



The Law Commission and The Scottish Law Commission

(LAW COM. No. 129)
(SCOT. LAW COM. No. 84)

DENTISTS BILL

**REPORT ON THE CONSOLIDATION OF THE
DENTISTS ACTS 1957 TO 1983**

*Presented to Parliament by the
Lord High Chancellor and the Lord Advocate
by Command of Her Majesty
January 1984*

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THE LAW COMMISSION AND THE SCOTTISH
LAW COMMISSION

DENTISTS BILL

**REPORT ON THE CONSOLIDATION OF THE DENTISTS ACTS
1957 TO 1983**

*To the Right Honourable the Lord Hailsham of St. Marylebone, C.H.,
Lord High Chancellor of Great Britain.*

*The Right Honourable the Lord Mackray of Clashfern, Q.C., Her Majesty's
Advocate.*

The Dentists Bill which is the subject of this Report seeks to consolidate the Dentists Acts 1957 to 1983. In order to produce a satisfactory consolidation it is necessary to make the recommendation set out in the Appendix to this Report.

The Department of Health and Social Security, the Scottish Office, the Department of Health and Social Services for Northern Ireland, the General Dental Council and the British Dental Association have been consulted in connection with the recommendation and agree with it.

RALPH GIBSON *Chairman of the Law Commission*

PETER MAXWELL, *Chairman of the Scottish Law Commission*

16th December 1983

The Law Commission and The Scottish Law Commission
(Law Com. No. 129) (Scot. Law Com. No. 84)

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CORRECTION

Page 3 line 8 and 9 should read:—

The Right Honourable the Lord Mackay of Clashfern, Q.C., Her Majesty's Advocate.

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APPENDIX

RECOMMENDATION

Our recommendation relates to the appointment of legal assessors in connection with certain proceedings before the Preliminary Proceedings Committee of the General Dental Council.

The present function of that Committee is to decide whether the case of a registered dentist who is alleged to be liable to have his name erased from the dentists register under section 25 of the Dentists Act 1957 (erasure from register for crime or infamous conduct) ought to be referred to the Disciplinary Committee of the Council to be dealt with by them in accordance with section 26 of that Act: see subsection (2) of section 26. Proceedings before the Preliminary Proceedings Committee for this purpose are conducted in the absence of the dentist concerned, and rules made under paragraph 9 of Schedule 1 to the 1957 Act provide for the Committee to be able to take advice from the Council's solicitors or counsel instructed by them: see Article 30(2) of the Council's Rules and Regulations (1981). However, if the case is referred to the Disciplinary Committee, the dentist and his representative will be entitled to be heard by that Committee when they consider the allegations against him (see section 27 (1) of that Act and the General Dental Council Disciplinary Committee (Procedure) Rules Approval Order of Council 1957, S.I. 1957 No. 1265, made thereunder), and a legal assessor must in accordance with section 28 of that Act be appointed to advise that Committee on questions of law arising in the proceedings before them.

As a result of the Dentists Act 1983 various changes will have been made by 1st October 1984 in the provisions of the 1957 Act relating to disciplinary proceedings affecting registered dentists, including the re-naming of the Disciplinary Committee as the Professional Conduct Committee and the amendment of section 28. The change with which our recommendation is principally concerned is the new power of the Preliminary Proceedings Committee under section 16 of the 1983 Act to make an order suspending the registration of a dentist pending the determination of his case by the Professional Conduct Committee. This power will be exercisable where the Preliminary Proceedings Committee decide that allegations of crime or misconduct ought to be referred to the latter Committee under section 26 of the 1957 Act, and are satisfied that it is necessary for the protection of members of the public to make the order. No doubt because of the serious consequences of such an order for the dentist concerned—so long as his registration is suspended he will be unable lawfully to practise as a dentist—subsection (3) of section 16 specifically provides that no order is to be made under the section unless the dentist has been afforded an opportunity of appearing before the Preliminary Proceedings Committee and of being heard on the question whether such an order should be made in his case. The subsection further provides that the dentist may be represented before the Committee by counsel or a solicitor.

Proceedings before the Committee under section 16 will thus be of a quite different character from those under section 26 of the 1957 Act since it follows from what is contemplated by the new procedure that points of law may be taken and argued before the Committee and that the Committee will be bound in conducting the proceedings to observe the rules of natural

justice. As it is possible that none of the members of the Committee will have any legal qualifications, it would seem desirable that the Committee should be in a position to obtain independent legal advice on any such points or on the application of those rules. However, whereas section 28 of the 1957 Act will, as indicated above, require a legal assessor to be appointed to advise the Professional Conduct Committee on questions of law arising in the subsequent proceedings before that Committee, the 1983 Act omitted to require a legal assessor to be appointed to advise the Preliminary Proceedings Committee on questions of law arising in proceedings under section 16. We can see no good reason why there should be this distinction between these two types of proceedings and think that it would be in the interests of both the dentist and the Committee if the omission in question were rectified by applying section 28 (as amended by Schedule 2 to the 1983 Act) to proceedings under section 16. This would have the effect of applying not only the requirement for there to be a legal assessor but also certain supplementary provisions as to legal assessors which we think should, so far as appropriate, also apply in the case of an assessor appointed for the purposes of section 16.

We accordingly recommend that the provisions of section 28 of the 1957 Act (as amended) should be applied to proceedings under section 16 of the 1983 Act, subject to any necessary modification.

Effect is given to this recommendation in paragraph 5(5) of Schedule 3 to the Bill.

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