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S T A T U T O R Y I N S T R U M E N T S

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**2005 No. 480**

**NATIONAL HEALTH SERVICE**

**OPTICIANS, ENGLAND**

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

*Made* - - - - - *2nd March 2005*

*Laid before Parliament* *10th March 2005*

*Coming into force*  
*except as provided in regulation 1(2),* *1st April 2005*

The Secretary of State for Health, in exercise of the powers conferred upon him by sections 38, 39, 43ZA, 43D, 49F, 49I, 49M, 49N, 49O, 49P, 49Q, 49R and 126(4) of the National Health Service Act 1977(a), section 26 of the Opticians Act 1989(b) and section 65 of the Health and Social Care Act 2001(c), and all other powers enabling him in that behalf, hereby makes the following Regulations:

**Citation, commencement and application**

1.—(1) These Regulations may be cited as the National Health Service (General Ophthalmic Services Supplementary List) and (General Ophthalmic Services Amendment and Consequential Amendment) Regulations 2005 and, except for regulation 39(11), shall come into force on 1st April 2005.

(2) Regulation 39(11) shall come into force on 31st July 2005.

(3) These Regulations apply in relation to England only.

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(a) 1977 c.49 (“the 1977 Act”); 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 38 was amended by the Health and Social Security Act 1984 (c.48) (“the 1984 Act”), s. 1(3); the Health and Medicines Act 1988 (c.49), s. 13; S.I. 1985/39, art. 7(1); the Health Authorities Act 1995 (c.17) (“the 1995 Act”), Schedule, paragraphs 1 and 27 and by the National Health Service Reform and Health Care Professions Act 2002 (c.17) (“the 2002 Act”), Schedule 2, paragraphs 1 and 11. Section 39 was amended by the Health Services Act 1980 (c.53), ss 1, 2 and Schedule 1, paragraph 52; the 1984 Act, s. 1, Schedule 1, paragraph 1, and Schedule 8, Part I; the 1995 Act, s. 2 and Schedule 1, paragraph 28; the National Health Service (Primary Care) Act 1997 (c.46), Schedule 2, paragraphs 70 and 75; the Health Act 1999 (c.8) (“the 1999 Act”), s. 9(4); by the Health and Social Care Act 2001 (c.15) (“the 2001 Act”), ss 20 and 23 and by the 2002 Act, Schedule 2, paragraphs 1 and 12. Sections 43ZA and 43D were inserted by the 2001 Act, ss 21 and 24 and amended by the 2002 Act, Schedule 2, paragraphs 1, 18 and 20. Sections 49F, 49I, 49L, 49M, 49N, 49O, 49P and 49Q were inserted by the 2001 Act, s. 25 and amended by the 2002 Act, Schedule 2, paragraphs 1, 21, 23, 24, 25, 26, 27 and 28. Section 126(4) was amended by the 1990 Act, s. 65(2); by the 1999 Act, Schedule 4, paragraph 37(6) and by the 2001 Act, Schedule 5, paragraph 5(13)(b). As regards Wales, the functions of the Secretary of State under ss 29 and 126(4) of the 1977 Act are transferred to the National Assembly for Wales under article 2 of, and Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999, S.I. 1999/672; section 68 of the 2001 Act provides that Schedule 1 shall be construed so as to include the amendments made by that Act to the 1977 Act; these Regulations therefore extend only to England.

(b) 1989 c.44.

(c) 2001 c.15.

# PART I

## SUPPLEMENTARY LIST

### **Interpretation**

**2.—(1)** In this Part—

“Abolition of the Tribunal Regulations” means the Abolition of the National Health Service Tribunal (Consequential Provisions) Regulations 2001(**a**);

“Abolition of the Tribunal (Wales) Regulations” means the Abolition of the National Health Service Tribunal (Consequential Provisions) Regulations 2002(**b**);

“director” means—

(a) a director of a body corporate; or

(b) a member of the body of persons controlling a body corporate (whether or not a limited liability partnership);

“employment” means any employment, whether paid or unpaid and whether under a contract for services or a contract of service, and “employed” and “employer” shall be construed accordingly;

“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;

“equivalent list” means a list kept by an equivalent body;

“FHSAA” means the Family Health Services Appeal Authority constituted under section 49S(**c**);

“fraud case” means a case where a person satisfies the second condition for removal from the ophthalmic list, set out in section 49F(3)(**d**) or, by virtue of section 49H, is treated as doing so;

“general ophthalmic services” means the services which a person whose name is included in an ophthalmic list has undertaken to provide, pursuant to paragraph 10 of Schedule 1 to the Ophthalmic Regulations;

“licensing or regulatory body” means 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 includes any body which licences or regulates any such profession, its education, training or qualifications, outside the United Kingdom;

“list”, unless the context otherwise requires, means—

(a) a list referred to in section 49N(1)(a) to (c);

(b) a list of persons undertaking to provide general medical services prepared in accordance with regulations under section 29, as the list existed on or before 31st March 2004;

(c) a list of persons approved by a Primary Care Trust for the purpose of assisting in the provision of general medical services prepared in accordance with regulations under section 43D(1) as the list existed on or before 31st March 2004; or

(d) a services list referred to in section 8ZA(1)(a) of the Primary Care Act as the list existed on or before 31st March 2004;

“a national disqualification” means a decision—

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(a) S.I. 2001/3744.

(b) S.I. 2002/1920.

(c) Section 49S was inserted by the 2001 Act, section 27(1) and amended by the 2002 Act, Schedule 1, paragraph 18.

(d) Sections 49F and 49H were inserted by the 2001 Act, section 25; section 49F was amended by the 2002 Act, Schedule 2, paragraph 21.

- (a) made by the FHSAA to nationally disqualify an ophthalmic medical practitioner or optician under section 49N;
- (b) to nationally disqualify an ophthalmic medical practitioner or optician under provisions in force in Scotland or Northern Ireland corresponding to section 49N; or
- (c) by the Tribunal, which is treated as a national disqualification by the FHSAA by virtue of regulation 6(4) of the Abolition of the Tribunal Regulations or regulation 6(4)(b) of the Abolition of the Tribunal (Wales) Regulations;

“the NCAA” means the National Clinical Assessment Authority;

“the NHS Counter Fraud and Security Management Service” means the body 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(a);

“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 of the Ophthalmic Regulations(b);

“ophthalmic medical practitioner” means a registered medical practitioner, whose qualifications have, in accordance with regulations 3, 4 or 5 of the Ophthalmic Regulations, been approved as prescribed qualifications;

“Ophthalmic Regulations” means the National Health Service (General Ophthalmic Services) Regulations 1986(c);

“optician” means a natural person, who is an ophthalmic optician;

“Opticians Act” means the Opticians Act 1989(d);

“originating events” means the events that gave rise to the conviction, investigation, proceedings, suspension, refusal to admit, conditional inclusion, removal or contingent removal that took place;

“professional conduct” includes matters relating both to professional conduct and professional performance;

“Primary Care Act” means the National Health Service (Primary Care) Act 1997(e);

“professional registration number” means the number against the ophthalmic medical practitioner or optician’s name in the register;

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

“suspended” means—

- (a) suspended by a Primary Care Trust or equivalent body under section 49I or 49J, regulations made under sections 28DA or 43D or under section 8ZA of the Primary Care Act(f), including these Regulations;
- (b) in relation to Scotland or Northern Ireland, suspended under provisions in force corresponding to those in or made under sections 28DA, 43D, 49I, 49J or under section 8ZA of the Primary Care Act,

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 “susends” and “suspension” shall be construed accordingly; and

- (a) S.I. 2002/3039. The NHS Counter Fraud and Security Management Service replaces the National Health Service Counter Fraud Service.
- (b) Regulation 6 was amended by S.I. 2001/414, 3739 and 2002/2469.
- (c) S.I. 1986/975.
- (d) 1989 c.44.
- (e) 1997 c.46.
- (f) Section 8ZA was inserted by the 2001 Act, section 26(2) and amended by the 2002 Act, Schedule 3, paragraph 3.

“the Tribunal” means the Tribunal constituted under section 46(a) for England and Wales, and which, except for prescribed cases, had effect in relation to England until 14th December 2001 and in relation to Wales until 26th August 2002(b).

(2) All references in this Part to sections are to sections of the National Health Service Act 1977, except where specified otherwise.

### **Supplementary list**

3.—(1) A Primary Care Trust shall prepare and publish a supplementary list of all ophthalmic medical practitioners or opticians approved by the Primary Care Trust for the purposes of assisting in the provision of general ophthalmic services.

(2) The supplementary list shall be divided into two parts, of which the first part shall relate to ophthalmic medical practitioners and the second part to opticians.

(3) Subject to regulation 21, an ophthalmic medical practitioner or optician may not assist in the provision of general ophthalmic services, unless his name is included in an ophthalmic list or a supplementary list.

(4) In respect of any ophthalmic medical practitioner or optician, whose name is included in the supplementary list, the list shall include—

- (a) his full name;
- (b) his professional registration number with,
  - (i) suffixed to that number, the organisational code given by the Secretary of State to the Primary Care Trust, and
  - (ii) prefixed to that number, the initials SOL;
- (c) his date of birth, where he consents, or if not, his date of first registration in the register; and
- (d) the date that his name was included in the supplementary list.

(5) The supplementary list shall be available for public inspection.

### **Application for inclusion in the supplementary list**

4.—(1) Subject to paragraphs (7) to (11), an application by an ophthalmic medical practitioner or optician for the inclusion of his name in the supplementary list shall be made by sending the Primary Care Trust an application in writing, which shall include the information mentioned in paragraph (2), the undertakings and consents required by paragraphs (3) and (6) and any declaration required under paragraph (4) or (5).

- (2) The ophthalmic medical practitioner or optician shall provide the following information—
- (a) his full name;
  - (b) his sex;
  - (c) his date of birth;
  - (d) his private address and telephone number;
  - (e) his qualifications and where they were obtained;
  - (f) a declaration that he is a fully registered ophthalmic medical practitioner or optician, included in the register;
  - (g) his professional registration number and date of first registration in the register;
  - (h) chronological details of his professional experience (including the starting and finishing dates of each appointment together with an explanation of any gaps between appointments), with any additional supporting particulars, and an explanation of why he was dismissed from any post;

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(a) Section 46 was revoked by the 2001 Act, s. 67, Schedule 5, paragraph 5 and Schedule 6, part I.

(b) See S.I. 2001/3738, article 2(5) and (6)(b), which sets out the prescribed cases for England and S.I. 2002/1919, article 2(2) and (3)(b), which sets out the prescribed cases for Wales.

- (i) names and addresses of two referees, who are willing to provide references in respect of two recent posts (which may include any current post) as an ophthalmic medical practitioner or optician, which lasted for at least three months without a significant break, and, where this is not possible, a full explanation and the names and addresses of alternative referees;
- (j) whether he has any outstanding application, including a deferred application, to be included in a list or an equivalent list, and if so, particulars of that application;
- (k) details of any Primary Care Trust list or equivalent list from which he has been removed or contingently removed, or to which he has been refused admission or in which he has been conditionally included, with an explanation as to why;
- (l) if he is the director of any body corporate that is included in any list or equivalent list, or which has an outstanding application (including a deferred application) for inclusion in such a list, the name and the address of the registered office of that body and details of the Primary Care Trust or equivalent body concerned; and
- (m) 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.

(3) The ophthalmic medical practitioner or optician shall provide the following undertakings and consent—

- (a) undertaking to provide the declarations and document, if applicable, required by regulation 9;
- (b) undertaking not to assist in the provision of general ophthalmic services in the area of another Primary Care Trust or equivalent body from whose ophthalmic or supplementary list he has been removed, except where that removal was at his request or in accordance with regulation 10(6) or 21(12) of these Regulations, or regulation 9(2) of the Ophthalmic Regulations, without the consent, in writing, of that Trust or equivalent body;
- (c) undertaking to notify the Primary Care Trust within 7 days of any material changes to the information provided in the application until the application is finally determined;
- (d) undertaking to notify the Primary Care Trust if he is included, or applies to be included, in any other list or equivalent list held by a Primary Care Trust or equivalent body; and
- (e) consent to the disclosure of information in accordance with regulations 9 and 20.

(4) The ophthalmic medical practitioner or optician shall send with the application a declaration as to whether he—

- (a) has any criminal convictions in the United Kingdom;
- (b) has been bound over following a criminal conviction in the United Kingdom;
- (c) has accepted a police caution in the United Kingdom;
- (d) has accepted a conditional offer under section 302 of the Criminal Procedure (Scotland) Act 1995(a) (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)(b);
- (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) has been convicted elsewhere of an offence, or what would constitute a criminal offence if committed in England and Wales;
- (g) 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;
- (h) has been subject to any investigation into his professional conduct by any licensing, regulatory or other body, where the outcome was adverse;

(a) 1995 c. 46.

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

- (i) is currently subject to any investigation into his professional conduct by any licensing, regulatory or other body;
- (j) is to his knowledge, or has been where the outcome was adverse, the subject of any investigation by the NHS Counter Fraud and Security Management Service in relation to fraud;
- (k) 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;
- (l) is, or has been where the outcome was adverse, the subject of any investigation into his professional conduct in respect of any current or previous employment;
- (m) has been removed or contingently removed from, refused admission to, or conditionally included in any list or equivalent list kept by another Primary Care Trust or equivalent body, or is currently suspended from such a list and if so, why and the name of that Primary Care Trust or equivalent body; or
- (n) is, or has ever been, subject to a national disqualification,

and, if so, he shall 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.

(5) If the ophthalmic medical practitioner or optician is, has in the preceding six months been, or was at the time of the originating events, a director of a body corporate, he shall in addition make a declaration to the Primary Care Trust as to whether the body corporate—

- (a) has any criminal convictions in the United Kingdom;
- (b) has been convicted elsewhere of an offence, or what would constitute a criminal offence if committed in England and Wales;
- (c) 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;
- (d) has been subject to any investigation into its provision of professional services by any licensing, regulatory or other body, where the outcome was adverse;
- (e) is currently subject to any investigation into its provision of professional services by any licensing, regulatory or other body;
- (f) is to his knowledge, or has been where the outcome was adverse, the subject of any investigation by the NHS Counter Fraud and Security Management Service in relation to fraud;
- (g) is the subject of any investigation by another Primary Care Trust or equivalent body, which might lead to its removal from any list or equivalent list; or
- (h) has been removed or contingently removed from, refused admission to, or conditionally included in any list or equivalent list or is currently suspended from such a list,

and, if so, he shall give the name and the address of the registered office of the body corporate 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.

(6) The ophthalmic medical practitioner or optician shall consent to a request being made by the Primary Care Trust to any employer or former employer, licensing, regulatory or other body in the United Kingdom or elsewhere, for information relating to a current investigation, or an investigation where the outcome was adverse, into him or a body corporate referred to in paragraphs (2) and (5) and, for the purposes of this paragraph, “employer” includes any partnership of which the ophthalmic medical practitioner or optician is or was a member.

(7) If, in the case of any application, the Primary Care Trust finds that the information, references or documentation supplied by the ophthalmic medical practitioner or optician are not sufficient for it to decide his application, it shall seek from him such further information, references or documentation as it may reasonably require in order to make a decision and he shall supply the material so sought to the Trust.

(8) In the case of an application to a Primary Care Trust by an ophthalmic medical practitioner or optician, who is included in its ophthalmic list, seeking to withdraw from that list and to include his name in its supplementary list, he shall only be required to provide the information required by paragraphs (2), (4) and (5) insofar as—

- (a) he has not already supplied it to that Trust; or

(b) it has changed since it was provided.

(9) Any person, who is not an optician, but expects to become so on successful completion of his training, may make an application to a Primary Care Trust not less than 3 months before he anticipates his being entered on the register.

(10) An application under paragraph (9) shall contain—

- (a) all information mentioned in paragraph (2), except that required by sub-paragraphs (f) and (g);
- (b) the undertakings and consents required by paragraphs (3) and (6);
- (c) any declaration required under paragraph (4) or (5), and

in the application of these Regulations to any such application, any reference to an optician shall be taken as being a reference to an applicant under paragraph (9).

(11) An applicant under paragraph (9) shall provide the information required by paragraph (2)(f) and (g) as soon as he has been notified by the General Optical Council whether he has been admitted to the register and the Primary Care Trust shall then, provided—

- (a) the requirements of paragraphs (9) and (10) have been complied with;
- (b) it has not sought further information, references or documentation under paragraph (7) from him; and
- (c) it has not deferred the application under regulation 7,

decide his application within 7 days of receiving the information required under paragraph (2)(f) and (g).

## **Readmission**

**5.**—(1) Where an ophthalmic medical practitioner or optician has been removed from its supplementary 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 supplementary 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 supplementary list shall once again have effect.

## **Decisions and grounds for refusal**

**6.**—(1) The grounds on which a Primary Care Trust may refuse to include an ophthalmic medical practitioner or optician in its supplementary list are that—

- (a) having considered the declaration required by regulation 4(4) and (if applicable) regulation 4(5), and any other information or documents in its possession relating to him, it considers that he is unsuitable to be included in its supplementary list;
- (b) having checked the information he provided under regulation 4(2)(e), (f) and (g), it considers he is unsuitable to be included in its supplementary list;
- (c) having contacted the referees provided by him under regulation 4(2)(i), it is not satisfied with the references;
- (d) 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 him and, having considered these and any other facts in its possession relating to fraud involving or relating to him, it considers these justify such refusal;
- (e) 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, it considers these justify such refusal; or

(f) there are grounds for considering that admitting him to its supplementary list would be prejudicial to the efficiency of the service which he would undertake.

(2) The grounds on which a Primary Care Trust must refuse to include an ophthalmic medical practitioner or optician in its supplementary list are that—

- (a) he has not provided satisfactory evidence that he intends to assist in the provision of general ophthalmic services in its area;
- (b) he is included in the ophthalmic list of any Primary Care Trust, unless he has given notice in writing to that Trust that he wishes to withdraw from that list;
- (c) he is included in the supplementary list of another Primary Care Trust, unless he has given notice in writing to that Trust that he wishes to withdraw from that list;
- (d) it is not satisfied he has the knowledge of English which, in his own interests or those of his patients, is necessary in assisting in the provision of general ophthalmic services in its area;
- (e) he has been convicted in the United Kingdom of murder;
- (f) he has been convicted in the United Kingdom of a criminal offence, other than murder, committed on or after 1st April 2005 and has been sentenced to a term of imprisonment of over six months;
- (g) he is subject to a national disqualification;
- (h) he has not updated his application in accordance with regulation 7(4); or
- (i) in a case to which regulation 15(4) applies, he does not notify the Primary Care Trust under regulation 15(5) that he wishes to be included in its supplementary list subject to the specified conditions.

(3) 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 regulation 4(2), (4) and (if applicable) (5), and ensure that it has sight of relevant documents;
- (b) check with the NHS Counter Fraud and Security Management Service whether it has any record of fraud by him;
- (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 that ophthalmic medical practitioner or optician; and
- (d) take up the references he provided under regulation 4(2)(i).

(4) Where the Primary Care Trust is considering a refusal under paragraph (1) or (2), it shall consider all facts which appear to it to be relevant, and shall in particular take into consideration, in relation to paragraph (1)(a), (d) or (e)—

- (a) the nature of any offence, investigation or incident;
- (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 or penalty imposed by any licensing, regulatory or other body, the police or the courts as a result of any such offence, incident or investigation;
- (e) the relevance of any offence, investigation or incident to the provision by him of general ophthalmic services and any likely risk to his patients or to public finances;
- (f) whether any offence was a sexual offence for the purposes of Part 2 of the Sexual Offences Act 2003(a), or if it had been committed in England and Wales, would have been such an offence;
- (g) whether he has been refused admission to, or conditionally included in, removed or contingently removed or is currently 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; and

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(a) 2003 c. 42.

(h) whether he was at the time, has in the preceding six months been, or was at the time of the originating events a director of a body corporate, which was refused admission to, conditionally included in, removed or contingently removed from, any list or equivalent list or is currently suspended from any such list, and if so, what the facts were in each such case and the reasons given by the Primary Care Trust or equivalent body in each case.

(5) When the Primary Care Trust takes into consideration any of the matters set out in paragraph (4), it shall consider the overall effect of all the matters being considered.

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

- (a) that decision; and
- (b) if it has decided not to include him, the reasons for that (including any facts relied upon) and of any right of appeal under regulation 15 against that decision.

### **Deferment of decision on application**

7.—(1) A Primary Care Trust may defer a decision on an ophthalmic medical practitioner or optician's application to be included in its supplementary list, where—

- (a) 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 supplementary list, if he were to be included in it;
- (b) in respect of a body corporate of which he is, has in the preceding 6 months been, or was at the time of the originating events a director there are—
  - (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 supplementary list, if he were to be included in it;
- (c) there is an investigation anywhere in the world by his licensing or regulatory body or any other investigation (including one by another Primary Care Trust or equivalent body) relating to him in his professional capacity that, if adverse, would be likely to lead to his removal from the Primary Care Trust's supplementary list, if he were to be included in it;
- (d) he is suspended from any list or equivalent list;
- (e) 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, is suspended from any list or equivalent list;
- (f) the FHSAA is considering an appeal by him against a decision of a Primary Care Trust to refuse to include him in its supplementary list, or to conditionally include him in or to contingently remove him from, or to remove him from, any list kept by a Primary Care Trust and if that appeal is unsuccessful the Primary Care Trust would be likely to remove him from its supplementary list, if he were to be included in it;
- (g) the FHSAA is considering an appeal by 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, against a decision of a Primary Care Trust or equivalent body to refuse to admit the body corporate to its list, or to conditionally include it in or to remove or contingently remove it from any list kept by a Primary Care Trust or equivalent body, and if that appeal is unsuccessful the Primary Care Trust would be likely to remove him from its supplementary list, if he were to be included in it;
- (h) he is being investigated by the NHS Counter Fraud and Security Management Service in relation to any fraud, where the result, if adverse, would be likely to lead to his removal from the Primary Care Trust's supplementary list if he were to be included in it;

- (i) 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, is being investigated in relation to any fraud, where the result, if adverse, would be likely to lead to his removal from the Primary Care Trust's supplementary list if he were to be included in it; and
  - (j) the FHSAA is considering an application from a Primary Care Trust for a national disqualification of him or 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.
- (2) A Primary Care Trust may only defer a decision under paragraph (1) until the outcome of the relevant event mentioned in any of sub-paragraphs (a) to (j) of that paragraph is known.
- (3) The Primary Care Trust must notify the ophthalmic medical practitioner or optician that it has deferred a decision on the application and the reasons for it.
- (4) Once the outcome of the relevant event mentioned in paragraph (1) is known, the Primary Care Trust shall notify the ophthalmic medical practitioner or optician that he must within 28 days of the date of the notification (or such longer period as it may agree)—
- (a) update his application; and
  - (b) confirm in writing that he wishes to proceed with his application.
- (5) Provided any additional information has been received within the 28 days or the time agreed, the Primary Care Trust shall notify the ophthalmic medical practitioner or optician as soon as possible—
- (a) that his application to be included has been successful; or
  - (b) that it has decided to refuse the application or impose conditions on his inclusion, and the reasons for that (including any facts relied upon), and of any right of appeal under regulation 15.

### **Conditional inclusion**

- 8.—(1) A Primary Care Trust may determine that, if an ophthalmic medical practitioner or optician is to be included in its supplementary list, he is to be subject, while he remains included in that list, to the imposition of conditions, having regard to the requirements of section 43D(5) (purpose of conditions).
- (2) If an ophthalmic medical practitioner or optician fails to comply with a condition, which has been imposed by the Primary Care Trust, it may remove him from its supplementary list.
- (3) Where the Primary Care Trust is considering the removal of an ophthalmic medical practitioner or optician from its supplementary list for breach of a condition, it shall give him—
- (a) notice of any allegation against him;
  - (b) notice of the grounds for the action it is considering;
  - (c) the opportunity to make written representations to it within 28 days of the date of the notification under sub-paragraph (b); and
  - (d) the opportunity to put his case at an oral hearing before it, if he requests one within the 28 day period mentioned in sub-paragraph (c).
- (4) If there are no representations within the period specified in paragraph (3)(c), it shall decide the matter and inform the ophthalmic medical practitioner or optician of—
- (a) that decision and the reasons for it (including any facts relied upon); and
  - (b) any right of appeal under regulation 15,
- within 7 days of making that decision.
- (5) If there are representations, the Primary Care Trust must take them into account before reaching its decision, and shall then notify the ophthalmic medical practitioner or optician of—
- (a) its decision and the reasons for it (including any facts relied upon); and
  - (b) any right of appeal under regulation 15,
- within 7 days of making that decision.
- (6) If the ophthalmic medical practitioner or optician requests an oral hearing, this must take place before the Primary Care Trust reaches its decision and it must then notify him of—

- (a) its decision and the reasons for it (including any facts relied upon); and
  - (b) of any right of appeal under regulation 15,
- within 7 days of making that decision.

(7) When the Primary Care Trust notifies the ophthalmic medical practitioner or optician of any decision, it shall inform him that, if he wishes to exercise a right of appeal, he must do so within the period of 28 days, beginning with the date on which it gave him the notice informing him of its decision, and shall tell him how to exercise any such right.

(8) The Primary Care Trust shall also notify the ophthalmic medical practitioner or optician of his right to have the decision reviewed in accordance with regulation 14.

- (9) Where the Primary Care Trust determines that an ophthalmic medical practitioner or optician—
- (a) may be included in its supplementary list, but subject to conditions imposed under this regulation; or
  - (b) is to be subject to conditions while he remains included in its supplementary list,

his name may be included (or continue to be included) in its supplementary list during the period for bringing any appeal to the FHSAA pursuant to regulation 15, or if an appeal is brought, until such time as that appeal has been decided, provided he agrees in writing to be bound by the conditions imposed until the time for appeal has expired or the appeal is decided.

#### **Requirements with which an ophthalmic medical practitioner or optician in the supplementary list must comply**

- 9.—(1) An ophthalmic medical practitioner or optician, who is included in the supplementary list of a Primary Care Trust, shall make a declaration to that Trust in writing within 7 days of its occurrence if he—
- (a) is convicted of any criminal offence in the United Kingdom;
  - (b) is bound over following a 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<sup>(a)</sup> (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)<sup>(b)</sup>;
  - (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 informed by any licensing, regulatory or other body 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 an investigation into his professional conduct in respect of any current or previous employment, or is informed of the outcome of any such investigation, where it is adverse;
  - (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 informed of the outcome of such an investigation, where it is adverse;

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(a) 1995 c. 46.

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

- (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; or
- (m) is removed, contingently removed or suspended from, refused admission to, or conditionally included in any list or equivalent list,

and, if so, he shall give details, including approximate dates, and where any investigation or proceedings were or are to be brought, the nature of that investigation or proceedings, and any outcome.

(2) An ophthalmic medical practitioner or optician, who is included in the supplementary list of a Primary Care Trust, and is, was in the preceding six months, or was at the time of the originating events, a director of a body corporate, shall make a declaration to that Trust in writing within 7 days of its occurrence if that body corporate—

- (a) is convicted of any criminal offence in the United Kingdom;
- (b) is convicted elsewhere of an offence, or what would constitute a criminal offence if committed in England and Wales;
- (c) 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;
- (d) is informed by any licensing, regulatory or other body of the outcome of any investigation into its provision of professional services, and there is a finding against the body corporate;
- (e) becomes the subject of any investigation into its provision of professional services by any licensing, regulatory or other body;
- (f) becomes to his knowledge the subject of any investigation in relation to fraud, or is informed of the outcome of such an investigation, where it is adverse;
- (g) becomes the subject of any investigation by another Primary Care Trust or equivalent body, which might lead to its removal from any list or equivalent list; or
- (h) is removed, contingently removed or suspended from, refused admission to, or conditionally included in any list or equivalent list,

and, if so, he shall give the name and registered address of the body corporate 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.

(3) An ophthalmic medical practitioner or optician, who is included in the supplementary list of a Primary Care Trust, shall consent to a request being made by that Trust to any employer or former employer, licensing, regulatory or other body in the United Kingdom or elsewhere, for information relating to a current investigation, or an investigation where the outcome was adverse, by that employer or body into him or a body corporate referred to in paragraph (1) and (2) and, for the purposes of this paragraph, “employer” includes any partnership of which the ophthalmic medical practitioner or optician is or was a member.

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

### **Removal from supplementary list**

**10.—(1)** The Primary Care Trust must remove the ophthalmic medical practitioner or optician from its supplementary list where it becomes aware that he—

- (a) has been convicted in the United Kingdom of murder;
- (b) has been convicted in the United Kingdom of a criminal offence, other than murder, committed on or after 1st April 2005, and has been sentenced to a term of imprisonment of over six months;
- (c) is subject to a national disqualification;

(a) 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.

- (d) has died;
- (e) has otherwise ceased to be an ophthalmic medical practitioner or optician;
- (f) 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)(**a**),
  - (ii) an order or direction made by that Committee under section 38(1) of that Act (order for immediate suspension)(**b**), or
  - (iii) from the coming into force of article 13 of the Medical Act 1983 (Amendment) Order 2002(**c**), 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(**d**);
- (g) in the case of an optician, is the subject of a suspension order under section 17 of the Opticians Act;
- (h) is included in the ophthalmic list of any Primary Care Trust, or the supplementary list of another Primary Care Trust,

and shall, except in a case falling within sub-paragraph (d), notify him immediately that it has done so.

(2) Where a Primary Care Trust is notified by the FHSAA that it has considered an appeal by an ophthalmic medical practitioner or optician against—

- (a) a contingent removal by the Trust and has decided to remove him instead; or
- (b) a conditional inclusion, where he has been conditionally included in the supplementary list until the appeal has been decided, and has decided not to include him,

the Trust shall remove him from its supplementary list and shall notify him immediately that it has done so.

(3) The Primary Care Trust may remove an ophthalmic medical practitioner or optician from its supplementary list where any of the conditions set out in paragraph (4) is satisfied.

(4) The conditions mentioned in paragraph (3) are that—

- (a) the continued inclusion of that ophthalmic medical practitioner or optician in the supplementary list would be prejudicial to the efficiency of the services which those included in the list assist in providing (“an efficiency case”);
- (b) he is involved in a fraud case in relation to any health scheme; or
- (c) he is unsuitable to be included in that list (“an unsuitability case”).

(5) For the purposes of this regulation, in addition to the services covered by the definition of “health scheme” in section 49F(8), the following shall also be health schemes—

- (a) health services, including medical and surgical treatment, provided by Her Majesty’s Forces;
- (b) services provided by Port Health Authorities constituted under the Public Health (Control of Disease) Act 1984(**e**);
- (c) health services provided to a prisoner in the care of the medical officer or other such officer of a prison appointed for the purposes of section 7 of the Prison Act 1952(**f**); and
- (d) publicly-funded health services provided by or on behalf of any organisation anywhere in the world.

(a) 1983 c. 54; section 36 was amended by S.I. 2000/1803.

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

(c) S.I. 2002/3135.

(d) 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.

(e) 1984 c.22.

(f) 1952 c.52.

(6) Where the ophthalmic medical practitioner or optician cannot demonstrate that he has assisted in the provision of general ophthalmic services within the area of the Primary Care Trust during the preceding six months, it may remove him from its supplementary list.

(7) In calculating the period of six months referred to in paragraph (6), the Primary Care Trust shall disregard any period during which he was—

- (a) suspended under these Regulations; or
- (b) performing whole-time service in the Armed Forces of the Crown—
  - (i) in a national emergency as a volunteer or otherwise; or
  - (ii) which was compulsory, including service resulting from any reserve liability or any equivalent service by a person liable for whole-time service in those forces.

(8) Where a Primary Care Trust is considering removing an ophthalmic medical practitioner or optician from its supplementary list under paragraphs (3) to (6), regulation 8, 12(3)(c) or 15(6) or contingently removing him under regulation 12, it shall give him—

- (a) notice of any allegation against him;
- (b) notice of what action it is considering and on what grounds;
- (c) the opportunity to make written representations to it within 28 days of the date of the notification under sub-paragraph (b); and
- (d) the opportunity to put his case at an oral hearing before it, if he so requests, within the 28 day period mentioned in sub-paragraph (c).

(9) If there are no representations within the period specified in paragraph (8)(c), the Primary Care Trust shall notify the ophthalmic medical practitioner or optician of—

- (a) its decision and the reasons for it (including any facts relied upon); and
- (b) any right of appeal under regulation 15,

within 7 days of making that decision.

(10) If there are representations, the Primary Care Trust must take them into account before reaching its decision, and shall then notify the ophthalmic medical practitioner or optician of—

- (a) its decision and the reasons for it (including any facts relied upon); and
- (b) any right of appeal under regulation 15,

within 7 days of making that decision.

(11) If the ophthalmic medical practitioner or optician requests an oral hearing, this must take place before the Primary Care Trust reaches its decision, and it shall then notify him of—

- (a) its decision and the reasons for it (including any facts relied upon); and
- (b) any right of appeal under regulation 15,

within 7 days of making that decision.

(12) When the Primary Care Trust notifies the ophthalmic medical practitioner or optician of any decision, it shall inform him that, if he wishes to exercise a right of appeal, he must do so within the period of 28 days beginning with the date on which it informed him of its decision and shall tell him how to exercise any such right.

(13) The Primary Care Trust shall also notify the ophthalmic medical practitioner or optician of his right to have the decision reviewed in accordance with regulation 14.

(14) Where the Primary Care Trust decides to remove an ophthalmic medical practitioner or optician under paragraph (3) or (6), he shall not be removed from its supplementary list until—

- (a) the end of a period of 28 days starting with the day on which the Primary Care Trust reaches its decision; or
- (b) any appeal is disposed of by the FHSAA,

whichever is the later.

## **Criteria for a decision on removal**

**11.**—(1) Where a Primary Care Trust is considering whether to remove an ophthalmic medical practitioner or optician from its supplementary list under regulation 10(3) and (4)(c) (“an unsuitability case”), it shall—

- (a) consider any information relating to him which it has received in accordance with any provision of regulation 9;
- (b) consider any information held by the Secretary of State as to any record about past or current investigations or proceedings involving or related to him; and
- (c) in reaching its decision, take into consideration the matters set out in paragraph (2).

(2) The matters referred to in paragraph (1) are—

- (a) the nature of any offence, investigation or incident;
- (b) the length of time since any such 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 assisting in the provision of general ophthalmic services and any likely risk to any patients or to public finances;
- (f) whether any criminal offence was a sexual offence for the purposes of Part 2 of the Sexual Offences Act 2003(a), or if it had been committed in England and Wales, would have been such an offence;
- (g) whether he has been refused admittance to, conditionally included in, removed or contingently removed or is currently suspended from, any list or any 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; and
- (h) whether he was at the time, has in the preceding six months been, or was at the time of the originating events, a director of a body corporate, which was refused admission to, conditionally included in, removed or contingently removed from any list or equivalent list or is currently suspended from any such list, and if so, what the facts were in each such case and the reasons given by the Primary Care Trust or equivalent body in each case for such action.

(3) Where a Primary Care Trust is considering whether to remove an ophthalmic medical practitioner or optician from its supplementary list under regulation 10(3) and (4)(b), it shall consider—

- (a) any information relating to him which it has received in accordance with any provision of regulation 9;
- (b) any information held by the Secretary of State as to any record about past or current investigations or proceedings involving or related to the ophthalmic medical practitioner or optician; and
- (c) the matters set out in paragraph (4).

(4) The matters referred to in paragraph (3)(c) are—

- (a) the nature of any incidents of fraud;
- (b) the length of time since the last incident of fraud occurred, and since any investigation into it was concluded;
- (c) whether there are any other incidents of fraud, or other criminal offences to be considered;
- (d) any action taken by any licensing, regulatory or other body, the police or the courts as a result of any such offence, investigation or incident;
- (e) the relevance of any investigation into an incident of fraud to his assisting in the provision of general ophthalmic services and the likely risk to patients or to public finances;

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(a) 2003 c. 42.

- (f) whether he has been refused admittance to, conditionally included in, removed or contingently removed or is currently suspended from, any list or any 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; and
- (g) whether he was at the time, has in the preceding six months been, or was at the time of the originating events, a director of a body corporate, which was refused admission to, conditionally included in, removed or contingently removed from, any list or equivalent list, or is currently suspended from any such list, and if so, what the facts were in each such case and the reasons given by the Primary Care Trust or equivalent body in each case.

(5) Where a Primary Care Trust is considering removal of an ophthalmic medical practitioner or optician from its supplementary list under regulation 10(3) and (4)(a) ("an efficiency case"), it shall—

- (a) consider any information relating to him which it has received in accordance with any provision of regulation 9;
- (b) consider any information held by the Secretary of State as to any record about past or current investigations or proceedings involving or related to the ophthalmic medical practitioner or optician; and
- (c) in reaching its decision, take into account the matters referred to in paragraph (6).

(6) The matters referred to in paragraph (5)(c) are—

- (a) the nature of any incident which was prejudicial to the efficiency of the general ophthalmic services that the ophthalmic medical practitioner or optician assisted in providing;
- (b) the length of time since the last incident occurred and since any investigation into it was concluded;
- (c) any action taken by any licensing, regulatory or other body, the police or the courts as a result of any such incident;
- (d) the nature of the incident and whether there is a likely risk to patients;
- (e) whether he has previously failed to supply information, make a declaration or comply with an undertaking required by these Regulations or the Ophthalmic Regulations;
- (f) whether he has ever failed to comply with a request by the Primary Care Trust to undertake an assessment by the NCAA;
- (g) whether he has been refused admittance to, conditionally included in, removed or contingently removed or is currently 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 the equivalent body for such action; and
- (h) whether he was at the time, has in the preceding six months been, or was at the time of the originating events, a director of a body corporate, which was refused admission to, conditionally included in, removed or contingently removed from any list or equivalent list, or is currently suspended from any such list, and if so, what the facts were in each such case and the reasons given by the Primary Care Trust or equivalent body in each case for such action.

(7) In making any decision under regulation 10, the Primary Care Trust shall take into account the overall effect of any relevant incidents and offences relating to the ophthalmic medical practitioner or optician of which it is aware, whichever condition it relies on.

(8) When making a decision on any condition in regulation 10(4), the Primary Care Trust shall state in its decision on which condition it relies.

### **Contingent removal**

**12.**—(1) In an efficiency case or a fraud case the Primary Care Trust may, instead of deciding to remove an ophthalmic medical practitioner or optician from its supplementary list, decide to remove him contingently and regulation 10(12) and (13) shall apply to that decision.

(2) If it so decides, it must impose such conditions as it may decide on his inclusion in its supplementary list with a view to—

- (a) removing any prejudice to the efficiency of the services in question (in an efficiency case); or
- (b) preventing further acts or omissions (in a fraud case).

(3) Where the Primary Care Trust decides to contingently remove an ophthalmic medical practitioner or optician under paragraph (1), that decision shall not take effect until—

- (a) the end of a period of 28 days starting with the day on which the Primary Care Trust reaches its decision; or

- (b) any appeal is disposed of by the FHSAA,

whichever is the later.

(4) If the Primary Care Trust determines that the ophthalmic medical practitioner or optician has failed to comply with a condition, it may decide to—

- (a) vary the conditions imposed;

- (b) impose new conditions; or

- (c) remove him from its supplementary list.

## Suspension

13.—(1) If a Primary Care Trust is satisfied that it is necessary to do so for the protection of members of the public or is otherwise in the public interest, it may suspend an ophthalmic medical practitioner or optician from its supplementary list, in accordance with the provisions of this regulation—

- (a) while it decides whether or not to exercise its powers to remove him under regulation 10 or contingently remove him under regulation 12;

- (b) while it waits for a decision affecting him of a court anywhere in the world or of a licensing or regulatory body;

- (c) where it has decided to remove him, but before that decision takes effect; or

- (d) pending appeal under these Regulations.

(2) In a case falling within paragraph (1)(a), the Primary Care Trust must specify a period, not exceeding six months, as the period of suspension.

(3) In a case falling within paragraph (1)(b), the Primary Care Trust may specify that he remains suspended, after the decision referred to in that sub-paragraph has been made, for an additional period not exceeding six months.

(4) The period of suspension under paragraph (1) or (2) may extend beyond six months, if—

- (a) on the application of the Primary Care Trust, the FHSAA so orders; and

- (b) the Primary Care Trust applied under sub-paragraph (a) before the expiry of the period of suspension, but the FHSAA has not made an order by the time it expires, in which case it continues until the FHSAA makes an order.

(5) If the FHSAA does so order, it shall specify—

- (a) the date on which the period of suspension is to end;

- (b) an event beyond which it is not to continue; or

- (c) both a date on which it is to end and an event beyond which it is not to continue, in which case it shall end on the earlier of that date or that event, as the case may be.

(6) The FHSAA may, on the application of the Primary Care Trust, make a further order (complying with paragraph (5)) at any time while the period of suspension pursuant to the earlier order is still continuing.

(7) If the Primary Care Trust suspends an ophthalmic medical practitioner or optician in a case falling within paragraph (1)(c) or (d), the suspension has effect from the date the Primary Care Trust informed him of the suspension until—

- (a) the expiry of any appeal period; or

- (b) if he appeals under regulation 15, the FHSAA has disposed of the appeal.

(8) The Primary Care Trust may extend the period of suspension under paragraph (2) or impose a further period of suspension under paragraph (3), so long as the aggregate does not exceed six months.

(9) The effect of a suspension is that, while an ophthalmic medical practitioner or optician is suspended under these Regulations, he is to be treated as not being included in the Primary Care Trust's supplementary list, even though his name appears in it.

(10) The Primary Care Trust may at any time revoke the suspension and inform the ophthalmic medical practitioner or optician of its decision.

(11) Where a Primary Care Trust is considering suspending an ophthalmic medical practitioner or optician or varying the period of suspension under this regulation, it shall give him—

- (a) notice of any allegation against him;
- (b) notice of what action it is considering and on what grounds;
- (c) the opportunity to put his case at an oral hearing before it, on a specified day, provided that at least 24 hours notice of the hearing is given.

(12) 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.

(13) If an oral hearing does take place, the Primary Care Trust shall take into account any representations made before it reaches its decision.

(14) The Primary Care Trust may suspend the ophthalmic medical practitioner or optician with immediate effect following the hearing.

(15) The Primary Care Trust shall notify the ophthalmic medical practitioner or optician of its decision and the reasons for it (including any facts relied upon) within 7 days of making that decision.

(16) The Primary Care Trust shall notify the ophthalmic medical practitioner or optician of any right of review under regulation 14.

(17) During a period of suspension payments may be made to or in respect of the ophthalmic medical practitioner or optician in accordance with a determination by the Secretary of State.

## Reviews

14.—(1) A Primary Care Trust may and if requested in writing to do so by the ophthalmic medical practitioner or optician shall review its decision to—

- (a) impose or vary conditions imposed under regulation 8;
- (b) impose or vary conditions imposed under regulation 12; or
- (c) suspend him under regulation 13(1)(a) or (b), except where a suspension is continuing by order of the FHSAA.

(2) The ophthalmic medical practitioner or optician may not request a review of a Primary Care Trust's decision until the expiry of a three month period beginning with the date of its decision or, in the case of a conditional inclusion under regulation 8, beginning with the date it includes his name in the supplementary list.

(3) After a review has taken place, the ophthalmic medical practitioner or optician cannot request a further review before the expiry of six months from the date of the decision on the last review.

(4) If a Primary Care Trust decides to review its decision under this regulation to conditionally include, contingently remove or suspend an ophthalmic medical practitioner or optician, it shall give him—

- (a) notice of any allegation against him;
- (b) notice of what action it is considering and on what grounds;
- (c) the opportunity to make written representations to it within 28 days of the date of the notification under sub-paragraph (b); and
- (d) the opportunity to put his case at an oral hearing before it, if he so requests within the 28 day period mentioned in sub-paragraph (c).

(5) If there are no representations within the period specified in paragraph (4)(c), the Primary Care Trust shall notify the ophthalmic medical practitioner or optician of its decision, the reasons for it (including any facts relied upon) and of any right of appeal under regulation 15.

(6) If there are representations, the Primary Care Trust must take them into account before reaching its decision.

(7) The Primary Care Trust shall notify the ophthalmic medical practitioner or optician of—

- (a) its decision;
- (b) the reasons for it (including any facts relied upon);
- (c) any right of appeal under regulation 15; and
- (d) the right to a further review under this regulation,

within 7 days of making that decision.

(8) If a Primary Care Trust decides to review its decision to impose conditions under regulation 8, it may vary the conditions, impose different conditions, remove the conditions or remove the ophthalmic medical practitioner or optician from its supplementary list.

(9) If a Primary Care Trust decides to review its decision to impose a contingent removal under regulation 12, it may vary the conditions, impose different conditions, or remove the ophthalmic medical practitioner or optician from its supplementary list.

(10) If a Primary Care Trust decides to review its decision to suspend an ophthalmic medical practitioner or optician under regulation 13(1)(a) or (b), it may decide to impose conditions or remove him from its supplementary list.

(11) A Primary Care Trust may not review its decision to suspend an ophthalmic medical practitioner or optician under regulation 13(1)(c) or (d).

## Appeals

**15.**—(1) An ophthalmic medical practitioner or optician may appeal (and the hearing of it shall be by way of redetermination) to the FHSAA against a decision of a Primary Care Trust mentioned in paragraph (2) by giving notice to the FHSAA.

(2) The Primary Care Trust decisions in question are—

- (a) a decision to refuse admission to the supplementary list under regulation 6(1);
- (b) a decision to impose a particular condition under regulation 8, or to vary any condition or to impose a different condition under that regulation;
- (c) any decision on a review under regulation 14 of a conditional inclusion under regulation 8;
- (d) any decision to remove him under regulations 8(2), 10(3) or (6), 12(3)(c) or 15(6)(b);
- (e) any decision to impose a particular condition under regulation 12(1), or to vary any condition or to impose a different condition under that regulation;
- (f) any decision on a review under regulation 14 of a contingent removal under regulation 12(1); and
- (g) any decision to transfer or move him under regulation 21(12).

(3) On appeal the FHSAA may make any decision which the Primary Care Trust could have made.

(4) Where the decision of the FHSAA on appeal is that the appellant's inclusion in the supplementary list is to be subject to conditions, whether or not those conditions are identical with the conditions imposed by the Primary Care Trust, the Trust shall ask the appellant to notify it within 28 days of the decision (or such longer period as the Trust may agree) whether he wishes to be included in the supplementary list subject to those conditions.

(5) If the ophthalmic medical practitioner or optician notifies the Primary Care Trust that he does wish to be included in the supplementary list subject to the conditions, it shall so include him.

(6) Where the FHSAA on appeal decides to impose a contingent removal—

- (a) the Primary Care Trust and the ophthalmic medical practitioner or optician may each apply to the FHSAA for the conditions imposed on him to be varied, for different conditions to be imposed, or for the contingent removal to be revoked; and
- (b) the Primary Care Trust may remove him from its supplementary list if it determines that he has failed to comply with a condition.

## **Notification**

**16.—(1)** Where a Primary Care Trust decides to—

- (a) refuse to admit an ophthalmic medical practitioner or optician to its supplementary list on the grounds specified in regulation 6;
- (b) impose conditions on his inclusion in that list under regulation 8;
- (c) remove him from that list under regulation 10;
- (d) remove him from that list contingently under regulation 12; or
- (e) suspend him from that list under regulation 13,

it shall notify the persons or bodies specified in paragraph (2) and shall additionally notify those specified in paragraph (3), if requested to do so by those persons or bodies in writing (including electronically), of the matters set out in paragraph (4).

**(2)** Where paragraph (1) applies, a Primary Care Trust shall notify, within 7 days of that decision—

- (a) the Secretary of State;
- (b) any Primary Care Trust or equivalent body that, to the knowledge of the notifying Trust—
  - (i) has the ophthalmic medical practitioner or optician on any list or equivalent list,
  - (ii) is considering an application for inclusion in any list or equivalent list by the ophthalmic medical practitioner or optician, or
  - (iii) has in its area any place where the ophthalmic medical practitioner or optician assists in the provision of general ophthalmic services;
- (c) the Scottish Executive;
- (d) the National Assembly for Wales;
- (e) the Northern Ireland Executive;
- (f) the General Medical Council, General Optical Council or any other appropriate regulatory body;
- (g) the NCAA; and
- (h) where it is a fraud case, the NHS Counter Fraud and Security Management Service.

**(3)** The persons or bodies to be additionally notified in accordance with paragraph (1) are—

- (a) persons or bodies that can establish that they—
  - (i) are or were employing the ophthalmic medical practitioner or optician, are using or have used his services, or
  - (ii) are considering employing or using his services in a professional capacity; and
- (b) a partnership any of whose members provide or assist in the provision of general ophthalmic services and can establish that the ophthalmic medical practitioner or optician is or was a member of the partnership or that it is considering inviting him to become such a member.

**(4)** The matters referred to in paragraph (1) are—

- (a) name, address and date of birth of the ophthalmic medical practitioner or optician;
- (b) his professional registration number;
- (c) date and copy of the decision of the Primary Care Trust; and
- (d) a contact name of a person in the Trust for further enquiries.

(5) The Primary Care Trust shall send to the ophthalmic medical practitioner or optician concerned a copy of any information about him provided to the persons or bodies listed in paragraph (2) or (3), and any correspondence with that person or body relating to that information.

(6) Where the Primary Care Trust has notified any of the persons or bodies specified in paragraph (2) or (3) of the matters set out in paragraph (4), it may, in addition, if requested by that person or body, notify that person or body of any evidence that was considered, including any representations from the ophthalmic medical practitioner or optician.

(7) 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 supplementary list, it shall notify the persons or bodies listed in paragraph (2)(b), (g) and (h) and paragraph (3).

(8) Where a decision is changed on review or appeal, or a suspension lapses, the Primary Care Trust shall notify the persons or bodies that were notified of the original decision of the later decision or the fact that that suspension has lapsed.

#### **Amendment of or withdrawal from supplementary lists**

**17.**—(1) An ophthalmic medical practitioner or optician shall, unless it is impracticable for him to do so, give notice to the Primary Care Trust within 28 days of any occurrence requiring a change in the information recorded about him in the supplementary list and of any change of his private address.

(2) Where an ophthalmic medical practitioner or optician intends to withdraw from the supplementary list, unless it is impracticable for him to do so, he shall so notify the Primary Care Trust at least three months in advance of that date.

(3) An ophthalmic medical practitioner or optician shall notify the Primary Care Trust that he intends to withdraw from its supplementary list if he is accepted on to its ophthalmic list, or on to any such list of another Primary Care Trust.

(4) The Primary Care Trust shall, on receiving notice from any ophthalmic medical practitioner or optician—

- (a) pursuant to paragraph (1), amend its supplementary list as soon as possible;
- (b) pursuant to paragraph (2), so amend its supplementary list, either—
  - (i) on the date notified by him, provided it falls at least three months after the date of the notice, or
  - (ii) on the date from which it has agreed that the withdrawal shall take effect, whichever is the earlier; or
- (c) pursuant to paragraph (3), remove his name from its supplementary list as soon as it confirms that he has been accepted on that other list.

(5) An ophthalmic medical practitioner or optician may withdraw a notice given pursuant to paragraph (1) or (2) at any time before the Primary Care Trust removes his name from its supplementary list.

(6) A notice given pursuant to paragraph (3) may not be withdrawn once the ophthalmic medical practitioner or optician has been accepted on that other list.

#### **Restrictions on withdrawal from lists**

**18.**—(1) Where a Primary Care Trust is investigating an ophthalmic medical practitioner or optician—

- (a) for the purpose of deciding whether or not to exercise its powers to remove him under regulation 10 or contingently remove him under regulation 12; or
- (b) who has been suspended under regulation 13,

he may not withdraw from any list kept by a Primary Care Trust in which he is included, except where the Secretary of State has given his consent, until the matter has been finally determined by the Primary Care Trust.

(2) Where a Primary Care Trust has decided to remove an ophthalmic medical practitioner or optician from its supplementary list under regulation 10(3) to (6) or to contingently remove him from it under regulation 12, but has not yet given effect to its decision, he may not withdraw from any list kept by a Primary Care Trust in which he is included, except where the Secretary of State has given his consent.

(3) Where a Primary Care Trust has suspended an ophthalmic medical practitioner or optician under regulation 13(1)(b), he may not withdraw from any list kept by a Primary Care Trust in which he is included, except where the Secretary of State has given his consent, until the decision of the relevant court or body is known and the matter has been considered and finally determined by the Primary Care Trust.

### **Review periods on national disqualification**

**19.** The period for review shall be the different period specified below, instead of that in section 49N(8)(a), where the circumstances are that—

- (a) on making a decision to impose a national disqualification, the FHSAA states that it is of the opinion that the criminal or professional conduct of the ophthalmic medical practitioner or optician is such that there is no realistic prospect of a further review being successful, if held within the period specified in section 49N(8)(a), in which case the reference to “two years” in that provision shall be a reference to five years;
- (b) on the last review by the FHSAA of a national disqualification the ophthalmic medical practitioner or optician was unsuccessful and the FHSAA states that it is of the opinion that there is no realistic prospect of a further review being successful if held within a period of three years beginning with the date of its decision on that review, in which case the reference to “one year” in section 49N(8)(b) shall be a reference to three years;
- (c) the FHSAA states that it is of the opinion that, because a criminal conviction considered by the FHSAA in reaching the decision that has effect has been quashed or the penalty reduced on appeal, there is a need for an immediate review, in which case the reference to “two years” or “one year” in section 49N(8) shall be a reference to the period that has already elapsed; or
- (d) the FHSAA is of the opinion that because the decision of a licensing, regulatory or other body has been quashed or the penalty reduced on appeal, there is a need for an immediate review, in which case the reference to “two years” or “one year” in section 49N(8) shall be a reference to the period that has already elapsed.

### **Disclosure of information**

**20.—(1)** The Primary Care Trust may disclose information supplied to it or acquired by it pursuant to these Regulations to any of the following—

- (a) the Secretary of State;
- (b) any other Primary Care Trust or equivalent body, which to its knowledge—
  - (i) has an ophthalmic medical practitioner or optician to whom that information relates on any of its lists,
  - (ii) is considering an application from such an ophthalmic medical practitioner or optician for inclusion in any of its lists, or
  - (iii) has in its area any place where the ophthalmic medical practitioner or optician assists in the provision of general ophthalmic services;
- (c) the Scottish Executive;
- (d) the National Assembly for Wales;
- (e) the Northern Ireland Executive;
- (f) the General Medical Council, General Optical Council or any other licensing or regulatory body;

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(a) Section 49N was inserted by section 25 of the 2001 Act and amended by the 2002 Act, Schedule 2, paragraph 25 and the 2003 Act, section 184 and Schedule 11, paragraph 24.

- (g) any organisation or employer that, to the knowledge of the Primary Care Trust, employs or uses the services of the ophthalmic medical practitioner or optician, to whom that information relates, in a professional capacity;
- (h) any partnership, any of whose members provide or assist in the provision of general ophthalmic services and of which, to the knowledge of the Primary Care Trust, the ophthalmic medical practitioner or optician is a member or that is considering inviting him to become a member; and
- (i) where an allegation of fraud is being considered, the NHS Counter Fraud and Security Management Service.

(2) The Primary Care Trust shall disclose to the Secretary of State information supplied to it or acquired by it pursuant to these Regulations, as he may from time to time request.

### **Transitional provisions**

**21.**—(1) Any ophthalmic medical practitioner or optician, who is not included in an ophthalmic list, but was assisting in the provision of general ophthalmic services on 31st March 2005 may continue to do so, notwithstanding regulation 3(3), until—

- (a) 31st July 2005; or
- (b) the date on which the Primary Care Trust notifies him of its decision under regulation 6(6),

whichever is the earlier, provided that he applies, in accordance with these Regulations, to a Primary Care Trust to be included in its supplementary list not later than 16th May 2005.

(2) Any ophthalmic medical practitioner or optician, not falling within paragraph (1), who has applied to be included in a supplementary list on or before 16th May 2005, may assist in the provision of general ophthalmic services after the date of that application, notwithstanding regulation 3(3), until—

- (a) 31st July 2005; or
- (b) the date on which the Primary Care Trust notifies him of its decision under regulation 6(6),

whichever is the earlier.

(3) Any ophthalmic medical practitioner or optician to whom paragraph (1) or (2) applies shall comply with regulation 9, if any of the events therein specified occur, as though he were included in the supplementary list of the Primary Care Trust in whose locality he is assisting in the provision of general ophthalmic services.

(4) An ophthalmic medical practitioner or optician may not assist in the provision of general ophthalmic services by virtue of paragraph (1) or (2) during any period in which he is the subject of a suspension notice given by a Primary Care Trust under paragraph (5).

(5) A Primary Care Trust may give a suspension notice to an ophthalmic medical practitioner or optician to whom paragraph (1) or (2) applies where it is satisfied that it is necessary to do so for the protection of members of the public or is otherwise in the public interest.

(6) A Primary Care Trust may withdraw a suspension notice it has given under paragraph (5) at any time.

(7) During a period of suspension payments may be made to or in respect of the ophthalmic medical practitioner or optician by the Primary Care Trust in accordance with a determination by the Secretary of State.

(8) Where a Primary Care Trust—

- (a) has received an application from an ophthalmic medical practitioner or optician to whom paragraph (1) or (2) applies; and
- (b) becomes aware in respect of him of any of the matters listed in regulation 10(1),

it shall immediately decide his application to be included in its supplementary list.

(9) A Primary Care Trust may publish a list of ophthalmic medical practitioners or opticians whose applications it has approved for inclusion in its supplementary list prior to 31st July 2005.

(10) If, on or after 1st April 2005, it appears to the Primary Care Trust that any ophthalmic medical practitioner or optician, whose name was included in its ophthalmic list on 31st March 2005—

- (a) is not entitled to have his name included in its ophthalmic list; but

(b) would be, if he so applied, entitled to have his name included in its supplementary list, it shall take the action specified in paragraph (11).

(11) The Primary Care Trust shall—

- (a) give him notice to that effect, together with the opportunity to make written representations to it within 28 days of the date of that notification; and
- (b) consult any other Primary Care Trust in whose ophthalmic list his name is, to its knowledge, included.

(12) After considering any representations under paragraph (11)(a) and the results of any consultation under paragraph (11)(b), if the Primary Care Trust is satisfied that that ophthalmic medical practitioner or optician does not meet the requirements for inclusion in its ophthalmic list, it shall—

- (a) remove his name from its ophthalmic list; and
- (b) unless his name is included in the ophthalmic list or supplementary list of another Primary Care Trust, include his name in its supplementary list.

(13) In a case to which paragraph (12) applies, the Primary Care Trust shall notify the ophthalmic medical practitioner or optician of its decision and the reasons for it (including any facts relied upon), within 7 days of making that decision.

(14) When the Primary Care Trust notifies the ophthalmic medical practitioner or optician of its decision in accordance with paragraph (13) it shall also notify any Primary Care Trust which it consulted pursuant to paragraph (11)(b).

(15) The Primary Care Trust shall act under paragraphs (10) to (12), so as to enable it to take a decision under paragraph (12), as soon as is reasonably practical.

(16) In any case where a Primary Care Trust—

- (a) received, on or before 31st March 2005, an application for inclusion in its ophthalmic list;
- (b) has not been determined that application before that date; and
- (c) considers that it is not appropriate to include the applicant in its ophthalmic list, but that it may be appropriate to include him in its supplementary list,

it shall treat that application as an application for inclusion in its supplementary list.

## 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(a).

#### Amendment of regulation 2

**23.—(1)** Regulation 2 of the Ophthalmic Regulations (interpretation)(b) 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—

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(a) 1986/975.

(b) Relevant amendments are, in relation to England, in S.I. 2001/3739.

““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;”;

““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(a), 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(b);”;

““mobile services” means general ophthalmic services provided at—

- (a) a day centre;
- (b) a residential centre; or

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

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

(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 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;”; and

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

(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)(b) 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)—

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(a) S.I. 2005/480

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

- “(e) if the contractor has made arrangements with the Primary Care Trust to provide mobile services—
- (i) that fact,
  - (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)(a) 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.”.

#### **Amendment of regulation 7A**

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

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(a) Relevant amendments are, in relation to England, in S.I. 1996/705, 2001/ 3739, 2002/601 and 2469.  
 (b) Regulation 7A was inserted, in relation to England, by S.I. 2001/3739 and amended by S.I. 2002/601 and 2469.

(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 be 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.

### **Amendment of regulation 7B**

**27.** Regulation 7B(1) of the Ophthalmic Regulations (deferment of decision)(a) 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,

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

- 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;”; and
    - (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)(a) 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)(b) shall be amended in accordance with the following provisions of this regulation.

(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(c), 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—

(a) Regulation 7C was inserted, in relation to England, by S.I. 2001/3739 and amended by S.I. 2002/2469.  
 (b) Regulation 7D was inserted by S.I. 2001/3739 and paragraph (15) was amended by S.I. 2002/601.  
 (c) 2002 c. 17.

“(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)(**a**) 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)(**b**) 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—

“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)(**c**) 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—

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

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

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

- (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(a) 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 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.”.

(a) 2003 c. 42.

(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)(a) (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)(b),
  - (ii) an order or direction made by that Committee under section 38(1) of that Act (order for immediate suspension)(c), or
  - (iii) from the coming into force of article 13 of the Medical Act 1983 (Amendment) Order 2002(d), 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(e); or
- (e) in the case of an optician, is the subject of a suspension order under section 17 of the Opticians Act 1989(f).”.

#### **Amendment of regulation 9D**

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

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

(b) 1983 c. 54; section 36 was amended by S.I. 2000/1803.

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

(d) S.I. 2002/3135.

(e) 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.

(f) 1989 c. 44.

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

- (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 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;”; and
  - (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)(a) 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)(b), 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”.

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(a) Regulation 9E was inserted, in relation to England, by S.I. 2001/3739 and amended by S.I. 2002/601 and 2469.  
 (b) Regulation 9F was inserted, in relation to England, by S.I. 2001/3739 and amended by S.I. 2002/ 2469.

## **Amendment of regulation 9G**

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

## **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)(b) 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

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

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

- (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,

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).
  - (7) 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.”.
  - (8) 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(a) (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)(b);
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(a) 1995 c. 46.

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

- (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(a) (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)(b);
    - (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;

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(a) 1995 c. 46.

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

(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(a) 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

(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(b) (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

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(a) 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) c. 44.

(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)(a) 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—

“(iiia) has accepted a conditional offer under section 302 of the Criminal Procedure (Scotland) Act 1995(b) 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)(c);

(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

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(a) Schedule 1A was inserted by S.I. 2001/3739 and amended by S.I. 2002/601.

(b) 1995 c. 46.

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

- (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;
  - (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(a) (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)(b);
  - (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

(a) 1995 c. 46.

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

(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.”.

(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.

## PART III

### CONSEQUENTIAL AMENDMENTS

#### **Amendment of the Sight Testing Regulations**

**42.** In regulation 3 of the Sight Testing (Examination and Prescription) (No.2) Regulations 1989(**a**) (examination)—

(a) in paragraph (1), for “paragraph (2)” there shall be substituted “paragraphs (2) and (3)”; and

(b) at the end, there shall be added paragraph (3)—

“(3) In England, the provisions of paragraph (1)(b)(ii) do not apply where the doctor or optician refers the patient to an ophthalmic hospital, in accordance with paragraph 10(2) of Schedule 1 to the National Health Service (General Ophthalmic Services) Regulations 1986(**b**).”.

#### **Amendment of the Charges and Payments Regulations**

**43.**—(1) The National Health Service (Optical Charges and Payments) Regulations 1997(**c**) shall be amended in accordance with the following provisions of this regulation.

(2) In regulation 1(2) (citation, commencement and interpretation) the following definition shall be inserted at the appropriate alphabetical place—

““supplementary list” means the list prepared by a Primary Care Trust under regulation 3 of the National Health Service (General Ophthalmic Services Supplementary List) and (General Ophthalmic Services Amendment and Consequential Amendment) Regulations 2005(**d**);”.

(3) In regulations 4(1)(b) (completion and use of voucher - sight test) and 6(1) (payment to patients in respect of sight test) “or supplementary list” shall be inserted after “ophthalmic list” in the place where it occurs in each of those regulations.

2nd March 2005

*Rosie Winterton*  
Minister of State,  
Department of Health

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- (a) S.I. 1989/1230. The Regulations were made under the Opticians Act 1958 (c.32), but have effect under the Opticians Act 1989 by virtue of the Interpretation Act 1978 (c.30), section 17(2)(b).  
(b) S.I. 1986/975; relevant amendments are S.I. 2001/414.  
(c) S.I. 1997/818; relevant amendments are S.I. 1999/2562, 2002/1326, 2003/657, 2381 and 2469.  
(d) S.I. 2004/ .

## **EXPLANATORY NOTE**

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

Part I of these Regulations provides for a supplementary list for those assisting in the provision of general ophthalmic services to be kept by Primary Care Trusts in accordance with the provisions of section 43D of the National Health Service Act 1977.

Regulation 2 provides some definitions for the Regulations.

Regulation 3 provides that each Primary Care Trust must prepare and publish a supplementary list. It also provides that no ophthalmic medical practitioner or optician may assist in performing general ophthalmic services unless his name is included in such a list or in an ophthalmic list.

Regulation 4 sets out how to apply to be included in the list and requires certain information to be given. It relaxes those requirements for an ophthalmic medical practitioner or optician who is included in the ophthalmic list of that Trust.

Regulation 5 provides for an ophthalmic medical practitioner or optician to be readmitted to the supplementary list on a successful appeal against conviction.

Regulation 6 sets out the grounds on which the Primary Care Trust may or must refuse to admit an ophthalmic medical practitioner or optician to the supplementary list, and the matters to which it must have regard.

Regulation 7 sets out the circumstances in which a Primary Care Trust may defer consideration of an application to include an ophthalmic medical practitioner or optician in the supplementary list and the procedure to be followed in that respect.

Regulation 8 allows Primary Care Trusts to enter an ophthalmic medical practitioner or optician's name in the supplementary list subject to condition. It also allows an ophthalmic medical practitioner or optician's name to be included in that list, until any appeal has been decided, provided he agrees to be bound by the condition until the appeal is determined.

Regulation 9 provides for a requirement that an ophthalmic medical practitioner or optician notify the Primary Care Trust in writing, within 7 days, if he, or a company of which he is a director, incurs any criminal convictions or other specified matters occur.

Regulation 10 provides for the mandatory removal from its supplementary list by a Primary Care Trust of any ophthalmic medical practitioner or optician convicted of murder or of a criminal offence and sentenced to over 6 months and for their discretionary removal on specified grounds.

Regulation 11 sets out the criteria for decisions on discretionary removals from the supplementary list.

Regulation 12 provides for a Primary Care Trust to impose conditions on an ophthalmic medical practitioner or optician whose name is included in the supplementary list and for him to be removed if he fails to comply with those conditions.

Regulation 13 provides for a Primary Care Trust to suspend an ophthalmic medical practitioner or optician from the supplementary list, if certain conditions are met, for the procedure to be then followed and provides for payment to suspended ophthalmic medical practitioners or opticians.

Regulation 14 provides for review and the procedure to be followed by Primary Care Trusts where the Primary Care Trust decides to conditionally include, contingently remove, or suspend an ophthalmic medical practitioner or optician from the supplementary list.

Regulation 15 provides for appeals from specified decisions to be heard by the FHSAA.

Regulation 16 provides for a Primary Care Trust to notify specified persons of specified information relating to decisions to refuse to admit, impose conditions, remove (or contingently remove) or suspend an ophthalmic medical practitioner or optician from the supplementary list.

Regulation 17 provides for the circumstances in which an ophthalmic medical practitioner or optician may or may not withdraw from the supplementary list and regulation 18 provides for the circumstances in which an ophthalmic medical practitioner or optician may not withdraw from the supplementary list.

Regulation 19 amends the statutory period for review set out in section 49N of the National Health Service Act 1977 in specified circumstances.

Regulation 20 provides for the disclosure of information to specified persons.

Regulation 21 makes transitional provision for ophthalmic medical practitioners or opticians, already assisting in the provision of general ophthalmic services before the coming into force of these Regulations, to continue to do so until not later than 31st July 2005, while their applications for inclusion in a supplementary list are determined. It also makes like provision for those applying for inclusion in a list in the first month after the coming into force of these Regulations and makes provision for those wrongly included in an ophthalmic list to be transferred to a supplementary list.

Part II (regulations 22 to 41) amends the National Health Service (General Ophthalmic Services) Regulations 1986 to ensure like provision in relation to ophthalmic lists to that provided in these Regulations for supplementary lists.

Part II also makes further provision for opticians which are corporate bodies practising as ophthalmic opticians (“corporate opticians”), extends the categories of persons who may be included in an ophthalmic list (in regulation 39(2) to (5)) and makes provision in relation to mobile services (in regulations 23(2) and (3), 24(3), 25(2) and 39(2), (3) and (5)). It further amends those Regulations (in regulation 39(9)) so as to clarify who may sign a claim for payment and provides when a counter-signature is also required.

Part II also amends those Regulations (in regulation 39(10)) so as to provide for opticians to refer patients to a doctor within the hospital eye service, to so inform the patient’s doctor and give that patient a statement to that effect. Regulation 41 requires corporate opticians already included in an ophthalmic list to provide further information required under these Regulations by 31st July 2005 and makes other transitional provisions.

Part III makes consequential amendments. Regulation 42 amends the Sight Testing (Examination and Prescription) (No. 2) Regulations 1989, so that the duty, in England, to issue a written statement as to whether the patient is being referred to a registered medical practitioner does not arise in a case to which paragraph 10(2) of Schedule 1 to the National Health Service (General Ophthalmic Services) Regulations 1986 (as amended by these Regulations) applies. Regulation 43 amends the National Health Service (Optical Charges and Payments) Regulations 1997 to make provision for the introduction of supplementary lists.