

Statutory Document No. 2004/0018



National Health Service Act 2001

NATIONAL HEALTH SERVICE (GENERAL OPHTHALMIC SERVICES) REGULATIONS 2004¹

Laid before Tynwald:

16 March 2004

Coming into Operation:

1st April 2004

In exercise of the powers conferred on the Department of Health and Social Security by section 10 of the National Health Service Act 2001¹, and of all other enabling powers, and after the consultations required by section 42(5) of that Act, the following Regulations are hereby made: —

1 Citation, commencement and Interpretation

(1) These Regulations may be cited as the National Health Service (General Ophthalmic Services) Regulations 2004, and shall come into operation on the 1st April 2004.

(2) In these Regulations —

"**the Act**" means the National Health Service Act 2001;

"**the Association**" means the Isle of Man Association of Optometrists and Registered Opticians;

"**contractor**" means a person who has undertaken to provide general ophthalmic services and whose name is included in the ophthalmic list;

"**deputy**" means an ophthalmic medical practitioner or optician, whether or not himself a contractor, who provides general ophthalmic services on behalf of a contractor otherwise than as a director or salaried employee of that contractor;

"**doctor**" means a registered medical practitioner who holds a licence to practise;

"**the health service**" means the health service maintained under section 1 of the Act;

"**the nominated officer**" means the officer nominated to determine an application under regulation 4(2) or to investigate a complaint under paragraph 15(2) of Schedule 1, as the case may be;

¹ 2001 c.14

"**the ophthalmic list**" means a list of ophthalmic medical practitioners and opticians maintained under section 11 of the Act;

"**ophthalmic medical practitioner**" means a doctor holding the prescribed qualifications for the purposes of providing general ophthalmic services (see regulation 2);

"**optician**" means an ophthalmic optician (within meaning of the Opticians Act 1996²);

"**patient**" means a person for whom a contractor has agreed to provide general ophthalmic services;

"**sight test**" includes such examination of the eyes as may be required;

"**sight test form**" means a form which in accordance with the Statement, is to be completed for the purposes of payments in respect of a sight test;

"**the Statement**" has the meaning given to it by regulation 8(1);

"**the terms of service**" means the terms set out in Schedule 1.

(3) Until the 1st January 2005 the definition of "doctor" in subsection (2) shall have effect with the omission of the words "who holds a licence to practise".

2 Qualifications of ophthalmic medical practitioners

The qualifications which a doctor is to possess for the purposes of section 11 of the Act (general ophthalmic services) are the prescribed qualifications for the purposes of providing general ophthalmic services —

- (a) in England and Wales under the National Health Service Act 1977 (an Act of Parliament)³;
- (b) in Scotland under the National Health Service (Scotland) Act 1978 (an Act of Parliament)⁴, or
- (c) in Northern Ireland under the Health and Personal Social Services (Northern Ireland) Order 1972⁵.

3 Ophthalmic list

(1) The ophthalmic list shall be divided into 2 parts, one relating to ophthalmic medical practitioners and the other relating to opticians.

(2) Each part shall contain —

- (a) the names of persons who are entitled to be included in it;

² 1996 c.6

³ 1977 c.49

⁴ 1978 c.29

⁵ SI 1972/1265

- (b) the addresses of any places at which they have undertaken to provide general ophthalmic services;
 - (c) particulars of the days on which and hours between which general ophthalmic services will normally be available at those addresses.
 - (d) the names of every other optician who is regularly engaged as a deputy, director or employee in the provision of general ophthalmic services at any of those addresses.
- (3) The Department shall send a copy of the ophthalmic list to the Isle of Man Medical Society and the Association and shall notify them of any change made in that list.

4 Application for inclusion in ophthalmic list and notification

- (1) An optician who wishes to be included in the ophthalmic list shall send to the Department an application to that effect which shall indicate whether the applicant is an ophthalmic medical practitioner, a registered ophthalmic optician or a body corporate carrying on business as ophthalmic opticians, and shall include —
- (a) an undertaking to provide general ophthalmic services and to comply with the terms of service; and
 - (b) the information, as respects the matters mentioned in regulation 3(2), which it is proposed shall be contained in the ophthalmic list.
- (2) The application shall be determined by an officer nominated by the Department for the purpose, who shall inform the applicant of his decision and, where the application is refused, the reasons for refusal and the right to appeal under regulation 5.
- (3) A contractor shall within 14 days of any change or addition affecting the entries which the ophthalmic list is required to contain in relation to him notify the Department accordingly.

5 Appeal

- (1) Where an application to be included in the ophthalmic list has been refused, the applicant may appeal to the Department by giving notice in writing to the Department, stating the grounds of appeal, within 21 days after the refusal is notified to him, or within such further time as the Department may allow.
- (2) The Department shall appoint a person (being a member or officer of the Department) to determine the appeal, who, if he considers that it can properly be determined without an oral hearing, shall determine the appeal summarily and notify the applicant of his decision.
- (3) If the appointed person does not determine appeal summarily under paragraph (2), he shall, not less than 7 days before the date fixed for the

hearing, notify the appellant and the nominated officer of the time and place at which the appeal will be heard.

- (4) The applicant and the nominated officer may attend the hearing and be heard either in person or by an advocate or other representative. The procedure at the hearing shall be such as the appointed person may determine.
- (5) The appointed person shall as soon as may be thereafter notify the applicant and the nominated person in writing of his decision on the appeal, with the grounds therefor, and if he allows the appeal shall direct the nominated officer to grant the application.

6 Withdrawal from ophthalmic list

- (1) Subject to paragraphs (2) and (3), where a contractor gives notice in writing to the Department that he wishes to withdraw from the ophthalmic list, his name shall be removed from the list at the expiration of 3 months from the date of that notice or of such shorter period as the contractor and the Department may agree.
- (2) If an enquiry is instituted as to whether the continued inclusion of a contractor would be prejudicial to the efficiency of the general ophthalmic services, he shall not, except with the consent of the Department and subject to such conditions as it may impose, be entitled to have his name removed from the list pending the termination of the inquiry.
- (3) The Department shall not agree to a contractor's withdrawal from the ophthalmic list unless and until it is satisfied that satisfactory arrangements have been made for the completion of any general ophthalmic services which he has undertaken to provide.

7 Removal from ophthalmic list

- (1) Where the Department has determined that a contractor —
 - (a) has died, or
 - (b) has otherwise ceased to be a doctor or optician,it shall remove his name from the ophthalmic list.
- (2) If it appears to the Department that a contractor whose name has been included for the preceding 6 months in the ophthalmic list has not during that period provided general ophthalmic services for persons on the Island, it shall refer the matter to an officer nominated by it, who shall —
 - (a) give to the contractor 28 days notice of the proposal to remove his name from the list;
 - (b) afford the contractor an opportunity to make representations to him in writing or, if he so wishes, orally; and

- (c) consult the Isle of Man Medical Society or the Association, as the case maybe.
- (4) No determination under this regulation shall be made in respect of any contractor who is called into —
 - (a) whole-time service in the Armed Forces of the Crown in a national emergency as a volunteer or otherwise, or
 - (b) compulsory whole-time service in those forces, including service resulting from an reserve liability or any equivalent service by a person liable for whole-time service in those forces,until 6 months after completion of that service.
- (5) Nothing in this regulation prejudices the right of a person to have his name included again in the ophthalmic list.

8 The Statement

- (1) The Department shall, after consulting the Isle of Man Medical Society and the Association, make provision in a determination ("the Statement") as to the fees to be paid by the Department to ophthalmic medical practitioners and opticians for —
 - (a) the testing of sight, and
 - (b) visits to the homes of persons for the purpose of testing their sight under regulation 12.
- (2) Any such determination —
 - (a) shall be published; and
 - (b) may be amended, in whole or part, after consultation with the Isle of Man Medical Society and the Association.

9 Terms of service

The arrangements for the provision of general ophthalmic services which it is the duty of the Department under section 10 of the Act to make shall incorporate the terms of service and the Statement.

10 Payment for services

- (1) The Department shall make payments to contractors in accordance with the Statement.
- (2) Where the Department considers that it has made a payment to a contractor owing to an error or in circumstances where it was not due, it shall, draw the overpayment to the attention of the contractor and —
 - (a) where he admits the overpayment; or

- (b) where he does not admit the overpayment but, the matter having been referred for investigation the Department decides there has been an overpayment,

the amount overpaid shall be recoverable by a deduction from the contractor's remuneration or in some other manner.

- (3) Recovery of an overpayment under the provision of this regulation shall be without prejudice to the investigation of an alleged breach of the terms of service.
- (4) A contractor who is unable to complete for a patient the general ophthalmic services which he has undertaken to provide shall inform the Department accordingly in writing, and if the Department is satisfied that the inability is due to a reasonable cause it shall make payment in accordance with the Statement to the contractor for such part of those services as he shall have provided.

11 Sight tests

- (1) A person who wishes to have his sight tested under the general ophthalmic services may make application for a sight test to any contractor.
- (2) A contractor to whom an application for a sight test is made shall, before making any test of the patient's sight —
- (a) secure that particulars of the patient and the approximate date of his last sight test, if any, are inserted in a sight test form by the patient or on his behalf, and
- (b) satisfy himself that a sight test is necessary.

12 Home visits

- (1) A person who wishes to have his sight tested under the general ophthalmic services but who due to age or infirmity is substantially housebound may request a contractor to visit him at his home for the purpose of testing his sight.
- (2) A contractor to whom a request under paragraph (1) is made shall, before making the visit take such steps as are reasonably practicable to ascertain that the conditions set out in paragraph (1) are fulfilled.

13 Applications and signatures by children or persons incapable

- (1) Subject to paragraph (2), an application for general ophthalmic services required by these regulations may be made and a signature required by these Regulations may be given —

- (a) on behalf of any person under 16 years of age by either parent or, in the absence of both parents, the guardian or other adult person who has the care of him;
 - (b) on behalf of any other person who is incapable of making the application or, giving the signature, by a relative or any other adult who has the care of that person; or
 - (c) on behalf of any person under 18 years of age in the care of the Department, by any person duly authorised by the Department.
- (2) A signature on an application may not be given by the contractor to whom the application is made.

14 Publication of particulars

The Department shall make copies of these Regulations and the Statement available for inspection at its offices, and at such other places as appear to the Department to be convenient for informing any person interested.

15 Service of documents

Any document which is required or authorised under these Regulations to be given to a contractor may be given by delivering it to him or by sending it addressed to him at any address notified by him to the Department for inclusion in the ophthalmic list as a place at which he has undertaken to provide general ophthalmic services.

16 Revocations

The regulations specified in Schedule 2 are revoked.

MADE 27 FEBRUARY 2004

SCHEDULE 1

Regulation 1(2)

TERMS OF SERVICE

1 Interpretation

In this Schedule "the regulations" means the National Health Service (General Ophthalmic Services) Regulations 2004.

2 Incorporation of provisions

Any provisions of the following affecting rights and obligations of contractors shall form part of the terms of service —

- (a) the regulations;
- (b) the National Health Service (Optical Payments) Regulations 2004⁶;
- (c) the Statement.

3 Premises at which general ophthalmic services are to be provided

- (1) Subject to sub-paragraph (2), a contractor shall provide general ophthalmic services only at an address which is included in relation to him in the ophthalmic list.
- (2) Where requested to do so by or on behalf of a patient who is unable to leave home unaccompanied because of physical or mental illness or disability, a contractor may agree to provide general ophthalmic services at the place at which the patient normally resides.
- (3) Where requested to do so by or on behalf of a patient who is attending a day centre, a contractor may agree to provide general ophthalmic services at that day centre.

4 Premises and equipment

- (1) Subject to paragraph 8(5), a contractor shall provide, as may be requisite, proper and sufficient consulting and waiting room accommodation and suitable equipment for the provision of the general ophthalmic services which he has undertaken to provide.
- (2) Subject to paragraph 8(5), a contractor, on receipt of a written request from the Department to do so, shall admit at all reasonable times for the purposes of inspecting his accommodation or equipment an authorised officer of the Department.

⁶ SD 19/04

5 Notices

A contractor shall secure that at each place at which he provides general ophthalmic services there is prominently displayed a notice and leaflet supplied or approved by the Department, indicating the services available under general ophthalmic services and indicating to which descriptions of his patients a payment may be made under the National Health Service (Optical Payments) Regulations 2004.

6 Records

- (1) A contractor shall keep a proper record in respect of each patient to whom he provides general ophthalmic services, giving appropriate details of sight testing.
- (2) Subject to paragraph 8(5), a contractor shall retain all such records for a period of 7 years and shall during that period produce them when required to do so by the Department to an authorised officer of the Department within such a period, being not less than 14 days, as the Department may specify.

7 Deputies

- (1) An ophthalmic medical practitioner may arrange for sight to be tested by another ophthalmic medical practitioner, and an optician may arrange for sight to be tested on his behalf by another optician, but no such arrangement shall be made with any person disqualified for inclusion in the ophthalmic list under section 13 of the Act without the consent of the Department.
- (2) Any contractor who makes an arrangement for the regular provision of services by a deputy shall notify the Department of the arrangement.
- (3) A contractor shall be responsible for all acts and omissions of any person acting as his deputy and of any employee of that person, and a deputy who is himself a contractor shall be jointly responsible to the same extent as the contractor for whom he is deputising.

8 Employees

- (1) An ophthalmic medical practitioner who employs a person for sight testing shall employ only another ophthalmic medical practitioner.
- (2) An optician who employs a person for sight testing shall employ only another optician.
- (3) A contractor shall not employ in the provision of general ophthalmic services any person disqualified for inclusion in the ophthalmic list under section 13 of the Act without the consent of the Department.
- (3) A contractor who regularly employs an ophthalmic medical practitioner or an optician shall notify the Department accordingly.

- (4) A contractor shall be responsible for all acts and omissions of any employee; and an employee who is himself a contractor shall be jointly responsible.
- (5) In this paragraph "employee" includes, in the case of a body corporate, a director, and "employ" is to be interpreted accordingly.

9 Complaints Procedure

- (1) Subject to sub-paragraphs (2) and (3), a contractor shall establish, and operate in accordance, with this paragraph, a procedure (a "complaints procedure") to deal with any complaints made by or on behalf of his patients and former patients.
- (2) The complaints procedure to be established by a contractor may be such that it also deals with complaints made in relation to one or more other contractors.
- (3) The complaints procedure to be established by a contractor who provides general ophthalmic services from more than one set of premises may be such that it relates to all those premises together.
- (4) A complaints procedure shall apply to complaints made in relation to any matter reasonably connected with the contractor's provision of general ophthalmic services and within the responsibility or control of —
 - (a) the contractor;
 - (b) where the contractor is a body corporate, any of its directors or former directors;
 - (c) a former partner of the contractor; or
 - (d) any employee of the contractor.
- (5) A complaint may be made on behalf of a patient or former patient with his consent or —
 - (a) where the patient is under the age of 16 years —
 - (i) by either parent, or in the absence of both parents, the guardian or other adult person who has care of him, or
 - (ii) by the Department, where he is in the care of the Department.
 - (b) where the patient is incapable of making a complaint, by a relative or other adult person who has an interest in his welfare.
- (6) Where a patient has died, a complaint may be made by a relative or other adult person who had an interest in his welfare or, where he was as described in paragraph (5)(a)(ii) by the Department.
- (7) A complaints procedure shall comply with the following requirements —
 - (a) the contractor must specify a person (who need not be connected with the contractor and who, in the case of an individual, may be

- specified by his job title) to be responsible for receiving and investigating all complaints;
- (b) all complaints must be –
 - (i) recorded in writing.
 - (ii) acknowledged either orally or in writing, within a period of 3 working days beginning with the day on which the complaint was received by the person specified under (a) above or where that is not possible, as soon as reasonably practicable, and
 - (iii) properly investigated;
 - (c) within the period of 10 working days beginning with the day on which the complaint was received by the person specified under (a) above, or where that is not possible, as soon as reasonably practicable, the complainant must be given a written summary of the investigation and its conclusions;
 - (d) where the investigation of the complaint requires consideration of the patient's sight testing records, the person specified under (a) above must inform the patient or person acting on his behalf if the investigation will involve disclosure of information contained in those records to a person other than the contractor, or a director, partner deputy or employee of the contractor; and
 - (e) the contractor must keep a record of all complaints and copies of all correspondence relating to complaints, but such records must be kept separate from patients' sight testing records.
- (8) At each of the premises at which the contractor provides general ophthalmic services he must provide information about the complaints procedure which he operates and give the name (or title) and address of the person specified under sub-paragraph (7)(a).
- (9) For the purpose of this paragraph "working day" means any day except Saturday, Sunday, Christmas Day, Good Friday or a bank holiday.

10 Complaints investigated by the Department

- (1) A contractor shall co-operate with any investigation of a complaint by the Department, whether the investigation follows one under the contractor's complaints procedure or not.
- (2) The co-operation required by sub-paragraph (1) includes –
 - (a) answering questions reasonably put to the contractor by the Department;
 - (b) providing any information relating to the complaint reasonably required by the Department; and
 - (c) attending any meeting to consider the complaint (if held at a reasonably accessible place and at a reasonable hour, and due

notice has been given), if the contractor's presence at the meeting is reasonably required by the Department.

11 Payments

- (1) Any claim by a contractor for fees in respect of the provision of general ophthalmic services shall be made by —
 - (a) completing or securing the completion of a sight test form; and,
 - (b) in the case of a visit to the patient's home under regulation 12, giving particulars in writing of the visit, and
 - (c) sending it or them to the Department within 6 months after the date of completion of the provision of the services.
- (2) Any such claim shall be signed —
 - (a) if the contractor is a body corporate, by any of its directors who is a contractor who takes part in the provision of general ophthalmic services at the address at or from I0 which the relevant service was provided or by any of its employees who is such a contractor;
 - (b) if the contractor is not a body corporate —
 - (i) if the service was provided on his behalf by a deputy or employee who is also a contractor, by the deputy or employee, who shall give the name of the contractor on whose behalf the service was provided,
 - (ii) in other cases, by the contractor himself.
- (3) A signatory shall sign any such claim in ink with his initials or forename and with his surname in his own handwriting and not by means of a stamp.
- (4) Except as may be provided in the regulations, in the Statement or in subparagraph (5), a contractor shall not demand or accept from any patient or from other persons the payment of any fee or other remuneration in respect of the provision of general ophthalmic services.
- (5) A contractor shall be entitled to demand and recover from a patient or person having charge of a patient a sum in respect of loss of remunerative time resulting from that patient's failure to keep an appointment.
- (6) A contractor shall not demand or accept from the Department the payment of any fee or other remuneration in respect of any item of service —
 - (a) which has not been provided under general ophthalmic services; or
 - (b) for which another claim has already been submitted to the Department.

12 Testing of sight

- (1) A contractor shall, having accepted pursuant to the regulations an application for the testing of sight, make such examination of the patient's eyes as may be required and in doing so shall exercise proper care and attention.
- (2) Where a contractor is of the opinion that a patient whose sight he has tested pursuant to sub-paragraph (1) –
 - (a) shows on examination signs of injury or disease in an eye or its immediate vicinity, or any other abnormality of the eye or the rest of the visual system which may require medical treatment; or
 - (b) is not likely to attain a satisfactory standard of vision notwithstanding the application of corrective lenses;he shall, if appropriate, and with the consent of the patient, inform the patient's doctor of his opinion.
- (3) Where a contractor is of the opinion that a patient whose sight he has tested pursuant to sub-paragraph (1) requires glasses (whether or not the patient already has the required glasses), he shall, immediately after completing the test and after consulting his records, if any, relating to that patient –
 - (a) in every case, issue to that patient a prescription for glasses, indicating the power of the lenses required;
 - (b) where the particulars of that prescription are the same as those relating to the patient's existing glasses, so inform the patient.
- (4) A prescription issued pursuant to sub-paragraph (3) shall be completed by the method recommended in appendix A to British Standard 3521:1991(Glossary of Terms relating to Ophthalmic Lenses and Spectacle Frames) published by the British Standards Institution, as effective on the date of its publication and shall comply with any requirements as to its form specified in the Statement for the purposes of payment in respect of the sight test.

13 Home visits

A contractor, having accepted a request for a visit to a patient's home under regulation 12, shall make such visit and carry out the examination required by regulation 11.

14 Use of disqualified name

- (1) Subject to sub-paragraph (2), a contractor shall not use in any manner whatsoever the name or part of the name, either alone or in combination with any other words or letters of, or used by, any person so long as that person is not included in the ophthalmic list.

- (2) Nothing in sub-paragraph (1) prevents a contractor other than a body corporate from using his own name, or being a body corporate from using the name by which it is enrolled in the register (within the meaning of the Opticians Act 1996).

15 Investigations

- (1) A person desiring to make a complaint made against a contractor in respect of an alleged failure to comply with the terms of service applicable to him shall within 6 weeks after the event which gave rise to the complaint give written notice to the Department stating the substance of the matter which it is desired to have investigated.
- (2) The complaint shall be investigated by an officer of the Department nominated for the purpose.
- (3) Even though such notice was not given within the period specified in sub-paragraph (1), the nominated officer may investigate the matter if he is satisfied that such failure was occasioned by illness or other reasonable cause, and either —
 - (a) the notice is given within 2 months after the event, or
 - (b) the contractor consents to the investigation taking place, or
 - (c) the Department consents to the investigation taking place.
- (4) The nominated officer shall investigate any matter arising on the complaint and relating to the provision or administration of general ophthalmic services, whether or not raised on the complaint.

SCHEDULE 2

Regulation 16.

REGULATIONS REVOKED

Reference	Title
GC 205/87	National Health Service (Supplementary Ophthalmic Services) (Isle of Man) Regulations 1987
GC 268/87	National Health Service (Supplementary Ophthalmic Services) (Isle of Man) (Amendment) Regulations 1987
GC 8/89	National Health Service (Supplementary Ophthalmic Services) (Isle of Man) (Amendment) Regulations 1989
GC 53/90	National Health Service (Supplementary Ophthalmic Services) (Isle of Man) (Amendment) Regulations 1990
SD 386/94	National Health Service (Supplementary Ophthalmic Services) (Isle of Man) (Amendment) Regulations 1994
SD 552/97	National Health Service (Supplementary Ophthalmic Services) (Isle of Man) (Amendment) Regulations 1997

ENDNOTES

Table of Endnote References

¹ The format of this legislation has been changed as provided for under section 75 of, and paragraph 2 of Schedule 1 to, the Legislation Act 2015. The changes have been approved by the Attorney General after consultation with the Clerk of Tynwald as required by section 76 of the Legislation Act 2015.