

SCHEDULE 2

Article 16(2)

TRANSITIONAL PROVISIONS

Interpretation

1. In this Schedule—

- (a) a reference to an old section of or paragraph in the Act shall be construed as a reference to that provision as it had effect prior to its amendment or substitution by this Order and a reference to a new section of or new paragraph in the Act shall be construed as a reference to that provision as amended or substituted or re-enacted (with or without modification) by this Order; and
- (b) “enactment” includes—
 - (i) an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament, and
 - (ii) any provision of, or any instrument made under, Northern Ireland legislation.

Registration

2.—(1) A person who, before 31st October 2003, is awarded a recognised overseas qualification which under the old section 19 of the Act would entitle him to be—

- (a) fully registered under that section; or
- (b) provisionally registered under the old section 21 of the Act and, on satisfying the requirements under the old section 20(2)(a) of the Act as to experience, to be fully registered under the old section 19 of the Act,

shall if he applies or has applied to the Registrar in accordance with sub-paragraph (2) or (3) below be eligible for full registration or provisional registration and subsequently full registration under the old section 19 or, as the case may be, the old section 21, as if they were still in force.

(2) An application for full registration under the old section 19 of the Act shall (except where sub-paragraph (3) applies) be made not later than 31st December 2003.

(3) An application for provisional registration under the old section 21 of the Act shall be made not later than 31st December 2003 and subsequent to that application an application for full registration may be made at any time.

(4) In this paragraph, “recognised overseas qualification” has the meaning given in the old section 19 of the Act.

3.—(1) In relation to applications under the old sections 19 and 21 of the Act—

- (a) the General Council may continue to provide facilities for testing the knowledge of English of an applicant; and
- (b) the old section 30(1) and the new section 30(1) of the Act shall apply as if the reference in paragraph (a) to section 19 or 21 included a reference to the old section 19 or 21 of the Act.

(2) Until article 6(11) of this Order comes into force—

- (a) for section 28(2)(b) there shall be substituted—
 - “(b) such number of other persons (who may, but need not, be members of the General Council) as the Council may by rules prescribe and including at least—
 - (i) one person who is neither registered with the General Council nor a holder of any qualification registrable under this Act, and

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- (ii) one person who is or has been registered under Part III of the Medical Act 1956, under section 18 or 22 of the Medical Act 1978 or under section 19, 21A, 22 or 25 of this Act.”; and
- (b) the old section 29 of the Act shall be amended as follows—
 - “(i) in subsection (2)(c) for the words from “by virtue of section 25” to “section 19 above” substitute “under section 25 above that he be registered under that section”, and
 - (ii) in subsection (3)—
 - (aa) in paragraph (a) for “section 20” substitute “section 19(1)(b)”,
 - (bb) omit paragraph (b), and
 - (cc) in paragraph (c) omit “(a), (b),”.
- (3) Notwithstanding the changes to the Review Board as a result of the coming into force of sub-paragraph (2)(a) above, the new Review Board resulting from those changes shall complete any case that is being considered but has not been completed by the old Review Board before the coming into force of that sub-paragraph.
- (4) Any application that is being considered by the Review Board on the date of the coming into force of article 6(11) of this Order shall be dealt with by the Review Board in accordance with the General Medical Council (Review Board for Overseas Qualified Practitioners Rules) Order of Council 1979(1), unless the person whose application is being considered requests that the application be transferred to a Registration Appeals Panel.
- (5) If, at the date of the coming into force of article 6(11) of this Order—
 - (a) a decision falling within section 29(2) of the Act has been made but an application to the Review Board under section 29(1) of the Act has not been made and the period for making such an application has not expired, if any such application is made it shall be considered by a Registration Appeals Panel; or
 - (b) any application under section 29(1) has been made but the Review Board has not started to consider it, that case shall be considered instead by a Registration Appeals Panel.
- (6) After the coming into force of article 6(11) of this Order, if a person makes an application for full registration under the old section 19 of the Act in accordance with paragraph 2(3) above, having previously been provisionally registered under the old section 21 of the Act, any decision not to direct that he shall be registered shall be an appealable registration decision for the purposes of Schedule 3A to the Act.

4. All entries in the overseas list immediately prior to the coming into force of article 9(1) of this Order shall be transferred to the principal list.

5.—(1) Any person who is fully registered or provisionally registered pursuant to the old section 19 or 21 of the Act after the coming into force of article 9(1) of this Order shall be entitled to be included in the principal list.

(2) If a person is successful in an appeal against a decision taken to erase his name from the overseas list before the coming into force of article 9(1) of this Order, the committee may, if they think fit, direct that he be included in the principal list.

Fitness to practise

6. Except as provided for in paragraphs 7 and 8 below, any allegation that has been made to the General Council concerning a medical practitioner’s professional conduct, professional performance

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or fitness to practise prior to the coming into force of the new section 35C of this Act that has not been referred to the Professional Conduct Committee, the Committee on Professional Performance or the Health Committee shall be dealt with by the Investigation Committee in accordance with new section 35C of the Act.

7. Any case that has been referred to and is being considered by the Preliminary Proceedings Committee at the date of the coming into force of the new section 35C of this Act shall be dealt with by that Committee in accordance with old section 42 of, and old Schedule 4 to, the Act (including rules made under that Schedule), and—

- (a) if the Committee decides to refer the case for inquiry, it shall be dealt with by a Fitness to Practise Panel; and
- (b) the matter shall thereafter be disposed of by that Panel in accordance with paragraph 10 below.

8.—(1) Any case that has been referred to and is being considered by the Assessment Referral Committee on the date of the coming into force of the new section 35C of the Act shall be dealt with by that Committee in accordance with the rules made under the old paragraph 5A of Schedule 4 to the Act, and if the Committee decide that an assessment needs to be carried out, the matter shall be referred to the Investigation Committee to be dealt with in accordance with the new section 35C of the Act.

(2) Any case that has been referred to but has not yet been considered by the Assessment Referral Committee on the date of the coming into force of the new section 35C of the Act shall be dealt with by a Fitness to Practise Panel in accordance with the rules made under the old paragraph 5A of Schedule 4 to the Act, and if the Panel decide that an assessment needs to be carried out, the matter shall be dealt with thereafter by that Panel in accordance with the rules made under the new paragraph 5A of Schedule 4 to the Act.

9. Any reference in any enactment or instrument to a notification under the new section 35C(5) of the Act of a decision of the Investigation Committee to refer a case to a Fitness to Practise Panel shall be construed as including a reference to a notification under the old section 42(3) of the Act of a decision by the Preliminary Proceedings Committee to refer a practitioner to the Professional Conduct Committee or the Health Committee.

10. Any case which—

- (a) has been referred to the Professional Conduct Committee, the Health Committee or the Committee on Professional Performance but which has not been disposed of on the date of the coming into force of the new section 35D of the Act; or
- (b) is referred to a Fitness to Practise Panel after the coming into force of the new section 35D of the Act in accordance with paragraph 7 above,

shall be disposed of by a Fitness to Practise Panel either in accordance with the old sections 36 to 38 of, and the old Schedule 4 to, the Act (including rules made under that Schedule) or in accordance with the rules made under the old paragraph 5A of Schedule 4 to the Act.

11. Any reference in any enactment (including an enactment comprised in the Act) or instrument to a direction given by a Fitness to Practise Panel shall be construed as including a reference to a corresponding direction made by—

- (a) the Professional Conduct Committee under the old section 36 or 38 of the Act;
- (b) the Health Committee under the old section 37 or 38 of the Act;
- (c) the Committee on Professional Performance under the old section 36A or 38 of, or under rules made under the old paragraph 5A of Schedule 4 to, the Act; or

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- (d) a Fitness to Practise Panel under either the old sections 36 to 38 of, and the old Schedule 4 to, the Act (including rules made under that Schedule) or in accordance with the rules made under the old paragraph 5A of Schedule 4 to the Act.

12. An appeal which relates to a direction or order—

- (a) made under the old sections 36 to 37, 39, 41, 44 or 45 of the Act; or
- (b) which was an appealable decision for the purposes of the old section 40 of the Act,

shall be dealt with in accordance with old section 40 of the Act, except as provided in paragraph 13 below.

13. Where any case would have been remitted under the old section 40(7) of the Act to the Professional Conduct Committee, the Health Committee or the Committee on Professional Performance, that case shall be remitted instead to the Registrar for him to refer it to a Fitness to Practise Panel to be dealt with under the old sections 36 to 38 of, and the old Schedule 4 to, the Act (including rules made under that Schedule) or in accordance with the rules made under the old paragraph 5A of Schedule 4 to the Act.

14.—(1) An application to the court under the old section 38 of the Act shall be dealt with in accordance with the old section 38 of the Act.

(2) An appeal from any direction of the Committee on Professional Performance given by virtue of the old paragraph 5A(3) of Schedule 4 to the Act shall lie to the court and shall be dealt with in accordance with the old paragraph 5A(4) of Schedule 4 to the Act.

15. Where, prior to the coming into force of the new section 35D of the Act—

- (a) a medical practitioner has agreed to an assessment of his professional performance under rules made under the old paragraph 5A of Schedule 4 to the Act; or
- (b) an assessment of a medical practitioner has to be carried out by virtue of a direction given in rules made under the old paragraph 5A of Schedule 4 to the Act,

a Fitness to Practise Panel may not direct in any proceedings relating to that assessment that his name shall be erased under the new section 35D(2) of the Act.

16. In relation to any application under the old section 41 of the Act that has not been determined by the Professional Conduct Committee on the coming into force of article 6(2) of this Order relating to a person—

- (a) who was provisionally registered under the old section 21 but;
- (b) to whom the new section 19(2) does not apply,

the Professional Conduct Committee shall not direct that his name be restored by way of provisional registration under the new section 21 of the Act, but may instead direct that he be registered with limited registration under the new section 22 of the Act.

17. Any application under the old section 41 of the Act that has not been determined by the Professional Conduct Committee on the date of the coming into force of the new section 41 of the Act (whether or not it is brought fully into force) shall be disposed of by a Fitness to Practise Panel in accordance with the old section 41 of, and the old Schedule 4 to, the Act (including any rules made under that Schedule), but if the application relates to a person—

- (a) who was provisionally registered under the old section 21 but;
- (b) but to whom the new section 19(2) does not apply,

a Fitness to Practise Panel shall not direct that his name be restored by way of provisional registration under the new section 21 of the Act, but may instead direct that he be registered with limited registration under the new section 22 of the Act.

18. In relation to any application under the new section 41 of the Act relating to a person—

- (a) who was provisionally registered under the old section 21 but;
- (b) to whom the new section 19(2) does not apply,

a Fitness to Practise Panel shall not direct that his name be restored by way of provisional registration under the new section 21 of the Act, but may instead direct that he be registered with limited registration under the new section 22 of the Act.

19. Any application under the new section 41 of the Act that has not been determined by a Fitness to Practise Panel on the date of the coming into force of the new section 41(7) of the Act shall be disposed of as if that provision were not in force.

20. Any case that is pending before the Interim Orders Committee under the old section 41A(1) or (2) of the Act on the date of the coming into force of the new section 41A of the Act shall be disposed of by an Interim Orders Panel or a Fitness to Practise Panel in accordance with the new section 41A of, and the new Schedule 4 to, the Act (including rules made under that Schedule).

21. Any case that is pending before the Interim Orders Committee, the Professional Conduct Committee, the Health Committee or the Committee on Professional Performance under the old section 41A(3) of the Act on the date of the coming into force of the new section 41A of the Act shall be disposed of by an Interim Orders Panel or a Fitness to Practise Panel in accordance with the new section 41A(3) of, and the new Schedule 4 to, the Act (including rules made under that Schedule).

22. Any application that is pending before the court under the old section 41A(6) of the Act before the date of the coming into force of the new section 41A of the Act shall be disposed of in accordance with the old section 41A of, and the old Schedule 4 to, the Act (including rules made under that Schedule).

23. Where, prior to the coming into force of the new section 41A of the Act, the Professional Conduct Committee, the Health Committee or the Committee on Professional Performance has made an order under the old section 41A(3)(c) or (d) of the Act, a Fitness to Practise Panel may in accordance with the old section 41B of, and the old Schedule 4 to, the Act (including rules made under that Schedule) do any of the things mentioned in old section 41B(2), read with the old section 41B(3), of the Act.

24. Any reference in any enactment (including an enactment comprised in the Act) or instrument to an order made by a Fitness to Practise Panel or an Interim Orders Panel under the new section 41A or 41B of the Act shall be construed as including a reference to an order made under the old section 41A or 41B of the Act by the Interim Orders Committee, the Professional Conduct Committee, the Health Committee or the Committee on Professional Performance or an order made by a Fitness to Practise Panel by virtue of paragraph 23 of this Schedule.

25. Any case that is pending before the Professional Conduct Committee under the old section 44(5) of the Act on the date of the coming into force of the new section 44 of the Act shall be disposed of by a Fitness to Practise Panel in accordance with the new section 44(5) of the Act.

26. Any case that is pending before the Professional Conduct Committee under the old section 45 of the Act on the date of the coming into force of the new section 45 of the Act shall be disposed of by a Fitness to Practise Panel in accordance with the new section 45 of the Act.

27. Any reference in the new section 45(1) of the Act to a finding of a Fitness to Practise Panel shall be construed as including a reference to a finding of a kind referred to in the old section 45(1) (a) or (b) of the Act by the Professional Conduct Committee.

28. The references in the new section 45(3) and (4) of the Act to a prohibition order under the new section 45 of the Act shall be construed as including a reference to a prohibition order imposed under the old section 45(1) of the Act.

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29. For the purposes of the new section 45(6) of the Act, applications made under the old section 45 of the Act for termination of a prohibition order shall be treated as if made under the new section 45 of the Act.

30. For the purposes of the new section 45(8) of the Act, a direction under the new section 45(6) of the Act shall be construed as including a reference to a direction made under the old section 45(6) of the Act.

Miscellaneous

31. A person shall be entitled to recover any charge under the new section 46(1) of the Act notwithstanding that he does not hold a licence to practise if the charge relates to a matter which took place before the commencement of article 12(4) of this Order, and for these purposes the new section 46(3) of the Act shall apply as if the words “and holds a licence to practise” were omitted.

32. A certificate signed by a person who is fully registered but who does not hold a licence to practise shall be valid notwithstanding the new section 48 of the Act if the certificate was signed before the commencement of article 12(6) of this Order.

33. The new section 53(2) of the Act shall apply to an order of the Professional Conduct Committee, the Committee on Professional Performance or the Health Committee under the old section 38 of the Act.

34. Subject to paragraph 35, where—

- (a) proceedings are pending before the Committee on Professional Performance; or
- (b) an appeal against a direction of that Committee is pending,

on the date of the commencement of article 15(6)(c) of this Order in so far as it relates to the definition of “professional performance”, the Committee or the court shall dispose of the proceedings as if that provision, in so far as it relates to the definition of “professional performance”, were not in force.

35. An assessment carried out by virtue of the old paragraph 5A of Schedule 4 to the Act after the coming into force of article 15(6)(c) of this Order in so far as it relates to the definition of “professional performance” may include—

- (a) an assessment of a registered person’s professional performance at any time prior to the assessment; and
- (b) an assessment of the standard of his professional performance at the time of the assessment.

36. In any case where, as a result of the provisions of this Schedule, a direction or order has been made under the old sections 36 to 39, 41, 44 or 45 of the Act, any further consideration of that case otherwise than by way of an appeal shall be dealt with as if the order or direction had been made under the corresponding new sections of the Act.

37. Until the coming into force of the new section 44A(3) of the Act, if registration is refused or if a person’s name is removed from the register in accordance with subsection (1) or (2) of that section—

- (a) the Registrar shall serve notification of the refusal or removal on that person;
- (b) the Registrar shall, on request, state in writing the reasons for the refusal or removal;
- (c) the person may appeal by giving notice to the General Council; and
- (d) any such appeal shall be determined by the General Council or, if the Council have delegated their functions under this paragraph to a committee, by that committee,

and the old paragraph 8 of Schedule 4 to the Act or the new paragraph 8 of Schedule 4 to the Act shall apply to any notification served under sub-paragraph (a) above.

38. The first Regulations made under new section 29A of the Act shall provide, except in prescribed cases or circumstances, that persons who on the date on which any provision of those regulations comes into force are registered under the Act with full or limited registration, shall be granted a licence to practise.