



# National Health Service Reform and Health Care Professions Act 2002

## 2002 CHAPTER 17

### PART 2

#### HEALTH CARE PROFESSIONS

##### *The Council for the Regulation of Health Care Professionals*

#### **25 The Council for the Regulation of Health Care Professionals**

- (1) There shall be a body corporate known as the Council for the Regulation of Health Care Professionals (in this group of sections referred to as “the Council”).
- (2) The general functions of the Council are—
  - (a) to promote the interests of patients and other members of the public in relation to the performance of their functions by the bodies mentioned in subsection (3) (in this group of sections referred to as “regulatory bodies”), and by their committees and officers,
  - (b) to promote best practice in the performance of those functions,
  - (c) to formulate principles relating to good professional self-regulation, and to encourage regulatory bodies to conform to them, and
  - (d) to promote co-operation between regulatory bodies; and between them, or any of them, and other bodies performing corresponding functions.
- (3) The bodies referred to in subsection (2)(a) are—
  - (a) the General Medical Council,
  - (b) the General Dental Council,
  - (c) the General Optical Council,
  - (d) the General Osteopathic Council,
  - (e) the General Chiropractic Council,
  - (f) subject to section 26(5), the Royal Pharmaceutical Society of Great Britain,

*Status: Point in time view as at 02/09/2002. This version of this cross heading contains provisions that are not valid for this point in time.*

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- (g) subject to section 26(6), the Pharmaceutical Society of Northern Ireland,
  - (h) until their abolition by virtue of section 60(3) of the 1999 Act—
    - (i) the United Kingdom Central Council for Nursing, Midwifery and Health Visiting, and each of the National Boards for Nursing, Midwifery and Health Visiting, and
    - (ii) the Council for Professions Supplementary to Medicine and each Board established by or by virtue of the Professions Supplementary to Medicine Act 1960 (c. 66),
  - (i) any regulatory body (within the meaning of Schedule 3 to the 1999 Act) established by an Order in Council under section 60 of that Act as the successor to a body mentioned in paragraph (h), and
  - (j) any other regulatory body (within that meaning) established by an Order in Council under that section.
- (4) Schedule 7 (which makes further provision about the Council) is to have effect.
- (5) “This group of sections” means this section and sections 26 to 29, and includes Schedule 7.
- (6) In this group of sections, references to regulation, in relation to a profession, are to be construed in accordance with paragraph 11(2) and (3) of Schedule 3 to the 1999 Act.

#### Commencement Information

- II** S. 25 wholly in force at 1.4.2003; s. 25 not in force at Royal Assent, see s. 42(3); s. 25 in force for certain purposes at 27.8.2002 and for certain further purposes at 1.12.2002 and in force at 1.4.2003 insofar as not already in force by [S.I. 2002/2202](#), [art. 2](#)

VALID FROM 01/04/2003

#### 26 Powers and duties of the Council: general

- (1) Except as mentioned in subsections (3) to (6), the Council may do anything which appears to it to be necessary or expedient for the purpose of, or in connection with, the performance of its functions.
- (2) The Council may, for example, do any of the following—
- (a) investigate, and report on, the performance by each regulatory body of its functions,
  - (b) where a regulatory body performs functions corresponding to those of another body (including another regulatory body), investigate and report on how the performance of such functions by the bodies in question compares,
  - (c) recommend to a regulatory body changes to the way in which it performs any of its functions.
- (3) The Council may not do anything in relation to the case of any individual in relation to whom—
- (a) there are, are to be, or have been proceedings before a committee of a regulatory body, or the regulatory body itself or any officer of the body, or
  - (b) an allegation has been made to the regulatory body, or one of its committees or officers, which could result in such proceedings.

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- (4) Subsection (3) does not prevent the Council from taking action under section 28 or 29, but action under section 29 may be taken only after the regulatory body's proceedings have ended.
- (5) The Council may not do anything in relation to the functions of the Royal Pharmaceutical Society of Great Britain (or its Council, or an officer or committee of the Society) unless those functions are—
  - (a) conferred on the Society (or its Council, or an officer or committee of the Society) by or by virtue of any provision of the Pharmacy Act 1954 (c. 61), other than section 17 (the benevolent fund),
  - (b) conferred as mentioned in paragraph (a) by, or by virtue of, an Order in Council under section 60 of the 1999 Act, or
  - (c) otherwise conferred as mentioned in paragraph (a) and relate to the regulation of the profession regulated by the Pharmacy Act 1954.
- (6) The Council may not do anything in relation to the functions of the Pharmaceutical Society of Northern Ireland (or its Council, or an officer or committee of the Society) unless those functions are—
  - (a) conferred on the Society (or its Council, or an officer or committee of the Society) by or by virtue of any provision of the Pharmacy (Northern Ireland) Order 1976 (S.I. 1976/1213 (N.I. 22)), other than Article 3(3)(e) (the benevolent functions),
  - (b) conferred as mentioned in paragraph (a) by, or by virtue of, an Order in Council under section 60 of the 1999 Act or an order under section 56 of the Health and Personal Social Services Act (Northern Ireland) 2001 (c. 3) (which makes provision corresponding to section 60 of the 1999 Act), or
  - (c) otherwise conferred as mentioned in paragraph (a) and relate to the regulation of the profession regulated by the Pharmacy (Northern Ireland) Order 1976.
- (7) The Secretary of State, the National Assembly for Wales, the Scottish Ministers or the Department of Health, Social Services and Public Safety in Northern Ireland may ask the Council for advice on any matter connected with a profession appearing to him or them to be a health care profession.
- (8) The Council must comply with such a request.
- (9) In section 60(1) of the 1999 Act (regulation of health care and associated professions), after paragraph (b) there is inserted—
  - “(c) modifying the functions, powers or duties of the Council for the Regulation of Health Care Professionals,
  - (d) modifying the list of regulatory bodies (in section 25(3) of the National Health Service Reform and Health Care Professions Act 2002) in relation to which that Council performs its functions,
  - (e) modifying, as respects any such regulatory body, the range of functions of that body in relation to which the Council performs its functions.”
- (10) In Schedule 3 to the 1999 Act (which makes further provision about orders under section 60 of that Act), in paragraph 7, after sub-paragraph (3) there is inserted—
  - “(4) An Order may not confer any additional powers of direction over the Council for the Regulation of Health Care Professionals.”

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- (11) In subsections (3) and (4), “proceedings”, in relation to a regulatory body, or one of its committees or officers, includes a process of decision-making by which a decision could be made affecting the registration of the individual in question.
- (12) In this section, “health care profession” means a profession (whether or not regulated by or by virtue of any enactment) which is concerned (wholly or partly) with the physical or mental health of individuals.

## 27 Regulatory bodies and the Council

- (1) Each regulatory body must in the exercise of its functions co-operate with the Council.
- (2) If the Council considers that it would be desirable to do so for the protection of members of the public, it may give directions requiring a regulatory body to make rules (under any power the body has to do so) to achieve an effect which must be specified in the directions.
- (3) The Council may give such directions only in relation to rules which must be approved by the Privy Council (whether by order or not) or by the Department of Health, Social Services and Public Safety in Northern Ireland before coming into force.
- (4) The Council must send a copy of any such directions to the relevant authority.
- (5) The relevant authority is the Secretary of State or, if the regulatory body in question is the Pharmaceutical Society of Northern Ireland, the Department of Health, Social Services and Public Safety there.
- (6) The directions do not come into force until the date specified in an order made by the relevant authority.
- (7) The Secretary of State must lay before both Houses of Parliament, or (as the case may be) the Department of Health, Social Services and Public Safety must lay before the Northern Ireland Assembly, a draft of an order—
- (a) setting out any directions he or it receives pursuant to subsection (4), and
  - (b) specifying the date on which the directions are to come into force.
- (8) Subsections (4) to (7) apply also to—
- (a) directions varying earlier directions, and
  - (b) directions revoking earlier directions, and given after—
    - (i) both Houses of Parliament have resolved to approve the draft order specifying the date on which the earlier directions are to come into force, or (as the case may be)
    - (ii) the Northern Ireland Assembly has done so.
- (9) Subsections (4) and (5) apply also to directions—
- (a) revoking earlier directions, but
  - (b) which do not fall within subsection (8)(b),
- but subsections (6) and (7) do not apply to such directions.
- (10) If the Council gives directions which fall within subsection (9), the earlier directions which those directions revoke shall be treated as if subsections (6) and (7) had never applied to them, and as never in force.

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- (11) A regulatory body must comply with directions given under subsection (2) which have come into force and have not been revoked.
- (12) A regulatory body is not to be taken to have failed to comply with such directions merely because a court determines that the rules made pursuant to the directions are to be construed in such a way that the effect referred to in subsection (2) is not achieved.
- (13) The Secretary of State shall make provision in regulations as to the procedure to be followed in relation to the giving of directions under subsection (2).
- (14) The regulations must, in particular, make provision requiring the Council to consult a regulatory body before giving directions relating to it under subsection (2).
- (15) In this section—
  - (a) “making” rules includes amending or revoking rules, and
  - (b) “rules” includes regulations, byelaws and schemes.

#### Commencement Information

- I2** S. 27 wholly in force at 1.4.2003; s. 27 in force for certain purposes at Royal Assent, see s. 42(3); s. 27 in force at 1.4.2003 by [S.I. 2002/2202](#), [art. 2\(3\)\(c\)](#)

## 28 Complaints about regulatory bodies

- (1) The Secretary of State may make provision in regulations about the investigation by the Council of complaints made to it about the way in which a regulatory body has exercised any of its functions.
- (2) The regulations may, in particular, make provision as to—
  - (a) who (or what description of person) is entitled to complain,
  - (b) the nature of complaints which the Council must (or need not) investigate,
  - (c) matters which are excluded from investigation,
  - (d) requirements to be complied with by a person who makes a complaint,
  - (e) the procedure to be followed by the Council in investigating complaints,
  - (f) the making of recommendations or reports by the Council following investigations,
  - (g) the confidentiality, or disclosure, of any information supplied to the Council or acquired by it in connection with an investigation,
  - (h) the use which the Council may make of any such information,
  - (i) the making of payments to any persons in connection with investigations,
  - (j) privilege in relation to any matter published by the Council in the exercise of its functions under the regulations.
- (3) The regulations may also make provision—
  - (a) empowering the Council to require persons to attend before it,
  - (b) empowering the Council to require persons to give evidence or produce documents to it,
  - (c) about the admissibility of evidence,
  - (d) enabling the Council to administer oaths.

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- (4) No person shall be required by or by virtue of regulations under this section to give any evidence or produce any document or other material to the Council which he could not be compelled to give or produce in civil proceedings before the High Court or, in Scotland, the Court of Session.

#### Commencement Information

**I3** S. 28 partly in force; s. 28 in force for certain purposes at Royal Assent, see s. 42(3)

VALID FROM 01/04/2003

## 29 Reference of disciplinary cases by Council to court

(1) This section applies to—

- (a) a direction of the Statutory Committee of the Royal Pharmaceutical Society of Great Britain under section 8 of the Pharmacy Act 1954 (c. 61) (control of registrations by Statutory Committee) or section 80 of the Medicines Act 1968 (c. 67) (power to disqualify and direct removal from register),
- (b) a direction of the Statutory Committee of the Pharmaceutical Society of Northern Ireland under Article 20 of the Pharmacy (Northern Ireland) Order 1976 (S.I. 1976/1213 (N.I. 22)) (control of registrations by Statutory Committee) or section 80 of the Medicines Act 1968,
- (c) a direction by the Professional Conduct Committee of the General Medical Council under section 36 of the Medical Act 1983 (c. 54) (professional misconduct and related offences),
- (d) a direction by the Committee on Professional Performance of the General Medical Council under section 36A of that Act (professional performance),
- (e) a determination by the Professional Conduct Committee of the General Dental Council under section 27 of the Dentists Act 1984 (c. 24) (erasure or suspension of registration for crime or misconduct),
- (f) a disciplinary order made by the Disciplinary Committee of the General Optical Council under section 17 of the Opticians Act 1989 (c. 44) (powers of Disciplinary Committee),
- (g) any step taken by the Professional Conduct Committee of the General Osteopathic Council under section 22 of the Osteopaths Act 1993 (c. 21) (which relates to action to be taken in cases of allegations referred to the Professional Conduct Committee),
- (h) any step taken by the Professional Conduct Committee of the General Chiropractic Council under section 22 of the Chiropractors Act 1994 (c. 17) (which relates to corresponding matters),
- (i) any corresponding measure taken in relation to a nurse, midwife or health visitor,
- (j) any corresponding measure taken in relation to a member of a profession regulated by the Professions Supplementary to Medicine Act 1960 (c. 66) or, after the repeal of that Act by virtue of section 60(3) of the 1999 Act, by any such Order in Council under section 60 of the 1999 Act as is mentioned in section 25(3)(i).

(2) This section also applies to—

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- (a) a final decision of the relevant committee not to take any disciplinary measure under the provision referred to in whichever of paragraphs (a) to (h) of subsection (1) applies,
  - (b) any corresponding decision taken in relation to a nurse, midwife or health visitor, or to any such person as is mentioned in subsection (1)(j) and
  - (c) a decision of the relevant regulatory body, or one of its committees or officers, to restore a person to the register following his removal from it in accordance with any of the measures referred to in paragraphs (a) to (j) of subsection (1).
- (3) The things to which this section applies are referred to below as “relevant decisions”.
- (4) If the Council considers that—
  - (a) a relevant decision falling within subsection (1) has been unduly lenient, whether as to any finding of professional misconduct or fitness to practise on the part of the practitioner concerned (or lack of such a finding), or as to any penalty imposed, or both, or
  - (b) a relevant decision falling within subsection (2) should not have been made, and that it would be desirable for the protection of members of the public for the Council to take action under this section, the Council may refer the case to the relevant court.
- (5) In subsection (4), the “relevant court”—
  - (a) in the case of a person whose address in the register of practitioners in question is (or if he were registered would be) in Scotland, means the Court of Session,
  - (b) in the case of a person whose address in the register of practitioners in question is (or if he were registered would be) in Northern Ireland, means the High Court of Justice in Northern Ireland, and
  - (c) in the case of any other person (including one who is not registered and is not seeking registration or restoration to the register), means the High Court of Justice in England and Wales.
- (6) The Council may not so refer a case after the end of the period of four weeks beginning with the last date on which the practitioner concerned has the right to appeal against the relevant decision.
- (7) If the Council does so refer a case—
  - (a) the case is to be treated by the court to which it has been referred as an appeal by the Council against the relevant decision (even though the Council was not a party to the proceedings resulting in the relevant decision), and
  - (b) the body which made the relevant decision is to be a respondent.
- (8) The court may—
  - (a) dismiss the appeal,
  - (b) allow the appeal and quash the relevant decision,
  - (c) substitute for the relevant decision any other decision which could have been made by the committee or other person concerned, or
  - (d) remit the case to the committee or other person concerned to dispose of the case in accordance with the directions of the court,and may make such order as to costs (or, in Scotland, expenses) as it thinks fit.

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