

## SCHEDULES

### SCHEDULE 5

#### Opticians

### 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 [<sup>F1</sup>IP completion 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.

##### Textual Amendments

- F1** Words in Sch. 5 para. 25 substituted (31.12.2020 immediately before IP completion day) by [The European Qualifications \(Health and Social Care Professions\) \(EFTA States\) \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1394\)](#), regs. 1(2), **13(2)**

##### Commencement Information

- I1** Sch. 5 para. 25 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1](#), [Sch. 5 para. 1\(1\)](#)), see [reg. 1\(2\)](#)

##### [<sup>F2</sup>Swiss opticians and optometrists qualifying outside the United Kingdom: saving of old law

**25A.**—(1) Where a registration application is received from a Swiss optician before the end of the Swiss recognition period, any provision made by or under the 1989 Act continues to apply in relation to the application (including any appeal arising from it) without the amendments that Part 1 of this Schedule makes to the establishment provisions (but subject to the modifications to the 1989 Act and the General Optical Council (Registration) Rules 2005 specified in sub-paragraphs (3) and (4)).

(2) The reference in sub-paragraph (1) to “the establishment provisions” is a reference to the provisions of the following enactments—

- (a) the 1989 Act (other than sections 8B to 8D, 10(1)(c) and (1ZA), 10A(11), 11A(5) to (7), 11B(1A) to (1C) and 29(2A) and paragraph 1A(1)(b)(ii) of Schedule 1);
- (b) the General Optical Council Testing of Sight by Persons Training as Ophthalmic Opticians Rules 1993;

**Changes to legislation:** There are currently no known outstanding effects for the The European Qualifications (Health and Social Care Professions) (Amendment etc.) (EU Exit) Regulations 2019, PART 2. (See end of Document for details)

- (c) the General Optical Council (Registration) Rules 2005 (other than rules 2(1A), 21A and 21B).
- (3) The modifications to the 1989 Act mentioned in sub-paragraph (1) are—
- (a) section 8(1A)(a) is to be read as if for “an exempt person” there were substituted “a Swiss optician”;
- (b) section 36 is to be read as if, in the definition of “General Systems Regulations”, at the end, there were inserted “as (and only to the extent that) they have effect, after IP completion day, in relation to an entitlement which arises in relation to a relevant qualification (within the meaning given in regulation 1A of the European Qualifications (Health and Social Care Professions) (Amendment etc.) (EU Exit) Regulations 2019)”.
- (4) The modifications to the General Optical Council (Registration) Rules 2005 mentioned in sub-paragraph (1) are—
- (a) rule 12(2)(b)(ii) is to be read as if for “a relevant European State, other than the United Kingdom” there were substituted “a competent authority in Switzerland, pursuant to Article 2(2) of the Directive”;
- (b) rule 13(2)(a) is to be read as if for “a relevant European State other than the United Kingdom” there were substituted “a competent authority in Switzerland pursuant to Article 2(2) of the Directive”.
- (5) In this paragraph—
- “registration application” means an application for registration in the register of optometrists or the register of dispensing opticians kept under section 7 of the 1989 Act;
- “Swiss optician” means a qualifying applicant who had not, before IP completion day, made a registration application in respect of registration in the register in which the applicant wishes to be registered on or after IP completion day.]

#### Textual Amendments

- F2** Sch. 5 para. 25A inserted (31.12.2020 immediately before IP completion day) by [The European Qualifications \(Health and Social Care Professions\) \(EFTA States\) \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1394\)](#), regs. 1(2), **13(3)**

#### Commencement Information

- I2** Sch. 5 para. 25A in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1](#), [Sch. 5 para. 1\(1\)](#)), see [reg. 1\(2\)](#)

### Visiting opticians: saving of old law for up to [<sup>F3</sup>five years]

#### 26.—(1) Where—

- (a) a person had, immediately before [<sup>F4</sup>IP completion 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 [<sup>F5</sup>IP completion 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

[<sup>F6</sup>(but subject, in the case of a relevant applicant, to the modifications to the 1989 Act specified in sub-paragraph (4))].

[<sup>F7</sup>(1A) But a relevant applicant in relation to whom sub-paragraph (1) applies may not provide services as an optometrist or a dispensing optician (as the case may be) for a period exceeding 90 days in total in any calendar year.]

(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.

[<sup>F8</sup>(2A) Sub-paragraph (2) does not apply in the case of a Swiss visiting optician.

(2B) But a Swiss visiting optician’s entitlement does not continue (or further continue) under sections 8C or 8D of the 1989 Act on or after the end of the visiting practitioner transitional period.

(2C) In this paragraph, “Swiss visiting optician” means a visiting optometrist or dispensing optician who—

- (a) is a national of the United Kingdom or is a Swiss national, or
- (b) is a third country national, who was, immediately before IP completion day, by virtue of an enforceable EU right entitled to be treated, for the purposes of access to and pursuit of the profession of optometrist or dispensing optician, no less favourably than a national of the United Kingdom or Switzerland.]

(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.

<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

**Changes to legislation:** There are currently no known outstanding effects for the The European Qualifications (Health and Social Care Professions) (Amendment etc.) (EU Exit) Regulations 2019, PART 2. (See end of Document for details)

National Health Service (General Ophthalmic regulation 2(1) Services) (Scotland) Regulations 2006

National Health Service (Pharmaceutical regulation 2(1) Services) (Scotland) Regulations 2009

Patient Rights (Treatment Time Guarantee) regulation 1(2) (Scotland) Regulations 2012

Human Medicines Regulations 2012 regulation 8(1)

[<sup>F9</sup>(4) The modifications to the 1989 Act mentioned in sub-paragraph (1) are—

(a) section 8C is to be read as if in subsection (1)—

(i) for “an exempt person” there were substituted “a relevant applicant (within the meaning given in regulation 1A of the European Qualifications (Health and Social Care Professions) (Amendment etc.) (EU Exit) Regulations 2019”;

(ii) for “a relevant European State other than the United Kingdom” there were substituted “Switzerland”;

(b) section 8D is to be read as if in subsection (1)—

(i) for “an exempt person” there were substituted “a relevant applicant (within the meaning given in regulation 1A of the European Qualifications (Health and Social Care Professions) (Amendment etc.) (EU Exit) Regulations 2019”;

(ii) for “a relevant European State other than the United Kingdom” there were substituted “Switzerland”;

(c) section 11A is to be read as if in subsection (7), for the words from “the relevant” to the end there were substituted “Switzerland”;

(d) section 11B is to be read as if in subsection (1C), for the words from “the relevant” to the end there were substituted “Switzerland”.]

### Textual Amendments

**F3** Words in Sch. 5 para. 26 heading substituted (31.12.2020 immediately before IP completion day) by [The European Qualifications \(Health and Social Care Professions\) \(EFTA States\) \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1394\), regs. 1\(2\), 13\(4\)\(a\)](#)

**F4** Words in Sch. 5 para. 26(1)(a) substituted (31.12.2020 immediately before IP completion day) by [The European Qualifications \(Health and Social Care Professions\) \(EFTA States\) \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1394\), regs. 1\(2\), 13\(4\)\(b\)\(i\)](#)

**F5** Words in Sch. 5 para. 26(1)(b) substituted (31.12.2020 immediately before IP completion day) by [The European Qualifications \(Health and Social Care Professions\) \(EFTA States\) \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1394\), regs. 1\(2\), 13\(4\)\(b\)\(i\)](#)

**F6** Words in Sch. 5 para. 26(1) inserted (31.12.2020 immediately before IP completion day) by [The European Qualifications \(Health and Social Care Professions\) \(EFTA States\) \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1394\), regs. 1\(2\), 13\(4\)\(b\)\(ii\)](#)

**F7** Sch. 5 para. 26(1A) inserted (31.12.2020 immediately before IP completion day) by [The European Qualifications \(Health and Social Care Professions\) \(EFTA States\) \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1394\), regs. 1\(2\), 13\(4\)\(c\)](#)

**F8** Sch. 5 para. 26(2A)-(2C) inserted (31.12.2020 immediately before IP completion day) by [The European Qualifications \(Health and Social Care Professions\) \(EFTA States\) \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1394\), regs. 1\(2\), 13\(4\)\(d\)](#)

**Changes to legislation:** There are currently no known outstanding effects for the The European Qualifications (Health and Social Care Professions) (Amendment etc.) (EU Exit) Regulations 2019, PART 2. (See end of Document for details)

**F9** Sch. 5 para. 26(4) inserted (31.12.2020 immediately before IP completion day) by The European Qualifications (Health and Social Care Professions) (EFTA States) (Amendment etc.) (EU Exit) Regulations 2020 (S.I. 2020/1394), regs. 1(2), **13(4)(e)**

#### Commencement Information

**I3** Sch. 5 para. 26 in force at 31.12.2020 on IP completion day (in accordance with 2020 c. 1, **Sch. 5 para. 1(1)**), see reg. 1(2)

### IMI alerts

**27.**—(1) Where an alert has been sent by the General Optical Council before [F10IP completion 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).

[F11(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 the words “that the alert be withdrawn or amended” were omitted.]

#### Textual Amendments

**F10** Words in Sch. 5 para. 27(1) substituted (31.12.2020 immediately before IP completion day) by The European Qualifications (Health and Social Care Professions) (EFTA States) (Amendment etc.) (EU Exit) Regulations 2020 (S.I. 2020/1394), regs. 1(2), **13(5)**

**F11** Sch. 5 para. 27(2) substituted (24.2.2022) by The European Qualifications (Health and Social Care Professions) (Amendment etc.) (EU Exit) Regulations 2022 (S.I. 2022/82), regs. 1(2), **3(6)**

#### Commencement Information

**I4** Sch. 5 para. 27 in force at 31.12.2020 on IP completion day (in accordance with 2020 c. 1, **Sch. 5 para. 1(1)**), see reg. 1(2)

### 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—

““enforceable EU right” means a right recognised and available in domestic law, immediately before [F12IP completion 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 [F13IP completion day], was a national of a relevant European State,

(b) a person who, immediately before [F13IP completion 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 [F13IP completion day], was not a national of a relevant European State, but at that time was, by virtue of

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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” [<sup>F14</sup>(other than in that definition as it is saved by paragraph 25A)], at the end there were inserted—

“(a) in relation to anything done before [<sup>F15</sup>IP completion day], as they had effect at that time;

(b) otherwise, as (and only to the extent that) they have effect, on or after [<sup>F15</sup>IP completion day], in relation to an entitlement which arose before [<sup>F15</sup>IP completion day] or arises as a result of something done before [<sup>F15</sup>IP completion day];”;

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

#### Textual Amendments

**F12** Words in Sch. 5 para. 28(a)(i) substituted (31.12.2020 immediately before IP completion day) by [The European Qualifications \(Health and Social Care Professions\) \(EFTA States\) \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1394\)](#), regs. 1(2), **13(6)(a)**

**F13** Words in Sch. 5 para. 28(a)(ii) substituted (31.12.2020 immediately before IP completion day) by [The European Qualifications \(Health and Social Care Professions\) \(EFTA States\) \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1394\)](#), regs. 1(2), **13(6)(a)**

**F14** Words in Sch. 5 para. 28(a)(iii) inserted (31.12.2020 immediately before IP completion day) by [The European Qualifications \(Health and Social Care Professions\) \(EFTA States\) \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1394\)](#), regs. 1(2), **13(6)(b)**

**F15** Words in Sch. 5 para. 28(a)(iii) substituted (31.12.2020 immediately before IP completion day) by [The European Qualifications \(Health and Social Care Professions\) \(EFTA States\) \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1394\)](#), regs. 1(2), **13(6)(a)**

#### Commencement Information

**I5** Sch. 5 para. 28 in force at 31.12.2020 on IP completion day (in accordance with 2020 c. 1, [Sch. 5 para. 1\(1\)](#)), see [reg. 1\(2\)](#)

**Changes to legislation:**

There are currently no known outstanding effects for the The European Qualifications (Health and Social Care Professions) (Amendment etc.) (EU Exit) Regulations 2019, PART 2.