

SCHEDULES

SCHEDULE 1

Section 11.

AMENDMENTS OF SCHEDULE 11 TO THE 1972 ORDER

1.—(1) Paragraph 1 (general provisions) shall be amended as follows.

(2) For paragraph 1(2), substitute—

“(2) If the Tribunal receives from a Health and Social Services 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.”.

(3) In paragraph 1(4)(b), omit “the representations that the second condition for disqualification is met and”.

(4) In paragraph 1(6)—

- (a) for “continued” substitute “inclusion or continued”;
- (b) for the words from “list” (second time) to the end substitute “list—
 - (a) in relation to a list referred to in paragraph (8)(a), (cc) or (e), perform;
 - (b) in relation to a list referred to in paragraph (8)(c) or (d), undertake to provide or are approved to assist in providing;”.

(5) After paragraph 1(7), insert—

“(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.”.

(6) In paragraph 1(8),—

- (a) omit paragraph (b);
- (b) for paragraphs (c) to (e) substitute—
 - “(c) a list of health care professionals of a prescribed description and bodies corporate performing primary 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 undertaking to provide pharmaceutical services.”.

(7) In paragraph 1(11),—

- (a) omit “and”;
- (b) 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”

2.—(1) Paragraph 2 (supplementary provisions) shall be amended as follows.

(2) In paragraph 2(1), after “the second condition for disqualification” insert “or, as the case may be, the third condition for disqualification”.

(3) After paragraph 2(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 Schedule 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).”.

(4) In paragraph 2(3)—

- (a) in paragraph (a), after “providing” insert “, assisting in providing, or as the case may be performing,”;
- (b) in paragraph (b), after “provision” insert “, assistance in the provision or performance,”.

(5) In paragraph 2(5), for “a fraud case” substitute “an unsuitability case, a fraud case or an inefficiency case”.

(6) In paragraph 2(6), after “in” insert “an unsuitability,”.

3.—(1) Paragraph 3 (powers of the Tribunal) shall be amended as follows.

(2) In paragraph 3(1), after paragraph (b) insert—

- “(c) on inquiring into an unsuitability case, that the person meets the third condition for disqualification.”.

(3) For paragraph 3(2), substitute—

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

- (a) the list to which the case relates;
- (b) all lists within the same paragraph of paragraph 1(8) as that list; and
- (c) where the list to which the case relates is a list referred to in—
 - (i) paragraph 1(8)(c), all lists within paragraph (cc) of paragraph 1(8);
 - (ii) that paragraph (cc), all lists within that paragraph (c).”.

(4) In paragraph 3(3), after “provision” insert “, or as the case may be performance,”.

(5) In paragraph 3(4), for “any” substitute “a”.

4.—(1) Paragraph 4 (conditional disqualification) shall be amended as follows.

(2) In paragraph 4(2)—

(a) at the end of paragraph (a), omit “or”; and

(b) 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).”.

(3) In paragraph 4(5), after paragraph (a) insert—

“(aa) vary any requirements to which the person subject to the inquiry is subject under or by virtue of Article 57G, 61F, 62A or 63AA;”.

5. In paragraph 5(4) (construction of references to Health and Social Services Board)—

(a) after “providing” insert “, or as the case may be performing,”;

(b) for “any corresponding authority” substitute “a reference to any authority which”; and

(c) at the end add “would be entitled to request a review corresponding to that mentioned in that sub-paragraph”.

6.—(1) Paragraph 7 (disqualification provisions in Scotland or England and Wales) shall be amended as follows.

(2) In paragraph 7(1), for the words from the beginning to “question,” substitute—

“Where—

(a) under or by virtue of any provisions in force in Scotland or England and Wales corresponding to the provisions of this Schedule, a person is disqualified for inclusion in all lists prepared under or by virtue of—

(i) those provisions so in force, or

(ii) provisions so in force corresponding to the provisions of Part VI of this Order,

of persons performing, undertaking to provide, approved to assist in providing or approved to perform any of the services mentioned in paragraph 1(8), then,

(b) in relation to the service in question,”.

(3) In paragraph 7(2)—

(a) after “provision” (first time) insert “, assistance in provision or performance”; and

(b) at the end add “, Article 15B arrangements or a pilot scheme”.

7. In paragraph 8(2) (regulations: inquiry into more than one category of case), for “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”.

8.—(1) Paragraph 9 (applications for interim suspension) shall be amended as follows

(2) In paragraph 9(5)(c), after “provision” insert “or performance”.

(3) In paragraph 9(7)(a), after “persons” insert “performing or”.

(4) At the end add—

“(8) Regulations may provide that where a Health and Social Services Board, in accordance with regulations made under Article 57G, 61F, 62A or 63AA, suspends a person from a list prepared under regulations made under the provision in question and the Board applies to the Tribunal for a direction to be made under sub-paragraph (2) in relation to the person to whom the suspension applies, the suspension may continue until the Tribunal determines the application.”.

9. For paragraph 12 (suspension provisions in Scotland or England and Wales) substitute—

“12.—(1) This paragraph applies where it appears to the Department that there is provision in Scotland or England or Wales 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 a provision of this Schedule.

(2) A decision in Scotland or England or Wales to deal with such a person in such a way is referred to in this paragraph as a “corresponding decision”.

(3) If this paragraph applies, the Department may make regulations providing for the effect to be given in Northern Ireland to a corresponding decision; and where the decision corresponds (whether or not exactly) with a decision which may be made under paragraph 4 or (so far as relating to conditional disqualification) paragraph 5 the regulations may provide for the effect to be given to be determined in the prescribed manner by the Department.

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(4) That effect need not be the same as the effect of the corresponding decision in the place where it was made.”.