

Island of



Guernsey

Ordinance of the States

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The Medicines (Human and Veterinary) (Bailiwick of Guernsey) Law, 2008 (Commencement and Amendment) Ordinance, 2013

**The Medicines (Human and Veterinary)
(Bailiwick of Guernsey) Law, 2008
(Commencement and Amendment) Ordinance, 2013**

THE STATES, in pursuance of their Resolution of the 26th day of September, 2012^a, and in exercise of the powers conferred on them by sections 131, 132 and 137(2) of the Medicines (Human and Veterinary) (Bailiwick of Guernsey) Law, 2008^b and all other powers enabling them in that behalf, hereby order:-

Amendment of Law of 2008.

1. The Medicines (Human and Veterinary) (Bailiwick of Guernsey) Law, 2008 ("**the Law**") is amended as follows.

2. In section 47(1), for "and for relevant disciplinary committee to disqualify", substitute "or disqualify pharmacists".

3. In section 47(1)(a) and (c), immediately before "pharmacist" in each place where it occurs, insert "controlling".

4. In section 47(3), insert the following definitions in the appropriate alphabetical order –

"**acting in temporary cover**", in relation to a newly-qualified pharmacist, means that the newly-qualified pharmacist is

^a Article XIII of Billet d'État No XX of 2012.

^b Order in Council No. V of 2009; as amended by Recueil d'Ordonnances Tome XXXIII, p. 540.

acting in the position of a controlling pharmacist in relation to a registered pharmacy, in the event of illness or temporary absence of the controlling pharmacist, for a period not exceeding 30 days (or any other period prescribed by order of the Department),

"certificate of registration", in relation to any person, means a certificate of registration issued by or on behalf of the Department in connection with the person's registration as a recognised pharmacist under the Doctors, Dentists and Pharmacists Ordinance, 1987,

"controlling pharmacist" means a pharmacist who –

- (a) has been registered as qualified to practise as a pharmacist in the United Kingdom for a period of at least 3 years,
- (b) is not, for the time being, prohibited from working under a prohibition notice served under section 48, and
- (c) is not, for the time being, disqualified for the purposes of this Part under section 61,

"newly-qualified pharmacist" means a pharmacist who –

- (a) has been registered as qualified to practise as a pharmacist in the United Kingdom for a period of less than 3 years,

- (b) is not for the time being prohibited from working under a prohibition notice served under section 48, and
- (c) is not for the time being disqualified for the purposes of this Part under section 61,".

5. For section 50, substitute the following section –

"Business carried on by controlling pharmacist in person.

50. The conditions referred to in section 47(1)(a) (General provisions) are that at all premises where the business is carried on and medicinal products, other than medicinal products on a general sale list, are sold by retail –

- (a) the business, so far as concerns the retail sale at those premises of medicinal products (whether they are medicinal products on a general sale list or not), or the supply at those premises of such products in circumstances corresponding to retail sale, is under the personal control of –
 - (i) the controlling pharmacist carrying on the business,
 - (ii) another controlling pharmacist,
or

(iii) a newly-qualified pharmacist acting in temporary cover, and

(b) the name and certificate of registration of the pharmacist (whether he is the person carrying on the business or some other person), under whose personal control the business is carried on at those premises at any given time, are conspicuously exhibited."

6. In section 51 –

(a) in subsection (1)(a), for "pharmacist", substitute "controlling pharmacist or a newly-qualified pharmacist acting in temporary cover",

(b) for paragraph (b) and the part of the section that follows that paragraph, substitute the following paragraph –

"(b) the name and certificate of registration of the pharmacist (whether he is the superintendent or some other person), under whose personal control the business is carried on at those premises at any given time, are conspicuously exhibited.", and

(c) in subsection (2)(a), immediately before "pharmacist", insert "controlling".

7. In section 52, including its heading but excluding subsection (3)(a), immediately before "pharmacist" in each place where it occurs, insert "controlling".

8. Omit the word "responsible" in section 53.

9. In section 54, immediately before "pharmacist" in each place where it occurs, insert "controlling".

10. In section 56(2), immediately after "prescribed manner", insert "(in the form and by the means directed by the pharmacy registrar)".

11. In section 58(a), delete the comma between "his" and "business".

12. In section 59 –

(a) for paragraph (a) of subsection (3), substitute the following paragraph –

"(a) in the case of an individual –

(i) that he is a person lawfully conducting a retail pharmacy business (either alone or as a member of a partnership) or he is a newly-qualified pharmacist acting in temporary cover for such a person, and

(ii) that he does not take or use the title in question in connection with any premises at which any goods are sold by retail, or are supplied in circumstances

corresponding to retail sale, unless those premises are a registered pharmacy, and"

(b) in subsection (4), for "an approved pharmacy", substitute "a registered pharmacy", and

(e) in subsection (8), immediately before "pharmacist" in each place where it occurs, insert "controlling".

13. For sections 61 to 64, substitute the following sections –

"Power for the Department to direct removal from register or disqualify pharmacists."

61. (1) This section is subject to sections 62 and 63, and applies where –

(a) a body corporate is convicted of an offence under any relevant law,

(b) a relevant person is convicted of an offence under any relevant law, or

(c) a relevant person has been disqualified by the relevant disciplinary committee from practising as a pharmacist in all or any part of the United Kingdom.

(2) Where this section applies, the Department may direct the pharmacy registrar to remove from the pharmacy

register, for a specified period or indefinitely, all or any of the following –

- (a) a relevant body corporate,
- (b) a relevant principal, or
- (c) any registered pharmacy associated with a person specified in paragraph (a) or (b).

(3) In any case where subsection (1)(b) applies to a relevant person who is a pharmacist, the Department may disqualify that person for the purposes of this Part, for a specified period or indefinitely.

(4) In any case where subsection (1)(c) applies, the Department shall, by giving notice in writing to the relevant person, disqualify that person for the purposes of this Part.

(5) The powers in subsections (3) and (4) are in addition to, and without prejudice to, the powers in subsection (2).

(6) The pharmacist registrar shall comply with a direction given under subsection (2).

(7) In this section and sections 62 to 64 –

"body corporate" means a body corporate carrying on a retail pharmacy business,

"relevant body corporate" means –

- (a) in any case where subsection (1)(a) applies, the body corporate to which that subsection applies, and
- (b) in any case where subsection (1)(b) or (c) applies, the body corporate –
 - (i) of which the relevant person is an officer or a superintendent, or
 - (ii) that employs the relevant person in its retail pharmacy business,

"relevant disciplinary committee" means –

- (a) in relation to a pharmacist registered as qualified to practise in Great Britain, the Fitness to Practise Committee established under the Pharmacy Order 2010^c, and
- (b) in relation to a pharmacist registered as qualified to practise in Northern Ireland, the Statutory Committee

^c UK SI 2010 No. 231.

appointed under the Pharmacy
(Northern Ireland) Order, 1976^d,

"relevant law" means –

- (a) this Law or any Ordinance made under it,
- (b) the Misuse of Drugs (Bailiwick of Guernsey) Law, 1974^e or any Ordinance made under it,
- (c) the Doctors, Dentists and Pharmacists Ordinance, 1987^f,
- (d) the Medicines Act 1968^g or the Medicines Act 2003^h,

^d UK SI 1976 No. 1213 (N.I.22).

^e Ordres en Conseil Vol. XXIV, p. 273; as amended by Vol. XXVIII, p. 307; Vol. XXXI, pp. 47 and 278; Vol. XXXIII, p. 217; Vol. XXXIV, p. 172; Vol. XXXVI, p. 396; Vol. XL, pp. 34 and 131; Order in Council No. IV of 2006; No. XIII of 2006; Recueil d'Ordonnances Tome XX, p. 271; Tome XXII, p. 483; Tome XXIV, p. 477; Tome XXV, pp. 38 and 325; Tome XXIX, p. 406; G.S.I. No. 19 of 1997; G.S.I. No. 5 of 2004; G.S.I. No. 42 of 2006; G.S.I. No. 20 of 2008; G.S.I. No. 22 of 2010; G.S.I. No. 33 of 2010; G.S.I. No. 82 of 2010; see also Recueil d'Ordonnances Tome XXVII, p. 247.

^f Recueil d'Ordonnances Tome XXIV, p. 79; as amended by Ordres en Conseil Vol. XXXI, p. 278; Recueil d'Ordonnances Tome XXIV, p. 238; Tome XXIX, p. 406. This Ordinance is applied to the Island of Alderney by Recueil d'Ordonnances Tome XXIV, p. 262.

^g An Act of Parliament (1968 c.67).

^h An Act of Parliament (2003 c.4).

- (e) the Misuse of Drugs Act 1971ⁱ,
- (f) the Pharmacy Order 2010,
- (g) any subordinate legislation made under an enactment specified in any of paragraphs (a) to (f), or
- (h) any other law in any jurisdiction that is similar in purpose or effect to any legislation specified in any of paragraphs (a) to (g),

"relevant person" means –

- (a) any director, manager, secretary, or other similar officer of a body corporate,
- (b) any superintendent of a body corporate,
- (c) any person employed by a body corporate in the retail pharmacy business,
- (d) any person (not being a body corporate) carrying on a retail pharmacy business,

ⁱ

An Act of Parliament (1971 c.38).

- (e) any person employed in the retail pharmacy business by a person referred to in paragraph (d),
- (f) any representative,
- (g) any person employed by a representative in the retail pharmacy business, or
- (h) any pharmacist under whose personal control a retail pharmacy business is carried on,

"relevant principal" means –

- (a) any person (not being a body corporate) carrying on a retail pharmacy business who employs in the retail pharmacy business a relevant person to whom subsection (1)(b) or (c) applies,
- (b) any representative who employs in the retail pharmacy business a relevant person to whom subsection (1)(b) or (c) applies, or
- (c) any other person who carries on a retail pharmacy business that is under the

personal control of a pharmacist to whom subsection (1)(b) or (c) applies, and

"**representative**" has the meaning given by section 52(5).

Grounds for removal from the register in certain cases.

62. (1) This section applies where the Department proposes to make a direction under section 61(2) by reason of the application of section 61(1)(b) or (c).

(2) Where this section applies, the Department must not give a direction removing a relevant body corporate from the pharmacy register under section 61(2)(a) unless –

- (a) the offence or misconduct in question was instigated or connived at by the board of the body corporate,
- (b) a director, manager, secretary or other similar officer or superintendent of the body corporate, or any person employed by the body corporate in the retail pharmacy business, had at some time within 12 months before the date on which the offence or misconduct in question occurred, been convicted of a similar offence or been guilty of similar misconduct, and the board had, or with

the exercise of reasonable care should have had, knowledge of that previous offence or misconduct,

- (c) in the case of a continuing offence or continuing misconduct, the board of the body corporate had, or with the exercise of reasonable care should have had, knowledge of its continuance, or
- (d) in any case where section 61(1)(b) applies, the board of the body corporate had not exercised reasonable care to secure that the relevant laws were complied with.

(3) Where this section applies, the Department must not give a direction removing a relevant principal from the pharmacy register under section 61(2)(b) unless –

- (a) the offence or misconduct in question was instigated or connived at by the relevant principal,
- (b) the relevant principal, any person employed by him, or any pharmacist under whose personal control his retail pharmacy business had been carried on, had, at some time within 12 months before the date on which the offence or

misconduct in question occurred, been convicted of a similar offence or been guilty of similar misconduct and (where it was a similar offence or similar misconduct on the part of the employee or the pharmacist) the relevant principal had, or with the exercise of reasonable care should have had, knowledge of that previous offence or misconduct,

- (c) in the case of a continuing offence or continuing misconduct, the relevant principal had, or with the exercise of reasonable care should have had, knowledge of its continuance, or
- (d) in any case where section 61(1)(b) applies, the relevant principal had not exercised reasonable care to secure that the relevant laws were complied with.

Procedure relating to removal from the register, disqualification, and appeal in certain cases.

63. (1) The Department shall give written notice of –

- (a) any direction under section 61(2)(a) or (b), to the person who is to be removed from the register, and

- (b) any direction under section 61(2)(c), to the person carrying on the retail pharmacy business at the registered pharmacy which is to be removed from the register.

(2) The Department shall give written notice of any disqualification under section 61(3) to the person who is to be disqualified.

(3) Neither a direction under section 61(2) nor a disqualification under section 61(3) has effect until –

- (a) if an appeal is made under this section against the direction or disqualification, the determination or withdrawal of the appeal, or

- (a) if no such appeal is made, the expiry of three months from the date of written notice of the direction or disqualification being given to the person concerned.

(4) Within three months of the date of written notice of the direction or disqualification being given to the person concerned, that person may appeal against the direction or disqualification to the Royal Court in accordance with subsections (5) to (11).

(5) An appeal may be made on any of the following grounds –

- (a) the direction or disqualification was *ultra vires* or there was some other error of law,
- (b) the direction or disqualification was unreasonable,
- (c) the direction or disqualification was made in bad faith,
- (d) there was a lack of proportionality, or
- (e) there was a material error as to the facts or as to the procedure.

(6) An appeal must be made by summons served on the Department stating the grounds and material facts on which the appellant relies.

(7) On an appeal, the Department may apply to the Court, by summons served on the appellant, for an order that the appeal be dismissed for want of prosecution; and on hearing the application the Court may –

- (a) dismiss the appeal or the application (in either case on such terms and conditions as the Court may direct), or

(b) make such other order as the Court considers just.

(8) On determining an appeal, the Court may -

(a) set aside the direction or disqualification in question and, if the Court considers it appropriate to do so, remit the matter to the Department with such directions as the Court thinks fit, or

(b) confirm that direction or disqualification, in whole or in part.

(9) An appeal from a decision of the Court under this section lies to the Court of Appeal on a question of law.

(10) Subsection (7) is without prejudice to the inherent powers of the Court or to the provisions of rule 52 of the Royal Court Civil Rules, 2007.

(11) In this section –

"person concerned" means a person given notice of a direction under section 61(2) or a disqualification under section 61(3), and

"Royal Court" or **"Court"** means the Royal Court sitting as an Ordinary Court, constituted by the Bailiff sitting unaccompanied by the Jurats; and for the

purposes of an appeal under this section the Court may appoint one or more assessors to assist it in the determination of any matter before it.

Reinstatement to register and revocation of disqualification.

64. (1) At any time while a direction under section 61(2) is in force, on the application of the person concerned or without any such application, the Department may reinstate to the pharmacy register any person or any premises.

(2) At any time while a disqualification under section 61(3) is in force, on the application of the person concerned or without any such application, the Department may revoke the disqualification.

(3) At any time while a disqualification under section 61(4) is in force, on the application of the disqualified person or without any such application, the Department may invite the relevant disciplinary committee to revoke that person's disqualification from practising as a pharmacist in all or any part of the United Kingdom.

(4) If a relevant disciplinary committee revokes a person's disqualification from practising as a pharmacist in all or any part of the United Kingdom (whether as a result of the Department's invitation under subsection (3) or otherwise) or if such a disqualification expires or lapses, the Department shall revoke that person's disqualification for the purposes of this Part.

(5) If, despite an application to the Department under subsection (1), (2) or (3), the Department refuses to make the reinstatement or issue the invitation requested, the applicant may appeal to the Royal Court against the refusal, at any time before the end of the period of three months from the date on which written notice of refusal is given to him.

(6) Section 63(5) to (11) (Procedure relating to removal from the register, disqualification and appeal in certain cases) shall have effect in relation to any appeal under this section as if –

- (a) an appeal under this section were an appeal under section 63, and
- (b) the refusal appealed under this section were a direction or disqualification appealed under section 63."

Interpretation.

14. (1) A reference in this Ordinance to an enactment, or any provision or part of it, is a reference to it as amended, or re-enacted or re-made (with or without modification), or extended or applied by or under any enactment.

(2) The Interpretation (Guernsey) Law, 1948^j applies to the interpretation of this Ordinance throughout the Bailiwick.

^j Ordres en Conseil Vol. XIII, p. 355.

(3) Unless the context requires otherwise, an expression used in this Ordinance has the same meaning as in the Law.

Consequential repeal.

15. Section 6 (Transitional provision relating to pharmacies) of the Medicines (Human and Veterinary) (Bailiwick of Guernsey) Law, 2008 (Commencement and Amendment) Ordinance, 2009^k is repealed.

Extent.

16. This Ordinance has effect throughout the Bailiwick of Guernsey.

Citation.

17. This Ordinance may be cited as the Medicines (Human and Veterinary) (Bailiwick of Guernsey) Law, 2008 (Commencement and Amendment) Ordinance, 2013.

Commencement of this Ordinance and Part IV of the Law.

18. This Ordinance and Part IV of the Law shall both come into force on the 1st May, 2014.

J. TORODE,
Her Majesty's Greffier.

^k Recueil d'Ordonnances Tome XXXIII, p. 540.

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