



National Health Service (Scotland) Act 1978

1978 CHAPTER 29

PART II

PROVISION OF SERVICES

General ophthalmic services

26 Arrangements for provision of general ophthalmic services.

(1) It shall be the duty of every Health Board to make as respects their area, in accordance with regulations, arrangements with medical practitioners having the prescribed qualifications, [^{F1}and with ophthalmic opticians], for securing [^{F2}the testing by such practitioners and opticians of the sight—

- (a) of a child;
- (b) of a person whose resources fall to be treated under the regulations as being less than his requirements or as being equal to his requirements; or
- (c) of a person of such other description as may be prescribed.

(1A) In this section—

“child” means—

- (a) a person who is under the age of 16 years; or
- (b) a person who is under the age of 19 years and receiving qualifying full-time education; and

“qualifying full time education” means full-time instruction at a recognised educational establishment or by other means accepted as comparable by the Secretary of State, and for the purposes of this definition—

- (i) “recognised educational establishment” means an establishment recognised by the Secretary of State as being, or as comparable to, a school, college or university; and

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- (ii) regulations may prescribe the circumstances in which a person is or is not to be treated as receiving full-time instruction.
- (1B) Regulations under this section may direct how a person’s resources and requirements are to be calculated and, without pre-judice to the generality of this subsection, may direct that they shall be calculated—
- (a) by a method set out in the regulations;
 - (b) by a method described by reference to a method of calculating or estimating income or capital specified in an enactment other than this section or in an instrument made under an Act of Parliament or by reference to such a method but subject to prescribed modifications;
 - (c) by reference to an amount applicable for the purposes of a payment under an Act of Parliament or an instrument made under an Act of Parliament; or
 - (d) by reference to the person’s being, or having been, entitled to payment under an Act of Parliament or an instrument made under an Act of Parliament.
- (1C) Descriptions of persons may be prescribed for the purposes of subsection (1) above by reference to any criterion and, without prejudice to the generality of this subsection, by reference to any of the following criteria—
- (a) their age;
 - (b) the fact that a prescribed person or a prescribed body accepts them as suffering from a prescribed medical condition;
 - (c) the fact that a prescribed person or a prescribed body accepts that a prescribed medical condition from which they suffer arose in prescribed circumstances;
 - (d) their receipt of benefit in money or in kind under any enactment or their entitlement to receive any such benefit; and
 - (e) the receipt of any such benefit by other persons satisfying prescribed conditions or the entitlement of other persons satisfying prescribed conditions to receive such benefits.
- (1D) Regulations which refer to an Act of Parliament or an instrument made under an Act of Parliament may direct that the reference is to be construed as a reference to that Act or instrument—
- (a) as it has effect at the time when the regulations are made; or
 - (b) both as it has effect at that time and as amended subsequently.
- (1E) Regulations may provide that a person—
- (a) whose sight is tested by a person who provides general ophthalmic services; and
 - (b) who is shown during the testing or within a prescribed time after it to fall within subsection (1) above,
- shall be taken for the purposes of the testing to have so fallen immediately before his sight was tested; and the testing shall be treated—
- (i) for the purposes of any arrangements under this section;
 - (ii) for the purposes of remuneration in respect of the testing; and
 - (iii) for any such other purpose as may be prescribed, as a testing of sight under this Act.
- (1F) Regulations shall define the services for the provision of which arrangements under this section are to be made and the services so defined are in this Act referred to as “general ophthalmic services”.]

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- (2) Regulations may make provision as to the arrangements to be made under subsection (1), and shall include provision—
- (a) for the preparation and publication of lists of medical practitioners, [^{F3}and ophthalmic opticians] respectively who undertake to provide general ophthalmic services;
 - (b) for conferring a right, subject to the provisions of this Act relating to the disqualification of practitioners, on any medical practitioner having the prescribed qualifications, [^{F4}or any ophthalmic optician], who wishes to be included in the appropriate list, to be so included;
 - (c) for conferring on any person a right to choose in accordance with the prescribed procedure the medical practitioner or ophthalmic optician by whom his sight is to be tested or from whom any prescription for the supply of optical appliances is to be obtained ^{F5};
 - (d) for the removal from the list of medical practitioners, [^{F6}or ophthalmic opticians] undertaking to provide general ophthalmic services for persons in any area of the name of a medical practitioner, [^{F7}or ophthalmic optician], as the case may be, in whose case it has been determined, in such manner as may be prescribed, that he has never provided or has ceased to provide general ophthalmic services for persons in that area.
- (3) The power conferred by this section to prescribe the qualifications to be possessed by any medical practitioner includes—
- (a) power to prescribe a requirement that the practitioner shall show, to the satisfaction of a committee recognised by the Secretary of State for the purpose, that he possesses such qualifications (including qualifications as to experience) as may be mentioned in the regulations, and
 - (b) power to confer on a person who is dissatisfied with the determination of such a committee, a right of appeal to a committee appointed by the Secretary of State, and to make provision for any matter for which it appears to the Secretary of State to be requisite or expedient to make provision in consequence of the conferring of that right.

Subordinate Legislation Made

- P1** [S. 26\(2\)](#): s. 19 (with ss. 25(2), 26(2), 27(2), 105(7) and 108(1)) power exercised by [S.I. 1991/1188](#)
[S. 26](#): for previous exercises of this power see Index to Government Orders
- P2** [S. 26\(1\)\(1C\)\(1E\)\(2\)](#)(with ss. 70(1), 73(a)(c), 74(a)(c), 105(7), 108(1) and Sch. 11 paras. 2, 2A) power exercised by [S.I. 1991/534](#)

Textual Amendments

- F1** Words substituted by [Health and Social Security Act 1984 \(c. 48, SIF 113:1\)](#), s. 1(7), [Sch. 1 Pt. II para. 1](#)
- F2** Words commencing “the testing by such practitioners” to s. 26(1F) substituted for words commencing “—(a) the” by [Health and Medicines Act 1988 \(c. 49, SIF 113:2\)](#), [s. 13\(4\)](#)
- F3** Words substituted by [Health and Social Security Act 1984 \(c. 48, SIF 113:1\)](#), s. 1(7), [Sch. 1 Pt. II para. 2](#)
- F4** Words substituted by [Health and Social Security Act 1984 \(c.48, SIF 113:1\)](#), s. 1(7), [Sch. 1 Pt. II para. 3](#)
- F5** Words repealed by [Health and Social Security Act 1984 \(c. 48, SIF 113:1\)](#), [ss. 1\(5\)\(b\)](#), 24, Sch. 8 Pt. I
- F6** Words substituted by [Health and Social Security Act 1984 \(c. 48, SIF 113:1\)](#), s. 1(7), [Sch. 1 Pt. II para. 4\(a\)](#)

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F7 Words substituted by [Health and Social Security Act 1984 \(c. 48, SIF 113:1\)](#), s. 1(7), **Sch. 1 Pt. II para. 4(b)**

Modifications etc. (not altering text)

- C1** S. 26(2) extended by [Health and Medicines Act 1988 \(c. 49, SIF 113:2\)](#), s. 17(1)
- C2** S. 26(2)(b) modified (4.3.2004) by [The National Health Service \(Tribunal\) \(Scotland\) Regulations 2004 \(S.S.I. 2004/38\)](#), **reg. 26(2)(c)** (with regs. 32-34)

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