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STATUTORY INSTRUMENTS

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**2005 No. 2011**

**The Dentists Act 1984 (Amendment) Order 2005**

**PART 3**

**Fitness to practise, proceedings and appeals**

**Insertion of section 26B**

17. Immediately before section 27 insert—

**“Guidance**

**26B.—**(1) The Council shall prepare and from time to time issue guidance as to the standards of conduct, performance and practice expected of registered dentists.

(2) Such guidance may make different provision in relation to different cases or classes of case.

(3) The Council shall keep such guidance under review and may vary or withdraw it whenever they consider it appropriate to do so.

(4) The Council shall from time to time publish guidance issued under this section.

(5) Before issuing such guidance or varying or withdrawing it, the Council shall consult—

- (a) such persons to whom subsection (6) applies as the Council consider appropriate;
- (b) the bodies within subsection (8); and
- (c) such bodies to which subsection (9) applies as the Council consider appropriate.

(6) This subsection applies to persons who appear to the Council to be representative of one or more of the following—

- (a) users of the services of registered dentists;
- (b) users of the services of registered dental care professionals;
- (c) registered dentists;
- (d) registered dental care professionals;
- (e) employers of registered dentists; and
- (f) employers of registered dental care professionals.

(7) The Council shall exercise their function under subsection (5)(a) so that the persons consulted are, taken together, representative of all the categories of person mentioned in subsection (6)(a) to (f).

(8) The bodies within this subsection are—

- (a) Primary Care Trusts in England;
- (b) Local Health Boards in Wales;

- (c) Health Boards in Scotland; and
- (d) Health and Social Services Boards in Northern Ireland.

(9) This subsection applies to bodies which make arrangements, for the provision of dental services, with one or both of the following—

- (a) registered dentists,
- (b) registered dental care professionals,

but are not within subsection (8).

(10) The Council may charge such fee as they consider reasonable for the provision of a copy of the guidance to any person.”.

### **Substitution of sections 27 and 28**

**18.** For sections 27 and 28 substitute—

#### **“Allegations**

**27.**—(1) This section applies where an allegation is made to the Council against a registered dentist that his fitness to practise as a dentist is impaired.

(2) A person’s fitness to practise as a dentist shall be regarded as “impaired” for the purposes of this Act by reason only of—

- (a) misconduct;
- (b) deficient professional performance;
- (c) adverse physical or mental health;
- (d) a conviction or caution in the United Kingdom for a criminal offence, or a conviction elsewhere for an offence which, if committed in England and Wales, would constitute a criminal offence;
- (e) the person having—
  - (i) accepted a conditional offer under section 302 of the Criminal Procedure (Scotland) Act 1995 (fixed penalty: conditional offer by procurator fiscal),  
or
  - (ii) agreed to pay a penalty under section 115A of the Social Security Administration Act 1992 (penalty as alternative to prosecution);
- (f) the person, in proceedings in Scotland for an offence, having been the subject of an order under section 246(2) or (3) of the Criminal Procedure (Scotland) Act 1995 discharging him absolutely; or
- (g) a determination by a body in the United Kingdom responsible under any enactment for the regulation of a health or social care profession to the effect that the person’s fitness to practise as a member of that profession is impaired, or a determination by a regulatory body elsewhere to the same effect.

(3) It does not matter whether the allegation is based on a matter alleged to have occurred—

- (a) outside the United Kingdom; or
- (b) at a time when the person was not registered in the register.

(4) This section also applies in a case where—

- (a) it comes to the attention of the Council that a registered dentist's fitness to practise as a dentist may be impaired on one or more of the grounds mentioned in subsection (2), but
  - (b) no allegation to that effect has been made to the Council against that person,
- and in such a case this Act shall apply as if an allegation or allegations to the effect that the person's fitness to practise as a dentist is impaired on the ground or grounds in question had been made to the Council against that person.
- (5) The registrar—
    - (a) shall refer the allegation to the Investigating Committee; and
    - (b) may also, if he considers it appropriate, refer the allegation to the Interim Orders Committee.
  - (6) The registrar shall investigate the allegation for the purpose of exercising his functions under subsection (5).
  - (7) In this section—
    - (a) “enactment” includes—
      - (i) a provision of, or an instrument made under, an Act of the Scottish Parliament,
      - (ii) a provision of, or an instrument made under, Northern Ireland legislation, and
      - (iii) a provision of subordinate legislation (within the meaning of the Interpretation Act 1978); and
    - (b) “regulatory body” means a regulatory body which has the function of authorising persons to practise as members of a health or social care profession.

### **The Investigating Committee**

**27A.—**(1) Where the registrar refers an allegation under section 27 to the Investigating Committee they shall investigate the allegation and determine whether the allegation ought to be considered by a Practice Committee.

(2) If the Investigating Committee determine that the allegation ought not to be considered by a Practice Committee, the Investigating Committee may—

- (a) issue a warning or advice to the person who is the subject of the allegation regarding his future conduct, performance and practice; and
- (b) issue advice to any other person involved in the investigation on any issue arising in the course of the investigation.

(3) If the Investigating Committee issue a warning under subsection (2)(a), they may, if they consider it appropriate to do so, direct the registrar to enter details of that warning in the entry in the register relating to the person who is the subject of the allegation.

(4) Unless subsection (5) applies, if the Investigating Committee determine that the allegation ought to be considered by a Practice Committee, the Investigating Committee—

- (a) shall refer the allegation—
  - (i) to the Professional Performance Committee, in the case of an allegation based on the ground mentioned in section 27(2)(b) (deficient professional performance),
  - (ii) to the Health Committee, in the case of an allegation based on the ground mentioned in section 27(2)(c) (adverse physical or mental health), or

- (iii) to the Professional Conduct Committee, in any other case; and
  - (b) may also, if they consider it appropriate, refer the allegation to the Interim Orders Committee.
- (5) This subsection applies in a case where two or more allegations under section 27 relating to the same person have been referred to the Investigating Committee and those allegations are—
- (a) an allegation based on the ground mentioned in section 27(2)(b) and an allegation or allegations based on any other grounds mentioned in section 27(2); or
  - (b) an allegation based on the ground mentioned in section 27(2)(c) and an allegation or allegations based on any other grounds mentioned in section 27(2).
- (6) Where subsection (5) applies, and the Investigating Committee determine that two or more of those allegations ought to be considered by a Practice Committee, the Investigating Committee—
- (a) shall refer those allegations to whichever one of the Practice Committees they consider most appropriate; and
  - (b) may also, if they consider it appropriate, refer those allegations to the Interim Orders Committee.
- (7) The registrar shall serve notification of any determination made by the Investigating Committee under subsection (1) on the person who is the subject of the allegation and on the person (if any) making the allegation.
- (8) The Investigating Committee may review and if they consider it appropriate revise a determination made by them that an allegation or allegations ought to be considered by a particular Practice Committee—
- (a) on a reference back to them from that Practice Committee under section 27B(4); or
  - (b) on an application made by the Council, the registrar, the person who is the subject of the allegation or allegations or any person making the allegation or allegations, but only if such review is carried out—
    - (i) where there is to be a hearing before that Practice Committee, before the commencement of that hearing, or
    - (ii) where there is not to be a hearing before that Practice Committee, before that Practice Committee have begun to consider written statements or representations.
- (9) Subsection (2) applies to a determination by the Investigating Committee, following a review under subsection (8), that an allegation or allegations ought not to be considered by a Practice Committee, as it applies to a determination under subsection (1) that an allegation ought not to be considered by a Practice Committee.
- (10) If the Investigating Committee determine, under subsection (1) or following a review under subsection (8), that an allegation or allegations against a person ought not to be considered by a Practice Committee, they shall, at the same time, revoke with immediate effect any interim order which has been made under section 32 in respect of that person in consequence of that allegation or those allegations.

### **The Practice Committees**

**27B.—**(1) Subject to subsection (4), a Practice Committee must investigate an allegation or allegations against a person referred to them by the Investigating Committee under section 27A and determine whether that person's fitness to practise as a dentist is impaired.

(2) In making a determination under subsection (1), the Practice Committee may take into account whether the person who is the subject of the allegation or allegations has complied with any relevant parts of the guidance issued under section 26B, but that question is not of itself determinative of whether a person's fitness to practise as a dentist is impaired.

(3) If the person who is the subject of an allegation or allegations is also registered in the dental care professionals register, a Practice Committee shall, in exercising their function under subsection (1), make a separate determination under section 36P(1) (fitness to practise as a member of a profession complementary to dentistry).

(4) Where a Practice Committee consider that any allegation should not have been referred to them by the Investigating Committee under section 27A, they may refer that allegation back to the Investigating Committee.

(5) If a Practice Committee determine that a person's fitness to practise as a dentist is not impaired, they—

- (a) shall publish at his request a statement to that effect; or
- (b) may publish such a statement if he consents.

(6) If a Practice Committee determine that a person's fitness to practise as a dentist is impaired, they may, if they consider it appropriate, direct—

- (a) (subject to subsection (7)) that the person's name shall be erased from the register;
- (b) that his registration in the register shall be suspended during such period not exceeding twelve months as may be specified in the direction;
- (c) that his registration in the register shall be conditional on his compliance, during such period not exceeding three years as may be specified in the direction, with such conditions specified in the direction as the Practice Committee think fit to impose for the protection of the public or in his interests; or
- (d) that he shall be reprimanded in connection with any conduct or action of his which was the subject of the allegation.

(7) The direction specified in subsection (6)(a) shall not be given following a determination that a person's fitness to practise as a dentist is impaired solely on the ground mentioned in section 27(2)(c) (adverse physical or mental health).

(8) Where a Practice Committee give a direction under subsection (6), the registrar shall forthwith serve on the person concerned notification of the direction and (except in the case of a direction under paragraph (d) of that subsection) of his right to appeal against it under section 29.

(9) Where a Practice Committee make a determination under subsection (1) as to a person's fitness to practise as a dentist, they shall, at the same time, revoke any interim order which has been made under section 32 in respect of that person in consequence of the allegation, or allegations, to which that determination relates.

(10) The revocation of an interim order under subsection (9) shall take effect—

- (a) in the case of a determination that the person's fitness to practise is not impaired, forthwith;
- (b) in the case of a direction given under paragraph (d) of subsection (6), forthwith; and
- (c) in the case of a direction given under paragraph (a), (b) or (c) of subsection (6), subject to section 30(5), from the time when—
  - (i) any direction given under those paragraphs takes effect in accordance with section 29A,

- (ii) an appeal under section 29 against the decision giving such a direction is determined under section 29(3)(b) or (c), or
- (iii) following a decision on appeal to remit the case to a Practice Committee, the Practice Committee dispose of the case.

### **Resumed hearings**

**27C.**—(1) Where a Practice Committee have given a direction under section 27B(6)(b) or subsection (2)(d) or (3) of this section that a person’s registration should be suspended, they may direct—

- (a) that the suspension shall be terminated;
- (b) that the current period of suspension shall be extended for such further period, specified in the direction and not exceeding twelve months, beginning with the date on which it would otherwise expire;
- (c) that the suspension shall be terminated and the person’s registration in the register shall be conditional on his compliance, during such period not exceeding three years as may be specified in the direction, with such conditions specified in the direction as the Practice Committee think fit to impose for the protection of the public or in his interests; or
- (d) that the person’s registration in the register shall be suspended indefinitely, if—
  - (i) the period of suspension will, on the date on which the direction takes effect, have lasted for at least two years, and
  - (ii) the direction is made not more than two months before the date on which the period of suspension would otherwise expire.

(2) Where a Practice Committee have given a direction under section 27B(6)(c), subsection (1)(c) or (5)(c) of this section or section 28(6)(b) imposing conditional registration, they may give one or more of the following directions—

- (a) a direction that the registration shall cease to be conditional from a date specified in the direction;
- (b) a direction that the current period of conditional registration shall be extended for such further period, specified in the direction and not exceeding three years, beginning with the date on which it would otherwise expire;
- (c) a direction that one or more of the conditions imposed on the registration shall be varied or revoked, or that those conditions shall be added to, as specified in the direction; or
- (d) a direction that the person’s registration in the register shall be suspended during such period not exceeding twelve months as may be specified in the direction.

(3) Where a Practice Committee—

- (a) have given a direction under section 27B(6)(c), subsection (1)(c), (2)(b) or (c) or (5)(c) of this section or section 28(6)(b) imposing conditions on a person’s registration, or extending a period of conditional registration, in the register, or
- (b) have made an order under section 32(4)(b) for interim conditional registration,

and the Practice Committee determine that at any time during the period for which that direction or order has effect the person has failed to comply with any condition imposed on his registration, the Practice Committee may direct that the person’s registration in the register shall be suspended during such period not exceeding twelve months as may be specified in the direction.

(4) Where a Practice Committee have given a direction under subsection (1)(d) that a person's registration is to be suspended indefinitely, they must review the direction if—

- (a) the person requests them to do so;
- (b) at least two years have elapsed since the date on which the direction took effect; and
- (c) if the direction has previously been reviewed under this subsection, at least two years have elapsed since the date of the last such review decision.

(5) On such a review a Practice Committee may—

- (a) direct that the suspension shall be terminated;
- (b) confirm the direction to suspend the person's registration indefinitely; or
- (c) direct that the suspension shall be terminated and the person's registration in the register shall be conditional on his compliance, during such period not exceeding three years as may be specified in the direction, with such conditions specified in the direction as the Practice Committee think fit to impose for the protection of the public or in his interests.

(6) Where a Practice Committee give a direction under this section, the registrar shall forthwith serve on the person concerned notification of the direction and (except in the case of a direction under subsection (1)(a), (2)(a) or (5)(a) or a direction under subsection (2)(c) that a condition or conditions shall be revoked) of his right to appeal against it under section 29.

#### **Restoration of names to the register following erasure under section 27B**

**28.**—(1) A person whose name has been erased from the register in accordance with a direction under section 27B(6)(a) may apply to the registrar for his name to be restored to the register.

(2) No application under this section for the restoration of a person's name to the register shall be made—

- (a) before the end of the period of five years beginning with the date on which the direction for erasure took effect; or
- (b) within twelve months of the date on which an earlier application for the restoration of his name was made.

(3) The registrar shall refer an application to the Professional Conduct Committee.

(4) When considering an application, the Professional Conduct Committee may, if they consider it necessary and appropriate in a particular case, direct the applicant to do one or both of the following—

- (a) produce such evidence as to his fitness to practise as a dentist as the Professional Conduct Committee shall specify;
- (b) meet such further requirements, including requirements as to education and training, as the Professional Conduct Committee shall specify.

(5) An application shall not be granted unless the applicant satisfies the Professional Conduct Committee that—

- (a) he is fit to practise as a dentist;
- (b) he meets the requirements of section 15(3)(a) to (c);
- (c) he meets the requirements of any rules made under section 34B which apply to his case; and

- (d) he meets any other requirements imposed in a direction under subsection (4)(b).
- (6) Where the Professional Conduct Committee grant an application, they may give one or both of the following directions—
- (a) a direction that the restoration of a person’s name to the register shall be conditional on his satisfying the registrar that he meets the requirements of section 26A (insurance);
  - (b) a direction that a person’s registration in the register shall be conditional on his compliance, during such period not exceeding three years as may be specified in the direction, with such conditions specified in the direction as the Professional Conduct Committee think fit to impose for the protection of the public or in his interests.
- (7) If the Professional Conduct Committee refuse to grant an application, the registrar shall forthwith serve on the applicant notification of the Professional Conduct Committee’s decision and of his right to appeal against it under section 29.
- (8) If the Professional Conduct Committee grant an application, the registrar shall forthwith serve on the applicant notification of the Professional Conduct Committee’s decision, and, in a case where a direction has been given under subsection (6)(b), of his right to appeal against that direction under section 29.
- (9) Where, during the same period of erasure, a second or subsequent application under this section by the same person is unsuccessful, the Professional Conduct Committee may direct that his right to make any further such applications shall be suspended indefinitely.
- (10) If the Professional Conduct Committee give a direction under subsection (9), the registrar shall forthwith serve on the person concerned notification of the direction and of his right to appeal against it under section 29.
- (11) Any person in respect of whom a direction has been given under subsection (9) may, after the end of the period of three years beginning with the date on which the direction took effect, apply to the registrar for the direction to be reviewed by the Professional Conduct Committee and, thereafter, may make further applications for review; but no such application may be made before the end of the period of three years beginning with the date of the most recent review decision.
- (12) On a review under subsection (11), the Professional Conduct Committee may—
- (a) confirm the direction under subsection (9); or
  - (b) direct that the person concerned may make an application under subsection (1).”.

### **Amendment of section 29**

#### **19. In section 29 (appeals)(1)—**

- (a) for subsections (1) and (1A) substitute—

“(1) The following decisions are appealable decisions for the purposes of this section—

- (a) a decision of the Professional Conduct Committee under section 24—
  - (i) giving a direction for erasure of a person’s name from the register under subsection (3) of that section, or
  - (ii) refusing an application to restore a person’s name to the register, or refusing to restore his name until the end of a specified period, under subsection (6) of that section;

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(1) Section 29 was amended by section 31 of the National Health Service Reform and Health Care Professions Act 2002 (c. 17).

- (b) a decision of a Practice Committee under section 27B or 27C giving a direction for erasure, for suspension, for conditional registration or for varying or adding to the conditions imposed by a direction for conditional registration; and
- (c) a decision of the Professional Conduct Committee under section 28—
  - (i) refusing to grant an application to restore a person’s name to the register,
  - (ii) giving a direction for conditional registration under subsection (6)(b) of that section, or
  - (iii) giving a direction under subsection (9) of that section suspending indefinitely the right to make further applications under that section.

(1A) In subsection (1)—

- (a) a reference to a direction for suspension includes a reference to a direction extending a period of suspension and a direction for indefinite suspension; and
- (b) a reference to a direction for conditional registration includes a reference to a direction extending a period of conditional registration.

(1B) Subject to subsection (1C), a person in respect of whom an appealable decision has been made may, before the end of the period of 28 days beginning with the date on which notification of the decision was served under section 24(7), 27B(8), 27C(6) or 28(7), (8) or (10), appeal against the decision to the relevant court.

(1C) Where—

- (a) any notification of a decision required to be served on a person under any of the provisions specified in subsection (1B) is served by sending it to him by post, and
- (b) the registrar is satisfied, on the application of that person, that he did not receive the notification within the period of 14 days beginning with the day on which the decision was made,

the registrar may, if he thinks fit, by authorisation in writing extend the period of time within which an appeal under this section may be brought.

(1D) In subsection (1B) “the relevant court”—

- (a) in the case of a person whose address in the register is (or if he were registered would be) in Scotland, means the Court of Session;
- (b) in the case of a person whose address in the register is (or if he were registered would be) in Northern Ireland, means the High Court in Northern Ireland; and
- (c) in the case of any other person, means the High Court in England and Wales.”; and

(b) in subsection (3), for paragraphs (b) to (d) substitute—

- “(b) allow the appeal and quash the decision appealed against,
- (c) substitute for the decision appealed against any other decision which could have been made by the Professional Conduct Committee, the Professional Performance Committee or (as the case may be) the Health Committee, or
- (d) remit the case to the Professional Conduct Committee, the Professional Performance Committee or (as the case may be) the Health Committee to dispose of the case under section 24, 27B, 27C or 28 in accordance with the directions of the court.”.

### Insertion of section 29A

20. After section 29 insert—

**“Taking effect of directions for erasure, suspension, conditional registration etc.**

**29A.—**(1) This section applies to—

- (a) a direction for erasure given by the Professional Conduct Committee under section 24(3);
- (b) a direction for erasure, suspension, conditional registration or variation of or addition to the conditions of registration given by a Practice Committee under section 27B or 27C; and
- (c) a direction for conditional registration given by the Professional Conduct Committee under section 28(6)(b).

(2) A direction to which this section applies shall take effect—

- (a) where no appeal under section 29 is brought against the decision giving the direction within the period of time specified in subsection (1B) of that section, on the expiry of that period;
- (b) where such an appeal is brought but is withdrawn or struck out for want of prosecution, on the withdrawal or striking out of the appeal; or
- (c) where such an appeal is brought and is not withdrawn or struck out for want of prosecution, on the dismissal of the appeal.

(3) Where the period of time for appealing against a decision giving a direction is extended under section 29(1C)—

- (a) subsection (2) shall apply to the direction as if the reference in paragraph (a) of that subsection to the period of time specified in section 29(1B) were a reference to that period as so extended, and
- (b) if the authorisation is given after the expiry of the period of time specified in section 29(1B), the direction shall be deemed not to have taken effect on the expiry of that period,

and any reference in this Act to the time when such a direction takes effect in accordance with this section shall be construed accordingly.

(4) In this section—

- (a) a reference to a direction for suspension includes a reference to a direction extending a period of suspension and a direction for indefinite suspension; and
- (b) a reference to a direction for conditional registration includes a reference to a direction extending a period of conditional registration.”.

### Substitution of section 30

21. For section 30 substitute—

**“Orders for immediate suspension and immediate conditional registration**

**30.—**(1) On giving a direction for erasure or for suspension under section 24(3), section 27B(6)(a) or (b) or section 27C(2)(d) or (3) in respect of any person, the Practice Committee giving the direction, if satisfied that to do so is necessary for the protection of the public or is otherwise in the public interest, or is in the interests of that person, may order that his registration shall be suspended forthwith in accordance with this section.

(2) On giving a direction for conditional registration under section 27B(6)(c), section 27C(1)(c) or (5)(c) or section 28(6)(b) in respect of any person, the Practice Committee giving the direction, if satisfied that to do so is necessary for the protection of the public or is otherwise in the public interest, or is in the interests of that person, may order that his registration shall be made conditional forthwith in accordance with this section.

(3) Where, on the giving of a direction, an order under subsection (1) or (2) is made in respect of a person, his registration in the register shall, subject to subsection (6), be suspended or made conditional, as the case may be, from the time when the order is made until the time when—

- (a) the direction takes effect in accordance with section 29A;
- (b) an appeal under section 29 against the decision giving the direction is determined under section 29(3)(b) or (c); or
- (c) following a decision on appeal to remit the case to a Practice Committee, the Practice Committee dispose of the case.

(4) Where a Practice Committee make an order under subsection (1) or (2), the registrar shall forthwith serve on the person in respect of whom it is made notification of the order and of his right to make an application under subsection (7).

(5) Where a Practice Committee make an order under subsection (1) or (2) in respect of a person, and an interim order under section 32 in respect of that person has been revoked by virtue of section 27B(9), that revocation shall take effect, subject to subsection (6), from the time when the order under subsection (1) or (2) is made.

(6) If, when an order under subsection (1) or (2) is made, the person in respect of whom it is made is neither present nor represented at the proceedings, subsections (3) and (5) shall have effect as if, in each case, for the reference to the time when the order is made, there were substituted a reference to the time when notification of the order is served under subsection (4).

(7) A person in respect of whom an order under subsection (1) or (2) is made may apply to the court for an order terminating any suspension imposed under subsection (1) or any conditional registration imposed under subsection (2), and the decision of the court on any such application shall be final.

(8) In subsection (7) “the court”—

- (a) in the case of a person whose address in the register is in Scotland, means the Court of Session;
- (b) in the case of a person whose address in the register is in Northern Ireland, means the High Court in Northern Ireland; and
- (c) in the case of any other person, means the High Court in England and Wales.”.

### **Repeal of section 31**

**22.** Section 31 (special provisions where directions replace, or extend periods under, previous directions) is hereby repealed.

### **Substitution of section 32**

**23.** For section 32 substitute—

**“Interim orders**

**32.—(1)** This section applies to the Professional Conduct Committee, the Professional Performance Committee, the Health Committee and the Interim Orders Committee, and any reference in this section to a “Committee” is a reference to any of those Committees.

(2) The Interim Orders Committee may exercise functions under this section only in relation to a person whose case has been referred to them—

- (a) by the registrar under section 27(5)(b);
- (b) by the Investigating Committee under section 27A(4)(b) or (6)(b); or
- (c) by a Practice Committee in accordance with rules under paragraph 7(1)(c) of Schedule 3.

(3) A Practice Committee may exercise functions under this section only in relation to a person whose case has been referred to them—

- (a) by the Investigating Committee under section 27A(4)(a) or (6)(a); or
- (b) by another Practice Committee in accordance with rules under paragraph 7(1)(a) of Schedule 3.

(4) Where a Committee are satisfied that it is necessary for the protection of the public or is otherwise in the public interest, or is in the interests of the person concerned, for the person’s registration to be suspended or to be made subject to conditions, the Committee may make—

- (a) an order that his registration in the register shall be suspended during such period not exceeding 18 months as may be specified in the order (an “interim suspension order”); or
- (b) an order that his registration shall be conditional on his compliance, during such period not exceeding 18 months as may be specified in the order, with such conditions so specified as the Committee think fit to impose (an “order for interim conditional registration”).

(5) Subject to subsection (11), where a Committee have made an interim suspension order or an order for interim conditional registration they—

- (a) shall review it within the period of six months beginning with the date on which the order was made, and shall thereafter, for so long as the order continues in force, further review it—
  - (i) before the end of the period of six months beginning with the date of the decision of the immediately preceding review, or
  - (ii) if after the end of the period of three months beginning with the date of the decision of the immediately preceding review the person concerned requests an earlier review, as soon as practicable after that request; and
- (b) may review it where new evidence relevant to the order has become available after the making of the order.

(6) Where an interim suspension order or an order for interim conditional registration has been made in relation to a person under any provision of this section (including this subsection), the Committee that made the order may—

- (a) revoke the order;
- (b) make an order adding to, varying or revoking any condition imposed by the order;
- (c) if satisfied that to do so is necessary for the protection of the public or is otherwise in the public interest, or is in the interests of the person concerned, replace an

interim suspension order with an order for interim conditional registration having effect for the remainder of the term of the former; or

- (d) if satisfied that to do so is necessary for the protection 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.

(7) If a Committee make an order under any provision of this section—

- (a) the registrar shall forthwith serve notification of the order on the person to whose registration it relates; and
- (b) that order shall take effect from the time on which the notification mentioned in paragraph (a) is served.

(8) The Council may apply to the court for an order made by a Committee under subsection (4) or (6) to be extended, and may apply again for further extensions.

(9) On each such application the court may extend (or further extend) for up to twelve months the period for which the order has effect.

(10) Any reference in this section to an interim suspension order, or to an order for interim conditional registration, includes a reference to such an order as so extended.

(11) For the purposes of subsection (5) the first review after the court’s extension of an order made by a Committee or after a replacement order made by a Committee under subsection (6)(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 (5), within the period of six months beginning with the date on which the court ordered the extension or on which a replacement order under subsection (6)(c) or (d) was made; and
- (b) if it had been reviewed under subsection (5), within the period of three months beginning with that date.

(12) Where an interim 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 the order or revoke, vary or add to any condition imposed by the order,
- (c) in either case, substitute for the period specified in the order (or in an order extending it) some other period which could have been specified in the order (or in the order extending it) when it was made,

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

(13) In this section “the court” has the meaning given by section 30(8).”.

### **Substitution of section 33**

**24.**—(1) For section 33 substitute—

#### *“Supplementary provisions*

#### **Supplementary provisions relating to fitness to practise cases**

**33.**—(1) While a person’s registration in the register is suspended by virtue of a direction or order under this Part—

- (a) he shall be treated, except as provided in subsection (2), as not being registered in the register notwithstanding that his name still appears in it; but
- (b) sections 27, 27A, 27B and 27C shall continue to apply to him.

(2) While a person's registration in the register is suspended by virtue of a direction or order under this Part, he shall be treated for the purposes of compliance with rules made under section 34A as if his registration were not suspended.

(3) Where any such direction as is mentioned in section 27C(1)(b), (c) or (d), (2)(b) or (d), (3) or (5)(c) is given while a person's registration is subject to conditions or suspended by virtue of a direction under this Part, his registration shall continue to be conditional or suspended throughout any period which may intervene between the time when (but for this subsection) his registration would cease to be conditional or suspended, as the case may be, and the time when—

- (a) the direction takes effect in accordance with section 29A;
- (b) an appeal under section 29 against the decision giving the direction is determined under section 29(3)(b) or (c); or
- (c) following a decision on appeal to remit the case to a Practice Committee, the Practice Committee dispose of the case.

(4) If, on the determination of an appeal under section 29, a direction extending the current period of suspension or conditional registration for a further period takes effect after the time when (but for subsection (3)) the current period of suspension or conditional registration would have ended, that further period shall be treated as having started to run at that time.

(5) Subsection (3) is subject to any order made under section 30(1) or (2).

(6) Schedule 3 to this Act (proceedings before the Investigating Committee, the Interim Orders Committee and Practice Committees: dentists) shall have effect.”.

(2) Schedule 2 to this Order, which substitutes Schedule 3 to the Act, shall have effect.

### **Insertion of sections 33A to 33C**

**25.** After section 33 insert—

#### **“Recording of suspension or conditional registration etc.**

**33A.—**(1) Where a direction or order under this Part for suspension, conditional registration or variation of or addition to the conditions of registration takes effect in relation to a person, the registrar shall make a note in the register of that fact and of the period for which that person's registration is to be suspended or made conditional.

(2) The registrar shall erase that note from the register at such time as the direction or order ceases (for any reason) to have effect.

(3) In this section—

- (a) a reference to a direction or order for suspension includes a reference to a direction or order extending a period of suspension and a direction for indefinite suspension; and
- (b) a reference to a direction or order for conditional registration includes a reference to a direction or order extending a period of conditional registration.

(4) Where a direction under section 24(3) or 27B(6)(a) (direction for erasure from the register) in respect of a person takes effect, the registrar shall remove that person's name from the register.

(5) Where a decision under section 24(6)(a) or 28 that a person's name is to be restored to the register takes effect, the registrar shall restore that person's name to the register.

### **The Council's power to require disclosure of information**

**33B.**—(1) For the purpose of assisting the Council or any of their committees in carrying out functions under this Part, the Council may require a person ("the relevant party") whose fitness to practise as a dentist is in question, to provide details of any person—

- (a) by whom the relevant party is employed to provide services in, or in relation to, any area of dentistry; or
- (b) with whom he has an arrangement to provide such services.

(2) For the purpose of assisting the Council or any of their committees in carrying out functions under this Part in respect of a person's fitness to practise as a dentist, the Council may require any person (except the person in respect of whom the information or document is sought) to supply any information or produce any document in his custody or under his control which appears to the Council relevant to the discharge of those functions.

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

(4) For the purposes of subsection (3), "relevant enactment" means any enactment other than—

- (a) this Act; or
- (b) the non-disclosure provisions within the meaning of Part 4 of the Data Protection Act 1998 (see section 27 of that Act).

(5) A person shall not be required to supply any information or produce any document under subsection (2) which he could not be compelled to supply or produce in civil proceedings before the relevant court.

(6) In subsection (5) "the relevant court" means—

- (a) if the person's address in the register is in Scotland or, if he is not registered in the register, he is resident there, the Court of Session;
- (b) if the person's address in the register is in Northern Ireland or, if he is not registered in the register, he is resident there, the High Court in Northern Ireland;
- (c) in any other case, the High Court in England and Wales.

(7) If a person fails to supply any information or produce any document within 14 days of being required to do so under subsection (1) or (2), the Council may seek an order of the relevant court requiring the information to be supplied or the document to be produced.

(8) In subsection (7), "the relevant court" means the county court or, in Scotland, the sheriff.

(9) In subsection (8), "the sheriff" means the sheriff in whose sheriffdom is situated the address of the person who fails to supply the information or produce the document; and in this subsection, "address" means, where the person is registered, his address in the register, or, where he is not registered in the register, the address where he resides.

(10) For the purposes of subsection (4), "enactment" includes—

- (a) a provision of, or an instrument made under, an Act of the Scottish Parliament;
- (b) a provision of, or an instrument made under, Northern Ireland legislation; and
- (c) a provision of subordinate legislation (within the meaning of the Interpretation Act 1978).

### **Notification and disclosure by the Council**

**33C.**—(1) As soon as reasonably practicable after an allegation as to a person’s fitness to practise as a dentist has been referred to the Investigating Committee under section 27(5) (a), the Council shall inform the following persons of that fact—

- (a) the Secretary of State, the Department of Health, Social Services and Public Safety in Northern Ireland, the Scottish Ministers and the National Assembly for Wales; and
- (b) any person in the United Kingdom to whom subsection (2) applies.

(2) This subsection applies to a person if the Council are aware that he—

- (a) employs the person concerned to provide services in, or in relation to, any area of dentistry; or
- (b) has an arrangement with the person concerned for that person to provide such services.

(3) The Council or the registrar may disclose to any person any information relating to a person’s fitness to practise as a dentist, including information relating to an allegation under section 27, where they consider it to be in the public interest for the information to be disclosed.”.

### **Repeal of section 34**

**26.** Section 34 (restoration of name erased under section 27 of the Act) is hereby repealed.

### **Substitution of sections 34A and 34B**

**27.** For sections 34A and 34B(2) substitute—

#### **“Professional training and development requirements**

**34A.**—(1) Rules shall require registered dentists to undertake such professional training and development as may be specified in the rules.

(2) If it appears to the registrar that a person has failed to comply with the requirements of rules made under subsection (1), the registrar may erase the person’s name from the register.

(3) Where a person’s name has been erased from the register under subsection (2), that name shall be restored to the register on that person’s application if he satisfies the registrar that he meets the requirements of—

- (a) section 15(3)(a) to (c);
- (b) section 26A; and
- (c) any rules made under section 34B which apply to his case.

(4) Rules shall specify the procedures to be followed before the registrar—

- (a) may erase a person’s name from the register under subsection (2); or
- (b) may make a decision whether or not to restore a person’s name to the register under subsection (3).

(5) Where, in the course of proceedings under this Part, it appears to the Investigating Committee, a Practice Committee or the Interim Orders Committee that a person to whose registration the proceedings relate may be failing to meet the requirements of rules made

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(2) Sections 34A and 34B were inserted by S.I.2001/3926.

under subsection (1), that Committee may refer the question of whether he is failing to meet them to the registrar.

### **Restoration of names to the register: professional training and development**

**34B.**—(1) Rules shall specify the requirements as to professional training and development to be met by a person who seeks the restoration of his name to the register following its erasure under any provision of this Part.

(2) Rules under this section must not require a person to do anything which amounts to the practice of dentistry.”

### **Amendment of section 35**

**28.** In section 35 (effect on registration of disqualification in another EEA state)—

- (a) in subsection (2)(a), for “or has misconducted himself in a professional respect” substitute “or on grounds related to his professional conduct, professional performance or physical or mental health”;
- (b) omit subsection (4); and
- (c) for subsection (5) substitute—

“(5) Where on or after the date on which a person was registered by virtue of section 15(1)(b) a disqualifying decision relating to him comes into force, this Part shall apply, with any necessary modifications, as if it had been found that he had been convicted of the criminal offence referred to in the disqualifying decision, or that his professional conduct, professional performance or physical or mental health had been such as is imputed to him by that decision, as the case may be.”