



COUNCIL

Draft FTP Transitional Rules

Meeting: Public 24 October 2012

Status: for decision

Lead responsibility:

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Executive Summary

1. Attached to this paper is a draft set of transitional FtP rules. Those draft rules are still under consideration by the Department of Health (DH) and are, therefore, likely to be subject to further amendments. We consider, however, that any amendments will be technical in nature relating to drafting language and formatting rather than the principles which underpin the transitional structure.

Background

2. Council will recall that at a previous meeting it endorsed the proposition that the GOC's aim would be to transfer as many existing investigations to the new legislative framework as possible. The purpose being to minimise the period of time where the GOC would be running two legislative schemes. This is a principle which is supported by DH. In preparing these rules the GOC prepared a schedule of transfer points which was discussed with the department and which was approved.
3. A summary of the transition points are set out below:
 - All new complaints received after commencement date – new rules
 - Cases in system at commencement date and no notification under rules 4(1) – new rules
 - Cases where notification under rule 4(1) has been sent at commencement date – 2005 rules
 - Cases where IC has considered but no referral decision – 2005 rules
 - Referred cases but notice of hearing not served – new rules
 - Review of decision (Rule 15) Termination (Rule 16) – new rules
 - Notice of hearing sent – 2005 rules
 - Interim order review hearings – new rules
 - Substantive review hearings – new rules

4. The current intention is for the public consultation to be launched in December 2012, but that will only be possible if the DH is in a position to advise as to its final position on the transitional rules by early November and on the basis that it does not depart from agreed principles.

Recommendations

5. Council is invited to:
 - Consider the rationale for the transfer points and advise as to any of the proposals that Council considers undesirable, and
 - Subject to that consideration approve in principle the initiation of a public consultation to take place as soon as possible on the draft transitional rules (subject to any further significant amendments being circulated to Council for approval prior to the consultation being initiated).

Attachments

Annex 1 Draft transitional FtP rules.

Transitional Rules: Draft v.1 - 19/09/12

Schedule

The General Optical Council (Fitness to Practise) Transitional Provisions Rules Order of Council [20]

The General Optical Council, in exercise of their powers under sections **13E(1), 23C, 23D(7), 23E(8) and 31A** of the Opticians Act 1989 and of all other powers enabling them in that behalf, after consultation with such organisations representing the interests of registrants as the Council consider appropriate, hereby make the following Rules:

PART 1

CITATION, COMMENCEMENT AND INTERPRETATION

This Order may be cited as the General Optical Council (Fitness to Practise) Transitional Provisions Rules Order of Council 20[] and shall come into force on **[insert the commencement date (“CD”)]**.

1. (1) In these Rules –

“the Act” means the Opticians Act 1989

“allegation” means an allegation of impairment as set out in section 13D, based on one or more of the grounds described in that section;

“conditional order” means an order made under section 13F (powers of the Fitness to Practise Committee) that a registrant’s registration or entry relating to a specialty is to be conditional upon compliance with specified requirements;

“the Council” means the General Optical Council

“Fitness to Practise Committee” means the Committee referred to in section 5C(1) (Fitness to Practise Committee);

“interim order” means an order under section 13L (interim orders);

“interim order hearing” means a hearing for the purposes of considering whether to make an interim order;

“the Investigation Committee” means the Committee referred to in section 4(1) (Investigation Committee);

“the new Rules” means the General Optical Council (Fitness to Practise Rules) Order of Council 20[]

“registrant” –

- (a) for the purposes of the service of any notification or other notice under these Rules or the provision of information includes a person whom the registrant informs the registrar is instructed to represent that registrant; and
- (b) in relation to a hearing, includes any representative of the registrant attending the hearing in accordance with the provisions of rule 21(2);

“substantive hearing” means any hearing at which the Fitness to Practise Committee may -

- (a) determine any issue relating to an allegation against a registrant; or
- (b) make an order under the provisions of sections 13F to 13I (power to order immediate suspension etc. after a finding of impairment of fitness to practise and hearings to review such orders); and

“suspension order” means any order made under section 13F directing that a registrant’s registration be suspended for a specified period or indefinitely or that a registrant’s entry relating to a speciality be removed for a specified period.

“the 2005 Rules” means the General Optical Council (Fitness to Practise Rules) Order of Council 2005 as if they remained in force after [CD]

- (2) In these Rules any reference to a numbered section is a reference to the section of the Opticians Act 1989 which bears that number.

PART 2

Allegations received by the Council on or after [CD]

2. An allegation received by the Council on a date on or after [CD] shall proceed under the new Rules.

Allegations received by the Council before [CD], but where on [CD] the Investigating Committee has not made a decision under rule 13 of the 2005 Rules

3. Where on a date before [CD] an allegation has been received by the Council but a notification under rule 4(1) of the 2005 Rules has not been served on the registrant, the allegation shall proceed thereafter under the new Rules.
4. Where on a date before [CD] an allegation has been received by the Council and a notification under rule 4(1) of the 2005 Rules has been served on the registrant:
- (i) the allegation shall proceed under the 2005 Rules until the Investigating Committee reaches a decision under rule 13 of the 2005 Rules;
 - (ii) if the Investigating Committee refers the allegation to the Fitness to Practise Committee under rule 13 of the 2005 Rules, the allegation shall proceed thereafter under the new Rules;
 - (iii) if the Investigating Committee decides that the allegation ought not to be considered by the Fitness to Practise Committee, but wishes to consider whether to give a warning to the registrant, they shall proceed under rule 14 of the 2005 Rules.

Reviews on or after [CD] of a decision of the Investigating Committee before [CD] not to refer an allegation to the Fitness to Practise Committee

5. Where on a date before [CD] the Investigating Committee has decided under rule 13 of the 2005 Rules not to refer an allegation to the Fitness to Practise Committee, a review of the decision which takes place on or after [CD] shall be considered under rule 15 of the new Rules and thereafter the allegation shall proceed under the new Rules.

Termination of referral of an allegation to the Fitness to Practise Committee considered on or after [CD]

6. Where on a date before [CD] the Investigating Committee has decided under rule 13 of the 2005 Rules to refer an allegation for consideration by the Fitness to Practise Committee, a review of the decision which takes place on or after [CD] shall be considered under rule 16 of the new Rules.

Allegations referred by the Investigating Committee to the Fitness to Practise Committee under rule 13 of the 2005 Rules before [CD]

7. Where on a date before [CD] the Investigating Committee has referred an allegation to the Fitness to Practise Committee under rule 13 of the 2005 Rules, but where on [CD] a notification under rule 26(1) of the 2005 Rules has not been served on the registrant, the allegation shall proceed from [CD] under the new Rules
8. Subject to rule 10, where on [CD] the Investigating Committee has referred an allegation to the Fitness to Practise Committee under rule 13 of the 2005 Rules and where a notification under rule 26(1) of the 2005 Rules has been served on the registrant, the allegation shall proceed under the 2005 Rules.
9. An allegation of the type referred to in Rule 9 may proceed under the new Rules where the Council invites the registrant to agree and the registrant does agree.

Hearings of applications for interim orders taking place on or after [CD]

10. A hearing of an application for an interim order which is to take place on a date on or after [CD] shall proceed under rule 20 of the new Rules.

Reviews of interim orders imposed before [CD] which take place on or after [CD]

11. Where an interim order imposed in respect of an allegation on a date before [CD] is to be reviewed on or after [CD], the review shall be considered under rule 58 of the new Rules.

Reviews on or after [CD] of conditional orders and suspension orders imposed by the Fitness to Practise Committee before [CD]

12. Where a conditional order or a suspension order imposed by the Fitness to Practise Committee on a date before [CD] is to be reviewed on or after [CD], the review shall proceed under rule 58 of the new Rules.