
STATUTORY INSTRUMENTS

2005 No. 848

The Opticians Act 1989 (Amendment) Order 2005

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 sherriffdom 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 subpoena 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 sheriffdom 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. 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.”.