



Health and Social Care Act 2008

2008 CHAPTER 14

PART 2

REGULATION OF HEALTH PROFESSIONS AND HEALTH AND SOCIAL CARE WORKFORCE

The Office of the Health Professions Adjudicator

98 The Office of the Health Professions Adjudicator

- (1) There is to be a body corporate known as the Office of the Health Professions Adjudicator (referred to in this Part as “the OHPA”).
- (2) The OHPA is to have functions in relation to the professions regulated by—
 - (a) the Medical Act 1983 (c. 54), and
 - (b) the Opticians Act 1989 (c. 44).
- (3) Schedule 6 (which makes further provision about the OHPA) has effect.

99 Functions under Medical Act 1983 and Opticians Act 1989

Schedule 7 (which contains amendments of the Medical Act 1983 and the Opticians Act 1989 providing for certain functions under those Acts relating to adjudication to be exercisable by the OHPA) has effect.

100 Fitness to practise panels

- (1) The functions which the OHPA has under the Medical Act 1983 and the Opticians Act 1989 are to be discharged by fitness to practise panels constituted in accordance with this section.
- (2) A fitness to practise panel is to consist of—
 - (a) a chair selected from the list of persons eligible to serve as chairs provided for by section 101(1)(a),

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- (b) a lay member selected from the list of persons eligible to serve as lay members provided for by section 101(1)(b) (the “lay members list”),
 - (c) a professionally qualified member selected from the list of persons eligible to serve as professionally qualified members provided for by section 101(1)(c) (the “professionally qualified members list”), and
 - (d) such additional members (if any) selected from the lay members list or the professionally qualified members list as may be required by rules.
- (3) Rules may make further provision about the selection of fitness to practise panels in relation to any proceedings.
- (4) Rules under subsection (3) may in particular make provision requiring the selection in specified circumstances of a chair who is legally qualified for the purposes of section 101(2)(a), and may provide for pilot schemes under which chairs who are legally qualified for those purposes are, or are not, selected for such proceedings as may be determined in accordance with the rules.
- (5) In this section “rules” means rules made by the OHPA.

101 Lists of persons eligible for membership of fitness to practise panels

- (1) For the purposes of section 100, the OHPA must appoint, or arrange for the appointment of, persons to lists of—
- (a) persons eligible to serve as chairs,
 - (b) persons eligible to serve as lay members, and
 - (c) persons eligible to serve as professionally qualified members.
- (2) The list of persons eligible to serve as chairs is to consist of—
- (a) persons who are legally qualified,
 - (b) persons who are also included on the list of persons eligible to serve as lay members, and
 - (c) persons who are also included on the list of persons eligible to serve as professionally qualified members.
- (3) Rules may make provision about the keeping of the lists including provision about—
- (a) the division of a list into parts, and
 - (b) the information which is to appear on a list in relation to a person appointed to that list.
- (4) No person may be appointed to a list unless the person satisfies such requirements as may be prescribed by rules.
- (5) Rules made by virtue of subsection (4) must make provision about—
- (a) the qualifications which a person must have in order to be “legally qualified” for the purposes of subsection (2)(a), and
 - (b) the experience which a person must have and the training which a person must have undertaken in order to be eligible for appointment to the list of persons eligible to serve as chairs by virtue of subsection (2)(b) or (c).
- (6) A member of the OHPA may not be appointed to a list.
- (7) A person appointed to a list holds and vacates office in accordance with the terms of the person’s appointment.

(8) In this section “rules” means rules made by the OHPA.

102 Further provisions about listed persons

- (1) The OHPA—
 - (a) may pay to any person included on a list such fees, allowances and expenses as it may determine, and
 - (b) may pay to any person whom it proposes to include on a list such allowances and expenses as it may determine in connection with the provision of training for the person by virtue of subsection (2)(b).
- (2) The OHPA—
 - (a) must provide, or arrange for the provision of, such training for persons included on a list as it may determine, and
 - (b) may provide, or arrange for the provision of, such training for persons whom it proposes to include on a list as it may determine.
- (3) The OHPA must—
 - (a) establish and maintain a system for the declaration and registration of private interests of persons included on a list, and
 - (b) publish entries recorded in that register of interests.
- (4) In this section “list” means any of the lists kept under section 101(1).

103 Legal assessors

- (1) The OHPA must appoint, or arrange for the appointment of, persons to be legal assessors.
- (2) The legal assessors are appointed for the purpose of giving advice to the OHPA’s fitness to practise panels on questions of law arising in proceedings before them.
- (3) To be eligible for appointment as a legal assessor a person must have such qualifications and satisfy such other conditions as are specified by rules.
- (4) A legal assessor appointed under this section—
 - (a) may be appointed either generally or for any particular proceedings or class of proceedings, and
 - (b) holds and vacates office in accordance with the terms of the assessor’s appointment.
- (5) The OHPA may pay such fees, allowances and expenses to a legal assessor appointed under this section as it may determine.
- (6) Rules may make—
 - (a) provision about the functions of legal assessors appointed under this section, and
 - (b) provision for a fitness to practise panel not to be advised by a legal assessor if the chair of the panel is legally qualified for the purposes of section 101(2)(a).
- (7) In this section “rules” means rules made by the OHPA.

104 Clinical and other specialist advisers

- (1) The OHPA may appoint, or arrange for the appointment of, persons to be clinical advisers.
- (2) Any clinical advisers are appointed for the purpose of giving advice to the OHPA's fitness to practise panels on issues relating to health that arise in proceedings before them.
- (3) The OHPA may also appoint, or arrange for the appointment of, persons to act as specialist advisers on issues on which the OHPA considers that specialist knowledge is required.
- (4) Any specialist advisers are appointed for the purpose of giving advice to the OHPA's fitness to practise panels on issues falling within the advisers' speciality arising in proceedings before them.
- (5) To be eligible for appointment as a clinical adviser or specialist adviser a person must have such qualifications and satisfy such other conditions as are specified by rules.
- (6) An adviser appointed under subsection (1) or (3)—
 - (a) may be appointed either generally or for any particular proceedings or class of proceedings, and
 - (b) holds and vacates office in accordance with the terms of the adviser's appointment.
- (7) The OHPA may pay such fees, allowances and expenses to an adviser appointed under subsection (1) or (3) as it may determine.
- (8) Rules may make provision about the functions of advisers appointed under subsection (1) or (3).
- (9) In this section "rules" means rules made by the OHPA.

105 Procedural rules

- (1) The OHPA must make rules about—
 - (a) the procedure to be followed in connection with the making of referrals to the OHPA under the Medical Act 1983 (c. 54) or the Opticians Act 1989 (c. 44), and
 - (b) the procedure to be followed, and the rules of evidence to be observed, in proceedings before the OHPA's fitness to practise panels.
- (2) Subject to subsection (4), rules under this section may make such provision as the OHPA considers appropriate including provision about—
 - (a) preliminary hearings,
 - (b) the giving of directions to parties as to the conduct of proceedings and the consequences of failure to comply with such directions,
 - (c) a fitness to practise panel taking account of undertakings given by the person to whom the proceedings relate,
 - (d) voting by fitness to practise panels, including the taking of decisions by majority and the conferral of a casting vote on the chair,
 - (e) the award and assessment of costs and expenses, and

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- (f) the circumstances in which fitness to practise panels may review their own decisions.
- (3) Rules about the award and assessment of costs and expenses may—
- (a) require that regard be had to a person’s ability to pay when considering the making of an award against that person,
 - (b) include provision for all or part of the costs or expenses of the representative of a party to proceedings to be disallowed by reason of that representative’s conduct of the proceedings, and
 - (c) provide for an award in respect of costs and expenses to be recoverable as if it had been adjudged to be paid by court order.
- (4) Rules under this section must make—
- (a) provision for securing that—
 - (i) notice that proceedings are to be brought is given to the person to whom the proceedings relate, and
 - (ii) notice of any decision of a fitness to practise panel is given to the parties to the proceedings and to the registrar of the regulatory body which regulates the profession of which the person to whom the proceedings relate is a member,within such time and in such manner as is specified in the rules,
 - (b) provision giving each party to proceedings the opportunity, if the party so requests, to put the party’s case at a hearing,
 - (c) provision entitling each party to be represented at any hearing by a person falling within a description of persons specified in the rules, and
 - (d) provision for proceedings to be held in public except and to the extent that the rules provide otherwise.

106 Administration of oaths and issuing of witness summonses etc.

- (1) For the purpose of proceedings before a fitness to practise panel of the OHPA in England and Wales or in Northern Ireland—
- (a) the panel may administer oaths, and
 - (b) any party to the proceedings may apply for the issue of a witness summons directing a person to attend the panel in order to give evidence or to produce a document.
- (2) No person shall be compelled under any such summons to give any evidence or produce any document which that person could not be compelled to give or produce on the trial of an action.
- (3) Section 36 of the Supreme Court Act 1981 (c. 54) and section 67 of the Judicature (Northern Ireland) Act 1978 (c. 23) (which provide a special procedure for the issue of such a summons so as to be in force throughout the United Kingdom) apply in relation to proceedings before a fitness to practise panel in England and Wales or, as the case may be, in Northern Ireland as those provisions apply in relation to causes or matters in the High Court.
- (4) For the purpose of proceedings before a fitness to practise panel of the OHPA in Scotland—
- (a) the panel may administer oaths, and

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- (b) the Court of Session, on the application of any party to the proceedings, has the like power as in any action in that court—
 - (i) to grant warrant for the citation of witnesses and havers to give evidence or to produce documents before the panel and for the issue of letters of second diligence against any witness or haver failing to appear after due citation,
 - (ii) to grant warrant for the recovery of documents, and
 - (iii) to grant commissions to persons to take the evidence of witnesses or to examine havers and receive their exhibits and productions.

107 Duty to inform the public

- (1) For the purpose of ensuring that members of the public are informed about the OHPA and the exercise by it of its functions, the OHPA must publish or provide in such manner as it thinks fit information about the OHPA and the exercise of its functions.
- (2) Without prejudice to the generality of subsection (1), the OHPA must publish in such manner as it thinks fit, and within such time as may be specified in rules, decisions of its fitness to practise panels.
- (3) But the OHPA may withhold from publication—
 - (a) information concerning the physical or mental health of a person which the OHPA considers to be confidential, and
 - (b) other information which is of a description specified in rules.
- (4) Nothing in subsection (1) or (2) authorises or requires the publication or provision of information if the publication or provision of that information—
 - (a) is prohibited by any enactment, or
 - (b) would constitute or be punishable as a contempt of court.
- (5) In this section “rules” means rules made by the OHPA.

108 Duty to consult

The OHPA must from time to time seek the views of—

- (a) members of the public,
 - (b) bodies which appear to the OHPA to represent the interests of patients,
 - (c) the General Medical Council and the General Optical Council, and
 - (d) any other bodies which appear to the OHPA to represent the professions regulated by the Medical Act 1983 (c. 54) or the Opticians Act 1989 (c. 44),
- on matters relevant to the exercise by it of its functions.

109 OHPA rules: supplementary

- (1) This section applies to the power of the OHPA to make rules under any of sections 100, 101, 103, 104, 105 and 107.
- (2) The power may be exercised—
 - (a) so as to make different provision for different cases or different classes of case or different provision in respect of the same case or class of case for different purposes of this Act,

- (b) either in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or
 - (c) so as to make any supplementary, incidental, consequential, transitional, transitory or saving provision which the OHPA considers necessary or expedient.
- (3) Before making rules the OHPA must consult—
 - (a) the Council for Healthcare Regulatory Excellence,
 - (b) if the rules affect the profession regulated by the Medical Act 1983, the General Medical Council and any other bodies which appear to the OHPA to represent that profession,
 - (c) if the rules affect the professions regulated by the Opticians Act 1989, the General Optical Council and any other bodies which appear to the OHPA to represent those professions,
 - (d) bodies which appear to the OHPA to represent the interests of patients, and
 - (e) such other persons as the OHPA considers appropriate.
- (4) Rules do not come into force until they have been approved by order of the Privy Council.
- (5) The Privy Council may approve rules—
 - (a) as submitted to them, or
 - (b) subject to such modifications as appear to them to be necessary.
- (6) Where the Privy Council propose to approve rules subject to modifications, they must—
 - (a) notify the OHPA of the modifications they propose to make, and
 - (b) consider any observations which the OHPA may make on the modifications.

110 Fees payable by General Medical Council and General Optical Council

- (1) The Secretary of State must with the approval of the Treasury make regulations requiring each of the regulatory bodies to pay to the OHPA periodic fees in respect of the discharge by the OHPA of its functions.
- (2) The regulations must provide for the amount of the fees to be determined by the OHPA in accordance with the regulations.
- (3) The regulations must require the OHPA to exercise its powers under the regulations with a view to ensuring that its chargeable costs are met by fees payable under the regulations and, accordingly, that the fees payable by each regulatory body cover—
 - (a) so much of the OHPA's chargeable costs as are treated by the regulations as being attributable to the OHPA's functions under the relevant regulatory Act, and
 - (b) an apportionment between the regulatory bodies of so much of the OHPA's chargeable costs as are not treated by the regulations as being attributable to the OHPA's functions under that Act or the other relevant regulatory Act.
- (4) For the purposes of subsection (3), the OHPA's "chargeable costs" are the costs incurred by the OHPA under or for the purposes of this Act or any other enactment, other than costs—
 - (a) incurred before such day as may be specified in the regulations, or

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- (b) incurred for a purpose specified in the regulations.
- (5) The regulations must provide that no fee is to be payable unless the OHPA has—
- (a) notified the regulatory bodies of its proposed determination as to the amount of the fees payable by them,
 - (b) considered any representations made by the regulatory bodies in relation to the proposed determination, and
 - (c) notified each of the regulatory bodies of the OHPA's determination of the amount payable by that body (which may be more or less than the amount proposed).
- (6) The regulations may require the OHPA to obtain the approval of the Treasury in relation to the amount of any fee.
- (7) The regulations may—
- (a) make provision as to the times at which fees are to be paid;
 - (b) enable a determination to be varied, replaced or revoked;
 - (c) provide that if the whole or any part of a fee payable under the regulations is not paid by the time when it is required to be paid under the regulations, the unpaid balance from that time carries interest at the rate determined by or in accordance with the regulations;
 - (d) make provision as to the recovery of fees.
- (8) Before making regulations under this section, the Secretary of State must consult the regulatory bodies and such other persons as the Secretary of State considers appropriate.
- (9) In this section—
- “regulatory body” means the General Medical Council or the General Optical Council;
 - “relevant regulatory Act” means—
 - (a) in relation to the General Medical Council, the Medical Act 1983 (c. 54),
and
 - (b) in relation to the General Optical Council, the Opticians Act 1989 (c. 44).