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STATUTORY INSTRUMENTS

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**2007 No. 289**

**The Pharmacists and Pharmacy Technicians Order 2007**

**PART 6**

**Proceedings**

**Rules in respect of proceedings**

**59.**—(1) Subject to the following provisions of this Part, the Council shall make such provision in rules in connection with the procedure to be followed and rules of evidence to be observed by—

- (a) the Registration Appeals Committee; and
- (b) fitness to practise committees (whether exercising functions under this Order or the Medicines Act 1968),

as it considers appropriate.

(2) The rules under paragraph (1) above in respect of the Health Committee, the Disciplinary Committee or the Registration Appeals Committee shall, and in respect of the Investigating Committee may, include provision—

- (a) for securing that, where a hearing is to be held, notice of when and where the hearing is to be held is given, at such time and in such manner as may be specified in the rules, to any person to whom the proceedings relate;
- (b) for securing that the person concerned (which, for the purposes of this article, where appropriate, includes an individual who, or body corporate which, is subject to disqualification proceedings under Part 4 of the Medicines Act 1968) and the Society shall, if they so require, be entitled to be heard by the committee—
  - (i) at any hearing, or
  - (ii) in fitness to practise proceedings, on any other occasion when the committee is considering making an interim suspension order or an order for interim conditional registration;
- (c) for enabling the person concerned and the Society to be represented at the hearing, or in fitness to practise proceedings on any other occasion when the committee is considering making an interim suspension order or an order for interim conditional registration, by—
  - (i) a person with a general qualification (within the meaning of section 71 of the Courts and Legal Services Act 1990),
  - (ii) an advocate in Scotland, or a solicitor with rights of audience to appear in the Court of Session or the High Court of Justiciary by virtue of section 25A of the Solicitors (Scotland) Act 1980<sup>(1)</sup> (rights of audience in the Court of Session etc.), or

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<sup>(1)</sup> Section 25A was inserted by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c.40), section 24, and has been amended by: the Criminal Procedure and Consequential Provisions (Scotland) Act 1995 (c.40), Schedule 4, paragraph 1; S.I. 1999/1042; and S.S.I. 2000/121.

- (iii) a person of such other description as may be specified in rules, if the rules so allow and the person concerned or the Society so elects;
  - (d) for proceedings before the committee to be held in public, except and to the extent that rules provide otherwise; and
  - (e) in respect of reviewing directions under article 51 or 52—
    - (i) which are due to expire, or
    - (ii) in circumstances where the committee is considering varying the requirements specified in the direction.
- (3) The rules under paragraph (1) may include provision—
- (a) in respect of the preliminary consideration of a case before a committee (including considering representations from the person concerned and the Society during its preliminary consideration);
  - (b) following preliminary consideration of a case—
    - (i) in the case of an appeal before the Registration Appeals Committee, allowing the Committee, in prescribed circumstances, to allow the appeal or take a decision that has the effect of allowing the appeal,
    - (ii) in fitness to practise proceedings, allowing the committee, in prescribed circumstances, to make a finding that the person concerned's fitness to practise is not impaired, and
    - (iii) in disqualification proceedings, allowing the Disciplinary Committee, in prescribed circumstances, to dismiss the case;
  - (c) in respect of consensual disposal of a fitness to practise case following preliminary consideration of it, including provision—
    - (i) enabling a fitness to practise committee, in such circumstances as may be specified in the rules, to agree with the person concerned that he will comply with such undertakings as the committee considers appropriate, and
    - (ii) with respect to the procedure to be followed where any such undertakings are breached (the rules may provide that the breach may be treated as misconduct for the purposes of article 48(1)(a) and for the matter to be dealt with as a misconduct allegation that is before the committee);
  - (d) in respect of consensual disposal of a disqualification case following preliminary consideration of it, including provision—
    - (i) enabling the Disciplinary Committee, in such circumstances as may be specified in the rules, to agree with the individual or body corporate that he or it will comply with such undertakings as the Committee considers appropriate, and
    - (ii) with respect to the procedure to be followed where any such undertakings are breached;
  - (e) in respect of case management meetings (and the rules may provide that the preliminary consideration of a case is to take place at a case management meeting) and directions, including provision with respect to the procedure to be followed where case management directions are breached;
  - (f) in respect of cancelling, postponing or adjourning hearings and staying proceedings in appropriate circumstances;
  - (g) enabling the Disciplinary Committee to refer a fitness to practise case before it to the Health Committee, in such circumstances as may be prescribed—
    - (i) for advice, or

- (ii) for the Health Committee to dispose of the case;
  - (h) enabling the Health Committee to refer a case before it to the Disciplinary Committee, in such circumstances as may be prescribed—
    - (i) for advice, or
    - (ii) for the Disciplinary Committee to dispose of the case;
  - (i) enabling the Registration Appeals Committee to refer a case before it to a fitness to practise committee for advice;
  - (j) enabling the committee to draw such inference as seems appropriate to it in the particular circumstances of the case if the person concerned fails—
    - (i) during fitness to practise proceedings, to submit to any examination or assessment required or directed to be carried out in accordance with rules made under this article or article 53, or
    - (ii) to co-operate with the committee;
  - (k) enabling the committee, at any time during the course of proceedings, to make such inquiries as it considers appropriate;
  - (l) enabling the Disciplinary Committee, following consideration of a disqualification case, instead of issuing a direction under section 80 of the Medicines Act 1968 (disqualification, and removal of persons from the register)—
    - (i) to agree with the individual or body corporate that he or it will comply with such undertakings as the Committee considers appropriate, and the rules may include provision with respect to the procedure to be followed where any such undertakings are breached, and
    - (ii) to dispose of the matter by way of a reprimand or a warning; and
  - (m) for the award of, and in respect of the assessment of, costs or expenses, and may require the committee to have regard to a person's ability to pay when considering the making of an award against him under the rules.
- (4) An award of costs may, by leave of the High Court, be enforced in the same manner as an order of the High Court to the same effect.
- (5) An award of expenses may, by leave of the Court of Session, be enforced in the same manner as a decree of the Court of Session to the same effect.
- (6) The rules under paragraph (1) above may make provision—
- (a) as to the form which is to be used for any document (and may provide that specified documents are to be in such form as the Council may determine from time to time); and
  - (b) for documents and certificates to be sent or received as an electronic communication.