



# Opticians Act 1989

## 1989 CHAPTER 44

An Act to consolidate certain enactments relating to opticians with amendments to give effect to recommendations of the Law Commission and the Scottish Law Commission. [16th November 1989]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### PART I

#### THE GENERAL OPTICAL COUNCIL

##### *The Council*

#### **1 Constitution and functions of the Council**

- (1) There shall continue to be a body corporate known as the General Optical Council (in this Act referred to as “the Council”).
- (2) The Council shall have the general function of promoting high standards of professional education and professional conduct among opticians and the additional functions assigned to the Council by or under this Act.
- (3) There shall continue to be a registrar of the Council.
- (4) The Council shall be constituted in accordance with Schedule 1 to this Act and the supplementary provisions relating to the Council and the registrar contained in that Schedule shall have effect.

### *The Council's Committees*

#### **2 The Education Committee**

- (1) There shall continue to be a committee of the Council known as the Education Committee, to whom the Council shall refer for advice on all matters relating to optical training and examinations.
- (2) The Education Committee shall continue to be constituted in accordance with rules made by the Council, but the rules shall secure that the Committee includes—
  - (a) one person appearing to the Council to represent persons training student ophthalmic opticians;
  - (b) one person appearing to the Council to represent persons training student dispensing opticians; and
  - (c) one person nominated by the Secretary of State,being in each case persons who are not members of the Council.

#### **3 The Companies Committee**

- (1) There shall continue to be a committee of the Council known as the Companies Committee, to whom the Council shall refer for advice on all matters relating to bodies corporate carrying on business as ophthalmic or dispensing opticians, other than matters required by this Act to be referred to the Investigating Committee or the Disciplinary Committee.
- (2) The Companies Committee shall continue to be constituted in accordance with rules made by the Council, but the rules shall secure that the Committee includes—
  - (a) at least one person appearing to the Council to represent the interests of bodies corporate carrying on business as ophthalmic opticians; and
  - (b) at least one person appearing to them to represent the interests of bodies corporate carrying on business as dispensing opticians,being in each case persons who are not members of the Council.
- (3) Before making rules under this section the Council shall consult organisations appearing to the Council to represent the interests of a substantial number of the bodies corporate carrying on business as ophthalmic opticians and as dispensing opticians respectively.

#### **4 The Investigating Committee**

- (1) There shall continue to be a committee of the Council known as the Investigating Committee, for the preliminary investigation of cases in which it is alleged that an individual or body corporate is liable to have made against him or it a disciplinary order or a direction under section 19 below.
- (2) Any such case is hereafter in this Act referred to as a “disciplinary case”.
- (3) It shall be the function of the Investigating Committee to decide whether a disciplinary case ought to be referred to the Disciplinary Committee to be dealt with by them in accordance with the following provisions of this Act.
- (4) The Council shall make rules as to the constitution of the Investigating Committee, and any such rules shall include provision requiring the Investigating Committee, on

the occasion of a disciplinary case involving an allegation against a body corporate or against a director or employee of a body corporate, to co-opt as a member of the Committee for that occasion a person selected by them from whichever of the following panels is appropriate—

- (a) a panel of persons appointed by the Council as capable of representing the interests of bodies corporate carrying on business as ophthalmic opticians; and
  - (b) a panel of persons appointed by the Council as capable of representing the interests of bodies corporate carrying on business as dispensing opticians,
- being, in either case, persons appointed after consultation with organisations appearing to the Council to represent the interests of a substantial number of the bodies concerned.

## **5 The Disciplinary Committee**

- (1) There shall continue to be a committee of the Council known as the Disciplinary Committee, for the consideration and determination—
  - (a) of disciplinary cases referred to them under section 4 above; and
  - (b) of any other cases of which they have cognizance under the following provisions of this Act.
- (2) The Council shall make rules—
  - (a) as to the constitution of the Disciplinary Committee;
  - (b) as to the times and places of the meetings of the Committee; and
  - (c) as to the Committee's quorum; and the mode of summoning members of the Committee.
- (3) Rules under this section shall secure that a person, other than the Chairman of the Council, who has acted in relation to any disciplinary case as a member of the Investigating Committee does not act in relation to that case as a member of the Disciplinary Committee.

## **6 General power to appoint committees**

- (1) The Council may set up a committee for any purpose (other than a purpose for which this Act requires that there shall be a committee of the Council) and may delegate to a committee set up under this section, with or without restrictions or conditions, as they think fit, any functions exercisable by them except the following—
  - (a) the power to make rules under this Act;
  - (b) any functions expressly conferred by this Act on some other committee; and
  - (c) subject to any express provision for delegation in the rules, any functions expressly conferred on the Council by rules under this Act.
- (2) The number of members of a committee set up under this section and their term of office shall be fixed by the Council.
- (3) A committee set up under this section may include persons who are not members of the Council, but at least two-thirds of the members of every such committee shall be members of the Council.
- (4) Every member of a committee set up under this section who at the time of his appointment was a member of the Council shall, upon ceasing to be a member of the Council, also cease to be a member of the committee.

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- (5) For the purposes of this section a member of the Council shall not be deemed to have ceased by reason of retirement to be a member of it if he has again been nominated or elected a member of it not later than the date of his retirement.

## PART II

### REGISTRATION AND TRAINING OF OPTICIANS

#### *The registers and lists*

#### **7 Registers of opticians**

The Council shall continue to maintain—

- (a) two registers of ophthalmic opticians, one for the registration of persons engaged or proposing to engage both in the testing of sight and in the fitting and supply of optical appliances and the other for the registration of persons engaged or proposing to engage in the testing of sight, but not in the fitting and supply of optical appliances; and
- (b) a register of dispensing opticians,

each containing the names, addresses and qualifications, and such other particulars as may be prescribed, of all persons who are entitled under the provisions of this Act to be registered in it and who apply in the prescribed manner to be so registered.

#### **8 Qualifications for being registered**

(1) Any person who satisfies the Council—

- (a) that he holds a qualification as an ophthalmic optician or dispensing optician for the time being approved by them under section 12 below, being a qualification granted to him after receiving instruction from one or more of the institutions so approved; and
- (b) that he has had adequate practical experience in the work of an ophthalmic or dispensing optician,

shall be entitled to be registered in the appropriate register.

(2) Any person who satisfies the Council—

- (a) that he holds a qualification as an ophthalmic optician or dispensing optician for the time being recognised by them for the purposes of this subsection, being a qualification granted outside the United Kingdom; and
- (b) that he has had adequate practical experience in the work of an ophthalmic or dispensing optician; and
- (c) that he is of good character,

shall be entitled to be registered in the appropriate register.

(3) Any person who on 1st January 1959 was entitled to have his name included in one of the health service ophthalmic lists, and whose name had not at that time been removed from one of those lists by direction of a health service tribunal, shall be entitled to be registered in the appropriate register.

- (4) Any person who on an application made not later than 1st June 1961 satisfied the Council—
- (a) that on the date of his application he held a qualification as an ophthalmic optician or dispensing optician recognised by them for the purposes of this subsection; and
  - (b) that he had had adequate practical experience in the work of an ophthalmic or dispensing optician; and
  - (c) that he was of good character,
- shall be entitled to be registered in the appropriate register.
- (5) Any person who on an application made after 1st June 1961 but before this Act came into force satisfied the Council—
- (a) that on 1st June 1961 he held a qualification such as is mentioned in paragraph (a) of subsection (4) above; and
  - (b) that he had had adequate practical experience in the work of an ophthalmic or dispensing optician; and
  - (c) that he was of good character,
- shall be entitled to be registered in the appropriate register.
- (6) Any person who on an application made after this Act comes into force satisfies the Council—
- (a) that on 1st June 1961 he held a qualification such as is mentioned in paragraph (a) of subsection (4) above; and
  - (b) that he has had adequate practical experience in the work of an ophthalmic or dispensing optician; and
  - (c) that he is of good character,
- shall be entitled to be registered in the appropriate register.
- (7) In the case of a person whose qualifications (including experience) are appropriate for an ophthalmic optician, both registers of ophthalmic opticians and the register of dispensing opticians are appropriate registers for the purposes of this section and, in the case of a person whose qualifications (including experience) are only appropriate for a dispensing optician, the register of dispensing opticians is appropriate for those purposes.
- (8) A person shall not be registered at the same time in more than one register.
- (9) Where the Council have refused to grant an application for registration under subsection (4), (5) or (6) above, the Privy Council, on representations being made to them, may if they think fit, after considering the representations and after communicating with the Council, order the Council to grant the application.

## **9 List of bodies corporate carrying on business as opticians**

- (1) The Council shall continue to maintain—
- (a) a list of bodies corporate carrying on business as ophthalmic opticians; and
  - (b) a list of bodies corporate carrying on business as dispensing opticians,
- each containing the names, principal places of business and such other particulars as may be prescribed of the bodies which are entitled under the following provisions of this Act to be enrolled in it and apply in the prescribed manner to be so enrolled.

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- (2) Subject to subsection (3) below, a body corporate shall be entitled to be enrolled in the appropriate list—
- (a) if it satisfies the Council that a majority of its directors are registered opticians or, in the case of a body corporate having only one director, that he is a registered optician;
  - (b) if on 20th November 1957 its name or a name under which it carried on business was included in one of the health service ophthalmic lists or if it subsequently came into existence on the reconstruction of a body corporate entitled to be enrolled by virtue of this paragraph;
  - (c) if it satisfies the Council—
    - (i) that the greater part of its business consists of activities other than the testing of sight and the fitting and supply of optical appliances; and
    - (ii) that so much of its business as consists of the testing of sight is carried on under the management of a registered ophthalmic optician; and
    - (iii) that so much of its business as consists of the fitting and supply of optical appliances is carried on under the management of a registered optician; or
  - (d) if—
    - (i) it is a society registered under the Industrial and Provident Societies Act 1965 or the Industrial and Provident Societies Act (Northern Ireland) 1969; and
    - (ii) it satisfies the Council that so much of its business as consists of the testing of sight, or of the fitting and supply of optical appliances, as the case may be, is carried on under such management as is mentioned in paragraph (c)(ii) and (iii) above.
- (3) A body corporate shall not be entitled to be enrolled by virtue of subsection (2)(b) above if its name, or the name of any body on whose reconstruction it came into existence, or a name under which it or any such body carried on business has at any time—
- (a) been removed from one of the health service ophthalmic lists by direction of a health service tribunal; or
  - (b) been erased from the list maintained under subsection (1) above in consequence of an erasure order.

## **10 General provisions as to registers and lists**

- (1) The Council may make rules with respect to the form and keeping of the registers and lists and the making of entries and alterations in them and, in particular—
- (a) regulating the making of applications for registration or enrolment or for transfer from one register or list to another, and providing for the evidence to be produced in support of any such application;
  - (b) providing for the notification to the Council of any change in the particulars entitling a person to be registered or a body corporate to be enrolled;
  - (c) prescribing a fee to be charged on the entry of a name in, or the restoration of a name to, the register or list;
  - (d) prescribing a fee to be charged in respect of the retention in the register or list of any name in any year subsequent to the year in which the name was first entered in the register or list;

- (e) providing for the entry in the register of qualifications (whether or not approved under section 12(2) below) possessed by persons whose names are registered in it and for the removal of such qualifications from the register, and prescribing a fee to be charged in respect of the entry;
  - (f) authorising the registrar—
    - (i) to refuse to enter a name in, or restore it to, the register or list until a fee prescribed for the entry or restoration has been paid; and
    - (ii) to erase from the register or list the name of a person who or body corporate which, after the prescribed notices and warnings, fails to pay the fee prescribed in respect of the retention of that name in the register or list;
  - (g) prescribing anything required or authorised to be prescribed by the provisions of this Act relating to the registers or lists.
- (2) On registering the death of an ophthalmic or dispensing optician a registrar shall send forthwith by post to the registrar of the Council a copy certified under his hand of the entry relating to the death in the register of deaths; and the cost of the certificate and of sending it by post shall be payable by the registrar of the Council to the registrar of births and deaths from whom it is received.
- (3) Rules under this section which provide for the erasure of a name from the register or list on failure to pay a fee shall provide for its restoration to the register or list on the making of the prescribed application in that behalf and on payment of that fee and any additional fee prescribed in respect of the restoration.
- (4) Rules under this section prescribing fees may provide for the charging of different fees in different classes of cases.

## **11 Publication of registers and lists**

- (1) The Council shall cause the registers and lists to be printed and published as often as they think fit.
- (2) Where any of the registers or lists is not published in any year, the Council shall cause any alterations in the entries in that register or list which have been made since its last publication to be printed and published within that year.
- (3) A copy of any of the registers or lists purporting to be printed and published by the Council shall, as altered by any alterations purporting to be printed and published by the Council, be evidence in all proceedings that the individuals specified in that register are registered in it or, as the case may be, that the bodies corporate specified in that list are enrolled in it, and the absence of the name of any individual or body corporate from any such copy of a register or list shall be evidence, until the contrary is shown, that he is not registered in that register or, as the case may be, that it is not enrolled in that list.
- (4) In the case of an individual or body corporate whose name does not appear in any such copy of a register or list as altered, a certified copy, under the hand of the registrar, of the entry relating to that individual or body corporate in the register or list shall be evidence of the entry.

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### *Training and Qualifications*

#### **12 Approval of training institutions and qualifications**

- (1) The Council may approve for the purposes of this Act any institution (hereafter in this Act referred to as “an approved training institution”) where the instruction given to persons training as opticians appears to the Council to be such as to secure to them adequate knowledge and skill for the practice of their profession.
- (2) The Council may approve for the purposes of this Act any qualification (hereafter in this Act referred to as “an approved qualification”) which appears to the Council to be granted to candidates who reach such a standard of proficiency at a qualifying examination as to secure to them adequate knowledge and skill for the practice of their profession.
- (3) An institution may be approved under this section as suitable for the giving of all, or some part of, the instruction necessary for the training of ophthalmic opticians or of dispensing opticians, or of both, and a qualification may be so approved as suitable to be granted to ophthalmic opticians or to dispensing opticians.
- (4) Where the Council have refused to approve an institution or qualification under this section as suitable for any purpose, the Privy Council, on representations being made to them within one month of the refusal, may, if they think fit, after considering the representations and after communicating with the Council, order the Council to approve the institution or qualification as suitable for that purpose.
- (5) The Council shall from time to time publish a list of approved training institutions and approved qualifications, indicating the purpose for which the approval was granted.

#### **13 Supervision of training institutions and qualifying examinations**

- (1) It shall be the duty of the Council to keep themselves informed of the nature of the instruction given by any approved training institution to persons training as opticians and of the examinations on the results of which approved qualifications are granted.
- (2) For the purposes of their duty under subsection (1) above the Council may appoint persons to visit approved training institutions and to attend at the examinations held by the bodies which grant approved qualifications.
- (3) No visitor shall interfere with the giving of any instruction or the holding of any examination.
- (4) It shall be the duty of visitors to report to the Council—
  - (a) as to the sufficiency of the instruction given by the institutions visited by them, or of the examinations attended by them; and
  - (b) as to any other matters relating to such institutions or examinations which may be specified by the Council either generally or in any particular case.
- (5) Where it appears to the Council (as a result of a report under subsection (4) above or otherwise)—
  - (a) that—
    - (i) the instruction given by any approved training institution to persons training as opticians; or
    - (ii) the examinations taken by such persons,



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are not such as to secure the possession by them of adequate knowledge and skill for the practice of their profession; and

- (b) that for that reason the approval of the institution or qualification in question should be withdrawn,

the Council shall give notice in writing to the institution or body of their opinion, sending with the notice a copy of any report on which their opinion is based.

- (6) On the receipt of the notice the institution or body may, within such period (not being less than one month) as the Council may have specified in the notice, make to the Council observations on the notice and any report sent with it or objections to the notice and report.
- (7) As soon as may be after the expiration of the period specified under subsection (6) above the Council shall determine whether or not to withdraw their approval of the institution or qualification, taking into account any observations or objections duly made under that subsection.
- (8) The Council shall give notice in writing of any decision under this section to withdraw approval of an institution or qualification to the institution or body concerned and the decision shall not take effect until the expiration of one month from the date of the giving of the notice or, if during that time that institution or body makes representations with respect to the decision to the Privy Council, until the representations are finally dealt with.
- (9) Where an institution has been approved as suitable for more than one purpose, the Council, instead of entirely withdrawing approval of the institution, may withdraw approval in relation to one or some of the purposes only and references in this section to the withdrawal of approval shall be construed accordingly.
- (10) Where the Council have decided to withdraw approval of an institution or a qualification (whether entirely or to a limited extent), the Privy Council, on representations being made to them within one month from the giving of notice of the decision may, if they think fit, after considering the representations and after communicating with the Council, order the Council to annul the withdrawal of approval or, in the case of an institution approved as suitable for more than one purpose, to withdraw approval in relation to one or some of the purposes only.
- (11) The Council may pay to visitors appointed under this section such fees and such travelling and subsistence allowances, to be paid as part of the expenses of the Council, as the Council may with the approval of the Privy Council determine.

### **PART III**

#### **DISCIPLINARY PROCEEDINGS**

#### **14 Disciplinary orders**

In this Act—

“disciplinary order” means—

- (a) an erasure order;  
(b) a suspension order;  
(c) a penalty order;

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“erasure order” means—

- (a) in relation to a registered optician, an order that his name shall be erased from the register; and
- (b) in relation to an enrolled body corporate, an order that its name shall be erased from the list in which it is enrolled;

“suspension order” means—

- (a) in relation to a registered optician, an order that his registration shall be suspended for a period specified in the order; and
- (b) in relation to an enrolled body corporate, an order that its enrolment in the list in which it is enrolled shall be suspended for a period specified in the order; and

“penalty order” means an order that a registered optician or an enrolled body corporate shall pay to the Council a sum specified in the order.

## **15 Suspension orders**

- (1) The period specified in a suspension order shall not exceed twelve months.
- (2) While the registration of a person in the register is suspended by virtue of a suspension order, he shall be treated as not being registered, notwithstanding that his name still appears in the register.
- (3) While the enrolment of a body corporate is suspended by virtue of a suspension order, it shall be treated as not being enrolled, notwithstanding that its name still appears in the list.
- (4) Where a suspension order is made against a person or body corporate, the registrar shall make in the register or list a note of that fact and of the period for which the registration or enrolment is to be suspended; and the registrar shall erase the note at such time as the order for any reason ceases to have effect.

## **16 Penalty orders**

- (1) A penalty order may specify any sum not exceeding the maximum penalty.
- (2) In this section “the maximum penalty” means £1,000 or such sum as is for the time being substituted in this definition by an order in force under subsection (3) below.
- (3) If it appears to the Privy Council that there has been a change in the value of money since the last occasion when the maximum penalty was fixed, whether by the coming into force of the original penalty provision or by order under this section, the Privy Council may by order substitute for the sum specified in subsection (2) above such other sum as appears to them justified by the change.
- (4) An order under subsection (3) above shall not affect the punishment for an offence committed before the order comes into force.
- (5) A penalty order shall specify a period within which the sum specified in it is to be paid.
- (6) The Council may recover the sum specified in a penalty order from the person or body against whom the order was made if that person or body does not pay it within the period specified in the order.

- (7) The Council shall pay a sum paid under a penalty order or recovered under subsection (6) above into the Consolidated Fund.
- (8) In subsection (3) above “the original penalty provision” means section 10C of the Opticians Act 1958 (which was inserted in that Act by section 4 of the Health and Social Security Act 1984 and is replaced by this section).

## **17 Powers of Disciplinary Committee**

- (1) If any registered optician—
- (a) is convicted by any court in the United Kingdom of any criminal offence; or
  - (b) is judged by the Disciplinary Committee to have been guilty of serious professional misconduct,
- the Committee may make a disciplinary order against him.
- (2) If—
- (a) an enrolled body corporate is convicted of an offence under this Act, or of aiding, abetting, counselling or procuring the commission of, or inciting another person to commit, such an offence; or
  - (b) in the case of a body corporate which is for the time being enrolled by virtue of paragraph (a), (c) or (d) of section 9(2) above, the Disciplinary Committee is of opinion that the condition, or any of the conditions, for the enrolment of the body corporate under that subsection is no longer satisfied,
- the Committee may make a disciplinary order against that body corporate.
- (3) Where a registered optician dies while he is either a director of an enrolled body corporate or the manager of that part of the business of an enrolled body corporate which consists of the testing of sight or the fitting and supply of optical appliances, he shall be deemed, for the purposes of subsection (2) above, to have continued to be a director of that body or a manager of that part of its business, as the case may be, until the expiration of three months beginning with the date of his death or until a director or manager is appointed in his place, whichever occurs first.
- (4) If it appears to the Disciplinary Committee that a registered optician or an enrolled body corporate—
- (a) has contravened or failed to comply with any rules made under section 30 below; or
  - (b) has failed to pay the sum specified in a penalty order within the period there specified,
- the Committee may make a disciplinary order against the optician or body corporate.
- (5) If it appears to the Disciplinary Committee—
- (a) that a registered optician or enrolled body corporate is engaged in the fitting and supply of optical appliances; and
  - (b) that the arrangements made by the optician or body corporate for carrying on his practice or his or its business are not such as to secure that the fitting and supply of optical appliances in the course of that practice or business are carried out by, or under the supervision of—
    - (i) an ophthalmic optician registered in the register of ophthalmic opticians engaged or proposing to engage both in the testing of sight and in the fitting and supply of optical appliances; or

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(ii) a registered dispensing optician,

the Committee may make a disciplinary order against that optician or body corporate.

(6) Where—

- (a) a disciplinary order is made against a director of an enrolled body corporate; or
- (b) a responsible officer of an enrolled body corporate is convicted of an offence under this Act; or
- (c) a disciplinary order is made against a registered optician employed by an enrolled body corporate and the act or omission constituting the ground on which the order was made was instigated or connived at by a responsible officer of the body corporate, or, if the act or omission was a continuing act or omission, a responsible officer of the body corporate had or reasonably ought to have had knowledge of its continuance,

the Disciplinary Committee may make a disciplinary order against the body corporate.

(7) In a case—

- (a) where—
  - (i) an enrolled body corporate is convicted of an offence under this Act; and
  - (ii) the offence was instigated or connived at by a responsible officer of the body corporate, or, if the offence was a continuing offence, a responsible officer of the body corporate had or reasonably ought to have had knowledge of its continuance; or
- (b) where—
  - (i) a disciplinary order is made against an enrolled body corporate; and
  - (ii) the act or omission constituting the ground on which the order was made was instigated or connived at by a responsible officer of the body corporate, or, if the act or omission was a continuing act or omission, a responsible officer of the body corporate had or reasonably ought to have had knowledge of its continuance,

the Disciplinary Committee may, if the responsible officer is a registered optician, make a disciplinary order against him.

(8) The Disciplinary Committee shall not take a case into consideration—

- (a) during any period within which proceedings by way of appeal may be brought which may result in subsection (6) or (7) above being rendered inapplicable in that case; or
- (b) while any such proceedings are pending.

(9) Where it appears to the Disciplinary Committee—

- (a) that a body corporate which carries on business as an ophthalmic or dispensing optician at more than one set of premises is liable to have a disciplinary order made against it; and
- (b) that the events giving rise to the liability were confined, or substantially confined, to a particular set of premises,

the Committee may, instead of making a disciplinary order against the body corporate, direct that the body corporate shall not use the title of optician, ophthalmic optician, dispensing optician, registered optician, enrolled optician or optometrist in connection with that set of premises; and if at any time thereafter it appears to the Committee

that the body corporate has contravened a direction in force under this subsection, the Committee may make a disciplinary order against the body corporate.

- (10) A direction under subsection (9) above shall remain in force until revoked, on an application made to them in that behalf, by the Disciplinary Committee.
- (11) When the Disciplinary Committee—
- (a) make a disciplinary order against an individual or body corporate; or
  - (b) direct that a body corporate shall not use any of the titles specified in subsection (9) above in connection with a set of premises,
- the registrar shall serve on that individual or body a notification of the order or direction.
- (12) Any power conferred by this section to make a disciplinary order is a power to make—
- (a) an erasure order;
  - (b) a suspension order;
  - (c) a penalty order; or
  - (d) an erasure order or suspension order together with a penalty order.
- (13) In this Act “responsible officer” means any director, manager, secretary or other similar officer of a body corporate, or of a branch or department of a body corporate, or any person purporting to act in any such capacity.

## **18 Restoration of names erased as result of disciplinary cases etc**

- (1) Where an erasure order has been made against an individual or body corporate, the name of that individual or body corporate shall not again be registered in any of the registers or lists unless the Disciplinary Committee on application made to them in that behalf otherwise direct.
- (2) An application under subsection (1) above for the restoration of a name to the register or list from which it has been erased or for the entry of a name in one of the other registers or lists shall not be made to the Committee—
- (a) within ten months of the date of erasure; or
  - (b) within ten months of the Committee’s decision on a previous application under that subsection.

## **19 Erasure from register and list on grounds of fraud or error**

- (1) If it is proved to the satisfaction of the Disciplinary Committee that any entry in a register or list has been fraudulently or incorrectly made, the Committee may, if they think fit, direct that the entry shall be erased.
- (2) An individual may be registered or a company enrolled in pursuance of any provision of this Act notwithstanding that his or its name has been erased under this section, but if it was so erased on the ground of fraud, that individual or company shall not be registered or enrolled except on an application in that behalf to the Disciplinary Committee, and on any such application the Committee may, if they think fit, direct that the individual or body corporate shall not be registered or enrolled, or shall not be registered or enrolled until the expiration of such period as may be specified in the direction.

- (3) Where the Disciplinary Committee direct that the name of an individual or body corporate shall be erased from a register or list under this section, the registrar shall serve a notification of the direction on that individual or body.

## **20 Service of notifications**

- (1) A notification under section 17 or 19 above which is required to be served on a person may be served by being delivered personally, or being sent by post in a registered letter or by the recorded delivery service.
- (2) For the purposes of this section, and of section 7 of the Interpretation Act 1978 (which defines “service by post”) in its application to this section, a letter to a person other than a body corporate containing such a notification shall be deemed to be properly addressed if it is addressed to him at his address in the register or at his last known address if that address differs from his address in the register and it appears to the registrar that the notification is more likely to reach him at his last known address.
- (3) A notification which is required to be served on a body corporate shall be duly served if it is served on the secretary or clerk of that body.
- (4) For the purposes of this section, and of section 7 of the Interpretation Act 1978 in its application to this section, the proper address of a person, in the case of a body corporate or the secretary or clerk of a body corporate, shall be its address in the list or the address of its registered or principal office if that address differs from its address in the list and it appears to the registrar that the notification is more likely to reach the body corporate or its secretary or clerk there.

## **21 Procedure of Disciplinary Committee**

- (1) For the purposes of any proceedings under this Act before the Disciplinary Committee (whether relating to disciplinary cases or otherwise) in England and Wales or Northern Ireland—
- (a) the Committee may administer oaths; and
  - (b) any party to the proceedings may sue out writs of subpoena ad testificandum and duces tecum;
- but no person shall be compelled under any such writ to produce any document which he could not be compelled to produce on the trial of an action.
- (2) Section 36 of the Supreme Court Act 1981 and section 67 of the Judicature (Northern Ireland) Act 1978 (subpoena issued in High Court to run throughout United Kingdom) shall apply in relation to any such proceedings in England and Wales and in Northern Ireland respectively as they apply in relation to causes or matters in the High Court.
- (3) For the purposes of any such proceedings in Scotland, the Committee may administer oaths and the Court of Session shall on the application of any party to the proceedings have the like power as in any action in that court—
- (a) to grant warrant for the citation of witnesses and havers to give evidence or to produce documents before the Committee, and for the issue of letters of second diligence against any witness or haver failing to appear after due citation;
  - (b) to grant warrant for the recovery of documents; and

- (c) to grant commissions to persons to take the evidence of witnesses or to examine havers and receive their exhibits and productions.
- (4) The Council shall make rules as to the procedure to be followed and the rules of evidence to be observed in proceedings before the Disciplinary Committee, and in particular—
- (a) for securing that notice that the proceedings are to be brought shall be given, at such time and in such manner as may be specified in the rules, to the individual or body corporate alleged to be liable to have a disciplinary order or a direction under section 19 above made against him or it;
  - (b) for securing that any party to the proceedings shall, if he so requires, be entitled to be heard by the Committee;
  - (c) for enabling any party to the proceedings to be represented by counsel or solicitor or (if the rules so provide and the party so elects) by a person of such other description as may be specified in the rules;
  - (d) for requiring proceedings before the Committee to be held in public except in so far as may be provided by the rules;
  - (e) for requiring, in cases where it is alleged that a registered optician has been guilty of serious professional misconduct, that where the Committee judge that the allegation has not been proved they shall record a finding that the optician is not guilty of such conduct in respect of the matters to which the allegation relates;
  - (f) for requiring, in cases where it is alleged that a registered optician or enrolled body corporate is liable to have a disciplinary order made against him or it under section 17(4) or (5) above, that where the Committee judge that the allegation has not been proved they shall record a finding that the optician or body corporate is not guilty of the matters alleged.
- (5) As respects proceedings for the restoration of names to the register or list, or for the revocation of a direction under section 17(9) above, the Council shall have power to make rules with respect to all or any of the matters specified in subsection (4) above, but shall not be required to do so, and separate rules under this section may be made as respects such proceedings.
- (6) Before making rules under this section the Council shall consult such organisations representing the interests of opticians and bodies corporate carrying on business as opticians as appear to the Council requisite to be consulted.

## **22 Assessors to Disciplinary Committee**

- (1) For the purpose of advising the Disciplinary Committee on questions of law arising in proceedings before them there shall in all such proceedings be an assessor to the Committee who shall be a barrister, advocate or solicitor of not less than ten years' standing.
- (2) The power of appointing assessors under this section shall be exercisable by the Council, but if no assessor appointed by them is available to act at any particular proceedings, the Disciplinary Committee may appoint an assessor under this section to act at those proceedings.
- (3) The Lord Chancellor may make rules as to the functions of assessors appointed under this section, and in particular, rules under this subsection may contain—
- (a) such provisions for securing—

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- (i) that where an assessor advises the Committee on any question of law as to evidence, procedure or any other matters specified in the rules, he shall do so in the presence of every party, or person representing a party, to the proceedings who appears at the proceedings or, if the advice is tendered after the Committee have begun to deliberate as to their findings, that every such party or person shall be informed what advice the assessor has tendered;
    - (ii) that every such party or person shall be informed if in any case the Committee do not accept the advice of the assessor on any such question; and
  - (b) such incidental and supplementary provisions, as appear to the Lord Chancellor expedient.
- (4) Subject to the provisions of this section, an assessor under this section may be appointed either generally or for any particular proceedings or class of proceedings, and shall hold and vacate office in accordance with the terms of the instrument under which he is appointed.
- (5) Any remuneration paid by the Council to persons appointed to act as assessors shall be at such rates as the Privy Council may approve.

## **23 Appeals in disciplinary and other cases**

- (1) At any time within 28 days from the service of a notification in relation to an individual or body corporate under section 17 or 19 above, that individual or body corporate may, in accordance with such rules as Her Majesty in Council may by Order provide for the purposes of this section, appeal to Her Majesty in Council; and the Judicial Committee Act 1833 shall apply in relation to the Disciplinary Committee as it applies to such courts as are mentioned in section 3 of that Act.
- (2) The Council may appear as respondent on any such appeal, and for the purpose of enabling directions to be given as to the costs of any such appeal the Council shall be deemed to be a party to the appeal, whether they appear on the hearing of the appeal or not.
- (3) Where—
- (a) no appeal is brought against—
    - (i) a disciplinary order; or
    - (ii) a direction under section 17(9) above; or
    - (iii) a direction under section 19 above; or
  - (b) such an appeal is brought but withdrawn or struck out for want of prosecution, the order or direction shall take effect on the expiration of the time for appealing or, as the case may be, on the withdrawal or striking out of the appeal.
- (4) Subject as aforesaid, where an appeal is brought against any such order or direction, it shall take effect if and when the appeal is dismissed and not otherwise.



## PART IV

### RESTRICTIONS ON TESTING OF SIGHT, FITTING OF CONTACT LENSES, SALE AND SUPPLY OF OPTICAL APPLIANCES AND USE OF TITLES AND DESCRIPTIONS

#### 24 Testing of sight

- (1) Subject to the following provisions of this section, a person who is not a registered medical practitioner or registered ophthalmic optician shall not test the sight of another person.
- (2) Subsection (1) above shall not apply to the testing of sight by a person recognised by a medical authority as a medical student, if carried out as part of a course of instruction approved by that authority for medical students or as part of an examination so approved.
- (3) The Council may by rules exempt from subsection (1) above the testing of sight by persons training as ophthalmic opticians, or any prescribed class of such persons, in such cases and subject to compliance with such conditions as may be prescribed by the rules.
- (4) Any person who contravenes subsection (1) above shall be liable on summary conviction to a fine of an amount not exceeding level 4 on the standard scale.

#### 25 Fitting of contact lenses

- (1) Subject to the following provisions of this section, a person who is not a registered medical practitioner or registered optician shall not fit contact lenses.
- (2) Subsection (1) above shall not apply to the fitting of contact lenses by a person recognised by a medical authority as a medical student, if carried out as part of a course of instruction approved by that authority for medical students or as part of an examination so approved.
- (3) The Council may by rules exempt from subsection (1) above the fitting of contact lenses by persons training as opticians, or any prescribed class of such persons, in such cases and subject to compliance with such conditions as may be prescribed by the rules.
- (4) Any person who contravenes subsection (1) above shall be liable on summary conviction to a fine of an amount not exceeding level 4 on the standard scale.

#### 26 Duties to be performed on sight testing

- (1) The Secretary of State may by regulations provide that, subject to any exceptions specified in the regulations, when a registered medical practitioner or registered ophthalmic optician tests the sight of another person, it shall be his duty—
  - (a) to perform such examinations of the eye for the purpose of detecting injury, disease or abnormality in the eye or elsewhere as the regulations may require, and
  - (b) immediately following the test to give the person whose sight he has tested a written statement—
    - (i) that he has carried out the examinations that the regulations require, and

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- (ii) that he is or (as the case may be) is not referring him to a registered medical practitioner.
- (2) Except in circumstances specified in regulations under subsection (3)(b) below, it shall also be his duty to give the person whose sight he has tested, immediately following the test, either a signed, written prescription for an optical appliance or a signed, written statement that he does not need to wear or use an optical appliance.
- (3) The Secretary of State may by regulations specify—
  - (a) particulars to be included in a prescription or statement provided in fulfilment of the duty imposed by subsection (2) above; and
  - (b) circumstances in which that duty does not arise.
- (4) A person shall not be required as a condition of having his sight tested—
  - (a) to undertake to purchase from a specified person any optical appliance the testing of his sight may show he requires to wear or use; or
  - (b) to pay a fee before the testing is carried out.
- (5) A fee shall be payable in a case where a duty arises under this section only if that duty has been fulfilled.
- (6) Any term of an agreement for a testing of sight which is inconsistent with this section shall be unenforceable, and any sum paid in respect of a fee otherwise than in pursuance of this section shall be recoverable.
- (7) In this section “fee” means any payment in connection—
  - (a) with testing sight in accordance with regulations under this section;
  - (b) with fulfilling any duty imposed by this section; or
  - (c) with the supply of optical appliances.
- (8) Any power to make regulations conferred by this section includes power to make different provision for different classes of case.
- (9) In the application of this section to Northern Ireland for any reference to the Secretary of State there shall be substituted a reference to the Department of Health and Social Services for Northern Ireland.

## **27 Sale and supply of optical appliances**

- (1) Subject to the following provisions of this section, a person shall not sell any optical appliance unless the sale is effected by or under the supervision of a registered medical practitioner or registered optician.
- (2) Subsection (1) above shall not apply to an excluded sale.
- (3) In subsection (2) above “excluded sale” means a sale for a person not under the age of 16 of spectacles which have two single vision lenses of the same positive spherical power not exceeding 4 dioptries where the sale is wholly for the purpose of correcting, remedying or relieving the condition known as presbyopia; and for the purposes of this subsection lenses are to be taken to have the same positive spherical power if the difference between them is within the tolerances relating to the power of such lenses specified from time to time in the British Standard Specification.
- (4) Subsection (1) above shall apply to the supply of an optical appliance in the course of the practice or business of an ophthalmic optician or dispensing optician, whether by

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- the person carrying on the practice or business or by a person employed by him, if the supply was effected in pursuance of arrangements made—
- (a) with a Minister of the Crown or Government department (including a Northern Ireland department); or
  - (b) with any body on whom functions are conferred by or by virtue of—
    - (i) the National Health Service Act 1977 ;
    - (ii) the National Health Service (Scotland) Act 1978 ; or
    - (iii) the Health and Personal Social Services (Northern Ireland) Order 1972 ,as it applies to the sale of an optical appliance.
- (5) Subsection (1) above shall not apply to the sale of an optical appliance—
- (a) to a registered medical practitioner, registered optician or enrolled body corporate for the purposes of his practice or of his or its business;
  - (b) to a manufacturer of or dealer in optical appliances for the purposes of his business;
  - (c) to any authority or person carrying on a hospital, clinic, nursing home or other institution providing medical or surgical treatment;
  - (d) to a Minister of the Crown or Government department (including a Northern Ireland department);
  - (e) for the purpose of its export; or
  - (f) in accordance with an order under subsection (6) below.
- (6) An order under this subsection is an order made by the Privy Council and specifying—
- (a) optical appliances to which it applies; and
  - (b) conditions subject to which their sale is exempted from the requirements of subsection (1) above.
- (7) Any such order relating to optical appliances consisting of or including one or more lenses shall specify, as a condition subject to which the sale of any such appliance is so exempted, the condition that the appliance must be in accordance with a written prescription which—
- (a) has been given by a registered medical practitioner or registered ophthalmic optician following a testing of sight by him; and
  - (b) bears a date not more than such time as is specified in the order before the prescription is presented to the proposed seller of the appliance.
- (8) An order under subsection (6) above may not specify as appliances to which it applies—
- (a) contact lenses; or
  - (b) any optical appliance for a person under 16 years of age.
- (9) On any prosecution for selling an optical appliance in contravention of subsection (1) above it shall be a defence for the defendant to prove—
- (a) that he sold the appliance as an antique or secondhand article; and
  - (b) that he did not know, and had no reason to believe, that the appliance was bought for the purpose of being used for correcting, remedying or relieving a defect of sight.
- (10) A person who contravenes subsection (1) above shall be liable on summary conviction to a fine of an amount not exceeding level 4 on the standard scale.

## **28 Penalty for pretending to be registered etc**

- (1) Any individual—
- (a) who takes or uses the title of ophthalmic optician or the title of optometrist when he is not registered in either of the registers of ophthalmic opticians; or
  - (b) who takes or uses the title of dispensing optician when he is not registered in the register of dispensing opticians; or
  - (c) who takes or uses the title of registered optician or enrolled optician when he is not registered in any of the registers; or
  - (d) who takes or uses any name, title, addition or description falsely implying that he is registered in any of the registers; or
  - (e) who otherwise pretends that he is registered in any of the registers,
- shall be liable on summary conviction to a fine of an amount not exceeding level 4 on the standard scale.
- (2) On any prosecution for an offence under subsection (1)(d) or (e) above, the taking or use of the title of optician by a person to whom this subsection applies is to be taken to imply that he is registered in one of the registers, but the implication may be rebutted if the defendant proves that he took or, as the case may be, used the title in circumstances where it would have been unreasonable for people to believe, in consequence of his taking or, as the case may be, use of it, that he was in fact registered in one of the registers.
- (3) Subject to subsection (4) below, subsection (2) above applies to a person who carries on the business—
- (a) of selling optical appliances; or
  - (b) of supplying optical appliances in pursuance of arrangements made as mentioned in section 27(4) above.
- (4) Subsection (2) above does not apply to a person who sells or supplies optical appliances only as mentioned in section 27(5)(a) to (e) above.
- (5) Any body corporate—
- (a) which takes or uses the title of ophthalmic optician or the title of optometrist when it is not enrolled in the list of bodies corporate carrying on business as ophthalmic opticians; or
  - (b) which takes or uses the title of dispensing optician when it is not enrolled in the list of bodies corporate carrying on business as dispensing opticians; or
  - (c) which takes or uses the title of registered optician or enrolled optician when it is not enrolled in either of the lists; or
  - (d) which takes or uses any name, title, addition or description falsely implying that it is enrolled in either of the lists; or
  - (e) which otherwise pretends that it is enrolled in either of the lists,
- shall be liable on summary conviction to a fine of an amount not exceeding level 4 on the standard scale.
- (6) On any prosecution for an offence under subsection (5)(d) or (e) above, the taking or use of the title of optician by a body corporate to which this subsection applies is to be taken to imply that it is enrolled in one of the lists, but the implication may be rebutted if the body corporate proves that it took or, as the case may be, used the title in circumstances where it would have been unreasonable for people to believe, in

consequence of its taking or, as the case may be, use of it, that it was in fact enrolled in either of the lists.

- (7) Subject to subsection (8) below, subsection (5) above applies to a body corporate which carries on the business—
- (a) of selling optical appliances; or
  - (b) of supplying optical appliances in pursuance of arrangements made as mentioned in section 27(4) above.
- (8) Subsection (5) above does not apply to a body corporate which sells or supplies optical appliances only as mentioned in section 27(5)(a) to (e) above.
- (9) It is immaterial for the purposes of this section whether a title was used alone or in combination with any other words.

## **29 Provision as to death or bankruptcy of registered optician**

- (1) Where a registered optician dies at a time when he is carrying on business or is in practice as an optician, then during the three years beginning with his death or such longer period as the Council may in any particular case allow, section 28 above shall not operate to prevent—
- (a) his executors or administrators;
  - (b) his widow;
  - (c) any of his children; or
  - (d) trustees on behalf of his widow or any of his children,
- from taking or using in relation to that business or practice, but in conjunction with the name in which he carried it on, any title which he was entitled to take or use immediately before his death.
- (2) Where a registered optician becomes bankrupt at a time when he is carrying on business or is in practice as an optician, then, during the three years beginning with the bankruptcy, section 28 above shall not operate to prevent his trustee in bankruptcy from taking or using in relation to that business or practice, but in conjunction with the name in which he carried it on, any title which he was entitled to take or use immediately before the bankruptcy.
- (3) Where—
- (a) a person by virtue of subsection (1) or (2) above takes or uses any title in relation to the business or practice—
    - (i) of a deceased optician; or
    - (ii) of an optician who has become bankrupt; and
  - (b) an offence under section 24, 25 or 27 above is committed in the course of that business or practice,
- the Disciplinary Committee may, if they think fit, direct that subsection (1) or (2) above shall cease to apply in relation to that business or practice.
- (4) This Act shall have effect in relation to any case in which it is alleged that there has been a conviction of any such offence and to any direction under subsection (3) above as it has effect in relation to a disciplinary case and a disciplinary order.
- (5) In its application to Scotland subsection (2) above shall have effect as if—

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- (a) for the reference to a registered optician becoming bankrupt there were substituted a reference to the estate of a registered optician being sequestrated (cognate expressions being construed accordingly); and
  - (b) for the reference to a registered optician's trustee in bankruptcy there were substituted a reference to the permanent trustee on his sequestrated estate.
- (6) In its application to Northern Ireland subsection (2) above shall have effect as if for a registered optician's trustee in bankruptcy there were substituted a reference to the assignee in bankruptcy.

### **30 Offences by bodies corporate**

Where an offence under this Act which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any responsible officer of the body corporate, he, as well as the body corporate, shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

## **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.

- (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.

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- (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



(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”.

- (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.

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## SCHEDULES

### SCHEDULE 1

Section 1.

#### CONSTITUTION ETC. OF COUNCIL

##### *Membership etc.*

- 1 The Council shall consist of—
  - (a) six persons nominated by the Privy Council;
  - (b) seven persons chosen to represent registered ophthalmic opticians;
  - (c) three persons chosen to represent registered dispensing opticians;
  - (d) six persons nominated by the examining bodies mentioned in this Schedule; and
  - (e) six registered medical practitioners.
- 2 (1) Subject to sub-paragraph (2) below, any person nominated by the Privy Council under paragraph 1(a) above shall not be—
  - (a) a registered optician;
  - (b) a registered medical practitioner; or
  - (c) a director of a body corporate carrying on business as opticians.

(2) One of the persons so nominated by the Privy Council shall be a person appearing to them to be specially qualified to advise the Council on educational problems generally and may be a registered optician or registered medical practitioner so long as he is not in practice as an optician or medical practitioner.
- 3 (1) The persons chosen to represent the registered ophthalmic or dispensing opticians on the Council shall be elected, subject to the provisions of this Schedule relating to casual vacancies, in accordance with the scheme under paragraph 3 of Schedule 1 to the Opticians Act 1958 approved by the Privy Council on 13th May 1974, as that scheme has effect at the commencement of this Act.

(2) The Council may at any time submit to the Privy Council a scheme for the variation or for the revocation and replacement of the scheme mentioned in sub-paragraph (1) above or any scheme varying or replacing that scheme.
- 4 Of the persons nominated by the examining bodies—
  - (a) three shall be nominated by the British College of Optometrists;
  - (b) two shall be nominated by the Association of British Dispensing Opticians; and
  - (c) one, who shall be a person engaged in the education or examination of persons training as ophthalmic opticians, shall be nominated jointly by—
    - (i) the City University;
    - (ii) the University of Aston in Birmingham;
    - (iii) the University of Bradford;
    - (iv) the University of Manchester Institute of Science and Technology;

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- (v) the University of Wales College of Cardiff; and
  - (vi) the Glasgow College of Technology.
- 5 Of the six registered medical practitioners on the Council—
  - (a) four shall be ophthalmologists and shall be nominated by the College of Ophthalmologists and one of the four shall be a person appearing to the College to be a suitable person to represent ophthalmologists practising in Scotland;
  - (b) one shall be a medical practitioner engaged in the pre-clinical training of students and shall be nominated by the Privy Council after consultation with persons or bodies appearing to them to have special knowledge and experience of such training;
  - (c) one shall be a general medical practitioner nominated by the Privy Council after consultation with organisations appearing to the Privy Council to be representative of the medical profession.
- 6 (1) On 1st January 1992, and at the end of each succeeding period of five years commencing on that date, the following members of the Council shall retire, that is to say—
  - (a) two of the members nominated by the Privy Council under paragraph 1(a) above, neither of them being the person appointed as specially qualified to advise on educational problems generally;
  - (b) those chosen to represent registered opticians; and
  - (c) the four ophthalmologists nominated by the College of Ophthalmologists.

(2) All the members who do not retire under sub-paragraph (1) above shall retire on 1st January 1994 and at the end of each succeeding period of five years commencing on that date.

(3) Elections or nominations required to fill any vacancy occurring at the end of any period shall, so far as is practicable, be held or made before the end of that period.
- 7 (1) A member of the Council may at any time, by notice in writing addressed to the registrar, resign his office.
- (2) Where a casual vacancy occurs among the members of the Council—
  - (a) if the member whose office has become vacant was chosen to represent registered opticians, the vacancy shall be filled by a person nominated by the Council as being a person having qualifications for membership similar to that member's;
  - (b) in any other case, the vacancy shall be filled by a person nominated by the like authority after the like consultation, if any, as in the case of the member whose office has become vacant.
- (3) A person nominated to fill a casual vacancy shall hold office until the date upon which the member whose vacancy he has filled would have regularly retired.
- 8 (1) The chairman of the Council shall be nominated by the Privy Council from among the members nominated by the Privy Council under paragraph 1(a) above.
- (2) The chairman shall hold office until he next retires from membership of the Council.
- 9 A person ceasing to be chairman or member of the Council shall be eligible to be again nominated or elected chairman or member.

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*The registrar*

- 10 The registrar shall be appointed by the Council and shall hold and vacate office in accordance with the terms of his appointment.

*Powers of Council*

- 11 (1) Subject to the following provisions of this Schedule, the Council shall have power to do anything which in their opinion is calculated to facilitate the proper discharge of their functions.
- (2) The Council shall, in particular, have power—
- (a) to appoint, in addition to a registrar, such officers and servants as the Council may determine;
  - (b) to pay to the members of the Council or of the Council’s committees such fees for attendance at meetings of the Council or committees and such travelling and subsistence allowances while attending such meetings or while on any other business of the Council as the Council may with the approval of the Privy Council determine;
  - (c) to pay to their officers and servants such remuneration as the Council may determine;
  - (d) as regards any officers or servants in whose case they may determine to do so, to pay to or in respect of them such pensions and gratuities, or provide and maintain for them such superannuation schemes (whether contributory or not), as the Council may determine.
- (3) The powers of the Council and any of the Council’s committees may be exercised notwithstanding any vacancy and no proceedings of the Council or a committee shall be invalidated by any defect in the nomination or election of a member.
- 12 The Council may make standing orders for regulating the proceedings (including quorum) of the Council and the proceedings of any of its committees except the Disciplinary Committee.

*Power of Privy Council to alter membership of Council etc.*

- 13 (1) Subject to sub-paragraph (2) below, the Privy Council may by order, after consultation with the Council and any other body or person they think fit to consult, make such alterations in the membership of the Council as may be expedient in view of changes in circumstances, and may make consequential alterations in relation to the committees which this Act requires the Council to maintain and consequential amendments to this Schedule.
- (2) In sub-paragraph (1) above “alterations in the membership of the Council” means alterations—
- (a) as to the numbers of members;
  - (b) as to the qualifications which a person must have to be a member; and
  - (c) as to who may nominate members.
- (3) An order under this paragraph shall not operate to reduce below seven the number of members chosen to represent registered opticians on the Council.
- (4) An order under this paragraph may revoke any previous order made under this paragraph or paragraph 13 of Schedule 1 to the Opticians Act 1958 if it appears to the

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Privy Council, after such consultation as is mentioned in sub-paragraph (1) above, that the order ought to be revoked.

SCHEDULE 2

Section 37.

REPEALS

<i>Chapter</i>	<i>Short title</i>	<i>Extent of repeal</i>
6 & 7 Eliz. 2 c. 32.	Opticians Act 1958.	The whole Act.
1975 c. 21.	Criminal Procedure (Scotland) Act 1975.	In Schedule 7A, paragraphs 11 to 13.
1977 c. 45.	Criminal Law Act 1977.	In Schedule 1, paragraphs 14 to 16.
1977 c. 49.	National Health Service Act 1977.	In Schedule 15, paragraphs 19 and 20.
1978 c. 29	National Health Service (Scotland) Act 1978.	In Schedule 16, paragraph 11.
1981 c. 54.	Supreme Court Act 1981.	In Schedule 5, the entry relating to the Opticians Act 1958.
1984 c. 48.	Health and Social Security Act 1984.	Section 1(1) and (2). Sections 2 to 4. In section 26(6), the words “section 1(1) and (2);” and the words “sections 2 to 4 and Schedule 2;”. Schedule 2.
1985 c. 9.	Companies Consolidation (Consequential Provisions) Act 1985.	In Schedule 2, the entry relating to the Opticians Act 1958.
1988 c. 49.	Health and Medicines Act 1988.	Section 13(6) and (7). Section 14. In section 26(2), the words “section 14”. In section 27(3), the words “13(6) and (7), 14”.