

Council meeting

By Zoom

Monday, 22 February 2021

09.30

Public business

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|----|---|--------------|
| 1. | Attendance and introductory remarks | Nigel Clarke |
| 2. | Declarations of interest | Nigel Clarke |
| 3. | Response to the Covid-19 emergency: proposed changes to our procedural Rules
<i>For approval</i> | Sarah Davies |
| 4. | Any other business | Nigel Clarke |

Date of next meeting

Thursday 11 March 2021

Response to the Covid-19 emergency: proposed changes to our procedural Rules

Meeting paper for Council on 22 February 2021

Public

Purpose

Council is invited to agree the further measures set out below which will allow us to respond appropriately and proportionately to the challenges in regulating the pharmacy professions brought about by Covid-19.

Recommendations

Council is invited to:

- a. Note the expedited consultation letter and report (Annex A);
- b. Note the associated analysis of the effects on equality (Annex B);
- c. In accordance with the powers set out in the Pharmacy Order 2010 and subject to any minor drafting changes required by the Privy Council, to make the General Pharmaceutical Council (Coronavirus) (Amendment) (No. 2) Rules Order of Council 2021 (Annex C);
- d. Agree to affix the corporate seal and to defer the application of the seal until such time as office working can safely resume. The application of the seal is a requirement under the Standing Orders of the Council (no.23). We undertake to apply the seal and physically lodge the rules with the Privy Council.
- e. The Chair and Registrar are each invited to electronically sign the rules to enable them to be lodged by email with the Privy Council office.

1. Introduction

- 1.1 Between April and June 2020, we liaised with representatives from the Department of Health and Social Care regarding amendments to our procedural rules which will provide us with greater flexibility to perform our statutory functions during the challenges brought about by the Covid-19 pandemic. The amendments to our rules included:

- The General Pharmaceutical (Registration Rules) 2010
 - The General Pharmaceutical (Appeals Committee Rules) 2010
 - The General Pharmaceutical (Fitness to Practise and Disqualification etc. Rules) Order 2010
 - The General Pharmaceutical Council (Statutory Committees and their Advisers Rules) 2010
- 1.2 All of the amendments were originally intended to operate temporarily and cease to have effect on 1 May 2021, save for the provisions relating to electronic service of documents which were to be permanent changes.
 - 1.3 In order that we might best continue to perform our functions as the regulator of the pharmacy professions as safely and efficiently at this time, there remains a pressing need for us to be able to continue to operate more flexibly beyond 1 May 2021 in response to the ongoing Covid-19 pandemic.
 - 1.4 We have therefore explored with representatives from the Department of Health and Social Care the prospect of further changes being made to our rules, which would effectively make permanent all of the rule changes brought about by the earlier SI, except one which is explained in paragraph 2.2 below.
 - 1.5 In line with our duty under article 66 of the Pharmacy Order 2010 to consult before making any changes to our rules, we conducted an expedited consultation exercise which was time limited. This was necessary because the latest proposed amendments to our rules involve amending the earlier SI which comes into force on 4 March 2021. It is imperative therefore that if the proposed further amendments are approved, the draft SI must be laid by in both Parliaments by 2 March 2021 at the very latest, so that it can come into force immediately before the first SI laid in January 2021 becomes law on 4 March 2021.
 - 1.6 On 8 February 2021, we wrote to the same stakeholders in England, Scotland and Wales that we consulted with on the earlier rule changes in May 2020. We set out the changes proposed and our reasons for wanting the changes. We invited feedback both on the rule changes and on any implications the provisions may have upon equality diversity and inclusion considerations. Respondents were asked to respond by 17 February 2021.
 - 1.7 Overall, the responses we received following our second consultation on proposed amendments to our procedural rules were broadly supportive. Stakeholders have indicated they support us operating a more agile and flexible approach to fitness to practise progression, provided we act appropriately and fairly in how we approach relying upon the provisions.
 - 1.8 The amendments to our rules are intended to be brought about by the laying of a new statutory instrument, The General Pharmaceutical Council (Coronavirus) (Amendment) (No. 2) Rules Order of Council 2021.
 - 1.9 To date the draft SI containing the amendments to our rules has undergone a formal process of robust legal checks by the Privy Council's legal advisors and currently awaits Council and Privy Council approval.

- 1.10 Council are invited to approve the rules. Provided they are approved by the Privy Council, the draft SI is intended to be laid simultaneously in the Westminster & Scottish Parliaments on 2 March 2021.

2. Summary of changes

- 2.1 The following provisions will be made permanent:
- The GPhC will have an express legal power to conduct meetings or hearings by teleconference or video link, “virtual hearings”.
 - Where a hearing is being held by teleconference or video link, the Committee may order that the hearing is to be held in private.
 - The right of a registrant to attend a hearing, includes attending and taking part in a virtual or remote hearing.
- 2.2 The only provision which is not intended to be made permanent concerns the amendment to the General Pharmaceutical Council (Statutory Committees and their Advisers) Rules 2010 which relates to the quorum of our statutory committees. Namely, where it has not been possible to convene a statutory committee constituted of three members, a committee may sit with only two members who must include a chair or deputy chair and a lay member. We propose instead that this provision be extended so that it expires on 1 May 2023. We have not yet had to use this provision to date; we will only ever use it if it is essential.
- 2.3 The details of the proposed changes are set out in more detail in our consultation letter dated 8 February 2021, along with the report on the expedited consultation (Annex A).

3. Key considerations

- 3.1 Since March 2020 we have been working remotely and in line with Government guidance. Initially this led to some challenges in progressing substantive hearings within established timescales due to Government imposed travel restrictions and safety concerns for those attending hearings in person.
- 3.2 Due to the legal requirements set out within the Fitness to Practise Rules requiring certain orders imposed by the Fitness to Practise Committee to be reviewed by the Committee within a fixed time period, a decision was made to conduct urgent and essential hearings remotely with the agreement of the person concerned and their representative.
- 3.3 We have done and will continue to do all that we can to facilitate members of the public in attending our remote hearings, where it is appropriate. Certain hearings, for example interim order hearings must be held in private. In other cases, for example where issues of health are touched upon, it will not be appropriate for members of the public to observe the parts of the hearing that deal with health issues.
- 3.4 If the amendments to our rules are enacted, whilst the Committee will have the option to exclude the public from observing remote hearings, we anticipate remote hearings will continue to be open to the public to observe, unless there is good reason why the hearing (or part of the hearing) should be heard in private. Our current approach is set out on our website, where we state that members of the public who wish to observe our hearings should contact our Adjudications Team in the first instance. Where appropriate, the

Hearings Co-ordinator will send the observer a secure link by email to join the hearing and facilitate/restrict the individual's access to the proceedings as appropriate.

- 3.5 As restrictions eased a limited number of physical hearings resumed alongside virtual hearings which continued. Cases identified as being more suitable for a hearing in person included those involving particularly complex issues, or those where there were multiple witnesses, as well as cases where the person concerned requested a physical hearing.
- 3.6 In response to the move to tier 4 restrictions and high level of infections in December 2020, all physical hearings were cancelled until further notice. The announcement of a new national lockdown on 4 January 2021 has not affected our position in that regard. We will continue to monitor the latest Government guidance and to review our position regarding holding physical hearings.
- 3.7 There is currently a pressing need for the further amendments to our rules. If the latest draft SI is not laid by 2 March, the flexible provisions including the power to hold remote hearings will expire on 1 May 2021.
- 3.8 With local elections due to take place in May 2021 and the Scottish Parliament being unable to consider any new legislation from the middle of March 2021 until after the elections, there will be no opportunity for us to secure a further rule change until after the current provisions expire. That will then leave us in a position where we are unable to operate with the degree of flexibility still required as a result of the prevailing circumstances.

4. Equality and diversity implications

- 4.1 Through our consultation, we highlighted our commitment to ensuring that any changes to our legal framework are compatible with our core values of equality, diversity and inclusion. We sought feedback and views about how the proposed changes to our rules may impact upon these issues.
- 4.2 We completed an analysis of the effects on equality consistent with our responsibilities as set out in the Equalities Act 2010 (see Annex B). This includes an overview of the work we have completed to inform our understanding of the equality and diversity dimensions of the proposed changes; to identify any trends or issues that apply to people who share protected characteristics; and, to consider the potential impact on this range of equality groups.
- 4.3 We recognise that the effects of Covid-19 are clearly more serious for certain groups and therefore individuals from these groups may have reservations about attending physical hearings. The proposed measures will provide added flexibility to our current procedures and will support distanced engagement with our functions via video, audio-link or telephone. We hope that this will have a positive impact across protected characteristics, and we will continue to review our approaches as the situation develops.
- 4.4 Overall, we are satisfied that these potential impacts can be mitigated through the implementation of supporting guidance.
- 4.5 Colleagues within our Adjudication Services have developed operational guidance which identifies the factors to be considered when determining whether a hearing is suitable to be conducted remotely. Our guidance takes account of the feedback we received during the consultation, as well as our analysis of the effects of the new measures upon equality and inclusion. The guidance was also informed by the PSA's "Guidance for regulators on fitness to practise hearings during the Covid-19 pandemic" which was published in September 2020.

- 4.6 Our guidance covers the key issues that should be considered, examples of which include but are not limited to: the nature of the allegations, the evidence in the case, the extent and nature of the areas of dispute, access to IT and adequate privacy to enable participation, the health or vulnerability of participants, whether the individual concerned is represented, and whether there is an interim order in place.
- 4.7 We will continue to monitor the equality impacts of the amendments to our rules going forward, taking further action where appropriate to do so.

5. Communications

- 5.1 We will publish an update on our website ahead of the Council meeting to include this paper and the appendices so that members of the public and interested individuals and organisations may access the SI and the summary of the amendments to our rules it is intended to bring about. We will also send an update via email to the stakeholders who responded to our consultation on the rules.
- 5.2 We already invite participants in our hearings to provide us with feedback of their experience once the proceedings conclude. We will continue to encourage the provision of feedback as this will be an invaluable tool for us to establish what people who attend our hearings think about remote hearings and the processes involved. We can then use any feedback to inform improvements moving forward.
- 5.3 In our consultation “Managing concerns about pharmacy professionals: Our strategy for change”, which we published in October 2020 and which closed on 22 January 2021, we asked for feedback on whether remote hearings disadvantage anyone; present any risks to a fair hearing; have benefits for those involved. We will be conducting a detailed analysis of the responses we receive and will update Council on the outcome of the consultation more widely in due course.

6. Resource implications

- 6.1 In general terms, making permanent the (majority of) the amendments to the rules as proposed are likely to represent a small saving both in cost and in staff time.
- 6.2 Remote hearings may represent a saving both in terms of time, money, and the potential for health and well-being benefits for those who take part. Removing the need to travel to the hearings suite saves time and costs, and dispenses with the need for reception and security staff to assist us. Some participants may find taking part in a remote hearing to be a less daunting and stressful experience than attending a hearing in person.

7. Risk implications

- 7.1 The proposed changes to our rules will give us the power to be more flexible in response to the Covid-19 outbreak whilst still fulfilling our core public protection functions. If the amendments to the rules are not approved and enacted, we could potentially face a legal challenge predicated on the absence of a legal power to hold remote hearings if there was a need to proceed with remote hearings after 1 May 2021.

8. Monitoring and review

- 8.1 We will continue to monitor Government and public health guidance and review our approach to holding hearings generally and update our guidance where necessary. We will also keep in touch with the other healthcare regulators and share and exchange

recommendations for best practice. We will also monitor any further guidance the PSA, other regulators and HM Court and Tribunal Service may publish regarding remote hearings.

9. Recommendations

Council is invited to:

- a. Note the expedited consultation letter and report (Annex A);
- b. Note the associated analysis of the effects on equality (Annex B);
- c. In accordance with the powers set out in the Pharmacy Order 2010 and subject to any minor drafting changes required by the Privy Council, to make the General Pharmaceutical Council (Coronavirus) (Amendment) (No. 2) Rules Order of Council 2021 (Annex C);
- d. Agree to affix the corporate seal and to defer the application of the seal until such time as office working can safely resume. The application of the seal is a requirement under the Standing Orders of the Council (no.23). We undertake to apply the seal and physically lodge the rules with the Privy Council.
- e. The Chair and Registrar are each invited to electronically sign the rules to enable them to be lodged by email with the Privy Council office.

Sarah Davies, Senior Legal Advisor

Laura McClintock, Chief of Staff

Rehana Li-Ying, Paralegal

General Pharmaceutical Council

19 February 2021

ANNEX A

Expedited consultation analysis: proposed changes to our procedural Rules

Background

1. Between April and June 2020, we liaised with representatives from the Department of Health and Social Care regarding amendments to our procedural rules which will provide us with greater flexibility to perform our statutory functions during the challenges brought about by the COVID-19 pandemic.
2. All of the amendments save for the one identified below, were originally intended to operate temporarily and cease to have effect on 1 May 2021.
3. The original amendments to our rules are intended to bring about the following provisions:
 - The GPhC will have an express legal power to conduct meetings or hearings by teleconference or video link, “virtual hearings”.
 - Where a hearing is being held by teleconference or video link, the Committee may order that the hearing is to be held in private.
 - Notices and documents may be sent to the individual in question (registrants) by email without requiring their express agreement to electronic service. This provision alone represents a permanent rule change.
 - Where it has not been possible to convene a statutory committee constituted of three members, a committee may sit with only two members who must include a chair or deputy chair and a lay member.
4. On 29 May 2020 we conducted an expedited consultation by writing to key pharmacy and patient focussed stakeholders across the three countries that we regulate asking for their views on the proposed amendments to our rules as well as any implications they thought the rules may have upon equality, diversity and inclusion considerations. Respondents were asked to respond by 9 June 2020 in light of the urgent need to clarify our legal framework without delay.
5. Overall, the responses we received were broadly supportive of the draft amendments proposed. At the time we prepared an analysis of the feedback which summarised some of the key themes which were addressed by stakeholders.

6. The statutory instrument (SI) containing the amendments to our rules was subsequently approved by our Council and the Privy Council and was laid in both the Westminster and Scottish Parliaments on 14 January 2021. The SI will come into force on 4 March 2021.

Further amendments to our procedural rules

7. In order that we might best continue to perform our functions as the regulator of the pharmacy professions as safely and efficiently at this time, there remains a pressing need for us to be able to continue to operate more flexibly beyond 1 May 2021 in response to the ongoing Covid-19 pandemic.
8. We have therefore explored with representatives from the Department of Health and Social Care the prospect of further changes being made to our rules, which would effectively make permanent all of the rule changes brought about by the earlier SI, except one.
9. The only provision which is not intended to be made permanent concerns the amendment to the General Pharmaceutical Council (Statutory Committees and their Advisers) Rules 2010 which relates to the quorum of our statutory committees. We propose instead that this provision be extended so that it expires on 1 May 2023. We have not yet had to use this provision to date; we will only ever use it if it is essential.
10. In line with our duty under article 66 of the Pharmacy Order 2010 to consult before making any changes to our rules, we conducted an expedited consultation exercise which was time limited. This was necessary because the latest proposed amendments to our rules involve amending the earlier SI which comes into force on 4 March 2021. It is imperative therefore that if the proposed further amendments are approved, the draft SI must be laid by in both Parliaments by 2 March 2021 at the very latest, so that it can come into force immediately before the first SI laid in January 2021 becomes law.
11. Our latest consultation involved writing to the same stakeholders in England, Scotland and Wales that we consulted with on the earlier rule changes in May 2020. We set out the changes proposed and our reasons for wanting the changes. We invited feedback both on the rule changes and on any implications the provisions may have upon equality diversity and inclusion considerations.

What we heard

12. Overall, the responses we received were broadly supportive of us being able to operate more flexibly in the longer term; provided we adopt safeguards to ensure fairness, transparency and integrity of our processes.
13. Stakeholders understood there may be real benefits in us having the flexibility the provisions bring about. However, they were clear that we should not adopt an overreliance on the flexible provisions, reliance upon these provisions should not become our default approach when we perform our functions. We agree. We are committed to using the provisions responsibly, proportionately, and in line with our relevant guidance. We will also seek to work collaboratively with the individuals involved to ensure we understand their views.

14. We have set out below a summary of some of the key themes which were addressed in the feedback we received from stakeholders.

Conducting hearings remotely (virtual hearings)

15. Stakeholders acknowledged that it is important that we are able to carry out hearings to protect the public and uphold public confidence in pharmacy. Having a power to enable us to conduct hearings remotely is a practical way of progressing hearings in a timely fashion, particularly when it may be difficult for physical hearings to take place. We heard that avoiding unnecessary delays can prove beneficial to an individual's wellbeing.
16. The feedback we received emphasised the importance of us being alive to the fact that not everyone has access to the internet or adequate internet connectivity to take part in a remote hearing. Stakeholders also noted that we must bear in mind that not all individuals have access to a computer or suitable electronic device to enable them to engage in proceedings remotely.
17. We have developed operational guidance which identifies the factors to be considered when determining whether a hearing is suitable to be conducted remotely. At the time of producing our guidance we took care to ensure that important factors including (but not limited to), the length of, complexity, and areas of dispute between the parties in a case, as well as the views of all parties, including the witnesses in a case would be taken into account in identifying whether a case may be suitable for a remote or virtual hearing. Our guidance also notes that *"Where witness evidence and credibility are central to determining a factual issue, and where seeing and assessing the demeanour of the witness is more important, the limitations of laptop or computer screens are likely to make a remote hearing unsuitable"*.
18. Our guidance also takes account of the feedback we received during our consultation on rule changes in May 2020, as well as our analysis of the effects of the new measures upon equality and inclusion. The guidance was informed by the PSA's "Guidance for regulators on fitness to practise hearings during the Covid-19 pandemic" which was published in September 2020.
19. We received feedback from stakeholders welcoming the development of our guidance identifying the criteria that will use to identify where it may be appropriate for hearings to be held remotely.
20. We will reflect upon the current consultation feedback and review whether our guidance needs to be further updated. We will also keep our guidance under review moving forward so that we can remain agile and embed best practice.
21. We have adopted a process of seeking feedback from registrants, committee members and witnesses who take part in our hearings. Any feedback they provide is reviewed and reflected upon so that we may improve how we arrange and conduct our hearings. We will continue to encourage stakeholders in our hearings to provide feedback and to review the feedback we receive to ensure we are mindful of any problems or negative experiences as soon as possible and can take action to make any necessary changes. In feedback from our latest consultation, stakeholders emphasised to us the importance of seeking feedback from participants in hearings and taking appropriate action.

22. We have also heard from stakeholders in their feedback that effective communication in a fair and equitable way with all parties involved in a hearing is incredibly important. We agree. We strive to take care in treating people with respect and kindness and by ensuring they have all the necessary information they need in good time to enable them to take part in our proceedings. We appreciate that attending a hearing can be very stressful for all concerned.
23. In other feedback we have received, stakeholders have asked us to consider facilitating witnesses giving their evidence at hearings via video link more regularly. We understand this to mean that even if the hearing takes place in person rather than remotely, some witnesses may find it beneficial for a variety of different reasons to give their evidence via live video link rather than in person.
24. We understand that it may sometimes be more convenient for a witness to give their evidence via video link rather than in person. If a hearing is to take place remotely, all witnesses in the case will be invited to give their evidence remotely. However, if the hearing is to take place in person, our fitness to practise rules dictate the process to be followed for how and when witnesses give their evidence. All decisions regarding whether a witness may give their evidence by video link are made by the Fitness to Practise Committee after hearing the views of the parties. Whilst we completely understand the point raised here is an important one for us to bear in mind, unfortunately the rule changes proposed do not enable us to accept all witness evidence via video link.

Facilitating public attendance at remote (virtual) hearings

25. Stakeholders have fed back to us that they expect that even where a hearing is conducted remotely, there should be a presumption that the hearing is accessible to the public, unless there are good reasons why the hearing should not be conducted in public. Public hearings ensure the proceedings are transparent and help to maintain public confidence in both the pharmacy professions, and in us as the regulator in how we perform our regulatory functions.
26. We agree that conducting fitness to practise proceedings in a fair, open and transparent manner is essential. We are committed to enabling the public to observe our proceedings wherever possible.
27. In our guidance for conducting remote hearings we confirm that our starting point is that all GPhC Principal and Principal Review Hearings are held in public, except for health cases. Any interested parties can contact the Adjudications Team and be given details for how to access a public remote hearing to observe.
28. We anticipate that it would be the exception to the rule and be in limited circumstances that it would be appropriate to invite a committee to conduct a remote hearing in private in cases other than those involving the registrant's health.

Sending notices and documents to people by email

29. The latest proposed amendments to our rules that this consultation was concerned with do not address this provision at all.

30. The permanent rule change providing us with a power to send notices and other documents by email to registered pharmacy professionals without requiring their consent, was brought about the earlier rule changes contained within SI that will come into force on 4 March 2021. The latest rule changes do not change this provision.

Hearing cases with a committee constituted of two rather than three members

31. The proposed rule change concerning this provision would enable us to have the option of exercising this provision until 1 May 2023. The provision will allow for our statutory committees to proceed to hear cases whilst constituted of two committee members rather than three. The two members who must be present include a chair or deputy chair and a lay member.
32. It would only be necessary to rely upon this provision where it has not been possible to find a third committee member due to a member(s) being unwell, or unavailable to sit due to supporting the wider workforce by returning to practice.
33. We hope that we would never need to rely upon this provision. However, whilst COVID-19 continues to disrupt and impact upon the provision of healthcare services and upon travel, there remains the possibility that we may need to rely upon this provision if the pharmacy workforce is impacted to the point where we are unable to locate an available pharmacy professional committee member.
34. We received limited feedback from stakeholders on this issue during this consultation exercise. However, what we did hear was that convening a committee comprised of two rather than three members is not ideal; it could lead to a situation where the two members are unable to agree on an outcome.
35. We agree that proceeding with a committee constituted of two rather than three members is far from ideal. We remain committed to confirming that we have no intention of relying upon this provision unless we have no other option.
36. We recognise the importance of pharmacy professional input into our Fitness to Practise decision-making, both in terms of expertise and in terms of ensuring professional as well as public confidence in the process.

Next steps

37. We are very grateful to all of the stakeholders who have provided us with their feedback. The points raised are important and will inform our next steps.
38. We again wish to assure all stakeholders that if the further rule changes are approved and come into force, just because we have the power to do something, does not mean that it is right for us to rely upon that power. We will not rely upon these flexible powers in every case.
39. We will continue to review our systems and follow our supporting guidance to ensure that we only use the powers where it is appropriate to do so. We will further reflect upon the feedback we have received and keep our guidance under review. We will continue to monitor the guidance of both the PSA and the practices of other regulators with similar powers, to help we ensure

consistency of approach and to ensure we perform our functions in line with best practice. We will also keep in mind relevant case law and any guidance issued by the Courts regarding remote hearings.

19 February 2021

ANNEX B

Analysis of the effects on equality

Proposed changes to our procedural Rules

1. Aims and purpose of the project or policy

This analysis supports the work we have been carrying out in relation to some proposed changes to the procedural rules that govern how we may perform certain statutory functions. These proposed changes will help us to work as effectively as possible during the COVID-19 pandemic.

At present our staff are working remotely and in line with Government guidance. This means that currently we are not able to hold physical hearings at our premises. We do not think it is appropriate to ask our staff, committee members, registrants and their representatives or witnesses to put themselves at risk by travelling to our offices at this time. This means that the majority of our hearings have not been able to take place.

However, we decided that for a small number of cases, it is essential that those hearings must still take place. These cases include interim order applications, which by their very nature are urgent, where there is a need to take steps to protect the public or prevent a loss of confidence in the pharmacy professions, or it may be in the interests of the person concerned to act. This also included interim order review hearings and review hearings.

Through an expedited consultation as provided for in the draft legislation, we sought feedback and views from a range of key stakeholders on temporary and urgent changes to our rules, to enable us to:

- hold panel hearings using audio or video conferencing facilities using a specific new legal power to do this
- serve documents and notices by email without requiring the agreement of the person concerned
- allow for our statutory committees to proceed to hear cases whilst constituted of two committee members rather than three in very limited circumstances

The details of the proposed changes are set out in more detail in our consultation letter dated 29 May 2020.

2. Review of available information

In order to assess the potential impact of these proposals from an equality, diversity and inclusion perspective, we considered a range of information and evidence including:

- Ongoing Government advice relating to Covid-19
- Stakeholder responses to our consultation letter
- Equivalent emergency legislation available to other health and social care regulators
- Supporting guidance and information produced by other health and social care regulators with similar powers
- HM Courts and Tribunals Service guidance on telephone and video hearings during coronavirus outbreak
- Other relevant external reports, guidance and case law

3. Additional information relevant to equality and diversity issues

This table shows if this project or policy has any relevance to the equality and diversity issues below. If it is relevant to any of these issues, a full equality impact analysis will need to be carried out.

Issue	Relevant?		Explanation
	Yes	No	
Age	<input checked="" type="checkbox"/>	<input type="checkbox"/>	See below
Disability	<input checked="" type="checkbox"/>	<input type="checkbox"/>	See below
Sex	<input type="checkbox"/>	<input checked="" type="checkbox"/>	See below
Gender reassignment	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
Marriage or Civil Partnership	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
Pregnancy/Maternity	<input checked="" type="checkbox"/>	<input type="checkbox"/>	See below
Race	<input checked="" type="checkbox"/>	<input type="checkbox"/>	See below
Religion or belief	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
Sexual orientation	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
Welsh Language Scheme	<input type="checkbox"/>	<input checked="" type="checkbox"/>	See below
Other identified groups	<input checked="" type="checkbox"/>	<input type="checkbox"/>	See below

4. Decision on impact

Based on the answers above, does this project or policy require a full impact analysis? This decision takes into account whether this policy or project would result in a substantial change or overall impact for pharmacy.

Yes ☒ No ☐

We have completed an analysis of the effects on equality consistent with our responsibilities as set out in the Equalities Act 2010. This includes an overview of the work we have completed to inform our

understanding of the equality and diversity dimensions of the proposed changes; to identify any trends or issues that apply to people who share protected characteristics; and, to consider the potential impact on this range of equality groups.

We marked 'Yes' against categories in the screening table where we believe there may be impacts on those who share protected characteristics.

The potential impact of these changes, from an equality and diversity perspective, has been included in the full impact assessment below.

5. Consultation and involvement

We wrote to a number of key stakeholders on 29 May 2020, to seek their views on the proposed changes to our procedural rules.

In our communications, we highlighted our commitment to ensuring that any changes to our legal framework are compatible with our core values of equality, diversity and inclusion and sought feedback about how the proposed changes to our rules may impact upon these issues.

6. Full impact analysis

The full details of what we heard through the consultation are set out in our report of the expedited consultation.

Broadly speaking, respondents were supportive of the proposed changes to our procedural rules, to ensure that our statutory functions can continue effectively during the pandemic.

Respondents also recognised the continuation of hearings as critical to maintaining public safety and confidence in the professions as well as the challenges in finding alternative technological solutions and new ways of working in the context. There was also recognition of the urgency of the changes, not only from a regulation perspective, but also from a personal well-being perspective of individuals involved in the cases.

Alongside this broad support, respondents highlighted a number of practical considerations and potential impacts from an equality, diversity and inclusion perspective, to help ensure that registrants, patients and others are not disproportionately or unfairly affected by the proposed changes. This included feedback relating to those who share protected characteristics, as well as some wider issues.

Overall, we do not anticipate that the proposed changes will give rise to significant impacts on certain protected characteristics. And, we consider that the proposed changes are a justified and a proportionate means of achieving the legitimate aim of protecting the general public, by enabling us to perform our statutory functions and progress hearings without delay.

Where some possible negative impact has been identified, we consider that this can be mitigated through adjustments based on individual needs and circumstances.

We have also identified a number of positive impacts. For example, having the option to attend hearings remotely may have a positive impact on those that would find travel to the hearing a significant barrier in the current context.

Finally, it is important to highlight that most impacts will be temporary, spanning the duration of the coronavirus outbreak and emergency situation, and many of the provisions where possible contain safeguards and mitigation measures to lessen the extent of any negative actual or perceived impacts.

Age

We did not receive any specific feedback or information through the consultation to suggest any disproportionate impact of the proposals in relation to age. However, we recognise that there could be a potential impact on people who have been identified as using online technologies less than other groups such as older people or those with physical or mental disabilities.

To mitigate any negative impact to these groups, we will be developing supporting guidance on the use of the proposed new powers, including how we will identify people for whom video or audio - conferencing hearings would be unsuitable as well as supporting and facilitating adjustments, where appropriate. There is more information relating to disability below.

We also recognise that the effects of Covid-19 are more serious for certain groups and therefore individuals from these groups may have reservations about attending physical hearings. A number of the proposed measures will provide added flexibility to our current procedures and will support distance engagement with our functions via video, audio-link or telephone.

Having the option to attend hearings remotely may also have a positive impact on those that would find travel to the hearing a significant barrier, which may include older people.

(Please see our comments below relating to the Public Health England Report on Disparities in the risk and outcomes of COVID-19)

Disability

We did not receive any specific feedback from respondents about disability other than those highlighting the continued importance of making adjustments for individuals based on their specific needs and circumstances.

More widely, and in the external context, we have noted the interim findings of the Equalities and Human Rights Commission (EHRC) in light of the increased expansion of video and phone hearings by the Ministry of Justice in response to the pandemic. This report highlighted that any new approaches should not accentuate the difficulties that already exist for disabled people in accessing justice and sets out and highlighted how to mitigate the risks that technologies pose to disabled people.

In particular, the interim report includes evidence about the impact video technology has on identifying impairments and on participation, and the adjustments required.

We will continue to monitor relevant advice in the external context and take this into account when developing guidance and criteria around how we'll use the flexible powers in practice. This will include how we identify people for whom video or audio conferencing hearings would be unsuitable as well as supporting and facilitating adjustments, where appropriate.

As highlighted above, having the option to attend hearings remotely may also have a positive impact on those that would find travel to the hearing a significant barrier, which may include people with different types of disabilities.

Gender (Sex)

We did not receive any specific feedback or information through the consultation to suggest any disproportionate impact of the proposals in relation to gender (sex).

(Please see our comments below relating to the Public Health England Report on Disparities in the risk and outcomes of COVID-19)

Gender reassignment

We do not anticipate, nor have any evidence or information to suggest, any disproportionate impact of the proposals in relation to gender reassignment.

Marriage or Civil Partnership

We do not anticipate, nor have any evidence or information to suggest, any disproportionate impact of the proposals in relation to marriage or civil partnership.

Pregnancy/maternity

We did not receive any specific feedback or information through the consultation to suggest any disproportionate impact of the proposals in relation to pregnancy or maternity.

More widely, we recognise that it could be more difficult for certain participants to attend remote hearings from their own homes if they have caring responsibilities. To mitigate this, we will take steps to ensure that individual needs and circumstances are catered for, by working with participants to facilitate their attendance with remote hearings at suitable times.

On the other hand, attending virtually, may be more beneficial for participants who may struggle to find child care or be away from their homes and families for prolonged periods of time.

Race

We did not receive any specific feedback or information through the consultation to suggest any disproportionate impact of the proposals in relation to race.

As highlighted above, having the option to attend hearings remotely may also have a positive impact on those that would find travel to the hearing a significant barrier.

(Please see our comments below relating to the Public Health England Report on Disparities in the risk and outcomes of COVID-19)

Religion or belief

We do not anticipate, nor have any evidence or information to suggest, any disproportionate impact of the proposals in relation to religion or belief.

More widely, we have taken account of external guidance on how the HM Courts and Tribunals Service will use telephone and video technology during Covid-19, which includes information about taking oaths or making affirmations as part of a remote hearing. This includes specific guidance on taking an oath on a sacred object in the context of a remote hearing, as well as guidance on how participants can choose to take an oath without a sacred object if they consider it will still be binding on them. We will consider this as we develop our supporting guidance.

Sexual orientation

We do not anticipate, nor have any evidence or information to suggest, any disproportionate impact of the proposals on sexual orientation.

Other external findings relevant to protected characteristics

As part of our analysis, we noted the recent PHE report on 'Disparities in the risk and outcomes of COVID-19'. The report presents findings based on surveillance data available to PHE at the time of its publication, including through linkage to broader health data sets. It confirms that the impact of COVID-19 has replicated existing health inequalities and, in some cases, has increased them.

The report is designed to improve understanding of the pandemic and to help formulate the future public health response to it. However, the information within the report has some broader relevance to our work in this context.

In particular, it highlights that among people already diagnosed with Covid-19, people who were 80 or older were seventy times more likely to die than those under 40. It goes on to say that the risk of dying among those diagnosed with Covid-19 was also higher in males than females; higher in those living in the more deprived areas than those living in the least deprived; and higher in those in Black, Asian and Minority Ethnic (BAME) groups than in White ethnic groups. These inequalities largely replicate existing inequalities in mortality rates in previous years, except for BAME groups, as mortality was previously higher in White ethnic groups.

We recognise that the effects of Covid-19 are clearly more serious for certain groups and therefore individuals from these groups may have reservations about attending physical hearings. A number of the proposed measures will provide added flexibility to our current procedures and will support distance engagement with our functions via video, audio-link or telephone. We hope that this will have a positive impact across protected characteristics, and we will continue to review our approaches as the situation develops.

In light of the emerging information about health inequalities, we are continuing to assess the risks to certain groups, at a wider organisation level. We are carrying out equality impact assessments on all the key changes we have put in place during the pandemic and undertaking risk assessments of our key regulatory activities through the lens of COVID-19, linked to our wider equality, diversity and inclusion strategy.

Welsh Language Scheme

The proposed changes do not raise any new issues or impacts in relation to the Welsh language scheme. Our current scheme (as published on our website [here](#)) sets out how we support and facilitate the needs of members of the public who prefer to communicate in Welsh.

Other potential issues and impacts

Through our consultation exercise, we also heard from stakeholders on a number of broader equality, diversity and inclusion aspects to the proposals, including:

- Some individuals may not have access to the internet and/or a computer or laptop, and therefore steps need to be taken, so that these individuals are not disadvantaged and are able to participate fully in remote hearings.
- Similarly, with regards to service of notices and documents by email, some individuals may have limited WiFi bandwidth/ unreliable internet, or struggle to receive attachments. Steps should be taken to ensure alternative arrangements are in place for those who may be technologically excluded.
- Where documents are served electronically, these should be accessible and reasonable adjustments should be made for individuals, who may need additional support or alternative formats made available to them.
- A possible consequence of all documents being provided electronically is that they may prove more arduous to read and digest particularly where a large amount of information is provided, for example, in a case bundle. One stakeholder suggested that the GPhC may wish to consider providing registrants with extra time, to respond to allegations to account for the change in format.

- A number of stakeholders felt, in the interests of fairness and transparency, that the GPhC should continue to facilitate public attendance at remote hearings even though this is not required under the new rules. Respondents suggested practical ways of doing this including registering beforehand or by accessing through a general link (we have previously confirmed in our consultation document that we will continue to facilitate public access at hearings, where possible).

7. Action needed as a result of the analysis

It is important to highlight that we will not always use these flexible powers (especially the powers on panel membership) in every case.

We will be producing guidance to explain how we'll use the powers in practice and in appropriate cases. This will take account of the feedback received through the consultation, as well as the guidance produced by other regulators with similar emergency powers, to help ensure consistency in approach, where possible.

Our guidance will set out the factors we'll consider when deciding whether to list a remote hearing, and by panels in deciding whether, and if so how, a remote hearing should take place.

This will also cover key issues such as the nature of the matters at stake during the hearing; any issues the use of video/audio technology may present for participants in the hearing, having regard to individuals' needs and circumstances; supporting vulnerable participants; and, any issues around public access to or participation in the hearing.

8. Monitoring and review

a) How will the implementation of the proposal be monitored and by whom?

The majority of the proposed changes will only be available to us for a time limited period.

If the new rules become law, they will only remain in force until 30 April 2021. However, it is possible that as we continue to review the situation, and in particular the impact of Covid-19 on the pharmacy professions, we may decide that we no longer need to use the provisions brought about by the rules. In those circumstances we may stop using the flexible provisions before 30 April 2021.

b) How will the results of monitoring be used to develop this proposal and its practices?

The information and feedback gathered through this consultation will be used to support the development of guidance on how we will use the new powers in practice.

c) What is the timetable for monitoring, including key dates?

See section (a) above.

9. Summary of the analysis of the effects on equality

This section sets out what action will be taken as a result of the analysis.

No impact identified: no change to the policy or project	<input type="checkbox"/>
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Equality impact identified: continue the policy	<input checked="" type="checkbox"/>
Equality and/or Welsh language impact identified: adjust the policy and continue	<input type="checkbox"/>
Equality and/or Welsh language impact identified: stop and remove the policy	<input type="checkbox"/>

The reasons for this decision are:

We have carefully considered the feedback through the consultation relating to the potential impact of our proposals on individuals or groups who share protected characteristics and any other impacted individuals or groups.

There is evidence that the impact of the proposed changes may be greater on some individuals or groups, for example, disabled people for whom video or audio conferencing hearings would be unsuitable, or those who may be digitally excluded.

We have also identified a number of positive impacts. For example, having the option to attend hearings remotely may also have a positive impact on those that would find travel to the hearing a significant barrier.

Overall, we are satisfied that these potential impacts can be mitigated through the development and implementation of supporting guidance, to explain how we'll use the powers in practice and in appropriate cases. This will take account of the important feedback received through the consultation, as well as the guidance produced by other regulators with similar emergency powers, to help ensure consistency in approach, where possible.

Our guidance will cover key issues such as the nature of the matters at stake during the hearing; any issues the use of video/audio technology may present for participants in the hearing, having regard to individuals' needs and circumstances; and any issues around public access to or participation in the hearing. The guidance will summarise relevant factors for panels to consider in balancing the risks and benefits in an individual case proceeding remotely, thus supporting fair process.

This guidance will be published on our website in due course.

We will also continue to monitor the equality impacts of these proposals going forward, taking further action where appropriate to do so.

June 2020

10. Supplementary equality impact analysis

The policy changes described above were implemented through a new statutory instrument which was laid in the Westminster and Scottish Parliaments on 14 January 2021 and which will come into force on 4 March 2021. However, the majority of the changes the new rules bring about are time limited and will expire on 1 May 2021.

We have since conducted a second expedited consultation on further changes to enable us to continue to operate more flexibly **beyond 1 May 2021** in response to the ongoing Covid-19 pandemic. This will effectively make permanent all of the rule changes, **except for** the provision amending the General Pharmaceutical Council (Statutory Committees and their Advisers) Rules 2010 which relates to the quorum of our Statutory Committees. Instead this provision will only be extended so that it expires on 1 May 2023.

Through the second expedited consultation, we have also sought to understand the potential impact of extending the time limits of these changes on individuals or groups who share protected characteristics and any other impacted individuals or groups. This analysis supplements the original equality impact analysis set out in more detail at pages 1-8 above.

Overall, we did not identify any significantly different impacts to those already considered and mitigated through our original assessment and related actions.

The main themes highlighted were as follows:

- the need for remote hearings to be conducted fairly, and in line with the GPhC's duties to protect patients and the public
- the importance of ensuring that hearings are carried out in a timely manner, reducing the potential negative impact on mental health (it was noted that some individuals who suffer from anxiety may benefit from the ability to take part in a remote hearing)
- the importance of recognising that remote hearings may be inappropriate for some people who may have hearing impairments or other disabilities related to communication
- making sure that those who may not have internet and/or a computer are supported through the process and not placed at a disadvantage (recognising that remote hearings may not be suitable or appropriate for some)
- the need to manage any practical difficulties with accessing documents on screens, to ensure that people can take part fully and are not placed at a disadvantage
- managing the numbers of people attending remote hearings, to avoid increased anxieties to the individuals involved
- the criteria /guidance to be applied in deciding when to run a remote hearing should be carefully considered to ensure that it does not inadvertently disadvantage any particular groups
- the need to mitigate against any detrimental effects that could arise from presenting evidence remotely

Overall, we are satisfied that these potential impacts can be mitigated through the safeguards set out in our operational guidance and by taking great care and caution in our approach to deciding whether, and how we will use the flexible provisions the changes bring about.

Our guidance identifies the factors to be taken into account when determining whether a hearing is suitable to be conducted remotely and has been informed by the Professional Standards Authority's

“Guidance for regulators on fitness to practise hearings during the Covid-19 pandemic” which was published in September 2020.

As stated previously, we recognise that the effects of Covid-19 are clearly more serious for certain groups and therefore individuals from these groups may have reservations about attending physical hearings. These changes will enable us to be flexible in our current procedures, in light of the ongoing pandemic and associated restrictions, and will support distanced engagement with our functions via video, audio-link or telephone.

We hope that this will have a positive impact across protected characteristics, and we will of course continue to review and monitor the equality impacts of these proposals going forward, taking further action where we need to do so.

February 2021

2021 No. 0000

HEALTH CARE AND ASSOCIATED PROFESSIONS

PHARMACY

**The General Pharmaceutical Council (Coronavirus)
(Amendment) (No. 2) Rules Order of Council 2021**

Made - - - - 2021

Laid before Parliament 2021

Laid before the Scottish Parliament 2021

Coming into force in accordance with Article 1

At the Council Chamber, Whitehall the [x]th day of February 2021

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

The General Pharmaceutical Council has made the General Pharmaceutical Council (Coronavirus) (Amendment) (No. 2) Rules 2021, which are set out in the Schedule to this Order, in exercise of the powers conferred by articles 19(3), 61(1), (2)(a), (3)(a) and (6)(b), 66(1) of, and paragraph 5(1)(a) and (d) of Schedule 1 to, the Pharmacy Order 2010^(a).

In accordance with article 66(3) of that Order, the General Pharmaceutical Council has consulted such persons or organisations as it considered appropriate.

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 (Coronavirus) (Amendment) (No. 2) Rules Order of Council 2021 and comes into force immediately before 4th March 2021.

Privy Council Approval

2. Their Lordships, having taken the Rules as set out in the Schedule to this Order into consideration, are pleased to, and do, approve them.

Richard Tillbrook
Clerk of the Privy Council

^(a) S.I. 2010/231; relevant amending instruments are S.I. 2015/806 and 2016/372.

SCHEDULE

Article 2

The General Pharmaceutical Council (Coronavirus) (Amendment) (No. 2) Rules 2021

The General Pharmaceutical Council makes these Rules, in exercise of the powers conferred by articles 19(3), 61(1), (2)(a), (3)(a) and (6)(b), 66(1) of, and paragraph 5(1)(a) and (d) of Schedule 1 to, the Pharmacy Order 2010(a).

In accordance with article 66(3) of that Order, the General Pharmaceutical Council has consulted such persons or organisations as it considered appropriate.

Citation and commencement

1. These Rules may be cited as the General Pharmaceutical Council (Coronavirus) (Amendment) (No. 2) Rules 2021 and come into force immediately before 4th March 2021.

Amendment of the General Pharmaceutical Council (Coronavirus) (Amendment) Rules 2021

2.—(1) The General Pharmaceutical Council (Coronavirus) (Amendment) Rules 2021(b) are amended as follows.

(2) For the heading to rule 1 substitute “Citation, commencement and expiry”.

(3) For rule 1(2) substitute—

“(2) At the end of 1st May 2023—

(a) the amendments made by rule 4 expire, and

(b) the provisions amended by rule 4, as they were in force immediately prior to the amendments made by rule 4, are revived.”.

(4) Omit rule 1(3).

Given under the common seal of the General Pharmaceutical Council this [*] th day of February 2021.



Nigel Clarke
Chair

Duncan Rudkin
Chief Executive and Registrar

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the General Pharmaceutical Council (Coronavirus) (Amendment) Rules 2021 (contained in the Schedule to S.I. 2021/26) to limit the expiry provision in rule 1 to rule 4 so that the amendments made by rules 2 and 3 (insofar as not already excepted from expiry) continue in force (in addition to the amendments made by rule 5) and only the amendments made by Rule 4 expire. This Order also substitutes the date referred to in that expiry provision with a new date so that the amendments made by rule 4 expire at the end of 1st May 2023 rather than 1st May 2021.

(a) S.I. 2010/231; relevant amending instruments are S.I. 2015/806 and 2016/372.

(b) Rules as contained in the Schedule to the General Pharmaceutical Council (Coronavirus) (Amendment) Rules Order of Council 2021 (S.I. 2021/26).