



# National Health Service Reform and Health Care Professions Act 2002

## 2002 CHAPTER 17

### PART 2

[<sup>F1</sup>HEALTH AND SOCIAL CARE PROFESSIONS ETC.]

#### *Appeals*

#### **30 Medical practitioners**

(1) The Medical Act 1983 (c. 54) is amended as follows.

(2) In section 40 (appeals)—

- (a) in subsection (1), paragraph (c) is omitted,
- (b) after subsection (1), there is inserted—

“(1A) A decision of the General Council under section 39 above giving a direction for erasure is also an appealable decision for the purposes of this section.”,

- (c) for subsection (3) there is substituted—

“(3) A person in respect of whom an appealable decision falling within subsection (1) has been taken may, before the end of the period of 28 days beginning with the date on which notification of the decision was served under section 36(6), 36A(7), or 37(6) above, or section 41(7) or 45(7) below, appeal against the decision to the relevant court.

(3A) In subsection (3), “the relevant court”—

- (a) in the case of a person whose address in the register is (or if he were registered would be) in Scotland, means the Court of Session,

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- (b) in the case of a person whose address in the 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 (including one appealing against a decision falling within subsection (1)(e)), means the High Court of Justice in England and Wales.
- (3B) A person in respect of whom an appealable decision falling within subsection (1A) above has been taken may, before the end of the period of 28 days beginning with the date on which notification of the decision was served under section 39(2), appeal against the decision to a county court or, in Scotland, the sheriff in whose sheriffdom the address in the register is situated.”
- (d) subsections (4) to (6), (9) and (10) are omitted, and
  - (e) for subsections (7) and (8) there is substituted—
    - “(7) On an appeal under this section from the Professional Conduct Committee, the Committee on Professional Performance or the Health Committee, the court may—
      - (a) dismiss the appeal,
      - (b) allow the appeal and quash the direction or variation appealed against,
      - (c) substitute for the direction or variation appealed against any other direction or variation which could have been given or made by the committee concerned, or
      - (d) remit the case to the committee concerned to dispose of the case in accordance with the directions of the court,
 and may make such order as to costs (or, in Scotland, expenses) as it thinks fit.
    - (8) On an appeal under this section from the General Council, the court (or the sheriff) may—
      - (a) dismiss the appeal,
      - (b) allow the appeal and quash the direction appealed against, or
      - (c) remit the case to the General Council to dispose of the case in accordance with the directions of the court (or the sheriff),
 and may make such order as to costs (or in Scotland, expenses) as it (or he) thinks fit.”
- (3) In Schedule 4 (proceedings before Professional Conduct, Health and Preliminary Proceedings Committees)—
- (a) in paragraph 3(b), the words “to Her Majesty in Council” are omitted and for “the Judicial Committee” there is substituted “ the court (or the sheriff) ”,
  - (b) in paragraph 10(1)—
    - (i) for “section 37 of this Act and” there is substituted “ section 37 of this Act, ”,
    - (ii) after “or 37 of this Act”, there is inserted “ and a direction for erasure given by the General Council under section 39 of this Act ”, and
    - (iii) in paragraph (a), for the words “mentioned in subsection (3) of that section” there is substituted “ specified in that section ”,
  - (c) paragraph 10(2) is omitted, and

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- (d) in paragraph 10(3)—
  - (i) “or (2)” is omitted,
  - (ii) “or that sub-paragraph as applied by sub-paragraph (2) above” is omitted,
  - (iii) for “mentioned in section 40(3)” there is substituted “ specified in section 40 ”, and
  - (iv) for “mentioned in the said section 40(3)” there is substituted “ specified in section 40 of this Act ”.

## 31 Dentists

- (1) The Dentists Act 1984 (c. 24) is amended as follows.
- (2) In section 29 (appeals)—
  - (a) in subsection (1), for the words from “to Her” to the end there is substituted “ against that determination or direction to the relevant court. ”,
  - (b) after subsection (1) there is inserted—
    - “(1A) In subsection (1), “the relevant court”—
      - (a) in the case of a person whose address in the 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 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.”,
    - (c) subsection (2) is omitted, and
    - (d) for subsection (3) there is substituted—
      - “(3) On an appeal under this section, the court may—
        - (a) dismiss the appeal,
        - (b) allow the appeal and quash the determination or direction appealed against,
        - (c) (in the case of an appeal against a determination under section 27 above or a direction under section 28 above) substitute for the determination or direction appealed against any other determination or direction which could have been made or given by the Professional Conduct Committee or (as the case may be) the Health Committee, or
        - (d) remit the case to the Professional Conduct Committee, the Health Committee or the Continuing Professional Development Committee to dispose of the case under section 27 or 28 above or Schedule 3A to this Act in accordance with the directions of the court,and may make such order as to costs (or, in Scotland, expenses) as it thinks fit.”
- (3) In section 44 (withdrawal of privilege from body corporate)—
  - (a) in subsection (4)—
    - (i) after “days” there is inserted “ from service ”, and

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- (ii) for the words from “in accordance” to “Majesty in Council” there is substituted “ appeal to the relevant court ”, and
- (b) after subsection (4) there is inserted—
  - “(4A) In subsection (4), “the relevant court”—
    - (a) where the registered office of the body corporate is in Northern Ireland, means the High Court of Justice in Northern Ireland,
    - (b) where the registered office of the body corporate is in Scotland, means the Court of Session,
    - (c) where the registered office of the body corporate is in any other place, means the High Court of Justice in England and Wales.”
- (4) In section 51, the words from “(other” to “appeals)” are omitted.
- (5) In section 34A (professional training and development requirements), in subsection (7)(b), for “to Her Majesty in Council” there is substituted “ under section 29 above to the relevant court ”.
- (6) Subsection (5) has effect—
  - (a) upon the coming into force of this section, if that happens after the coming into force of article 8 of the Dentists Act 1984 (Amendment) Order 2001 (S.I. 2001/3926) (“the Dentists Order”) so far as that article effects the insertion into the Dentists Act 1984 (c. 24) of the new section 34A(7)(b),
  - (b) otherwise, immediately after the coming into force to that extent of that article.
- (7) If this section comes into force before article 10(3) of the Dentists Order—
  - (a) paragraphs (b), (c) and (d) of article 10(3) of that Order are revoked upon the coming into force of this section, and
  - (b) until the coming into force of the remainder of article 10(3) of that Order, section 29 of the Dentists Act 1984 (c. 24) (as amended by this section) is to be read with the modifications set out in subsection (8).
- (8) The modifications are that section 29 is to be read as if—
  - (a) in each of paragraphs (a) and (b) of subsection (1A), the words “(or if he were registered would be)” were omitted,
  - (b) in paragraph (c) of subsection (3), the words “(in the case of an appeal against a determination under section 27 above or a direction under section 28 above)” were omitted, and
  - (c) in paragraph (d) of subsection (3)—
    - (i) for the words “, the Health Committee or the Continuing Professional Development Committee” there were substituted “ or the Health Committee ”, and
    - (ii) the words “or Schedule 3A to this Act” were omitted.

## 32 Opticians

- (1) Section 23 of the Opticians Act 1989 (c. 44) (appeals in disciplinary and other cases) is amended as follows.
- (2) For subsection (1) there is substituted—

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“(1) An individual or body corporate who is notified under subsection (11) of section 17—

- (a) that a disciplinary order has been made against him under that section; or
- (b) that a direction has been given in respect of him under subsection (9) of that section,

may, before the end of the period of 28 days beginning with the date on which notification was served, appeal against that order or direction to the relevant court.

(1A) In subsection (1), “the relevant court”—

- (a) in the case of an individual whose address in the register is in Scotland, or a body corporate whose registered office is in Scotland, means the Court of Session,
- (b) in the case of an individual whose address in the register is in Northern Ireland, or a body corporate whose registered office is in Northern Ireland, means the High Court of Justice in Northern Ireland, and
- (c) in the case of any other individual or body corporate, means the High Court of Justice in England and Wales.

(1B) An individual or body corporate who is notified under subsection (3) of section 19 above that a direction has been given in respect of him under that section may, before the end of the period of 28 days beginning with the date on which notification was served, appeal against that direction to a county court or, in Scotland, the sheriff in whose sheriffdom the address in the register or (as the case may be) the registered office is situated.

(1C) On an appeal under this section, the court (or the sheriff) may—

- (a) dismiss the appeal,
- (b) allow the appeal and quash the order or direction appealed against,
- (c) substitute for the order or direction appealed against any other order or direction which could have been made by the Disciplinary Committee, or
- (d) remit the case to the Disciplinary Committee to dispose of the case in accordance with the directions of the court (or the sheriff),

and may make such order as to costs (or, in Scotland, expenses) as it (or he) thinks fit.”

(3) In subsection (2), for “any such appeal”, where it first appears, there is substituted “any appeal under this section”.

### 33 Osteopaths

(1) The Osteopaths Act 1993 (c. 21) is amended as follows.

(2) In section 10 (fraud or error in relation to registration)—

- (a) in subsection (7), for “Her Majesty in Council” there is substituted “a county court or, in the case of a person whose address in the register is in Scotland, the sheriff in whose sheriffdom the address is situated”,
- (b) for subsection (8) there is substituted—

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- “(8) Any such appeal must be brought before the end of the period of 28 days beginning with the date on which notification of the order was served under subsection (6).”
- (c) subsection (10) is omitted, and
- (d) for subsection (11) there is substituted—
- “(11) On an appeal under this section, the court (or the sheriff) may—
- (a) dismiss the appeal,
- (b) allow the appeal and quash the order appealed against, or
- (c) remit the case to the General Council to dispose of the case in accordance with the directions of the court (or the sheriff),
- and may make such order as to costs (or, in Scotland, expenses) as it (or he) thinks fit.”
- (3) In section 22 (consideration of allegations by the Professional Conduct Committee), in each of subsections (6) and (8), for “recommendation under section 31(8)(c)” there is substituted “ decision of a court on an appeal under section 31 ”.
- (4) In section 23 (consideration of allegations by the Health Committee), in each of subsections (4), (5) and (6), for “recommendation under section 31(8)(c)” there is substituted “ decision of a court on an appeal under section 31 ”.
- (5) In section 29 (appeals against decisions of the Registrar), for subsections (4) to (6) there is substituted—
- “(4) A person aggrieved by the decision of the General Council on an appeal under this section may appeal to a county court or, in the case of a person whose address in the register is (or if he were registered would be) in Scotland, the sheriff in whose sheriffdom the address is situated.
- (4A) On an appeal under subsection (4) above, the court (or the sheriff) may—
- (a) dismiss the appeal,
- (b) allow the appeal and quash the decision appealed against,
- (c) substitute for the decision appealed against any other decision which could have been made by the Registrar, or
- (d) remit the case to the General Council to dispose of the case in accordance with the directions of the court (or the sheriff),
- and may make such order as to costs (or, in Scotland, expenses) as it (or he) thinks fit.”
- (6) In section 31 (appeals against decisions of the Professional Conduct Committee and appeal tribunals)—
- (a) in subsection (1), for the words from “sent to him” to the end there is substituted “ served on him, appeal against it to the relevant court. ”,
- (b) after subsection (1) there is inserted—
- “(1A) In subsection (1), “the relevant court”—
- (a) in the case of a person whose address in the register is (or if he were registered would be) in Scotland, means the Court of Session,

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- (b) in the case of a person whose address in the 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.”,
- (c) subsections (3) to (5) and (7) are omitted, and
- (d) for subsection (8) there is substituted—

“(8) On an appeal under this section, the court may—

- (a) dismiss the appeal,
- (b) allow the appeal and quash the decision appealed against,
- (c) substitute for the decision appealed against any other decision which could have been made by the Professional Conduct Committee or (as the case may be) Health Committee, or
- (d) remit the case to the Committee or appeal tribunal concerned to dispose of the case in accordance with the directions of the court,

and may make such order as to costs (or, in Scotland, expenses) as it thinks fit.”

- (7) In section 35 (rules), subsection (3) is omitted.

### **34 Chiropractors**

- (1) The Chiropractors Act 1994 (c. 17) is amended as follows.

- (2) In section 10 (fraud or error in relation to registration)—

- (a) in subsection (7), for “Her Majesty in Council” there is substituted “ a county court or, in the case of a person whose address in the register is in Scotland, the sheriff in whose sherrifdom the address is situated ”,
- (b) for subsection (8) there is substituted—
  - “(8) Any such appeal must be brought before the end of the period of 28 days beginning with the date on which notification of the order was served under subsection (6).”,
- (c) subsection (10) is omitted, and
- (d) for subsection (11) there is substituted—

“(11) On an appeal under this section, the court (or the sheriff) may—

- (a) dismiss the appeal,
- (b) allow the appeal and quash the order appealed against, or
- (c) remit the case to the General Council to dispose of the case in accordance with the directions of the court (or the sheriff),

and may make such order as to costs (or, in Scotland, expenses) as it (or he) thinks fit.”

- (3) In section 22 (consideration of allegations by the Professional Conduct Committee), in each of subsections (7) and (9), for “recommendation under section 31(8)(c)” there is substituted “ decision of a court on an appeal under section 31 ”.

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- (4) In section 23 (consideration of allegations by the Health Committee), in each of subsections (4), (5) and (6), for “recommendation under section 31(8)(c)” there is substituted “ decision of a court on an appeal under section 31 ”.
- (5) In section 29 (appeals against decisions of the Registrar), for subsections (4) to (6) there is substituted—
- “(4) A person aggrieved by the decision of the General Council on an appeal under this section may appeal to a county court or, in the case of a person whose address in the register is (or if he were registered would be) in Scotland, the sheriff in whose sheriffdom the address is situated.
- (4A) On an appeal under subsection (4) above, the court (or the sheriff) may—
- (a) dismiss the appeal,
- (b) allow the appeal and quash the decision appealed against,
- (c) substitute for the decision appealed against any other decision which could have been made by the Registrar, or
- (d) remit the case to the General Council to dispose of the case in accordance with the directions of the court (or the sheriff),
- and may make such order as to costs (or, in Scotland, expenses) as it (or he) thinks fit.”
- (6) In section 31 (appeals against decisions of the Professional Conduct Committee and appeal tribunals)—
- (a) in subsection (1), for the words from “sent to him” to the end there is substituted “ served on him, appeal against it to the relevant court. ”,
- (b) after subsection (1) there is inserted—
- “(1A) In subsection (1), “the relevant court”—
- (a) in the case of a person whose address in the 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 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.”,
- (c) subsections (3) to (5) and (7) are omitted, and
- (d) for subsection (8) there is substituted—
- “(8) On an appeal under this section, the court may—
- (a) dismiss the appeal,
- (b) allow the appeal and quash the decision appealed against,
- (c) substitute for the decision appealed against any other decision which could have been made by the Professional Conduct Committee or (as the case may be) Health Committee, or
- (d) remit the case to the Committee or appeal tribunal concerned to dispose of the case in accordance with the directions of the court,
- and may make such order as to costs (or, in Scotland, expenses) as it thinks fit.”



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(7) In section 35 (rules), subsection (3) is omitted.

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