



Paper: Briefing on the GOC's Call for Evidence on the Opticians Act 1989 and Consultation on Associated Policies

Audience: LOCs

Author: LOCSU

Date: May 2022

Executive Summary

LOCs, as key optical stakeholders established by statute, have a once in a generation opportunity to influence the legislation and regulation that frames the optical sector.

LOCs should give full scrutiny to the GOC's proposals when considering opportunities and risks therein, in particular, the GOC's requirement for evidence of the need for any change.

LOCSU is on hand to support LOCs in forming their responses.

Purpose of paper

To provide LOCs with information on the [GOC's call for evidence and consultation](#)

[regarding the Opticians Act 1989](#) ('the Act') in order to assist with LOC engagement.

Please note that LOCSU's parent organisations (ABDO; AOP; FODO) are currently working towards sector positions based on legal advice which we will share with LOCs when these are made available to us. As below, LOCs may wish to delay considering the issues or responding until this information is received.

Overview

The Act is a key piece of patient protection legislation. It establishes the GOC and the GOC register and gives the GOC powers e.g., over education and CPD, to set professional standards and assess fitness to practise.

The Act does not regulate scope of practice or what optometrists, dispensing opticians (DOs), contact lens opticians (CLOs) and medical practitioners can and cannot do beyond the sight test e.g., in extended services or hospital settings. It also has nothing to do with the NHS, GOS contracts, extended services or remuneration (fees, grants, pensions). These matters are **not within the scope** of this call for evidence and consultation.

However, the Act does specify:

- who can test sight (optometrists, medical practitioners, supervised students)
- who can supply optical appliances to the general public and to protected groups of children and registered visually impaired adults (optometrists, DOs and medical practitioners)
- who can fit contact lenses (CLOs, optometrists and medical practitioners) and supply contact lenses

- the definition of a sight test and what a sight test (whether NHS or private) has to include
- protected titles
- business regulation

These matters (set out primarily in Part IV of the Act) **are the subject** of this call for evidence and consultation and LOCs are advised to focus discussion on these with suggested questions below.

Context

The GOC is a regulator, not legislator. In respect of the larger call for evidence portion of this workstream, whatever its outcomes, the GOC can only make recommendations to the DHSC. This will require hard evidence to make a business case to ministers for change (note though that the GOC does not require DSHC agreement/legislation on the consultation portion).

Changes to the Act would require time in the government's legislative agenda and then approval by Parliament. Given that Parliament has only recently concluded procedure pertaining to the Health and Care Act 2022, and that Integrated Care Systems and then the Provider Selection Regime are current priorities, any changes to the Act could potentially take three to five years to become law.

This is no reason however for not making the case for sensible updating where this would enhance patient protection based on evidence so that the sector is ready to make the case for change if and when the opportunity arises.

Stakeholder engagement

A call for evidence seeking views, information and factual evidence on the need for change to the Act and a consultation including questions on the [GOC 2013 statement on whether DOs should be able to provide the refraction element of the sight test as a delegated function](#).

The deadline for responses is 18th July 2022.

Why now?

The GOC's justification for this workstream is that as the Act is over thirty years old, and still contains many provisions from the original Opticians Act 1958 and may not reflect the full range of activities that are now undertaken by registrants. The GOC cites examples of such changes to include developments in clinical skills; technological advancements; service delivery changes; greater patient expectations; changes to patient risk; and wider public benefit.

The call for evidence is long and complex including 54 questions. Given the primacy of patient protection, on most matters the consultation implies a presumption against change – hence the requirement for evidence. An exception is the case of the contact lens protections created in 2005 (Section 5 of the consultation).

Audience

No limits have been set on who may consider themselves to be a stakeholder and take part in the exercise(s). Stakeholders may include:

- Sector bodies
- LOCs

- LOC regional forums
- NHS bodies
- Other health care bodies, private or public
- Government departments and local authorities
- Companies, whether bodies corporate or otherwise
- Prospective business entrants to the UK optical market, whether domestic or overseas
- Individuals, or small groups
- Investors or speculators

Main areas of scope

Each main area of scope appears in bold below, with a brief summary of the current position and then a summary of the call for evidence in red. Note that the consultation element of this engagement piece is much smaller and relates to point 5. only:

1. Objective for legislative reform

Objectives include maintaining patient and public safety and not restricting the development of workforce roles.

Call for evidence: are the set objectives suitable? Also, should they be given equal weight of importance?

2. Protection of title; restricted activities and registers

At present, certain titles (optometrist; DO); registered optician; ophthalmic optician) are legally reserved for individual or business registrants of the GOC. Similar certain activities are restricted to residents.

Call for evidence: what restrictions should be in place on these areas?

3. Post-registration skills

There are currently four post-registration qualifications recognised by the GOC.

Call for evidence: should these be expanded upon/increased?

4. Regulation of businesses

It is not presently required for optical businesses providing restricted functions to be registered with the GOC (unless they use a protected title) which means the GOC lacks full regulatory oversight. In addition, the optical sector is not subject to inspection powers or premises regulation such as CQC and General Pharmaceutical powers.

Call for evidence: the GOC has set out its own view that all optical businesses which provide protected functions i.e., sight testing and supply to protected groups, should be registered whether or not they use a protected title: is this suitable? Should the GOC have increased powers to regulated businesses e.g., inspection?

5. Sight testing

i) Refraction

Only optometrists or registered medical practitioners (with special provision for students) can test sight under the Act. This includes not

only “determining whether there is any defect of sight and of correcting, remedying or relieving any such defect of an anatomical or physiological nature by means of an optical appliance prescribed on the basis of the determination” (established in the original Opticians Act 1958) but also examinations of the external and interior parts of the eye and the eyes vicinity (added through the current Opticians Act and accompanying regulations in 1989). As the GOC reports, its 2013 statement, as captured in the smaller consultation part of the GOC’s review, interprets the Act to prohibiting any part of the sight test being delegated to a DO/contact lens optician even though refraction can be undertaken by these registrants for purposes other than sight testing (GOC gives example of DOs undertaking refraction to check lens accuracy).

Call for evidence: does the development of DO skillsets and technological improvements, as well as increasing pressures on hospital eye departments, potentially leading to greater demands on optometrist clinical time, mean that appropriately qualified DOs should now be able to carry out the refraction element of a sight test (subject to having received appropriate training and achieving the required level of competence)? The GOC is also seeking views on whether this should be under the oversight of an optometrists or medical practitioner. Note - this is also a consultation question.

ii) Refraction-eye health protocol

As above, the Act specifies that a sight test must include both what we call refraction (not a term used in the Act) and eye health examinations (external, internal eye and vicinity).

Call for evidence: does current practice protect the public while avoiding being unnecessarily restrictive?

6. Contact lenses

Contact lenses can currently only be fitted by professionals as per 5.

Call for evidence: does current practice protect the public while avoiding being unnecessarily restrictive?

7. Sale and supply of optical appliances to specific groups

As with contact lenses, optical appliance supply to under 16s and those registered visually impaired (RVI) can only be supplied by or under the supervision of registrants as per 5.

Call for evidence: should this restriction be extended to vulnerable patients including those in domiciliary settings and learning disabilities? How would these be identified?

8. Prescription contact lenses and verification

During COVID, certain contact lens verification processes were relaxed to no known detrimental effect.

Call for evidence: should contact lens verification processes be relaxed?

9. Zero powered contact lenses

At present, only the registrants as per 5. can sell zero powered lenses who, case law suggests, must be on the premises at the time of sale. This means that legally zero powered contact lenses cannot be sold online or in other retail premises.

Call for evidence: does current practice protect the public while avoiding being unnecessarily restrictive?

10. Offences under the Act (illegal title misuse and registration/sight testing/supply)

Professional bodies have asked the GOC to do more to counter offences under the Act. However, the GOC says it lacks the resources or powers to act against non-UK suppliers. It therefore posits whether deregulation would create a level playing field between UK suppliers and non-UK counterparts by transferring the onus of compliance to the consumer?

Call for evidence: should supply be deregulated to broaden consumer choice? Would this put public safety at risk? How might this be read across to other areas of sale and supply?

11. Sale and supply of spectacles by non-registrants

At present, there are no restrictions in supply of prescription spectacles by, or under the supervision of, optometrists or DOs, including for under 16s and RVIs. However, non-registrants can only supply prescription spectacles from a written prescription issued within the previous two years. This does not apply to ready readers which do not require a prescription.

Call for evidence: does this unnecessarily restrict patient choice?

12. Supply of sportswear optical appliances to children under 16.

Current restrictions of supply of optical appliances to under 16s includes prescription sportswear (goggles and dive masks) meaning that these items cannot be provided by non-registrant online suppliers.

Call for evidence: should this supply be deregulated?

13. Delivery of remote care and technology

COVID demonstrated the possibilities for delivering patient care through the use of technology, such as with the LOCSU-designed Covid-19 Urgent Eyecare Service.

Call for evidence: does the Act currently inhibit the use of current/future technology and, if so, how should it be changed to permit these whilst still protecting patients?

In addition to these main areas, the GOC also calls for evidence on other areas of legislation including bearing on Equality, Diversity and Inclusion vis a vis the Equalities Act 2010.

Considerations for LOCs

All those working in the optical sector in the UK work to the stipulations of the Act. Reviews of the Act, such as this one, only occur every thirty years or so. LOCs therefore have a generational opportunity to have their say on optical sector fundamentals.

Deliberations will take some time. Although the deadline for submission is not until mid-July meaning that responses do not need to be rushed, LOCs will want to dedicate as much time and resource as possible for this engagement process. Many of the matters related to the GOC's proposals are complex and so it is important that all facets of the workstreams are given due regard.

Some things for LOCs to consider when doing this include:

- Thinking about the longevity of the provision of eye health care services from optical practices for patient and communities now and in the future.
- Assessing how the proposals, if enacted, could affect patients and the local contractors and performers that LOCs represent. Understand what this call to evidence *is* about - but also what it is *not* about.
- Recognising that the potential implications of some of these proposals go beyond the optical sector and where these could increase or decrease patient risk.
- Ensuring that all views are heard by engaging with members making sure that all individuals are afforded a fair and equitable hearing. People will naturally have passionate views on some of these proposals, but LOCs must always engender a collegiate environment.
- Deciding whether individual LOCs should submit their own responses to the call for evidence and, if so, considering how this work will be undertaken, who will lead it, avenues for collaboration etc.
- Considering an alternative of following the national bodies advice and only submitting responses/evidences on issues where the LOC disagrees or has a different view.
- If individual LOCs respond, considering whether LOC regional forums should also engage.
- LOCSU will always try and facilitate an expert to attend meetings especially regional meeting where LOCs wish.

LOCSU contacts

LOCs can contact their optical lead for support and advice or contact:

Richard Knight, Head of Policy, LOCSU

richardknight@locsu.co.uk

07860 755808