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STATUTORY INSTRUMENTS

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**2002 No. 601**

**NATIONAL HEALTH SERVICE, ENGLAND**

**The National Health Service (General Ophthalmic Services) Amendment Regulations 2002**

<i>Made</i>	- - - -	<i>19th March 2002</i>
<i>Laid before Parliament</i>		<i>20th March 2002</i>
<i>Coming into force</i>	- -	<i>9th April 2002</i>

The Secretary of State for Health, in exercise of the powers conferred on him by sections 38, 39, 43ZA, 49O, 49Q, 49R and 126(4) of the National Health Service Act 1977<sup>(1)</sup> and of all other powers enabling him in that behalf, hereby makes the following Regulations—

**Citation, commencement and extent**

1.—(1) These Regulations may be cited as the National Health Service (General Ophthalmic Services) Amendment Regulations 2002 and shall come into force on 9th April 2002.

(2) These Regulations extend to England only.

**Amendment of the National Health Service (General Ophthalmic Services) Regulations 1986**

2. The National Health Service (General Ophthalmic Services) Regulations 1986<sup>(2)</sup> shall be amended in accordance with the following provisions of these Regulations.

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(1) 1977 c. 49; see section 128(1) as amended by the National Health Service and Community Care Act 1990 (c. 19) (“the 1990 Act”), section 26(2)(g) and (i), for the definitions of “prescribed” and “regulations”. Section 38 was amended by the Health Services Act 1980 (c. 53) (“the 1980 Act”), section 1 and Schedule 1, paragraph 51; by the Health and Social Security Act 1984 (c. 48) (“the 1984 Act”), section 1(3); by S.I. 1985/39, article 7(11); by the Health and Medicines Act 1988 (c. 49) (“the 1988 Act”), section 13(1); and by the Health Authorities Act 1995 (c. 17) (“the 1995 Act”), Schedule 1, paragraph 27. Section 39 was extended by the 1988 Act, section 17; and amended by the 1980 Act, section 1 and Schedule 1, paragraph 52; by the 1984 Act, section 1(4), Schedule 1, Part I, paragraph 1 and Schedule 8, Part I; by S.I. 1985/39, article 7(12); by the 1995 Act, Schedule 1, paragraph 28; by the Health Act 1999 (c. 8) (“the 1999 Act”), section 9(4) and the Health and Social Care Act 2001 (c. 15) (“the 2001 Act”), section 20(5) and 23(4). Section 43ZA was inserted by the 2001 Act, section 21. Sections 49F to 49R were inserted by the 2001 Act, section 25. The functions of the Secretary of State for Health under the National Health Service Act 1977 are, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales by article 2(a) of the National Assembly for Wales (Transfer of Functions) Order 1999, S.I. 1999/672 as amended by section 66(5) of the 1999 Act (c. 8). See also the 2001 Act, section 68.

(2) S.I. 1986/975; relevant amending instruments are 1989/395, 1990/1051, 1991/583, 1992/404, 1995/558, 1996/705, 1996/2320, 1998/486, 1999/2562, 1999/2841, 2001/414, 2001/1084 and 2001/3739.

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

**3.** Regulation 7A (grounds for refusal) shall be amended as follows—

- (a) for paragraph (1)(c) substitute—
  - “(c) that having contacted the referees nominated by the ophthalmic medical practitioner or optician in accordance with paragraph 9 of Schedule 1A, the Health Authority is not satisfied with the references given;”
- (b) in paragraph (1)(d) for “Services” substitute “Service”;
- (c) in paragraph (2)(e) for “7D(13)” substitute “7D(11)”;
- (d) in paragraph (3)(g) for the words from “what the facts were” to the end, substitute—
  - “the facts relating to the matter which led to such action and the reasons given by the Health Authority or equivalent body for such action;”;
- (e) in paragraph (3)(h)—
  - (i) after “included” insert “in”,
  - (ii) for “or is currently suspended from such lists” to the end, substitute—
    - “and if so, the facts relating to the matter which led to such action and the reasons given by the Health Authority or equivalent body for such action; and”;
- (f) after paragraph (3)(h) add—
  - “(i) whether he is 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 is currently suspended from such a list, and if so, the facts relating to the matter which led to the suspension and the reasons given by the Health Authority or equivalent body for the suspension.”.

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

**4.** In regulation 7B (deferment of decision)—

- (a) in paragraph (1)(a) for the words from “legal proceedings” to “in the United Kingdom” substitute—
  - “proceedings in respect of conduct which, if it had occurred in the United Kingdom, would constitute a criminal offence;”;
- (b) in paragraph (1)(b) for the words from “legal proceedings” to “in the United Kingdom” substitute—
  - “proceedings against a body corporate of which 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, in respect of conduct which, if it had occurred in the United Kingdom, would constitute a criminal offence;”;
- (c) in paragraph (1)(c) for “successful” substitute “adverse”;
- (d) for paragraph (1)(f) substitute—
  - “(f) where the FHSAA is considering an appeal by the ophthalmic medical practitioner or optician against a decision of a Health Authority to refuse to admit him to its list, or to conditionally include him in or to remove or contingently remove him from any list kept by a Health Authority, and if that appeal is successful the Health Authority would be likely to remove the ophthalmic medical practitioner or optician from the Health Authority list if he had been included;”
- (e) for paragraph (1)(g) substitute—

- “(g) where the FHSAA is considering an appeal by a body corporate of which the practitioner is, has in the preceding six months been, or was at the time of the originating events a director, against a decision of a Health Authority 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 Health Authority or equivalent body, and if that appeal is unsuccessful the Health Authority would be likely to remove the practitioner from the list if he had been included”;
- (f) in paragraph (1)(k) omit “ophthalmic medical practitioner or optician or a”; and
- (g) in paragraph (4) for “shall notify the ophthalmic medical practitioner or optician” to the end, substitute—
  - “shall notify the ophthalmic medical practitioner or optician in writing that he must—
  - (a) update his application within 28 days of the date of the notification (or such longer period as the Health Authority may agree);
  - (b) confirm in writing within the period mentioned in sub-paragraph (a) that he wishes to proceed with his application.”.

#### **Amendment of regulation 7D**

- 5. In regulation 7D (conditional inclusion)—
  - (a) in paragraph (15)(b)—
    - (i) omit “on any of its lists”,
    - (ii) after “is a director,” insert “on any of its lists”;
  - (b) for paragraph (16) substitute—
    - “(16) The Health Authority shall notify any person or body of the information specified in paragraph (14) if that person or body can establish that it is considering employing the ophthalmic medical practitioner or optician in a professional capacity and the Health Authority receives a written request (including an electronic request) from that person or body to do so.”; and
  - (c) at the end of paragraph (17) add “relating to that information”.

#### **Amendment of regulation 8**

- 6. In regulation 8 (withdrawal from ophthalmic list)—
  - (a) in paragraph (2A) after “contingently remove” insert “him”; and
  - (b) in paragraph (2B) for “the ophthalmic medical practitioner” substitute “an ophthalmic medical practitioner”.

#### **Amendment of regulation 9B**

- 7. Regulation 9B (criteria for decisions on removal) shall be amended as follows—
  - (a) in paragraph (1) for “paragraph 6” substitute “paragraph 7”;
  - (b) in paragraph (2)(g)—
    - (i) after “included” insert “in”,
    - (ii) for “what the facts were” to the end, substitute—
      - “the facts relating to the matter which led to such action and the reasons given by the Health Authority or equivalent body for such action;”;

- (c) in paragraph (2)(h)—
  - (i) after “included” insert “in”,
  - (ii) for “or is currently suspended from such lists” to the end, substitute—

“and if so, the facts relating to the matter which led to such action and the reasons given by the Health Authority or equivalent body for such action; and”;
- (d) after paragraph (2)(h) add—
  - “(i) whether he is 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 is currently suspended from such a list, and if so, the facts relating to the matter which led to the suspension and the reasons given by the Health Authority or equivalent body for the suspension.”;
- (e) in paragraph (3) for “paragraph 6” substitute “paragraph 7”;
- (f) for paragraph (4)(b) substitute—

“the length of time since the last incident of fraud occurred, and since any investigation into that incident of fraud was concluded.”;
- (g) in paragraph (4)(e) for “the investigation” substitute “any investigation into the incident of fraud”;
- (h) in paragraph (4)(f)—
  - (i) after “included” insert “in”,
  - (ii) for “what the facts were” to the end, substitute—

“the facts relating to the matter which led to such action and the reasons given by the Health Authority or equivalent body for such action;”;
- (i) in paragraph (4)(g)—
  - (i) after “included” insert “in”,
  - (ii) for “or is currently suspended from such lists” to the end, substitute—

“and if so, the facts relating to the matter which led to such action and the reasons given by the Health Authority or equivalent body for such action; and”;
- (j) after paragraph (4)(g) add—
  - “(h) whether he is 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 is currently suspended from such a list, and if so, the facts relating to the matter which led to the suspension and the reasons given by the Health Authority or equivalent body for the suspension.”;
- (k) in paragraph (5) for “paragraph 6” substitute “paragraph 7”;
- (l) in paragraph (6)(a) for “it” substitute “any incident”;
- (m) for paragraph (6)(b) substitute—
  - “(b) the length of time since the last such incident occurred, and since any investigation into that incident was concluded.”;
- (n) in paragraph (6)(d) for “the incident” substitute “any incident”;
- (o) in paragraph (6)(g)—
  - (i) after “included” insert “in”,
  - (ii) for “what the facts were” to the end, substitute—

“the facts relating to the matter which led to such action and the reasons given by the Health Authority or equivalent body for such action;”;

(p) in paragraph (6)(h)—

(i) after “included” insert “in”,

(ii) for “or is currently suspended from such lists” to the end, substitute—

“and if so, the facts relating to the matter which led to such action and the reasons given by the Health Authority or equivalent body for such action; and”;

(q) after paragraph (6)(h) add—

“(i) whether he is 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 is currently suspended from such a list, and if so, the facts relating to the matter which led to the suspension and the reasons given by the Health Authority or equivalent body for the suspension.”.

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

**8.** In Regulation 9D (notifications by Health Authorities)—

(a) in paragraph (1), for “it shall notify the persons or bodies” to the end, substitute “it shall notify the persons and bodies specified in paragraph (2), and shall additionally notify those specified in paragraph (3) if so requested by those persons or bodies in writing (including electronically), of the matters set out in paragraph (4).” and

(b) for paragraph (3) substitute—

“(3) The persons or bodies who shall be additionally notified in accordance with paragraph (1) are persons or bodies that can establish that they are considering employing the ophthalmic medical practitioner or optician in a professional capacity.”.

#### **Amendment of regulation 9E**

**9.** In regulation 9E (procedure on removal)—

(a) in paragraph (1)(a), for “regulation 7C” substitute “regulation 9C”; and

(b) in paragraph (3)(c), omit “calendar”.

#### **Amendment of regulation 9G**

**10.** In regulation 9G (procedure on review of Health Authority decision)—

(a) in paragraph (1)(c), omit “calendar”;

(b) omit paragraph (1)(e);

(c) in paragraph (2), omit “, and notifying the ophthalmic medical practitioner or optician of its decision and the reasons for it”; and

(d) omit paragraph (3).

#### **Amendment of regulation 12A**

**11.** In paragraph (5) of regulation 12A, for “doctor” substitute “ophthalmic medical practitioner or optician”.

### **Amendment of regulation 13**

12. In regulation 13(2)(c) and (2)(g) (sight tests-eligibility) for “£71.00” on each occasion it occurs, substitute “£72.20”.

### **Amendment of Schedule 1**

13. In paragraph 6A of Schedule 1 (terms of service)—

- (a) in sub-paragraph (1)(g) omit “, where the outcome was adverse”;
- (b) in sub-paragraph (3) omit from “by them” to the end; and
- (c) for sub-paragraph (5)(b) substitute—
  - “(b) is convicted elsewhere of an offence, or what would constitute a criminal offence if committed in England and Wales, or is subject to a penalty which is the equivalent of being bound over or cautioned”.

### **Amendment of Schedule 2**

14.—(1) Schedule 2 (information and undertakings) shall be renumbered Schedule 1A and in paragraph 7 of that Schedule—

- (a) in sub-paragraph (a)(v), for “has not” substitute “have not”;
- (b) in sub-paragraph (a)(ix), omit “where the outcome was adverse.”
- (c) in sub-paragraph (a)(x) for “Services” substitute “Service”;
- (d) in sub-paragraph (b)(ii) for “will be” substitute “is”.
- (e) in sub-paragraph (b)(iii), for “has not” substitute “have not”; and
- (f) for sub-paragraph (b)(vi), substitute—
  - “(vi) it is to his knowledge, or has been where the outcome was adverse, subject to any investigation by the National Health Service Counter Fraud Service in relation to a fraud case,”.

(2) In regulations 7, 7A and 9B, for “Schedule 2” wherever it appears substitute “Schedule 1A”.

Signed by authority of the Secretary of State for Health

19th March 2002

*Hazel Blears*  
Parliamentary Under Secretary of State,  
Department of Health

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## EXPLANATORY NOTE

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

Regulations 3 to 11 and 13 to 14 make minor amendments to the National Health Service (General Ophthalmic Services) Regulations (“the principal Regulations”).

Regulation 12 amends regulation 13 of the principal Regulations to increase the income level applying to recipients of tax credits for the purposes of calculating whether a person’s resources shall be treated as being less than or equal to his requirements in determining eligibility for NHS sight tests.

As a result of the transfer of certain functions of the Secretary of State in relation to Wales to the National Assembly for Wales, these amendments apply to England only.