STATUTORY INSTRUMENTS

2016 No. 496

HEALTH CARE AND ASSOCIATED PROFESSIONS

DENTISTS

The General Dental Council (Fitness to Practise etc.) Order 2016

Made - - - - 12th April 2016

Coming into force in accordance with article 1

At the Court at Windsor Castle, the 12th day of April 2016

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(**1**).

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.

The period of three months mentioned in paragraph 9(4) of that Schedule expired before a draft of this Order in Council, together with a report about the consultation, 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 of 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:

(**1**) 1999 c. 8. Section 60 was amended by paragraph 16 of Schedule 5 to the Nursing and Midwifery Order 2001 (S.I. 2002/253); section 26(9) of the National Health Service Reform and Health Care Professions Act 2002 (c. 17); paragraph 1 of Schedule 8 to the Health and Social Care Act 2008 (c. 14); sections 209, 210 and 213 of, and paragraphs 60 and 72 of, Schedule 15 to the Health and Social Care Act 2012 (c. 7); paragraph 7 of Schedule 4 to the Pharmacy Order 2010 (S.I. 2010/231); paragraph 43 of Schedule 34 to the Human Medicines Regulations 2012 (S.I. 2012/1916). Section 62 was amended by paragraph 1 of Schedule 4 to the National Health Service (Consequential Provisions) Act 2006 (c. 43); and paragraph 2 of Schedule 8 to the Health and Social Care Act 2008. Subsections (4) and (4A) were substituted in section 62 by paragraph 11 of Schedule 10 to the Health and Social Care Act 2008. Schedule 3 was amended by section 26(10) of the National Health Service Reform and Health Care Professions Act 2002 (c. 17); paragraph 8(b) of Schedule 4 to the Health and Social Work Professions Order 2002 (S.I. 2002/254); paragraph 67 of Schedule 11, and paragraph 1 of Schedule 14 to the Health and Social Care (Community Health and Standards) Act 2003 (c. 43); paragraphs 4 to 9 of Schedule 8, and paragraph 1 of Schedule 15, to the Health and Social Care Act 2008; section 211 of, and paragraphs 61 and 72 of Schedule 15 to, the Health and Social Care Act 2012.

PART 1

General

Citation and commencement

1. This Order may be cited as the General Dental Council (Fitness to Practise etc.) Order 2016 and shall come into force on the day after the day on which this order is made.

Amendment of the Dentists Act 1984

2. The Dentists Act 1984(**2**) is amended as follows.

Delegation of Investigating Committee's functions

3. After section 27A(**3**) insert—

" **Delegation of the Investigating Committee's functions under section 27A**

27AA. Rules(**4**) 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.".

4. After section 36O(**5**) insert—

" **Delegation of the Investigating Committee's functions under section 36O**

36OA. 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.".

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 (4), before paragraph (a) insert—

"(za) may agree with the person who is the subject of the allegation that the person will comply with such undertakings as the Investigating Committee consider appropriate;".

(**2**) 1984 c. 24.
(**3**) Section 27A was substituted by S.I. 2005/2011, articles 2(1) and 18.
(**4**) *See* sections 50C(1) and (2) of the Dentists Act 1984 which provide that the power to make rules shall be exercisable by the General Dental Council and that such rules (with some exceptions) shall not come into force until approved by the Privy Council.
(**5**) Section 36O was inserted by S.I. 2005/2011, articles 2(1) and 31.

(3) In subsection (4)(a), at the beginning insert "if they do not agree undertakings under paragraph (za),".

(4) In subsection (6), before paragraph (a) insert—

"(za) may agree with the person who is the subject of those allegations that the person will comply with such undertakings as the Investigating Committee consider appropriate;".

(5) In subsection (6)(a), at the beginning insert "if they do not agree undertakings under paragraph (za),".

(6) After subsection (6B) (inserted by article 14(5)) insert—

"(6C) If the Investigating Committee agree undertakings under subsection (4)(za) or (6)(za), they may, if they consider it appropriate to do so, direct the registrar to enter details of the undertakings in the entry in the register relating to the person who is the subject of the allegation or allegations.".

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

"(13) Rules may make provision in connection with undertakings under subsections (4)(za) and (6)(za) (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 (4), before paragraph (a) insert—

"(za) may agree with the person who is the subject of the allegation that the person will comply with such undertakings as the Investigating Committee consider appropriate;".

(3) In subsection (4)(a), at the beginning insert "if they do not agree undertakings under paragraph (za),".

(4) In subsection (6), before paragraph (a) insert—

"(za) may agree with the person who is the subject of those allegations that the person will comply with such undertakings as the Investigating Committee consider appropriate;".

(5) In subsection (6)(a), at the beginning insert "if they do not agree undertakings under paragraph (za),".

(6) After subsection (6B) (inserted by article 17(5)) insert—

"(6C) If the Investigating Committee agree undertakings under subsection (4)(za) or (6)(za), they may, if they consider it appropriate to do so, direct the registrar to enter details of the undertakings in the entry in the register relating to the person who is the subject of the allegation or allegations.".

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

"(13) Rules may make provision in connection with undertakings under subsections (4)(za) and (6)(za) (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. 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—

"**Review of determination under section 27A(1)**

27AB.—(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—

"**Review of determination under section 36O(1)**

36OB.—(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.".