



Smoking, Health and Social Care (Scotland) Act 2005

2005 asp 13

PART 5

DISCIPLINE

26 Disqualification by the NHS Tribunal

- (1) The 1978 Act is amended as follows.
- (2) In section 29 (conditions of disqualification and persons subject to jurisdiction of NHS Tribunal)—
 - (a) for subsection (2) substitute—

“(2) If the Tribunal receive from a Health Board representations that a person—
 - (a) who has applied to be included; or
 - (b) who is included,in any list meets any of the conditions for disqualification, the Tribunal shall inquire into the case.”;
 - (b) in subsection (4)(b), the words “the representations are that the second condition for disqualification is met and” are repealed;
 - (c) in subsection (6)—
 - (i) for the word “continued” substitute “inclusion or continued”;
 - (ii) for the words from “list”, where it second occurs, to the end substitute “list—
 - (a) in relation to a list referred to in subsection (8)(a), (cc) or (e), perform;
 - (b) in relation to a list referred to in subsection (8)(c) or (d), undertake to provide or are approved to assist in providing;”;
 - (d) after subsection (7), insert—

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- “(7A) The third condition for disqualification is that the person concerned is unsuitable (by virtue of professional or personal conduct) to be included, or to continue to be included, in the list.”;
- (e) in subsection (8)—
- (i) paragraph (b) is repealed;
 - (ii) for paragraphs (c) to (e) substitute—
 - “(c) a list of dental practitioners and bodies corporate referred to in section 25(1) undertaking to provide, and of persons who are approved to assist in providing, general dental services;
 - (cc) a list of persons performing personal dental services;
 - (d) a list of medical practitioners and ophthalmic opticians undertaking to provide, and of persons who are approved to assist in providing, general ophthalmic services; or
 - (e) a list of registered pharmacists performing pharmaceutical care services.”;
- (f) in subsection (11)—
- (i) the word “and” is repealed;
 - (ii) at the end insert “ ; and cases in which representations are made that the third condition for disqualification is met are referred to below as unsuitability cases ”.
- (3) In section 29A (cases before Tribunal: supplementary provision)—
- (a) in subsection (1), after “the second condition for disqualification” insert “ or, as the case may be, the third condition for disqualification ”;
 - (b) after subsection (1), insert—

“(1A) A body corporate entitled, by virtue of section 43 of the Dentists Act 1984 (c. 24), to carry on the business of dentistry is to be treated for the purposes of this group of sections as meeting the second condition for disqualification or, as the case may be, the third condition for disqualification if any director meets that condition (whether or not he first met that condition when he was a director).”;
 - (c) in subsection (3)—
 - (i) in paragraph (a), after the word “providing,” insert “ assisting in providing, ”;
 - (ii) in paragraph (b), after the word “provision,” insert “ assistance in provision, ”;
 - (d) in subsection (5), for the words “a fraud case” substitute “ an unsuitability case, a fraud case or an efficiency case ”;
 - (e) in subsection (6), after the word “in” insert “ an unsuitability, ”.
- (4) In section 29B (disqualification by Tribunal)—
- (a) in subsection (1), after paragraph (b) insert “;
 - (c) on inquiring into an unsuitability case, that the person meets the third condition for disqualification”;
 - (b) for subsection (2), substitute—

“(2) The Tribunal shall disqualify him for inclusion in—

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- (a) the list to which the case relates;
 - (b) all lists within the same paragraph of subsection (8) of section 29 as that list; and
 - (c) where the list to which the case relates is a list referred to in—
 - (i) paragraph (c) of that subsection, all lists within paragraph (cc) of that subsection;
 - (ii) that paragraph (cc), all lists within that paragraph (c).”;
 - (c) in subsection (4), for the word “any” substitute “ a ”.
- (5) In section 29C (conditional disqualification)—
- (a) in subsection (2)—
 - (i) the word “or” following paragraph (a) is repealed;
 - (ii) after paragraph (b), insert “;
 - (c) ensuring that the person—
 - (i) performs, undertakes to provide or assists in providing only services specified (or of a description specified) in the condition;
 - (ii) undertakes an activity (or course of activity) of a personal or professional nature, or refrains from conduct of a personal or professional nature, so specified (or of a description so specified)”;
 - (b) in subsection (5)(aa), for the words “17P” substitute “ 17F, 17P or 17X or this Part ”.
- (6) In section 32(2) (regulations: inquiry into more than one category of case), for the words “both an efficiency case and a fraud case” substitute “ an efficiency case and a fraud case or an unsuitability case or any other combination of more than one such category of case ”.
- (7) In section 32A (interim suspension by the Tribunal)—
- (a) in subsection (2), for the words from “services” to the end substitute “—
 - (a) services of the kind to which the case in question, or the case to which the review in question, relates; and
 - (b) if the services are either general dental services or personal dental services, both general dental services and personal dental services.”;
 - (b) in subsection (2A)—
 - (i) in paragraph (a), after the words “primary medical services” insert “ , pharmaceutical care services ”;
 - (ii) for paragraph (b), substitute “or
 - (b) that it is otherwise in the public interest to do so.”;
 - (c) in subsection (6)(a), for the words from “a list” to “services” substitute—
 - “(i) a list of persons performing;
 - (ii) a list of persons undertaking to provide and of persons approved to assist in providing,services ”;
 - (d) after subsection (6), insert—

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“(7) Regulations may provide that where a Health Board, in accordance with regulations made under section 17F, 17P, 17X, 25(2) or 26(2), suspend a person from a list prepared under regulations made under the section in question and the Board apply to the Tribunal for a direction to be made under subsection (2) in relation to the person to whom the suspension applies, the suspension may continue until the Tribunal determine the application.”.

Commencement Information

- I1** S. 26 in force at 7.3.2006 for specified purposes by S.S.I. 2006/121, art. 3(a), **Sch. 1**
- I2** S. 26(1)(2)(a)(2)(b)(2)(c)(i)(2)(d)(2)(e)(i)(2)(f)(3)(a)(3)(d)(3)(e)(4)(a)(4)(c)(5)(a)(6)(7)(b)(ii)(7)(c) in force at 1.4.2006 in so far as not already in force by S.S.I. 2006/121, art. 3(b), **Sch. 2**
- I3** S. 26(2)(c)(ii) in force at 1.4.2006 for specified purposes by S.S.I. 2006/121, art. 3(b), **Sch. 2**
- I4** S. 26(2)(c)(ii) in force at 2.7.2010 for specified purposes by S.S.I. 2010/185, art. 3(b), **Sch. 2**
- I5** S. 26(2)(e)(ii) in force at 1.4.2006 for specified purposes by S.S.I. 2006/121, art. 3(b), **Sch. 2**
- I6** S. 26(2)(e)(ii) in force at 2.7.2010 for specified purposes by S.S.I. 2010/185, art. 3(b), **Sch. 2**
- I7** S. 26(3)(b) in force at 2.7.2010 in so far as not already in force by S.S.I. 2010/185, art. 3(b), **Sch. 2**
- I8** S. 26(3)(c) in force at 1.4.2006 for specified purposes by S.S.I. 2006/121, art. 3(b), **Sch. 2**
- I9** S. 26(3)(c) in force at 2.7.2010 for specified purposes by S.S.I. 2010/185, art. 3(b), **Sch. 2**
- I10** S. 26(4)(b) in force at 1.4.2006 for specified purposes by S.S.I. 2006/121, art. 3(b), **Sch. 2**
- I11** S. 26(7)(d) in force at 1.4.2006 for specified purposes by S.S.I. 2006/121, art. 3(b), **Sch. 2**

27 Corresponding provision in England or Wales or Northern Ireland

For section 32D of the 1978 Act (suspension provisions in England and Wales or Northern Ireland), substitute—

“32D Corresponding provision in England or Wales or Northern Ireland

- (1) This section applies where it appears to the Scottish Ministers that there is provision in England or Wales or Northern Ireland under which a person may be dealt with in any way which corresponds (whether or not exactly) with a way in which a person may be dealt with under sections 29 to 32B.
- (2) A decision in England or Wales or Northern Ireland to deal with such a person in such a way is referred to in this section as a “corresponding decision”.
- (3) If this section applies, the Scottish Ministers may make regulations providing for the effect to be given in Scotland to a corresponding decision; and where the decision corresponds (whether or not exactly) with a decision which may be made under section 29C or (so far as relating to conditional disqualification) 30 the regulations may provide for the effect to be given to be determined in the prescribed manner by the Scottish Ministers.
- (4) That effect need not be the same as the effect of the corresponding decision in the place where it was made.”.

Commencement Information

- I12** S. 27 in force at 7.3.2006 for specified purposes by S.S.I. 2006/121, art. 3(a), **Sch. 1**

Changes to legislation: *There are currently no known outstanding effects for the Smoking, Health and Social Care (Scotland) Act 2005, Part 5. (See end of Document for details)*

I13 S. 27 in force at 1.4.2006 in so far as not already in force by S.S.I. 2006/121, art. 3(b), **Sch. 2**

Changes to legislation:

There are currently no known outstanding effects for the Smoking, Health and Social Care (Scotland) Act 2005, Part 5.