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 the Scottish Parliament.

DRAFT STATUTORY INSTRUMENTS

2014 No.

HEALTH CARE AND ASSOCIATED PROFESSIONS

The Health Care and Associated Professions (Indemnity Arrangements) Order 2014

Made - - - - 2014
Coming into force in accordance with article 1(2) and (3)

At the Court at Buckingham Palace, the xx day of xx 2014

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 that Act.

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

A draft of this Order in Council has been approved by resolution of each House of Parliament and the Scottish Parliament, in accordance with section 62(10) of that Act.

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 has been amended by: the National Health Service Reform and Health Care Professions Act 2002 (c. 17) ("the 2002 Act"), section 26(9); the Health and Social Care Act 2008 (c. 14) ("the 2008 Act"), Schedule 8, paragraph 1, and Schedule 10, paragraph 10; sections 209 and 210 of the Health and Social Care Act 2012 (c. 7) ("the 2012 Act"); and S.I. 2002/253 and 254. Section 62 has been amended by: the National Health Service (Consequential Provisions) Act 2006 (c. 43), Schedule 1, paragraphs 194 and 197, and Schedule 4; and the 2008 Act, Schedule 8, paragraph 2, and Schedule 10, paragraph 11. Schedule 3 has been amended by: the 2002 Act, section 26(10); the Health and Social Care (Community Health and Standards) Act 2003 (c. 43), Schedule 11, paragraph 67, and Schedule 14, Part 4; the Health Act 2006 (c. 28), section 33 and Schedule 9; the 2008 Act, Schedule 8, paragraphs 3 to 10 (although paragraph 10 is not yet in force); the 2012 Act, section 211 and S.I. 2002/254.

Citation and commencement

1.—(1) This Order may be cited as the Health Care and Associated Professions (Indemnity Arrangements) Order 2014.

(2) This Order comes into force on the day after the day on which it is made.

(3) Where this Order amends other legislation and makes transitional provisions in relation to those amendments, those amendments and transitional provisions have the same extent as the legislation being amended.

Amendments

2.—(1) Schedule 1 (amendments to legislation regulating health care and associated professions) has effect.

(2) Schedule 2 (other amendments of subordinate legislation) has effect.

Transitional, transitory or saving provisions

3.—(1) The transitional and saving provisions set out in Schedule 3 have effect.

(2) In connection with the commencement of any provision of this Order, the Privy Council may by order make such transitional, transitory or saving provisions as it considers appropriate.

(3) The power to make an order under paragraph (2) may be exercised—

(a) so as to make different provision—

(i) with respect to different cases or different classes of cases, or

(ii) in respect of the same case or class of case for different purposes;

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

(c) so as to make any supplementary, incidental or consequential provisions which the Privy Council considers necessary or expedient.

(4) The power of the Privy Council to make an order under paragraph (2) may be exercised by any two or more members of the Privy Council.

(5) The making of an order under paragraph (2) shall be sufficiently signified by an instrument signed by the Clerk of the Privy Council.

(6) The power to make an order under paragraph (2) shall be exercisable by statutory instrument.

(7) For the purposes of section 1 of the Statutory Instruments Act 1946 (definition of "statutory instrument"), the power in paragraph (2) is to be taken to be conferred by an Act of Parliament.

(8) Where an order of the Privy Council under this Order is signified by an instrument purporting to be signed by the Clerk of the Privy Council, that shall be evidence, and in Scotland sufficient evidence, of—

(a) the fact that the order was duly made; and

(b) the order's terms.

Name
Clerk of the Privy Council

SCHEDULE 1 Article 2(1)

Amendments relating to indemnity arrangements

PART 1

Amendments to the Medical Act 1983

1.—(1) For section 44C(**2**) of the Medical Act 1983(**3**) (indemnity arrangements) substitute—

"**Indemnity arrangements**

44C.—(1) A person who holds a licence to practise as a medical practitioner, and practises as such, must have in force in relation to him an indemnity arrangement which provides appropriate cover for practising as such.

(2) For the purposes of this section, an "indemnity arrangement" may comprise—

(a) a policy of insurance;

(b) an arrangement for the purposes of indemnifying a person;

(c) a combination of the two.

(3) For the purposes of this section, "appropriate cover", in relation to practice as a medical practitioner, means cover against liabilities that may be incurred in practising as such which is appropriate, having regard to the nature and extent of the risks of practising as such.

(4) The General Council may make regulations in connection with the information to be provided to the Registrar—

(a) by or in respect of a person seeking a licence to practise for the purpose of determining whether, if he is granted such a licence, there will be in force in relation to him by the time he begins to practise an indemnity arrangement which provides appropriate cover; and

(b) by or in respect of a person who holds a licence to practise for the purpose of determining whether there is in force in relation to him an indemnity arrangement which provides appropriate cover.

(5) Regulations made under subsection (4)(b) may require the information mentioned there to be provided—

(a) at the request of the Registrar; or

(b) on such dates or at such intervals as the Registrar may determine, either generally or in relation to individual practitioners or practitioners of a particular description.

(6) The General Council may also make regulations requiring a person who holds a licence to practise to inform the Registrar if there ceases to be in force in relation to him an indemnity arrangement which provides appropriate cover.

(7) The General Council may also make regulations requiring a person who holds a licence to practise to inform the Registrar if there is in force in relation to him appropriate cover provided under an indemnity arrangement by an employer.

(**2**) Section 44C was inserted by S.I. 2006/1914.
(**3**) 1983 c. 54.

(8) A licensing authority may refuse to grant a licence to practise to any person who fails to comply, or in respect of whom there is a failure to comply, with regulations made under subsection (4)(a).

(9) Where a person who holds a licence to practise is in breach of subsection (1) or there is a failure to comply with regulations made under subsection (4)(b) in relation to him—

(a) a licensing authority may withdraw that person's licence to practise; or

(b) the breach or failure may be treated as misconduct for the purposes of section 35C(2)(a)(**4**), and the Registrar may accordingly refer the matter to the Investigation Committee under section 35C(4).

(10) Regulations made under subsection (4), (6) or (7) shall not have effect until approved by the Privy Council.

(11) This section does not apply to a person who holds a licence to practise as a result of registration under Schedule 2A(**5**) (visiting medical practitioners from relevant European States).".

(2) In section 29F(1A)(**6**) (appeals), in paragraph (a), for "section 44C(7)" substitute "section 44C(8)" and in paragraph (b), for "section 44C(8)(a)" substitute "section 44C(9)(a)".

PART 2

Amendments to the Dentists Act 1984

2. The Dentists Act 1984(**7**) is amended in accordance with this Part.

Amendment of section 18

3. In subsection (2) of section 18(**8**) (procedure for registration), after paragraph (b), insert—

"(ba) the documents conferring, or evidencing that there is in force in relation to him or there will be as necessary for the purpose of complying with section 26A, appropriate cover under an indemnity arrangement.".

Amendment of section 26A

4. For section 26A(**9**)(insurance for dental practitioners), substitute—

"**Indemnity arrangements**

26A.—(1) A registered dentist who is practising as a dental practitioner must have in force in relation to him an indemnity arrangement which provides appropriate cover for practising as such.

(2) For the purposes of this section, an "indemnity arrangement" may comprise—

(a) a policy of insurance;

(b) an arrangement made for the purposes of indemnifying a person;

(c) a combination of the two.

(**4**) Section 35C was substituted by S.I. 2002/3135.
(**5**) Inserted by S.I. 2007/3101.
(**6**) Inserted by S.I. 2006/1914.
(**7**) 1984 c. 24.
(**8**) Amended by S.I. 1996/1496; S.I. 2005/2011 and S.I. 2007/3101.
(**9**) Inserted by S.I. 2005/2011.

(3) For the purposes of this section, "appropriate cover", in relation to practice as a dental practitioner, means cover against liabilities that may be incurred in practising as such which is appropriate, having regard to the nature and extent of the risks of practising as such.

(4) Rules may make provision in connection with the information to be provided to the registrar—

(a) by or in respect of a person seeking registration in the register for the purpose of determining whether, if his name is entered in the register, there will be in force in relation to him by the time he begins to practise an indemnity arrangement which provides appropriate cover;

(b) by or in respect of a person seeking restoration of his name in the register for the purpose of determining whether, if his name is restored in the register, there will be in force in relation to him by the time he resumes practice an indemnity arrangement which provides appropriate cover; and

(c) by or in respect of a registered dentist seeking retention of his name in the register for the purpose of determining whether, if his name is retained in the register, there will continue to be in force in relation to him an indemnity arrangement which provides appropriate cover.

(5) Rules may make provision requiring a registered dentist to inform the registrar if there ceases to be in force in relation to that dentist an indemnity arrangement which provides appropriate cover.

(6) Rules may make provision requiring a registered dentist to inform the registrar if there is in force in relation to that registered dentist appropriate cover provided under an indemnity arrangement by an employer.

(7) Rules made under subsection (4) may require the information mentioned there to be provided—

(a) at the request of the registrar; or

(b) on such dates or at such intervals as the registrar may determine, either generally or in relation to individual dental practitioners or dental practitioners of a particular description.

(8) Where a person fails to comply with rules made under subsection (4), or there is a failure to comply with rules made under subsection (4) in relation to him, the registrar may—

(a) refuse to register his name in the register;

(b) refuse to restore his name to the register; or

(c) erase his name from the register.

(9) Where a registered dentist is in breach of subsection (1) or fails to comply with rules made under this section—

(a) the registrar may erase that person's name from the register; or

(b) the breach or failure may be treated as misconduct for the purposes of section 27(2)(a)(**10**), and the registrar may accordingly refer the matter to the Investigating Committee under section 27(5)(a)(**11**).

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

(**10**) Substituted by S.I. 2005/2011.
(**11**) Substituted by S.I. 2005/2011.