

1989 No 387 (S.41)

NATIONAL HEALTH SERVICE, SCOTLAND

The National Health Service (General Ophthalmic Services) (Scotland) Amendment Regulations 1989

Made - - - - - *8th March 1989*

Laid before Parliament *10th March 1989*

Coming into force *1st April 1989*

The Secretary of State, in exercise of the powers conferred on him by sections 26, 105(7) and 108(1) of the National Health Service (Scotland) Act 1978(a) and of all other powers enabling him in that behalf, hereby makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the National Health Service (General Ophthalmic Services) (Scotland) Amendment Regulations 1989 and shall come into force on 1st April 1989.

(2) In these Regulations, the “principal Regulations” means the National Health Service (General Ophthalmic Services) (Scotland) Regulations 1986(b).

Amendment of regulation 2 of the principal Regulations

2. In regulation 2(1) of the principal Regulations (interpretation)—

(a) after the definition of “Board” there shall be inserted the following definitions:—

““capital limit” means the amount prescribed for the purposes of section 22(6) of the Social Security Act 1986(c) as it applies to income support;

“complex appliance” means an optical appliance at least one lens of which—
(i) has a power in any one meridian of plus or minus 10 or more dioptries, or
(ii) is a lenticular lens;”

(b) after the definition of “doctor” there shall be inserted the following definition:—

““eligible person” means a person who in accordance with regulation 14, may have his sight tested under general ophthalmic services;”

(c) after the definition of “enactment” there shall be inserted the following definitions:—

““family credit” means family credit under Part II of the Social Security Act 1986;

“general ophthalmic services” means the services which a contractor must provide pursuant to paragraph 10 of the terms of service;

(a) 1978 c.29; section 26 was amended by the Health and Social Security Act 1984 (c.48) (“the 1984 Act”), section 1(5) and Schedule 1, Part II, paragraphs 1 to 4 and by the Health and Medicines Act 1988 (c.49) (“the 1988 Act”), section 13(4); section 105(7), which contains provisions relevant to the making of Regulations, was amended by the Health Service Act 1980 (c.53), Schedule 6, paragraph 5; section 108(1) contains definitions of “prescribed” and “regulations” relevant to the exercise of the statutory powers under which these Regulations are made.

(b) S.I. 1986/965, amended by S.I. 1988/543.

(c) 1986 c.50; regulation 45 of the Income Support (General) Regulations 1987 (S.I. 1987/1967) has prescribed the amount of £6,000 as the capital limit.

“income support” means income support under Part II of the Social Security Act 1986 and includes personal expenses addition, special transition addition and transitional addition as defined in regulation 2(1) of the Income Support (Transitional) Regulations 1987(a);

“notice of entitlement” means a notice issued under regulation 7 of the Remission Regulations for the purposes of remission of charges under the Act;”

- (d) after the definition of “qualifications” there shall be inserted the following definition:—
“the Remission Regulations” means the National Health Service (Travelling Expenses and Remission of Charges) (Scotland) Regulations 1988(b) and a reference to those Regulations is to be construed as a reference to them as they have effect on the date of making of the National Health Service (General Ophthalmic Services) (Scotland) Amendment Regulations 1989 and as amended subsequently.”;
- (e) the definition of “sight test” shall be deleted.

Amendment of regulation 13 of the principal Regulations

3. Regulation 13 of the principal Regulations (payment for services) shall be renumbered paragraph (1) and there shall be inserted thereafter the following—

“(2) Where in accordance with regulation 14B(4) a Board has paid to a patient in respect of a testing of sight an amount which exceeds the fee payable to the contractor, in accordance with the Statement, for that testing, it shall deduct the excess from remuneration otherwise payable to the contractor.”

Substitution of regulation 14 of the principal Regulations

4. For regulation 14 (sight tests) of the principal Regulations there shall be substituted the following—

“Sight Tests – eligibility

14.—(1) A person may have his sight tested under general ophthalmic services if, at the time of the testing of sight, he is—

- (a) under the age of 16 years;
- (b) under the age of 19 years and receiving qualifying full-time education within the meaning of section 26(1A) of the Act;
- (c) a person whose resources are treated in accordance with paragraph (2) as being less than or equal to his requirements;
- (d) a person who requires to wear a complex appliance;
- (e) a person who has been certified as—
 - (i) so blind or
 - (ii) substantially and permanently handicapped by defective vision and likely to become so blind

as to be unable to perform any work for which eyesight is essential and in consequence is registered as such in a register maintained by or on behalf of a regional council or islands council;

- (f) a person who is or has been diagnosed by a doctor as suffering from diabetes or glaucoma; or
- (g) aged 40 or over and is the parent, brother or sister or child of a person who has been diagnosed by a doctor as suffering from glaucoma.

(2) A person’s resources shall be treated as being less than or equal to his requirements if—

- (a) he is in receipt of income support;
- (b) he is a member of the same family as a person who is in receipt of income support;
- (c) he is in receipt of family credit;
- (d) he is a member of the same family as a person who is in receipt of family credit;

(a) S.I. 1987/1969 amended by S.I. 1988/521 and 670.

(b) S.I. 1988/546, amended by S.I. 1989/393.

- (e) his income resources as calculated in accordance with regulation 6 of, and Schedule 1 to, the Remission Regulations for the purposes of remission of charges under the Act are less than or equal to his requirements as so calculated and his capital resources as so calculated do not exceed the capital limit; or
- (f) he is a member of the same family as a person described in paragraph (e) of this paragraph.

(3) In paragraph 1(e) the expressions “regional council” and “islands council” have the meanings given to them respectively by the Local Government (Scotland) Act 1973(a).

(4) In paragraph (2)(b) and (f) “family” has the meaning assigned to it by section 20(11) of the Social Security Act 1986 as it applies to income support(b) and in paragraph 2(d) it has the meaning assigned to it by section 20(11) of that Act as it applies to family credit(c).

Sight tests – applications

14A.—(1) An eligible person who wishes to have his sight tested under general ophthalmic services may make an application to any contractor for his sight to be tested.

(2) The application shall be made on a form provided for that purpose to contractors by the Board and shall contain a written declaration signed by the applicant to the effect that he is an eligible person.

(3) In addition, a person who is an eligible person—

- (a) but only by virtue of regulation 14(1)(c) and (2)(e) or (f) shall show to the contractor a current notice of entitlement;
- (b) but only by virtue of regulation 14(1)(d), shall show to the contractor the prescription for a complex appliance given to him on the occasion when his sight was last tested;
- (c) but only by virtue of regulation 14(1)(f), shall, on a form provided for that purpose to contractors by the Board, provide the contractor with the name and address of his doctor and give his consent to the Board seeking confirmation of his diabetes or glaucoma from his doctor.

(4) A contractor to whom an application for a testing of sight is made shall, before making any test of the person’s sight—

- (a) subject to paragraph (5), satisfy himself that the person is an eligible person and that the requirements of paragraph (2) and such of the requirements of paragraph (3) as are applicable are met;
- (b) ensure that particulars of the patient and the approximate date of the last testing, if any, of his sight are inserted in a sight test form by the patient or on his behalf; and
- (c) satisfy himself that the testing of sight is necessary.

(5) Where an eligible person to whom paragraph (3)(b) applies is unable to meet its requirements, the contractor may, instead of satisfying himself that those requirements are met, satisfy himself that the person is an eligible person by referring to his own records or by measuring the power of the lenses of the person’s existing optical appliance by means of a focimeter or other suitable means.

Sight test treated as a test under general ophthalmic services

14B.—(1) A person whose sight is tested by a contractor but who was not an eligible person when the sight test began and—

- (a) who is shown during the testing to fall within the description specified in sub-paragraph (d) of regulation 14(1); or
- (b) who is shown, in accordance with paragraph (3), within 3 months after the testing to fall within either of the descriptions specified in sub-paragraph (e) or (f) of regulation 14(2),

shall be taken for the purposes of the testing to have so fallen immediately before his sight was tested.

(a) 1973 c.65.

(b) 1986 c.50; see S.I. 1987/1967 regulations 14 to 16, as amended by S.I. 1988/663 and 1445.

(c) See S.I. 1987/1973, regulations 6 to 9, as amended by S.I. 1988/660.

(2) Where paragraph (1) applies the testing shall be treated as a testing of sight under the Act for the purposes of regulation 8(1)(a) of the National Health Service (Optical Charges and Payments) (Scotland) Regulations 1989^(a) as well as for the purposes specified in section 26(1E)(i) and (ii) of the Act.

(3) For the purposes of paragraph (1)(b) a person is shown to fall within the description specified in sub-paragraph (e) or (f) of regulation 14(2) if he presents to the Board a notice of entitlement which is effective for a period which includes the date of the testing of sight or for a period beginning no later than 14 days after the date of the testing of sight.

(4) Where a testing of a person's sight is treated by virtue of paragraphs (1)(b) and (3) as a testing of sight under the Act the Board shall, on being presented with a receipt for, or other evidence of, any fee paid for the testing, and on being satisfied as to its amount, pay to that person an amount equal to that fee."

Amendment of regulation 15

5. For regulation 15(1)(b) there shall be substituted the following—

- "(b) on behalf of any other person who is incapable of making such an application or giving such a signature by—
- (i) an adult relative,
 - (ii) any other adult who has the care of that person, or
 - (iii) any other adult competent to make such an application or give such a signature in accordance with any rule of law."

Amendment of terms of service

6.—(1) Schedule 1 to the principal Regulations (terms of service) shall be amended according to the following provisions of this regulation.

(2) In paragraph 2, for sub-paragraph (c) there shall be substituted the following:—

- "(c) regulation 9(2) to (6) of the National Health Service (Optical Charges and Payments) (Scotland) Regulations 1989;"

(3) In paragraph 5 (notices) for "the National Health Service (Payments for Optical Appliances (Scotland) Regulations 1986" there shall be substituted "the National Health Service (Optical Charges and Payments) (Scotland) Regulations 1989".

St. Andrew's House, Edinburgh
8th March 1989

Michael B. Forsyth
Parliamentary Under Secretary of State,
Scottish Office

(a) S.I. 1989/392.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the National Health Service (General Ophthalmic Services) (Scotland) Regulations 1986 which provide for the arrangements under which ophthalmic medical practitioners and ophthalmic opticians ("contractors") provide general ophthalmic services.

As a consequence of the Health and Medicines Act 1988, from 1st April 1989 only certain categories of persons will be entitled to sight tests under general ophthalmic services. Those persons are specified by regulation 4 as children (including those under 19 in full-time education), persons entitled to income support or to family credit or to full remission of certain National Health Service charges, persons needing complex optical appliances, the registered blind or partially sighted, diabetics, those suffering from glaucoma and certain relatives of those suffering from glaucoma.

Regulation 4 also provides for those shown as a result of the sight test to need a complex optical appliance or who establish entitlement to full remission of NHS charges after the test to be treated as having had their sight tested under general ophthalmic services, so that any fee paid may be recovered from the Health Board. The appropriate adjustment is made to the contractor's remuneration (regulation 3).