STATUTORY INSTRUMENTS

2003 No. 1700

HEALTH CARE AND ASSOCIATED PROFESSIONS

HEALTH PROFESSIONS

The Health Professions Order 2001 (Transitional Provisions) Order of Council 2003

Made - - - -	*3rd July 2003*
Coming into force	*9th July 2003*

At the Council Chamber, Whitehall, the 3rd day of July 2003

By the Lords of Her Majesty's Most Honourable Privy Council

Their Lordships, in exercise of the powers conferred on them by article 48(2) of the Health Professions Order 2001**(a)**, and of all other powers enabling them in that behalf, hereby make the following Order:

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Health Professions (Transitional) Order of Council 2003 and shall come into force on 9th July 2003.

(2) In this Order—

"the Act" means the Professions Supplementary to Medicine Act 1960**(b)**;

"the Order" means the Health Professions Order 2001;

"case relating to conduct" means any case in which, under the Act, a person would be, or would have been, liable to have his name removed from the register because of infamous conduct;

"case relating to conviction" means any case in which, under the Act, a person would be, or would have been, liable to have his name removed from the register because he has been convicted of a criminal offence;

"case relating to fraudulent entry" means any case in which, under the Act, a person would be, or would have been, liable to have his name removed from the register because his name has been fraudulently entered on the register;

"disciplinary committee" has the same meaning as in section 8(1)(b) of the Act;

"notice of inquiry" means a notice of inquiry as referred to in rule 4 or rule 13 of the Procedure Rules;

"preliminary investigation" has the same meaning as in section 8(1)(a) of the Act;

"the Procedure Rules" means the Professions Supplementary to Medicine (Disciplinary Committees) (Procedure) Rules Order of Council 1964**(c)**; and

(a) S.I. 2002/254.
(b) 1960 c.66.
(c) S.I. 1964/1203.

"respondent" means a person who is the subject of an allegation in a case relating to conduct, conviction or fraudulent entry.

(3) For the purposes of this Order, the Act and relevant rules made under the Act (including the Procedure Rules) shall apply as they were in force on 31st March 2002, except that, where necessary, references in the Act or the rules to the CPSM, the boards or their committees are to be treated as references to the Council.

Fitness to practise

2.—(1) Any allegation which is received by the Council on or after 1st April 2002 but before 9th July 2003 and which at 9th July 2003 has—

(a) not been referred for a preliminary investigation pursuant to paragraph 17 of Schedule 2 to the Order; or

(b) has been so referred but in respect of which that preliminary investigation has not begun,

shall be dealt with in accordance with Part V and article 38 of the Order.

(2) For these purposes, a case relating to—

(a) conduct shall be treated as if it were an allegation referred to in article 22(1)(a)(i) of the Order;

(b) conviction shall be treated as if it were an allegation referred to in article 22(1)(a)(iii) of the Order; and

(c) fraudulent entry shall be treated as if it were an allegation referred to in article 22(1)(b) of the Order,

unless in the opinion of the Council, it is more appropriate to treat the case as an allegation referred to in another paragraph or sub-paragraph of article 22(1) of the Order.

3. Where at 9th July 2003 in respect of an allegation which is received by the Council on or after 1st April 2002 but before 9th July 2003 a preliminary investigation has begun but has not yet been concluded, it shall be concluded in accordance with section 8(1)(a) of the Act and any relevant rules made under the Act as if they remained in force, and—

(a) if it is determined that the allegation should be referred for consideration, the Council shall refer the allegation to the Investigating Committee or such other Practice Committee as it considers appropriate and it shall be dealt with in accordance with Part V and article 38 of the Order in the manner set out in article 2(2) above; or

(b) if it is determined that the allegation should not be so referred, the Council shall inform the respondent of that determination.

4.—(1) Where at 9th July 2003 in respect of an allegation which is received by the Council on or after 1st April 2002 but before 9th July 2003 the preliminary investigation has been concluded and it has been determined that the allegation should be referred for consideration but—

(a) it has not yet been so referred; or

(b) it has been so referred but a notice of inquiry has not yet been served,

the Council shall refer the allegation to the Investigating Committee or such other Practice Committee as it considers appropriate and it shall be dealt with in accordance with Part V and article 38 of the Order in the manner set out in article 2(2) above.

5.—(1) Where at 9th July 2003 in respect of an allegation which is received by the Council on or after 1st April 2002 but before 9th July 2003 the allegation has been referred for consideration and a notice of inquiry (or, where necessary under rule 5 of the Procedure Rules, an amended notice of inquiry) has been served on the respondent, subject to paragraph (2) and articles 8 and 9, the Council shall deal with it in accordance with sections 8(1)(b) and 9 of the Act and relevant rules made under the Act as if they remained in force.

(2) If—

(a) a notice of inquiry has been served on the respondent;

(b) the inquiry has not yet begun; and

(c) the respondent agrees,

the Council shall refer the allegation to the Investigating Committee or such other Practice Committee as it considers appropriate and it shall be dealt with in accordance with Part V and article 38 of the Order in the manner set out in article 2(2) above.

Appeals

6.—(1) Where, in respect of an allegation which is received by the Council on or after 1st April 2002 but before 9th July 2003, a direction is made before, on or after 9th July 2003 in accordance with section 9(1) of the Act that the name of the respondent be removed from the register, and no appeal has been made before 9th July 2003, the respondent may appeal in accordance with section 9(3) of the Act as if it remained in force.

(2) Where after 8th July 2003 but within the period referred to in rule 6 of the Professions Supplementary to Medicine (Registration (Appeals) Rules) Order of Council 1962**(a)** and in the manner set out in that rule the Council receives an appeal against—

(a) a refusal of an application for registration given before 9th July 2003; or

(b) a failure either to grant or refuse such an application,

as referred to in section 3(3) of the Act, the Council shall forthwith refer the matter to a county court or, in Scotland, the sheriff, and that court or sheriff shall deal with the appeal as if it were an appeal under article 38(1)(b) of the Order.

Proceedings pending at 1st April 2002

7. Any proceedings referred to the Council pursuant to paragraph 17(1)(a) of Schedule 2 to the Order shall be treated as an allegation which has been received by the Council on or after 1st April 2002 but before 9th July 2003 and the appropriate provisions in this Order shall apply.

Postponing judgments

8. Where the Council deals with a case relating to conduct or conviction in accordance with the Act and makes a finding as referred to in rule 10(1) or (2) of the Procedure Rules it—

(a) may not after 8th July 2003 postpone judgment pursuant to rule 10(3) of the Procedure Rules; and

(b) if, but for paragraph (a), the Council would have postponed judgment, it shall, having invited the parties to address it on any relevant matter, act in accordance with article 29(4) or (5) of the Order, and—

(i) thereafter Part V and article 38 of the Order will apply to the decision or order of the Council as if it were a decision or order of a Committee under article 29(4) or (5) of the Order,

(ii) for these purposes, Part V and article 38 of the Order shall apply as if references to a Practice Committee (however made), except in article 38(3)(d) of the Order, were references to the Council, and

(iii) in article 38(3)(d) the reference to the "Practice Committee concerned" shall be read as if it were to "such Practice Committee as the court or sheriff considers appropriate".

Judgments which immediately before 9th July 2003 stand postponed

9.—(1) Where immediately before 9th July 2003 the judgment of a disciplinary committee, or of the Council, stands postponed pursuant to rule 10(4), or further postponed pursuant to rule 12(1)(d), of the Procedure Rules, the Council shall no later than 9th July 2004 or six weeks before the date fixed for resumption of the proceedings, whichever is sooner, send to the respondent a notice which shall—

(a) S.I. 1962/2545.

(a) specify the day, time and place at which the proceedings are to be resumed and invite him to appear at the hearing;

(b) unless the Chairman otherwise directs, invite the respondent to furnish the Registrar with names and addresses of persons to whom reference may be made confidentially or otherwise concerning his character and conduct; and

(c) invite the respondent to send to the Council, not less than three weeks before the date fixed for the resumption of proceedings, a copy of any statement or statutory declaration, whether made by the respondent or not, relating to his conduct or other relevant matters since the hearing of his case or setting out any material facts which have arisen since that hearing.

(2) A copy of—

(a) the notice sent by the Council in accordance with paragraph (1); and

(b) any statement or statutory declaration sent to the Council by the respondent as a result of the invitation pursuant to paragraph (1)(c),

shall be sent to the person making the allegation that led to the case if any, if he is a party to the proceedings, and he may in turn, if he so desires, send to the Council a statement or statutory declaration, whether made by himself or not, concerning any matter raised by the respondent.

(3) At the meeting at which the proceedings are resumed the Chairman shall first invite the Solicitor to recall, for the information of the Council, the position in which the case stands and the Council may then receive further oral or documentary evidence in relation to the case, or to the conduct of the respondent since the hearing, and shall hear any party to the proceedings who desires to be heard.

(4) The Council shall then consider the case and—

(a) may not further postpone judgment pursuant to rule 12(1)(d); and

(b) if but for paragraph (a) the Council would have further postponed judgment, it shall act in accordance with article 29(4) or (5) of the Order, and—

(i) thereafter Part V and article 38 of the Order will apply to the decision or order of the Council as if it were a decision or order of a Committee under article 29(4) or (5) of the Order,

(ii) for these purposes, Part V and article 38 of the Order shall apply as if references to a Practice Committee (however made), except in article 38(3)(d) of the Order, were references to the Council, and

(iii) in article 38(3)(d) the reference to the "Practice Committee concerned" shall be read as if it were to "such Practice Committee as the court or sheriff considers appropriate".

(5) Subject to the provisions of the Order, the validity of any resumed proceedings shall not be called into question by reason only that members of the Committee who were present at any former meeting are not present at the resumed meeting held by the Council.

(6) In this article—

"Chairman" means the person selected by the Council to preside at the resumed proceedings;

"Solicitor" means any solicitor appointed by the Council to present the case against the respondent;

"Party" means—

(a) the respondent; or

(b) the person making the allegation provided that he shall not be deemed to be a party if he takes part in the proceedings only as a witness.

Restoration to the register

10.—(1) Where a person whose name has been removed from a register maintained in accordance with the Act in pursuance of—

(a) a direction by a disciplinary committee; or

(b) by the Council pursuant to—

(i) paragraph 17 of Schedule 2 to the Order, or

(ii) article 5(1) of this Order,

applies on or after 9th July 2003 to be included in the register, paragraph (2) shall apply.

(2) The application shall—

(a) not be considered if made before any period specified in the direction as mentioned in section 9(5) has expired;

(b) be construed, where necessary, as an application to be registered in the part of the register corresponding to his profession;

(c) be made to the Council and referred by it to the Practice Committee it considers appropriate; and

(d) be dealt with in accordance with article 33 of the Order.

11.—(1) Where a person whose name has been removed from a register maintained in accordance with the Act has applied before 9th July 2003 to be registered again pursuant to section 9(5) of the Act but at 9th July 2003 a decision has not been made on the application, the application shall, subject to paragraph (2), be dealt with as set out in article 10 as if it was received on or after 9th July 2003.

(2) Where in connection with an application mentioned in paragraph (1) the Council—

(a) has sought evidence under rule 14 of the Procedure Rules or has received evidence under rule 16 of those Rules;

(b) has arranged an oral hearing in accordance with rule 14 of those Rules; or

(c) has begun its consideration of the application,

it shall continue to deal with the application and shall make its decision in accordance with the Procedure Rules as if they were still in force or in such manner as it considers just.

Reconsideration of cases

12. Where, as a result of this Order or paragraph 17 of Schedule 2 to the Order, a case has been disposed of under the Act or relevant rules made under the Act, any further consideration of that case as a consequence of a decision on an appeal made before, on or after 9th July 2003, shall, subject to any order of the court (which shall for these purposes include Her Majesty in Council and the Judicial Committee of the Privy Council), be dealt with as if the case had been disposed of under the corresponding provisions of the Order.

A.K. Galloway
Clerk of the Privy Council

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes further transitional provisions arising out of the implementation of the Health Professions Order 2001. It relates to cases concerning the fitness to practise of health professionals to whom the Health Professions Order applies. It provides for the manner in which allegations which are received after the repeal of relevant provisions of the Professions Supplementary to Medicine Act 1960, but before the coming into force of rules relating to fitness to practise proceedings are to be dealt with and provides for the disposal of cases begun before the relevant rules come into force.

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