

SCHEDULE 4

Article 32(2)

Insertion of Schedule 4B

After Schedule 4A insert—

“SCHEDULE 4B

Section 36W(6)

Proceedings before the Investigating Committee, the Interim Orders Committee and Practice Committees: dental care professionals

**Definitions**

- 1.—(1) In this Schedule a “Committee” means—
  - (a) the Professional Conduct Committee;
  - (b) the Professional Performance Committee;
  - (c) the Health Committee; or
  - (d) the Interim Orders Committee.
- (2) A “party” to proceedings means, unless the context otherwise requires—
  - (a) the person to whose registration the proceedings relate; or
  - (b) the Council.

**Rules relating to procedure**

- 2.—(1) Subject to the provisions of this paragraph, rules shall make provision as to the procedure to be followed—
  - (a) in proceedings before a Committee under Part 3A of this Act; and
  - (b) by the Investigating Committee in the exercise of their functions under section 36O.
- (2) Rules under sub-paragraph (1)(a) shall include provision—
  - (a) requiring the registrar to serve notification on the person to whose registration the proceedings relate that proceedings are to be brought and outlining the case against him;
  - (b) enabling any party to be heard by a Committee, if the party so requires;
  - (c) enabling any party to be represented before the Committee 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) enabling the registrar to serve notification of the proceedings on any person who in his opinion has an interest in those proceedings, and to provide any person so notified with an opportunity to submit written representations;
  - (e) enabling a Committee, before they hold any hearing, where they consider that it would assist them in performing their functions, to hold a preliminary meeting in private attended by the parties and the parties' representatives and any other person the Committee think appropriate;
  - (f) requiring proceedings before a Committee to be held in public unless and to the extent that the rules provide otherwise;
  - (g) requiring the registrar to serve notification on the person (if any) making the allegation and any other person who in his opinion has an interest in the proceedings, of the Committee's decision and the reasons for the decision; and

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(h) requiring the registrar to publish, in such manner as may be specified in the rules, such information relating to the case and any decision made by the Committee as may be specified in the rules.

(3) Each stage in proceedings before a Committee under Part 3A of this Act shall be dealt with expeditiously and a Committee may give directions as to the conduct of the case and the consequences of failure to comply with such directions (which may include the making of an order or refusal of an application if the failure to comply was without reasonable excuse).

(4) Rules may provide for the Chairman of a Committee to hold the meeting referred to in sub-paragraph (2)(e) or to give the directions mentioned in sub-paragraph (3) and, subject to the agreement of the parties to his acting on behalf of the Committee, to take such action as the Committee would be competent to take at such a meeting.

### **Evidence etc.**

3. Subject to paragraph 4, rules shall make provision regarding the rules of evidence to be observed in any proceedings before a Committee under Part 3A of this Act, including rules as to the admissibility of evidence.

4.—(1) For the purpose of proceedings under Part 3A of this Act in England and Wales or in Northern Ireland before a Committee, a Committee may—

- (a) summon any person to attend a hearing as a witness, to answer any question or to produce any documents in his custody or under his control which relate to any matter in question in the proceedings;
- (b) require any witness appearing before them to give evidence on oath and for this purpose an oath may be administered in due form; and
- (c) upon an application by a person summoned to appear before them, set the summons aside.

(2) No person shall be compelled under sub-paragraph (1)—

- (a) to attend in obedience to a summons if he has been given less than 14 days' notification of the hearing unless he informs the Committee before the hearing that he accepts such notification has been given; or
- (b) to produce any document which he could not be compelled to produce on the trial of an action.

(3) For the purposes of any proceedings under Part 3A of this Act in Scotland before a Committee, 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.

5. Where the proceedings relate to a person's conduct, and that conduct has been considered by another body whose functions include overseeing the conduct of members of a health or social care profession, a Committee may adopt as its own findings any finding of fact found by that body and proceed to determine the case without further inquiry.

## **Costs**

6.—(1) In the course of proceedings under Part 3A of this Act, a Committee may make such order as to costs (or, in Scotland, expenses) as they think fit, but may make provision as described in sub-paragraph (2) only if rules allowing such provision have been made under that sub-paragraph.

(2) Rules may allow a Committee—

- (a) to disallow all or part of the costs (or, in Scotland, expenses) of a representative of a party by reason of that representative's conduct of the proceedings; and
- (b) to order a representative of a party to meet all or part of the costs (or, in Scotland, expenses) incurred by a party by reason of that representative's conduct of the proceedings.

(3) A Committee shall have regard to a person's ability to pay when considering the making of an order under this paragraph.

(4) Any sum required to be paid under an award in respect of costs (or, in Scotland, expenses) shall be recoverable as if it had been adjudged to be paid by an order of a relevant court.

(5) In sub-paragraph (4) "the relevant court" means—

- (a) where the person to whose registration the proceedings relate is registered in the dental care professionals register, and his address in that register is in Scotland, the sheriff in whose sheriffdom that address is situated;
- (b) where the person to whose registration the proceedings relate is not registered in that register, but his address would (if he were to be registered) be in Scotland, the sheriff in whose sheriffdom that address is situated; and
- (c) in any other case, the county court.

## **Reference of cases to the registrar or a different Committee**

7.—(1) Rules shall be made enabling a Practice Committee, in the course of proceedings under Part 3A of this Act—

- (a) to refer to another Practice Committee any matter arising which they consider should be dealt with by that other Practice Committee;
- (b) to take advice, as they consider necessary and appropriate, from another Practice Committee; and
- (c) to refer to the Interim Orders Committee any allegation before them which they consider should be dealt with by the Interim Orders Committee.

(2) Rules under sub-paragraph (1)(a) may provide that, where a Practice Committee refer a case to another Practice Committee by virtue of those rules, section 36P is to apply as if the case had originally been referred by the Investigating Committee to that other Practice Committee."