

2006 No. 1550

NATIONAL HEALTH SERVICE, ENGLAND

**The National Health Service (General Ophthalmic Services etc.)
Amendment Regulations 2006**

<i>Made</i> - - - -	<i>14th June 2006</i>
<i>Laid before Parliament</i>	<i>21st June 2006</i>
<i>Coming into force</i> - -	<i>19th July 2006</i>

The Secretary of State for Health makes these Regulations, in exercise of the powers conferred by sections 38, 39, 43D, 49I and 126(4) of the National Health Service Act 1977(a).

Citation, commencement, application and interpretation

1.—(1) These Regulations may be cited as the National Health Service (General Ophthalmic Services etc.) Amendment Regulations 2006 and shall come into force on 19th July 2006.

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

(3) In these Regulations—

“the Principal Regulations” means the National Health Service (General Ophthalmic Services) Regulations 1986(b); and

“the Schedule” means Schedule 1 (terms of service) to the Principal Regulations(c).

Amendment of regulation 12A of the Principal Regulations

2.—(1) Regulation 12A (suspension) of the Principal Regulations(d) shall be amended in accordance with the provisions of this regulation.

(2) For paragraphs (1) to (5) substitute—

(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(11); 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. Section 43D was inserted by the 2001 Act, s. 24, and amended by the 2002 Act, s.2 and Schedule 2 and the 2003 Act, ss 184 and 196 and Schedules 11 and 14. Section 49I was inserted by the 2001 Act, s. 25, and amended by the 2002 Act, s.2 and Schedule 2. 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) S.I. 1986/975.

(c) Relevant amendments to Schedule 1 are by S.I. 1996/705 and 2002/2469.

(d) Regulation 12A was inserted by S.I. 1996/705 and amended, in relation to England, by S.I. 2001/3729 and 2002/2469.

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

(3) For paragraph (7) substitute—

“(7) If a payment is made pursuant to a determination under paragraph (1), but the payee was not entitled to receive all or any part of it, if the amount to which he was not entitled has not been recovered by other means, it may be recovered as a civil debt.

(8) If an ophthalmic medical practitioner or optician is dissatisfied with a decision of a Primary Care Trust (“the original decision”)—

- (a) to refuse to make a payment to, or in respect of, him pursuant to a determination under paragraph (1);
- (b) to make a payment to, or in respect of, him pursuant to a determination under paragraph (1), but at a lower level than the level to which he considers to be correct; or
- (c) in respect of recovery of what the Primary Care Trust considers to be an overpayment,

he may ask the Primary Care Trust in writing to review the original decision and, if he does so, the Primary Care Trust shall reconsider that decision, and once it has done so, it must notify the ophthalmic medical practitioner or optician of the decision that is the outcome of its reconsideration of its original decision (“the reconsidered decision”), and give him notice of the reasons for its reconsidered decision.

(9) If the ophthalmic medical practitioner or optician remains dissatisfied (whether on the same or different grounds), he may appeal to the Secretary of State by giving him a notice of appeal within a period of 28 days beginning on the day that the Primary Care Trust notified him of the reconsidered decision.

(10) A notice of appeal under paragraph (9) shall include—

- (a) the names and addresses of the parties to the disputed decision;
- (b) a copy of the reconsidered decision; and
- (c) a brief statement of the grounds for appeal.

(11) The Secretary of State shall then send a written request to the parties to make, in writing and within a period specified by him, any representations they may wish to make about the matter (and the request to the Primary Care Trust shall include a copy of the ophthalmic medical practitioner or optician’s brief statement of the grounds for appeal).

(12) Once the period specified pursuant to paragraph (11) has elapsed, the Secretary of State shall—

- (a) give a copy of the representations received from a party to the other party; and
- (b) request in writing a party to whom a copy of representations is given to make within a period specified by him any written observations which he or it wishes to make on those representations.

(13) Once the period specified pursuant to paragraph (12)(b) has elapsed, the Secretary of State shall, as soon as is reasonably practicable, having taken into account any such representations or observations as are referred to in paragraphs (11) and (12) (if submitted within the specified periods) and such other evidence as he sees fit to consider—

- (a) determine the appeal, and shall give notice of the determination (including a record of the reasons for it) to both parties; and
- (b) give the Primary Care Trust such directions in writing, if any, on the matter as he thinks fit.

”.

Amendment of regulation 13 of the Principal Regulations

3. In regulation 13(2A) (sight tests – eligibility) of the Principal Regulations(a) for “article 8 of the European Specialist Medical Qualifications Order 1995” substitute “article 13(1) of the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003(b)”.

Amendment of Schedule 1 to the Principal Regulations

4.—(1) The Schedule shall be amended in accordance with this regulation.

(2) In paragraph 8B(c)—

(a) in sub-paragraph (1), for the words “or Primary Care Trust” to the end of the sub-paragraph, substitute “or the Commission for Healthcare, Audit and Inspection(d) in accordance with the National Health Service (Complaints) Regulations 2004(e), whether the investigation follows one under the practice based complaints procedure or not.”; and

(b) in sub-paragraph (2), for “or Primary Care Trust”, in each place it appears, substitute “or the Commission for Healthcare, Audit and Inspection”.

(3) At the end, there shall be added paragraph 12—

“Telephone services

12.—(1) A contractor shall not be a party to any contract or other arrangement under which the number for telephone services to be used by—

(a) patients to contact the contractor for any purpose related to the provision of general ophthalmic services; or

(b) any other person to contact the contractor in relation to services provided as part of the health service, and

starts with the digits 087, 090 or 091 or consists of a personal number, unless the service is provided free to the caller.

(2) In this paragraph, “personal number” means a telephone number which starts with the number 070 followed by a further 8 digits.”.

Amendment of regulation 13 of the Supplementary List Regulations

5. At the end of regulation 13 (suspension) of the National Health Service (General Ophthalmic Services Supplementary List) and (General Ophthalmic Services Amendment and Consequential Amendments) Regulations 2005(f) add—

“(18) If a payment is made pursuant to a determination under paragraph (17), but the payee was not entitled to receive all or any part of it, if the amount to which he was not entitled has not been recovered by other means, it may be recovered as a civil debt.

(19) If an ophthalmic medical practitioner or optician is dissatisfied with a decision of a Primary Care Trust (“the original decision”)—

(a) to refuse to make a payment to, or in respect of, him pursuant to a determination under paragraph (17);

(b) to make a payment to, or in respect of, him pursuant to a determination under paragraph (17), but at a lower level than the level to which he considers to be correct; or

(c) in respect of recovery of what the Primary Care Trust considers to be an overpayment,

(a) Paragraph (2A) of regulation 13 was inserted by S.I. 1999/693.

(b) S.I. 2003/1250.

(c) Paragraph 8B was inserted by S.I. 1996/705 and amended by S.I. 2002/2469.

(d) The Commission is established under section 41 of the Health and Social Care (Community Health and Standards) Act 2003 (c.43).

(e) S.I. 2004/1768.

(f) S.I. 2005/480.

he may ask the Primary Care Trust in writing to review the original decision and, if he does so, the Primary Care Trust shall reconsider that decision, and once it has done so, it must notify the ophthalmic medical practitioner or optician of the decision that is the outcome of its reconsideration of its original decision (“the reconsidered decision”), and give him notice of the reasons for its reconsidered decision.

(20) If the ophthalmic medical practitioner or optician remains dissatisfied (whether on the same or different grounds), he may appeal to the Secretary of State by giving him a notice of appeal within a period of 28 days beginning on the day that the Primary Care Trust notified him of the reconsidered decision.

(21) A notice of appeal under paragraph (20) shall include—

- (a) the names and addresses of the parties to the disputed decision;
- (b) a copy of the reconsidered decision; and
- (c) a brief statement of the grounds for appeal.

(22) The Secretary of State shall then send a written request to the parties to make, in writing and within a period specified by him, any representations they may wish to make about the matter (and the request to the Primary Care Trust shall include a copy of the ophthalmic medical practitioner or optician’s brief statement of the grounds for appeal).

(23) Once the period specified pursuant to paragraph (22) has elapsed, the Secretary of State shall—

- (a) give a copy of the representations received from a party to the other party; and
- (b) request in writing a party to whom a copy of representations is given to make within a period specified by him any written observations which he or it wishes to make on those representations.

(24) Once the period specified pursuant to paragraph (23)(b) has elapsed, the Secretary of State shall, as soon as is reasonably practicable, having taken into account any such representations or observations as are referred to in paragraphs (22) and (23) (if submitted within the specified periods) and such other evidence as he sees fit to consider—

- (a) determine the appeal, and shall give notice of the determination (including a record of the reasons for it) to both parties; and
- (b) give the Primary Care Trust such directions in writing, if any, on the matter as he thinks fit.

Transitional arrangements in relation to telephone services and general ophthalmic services

6.—(1) Where, as a result of the amendment of the Schedule by virtue of regulation 4(3), a contractor is, by virtue of a contract or other arrangement for the provision of telephone services entered into before 1st July 2006, in breach of his terms of service, no action shall be taken against the contractor in respect of that breach, provided that the contractor complies with the conditions specified in paragraph (2).

(2) The conditions referred to in paragraph (1) are that the contractor—

- (a) provides, within the time specified in the request, such details of the contract or other arrangement for telephone services as the Primary Care Trust may request; and
- (b) varies or terminates that contract or other arrangement when required to do so by the Primary Care Trust in accordance with directions from the Secretary of State under section 17 of the National Health Service Act 1977(a).

14th June 2006

Rosie Winterton
Minister of State,
Department of Health

(a) Section 17 was substituted by the 1999 Act, section 12(1) and amended by the 2001 Act, Schedule 5, paragraph 5(3) and the 2002 Act, Schedule 1, paragraph 7.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend regulations 12A and 13 of and Schedule 1 to the National Health Service (General Ophthalmic Services) Regulations 1986 (“the Principal Regulations”) and regulation 13 of the National Health Service (General Ophthalmic Services Supplementary List) and (General Ophthalmic Services Amendment and Consequential Amendment) Regulations 2005 (“the 2005 Regulations”).

Regulation 2 amends regulation 12A of the Principal Regulations on payments to practitioners suspended from an ophthalmic list.

Regulation 3 updates a cross-reference in regulation 13(2A) of the Principal Regulations.

Regulation 4 amends Schedule 1 to the Principal Regulations, which contains the terms of service with which contractors providing general ophthalmic services under the National Health Service Act 1977 have to comply. It amends paragraph 8B of that Schedule to vary terms of service regarding a contractor’s duty of co-operation with the investigation of complaints (regulation 4(2)). It also adds a new paragraph 12 to that Schedule (regulation 4(3)). The new provision bans the use of telephone services for the purposes of the provision of general ophthalmic services which make use of national rate numbers (starting with 087), premium rate numbers (starting with 090 or 091) or personal numbers (starting with 070).

Regulation 5 amends regulation 13 of the 2005 Regulations on payments to practitioners suspended from an ophthalmic supplementary list.

Regulation 6 makes transitional arrangements in relation to contractors who have an arrangement to provide general ophthalmic services where the contractor has, before the coming into force of these Regulations, entered into a contract or other arrangement for the provision of telephone services which will breach the ban on certain types of telephone services inserted by regulation 4(3) of these Regulations. Such contractors will be required to vary or terminate their existing telephone arrangements in accordance with directions given to Primary Care Trusts by the Secretary of State.

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