



FEDERAL SUBSIDIARY LEGISLATION

OPTICAL ACT 1991 [ACT 469]

P.U.(A) 210/94

OPTICAL REGULATIONS 1994

Publication in the Gazette

: 26th May 1994

Date of coming into operation

: 1st July 1994

ARRANGEMENT OF REGULATIONS

PART I – PRELIMINARY

Regulation 1. Citation and commencement.

These regulations may be cited as the **Optical Regulations 1994** and shall come into force on the 1st July 1994.

Regulation 2. Interpretation.

In these Regulations, unless the context otherwise requires—

"examination" means the examination set or to be set by the Council under paragraph 30(1) (b) of the Act;

"Schedule" means the Schedule to these Regulations.

PART II - THE MALAYSIAN OPTICAL COUNCIL

Regulation 3. Returning officer.

The chairman of the Council shall be the returning officer for the purpose of any election of elected members of the Council.

Regulation 4. Notice of and request for nomination.

(1) The Chairman shall—

(a) in the case of the first election of elected members of the Council after the coming into force of the Act; or

(b) where a vacancy in any of the elected offices of the Council shall, by effluxion of time, arise,

at least three months before the date when it is proposed to hold the first election or the occurrence of the vacancy, as the case may be, cause a notice to be published in the *Gazette*.

(2) The notice in subregulation (1) shall—

(a) specify the office that is vacant or will fall vacant;

(b) specify the hour and date after which the nomination of candidates to the office shall not be accepted; and

(c) request for the nomination of candidates to the office.

(3) Where a vacancy in any of the elected offices of the Council occurs by reason of death, resignation or cessation of membership in the Council the Chairman shall, within one month of the vacancy occurring, cause a notice to be published in the *Gazette*—

(a) specifying the office that has been vacated;

(b) specifying the hour and date after which the nomination of candidates to the office shall not be accepted; and

(c) requesting the nomination of candidates to the office.

Regulation 5. Eligibility for nominations.

Any registered optician or optometrist eligible for election to the elected office may be nominated as a candidate.

Regulation 6. Nominations.

(1) Candidates shall be nominated by means of nomination papers.

(2) Each nomination which shall be in Form I of the Schedule shall be signed by two registered opticians or optometrists as proposer and seconder respectively and shall be endorsed by the written consent of the candidate.

Regulation 7. Non-acceptance after close of nominations.

No nomination shall be accepted by the Chairman after the close of nominations.

Regulation 8. Publication of names of candidates, etc.

The Chairman shall within fourteen days of closing nominations cause to be published in the *Gazette*—

(a) the names of the candidates who have been nominated and the names of the registered opticians or optometrists proposing and seconding the candidates;

(b) the offices which shall be or are vacant and in respect of which elections are to be held; and

(c) the hour and date after which no objections may be made against any candidate

Regulation 9. Objections.

(1) Objections may be made on any of the following grounds but on no other ground, namely:

(a) that the candidate is not a citizen;

(b) that the candidate is not a holder of a current practising certificate;

(c) that the candidate is already a member of the Council and will, if elected, serve as a member of the Council in more than one capacity;

(d) that the persons proposing and seconding the candidate are not holders of current practising certificates;

(e) that the candidate has been found guilty by a court of law of an offence involving fraud, dishonesty or moral turpitude, or an offence punishable with imprisonment (in itself only or in addition to or in lieu of a fine) for a period of more than two years;

(f) that the candidate is an undischarged bankrupt;

(g) that the candidate is not qualified on grounds of residence;

(h) that the registered optician or optometrist proposing or seconding the candidate is not qualified on grounds of residence; or

(i) that the candidate is certified to be of unsound mind.

(2) Any objection against a candidate may be lodged only by a registered optician or optometrist or a member of the Council and shall—

(a) specify the ground relied upon;

(b) specify the facts in support of the ground;

(c) specify the source of knowledge whether of his own or through a third person;

(d) if the source of knowledge is a third person, state the person's name, address and occupation; and

(e) provide any document in support of the objection.

(3) If the chairman is satisfied that the objection is *prima facie* true, the Chairman shall within seven days of the receipt of the objection send a copy of the objection and supporting documents, if any, to the candidate with a notice requiring him within seven days of the service thereof to show cause as to why his name should not be deleted from the list of candidates.

(4) If the Chairman is satisfied after considering the reply that the objection is true, he shall delete the candidate's name from the list.

Regulation 10. Uncontested elections.

If after determination by the Chairman of any objection that may have been lodged, the number of nominated candidates equals to or is less than the number of vacant elected offices, the Chairman shall declare the nominated candidates to be elected

Regulation 11. Issue of ballot papers, etc.

If after determination by the Chairman of any objection which may have been lodged, the number of nominated candidates exceeds the number of vacant elected offices, the Chairman shall cause to be sent by post to every registered optician or optometrist eligible to vote in the elections—

(a) a ballot paper in Form 2 of the Schedule for opticians and Form 3 of the Schedule for optometrists which shall contain the names and academic qualifications of the candidates and specify the hour and date on which the election will be closed;

(b) an envelope for registered opticians (hereinafter referred to as Envelope A) in Form 4 of the Schedule which shall contain a space for the name and signature of the witness;

(c) an envelope for registered optometrists (hereinafter referred to as Envelope B) in Form 4 of the Schedule which shall contain a space for the name and

signature of the witness;

(d) an envelope (hereinafter referred to as Envelope C) in Form 4 of the Schedule which shall bear the name of the Chairman and his address at which the ballot paper shall be received by him.

Regulation 12. Method of voting.

(1) A registered optician or optometrist may vote for not more candidates than there are vacancies to be filled by placing a mark on the ballot paper against the names of the candidates for whom he wishes to vote.

(2) The registered optician or optometrist shall enclose the ballot paper into Envelope A or Envelope B respectively and shall sign and write his/her full name in capital letters on Envelope A or Envelope B in the presence of another registered optician or optometrist, Justice of the Peace, an officer in the managerial and professional group of the public service or an advocate and solicitor as witness who shall then write his/her full name in capital letters, his/her designation and sign on the space provided.

[(2) Subs. P.U.(A) 221/2010]

(3) The registered optician or optometrist shall enclose Envelope A or Envelope B in Envelope C and shall then forward the sealed Envelope C to the Chairman.

Regulation 13. Opening of voting papers.

(1) The Chairman shall, at least ten days before the date of the opening of Envelope C, notify every candidate of the hour and date and the place at which he intends to open Envelope C.

(2) The candidate or his nominee who has been so authorised in writing by him shall be entitled to be present at the opening of the envelopes.

(3) The Chairman shall cause the Envelope C to be opened and shall, either on his own initiative or at the instance of the candidate or his nominee, if he is so satisfied that any of the Envelope A or B is not in accordance with these Regulations reject the envelope without opening it.

(4) The rejected Envelope A or B shall be sealed in a separate parcel.

Regulation 14. Counting of votes.

(1) The envelopes which are not rejected shall then be opened and the ballot papers contained therein placed in separate receptacles for opticians and optometrists.

(2) The ballot papers shall then be opened and the Chairman or his nominee shall proceed continuously with the counting and shall, either on his own initiative or at the instance of the candidates or his nominee, if he is so satisfied that any of the ballot papers is not in accordance with these Regulations reject such ballot paper.

(3) The rejected ballot paper shall be sealed in a separate parcel.

Regulation 15. Declaration of result.

(1) When the counting has been completed the Chairman shall declare the candidate or candidates with the highest number of votes to be elected and shall cause a notice of the declaration to be published in the *Gazette*.

(2) When an equality of votes is found to exist between any candidate and the addition of a vote would entitle either or any of the candidates to be declared elected, the Chairman may cast such number of casting votes as would determine who among the candidates shall be elected.

(3) Where the Chairman is unwilling to give his casting vote, the determination of the candidate or candidates to whom such one additional casting vote shall be deemed to have been given shall be made by lot in the presence of the Chairman and the candidates or their nominees, if any.

Regulation 16. Grounds for rejection of ballot papers.

The Chairman shall reject the following ballot papers as not complying with these Regulations:

(a) where the ballot paper is not the ballot paper issued by the Chairman;

(b) on which more votes are given than there are candidates to be returned;

(c) which does not clearly indicate the intention of the voter;

(d) where the ballot paper was issued to and filled in by a registered optician or optometrist who is disqualified for any reason from voting.

Regulation 17. Sealing of ballot papers and Envelopes A and B.

The opened Enveloped A or B and the ballot papers shall be sealed in separate parcels.

Regulation 18. Retention of ballot papers.

Subject to any direction that the Chairman may give, the sealed parcels containing the Envelope A or B, the ballot papers, the rejected ballot papers and the rejected Envelope A or B shall be retained by the Council for one year and shall then be destroyed with the seals unbroken.

Regulation 19. Complaints.

The Council may on its own initiative or at the instance of any registered optician or optometrist investigate into any complaint relating to the conduct and result of the elections and may take such action including declaring the election void in whole or in part as it thinks fit:

Provided that the Council shall not accept a complaint lodged by a registered optician or optometrist unless the complaint is made within fourteen days of the publication of the result.

PART III - REGISTRATION OF OPTICIANS AND OPTOMETRISTS

Regulation 20. Registration.

(1) A person who is entitled to be registered as an optician under subsection 18(1) of the Act and who desires to be so registered shall apply in Form 5 of the Schedule.

(2) A person who desires to be registered as an optician under subsection 18(2) of the Act shall apply in Form 6 of the Schedule.

(3) A person who is entitled to be registered as an optometrist under section 19 of the Act and who desires to be so registered shall apply in Form 7 of the Schedule.

(4) The certificate of registration issued under section 18 of the Act shall be in Form 8 of the Schedule.

(5) The certificate of registration issued under section 19 of the Act shall be in Form 9 of the Schedule.

- (6) The Registrar may, before registering such person, require him—
- (a) to produce the original diploma or degree conferred upon him or if such diploma or degree is not available, to request for an official transcript of the diploma or degree to be sent by the institution concerned direct to the Registrar;

 - (b) to produce a statement by a registered optician of optometrist, an advocate and solicitor or an officer in the managerial and professional group of the public service to the effect that the applicant is personally known to him and that to the best of his knowledge, the applicant is the person who has been conferred the diploma or degree; and

 - (c) if the qualification referred to in his application is not one of the qualifications specified in the First or Second Schedule to the Act, to produce a certificate to the effect that the qualification held by him has been deemed suitable for registration by the Minister under paragraph 18(2) (b) or subsection 19(2) of the Act

Regulation 21. Provisional registration.

- (1) The Council may, subject to such conditions and restrictions as the Council may impose, allow a person to be provisionally registered in the Registrar of Opticians under subsection 18(3) of the Act.
- (2) A person who is entitled to be provisionally registered and who desires to be so registered shall apply in Form 10 of the Schedule.
- (3) The provisional certificate of registration issued under subsection 18(3) of the Act shall be in Form 11 of the Schedule.

Regulation 22. Practising certificate.

- (1) A registered person who desires to practise as an optician shall apply in Form 12 of the Schedule.
- (2) A registered person who desires to practise as an optometrist shall apply in Form 13 of the Schedule.
- (3) The practising certificate for opticians and optometrists under subsection 32(1) of the Act shall be in Form 14 and Form 15 of the Schedule respectively

Regulation 23. Fees

(1) The fee payable for full or provisional registration shall be one hundred ringgit and for an annual practising certificate, fifty ringgit.

(2) Except in the case of a first application for an annual practising certificate, where a registered person who desires to practise after the thirty-first day of December of any year fails to apply before the first day of December of that year, he shall pay, in addition to the fee payable in respect of an annual practising certificate, a late fee of twenty-five ringgit.

PART IV - APPLICATION BY REGISTERED OPTICIANS TO PRESCRIBE AND DISPENSE CONTACT LENSES

Regulation 24. Permit to registered opticians to prescribe and dispense contact lenses.

(1) A registered optician who has been prescribing and dispensing contact lenses for a period of three years or more immediately prior to the date of coming into force of the Act may apply in Form 16 of the Schedule to be permitted to continue prescribing and dispensing contact lenses.

(2) Notwithstanding subregulation (1), a registered optician who has been prescribing and dispensing contact lenses for a period of less than three years immediately prior to the date of coming into force of the Act, and has passed within a period of six years from the date of coming into force of the Act an examination, may apply in Form 16 of the Schedule to be permitted to continue prescribing and dispensing contact lenses.

(3) The permit to continue prescribing and dispensing contact lenses shall be in Form 17 of the Schedule

Regulation 25. General nature of examination.

(1) The Council may, either generally or in the case of any candidate or class of candidates, conduct an oral or practical examination or a combined oral and practical examination.

(2) Emphasis shall be placed in the examination on contact lens practice.

(3) The examination shall be conducted in national language or English language.

Regulation 26. Frequency and date of examination.

- (1) There shall not be more than three examinations held in a year.
- (2) The date of a proposed examination shall be published in at least one local newspaper at least six weeks before the first day of the examination.
- (3) The Council may, if necessary, cancel a proposed examination or defer its date.
- (4) No candidate shall exceed four sittings of the examination

Regulation 27. Application to sit for examination.

- (1) An application to sit for the theory examination shall be submitted in duplicate in Form 18 of the Schedule and shall reach the Council at least four weeks before the first day of the proposed examination together with a fee of two hundred ringgit.
- (2) An application to sit for the practical examination shall be submitted in duplicate in Form 19 of the Schedule and shall reach the Council at least four weeks before the first day of the proposed examination together with a fee of seven hundred ringgit.
- (3) A candidate must obtain a pass in the theory examination before registering for the practical examination.

Regulation 28. Withdrawal from examination.

If a candidate withdraws or is absent from the examination, the fee shall not be refunded unless the withdrawal or absence is due to medical reasons.

PART V - DISCIPLINARY INQUIRIES

Regulation 29. Inquiry Committee.

- (1) The Council may appoint a committee from among the members of the Council, which committee shall be known as an Inquiry Committee, to inquire into any complaint or information touching on any disciplinary matter against any registered person.
- (2) An Inquiry Committee shall consist of two members.

(3) The Council may at any time revoke the appointment of or remove any member or fill any vacancy in an Inquiry Committee:

Provided that no act done or proceedings taken under these Regulations shall be questioned on the ground of any vacancy in the membership of, or any defect in the constitution of, an Inquiry Committee.

(4) The Council shall nominate a member from among the members of an Inquiry Committee to be the Presiding Member of the Committee.

(5) The Presiding Member shall chair all meetings of the Committee.

(6) The decision of an Inquiry Committee shall be unanimous and, if not, the decision of the Presiding Member shall prevail.

Regulation 30. Complaint against registered persons.

Where a complaint or information is made against any registered person alleging that—

(a) his registration has been obtained by fraud or misrepresentation;

(b) his diploma, certificate or other qualification has been withdrawn or cancelled by the university, college or body by which it was conferred; or

(c) he has been convicted by a court in Malaysia or elsewhere for an offence involving fraud, dishonesty or moral turpitude, or has been sentenced to imprisonment (whether in itself only or in addition to or in lieu of a fine) for a term of more than one year.

the complaint or information shall be made to the Council and shall be forwarded by the Chairman to an Inquiry Committee.

Regulation 31. Summary dismissal of complaint.

(1) An Inquiry Committee may, upon receiving any complaint or information from the Chairman, recommend to the Council to summarily dismiss the complaint or information if it is satisfied—

(a) that the name and address of the complainant is unknown or untraceable;

(b) that even if the facts were true, the facts do not constitute a disciplinary matter; or

(c) for reasons which must be recorded, that there is reason to doubt the truth of the complaint or information.

(2) An Inquiry Committee may before making any recommendation require the complainant to make a statutory declaration of the facts alleged by him.

Regulation 32. Procedure for inquiry.

(1) Where an Inquiry Committee has reason to believe that the complaint or information is probably true, it shall—

(a) by order in writing require the attendance before the Inquiry Committee on a date and time and at a place to be specified therein, of the complainant and any person who from the complaint or information given or otherwise appears to be acquainted with the circumstances; and

(b) inform the registered person against whom the allegation is made the substance of the complaint or information, the date, time and place at which the inquiry into the complaint or information shall be made and of his rights to be present with or without a counsel and to cross-examine such persons who may be cancelled at the inquiry.

(2) The Inquiry Committee shall convene the inquiry on the date, time and place specified in the order and shall proceed to inquire into the allegation made against the registered person.

(3) The Inquiry Committee may examine the complainant and the persons in support of the allegation, who may in turn be cross-examined by the registered person or his counsel and, if necessary, be re-examined, and shall reduce into writing the statements made by the complainant and the persons so examined.

(4) After taking the statements of the complainant and the persons in support of the allegation, the Inquiry Committee shall—

(a) if it finds that there are no sufficient grounds to support the allegation, recommend to the Council that no action be taken; or

(b) if it finds that the statements support the allegation, frame the charge and explain to the registered person his right either to state his defence to the charge or to remain silent.

(5) If the registered person elects to remain silent, the Inquiry Committee shall recommend that there shall be an inquiry by the Council.

(6) If the registered person elects to make his defence he may call any person in support of his defence:

Provided that if the registered person intends to call any person in support of his defence the registered person shall make his statement first.

(7) The Inquiry Committee shall record any statement made by the registered person or any other person called by him as far as possible, word for word.

(8) After recording the statements made by the registered person or the person in support of him, the Inquiry Committee may allow the registered person or his counsel to make a submission.

(9) The Inquiry Committee shall, after having inquired into the matter, make a report to the Council.

(10) If the Council considers that the report is not clear in any respect or that a further inquiry is desirable, the matter may be referred back to the Inquiry Committee for such further inquiry and report.

Regulation 33. Power of the Council.

(1) If upon considering the recommendation or report of the Inquiry Committee the Council is of the opinion—

(a) that the case should be summarily dismissed, it shall direct accordingly—

(b) that no action be taken, it shall direct accordingly;

(c) that no case has been made out against the registered person, it shall direct that the charge be dismissed and shall inform the registered person accordingly;
or

(d) that the registered person is guilty of the charge framed against him, it shall inform the registered person of its decision and the grounds thereof and shall request him, within a period of one month; to make a plea in mitigation in writing as he deems fit.

(2) The Council shall after considering the plea in mitigation impose on the registered person any of the punishments specified in section 22 of the Act

Regulation 34. Appointment of legal adviser.

(1) The Council or an Inquiry Committee may appoint a legal adviser to assist the Council or Committee during any inquiry touching on disciplinary matter.

(2) The Council or an Inquiry Committee may appoint a person who is and has been an advocate and solicitor for a period of not less than five years to advise it on—

(a) all questions of law arising in the course of an inquiry; and

(b) the meaning and construction of all documents produced at the inquiry.

Regulation 35. Disqualification from meetings of the Council.

No member of the Council shall attend or participate in any meeting of the Council to consider any recommendation or report of an Inquiry Committee if—

(a) he was the complainant;

(b) he has appeared before the Inquiry Committee for the purpose of making a statement;

(c) he was a member of the Inquiry Committee which had inquired into the complaint or information; or

(d) he is a partner or a relative of the complainant or the person appearing before the Inquiry Committee for the purpose of making a statement

Regulation 36. Appeal.

(1) A registered person who is aggrieved by an order made by the Council under section 22 may appeal to the Appeal Board constituted under subsection 25(6) of the Act.

(2) The Appeal Board shall have no jurisdiction to hear an appeal against an order made under section 22 of the Act unless the notice of appeal is lodged with the Board within one month of the service of the order.