

Draft Order in Council laid before Parliament and the Scottish Parliament under section 62(10) of the Health Act 1999 for approval by resolution of each House of Parliament and by the Scottish Parliament.

DRAFT STATUTORY INSTRUMENTS

2015 No.

HEALTH CARE AND ASSOCIATED PROFESSIONS

DENTISTS

**The General Dental Council (Fitness to Practise etc.) Order
2015**

Made - - - - - ***
Coming into force - - - - - ***

At the Court at Buckingham Palace, the 000 day of 000

Present,

The Queen's Most Excellent Majesty in Council

This Order in Council is made in exercise of the powers conferred by sections 60 and 62(4) and (4A) of, and Schedule 3 to, the Health Act 1999.

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 that Act.

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.

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.

Accordingly, Her Majesty is pleased, by and with the advice of Her Privy Council, to make the following Order in Council:

PART 1

General

Citation and commencement

1.—(1) This Order may be cited as the General Dental Council (Fitness to Practise etc.) Order 2015.

(2) [c.i.f provisions].

Amendment of the Dentists Act 1984

2. The Dentists Act 1984 is amended as follows.

Delegation of Investigating Committee's functions

3. After section 27A insert—

“27AA Delegation of the Investigating Committee's functions under section 27A

(1) Rules may make provision for one or more of the following—

- (a) the registrar;
- (b) any other officer of the Council,

to exercise the functions of the Investigating Committee under section 27A, whether generally or in relation to such classes of case as may be specified in the rules.

(2) Where, by virtue of subsection (1), rules provide for the registrar to exercise the functions of the Investigating Committee under subsection (3), (8) (11) or (12) of section 27A—

- (a) subsection (3) of that section applies as if “direct the registrar to” were omitted;
- (b) subsection (8) of that section applies as if in paragraph (b) “the registrar,” were omitted;
- (c) subsection (11) of that section applies as if in paragraph (a) “or the registrar” were omitted;
- (d) subsection (12) of that section applies as if “direct the registrar to” were omitted, (as the case may be).”.

4. After section 36O insert—

“36OA Delegation of the Investigating Committee's functions under section 36O

(1) Rules may make provision for one or more of the following—

- (a) the registrar;
- (b) any other officer of the Council,

to exercise the functions of the Investigating Committee under section 36O, whether generally or in relation to such classes of case as may be specified in the rules.

(2) Where, by virtue of subsection (1), rules provide for the registrar to exercise the functions of the Investigating Committee under subsection (3), (8) (11) or (12) of section 36O—

- (a) subsection (3) of that section applies as if “direct the registrar to” were omitted;
- (b) subsection (8) of that section applies as if in paragraph (b) “the registrar,” were omitted;
- (c) subsection (11) of that section applies as if in paragraph (a) “or the registrar” were omitted;

(d) subsection (12) of that section applies as if “direct the registrar to” were omitted, (as the case may be).”.

Power for Investigating Committee to agree undertakings

5.—(1) Section 27A (powers of the Investigating Committee in respect of registered dentists) is amended as follows.

(2) In subsection (2)—

- (a) after “may” insert “do one or more of the following”,
- (b) omit “and” at the end of paragraph (a), and
- (c) after paragraph (a) insert—

“(aa) agree with that person that he will comply with such undertakings as the Investigating Committee consider appropriate;”.

(3) In subsection (3)—

- (a) after “subsection (2)(a)” insert “or agree undertakings under subsection (2)(aa)”, and
- (b) after “that warning” insert “or those undertakings”.

(4) After subsection (12) (inserted by article 7) insert—

“(13) Rules may make provision in connection with undertakings under subsection (2)(aa) (including provision as to the actions which may be taken in consequence of undertakings being breached).”

6.—(1) Section 36O (powers of the Investigating Committee in respect of registered dental care professionals) is amended as follows.

(2) In subsection (2)—

- (a) after “may” insert “do one or more of the following”,
- (b) omit “and” at the end of paragraph (a), and
- (c) after paragraph (a) insert—

“(aa) agree with that person that he will comply with such undertakings as the Investigating Committee consider appropriate;”.

(3) In subsection (3)—

- (a) after “subsection (2)(a)” insert “or agree undertakings under subsection (2)(aa)”, and
- (b) after “that warning” insert “or those undertakings”.

(4) After subsection (12) (inserted by article 8) insert—

“(13) Rules may make provision in connection with undertakings under subsection (2)(aa) (including provision as to the actions which may be taken in consequence of undertakings being breached).”

Power for Investigating Committee to review a decision to issue a warning

7. In section 27A (powers of the Investigating Committee in respect of registered dentists) after subsection (10) insert—

“(11) The Investigating Committee may review a determination made by them to issue a warning under subsection (2)(a) on an application made—

- (a) by the person to whom the warning was issued or the registrar;
- (b) before the end of the period of two years beginning with the date on which the determination was made.

(12) On a review under subsection (11) the Investigating Committee may, if they consider it appropriate—

- (a) revoke the warning, and

- (b) direct the registrar to remove details of the warning from the entry in the register relating to the person to whom the warning was issued.”

8.—(1) In section 36O (powers of the Investigating Committee in respect of registered dental care professionals) after subsection (10) insert—

“(11) The Investigating Committee may review a determination made by them to issue a warning under subsection (2)(a) on an application made—

- (a) by the person to whom the warning was issued or the registrar;
- (b) before the end of the period of two years beginning with the date on which the determination was made.

(12) On a review under subsection (11) the Investigating Committee may, if they consider it appropriate—

- (a) revoke the warning, and
- (b) direct the registrar to remove details of the warning from the entry in the register relating to the person to whom the warning was issued.”

Review of Investigating Committee’s determination by registrar

9. After section 27AA (inserted by article 3) insert—

“27AB Review of determination under section 27A(1)

(1) Rules may make provision for enabling the registrar to review a determination by the Investigating Committee under section 27A(1) that an allegation ought not to be considered by a Practice Committee.

(2) Rules made by virtue of subsection (1) may, in particular, include provision as to—

- (a) the period within which a review is to be commenced;
- (b) the process to be followed by the registrar in carrying out a review (including the determinations to be made by him);
- (c) the actions which may be taken following a review.”

10. After section 36OA (inserted by article 4) insert—

“36OB Review of determination under section 36O(1)

(1) Rules may make provision for enabling the registrar to review a determination by the Investigating Committee under section 36O(1) that an allegation ought not to be considered by a Practice Committee.

(2) Rules made by virtue of subsection (1) may, in particular, include provision as to—

- (a) the period within which a review is to be commenced;
- (b) the process to be followed by the registrar in carrying out a review (including the determinations to be made by him);
- (c) the actions which may be taken following a review.”

Review of registrar’s determination

11. In section 27 (allegations in respect of registered dentists) for subsection (6) substitute—

“(6) The registrar shall investigate the allegation for the purpose of—

- (a) determining whether it is an allegation in relation to which this section applies, and
- (b) if he determines that it is, determining whether to refer the allegation to the Interim Orders Committee under subsection (5)(b).

(6A) Rules may make provision for enabling the registrar to review a determination under subsection (6)(a) (including provision as to the action which may be taken following a review).”

12. In section 36N (allegations in respect of registered dental care professionals) for subsection (6) substitute—

“(6) The registrar shall investigate the allegation for the purpose of—

- (a) determining whether it is an allegation in relation to which this section applies, and
- (b) if he determines that it is, determining whether to refer the allegation to the Interim Orders Committee under subsection (5)(b).

(6A) Rules may make provision for enabling the registrar to review a determination under subsection (6)(a) (including provision as to the action which may be taken following a review).”

Referral to the Interim Orders Committee

13. In section 27 (allegations in respect of registered dentists) for subsection (5)(b) substitute—

“(b) may, at any time before the Investigating Committee have begun to consider the allegation, refer the allegation to the Interim Orders Committee if he considers it appropriate.”

14. Section 27A (powers of the Investigating Committee in respect of registered dentists) is amended as follows—

- (a) in subsection (4) omit paragraph (b) and the “and” immediately preceding it;
- (b) after subsection (4) insert—

“(4A) Unless subsection (5) applies, the Investigating Committee may, if they consider it appropriate, refer the allegation to the Interim Orders Committee (subject to subsection (6B)).”;

- (c) in subsection (6) omit paragraph (b) and the “and” immediately preceding it;
- (d) after subsection (6) insert—

“(6A) Where subsection (5) applies, the Investigating Committee may, if they consider it appropriate, refer those allegations to the Interim Orders Committee (subject to subsection (6B)).

(6B) Subsections (4A) and (6A) do not apply if—

- (a) the Investigating Committee have determined that the allegation or allegations ought to be considered by a Practice Committee, and
- (b) the hearing before that Committee has commenced or, where there is not to be a hearing before that Committee, that Committee have begun to consider written statements or representations.”;

- (e) after subsection (8) insert—

“(8A) On a review under subsection (8) the Investigating Committee may refer the allegation or allegations to the Interim Orders Committee.”.

15. In section 32(2)(b) (Interim Orders Committee to exercise functions only on a reference by the Investigating Committee) for “section 27A(4)(b) or (6)(b)” substitute “section 27A(4A) or (6A)”.

16. In section 36N (allegations in respect of registered dental care professionals) for subsection (5)(b) substitute—

“(b) may, at any time before the Investigating Committee have begun to consider the allegation, refer the allegation to the Interim Orders Committee if he considers it appropriate.”.

17. Section 36O (powers of the Investigating Committee in respect of registered dental care professionals) is amended as follows—

- (a) in subsection (4) omit paragraph (b) and the “and” immediately preceding it;
- (b) after subsection (4) insert—

“(4A) Unless subsection (5) applies, the Investigating Committee may, if they consider it appropriate, refer the allegation to the Interim Orders Committee (subject to subsection (6B)).”;
- (c) in subsection (6) omit paragraph (b) and the “and” immediately preceding it;
- (d) after subsection (6) insert—

“(6A) Where subsection (5) applies, the Investigating Committee may, if they consider it appropriate, refer those allegations to the Interim Orders Committee (subject to subsection (6B)).

(6B) Subsections (4A) and (6A) do not apply if—

 - (a) the Investigating Committee have determined that the allegation or allegations ought to be considered by a Practice Committee, and
 - (b) the hearing before that Committee has commenced or, where there is not to be a hearing before that Committee, that Committee have begun to consider written statements or representations.”;
- (e) after subsection (8) insert—

“(8A) On a review under subsection (8) the Investigating Committee may refer the allegation or allegations to the Interim Orders Committee.”.

18. In section 36V(2)(b) (Interim Orders Committee to exercise functions only on a reference by the Investigating Committee) for “section 36O(4)(b) or (6)(b)” substitute “section 36O(4A) or (6A)”.

Richard Tilbrook

Clerk of the Privy Council

EXPLANATORY NOTE

(This note is not part of the Order)