

Tanzania

Opticians Act

Chapter 23

Legislation as at 31 July 2002

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Opticians Act Contents

Part I – Preliminary provisions (ss. 1-2)	1
1. Short title	1
2. Interpretation	1
Part II – The Optical Council (s. 3)	2
3. Establishment of the Optical Council of Tanzania	2
Part III – Registration (ss. 4-12)	2
4. Appointment of Registrar	2
5. Registers of ophthalmic and dispensing opticians	2
6. Qualifications for registration of opticians	2
7. List of corporate bodies	2
8. Qualifications for enrolment of corporate bodies	3
9. Publication of registers and lists	3
10. Publication prima facie evidence of registration or enrolment	3
11. Appeal against refusal to register	3
12. Registration of higher qualifications	3
Part IV – Disciplinary proceedings (ss. 13-19)	3
13. Establishment of Disciplinary Committee	3
14. Procedure for disciplinary proceedings	4
15. Disobedience of summons and refusal to give evidence	4
16. Erasure from the register and list for crime, infamous conduct, etc.	4
17. Restoration of names erased as a result of disciplinary cases, etc.	6
18. Erasure from register and list on grounds of fraud or error	6
19. Appeals in disciplinary and other cases	6
Part V – Disciplinary proceedings (ss. 20-27)	7
20. Restriction on practice by non-registered persons	7
21. Penalty for pretending to be registered, etc.	7
22. Provisions as to death or bankruptcy of registered optician	8
23. Restriction on sale and supply of optical appliances	8
24. Offences by bodies corporate	9
25. High Court may make rules	9
26. General power to make rules	9
27. Transitional provisions	9
Schedule (Section 3(3))	9

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Opticians Act

Chapter 23

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[Note: This legislation has been thoroughly revised and consolidated under the supervision of the Attorney General's Office, in compliance with the Laws Revision Act No. 7 of 1994, the Revised Laws and Annual Revision Act (Chapter 356 (R.L.)), and the Interpretation of Laws and General Clauses Act No. 30 of 1972. This version is up-to-date as at 31st July 2002.]

[Acts Nos.9 of 1966; 31 of 1967; G.N. No. 124 of 1966]

An Act to provide for the registration of opticians and the enrolment of bodies corporate carrying on business as opticians and for related matters.

Part I – Preliminary provisions (ss. 1-2)

1. Short title

This Act may be cited as the Opticians Act.

2. Interpretation

In this Act, unless the context otherwise requires—

"**Council**" means the Optical Council of Tanzania established under section 3;

"**dispensing optician**" means a person engaged or proposing to engage in the fitting and supply of optical appliances;

"**enrolled body corporate**" means a body corporate which is enrolled in the list of bodies corporate, carrying on business as ophthalmic or dispensing opticians;

"**Minister**" means the Minister responsible for matters relating to health and hospital services;

"**ophthalmic optician**" means a person engaged or proposing to engage in the testing of sight (otherwise than as a registered medical practitioner or a person following a course of study leading to obtaining a recognised qualification), 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;

"**register**" means a register of ophthalmic opticians or of dispensing opticians kept under the provisions of section 5;

"**registered optician**" means any optician registered under this Act;

"**Registrar**" means the Registrar of the Optical Council of Tanzania, appointed under section 4.

Part II – The Optical Council (s. 3)

3. Establishment of the Optical Council of Tanzania

- (1) There is hereby established a body to be known as the Optical Council of Tanzania which will have responsibility for regulating the practice and conduct of opticians and bodies corporate carrying on the business of opticians.
- (2) The Council shall—
 - (a) be a body corporate with perpetual succession and a common seal;
 - (b) in its corporate name be capable of suing and being sued;
 - (c) for and in connection with the purposes of this Act be capable of holding, purchasing and otherwise acquiring and disposing of movable or immovable property.
- (3) The provisions of the Schedule hereto shall have effect as to the constitution and proceedings of the Council and otherwise in relation to the Council.

Part III – Registration (ss. 4-12)

4. Appointment of Registrar

The Minister shall appoint a Registrar of the Optical Council of Tanzania, and he shall hold and vacate office in accordance with the terms of his appointment.

5. Registers of ophthalmic and dispensing opticians

The Registrar shall, subject to the directions of the Council, maintain—

- (a) two registers of ophthalmic opticians, one for the registration of persons engaged or proposing to engage, both in the testing of sight and in the fitting and supply of optical appliances, and the other for the registration of persons engaged or proposing to be engaged in the testing of sight but not in the fitting and supply of optical appliances; and
- (b) a register of dispensing opticians.

6. Qualifications for registration of opticians

- (1) The holder of any degree, diploma or licence which is recognised for the time being by the Council, as furnishing a sufficient guarantee of the possession of the requisite knowledge and skill for the efficient practice of optics, shall be entitled to be registered under this Act as an ophthalmic optician or a dispensing optician.
- (2) The Council may require any applicant for registration under this Act to satisfy it that he has adequate practical experience in the work of an ophthalmic optician or dispensing optician, as the case may be, and is of good moral character and a fit and proper to be registered under this Act.
- (3) The Council may direct the Registrar to postpone the registration of any applicant until so satisfied.

7. List of corporate bodies

The Registrar shall, subject to the directions of the Council, maintain a list of bodies corporate carrying on business as ophthalmic opticians or dispensing opticians, each containing the names, principal places of business and such other particulars as may be prescribed under the provisions of this Act.

8. Qualifications for enrolment of corporate bodies

A body corporate of which either—

- (a) a majority of the directors are registered opticians or where the body corporate has one director only, such director is a registered optician; or
- (b) the greater part of its business consists of activities other than the testing of sight and the fitting and supply of optical appliances, and so much of its business as consists of the testing of sight is carried on under the management of a registered ophthalmic optician, and so much of its business as consists of the fitting and supply of optical appliances is carried on under the management of a registered optician,

shall be entitled to be enrolled in the list maintained for the purpose under the provisions of section 7.

9. Publication of registers and lists

- (1) The Registrar shall publish in the *Gazette*, as soon as may be practicable after registration or enrolment, the name of every person registered as an ophthalmic optician or dispensing optician and the name of every enrolled body corporate carrying on the business of ophthalmic optician or dispensing optician.
- (2) The Registrar shall, once in every year, as soon as it is convenient after the first of January, publish in the *Gazette* the names and qualifications of all registered ophthalmic opticians and dispensing opticians, and all enrolled bodies corporate.

10. Publication *prima facie* evidence of registration or enrolment

- (1) The publication provided for in section 9 shall be *prima facie* evidence that the persons and bodies corporate named therein are registered or enrolled under this Act, and the absence of the name of any person or body corporate from such publication shall be *prima facie* evidence that such person or body corporate is not so registered or enrolled.
- (2) The registers, lists and all copies thereof or extracts therefrom which purport to have been certified under the hand of the Registrar shall be receivable in all courts and tribunals or other bodies authorised to receive evidence as *prima facie* evidence of the facts contained therein.

11. Appeal against refusal to register

Where the Council have refused to grant an application for registration under section 6, the Minister may, on representations being made to him, if he thinks fit, after considering the representations and after communicating with the Council, order the Council to grant the application.

12. Registration of higher qualifications

Every person registered under this Act who has obtained any higher degree or qualification than the qualification in respect of which he has been registered shall be entitled to have such higher degree or additional qualifications inserted in the register in substitution for or in addition to the qualification previously registered, without payment of any further fee.

Part IV – Disciplinary proceedings (ss. 13-19)

13. Establishment of Disciplinary Committee

- (1) The Council may, from time to time, resolve itself into a Disciplinary Committee for the purpose of making inquiry into the conduct of any registered optician or enrolled body corporate.

- (2) The Disciplinary Committee may, if it thinks fit and shall, if so directed by the Minister, co-opt for the purpose of any inquiry, the Attorney-General or his legally qualified representative as a member of the Committee.

14. Procedure for disciplinary proceedings

- (1) Upon any inquiry held by the for Disciplinary Committee, the person or body corporate whose conduct is being inquired into shall be entitled to appear and to be heard in person or, in the case of a body corporate, by a director or officer, or to be represented by an advocate.
- (2) For the purpose of proceedings at any inquiry held by the Disciplinary Committee, the chairman may administer oaths and may issue a summons under his hand directing the person named therein to attend at the time and place mentioned to give evidence, or to produce documents therein specified, or to do both.
- (3) For the purpose of Chapter XI of the Penal Code ¹, an inquiry under this section shall be deemed to be a judicial proceeding.
- (4) The Disciplinary Committee shall have power to make an order for the payment of costs by any party appearing before it and any such order shall be enforceable in like manner as an order of the High Court.
- (5) Subject to the provisions of this section and of rules made under section 26, the Disciplinary Committee shall have power to regulate its own procedure.

15. Disobedience of summons and refusal to give evidence

If any person upon whom a summons issued under the provisions of section 14 has been served, refuses or omits without sufficient cause to attend at the time and place mentioned in the summons, or refuses without sufficient cause to answer fully and satisfactorily to the best of his knowledge and belief all questions put to him by or with the concurrence of the Disciplinary Committee, or refuses or omits without sufficient cause to produce any documents in his possession or under his control which are mentioned in the summons, he shall be liable on conviction to a fine not exceeding one thousand shillings:

Provided that every person giving evidence before the Disciplinary Committee shall, in respect of any evidence given by him or any document produced by him, be entitled to all privileges to which he would be entitled as a witness before the High Court.

16. Erasure from the register and list for crime, infamous conduct, etc.

- (1) If any registered optician—
 - (a) is convicted by any court in a foreign country of any criminal offence, not being an offence which, owing to its trivial nature or the circumstances under which it was committed, does not render him unfit to have his name on the register; or
 - (b) is judged after enquiry by the Disciplinary Committee to have been guilty of infamous conduct in any professional respect,the Committee may, if it thinks fit, direct that his name be erased from the register.
- (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

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- (b) the Disciplinary Committee is of the opinion that the condition, or any of the conditions, for the enrolment of a body corporate is no longer satisfied,

the Committee may, if it thinks fit, direct that the name of the body corporate be erased from the list.

- (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 or supply of optical appliances, subsection (2) shall apply as if he 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 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 has contravened or failed to comply with any rules made under section 26 of this Act and that the contravention or failure is such as to render the optician unfit to have his name on the register or the body corporate unfit to have its name on the list, the Disciplinary Committee may, if it thinks fit direct that the name of the optician or body corporate be erased from the register or list.
- (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 registered 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 persons engaged or proposing to engage both in the testing of sight and in the fitting and supply of optical appliance or a registered dispensing optician,

the Committee may, if it thinks fit, direct that the name of the optician or body corporate be erased from the register or list.

- (6) Where—
 - (a) the name of a director of any such body corporate as aforesaid is erased from the register under subsection (1) or (4) of this section; or
 - (b) a director of any such body corporate is convicted of an offence under this Act;
 - (c) the name of a registered optician employed by any such body corporate is erased from the register under subsection (1) of this section and the act or omission constituting the ground on which it was erased was instigated or connived at by a director of the body corporate, or, if the act or omission was a continuing act or omission, a director of the body corporate had or reasonably ought to have had knowledge of the continuance thereof, the Disciplinary Committee may, if it thinks fit, direct that the name of the body corporate shall be erased from the list:

Provided that the 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 this subsection being rendered inapplicable in that case or while any such proceedings are pending.

- (7) Where it appears to the Disciplinary Committee 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 its name erased from the list under this section and that the events giving rise to the liability were confined, or substantially confined, to a particular set of premises, the Committee may, instead of erasing the name of the body corporate from the list, direct that the body corporate shall not use the title of ophthalmic optician, dispensing optician, registered optician or enrolled optician 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, if it

thinks fit, erase the name of the body corporate from the list. A direction under this subsection shall remain in force until revoked, on an application made to it in that behalf, by the Disciplinary Committee.

- (8) When the Disciplinary Committee directs that the name of an individual or body corporate be erased from the register or list, or that a body corporate shall not use any of the titles specified in subsection (7) in connection with a set of premises, the Registrar shall serve on that individual or body a notification of the direction.
- (9) A notification required to be served under subsection (8) on an individual may be served by post in a registered letter addressed to him at his address in the register or at his last known address if that address differs from his address in the register and it appears to the Registrar that service at his last known address would be more effective, and a notification required to be so served on a body corporate may be served by post in a registered or principal office if that address differs from its address in the list and it appears to the Registrar that service at its registered or principal office would be more effective.

17. Restoration of names erased as a result of disciplinary cases, etc.

- (1) Where the name of an individual or body corporate has been erased from one of the registers or lists in pursuance of a direction under section 16, the name of that individual or body corporate shall not again be entered in any of the registers or lists unless the Disciplinary Committee on application made to it in that behalf otherwise direct.
- (2) An application under subsection (1) for the restoration of a name to the register or list from which it has been erased or for the entry of a name in one of the other registers or lists shall not be made to the Committee within ten months of—
 - (a) the date of erasure; or
 - (b) a previous application thereunder.

18. Erasure from register and list on grounds of fraud or error

- (1) If it is proved to the satisfaction of the Disciplinary Committee that any entry in the register or list has been fraudulently or incorrectly made, the Committee may, if it thinks fit direct that the entry be erased from the register or list.
- (2) An individual may be registered or a company enrolled in pursuance of any provision of this Act notwithstanding that his or its name has been erased under this section, but if it was so erased on the ground of fraud, that individual or company shall not be registered or enrolled except on an application in that behalf to the Disciplinary Committee; and on any such application the Committee may, if it thinks fit, direct that the individual or body corporate shall not be registered or enrolled, or shall not be registered or enrolled until the expiration of such period as may be specified in the direction.
- (3) Where the Disciplinary Committee direct that the name of an individual or body corporate be erased from the register or list under this section, the Registrar shall serve on that individual or body corporate a notification of the direction, and subsection (9) of section 16 of this Act shall apply to any such notification as it applies to a notification required to be served under subsection (8) of that section.

19. Appeals in disciplinary and other cases

- (1) At any time within three months from the service of a notification that the Disciplinary Committee have under section 16 or 18 of this Act directed that the name of an individual or a body corporate be erased from the register or list or that a body corporate shall not use any of the titles specified in subsection (7) of section 16 in connection with a set of premises, that individual or body corporate may appeal to the High Court against the decision of the Council and in any such appeal the High

Court may give such directions in the matter as it thinks proper, and any order of the High Court under this section shall be final.

- (2) The Council may appear as respondent on any appeal, and for the purpose of enabling directions to be given as to the costs of that appeal the Council shall be deemed to be a party thereto, whether or not it shall appear at the hearing of the appeal.
- (3) Where no appeal is brought against a direction under section 16 or 18 of this Act, or where such an appeal is brought but withdrawn or struck out for want of prosecution, the direction shall take effect on the expiration of the time for appearing or as the case may be, on the withdrawal or striking out of the appeal.
- (4) Subject to subsections (1), (2) and (3), where an appeal is brought against a direction under either of those subsections, the direction shall take effect if and when the appeal is dismissed and not otherwise.

Part V – Disciplinary proceedings (ss. 20-27)

20. Restriction on practice by non-registered persons

- (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 or prescribe any optical appliance to any person.
- (2) Subsection (1) 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 a part of an examination so approved.
- (3) The Council may make rules exempting any prescribed class of persons, including persons training as ophthalmic opticians from the provisions of this section, provided they comply with such conditions as may be prescribed by the rules.
- (4) Any person who contravenes the provisions of this section is liable on conviction to a fine not exceeding five thousand shillings or to imprisonment for a term not exceeding six months or to both the fine and imprisonment.

21. Penalty for pretending to be registered, etc.

- (1) Any individual who, for the purpose of trade or practice—
 - (a) takes or uses any of the following titles (either alone or in combination with any other words) in the circumstances mentioned in relation thereto, that is to say, the title of ophthalmic optician when he is not registered in either of the registers of ophthalmic opticians, or the title of dispensing optician when he is not registered in the register of dispensing opticians, or exempted from the provisions of section 23, or the title of registered optician or enrolled optician when he is not registered in any of the registers; or
 - (b) takes or uses any name, title, addition or description falsely implying, or otherwise pretends, that he is registered in any of the registers,

is liable on conviction to a fine not exceeding three thousand shillings or to imprisonment for six months or to both the fine and imprisonment.

- (2) Any body corporate—
 - (a) which takes or uses any of the following titles (either alone or in combination with any other words) in the circumstances mentioned in relation thereto, that is to say, the title of ophthalmic optician when it is not enrolled in the list of bodies corporate carrying on business as ophthalmic opticians or the title of dispensing optician when it is not enrolled

in the list of bodies corporate carrying on business as dispensing opticians, or which takes or uses the title of registered optician or enrolled optician, when it is not enrolled in the list; or

- (b) which takes or uses any name, title, addition or description falsely implying, or otherwise pretends, that it is enrolled in the list,

is liable on conviction to a fine not exceeding three thousand shillings.

22. Provisions 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 six months beginning with his death or such longer period as the Council may in any particular case allow, section 21 shall not operate to prevent his personal representatives, his widow or any of his children or 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 six months beginning with the bankruptcy or such longer period as the Council may in any particular case allow, section 21 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 person by virtue of subsection (1) or subsection (2) of this section takes or uses any title in relation to the business or practice of a deceased optician or of an optician who has become bankrupt and an offence under this Act is committed in the cause of that business or practice the Disciplinary Committee may if it thinks fit, direct that subsection (1) or, as the case may be, subsection (2) shall cease to apply in relation to that business or practice and 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 this subsection as it has effect in relation to a disciplinary case and any direction that the name of a body corporate shall be erased from the list.

23. Restriction on 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—
 - (a) by or under the supervision of a registered medical practitioner or registered optician; or
 - (b) in accordance with a prescription made by a registered medical practitioner or ophthalmic optician, or by a dispensing optician.
- (2) The foregoing subsection shall not apply to the sale of an optical appliance to—
 - (a) a registered medical practitioner, registered optician or enrolled body corporate for the purposes of his practice or of his or its business;
 - (b) any authority or person running a hospital, clinic, nursing home or other institution providing for medical or surgical treatment;
 - (c) a Government department or for use in Government hospitals; or
 - (d) a manufacturer of or dealer in optical appliances for the purposes of business.
- (3) The Council may make rules exempting any prescribed class of persons, including persons training as dispensing opticians, from the provisions of this section provided they comply with such conditions as may be prescribed.

- (4) Rules prescribed by the Council under subsection (3) may require a person to satisfy the Council as to his suitability to practise as dispensing optician by passing an examination conducted under the authority of the Council.
- (5) Any person who contravenes subsection (1) of this section commits an offence and is liable on conviction to a fine not exceeding three thousand shillings or to imprisonment for a term not exceeding six months or to both the fine and imprisonment.

24. 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 be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person purporting to act in any such capacity, 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.

25. High Court may make rules

The High Court may make rules of court for regulating appeals to the High Court under the provisions of this Act and for the fees to be paid in respect thereof, and until any such rules are made and subject to any such rules when made, the provisions of the Civil Procedure Code ² shall apply as if a decision of the Disciplinary Committee were a decree of a court exercising original jurisdiction.

26. General power to make rules

Subject to the provisions of section 25, the Minister may make rules generally for the better carrying out of the provisions of this Act, and any such rules may, without prejudice to the generality of the foregoing, provide for—

- (a) the procedure to be followed by the Disciplinary Committee in any inquiry under this Act;
- (b) advertising by enrolled bodies corporate or registered opticians;
- (c) the administration of drugs by registered opticians, enrolled bodies corporate and their employees;
- (d) the practice of orthoptics by registered opticians, enrolled bodies corporate and their employees;
- (e) the prescription, supply and fitting of contact lenses by registered opticians, enrolled bodies corporate and their employees; and
- (f) anything which is permitted or required by this Act to be prescribed.

27. Transitional provisions

[Transitional provisions.]

Schedule (Section 3(3))

1. Composition of the Council

The Optical Council shall consist of—

- (a) two medical practitioners in the service of the Government, one of whom shall be chairman;
- (b) two registered medical practitioners not being in the service of the Government; and

- (c) two registered opticians,

appointed by the Minister:

Provided that the first two persons to be appointed under subparagraph (c) shall be persons who in the opinion of the Minister are qualified for registration as opticians.

2. Tenure of office of members

A member of the Council shall, unless he previously dies or retires or his appointment is revoked, hold office for a period of three years and shall be eligible for re-appointment.

3. Quorum procedure and meetings

- (1) The Council shall meet at such times as may be necessary or expedient for the transaction of its business.
- (2) At any meeting of the Council three members thereof shall constitute a quorum.
- (3) At any meeting of the Council the chairman shall preside or if the chairman is absent the members present at the meeting shall elect one of their number to be the chairman for that meeting.
- (4) In the event of an equality of votes the chairman of the meeting shall have a casting vote in addition to his deliberative vote.
- (5) Minutes in proper form of each meeting of the Council shall be kept and shall be confirmed by the Council at the next meeting and signed by the chairman of the meeting.
- (6) All acts, matters and things authorised to be done by the Council shall be decided by resolution at a meeting of the Council at which a quorum is present.
- (7) A decision of the majority of members present and voting at a meeting of the Council shall be deemed to be a decision of the Council.
- (8) The seal of the Council shall be affixed by the chairman or the chairman for the meeting and witnessed by two members of the Council.

4. Vacancies etc., not to invalidate proceedings

Subject to the provisions of paragraph 3 relating to a quorum, the Council may act notwithstanding any vacancy in the membership and no act or proceeding of the Council shall be invalid by reason only of some defect in the appointment of a member or some person who purports to be a member.