

2004 No. 36

NATIONAL HEALTH SERVICE

**The National Health Service (General Ophthalmic Services)
(Scotland) Amendment Regulations 2004**

Made - - - - - *2nd February 2004*

Laid before the Scottish Parliament *3rd February 2004*

Coming into force - - - *4th March 2004*

The Scottish Ministers, in exercise of the powers conferred by sections 26, 105(7) and 108(1) of the National Health Service (Scotland) Act 1978(a) and of all other powers enabling them in that behalf, hereby make the following Regulations:

Citation and commencement

1. These Regulations may be cited as the National Health Service (General Ophthalmic Services) (Scotland) Amendment Regulations 2004 and shall come into force on 4th March 2004.

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

2.—(1) The National Health Service (General Ophthalmic Services) (Scotland) Regulations 1986(b) are amended as follows.

(2) In regulation 6(1) (ophthalmic list)(c)—

- (a) for “30(1), 31” substitute “29B(2), 30(2) or (5), 31(1)(b)(d)”; and
- (b) after “Act” insert “or who may not be added by virtue of the provisions of regulation 26(1) (practitioner subject to an inquiry in a fraud case) of the National Health Service (Tribunal) (Scotland) Regulations 2004(e)”.

(a) 1978 c.29; section 26 was amended by the Health and Social Security Act 1984 (c.48), section 1(5) and (7), section 13(4), Schedule 1, Part II, paragraphs 1 to 4 and Schedule 8, was extended by the Health and Medicines Act 1988 (c.49), section 17 and amended by the Health Act 1999 (c.9), section 56; section 105(7), which contain provisions relevant to the making regulations, was amended by the Health Services Act 1980 (c.53), Schedule 6, paragraph 5 and Schedule 7 and by the Health and Social Services and Social Security Adjudications Act 1983 (c.41), Schedule 9, paragraph 24; section 108(1) contains definitions of “prescribed” and “regulations” relevant to the exercise of the statutory powers under which these Regulations are made. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46).

(b) S.I. 1986/965. Relevant amending instruments are S.I. 1988/543, 1996/843, 1999/725 and S.S.I. 1999/55 and 2001/62.

(c) Regulation 6(1) was substituted by S.I. 1988/543 and amended by S.I. 1996/843 and S.S.I. 1999/55.

(d) Section 29B was inserted by the Health Act 1999 (c.8) (“the 1999 Act”), Section 58(1) and amended by the Community Care and Health (Scotland) Act 2002 asp 5 (“the 2002 Act”), schedule 2, paragraph 2(6). Section 30 was inserted by the 1999 Act, section 58(2) and amended by the 2002 Act, schedule 2, paragraph 2(7). Section 31 was renumbered section 31(1) by the 1999 Act, Schedule 4, paragraph 49.

(e) S.S.I. 2004/38.

- (3) In regulation 8(a) (withdrawal from ophthalmic list)–
- (a) for “that the continued inclusion of a contractor in the Ophthalmic List would be prejudicial to the efficiency of the general ophthalmic services” substitute “(the NHS Tribunal), or a request for review has been made to the Tribunal or a review is to be made by the Tribunal under section 30 of the Act (review etc. of disqualification)”; and
 - (b) after “representations” in the second place where it occurs insert “, request for review or review”.
- (4) In Schedule 1 (terms of service)–
- (a) in paragraph 7(1)(a) (deputies)(a) and in paragraph 8(3)(a) (employees)(b)–
 - (i) for “29(3)(b)” substitute “29B(2)(b) or 30(2) or (5)”; and
 - (ii) for “29(3)(c)” substitute “29B(3) or 30(6)”; and
 - (b) in paragraph 11(1) (use of disqualified name)(c)–
 - (i) omit “under section 29 of the Act”; and
 - (ii) for “30(1), 31” substitute “29B(2), 30(2) or (5), 31(1)(b)”.

MALCOLM CHISHOLM
Authorised to sign by the Scottish Ministers

St Andrew’s House,
Edinburgh
2nd February 2004

(a) Paragraph 7(1)(a) was inserted by S.I. 1996/843 and amended by S.S.I. 1999/55.
(b) Paragraph 8(3)(a) was inserted by S.I. 1996/843 and amended by S.S.I. 1999/55.
(c) Paragraph 11(1) was amended by S.I. 1996/843.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the National Health Service (General Ophthalmic Services) (Scotland) Regulations 1986 (“the 1986 Regulations”), which make arrangements under which ophthalmic medical practitioners and ophthalmic opticians provide general ophthalmic services under the National Health Service (Scotland) Act 1978 (c.29) (“the Act”).

These Regulations make amendments to regulation 6 (ophthalmic list) and regulation 8 (withdrawal from ophthalmic list) of, and Schedule 1 (terms of service) to, the 1986 Regulations. These amendments are consequential upon the National Health Service (Tribunal) (Scotland) Regulations 2004 (“the 2004 Regulations”) and amendments made to the Act by the Health Act 1999 (c.8) (“the 1999 Act”), relating to the NHS Tribunal and the disqualification of practitioners providing services under Part II of the Act.

In particular, these Regulations—

- (a) clarify that a Health Board or primary care NHS trust shall not include in the Ophthalmic List persons who may not be added to that list, by virtue of the provisions of regulation 26 of the 2004 Regulations, because they are subject to an inquiry in a fraud case, until proceedings in that case are finally concluded; and
- (b) replace references to provisions of the Act, with references to provisions of the Act as amended by the 1999 Act.

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