

2013 No. 147

PHARMACY

**The Council of the Pharmaceutical Society of Northern Ireland
(Continuing Professional Development) (Amendment)
Regulations (Northern Ireland) 2013**

Made - - - - 30th May 2013

Coming into operation - 31st May 2013

The Council of the Pharmaceutical Society of Northern Ireland makes the following regulations in exercise of the powers conferred on it by Articles 4A(9) and (10), 5(1)(ff), (fff) and (ffg) of, and paragraphs 5(1) and (2)(b), and 15(1)(b), (2) and (3) of Schedule 3 to, the Pharmacy (Northern Ireland) Order 1976(a). The Department of Health, Social Services and Public Safety(b) has approved these regulations in accordance with Article 25A(2) of that Order(c).

Citation, commencement and interpretation

1.—(1) These regulations may be cited as the Council of the Pharmaceutical Society of Northern Ireland (Continuing Professional Development) (Amendment) Regulations (Northern Ireland) 2013 and shall come into operation on 31st May 2013.

(2) In these regulations “the principal regulations” means the Council of the Pharmaceutical Society of Northern Ireland (Continuing Professional Development) Regulations (Northern Ireland) 2012(d).

Amendment of regulation 1 of the principal regulations

2. In regulation 1 of the principal regulations (*Citation, commencement and interpretation*), in the appropriate place, insert the following—

““the chair” means the chair of the Statutory Committee;”

““the secretary” means the secretary of the Statutory Committee;”.

Amendment of regulation 5 of the principal regulations

3. In regulation 5 of the principal regulations (*Notice of intention to remove: stage 1*), in paragraph (5) omit sub-paragraphs (e) and (f).

(a) S.I. 1976/1213 (N.I. 22) as amended by 1981 c.45 and c.55; 1983 c.54; S.I. 1984/703 (N.I. 3); S.R. 1987 No. 457; S.I. 1994/429 (N.I. 2); S.R. 1996 No. 393; 2004 c.33; S.R. 2004 No. 78; S.R. 2008 No. 192 and S.R. 2012 No. 308
(b) See S.I. 1999/283 (N.I. 1) Article 3(6)
(c) Article 25A is inserted by Article 9 of S.R. 2012 No. 308
(d) S.R. 2012 No. 312

Amendment of regulation 6 of the principal regulations

4. In regulation 6 of the principal regulations (*Subsequent action by the registrar: stage 2*)—
- (a) in paragraph (1)(b) omit “, (f)”;
 - (b) in paragraph (5)(b)—
 - (i) omit the words “if the registered person has not already requested a hearing, ”;
 - (ii) after head (i) insert the word “ and”;
 - (iii) in head (ii) for the word “notice,” substitute “notice.”; and
 - (iv) omit heads (iii) and (iv).

Amendment of regulation 7 of the principal regulations

5. In regulation 7 of the principal regulations (*Decisions in contested cases: stage 3*)—
- (a) in paragraph (1) for the words “Where the registered person does not request a hearing or is not entitled to one” substitute “Where regulation 6(7) applies”; and
 - (b) omit paragraph (2).

Amendment of regulation 8 of the principal regulations

6. For regulation 8 of the principal regulations substitute—

“Notification of removal of the name of a registered person or the annotation recorded against the registered person’s name under regulation 6 or 7.

8. Where the registrar has decided to remove the name of a registered person, or the annotation recorded against the registered person’s name, the registrar must send the registered person a written statement giving notice of—

- (a) the decision to remove the registered person’s name or the annotation recorded against the registered person’s name;
- (b) the reasons for it; and
- (c) the registered person’s right of appeal under Article 4A(13) of the Order (in accordance with regulations 13 and 14) to the Statutory Committee.”

Amendment of regulation 9 of the principal regulations

7. In regulation 9 of the principal regulations (*Suspension from the register pending appeal*), in paragraph (1)(b) for the words “Article 4A(12) of the Order” substitute “Article 4A(13) of the Order (in accordance with regulations 13 and 14)”.

Amendment to regulation 11 of the principal regulations

8. In regulation 11 of the principal regulations (*Restoration of an annotation to be recorded against a registered person’s name in the register*), after paragraph (8) insert—

“(9) Where the registrar has refused an application for the restoration of an annotation to be recorded against a registered person’s name in the register, the applicant may appeal to the Statutory Committee under Article 4A(13) of the Order (in accordance with regulations 13 and 14) against the refusal of the application.

- (10) The registrar must send a written statement to the applicant giving notice of—
 - (a) the refusal of the application;
 - (b) the reasons for it; and
 - (c) the applicant’s right of appeal to the Statutory Committee”.

Appeals

9. After regulation 11 of the principal regulations (*Restoration of an annotation to be recorded against a registered person's name in the register*) insert—

“Appeals

12. Where a decision has been taken to remove the name of a registered person or the annotation recorded against the registered person's name from the register under regulation 6 or 7, the decision does not take effect—

- (a) until the time for serving a Notice of Appeal on the secretary in respect of the decision has expired, and
- (b) where a Notice of Appeal is served within time, until the date on which the appeal is finally disposed of, or is abandoned or fails by reason of its non-prosecution.

Time for serving Notice of Appeal

13.—(1) Subject to paragraph (2), on receipt of the written statement sent by the registrar under Article 4A(12) of the Order or regulations 8 or 11(10), the registered person or applicant as the case may be, (hereafter referred to as “the appellant”) must serve a Notice of Appeal on the secretary in accordance with regulation 14, within 28 days beginning with, and including, the date on which the written statement was sent.

(2) Where the secretary considers that it was not reasonably practicable for the Notice of Appeal to be served within 28 days, the secretary may by authorisation in writing extend the time limit for serving the Notice of Appeal.

Notice of Appeal

14.—(1) Subject to paragraph (3), a Notice of Appeal will only be valid if it is in the format described in paragraph (2).

(2) The Notice of Appeal must—

- (a) state that it is a Notice of Appeal;
- (b) provide the full name and address of the appellant;
- (c) provide a daytime telephone number at which the appellant can be contacted;
- (d) state the appellant's registration number, or former registration number;
- (e) state whether the appellant is to be represented in the course of proceedings, and if so, provide contact details for the representative;
- (f) state the date of the decision being appealed against;
- (g) set out the decision being appealed against;
- (h) set out the grounds on which the appeal is being brought;
- (i) be accompanied by copies of any material—
 - (i) submitted by the appellant to the registrar prior to the appealable decision being taken, and
 - (ii) not so submitted, but on which the appellant intends to rely in the course of the appeal proceedings;
- (j) be accompanied by a skeleton argument containing the submissions of the appellant;
- (k) state whether the appellant wishes the appeal to be considered on the papers or at a hearing; and
- (l) in a case where the appellant wishes a hearing to be held, state whether the appellant wishes to have a case management meeting, and if so, the issues that the appellant wishes to be considered at that meeting.

- (3) At a case management meeting, the chair may—
- (a) extend the time for the delivery of the skeleton argument and any additional material necessary to determine the appeal; and
 - (b) allow the appellant to amend the details regarding representation provided under paragraph (2)(e).

Action following receipt of Notice of Appeal

- 15.** Following receipt of the Notice of Appeal, the secretary must—
- (a) acknowledge receipt of the Notice of Appeal and the accompanying material submitted by the appellant;
 - (b) send copies of the Notice of Appeal and the accompanying material to the Society;
 - (c) require the Society to provide the secretary with copies of all documents on which they intend to rely in defending the appeal;
 - (d) send copies of any documents provided by the Society under paragraph (c) to the appellant or (where applicable) the appellant's representative;
 - (e) as soon as possible, inform the parties of the date—
 - (i) of any case management meeting (if the chair decides that one should be held), and
 - (ii) on which the Statutory Committee will consider the appeal (which, in the case of a hearing, unless the parties agree otherwise, must be no less than 28 days after the date on which the secretary serves the Notice of Hearing); and
 - (f) where the appellant has stated that the appellant wishes the Statutory Committee to consider the appeal at a hearing, send a Notice of Hearing to any person to whom the proceedings relate, which must be in the format described in regulation 16.

Notice of Hearing

- 16.** The Notice of Hearing must—
- (a) state the date, time and venue of the hearing;
 - (b) inform the appellant of the appellant's right to attend the hearing and to be represented or accompanied at the hearing in accordance with regulation 23(2) or (3);
 - (c) inform the appellant of the provisions relating to—
 - (i) evidence set out in regulation 18,
 - (ii) procedure at hearings set out in regulation 22,
 - (iii) witness evidence set out in regulation 24;
 - (d) require the appellant to inform the secretary, within 14 days beginning with, and including, the day on which the Notice is served, whether the appellant intends to—
 - (i) attend the hearing,
 - (ii) be represented at the hearing, and if so, by whom, and
 - (iii) seek to call any witnesses at the hearing, and if so, whom, and
 - (e) inform the appellant that, if the appellant fails to attend the hearing, the Statutory Committee may proceed with the hearing in the appellant's absence.

Case management meetings

17.—(1) Where a hearing is to be held a case management meeting^(a) may be convened by the chair of the chair's own motion or at the written request of one or both of the parties.

(2) Where a case management meeting is to be convened the secretary must give the parties such notice of it as is reasonable (in the opinion of the chair) in all the circumstances of the case.

(3) A case management meeting may be conducted by teleconference or such other method as is determined by the chair, in consultation with the parties.

(4) A case management meeting must be held in private.

(5) At a case management meeting, the chair (in addition to the matters mentioned in regulation 14(3)) may issue such directions as the chair considers necessary for the just and expeditious management of the case and may give preliminary rulings for the purpose of resolving questions of law and admissibility of evidence.

(6) Any preliminary rulings mentioned in paragraph (5) are binding on the Committee hearing the appeal.

Evidence

18.—(1) All questions of admissibility of evidence and law before the Statutory Committee must be decided by the Statutory Committee.

(2) Subject only to the requirements of relevance and fairness, the Statutory Committee may receive—

- (a) subject to paragraph (3), any documentary evidence; and
- (b) where a hearing is held, any oral evidence,

whether or not such evidence would be admissible in any civil proceedings.

(3) Where a party wishes to adduce a witness statement in evidence, the Statutory Committee may only receive such evidence if the statement—

- (a) contains an attestation, in a format acceptable to the Statutory Committee, that the statement is true; and
- (b) is signed by the person making it.

(4) Where a person has been convicted of a criminal offence in the British Islands or a conviction elsewhere than in the British Islands which, if committed in Northern Ireland, would constitute a criminal offence (and has not successfully appealed against the conviction), a copy of a certificate purporting to be under the hand of a competent officer of a court that the person has been convicted of a criminal offence (or in Scotland, an extract conviction) is admissible as conclusive proof of that conviction and the findings of fact on which it was based.

(5) The only evidence which may be adduced by a person in rebuttal of a conviction certified or extracted in accordance with paragraph (4) is evidence for the purpose of proving that the person is not the person referred to in the certificate or extract.

(6) Where it is alleged that a person is included in a barred list (within the meaning of the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007^(b) or the Safeguarding Vulnerable Groups Act 2006^(c) by the Independent Safeguarding Authority (“the Authority”)—

(a) By virtue of regulation 15(2) of the Council of the Pharmaceutical Society of Northern Ireland (Statutory Committee, Scrutiny Committee and Advisers) Regulations (Northern Ireland) 2012, S.R. 2012/310, a case management meeting must be conducted by the chair. By virtue of regulation 18(4) of those regulations, if the chair is not legally qualified a legal adviser must also be present at a case management meeting.

(b) S.I. 2007/1351 (N.I. 11)

(c) 2006 c.47

- (a) information provided by the Secretary of State under the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 or the Safeguarding Vulnerable Groups Act 2006 that attests to that inclusion is to be conclusive proof of that inclusion, unless the person concerned can prove that they are not the person referred to in the information provided; and
 - (b) a document from the Authority, authenticated in whatever way the Society may approve, that provides a statement of the findings of fact that led to that inclusion is conclusive proof of those facts.
- (7) Where it is alleged that a person is included in the children’s or the adults’ list (within the meaning of the Protection of Vulnerable Groups (Scotland) Act 2007(a))—
- (a) information provided by the Scottish Ministers under the Protection of Vulnerable Groups (Scotland) Act 2007 that attests to the inclusion is conclusive proof of that inclusion, unless the person concerned can prove that they are not the person referred to in the information provided; and
 - (b) a document from the Scottish Ministers, authenticated in whatever way the Society may approve, that provides a statement of the findings of fact that led to the inclusion is conclusive proof of those facts.
- (8) A formal notification of a determination about a person’s fitness to practise made by a body responsible under any statutory provision for the regulation of a health or social care profession (in the United Kingdom or elsewhere), and signed by an officer authorised by that body to sign such a notification, is sufficient evidence, unless the contrary is proved, of any facts found proved by that regulatory body.
- (9) The Statutory Committee may only allow a party to adduce written evidence at a hearing which has not been submitted in accordance with these regulations in such exceptional circumstances as it may determine.

Advice from clinical, specialist and legal advisers

- 19.** The Statutory Committee may, at any time in the course of proceedings before it (including during a hearing), seek advice(b) from—
- (a) a clinical adviser, appointed under paragraph 18 of Schedule 3 to the Order, on a health related issue;
 - (b) a specialist adviser, appointed under paragraph 18 of Schedule 3 to the Order, on issues falling within the specialty of the adviser or related to it; or
 - (c) a legal adviser appointed under paragraph 17 of Schedule 3 to the Order.

Burden and standard of proof

- 20.—**(1) The appellant bears the burden of establishing that the registrar’s decision against which the appellant is appealing should be overturned.
- (2) Where facts are in dispute, the Statutory Committee must consider whether they have been established in accordance with the civil standard of proof.

Consideration of appeals on the papers

- 21.—**(1) The Statutory Committee shall determine an appeal on the papers unless the appellant has requested a hearing in the Notice of Appeal.
- (2) No later than 7 days before the day of a meeting for the purposes of determining an appeal on the papers, the secretary must provide the Statutory Committee with an agenda and the documents relevant to the consideration of the appeal.

(a) 2007 asp 14
 (b) See regulation 22(3) of S.R. 2012 No.310

(3) An appeal on the papers shall be conducted in accordance with regulations 18, 19 and 20 insofar as those regulations apply to an appeal on the papers and in accordance with practice directions given by the chair under regulation 24 of the Council of the Pharmaceutical Society of Northern Ireland (Fitness to Practise and Disqualification) Regulations (Northern Ireland) (2012)(a).

Procedure at appeal hearings

22.—(1) No later than 7 days before the day of the hearing, the secretary must provide the Statutory Committee with an agenda and the documents relevant to the consideration of the appeal.

(2) The order of proceedings at the hearing is to be as follows—

- (a) the chair must declare the hearing open;
- (b) where the appellant is neither present nor represented at the hearing, the chair—
 - (i) must require the secretary to adduce evidence that all reasonable efforts have been made to serve the Notice of Hearing on the appellant, or
 - (ii) having consulted the Statutory Committee, may—
 - (aa) if the chair is satisfied that the Notice of Hearing has been duly served, proceed with the hearing in the absence of the appellant, or
 - (bb) adjourn the hearing and issue appropriate directions;
- (c) the Statutory Committee must hear and consider any preliminary legal arguments;
- (d) the presenter must make an opening statement, outlining what the presenter considers to be the relevant circumstances of the case;
- (e) subject to paragraph (4), the appellant may adduce evidence in support of the appellant's appeal, and may call witnesses (provided that the chair is satisfied that the witness is in a position to provide relevant testimony);
- (f) subject to paragraph (4), the presenter may adduce evidence in rebuttal of the position of the appellant and in support of the position of the Society, and may call witnesses (provided that the chair is satisfied that the witness is in a position to provide relevant testimony);
- (g) the appellant and the presenter may respectively make a closing statement;
- (h) the Statutory Committee must deliberate in private and must then announce its decision on the appeal in the presence of the parties (where present), together with the reasons for its decision.

(3) Otherwise the conduct of the hearing is to be at the discretion of the chair, who may (amongst other matters) invite the parties to make additional submissions to those outlined in paragraph (2).

(4) The Statutory Committee may refuse to allow a witness to give oral evidence, or to give oral evidence on a particular matter, if the Committee is satisfied that all or part of the evidence that the witness is to provide, or is to provide on that matter, should have been disclosed to the party not calling the witness at an earlier stage in the proceedings.

Representation

23.—(1) The presenter must be a person who is—

- (a) a barrister or solicitor; or
- (b) an employee of the Society.

(2) The appellant may be represented by a person who is—

- (a) a barrister or solicitor; or
 - (b) a representative from the appellant's defence organisation or their trade union.
- (3) Where the appellant is not represented, the appellant may be accompanied and advised by a supporter, but the supporter—
- (a) may not be—
 - (i) a member of the Council or one of its Committees,
 - (ii) an employee of the Society, or
 - (iii) a witness at the hearing; and
 - (b) may only address the Statutory Committee with the permission of the chair.

Witness evidence

24.—(1) Witnesses must be required to take an oath, or to affirm, before giving their oral evidence.

(2) The Statutory Committee may not compel the appellant to be a witness.

(3) A party may not call a person to be witness unless—

- (a) that party has provided to the other party a written statement of evidence to be provided by the witness at least 7 days before the day of the hearing (which meets the requirements of regulation 18); or
- (b) the chair determines otherwise.

(4) The Statutory Committee may, upon the application of the party calling a witness, direct that any details which may identify that witness should not be revealed in public.

(5) Where a witness's first language is not English, the Statutory Committee may direct that their evidence be given through an interpreter.

(6) Witnesses other than an unrepresented party—

- (a) must first be examined by the party calling them;
- (b) may be cross examined;
- (c) may then be re-examined by the party calling them; and
- (d) may then be questioned by the Statutory Committee through the chair and, with the leave of the chair, by a legal, clinical or specialist adviser.

(7) If witnesses are questioned under paragraph (6)(d) the parties may then question the witnesses on matters arising out of the questions of the Statutory Committee or the legal, clinical or specialist adviser (as the case may be) with the party calling the witness being given the last opportunity to do so (as between the parties).

(8) Where the witness is an unrepresented party, the witness—

- (a) must first be questioned by the Statutory Committee through the chair;
- (b) may then be cross examined; and
- (c) may then be questioned again by the Statutory Committee through the chair and, with the leave of the chair, by a legal, clinical or specialist adviser.

(9) Any further questioning of witnesses is to be at the discretion of the chair.

(10) Except for expert witnesses and the appellant, witnesses must not be allowed to attend the proceedings until after they have completed giving evidence and been formally released by the chair.

Attendance of the public at hearings

25.—(1) Except as provided for by this regulation, hearings of the Statutory Committee must be conducted in public.

(2) Where an issue under consideration relates to the health of the appellant or a third party, the hearing, or the relevant part of the hearing, that relates to that issue must be conducted in private if the Statutory Committee is satisfied—

- (a) having given the parties (where present), and any third party from whom the Statutory Committee considers it appropriate to hear, an opportunity to make representations; and
- (b) having obtained the advice of a clinical adviser,

that the interest of the appellant or the third party in maintaining their privacy as regards that issue outweighs the public interest in holding the hearing, or the relevant part of the hearing, in public.

(3) Where an issue under consideration does not relate to the health of the appellant or a third party, the hearing, or the relevant part of the hearing, that relates to that issue may be conducted in private if the Statutory Committee—

- (a) has given the parties (where present), and any third party from whom the Statutory Committee considers it appropriate to hear, an opportunity to make representations; and
- (b) is satisfied that the interest of any person in maintaining their privacy as regards that issue outweighs the public interest in holding the hearing, or the relevant part of the hearing, in public.

(4) The Statutory Committee may exclude from the whole or any part of a hearing any person whose conduct, in its opinion, has disrupted or is likely to disrupt the hearing.

Postponements and adjournments

26.—(1) The chair may, of the chair's own motion, or upon the application of a party, postpone any hearing of which notice has been given under these regulations before the hearing begins.

(2) The Statutory Committee may, of its own motion, or upon the application of a party, adjourn the proceedings at any stage, provided that—

- (a) no injustice is caused to the parties; and
- (b) the decision to adjourn is made after hearing representations from the parties (where present).

(3) In considering whether or not to grant a request for postponement or adjournment, the chair or Statutory Committee must, in particular, have regard to—

- (a) the public interest in the expeditious disposal of the case;
- (b) the potential inconvenience caused to a party or any witnesses to be called by a party;
- (c) the conduct of the party seeking the postponement or adjournment; and
- (d) fairness to the parties.

(4) Where the proceedings have been postponed or adjourned, the secretary must, as soon as practicable, notify the parties of the date, time and venue of the re-listed or resumed hearing.

Decision of the Statutory Committee

27.—(1) Having considered the appeal, the Statutory Committee may—

- (a) dismiss the appeal;
- (b) allow the appeal and quash the decision appealed against;
- (c) substitute for the decision appealed against any other decision that the registrar could have taken; or

(d) remit or refer the case to the registrar for disposal of the matter in accordance with their directions.

(2) The Statutory Committee must as soon as is reasonably practicable, send to the appellant a statement in writing, giving notice of the Statutory Committee's decision and the reasons for it.

(3) The written statement, under paragraph (2), given to the appellant must be accompanied by a record of any rulings on questions of law or admissibility of evidence made by the Statutory Committee.

Costs of the hearing

28.—(1) Where a hearing is to be held and a party is seeking or intends to seek an order for payment of its costs, the party must serve on the other party, and on the secretary, a schedule of costs relating to the hearing no less than 24 hours before the date of the hearing.

(2) After announcing the Statutory Committee's decision on the appeal, the chair may invite representations as to whether the costs should be assessed against either party.

(3) After hearing any representations from the parties, the Statutory Committee may, if it thinks fit and having regard to the ability of any party to pay, order that a party pay by a specified date all or part of the costs relating to the hearing incurred by other party.

(4) Where the Statutory Committee orders a party to pay costs, the chair may—

(a) summarily assess the costs to be paid; or

(b) require the parties either to agree the figure for the costs to be awarded or to submit to taxation before a person appointed by the secretary.

(5) Where a person is appointed by the secretary in accordance with paragraph (4)(b), that person must also determine how the costs of the assessment are to be apportioned.

Notes and transcripts of hearings

29.—(1) Subject to paragraph (3), the Statutory Committee must arrange for all hearings to be recorded in writing or electronic form.

(2) Any party to the proceedings must, on application to the Statutory Committee, be furnished with a transcript of the record of any part of the hearing at which that party was entitled to be present.

(3) The private deliberations of the Statutory Committee must not be recorded.”

Sealed with the Common Seal of the Council of the Pharmaceutical Society of Northern Ireland on 30th May 2013

(L.S.)

Jacqui Dougan
President of the Pharmaceutical Society of Northern Ireland

Trevor Patterson
Chief Executive of the Pharmaceutical Society of Northern Ireland

The Department of Health, Social Services and Public Safety hereby approves the foregoing regulations.

Sealed with the Official Seal of the Department of Health, Social Services and Public Safety on
30th May 2013

(L.S.)

Mark Timoney

A senior officer of the Department of Health, Social Services and Public Safety

EXPLANATORY NOTE

(This note is not part of the regulations)

These regulations amend the Council of the Pharmaceutical Society of Northern Ireland (Continuing Professional Development) Regulations (Northern Ireland) 2012 (SR 2012 No. 312) “(the principal regulations)”.

The amendments remove the erroneous reference in regulation 7 of the principal regulations to S.R. 2012 No.311 and remove provision for a registered person to request a hearing upon receipt of the registrars’ Notice of Intention to remove their name from the register. Provision is also made for the procedures of the Statutory Committee when dealing with appeals.

Regulation 2 amends regulation 1 of the principal regulations to include new definitions.

Regulations 5, 6 and 7 of the principal regulations are amended to remove the provision for a registered person to request a hearing following receipt of the registrars’ Notice of Intention to remove their name from the register. (Regulations 3, 4 and 5)

Regulation 8 of the principal regulations is amended to include a time limit for lodging an appeal where the name of a registered person, or the annotation recorded against the registered person’s name is removed from the register. (Regulation 6)

Regulation 11 of the principal regulations is amended to include the action required where the registrar has refused an application for the restoration of the annotation to be recorded against a registered person’s name in the register. (Regulation 8)

Provision is also made for the insertion of regulations 12 to 29 in the principal regulations which deal with appeals to and the procedures to be followed by, the Statutory Committee. (Regulation 9).

© Crown copyright 2013

Printed in the UK by The Stationery Office Limited under the authority and superintendence of Carol Tullo, Controller of Her Majesty’s Stationery Office being the Government Printer for Northern Ireland and the Officer appointed to print Acts of the Northern Ireland Assembly.

£5.75

N5851 06/2013 435851T 19585

ISBN 978-0-337-99130-1



9 780337 991301