
STATUTORY INSTRUMENTS

2005 No. 848

The Opticians Act 1989 (Amendment) Order 2005

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 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”; 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(1) or as a dispensing optician by virtue of the European Communities (Recognition of Professional Qualifications) (Second General System) Regulations 2002(2); 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.

(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.

(1) S.I.2005/18.

(2) S.I. 2002/2934.

(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;” and
- (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.”.