

SCHEDULE 1

Article 14(2)

Insertion of Schedule 2A

After Schedule 2 insert—

“SCHEDULE 2A

Section 25A

Registration appeals: dentists register

1. In this Schedule—

“appealable registration decision” shall be construed in accordance with paragraphs 2 and 3(2);

“person concerned” means a person notified under paragraph 3(1) of an appealable registration decision made in respect of him, or, as the case may be, an applicant in respect of whom an appealable registration decision is treated as having been made by virtue of paragraph 3(2); and

“the requisite period”, in relation to a decision of a kind specified in paragraph 2(1)(a), (b), (d), (f), (g), (i) or (j), means the period of three months beginning with the date when the registrar is first in possession of sufficient information to make the decision.

2.—(1) The following decisions are appealable registration decisions for the purposes of this Schedule—

- (a) a decision not to register a person’s name in the register under section 15 (qualification for registration) on the grounds that any of the requirements of that section are not met;
- (b) a decision not to give a direction for temporary registration under section 17 (temporary registration);
- (c) a decision under section 23(3) (erasure of names of those who have ceased to practise) to erase a person’s name from the register;
- (d) a decision under section 23(4) not to restore a person’s name to the register;
- (e) a decision under section 24(1) (erasure on grounds of error) to erase an entry relating to a person from the register;
- (f) a decision under section 26A(8)(a), (b) or (c) (insurance) not to register a person’s name in the register, not to restore his name to the register or to erase his name from the register;
- (g) a decision under section 26A(9) not to restore a person’s name to the register;
- (h) a decision under section 34A(2) (professional training and development requirements) to erase a person’s name from the register;
- (i) a decision under section 34A(3) not to restore a person’s name to the register;
- (j) a decision not to register a person’s name in the register on the grounds that section 35(1) is satisfied (effect on registration of disqualification in another EEA state); and
- (k) a decision under section 35(3) to erase a person’s name from the register.

(2) A decision is not an appealable registration decision for the purposes of this Schedule if it is a decision taken by reason only that the person failed to—

- (a) pay any fee prescribed by regulations made under section 19; or
- (b) make an application as required under this Act or any rules made under it.

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### **Notification of appealable registration decisions**

3.—(1) Where an appealable registration decision is made in respect of a person, the registrar shall forthwith serve on that person written notification of—

- (a) the decision;
- (b) the reasons for the decision; and
- (c) that person’s right to appeal under paragraph 4.

(2) Where an applicant has not been served with notification of a decision in respect of an application for registration or restoration of a name mentioned in paragraphs (a), (b), (d), (f), (g), (i) or (j) of paragraph 2(1) within the requisite period, that omission shall be treated as a decision not to register or, as the case may be, restore the applicant’s name, which is an appealable registration decision for the purposes of this Schedule.

### **Appeals from an appealable registration decision**

4.—(1) A person concerned may appeal to the Registration Appeals Committee against—

- (a) the appealable registration decision made in respect of him of which he was notified under paragraph 3(1); or
- (b) the appealable registration decision treated as having been made in respect of him by virtue of paragraph 3(2).

(2) An appeal under sub-paragraph (1) shall be made by giving notice of appeal to the registrar.

(3) Notice of appeal in a case within sub-paragraph (1)(a) must be given before the end of the period of 28 days beginning with the date on which notification of the decision was served under paragraph 3(1), subject to any extension of time under paragraph 5.

(4) Notice of appeal in a case within sub-paragraph (1)(b) must be given before the end of the period of 28 days following the end of the requisite period.

(5) In the case of an appealable registration decision which is a decision to erase a person’s name from the register, where—

- (a) no appeal under this paragraph is brought against the decision within the period of time specified in sub-paragraph (3), or
- (b) an appeal under this paragraph is brought but is withdrawn or struck out for want of prosecution,

that decision shall take effect on the expiry of that period or, as the case may be, on the withdrawal or striking out of that appeal.

(6) For the purposes of considering an appeal under this paragraph, the Registration Appeals Committee may make such inquiries as they consider appropriate.

(7) Schedule 3 (proceedings before the Investigating Committee, the Interim Orders Committee and Practice Committees: dentists) applies to proceedings under this Schedule before the Registration Appeals Committee with the following modifications—

- (a) in paragraph 1—
  - (i) omit sub-paragraph (1), and
  - (ii) in sub-paragraph (2)(b) for “the Council” substitute “the registrar”;
- (b) references to a Committee shall be read as references to the Registration Appeals Committee;
- (c) in paragraph 2—

- (i) omit sub-paragraph (1)(b), and
- (ii) in sub-paragraph (2)(g) omit “the person (if any) making the allegation and”;  
and

(d) omit paragraph 7.

(8) In disposing of an appeal under this paragraph, the Registration Appeals Committee may determine to—

- (a) dismiss the appeal;
- (b) allow the appeal and quash the decision appealed against;
- (c) substitute for the decision appealed against any other decision which could have been made by the registrar; or
- (d) remit the case to the registrar to dispose of in accordance with the directions of the Registration Appeals Committee.

(9) In the case of an appealable registration decision which is a decision to erase a person’s name from the register, where the Registration Appeals Committee dispose of an appeal brought under this paragraph by making a determination under sub-paragraph (8)(a), (c) or (d), that decision shall take effect—

- (a) where no appeal under paragraph 6 is brought against the determination of the Registration Appeals Committee within the period of time specified in paragraph 6(1), on the expiry of that period;
- (b) where an appeal under paragraph 6 is brought but is withdrawn or struck out for want of prosecution, on the withdrawal or striking out of that appeal; or
- (c) where an appeal under paragraph 6 is brought and dismissed under paragraph 6(2)(a), on the dismissal of that appeal.

(10) Where the Registration Appeals Committee make a determination on an appeal under this Schedule, they shall, as soon as reasonably practicable—

- (a) inform the registrar of, and serve on the person concerned notification of, the Committee’s determination on the appeal and of the reasons for that determination; and
- (b) if that determination is not a determination under sub-paragraph (8)(b), serve on the person concerned notification of his right of appeal under paragraph 6.

### **Extension of time for appealing**

5. Where—

- (a) any notification of a decision required under paragraph 3(1) to be served on a person is served by sending it to him by post, and
- (b) the registrar is satisfied, on the application of that person, that he did not receive the notification within the period of 14 days beginning with the day on which the decision was made,

the registrar may, if he thinks fit, by authorisation in writing extend the time for giving notice of appeal under paragraph 4(3).

### **Appeals from the Registration Appeals Committee**

6.—(1) Where—

- (a) the Registration Appeals Committee determine an appeal under paragraph 4, and

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- (b) they do not determine under paragraph 4(8)(b) to allow the appeal and quash the decision appealed against,

the person concerned may, before the end of the period of 28 days beginning with the date on which notification of the determination was served on him under paragraph 4(10), appeal against the determination to the relevant court.

(2) On an appeal under this paragraph from the Registration Appeals Committee, the relevant court may—

- (a) dismiss the appeal,
- (b) allow the appeal and quash the determination appealed against,
- (c) substitute for the determination appealed against any other determination which could have been made by the Registration Appeals Committee, or
- (d) remit the case to the Registration Appeals Committee to dispose of in accordance with the directions of the relevant court,

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

(3) In this paragraph “the relevant court” means—

- (a) where the person concerned is registered in the register, and his address in the register is in Scotland, the sheriff in whose sheriffdom that address is situated;
- (b) where the person concerned is not registered in the 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.”.

## SCHEDULE 2

Article 24(2)

### Substitution of Schedule 3

For Schedule 3 substitute—

## “SCHEDULE 3

Section 33(6)

### Proceedings before the Investigating Committee, the Interim Orders Committee and Practice Committees: dentists

#### 1. Definitions

(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.

## **2. Rules relating to procedure**

(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 3 of this Act; and
- (b) by the Investigating Committee in the exercise of their functions under section 27A.

(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
- (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 3 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.

## **3. 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 3 of this Act, including rules as to the admissibility of evidence.

(1) For the purpose of proceedings under Part 3 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;

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- (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 3 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.

## 6. Costs

- (1) In the course of proceedings under Part 3 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 register, and his address in the register is in Scotland, the sheriff in whose sheriffdom that address is situated;

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- (b) where the person to whose registration the proceedings relate is not registered in the 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.

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

(1) Rules shall be made enabling a Practice Committee, in the course of proceedings under Part 3 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 27B is to apply as if the case had originally been referred by the Investigating Committee to that other Practice Committee.”.

### SCHEDULE 3

Article 30(2)

#### Insertion of Schedule 4A

After Schedule 4 insert—

### “SCHEDULE 4A

Section 36J

#### Registration appeals: dental care professionals register

##### **1. In this Schedule—**

“appealable registration decision” shall be construed in accordance with paragraphs 2 and 3(2);

“person concerned” means a person notified under paragraph 3(1) of an appealable registration decision made in respect of him, or, as the case may be, an applicant in respect of whom an appealable registration decision is treated as having been made by virtue of paragraph 3(2); and

“the requisite period”, in relation to a decision of a kind specified in paragraph 2(1)(a), (c), (e), (f) or (h), means the period of four months beginning with the date when the registrar is first in possession of sufficient information to make the decision.

**2.—(1)** The following decisions are appealable registration decisions for the purposes of this Schedule—

- (a) a decision not to register a person’s name under a particular title in the dental care professionals register under section 36C (qualifications for registration) on the grounds that any of the requirements of that section are not met;
- (b) a decision under section 36H(3) (erasure of names of those who have ceased to practise) to erase a person’s name from the dental care professionals register;

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- (c) a decision under section 36H(4) not to restore a person's name to the dental care professionals register under a particular title;
  - (d) a decision under section 36I(1) (erasure on grounds of error) to erase an entry relating to a person from the dental care professionals register;
  - (e) a decision under section 36L(9)(a), (b) or (c) (insurance) not to register a person's name in the dental care professionals register, not to restore his name to that register, or to erase his name from registration in that register, under a particular title;
  - (f) a decision under section 36L(10) not to restore a person's name to the dental care professionals register under a particular title;
  - (g) a decision under section 36Z1(2) (professional training and development requirements) to erase a person's name from registration in the dental care professionals register under a particular title; and
  - (h) a decision under section 36Z1(3) not to restore a person's name to the dental care professionals register under a particular title.
- (2) A decision is not an appealable registration decision for the purposes of this Schedule if it is a decision taken by reason only that the person failed to—
- (a) pay any fee prescribed by regulations made under section 36F; or
  - (b) make an application as required under this Act or any rules made under it.

#### **Notification of appealable registration decisions**

- 3.—(1) Where an appealable registration decision is made in respect of a person, the registrar shall forthwith serve on that person written notification of—
- (a) the decision;
  - (b) the reasons for the decision; and
  - (c) that person's right to appeal under paragraph 4.

(2) Where an applicant has not been served with notification of a decision in respect of an application for registration or restoration of a name mentioned in paragraphs (a), (c), (e), (f) or (h) of paragraph 2(1) within the requisite period, that omission shall be treated as a decision not to register or, as the case may be, restore the applicant's name, which is an appealable registration decision for the purposes of this Schedule.

#### **Appeals from an appealable registration decision**

- 4.—(1) A person concerned may appeal to the Registration Appeals Committee against—
- (a) the appealable registration decision made in respect of him of which he was notified under paragraph 3(1); or
  - (b) the appealable registration decision treated as having been made in respect of him by virtue of paragraph 3(2).
- (2) An appeal under sub-paragraph (1) shall be made by giving notice of appeal to the registrar.
- (3) Notice of appeal in a case within sub-paragraph (1)(a) must be given before the end of the period of 28 days beginning with the date on which notification of the decision was served under paragraph 3(1), subject to any extension of time under paragraph 5.
- (4) Notice of appeal in a case within sub-paragraph (1)(b) must be given before the end of the period of 28 days following the end of the requisite period.



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(5) In the case of an appealable registration decision which is a decision to erase a person's name from registration in the dental care professionals register under a particular title, where—

- (a) no appeal under this paragraph is brought against the decision within the period of time specified in sub-paragraph (3), or
- (b) an appeal under this paragraph is brought but is withdrawn or struck out for want of prosecution,

that decision shall take effect on the expiry of that period or, as the case may be, on the withdrawal or striking out of that appeal.

(6) For the purposes of considering an appeal under this paragraph, the Registration Appeals Committee may make such inquiries as they consider appropriate.

(7) Schedule 4B (proceedings before the Investigating Committee, the Interim Orders Committee and Practice Committees: dental care professionals) applies to proceedings under this Schedule before the Registration Appeals Committee with the following modifications—

- (a) in paragraph 1—
  - (i) omit sub-paragraph (1), and
  - (ii) in sub-paragraph (2)(b) for “the Council” substitute “the registrar”;
- (b) references to a Committee shall be read as references to the Registration Appeals Committee;
- (c) in paragraph 2—
  - (i) omit sub-paragraph (1)(b), and
  - (ii) in sub-paragraph (2)(g), omit “the person (if any) making the allegation and”;
- (d) omit paragraph 7.

(8) In disposing of an appeal under this paragraph, the Registration Appeals Committee may determine to—

- (a) dismiss the appeal;
- (b) allow the appeal and quash the decision appealed against;
- (c) substitute for the decision appealed against any other decision which could have been made by the registrar; or
- (d) remit the case to the registrar to dispose of in accordance with the directions of the Registration Appeals Committee.

(9) In the case of an appealable registration decision which is a decision to erase a person's name from registration in the dental care professionals register under a particular title, where the Registration Appeals Committee dispose of an appeal brought under this paragraph by making a determination under sub-paragraph (8)(a), (c) or (d), that decision shall take effect—

- (a) where no appeal under paragraph 6 is brought against the determination of the Registration Appeals Committee within the period of time specified in paragraph 6(1), on the expiry of that period;
- (b) where an appeal under paragraph 6 is brought but is withdrawn or struck out for want of prosecution, on the withdrawal or striking out of that appeal; or
- (c) where an appeal under paragraph 6 is brought and dismissed under paragraph 6(2)(a), on the dismissal of that appeal.

(10) Where the Registration Appeals Committee make a determination on an appeal under this Schedule, they shall, as soon as reasonably practicable—

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- (a) inform the registrar of, and serve on the person concerned notification of, the Committee's determination on the appeal and of the reasons for that determination; and
- (b) if that determination is not a determination under sub-paragraph (8)(b), serve on the person concerned notification of his right of appeal under paragraph 6.

#### **Extension of time for appealing**

##### **5. Where—**

- (a) any notification of a decision required under paragraph 3(1) to be served on a person is served by sending it to him by post, and
- (b) the registrar is satisfied, on the application of that person, that he did not receive the notification within the period of 14 days beginning with the day on which the decision was made,

the registrar may, if he thinks fit, by authorisation in writing extend the time for giving notice of appeal under paragraph 4(3).

#### **Appeals from the Registration Appeals Committee**

##### **6. Where—**

- (a) the Registration Appeals Committee determine an appeal under paragraph 4, and
- (b) they do not determine under paragraph 4(8)(b) to allow the appeal and quash the decision appealed against,

the person concerned may, before the end of the period of 28 days beginning with the date on which notification of the determination was served on him under paragraph 4(10), appeal against the determination to the relevant court.

(2) On an appeal under this paragraph from the Registration Appeals Committee, the relevant court may—

- (a) dismiss the appeal,
- (b) allow the appeal and quash the determination appealed against,
- (c) substitute for the determination appealed against any other determination which could have been made by the Registration Appeals Committee, or
- (d) remit the case to the Registration Appeals Committee to dispose of in accordance with the directions of the relevant court,

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

(3) In this paragraph “the relevant court” means—

- (a) where the person concerned 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 concerned 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.”

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."

## SCHEDULE 5

Article 41(2)

### Insertion of Schedule 4C

After Schedule 4B insert—

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“SCHEDULE 4C

Section 49A

Advisers

**Legal advisers**

1.—(1) The Council shall appoint persons to be legal advisers.

(2) Legal advisers shall have the general function of giving advice to—

- (a) the registrar,
- (b) the Council,
- (c) the Investigating Committee,
- (d) the Professional Conduct Committee,
- (e) the Professional Performance Committee,
- (f) the Interim Orders Committee,
- (g) the Health Committee, and
- (h) the Registration Appeals Committee,

on questions of law arising in connection with any matter under consideration by a person or body listed in this sub-paragraph.

(3) No person who has been appointed as the registrar or appointed to the Council or a Committee listed in sub-paragraph (2) shall be appointed a legal adviser.

(4) Legal advisers shall have such other functions as may be conferred on them by rules, and in particular provision may be made, in relation to any proceedings—

- (a) requiring a legal adviser, when advising the Council or any of their committees, to do so in the presence of every party, or person representing a party, to the proceedings who appears at the proceedings, or, where advice is given in private, requiring every such party or person to be notified of the advice given by a legal adviser; or
- (b) requiring every party, or person representing a party, to the proceedings to be notified in any case where a legal adviser’s advice is not accepted by the person or body in receipt of the advice.

(5) To be qualified for appointment as a legal adviser under this paragraph, a person must—

- (a) have a ten year general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990;
- (b) be an advocate or solicitor in Scotland of at least ten years' standing; or
- (c) be a member of the Bar of Northern Ireland or solicitor of the Supreme Court of Northern Ireland of at least ten years' standing.

(6) The Council may pay such fees, allowances or expenses to persons appointed as legal advisers as the Council may determine.

**Medical advisers**

2.—(1) The Council may appoint registered medical practitioners to be medical advisers.

(2) Medical advisers shall have the general function of giving advice to—

- (a) the registrar,
- (b) the Council,
- (c) the Investigating Committee,

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- (d) the Professional Conduct Committee,
- (e) the Professional Performance Committee,
- (f) the Interim Orders Committee,
- (g) the Health Committee, and
- (h) the Registration Appeals Committee,

on matters within their professional competence arising in connection with any matter under consideration by a person or body listed in this sub-paragraph.

(3) No person who has been appointed as the registrar or appointed to the Council or a Committee listed in sub-paragraph (2) shall be appointed a medical adviser.

(4) Medical advisers shall also have such other functions as may be conferred on them by rules.

(5) The Council may pay such fees, allowances or expenses to persons appointed as medical advisers as the Council may determine.

### **Professional advisers**

3.—(1) The Council may appoint persons registered in either the dentists register or the dental care professionals register to be professional advisers.

(2) Professional advisers shall have the general function of giving advice to—

- (a) the registrar,
- (b) the Council,
- (c) the Investigating Committee,
- (d) the Professional Conduct Committee,
- (e) the Professional Performance Committee,
- (f) the Interim Orders Committee,
- (g) the Health Committee, and
- (h) the Registration Appeals Committee,

on matters within their professional competence arising in connection with any matter under consideration by a person or body listed in this sub-paragraph.

(3) No person who has been appointed as the registrar or appointed to the Council or a Committee listed in sub-paragraph (2) shall be appointed a professional adviser.

(4) Professional advisers shall also have such other functions as may be conferred on them by rules.

(5) The Council may pay such fees, allowances or expenses to persons appointed as professional advisers as the Council may determine.”.

SCHEDULE 6

Article 49

Minor and consequential amendments

PART 1

Primary Legislation

**The National Health Service Act 1977**

- 1.—(1) The National Health Service Act 1977(1) is amended as follows.
- (2) In section 35(2) (arrangements for general dental services)—
- (a) for subsection (3) substitute—
- “(3) Subsection (3B) applies where the registration of a dental practitioner in the dentists register is suspended—
- (a) by an interim suspension order under section 32 of the Dentists Act 1984 (interim orders); or
- (b) by a direction or order of the Health Committee, the Professional Performance Committee or the Professional Conduct Committee of the General Dental Council under any of sections 27B, 27C or 30 of that Act following a relevant determination that that practitioner’s fitness to practise is impaired.
- (3A) For the purposes of subsection (3), a “relevant determination” that a practitioner’s fitness to practise is impaired is a determination which is based solely on—
- (a) the ground mentioned in paragraph (b) of subsection (2) of section 27 of the Dentists Act 1984 (deficient professional performance);
- (b) the ground mentioned in paragraph (c) of that subsection (adverse physical or mental health); or
- (c) both those grounds.
- (3B) Where this subsection applies, the suspension shall not terminate any arrangements made with the dental practitioner for the provision of general dental services, but he shall not provide such services in person during the suspension.”; and
- (b) in subsection (4), for “is so suspended” substitute “is suspended as described in subsection (3)”.
- (3) In section 41(3) (arrangements for pharmaceutical services), for paragraph (c) of subsection (3) substitute—
- “(c) persons who are registered in the dental care professionals register established under section 36B of the Dentists Act 1984;”.
- (4) In Schedule 5 (Health Authorities and Special Health Authorities), for sub-paragraph (2A) of paragraph 10(4) substitute—

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(1) 1977 c. 49.

(2) Section 35(3) and (4) were inserted by the Health and Social Services and Social Security Adjudications Act 1983 (c. 41), section 15(a), and amended by the Dentists Act 1984, section 54(1) and Schedule 5, paragraph 8; and section 35 is prospectively repealed by the Health and Social Care (Community Health and Standards) Act 2003 (c. 43), section 172(2).

(3) Section 41 was substituted by the Health and Social Care Act 2001 (c. 15), section 42.

(4) Sub-paragraph (2A) of paragraph 10 was inserted by the Health and Social Services and Social Security Adjudications Act 1983 (c. 41), section 15(b), and amended by the Dentists Act 1984, section 54(1) and Schedule 5, paragraphs 8 and 10.



“(2A) Sub-paragraph (2C) applies where the registration of a dental practitioner in the dentists register is suspended—

- (a) by an interim suspension order under section 32 of the Dentists Act 1984 (interim orders); or
- (b) by a direction or order of the Health Committee, the Professional Performance Committee or the Professional Conduct Committee of the General Dental Council under any of sections 27B, 27C or 30 of that Act following a relevant determination that that practitioner’s fitness to practise is impaired.

(2B) For the purposes of sub-paragraph (2A), a “relevant determination” that a practitioner’s fitness to practise is impaired is a determination which is based solely on—

- (a) the ground mentioned in paragraph (b) of subsection (2) of section 27 of the Dentists Act 1984 (deficient professional performance);
- (b) the ground mentioned in paragraph (c) of that subsection (adverse physical or mental health); or
- (c) both those grounds.

(2C) Where this sub-paragraph applies, the suspension shall not terminate any contract of employment made between the dental practitioner and an authority, but a person whose registration is so suspended shall not perform any duties under a contract made between him and an authority which involves the practice of dentistry within the meaning of the Dentists Act 1984.”

(5) In Schedule 5A(5) (Primary Care Trusts), for paragraph 10A(6) substitute—

“**10A.**—(1) Sub-paragraph (3) applies where the registration of a dental practitioner in the dentists register is suspended—

- (a) by an interim suspension order under section 32 of the Dentists Act 1984 (interim orders); or
- (b) by a direction or order of the Health Committee, the Professional Performance Committee or the Professional Conduct Committee of the General Dental Council under any of sections 27B, 27C or 30 of that Act following a relevant determination that that practitioner’s fitness to practise is impaired.

(2) For the purposes of sub-paragraph (1), a “relevant determination” that a practitioner’s fitness to practise is impaired is a determination which is based solely on—

- (a) the ground mentioned in paragraph (b) of subsection (2) of section 27 of the Dentists Act 1984 (deficient professional performance);
- (b) the ground mentioned in paragraph (c) of that subsection (adverse physical or mental health); or
- (c) both those grounds.

(3) Where this sub-paragraph applies, the suspension shall not terminate any contract of employment made between the dental practitioner and a Primary Care Trust, but a person whose registration is so suspended shall not perform any duties under a contract made between him and a Primary Care Trust which involves the practice of dentistry within the meaning of the Dentists Act 1984.”

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(5) Schedule 5A was inserted by the Health Act 1999 (c. 8), section 2(2) and Schedule 1.

(6) Paragraph 10A was inserted by the National Health Service Reform and Health Care Professions Act 2002 (c. 17), section 2(5) and Schedule 2, Part I, paragraph 37.

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## The National Health Service (Scotland) Act 1978

2.—(1) The National Health Service (Scotland) Act 1978(7) is amended as follows.

(2) In section 25(8) (arrangements for provision of general dental services)—

(a) for subsection (4) substitute—

“(4) Subsection (4B) applies where the registration of a dental practitioner in the dentists register is suspended—

(a) by an interim suspension order under section 32 of the Dentists Act 1984 (interim orders); or

(b) by a direction or order of the Health Committee, the Professional Performance Committee or the Professional Conduct Committee of the General Dental Council under any of sections 27B, 27C or 30 of that Act following a relevant determination that that practitioner’s fitness to practise is impaired.

(4A) For the purposes of subsection (4), a “relevant determination” that a practitioner’s fitness to practise is impaired is a determination which is based solely on—

(a) the ground mentioned in paragraph (b) of subsection (2) of section 27 of the Dentists Act 1984 (deficient professional performance);

(b) the ground mentioned in paragraph (c) of that subsection (adverse physical or mental health); or

(c) both those grounds.

(4B) Where this subsection applies, the suspension shall not terminate any arrangements made with the dental practitioner for the provision of general dental services, but he shall not provide such services in person during the suspension.”; and

(b) in subsection (5), for “is so suspended” substitute “is suspended as described in subsection (4)”.

(3) In section 27(9) (arrangements for provision of pharmaceutical services), for paragraph (c) of subsection (1A) substitute—

“(c) persons who are registered in the dental care professionals register established under section 36B of the Dentists Act 1984;”.

(4) In Schedule 1 (Health Boards), for paragraph 6A(10) substitute—

“6A.—(1) Sub-paragraph (3) applies where the registration of a dental practitioner in the dentists register is suspended—

(a) by an interim suspension order under section 32 of the Dentists Act 1984 (interim orders); or

(b) by a direction or order of the Health Committee, the Professional Performance Committee or the Professional Conduct Committee of the General Dental Council under any of sections 27B, 27C or 30 of that Act following a relevant determination that that practitioner’s fitness to practise is impaired.

(2) For the purposes of sub-paragraph (1), a “relevant determination” that a practitioner’s fitness to practise is impaired is a determination which is based solely on—

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(7) 1978 c. 29.

(8) Section 25(4) and (5) were inserted by the Health and Social Services and Social Security Adjudications Act 1983 (c. 41), section 16(a), and amended by the Dentists Act 1984, section 54(1) and Schedule 5, paragraph 12.

(9) Section 27 was amended by the Health and Social Care Act 2001 (c. 15), section 44.

(10) Paragraph 6A was inserted by the Health and Social Services and Social Security Adjudications Act 1983 (c. 41), section 16(b), and amended by the Dentists Act 1984, section 54(1) and Schedule 5, paragraphs 12 and 14.

- (a) the ground mentioned in paragraph (b) of subsection (2) of section 27 of the Dentists Act 1984 (deficient professional performance);
- (b) the ground mentioned in paragraph (c) of that subsection (adverse physical or mental health); or
- (c) both those grounds.

(3) Where this sub-paragraph applies, notwithstanding paragraph 7 of this Schedule, the suspension shall not terminate any contract of employment made between the dental practitioner and a Health Board, but a person whose registration is so suspended shall not perform any duties under a contract made between him and a Health Board which involves the practice of dentistry within the meaning of the Dentists Act 1984.”.

#### **The Value Added Tax Act 1994**

3. In Schedule 9 to the Value Added Tax Act 1994(11) (exemptions), in Group 7 (health and welfare) for item 2(b) substitute—

- “(b) a person registered in the dental care professionals register established under section 36B of the Dentists Act 1984; or”.

#### **The National Health Service Reform and Health Care Professions Act 2002**

4. In section 29 of the National Health Service Reform and Health Care Professions Act 2002(12) (reference of disciplinary cases by Council to court), for paragraph (e) of subsection (1) substitute—

- “(e) a direction by the Professional Conduct Committee, the Professional Performance Committee or the Health Committee of the General Dental Council under any of sections 27B, 27C, 36P or 36Q of the Dentists Act 1984 following a determination that a person’s fitness to practise as a dentist or as a member of a profession complementary to dentistry, or class of members of such a profession, is impaired (other than a determination based solely on the ground mentioned in section 27(2)(c) or 36N(2)(c) of that Act (adverse physical or mental health)).”.

#### **The Income Tax (Earnings and Pensions) Act 2003**

5. In section 343(2) of the Income Tax (Earnings and Pensions) Act 2003(13) (deduction for professional membership fees), for paragraph 1(c) of the Table substitute—

- “(c) the dental care professionals register.”.

## **PART 2**

### **Secondary legislation**

#### **The Health and Personal Social Services (Northern Ireland) Order 1972**

6.—(1) The Health and Personal Social Services (Northern Ireland) Order 1972(14) is amended as follows.

- (2) In article 61 (arrangements for general dental services), for paragraph (2B)(15) substitute—

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(11) 1994 c. 23.

(12) 2002 c. 17. Section 29(1) was amended by S.I.2002/3135 and 2004/1771 and prospectively amended by S.I. 2005/848.

(13) 2003 c. 1; the Table was amended by S.I. 2003/1652, 2004/1360 and 2005/1091.

(14) S.I. 1972/1265 (N.I. 14).

(15) Paragraph (2B) was inserted by S.I. 1986/2229 (N.I.24).

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“(2B) Paragraph (2BB) applies where the registration of a dental practitioner in the dentists register is suspended—

- (a) by an interim suspension order under section 32 of the Dentists Act 1984 (interim orders); or
- (b) by a direction or order of the Health Committee, the Professional Performance Committee or the Professional Conduct Committee of the General Dental Council under any of sections 27B, 27C or 30 of that Act following a relevant determination that that practitioner’s fitness to practise is impaired.

(2BA) For the purposes of paragraph (2B), a “relevant determination” that a practitioner’s fitness to practise is impaired is a determination which is based solely on—

- (a) the ground mentioned in paragraph (b) of subsection (2) of section 27 of the Dentists Act 1984 (deficient professional performance);
- (b) the ground mentioned in paragraph (c) of that subsection (adverse physical or mental health); or
- (c) both those grounds.

(2BB) Where this paragraph applies, the suspension shall not terminate any arrangements made with the dental practitioner for the provision of general dental services, but he shall not provide such services in person during the suspension.”.

(3) In Schedule 1 (Health and Social Services Boards), for sub-paragraph (2C) of paragraph 12(16) (officers) substitute—

“(2C) Sub-paragraph (2E) applies where the registration of a dental practitioner in the dentists register is suspended—

- (a) by an interim suspension order under section 32 of the Dentists Act 1984 (interim orders); or
- (b) by a direction or order of the Health Committee, the Professional Performance Committee or the Professional Conduct Committee of the General Dental Council under any of sections 27B, 27C or 30 of that Act following a relevant determination that that practitioner’s fitness to practise is impaired.

(2D) For the purposes of sub-paragraph (2C), a “relevant determination” that a practitioner’s fitness to practise is impaired is a determination which is based solely on—

- (a) the ground mentioned in paragraph (b) of subsection (2) of section 27 of the Dentists Act 1984 (deficient professional performance);
- (b) the ground mentioned in paragraph (c) of that subsection (adverse physical or mental health); or
- (c) both those grounds.

(2E) Where this sub-paragraph applies, the suspension shall not terminate any contract of employment made between the dental practitioner and a Health and Social Services Board, but a person whose registration is so suspended shall not perform any duties under a contract made between him and a Health and Social Services Board which involves the practice of dentistry within the meaning of the Dentists Act 1984.”.

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(16) Sub-paragraph (2C) of paragraph 12 was inserted by S.I. [1986/2229 \(N.I. 24\)](#).

### **The Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975**

7. In the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975(17), in Part I of Schedule 1 (excepted professions), in paragraph 4, for “dental auxiliary” substitute “dental therapist”.

### **The National Health Service (General Dental Services) Regulations 1992**

8.—(1) The National Health Service (General Dental Services) Regulations 1992(18) are amended as follows.

(2) In regulation 2(1) (interpretation), after the definition of “continuing care arrangement” insert—

““dental care professional” means a person who is registered in the dental care professionals register established under section 36B of the Dentists Act 1984 (c. 24);”.

(3) In regulation 4 (dental list), in paragraph (2)(b)(iii), for “dental auxiliary whose work he directs” substitute “dental care professional who assists him in providing general dental services.”.

(4) In Part V (payments in consequence of suspension)—

(a) in regulation 23(a) (interpretation)—

(i) for the definition of “immediate suspension” substitute—

““immediate suspension” means suspension by virtue of an order under section 30(1) of the Dentists Act 1984 except suspension which is terminated by the court under section 30(7) of that Act;”, and

(ii) in the definition of “interim suspension order”, for “section 32” substitute “section 32(4)(a)”;

(b) for regulation 23(b) substitute—

“(b) a reference to a direction or order for health or performance related suspension means a direction or order of the Health Committee, the Professional Performance Committee or the Professional Conduct Committee of the General Dental Council for the suspension of a person’s registration under any of sections 27B, 27C or 30 of the Dentists Act 1984 following a relevant determination that that person’s fitness to practise is impaired; and for the purposes of this paragraph, a “relevant determination” that a person’s fitness to practise is impaired is a determination which is based solely on—

(i) the ground mentioned in paragraph (b) of subsection (2) of section 27 of the Dentists Act 1984 (deficient professional performance),

(ii) the ground mentioned in paragraph (c) of that subsection (adverse physical or mental health), or

(iii) both those grounds.”;

(c) in regulation 24 (entitlement to payments), in paragraphs (1), (2)(a) and (3), for “of the Health Committee” substitute “for health or performance related suspension”; and

(d) in regulation 26 (amount and time of payments), in paragraphs (1)(a) and (4), for “of the Health Committee” substitute “for health or performance related suspension”.

(5) In Part IV of Schedule 1 (additional terms of service for all dentists)—

(a) for paragraph 29 substitute—

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(17) S.I. 1975/1023.

(18) S.I. 1992/661; the relevant amending instruments are S.I. 1998/1648, 2001/289, 2133, 3963, 4000 and 2002/2469.

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### **“Dental care professionals**

**29.** A dentist may in the provision of general dental services arrange for care and treatment to be given by dental care professionals, and shall ensure that such care and treatment is properly completed.”; and

- (b) in paragraph 31D (professional indemnity), in sub-paragraph (a), for “dental auxiliary whose work he directs” substitute “dental care professional who assists him in providing general dental services”.

(6) In Part V of Schedule 1 (additional terms of service for dentists other than salaried dentists), for paragraph 38 substitute—

### **“Dentists suspended under section 27B, 27C, 30 or 32 of the Dentists Act 1984**

**38.**—(1) Sub-paragraph (3) applies to a dentist whose registration in the register kept under section 14 of the Dentists Act 1984 is suspended—

- (a) by an interim suspension order under section 32 of that Act; or
- (b) by a direction or order of the Health Committee, the Professional Performance Committee or the Professional Conduct Committee of the General Dental Council under any of sections 27B, 27C or 30 of that Act following a relevant determination that that dentist’s fitness to practise is impaired.

(2) For the purposes of sub-paragraph (1), a “relevant determination” that a dentist’s fitness to practise is impaired is a determination which is based solely on—

- (a) the ground mentioned in paragraph (b) of subsection (2) of section 27 of the Dentists Act 1984 (deficient professional performance);
- (b) the ground mentioned in paragraph (c) of that subsection (adverse physical or mental health); or
- (c) both those grounds.

(3) A dentist to whom this sub-paragraph applies shall secure that any dentist appointed by him to provide general dental services on his behalf during the period of the suspension of his registration shall be a dentist whose name is included in the dental list.”.

(7) In Part I of Schedule 2 (information and undertaking to be included in an application for inclusion in the dental list), in paragraph 15, for “dental auxiliary whose work the dentist intends to direct” substitute “dental care professional who the dentist intends will assist him in providing general dental services”.

### **The National Health Service Pension Scheme Regulations 1995**

**9.** In the National Health Service Pension Scheme Regulations 1995(19), in regulation A2 (interpretation)—

- (a) in the definition of “dental hygienist”, for “included in the roll of dental hygienists referred to in regulation 21 of the Dental Auxiliaries Regulations 1986” substitute “registered in the dental care professionals register established under section 36B of the Dentists Act 1984 under the title of dental hygienist”; and
- (b) in the definition of “dental therapist”, for “included in the roll of dental therapists referred to in regulation 25 of the Dental Auxiliaries Regulations 1986” substitute “registered in

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(19) S.I. 1995/300; the relevant amending instrument is S.I. 1998/2216.

the dental care professionals register established under section 36B of the Dentists Act 1984 under the title of dental therapist”.

### **The National Health Service Superannuation Scheme (Scotland) Regulations 1995**

**10.** In the National Health Service Superannuation Scheme (Scotland) Regulations 1995<sup>(20)</sup>, in regulation A2 (interpretation), in paragraph (4)—

- (a) in the entry in the column containing the definition of “dental hygienist”, for “included in the roll of dental hygienists referred to in regulation 21 of the Dental Auxiliaries Regulations 1986” substitute “registered in the dental care professionals register established under section 36B of the Dentists Act 1984 under the title of dental hygienist”; and
- (b) in the entry in the column containing the definition of “dental therapist”, for “included in the roll of dental therapists referred to in regulation 25 of the Dental Auxiliaries Regulations 1986” substitute “registered in the dental care professionals register established under section 36B of the Dentists Act 1984 under the title of dental therapist”.

### **The National Health Service (Injury Benefits) Regulations 1995**

**11.** In the National Health Service (Injury Benefits) Regulations 1995<sup>(21)</sup>, in regulation 2(1) (interpretation)—

- (a) in the definition of “dental hygienist”, for “included in the roll of dental hygienists referred to in regulation 21 of the Dental Auxiliaries Regulations 1986” substitute “registered in the dental care professionals register established under section 36B of the Dentists Act 1984 under the title of dental hygienist”; and
- (b) in the definition of “dental therapist”, for “included in the roll of dental therapists referred to in regulation 25 of the Dental Auxiliaries Regulations 1986” substitute “registered in the dental care professionals register established under section 36B of the Dentists Act 1984 under the title of dental therapist”.

### **The National Health Service (General Dental Services) (Scotland) Regulations 1996**

**12.**—(1) The National Health Service (General Dental Services) (Scotland) Regulations 1996<sup>(22)</sup> are amended as follows.

(2) In regulation 2(1) (interpretation), after the definition of “continuing care arrangement” insert—

““dental care professional” means a person who is registered in the dental care professionals register established under section 36B of the Dentists Act 1984 (c. 24);”.

(3) In regulation 4 (dental list), in paragraph (2)(b)(iii), for “dental auxiliary whose work he directs.” substitute “dental care professional who assists him in providing general dental services.”.

(4) In Part V (payment in consequence of suspension)—

(a) in regulation 26(a) (interpretation)—

- (i) omit the definition of “Health Committee”,
- (ii) for the definition of “immediate suspension” substitute—

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<sup>(20)</sup> S.I. 1995/365.

<sup>(21)</sup> S.I. 1995/866; the relevant amending instrument is S.I. 1998/2217.

<sup>(22)</sup> S.I. 1996/177; the relevant amending instruments are S.I. 1998/1663, S.S.I. 1999/51, S.I. 1999/724, S.S.I. 2000/188 and S.S.I. 2004/37.

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““immediate suspension” means suspension by virtue of an order under section 30(1) of the Dentists Act 1984 except such a suspension which is terminated by the court under section 30(7) of that Act;”, and

(iii) in the definition of “interim suspension order”, for “section 32” substitute “section 32(4)(a)”;

(b) for regulation 26(b) substitute—

“(b) a reference to a direction or order for health or performance related suspension means a direction or order of the Health Committee, the Professional Performance Committee or the Professional Conduct Committee of the General Dental Council for the suspension of a person’s registration under any of sections 27B, 27C or 30 of the Dentists Act 1984 following a relevant determination that that person’s fitness to practise is impaired; and for the purposes of this paragraph, a “relevant determination” that a person’s fitness to practise is impaired is a determination which is based solely on—

(i) the ground mentioned in paragraph (b) of subsection (2) of section 27 of the Dentists Act 1984 (deficient professional performance),

(ii) the ground mentioned in paragraph (c) of that subsection (adverse physical or mental health), or

(iii) both those grounds.”;

(c) in regulation 27 (entitlement to payment), in paragraphs (1), (2)(a) and (3), for “of the Health Committee” substitute “for health or performance related suspension”; and

(d) in regulation 29 (amounts and times of payment), in paragraphs (1)(a) and (4), for “of the Health Committee” substitute “for health or performance related suspension”.

(5) In Part IV of Schedule 1 (additional terms of service for all dentists)—

(a) for paragraph 29 substitute—

#### **“Dental care professionals**

**29.** A dentist may in the provision of general dental services arrange for care and treatment to be given by dental care professionals, and shall ensure that such care and treatment is properly completed.”; and

(b) in paragraph 31D (professional indemnity), in sub-paragraph (a), for “dental auxiliary whose work he directs” substitute “dental care professional who assists him in providing general dental services”.

(6) In Part V of Schedule 1 (additional terms of service for dentists other than salaried dentists), for paragraph 38 substitute—

#### **“Dentists suspended under section 27B, 27C, 30 or 32 of the Dentists Act 1984**

**38.**—(1) Sub-paragraph (3) applies to a dentist whose registration in the register kept under section 14 of the Dentists Act 1984 is suspended—

(a) by an interim suspension order under section 32 of that Act; or

(b) by a direction or order of the Health Committee, the Professional Performance Committee or the Professional Conduct Committee of the General Dental Council under any of sections 27B, 27C or 30 of that Act following a relevant determination that that dentist’s fitness to practise is impaired.

(2) For the purposes of sub-paragraph (1), a “relevant determination” that a dentist’s fitness to practise is impaired is a determination which is based solely on—



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- (a) the ground mentioned in paragraph (b) of subsection (2) of section 27 of the Dentists Act 1984 (deficient professional performance);
- (b) the ground mentioned in paragraph (c) of that subsection (adverse physical or mental health); or
- (c) both those grounds.

(3) A dentist to whom this sub-paragraph applies shall secure that any dentist appointed by him to provide general dental services on his behalf during the period of the suspension of his registration shall be a dentist whose name is included in Part A of the dental list.”.

(7) In Part I of Schedule 2 (information and undertaking to be included in an application for inclusion in Part A of the dental list), in paragraph 16, for “dental auxiliary whose work the dentist intends to direct” substitute “dental care professional who the dentist intends will assist him in providing general dental services”.

### **The National Health Service (Scotland) (Injury Benefits) Regulations 1998**

**13.** In the National Health Service (Scotland) (Injury Benefits) Regulations 1998(23), in regulation 2(1) (interpretation)—

- (a) in the definition of “dental hygienist”, for “included in the roll of dental hygienists referred to in regulation 21 of the Dental Auxiliaries Regulations 1986” substitute “registered in the dental care professionals register established under section 36B of the Dentists Act 1984 under the title of dental hygienist”; and
- (b) in the definition of “dental therapist”, for “included in the roll of dental therapists referred to in regulation 25 of the Dental Auxiliaries Regulations 1986” substitute “registered in the dental care professionals register established under section 36B of the Dentists Act 1984 under the title of dental therapist”.

### **The Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2003**

**14.** In the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2003(24), in Part 1 of Schedule 4 (excepted professions), in paragraph 4, for “dental auxiliary” substitute “dental therapist”.

### **The National Health Service (General Dental Services Supplementary List) and (General Dental Services) Amendment Regulations 2003**

**15.—(1)** The National Health Service (General Dental Services Supplementary List) and (General Dental Services) Amendment Regulations 2003(25) are amended as follows.

(2) In regulation 2(1) (interpretation)—

- (a) in the definition of “Health Committee”, for “section 2(4)” substitute “section 2(1)”; and
- (b) after the definition of “Health Committee” insert—

““Interim Orders Committee” means the Interim Orders Committee of the General Dental Council constituted under section 2(2) of the Dentists Act;”;

- (c) omit the definition of “Preliminary Proceedings Committee”; and
- (d) in the definition of “Professional Conduct Committee”, for “section 2(2)” substitute “section 2(1)”; and

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(23) S.I. 1998/1594.

(24) S.S.I. 2003/231.

(25) S.I. 2003/250.

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- (e) after the definition of “Professional Conduct Committee” insert—
- ““Professional Performance Committee” means the Professional Performance Committee of the General Dental Council constituted under section 2(2) of the Dentists Act;”.
- (3) In regulation 10 (removal from supplementary list)—
- (a) for paragraph (1)(f) substitute—
- “(f) is the subject of—
- (i) a direction for erasure from the Dentists Register given by the Professional Conduct Committee, the Professional Performance Committee or the Health Committee under section 27B(6)(a) of the Dentists Act;
- (ii) a direction or order for suspension of his registration from the Dentists Register given by any of those Committees under any of sections 27B, 27C or 30 of that Act; or
- (iii) an order made by the Professional Conduct Committee, the Professional Performance Committee, the Health Committee or the Interim Orders Committee under section 32(4)(a) of that Act (interim suspension order); or”; and
- (b) for paragraph (8) substitute—
- “(8) In calculating the period of twelve months referred to in paragraph (7), the Primary Care Trust shall disregard any period during which—
- (a) the person’s registration as a dental practitioner was suspended by an interim suspension order under section 32 of the Dentists Act;
- (b) his registration as a dental practitioner was suspended by a direction or order of the Health Committee, the Professional Performance Committee or the Professional Conduct Committee under any of sections 27B, 27C or 30 of that Act following a relevant determination that that person’s fitness to practise was impaired; or
- (c) he was suspended under these Regulations.
- (8A) For the purposes of paragraph (8), a “relevant determination” that a person’s fitness to practise was impaired is a determination which was based solely on—
- (a) the ground mentioned in paragraph (b) of subsection (2) of section 27 of the Dentists Act (deficient professional performance);
- (b) the ground mentioned in paragraph (c) of that subsection (adverse physical or mental health); or
- (c) both those grounds.”.

## SCHEDULE 7

Article 50(1)

### Transitional provisions

1. In this Schedule—
- (a) “the Regulations” means the Dental Auxiliaries Regulations 1986(26); and
- (b) a reference to—

(26) S.I. 1986/887, as amended by S.I. 1991/1706, 1996/2988, 1999/3460, 2002/1671 and 3135 and 2003/3105.

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- (i) an old Part or old section is to that Part or section as it had effect immediately before its amendment or substitution by this Order; and
- (ii) a new Part or new section is to that Part or section as amended or substituted or re-enacted (with or without modification) by this Order.

**Fitness to practise proceedings before the Preliminary Proceedings Committee, the Professional Conduct Committee and the Health Committee**

2. The Preliminary Proceedings Committee established under the old section 2 shall continue in being after the date on which article 4(2) of this Order comes into force for the purpose of exercising their functions under this Schedule.

3. The old sections 27 to 34 and the old Schedule 3, and any rules made under the old Schedule 3, shall continue to apply for the purpose of the exercise of functions under this Schedule by the Preliminary Proceedings Committee, the Professional Conduct Committee and the Health Committee.

4. Any case which is pending before the Preliminary Proceedings Committee under the old section 27 before the date on which article 18 of this Order comes into force shall continue to be dealt with by the Preliminary Proceedings Committee under the old section 27.

5. Any case which has been referred to the Professional Conduct Committee under the old section 27, whether before or after the date on which article 18 of this Order comes into force, shall continue to be dealt with by the Professional Conduct Committee under the old section 27.

6. Any case which is pending before the Health Committee under the old section 28 before the date on which article 18 of this Order comes into force shall continue to be dealt with by the Health Committee under the old section 28.

7. Except in a case to which paragraph 4, 5 or 6 applies, where an allegation concerning the fitness to practise of a registered dentist has been made before the date on which article 18 of this Order comes into force, the registrar shall refer that allegation to the Investigating Committee under the new section 27.

8. Where an allegation concerning the fitness to practise of a registered dentist is made on or after the date on which article 18 of this Order comes into force, but the allegation relates to events which occurred before that date, the registrar shall refer that allegation to the Investigating Committee under the new section 27.

9. Any case where a person has applied before the date on which article 18 comes into force for the restoration of his name to the dentists register under the old section 34 shall continue to be dealt with under the old section 34.

10. Any case which has been referred to the Professional Conduct Committee under the old section 34, whether before or after the date on which article 18 comes into force, shall continue to be dealt with by the Professional Conduct Committee under the old section 34.

11. An appeal which relates to a determination under the old section 27 or a direction under the old section 28 shall be dealt with under the old section 29.

12. Paragraph 13 applies to a case where—

- (a) the Professional Conduct Committee gave a determination under the old section 27 or the Health Committee gave a direction under the old section 28;
- (b) an appeal against that determination or direction was made to the court under the old section 29; and

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- (c) the court remits the case to the Committee which made the determination or direction to dispose of in accordance with the court's directions.

13. Where this paragraph applies, the Committee to which the case is remitted shall deal with the case (even where the new section 27B is in force)—

- (a) under the old section 27 in the case of the Professional Conduct Committee; or
- (b) under the old section 28 in the case of the Health Committee.

#### **Proceedings before the Continuing Professional Development Committee**

14. The Continuing Professional Development Committee established under the old section 2 shall continue in being after the date on which article 4(2) of this Order comes into force for the purpose of exercising their functions under this Schedule.

15. The old sections 34A and 34B and the old Schedule 3A, and any rules made under those provisions, shall continue to apply for the purpose of the exercise of functions under this Schedule by the Continuing Professional Development Committee.

16. An appeal which relates to a decision by the registrar—

- (a) to erase a dentist's name from the register under the old section 34A(2), or
- (b) not to restore a person's name to the register under the old section 34B(3),

shall be dealt with by the Continuing Professional Development Committee under the old section 34A or 34B (as the case may be) and the old Schedule 3A, and any rules made under those provisions.

17. An appeal which relates to a determination by the Continuing Professional Development Committee under paragraph 3 of the old Schedule 3A shall be dealt with under the old section 29.

18. Paragraph 19 applies to a case where—

- (a) the Continuing Professional Development Committee made a determination under paragraph 3 of the old Schedule 3A;
- (b) an appeal against that determination was made to the court under the old section 29; and
- (c) the court remits the case to the Continuing Professional Development Committee to dispose of in accordance with the court's directions.

19. Where this paragraph applies, the Continuing Professional Development Committee shall deal with the case (even where the new sections 34A and 34B are in force) under the old section 34A or 34B (as the case may be) and the old Schedule 3A, and any rules made under those provisions.

#### **Proceedings before the Dental Auxiliaries Committee**

20. The Dental Auxiliaries Committee established under the old section 2 shall continue in being after the date on which article 4(2) of this Order comes into force for the purpose of exercising their functions under this Schedule.

21. The old Part 5 and the Regulations shall continue to apply for the purpose of the exercise of functions under this Schedule by the Dental Auxiliaries Committee.

22. Any case which is pending before the Dental Auxiliaries Committee under Part IV (erasure for misconduct of a name from a roll) or Part V (restoration after erasure for misconduct) of the Regulations before the date on which article 31 of this Order comes into force shall continue to be dealt with by the Dental Auxiliaries Committee under the Regulations.

23. Except in a case to which paragraph 22 applies, where an allegation concerning the fitness to practise of a person enrolled in the roll of dental hygienists or the roll of dental therapists is

made before the date on which article 31 of this Order comes into force, the registrar shall refer that allegation to the Investigating Committee under the new section 36N.

24. Where an allegation concerning the fitness to practise of a registered dental care professional is made on or after the date on which article 31 of this Order comes into force but the allegation relates to events which occurred before that date, the registrar shall refer that allegation to the Investigating Committee under the new section 36N.

25. An appeal which relates to a decision made by the Dental Auxiliaries Committee under regulation 15 of the Regulations shall be dealt with under the old section 29 as applied by the old section 48(3).

26. Paragraph 27 applies to a case where—

- (a) the Dental Auxiliaries Committee gave a decision under regulation 15 of the Regulations;
- (b) an appeal against that decision was made to the court; and
- (c) the court remits the case to the Committee to dispose of in accordance with the court's directions.

27. Where this paragraph applies, the Dental Auxiliaries Committee shall deal with the case under the Regulations, even where article 31 of this Order is in force.

#### **Dental auxiliaries: registration**

28. The first regulations made by the Council under section 36A(2) shall specify dental hygienists and dental therapists and shall specify, in relation to those professions complementary to dentistry or classes of members of such professions, the titles of “dental hygienist” and “dental therapist” respectively.

29.—(1) Subject to sub-paragraph (3), if on the day before this paragraph comes into force—

- (a) a person's name is enrolled in the roll of dental hygienists referred to in regulation 21 of the Regulations and kept in accordance with regulation 2 of the Regulations, he shall be registered in the dental care professionals register under the title of dental hygienist, or
- (b) a person's name is enrolled in the roll of dental therapists referred to in regulation 25 of the Regulations and kept in accordance with regulation 2 of the Regulations, he shall be registered in the dental care professionals register under the title of dental therapist,

with effect from the day this paragraph comes into force.

(2) If on the day this paragraph comes into force there is an outstanding application for a person's name to be enrolled in the roll of dental hygienists or dental therapists (including an application for restoration to that roll), the Council—

- (a) may determine that his name is to be entered in the dental care professionals register under the title of dental hygienist or dental therapist (as the case may be); and
- (b) shall dispose of the matter in such manner as they consider just.

(3) If on the day before this paragraph comes into force a person's name is enrolled in the roll of dental hygienists or dental therapists but he is the subject of proceedings which, but for the closure of the roll of dental hygienists or dental therapists, could have led to his removal from that roll, the Council—

- (a) may determine that his name is not to be entered in the dental care professionals register; and
- (b) shall dispose of the matter in such manner as they consider just.

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**Dental auxiliary members of the Council**

**30.**—(1) This paragraph applies to dental auxiliaries elected to serve as members of the Council whose term of office has not expired on the date on which article 47 of this Order comes into force.

(2) Persons to whom this paragraph applies may continue to serve on the Council for the term of office for which they were elected, notwithstanding the coming into force of article 47 of this Order.

**Orders in Council under section 1 of the Act**

**31.** After the date on which article 3 of this Order comes into force, any Order in Council made under powers contained in the old section 1(2A) shall continue in force as if made under powers contained in the new section 1(2A), until such time as the first order of the Privy Council made under the new section 1(2A) comes into force.