
STATUTORY INSTRUMENTS

2010 No. 231

The Pharmacy Order 2010

PART 7

Proceedings

Rules in respect of proceedings

61.—(1) Subject to the following provisions of this Part, the Council must make such provision as it considers appropriate in rules in connection with the procedure to be followed and rules of evidence to be observed by—

- (a) the Investigating Committee;
- (b) the Fitness to Practise Committee (whether exercising functions under this Order or the Medicines Act 1968⁽¹⁾); and
- (c) the Appeals Committee.

(2) The rules under paragraph (1) in respect of the Fitness to Practise Committee or the Appeals Committee must, and in respect of the Investigating Committee may, include provision—

- (a) for securing that, where a hearing is to be held, notice of when and where the hearing is to be held is given, at such time and in such manner as may be specified in the rules, to any person to whom the proceedings relate;
- (b) for securing that the person concerned (which for the purposes of this article, where appropriate, includes an individual who, or [^Fpartnership or] body corporate which, is subject to disqualification proceedings under Part 4 of the Medicines Act 1968) and the Council are, if they so require, entitled to be heard by the committee—
 - (i) at any hearing, or
 - (ii) in fitness to practise proceedings or on any other occasion when the committee is considering making an interim suspension order or an order for interim conditional entry;
- (c) for allowing the person concerned and the Council to be represented at any hearing, or in fitness to practise proceedings or on any other occasion when the committee is considering making an interim suspension order or an order for interim conditional entry, by—
 - (i) a person with a general qualification (within the meaning of section 71 of the Courts and Legal Services Act 1990⁽²⁾ (offences)),
 - (ii) an advocate in Scotland, or a solicitor with rights of audience to appear in the Court of Session or in the High Court of Justiciary by virtue of section 25A of the Solicitors (Scotland) Act 1980⁽³⁾ (rights of audience in the Court of Session etc.), or

(1) 1968 c.67.

(2) 1990 c.41.

(3) 1980 c.46. Section 25A was inserted by section 24 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c.40) and amended by paragraph 31 of Schedule 4 to the Criminal Procedure and Consequential Provisions (Scotland) Act 1995 (c.40), by S.S.I.1999/1042 and by S.S.I.2001/121.

- (iii) a person of such other description as may be specified in rules, if the rules so allow and the person concerned or the Council so elects;
 - (d) for proceedings before the committee to be held in public, except and to the extent that rules provide otherwise; and
 - (e) in respect of reviewing directions under article 54—
 - (i) which are due to expire,
 - (ii) in circumstances where the committee is considering varying the requirements specified in the direction, or
 - (iii) in the case of a direction for suspension or for conditional entry—
 - (aa) at the request of the Registrar or the person concerned, or
 - (bb) upon new evidence becoming available.
- (3) The rules under paragraph (1) may include provision—
 - (a) in respect of preliminary consideration of a case before a committee (including considering representations from the person concerned and the Council during its preliminary consideration);
 - (b) following preliminary consideration of a case—
 - (i) in the case of an appeal before the Appeals Committee, allowing the Appeals Committee, in prescribed circumstances, to allow the appeal or take a decision which has the effect of allowing the appeal,
 - (ii) in fitness to practise proceedings, allowing the Fitness to Practise Committee, in prescribed circumstances, to make a finding that the fitness to practise of the person concerned is not impaired, and
 - (iii) in a disqualification case, allowing the Fitness to Practise Committee, in prescribed circumstances, to dismiss the case;
 - (c) in respect of consensual disposal of a fitness to practise case following preliminary consideration of it, including provision—
 - (i) enabling the Investigating Committee or the Fitness to Practise Committee, in prescribed circumstances, to agree with the person concerned that the person concerned will comply with such undertakings as the committee considers appropriate, and
 - (ii) with respect to the procedure to be followed when any such undertakings are breached (the rules may provide that the breach may be treated as misconduct for the purposes of article 51(1)(a) and for the matter to be dealt with as a misconduct allegation that is before the committee);
 - (d) in respect of consensual disposal of a disqualification case following preliminary consideration of it, including provision—
 - (i) enabling the Fitness to Practise Committee, in prescribed circumstances, to agree with the individual [^{F2}, partnership] or body corporate that the individual [^{F2}, partnership] or body corporate will comply with such undertakings as the Committee considers appropriate, and
 - (ii) with respect to the procedure to be followed where any such undertakings are breached;
 - (e) in respect of case management meetings (and the rules may provide that the preliminary consideration of a case is to take place at a case management meeting) and directions, including provision with respect to the procedure to be followed where case management directions are breached;

- (f) in respect of cancelling, postponing or adjourning hearings and staying proceedings in appropriate circumstances;
 - (g) enabling the Appeals Committee to refer a case before it to the Investigating Committee or the Fitness to Practise Committee for advice;
 - (h) enabling the Fitness to Practise Committee to draw such inference as seems appropriate to it in the particular circumstances of the case if the person concerned fails—
 - (i) during fitness to practise proceedings, to submit to any examination or assessment required or directed to be carried out in accordance with the rules made under this article [^{F3}, article 55 or article 55A, or to provide the information required by virtue of rules made under article 55A(3)(b)], or
 - (ii) to co-operate with the Committee;
 - (i) enabling the committee during the course of proceedings, to make such inquiries as it considers appropriate;
 - (j) enabling the Fitness to Practise Committee, following consideration of a disqualification case, instead of issuing a direction under section 80 of the Medicines Act 1968(4) (disqualification and removal from the Register)—
 - (i) to agree with the individual [^{F4}, partnership] or body corporate that the individual [^{F4}, partnership] or body corporate will comply with such undertakings as the Committee considers appropriate (and the rules may include provision with respect to the procedure to be followed where any such undertakings are breached), and
 - (ii) to dispose of the matter by giving advice or a warning; and
 - (k) for the award of, and in respect of the assessment of, costs or expenses, and may require the committee to have regard to a person's ability to pay when considering the making of an award against the person under the rules.
- (4) An award of costs may, by leave of the High Court, be enforced in the same manner as an order of the High Court to the same effect.
- (5) An award of expenses may, by leave of the Court of Session, be enforced in the same manner as a decree of the Court of Session to the same effect.
- (6) The rules under paragraph (1) may make provision—
- (a) as to the form which is to be used for any document (and may provide that documents specified in the rules are to be in such form as the Council may determine from time to time); and
 - (b) for documents or certificates to be sent or received as an electronic communication.

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| F1 | Words in art. 61(2)(b) inserted (24.5.2018) by The Pharmacy (Premises Standards, Information Obligations, etc.) Order 2016 (S.I. 2016/372), arts. 1(3), 26(a) ; S.I. 2018/512, art. 2(1)(b) |
| F2 | Word in art. 61(3)(d)(i) inserted (24.5.2018) by The Pharmacy (Premises Standards, Information Obligations, etc.) Order 2016 (S.I. 2016/372), arts. 1(3), 26(b)(i) ; S.I. 2018/512, art. 2(1)(b) |
| F3 | Words in art. 61(3)(h)(i) substituted (1.6.2016) by The Health Care and Associated Professions (Knowledge of English) Order 2015 (S.I. 2015/806), arts. 1(3), 56 ; S.I. 2015/1451, art. 6(b) |
| F4 | Word in art. 61(3)(j)(i) inserted (24.5.2018) by The Pharmacy (Premises Standards, Information Obligations, etc.) Order 2016 (S.I. 2016/372), arts. 1(3), 26(b)(ii) ; S.I. 2018/512, art. 2(1)(b) |

Commencement Information

- II** Art. 61 in force at 10.2.2010 for specified purposes, see [art. 1\(3\)](#)

Changes to legislation: *There are currently no known outstanding effects for the The Pharmacy Order 2010, Section 61. (See end of Document for details)*

I2 [Art. 61](#) in force at 27.9.2010 in so far as not already in force by S.I. 2010/1621, art. 2(1), **Sch.**

Changes to legislation:

There are currently no known outstanding effects for the The Pharmacy Order 2010, Section 61.