
STATUTORY INSTRUMENTS

2015 No. 794

The General Medical Council (Fitness to Practise and Over-arching Objective) and the Professional Standards Authority for Health and Social Care (References to Court) Order 2015

PART 2

The Medical Practitioners Tribunal Service

References to court by the Professional Standards Authority for Health and Social Care

18.—(1) In section 29 of the National Health Service Reform and Health Care Professions Act 2002 (reference of disciplinary cases by the Professional Standards Authority for Health and Social Care to court)(1), in subsection (1)(c), for “a Fitness to Practise Panel” substitute “a Medical Practitioners Tribunal”.

(2) In subsection (1) of that section, after paragraph (c) insert—

“(ca) a direction by a Medical Practitioners Tribunal of the General Medical Council under paragraph 5A(3D) or 5C(4) of Schedule 4 to the Medical Act 1983 for suspension of a person’s registration or for conditional registration.”.

(3) For subsection (4) of that section substitute—

“(4) Where a relevant decision is made, the Authority may refer the case to the relevant court if it considers that the decision is not sufficient (whether as to a finding or a penalty or both) for the protection of the public.

(4A) Consideration of whether a decision is sufficient for the protection of the public involves consideration of whether it is sufficient—

- (a) to protect the health, safety and well-being of the public;
- (b) to maintain public confidence in the profession concerned; and
- (c) to maintain proper professional standards and conduct for members of that profession.”

(4) In subsection (6) of that section—

(a) after “the end of the period of” insert—

“—

(a)”,
and

(b) at the end insert

“, or

(1) [2002 c.17](#); section 29 was amended by [S.I. 2002/3135](#), [S.I. 2004/1771](#), [S.I. 2005/848](#), [S.I. 2005/2011](#), [S.I. 2010/1621](#) and by section 118 of the Health and Social Care Act 2008 ([c.14](#)) and paragraphs 62 and 73 of Schedule 15 to the Health and Social Care Act 2012 ([c.7](#)).

(b) in the case of a relevant decision against which it is not possible for the practitioner concerned to appeal, 56 days beginning with the day on which notification of the decision was served on the person to whom the decision relates.”

(5) In subsection (7) of that section, in paragraph (b), after “the body which made the relevant decision” insert “(as well as the person to whom the decision relates)”.

(6) After that subsection insert—

“(7A) In a case where the relevant decision is taken by a committee, the reference in subsection (7)(b) to the body which made the decision is to be read as a reference to the body of which it is a committee.”

(7) In subsection (8) of that section, at the end of paragraph (d) insert “or, in the case of a relevant decision within subsection (1)(c) or (ca) or a relevant decision within subsection (2)(a) or (c) not to take a disciplinary measure under a provision referred to in subsection (1)(c) or (ca), remit the case to the Medical Practitioners Tribunal Service for them to arrange for a Medical Practitioners Tribunal so to dispose of the case.”

(8) After that subsection insert—

“(9) Where rules under paragraph 1 of Schedule 4 to the Medical Act 1983 provide, by virtue of paragraph 1(2E) of that Schedule, for the application of section 35D of that Act, the reference in subsection (1)(c) of this section to section 35D of that Act includes a reference to that section as so applied.

(10) The reference in subsection (1)(ca) to paragraph 5A(3D) of the Medical Act 1983 includes a reference to that provision as applied by section 35A(6E) of that Act.”

(9) After that section insert—

“References under section 29: role of the General Medical Council

29A.—(1) If the Authority makes a reference under section 29 of a case involving a relevant decision such as is mentioned in subsection (8)(d) of that section—

- (a) the Authority must without delay give the General Medical Council notice of the reference; and
- (b) the General Medical Council may not bring an appeal under section 40A of the Medical Act 1983 against the decision.

(2) Where the General Medical Council is the respondent in the case of a reference under section 29, the matters which it may raise on the reference include any matter that it could have raised on an appeal against the relevant decision under section 40A of the Medical Act 1983.

(3) If the General Medical Council is the respondent in the case of a reference under section 29, and the Authority either wishes to withdraw the reference or, having agreed the terms of a settlement of the case with the person to whom the relevant decision relates, wishes the case to be disposed of on those terms, the Authority must give notice of its wish to the Council.

(4) The General Medical Council, having received a notice under subsection (3), must by notice inform the relevant court, the Authority and the person concerned whether it wishes the proceedings on the reference to continue.

(5) Where the General Medical Council gives notice under subsection (4) that it wishes the proceedings to continue, they are to continue but, from the time when the Council gives its notice to the relevant court under subsection (4), are to be treated as proceedings on an appeal made by the Council under section 40A of the Medical Act 1983.

(6) In a case within subsection (5), the General Medical Council must give notice to the relevant court, the Authority and the person concerned specifying the grounds of its case; and—

- (a) the person concerned has the opportunity to respond accordingly, and
- (b) the Authority has the opportunity to become a party to the appeal by virtue of section 40B(2) of the Medical Act 1983.

(7) A requirement in this section to give a notice to a specified person is in addition to such requirements as are imposed by rules of court in relation to the persons to whom notice is to be given; and the giving of notice under this section is subject to such other requirements relating to the giving of notices as are imposed by rules of court.

(8) In this section, “relevant court” and “relevant decision” each have the same meaning as in section 29.”