
STATUTORY INSTRUMENTS

2005 No. 848

The Opticians Act 1989 (Amendment) Order 2005

PART 5

Further amendments

Registration appeals

27. After Schedule 1, insert—

“SCHEDULE 1A

REGISTRATION APPEALS

Interpretation

1. In this Schedule—

“appealable registration decision” is to be construed in accordance with paragraph 2 below;

“person concerned” means a person in respect of whom an appealable registration decision is made or, as the case may be, an applicant in respect of whom paragraph 3(2) below applies;

“person making the decision” means the registrar or, as the case may be, the Council;

“the requisite period” means the period of three months beginning with the date there is in the possession of the registrar or, as the case may be, the Council, sufficient information to make a decision of a kind specified in paragraphs (a) to (h) of paragraph 2(1) below;

“relevant court” mean the county court or, in Scotland, the sheriff; and

“the sheriff” means the sheriff in whose sheriffdom is situated the address of the person concerned.

Appealable registration decisions

2.—(1) The following are appealable registration decisions for the purposes of this Schedule—

- (a) a decision by the Council on an application made under section 8 above not to register the applicant in the appropriate register;
- (b) a decision by the Council on an application made under section 8A above not to register the applicant in the appropriate register;
- (c) a decision of the Council under rules made in accordance with section 8A(5) above to remove a registrant from the register maintained under section 8A above;

- (d) a decision by the Council on an application made by a body corporate under section 9 above not to register that body in the register of bodies corporate;
 - (e) a decision of the registrar under rules made in accordance with section 10(1A) above—
 - (i) refusing an application for an entry or refusing to retain an entry in the appropriate register; or
 - (ii) removing or restoring a person’s entry in the appropriate register;
 - (f) a decision of the registrar under rules made in accordance with section 10(1)(b), (f) or (ff) above to remove a person’s name from the appropriate register or to refuse to retain his name in, or restore his name to, it;
 - (g) a decision of the registrar removing the registrant’s name from, or refusing to retain the registrant’s name in, the appropriate register in accordance with section 11B(1)(a) above, or removing or refusing to retain the registrant’s entry relating to a specialty or proficiency in the appropriate register in accordance with section 11B(2)(a) above; and
 - (h) a decision of the registrar under section 11B above not to restore a person’s name to, or to make an entry relating to a specialty or proficiency in, the appropriate register.
- (2) A decision is not an appealable registration decision for the purposes of this Schedule if it is a decision to refuse to enter or retain a person’s name in the appropriate register merely because that the person failed to—
- (a) pay the prescribed fee for registration or inclusion of an entry relating to a specialty or proficiency; or
 - (b) make an application as required under this Act or any rules made under it.

Notice of appealable registration decisions

3.—(1) Where an appealable registration decision is made, the person making the decision shall serve on the person concerned notice of—

- (a) the decision;
- (b) the reasons for the decision; and
- (c) the person’s right to appeal under paragraph 4 below.

(2) Failure to serve on an applicant notification of a decision in respect of an application for registration, retention or restoration (including registration or restoration of an entry relating to a specialty or proficiency) under any provision mentioned in paragraph 2(1) above within the requisite period shall be treated as a decision from which the applicant may appeal under paragraph 4 below.

Appeals from an appealable registration decision

4.—(1) A person in respect of whom an appealable registration decision has been made may appeal against that decision to the Registration Appeals Committee.

(2) An appeal under sub-paragraph (1) above shall be made by giving notice of appeal to the registrar.

(3) Except where sub-paragraph (4) applies, any such notice of appeal must be given before the end of the period of 28 days beginning with the date on which notice of the decision was given under paragraph 3(1) above, but an extension of time may be granted under paragraph 5 below.

(4) In the case of an appeal by virtue of paragraph 3(2) above, notice of appeal must be given before the end of the period of 28 days following the end of the requisite period.

(5) Where a decision to erase or remove the name of the registrant from the appropriate register or to remove from the appropriate register particulars entered in accordance with rules made under section 10(1A) above is an appealable registration decision, the decision shall not be carried into effect—

- (a) until the time for bringing an appeal has expired without an appeal being brought; or
- (b) where an appeal is brought, until the date on which the appeal is finally disposed of or abandoned or fails by reason of its non-prosecution.

(6) The Registration Appeals Committee considering the appeal may make such inquiries as they consider appropriate.

(7) In disposing of an appeal under this paragraph, a Registration Appeals Committee may determine to—

- (a) dismiss the appeal;
- (b) allow the appeal and quash the decision appealed against;
- (c) substitute for the decision appealed against any other decision which could have been made by the person making the decision; or
- (d) remit the case to the person making the decision to dispose of in accordance with the directions of the Registration Appeals Committee.

(8) Any sum required to be paid under an award in respect of costs or expenses shall be recoverable as if it had been adjudged to be paid by order of a relevant court.

(9) The Registration Appeals Committee shall, as soon as reasonably practicable—

- (a) give the person concerned, and the person making the decision, notice of the Committee's determination on the appeal before them and of the reasons for that determination; and
- (b) if that determination is not a determination under sub-paragraph (7)(b) above, give the person concerned notice of his right of appeal under section 23G of this Act.

Extension of time for appealing

5. Where—

- (a) any notice required by paragraph 3(1) above to be given to the person concerned is given by sending it to him by post; and
- (b) the registrar is satisfied, on the application of the person concerned, that that person did not receive the notice within the period of fourteen days beginning with the day the person making the decision gave the decision to which the notice relates,

the registrar may, if he thinks fit, by authorisation in writing extend the time for giving notice of appeal under paragraph 4(3) above.”.