



Opticians Act 1989

1989 CHAPTER 44

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—
 - ^{F1}(a)
 - [^{F2}(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;]
 - [^{F3}(c) the prescription, sale, supply and administration of drugs by registered optometrists, registered dispensing opticians or 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 [^{F4}registered optometrists, registered dispensing opticians, business registrants] and their employees;
 - [^{F5}(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.]
- ^{F6}(2)
- [^{F7}(3) The Council may make rules specifying requirements which registered optometrists, registered dispensing opticians and 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—

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- [^{F8}(a) in relation to registered optometrists, registered dispensing opticians and business registrants or employees of or persons providing services to them, to specify qualifications which they must have; and]
- (b) in relation to [^{F9}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 [^{F10}registered optometrist or registered dispensing optician] that a person consulting him is suffering from an injury or disease of the eye, the [^{F10}registered optometrist or registered dispensing optician] shall, [^{F11}except—
- (a) in an emergency,
- (b) where that person is consulting him for the purpose of being given treatment in accordance with rules under subsection (1)(d) above, or
- (c) in such other cases as may be prescribed,
- take the prescribed steps] to refer that person to a registered medical practitioner for advice and treatment.
- [^{F12}(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.]

^{F13}(6)

Textual Amendments

- F1** S. 31(1)(a) omitted (coming into force in accordance with art. 1(3)-(6) of the amending S.I.) by virtue of [The Opticians Act 1989 \(Amendment\) Order 2005 \(S.I. 2005/848\)](#), **Sch. 1 para. 6(a)(i)** (with Sch. 2)
- F2** S. 31(1)(b) substituted (coming into force in accordance with art. 1(3)-(6) of the amending S.I.) by [The Opticians Act 1989 \(Amendment\) Order 2005 \(S.I. 2005/848\)](#), **Sch. 1 para. 6(a)(ii)** (with Sch. 2)
- F3** S. 31(1)(c) substituted (coming into force in accordance with art. 1(3)-(6) of the amending S.I.) by [The Opticians Act 1989 \(Amendment\) Order 2005 \(S.I. 2005/848\)](#), **Sch. 1 para. 6(a)(iii)** (with Sch. 2)
- F4** Words in s. 31(1)(d) substituted (coming into force in accordance with art. 1(3)-(6) of the amending S.I.) by [The Opticians Act 1989 \(Amendment\) Order 2005 \(S.I. 2005/848\)](#), **Sch. 1 para. 6(a)(iv)** (with Sch. 2)
- F5** S. 31(1)(e) substituted (coming into force in accordance with art. 1(3)-(6) of the amending S.I.) by [The Opticians Act 1989 \(Amendment\) Order 2005 \(S.I. 2005/848\)](#), **Sch. 1 para. 6(a)(v)** (with Sch. 2)
- F6** S. 31(2) omitted (coming into force in accordance with art. 1(3)-(6) of the amending S.I.) by virtue of [The Opticians Act 1989 \(Amendment\) Order 2005 \(S.I. 2005/848\)](#), **Sch. 1 para. 6(b)** (with Sch. 2)
- F7** S. 31(3) substituted (coming into force in accordance with art. 1(3)-(6) of the amending S.I.) by [The Opticians Act 1989 \(Amendment\) Order 2005 \(S.I. 2005/848\)](#), **Sch. 1 para. 6(c)** (with Sch. 2)
- F8** S. 31(4)(a) substituted (coming into force in accordance with art. 1(3)-(6) of the amending S.I.) by [The Opticians Act 1989 \(Amendment\) Order 2005 \(S.I. 2005/848\)](#), **Sch. 1 para. 6(d)** (with Sch. 2)
- F9** Words in s. 31(4)(b) substituted (coming into force in accordance with art. 1(3)-(6) of the amending S.I.) by [The Opticians Act 1989 \(Amendment\) Order 2005 \(S.I. 2005/848\)](#), **Sch. 1 para. 6(e)** (with Sch. 2)
- F10** Words in s. 31(5) substituted (coming into force in accordance with art. 1(3)-(6) of the amending S.I.) by [The Opticians Act 1989 \(Amendment\) Order 2005 \(S.I. 2005/848\)](#), **Sch. 1 para. 6(f)** (with Sch. 2)
- F11** Words in s. 31(5) substituted and s. 31(5)(a)-(c) inserted (15.8.1997) by 1997 c. 46, **s. 30(2)**; S.I. 1997/1780, art. 2(1), **Sch.**
- F12** S. 31(5A) inserted (15.8.1997) by 1997 c. 46, **s. 30(3)**; S.I. 1997/1780, art. 2(1), **Sch.**
- F13** S. 31(6) omitted (coming into force in accordance with art. 1(3)-(6) of the amending S.I.) by virtue of [The Opticians Act 1989 \(Amendment\) Order 2005 \(S.I. 2005/848\)](#), **Sch. 1 para. 6(g)** (with Sch. 2)

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[^{F14}31A. Rules

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 any supplementary, incidental, consequential, transitional, transitory or saving provision which the Council considers necessary or expedient.]

Textual Amendments

F14 S. 31A inserted (coming into force in accordance with art. 1(3)-(6) of the amending S.I.) by [The Opticians Act 1989 \(Amendment\) Order 2005 \(S.I. 2005/848\)](#), arts. 1(2), **22** (with Sch. 2)

32 Expenses and accounts of the Council.

[^{F15}(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.

[^{F16}(3) A person shall not be appointed auditor under subsection (2) unless he is eligible for appointment as a [^{F17}statutory auditor under Part 42 of the Companies Act 2006] .]

Textual Amendments

F15 S. 32(1) substituted (coming into force in accordance with art. 1(3)-(6) of the amending S.I.) by [The Opticians Act 1989 \(Amendment\) Order 2005 \(S.I. 2005/848\)](#), art. **23** (with Sch. 2)

F16 S. 32(3): s. 32(3) substituted (1. 10. 1991) by S.I. 1991/1997, reg. 2, **Sch. para73** (with reg. 4)

F17 Words in s. 32(3) substituted (6.4.2008) by [The Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), art. 2(2), **Sch. 1 para. 1(mm)** (with arts. 6, 11, 12)

[^{F18}32A. Annual reports, statistical reports and strategic plans

(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

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“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.]

Textual Amendments

F18 S. 32A inserted (1.4.2009) by [The Health Care and Associated Professions \(Miscellaneous Amendments\) Order 2008 \(S.I. 2008/1774\)](#), art. 1(4), **Sch. 2 para. 3**; S.I. 2008/3150, art. 2(3)(a)(ii)

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.
- (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.

- [^{F19}(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.]

Textual Amendments

F19 S. 33(3) substituted (coming into force in accordance with art. 1(3)-(6) of the amending S.I.) by [The Opticians Act 1989 \(Amendment\) Order 2005 \(S.I. 2005/848\)](#), **art. 24** (with Sch. 2)

34 Subordinate legislation procedure.

- (1) Rules made by the Council under this Act ^{F20}... shall not come into force until approved by order of the Privy Council.

[^{F21}(1A) Subsection (1) above shall not apply to rules made under section 10 above in so far as they relate to fees.]

[^{F22}(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.]

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- (3) Where the Privy Council propose to approve any such rules ^{F23}... subject to modifications, they shall notify to the Council the modifications they propose to make and consider any observations of the Council on them.
- ^{F24}(4)
- (5) The powers—
- (a) of the Privy Council to make orders under this Act;
 - ^{F25}(b)
 - (c) of the Secretary of State to make regulations under [^{F26}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 [^{F27}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 ^{F28}...; and
 - ^{F29}(b)
 - [^{F30}(c) an order under section 1(4) or 27.]
- ^{F31}(8)
- ^{F32}(9)
- (10) The power of the Department of Health and Social Services for Northern Ireland to make regulations under [^{F33}section 25 or 26 above] shall be exercisable by statutory rule for the purposes of the ^{M1}Statutory Rules (Northern Ireland) Order 1979; and any such regulations shall be subject to negative resolution within the meaning of the ^{M2}Interpretation Act (Northern Ireland) 1954.

Textual Amendments

- F20** Words in s. 34(1) omitted (1.4.2009) by virtue of [The Health Care and Associated Professions \(Miscellaneous Amendments\) Order 2008 \(S.I. 2008/1774\)](#), art. 1(4), **Sch. 2 para. 4(a)**; S.I. 2008/3150, art. 2(3)(a)(ii)
- F21** S. 34(1A) inserted (22.3.2005) by [The Opticians Act 1989 \(Amendment\) Order 2005 \(S.I. 2005/848\)](#), arts. 1(2), **25(2)** (with Sch. 2)
- F22** S. 34(2) substituted (22.3.2005) by [The Opticians Act 1989 \(Amendment\) Order 2005 \(S.I. 2005/848\)](#), arts. 1(2), **25(3)** (with Sch. 2)
- F23** Words in s. 34(3) omitted (22.3.2005) by virtue of [The Opticians Act 1989 \(Amendment\) Order 2005 \(S.I. 2005/848\)](#), arts. 1(2), **25(4)** (with Sch. 2)
- F24** S. 34(4) omitted (22.3.2005) by virtue of [The Opticians Act 1989 \(Amendment\) Order 2005 \(S.I. 2005/848\)](#), arts. 1(2), **25(6)** (with Sch. 2)
- F25** S. 34(5)(b) omitted (22.3.2005) by virtue of [The Opticians Act 1989 \(Amendment\) Order 2005 \(S.I. 2005/848\)](#), arts. 1(2), **25(6)** (with Sch. 2)
- F26** Words in s. 34(5)(c) substituted (22.3.2005) by [The Opticians Act 1989 \(Amendment\) Order 2005 \(S.I. 2005/848\)](#), arts. 1(2), **25(5)** (with Sch. 2)
- F27** Words in s. 34(6)(b) substituted (22.3.2005) by [The Opticians Act 1989 \(Amendment\) Order 2005 \(S.I. 2005/848\)](#), arts. 1(2), **25(5)** (with Sch. 2)

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- F28** Words in s. 34(7)(a) omitted (1.4.2009) by virtue of [The Health Care and Associated Professions \(Miscellaneous Amendments\) Order 2008 \(S.I. 2008/1774\)](#), art. 1(4), **Sch. 2 para. 4(b)(i)**; S.I. 2008/3150, art. 2(3)(a)(ii)
- F29** S. 34(7)(b) omitted (1.4.2009) by virtue of [The Health Care and Associated Professions \(Miscellaneous Amendments\) Order 2008 \(S.I. 2008/1774\)](#), art. 1(4), **Sch. 2 para. 4(b)(ii)**; S.I. 2008/3150, art. 2(3)(a)(ii)
- F30** S. 34(7)(c) substituted (9.7.2008 for specified purposes, 1.4.2009 in so far as not already in force) by [The Health Care and Associated Professions \(Miscellaneous Amendments\) Order 2008 \(S.I. 2008/1774\)](#), art. 1(3), **Sch. 2 para. 4(b)(iii)**; S.I. 2008/3150, art. 2(3)(a)(i)
- F31** S. 34(8) omitted (22.3.2005) by virtue of [The Opticians Act 1989 \(Amendment\) Order 2005 \(S.I. 2005/848\)](#), arts. 1(2), **25(6)** (with Sch. 2)
- F32** S. 34(9) omitted (22.3.2005) by virtue of [The Opticians Act 1989 \(Amendment\) Order 2005 \(S.I. 2005/848\)](#), arts. 1(2), **25(6)** (with Sch. 2)
- F33** Words in s. 34(10) substituted (22.3.2005) by [The Opticians Act 1989 \(Amendment\) Order 2005 \(S.I. 2005/848\)](#), arts. 1(2), **25(5)** (with Sch. 2)

Marginal Citations

- M1** S.I. 1979 No. 1573 (N.I. 12).
M2 1954 c.33 (N.I.).

35 Privy Council quorum and documents.

- (1) For the purpose of exercising any powers conferred by this Act on the Privy Council^{F34} ... 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.

Textual Amendments

- F34** Words in s. 35(1) omitted (coming into force in accordance with art. 1(3)-(6) of the amending S.I.) by virtue of [The Opticians Act 1989 \(Amendment\) Order 2005 \(S.I. 2005/848\)](#), **Sch. 1 para. 7** (with Sch. 2)

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 13D(2)(h)(i) inserted by [S.I. 2008/1774 Sch. 2 para. 2](#) (This amendment not applied to legislation.gov.uk. It was due to come into force on the coming into force of s. 44(1) of the Safeguarding Vulnerable Groups Act 2006 (c. 47), see art. 1(4). S. 44(1) was repealed without ever being in force on 10.9.2012 by 2012 c. 9, s. 75(6), Sch. 10 Pt. 5; S.I. 2012/2234, art. 2)
- s. 13AA inserted by [2008 c. 14 Sch. 7 para. 30](#)
- s. 23I inserted by [2008 c. 14 Sch. 7 para. 46](#)
- s. 23AA inserted by [2008 c. 14 Sch. 7 para. 39](#)
- s. 23CA inserted by [2008 c. 14 Sch. 7 para. 42](#)