

PART 4

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

Testing of sight

24. (1) Subject to the following provisions of this section, a person who is not a registered medical practitioner or registered optometrist 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 optometrists, 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 5 on the standard scale.

Fitting of contact lenses

25. (1) Subject to the following provisions of this section a person who is not a registered medical practitioner or registered optometrist or registered dispensing optician must not fit a contact lens for an individual.
- (1A) A registered medical practitioner, a registered optometrist, a registered dispensing optician or a person to whom, by virtue of subsection (2) or (3) below, subsection (1) above does not apply, must not fit a contact lens for an individual unless -
- (a) where the duty to give an individual a signed written prescription under section 26(2) below arises, he has the particulars of such a prescription given to the individual within the period of two years ending on the date the fitting begins; and
- (b) the fitting begins before any re-examination date specified in the prescription.
- (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 optometrists or dispensing 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) of (1A) above shall be liable on summary conviction to a fine of an amount not exceeding level 5 on the standard scale.
- (5) A person to whom this subsection applies who fits a contact lens to an individual must -
 - (a) on completion of the fitting, provide the individual with a signed written specification of each lens fitted sufficient to enable the lens to be replicated unless, having carried out the assessment referred to in subsection (9)(a) below, he is of the view that a contact lens is not appropriate; and
 - (b) provide the individual with instructions and information on the care, wearing, treatment, cleaning and maintenance of the lens.
- (6) The obligation to provide a specification or instructions or information under subsection (5) above applies -
 - (a) if only one person took part in fitting a contact lens for the individual, to that person; and
 - (b) if a series of persons took part in fitting a contact lens for an individual, to the last person to fit a lens.
- (7) A specification issued in accordance with subsection (5) above must -
 - (a) state the period during which the specification remains valid and its expiry date; and
 - (b) in the case of a specification provided by a registered medical practitioner, contain such particulars as the Secretary of State may specify in regulations.
- (8) A specification becomes invalid after its expiry date.
- (9) For the purposes of this section and section 27(3A) below, "fitting" a contact lens means -
 - (a) assessing whether a contact lens meets the needs of the individual; and, where appropriate
 - (b) providing the individual with one or more contact lenses for use during a trial period,

and “fit” and “fitted” shall be construed accordingly.

- (10) 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, Social Services and Public Safety in Northern Ireland.

Duties to be performed on sight testing

26. (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 optometrist 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 and if he is referring him, the reason for the referral.
- (2) Except where regulations under subsection (3)(b) below specify otherwise, 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) the 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, Social Services and Public Safety in Northern Ireland.

Sale and supply of optical appliances

- 27. (1) A person shall not sell -
 - (a) any contact lens for use by any person who does not have a valid specification provided pursuant to section 25(5) above; or
 - (b) subject to the following provisions of this section, any optical appliance or zero powered contact lens unless the sale is effected by or under the supervision of a registered medical practitioner, a registered optometrist or a registered dispensing optician.
- (2) Subsection (1) above shall not apply to any of the following sales -
 - (a) a sale for a person who has attained the age of sixteen 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 presbyopia;
 - (b) a sale of an optical appliance intended for use as protection or cover for the eyes in sports if -
 - (i) neither lens fitted to the appliance has a positive or negative spherical power exceeding 8 dioptres;
 - (ii) the appliance is an appliance with a single vision lens or single vision lenses; and
 - (iii) the appliance falls within a category of appliance specified in an order made by the Privy Council for the purposes of this section; or

(c) the sale of a contact lens for a person who has attained the age of sixteen where the sale satisfies the requirements of subsection (3) below.

(3) Those requirements are that -

(a) the seller has -

- (i) the original specification;
- (ii) a copy of the original specification which he verifies with the person who provided it; or
- (iii) an order from the purchaser, submitted either in writing or electronically, which contains the particulars of the specification of the person who intends to wear the contact lens ("the wearer"), and the seller verifies those particulars with the person who provided the specification;

(b) the seller is reasonably satisfied that the goods ordered are for use by the person named in the specification;

(c) the sale is made before the expiry date mentioned in the specification;

(d) the seller is, or is under the general direction of, a registered medical practitioner, a registered optometrist or a registered dispensing optician; and

(e) the wearer -

- (i) is not, so far as the seller knows, registered as blind or registered as partially sighted in a register compiled by a local authority under section 29(4)(g) of the National Assistance Act 1948 (welfare services);
- (ii) has not been certified as blind or as partially sighted and in consequence registered as blind or partially sighted in a register maintained by or on behalf of a council constituted under the Local Government (Scotland) Act 1994; or
- (iii) has not been certified as blind or in consequence registered as blind in a register maintained by or on behalf of a Health and Social Services Board in Northern Ireland.

(3A) In this section -

(a) "seller" -

- (i) includes any person who supplies the optical appliance or, as the case may be, the zero powered

contact lens whether or not payment is made to him for the supply; and

(ii) does not include a person who supplies the contact lens as part of the assessment process in the course of fitting the lenses to the individual; and

(b) 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.

(3B) The seller must make arrangements, except in such cases or classes of cases as may be prescribed in rules made by the Council, for the individual for whom the optical appliance or, as the case may be, the zero powered contact lens is supplied to receive aftercare in so far as, and for so long as, may be reasonable in his particular case.

(3C) The Council may by rules specify the arrangements which are to be made or may be made under subsection (3B) above.

(4) Subsection (1) above shall apply to the supply of an optical appliance or zero powered contact lens in the course of the practice or business of an optometrist 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 or zero powered contact lens -

(a) to a registered medical practitioner, registered optometrist, registered dispensing optician or business registrant for the purposes of his practice or of his or its business;

(b) to a manufacturer of or dealer in optical appliances or zero powered contact lenses 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 optometrist 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 or zero powered contact lens in contravention of subsection (1) above it shall be a defence for the defendant to prove -
- (a) that he sold the appliance or lens as an antique or second hand article; and
 - (b) that he did not know, and had no reason to believe, that the appliance or lens 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 5 on the standard scale.

Penalty for pretending to be registered etc.

28. (1) Any individual -

- (a) who takes or uses the title of ophthalmic optician or the title of optometrist when he is not a registered optometrist; or
- (b) who takes or uses the title of dispensing optician when he is not a registered dispensing optician; or
- (c) who takes or uses the title of registered optometrist when he is not a registered optometrist; or
- (cc) who holds himself out as being a student registrant when he is not registered in the register of those undertaking training as optometrists or dispensing opticians maintained under section 8A above;
- (ccc) who holds himself out as having a specialty or proficiency which qualifies for entry in the appropriate register in accordance with rules made under section 10(1A) above but for whom no entry is extant;
- (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 5 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 only optical appliances or zero powered contact lenses or both as mentioned in section 27(5)(a) to (e) above.
- (5) Any body corporate which -
 - (a) takes or uses the title of ophthalmic optician, the title of optometrist, the title of dispensing optician, or the title of registered optician when it is not registered; or

(b) takes or uses any name, title, addition or description falsely implying that it is registered; or

(c) otherwise pretends that it is registered,

shall be liable on summary conviction to a fine of an amount not exceeding level 5 on the standard scale.

- (6) On any prosecution for an offence under subsection (5)(b) or (c) 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 registered, 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 registered.
- (7) Subject to subsection (8) below, subsection (6) above applies to a body corporate which carries on the business-
- (a) of selling optical appliances or zero powered contact lenses; or
- (b) of supplying optical appliances or zero powered contact lenses in pursuance of arrangements made as mentioned in section 27(4) above.
- (8) Subsection (6) 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.

Provisions as to death or bankruptcy of registered optician

29. (1) Where a registered optometrist or registered dispensing optician dies at a time when he is carrying on business or is in practice as an optometrist or dispensing 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 surviving spouse or his surviving civil partner;
- (c) any of his children; or
- (d) trustees on behalf of his surviving spouse or his surviving civil partner 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 optometrist or registered dispensing optician becomes bankrupt at a time when he is carrying on business or is in practice as an optometrist or dispensing 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.
- (2A) In subsections (1) and (2)-
“registered optometrist” does not include a person registered in the register maintained under section 8B(1)(a);
“registered dispensing optician” does not include a person registered in the register maintained under section 8B(1)(b).
- (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 optometrist or dispensing optician; or
- (ii) of an optometrist or dispensing 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 Fitness to Practise 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 case in which it is alleged that a registrant’s fitness to practise or as the case may be a business registrant’s fitness to carry on the business as an optometrist or a dispensing optician or both, is impaired and the making of an order under Part 2A above.
- (5) In its application to Scotland subsection (2) above shall have effect as if-
- (a) for the reference to a registered optometrist or registered dispensing optician becoming bankrupt there were substituted a reference to the estate of a registered optometrist or registered dispensing optician being sequestrated (cognate expressions being construed accordingly); and
- (b) for the reference to a registered optometrist’s or registered dispensing 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 optometrist's or a registered dispensing optician's trustee in bankruptcy there were substituted a reference to the assignee in bankruptcy.

Offences by bodies corporate

30. (1) 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.
- (2) In subsection (1) above, "responsible officer" means any director, manager, secretary or other similar officer of the body corporate, or of a branch or department of the body corporate, or of any person purporting to act in such a capacity.

Legal proceedings

- 30A. (1) Notwithstanding anything in any enactment, proceedings for an offence under this Part of this Act may be begun at any time within the period of six months beginning with the date on which evidence sufficient in the opinion of the Council to justify a prosecution for the offence comes to the Council's knowledge, or within a period of two years beginning with the date of the commission of the offence, whichever period first expires.
- (2) In this section, "enactment" means -
- (a) an Act of Parliament;
 - (b) an Act of the Scottish Parliament;
 - (c) any Northern Ireland legislation; or
 - (d) any instrument made under or having effect by virtue of an Act of Parliament, an Act of the Scottish Parliament or any Northern Ireland legislation.