

**2005 No. 2011**

**HEALTH CARE AND ASSOCIATED PROFESSIONS**

**DENTISTS**

**The Dentists Act 1984 (Amendment) Order 2005**

*Made* - - - - - *19th July 2005*

*Coming into force in accordance with article 1(3), (4) and (5)*

At the Court at Buckingham Palace, the 19 day of July 2005

Present,

The Queen's Most Excellent Majesty in Council

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Whereas the Secretary of State and the Scottish Ministers published a draft Order and invited representations as required by paragraph 9(1) and (3) of Schedule 3 to the Health Act 1999<sup>(a)</sup>;

And whereas the period of three months mentioned in paragraph 9(4) of that Schedule expired before a draft of this Order in Council was laid before Parliament and the Scottish Parliament;

And whereas a draft of this Order in Council has been laid before and approved by resolution of each House of Parliament and the Scottish Parliament in accordance with section 62(10) of the Health Act 1999;

Now, therefore, Her Majesty, in exercise of the powers conferred upon Her by sections 60 and 62(4) of, and Schedule 3 to, that Act, and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:

## PART 1

### General

#### **Citation, interpretation and commencement**

1.—(1) This Order may be cited as the Dentists Act 1984 (Amendment) Order 2005.

(2) In this Order, “the Act” means the Dentists Act 1984<sup>(b)</sup>.

(3) The following articles shall come into force on the making of this Order—

- (a) this article;
- (b) article 43 to the extent that it inserts sections 50C and 50D into the Act;
- (c) article 44;
- (d) article 45; and
- (e) article 50(2) to (4).

(4) Those provisions of this Order which confer powers enabling rules or regulations to be made by the General Dental Council, or orders to be made by the Privy Council, shall come into force on the making of this Order, but for the purpose only of the exercise of those powers.

(5) The provisions of this Order in so far as they are not brought into force by paragraphs (3) and (4) shall come into force on such day as the Secretary of State may specify.

(6) Different days may be specified under paragraph (5) for different purposes.

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<sup>(a)</sup> 1999 c.8.

<sup>(b)</sup> 1984 c.24; this Act is amended by the Dentists Act 1984 (Amendment) Order 2001 (S.I. 2001/3926).

(7) The Secretary of State shall notify any day specified and, if different purposes are specified, the purposes for which it is specified in the London, Edinburgh and Belfast Gazettes at least one week before that day.

(8) Subject to paragraph (9), this Order shall extend to England and Wales, Scotland and Northern Ireland.

(9) The extent of any amendment of any enactment or instrument in Schedule 6 to this Order is the same as that of the enactment or instrument amended.

#### **Amendment of the Dentists Act 1984**

2.—(1) The Act shall be amended in accordance with the following provisions of this Order.

(2) Except where the context otherwise requires, references in this Order to Parts, sections and Schedules are references to Parts and sections of, and Schedules to, the Act.

## **PART 2**

### **The Council, their Committees and Registration**

#### **Amendment of section 1**

3. In section 1 (constitution and general duties of the Council), for subsections (2) to (2C)(a) substitute—

“(2) The Council shall, when exercising their functions under this Act, have a general concern—

(a) to promote high standards of education at all its stages in all aspects of dentistry; and

(b) to promote high standards of professional conduct, performance and practice among persons registered under this Act.

(2A) The Council shall be constituted as provided by order of the Privy Council.

(2B) An order of the Privy Council made under subsection (2A) may contain such incidental, consequential, saving, transitional or supplementary provisions as appear to the Privy Council to be necessary or expedient.”.

#### **Amendment of section 2**

4.—(1) In section 2 (Committees of the Council)—

(a) for subsections (1) to (4A)(b) substitute—

“(1) There shall continue to be committees of the Council known as—

(a) the Professional Conduct Committee; and

(b) the Health Committee.

(2) There shall also be established committees of the Council to be known as—

(a) the Investigating Committee;

(b) the Professional Performance Committee;

(c) the Interim Orders Committee; and

(d) the Registration Appeals Committee.

(3) In this Act, “Practice Committee” means the Professional Conduct Committee, the Health Committee or the Professional Performance Committee.”; and

(b) in subsection (7), omit “shall be contained in a statutory instrument, and”.

(2) The Preliminary Proceedings Committee, the Continuing Professional Development Committee and the Dental Auxiliaries Committee are abolished.

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(a) Subsections (2A) to (2C) were inserted by S.I. 2001/3926.

(b) Subsection (4A) was inserted by S.I. 2001/3926.

## Insertion of sections 2A to 2D

### 5. After section 2 insert—

#### **“The Council’s duty to co-operate**

**2A.**—(1) In the exercise of their functions, the Council shall co-operate in so far as reasonably practicable with public authorities, and other bodies and persons, falling within subsection (2).

(2) Public authorities, bodies and persons fall within this subsection if—

- (a) they are concerned with the employment (whether or not under a contract of service) of registered dentists or registered dental care professionals;
- (b) they provide, assess or fund education or training for those who are, or seek to become, registered dentists or registered dental care professionals, or they propose to do so;
- (c) they regulate services in the provision of which registered dentists or registered dental care professionals are engaged;
- (d) they carry out activities in connection with the services provided by the professions regulated under this Act; or
- (e) they—
  - (i) are responsible for regulating or co-ordinating the regulation of health or social care professions not regulated under this Act, or
  - (ii) carry out activities in connection with the services provided by those professions.

(3) In carrying out their duty to co-operate under subsection (1), the Council shall have regard to any differing considerations in relation to the practice of dentistry which apply in England, Scotland, Wales and Northern Ireland.

#### **Annual and other reports**

**2B.**—(1) The Council shall prepare a report for each calendar year on the exercise of their functions in that year.

(2) The Council must submit each report prepared under subsection (1) to the Privy Council within the calendar year after the year to which the report relates.

(3) The first report prepared under subsection (1) shall relate to the last complete calendar year before the commencement of this subsection.

(4) The Privy Council shall, as soon as reasonably practicable after a report is submitted to it under subsection (2), lay a copy of that report before each House of Parliament and the Scottish Parliament.

(5) The Council shall publish at least once in each calendar year a statistical report which indicates the efficiency and effectiveness of the arrangements they have put in place to protect the public from persons whose fitness to practise as a dentist or as a member of a profession complementary to dentistry is impaired, together with the Council’s observations on the report.

#### **Accounts**

**2C.**—(1) The Council shall—

- (a) keep accounts, and
- (b) prepare a statement of accounts in respect of each calendar year,

in such form as the Privy Council may determine in writing.

(2) The Council shall appoint an auditor to audit each statement of accounts prepared in accordance with subsection (1)(b), and the auditor must prepare a report on each statement of accounts.

(3) The auditor appointed must be eligible for appointment as a company auditor under section 25 of the Companies Act 1989 or article 28 of the Companies (Northern Ireland) Order 1990.

(4) The Council shall, as soon as reasonably practicable after the end of each calendar year—

- (a) publish the statement of accounts for that year, together with the auditor's report on it; and
- (b) send a copy of the statement of accounts and the report to the Privy Council and the Comptroller and Auditor General.

(5) The Comptroller and Auditor General shall examine, certify and report on each statement of accounts received under subsection (4) and for these purposes may inspect accounts kept by the Council in accordance with subsection (1)(a).

(6) The Comptroller and Auditor General shall send a copy of each report prepared by him under subsection (5) to the Council and the Privy Council.

(7) The Privy Council shall, as soon as reasonably practicable after the end of each calendar year, lay before each House of Parliament and the Scottish Parliament a copy of—

- (a) the statement of accounts for that year as certified by the Comptroller and Auditor General;
- (b) the auditor's report for that year; and
- (c) the report of the Comptroller and Auditor General for that year.

### **Complaints**

**2D.**—(1) The Council may incur expenditure for the purposes of investigating and resolving dental complaints.

(2) In this section “dental complaints” means complaints made by users of the services of registered dentists or the services of registered dental care professionals about—

- (a) the dental services provided by a registered dentist, a registered dental care professional or a body corporate carrying on the business of dentistry; or
- (b) the goods or materials provided to persons, or the facilities provided for persons, using those dental services.

(3) The Council may also incur expenditure for the purposes of assisting the parties to the dental complaint in reaching a satisfactory resolution of that complaint.”.

### **Substitution of section 14**

6. For section 14 substitute—

#### **“The dentists register and the registrar**

**14.**—(1) There shall continue to be a register known as the dentists register (referred to in this Act as “the register”).

(2) The register shall be kept by a registrar appointed by the Council.

(3) Any person appointed to the office of registrar shall hold the office for such period and shall receive such salary as may be fixed by the Council.

(4) The registrar shall perform such duties in connection with the register as the Council may direct, and in the execution of his duties he shall act on such evidence as in each case appears to him sufficient.

(5) The registrar may delegate, either generally or specifically, any of his functions to any of the Council's officers.

(6) A certificate purporting to be signed by the registrar, certifying that a person—

- (a) is registered in the register,
- (b) is not registered in the register,
- (c) was registered in the register at a specified date or during a specified period,
- (d) was not registered in the register at a specified date or during a specified period, or
- (e) has never been registered in the register,

shall be evidence (and in Scotland sufficient evidence) of the matters certified.”.

### **Amendment of section 18**

7. In section 18 (procedure for registration)—

- (a) in subsection (1), after “registration” insert “in the register”;
- (b) in subsection (2), after “applying to be registered” insert “in the register”; and
- (c) in subsection (3), after “duly register” insert “in the register”.

### **Amendment of section 19**

8. In section 19 (regulations with respect to the register)—

(a) for subsection (2)(a) substitute—

“(2) Regulations under this section may authorise the registrar to erase from the register the name of a person who, after such notices and warnings as may be prescribed by the regulations, fails to pay a fee prescribed under subsection (1)(b).

(2A) Where a person’s name has been erased by virtue of regulations under this section, that name shall be restored to the register on that person’s application if he satisfies the registrar that he meets the requirements of—

- (a) section 15(3)(a) to (c);
- (b) section 26A; and
- (c) any rules made under section 34B which apply to his case.

(2B) Where the registrar refuses to restore a person’s name to the register under subsection (2A), the registrar shall forthwith serve on the person concerned notification of the decision and of the reasons for it.”; and

(b) omit subsections (3) and (4).

### **Repeal of sections 20 and 21**

9. Section 20 (selection of proper abbreviations of overseas diplomas) and section 21 (notification of reasons for refusal of application for registration etc.) are hereby repealed.

### **Substitution of section 22**

10. For section 22 substitute—

#### **“Publication of the register**

22.—(1) The registrar shall make available to members of the public in such form as he considers appropriate—

- (a) the names of persons appearing in the register;
- (b) the qualifications of persons appearing in the register; and
- (c) such other details as the Council may direct.

(2) For the purposes of subsection (1), the registrar may provide a member of the public with a copy of, or extract from, the register, and any such copy or extract shall be evidence (and in Scotland sufficient evidence) of the matters mentioned in it.”.

### **Amendment of section 23**

11. In section 23 (erasure of names of deceased persons and of those who have ceased to practise)—

(a) for subsection (4)(b) substitute—

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(a) Subsection (2) was substituted by S.I. 1996/1496.  
(b) Subsection (4) was amended by S.I. 2001/3926.

“(4) Where a person’s name has been erased from the register under subsection (2) or (3) or at his request, then, unless the original entry of his name was incorrectly made or fraudulently procured, the name shall be restored to the register on his application if he satisfies the registrar that he meets the requirements of—

- (a) section 15(3)(a) to (c);
  - (b) section 26A; and
  - (c) any rules made under section 34B which apply to his case.”; and
- (b) omit subsection (5).

### **Substitution of section 24**

12. For section 24 substitute—

#### **“Erasure on grounds of fraud or error**

24.—(1) If the registrar is satisfied that any entry in the register has been incorrectly made, he shall erase that entry from the register.

(2) If the registrar has reason to believe that any entry in the register has been fraudulently procured, he shall refer the matter to the Professional Conduct Committee to determine the question of whether that entry has been fraudulently procured.

(3) If the Professional Conduct Committee determine that the entry has been fraudulently procured, they may direct that the entry shall be erased from the register.

(4) Where a person’s name has been erased from the register under subsection (3), that person may apply to the Council for his name to be restored to the register.

(5) The Council shall refer an application under subsection (4) to the Professional Conduct Committee.

(6) The Professional Conduct Committee shall determine an application referred under subsection (5) and may decide—

- (a) that the person’s name is to be restored to the register;
- (b) that the person’s name is not to be restored to the register; or
- (c) that the person’s name is not to be restored to the register until the end of such period as they shall specify.

(7) If the Professional Conduct Committee give a direction under subsection (3) or a decision under subsection (6), the registrar shall forthwith serve on the person concerned notification of the direction or decision and (except in the case of a decision under subsection (6)(a)) of his right to appeal against it under section 29.”.

### **Repeal of section 25**

13. Section 25 (alterations of names and addresses) is hereby repealed.

### **Insertion of section 25A**

14.—(1) After section 25 insert—

#### *“Registration appeals*

#### **Registration appeals**

25A. Schedule 2A to this Act (registration appeals: dentists register) shall have effect.”.

(2) Schedule 1 to this Order, which inserts a new Schedule 2A into the Act, shall have effect.



## **Amendment of section 26**

**15.** In section 26 (use of titles and descriptions)—

(a) after subsection (4) insert—

“(4A) The Council may make regulations—

- (a) prescribing a fee to be charged on the entry of a name in a list for the time being kept by them under subsection (4), or on the restoration of any entry to such a list;
- (b) prescribing a fee to be charged in respect of the retention of the name of a person in such a list.

(4B) Regulations under subsection (4A) may in particular authorise the registrar—

- (a) to refuse to make in or restore to a list for the time being kept by the Council under subsection (4) any entry until a fee prescribed by the regulations has been paid; and
- (b) to erase from such a list the name of a person who, after such notices and warnings as may be prescribed by the regulations, fails to pay a fee prescribed by the regulations in respect of the retention of a person’s name in that list.”;

(b) omit subsection (5);

(c) in subsection (6) omit “or (5)”; and

(d) for subsection (7) substitute—

“(7) The Council shall from time to time publish any list for the time being kept by them under subsection (4).”.

## **Insertion of section 26A**

**16.** After section 26 insert—

### *“Insurance*

#### **Insurance**

**26A.—**(1) A registered dentist must be covered by adequate and appropriate insurance throughout the period during which he is registered in the register.

(2) In this section “adequate and appropriate insurance” means insurance of a type and amount which rules under this section specify as adequate and appropriate.

(3) A person seeking registration in the register must supply the registrar with evidence that, if his name were to be entered in the register, he would be covered by adequate and appropriate insurance commencing, at the latest, on the date on which his name was so entered.

(4) A registered dentist seeking the retention of his name in the register must, before the commencement of the period for which he is seeking the retention of his name in the register, supply the registrar with evidence that he is covered by adequate and appropriate insurance.

(5) A person seeking the restoration of his name to the register must supply the registrar with evidence that, if his name were to be restored to the register, he would be covered by adequate and appropriate insurance commencing, at the latest, on the date on which his name was so restored.

(6) The registrar may at any other time require a registered dentist to supply him with evidence that he is covered by adequate and appropriate insurance, and a registered dentist must comply with such a requirement as soon as reasonably practicable.

(7) A registered dentist or (as the case may be) a person seeking registration in, or restoration of his name to, the register must inform the registrar forthwith if he is no longer covered by adequate and appropriate insurance or (as the case may be) arrangements under which he would be covered by such insurance are no longer in place.

(8) If a person fails to comply with the requirements of this section, the registrar may—

- (a) refuse to register his name in the register;
- (b) refuse to restore his name to the register;

- (c) erase his name from the register; or
- (d) refer the matter to the Investigating Committee under section 27(5)(a) as if the person's failure to comply with the requirements of this section constituted an allegation that his fitness to practise as a dentist is impaired by reason of misconduct for the purposes of section 27.

(9) Where a person's name has been erased from the register under subsection (8)(c), that name shall be restored to the register on that person's application if he satisfies the registrar that he meets the requirements of—

- (a) section 15(3)(a) to (c);
- (b) this section; and
- (c) any rules made under section 34B which apply to his case.

(10) In this section "insurance" means—

- (a) a contract of insurance providing cover for liabilities which may be incurred in carrying out work as a dentist; or
- (b) an arrangement made for the purpose of indemnifying a person against such liabilities."

## PART 3

### Fitness to practise, proceedings and appeals

#### **Insertion of section 26B**

17. Immediately before section 27 insert—

#### **“Guidance**

**26B.**—(1) The Council shall prepare and from time to time issue guidance as to the standards of conduct, performance and practice expected of registered dentists.

(2) Such guidance may make different provision in relation to different cases or classes of case.

(3) The Council shall keep such guidance under review and may vary or withdraw it whenever they consider it appropriate to do so.

(4) The Council shall from time to time publish guidance issued under this section.

(5) Before issuing such guidance or varying or withdrawing it, the Council shall consult—

- (a) such persons to whom subsection (6) applies as the Council consider appropriate;
- (b) the bodies within subsection (8); and
- (c) such bodies to which subsection (9) applies as the Council consider appropriate.

(6) This subsection applies to persons who appear to the Council to be representative of one or more of the following—

- (a) users of the services of registered dentists;
- (b) users of the services of registered dental care professionals;
- (c) registered dentists;
- (d) registered dental care professionals;
- (e) employers of registered dentists; and
- (f) employers of registered dental care professionals.

(7) The Council shall exercise their function under subsection (5)(a) so that the persons consulted are, taken together, representative of all the categories of person mentioned in subsection (6)(a) to (f).

(8) The bodies within this subsection are—

- (a) Primary Care Trusts in England;
- (b) Local Health Boards in Wales;

- (c) Health Boards in Scotland; and
- (d) Health and Social Services Boards in Northern Ireland.

(9) This subsection applies to bodies which make arrangements, for the provision of dental services, with one or both of the following—

- (a) registered dentists,
- (b) registered dental care professionals,

but are not within subsection (8).

(10) The Council may charge such fee as they consider reasonable for the provision of a copy of the guidance to any person.”.

### **Substitution of sections 27 and 28**

**18.** For sections 27 and 28 substitute—

#### **“Allegations**

**27.—**(1) This section applies where an allegation is made to the Council against a registered dentist that his fitness to practise as a dentist is impaired.

(2) A person’s fitness to practise as a dentist shall be regarded as “impaired” for the purposes of this Act by reason only of—

- (a) misconduct;
- (b) deficient professional performance;
- (c) adverse physical or mental health;
- (d) a conviction or caution in the United Kingdom for a criminal offence, or a conviction elsewhere for an offence which, if committed in England and Wales, would constitute a criminal offence;
- (e) the person having—
  - (i) accepted a conditional offer under section 302 of the Criminal Procedure (Scotland) Act 1995 (fixed penalty: conditional offer by procurator fiscal), or
  - (ii) agreed to pay a penalty under section 115A of the Social Security Administration Act 1992 (penalty as alternative to prosecution);
- (f) the person, in proceedings in Scotland for an offence, having been the subject of an order under section 246(2) or (3) of the Criminal Procedure (Scotland) Act 1995 discharging him absolutely; or
- (g) a determination by a body in the United Kingdom responsible under any enactment for the regulation of a health or social care profession to the effect that the person’s fitness to practise as a member of that profession is impaired, or a determination by a regulatory body elsewhere to the same effect.

(3) It does not matter whether the allegation is based on a matter alleged to have occurred—

- (a) outside the United Kingdom; or
- (b) at a time when the person was not registered in the register.

(4) This section also applies in a case where—

- (a) it comes to the attention of the Council that a registered dentist’s fitness to practise as a dentist may be impaired on one or more of the grounds mentioned in subsection (2), but
- (b) no allegation to that effect has been made to the Council against that person,

and in such a case this Act shall apply as if an allegation or allegations to the effect that the person’s fitness to practise as a dentist is impaired on the ground or grounds in question had been made to the Council against that person.

(5) The registrar—

- (a) shall refer the allegation to the Investigating Committee; and
  - (b) may also, if he considers it appropriate, refer the allegation to the Interim Orders Committee.
- (6) The registrar shall investigate the allegation for the purpose of exercising his functions under subsection (5).
- (7) In this section—
- (a) “enactment” includes—
    - (i) a provision of, or an instrument made under, an Act of the Scottish Parliament,
    - (ii) a provision of, or an instrument made under, Northern Ireland legislation, and
    - (iii) a provision of subordinate legislation (within the meaning of the Interpretation Act 1978); and
  - (b) “regulatory body” means a regulatory body which has the function of authorising persons to practise as members of a health or social care profession.

### **The Investigating Committee**

**27A.**—(1) Where the registrar refers an allegation under section 27 to the Investigating Committee they shall investigate the allegation and determine whether the allegation ought to be considered by a Practice Committee.

(2) If the Investigating Committee determine that the allegation ought not to be considered by a Practice Committee, the Investigating Committee may—

- (a) issue a warning or advice to the person who is the subject of the allegation regarding his future conduct, performance and practice; and
- (b) issue advice to any other person involved in the investigation on any issue arising in the course of the investigation.

(3) If the Investigating Committee issue a warning under subsection (2)(a), they may, if they consider it appropriate to do so, direct the registrar to enter details of that warning in the entry in the register relating to the person who is the subject of the allegation.

(4) Unless subsection (5) applies, if the Investigating Committee determine that the allegation ought to be considered by a Practice Committee, the Investigating Committee—

- (a) shall refer the allegation—
  - (i) to the Professional Performance Committee, in the case of an allegation based on the ground mentioned in section 27(2)(b) (deficient professional performance),
  - (ii) to the Health Committee, in the case of an allegation based on the ground mentioned in section 27(2)(c) (adverse physical or mental health), or
  - (iii) to the Professional Conduct Committee, in any other case; and
- (b) may also, if they consider it appropriate, refer the allegation to the Interim Orders Committee.

(5) This subsection applies in a case where two or more allegations under section 27 relating to the same person have been referred to the Investigating Committee and those allegations are—

- (a) an allegation based on the ground mentioned in section 27(2)(b) and an allegation or allegations based on any other grounds mentioned in section 27(2); or
- (b) an allegation based on the ground mentioned in section 27(2)(c) and an allegation or allegations based on any other grounds mentioned in section 27(2).

(6) Where subsection (5) applies, and the Investigating Committee determine that two or more of those allegations ought to be considered by a Practice Committee, the Investigating Committee—

- (a) shall refer those allegations to whichever one of the Practice Committees they consider most appropriate; and
- (b) may also, if they consider it appropriate, refer those allegations to the Interim Orders Committee.

(7) The registrar shall serve notification of any determination made by the Investigating Committee under subsection (1) on the person who is the subject of the allegation and on the person (if any) making the allegation.

(8) The Investigating Committee may review and if they consider it appropriate revise a determination made by them that an allegation or allegations ought to be considered by a particular Practice Committee—

- (a) on a reference back to them from that Practice Committee under section 27B(4); or
- (b) on an application made by the Council, the registrar, the person who is the subject of the allegation or allegations or any person making the allegation or allegations, but only if such review is carried out—
  - (i) where there is to be a hearing before that Practice Committee, before the commencement of that hearing, or
  - (ii) where there is not to be a hearing before that Practice Committee, before that Practice Committee have begun to consider written statements or representations.

(9) Subsection (2) applies to a determination by the Investigating Committee, following a review under subsection (8), that an allegation or allegations ought not to be considered by a Practice Committee, as it applies to a determination under subsection (1) that an allegation ought not to be considered by a Practice Committee.

(10) If the Investigating Committee determine, under subsection (1) or following a review under subsection (8), that an allegation or allegations against a person ought not to be considered by a Practice Committee, they shall, at the same time, revoke with immediate effect any interim order which has been made under section 32 in respect of that person in consequence of that allegation or those allegations.

### **The Practice Committees**

**27B.**—(1) Subject to subsection (4), a Practice Committee must investigate an allegation or allegations against a person referred to them by the Investigating Committee under section 27A and determine whether that person's fitness to practise as a dentist is impaired.

(2) In making a determination under subsection (1), the Practice Committee may take into account whether the person who is the subject of the allegation or allegations has complied with any relevant parts of the guidance issued under section 26B, but that question is not of itself determinative of whether a person's fitness to practise as a dentist is impaired.

(3) If the person who is the subject of an allegation or allegations is also registered in the dental care professionals register, a Practice Committee shall, in exercising their function under subsection (1), make a separate determination under section 36P(1) (fitness to practise as a member of a profession complementary to dentistry).

(4) Where a Practice Committee consider that any allegation should not have been referred to them by the Investigating Committee under section 27A, they may refer that allegation back to the Investigating Committee.

(5) If a Practice Committee determine that a person's fitness to practise as a dentist is not impaired, they—

- (a) shall publish at his request a statement to that effect; or
- (b) may publish such a statement if he consents.

(6) If a Practice Committee determine that a person's fitness to practise as a dentist is impaired, they may, if they consider it appropriate, direct—

- (a) (subject to subsection (7)) that the person's name shall be erased from the register;
- (b) that his registration in the register shall be suspended during such period not exceeding twelve months as may be specified in the direction;
- (c) that his registration in the register shall be conditional on his compliance, during such period not exceeding three years as may be specified in the direction, with such conditions specified

in the direction as the Practice Committee think fit to impose for the protection of the public or in his interests; or

- (d) that he shall be reprimanded in connection with any conduct or action of his which was the subject of the allegation.

(7) The direction specified in subsection (6)(a) shall not be given following a determination that a person's fitness to practise as a dentist is impaired solely on the ground mentioned in section 27(2)(c) (adverse physical or mental health).

(8) Where a Practice Committee give a direction under subsection (6), the registrar shall forthwith serve on the person concerned notification of the direction and (except in the case of a direction under paragraph (d) of that subsection) of his right to appeal against it under section 29.

(9) Where a Practice Committee make a determination under subsection (1) as to a person's fitness to practise as a dentist, they shall, at the same time, revoke any interim order which has been made under section 32 in respect of that person in consequence of the allegation, or allegations, to which that determination relates.

(10) The revocation of an interim order under subsection (9) shall take effect—

- (a) in the case of a determination that the person's fitness to practise is not impaired, forthwith;
- (b) in the case of a direction given under paragraph (d) of subsection (6), forthwith; and
- (c) in the case of a direction given under paragraph (a), (b) or (c) of subsection (6), subject to section 30(5), from the time when—
  - (i) any direction given under those paragraphs takes effect in accordance with section 29A,
  - (ii) an appeal under section 29 against the decision giving such a direction is determined under section 29(3)(b) or (c), or
  - (iii) following a decision on appeal to remit the case to a Practice Committee, the Practice Committee dispose of the case.

### **Resumed hearings**

**27C.**—(1) Where a Practice Committee have given a direction under section 27B(6)(b) or subsection (2)(d) or (3) of this section that a person's registration should be suspended, they may direct—

- (a) that the suspension shall be terminated;
- (b) that the current period of suspension shall be extended for such further period, specified in the direction and not exceeding twelve months, beginning with the date on which it would otherwise expire;
- (c) that the suspension shall be terminated and the person's registration in the register shall be conditional on his compliance, during such period not exceeding three years as may be specified in the direction, with such conditions specified in the direction as the Practice Committee think fit to impose for the protection of the public or in his interests; or
- (d) that the person's registration in the register shall be suspended indefinitely, if—
  - (i) the period of suspension will, on the date on which the direction takes effect, have lasted for at least two years, and
  - (ii) the direction is made not more than two months before the date on which the period of suspension would otherwise expire.

(2) Where a Practice Committee have given a direction under section 27B(6)(c), subsection (1)(c) or (5)(c) of this section or section 28(6)(b) imposing conditional registration, they may give one or more of the following directions—

- (a) a direction that the registration shall cease to be conditional from a date specified in the direction;
- (b) a direction that the current period of conditional registration shall be extended for such further period, specified in the direction and not exceeding three years, beginning with the date on which it would otherwise expire;

- (c) a direction that one or more of the conditions imposed on the registration shall be varied or revoked, or that those conditions shall be added to, as specified in the direction; or
- (d) a direction that the person's registration in the register shall be suspended during such period not exceeding twelve months as may be specified in the direction.

(3) Where a Practice Committee—

- (a) have given a direction under section 27B(6)(c), subsection (1)(c), (2)(b) or (c) or (5)(c) of this section or section 28(6)(b) imposing conditions on a person's registration, or extending a period of conditional registration, in the register, or
- (b) have made an order under section 32(4)(b) for interim conditional registration,

and the Practice Committee determine that at any time during the period for which that direction or order has effect the person has failed to comply with any condition imposed on his registration, the Practice Committee may direct that the person's registration in the register shall be suspended during such period not exceeding twelve months as may be specified in the direction.

(4) Where a Practice Committee have given a direction under subsection (1)(d) that a person's registration is to be suspended indefinitely, they must review the direction if—

- (a) the person requests them to do so;
- (b) at least two years have elapsed since the date on which the direction took effect; and
- (c) if the direction has previously been reviewed under this subsection, at least two years have elapsed since the date of the last such review decision.

(5) On such a review a Practice Committee may—

- (a) direct that the suspension shall be terminated;
- (b) confirm the direction to suspend the person's registration indefinitely; or
- (c) direct that the suspension shall be terminated and the person's registration in the register shall be conditional on his compliance, during such period not exceeding three years as may be specified in the direction, with such conditions specified in the direction as the Practice Committee think fit to impose for the protection of the public or in his interests.

(6) Where a Practice Committee give a direction under this section, the registrar shall forthwith serve on the person concerned notification of the direction and (except in the case of a direction under subsection (1)(a), (2)(a) or (5)(a) or a direction under subsection (2)(c) that a condition or conditions shall be revoked) of his right to appeal against it under section 29.

### **Restoration of names to the register following erasure under section 27B**

**28.—**(1) A person whose name has been erased from the register in accordance with a direction under section 27B(6)(a) may apply to the registrar for his name to be restored to the register.

(2) No application under this section for the restoration of a person's name to the register shall be made—

- (a) before the end of the period of five years beginning with the date on which the direction for erasure took effect; or
- (b) within twelve months of the date on which an earlier application for the restoration of his name was made.

(3) The registrar shall refer an application to the Professional Conduct Committee.

(4) When considering an application, the Professional Conduct Committee may, if they consider it necessary and appropriate in a particular case, direct the applicant to do one or both of the following—

- (a) produce such evidence as to his fitness to practise as a dentist as the Professional Conduct Committee shall specify;
- (b) meet such further requirements, including requirements as to education and training, as the Professional Conduct Committee shall specify.

(5) An application shall not be granted unless the applicant satisfies the Professional Conduct Committee that—

- (a) he is fit to practise as a dentist;
- (b) he meets the requirements of section 15(3)(a) to (c);
- (c) he meets the requirements of any rules made under section 34B which apply to his case; and
- (d) he meets any other requirements imposed in a direction under subsection (4)(b).

(6) Where the Professional Conduct Committee grant an application, they may give one or both of the following directions—

- (a) a direction that the restoration of a person’s name to the register shall be conditional on his satisfying the registrar that he meets the requirements of section 26A (insurance);
- (b) a direction that a person’s registration in the register shall be conditional on his compliance, during such period not exceeding three years as may be specified in the direction, with such conditions specified in the direction as the Professional Conduct Committee think fit to impose for the protection of the public or in his interests.

(7) If the Professional Conduct Committee refuse to grant an application, the registrar shall forthwith serve on the applicant notification of the Professional Conduct Committee’s decision and of his right to appeal against it under section 29.

(8) If the Professional Conduct Committee grant an application, the registrar shall forthwith serve on the applicant notification of the Professional Conduct Committee’s decision, and, in a case where a direction has been given under subsection (6)(b), of his right to appeal against that direction under section 29.

(9) Where, during the same period of erasure, a second or subsequent application under this section by the same person is unsuccessful, the Professional Conduct Committee may direct that his right to make any further such applications shall be suspended indefinitely.

(10) If the Professional Conduct Committee give a direction under subsection (9), the registrar shall forthwith serve on the person concerned notification of the direction and of his right to appeal against it under section 29.

(11) Any person in respect of whom a direction has been given under subsection (9) may, after the end of the period of three years beginning with the date on which the direction took effect, apply to the registrar for the direction to be reviewed by the Professional Conduct Committee and, thereafter, may make further applications for review; but no such application may be made before the end of the period of three years beginning with the date of the most recent review decision.

(12) On a review under subsection (11), the Professional Conduct Committee may—

- (a) confirm the direction under subsection (9); or
- (b) direct that the person concerned may make an application under subsection (1).”.

### **Amendment of section 29**

**19.** In section 29 (appeals)(a)—

- (a) for subsections (1) and (1A) substitute—

“(1) The following decisions are appealable decisions for the purposes of this section—

- (a) a decision of the Professional Conduct Committee under section 24—
  - (i) giving a direction for erasure of a person’s name from the register under subsection (3) of that section, or
  - (ii) refusing an application to restore a person’s name to the register, or refusing to restore his name until the end of a specified period, under subsection (6) of that section;
- (b) a decision of a Practice Committee under section 27B or 27C giving a direction for erasure, for suspension, for conditional registration or for varying or adding to the conditions imposed by a direction for conditional registration; and
- (c) a decision of the Professional Conduct Committee under section 28—

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(a) Section 29 was amended by section 31 of the National Health Service Reform and Health Care Professions Act 2002 (c.17).



- (i) refusing to grant an application to restore a person’s name to the register,
- (ii) giving a direction for conditional registration under subsection (6)(b) of that section, or
- (iii) giving a direction under subsection (9) of that section suspending indefinitely the right to make further applications under that section.

(1A) In subsection (1)—

- (a) a reference to a direction for suspension includes a reference to a direction extending a period of suspension and a direction for indefinite suspension; and
- (b) a reference to a direction for conditional registration includes a reference to a direction extending a period of conditional registration.

(1B) Subject to subsection (1C), a person in respect of whom an appealable decision has been made may, before the end of the period of 28 days beginning with the date on which notification of the decision was served under section 24(7), 27B(8), 27C(6) or 28(7), (8) or (10), appeal against the decision to the relevant court.

(1C) Where—

- (a) any notification of a decision required to be served on a person under any of the provisions specified in subsection (1B) is served by sending it to him by post, and
- (b) the registrar is satisfied, on the application of that person, that he did not receive the notification within the period of 14 days beginning with the day on which the decision was made,

the registrar may, if he thinks fit, by authorisation in writing extend the period of time within which an appeal under this section may be brought.

(1D) In subsection (1B) “the relevant court”—

- (a) in the case of a person whose address in the register is (or if he were registered would be) in Scotland, means the Court of Session;
  - (b) in the case of a person whose address in the register is (or if he were registered would be) in Northern Ireland, means the High Court in Northern Ireland; and
  - (c) in the case of any other person, means the High Court in England and Wales.”; and
- (b) in subsection (3), for paragraphs (b) to (d) substitute—
- “(b) allow the appeal and quash the decision appealed against,
  - (c) substitute for the decision appealed against any other decision which could have been made by the Professional Conduct Committee, the Professional Performance Committee or (as the case may be) the Health Committee, or
  - (d) remit the case to the Professional Conduct Committee, the Professional Performance Committee or (as the case may be) the Health Committee to dispose of the case under section 24, 27B, 27C or 28 in accordance with the directions of the court,”.

## **Insertion of section 29A**

**20.** After section 29 insert—

### **“Taking effect of directions for erasure, suspension, conditional registration etc.**

**29A.**—(1) This section applies to—

- (a) a direction for erasure given by the Professional Conduct Committee under section 24(3);
- (b) a direction for erasure, suspension, conditional registration or variation of or addition to the conditions of registration given by a Practice Committee under section 27B or 27C; and
- (c) a direction for conditional registration given by the Professional Conduct Committee under section 28(6)(b).

(2) A direction to which this section applies shall take effect—

- (a) where no appeal under section 29 is brought against the decision giving the direction within the period of time specified in subsection (1B) of that section, on the expiry of that period;
- (b) where such an appeal is brought but is withdrawn or struck out for want of prosecution, on the withdrawal or striking out of the appeal; or
- (c) where such an appeal is brought and is not withdrawn or struck out for want of prosecution, on the dismissal of the appeal.

(3) Where the period of time for appealing against a decision giving a direction is extended under section 29(1C)—

- (a) subsection (2) shall apply to the direction as if the reference in paragraph (a) of that subsection to the period of time specified in section 29(1B) were a reference to that period as so extended, and
- (b) if the authorisation is given after the expiry of the period of time specified in section 29(1B), the direction shall be deemed not to have taken effect on the expiry of that period,

and any reference in this Act to the time when such a direction takes effect in accordance with this section shall be construed accordingly.

(4) In this section—

- (a) a reference to a direction for suspension includes a reference to a direction extending a period of suspension and a direction for indefinite suspension; and
- (b) a reference to a direction for conditional registration includes a reference to a direction extending a period of conditional registration.”.

### **Substitution of section 30**

21. For section 30 substitute—

#### **“Orders for immediate suspension and immediate conditional registration**

**30.**—(1) On giving a direction for erasure or for suspension under section 24(3), section 27B(6)(a) or (b) or section 27C(2)(d) or (3) in respect of any person, the Practice Committee giving the direction, if satisfied that to do so is necessary for the protection of the public or is otherwise in the public interest, or is in the interests of that person, may order that his registration shall be suspended forthwith in accordance with this section.

(2) On giving a direction for conditional registration under section 27B(6)(c), section 27C(1)(c) or (5)(c) or section 28(6)(b) in respect of any person, the Practice Committee giving the direction, if satisfied that to do so is necessary for the protection of the public or is otherwise in the public interest, or is in the interests of that person, may order that his registration shall be made conditional forthwith in accordance with this section.

(3) Where, on the giving of a direction, an order under subsection (1) or (2) is made in respect of a person, his registration in the register shall, subject to subsection (6), be suspended or made conditional, as the case may be, from the time when the order is made until the time when—

- (a) the direction takes effect in accordance with section 29A;
- (b) an appeal under section 29 against the decision giving the direction is determined under section 29(3)(b) or (c); or
- (c) following a decision on appeal to remit the case to a Practice Committee, the Practice Committee dispose of the case.

(4) Where a Practice Committee make an order under subsection (1) or (2), the registrar shall forthwith serve on the person in respect of whom it is made notification of the order and of his right to make an application under subsection (7).

(5) Where a Practice Committee make an order under subsection (1) or (2) in respect of a person, and an interim order under section 32 in respect of that person has been revoked by virtue of section 27B(9), that revocation shall take effect, subject to subsection (6), from the time when the order under subsection (1) or (2) is made.

(6) If, when an order under subsection (1) or (2) is made, the person in respect of whom it is made is neither present nor represented at the proceedings, subsections (3) and (5) shall have effect as if, in each case, for the reference to the time when the order is made, there were substituted a reference to the time when notification of the order is served under subsection (4).

(7) A person in respect of whom an order under subsection (1) or (2) is made may apply to the court for an order terminating any suspension imposed under subsection (1) or any conditional registration imposed under subsection (2), and the decision of the court on any such application shall be final.

(8) In subsection (7) “the court”—

- (a) in the case of a person whose address in the register is in Scotland, means the Court of Session;
- (b) in the case of a person whose address in the register is in Northern Ireland, means the High Court in Northern Ireland; and
- (c) in the case of any other person, means the High Court in England and Wales.”.

### **Repeal of section 31**

22. Section 31 (special provisions where directions replace, or extend periods under, previous directions) is hereby repealed.

### **Substitution of section 32**

23. For section 32 substitute—

#### **“Interim orders**

32.—(1) This section applies to the Professional Conduct Committee, the Professional Performance Committee, the Health Committee and the Interim Orders Committee, and any reference in this section to a “Committee” is a reference to any of those Committees.

(2) The Interim Orders Committee may exercise functions under this section only in relation to a person whose case has been referred to them—

- (a) by the registrar under section 27(5)(b);
- (b) by the Investigating Committee under section 27A(4)(b) or (6)(b); or
- (c) by a Practice Committee in accordance with rules under paragraph 7(1)(c) of Schedule 3.

(3) A Practice Committee may exercise functions under this section only in relation to a person whose case has been referred to them—

- (a) by the Investigating Committee under section 27A(4)(a) or (6)(a); or
- (b) by another Practice Committee in accordance with rules under paragraph 7(1)(a) of Schedule 3.

(4) Where a Committee are satisfied that it is necessary for the protection of the public or is otherwise in the public interest, or is in the interests of the person concerned, for the person’s registration to be suspended or to be made subject to conditions, the Committee may make—

- (a) an order that his registration in the register shall be suspended during such period not exceeding 18 months as may be specified in the order (an “interim suspension order”); or
- (b) an order that his registration shall be conditional on his compliance, during such period not exceeding 18 months as may be specified in the order, with such conditions so specified as the Committee think fit to impose (an “order for interim conditional registration”).

(5) Subject to subsection (11), where a Committee have made an interim suspension order or an order for interim conditional registration they—

- (a) shall review it within the period of six months beginning with the date on which the order was made, and shall thereafter, for so long as the order continues in force, further review it—
  - (i) before the end of the period of six months beginning with the date of the decision of the immediately preceding review, or

- (ii) if after the end of the period of three months beginning with the date of the decision of the immediately preceding review the person concerned requests an earlier review, as soon as practicable after that request; and
  - (b) may review it where new evidence relevant to the order has become available after the making of the order.
- (6) Where an interim suspension order or an order for interim conditional registration has been made in relation to a person under any provision of this section (including this subsection), the Committee that made the order may—
- (a) revoke the order;
  - (b) make an order adding to, varying or revoking any condition imposed by the order;
  - (c) if satisfied that to do so is necessary for the protection of the public or is otherwise in the public interest, or is in the interests of the person concerned, replace an interim suspension order with an order for interim conditional registration having effect for the remainder of the term of the former; or
  - (d) if satisfied that to do so is necessary for the protection of the public or is otherwise in the public interest, or is in the interests of the person concerned, replace an order for interim conditional registration with an interim suspension order having effect for the remainder of the term of the former.
- (7) If a Committee make an order under any provision of this section—
- (a) the registrar shall forthwith serve notification of the order on the person to whose registration it relates; and
  - (b) that order shall take effect from the time on which the notification mentioned in paragraph (a) is served.
- (8) The Council may apply to the court for an order made by a Committee under subsection (4) or (6) to be extended, and may apply again for further extensions.
- (9) On each such application the court may extend (or further extend) for up to twelve months the period for which the order has effect.
- (10) Any reference in this section to an interim suspension order, or to an order for interim conditional registration, includes a reference to such an order as so extended.
- (11) For the purposes of subsection (5) the first review after the court’s extension of an order made by a Committee or after a replacement order made by a Committee under subsection (6)(c) or (d) shall take place—
- (a) if the order (or the order which has been replaced) had not been reviewed at all under subsection (5), within the period of six months beginning with the date on which the court ordered the extension or on which a replacement order under subsection (6)(c) or (d) was made; and
  - (b) if it had been reviewed under subsection (5), within the period of three months beginning with that date.
- (12) Where an interim order has effect under any provision of this section, the court may—
- (a) in the case of an interim suspension order, terminate the suspension,
  - (b) in the case of an order for interim conditional registration, revoke the order or revoke, vary or add to any condition imposed by the order,
  - (c) in either case, substitute for the period specified in the order (or in an order extending it) some other period which could have been specified in the order (or in the order extending it) when it was made,
- and the decision of the court on any application under this subsection shall be final.
- (13) In this section “the court” has the meaning given by section 30(8).”.

### **Substitution of section 33**

24.—(1) For section 33 substitute—

#### *“Supplementary provisions*

#### **Supplementary provisions relating to fitness to practise cases**

33.—(1) While a person’s registration in the register is suspended by virtue of a direction or order under this Part—

- (a) he shall be treated, except as provided in subsection (2), as not being registered in the register notwithstanding that his name still appears in it; but
- (b) sections 27, 27A, 27B and 27C shall continue to apply to him.

(2) While a person’s registration in the register is suspended by virtue of a direction or order under this Part, he shall be treated for the purposes of compliance with rules made under section 34A as if his registration were not suspended.

(3) Where any such direction as is mentioned in section 27C(1)(b), (c) or (d), (2)(b) or (d), (3) or (5)(c) is given while a person’s registration is subject to conditions or suspended by virtue of a direction under this Part, his registration shall continue to be conditional or suspended throughout any period which may intervene between the time when (but for this subsection) his registration would cease to be conditional or suspended, as the case may be, and the time when—

- (a) the direction takes effect in accordance with section 29A;
- (b) an appeal under section 29 against the decision giving the direction is determined under section 29(3)(b) or (c); or
- (c) following a decision on appeal to remit the case to a Practice Committee, the Practice Committee dispose of the case.

(4) If, on the determination of an appeal under section 29, a direction extending the current period of suspension or conditional registration for a further period takes effect after the time when (but for subsection (3)) the current period of suspension or conditional registration would have ended, that further period shall be treated as having started to run at that time.

(5) Subsection (3) is subject to any order made under section 30(1) or (2).

(6) Schedule 3 to this Act (proceedings before the Investigating Committee, the Interim Orders Committee and Practice Committees: dentists) shall have effect.”.

(2) Schedule 2 to this Order, which substitutes Schedule 3 to the Act, shall have effect.

### **Insertion of sections 33A to 33C**

25. After section 33 insert—

#### **“Recording of suspension or conditional registration etc.**

33A.—(1) Where a direction or order under this Part for suspension, conditional registration or variation of or addition to the conditions of registration takes effect in relation to a person, 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 made conditional.

(2) The registrar shall erase that note from the register at such time as the direction or order ceases (for any reason) to have effect.

(3) In this section—

- (a) a reference to a direction or order for suspension includes a reference to a direction or order extending a period of suspension and a direction for indefinite suspension; and
- (b) a reference to a direction or order for conditional registration includes a reference to a direction or order extending a period of conditional registration.

(4) Where a direction under section 24(3) or 27B(6)(a) (direction for erasure from the register) in respect of a person takes effect, the registrar shall remove that person's name from the register.

(5) Where a decision under section 24(6)(a) or 28 that a person's name is to be restored to the register takes effect, the registrar shall restore that person's name to the register.

### **The Council's power to require disclosure of information**

**33B.**—(1) For the purpose of assisting the Council or any of their committees in carrying out functions under this Part, the Council may require a person ("the relevant party") whose fitness to practise as a dentist is in question, to provide details of any person—

- (a) by whom the relevant party is employed to provide services in, or in relation to, any area of dentistry; or
- (b) with whom he has an arrangement to provide such services.

(2) For the purpose of assisting the Council or any of their committees in carrying out functions under this Part in respect of a person's fitness to practise as a dentist, the Council may require any person (except the person in respect of whom the information or document is sought) to supply any information or produce any document in his custody or under his control which appears to the Council relevant to the discharge of those functions.

(3) Nothing in this section shall require or permit any disclosure of information which is prohibited by any relevant enactment.

(4) For the purposes of subsection (3), "relevant enactment" means any enactment other than—

- (a) this Act; or
- (b) the non-disclosure provisions within the meaning of Part 4 of the Data Protection Act 1998 (see section 27 of that Act).

(5) A person shall not be required to supply any information or produce any document under subsection (2) which he could not be compelled to supply or produce in civil proceedings before the relevant court.

(6) In subsection (5) "the relevant court" means—

- (a) if the person's address in the register is in Scotland or, if he is not registered in the register, he is resident there, the Court of Session;
- (b) if the person's address in the register is in Northern Ireland or, if he is not registered in the register, he is resident there, the High Court in Northern Ireland;
- (c) in any other case, the High Court in England and Wales.

(7) If a person fails to supply any information or produce any document within 14 days of being required to do so under subsection (1) or (2), the Council may seek an order of the relevant court requiring the information to be supplied or the document to be produced.

(8) In subsection (7), "the relevant court" means the county court or, in Scotland, the sheriff.

(9) In subsection (8), "the sheriff" means the sheriff in whose sheriffdom is situated the address of the person who fails to supply the information or produce the document; and in this subsection, "address" means, where the person is registered, his address in the register, or, where he is not registered in the register, the address where he resides.

(10) For the purposes of subsection (4), "enactment" includes—

- (a) a provision of, or an instrument made under, an Act of the Scottish Parliament;
- (b) a provision of, or an instrument made under, Northern Ireland legislation; and
- (c) a provision of subordinate legislation (within the meaning of the Interpretation Act 1978).

### **Notification and disclosure by the Council**

**33C.**—(1) As soon as reasonably practicable after an allegation as to a person's fitness to practise as a dentist has been referred to the Investigating Committee under section 27(5)(a), the Council shall inform the following persons of that fact—

- (a) the Secretary of State, the Department of Health, Social Services and Public Safety in Northern Ireland, the Scottish Ministers and the National Assembly for Wales; and
  - (b) any person in the United Kingdom to whom subsection (2) applies.
- (2) This subsection applies to a person if the Council are aware that he—
- (a) employs the person concerned to provide services in, or in relation to, any area of dentistry; or
  - (b) has an arrangement with the person concerned for that person to provide such services.
- (3) The Council or the registrar may disclose to any person any information relating to a person’s fitness to practise as a dentist, including information relating to an allegation under section 27, where they consider it to be in the public interest for the information to be disclosed.”.

**Repeal of section 34**

26. Section 34 (restoration of name erased under section 27 of the Act) is hereby repealed.

**Substitution of sections 34A and 34B**

27. For sections 34A and 34B(a) substitute—

**“Professional training and development requirements**

**34A.**—(1) Rules shall require registered dentists to undertake such professional training and development as may be specified in the rules.

(2) If it appears to the registrar that a person has failed to comply with the requirements of rules made under subsection (1), the registrar may erase the person’s name from the register.

(3) Where a person’s name has been erased from the register under subsection (2), that name shall be restored to the register on that person’s application if he satisfies the registrar that he meets the requirements of—

- (a) section 15(3)(a) to (c);
- (b) section 26A; and
- (c) any rules made under section 34B which apply to his case.

(4) Rules shall specify the procedures to be followed before the registrar—

- (a) may erase a person’s name from the register under subsection (2); or
- (b) may make a decision whether or not to restore a person’s name to the register under subsection (3).

(5) Where, in the course of proceedings under this Part, it appears to the Investigating Committee, a Practice Committee or the Interim Orders Committee that a person to whose registration the proceedings relate may be failing to meet the requirements of rules made under subsection (1), that Committee may refer the question of whether he is failing to meet them to the registrar.

**Restoration of names to the register: professional training and development**

**34B.**—(1) Rules shall specify the requirements as to professional training and development to be met by a person who seeks the restoration of his name to the register following its erasure under any provision of this Part.

(2) Rules under this section must not require a person to do anything which amounts to the practice of dentistry.”.

**Amendment of section 35**

28. In section 35 (effect on registration of disqualification in another EEA state)—

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(a) Sections 34A and 34B were inserted by S.I. 2001/3926.

- (a) in subsection (2)(a), for “or has misconducted himself in a professional respect” substitute “or on grounds related to his professional conduct, professional performance or physical or mental health”;
- (b) omit subsection (4); and
- (c) for subsection (5) substitute—

“(5) Where on or after the date on which a person was registered by virtue of section 15(1)(b) a disqualifying decision relating to him comes into force, this Part shall apply, with any necessary modifications, as if it had been found that he had been convicted of the criminal offence referred to in the disqualifying decision, or that his professional conduct, professional performance or physical or mental health had been such as is imputed to him by that decision, as the case may be.”.

## PART 4

### Professions Complementary to Dentistry

#### **Insertion of sections 36A to 36I**

29. After section 36 insert—

## “PART 3A

### Professions Complementary to Dentistry

#### *Introductory*

#### **Professions complementary to dentistry**

**36A.**—(1) For the purposes of this Act, a profession complementary to dentistry is a profession—

- (a) the majority of whose members work in connection with the provision of dental care—
  - (i) with persons receiving such care, or
  - (ii) with persons registered in the dentists register or the dental care professionals register established by section 36B; and
- (b) in respect of which the regulatory body is not a body (other than the Council) regulated by the Council for the Regulation of Health Care Professionals under section 25 of the National Health Service Reform and Health Care Professions Act 2002.

(2) The Council may by regulations specify—

- (a) a profession complementary to dentistry; or
- (b) a class of members of a profession complementary to dentistry.

(3) Regulations under subsection (2) specifying a profession or class of members must also specify a title which applies to that profession or class.

(4) Regulations under subsection (2) shall not come into force until approved by order of the Privy Council.

(5) Before making regulations under subsection (2), the Council shall consult organisations appearing to the Council to be representative of the professions, or classes of members of professions, specified in the proposed regulations.

(6) The following provisions of this Part apply in relation to all members of a profession complementary to dentistry except those members of a profession or class in relation to which no regulations under subsection (2) are in force.



**The dental care professionals register**

**36B.**—(1) There shall be a register of members of professions complementary to dentistry to be known as the dental care professionals register.

(2) The dental care professionals register shall be kept by the registrar.

(3) Subsections (4) and (5) of section 14 apply to the register established under this section, and to the registrar's duties as keeper of that register, as they apply to the dentists register and to the registrar's duties in respect of the dentists register.

(4) Rules may make provision relating to the form of the dental care professionals register and the manner in which it is to be kept.

(5) A person may not be registered in the dental care professionals register except under one or more of the titles specified in regulations under section 36A(2).

(6) A certificate purporting to be signed by the registrar, certifying that a person—

(a) is registered in the dental care professionals register under a particular title,

(b) is not registered in that register under a particular title,

(c) was registered in that register under a particular title at a specified date or during a specified period,

(d) was not registered in that register under a particular title at a specified date or during a specified period, or

(e) has never been registered in that register under a particular title,

shall be evidence (and in Scotland sufficient evidence) of the matters certified.

**Qualifications for registration**

**36C.**—(1) Subject to the provisions of this Act, a person shall be entitled to be registered under a particular title in the dental care professionals register if he satisfies the registrar—

(a) in a case where the title concerned is that of dental hygienist or dental therapist—

(i) of matter A, B or C, and

(ii) of matter D; and

(b) in any other case—

(i) of matter A or C, and

(ii) of matter D.

(2) Matter A is that the person holds a qualification or qualifications approved by the Council under section 36D(2) in relation to the profession, or class of members of a profession, to which the title applies.

(3) Matter B is that the person—

(a) either—

(i) is a national of an EEA State, or

(ii) is not a national of an EEA State but is, by virtue of a right conferred by article 11 of Council Regulation (EEC) No. 1612/68 or any other enforceable Community right, entitled to be treated, for the purposes of access to a profession complementary to dentistry, no less favourably than a national of such a State; and

(b) has a right to practise in the United Kingdom as a dental hygienist or dental therapist (as the case may be) by virtue of the European Communities (Recognition of Professional Qualifications) (Second General System) Regulations 2002 (S.I. 2002/2934).

(4) Matter C is that the person—

- (a) holds a qualification or qualifications granted by an institution or institutions outside the United Kingdom relevant to the profession complementary to dentistry, or class of members of such a profession, to which the title applies (in this section referred to as “relevant qualifications”);
- (b) has satisfied the Council that he has the requisite knowledge and skill to practise as a member of the profession or class to which the title applies; and
- (c) has the knowledge of English which, in the interests of himself and his patients, is necessary for practising in the United Kingdom as a member of the profession or class to which the title applies.

(5) For the purpose of establishing whether a person has the requisite knowledge and skill for the purposes of subsection (4)(b), the Council—

- (a) in all cases—
  - (i) shall take into account all that person’s relevant qualifications, and all relevant knowledge or experience, wherever acquired, and
  - (ii) may determine that a person must perform to the satisfaction of the Council in any test or assessment specified in the determination; and
- (b) in the case of a national of an EEA State (or a person within subsection (3)(a)(ii)) who holds a relevant qualification granted by an institution or institutions outside the EEA which has been accepted by another EEA State as qualifying him to practise in that State as a member of the profession or class to which the title applies, shall take that acceptance into account.

(6) Matter D is—

- (a) the person’s identity;
- (b) that he is of good character; and
- (c) that he is in good health, both physically and mentally.

(7) In this section “national” has the meaning given to it in section 15(2).

### **Education and training for members of professions complementary to dentistry**

**36D.**—(1) For each regulated profession or class, the Council shall, from time to time—

- (a) determine the appropriate standard of proficiency which, in their opinion, is required for a person to practise competently and safely as a member of the profession or class; and
- (b) specify the content and standard of the education and training (including practical experience) which, in their opinion, is required for imparting the knowledge and skills necessary for a person to obtain that proficiency.

(2) Where the Council are satisfied that—

- (a) a qualification granted by an institution in the United Kingdom is evidence of having reached the standard of proficiency for a regulated profession or class determined under subsection (1),
- (b) a qualification which such an institution proposes to grant will be such evidence, or
- (c) two or more qualifications granted or to be granted as mentioned in paragraph (a) or (b), taken together, are or will be such evidence,

the Council may approve that qualification or those qualifications in relation to that regulated profession or class.

(3) The matters determined or specified under subsection (1), and the qualifications approved under subsection (2), shall be published by the Council from time to time in such form as appears to them to be appropriate.

(4) The Council shall ensure that establishments providing or overseeing courses of education or training for persons who seek registration under a title in the dental care professionals register are notified of—

- (a) the matters for the time being determined or specified under subsection (1); and
- (b) the qualifications for the time being approved under subsection (2).

(5) Rules shall make provision for the withdrawal of approval given under subsection (2) in such circumstances as may be specified in the rules.

(6) Rules may make provision for the appointment by the Council of persons to visit establishments which provide or oversee, or seek to provide or oversee, courses of education or training for persons referred to in subsection (4), for the purposes of advising and reporting back to the Council upon matters connected with such courses, including—

- (a) the sufficiency of instruction provided or overseen by, or to be provided or overseen by, those establishments;
- (b) the suitability of a particular qualification for approval under subsection (2); and
- (c) whether approval of a particular qualification ought to be withdrawn under rules under subsection (5).

(7) Rules may make provision—

- (a) for the appointment by the Council of persons to attend examinations (or other forms of assessment) taken by persons attempting to obtain qualifications approved under subsection (2); and
- (b) for persons appointed under paragraph (a) to report back to the Council on their findings.

(8) In this section “regulated profession or class” means a profession complementary to dentistry, or class of members of such a profession, specified in regulations under section 36A(2).

#### *Procedure for registration*

#### **Rules relating to the dental care professionals register**

**36E.** Rules may make provision relating to—

- (a) the form of an application by a person seeking registration under a title in the dental care professionals register;
- (b) the manner in which an application under paragraph (a) is to be made;
- (c) the evidence and information which an applicant must supply in support of an application under paragraph (a);
- (d) the details which must be entered in the dental care professionals register; and
- (e) the procedure for the making, alteration and deletion of entries in that register.

#### **Fees**

**36F.**—(1) The Council may by regulations—

- (a) prescribe a fee to be charged on—
  - (i) the entry of a person’s name in the dental care professionals register under a title (including a name already registered in that register under another title or titles),
  - (ii) the restoration of a person’s name to that register under a title (including a name already registered in that register under another title or titles), or
  - (iii) the entry in that register of additional qualifications held by a registered dental care professional;
- (b) prescribe a fee to be charged in respect of the retention of a person’s name under a title or titles in the dental care professionals register for each period of twelve months;
- (c) provide for the payment by instalments of a fee prescribed by regulations under paragraph (b);
- (d) authorise the registrar (notwithstanding anything in this Act) to refuse to make in, or restore to, the dental care professionals register any entry until a fee prescribed by regulations under this section has been paid.

(2) The Council may by regulations provide that where a person, after such notices and warnings as may be provided for in the regulations, fails to pay a fee prescribed by regulations under subsection (1)(b), the registrar may erase that person's name from registration under all titles under which that person is registered in the dental care professionals register.

(3) Where a person's name has been erased from registration under a particular title by virtue of regulations under subsection (2), that name shall be restored to the dental care professionals register under that title on that person's application if he satisfies the registrar—

- (a) of Matter D within the meaning of section 36C; and
- (b) that he meets the requirements of—
  - (i) section 36L, and
  - (ii) any rules made under section 36Z2 which apply to his case.

(4) Where, under subsection (3), the registrar refuses to restore a person's name to the dental care professionals register under a title, the registrar shall forthwith serve on the person concerned notification of the decision and of the reasons for it.

#### *Publication of the dental care professionals register*

#### **Publication of the dental care professionals register**

**36G.**—(1) The registrar shall make available to members of the public in such form as he considers appropriate—

- (a) the names of persons appearing in the dental care professionals register;
- (b) the title or titles under which a person is registered in that register;
- (c) the qualifications of persons appearing in that register; and
- (d) such other details as the Council may direct.

(2) For the purposes of subsection (1), the registrar may provide a member of the public with a copy of, or extract from, the dental care professionals register, and any such copy or extract shall be evidence (and in Scotland sufficient evidence) of the matters mentioned in it.

#### *Erasures and alterations in the dental care professionals register*

#### **Erasure of names of deceased persons and of those who have ceased to practise**

**36H.**—(1) The registrar shall erase the name of a deceased person from registration under all titles under which that person is registered in the dental care professionals register; and on registering the death of a registered dental care professional, a registrar of births and deaths shall, without charge to the recipient, send forthwith by post to the registrar a copy certified under his hand of the entry in the register of deaths relating to the death.

(2) Where a person is registered in the dental care professionals register under a title applying to a particular profession, or class of members of a profession, and has ceased to practise as a member of that profession or class, the registrar may, with that person's consent, erase his name from registration in that register under that title.

(3) The registrar may send by post to a registered dental care professional a notice inquiring whether he has ceased to practise as a member of a particular profession complementary to dentistry, or class of members of such a profession, or has changed his residence and, if no answer is received to the inquiry within six months from the posting of the notice, the registrar may erase that person's name from registration under all titles under which that person is registered in the dental care professionals register.

(4) Where, under subsection (2) or (3) or at a person's request, a person's name has been erased from registration under a particular title, that name shall be restored to the dental care professionals register under that title on that person's application if the conditions specified in subsection (5) are met.

(5) The conditions referred to in subsection (4) are that—

- (a) the original entry of the person’s name in the dental care professionals register under the title in question was not incorrectly made or fraudulently procured;
- (b) the person satisfies the registrar of Matter D within the meaning of section 36C; and
- (c) the person also satisfies the registrar that he meets the requirements of—
  - (i) section 36L, and
  - (ii) any rules made under section 36Z2 which apply to his case.

**Erasure on grounds of fraud or error**

**36I.**—(1) If the registrar is satisfied that any entry in the dental care professionals register has been incorrectly made, he shall erase that entry from that register.

(2) If the registrar has reason to believe that any entry in the dental care professionals register has been fraudulently procured, he shall refer the matter to the Professional Conduct Committee to determine the question of whether that entry has been fraudulently procured.

(3) If the Professional Conduct Committee determine that the entry in the dental care professionals register has been fraudulently procured, they may direct that the name of the person to whom the entry relates shall be erased from registration under all titles under which he is registered in that register.

(4) Where a person’s name has been erased from registration under a particular title under subsection (3), that person may apply to the Council for his name to be restored to that register under that title.

(5) The Council shall refer an application under subsection (4) to the Professional Conduct Committee.

(6) The Professional Conduct Committee shall determine an application referred under subsection (5) and may decide—

- (a) that the person’s name is to be restored to the dental care professionals register under the title in question;
- (b) that the person’s name is not to be restored to that register under the title in question; or
- (c) that the person’s name is not to be restored to that register under the title in question until the end of such period as the Professional Conduct Committee shall specify.

(7) If the Professional Conduct Committee give a direction under subsection (3) or a decision under subsection (6), the registrar shall forthwith serve on the person concerned notification of the direction or decision and (except in the case of a decision under subsection (6)(a)) of his right to appeal against it under section 36S.”.

**Insertion of section 36J**

**30.**—(1) After section 36I insert—

*“Registration appeals*

**Registration appeals**

**36J.** Schedule 4A to this Act (registration appeals: dental care professionals register) shall have effect.”.

(2) Schedule 3 to this Order, which inserts a new Schedule 4A into the Act, shall have effect.

**Insertion of sections 36K to 36V**

**31.** After section 36J insert—

*“Use of titles and descriptions*

**Use of titles and descriptions**

**36K.**—(1) A registered dental care professional shall not take or use, or affix to or use in connection with his premises—

- (a) any description reasonably calculated to suggest that he possesses any professional status or qualification other than a professional status or qualification which he in fact possesses and which is indicated by particulars entered in the dental care professionals register in respect of him; or
- (b) any title specified in regulations under section 36A(2) except the title or titles under which he is registered in the dental care professionals register.

(2) Any person who contravenes subsection (1) shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

*Insurance*

**Insurance**

**36L.**—(1) A registered dental care professional must, in relation to each title under which he is registered in the dental care professionals register, be covered by adequate and appropriate insurance throughout the period during which he is so registered under that title.

(2) In this section “adequate and appropriate insurance”, in relation to a title specified in regulations under section 36A(2), means insurance of a type and amount which rules under this section specify as adequate and appropriate in relation to that title.

(3) A person seeking registration in the dental care professionals register under a particular title (whether or not he is already registered in that register under any other title or titles) must supply the registrar with evidence that, if his name were to be entered in that register under that title, he would be covered by adequate and appropriate insurance in relation to that title commencing, at the latest, on the date on which his name was so entered.

(4) A registered dental care professional seeking the retention of his name in the dental care professionals register under a particular title must, before the commencement of the period for which he is seeking the retention of his name in that register under that title, supply the registrar with evidence that he is covered by adequate and appropriate insurance in relation to that title.

(5) A person seeking the restoration of his name to the dental care professionals register under a particular title (whether or not he is already registered in that register under any other title or titles) must supply the registrar with evidence that, if his name were to be restored to that register under that title, he would be covered by adequate and appropriate insurance in relation to that title commencing, at the latest, on the date on which his name was so restored.

(6) The registrar may at any other time require a registered dental care professional to supply him with evidence that he is covered by adequate and appropriate insurance in relation to a title under which he is registered, and a registered dental care professional must comply with such a requirement as soon as reasonably practicable.

(7) A registered dental care professional must inform the registrar forthwith if he is no longer covered by adequate and appropriate insurance in relation to any title under which he is registered.

(8) A person seeking registration in, or restoration of his name to, the dental care professionals register must inform the registrar forthwith if arrangements under which he would be covered by adequate and appropriate insurance in relation to any title under which he is seeking to be registered or restored are no longer in place.

(9) If a person fails to comply with the requirements of this section in relation to any title in the dental care professionals register, the registrar may—

- (a) refuse to register his name in that register under that title;
- (b) refuse to restore his name to that register under that title;

- (c) erase his name from registration in that register under that title; or
- (d) refer the matter to the Investigating Committee under section 36N(5)(a) as if the person's failure to comply with the requirements of this section constituted an allegation that his fitness to practise as a member of a profession complementary to dentistry is impaired by reason of misconduct for the purposes of section 36N.

(10) Where, under subsection (9)(c), a person's name has been erased from registration under a particular title, that name shall be restored to the dental care professionals register under that title on that person's application if he satisfies the registrar—

- (a) of Matter D within the meaning of section 36C; and
- (b) that he meets the requirements of—
  - (i) this section, and
  - (ii) any rules made under section 36Z2 which apply to his case.

(11) In this section “insurance” means—

- (a) a contract of insurance providing cover for liabilities which may be incurred in carrying out work as a member of a profession complementary to dentistry; or
- (b) an arrangement made for the purpose of indemnifying a person against such liabilities.

*Professional conduct and fitness to practise*

**Guidance**

**36M.**—(1) The Council shall prepare and from time to time issue guidance as to the standards of conduct, performance and practice expected of registered dental care professionals.

(2) Such guidance may make different provision in relation to different cases or classes of case, and in particular in relation to different descriptions of registered dental care professionals.

(3) The Council shall keep such guidance under review and may vary or withdraw it whenever they consider it appropriate to do so.

(4) The Council shall from time to time publish guidance issued under this section.

(5) Before issuing such guidance or varying or withdrawing it, the Council shall consult—

- (a) such persons to whom subsection (6) applies as the Council consider appropriate;
- (b) the bodies within subsection (8); and
- (c) such bodies to which subsection (9) applies as the Council consider appropriate.

(6) This subsection applies to persons who appear to the Council to be representative of one or more of the following—

- (a) users of the services of registered dentists;
- (b) users of the services of registered dental care professionals;
- (c) registered dentists;
- (d) registered dental care professionals;
- (e) employers of registered dentists; and
- (f) employers of registered dental care professionals.

(7) The Council shall exercise their function under subsection (5)(a) so that the persons consulted are, taken together, representative of all the categories of person mentioned in subsection (6)(a) to (f).

(8) The bodies within this subsection are—

- (a) Primary Care Trusts in England;
- (b) Local Health Boards in Wales;
- (c) Health Boards in Scotland; and
- (d) Health and Social Services Boards in Northern Ireland.

(9) This subsection applies to bodies which make arrangements, for the provision of dental services, with one or both of the following—

- (a) registered dentists,
- (b) registered dental care professionals,

but are not within subsection (8).

(10) The Council may charge such fee as they consider reasonable for the provision of a copy of the guidance to any person.

### **Allegations**

**36N.**—(1) This section applies where an allegation is made to the Council against a registered dental care professional that his fitness to practise as a member of a profession complementary to dentistry is impaired.

(2) A person's fitness to practise as a member of a profession complementary to dentistry shall be regarded as "impaired" for the purposes of this Act by reason only of—

- (a) misconduct;
- (b) deficient professional performance;
- (c) adverse physical or mental health;
- (d) a conviction or caution in the United Kingdom for a criminal offence, or a conviction elsewhere for an offence which, if committed in England and Wales, would constitute a criminal offence;
- (e) the person having—
  - (i) accepted a conditional offer under section 302 of the Criminal Procedure (Scotland) Act 1995 (fixed penalty: conditional offer by procurator fiscal), or
  - (ii) agreed to pay a penalty under section 115A of the Social Security Administration Act 1992 (penalty as alternative to prosecution);
- (f) the person, in proceedings in Scotland for an offence, having been the subject of an order under section 246(2) or (3) of the Criminal Procedure (Scotland) Act 1995 discharging him absolutely; or
- (g) a determination by a body in the United Kingdom responsible under any enactment for the regulation of a health or social care profession to the effect that the person's fitness to practise as a member of that profession is impaired, or a determination by a regulatory body elsewhere to the same effect.

(3) It does not matter whether the allegation is based on a matter alleged to have occurred—

- (a) outside the United Kingdom; or
- (b) at a time when the person was not registered in the dental care professionals register.

(4) This section also applies in a case where—

- (a) it comes to the attention of the Council that a registered dental care professional's fitness to practise as a member of a profession complementary to dentistry may be impaired on one or more of the grounds mentioned in subsection (2), but
- (b) no allegation to that effect has been made to the Council against that person,

and in such a case this Act shall apply as if an allegation or allegations to the effect that the person's fitness to practise as a member of a profession complementary to dentistry is impaired on the ground or grounds in question had been made to the Council against that person.

(5) The registrar—

- (a) shall refer the allegation to the Investigating Committee; and
- (b) may also, if he considers it appropriate, refer the allegation to the Interim Orders Committee.

(6) The registrar shall investigate the allegation for the purpose of exercising his functions under subsection (5).



- (7) In this section—
- (a) “enactment” includes—
    - (i) a provision of, or an instrument made under, an Act of the Scottish Parliament,
    - (ii) a provision of, or an instrument made under, Northern Ireland legislation, and
    - (iii) a provision of subordinate legislation (within the meaning of the Interpretation Act 1978); and
  - (b) “regulatory body” means a regulatory body which has the function of authorising persons to practise as members of a health or social care profession.

### **The Investigating Committee**

**36O.**—(1) Where the registrar refers an allegation under section 36N to the Investigating Committee they shall investigate the allegation and determine whether the allegation ought to be considered by a Practice Committee.

(2) If the Investigating Committee determine that the allegation ought not to be considered by a Practice Committee, the Investigating Committee may—

- (a) issue a warning or advice to the person who is the subject of the allegation regarding his future conduct, performance and practice; and
- (b) issue advice to any other person involved in the investigation on any issue arising in the course of the investigation.

(3) If the Investigating Committee issue a warning under subsection (2)(a), they may, if they consider it appropriate to do so, direct the registrar to enter details of that warning in any entry in the dental care professionals register relating to the person who is the subject of the allegation.

(4) Unless subsection (5) applies, if the Investigating Committee determine that the allegation ought to be considered by a Practice Committee, the Investigating Committee—

- (a) shall refer the allegation—
  - (i) to the Professional Performance Committee, in the case of an allegation based on the ground mentioned in section 36N(2)(b) (deficient professional performance),
  - (ii) to the Health Committee, in the case of an allegation based on the ground mentioned in section 36N(2)(c) (adverse physical or mental health), or
  - (iii) to the Professional Conduct Committee, in any other case; and
- (b) may also, if they consider it appropriate, refer the allegation to the Interim Orders Committee.

(5) This subsection applies in a case where two or more allegations under section 36N relating to the same person have been referred to the Investigating Committee and those allegations are—

- (a) an allegation based on the ground mentioned in section 36N(2)(b) and an allegation or allegations based on any other grounds mentioned in section 36N(2); or
- (b) an allegation based on the ground mentioned in section 36N(2)(c) and an allegation or allegations based on any other grounds mentioned in section 36N(2).

(6) Where subsection (5) applies, and the Investigating Committee determine that two or more of those allegations ought to be considered by a Practice Committee, the Investigating Committee—

- (a) shall refer those allegations to whichever one of the Practice Committees they consider most appropriate; and
- (b) may also, if they consider it appropriate, refer those allegations to the Interim Orders Committee.

(7) The registrar shall serve notification of any determination made by the Investigating Committee under subsection (1) on the person who is the subject of the allegation and on the person (if any) making the allegation.

(8) The Investigating Committee may review and if they consider it appropriate revise a determination made by them that an allegation or allegations ought to be considered by a particular Practice Committee—

- (a) on a reference back to them from that Practice Committee under section 36P(5); or
- (b) on an application made by the Council, the registrar, the person who is the subject of the allegation or allegations or any person making the allegation or allegations, but only if such review is carried out—
  - (i) where there is to be a hearing before that Practice Committee, before the commencement of that hearing, or
  - (ii) where there is not to be a hearing before that Practice Committee, before that Practice Committee have begun to consider written statements or representations.

(9) Subsection (2) applies to a determination by the Investigating Committee, following a review under subsection (8), that an allegation or allegations ought not to be considered by a Practice Committee, as it applies to a determination under subsection (1) that an allegation ought not be considered by a Practice Committee.

(10) If the Investigating Committee determine, under subsection (1) or following a review under subsection (8), that an allegation or allegations against a person ought not to be considered by a Practice Committee, they shall, at the same time, revoke with immediate effect any interim order which has been made under section 36V in respect of that person in consequence of that allegation or those allegations.

### **The Practice Committees**

**36P.**—(1) Subject to subsection (5), a Practice Committee must investigate an allegation or allegations against a person referred to them by the Investigating Committee under section 36O and determine whether that person’s fitness to practise as a member of a profession complementary to dentistry is impaired.

(2) A Practice Committee shall, in exercising their function under subsection (1), make separate determinations in relation to each title under which that person is registered in the dental care professionals register, as to his fitness to practise as a member of the profession, or class of members of a profession, to which that title applies.

(3) In making a determination under subsection (1), a Practice Committee may take into account whether the person who is the subject of the allegation or allegations has complied with any relevant parts of the guidance issued under section 36M, but that question is not of itself determinative of whether a person’s fitness to practise as a member of a profession complementary to dentistry is impaired.

(4) If the person who is the subject of an allegation or allegations is also registered in the dentists register, a Practice Committee shall, in exercising their function under subsection (1), make a separate determination under section 27B(1) (fitness to practise as a dentist).

(5) Where a Practice Committee consider that any allegation should not have been referred to them by the Investigating Committee under section 36O, they may refer that allegation back to the Investigating Committee.

(6) If a Practice Committee determine that, in relation to a title under which a person is registered in the dental care professionals register, his fitness to practise as a member of the profession, or class of members of a profession, to which that title applies is not impaired, they—

- (a) shall publish at his request a statement to that effect; or
- (b) may publish such a statement if he consents.

(7) If a Practice Committee determine that, in relation to a title under which a person is registered in the dental care professionals register, his fitness to practise as a member of the profession, or class of members of a profession, to which that title applies is impaired, they may, if they consider it appropriate, direct—

- (a) (subject to subsection (8)) that the person’s name shall be erased from registration in that register under that title;
- (b) that his registration in that register under that title shall be suspended during such period not exceeding twelve months as may be specified in the direction;

- (c) that his registration in that register under that title shall be conditional on his compliance, during such period not exceeding three years as may be specified in the direction, with such conditions specified in the direction as the Practice Committee think fit to impose for the protection of the public or in his interests; or
- (d) that he shall be reprimanded in connection with any conduct or action of his which was the subject of the allegation.

(8) A direction under subsection (7)(a) that a person's name shall be erased from registration in the dental care professionals register under a particular title shall not be given following a determination that that person's fitness to practise as a member of the profession, or class of members of a profession, to which that title applies is impaired solely on the ground mentioned in section 36N(2)(c) (adverse physical or mental health).

(9) Where a Practice Committee give a direction under subsection (7), the registrar shall forthwith serve on the person concerned notification of the direction and (except in the case of a direction under paragraph (d) of that subsection) of his right to appeal against it under section 36S.

(10) Where a Practice Committee make a determination under subsection (1) as to a person's fitness to practise as a member of a profession, or class of members of a profession, to which a particular title applies, they shall, at the same time, revoke any interim order which has been made under section 36V—

- (a) in consequence of the allegation, or allegations, to which that determination relates; and
- (b) in relation to that person's registration in the dental care professionals register under that title.

(11) The revocation of an interim order under subsection (10) shall take effect—

- (a) in the case of a determination that the person's fitness to practise is not impaired, forthwith;
- (b) in the case of a direction given under paragraph (d) of subsection (7), forthwith; and
- (c) in the case of a direction given under paragraph (a), (b) or (c) of subsection (7), subject to section 36U(5), from the time when—
  - (i) any direction given under those paragraphs takes effect in accordance with section 36T,
  - (ii) an appeal under section 36S against the decision giving such a direction is determined under section 36S(6)(b) or (c), or
  - (iii) following a decision on appeal to remit the case to a Practice Committee, the Practice Committee dispose of the case.

### **Resumed hearings**

**36Q.**—(1) Where a Practice Committee have given a direction under section 36P(7)(b) or subsection (2)(d) or (3) of this section that a person's registration in the dental care professionals register under a particular title should be suspended, they may direct, in relation to that title—

- (a) that the suspension shall be terminated;
- (b) that the current period of suspension shall be extended for such further period, specified in the direction and not exceeding twelve months, beginning with the date on which it would otherwise expire;
- (c) that the suspension shall be terminated and the person's registration in the dental care professionals register under that title shall be conditional on his compliance, during such period not exceeding three years as may be specified in the direction, with such conditions specified in the direction as the Practice Committee think fit to impose for the protection of the public or in his interests; or
- (d) that the person's registration in the dental care professionals register under that title shall be suspended indefinitely, if—
  - (i) the period of suspension will, on the date on which the direction takes effect, have lasted for at least two years, and
  - (ii) the direction is made not more than two months before the date on which the period of suspension would otherwise expire.

(2) Where a Practice Committee have given a direction under section 36P(7)(c), subsection (1)(c) or (5)(c) of this section or section 36R(6)(b) imposing conditions on a person's registration in the dental care professionals register under a particular title, they may give one or more of the following directions in relation to that title—

- (a) a direction that the registration shall cease to be conditional from a date specified in the direction;
- (b) a direction that the current period of conditional registration shall be extended for such further period, specified in the direction and not exceeding three years, beginning with the date on which it would otherwise expire;
- (c) a direction that one or more of the conditions imposed on the registration shall be varied or revoked, or that those conditions shall be added to, as specified in the direction; or
- (d) a direction that the person's registration in the dental care professionals register under that title shall be suspended during such period not exceeding twelve months as may be specified in the direction.

(3) Where a Practice Committee—

- (a) have given a direction under section 36P(7)(c), subsection (1)(c), (2)(b) or (c) or (5)(c) of this section or section 36R(6)(b) imposing conditions on a person's registration, or extending a period of conditional registration, in the dental care professionals register under a particular title, or
- (b) have made an order under section 36V(4)(b) for interim conditional registration in relation to a particular title,

and the Practice Committee determine that at any time during the period for which that direction or order has effect the person has failed to comply with any condition imposed on his registration, the Practice Committee may direct, in relation to that title, that the person's registration in the dental care professionals register shall be suspended during such period not exceeding twelve months as may be specified in the direction.

(4) Where a Practice Committee have given a direction under subsection (1)(d) that a person's registration in the dental care professionals register under a particular title is to be suspended indefinitely, they must review the direction if—

- (a) the person requests them to do so;
- (b) at least two years have elapsed since the date on which the direction took effect; and
- (c) if the direction has previously been reviewed under this subsection, at least two years have elapsed since the date of the last such review decision.

(5) On such a review a Practice Committee may, in relation to the title in question—

- (a) direct that the suspension shall be terminated;
- (b) confirm the direction to suspend the person's registration under that title indefinitely; or
- (c) direct that the suspension shall be terminated and the person's registration in the dental care professionals register under that title shall be conditional on his compliance, during such period not exceeding three years as may be specified in the direction, with such conditions specified in the direction as the Practice Committee think fit to impose for the protection of the public or in his interests.

(6) Where a Practice Committee give a direction under this section, the registrar shall forthwith serve on the person concerned notification of the direction and (except in the case of a direction under subsection (1)(a), (2)(a) or (5)(a) or a direction under subsection (2)(c) that a condition or conditions shall be revoked) of his right to appeal against it under section 36S.

### **Restoration of names to the dental care professionals register following erasure under section 36P**

**36R.**—(1) A person whose name has been erased from registration in the dental care professionals register under a particular title in accordance with a direction under section 36P(7)(a) may apply to the registrar for his name to be restored to that register under that title.

- (2) No application under this section for the restoration of a person's name to the dental care professionals register shall be made—
- (a) before the end of the period of five years beginning with the date on which the direction for erasure took effect; or
  - (b) within twelve months of the date on which an earlier application for the restoration of his name under the title in question was made.
- (3) The registrar shall refer an application to the Professional Conduct Committee.
- (4) When considering an application, the Professional Conduct Committee may, if they consider it necessary and appropriate in a particular case, direct the applicant to do one or both of the following—
- (a) produce such evidence as to his fitness to practise as a member of the profession complementary to dentistry, or class of members of such a profession, in question as the Professional Conduct Committee shall specify;
  - (b) meet such further requirements, including requirements as to education and training, as the Professional Conduct Committee shall specify.
- (5) An application shall not be granted unless the applicant satisfies the Professional Conduct Committee—
- (a) that he is fit to practise as a member of the profession complementary to dentistry, or class of members of such a profession, in question;
  - (b) of Matter D within the meaning of section 36C;
  - (c) that he meets the requirements of any rules made under section 36Z2 which apply to his case; and
  - (d) that he meets any other requirements imposed in a direction under subsection (4)(b).
- (6) Where the Professional Conduct Committee grant an application, they may give one or both of the following directions—
- (a) a direction that the restoration of a person's name to the dental care professionals register under the title in question shall be conditional on his satisfying the registrar that he meets the requirements of section 36L (insurance) in relation to that title;
  - (b) a direction that a person's registration in that register under the title in question shall be conditional on his compliance, during such period not exceeding three years as may be specified in the direction, with such conditions specified in the direction as the Professional Conduct Committee think fit to impose for the protection of the public or in his interests.
- (7) If the Professional Conduct Committee refuse to grant an application, the registrar shall forthwith serve on the applicant notification of the Professional Conduct Committee's decision and of his right to appeal against it under section 36S.
- (8) If the Professional Conduct Committee grant an application, the registrar shall forthwith serve on the applicant notification of the Professional Conduct Committee's decision, and, in a case where a direction has been given under subsection (6)(b), of his right to appeal against that direction under section 36S.
- (9) Where, during the same period of erasure from registration in the dental care professionals register under a particular title, a second or subsequent application relating to that title under this section by the same person is unsuccessful, the Professional Conduct Committee may direct that his right to make any further such applications shall be suspended indefinitely.
- (10) If the Professional Conduct Committee give a direction under subsection (9), the registrar shall forthwith serve on the person concerned notification of the direction and of his right to appeal against it under section 36S.
- (11) Any person in respect of whom a direction has been given under subsection (9) may, after the end of the period of three years beginning with the date on which the direction took effect, apply to the registrar for the direction to be reviewed by the Professional Conduct Committee and, thereafter, may make further applications for review; but no such application may be made before the end of the period of three years beginning with the date of the most recent review decision.
- (12) On a review under subsection (11), the Professional Conduct Committee may—

- (a) confirm the direction under subsection (9); or
- (b) direct that the person concerned may make an application under subsection (1).

## Appeals

**36S.**—(1) The following decisions are appealable decisions for the purposes of this section—

- (a) a decision of the Professional Conduct Committee under section 36I—
  - (i) giving a direction under subsection (3) of that section for erasure of a person’s name from the dental care professionals register under all titles under which he is registered in that register, or
  - (ii) refusing an application under subsection (6) of that section to restore a person’s name to that register under a particular title, or refusing to so restore his name until the end of a specified period;
- (b) a decision of a Practice Committee under section 36P or 36Q giving, in relation to a particular title, a direction for erasure, for suspension, for conditional registration or for varying or adding to the conditions imposed by a direction for conditional registration; and
- (c) a decision of the Professional Conduct Committee under section 36R—
  - (i) refusing to grant an application to restore a person’s name to the dental care professionals register under a particular title,
  - (ii) giving, in relation to a particular title, a direction for conditional registration under subsection (6)(b) of that section, or
  - (iii) giving a direction under subsection (9) of that section in respect of a particular title suspending indefinitely the right to make further applications under that section.

(2) In subsection (1)—

- (a) a reference to a direction for suspension includes a reference to a direction extending a period of suspension and a direction for indefinite suspension; and
- (b) a reference to a direction for conditional registration includes a reference to a direction extending a period of conditional registration.

(3) Subject to subsection (4), a person in respect of whom an appealable decision has been made may, before the end of the period of 28 days beginning with the date on which notification of the decision was served under section 36I(7), 36P(9), 36Q(6) or 36R(7), (8) or (10), appeal against the decision to the relevant court.

(4) Where—

- (a) any notification of a decision required to be served on a person under any of the provisions specified in subsection (3) is served by sending it to him by post, and
- (b) the registrar is satisfied, on the application of that person, that he did not receive the notification within the period of 14 days beginning with the day on which the decision was made,

the registrar may, if he thinks fit, by authorisation in writing extend the period of time within which an appeal under this section may be brought.

(5) In subsection (3) “the relevant court”—

- (a) in the case of a person whose address in the dental care professionals register is (or if he were registered would be) in Scotland, means the Court of Session;
- (b) in the case of a person whose address in that register is (or if he were registered would be) in Northern Ireland, means the High Court in Northern Ireland; and
- (c) in the case of any other person, means the High Court in England and Wales.

(6) On an appeal under this section, the court 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 which could have been made by the Professional Conduct Committee, the Professional Performance Committee or (as the case may be) the Health Committee, or
- (d) remit the case to the Professional Conduct Committee, the Professional Performance Committee or (as the case may be) the Health Committee to dispose of the case under section 36I, 36P, 36Q or 36R in accordance with the directions of the court,

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

(7) The Council may appear as respondent on any appeal under this section; and for the purpose of any order as to costs (or, in Scotland, expenses) in relation to any such appeal the Council shall be deemed to be a party to it, whether they appear on the hearing of the appeal or not.

**Taking effect of directions for erasure, suspension, conditional registration etc.**

**36T.**—(1) This section applies to—

- (a) a direction given by the Professional Conduct Committee under section 36I(3) for erasure of a person’s name from the dental care professionals register under all titles under which he is registered in that register;
- (b) a direction, in relation to a particular title, for erasure, suspension, conditional registration or variation of or addition to the conditions of registration given by a Practice Committee under section 36P or 36Q; and
- (c) a direction, in relation to a particular title, for conditional registration given by the Professional Conduct Committee under section 36R(6)(b).

(2) A direction to which this section applies shall take effect—

- (a) where no appeal under section 36S is brought against the decision giving the direction within the period of time specified in subsection (3) of that section, on the expiry of that period;
- (b) where such an appeal is brought but is withdrawn or struck out for want of prosecution, on the withdrawal or striking out of the appeal; or
- (c) where such an appeal is brought and is not withdrawn or struck out for want of prosecution, on the dismissal of the appeal.

(3) Where the period of time for appealing against a decision giving a direction is extended under section 36S(4)—

- (a) subsection (2) shall apply to the direction as if the reference in paragraph (a) of that subsection to the period of time specified in section 36S(3) were a reference to that period as so extended, and
- (b) if the authorisation is given after the expiry of the period of time specified in section 36S(3), the direction shall be deemed not to have taken effect on the expiry of that period,

and any reference in this Act to the time when such a direction takes effect in accordance with this section shall be construed accordingly.

(4) In this section—

- (a) a reference to a direction for suspension includes a reference to a direction extending a period of suspension and a direction for indefinite suspension; and
- (b) a reference to a direction for conditional registration includes a reference to a direction extending a period of conditional registration.

**Orders for immediate suspension and immediate conditional registration**

**36U.**—(1) On giving a direction, in relation to a particular title, for erasure or for suspension under section 36I(3), section 36P(7)(a) or (b) or section 36Q(2)(d) or (3) in respect of any person, the Practice Committee giving the direction, if satisfied that to do so is necessary for the protection of the public or is otherwise in the public interest, or is in the interests of that person, may order that his registration under that title shall be suspended forthwith in accordance with this section.

(2) On giving a direction, in relation to a particular title, for conditional registration under section 36P(7)(c), section 36Q(1)(c) or (5)(c) or section 36R(6)(b) in respect of any person, the Practice Committee giving the direction, if satisfied that to do so is necessary for the protection of the public or is otherwise in the public interest, or is in the interests of that person, may order that his registration under that title shall be made conditional forthwith in accordance with this section.

(3) Where, on the giving of a direction, an order under subsection (1) or (2) is made in respect of a person, his registration in the dental care professionals register under the title in question shall, subject to subsection (6), be suspended or made conditional, as the case may be, from the time when the order is made until the time when—

- (a) the direction takes effect in accordance with section 36T;
- (b) an appeal under section 36S against the decision giving the direction is determined under section 36S(6)(b) or (c); or
- (c) following a decision on appeal to remit the case to a Practice Committee, the Practice Committee dispose of the case.

(4) Where a Practice Committee make an order under subsection (1) or (2), the registrar shall forthwith serve on the person in respect of whom it is made notification of the order and of his right to make an application under subsection (7).

(5) Where a Practice Committee make an order under subsection (1) or (2) in respect of a person, and an interim order under section 36V in respect of that person has been revoked by virtue of section 36P(10), that revocation shall take effect, subject to subsection (6), from the time when the order under subsection (1) or (2) is made.

(6) If, when an order under subsection (1) or (2) is made, the person in respect of whom it is made is neither present nor represented at the proceedings, subsections (3) and (5) shall have effect as if, in each case, for the reference to the time when the order is made, there were substituted a reference to the time when notification of the order is served under subsection (4).

(7) A person in respect of whom an order under subsection (1) or (2) is made may apply to the court for an order terminating any suspension imposed under subsection (1) or any conditional registration imposed under subsection (2), and the decision of the court on any such application shall be final.

(8) In subsection (7) “the court”—

- (a) in the case of a person whose address in the dental care professionals register is in Scotland, means the Court of Session;
- (b) in the case of a person whose address in that register is in Northern Ireland, means the High Court in Northern Ireland; and
- (c) in the case of any other person, means the High Court in England and Wales.

### **Interim orders**

**36V.**—(1) This section applies to the Professional Conduct Committee, the Professional Performance Committee, the Health Committee and the Interim Orders Committee, and any reference in this section to a “Committee” is a reference to any of those Committees.

(2) The Interim Orders Committee may exercise functions under this section only in relation to a person whose case has been referred to them—

- (a) by the registrar under section 36N(5)(b);
- (b) by the Investigating Committee under section 36O(4)(b) or (6)(b); or
- (c) by a Practice Committee in accordance with rules under paragraph 7(1)(c) of Schedule 4B.

(3) A Practice Committee may exercise functions under this section only in relation to a person whose case has been referred to them—

- (a) by the Investigating Committee under section 36O(4)(a) or (6)(a); or
- (b) by another Practice Committee in accordance with rules under paragraph 7(1)(a) of Schedule 4B.



(4) Where a Committee are satisfied that it is necessary for the protection of the public or is otherwise in the public interest, or is in the interests of the person concerned, for the person's registration in the dental care professionals register under a particular title to be suspended or to be made subject to conditions, the Committee may make—

- (a) an order that his registration in that register under that title shall be suspended during such period not exceeding 18 months as may be specified in the order (an "interim suspension order"); or
- (b) an order that his registration in that register under that title shall be conditional on his compliance, during such period not exceeding 18 months as may be specified in the order, with such conditions so specified as the Committee think fit to impose (an "order for interim conditional registration").

(5) Subject to subsection (11), where a Committee have made an interim suspension order or an order for interim conditional registration they—

- (a) shall review it within the period of six months beginning with the date on which the order was made, and shall thereafter, for so long as the order continues in force, further review it—
  - (i) before the end of the period of six months beginning with the date of the decision of the immediately preceding review, or
  - (ii) if after the end of the period of three months beginning with the date of the decision of the immediately preceding review the person concerned requests an earlier review, as soon as practicable after that request; and
- (b) may review it where new evidence relevant to the order has become available after the making of the order.

(6) Where an interim suspension order or an order for interim conditional registration has been made under any provision of this section (including this subsection) in relation to a person's registration in the dental care professionals register under a particular title, the Committee that made the order may, in relation to that title—

- (a) revoke the order;
- (b) make an order adding to, varying or revoking any condition imposed by the order;
- (c) if satisfied that to do so is necessary for the protection of the public or is otherwise in the public interest, or is in the interests of the person concerned, replace an interim suspension order with an order for interim conditional registration having effect for the remainder of the term of the former; or
- (d) if satisfied that to do so is necessary for the protection of the public or is otherwise in the public interest, or is in the interests of the person concerned, replace an order for interim conditional registration with an interim suspension order having effect for the remainder of the term of the former.

(7) If a Committee make an order under any provision of this section—

- (a) the registrar shall forthwith serve notification of the order on the person to whose registration it relates; and
- (b) that order shall take effect from the time on which the notification mentioned in paragraph (a) is served.

(8) The Council may apply to the court for an order made by a Committee under subsection (4) or (6) to be extended, and may apply again for further extensions.

(9) On each such application the court may extend (or further extend) for up to twelve months the period for which the order has effect.

(10) Any reference in this section to an interim suspension order, or to an order for interim conditional registration, includes a reference to such an order as so extended.

(11) For the purposes of subsection (5) the first review after the court's extension of an order made by a Committee or after a replacement order made by a Committee under subsection (6)(c) or (d) shall take place—

- (a) if the order (or the order which has been replaced) had not been reviewed at all under subsection (5), within the period of six months beginning with the date on which the court ordered the extension or on which a replacement order under subsection (6)(c) or (d) was made; and
- (b) if it had been reviewed under subsection (5), within the period of three months beginning with that date.

(12) Where an interim order has effect under any provision of this section in relation to a person's registration in the dental care professionals register under a particular title, the court may, in relation to that title—

- (a) in the case of an interim suspension order, terminate the suspension,
- (b) in the case of an order for interim conditional registration, revoke the order or revoke, vary or add to any condition imposed by the order,
- (c) in either case, substitute for the period specified in the order (or in an order extending it) some other period which could have been specified in the order (or in the order extending it) when it was made,

and the decision of the court on any application under this subsection shall be final.

(13) In this section "the court" has the meaning given by section 36U(8)."

### **Insertion of section 36W**

**32.**—(1) After section 36V insert—

#### *“Supplementary provisions*

#### **Supplementary provisions relating to fitness to practise cases**

**36W.**—(1) While a person's registration in the dental care professionals register under a particular title is suspended by virtue of a direction or order under this Part—

- (a) he shall be treated, except as provided in subsection (2), as not being registered in that register under that title, notwithstanding that his name still appears in that register; but
- (b) sections 36N, 36O, 36P and 36Q shall continue to apply to him in relation to that title.

(2) While a person's registration in the dental care professionals register under a particular title is suspended by virtue of a direction or order under this Part, he shall be treated for the purposes of compliance with rules made under section 36Z1 as if his registration were not so suspended.

(3) Where any such direction as is mentioned in section 36Q(1)(b), (c) or (d), (2)(b) or (d), (3) or (5)(c) is given in relation to a person's registration in the dental care professionals register under a particular title while his registration under that title is subject to conditions or suspended by virtue of a direction under this Part, his registration under that title shall continue to be conditional or suspended throughout any period which may intervene between the time when (but for this subsection) his registration under that title would cease to be conditional or suspended, as the case may be, and the time when—

- (a) the direction takes effect in accordance with section 36T;
- (b) an appeal under section 36S against the decision giving the direction is determined under section 36S(6)(b) or (c); or
- (c) following a decision on appeal to remit the case to a Practice Committee, the Practice Committee dispose of the case.

(4) If, on the determination of an appeal under section 36S, a direction extending the current period of suspension or conditional registration for a further period takes effect after the time when (but for subsection (3)) the current period of suspension or conditional registration would have ended, that further period shall be treated as having started to run at that time.

(5) Subsection (3) is subject to any order made under section 36U(1) or (2).

(6) Schedule 4B to this Act (proceedings before the Investigating Committee, the Interim Orders Committee and Practice Committees: dental care professionals) shall have effect.”.

(2) Schedule 4 to this Order, which inserts a new Schedule 4B into the Act, shall have effect.

### **Insertion of sections 36X to 36Z2**

33. After section 36W insert—

#### **“Recording of suspension or conditional registration etc.**

**36X.**—(1) Where a direction or order under this Part for suspension, conditional registration or variation of or addition to the conditions of registration takes effect in relation to a person, the registrar shall make a note in the dental care professionals register of that fact, of the title in relation to which the direction or order is made, and of the period for which that person’s registration is to be suspended or made conditional.

(2) The registrar shall erase any note made in accordance with subsection (1) from the dental care professionals register at such time as the direction or order ceases (for any reason) to have effect.

(3) In this section—

- (a) a reference to a direction or order for suspension includes a reference to a direction or order extending a period of suspension and a direction for indefinite suspension; and
- (b) a reference to a direction or order for conditional registration includes a reference to a direction or order extending a period of conditional registration.

(4) Where a direction under section 36I(3) or 36P(7)(a) (direction for erasure from the dental care professionals register) in respect of a person takes effect, the registrar shall remove that person’s name from registration in that register under the title in relation to which the direction is given.

(5) Where a decision under section 36I(6)(a) or 36R that a person’s name is to be restored to the dental care professionals register under a title takes effect, the registrar shall restore that person’s name to that register under the title in relation to which the decision is made.

#### **The Council’s power to require disclosure of information**

**36Y.**—(1) For the purpose of assisting the Council or any of their committees in carrying out functions under this Part, the Council may require a person (“the relevant party”) whose fitness to practise as a member of a profession complementary to dentistry is in question, to provide details of any person—

- (a) by whom the relevant party is employed to provide services in, or in relation to, any area of dentistry; or
- (b) with whom he has an arrangement to provide such services.

(2) For the purpose of assisting the Council or any of their committees in carrying out functions under this Part in respect of a person’s fitness to practise as a member of a profession complementary to dentistry, the Council may require any person (except the person in respect of whom the information or document is sought) to supply any information or produce any document in his custody or under his control which appears to the Council relevant to the discharge of those functions.

(3) Nothing in this section shall require or permit any disclosure of information which is prohibited by any relevant enactment.

(4) For the purposes of subsection (3), “relevant enactment” means any enactment other than—

- (a) this Act; or
- (b) the non-disclosure provisions within the meaning of Part 4 of the Data Protection Act 1998 (see section 27 of that Act).

(5) A person shall not be required to supply any information or produce any document under subsection (2) which he could not be compelled to supply or produce in civil proceedings before the relevant court.

(6) In subsection (5) “the relevant court” means—

- (a) if the person’s address in the dental care professionals register is in Scotland or, if he is not registered in that register, he is resident there, the Court of Session;
- (b) if the person’s address in that register is in Northern Ireland or, if he is not registered in that register, he is resident there, the High Court in Northern Ireland;
- (c) in any other case, the High Court in England and Wales.

(7) If a person fails to supply any information or produce any document within 14 days of being required to do so under subsection (1) or (2), the Council may seek an order of the relevant court requiring the information to be supplied or the document to be produced.

(8) In subsection (7) “the relevant court” means the county court or, in Scotland, the sheriff.

(9) In subsection (8) “the sheriff” means the sheriff in whose sheriffdom is situated the address of the person who fails to supply the information or produce the document; and in this subsection, “address” means, where the person is registered, his address in the dental care professionals register, or, where he is not registered in that register, the address where he resides.

(10) For the purposes of subsection (4), “enactment” includes—

- (a) a provision of, or an instrument made under, an Act of the Scottish Parliament;
- (b) a provision of, or an instrument made under, Northern Ireland legislation; and
- (c) a provision of subordinate legislation (within the meaning of the Interpretation Act 1978).

### **Notification and disclosure by the Council**

**36Z.**—(1) As soon as reasonably practicable after an allegation as to a person’s fitness to practise as a member of a profession complementary to dentistry has been referred to the Investigating Committee under section 36N(5)(a), the Council shall inform the following persons of that fact—

- (a) the Secretary of State, the Department of Health, Social Services and Public Safety in Northern Ireland, the Scottish Ministers and the National Assembly for Wales; and
- (b) any person in the United Kingdom to whom subsection (2) applies.

(2) This subsection applies to a person if the Council are aware that he—

- (a) employs the person concerned to provide services in, or in relation to, any area of dentistry; or
- (b) has an arrangement with the person concerned for that person to provide such services.

(3) The Council or the registrar may disclose to any person any information relating to a person’s fitness to practise as a member of a profession complementary to dentistry, including information relating to an allegation under section 36N, where they consider it to be in the public interest for the information to be disclosed.

### *Professional training and development requirements*

### **Professional training and development requirements**

**36Z1.**—(1) In relation to each profession, or class of members of a profession, specified in regulations under section 36A(2), rules shall require registered dental care professionals to undertake such professional training and development as may be specified in the rules.

(2) Where a person is registered in the dental care professionals register under a title applying to a particular profession, or class of members of a profession, and it appears to the registrar that the person has failed to comply with the requirements of rules under subsection (1) relating to that profession or class, the registrar may erase that person’s name from registration in that register under that title.

(3) Where, under subsection (2), a person’s name has been erased from registration under a particular title, that name shall be restored to the dental care professionals register under that title on that person’s application if he satisfies the registrar—

- (a) of Matter D within the meaning of section 36C; and

- (b) that he meets the requirements of—
  - (i) section 36L, and
  - (ii) any rules made under section 36Z2 which apply to his case.
- (4) Rules shall specify the procedures to be followed before the registrar—
  - (a) may, under subsection (2), erase a person’s name from registration in the dental care professionals register under a title; or
  - (b) may, under subsection (3), make a decision whether or not to restore a person’s name to that register under a title.
- (5) Where, in the course of proceedings under this Part, it appears to the Investigating Committee, a Practice Committee or the Interim Orders Committee that a person to whose registration the proceedings relate may be failing to meet the requirements of rules made under subsection (1), that Committee may refer the question of whether he is failing to meet them to the registrar.

**Restoration of names to the dental care professionals register: professional training and development**

- 36Z2.**—(1) Rules shall specify the requirements as to professional training and development to be met by a person who seeks the restoration of his name to the dental care professionals register under a particular title following its erasure from registration under that title under any provision of this Part.
- (2) Rules under this section must not require a person to do anything which amounts to the practice of dentistry.”.

## PART 5

### The Practice of Dentistry and Carrying on the Business of Dentistry

**Amendment of section 37**

- 34.** In section 37 (definition of practice of dentistry)—
- (a) in subsection (1), for “For” substitute “Subject to subsection (1A), for”;
  - (b) after subsection (1) insert—
 

“(1A) For the purposes of this Act, the practice of dentistry shall be deemed not to include the performance of any medical task by a person who—

    - (a) is qualified to carry out such a task; and
    - (b) is a member of a profession regulated by a regulatory body (other than the Council) listed in section 25(3) of the National Health Service Reform and Health Care Professions Act 2002.”;

and
  - (c) for subsection (2) substitute—
 

“(2) Dental work to which subsection (2A) or (2B) applies shall not be treated for the purposes of this Act as amounting to the practice of dentistry if it is undertaken under the direct personal supervision of—

    - (a) a registered dentist; or
    - (b) a registered dental care professional of a kind authorised in rules under this section to carry out such supervision.

(2A) This subsection applies to dental work if it is undertaken—

    - (a) by a person recognised by a dental authority as a student of dentistry or by a medical authority as a medical student; and
    - (b) as part of a course of instruction or training approved by that authority for students of that kind or as part of an examination so approved.

(2B) This subsection applies to dental work if it is undertaken by a person as part of—

- (a) a course of instruction or training which he is following in order to qualify for registration in the dental care professionals register under a particular title or titles; or
- (b) an examination which he must pass in order to satisfy the requirements for registration in that register under a particular title or titles.”.

**Amendment of section 38**

35. In section 38 (prohibition on practice of dentistry by laymen), in subsection (1)(a), for the words from the beginning to “medical practitioner” substitute “A person who is not a registered dentist, a registered dental care professional or a visiting EEA practitioner entered in the list of such practitioners”.

**Amendment of section 39**

36. In section 39 (prohibition on use of practitioners’ titles by laymen)—

- (a) for subsection (1)(b) substitute—

“(1) A person shall not take or use the title of dentist, dental surgeon or dental practitioner, either alone or in combination with any other word, unless he is a registered dentist or a visiting EEA practitioner entered in the list of such practitioners.”; and

- (b) after subsection (2) insert—

“(2A) A person who is not a registered dental care professional shall not take or use any title specified in regulations under section 36A(2), either alone or in combination with any other word.

(2B) No person shall take or use any title or description implying that he is a registered dental care professional unless he is a registered dental care professional.”.

**Amendment of section 41**

37. In section 41 (restriction on individuals)—

- (a) for subsections (1) to (3) substitute—

“(1) Subject to the provisions of this section, an individual who is not a registered dentist shall not carry on the business of dentistry unless—

- (a) he was engaged in carrying on the business of dentistry on 21<sup>st</sup> July 1955; or
- (b) he falls within a class of registered dental care professionals prescribed in rules under this section.

(1A) For the purposes of this section, an “authorised dental care professional” means an individual who falls within subsection (1)(b).

(1B) Any individual who contravenes this section shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(2) The exemption conferred by subsection (1)(a) on persons who were carrying on the business of dentistry on the date there mentioned shall not extend to any person who has at any time ceased to be a registered dentist in consequence of a Practice Committee giving a direction under section 27B or 27C or making an order under section 30(1) for the erasure of his name from the register, or for the suspension of his registration, following a relevant determination that his fitness to practise as a dentist is impaired.

(2A) For the purposes of subsection (2), a “relevant determination” that a person’s fitness to practise is impaired is a determination which is based solely on one or more of the grounds mentioned in paragraph (a), (d), (e), (f) or (g) of subsection (2) of section 27 (misconduct etc.).

(3) This section shall not operate to prevent a person from carrying on the business of dentistry during any period for which—

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(a) Subsection (1) was amended by S.I. 1996/1496.  
 (b) Subsection (1) was amended by S.I. 1996/1496.

- (a) his registration in the register is suspended by virtue of a direction given by a Practice Committee under section 27B or 27C, or an order made by a Practice Committee under section 30(1), following a determination, based solely on the ground mentioned in paragraph (c) of subsection (2) of section 27 (adverse physical or mental health), that his fitness to practise is impaired, or
- (b) his registration in the dental care professionals register is suspended by virtue of a direction given by a Practice Committee under section 36P or 36Q, or an order made by a Practice Committee under section 36U(1), following a determination, based solely on the ground mentioned in paragraph (c) of subsection (2) of section 36N (adverse physical or mental health), that his fitness to practise is impaired,

and subsections (4) and (6) shall apply in relation to a person whose registration is so suspended as they apply in relation to a registered dentist or an authorised dental care professional.”;

- (b) in both subsection (4) and (6), for “registered medical practitioner” substitute “authorised dental care professional”;
- (c) in subsection (5), omit “or a registered medical practitioner”; and
- (d) after subsection (6) add—
  - “(7) Rules made under subsection (1)(b) shall not be amended or revoked in such a way that any class of registered dental care professionals prescribed in those rules ceases thereafter to be prescribed.”.

#### **Repeal of section 42**

38. Section 42 (restriction on bodies corporate) is hereby repealed.

#### **Substitution of sections 43 and 44**

39. For sections 43 and 44 substitute—

##### **“Directors of bodies corporate**

43.—(1) A body corporate commits an offence if it carries on the business of dentistry at a time when a majority of its directors are not persons who are either registered dentists or registered dental care professionals.

(2) Where a person is the subject of a decision erasing his name from, or suspending him from, a register kept by any of the regulatory bodies listed in section 25(3) of the National Health Service Reform and Health Care Professions Act 2002, that person commits an offence if he is a director of a body corporate carrying on the business of dentistry at any time when such an erasure or suspension remains in effect.

(3) Any body corporate committing an offence under subsection (1), or any person committing an offence under subsection (2), shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

##### **Provision of information and payment of fees by bodies corporate**

43A.—(1) The Council shall maintain a list, in such form as they consider appropriate, of bodies corporate which carry on the business of dentistry.

(2) Subject to subsections (3) and (4), a body corporate which carries on the business of dentistry shall, at intervals of no more than twelve months, provide the Council with the information specified in subsection (5).

(3) A body corporate which is carrying on the business of dentistry at the time when this section comes into force shall first provide the Council with the information specified in subsection (5) within the period of twelve months beginning with the date on which this section came into force.

(4) A body corporate which begins to carry on the business of dentistry after this section comes into force shall first provide the Council with the information specified in subsection (5) within the period of three months beginning with the date on which it begins to carry on that business.

- (5) The information referred to in subsections (2), (3) and (4) is—
- (a) the address of the body corporate’s principal office;
  - (b) the names of the directors of the body corporate and the addresses where they are resident;
  - (c) the names of all persons who practise dentistry in the course of the business and the addresses where they are resident;
  - (d) the names of all registered dental care professionals not falling within paragraph (b) or (c) who, in the course of the business, provide services in, or in relation to, any area of dentistry, and the addresses where they are resident; and
  - (e) such further information as may be specified in rules.

(6) Rules may specify the form and manner in which the information specified in subsection (5) is required to be provided.

(7) The Council may make regulations providing that a fee is payable by a body corporate on each occasion on which that body is required to provide information in accordance with subsection (2), (3) or (4).

### **Financial penalties in relation to bodies corporate**

**43B.**—(1) The registrar may refer to the Professional Conduct Committee for investigation information in his possession which indicates that there may be grounds for imposing a financial penalty under this section.

(2) For the purposes of this section, a “relevant requirement” means a requirement for a body corporate to—

- (a) provide information under subsection (2), (3) or (4) of section 43A;
- (b) provide such information in the form and manner specified in any rules under subsection (6) of that section; or
- (c) pay any fee in accordance with regulations under subsection (7) of that section.

(3) The Professional Conduct Committee may impose a financial penalty under this section if they are satisfied that a body corporate failed to comply with a relevant requirement.

(4) In such a case, a financial penalty may be imposed on—

- (a) the body corporate concerned;
- (b) any person who was a director of that body at the time of the body’s failure to comply with the relevant requirement in question; or
- (c) both that body corporate and one or more persons within paragraph (b).

(5) But a financial penalty shall not be imposed on a director or former director of the body corporate if he satisfies the Professional Conduct Committee that, at the time of the body’s failure to comply with the relevant requirement in question, he had taken all reasonable steps to ensure that the body complied with that requirement.

(6) A financial penalty imposed under this section—

- (a) in the case of a body corporate, must not exceed £5,000,
- (b) in the case of a person within subsection (4)(b), must not exceed £1,000,

and is payable within such period as the Professional Conduct Committee shall specify at the time the penalty is imposed.

(7) If it appears to the Council that there has been a change in the value of money since the last occasion when the maximum amount of the financial penalty under subsection (6)(a) or (b) was fixed, whether by this section or by an order under this section, the Council may by order substitute for the sum for the time being specified in paragraph (a) or (b) of that subsection such higher sum as appears to the Council justified by the change.

(8) The Council shall publish an order under subsection (7) in such form as they consider appropriate.



(9) An order under subsection (7) shall not have effect in relation to any case where the failure to comply with the relevant requirement in question occurred before the order came into force.

(10) Where the Professional Conduct Committee determine to impose a financial penalty under this section, the registrar shall forthwith serve on the person on whom the penalty is imposed notification of—

- (a) the imposition of the penalty;
- (b) the amount of the penalty;
- (c) the period within which it is to be paid; and
- (d) the person's right to appeal under section 44B against any of the matters notified under paragraphs (a), (b) or (c).

(11) Subject to subsection (12), the Council may recover the financial penalty from the person on whom it was imposed if the penalty is not paid within the period specified under subsection (6).

(12) A penalty may not be recovered under subsection (11) while proceedings by way of appeal under section 44B(1) are pending, or during the period in which any such proceedings may be brought.

(13) The Council shall pay any sum paid as a financial penalty, or recovered under subsection (11), into the Consolidated Fund.

#### **Further financial penalties on bodies corporate**

**44.—**(1) The Professional Conduct Committee may, subject to subsection (5), impose a financial penalty on a body corporate if condition A or condition B is satisfied.

(2) Condition A is satisfied if, at a time when the body corporate is carrying on the business of dentistry, the name of a director of the body corporate is erased—

- (a) from the register by virtue of a direction under section 27B(6)(a); or
- (b) from registration in the dental care professionals register under any title by virtue of a direction under section 36P(7)(a).

(3) Condition B is satisfied if at a time when the body corporate is carrying on the business of dentistry the name of a member of the staff of the body corporate is so erased, and in the opinion of the Professional Conduct Committee—

- (a) the act or omission leading to the erasure was instigated, or connived at, by a director of the body corporate; or
- (b) if the act or omission was a continuing act or omission, a director of the body corporate had, or reasonably ought to have had, knowledge of its continuation.

(4) A financial penalty imposed under subsection (1)—

- (a) must not exceed £50,000; and
- (b) is payable within such period as the Professional Conduct Committee shall specify at the time the penalty is imposed.

(5) The Professional Conduct Committee shall not take a case into consideration under subsection (1) while proceedings by way of appeal are pending which may result in a decision that the name of the director or member of staff of the body corporate (as the case may be) should not be erased as described in subsection (2), or during the period in which any such proceedings may be brought.

(6) If it appears to the Council that there has been a change in the value of money since the last occasion when the maximum amount of the financial penalty under subsection (4)(a) was fixed, whether by this section or by an order under this section, the Council may by order substitute for the sum for the time being specified in subsection (4)(a) such higher sum as appears to the Council justified by the change.

(7) The Council shall publish an order under subsection (6) in such form as they consider appropriate.

(8) An order under subsection (6) shall not have effect in relation to any case where the erasure of the name which gave rise to the penalty occurred before the order came into force.

(9) Where the Professional Conduct Committee determine to impose a financial penalty on a body corporate under subsection (1), the registrar shall forthwith serve on the body corporate notification of—

- (a) the imposition of the penalty;
- (b) the amount of the penalty;
- (c) the period within which it is to be paid; and
- (d) the body corporate's right to appeal under section 44B against any of the matters notified under paragraphs (a), (b) or (c).

(10) Subject to subsection (11), the Council may recover the financial penalty from the body corporate if the penalty is not paid within the period specified under subsection (4)(b).

(11) A penalty may not be recovered under subsection (10) while proceedings by way of appeal under section 44B(2) are pending, or during the period in which any such proceedings may be brought.

(12) The Council shall pay any sum paid as a financial penalty, or recovered under subsection (10), into the Consolidated Fund.

(13) References in this section to the erasure of the name of a director or member of staff of a body corporate include references to the erasure of the name of any person who was a director or member of staff of the body corporate at the time of the act or omission leading to the erasure.

#### **Supplementary provisions relating to financial penalties under sections 43B and 44**

**44A.** Schedule 3 (proceedings before the Investigating Committee, the Interim Orders Committee and Practice Committees: dentists) applies to proceedings before the Professional Conduct Committee under section 43B or 44 with the following modifications—

- (a) references to proceedings under Part 3 of the Act shall be read as including proceedings under sections 43B and 44;
- (b) references to a Committee shall be read as references to the Professional Conduct Committee;
- (c) in paragraph 1—
  - (i) omit sub-paragraph (1), and
  - (ii) for sub-paragraph (2) substitute—

“(2) A “party” to proceedings means—

    - (a) the body corporate;
    - (b) any director or former director of the body corporate against whom the proceedings are brought; or
    - (c) the Council.”;
- (d) in paragraph 2—
  - (i) omit sub-paragraph (1)(b),
  - (ii) in sub-paragraph (2)(a), for “the person to whose registration the proceedings relate” substitute “the body corporate and any director or former director of the body corporate on whom a financial penalty may be imposed”, and
  - (iii) in sub-paragraph (2)(g), omit “the person (if any) making the allegation and”;
- (e) omit paragraph 5;
- (f) in paragraph 6(5), for paragraphs (a) and (b) substitute—

“(a) where the body corporate's principal office is in Scotland, the sheriff in whose sheriffdom that office is situated; and”;

and
- (g) omit paragraph 7.

## **Appeals relating to financial penalties**

**44B.**—(1) A person on whom a financial penalty has been imposed under section 43B may, before the end of the period of 28 days beginning with the date on which notification of the penalty was served under section 43B(10), appeal to the relevant court against the imposition of the penalty, the amount of the penalty or the period within which the penalty is to be paid.

(2) A body corporate on which a financial penalty has been imposed under section 44 may, before the end of the period of 28 days beginning with the date on which notification of the penalty was served under section 44(9), appeal to the relevant court against the imposition of the penalty, the amount of the penalty or the period within which the penalty is to be paid.

(3) Where—

- (a) any notification required to be served on a person by section 43B(10) or 44(9) is given by sending it to that person by post, and
- (b) the registrar is satisfied, on the application of that person, that that person did not receive the notification within the period of 14 days beginning with the day on which the Professional Conduct Committee gave the determination to which the notification relates,

the registrar may, if he thinks fit, by authorisation in writing extend the period of time within which an appeal under this section may be brought.

(4) In subsections (1) and (2) “the relevant court”—

- (a) where the principal office of the body corporate is in Scotland, means the Court of Session;
- (b) where the principal office of the body corporate is in Northern Ireland, means the High Court in Northern Ireland; and
- (c) where the principal office of the body corporate is in any other place, means the High Court in England and Wales.

(5) In subsection (4)—

- (a) where a financial penalty has been imposed on a body corporate, “the body corporate” means that body; and
- (b) where a financial penalty has been imposed on a director or former director of a body corporate, “the body corporate” means the body whose failure to comply with a relevant requirement (within the meaning of section 43B) led to the imposition of the financial penalty.

(6) Subsections (3) and (4) of section 29 apply to appeals under this section as they apply to appeals under that section with the following modifications—

- (a) in subsection (3)(c) and (d), omit references to the Professional Performance Committee and the Health Committee; and
- (b) in subsection (3)(d), for “section 24, 27B, 27C or 28” substitute “section 43B or 44”.

## **PART 6**

### **Further amendments**

#### **Repeal of Part 5**

**40.** Part 5 (dental auxiliaries) is hereby repealed.

#### **Insertion of section 49A**

**41.**—(1) After section 49 insert—

##### **“Advisers**

**49A.** Schedule 4C to this Act (advisers) shall have effect.”.

(2) Schedule 5 to this Order, which inserts a new Schedule 4C into the Act, shall have effect.

### **Repeal of section 50**

42. Section 50 (evidence etc in certain proceedings under the Dentists Act 1984) is hereby repealed.

### **Insertion of sections 50A to 50D**

43. After section 50 insert—

#### **“Service of notifications**

**50A.**—(1) A notification under this Act which is required to be served on any person may be served, subject to subsections (4) and (6), by—

- (a) delivering it to that person personally;
- (b) leaving it at that person’s proper address;
- (c) sending it by a registered post service; or
- (d) sending it by a postal service which provides for the delivery of the notification by post to be recorded.

(2) For the purposes of this section and of section 7 of the Interpretation Act 1978 (which defines “service by post”) in its application to this section, the proper address of an individual (except in the cases mentioned in subsection (3)) is—

- (a) his address in the dentists register or the dental care professionals register (or, if he is not registered, the address which would have been shown if he were registered); or
- (b) his last known address, if that differs from the address mentioned in paragraph (a) and it appears to the person serving the notification that the notification is more likely to reach him at that address.

(3) The cases referred to in subsection (2) are those where a notification is required to be served—

- (a) under section 27A(7) or section 36O(7), or in accordance with rules made under paragraph 2(2)(g) of Schedule 3 or paragraph 2(2)(g) of Schedule 4B, on a person making an allegation,
- (b) under section 43B(10) on a person who is a director or former director of a body corporate, or
- (c) in accordance with rules made under paragraph 2(2)(d) or (g) of Schedule 3 or paragraph 2(2)(d) or (g) of Schedule 4B on a person who may have an interest in certain proceedings,

and in such cases, for the purposes mentioned in subsection (2), the person’s proper address is the address where he resides.

(4) A notification which is required to be served on a body corporate shall be duly served if it is served on an officer, secretary or clerk of that body.

(5) For the purposes of this section and of section 7 of the Interpretation Act 1978 in its application to this section, the proper address of a body corporate, or of an officer, secretary or clerk of that body, is—

- (a) that body’s address as specified in the list maintained by the Council under section 43A; or
- (b) the address of that body’s registered or principal office if—
  - (i) it appears to the person serving the notification that the notification is more likely to reach the body corporate or its officer, secretary or clerk at that address, or
  - (ii) there is no address specified in relation to that body in that list.

(6) Rules may provide for a notification which is required to be served on any person under this Act to be served by an electronic communication.

(7) Rules under subsection (6) shall secure that a notification cannot be served on a person by an electronic communication unless—

- (a) the person consents in writing to the receipt of notifications under this Act by electronic communication; and

(b) the communication is sent to the number or address specified by that person when giving consent.

(8) In this section, “electronic communication” has the same meaning as in the Electronic Communications Act 2000.

(9) References in this section to serving a notification include references to sending a notification.

### **Publication of information**

**50B.**—(1) Subject to subsection (2), any information or guidance which is to be published by the registrar, the Council or a Practice Committee in accordance with any provision of this Act may be published in such form and manner as the registrar, the Council or the Practice Committee (as the case may be) consider appropriate, including in electronic form.

(2) Information required to be published under rules under paragraph 2(2)(h) of Schedule 3 to this Act or paragraph 2(2)(h) of Schedule 4B to this Act shall be published in such manner as may be determined by those rules, and not by this section.

### **Rules**

**50C.**—(1) Any power in this Act to make rules shall be exercisable by the Council.

(2) Rules made under this Act shall not come into force until approved by the Privy Council, except in the case of rules made under—

section 36B(4) (dental care professionals register);

section 36D(6) and (7) (education and training for members of professions complementary to dentistry);

section 36E (rules relating to the dental care professionals register);

section 43A(5) and (6) (provision of information by bodies corporate); and

paragraphs 4(2) and 8(1)(a) and (b) of Schedule 1 (the Council: supplementary provisions).

(3) The approval of the Privy Council shall be given by order made by the Privy Council.

(4) The Privy Council may approve rules as submitted to them, or subject to such modifications as appear to them to be requisite.

(5) Any power to make rules under this Act may be exercised—

(a) so as to make different provision with respect to 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; and

(b) either in relation to all cases to which the power extends or in relation to all those cases subject to specified exceptions.

(6) Any power to make rules under this Act includes power to make any incidental, consequential, saving, transitional, transitory or supplementary provision which the Council consider necessary or expedient.

### **Rules: consultation requirements**

**50D.**—(1) Before making rules under Schedule 3 or 4B, the Council shall consult—

(a) such persons to whom subsection (2) applies as the Council consider appropriate;

(b) the bodies within subsection (4); and

(c) such bodies to which subsection (5) applies as the Council consider appropriate.

(2) This subsection applies to persons who appear to the Council to be representative of one or more of the following—

(a) users of the services of registered dentists;

(b) users of the services of registered dental care professionals;

- (c) registered dentists;
- (d) registered dental care professionals;
- (e) employers of registered dentists; and
- (f) employers of registered dental care professionals.

(3) The Council shall exercise their function under subsection (1)(a) so that the persons consulted are, taken together, representative of all the categories of person mentioned in subsection (2)(a) to (f).

(4) The bodies within this subsection are—

- (a) Primary Care Trusts in England;
- (b) Local Health Boards in Wales;
- (c) Health Boards in Scotland; and
- (d) Health and Social Services Boards in Northern Ireland.

(5) This subsection applies to bodies which make arrangements, for the provision of dental services, with one or both of the following—

- (a) registered dentists,
- (b) registered dental care professionals,

but are not within subsection (4).

(6) Subsection (1) does not apply in relation to rules made under Schedule 3 as applied (with modifications) by section 44A (supplementary provisions relating to financial penalties in relation to bodies corporate), but before making such rules the Council shall consult—

- (a) the bodies corporate which carry on the business of dentistry; and
- (b) such organisations appearing to the Council to be representative of users of the services of those bodies corporate as the Council consider appropriate.”.

#### **Amendment of section 51**

**44.** In section 51 (exercise of powers conferred on Privy Council)—

- (a) the existing provision shall be numbered as subsection (1); and
- (b) after subsection (1) insert—

“(2) Any power of the Privy Council to make an order under this Act shall be exercisable by statutory instrument, except—

- (a) the power to make an order under section 11 (remedy where qualifying courses of study or examinations are inadequate); and
- (b) the power to make an order under section 12 (candidates not to be required to adopt or reject particular theories of dentistry).

(3) A statutory instrument which contains an order made by the Privy Council—

- (a) under section 1(2A) (constitution of the Council),
- (b) approving rules under section 41(1) (restriction on individuals carrying on the business of dentistry),
- (c) approving rules under Schedule 3 (proceedings before the Investigating Committee, the Interim Orders Committee and Practice Committees: dentists),
- (d) approving rules under Schedule 4B (proceedings before the Investigating Committee, the Interim Orders Committee and Practice Committees: dental care professionals), or
- (e) approving rules under Schedule 4C (advisers),

shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(4) Where a statutory instrument is made which contains an order made by the Privy Council approving regulations under section 36A(2) (professions complementary to dentistry)—

- (a) in the case of regulations to which subsection (5) applies, that instrument shall be subject to annulment in pursuance of a resolution of either House of Parliament; and
- (b) in any other case, that instrument shall be subject to annulment in pursuance of a resolution of either House of Parliament or of the Scottish Parliament.

(5) This subsection applies to regulations which specify a profession complementary to dentistry, or a class of members of such a profession, which, immediately before the revocation of the Dental Auxiliaries Regulations 1986 (S.I. 1986/887), constituted a class of dental auxiliaries regulated by those Regulations.

(6) Any act of the Privy Council under this Act shall be sufficiently signified by an instrument signed by the Clerk of the Privy Council.

(7) Any document purporting to be—

- (a) an instrument made by the Privy Council under this Act, and
- (b) signed by the Clerk of the Privy Council,

shall be evidence (and in Scotland sufficient evidence) of the fact that the instrument was so made and of its terms.”.

### **Amendment of section 52**

**45.** In section 52 (regulations and other documents), after subsection (1) insert—

“(1A) Any power to make regulations under this Act may be exercised—

- (a) so as to make different provision with respect to 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; and
- (b) either in relation to all cases to which the power extends or in relation to all those cases subject to specified exceptions.

(1B) Any power to make regulations under this Act includes power to make any incidental, consequential, saving, transitional, transitory or supplementary provision which the Council consider necessary or expedient.”.

### **Amendment of section 53**

**46.**—(1) Section 53 (interpretation) is amended as follows.

(2) In subsection (1)(a)—

(a) after the definition of “the EEA agreement” insert—

““interim order” means—

- (a) an interim suspension order under section 32(4)(a) or section 36V(4)(a); or
- (b) an order for interim conditional registration under section 32(4)(b) or section 36V(4)(b);

“Practice Committee” shall be construed in accordance with section 2;

“profession complementary to dentistry” shall be construed in accordance with section 36A(1);”;

(b) after the definition of “the register” insert—

““registered dental care professional” means a person for the time being registered in the dental care professionals register under a title or titles;”;

(c) in the definition of “the registrar”, for “section 14(3)” substitute “section 14(2)”.

(3) After subsection (2) insert—

“(2A) In this Act references to a body corporate’s principal office mean, in the case of a body corporate registered outside the United Kingdom, that body’s principal office within the United Kingdom.”.

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(a) Subsection (1) was amended by S.I. 1996/1496.

## Amendment of Schedule 1

- 47.—(1) Schedule 1(a) (the Council: supplementary provisions) is amended as follows.
- (2) In paragraph 1—
- (a) in sub-paragraph (1), for paragraph (b) substitute—  
“(b) members who are registered dental care professionals; and”;
  - (b) in sub-paragraph (2), for “Order in Council” substitute “order of the Privy Council”; and
  - (c) in sub-paragraph (5), for “dental auxiliary” substitute “registered dental care professional”.
- (3) In paragraph 2(1)—
- (a) for “Order in Council” substitute “order of the Privy Council”; and
  - (b) in paragraph (c), for “Her Majesty” substitute “the Privy Council”.
- (4) For the heading to paragraph 3, substitute “Members who are registered dentists or registered dental care professionals”.
- (5) In paragraph 3—
- (a) in sub-paragraph (1)—
    - (i) for “Order in Council” substitute “order of the Privy Council”, and
    - (ii) for paragraph (c) substitute—  
“(c) any other matter which appears to the Privy Council to be necessary or expedient in relation to the categories of members of the Council mentioned in paragraph 1(1)(a) and (b).”;
  - (b) after sub-paragraph (1) insert—  
“(1A) An order under section 1(2A) shall in particular provide that a member who at the time of his election was a registered dentist or registered dental care professional is to be removed from office if he ceases to be registered in the register or (as the case may be) the dental care professionals register.”; and
  - (c) omit sub-paragraphs (3) and (6).
- (6) In paragraph 4, omit sub-paragraph (5).
- (7) For paragraph 7 substitute—
- “7.—(1) Subject to section 43B(13) and section 44(12), the Council may, after paying their expenses, allocate any of their income to—
- (a) purposes connected with education or research in relation to—
    - (i) the dental profession, or
    - (ii) professions complementary to dentistry; or
  - (b) any other public purpose connected with either or both of those professions.
- (2) In sub-paragraph (1), “expenses” includes the payments authorised under this Schedule to be made to members of the Council and their committees and the salaries and remuneration of the Council’s officers.”.
- (8) In paragraph 8—
- (a) in sub-paragraph (1)(b), after “section 2 of this Act,” insert “or to any officer of the Council,”;
  - (b) in sub-paragraph (1)(c), for “subject as aforesaid,” substitute “subject to the provisions of this Act and in particular sub-paragraph (1A),”;
  - (c) after sub-paragraph (1) insert—  
“(1A) The power conferred by sub-paragraph (1)(c) does not include power to make any rules regulating the proceedings of the committees referred to in section 2 of this Act, in so far as the power to make such rules is specifically conferred by Schedule 3 or 4B to this Act.”; and

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(a) Schedule 1 was amended by S.I. 2001/3926.



- (d) omit sub-paragraphs (2) and (3).

### **Repeal of Schedule 3A**

48. Schedule 3A(a) (continuing professional development cases) is hereby repealed.

### **Minor and consequential amendments**

49. The minor and consequential amendments contained in Schedule 6 to this Order shall have effect.

### **Transitional, transitory and saving provisions**

50.—(1) The transitional, transitory and saving provisions contained in Schedule 7 to this Order shall have effect.

(2) The Privy Council may by order make such further transitional, transitory or saving provisions as it considers appropriate, and an order under this paragraph may, in particular, include requirements as to the education, training and practical experience which a person must satisfy during a period specified in the order in order to be entitled to be registered under a particular title in the dental care professionals register.

(3) The power to make an order under paragraph (2) is exercisable by statutory instrument and a statutory instrument containing such an order shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(4) Until such time as article 29 is in force, section 50D of the Act has effect, in relation to the making of any rules to which that section applies, as if, for any reference in that section to registered dental care professionals, there were substituted a reference to—

- (a) persons enrolled in the roll of dental hygienists referred to in regulation 21 of the Dental Auxiliaries Regulations 1986(b); and
- (b) persons enrolled in the roll of dental therapists referred to in regulation 25 of those Regulations.

*A.K. Galloway*  
Clerk of the Privy Council

## SCHEDULE 1

Article 14(2)

### Insertion of Schedule 2A

After Schedule 2 insert—

## “SCHEDULE 2A

Section 25A

### Registration appeals: dentists register

1. In this Schedule—

“appealable registration decision” shall be construed in accordance with paragraphs 2 and 3(2);

“person concerned” means a person notified under paragraph 3(1) of an appealable registration decision made in respect of him, or, as the case may be, an applicant in respect of whom an appealable registration decision is treated as having been made by virtue of paragraph 3(2); and

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(a) Schedule 3A was inserted by S.I. 2001/3926.

(b) S.I. 1986/887, as amended by S.I. 1991/1706, 1996/2988, 1999/3460, 2002/1671 and 3135 and 2003/3105.

“the requisite period”, in relation to a decision of a kind specified in paragraph 2(1)(a), (b), (d), (f), (g), (i) or (j), means the period of three months beginning with the date when the registrar is first in possession of sufficient information to make the decision.

2.—(1) The following decisions are appealable registration decisions for the purposes of this Schedule—

- (a) a decision not to register a person’s name in the register under section 15 (qualification for registration) on the grounds that any of the requirements of that section are not met;
- (b) a decision not to give a direction for temporary registration under section 17 (temporary registration);
- (c) a decision under section 23(3) (erasure of names of those who have ceased to practise) to erase a person’s name from the register;
- (d) a decision under section 23(4) not to restore a person’s name to the register;
- (e) a decision under section 24(1) (erasure on grounds of error) to erase an entry relating to a person from the register;
- (f) a decision under section 26A(8)(a), (b) or (c) (insurance) not to register a person’s name in the register, not to restore his name to the register or to erase his name from the register;
- (g) a decision under section 26A(9) not to restore a person’s name to the register;
- (h) a decision under section 34A(2) (professional training and development requirements) to erase a person’s name from the register;
- (i) a decision under section 34A(3) not to restore a person’s name to the register;
- (j) a decision not to register a person’s name in the register on the grounds that section 35(1) is satisfied (effect on registration of disqualification in another EEA state); and
- (k) a decision under section 35(3) to erase a person’s name from the register.

(2) A decision is not an appealable registration decision for the purposes of this Schedule if it is a decision taken by reason only that the person failed to—

- (a) pay any fee prescribed by regulations made under section 19; or
- (b) make an application as required under this Act or any rules made under it.

### **Notification of appealable registration decisions**

3.—(1) Where an appealable registration decision is made in respect of a person, the registrar shall forthwith serve on that person written notification of—

- (a) the decision;
- (b) the reasons for the decision; and
- (c) that person’s right to appeal under paragraph 4.

(2) Where an applicant has not been served with notification of a decision in respect of an application for registration or restoration of a name mentioned in paragraphs (a), (b), (d), (f), (g), (i) or (j) of paragraph 2(1) within the requisite period, that omission shall be treated as a decision not to register or, as the case may be, restore the applicant’s name, which is an appealable registration decision for the purposes of this Schedule.

### **Appeals from an appealable registration decision**

4.—(1) A person concerned may appeal to the Registration Appeals Committee against—

- (a) the appealable registration decision made in respect of him of which he was notified under paragraph 3(1); or
- (b) the appealable registration decision treated as having been made in respect of him by virtue of paragraph 3(2).

(2) An appeal under sub-paragraph (1) shall be made by giving notice of appeal to the registrar.

(3) Notice of appeal in a case within sub-paragraph (1)(a) must be given before the end of the period of 28 days beginning with the date on which notification of the decision was served under paragraph 3(1), subject to any extension of time under paragraph 5.

(4) Notice of appeal in a case within sub-paragraph (1)(b) must be given before the end of the period of 28 days following the end of the requisite period.

(5) In the case of an appealable registration decision which is a decision to erase a person's name from the register, where—

- (a) no appeal under this paragraph is brought against the decision within the period of time specified in sub-paragraph (3), or
- (b) an appeal under this paragraph is brought but is withdrawn or struck out for want of prosecution,

that decision shall take effect on the expiry of that period or, as the case may be, on the withdrawal or striking out of that appeal.

(6) For the purposes of considering an appeal under this paragraph, the Registration Appeals Committee may make such inquiries as they consider appropriate.

(7) Schedule 3 (proceedings before the Investigating Committee, the Interim Orders Committee and Practice Committees: dentists) applies to proceedings under this Schedule before the Registration Appeals Committee with the following modifications—

- (a) in paragraph 1—
  - (i) omit sub-paragraph (1), and
  - (ii) in sub-paragraph (2)(b) for “the Council” substitute “the registrar”;
- (b) references to a Committee shall be read as references to the Registration Appeals Committee;
- (c) in paragraph 2—
  - (i) omit sub-paragraph (1)(b), and
  - (ii) in sub-paragraph (2)(g) omit “the person (if any) making the allegation and”; and
- (d) omit paragraph 7.

(8) In disposing of an appeal under this paragraph, the Registration Appeals Committee may determine to—

- (a) dismiss the appeal;
- (b) allow the appeal and quash the decision appealed against;
- (c) substitute for the decision appealed against any other decision which could have been made by the registrar; or
- (d) remit the case to the registrar to dispose of in accordance with the directions of the Registration Appeals Committee.

(9) In the case of an appealable registration decision which is a decision to erase a person's name from the register, where the Registration Appeals Committee dispose of an appeal brought under this paragraph by making a determination under sub-paragraph (8)(a), (c) or (d), that decision shall take effect—

- (a) where no appeal under paragraph 6 is brought against the determination of the Registration Appeals Committee within the period of time specified in paragraph 6(1), on the expiry of that period;
- (b) where an appeal under paragraph 6 is brought but is withdrawn or struck out for want of prosecution, on the withdrawal or striking out of that appeal; or
- (c) where an appeal under paragraph 6 is brought and dismissed under paragraph 6(2)(a), on the dismissal of that appeal.

(10) Where the Registration Appeals Committee make a determination on an appeal under this Schedule, they shall, as soon as reasonably practicable—

- (a) inform the registrar of, and serve on the person concerned notification of, the Committee's determination on the appeal and of the reasons for that determination; and

- (b) if that determination is not a determination under sub-paragraph (8)(b), serve on the person concerned notification of his right of appeal under paragraph 6.

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

5. Where—

- (a) any notification of a decision required under paragraph 3(1) to be served on a person is served by sending it to him by post, and
- (b) the registrar is satisfied, on the application of that person, that he did not receive the notification within the period of 14 days beginning with the day on which the decision was made,

the registrar may, if he thinks fit, by authorisation in writing extend the time for giving notice of appeal under paragraph 4(3).

#### **Appeals from the Registration Appeals Committee**

6.—(1) Where—

- (a) the Registration Appeals Committee determine an appeal under paragraph 4, and
- (b) they do not determine under paragraph 4(8)(b) to allow the appeal and quash the decision appealed against,

the person concerned may, before the end of the period of 28 days beginning with the date on which notification of the determination was served on him under paragraph 4(10), appeal against the determination to the relevant court.

(2) On an appeal under this paragraph from the Registration Appeals Committee, the relevant court may—

- (a) dismiss the appeal,
- (b) allow the appeal and quash the determination appealed against,
- (c) substitute for the determination appealed against any other determination which could have been made by the Registration Appeals Committee, or
- (d) remit the case to the Registration Appeals Committee to dispose of in accordance with the directions of the relevant court,

and may make such order as to costs (or, in Scotland, expenses) as the relevant court thinks fit.

(3) In this paragraph “the relevant court” means—

- (a) where the person concerned is registered in the register, and his address in the register is in Scotland, the sheriff in whose sheriffdom that address is situated;
- (b) where the person concerned is not registered in the register, but his address would (if he were to be registered) be in Scotland, the sheriff in whose sheriffdom that address is situated; and
- (c) in any other case, the county court.”.

## **SCHEDULE 2**

Article 24(2)

### **Substitution of Schedule 3**

For Schedule 3 substitute—

Proceedings before the Investigating Committee, the Interim Orders  
Committee and Practice Committees: dentists

**Definitions**

- 1.—(1) In this Schedule a “Committee” means—
- (a) the Professional Conduct Committee;
  - (b) the Professional Performance Committee;
  - (c) the Health Committee; or
  - (d) the Interim Orders Committee.
- (2) A “party” to proceedings means, unless the context otherwise requires—
- (a) the person to whose registration the proceedings relate; or
  - (b) the Council.

**Rules relating to procedure**

2.—(1) Subject to the provisions of this paragraph, rules shall make provision as to the procedure to be followed—

- (a) in proceedings before a Committee under Part 3 of this Act; and
  - (b) by the Investigating Committee in the exercise of their functions under section 27A.
- (2) Rules under sub-paragraph (1)(a) shall include provision—
- (a) requiring the registrar to serve notification on the person to whose registration the proceedings relate that proceedings are to be brought and outlining the case against him;
  - (b) enabling any party to be heard by a Committee, if the party so requires;
  - (c) enabling any party to be represented before the Committee by counsel or a 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) enabling the registrar to serve notification of the proceedings on any person who in his opinion has an interest in those proceedings, and to provide any person so notified with an opportunity to submit written representations;
  - (e) enabling a Committee, before they hold any hearing, where they consider that it would assist them in performing their functions, to hold a preliminary meeting in private attended by the parties and the parties’ representatives and any other person the Committee think appropriate;
  - (f) requiring proceedings before a Committee to be held in public unless and to the extent that the rules provide otherwise;
  - (g) requiring the registrar to serve notification on the person (if any) making the allegation and any other person who in his opinion has an interest in the proceedings, of the Committee’s decision and the reasons for the decision; and
  - (h) requiring the registrar to publish, in such manner as may be specified in the rules, such information relating to the case and any decision made by the Committee as may be specified in the rules.

(3) Each stage in proceedings before a Committee under Part 3 of this Act shall be dealt with expeditiously and a Committee may give directions as to the conduct of the case and the consequences of failure to comply with such directions (which may include the making of an order or refusal of an application if the failure to comply was without reasonable excuse).

(4) Rules may provide for the Chairman of a Committee to hold the meeting referred to in sub-paragraph (2)(e) or to give the directions mentioned in sub-paragraph (3) and, subject to the agreement

of the parties to his acting on behalf of the Committee, to take such action as the Committee would be competent to take at such a meeting.

### **Evidence etc.**

3. Subject to paragraph 4, rules shall make provision regarding the rules of evidence to be observed in any proceedings before a Committee under Part 3 of this Act, including rules as to the admissibility of evidence.

4.—(1) For the purpose of proceedings under Part 3 of this Act in England and Wales or in Northern Ireland before a Committee, a Committee may—

- (a) summon any person to attend a hearing as a witness, to answer any question or to produce any documents in his custody or under his control which relate to any matter in question in the proceedings;
- (b) require any witness appearing before them to give evidence on oath and for this purpose an oath may be administered in due form; and
- (c) upon an application by a person summoned to appear before them, set the summons aside.

(2) No person shall be compelled under sub-paragraph (1)—

- (a) to attend in obedience to a summons if he has been given less than 14 days' notification of the hearing unless he informs the Committee before the hearing that he accepts such notification has been given; or
- (b) to produce any document which he could not be compelled to produce on the trial of an action.

(3) For the purposes of any proceedings under Part 3 of this Act in Scotland before a Committee, 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.

5. Where the proceedings relate to a person's conduct, and that conduct has been considered by another body whose functions include overseeing the conduct of members of a health or social care profession, a Committee may adopt as its own findings any finding of fact found by that body and proceed to determine the case without further inquiry.

### **Costs**

6.—(1) In the course of proceedings under Part 3 of this Act, a Committee may make such order as to costs (or, in Scotland, expenses) as they think fit, but may make provision as described in sub-paragraph (2) only if rules allowing such provision have been made under that sub-paragraph.

(2) Rules may allow a Committee—

- (a) to disallow all or part of the costs (or, in Scotland, expenses) of a representative of a party by reason of that representative's conduct of the proceedings; and
- (b) to order a representative of a party to meet all or part of the costs (or, in Scotland, expenses) incurred by a party by reason of that representative's conduct of the proceedings.

(3) A Committee shall have regard to a person's ability to pay when considering the making of an order under this paragraph.

(4) Any sum required to be paid under an award in respect of costs (or, in Scotland, expenses) shall be recoverable as if it had been adjudged to be paid by an order of a relevant court.

(5) In sub-paragraph (4) "the relevant court" means—

- (a) where the person to whose registration the proceedings relate is registered in the register, and his address in the register is in Scotland, the sheriff in whose sheriffdom that address is situated;
- (b) where the person to whose registration the proceedings relate is not registered in the register, but his address would (if he were to be registered) be in Scotland, the sheriff in whose sheriffdom that address is situated; and
- (c) in any other case, the county court.

**Reference of cases to the registrar or a different Committee**

7.—(1) Rules shall be made enabling a Practice Committee, in the course of proceedings under Part 3 of this Act—

- (a) to refer to another Practice Committee any matter arising which they consider should be dealt with by that other Practice Committee;
- (b) to take advice, as they consider necessary and appropriate, from another Practice Committee; and
- (c) to refer to the Interim Orders Committee any allegation before them which they consider should be dealt with by the Interim Orders Committee.

(2) Rules under sub-paragraph (1)(a) may provide that, where a Practice Committee refer a case to another Practice Committee by virtue of those rules, section 27B is to apply as if the case had originally been referred by the Investigating Committee to that other Practice Committee.”.

**SCHEDULE 3**

Article 30(2)

**Insertion of Schedule 4A**

After Schedule 4 insert—

**“SCHEDULE 4A**

Section 36J

**Registration appeals: dental care professionals register**

**1.** In this Schedule—

“appealable registration decision” shall be construed in accordance with paragraphs 2 and 3(2);

“person concerned” means a person notified under paragraph 3(1) of an appealable registration decision made in respect of him, or, as the case may be, an applicant in respect of whom an appealable registration decision is treated as having been made by virtue of paragraph 3(2); and

“the requisite period”, in relation to a decision of a kind specified in paragraph 2(1)(a), (c), (e), (f) or (h), means the period of four months beginning with the date when the registrar is first in possession of sufficient information to make the decision.

**2.—(1)** The following decisions are appealable registration decisions for the purposes of this Schedule—

- (a) a decision not to register a person’s name under a particular title in the dental care professionals register under section 36C (qualifications for registration) on the grounds that any of the requirements of that section are not met;
- (b) a decision under section 36H(3) (erasure of names of those who have ceased to practise) to erase a person’s name from the dental care professionals register;
- (c) a decision under section 36H(4) not to restore a person’s name to the dental care professionals register under a particular title;

- (d) a decision under section 36I(1) (erasure on grounds of error) to erase an entry relating to a person from the dental care professionals register;
- (e) a decision under section 36L(9)(a), (b) or (c) (insurance) not to register a person's name in the dental care professionals register, not to restore his name to that register, or to erase his name from registration in that register, under a particular title;
- (f) a decision under section 36L(10) not to restore a person's name to the dental care professionals register under a particular title;
- (g) a decision under section 36Z1(2) (professional training and development requirements) to erase a person's name from registration in the dental care professionals register under a particular title; and
- (h) a decision under section 36Z1(3) not to restore a person's name to the dental care professionals register under a particular title.

(2) A decision is not an appealable registration decision for the purposes of this Schedule if it is a decision taken by reason only that the person failed to—

- (a) pay any fee prescribed by regulations made under section 36F; or
- (b) make an application as required under this Act or any rules made under it.

### **Notification of appealable registration decisions**

3.—(1) Where an appealable registration decision is made in respect of a person, the registrar shall forthwith serve on that person written notification of—

- (a) the decision;
- (b) the reasons for the decision; and
- (c) that person's right to appeal under paragraph 4.

(2) Where an applicant has not been served with notification of a decision in respect of an application for registration or restoration of a name mentioned in paragraphs (a), (c), (e), (f) or (h) of paragraph 2(1) within the requisite period, that omission shall be treated as a decision not to register or, as the case may be, restore the applicant's name, which is an appealable registration decision for the purposes of this Schedule.

### **Appeals from an appealable registration decision**

4.—(1) A person concerned may appeal to the Registration Appeals Committee against—

- (a) the appealable registration decision made in respect of him of which he was notified under paragraph 3(1); or
- (b) the appealable registration decision treated as having been made in respect of him by virtue of paragraph 3(2).

(2) An appeal under sub-paragraph (1) shall be made by giving notice of appeal to the registrar.

(3) Notice of appeal in a case within sub-paragraph (1)(a) must be given before the end of the period of 28 days beginning with the date on which notification of the decision was served under paragraph 3(1), subject to any extension of time under paragraph 5.

(4) Notice of appeal in a case within sub-paragraph (1)(b) must be given before the end of the period of 28 days following the end of the requisite period.

(5) In the case of an appealable registration decision which is a decision to erase a person's name from registration in the dental care professionals register under a particular title, where—

- (a) no appeal under this paragraph is brought against the decision within the period of time specified in sub-paragraph (3), or
- (b) an appeal under this paragraph is brought but is withdrawn or struck out for want of prosecution,

that decision shall take effect on the expiry of that period or, as the case may be, on the withdrawal or striking out of that appeal.



(6) For the purposes of considering an appeal under this paragraph, the Registration Appeals Committee may make such inquiries as they consider appropriate.

(7) Schedule 4B (proceedings before the Investigating Committee, the Interim Orders Committee and Practice Committees: dental care professionals) applies to proceedings under this Schedule before the Registration Appeals Committee with the following modifications—

- (a) in paragraph 1—
  - (i) omit sub-paragraph (1), and
  - (ii) in sub-paragraph (2)(b) for “the Council” substitute “the registrar”;
- (b) references to a Committee shall be read as references to the Registration Appeals Committee;
- (c) in paragraph 2—
  - (i) omit sub-paragraph (1)(b), and
  - (ii) in sub-paragraph (2)(g), omit “the person (if any) making the allegation and”;
- (d) omit paragraph 7.

(8) In disposing of an appeal under this paragraph, the Registration Appeals Committee may determine to—

- (a) dismiss the appeal;
- (b) allow the appeal and quash the decision appealed against;
- (c) substitute for the decision appealed against any other decision which could have been made by the registrar; or
- (d) remit the case to the registrar to dispose of in accordance with the directions of the Registration Appeals Committee.

(9) In the case of an appealable registration decision which is a decision to erase a person’s name from registration in the dental care professionals register under a particular title, where the Registration Appeals Committee dispose of an appeal brought under this paragraph by making a determination under sub-paragraph (8)(a), (c) or (d), that decision shall take effect—

- (a) where no appeal under paragraph 6 is brought against the determination of the Registration Appeals Committee within the period of time specified in paragraph 6(1), on the expiry of that period;
- (b) where an appeal under paragraph 6 is brought but is withdrawn or struck out for want of prosecution, on the withdrawal or striking out of that appeal; or
- (c) where an appeal under paragraph 6 is brought and dismissed under paragraph 6(2)(a), on the dismissal of that appeal.

(10) Where the Registration Appeals Committee make a determination on an appeal under this Schedule, they shall, as soon as reasonably practicable—

- (a) inform the registrar of, and serve on the person concerned notification of, the Committee’s determination on the appeal and of the reasons for that determination; and
- (b) if that determination is not a determination under sub-paragraph (8)(b), serve on the person concerned notification of his right of appeal under paragraph 6.

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

5. Where—

- (a) any notification of a decision required under paragraph 3(1) to be served on a person is served by sending it to him by post, and
- (b) the registrar is satisfied, on the application of that person, that he did not receive the notification within the period of 14 days beginning with the day on which the decision was made,

the registrar may, if he thinks fit, by authorisation in writing extend the time for giving notice of appeal under paragraph 4(3).

## Appeals from the Registration Appeals Committee

6.—(1) Where—

- (a) the Registration Appeals Committee determine an appeal under paragraph 4, and
- (b) they do not determine under paragraph 4(8)(b) to allow the appeal and quash the decision appealed against,

the person concerned may, before the end of the period of 28 days beginning with the date on which notification of the determination was served on him under paragraph 4(10), appeal against the determination to the relevant court.

(2) On an appeal under this paragraph from the Registration Appeals Committee, the relevant court may—

- (a) dismiss the appeal,
- (b) allow the appeal and quash the determination appealed against,
- (c) substitute for the determination appealed against any other determination which could have been made by the Registration Appeals Committee, or
- (d) remit the case to the Registration Appeals Committee to dispose of in accordance with the directions of the relevant court,

and may make such order as to costs (or, in Scotland, expenses) as the relevant court thinks fit.

(3) In this paragraph “the relevant court” means—

- (a) where the person concerned is registered in the dental care professionals register, and his address in that register is in Scotland, the sheriff in whose sheriffdom that address is situated;
- (b) where the person concerned is not registered in that register, but his address would (if he were to be registered) be in Scotland, the sheriff in whose sheriffdom that address is situated; and
- (c) in any other case, the county court.”.

## SCHEDULE 4

Article 32(2)

### Insertion of Schedule 4B

After Schedule 4A insert—

## “SCHEDULE 4B

Section 36W(6)

### Proceedings before the Investigating Committee, the Interim Orders Committee and Practice Committees: dental care professionals

#### Definitions

1.—(1) In this Schedule a “Committee” means—

- (a) the Professional Conduct Committee;
- (b) the Professional Performance Committee;
- (c) the Health Committee; or
- (d) the Interim Orders Committee.

(2) A “party” to proceedings means, unless the context otherwise requires—

- (a) the person to whose registration the proceedings relate; or
- (b) the Council.

## **Rules relating to procedure**

2.—(1) Subject to the provisions of this paragraph, rules shall make provision as to the procedure to be followed—

- (a) in proceedings before a Committee under Part 3A of this Act; and
- (b) by the Investigating Committee in the exercise of their functions under section 36O.

(2) Rules under sub-paragraph (1)(a) shall include provision—

- (a) requiring the registrar to serve notification on the person to whose registration the proceedings relate that proceedings are to be brought and outlining the case against him;
- (b) enabling any party to be heard by a Committee, if the party so requires;
- (c) enabling any party to be represented before the Committee by counsel or a 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) enabling the registrar to serve notification of the proceedings on any person who in his opinion has an interest in those proceedings, and to provide any person so notified with an opportunity to submit written representations;
- (e) enabling a Committee, before they hold any hearing, where they consider that it would assist them in performing their functions, to hold a preliminary meeting in private attended by the parties and the parties' representatives and any other person the Committee think appropriate;
- (f) requiring proceedings before a Committee to be held in public unless and to the extent that the rules provide otherwise;
- (g) requiring the registrar to serve notification on the person (if any) making the allegation and any other person who in his opinion has an interest in the proceedings, of the Committee's decision and the reasons for the decision; and
- (h) requiring the registrar to publish, in such manner as may be specified in the rules, such information relating to the case and any decision made by the Committee as may be specified in the rules.

(3) Each stage in proceedings before a Committee under Part 3A of this Act shall be dealt with expeditiously and a Committee may give directions as to the conduct of the case and the consequences of failure to comply with such directions (which may include the making of an order or refusal of an application if the failure to comply was without reasonable excuse).

(4) Rules may provide for the Chairman of a Committee to hold the meeting referred to in sub-paragraph (2)(e) or to give the directions mentioned in sub-paragraph (3) and, subject to the agreement of the parties to his acting on behalf of the Committee, to take such action as the Committee would be competent to take at such a meeting.

## **Evidence etc.**

3. Subject to paragraph 4, rules shall make provision regarding the rules of evidence to be observed in any proceedings before a Committee under Part 3A of this Act, including rules as to the admissibility of evidence.

4.—(1) For the purpose of proceedings under Part 3A of this Act in England and Wales or in Northern Ireland before a Committee, a Committee may—

- (a) summon any person to attend a hearing as a witness, to answer any question or to produce any documents in his custody or under his control which relate to any matter in question in the proceedings;
- (b) require any witness appearing before them to give evidence on oath and for this purpose an oath may be administered in due form; and
- (c) upon an application by a person summoned to appear before them, set the summons aside.

(2) No person shall be compelled under sub-paragraph (1)—

- (a) to attend in obedience to a summons if he has been given less than 14 days' notification of the hearing unless he informs the Committee before the hearing that he accepts such notification has been given; or
- (b) to produce any document which he could not be compelled to produce on the trial of an action.

(3) For the purposes of any proceedings under Part 3A of this Act in Scotland before a Committee, 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.

5. Where the proceedings relate to a person's conduct, and that conduct has been considered by another body whose functions include overseeing the conduct of members of a health or social care profession, a Committee may adopt as its own findings any finding of fact found by that body and proceed to determine the case without further inquiry.

### **Costs**

6.—(1) In the course of proceedings under Part 3A of this Act, a Committee may make such order as to costs (or, in Scotland, expenses) as they think fit, but may make provision as described in sub-paragraph (2) only if rules allowing such provision have been made under that sub-paragraph.

(2) Rules may allow a Committee—

- (a) to disallow all or part of the costs (or, in Scotland, expenses) of a representative of a party by reason of that representative's conduct of the proceedings; and
- (b) to order a representative of a party to meet all or part of the costs (or, in Scotland, expenses) incurred by a party by reason of that representative's conduct of the proceedings.

(3) A Committee shall have regard to a person's ability to pay when considering the making of an order under this paragraph.

(4) Any sum required to be paid under an award in respect of costs (or, in Scotland, expenses) shall be recoverable as if it had been adjudged to be paid by an order of a relevant court.

(5) In sub-paragraph (4) "the relevant court" means—

- (a) where the person to whose registration the proceedings relate is registered in the dental care professionals register, and his address in that register is in Scotland, the sheriff in whose sheriffdom that address is situated;
- (b) where the person to whose registration the proceedings relate is not registered in that register, but his address would (if he were to be registered) be in Scotland, the sheriff in whose sheriffdom that address is situated; and
- (c) in any other case, the county court.

### **Reference of cases to the registrar or a different Committee**

7.—(1) Rules shall be made enabling a Practice Committee, in the course of proceedings under Part 3A of this Act—

- (a) to refer to another Practice Committee any matter arising which they consider should be dealt with by that other Practice Committee;
- (b) to take advice, as they consider necessary and appropriate, from another Practice Committee; and
- (c) to refer to the Interim Orders Committee any allegation before them which they consider should be dealt with by the Interim Orders Committee.

(2) Rules under sub-paragraph (1)(a) may provide that, where a Practice Committee refer a case to another Practice Committee by virtue of those rules, section 36P is to apply as if the case had originally been referred by the Investigating Committee to that other Practice Committee.”.

## SCHEDULE 5

Article 41(2)

### Insertion of Schedule 4C

After Schedule 4B insert—

## “SCHEDULE 4C

Section 49A

### Advisers

#### **Legal advisers**

1.—(1) The Council shall appoint persons to be legal advisers.

(2) Legal advisers shall have the general function of giving advice to—

- (a) the registrar,
- (b) the Council,
- (c) the Investigating Committee,
- (d) the Professional Conduct Committee,
- (e) the Professional Performance Committee,
- (f) the Interim Orders Committee,
- (g) the Health Committee, and
- (h) the Registration Appeals Committee,

on questions of law arising in connection with any matter under consideration by a person or body listed in this sub-paragraph.

(3) No person who has been appointed as the registrar or appointed to the Council or a Committee listed in sub-paragraph (2) shall be appointed a legal adviser.

(4) Legal advisers shall have such other functions as may be conferred on them by rules, and in particular provision may be made, in relation to any proceedings—

- (a) requiring a legal adviser, when advising the Council or any of their committees, to do so in the presence of every party, or person representing a party, to the proceedings who appears at the proceedings, or, where advice is given in private, requiring every such party or person to be notified of the advice given by a legal adviser; or
- (b) requiring every party, or person representing a party, to the proceedings to be notified in any case where a legal adviser’s advice is not accepted by the person or body in receipt of the advice.

(5) To be qualified for appointment as a legal adviser under this paragraph, a person must—

- (a) have a ten year general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990;
- (b) be an advocate or solicitor in Scotland of at least ten years’ standing; or
- (c) be a member of the Bar of Northern Ireland or solicitor of the Supreme Court of Northern Ireland of at least ten years’ standing.

(6) The Council may pay such fees, allowances or expenses to persons appointed as legal advisers as the Council may determine.

### **Medical advisers**

2.—(1) The Council may appoint registered medical practitioners to be medical advisers.

(2) Medical advisers shall have the general function of giving advice to—

- (a) the registrar,
- (b) the Council,
- (c) the Investigating Committee,
- (d) the Professional Conduct Committee,
- (e) the Professional Performance Committee,
- (f) the Interim Orders Committee,
- (g) the Health Committee, and
- (h) the Registration Appeals Committee,

on matters within their professional competence arising in connection with any matter under consideration by a person or body listed in this sub-paragraph.

(3) No person who has been appointed as the registrar or appointed to the Council or a Committee listed in sub-paragraph (2) shall be appointed a medical adviser.

(4) Medical advisers shall also have such other functions as may be conferred on them by rules.

(5) The Council may pay such fees, allowances or expenses to persons appointed as medical advisers as the Council may determine.

### **Professional advisers**

3.—(1) The Council may appoint persons registered in either the dentists register or the dental care professionals register to be professional advisers.

(2) Professional advisers shall have the general function of giving advice to—

- (a) the registrar,
- (b) the Council,
- (c) the Investigating Committee,
- (d) the Professional Conduct Committee,
- (e) the Professional Performance Committee,
- (f) the Interim Orders Committee,
- (g) the Health Committee, and
- (h) the Registration Appeals Committee,

on matters within their professional competence arising in connection with any matter under consideration by a person or body listed in this sub-paragraph.

(3) No person who has been appointed as the registrar or appointed to the Council or a Committee listed in sub-paragraph (2) shall be appointed a professional adviser.

(4) Professional advisers shall also have such other functions as may be conferred on them by rules.

(5) The Council may pay such fees, allowances or expenses to persons appointed as professional advisers as the Council may determine.”.

## Minor and consequential amendments

## PART 1

## Primary Legislation

**The National Health Service Act 1977**

- 1.—(1) The National Health Service Act 1977(a) is amended as follows.
- (2) In section 35(b) (arrangements for general dental services)—
- (a) for subsection (3) substitute—
- “(3) Subsection (3B) applies where the registration of a dental practitioner in the dentists register is suspended—
- (a) by an interim suspension order under section 32 of the Dentists Act 1984 (interim orders); or
- (b) by a direction or order of the Health Committee, the Professional Performance Committee or the Professional Conduct Committee of the General Dental Council under any of sections 27B, 27C or 30 of that Act following a relevant determination that that practitioner’s fitness to practise is impaired.
- (3A) For the purposes of subsection (3), a “relevant determination” that a practitioner’s fitness to practise is impaired is a determination which is based solely on—
- (a) the ground mentioned in paragraph (b) of subsection (2) of section 27 of the Dentists Act 1984 (deficient professional performance);
- (b) the ground mentioned in paragraph (c) of that subsection (adverse physical or mental health); or
- (c) both those grounds.
- (3B) Where this subsection applies, the suspension shall not terminate any arrangements made with the dental practitioner for the provision of general dental services, but he shall not provide such services in person during the suspension.”; and
- (b) in subsection (4), for “is so suspended” substitute “is suspended as described in subsection (3)”.
- (3) In section 41(c) (arrangements for pharmaceutical services), for paragraph (c) of subsection (3) substitute—
- “(c) persons who are registered in the dental care professionals register established under section 36B of the Dentists Act 1984;”.
- (4) In Schedule 5 (Health Authorities and Special Health Authorities), for sub-paragraph (2A) of paragraph 10(d) substitute—
- “(2A) Sub-paragraph (2C) applies where the registration of a dental practitioner in the dentists register is suspended—
- (a) by an interim suspension order under section 32 of the Dentists Act 1984 (interim orders); or

---

(a) 1977 c.49.

(b) Section 35(3) and (4) were inserted by the Health and Social Services and Social Security Adjudications Act 1983 (c.41), section 15(a), and amended by the Dentists Act 1984, section 54(1) and Schedule 5, paragraph 8; and section 35 is prospectively repealed by the Health and Social Care (Community Health and Standards) Act 2003 (c.43), section 172(2).

(c) Section 41 was substituted by the Health and Social Care Act 2001 (c.15), section 42.

(d) Sub-paragraph (2A) of paragraph 10 was inserted by the Health and Social Services and Social Security Adjudications Act 1983 (c.41), section 15(b), and amended by the Dentists Act 1984, section 54(1) and Schedule 5, paragraphs 8 and 10.

- (b) by a direction or order of the Health Committee, the Professional Performance Committee or the Professional Conduct Committee of the General Dental Council under any of sections 27B, 27C or 30 of that Act following a relevant determination that that practitioner's fitness to practise is impaired.

(2B) For the purposes of sub-paragraph (2A), a "relevant determination" that a practitioner's fitness to practise is impaired is a determination which is based solely on—

- (a) the ground mentioned in paragraph (b) of subsection (2) of section 27 of the Dentists Act 1984 (deficient professional performance);
- (b) the ground mentioned in paragraph (c) of that subsection (adverse physical or mental health); or
- (c) both those grounds.

(2C) Where this sub-paragraph applies, the suspension shall not terminate any contract of employment made between the dental practitioner and an authority, but a person whose registration is so suspended shall not perform any duties under a contract made between him and an authority which involves the practice of dentistry within the meaning of the Dentists Act 1984."

(5) In Schedule 5A(a) (Primary Care Trusts), for paragraph 10A(b) substitute—

**"10A.—**(1) Sub-paragraph (3) applies where the registration of a dental practitioner in the dentists register is suspended—

- (a) by an interim suspension order under section 32 of the Dentists Act 1984 (interim orders); or
- (b) by a direction or order of the Health Committee, the Professional Performance Committee or the Professional Conduct Committee of the General Dental Council under any of sections 27B, 27C or 30 of that Act following a relevant determination that that practitioner's fitness to practise is impaired.

(2) For the purposes of sub-paragraph (1), a "relevant determination" that a practitioner's fitness to practise is impaired is a determination which is based solely on—

- (a) the ground mentioned in paragraph (b) of subsection (2) of section 27 of the Dentists Act 1984 (deficient professional performance);
- (b) the ground mentioned in paragraph (c) of that subsection (adverse physical or mental health); or
- (c) both those grounds.

(3) Where this sub-paragraph applies, the suspension shall not terminate any contract of employment made between the dental practitioner and a Primary Care Trust, but a person whose registration is so suspended shall not perform any duties under a contract made between him and a Primary Care Trust which involves the practice of dentistry within the meaning of the Dentists Act 1984."

## **The National Health Service (Scotland) Act 1978**

**2.—**(1) The National Health Service (Scotland) Act 1978(c) is amended as follows.

(2) In section 25(d) (arrangements for provision of general dental services)—

- (a) for subsection (4) substitute—

**"(4)** Subsection (4B) applies where the registration of a dental practitioner in the dentists register is suspended—

- (a) by an interim suspension order under section 32 of the Dentists Act 1984 (interim orders); or

---

(a) Schedule 5A was inserted by the Health Act 1999 (c.8), section 2(2) and Schedule 1.  
(b) Paragraph 10A was inserted by the National Health Service Reform and Health Care Professions Act 2002 (c.17), section 2(5) and Schedule 2, Part I, paragraph 37.  
(c) 1978 c.29.  
(d) Section 25(4) and (5) were inserted by the Health and Social Services and Social Security Adjudications Act 1983 (c.41), section 16(a), and amended by the Dentists Act 1984, section 54(1) and Schedule 5, paragraph 12.



- (b) by a direction or order of the Health Committee, the Professional Performance Committee or the Professional Conduct Committee of the General Dental Council under any of sections 27B, 27C or 30 of that Act following a relevant determination that that practitioner’s fitness to practise is impaired.

(4A) For the purposes of subsection (4), a “relevant determination” that a practitioner’s fitness to practise is impaired is a determination which is based solely on—

- (a) the ground mentioned in paragraph (b) of subsection (2) of section 27 of the Dentists Act 1984 (deficient professional performance);
- (b) the ground mentioned in paragraph (c) of that subsection (adverse physical or mental health); or
- (c) both those grounds.

(4B) Where this subsection applies, the suspension shall not terminate any arrangements made with the dental practitioner for the provision of general dental services, but he shall not provide such services in person during the suspension.”; and

- (b) in subsection (5), for “is so suspended” substitute “is suspended as described in subsection (4)”.

(3) In section 27(a) (arrangements for provision of pharmaceutical services), for paragraph (c) of subsection (1A) substitute—

“(c) persons who are registered in the dental care professionals register established under section 36B of the Dentists Act 1984;”.

(4) In Schedule 1 (Health Boards), for paragraph 6A(b) substitute—

“6A.—(1) Sub-paragraph (3) applies where the registration of a dental practitioner in the dentists register is suspended—

- (a) by an interim suspension order under section 32 of the Dentists Act 1984 (interim orders); or
- (b) by a direction or order of the Health Committee, the Professional Performance Committee or the Professional Conduct Committee of the General Dental Council under any of sections 27B, 27C or 30 of that Act following a relevant determination that that practitioner’s fitness to practise is impaired.

(2) For the purposes of sub-paragraph (1), a “relevant determination” that a practitioner’s fitness to practise is impaired is a determination which is based solely on—

- (a) the ground mentioned in paragraph (b) of subsection (2) of section 27 of the Dentists Act 1984 (deficient professional performance);
- (b) the ground mentioned in paragraph (c) of that subsection (adverse physical or mental health); or
- (c) both those grounds.

(3) Where this sub-paragraph applies, notwithstanding paragraph 7 of this Schedule, the suspension shall not terminate any contract of employment made between the dental practitioner and a Health Board, but a person whose registration is so suspended shall not perform any duties under a contract made between him and a Health Board which involves the practice of dentistry within the meaning of the Dentists Act 1984.”.

### **The Value Added Tax Act 1994**

3. In Schedule 9 to the Value Added Tax Act 1994(c) (exemptions), in Group 7 (health and welfare) for item 2(b) substitute—

“(b) a person registered in the dental care professionals register established under section 36B of the Dentists Act 1984; or”.

---

(a) Section 27 was amended by the Health and Social Care Act 2001 (c.15), section 44.

(b) Paragraph 6A was inserted by the Health and Social Services and Social Security Adjudications Act 1983 (c.41), section 16(b), and amended by the Dentists Act 1984, section 54(1) and Schedule 5, paragraphs 12 and 14.

(c) 1994 c.23.

## **The National Health Service Reform and Health Care Professions Act 2002**

4. In section 29 of the National Health Service Reform and Health Care Professions Act 2002(a) (reference of disciplinary cases by Council to court), for paragraph (e) of subsection (1) substitute—

“(e) a direction by the Professional Conduct Committee, the Professional Performance Committee or the Health Committee of the General Dental Council under any of sections 27B, 27C, 36P or 36Q of the Dentists Act 1984 following a determination that a person’s fitness to practise as a dentist or as a member of a profession complementary to dentistry, or class of members of such a profession, is impaired (other than a determination based solely on the ground mentioned in section 27(2)(c) or 36N(2)(c) of that Act (adverse physical or mental health)),”.

## **The Income Tax (Earnings and Pensions) Act 2003**

5. In section 343(2) of the Income Tax (Earnings and Pensions) Act 2003(b) (deduction for professional membership fees), for paragraph 1(c) of the Table substitute—

“(c) the dental care professionals register,”.

## **PART 2**

### **Secondary legislation**

## **The Health and Personal Social Services (Northern Ireland) Order 1972**

6.—(1) The Health and Personal Social Services (Northern Ireland) Order 1972(c) is amended as follows.

(2) In article 61 (arrangements for general dental services), for paragraph (2B)(d) substitute—

“(2B) Paragraph (2BB) applies where the registration of a dental practitioner in the dentists register is suspended—

- (a) by an interim suspension order under section 32 of the Dentists Act 1984 (interim orders); or
- (b) by a direction or order of the Health Committee, the Professional Performance Committee or the Professional Conduct Committee of the General Dental Council under any of sections 27B, 27C or 30 of that Act following a relevant determination that that practitioner’s fitness to practise is impaired.

(2BA) For the purposes of paragraph (2B), a “relevant determination” that a practitioner’s fitness to practise is impaired is a determination which is based solely on—

- (a) the ground mentioned in paragraph (b) of subsection (2) of section 27 of the Dentists Act 1984 (deficient professional performance);
- (b) the ground mentioned in paragraph (c) of that subsection (adverse physical or mental health); or
- (c) both those grounds.

(2BB) Where this paragraph applies, the suspension shall not terminate any arrangements made with the dental practitioner for the provision of general dental services, but he shall not provide such services in person during the suspension.”.

(3) In Schedule 1 (Health and Social Services Boards), for sub-paragraph (2C) of paragraph 12(e) (officers) substitute—

“(2C) Sub-paragraph (2E) applies where the registration of a dental practitioner in the dentists register is suspended—

---

(a) 2002 c.17. Section 29(1) was amended by S.I. 2002/3135 and 2004/1771 and prospectively amended by S.I. 2005/848.  
(b) 2003 c.1; the Table was amended by S.I. 2003/1652, 2004/1360 and 2005/1091.  
(c) S.I. 1972/1265 (N.I. 14).  
(d) Paragraph (2B) was inserted by S.I. 1986/2229 (N.I.24).  
(e) Sub-paragraph (2C) of paragraph 12 was inserted by S.I. 1986/2229 (N.I. 24).

- (a) by an interim suspension order under section 32 of the Dentists Act 1984 (interim orders); or
- (b) by a direction or order of the Health Committee, the Professional Performance Committee or the Professional Conduct Committee of the General Dental Council under any of sections 27B, 27C or 30 of that Act following a relevant determination that that practitioner’s fitness to practise is impaired.

(2D) For the purposes of sub-paragraph (2C), a “relevant determination” that a practitioner’s fitness to practise is impaired is a determination which is based solely on—

- (a) the ground mentioned in paragraph (b) of subsection (2) of section 27 of the Dentists Act 1984 (deficient professional performance);
- (b) the ground mentioned in paragraph (c) of that subsection (adverse physical or mental health); or
- (c) both those grounds.

(2E) Where this sub-paragraph applies, the suspension shall not terminate any contract of employment made between the dental practitioner and a Health and Social Services Board, but a person whose registration is so suspended shall not perform any duties under a contract made between him and a Health and Social Services Board which involves the practice of dentistry within the meaning of the Dentists Act 1984.”

### **The Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975**

7. In the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975(a), in Part I of Schedule 1 (excepted professions), in paragraph 4, for “dental auxiliary” substitute “dental therapist”.

### **The National Health Service (General Dental Services) Regulations 1992**

8.—(1) The National Health Service (General Dental Services) Regulations 1992(b) are amended as follows.

(2) In regulation 2(1) (interpretation), after the definition of “continuing care arrangement” insert—

““dental care professional” means a person who is registered in the dental care professionals register established under section 36B of the Dentists Act 1984 (c.24);”.

(3) In regulation 4 (dental list), in paragraph (2)(b)(iii), for “dental auxiliary whose work he directs” substitute “dental care professional who assists him in providing general dental services.”.

(4) In Part V (payments in consequence of suspension)—

(a) in regulation 23(a) (interpretation)—

(i) for the definition of “immediate suspension” substitute—

““immediate suspension” means suspension by virtue of an order under section 30(1) of the Dentists Act 1984 except suspension which is terminated by the court under section 30(7) of that Act;”, and

(ii) in the definition of “interim suspension order”, for “section 32” substitute “section 32(4)(a)”;

(b) for regulation 23(b) substitute—

“(b) a reference to a direction or order for health or performance related suspension means a direction or order of the Health Committee, the Professional Performance Committee or the Professional Conduct Committee of the General Dental Council for the suspension of a person’s registration under any of sections 27B, 27C or 30 of the Dentists Act 1984 following a relevant determination that that person’s fitness to practise is impaired; and for the purposes of this paragraph, a “relevant determination” that a person’s fitness to practise is impaired is a determination which is based solely on—

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(a) S.I. 1975/1023.

(b) S.I. 1992/661; the relevant amending instruments are S.I. 1998/1648, 2001/289, 2133, 3963, 4000 and 2002/2469.

- (i) the ground mentioned in paragraph (b) of subsection (2) of section 27 of the Dentists Act 1984 (deficient professional performance),
- (ii) the ground mentioned in paragraph (c) of that subsection (adverse physical or mental health), or
- (iii) both those grounds.”;
- (c) in regulation 24 (entitlement to payments), in paragraphs (1), (2)(a) and (3), for “of the Health Committee” substitute “for health or performance related suspension”; and
- (d) in regulation 26 (amount and time of payments), in paragraphs (1)(a) and (4), for “of the Health Committee” substitute “for health or performance related suspension”.
- (5) In Part IV of Schedule 1 (additional terms of service for all dentists)—
  - (a) for paragraph 29 substitute—

**“Dental care professionals**

- 29. A dentist may in the provision of general dental services arrange for care and treatment to be given by dental care professionals, and shall ensure that such care and treatment is properly completed.”; and
- (b) in paragraph 31D (professional indemnity), in sub-paragraph (a), for “dental auxiliary whose work he directs” substitute “dental care professional who assists him in providing general dental services”.
- (6) In Part V of Schedule 1 (additional terms of service for dentists other than salaried dentists), for paragraph 38 substitute—

**“Dentists suspended under section 27B, 27C, 30 or 32 of the Dentists Act 1984**

- 38.—(1) Sub-paragraph (3) applies to a dentist whose registration in the register kept under section 14 of the Dentists Act 1984 is suspended—
  - (a) by an interim suspension order under section 32 of that Act; or
  - (b) by a direction or order of the Health Committee, the Professional Performance Committee or the Professional Conduct Committee of the General Dental Council under any of sections 27B, 27C or 30 of that Act following a relevant determination that that dentist’s fitness to practise is impaired.
- (2) For the purposes of sub-paragraph (1), a “relevant determination” that a dentist’s fitness to practise is impaired is a determination which is based solely on—
  - (a) the ground mentioned in paragraph (b) of subsection (2) of section 27 of the Dentists Act 1984 (deficient professional performance);
  - (b) the ground mentioned in paragraph (c) of that subsection (adverse physical or mental health); or
  - (c) both those grounds.
- (3) A dentist to whom this sub-paragraph applies shall secure that any dentist appointed by him to provide general dental services on his behalf during the period of the suspension of his registration shall be a dentist whose name is included in the dental list.”.
- (7) In Part I of Schedule 2 (information and undertaking to be included in an application for inclusion in the dental list), in paragraph 15, for “dental auxiliary whose work the dentist intends to direct” substitute “dental care professional who the dentist intends will assist him in providing general dental services”.

**The National Health Service Pension Scheme Regulations 1995**

- 9. In the National Health Service Pension Scheme Regulations 1995(a), in regulation A2 (interpretation)—

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(a) S.I. 1995/300; the relevant amending instrument is S.I. 1998/2216.

- (a) in the definition of “dental hygienist”, for “included in the roll of dental hygienists referred to in regulation 21 of the Dental Auxiliaries Regulations 1986” substitute “registered in the dental care professionals register established under section 36B of the Dentists Act 1984 under the title of dental hygienist”; and
- (b) in the definition of “dental therapist”, for “included in the roll of dental therapists referred to in regulation 25 of the Dental Auxiliaries Regulations 1986” substitute “registered in the dental care professionals register established under section 36B of the Dentists Act 1984 under the title of dental therapist”.

#### **The National Health Service Superannuation Scheme (Scotland) Regulations 1995**

**10.** In the National Health Service Superannuation Scheme (Scotland) Regulations 1995(a), in regulation A2 (interpretation), in paragraph (4)—

- (a) in the entry in the column containing the definition of “dental hygienist”, for “included in the roll of dental hygienists referred to in regulation 21 of the Dental Auxiliaries Regulations 1986” substitute “registered in the dental care professionals register established under section 36B of the Dentists Act 1984 under the title of dental hygienist”; and
- (b) in the entry in the column containing the definition of “dental therapist”, for “included in the roll of dental therapists referred to in regulation 25 of the Dental Auxiliaries Regulations 1986” substitute “registered in the dental care professionals register established under section 36B of the Dentists Act 1984 under the title of dental therapist”.

#### **The National Health Service (Injury Benefits) Regulations 1995**

**11.** In the National Health Service (Injury Benefits) Regulations 1995(b), in regulation 2(1) (interpretation)—

- (a) in the definition of “dental hygienist”, for “included in the roll of dental hygienists referred to in regulation 21 of the Dental Auxiliaries Regulations 1986” substitute “registered in the dental care professionals register established under section 36B of the Dentists Act 1984 under the title of dental hygienist”; and
- (b) in the definition of “dental therapist”, for “included in the roll of dental therapists referred to in regulation 25 of the Dental Auxiliaries Regulations 1986” substitute “registered in the dental care professionals register established under section 36B of the Dentists Act 1984 under the title of dental therapist”.

#### **The National Health Service (General Dental Services) (Scotland) Regulations 1996**

**12.**—(1) The National Health Service (General Dental Services) (Scotland) Regulations 1996(c) are amended as follows.

(2) In regulation 2(1) (interpretation), after the definition of “continuing care arrangement” insert—

““dental care professional” means a person who is registered in the dental care professionals register established under section 36B of the Dentists Act 1984 (c.24);”.

(3) In regulation 4 (dental list), in paragraph (2)(b)(iii), for “dental auxiliary whose work he directs.” substitute “dental care professional who assists him in providing general dental services.”.

(4) In Part V (payment in consequence of suspension)—

- (a) in regulation 26(a) (interpretation)—
  - (i) omit the definition of “Health Committee”,
  - (ii) for the definition of “immediate suspension” substitute—

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(a) S.I. 1995/365.

(b) S.I. 1995/866; the relevant amending instrument is S.I. 1998/2217.

(c) S.I. 1996/177; the relevant amending instruments are S.I. 1998/1663, S.S.I. 1999/51, S.I. 1999/724, S.S.I. 2000/188 and S.S.I. 2004/37.

““immediate suspension” means suspension by virtue of an order under section 30(1) of the Dentists Act 1984 except such a suspension which is terminated by the court under section 30(7) of that Act;”, and

(iii) in the definition of “interim suspension order”, for “section 32” substitute “section 32(4)(a)”;

(b) for regulation 26(b) substitute—

“(b) a reference to a direction or order for health or performance related suspension means a direction or order of the Health Committee, the Professional Performance Committee or the Professional Conduct Committee of the General Dental Council for the suspension of a person’s registration under any of sections 27B, 27C or 30 of the Dentists Act 1984 following a relevant determination that that person’s fitness to practise is impaired; and for the purposes of this paragraph, a “relevant determination” that a person’s fitness to practise is impaired is a determination which is based solely on—

(i) the ground mentioned in paragraph (b) of subsection (2) of section 27 of the Dentists Act 1984 (deficient professional performance),

(ii) the ground mentioned in paragraph (c) of that subsection (adverse physical or mental health), or

(iii) both those grounds.”;

(c) in regulation 27 (entitlement to payment), in paragraphs (1), (2)(a) and (3), for “of the Health Committee” substitute “for health or performance related suspension”; and

(d) in regulation 29 (amounts and times of payment), in paragraphs (1)(a) and (4), for “of the Health Committee” substitute “for health or performance related suspension”.

(5) In Part IV of Schedule 1 (additional terms of service for all dentists)—

(a) for paragraph 29 substitute—

#### **“Dental care professionals**

**29.** A dentist may in the provision of general dental services arrange for care and treatment to be given by dental care professionals, and shall ensure that such care and treatment is properly completed.”; and

(b) in paragraph 31D (professional indemnity), in sub-paragraph (a), for “dental auxiliary whose work he directs” substitute “dental care professional who assists him in providing general dental services”.

(6) In Part V of Schedule 1 (additional terms of service for dentists other than salaried dentists), for paragraph 38 substitute—

#### **“Dentists suspended under section 27B, 27C, 30 or 32 of the Dentists Act 1984**

**38.—**(1) Sub-paragraph (3) applies to a dentist whose registration in the register kept under section 14 of the Dentists Act 1984 is suspended—

(a) by an interim suspension order under section 32 of that Act; or

(b) by a direction or order of the Health Committee, the Professional Performance Committee or the Professional Conduct Committee of the General Dental Council under any of sections 27B, 27C or 30 of that Act following a relevant determination that that dentist’s fitness to practise is impaired.

(2) For the purposes of sub-paragraph (1), a “relevant determination” that a dentist’s fitness to practise is impaired is a determination which is based solely on—

(a) the ground mentioned in paragraph (b) of subsection (2) of section 27 of the Dentists Act 1984 (deficient professional performance);

(b) the ground mentioned in paragraph (c) of that subsection (adverse physical or mental health); or

(c) both those grounds.

(3) A dentist to whom this sub-paragraph applies shall secure that any dentist appointed by him to provide general dental services on his behalf during the period of the suspension of his registration shall be a dentist whose name is included in Part A of the dental list.”

(7) In Part I of Schedule 2 (information and undertaking to be included in an application for inclusion in Part A of the dental list), in paragraph 16, for “dental auxiliary whose work the dentist intends to direct” substitute “dental care professional who the dentist intends will assist him in providing general dental services”.

### **The National Health Service (Scotland) (Injury Benefits) Regulations 1998**

**13.** In the National Health Service (Scotland) (Injury Benefits) Regulations 1998(a), in regulation 2(1) (interpretation)—

- (a) in the definition of “dental hygienist”, for “included in the roll of dental hygienists referred to in regulation 21 of the Dental Auxiliaries Regulations 1986” substitute “registered in the dental care professionals register established under section 36B of the Dentists Act 1984 under the title of dental hygienist”; and
- (b) in the definition of “dental therapist”, for “included in the roll of dental therapists referred to in regulation 25 of the Dental Auxiliaries Regulations 1986” substitute “registered in the dental care professionals register established under section 36B of the Dentists Act 1984 under the title of dental therapist”.

### **The Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2003**

**14.** In the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2003(b), in Part 1 of Schedule 4 (excepted professions), in paragraph 4, for “dental auxiliary” substitute “dental therapist”.

### **The National Health Service (General Dental Services Supplementary List) and (General Dental Services) Amendment Regulations 2003**

**15.—**(1) The National Health Service (General Dental Services Supplementary List) and (General Dental Services) Amendment Regulations 2003(c) are amended as follows.

(2) In regulation 2(1) (interpretation)—

- (a) in the definition of “Health Committee”, for “section 2(4)” substitute “section 2(1)”;
- (b) after the definition of “Health Committee” insert—

““Interim Orders Committee” means the Interim Orders Committee of the General Dental Council constituted under section 2(2) of the Dentists Act;”;
- (c) omit the definition of “Preliminary Proceedings Committee”;
- (d) in the definition of “Professional Conduct Committee”, for “section 2(2)” substitute “section 2(1)”;
- and
- (e) after the definition of “Professional Conduct Committee” insert—

““Professional Performance Committee” means the Professional Performance Committee of the General Dental Council constituted under section 2(2) of the Dentists Act;”.

(3) In regulation 10 (removal from supplementary list)—

- (a) for paragraph (1)(f) substitute—

“(f) is the subject of—

  - (i) a direction for erasure from the Dentists Register given by the Professional Conduct Committee, the Professional Performance Committee or the Health Committee under section 27B(6)(a) of the Dentists Act;

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(a) S.I. 1998/1594.  
(b) S.S.I. 2003/231.  
(c) S.I. 2003/250.

- (ii) a direction or order for suspension of his registration from the Dentists Register given by any of those Committees under any of sections 27B, 27C or 30 of that Act; or
  - (iii) an order made by the Professional Conduct Committee, the Professional Performance Committee, the Health Committee or the Interim Orders Committee under section 32(4)(a) of that Act (interim suspension order); or”; and
- (b) for paragraph (8) substitute—
- “(8) In calculating the period of twelve months referred to in paragraph (7), the Primary Care Trust shall disregard any period during which—
- (a) the person’s registration as a dental practitioner was suspended by an interim suspension order under section 32 of the Dentists Act;
  - (b) his registration as a dental practitioner was suspended by a direction or order of the Health Committee, the Professional Performance Committee or the Professional Conduct Committee under any of sections 27B, 27C or 30 of that Act following a relevant determination that that person’s fitness to practise was impaired; or
  - (c) he was suspended under these Regulations.
- (8A) For the purposes of paragraph (8), a “relevant determination” that a person’s fitness to practise was impaired is a determination which was based solely on—
- (a) the ground mentioned in paragraph (b) of subsection (2) of section 27 of the Dentists Act (deficient professional performance);
  - (b) the ground mentioned in paragraph (c) of that subsection (adverse physical or mental health); or
  - (c) both those grounds.”.

## SCHEDULE 7

Article 50(1)

### Transitional provisions

**1. In this Schedule—**

- (a) “the Regulations” means the Dental Auxiliaries Regulations 1986(a); and
- (b) a reference to—
  - (i) an old Part or old section is to that Part or section as it had effect immediately before its amendment or substitution by this Order; and
  - (ii) a new Part or new section is to that Part or section as amended or substituted or re-enacted (with or without modification) by this Order.

**Fitness to practise proceedings before the Preliminary Proceedings Committee, the Professional Conduct Committee and the Health Committee**

**2.** The Preliminary Proceedings Committee established under the old section 2 shall continue in being after the date on which article 4(2) of this Order comes into force for the purpose of exercising their functions under this Schedule.

**3.** The old sections 27 to 34 and the old Schedule 3, and any rules made under the old Schedule 3, shall continue to apply for the purpose of the exercise of functions under this Schedule by the Preliminary Proceedings Committee, the Professional Conduct Committee and the Health Committee.

**4.** Any case which is pending before the Preliminary Proceedings Committee under the old section 27 before the date on which article 18 of this Order comes into force shall continue to be dealt with by the Preliminary Proceedings Committee under the old section 27.

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(a) S.I. 1986/887, as amended by S.I. 1991/1706, 1996/2988, 1999/3460, 2002/1671 and 3135 and 2003/3105.



5. Any case which has been referred to the Professional Conduct Committee under the old section 27, whether before or after the date on which article 18 of this Order comes into force, shall continue to be dealt with by the Professional Conduct Committee under the old section 27.

6. Any case which is pending before the Health Committee under the old section 28 before the date on which article 18 of this Order comes into force shall continue to be dealt with by the Health Committee under the old section 28.

7. Except in a case to which paragraph 4, 5 or 6 applies, where an allegation concerning the fitness to practise of a registered dentist has been made before the date on which article 18 of this Order comes into force, the registrar shall refer that allegation to the Investigating Committee under the new section 27.

8. Where an allegation concerning the fitness to practise of a registered dentist is made on or after the date on which article 18 of this Order comes into force, but the allegation relates to events which occurred before that date, the registrar shall refer that allegation to the Investigating Committee under the new section 27.

9. Any case where a person has applied before the date on which article 18 comes into force for the restoration of his name to the dentists register under the old section 34 shall continue to be dealt with under the old section 34.

10. Any case which has been referred to the Professional Conduct Committee under the old section 34, whether before or after the date on which article 18 comes into force, shall continue to be dealt with by the Professional Conduct Committee under the old section 34.

11. An appeal which relates to a determination under the old section 27 or a direction under the old section 28 shall be dealt with under the old section 29.

12. Paragraph 13 applies to a case where—

- (a) the Professional Conduct Committee gave a determination under the old section 27 or the Health Committee gave a direction under the old section 28;
- (b) an appeal against that determination or direction was made to the court under the old section 29; and
- (c) the court remits the case to the Committee which made the determination or direction to dispose of in accordance with the court's directions.

13. Where this paragraph applies, the Committee to which the case is remitted shall deal with the case (even where the new section 27B is in force)—

- (a) under the old section 27 in the case of the Professional Conduct Committee; or
- (b) under the old section 28 in the case of the Health Committee.

### **Proceedings before the Continuing Professional Development Committee**

14. The Continuing Professional Development Committee established under the old section 2 shall continue in being after the date on which article 4(2) of this Order comes into force for the purpose of exercising their functions under this Schedule.

15. The old sections 34A and 34B and the old Schedule 3A, and any rules made under those provisions, shall continue to apply for the purpose of the exercise of functions under this Schedule by the Continuing Professional Development Committee.

16. An appeal which relates to a decision by the registrar—

- (a) to erase a dentist's name from the register under the old section 34A(2), or
- (b) not to restore a person's name to the register under the old section 34B(3),

shall be dealt with by the Continuing Professional Development Committee under the old section 34A or 34B (as the case may be) and the old Schedule 3A, and any rules made under those provisions.

17. An appeal which relates to a determination by the Continuing Professional Development Committee under paragraph 3 of the old Schedule 3A shall be dealt with under the old section 29.

18. Paragraph 19 applies to a case where—

- (a) the Continuing Professional Development Committee made a determination under paragraph 3 of the old Schedule 3A;
- (b) an appeal against that determination was made to the court under the old section 29; and
- (c) the court remits the case to the Continuing Professional Development Committee to dispose of in accordance with the court's directions.

19. Where this paragraph applies, the Continuing Professional Development Committee shall deal with the case (even where the new sections 34A and 34B are in force) under the old section 34A or 34B (as the case may be) and the old Schedule 3A, and any rules made under those provisions.

### **Proceedings before the Dental Auxiliaries Committee**

20. The Dental Auxiliaries Committee established under the old section 2 shall continue in being after the date on which article 4(2) of this Order comes into force for the purpose of exercising their functions under this Schedule.

21. The old Part 5 and the Regulations shall continue to apply for the purpose of the exercise of functions under this Schedule by the Dental Auxiliaries Committee.

22. Any case which is pending before the Dental Auxiliaries Committee under Part IV (erasure for misconduct of a name from a roll) or Part V (restoration after erasure for misconduct) of the Regulations before the date on which article 31 of this Order comes into force shall continue to be dealt with by the Dental Auxiliaries Committee under the Regulations.

23. Except in a case to which paragraph 22 applies, where an allegation concerning the fitness to practise of a person enrolled in the roll of dental hygienists or the roll of dental therapists is made before the date on which article 31 of this Order comes into force, the registrar shall refer that allegation to the Investigating Committee under the new section 36N.

24. Where an allegation concerning the fitness to practise of a registered dental care professional is made on or after the date on which article 31 of this Order comes into force but the allegation relates to events which occurred before that date, the registrar shall refer that allegation to the Investigating Committee under the new section 36N.

25. An appeal which relates to a decision made by the Dental Auxiliaries Committee under regulation 15 of the Regulations shall be dealt with under the old section 29 as applied by the old section 48(3).

26. Paragraph 27 applies to a case where—

- (a) the Dental Auxiliaries Committee gave a decision under regulation 15 of the Regulations;
- (b) an appeal against that decision was made to the court; and
- (c) the court remits the case to the Committee to dispose of in accordance with the court's directions.

27. Where this paragraph applies, the Dental Auxiliaries Committee shall deal with the case under the Regulations, even where article 31 of this Order is in force.

### **Dental auxiliaries: registration**

28. The first regulations made by the Council under section 36A(2) shall specify dental hygienists and dental therapists and shall specify, in relation to those professions complementary to dentistry or classes of members of such professions, the titles of "dental hygienist" and "dental therapist" respectively.

29.—(1) Subject to sub-paragraph (3), if on the day before this paragraph comes into force—

- (a) a person's name is enrolled in the roll of dental hygienists referred to in regulation 21 of the Regulations and kept in accordance with regulation 2 of the Regulations, he shall be registered in the dental care professionals register under the title of dental hygienist, or
- (b) a person's name is enrolled in the roll of dental therapists referred to in regulation 25 of the Regulations and kept in accordance with regulation 2 of the Regulations, he shall be registered in the dental care professionals register under the title of dental therapist,

with effect from the day this paragraph comes into force.

(2) If on the day this paragraph comes into force there is an outstanding application for a person's name to be enrolled in the roll of dental hygienists or dental therapists (including an application for restoration to that roll), the Council—

- (a) may determine that his name is to be entered in the dental care professionals register under the title of dental hygienist or dental therapist (as the case may be); and
- (b) shall dispose of the matter in such manner as they consider just.

(3) If on the day before this paragraph comes into force a person's name is enrolled in the roll of dental hygienists or dental therapists but he is the subject of proceedings which, but for the closure of the roll of dental hygienists or dental therapists, could have led to his removal from that roll, the Council—

- (a) may determine that his name is not to be entered in the dental care professionals register; and
- (b) shall dispose of the matter in such manner as they consider just.

#### **Dental auxiliary members of the Council**

**30.**—(1) This paragraph applies to dental auxiliaries elected to serve as members of the Council whose term of office has not expired on the date on which article 47 of this Order comes into force.

(2) Persons to whom this paragraph applies may continue to serve on the Council for the term of office for which they were elected, notwithstanding the coming into force of article 47 of this Order.

#### **Orders in Council under section 1 of the Act**

**31.** After the date on which article 3 of this Order comes into force, any Order in Council made under powers contained in the old section 1(2A) shall continue in force as if made under powers contained in the new section 1(2A), until such time as the first order of the Privy Council made under the new section 1(2A) comes into force.

## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order amends the Dentists Act 1984 (“the Act”).

The Order is made under sections 60 and 62(4) of, and Schedule 3 to, the Health Act 1999. Under paragraph 9(1) and (3) of that Schedule, the Secretary of State and the Scottish Ministers published a draft of the Order and invited representations to be made on it. The report about the consultation is posted on the Department of Health’s website ([www.dh.gov.uk/Consultations/ResponsesToConsultations/fs/en](http://www.dh.gov.uk/Consultations/ResponsesToConsultations/fs/en)).

Article 3 provides for the main objective of the General Dental Council (“the Council”) in exercising its functions under the Act to be the promotion of high standards of education and professional conduct and practice.

Article 4 establishes four new Committees of the Council: the Investigating Committee, the Professional Performance Committee, the Interim Orders Committee and the Registration Appeals Committee. The Preliminary Proceedings Committee, the Continuing Professional Development Committee and the Dental Auxiliaries Committee are all abolished.

Article 5 makes provision regarding the Council’s duty to co-operate with other bodies, the preparation of annual reports and accounts, and the establishment of a consumer complaints procedure.

Articles 6 to 13 make various changes to Part III of the Act concerning the dentists register, including provisions concerning publication of the register (article 10) and erasure from the register on grounds of fraud or error (article 12).

Article 14 introduces Schedule 1 to the Order, which inserts Schedule 2A into the Act, providing for appeals against registration decisions in relation to the dentists register.

Article 16 requires registered dentists and those seeking registration in the dentists register to have a valid policy of insurance which covers them against liabilities which may arise in connection with their work, and article 17 provides for the preparation and publication of guidance for dentists.

Article 18 introduces new sections into the Act relating to—

- (a) allegations made against a registered dentist that his fitness to practise is impaired;
- (b) the duties and powers of the Investigating Committee in connection with an allegation referred for their consideration;
- (c) the duties and powers of the Professional Conduct Committee, the Professional Performance Committee and the Health Committee in connection with an allegation, including their powers to erase a person’s name from the dentists register, to suspend his registration or to direct that his registration should be subject to conditions; and
- (d) the restoration to the dentists register of a person whose name has been erased by the Professional Conduct Committee.

Article 19 relates to appeals against decisions concerning a person’s fitness to practise as a dentist. Article 21 provides for orders for immediate suspension and immediate conditional registration, and article 23 provides for interim orders for suspension or conditional registration.

Article 24 introduces Schedule 2 to the Order, which substitutes Schedule 3 to the Act, providing for the Council to make rules relating to the procedure to be followed and evidence to be observed before the Council’s Committees in connection with fitness to practise proceedings. Article 25 inserts supplementary provisions including provisions relating to the disclosure of documents relevant to fitness to practise investigations, and notifications by the Council of such investigations.

Article 27 contains provisions relating to the training and development requirements of persons registered in the dentists register, the removal from the register of any person who fails to comply with those requirements and the training and development requirements which need to be met by a person who seeks the restoration of his name to the dentists register.

Article 29 inserts a new Part 3A into the Act relating to professions complementary to dentistry. Part 3A includes provisions relating to—

- (a) the definition of a profession complementary to dentistry;
- (b) the establishment of a dental care professionals register;
- (c) qualifications for registration under a particular title in the dental care professionals register;
- (d) education and training for members of professions complementary to dentistry;
- (e) applications for registration in that register, and fees payable by applicants;
- (f) publication of that register;
- (g) appeals relating to registration decisions;
- (h) the requirement for dental care professionals to be covered by adequate and appropriate insurance;
- (i) the preparation and publication of guidance relating to persons registered in the new register;
- (j) the fitness to practise of persons registered in the dental care professionals register, and proceedings before the Investigating Committee, the Professional Conduct Committee, the Professional Performance Committee, the Health Committee and the Interim Orders Committee relating to such matters, including the making by the Council of rules relating to the procedure to be followed and evidence to be observed by those Committees; and
- (k) professional training and development requirements relating to members of professions complementary to dentistry.

Articles 34 to 36 contain provisions relating to the meaning of the term “practice of dentistry” and to the prohibition on laymen practising dentistry and using terms reserved for practitioners.

Articles 37 to 39 concern individuals and bodies corporate which carry on the business of dentistry. In particular, those articles make provision relating to—

- (a) the directors of bodies corporate which carry on the business of dentistry;
- (b) the maintenance by the Council of a list of such bodies corporate;
- (c) financial penalties which may be imposed in relation to such a body corporate; and
- (d) supplementary provisions and appeals relating to such financial penalties.

Article 40 repeals Part 5 of the Act relating to dental auxiliaries.

Article 43 makes provision regarding the service of notifications and the publication of information, and procedural requirements relating to rules which may be made by the Council under the Act.

Article 44 makes provision concerning orders made by the Privy Council under the Act, and article 45 relates to regulations made by the Council under the Act.

Article 47 makes minor amendments to Schedule 1 of the Act concerning the constitution of the Council.

Schedules 6 and 7 contain consequential amendments and transitional provisions.