

2015 No. 1958

HEALTH CARE AND ASSOCIATED PROFESSIONS

DOCTORS

**The General Medical Council (Legal Assessors and Legally
Qualified Persons) Rules Order of Council 2015**

Made - - - - *1st December 2015*

Laid before Parliament *2nd December 2015*

Coming into force - - *31st December 2015*

At the Council Chamber, Whitehall, the 1st day of December 2015

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

The General Medical Council has made the General Medical Council (Legal Assessors and Legally Qualified Persons) Rules 2015 which are set out in the Schedule to this Order, in exercise of the powers conferred by paragraphs 1(4E), 7(3) and (4) of Schedule 4 to the Medical Act 1983(a).

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 in accordance with paragraph 1(6) Schedule 4 to that Act.

By virtue of paragraph 7(6) of Schedule 4 to that Act, the 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 (Legal Assessors and Legally Qualified Persons) Rules Order of Council 2015 and comes into force on 31st December 2015.

Privy Council approval

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

(a) 1983 c.54. Paragraphs 7(3) and (4) of Schedule 4 were substituted by article 14 of S.I. 2002/3135 and amended by article 57(3)(a) and (b) of S.I. 2006/1914. Paragraph (4) was also amended by article 13 of S.I. 2015/794. Paragraph 1(4E) of Schedule 4 was inserted by article 8(6) of S.I. 2015/794.

Revocation of Orders of Council

3. The following instruments are revoked—
- (a) the General Medical Council (Legal Assessors) Rules Order of Council 2004(a);
 - (b) the General Medical Council (Legal Assessors) (Amendment) Rules Order of Council 2005(b).

Richard Tilbrook
Clerk of the Privy Council

SCHEDULE

Article 2

The General Medical Council (Legal Assessors and Legally Qualified Persons) Rules 2015

These Rules are made by the General Medical Council in exercise of the powers conferred by paragraphs 1(4E), 7(3) and (4) of Schedule 4 to the Medical Act 1983(c).

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 in accordance with paragraph 1(6) of Schedule 4 to that Act.

Citation, commencement and interpretation

1.—(1) These Rules may be cited as the General Medical Council (Legal Assessors and Legally Qualified Persons) Rules 2015 and come into force on 31st December 2015.

(2) In these Rules—

“the 1983 Act” means the Medical Act 1983;

“Committee” means the Investigation Committee, in circumstances where it is considering giving a warning to a person under section 35C(6) of the Act;

“hearing” means proceedings of the Committee, a Panel or a Tribunal that have been constituted as a hearing at which the parties to the proceedings may attend or be represented;

“legal assessor” means a person appointed under paragraph 7(1) or (1B) of Schedule 4 to the 1983 Act;

“legally qualified person” means a person satisfying the criteria set and published by the MPTS pursuant to paragraph 7(1C) of Schedule 4 to the 1983 Act in relation to legal qualifications and experience;

“Panel” means a Registration Appeals Panel;

“Tribunal” means Interim Orders Tribunal or Medical Practitioners Tribunal.

Functions of legal assessors

2.—(1) The functions of a legal assessor are to advise—

- (a) the Committee, a Panel or a Tribunal on questions of law as to evidence or procedure arising in proceedings before them: in particular a legal assessor shall, in such proceedings—

(a) S.I. 2004/2625.

(b) S.I. 2005/896.

(c) 1983 c.54: Paragraphs 7(3) and (4) of Schedule 4 were substituted by article 14 of S.I. 2002/3135 and amended by article 57(3)(a) and (b) of S.I. 2006/1914. Paragraph (4) was also amended by article 13 of S.I. 2015/794. Paragraph 1(4E) of Schedule 4 was inserted by article 8(6) of S.I. 2015/794.

- (i) advise the Committee, the Panel or the Tribunal on any question of law as to evidence or procedure that is referred to the assessor by the Committee, the Panel or the Tribunal, and
 - (ii) intervene to advise the Committee, the Panel or the Tribunal on an issue of law as to evidence or procedure where it appears to the assessor that, without the assessor's intervention, there is the possibility of a mistake of law being made, and
 - (iii) intervene to advise the Committee, the Panel or the Tribunal of any irregularity in the conduct of the proceedings which comes to the assessor's knowledge; and
- (b) on the drafting of decisions of the Committee, a Panel or a Tribunal (notwithstanding that legal assessors will not themselves be parties to those decisions).

Attendance of legal assessors

3.—(1) In any proceedings where a legal assessor is appointed by the Council or the MPTS the Committee, Panel or Tribunal conducting those proceedings must not hold any meeting or hearing in respect of them unless the appointed legal assessor is present.

(2) Paragraph (1) applies where a legal assessor has been appointed by—

- (a) the Council under paragraph 7(1) of Schedule 4 to the 1983 Act; or
- (b) the MPTS under paragraph 7(1B) of Schedule 4 to that Act.

Advice of legal assessors tendered at hearings

4.—(1) Any advice given at a hearing by a legal assessor on a question of law as to evidence or procedure must be given in the presence of every party, or person representing a party, in attendance at the hearing.

This is subject to paragraph (2).

(2) The advice may be tendered in the absence of the parties or their representatives where the Committee, a Panel or a Tribunal—

- (a) has begun to deliberate on its decision; and
- (b) it considers that it would be prejudicial to the discharge of its functions for that advice to be tendered in the presence of the parties or their representatives.

(3) Where advice is tendered in the absence of the parties or their representatives in accordance with paragraph (2), the legal assessor who tendered that advice must—

- (a) as soon as practicable after the completion of the deliberations inform each of the parties (or their representatives) in attendance at the hearing of the advice tendered, together with any question which led to that advice; and
- (b) subsequently record those matters in writing and give a copy to those parties or their representatives.

(4) A party to the proceedings who does not attend, and is not represented at, the hearing to which the advice referred to in paragraph (3) applies must, upon that party's application, be provided with a copy of that advice.

Advice of a legal assessor outside a hearing which the Committee, a Panel or a Tribunal does not accept

5.—(1) This rule applies where, in proceedings but not at a hearing, a legal assessor tenders advice on a question of law as to evidence or procedure to the Committee, a Panel or a Tribunal which the Committee, the Panel or the Tribunal does not accept.

(2) In the circumstances referred to in paragraph (1)—

- (a) a record must be made by the legal assessor of the advice given (together with any question which led to that advice), and of the decision not to accept it, together with the reasons for that decision; and
- (b) a copy of the record must be given to every party to the proceedings or their representatives.

Advice of legally qualified persons

6. Where, at hearing of a Tribunal, a legal assessor has not been appointed under paragraph 7(1B) of Schedule 4 to the Act, and the Chair as a legally qualified person advises the Tribunal on any question of law as to evidence or procedure, the Chair shall—

- (a) so advise in the presence of every party, or person representing a party, in attendance at the hearing; or
- (b) if the advice is tendered after the Tribunal has begun to deliberate on any decision during the course of the proceedings, include the advice so given in the Tribunal decision, unless the Chair considers it necessary to advise in the presence of every party, or person representing a party, in attendance at the hearing.

Revocation

7. The following Rules are revoked—

- (a) the General Medical Council (Legal Assessors) Rules 2004(a);
- (b) the General Medical Council (Legal Assessors) (Amendment) Rules 2005(b).

Given under the official seal of the General Medical Council this 19th day of November 2015.

Terence Stephenson
Chair

Niall Dickson
Chief Executive and Registrar

EXPLANATORY NOTE

(This note is not part of the Order)

This Order approves the General Medical Council (Legal Assessors) Rules 2015 (“the Rules”) which have been made by the General Medical Council and are contained in the Schedule to the Order.

Rule 2 sets out the functions of a legal assessor. They are, essentially, to advise a Registration Appeals Panel, an Interim Orders Tribunal, a Medical Practitioners Tribunal, or as the case may be, the Investigation Committee on questions of law relating to the evidence or procedure in proceedings and to advise on the drafting of decisions by those bodies.

Rule 3 provides that a Registration Appeals Panel, an Interim Orders Tribunal, a Medical Practitioners Tribunal, or as the case may be, the Investigation Committee cannot hold any meeting or hearing in cases where a legal assessor has been appointed unless that assessor is present.

(a) S.I. 2004/2625.
(b) S.I. 2005/896.

Rule 4 establishes a general rule that the advice of a legal assessor must be given in the presence of the parties to the proceedings or their representatives. It also provides an exception to that rule.

Rule 5 deals with the situation where a legal assessor tenders advice outside a hearing and that advice is not accepted by a Registration Appeals Panel, an Interim Orders Tribunal, a Medical Practitioners Tribunal, or as the case may be, the Investigation Committee. In such cases it requires the advice to be recorded and for copies of it to be available to the parties to the proceedings or their representatives.

Rule 6 deals with the situation where a legal assessor has not been appointed at a hearing before an Interim Orders Tribunal or a Medical Practitioners Tribunal and advice has been tendered by a legally qualified person.

Rule 7 revokes the General Medical Council (Legal Assessors) Rules 2004 and the General Medical Council (Legal Assessors) (Amendment) Rules 2005. The Order also revokes the Orders of the Privy to which those Rules were Scheduled.

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