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STATUTORY INSTRUMENTS

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**2005 No. 848**

**The Opticians Act 1989 (Amendment) Order 2005**

**PART 5**

**Further amendments**

**Fitting of contact lenses**

**18.**—(1) Section 25 (fitting of contact lenses) is amended as follows.

(2) For subsection (1) substitute—

“(1) Subject to the following provisions of this section a person who is not a registered medical practitioner, a registered optometrist or a registered dispensing optician must not fit a contact lens for an individual.

(1A) A registered medical practitioner, a registered optometrist, a registered dispensing optician or a person to whom, by virtue of subsection (2) or (3) below, subsection (1) above does not apply, must not fit a contact lens for an individual unless—

(a) where the duty to give an individual a signed written prescription under section 26(2) below arises, he has the particulars of such a prescription given to the individual within the period of two years ending on the date the fitting begins; and

(b) the fitting begins before any re-examination date specified in that prescription.”.

(3) In subsection (3), for the word “opticians” substitute “optometrists or dispensing opticians”.

(4) In subsection (4), after the words “subsection (1)” insert “or (1A)”.

(5) After subsection (4), add—

“(5) A person to whom this subsection applies who fits a contact lens to an individual must—

(a) on completion of the fitting, provide the individual with a signed, written specification of each lens fitted sufficient to enable the lens to be replicated unless, having carried out the assessment referred to in subsection (9)(a) below, he is of the view that a contact lens is not appropriate; and

(b) provide the individual with instructions and information on the care, wearing, treatment, cleaning and maintenance of the lens.

(6) The obligation to provide a specification or instructions or information under subsection (5) above applies—

(a) if only one person took part in fitting a contact lens for the individual, to that person;

(b) if a series of persons took part in fitting a contact lens for an individual, to the last person to fit a lens.

(7) A specification issued in accordance with subsection (5) above must—

- (a) state the period during which the specification remains valid and its expiry date; and
  - (b) in the case of a specification provided by a registered medical practitioner, contain such particulars as the Secretary of State may specify in regulations.
- (8) A specification becomes invalid after its expiry date.
- (9) For the purposes of this section and section 27(3A) below, “fitting” a contact lens means—
- (a) assessing whether a contact lens meets the needs of the individual; and, where appropriate
  - (b) providing the individual with one or more contact lenses for use during a trial period,

and “fit” and “fitted” shall be construed accordingly.

(10) In the application of this section to Northern Ireland, for any reference to the Secretary of State there shall be substituted a reference to the Department of Health, Social Services and Public Safety in Northern Ireland.”.

(6) The amendments made by this article do not apply to any fitting which was completed before this article came into force.

### **Testing of sight**

**19.**—(1) Section 26 (duties to be performed on sight testing) is amended as follows.

(2) In subsection (1)—

(a) for the words “ophthalmic optician” substitute “optometrist”; and

(b) in paragraph (b)(ii), at the end add “and if he is referring him, the reason for the referral.”.

(3) In subsection (2), for the words “Except in circumstances specified in regulations under subsection (3)(b) below”, substitute “Except where regulations under subsection (3)(b) below specify otherwise”.

(4) In subsection (3), for paragraph (b), substitute—

“(b) that that duty does not arise where a person is being fitted with contact lenses as part of the medical or clinical treatment provided for an eye condition.”.

(5) In subsection (9), for “the Department of Health and Social Services for Northern Ireland” substitute “the Department of Health, Social Services and Public Safety in Northern Ireland”.

### **Eye protection wear**

**20.**—(1) Section 27 (sale and supply of optical appliances) is amended as follows.

(2) For subsections (1) to (3) substitute—

“(1) A person shall not sell—

(a) any contact lens for use by any person who does not have a valid specification provided pursuant to section 25(5) above; or

(b) subject to the following provisions of this section, any optical appliance or zero powered contact lens unless the sale is effected by or under the supervision of a registered medical practitioner, a registered optometrist or a registered dispensing optician.

(2) Subsection (1) above shall not apply to any of the following sales—

- (a) a sale for a person who has attained the age of sixteen of spectacles which have two single vision lenses of the same positive spherical power not exceeding 4 dioptres where the sale is wholly for the purpose of correcting, remedying or relieving presbyopia;
  - (b) a sale of an optical appliance intended for use as protection or cover for the eyes in sports if—
    - (i) neither lens fitted to the appliance has a positive or negative spherical power exceeding 8 dioptres;
    - (ii) the appliance is an appliance with a single vision lens or single vision lenses; and
    - (iii) the appliance falls within any category of appliance specified in an order made by the Privy Council for the purposes of this section; or
  - (c) a sale of a contact lens for a person who has attained the age of sixteen where the sale satisfies the requirements of subsection (3) below.
- (3) Those requirements are that—
- (a) the seller has—
    - (i) the original specification;
    - (ii) a copy of the original specification which he verifies with the person who provided it; or
    - (iii) an order from the purchaser, submitted either in writing or electronically, which contains the particulars of the specification of the person who intends to wear the contact lens (“the wearer”), and the seller verifies those particulars with the person who provided the specification;
  - (b) the seller is reasonably satisfied that the goods ordered are for use by the person named in the specification;
  - (c) the sale is made before the expiry date mentioned in the specification;
  - (d) the seller is, or is under the general direction of, a registered medical practitioner, a registered optometrist or a registered dispensing optician; and
  - (e) the wearer—
    - (i) is not, so far as the seller knows, registered as blind or registered as partially sighted in a register compiled by a local authority under section 29(4)(g) of the National Assistance Act 1948 (welfare services);
    - (ii) has not been certified as blind or as partially sighted and in consequence registered as blind or partially sighted in a register maintained by or on behalf of a council constituted under the Local Government (Scotland) Act 1994; or
    - (iii) has not been certified as blind and in consequence registered as blind in a register maintained by or on behalf of a Health and Social Services Board in Northern Ireland.
- (3A) In this section—
- (a) “seller”—
    - (i) includes any person who supplies the optical appliance or, as the case may be, the zero powered contact lens whether or not payment is made to him for the supply; and
    - (ii) does not include a person who supplies the contact lens as part of the assessment process in the course of fitting the lenses to the individual; and

(b) lenses are to be taken to have the same positive spherical power if the difference between them is within the tolerances relating to the power of such lenses specified from time to time by the British Standard Specification.

(3B) The seller must make arrangements, except in such cases or classes of cases as may be prescribed in rules made by the Council, for the individual for whom the optical appliance or, as the case may be, the zero powered contact lens is supplied to receive aftercare in so far as, and for so long as, may be reasonable in his particular case.

(3C) The Council may by rules specify the arrangements which are to be made or may be made under subsection (3B) above.”.

(3) In subsection (4)—

- (a) for the words “ophthalmic optician” substitute “optometrist”; and
- (b) after the words “optical appliance”, in each place that it appears, insert “or zero powered contact lens”.

(4) In subsection (5)—

- (a) after the words “the sale of an optical appliance” insert “or zero powered contact lens”;
- (b) in paragraph (a), for the words “registered optician or enrolled body corporate” substitute “registered optometrist, registered dispensing optician or business registrant”; and
- (c) in paragraph (b), after the words “optical appliances” insert “or zero powered contact lenses”.

(5) In subsection (7), for the words “ophthalmic optician” substitute “optometrist”.

(6) In subsection (9)—

- (a) after the words “optical appliance” insert “or zero powered contact lens”; and
- (b) in paragraphs (a) and (b), after the word “appliance” insert “or lens”.

(7) The amendments made by this article do not affect any offence committed before this article comes into force.

### **Criminal offences and legal proceedings**

**21.**—(1) In the provisions specified in paragraph (2) below, for the words “level 4” substitute “level 5”.

(2) Those provisions are sections 24(4) (testing of sight), 25(4) (fitting of contact lenses), 27(10) (sale and supply of optical appliances) and 28(1) (penalty for pretending to be registered etc.).

(3) After section 30 insert—

#### **“Legal proceedings**

**30A.**—(1) Notwithstanding anything in any enactment, proceedings for an offence under this Part of this Act may be begun at any time within the period of six months beginning with the date on which evidence sufficient in the opinion of the Council to justify a prosecution for the offence comes to the Council’s knowledge, or within a period of two years beginning with the date of the commission of the offence, whichever period first expires.

(2) In this section, “enactment” means—

- (a) an Act of Parliament;
- (b) an Act of the Scottish Parliament;
- (c) any Northern Ireland legislation; or

(d) any instrument made under or having effect by virtue of an Act of Parliament, an Act of the Scottish Parliament or any Northern Ireland legislation.”.

(4) The amendments made by this article do not affect any offence committed before this article comes into force.

## **Rules**

**22.** After section 31 insert—

### **“Rules**

**31A.** Any power to make rules under this Act may be exercised—

- (a) so as to make different provision with respect to different cases or different classes of cases or different provisions in respect of the same case or class of case for different purposes of this Act; and in particular different provisions may be made in respect of optometrists and dispensing opticians;
- (b) either in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions; or
- (c) so as to make any supplementary, incidental, consequential, transitional, transitory or saving provision which the Council considers necessary or expedient.”.

## **Consumer complaints**

**23.** For section 32(1) (expenses and accounts of the Council) substitute—

“(1) The Council may allocate any money received by them whether by way of fees or otherwise, other than any sum paid under a financial penalty order or recovered under section 23C(7) above, to any person or body—

- (a) set up to investigate and resolve consumer complaints into the supply of goods and services by registrants; or
- (b) for purposes connected with the profession of optometrist or dispensing optician.”.

## **Amendment of section 33**

**24.** For section 33(3) (default powers of Privy Council not applicable) substitute—

“(3) This section applies to all functions of the Council under this Act except—

- (a) their functions under sections 1, 5D, 8, 8A, 9, 12, 13 and 32(1) above; and
- (b) their powers to make rules under sections 23C, 23D and 23E above.”.

## **Subordinate legislation**

**25.**—(1) Section 34 (subordinate legislation procedure) is amended as follows.

(2) After subsection (1), insert—

“(1A) Subsection (1) above shall not apply to rules made under section 10 above in so far as they relate to fees.”.

(3) For subsection (2), substitute—

“(2) The Privy Council may approve rules under section 23C above either in the form submitted to them or subject to such modifications as appear to the Privy Council requisite.”.

- (4) In subsection (3) omit the words “or scheme”.
- (5) In subsections (5)(c), (6)(b) and (10), for the words “section 26 above” substitute “section 25 or 26 above”.
- (6) Omit subsections (4), (5)(b), (8) and (9).

### **Amendment of Schedule 1**

- 26.—(1) Schedule 1 (constitution etc. of the Council) is amended as follows.
  - (2) In paragraph 1(d), for the word “examining” substitute “assessing”.
  - (3) In paragraph 2—
    - (a) in sub-paragraph (1)—
      - (i) for paragraph (a), substitute—

“(a) registered in any of the registers maintained by the Council;”, and
      - (ii) for paragraph (c), substitute—

“(c) a director of a body corporate registered in the register of bodies corporate maintained by the Council under section 9(1) of this Act.”; and
    - (b) in sub-paragraph (2), omit the words “and may be” to the end.
  - (4) In paragraph 3(1) for the words “registered ophthalmic or dispensing opticians” substitute “registrants”.
  - (5) In paragraph 4—
    - (a) for the word “examining” substitute “assessing”;
    - (b) in sub-paragraph (c), for the words “ophthalmic opticians” substitute “optometrists”;
    - (c) in sub-paragraphs (c) and (d), for the word “examination” substitute “assessment”;
    - (d) for sub-paragraph (d)(ii), substitute—

“(ii) the Bradford College;”; and
    - (e) in sub-paragraph (d)—
      - (i) after the words “City and Islington College (City Campus)” omit “and”; and
      - (ii) at the end add—

“; and

(v) the Association of British Dispensing Opticians College.”.
  - (6) For paragraph 6(1)(b), substitute—

“(b) those chosen to represent registered optometrists or registered dispensing opticians; and”.
  - (7) In paragraph 7—
    - (a) in sub-paragraph (2)(a), for the word “opticians” substitute “optometrists or registered dispensing opticians”; and
    - (b) for sub-paragraph (3), substitute—

“(3) A person nominated to fill a vacancy—
      - (a) under sub-paragraph (2)(a) above shall hold office until the date on which the term of office of the person whose vacancy he fills would have expired; and
      - (b) under sub-paragraph (2)(b) above shall hold office for a period of five years commencing on the date of his appointment.”.
- (8) For paragraph 9 substitute—

“9.—(1) A person who has been chairman of the Council is eligible to be nominated chairman of the Council once more only.

(2) A person who has been a member is eligible to be again nominated or elected as a member.”.

(9) In paragraph 11(2)(b), omit the words “with the approval of the Privy Council”.

(10) In paragraph 12, for the words “the Disciplinary Committee” substitute “the Investigation Committee, the Registration Appeals Committee and the Fitness to Practise Committee”.

(11) After paragraph 12, insert—

“12A. Rules under section 2(2), 3(2), 4(3), 5(2), 5A(3), 5B(2) and 5C(3) above may make provision as to quorum.”.

(12) In paragraph 13(3), for the words “registered opticians” substitute “registered optometrists and registered dispensing opticians”.

### **Registration appeals**

27. After Schedule 1, insert—

#### “SCHEDULE 1A

#### REGISTRATION APPEALS

### **Interpretation**

1. In this Schedule—

“appealable registration decision” is to be construed in accordance with paragraph 2 below;

“person concerned” means a person in respect of whom an appealable registration decision is made or, as the case may be, an applicant in respect of whom paragraph 3(2) below applies;

“person making the decision” means the registrar or, as the case may be, the Council;

“the requisite period” means the period of three months beginning with the date there is in the possession of the registrar or, as the case may be, the Council, sufficient information to make a decision of a kind specified in paragraphs (a) to (h) of paragraph 2(1) below;

“relevant court” mean the county court or, in Scotland, the sheriff; and

“the sheriff” means the sheriff in whose sheriffdom is situated the address of the person concerned.

### **Appealable registration decisions**

2.—(1) The following are appealable registration decisions for the purposes of this Schedule—

(a) a decision by the Council on an application made under section 8 above not to register the applicant in the appropriate register;

(b) a decision by the Council on an application made under section 8A above not to register the applicant in the appropriate register;

(c) a decision of the Council under rules made in accordance with section 8A(5) above to remove a registrant from the register maintained under section 8A above;

- (d) a decision by the Council on an application made by a body corporate under section 9 above not to register that body in the register of bodies corporate;
  - (e) a decision of the registrar under rules made in accordance with section 10(1A) above—
    - (i) refusing an application for an entry or refusing to retain an entry in the appropriate register; or
    - (ii) removing or restoring a person’s entry in the appropriate register;
  - (f) a decision of the registrar under rules made in accordance with section 10(1)(b), (f) or (ff) above to remove a person’s name from the appropriate register or to refuse to retain his name in, or restore his name to, it;
  - (g) a decision of the registrar removing the registrant’s name from, or refusing to retain the registrant’s name in, the appropriate register in accordance with section 11B(1)(a) above, or removing or refusing to retain the registrant’s entry relating to a specialty or proficiency in the appropriate register in accordance with section 11B(2)(a) above; and
  - (h) a decision of the registrar under section 11B above not to restore a person’s name to, or to make an entry relating to a specialty or proficiency in, the appropriate register.
- (2) A decision is not an appealable registration decision for the purposes of this Schedule if it is a decision to refuse to enter or retain a person’s name in the appropriate register merely because that the person failed to—
- (a) pay the prescribed fee for registration or inclusion of an entry relating to a specialty or proficiency; or
  - (b) make an application as required under this Act or any rules made under it.

### **Notice of appealable registration decisions**

**3.—(1)** Where an appealable registration decision is made, the person making the decision shall serve on the person concerned notice of—

- (a) the decision;
- (b) the reasons for the decision; and
- (c) the person’s right to appeal under paragraph 4 below.

(2) Failure to serve on an applicant notification of a decision in respect of an application for registration, retention or restoration (including registration or restoration of an entry relating to a specialty or proficiency) under any provision mentioned in paragraph 2(1) above within the requisite period shall be treated as a decision from which the applicant may appeal under paragraph 4 below.

### **Appeals from an appealable registration decision**

**4.—(1)** A person in respect of whom an appealable registration decision has been made may appeal against that decision to the Registration Appeals Committee.

(2) An appeal under sub-paragraph (1) above shall be made by giving notice of appeal to the registrar.

(3) Except where sub-paragraph (4) applies, any such notice of appeal must be given before the end of the period of 28 days beginning with the date on which notice of the decision was given under paragraph 3(1) above, but an extension of time may be granted under paragraph 5 below.



(4) In the case of an appeal by virtue of paragraph 3(2) above, notice of appeal must be given before the end of the period of 28 days following the end of the requisite period.

(5) Where a decision to erase or remove the name of the registrant from the appropriate register or to remove from the appropriate register particulars entered in accordance with rules made under section 10(1A) above is an appealable registration decision, the decision shall not be carried into effect—

- (a) until the time for bringing an appeal has expired without an appeal being brought; or
- (b) where an appeal is brought, until the date on which the appeal is finally disposed of or abandoned or fails by reason of its non-prosecution.

(6) The Registration Appeals Committee considering the appeal may make such inquiries as they consider appropriate.

(7) In disposing of an appeal under this paragraph, a Registration Appeals Committee may determine to—

- (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 person making the decision; or
- (d) remit the case to the person making the decision to dispose of in accordance with the directions of the Registration Appeals Committee.

(8) Any sum required to be paid under an award in respect of costs or expenses shall be recoverable as if it had been adjudged to be paid by order of a relevant court.

(9) The Registration Appeals Committee shall, as soon as reasonably practicable—

- (a) give the person concerned, and the person making the decision, notice of the Committee's determination on the appeal before them and of the reasons for that determination; and
- (b) if that determination is not a determination under sub-paragraph (7)(b) above, give the person concerned notice of his right of appeal under section 23G of this Act.

### **Extension of time for appealing**

5. Where—

- (a) any notice required by paragraph 3(1) above to be given to the person concerned is given by sending it to him by post; and
- (b) the registrar is satisfied, on the application of the person concerned, that that person did not receive the notice within the period of fourteen days beginning with the day the person making the decision gave the decision to which the notice relates,

the registrar may, if he thinks fit, by authorisation in writing extend the time for giving notice of appeal under paragraph 4(3) above.”.

### **Consequential amendments**

28. The minor and consequential amendments contained in Schedule 1 to this Order shall have effect.

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*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

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### **Transitional provisions**

**29.**—(1) The transitional provisions contained in Schedule 2 to this Order shall have effect.

(2) The Privy Council may by Order make such transitional, transitory or savings provisions as it considers appropriate.

(3) The power to make an Order under paragraph (2) is exercisable by statutory instrument and a statutory instrument containing such an Order shall be subject to annulment in pursuance of a resolution of either House of Parliament and for the purposes of section 1 of the Statutory Instruments Act 1946<sup>(1)</sup> this provision shall have effect as if contained in an Act of Parliament.

(4) The power vested in the Privy Council to make an Order under paragraph (2) may be exercised by any two or more of the Lords and others of the Council.

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<sup>(1)</sup> 9 and 10 Geo 6 c.36; as amended by the Government of Wales Act 1998 (c. 38).