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STATUTORY INSTRUMENTS

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**2007 No. 3101**

**The European Qualifications (Health and  
Social Care Professions) Regulations 2007**

**PART 12**

**OPTICIANS: OPTICIANS ACT 1989**

**Amendment of Opticians Act 1989**

**178.** The Opticians Act 1989 <sup>M1</sup> is amended in accordance with this Part.

**Marginal Citations**

**M1** 1989 c.44.

**Amendment of section 8**

**179.** In section 8 <sup>M2</sup> (qualifications for being registered)—

(a) in subsection (1A), for paragraphs (a) and (b) substitute—

“(a) is an exempt person;

(b) is permitted to pursue the profession of optometrist or dispensing optician in the United Kingdom by virtue of Part 3 of the General Systems Regulations (having, in particular, successfully completed any adaptation period, or passed any aptitude test, that he may be required to undertake pursuant to that Part of those Regulations); and”;

(b) omit subsection (10).

**Marginal Citations**

**M2** Section 8 was amended by S.I. 2005/848.

**Insertion of sections 8B, 8C and 8D**

**180.** After section 8A <sup>M3</sup> insert—

**“8B Visiting opticians from relevant European States: registers**

(1) The Council shall establish and maintain—

(a) a register of visiting optometrists from relevant European States; and

(b) a register of visiting dispensing opticians from relevant European States.

(2) The Council may prescribe particulars to be entered in the registers mentioned in subsection (1).

### **8C Visiting optometrists: entitlement to registration**

(1) This section applies to an exempt person (“O”) who is lawfully established, in a relevant European State other than the United Kingdom (“State A”), in the profession pursued in the United Kingdom by optometrists.

(2) Subsection (3) applies if O has the benefit of regulation 8 of the General Systems Regulations in connection with the provision by O of services as an optometrist in the United Kingdom on a temporary and occasional basis (O having complied with any requirements imposed under Part 2 of those Regulations in connection with the provision by O of services as an optometrist).

(3) O is entitled to be registered in the register of visiting optometrists from relevant European States; and the registrar shall give effect to the entitlement.

(4) If O is entitled under subsection (3) to be registered in the register of visiting optometrists from relevant European States but is not registered in that register, O shall be treated as being registered in that register.

(5) O's entitlement under subsection (3) ceases if O ceases, whether as a result of the operation of regulation 17 of the General Systems Regulations or otherwise, to have the benefit of regulation 8 of those Regulations in connection with the provision by O of services as an optometrist in the United Kingdom on a temporary and occasional basis.

(6) If—

- (a) O's entitlement under subsection (3) ceases by reason of the operation of subsection (5), and
- (b) O's name is registered in the register of visiting optometrists from relevant European States,

the registrar may remove O's name from that register.

(7) Subsection (8) applies if—

- (a) O's establishment in State A is subject to a condition relating to O's practice of the profession pursued in the United Kingdom by optometrists;
- (b) O's name is registered in the register of visiting optometrists from relevant European States; and
- (c) for any of the purposes of this Act it falls to be decided whether O's fitness to practise is or may be impaired on the ground of misconduct.

(8) The matters that may be counted as misconduct include (in particular) any act or omission by O during the course of the provision by O of services as an optometrist in the United Kingdom on a temporary and occasional basis that is, or would be if the condition applied in relation to practice of the profession outside State A, a breach of the condition.

(9) In subsections (7) and (8) “condition” includes limitation.

(10) Subsections (1) to (6) are not to be taken to prejudice the application, in relation to persons registered in the register of visiting optometrists from relevant European States, of any other provision of this Act under which a registered optometrist's name may be removed or erased from that register or under which a registered optometrist's registration in that register may be suspended.

## **8D Visiting dispensing opticians: entitlement to registration**

(1) This section applies to an exempt person (“D”) who is lawfully established, in a relevant European State other than the United Kingdom (“State A”), in the profession pursued in the United Kingdom by dispensing opticians.

(2) Subsection (3) applies if D has the benefit of regulation 8 of the General Systems Regulations in connection with the provision by D of services as a dispensing optician in the United Kingdom on a temporary and occasional basis (D having complied with any requirements imposed under Part 2 of those Regulations in connection with the provision by D of services as a dispensing optician).

(3) D is entitled to be registered in the register of visiting dispensing opticians from relevant European States; and the registrar shall give effect to the entitlement.

(4) If D is entitled under subsection (3) to be registered in the register of visiting dispensing opticians from relevant European States but is not registered in that register, D shall be treated as being registered in that register.

(5) D's entitlement under subsection (3) ceases if D ceases, whether as a result of the operation of regulation 17 of the General Systems Regulations or otherwise, to have the benefit of regulation 8 of those Regulations in connection with the provision by D of services as a dispensing optician in the United Kingdom on a temporary and occasional basis.

(6) If—

- (a) D's entitlement under subsection (3) ceases by reason of the operation of subsection (5), and
- (b) D's name is registered in the register of visiting dispensing opticians from relevant European States,

the registrar may remove D's name from that register.

(7) Subsection (8) applies if—

- (a) D's establishment in State A is subject to a condition relating to D's practice of the profession pursued in the United Kingdom by dispensing opticians;
- (b) D's name is registered in the register of visiting dispensing opticians from relevant European States; and
- (c) for any of the purposes of this Act it falls to be decided whether D's fitness to practise is or may be impaired on the ground of misconduct.

(8) The matters that may be counted as misconduct include (in particular) any act or omission by D during the course of the provision by D of services as a dispensing optician in the United Kingdom on a temporary and occasional basis that is, or would be if the condition applied in relation to practice of the profession outside State A, a breach of the condition.

(9) In subsections (7) and (8) “condition” includes limitation.

(10) Subsections (1) to (6) are not to be taken to prejudice the application, in relation to persons registered in the register of visiting dispensing opticians from relevant European States, of any other provision of this Act under which a registered dispensing optician's name may be removed or erased from that register or under which a registered dispensing optician's registration in that register may be suspended.”.

### **Marginal Citations**

**M3** Section 8A was inserted by [S.I. 2005/848](#).

### Amendment of section 10

**181.** In section 10<sup>M4</sup> (general provisions as to registers and lists)—

- (a) in subsection (1)(c), for “prescribing” substitute “subject to subsection (1ZA), prescribing”; and
- (b) after subsection (1) insert—

“(1ZA) Rules under subsection (1) may not make provision for the payment of fees in connection with registration in a register maintained under section 8B.”.

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#### Marginal Citations

**M4** Section 10 was amended by [S.I. 2005/848](#).

### Amendment of section 10A

**182.** In section 10A<sup>M5</sup> (insurance for individual registrants and persons applying for their name to be registered), after subsection (6) insert—

“(6A) Subsections (1) to (6) do not apply in relation to persons who are registered, or who are seeking registration, in a register maintained under section 8B.”.

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#### Marginal Citations

**M5** Section 10A was inserted by [S.I. 2005/848](#).

### Amendment of section 11A

**183.** In section 11A<sup>M6</sup> (requirement for continuing education and training), after subsection (4) add—

“(5) Subsection (6) circumscribes the power under subsection (1) in relation to a person (“P”)—

- (a) who is a registered optometrist only as a result of being in the register of visiting optometrists from relevant European States, or
  - (b) who is a registered dispensing optician only as a result of being in the register of visiting dispensing opticians from relevant European States.
- (6) A scheme made by rules under subsection (1)—
- (a) may not impose requirements on P if P is required to undertake, in P's home State, continuing education and training in relation to the profession pursued in the United Kingdom by optometrists or dispensing opticians (as the case may be); and
  - (b) where it imposes requirements on P—
    - (i) shall take account of the fact that P is fully qualified to pursue that profession in P's home State, and
    - (ii) shall specify that continuing education and training which P is required to undertake by the requirements may be undertaken outside the United Kingdom.

(7) In subsection (6) “home State”, in relation to P, means the relevant European State in which P is lawfully established in the profession pursued in the United Kingdom by optometrists or dispensing opticians (as the case may be).”.

**Marginal Citations**

**M6** Section 11A was inserted by [S.I. 2005/848](#).

**Amendment of section 11B**

**184.** In section 11B <sup>M7</sup> (failure to satisfy requirements imposed under a scheme), after subsection (1) insert—

“(1A) Subsection (1B) circumscribes the power under subsection (1) in relation to a person (“P”)—

- (a) who is a registered optometrist only as a result of being in the register of visiting optometrists from relevant European States, or
- (b) who is a registered dispensing optician only as a result of being in the register of visiting dispensing opticians from relevant European States.

(1B) A power under subsection (1)(a) is exercisable in relation to P only if it also appears to the registrar that, in the circumstances of the case, exercise of the power is an appropriate and proportionate sanction in view of P’s continued lawful establishment in P’s home State in the profession pursued in the United Kingdom by optometrists or dispensing opticians (as the case may be).

(1C) In subsection (1B) “home State”, in relation to P, means the relevant European State in which P is lawfully established in the profession pursued in the United Kingdom by optometrists or dispensing opticians (as the case may be).”.

**Marginal Citations**

**M7** Section 11B was inserted by [S.I. 2005/848](#).

**Amendment of section 28**

**185.** In section 28 <sup>M8</sup> (penalty for pretending to be registered etc), in subsection (1)—

- (a) in paragraph (a), for “registered in the register of optometrists” substitute “ a registered optometrist ”;
- (b) in paragraph (b), for “registered in the register of dispensing opticians” substitute “ a registered dispensing optician ”; and
- (c) in paragraph (c), for “registered in the register of optometrists maintained under section 7 above” substitute “ a registered optometrist ”.

**Marginal Citations**

**M8** Section 28 was amended by [S.I. 2005/848](#).

### Amendment of section 29

**186.** In section 29 <sup>M9</sup> (provision as to death or bankruptcy of registered optician), after subsection (2) insert—

“(2A) In subsections (1) and (2)—

“registered optometrist” does not include a person registered in the register maintained under section 8B(1)(a);

“registered dispensing optician” does not include a person registered in the register maintained under section 8B(1)(b).”.

#### Marginal Citations

**M9** Relevant amendments were made to section 29 by [S.I. 2005/848](#).

### Amendment of section 36

**187.** In section 36 <sup>M10</sup> (interpretation), in subsection (1)—

(a) after the definition of “electronic communication” insert—

““exempt person”, in relation to the profession of optometrist or the profession of dispensing optician, means—

- (a) a national of a relevant European State other than the United Kingdom;
- (b) a national of the United Kingdom who is seeking access to, or is pursuing, the profession by virtue of an enforceable Community right; or
- (c) a person who is not a national of a relevant European State but who is, by virtue of an enforceable Community right, entitled to be treated, for the purposes of access to and pursuit of the profession, no less favourably than a national of a relevant European State;”;

(b) after the definition of “functions” insert—

““General Systems Regulations” means the European Communities (Recognition of Professional Qualifications) Regulations 2007 (S.I. 2007/2781);”;

(c) in the definition of “individual registrant”, for “section 7 or 8A” substitute “ section 7, 8A or 8B ”;

(d) in the definition of “register”—

(i) after paragraph (c) insert—

“(ca) the registers of visiting optometrists from relevant European States and visiting dispensing opticians from relevant European States maintained under section 8B;” and

(ii) for “except where used in relation to medical practitioners” substitute “ except in the expressions “registered medical practitioner”, “registered dispensing optician” and “registered optometrist” ”;

(e) after the definition of “register” insert—

““registered dispensing optician” means a person whose name is in the register of dispensing opticians maintained under section 7 or in the register of visiting dispensing opticians from relevant European States maintained under section 8B;

“registered optometrist” means a person whose name is in the register of optometrists maintained under section 7 or in the register of visiting optometrists from relevant European States maintained under section 8B;” and

(f) after the definition of “registrant” insert—

““relevant European State” means an EEA State or Switzerland;”.

**Marginal Citations**

**M10** Section 36 was amended by [S.I. 2005/848](#).

**Amendment of Schedule 1A**

**188.** In Schedule 1A <sup>M11</sup> (registration appeals), in paragraph 2(1)—

(a) after paragraph (a) insert—

“(aa) a decision by the Council under Part 3 of the General Systems Regulations on an application made under section 8 above to require an exempt person to complete an adaptation period, or pass an aptitude test, in connection with becoming entitled by virtue of that Part of those Regulations to pursue in the United Kingdom the profession of optometrist or dispensing optician;” and

(b) after paragraph (c) insert—

“(ca) a decision by the Council not to register an individual in the register of visiting optometrists from relevant European States or the register of visiting dispensing opticians from relevant European States maintained under section 8B above;”.

**Marginal Citations**

**M11** Schedule 1A was inserted by [S.I. 2005/848](#).

**Changes to legislation:**

There are currently no known outstanding effects for the The European Qualifications (Health and Social Care Professions) Regulations 2007, PART 12.