

SCHEDULES

SCHEDULE 4

Section 43.

PROCEEDINGS BEFORE PROFESSIONAL CONDUCT, HEALTH AND PRELIMINARY PROCEEDINGS COMMITTEES

Procedure of and evidence before the Professional Conduct Committee and the Health Committee

- 1 (1) Subject to the provisions of this paragraph, the General Council shall make rules for the Professional Conduct Committee and for the Health Committee with respect to the times and places of the meetings of the Committee and the mode of summoning the members, the reference of cases to the Committee (whether by the Preliminary Proceedings Committee or otherwise) and the procedure to be followed and rules of evidence to be observed in proceedings before the Committee.
- (2) Rules made under this paragraph for the Professional Conduct Committee shall include provision—
 - (a) securing that notice that the proceedings are to be brought shall be given, at such time and in such manner as may be specified in the rules, to the person to whose registration the proceedings relate;
 - (b) securing that any party to the proceedings shall, if he so requires, be entitled to be heard by the Committee ;
 - (c) enabling any party to the proceedings to be represented by counsel or a solicitor, or (if the rules so provide and the party so elects) by a person of such other description as may be specified in the rules ;
 - (d) requiring proceedings before the Committee to be held in public except in so far as may be provided by the rules;
 - (e) requiring that where, in a case in which it is alleged that a person has been guilty of serious professional misconduct, the Committee judge that the allegation has not been proved they shall record a finding that the person is not guilty of such misconduct in respect of the matters to which the allegation relates.
- (3) Rules made under this paragraph for the Health Committee shall include provision—
 - (a) securing that notice that the proceedings are to be brought shall be given, at such time and in such manner as may be specified in the rules, to the person to whose registration the proceedings relate ;
 - (b) securing that any party to the proceedings shall, if he so requires, be entitled to be heard by the Committee ;
 - (c) enabling any party to the proceedings to be represented by counsel or a solicitor, or (if the rules so provide and the party so elects) by a person of such other description as may be specified in the rules.

- (4) Before making rules under this paragraph the General Council shall consult with such bodies of persons representing medical practitioners, or medical practitioners of any description, as appear to the Council requisite to be consulted.
- (5) Rules under this paragraph shall not come into force until approved by order of the Privy Council, and the Privy Council may approve such rules either as submitted to them or subject to such modifications as appear to them to be requisite; but where the Privy Council propose to approve any rules subject to modifications they shall notify to the General Council the modifications they propose to make and consider any observations of the General Council on them.
- 2 (1) For the purpose of proceedings before the Professional Conduct Committee or the Health Committee in England or Wales or in Northern Ireland the Committee may administer oaths, and any party to the proceedings may issue a writ of sub poena ad testificandum or duces tecum, but no person shall be compelled under any such writ to produce any document which he could not be compelled to produce on the trial of an action.
- (2) Section 36 of the Supreme Court Act 1981 or section 67 of the Judicature (Northern Ireland) Act 1978 (which provide a special procedure for the issue of such writs so as to be in force throughout the United Kingdom) shall apply in relation to proceedings before the Professional Conduct Committee or the Health Committee in England and Wales or, as the case may be, in Northern Ireland as those provisions apply in relation to causes or matters in the High Court or actions or suits pending in the High Court of Justice in Northern Ireland.
- (3) For the purpose of proceedings before the Professional Conduct Committee or the Health Committee in Scotland, the Committee may administer oaths and the Court of Session shall on the application of any party to the proceedings have 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 haver 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.
- 3 Where—
- (a) several sittings of the Professional Conduct Committee, of the Health Committee or of the General Council are required to enable the Committee or the Council to dispose of a case; or
 - (b) on an appeal to Her Majesty in Council under section 40 of this Act, the case is remitted to the Committee or to the General Council for the Committee or the Council to dispose of the case in accordance with directions given by the Judicial Committee;

the validity of the proceedings on the case before the Professional Conduct Committee, the Health Committee or the General Council, as the case may be, shall not be called into question by reason only that members of the Committee or Council who were present at a former meeting were not present at a later meeting of the Committee or Council or that members present at a later meeting were not present at a former meeting of the Committee or Council, as the case may be.

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Reference and transfer of cases to the Health Committee

- 4 (1) Where, in the course of inquiring into the case of a practitioner, it appears to the Professional Conduct Committee that his fitness to practise may be seriously impaired by reason of his physical or mental condition, the Committee may refer that question to the Health Committee for determination.
- (2) If, on a reference under this paragraph, the Health Committee determine that the fitness of the practitioner to practise is not seriously, impaired by reason of his condition the Health Committee shall certify their opinion to the Professional Conduct Committee.
- (3) If, on a reference under this paragraph, the Health Committee determine that the fitness of the practitioner to practice is seriously impaired by reason of his condition the Health Committee shall certify their opinion to the Professional Conduct Committee and shall proceed to dispose of the case and the Professional Conduct Committee shall cease to exercise their functions in relation to the case.

Preliminary proceedings

- 5 (1) The General Council shall make rules for the Preliminary Proceedings Committee with respect to the times and places of the meetings of the Committee and the mode of summoning the members, and the manner in which the Committee are to discharge their functions.
- (2) Rules made under this paragraph for the Preliminary Proceedings Committee shall include provision requiring that before any case is considered by the Committee it shall have been considered by a member of the General Council appointed for the purpose by the Council and referred by that person to the Committee.
- (3) Sub-paragraphs (4) and (5) of paragraph 1 above shall apply in relation to rules made under this paragraph as they apply in relation to rules under that paragraph.

Proceedings for erasure of entries fraudulently procured or incorrectly made

- 6 (1) The General Council shall make rules with respect to the discharge by the Council of their functions under section 39 of this Act and, if the Council delegate their functions under that section to a committee, with respect to the times and places of the meetings of the committee and the mode of summoning members and the discharge of those functions by the committee.
- (2) Sub-paragraphs (4) and (5) of paragraph 1 above shall apply in relation to rules made under this paragraph as they apply in relation to rules under that paragraph.

Legal assessors

- 7 (1) For the purpose of advising the Professional Conduct Committee, the Health Committee and the Preliminary Proceedings Committee on questions of law arising in proceedings before them there shall in all such proceedings be an assessor to the Committee who shall be appointed by the General Council and shall be a barrister, advocate or solicitor of not less than ten years' standing.
- (2) An assessor may be appointed under this paragraph either generally or for any particular proceedings or class of proceedings.

- (3) The Lord Chancellor or, in relation to proceedings in Scotland, the Lord Advocate may make rules as to the functions of assessors appointed under this paragraph.
- (4) Rules made under this paragraph in relation to proceedings before the Professional Conduct Committee and the Health Committee may in particular contain such provisions as appear to the Lord Chancellor or the Lord Advocate expedient for securing—
 - (a) that where an assessor advises the Committee on any question of law as to evidence, procedure or any other matter specified in the rules, he shall do so in the presence of every party, or person representing a party, to the proceedings who appears at the proceedings or, if the advice is tendered after the Committee have begun to deliberate as to their findings, that every such party or person shall be informed what advice the assessor has tendered,
 - (b) that every such party or person shall be informed if in any case the Committee do not accept the advice of the assessor on any such question, and such incidental and supplementary provisions as appear to the Lord Chancellor or the Lord Advocate expedient.
- (5) The General Council may pay to persons appointed to act as assessors such remuneration as the Council may determine.
- (6) The power to make rules under this paragraph shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament

Service of notifications of decisions

- 8 (1) Any notification required by section 36(6), 37(6), 38(3), 39(2) or 42(5) of this Act to be served on a person by the Registrar may be served on him either by delivering it to him or by leaving it at his proper address or by sending it by registered post or by the recorded delivery service.
- (2) For the purposes of this paragraph and of section 7 of the Interpretation Act 1978 in its application to this paragraph, a person's proper address shall be his address in the register or, if his last known address differs from his address in the register and it appears to the Registrar that a letter sent to him there is more likely to reach him, his last known address.
- (3) For the purposes of this paragraph service of a notification effected by sending it by post shall be deemed to have been effected at the time when the letter containing it would be delivered in the ordinary course of post, and so much of the said section 7 as relates to the time when service is deemed to have been effected shall not apply to a notification sent by post.

Extension of time for appealing

- 9 Where any notification required by section 36(6), 37(6) or 39(2) of this Act to be served on a person by the Registrar is served on him by sending it by post then, on an application made at any time by that person, the member of the General Council appointed to act for the purposes of this paragraph, if satisfied that the notification was not received by that person within fourteen days of the giving of the decision to which the notification relates, may if he thinks fit by authorisation in writing

extend the time within which an appeal under section 40 of this Act may be brought against the decision.

Taking effect of directions for erasure, suspension or conditional registration and of variations of conditions of registration

- 10 (1) A direction for erasure, for suspension or for conditional registration given by the Professional Conduct Committee under section 36 of this Act, a direction for suspension or for conditional registration given by the Health Committee under section 37 of this Act and a variation by either Committee of the conditions imposed by a direction for conditional registration under section 36 or 37 of this Act shall take effect—
- (a) where no appeal under section 40 is brought against the direction or variation within the time mentioned in subsection (3) of that section, on the expiration of that time ;
 - (b) where such an appeal is so brought but is withdrawn or dismissed for want of prosecution, on the withdrawal or dismissal of the appeal;
 - (c) where such an appeal is so brought and is not withdrawn or dismissed for want of prosecution, if and when the appeal is dismissed.
- (2) Sub-paragraph (1) above applies to a direction for erasure given by the General Council under section 39 of this Act as it applies to a direction for erasure given under section 36 of this Act.
- (3) Where the time for appealing against a direction or variation such as is mentioned in sub-paragraph (1) or (2) above is extended by an authorisation under paragraph 9 above, sub-paragraph (1) above or that sub-paragraph as applied by sub-paragraph (2) above shall apply to the direction or variation as if the reference in (a) to the time mentioned in section 40(3) of this Act were a reference to that time as so extended; and if the authorisation is given after the expiration of the time mentioned in the said section 40(3), the direction or variation shall be deemed not to have taken effect on the expiration of that time, and any reference in this Act to the time when such a direction takes effect in accordance with this paragraph shall be construed accordingly.
- (4) Any reference in this paragraph to a direction for suspension or for conditional registration includes a reference to a direction extending a period of suspension or conditional registration.
- 11 (1) If, while a person's registration is suspended under section 36 or 37 of this Act, a direction is given under subsection (3) of that section, the suspension of his registration shall continue to have effect throughout any period which may intervene between the time when, but for this sub-paragraph, the suspension of his registration would end and the time when the direction takes effect in accordance with paragraph 10 above or an appeal against it under section 40 of this Act is (otherwise than by the dismissal of the appeal) determined.
- (2) If, on the determination of an appeal under section 40 of this Act, a direction extending a current period of suspension for a further period takes effect after the time when, but for sub-paragraph (1) above, the current period of suspension would have ended, that further period shall be treated as having started to run from that time.
- (3) If, while a person's registration is subject to conditions imposed under section 36 or 37 of this Act, a direction is given under subsection (2) or (4) of that section, the

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conditions attached to his registration shall continue to attach to it throughout any period which may intervene between the time when, but for this sub-paragraph, his registration would cease to be conditional and the time when the direction takes effect in accordance with paragraph 10 above or an appeal against it under section 40 of this Act is (otherwise than by the dismissal of the appeal) determined.

- (4) If, on the determination of an appeal under section 40 of this Act, a direction extending a current period of conditional registration for a further period takes effect after the time when, but for subparagraph (3) above, the current period of conditional registration would have ended, that further period shall be treated as having started to run from that time.

Recording of directions for suspension or conditional registration

- 12 Where a direction under section 36 or 37 of this Act for suspension or for conditional registration takes effect in relation to any person the Registrar shall make a note in the register of the fact that that person's registration is suspended or subject to conditions.

Meaning of "party"

- 13 In this Schedule "party", in relation to proceedings before the Professional Conduct Committee or the Health Committee, means any person to whose registration the proceedings relate, or any person on whose complaint the proceedings are brought, or the Solicitor to the General Council.