

# SCHEDULES

## SCHEDULE 5

Regulation 6

### Opticians

## PART 1

### Amendments to legislation

#### Interpretation

1. In this Schedule, “the 1989 Act” means the Opticians Act 1989<sup>(1)</sup>.

#### Opticians Act 1989

2. The 1989 Act is amended as follows.
3. In section 8 (qualifications for registration)<sup>(2)</sup>—
  - (a) omit subsection (1A);
  - (b) after subsection (2A) insert—

“(2B) A determination under subsection (2A) may not be made in relation to a person whose qualification—

    - (a) was granted in a relevant European State, and
    - (b) indicates, in the opinion of the Council, a level of attainment of competency comparable to that indicated by an approved UK qualification.

(2C) In subsection (2B), “approved UK qualification” means a qualification that is—

    - (a) approved under section 12(7)(b), and
    - (b) granted by an establishment in the United Kingdom that is approved under section 12(7)(a).”.
  4. Omit sections 8B to 8D (registration of visiting European practitioners)<sup>(3)</sup>.
  5. In section 10 (general provisions as to registers and lists)<sup>(4)</sup>—
    - (a) in subsection (1)(c), omit “subject to subsection (1ZA),”;
    - (b) omit subsection (1ZA).
  6. In section 10A (indemnity arrangements)<sup>(5)</sup>, omit subsection (11).
  7. In section 11A (continuing education and training), omit subsections (5) to (7)<sup>(6)</sup>.

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(1) 1989 c. 44.

(2) Relevant amending instruments are [S.I. 2005/848](#), [2007/3101](#).

(3) Sections 8B to 8D were inserted by [S.I. 2007/3101](#). Sections 8C and 8D were amended by [S.I. 2016/1030](#).

(4) Relevant amending instruments are [S.I. 2005/848](#), [2007/3101](#).

(5) Section 10A was inserted by [S.I. 2005/848](#) and substituted by [S.I. 2014/1887](#).

(6) Section 11A was inserted by [S.I. 2005/848](#) and subsections (5) to (7) were inserted by [S.I. 2007/3101](#).

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**8.** In section 11B (failure to satisfy continuing education and training requirements)(**7**), omit subsections (1A) to (1C).

**9.** In section 23G (appeals)(**8**)—

(a) in subsection (1)—

(i) in paragraph (c), at the end insert “and”;

(ii) omit paragraph (e) and the “and” before it;

(b) in subsection (4), in paragraphs (b) and (c), for “(e)” substitute “(d)”;

(c) omit subsection (8).

**10.** In section 29 (death or bankruptcy)(**9**), omit subsection (2A).

**11.** In section 36 (interpretation)(**10**), in subsection (1)—

(a) omit the definitions of “exempt person” and “General Systems Regulations”;

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

(c) in the definition of “register”, omit paragraph (ca);

(d) in the definitions of “registered dispensing optician” and “registered optometrist”, omit the words from “or in” to the end.

**12.** In Schedule 1 (constitution of the General Council)(**11**), in paragraph 1A(1)(b)(ii), omit “or 8B”.

### **National Health Service (Scotland) Act 1978**

**13.** In the National Health Service (Scotland) Act 1978(**12**), in section 108 (interpretation), in subsection (1), in the definition of “ophthalmic optician” omit from “, or in” to “that Act” (where it first occurs).

### **National Health Service Act 2006**

**14.** In the National Health Service Act 2006(**13**), in section 275 (interpretation), in subsection (1), in the definition of “optometrist” omit from “or in” to “that Act,”.

### **National Health Service (Wales) Act 2006**

**15.** In the National Health Service (Wales) Act 2006(**14**), in section 206 (interpretation), in subsection (1), in the definition of “optometrist” omit from “or in” to “that Act,”.

### **National Health Service (General Ophthalmic Services) Regulations 1986**

**16.** In the National Health Service (General Ophthalmic Services) Regulations 1986(**15**), in regulation 2 (interpretation), in paragraph (1), in the definition of “optician” omit from “or in” to “that Act”.

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(7) Section 11B was inserted by [S.I. 2005/848](#) and subsections (1A) to (1C) were inserted by [S.I. 2007/3101](#).

(8) Section 23G was inserted by [S.I. 2005/848](#). Relevant amending instrument is [S.I. 2016/1030](#).

(9) Subsection 2A was inserted by [S.I. 2007/3101](#).

(10) Relevant amending instruments are [S.I. 2005/848](#), [2007/3101](#), [2011/1043](#), [2016/1030](#).

(11) Relevant amending instrument is [S.I. 2008/1774](#).

(12) [1978 c. 29](#). Relevant amending instruments are [S.I. 2005/848](#), [2007/3101](#).

(13) [2006 c. 41](#). Relevant amending instrument is [S.I. 2007/3101](#).

(14) [2006 c. 42](#). Relevant amending instrument is [S.I. 2007/3101](#).

(15) [S.I. 1986/975](#). Relevant amending instruments are [S.I. 2005/1481](#), [2007/122 \(W.12\)](#), [2007/3101](#).

### **National Health Service (Service Committees and Tribunal) Regulations 1992**

17. In the National Health Service (Service Committees and Tribunal) Regulations 1992(16), in regulation 2 (interpretation), in paragraph (1), in paragraph (b) of the definition of “optician” omit from “or in” to “that Act”.

### **General Optical Council Testing of Sight by Persons Training as Ophthalmic Opticians Rules 1993**

18. In the General Optical Council Testing of Sight by Persons Training as Ophthalmic Opticians Rules 1993(17), in rule 4 (classes of exempt person), omit paragraph (c).

### **Medicines for Human Use (Clinical Trials) Regulations 2004**

19. In the Medicines for Human Use (Clinical Trials) Regulations 2004(18), in regulation 2 (interpretation), in paragraph (1), in paragraph (e) of the definition of “health care professional” omit from “or in” to “that Act”.

### **General Optical Council (Registration) Rules 2005**

20. In the General Optical Council (Registration) Rules 2005(19)—

- (a) in rule 2 (interpretation), omit paragraph (1A);
- (b) in rule 5(1) (information from applicants)—
  - (i) in sub-paragraph (d), omit from “(except” to “registered)”;
  - (ii) in sub-paragraph (f), omit from “except” to “8(1A),”;
- (c) in rule 12 (entries on the register), omit paragraph (2);
- (d) in rule 13 (entries relating to specialties), omit paragraph (2);
- (e) omit rules 21A and 21B (visiting opticians from relevant European states).

### **National Health Service (General Ophthalmic Services) (Scotland) Regulations 2006**

21. In the National Health Service (General Ophthalmic Services) (Scotland) Regulations 2006(20), in regulation 2 (interpretation), in paragraph (1)—

- (a) in the definition of “optometrist”, omit from “or in” to “that Act”;
- (b) in paragraph (b) of the definition of “register”, omit from “or in” to “that Act” (where it first occurs).

### **National Health Service (Pharmaceutical Services) (Scotland) Regulations 2009**

22. In the National Health Service (Pharmaceutical Services) (Scotland) Regulations 2009(21), in regulation 2 (interpretation), in paragraph (1), in paragraph (a) of the definition of “optometrist independent prescriber”, omit from “, or in” to “that Act”.

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(16) S.I. 1992/664. Relevant amending instruments are S.I. 2005/848, 2007/3101.

(17) As set out in the Schedule to the General Optical Council (Testing of Sight by Persons Training as Ophthalmic Opticians Rules) Order of Council 1994 (S.I. 1994/70). Relevant amending instrument is S.I. 2007/3101.

(18) S.I. 2004/1031. Relevant amending instrument is S.I. 2007/3101.

(19) As set out in the Schedule to the General Optical Council (Registration Rules) Order of Council 2005 (S.I. 2005/1478). Relevant amending instrument is S.I. 2007/3101.

(20) S.S.I. 2006/135. Relevant amending instrument is S.I. 2007/3101.

(21) S.S.I. 2009/183.

**Patient Rights (Treatment Time Guarantee) (Scotland) Regulations 2012**

23. In the Patient Rights (Treatment Time Guarantee) (Scotland) Regulations 2012(22), in regulation 1(2) (interpretation), in the definition of “ophthalmic optician”, omit from “, or in” to “that Act” (where it first occurs).

**Human Medicines Regulations 2012**

24. In the Human Medicines Regulations 2012(23), in regulation 8 (interpretation), in paragraph (1)—

- (a) in the definition of “registered optometrist”, omit the words from “or the” to the end;
- (b) in paragraph (c) of the definition of “the relevant register”, omit the words from “or the” to the end.

**PART 2****Savings and transitional provision****Pending applications**

25. Where an application for—

- (a) entry in, or restoration to, a register kept under the 1989 Act, or
- (b) the entry, or restoration of an entry, of particulars of a specialty in such a register,

is received before exit day, any provision made by or under that Act continues to apply in relation to the application (including any appeal arising from it) without the amendments made by Part 1 of this Schedule.

**Visiting opticians: saving of old law for up to one year**

26.—(1) Where—

- (a) a person had, immediately before exit day, the benefit of regulation 12 of the European Union (Recognition of Professional Qualifications) Regulations 2015 in respect of the provision by that person of services as an optometrist or dispensing optician (and section 8C(3) or 8D(3) of the 1989 Act accordingly applied to the person), and
- (b) the person continues to have that benefit on or after exit day,

any provision made by an Act or instrument amended by Part 1 of this Schedule continues to apply in relation to the provision of those services by that person without the amendments that Part 1 of this Schedule makes to the provisions relating to visiting opticians from relevant European states.

(2) Sub-paragraph (1) ceases to apply in relation to a visiting optometrist or dispensing optician—

- (a) if the optometrist or optician is registered as required by section 8C(3) or 8D(3) of the 1989 Act, when his or her name is removed under section 8C(6) or 8D(6) of the Act;
- (b) otherwise, when his or her entitlement ceases by reason of the operation of section 8C(5) or 8D(5) of the Act.

(3) The reference in sub-paragraph (1) to “the provisions relating to visiting opticians from relevant European states” is to the provisions listed in the following table.

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(22) S.S.I. 2012/110.

(23) S.I. 2012/1916.

<i>Act or instrument</i>	<i>Provision relating to visiting opticians</i>
The 1989 Act	sections 8B to 8D
	section 10(1)(c) and (1ZA)
	section 10A(11)
	section 11A(5) to (7)
	section 11B(1A) to (1C)
	section 29(2A)
	section 36(1)
	Schedule 1, paragraph 1A(1)(b)(ii)
National Health Service (Scotland) Act 1978	section 108(1)
National Health Service (General Ophthalmic Services) Regulations 1986	regulation 2(1)
National Health Service (Service Committees and Tribunal) Regulations 1992	regulation 2(1)
Medicines for Human Use (Clinical Trials) Regulations 2004	regulation 2(1)
General Optical Council (Registration) Rules 2005	rules 2(1A), 21A and 21B
National Health Service (General Ophthalmic Services) (Scotland) Regulations 2006	regulation 2(1)
National Health Service (Pharmaceutical Services) (Scotland) Regulations 2009	regulation 2(1)
Patient Rights (Treatment Time Guarantee) (Scotland) Regulations 2012	regulation 1(2)
Human Medicines Regulations 2012	regulation 8(1)

**IMI alerts**

**27.**—(1) Where an alert has been sent by the General Optical Council before exit day under regulation 67 of the European Union (Recognition of Professional Qualifications) Regulations 2015, the decision to send the alert continues to be appealable for the purposes of section 23G of the 1989 Act (subject to the provisions of that Act) despite the repeal of section 23G(1)(e).

(2) In disposing of such an appeal, the powers of the relevant court continue to be those set out in section 23G(8) of the 1989 Act (as it had effect before the coming into force of these Regulations), but as if for “that the alert be withdrawn or amended” there were substituted “the Council to take such steps as the relevant court considers fit to draw the findings of the court to the attention of the European Commission”.

**Interpretation of saved provisions**

**28.** Where a provision continues to apply by virtue of this Part, it is to be read as if—

- (a) in section 36(1) of the 1989 Act—
  - (i) there were inserted at the appropriate place—

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““enforceable EU right” means a right recognised and available in domestic law, immediately before exit day, by virtue of section 2(1) of the European Communities Act 1972;”;

(ii) in the definition of “exempt person”, for paragraphs (a) to (c) there were substituted—

“(a) a person who, immediately before exit day, was a national of a relevant European State,

(b) a person who, immediately before exit day, was a national of the United Kingdom and, at that time, was seeking access to, or pursuing, the profession by virtue of an enforceable EU right, or

(c) a person who, immediately before exit day, was not a national of a relevant European State, but at that time was, by virtue of an enforceable EU 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;”;

(iii) in the definition of “General Systems Regulations”, at the end there were inserted—

“—

(a) in relation to anything done before exit day, as they had effect at that time;

(b) otherwise, as (and only to the extent that) they have effect, on or after exit day, in relation to an entitlement which arose before exit day or arises as a result of something done before exit day;”;

(b) in any reference to a relevant European State other than the United Kingdom, the words “other than the United Kingdom” were omitted.