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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order amends the Medical Act 1983 (“the Act”) to make provision as outlined below and consequential changes.

Articles 2 to 4 establish the Medical Practitioners Tribunal Service (“the MPTS”) as a statutory committee of the General Medical Council (“the GMC”) to strengthen the separation between the GMC’s investigation and adjudication arms, and place Medical Practitioners Tribunals and Interim Orders Tribunals (formerly fitness to practise and interim orders panels) under the administrative control of the MPTS. The overriding objective of the GMC when making rules relating to appointments to the MPTS and its tribunals is to secure that cases are dealt with fairly and justly.

Article 5 amends the review powers that are to be exercisable by Medical Practitioners Tribunals, including by introducing provision to ensure that reviews can be carried out before the expiry of tribunal directions and to enable reviews without a hearing where both parties are in agreement as to the outcome.

Article 6 includes provision enabling reviews of interim orders without a hearing where both parties are in agreement as to the outcome.

Article 7 makes provision for there to be an overriding objective for the making of certain procedural rules of securing that cases are dealt with fairly and justly.

Article 8 amends the Act to include specific rule-making powers for investigations to continue once MPTS proceedings have started and for cases referred to the MPTS to be withdrawn. Provision is also made for rules to include provision for preliminary hearings and in relation to the consequences of failure to comply with rules and directions (which may include refusal to admit evidence, the drawing of adverse inferences and the award of costs). Provision is made for rules to provide for costs to be awarded on account of unreasonable behaviour. Provision is also made for rules to require a legally qualified Tribunal chair to inform the parties of certain advice given by the chair to the Tribunal.

Article 9 amends the Act in relation to powers to provide in rules for undertakings to be agreed between the GMC and a practitioner and for the consequences of breaches, including specific provision for undertakings to be agreed during a fitness to practise hearing, after a finding of impairment has been made, and for a tribunal to take into account such undertakings.

Articles 10 to 12 make amendments to the Act in relation to professional performance assessments and include express provisions relating to health assessments, including provision for directions by Medical Practitioners Tribunals for non-compliance with such assessments to include up to 12 months’ suspension or up to three years’ conditional registration; and, where relevant, corresponding amendments are made for knowledge of English assessments.

Article 13 provides for the MPTS to appoint legal assessors in fitness to practise proceedings. The MPTS must appoint a legal assessor in the case of a Tribunal where the chair is not legally qualified and have discretion to do so in other cases.

Article 14 provides for the MPTS to appoint case managers in fitness to practise proceedings and for such case managers to have the power to give directions.

Article 15 confers power on the GMC to require practitioners to provide information or produce documents (subject to certain exceptions) for certain purposes and to refer the case to the MPTS for

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

them to arrange for a Medical Practitioners Tribunal to consider whether to impose a suspension or conditional registration in the event of non-compliance.

Article 16 makes consequential provisions relating to appeals by practitioners.

Articles 17 and 18 introduce a power for the GMC to bring appeals against fitness to practise decisions alongside the power of the Professional Standards Authority for Health and Social Care (“the PSA”) to refer such decisions to the higher courts under section 29 of the National Health Service Reform and Health Care Professions Act 2002. Provision is made to ensure that there can be only one such appeal or reference. The PSA’s grounds for reference are also amended, and the same grounds are applicable to the GMC’s power of appeal.

Article 19 makes consequential changes relating to applications for restoration to the register.

Article 20 provides for annual reports of the MPTS to be published by them and to be laid before Parliament by the Privy Council.

Article 21 provides for a new over-arching objective for the GMC in place of their main objective and for regard to be had to it by the Investigation Committee, when considering whether to give a warning or agree undertakings, and by Medical Practitioners Tribunals.

Article 22 amends the Act to include specific rule-making powers for the rejection of vexatious allegations and for allegations concerning facts that are more than five years old not to be investigated, except where investigation would be in the public interest, and for the review of investigation decisions.

Article 23 makes consequential provision in relation to Registration Appeals Panels.

Article 24 makes provision to enable service of statutory notices relating to fitness to practise by electronic mail.

Article 25 makes provision to ensure a direction for suspension or conditional registration will continue in effect during an appeal against a review decision until the final outcome of that appeal takes effect.

Article 26 makes minor corrections.

A full impact assessment has not been produced for this instrument as no or no significant impact on the private sector or civil society organisations is foreseen. A report on the Consultation in relation to the Secretary of State’s proposals to make this Order is available at <https://www.gov.uk/government/consultations/changing-how-the-gmc-decides-on-doctors-fitness-to-practise>.