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STATUTORY INSTRUMENTS

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**2002 No. 3135**

The Medical Act 1983 (Amendment) Order 2002

**PART V**

LICENCE TO PRACTISE AND REVALIDATION

**Insertion of Part IIIA**

**10.** After Part III (registration of persons qualifying overseas) insert—

**“PART IIIA**

LICENCE TO PRACTISE AND REVALIDATION

*Duty of General Council to make regulations*

**Regulations as to licence to practise and revalidation**

**29A.**—(1) Any reference in this Act to a “licence to practise” is a reference to a licence granted under and in accordance with this Part to a medical practitioner by a licensing authority.

(2) The General Council shall make regulations with respect to licences to practise.

(3) The provisions made by regulations under subsection (2) above must include provision for or in connection with each of the matters specified in subsection (4) below.

(4) Those matters are—

- (a) grant of a licence to practise;
- (b) refusal of a licence to practise;
- (c) withdrawal of a licence to practise; and
- (d) revalidation of a medical practitioner of a prescribed description as a condition of his continuing to hold a licence to practise.

(5) In this Part—

“licensing authority” means—

- (a) the Registrar;
- (b) a Registration Decisions Panel;
- (c) such other committee of the General Council as may be prescribed; or
- (d) such other officer of the General Council as may be prescribed;

“prescribed” means prescribed by regulations made by the General Council under subsection (2) above; and

“revalidation” means evaluation of a medical practitioner’s fitness to practise.

*Grant, refusal and withdrawal of licence*

**Grant, refusal and withdrawal of licence**

**29B.**—(1) Regulations under section 29A above shall provide for a licence to practise to be granted to a medical practitioner—

- (a) on first registration under this Act as a medical practitioner with either full registration or limited registration;
- (b) on being provisionally registered under this Act; and
- (c) in such other cases or circumstances as may be prescribed.

(2) Regulations under section 29A above shall provide for the withdrawal of a licence to practise from a medical practitioner—

- (a) where the practitioner has failed to comply with prescribed requirements of regulations under section 29A above;
- (b) where the licence to practise was fraudulently procured or otherwise incorrectly granted;
- (c) where the medical practitioner requests that the licence to practise be withdrawn; and
- (d) in such other cases or circumstances as may be prescribed.

(3) Regulations under section 29A above shall make provision as to the procedure to be followed in connection with the grant or refusal, or the withdrawal, of a licence to practise by a licensing authority.

(4) If a licensing authority decides—

- (a) to refuse to grant a licence to practise to a medical practitioner; or
- (b) to withdraw a licence to practise from a medical practitioner,

the Registrar shall give the practitioner notice in accordance with subsection (5) below.

(5) The notice required by subsection (4) above is notice of—

- (a) the decision;
- (b) the reasons given for the decision by the licensing authority concerned; and
- (c) the practitioner’s right of appeal under section 29F below.

(6) Section 29H below applies in relation to a notice under subsection (4) above.

**Referral to the Investigation Committee**

**29C.**—(1) Regulations under section 29A above shall provide that where, in the course of revalidation, it appears to a licensing authority that the fitness to practise of the medical practitioner concerned may be impaired, the authority may refer the matter to the Investigation Committee.

(2) If a matter is referred to the Investigation Committee in accordance with subsection (1) above, the licensing authority shall take no further action until the matter has been considered—

- (a) by the Investigation Committee; or
- (b) if it is referred by that Committee to a Fitness to Practise Panel, by such a Panel, and has been referred back to the authority.

### *Restoration of licence*

#### **Restoration of licence**

**29D.**—(1) The General Council shall make regulations under section 29A above for and in connection with authorising or requiring a licensing authority, in such cases or circumstances as may be prescribed, to restore a licence to practise to a medical practitioner whose licence to practise has been withdrawn.

(2) Regulations by virtue of subsection (1) above shall make provision as to the procedure to be followed in connection with the restoration, or the refusal of the restoration, of a licence to practise by a licensing authority.

(3) If a licensing authority refuses to restore a licence to practise to a medical practitioner, the Registrar shall give the practitioner notice of—

- (a) the decision;
  - (b) the reasons given for the decision by the licensing authority concerned; and
  - (c) the practitioner's right of appeal under section 29F below.
- (4) Section 29H below applies in relation to a notice under subsection (3) above.

### *Supplementary provisions*

#### **Evidence**

**29E.**—(1) Regulations under section 29A above may make provision for a licensing authority—

- (a) to refuse to grant a licence to practise to a medical practitioner;
- (b) to withdraw a licence to practise from a medical practitioner; or
- (c) to refuse to restore a licence to practise to a medical practitioner,

in any case where the medical practitioner does not provide the licensing authority with such evidence or information as the authority may reasonably request for any of the purposes specified in subsection (2) below.

(2) The purposes are those of—

- (a) determining whether to grant a licence to practise to the practitioner;
- (b) revalidation of the practitioner;
- (c) determining whether to withdraw a licence to practise from the practitioner; and
- (d) determining whether to restore a licence to practise to the practitioner.

(3) For the purpose of carrying out any function under sections 29A to 29D above in relation to a medical practitioner, a licensing authority may require—

- (a) any medical practitioner (other than that practitioner); or
- (b) any other person,

who, in the opinion of the authority, is able to supply information, or produce any document, which appears relevant to the discharge of any such function, to supply such information or produce such a document.

(4) For the purpose of reviewing procedures relating to—

- (a) revalidation; or
- (b) the grant, withdrawal or restoration of a licence to practise,

a licensing authority may require any medical practitioner or other person to supply information or produce any document.

(5) Nothing in subsection (3) or (4) above shall require or permit any disclosure of information which is prohibited by or under any other enactment.

(6) But where information is held in a form in which the prohibition operates because the information is capable of identifying an individual, a licensing authority may, in exercising its functions under subsection (3) or (4) above, require that the information be put into a form which is not capable of identifying that individual.

(7) In determining for the purposes of subsection (5) above whether a disclosure is not prohibited, by reason of being a disclosure of personal data which is exempt from the non-disclosure provisions of the Data Protection Act 1998 by virtue of section 35(1) of that Act, it shall be assumed that the disclosure is required by or under this section.

(8) Subsections (3) and (4) do not apply in relation to the supplying of information or the production of a document which a person could not be compelled to supply or produce in civil proceedings before the relevant court (within the meaning of section 40(5) below).

(9) In this section “enactment” includes—

- (a) an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament; and
- (b) any provision of, or any instrument made under, Northern Ireland legislation.

## Appeals

**29F.**—(1) If a licensing authority decides under this Part—

- (a) to refuse to grant a licence to practise to a medical practitioner;
- (b) to withdraw a licence to practise from a medical practitioner; or
- (c) to refuse to restore a licence to practise to a medical practitioner,

the practitioner may appeal to a Registration Appeals Panel.

(2) Schedule 3B (which provides for the procedures to be followed before a Registration Appeals Panel) shall apply in relation to any appeal under subsection (1) above.

(3) A decision under this Part to withdraw a licence to practise from a medical practitioner shall not be carried into effect—

- (a) until the time for bringing any appeal against the decision has expired without an appeal being brought; or
- (b) where an appeal is brought, until the date on which the appeal is finally disposed of or abandoned or fails by reason of its non-prosecution.

## Guidance

**29G.**—(1) The General Council may publish guidance for medical practitioners relating to the information and documents to be provided, and any other requirements to be satisfied—

- (a) for the purposes of revalidation; or
- (b) for securing restoration of a licence to practise.

(2) In preparing any such guidance in relation to revalidation, the General Council shall take into account such similarities as there may be between any information or documents to be provided, or any other requirements to be satisfied—

- (a) for the purposes of revalidation; and

- (b) for the purposes of any scheme for the appraisal of medical practitioners which applies within the health service, the Scottish health service or the Northern Ireland health service.
- (3) In subsection (2) above—
  - “the health service” means the health service established in pursuance of the National Health Service Act 1946;
  - “the Northern Ireland health service” means any service provided in pursuance of Article 4(a) of the Health and Personal Social Services (Northern Ireland) Order 1972; and
  - “the Scottish health service” means the health service established in pursuance of the National Health Service (Scotland) Act 1947.

### Notices

- 29H.**—(1) This section applies to any notice required to be given to a medical practitioner under—
- (a) section 29B or 29D above; or
  - (b) paragraph 6 or 7 of Schedule 3B to this Act.
- (2) Any such notice may be so given—
- (a) by delivering it to him;
  - (b) by leaving it at his proper address;
  - (c) by sending it by a registered post service; or
  - (d) by sending it by a postal service which provides for the delivery of the notice by post to be recorded.
- (3) For the purposes of this section and of section 7 of the Interpretation Act 1978 in its application to this section, a medical practitioner’s proper address shall be—
- (a) his address in the register; or
  - (b) if the conditions in subsection (4) below are satisfied, his last known address.
- (4) The conditions are that—
- (a) the practitioner’s last known address differs from his address in the register; and
  - (b) it appears to the body or person giving the notice that a letter sent to the practitioner at his last known address is more likely to reach him.
- (5) For the purposes of this section—
- (a) the giving of a notice effected by sending it by post shall be deemed to have been effected at the time when the letter containing it would be delivered in the ordinary course of post; and
  - (b) so much of section 7 of the Interpretation Act 1978 as relates to the time when service is deemed to have been effected shall not apply to a notice sent by post.

### Miscellaneous

- 29J.**—(1) Regulations under section 29A above may provide for the charging of a fee to a medical practitioner in respect of the cost of—
- (a) his revalidation; or
  - (b) the consideration of any application made by him for restoration of a licence to practise.

(2) Any sum payable by a medical practitioner under subsection (1) above may be recovered by the General Council and, in England and Wales or Northern Ireland, shall be recoverable summarily as a civil debt.

(3) Regulations under section 29A above may make different provision for different purposes, cases or circumstances.

(4) Regulations under section 29A above shall not have effect until approved by order of the Privy Council.

(5) Before making regulations under section 29A above, the General Council shall consult such bodies of persons representing medical practitioners, or medical practitioners of any description, as appear to the Council requisite to be consulted.”

### Insertion of new Schedule 3B

11. After Schedule 3A insert—

#### “SCHEDULE 3B

Section 29F

#### LICENCE TO PRACTISE AND REVALIDATION: APPEALS

##### **Manner of, and time for, appealing**

1.—(1) A medical practitioner who wishes to appeal to a Registration Appeals Panel under section 29F of this Act against a decision of a licensing authority must give written notice of appeal to the Registrar.

(2) Any such notice of appeal must be given within the period of 28 days beginning with the day on which the practitioner is given notice of the decision of the licensing authority.

(3) Sub-paragraph (2) above is subject to paragraph 2 below.

##### **Extension of time for appealing**

2. Where—

(a) any notice required by section 29B or 29D to be given to a medical practitioner by the Registrar is given by sending it to him by post; and

(b) the Registrar is satisfied, on the application of the practitioner, that the practitioner did not receive the notice within the period of 14 days beginning with the day on which the licensing authority gave the decision to which the notice relates,

the Registrar may, if he thinks fit, by authorisation in writing extend the time for giving notice of appeal under paragraph 1 above.

##### **Rules as to procedure and evidence**

3.—(1) The General Council shall make rules as to—

(a) the procedure to be followed; and

(b) the rules of evidence which are to apply,

in proceedings before a Registration Appeals Panel.

(2) Rules made under this paragraph shall include provision—

(a) securing that notice of the time and place of any hearing is given, at such time and in such manner as may be specified in the rules, to the medical practitioner to whom the proceedings relate;

- (b) securing that any party to proceedings before a Registration Appeals Panel shall, if he so requires, be entitled to be heard by the Panel;
  - (c) 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; and
  - (d) requiring proceedings to be held in public if the medical practitioner to whom the proceedings relate so requests, unless and to the extent that the rules provide otherwise.
- (3) In sub-paragraph (2) above, “party”, in relation to any proceedings, means—
- (a) the medical practitioner to whom the proceedings relate; or
  - (b) the Solicitor to the General Council.
- (4) Paragraphs 2 and 7 of Schedule 4 to this Act shall apply in relation to proceedings before a Registration Appeals Panel as they apply in relation to proceedings before a Fitness to Practise Panel.
- (5) Rules under this paragraph shall not come into force until approved by order of the Privy Council.
- (6) The Privy Council may approve such rules—
- (a) as submitted to them; or
  - (b) subject to such modifications as appear to them to be requisite.
- (7) Where the Privy Council propose to approve rules under this paragraph subject to modifications, they shall—
- (a) notify the General Council of the modifications they propose to make; and
  - (b) consider any observations which the General Council may make on the modifications.
- (8) Before making rules under this paragraph the General Council shall consult such bodies of persons representing medical practitioners, or medical practitioners of any description, as appear to the Council requisite to be consulted.

#### **References to the Investigation Committee**

- 4.—(1) Where a matter—
- (a) arises in the course of proceedings relating to a medical practitioner before a Registration Appeals Panel; and
  - (b) ought, in the opinion of the Panel, to be investigated by the Investigation Committee,
- sub-paragraph (2) below applies.
- (2) In any such case, the Registration Appeals Panel may—
- (a) adjourn the proceedings; and
  - (b) give a direction to the Registrar to refer the matter to the Investigation Committee.

#### **Powers of Registration Appeal Panels disposing of an appeal**

5. In disposing of an appeal under section 29F of this Act by a medical practitioner against a decision of a licensing authority, the determinations that may be made by a Registration Appeals Panel are—

- (a) if the appeal is against a decision to refuse to grant a licence to practise, that a licence to practise should, or (as the case may be) should not, be granted to the practitioner;
- (b) if the appeal is against a decision to withdraw a licence to practise, that a licence to practise should, or (as the case may be) should not, be withdrawn from the practitioner; or
- (c) if the appeal is against a decision to refuse to restore a licence to practise, that a licence to practise should, or (as the case may be) should not, be restored to the practitioner,

and a Panel may make such orders as to costs (or, in Scotland, expenses) as they think fit.

### Successful appeals

6.—(1) This paragraph applies in any case where, on an appeal under section 29F of this Act by a medical practitioner against a decision of a licensing authority, a Registration Appeals Panel determines—

- (a) that a licence to practise should be granted to the medical practitioner;
- (b) that a licence to practise should not be withdrawn from the medical practitioner; or
- (c) that a licence to practise should be restored to the medical practitioner.

(2) The Registration Appeals Panel shall give notice to the Registrar informing him of the determination and directing him accordingly—

- (a) to grant the licence;
- (b) not to withdraw the licence; or
- (c) to restore the licence.

(3) The Registrar shall give notice of the determination to the medical practitioner.

(4) Section 29H of this Act applies in relation to any notice under sub-paragraph (2) above.

### Unsuccessful appeals

7.—(1) This paragraph applies in any case where, on an appeal under section 29F of this Act by a medical practitioner against a decision of a licensing authority, a Registration Appeals Panel determines—

- (a) that a licence to practise should not be granted to the medical practitioner;
- (b) that a licence to practise should be withdrawn from the medical practitioner; or
- (c) that a licence to practise should not be restored to the medical practitioner.

(2) The Registration Appeals Panel shall give notice to the Registrar—

- (a) informing him of the determination; and
- (b) if the determination is that a licence to practise should be withdrawn from the medical practitioner, directing him to withdraw the licence.

(3) The Registrar shall give the medical practitioner notice of—

- (a) the determination; and
- (b) his right under paragraph 8 below to appeal against the determination.

(4) Any direction under sub-paragraph (2)(b) above has effect subject to section 29F(3) of this Act (no implementation pending appeal).



(5) Section 29H of this Act applies in relation to any notice under sub-paragraph (2) above.

#### **Further appeal to court against determination within paragraph 7**

**8.**—(1) Where, on an appeal under section 29F of this Act by a medical practitioner, a Registration Appeals Panel makes a determination falling within sub-paragraph (1) of paragraph 7 above, the practitioner may appeal against the determination.

(2) Any such appeal must be made within the period of 28 days beginning with the day on which the practitioner is given notice under paragraph 7 above of the determination of the Registration Appeals Panel.

(3) Any such appeal must be made to a county court or, in Scotland, to the sheriff.

(4) In sub-paragraph (3) above “the sheriff” means the sheriff in whose sheriffdom is situated the address—

- (a) which is shown in the register as the practitioner’s address; or
- (b) which would be so shown, if the practitioner were registered.

(5) On appeal under this paragraph from a Registration Appeals Panel, the county court or the sheriff may—

- (a) dismiss the appeal;
- (b) allow the appeal and quash the decision appealed against; or
- (c) remit the case to the Registrar for him to refer it to a Registration Appeals Panel to dispose of in accordance with the directions of the court (or the sheriff),

and may make such orders as to costs (or, in Scotland, expenses) as it (or he) thinks fit.”.

#### **Supplementary**

**12.**—(1) For section 30(3) (the registers) substitute—

“(3) Each register shall also include, in respect of each of the persons entered in it, a statement of the following—

- (a) the person’s address;
- (b) the person’s date of registration;
- (c) whether the person holds a licence to practise or not;
- (d) any qualifications which the person is entitled to have registered under section 16 or 26 above; and
- (e) any other particulars prescribed in the case of a person entered in that register.”.

(2) In section 31(9) (power to make regulations with respect to the registers) for paragraph (b) substitute—

- “(b) for securing that, in such circumstances as may be prescribed, such a person’s name is not so restored unless—
  - (i) the General Council or a committee of the General Council so direct after making such investigation into his fitness to practise as they think fit,
  - (ii) the practitioner’s licence to practise is restored in accordance with the regulations, or
  - (iii) both (i) and (ii) are met.”.

(3) In section 31A (voluntary removal from the register), after subsection (1) insert—

“(1A) Regulations under subsection (1)(c) above shall provide that, in such circumstances as may be prescribed, a person’s name is not to be restored to the register unless—

- (a) the General Council or a committee of the General Council so direct after making such investigation into his fitness to practise as they think fit;
- (b) the practitioner’s licence to practise is restored in accordance with the regulations; or
- (c) both (a) and (b) are met.

(1B) In subsection (1A) above, “prescribed” means prescribed under regulations made under subsection (1) above.”.

(4) In section 46 (recovery of fees), in subsections (1) and (3) after the words “fully registered” insert in both places “ and holds a licence to practise ”.

(5) In section 47 (appointments not to be held except by fully registered practitioners)—

- (a) in subsection (1) for the words from the beginning to “medical officer” substitute—  
“ Subject to subsection (2) below, only a person who is fully registered and who holds a licence to practise may hold an appointment as physician, surgeon or other medical officer ”; and
- (b) in consequence of that amendment, the sidenote to the section becomes “Appointments not to be held except by fully registered medical practitioners who hold licences to practise”.

(6) In section 48 (certificates invalid if not signed by fully registered practitioner)—

- (a) at the end add “ and holds a licence to practise ”; and
- (b) in consequence of that amendment, the sidenote to the section becomes “Certificates invalid if not signed by fully registered medical practitioners who hold licences to practise”.

(7) After section 49 insert—

**“49A Penalty for pretending to hold a licence to practise**

(1) If a person who does not hold a licence to practise—

- (a) holds himself out as having such a licence; or
- (b) engages in conduct calculated to suggest that he has such a licence,

he shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(2) Any penalty to which a person is liable on summary conviction under subsection (1) above may be recovered in Scotland by any person before the sheriff or the district court who may, on the appearance or the default to appear of the accused, proceed to hear the complaint, and where the offence is proved or admitted the sheriff or court shall order the accused to pay the penalty as well as such expenses as the sheriff or court shall think fit.

(3) Any sum of money arising from conviction and recovery of penalties as mentioned in subsection (2) above shall be paid to the Treasurer of the General Council.”.

(8) In paragraphs 11(1) and (2) of Schedule 6 (transitional and saving provisions) for “fully registered person” substitute “ registered medical practitioner ”.

**Changes to legislation:**

There are currently no known outstanding effects for the The Medical Act 1983 (Amendment) Order 2002, PART V.