

THE OPTICAL COUNCIL BILL
(No. IV of 2021)

Explanatory Memorandum

The object of this Bill is to provide for the establishment of the Optical Council of Mauritius with a view to better regulating the profession of opticians.

2. The Bill accordingly provides that the Council will, inter alia –
- (a) regulate and control the profession of opticians;
 - (b) register opticians;
 - (c) regulate the professional conduct of opticians;
 - (d) promote the advancement of opticians; and
 - (e) approve, conduct or cause to be conducted training courses, programmes, lectures, seminars or conferences, including continuing professional development courses or programmes, for opticians.

Dr K. K. S. JAGUTPAL
Minister of Health and Wellness

19 March 2021

THE OPTICAL COUNCIL BILL
(No. IV of 2021)

ARRANGEMENT OF CLAUSES

Clause

- | | |
|---|---------------------------------------|
| PART I – PRELIMINARY | 8. Vacancy in membership of Council |
| 1. Short title | 9. Meetings of Council |
| 2. Interpretation | 10. Committees |
| PART II – THE COUNCIL | 11. Disclosure of interest |
| 3. Establishment of Council | 12. Registrar |
| 4. Objects of Council | 13. Delegation |
| 5. Functions of Council | 14. Officers of Council |
| 6. Powers of Council | 15. Conditions of service of officers |
| PART III – MANAGEMENT OF COUNCIL | 16. Powers of Minister |
| 7. Composition of Council | |

- | | |
|--|--|
| <p>PART IV – REGISTRATION OF OPTICIANS, FOREIGN OPTICIANS AND VISITING OPTICIANS</p> <p>Sub-Part A – Practice of Optometry</p> <p>17. Practice of optometry</p> <p>Sub-Part B – Optician</p> <p>18. Registration of optician</p> <p>Sub-Part C – Foreign Optician</p> <p>19. Temporary registration of foreign optician</p> <p>Sub-Part D – Visiting Optician</p> <p>20. Temporary registration of visiting optician</p> <p>Sub-Part E – Annual Fee</p> <p>21. Annual fee</p> <p>Sub-Part F – Annual List</p> <p>22. Annual list</p> <p>Sub-Part G – Register</p> <p>23. Register</p> <p>Sub-Part H – Continuing Professional Development</p> <p>24. Continuing professional development</p> <p>PART V – DISCIPLINE</p> <p>25. Interpretation of Part V</p> <p>26. Preliminary investigation by Council</p> <p>27. Disciplinary proceedings</p> <p>28. Membership of Disciplinary Tribunal</p> | <p>29. Disciplinary measures</p> <p>30. Other disciplinary measures</p> <p>31. Summary proceedings</p> <p>32. Name and other particulars to be removed from Register</p> <p>PART VI – FINANCIAL PROVISIONS AND ACCOUNTS</p> <p>33. General Fund</p> <p>34. Execution of documents</p> <p>35. Donations</p> <p>36. Annual report</p> <p>PART VII – MISCELLANEOUS</p> <p>37. Seal of Council</p> <p>38. Legal proceedings</p> <p>39. Protection from liability</p> <p>40. Confidentiality</p> <p>41. Review of decision of Council</p> <p>42. Offences</p> <p>43. Regulations</p> <p>44. Repeal</p> <p>45. Savings and transitional provisions</p> <p>46. Commencement</p> <p>FIRST SCHEDULE</p> <p>SECOND SCHEDULE</p> <p>THIRD SCHEDULE</p> <p>FOURTH SCHEDULE</p> |
|--|--|

A BILL

To establish the Optical Council of Mauritius

ENACTED by the Parliament of Mauritius, as follows –

PART I – PRELIMINARY

1. Short title

This Act may be cited as the Optical Council Act 2021.

2. Interpretation

In this Act –

“annual fee” means the fee required under section 21;

“annual list” means the annual list of opticians published under section 22;

“Chairperson” means the Chairperson of the Council;

“Code of Practice” means such Code of Practice as may be prescribed under section 43;

“committee” means a committee set up under section 10;

“Council” means the Optical Council of Mauritius established under section 3;

“delegated power” means the powers delegated, under section 89(2)(b)(i) of the Constitution, and subject to Part IVA of the Public Service Commission Regulations, to the Council by the Public Service Commission to enquire and report into any complaint of professional misconduct or negligence against an optician appointed by the Public Service Commission;

“Disciplinary Tribunal” means the Medical Disciplinary Tribunal set up under the Medical Council Act;

“dispensing optician” means a person who –

- (a) fits and supplies optical appliances in accordance with a prescription from an ophthalmic optician, an *opticien-lunetier* or an ophthalmologist; and
- (b) after satisfying the Council that he is suitably qualified to –
 - (i) fit and supply contact lenses; and
 - (ii) use such medication as surface anaesthetics and colouring agents as may be necessary for that purpose;

“financial year” has the same meaning as in section 2A of the Finance and Audit Act;

“foreign optician” means a person registered as such under section 19;

“member” –

- (a) means a member of the Council; and
- (b) includes the Chairperson;

“Minister” means the Minister to whom responsibility for the subject of health is assigned;

“officer” –

- (a) means an officer of the Council appointed as such under section 14; and
- (b) includes the Registrar;

“ophthalmic optician or optometrist” means a person who –

- (a) evaluates visual acuity and prescribes, fits and supplies optical appliances for remedial purposes; and
- (b) uses such equipment and such medication as miotics, cycloplegics, mydriatics, surface anaesthetics as listed in the First Schedule and colouring agents as may be necessary for remedial purposes;

“ophthalmologist” means a medical practitioner who holds a recognised post-graduate qualification in ophthalmology;

“optical appliance” means an appliance designated to correct, remedy or relieve a defect of sight, contact lenses shall be deemed to be optical appliances;

“optician” means a dispensing optician, an ophthalmic optician, foreign optician, visiting optician or optometrist or an *opticien-lunetier*;

“*opticien-lunetier*” means a person who –

- (a) evaluates visual acuity and prescribes, fits and supplies optical appliances for remedial purposes in respect of persons above the age of 16; but
- (b) does not use any medication for that purpose except for the fitting of a contact lenses.

“practice of optometry” includes –

- (a) evaluating visual acuity, prescribing, fitting and supplying optical appliances for remedial purposes;
- (b) dispensing optical appliances;
- (c) interpreting prescriptions;
- (d) patient counselling for the purposes of dispensing optical appliances;

(e) evaluating the use of optical appliances;

“preliminary investigation” means a preliminary investigation under section 26;

“Registrar” means the Registrar of the Council appointed under section 12;

“resident” has the same meaning as in the Immigration Act;

“supervising officer” means the supervising officer of the Ministry;

“visiting optician” means a person registered as such under section 20.

PART II – THE COUNCIL

3. Establishment of Council

(1) This is established for the purposes of this Act the Optical Council of Mauritius.

(2) The Council shall be a body corporate.

4. Objects of Council

The Council shall –

- (a) regulate the professional conduct of opticians; and
- (b) promote the advancement of opticians.

5. Functions of Council

The Council shall –

- (a) register opticians;
- (b) temporarily register non-citizens, other than non-citizens who are residents of Mauritius, as foreign opticians or visiting opticians;
- (c) exercise and maintain discipline in the profession of opticians;
- (d) establish a Code of Practice on standards of professional conduct and ethics and monitor compliance with such code;

- (e) cooperate with any other institution having objects wholly or partly similar to its objects;
- (f) publish the annual list;
- (g) keep a record of its proceedings and decisions;
- (h) approve the conduct of such examination before registering opticians;
- (i) approve, organise or cause to be organised training programmes, courses, lectures, seminars or conferences for the profession of opticians;
- (j) advise the Minister on any matter pertaining to this Act on any matter connected with, or incidental to, it;
- (k) discharge such other functions as are conducive to its objects.

6. Powers of Council

The Council shall have such powers as may be necessary to discharge its functions most effectively and may, in particular –

- (a) enter into any contract or agreement;
- (b) set up any committee of appropriate persons to assist it in the exercise of its exercise;
- (c) sell or exchange any property;
- (d) make or receive any grant or donation, other than to, or from an optician, a foreign optician, a visiting optician or a person who is the holder of a licence to operate an optical shop;
- (e) borrow money, other than from an optician, a foreign optician, a visiting optician or a person who is the holder of a licence to operate an optical shop, and raise funds;
- (f) collect or receive any fee, rental, interest or other sum which may lawfully accrue to it;
- (g) do such acts and things as may be necessary for the purposes of this Act.

PART III – MANAGEMENT OF COUNCIL

7. Composition of Council

- (1) The Council shall consist of –
- (a) a Chairperson, to be elected from among the members referred to in paragraphs (b) and (c);
 - (b) 3 opticians from the public sector, each having not less than 7 years' experience as optician in Mauritius, to be elected in the manner specified in the Second Schedule;
 - (c) 5 opticians from the private sector, each having not less than 7 years' experience as optician in Mauritius, to be elected in the manner specified in the Second Schedule;
 - (d) one optician from the Optical Association (Mauritius), to be appointed by the Minister;
 - (e) a representative of the Ministry;
 - (f) a representative of the Prime Minister's Office;
 - (g) a representative of the Attorney-General's Office; and
 - (h) 3 persons who are not opticians, to be appointed by the Minister.

(2) A member, other than a member referred to in paragraphs (e) to (g) shall, subject to section 8, hold office for a period of 3 years and shall be eligible for reappointment.

(3) The names of the members of the Council shall be published in the Gazette as soon as possible after the Council is constituted.

(4) Every member shall be paid such fee or allowance as the Council may determine.

8. Vacancy in membership of Council

(1) A member, other than a member referred to in section 7(1)(e) to (g) shall cease to hold office –

- (a) on completion of his term of office; or
- (b) on his resignation, by notice in writing given to the Registrar.

(2) Where a member referred to in section 7(1)(b) or (c) resigns, his seat shall become vacant as from the date on which the Registrar receives the notice.

(3) The Council may remove from office any member, other than a member referred to in section 7(1)(e) to (g), who –

- (a) is absent, without leave of the Council, from 2 consecutive meetings of the Council;
- (b) commits an act of misconduct, malpractice, negligence, fraud or dishonesty, or a breach of the Code of Practice, which, in the opinion of the Council, renders him unfit to be a member;
- (c) is convicted of an offence of such nature as, in the opinion of the Council, renders him unfit to be a member;
- (d) is suspended or deregistered as an optician under this Act;
- (e) is suffering from such mental or physical impairment as, in the opinion of the Council, renders him unfit to be a member; or
- (f) fails to disclose any pecuniary or other material interest which he has in relation to any matter before the Council.

(4) The Council may suspend from office, for such time as it may determine, any member who is –

- (a) liable to be removed from office under subsection (3);
- (b) guilty of a minor breach of the Code of Practice; or
- (c) the subject of a preliminary investigation.

(5) Where a vacancy occurs in the membership of the Council, the vacancy shall be filled, in the case of a member who –

- (a) is appointed by the Minister, by a fresh appointment; or
- (b) is elected, by appointing the optician who obtained the highest number of votes after the elected optician at the election held immediately before the vacancy arose.

(6) A person appointed under subsection (5) shall hold office for the remainder of the term of office of the person whom he replaces.

9. Meetings of Council

(1) The Council shall meet as often as the Chairperson may determine but at least once every 2 months at such time and place as he may determine.

(2) At a meeting of the Council, 8 members shall constitute a quorum.

(3) (a) Where the Chairperson is absent from a meeting of the Council, the Chairperson or, in the absence of the Chairperson, the Vice-chairperson shall chair the meeting.

(b) Where the Chairperson and the Vice-chairperson are absent from a meeting of the Council, the members present shall elect one of the members referred to in section 7(1)(b), (c) or (d) to chair the meeting.

(4) (a) A special meeting of the Council –

(i) may be convened by the Chairperson at any time; or

(ii) shall be convened by the Registrar within 7 days of the receipt of a request in writing signed by not less than 8 members.

(b) Any request made under paragraph (a)(ii) shall specify the purpose for which the special meeting is to be convened.

(5) The Council may, where it considers necessary, co-opt such other persons with relevant expertise not already available to the Council, to assist it in relation to any matter before it.

(6) At any meeting of the Council, each member shall have one vote on a matter in issue and in the event of an equality of votes, the person presiding shall have a casting vote.

(7) Subject to this section, the Council shall regulate its meetings and proceedings in such manner as it may determine.

10. Committees

(1) The Council may set up such committees as may be necessary to assist it in the discharge of its functions, including the conduct of a preliminary investigation.

(2) A committee shall consist of not less than 3 members of the Council and such other persons as may be co-opted by the Council.

(3) A committee shall –

- (a) meet as often as is necessary and at such time and place as the chairperson of the committee may determine;
- (b) meet as and when required by the Council;
- (c) regulate its meetings and proceedings in such manner as it may determine.

(4) A committee shall submit its report within such time as the Council may determine.

(5) The report referred to in subsection (4) shall contain the committee's observations, comments, recommendations or findings, if any, on any matter referred to it.

11. Disclosure of interest

(1) Where any member, or any person related to the member by blood or marriage, has a pecuniary or other material interest in, or in relation to, any matter before the Council or a committee, that member shall –

- (a) disclose the nature of the interest before or at the meeting convened to discuss that matter; and
- (b) not take part in any deliberations relating to that matter.

(2) A disclosure of interest made under subsection (1) shall be recorded in the minutes of proceedings of the meeting of the Council or committee.

12. Registrar

(1) The Council shall, on such terms and conditions as it may determine, appoint an optician to act as Registrar of the Council.

(2) The Registrar appointed under subsection (1) shall have at least 5 years' experience as an optician.

(3) The Registrar shall be responsible for –

- (a) the proper administration of the Council.

- (b) executing all decisions of the Council; and
- (c) performing such other duties as the Council may assign to him.

(4) The Registrar shall act as Secretary to the Council and shall, for every meeting of the Council –

- (a) give notice of the meeting to the members;
- (b) prepare and attend the meeting;
- (c) keep minutes of proceedings of the meeting; and
- (d) execute all decisions of the Council.

(5) The Registrar may take part in the deliberations of a meeting of the Council, but shall not have the right to vote.

(6) The Registrar may also act as the Treasurer of the Council.

(7) The Registrar shall have such other duties as may be conferred upon him by the Council.

(8) Where the Registrar is, for any reason, unable to perform his duties, the Council may appoint another optician having at least 5 years' experience as an optician in Mauritius to act as Registrar.

13. Delegation

(1) The Council may, subject to such instructions as it may give, delegate to the Registrar such of its functions and powers as may be necessary for the effective management of the day to day business and activities of the Council, other than the power to –

- (a) acquire, sell or exchange any property;
- (b) make or receive any grant or donation;
- (c) borrow money and raise funds.

(2) The Registrar may, with the approval of the Council, delegate his functions and powers to such officer as he may designate.

14. Officers of Council

(1) The Council may, on such terms and conditions as it may determine, appoint such officers as it considers necessary for the proper discharge of its functions under this Act.

(2) Every officer shall be under the administrative control of the Registrar.

15. Conditions of service of officers

The Council may make provision to govern the conditions of service of its officers and, in particular, to deal with –

- (a) the appointment, dismissal, discipline, pay and leave of, and the security to be given to, officers;
- (b) appeals by officers against dismissal and any other disciplinary measure.

16. Powers of Minister

(1) The Minister may give such directions of a general character to the Council, not inconsistent with this Act, as he considers necessary in the public interest, and the Council shall comply with those directions.

(2) The Minister may require the Council to furnish any information or document in relation to its activities, and the Council shall supply such information or document.

PART IV – REGISTRATION OF OPTICIANS, FOREIGN OPTICIANS AND VISITING OPTICIANS

Sub-Part A – Practice of Optometry

17. Practice of optometry

- (1) No person shall practise optometry unless he is –
 - (a) registered as an optician; or
 - (b) temporarily registered as a foreign optician or visiting optician.
- (2) Nothing in this Act shall –
 - (a) apply to medical practitioners;

- (b) prevent –
 - (i) a licensed pharmacist from dispensing, selling or supplying any drugs; or
 - (ii) a dealer from supplying ophthalmic frames or lenses in the ordinary course of wholesale business.

Sub-Part B – Optician

18. Registration of optician

- (1) No person shall be registered as an optician unless he –
 - (a) satisfies the Council that he –
 - (i) is a citizen, or a resident, of Mauritius;
 - (ii) has not been convicted of an offence involving fraud or dishonesty in Mauritius or in any other country;
 - (iii) has not been disqualified or deregistered as an optician on account of professional misconduct or negligence in in Mauritius or in any other country;
 - (iv) does not suffer from any mental impairment which is likely to hamper the discharge of his functions as optician;
 - (b) holds the appropriate qualification and experience;
 - (c) satisfies the Council that his qualifications are recognised by the regulatory body of the country where he has obtained his qualifications and would have entitled him to practise as an optician in that country;
 - (d) passes, subject to subsection (3)(c), such examination as the Council may approve; and
 - (e) pays such registration fee as may be prescribed.
- (2) The qualification specified in subsection (1)(b) shall be any of the qualification specified in the Third Schedule.

(3) (a) Subsection (2) shall not apply to a person who has, on the commencement of this Act, already enrolled on a course leading to a degree, diploma or an equivalent qualification in the field of optometry.

(b) An examination referred to in subsection (1)(d) shall be held at least once every year.

(c) Subsection (1)(d) shall not apply to a person who satisfies the condition specified in subsection (1)(c), provided he is registered as an optician by the regulatory body of the country where he obtained his degree, diploma or equivalent qualification, as specified in the Fourth Schedule, in the field of optometry.

(4) (a) Any person who wishes to be registered as an optician shall make an application, in writing, to the Registrar in such form and manner as the Council may determine.

(b) An application made under paragraph (a) shall be accompanied by –

(i) the applicant's birth certificate, National Identity Card or any other acceptable evidence of his identity, and in the case of a non-citizen, his passport;

(ii) (A) the original or a certified copy of the applicant's degree, diploma or equivalent qualification in the field of optometry; or

(B) where the qualification is written in a language other than in English or French, a certified translation, in English or French, of his degree, diploma or equivalent qualification in the field of optometry;

(iii) such processing fee as may be prescribed; and

(iv) such additional document or information as the Registrar may require.

(5) On receipt of an application made under subsection (4), the Registrar shall refer the application to the Council for its determination.

(6) (a) The Council may, where it considers it necessary, call an applicant for an interview.

(b) The Council may grant or reject an application and shall forthwith notify the applicant of its decision.

(c) Where the Council grants an application under paragraph (b), it shall, on payment of such registration and annual fees as may be prescribed, register the applicant as an optician and issue to him a certificate of registration, subject to such terms and conditions as the Council may determine.

(d) Where the Council registers an optician under paragraph (c), the Registrar shall forthwith enter in the Register the name, address, qualification and such other particulars of that optician as may be relevant.

(7) Where the Council is satisfied that an optician has damaged or lost his certificate of registration, it may, on payment of such appropriate fee as may be prescribed, issue a duplicate certificate of registration to him.

Sub-Part C – Foreign Optician

19. Temporary registration of foreign optician

(1) A non-citizen may be temporarily registered as a foreign optician where he –

- (a) undertakes to work in a company or other body where the relevant expertise required in the field is not available in Mauritius;
- (b) undertakes to work in a company or other body, where at least 75 per cent shares of which is owned by citizens of Mauritius;
- (c) holds a work permit, is exempted from holding a permit under the Non-Citizens (Employment Restriction) Act or holds an occupation permit under section 9A of the Immigration Act;
- (d) satisfies the requirements referred to in section 18(1)(a)(ii) to (iv), (b), (c) (d) and (e);
- (e) pays such registration fee as may be prescribed; and
- (f) undertakes not to open a company or body operating in the field of optometry.

(2) An application for registration as a foreign optician shall be made to the Registrar in such form and manner as the Council may determine, and shall be accompanied by –

- (a) the applicant's birth certificate and where necessary, his passport;
- (b)
 - (i) the original or a certified copy of the applicant's degree, diploma or equivalent qualification in the field of optometry; or
 - (ii) where the qualification is written in a language other than in English or French, a certified translation, in English or French, of his degree, diploma or equivalent qualification in the field of optometry;
- (c) documentary evidence that the applicant's expertise in field of optometry is not available in Mauritius;
- (d) the applicant's work permit, where applicable, or occupation permit;
- (e) such processing fee as may be prescribed; and
- (f) such additional document or information as the Registrar may require.

(3) On receipt of an application made under subsection (2), the Registrar shall refer the application to the Council for its determination.

(4) (a) The Council may, where it considers it necessary, call an applicant for an interview.

(b) The Council shall, within 30 days of the receipt of an application, grant or reject an application and shall forthwith notify the applicant of its decision.

(5) (a) Where the Council grants an application, it shall, on payment of such registration fee as may be prescribed, temporarily register the applicant as a foreign optician and issue him with a practising licence, subject to such terms and conditions as the Council may determine.

(b) Subject to this Act, a practising licence issued under this section shall be valid for a period of one year and may be renewed subject to the payment of such annual fee as may be prescribed.

(c) Where the Council is satisfied that a foreign optician has damaged or lost his practising licence, it may, on payment of such fee as may be prescribed, issue a duplicate practising licence to him.

(d) Where the name of a foreign optician is removed from the Register, his practising licence shall cease to be in force.

Sub-Part D – Visiting Optician

20. Temporary registration of visiting optician

(1) A non-citizen may be temporarily registered as a visiting optician where –

- (a) he is engaged in Mauritius in the implementation of a Government scheme agreed upon by the Government of Mauritius and the World Health Organisation or another similar international agency;
- (b) he has been invited to offer his services under a scheme approved by the Ministry; or
- (c) he visits Mauritius for the purpose of teaching, research or study in the field of optometry under a scheme as may be approved by the Government of Mauritius.

(2) The Ministry shall, on behalf of the non-citizen, make all necessary arrangements for him to be temporarily registered with the Council.

(3) A visiting optician shall –

- (a) be exempted from the payment of any fee prescribed under this Act;
- (b) not be involved in the running of any optometry shop.

Sub-Part E – Annual Fee

21. Annual fee

(1) Subject to subsection (2), every optician or foreign optician shall, on or before 31 January in every year, pay to the Registrar such annual fee as may be prescribed, in respect of the year commencing on 1 January of that year.

(2) Where an optician or foreign optician fails to comply with subsection (1), he shall be liable to pay the annual fee, together with a surcharge of 50 per cent of the annual fee, by 15 February in the year in respect of which it is due.

(3) Where an optician or foreign optician fails to pay the annual fee together with the surcharge required under subsection (2), the Council may deregister the optician.

(4) Where an optician is deregistered under subsection (3), the Council shall cause the Registrar to remove the name and other particulars of the optician or foreign optician from the Register.

(5) The Council may, where an optician or foreign optician is deregistered under subsection (3), restore the name and other particulars of the optician or foreign optician on the Register on good cause shown and on payment of the annual fee together with its surcharge.

Sub-Part F – Annual List

22. Annual list

(1) The Registrar shall, not later than the end of February in every year, transmit to the Minister a list of all opticians registered for that year, including foreign opticians and visiting opticians temporarily registered for that year.

(2) The Council shall, not later than 15 March in every year, publish, in the Gazette, the list of all opticians referred to in subsection (1).

Sub-Part G – Register

23. Register

(1) The Registrar shall keep a Register of opticians, foreign opticians and visiting opticians, or such other register as may be necessary, in such form and manner as the Council may determine.

(2) The Registrar shall enter in the Register –

- (a) the name, address, qualification and other particulars of every optician;
- (b) any change in his particulars;
- (c) where an optician, a foreign optician or a visiting optician is suspended or deregistered, an annotation to that effect;
- (d) such other particulars as the Council may determine.

(3) (a) Where, after registration, an optician obtains any additional qualification in the field of optometry, the Council may, on application made by

the optician, add the additional qualification to the opticians' particulars in the Register.

(b) An application made under paragraph (a) shall be accompanied by such fee as may be prescribed by the Council.

Sub-Part H – Continuing Professional Development

24. Continuing professional development

(1) Notwithstanding section 22 and subject to subsection (2), no person, other than a visiting optician, shall have his name on the annual list unless he has followed, in such manner as may be prescribed, such continuing professional development courses or training programmes as the Council may determine.

(2) Subsection (1) shall not apply to an optician who is excused by the Council on such ground as may be prescribed.

PART V – DISCIPLINE

25. Interpretation of Part V

In this Part –

“optician” includes –

- (a) an optician in respect of whom the Council holds a delegated power;
- (b) a foreign optician; and
- (c) a visiting optician.

26. Preliminary investigation by Council

(1) The Council may investigate into any complaint of professional misconduct or negligence against an optician.

(2) Where the Council investigates into a complaint under subsection (1), it –

- (a) shall notify the optician, whose conduct, act or omission is under investigation, of the nature of the complaint against him;

- (b) may visit or inspect the premises where the alleged professional misconduct or negligence has occurred;
- (c) may summon and hear the optician who shall be given an opportunity of being assisted by a legal representative of his choice;
- (d) may summon and hear witnesses;
- (e) may call for the communication or production of any relevant record, document or article; and
- (f) shall submit its report not later than 3 months as from the date the investigation starts.

(3) The Council shall, when investigating a complaint under subsection (1), keep a proper record of its proceedings.

(4) Where, in the course of a preliminary investigation, any person refuses to give evidence or to communicate or produce any record, document or article on the ground of confidentiality, the Registrar may apply to the Judge in Chambers for an order directing that person to disclose the evidence, to communicate or produce the record, document or article required for the purpose of the investigation.

(5) Where the Judge is satisfied that the evidence, record, document or article sought is bona fide required for the purpose of the preliminary investigation, he may make an order under subsection (4).

(6) The Council may, for the purpose of a preliminary investigation under subsection (1), appoint a committee consisting of not less than 3 members.

(7) A member who –

- (a) is closely related to an optician whose conduct, act or omission is under preliminary investigation;
- (b) has any pecuniary or other personal interest in the subject-matter of a preliminary investigation,

shall disclose his relationship or interest, as the case may be, and refrain from participating in the investigation.

27. Disciplinary proceedings

(1) (a) Where, after having carried out a preliminary investigation, the Council determines that there is prima facie evidence of professional misconduct or negligence against the optician, the Council may, subject to subsection (3), institute disciplinary proceedings against him before the Disciplinary Tribunal.

(b) Where disciplinary proceedings are instituted under paragraph (a), the Council shall, at the same time, notify the Ministry thereof.

(2) Where, upon a determination under subsection (1), the Council considers that the conduct, act or omission of the optician is of such a serious nature that he should, in the public interest, instantly cease to practise, the Council –

(a) may, in the case of an optician in respect of whom the Council does not hold a delegated power, suspend him temporarily as an optician for a period not exceeding such time as the Council –

(i) takes any disciplinary measures against him under section 29(5)(a); or

(ii) gives him notice, under section 29(7)(a), that the charge against him has not been proved; or

(b) shall, in the case of an optician in respect of whom the Council holds a delegated power, report the temporary suspension to the Public Service Commission for the Commission's decision on any such suspension.

(3) Where, pursuant to subsection (2)(a), the Council suspends an optician temporarily, it shall, not later than 7 days of such suspension, institute disciplinary proceedings against him before the Disciplinary Tribunal.

28. Membership of Disciplinary Tribunal

(1) Notwithstanding section 15(1)(b) of the Medical Council Act, in relation to a matter referred to the Disciplinary Tribunal under section 27, the Tribunal shall consist of its President and, subject to subsection (2), 2 members, appointed by the Minister, one of whom shall be, from the public sector and one from the private sector, who shall be opticians with not less than 10 years' experience.

(2) The Minister shall not appoint a member of the Council as a member of the Disciplinary Tribunal.

29. Disciplinary measures

(1) The Disciplinary Tribunal shall, pursuant to disciplinary proceedings instituted against an optician, hear and determine the matter not later than 90 days after the start of the hearing of the proceedings, except where there is a valid reason, and with the consent of the parties.

(2) The Disciplinary Tribunal shall, not later than 3 days after a determination under subsection (1), forward to the Council its report and a copy of its proceedings, including any record, document or article produced.

(3) The report under subsection (2) shall include –

- (a) a finding as to whether the charge has been proved or not, and the reasons for such finding;
- (b) details of any matter which, in the Disciplinary Tribunal's opinion, aggravates or alleviates the gravity of the charge; and
- (c) a summing up and such comments as will indicate clearly the opinion of the Disciplinary Tribunal on the subject matter of the disciplinary proceedings.

(4) The Tribunal shall not, in its report, make any recommendation regarding the form of disciplinary measure.

(5) (a) Where the report is in relation to an optician, other than an optician in respect of whom the Council holds a delegated power, and states that the charge has been proved, the Council may, not later than 14 days after receipt of the report –

- (i) administer him a reprimand or a severe reprimand;
- (ii) suspend him as an optician or a foreign optician, as the case may be, for a period not exceeding 2 years; or
- (iii) deregister him as an optician or a foreign optician, as the case may be.

(b) Where the report is in relation to an optician in respect of whom the Council holds a delegated power, the Council shall submit its own report to the Public Service Commission, in accordance with regulation 46E of the Public Service Commission Regulations.

(6) Where the punishment inflicted by the Public Service Commission on an optician, in respect of whom the Council holds a delegated power, is dismissal or retirement in the interest of the public service, the Council shall, not later than 14 days of the decision of the Public Service Commission, determine whether or not it shall suspend or deregister him as an optician.

(7) Where there is finding that the charge has not been proved against the optician, the Council shall, not later than 14 days after receipt of the report –

- (a) notify the optician, in writing, of such finding; and
- (b) where the Council holds a delegated power in respect of the optician, send a copy of the notice required under paragraph (a) to the Public Service Commission.

30. Other disciplinary measures

(1) Notwithstanding any of the proceedings provided for in sections 26, 27 and 29 being instituted, the Council may, where an optician has been convicted of an offence and is serving a sentence of imprisonment or penal servitude –

- (a) suspend him as an optician or a foreign optician, as the case may be, for such time as the Council may determine; or
- (b) deregister him as an optician or a foreign optician, as the case may be.

(2) The Registrar shall cause any suspension or deregistration under this Act to be published in the Gazette and in 2 daily newspapers.

31. Summary proceedings

Where the Council is satisfied, after having carried out a preliminary investigation against an optician, other than an optician in respect of whom the Council holds a delegated power, that he has committed an act or omission which, in its opinion, is not considered to be of a serious nature, it may, notwithstanding section 27(1)(a), inflict upon him a warning or severe warning.

32. Name and other particulars to be removed from Register

(1) The Council shall cause the Registrar to remove from the Register the name and other particulars of any optician who has been deregistered as an optician or foreign optician, as the case may be, under this Act.

(2) Where the name and other particulars of an optician have been removed from the Register, the name and other particulars of that person shall not be restored to the Register except by order of the Council or of the Supreme Court, as the case may be.

(3) The Council may, on its own motion or on application of the optician and after holding such inquiry as it may determine, cause his name and other particulars to be restored to the Register.

PART VI – FINANCIAL PROVISIONS AND ACCOUNTS

33. General Fund

The Council shall set up a General Fund –

- (a) into which shall be paid –
 - (i) any grant, donation and contribution received by it;
 - (ii) any fee, rental or interest; and
 - (iii) any other sum which may lawfully accrue to it;
- (b) out of which all payments required to be made by the Council shall be effected.

34. Execution of documents

(1) Subject to subsection (2), no deed, instrument, contract or other document shall be executed or signed by or on behalf of the Council unless it is signed by the Chairperson or, in his absence, by the Vice-chairperson.

(2) No cheque shall be signed by or on behalf of the Council unless it is signed by –

- (a) the Chairperson or, in his absence, by the Vice-chairperson; and
- (b) the Registrar.

35. Donations

Article 910 of the Code Civil Mauricien shall not apply to the Council.

36. Annual report

(1) The Council shall, in accordance with the Statutory Bodies (Accounts and Audit) Act, prepare an annual report and submit it to the Minister, together with an audited statement of accounts on the operations of the Council, in respect of every financial year.

(2) The Minister shall, at the earliest available opportunity, lay a copy of the annual report and audited accounts of the Council before the Assembly.

(3) The auditor to be appointed under section 5(1) of the Statutory Bodies (Accounts and Audit) Act shall be the Director of Audit.

PART VII – MISCELLANEOUS

37. Seal of Council

The Council shall have a seal which shall bear such device as it may approve.

38. Legal proceedings

(1) The Council shall act, sue and be sued in its corporate name.

(2) Service of process by or on the Council shall be sufficient if made by or on the Registrar.

39. Protection from liability

No liability, civil or criminal, shall lie against the Council, the Registrar, any member or officer, in respect of any act done or omitted by it or him in good faith in the discharge of its or his functions, or exercise of its or his powers, under this Act.

40. Confidentiality

(1) No member or officer shall, during or after his relationship with the Council, use or disclose any matter which comes to his knowledge in the discharge of his functions, except for the purposes of administering this Act.

(2) Any person who, without lawful excuse, contravenes subsection (1) shall commit an offence and shall, on conviction, be liable to a fine not exceeding 10,000 rupees and to imprisonment for a term not exceeding 12 months.

41. Review of decision of Council

- (1) A person who is aggrieved by the decision of the Council –
 - (a) not to register him as an optician or a foreign optician; or
 - (b) to take any disciplinary measure against him,

may apply for a judicial review of the decision before the Supreme Court.

(2) On an application under subsection (1), the Supreme Court may make such order or give such directions in the matter as it may determine.

42. Offences

- (1) Any person who –
 - (a) wilfully and falsely pretends to be an optician, a foreign optician or a visiting optician;
 - (b) takes or uses any name, title, addition or description implying that he is registered to practise optometry,

shall commit an offence.

(2) Any person who, without reasonable excuse, fails to comply with any requirement lawfully imposed by the Council –

- (a) for his attendance before the Council;
- (b) for the giving of evidence; or
- (c) for the production of documents,

shall commit an offence.

(3) Any person who procures or attempts to procure the entry of any name on a register established under this Act by wilfully making or producing or causing to be made or produced, either verbally or in writing, any declaration, certificate or representation which he knows to be false or fraudulent, shall commit an offence.

(4) Any person who is convicted of an offence shall be liable to a fine of not exceeding 10,000 rupees and to imprisonment for a term not exceeding 12 months.

(5) For the purposes of subsection (1), the performance of any single act relating to the practice of optometry may be held to be sufficient evidence of such practice.

(6) Any person who –

- (a) wilfully fails to attend the Medical Tribunal after having been summoned;
- (b) refuses to take an oath or make solemn affirmation or a declaration, as the case may be, before the Medical Tribunal;
- (c) refuses, without reasonable excuse, to produce any record, document or article before the Medical Tribunal;
- (d) gives false evidence or evidence which he knows to be misleading before the Medical Tribunal;
- (e) obstructs the proceedings of a meeting of the Council or Medical Tribunal;
- (f) molests any member of the Council or the Medical Tribunal in the course of, or on account of, any investigation or proceedings under this Act; or
- (g) in any other manner, contravenes this Act,

shall commit an offence and shall, on conviction, be liable to a fine not exceeding 10,000 rupees and to imprisonment for a term not exceeding 12 months.

(7) Any person who commits an offence under this Act shall, on conviction, where no specific penalty is provided, be liable to a fine not exceeding 10,000 rupees and to imprisonment for a term not exceeding 12 months.

43. Regulations

(1) The Minister may, for the purposes of this Act, make such regulations as he thinks fit.

(2) Any regulations made under subsection (1) shall be made after consultation with the Council.

(3) Any regulations made under subsection (1) may provide –

- (a) for a Code of Practice;

- (b) for the levying of fees and the taking of charges;
- (c) for the amendment of the Schedules;
- (d) that any person who contravenes them shall commit an offence and shall, on conviction, be liable to a fine not exceeding 10,000 rupees and to imprisonment for a term not exceeding 12 months.

44. Repeal

The Opticians (Registration) Act is repealed.

45. Savings and transitional provisions

(1) The Opticians Registration Board established under section 3 of the repealed Opticians (Registration) Act shall, on the commencement of this Act, discharge the functions and exercise the powers of the Council under this Act until the first constitution of the Council pursuant to section 9 and the Second Schedule.

(2) (a) Every person who is registered as an optician and whose name appears in the register under the repealed Opticians (Registration) Act shall, on the commencement of this Act, be deemed to be registered as an optician under this Act.

(b) The Registrar shall enter in the Register the name, address, qualification and other particulars of every optician whose name, address, qualification and other particulars appear in the register of opticians kept under the repealed Opticians (Registration) Act.

(3) All proceedings, judicial or otherwise, commenced before and pending on the commencement of this Act, by or against the Opticians Registration Board under the repealed Opticians (Registration) Act, shall be deemed to have been commenced, and may be continued, by or against the Council.

(4) Where this Act does not make provision for any transition, the Minister may make such regulations as may be necessary for such transition.

46. Commencement

(1) Subject to subsection (2), this Act shall come into operation on a date to be fixed by Proclamation.

(2) Different dates may be fixed for the coming into operation of different sections of this Act.

FIRST SCHEDULE

[Section 2]

LIST OF PHARMACEUTICAL AGENTS OPTOMETRISTS OR OPHTHALMIC OPTICIANS ARE ENTITLED TO USE IN THE COURSE OF THEIR PROFESSIONAL DUTIES

1. Fluorescein paper strips
2. Oxybuprocain 0.1% single use eye drops
3. Tropicamide 1.0% single use eye drops

SECOND SCHEDULE

[Section 7(1)(b) and (c)]

PROCEDURE FOR ELECTION

1. Calling for nominations and appointment of nomination day

The Registrar shall, within 90 days after the commencement of this Act and, thereafter, not less than one month before the expiry of the term of office of the members specified section 7(1)(b) and (c), publish, in the Gazette and such newspaper as he may determine, a notice –

- (a) inviting the submission of nominations; and
- (b) appointing a day, time and place for the nominations to be submitted.

2. Eligibility to stand as candidate

No person shall be eligible to stand as candidate for election as a member of the Council unless, on the nomination day –

- (a) he is a citizen of Mauritius;
- (b) he is an optician having not less than 7 years' experience as optician in Mauritius;
- (c) his nomination is supported, in writing, by not less than 5 opticians; and
- (d) (i) he is not subject to any preliminary investigation under section 26;

- (ii) no disciplinary proceedings are being held against him under section 27; and
- (iii) no disciplinary measure has been taken against him during the last 5 years preceding the nomination.

3. Procedure after nomination

Where the number of persons duly nominated exceeds the number of persons to be elected, the Registrar shall publish, in the Gazette and such newspaper as he may determine, a notice –

- (a) specifying the names of the persons duly nominated;
- (b) appointing a day, time and place, being not less than 15 days after the publication of the notice, for the holding of an election.

4. Persons entitled to vote

(1) Every person who, on nomination day, is an optician may vote at an election of the members.

(2) Every optician shall vote for such number of candidates as there are vacancies available in the membership of the Council.

5. Election

- (1) The Office of the Electoral Commissioner shall –
 - (a) conduct the election of the members of the Council; and
 - (b) communicate the results to the Registrar.

(2) The Registrar shall forthwith submit to the Minister the results of the election.

(3) The Minister shall, within 21 days of receipt of the results of the election, publish the composition of the Council in the Gazette.

THIRD SCHEDULE

[Section 18(2)]

QUALIFICATIONS

Ophthalmic Optician/Optician
Optician

Batchelor degree in Optometry/Ophthalmic
Optometry

or

Batchelor degree in Dispensing Optometry

or

Batchelor degree in *Opticien-lunetier*

FOURTH SCHEDULE

[Section 18(3)(c)]

QUALIFICATIONS EXEMPTED FROM EXAMINATION

1. Diploma in Optometry recognised by the GOC of the UK
 2. Diploma in Dispensing Optics recognised by the GOC of the UK
-