

SCHEDULES

SCHEDULE 7

ADJUDICATION FUNCTIONS UNDER MEDICAL ACT 1983 AND OPTICIANS ACT 1989

PART 2

AMENDMENTS OF OPTICIANS ACT 1989

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;

Status: This is the original version (as it was originally enacted).

- (ii) giving a direction that a temporary removal of an entry relating to a speciality or proficiency be terminated;
 - (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).”