

Draft Order in Council laid before Parliament and the Scottish Parliament under section 62(10) of the Health Act 1999 for approval by resolution of each House of Parliament and by the Scottish Parliament.

DRAFT STATUTORY INSTRUMENTS

2015 No.

**HEALTH CARE AND
ASSOCIATED PROFESSIONS**

DENTISTS

The General Dental Council
(Fitness to Practise etc.) Order 2015

Made - - - - *****

Coming into force in accordance with article 1

At the Court at Buckingham Palace, the 000 day of 000

Present,

The Queen's Most Excellent Majesty in Council

This Order in Council is made in exercise of the powers conferred by sections 60 and 62(4) and (4A) of, and Schedule 3 to, the Health Act 1999(1).

The Secretary of State and the Scottish Ministers published a draft Order and invited representations as required by paragraph 9(1) and (3) of Schedule 3 to the Health Act 1999.

The period of three months mentioned in paragraph 9(4) of that Schedule expired before a draft of this Order in Council, together with a report about the consultation, was laid before Parliament and the Scottish Parliament.

A draft of this Order in Council has been laid before, and approved by resolution of, each House of Parliament and of the Scottish Parliament in accordance with section 62(10) of the Health Act 1999.

(1) 1999 c. 8. Section 60 was amended by paragraph 16 of Schedule 5 to the Nursing and Midwifery Order 2001 (S.I. 2002/253); section 26(9) of the National Health Service Reform and Health Care Professions Act 2002 (c. 17); paragraph 1 of Schedule 8 to the Health and Social Care Act 2008 (c. 14); sections 209, 210 and 213 of, and paragraphs 60 and 72 of, Schedule 15 to the Health and Social Care Act 2012 (c. 7); paragraph 7 of Schedule 4 to the Pharmacy Order 2010 (S.I. 2010/231); paragraph 43 of Schedule 34 to the Human Medicines Regulations 2012 (S.I. 2012/1916). Section 62 was amended by paragraph 1 of Schedule 4 to the National Health Service (Consequential Provisions) Act 2006 (c. 43); and paragraph 2 of Schedule 8 to the Health and Social Care Act 2008. Subsections (4) and (4A) were substituted in section 62 by paragraph 11 of Schedule 10 to the Health and Social Care Act 2008. Schedule 3 was amended by section 26(10) of the National Health Service Reform and Health Care Professions Act 2002 (c. 17); paragraph 8(b) of Schedule 4 to the Health and Social Work Professions Order 2002 (S.I. 2002/254); paragraph 67 of Schedule 11, and paragraph 1 of Schedule 14 to the Health and Social Care (Community Health and Standards) Act 2003 (c. 43); paragraphs 4 to 9 of Schedule 8, and paragraph 1 of Schedule 15, to the Health and Social Care Act 2008; section 211 of, and paragraphs 61 and 72 of Schedule 15 to, the Health and Social Care Act 2012.

Accordingly, Her Majesty is pleased, by and with the advice of Her Privy Council, to make the following Order in Council:

PART 1

General

Citation and commencement

1. This Order may be cited as the General Dental Council (Fitness to Practise etc.) Order 2015 and shall come into force on the day after the day on which this order is made.

Amendment of the Dentists Act 1984

2. The Dentists Act 1984(2) is amended as follows.

Delegation of Investigating Committee's functions

3. After section 27A(3) insert—

“ **Delegation of the Investigating Committee's functions under section 27A**

27AA. Rules(4) may make provision for one or more of the following—

- (a) the registrar;
- (b) any other officer of the Council,

to exercise the functions of the Investigating Committee under section 27A, whether generally or in relation to such classes of case as may be specified in the rules.”.

4. After section 36O(5) insert—

“ **Delegation of the Investigating Committee's functions under section 36O**

36OA. Rules may make provision for one or more of the following—

- (a) the registrar;
- (b) any other officer of the Council,

to exercise the functions of the Investigating Committee under section 36O, whether generally or in relation to such classes of case as may be specified in the rules.”.

Power for Investigating Committee to agree undertakings

5.—(1) Section 27A (powers of the Investigating Committee in respect of registered dentists) is amended as follows.

(2) 1984 c. 24.

(3) Section 27A was substituted by S.I. 2005/2011, articles 2(1) and 18.

(4) See sections 50C(1) and (2) of the Dentists Act 1984 which provide that the power to make rules shall be exercisable by the General Dental Council and that such rules (with some exceptions) shall not come into force until approved by the Privy Council.

(5) Section 36O was inserted by S.I. 2005/2011, articles 2(1) and 31.

(2) In subsection (4), before paragraph (a) insert—

“(za) may agree with the person who is the subject of the allegation that the person will comply with such undertakings as the Investigating Committee consider appropriate;”.

(3) In subsection (4)(a), at the beginning insert “if they do not agree undertakings under paragraph (za),”.

(4) In subsection (6), before paragraph (a) insert—

“(za) may agree with the person who is the subject of those allegations that the person will comply with such undertakings as the Investigating Committee consider appropriate;”.

(5) In subsection (6)(a), at the beginning insert “if they do not agree undertakings under paragraph (za),”.

(6) After subsection (6B) (inserted by article 14(5)) insert—

“(6C) If the Investigating Committee agree undertakings under subsection (4)(za) or (6) (za), they may, if they consider it appropriate to do so, direct the registrar to enter details of the undertakings in the entry in the register relating to the person who is the subject of the allegation or allegations.”.

(7) After subsection (12) (inserted by article 7) insert—

“(13) Rules may make provision in connection with undertakings under subsections (4) (za) and (6)(za) (including provision as to the actions which may be taken in consequence of undertakings being breached).”.

6.—(1) Section 36O (powers of the Investigating Committee in respect of registered dental care professionals) is amended as follows.

(2) In subsection (4), before paragraph (a) insert—

“(za) may agree with the person who is the subject of the allegation that the person will comply with such undertakings as the Investigating Committee consider appropriate;”.

(3) In subsection (4)(a), at the beginning insert “if they do not agree undertakings under paragraph (za),”.

(4) In subsection (6), before paragraph (a) insert—

“(za) may agree with the person who is the subject of those allegations that the person will comply with such undertakings as the Investigating Committee consider appropriate;”.

(5) In subsection (6)(a), at the beginning insert “if they do not agree undertakings under paragraph (za),”.

(6) After subsection (6B) (inserted by article 17(5)) insert—

“(6C) If the Investigating Committee agree undertakings under subsection (4)(za) or (6) (za), they may, if they consider it appropriate to do so, direct the registrar to enter details of the undertakings in the entry in the register relating to the person who is the subject of the allegation or allegations.”.

(7) After subsection (12) (inserted by article 8) insert—

“(13) Rules may make provision in connection with undertakings under subsections (4) (za) and (6)(za) (including provision as to the actions which may be taken in consequence of undertakings being breached).”.

Power for Investigating Committee to review a decision to issue a warning

7. In section 27A (powers of the Investigating Committee in respect of registered dentists) after subsection (10) insert—

“(11) The Investigating Committee may review a determination made by them to issue a warning under subsection (2)(a) on an application made—

- (a) by the person to whom the warning was issued or the registrar;
- (b) before the end of the period of two years beginning with the date on which the determination was made.

(12) On a review under subsection (11) the Investigating Committee may, if they consider it appropriate—

- (a) revoke the warning, and
- (b) direct the registrar to remove details of the warning from the entry in the register relating to the person to whom the warning was issued.”.

8. In section 36O (powers of the Investigating Committee in respect of registered dental care professionals) after subsection (10) insert—

“(11) The Investigating Committee may review a determination made by them to issue a warning under subsection (2)(a) on an application made—

- (a) by the person to whom the warning was issued or the registrar;
- (b) before the end of the period of two years beginning with the date on which the determination was made.

(12) On a review under subsection (11) the Investigating Committee may, if they consider it appropriate—

- (a) revoke the warning, and
- (b) direct the registrar to remove details of the warning from the entry in the register relating to the person to whom the warning was issued.”.

Review of Investigating Committee’s determination by registrar

9. After section 27AA (inserted by article 3) insert—

“27AB Review of determination under section 27A(1)

(1) Rules may make provision for enabling the registrar to review a determination by the Investigating Committee under section 27A(1) that an allegation ought not to be considered by a Practice Committee.

(2) Rules made by virtue of subsection (1) may, in particular, include provision as to—

- (a) the period within which a review is to be commenced;
- (b) the process to be followed by the registrar in carrying out a review (including the determinations to be made by him);
- (c) the actions which may be taken following a review.”.

10. After section 36OA (inserted by article 4) insert—

“36OB Review of determination under section 36O(1)

(1) Rules may make provision for enabling the registrar to review a determination by the Investigating Committee under section 36O(1) that an allegation ought not to be considered by a Practice Committee.

(2) Rules made by virtue of subsection (1) may, in particular, include provision as to—

- (a) the period within which a review is to be commenced;

- (b) the process to be followed by the registrar in carrying out a review (including the determinations to be made by him);
- (c) the actions which may be taken following a review.”.

Review of registrar’s determination

11. In section 27 (allegations in respect of registered dentists)(6) for subsection (6) substitute—

“(6) The registrar shall investigate the allegation for the purpose of—

- (a) determining whether it is an allegation in relation to which this section applies, and
- (b) if he determines that it is, determining whether to refer the allegation to the Interim Orders Committee under subsection (5)(b).

(6A) Rules may make provision for enabling the registrar to review a determination under subsection (6)(a) that the allegation is not an allegation in relation to which this section applies (including provision as to the action which may be taken following a review).”.

12. In section 36N (allegations in respect of registered dental care professionals)(7) for subsection (6) substitute—

“(6) The registrar shall investigate the allegation for the purpose of—

- (a) determining whether it is an allegation in relation to which this section applies, and
- (b) if he determines that it is, determining whether to refer the allegation to the Interim Orders Committee under subsection (5)(b).

(6A) Rules may make provision for enabling the registrar to review a determination under subsection (6)(a) that the allegation is not an allegation in relation to which this section applies (including provision as to the action which may be taken following a review).” .

Referral to the Interim Orders Committee

13. In section 27 (allegations in respect of registered dentists) for subsection (5)(b) substitute—

“(b) may, at any time before the Investigating Committee have begun to consider the allegation, refer the allegation to the Interim Orders Committee if he considers it appropriate.”.

14.—(1) Section 27A (powers of the Investigating Committee in respect of registered dentists) is amended as follows.

(2) In subsection (4) omit paragraph (b) and the “and” immediately preceding it.

(3) After subsection (4) insert—

“(4A) Unless subsection (5) applies, the Investigating Committee may, if they consider it appropriate, refer the allegation to the Interim Orders Committee (subject to subsection (6B)).”.

(4) In subsection (6) omit paragraph (b) and the “and” immediately preceding it.

(5) After subsection (6) insert—

“(6A) Where subsection (5) applies, the Investigating Committee may, if they consider it appropriate, refer those allegations to the Interim Orders Committee (subject to subsection (6B)).”.

(6) Section 27 was substituted by [S.I. 2005/2011](#), articles 2(1) and 18.

(7) Section 36N was inserted by [S.I. 2005/2011](#), articles 2(1) and 31.

(6B) Subsections (4A) and (6A) do not apply if the Investigating Committee have determined that the allegation or allegations ought to be considered by a Practice Committee and—

- (a) the Investigating Committee agree undertakings under subsection (4)(za) or (6)(za), or
- (b) (if they do not agree undertakings under that provision) the hearing before a Practice Committee has commenced or, where there is not to be a hearing before a Practice Committee, a Practice Committee have begun to consider written statements or representations.”.

(6) after subsection (8) insert—

“(8A) On a review under subsection (8) the Investigating Committee may refer the allegation or allegations to the Interim Orders Committee.”.

15. In section 32(2)(b) (Interim Orders Committee to exercise functions only on a reference by the Investigating Committee)(**8**) for “section 27A(4)(b) or (6)(b)” substitute “section 27A(4A) or (6A)”.

16. In section 36N (allegations in respect of registered dental care professionals) for subsection (5)(b) substitute—

- “(b) may, at any time before the Investigating Committee have begun to consider the allegation, refer the allegation to the Interim Orders Committee if he considers it appropriate.”.

17.—(1) Section 36O (powers of the Investigating Committee in respect of registered dental care professionals) is amended as follows.

(2) In subsection (4) omit paragraph (b) and the “and” immediately preceding it.

(3) After subsection (4) insert—

“(4A) Unless subsection (5) applies, the Investigating Committee may, if they consider it appropriate, refer the allegation to the Interim Orders Committee (subject to subsection (6B)).”.

(4) In subsection (6) omit paragraph (b) and the “and” immediately preceding it.

(5) After subsection (6) insert—

“(6A) Where subsection (5) applies, the Investigating Committee may, if they consider it appropriate, refer those allegations to the Interim Orders Committee (subject to subsection (6B)).

(6B) Subsections (4A) and (6A) do not apply if the Investigating Committee have determined that the allegation or allegations ought to be considered by a Practice Committee and—

- (a) the Investigating Committee agree undertakings under subsection (4)(za) or (6)(za), or
- (b) (if they do not agree undertakings under that provision) the hearing before a Practice Committee has commenced or, where there is not to be a hearing before a Practice Committee, a Practice Committee have begun to consider written statements or representations.”.

(6) after subsection (8) insert—

“(8A) On a review under subsection (8) the Investigating Committee may refer the allegation or allegations to the Interim Orders Committee.”.

(8) Section 32 was substituted by [S.I. 2005/2011](#), articles 2(1) and 23.

18. In section 36V(2)(b) (Interim Orders Committee to exercise functions only on a reference by the Investigating Committee)**(9)** for “section 36O(4)(b) or (6)(b)” substitute “section 36O(4A) or (6A)”.

Name
Clerk of the Privy Council

(9) Section 36V was inserted by [S.I. 2005/2011](#), articles 2(1) and 31.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Dentists Act 1984 (1984 c. 24) (“the Act”).

Articles 3 and 4 of this Order insert new sections 27AA and 36OA to the Act. These enable rules to provide for the registrar or another officer of the Council to exercise the Investigating Committee’s functions under section 27A (in relation to registered dentists) and under section 36O (in respect of registered dental care professionals).

Article 5 amends section 27A of the Act to provide that, where the Investigating Committee determine that an allegation against a registered dentist ought to be considered by a Practice Committee, the Committee can agree undertakings with that registrant instead of referring them to a Practice Committee. It also provides a rule making power in connection with undertakings. Article 6 amends section 36O of the Act to make similar provision in respect of registered dental care professionals.

Article 7 amends section 27A of the Act to provide the Investigating Committee with power to review their own determination to issue a warning to a registered dentist and it specifies the actions they might take following such a review. Article 8 amends section 36O of the Act to make similar provision in respect of registered dental care professionals.

Articles 9 and 10 insert new section 27AB (in respect of registered dentists) and new section 36OB (in respect of registered dental care professionals). These sections allow rules to be made to enable the registrar to review a determination by the Investigating Committee that an allegation ought not to be considered by a Practice Committee.

Article 11 amends section 27 of the Act to introduce a power to make rules to enable the registrar to review a determination that an allegation against a registered dentist is not one to which that section applies. Article 12 amends section 36N of the Act to make similar provision in respect of registered dental care professionals.

Articles 13 and 16 amend sections 27 and 36N of the Act respectively to enable the registrar to refer an allegation to the Interim Orders Committee at any time before the Investigating Committee has begun to consider the allegation.

Articles 14 and 17 amend sections 27A and 36O of the Act respectively in connection with interim orders. The amendments mean that the Investigating Committee can refer an allegation to the Interim Orders Committee at any time, subject only to subsection (6B) (also inserted by these articles) of each of the sections. In both of the amended sections, subsection (6B) provides that there cannot be a reference to the Interim Orders Committee where the Investigating Committee have agreed undertakings with a registrant or where the allegation has been referred to a Practice Committee and that Committee has started its consideration of the case.

Articles 15 and 18 make consequential amendments to sections 32 and 36V of the Act respectively.

A full regulatory impact assessment of the effect that this instrument will have on the costs of business, the voluntary and the public sector, together with 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/measures-to-improve-the-gdcs-processes-on-fitness-to-practice>, hard copies of which can be obtained by writing to the Department of Health, Professional Standards Division, Quarry House, Quarry Hill, Leeds, LS2 7UE.

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Draft Legislation: *This is a draft item of legislation and has not yet been made as a UK Statutory Instrument.*