

**EXPLANATORY MEMORANDUM TO
THE PHARMACY ORDER 2010 (APPEALS – TRANSITIONAL PROVISIONS) ORDER
OF COUNCIL 2010**

2010 No. 2150

1. This Explanatory Memorandum has been prepared by the Department of Health and is laid before Parliament by Command of Her Majesty. The Pharmacy Order 2010 (Appeals – Transitional Provisions) Order of Council 2010 (“the Appeals - Transitional Provisions Order”) is being laid simultaneously before the Scottish Parliament.

2. Purpose of the instrument

2.1 The Pharmacy Order 2010 (SI 2010/231) (“the Pharmacy Order”) establishes a new regulator for pharmacy, the General Pharmaceutical Council (“GPhC”), and sets out the arrangements, in Great Britain, for the professional regulation of pharmacists, pharmacy technicians and registered pharmacy premises. The GPhC replaces the Royal Pharmaceutical Society of Great Britain (“RPSGB”) as the regulator for pharmacy in Great Britain. The RPSGB retains its other role as a professional body. The Appeals – Transitional Provisions Order supplements the transitional provisions which are contained in paragraphs 5 and 12 of Schedule 5 to the Pharmacy Order. It preserves the right to appeal against certain decisions of the Society or any of its committees made before the day on which the responsibility for regulation is transferred from the RPSGB to the GPhC (i.e. 27th September 2010). It also sets out, for transitional purposes, the procedures relating to the conduct and continuation of proceedings by the GPhC which are either pending before, or have begun to be heard by, the RPSGB or any of its committees immediately before 27th September 2010, or which are commenced against the GPhC by virtue of provision in the Appeals – Transitional Provisions Order.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 The Health and Social Care Act 2008 sets out a series of provisions to reform the regulation of health care professionals. The main emphasis of the reforms was to increase accountability of the health professions’ regulators while at the same time increasing their independence from Government. One specific provision enabled the establishment of a new regulator for pharmacy to separate regulation from professional leadership, both of these functions being currently carried out by the RPSGB. The Pharmacy Order establishes the GPhC as the new pharmacy regulator.

4.2 The Appeals Transitional Provisions Order, which is made under article 69(3) of the Pharmacy Order, makes transitional provision in connection with the commencement of paragraphs 5 and 12 of Schedule 5 to the Pharmacy Order.

5. Territorial Extent and Application

5.1 This instrument applies to Great Britain.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- *What is being done and why*

7.1 The Health and Social Care Act 2008 included provisions which are designed to modernise and strengthen the regulation of health care professionals, to ensure patient, public and professional confidence in the regulatory bodies and make protection of patients and the public a priority. The Pharmacy Order was made under the Health Act 1999 as amended by the Health and Social Care Act 2008, to establish the GPhC as the new regulator for pharmacy, in place of the RPSGB. Operational transfer of the regulatory functions from the RPSGB to the GPhC will take place on 27 September 2010.

7.2 The Pharmacy Order enables the GPhC to set out in Rules details of its processes and procedures, such as procedures for appeals against appealable decisions. The General Pharmaceutical Council (Appeals Committee Rules) Order of Council 2010 (SI 2010/1614) provides for the functions of the Appeals Committee of the GPhC in respect of appeals relating to the registration of pharmacists and pharmacy technicians; the provision of education, training tests or other means of assessment by institutions or other providers; or the registration of premises at which a retail pharmacy business is to be carried on; and for the procedures to be followed in proceeding before the Appeals Committee.

7.3 The Appeals Transitional Provisions Order makes provision for conduct and continuation by the GPhC of those proceedings which are pending before, or which have begun to be heard by, the RPSGB, or any of its committees, immediately before the revocation, on 27 September 2010, of the Pharmacists and Pharmacy Technicians Order 2007 (SI 2007/289) (“the 2007 Order”) (“the appointed day”). It also preserves the right to appeal against certain decisions of the Society or any of its committees that are made before the appointed day.

7.4 Article 1 of the Appeals Transitional Provisions Order provides for the citation, commencement and interpretation.

7.5 Article 2 makes transitional arrangements which preserve the right of appeal to the Registration Appeals Committee against decisions of the Society or any of its committees made before the appointed day, where the 28 day time limit for lodging the appeal has not, immediately prior to the appointed day, expired. This applies to appealable registration decisions, which are defined in article 42 of the 2007 Order.

7.6 Article 3 makes transitional arrangements which preserve the right of appeal to the county court or, in Scotland, the Court of Session against any decision by the Registration Appeals Committee which is made before the appointed day, and where the 28 day time limit for lodging an appeal has not, immediately prior to the appointed day, expired.

7.7 Article 4 makes transitional arrangements which preserve the right to appeal to the High Court or, in Scotland, the Court of Session against any decision by the RPSGB or any of its committees made before the appointed day where the 28 day time limit for lodging an appeal has not, immediately prior to the appointed day, expired. This applies to appealable fitness to practise decisions, which are defined in article 56 of the 2007 Order.

7.8 Article 5 provides that anything done by the RPSGB prior to the appointed day, in connection with its regulatory activities, is to be treated as having been done by the GPhC. It also makes provision for the commencement or continuation of statutory appeals and other legal proceedings against the GPhC in relation to liabilities incurred by the RPSGB prior to the appointed day in connection with its regulatory activities.

- ***Consolidation***

7.9 No consolidation is necessary as the Appeals Transitional Provisions Order does not amend previous legislation.

8. Consultation outcome

8.1 There is no requirement to consult in relation to an order under article 69(3).

9. Guidance

9.1 Neither the Department of Health nor the Scottish Government has issued guidance in relation to this Order. However, it is expected that the GPhC will be providing guidance for registrants.

10. Impact

10.1 There is minimum impact on business, charities or voluntary bodies.

10.2 There is no impact on the public sector.

10.3 An Impact Assessment was prepared for the related Pharmacy Order 2010 (SI 2010/231) and is available as part of the Explanatory Memorandum at <http://www.opsi.gov.uk/si/si201002>

10.4 An Equality Impact Assessment was prepared by the GPhC for the consultation on the Appeals Committee Rules. It is available at <http://www.pharmacyregulation.org/getinvolved/consultations/index.aspx>

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 This legislation, as part of the Professional Standards Programme, will be subject to review by the Department of Health and the Scottish Government in 2011.

13. Contact

Diana Kenworthy at the Department of Health Tel: 020 7972 2820 or email: diana.kenworthy@dh.gsi.gov.uk can answer any queries regarding the instrument.