

**2007 No. 193**

**NATIONAL HEALTH SERVICE**

**The National Health Service (General Ophthalmic Services)  
(Scotland) Amendment Regulations 2007**

<i>Made</i> - - - -	<i>6th March 2007</i>
<i>Laid before the Scottish Parliament</i>	<i>7th March 2007</i>
<i>Coming into force</i> - -	<i>1st April 2007</i>

The Scottish Ministers, in exercise of the powers conferred by sections 26, 32A(7), 32D, 105(7), 106(a) and 108(1) of the National Health Service (Scotland) Act 1978(a) and of all other powers enabling them in that behalf, hereby make the following Regulations:

**Citation and commencement**

1. These Regulations may be cited as the National Health Service (General Ophthalmic Services) (Scotland) Amendment Regulations 2007 and shall come into force on 1st April 2007.

**Amendment of the National Health Service (General Ophthalmic Services) (Scotland) Regulations 2006**

2.—(1) The National Health Service (General Ophthalmic Services) (Scotland) Regulations 2006(b) are amended as follows.

(2) In regulation 2(1) (interpretation)—

(a) in the definition of “enhanced criminal record certificate” for “section (6)”, substitute “section 113B(c)”;

(b) after the definition of “patient” insert—

““practice premises” means a place to which the public has unrestricted access during normal business hours and at which general ophthalmic services are provided;”;

(c) after the definition of “qualifications” insert—

““record of complaints” means a record of all complaints made by or on behalf of the patients and former patients of the contractor or an ophthalmic medical practitioner or optician who assists the contractor in the provision of general ophthalmic services”; and

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(a) 1978 c.29. Section 26 was amended by the Health and Social Security Act 1984 (c.48), section 1(5) and Schedule 1, Part II, paragraphs 1 and 4 and Schedule 8, the Health and Medicines Act 1988 (c.49), section 13(4) and the Smoking, Health and Social Care (Scotland) Act 2005 (“the 2005 Act”) (asp 13), sections 13(2) and 19; section 32A(7) was inserted by the 2005 Act, section 26(7)(d); section 32D was substituted by the 2005 Act, section 27; section 105(7) was amended by the Health Services Act 1980 (c.53), Schedule 6, paragraph 5(1) and Schedule 7, the Health and Social Services and Social Security Adjudications Act 1983 (c.41), Schedule 9, Part 1, paragraph 24 and the Health Act 1999 (c.8), Schedule 4, paragraph 60; section 108(1) contains definitions of “prescribed” and “regulations” relevant to the exercise of the statutory powers under which these Regulations are made. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46).

(b) S.S.I. 2006/135 as amended by S.S.I. 2006/329.

(c) 1997 c.50. Section 113B was inserted by the Serious Organised Crime and Police Act 2005 (c.15), section 163(2).

- (d) for the definition of “records” substitute–
  - ““records” means records as specified in Schedule 5;”.
- (3) In regulation 6 (Ophthalmic List)–
  - (a) in paragraph (3)(b) for “places” substitute “practice premises”; and
  - (b) in paragraphs (3)(j) and (4)(c) after “first registration” insert “, and any subsequent registration.”.
- (4) In regulation 7 (application for inclusion in Ophthalmic List and notification of changes)–
  - (a) after paragraph (1) insert–
    - “(1A) An application may specify other Boards on whose Ophthalmic List the applicant wishes to be included and such an application shall include an undertaking to provide general ophthalmic services and comply with the terms of service in the areas of the Boards so specified.”;
  - (b) in paragraph (3)(b)–
    - (i) for “take up the references that” substitute “examine references obtained from the referees, the names and addresses of whom”; and
    - (ii) omit “and”;
  - (c) in paragraph 3(c) after “fraud”, insert–
    - “; and
    - (d) notify any other Boards on whose Ophthalmic List the applicant wishes to be included on the application.”;
  - (d) in paragraph (6) after “2” insert “)”; and
  - (e) after paragraph (10) insert–
    - “(11) Where an applicant for inclusion in a Board’s Ophthalmic List is already included on another Board’s Ophthalmic List and has specified such inclusion in the application, notwithstanding paragraphs (1), (3) and (6), the Board to which the application has been made may add the applicant to its Ophthalmic List without further enquiry.”.
- (5) In regulation 8 (grounds for refusal of application)–
  - (a) in paragraph (3) after “applicant”, where it occurs for the second time, insert “and any other Board which the applicant has specified in the application”; and
  - (b) after paragraph (3), insert–
    - “(4) When the Board has decided to include an applicant in the Ophthalmic List, and has notified another Board of that decision in accordance with paragraph (3), notwithstanding regulation 7(1), (3) and (6), that other Board may include the applicant in that Board’s Ophthalmic List without further enquiry.”.
- (6) In regulation 9(6) (deferment of decision on application) for “paragraph” substitute “regulation”.
- (7) In regulation 12(8) (removal from Ophthalmic List)–
  - (a) for “this regulation” substitute “these Regulations”; and
  - (b) for “place of business” substitute “practice premises”.
- (8) In regulation 14(3)(a) (disclosure of information) after “person’s services” insert “to provide or assist in the provision of general ophthalmic services”.
- (9) In regulation 15 (requirements with which an ophthalmic medical practitioner or optician included in an Ophthalmic List must comply)–
  - (a) in paragraph (1)(c) after “Regulations” insert “whether or not those undertakings were included in an application by that person under regulation 7”; and
  - (b) omit paragraph (2).
- (10) In regulation 16(2) (effect to be given to corresponding decisions in England, Wales and Northern Ireland) for “on”, substitute “in”.

- (11) In regulation 20(4) (payment) after “he”, insert “or she”.
- (12) In regulation 21 (payments to ophthalmic medical practitioners and opticians suspended)–
- (a) in sub-paragraph (3) after “suspended”, at both places where it occurs, insert “and may provide that the assessment of such remuneration shall take into account such factors and evidence as may be specified”; and
  - (b) for paragraph (6) substitute–
 

“(6) Where the Agency considers that it has made a payment to an ophthalmic medical practitioner or optician owing to an error or in circumstances where it was not due, it shall, except to the extent that the Scottish Ministers on the application of the Board direct otherwise, draw the overpayment to the attention of the ophthalmic medical practitioner or optician and the amount overpaid shall be recoverable as a debt by any lawful means.”.
- (13) In regulation 25 (service of documents) for “place at which the contractor has undertaken to provide general ophthalmic services”, substitute “practice premises”.
- (14) In regulation 26(7) (revocation, savings and transitional provisions) for “sub-paragraph” substitute “paragraph”.
- (15) In Schedule 1 (terms of service)–
- (a) in paragraph 4(1) (premises at which general ophthalmic services are to be provided) in sub-paragraph (1) for “at any address which is” substitute “at the addresses of all the practice premises which are”;
  - (b) in paragraph 6(1) (premises and equipment) after “services” insert “, at the practice premises”;
  - (c) in paragraph 9 (deputies)–
    - (i) in sub-paragraph (1) for “An ophthalmic medical practitioner may arrange for eye examinations to be carried out on his behalf by another ophthalmic medical practitioner, and an optician may arrange for eye examinations to be carried out on his behalf by another optician” substitute “An ophthalmic medical practitioner or optician may arrange for eye examinations to be carried out on his or her behalf by another ophthalmic medical practitioner or optician”; and
    - (ii) in sub-paragraph (2) for “paragraph” substitute “sub-paragraph”;
  - (d) in paragraph 10 (employees)–
    - (i) omit sub-paragraph (1);
    - (ii) in sub-paragraph (2) after “optician” insert “or ophthalmic medical practitioner”;
    - (iii) in paragraph (a) after “optician” insert “or ophthalmic medical practitioner”;
    - (iv) in paragraph (b) after “his” insert “or her”; and
    - (v) in sub-paragraph (3) for “paragraphs” substitute “sub-paragraphs”;
  - (e) in paragraph 11 (complaints)–
    - (i) before “premises”, at each place where it occurs, insert “practice”;
    - (ii) after “his”, at each place where it occurs, insert “or her”;
    - (iii) in sub-paragraph (7)(d) and (e) omit “eye examination”; and
    - (iv) in sub-paragraph (7)(e)–
      - (aa) for “record of all complaints” insert “record of complaints”; and
      - (bb) for “such records” insert “the record of complaints”;
  - (f) in paragraph 13(3) (payments) after “his”, where it occurs for the third time, insert “or her”;
  - (g) in paragraph 14 (eye examinations)–
    - (i) in sub-paragraph (1)(b) after “supplementary eye examination,” insert “following a primary eye examination, except where a child under the age of 16 is referred by an

ophthalmic hospital to an optician or ophthalmic medical practitioner for a cycloplegic refraction,”; and

(ii) in sub-paragraph (6) for “3521:1962” substitute “2738-3:2004”; and

(h) in paragraph 15 (use of disqualified name) after “his” insert “or her”.

(16) In Schedule 2 (information, certificates, consents, declarations and undertakings to be included in an application for inclusion in the first part of the Ophthalmic List)–

(a) in paragraphs 1(e), (f), (g) and (h) of Part A before “premises” insert “practice”;

(b) in paragraph 1(o) of Part A and 1(j) of Part B omit “by the Agency”; and

(c) in paragraph 3(b) of Part A and B after “certificate” insert “, dated not earlier than 2 years before the date of the application where the applicant has not worked in Scotland within that 2 year period,”.

(17) In Table B of Schedule 3 (primary eye examination) in the entry relating to “patients with diabetes”–

(a) in column 1 for “Patients with diabetes” substitute “Patients aged 60 and over with diabetes”; and

(b) in column 2, omit “or head mounted indirect ophthalmoscopy”.

(18) In column 1 of the Table in Schedule 4 (supplementary eye examination) for “Diabetes” substitute “Diabetes (where patient is aged under 60)”.

*LEWIS MACDONALD*

Authorised to sign by the Scottish Ministers

St Andrew’s House,  
Edinburgh  
6th March 2007

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These regulations amend the National Health Service (General Ophthalmic Services) (Scotland) Regulations 2006 (“the Regulations”) which provide for arrangements for the provision of general ophthalmic services under the National Health Service in Scotland, and for the preparation and maintenance by each Health Board in Scotland of an Ophthalmic List.

Regulation 2(2) amends regulation 2(1) of the Regulations by amending the definitions of “enhanced criminal record certificate” and “records” and inserting definitions of “practice premises” and “record of complaints”.

Regulation 2(3) amends regulation 6 of the Regulations. Regulation 6 is amended to refer to practice premises. Regulation 6(3)(j) and (4)(c) is amended so that the information required on the Ophthalmic List includes, where appropriate, the date of subsequent registration with the General Ophthalmic Council, in the case of an optician, and the General Medical Council, in the case of an ophthalmic medical practitioner.

Regulation 2(4) and (5) amend regulations 7 and 8 of the Regulations to allow an application to specify other Health Boards on whose Ophthalmic List the applicant wishes to be included. A Health Board must inform other Health Boards of its decision on whether or not to include the applicant in its Ophthalmic List. Inclusion in an Ophthalmic List is to be allowed by another Health Board without further enquiry where the decision is that the applicant should be included in the Ophthalmic List or where the applicant is already on an Ophthalmic List.

Regulation 2(6) to (11) make minor amendments to regulations 9(6), 12(8), 14(3)(a), 15(1) and (2), 16(2) and 20(4) of the Regulations.

Regulation 2(12) substitutes regulation 21(6) of the Regulations to allow the Common Services Agency to recover overpayments made to ophthalmic medical practitioners or opticians owing to an error or in circumstances where the payment was not due.

Regulation 2(13) amends regulation 25 of the Regulations to refer to practice premises.

Regulation 2(14) makes a minor amendment to regulation 26(7) of the Regulations.

Regulation 2(15) amends Schedule 1 to the Regulations. Paragraphs 4 and 6 are amended to refer to practice premises. Paragraphs 9 and 10 are amended to allow an ophthalmic medical practitioner or optician to deputise for or employ another ophthalmic medical practitioner or optician. Paragraph 11 is amended to refer to practice premises and to ensure that contractors keep a record of complaints. Paragraph 14 is amended so that an ophthalmic medical practitioner or optician shall carry out an eye examination on accepting an application for a supplementary eye examination only following a primary eye examination.

Regulation 2(16) amends Schedule 2 to the Regulations to refer to practice premises and to ensure that an applicant provides a certificate from a provider of training dated not earlier than two years before the date of the application where the applicant has not worked in Scotland within that two year period.

Regulation 2(17) and (18) amend Schedules 3 and 4 to the Regulations by providing that patients who are 60 and over with diabetes are entitled to an internal eye examination with miadriasis using slit lamp biomicroscopy as part of a primary eye examination and patients who are under 60 with diabetes are entitled to the same as part of a supplementary eye examination.



