

PART 5
MISCELLANEOUS AND SUPPLEMENTARY

Miscellaneous

Miscellaneous matters with respect to which rules may be made

31. (1) Subject to subsection (2) below, the Council may make rules prohibiting or regulating -
- (a) ...;
 - (b) the carrying on of a practice or business by registered optometrists, registered dispensing opticians and business registrants under names other than those under which they are registered;
 - (c) the prescription, sale, supply and administration of drugs by registered optometrists, registered dispensing opticians, business registrants, their employees and persons providing services to them in the course of their practice or business of an optometrist or a dispensing optician;
 - (d) the practice of orthoptics by registered optometrists, registered dispensing opticians, business registrants and their employees;
 - (e) the prescription, sale, supply and fitting of contact lenses by registered optometrists, registered dispensing opticians, business registrants, their employees and persons providing services to them.
- (2) ...
- (3) The Council may make rules specifying requirements which registered optometrists, registered dispensing opticians, business registrants or employees of or persons providing services to them must meet if they are to prescribe, fit, supply or sell contact lenses.
- (4) The power conferred by subsection (3) above is a power -
- (a) in relation to registered optometrists, registered dispensing opticians, business registrants or employees of or person providing services to them, to specify qualifications which they must have; and
 - (b) in relation to business registrants, 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 optometrist or registered dispensing optician that a person consulting him is

suffering from an injury or disease of the eye, the registered optometrist or registered dispensing optician shall, except -

- (a) in an emergency,
- (b) where that person is consulting him for the purpose of being given treatment in accordance with rules under section (1)(d) above, or
- (c) in such other case as may be prescribed,

take the prescribed steps to refer that person to a registered medical practitioner for advice and treatment.

(5A) Rules made by virtue of subsection (5)(c) may impose conditions which must be satisfied if the exception for which those rules provide is to apply.

(6) ...

Rules

31A. Any power to make rules under this Act may be exercised -

- (a) so as to make different provision with respect to different cases or different classes of cases or different provisions in respect of the same case or class of case for different purposes of this Act; and in particular different provisions may be made in respect of optometrists and dispensing opticians;
- (b) either in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions; or
- (c) so as to make supplementary, incidental, consequential, transitional, transitory or saving provision which the Council considers necessary or expedient.

Expenses and accounts of the Council

32. (1) The Council may allocate any money received by them whether by way of fees or otherwise, other than any sum paid under a financial penalty order or recovered under section 23C(7) above, to any person or body -

- (a) set up to investigate and resolve consumer complaints into the supply of goods and services by registrants; or
- (b) for purposes connected with the profession of optometrist or dispensing optician.

(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.

Annual reports, statistical reports and strategic plans

- 32A (1) The Council shall publish, by such date in each year as the Privy Council shall specify—
- (a) a report on the exercise of their functions which includes a description of the arrangements that the Council have put in place to ensure that they adhere to good practice in relation to equality and diversity (and for these purposes “equality” and “diversity” have the meanings given in section 8(2) of the Equality Act 2006);
- (b) a statistical report which indicates the efficiency and effectiveness of, and which includes a description of, the arrangements which the Council have put in place to protect members of the public from registrants whose fitness to practise, to undertake training or to carry on a business is impaired, together with the Council’s observations on the report; and
- (c) a strategic plan for the Council in respect of such number of years as the Council shall determine.
- (2) The Council shall submit copies of the reports and the plan published under subsection (1) to the Privy Council and the Privy Council shall lay copies of the reports and the plan before each House of Parliament.”

Default powers of Privy Council

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

- (2) If the Council fail to comply with any directions of the Privy Council under subsection (1) above, the Privy Council may themselves discharge any function of the Council to which this section applies.
- (3) This section applies to all functions of the Council under this Act except -
 - (a) their functions under sections 1, 5D, 8, 8A, 9, 12, 13 and 32(1) above; and
 - (b) their powers to make rules under sections 23C, 23D and 23E above.

Subordinate legislation procedure

- 34. (1) Rules made by the Council under this Act shall not come into force until approved by order of the Privy Council.
 - (1A) Subsection (1) above shall not apply to rules made under section 10 above in so far as they relate to fees.
 - (2) The Privy Council may approve rules under section 23C above either in the form submitted to them or subject to such modifications as appear to the Privy Council requisite.
 - (3) Where the Privy Council propose to approve any such rules 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) ...
 - (5) The powers -
 - (a) of the Privy Council to make orders under this Act;
 - (b) ...; and
 - (c) of the Secretary of State to make regulations under section 25 or 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 25 or 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; and

- (c) an order under section 1(4) or 27.
- (8) ...
- (9) ...
- (10) The power of the Department of Health and Social Services for Northern Ireland to make regulations under section 25 or 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.

Privy Council quorum and documents

- 35. (1) For the purpose of exercising any powers conferred by this Act on the Privy Council 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

Interpretation

- 36. (1) In this Act, unless the context otherwise requires -
 - “approved training establishment” means an establishment approved by the Council under section 12(7)(a) above;
 - “approved qualification” means any qualification approved by the Council under section 12(7)(b) above;
 - “body corporate” includes a limited liability partnership and, in Scotland, a partnership; and, in relation to such partnerships, a reference to a director or other officer of a body corporate is a reference to a member;
 - “business registrant” means a body corporate registered in the register maintained by the Council under section 9 above;
 - “the Council” means the General Optical Council;
 - “dispensing optician” means a person engaged or proposing to engage in the fitting and supply of optical appliances;

“electronic communication” has the same meaning as in the Electronic Communications Act 2000;

“exempt person”, in relation to the profession of optometrist or the profession of dispensing optician, means-

- (a) a national of a relevant European State other than the United Kingdom;
- (b) a national of the United Kingdom who is seeking access to, or is pursuing, the profession by virtue of an enforceable Community right; or
- (c) a person who is not a national of a relevant European State but who is, by virtue of an enforceable Community right, entitled to be treated, for the purposes of access to and pursuit of the profession, no less favourably than a national of a relevant European State;

“financial penalty order” means an order under Part 2A above that a registrant shall pay to the Council a sum specified in the order;

“functions” includes powers and duties;

“General Systems Regulations” means the European Communities (Recognition of Professional Qualifications) Regulations 2007 (SI 2007/2781);

“health service ophthalmic lists” means the lists of optometrists 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
- (c) section 21 of the Health Services Act (Northern Ireland) 1948;

“Hearings Panel” means the panel of persons appointed under section 5D(1) above;

“individual registrant” means any person whose name is in a register maintained by the Council under section 7, 8A or 8B; above;

“medical authority” means a body or combination of bodies included in the list maintained by the General Medical Council under section 4(1) of the Medical Act 1983;

“optometrist” means a person engaged or proposing to engage in the testing of sight (otherwise than 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;

“prescribed” means prescribed by rules under this Act;

“register” means, unless the context otherwise requires, any one of the following registers –

- (a) the register of optometrists maintained under section 7 above;
- (b) the register of dispensing opticians maintained under section 7 above;
- (c) the register of students maintained under section 8A above;
- (ca) the registers of visiting optometrists from relevant European States and visiting dispensing opticians from relevant European States maintained under section 8B;
- (d) the register of bodies corporate maintained under section 9 above;

and, except in the expressions “registered medical practitioner”, “registered dispensing optician” and “registered optometrist”, “registered” and “registration” have corresponding meanings;

“registered dispensing optician” means a person whose name is in the register of dispensing opticians maintained under section 7 or in the register of visiting dispensing opticians from relevant European States maintained under section 8B;

“registered optometrist” means a person whose name is in the register of optometrists maintained under section 7 or in the register of visiting optometrists from relevant European States maintained under section 8B;

“registrant”, except in the expressions “individual registrant”, “business registrant” and “student registrant”, means a person whose name is in the appropriate register;

“relevant European State” means an EEA State or Switzerland;

“student registrant” means a person whose name is in one of the registers maintained by the Council under section 8A 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.

Consequential amendments and repeals

37. (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 and 5 of Schedule 3 to the Criminal Justice (Northern Ireland) Order 1986 are revoked.

Commencement

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

Short title and extent

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