



# Opticians Act 1989

## 1989 CHAPTER 44

### PART V

#### MISCELLANEOUS AND SUPPLEMENTARY

##### *Miscellaneous*

### **31 Miscellaneous matters with respect to which rules may be made**

- (1) Subject to subsection (2) below, the Council may make rules prohibiting or regulating—
  - (a) the use by registered opticians and enrolled bodies corporate of any means of giving publicity, whether by advertisements or not, to their practice or business of ophthalmic or dispensing opticians;
  - (b) the carrying on of practice or business by registered opticians and enrolled bodies corporate under names other than those under which they are registered or enrolled;
  - (c) the administration of drugs by registered opticians, enrolled bodies corporate and their employees in the course of their practice or business of ophthalmic or dispensing opticians;
  - (d) the practice of orthoptics by registered opticians, enrolled bodies corporate and their employees;
  - (e) the prescription, supply and fitting by registered opticians, enrolled bodies corporate and their employees of contact lenses.
- (2) The power of the Council to make rules by virtue of subsection (1)(a) above shall not include power to prohibit the display, for the purposes of the practice or business of a registered optician or enrolled body corporate, of optical appliances or parts of optical appliances on premises where the fitting and supply of optical appliances is being carried on as part of that business or practice or in any building comprising those premises.

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- (3) The Council may make rules specifying requirements which registered opticians, enrolled bodies corporate or employees of registered opticians or enrolled bodies corporate must meet if they are to prescribe, fit or supply contact lenses.
- (4) The power conferred by subsection (3) above is a power—
  - (a) in relation to registered opticians or employees of registered opticians or of enrolled bodies corporate, to specify qualifications which they must have; and
  - (b) in relation to enrolled bodies corporate, to specify conditions which they must satisfy.
- (5) The Council shall make and submit to the Privy Council rules providing that where it appears to a registered optician that a person consulting him is suffering from an injury or disease of the eye, the optician shall, except in an emergency or where that person is consulting him for the purpose of being given treatment in accordance with rules under subsection (1)(d) above or in such other cases as may be prescribed, being cases in which it is, owing to special circumstances, impracticable or inexpedient to do so, take the prescribed steps to refer that person to a registered medical practitioner for advice and treatment.
- (6) Rules under this section may make different provision for different classes of cases.

### **32 Expenses and accounts of the Council**

- (1) The Council may, after paying their expenses, allocate any money, other than a sum paid under a penalty order or recovered under section 16(6) above, received by them whether by way of fees or otherwise to purposes connected with optical education and research or any other public purposes connected with the profession of ophthalmic opticians or dispensing opticians in such manner as they may think fit.
- (2) The Council shall keep accounts of all sums received or paid by them and the accounts for each financial year of the Council shall be audited by auditors to be appointed by them and shall as soon as may be after they have been audited be published and laid before Parliament.
- (3) No person shall be qualified to be appointed auditor under subsection (2) above unless he is a member of one or more of the following bodies—
  - the Institute of Chartered Accountants in England and Wales;
  - the Institute of Chartered Accountants of Scotland;
  - the Chartered Association of Certified Accountants;
  - the Institute of Chartered Accountants in Ireland;any other body of accountants established in the United Kingdom for the time being recognised for the purposes of section 389(1)(a) of the Companies Act 1985 by the Secretary of State.

### **33 Default powers of Privy Council**

- (1) If at any time it appears to the Privy Council that the Council have failed, but ought, to discharge a function of theirs to which this section applies, the Privy Council may notify their opinion to the Council and may direct them to discharge such of those functions, and in such manner and within such time or times, as may be specified in the direction.

- (2) If the Council fail to comply with any directions of the Privy Council under subsection (1) above, the Privy Council may themselves discharge any function of the Council to which this section applies.
- (3) This section applies to all functions of the Council under this Act except—
  - (a) their functions under sections 1, 8, 12, 13, 22 and 32(1) above; and
  - (b) their power to make rules under subsection (3) of section 21 above as respects such proceedings as are mentioned in subsection (4) of that section.

### **34 Subordinate legislation procedure**

- (1) Rules made by the Council under this Act and a scheme submitted by them under paragraph 3 of Schedule 1 to this Act shall not come into force until approved by order of the Privy Council.
- (2) The Privy Council may approve rules under section 21(3) or 31(1)(a) above and any such scheme either as submitted to them or subject to such modifications as appear to them requisite.
- (3) Where the Privy Council propose to approve any such rules or scheme subject to modifications, they shall notify to the Council the modifications they propose to make and consider any observations of the Council on them.
- (4) The Privy Council, after consulting the Council, may by order vary or revoke any rules made under section 31(1)(a) above and previously approved by them (whether the approval was before or after the commencement of this subsection).
- (5) The powers—
  - (a) of the Privy Council to make orders under this Act;
  - (b) of the Lord Chancellor to make rules under section 22 above; and
  - (c) of the Secretary of State to make regulations under section 26 above,shall be exercisable by statutory instrument.
- (6) Subject to subsection (7) below, a statutory instrument containing—
  - (a) an order of the Privy Council to which this subsection applies; or
  - (b) regulations made by the Secretary of State under section 26 above,shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (7) Subsection (6) above applies to the following orders of the Privy Council—
  - (a) an order approving rules under section 4, 5 or 31 above other than an order such as is mentioned in subsection (9)(a) below; and
  - (b) an order approving a scheme under paragraph 3 of Schedule 1 to this Act; and
  - (c) an order under section 16(3) or 27 above or under paragraph 13 of Schedule 1 to this Act.
- (8) No order to which this subsection applies shall be made unless a draft of the order has been laid before and approved by resolution of each House of Parliament.
- (9) Subsection (8) above applies to an order—
  - (a) which is made by virtue of subsection (2) above and approves rules under section 31(1)(a) above subject to modifications; or

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(b) which is made by virtue of subsection (4) above, unless it is contained in a statutory instrument that states that the Council have indicated their consent to the terms of the order either in the course of consultations under this section or in observations under subsection (3) above.

- (10) The power of the Department of Health and Social Services for Northern Ireland to make regulations under section 26 above shall be exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979; and any such regulations shall be subject to negative resolution within the meaning of the Interpretation Act (Northern Ireland) 1954.

### **35 Privy Council quorum and documents**

- (1) For the purpose of exercising any powers conferred by this Act on the Privy Council (other than the power of hearing appeals against disciplinary orders or directions under section 19 above) the quorum of the Privy Council shall be two.
- (2) Any document purporting to be—
- (a) an instrument of appointment or approval made by the Privy Council under this Act or any other instrument so made; and
  - (b) signed by the Clerk of the Privy Council or by any other person authorised by the Privy Council in that behalf,

shall be evidence of the fact that the instrument was so made and of the terms of the instrument.

### *Supplementary*

### **36 Interpretation**

- (1) In this Act, unless the context otherwise requires—
- “approved training institution” and “approved qualification” have the meanings respectively assigned to them by section 12 above;
  - “body corporate” includes a partnership in Scotland and, in relation to such a partnership, a reference to a director or other officer of a body corporate is a reference to a partner;
  - “the Council” means the General Optical Council;
  - “disciplinary case” has the meaning assigned to it by section 4 above;
  - “disciplinary order” has the meaning assigned to it by section 14 above;
  - “dispensing optician” means a person engaged or proposing to engage in the fitting and supply of optical appliances;
  - “enrolled” means enrolled in either of the lists and “enrolment” shall be construed accordingly;
  - “erasure order” has the meaning assigned to it by section 14 above;
  - “functions” includes powers and duties;
  - “health service ophthalmic lists” means the lists of ophthalmic opticians or dispensing opticians undertaking to provide general ophthalmic services or supplementary eye services which on 1st January 1959 were kept by virtue of the following—
- (a) section 41 of the National Health Service Act 1946 ;
  - (b) section 42 of the National Health Service (Scotland) Act 1947; and

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(c) section 21 of the Health Services Act (Northern Ireland) 1948;

“list” means the list of bodies corporate carrying on business as ophthalmic opticians or the list of bodies corporate carrying on business as dispensing opticians;

“medical authority” means one of the universities and other bodies who choose appointed members of the General Medical Council;

“ophthalmic optician” means a person engaged or proposing to engage in the testing of sight (otherwise than as a registered medical practitioner or a person recognised by a medical authority as a medical student), whether or not he is also engaged or proposing to engage in the fitting and supply of optical appliances;

“optical appliance” means an appliance designed to correct, remedy or relieve a defect of sight;

“penalty order” has the meaning assigned to it by section 14 above;

“prescribed” means prescribed by rules under this Act;

“register” means either of the registers of ophthalmic opticians or the register of dispensing opticians and, except where used in relation to medical practitioners, “registered” and “registration” have corresponding meanings;

“registered dispensing optician” means a person who is registered in the register of dispensing opticians;

“registered ophthalmic optician” means a person who is registered in either of the registers of ophthalmic opticians;

“registered optician” means a person who is registered in any of the registers;

“responsible officer” has the meaning assigned to it by section 17(13) above;

“suspension order” has the meaning assigned to it by section 14 above.

- (2) References in this Act to testing sight are references to testing sight with the object of determining whether there is any and, if so, what defect of sight and of correcting, remedying or relieving any such defect of an anatomical or physiological nature by means of an optical appliance prescribed on the basis of the determination.

### **37 Consequential amendments and repeals**

- (1) In the definition of “ophthalmic optician” in section 128(1) of the National Health Service Act 1977 and section 108(1) of the National Health Service (Scotland) Act 1978—
- (a) for “section 2 of the Opticians Act 1958” there shall be substituted “section 7 of the Opticians Act 1989”; and
  - (b) for “section 4” there shall be substituted “section 9”.
- (2) In paragraph 13(1)(b) of Schedule 14 to the National Health Service Act 1977, for “to” there shall be substituted, “, 82 and”.
- (3) In Schedule 6 to the Value Added Tax Act 1983, in paragraph (b) of Item 1 of Group 7—
- (a) for “Opticians Act 1958” there shall be substituted “Opticians Act 1989”; and
  - (b) for “section 4” there shall be substituted “section 9”.

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- (4) The enactments mentioned in Schedule 2 to this Act are repealed to the extent specified in the third column of that Schedule.
- (5) Paragraphs 3 to 5 of Schedule 3 to the Criminal Justice (Northern Ireland) Order 1986 are revoked.

**38 Commencement**

This Act shall come into force at the end of the period of three months beginning with the day on which it is passed.

**39 Short title and extent**

- (1) This Act may be cited as the Opticians Act 1989.
- (2) This Act extends to Northern Ireland.