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DRAFT STATUTORY INSTRUMENTS

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**2007 No.**

**The Pharmacists and Pharmacy Technicians Order 2007**

**PART 5**

Fitness to practise

**Guidance in respect of standards of conduct, practice and performance**

**45.**—(1) The Council shall prepare and from time to time publish in such manner as it sees fit guidance as to the standards of conduct, practice and performance expected of registrants.

(2) The Council shall keep guidance published under this article under review and may vary or withdraw its provisions whenever it considers it appropriate to do so.

(3) Before issuing, varying or withdrawing guidance published under this article, the Council shall consult such registrants or classes of registrants as it considers appropriate.

(4) The Society may charge reasonable fees for copies of guidance published under this article.

**Disclosure of information: general**

**46.**—(1) For the purpose of assisting the Society (including its Council, its staff and its committees) in carrying out functions in respect of the fitness to practise of—

(a) a registered pharmacist, a person authorised by the Society may require—

(i) any registered pharmacist (except the registered pharmacist against whom the information or document is sought), or

(ii) any other person,

in Great Britain 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 the information or produce the document; or

(b) a registered pharmacy technician, a person authorised by the Society may require—

(i) any registered pharmacy technician (except the registered pharmacy technician against whom the information or document is sought), or

(ii) any other person,

in England or Wales 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 the information or produce the document.

(2) Nothing in paragraph (1) shall require or permit—

(a) any disclosure of information which is prohibited by or under any enactment, but where that prohibition arises because the information is in a form which allows for the identification of an individual, the person authorised by the Society may require that information to be put in a form which does not allow for the identification of that individual; or

(b) the supplying of information or production of a document which a person could not be compelled to produce in civil proceedings in the High Court or the Court of Session under article 56.

(3) In determining for the purposes of paragraph (2)(a) whether a disclosure of personal data is prohibited, it shall be assumed, for the purposes of section 35(1) of the Data Protection Act 1998<sup>(1)</sup> (disclosures required by law or made in connection with legal proceedings etc.), that disclosure of the personal data is required by paragraph (1).

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

(5) For the purposes of this article, the “relevant court” means—

(a) the county court; or

(b) if—

(i) the information or document relates to the fitness to practise of a registered pharmacist, and

(ii) the person against whom the order is sought is domiciled in Scotland,  
the sheriff in whose sheriffdom that person is domiciled.

#### **Disclosure of fitness to practise matters in the public interest**

47.—(1) The Society may, if it considers it to be in the public interest to do so, publish, or disclose to any person, information—

(a) which relates to a particular pharmacist’s or pharmacy technician’s fitness to practise, whether the matter to which the information relates arose before or after his registration, or arose in the United Kingdom or elsewhere; or

(b) of a particular description related to fitness to practise in relation to every pharmacist or pharmacy technician, or to every pharmacist or pharmacy technician of a particular description.

(2) For the purposes of paragraph (1)(b) above, the Society need not consider whether it is in the public interest to publish or disclose the information in question in relation to each individual pharmacist or pharmacy technician to whom it relates.

#### **Impairment of fitness to practise**

48.—(1) A person’s fitness to practise shall be regarded as “impaired” for the purposes of this Order only by reason of—

(a) misconduct;

(b) deficient professional performance (which includes competence);

(c) adverse physical or mental health;

(d) failure to comply with a reasonable requirement imposed by an individual assessor or an assessment team in connection with carrying out a professional performance assessment;

(e) a conviction in the British Islands for a criminal offence;

(f) a conviction elsewhere than in the British Islands for an offence which, if committed in England and Wales, would constitute a criminal offence;

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(1) 1998 c.29.

- (g) an order under section 246(2) or (3) of the Criminal Procedure (Scotland) Act 1995(2) (admonition and absolute discharge) discharging him absolutely;
- (h) having accepted a conditional offer under section 302 of the Criminal Procedure (Scotland) Act 1995 (fixed penalty: conditional offer by procurator fiscal);
- (i) having agreed to pay a penalty under section 115A of the Social Security Administration Act 1992(3) (penalty as alternative to prosecution);
- (j) a police caution in the British Islands; or
- (k) a determination made by a regulatory body in the United Kingdom responsible under any enactment for the regulation of a health or social care profession to the effect that his fitness to practise as a member of a profession regulated by that body is impaired, or a determination by a regulatory body elsewhere to the same effect.

(2) The demonstration towards a patient or customer, or a prospective patient or customer, of a pharmacist or pharmacy technician of attitudes or behaviour from which that person can reasonably expect to be protected may be treated as misconduct for the purposes of paragraph (1)(a).

(3) References in this article to a conviction include a conviction by court martial.

(4) A person's fitness to practise may be regarded as impaired because of matters arising—

- (a) outside the United Kingdom; and
- (b) at any time.

(5) The Council may make such provision in rules as it considers appropriate in connection with the information to be provided to the Registrar by a registrant about fitness to practise matters that arise while he is registered.

(6) If a registrant fails to comply with rules under paragraph (5), the failure may be treated as misconduct for the purposes of paragraph (1)(a) and the Registrar shall consider, in accordance with article 49(1), whether to refer the matter to the relevant fitness to practise committee.

### **Initial action in respect of allegations**

**49.**—(1) Where—

- (a) an allegation is made to the Society against a registrant that his fitness to practise is impaired; or
- (b) the Society has information that calls into question a registrant's fitness to practise, but no allegation to that effect has been made against him to the Society,

the Registrar shall, except in such cases and subject to such considerations as the Council may prescribe, refer the matter (referred to in this article as “the allegation”) to the Investigating Committee.

(2) Rules under paragraph (1) may in addition provide—

- (a) for the allegation to be referred instead, in prescribed cases, to the Disciplinary Committee or the Health Committee; and
- (b) that where the Registrar—
  - (i) refers a case to the Disciplinary or Health Committee; and
  - (ii) is of the opinion that the Committee to which he has referred the case should consider making an interim order under article 54,

he shall notify the Committee accordingly,

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(2) [1995 c.46](#); section 246 has been amended by the Crime and Punishment (Scotland) Act [1997 \(c.48\)](#), Schedule 1, paragraph 21(31).

(3) [1992 c.5](#); section 115A was inserted by the Social Security Administration (Fraud) Act [1997 \(c.47\)](#), section 15.

and where the Registrar does decide to refer an allegation to the Disciplinary or Health Committee under such rules, the Registrar shall inform the registrant who is the subject of the allegation and the person (if any) who made the allegation of that decision.

(3) Once a decision has been taken to refer the allegation to the Investigating Committee, or where rules so provide to the Disciplinary or Health Committee, the Registrar shall, as soon as is reasonably practicable—

- (a) require from the registrant who is the subject of the allegation details of any person—
  - (i) by whom the registrant is employed or engaged to provide services in, or in relation to, any area of pharmacy, or
  - (ii) with whom he has arrangements to do so;
- (b) notify the Secretary of State, the Scottish Ministers, the Department of Health, Social Services and Public Safety in Northern Ireland and the National Assembly for Wales of the investigation of the registrant’s fitness to practise;
- (c) if the registrant is a registered pharmacist, notify any person in Great Britain of whom the Registrar is aware—
  - (i) by whom the registrant concerned is employed or engaged to provide services in, or in relation to, any area of pharmacy, or
  - (ii) with whom he has arrangements to do so,
 of the investigation of the registrant’s fitness to practise; and
- (d) if the registrant is a registered pharmacy technician, notify any person in England or Wales of whom the Registrar is aware—
  - (i) by whom the registrant concerned is employed or engaged to provide services in, or in relation to, any area of pharmacy, or
  - (ii) with whom he has arrangements to do so,
 of the investigation of the registrant’s fitness to practise.

(4) Where a registrant fails to comply with a requirement imposed on him under paragraph (3) (a) within 14 days of the requirement being imposed—

- (a) the failure may be treated as misconduct for the purposes of article 48(1)(a) and the Registrar may refer the matter to the Committee that is considering the allegation in respect of the registrant; and
- (b) the Registrar may seek an order of the relevant court requiring the requested details to be supplied.

(5) For the purposes of this article, the “relevant court” means—

- (a) the county court; or
- (b) if the registrant is a registered pharmacist domiciled in Scotland, the sheriff in whose sheriffdom that registrant is domiciled.

### **Consideration by the Investigating Committee**

**50.**—(1) Where an allegation or a matter has been referred to the Investigating Committee under this Order by the Registrar (referred to in this article as “the allegation”), it shall decide whether the allegation ought to be considered by the Disciplinary Committee or the Health Committee.

(2) If the Investigating Committee decides that the allegation need not be considered by the Disciplinary Committee or the Health Committee, unless the person who is the subject of the allegation (referred to in this article as “the person concerned”) has requested a referral under paragraph (3)—

- (a) the Investigating Committee may issue—
    - (i) a warning or advice to the person concerned in connection with any matter arising out of or related to the allegation, and
    - (ii) advice to any other person or other body involved in its investigation of the allegation on any matter arising out of or related to the allegation; and
  - (b) the Registrar shall inform the person concerned and the person who made the allegation, if any, of the Committee’s decision and any action it is taking under sub-paragraph (a).
- (3) If the Investigating Committee decides that the allegation ought to be considered by the Disciplinary Committee or the Health Committee or the person concerned has requested a referral under this paragraph—
- (a) the Investigating Committee shall refer the allegation—
    - (i) in the case of an allegation that the person concerned’s fitness to practise is impaired by reason only of adverse physical or mental health, to the Health Committee,
    - (ii) in the case of an allegation that the person concerned’s fitness to practise is impaired by reason of adverse physical or mental health and by reason of other matters, to the Health Committee or the Disciplinary Committee, whichever one the Investigating Committee considers more appropriate, or
    - (iii) in any other case, to the Disciplinary Committee;
  - (b) where the Investigating Committee is of the opinion that the committee to which it is referring the allegation should consider making an interim order under article 54, it shall notify the committee accordingly; and
  - (c) the Registrar shall inform the person concerned and the person who made the allegation, if any, of the Investigating Committee’s decision to refer the allegation to the Health Committee or the Disciplinary Committee.
- (4) If, having considered an allegation, the Investigating Committee is of the opinion that the Society should consider exercising any of its powers to bring criminal proceedings under any enactment, it shall notify the Registrar accordingly.

### **Consideration by the Health Committee**

**51.**—(1) Where an allegation is referred to the Health Committee by—

- (a) the Registrar under rules made under article 49(2)(a);
- (b) the Investigating Committee under article 50(3)(a)(i) or (ii); or
- (c) the Disciplinary Committee under rules made under article 59(3)(g),

the Committee shall, except in such circumstances as may be prescribed, determine whether or not the fitness to practise of the person in respect of whom the allegation is made (referred to in this article as “the person concerned”) is impaired.

(2) If the Health Committee determines that the person concerned’s fitness to practise is not impaired—

- (a) the Committee may issue—
  - (i) a warning or advice to the person concerned in connection with any matter arising out of or related to the allegation, and
  - (ii) advice to any other person or other body involved in its investigation of the allegation on any issue arising out of or related to the allegation;
- (b) the Registrar shall inform the person concerned and the person who made the allegation, if any, of the Committee’s decision and any action it is taking under sub-paragraph (a); and

- (c) the Committee shall, if the person concerned so requests, publish in such manner as it sees fit a statement summarising its determination, or may publish such a statement if he consents.
- (3) If the Health Committee determines that the person concerned's fitness to practise is impaired by reason of adverse physical or mental health, it may—
- (a) issue—
- (i) a warning to the person concerned in connection with any matter arising out of or related to the allegation and give a direction that details of the warning must be recorded in the person concerned's entry in the register, and
- (ii) advice to any other person or other body involved in its investigation of the allegation on any issue arising out of or related to the allegation;
- (b) give a direction that the person concerned's registration shall be suspended, for such period not exceeding 12 months as may be specified in the direction; or
- (c) give a direction that the person concerned's registration shall be conditional upon his compliance, during a period specified in the direction not exceeding 3 years, with such requirements specified in the direction as the Committee thinks fit to impose for the protection of the public or in the person concerned's interests.
- (4) Where the Health Committee has given a direction under this article, following a review it may if it thinks fit—
- (a) where the person concerned's registration is suspended, give a direction that—
- (i) the suspension be extended for such further period not exceeding 12 months as may be specified in the direction, starting from the time when the period of suspension would otherwise expire,
- (ii) the person concerned's registration be suspended indefinitely, if the suspension has already been in force throughout a period of at least 2 years,
- (iii) in the case of an indefinite suspension, terminate the suspension, provided that the review takes place in the circumstances provided for in paragraph (5), or
- (iv) on expiry or termination of the period of suspension (including a period of suspension that was expressed to be indefinite), the person concerned's registration shall be conditional upon his compliance, during a period specified in the direction not exceeding 3 years, with such requirements specified in the direction as the Committee thinks fit to impose for the protection of the public or in the person concerned's interests;
- (b) where the person concerned's registration is conditional upon his compliance with requirements specified in a direction given under this article, give a direction that—
- (i) the period specified in the direction for compliance with the requirements shall be extended for such further period not exceeding 3 years as may be specified in the direction, starting from the time when the earlier period would otherwise expire,
- (ii) the requirements be added to, reduced, removed or otherwise varied in such manner as is specified in the direction, or
- (iii) the person concerned's registration shall instead be suspended (for example, where he has failed to comply, whether wholly or partly, with the requirements), for such period not exceeding 12 months as may be specified in the direction.
- (5) If the Health Committee gives a direction under paragraph (4)(a)(ii), the Committee shall review the direction if—
- (a) the person concerned asks them to do so; and

- (b) at least two years have elapsed—
  - (i) since the direction took effect, or
  - (ii) if the direction has already been reviewed by the Committee, since the conclusion of the last review by the Committee.
- (6) If the person concerned is registered in both of the Society’s registers, the Health Committee—
  - (a) shall make separate determinations under this article in relation to each register; and
  - (b) may give a direction under paragraph (3) or (4) in relation to only one of the registers or different directions in relation to each register,but may otherwise deal with the matter as a single case.
- (7) If the Health Committee issues a warning or gives a direction under this article, the Registrar shall on its behalf send to the person concerned at his last known home address a statement in writing notifying him of—
  - (a) the reasons for the warning or the direction; and
  - (b) any right of appeal he has under article 56.

### **Consideration by the Disciplinary Committee**

- 52.**—(1) Where an allegation is referred to the Disciplinary Committee by—
- (a) the Registrar under rules made under article 49(2)(a);
  - (b) the Investigating Committee under article 50(3)(a)(ii) or (iii);
  - (c) an individual assessor or an assessment team under rules made under article 53(2)(c); or
  - (d) the Health Committee under rules made under article 59(3)(h),
- the Committee shall, except in such circumstances as may be prescribed, determine whether or not the fitness to practise of the person in respect of whom the allegation is made (referred to in this article as “the person concerned”) is impaired.
- (2) If the Disciplinary Committee determines that the person concerned’s fitness to practise is not impaired—
- (a) the Committee may issue—
    - (i) a warning or advice to the person concerned in connection with any matter arising out of or related to the allegation, and
    - (ii) advice to any other person or other body involved in its investigation of the allegation on any issue arising out of or related to the allegation;
  - (b) the Registrar shall inform the person concerned and the person who made the allegation, if any, of the Committee’s decision and any action it is taking under sub-paragraph (a); and
  - (c) the Committee shall, if the person concerned so requests, publish in such manner as it sees fit a statement summarising its determination, or may publish such a statement if he consents.
- (3) If the Disciplinary Committee determines that the person concerned’s fitness to practise is impaired, it may—
- (a) issue—
    - (i) a warning to the person concerned in connection with any matter arising out of or related to the allegation and give a direction that details of the warning must be recorded in the person concerned’s entry in the register, and
    - (ii) advice to any other person or other body involved in its investigation of the allegation on any issue arising out of or related to the allegation;

- (b) give a direction that the person concerned be removed from the register;
  - (c) give a direction that the person concerned's registration shall be suspended, for such period not exceeding 12 months as may be specified in the direction; or
  - (d) give a direction that the person concerned's registration shall be conditional upon his compliance, during a period specified in the direction not exceeding 3 years, with such requirements specified in the direction as the Committee thinks fit to impose for the protection of the public or in the person concerned's interests.
- (4) Where the Disciplinary Committee has given a direction under this article, other than a direction that the person concerned be removed from the register, following a review it may if it thinks fit—
- (a) where the person concerned's registration is suspended, give a direction that—
    - (i) the person concerned be removed from the register,
    - (ii) the suspension be extended for such further period not exceeding 12 months as may be specified in the direction, starting from the time when the period of suspension would otherwise expire,
    - (iii) the person concerned's registration be suspended indefinitely, if the suspension has already been in force throughout a period of at least 2 years,
    - (iv) in the case of an indefinite suspension, terminate the suspension, provided that the review takes place in the circumstances provided for in paragraph (5), or
    - (v) on expiry or termination of the period of suspension (including a period of suspension that was expressed to be indefinite), the person concerned's registration shall be conditional upon his compliance, during a period specified in the direction not exceeding 3 years, with such requirements specified in the direction as the Committee thinks fit to impose for the protection of the public or in the person concerned's interests;
  - (b) where the person concerned's registration is conditional upon his compliance with requirements specified in a direction given under this article, give a direction that—
    - (i) the period specified in the direction for compliance with the requirements shall be extended for such further period not exceeding 3 years as may be specified in the direction, starting from the time when the earlier period would otherwise expire,
    - (ii) the requirements be added to, reduced, removed or otherwise varied in such manner as is specified in the direction,
    - (iii) the person concerned's registration shall instead be suspended (for example, where he has failed to comply, whether wholly or partly, with the requirements), for such period not exceeding 12 months as may be specified in the direction, or
    - (iv) the person concerned be removed from the register, if he has failed to comply, whether wholly or partly, with the requirements.
- (5) If the Disciplinary Committee gives a direction under paragraph (4)(a)(iii), the Committee shall review the direction if—
- (a) the person concerned asks them to do so; and
  - (b) at least two years have elapsed—
    - (i) since the direction took effect, or
    - (ii) if the direction has already been reviewed by the Committee, since the conclusion of the last review by the Committee.
- (6) If the person concerned is registered in both of the Society's registers, the Disciplinary Committee—



- (a) shall make separate determinations under this article in relation to each register; and
- (b) may give a direction under paragraph (3) or (4) in relation to only one of the registers or different directions in relation to each register,

but may otherwise deal with the matter as a single case.

(7) If the Disciplinary Committee issues a warning or gives a direction under this article, the Registrar shall on its behalf send to the person concerned at his last known home address a statement in writing notifying him of—

- (a) the reasons for the warning or the direction; and
- (b) any right of appeal he has under article 56.

### **Professional performance assessments**

**53.**—(1) The Council may make rules authorising the Registrar and fitness to practise committees to give directions, in such circumstances as may be prescribed (including during proceedings of the committee), requiring an assessment of the standard of a registrant’s professional performance by an individual assessor or an assessment team.

(2) The Council may make such provision in rules in connection with the composition of professional performance assessment teams, and functions of and procedures to be followed by individual assessors and assessment teams, as it considers appropriate, and may in particular make provision with regard to—

- (a) the Society entering into arrangements with other bodies for those bodies to provide individual assessors or assessment teams to carry out the assessments;
- (b) allowing an assessment by an individual assessor or an assessment team to include an assessment of the standard of a registrant’s professional performance both at any time prior to the assessment and at the time of the assessment; and
- (c) referring to the Investigating Committee or the Disciplinary Committee a case where an individual assessor or an assessment team considers that a registrant has failed to comply with a reasonable requirement that he or it has imposed on him.

(3) An individual assessor or an assessment team, in connection with carrying out an assessment of the standard of a registrant’s professional performance—

- (a) may require the production of, inspect and take copies of any records (in whatever form they are held) arising out of or related to the registrant’s professional practice; and
- (b) where such records are kept otherwise than in legible form, may require a copy of them to be given to the team in a legible form.

(4) Nothing in, or in rules under, this article shall require or permit—

- (a) any disclosure of information which is prohibited by or under any enactment, but where that prohibition arises because the information is in a form which allows for the identification of an individual, an individual assessor or an assessment team, when requiring the production of records under paragraph (3)(a), may require that the records be put in a form which does not allow for the identification of that individual; or
- (b) the production of records which a person could not be compelled to produce in civil proceedings in the High Court or the Court of Session under article 56.

(5) In determining for the purposes of paragraph (4)(a) whether a disclosure of personal data is prohibited, it shall be assumed, for the purposes of section 35(1) of the Data Protection Act 1998(4) (disclosures required by law or made in connection with legal proceedings etc.), that disclosure of the personal data is required by paragraph (3).

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(4) 1998 c.29.

(6) If a person fails to produce any records within 14 days of his being required to do so under paragraph (3), the Registrar or the committee on whose behalf the individual assessor or an assessment team is carrying out the assessment in connection with which the records are being sought may seek an order of the relevant court requiring the records to be produced.

(7) For the purposes of this article, the “relevant court” means—

- (a) the county court (the central London county court in the case of a registered pharmacist who is not domiciled in Great Britain or a registered pharmacy technician who is not domiciled in England or Wales); or
- (b) if—
  - (i) the records are being sought in relation to a registered pharmacist, and
  - (ii) the registered pharmacist is domiciled in Scotland,
 the sheriff in whose sheriffdom that registered pharmacist is domiciled.

### **Interim Orders**

**54.**—(1) Where the Health Committee or the Disciplinary Committee is 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 registrant, for the registration of that registrant to be suspended or to be made subject to conditions, the Committee may make an order—

- (a) that his registration be suspended during such period not exceeding 18 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 18 months as may be specified in the order, with such requirements specified in the direction as the Committee thinks fit to impose (an “order for interim conditional registration”).

(2) Subject to paragraphs (7) and (8), where the Health Committee or the Disciplinary Committee has made an order under paragraph (1), the Committee that made the order—

- (a) shall review it within the period of 6 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—
  - (i) before the end of the period of 6 months beginning on the date of the decision of the immediately preceding review, or
  - (ii) if after the end of the period of three months beginning on 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 it was made.

(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 article (including this paragraph) the committee that made the order (or the committee that is treated as the committee that made the order by virtue of paragraph (8)(a)) may—

- (a) revoke the order or revoke any condition imposed by the order;
- (b) add to, remove or otherwise vary any condition imposed by the order; or
- (c) if satisfied that to do so is necessary for the protection of members of the public or is otherwise in the public interest—
  - (i) replace an order for interim conditional registration with an interim suspension order having effect for the remainder of the term of the previous order, or

(ii) replace an interim suspension order with an order for interim conditional registration having effect for the remainder of the term of the previous order.

(4) If an order is made under any provision of this article, the Registrar shall without delay send a notification of the order to the person to whose registration it relates at his last known home address.

(5) The Society may apply to the relevant court for an order made by the Health Committee or the Disciplinary Committee under paragraph (1) or (3)—

- (a) to be extended;
- (b) that has been extended to be further extended,

and on such an application the relevant court may extend, or further extend, for up to 12 months the period for which the order has effect.

(6) Any reference in this article to an interim suspension order, or to an order for interim conditional registration, includes a reference to such an order as extended under paragraph (5).

(7) For the purposes of paragraph (2), the first review after the relevant court's extension of an order made by the Health Committee or the Disciplinary Committee, or after a replacement order made by the Health Committee or the Disciplinary Committee under paragraph (3)(c), shall take place—

- (a) if the order (or the order which has been replaced) has not been reviewed at all under paragraph (2), within the period of 6 months beginning on the date ("the relevant date") on which the relevant court ordered the extension or on which a replacement order under paragraph (3)(c) was made; and
- (b) if the order has been reviewed under paragraph (2), within the period of three months beginning on the relevant date.

(8) Where one of the Committees that may make orders under this article has made such an order but then refers the related fitness to practise case under rules made under article 59(3)(g)(ii) or (h)(ii) to the other Committee that may make orders under this article—

- (a) the order that has been made under this article is to be treated as made by the Committee to which the case is referred; and
- (b) as soon as is practicable, the Committee to which the case is referred must review the order.

(9) A registrant who is aggrieved by a decision of the Health Committee or the Disciplinary Committee to make or vary an order under this article may appeal against that decision to the relevant court, and 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; and
- (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),

but unless the court otherwise directs the order shall remain in force pending the outcome of the appeal.

(10) The decision of the relevant court on any application under paragraph (9) shall be final.

(11) If an order is made in relation to any person under this article and that order remains in effect immediately before the determination in respect of the allegation against that person under article 51(1) or 52(1), the committee considering that allegation shall revoke the order once it has determined whether or not the person's fitness to practise is impaired.

(12) In this article "the relevant court" means—

- (a) in a case relating to a registered pharmacist who is domiciled in Scotland, the Court of Session; and
- (b) in any other case, the High Court.

**Restoration of names to the register: fitness to practise**

**55.**—(1) Subject to paragraph (2)—

- (a) a person whose name has been removed from one or both of the Society’s registers in accordance with a direction under article 52(3)(b) or (4)(a)(i) or (b)(iv) may apply to the Registrar for his name to be restored to any register from which he has been removed; and
- (b) the Registrar shall refer that application to the Disciplinary Committee.

(2) An application may not be made under paragraph (1)—

- (a) before the expiration of five years from the date of removal; or
- (b) within 12 months of the date of an earlier application under paragraph (1) in respect of that person.

(3) The Council may make such provision in rules in connection with applications for restoration by virtue of paragraph (1) as it considers appropriate, and may in particular make provision with regard to—

- (a) the form and manner in which applications for restoration are to be made (and the rules may provide that applicants shall apply using application forms that are in such form as the Council may determine from time to time);
- (b) the information to be provided by the applicant, including—
  - (i) the name under which he intends to practise, or in the case of a person who does not intend to practise, the name by which he is generally known, and
  - (ii) his home address;
- (c) whether any, and if so what, additional education, training or continuing professional development is required before restoration, and the rules may make provision for these issues to be determined in individual cases by the Continuing Professional Development Committee;
- (d) fitness to practise matters; and
- (e) refusal of applications (including where the applicant has not paid the fee prescribed under article 40(1)(a)).

(4) An application under this article shall not be granted unless the person applying for his name to be restored to the register provides such evidence of his fitness to practise as the Disciplinary Committee directs.

(5) Where the Disciplinary Committee refuses an application for restoration to one of the Society’s registers, the Registrar shall send to the applicant at his last known home address a statement in writing notifying him of the reasons for the decision.

(6) If the Disciplinary Committee grants the application, it may give a direction that the person’s registration shall be conditional upon his compliance, during a period specified in the direction not exceeding 3 years, with such requirements specified in the direction as the Committee thinks fit to impose for the protection of the public or in the person’s interests.

(7) Where the Disciplinary Committee gives a direction under paragraph (6), that direction shall, for the purposes of article 52(4), be treated as a direction under article 52.

(8) If the application under this article relates to both of the Society’s registers, the Disciplinary Committee—

- (a) shall make separate determinations under this article in relation to each register; and
- (b) may give a direction under paragraph (6) in relation to only one of the registers or different directions in relation to each register,

but may otherwise deal with the matter as a single case.

(9) If, during a continuous period when a person is not registered, a person makes two or more applications under this article in respect of a register and the applications are refused, the Disciplinary Committee may direct that he may make no further applications under this article in respect of that register (if the applications related to both registers and the applicant has been restored to neither register, the direction may cover both registers).

(10) If the Disciplinary Committee gives a direction under paragraph (6) or (9), the Registrar shall on its behalf send to the person concerned at his last known home address a statement in writing notifying him of—

- (a) the reasons for the direction; and
- (b) his right of appeal under article 56.

### **Appeals against appealable fitness to practise decisions**

**56.**—(1) The following decisions are appealable fitness to practise decisions for the purposes of this Part—

- (a) a decision of the Registrar under article 41 to refuse an application for restoration to one of the Society's registers for a reason that relates to the applicant's fitness to practise;
- (b) a decision of the Health Committee under article 51 to give a direction for suspension or for conditional registration or varying the conditions imposed by a direction for conditional registration (including a decision to give such a direction that extends an earlier direction);
- (c) a decision of the Disciplinary Committee under article 52 to give a direction—
  - (i) to remove a person from a register, or
  - (ii) for suspension or conditional registration or for varying the conditions imposed by a direction for conditional registration (including a decision to give such a direction that extends an earlier direction);
- (d) a decision of the Disciplinary Committee under article 55(6) to give a direction for conditional registration; and
- (e) a decision of the Disciplinary Committee to give a direction under article 55(9) that a person may make no further applications under that article in respect of a particular register (or both registers).

(2) A person in respect of whom an appealable fitness to practise decision has been made may appeal against that decision to the relevant court, provided that he does so (subject to any rules of the relevant court in respect of the admissibility of applications to it) within 28 days beginning with the date on which the written notice of the reasons for the decision was sent to him.

(3) In this article and article 57, "the relevant court" means—

- (a) the High Court; or
- (b) as regards an application relating to registration in the Register of Pharmacists, if the person making the appeal is domiciled in Scotland, the Court of Session.

(4) Having considered the appeal, the relevant court may—

- (a) dismiss the appeal;
- (b) allow the appeal, and—
  - (i) quash the decision appealed against, or

- (ii) in the case of an appeal in respect of a direction, quash the direction in respect of which the appeal is made;
- (c) in the case of an appeal in respect of a direction, substitute for the direction any other direction that the committee or person giving the direction could have given; or
- (d) remit or refer the case to the Registrar, the Health Committee or the Disciplinary Committee for him or it to dispose of the matter in accordance with directions from the relevant court,

and may make such order as to costs or, in Scotland, expenses as the relevant court thinks fit.

### **The taking effect of directions in respect of appealable fitness to practise decisions**

**57.**—(1) Where an appealable fitness to practise decision is taken in respect of a direction, that direction shall not take effect—

- (a) until the period for bringing an appeal in respect of the direction has expired; or
- (b) where an appeal is brought within the period for bringing an appeal, until the date on which the appeal is finally disposed of, or is abandoned or fails by reasons of its non-prosecution.

(2) Where an appeal is brought, within the period for bringing an appeal, against an appealable fitness to practise decision in respect of a direction (“the later direction”) that extends, varies or replaces an earlier direction, the earlier direction shall continue to have effect until the date on which the appeal is finally disposed of, or is abandoned or fails by reason of its non-prosecution.

(3) Where, as a result of the extension of an earlier direction pursuant to paragraph (2), a later direction takes effect on a date after it was due to take effect, the period for which the later direction was originally expressed to have effect (howsoever expressed) shall be treated as commencing—

- (a) on the date on which it was originally due to take effect; or
- (b) if this would mean that the later direction would in practice expire before it commences, on the date on which the appeal is finally disposed of, or is abandoned or fails by reason of its non-prosecution.

### **Interim measures pending a direction taking effect**

**58.**—(1) Where—

- (a) the Health Committee gives a direction for suspension under article 51; or
- (b) the Disciplinary Committee gives a direction for suspension, or to remove a person from a register, under article 52,

if the Committee is 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 best interests of the person who is the subject of the direction, it may order that his registration in the register shall be suspended forthwith, pending the coming into force of the direction.

(2) Where—

- (a) the Health Committee gives a direction for conditional registration under article 51; or
- (b) the Disciplinary Committee gives a direction for conditional registration under article 52 or 55(6),

if the committee is 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 best interests of the person who is the subject of the direction, it may order that his registration in the register shall be conditional upon his compliance, pending the coming into force of the direction, with such requirements specified in the order as the Committee thinks fit to impose.

(3) Where the Health Committee or the Disciplinary Committee, as the case may be, makes an order under paragraph (1) or (2), the Registrar shall send to the person who is the subject of the order at his last known home address a statement in writing notifying him of the contents of the order and his right of appeal under paragraph (4).

(4) A registrant who is aggrieved by a decision of the Health Committee or the Disciplinary Committee to make an order under this article may appeal against that decision to the relevant court, and the court may—

- (a) dismiss the appeal;
- (b) in the case of an order under paragraph (1), terminate the suspension; and
- (c) in the case of an order under paragraph (2), revoke or vary any condition imposed by the order,

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

(5) In this article “the relevant court” means—

- (a) in a case relating to a registered pharmacist who is domiciled in Scotland, the Court of Session; and
- (b) in any other case, the High Court.