

2005 No. 1472

HEALTH CARE AND ASSOCIATED PROFESSIONS

OPTICIANS

The Opticians Act 1989 (Transitional Provisions) Order 2005

Made 27th May 2005

Laid before Parliament 8th June 2005

Coming into force 30th June 2005

At the Council Chamber, Whitehall, the 27th day of May 2005

By the Lords of Her Majesty's Most Honourable Privy Council

The Privy Council, in exercise of the powers conferred upon it by article 29(2) of the Opticians Act 1989 (Amendment) Order 2005^[1], hereby makes the following Order:

Citation, commencement and interpretation

1. - (1) This Order may be cited as the Opticians Act 1989 (Transitional Provisions) Order 2005 and shall come into force on 30th June 2005.

(2) In this Order -

"the Act" means the Opticians Act 1989^[2];

"the Council" means the General Optical Council;

"the Disciplinary Committee" means the Disciplinary Committee established by the old section 5 (the Disciplinary Committee);

"the Opticians Order" means the Opticians Act 1989 (Amendment) Order 2005; and

"the relevant date" means 30th June 2005.

(3) References in this Order to -

(a) an old Part or old section are to the Part or section of the Act as it had effect immediately before its amendment or substitution by the Opticians Order; and

(b) a new Part or new section are to the Part or section of that Act as amended or substituted by the Opticians Order.

Supplementary provisions in respect of Schedule 2 to the Opticians Order

2. - (1) Paragraph 4(b) of Schedule 2 to the Opticians Order shall not apply to an allegation that has been considered by the Investigating Committee where that Committee had, before the relevant date, determined not to refer the allegation to the

Disciplinary Committee.

(2) The Disciplinary Committee shall be entitled to exercise the powers conferred on it by the old section 17(6) and (7) in respect of any allegation falling within paragraph (1), subject to the old section 17(8).

New section 10A

3. - (1) The obligation in the new section 10A(1) (insurance for individual registrants and persons applying for their name to be registered) for a registered optometrist or registered dispensing optician to maintain adequate and appropriate insurance throughout the period during which he is registered in the appropriate register does not apply to a period of registration prior to the relevant date.

(2) Where a person has, prior to the relevant date, sought -

(a) retention or registration of his name in; or

(b) restoration of his name to,

the registers maintained under the old section 7 (registers of opticians), and -

(i) the Council has not determined the matter before the relevant date, and

(ii) that person has not supplied evidence in accordance with section 10A that he is covered by adequate and appropriate insurance or, where applicable, that he would be, if registered, covered by such insurance,

paragraph (3) shall apply.

(3) Where this paragraph applies, the Registrar shall request in writing that the person provides the evidence to the Council within such period of time as the Registrar may specify, and the Council shall not decide whether to retain or register his name in, or restore his name to, the appropriate register until that period of time has expired, or the evidence is provided, whichever occurs first.

(4) The obligation in the new section 10A(6) shall apply to a registered optician or registered dispensing optician whose name was included in the register maintained under the old section 7 immediately before the relevant date if, on or after the relevant date, he is not covered by insurance meeting the requirements of section 10A, whether or not he was, prior to the relevant date, covered by insurance that met the requirements of that section.

New section 12

4. - (1) Where the Council has, under the old section 12 (approval of training institutions and qualifications), approved an institution or a qualification in accordance with that section, and that approval remains in place immediately before the relevant date, the Council shall be deemed to have approved -

- (a) that institution under the new section 12(7)(a) (education and training); or
- (b) that qualification under the new section 12(7)(b),

until such time as the Council makes a further determination in respect of that institution or that qualification under the new section 12 or 13 (supervision of training institutions and qualifying assessments) (as the case may be).

New section 13H

5. Where -

- (a) a financial penalty order is imposed pursuant to the new section 13H (financial penalty order); and
- (b) the allegation considered by the Fitness to Practise Committee which resulted in that order being imposed relates to events that took place before the relevant date,

section 13H(3) shall not apply and the maximum penalty for the purposes of section 13H shall instead be £1,600.

Penalty orders

6. - (1) Where a penalty order has been imposed on a person or body pursuant to the old section 16 (penalty orders) -

- (a) before the relevant date; or
- (b) on or after the relevant date pursuant to Schedule 2 to the Opticians Order (transitional provisions) or this Order,

the Council shall, on and after the relevant date, continue to be entitled to recover the sum of money payable in respect of that penalty order from the person or body against whom the order was made if that person or body has failed to pay that sum to the Council within the period specified in the penalty order.

(2) The old section 16(7) shall continue to apply to any sum recovered pursuant to this article.

Suspension orders

7. - (1) Where -

- (a) before the relevant date; or
- (b) on or after the relevant date pursuant to Schedule 2 to the Opticians Order or this Order,

a suspension order has been made pursuant to the old Part 3 (disciplinary proceedings) in respect of -

(i) a person's registration in the register, or

(ii) a body corporate's enrolment in the list of bodies corporate,

that suspension shall continue for the period specified in the suspension order as a suspension from the appropriate register referred to in the new section 7 (registers of opticians) or, in respect of a body corporate, as a suspension from the register of bodies corporate maintained under the new section 9(1) (list of bodies corporate carrying on business as opticians).

Erasure orders

8. - (1) Where -

(a) before the relevant date; or

(b) on or after the relevant date pursuant to Schedule 2 to the Opticians Order or this Order,

an erasure order has been made pursuant to the old Part 3 in respect of -

(i) a person's registration in the register, or

(ii) a body corporate's enrolment in the list of bodies corporate,

that erasure shall have effect as an erasure from the appropriate register referred to in the new section 7 or, in respect of a body corporate, as an erasure from the register of bodies corporate maintained under the new section 9(1).

Directions under the old section 17(9)

9. - (1) Where a direction has been made in respect of a body corporate pursuant to the old section 17(9) (powers of Disciplinary Committee) -

(a) before the relevant date and it is still in force immediately before the relevant date; or

(b) on or after the relevant date pursuant to Schedule 2 to the Opticians Order or this Order,

and that direction is in force immediately before the relevant date, it shall remain in force unless and until, upon the application of that body corporate, the Fitness to Practise Committee revokes that direction under the old section 17(10).

(2) Where it appears to the Council on or after the relevant date that a body corporate has contravened a direction falling within paragraph (1), it shall be a ground upon which a business registrant's fitness to carry on business as an optometrist or a dispensing optician, or both, is impaired for the purposes of the new section 13D(3) (allegations), and accordingly any such contravention may be dealt with in accordance with the new Part 2A (fitness to practise).

Appeals against disciplinary orders etc.

10. - (1) Where an individual or body corporate has -

(a) been notified under the old section 17(11) that -

(i) a disciplinary order has been made against him or it under that section, or

(ii) a direction has been given in respect of him or it under the old section 17(9); or

(b) had a notification served on him under the old section 19(3) (erasure from register and list on grounds of fraud or error),

an appeal which relates to that direction or order shall be dealt with in accordance with the old section 23 (appeals in disciplinary and other cases) in any case to which paragraph (2) applies.

(2) This paragraph applies to any direction, order or notification specified in paragraph (1) that -

(a) was made, given or served (as the case may be) before the relevant date, where -

(i) the period specified in the old section 23(1) or (1B) (as the case may be) has not expired immediately before the relevant date and an appeal is made within that period in accordance with those subsections; or

(ii) an appeal was made before the relevant date but it had not been finally determined before that date; or

(b) is -

(i) made or given on or after the relevant date pursuant to the transitional provisions contained in Schedule 2 to the Opticians Order or this Order, or

(ii) served on or after the relevant date,

and an appeal is made on or after the relevant date within the period specified in the old section 23(1) or (1B).

(3) The old section 23(3) shall continue to apply to any order or direction specified in that subsection that was made or given before the relevant date.

(4) Where any case would have been remitted under the old section 23(1C) to the Disciplinary Committee, that case shall be remitted to the Fitness to Practise Committee to be dealt with under the old Part 3.

Restoration to the Register

11. - (1) Where, before the relevant date, an erasure order has been made against a

person pursuant to the old Part 3, that person may, on or after the relevant date, apply for restoration of his name to the appropriate register under section 13K (restoration of names to a register), as if his name had been erased under section 13F (powers of the fitness to practise committee), save that a person's first such application on or after the relevant date may only be made within ten months of -

(a) the date of erasure; or

(b) the date of the Disciplinary Committee's decision in respect of the last application made under the old section 18 (restoration of names erased as a result of disciplinary cases etc).

(2) An application under paragraph (1) shall be determined in accordance with the new section 13K, except that the new section 13K(2)(a) and (4)(a) shall not apply.

(3) Where, before the relevant date, an individual or body corporate has applied for restoration of his name to a register, or, as the case may be, the list, under the old section 18, the Disciplinary Committee shall determine the matter in accordance with the old section 18.

(4) Where, in any case falling within this article, the application for restoration succeeds, if the application was made by -

(a) an individual, his name shall be included in the appropriate register maintained by the Council under the new section 7 (registers of opticians); or

(b) a body corporate, its name shall be included in the register of bodies corporate maintained by the Council under the new section 9(1) (list of bodies corporate carrying on business as opticians).

Status of the Disciplinary Committee

12. - (1) The Disciplinary Committee established under the old section 5 (the Disciplinary Committee) shall continue in being after the coming into force of article 16 of the Opticians Order (insertion of Part 2A) for the purpose of exercising any function conferred on it by this Order.

(2) For the purposes of this article, and Schedule 2 to the Opticians Order (transitional provisions), rules made under the old sections 5 and 21 (procedure of disciplinary committee), that were in force immediately before the coming into force of this Order, shall be treated as if they remained in force for the purposes of any function conferred on the Disciplinary Committee by virtue of this Order or Schedule 2 to the Opticians Order.

Section 29 of the National Health Service Reform and Health Care Professions Act 2002

13. - (1) Notwithstanding the amendment made by paragraph 13 of Schedule 1 to the Opticians Order (the National Health Service Reform and Health Care Professions Act 2002), the Council for the Regulation of Health Care Professionals shall be entitled to refer to court a disciplinary order made by -

(a) the Disciplinary Committee under the old section 17 of the Act, whether that order is made before the relevant date, or on or after the relevant date in accordance with Schedule 2 to the Opticians Order or this Order; or

(b) the Fitness to Practise Committee of the Council pursuant to article 10(4),

in accordance with section 29 of the National Health Service Reform and Health Care Professions Act 2002.

A.K Galloway

Clerk of the Privy Council

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes additional transitional provision in respect of the Opticians Act 1989 (Amendment) Order 2005 ("the Order"), which amends certain provisions in the Opticians Act 1989 ("the Act"): some transitional provisions are included in Schedule 2 to the Order itself.

The transitional provisions in this Order come into force on the same date that relevant provisions of the Order come into force, namely 30th June 2005 ("the relevant date").

The additional matters provided for in this Order are -

(a) supplementary provision in respect of the transitional provisions already contained in Schedule 2 to the Order concerning fitness to practise allegations made before the relevant date (article 2);

(b) provision in respect of existing registrants to the effect that the requirements of the new section 10A (to have insurance in place during any period of registration) do not apply to a period of registration before the relevant date, and making further provision concerning checking the insurance provision of existing registrants (article 3);

(c) provision for the General Optical Council's ("the Council's") approval of training institutions and qualifications in place immediately before the relevant date to continue on and after the relevant date, as if that approval had been given under the new provisions of the Act (article 4);

(d) provision for financial penalty orders that may be imposed under the new section 13H of the Act to be limited to the old maximum penalty in the Act immediately before the relevant date where the matters which resulted in that penalty order took place before the relevant date (article 5);

- (e) provision for financial penalty orders imposed under the old provisions of the Act to continue to be recoverable by the Council notwithstanding the repeal of those old provisions (article 6);
- (f) provision in respect of on-going suspension orders, erasure orders and directions of the old Disciplinary Committee of the Council to continue on and after the relevant date, notwithstanding the repeal of the provisions in the Act under which they were made (articles 7 to 9);
- (g) provision in respect of appeals against disciplinary orders etc where the appeal relates to decisions made by the old Disciplinary Committee before the relevant date (article 10);
- (h) provision as to the procedure to be followed by persons seeking restoration to either of the registers maintained by the Council on or after the relevant date, where that person was erased from a register before the relevant date (article 11);
- (i) provision maintaining the Disciplinary Committee established under the old section 5 of the Act, notwithstanding the repeal of that section, for the purposes of the functions conferred on it under this Order (article 12); and
- (j) provision allowing the Council for the Regulation of Health Care Professionals to refer to court disciplinary orders made by the Disciplinary Committee or the Fitness to Practise Committee in accordance with section 29 of the National Health Service Reform and Health Care Professions Act 2002 (article 13).