

PART 3A PROCEEDINGS AND APPEALS

Service of notification

- 23A. (1) A notification under this Act which is required to be served on any person may be served, subject to subsections (2) and (5) below, by:-
- (a) being delivered to that person personally;
 - (b) leaving it at that person's registered address, or his last known address if that address differs from the address in the appropriate register and it appears to the registrar that the notification is more likely to reach him at that address;
 - (c) being sent by post in a registered letter; or
 - (d) sending it by a postal service which provides for the delivery of the notice by post to be recorded.
- (2) The Council may make rules providing for a notification which is required to be served on any person under this Act to be served by an electronic communication.
- (3) Rules under subsection (2) above shall secure that a notice cannot be served by an electronic communication unless the person consents in writing to the receipt of notices from the Council by electronic communication and the communication is sent to the number or address specified by that person when giving consent.
- (4) For the purposes of this section, and of section 7 of the Interpretation Act 1978 (which defines "service by post") in its application to this section, a letter to an individual containing such a notification shall be deemed to be properly addressed if it is addressed to him at his:-
- (a) address in the appropriate register; or
 - (b) last known address if that address differs from the address in the appropriate register and it appears to the registrar that the notification is more likely to reach him at that address.
- (5) A notification which is required to be served on a body corporate shall be duly served if it is served on an officer, secretary or clerk of that body.
- (6) For the purposes of this section and of section 7 of the Interpretation Act 1978 in its application to this section, a letter to a body corporate, or to an officer, secretary or clerk of that body, containing such a notification shall be deemed to be properly addressed if it is addressed to it or him at:-
- (a) that body's address in the register of bodies corporate under section 9 above; or
 - (b) the address of that body's registered or principal office if that address differs from its address in that register and it appears to the registrar that the notification is more likely to reach the body

corporate or its officer, secretary or clerk at that address.

- (7) An electronic communication received outside a person's normal business hours shall be taken to have been received on the next working day, and for this purpose "working day" means any day which is not a Saturday, Sunday, bank holiday or other public holiday.

Procedure of Fitness to Practise Committee and Registration Appeals Committee

- 23B. (1) For the purposes of proceedings under this Act in England and Wales or in Northern Ireland before:-
- (a) the Fitness to Practise Committee; or
 - (b) the Registration Appeals Committee,
- the Committee may administer oaths and any party to the proceedings may issue a writ of sub poena ad testificandum or duces tecum.
- (2) No person shall be compelled under any such writ to produce any document which he could not be compelled to produce on the trial of an action.
- (3) Section 36 of the Supreme Court Act 1981 and section 67 of the Judicature (Northern Ireland) Act 1978 (subpoena issued in High Court to run through United Kingdom) shall apply in relation to any such proceedings in England and Wales and in Northern Ireland respectively as those provisions apply in relation to causes and matters in the High Court or, as the case may be, actions or suits pending in the High Court of Justice in Northern Ireland.
- (4) For the purposes of any such proceedings in Scotland, the Committee may administer oaths and the Court of Session shall on the application of any party to the proceedings have the like power as in any action in that court:-
- (a) to grant warrant for the citation of witnesses and havers to give evidence or to produce documents before the Committee, and for the issue of letters of second diligence against any witness or havers failing to appear after due citation;
 - (b) to grant warrant for the recovery of documents; and
 - (c) to grant commissions to persons to take the evidence of witnesses or to examine havers and receive their exhibits and productions.

Powers of the Council to make rules

- 23C. (1) The Council shall make rules as to:-
- (a) the procedure to be followed and the rules of evidence to be observed by:-

- (i) the Fitness to Practise Committee; and
 - (ii) the Registration Appeals Committee; and
 - (b) the procedure to be followed by the Investigation Committee.
- (2) The rules under subsection (1)(a) above shall in particular include provision:-
 - (a) for securing that notice that the proceedings are to be brought shall be given, at such time and in such manner as may be specified in the rules, to the registrant or person seeking restoration to whom, or as the case may be to which, the proceedings relate;
 - (b) for securing that any party to the proceedings shall, if he so requires, be entitled to be heard by the Committee;
 - (c) for enabling any party to the proceedings to be represented at the hearing 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 entitled to appear in the Court of Session and the High Court of Justiciary;
 - (iii) a member of the Bar of Northern Ireland or Solicitor of the Supreme Court of Northern Ireland; or
 - (iv) a person of such other description as may be specified in rules if the rules so allow and the person appearing so elects;
 - (d) for proceedings before the Committee to be held in public, except and to the extent that rules provide otherwise;
 - (e) (except in relation to proceedings before the Registration Appeals Committee), if in the case of a registered optometrist, a registered dispensing optician or a student registrant it is alleged that his fitness to practise or, as the case may be, fitness to undertake training is impaired, but the Committee judge that he is fit to practise or, as the case may be, fit to undertake training:-
 - (i) requiring the Fitness to Practise Committee, if requested to do so by the registrant, to make a declaration to that effect, giving its reasons; or
 - (ii) enabling the Fitness to Practise Committee, if no such request is made but he nonetheless consents, to make such a declaration;
 - (f) (except in relation to proceedings before a Registration Appeals Committee), if in a case where the registrant is a body corporate it is alleged that the body is not fit to carry on the business of an optometrist or a dispensing optician or both but the Fitness to

Practise Committee judge that the body is fit to carry on that business:-

- (i) requiring the Fitness to Practise Committee, if requested to do so by the registrant, to make a declaration to that effect, giving its reasons; or
 - (ii) enabling the Fitness to Practise Committee, if no such request is made but the registrant nonetheless consents, to make such a declaration.
- (3) The Council may also make rules:-
 - (a) enabling the Committee to appoint an assessor for the purposes of reporting on the health, or specific aspects of the health, of the registrant or the person seeking restoration to the appropriate register;
 - (b) enabling the Committee to appoint an assessor to report on the standard and quality of the work done or being done by the registrant or by a person seeking to have his name restored to the appropriate register;
 - (c) enabling the Committee to draw such inference as seems appropriate to them in the particular case if the registrant or the person seeking restoration to the appropriate register fails:-
 - (i) to submit to any examination required or directed to be carried out in accordance with rules made under this section; or
 - (ii) to co-operate with the Committee.
- (4) The rules under subsection (1)(a) above may also include provision for the award and summary assessment of costs and expenses.
- (5) Such rules 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.
- (6) The rules as to costs or expenses may include provision for authorising the Committee to disallow all or part of the costs or expenses of a representative of a party to proceedings before it by reason of that representative's conduct of the proceedings.
- (7) Any sum required to be paid under an award in respect of costs and expenses shall be recoverable as if it had been adjudged to be paid by order of a relevant court.
- (8) In subsection (7) above "relevant court" means:-
 - (a) in the case of a person whose address in the appropriate register 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 appropriate

- register 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, means the High Court of Justice in England and Wales.
- (9) The rules under subsection (1) above may make provision as to the form which is to be used for any document and for documents and certificates to be sent or received as an electronic communication.
 - (10) Before making rules under this section, the Council shall consult such organisations representing the interests of registrants as it appears appropriate to the Council to consult.

Legal advisers

- 23D. (1) The Council shall appoint persons to be legal advisers.
- (2) The legal advisers are appointed for the purpose of giving advice to:-
 - (a) the Fitness to Practise Committee; and
 - (b) the Registration Appeals Committee,on questions of law arising in connection with any matter which the Committee is considering.
 - (3) To be qualified for appointment as a legal adviser, a person must:-
 - (a) have at least a five year general qualification (within the meaning of section 71 of the Courts and Legal Services Act 1990);
 - (b) be an advocate or solicitor in Scotland of at least five years standing; or
 - (c) be a member of the Bar of Northern Ireland or Solicitor of the Supreme Court of Northern Ireland of at least five years standing.
 - (4) A legal adviser must not be a member of the Council.
 - (5) The Council may pay such fees, allowances and expenses to a legal adviser as the Council consider appropriate.
 - (6) Legal advisers appointed under this section may be appointed either generally or for any particular class of proceedings, and shall hold and vacate office in accordance with the terms of the instrument under which they are appointed.
 - (7) The Council may make rules as to the functions of legal advisers appointed under this section and those rules may in particular contain provision:-
 - (a) for legal advisers to advise on the drafting of decisions;
 - (b) for securing that where the adviser advises a Committee on any question of law as to evidence, procedure or any other matters set out in the rules, he shall do so in the presence of

every party, or person representing a party, to the proceedings who appears at the proceedings, or, if the advice is tendered after the Committee have begun to deliberate as to their findings, that every such party or person shall be informed as to the advice tendered by the legal adviser; and

- (c) for incidental and supplementary matters.

Other advisers

23E. (1) The Council:-

- (a) shall appoint persons to be clinical advisers; and
(b) may appoint persons to act as specialist advisers on issues on which, in the Council's opinion, specialist knowledge is required.

(2) Persons appointed to be:-

- (a) clinical advisers must have specialist expertise in a particular field or fields; and
(b) specialist advisers must have particular expertise in the specialty for which they are appointed.

(3) Clinical advisers shall be appointed for the purpose of giving advice to the Fitness to Practise Committee and the Registration Appeals Committee on health related issues under consideration by the Committee.

(4) If specialist advisers are appointed under subsection (1)(b) above, their appointment shall be for the purpose of giving advice to the Fitness to Practise Committee and the Registration Appeals Committee on issues falling within their specialty which are under consideration by the Committee.

(5) Advisers appointed under this section must not be members of the Council.

(6) The Council may pay such fees, allowances and expenses to the advisers appointed under this section as the Council consider appropriate.

(7) Advisers appointed under this section may be appointed either generally or for any particular class of proceedings, and shall hold and vacate office in accordance with the terms of the instrument under which they are appointed.

(8) The Council may make rules as to the functions of advisers appointed under this section.

Registration appeals

23F. Schedule 1A to this Act (which makes provision about appeals against registration decisions) shall have effect.

Appeals from the Registration Appeals Committee and the Fitness to Practise Committee

23G.(1) The following decisions are appealable decisions for the purposes of this section:-

- (a) a decision of the Fitness to Practise Committee:-
 - (i) under section 13F above giving a direction for erasure, for suspension or for conditional registration or varying the conditions imposed by a direction for conditional registration;
 - (ii) under section 13F above in respect of an entry relating to a specialty or proficiency, giving a direction for removal (whether or not temporarily) or conditional inclusion or varying the conditions imposed by a direction for conditional inclusion; or
 - (iii) under section 13H(1) above imposing a financial penalty order;
 - (b) a decision of the Fitness to Practise Committee under section 13J above giving a direction that a person's name or
 - (c) an entry relating to a specialty or proficiency be removed from the appropriate register;
 - (d) a determination of the Registration Appeals Committee under paragraph 4 of Schedule 1A to this Act other than a determination to allow the appeal and quash the decision appealed against; and
 - (e) a determination of the Registration Appeals Committee under section 13K(8) above directing that the right to make further applications under that section shall be suspended indefinitely.
 - (f) a decision of the Council under regulation 67 of the General Systems Regulations to send an alert about a person
- (2) In subsection (1)(a) above:-
- (a) references to a direction for suspension include a reference to a direction extending a period of suspension and a direction for indefinite suspension;
 - (b) references to a direction for removal of an entry relating to a specialty or proficiency include a reference to a direction extending a period of temporary removal and a direction for indefinite removal of an entry which was removed only temporarily; and
 - (c) references to a direction for conditional registration or, in the case of an entry relating to a specialty or proficiency, conditional inclusion, include a reference to a direction extending a period of conditional registration or, in the case of an entry relating to a

specialty or proficiency, conditional inclusion.

- (3) A person in respect of whom an appealable decision falling within subsection (1) above has been taken may, within the period of 28 days beginning with the day on which the decision was served on him, appeal against the decision to the relevant court.
- (4) In this section and section 23H below, “the relevant court” means:-
 - (a) in any case falling within subsection (1)(a) above:-
 - (i) where the address of the person named in the appropriate register is, or if he were registered would be, in Scotland, means the Court of Session;
 - (ii) where the address of the person named in the appropriate register is, or if he were registered would be, in Northern Ireland, means the High Court of Justice in Northern Ireland; and
 - (iii) otherwise, means the High Court of Justice in England and Wales;
 - (b) in any case falling within subsection (1)(b) to (e) above where the address of the person named in the appropriate register is, or if he were registered would be, in Scotland, the sheriff in whose sheriffdom that address is situated; or
 - (c) in any other case falling within subsection (1)(b), (c) or (d) above, the county court.
- (5) The Council may appear as respondent on any such appeal, and for the purposes of any order as to costs (or in Scotland, expenses) in relation to any such appeal the Council shall be deemed to be a party to the appeal, whether they appear on the hearing of the appeal or not.
- (6) On an appeal under this section from a decision of the Fitness to Practise Committee, the relevant court may:-
 - (a) dismiss the appeal;
 - (b) allow the appeal and quash the direction or variation or order appealed against;
 - (c) substitute for the direction or variation or order appealed against any other direction or variation or order which could have been given or made by the Fitness to Practise Committee; or
 - (d) remit the case to the registrar for him to refer it to the Fitness to Practise Committee 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 the court (or sheriff) thinks fit.
- (7) On an appeal under this section from a decision of the Registration Appeals Committee, the relevant court may:-

- (a) dismiss the appeal;
 - (b) allow the appeal and quash the determination appealed against;
 - (c) substitute for the determination appealed against any other determination which could have been given or made by the Registration Appeals Committee; or
 - (d) remit the case to the registrar for him to refer it to the Registration Appeals Committee to dispose of the case in accordance with the directions of the court,
- (8) On an appeal under this section from a decision falling within subsection (1)(e), the relevant court may –
- (a) Dismiss the appeal; or
 - (b) Allow the appeal and direct that the alert be withdrawn or amended,
- and may make such order as to costs (or in Scotland, expenses) as the court (or sheriff) thinks fit.

Date decision takes effect

23H. (1) Where:-

- (a) no appeal is brought against an appealable decision; or
- (b) such an appeal is brought but withdrawn or struck out for want of prosecution,

the appealable decision shall take effect on the expiration of the time for appealing or, as the case may be, on the withdrawal or striking out of the appeal.

- (2) Where an appeal is brought against an appealable decision and the relevant court dismisses the appeal, the appealable decision shall take effect on the date the appeal is dismissed.