

---

STATUTORY INSTRUMENTS

---

**2002 No. 3135**

The Medical Act 1983 (Amendment) Order 2002

**PART VI**

FITNESS TO PRACTISE

**Substitution of Part V**

13. For Part V (professional conduct and fitness to practise) substitute—

**“PART V**

FITNESS TO PRACTISE AND MEDICAL ETHICS

**General Council’s power to advise on conduct, performance or ethics**

35. The powers of the General Council shall include the power to provide, in such manner as the Council think fit, advice for members of the medical profession on—

- (a) standards of professional conduct;
- (b) standards of professional performance; or
- (c) medical ethics.

**General Council’s power to require disclosure of information**

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

- (a) a practitioner (except the practitioner in respect of whom the information or document is sought); or
- (b) any other person,

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

(2) As soon as is reasonably practicable after the relevant date, the General Council shall require, from a practitioner whose fitness to practise is being investigated, details of any person—

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

(3) For the purposes of this section and section 35B below the relevant date is the date specified by the General Council by rules under paragraph 1 of Schedule 4 of this Act.

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

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

(5A) In determining for the purposes of subsection (4) above whether a disclosure is not prohibited, by reason of being a disclosure of personal data which is exempt from the non-disclosure provisions of the Data Protection Act 1998 by virtue of section 35(1) of that Act, it shall be assumed that the disclosure is required by this section.

(6) Subsection (1) above does not apply in relation to the supplying of information or the production of a document which a person could not be compelled to supply or produce in civil proceedings before the relevant court (within the meaning of section 40(5) below).

(7) For the purposes of subsection (4), “enactment” includes—

- (a) an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament; and
- (b) any provision of, or any instrument made under, Northern Ireland legislation.

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

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

**35B.**—(1) As soon as is reasonably practicable after the relevant date, the General Council shall notify the following of an investigation by the General Council of a practitioner’s fitness to practise—

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

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

#### **Functions of the Investigation Committee**

**35C.**—(1) This section applies where an allegation is made to the General Council against—

- (a) a fully registered person;
- (b) a person who is provisionally registered; or
- (c) a person who is registered with limited registration,

that his fitness to practise is impaired.

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

- (a) misconduct;

- (b) deficient professional performance;
  - (c) a conviction or caution in the British Islands for a criminal offence, or a conviction elsewhere for an offence which, if committed in England and Wales, would constitute a criminal offence;
  - (d) adverse physical or mental health; or
  - (e) 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 his fitness to practise as a member of that profession is impaired, or a determination by a regulatory body elsewhere to the same effect.
- (3) This section is not prevented from applying because 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.
- (4) The Investigation Committee shall investigate the allegation and decide whether it should be considered by a Fitness to Practise Panel.
- (5) If the Investigation Committee decide that the allegation ought to be considered by a Fitness to Practise Panel—
- (a) they shall give a direction to that effect to the Registrar;
  - (b) the Registrar shall refer the allegation to a Fitness to Practise Panel; and
  - (c) the Registrar shall serve a notification of the Committee’s decision on the person who is the subject of the allegation and the person making the allegation (if any).
- (6) If the Investigation Committee decide that the allegation ought not to be considered by a Fitness to Practise Panel, they may give a warning to the person who is the subject of the allegation regarding his future conduct or performance.
- (7) If the Investigation Committee decide that the allegation ought not to be considered by a Fitness to Practise Panel, but that no warning should be given under subsection (6) above—
- (a) they shall give a direction to that effect to the Registrar; and
  - (b) the Registrar shall serve a notification of the Committee’s decision on the person who is the subject of the allegation and the person making the allegation (if any).
- (8) If the Investigation Committee are of the opinion that an Interim Orders Panel or a Fitness to Practise Panel should consider making an order for interim suspension or interim conditional registration under section 41A below in relation to the person who is the subject of the allegation—
- (a) they shall give a direction to that effect to the Registrar;
  - (b) the Registrar shall refer the matter to an Interim Orders Panel or a Fitness to Practise Panel for the Panel to decide whether to make such an order; and
  - (c) the Registrar shall serve notification of the decision on the person who is the subject of the allegation and the person making the allegation (if any).
- (9) In this section—
- “enactment” includes—
- (a) an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament; and
  - (b) any provision of, or any instrument made under, Northern Ireland legislation; and

“regulatory body” means a regulatory body which has the function of authorising persons to practise as a member of a health or social care profession.

### **Provisions supplementary to section 35C**

**35CC.**—(1) Rules under paragraph 1 of Schedule 4 to this Act may make provision for—

- (a) the Registrar; or
- (b) any other officer of the General Council,

to exercise the functions of the Investigation Committee under section 35C above, whether generally or in relation to such classes of case as may be specified in the rules.

(2) Where, by virtue of subsection (1) above, rules provide for the Registrar to exercise the functions of the Investigation Committee under subsections (5), (7) and (8) of section 35C above, those subsections shall apply in relation to him as if paragraph (a) in each of them were omitted.

(3) Section 35C above also applies in a case where—

- (a) it comes to the attention of the General Council that a person’s fitness to practise is called into question by one or more of the matters mentioned in subsection (2) of that section, but
- (b) no allegation to that effect has been made to the Council against that person,

and in such a case section 35C shall apply as if an allegation to that effect had been made to the Council against that person.

### **Functions of a Fitness to Practise Panel**

**35D.**—(1) Where an allegation against a person is referred under section 35C above to a Fitness to Practise Panel, subsections (2) and (3) below shall apply.

(2) Where the Panel find that the person’s fitness to practise is impaired they may, if they think fit—

- (a) except in a health case, direct that the person’s name shall be erased from the register;
- (b) direct that his registration in the register shall be suspended (that is to say, shall not have effect) during such period not exceeding twelve months as may be specified in the direction; or
- (c) direct that his registration shall be conditional on his compliance, during such period not exceeding three years as may be specified in the direction, with such requirements so specified as the Panel think fit to impose for the protection of members of the public or in his interests.

(3) Where the Panel find that the person’s fitness to practise is not impaired they may nevertheless give him a warning regarding his future conduct or performance.

(4) Where a Fitness to Practise Panel have given a direction that a person’s registration be suspended—

- (a) under subsection (2) above;
- (b) under subsection (10) or (12) below; or
- (c) under rules made by virtue of paragraph 5A(3) of Schedule 4 to this Act,

subsection (5) below applies.

(5) In such a case, a Fitness to Practise Panel may, if they think fit—

- (a) direct that the current period of suspension shall be extended for such further period from the time when it would otherwise expire as may be specified in the direction;
- (b) except in a health case, direct that the person's name shall be erased from the register; or
- (c) direct that the person's registration shall, as from the expiry of the current period of suspension, be conditional on his compliance, during such period not exceeding three years as may be specified in the direction, with such requirements so specified as the Panel think fit to impose for the protection of members of the public or in his interests,

but, subject to subsection (6) below, the Panel shall not extend any period of suspension under this section for more than twelve months at a time.

(6) In a health case, a Fitness to Practise Panel may give a direction in relation to a person whose registration has been suspended under this section extending his period of suspension indefinitely where—

- (a) the period of suspension will, on the date on which the direction takes effect, have lasted for at least two years; and
- (b) the direction is made not more than two months before the date on which the period of suspension would otherwise expire.

(7) Where a Fitness to Practise Panel have given a direction under subsection (6) above for a person's period of suspension to be extended indefinitely, a Fitness to Practise Panel shall 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 previous review.

(8) On such a review the Panel may—

- (a) confirm the direction;
- (b) direct that the suspension be terminated; or
- (c) direct that the person's registration be conditional on his compliance, during such period not exceeding three years as may be specified in the direction, with such requirements so specified as the Panel think fit to impose for the protection of members of the public or in his interests.

(9) Where—

- (a) a direction that a person's registration be subject to conditions has been given under—
  - (i) subsection (2), (5) or (8) above,
  - (ii) subsection (12) below,
  - (iii) rules made by virtue of paragraph 5A(3) of Schedule 4 to this Act, or
  - (iv) section 41A below; and
- (b) that person is judged by a Fitness to Practise Panel to have failed to comply with any requirement imposed on him as such a condition,

subsection (10) below applies.

(10) In such a case, the Panel may, if they think fit—

- (a) except in a health case, direct that the person's name shall be erased from the register; or
  - (b) 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.
- (11) Where a direction that a person's registration be subject to conditions has been given under—
- (a) subsection (2), (5) or (8) above; or
  - (b) rules made by virtue of paragraph 5A(3) of Schedule 4 to this Act,
- subsection (12) below applies.
- (12) In such a case, a Fitness to Practise Panel may, if they think fit—
- (a) except in a health case, direct that the person's name shall be erased from the register;
  - (b) 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;
  - (c) direct that the current period of conditional registration shall be extended for such further period from the time when it would otherwise expire as may be specified in the direction; or
  - (d) revoke the direction, or revoke or vary any of the conditions imposed by the direction, for the remainder of the current period of conditional registration,
- but the Panel shall not extend any period of conditional registration under this section for more than three years at a time.

### **Provisions supplementary to section 35D**

- 35E.**—(1) Where, under section 35D above, a Fitness to Practise Panel—
- (a) give a direction that a person's name shall be erased from the register;
  - (b) give a direction for suspension;
  - (c) give a direction for conditional registration; or
  - (d) vary any of the conditions imposed by a direction for conditional registration,
- the Registrar shall forthwith serve on the person concerned notification of the direction or variation and of his right to appeal against it under section 40 below.
- (2) In subsection (1) above—
- (a) references to a direction for suspension include a reference to a direction extending a period of suspension; and
  - (b) references to a direction for conditional registration include a reference to a direction extending a period of conditional registration.
- (3) While a person's registration in the register is suspended by virtue of a direction under section 35D—
- (a) he shall be treated as not being registered in the register notwithstanding that his name still appears in it, but
  - (b) sections 35C, 35CC and 35D above, and this section, shall continue to apply to him.
- (4) In section 35D above, "health case" means any case in which a Fitness to Practise Panel has determined that—

- (a) a person's fitness to practise is impaired by reason of a matter falling within paragraph (d) of subsection (2) of section 35C above, but
- (b) the person's fitness to practise is not impaired by any matter falling within any other paragraph of that subsection.

**Power to order immediate suspension etc. after a finding of impairment of fitness to practise**

**38.**—(1) On giving a direction for erasure or a direction for suspension under section 35D(2), (10) or (12) above, or under rules made by virtue of paragraph 5A(3) of Schedule 4 to this Act, in respect of any person the Fitness to Practise Panel, if satisfied that to do so is necessary for the protection of members of the public or is otherwise in the public interest, or is in the best interests of that person, may order that his registration in the register shall be suspended forthwith in accordance with this section.

(2) On giving a direction for conditional registration under section 35D(2) above, or under rules made by virtue of paragraph 5A(3) of Schedule 4 to this Act, in respect of any person the Fitness to Practise Panel, if satisfied that to do so is necessary for the protection of members of the public or is otherwise in the public interest, or is in the best interests of that person, may order that his registration be made conditional forthwith in accordance with this section.

(3) Where, on the giving of a direction, an order under subsection (1) or (2) above is made in respect of a person, his registration in the register shall, subject to subsection (4) below, be suspended (that is to say, shall not have effect) 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—
  - (i) paragraph 10 of Schedule 4 to this Act; or
  - (ii) rules made by virtue of paragraph 5A(3) of that Schedule; or
- (b) an appeal against it under section 40 below or paragraph 5A(4) of that Schedule is (otherwise than by the dismissal of the appeal) determined.

(4) Where a Fitness to Practise Panel make an order under subsection (1) or (2) above, the Registrar shall forthwith serve a notification of the order on the person to whom it applies.

(5) If, when an order under subsection (1) or (2) above is made, the person to whom it applies is neither present nor represented at the proceedings, subsection (3) above shall have effect as if, for the reference to the time when the order is made, there were substituted a reference to the time of service of a notification of the order as determined for the purposes of paragraph 8 of Schedule 4 to this Act.

(6) Except as provided in subsection (7) below, while a person's registration in the register is suspended by virtue of subsection (1) above, he shall be treated as not being registered in the register notwithstanding that his name still appears in it.

(7) Notwithstanding subsection (6) above, sections 35C to 35E above shall continue to apply to a person whose registration in the register is suspended.

(8) The relevant court may terminate any suspension of a person's registration in the register imposed under subsection (1) above or any conditional registration imposed under subsection (2) above, and the decision of the court on any application under this subsection shall be final.

(9) In this section "the relevant court" has the same meaning as in section 40(5) below.

### **Fraud or error in relation to registration**

**39.**—(1) If the General Council are satisfied that any entry in the register has been fraudulently procured or incorrectly made, they may direct that the entry shall be erased from the register.

(2) Where the General Council give a direction for the erasure of a person's name under this section, the Registrar shall forthwith serve on that person a notification of the direction and of his right to appeal against the decision in accordance with section 40 below.

### **Appeals**

**40.**—(1) The following decisions are appealable decisions for the purposes of this section, that is to say—

- (a) a decision of a Fitness to Practise Panel under section 35D above giving a direction for erasure, for suspension or for conditional registration or varying the conditions imposed by a direction for conditional registration;
- (b) a decision of a Fitness to Practise Panel under section 41(9) below giving a direction that the right to make further applications under that section shall be suspended indefinitely; or
- (c) a decision of the General Council under section 45(6) below giving a direction that the right to make further applications under that section shall be suspended indefinitely.

(2) A decision of the General Council under section 39 above giving a direction for erasure is also an appealable decision for the purposes of this section.

(3) In subsection (1) above—

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

(4) A person in respect of whom an appealable decision falling within subsection (1) has been taken may, before the end of the period of 28 days beginning with the date on which notification of the decision was served under section 35E(1) above, or section 41(10) or 45(7) below, appeal against the decision to the relevant court.

(5) In subsection (4) above, “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 of Justice in Northern Ireland; and
- (c) in the case of any other person (including one appealing against a decision falling within subsection (1)(c) above), means the High Court of Justice in England and Wales.

(6) A person in respect of whom an appealable decision falling within subsection (2) above has been taken may, before the end of the period of 28 days beginning with the date on which notification of the decision was served under section 39(2) above, appeal against the decision to a county court or, in Scotland, the sheriff in whose sheriffdom the address in the register is situated.

(7) On an appeal under this section from a Fitness to Practise Panel, the court may—



- (a) dismiss the appeal;
- (b) allow the appeal and quash the direction or variation appealed against;
- (c) substitute for the direction or variation appealed against any other direction or variation which could have been given or made by a Fitness to Practise Panel; or
- (d) remit the case to the Registrar for him to refer it to a Fitness to Practise Panel to dispose of the case in accordance with the directions of the court,

and may make such order as to costs (or, in Scotland, expenses) as it thinks fit.

(8) On an appeal under this section from the General Council, the court (or the sheriff) may—

- (a) dismiss the appeal;
- (b) allow the appeal and quash the direction appealed against; or
- (c) remit the case to the General Council to dispose of the case in accordance with the directions of the court (or the sheriff),

and may make such order as to costs (or, in Scotland, expenses) as it (or he) thinks fit.

(9) On an appeal under this section from a Fitness to Practise Panel, the General Council may appear as respondent; and for the purpose of enabling directions to be given as to the costs of any such appeal the Council shall be deemed to be a party thereto, whether they appear on the hearing of the appeal or not.

#### **Restoration of names to the register**

**41.**—(1) Subject to subsections (2) and (6) below, where the name of a person has been erased from the register under section 35D above, a Fitness to Practise Panel may, if they think fit, direct that his name be restored to the register.

(2) No application for the restoration of a name to the register under this section shall be made to a Fitness to Practise Panel—

- (a) before the expiration of five years from the date of erasure; or
- (b) in any period of twelve months in which an application for the restoration of his name has already been made by or on behalf of the person whose name has been erased.

(3) An application under this section shall be made to the Registrar who shall refer the application to a Fitness to Practise Panel.

(4) In the case of a person who was provisionally registered under section 15, 15A or 21 above before his name was erased, a direction under subsection (1) above shall be a direction that his name be restored by way of provisional registration under section 15, 15A or 21 above, as the case requires.

(5) The requirements of Part II or Part III of this Act as to the experience required for registration as a fully registered medical practitioner shall not apply to registration in pursuance of a direction under subsection (1) above.

(6) Before determining whether to give a direction under subsection (1) above, a Fitness to Practise Panel shall require an applicant for restoration to provide such evidence as they direct as to his fitness to practise; and they shall not give such a direction if that evidence does not satisfy them.

(7) A Fitness to Practise Panel shall not give a direction under subsection (1) above unless at the same time in accordance with regulations made by the General Council under this subsection, they direct the Registrar to restore the practitioner's licence to practise.

(8) Subsections (3) to (5) of section 29J above apply to regulations made under subsection (7) above as they apply in relation to regulations made under section 29A above.

(9) Where, during the same period of erasure, a second or subsequent application for the restoration of a name to the register, made by or on behalf of the person whose name has been erased, is unsuccessful, a Fitness to Practise Panel may direct that his right to make any further such applications shall be suspended indefinitely.

(10) Where a Fitness to Practise Panel give a direction under subsection (9) above, the Registrar shall without delay serve on the person in respect of whom it has been made a notification of the direction and of his right to appeal against it in accordance with section 40 above.

(11) Any person in respect of whom a direction has been given under subsection (9) above may, after the expiration of three years from the date on which the direction was given, apply to the Registrar for that direction to be reviewed by a Fitness to Practise Panel and, thereafter, may make further applications for review; but no such application may be made before the expiration of three years from the date of the most recent review decision.

### **Interim Orders**

**41A.—**(1) Where an Interim Orders Panel or a Fitness to Practise Panel are satisfied that it is necessary for the protection of members of the public or is otherwise in the public interest, or is in the interests of a fully registered person, for the registration of that person to be suspended or to be made subject to conditions, the Panel may make an order—

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

(2) Subject to subsection (9) below, where an Interim Orders Panel or a Fitness to Practise Panel have made an order under subsection (1) above, an Interim Orders Panel or a Fitness to Practise Panel—

- (a) shall review it within the period of six months beginning on the date on which the order was made, and shall thereafter, for so long as the order continues in force, further review it—
  - (i) before the end of the period of six 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 the making of the order.

(3) Where an interim suspension order or an order for interim conditional registration has been made in relation to any person under any provision of this section (including this subsection), an Interim Orders Panel or a Fitness to Practise Panel may, subject to subsection (4) below—

- (a) revoke the order or revoke any condition imposed by the order;
- (b) vary any condition imposed by the order;

- (c) if satisfied that to do so is necessary for the protection of members of the public or is otherwise in the public interest, or is in the interests of the person concerned, replace an order for interim conditional registration with an interim suspension order having effect for the remainder of the term of the former; or
- (d) if satisfied that to do so is necessary for the protection of members of the public, or is otherwise in the public interest, or is in the interests of the person concerned, replace an interim suspension order with an order for interim conditional registration having effect for the remainder of the term of the former.

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

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

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

(7) 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.

(8) 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.

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

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

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

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

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

(11) Except as provided in subsection (12) below, while a person's registration in the register is suspended by virtue of an interim suspension order under this section he shall be treated as not being registered in the register notwithstanding that his name still appears in the register.

(12) Notwithstanding subsection (11) above, sections 35C to 35E above shall continue to apply to a person whose registration in the register is suspended.

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

(14) In this section “the relevant court” has the same meaning as in section 40(5) above.

### **Effect of directions or orders on a licence to practise**

**41C.**—(1) Where under this Part or under rules made by virtue of paragraph 5A(3) of Schedule 4 to this Act—

- (a) a direction is given that a medical practitioner’s name be erased from the register; or
- (b) an order is made or a direction is given that his registration as a medical practitioner be suspended,

the practitioner’s licence to practise shall be withdrawn with effect from the date when the direction or order has effect.

(2) Where a medical practitioner’s registration has been suspended and—

- (a) that suspension expires without being further extended;
- (b) the suspension is brought to an end without any direction for erasure or further suspension being made,

the practitioner’s licence to practise shall be restored with effect from the date on which the suspension comes to an end.

### **Proceedings before the Investigation Committee, Interim Orders Panels and Fitness to Practise Panels**

**43.** Schedule 4 to this Act (which contains supplementary provisions about proceedings before the Investigation Committee, Interim Orders Panels and Fitness to Practise Panels) shall have effect.

### **Effect of disqualification in another member State on registration in the United Kingdom**

**44.**—(1) A person who is subject to a disqualifying decision in an EEA State in which he is or has been established in medical practice shall not be entitled to be registered by virtue of section 3(1)(b) above for so long as the decision remains in force in relation to him.

(2) A disqualifying decision in respect of a person is a decision, made by responsible authorities of the EEA State in which he was established in medical practice or in which he acquired a primary United Kingdom or primary European qualification, and—

- (a) expressed to be made on the grounds that he has committed a criminal offence or on grounds related to his professional conduct, professional performance or physical or mental health; and
- (b) having in that State the effect either that he is no longer registered or otherwise officially recognised as a medical practitioner, or that he is prohibited from practising medicine there.

(3) If a person has been registered by virtue of section 3(1)(b) above and it is subsequently shown to the satisfaction of the Registrar that he was subject to a disqualifying

decision in force at the time of registration, and that the decision remains in force, the Registrar shall remove the person's name from the register.

(4) A decision under—

- (a) subsection (1) above not to register a person; or
- (b) subsection (3) above to remove a person's name from the register,

is an appealable registration decision for the purposes of Schedule 3A to this Act.

(5) If a person has been registered as a fully registered medical practitioner by virtue of section 3(1)(b) above at a time when a disqualifying decision was in force in respect of him, and he has been so registered for a period of not less than one month throughout which the decision had effect—

- (a) a Fitness to Practise Panel may direct that his registration be suspended for such period, not exceeding the length of the first-mentioned period, as the Panel think fit, and the period of suspension shall begin on a date to be specified in the Panel's direction; and
- (b) sections 35E(1) and (3) and 40 and paragraphs 1, 2, 8, 9, 10, 12 and 13 of Schedule 4 to this Act shall have effect, with any necessary modifications, in relation to suspension under this subsection.

(6) Where on or after the date on which a person was registered by virtue of section 3(1) (b) above a disqualifying decision relating to him comes into force, this Part of this Act 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.

(7) Subsection (1) of section 18 above shall not apply to a person, and that person shall not be registered as a visiting EEA practitioner, at any time when he is subject to a disqualifying decision imposed by a member State or its competent authority (within the meaning of that section).

### **Effect of disqualification or conviction on registration**

**44A.—**(1) Without prejudice to regulations made under section 31 (power to make regulations with respect to the register), the Registrar may, notwithstanding anything in this Act, refuse to register any person under any section of this Act (other than sections 3(1) (b) or 18 above) who—

- (a) has, in the British Islands, been convicted of, or cautioned for, a criminal offence or convicted elsewhere of an offence which, if committed in England and Wales, would constitute a criminal offence; or
- (b) has been the subject of 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 his fitness to practise as a member of that profession is impaired, or a determination by a regulatory body (within the meaning of section 35C(9) above) elsewhere to the same effect.

(2) If a person has been registered by virtue of any provision of this Act and it is subsequently shown to the satisfaction of the Registrar that—

- (a) he is a person to whom paragraph (a) or (b) of subsection (1) above applies; and
- (b) he had not informed the Registrar of that fact at the time of registration,

the Registrar may remove that person's name from the register.

(3) A decision under—

- (a) subsection (1) above not to register a person; or
  - (b) subsection (2) above to remove a person's name from the register,
- is an appealable registration decision for the purposes of Schedule 3A to this Act.
- (4) If a person has been registered by virtue of any section other than section 3(1)(b) or 18 above at a time when a determination of a kind referred to in subsection (1)(b) above was in force in respect of him, and he has been so registered for a period of not less than one month throughout which the determination had effect—
- (a) a Fitness to Practice Panel may direct that his registration be suspended for such period, not exceeding the length of the first mentioned period, as the Panel think fit, and the period of suspension shall begin on a date to be specified in the Panel's direction; and
  - (b) sections 35E(1) and (3) and 40 and paragraphs 1, 2, 8, 9, 10, 12 and 13 of Schedule 4 to this Act shall have effect, with any necessary modifications, in relation to suspension under this subsection.
- (5) The General Council may by regulations make provision about the information to be provided to the Registrar by a person seeking registration for the purposes of this section.
- (6) The Registrar may refuse to register any person who fails to comply with regulations made under subsection (5) above.
- (7) Regulations under subsection (5) above shall not have effect until approved by order of the Privy Council.
- (8) In this section "enactment" includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament, and any provision of, or any instrument made under, Northern Ireland legislation.

### **Disciplinary provisions affecting practitioners who render services while visiting the United Kingdom**

- 45.—**(1) If a national of an EEA State who has medical qualifications entitling him to registration under section 3 above but is not so registered and who renders medical services while visiting the United Kingdom (whether or not registered as a visiting EEA practitioner) —
- (a) is found by a Fitness to Practise Panel to have been convicted of a criminal offence in any EEA State where he was practising medicine; or
  - (b) is subject to a finding that his fitness to practise is impaired,
- the Panel may, if they think fit, impose on him a prohibition in respect of the rendering of medical services in the United Kingdom in the future.
- (2) A prohibition imposed under this section shall either relate to a period specified by a Fitness to Practise Panel or be expressed to continue for an indefinite period.
- (3) A person may apply to the General Council for termination of a prohibition imposed on him under this section and the Council may, on any such application, terminate the prohibition or reduce the period of it; but no application may be made under this subsection—
- (a) earlier than five years from the date on which the prohibition was imposed; or
  - (b) in the period of twelve months following a decision made on an earlier application.

(4) Section 18(1) above does not apply to a person, and that person shall not be registered as a visiting EEA practitioner, at a time when he is subject to a prohibition imposed by a Fitness to Practise Panel under this section.

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

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

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

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

**Changes to legislation:**

There are currently no known outstanding effects for the The Medical Act 1983 (Amendment) Order 2002, Section 13.