Draft Order in Council laid before Parliament under section 62(9) of the Health Act 1999 for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2005 No.

HEALTH CARE AND ASSOCIATED PROFESSIONS

OPTICIANS

The Opticians Act 1989 (Amendment) Order 2005

Made - - - - 2005
Coming into force in accordance with article 1(2), (3) and (4)

At the Court at Buckingham Palace, the [ ] day of [ ] 2005

Present,

The Queen's Most Excellent Majesty in Council

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

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

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

(**1**) 1999 c. 8.

PART 1

General

Citation, commencement and extent

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

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

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

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

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

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

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

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

Amendment of the Opticians Act 1989

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

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

PART 2

The Council, its Committees and Registration

Functions of the Council

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

The Council's Committees

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

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

(**2**) 1989 c. 44.

(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—