



Pharmacists (Fitness to Practise) Act 1997

1997 CHAPTER 19

An Act to make provision about finding registered pharmaceutical chemists unfit to practise due to ill health; and for connected purposes. [19th March 1997]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1.—(1) The Schedule (which amends the Pharmacy Act 1954 for the purposes mentioned below and makes consequential amendments) is to have effect. Fitness to practise.
1954 c. 61.

(2) Those purposes are—

- (a) establishing a new committee of the Royal Pharmaceutical Society of Great Britain,
- (b) enabling the committee to consider allegations against registered pharmaceutical chemists of unfitness to practise due to ill health, and
- (c) enabling the committee to impose practising conditions on, or suspend from registration, registered pharmaceutical chemists whose ability to practise it finds to be seriously impaired due to ill health.

2.—(1) Section 1 and the Schedule are to come into force on such day as the Secretary of State may by order made by statutory instrument appoint. Commencement.

(2) Different days may be appointed for different purposes.

Short title and
extent.

3.—(1) This Act may be cited as the Pharmacists (Fitness to Practise) Act 1997.

(2) This Act (except paragraph 5 of the Schedule) does not extend to Northern Ireland.

SCHEDULE

Section 1.

FITNESS TO PRACTISE OF REGISTERED PHARMACEUTICAL CHEMISTS

Pharmacy Act 1954 (c. 61)

1. The Pharmacy Act 1954 is amended as follows.

2. After section 13 there is inserted—

“Imposition of practising conditions and suspension from the register

The Health
Committee.

13A.—(1) There shall be appointed a committee of the Society, to be known as the Health Committee.

(2) The provisions of Schedule 1B to this Act shall have effect in relation to the Health Committee.

Preliminary
investigation by
the Council.

13B.—(1) This section applies to an allegation to the effect that the ability of a registered pharmaceutical chemist to practise as a pharmaceutical chemist is seriously impaired because of his physical or mental condition.

(2) Where such an allegation is made or referred to the Council, they shall —

- (a) notify the pharmaceutical chemist of the allegation and invite him to give them his observations before the end of the permitted period,
- (b) take such steps as are reasonably practicable to obtain as much information as possible about the case, and
- (c) consider, in the light of the information which they have been able to obtain and any observations duly made to them by the pharmaceutical chemist, whether in their opinion there is a case to answer.

(3) In subsection (2)(a) of this section “the permitted period” means—

- (a) the period of 28 days beginning with the day on which notice of the allegation is sent to the pharmaceutical chemist, or
- (b) where the Council consider that, were the allegation to be well founded, it would be necessary for members of the public to be protected without delay, such shorter period as may be specified by the Council in regulations.

(4) Where the Council conclude that there is a case to answer, they shall—

- (a) notify the pharmaceutical chemist of their conclusion, and
- (b) refer the allegation, as formulated by them, to the Health Committee.

(5) Where the Council conclude that there is no case to answer, they shall notify the pharmaceutical chemist of their conclusion.

(6) The Council may make regulations with respect to the procedure to be followed on an investigation under this section.

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Conditions of practice orders and suspension orders.

13C.—(1) The Health Committee shall consider an allegation against a pharmaceutical chemist referred to them under section 13B of this Act.

(2) If, having considered the allegation, the Committee is satisfied that it is well founded, the Committee shall—

- (a) make an order imposing conditions with which the pharmaceutical chemist must comply while practising as a pharmaceutical chemist (a “conditions of practice order”), or
- (b) make an order directing the registrar to suspend the pharmaceutical chemist’s registration for the period specified in the order (a “suspension order”).

(3) Any condition in a conditions of practice order shall have effect for the period specified in the order.

(4) The period specified in a conditions of practice order or a suspension order shall not exceed three years.

(5) An order under this section shall have effect—

- (a) if there is no appeal against it under section 13J of this Act, when the period for making such an appeal expires, or
- (b) if there is an appeal against it under that section, when the appeal is withdrawn or otherwise disposed of.

Review of orders.

13D.—(1) The Health Committee may review a conditions of practice order or a suspension order made with respect to a pharmaceutical chemist at any time while the order has effect.

(2) The Committee shall review such an order on the written application of the pharmaceutical chemist.

(3) The Committee shall not consider an application under subsection (2) of this section for a review of an order if—

- (a) the pharmaceutical chemist has made an earlier application under that subsection for a review of the order,
- (b) the earlier application was made within the period of twelve months ending with the date on which the Committee received the application, and
- (c) the order was not varied on the earlier review.

(4) On a review under subsection (1) of this section of a conditions of practice order, the Committee may—

- (a) confirm the order,
- (b) revoke the order,
- (c) vary the order, or
- (d) replace the order with a suspension order.

(5) On a review under subsection (1) of this section of a suspension order, the Committee may—

- (a) confirm the order,
- (b) revoke the order,
- (c) vary the order,
- (d) replace the order with a conditions of practice order, or

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(e) make a conditions of practice order with which the pharmaceutical chemist must comply if he resumes practice as a pharmaceutical chemist after the end of his period of suspension.

(6) On a review under subsection (1) of this section, an order may be varied by—

- (a) extending (or further extending) or reducing the period specified in the order, or
- (b) in the case of a conditions of practice order, imposing additional conditions or removing or altering any of the existing conditions,

but the period specified in the order may not be extended (or further extended) by more than three years.

(7) On a review under subsection (2) of this section, the Committee may—

- (a) confirm the order,
- (b) revoke the order, or
- (c) vary the order.

(8) On such a review, an order may be varied by—

- (a) reducing the period specified in the order, or
- (b) in the case of a conditions of practice order, removing or altering any of the conditions.

(9) If an order is revoked on a review under this section without being replaced by another order, the revocation shall have immediate effect.

(10) Any other decision on a review under this section shall have effect—

- (a) if there is no appeal against it under section 13J of this Act, when the period for making such an appeal expires, or
- (b) if there is an appeal against it under that section, when the appeal is withdrawn or otherwise disposed of.

Exercise by
Health
Committee of its
powers.

13E. In exercising any power to make, confirm, vary or revoke a conditions of practice order or a suspension order, the Health Committee shall ensure that any conditions imposed on the pharmaceutical chemist are, or any period of suspension imposed on him is, the minimum which it considers necessary for the protection of members of the public.

Interim
suspension
orders.

13F.—(1) Where the Health Committee makes a suspension order with respect to a pharmaceutical chemist, it may make an order directing the registrar to suspend the pharmaceutical chemist's registration with immediate effect (an "interim suspension order").

(2) The Committee may only make an interim suspension order if it is satisfied that it is necessary to do so in order to protect members of the public.

(3) If there is no appeal against the suspension order under section 13J of this Act, an interim suspension order shall cease to have effect when the period for making such an appeal expires.

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(4) If there is an appeal against the suspension order under that section, an interim suspension order shall cease to have effect—

- (a) when the appeal is withdrawn or otherwise disposed of, or
- (b) (if sooner) at the end of the period of 12 weeks beginning with the day on which the interim suspension order is made.

Procedural regulations.

13G.—(1) The Council shall make regulations as to the procedure to be followed—

- (a) on the consideration of an allegation against a pharmaceutical chemist under section 13C of this Act, and
- (b) on a review under section 13D of this Act of an order made with respect to a pharmaceutical chemist.

(2) The regulations shall, in particular, include provision—

- (a) requiring the pharmaceutical chemist to be given notice of the allegation or review,
- (b) giving the pharmaceutical chemist an opportunity to put his case at a hearing,
- (c) entitling the pharmaceutical chemist to be legally represented at any hearing in respect of the allegation or review,
- (d) enabling such a hearing to be held in the absence of the pharmaceutical chemist if the requirements of regulations made by virtue of paragraphs (a) to (c) of this subsection have been met,
- (e) securing that such a hearing is held in private unless—
 - (i) the pharmaceutical chemist requires the hearing or any part of it to be held in public, or
 - (ii) the Health Committee considers that it is appropriate to hold the hearing or any part of it in public,
- (f) requiring the pharmaceutical chemist to be notified by the Committee of its decision, its reasons for reaching that decision and of his right of appeal,
- (g) giving the Committee power to require persons to attend and give evidence or to produce documents,
- (h) about the admissibility of evidence, and
- (i) enabling the Committee to administer oaths.

(3) No person shall be required by any regulations made under this section to give any evidence or produce any document or other material at a hearing in respect of the allegation or review which he could not be compelled to give or produce in civil proceedings in any court in the part of Great Britain in which the hearing takes place.

Duties of registrar in relation to orders, etc.

13H.—(1) Where a conditions of practice order is made, the registrar shall enter in the register a note of—

- (a) the conditions imposed, and
- (b) the period for which each condition is to have effect.

(2) Where a suspension order is made, the registrar shall enter in the register a note of—

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- (a) the suspension, and
- (b) the period of the suspension.

(3) Where a conditions of practice order or a suspension order is revoked or varied on a review under section 13D of this Act or an appeal under section 13J of this Act, the registrar shall delete, or make the necessary alterations to, any note entered in the register under subsection (1) or (2) of this section.

(4) Where an interim suspension order is made, the registrar shall enter in the register a note of the suspension.

(5) When an interim suspension order ceases to have effect, the registrar shall delete the note entered in the register under subsection (4) of this section.

Effect of suspension of registration.

13I.—(1) A pharmaceutical chemist who is subject to a suspension order or an interim suspension order shall be treated as if his name was not registered for the purposes of—

- (a) sections 2, 5 and 14 of, and paragraphs 2(3) of Schedule 1B and 3(2) of Schedule 1C to, this Act,
- (b) sections 10, 23, 31, 33 and 52 of the Medicines Act 1968, 1968 c. 67,
- (c) section 7 of the Misuse of Drugs Act 1971, 1971 c. 38.
- (d) the Poisons Act 1972, 1972 c. 66.
- (e) paragraph 1 of Schedule 9 to the National Health Service Act 1977, and 1977 c. 49.
- (f) paragraph 1 of Schedule 8 to the National Health Service (Scotland) Act 1978. 1978 c. 29.

(2) For the purposes of this section a pharmaceutical chemist is subject to an order during the period for which the order has effect.

Appeals against decisions of the Health Committee.

13J.—(1) A pharmaceutical chemist with respect to whom an appealable decision is made by the Health Committee may appeal against the decision.

(2) In subsection (1) of this section “appealable decision” means—

- (a) a conditions of practice order,
- (b) a suspension order,
- (c) variation of an order on a review under section 13D of this Act, or
- (d) replacement of an order with another order on such a review.

(3) An appeal under this section may not be made after the end of the period of 28 days beginning with the date on which notification of the decision is sent to the pharmaceutical chemist.

(4) An appeal under this section lies to an appeal tribunal established for the purpose of the appeal by the Privy Council.

(5) The provisions of Schedule 1C to this Act shall have effect in relation to appeal tribunals established under this section.

Procedure on appeals.

13K.—(1) In this section “an appeal” means an appeal made by a pharmaceutical chemist under section 13J of this Act to an appeal tribunal established under that section.

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- (2) An appeal shall be by way of a rehearing of the case.
- (3) The Council shall be the respondent to an appeal.
- (4) The Council shall make regulations as to the procedure to be followed on an appeal.
- (5) The regulations shall, in particular, include provision—
 - (a) as to the manner in which the appeal is to be made,
 - (b) giving the pharmaceutical chemist an opportunity to put his case at a hearing,
 - (c) entitling the pharmaceutical chemist to be legally represented at any hearing in respect of the appeal,
 - (d) enabling such a hearing to be held in the absence of the pharmaceutical chemist if the requirements of regulations made by virtue of paragraphs (a) to (c) of this subsection have been met,
 - (e) securing that such a hearing is held in private unless the pharmaceutical chemist or the Council require it to be held in public,
 - (f) requiring the pharmaceutical chemist to be notified by the appeal tribunal of its decision and its reasons for reaching that decision,
 - (g) giving the appeal tribunal power to require persons to attend and give evidence or to produce documents,
 - (h) about the admissibility of evidence, and
 - (i) enabling the appeal tribunal to administer oaths.
- (6) No person shall be required by any regulations made under subsection (4) of this section to give any evidence or produce any document or other material at a hearing in respect of an appeal which he could not be compelled to give or produce in civil proceedings in any court in the part of Great Britain in which the hearing takes place.

Decisions of
appeal tribunals.

13L.—(1) This section applies where an appeal is made by a pharmaceutical chemist under section 13J of this Act to an appeal tribunal established under that section.

- (2) The appeal tribunal may—
 - (a) confirm a conditions of practice order or suspension order,
 - (b) revoke such an order,
 - (c) vary such an order,
 - (d) replace a conditions of practice order with a suspension order,
 - (e) replace a suspension order with a conditions of practice order, or
 - (f) make a conditions of practice order with which the pharmaceutical chemist must comply if he resumes practice as a pharmaceutical chemist after the end of his period of suspension.
- (3) An order may be varied by—
 - (a) extending or reducing the period specified in the order, or

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(b) in the case of a conditions of practice order, imposing additional conditions or removing or altering any of the existing conditions,

but the period specified in the order may not be extended by more than three years.

(4) Section 13E of this Act shall apply to an appeal tribunal as it applies to the Health Committee.

(5) The appeal tribunal may award costs or expenses.

(6) Any decision of the appeal tribunal may be made by a majority of its members.

(7) A decision of the tribunal on an appeal shall have effect when notification of it is sent to the pharmaceutical chemist.

Approval of regulations.

13M.—(1) No regulations made under section 13B, 13G or 13K of this Act shall come into operation until they are approved by the Privy Council by order made by statutory instrument.

(2) Any statutory instrument made under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.”

3. In section 24 (interpretation)—

(a) after the definition of “byelaws” there is inserted—

““conditions of practice order” has the meaning given by section 13C(2)(a) of this Act”,

(b) after the definition of “the Council” there is inserted—

““interim suspension order” has the meaning given by section 13F(1) of this Act”, and

(c) after the definition of “the Society” there is inserted—

““suspension order” has the meaning given by section 13C(2)(b) of this Act”.

4. After Schedule 1A there is inserted—

“SCHEDULE 1B

THE HEALTH COMMITTEE

Interpretation

1. In this Schedule—

“the Committee” means the Health Committee, and

“member” (except in paragraph 6(5) of this Schedule) means a member of the Committee.

Constitution

2.—(1) The Committee shall consist of—

(a) a chairman and deputy chairman appointed by the Privy Council, and

(b) six other members appointed by the Council.

(2) The members appointed by the Privy Council shall be registered medical practitioners at the time of their appointment.

(3) At least three of the members appointed by the Council shall be registered pharmaceutical chemists at the time of their appointment.

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Term of office and resignation

- 3.—(1) A member appointed by the Privy Council—
- (a) shall hold office for a period of five years, and
 - (b) (unless he holds office by virtue of being re-appointed under this paragraph) shall be eligible for re-appointment at the end of his period of office.
- (2) A member appointed by the Council shall hold office for such period as may be determined by the Council.
- (3) Subject to sub-paragraph (1)(b) of this paragraph, a person shall not be prevented from being a member merely because he has previously been a member.
- (4) Any member may at any time resign his office by giving notice in writing to the Council.
- (5) If a conditions of practice order or a suspension order is made with respect to a member, he shall cease to be a member on the date on which the order has effect.

Procedure

- 4.—(1) In any case, the functions of the Committee shall be performed by three members, of whom—
- (a) one shall be the chairman or (if the chairman is not available) the deputy chairman, and
 - (b) the other two shall be selected by the chairman or (as the case may be) the deputy chairman from the members appointed by the Council.
- (2) At least one of the members selected by the chairman or deputy chairman shall be a registered pharmaceutical chemist.
- (3) The Committee may act by a majority of the members performing its functions in any case.

Expenses

5. The Council may pay to any member such expenses and fees as they consider appropriate in connection with the performance of any functions of the Committee.

Legal assessors

- 6.—(1) The Council shall appoint persons to be legal assessors.
- (2) The legal assessors shall have the function of giving advice to the Committee on questions of law arising in connection with any matter which the Committee is considering.
- (3) To be qualified for appointment under this paragraph as a legal assessor, a person must—
- (a) have a five year general qualification (within the meaning of section 71 of the Courts and Legal Services Act 1990), or
 - (b) be an advocate or solicitor in Scotland of at least five years' standing.
- (4) The Council may pay such fees, allowances and expenses to the legal assessors as they consider appropriate.

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(5) If a legal assessor appointed under this paragraph is also a member of the Committee or the Statutory Committee, any payment made to him in his capacity as a legal assessor shall be in addition to any to which he is entitled as such a member.

SCHEDULE 1C

APPEAL TRIBUNALS

Interpretation

1. In this Schedule—

“appeal tribunal” means an appeal tribunal established under section 13J of this Act, and

“the panel” means the panel appointed under paragraph 3 of this Schedule.

Constitution

2. An appeal tribunal shall consist of three members of the panel, of whom—

- (a) one shall be the chairman or (if the chairman is not available) the deputy chairman,
- (b) one shall be a registered medical practitioner, and
- (c) one shall be a registered pharmaceutical chemist.

Appeal tribunals panel

3.—(1) There shall be a panel of persons eligible for membership of appeal tribunals, appointed by the Privy Council.

(2) The panel shall consist of—

- (a) a chairman and deputy chairman,
- (b) two persons who, at the time of their appointment, are registered medical practitioners, and
- (c) two persons who, at the time of their appointment, are registered pharmaceutical chemists.

(3) A person shall not be appointed a member of the panel if—

- (a) he is a member of the Council or the Statutory Committee,
- (b) he holds any office in the Society, or
- (c) he is employed by, or provides any service to, the Society.

(4) A person shall be not be appointed as the chairman or deputy chairman unless—

- (a) he is qualified for the appointment, and
- (b) his appointment has been approved by the Lord Chancellor and the Lord Advocate.

(5) To be qualified for appointment as the chairman or deputy chairman, a person must—

- (a) have a five year general qualification (within the meaning of section 71 of the Courts and Legal Services Act 1990), or
- (b) be an advocate or solicitor in Scotland of at least five years' standing.

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Term of office and resignation

4.—(1) A member of the panel—

- (a) shall hold office for a period of five years, and
- (b) (unless he holds office by virtue of being re-appointed under this paragraph) shall be eligible for re-appointment at the end of his period of office.

(2) Subject to sub-paragraph (1)(b) of this paragraph, a person shall not be prevented from being a member of the panel merely because he has previously been a member.

(3) Any member of the panel may at any time resign his office by giving notice in writing to the Privy Council.

(4) If a conditions of practice order or a suspension order is made with respect to a member of the panel, he shall cease to be a member on the date on which the order has effect.

(5) The Privy Council may remove any member of the panel from office for inability to perform his duties or for misbehaviour.

Clerks of tribunals

5. The chairman or deputy chairman may appoint a person approved by the other members of an appeal tribunal to act as clerk of the tribunal.

Expenses

6. Any expenses reasonably incurred by an appeal tribunal, including any incurred in connection with the appointment of a clerk, shall be met by the Council.”

Medicines Act 1968 (c. 67)

5. In section 69 of the Medicines Act 1968 (general provisions as to when a person is lawfully conducting a retail pharmacy business)—

- (a) in subsection (1), after “Subject to” there is inserted “subsection (1A) below and”, and
- (b) after subsection (1) there is inserted—

“(1A) A person carrying on a retail pharmacy business shall not be taken to be a person lawfully conducting such a business if—

- (a) (in any case) the business is under the personal control of a pharmacist who is subject to a suspension order or an interim suspension order, or
- (b) (in the case of a body corporate) the business is under the management of a superintendent who is subject to such an order.

(1B) For the purposes of subsection (1A) of this section—

- (a) a person is subject to an order during the period for which the order has effect, and
- (b) “suspension order” and “interim suspension order” have the same meaning as in the Pharmacy Act 1954.”

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National Health Service Act 1977 (c. 49)

6. In section 43 of the National Health Service Act 1977 (persons authorised to provide pharmaceutical services), after subsection (3) there is added—

“(4) Where—

- (a) arrangements for the provision of pharmaceutical services have been made with a registered pharmacist, and
- (b) a suspension order or an interim suspension order is made with respect to him,

he shall not provide pharmaceutical services in person during the period of suspension.

(5) In subsection (4) above, “suspension order” and “interim suspension order” have the same meaning as in the Pharmacy Act 1954.”

1954 c. 61.

National Health Service (Scotland) Act 1978 (c. 29)

7. In section 28 of the National Health Service (Scotland) Act 1978 (persons authorised to provide pharmaceutical services), after subsection (2) there is added—

“(3) Where—

- (a) arrangements for the provision of pharmaceutical services have been made with a registered pharmacist, and
- (b) a suspension order or an interim suspension order is made with respect to him,

he shall not provide pharmaceutical services in person during the period of suspension.

(4) In subsection (3), “suspension order” and “interim suspension order” have the same meaning as in the Pharmacy Act 1954.”

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