

EXECUTIVE NOTE

The National Health Service (General Ophthalmic Services) (Scotland) Regulations 2006 SSI/2006/135

1. The above instrument was made in exercise of the powers conferred by sections 26(1), (2), (2A), (2B) and (3), 32A(7), 32D, 34, 105(7), 106(a) and 108 of, the National Health Service (Scotland) Act 1978 (“the 1978 Act”). The instrument is laid before Parliament and is subject to negative resolution in accordance with section 105(9) of the 1978 act.

Policy Objectives

2. The purposes of the instrument are:

- to consolidate the National Health Service (General Ophthalmic Services) (Scotland) Regulations 1986 and subsequent amending Regulations to these;
- to extend the NHS Board ophthalmic list system to cover those opticians and ophthalmic medical practitioners who assist with the provision of general ophthalmic services (“GOS”) as well as those who undertake to provide GOS;
- to extend the requirements with which those who apply to join an ophthalmic list and those whose names appear on these lists must comply in order to demonstrate their fitness to provide or assist with the provision of GOS in a Health Board’s area;
- to introduce a power for an NHS Board to suspend an optician or ophthalmic medical practitioner from its ophthalmic list in a limited range of circumstances; and
- to make provision for the introduction of a new, tailored eye examination, which will include a sight test where necessary, to be delivered to patients under GOS, in place of the previous sight test.

3. The Regulations implement the provisions of the Smoking, Health and Social Care (Scotland) Act 2005 regarding the ophthalmic list, and the introduction of a new free eye examination.

4. Under the new provisions, the ophthalmic list maintained by an NHS Board will be split into two parts, the first part listing opticians and ophthalmic medical practitioners who undertake to provide GOS (i.e. those opticians and ophthalmic medical practitioners who provide GOS on a regular basis in a Board area from their own practices or by undertaking domiciliary visits or who are regularly employed or engaged to do so) and the second part listing those who assist with GOS provision. At present those whose names will appear on the second part of a Board list may work in an area without being listed i.e. without the Board knowing that they are operating in the area. It will in future be a breach of the Regulations for an optician or ophthalmic medical practitioner to provide or assist with the provision of GOS in an area without being on the NHS Board list for that area. Transitional provisions will provide that those whose names feature on current ophthalmic lists will be deemed to be on the first part of such lists from 1 April 2006 and those who assist with GOS provision will have 3 months – until 30 June 2006 – to join the list or lists for areas where they work. The listing of those who assist with GOS provision will increase Boards’ knowledge of the

opticians and ophthalmic medical practitioners working in their area, and will make those assisting with GOS provision responsible for their own acts and omissions, bringing them within current disciplinary arrangements, including referral, where relevant, to the NHS Tribunal for disqualification.

5. There will be expanded terms of service for those on the first part of a Board ophthalmic list, including terms relating to the arrangements for the new eye examination. These will include providing the 4 items of required equipment to enable eye examinations to be carried out. There will also be more limited terms of service for those on the second part of an ophthalmic list which will be common to those on the first part, such as undergoing the necessary training for providing the eye examination and maintaining proper, complete, up to date and accurate records in accordance with a dataset specified in the Instrument at Schedule 5.

6. This Instrument sets down in detail the expanded categories of information, documents, declarations, consents and undertakings which opticians and ophthalmic medical practitioners will need to provide, and which NHS Boards will then check, in support of a formal application for inclusion on either part of a Board's ophthalmic list. In considering any such application, a Board will undertake checks to determine if the applicant meets the criteria to be included on its ophthalmic list. There is a procedure for dealing with listing applications, including grounds for deferment; a power for an NHS Board to require further information from an applicant which he or she must provide and grounds on which a Board must refuse an application. These are the same grounds on which a Board must remove someone from its list. The circumstances on which a Board must refuse list entry or must remove someone from its list are very limited, with one linked directly to the Harold Shipman case i.e. where an applicant or listed optician or ophthalmic medical practitioner has been convicted of murder in the British islands. In such cases, there is a power of re-inclusion where an adverse finding is overturned on appeal. In all other cases where an NHS Board consider that an applicant should not be allowed to join its ophthalmic list or should no longer be named on this list, it may refer the case to the NHS Tribunal.

7. The criteria provided by this Instrument for inclusion on an ophthalmic list are intended to increase protection of patients and of NHS resources and the information, documents, consents, declarations and undertakings which applicants will have to provide are therefore very comprehensive. Those already named on ophthalmic lists will be required to provide similar information, documents, declarations, consents and undertakings and will need to inform the NHS Board within 7 days if there is any change in circumstances. This could be where he or she becomes the subject of a criminal conviction, an adverse finding by a professional regulatory or licensing body such as the General Optical Council (GOC) or General Medical Council (GMC) or there are current court of regulatory/licensing body proceedings against him or her. Transitional provisions will provide that those on the first part of a Board's ophthalmic list at 1 April 2006 must provide the required information, consents, documents etc by 30 June 2006 but there will be a power for Boards to extend this period in cases where it considers it is not practicable for the person concerned to provide the material within the prescribed period. The Instrument also makes provision for students awaiting registration with the GOC and wishing to join ophthalmic lists to provide within a specified period the same consents, certificates, information, declarations and undertakings as other applicants except for the certificate of training required to undertake eye examinations and the applicant's registration number and date of first registration, thus allowing the

relevant Health Board to begin the required checks and speeding up the application process for those about to graduate. The students must provide the training certificate and the remaining information as soon as possible after notification of admission to the GOC's register.

8. The consents which will be required of list applicants and those opticians and ophthalmic medical practitioners who are already listed will allow the exchange of information between the Health Board and specified bodies or persons. This will enable a Board to request, for example, information from a former employer or from the GOC or the GMC concerning an adverse finding or current proceedings to which the list applicant or listed optician or ophthalmic medical practitioner is subject. It will also enable the Board to notify, for example, a current employer or to the General Medical or Optical Councils of its decision to refuse entry to a list applicant or to remove an optician or ophthalmic medical practitioner from its list.

9. Further protection will be afforded by a power enabling a Health Board to impose conditions on the provision, or assistance with provision, of GOS in cases where an optician or ophthalmic medical practitioner wishes to be included on its ophthalmic list and he or she has had conditions relating to his or her inclusion on an ophthalmic list imposed already in England, Wales or Northern Ireland. The Board may modify the conditions as required to suit Scottish circumstances, provided the optician or ophthalmic medical practitioner concerned has been given an opportunity to make representations about these.

10. This Instrument introduces a power for an NHS Board to suspend from its ophthalmic list an optician or ophthalmic medical practitioner named on either part of it on certain grounds. There are however only a limited number of grounds on which this power may be exercised – while the Board awaits the findings of a court, a professional regulatory or advisory body or the NHS Tribunal; while it decides whether to refer the person to the NHS Tribunal, while it decides whether to remove the person from its ophthalmic list or where it has decided to remove the person from its list but before that decision take effect. This power does not replace the power of the NHS Tribunal to direct a suspension. It provides Boards with a choice of whether to suspend from its own list or make a Tribunal referral for suspension.

11. The Instrument recognises the right of the optician or ophthalmic medical practitioner to receive payments while suspended either by an NHS Board or by the Tribunal to reflect that the “neutrality” of the suspension.

12. Under the Instrument's consolidated provisions, there will continue to be specified qualifications which a doctor must possess for the purposes of general ophthalmic services and a process by which the doctor's status as an ophthalmic medical practitioner may be approved.

13. The Smoking, Health and Social Care (Scotland) Act 2005 introduces free eye examinations including where clinically necessary testing of sight with effect from 1st April 2006 and delivers the Partnership Commitment to introduce free eye checks for all before 2007. The new eye examination is provided for in the Instrument.

14. From 1 April 2006, patients will be entitled to a free eye examination which moves away from the current sight tests to broader health aspects. Patients will receive an eye

examination tailored to their clinical needs, taking into account their history and symptoms, which may include a sight test (i.e. a refraction to determine whether or not the patient needs to use or wear an optical appliance) where this is required in the clinical judgement of the relevant optician or ophthalmic medical practitioner. The eye examination will comprise a primary eye examination and, in certain circumstances, may be followed by a supplementary eye examination. The primary eye examination will consist of a number of set procedures as well as patient specific procedures, as set out in Schedule 3. There are a number of circumstances where the optician or ophthalmic medical practitioner may require to undertake a supplementary eye examination, depending on the patient's circumstances such as age/clinical need. These are set out in Schedule 4. There will be occasions when only a supplementary examination will be undertaken – for example where there is a referral of a patient from a hospital ophthalmology department specifically for a cyclopegic sight test (i.e. where eye drops are used to paralyse the ciliary muscle and prevent the patient from blinking).

15. The Instrument makes provision for the payment of fees, allowances and reimbursement of expenses in relation to the provision of general ophthalmic services by means of a determination, continuing the method of payment provided for in the National Health Service (GOS) (Scotland) Regulations 1986 which this Instrument replaces.

Consultation

16. A consultation paper “The Listing of Non Principal Dentists, Optometrists and Ophthalmic Medical Practitioners” (<http://www.scotland.gov.uk/consultations/health/lfdp-00.asp>) issued to a range of bodies in February 2004. This contained proposals relating to the expansion of the listing system to opticians and ophthalmic medical practitioners giving patient sight tests under GOS but not named already on NHS Board ophthalmic lists. Responses, including those from the professional representative bodies, were mainly supportive of the concept. The paper suggested the listing of pre registration (with the GOC) trainees. We have changed course on this because the trainees are not registered opticians. Instead the Regulations will make provision for pre registration trainees to apply for listing not more than 4 and not less than 3 months before they expect to be accepted onto the GOC's register, with the application checking procedure being completed once the trainees' names have been included in the register.

17. Placing additional requirements on family health service practitioners, including opticians and ophthalmic medical practitioners, who wish to join NHS Board lists or whose names already appear on these lists was proposed in the consultation paper “Further Measures to Improve the Provision of Primary Care Services” (<http://www.scotland.gov.uk/consultations/health/fmippc-00.asp>) which was issued in March 2004 to a wide range of interests. The major proportion of respondees, including the professional representative bodies, voiced support for the proposals.

18. The introduction of free eye checks is a Partnership Commitment. The profession has been consulted on the most beneficial type of eye checks for patients.

Financial Effects

19. There will be some additional administrative costs linked to the expanded listing regime. These will be met from NHS Boards' financial allocations.

20. Provision has been made within the General Ophthalmic Services budget to meet the costs of the eye checks.

SCOTTISH EXECUTIVE HEALTH DEPARTMENT

March 2006