
STATUTORY INSTRUMENTS

2005 No. 2011

The Dentists Act 1984 (Amendment) Order 2005

PART 5

The Practice of Dentistry and Carrying on the Business of Dentistry

Substitution of sections 43 and 44

39. For sections 43 and 44 substitute—

“Directors of bodies corporate

43.—(1) A body corporate commits an offence if it carries on the business of dentistry at a time when a majority of its directors are not persons who are either registered dentists or registered dental care professionals.

(2) Where a person is the subject of a decision erasing his name from, or suspending him from, a register kept by any of the regulatory bodies listed in section 25(3) of the National Health Service Reform and Health Care Professions Act 2002, that person commits an offence if he is a director of a body corporate carrying on the business of dentistry at any time when such an erasure or suspension remains in effect.

(3) Any body corporate committing an offence under subsection (1), or any person committing an offence under subsection (2), shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Provision of information and payment of fees by bodies corporate

43A.—(1) The Council shall maintain a list, in such form as they consider appropriate, of bodies corporate which carry on the business of dentistry.

(2) Subject to subsections (3) and (4), a body corporate which carries on the business of dentistry shall, at intervals of no more than twelve months, provide the Council with the information specified in subsection (5).

(3) A body corporate which is carrying on the business of dentistry at the time when this section comes into force shall first provide the Council with the information specified in subsection (5) within the period of twelve months beginning with the date on which this section came into force.

(4) A body corporate which begins to carry on the business of dentistry after this section comes into force shall first provide the Council with the information specified in subsection (5) within the period of three months beginning with the date on which it begins to carry on that business.

(5) The information referred to in subsections (2), (3) and (4) is—

(a) the address of the body corporate’s principal office;

- (b) the names of the directors of the body corporate and the addresses where they are resident;
- (c) the names of all persons who practise dentistry in the course of the business and the addresses where they are resident;
- (d) the names of all registered dental care professionals not falling within paragraph (b) or (c) who, in the course of the business, provide services in, or in relation to, any area of dentistry, and the addresses where they are resident; and
- (e) such further information as may be specified in rules.

(6) Rules may specify the form and manner in which the information specified in subsection (5) is required to be provided.

(7) The Council may make regulations providing that a fee is payable by a body corporate on each occasion on which that body is required to provide information in accordance with subsection (2), (3) or (4).

Financial penalties in relation to bodies corporate

43B.—(1) The registrar may refer to the Professional Conduct Committee for investigation information in his possession which indicates that there may be grounds for imposing a financial penalty under this section.

(2) For the purposes of this section, a “relevant requirement” means a requirement for a body corporate to—

- (a) provide information under subsection (2), (3) or (4) of section 43A;
- (b) provide such information in the form and manner specified in any rules under subsection (6) of that section; or
- (c) pay any fee in accordance with regulations under subsection (7) of that section.

(3) The Professional Conduct Committee may impose a financial penalty under this section if they are satisfied that a body corporate failed to comply with a relevant requirement.

(4) In such a case, a financial penalty may be imposed on—

- (a) the body corporate concerned;
- (b) any person who was a director of that body at the time of the body’s failure to comply with the relevant requirement in question; or
- (c) both that body corporate and one or more persons within paragraph (b).

(5) But a financial penalty shall not be imposed on a director or former director of the body corporate if he satisfies the Professional Conduct Committee that, at the time of the body’s failure to comply with the relevant requirement in question, he had taken all reasonable steps to ensure that the body complied with that requirement.

(6) A financial penalty imposed under this section—

- (a) in the case of a body corporate, must not exceed £5,000,
- (b) in the case of a person within subsection (4)(b), must not exceed £1,000,

and is payable within such period as the Professional Conduct Committee shall specify at the time the penalty is imposed.

(7) If it appears to the Council that there has been a change in the value of money since the last occasion when the maximum amount of the financial penalty under subsection (6) (a) or (b) was fixed, whether by this section or by an order under this section, the Council

may by order substitute for the sum for the time being specified in paragraph (a) or (b) of that subsection such higher sum as appears to the Council justified by the change.

(8) The Council shall publish an order under subsection (7) in such form as they consider appropriate.

(9) An order under subsection (7) shall not have effect in relation to any case where the failure to comply with the relevant requirement in question occurred before the order came into force.

(10) Where the Professional Conduct Committee determine to impose a financial penalty under this section, the registrar shall forthwith serve on the person on whom the penalty is imposed notification of—

- (a) the imposition of the penalty;
- (b) the amount of the penalty;
- (c) the period within which it is to be paid; and
- (d) the person's right to appeal under section 44B against any of the matters notified under paragraphs (a), (b) or (c).

(11) Subject to subsection (12), the Council may recover the financial penalty from the person on whom it was imposed if the penalty is not paid within the period specified under subsection (6).

(12) A penalty may not be recovered under subsection (11) while proceedings by way of appeal under section 44B(1) are pending, or during the period in which any such proceedings may be brought.

(13) The Council shall pay any sum paid as a financial penalty, or recovered under subsection (11), into the Consolidated Fund.

Further financial penalties on bodies corporate

44.—(1) The Professional Conduct Committee may, subject to subsection (5), impose a financial penalty on a body corporate if condition A or condition B is satisfied.

(2) Condition A is satisfied if, at a time when the body corporate is carrying on the business of dentistry, the name of a director of the body corporate is erased—

- (a) from the register by virtue of a direction under section 27B(6)(a); or
- (b) from registration in the dental care professionals register under any title by virtue of a direction under section 36P(7)(a).

(3) Condition B is satisfied if at a time when the body corporate is carrying on the business of dentistry the name of a member of the staff of the body corporate is so erased, and in the opinion of the Professional Conduct Committee—

- (a) the act or omission leading to the erasure was instigated, or connived at, by a director of the body corporate; or
- (b) if the act or omission was a continuing act or omission, a director of the body corporate had, or reasonably ought to have had, knowledge of its continuation.

(4) A financial penalty imposed under subsection (1)—

- (a) must not exceed £50,000; and
- (b) is payable within such period as the Professional Conduct Committee shall specify at the time the penalty is imposed.

(5) The Professional Conduct Committee shall not take a case into consideration under subsection (1) while proceedings by way of appeal are pending which may result in a

decision that the name of the director or member of staff of the body corporate (as the case may be) should not be erased as described in subsection (2), or during the period in which any such proceedings may be brought.

(6) If it appears to the Council that there has been a change in the value of money since the last occasion when the maximum amount of the financial penalty under subsection (4) (a) was fixed, whether by this section or by an order under this section, the Council may by order substitute for the sum for the time being specified in subsection (4)(a) such higher sum as appears to the Council justified by the change.

(7) The Council shall publish an order under subsection (6) in such form as they consider appropriate.

(8) An order under subsection (6) shall not have effect in relation to any case where the erasure of the name which gave rise to the penalty occurred before the order came into force.

(9) Where the Professional Conduct Committee determine to impose a financial penalty on a body corporate under subsection (1), the registrar shall forthwith serve on the body corporate notification of—

- (a) the imposition of the penalty;
- (b) the amount of the penalty;
- (c) the period within which it is to be paid; and
- (d) the body corporate's right to appeal under section 44B against any of the matters notified under paragraphs (a), (b) or (c).

(10) Subject to subsection (11), the Council may recover the financial penalty from the body corporate if the penalty is not paid within the period specified under subsection (4)(b).

(11) A penalty may not be recovered under subsection (10) while proceedings by way of appeal under section 44B(2) are pending, or during the period in which any such proceedings may be brought.

(12) The Council shall pay any sum paid as a financial penalty, or recovered under subsection (10), into the Consolidated Fund.

(13) References in this section to the erasure of the name of a director or member of staff of a body corporate include references to the erasure of the name of any person who was a director or member of staff of the body corporate at the time of the act or omission leading to the erasure.

Supplementary provisions relating to financial penalties under sections 43B and 44

44A. Schedule 3 (proceedings before the Investigating Committee, the Interim Orders Committee and Practice Committees: dentists) applies to proceedings before the Professional Conduct Committee under section 43B or 44 with the following modifications—

- (a) references to proceedings under Part 3 of the Act shall be read as including proceedings under sections 43B and 44;
- (b) references to a Committee shall be read as references to the Professional Conduct Committee;
- (c) in paragraph 1—
 - (i) omit sub-paragraph (1), and
 - (ii) for sub-paragraph (2) substitute—
 - “(2) A “party” to proceedings means—
 - (a) the body corporate;

- (b) any director or former director of the body corporate against whom the proceedings are brought; or
- (c) the Council.”;
- (d) in paragraph 2—
 - (i) omit sub-paragraph (1)(b),
 - (ii) in sub-paragraph (2)(a), for “the person to whose registration the proceedings relate” substitute “the body corporate and any director or former director of the body corporate on whom a financial penalty may be imposed”, and
 - (iii) in sub-paragraph (2)(g), omit “the person (if any) making the allegation and”;
- (e) omit paragraph 5;
- (f) in paragraph 6(5), for paragraphs (a) and (b) substitute—
 - “(a) where the body corporate’s principal office is in Scotland, the sheriff in whose sheriffdom that office is situated; and”;
- (g) omit paragraph 7.

Appeals relating to financial penalties

44B.—(1) A person on whom a financial penalty has been imposed under section 43B may, before the end of the period of 28 days beginning with the date on which notification of the penalty was served under section 43B(10), appeal to the relevant court against the imposition of the penalty, the amount of the penalty or the period within which the penalty is to be paid.

(2) A body corporate on which a financial penalty has been imposed under section 44 may, before the end of the period of 28 days beginning with the date on which notification of the penalty was served under section 44(9), appeal to the relevant court against the imposition of the penalty, the amount of the penalty or the period within which the penalty is to be paid.

(3) Where—

- (a) any notification required to be served on a person by section 43B(10) or 44(9) is given by sending it to that person by post, and
- (b) the registrar is satisfied, on the application of that person, that that person did not receive the notification within the period of 14 days beginning with the day on which the Professional Conduct Committee gave the determination to which the notification relates,

the registrar may, if he thinks fit, by authorisation in writing extend the period of time within which an appeal under this section may be brought.

(4) In subsections (1) and (2) “the relevant court”—

- (a) where the principal office of the body corporate is in Scotland, means the Court of Session;
- (b) where the principal office of the body corporate is in Northern Ireland, means the High Court in Northern Ireland; and
- (c) where the principal office of the body corporate is in any other place, means the High Court in England and Wales.

(5) In subsection (4)—

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

- (a) where a financial penalty has been imposed on a body corporate, “the body corporate” means that body; and
 - (b) where a financial penalty has been imposed on a director or former director of a body corporate, “the body corporate” means the body whose failure to comply with a relevant requirement (within the meaning of section 43B) led to the imposition of the financial penalty.
- (6) Subsections (3) and (4) of section 29 apply to appeals under this section as they apply to appeals under that section with the following modifications—
- (a) in subsection (3)(c) and (d), omit references to the Professional Performance Committee and the Health Committee; and
 - (b) in subsection (3)(d), for “section 24, 27B, 27C or 28” substitute “section 43B or 44”.