

**2009 No. 288**

**NATIONAL HEALTH SERVICE**

**The National Health Service (Optical Charges and Payments)  
(Scotland) Amendment (No. 2) Regulations 2009**

<i>Made</i> - - - -	<i>5th August 2009</i>
<i>Laid before the Scottish Parliament</i>	<i>6th August 2009</i>
<i>Coming into force</i> - -	<i>7th August 2009</i>

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 70(1), 73(a), 74(a), 105(7) and 108(1) of, and by paragraphs 2 and 2A of Schedule 11 to, the National Health Service (Scotland) Act 1978(a) and all other powers enabling them to do so.

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the National Health Service (Optical Charges and Payments) (Scotland) Amendment (No. 2) Regulations 2009 and come into force on 7th August 2009.

(2) In these Regulations “the principal Regulations” means the National Health Service (Optical Charges and Payments) (Scotland) Regulations 1998(b).

**Amendment of the principal Regulations**

2.—(1) The principal Regulations are amended as follows.

(2) After Regulation 8(2) insert—

“**8(2A).**—(1) A person described in paragraph (2) is prescribed as being a person for whom payments are to be made by the Health Board for the supply of an optical appliance for which a prescription has been given in consequence of a testing of sight under the Act.

(2) A person referred to in paragraph (1) is a person who at the time of the payment for the supply of an optical appliance on or after 6th April 2009, is a member of a family—

(i) which satisfies the criteria specified in regulation 8(3)(k)(i); and

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(a) 1978 c.29; section 70(1) was amended by the Health and Medicines Act 1988 (c.49) (“the 1988 Act”), Schedule 3 and the Smoking, Health and Social Care (Scotland) Act 2005 (asp 13) (“the 2005 Act”), section 14; section 105(7) was amended by the Health Services Act 1980 (c.53), Schedule 6, paragraph 5(1) and Schedule 7, the Health and Social Services and Social Security Adjudications Act 1983 (c.41), Schedule 9, Part I, paragraph 24 and the Health Act 1999 (c.8), Schedule 4, paragraph 60; section 108(1) contains definitions of “prescribed” and “regulations” relevant to the exercise of the statutory powers under which these Regulations are made; paragraph 2(1) of Schedule 11 was substituted by the 1988 Act, Schedule 2, paragraph 15(1), and paragraph 2A of Schedule 11 was inserted by the Health and Social Security Act 1984 (c.48), Schedule 1, Part II, paragraph 7 and amended by the 1988 Act, section 13(2) and (5) and the 2005 Act, section 13(3). 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. 1998/642; amended by S.I. 1999/748 and S.S.I. 1999/64, 2000/45 and 395, 2001/88, 2002/17, 86 and 224, 2003/218 and 431, 2004/97 and 168, 2005/119, 2006/138, 2007/192, 2008/106 and 289 and 2009/86.

- (ii) where the relevant income of the person or persons to whom an award of tax credit was made under section 14 of the Tax Credits Act 2002<sup>(a)</sup> is determined at the time of the award to exceed £15,050, but not to exceed £15,276.

(3) A person prescribed in paragraph (1) is an eligible person for the purposes of Parts IV and V”.

(3) In regulation 8(4)(c)(b) (circumstances where a person’s resources are treated as less than his requirements), after “and (l)” insert “, and 8(2A)”.

(4) In regulation 12(6)(a)(c) (use of vouchers for the supply of optical appliances) for “or (d)”, substitute “or (d), or (2A)”.

(5) In regulation 12A(1)(d) (notice of entitlement), after “8(3)(k)” insert “or 8(2A)”.

(6) In regulation 15(1)(e) (eligibility – replacement or repair)—

(a) in sub-paragraph (b) for “or (e)” substitute, “or (e), or sub-paragraph (c) of this paragraph”; and

(b) after sub-paragraph (b) insert—

“(c) a person referred to in sub paragraph (b) includes a person who at the time of the payment for the replacement or repair on or after 6th April 2009 is a member of a family described in regulation 8(2A)(2).”.

(7) In regulation 16(2)(a) and (3)(a)(f) (completion of vouchers for replacement or repair) for “or (d)”, substitute “or (d), or (2A)”.

(8) In regulation 20(1) (payments to patients in respect of the supply, replacement or repair of optical appliances) after “8(2)” insert “, 8(2A)”.

(9) In regulation 20(2) (payments to patients in respect of the supply, replacement or repair of optical appliances), for “or (d)”, substitute “or (d), or (2A)”.

*ALEX NEIL*

Authorised to sign by the Scottish Ministers

St Andrew’s House,  
Edinburgh  
5th August 2009

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(a) 2002 c.21.  
(b) Regulation 8(4)(2) was substituted by S.S.I. 2003/218.  
(c) Regulation 12(6) was inserted by S.S.I. 2001/88.  
(d) Regulation 12A was inserted by S.S.I. 2003/218 and amended by S.S.I. 2006/138.  
(e) Regulation 15(1)(b) was amended by S.S.I. 2000/45.  
(f) Regulation 16(2) and (3) were inserted by S.S.I. 2001/88.

## EXPLANATORY NOTE

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

These Regulations amend the National Health Service (Optical Charges and Payments) (Scotland) Regulations 1998 (“the principal Regulations”) which provide for payments to be made by means of a voucher system, in respect of costs incurred by certain categories of persons in connection with the supply, replacement and repair of optical appliances.

Regulation 2(2) inserts a new regulation 8(2A) to prescribe an additional category of person to whom payments are to be made by a Health Board for the supply of an optical appliance. This category is a person who at the time of the payment for the supply of an optical appliance on or after 6th April 2009 is a member of a family one member of which is receiving working tax credit and child tax credit; or working tax credit which includes a disability element or severe disability element; or child tax credit but is not eligible for workers tax credit, but in each case only where the relevant income of the person or persons to whom an award of a tax credit was made under section 14 of the Tax Credits Act 2002 was determined at the time of the award to exceed £15,050, but not to exceed £15,276.

Regulations 2(3), 2(4) and 2(5) amend regulations 8(4)(c), 12(6)(a) and 12A(1) respectively to include references to regulation 8(2A).

Regulation 2(6) amends regulation 15(1)(b) to include the additional category of persons in those who are eligible for a payment in respect of the replacement or repair of an optical appliance.

Regulations 2(7), 2(8) and 2(9) amend regulations 16(2)(a) and (3)(a), 20(1) and 20(2) of the principal Regulations to include a reference to the new regulation 8(2A).

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