Opticians Act 1989

1989 CHAPTER 44

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

(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 dioptres 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 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—

(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.