

SCHEDULES

SCHEDULE 3

Section 33.

PROFESSIONAL CONDUCT AND HEALTH CASES

Preliminary

- 1 (1) This Schedule applies to proceedings before the Professional Conduct Committee under section 27 of this Act and to proceedings before the Health Committee under this Act, and references in this Schedule to proceedings before those Committees shall be construed accordingly.
- (2) In relation to any such proceedings " party " means, unless the context otherwise requires—
 - (a) the person to whose registration the proceedings relate,
 - (b) a person on whose complaint the proceedings are brought, or
 - (c) a solicitor appointed by the Council to represent them at the proceedings.
- (3) In this Schedule " the principal sections " means sections 27 to 32 above.

Rules of procedure

- 2 (1) Subject to the provisions of this paragraph, the Council shall make rules—
 - (a) as to the procedure to be followed and rules of evidence to be observed in proceedings before the Professional Conduct Committee; and
 - (b) as to the procedure to be followed and rules of evidence to be observed in proceedings before the Health Committee.
- (2) The Council shall in particular make rules—
 - (a) for securing that notice that the proceedings are to be brought shall be given, at such time and in such manner as may be specified in the rules, to the person to whose registration the proceedings relate;
 - (b) for securing that any party to the proceedings shall, if he so requires, be entitled to be heard by the Committee in question;
 - (c) for enabling any party to the proceedings to be represented by counsel or solicitor, or (if the rules so provide and the party so elects) by a person of such other description as may be specified in the rules;
 - (d) for requiring proceedings before the Professional Conduct Committee to be held in public except so far as may be provided by the rules;
 - (e) for requiring, in cases where it is alleged that a registered dentist has been guilty of serious professional misconduct, that where the Professional Conduct Committee judge that the allegation has not been proved they shall record a finding that the dentist is not guilty of such misconduct in respect of the matters to which the allegation relates.

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- (3) Before making rules under this paragraph the Council shall consult such bodies of persons representing dentists as appear to the Council requisite to be consulted.
- (4) Rules under this paragraph shall not come into force until approved by order of the Privy Council contained in a statutory instrument, and the Privy Council may approve such rules either as submitted to them or subject to such modifications as appear to them requisite; but where the Privy Council propose to approve any rules subject to modifications they shall notify to the Council the modifications they propose to make and consider any observations of the Council on the modifications.

Preliminary proceedings in health cases

- 3 (1) Rules under paragraph 2(1)(b) above shall make provision for requiring that before any case is considered by the Health Committee (otherwise than under the following provisions of this paragraph) it shall have been considered by a member of the Council appointed for the purpose by the Council and have been referred by that person to the Committee.
- (2) Where in the course of any proceedings under section 27 of this Act it appears to the Preliminary Proceedings Committee or to the Professional Conduct Committee that the fitness of a registered dentist to practise may be seriously impaired by reason of his physical or mental condition, that Committee may (notwithstanding anything in section 27) refer the question whether it is so impaired to the Health Committee for that question to be determined by them.
- (3) If on a reference under sub-paragraph (2) above the Health Committee determine that the fitness of the dentist to practise is not seriously impaired by reason of his physical or mental condition, the Health Committee shall certify their opinion to the Committee that made the reference.
- (4) If on a reference under sub-paragraph (2) above the Health Committee determine that the fitness of the dentist to practise is seriously impaired by reason of his physical or mental condition the Health Committee shall—
 - (a) certify their opinion' to the Committee that made the reference, and
 - (b) proceed to dispose of the case under section; 28 of this Act,
 and on the Health Committee so certifying, any functions which would otherwise be exercisable by any committee in relation to that person under section 27 of this Act shall cease to be so exercisable.

Evidence etc.

- 4 (1) For the purposes of any proceedings before the Professional Conduct Committee or the Health Committee in England and Wales or Northern Ireland—
 - (a) the Committee may administer oaths; and
 - (b) any party to the proceedings may sue out writs of subpoena ad testificandum and duces tecum;
 but no person shall be compelled under any such writ to produce any document which he could not be compelled to produce on the trial of an action.
- (2) Section 36 of the Supreme Court Act 1981 and section 67 of the Judicature (Northern Ireland) Act 1978 (subpoena issued by High Court to run throughout United Kingdom) shall apply in relation to any such proceedings in England and

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Wales and in Northern Ireland respectively as they apply in relation to causes or matters in the High Court.

- (3) For the purposes of any proceedings before the Professional Conduct Committee or the Health Committee in Scotland, the Committee may administer oaths and the Court of Session shall on the application of any party to the proceedings have the like power as in any action in that court—
- (a) to grant warrant for the citation of witnesses and havers to give evidence or to produce documents before the Committee, and for the issue of letters of second diligence against any witness or haver failing to appear after due citation;
 - (b) to grant warrant for the recovery of documents; and
 - (c) to grant commissions to persons to take the evidence of witnesses or to examine havers and receive their exhibits and productions.

Legal assessors

- 5 (1) For the purpose of advising the Professional Conduct Committee and the Health Committee respectively on questions of law arising in proceedings before them, there shall in all such proceedings be an assessor to the Committee, appointed by the Council, who shall be a barrister, advocate or solicitor of not less than ten years' standing.
- (2) The Lord Chancellor may by statutory instrument make rules as to the functions of assessors appointed under this paragraph to advise the Professional Conduct Committee and as to the functions of those so appointed to advise the Health Committee; and in particular rules under this sub-paragraph may contain such provisions as appear to the Lord Chancellor expedient for securing—
- (a) that where an assessor advises the Professional Conduct Committee or (as the case may be) the Health Committee on any question of law as to evidence, procedure or any other matter specified in the rules, he shall do so in the presence of every party to the proceedings, or every person representing such a party, who appears at the proceedings or, if the advice is tendered after the Committee have begun to deliberate as to their findings, that every such party or person shall be informed what advice the assessor has tendered;
 - (b) that every such party or person as is mentioned in paragraph (a) above shall be informed if in any case the Committee do not accept the advice of the assessor on any such question as is there mentioned,
- and such incidental and supplementary provisions as appear to the Lord Chancellor expedient
- (3) Subject to the provisions of this paragraph, an assessor under this paragraph may be appointed to advise the Professional Conduct Committee or the Health Committee either generally or for any particular proceedings or class of proceedings, and shall hold and vacate office in accordance with the terms of the instrument under which he is appointed.
- (4) The Council may pay to persons appointed to act as assessors such remuneration as the Council may determine.
- (5) The preceding provisions of this paragraph shall apply in relation to proceedings before the Preliminary Proceedings Committee under section 32 of this Act as they

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apply in relation to proceedings before the Professional Conduct Committee, but with the omission of the words " or class of proceedings" in sub-paragraph (3).

Medical examiners and assessors

- 6 Rules under paragraph 2(1)(b) above shall make provision for the appointment of medical examiners and medical assessors to assist the Health Committee in proceedings before them, and for the remuneration of such persons.

Service of notifications by registrar

- 7 (1) Any notification required by the principal sections to be served on a person by the registrar may be served by post in a registered letter, or (in a case to which sub-paragraph (2) below applies) by the recorded delivery service, addressed to that person at his address in the register, or at his last known address if that address differs from his address in the register and it appears to the registrar that such service will be more effective.
- (2) This sub-paragraph applies to any notification required to be served in connection with any determination or order of the Professional Conduct Committee.

Recording of suspension or imposition of conditions

- 8 (1) Where a determination, direction or order for suspension or a direction for conditional registration takes effect in relation to any person in accordance with the principal sections, the registrar shall make a note in the register of that fact and of the period for which that person's registration is to be suspended or subject to conditions by virtue of the determination, direction or order.
- (2) The registrar shall erase that note from the register at such time as the determination, direction or order (for any reason) ceases to have effect.
- (3) Any reference in this paragraph to a direction for suspension or for conditional registration includes a reference to a direction extending a period of suspension or conditional registration.

Co-operation with Dental Board of Republic of Ireland

- 9 (1) with a view to preventing the holding of simultaneous inquiries—
- (a) the Council shall report to the Dental Board of the Republic of Ireland (" the Board ") every case in which it is proposed, in connection with the exercise of the disciplinary powers of the Council or of the Council's committees, to hold an inquiry into the conduct in the United Kingdom of a person registered in the dental register of the Republic of Ireland; and
- (b) where the Council receive a report from the Board as to a proposal to hold an inquiry in connection with the exercise of the disciplinary powers of the Board, the Council and the Council's committees shall have regard to the desirability of postponing inquiry by them into the matter to which the report relates until the inquiry by the Board is completed.
- (2) The Council shall report to the Board every case in which disciplinary action resulting in erasure from the register or in any suspension of a person's registration in it is taken against a person registered in the dental register of the Republic of Ireland

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or in which an order is made under section 32 of this Act in respect of any such person.

- (3) The Council shall also report to the Board—
- (a) every case in which it is proposed that the question of the fitness to practise of a person registered in the said register should be referred to the Health Committee under this Act; and
 - (b) every case in which a direction or an order of the Health Committee takes effect in relation to any such person in accordance with the principal sections.