
STATUTORY INSTRUMENTS

2005 No. 480

The National Health Service (General Ophthalmic Services Supplementary List) and (General Ophthalmic Services Amendment and Consequential Amendment) Regulations 2005

PART II

AMENDMENTS TO THE OPHTHALMIC REGULATIONS

Interpretation

22. In this Part “the Ophthalmic Regulations” means the National Health Service (General Ophthalmic Services) Regulations 1986(1).

Amendment of regulation 2

23.—(1) Regulation 2 of the Ophthalmic Regulations (interpretation)(2) shall be amended in accordance with the following provisions of this regulation.

(2) In paragraph (1)—

(a) for the definitions of “deputy”, “equivalent body”, “licensing or regulatory body”, “mobile practice” and “suspended”, there shall be substituted respectively—

““deputy” means an ophthalmic medical practitioner or optician, who is included in an ophthalmic list or a supplementary list and assists in the provision of general ophthalmic services;”;

““equivalent body” means—

- (a) a Local Health Board in Wales;
- (b) a Health Board or an NHS trust in Scotland;
- (c) a Health and Social Services Board in Northern Ireland;
- (d) in relation to any time prior to 1st October 2002, a Health Authority in England; or
- (e) in relation to any time prior to 1st April 2003, a Health Authority in Wales;”;

““licensing or regulatory body” means—

- (a) a body that licenses or regulates any profession of which the ophthalmic medical practitioner or optician is or has been a member, including a body regulating or licensing the education, training or qualifications of that profession; and
- (b) includes any body which licenses or regulates any such profession, its education, training or qualifications, outside the United Kingdom;”;

(1) 1986/975.

(2) Relevant amendments are, in relation to England, in [S.I. 2001/3739](#).

“mobile practice” means a contractor who—

- (a) has made arrangements with the Primary Care Trust to provide mobile services; and
- (b) does not have practice premises in the locality;”;

“suspended” means suspended—

- (a) in relation to England and Wales, by a Primary Care Trust or equivalent body under section 49I or 49J of the Act or under regulations made under—
 - (i) sections 28DA or 43D of the Act, or
 - (ii) section 8ZA of the National Health Service (Primary Care) Act 1997⁽³⁾, including these Regulations;
- (b) in relation to Scotland or Northern Ireland, under provisions in force corresponding to those in or made under sections 28DA, 43D, 49I, 49J of the Act or under section 8ZA of the National Health Service (Primary Care) Act 1997,

and shall be treated as including a case where a person is treated as suspended by a Primary Care Trust or, prior to 1st October 2002, by a Health Authority by virtue of regulation 6(2) of the Abolition of the Tribunal Regulations, or, in Wales, by a Local Health Board or, prior to 1st April 2003, a Health Authority by virtue of regulation 6(2) of the Abolition of the Tribunal (Wales) Regulations, and “suspends” and “suspension” shall be construed accordingly;”;

- (b) the following definitions shall be inserted at the appropriate alphabetical places—

“corporate optician” means an optician, which is a body corporate carrying on business as an optician;”;

“the NCAA” means the National Clinical Assessment Authority;”;

“the NHS Counter Fraud and Security Management Service” means the service with responsibility for policy and operational matters relating to the prevention, detection and investigation of fraud or corruption and the management of security in the National Health Service, established by the Counter Fraud and Security Management Service Establishment and Constitution Order 2002⁽⁴⁾;”;

“mobile services” means general ophthalmic services provided at—

- (a) a day centre;
- (b) a residential centre; or
- (c) the patient’s home, where the patient is unable to leave it unaccompanied because of physical or mental illness or disability,

which a contractor has made arrangements with a Primary Care Trust to provide in its locality;”;

“notice” means a notice in writing (including electronic) and “notify” shall be construed accordingly;”;

“ophthalmic list” means the list prepared by a Primary Care Trust under regulation 6;”;

“the register”, except where the context otherwise requires, means, in relation to an ophthalmic medical practitioner, a register maintained by the General Medical

⁽³⁾ 1997 c. 46; section 8ZA was inserted by the 2001 Act, section 26(2) and amended by the 2002 Act, Schedule 3, paragraph 3.

⁽⁴⁾ S.I. 2002/3039; the NHS Counter Fraud and Security Management Service replaces the National Health Service Counter Fraud Service.

Council or, in relation to an optician, a register or list maintained by the General Optical Council;”;

““supplementary list” means the list prepared by a Primary Care Trust under regulation 3 of the Supplementary List Regulations;”;

““Supplementary List Regulations” means the National Health Service (General Ophthalmic Services Supplementary List) and (General Ophthalmic Services Amendment and Consequential Amendment) Regulations 2005(5);”;

(c) the definition of “the National Health Service Counter Fraud Service” shall be omitted.

(3) At the end there shall be added paragraph (4)—

“(4) In these Regulations any reference to “he”, “him” or “his”, when referring to an optician, is deemed to include a reference to a corporate optician.”.

Amendment of regulation 6

24.—(1) Regulation 6 of the Ophthalmic Regulations (ophthalmic list)(6) shall be amended in accordance with the following provisions of this regulation.

(2) In paragraph (1), after “shall keep”, there shall be inserted “and publish”.

(3) In paragraph (3)—

(a) at the end of sub-paragraph (a) there shall be added—

“and in relation to each person—

(i) his professional registration number with—

(aa) suffixed to that number, the organisational code given by the Secretary of State to the Primary Care Trust, and

(bb) prefixed to that number, the initials OL,

(ii) in the case of an individual, his date of birth, where he consents, or where he does not consent, or in the case of a corporate optician, the date of that person’s first registration in the register, and

(iii) the date that his name was included in the ophthalmic list;”;

(b) for sub-paragraph (b) there shall be substituted—

“(b) except in the case of a mobile practice, the addresses of any places in the Primary Care Trust’s locality at which they have undertaken to provide general ophthalmic services, other than mobile services;”;

(c) in sub-paragraph (c) from “available at those addresses” to the end shall be deleted;

(d) in sub-paragraph (d)—

(i) after “or employee”, there shall be inserted “in assisting”, and

(ii) at the end, there shall be added “or in the provision of mobile services”; and

(e) at the end, there shall be added sub-paragraph (e)—

“(e) if the contractor has made arrangements with the Primary Care Trust to provide mobile services—

(i) that fact,

(5) [S.I. 2005/480](#)

(6) Relevant amendments are, in relation to England, in [S.I. 2001/ 414](#), [3739](#) and [2002/2469](#).

- (ii) the addresses of any day or residential centres visited regularly, with particulars of the months in which visits are planned to take place and the planned interval between such visits, and
- (iii) if that contractor is a mobile practice, that fact and the addresses to which correspondence in connection with such provision may be sent.”.

Amendment of regulation 7

25.—(1) Regulation 7 of the Ophthalmic Regulations (application for inclusion in ophthalmic list and notification)(7) shall be amended in accordance with the following provisions of this regulation.

(2) In paragraph (1)—

(a) for “body corporate carrying on business as ophthalmic opticians” there shall be substituted “corporate optician”; and

(b) after sub-paragraph (a), there shall be inserted sub-paragraph (aa)—

“(aa) if he wishes to provide mobile services, a statement to that effect, with an undertaking to provide mobile services and to comply with the terms of service relevant to the provision of mobile services;”.

(3) After paragraph (1) there shall be inserted paragraphs (1A), (1B) and (1C)—

“(1A) In the case of an application to a Primary Care Trust by an ophthalmic medical practitioner or optician, who is included in the supplementary list of that Trust, seeking to withdraw from that list and to include his name in its ophthalmic list, he shall only be required to provide any information and undertakings required by paragraph (1) and Schedule 1A insofar as—

- (a) he has not already supplied it to that Trust; or
- (b) it has changed since it was provided.

(1B) Before making a decision on the ophthalmic medical practitioner or optician’s application, the Primary Care Trust shall—

- (a) check, as far as reasonably practicable, the information he provided, in particular that provided under Schedule 1A, and shall ensure that it has sight of relevant documents;
- (b) check with the NHS Counter Fraud and Security Management Service whether the ophthalmic medical practitioner or optician has any record of fraud;
- (c) check with the Secretary of State as to any information held by him as to any record about past or current investigations or proceedings involving or related to the ophthalmic medical practitioner or optician; and
- (d) take up the references the ophthalmic medical practitioner or optician provided under paragraph 9 of Schedule 1A.

(1C) When the Primary Care Trust has decided whether or not to include the ophthalmic medical practitioner or optician in its list, it shall notify him within 7 days of that decision of—

- (a) that decision; and
- (b) if the Trust has decided not to include him, the reasons for it (including any facts relied upon) and of any right of appeal under regulation 7C against that decision.”.

(7) Relevant amendments are, in relation to England, in [S.I. 1996/705](#), [2001/ 3739](#), [2002/601](#) and [2469](#).

Amendment of regulation 7A

26.—(1) Regulation 7A of the Ophthalmic Regulations (grounds for refusal)(8) shall be amended in accordance with the following provisions of this regulation.

(2) In paragraph (1)—

(a) after “may refuse to include an ophthalmic medical practitioner or optician” there shall be inserted “in its list or to list him as providing mobile services”;

(b) in sub-paragraph (a), “paragraph 7 of” shall be deleted;

(c) in sub-paragraph (b), “paragraphs 5 and 6 of” shall be deleted;

(d) for sub-paragraph (d), there shall be substituted—

“(d) that, having checked with the NHS Counter Fraud and Security Management Service for any facts that it considers relevant relating to past or current fraud investigations involving or related to the ophthalmic medical practitioner or optician and, having considered these and any other facts in its possession relating to fraud involving or relating to him, the Primary Care Trust considers these justify such refusal;” and

(e) at the end there shall be added—

“or

(f) that, having checked with the Secretary of State for any facts that he considers relevant relating to past or current investigations or proceedings involving or related to the ophthalmic medical practitioner or optician and, having considered these and any other facts in its possession involving or relating to him, the Primary Care Trust considers these justify such refusal.”.

(3) In paragraph (2), at the end, there shall added the following sub-paragraphs—

“(f) where he has not provided satisfactory evidence that he intends to provide general ophthalmic services in its locality;

(g) except in the case of a corporate optician, where it is not satisfied that he has the knowledge of English which, in his own interests or those of his patients, is necessary for the provision of general ophthalmic services in its locality; or

(h) where he has had his name included in the supplementary list of any Primary Care Trust.”.

(4) In paragraph (3)—

(a) there shall be substituted for sub-paragraph (b)—

“(b) the length of time since any offence, incident, conviction or investigation;”;

(b) at the end of sub-paragraph (f), there shall be added “or, if it had been committed in England and Wales, would have applied”; and

(c) at the end there shall be added sub-paragraph (j)—

“(j) where it is a corporate optician, whether any of its directors, or anyone who has in the preceding six months been one of its directors, was refused admittance to, conditionally included in, removed or contingently removed from or suspended from any list or equivalent list and, if so, the facts relating to the matter which led to such action and the reasons given by the Primary Care Trust or equivalent body for such action;”.

(5) Paragraph (5) shall be omitted.

(8) Regulation 7A was inserted, in relation to England, by [S.I. 2001/3739](#) and amended by [S.I. 2002/601](#) and [2469](#).

Amendment of regulation 7B

27. Regulation 7B(1) of the Ophthalmic Regulations (deferment of decision)(9) shall be amended as follows—

- (a) for sub-paragraphs (a) and (b) there shall be substituted—
 - “(a) where there are, in respect of him—
 - (i) criminal proceedings in the United Kingdom, or
 - (ii) proceedings elsewhere in the world relating to conduct, which, if it had occurred in the United Kingdom, would constitute a criminal offence, which, if they resulted in a conviction, or the equivalent of a conviction, would be likely to lead to his removal from its ophthalmic list, if he were to be included in it;
 - (b) where there are, in respect of a body corporate of which he is, has in the preceding six months been, or was at the time of the originating events, a director—
 - (i) criminal proceedings in the United Kingdom, or
 - (ii) proceedings elsewhere in the world relating to conduct, which, if it had occurred in the United Kingdom, would constitute a criminal offence, which, if they resulted in a conviction, or the equivalent of a conviction, would be likely to lead to his removal from its ophthalmic list, if he were to be included in it;
 - (bb) in the case of a corporate optician, where there are, in respect of any of its directors—
 - (i) criminal proceedings in the United Kingdom, or
 - (ii) proceedings elsewhere in the world relating to conduct, which, if it had occurred in the United Kingdom, would constitute a criminal offence, which, if they resulted in a conviction, or the equivalent of a conviction, would be likely to lead to that body’s removal from its ophthalmic list, if it were to be included in it;”;
- (b) in sub-paragraph (f), for “successful” there shall be substituted “unsuccessful”;
- (c) for sub-paragraph (h), there shall be substituted—
 - “(h) where he is being investigated by the NHS Counter Fraud and Security Management Service in relation to any fraud, and the result, if adverse, would be likely to lead to his removal from the Trust’s ophthalmic list, if he were to be included in it;”;
- (d) in sub-paragraph (i), “by the National Health Service Counter Fraud Service” and “case” shall be omitted.

Amendment of regulation 7C

28. At the beginning of regulation 7C(1) (appeal to the FHSAA)(10) there shall be inserted—
 “Except in a case to which regulation 7A(2) (mandatory grounds of refusal) applies,”.

Amendment of regulation 7D

29.—(1) Regulation 7D of the Ophthalmic Regulations (conditional inclusion)(11) shall be amended in accordance with the following provisions of this regulation.

(9) Regulation 7B was inserted, in relation to England, by [S.I. 2001/3739](#) and amended by [S.I. 2002/601](#) and [2469](#).

(10) Regulation 7C was inserted, in relation to England, by [S.I. 2001/3739](#) and amended by [S.I. 2002/2469](#).

(11) Regulation 7D was inserted by [S.I. 2001/3739](#) and paragraph (15) was amended by [S.I. 2002/601](#).

(2) For “Health Authority”, in each place where it occurs, there shall be substituted “Primary Care Trust”.

(3) In paragraph (14) there shall be inserted, after sub-paragraph (b), sub-paragraph (bb)—

“(bb) if the optician is a corporate optician, the names, addresses and dates of birth of its directors, with, in the case of a director, who is a member of a profession regulated by a body for the time being mentioned in section 25(3) of the National Health Service Reform and Health Care Professions Act 2002(12), that fact and his registration number with that body;”.

(4) In paragraph (15)—

(a) after sub-paragraph (f), there shall be inserted sub-paragraph (ff)—

“(ff) the NCAA;”; and

(b) for sub-paragraph (h), there shall be substituted—

“(h) where it is a fraud case, the NHS Counter Fraud and Security Management Service, and, in respect of a person or body falling within sub-paragraph (a), (b), (f) or (h) that notification shall be given not more than 7 days after the Primary Care Trust makes the decision referred to in paragraph (1).”.

Amendment of regulation 8

30.—(1) Regulation 8 of the Ophthalmic Regulations (withdrawal from the ophthalmic list)(13) shall be amended in accordance with the following provisions of this regulation.

(2) After paragraph (1) there shall be inserted paragraph (1A)—

“(1A) An ophthalmic medical practitioner or optician, who applies for inclusion in a supplementary list, shall give notice to the Primary Care Trust, as soon as practicable thereafter, that he intends to withdraw from its ophthalmic list if his name is included in the supplementary list of any Primary Care Trust.”.

(3) At the end there shall be added paragraphs (4) and (5)—

“(4) In the case of a notice pursuant to paragraph (1A), the Primary Care Trust shall remove the ophthalmic medical practitioner or optician’s name from its ophthalmic list as soon as it confirms that his name is included in a supplementary list.

(5) A notice given pursuant to paragraph (1A) may not be withdrawn once the ophthalmic medical practitioner’s or optician’s name is included in a supplementary list.”.

Amendment of regulation 9

31.—(1) Regulation 9 of the Ophthalmic Regulations (removal from the ophthalmic list)(14) shall be amended in accordance with the following provisions of this regulation.

(2) In paragraph (1)—

(a) in sub-paragraph (a), “, or” shall be omitted;

(b) after sub-paragraph (a), there shall be inserted sub-paragraph (aa)—

“(aa) in the case of a corporate optician, has been dissolved or ceased trading;”;

(c) after sub-paragraph (b), there shall be inserted—

(12) 2002 c. 17.

(13) Regulation 8 was amended, in relation to England, by S.I. 2001/3739, 2002/601 and 2469.

(14) Regulation 9 was amended, in relation to England, by S.I. 1996/705, 2001/3739 and 2002/2469

“or

(c) has had his name included in the supplementary list of any Primary Care Trust,”;
and

(d) at the end, there shall be added “and, except in a case to which sub-paragraph (a) applies, notify him immediately that he has been removed from the list”.

(3) In paragraph (2A), for “by direction of the Tribunal”, there shall be substituted “from the ophthalmic list”.

(4) In paragraph (5), for “this regulation”, there shall be substituted “paragraph (2)”.

Amendment of regulation 9B

32.—(1) Regulation 9B of the Ophthalmic Regulations (criteria for decisions on removal)**(15)** shall be amended in accordance with the following provisions of this regulation.

(2) For paragraph (1) there shall be substituted the following paragraph—

“(1) Where a Primary Care Trust is considering whether to remove an ophthalmic medical practitioner or optician from its ophthalmic list under section 49F(4) of the Act (an unsuitability case), it shall—

(a) consider any information relating to him which it has received in accordance with any provision of Schedule 1 or 1A;

(b) check with the Secretary of State as to any record held by him about past or current investigations or proceedings involving or relating to the ophthalmic medical practitioner or optician; and

(c) in reaching its decision, take into consideration the matters set out in paragraph (2).”.

(3) In paragraph (2)—

(a) for “criteria” there shall be substituted “matters”;

(b) for sub-paragraphs (b) to (f), there shall be substituted—

“(b) the length of time since any offence, incident, conviction or investigation;

(c) whether there are other offences, incidents or investigations to be considered;

(d) any action taken or penalty imposed by any licensing or regulatory body, the police or the courts as a result of any such offence, incident or investigation;

(e) the relevance of any offence, incident or investigation to his provision of general ophthalmic services and the likely risk to patients or to public finances;

(f) whether any offence was a sexual offence to which Part I of the Sexual Offences Act 2003**(16)** applies or, if it had been committed in England and Wales, would have applied;”;

(c) after sub-paragraph (h) “and” shall be omitted and, at the end of the paragraph, there shall be added—

“and

(j) in the case of a corporate optician, whether a person who, at the time of the originating events, was one of its directors, has been refused admittance to, conditionally included in, removed, contingently removed or suspended from any list or equivalent list and, if so, the facts relating to the matter which led to such

(15) Regulation 9B was inserted, in relation to England, by [S.I. 2001/3739](#) and amended by [S.I. 2002/601](#) and [2469](#).

(16) [2003 c. 42](#).

action and the reasons given by the Primary Care Trust or equivalent body for such action.”.

(4) For paragraph (3) there shall be substituted—

“(3) Where a Primary Care Trust is considering whether to remove an ophthalmic medical practitioner or optician from its ophthalmic list under section 49F(3) of the Act (a fraud case), it shall—

- (a) consider any information relating to him which it has received in accordance with any provision of Schedule 1 or 1A;
- (b) check with the Secretary of State as to any record held by him about past or current investigations or proceedings involving or relating to the ophthalmic medical practitioner or optician; and
- (c) in reaching its decision, take into consideration the matters set out in paragraph (4).”.

(5) In paragraph (4)—

- (a) for “criteria”, there shall be substituted “matters”;
- (b) in sub-paragraph (d), for “the incident”, there shall be substituted “any such offence, investigation or incident”; and
- (c) at the end of sub-paragraph (g) “and” shall be deleted and, at the end of the paragraph, there shall be added—

“and

- (j) in the case of a corporate optician, whether a person who, at the time of the originating events, was one of its directors, has been refused admittance to, conditionally included in, removed, contingently removed or suspended from any list or equivalent list and, if so, the facts relating to the matter which led to such action and the reasons given by the Primary Care Trust or equivalent body for such action.”.

(6) For paragraph (5) there shall be substituted—

“(5) Where a Primary Care Trust is considering whether to remove an ophthalmic medical practitioner or optician from its ophthalmic list under section 49F(2) of the Act (“an efficiency case”), it shall—

- (a) consider any information relating to him which it has received in accordance with any provision of Schedule 1 or 1A;
- (b) check with the Secretary of State as to any record held by him about past or current investigations or proceedings involving or relating to the ophthalmic medical practitioner or optician; and
- (c) in reaching its decision, take into consideration the matters set out in paragraph (6).”.

(7) In paragraph (6)—

- (a) for “criteria” there shall be substituted “matters”;
- (b) at the end of sub-paragraph (f) there shall be added “or the Supplementary List Regulations”; and
- (c) at the end of sub-paragraph (h) “and” shall be deleted and, at the end of the paragraph, there shall be added—

“and

- (j) in the case of a corporate optician, whether a person who, at the time of the originating events, was one of its directors, has been refused admittance to, conditionally included in, removed, contingently removed or suspended from any list or equivalent list and, if so, the facts relating to the matter which led to such action and the reasons given by the Primary Care Trust or equivalent body for such action.”.

Amendment of regulation 9C

33. At the end of regulation 9C(1)(17) (cases where a practitioner must be removed) there shall be added sub-paragraphs (c) to (e)—

- “(c) is subject to a national disqualification;
- (d) in the case of an ophthalmic medical practitioner, is the subject of—
- (i) a direction given by the Professional Conduct Committee of the General Medical Council under section 36(1)(i) or (ii) of the Medical Act 1983 (professional misconduct and criminal offences)(18),
- (ii) an order or direction made by that Committee under section 38(1) of that Act (order for immediate suspension)(19), or
- (iii) from the coming into force of article 13 of the Medical Act 1983 (Amendment) Order 2002(20), a direction by a Fitness to Practise Panel of the General Medical Council for erasure or immediate suspension under section 35D(2)(a) or (b), (5)(a) or (b), (10)(a) or (b), or (12)(a) or (b) (functions of a Fitness to Practise Panel), or section 38(1) (power to order immediate suspension etc) of that Act(21); or
- (e) in the case of an optician, is the subject of a suspension order under section 17 of the Opticians Act 1989(22).”.

Amendment of regulation 9D

34.—(1) Regulation 9D of the Ophthalmic Regulations (notifications by Primary Care Trusts)(23) shall be amended in accordance with the following provisions of this regulation.

- (2) In paragraph (1)—
- (a) after sub-paragraph (d), “or” shall be omitted; and
- (b) after sub-paragraph (e), there shall be inserted—
- “or
- (f) removes an ophthalmic medical practitioner or optician under regulation 9 or 9C.”.
- (3) In paragraph (2)—
- (a) after sub-paragraph (b) there shall be inserted sub-paragraph (bb)—
- “(bb) any Primary Care Trust in England in whose area the ophthalmic medical practitioner or optician, to the knowledge of the

(17) Regulation 9C was inserted by [S.I. 2001/3739](#); paragraph (1) was amended by [S.I. 2002/2469](#).

(18) [1983 c. 54](#); section 36 was amended by [S.I. 2000/1803](#).

(19) Section 38(1) was amended by the 1995 Act, section 4 and Schedule 1, paragraphs 1 and 7.

(20) [S.I. 2002/3135](#).

(21) Sections 35D and 38 are inserted by article 13 of the 2002 Order, with effect from such date as the Secretary of State may specify.

(22) [1989 c. 44](#).

(23) Regulation 9D was inserted, in relation to England, by [S.I. 2001/3739](#) and amended by [S.I. 2002/601](#) and [2469](#).

- notifying Trust, provides or assists in the provision of general ophthalmic services;”;
- (b) after sub-paragraph (f) there shall be inserted the following sub-paragraph—
- “(ff) the NCAA;”;
- (c) for sub-paragraph (i), there shall be substituted—
- “(i) where it is a fraud case, the NHS Counter Fraud and Security Management Service, and that notification shall be given not later than 7 days after the Primary Care Trust makes the decision referred to in paragraph (1).”.
- (4) For paragraph (4)(a) there shall be substituted—
- “(a) the name, address and, where applicable, date of birth of the ophthalmic medical practitioner or optician, and, in the case of a corporate optician, that information in respect of its directors;”.
- (5) At the end, there shall be added paragraph (8)—
- “(8) Where a Primary Care Trust is notified by the FHSAA that it has imposed a national disqualification on an ophthalmic medical practitioner or optician who was, or had applied to be, included in its ophthalmic list, the Trust shall notify the persons or bodies referred to in paragraphs (2)(b), (ff), (g) and (h) and (3).”.

Amendment of regulation 9E

35. Regulation 9E of the Ophthalmic Regulations (procedure on removal)(**24**) shall be amended as follows—

- (a) in paragraphs (4) and (7), for “inform” there shall be substituted “notify”; and
- (b) at the end of each of paragraphs (4), (5) and (6), there shall be added “within 7 days of making that decision”.

Amendment of regulation 9F

36.—(1) Regulation 9F of the Ophthalmic Regulations (procedure on suspension)(**25**), shall be amended in accordance with the following provisions of this regulation.

(2) In paragraph (2) for “and the reasons” to the end, there shall be substituted “within 7 days of making that decision”.

(3) After paragraph (2) there shall be inserted paragraph (2A)—

“(2A) If the ophthalmic medical practitioner or optician does not wish to have an oral hearing or does not attend the oral hearing, the Primary Care Trust may suspend him with immediate effect.”.

(4) At the end of paragraph (5) there shall be added “within 7 days of making that decision”.

Amendment of regulation 9G

37. At the end of regulation 9G(5) of the Ophthalmic Regulations (procedure on review)(**26**) there shall be added “within 7 days of making that decision”.

(24) Regulation 9E was inserted, in relation to England, by [S.I. 2001/3739](#) and amended by [S.I. 2002/601](#) and [2469](#).

(25) Regulation 9F was inserted, in relation to England, by [S.I. 2001/3739](#) and amended by [S.I. 2002/ 2469](#).

(26) Regulation 9G was inserted, in relation to England, by [S.I. 2001/3739](#) and amended by [S.I. 2002/601](#) and [2469](#).

Insertion of regulation 9I

38. After regulation 9H of the Ophthalmic Regulations, there shall be inserted regulation 9I—

“Readmission

9I.—(1) Where an ophthalmic medical practitioner or optician has been removed from its ophthalmic list by a Primary Care Trust on the grounds that he had been convicted of a criminal offence, and that conviction is overturned on appeal, it may agree to include him in its ophthalmic list without a full application if it—

- (a) is satisfied that there are no other matters that need to be considered; and
- (b) has received an undertaking from him to comply with the requirements of these Regulations.

(2) In a case to which paragraph (1) applies, if the conviction is reinstated on a further appeal, the previous determination of the Primary Care Trust to remove that ophthalmic medical practitioner or optician from its ophthalmic list shall once again have effect.”.

Amendment of Schedule 1

39.—(1) Schedule 1 to the Ophthalmic Regulations (terms of service)(27) shall be amended in accordance with the following provisions of this regulation.

(2) For paragraphs 3 (premises at which general ophthalmic services are to be provided) and 3A (visits) there shall be substituted—

“Premises at which general ophthalmic services are to be provided

3. Subject to paragraph 3A, a contractor shall provide general ophthalmic services only at an address which is included in relation to him in the ophthalmic list.

Provision of mobile services

3A.—(1) A contractor, who has made arrangements with the Primary Care Trust to provide mobile services, may provide them only in accordance with sub-paragraph (2), after giving notice in accordance with sub-paragraph (3).

(2) The contractor may only provide mobile services if—

- (a) the patient has requested the contractor to provide those services to him, or, where the patient is incapable of making such a request, a relative of his, a primary carer of that patient or a duly authorised person has made such a request; and
- (b) subject to sub-paragraphs (5), (6) and (7), he has notified the Trust in accordance with sub-paragraphs (3) and, if applicable, (4) and the Trust has not informed the contractor that it is not content with those changes.

(3) The contractor shall notify the Primary Care Trust of his intention to provide mobile services—

- (a) where they are to be provided to three or more persons at a day centre or residential centre, at least three weeks in advance; or
- (b) in any other case, as far in advance as is reasonably possible, but not less than 48 hours (except that no part of a Saturday, Sunday or bank holiday shall count towards that period) before that provision,

(27) Relevant amendments are [S.I. 1989/1175](#), [1996/705](#), [2001/414](#), [3793](#), [2002/601](#) and [2469](#).

of that provision, identifying the persons to whom the services are to be provided and specifying the date and approximate time when he will provide them.

(4) If the contractor wishes to change any of the matters of which he has notified the Primary Care Trust under sub-paragraph (3), he shall so notify the Trust at least 48 hours (except that no part of a Saturday, Sunday or bank holiday shall count towards that period) before —

- (a) if he wishes to provide mobile services to further or different persons, that provision;
- (b) if he wishes to change the date or time of the provision of those services, both—
 - (i) the previously notified date of that provision, and
 - (ii) if the notification is to change the date, the date so notified.

(5) If the contractor is unable attend the place at which he has notified the Primary Care Trust that he would be attending, he may instead, on that day and at that approximate time, provide mobile services at another location (“the substitution”), provided that the Trust notifies him that it agrees to the substitution.

(6) In a case to which paragraph (5) applies the contractor may attend and provide mobile services at the originally notified place at such time as the Trust shall agree.

(7) In a case where circumstances have arisen whereby it was not possible to notify in accordance with sub-paragraph (4)(a), the contractor may provide mobile services to up to 3 other persons at the previously notified time and place.”.

(3) In paragraph 4 (premises and equipment)—

- (a) in sub-paragraph (1), for “sub-paragraph (1A)”, there shall be substituted “, sub-paragraphs (1A) to (1D)”;
- (b) for sub-paragraph (1A) there shall be substituted—

“(1A) A contractor, who has made arrangements with the Primary Care Trust to provide mobile services, shall provide suitable equipment for the provision of such services.

(1B) A contractor, who was included on the ophthalmic list of a Primary Care Trust on 31st March 2005, and who—

- (a) does not provide or no longer provides accommodation and equipment, as required under sub-paragraph (1), or equipment as required under sub-paragraph (1A); and
- (b) is not employed, in relation to the general ophthalmic services which he has undertaken to provide in the area of that Trust, by another contractor,

may, instead of providing the accommodation and equipment, as required under sub-paragraph (1), or equipment as required by sub-paragraph (1A), enter into arrangements of the kind described in sub-paragraph (1C), provided the conditions set out in sub-paragraph (1D) are met.

(1C) The arrangements referred to in sub-paragraph (1B) are legally enforceable arrangements under which—

- (a) requisite, proper and sufficient consulting and waiting room accommodation and suitable equipment; or
- (b) in the case of the provision of mobile services, suitable equipment;

are available to him for the provision of the general ophthalmic services which he has undertaken to provide, which permit inspection as required under paragraph 4(2) or (2A).

(1D) The conditions referred to in sub-paragraph (1B) are that the contractor has satisfied the Primary Care Trust that—

- (a) the arrangements are legally enforceable and permit inspection as required under paragraph 4(2) or (2A);
 - (b) the accommodation and equipment or, in the case of the provision of mobile services, equipment, provided under the arrangements are adequate and suitable.”;
 - (c) in sub-paragraph (2) for “sub-paragraph (2A)” there shall be substituted “sub-paragraphs (2A) and (3)”
 - (d) in sub-paragraph (2A), for “In the case of a mobile practice, the contractor”, there shall be substituted, “A contractor, who has made arrangements with the Primary Care Trust to provide mobile services,”; and
- (c) at the end, there shall be added sub-paragraph (3)—
- “(3) In addition to the right to inspect under sub-paragraph (2A), a contractor, who has made arrangements with the Primary Care Trust to provide mobile services, shall allow an authorised officer of the Secretary of State or that Trust to inspect the facilities and equipment that he uses when providing those services at a location of which he notified the Trust under paragraph 3A(3).”.
- (4) Paragraph 5 (notices) shall be renumbered as sub-paragraph (1) of paragraph 5, and—
- (a) at the beginning there shall be inserted “Subject to sub-paragraph (2),”; and
 - (b) at the end there shall be added sub-paragraph (2)—
- “(2) Where mobile services are being provided, a notice shall be displayed only in so far as it is reasonably practicable to do so.”.
- (5) In paragraph 6 (records)—
- (a) at the beginning of sub-paragraph (1) there shall be inserted “Subject to paragraph 6ZA”; and
 - (b) in sub-paragraph (2), for “paragraph 8(5)”, there shall be substituted “paragraphs 6ZA and 8(5)”.
- (6) After paragraph 6 there shall be inserted paragraph 6ZA—
- “**6ZA.**—(1) A contractor, who was included on the list of a Primary Care Trust on 31st March 2005 and who—
- (a) does not keep or no longer keeps records as required under paragraph 6; and
 - (b) is not employed, in relation to the general ophthalmic services he provides in the area of that Trust, by another contractor,
- may, instead of keeping those records, comply with the conditions set out in sub-paragraph (2).
- (2) The conditions referred to in sub-paragraph (1) are that that contractor has—
- (a) made legally enforceable arrangements that a proper record in respect of each patient to whom he provides general ophthalmic services, giving appropriate details of sight testing, is kept and that all such records are kept for a period of seven years and during that period shall be produced when and as required under paragraph 6(2);
 - (b) satisfied the Primary Care Trust as to the keeping of the records and that the arrangements are legally enforceable and require such production; and
 - (c) access to those records at all reasonable times.”.
- (7) In paragraph 6A (declarations of convictions)—

- (a) at the end of sub-paragraph (3) there shall be added “and, for the purposes of this sub-paragraph, “employer” includes any partnership of which the ophthalmic medical practitioner or optician is or was a member”;
- (b) in sub-paragraph (4)—
- (i) for “Having supplied the information referred to in paragraph (1), the contractor shall inform”, there shall be substituted “The contractor shall notify”;
- (ii) there shall be inserted after paragraph (c) the following paragraphs—
- “(cc) has accepted a conditional offer under section 302 of the Criminal Procedure (Scotland) Act 1995(28) (fixed penalty: conditional offer by procurator fiscal) or agreed to pay a penalty under section 115A of the Social Security Administration Act 1992 (penalty as alternative to prosecution)(29);
- (cd) has, in proceedings in Scotland for an offence, been the subject of an order under section 246(2) or (3) of the Criminal Procedure (Scotland) Act 1995 discharging him absolutely;”, and
- (iii) in paragraph (d), from “, or is subject” to the end shall be omitted;
- (iv) for paragraph (i) there shall be substituted—
- “(i) becomes to his knowledge the subject of any investigation by the NHS Counter Fraud and Security Management Service in relation to fraud, or is notified of the outcome of such an investigation, where it is adverse;”;
- (c) in sub-paragraph (5)—
- (i) for “Having supplied the information referred to in paragraph (1), the contractor shall inform”, there shall be substituted “The contractor shall notify”;
- (ii) for paragraph (f), there shall be substituted—
- “(f) becomes to his knowledge the subject of any investigation in relation to fraud, or is notified of the outcome of such an investigation if adverse;”; and
- (iii) in paragraph (b), from “, or is subject” to the end shall be omitted;
- (d) After sub-paragraph (5), there shall be inserted as sub-paragraph (5A)—
- “(5A) If the contractor is a corporate optician, it shall notify the Primary Care Trust within 7 days if one of its directors or a person who was in the preceding six months or was at the time of the originating events one of its directors—
- (a) is convicted of any criminal offence in the United Kingdom;
- (b) is bound over following any criminal conviction in the United Kingdom;
- (c) accepts a police caution in the United Kingdom;
- (d) has accepted a conditional offer under section 302 of the Criminal Procedure (Scotland) Act 1995(30) (fixed penalty: conditional offer by procurator fiscal) or agreed to pay a penalty under section 115A of the Social Security Administration Act 1992 (penalty as alternative to prosecution)(31);

(28) 1995 c. 46.

(29) 1992 c. 5; section 115A was inserted by section 15 of the Social Security Administration (Fraud) Act 1997 (c. 47).

(30) 1995 c. 46.

(31) 1992 c. 5; section 115A was inserted by section 15 of the Social Security Administration (Fraud) Act 1997 (c. 47).

- (e) has, in proceedings in Scotland for an offence, been the subject of an order under section 246(2) or (3) of the Criminal Procedure (Scotland) Act 1995 discharging him absolutely;
- (f) is convicted elsewhere of an offence, or what would constitute a criminal offence if committed in England and Wales;
- (g) is charged in the United Kingdom with a criminal offence, or is charged elsewhere with an offence which, if committed in England and Wales, would constitute a criminal offence;
- (h) is notified by any licensing, regulatory or other body anywhere in the world, of the outcome of any investigation into his professional conduct, and there is a finding against him;
- (i) becomes the subject of any investigation into his professional conduct by any licensing, regulatory or other body;
- (j) becomes subject to any investigation into his professional conduct in respect of any current or previous employment, or is notified at the outcome of any such investigation and any finding against him;
- (k) becomes to his knowledge the subject of any investigation by the NHS Counter Fraud and Security Management Service in relation to fraud, or is notified of the outcome of such an investigation, where it is adverse;
- (l) becomes the subject of any investigation by another Primary Care Trust or equivalent body, which might lead to his removal from any list or equivalent list;
- (m) is removed, contingently removed or suspended from, refused admission to or conditionally included in any list or equivalent list,

and, if so, give the name and address of that director or ex-director and details, including approximate dates, of where any investigation or proceedings were or are to be brought, the nature of that investigation or proceedings, and any outcome;”;

- (e) at the end there shall be added sub-paragraph (7)—

“(7) An ophthalmic medical practitioner or optician, who is included in the ophthalmic list of a Primary Care Trust, shall supply that Trust with an enhanced criminal record certificate under section 115 of the Police Act 1997⁽³²⁾ in relation to himself, if the Primary Care Trust at any time, for reasonable cause, gives him notice to provide such a certificate.”.

- (8) In paragraph 6B (applications to other lists), “and” at the end of sub-paragraph (a) shall be deleted and, at the end of sub-paragraph (b), there shall be added—

“and

- (c) in the case of a corporate optician, if any of its directors applies to be included in any list held by another Primary Care Trust or equivalent body and of the outcome of any such application.”.

- (9) In paragraph 7 (deputies)—

- (a) for sub-paragraph (1) there shall be substituted—

“(1) Subject to regulation 21 of the Supplementary List Regulations (transitional provisions), a contractor may arrange for sight to be tested on his behalf by an ophthalmic medical practitioner or optician, but no such arrangements shall be made unless the name of that ophthalmic medical practitioner or optician is included in an ophthalmic list or a supplementary list.”; and

⁽³²⁾ 1997 c. 50; relevant amendments are the 2001 Act s. 19(1), (2) and (3) and the 2002 Act s. 2(5) and Schedule 2, paragraph 64.

- (b) sub-paragraph (2)(b) and “and” preceding it shall be deleted.
- (10) In paragraph 8 (employees)—
- (a) for sub-paragraphs (1), (2) and (3) there shall be substituted—
- “(1) Subject to regulation 21 of the Supplementary List Regulations (transitional provisions), a contractor may employ to test sight—
- (a) an ophthalmic medical practitioner or optician, whose name is included in an ophthalmic list or a supplementary list; or
- (b) a person, who is authorised to test sight by rules made under section 24(3) of the Opticians Act 1989(33) (testing of sight), acting under the continuous personal supervision of an ophthalmic medical practitioner or optician, whose name is included in an ophthalmic list or a supplementary list.”; and
- (b) sub-paragraph (4)(b) and “and” preceding it shall be deleted.
- (11) In paragraph 9 (payments)—
- (a) for sub-paragraph (2), there shall be substituted the following—
- “(2) Any such claim shall be—
- (a) signed by the optician or ophthalmic medical practitioner, whose name is included in an ophthalmic list or a supplementary list and who performed the general ophthalmic services in respect of which the claim is made (“the practitioner”); and
- (b) in a case where the practitioner is not on the ophthalmic list of that Primary Care Trust, counter-signed on behalf of the contractor by a person (who may be the practitioner), duly authorised by the contractor to counter-sign, whom the contractor has previously notified the Primary Care Trust as being so authorised;
- (2A) In the case of a claim signed under sub-paragraph (2)(a), the practitioner shall supply, with his signature, his professional registration number with the prefix and suffix given to that number in the ophthalmic list or supplementary list in which the practitioner’s name is included; and
- (2B) In the case of a claim counter-signed under sub-paragraph (2)(b), the person authorised to counter-sign shall supply, with his counter-signature, the professional registration number of the contractor.”; and
- (b) in sub-paragraph (3), after “signatory”, there shall be inserted “or counter-signatory”.
- (12) In paragraph 10(2) (testing of sight)—
- (a) after “a contractor” there shall be inserted “or an ophthalmic medical practitioner or optician assisting him in the provision of general ophthalmic services”; and
- (b) for “inform the patient’s doctor of his opinion”, there shall be substituted—
- (i) refer the patient to an ophthalmic hospital,
- (ii) inform the patient’s doctor or GP practice that he has done so, and
- (iii) give the patient a written statement that he has done so, with details of the referral.”.

Amendment of Schedule 1A

40.—(1) Schedule 1A to the Ophthalmic Regulations (information and undertakings to be given when applying to be included in the ophthalmic list)(**34**) shall be amended in accordance with the following provisions of this regulation.

(2) At the end of paragraph 4 there shall be added “or, in the case of a corporate optician, the address of its registered office and, in either case, telephone number”.

(3) At the end of paragraph 6 there shall be added “and date of first registration in the register”.

(4) In paragraph 7(a)—

(a) there shall be inserted, after paragraph (iii), the following paragraphs—

“(iii) has accepted a conditional offer under section 302 of the Criminal Procedure (Scotland) Act 1995(**35**) (fixed penalty: conditional offer by procurator fiscal) or agreed to pay a penalty under section 115A of the Social Security Administration Act 1992 (penalty as alternative to prosecution)(**36**);

(iiib) has, in proceedings in Scotland for an offence, been the subject of an order under section 246(2) or (3) of the Criminal Procedure (Scotland) Act 1995 discharging him absolutely;” and

(b) in paragraph (iv), from “, or is subject” to the end shall be deleted;

(c) for paragraph (x) there shall be substituted—

“(x) he becomes to his knowledge the subject of any investigation by the NHS Counter Fraud and Security Management Service in relation to fraud, or is notified of the outcome of such an investigation, where it is adverse;”;

(d) after paragraph (x), there shall be inserted as paragraphs (xi) and (xii)—

“(xi) is the subject of any investigation by another Primary Care Trust or equivalent body, which might lead to his removal from any list or equivalent list;

(xii) has been removed, contingently removed or suspended from, refused admission to or conditionally included in any list or equivalent list.”.

(5) In paragraph 7(b)—

(a) in paragraph (ii), from “, or is subject” to the end shall be omitted;

(b) for paragraph (vi), there shall be substituted—

“(vi) it becomes, to his knowledge, the subject of any investigation by the NHS Counter Fraud and Security Management Service in relation to fraud, or is notified of the outcome of such an investigation, where it is adverse;” and

(c) after paragraph (vi), there shall be inserted paragraphs (vii) and (viii)—

“(vii) is the subject of any investigation by another Primary Care Trust or equivalent body, which might lead to his removal from any list or equivalent list;

(viii) has been removed, contingently removed or suspended from, refused admission to or conditionally included in any list or equivalent list.”.

(6) At the end of paragraph 7, there shall be added sub-paragraph (c)—

“(c) if the contractor is a corporate optician, information on whether any of its directors—

(i) has any criminal convictions in the United Kingdom;

(ii) has been bound over following a criminal conviction in the United Kingdom;

(34) Schedule 1A was inserted by [S.I. 2001/3739](#) and amended by [S.I. 2002/601](#).

(35) 1995 c. 46.

(36) c. 5; section 115A was inserted by section 15 of the Social Security Administration (Fraud) Act 1997 (c. 47).

- (iii) has accepted a police caution in the United Kingdom;
 - (iv) has accepted a conditional offer under section 302 of the Criminal Procedure (Scotland) Act 1995⁽³⁷⁾ (fixed penalty: conditional offer by procurator fiscal) or agreed to pay a penalty under section 115A of the Social Security Administration Act 1992 (penalty as alternative to prosecution)⁽³⁸⁾;
 - (v) has, in proceedings in Scotland for an offence, been the subject of an order under section 246(2) or (3) of the Criminal Procedure (Scotland) Act 1995 discharging him absolutely;
 - (vi) has been convicted elsewhere of an offence, or what would constitute a criminal offence if committed in England and Wales;
 - (vii) is currently the subject of any proceedings which might lead to such a conviction, which have not yet been notified to the Primary Care Trust;
 - (viii) is currently subject to any investigation into his professional conduct by any licensing, regulatory or other body;
 - (ix) is to his knowledge the subject of any investigation by the NHS Counter Fraud and Security Management Service in relation to fraud, or is notified of the outcome of such an investigation, where it is adverse;
 - (x) is the subject of any investigation by another Primary Care Trust or equivalent body, which might lead to his removal from any list or equivalent list;
 - (xi) has been removed, contingently removed or suspended from, refused admission to or conditionally included in any list or equivalent list,
- and, if so, give details, including approximate dates, of where any investigation or proceedings were or are to be brought, the nature of that investigation or proceedings, and any outcome.”.

(7) In paragraph 10—

- (a) after “any of whose lists”, in each place where it occurs, there shall be inserted “or equivalent lists”; and
- (b) after “Primary Care Trust”, in the second, third and fourth places where it appears, there shall be inserted “or equivalent body”.

(8) After paragraph 11, there shall be inserted paragraph 11A—

“**11A.** Where he is, or was in the preceding six months, or was at the time of the originating events, a director of a body corporate, details of any list or equivalent list to which that body has been refused admission, in which it has been conditionally included, from which it has been removed, contingently removed or from which it is currently suspended, with an explanation as to why and details of the Primary Care Trust or equivalent body concerned.”.

(9) In paragraph 13, for sub-paragraph (c), there shall be substituted—

- “(c) supply the information required by this Schedule; and
- (d) neither to provide nor assist in the provision of general ophthalmic services in the area of another Primary Care Trust or equivalent body from whose ophthalmic list, supplementary list or equivalent list he has been removed, except where that removal was at his request or in accordance with regulation 10(6) or 21(11) of the Supplementary List Regulations, or regulation 9(2) of these Regulations, without the consent, in writing, of that Primary Care Trust or equivalent body.”.

⁽³⁷⁾ 1995 c. 46.

⁽³⁸⁾ 1992 c. 5; section 115A was inserted by section 15 of the Social Security Administration (Fraud) Act 1997 (c. 47).

(10) At the end of paragraph 14 there shall be added “and, for the purposes of this paragraph, “employer” includes any partnership of which the ophthalmic medical practitioner or optician is or was a member”.

(11) At the end there shall be added paragraph 15—

“(15) In the case of a corporate optician, paragraphs 2, 3 and 5 shall not apply, but it shall also give details of its registration as a company.”.

Transitional provisions

41.—(1) A corporate optician, whose name was included in the ophthalmic list of a Primary Care Trust on 31st March 2005, which has not already notified that Trust of any matter arising on or before that day of which these Regulations require notification by a corporate optician, shall notify that Trust of any such matter by 31st July 2005.

(2) Any contractor—

- (a) who was named in the ophthalmic list of the Primary Care Trust as a mobile practice on 31st March 2005; or
- (b) whose name was included in the ophthalmic list of the Primary Care Trust and provided mobile services in its area immediately before 1st April 2005,

may continue to do so until 16th May 2005 and, if he wishes to continue to provide mobile services in the area of that Trust after that date, he shall apply by 16th May 2005 to that Trust to make arrangements with him to provide mobile services.

(3) If that contractor makes an application in accordance with paragraph (2), he may continue to provide mobile services in the area of that Primary Care Trust, pursuant to this regulation, until such time as that Trust determines whether or not to make such arrangements with him.

(4) Before 31st July 2005, in addition to the procedure laid down in paragraph 9(2) of Schedule 1 to the Ophthalmic Regulations, a claim by a contractor under paragraph 9(1) of that Schedule may be signed by an ophthalmic medical practitioner or ophthalmic optician—

- (a) whose name is included in a supplementary list or an ophthalmic list; and
- (b) who is employed by that contractor, provided that he identifies on that claim—
 - (i) the Primary Care Trust in whose supplementary list his name is included; and
 - (ii) the contractor on whose behalf he is signing.