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## STATUTORY INSTRUMENTS

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# 2007 No. 289

## The Pharmacists and Pharmacy Technicians Order 2007

### PART 6

#### Proceedings

##### Rules in respect of proceedings

**59.**—(1) Subject to the following provisions of this Part, the Council shall make such provision in rules in connection with the procedure to be followed and rules of evidence to be observed by—

- (a) the Registration Appeals Committee; and
- (b) fitness to practise committees (whether exercising functions under this Order or the Medicines Act 1968),

as it considers appropriate.

(2) The rules under paragraph (1) above in respect of the Health Committee, the Disciplinary Committee or the Registration Appeals Committee shall, and in respect of the Investigating Committee may, include provision—

- (a) for securing that, where a hearing is to be held, notice of when and where the hearing is to be held is given, at such time and in such manner as may be specified in the rules, to any person to whom the proceedings relate;
- (b) for securing that the person concerned (which, for the purposes of this article, where appropriate, includes an individual who, or body corporate which, is subject to disqualification proceedings under Part 4 of the Medicines Act 1968) and the Society shall, if they so require, be entitled to be heard by the committee—
  - (i) at any hearing, or
  - (ii) in fitness to practise proceedings, on any other occasion when the committee is considering making an interim suspension order or an order for interim conditional registration;
- (c) for enabling the person concerned and the Society to be represented at the hearing, or in fitness to practise proceedings on any other occasion when the committee is considering making an interim suspension order or an order for interim conditional registration, by—
  - (i) a person with a general qualification (within the meaning of section 71 of the Courts and Legal Services Act 1990),
  - (ii) an advocate in Scotland, or a solicitor with rights of audience to appear in the Court of Session or the High Court of Justiciary by virtue of section 25A of the Solicitors (Scotland) Act 1980<sup>(1)</sup> (rights of audience in the Court of Session etc.), or

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<sup>(1)</sup> Section 25A was inserted by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c.40), section 24, and has been amended by: the Criminal Procedure and Consequential Provisions (Scotland) Act 1995 (c.40), Schedule 4, paragraph 1; S.I. 1999/1042; and S.S.I. 2000/121.

- (iii) a person of such other description as may be specified in rules, if the rules so allow and the person concerned or the Society so elects;
- (d) for proceedings before the committee to be held in public, except and to the extent that rules provide otherwise; and
- (e) in respect of reviewing directions under article 51 or 52—
  - (i) which are due to expire, or
  - (ii) in circumstances where the committee is considering varying the requirements specified in the direction.
- (3) The rules under paragraph (1) may include provision—
  - (a) in respect of the preliminary consideration of a case before a committee (including considering representations from the person concerned and the Society during its preliminary consideration);
  - (b) following preliminary consideration of a case—
    - (i) in the case of an appeal before the Registration Appeals Committee, allowing the Committee, in prescribed circumstances, to allow the appeal or take a decision that has the effect of allowing the appeal,
    - (ii) in fitness to practise proceedings, allowing the committee, in prescribed circumstances, to make a finding that the person concerned's fitness to practise is not impaired, and
    - (iii) in disqualification proceedings, allowing the Disciplinary Committee, in prescribed circumstances, to dismiss the case;
  - (c) in respect of consensual disposal of a fitness to practise case following preliminary consideration of it, including provision—
    - (i) enabling a fitness to practise committee, in such circumstances as may be specified in the rules, to agree with the person concerned that he will comply with such undertakings as the committee considers appropriate, and
    - (ii) with respect to the procedure to be followed where any such undertakings are breached (the rules may provide that the breach may be treated as misconduct for the purposes of article 48(1)(a) and for the matter to be dealt with as a misconduct allegation that is before the committee);
  - (d) in respect of consensual disposal of a disqualification case following preliminary consideration of it, including provision—
    - (i) enabling the Disciplinary Committee, in such circumstances as may be specified in the rules, to agree with the individual or body corporate that he or it will comply with such undertakings as the Committee considers appropriate, and
    - (ii) with respect to the procedure to be followed where any such undertakings are breached;
  - (e) in respect of case management meetings (and the rules may provide that the preliminary consideration of a case is to take place at a case management meeting) and directions, including provision with respect to the procedure to be followed where case management directions are breached;
  - (f) in respect of cancelling, postponing or adjourning hearings and staying proceedings in appropriate circumstances;
  - (g) enabling the Disciplinary Committee to refer a fitness to practise case before it to the Health Committee, in such circumstances as may be prescribed—
    - (i) for advice, or

- (ii) for the Health Committee to dispose of the case;
  - (h) enabling the Health Committee to refer a case before it to the Disciplinary Committee, in such circumstances as may be prescribed—
    - (i) for advice, or
    - (ii) for the Disciplinary Committee to dispose of the case;
  - (i) enabling the Registration Appeals Committee to refer a case before it to a fitness to practise committee for advice;
  - (j) enabling the committee to draw such inference as seems appropriate to it in the particular circumstances of the case if the person concerned fails—
    - (i) during fitness to practise proceedings, to submit to any examination or assessment required or directed to be carried out in accordance with rules made under this article or article 53, or
    - (ii) to co-operate with the committee;
  - (k) enabling the committee, at any time during the course of proceedings, to make such inquiries as it considers appropriate;
  - (l) enabling the Disciplinary Committee, following consideration of a disqualification case, instead of issuing a direction under section 80 of the Medicines Act 1968 (disqualification, and removal of persons from the register)—
    - (i) to agree with the individual or body corporate that he or it will comply with such undertakings as the Committee considers appropriate, and the rules may include provision with respect to the procedure to be followed where any such undertakings are breached, and
    - (ii) to dispose of the matter by way of a reprimand or a warning; and
  - (m) for the award of, and in respect of the assessment of, costs or expenses, and may require the committee to have regard to a person's ability to pay when considering the making of an award against him under the rules.
- (4) An award of costs may, by leave of the High Court, be enforced in the same manner as an order of the High Court to the same effect.
- (5) An award of expenses may, by leave of the Court of Session, be enforced in the same manner as a decree of the Court of Session to the same effect.
- (6) The rules under paragraph (1) above may make provision—
- (a) as to the form which is to be used for any document (and may provide that specified documents are to be in such form as the Council may determine from time to time); and
  - (b) for documents and certificates to be sent or received as an electronic communication.

### **Procedure of fitness to practise committees and the Registration Appeals Committee**

- 60.**—(1) For the purposes of proceedings under this Order in England and Wales—
- (a) a fitness to practise committee or the Registration Appeals Committee may administer oaths; and
  - (b) a fitness to practise committee, the Registration Appeals Committee or any party to proceedings before them may issue a writ of subpoena ad testificandum or subpoena duces tecum.
- (2) No person shall be compelled under any such writ to produce any document which he could not be compelled to produce on the trial of an action.

(3) Section 36 of the Supreme Court Act 1981(2) (subpoena issued by High Court to run throughout the United Kingdom) shall apply in relation to any such proceedings in England and Wales as it applies in relation to causes and matters in the High Court.

(4) For the purposes of any such proceedings in Scotland, the committee may administer oaths and the Court of Session shall on the application of any party to the proceedings have the like power as in any action in that court—

- (a) to grant warrant for the citation of witnesses and havers to give evidence or to produce documents before the committee, and for the issue of letters of second diligence against any witnesses or havers 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—

- (a) several sittings of a fitness to practise committee are required to enable the committee to dispose of a case; or
- (b) on an appeal to the relevant court under article 56, the case is remitted to a fitness to practise committee to dispose of the case in accordance with directions given by the court,

the validity of the proceedings on the case before the committee shall not be called into question by reason only that members of the committee who were present at a former meeting were not present at a later meeting of the committee or that members present at a later meeting were not present at a former meeting of the committee.

### **Legal advisers**

**61.**—(1) The Council shall appoint suitably qualified and experienced barristers, solicitors or advocates to be legal advisers, except that the Council may make rules which provide for it to enter into arrangements with another person, body or group (including a committee established under the Charter) for that person, body or group to appoint suitably qualified and experienced barristers, solicitors or advocates to be legal advisers on its behalf.

(2) Legal advisers appointed under this article must not be a member of the Council or a statutory committee.

(3) Legal advisers appointed under this article may be appointed either generally or for any particular class of proceedings, and shall hold and vacate office in accordance with the terms of the instrument under which they are appointed.

(4) The Council may make rules as to the functions of legal advisers appointed under this article.

### **Clinical and other specialist advisers**

**62.**—(1) In connection with proceedings under this Order, the Council—

- (a) shall appoint registered medical practitioners to be clinical advisers, except that the Council may make rules which provide for it to enter into arrangements with another person, body or group (including a committee established under the Charter) for that person, body or group to appoint registered medical practitioners to be clinical advisers on its behalf; and
- (b) may appoint persons to act as specialist advisers on issues on which, in the Council's opinion, specialist knowledge is required, and the Council may make rules which provide for it to enter into arrangements with another person, body or group (including a committee

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(2) 1981 c.54; section 36 has been amended by the Courts and Legal Services Act 1990 (c.41), Schedule 17, paragraph 13.

established under the Charter) for that person, body or group to appoint persons to be specialist advisers on its behalf.

(2) Persons appointed to be—

- (a) clinical advisers must have specialist expertise in a particular field or fields; and
- (b) specialist advisers must have particular expertise in the speciality for which they are appointed.

(3) Clinical advisers shall be appointed for the purpose of giving advice to the Health Committee or the Investigating Committee on health related issues under consideration by the Committee in the course of proceedings before it and may also be appointed to give advice to the Council or the Society's committees on other health related issues.

(4) If specialist advisers are appointed under paragraph (1)(b) above, their appointment shall be for the purpose of giving advice—

- (a) to one or more of the statutory committees on issues falling within their speciality which are under consideration by the committee in the course of proceedings before it; and
- (b) to the Council or the Society's committees on issues falling within their speciality or related to it.

(5) Advisers appointed under this article must not be a member of the Council or a statutory committee.

(6) Advisers appointed under this article with regard to proceedings may be appointed either generally or for any particular class of proceedings, and shall hold and vacate office in accordance with the terms of the instrument under which they are appointed.

(7) The Council may make rules as to the functions of advisers appointed under this article.