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STATUTORY INSTRUMENTS

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**2005 No. 2011**

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

**PART 3**

**Fitness to practise, proceedings and appeals**

**Substitution of sections 27 and 28**

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

**“Allegations**

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

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

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

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

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

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

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

### **The Investigating Committee**

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

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

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

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

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

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

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

### **The Practice Committees**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **Resumed hearings**

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

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

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

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

(3) Where a Practice Committee—

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

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

- (4) Where a Practice Committee have given a direction under subsection (1)(d) that a person's registration is to be suspended indefinitely, they must review the direction if—
- (a) the person requests them to do so;
  - (b) at least two years have elapsed since the date on which the direction took effect; and
  - (c) if the direction has previously been reviewed under this subsection, at least two years have elapsed since the date of the last such review decision.
- (5) On such a review a Practice Committee may—
- (a) direct that the suspension shall be terminated;
  - (b) confirm the direction to suspend the person's registration indefinitely; or
  - (c) direct that the suspension shall be terminated and the person's registration in the register shall be conditional on his compliance, during such period not exceeding three years as may be specified in the direction, with such conditions specified in the direction as the Practice Committee think fit to impose for the protection of the public or in his interests.
- (6) Where a Practice Committee give a direction under this section, the registrar shall forthwith serve on the person concerned notification of the direction and (except in the case of a direction under subsection (1)(a), (2)(a) or (5)(a) or a direction under subsection (2)(c) that a condition or conditions shall be revoked) of his right to appeal against it under section 29.

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

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

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

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

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

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

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

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

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

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