

PART 2A
FITNESS TO PRACTISE

The Council's duty to provide guidance on fitness to practise

- 13A. (1) The Council shall -
- (a) provide, in such manner as the Council considers appropriate, guidance for registered optometrists, registered dispensing opticians and student registrants, on matters relating to fitness to practise or, in the case of a student registrant, fitness to undertake training, and in particular on the standards of conduct and performance expected of them; and
 - (b) establish and keep under review effective arrangements to protect members of the public from registered optometrists, registered dispensing opticians and student registrants whose fitness to practise or, in the case of a student registrant, fitness to undertake training, is impaired.
- (2) The Council shall -
- (a) provide, in such manner as the Council considers appropriate, guidance to business registrants on matters relating to fitness to carry on business as an optometrist or a dispensing optician or both, and in particular on the standards of conduct and performance expected of such registrants in carrying on that business; and
 - (b) establish and keep under review effective arrangements to protect the public from business registrants whose fitness to carry on business as an optometrist or a dispensing optician or both is impaired.
- (3) Before issuing guidance or varying guidance already issued under this section, the Council shall consult groups which, in the Council's opinion, are representative of registrants or of persons with an interest in the subject matter of the guidance.
- (4) The Council shall keep under review, and revise as appropriate, guidance provided by them under this section.

The Council's power to require disclosure of information

- 13B. (1) For the purpose of assisting the Council or any of their Committees in carrying out any of their functions under this Act relating to -
- (a) a registered optometrist's or a registered dispensing optician's fitness to practise;

- (b) a business registrant's fitness to carry on business as an optometrist or a dispensing optician or both; or
- (c) a student registrant's fitness to undertake training,

the Council may require a registrant or any other person to supply any information or produce any document which appears to the Council relevant to the discharge of those functions.

- (2) As soon as reasonably practicable after the date on which an allegation has been made to the Council relating to a registered optometrist's or registered dispensing optician's fitness to practise or a student registrant's fitness to undertake training, the Council shall require, from the registrant to whom the allegation relates, particulars of any person who employs him.
- (3) Nothing in this section shall require or permit any disclosure of information which is prohibited by or under any other enactment; but if information is held in a form in which the prohibition operates because the information is capable of identifying an individual, the Council may, in exercising their functions under subsection (1) above, require that the information be put into a form which is not capable of identifying that individual.
- (4) In determining for the purposes of subsection (3) above whether a disclosure is not prohibited by reason of being a disclosure of personal information which is exempt from the non-disclosure provisions of the Data Protection Act 1998 by virtue of section 35(1) of that Act, it shall be assumed that the disclosure is required by this section.
- (5) Subsection (1) above does not apply in relation to the supplying of information or the production of a document which a person could not be compelled to supply or produce in civil proceedings before -
 - (a) the Court of Session, if the person's address in the appropriate register is in Scotland, or if he is not registered, if he is resident in Scotland;
 - (b) the High Court of Justice in Northern Ireland, if the person's address in the appropriate register is in Northern Ireland, or if he is not registered, if he is resident in Northern Ireland; or
 - (c) the High Court of Justice in England and Wales, if the person's address in the appropriate register is in England or Wales, or if he is not registered, he is resident in England or Wales.
- (6) If a person fails to supply any information or produce any document within fourteen days of his being required to do so under subsection (1) above, the Council may seek an order of the relevant court

requiring the information to be supplied or the document to be produced.

- (7) In subsection (6) above, “relevant court” means the county court or, in Scotland, the sheriff.
- (8) In subsection (7) above, “the sheriff” means the sheriff in whose sheriffdom is situated the address of the person who fails to supply the information or produce the document.
- (9) For the purposes of subsection (3) above, “enactment” includes -
 - (a) a provision of, or an instrument made under, an Act of the Scottish Parliament;
 - (b) a provision of, or an instrument made under, Northern Ireland legislation; and
 - (c) a provision of subordinate legislation (within the meaning of the Interpretation Act 1978).

Notification and disclosure by the Council

- 13C. (1) As soon as is reasonably practicable after an allegation is received by the Council relating to a registered optometrist’s or registered dispensing optician’s fitness to practise or, in the case of a business registrant, its fitness to carry on business as an optometrist or a dispensing optician or both, or in the case of a student registrant, his fitness to undertake training, they shall notify the persons specified in subsection (2) below of an investigation under this Part by the Council or any of its Committees of -
- (a) a registered optometrist’s or a registered dispensing optician’s fitness to practise;
 - (b) a business registrant’s fitness to carry on business as an optometrist or a dispensing optician, or to carry on both businesses; or
 - (c) a student registrant’s fitness to undertake training.
- (2) The persons specified in this subsection are -
- (a) the Secretary of State, the Scottish Ministers, the Department of Health, Social Services and Public Safety in Northern Ireland and the National Assembly for Wales; and
 - (b) any person in the United Kingdom of whom the Council are aware by whom the registered optometrist, registered dispensing optician or student registrant is employed.
- (3) The Council may disclose to any person any information relating to -
- (a) a registered optometrist’s or a registered dispensing optician’s fitness to practise;

- (b) a business registrant's fitness to carry on business as an optometrist or a dispensing optician, or to carry on both businesses; or
- (c) a student registrant's fitness to undertake training, which they consider it to be in the public interest to disclose.

Allegations

- 13D. (1) This section applies where an allegation is made to the Council against -
- (a) a registered optometrist or a registered dispensing optician that his fitness to practise is or may be impaired;
 - (b) a business registrant that its fitness to carry on business as an optometrist or a dispensing optician, or both, is or may be impaired; or
 - (c) a student registrant that his fitness to undertake training as an optometrist or a dispensing optician is or may be impaired.
- (2) The only grounds upon which the fitness to practise of a registered optometrist or registered dispensing optician, or the fitness to undertake training of a student registrant, is "impaired" for the purposes of this Act are -
- (a) misconduct;
 - (b) except in the case of a student registrant, deficient professional performance;
 - (c) a conviction or caution in the British Islands for a criminal offence, or a conviction elsewhere for an offence which, if committed in England and Wales, would constitute a criminal offence;
 - (d) the registrant having accepted a conditional offer under section 302 of the Criminal Procedure (Scotland) Act 1995 (fixed penalty: conditional offer by procurator fiscal) or agreed to pay a penalty under section 115A of the Social Security Administration Act 1992 (penalty as alternative to prosecution);
 - (e) the registrant, in proceedings in Scotland for an offence, having been the subject of an order under section 246(2) or (3) of the Criminal Procedure (Scotland) Act 1995 discharging him absolutely;
 - (f) adverse physical or mental health; or
 - (g) a determination by a body in the United Kingdom responsible under any enactment for the regulation of a health or social

care profession to the effect that his fitness to practise as a member of that profession is impaired, or a determination by a regulatory body elsewhere to the same effect.

- (3) The only grounds upon which a business registrant's fitness to carry on business as an optometrist or a dispensing optician or to carry on both businesses is impaired for the purposes of this Act are -
- (a) misconduct by the business registrant or by one of its directors;
 - (b) practices or patterns of behaviour occurring within the business which -
 - (i) the registrant knew or ought reasonably to have known of; and
 - (ii) amount to misconduct or deficient professional performance;
 - (c) the instigation by the business registrant of practices or patterns of behaviour within the business where that practice or behaviour amounts, or would if implemented amount, to misconduct or deficient professional performance;
 - (d) a conviction or caution in the British Islands of the business registrant or one of its directors for a criminal offence, or a conviction elsewhere for an offence which, if committed in England or Wales, would constitute a criminal offence;
 - (e) the registrant or one of its directors having accepted a conditional offer under section 302 of the Criminal Procedure (Scotland) Act 1995 or agreed to pay a penalty under section 115A of the Social Security Administration Act 1992;
 - (f) the registrant or one of its directors, in proceedings in Scotland for an offence, having been the subject of an order under section 246(2) or (3) of the Criminal Procedure (Scotland) Act 1995 discharging it or him absolutely;
 - (g) a determination by a body in the United Kingdom responsible under any enactment for the regulation of a health or social care profession to the effect that -
 - (i) the business registrant's fitness to carry on business as a member of that profession is impaired; or
 - (ii) the fitness of a director of the business registrant to practise that profession is impaired,or a determination by a regulatory body elsewhere to the same effect.
- (4) For the purposes of this section -

- (a) references to a conviction include a conviction by court martial; and
 - (b) the allegation may refer to acts or omissions which occurred outside the United Kingdom or at a time when the registrant was not registered.
- (5) The Investigation Committee shall investigate the allegation made against the registrant and decide whether it ought to be considered by the Fitness to Practise Committee.
- (6) If the Investigation Committee decide that the allegation ought to be considered by the Fitness to Practise Committee -
 - (a) they shall give a direction to that effect to the registrar;
 - (b) the registrar shall refer the allegation to the Fitness to Practise Committee; and
 - (c) the registrar shall serve a notification of the Investigation Committee's decision on the registrant who, or which, is the subject of the allegation, and on the person making the allegation.
- (7) If the Investigation Committee decide that the allegation ought not to be considered by the Fitness to Practise Committee, they may give a warning to the registrant who, or which, is subject to the allegation regarding his, or its, future conduct or performance.
- (8) If the Investigation Committee decide that the allegation ought not to be considered by the Fitness to Practise Committee and that no warning is to be given under subsection (7) above -
 - (a) they shall give a direction to that effect to the registrar; and
 - (b) the registrar shall serve a notification of the Committee's decision on the registrant who, or which, is the subject of the allegation, on the person making the allegation and on those persons specified in section 13C(2) above.
- (9) If the Investigation Committee are of the opinion that the Fitness to Practise Committee should consider making an order for interim suspension or interim conditional registration under section 13L below in relation to the registrant who, or which, is the subject of the allegation -
 - (a) they shall give a direction to that effect to the registrar;
 - (b) the registrar shall refer the matter to the Fitness to Practise Committee for the Committee to decide whether to make such an order; and

- (c) the registrar shall serve notification of the decision on the registrant who, or which, is the subject of the allegation, and on the person making the allegation.
- (10) In this section -
- (a) “enactment” includes -
 - (i) a provision of, or an instrument made under, an Act of the Scottish Parliament;
 - (ii) a provision of, or an instrument made under, Northern Ireland legislation; and
 - (iii) a provision of subordinate legislation (within the meaning of the Interpretation Act 1978); and
 - (b) “regulatory body” means a regulatory body which has the function of authorising persons to practise as a member of a health or social care profession.

Provisions supplementary to section 13D

- 13E. (1) The Council may make rules providing for -
- (a) the registrar; or
 - (b) any other officer of the Council,
- to exercise the functions of the Investigation Committee under section 13D above, either generally or in relation to such classes of case as may be specified in the rules.
- (2) If those rules enable the registrar to exercise the functions of the Investigation Committee under subsections (6), (8) or (9) of section 13D above, those subsections shall apply in relation to him as if paragraph (a) in each of them were omitted.
- (3) Section 13D above also applies in any case where -
- (a) it comes to the attention of the Council that -
 - (i) a registered optometrist’s or registered dispensing optician’s fitness to practise;
 - (ii) a business registrant’s fitness to carry on business as an optometrist or a dispensing optician or both; or
 - (iii) a student registrant’s fitness to undertake training,is, or may be, impaired by one or more of the matters mentioned in section 13D(2) above or, as the case may be, section 13D(3) above, but
 - (b) no allegation to that effect has been made to the Council against that registrant,

and in such cases this Act and rules made under this Act shall apply as if an allegation to that effect has been made to the Council under section 13D above against the registered optometrist, registered dispensing optician, student registrant or, as the case may be, business registrant, and any reference to the person making an allegation shall be disregarded.

Powers of the Fitness to Practise Committee

- 13F. (1) Where an allegation against a registrant is referred under section 13D above (other than under subsection (9) of that section) to the Fitness to Practise Committee, subsections (2) to (5) below shall apply.
- (2) If the Fitness to Practise Committee find that -
- (a) a registered optometrist's or registered dispensing optician's fitness to practise is impaired;
 - (b) a business registrant's fitness to carry on business as an optometrist or a dispensing optician or both is impaired; or
 - (c) a student registrant's fitness to undertake training is impaired,
- they may if they think fit give a direction specified in subsection (3) or (4) below.
- (3) The directions specified in this subsection are that -
- (a) except in a health case, the name of the registrant be erased from the appropriate register;
 - (b) the registrant's registration be suspended (that is to say, is not to have effect) during such period not exceeding twelve months as may be specified in the direction;
 - (c) the registrant's registration is to be conditional on his or its compliance, during such period not exceeding three years as may be specified in the direction, with such requirements so specified as the Committee see fit to impose for the protection of members of the public or in his or its interests.
- (4) Where the Fitness to Practise Committee find that a registered optometrist's or registered dispensing optician's fitness to practise is impaired on the ground of deficient professional performance, and the deficiency relates to the performance of a specialty or proficiency particulars of which are entered in the appropriate register in respect of him, the Committee may, instead of any of the directions specified in subsection (3) above or, in addition to any of the directions specified in subsection (3)(b) or (c) above, direct that

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- (a) the entry relating to that specialty or proficiency be removed from the appropriate register;
 - (b) the entry relating to that specialty or proficiency be removed from the appropriate register temporarily, that is to say, for such period not exceeding twelve months as may be specified in the direction; or
 - (c) the entry relating to that specialty or proficiency be conditional upon the registered optometrist's or registered dispensing optician's compliance, during such period not exceeding three years as may be specified in the direction, with such requirements so specified as the Committee see fit to impose for the protection of members of the public or in his interests.
- (5) If the Fitness to Practise Committee find that -
- (a) the registered optometrist's or the registered dispensing optician's fitness to practise is not impaired;
 - (b) the business registrant's fitness to carry on the business of an optometrist or a dispensing optician or both is not impaired; or
 - (c) the student registrant's fitness to undertake training is not impaired,
- they may nevertheless give the registrant a warning regarding his or its future conduct or performance.
- (6) Subsection (7) below applies if the Fitness to Practise Committee have directed that the registration of a registrant be suspended under subsection (3) above or (13) below.
- (7) If this subsection applies, the Fitness to Practise Committee may, if they think fit -
- (a) direct that the current period of suspension be extended for such further period from the time when it would otherwise expire as is specified in the direction;
 - (b) except in a case to which subsection (8) below applies, direct that the name of the registrant be erased from the appropriate register;
 - (c) direct that the registrant's registration is, as from the expiry of the current period of suspension, to be conditional on his or its compliance, during such period not exceeding three years as may be specified in the direction, with such requirements so specified as the Committee think fit to impose for the protection of members of the public or in his or its interests,

but, except as provided in subsection (8) below, the Committee shall not extend any period of suspension under this section for more than twelve months at a time.

- (8) In a case where -
- (a) the Fitness to Practise Committee find that the registered optometrist's, the registered dispensing optician's or the student registrant's impairment is due to adverse physical or mental health; and
 - (b) that person's name has been suspended from the appropriate register under the preceding provisions of this section,
- they may give a direction extending his period of suspension indefinitely if the conditions specified in subsection (9) below are satisfied.
- (9) The conditions specified in this subsection are -
- (a) the period of suspension will, on the date on which the direction takes effect, have lasted for at least two years; and
 - (b) that direction is made not more than two months before the date on which the period of suspension would otherwise expire.
- (10) Where the Fitness to Practise Committee have given a direction under subsection (8) above extending indefinitely the suspension of a person's name from the appropriate register, the Fitness to Practise Committee must review the direction if -
- (a) the person requests them to do so;
 - (b) at least two years have elapsed since the date on which the direction took effect; and
 - (c) in a case where the direction has previously been reviewed under this subsection, at least two years have elapsed since the date of the last such review.
- (11) On a review under subsection (10) above, the Fitness to Practise Committee may -
- (a) confirm the direction;
 - (b) direct that the suspension be terminated; or
 - (c) direct that the registrant's registration be conditional on his or its compliance, during such period not exceeding three years as may be specified in the direction, with such requirements so specified as the Committee see fit to impose for the protection of members of the public or in his or its interests.

- (12) Where a direction that the inclusion of a person's name in the appropriate register be subject to conditions has been given under subsection (3), (7) or (11) above, subsection (13) below applies.
- (13) If this subsection applies, the Fitness to Practise Committee may (whether or not of their own motion), if they think fit -
- (a) except in a health case, direct that the name of the registrant be erased from the appropriate register;
 - (b) direct that a registrant's registration in the appropriate register be suspended during such period not exceeding twelve months as may be specified in the direction;
 - (c) direct that the current period of conditional registration be extended for such further period from the time when it would otherwise expire as may be specified in the direction; or
 - (d) revoke the direction, or revoke or vary any of the conditions imposed by the direction, for the remainder of the current period of conditional registration,
- but the Committee must not extend any period of conditional registration under this section for more than three years at a time.
- (14) Subsections (6) to (13) above shall apply -
- (a) to the temporary removal of an entry relating to a specialty or proficiency under subsection (4)(b) above as they apply to a registrant's registration being suspended under subsection (3)(b) above; and
 - (b) to an entry relating to a specialty or proficiency being made conditional under subsection (4)(c) above as they apply to a registrant's registration being made conditional under subsection (3)(c) above.
- (15) Where subsection (6) to (13) above apply by virtue of subsection (14) above -
- (a) references in subsections (7)(b) and (13)(a) above and section 13G(1) below to the name of a registrant being erased from the appropriate register shall be read as if it included a reference to the removal from the appropriate register (otherwise than temporarily) of an entry relating to a specialty or proficiency;
 - (b) references in subsections (7) to (11) above and section 13G(1) and (2) below to a period of suspension or suspension shall be read as if it included a reference to a period of time specified for the temporary removal or temporary removal from the appropriate register of an entry relating to a specialty or proficiency;

- (c) references in subsection (13) above and section 13G(1), (4) and (5) below to being suspended shall be read as if it included a reference to an entry relating to a specialty or proficiency being removed from the appropriate register for a specified period; and
- (d) references in subsections (7), (11) and (13) above and section 13G(1) and (2) below to a registrant's registration being conditional or to conditional registration shall be read as if it included a reference to an entry relating to a specialty or proficiency being conditional.

Provisions supplementary to section 13F

13G. (1) If, under section 13F above, the Fitness to Practise Committee -

- (a) give a direction -
 - (i) that a registrant's name be erased from the appropriate register;
 - (ii) for suspension; or
 - (iii) for conditional registration; or
- (b) vary any of the conditions imposed by a direction for conditional registration,

the registrar must forthwith serve on the registrant concerned notification of the direction or variation, and of the registrant's right to appeal against it under section 23G below.

- (2) In subsection (1) above references to -
 - (a) a direction for suspension include a reference to a direction extending a period of suspension; and
 - (b) a direction for conditional registration include a reference to a direction extending a period of conditional registration.
- (3) While a registrant's registration in the appropriate register is suspended by virtue of a direction under section 13F above -
 - (a) the registrant shall be treated, except as provided in subsection (4) below, as not being registered in the appropriate register and the registrar shall make a note in the appropriate register of that fact and of the period for which the registration is to be suspended, but
 - (b) sections 13D, 13E and 13F above, this section and section 13H below shall continue to apply to the individual or body whose registration is suspended.
- (4) An individual registrant shall be treated for the purposes of compliance with rules made under sections 11A and 11B above as if his registration in the appropriate register was not suspended.

- (5) The registrar shall erase any note made under subsection (3)(a) above when the direction for suspension ceases to have effect.
- (6) In section 13F above and section 13H below, “health case” means any case in which the Fitness to Practise Committee has determined that a registered optometrist’s or registered dispensing optician’s fitness to practise or a student registrant’s fitness to undertake training -
 - (a) is impaired by reason of a matter falling within paragraph (f) of subsection (2) of section 13D above, but
 - (b) is not impaired by any matter falling within any other paragraph of that subsection.

Financial penalty order

- 13H. (1) In any case other than a health case in which the Fitness to Practise Committee have the power to impose a direction under section 13F above, they may impose, either in addition to the direction or instead of it, a financial penalty order.
- (2) A financial penalty order may specify any sum not exceeding the maximum penalty.
 - (3) In this section, the “maximum penalty” means a sum not exceeding £50,000 or such higher sum as may be substituted by an order made under subsection (4) below.
 - (4) If it appears to the Council that there has been a change in the value of money since the last occasion when the financial penalty was fixed, whether by this section or by an order under this section, the Council may by order amend subsection (3) above so as to substitute for the sum for the time being specified in subsection (3) above such other sum as appears to the Council justified by the change.
 - (5) The Council shall publish an order made under subsection (4) above in such form as they consider appropriate.
 - (6) An amendment made by order under subsection (4) above shall not apply where the event which gave rise to the allegation occurred before the order came into force.
 - (7) A financial penalty order shall specify the period within which the sum specified in it is to be paid.
 - (8) The Council may recover the sum specified in a financial penalty order from the person or body against whom the order was made if that person or body does not comply with it within the period specified in the order.

- (9) The Council shall pay any sum paid under a financial penalty order or recovered under subsection (8) above into the Consolidated Fund.

Power to order immediate suspension etc. after a finding of impairment of fitness to practise

13I. (1) On giving -

- (a) a direction for erasure or a direction for suspension under section 13F(2) above; or
- (b) a direction for removal from the appropriate register of an entry relating to a specialty or proficiency under section 13F(4)(a) or (b) above,

the Fitness to Practise Committee, if satisfied that to do so is -

- (i) necessary for the protection of members of the public;
- (ii) otherwise in the public interest; or
- (iii) in the best interests of the individual or body corporate,

may order that the registration of the registrant shall be suspended forthwith or, in the case of an entry relating to a specialty or proficiency, that the removal from the register of the entry relating to the specialty or proficiency take place forthwith in accordance with this section.

(2) On giving -

- (a) a direction for conditional registration under section 13F(2) above; or
- (b) a direction that an entry in the register relating to a specialty or proficiency be made conditional under section 13F(4)(c) above,

the Fitness to Practise Committee, if satisfied that to do so is -

- (i) necessary for the protection of members of the public;
- (ii) otherwise in the public interest; or
- (iii) in the best interests of the individual or body corporate,

may order that the registration of the registrant be made conditional forthwith or, in the case of an entry relating to a specialty or proficiency, that the entry in the register relating to the specialty or proficiency be made conditional forthwith, in accordance with this section.

(3) Where, on the giving of a direction mentioned in subsection (1) or (2) above, an order under subsection (1) or (2) above is made in

respect of a registrant, the registration in the appropriate register of that individual or body shall, subject to subsection (4) below, be suspended (that is to say, shall not have effect) or made conditional, as the case may be, or in the case of an entry in the register relating to a specialty or proficiency, removed or made conditional, from the time when the order is made until the time when -

- (a) the direction takes effect in accordance with section 23H below; or
 - (b) an appeal against it under section 23G below is (otherwise than by the dismissal of the appeal) determined.
- (4) Where the Fitness to Practise Committee make an order under subsection (1) or (2) above, the registrar shall forthwith serve a notification of the order on the individual to whom, or body corporate to which, it applies.
- (5) If, when an order under subsection (1) or (2) above is made, the individual to whom, or body to which, it applies is neither present nor represented at the proceedings, subsection (3) above shall have effect as if, for the reference to the time when the order is made, there were substituted a reference to the time of service of a notification of the order as determined for the purposes of section 23A below.
- (6) Except as provided in subsection (7) below, while the registration of an individual or body corporate is suspended from the appropriate register by virtue of subsection (1) above, the individual or body shall be treated as not being registered in the appropriate register notwithstanding that his or its name still appears in any published copy of the appropriate register.
- (7) Notwithstanding subsection (6) above -
- (a) sections 13D to 13H above shall continue to apply to an individual or body corporate whose registration in the appropriate register is suspended; and
 - (b) an individual registrant shall be treated for the purposes of compliance with rules made under sections 11A and 11B above as if his registration were not suspended.
- (8) The relevant court may revoke any order imposed under subsection (1) or (2) above, and the decision of the court on any application under this subsection shall be final.
- (9) In subsection (8) above, "relevant court" means -
- (a) in the case of a person whose address in the appropriate register is, or if he were registered would be, in Scotland, means the Court of Session;

- (b) in the case of a person whose address in the appropriate register is, or if he were registered would be, in Northern Ireland, means the High Court of Justice in Northern Ireland; and
- (c) in the case of any other person, means the High Court of Justice in England and Wales.

Removal from a register on grounds of fraud or error

- 13J. (1) If it is proved to the satisfaction of the Fitness to Practise Committee that the entry of a person's name in a register has been fraudulently procured or incorrectly made, or that an entry relating to a specialty or proficiency has been fraudulently procured or incorrectly made in a register, the Committee may, if they think fit, direct that the person's name or, as the case may be, entry, be removed.
- (2) Where the Fitness to Practise Committee direct that a person's name or entry relating to a specialty or proficiency shall be removed from a register under this section, the registrar shall serve a notification of the direction on that person and of that person's right of appeal against it in accordance with section 23G below.

Restoration of names to a register

- 13K. (1) A person whose name has been erased from a register under section 13F above or who has had an entry relating to a specialty or proficiency removed under section 13F above (otherwise than for a specified period) may apply to the registrar for his name, or his entry relating to a specialty or proficiency, to be restored to the appropriate register.
- (2) No application for the restoration of a name, or an entry relating to a specialty or proficiency, to the appropriate register under this section shall be considered by the Registration Appeals Committee -
- (a) before the expiration of two years from the date of erasure or removal of an entry; or
 - (b) during any period of twelve months after any previous such application.
- (3) Subject to subsection (4), the registrar shall refer an application under this section to the Registration Appeals Committee.
- (4) An application is invalid if made earlier than -
- (a) twenty two months after the date of erasure or removal of an entry relating to a specialty or proficiency; or
 - (b) ten months after determination of a previous application for restoration.

- (5) An application for restoration under this section may be for -
- (a) restoration to the register from which the applicant's name was erased, or the entry relating to a specialty or proficiency was removed; or
 - (b) admission to a different register or, in the case of an entry relating to a specialty or proficiency, inclusion of the entry in a different register,

but in the case of an application for restoration of an entry relating to a specialty or proficiency, an application may only be made for restoration of the entry to a register in which the applicant's name is or will be included.

- (6) Subject to subsections (2) and (5) above, the Registration Appeals Committee may, if they think fit, on an application made under this section, direct the registrar to restore the person's name, or the entry relating to a specialty or proficiency, to the appropriate register.
- (7) Before determining whether to give a direction under this section, the Registration Appeals Committee shall require an applicant for restoration to provide such evidence as they consider appropriate as to his fitness to practise or fitness to undertake training or, as the case may be, the fitness of the body corporate to carry on the business of an optometrist or a dispensing optician or both; and they must not give such a direction if that evidence does not satisfy them.
- (8) If, during the same period of erasure, a second or subsequent application for the restoration to the appropriate register of a name or an entry relating to a specialty or proficiency, made by or on behalf of the individual or body corporate whose name has been erased or whose entry relating to a specialty or proficiency has been removed, is unsuccessful, the Registration Appeals Committee may direct that the individual's or body's right to make any further such applications shall be suspended indefinitely.
- (9) Where the Registration Appeals Committee give a direction under subsection (8) above, the registrar shall forthwith serve on the person in respect of whom it has been made a notification of the direction and of the person's right to appeal against it in accordance with section 23G below.
- (10) Any person in respect of whom a direction has been given under subsection (8) above may, after the expiration of two years from the date on which the direction was given, apply to the registrar for that direction to be reviewed by the Registration Appeals Committee and, thereafter, may make further applications for review; but no

such application may be entertained before the expiration of three years from the date of the most recent review decision.

Interim orders

- 13L. (1) Where the Fitness to Practise Committee are satisfied that it is necessary for the protection of members of the public or is otherwise in the public interest, or is in the interests of a registrant, for -
- (a) his registration to be suspended or to be made subject to conditions; or
 - (b) an entry relating to a specialty or proficiency to be removed temporarily or made subject to conditions,
- the Committee may make an order specified in subsection (2) below.
- (2) The orders specified in this subsection are that -
- (a) the registrant's registration in the appropriate register shall be suspended (that is to say, shall not have effect), or that an entry relating to a specialty or proficiency of his shall be removed, during such period not exceeding eighteen months as may be specified in the order (an "interim suspension order"); or
 - (b) his registration or entry relating to a specialty or proficiency shall be conditional on his compliance, during such period not exceeding eighteen months as may be specified in the order, with such requirements so specified as the Committee think fit to impose (an "order for interim conditional registration").
- (3) Subject to subsection (9) below, if the Fitness to Practise Committee make an order under subsection (1) above, the Committee -
- (a) must review that order within the period of six months beginning on the date on which the order was made, and must also, for so long as the order remains in force, further review it -
 - (i) before the end of the period of six months beginning on the date of the immediately preceding decision, or
 - (ii) if after the end of the period of three months beginning on the date of the decision of the immediately preceding review, the person concerned requests an earlier review, as soon as practicable after that request; and

- (b) may review it if new evidence relevant to the order becomes available after the order is made.
- (4) Where an interim suspension order or an order for interim conditional registration has been made in relation to a person under any provision of this section (including this subsection), the Fitness to Practise Committee may -
 - (a) revoke the order or revoke the condition imposed by the order;
 - (b) vary any condition imposed by the order; or
 - (c) if satisfied that to do so is necessary for the protection of members of the public or is otherwise in the public interest, or is in the interests of that person, replace -
 - (i) an order for interim conditional registration with an interim suspension order having effect for the remainder of the term of the former; or
 - (ii) an interim suspension order with an order for interim conditional registration having effect for the remainder of the term of the former.
- (5) If an order is made under any provision of this section, the registrar shall forthwith serve a notification of the order on the person.
- (6) The Council may apply to the relevant court for an order made by the Fitness to Practise Committee under subsection (1) or (4) above to be extended, and may apply again for further extensions.
- (7) On such an application the relevant court may extend (or further extend) for up to twelve months the period for which the order has effect.
- (8) Any references in this section to an interim suspension order, or to an order for interim conditional registration, include a reference to such an order as extended under subsection (7) above.
- (9) For the purposes of subsection (3) above the first review after the relevant court's extension of an order made by the Fitness to Practise Committee, or after the Fitness to Practise Committee makes a replacement order under subsection (4)(c) above, shall take place -
 - (a) if the order (or the order which has been replaced) had not been reviewed at all under subsection (3) above, within the period of six months beginning on the date on which the relevant court ordered the extension or on which a replacement order under subsection (4)(c) above was made; and

- (b) if it had been reviewed under the provision, within the period of three months beginning on that date.
- (10) Where an order has effect under any provision of this section, the relevant court may -
- (a) in the case of an interim suspension order, terminate the suspension, or temporary period of removal in the case of an entry relating to a specialty or proficiency;
 - (b) in the case of an order for interim conditional registration, revoke or vary any condition imposed by the order; or
 - (c) in either case, substitute for the period specified in the order (or in the order extending it) some other period which could have been specified in the order when the Order was made,
- and the decision of the relevant court under any application under this subsection shall be final.
- (11) If an order is made in relation to any person under any provision of this section, the Fitness to Practise Committee shall (if the order remains in effect at the time of the hearing of the allegation against the person before the Committee) revoke that order immediately after it has determined the allegation in accordance with section 13F above and rules made under section 23C below.
- (12) The revocation of an interim suspension order or an order for interim conditional registration under subsection (11) shall take effect forthwith.

Provisions supplementary to section 13L

- 13M. (1) While a registrant's registration in the appropriate register is suspended by virtue of an interim suspension order under this section -
- (a) the registrant shall be treated, except as provided in subsection (2) below, as not being registered in the appropriate register, and the registrar shall make a note in the appropriate register of that fact and of the period for which the registration is to be suspended, but
 - (b) sections 13D to 13H above and this section shall continue to apply to the individual or body whose registration is suspended.
- (2) An individual registrant shall be treated for the purposes of compliance with rules made under sections 11A and 11B above as if his registration in the appropriate register was not suspended.
- (3) The registrar shall erase any note made under subsection (1)(a) above when the direction for suspension ceases to have effect.

- (4) In section 13L above “the relevant court” means -
- (a) in the case of a person whose address in the appropriate register is, or if he were registered would be, in Scotland, means the Court of Session;
 - (b) in the case of a person whose address in the appropriate register is, or if he were registered would be, in Northern Ireland, means the High Court of Justice in Northern Ireland;
and
 - (c) in the case of any other person, means the High Court of Justice in England and Wales.