
STATUTORY INSTRUMENTS

2000 No. 1803

MEDICAL PROFESSION

The Medical Act 1983 (Amendment) Order 2000

Made - - - - *12th July 2000*

Coming into force - - *3rd August 2000*

At the Court at Buckingham Palace, the 12th day of July 2000

Present,

The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order in Council has been approved by a resolution of each House of Parliament in accordance with section 62(9) of the Health Act 1999⁽¹⁾;

Now, therefore, Her Majesty, in exercise of the powers conferred upon Her by section 126(4) of the National Health Service Act 1977⁽²⁾ and section 60 of the Health Act 1999 and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is thereby ordered, as follows:

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Medical Act 1983 (Amendment) Order 2000 and shall come into force on 3rd August 2000.

(2) In this Order, “the Act” means the Medical Act 1983⁽³⁾.

Amendment of the Act

2. The Act shall be amended in accordance with articles 3 to 16 of this Order.

Amendment of section 1

3. In section 1(3)(4) (committees of the General Medical Council)—

(a) for “six” there shall be substituted “seven”;

(1) 1999 c. 8. An earlier draft of this Order was published for consultation in accordance with para. 9(1) of Schedule 3 to the Health Act.

(2) 1977 c. 49; section 126(4) is applied by section 62(4) of the Health Act 1999.

(3) 1983 c. 54, as amended by the Medical (Professional Performance) Act 1995 (1995 c. 51).

(4) Section 1(3) was amended by the Medical (Professional Performance) Act 1995, Schedule, para. 2.

(b) after “the Education Committee,” there shall be inserted “the Interim Orders Committee,”.

Insertion of sections 35A and 35B

4. After section 35 there shall be inserted—

“General Council’s power to require disclosure of information

35A.—(1) For the purpose of assisting the General Council or any of their committees in carrying out functions in respect of professional conduct, professional performance or fitness to practise, a person authorised by the Council may require—

- (a) a practitioner (except the practitioner in respect of whose professional conduct, professional performance or fitness to practise the information or document is sought); or
- (b) any other person,

who in his opinion is able to supply information or produce any document which appears relevant to the discharge of any such function, to supply such information or produce such a document.

(2) As soon as is reasonably practicable after the relevant date, the General Council shall require, from a practitioner in respect of whom a decision mentioned in subsection (3) has been made, details of any person—

- (a) by whom the practitioner is employed to provide services in, or in relation to, any area of medicine; or
- (b) with whom he has an arrangement to do so.

(3) For the purposes of this section and section 35B the relevant date is—

- (a) the date of a decision to refer a case in respect of a practitioner to the Preliminary Proceedings Committee in accordance with rules made under paragraph 5(2) of Schedule 4 to this Act;
- (b) where rules have been made under paragraph 1(1) or 5A(1) of Schedule 4 to this Act which provide for any of the following decisions—
 - (i) to invite a practitioner to agree to an assessment of his professional performance;
 - (ii) to invite a practitioner to agree to an assessment to determine whether his fitness to practise is seriously impaired by reason of his physical or mental condition;
 - (iii) to notify a practitioner that medical reports received by the General Council appear to provide evidence that his fitness to practise may be seriously impaired by reason of his physical or mental condition,

the date of the decision in question.

(4) Nothing in this section shall require or permit any disclosure of information which is prohibited by or under any other enactment.

(5) But where information is held in a form in which the prohibition operates because the information is capable of identifying an individual, the person referred to in subsection (1) may, in exercising his functions under that subsection, require that the information be put into a form which is not capable of identifying that individual.

(6) Subsection (1) shall not apply in relation to the supplying of information or the production of any document which a person could not be compelled to supply or produce in civil proceedings before the court (within the meaning of section 38).

(7) For the purposes of subsection (4), “enactment” includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament.

(8) For the purposes of this section and section 35B, a “practitioner” means a fully registered person, a provisionally registered person or a person registered with limited registration.

Notification and disclosure by the General Council

35B.—(1) As soon as is reasonably practicable after the relevant date, the General Council shall notify the following of the making of a decision mentioned in section 35A(3) in respect of a practitioner—

- (a) the Secretary of State, the Scottish Ministers and the National Assembly for Wales; and
- (b) any person in the United Kingdom of whom the General Council are aware—
 - (i) by whom the practitioner concerned is employed to provide services in, or in relation to, any area of medicine, or
 - (ii) with whom he has an arrangement to do so.

(2) The General Council may disclose to any person any information relating to a practitioner’s professional conduct, professional performance or fitness to practise which they consider it to be in the public interest to disclose.”.

Amendment of section 36

5. In section 36(5) (professional misconduct and criminal offences)—

- (a) in subsection (1)(a), after “criminal offence,” there shall be inserted “or to have been convicted elsewhere of an offence which, if committed in England and Wales, would constitute a criminal offence,”;
- (b) in subsection (2), for “under section 42 below by the Preliminary Proceedings Committee” there shall be substituted “under section 41A by the Interim Orders Committee”.

Amendment of section 36A

6. In section 36A(2)(6) (professional performance), for “, is judged by the Committee” there shall be substituted “or under section 41A by the Interim Orders Committee or the Committee on Professional Performance, is judged by the Committee on Professional Performance”.

Amendment of section 37

7. In section 37(2)(7) (unfitness to practise through illness etc), for “under section 42 below by the Preliminary Proceedings Committee” there shall be substituted “under section 41A by the Interim Orders Committee”.

Amendment of section 40

8. In section 40(8) (appeals)—

- (a) in subsection (1), after paragraph (c) there shall be added—

(5) Section 36(2) was amended by the Medical (Professional Performance) Act 1995, Schedule, para. 5.

(6) Section 36A was inserted by the Medical (Professional Performance) Act 1995, section 1.

(7) Section 37(2) was amended by the Medical (Professional Performance) Act 1995, Schedule, para. 6(2).

(8) Section 40 was amended by the Medical (Professional Performance) Act 1995, Schedule, para. 8.

- “; or
- (d) a decision of the Professional Conduct Committee under section 41(6) giving a direction that the right to make further applications under that section shall be suspended indefinitely; or
 - (e) a decision of the General Council under section 45(6) giving a direction that the right to make further applications under that section shall be suspended indefinitely.”;
- (b) in subsection (3), for “or 39(2)” there shall be substituted “, 39(2), 41(7) or 45(7)”;
 - (c) in subsection (4), the word “or” after paragraph (b) shall be omitted and after paragraph (c) there shall be added the following paragraphs—
 - “(d) of the Professional Conduct Committee under section 41(6); or
 - (e) of the General Council under section 45(6).”.

Amendment of section 41

9. In section 41 (restoration of names to the register)—
- (a) in subsection (1), for “subsection (2)” there shall be substituted “subsections (2) and (5)”;
 - (b) in subsection (2)(a), for “ten months” there shall be substituted “five years”;
 - (c) in subsection (2)(b), for “ten months” there shall be substituted “twelve months”;
 - (d) after subsection (4) there shall be added—
 - “(5) Before determining whether to give a direction under subsection (1), the Professional Conduct Committee shall require an applicant for restoration to provide such evidence as they direct as to one or more of his good character, professional competence and health; and they shall not give such a direction if that evidence does not satisfy them.
 - (6) Where, during the same period of erasure, a second or subsequent application for the restoration of a name to the register, made by or on behalf of the person whose name has been erased, is unsuccessful, the Professional Conduct Committee may direct that his right to make any further such applications shall be suspended indefinitely.
 - (7) Where the Professional Conduct Committee give a direction under subsection (6), the Registrar shall without delay serve on the person in respect of whom it has been made a notification of the direction and of his right to appeal against it in accordance with section 40.
 - (8) Any person in respect of whom a direction has been given under subsection (6) may, after the expiration of three years from the date on which the direction was given, apply to the Professional Conduct Committee for that direction to be reviewed by the Committee and, thereafter, may make further applications for review; but no such application may be made before the expiration of three years from the date of the most recent review decision.”.

Insertion of sections 41A and 41B

10. After section 41 there shall be inserted—

“Interim Orders

41A.—(1) Where the Interim Orders Committee are satisfied that it is necessary for the protection of members of the public or is otherwise in the public interest, or is in the interests

of a fully registered person, for the registration of that person to be suspended or to be made subject to conditions, the Committee may make an order—

- (a) that his registration in the register shall be suspended (that is to say, shall not have effect) during such period not exceeding eighteen months as may be specified in the order (an “interim suspension order”); or
- (b) that his registration shall be conditional on his compliance, during such period not exceeding eighteen months as may be specified in the order, with such requirements so specified as the Committee think fit to impose (an “order for interim conditional registration”).

(2) Subject to subsection (9), where the Interim Orders Committee have made an order under subsection (1), the Committee—

- (a) shall review it within the period of six months beginning on the date on which the order was made, and shall thereafter, for so long as the order continues in force, further review it before the end of the period of three months beginning on the date of the decision of the immediately preceding review; and
- (b) may review it where new evidence relevant to the order has become available after the making of the order.

(3) Where an interim suspension order or an order for interim conditional registration has been made in relation to any person under any provision of this section (including this subsection), the Interim Orders Committee, the Professional Conduct Committee, the Health Committee or the Committee on Professional Performance may, subject to subsection (4)—

- (a) revoke the order or revoke any condition imposed by the order;
- (b) vary any condition imposed by the order;
- (c) if satisfied that to do so is necessary for the protection of members of the public or is otherwise in the public interest, or is in the interests of the person concerned, replace an order for interim conditional registration with an interim suspension order having effect for the remainder of the term of the former;
- (d) if satisfied that the public interest, including the protection of members of the public, or the interests of the person concerned would be adequately served by an order for interim conditional registration, replace an interim suspension order with an order for interim conditional registration having effect for the remainder of the term of the former.

(4) No order under subsection (1) or (3)(b) to (d) shall be made by any Committee in respect of any person unless he has been afforded an opportunity of appearing before the Committee and being heard on the question whether such an order should be made in his case; and for the purposes of this subsection a person may be represented before the Committee by counsel or a solicitor, or (if rules made under paragraph 1 of Schedule 4 to this Act so provide and he so elects) by a person of such other description as may be specified in the rules.

(5) If an order is made under any provision of this section the Registrar shall without delay serve a notification of the order on the person to whose registration it relates.

(6) The General Council may apply to the court for an order made by the Interim Orders Committee under subsection (1) or (3) to be extended, and may apply again for further extensions.

(7) On such an application the court may extend (or further extend) for up to 12 months the period for which the order has effect.

(8) In this section, references to an interim suspension order and an order for interim conditional registration include such an order as so extended.

(9) For the purposes of subsection (2) the first review after the court's extension of an order made by the Interim Orders Committee or after a replacement order made by the Interim Orders Committee under subsection (3)(c) or (d) shall take place—

- (a) if the order (or the order which has been replaced) had not been reviewed at all under subsection (2), within the period of six months beginning on the date on which the court ordered the extension or on which a replacement order under subsection (3)(c) or (d) was made; and
- (b) if it had been reviewed under the provision, within the period of three months beginning on that date.

(10) Where an order has effect under any provision of this section, the court may—

- (a) in the case of an interim suspension order, terminate the suspension;
- (b) in the case of an order for interim conditional registration, revoke or vary any condition imposed by the order;
- (c) in either case, substitute for the period specified in the order (or in the order extending it) some other period which could have been specified in the order when it was made (or in the order extending it),

and the decision of the court under any application under this subsection shall be final.

(11) While a person's registration in the register is suspended by virtue of an interim suspension order under this section he shall be treated as not being registered in the register notwithstanding that his name still appears in the register.

(12) This section applies to a provisionally registered person and to a person registered with limited registration whether or not the circumstances are such that he falls within the meaning in this Act of the expression "fully registered person".

(13) In this section "the court" has the same meaning as in section 38.

Interim orders made by committees other than the Interim Orders Committee

41B.—(1) This section applies where the Professional Conduct Committee, the Committee on Professional Performance or the Health Committee have made an order under section 41A(3)(c) or (d).

- (2) Subject to subsections (3) and (4), any Committee referred to in subsection (1) may—
- (a) do any of the things referred to in section 41A(3)(a) to (d) in relation to the order; and
 - (b) before the expiry of the order, extend it or further extend it.

(3) Subsection (2)(b) applies equally to a replacement order made by one of those Committees by virtue of section 41A(3)(c) or (d) as applied by subsection (2)(a).

(4) An order may not be extended under this section for more than three months at a time.

(5) Subsections (5) and (10) to (13) of section 41A apply for the purposes of this section as they apply for the purposes of that section.

(6) For the purposes of rules made under paragraph 1 of Schedule 4 for the Committees referred to in subsection (1), "proceedings" in that paragraph includes proceedings under this section."

Amendment of section 42

11. In section 42 (preliminary proceedings as to professional misconduct and unfitness to practise) for subsections (3) to (8)(9) there shall be substituted—

“(3) If the Committee decide that a case ought to be referred for inquiry by the Professional Conduct Committee or the Health Committee—

- (a) they shall give a direction designating the Committee which is to inquire into the case; and
- (b) the Registrar shall serve a notification of the decision of the Preliminary Proceedings Committee on the person whose case has been so referred.”.

Amendment of section 43

12. In section 43(10) (proceedings before the Professional Conduct, Assessment Referral, Professional Performance, Health and Preliminary Proceedings Committees), after “before” there shall be inserted “the Interim Orders Committee,”.

Amendment of section 45

13. In section 45 (disciplinary provisions affecting practitioners who render services while visiting the United Kingdom—

- (a) in subsection (3)(a), for “ten months” there shall be substituted “five years”;
- (b) in subsection (3)(b), for “ten months” there shall be substituted “twelve months”;
- (c) after subsection (4) there shall be added—

“(5) Before determining whether to terminate a prohibition under subsection (3), the General Council shall require the person applying for its termination to provide such evidence as they direct as to one or more of his good character, professional competence and health; and they shall not terminate the prohibition if that evidence does not satisfy them.

(6) Where, during the same period of prohibition, a second or subsequent application for termination of the prohibition, made by or on behalf of a person on whom the prohibition has been imposed, is unsuccessful, the General Council may direct that his right to make any further such applications shall be suspended indefinitely.

(7) Where the General Council give a direction under subsection (6), the Registrar shall without delay serve on the person in respect of whom it has been made a notification of the direction and of his right to appeal against it in accordance with section 40.

(8) Any person in respect of whom a direction has been given under subsection (6) may, after the expiration of three years from the date on which the direction was made, apply to the General Council for that direction to be reviewed by the General Council and, thereafter, may make further applications for review; but no such application may be made before the expiration of three years from the date of the most recent review decision.”.

Amendment of section 47

14. In section 47(3)(11) (appointments not to be held except by fully registered practitioner), for “section 42” there shall be substituted “section 41A”.

(9) Section 3 of the Medical (Professional Performance) Act 1995 inserted subsections (6A) to (6D) and repealed subsection (7).

(10) Section 43 was amended by the Medical (Professional Performance) Act 1995, Schedule, para. 9.

(11) Section 47(3) was amended by the Medical (Professional Performance) Act 1995, Schedule, para. 10.

Amendment of Part III of Schedule 1

15. In Part III of Schedule 1(12) (constitution of committees of the General Council—

(a) after paragraph 19 there shall be inserted the following paragraph—

“The Interim Orders Committee

19A. Subject to the power of the Committee under paragraph 25 to co-opt members, the Interim Orders Committee shall be constituted as provided by the General Council by rules under this paragraph.”;

(b) in each of paragraphs 20, 21, 21A, 21B and 22, at the beginning there shall be inserted “Subject to the power of the Committee under paragraph 25 to co-opt members,”;

(c) in paragraph 23, after “who sits as a member of” there shall be inserted “the Interim Orders Committee,”;

(d) after paragraph 23 there shall be inserted the following paragraph—

“**23A.** Rules under paragraph 19A above shall secure that a person who sits as a member of the Preliminary Proceedings Committee, the Assessment Referral Committee, the Professional Conduct Committee, the Committee on Professional Performance or the Health Committee shall not sit as a member of the Interim Orders Committee in any subsequent proceedings on that case.”;

(e) in paragraph 24, after “paragraph” there shall be inserted “19A,”;

(f) for paragraph 25(2) there shall be substituted the following—

“(2) A Committee of the General Council may, if authorised to do so by the General Council, co-opt such persons (whether or not members of the Council) as the Committee think fit.”.

Amendment of Schedule 4

16. In Schedule 4(13) (proceedings before the fitness to practice committees)—

(a) in paragraph 1(1), after “shall make rules for” there shall be inserted “the Interim Orders Committee,”;

(b) after paragraph 1(1) there shall be inserted—

“(1A) Rules made under this paragraph for the Interim Orders Committee shall include provision—

(a) securing that notice that the proceedings are to be brought or that a review is to take place shall be given, at such time and in such manner as may be specified in the rules, to the person to whom the proceedings relate;

(b) securing that a person in relation to whom an interim order has been made (“the person concerned”) shall, if he so requires, be entitled to be heard by the Committee on each occasion on which they review the order; and enabling him to be represented before the Committee by counsel or a solicitor, or (if the rules so provide and he so elects) by a person of such other description as may be specified in the rules;

(12) Paragraph 23 was substituted by the Medical (Professional Performance) Act 1995, Schedule, para. 13, and paragraph 24 amended by the Schedule, para. 14 to that Act.

(13) Paragraph 1(1) was amended by the Medical (Professional Performance) Act 1995, Schedule, paragraph 15; paragraph 2 was amended by the Schedule, paragraph 17 to that Act; paragraphs 7(1) and (4) were amended by the Schedule, para. 21 to that Act and the Courts and Legal Services Act 1990, Schedule 10, para. 53; paragraph 8 was amended by the Medical (Professional Performance) Act 1995, Schedule, para. 22.

- (c) for service on the person concerned of notice of any decision taken in relation to him by the Committee;
- (d) determining when proceedings before the Committee are to be held in public and when in private (including provision securing that they are to be held in public if the person concerned so requests).”;
- (c) in paragraph 1(2B)(b), for “the proceedings”, where it first appears, there shall be substituted “proceedings”;
- (d) in each of sub-paragraphs (1), (2) and (3) of paragraph 2, after “proceedings before” there shall be inserted “the Interim Orders Committee,”;
- (e) in paragraph 3, after “several sittings of” there shall be inserted “the Interim Orders Committee,”;
- (f) in paragraph 7(1), after “purpose of advising” there shall be inserted “the Interim Orders Committee,”;
- (g) in paragraph 7(4), after “proceedings before” there shall be inserted “the Interim Orders Committee,”;
- (h) in paragraph 8(1), for “or 42(5) or (6C)” there shall be substituted “, 41(7), 41A(5), 42(3) or 45(7) or by virtue of section 41B(5)”;
- (i) after paragraph 13 there shall be inserted the following paragraph—

“14. In this Schedule “party”, in relation to proceedings before the Interim Orders Committee, means any person to whose registration the proceedings relate, or the Solicitor to the General Council.”.

Transitional Provision and Saving

17.—(1) Any interim suspension order or order for interim conditional registration made prior to the date on which this Order comes into force which is in force immediately prior to that date shall, subject to the provisions of article 18, continue in force.

(2) In any case where erasure under section 41 of the Act or the imposition of a prohibition under section 45 of the Act has taken place prior to the date on which this Order comes into force, and an application for restoration of a name to the register or, as the case may be, for termination of a prohibition, is made on or after the date on which this Order comes into force, paragraphs (b) and (c) of article 9 or, as the case may be, paragraphs (a) and (b) of article 13, shall not have effect in relation to that application.

Power to make rules dealing with transitional cases

18.—(1) In respect of any case where—

- (a) proceedings have commenced under section 42 of the Act but no order has been made prior to the date on which this Order comes into force; or
- (b) an interim suspension order or order for interim conditional registration has been made prior to the date on which this Order comes into force which is in force immediately prior to that date,

the General Council shall make rules for the determination of that case.

(2) Sub-paragraphs (4) and (5) of paragraph 1 of Schedule 4 to the Act shall apply in relation to rules made under this article as they apply to rules under that paragraph.

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

A. K. Galloway
Clerk of the Privy Council

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes amendments to the Medical Act 1983 (“the Act”). Article 3 provides for a new statutory committee of the General Medical Council (“the Council”), to be called the Interim Orders Committee.

Article 4 inserts two new sections into the Act, sections 35A and 35B. Section 35A provides powers for persons authorised by the Council to require disclosure of information that would assist them in the carrying out of their functions in respect of fitness to practise or professional conduct. Section 35B obliges the committees of the Council to notify specified persons when formal proceedings are initiated against a practitioner in respect of his fitness to practise or professional conduct. The section also empowers the Council to disclose information relating to a practitioner’s fitness to practise or professional conduct where they consider it to be in the public interest to do so.

Article 5 amends section 36 of the Act to provide that, as well as convictions in the British Islands, a practitioner’s name may be erased from the register, or his registration may be suspended or made subject to conditions, if he is convicted abroad of an offence which would constitute a criminal offence if committed in England and Wales.

Article 8 provides for a right of appeal to the Judicial Committee of the Privy Council where a direction is given under section 41 or 45 of the Act that the right to make further applications during the same period of erasure or, as the case may be, prohibition, is suspended indefinitely.

Articles 9 and 13 make amendments to sections 41 and 45 of the Act respectively. They increase the period of time that a person who has been erased from the register, or in respect of whom a prohibition has been imposed, must wait before being able to apply for restoration, or termination of the prohibition, from ten months to five years. They also increase the period of time that must elapse between each application for restoration or termination of a prohibition from ten months to twelve months and provide that before a person’s name is restored to the register, or a prohibition imposed on him is terminated, he must satisfy specified conditions as to fitness to practise.

Article 10 inserts sections 41A and 41B into the Act.

Section 41A defines the circumstances in which the Interim Orders Committee may make an order providing for a practitioner’s registration to be suspended or to be made subject to conditions on an interim basis and also makes provision for the review of orders. The section makes provision for statutory committees of the Council to revoke or vary orders for interim suspension or interim conditional registration; for such orders to require extension by the court; and for the court to have power to terminate or vary such orders.

Section 41B makes provision for interim orders made by committees other than the Interim Orders Committee.

Article 15 provides for committees of the Council to have a power of co-option.

Article 17 makes transitional and saving provision and article 18 provides a power to make rules dealing with transitional cases.

The Order also makes minor and consequential amendments to the Act.