

EXPLANATORY MEMORANDUM TO
THE OPTICIANS ACT 1989 (AMENDMENT) ORDER 2005

1. This explanatory memorandum has been prepared by the Department of Health and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

Description

2. The Order, made under section 60 of the Health Act, 1999, amends the Opticians Act, 1989. The 1989 Act provides for the regulation of opticians by the General Optical Council (GOC). The amendments deal, among other matters, with giving the GOC broader powers to deal with impaired fitness to practise, powers to set up a compulsory scheme of continuing education and training and powers to recognise specialist qualifications.

Matters of special interest to the Joint Committee on Statutory Instruments

3. There are none.

Legislative Background

4. This Order in Council is made under the powers given to Her Majesty under sections 60 and 62(4) of the Health Act 1999. Section 62(9) requires that the Order be laid before, and approved by resolution of, both Houses of Parliament before any recommendation is made to Her Majesty to make the Order. Under Schedule 3, paragraph 9 to the Health Act 1999, the Secretary of State is required to publish a draft of the Order at least 3 months before the Order (which may be modified as he sees fit) is laid in draft before both Houses of Parliament. The Secretary of State must lay with the Order a report about the consultation that he is required to carry out. The draft Order was published on 30 April 2004 and the period of consultation ended on 30 July 2004.

The purpose of the Order is to give effect to Government policies described in section 7.

Extent

5. This Instrument applies to all of the United Kingdom.

European Convention on Human Rights

6. The Minister of State at the Department of Health, Rosie Winterton MP, has made the following statement regarding Human Rights:

“In my view the provisions of the Opticians Act 1989 (Amendment) Order 2005 are compatible with the Convention rights. “

Policy background:

7. The policy intention is to strengthen the statutory regulation of optometrists and dispensing opticians (“opticians”) in line with Government goals for the regulation of all the regulated health care professions.

The 1989 Act already requires a person practising as an optician to register with the GOC. It imposes educational requirements for registration and gives the GOC powers to remove or suspend an optician’s registration for misconduct. An appeal against such decisions exists to the High Court. The 1989 Act also regulates the fitting and supply of, among other optical products, contact lenses.

The amendments in the Order would give the GOC broader powers to deal with impaired fitness to practise, in common with other regulators. In addition to misconduct, action could be taken on deficient professional performance and impaired health, and the findings of other regulators and courts could be used more effectively. The GOC would gain powers to place conditions on an optician’s registration where fitness to practise proceedings found impaired fitness to practise.

One of the remedies already available is a financial penalty, and the Order raises the maximum value of this from £1,600 to £50,000. If a criminal offence had been involved, the maximum fine the Order could have imposed would have been level 5 on the standard scale, due to the operation of paragraph 6 of Schedule 3 to the Health Act, 1999. An offence is not involved here however, but a civil penalty. £50,000 is a maximum, available for companies and individuals, and the penalty is an alternative to erasure or suspension, which would normally be more onerous.

Other amendments would give the GOC powers to set up a scheme of compulsory continuing education and training. Under the scheme, opticians would need to complete a specified amount of approved education and training each year in order to remain on the register.

The Order would also allow the GOC to recognise specialisation by opticians by adding a mark in the register against their names. The intention is that this would allow the public to recognise opticians who are qualified to fit contact

lenses and to prescribe drugs (in certain circumstances to be set out in legislation under the Medicines Act).

The Order would change the regulation of contact lens supply in two ways. To allow patients to buy lenses by mail order or from the internet with confidence, the Order would make it a requirement that the optician carrying out the fitting supplies the patient with a specification. It would then be a requirement that the seller has this specification. Secondly the Order would impose the same requirement on the sale of cosmetic contact lenses as on other lenses for the sale to be supervised by an optician or doctor.

The Order would also give the GOC a duty to set standards of conduct for opticians, give it powers to support a consumer complaints scheme, and bring the penalty for the offence of pretending to be a registered optician into line with that for pretending to be a nurse or doctor, at level 5 on the standard scale (currently £5,000).

Consultation on the draft Order took place via the document *Reform of the General Optical Council* which was published in April 2004. The responses to the consultation exercise are summarised in the attached Regulatory Impact Assessment and a somewhat fuller report on consultation is also laid before Parliament with the Order.

Impact

8. A Regulatory Impact Assessment is attached to this memorandum.

Contact

9. The contact for further information on the Order is:

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