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STATUTORY INSTRUMENTS

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**2002 No. 253**

**The Nursing and Midwifery Order 2001**

**PART VI**

**APPEALS**

**Appeals against Registrar's decisions**

**37.**—(1) Where the Registrar under this Order—

- (a) refuses an application for registration, readmission or renewal or for the inclusion of an additional entry;
- (b) in determining an application under article 9 or 10, imposes additional conditions which must be satisfied before the applicant may be admitted to, readmitted to or retained on the register;
- (c) removes the name of a registrant from the register on the ground that he has breached a condition in respect of continuing professional development or such additional education, training or experience as is mentioned in article 19(3) subject to which his registration has effect; or
- (d) fails, within the terms of article 9(6), to issue a decision,

the person aggrieved may appeal to the Council within the prescribed period.

(2) No appeal lies to the Council where the person aggrieved has been refused registration solely because he has failed to pay the prescribed fee for registration or has failed to apply in the prescribed form and manner in accordance with article 9 or 10.

(3) No decision removing a registrant from the register against which an appeal to the Council may be made under paragraph (1) shall have effect before—

- (a) the expiry of the period within which such an appeal may be made; or
- (b) if an appeal is made, the appeal is withdrawn or otherwise finally disposed of.

(4) Any appeal shall be subject to such rules as the Council shall make for the purpose of regulating appeals under this article.

(5) The rules shall in particular provide—

- (a) for the quorum of the Council considering such an appeal;
- (b) that the members considering the appeal are to include registrants and lay members and that the number of members who are registrants may exceed the number of lay members but may not exceed them by more than one;
- (c) for a panel considering an appeal to consist of no fewer than three members who are to be selected with due regard to the matter under consideration and to include—
  - (i) one registrant registered in the same part of the register as the one in which the person concerned is, or is applying to be, registered;
  - (ii) one lay member (who shall not be a registered medical practitioner); and

- (iii) where the health of the person concerned is in issue, one registered medical practitioner;
  - (d) for the person presiding to be a Council member;
  - (e) that no one who has been involved in any other capacity in the case to be considered is to be a member of the panel;
  - (f) for the decision to be made by a majority vote of the persons present;
  - (g) in the event of a tie, for the Chairman to have an additional casting vote which he shall exercise in the favour of the person concerned;
  - (h) for the Registrar to be made a party to the proceedings;
  - (i) for similar provision to be made to that in article 32(2)(b), (f), (g), (i), (j), (k), (m), (n) and (o).
- (6) Article 32(3) shall apply to appeals under this article as if a reference to the Committee concerned were to the Council.
- (7) Article 25, with the exception of paragraph (2), shall apply to appeals under this article as if a reference to a Practice Committee were to the Council.
- (8) A hearing provided for by the rules made under paragraph (4) is to be held—
- (a) in the United Kingdom country in which the registered address of the person concerned is situated;
  - (b) if he is not registered and resides in the United Kingdom, in the country in which he resides; or
  - (c) in any other case, in England.
- (9) Having considered the appeal under this article, the Council 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 made; or
  - (d) remit the case to the Registrar to be disposed of in accordance with its directions.
- (10) The person concerned may appeal to a county court or, in Scotland, a sheriff against an unfavourable decision made under paragraph (9)(a), (c) or (d) and article 38 shall apply to that appeal.
- (11) Subject to paragraph 12, the Council shall publish as soon as reasonably practicable a decision of the Council made under this article together with the reasons for it.
- (12) If the decision is favourable to the person concerned, the Council is not required to publish it unless the person concerned so requests but it may do so with the consent of the person concerned.

## **Appeals**

- 38.**—(1) An appeal from—
- (a) any order or decision of the Health Committee or the Conduct and Competence Committee other than an interim order made under article 31, shall lie to the appropriate court; and
  - (b) any decision of the Council under article 37 or of the Investigating Committee under article 26(7) or (12) shall lie to a county court or, in Scotland, to a sheriff.
- (2) In any appeal under this article the Council shall be the respondent.
- (3) The Court or sheriff 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 the Practice Committee concerned or the Council, as the case may be, could have made; or
- (d) remit the case to the Practice Committee concerned or Council, as the case may be, to be disposed of in accordance with the directions of the court or sheriff,

and may make such order as to costs (or, in Scotland, expenses) as it, or he, as the case may be, thinks fit.

(4) In this article “the appropriate court” means—

- (a) in the case of a person whose registered address is (or, if he were registered, would be) in Scotland, the Court of Session;
- (b) in the case of a person whose registered address is (or, if he were registered, would be) in Northern Ireland, the High Court of Justice in Northern Ireland; and
- (c) in the case of a visiting EEA nurse or midwife or in any other case, the High Court of Justice in England and Wales.