

2005 No. 848

HEALTH CARE AND ASSOCIATED PROFESSIONS

OPTICIANS

The Opticians Act 1989 (Amendment) Order 2005

Made - - - - - *22nd March 2005*

Coming into force in accordance with article 1(2), (3) and (4)

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Transitional provisions

At the Court at Buckingham Palace, the 22nd day of March 2005

Present,

The Queen's Most Excellent Majesty in Council

Whereas the Secretary of State published a draft Order and invited representations as required by paragraph 9(1) of Schedule 3 to the Health Act 1999^(a) and the period of three months mentioned in paragraph 9(2) of that Schedule expired before a draft of this Order in Council was laid before Parliament;

And whereas a draft of this Order in Council has been laid before and approved by resolution of each House of Parliament in accordance with section 62(9) of the Health Act 1999;

(a) 1999 c.8.

Now, therefore, Her Majesty, in exercise of the powers conferred upon Her by sections 60 and 62(4) of, and Schedule 3 to, that Act, and of all other powers enabling Her in that behalf, is pleased, by and with the advice of the Privy Council, to order, and it is hereby ordered, as follows:

PART 1

General

Citation, commencement and extent

1.—(1) This Order may be cited as the Opticians Act 1989 (Amendment) Order 2005.

(2) This article and articles 22, 25 and 29(2) to (4) shall come into force forthwith on the making of this Order.

(3) Those provisions of this Order which confer powers enabling rules, regulations or orders to be made shall come into force forthwith on the making of this Order, but for the purpose only of the exercise of those powers.

(4) The provisions of this Order in so far as they are not brought into force by paragraphs (2) and (3) shall come into force on such day as the Secretary of State may specify.

(5) Different days may be specified under paragraph (4) for different purposes.

(6) The Secretary of State shall notify any day specified and, if different purposes are specified, the purposes for which it is specified in the London, Edinburgh and Belfast Gazettes at least one week before that day.

(7) Subject to paragraph (8), this Order shall extend to England and Wales, Scotland and Northern Ireland.

(8) The extent of any amendment to any enactment or instrument in Parts 2 and 3 of Schedule 1 to this Order is the same as that of the enactment or instrument amended.

Amendment of the Opticians Act 1989

2.—(1) The Opticians Act 1989(a) shall be amended in accordance with the following provisions of this Order.

(2) Except where the context otherwise requires, references in this Order to Parts, sections and Schedules are references to Parts and sections of, and Schedules to, the Opticians Act 1989.

PART 2

The Council, its Committees and Registration

Functions of the Council

3. In section 1 (constitution and functions of the Council), in subsection (2), for the words “professional education and professional conduct among opticians” substitute “professional education, conduct and performance among registrants”.

The Council’s Committees

4.—(1) In section 2 (the Education Committee)—

(a) in subsection (1), for the words “to whom the Council shall refer for advice on all matters relating to optical training and examinations” substitute “for the purpose of giving advice

(a) 1989 c.44.

and assistance to the Council (whether or not in response to a reference from them) on matters relating to optical training, education and assessment”; and

- (b) in subsection (2), omit the words from “, but the rules shall secure” to the end of the subsection.

(2) For sections 3 to 5 (the Companies Committee, the Investigating Committee and the Disciplinary Committee) substitute—

“The Companies Committee

3.—(1) There shall continue to be a committee of the Council known as the Companies Committee for the purpose of giving advice and assistance to the Council (whether or not in response to a reference from them) on matters relating to business registrants, other than matters required by this Act to be considered by the Investigation Committee, the Registration Appeals Committee or the Fitness to Practise Committee.

(2) The Companies Committee shall continue to be constituted as provided by rules made under this subsection by the Council.

(3) Before making rules under subsection (2) above, the Council shall consult organisations appearing to the Council to represent the interests of substantial numbers of business registrants.

The Investigation Committee

4.—(1) There shall be a committee of the Council known as the Investigation Committee for the purpose of investigating any allegation that—

- (a) a registered optometrist’s or a registered dispensing optician’s fitness to practise is impaired;
- (b) a business registrant’s fitness to carry on business as an optometrist or a dispensing optician or both is impaired; or
- (c) a student registrant’s fitness to undertake training as an optometrist or a dispensing optician is impaired.

(2) The Investigation Committee may refer any allegation before it to the Fitness to Practise Committee for consideration.

(3) The Investigation Committee shall be constituted as provided by rules made under this subsection by the Council.

The Registration Committee

5.—(1) There shall be a committee of the Council known as the Registration Committee, for the purpose of giving advice and assistance to the Council (whether or not in response to a reference from them) on matters relating to registration, other than matters required by this Act to be considered by the Registration Appeals Committee.

(2) The Registration Committee shall be constituted as provided by rules made under this subsection by the Council.

The Registration Appeals Committee

5A.—(1) There shall be a committee of the Council known as the Registration Appeals Committee, for the purpose of hearing and determining appeals against any decision of the registrar refusing to enter the name of an individual or body corporate in, or to restore it to, the appropriate register.

(2) All the members of the Registration Appeals Committee shall be members of the Hearings Panel.

(3) Subject to subsection (2) above, the Registration Appeals Committee shall be constituted as provided by rules made under this subsection by the Council.

(4) The members of the Registration Appeals Committee who are to hear any particular case shall be determined in accordance with rules made by the Council under subsection (3) above.

The Standards Committee

5B.—(1) There shall be a committee of the Council known as the Standards Committee for the purpose of giving advice and assistance to the Council (whether or not in response to a reference from them) on matters relating to the standards of conduct and performance expected of registrants or those seeking admission to a register.

(2) The Standards Committee shall be constituted as provided by rules made under this subsection by the Council.

The Fitness to Practise Committee

5C.—(1) There shall be a Committee of the Council known as the Fitness to Practise Committee for the purpose of inquiring into and determining allegations relating to—

- (a) the fitness of registered optometrists and registered dispensing opticians to practise;
- (b) the fitness of business registrants to carry on business as an optometrist or a dispensing optician or both; and
- (c) the fitness of student registrants to undertake training as an optometrist or a dispensing optician.

(2) All the members of the Fitness to Practise Committee shall be members of the Hearings Panel.

(3) Subject to subsection (2) above, the Fitness to Practise Committee shall be constituted as provided by rules made under this subsection by the Council.

(4) The members of the Fitness to Practise Committee who are to hear any particular case shall be determined in accordance with rules made by the Council under subsection (3) above.”.

(3) The Disciplinary Committee and the Investigating Committee are abolished.

The Hearings Panel

5. Before section 6, insert—

“The Hearings Panel

5D.—(1) The Council shall appoint a panel of persons (“the Hearings Panel”) from whom members of the Fitness to Practise Committee and the Registration Appeals Committee must be selected.

(2) No person shall be appointed to the Hearings Panel—

- (a) if he is a member of the Council; and
- (b) unless he satisfies such requirements as may be prescribed by rules made by the Council.

(3) The Council shall pay members of the Hearings Panel such fees, allowances and expenses as the Council may determine.

(4) The Council shall arrange such training for members of the Hearings Panel as the Council consider appropriate.

(5) The Council may by rules make provision in respect of the Hearings Panel and may, in particular, make provision—

- (a) as to the number of persons to be appointed to the Hearings Panel;
- (b) for the removal or resignation from the Hearings Panel of any person appointed to it;
- (c) for the term of appointment of any person appointed to the Hearings Panel; and
- (d) for the publication of a list of members of the Hearings Panel.”.

Delegation

6.—(1) In section 6 (general power to appoint committees), at the end add—

“(6) Any function delegated to a committee set up under this section may be further delegated by that committee to an officer or employee of the Council except to the extent that the Council limits or prohibits its further delegation.

(7) The delegation of a function under this section shall not prevent the exercise of the function by the committee by whom the delegation is made.”.

(2) After section 6, insert—

“Powers of delegation

6A.—(1) The Council may delegate to any Committee of the Council, other than a committee set up under section 6 above, or to any officer or employee of the Council, any of the functions exercisable by the Council under this Act, except the following—

- (a) the power to make rules; and
- (b) any functions expressly conferred by this Act on some other committee.

(2) Any function delegated under this section to a Committee or officer of the Council may be further delegated by the Committee or officer to an employee of the Council except to the extent that the Council limits or prohibits its further delegation.

(3) The registrar may delegate any function of his, whether assigned to him under this Act or by the Council under this section, to any employee of the Council.

(4) The delegation of a function under this section shall not prevent the exercise of the function by the body or person by whom the delegation is made.”.

Register of optometrists

7.—(1) In section 7 (registers of opticians)—

- (a) for paragraph (a) substitute—
“(a) a register of optometrists; and”;

- (b) for the words “names, addresses and qualifications” substitute “names and addresses”.

(2) Any person who was registered in either of the registers of ophthalmic opticians immediately before the coming into force of paragraph (1) shall be treated on the day that paragraph comes into force as having his name in the register of optometrists.

Amendment of section 8

8.—(1) Section 8 (qualifications for being registered) is amended as follows.

(2) For subsections (1) and (2) substitute—

“(1) A person shall be entitled to have his name in the appropriate register if he satisfies the Council that he—

- (a) holds a qualification—
 - (i) as an optometrist or a dispensing optician;

- (ii) which, at the time it was granted, was approved by the Council under section 12(7)(b) below; and
- (iii) which was granted to him after receiving instruction from one or more of the establishments approved by the Council under section 12(7)(a) below;
- (b) has had adequate practical experience in the work of an optometrist or a dispensing optician; and
- (c) is a fit person to practise as an optometrist or a dispensing optician.

(1A) A person shall be entitled to have his name in the appropriate register if he satisfies the Council that he—

- (a) either—
 - (i) is a national of an EEA State; or
 - (ii) is not a national of an EEA State but is, by virtue of a right conferred by article 11 of Regulation (EEC) No. 1612/68, or any other enforceable Community right, entitled to be treated, for the purpose of access to the profession of optometrist or dispensing optician, no less favourably than a national of such a state;
- (b) has a right to practise in the United Kingdom as an optometrist by virtue of the European Communities (Recognition of Professional Qualifications) (First General System) Regulations 2005(a) or as a dispensing optician by virtue of the European Communities (Recognition of Professional Qualifications) (Second General System) Regulations 2002(b); and
- (c) is a fit person to practise as an optometrist or a dispensing optician.

(2) Subject to subsection (2A), a person shall be entitled to have his name in the appropriate register if he satisfies the Council that he—

- (a) holds a qualification as an optometrist or as a dispensing optician granted outside the United Kingdom;
- (b) has had adequate practical experience in the work of an optometrist or a dispensing optician; and
- (c) is a fit person to practise as an optometrist or a dispensing optician.

(2A) The Council may determine, in relation to any particular person or class of person to which subsection (2) above applies, that before being entitled to have his name in the appropriate register, a person must—

- (a) obtain such qualification, approved in accordance with section 12(7)(b) below; or
- (b) pass such test, approved in accordance with section 12(7)(c) below,

as they consider appropriate.”.

(3) In subsection (4)(a), for the words “ophthalmic optician” substitute “optometrist”.

(4) In subsections (4)(b), (5)(b) and (6)(b), for the word “ophthalmic” substitute “optometrist”.

(5) In subsection (6), for paragraph (c) substitute—

“(c) that he is a fit person to practise as an optometrist or a dispensing optician,”.

(6) In subsection (7), for the words “an ophthalmic optician, both registers of ophthalmic opticians and the register of dispensing opticians are appropriate registers” substitute “optometrists, the register of optometrists and the register of dispensing opticians are both appropriate registers”.

(7) For subsection (8), substitute—

“(8) A person may have his name in both the register of dispensing opticians and the register of those undertaking training as optometrists.

(a) S.I. 2005/18.
 (b) S.I. 2002/2934.

(8A) Except as provided in subsection (8) above, a person may not have his name in more than one register.”.

(8) After subsection (9), add—

“(10) In this section—

“EEA State” means a Contracting Party to the EEA Agreement or Switzerland; and

“EEA Agreement” means the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 as adjusted or amended from time to time.”.

Registration for students

9. After section 8, insert—

“Registers of students

8A.—(1) The Council shall maintain a register of persons undertaking training as optometrists and a register of persons undertaking training as dispensing opticians.

(2) A person who is undertaking training provided by an approved training establishment or obtaining practical experience in the work of an optometrist or a dispensing optician shall have his name in the appropriate register.

(3) A person shall be entitled to have his name in the appropriate register if he satisfies the Council that he is fit to undertake training as an optometrist or a dispensing optician, and either—

(a) he is undertaking, or will be undertaking, training provided by an approved training establishment; or

(b) he is obtaining, or will be obtaining, practical experience in the work of—

(i) an optometrist under the supervision of a registered medical practitioner or a registered optometrist; or

(ii) a dispensing optician under the supervision of a registered medical practitioner, a registered optometrist or a registered dispensing optician.

(4) Each register shall contain the names and addresses of the persons who are registered under this section, together with such other particulars as the Council may prescribe in rules.

(5) The Council may make rules as to the circumstances in which a person’s name may be removed from a register maintained under this section.”.

Amendment of section 9

10.—(1) Section 9 (list of bodies corporate carrying on business as opticians) is amended as follows.

(2) For subsection (1) substitute—

“(1) The Council shall maintain a register of bodies corporate carrying on business as an optometrist or a dispensing optician or both, containing the names, principal places of business and such other particulars, as may be prescribed by the Council, of the bodies which are entitled under the following provisions of this Act to be registered in it and apply in the prescribed manner to be registered or to have their registration retained in the register.”.

(3) In subsection (2)—

(a) for the words “enrolled in the appropriate list—” substitute “registered in the register if it satisfies the Council that it is fit to carry on business as an optometrist or a dispensing optician or to carry on both businesses and—”;

- (b) in paragraph (a), for the words “registered opticians” substitute “registered optometrists or registered dispensing opticians”, and for “a registered optician” substitute “a registered optometrist or registered dispensing optician”;
 - (c) in paragraph (b), for the word “enrolled” substitute “registered”;
 - (d) in paragraph (c)(ii), for the words “ophthalmic optician” substitute “optometrist”; and
 - (e) in paragraph (c)(iii), for the word “optician” substitute “optometrist or registered dispensing optician”.
- (4) In subsection (3)—
- (a) for the word “enrolled” substitute “registered”; and
 - (b) for paragraph (b), substitute—
 - “(b) been the subject of an order for erasure from the register maintained under subsection (1) above.”.

(5) Any body corporate which was enrolled in one of the lists of bodies corporate carrying on business as an ophthalmic optician or a dispensing optician immediately before the coming into force of paragraph (1) shall be treated on the day that paragraph comes into force as being registered in the register of bodies corporate maintained by the Council under section 9.

Amendment of section 10

11.—(1) Section 10 (general provisions as to the register) is amended as follows.

- (2) In subsection (1)—
- (a) omit the words “and lists”;
 - (b) in paragraph (a), omit the words “or enrolment” and “or list”;
 - (c) for paragraphs (b) and (c), substitute—
 - “(b) providing for—
 - (i) the notification to the Council of any change in the information provided by the registrant to the Council in accordance with rules made under paragraph (c)(ii) below; and
 - (ii) the removal from the appropriate register of the name of the registrant if he fails to notify the Council of any such change;
 - (c) prescribing—
 - (i) a fee to be charged;
 - (ii) information to be provided to the Council; and
 - (iii) the time within which the fee is to be paid and the information provided, for the entry or retention of a name in, or the restoration of a name to, a register;”;
 - (d) omit paragraph (d);
 - (e) in paragraph (e), for the words “section 12(2) below” substitute “section 12(7)(b) below”;
 - (f) for paragraph (f), substitute—
 - “(f) authorising the registrar to refuse to enter or retain a name in, or restore a name to, the appropriate register until the fee prescribed under paragraph (c)(i) has been paid, and the information prescribed under paragraph (c)(ii) and the evidence required by section 10A(3) has been provided, to the Council;
 - (ff) authorising the registrar to remove a person’s name from the appropriate register if he ceases to satisfy the requirements for registration specified in section 8, 8A or 9 above, or ceases to satisfy the requirement to be insured under section 10A(1) below, or fails to pay any fee due or provide any information he is required to provide;”;
 - (g) in paragraph (g), omit the words “or lists”.

(3) After subsection (1), insert—

“(1A) The Council may make rules—

- (a) specifying specialties or levels of proficiency which a registered optometrist or registered dispensing optician may be permitted to register;
- (b) enabling the registrar to enter in the appropriate register particulars of a registered optometrist’s or registered dispensing optician’s specialties or proficiencies where such requirements as may be prescribed for inclusion of such an entry have been met;
- (c) enabling the registrar to remove from the appropriate register particulars of a registered optometrist’s or registered dispensing optician’s specialties or proficiencies in such circumstances as may be prescribed;
- (d) applying with or without modification rules made under subsection (1) above to specialties and proficiencies;
- (e) specifying the activities or work which may be performed by registered optometrists or registered dispensing opticians whose registration in the appropriate register includes particulars registered in accordance with rules made under paragraph (b) above; and
- (f) providing that the performing of such activities or work by a registered optometrist or registered dispensing optician whose registration in the appropriate register does not include such particulars shall be treated as adversely affecting a registered optometrist’s or registered dispensing optician’s fitness to practise.”.

(4) In subsection (2), for the words “an ophthalmic or dispensing optician” substitute “a registrant”.

(5) Omit subsections (3) and (4).

(6) At the end of the section, add—

“(5) The Council may make rules providing for—

- (a) the communication of documents in electronic form to the Council; and
- (b) the electronic storage of documents communicated to the Council whether or not in electronic form.”.

Insurance

12. After section 10 insert—

“Insurance for individual registrants and persons applying for their name to be registered

10A.—(1) A registered optometrist or registered dispensing optician must be covered by adequate and appropriate insurance throughout the period during which he is registered in the appropriate register.

(2) A registered optometrist or registered dispensing optician seeking retention of his name in the register must supply to the Council evidence that he is covered by insurance as specified in subsection (1) above.

(3) A person seeking registration or restoration of his name in the register of optometrists or dispensing opticians must supply the Council with evidence that, if his name were to be entered in the appropriate register, he would be covered by adequate and appropriate insurance commencing, at the latest, on the date on which his name was so entered.

(4) The Council may at any other time require a registered optometrist or registered dispensing optician to supply evidence that he is covered by adequate and appropriate insurance.

(5) The Council may make rules specifying the types and amounts of insurance they consider to be adequate and appropriate for the purposes of this section.

(6) A registered optician or registered dispensing optician, or a person seeking registration as an optometrist or a dispensing optician, must inform the Council forthwith if he is no longer covered by insurance which meets the requirements of this section.

(7) If a person fails to comply with the requirements of this section, the registrar may—

- (a) refuse to register his name in the appropriate register;
- (b) refuse to retain his name in the appropriate register;
- (c) refuse to restore his name to the appropriate register; or
- (d) remove his name from the appropriate register,

under section 10(1)(f) or (ff) above, or refer the matter to the Investigation Committee for investigation under section 13D(5) below as if the failure to comply with the requirements of this section constituted an allegation of misconduct for the purposes of section 13D(2)(a) below.

(8) In this section, “insurance” means—

- (a) a policy of insurance providing cover for liabilities which may be incurred in carrying out work as a registered optometrist or registered dispensing optician; and
- (b) an arrangement made for the purposes of indemnifying the person concerned against such liabilities.”.

Publication of register

13. For section 11 (publication of registers and lists) substitute—

“Publication of registers and proof of registration

11.—(1) The Council shall publish from time to time information from each register in such form (including electronic form) as they consider appropriate.

(2) The information published by the Council shall include—

- (a) a list of all persons or bodies whose names are in the registers on a date specified by the Council at the time of publication;
- (b) the number assigned to the person or body on the appropriate register; and
- (c) such other particulars (if any) as the Council may direct in relation to registrants or a particular class of registrants.

(3) A copy of the appropriate register purporting to be published by the Council shall be evidence (and in Scotland sufficient evidence) in all proceedings that the persons or bodies whose names are in the appropriate register are registrants, and the absence of the name of any person or body from such a copy of the appropriate register shall be evidence, until the contrary is shown, that that person or body is not a registrant.

(4) The registrar may issue a certificate that—

- (a) a person’s or body’s name is in the appropriate register;
- (b) a person’s or body’s name is not in the appropriate register;
- (c) a person’s or body’s name was in the appropriate register at a specified date or during a specified period;
- (d) a person’s or body’s name was not in the appropriate register at a specified date or during a specified period; or
- (e) a person’s or body’s name has never been in the appropriate register.

(5) A certificate issued under subsection (4) above shall be evidence (and in Scotland sufficient evidence) of the matters certified.

(6) Subsections (3) and (4) above shall apply to entries made in accordance with rules made under section 10(1A) above as they apply to registration in the appropriate register.”.

PART 3

Professional training and development

Insertion of sections 11A and 11B

14. Before section 12 insert—

“Requirement for continuing education and training

11A.—(1) The Council may by rules make a scheme providing for the continuing education and training of—

- (a) registered optometrists and registered dispensing opticians; and
- (b) others who have been but who are not so registered and who seek registration, whether by way of restoration or otherwise.

(2) Such a scheme may in particular—

- (a) impose requirements on persons to whom the scheme applies for continuing education and training;
- (b) provide for a person appointed by the Council (“the administrator”) to administer the scheme;
- (c) specify, or provide for the administrator to specify, the steps which persons to whom the scheme applies are expected to take to ensure they meet requirements imposed under the scheme for continuing education and training;
- (d) specify the procedures which persons to whom the scheme applies must follow in order to satisfy the Council that the requirements imposed upon them under the scheme have been met;
- (e) provide for the Council to impose additional education and training requirements on those persons against whose name in the appropriate register an entry is made in accordance with rules made under section 10(1A) above; and
- (f) include provision for education and training undertaken before the scheme comes into force, or undertaken outside the United Kingdom, to count towards the satisfaction of any requirement imposed in accordance with the preceding provisions of this subsection.

(3) The rules may require the administrator to secure the provision of education and training—

- (a) sufficient in quantity to meet the reasonable needs of persons to whom the scheme applies; and
- (b) of a quality adequate to meet those needs.

(4) The rules may—

- (a) require persons (“providers”) who seek to provide education and training for persons to whom the scheme applies to apply to the administrator for approval;
- (b) require the approval of the administrator for any curriculum established for the purpose of meeting the educational and training requirements of persons to whom the scheme applies, and for any lessons or activities provided for such persons;
- (c) provide for the charging of fees by the administrator for approval by him;
- (d) set the level of fees required to be paid for approval by the administrator and to provide for the collection of fees due;
- (e) require the keeping of records by providers and specify the period for which those records must be kept;
- (f) require records kept by providers to be produced for inspection at such time and such place as may be specified in accordance with the rules;

- (g) specify the procedures which must be followed by providers seeking approval under the rules; and
- (h) enable the Council to exercise in specified circumstances any of the administrator's functions.

Failure to satisfy requirements imposed under a scheme

11B.—(1) If it appears to the registrar that a person has failed to satisfy requirements for continuing education and training imposed upon him under a scheme made by virtue of section 11A above, the registrar may—

- (a) remove from the appropriate register, or refuse to retain in the appropriate register, the registrant's name; or
- (b) refuse to restore the person's name to the appropriate register.

(2) If it appears to the registrar that a person has failed to satisfy requirements for additional education and training imposed upon him under a scheme by virtue of section 11A(2)(e) above, the registrar may—

- (a) remove from the appropriate register, or refuse to retain in the appropriate register, the registrant's entry relating to a specialty or proficiency; or
- (b) refuse to restore the registrant's entry relating to a specialty or proficiency in the appropriate register.

(3) The registrar must serve on any person whose name or entry he removes from, or whose name he refuses to retain in or restore to, the appropriate register under this section, notice of his decision and the reasons for it.

(4) If the registrar exercises his powers under subsection (1) above, and the person whose name is removed from, or not retained in, or restored to, the appropriate register—

- (a) subsequently satisfies the registrar that he has met the requirements provided for under the scheme as to continuing education and training; and
- (b) meets the other requirements for registration,

the registrar must restore his registration.

(5) If the registrar exercises his powers under subsection (2) above, and the registrant whose entry relating to a specialty or proficiency is removed from, not retained in, or restored to, the appropriate register—

- (a) subsequently satisfies the registrar that he has now met the requirements for additional education and training; and
- (b) meets the other requirements for an entry relating to a specialty or proficiency set out in rules made in accordance with section 10(1A) above,

the registrar must make the entry.

(6) The Council may make rules as to the procedures to be followed before the registrar—

- (a) may refuse under this section—
 - (i) to retain in the register the name of a person; or
 - (ii) to retain in the register an entry relating to a specialty or proficiency; or
- (b) may make a decision whether or not to restore a person's name to the appropriate register or to restore an entry relating to a proficiency or specialty in accordance with this section.”.

Education and training

15. For section 12 (approval of training institutions and qualifications) substitute—

“Education and training

12.—(1) The Council shall from time to time establish—

- (a) the competencies which a person must be able to demonstrate in order to be granted a qualification as an optometrist or a dispensing optician; and
- (b) the content and the standard of education and training (including practical experience) required for the purpose of achieving those competencies.

(2) The Council must consult and seek advice from—

- (a) the Standards Committee before establishing the competencies specified in subsection (1)(a) above;
- (b) the Education Committee before establishing the requirements specified in subsection (1)(b) above.

(3) The competencies and requirements established under subsection (1) above shall be published by the Council from time to time in such form as appears to the Council to be appropriate.

(4) The Standards Committee and the Education Committee—

- (a) must respectively keep under review the competencies and requirements established under subsection (1) above; and
- (b) must each advise the Council if they consider changes to be necessary.

(5) The Council must take into account any advice received from the Standards Committee and the Education Committee under subsection (4) above and must, if the Council consider it appropriate to do so, establish and publish revised competencies or requirements.

(6) The Council must ensure that those establishments approved by the Council under subsection (7)(a) below who are engaged in the education, training or assessment of optometrists or dispensing opticians are notified of—

- (a) the competencies and requirements established under subsections (1) and (5) above; and
- (b) the requirements for the approval of any form of assessment under subsection (7)(b) below.

(7) The Council may approve—

- (a) establishments where the instruction given to persons receiving education or training as optometrists or as dispensing opticians appears to the Council to be such as to provide them with adequate knowledge and skills to achieve the competencies for the practice of their profession;
- (b) a qualification as an optometrist or a dispensing optician granted to candidates following success in an examination or other form of assessment which in the Council’s opinion indicates that the candidate has attained all the competencies for the time being established under subsections (1)(a) and (5) above; and
- (c) any test of a candidate’s competency in, or knowledge of, the English language carried out by an educational establishment on candidates seeking entry to courses for optometrists or dispensing opticians offered by that establishment.

(8) If—

- (a) an establishment referred to in subsection (7)(a) above is outside the United Kingdom; or
- (b) a qualification referred to in subsection (7)(b) above is granted by an establishment which is outside the United Kingdom,

the Council may, before determining whether to give their approval, commission others to advise and report on the suitability of the establishment or qualification.

(9) The Council may also approve—

- (a) establishments which provide only some of the education or training; or
 - (b) qualifications which meet only some of the requirements,
- needed to achieve the competencies referred to in subsection (1)(a) above.

(10) The Council must from time to time publish, in such form (including electronic form) as they consider appropriate, a list of establishments and qualifications approved by them, indicating the purposes for which the approval was granted.

(11) Subsections (1) to (10) above shall apply in relation to specialties and proficiencies specified under section 10(1A) above as they apply in relation to qualifications as an optometrist or a dispensing optician.”.

PART 4

Fitness to Practise and Proceedings and Appeals

Insertion of Part 2A

16. After section 13 insert the following Part—

“PART 2A

FITNESS TO PRACTISE

The Council’s duty to provide guidance on fitness to practise

13A.—(1) The Council shall—

- (a) provide, in such manner as the Council considers appropriate, guidance for registered optometrists, registered dispensing opticians and student registrants, on matters relating to fitness to practise or, in the case of a student registrant, fitness to undertake training, and in particular on the standards of conduct and performance expected of them; and
- (b) establish and keep under review effective arrangements to protect members of the public from registered optometrists, registered dispensing opticians and student registrants whose fitness to practise or, in the case of a student registrant, fitness to undertake training, is impaired.

(2) The Council shall—

- (a) provide, in such manner as the Council considers appropriate, guidance to business registrants on matters relating to fitness to carry on business as an optometrist or a dispensing optician or both, and in particular on the standards of conduct and performance expected of such registrants in carrying on that business; and
- (b) establish and keep under review effective arrangements to protect the public from business registrants whose fitness to carry on business as an optometrist or a dispensing optician or both is impaired.

(3) Before issuing guidance or varying guidance already issued under this section, the Council shall consult groups which, in the Council’s opinion, are representative of registrants or of persons with an interest in the subject matter of the guidance.

(4) The Council shall keep under review, and revise as appropriate, guidance provided by them under this section.

The Council’s power to require disclosure of information

13B.—(1) For the purpose of assisting the Council or any of their Committees in carrying out any of their functions under this Act relating to—

- (a) a registered optometrist's or a registered dispensing optician's fitness to practise;
- (b) a business registrant's fitness to carry on business as an optometrist or a dispensing optician or both; or
- (c) a student registrant's fitness to undertake training,

the Council may require a registrant or any other person to supply any information or produce any document which appears to the Council relevant to the discharge of those functions.

(2) As soon as reasonably practicable after the date on which an allegation has been made to the Council relating to a registered optometrist's or registered dispensing optician's fitness to practise or a student registrant's fitness to undertake training, the Council shall require, from the registrant to whom the allegation relates, particulars of any person who employs him.

(3) Nothing in this section shall require or permit any disclosure of information which is prohibited by or under any other enactment; but if information is held in a form in which the prohibition operates because the information is capable of identifying an individual, the Council may, in exercising their functions under subsection (1) above, require that the information be put into a form which is not capable of identifying that individual.

(4) In determining for the purposes of subsection (3) above whether a disclosure is not prohibited by reason of being a disclosure of personal information which is exempt from the non-disclosure provisions of the Data Protection Act 1998 by virtue of section 35(1) of that Act, it shall be assumed that the disclosure is required by this section.

(5) Subsection (1) above does not apply in relation to the supplying of information or the production of a document which a person could not be compelled to supply or produce in civil proceedings before—

- (a) the Court of Session, if the person's address in the appropriate register is in Scotland, or if he is not registered, if he is resident in Scotland;
- (b) the High Court of Justice in Northern Ireland, if the person's address in the appropriate register is in Northern Ireland, or if he is not registered, if he is resident in Northern Ireland; or
- (c) the High Court of Justice in England and Wales, if the person's address in the appropriate register is in England or Wales, or if he is not registered, he is resident in England or Wales.

(6) If a person fails to supply any information or produce any document within fourteen days of his being required to do so under subsection (1) above, the Council may seek an order of the relevant court requiring the information to be supplied or the document to be produced.

(7) In subsection (6) above, "relevant court" means the county court or, in Scotland, the sheriff.

(8) In subsection (7) above, "the sheriff" means the sheriff in whose sheriffdom is situated the address of the person who fails to supply the information or produce the document.

(9) For the purposes of subsection (3) above, "enactment" includes—

- (a) a provision of, or an instrument made under, an Act of the Scottish Parliament;
- (b) a provision of, or an instrument made under, Northern Ireland legislation; and
- (c) a provision of subordinate legislation (within the meaning of the Interpretation Act 1978).

Notification and disclosure by the Council

13C.—(1) As soon as is reasonably practicable after an allegation is received by the Council relating to a registered optometrist's or registered dispensing optician's fitness to practise or, in the case of a business registrant, its fitness to carry on business as an

optometrist or a dispensing optician or both, or in the case of a student registrant, his fitness to undertake training, they shall notify the persons specified in subsection (2) below of an investigation under this Part by the Council or any of its Committees of—

- (a) a registered optometrist's or a registered dispensing optician's fitness to practise;
- (b) a business registrant's fitness to carry on business as an optometrist or a dispensing optician, or to carry on both businesses; or
- (c) a student registrant's fitness to undertake training.

(2) The persons specified in this subsection are—

- (a) the Secretary of State, the Scottish Ministers, the Department of Health, Social Services and Public Safety in Northern Ireland and the National Assembly for Wales; and
- (b) any person in the United Kingdom of whom the Council are aware by whom the registered optometrist, registered dispensing optician or student registrant is employed.

(3) The Council may disclose to any person any information relating to—

- (a) a registered optometrist's or a registered dispensing optician's fitness to practise;
- (b) a business registrant's fitness to carry on business as an optometrist or a dispensing optician, or to carry on both businesses; or
- (c) a student registrant's fitness to undertake training,

which they consider it to be in the public interest to disclose.

Allegations

13D.—(1) This section applies where an allegation is made to the Council against—

- (a) a registered optometrist or a registered dispensing optician that his fitness to practise is or may be impaired;
- (b) a business registrant that its fitness to carry on business as an optometrist or a dispensing optician, or both, is or may be impaired; or
- (c) a student registrant that his fitness to undertake training as an optometrist or a dispensing optician is or may be impaired.

(2) The only grounds upon which the fitness to practise of a registered optometrist or registered dispensing optician, or the fitness to undertake training of a student registrant, is “impaired” for the purposes of this Act are—

- (a) misconduct;
- (b) except in the case of a student registrant, deficient professional performance;
- (c) a conviction or caution in the British Islands for a criminal offence, or a conviction elsewhere for an offence which, if committed in England and Wales, would constitute a criminal offence;
- (d) the registrant having accepted a conditional offer under section 302 of the Criminal Procedure (Scotland) Act 1995 (fixed penalty: conditional offer by procurator fiscal) or agreed to pay a penalty under section 115A of the Social Security Administration Act 1992 (penalty as alternative to prosecution);
- (e) the registrant, in proceedings in Scotland for an offence, having been the subject of an order under section 246(2) or (3) of the Criminal Procedure (Scotland) Act 1995 discharging him absolutely;
- (f) adverse physical or mental health; or
- (g) a determination by a body in the United Kingdom responsible under any enactment for the regulation of a health or social care profession to the effect that his fitness to practise as a member of that profession is impaired, or a determination by a regulatory body elsewhere to the same effect.

(3) The only grounds upon which a business registrant's fitness to carry on business as an optometrist or a dispensing optician or to carry on both businesses is impaired for the purposes of this Act are—

- (a) misconduct by the business registrant or by one of its directors;
- (b) practices or patterns of behaviour occurring within the business which—
 - (i) the registrant knew or ought reasonably to have known of; and
 - (ii) amount to misconduct or deficient professional performance;
- (c) the instigation by the business registrant of practices or patterns of behaviour within the business where that practice or behaviour amounts, or would if implemented amount, to misconduct or deficient professional performance;
- (d) a conviction or caution in the British Islands of the business registrant or one of its directors for a criminal offence, or a conviction elsewhere for an offence which, if committed in England or Wales, would constitute a criminal offence;
- (e) the registrant or one of its directors having accepted a conditional offer under section 302 of the Criminal Procedure (Scotland) Act 1995 or agreed to pay a penalty under section 115A of the Social Security Administration Act 1992;
- (f) the registrant or one of its directors, in proceedings in Scotland for an offence, having been the subject of an order under section 246(2) or (3) of the Criminal Procedure (Scotland) Act 1995 discharging it or him absolutely;
- (g) a determination by a body in the United Kingdom responsible under any enactment for the regulation of a health or social care profession to the effect that—
 - (i) the business registrant's fitness to carry on business as a member of that profession is impaired; or
 - (ii) the fitness of a director of the business registrant to practise that profession is impaired,or a determination by a regulatory body elsewhere to the same effect.

(4) For the purposes of this section—

- (a) references to a conviction include a conviction by court martial; and
- (b) the allegation may refer to acts or omissions which occurred outside the United Kingdom or at a time when the registrant was not registered.

(5) The Investigation Committee shall investigate the allegation made against the registrant and decide whether it ought to be considered by the Fitness to Practise Committee.

(6) If the Investigation Committee decide that the allegation ought to be considered by the Fitness to Practise Committee—

- (a) they shall give a direction to that effect to the registrar;
- (b) the registrar shall refer the allegation to the Fitness to Practise Committee; and
- (c) the registrar shall serve a notification of the Investigation Committee's decision on the registrant who, or which, is the subject of the allegation, and on the person making the allegation.

(7) If the Investigation Committee decide that the allegation ought not to be considered by the Fitness to Practise Committee, they may give a warning to the registrant who, or which, is subject to the allegation regarding his, or its, future conduct or performance.

(8) If the Investigation Committee decide that the allegation ought not to be considered by the Fitness to Practise Committee and that no warning is to be given under subsection (7) above—

- (a) they shall give a direction to that effect to the registrar; and

- (b) the registrar shall serve a notification of the Committee’s decision on the registrant who, or which, is the subject of the allegation, on the person making the allegation and on those persons specified in section 13C(2) above.

(9) If the Investigation Committee are of the opinion that the Fitness to Practise Committee should consider making an order for interim suspension or interim conditional registration under section 13L below in relation to the registrant who, or which, is the subject of the allegation—

- (a) they shall give a direction to that effect to the registrar;
- (b) the registrar shall refer the matter to the Fitness to Practise Committee for the Committee to decide whether to make such an order; and
- (c) the registrar shall serve notification of the decision on the registrant who, or which, is the subject of the allegation, and on the person making the allegation.

(10) In this section—

- (a) “enactment” includes—
 - (i) a provision of, or an instrument made under, an Act of the Scottish Parliament;
 - (ii) a provision of, or an instrument made under, Northern Ireland legislation; and
 - (iii) a provision of subordinate legislation (within the meaning of the Interpretation Act 1978); and
- (b) “regulatory body” means a regulatory body which has the function of authorising persons to practise as a member of a health or social care profession.

Provisions supplementary to section 13D

13E.—(1) The Council may make rules providing for—

- (a) the registrar; or
- (b) any other officer of the Council,

to exercise the functions of the Investigation Committee under section 13D above, either generally or in relation to such classes of case as may be specified in the rules.

(2) If those rules enable the registrar to exercise the functions of the Investigation Committee under subsections (6), (8) or (9) of section 13D above, those subsections shall apply in relation to him as if paragraph (a) in each of them were omitted.

(3) Section 13D above also applies in any case where—

- (a) it comes to the attention of the Council that—
 - (i) a registered optometrist’s or registered dispensing optician’s fitness to practise;
 - (ii) a business registrant’s fitness to carry on business as an optometrist or a dispensing optician or both; or
 - (iii) a student registrant’s fitness to undertake training,is, or may be, impaired by one or more of the matters mentioned in section 13D(2) above or, as the case may be, section 13D(3) above, but
- (b) no allegation to that effect has been made to the Council against that registrant,

and in such cases this Act and rules made under this Act shall apply as if an allegation to that effect has been made to the Council under section 13D above against the registered optometrist, registered dispensing optician, student registrant or, as the case may be, business registrant, and any reference to the person making an allegation shall be disregarded.

Powers of the Fitness to Practise Committee

13F.—(1) Where an allegation against a registrant is referred under section 13D above (other than under subsection (9) of that section) to the Fitness to Practise Committee, subsections (2) to (5) below shall apply.

(2) If the Fitness to Practise Committee find that—

- (a) a registered optometrist's or registered dispensing optician's fitness to practise is impaired;
- (b) a business registrant's fitness to carry on business as an optometrist or a dispensing optician or both is impaired; or
- (c) a student registrant's fitness to undertake training is impaired,

they may if they think fit give a direction specified in subsection (3) or (4) below.

(3) The directions specified in this subsection are that—

- (a) except in a health case, the name of the registrant be erased from the appropriate register;
- (b) the registrant's registration be suspended (that is to say, is not to have effect) during such period not exceeding twelve months as may be specified in the direction;
- (c) the registrant's registration is to be conditional on his or its compliance, during such period not exceeding three years as may be specified in the direction, with such requirements so specified as the Committee see fit to impose for the protection of members of the public or in his or its interests.

(4) Where the Fitness to Practise Committee find that a registered optometrist's or registered dispensing optician's fitness to practise is impaired on the ground of deficient professional performance, and the deficiency relates to the performance of a specialty or proficiency particulars of which are entered in the appropriate register in respect of him, the Committee may, instead of any of the directions specified in subsection (3) above or, in addition to any of the directions specified in subsection (3)(b) or (c) above, direct that—

- (a) the entry relating to that specialty or proficiency be removed from the appropriate register;
- (b) the entry relating to that specialty or proficiency be removed from the appropriate register temporarily, that is to say, for such period not exceeding twelve months as may be specified in the direction; or
- (c) the entry relating to that specialty or proficiency be conditional upon the registered optometrist's or registered dispensing optician's compliance, during such period not exceeding three years as may be specified in the direction, with such requirements so specified as the Committee see fit to impose for the protection of members of the public or in his interests.

(5) If the Fitness to Practise Committee find that—

- (a) the registered optometrist's or the registered dispensing optician's fitness to practise is not impaired;
- (b) the business registrant's fitness to carry on the business of an optometrist or a dispensing optician or both is not impaired; or
- (c) the student registrant's fitness to undertake training is not impaired,

they may nevertheless give the registrant a warning regarding his or its future conduct or performance.

(6) Subsection (7) below applies if the Fitness to Practise Committee have directed that the registration of a registrant be suspended under subsection (3) above or (13) below.

(7) If this subsection applies, the Fitness to Practise Committee may, if they think fit—

- (a) direct that the current period of suspension be extended for such further period from the time when it would otherwise expire as is specified in the direction;

- (b) except in a case to which subsection (8) below applies, direct that the name of the registrant be erased from the appropriate register;
- (c) direct that the registrant's registration is, as from the expiry of the current period of suspension, to be conditional on his or its compliance, during such period not exceeding three years as may be specified in the direction, with such requirements so specified as the Committee think fit to impose for the protection of members of the public or in his or its interests,

but, except as provided in subsection (8) below, the Committee shall not extend any period of suspension under this section for more than twelve months at a time.

(8) In a case where—

- (a) the Fitness to Practise Committee find that the registered optometrist's, the registered dispensing optician's or the student registrant's impairment is due to adverse physical or mental health; and
- (b) that person's name has been suspended from the appropriate register under the preceding provisions of this section,

they may give a direction extending his period of suspension indefinitely if the conditions specified in subsection (9) below are satisfied.

(9) The conditions specified in this subsection are—

- (a) the period of suspension will, on the date on which the direction takes effect, have lasted for at least two years; and
- (b) that direction is made not more than two months before the date on which the period of suspension would otherwise expire.

(10) Where the Fitness to Practise Committee have given a direction under subsection (8) above extending indefinitely the suspension of a person's name from the appropriate register, the Fitness to Practise Committee must review the direction if—

- (a) the person requests them to do so;
- (b) at least two years have elapsed since the date on which the direction took effect; and
- (c) in a case where the direction has previously been reviewed under this subsection, at least two years have elapsed since the date of the last such review.

(11) On a review under subsection (10) above, the Fitness to Practise Committee may—

- (a) confirm the direction;
- (b) direct that the suspension be terminated; or
- (c) direct that the registrant's registration be conditional on his or its compliance, during such period not exceeding three years as may be specified in the direction, with such requirements so specified as the Committee see fit to impose for the protection of members of the public or in his or its interests.

(12) Where a direction that the inclusion of a person's name in the appropriate register be subject to conditions has been given under subsection (3), (7) or (11) above, subsection (13) below applies.

(13) If this subsection applies, the Fitness to Practise Committee may (whether or not of their own motion), if they think fit—

- (a) except in a health case, direct that the name of the registrant be erased from the appropriate register;
- (b) direct that a registrant's registration in the appropriate register be suspended during such period not exceeding twelve months as may be specified in the direction;
- (c) direct that the current period of conditional registration be extended for such further period from the time when it would otherwise expire as may be specified in the direction; or

(d) revoke the direction, or revoke or vary any of the conditions imposed by the direction, for the remainder of the current period of conditional registration, but the Committee must not extend any period of conditional registration under this section for more than three years at a time.

(14) Subsections (6) to (13) above shall apply—

- (a) to the temporary removal of an entry relating to a specialty or proficiency under subsection (4)(b) above as they apply to a registrant's registration being suspended under subsection (3)(b) above; and
- (b) to an entry relating to a specialty or proficiency being made conditional under subsection (4)(c) above as they apply to a registrant's registration being made conditional under subsection (3)(c) above.

(15) Where subsection (6) to (13) above apply by virtue of subsection (14) above—

- (a) references in subsections (7)(b) and (13)(a) above and section 13G(1) below to the name of a registrant being erased from the appropriate register shall be read as if it included a reference to the removal from the appropriate register (otherwise than temporarily) of an entry relating to a specialty or proficiency;
- (b) references in subsections (7) to (11) above and section 13G(1) and (2) below to a period of suspension or suspension shall be read as if it included a reference to a period of time specified for the temporary removal or temporary removal from the appropriate register of an entry relating to a specialty or proficiency;
- (c) references in subsection (13) above and section 13G(1), (4) and (5) below to being suspended shall be read as if it included a reference to an entry relating to a specialty or proficiency being removed from the appropriate register for a specified period; and
- (d) references in subsections (7), (11) and (13) above and section 13G(1) and (2) below to a registrant's registration being conditional or to conditional registration shall be read as if it included a reference to an entry relating to a specialty or proficiency being conditional.

Provisions supplementary to section 13F

13G.—(1) If, under section 13F above, the Fitness to Practise Committee—

- (a) give a direction—
 - (i) that a registrant's name be erased from the appropriate register;
 - (ii) for suspension; or
 - (iii) for conditional registration; or
- (b) vary any of the conditions imposed by a direction for conditional registration,

the registrar must forthwith serve on the registrant concerned notification of the direction or variation, and of the registrant's right to appeal against it under section 23G below.

(2) In subsection (1) above references to—

- (a) a direction for suspension include a reference to a direction extending a period of suspension; and
- (b) a direction for conditional registration include a reference to a direction extending a period of conditional registration.

(3) While a registrant's registration in the appropriate register is suspended by virtue of a direction under section 13F above—

- (a) the registrant shall be treated, except as provided in subsection (4) below, as not being registered in the appropriate register and the registrar shall make a note in the appropriate register of that fact and of the period for which the registration is to be suspended, but

(b) sections 13D, 13E and 13F above, this section and section 13H below shall continue to apply to the individual or body whose registration is suspended.

(4) An individual registrant shall be treated for the purposes of compliance with rules made under sections 11A and 11B above as if his registration in the appropriate register was not suspended.

(5) The registrar shall erase any note made under subsection (3)(a) above when the direction for suspension ceases to have effect.

(6) In section 13F above and section 13H below, “health case” means any case in which the Fitness to Practise Committee has determined that a registered optometrist’s or registered dispensing optician’s fitness to practise or a student registrant’s fitness to undertake training—

(a) is impaired by reason of a matter falling within paragraph (f) of subsection (2) of section 13D above, but

(b) is not impaired by any matter falling within any other paragraph of that subsection.

Financial penalty order

13H.—(1) In any case other than a health case in which the Fitness to Practise Committee have the power to impose a direction under section 13F above, they may impose, either in addition to the direction or instead of it, a financial penalty order.

(2) A financial penalty order may specify any sum not exceeding the maximum penalty.

(3) In this section, the “maximum penalty” means a sum not exceeding £50,000 or such higher sum as may be substituted by an order made under subsection (4) below.

(4) If it appears to the Council that there has been a change in the value of money since the last occasion when the financial penalty was fixed, whether by this section or by an order under this section, the Council may by order amend subsection (3) above so as to substitute for the sum for the time being specified in subsection (3) above such other sum as appears to the Council justified by the change.

(5) The Council shall publish an order made under subsection (4) above in such form as they consider appropriate.

(6) An amendment made by order under subsection (4) above shall not apply where the event which gave rise to the allegation occurred before the order came into force.

(7) A financial penalty order shall specify the period within which the sum specified in it is to be paid.

(8) The Council may recover the sum specified in a financial penalty order from the person or body against whom the order was made if that person or body does not comply with it within the period specified in the order.

(9) The Council shall pay any sum paid under a financial penalty order or recovered under subsection (8) above into the Consolidated Fund.

Power to order immediate suspension etc. after a finding of impairment of fitness to practise

13I.—(1) On giving—

(a) a direction for erasure or a direction for suspension under section 13F(2) above; or

(b) a direction for removal from the appropriate register of an entry relating to a specialty or proficiency under section 13F(4)(a) or (b) above,

the Fitness to Practise Committee, if satisfied that to do so is—

(i) necessary for the protection of members of the public;

(ii) otherwise in the public interest; or

(iii) in the best interests of the individual or body corporate,

may order that the registration of the registrant shall be suspended forthwith or, in the case of an entry relating to a specialty or proficiency, that the removal from the register of the entry relating to the specialty or proficiency take place forthwith in accordance with this section.

(2) On giving—

- (a) a direction for conditional registration under section 13F(2) above; or
- (b) a direction that an entry in the register relating to a specialty or proficiency be made conditional under section 13F(4)(c) above,

the Fitness to Practise Committee, if satisfied that to do so is—

- (i) necessary for the protection of members of the public;
- (ii) otherwise in the public interest; or
- (iii) in the best interests of the individual or body corporate,

may order that the registration of the registrant be made conditional forthwith or, in the case of an entry relating to a specialty or proficiency, that the entry in the register relating to the specialty or proficiency be made conditional forthwith, in accordance with this section.

(3) Where, on the giving of a direction mentioned in subsection (1) or (2) above, an order under subsection (1) or (2) above is made in respect of a registrant, the registration in the appropriate register of that individual or body shall, subject to subsection (4) below, be suspended (that is to say, shall not have effect) or made conditional, as the case may be, or in the case of an entry in the register relating to a specialty or proficiency, removed or made conditional, from the time when the order is made until the time when—

- (a) the direction takes effect in accordance with section 23H below; or
- (b) an appeal against it under section 23G below is (otherwise than by the dismissal of the appeal) determined.

(4) Where the Fitness to Practise Committee make an order under subsection (1) or (2) above, the registrar shall forthwith serve a notification of the order on the individual to whom, or body corporate to which, it applies.

(5) If, when an order under subsection (1) or (2) above is made, the individual to whom, or body to which, it applies is neither present nor represented at the proceedings, subsection (3) above shall have effect as if, for the reference to the time when the order is made, there were substituted a reference to the time of service of a notification of the order as determined for the purposes of section 23A below.

(6) Except as provided in subsection (7) below, while the registration of an individual or body corporate is suspended from the appropriate register by virtue of subsection (1) above, the individual or body shall be treated as not being registered in the appropriate register notwithstanding that his or its name still appears in any published copy of the appropriate register.

(7) Notwithstanding subsection (6) above—

- (a) sections 13D to 13H above shall continue to apply to an individual or body corporate whose registration in the appropriate register is suspended; and
- (b) an individual registrant shall be treated for the purposes of compliance with rules made under sections 11A and 11B above as if his registration were not suspended.

(8) The relevant court may revoke any order imposed under subsection (1) or (2) above, and the decision of the court on any application under this subsection shall be final.

(9) In subsection (8) 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.

Removal from a register on grounds of fraud or error

13J.—(1) If it is proved to the satisfaction of the Fitness to Practise Committee that the entry of a person's name in a register has been fraudulently procured or incorrectly made, or that an entry relating to a specialty or proficiency has been fraudulently procured or incorrectly made in a register, the Committee may, if they think fit, direct that the person's name or, as the case may be, entry, be removed.

(2) Where the Fitness to Practise Committee direct that a person's name or entry relating to a specialty or proficiency shall be removed from a register under this section, the registrar shall serve a notification of the direction on that person and of that person's right of appeal against it in accordance with section 23G below.

Restoration of names to a register

13K.—(1) A person whose name has been erased from a register under section 13F above or who has had an entry relating to a specialty or proficiency removed under section 13F above (otherwise than for a specified period) may apply to the registrar for his name, or his entry relating to a specialty or proficiency, to be restored to the appropriate register.

(2) No application for the restoration of a name, or an entry relating to a specialty or proficiency, to the appropriate register under this section shall be considered by the Registration Appeals Committee—

- (a) before the expiration of two years from the date of erasure or removal of an entry; or
- (b) during any period of twelve months after any previous such application.

(3) Subject to subsection (4), the registrar shall refer an application under this section to the Registration Appeals Committee.

(4) An application is invalid if made earlier than—

- (a) twenty two months after the date of erasure or removal of an entry relating to a specialty or proficiency; or
- (b) ten months after determination of a previous application for restoration.

(5) An application for restoration under this section may be for—

- (a) restoration to the register from which the applicant's name was erased, or the entry relating to a specialty or proficiency was removed; or
- (b) admission to a different register or, in the case of an entry relating to a specialty or proficiency, inclusion of the entry in a different register,

but in the case of an application for restoration of an entry relating to a specialty or proficiency, an application may only be made for restoration of the entry to a register in which the applicant's name is or will be included.

(6) Subject to subsections (2) and (5) above, the Registration Appeals Committee may, if they think fit, on an application made under this section, direct the registrar to restore the person's name, or the entry relating to a specialty or proficiency, to the appropriate register.

(7) Before determining whether to give a direction under this section, the Registration Appeals Committee shall require an applicant for restoration to provide such evidence as they consider appropriate as to his fitness to practise or fitness to undertake training or, as the case may be, the fitness of the body corporate to carry on the business of an optometrist or a dispensing optician or both; and they must not give such a direction if that evidence does not satisfy them.

(8) If, during the same period of erasure, a second or subsequent application for the restoration to the appropriate register of a name or an entry relating to a specialty or

proficiency, made by or on behalf of the individual or body corporate whose name has been erased or whose entry relating to a specialty or proficiency has been removed, is unsuccessful, the Registration Appeals Committee may direct that the individual's or body's right to make any further such applications shall be suspended indefinitely.

(9) Where the Registration Appeals Committee give a direction under subsection (8) above, the registrar shall forthwith serve on the person in respect of whom it has been made a notification of the direction and of the person's right to appeal against it in accordance with section 23G below.

(10) Any person in respect of whom a direction has been given under subsection (8) above may, after the expiration of two years from the date on which the direction was given, apply to the registrar for that direction to be reviewed by the Registration Appeals Committee and, thereafter, may make further applications for review; but no such application may be entertained before the expiration of three years from the date of the most recent review decision.

Interim orders

13L.—(1) Where the Fitness to Practise Committee are satisfied that it is necessary for the protection of members of the public or is otherwise in the public interest, or is in the interests of a registrant, for—

- (a) his registration to be suspended or to be made subject to conditions; or
- (b) an entry relating to a specialty or proficiency to be removed temporarily or made subject to conditions,

the Committee may make an order specified in subsection (2) below.

(2) The orders specified in this subsection are that—

- (a) the registrant's registration in the appropriate register shall be suspended (that is to say, shall not have effect), or that an entry relating to a specialty or proficiency of his shall be removed, during such period not exceeding eighteen months as may be specified in the order (an "interim suspension order"); or
- (b) his registration or entry relating to a specialty or proficiency shall be conditional on his compliance, during such period not exceeding eighteen months as may be specified in the order, with such requirements so specified as the Committee think fit to impose (an "order for interim conditional registration").

(3) Subject to subsection (9) below, if the Fitness to Practise Committee make an order under subsection (1) above, the Committee—

- (a) must review that order within the period of six months beginning on the date on which the order was made, and must also, for so long as the order remains in force, further review it—
 - (i) before the end of the period of six months beginning on the date of the immediately preceding decision, or
 - (ii) if after the end of the period of three months beginning on the date of the decision of the immediately preceding review, the person concerned requests an earlier review, as soon as practicable after that request; and
- (b) may review it if new evidence relevant to the order becomes available after the order is made.

(4) Where an interim suspension order or an order for interim conditional registration has been made in relation to a person under any provision of this section (including this subsection), the Fitness to Practise Committee may—

- (a) revoke the order or revoke the condition imposed by the order;
- (b) vary any condition imposed by the order; or
- (c) if satisfied that to do so is necessary for the protection of members of the public or is otherwise in the public interest, or is in the interests of that person, replace—

- (i) an order for interim conditional registration with an interim suspension order having effect for the remainder of the term of the former; or
- (ii) an interim suspension order with an order for interim conditional registration having effect for the remainder of the term of the former.

(5) If an order is made under any provision of this section, the registrar shall forthwith serve a notification of the order on the person.

(6) The Council may apply to the relevant court for an order made by the Fitness to Practise Committee under subsection (1) or (4) above to be extended, and may apply again for further extensions.

(7) On such an application the relevant court may extend (or further extend) for up to twelve months the period for which the order has effect.

(8) Any references in this section to an interim suspension order, or to an order for interim conditional registration, include a reference to such an order as extended under subsection (7) above.

(9) For the purposes of subsection (3) above the first review after the relevant court's extension of an order made by the Fitness to Practise Committee, or after the Fitness to Practise Committee makes a replacement order under subsection (4)(c) above, shall take place—

- (a) if the order (or the order which has been replaced) had not been reviewed at all under subsection (3) above, within the period of six months beginning on the date on which the relevant court ordered the extension or on which a replacement order under subsection (4)(c) above was made; and
- (b) if it had been reviewed under the provision, within the period of three months beginning on that date.

(10) Where an order has effect under any provision of this section, the relevant court may—

- (a) in the case of an interim suspension order, terminate the suspension, or temporary period of removal in the case of an entry relating to a specialty or proficiency;
- (b) in the case of an order for interim conditional registration, revoke or vary any condition imposed by the order; or
- (c) in either case, substitute for the period specified in the order (or in the order extending it) some other period which could have been specified in the order when the Order was made,

and the decision of the relevant court under any application under this subsection shall be final.

(11) If an order is made in relation to any person under any provision of this section, the Fitness to Practise Committee shall (if the order remains in effect at the time of the hearing of the allegation against the person before the Committee) revoke that order immediately after it has determined the allegation in accordance with section 13F above and rules made under section 23C below.

(12) The revocation of an interim suspension order or an order for interim conditional registration under subsection (11) shall take effect forthwith.

Provisions supplementary to section 13L

13M.—(1) While a registrant's registration in the appropriate register is suspended by virtue of an interim suspension order under this section—

- (a) the registrant shall be treated, except as provided in subsection (2) below, as not being registered in the appropriate register, and the registrar shall make a note in the appropriate register of that fact and of the period for which the registration is to be suspended, but

(b) sections 13D to 13H above and this section shall continue to apply to the individual or body whose registration is suspended.

(2) An individual registrant shall be treated for the purposes of compliance with rules made under sections 11A and 11B above as if his registration in the appropriate register was not suspended.

(3) The registrar shall erase any note made under subsection (1)(a) above when the direction for suspension ceases to have effect.

(4) In section 13L above “the 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.”.

Proceedings and appeals

17.—(1) Omit Part III (Disciplinary Proceedings).

(2) Before Part IV (Restrictions on testing of sight etc.), insert—

“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 an entry relating to a specialty or proficiency be removed from the appropriate register;
- (c) 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

- (d) 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.

(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), (c) or (d) 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 sherriffdom 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,
- 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.”.

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 dioptries 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 dioptries;
 - (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.

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(a) 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.

A. K. Galloway
Clerk of the Privy Council

(a) 9 and 10 Geo 6 c.36; as amended by the Government of Wales Act 1998 (c.38).

Minor and consequential amendments

PART 1

Minor and consequential amendments to the Opticians Act 1989

1. In section 13 (supervision of training institutions and qualifying examinations)—
 - (a) for the words “institution” and “institutions”, wherever they occur, substitute respectively “establishment” and “establishments”;
 - (b) in subsections (1) and (5)(a)(i), for the word “opticians” substitute “optometrists or dispensing opticians”;
 - (c) in subsections (1), (2) and (4)(a) and (b), and in the section heading, for the word “examinations” substitute “assessments”;
 - (d) in subsection (3), for the word “examination” substitute “assessment”;
 - (e) in subsection (5)(a)(ii), for the words “examinations taken” substitute “assessment undertaken”;
 - (f) after subsection (5), insert—

“(5A) Where rules are made under section 23A(2) above, a notice under subsection (5) above or subsection (8) below may be given by means of an electronic communication.”;

and
 - (g) in subsection (11), omit the words “with the approval of the Privy Council”.
2. In section 24 (testing of sight)—
 - (a) in subsection (1), for the words “ophthalmic optician” substitute “optometrist”; and
 - (b) in subsection (3), for the words “ophthalmic opticians” substitute “optometrists”.
- 3.—(1) In section 28 (penalty for pretending to be registered etc.)—
 - (a) in subsection (1)—
 - (i) in paragraph (a), for the words “ophthalmic optician” substitute “optometrist”, and for the words “either of the registers of ophthalmic opticians” substitute “the register of optometrists”, and
 - (ii) for paragraph (c), substitute—

“(c) who takes or uses the title of registered optometrist when he is not registered in the register of optometrists maintained under section 7 above;

(cc) who holds himself out as being a student registrant when he is not registered in the register of those undertaking training as optometrists or dispensing opticians maintained under section 8A above;

(ccc) who holds himself out as having a specialty or proficiency which qualifies for entry in the appropriate register in accordance with rules made under section 10(1A) above but for whom no entry is extant;”;
 - (b) in subsection (4), for the words “optical appliances only” substitute “only optical appliances or zero powered contact lenses or both”;
 - (c) for subsections (5) and (6), substitute—

“(5) Any body corporate which—

 - (a) takes or uses the title of ophthalmic optician, the title of optometrist, the title of dispensing optician or the title of registered optician when it is not registered;

- (b) takes or uses any name, title, addition or description falsely implying that it is registered;
- (c) otherwise pretends that it is registered,

shall be liable on summary conviction to a fine of an amount not exceeding level 5 on the standard scale.

(6) On any prosecution for an offence under subsection (5)(b) or (c) above, the taking or using of the title of optician by a body corporate to which this subsection applies is to be taken to imply that it is registered, but the implication may be rebutted if the body corporate took or, as the case may be, used the title in circumstances where it would have been unreasonable for people to believe, in consequence of its taking or, as the case may be, use of it, that it was in fact registered.”;

- (d) in subsection (7)—
 - (i) for the words “subsection (5)” substitute “subsection (6)”, and
 - (ii) in paragraphs (a) and (b), after the words “optical appliances” insert “or zero powered contact lenses”; and
- (e) in subsection (8), for the words “Subsection (5)” substitute “Subsection (6)”.

(2) The amendments made by sub-paragraph (1) do not affect any offence committed before this paragraph comes into force.

4. In section 29 (provisions as to death or bankruptcy of registered optician)—

- (a) in subsections (1) and (2)—
 - (i) for the words “registered optician” substitute “registered optometrist or registered dispensing optician”, and
 - (ii) for the words “an optician” substitute “an optometrist or dispensing optician”;
- (b) in subsection (3)—
 - (i) in paragraphs (a)(i) and (ii), for the word “optician” substitute “optometrist or dispensing optician”, and
 - (ii) for the words “Disciplinary Committee” substitute “Fitness to Practise Committee”;
- (c) in subsection (4), for the words “a disciplinary case and a disciplinary order” substitute “a case in which it is alleged that a registrant’s fitness to practise or as the case may be a business registrant’s fitness to carry on business as an optometrist or a dispensing optician or both, is impaired and the making of an order under Part 2A above”;
- (d) in subsection (5)—
 - (i) in paragraph (a), for the words “registered optician” in both places where they occur substitute “registered optometrist or registered dispensing optician”, and
 - (ii) in paragraph (b), for the word “optician’s” substitute “optometrist’s or registered dispensing optician’s”; and
- (e) in subsection (6), for the words “registered optician’s” substitute “registered optometrist’s or a registered dispensing optician’s”.

5. In section 30 (offences by bodies corporate), the current provision shall become subsection (1) and at the end add—

“(2) In subsection (1) above, “responsible officer” means any director, manager, secretary or other similar officer of the body corporate, or of a branch or department of the body corporate, or any person purporting to act in any such capacity.”.

6. In section 31 (miscellaneous matters with respect to which rules may be made)—

- (a) in subsection (1)—
 - (i) omit paragraph (a),
 - (ii) for paragraph (b), substitute—

- “(b) the carrying on of a practice or business by registered optometrists, registered dispensing opticians and business registrants under names other than those under which they are registered;”,
- (iii) for paragraph (c), substitute—
 - “(c) the prescription, sale, supply and administration of drugs by registered optometrists, registered dispensing opticians or business registrants, their employees and persons providing services to them in the course of their practice or business of an optometrist or a dispensing optician;”,
- (iv) in paragraph (d), for the words “registered opticians, enrolled bodies corporate” substitute “registered optometrists, registered dispensing opticians, business registrants”, and
- (v) for paragraph (e) substitute—
 - “(e) the prescription, sale, supply and fitting of contact lenses by registered optometrists, registered dispensing opticians, business registrants, their employees and persons providing services to them.”;
- (b) omit subsection (2);
- (c) for subsection (3) substitute—
 - “(3) The Council may make rules specifying requirements which registered optometrists, registered dispensing opticians and business registrants or employees of or persons providing services to them must meet if they are to prescribe, fit, supply or sell contact lenses.”;
- (d) for subsection (4)(a) substitute—
 - “(a) in relation to registered optometrists, registered dispensing opticians and business registrants or employees of or persons providing services to them, to specify qualifications which they must have; and”;
- (e) in subsection (4)(b), for the words “enrolled bodies corporate” substitute “business registrants”;
- (f) in subsection (5), for the words “registered optician” and the word “optician” substitute “registered optometrist or registered dispensing optician”; and
- (g) omit subsection (6).

7. In section 35(1) (Privy Council quorum and documents), omit the words “(other than the power of hearing appeals against disciplinary orders or directions under section 19 above)”.

8. In section 36 (interpretation)—

- (a) omit the definitions of “disciplinary case”, “disciplinary order”, “enrolled”, “erasure order”, “list”, “penalty order”, “registered dispensing optician”, “registered ophthalmic optician”, “registered optician”, “responsible officer” and “suspension order”;
- (b) for the definition of “approved training institution” and “approved qualification” substitute—
 - ““approved training establishment” means an establishment approved by the Council under section 12(7)(a) above;
 - “approved qualification” means any qualification approved by the Council under section 12(7)(b) above;”;
- (c) for the definition of “body corporate” substitute—
 - ““body corporate” includes a limited liability partnership and, in Scotland, a partnership; and in relation to such partnerships, a reference to a director or other officer of a body corporate is a reference to a member;”;
- (d) after the definition of “body corporate” insert—
 - ““business registrant” means a body corporate registered in the register maintained by the Council under section 9 above;”;

- (e) before the definition of “functions” insert—
- ““electronic communication” has the same meaning as in the Electronic Communications Act 2000(a);
- “financial penalty order” means an order under Part 2A above that a registrant shall pay to the Council a sum specified in the order;”;
- (f) after the definition of “health service ophthalmic lists”, insert—
- ““Hearings Panel” means the panel of persons appointed under section 5D(1) above;
- “individual registrant” means any person whose name is in a register maintained by the Council under section 7 or 8A above;”;
- (g) in the definition of “ophthalmic optician”, for the words ““ophthalmic optician” means” substitute ““optometrist” means”;
- (h) for the definition of “register” substitute—
- ““register” means, unless the context otherwise requires, any one of the following registers—
- (a) the register of optometrists maintained under section 7 above;
- (b) the register of dispensing opticians maintained under section 7 above;
- (c) the registers of students maintained under section 8A above;
- (d) the register of bodies corporate under section 9 above,
- and, except where used in relation to medical practitioners, “registered” and “registration” have corresponding meanings;” and
- (i) after the definition of “register” insert—
- ““registrant”, except in the expressions “individual registrant”, “business registrant” and “student registrant”, means a person whose name is in the appropriate register;
- “student registrant” means a person whose name is in one of the registers maintained by the Council under section 8A above;”.

PART 2

Consequential amendments to primary legislation

The National Health Service Act 1977

9. In section 128(1) of the National Health Service Act 1977(b) (interpretation and construction), for the definition of “ophthalmic optician”, substitute—

““ophthalmic optician” means a person registered in the register of optometrists maintained under section 7 of the Opticians Act 1989 or a body corporate registered in the register of bodies corporate maintained under section 9 of that Act carrying on business as an optometrist;”.

The National Health Service (Scotland) Act 1978

10. In section 108(1) of the National Health Service (Scotland) Act 1978(c) (interpretation and construction), for the definition of “ophthalmic optician”, substitute—

““ophthalmic optician” means a person registered in the register of optometrists maintained under section 7 of the Opticians Act 1989 or a body corporate registered in

(a) 2000 c.7.
 (b) 1977 c.49.
 (c) 1978 c.29.

the register of bodies corporate maintained under section 9 of that Act carrying on business as an optometrist.”.

Health and Personal Social Services (Northern Ireland) Order 1972

11. In Article 2(2) of the Health and Personal Social Services (Northern Ireland) Order 1972(a) (interpretation), for the definition of ophthalmic optician, substitute—

““ophthalmic optician” means a person registered in the register of optometrists maintained under section 7 of the Opticians Act 1989 or a body corporate registered in the register of bodies corporate maintained under section 9 of that Act carrying on business as an optometrist.”.

The Data Protection Act 1998

12. In section 69(1) of the Data Protection Act 1998(b) (meaning of health professional), for paragraph (c), substitute—

“(c) a registered dispensing optician or a registered optometrist within the meaning of the Opticians Act 1989;”.

The National Health Service Reform and Health Care Professions Act 2002

13. In section 29(1) of the National Health Service Reform and Health Care Professions Act 2002(c) (reference of disciplinary cases by Council to court), for paragraph (f) substitute—

“(f) a direction by the Fitness to Practise Committee of the General Optical Council under section 13F(2) of the Opticians Act 1989 (powers of Fitness to Practise Committee), other than a direction that a registrant’s fitness to practise is impaired solely by virtue of a matter falling within section 13D(2)(f) of that Act;”.

PART 3

Consequential amendments to subordinate legislation

The Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975

14. In paragraph 7 of Part 1 of Schedule 1 to the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975(d) (excepted professions) for the words “ophthalmic optician” substitute “optometrist”.

The Medicines (Contact Lens Fluids and Other Substances) (Exemption from Licences) Order 1979

15. In article 1(2) of the Medicines (Contact Lens Fluids and Other Substances) (Exemption from Licences) Order 1979(e) (interpretation), for the definition of “optician” substitute—

““optician” means a person whose name is entered in the register of optometrists maintained under section 7(a) of the Opticians Act 1989;”.

(a) 1972/1265 (N.I. 14).

(b) 1998 c. 29.

(c) 2002 c.17.

(d) S.I. 1975/1023; the relevant amending instrument is S.S.I. 2003/231.

(e) S.I. 1979/1585.

The Medicines (Contact Lens Fluids and Other Substances) (Advertising and Miscellaneous Amendments) Regulations 1979

16. In article 2(1) of the Medicines (Contact Lens Fluids and Other Substances) (Advertising and Miscellaneous Amendments) Regulations 1979(a) (interpretation), for the definition of “optician” substitute—

““optician” means a person whose name is entered in the register of optometrists or the register of dispensing opticians maintained under section 7 of the Opticians Act 1989;”.

The Medicines (Pharmacy and General Sale – Exemption) Order 1980

17. In article 1(2) of the Medicines (Pharmacy and General Sale - Exemption) Order 1980(b) (interpretation), for the definition of “registered ophthalmic optician” substitute—

““registered ophthalmic optician” means a person whose name is entered in the register of optometrists maintained under section 7(a) of the Opticians Act 1989;”.

The Sale of Optical Appliances Order of Council 1984

18. In the Sale of Optical Appliances Order of Council 1984(c)—

(a) in article 1(2)(interpretation), in the definition of “registered blind or partially sighted”, for sub-paragraph (b), substitute—

“(b) in a register maintained by or on behalf of a council constituted under the Local Government (Scotland) Act 1994, or”; and

(b) in article 3 (conditions subject to which a sale is exempt)—

(i) in paragraph (1), for the words “or registered optician” substitute “, registered optometrist or registered dispensing optician”; and

(ii) in paragraph (2)(a)(i), for the words “ophthalmic optician” substitute “optometrist”.

The Rules on the Fitting of Contact Lenses 1985

19.—(1) The Rules on the Fitting of Contact Lenses 1985(d) shall be amended in accordance with the following provisions of this paragraph.

(2) For the words “ophthalmic optician”, wherever they occur, substitute “optometrist”.

(3) For the words “ophthalmic opticians”, wherever they occur, substitute “optometrists”.

(4) In rule 2(a) (interpretation)—

(a) for the definition of “appropriate course of instruction”, substitute—

““appropriate course of instruction” means a course of instruction as a dispensing optician or an optometrist provided by an approved training establishment;”; and

(b) for the definition of “qualified registered optician” substitute—

““qualified registered optometrist or registered dispensing optician” means a registered optometrist or registered dispensing optician who holds an approved qualification, as defined in the Contact Lens (Qualifications etc) Rules 1988 (scheduled to the General Optical Council (Contact Lens (Qualifications etc) Rules) Order of Council 1988) or has been granted certification as a person qualified to fit contact lenses in accordance with the provisions of those Rules;”.

(5) For rule 3, substitute—

“3. A person who—

(a) S.I. 1979/1760.

(b) S.I. 1980/1924.

(c) S.I. 1984/1778.

(d) Scheduled to S.I. 1985/856 and amended by rules scheduled to S.I. 1988/1305.

- (a) is training as an optometrist or a dispensing optician;
- (b) is registered in the register of students maintained by the Council in accordance with section 8A of the Act; and
- (c) falls within one of the classes prescribed by rule 4 of these Rules,

may fit a contact lens provided he does so—

- (i) in the course of obtaining practical experience; and
- (ii) under the continuous personal supervision of a qualified registered optometrist or registered dispensing optician or a registered medical practitioner.”.

(6) In rule 4—

(a) in paragraph (2), for sub-paragraph (b) substitute—

“(b) are holders of a qualification granted outside the United Kingdom which is approved under section 12(7) of the Act (education and training);”; and

(b) for paragraph (4), substitute—

“(4) Persons engaged in a course of instruction provided by an approved training establishment leading to a qualification specified in Appendix A to the Contact Lens (Qualification etc) Rules 1988 (scheduled to the General Optical Council (Contact Lens (Qualifications etc) Rules) Order of Council 1988).”.

The Contact Lens (Qualifications etc) Rules 1988

20.—(1) The Contact Lens (Qualifications etc) Rules 1988(a) shall be amended in accordance with the following provisions of this paragraph.

(2) For the words “registered optician”, wherever they occur, substitute “registered optometrist or registered dispensing optician”.

(3) In rule 2(2), omit the definition of “fitting”.

(4) In rule 3 (qualifications required for fitting of contact lens by a registered optician) at the end, add—

“,

and the fitting of contact lenses is entered in the appropriate register against his name in accordance with rules made under section 10(1A) of the Act (particulars of registrants’ specialties or proficiencies).”.

(5) For rule 4, substitute—

“Fitting a contact lens under supervision

4. Rule 3 does not prevent a registered optometrist or registered dispensing optician who does not hold a qualification, certification or provisional certification fitting a contact lens if the fitting is carried out under the supervision of a person who does hold such a qualification, certification or provisional certification.”.

(6) For rule 10 (cancellation of certification or provisional certification), substitute—

“Cancellation

10.—(1) The Council may cancel any certification or provisional certification granted to a registered optometrist or registered dispensing optician—

- (a) in respect of an application which is subsequently shown to contain false or misleading statements;

(a) Scheduled to S.I.1988/1305.

- (b) if his name is removed from the register or if he is suspended from the register under section 13F (powers of Fitness to Practise Committee), 13I (power to order immediate suspension etc) or 13J (removal from a register on grounds of fraud or error) of the Act;
 - (c) if his entry relating to a specialty or proficiency is removed from the appropriate register under section 13F, 13I or 13J of the Act; or
 - (d) if he is the subject of an interim suspension order or interim conditional registration order under section 13L of the Act (interim orders).
- (2) Paragraph (1) is without prejudice to the right of a registered optometrist or registered dispensing optician to have his certification or provisional certification renewed on—
- (a) having his name or entry relating to a specialty or proficiency restored pursuant to section 10 (general provisions as to registers) or 13K (restoration of names to a register) of the Act;
 - (b) termination of a period of suspension (unless followed by a further period of suspension or erasure); or
 - (c) termination of a period of temporary removal of an entry relating to a specialty or proficiency (unless followed by a further direction for removal whether or not for a specified period).”.
- (7) In rule 12 (fitting of contact lenses in the course of business, and use of titles, etc.)—
- (a) in paragraph (1), for the words “or who are entitled to fit contact lenses by virtue of these Rules or of Rules made under section 20A(3) of the Act”, substitute “or have an entry for the fitting of contact lenses in the appropriate register in accordance with rules made under section 10(1A) of the Act”; and
 - (b) in paragraph (2)—
 - (i) for the word “enrolled” substitute “registered”, and
 - (ii) for the words “or persons entitled to fit contact lenses by virtue of these Rules or of Rules made under section 20A(3) of the Act”, substitute “or who have an entry for the fitting of contact lenses in the appropriate register in accordance with rules made under section 10(1A) of the Act.”.
- (8) Omit rules 13 and 14.
- (9) For rule 15 (provision of after-care) substitute—

“Exemption from the duty to provide aftercare

15.—(1) A person is exempted from the duty to provide aftercare under section 27 of the Act (sale and supply of optical appliance) if he is not a person to whom paragraph (2) refers.

(2) The person to whom this paragraph refers is—

- (a) if only one person supplied a contact lens to the person, that person; or
- (b) if more than one person supplied a contact lens to the person, the last person to fit a lens.”.

The Contact Lens (Specification) Rules 1989

21. In the Contact Lens (Specification) Rules 1989(a), for rule 2 (duty to provide specification), substitute—

(a) Scheduled to S.I. 1989/791.

“Duty to provide specification

2. The specification provided under section 25(5) of the Act must include the following particulars—

- (a) the name and address of the individual;
- (b) if the individual has not attained the age of sixteen on the day the specification is issued, his date of birth;
- (c) the name and registration number of the person signing the specification;
- (d) the address from which the person signing the specification practices;
- (e) the name of the practice on whose premises the fitting was done;
- (f) the date the fitting was completed;
- (g) sufficient details of any lens fitted to enable a person who fits or supplies a contact lens to replicate the lens;
- (h) the date the specification expires; and
- (i) such information of a clinical nature as the person fitting the lens considers to be necessary in the particular case.”.

The Sight Testing (Examination and Prescription) (No. 2) Regulations 1989

22. In the Sight Testing (Examination and Prescription) (No. 2) Regulations 1989**(a)**—

- (a) in regulation 2(1) (interpretation), for the definition of “optician” substitute—
““optometrist” means a registered optometrist;”;
- (b) for the word “optician”, wherever it occurs, substitute “optometrist”;
- (c) in regulation 3(1)(b) (examination) at the end add—
“and
(iii) if he is referring the patient to a doctor, setting out the reason for the referral.”
;
- (d) in regulation 4 (exceptions to the duty to issue a prescription statement), for the word “opticians” substitute “optometrists”; and
- (e) in regulation 5(1) (particulars to be included in a prescription or statement), in sub-paragraph (a) at the end add “and such other particulars as may be necessary to enable each lens to be replicated.”.

The Prescription Pricing Authority Constitution Order 1990

23. In article 5(e) of the Prescription Pricing Authority Constitution Order 1990**(b)** (constitution of the Pricing Authority), in sub-paragraph (e)(iv), for the words “registered in any of the registers of opticians” substitute “whose name is entered in the register of optometrists or the register of dispensing opticians”.

The National Health Service (Service Committees and Tribunal) Regulations 1992

24. In regulation 2 of the National Health Service (Service Committees and Tribunal) Regulations 1992**(c)** (interpretation) for the definition of “optician” substitute—

- ““optician” means—
(a) in the context of any provision requiring a member of a body constituted under these Regulations to be an optician, an optometrist whose name is registered in the

(a) S.I. 1989/1230.
(b) S.I. 1990/1718.
(c) S.I. 1992/664.

register of optometrists maintained under section 7(a) of the Opticians Act 1989;
or

- (b) in any other context, an optometrist whose name is registered in the register of optometrists maintained under section 7(a) of that Act or a body corporate registered in the register of bodies corporate maintained under section 9 of that Act carrying on business as an optometrist;”.

The Testing of Sight by Persons Training as Ophthalmic Opticians Rules, 1993

25. In the Testing of Sight by Persons Training as Ophthalmic Opticians Rules, 1993(a)—

- (a) for the words “ophthalmic optician”, wherever they occur, substitute “optometrist”;
- (b) for the words “ophthalmic opticians”, wherever they occur in rules 1 to 4, substitute “optometrists”;
- (c) for the word “institution”, wherever it occurs, substitute “establishment”; and
- (d) in rule 4 (classes of persons training as ophthalmic optometrists)—
 - (i) for paragraphs (a) and (b), substitute—
 - “(a) persons who are undertaking training at an approved training establishment for the purpose of satisfying section 8(1)(a) or 8(2A)(a) of the Act;
 - (b) persons who are obtaining practical experience in the work of an optometrist under the supervision of a registered medical practitioner or a registered optometrist for the purpose of satisfying section 8(1)(b) or 8(2A) of the Act ”, and
 - (ii) in paragraph (d), after the word “examination” insert “or assessment”.

The Family Health Services Appeal Authority Regulations 1995

26. In regulation 7(1) of the Family Health Services Appeal Authority Regulations 1995(b) (disqualification for appointment), in sub-paragraph (i)(iv), for the words “ophthalmic optician” substitute “optometrist”.

The Prescription Only Medicines (Human Use) Regulations 1997

27. In the Prescription Only Medicines (Human Use) Regulations 1997(c)—

- (a) in regulation 1(2) (citation, commencement and interpretation), for the definition of “registered ophthalmic optician” substitute—
 - ““registered optometrist” means a person whose name is registered in the register of optometrists maintained under section 7(a) of the Opticians Act 1989;”;
- (b) for the words “registered ophthalmic optician”, wherever they appear, substitute “registered optometrist”, and for the words “registered ophthalmic opticians”, wherever they appear, substitute “registered optometrists”.

The Primary Care Trusts (Consultation on Establishment, Dissolution and Transfer of Staff) Regulations 1999

28. In regulation 1(2) of the Primary Care Trusts (Consultation on Establishment, Dissolution and Transfer of Staff) Regulations 1999(d) (interpretation), in the definition of “health care professional” for sub-paragraph (d) substitute—

- “(d) an optometrist or a dispensing optician whose name is entered in a register under section 7 of the Opticians Act 1989;”.

(a) Scheduled to S.I. 1994/70; relevant amending rules are scheduled to S.I. 1999/2897.
(b) S.I. 1995/622.
(c) S.I. 1997/1830.
(d) S.I. 1999/2337.

The Rules relating to Injury or Disease of the Eye, 1999

29. In the Rules relating to Injury or Disease of the Eye, 1999(**a**)—

- (a) for the words “registered optician”, wherever they occur, substitute “registered optometrist or registered dispensing optician”; and
- (b) in rule 7, for the words “dispensing optician” substitute “registered dispensing optician” and for the words “ophthalmic optician” substitute “registered optometrist”.

The Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000

30. In regulation 5(5) of the Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000(**b**) (disqualification for appointment: chairman and non-officer members), for sub-paragraph (d) substitute—

“(d) an optometrist or a dispensing optician whose name is entered in a register maintained under section 7 of the Opticians Act 1989;”.

The General Social Care Council (Appointments and Procedure) Regulations 2001

31. In regulation 4(7) of the General Social Care Council (Appointments and Procedure) Regulations 2001(**c**) (disqualification for appointment), for sub-paragraph (d) substitute—

“(d) an optometrist or a dispensing optician whose name is entered in a register maintained under section 7 of the Opticians Act 1989;”.

The General Optical Council Election Scheme 2001

32. In the General Optical Council Election Scheme 2001(**d**)—

- (a) for the words “ophthalmic optician”, wherever they occur, substitute “optometrist”;
- (b) for the words “ophthalmic opticians”, wherever they occur, substitute “optometrists”; and
- (c) in paragraph 3(i), for “ophthalmic or dispensing opticians” substitute “optometrists or dispensing opticians”.

SCHEDULE 2

Article 29

Transitional provisions

1. In this Schedule, references to—

- (a) an old Part or old section is to the Part or section of that Act as it had effect immediately before its amendment or substitution by this Order; and
- (b) a new Part or new section is to the Part or section of that Act as amended or substituted by this Order.

2. The Disciplinary Committee established under the old section 5 of the Act shall continue in being after the coming into force of article 16 of this Order for the purpose of exercising its functions under this Schedule.

3. For the purpose of exercising those functions, the old Part III of the Act shall continue to apply.

(a) Scheduled to S.I. 1999/3267.
(b) S.I. 2000/89.
(c) S.I. 2001/1744.
(d) Scheduled to S.I. 2001/3057.

4. Where—

- (a) an allegation against a registered optician has been referred for consideration by the Disciplinary Committee under the old Part III of the Act, the Disciplinary Committee shall continue to deal with that case after the coming into force of article 16 of this Order; or
- (b) an allegation has been made to or on behalf of the Council against a registered optician that his fitness to practise is or may be impaired within the meaning of the new section 13D of the Act and the Council has not, before the day article 16 of this Order comes into force, referred that allegation to the Disciplinary Committee, the Council shall refer the allegation to the Investigation Committee to investigate the allegation under the new section 13D of the Act.

5. Where after article 16 of this Order comes into force an allegation is made against a registered optician that his fitness to practise is or may be impaired within the meaning of the new section 13D of the Act and the allegation refers to events which occurred before article 16 came into force, the Council shall refer the allegation to the Investigation Committee for investigation under the new section 13C of the Act.

6. Any case referred to the Investigation Committee under this Schedule shall be dealt with by the Committee, and by the Fitness to Practise Committee in any case referred to that Committee by the Investigation Committee, in accordance with new Parts 2A and 3A.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Opticians Act 1989 (“the Act”).

The Order is made under sections 60 and 62(4) of, and Schedule 3 to, the Health Act 1999. Under paragraph 9(1) of that Schedule, the Secretary of State published a draft of the Order and invited representations to be made on it. The report about the consultation is posted on the Department of Health’s website (www.dh.gov.uk/publications).

Article 3 provides that the functions of the General Optical Council (“the Council”) are to include the promotion of high standards of professional education, conduct and performance amongst optometrists, dispensing opticians and bodies corporate.

Article 4 amends provisions relating to the Committees of the Council. In particular, it abolishes the Disciplinary Committee and establishes in its place the Fitness to Practise Committee; in addition it establishes the Registration Committee, the Registration Appeals Committee and the Standards Committee.

Article 5 establishes a panel of persons (a Hearings Panel) from whom the members of the Registration Appeals Committee and the Fitness to Practise Committee are to be drawn.

Article 6 provides powers of delegation for the Council, its Committees and the registrar.

Article 7 replaces the registers of ophthalmic opticians with a register of optometrists. Article 8 makes registration dependant upon the applicant being a fit person to be registered. Registration matters are also dealt with in article 9 (register of students), article 10 (register of bodies corporate), article 11 (fee to be charged for registration and power enabling the Council to provide in Rules for the registration of particular specialties or proficiencies) and article 13 (publication of register and proof of registration). Article 12 requires registrants to have in place a policy of insurance to insure against civil liabilities for work done by them.

Article 14 introduces new requirements for training and development for registered persons and for those seeking to restore their name to the register. Article 15 provides for the Council to establish standards for education and training.

Article 16 introduces a new Part 2A to the Opticians Act 1989 relating to Fitness to Practise. This Part provides for—

- (a) the Council to give guidance on fitness to practise;
- (b) the disclosure of documents relevant to the functions of the Council and its Committees;
- (c) dealing with allegations that a person’s fitness to practise is impaired;
- (d) the powers of the Fitness to Practise Committee;
- (e) the Fitness to Practise Committee to order immediate suspension or conditional registration of any person;
- (f) the erasure of a person’s name from the register;
- (g) the Fitness to Practise Committee to order restoration of a person’s name to the register;
- (h) the Fitness to Practise Committee to make an interim order suspending a person’s name from the register or making his registration conditional and for the review of the order.

Article 17 substitutes a new Part 3A of the Act relating to proceedings and appeals. It provides for—

- (a) the administration of oaths in proceedings before the Committees of the Council;
- (b) the making by the Council of rules as to the procedure to be followed and the evidence to be observed before those Committees;
- (c) the appointment of legal advisers;
- (d) registration decisions to be appealable to the Registration Appeals Committee;

- (e) certain decisions of the Fitness to Practise Committee and the Registration Appeals Committee to be appealable to the specified court;
- (f) the date decisions are to take effect.

Part 5 of the Order contains further amendments to the Act. Article 18 relates to the fitting of contact lenses and article 19 relates to the duties to be performed on sight testing. Article 20 makes provision as to the supply of contact lenses and protective eyewear.

Article 21 provides for proceedings under the Act to be commenced at any time within 6 months from the date on which evidence sufficient in the opinion of the Council to justify a prosecution comes to the Council's knowledge.

Article 22 contains provisions as to the making of Rules.

Article 23 enables the Council to provide money to persons or a body whose function is to investigate and resolve consumer complaints against registered opticians.

Article 24 amends references to the default powers of the Privy Council which are consequential on changes made elsewhere in this Order.

Article 25 (amongst other matters) provides the procedure for regulations introduced under article 17. Article 26 (amongst other matters) makes provision as to length of time members serve on the Council.

Article 27 introduces a new Schedule 1A which makes provision for appeals to the Registration Appeals Committee from decisions of the registrar or the Council relating to the registration of any person.

Article 28 and Schedule 1 contain a number of minor amendments to the Opticians Act 1989 and subordinate legislation which are consequential upon changes made elsewhere in the Order.

Article 29 and Schedule 2 provide for transitional matters.