allegations should be referred to the Committee;”.

Procedure at principal hearings in fitness to practise proceedings

21.—(1) Rule 31 of the Fitness to Practise Rules (procedure at principal hearings before the Committee in fitness to practise proceedings) is amended as follows.

(2) In paragraph (4), for the words “The person acting as secretary” substitute “The secretary”.

(3) For paragraph (14) substitute—

“(14) The Committee must—

- (a) having regard to any guidance issued by the Council about sanctions that particular classes of cases before the Committee should attract, consider the course of action under article 54(2) of the Order which is appropriate in the registrant’s case;
- (b) announce its decision; and
- (c) give its reasons for that decision.”

Procedure at principal hearings in disqualification proceedings

22.—(1) Rule 32 of the Fitness to Practise Rules (procedure at principal hearings before the Committee in disqualification proceedings) is amended as follows.

(2) In paragraph (4), for the words “The person acting as secretary” substitute “The secretary”.

^(f) Scheduled to S.I. 2010/1615.

(3) For paragraph (15) substitute—

“(15) The Committee must—

- (a) having regard to any guidance issued by the Council about sanctions that particular classes of cases before the Committee should attract, consider whether or not a direction under section 80(1) or (4) of the Act should be given;
- (b) announce its decision; and
- (c) give reasons for that decision.”.

(4) In paragraph (16), for “the direction” substitute “a direction”.

(5) In paragraph (18), for sub-paragraph (b) substitute—

“(b) reconsider the sanction imposed and, having regard to the guidance referred to in paragraph (15)(a), may instead issue a direction under section 80(1) or (4) of the Act (as the case may be).”.

Procedure at review hearings

23. In rule 34 of the Fitness to Practise Rules (procedure at review hearings), after paragraph (9) insert—

“(9A) In making a decision under paragraph (9), the Committee must have regard to any guidance issued by the Council about sanctions that particular classes of cases before the Committee should attract.”.

Representation

24.—(1) Rule 40 of the Fitness to Practise Rules (representation) is amended as follows.

(2) In paragraph (2)—

(a) omit “or” at the end of sub-paragraph (b);

(b) for sub-paragraph (c) substitute—

“(c) a representative from the trade union of the person concerned; or”; and

(c) at the end of that sub-paragraph insert—

“(d) a representative from a relevant organisation which acts on behalf of the person concerned.”.

(3) In paragraph (3), for “one of its statutory committees” substitute “any of its statutory committees”.

(4) After paragraph (3) insert—

“(4) The reference in paragraph (2)(d) to a relevant organisation is to any body corporate or partnership which advises, assists or defends applicants concerned, registrants or section 80 parties in respect of matters to be determined by the Committee.”.

PART 4

Amendments of General Pharmaceutical Council (Registration) Rules 2010

Interpretation of this Part

25. In this Part “the Registration Rules” means the General Pharmaceutical Council (Registration) Rules 2010^(⁶).

Amendment of provisions referring to copy of passport

26.—(1) In the following provisions of rule 10 of the Registration Rules, for “(or a true copy of it certified by a notary or solicitor)” substitute “(or a copy of the passport which meets the conditions set out in paragraph (3A))”.

⁽⁶⁾ Scheduled to S.I. 2010/1617.

- (2) The provisions of rule 10 of those Rules which are referred to in paragraph (1) are—
- (a) paragraph (3)(a)(i),
 - (b) paragraph (3)(c)(i),
 - (c) paragraph (3)(d)(i), and
 - (d) paragraph (3)(f)(ii).

Amendment of provisions referring to copy of certain certificates

27.—(1) Rule 10 of the Registration Rules is further amended as follows.

(2) For paragraph (3)(b) substitute—

“(b) where the applicant wishes to use a registered name which is different from the name given on the applicant’s evidence of identity—

- (i) a relevant certificate demonstrating the change of name (or a copy of the certificate which meets whichever of the conditions set out in paragraph (3B)(a) or (b) is applicable), or
- (ii) other evidence of the change of name in the form of a statutory declaration;”.

(3) In paragraph (3)(c), in paragraph (ii), for sub-paragraph (aa) substitute—

“(aa) the applicant’s birth certificate (or a copy of the certificate which meets whichever of the conditions set out in paragraph (3B)(a) or (b) is applicable), or”.

Conditions to be met by copy of passport or certificate

28. After rule 10(3) of the Registration Rules insert—

“(3A) The conditions referred to in paragraph (3)(a)(i), (c)(i), (d)(i) and (f)(ii) are that the copy of the passport—

- (a) if it is a copy of a United Kingdom passport (within the meaning of the Immigration Act 1971), does not include the front cover; and
- (b) whether or not it is a copy of a United Kingdom passport, is certified as being a true copy by a notary, solicitor or Commissioner for Oaths.

(3B) The conditions referred to in paragraph (3)(b)(i) and (c)(ii)(aa) are—

- (a) if the certificate was issued by the General Register Office for England and Wales or the General Register Office for Scotland, that the copy of it has been obtained from that Office; or
- (b) if the certificate was not issued by either of those Offices, that the copy of it is certified as a true copy by a notary, solicitor or Commissioner for Oaths.”.

Copy of previously issued certificate of disclosure

29. In rule 10(5) of the Registration Rules, for “(or a true copy of it certified by a notary or solicitor)” substitute “(a true copy of it certified by a notary, solicitor or Commissioner for Oaths)”.

Given under the official seal of the General Pharmaceutical Council this [] day of [] 2012.



Chair

Registrar