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STATUTORY INSTRUMENTS

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**1988 No. 878 (S.87)**

**NATIONAL HEALTH SERVICE, SCOTLAND**

**The National Health Service (Service Committees and Tribunal) (Scotland) Amendment Regulations 1988**

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| <i>Made</i>                   | - - - - | <i>12th May 1988</i> |
| <i>Laid before Parliament</i> |         | <i>16th May 1988</i> |
| <i>Coming into force</i>      | - -     | <i>1st June 1988</i> |

The Secretary of State, in exercise of powers conferred on him by sections 9(6), 25(1) and (2), 26(1) and (2) and 108(1) of the National Health Service (Scotland) Act 1978<sup>(1)</sup> and of all other powers enabling him in that behalf, and after consultation with the Council on Tribunals in accordance with section 10 of the Tribunals and Inquiries Act 1971<sup>(2)</sup>, hereby makes the following Regulations:

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the National Health Service (Service Committees and Tribunal) (Scotland) Amendment Regulations 1988 and shall come into force on 1st June 1988.

(2) In these Regulations, “the principal Regulations” means the National Health Service (Service Committees and Tribunal) (Scotland) Regulations 1974<sup>(3)</sup>.

(3) In these Regulations, a reference to a numbered regulation is a reference to the regulation bearing that number in the principal Regulations.

**Amendments to the principal Regulations**

2. In regulation 2 (interpretation)—

- (a) the definitions of “area optical committee”, “Joint Ophthalmic Committee” “lay member”, “ophthalmic optician” and “dispensing optician”, “Ophthalmic Services Regulations”, “optician”, and “the terms of service” shall be revoked;

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(1) 1978 c. 29; section 25(2) was amended by S.I. 1981/432; section 26(1) and (2) was amended by the Health and Social Security Act 1984 (c. 48) Schedule 1, Part II, paragraphs 1 to 4, and by Schedule 8, Part I; see section 108(1) for the definitions of “prescribed” and “regulations”

(2) 1971 c. 62; section 10 refers to Schedule 1, Part II, item 41 of which was amended by the National Health Service (Scotland) Act 1972 (c. 58) Schedule 6, paragraph 152(a) and (b), and by the National Health Service (Scotland) Act 1978, Schedule 16, paragraph 35.

(3) S.I. 1974/504, amended by S.I. 1974/1031

- (b) each of the following definitions shall be inserted at the appropriate position in the alphabetical order within that regulation:—

“the 1978 Act” means the National Health Service (Scotland) Act 1978;

“area optical committee” means the committee of that name for the area of a Board recognised under section 9 of the 1978 Act;

“lay member” means (a) in relation to the Board, a member who is not a registered medical practitioner, a registered dental practitioner, a registered pharmaceutical chemist, an ophthalmic medical practitioner or an optician and (b) in relation to a service committee, a member appointed by the Board who is not a registered medical practitioner, a registered dental practitioner, a registered pharmaceutical chemist, an ophthalmic medical practitioner or an optician;

“ophthalmic list” means the list of ophthalmic medical practitioners and opticians maintained by the Board in terms of Regulation 6 of the National Health Service (General Ophthalmic Services) (Scotland) Regulations 1986<sup>(4)</sup>;

“Ophthalmic Services Regulations” means the National Health Service (General Ophthalmic Services) (Scotland) Regulations 1986<sup>(5)</sup>;

“optician” means an ophthalmic optician as defined in section 108 of the 1978 Act;

“the terms of service” means the terms of service for general medical practitioners contained in Part I of Schedule 1 to the General Services Regulations, the terms of service for chemists contained in Parts I and II of Schedule 3 to the General Services Regulations, the terms of service for general dental practitioners contained in Parts I, II and III of Schedule 1 to the General Dental Regulations, and the terms of service for ophthalmic medical practitioners and opticians contained in Schedule 1 to the Ophthalmic Services Regulations as the case may be;”.

**3.** In the heading to Part II of the principal Regulations (provisions relating to investigations, disputes, appeals, etc.-medical, dental and pharmaceutical service committees), the word “and” shall be revoked, a comma inserted in its place, and after the word “pharmaceutical” the words “and ophthalmic” shall be inserted.

**4.—(1)** In regulation 3(1) (constitution of service committees) after the words “dental service committee” the words “an ophthalmic service committee” shall be inserted.

(2) In regulation 3(2)—

- (a) after sub-paragraph (c) the following shall be inserted:—

“(cc) The ophthalmic service committee shall consist of a chairman appointed by the Board from its lay members and six other persons, of whom three shall be appointed by the Board from the lay members of the Board, one shall be appointed by the area medical committee, one who must be an optician shall be appointed by the area optical committee, and one who must be either an ophthalmic medical practitioner or an optician shall be appointed by either the area medical or optical committee as appropriate.”;

- (b) in sub-paragraph (d) the word “ten” shall be revoked and the word “twelve” inserted in its place;

- (c) at the end of sub-paragraph (d) the full stop shall be revoked and the following inserted:—

“, and two shall be appointed by the ophthalmic service committee from their members or deputies who are ophthalmic medical practitioners or opticians.”;

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<sup>(4)</sup> S.I. 1986/965; regulation 6 was amended by S.I. 1988/543

<sup>(5)</sup> S.I. 1986/965, amended by S.I. 1988/543

- (d) in sub-paragraph (h)
  - (i) after the words “dental practitioner” the word “and” shall be revoked;
  - (ii) at the end the full stop shall be revoked and the following inserted:—

“, and the members appointed by the ophthalmic service committee shall not take part in the hearing unless the matter involves a question relating to an ophthalmic medical practitioner or optician.”.
- 5. In regulation 4 (investigation of complaints by service committees)
  - (a) after the words “pharmaceutical service committee” the word “and” shall be revoked;
  - (b) at the end the full stop shall be revoked and the following inserted:—

“, and any complaint made by a person against an ophthalmic medical practitioner or optician in respect of an alleged failure to comply with the terms of service shall be investigated by the ophthalmic service committee.”.
- 6. In regulation 5(1) (time limit for complaint and notice of complaint) after the words “or a chemist” the words “or an ophthalmic medical practitioner or an optician” shall be inserted.
- 7. In regulation 6(2)(a), (2)(c), (2)(d) and (3)(d) (late complaints) after the words “or chemist” each time they appear, the words “or ophthalmic medical practitioner or optician” shall be inserted.
- 8. In regulation 7 (investigation of other matters by service committees)—
  - (a) in paragraph (1)(a)
    - (i) after the words “in relation to chemists” the word “and” shall be revoked, and a comma inserted in its place;
    - (ii) after the words “in relation to dental practitioners” the words “, and the ophthalmic service committee in relation to ophthalmic medical practitioners and opticians” shall be inserted;
    - (iii) the word “or” before the words “general dental services” shall be revoked, and a comma inserted in its place;
    - (iv) after the words “general dental services,” the words “or general ophthalmic services,” shall be inserted;
    - (v) in the proviso, after the words “or chemist” each time they appear the words “or ophthalmic medical practitioner or optician” shall be inserted;
  - (b) in paragraph (3)—
    - (i) after the words “or a chemist” each time they appear the words “or an ophthalmic medical practitioner or an optician” shall be inserted;
    - (ii) after the words “or a general dental practitioner” the words “or an ophthalmic medical practitioner or an optician, or if in the opinion of the ophthalmic service committee any matter referred to that committee involves a question relating to a general medical practitioner, or a general dental practitioner or a chemist” shall be inserted;
  - (c) in paragraph (4) after the words “pharmaceutical service committee” the words “or the dental service committee” shall be revoked, and the words “, dental service committee or ophthalmic service committee” shall be inserted.
- 9. In regulation 9(1) (action by the board)—
  - (a) in sub-paragraphs (b)(i) and (c) after the words “or chemist” wherever they occur the words “or ophthalmic medical practitioner or optician” shall be inserted;

(b) in sub-paragraph (d) after the words “dental list” the words “or of the ophthalmic medical practitioner or optician on the ophthalmic list” shall be inserted.

10. In regulation 10(4) (appeal to the Secretary of State from decision of the board) after the words “or chemist” the words “or ophthalmic medical practitioner or optician” shall be inserted.

11. In regulation 11(5) (procedure on appeal to the Secretary of State) at the end the full stop shall be revoked, and the following inserted:—

“, and (c) where one of the parties to an appeal is an ophthalmic medical practitioner or an optician the persons appointed to hear the appeal shall include an ophthalmic medical practitioner or an optician as the case may require.”.

12. In regulation 13(1) (procedure on withholding money)—

- (a) after the words “on whose list the practitioner” the words “or chemist” shall be inserted;
- (b) after the words “or chemist” each time they appear the words “or ophthalmic medical practitioner or optician” shall be inserted.

13. Regulation 19 (appeal from Scottish Dental Estimates Board) shall be revoked and the following inserted—

**“Appeal from Scottish Dental Estimates Board**

19.—(1) Any person aggrieved by a decision of the Scottish Dental Estimates Board concerning the treatment or intended treatment of a patient, and any dental practitioner aggrieved by a decision of the Scottish Dental Estimates Board concerning fees in respect of his provision or intended provision of general dental services, may appeal against that decision to the Board which makes arrangements for general dental services provided under the Act.

(2) For the purposes of this regulation, the parties to an appeal are the Scottish Dental Estimates Board and the appellant, that is to say the aggrieved person or dental practitioner.

(3) Notice of appeal shall—

- (a) be given to the Board in writing;
- (b) except where the Board is satisfied that the lateness of the appeal is due to illness or other reasonable cause, be given within one month of the date on which the appellant received notice of the decision of the Scottish Dental Estimates Board;
- (c) state the date on which the appellant was informed of that decision; and
- (d) contain a concise statement of the facts and contentions upon which it is intended to rely.

(4) The Board shall within 28 days of receipt of the notice of appeal request from the Scottish Dental Estimates Board a written statement of the reasons for their decision, and the Scottish Dental Estimates Board shall within 28 days of receipt of the request send such a statement to the Board.

(5) The Board shall consider the notice of appeal and the statement of the Scottish Dental Estimates Board and

- (a) where, after consulting the Area Dental Committee, the Board are of the opinion that the notice discloses no reasonable grounds of appeal or that the appeal is otherwise trivial or vexatious, they may determine the appeal by dismissing it forthwith;
- (b) where the appeal is against a refusal of the Scottish Dental Estimates Board to approve an estimate on the ground that the services to which the estimate relates cannot be provided as part of general dental services, they shall refer the notice

- of appeal and the Scottish Dental Estimates Board's statement to the Secretary of State, and on referring the appeal the Board shall inform the parties of the referral;
- (c) where in an appeal by a dental practitioner against a decision of the Scottish Dental Estimates Board concerning fees the Scottish Dental Estimates Board certifies in its statement that it authorised those fees and that they were the fees or maximum fees prescribed by Determination I of the Statement of Dental Remuneration for the services provided or to be provided, the Board shall dismiss the appeal forthwith unless they are of the opinion that it involves a dispute as to the item or sub-item of treatment in that Determination applicable to the services provided or to be provided;
  - (d) except where an appeal is dismissed or referred in accordance with the preceding provisions of this paragraph, the Board shall within 28 days of receipt of the Scottish Dental Estimates Board's statement appoint two dental practitioners as referees to determine the appeal, one of whom they shall select from a panel of dental practitioners who are or have been engaged in the provision of general dental services and who is nominated by the Area Dental Committee, failing which the Area Dental Committee for another Board area.
- (6) Where the Board dismiss an appeal they shall inform the parties accordingly and, in the case of dismissal under paragraph (5)(c), shall send to the appellant a copy of the Scottish Dental Estimates Board's statement.
- (7) Where an appeal is referred to the Secretary of State, he shall determine the appeal in such manner as he thinks fit, and shall then inform the parties and the Board of his decision, which shall be final, and of the reasons for it.
- (8) Where referees are appointed they shall, subject to paragraph (11), hear the representations of the appellant and of the Scottish Dental Estimates Board on a day appointed by the Board for that purpose, and determine the appeal.
- (9) The Board shall—
- (a) at least 14 days before the hearing (or within such shorter period as the parties may agree), give written notice to the parties of the date, time and place of hearing, and of the names of the referees;
  - (b) at least 7 days before the hearing (or within such shorter period as the parties may agree), provide—
    - (i) the referees and the appellant with a copy of the Scottish Dental Estimates Board's statement, and
    - (ii) the referees and the Scottish Dental Estimates Board with a copy of the notice of appeal.
- (10) If in the course of a hearing a party introduces any issue which in the opinion of the referees was not sufficiently disclosed in the written statement submitted, it shall be within the discretion of the referees to admit or exclude such issue as they think fit, but if the issue is admitted the hearing will be adjourned unless the other party requests that the hearing should proceed and the referees agree thereto.
- (11) Where the parties to an appeal have given written notice to the Board that it is not intended to make representations at a hearing, the Board shall inform the referees accordingly, and the referees shall thereafter determine the appeal without holding a hearing.
- (12) The referees shall after determining the appeal give the Board written notice of their decision which shall be final and of the reasons for it, and the Board shall within 2 weeks of receiving such notice send copies of it to the parties.”

14. After regulation 20 (investigation of excessive dental treatment) there shall be inserted the following regulation:—

**“Investigation of excessive prescribing of optical appliances**

**20A.—**(1) The area optical committee shall from time to time examine the forms which have been completed by ophthalmic medical practitioners or opticians after testing the sight of persons applying for general ophthalmic services, and where it appears to the committee that, by reason of the number of optical appliances and type of lenses prescribed in relation to the number of sight tests undertaken and to the degree of refractive error detected, the cost incurred by the Board is materially in excess of what was reasonably necessary for the adequate treatment of those persons, they shall make a report thereon to the Board stating fully the facts of the case as ascertained by them, the grounds upon which their opinion is based and their recommendation as to the sum which, in their opinion, might properly be recovered from the ophthalmic medical practitioner or the optician as the case may be:

Provided that before making a report to the Board the area optical committee shall furnish the ophthalmic medical practitioner or the optician concerned with a statement indicating the grounds on which they propose to make a report as aforesaid, and shall afford him reasonable opportunity of appearing before and being heard by them or, if he thinks fit, of submitting to them any statement in writing.

(2) The Board shall consider the report of the area optical committee and if they are of the opinion that by reason of the number of optical appliances and type of lenses prescribed in relation to the number of sight tests undertaken and to the degree of refractive error detected, the cost incurred is materially in excess of what was reasonably necessary for the adequate treatment of persons whose sight was tested, they may decide to recover from the ophthalmic medical practitioner or optician, by deduction from his remuneration or otherwise such sum as they think fit.

(3) The Board shall send to the Secretary of State and to the ophthalmic medical practitioner or optician, as the case may be, copies of every report made by the area optical committee under this regulation, and shall inform the Secretary of State, the area optical committee and the said ophthalmic medical practitioner or optician, of the decision of the Board. The Board shall also inform the ophthalmic medical practitioner or optician of his right to appeal to the Secretary of State, and the foregoing provisions of these Regulations relating to the procedure on appeal from a decision of the Board made under regulation 9 and to the hearing and expenses of such appeal shall apply.

(4) If the Secretary of State is not satisfied that the obligations laid on the area optical committee and the Board by this regulation have been adequately fulfilled, he may appoint a person or persons, not exceeding two in number, for the purpose of holding an investigation under this regulation, and the person or persons so appointed shall have the same powers and duties with respect to the investigation into the number of optical appliances and type of lenses prescribed in relation to the number of sight tests undertaken and to the degree of refractive error detected, as are conferred and imposed on the committee, and shall be entitled to require the committee to furnish any relevant statistics or other information available.

(5) Any report made by the person or persons so appointed shall be made to the Secretary of State, and if he is of the opinion that, by reason of the number of optical appliances and type of lenses prescribed in relation to the number of sight tests undertaken and to the degree of refractive error detected, the cost incurred is materially in excess of what was reasonably necessary for the adequate treatment of persons whose sight was tested, he may direct that such sum as he thinks fit shall be recovered from the ophthalmic medical practitioner or

optician, as the case may be, by the Board, whether by deduction from his remuneration or otherwise, and the decision of the Secretary of State shall be final and conclusive.”.

**15.** In regulation 21 (power of area medical and pharmaceutical committees to consider complaints)—

- (a) in the heading the word “and” shall be revoked and after the word “pharmaceutical” the words “and optical” shall be inserted;
- (b) in paragraph (1) after the words “general medical services” the words “or general ophthalmic services” shall be inserted;
- (c) in paragraph (1) after the words “medical practitioner” each time they occur the words “or ophthalmic medical practitioner” shall be inserted;
- (d) after paragraph (2) there shall be inserted the following:—

“(3) The area optical committee shall have power to consider any complaint being a complaint relating to the efficiency of the general ophthalmic services made to them by any ophthalmic medical practitioner against an ophthalmic medical practitioner or by any optician against an optician, practising in the area for which the committee is constituted.”.

**16.** Part III of the principal Regulations, (provisions relating to investigations, disputes, appeals etc-ophthalmic service committee), comprising regulations 22 to 35, shall be revoked.

**17.** In regulations 41, 46(2), 49(1), 54(2), 55(2), 56(3), 58(1)(b) and 58(1)(c) the phrases “or a Joint Ophthalmic Committee”, “or Joint Ophthalmic Committee”, “Joint Ophthalmic Committee”, and “or Joint Ophthalmic Committees”, as the case may be, shall be revoked.

**18.** In regulation 60 (attendance by member of council on tribunals) the words “or a Joint Ophthalmic Committee”, the words “or Committee” and the number “30” shall be revoked.

**19.** In Schedule 1 to the principal Regulations:—

- (a) in paragraph 1(2) the words “or of the Joint Ophthalmic Committee” shall be revoked;
- (b) in paragraph 2(6)(d) the words “or of the Joint Ophthalmic Committee” shall be revoked;
- (c) in paragraph 2(8) the words “or Joint Ophthalmic Committee” shall be revoked;
- (d) in paragraph 2(9) the words “or in the case of an ophthalmic service committee to the Joint Ophthalmic Committee”, the words “or Joint Ophthalmic Committee”, each time they occur, and the words “or the Joint Ophthalmic Committee” shall be revoked;
- (e) in paragraph 2(12)(a)(i) the words “general member” shall be revoked and the words “general medical” inserted in their place;
- (f) in paragraph 2(12)(a) and in paragraph 4 the following shall in each case be inserted at the end:—
  - “(iv) a general medical practitioner and an ophthalmic medical practitioner or optician, one medical member and one ophthalmic member being either an ophthalmic medical practitioner or optician, as appropriate;
  - (v) a general dental practitioner and an ophthalmic medical practitioner or optician, one dental member and one ophthalmic member being either an ophthalmic medical practitioner or optician, as appropriate;
  - (vi) a chemist and an ophthalmic medical practitioner or optician, one pharmaceutical member and one ophthalmic member being either an ophthalmic medical practitioner or optician, as appropriate.”;
- (g) in paragraph 3 the words “or Joint Ophthalmic Committee” shall be revoked;
- (h) in paragraph 5, in the definition of “lay member”, and the words “or by the Joint Ophthalmic Committee” shall be revoked;

- (i) in paragraph 5 the definitions of “medical member” “pharmaceutical member” and “dental member” shall be revoked, and the following inserted in their place:—

““medical member”, “pharmaceutical member”, “dental member” or “ophthalmic member” of a service committee means a member appointed by the area medical, pharmaceutical, dental or optical committee, as the case may be, and in the case of a joint services committee a member appointed by and from the medical, pharmaceutical, dental or ophthalmic members of the medical, pharmaceutical, dental or ophthalmic service committee.”.

**20.** In Schedule 3 to the principal Regulations references to “Joint Ophthalmic Committee” and the words “ophthalmic or dispensing” in Forms 1, 2, 3 and 4 shall be revoked.

### **Transitional provisions**

**21.**—(1) Where notice of appeal with respect to a decision of the Scottish Dental Estimates Board has been lodged before 1st June 1988 but the appeal not resolved by that date, it shall be dealt with as if these Regulations had not been made.

(2) Where a matter has before 1st June 1988 been referred to or by the Joint Ophthalmic Committee for investigation and has not been resolved by that date, then it shall be deemed to have been referred to the Board and after the said date be dealt with by the Board in accordance with the principal Regulations as amended by these Regulations.

St Andrew’s House,  
Edinburgh  
12th May 1988

*Michael B Forsyth*  
Parliamentary Under Secretary of State, Scottish  
Office



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## EXPLANATORY NOTE

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

These Regulations amend the National Health Service (Service Committees and Tribunal) (Scotland) Regulations 1974 (“the principal Regulations”). They are concerned mainly with 3 topics: the substitution in the principal Regulations of a new regulation 19 (appeal from Scottish Dental Estimates Board), the setting up by health boards of ophthalmic service committees to consider complaints against ophthalmic medical practitioners and opticians, and the extension of the duties of area optical committees.

The major changes effected by the introduction (by regulation 13) of a new regulation 19 are—

- (a) provision for certain appeals from decisions of the Scottish Dental Estimates Board to be made to a health board rather than to the Secretary of State;
- (b) in matters concerning fees, confinement of the right of appeal to the dentist concerned;
- (c) a requirement that referees who determine appeals give written reasons for their decisions.

Provisions concerning ophthalmic service committees (see regulations 4-12) with respect to complaints are inserted in Part II of the principal Regulations. The duties of area optical committees are extended by requiring those committees to monitor the volume and standard of NHS sight testing undertaken in Board areas (see regulation 14).

These Regulations also make minor textual corrections (regulation 19) to, and remove references to Joint Ophthalmic Committees (regulations 2, 17-20) and to ophthalmic and dispensing opticians (regulations 2 and 20) from, the principal Regulations. Complaints against ophthalmic medical practitioners and opticians were previously considered by Joint Ophthalmic Committees but these Committees are, with effect from 1st June 1988, dissolved by the National Health Service (Joint Ophthalmic Committees) (Scotland) Revocation Order 1988 (S.I.1988/808). Part III of the principal Regulations (comprising regulations 22-35) which deals with Joint Ophthalmic Committees is therefore revoked by these Regulations (regulation 16).

As a consequence of these Regulations, the principal Regulations now generally use the term “optician” rather than “ophthalmic optician” to accord with the terminology adopted in the National Health Service (General Ophthalmic Services) (Scotland) Regulations 1986 (S.I. 1986/965). The 1986 Regulations also ended the practice of dispensing opticians being contracted to health boards to provide general ophthalmic services.

Differing transitional provisions are made concerning appeals to the Scottish Dental Estimates Board, and references to or by Joint Ophthalmic Committees which are not concluded by 1st June 1988, the date of coming into operation of these Regulations (see regulation 21).