

2006 No. 1671

HEALTH CARE AND ASSOCIATED PROFESSIONS

DENTISTS

PROFESSIONS COMPLEMENTARY TO DENTISTRY

**The Dentists Act 1984 (Amendment) Order 2005 Transitional
Provisions Order of Council 2006**

<i>Made</i> - - - -	<i>23rd June 2006</i>
<i>Laid before Parliament</i>	<i>29th June 2006</i>
<i>Coming into force</i> -	<i>31st July 2006</i>

At the Council Chamber, Whitehall, the 23rd day of 2006

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

Their Lordships make the following Order in exercise of the powers conferred by article 50(2) of the Dentists Act 1984 (Amendment) Order 2005(a).

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Dentists Act 1984 (Amendment) Order 2005 Transitional Provisions Order of Council 2006 and shall come into force on 31st July 2006.

(2) In this Order—

“the 1984 Act” means the Dentists Act 1984(b);

“the 1984 Rules” means the General Dental Council Professional Conduct Committee (Procedure) Rules 1984(c), as in force on 30th July 2006;

“the 1986 Regulations” means the Dental Auxiliaries Regulations 1986(d), as in force on 30th July 2006;

“the 2002 Act” means the National Health Service Reform and Health Care Professions Act 2002(e);

“the 2003 CPD Rules” means the General Dental Council Continuing Professional Development Rules 2003(f);

(a) S.I. 2005/2011.

(b) 1984 c.24.

(c) Scheduled to S.I. 1984/1517.

(d) S.I. 1986/887.

(e) 2002 c.17.

(f) Made on 4th December 2003 and available from the General Dental Council, 37 Wimpole Street, London W1G 8DQ.

“the 2003 Procedure Rules” means the General Dental Council Continuing Professional Development Committee (Procedure) Rules 2003(a), as in force on 30th July 2006; and

“the 2005 Order” means the Dentists Act 1984 (Amendment) Order 2005.

(3) In this Order—

- (a) references to sections or Schedules are, unless the context otherwise requires, references to sections of or Schedules to the 1984 Act;
- (b) where reference is made to an old section of or Schedule to the 1984 Act, that reference is to that section or Schedule as in force before any amendment, repeal or substitution by the 2005 Order;
- (c) where reference is made to a new section of or Schedule to the 1984 Act, that reference is to that section or Schedule as inserted, amended or substituted by the 2005 Order;
- (d) where reference is made by title to a committee, that reference is to the committee of the General Dental Council with that title; and
- (e) where reference is made to “the registrar”—
 - (i) that reference is to the person appointed under section 14(2) (the dentists register and the registrar), and
 - (ii) if the reference is in the context of a function that may be performed by another person on the registrar’s behalf by virtue of the new section 14(5), that reference is also to any person who may perform that function on behalf of the registrar by virtue of the new section 14(5).

(4) Notwithstanding the amendment or substitution of an old section in or Schedule to the 1984 Act that is mentioned in this Order, that old section or Schedule shall continue to apply for the purposes of the matters set out in this Order (in addition to any reason for which it continues to apply by virtue of Schedule 7 to the 2005 Order (transitional provisions)).

(5) Notwithstanding that the 1984 Rules and the 1986 Regulations have ceased to have effect by virtue of the repeal of their enabling powers, and the partial repeal of the enabling powers for the 2003 Procedure Rules, those Rules and Regulations shall continue to apply for the purposes of the matters set out in this Order (in addition to any reason for which they continue to apply by virtue of Schedule 7 to the 2005 Order).

Transitional provisions relating to fraud and error cases

2.—(1) If, before 31st July 2006, a case (other than a restoration case) as to whether an entry in the dentists register has been incorrectly made has been referred to the General Dental Council—

- (a) the General Dental Council shall continue to deal with the case; and
- (b) the case shall be dealt with under the old section 24 (erasure on grounds of fraud or error) (all other error cases being dealt with by the registrar under the new section 24).

(2) If, before 31st July 2006, a case (other than a restoration case) as to whether an entry in the dentists register had been fraudulently made has been referred to the Professional Conduct Committee—

- (a) if the inquiry into that case has already commenced, that case shall be dealt with by the Professional Conduct Committee under the old section 24 and the 1984 Rules; or
- (b) if the inquiry into that case has not already commenced, that case shall be dealt with by the Professional Conduct Committee under the new section 24, but subject to such modifications of the rules of procedure of that Committee to take account of the state of the proceedings relating to that case as the Committee consider necessary or expedient.

(3) If, before 31st July 2006, a person has applied under the old section 24(2) to have his name restored to the dentists register, that application shall be dealt with by the General Dental Council, and thereafter by the Professional Conduct Committee, under the old section 24 and the 1984

(a) Scheduled to S.I. 2004/68.

Rules (and accordingly shall not give rise to a decision that is appealable under the new section 29).

(4) If, on or after 31st July 2006, a person whose name was erased from the dentists register under the old section 24 applies to have his name restored to the register, that application shall be referred to the Professional Conduct Committee for determination by them under the new section 24(6), and—

- (a) for these purposes, the new section 24(6) shall apply as if the reference to an application referred under section 24(5) also included reference to an application referred by virtue of this paragraph; and
- (b) the application shall be refused if it is for registration within a period specified in a direction under the old section 24(2).

Transitional provisions relating to old cases of suspension, erasure or conditional registration

3.—(1) Where—

- (a) a determination under the old section 27 (erasure or suspension of registration for crime or misconduct); or
- (b) a direction under the old section 28 (powers of Health Committee),

to suspend a person has taken effect by virtue of the old section 30 (time when determinations and directions normally take effect and orders for immediate suspension), whether or not that decision was taken before 31st July 2006 or by virtue of the transitional provisions set out in this Order and Schedule 7 to the 2005 Order (transitional provisions), that suspension shall, for the purposes of the new section 27C (resumed hearings) be treated as a suspension directed in a direction of the relevant Practice Committee under the new section 27B(6)(b) (the Practice Committees).

(2) Where a determination under the old section 27 to erase a person has taken effect by virtue of the old section 30, whether or not that determination was made before 31st July 2006 or by virtue of the transitional provisions set out in this Order and Schedule 7 to the 2005 Order—

- (a) that erasure shall, for the purposes of the new section 28 (restoration of names to the register following erasure under the new section 27B) be treated as an erasure directed in a direction of the Professional Conduct Committee under the new section 27B(6)(a); and
- (b) as regards any case to which this paragraph applies, the new section 28(2)(a) shall apply as if for “five years” there were substituted “ten months”.

(3) Where a direction under the old section 28 that a person’s registration be conditional upon his compliance with specified conditions has taken effect by virtue of the old section 30, whether or not that direction was given before 31st July 2006 or by virtue of the transitional provisions set out in this Order and Schedule 7 to the 2005 Order, the conditions to which his registration is subject shall, for the purposes of the new section 27C (resumed hearings) be treated as conditions imposed by the Health Committee in a direction under the new section 27B(6)(c).

Transitional provisions relating to the time when directions and determinations normally take effect and to orders for immediate suspension

4. Notwithstanding the substitution of section 30 (which relates to orders for immediate suspension etc.)—

- (a) any order for immediate suspension made before 31st July 2006 under the old section 30(3) shall continue to have effect as an order for immediate suspension under the old section 30; and
- (b) if a case is dealt with under the old sections 27 (erasure or suspension of registration for crime or misconduct), 28 (powers of Health Committee) or 29 (appeals) by virtue of this Order or Schedule 7 to the 2005 Order (transitional provisions), the old section 30 shall continue to apply as regards that case,

and accordingly, the old section 30 shall continue to apply as regards orders for immediate suspension that either continue by virtue of paragraph (a) or are made by virtue of paragraph (b).

Transitional provisions relating to orders for interim suspension

5.—(1) Notwithstanding the substitution of section 32 (which relates to interim orders etc.), any order for interim suspension made by the Preliminary Proceedings Committee before 31st July 2006 under the old section 32 shall continue to have effect as an interim suspension order made under the new section 32, except that—

- (a) where, before 31st July 2006, an application has been made to a court for an order terminating the original order for interim suspension—
 - (i) that application shall be defended as appropriate by the General Dental Council and disposed of by the court in accordance with the old sections 30(6) and (7) (time when determinations and directions normally take effect and orders for interim suspension) and 32(8), and
 - (ii) the decision of the court made as a result of that application is not subject to review under the new section 32;
- (b) the period of the interim suspension order (subject to the outcome of any review) shall be—
 - (i) the period specified in the original order for interim suspension (it will be due to expire when the case is determined by the Professional Conduct Committee), or
 - (ii) eighteen months from the date of the substitution of section 32,whichever expires the sooner;
- (c) except where paragraph (d) applies, the Committee responsible for reviewing the order and any subsequent changes to it shall be the Interim Orders Committee;
- (d) any review of the original order for interim suspension which had been begun by the Preliminary Proceedings Committee under the old section 32 but which had not been completed before 31st July 2006 shall be completed by the Preliminary Proceedings Committee in accordance with the old section 32 (sub-paragraph (c) shall apply to any subsequent reviews); and
- (e) the first review of the order by the Interim Orders Committee under the new section 32 shall be not more than six months from—
 - (i) if the order was never reviewed by the Preliminary Proceedings Committee under the old section 32, the date the order was first made, or
 - (ii) the date of the last review of the order by the Preliminary Proceedings Committee under the old section 32.

(2) Where a person has been afforded the opportunity of appearing before the Preliminary Proceedings Committee pursuant to the old section 32(3) and the hearing started before 31st July 2006 but the Committee has not, prior to 31st July 2006, reached a decision on whether or not to make an order in respect of that person in accordance with the old section 32—

- (a) the Preliminary Proceedings Committee shall proceed to decide the matter in accordance with the old section 32; and
- (b) if an order for interim suspension is made by the Committee pursuant to the old section 32(1) pursuant to this paragraph, that order shall, once made, continue to have effect as an interim suspension order made under the new section 32, except that—
 - (i) the period of the interim suspension order (subject to the outcome of any review) shall be the period specified in the order or eighteen months from the date of making the order, whichever expires the sooner,
 - (ii) the Committee responsible for reviewing the order and any subsequent changes to it shall be the Interim Orders Committee, and

- (iii) the first review of the order by the Interim Orders Committee under the new section 32 shall be not more than six months from the date the original order for interim suspension was made.

(3) Where, prior to 31st July 2006, a person has been afforded the opportunity of appearing before the Preliminary Proceedings Committee pursuant to the old section 32(3) but the hearing has not started before 31st July 2006—

- (a) the issue of whether or not to make an interim order in respect of that person shall be referred to the Interim Orders Committee (and so shall not be decided by the Preliminary Proceedings Committee under the old section 32); and
- (b) the Interim Orders Committee shall proceed to decide that issue in accordance with the new section 32, and for these purposes the new section 32(2) shall apply as if after “referred to them” there were inserted “under article 5 of the Dentists Act 1984 (Amendment) Order 2005 Transitional Provisions Order of Council 2006 or”.

(4) Where a case is to be dealt with by the Preliminary Proceedings Committee by virtue of paragraph 4 of Schedule 7 to the 2005 Order but the person against whom an allegation has been made has not, prior to 31st July 2006, been afforded the opportunity to appear before the Preliminary Proceedings Committee, if the registrar determines that it is appropriate for the Interim Orders Committee to consider whether or not to make an interim order in respect of him—

- (a) the issue of whether or not to make an interim order in respect of that person shall be referred by the registrar to the Interim Orders Committee (and so shall not be determined by the Preliminary Proceedings Committee under the old section 32); and
- (b) the Interim Orders Committee shall proceed to decide that issue in accordance with the new section 32, and for these purposes the new section 32(2) shall apply as if after “referred to them” there were inserted “under article 5 of the Dentists Act 1984 (Amendment) Order 2005 Transitional Provisions Order of Council 2006 or”.

(5) The Preliminary Proceedings Committee that continues in being by virtue of paragraph 2 of Schedule 7 to the 2005 Order (transitional provisions) shall, in addition to continuing in being for the purpose of exercising their functions under that Schedule, continue in being for the purpose of exercising their functions under this article.

Transitional provisions relating to the abolition of the Continuing Professional Development Committee

6.—(1) Pending the coming into force of the new sections 34A and 34B (which relate to professional training and development requirements, including with regard to restoration of names to the register) and the repeal of Schedule 3A (continuing professional development cases)—

- (a) the old section 29 (appeals) shall continue to apply, notwithstanding its amendment by virtue of article 19 of the 2005 Order, as regards persons notified under the old paragraph 3 of Schedule 3A; and
- (b) subject to paragraph (2), where reference is made in—
 - (i) the 2003 CPD Rules,
 - (ii) the 2003 Procedure Rules, or
 - (iii) the old sections 29, 34A and 34B and Schedule 3A,to the Continuing Professional Development Committee, that reference shall be construed as a reference to the Registration Appeals Committee.

(2) As regards any appeal for the purposes of the 2003 Procedure Rules for which the appeal hearing has already been convened before 31st July 2006 (including an appeal where the appeal hearing has begun but has been adjourned), where reference is made in—

- (a) the 2003 CPD Rules;
- (b) the 2003 Procedure Rules; or
- (c) the old sections 29, 34A and 34B and Schedule 3A,

to the Continuing Professional Development Committee, that reference shall, subject to paragraph (3), continue to be construed as a reference to the Continuing Professional Development Committee.

(3) Where a court proposes to exercise its functions under the old section 29(3)(d) of remitting a case which, by virtue of paragraph (2), it is considering on appeal from the Continuing Professional Development Committee—

- (a) the old section 29(3)(d) shall apply as if the reference in it to the Continuing Professional Development Committee were a reference to the Registration Appeals Committee; and
- (b) once remitted to the Registration Appeals Committee, for the purposes of disposing of the case, the old Schedule 3A shall apply as if the references in it to the Continuing Professional Development Committee were references to the Registration Appeals Committee.

(4) Where a notice of the registrar's decision or a notice of appeal refers to the Continuing Professional Development Committee but it should, by virtue of this article, have referred to Registration Appeals Committee, that notice shall be treated as referring to the committee to which it should, by virtue of this article, refer.

(5) The Continuing Professional Development Committee established under the old section 2 (Committees of the Council) shall continue in being after article 4(2) of the 2005 Order (amendment of section 2) comes into force for the purposes of exercising the functions that they have by virtue of this article.

Transitional provisions relating to cases already under consideration under section 35

7. Where, before 31st July 2006, the registrar has refused registration or erased a person's name from the dentists register under the old section 35 (effect on registration of disqualification in another member State)—

- (a) that case shall be dealt with in accordance with the old section 35 by the registrar, the General Dental Council and the Professional Conduct Committee, and any appeal shall be disposed of by the courts, in accordance with the 1984 Rules and the old sections 27 (erasure or suspension of registration for crime or misconduct), 29 (appeals), 30 (time when determinations and directions normally take effect and orders for immediate suspension), 35 and Schedule 3 (professional conduct and health cases); and
- (b) if an order is made by the Professional Conduct Committee in accordance with the old section 30(3) pursuant to paragraph (a), that order shall, once made, be treated for the purposes of article 4 as an order made under the old section 30(3) before 31st July 2006.

Transitional provisions relating to section 41

8.—(1) Notwithstanding the substitution of subsection (2) of the old section 41 (restriction on individuals) by virtue of article 37 of the 2005 Order (amendment of section 41), the old section 41(2) shall continue to apply to a person who has ceased to be a registered dentist in consequence of a determination under the old section 27 to erase his name from the register, or suspend his registration in the register, whether or not that determination was made before 31st July 2006 or by virtue of the transitional provisions set out in this Order and Schedule 7 to the 2005 Order (transitional provisions).

(2) Notwithstanding the substitution of the old section 41(3) by virtue of article 37 of the 2005 Order, the old section 41(3) shall continue to apply to a person whose registration in the register is suspended by virtue of a direction or order specified in the old section 41(3), whether or not that direction or order was made before 31st July 2006 or by virtue of the transitional provisions set out in this Order and Schedule 7 to the 2005 Order.

Transitional provisions relating to the appointment of visitors

9. Notwithstanding the repeal of section 45 (establishment by Council of classes of dental auxiliaries) by virtue of article 40 of the 2005 Order (repeal of Part 5), any person—

- (a) appointed under regulation 8 of the 1986 Regulations (which relates to the appointment of visitors to places providing courses of instruction or to attend examinations)—
 - (i) as a visitor to visit places where instruction is given, and
 - (ii) whose appointment has not been rescinded prior to the coming into force of the new section 36D(a) (education and training for members of professions complementary to dentistry),
 shall be treated as a person appointed under rules made under the new section 36D(6) on and after the coming into force of that section;
- (b) appointed under regulation 8 of the 1986 Regulations—
 - (i) to visit examinations, and
 - (ii) whose appointment has not been rescinded prior to the coming into force of the new section 36D,
 shall be treated as a person appointed under rules made under the new section 36D(7) on and after the coming into force of that section; or
- (c) appointed under regulation 8 of the 1986 Regulations—
 - (i) as a visitor to visit places where instruction is given and to visit examinations, and
 - (ii) whose appointment has not been rescinded prior to the coming into force of the new section 36D,
 shall be treated as a person appointed both under rules made under the new section 36D(6) and under rules made under the new section 36D(7) on and after the coming into force of those sections.

Transitional provisions relating to the abolition of the Dental Auxiliaries Committee

10.—(1) Any function that the Dental Auxiliaries Committee exercise by virtue of paragraph 22 of Schedule 7 to the 2005 Order (transitional provisions) may be exercised by a sub-committee appointed by that Committee.

(2) Accordingly, where reference is made in the legislation that continues to apply by virtue of paragraph 22 of Schedule 7 to the 2005 Order to the Dental Auxiliaries Committee, that legislation shall apply as if that reference were also to a sub-committee of that Committee.

(3) Where the Dental Auxiliaries Committee (or one of their sub-committees) are dealing with a case under the 1986 Regulations pursuant to paragraph 22 of Schedule 7 to the 2005 Order, they shall apply those Regulations with such modifications as they consider necessary or expedient to take account of the closure of the rolls of dental hygienists and dental therapists and their replacement by the dental care professionals register.

(4) Accordingly—

- (a) they may erase a person’s name from the dental care professionals register, pursuant to the 1986 Regulations; and
- (b) where a case is remitted to them by a court, and the court directs they deal with the case in a manner which requires modifications to the 1986 Regulations, they must deal with the case in accordance with the 1986 Regulations, modified as required.

(5) The Dental Auxiliaries Committee that continues in being by virtue of paragraph 20 of Schedule 7 to the 2005 Order, and sub-committees of that Committee, shall in addition to having the functions conferred by virtue of paragraph 20 have the functions conferred by virtue of this article.

(a) Section 36D was inserted by S.I. 2005/2011.

Continuing functions of the Council for the Regulation of Health Care Professionals

11. Notwithstanding the substitution of paragraph (e) of section 29(1) of the 2002 Act (reference of disciplinary cases by Council to court) by virtue of paragraph 4 of Schedule 6 to the 2005 Order (minor and consequential amendments), section 29 of the 2002 Act shall continue to apply to any determination of the Professional Conduct Committee under the old section 27 (erasure or suspension of registration for crime or misconduct), whether such a determination was made before 31st July 2006 or by virtue of the transitional provisions set out in this Order and Schedule 7 to the 2005 Order (transitional provisions).

A.K. Galloway
Clerk of the Privy Council

EXPLANATORY NOTE

(This note is not part of the Order)

This Order contains transitional provisions relating to the new arrangements for the regulation of dentists and dental care professionals included in the Dentists Act 1984 (Amendment) Order 2005. These transitional provisions supplement the transitional provisions set out in Schedule 7 to that Order.

Article 2 sets out the arrangements for dealing with fraud and error cases relating to registration in the dentists register which are ongoing when the new arrangements come into force. Old cases which have already been referred to the General Dental Council (GDC) or their Professional Conduct Committee will continue to be dealt with in accordance with the old arrangements.

Articles 3 to 5 ensure that determinations, directions and orders relating to suspension (including temporary suspension) or erasure from, or conditional registration in, the dentists register under the old arrangements continue to have effect, with measures for moving old cases to the new system.

Article 6 sets out measures for concluding the work of the GDC's Continuing Professional Development Committee, which is being abolished: much of its existing case work will be taken on by the GDC's new Registration Appeals Committee.

Article 7 deals with outstanding erasure or suspension cases relating to disqualification in another Member State of the European Economic Area or Switzerland: generally, these cases will be disposed of under the old arrangements.

Article 8 ensures that the restrictions on individuals carrying on the business of dentistry will continue to apply to individuals who are or were suspended or erased from the dentists register under the old arrangements.

Articles 9 and 10 contain transitional provisions that relate to the new arrangements for the registration of dental care professionals, which include arrangements enabling sub-committees of the Dental Auxiliaries Committee (which is being abolished) to conclude cases and provisions ensuring that visitors appointed under the old arrangements remain in post under the new arrangements.

Article 11 ensures that the Council for the Regulation of Health Care Professions will continue to be able to review the outstanding misconduct or crime cases before the GDC's Professional Conduct Committee which are being disposed of under the old arrangements.

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