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STATUTORY INSTRUMENTS

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**1996 No. 705**

**NATIONAL HEALTH SERVICE,  
ENGLAND AND WALES**

**The National Health Service (General Ophthalmic  
Services) Amendment Regulations 1996**

<i>Made</i>	- - - -	<i>11th March 1996</i>
<i>Laid before Parliament</i>		<i>11th March 1996</i>
<i>Coming into force</i>	- -	<i>1st April 1996</i>

The Secretary of State for Health, in exercise of powers conferred on him by sections 15(1), 38(1), 39, 49E and 126(4) of the National Health Service Act 1977(1) and of all other powers enabling him in that behalf, hereby makes the following Regulations:—

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the National Health Service (General Ophthalmic Services) Amendment Regulations 1996 and shall come into force on 1st April 1996.

(2) In these Regulations, “the principal Regulations” means the National Health Service (General Ophthalmic Services) Regulations 1986(2).

**Amendment of regulation 2 of the principal Regulations**

2. In regulation 2(1) of the principal Regulations (interpretation), after the definition of “the Statement” insert—

““suspended by direction of the Tribunal” means suspended as respects the provision of general ophthalmic services to patients by a direction of the Tribunal made pursuant to

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(1) 1977 c. 49; see section 128(1) as amended by the National Health Service and Community Care Act 1990 (c. 19) (“the 1990 Act”), section 26(2)(g) and (i), for the definitions of “prescribed” and “regulations”. Section 15(1) was amended by the Health and Social Security Act 1984 (c. 48) (“the 1984 Act”), section 5(2); by the 1990 Act, section 12(1); and, from 1st April 1996, by the Health Authorities Act 1995 (c. 17) (“the 1995 Act”), Schedule 1, paragraph 6. Section 38 was amended by the Health Services Act 1980 (c. 53) (“the 1980 Act”), section 1 and Schedule 1, paragraph 51; by the 1984 Act, section 1(3); by S.I. 1985/39, article 7(11); by the Health and Medicines Act 1988 (c. 49) (“the 1988 Act”), section 13(1); and, from 1st April 1996, by the 1995 Act, Schedule 1, paragraph 27. Section 39 was extended by the 1988 Act, section 17; and amended by the 1980 Act, section 1 and Schedule 1, paragraph 52; by the 1984 Act, section 1(4), Schedule 1, Part 1, paragraph 1 and Schedule 8, Part I; by S.I. 1985/39, article 7(12); and, from 1st April 1996, by the 1995 Act, Schedule 1, paragraph 28. Section 49E was inserted by the National Health Service (Amendment) Act 1995 (c. 31), section 2(1). Section 126(4) was amended by the 1990 Act, section 65(2).

(2) S.I. 1986/975; relevant amending instruments are S.I. 1988/486, 1989/395 and 1990/1051.

section 49A(2) or section 49B(1) of the Act(3) or to any provisions in force in Scotland or Northern Ireland corresponding to those provisions;”.

#### **Amendment of regulation 6 of the principal Regulations**

3. In regulation 6 (ophthalmic list), at the end of paragraph (1) insert “in its area and who are not disqualified for inclusion by virtue of the provisions of sections 47(1), 48(b), 49A(3), 49B(1) or 49D(2) of the Act(4)”.

#### **Amendment of regulation 7 of the principal Regulations**

4. In regulation 7 (application for inclusion in ophthalmic list and notification), in paragraph (1)

- (a) at the end of sub-paragraph (a), omit “and”; and
- (b) at the end of sub-paragraph (b), insert—
  - “; and
  - (c) a declaration that he is not suspended by direction of the Tribunal.”.

#### **Amendment of regulation 9 of the principal Regulations**

5. In regulation 9 (removal from ophthalmic list), after paragraph (2) insert the following new paragraph—

“(2A) In calculating the period of six months referred to in paragraph (2), a Health Authority shall disregard any period during which the contractor provided no general ophthalmic services by reason only that he was suspended by direction of the Tribunal.”.

#### **Amendment of regulation 12 of the principal Regulations**

6. In regulation 12 (payment for services), in paragraph (2)(b), for “regulation 6(6)(a) of the National Health Service (Service Committees and Tribunal) Regulations 1974” substitute “regulation 5(1) of the National Health Service (Service Committees and Tribunal) Regulations 1992”(5).

#### **Payments to suspended contractors**

7. After regulation 12 of the principal Regulations insert the following new regulation—

##### **“Payments to contractors suspended by direction of the Tribunal**

**12A.**—(1) A Health Authority shall make payments to any contractor who is suspended by direction of the Tribunal in accordance with the Secretary of State’s determination for the time being in force in relation to such payments.

(2) The Secretary of State shall make the determination in accordance with paragraphs (3) and (4) after consultation with the organisations referred to in regulation 10(1), and it shall be published with the Statement there referred to.

(3) Subject to paragraph (4), the Secretary of State’s determination shall be such as to secure that, as far as reasonably practicable, the suspended contractor receives payments at

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(3) Sections 49A and 49B were inserted by section 2(1) of the National Health Service (Amendment) Act 1995 (c. 31).

(4) Section 49D was also inserted by section 2(1) of the National Health Service (Amendment) Act 1995 (c. 31).

(5) S.I. 1992/664; the relevant amending instrument is S.I. 1996/703.

a rate corresponding to his remuneration by virtue of regulation 10 during the 12 months ending with the direction for suspension by the Tribunal.

(4) The Secretary of State's determination may include provision that payments in accordance with the determination are not to exceed a specified amount in any specified period.

(5) In a case to which section 49B(3) of the Act applies, the determination shall provide for the amount by which a suspended contractor's payments are to be reduced to take account of any payments which he receives for providing general ophthalmic services other than as a principal.

(6) Regulation 10(2) shall apply to determinations under this regulation as it applies to determinations under that regulation.

(7) Regulation 12(2) shall apply to payments made under this regulation as it applies to payments made under that regulation."

### **Amendment of Schedule 1**

**8.—**(1) Schedule 1 (terms of service for ophthalmic medical practitioners and opticians) shall be amended as follows.

(2) In paragraph 2 (incorporation of provisions), in sub-paragraph (b)—

(a) for "National Health Service (Service Committees and Tribunal) Regulations 1974" substitute "National Health Service (Service Committees and Tribunal) Regulations 1992"; and

(b) in paragraph (i), for "ophthalmic service committee" substitute "ophthalmic discipline committee".

(3) For paragraph 5 (notices) substitute—

"**5.** A contractor shall secure that at each place at which he provides general ophthalmic services there is prominently displayed a notice and leaflet supplied or approved by the Health Authority, indicating the services available under general ophthalmic services and indicating to which descriptions of his patients a payment may be made under the National Health Service (Optical Charges and Payments) Regulations 1989(6)."

(4) In paragraph 7 (deputies), in sub-paragraph (1), for the words "disqualified by the Tribunal from inclusion in the ophthalmic list" substitute—

"(a) who, having been disqualified under section 46(2)(b) of the Act (or under any corresponding provision in force in Scotland or Northern Ireland) from inclusion in the ophthalmic list of any Health Authority (or, in Scotland or Northern Ireland, of a Health Board or of a Health and Social Services Board respectively), is also the subject of a declaration under section 46(2)(c)(7) of the Act (or any corresponding provision in force in Scotland or Northern Ireland) that he is not fit to be engaged in any capacity in the provision of general ophthalmic services; or

(b) who is suspended by direction of the Tribunal, other than in a case falling within section 49B(3) of the Act."

(5) In paragraph 8 (employees), for sub-paragraph (3) substitute—

"(3) A contractor shall not employ in the provision of general ophthalmic services any person—

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(6) S.I. 1989/39, amended by S.I. 1990/495, 1991/583, 1991/1680, 1991/2465, 1992/404, 1993/418, 1994/131, 1994/495, 1994/2619, 1995/34, 1995/691, 1995/2307 and 1996/582.

(7) Section 46(2)(c) was inserted by section 1 of the National Health Service (Amendment) Act 1995 (c. 31).

- (a) who, having been disqualified under section 46(2)(b) of the Act (or under any corresponding provision in force in Scotland or Northern Ireland) from inclusion in the ophthalmic list of any Health Authority (or, in Scotland or Northern Ireland, of a Health Board or of a Health and Social Services Board respectively), is also the subject of a declaration under section 46(2)(c) of the Act (or any corresponding provision in force in Scotland or Northern Ireland) that he is not fit to be engaged in any capacity in the provision of general ophthalmic services; or
  - (b) who is suspended by direction of the Tribunal, other than in a case falling within section 49B(3) of the Act.”
- (6) After paragraph 8 (employees), insert the following new paragraphs—

**“Complaints**

**8A.**—(1) Subject to sub-paragraphs (2) and (3), a contractor shall establish, and operate in accordance with this paragraph, a procedure (in this paragraph and in paragraph 8B referred to as a “complaints procedure”) to deal with any complaints made by or on behalf of his patients and former patients.

(2) The complaints procedure to be established by a contractor may be such that it also deals with complaints made in relation to one or more other contractors.

(3) The complaints procedure to be established by a contractor who provides general ophthalmic services from more than one set of premises may be such that it relates to all those premises together.

(4) A complaints procedure shall apply to complaints made in relation to any matter reasonably connected with the contractor’s provision of general ophthalmic services and within the responsibility or control of—

- (a) the contractor;
- (b) where the contractor is a body corporate, any of its directors or former directors;
- (c) a former partner of the contractor;
- (d) any other person (being an optician, an ophthalmic medical practitioner or a person authorised to test sight by rules made under section 24(3) of the Opticians Act 1989)<sup>(8)</sup> who is either employed by the contractor or engaged as his deputy;
- (e) any employee of the contractor other than one falling within paragraph (d),

and in this paragraph and paragraph 8B, references to complaints are to complaints falling within this sub-paragraph.

(5) A complaint may be made on behalf of a patient or former patient with his consent, or—

- (a) where the patient is a child under the age of 16 years—
  - (i) by either parent, or in the absence of both parents, the guardian or other adult person who has care of the child, or
  - (ii) where the child is in the care of an authority to whose care he has been committed under the provisions of the Children Act 1989<sup>(9)</sup>, or in the care of a voluntary organisation, by that authority or voluntary organisation; or
- (b) where the patient is incapable of making a complaint, by a relative or other adult person who has an interest in his welfare.

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<sup>(8)</sup> 1989 c. 44.

<sup>(9)</sup> 1989 c. 41.

(6) Where a patient has died, a complaint may be made by a relative or other adult person who had an interest in his welfare or, where the patient was as described in paragraph (a)(ii) of sub-paragraph (5), by the authority or voluntary organisation.

(7) A complaints procedure shall comply with the following requirements—

- (a) the contractor must specify a person (who need not be connected with the contractor and who, in the case of an individual, may be specified by his job title) to be responsible for receiving and investigating all complaints;
- (b) all complaints must be—
  - (i) recorded in writing.
  - (ii) acknowledged, either orally or in writing, within the period of three days (excluding Saturdays, Sundays, Christmas Day, Good Friday and bank holidays) beginning with the day on which the complaint was received by the person specified under paragraph (a) or where that is not possible, as soon as reasonably practicable, and
  - (iii) properly investigated;
- (c) within the period of 10 days (excluding Saturdays, Sundays, Christmas Day, Good Friday and bank holidays) beginning with the day on which the complaint was received by the person specified under paragraph (a), or where that is not possible, as soon as reasonably practicable, the complainant must be given a written summary of the investigation and its conclusions;
- (d) where the investigation of the complaint requires consideration of the patient's sight testing records, the person specified under paragraph (a) must inform the patient or person acting on his behalf if the investigation will involve disclosure of information contained in those records to a person other than the contractor, or a director, partner, deputy or employee of the contractor; and
- (e) the contractor must keep a record of all complaints and copies of all correspondence relating to complaints, but such records must be kept separate from patients' sight testing records.

(8) At each of the premises at which the contractor provides general ophthalmic services he must provide information about the complaints procedure which he operates and give the name (or title) and address of the person specified under paragraph (7)(a).

**8B.**—(1) A contractor shall cooperate with any investigation of a complaint by the Health Authority in accordance with the procedures which it operates in accordance with directions given under section 17 of the Act(10), whether the investigation follows one under the contractor's complaints procedure or not.

(2) The co-operation required by sub-paragraph (i) includes—

- (a) answering questions reasonably put to the contractor by the Health Authority;
- (b) providing any information relating to the complaint reasonably required by the Health Authority; and
- (c) attending any meeting to consider the complaint (if held at a reasonably accessible place and at a reasonable hour, and due notice has been given), if the contractor's presence at the meeting is reasonably required by the Health Authority.

### **Complaints against ophthalmic medical practitioners**

**8C.**—(1) A contractor who, being an ophthalmic medical practitioner also provides general medical services, shall secure that the practice based complaints procedure he has established and operates in accordance with paragraph 47A of the doctor's terms of service applies in relation to any matter reasonably connected with his provision of general ophthalmic services as it applies as respects his provision of general medical services.

(2) Accordingly, paragraph 47B of those terms of service also applies in relation to complaints about such matters.”.

(7) In paragraph 11 (use of disqualified name), in sub-paragraph (1), at the end insert “by virtue of section 47(1), 48(b), 49A(3), 49B(1) or 49D(2) of the Act”.

Signed by authority of the Secretary of State for Health,

11th March 1996

*Gerald Malone*  
Minister of State,  
Department of Health

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## EXPLANATORY NOTE

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

These Regulations further amend the National Health Service (General Ophthalmic Services) Regulations 1986 (S.I.1986/975) (“the 1986 Regulations”) to make provision relating to ophthalmic medical practitioners and ophthalmic opticians (“contractors”) who have been suspended from the provision of general ophthalmic services by the NHS Tribunal or whom the Tribunal has declared not fit to be engaged in any capacity in the provision of those services.

The Regulations also provide for payments to suspended contractors.

The Regulations also amend Schedule 1 of the 1986 Regulations (contractors' terms of service) as follows:—

1. To prevent the employment, as an assistant or deputy, of any contractor suspended by the Tribunal who is also subject to a declaration by the Tribunal that he is not fit to be engaged in any capacity in the provision of general ophthalmic services.
2. To stipulate that a contractor must display, at each place where he provides general ophthalmic services a notice and leaflet (to be supplied or approved by the Health Authority) giving patients information about the optical voucher scheme whereby eligible persons can obtain help, by means of a voucher system, with costs incurred in connection with the supply, replacement and repair of optical appliances.
3. To require a contractor to establish and operate a system to deal with complaints. There is provision about who may complain, what they may complain about and how such complaints are to be dealt with and the publicity which a contractor must give to his complaints procedure. A contractor is also required to cooperate with complaints procedures which are operated by Health Authorities.

The Regulations also make other minor amendments.

A copy of the Statement referred to in Regulation 7 (which inserts a new Regulation 12A into the 1986 Regulations) can be obtained free of charge from the Health Publications Unit, DSS Distribution Unit, Heywood Stores, Manchester Road, Heywood, Lancashire, OL10 2PZ.