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SCOTTISH STATUTORY INSTRUMENTS

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**2008 No. 290**

**NATIONAL HEALTH SERVICE**

**The National Health Service (Charges to Overseas Visitors) (Scotland) Amendment Regulations 2008**

*Made* - - - - 27th August 2008  
*Laid before the Scottish Parliament* - - - - 1st September 2008  
*Coming into force* - - 6th October 2008

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 98, 105(7) and 108(1) of the National Health Service (Scotland) Act 1978(1) and all other powers enabling them to do so.

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the National Health Service (Charges to Overseas Visitors) (Scotland) Amendment Regulations 2008 and come into force on 6th October 2008.

(2) In these Regulations, “the principal Regulations” means the National Health Service (Charges to Overseas Visitors) (Scotland) Regulations 1989(2).

**Amendment of the Principal Regulations**

2.—(1) In regulation 1(2) of the principal Regulations:

(a) at the appropriate place, insert

““eye examinations and sight tests” means eye examinations and sight tests within the meaning of section 13(1) of the Smoking, Health and Social Care (Scotland) Act 2005(3);”;

(b) at the appropriate place, insert

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(1) 1978 c. 29 Section 98 was amended by the Health and Medicines Act 1988 (c. 49), section 7(13) and (14); section 105(7), which was amended by the Health Services Act 1980 (c. 53), Schedule 6, paragraph 5 and Schedule 7, by the Health and Social Services and Social Security Adjudications Act 1983 (c. 41), Schedule 9, paragraph 24 and by the Health Act 1999 (c. 8), Schedule 4, paragraph 60, contains provisions relevant to the exercise of the powers under which these Regulations are made and 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).

(2) S.I.1989/364; amended by S.I. 1992/411, 1994/1770, 1998/251 and S.S.I. 2004/369 and 2006/141.

(3) asp. 13.

““oral health assessments and dental examinations” means oral health assessments and dental examinations within the meaning of section 12(1) of the Smoking Health and Social Care (Scotland) Act 2005;”;

- (c) omit the definition of “dental list”;
- (d) omit the definition of “general dental services”;
- (e) omit the definition of “ophthalmic list”; and
- (f) in the definition of “services forming part of the health service”, for “or general dental services, or general ophthalmic services, or personal dental services” substitute “or oral health assessments and dental examinations, or eye examinations and sight tests”.

(2) For regulation 2(3) of the principal Regulations substitute “Where an overseas visitor receives an oral health assessment, dental examination, eye examination or sight test, the dental practitioner, ophthalmic medical practitioner or ophthalmic optician (as the case may be) providing those services having determined, by means of such enquiries as that person is satisfied are reasonable in all the circumstances, including the state of health of that overseas visitor, that the case is not one in which these Regulations provide for no charge to be made, shall make and recover from the person liable under regulation 7 charges for the provision of those services as such charges are determined by the Health Board.”.

(3) In regulation 3(b) of the principal Regulations for “general dental services, or general ophthalmic services, or personal dental services” substitute “an oral health assessment, dental examination, eye examination or sight test”.

(4) In regulation 4(1) of the principal Regulations:

- (a) after sub-paragraph (p)(iv) omit “or”; and
- (b) after sub-paragraph (q) insert–

“; or

- (r) who the competent authorities of the United Kingdom within the meaning of the Council of Europe Convention on Action Against Trafficking in Human Beings<sup>(4)</sup> (in this regulation “the Convention”),
  - (i) consider that there are reasonable grounds to believe is a victim within the meaning of Article 4 of the Convention, and the recovery and reflection period in relation to him under Article 13 of the Convention has not yet expired; or
  - (ii) have identified as a victim within the meaning of Article 4 of the Convention.”.

(5) In regulation 8 of the principal Regulations:

- (a) in paragraph (1) omit “other than general dental services, or general ophthalmic services, or personal dental services,”; and
- (b) in paragraph (3), for “general dental services, general ophthalmic services or personal dental services forming part of the health service” substitute “an oral health assessment, dental examination, eye examination or sight test”.

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(4) The Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197).

St Andrew's House,  
Edinburgh  
27th August 2008

*NICOLA STURGEON*  
A member of the Scottish Executive

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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## EXPLANATORY NOTE

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

These Regulations amend the National Health Service (Charges to Overseas Visitors) (Scotland) Regulations 1989 (“the principal Regulations”), which provide for the making and recovery of charges in respect of certain services provided under the National Health Service (Scotland) Act 1978 to certain persons not ordinarily resident in the United Kingdom.

Regulation 2(1) inserts definitions of “oral health assessments and dental examinations” and “eye examinations and sight tests” into the principal Regulations. It also amends the definition of “services forming part of the health service” to limit the supply of ophthalmic and dental services within this definition to sight tests, eye examinations, dental examinations and oral health assessments. Definitions which are no longer necessary, as a result of the removal of general dental services, general ophthalmic services and personal dental services from the definition of services forming part of the health service, are removed. Regulations 2(2) and 2(3) make consequential textual amendments.

Regulation 2(4) amends regulation 4(1) of the principal Regulations to meet the United Kingdom’s obligations in relation to medical treatment under the Council of Europe Convention on Action Against Human Trafficking.

The effect of this amendment is to extend the exemption from charges set out in regulation 4 of the principal Regulations to overseas visitors who the United Kingdom authorities have reasonable grounds to believe are victims within the meaning of Article 4 of the Council of Europe Convention on Action Against Human Trafficking (this exemption is limited to the recovery and reflection period recognised in Article 13 of the Convention) and to those who have been identified as victims.

Regulation 2(5)(a) and (b) make consequential amendments needed following the changes made by Regulation 2(2).

Article 4(s)(ii) of the Functions of Health Boards (Scotland) Order 1991 ([S.I. 1991/570](#)). As amended by article 2(5) of the Functions of Health Boards (Scotland) Amendment Order 2006 ([S.S.I. 2006/132](#)), confers on Health Boards the powers of the Scottish ministers to determine the charges imposed by the principal Regulations.