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DRAFT STATUTORY INSTRUMENTS

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**2010 No.**

**The Pharmacy Order 2010**

**PART 7**

**Proceedings**

**Rules in respect of proceedings**

**61.**—(1) Subject to the following provisions of this Part, the Council must make such provision as it considers appropriate in rules in connection with the procedure to be followed and rules of evidence to be observed by—

- (a) the Investigating Committee;
- (b) the Fitness to Practise Committee (whether exercising functions under this Order or the Medicines Act 1968<sup>(1)</sup>); and
- (c) the Appeals Committee.

(2) The rules under paragraph (1) in respect of the Fitness to Practise Committee or the Appeals Committee must, and in respect of the Investigating Committee may, include provision—

- (a) for securing that, where a hearing is to be held, notice of when and where the hearing is to be held is given, at such time and in such manner as may be specified in the rules, to any person to whom the proceedings relate;
- (b) for securing that the person concerned (which for the purposes of this article, where appropriate, includes an individual who, or body corporate which, is subject to disqualification proceedings under Part 4 of the Medicines Act 1968) and the Council are, if they so require, entitled to be heard by the committee—
  - (i) at any hearing, or
  - (ii) in fitness to practise proceedings or on any other occasion when the committee is considering making an interim suspension order or an order for interim conditional entry;
- (c) for allowing the person concerned and the Council to be represented at any hearing, or in fitness to practise proceedings or on any other occasion when the committee is considering making an interim suspension order or an order for interim conditional entry, by—
  - (i) a person with a general qualification (within the meaning of section 71 of the Courts and Legal Services Act 1990<sup>(2)</sup> (offences)),
  - (ii) an advocate in Scotland, or a solicitor with rights of audience to appear in the Court of Session or in the High Court of Justiciary by virtue of section 25A of the Solicitors (Scotland) Act 1980<sup>(3)</sup> (rights of audience in the Court of Session etc.), or

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<sup>(1)</sup> 1968 c.67.

<sup>(2)</sup> 1990 c.41.

<sup>(3)</sup> 1980 c.46. Section 25A was inserted by section 24 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c.40) and amended by paragraph 31 of Schedule 4 to the Criminal Procedure and Consequential Provisions (Scotland) Act 1995 (c.40), by S.S.I.1999/1042 and by S.S.I.2001/121.

- (iii) a person of such other description as may be specified in rules, if the rules so allow and the person concerned or the Council so elects;
  - (d) for proceedings before the committee to be held in public, except and to the extent that rules provide otherwise; and
  - (e) in respect of reviewing directions under article 54—
    - (i) which are due to expire,
    - (ii) in circumstances where the committee is considering varying the requirements specified in the direction, or
    - (iii) in the case of a direction for suspension or for conditional entry—
      - (aa) at the request of the Registrar or the person concerned, or
      - (bb) upon new evidence becoming available.
- (3) The rules under paragraph (1) may include provision—
- (a) in respect of preliminary consideration of a case before a committee (including considering representations from the person concerned and the Council during its preliminary consideration);
  - (b) following preliminary consideration of a case—
    - (i) in the case of an appeal before the Appeals Committee, allowing the Appeals Committee, in prescribed circumstances, to allow the appeal or take a decision which has the effect of allowing the appeal,
    - (ii) in fitness to practise proceedings, allowing the Fitness to Practise Committee, in prescribed circumstances, to make a finding that the fitness to practise of the person concerned is not impaired, and
    - (iii) in a disqualification case, allowing the Fitness to Practise Committee, in prescribed circumstances, to dismiss the case;
  - (c) in respect of consensual disposal of a fitness to practise case following preliminary consideration of it, including provision—
    - (i) enabling the Investigating Committee or the Fitness to Practise Committee, in prescribed circumstances, to agree with the person concerned that the person concerned will comply with such undertakings as the committee considers appropriate, and
    - (ii) with respect to the procedure to be followed when any such undertakings are breached (the rules may provide that the breach may be treated as misconduct for the purposes of article 51(1)(a) and for the matter to be dealt with as a misconduct allegation that is before the committee);
  - (d) in respect of consensual disposal of a disqualification case following preliminary consideration of it, including provision—
    - (i) enabling the Fitness to Practise Committee, in prescribed circumstances, to agree with the individual or body corporate that the individual or body corporate will comply with such undertakings as the Committee considers appropriate, and
    - (ii) with respect to the procedure to be followed where any such undertakings are breached;
  - (e) in respect of case management meetings (and the rules may provide that the preliminary consideration of a case is to take place at a case management meeting) and directions, including provision with respect to the procedure to be followed where case management directions are breached;

- (f) in respect of cancelling, postponing or adjourning hearings and staying proceedings in appropriate circumstances;
  - (g) enabling the Appeals Committee to refer a case before it to the Investigating Committee or the Fitness to Practise Committee for advice;
  - (h) enabling the Fitness to Practise Committee to draw such inference as seems appropriate to it in the particular circumstances of the case if the person concerned fails—
    - (i) during fitness to practise proceedings, to submit to any examination or assessment required or directed to be carried out in accordance with the rules made under this article or article 55, or
    - (ii) to co-operate with the Committee;
  - (i) enabling the committee during the course of proceedings, to make such inquiries as it considers appropriate;
  - (j) enabling the Fitness to Practise Committee, following consideration of a disqualification case, instead of issuing a direction under section 80 of the Medicines Act 1968(4) (disqualification and removal from the Register)—
    - (i) to agree with the individual or body corporate that the individual or body corporate will comply with such undertakings as the Committee considers appropriate (and the rules may include provision with respect to the procedure to be followed where any such undertakings are breached), and
    - (ii) to dispose of the matter by giving advice or a warning; and
  - (k) for the award of, and in respect of the assessment of, costs or expenses, and may require the committee to have regard to a person's ability to pay when considering the making of an award against the person under the rules.
- (4) An award of costs may, by leave of the High Court, be enforced in the same manner as an order of the High Court to the same effect.
- (5) An award of expenses may, by leave of the Court of Session, be enforced in the same manner as a decree of the Court of Session to the same effect.
- (6) The rules under paragraph (1) may make provision—
- (a) as to the form which is to be used for any document (and may provide that documents specified in the rules are to be in such form as the Council may determine from time to time); and
  - (b) for documents or certificates to be sent or received as an electronic communication.

### **Procedure for the Fitness to Practise Committee and the Appeals Committee**

**62.**—(1) For the purposes of proceedings under this Order in England and Wales—

- (a) the Fitness to Practise Committee or the Appeals Committee may administer oaths; and
- (b) the Fitness to Practise Committee, the Appeals Committee or any party to proceedings before either of those committees may apply for the issue of a witness summons directing a person to attend the proceedings in order to give evidence or to produce a document.

(2) No person may be compelled under any such summons to give any evidence or to produce any document which that person could not be compelled to give or produce on the trial of an action.

(3) Section 36 of the Senior Courts Act 1981(5) (subpoena issued by High Court to run throughout the United Kingdom), which provides a special procedure for the issue of such a summons so as to

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(4) 1968 c.67.

(5) 1981 c.54 as amended by section 59(5) of and Schedule 11 to the Constitutional Reform Act 2005 (c.4). Section 36 has been amended by the Courts and Legal Services Act 1990 (c.41), Schedule 17, paragraph 13.

be in force throughout the United Kingdom, applies in relation to any proceedings under this Order in England and Wales as it applies in relation to causes and matters in the High Court.

(4) For the purposes of any such proceedings in Scotland, the Fitness to Practise Committee or the Appeals Committee may administer oaths and the Court of Session has, on the application of any party to the proceedings, the like power as in any action in that court—

- (a) to grant warrant for the citation of witnesses and havers to give evidence or to produce documents before the committee, and for the issue of letters of second diligence against any witness or havers failing to appear after due citation;
- (b) to grant warrant for the recovery of documents; and
- (c) to grant commissions to persons to take the evidence of witnesses or to examine havers and receive their exhibits and productions.

(5) Where—

- (a) several sittings of the Fitness to Practise Committee or the Appeals Committee are required to enable the committee to dispose of the case; or
- (b) on an appeal to the relevant court under article 58, the case is remitted to the Fitness to Practise Committee to dispose of the case in accordance with directions given by the court,

the validity of the proceedings on the case before the committee may not be called into question by reason only that members of the committee who were present at a former meeting were not present at a later meeting of the committee or that members present at a later meeting were not present at a former meeting of the committee.

### **Legal advisers**

**63.**—(1) The Council may do either or both of the following—

- (a) appoint suitably qualified and experienced barristers, solicitors or advocates to be legal advisers;
- (b) make rules which provide for it to enter into arrangements with another person for that person to appoint on behalf of the Council suitably qualified and experienced barristers, solicitors or advocates to be legal advisers.

(2) Legal advisers appointed under this article may not be a member of the Council or of a statutory committee.

(3) Legal advisers appointed under this article may be appointed either generally or for any proceedings or particular class of proceedings and are to hold and vacate office in accordance with the terms of the instrument under which they are appointed.

(4) The Council may make rules as to the functions of legal advisers appointed under this article.

### **Clinical and other specialist advisers**

**64.**—(1) The Council may do either or both of the following in connection with proceedings under this Order—

- (a) appoint registered medical practitioners to be clinical advisers;
- (b) make rules which provide for it to enter into arrangements with another person for that person to appoint on behalf of the Council registered medical practitioners to be clinical advisers.

(2) The Council may do either or both of the following in connection with proceedings under this Order—

- (a) appoint persons to act as specialist advisers on issues on which, in the Council's opinion, specialist knowledge is required;
  - (b) make rules which provide for it to enter into arrangements with another person for that person to appoint on behalf of the Council persons to be specialist advisers.
- (3) Persons appointed to be—
  - (a) clinical advisers must have specialist expertise in a particular field or fields; and
  - (b) specialist advisers must have particular expertise in the speciality for which they are appointed.
- (4) If clinical advisers are appointed under paragraph (1), their appointment is for the purpose of giving advice to—
  - (a) the Investigating Committee or the Fitness to Practise Committee on health related issues under consideration by the committee in the proceedings before it; and
  - (b) the Council or any of its other committees on health related issues.
- (5) If specialist advisers are appointed under paragraph (2), their appointment is for the purpose of giving advice to—
  - (a) one or more of the statutory committees on issues falling within their speciality which are under consideration by the committee in the course of proceedings before it; and
  - (b) the Council or any of its other committees on issues falling within their speciality or related to it.
- (6) Advisers appointed under this article may not be a member of the Council or of a statutory committee.
- (7) Advisers appointed under this article—
  - (a) may be appointed generally; or
  - (b) may be appointed for the purpose of any proceedings or particular class of proceedings, and are to hold and vacate office in accordance with the terms of the instrument under which they are appointed.
- (8) The Council may make rules as to the functions of advisers appointed under this article.