

## SCHEDULES

### SCHEDULE 7

Section 99

#### ADJUDICATION FUNCTIONS UNDER MEDICAL ACT 1983 AND OPTICIANS ACT 1989

##### PART 1

###### AMENDMENTS OF MEDICAL ACT 1983

- 1 In this Part of this Schedule “the 1983 Act” means the Medical Act 1983 (c. 54).
- 2 (1) Section 1 of the 1983 Act (the General Medical Council) is amended as follows.
- (2) In subsection (3) omit paragraphs (b) and (f).
- (3) In subsection (3A) for “(a) to (f)” substitute “(a), (c), (d) and (e)”.
- 3 In section 29C of the 1983 Act (referral to the Investigation Committee), in subsection (2)(b), for “a Fitness to Practise Panel, by such a Panel” substitute “the Adjudicator, by the Adjudicator”.
- 4 After section 35 of the 1983 Act insert—

##### “35ZA Fitness to practise findings: guidance

- (1) The General Council may publish guidance about factors which they consider to indicate that—
- (a) a person (“D”) whose fitness to practise is found to be impaired should or should not have—
    - (i) D’s name erased from the register;
    - (ii) D’s registration suspended;
    - (iii) D’s registration suspended forthwith in accordance with section 38;
    - (iv) D’s registration made conditional;
    - (v) D’s registration made conditional forthwith in accordance with section 38;
  - (b) a person whose fitness to practise is found not to be impaired should or should not be given a warning regarding the person’s future conduct or performance;
  - (c) a person whose name has been erased from the register should or should not have the person’s name restored to the register.
- (2) The General Council may also publish guidance about factors which they consider to indicate—
- (a) that requirements of a particular type should be imposed as conditions in the case of a person whose registration is to be made conditional;

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- (b) the period of time for which a person’s registration should be suspended or made conditional.
- (3) The Adjudicator must take account of guidance published under subsection (1) or (2) in exercising its functions under sections 35D, 38 and 41 and under paragraph 5A(3E) of Schedule 4.”
- 5 In section 35B of the 1983 Act (notification and disclosure by the General Council), in subsection (4)—
- (a) in paragraphs (a), (b) and (c) for “a Fitness to Practise Panel” substitute “the Adjudicator”,
- (b) in paragraph (d) for “an Interim Orders Panel or a Fitness to Practise Panel” substitute “the Adjudicator”,
- (c) after paragraph (d) insert—
- “(da) decisions of the Adjudicator to make a direction under paragraph 5A(3E) of Schedule 4 to this Act and decisions of the Adjudicator under section 35D below that relate to such a direction;”, and
- (d) in paragraph (e) for “a Fitness to Practise Panel” substitute “the Adjudicator”.
- 6 (1) Section 35C of the 1983 Act (functions of the Investigation Committee) is amended as follows.
- (2) In subsection (2)(e) after “social care profession” insert “, or by the Adjudicator,”.
- (3) In subsection (4) for “a Fitness to Practise Panel” substitute “the Adjudicator”.
- (4) In subsection (5) for “a Fitness to Practise Panel” (in both places) substitute “the Adjudicator”.
- (5) In subsections (6) and (7) for “a Fitness to Practise Panel” substitute “the Adjudicator”.
- (6) In subsection (8)—
- (a) for “an Interim Orders Panel or a Fitness to Practise Panel should” substitute “the Adjudicator should”, and
- (b) in paragraph (b) for “an Interim Orders Panel or a Fitness to Practise Panel for the Panel” substitute “the Adjudicator for the Adjudicator”.
- 7 (1) Section 35D of the 1983 Act (functions of a Fitness to Practise Panel) is amended as follows.
- (2) In the heading for “a Fitness to Practise Panel” substitute “the Adjudicator”.
- (3) In subsection (1)—
- (a) after “section 35C above” insert “(other than under subsection (8) of that section)”, and
- (b) for “a Fitness to Practise Panel” substitute “the Adjudicator”.
- (4) In subsection (2)—
- (a) for “Panel find” substitute “Adjudicator finds”,
- (b) for “they may, if they think” substitute “the Adjudicator may, if it thinks”, and
- (c) in paragraph (c) for “Panel think” substitute “Adjudicator thinks”.

- (5) In subsection (3)—
- (a) for “Panel find” substitute “Adjudicator finds”, and
  - (b) for “they” substitute “the Adjudicator”.
- (6) In subsection (4)—
- (a) for “a Fitness to Practise Panel have” substitute “the Adjudicator has”, and
  - (b) in paragraph (c) for “rules made by virtue of paragraph 5A(3)” substitute “paragraph 5A(3E)”.
- (7) In subsection (5)—
- (a) for “a Fitness to Practise Panel may, if they think” substitute “the Adjudicator may, if it thinks”,
  - (b) in paragraph (c) for “Panel think” substitute “Adjudicator thinks”, and
  - (c) for “Panel shall” substitute “Adjudicator shall”.
- (8) In subsection (6) for “a Fitness to Practise Panel” substitute “the Adjudicator”.
- (9) In subsection (7)—
- (a) for “a Fitness to Practise Panel have” substitute “the Adjudicator has”,
  - (b) for “a Fitness to Practise Panel shall” substitute “the Adjudicator shall”, and
  - (c) in paragraph (a) for “them” substitute “the Adjudicator”.
- (10) In subsection (8)—
- (a) for “Panel” (where first occurring) substitute “Adjudicator”, and
  - (b) in paragraph (c) for “Panel think” substitute “Adjudicator thinks”.
- (11) In subsection (9)—
- (a) in paragraph (a)(iii) for “rules made by virtue of paragraph 5A(3)” substitute “paragraph 5A(3E)”, and
  - (b) in paragraph (b) for “a Fitness to Practise Panel” substitute “the Adjudicator”.
- (12) In subsection (10) for “Panel may, if they think” substitute “Adjudicator may, if it thinks”.
- (13) In subsection (11)(b) for “rules made by virtue of paragraph 5A(3)” substitute “paragraph 5A(3E)”.
- (14) In subsection (12)—
- (a) for “a Fitness to Practise Panel may, if they think” substitute “the Adjudicator may, if it thinks”, and
  - (b) for “Panel shall” substitute “Adjudicator shall”.
- 8 (1) Section 35E of the 1983 Act (provisions supplementary to section 35D) is amended as follows.
- (2) In subsection (1)—
- (a) for “a Fitness to Practise Panel” substitute “the Adjudicator”,
  - (b) in paragraphs (a), (b) and (c) for “give” substitute “gives”, and
  - (c) in paragraph (d) for “vary” substitute “varies”.
- (3) In subsection (4) for “a Fitness to Practise Panel” substitute “the Adjudicator”.

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- 9 (1) Section 38 of the 1983 Act (power to order immediate suspension etc after a finding of impairment of fitness to practise) is amended as follows.
- (2) In subsections (1) and (2)—
- (a) for “rules made by virtue of paragraph 5A(3)” substitute “paragraph 5A(3E)”, and
- (b) for “Fitness to Practise Panel” substitute “Adjudicator”.
- (3) In subsection (3)—
- (a) in paragraph (a)—
- (i) in sub-paragraph (i) after “10” insert “or 10A”, and
- (ii) omit sub-paragraph (ii), and
- (b) in paragraph (b) for “paragraph 5A(4) of that Schedule” substitute “paragraph 5A(5) of Schedule 4 to this Act”.
- (4) In subsection (4) for “a Fitness to Practise Panel make” substitute “the Adjudicator makes”.
- 10 (1) Section 40 of the 1983 Act (appeals) is amended as follows.
- (2) In subsection (1)(a) and (b) for “a Fitness to Practise Panel” substitute “the Adjudicator”.
- (3) In subsection (7)—
- (a) for “a Fitness to Practise Panel” (where first occurring) substitute “the Adjudicator”,
- (b) in paragraph (c) for “a Fitness to Practise Panel” substitute “the Adjudicator”, and
- (c) in paragraph (d) for “Registrar for him to refer it to a Fitness to Practise Panel” substitute “Adjudicator”.
- (4) In subsection (9) for “a Fitness to Practise Panel” substitute “the Adjudicator”.
- 11 After section 40 of the 1983 Act insert—

**“40A Reference of cases by General Council to court**

- (1) This section applies to—
- (a) a decision of the Adjudicator under section 35D giving—
- (i) a direction for suspension, including a direction extending a period of suspension;
- (ii) a direction for conditional registration, including a direction extending a period of conditional registration;
- (iii) a direction varying any of the conditions imposed by a direction for conditional registration; and
- (b) a decision of the Adjudicator under paragraph 5A(3E) of Schedule 4 giving—
- (i) a direction for suspension;
- (ii) a direction for conditional registration.
- (2) This section also applies to—
- (a) a decision of the Adjudicator under section 35D not to give a direction falling within subsection (1)(a) or a direction for erasure

- (whether because of a finding that the person's fitness to practise is not impaired or otherwise);
- (b) a decision of the Adjudicator under section 35D—
    - (i) giving a direction that a suspension be terminated;
    - (ii) revoking a direction for conditional registration or a condition imposed by such a direction;
  - (c) a decision of the Adjudicator under section 41 giving a direction that a person's name be restored to the register; and
  - (d) a decision of the Adjudicator under paragraph 5A(3E) of Schedule 4 not to give a direction falling within subsection (1)(b).
- (3) The decisions to which this section applies are referred to below as “relevant decisions”.
- (4) If the General Council consider that—
- (a) a relevant decision falling within subsection (1) is unduly lenient, whether because the findings relating to fitness to practise are inadequate, or because the direction given does not adequately reflect the findings that have been made, or both; or
  - (b) a relevant decision falling within subsection (2) should not have been made,
- and that it would be desirable for the protection of members of the public for the General Council to take action under this section, the General Council may refer the case to the relevant court.
- (5) In the case of a relevant decision falling within subsection (1), the General Council may not refer a case after the end of the period of 40 days beginning with the day which is the last day on which the person to whom the relevant decision relates can appeal against it.
- (6) In the case of a relevant decision falling within subsection (2), the General Council may not refer a case after the end of the period of 40 days beginning with the day on which the General Council receives notice of the relevant decision in accordance with rules made by the Adjudicator under section 105(4)(a)(ii) of the Health and Social Care Act 2008.
- (7) If the General Council do refer a case—
- (a) the case is to be treated by the court to which it has been referred as an appeal by the General Council against the relevant decision; and
  - (b) the Adjudicator is to be a respondent.
- (8) The court may—
- (a) dismiss the appeal;
  - (b) allow the appeal and quash the relevant decision;
  - (c) substitute for the relevant decision any other decision which could have been made by the Adjudicator; or
  - (d) remit the case to the Adjudicator to dispose of the case in accordance with the directions of the court,
- and may make such order as to costs (or, in Scotland, expenses) as it thinks fit.

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- (9) If the General Council do refer a case, the Registrar must without delay serve on the person to whom the relevant decision relates notification of the reference of the case to the court.
- (10) In subsection (4) “relevant court” has the meaning given by section 40(5).”
- 12 (1) Section 41 of the 1983 Act (restoration of names to the register) is amended as follows.
- (2) In subsection (1) for “a Fitness to Practise Panel may, if they think” substitute “the Adjudicator may, if it thinks”.
- (3) In subsections (2) and (3) for “a Fitness to Practise Panel” substitute “the Adjudicator”.
- (4) In subsection (6)—
- (a) for “a Fitness to Practise Panel” substitute “the Adjudicator”,
  - (b) for “they direct” substitute “the Adjudicator directs”,
  - (c) for “they shall” substitute “the Adjudicator shall”, and
  - (d) for “them” substitute “it”.
- (5) In subsection (7)—
- (a) for “A Fitness to Practise Panel” substitute “The Adjudicator”,
  - (b) omit “in accordance with regulations made by the General Council under this subsection,”, and
  - (c) for the words from “they direct” to the end substitute “the Adjudicator directs that the practitioner’s licence to practise be restored.”.
- (6) Omit subsection (8).
- (7) In subsection (9) for “a Fitness to Practise Panel” substitute “the Adjudicator”.
- (8) In subsection (10) for “a Fitness to Practise Panel give” substitute “the Adjudicator gives”.
- (9) In subsection (11) for “a Fitness to Practise Panel” substitute “the Adjudicator”.
- 13 (1) Section 41A of the 1983 Act (interim orders) is amended as follows.
- (2) In subsection (1)—
- (a) for “an Interim Orders Panel or a Fitness to Practise Panel are” substitute “the Adjudicator is”,
  - (b) for “Panel may” substitute “Adjudicator may”, and
  - (c) in paragraph (b) for “Panel think” substitute “Adjudicator thinks”.
- (3) In subsection (2)—
- (a) for “an Interim Orders Panel or a Fitness to Practise Panel have” substitute “the Adjudicator has”, and
  - (b) for “an Interim Orders Panel or a Fitness to Practise Panel—” substitute “the Adjudicator—”.
- (4) In subsection (3) for “an Interim Orders Panel or a Fitness to Practise Panel” substitute “the Adjudicator”.
- (5) In subsection (4)—

- (a) for “any Panel” substitute “the Adjudicator”,
- (b) for “before the Panel” substitute “before the Adjudicator”, and
- (c) omit the words from “; and for the purposes” to the end.
- (6) In subsection (6) for “an Interim Orders Panel or a Fitness to Practise Panel” substitute “the Adjudicator”.
- (7) In subsection (9) for “an Interim Orders Panel or a Fitness to Practise Panel” (in both places) substitute “the Adjudicator”.
- 14 In section 41C of the 1983 Act (effect of directions or orders on a licence to practise), in subsection (1), for “rules made by virtue of paragraph 5A(3)” substitute “paragraph 5A(3E)”.
- 15 In section 43 of the 1983 Act (proceedings before the Investigation Committee, Interim Orders Panels and Fitness to Practise Panels), and in the heading, for “, Interim Orders Panels and Fitness to Practise Panels” substitute “and the Adjudicator”.
- 16 In section 44 of the 1983 Act (effect of disqualification in another relevant European State on registration in the United Kingdom), in subsection (5)—
- (a) in paragraph (a)—
- (i) for “a Fitness to Practise Panel may direct that his” substitute “the Adjudicator may, if the matter is referred to it by the Registrar, direct that the person's”,
- (ii) for “Panel think” substitute “Adjudicator thinks”, and
- (iii) for “Panel's” substitute “Adjudicator's”, and
- (b) in paragraph (b) for “1, 2, 8, 9, 10, 12 and 13” substitute “8, 9, 10 and 12”.
- 17 In section 47 of the 1983 Act (appointments not to be held except by fully registered medical practitioners who hold licences to practise), in subsection (4)—
- (a) in paragraph (a)—
- (i) for “a Fitness to Practise Panel” substitute “the Adjudicator”, and
- (ii) in sub-paragraph (ii) for “rules made by virtue of paragraph 5A(3)” substitute “paragraph 5A(3E)”,
- (b) in paragraph (b) for “a Fitness to Practise Panel” substitute “the Adjudicator”, and
- (c) in paragraph (c) for “an Interim Orders Panel or a Fitness to Practise Panel” substitute “the Adjudicator”.
- 18 In section 53 of the 1983 Act (proof of certain instruments), omit subsection (2)(c).
- 19 In section 55 of the 1983 Act (interpretation), in subsection (1), after the definition of “additional qualification” insert—
- ““the Adjudicator” means the Office of the Health Professions Adjudicator;”.
- 20 (1) Part 3 of Schedule 1 to the 1983 Act (committees of the General Medical Council) is amended as follows.
- (2) Omit paragraph 19A and the heading before it.
- (3) Omit paragraph 19E and the heading before it.
- (4) In paragraph 23—

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- (a) for “paragraphs 19A, 19C and 19E” substitute “paragraph 19C”,
  - (b) in paragraph (a) for “an Interim Orders Panel, a Registration Appeals Panel or a Fitness to Practise Panel” substitute “a Registration Appeals Panel”,
  - (c) omit paragraph (b), and
  - (d) in paragraph (c) for “an Interim Orders Panel, a Registration Appeals Panel or a Fitness to Practise Panel” substitute “a Registration Appeals Panel”.
- (5) In paragraphs 23B and 24 for “19A, 19B, 19C, 19D or 19E” substitute “19B, 19C or 19D”.
- 21 In Schedule 3A to the 1983 Act (registration appeals), in paragraph 4(7), for “a Fitness to Practise Panel” substitute “the Investigation Committee (where, in the case of paragraph 7, the Committee is considering giving a warning to a person)”.
- 22 In Schedule 3B to the 1983 Act (licence to practise and revalidation: appeals), in paragraph 3(4), for “a Fitness to Practise Panel” substitute “the Investigation Committee (where, in the case of paragraph 7, the Committee is considering giving a warning to a person)”.
- 23 (1) Schedule 4 to the 1983 Act (proceedings before the Investigation Committee, Interim Orders Panels and Fitness to Practise Panels) is amended as follows.
- (2) In the heading for “, INTERIM ORDERS PANELS AND FITNESS TO PRACTISE PANELS” substitute “AND THE ADJUDICATOR”.
- (3) In the heading before paragraph 1 omit “, Interim Orders Panels and Fitness to Practise Panels”.
- (4) In paragraph 1—
- (a) in sub-paragraph (1)—
    - (i) omit “, Interim Orders Panels and Fitness to Practise Panels”,
    - (ii) in paragraph (a) omit “, an Interim Orders Panel or a Fitness to Practise Panel”, and
    - (iii) in paragraph (b) omit “or such a Panel”, and
  - (b) omit sub-paragraphs (3) and (4).
- (5) In paragraph 2—
- (a) in sub-paragraph (1)—
    - (i) omit paragraphs (b) and (c), and
    - (ii) omit “or Panel”,
  - (b) in sub-paragraph (2) omit “, an Interim Orders Panel or a Fitness to Practise Panel”, and
  - (c) in sub-paragraph (3)—
    - (i) omit “, an Interim Orders Panel or a Fitness to Practise Panel”, and
    - (ii) omit “or Panel” (in both places).
- (6) In paragraph 3—
- (a) in paragraph (a)—
    - (i) omit “, an Interim Orders Panel or a Fitness to Practise Panel”, and
    - (ii) omit “, a Panel”,
  - (b) in paragraph (b)—
    - (i) omit “to a Fitness to Practise Panel or”, and
    - (ii) omit “the Panel or”, and



- (c) for “Committee, Panel or Council” (wherever occurring) substitute “Committee or Council”.

(7) For paragraph 3A substitute—

- “3A (1) Where, in the course of any proceedings before the Adjudicator, the Adjudicator forms the opinion (on reasonable grounds) that there is a matter which ought to be investigated by the Investigation Committee—
- (a) the Adjudicator may notify the Registrar of that matter; and
  - (b) on being so notified, the Registrar shall refer the matter to the Investigation Committee and the Investigation Committee shall investigate the matter.
- (2) Nothing in sub-paragraph (1) prevents the Adjudicator from considering the matter itself, whether or not it has reached a decision in the proceedings.”

(8) In paragraph 5A—

- (a) in sub-paragraph (1)(a) omit paragraph (ii),
- (b) after sub-paragraph (1) insert—
 

“(1A) If the Adjudicator considers (on reasonable grounds) that it would be of assistance to it, in dealing with any proceedings before it, for there to be an assessment of the standard of professional performance of the person to whom the proceedings relate—

  - (a) the Adjudicator may request the Registrar to arrange for an assessment to be carried out; and
  - (b) on receipt of the request, the Registrar shall arrange for such an assessment to be carried out.”,
  - (c) in sub-paragraph (2)—
    - (i) for “by virtue of this paragraph” substitute “by virtue of sub-paragraph (1) or (1A)”, and
    - (ii) after “in accordance with rules” insert “made by the General Council”,
  - (d) omit sub-paragraphs (3) and (3A),
  - (e) after sub-paragraph (3A) insert—
 

“(3B) If the Registrar is of the opinion that a person who is the subject of an assessment of the standard of the person’s professional performance—

    - (a) has failed to submit to the assessment, or
    - (b) having submitted to the assessment, has failed to comply with reasonable requirements imposed by the Assessment Team,

the Registrar may refer the matter to the Adjudicator.

(3C) If the Investigation Committee are of the opinion that a person who is the subject of an assessment of the standard of the person’s professional performance—

    - (a) has failed to submit to the assessment, or

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- (b) having submitted to the assessment, has failed to comply with reasonable requirements imposed by the Assessment Team,  
the Investigation Committee may direct the Registrar to refer the matter to the Adjudicator and, on receipt of the direction, the Registrar shall make such a reference.
- (3D) The Registrar shall without delay serve on the person who is the subject of the assessment notification of the making of a reference to the Adjudicator under sub-paragraph (3B) or (3C).
- (3E) Where a matter is referred to the Adjudicator under sub-paragraph (3B) or (3C), the Adjudicator may, if it thinks fit—
  - (a) direct that the person’s registration in the register shall be suspended (that is to say, shall not have effect) during such period not exceeding 12 months as may be specified in the direction; or
  - (b) direct that the person’s registration shall be conditional on the person’s compliance, during such period not exceeding 3 years as may be specified in the direction, with such requirements so specified as the Adjudicator thinks fit to impose for the protection of members of the public or in the person’s interests.
- (3F) Where, under sub-paragraph (3E), the Adjudicator gives a direction for suspension or a direction for conditional registration the Registrar shall without delay serve on the person concerned notification of the direction and of the person’s right to appeal against it under sub-paragraph (5).
- (3G) While a person’s registration in the register is suspended by virtue of a direction under sub-paragraph (3E)—
  - (a) the person is to be treated as not being registered in the register notwithstanding that the person’s name still appears in it, but
  - (b) sections 31A, 35C, 35CC, 35D, 35E and 39 are to continue to apply to the person.”,
- (f) in sub-paragraph (5)—
  - (i) for “a Fitness to Practise Panel” (where first occurring) substitute “the Adjudicator”,
  - (ii) for “by virtue of sub-paragraph (3) above” substitute “under sub-paragraph (3E)”,
  - (iii) in paragraph (b) for “Panel” substitute “Adjudicator”, and
  - (iv) in paragraph (c) for “the Registrar for him to refer it to a Fitness to Practise Panel” substitute “the Adjudicator”, and
- (g) after sub-paragraph (5) insert—

“(5A) Subject to paragraph 9 below, an appeal under sub-paragraph (5) must be brought before the end of the period of 28 days beginning with the date on which notification of the direction was served under sub-paragraph (3F).”

- (9) In paragraph 5B, in sub-paragraph (1), for “rules made under paragraph 5A above” substitute “sub-paragraph (1) or (1A) of paragraph 5A”.
- (10) In paragraph 7—
- (a) in sub-paragraph (1)—
    - (i) omit paragraphs (b) and (c),
    - (ii) for “them” substitute “the Committee”, and
    - (iii) for “the Panel” substitute “the Committee”, and
  - (b) in sub-paragraph (4)—
    - (i) omit “, an Interim Orders Panel or a Fitness to Practise Panel”,
    - (ii) in paragraph (a) omit “or a Panel”,
    - (iii) in paragraph (a)(ii) omit “or the Panel”, and
    - (iv) in paragraph (b) omit “or the Panel”.
- (11) In paragraph 8, in sub-paragraph (1)—
- (a) after “39(2),” insert “40A(9),” and
  - (b) after “this Act” insert “or paragraph 5A(3D) or (3F) above”.
- (12) In paragraph 9—
- (a) in paragraph (a) after “this Act” insert “or paragraph 5A(3F) above”, and
  - (b) after “section 40 of this Act” insert “or (as the case may be) paragraph 5A(5) above”.
- (13) In paragraph 10, in sub-paragraph (1), for “a Fitness to Practise Panel” (in both places) substitute “the Adjudicator”.
- (14) After paragraph 10 insert—
- “10A (1) A direction for suspension or for conditional registration given by the Adjudicator under paragraph 5A(3E) above shall take effect—
- (a) where no appeal under paragraph 5A(5) above is brought against the direction within the time specified in paragraph 5A(5A) above, on the expiration of that time;
  - (b) where such an appeal is so brought but is withdrawn or dismissed for want of prosecution, on the withdrawal or dismissal of the appeal;
  - (c) where such an appeal is so brought and is not withdrawn or dismissed for want of prosecution, if and when the appeal is dismissed.
- (2) Where the time for appealing against a direction is extended by an authorisation under paragraph 9 above—
- (a) sub-paragraph (1) shall apply to the direction as if the reference in paragraph (a) to the time specified in paragraph 5A(5A) above were a reference to that time as so extended; and
  - (b) if the authorisation is given after the expiration of the time specified in paragraph 5A(5A) above, the direction shall be deemed not to have taken effect on the expiration of that time, and any reference in this Act to the time when such a direction takes effect in accordance with this paragraph shall be construed accordingly.”

(15) In paragraph 11, in sub-paragraphs (1) and (3)—

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- (a) after “section 35D(2) of this Act” insert “or paragraph 5A(3E) above”, and
  - (b) for “that section” substitute “section 35D”.
- (16) In paragraph 12 for “rules made by virtue of paragraph 5A(3) of this Schedule” substitute “paragraph 5A(3E) above”.
- (17) In paragraph 13 omit “, an Interim Orders Panel or Fitness to Practise Panel”.

## PART 2

### AMENDMENTS OF OPTICIANS ACT 1989

- 24 In this Part of this Schedule “the 1989 Act” means the Opticians Act 1989 (c. 44).
- 25 In section 3 of the 1989 Act (the Companies Committee), in subsection (1), for “, the Registration Appeals Committee or the Fitness to Practise Committee” substitute “or the Registration Appeals Committee”.
- 26 In section 4 of the 1989 Act (the Investigation Committee), in subsection (2), for “Fitness to Practise Committee” substitute “Adjudicator”.
- 27 In section 5A of the 1989 Act (the Registration Appeals Committee), in subsection (1), for the words from “any decision of the registrar” to the end substitute “any decision which is an appealable registration decision for the purposes of Schedule 1A”.
- 28 Omit section 5C of the 1989 Act (the Fitness to Practise Committee).
- 29 In section 5D of the 1989 Act (the Hearings Panel), in subsection (1), omit “the Fitness to Practise Committee and”.
- 30 After section 13A of the 1989 Act insert—

#### “13AA Fitness to practise findings: guidance

- (1) The Council may publish guidance about factors which they consider to indicate that—
- (a) a registrant (“R”) whose fitness to practise, fitness to carry on business or (as the case may be) fitness to undertake training is found to be impaired should or should not have—
    - (i) R’s name erased from the appropriate register;
    - (ii) R’s registration suspended;
    - (iii) R’s registration suspended forthwith in accordance with section 13I;
    - (iv) R’s registration made conditional;
    - (v) R’s registration made conditional forthwith in accordance with section 13I;
    - (vi) a financial penalty order made against R;
  - (b) a registrant (“R”) whose fitness to practise is found to be impaired on the ground of deficient professional performance should or should not have—
    - (i) an entry relating to a speciality or proficiency to the performance of which the deficiency relates removed from the appropriate register;

- (ii) the entry relating to that speciality or proficiency removed from the appropriate register temporarily;
  - (iii) the entry relating to that speciality or proficiency removed forthwith in accordance with section 13I;
  - (iv) the entry relating to that speciality or proficiency made conditional;
  - (v) the entry relating to that speciality or proficiency made conditional forthwith in accordance with section 13I;
  - (c) a registrant whose fitness to practise, fitness to carry on business or (as the case may be) fitness to undertake training is found not to be impaired should or should not be given a warning regarding the registrant’s future conduct or performance;
  - (d) a person the entry of whose name in a register is found to have been fraudulently procured or incorrectly made should or should not have the person’s name removed;
  - (e) a person in respect of whom an entry relating to a speciality or proficiency is found to have been fraudulently procured or incorrectly made in a register should or should not have the entry removed;
  - (f) a person whose name has been erased from a register should or should not have the person’s name restored to the appropriate register;
  - (g) a person who has had an entry relating to a speciality or proficiency removed from a register should or should not have the entry restored to the appropriate register.
- (2) The Council may also publish guidance about factors which they consider to indicate—
- (a) that requirements of a particular type should be imposed as conditions in the case of a registrant whose registration is to be made conditional or a registrant in respect of whom an entry relating to a speciality or proficiency is to be made conditional;
  - (b) the period of time for which a registrant’s registration should be suspended or made conditional or an entry relating to a speciality or proficiency of a registrant should be removed from the appropriate register or made conditional.
- (3) The Adjudicator must take account of guidance published under subsection (1) or (2) in exercising its functions under sections 13F, 13H, 13I, 13J and 13K.”
- 31 (1) Section 13D of the 1989 Act (allegations) is amended as follows.
- (2) In subsection (2)(g) after “social care profession” insert “, or by the Adjudicator,”.
  - (3) In subsection (3)(g) after “social care profession” insert “, or by the Adjudicator,”.
  - (4) In subsection (5) for “Fitness to Practise Committee” substitute “Adjudicator”.
  - (5) In subsection (6) for “Fitness to Practise Committee” (in both places) substitute “Adjudicator”.
  - (6) In subsections (7) and (8) for “Fitness to Practise Committee” substitute “Adjudicator”.

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- (7) In subsection (9)—
- (a) for “Fitness to Practise Committee” (where first occurring) substitute “Adjudicator”, and
  - (b) in paragraph (b) for “Fitness to Practise Committee for the Committee” substitute “Adjudicator for the Adjudicator”.
- 32 (1) Section 13F of the 1989 Act (powers of the Fitness to Practise Committee) is amended as follows.
- (2) In the heading for “Fitness to Practise Committee” substitute “Adjudicator”.
- (3) In subsection (1) for “Fitness to Practise Committee” substitute “Adjudicator”.
- (4) In subsection (2)—
- (a) for “Fitness to Practise Committee find” substitute “Adjudicator finds”, and
  - (b) for “they may if they think” substitute “the Adjudicator may if it thinks”.
- (5) In subsection (3)(c)—
- (a) for “Committee see” substitute “Adjudicator sees”, and
  - (b) for “his or its interests” substitute “the registrant’s interests”.
- (6) In subsection (4)—
- (a) for “Fitness to Practise Committee find” substitute “Adjudicator finds”,
  - (b) for “Committee may” substitute “Adjudicator may”, and
  - (c) in paragraph (c)—
    - (i) for “Committee see” substitute “Adjudicator sees”, and
    - (ii) for “his interests” substitute “the registrant’s interests”.
- (7) In subsection (5)—
- (a) for “Fitness to Practise Committee find” substitute “Adjudicator finds”, and
  - (b) for “they” substitute “the Adjudicator”.
- (8) In subsection (6) for “Fitness to Practise Committee have” substitute “Adjudicator has”.
- (9) In subsection (7)—
- (a) for “Fitness to Practise Committee may, if they think” substitute “Adjudicator may (whether or not of its own motion), if it thinks”,
  - (b) in paragraph (c)—
    - (i) for “Committee think” substitute “Adjudicator thinks”, and
    - (ii) for “his or its interests” substitute “the registrant’s interests”, and
  - (c) for “Committee shall” substitute “Adjudicator shall”.
- (10) In subsection (8)—
- (a) in paragraph (a) for “Fitness to Practise Committee find” substitute “Adjudicator finds”, and
  - (b) for “they” substitute “the Adjudicator”.
- (11) In subsection (10)—
- (a) for “Fitness to Practise Committee have” substitute “Adjudicator has”,
  - (b) for “Fitness to Practise Committee must” substitute “Adjudicator must”, and
  - (c) in paragraph (a) for “them” substitute “the Adjudicator”.

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- (12) In subsection (11)—
- (a) for “Fitness to Practise Committee” substitute “Adjudicator”, and
  - (b) in paragraph (c)—
    - (i) for “Committee see” substitute “Adjudicator sees”, and
    - (ii) for “his or its interests” substitute “the registrant’s interests”.
- (13) In subsection (13)—
- (a) for the words from “Fitness to Practise Committee” to “they think” substitute “Adjudicator may (whether or not of its own motion), if it thinks”, and
  - (b) for “Committee must” substitute “Adjudicator must”.
- 33 (1) Section 13G of the 1989 Act (provisions supplementary to section 13F) is amended as follows.
- (2) In subsection (1)—
- (a) for “Fitness to Practise Committee” substitute “Adjudicator”,
  - (b) in paragraph (a) for “give” substitute “gives”, and
  - (c) in paragraph (b) for “vary” substitute “varies”.
- (3) In subsection (6) for “Fitness to Practise Committee” substitute “Adjudicator”.
- 34 In section 13H of the 1989 Act (financial penalty order), in subsection (1)—
- (a) for “Fitness to Practise Committee have” substitute “Adjudicator has”, and
  - (b) for “they” substitute “the Adjudicator”.
- 35 (1) Section 13I of the 1989 Act (power to order immediate suspension etc after a finding of impairment of fitness to practise) is amended as follows.
- (2) In subsections (1) and (2) for “Fitness to Practise Committee” substitute “Adjudicator”.
- (3) In subsection (4) for “Fitness to Practise Committee make” substitute “Adjudicator makes”.
- 36 (1) Section 13J of the 1989 Act (removal from a register on grounds of fraud or error) is amended as follows.
- (2) In subsection (1)—
- (a) for “Fitness to Practise Committee” substitute “Adjudicator”, and
  - (b) for “Committee may, if they think” substitute “Adjudicator may, if it thinks”.
- (3) In subsection (2) for “Fitness to Practise Committee direct” substitute “Adjudicator directs”.
- 37 (1) Section 13K of the 1989 Act (restoration of names to a register) is amended as follows.
- (2) In subsections (2) and (3) for “Registration Appeals Committee” substitute “Adjudicator”.
- (3) In subsection (6)—
- (a) for “Registration Appeals Committee may, if they think” substitute “Adjudicator may, if it thinks”,
  - (b) for “direct the registrar to restore” substitute “direct that”, and
  - (c) after “proficiency,” insert “be restored”.

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- (4) In subsection (7)—
- (a) for “Registration Appeals Committee” substitute “Adjudicator”,
  - (b) for “they consider” substitute “the Adjudicator considers”,
  - (c) for “they must” substitute “the Adjudicator must”, and
  - (d) for “them” substitute “it”.
- (5) In subsection (8) for “Registration Appeals Committee” substitute “Adjudicator”.
- (6) In subsection (9) for “Registration Appeals Committee give” substitute “Adjudicator gives”.
- (7) In subsection (10) for “Registration Appeals Committee” substitute “Adjudicator”.
- 38 (1) Section 13L of the 1989 Act (interim orders) is amended as follows.
- (2) In subsection (1)—
- (a) for “Fitness to Practise Committee are” substitute “Adjudicator is”, and
  - (b) for “the Committee” substitute “the Adjudicator”.
- (3) In subsection (2)(b) for “Committee think” substitute “Adjudicator thinks”.
- (4) In subsection (3)—
- (a) for “Fitness to Practise Committee make” substitute “Adjudicator makes”, and
  - (b) for “the Committee” substitute “the Adjudicator”.
- (5) In subsections (4) and (6) for “Fitness to Practise Committee” substitute “Adjudicator”.
- (6) In subsection (9) for “Fitness to Practise Committee” (in both places) substitute “Adjudicator”.
- (7) In subsection (11)—
- (a) for “Fitness to Practise Committee” substitute “Adjudicator”,
  - (b) for “the Committee” substitute “the Adjudicator”, and
  - (c) omit “and rules made under section 23C below”.
- 39 After section 23A of the 1989 Act insert—

**“23AA References to Investigation Committee**

- (1) Where, in the course of any proceedings before the Adjudicator, the Adjudicator forms the opinion (on reasonable grounds) that there is a matter which ought to be investigated by the Investigation Committee—
    - (a) the Adjudicator may notify the registrar of that matter; and
    - (b) on being so notified, the registrar shall refer the matter to the Investigation Committee and the Investigation Committee shall investigate the matter.
  - (2) Nothing in subsection (1) prevents the Adjudicator from considering the matter itself, whether or not it has reached a decision in the proceedings.”
- 40 (1) Section 23B of the 1989 Act (procedure of Fitness to Practise Committee and Registration Appeals Committee) is amended as follows.



- (2) In the heading omit “Fitness to Practise Committee and”.
- (3) Omit subsection (1)(a) and the word “or” following it.
- 41 (1) Section 23C of the 1989 Act (powers of the Council to make rules) is amended as follows.
- (2) Omit subsection (1)(a)(i) and the word “and” following it.
- (3) Omit subsection (2)(e) and (f).
- 42 After section 23C of the 1989 Act insert—

**“23CA Assessments**

- (1) If the Adjudicator considers (on reasonable grounds) that it would be of assistance to it, in dealing with any proceedings before it, for there to be an assessment of—
- (a) the standard and quality of the work done or being done by the person to whom the proceedings relate (“P”); or
  - (b) the health, or specific aspects of the health, of P,
- the Adjudicator may request the registrar to arrange for an assessor to be appointed to report on the standard and quality of P’s work or (as the case may be) on P’s health or specific aspects of P’s health.
- (2) On receipt of a request under subsection (1), the registrar shall arrange for one or more assessors to be appointed in accordance with rules made by the Council.
- (3) The Council may make rules about the carrying out of the assessment and the making of the report.
- (4) If P fails to submit to, or co-operate with, the assessment the Adjudicator may draw such inferences from P’s failure as it considers appropriate.
- (5) This section does not apply if the person to whom the proceedings relate is a body corporate.”
- 43 In section 23D of the 1989 Act (legal advisers) omit subsection (2)(a) and the word “and” following it.
- 44 In section 23E of the 1989 Act (other advisers), in subsections (3) and (4), omit “the Fitness to Practise Committee and”.
- 45 (1) Section 23G of the 1989 Act (appeals from the Registration Appeals Committee and the Fitness to Practise Committee) is amended as follows.
- (2) In the heading for “Fitness to Practise Committee” substitute “Adjudicator”.
- (3) In subsection (1)—
- (a) in paragraphs (a) and (b) for “Fitness to Practise Committee” substitute “Adjudicator”, and
  - (b) in paragraph (d) for “Registration Appeals Committee” substitute “Adjudicator”.
- (4) In subsection (6)—

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- (a) for “Fitness to Practise Committee” (where first occurring) substitute “Adjudicator”;
- (b) in paragraph (b) for “direction or variation or order” substitute “direction, variation, order or (as the case may be) determination”;
- (c) in paragraph (c) for “Fitness to Practise Committee” substitute “Adjudicator”, and
- (d) in paragraph (d) for “registrar for him to refer it to the Fitness to Practise Committee” substitute “Adjudicator”.

46 After section 23H of the 1989 Act insert—

**“23I Reference of cases by Council to court**

- (1) This section applies to—
  - (a) a decision of the Adjudicator under section 13F giving—
    - (i) a direction for suspension, including a direction extending a period of suspension;
    - (ii) a direction for temporary removal of an entry relating to a speciality or proficiency, including a direction extending a period of temporary removal;
    - (iii) a direction for conditional registration, including a direction extending a period of conditional registration;
    - (iv) a direction for conditional inclusion of an entry relating to a speciality or proficiency, including a direction extending a period of conditional inclusion;
    - (v) a direction varying any of the conditions imposed by a direction for conditional registration;
    - (vi) a direction varying any of the conditions imposed by a direction for conditional inclusion; and
  - (b) a decision of the Adjudicator under section 13H to impose a financial penalty order.
- (2) This section also applies to—
  - (a) a decision of the Adjudicator under section 13F not to give—
    - (i) a direction falling within subsection (1)(a);
    - (ii) a direction for erasure;
    - (iii) a direction for removal (other than temporarily) of an entry relating to a speciality or proficiency;
    - (iv) a direction for indefinite suspension,  
 (whether because of a finding that the registrant’s fitness to practise, fitness to carry on business or (as the case may be) fitness to undertake training is not impaired or otherwise);
  - (b) a decision of the Adjudicator under section 13F—
    - (i) giving a direction that a suspension be terminated;
    - (ii) giving a direction that a temporary removal of an entry relating to a speciality or proficiency be terminated;
    - (iii) revoking a direction for conditional registration or a condition imposed by such a direction;
    - (iv) revoking a direction for conditional inclusion or a condition imposed by such a direction;

- (c) a decision of the Adjudicator under section 13H not to impose a financial penalty order;
  - (d) a decision of the Adjudicator under section 13J not to give a direction that a person's name or an entry relating to a speciality or proficiency be removed; and
  - (e) a decision of the Adjudicator under section 13K giving a direction that a person's name or an entry relating to a speciality or proficiency be restored to the appropriate register.
- (3) The decisions to which this section applies are referred to below as “relevant decisions”.
- (4) If the Council consider that—
- (a) a relevant decision falling within subsection (1) is unduly lenient, whether because the findings relating to fitness to practise, fitness to carry on business or (as the case may be) fitness to carry on training are inadequate, or because the direction given or financial penalty order imposed does not adequately reflect the findings that have been made, or both; or
  - (b) a relevant decision falling within subsection (2) should not have been made,
- and that it would be desirable for the protection of members of the public for the Council to take action under this section, the Council may refer the case to the relevant court.
- (5) In the case of a relevant decision falling within subsection (1), the Council may not refer a case after the end of the period of 40 days beginning with the day which is the last day on which the person to whom the relevant decision relates can appeal against it.
- (6) In the case of a relevant decision falling within subsection (2), the Council may not refer a case after the end of the period of 40 days beginning with the day on which the Council receives notice of the relevant decision in accordance with rules made by the Adjudicator under section 105(4)(a)(ii) of the Health and Social Care Act 2008.
- (7) If the Council do refer a case—
- (a) the case is to be treated by the court to which it has been referred as an appeal by the Council against the relevant decision; and
  - (b) the Adjudicator is to be a respondent.
- (8) The court may—
- (a) dismiss the appeal;
  - (b) allow the appeal and quash the relevant decision;
  - (c) substitute for the relevant decision any other decision which could have been made by the Adjudicator; or
  - (d) remit the case to the Adjudicator to dispose of the case in accordance with the directions of the court,
- and may make such order as to costs (or, in Scotland, expenses) as it thinks fit.

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- (9) If the Council do refer a case, the registrar must without delay serve on the person to whom the relevant decision relates notification of the reference of the case to the court.
- (10) In subsection (4) “relevant court” has the same meaning as in section 23G(4)(a) except that where the reference is of a relevant decision falling within subsection (2)(d) or (e) “relevant court” has the same meaning as in section 23G(4)(b) and (c).”
- 47 In section 29 of the 1989 Act (provision as to death or bankruptcy of registered optician), in subsection (3), for “Fitness to Practise Committee may, if they think” substitute “Adjudicator may, on the matter being referred to it by the registrar, if it thinks”.
- 48 In section 33 of the 1989 Act (default powers of Privy Council), in subsection (3)(b), after “23C,” insert “23CA,”.
- 49 In section 34 of the 1989 Act (subordinate legislation procedure), in subsection (2), after “23C” insert “or 23CA”.
- 50 In section 36 of the 1989 Act (interpretation), in subsection (1), before the definition of “approved training establishment” insert—
- ““the Adjudicator” means the Office of the Health Professions Adjudicator;”.
- 51 In Schedule 1 to the 1989 Act (constitution etc of General Optical Council), in paragraph 12, for “, the Registration Appeals Committee and the Fitness to Practise Committee” substitute “and the Registration Appeals Committee”.