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STATUTORY INSTRUMENTS

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**2010 No. 231**

**The Pharmacy Order 2010**

**PART 6**

Fitness to practise

**Standards of conduct and performance**

**48.**—(1) The Council must—

- (a) set standards relating to the conduct, ethics and performance expected of registrants; and
- (b) make provision in rules regarding the criteria to which the Fitness to Practise Committee is to have regard when deciding, in the case of any registrant, whether or not the requirements as to fitness to practise are met in relation to that registrant.

(2) The Council must publish the standards set under this article, as they exist from time to time, in such manner as it considers appropriate.

(3) Where any registrant is alleged to have failed to comply with standards set under this article, that failure—

- (a) is not, of itself, to be taken to constitute misconduct on the registrant's part; but
- (b) is to be taken into account in any proceedings against the registrant under this Order.

**Disclosure of information: general**

**49.**—(1) For the purpose of assisting the Council (including its staff and its committees) in carrying out functions in respect of the fitness to practise of a registrant, or of assisting the Registrar in carrying out functions in respect of identifying any person entered in the Register by virtue of article 34(1)(b), a person authorised by the Council may require—

- (a) a registrant (except the registrant in respect of whom the information or document is sought); or
- (b) any other person,

who, in the opinion of the authorised person, is able to supply information or produce any document which appears to be relevant to the discharge of any such function, to supply the information or produce the document.

(2) Nothing in paragraph (1) requires or permits—

- (a) any disclosure of information which is prohibited by or under any enactment, but where that prohibition arises because the information is in a form which allows for the identification of an individual, the person authorised by the Council may require that information to be put in a form which does not allow for the identification of that individual; or
- (b) the supplying of information or production of a document which a person could not be compelled to produce in civil proceedings in the High Court or the Court of Session under article 58 .

(3) In determining, for the purposes of paragraph (2)(a), whether a disclosure of personal data is prohibited, it is to be assumed, for the purposes of section 35(1) of the Data Protection Act 1998<sup>(1)</sup> (disclosures required by law or made in connection with legal proceedings etc.), that the disclosure of personal data is required by paragraph (1).

(4) If a person fails to supply any information or to produce any document within 14 days of being required to do so under paragraph (1), or within such longer period as the Council in the circumstances of a particular case may allow, the Council may seek an order of the relevant court requiring the information to be supplied or the document to be produced.

(5) For the purposes of this article, the “relevant court” means—

- (a) in a case where the person in respect of whom the information or document is sought is domiciled in Scotland, the sheriff in whose sheriffdom that person is domiciled; and
- (b) in any other case, the county court (the Central London County Court if the person in respect of whom the information or document is sought is not domiciled in Great Britain).

### **Disclosure of fitness to practise matters in the public interest**

**50.**—(1) The Council may, if it considers it to be in the public interest to do so, publish or disclose to any person—

- (a) information which relates to a particular pharmacist’s or pharmacy technician’s fitness to practise, whether the matter to which the information relates arose before or after the entry in the Register of that pharmacist or pharmacy technician, or arose in Great Britain or elsewhere; or
- (b) information of a particular description related to fitness to practise in relation to every pharmacist or pharmacy technician, or to every pharmacist or pharmacy technician of a particular description.

(2) For the purposes of paragraph (1)(b), the Council need not consider whether it is in the public interest to publish or disclose the information in question in relation to each individual pharmacist or pharmacy technician to whom it relates.

### **Impairment of fitness to practise**

**51.**—(1) A person’s fitness to practise is to be regarded as “impaired” for the purposes of this Order only by reason of—

- (a) misconduct;
- (b) deficient professional performance (which includes competence);
- (c) adverse physical or mental health which impairs their ability to practise safely and effectively or which otherwise impairs their ability to carry out the duties of a pharmacist or a pharmacy technician in a safe and effective manner;
- (d) failure to comply with a reasonable requirement imposed by an individual assessor or an assessment team in connection with carrying out a professional performance assessment;
- (e) a conviction in the British Islands for a criminal offence;
- (f) a conviction elsewhere than in the British Islands for an offence which, if committed in England, Wales or Scotland, would constitute a criminal offence;
- (g) an order under section 246(2) or (3) of the Criminal Procedure (Scotland) Act 1995<sup>(2)</sup> discharging the person absolutely (admonition and absolute discharge);

(1) 1998 c.29.

(2) 1995 c.46.

- (h) having accepted a conditional offer under section 302 of the Criminal Procedure (Scotland) Act 1995(3) (fixed penalty: conditional offer by procurator fiscal);
  - (i) having agreed to pay a penalty under section 115A of the Social Security Administration Act 1992(4) (penalty as alternative to prosecution);
  - (j) a police caution in the British Islands;
  - (k) having agreed to be bound over to keep the peace by a magistrates' court in England or Wales;
  - (l) a determination made by a regulatory body in the United Kingdom responsible under any enactment for the regulation of a health or social care profession to the effect that the person's fitness to practise as a member of a profession regulated by that body is impaired, or a determination by a regulatory body elsewhere to the same effect;
  - (m) the Independent Barring Board including the person in a barred list (within the meaning of the Safeguarding Vulnerable Groups Act 2006(5) or the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007(6)); or
  - (n) the Scottish Ministers including the person in the children's list or the adults' list (within the meaning of the Protection of Vulnerable Groups (Scotland) Act 2007(7)).
- (2) The demonstration towards a patient or customer, or a prospective patient or customer, by a pharmacist or pharmacy technician of attitudes or behaviour from which that person can reasonably expect to be protected may be treated as misconduct for the purposes of paragraph (1)(a).
- (3) References in this article to a conviction include a conviction by court martial.
- (4) A person's fitness to practise may be regarded as impaired because of matters arising—
- (a) outside Great Britain; and
  - (b) at any time.
- (5) The Council may make such provision in rules as it considers appropriate in connection with the information to be provided to the Registrar by a registrant about fitness to practise matters that arise while the registrant is entered in any part of the Register.
- (6) If a registrant fails to comply with rules under paragraph (5), the failure may be treated as misconduct for the purposes of paragraph (1)(a) and the Registrar must consider, in accordance with article 52(1), whether or not to refer the matter to the Investigating Committee or (where rules under article 52(1) so provide) the Fitness to Practise Committee.

### **Initial action in respect of allegations**

**52.**—(1) Where—

- (a) an allegation is made to the Council against a registrant that the registrant's fitness to practise is impaired; or
- (b) the Council has information that calls into question a registrant's fitness to practise, even though no allegation to that effect has been made to the Council,

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(3) Section 302 was amended by section 406(1) of and Schedule 17, paragraph 133(1) and (2) to, the Communications Act 2003 (c.21), by paragraph 16 of Schedule 7 to the Wireless Telegraphy Act 2006 (c.36) and by section 50(1) of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6).

(4) 1992 c.5. Section 115A was inserted by section 60 of the Social Security Administration (Fraud) Act 1997 (c.47) and amended by section 14 of the Social Security Fraud Act 2001 (c.11).

(5) 2006 c.47.

(6) S.I.2007/1351 (N.I.11).

(7) 2007 asp14.

the Registrar must, except in such cases and subject to such considerations as the Council may prescribe, refer the matter (referred to in this article as “the allegation”) to the Investigating Committee.

- (2) Rules under paragraph (1) may provide for—
  - (a) an allegation not to be referred where it is of a type that the Council has stated in threshold criteria, which it has published and which it may amend from time to time, should not be referred; and
  - (b) an allegation to be referred, in prescribed cases, directly by the Registrar to the Fitness to Practise Committee.
- (3) Where the Registrar—
  - (a) refers an allegation directly to the Fitness to Practise Committee under rules made by virtue of paragraph (2)(b); and
  - (b) is of the opinion that the Fitness to Practise Committee should consider making an interim order under article 56,

the Registrar must notify the Committee accordingly.

(4) Where the Registrar refers an allegation to the Fitness to Practise Committee under rules made by virtue of paragraph (2)(b), the Registrar must inform the registrant who is the subject of the allegation and the person, if any, who made the allegation of that decision.

(5) Once a decision has been taken to refer the allegation to the Investigating Committee or (where rules so provide) the Fitness to Practise Committee, the Registrar must, as soon as is reasonably practicable—

- (a) require from the registrant who is the subject of the allegation details of any person—
  - (i) by whom the registrant is employed or engaged to provide services in, or in relation to, any area of pharmacy, or
  - (ii) with whom the registrant has arrangements to provide such services;
- (b) notify the Secretary of State, the Scottish Ministers and the Welsh Ministers of the investigation of the registrant’s fitness to practise;
- (c) notify the Department of Health, Social Services and Public Safety in Northern Ireland of the investigation of the registrant’s fitness to practise where the registrant is also entered in the register of pharmaceutical chemists for Northern Ireland or the register of visiting pharmaceutical chemists made out and maintained under Articles 6 and 9 of the Pharmacy (Northern Ireland) Order 1976<sup>(8)</sup>; and
- (d) notify any person of whom the Registrar is aware—
  - (i) by whom the registrant is employed or engaged to provide services in, or in relation to, any area of pharmacy, or
  - (ii) with whom the registrant has arrangements to provide such services, of the investigation of the registrant’s fitness to practise.

(6) Where a registrant fails to comply with a requirement imposed under paragraph (5)(a) within 14 days of the requirement being imposed, or within such longer period as the Registrar may in the circumstances of the particular case allow—

- (a) the failure may be treated as misconduct for the purposes of article 51(1)(a) and the Registrar may refer the matter to the Committee that is considering the allegation in respect of the registrant; and

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<sup>(8)</sup> [S.I.1976/1213 \(N.I. 22\)](#).

- (b) the Registrar may seek an order of the relevant court requiring the requested details to be supplied.
- (7) For the purposes of this article, the “relevant court” means—
  - (a) in a case where the registrant is domiciled in Scotland, the sheriff in whose sheriffdom that registrant is domiciled; and
  - (b) in any other case, the county court (the Central London County Court if the registrant is not domiciled in Great Britain).

### **Consideration by the Investigating Committee**

**53.**—(1) Where an allegation or a matter (referred to in this article as “the allegation”) is referred to the Investigating Committee by—

- (a) the Registrar under article 52(1) or (6)(a); or
- (b) an individual assessor or an assessment team under rules made under article 55(3)(c),

the Committee must decide whether the allegation ought to be considered by the Fitness to Practise Committee.

(2) If the Investigating Committee decides that the allegation need not be considered by the Fitness to Practise Committee, then unless the person who is the subject of the allegation (referred to in this article as “the person concerned”) has requested a referral under paragraph (3)—

- (a) the Investigating Committee may give—
  - (i) a warning to the person concerned in connection with any matter arising out of or related to the allegation and give a direction that details of the warning be recorded in the Register,
  - (ii) advice to the person concerned in connection with any matter arising out of, or related to, the allegation, and
  - (iii) advice to any other person or other body involved in its investigation of the allegation on any issue arising out of, or related to, the allegation; and
- (b) the Registrar must inform the person concerned and the person who made the allegation, if any, of the Investigating Committee’s decision and any action it is taking under subparagraph (a).

(3) If the Investigating Committee determines that the allegation ought to be considered by the Fitness to Practise Committee or the person concerned has requested a referral under this paragraph—

- (a) the Investigating Committee must refer the allegation to the Fitness to Practise Committee;
- (b) where the Investigating Committee considers that the Fitness to Practise Committee should consider making an interim order under article 56, it must notify the Fitness to Practise Committee accordingly; and
- (c) the Registrar must inform the person concerned and the person who made the allegation, if any, of the Investigating Committee’s decision to refer the allegation to the Fitness to Practise Committee.

(4) If, having considered the allegation, the Investigating Committee considers that the Council should consider exercising any of its powers to bring criminal proceedings under any enactment, it must notify the Registrar accordingly.

### Consideration by the Fitness to Practise Committee

54.—(1) Where an allegation or matter (referred to in this article as “the allegation”) is referred to the Fitness to Practise Committee by the Registrar—

- (a) under rules made by virtue of article 52(2)(b);
- (b) under article 52(6)(a);
- (c) by the Investigating Committee under article 53; or
- (d) by an individual assessor or an assessment team under rules made under article 55(3)(c),

the Fitness to Practise Committee must determine whether or not the fitness to practise of the person in respect of whom the allegation is made (referred to in this article as “the person concerned”) is impaired.

(2) If the Fitness to Practise Committee determines that the fitness to practise of the person concerned is impaired, it may—

- (a) give a warning to the person concerned in connection with any matter arising out of, or related to, the allegation and give a direction that details of the warning be recorded in the Register;
- (b) give advice to any other person or other body involved in the investigation of the allegation on any issue arising out of, or related to, the allegation;
- (c) give a direction that the entry in the Register of the person concerned be removed;
- (d) give a direction that the entry in the Register of the person concerned be suspended, for such period not exceeding 12 months as may be specified in the direction; or
- (e) give a direction that the entry in the Register of the person concerned be conditional upon that person complying, during such period not exceeding 3 years as may be specified in the direction, with such requirements specified in the direction as the Committee thinks fit to impose for the protection of the public or otherwise in the public interest or in the interests of the person concerned.

(3) Where the Fitness to Practise Committee has given a direction under this article, other than a direction that the entry in the Register of the person concerned be removed, it may, if it thinks fit, following a review—

- (a) where the entry in the Register of the person concerned is suspended, give a direction that—
  - (i) the entry be removed from the Register,
  - (ii) the suspension of the entry be extended for such further period not exceeding 12 months as may be specified in the direction, starting from the time when the period of suspension would otherwise expire,
  - (iii) the entry be suspended indefinitely, if the suspension has already been in force throughout a period of at least two years,
  - (iv) in the case of an indefinite suspension, terminate the suspension, provided that the review takes place in the circumstances provided for in paragraph (4), or
  - (v) on expiry or termination of the period of suspension (including a period of suspension that was expressed to be indefinite), the entry be conditional upon that person complying, during such period not exceeding 3 years as may be specified in the direction, with such requirements specified in the direction as the Committee thinks fit to impose for the protection of the public or otherwise in the public interest or in the interests of the person concerned;

- (b) where the entry in the Register of the person concerned is conditional upon that person complying with requirements specified in a direction given under this article, give a direction that—
  - (i) the period specified in the direction for complying with the requirements be extended for such further period not exceeding 3 years as may be specified in the direction, starting from the time when the earlier period would otherwise expire,
  - (ii) the requirements be added to, removed or otherwise varied in such manner as may be specified in the direction,
  - (iii) the entry instead be suspended (for example, where that person has failed, whether wholly or partly, to comply with the requirements), for such period not exceeding 12 months as may be specified in the direction, or
  - (iv) the entry be removed from the Register, if that person has failed, whether wholly or partly, to comply with the requirements.
- (4) If the Fitness to Practise Committee gives a direction under paragraph (3)(a)(iii), the Committee must review the direction if—
  - (a) the person concerned asks it to do so; and
  - (b) at least two years have elapsed—
    - (i) since the direction took effect, or
    - (ii) if the direction has already been reviewed by the Committee, since the conclusion of the last review by the Committee.
- (5) If the Fitness to Practise Committee determines that the fitness to practise of the person concerned is not impaired—
  - (a) the Committee may give—
    - (i) a warning to the person concerned in connection with any matter that the Committee considers necessary or desirable taking into account the Committee’s findings and give a direction that details of the warning be recorded in the Register,
    - (ii) advice to the person concerned in connection with any such matter, and
    - (iii) advice to any other person or other body involved in the investigation of the allegation on any issue arising out of, or related to, the allegation;
  - (b) the Registrar must inform the person concerned and the person who made the allegation, if any, of the Committee’s decision and any action it is taking under sub-paragraph (a); and
  - (c) the Committee must, if the person concerned so requests, publish in such manner as it sees fit a statement summarising its determination, or may publish such a statement if that person consents.
- (6) If the person concerned is entered in more than one part of the Register, the Fitness to Practise Committee—
  - (a) must make separate determinations under this article in relation to each part of the Register; and
  - (b) may give a direction under paragraph (2) or (3) in relation to only one part of the Register or different directions in relation to different parts of the Register,but may otherwise deal with the matter as a single case.
- (7) If the Fitness to Practise Committee determines under this article that a person’s fitness to practise is impaired solely by reason of adverse physical or mental health, it may not give a direction under paragraph (2)(c), (3)(a)(i) or (3)(b)(iv) that the entry in the Register in respect of that person be removed.

(8) If the Fitness to Practise Committee gives a warning or a direction under this article, the Registrar must on its behalf send to the person concerned at the last known home address of that person a statement in writing giving the person notice of the reasons for the warning or the direction and of any right of appeal under article 58.

(9) If, having considered the allegation, the Fitness to Practise Committee considers that the Council should consider exercising any of its powers to bring criminal proceedings under any enactment, it must notify the Registrar accordingly.

### **Professional performance assessments**

**55.**—(1) The Council may make rules about the circumstances in which the Registrar, the Investigating Committee and the Fitness to Practise Committee are authorised to give directions requiring an assessment of the standard of a registrant’s professional performance by an individual assessor or an assessment team.

(2) The circumstances that may be prescribed under paragraph (1) include circumstances arising during proceedings of either Committee.

(3) The Council may make such provision as it considers appropriate in rules in connection with the composition of assessment teams and the functions of and procedures to be followed by individual assessors and assessment teams and may, in particular, make provision with regard to—

- (a) the Council entering into arrangements with other bodies for those bodies to provide individual assessors or assessment teams to carry out the assessments;
- (b) allowing an assessment by an individual assessor or an assessment team to include an assessment of the standard of a registrant’s professional performance both at any time before the assessment and at the time of the assessment; and
- (c) referring to the Investigating Committee or the Fitness to Practise Committee a case where an individual assessor or an assessment team considers that a registrant has failed to comply with a reasonable requirement that has been imposed on that registrant by the individual assessor or the assessment team.

(4) An individual assessor or an assessment team, in connection with carrying out an assessment of the standard of a registrant’s professional performance—

- (a) may require the production of, and inspect and take copies of, any records (in whatever form they are held) arising out of or related to the registrant’s professional practice; and
- (b) where such records are kept otherwise than in legible form, may require a copy of them to be given in legible form.

(5) Nothing in, or in rules under, this article requires or permits—

- (a) any disclosure of information which is prohibited by or under any enactment, but where that prohibition arises because the information is in a form which allows for the identification of an individual, an individual assessor or an assessment team, when requiring the production of records under paragraph (4)(a), may require that the records be put in a form which does not allow for the identification of that individual; or
- (b) the production of records which a person could not be compelled to produce in civil proceedings in the High Court or the Court of Session under article 58.

(6) In determining, for the purposes of paragraph (5)(a), whether a disclosure of personal data is prohibited, it is to be assumed, for the purposes of section 35(1) of the Data Protection Act 1998(9) (disclosures required by law or made in connection with legal proceedings etc.), that the disclosure of personal data is required by paragraph (4).

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(9) 1998 c.29.



(7) If a person fails to produce any records within 14 days of being required to do so under paragraph (4), the Registrar, the Investigating Committee or the Fitness to Practise Committee on whose behalf the individual assessor or assessment team is carrying out the assessment in connection with which the records are being sought, may seek an order of the relevant court requiring the records to be produced.

(8) For the purposes of this article, the “relevant court” means—

- (a) in a case where records are being sought in relation to a registrant who is domiciled in Scotland, the sheriff in whose sheriffdom that registrant is domiciled; and
- (b) in any other case, the county court (the Central London County Court in the case of a registrant who is not domiciled in Great Britain).

### **Interim orders**

**56.**—(1) Where the Fitness to Practise Committee is satisfied that it is necessary for the protection of members of the public or is otherwise in the public interest or is in the interests of the registrant for an entry in the Register relating to a registrant to be suspended or to be made subject to conditions, the Committee may make an order—

- (a) that the entry in question be suspended for such period not exceeding 18 months as may be specified in the order (an “interim suspension order”); or
- (b) that the entry in question be conditional upon the registrant complying, during such period not exceeding 18 months as may be specified in the order, with such requirements specified in the order as the Committee thinks fit to impose (an “order for interim conditional entry”).

(2) Subject to paragraph (7), where the Fitness to Practise Committee has made an order under paragraph (1), the Committee—

- (a) must review it within the period of 6 months beginning with the date on which the order was made, and must after that, for so long as the order continues in force, further review it—
  - (i) before the end of the period of 6 months beginning with the date of the decision of the immediately preceding review, or
  - (ii) if, after the end of the period of 3 months beginning with the date of the decision of the immediately preceding review, the person concerned requests an earlier review, as soon as practicable after that request; and
- (b) may review it where new evidence relevant to the order has become available after it was made.

(3) Where an interim suspension order or an order for interim conditional entry has been made in relation to any person under any provision of this article (including this paragraph) the Fitness to Practise Committee may—

- (a) revoke the order;
- (b) add to, remove or otherwise vary any condition imposed by the order; or
- (c) if satisfied that to do so is necessary for the protection of members of the public or is otherwise in the public interest—
  - (i) replace an order for interim conditional entry with an interim suspension order having effect for the remainder of the term of the previous order, or
  - (ii) replace an interim suspension order with an order for interim conditional entry having effect for the remainder of the term of the previous order.

(4) If an order is made, revoked or varied under any provision of this article, the Registrar must without delay send to the person in respect of whose entry in the Register it relates at the last

known home address of that person a statement in writing giving the person notice of the order, the revocation or, as the case may be, the variation.

(5) The Council may apply to the relevant court for an order made by the Fitness to Practise Committee under paragraph (1) or (3) to be extended or, if it has been extended, further extended, and on such application the relevant court may extend, or further extend, for up to 12 months the period for which the order has effect.

(6) Any reference in this article to an interim suspension order, or to an order for interim conditional entry, includes a reference to such an order as extended under paragraph (5).

(7) For the purposes of paragraph (2), the first review after the relevant court's extension of an order made by the Fitness to Practise Committee, or after a replacement order made by the Fitness to Practise Committee under paragraph (3)(c), must take place—

- (a) if the order (or the order which has been replaced) has not been reviewed at all under paragraph (2), within the period of 6 months beginning with the date on which the relevant court ordered the extension or on which the replacement order under paragraph (3)(c) was made; and
- (b) if the order (or the order which has been replaced) has been reviewed under paragraph (2), within the period of 3 months beginning with that date.

(8) A registrant who is aggrieved by the decision of the Fitness to Practise Committee to make or vary an order under this article may appeal against that decision to the relevant court, and the court may—

- (a) in the case of an interim suspension order, terminate the suspension;
- (b) in the case of an order for interim conditional entry, revoke the order or remove or vary any condition imposed by the order; and
- (c) in either case, substitute for the period specified in the order (or in the order extending it) some other period which could have been specified in the order when it was made (or in the order extending it),

but unless the court otherwise directs, the order remains in force pending the outcome of the appeal.

(9) The decision of the relevant court on any application under paragraph (8) is final.

(10) If an order is made in relation to any person under this article and that order remains in effect immediately before the determination in respect of the allegation against that person under article 54(1), the Fitness to Practise Committee must revoke the order once it has been determined whether or not the person's fitness to practise is impaired.

(11) In this article, "the relevant court" means—

- (a) in a case relating to a registrant who is domiciled in Scotland, the Court of Session; and
- (b) in any other case, the High Court.

### **Restoration of names to the Register: fitness to practise**

57.—(1) Subject to paragraph (2)—

- (a) a person whose entry has been removed from one or more parts of the Register, in accordance with a direction under article 54(2)(c) or (3)(a)(i) or (b)(iv) may apply to the Registrar under this article for restoration to any part of the Register from which that person's entry has been removed; and
- (b) the Registrar must refer that application to the Fitness to Practise Committee.

(2) An application may not be made under paragraph (1)—

- (a) before the expiration of five years from the date of removal; or

(b) within 12 months of the date of an earlier application under paragraph (1) relating to the same entry.

(3) The Council may make such provision in rules in connection with applications for restoration by virtue of paragraph (1) as it considers appropriate and may, in particular, make provision with regard to—

- (a) the form and manner in which applications for restoration are to be made (and the rules may provide that applicants must apply using application forms that are in such form as the Council may determine from time to time);
- (b) the information to be provided by the applicant, including—
  - (i) the name under which the applicant intends to practise, and
  - (ii) the applicant’s home address;
- (c) whether any, and if so what, additional education, training or continuing professional development is required before restoration (and the rules may make provision for these issues to be determined in individual cases by the Registrar);
- (d) fitness to practise matters; and
- (e) refusal of applications (including where the applicant has not paid the fee prescribed under article 36(1)(b)).

(4) An application under this article may not be granted unless the person applying for restoration provides such evidence of fitness to practise as the Fitness to Practise Committee directs.

(5) Where the Fitness to Practise Committee refuses an application for restoration, the Registrar must send to the applicant at the applicant’s last known home address a statement in writing giving the applicant notice of the decision and of the reasons for it.

(6) If the Fitness to Practise Committee grants the application, it may give a direction that the person’s entry in the part or parts of the Register to which it has been restored be conditional upon that person complying, during such period not exceeding 3 years as may be specified in the direction, with such requirements specified in the direction as the Committee thinks fit to impose for the protection of the public or otherwise in the public interest or in the interests of the person concerned.

(7) Where the Fitness to Practise Committee gives a direction under paragraph (6), that direction must, for the purposes of article 54(3), be treated as a direction under article 54.

(8) If the application under this article relates to more than one part of the Register, the Fitness to Practise Committee—

- (a) must make separate determinations under this article in relation to each part of the Register; and
- (b) may give a direction under paragraph (6) in relation to only one part of the Register or different directions in relation to different parts of the Register,

but may otherwise deal with the matter as a single case.

(9) If—

- (a) the Fitness to Practise Committee refuses an application under this article (“the current application”);
- (b) it had refused a previous application under this article made by the same person, whether relating to the same part of the Register as the current application or to another part or parts of the Register; and
- (c) since the time when the previous application was refused, the person has not been entered in the part of the Register to which the current application and the previous application relate, or (if they relate to different parts) has not been entered in any of those parts of the Register,

the Fitness to Practise Committee may direct that the person may make no further application under this article in respect of the part or parts of the Register to which the current application and the previous application (or each of two or more previous applications falling within sub-paragraphs (b) and (c)) relate.

(10) If the Fitness to Practise Committee gives a direction under paragraph (6) or (9), the Registrar must on its behalf send to the applicant at the applicant's last known home address a statement in writing giving the applicant notice of the decision and the reasons for it and, in the case of a direction under paragraph (9), of the right of appeal under article 58.

### **Appeals against appealable fitness to practise decisions**

**58.**—(1) The following decisions are appealable fitness to practise decisions for the purposes of this Part—

- (a) a decision of the Fitness to Practise Committee under article 54 to give a direction to remove the entry of a person from one or more parts of the Register;
- (b) a decision of the Fitness to Practise Committee under article 54 to give a direction for suspension or for conditional entry (including a direction extending a period of earlier suspension or of conditional entry or making a period of suspension indefinite);
- (c) a decision of the Fitness to Practise Committee under article 54 to give a direction to vary the conditions imposed by a direction for conditional entry; and
- (d) a decision of the Fitness to Practise Committee to give a direction under article 57(9) that a person may make no further applications under that article in respect of one or more parts of the Register.

(2) A person in respect of whom an appealable fitness to practise decision has been made may appeal against that decision to the relevant court.

(3) Notice of any appeal under this article must be filed at, or in Scotland lodged in, the relevant court and served on the Council, in accordance with rules of court, within 28 days beginning with the date on which the written notice of the reasons for the decision was sent, or within such longer period as the relevant court may, in accordance with rules of court, allow.

(4) In this article, “the relevant court” means—

- (a) in a case where the person making the appeal is domiciled in Scotland, the Court of Session; and
- (b) in any other case, the High Court.

(5) Having considered the appeal, the relevant court may—

- (a) dismiss the appeal;
- (b) allow the appeal and quash the direction in respect of which the appeal is made;
- (c) substitute for the direction in respect of which the appeal is made any other direction that the Fitness to Practise Committee could have given; or
- (d) remit or refer the case to the Registrar or the Fitness to Practise Committee for disposal of the matter in accordance with the relevant court's directions,

and may make such order as to costs or, in Scotland, expenses as the relevant court thinks fit.

### **The taking effect of directions in respect of appealable fitness to practise decisions**

**59.**—(1) Where an appealable fitness to practise decision is taken in respect of a direction, that direction does not take effect—

- (a) until the period for bringing an appeal in respect of the direction has expired; or

- (b) where an appeal is brought within the period for bringing an appeal, until the date on which the appeal is finally disposed of, is abandoned or fails by reason of its non-prosecution.
- (2) Where, by virtue of paragraph (3) of article 58, the time for bringing an appeal in respect of the direction has been extended by the relevant court in accordance with rules of court—
  - (a) paragraph (1) applies to the direction as if the references to the period for bringing an appeal were references to that period as so extended; and
  - (b) if the relevant court allows an appeal to be brought after the expiration of the period for bringing an appeal specified in paragraph (3) of article 58, the direction is deemed not to have taken effect on the expiration of that period.
- (3) Where, within the period for bringing an appeal (which includes that period as extended by virtue of article 58(3)), an appeal is brought against an appealable fitness to practise decision in respect of a direction (“the later direction”) that extends, varies or replaces an earlier direction, the earlier direction continues to have effect until the date on which the appeal is finally disposed of, is abandoned or fails by reason of its non-prosecution.
- (4) Where, as a result of an extension of an earlier direction pursuant to paragraph (3), a later direction takes effect on a date after it was due to take effect, the period for which the later direction was originally expressed to have effect (howsoever expressed) is treated as commencing—
  - (a) on the date on which it was originally due to take effect; or
  - (b) if this would mean that the later direction would in practice expire before it commences, on the date on which the appeal is finally disposed of, is abandoned or fails by reason of its non-prosecution.
- (5) For the purposes of paragraphs (3) and (4), an appeal is finally disposed of once all rights in relation to the appeal have been exhausted.

#### **Interim measures pending a direction taking effect**

- 60.**—(1) Paragraph (2) applies where, under article 54, the Fitness to Practise Committee gives—
- (a) a direction to remove a registrant’s entry from one or more parts of the Register; or
  - (b) a direction for suspension.
- (2) If the Fitness to Practise Committee is satisfied that to do so is necessary for the protection of members of the public or is otherwise in the public interest or in the interests of the registrant, it may order that the entry of the registrant who is the subject of the direction in the part or parts of the Register to which the direction relates be suspended forthwith, pending the coming into force of the direction.
- (3) Paragraph (4) applies where the Fitness to Practise Committee gives a direction for conditional entry under article 54.
- (4) If the Fitness to Practise Committee is satisfied that to do so is necessary for the protection of members of the public or is otherwise in the public interest or in the interests of the registrant, it may order that the entry of the registrant who is the subject of the direction in the part or parts of the Register to which the direction relates, be conditional upon that registrant complying, pending the coming into force of the direction, with such requirements specified in the order as the Committee thinks fit to impose.
- (5) If the direction referred to in paragraph (1) or (3) relates to the entry of the registrant in more than one part of the Register, the Fitness to Practise Committee may make an order under paragraph (2) or, as the case may be, (4) in relation to only one part of the Register and may impose different requirements under paragraph (4) in relation to the registrant’s entry in different parts of the Register.

(6) Where the Fitness to Practise Committee makes an order under paragraph (2) or (4), the Registrar must send to the registrant who is the subject of the order at that registrant's last known home address a statement in writing giving that registrant notice of the contents of the order and of the right of appeal under paragraph (7).

(7) A registrant who is aggrieved by a decision of the Fitness to Practise Committee to make an order under this article may appeal against that decision to the relevant court, and the court may—

- (a) dismiss the appeal;
- (b) in the case of an order under paragraph (2), terminate the suspension; and
- (c) in the case of an order under paragraph (4), revoke the order or remove or vary any condition imposed by the order,

and the decision of the relevant court on any application under this paragraph is final.

(8) In this article, "the relevant court" means—

- (a) in a case where the person making the appeal is domiciled in Scotland, the Court of Session; and
- (b) in any other case, the High Court.