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SCHEDULES

SCHEDULE 2

DISCIPLINARY PROVISIONS OF OPTICIANS ACT 1958

PART I

NEW SECTIONS

1 The following sections shall be inserted after section 10 of the Opticians Act 1958—

“10A Disciplinary orders.

In this Act—

"disciplinary order" means—

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

"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 General Optical Council a sum specified in the order.

10B 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.

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- (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.

10C 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 this section, 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—
- (a) shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament; and
 - (b) shall not affect the punishment for an offence committed before that 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 General Optical 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 General Optical Council shall pay a sum paid under a penalty order or recovered under subsection (6) above into the Consolidated Fund.”.

2

The following section shall be substituted for section 11—

“11 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),

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- (c) or (d) of subsection (2) of section four of this Act, 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) of this section, 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 the 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 twenty-five of this Act; 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 that—
- (a) 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, 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 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.

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- (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 during any period within which proceedings by way of appeal may be brought which may result in subsection (6) or (7) of this section being rendered inapplicable in that case or 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) of this section 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) of this section in connection with a set of premises,
- the registrar shall serve on that individual or body a notification of the order or direction.

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- (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.”.