

## SCHEDULES

### SCHEDULE 7

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

##### PART 2

###### AMENDMENTS OF OPTICIANS ACT 1989

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

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

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

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

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

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- (11) In subsection (10)—
  - (a) for “Fitness to Practise Committee have” substitute “Adjudicator has”,
  - (b) for “Fitness to Practise Committee must” substitute “Adjudicator must”, and
  - (c) in paragraph (a) for “them” substitute “the Adjudicator”.
- (12) In subsection (11)—
  - (a) for “Fitness to Practise Committee” substitute “Adjudicator”, and
  - (b) in paragraph (c)—
    - (i) for “Committee see” substitute “Adjudicator sees”, and
    - (ii) for “his or its interests” substitute “the registrant’s interests”.
- (13) In subsection (13)—
  - (a) for the words from “Fitness to Practise Committee” to “they think” substitute “Adjudicator may (whether or not of its own motion), if it thinks”, and
  - (b) for “Committee must” substitute “Adjudicator must”.
- 33 (1) Section 13G of the 1989 Act (provisions supplementary to section 13F) is amended as follows.
  - (2) In subsection (1)—
    - (a) for “Fitness to Practise Committee” substitute “Adjudicator”,
    - (b) in paragraph (a) for “give” substitute “gives”, and
    - (c) in paragraph (b) for “vary” substitute “varies”.
  - (3) In subsection (6) for “Fitness to Practise Committee” substitute “Adjudicator”.
- 34 In section 13H of the 1989 Act (financial penalty order), in subsection (1)—
  - (a) for “Fitness to Practise Committee have” substitute “Adjudicator has”, and
  - (b) for “they” substitute “the Adjudicator”.
- 35 (1) Section 13I of the 1989 Act (power to order immediate suspension etc after a finding of impairment of fitness to practise) is amended as follows.
  - (2) In subsections (1) and (2) for “Fitness to Practise Committee” substitute “Adjudicator”.
  - (3) In subsection (4) for “Fitness to Practise Committee make” substitute “Adjudicator makes”.
- 36 (1) Section 13J of the 1989 Act (removal from a register on grounds of fraud or error) is amended as follows.
  - (2) In subsection (1)—
    - (a) for “Fitness to Practise Committee” substitute “Adjudicator”, and
    - (b) for “Committee may, if they think” substitute “Adjudicator may, if it thinks”.
  - (3) In subsection (2) for “Fitness to Practise Committee direct” substitute “Adjudicator directs”.
- 37 (1) Section 13K of the 1989 Act (restoration of names to a register) is amended as follows.
  - (2) In subsections (2) and (3) for “Registration Appeals Committee” substitute “Adjudicator”.

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

#### **“23AA References to Investigation Committee**

- (1) Where, in the course of any proceedings before the Adjudicator, the Adjudicator forms the opinion (on reasonable grounds) that there is a matter which ought to be investigated by the Investigation Committee—
- (a) the Adjudicator may notify the registrar of that matter; and
  - (b) on being so notified, the registrar shall refer the matter to the Investigation Committee and the Investigation Committee shall investigate the matter.

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- (2) Nothing in subsection (1) prevents the Adjudicator from considering the matter itself, whether or not it has reached a decision in the proceedings.”
- 40     (1) Section 23B of the 1989 Act (procedure of Fitness to Practise Committee and Registration Appeals Committee) is amended as follows.
- (2) In the heading omit “Fitness to Practise Committee and”.
- (3) Omit subsection (1)(a) and the word “or” following it.
- 41     (1) Section 23C of the 1989 Act (powers of the Council to make rules) is amended as follows.
- (2) Omit subsection (1)(a)(i) and the word “and” following it.
- (3) Omit subsection (2)(e) and (f).
- 42     After section 23C of the 1989 Act insert—

**“23CA Assessments**

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

- (b) in paragraph (d) for “Registration Appeals Committee” substitute “Adjudicator”.

(4) In subsection (6)—

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

46 After section 23H of the 1989 Act insert—

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

(1) This section applies to—

- (a) a decision of the Adjudicator under section 13F giving—
  - (i) a direction for suspension, including a direction extending a period of suspension;
  - (ii) a direction for temporary removal of an entry relating to a speciality or proficiency, including a direction extending a period of temporary removal;
  - (iii) a direction for conditional registration, including a direction extending a period of conditional registration;
  - (iv) a direction for conditional inclusion of an entry relating to a speciality or proficiency, including a direction extending a period of conditional inclusion;
  - (v) a direction varying any of the conditions imposed by a direction for conditional registration;
  - (vi) a direction varying any of the conditions imposed by a direction for conditional inclusion; and
- (b) a decision of the Adjudicator under section 13H to impose a financial penalty order.

(2) This section also applies to—

- (a) a decision of the Adjudicator under section 13F not to give—
  - (i) a direction falling within subsection (1)(a);
  - (ii) a direction for erasure;
  - (iii) a direction for removal (other than temporarily) of an entry relating to a speciality or proficiency;
  - (iv) a direction for indefinite suspension,
 (whether because of a finding that the registrant’s fitness to practise, fitness to carry on business or (as the case may be) fitness to undertake training is not impaired or otherwise);
- (b) a decision of the Adjudicator under section 13F—
  - (i) giving a direction that a suspension be terminated;
  - (ii) giving a direction that a temporary removal of an entry relating to a speciality or proficiency be terminated;

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



and may make such order as to costs (or, in Scotland, expenses) as it thinks fit.

(9) If the Council do refer a case, the registrar must without delay serve on the person to whom the relevant decision relates notification of the reference of the case to the court.

(10) In subsection (4) “relevant court” has the same meaning as in section 23G(4) (a) except that where the reference is of a relevant decision falling within subsection (2)(d) or (e) “relevant court” has the same meaning as in section 23G(4)(b) and (c).”

47 In section 29 of the 1989 Act (provision as to death or bankruptcy of registered optician), in subsection (3), for “Fitness to Practise Committee may, if they think” substitute “Adjudicator may, on the matter being referred to it by the registrar, if it thinks”.

48 In section 33 of the 1989 Act (default powers of Privy Council), in subsection (3) (b), after “23C,” insert “23CA,”.

49 In section 34 of the 1989 Act (subordinate legislation procedure), in subsection (2), after “23C” insert “or 23CA”.

50 In section 36 of the 1989 Act (interpretation), in subsection (1), before the definition of “approved training establishment” insert—

““the Adjudicator” means the Office of the Health Professions Adjudicator;”.

51 In Schedule 1 to the 1989 Act (constitution etc of General Optical Council), in paragraph 12, for “, the Registration Appeals Committee and the Fitness to Practise Committee” substitute “and the Registration Appeals Committee”.