

**2010 No. 378**

**NATIONAL HEALTH SERVICE**

**The National Health Service (General Ophthalmic Services and  
General Dental Services) (Scotland) Amendment  
Regulations 2010**

*Made* - - - - *2nd November 2010*

*Laid before the Scottish Parliament* *4th November 2010*

*Coming into force in accordance with regulation 1(1)*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 25(2) and (2A), 26(2) and (2A), 105(7) and 108(1) of 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 (General Ophthalmic Services and General Dental Services) (Scotland) Amendment Regulations 2010 and come into force on the same day as section 44 (the Scheme) of the Protection of Vulnerable Groups (Scotland) Act 2007(b).

(2) In these Regulations—

“the 2006 Regulations” means the National Health Service (General Ophthalmic Services) (Scotland) Regulations 2006(c);

“the 2010 Regulations” means the National Health Service (General Dental Services) (Scotland) Regulations 2010(d).

**Amendments to the National Health Service (General Ophthalmic Services) (Scotland) Regulations 2006**

2.—(1) The 2006 Regulations are amended as follows.

(2) In regulation 2(1) (interpretation) insert the following definitions in the appropriate place:—

“the 2007 Act” means the Protection of Vulnerable Groups (Scotland) Act 2007;

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(a) 1978 c.29. Section 25(2) was substituted by, and (2A) inserted by, section 17 of the Smoking, Health and Social Care (Scotland) Act 2005 (asp 13) and section 26(2) was substituted by, and (2A) inserted by, section 19 of that Act. Section 105(7) was amended by the Health Services Act 1980 (c.53) Schedule 6, paragraph 5 and Schedule 7, the Health and Social Services and Social Security Adjudications Act 1983 (c.41), Schedule 9, Part 1, paragraph 24 and by the Health Act 1999 (c.8), Schedule 4, paragraph 60. Section 108(1) contains a definition of “regulations” relevant to the exercise of powers in exercise of 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) 2007 asp 14.

(c) S.S.I. 2006/135 as amended by S.S.I. 2006/329, S.S.I. 2007/193, S.I. 2007/3101 and S.S.I. 2010/86.

(d) S.S.I. 2010/208 as amended by S.S.I. 2004/292. S.S.I. 2004/292 was amended by S.S.I. 2010/229.

“barred from regulated work” means barred from regulated work with children or adults within the meaning of section 92(1) or (2) (individuals barred from regulated work) of the 2007 Act;

“considered for listing” means considered for listing by the Scottish Ministers in the children’s list or adult’s list or in both lists in pursuance of section 10, 11, 12 or 13 (consideration whether to list) of the 2007 Act;

“disclosure record” has the meaning given in section 97(1) of the 2007 Act;

“disclosure request” has the meaning given in section 97(1) of the 2007 Act;

“scheme member” means a member of the Scheme, established by section 44 of the 2007 Act, in relation to both—

- (a) regulated work with children, as defined in section 91(2) (regulated work) of the 2007 Act; and
- (b) regulated work with adults, as defined in section 91(3) of the 2007 Act.

(3) In regulation 7 (application for inclusion in Ophthalmic List and notification of changes)(a)—

- (a) in paragraphs (1)(d) and (e) and (8)(a) after “as the case may be” insert “, disclosure requests, disclosure records,”;
- (b) in paragraph (2)(b) after “certificates, applications,” in both places it occurs insert “disclosure requests, disclosure records,”;
- (c) for paragraph (2)(c) substitute—

“(c) if the optician or ophthalmic medical practitioner is included in the Ophthalmic List of more than one Board, send the notification and information referred to in sub-paragraph (a) to each Board on whose Ophthalmic List that optician or ophthalmic medical practitioner is included, and—

- (i) to the Board in whose area the optician or ophthalmic medical practitioner derives most income from general ophthalmic services: the original declarations, certificate or application, disclosure record and disclosure request, undertakings and consents required in terms of sub-paragraph (b); and
  - (ii) a copy of such originals to each other Board on whose Ophthalmic List that optician or ophthalmic medical practitioner is included.”;
- (d) at the end of paragraph (3)(d) omit “and”;
  - (e) at the end of paragraph (3)(e), insert—  
“; and
  - (f) obtain any disclosure record it requires in respect of the application.”;
  - (f) in paragraph (5) after “certificate” insert “or disclosure record”.

(4) At the end of regulation 8(1)(i) (grounds for refusal of application)(b), insert—

- “;
- (j) the applicant (except where the applicant is a body corporate) is not a scheme member;
- (k) the applicant (except where the applicant is a body corporate) is barred from regulated work.”.

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(a) Regulation 7 was relevantly amended by regulation 3(3) of S.S.I. 2010/86.

(b) Regulation 8 was relevantly amended by regulation 3(4) of S.S.I. 2010/86.

- (5) In regulation 9 (deferment of decision on application)(a)—
- (a) at the end of paragraph (1)(i) omit “or”;
  - (b) at the end of paragraph (1)(j), insert—
    - “; or
    - (k) the applicant is being considered for listing and the Board is satisfied that it is necessary for the protection of members of the public for the application to be deferred.”;
  - (c) in paragraph (2) for “(i)” substitute “(k)”.
- (6) In regulation 11 (suspension)—
- (a) at the end of paragraph (1)(e), insert—
    - “;
    - (f) while that person is being considered for listing.”;
  - (b) in paragraph (4), for “(1)(d)” substitute “(1)(b), (d) or (f)”.
- (7) In regulation 12 (removal from Ophthalmic List)(b)—
- (a) omit “or” at the end of paragraph (1)(e); and
  - (b) at the end of paragraph (1)(f), insert—
    - “;
    - (g) is barred from regulated work; or
    - (h) is no longer a scheme member.”.
- (8) In Part A of Schedule 2 (information, certificates, consents, declarations and undertakings to be included in an application for inclusion in the first part of the Ophthalmic List)—
- (a) in the title, after “CERTIFICATES,” insert “DISCLOSURE REQUESTS, DISCLOSURE RECORDS,”;
  - (b) for paragraph 3(a) and (aa)(c) substitute—
    - “(a) where the applicant is an ophthalmic medical practitioner or an optician (except where the optician is a body corporate)—
      - (i) a disclosure request for any disclosure record required under regulation 7(3)(f); and
      - (ii) where required by the Board under that regulation, any existing disclosure record the applicant holds;
    - (aa) where the applicant is a body corporate, an enhanced criminal record certificate in relation to each director, dated not earlier than 28 days before the date of the application, or an application for such a certificate completed and signed by each director who is not already on the Board’s Ophthalmic List; and”;
  - (c) in paragraph 4—
    - (i) omit “and” at the end of sub-paragraph (e); and
    - (ii) at the end of sub-paragraph (f), insert—
      - “; and
      - (g) that the applicant (except where the applicant is a body corporate) will remain a scheme member.”.

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(a) Regulation 9 was relevantly amended by regulation 3(5) of S.S.I. 2010/86.  
 (b) Regulation 12 was relevantly amended by regulation 3(7) of S.S.I. 2010/86.  
 (c) Paragraph 3 was amended by regulation 3(10)(b) of S.S.I. 2010/86.

(9) In Part B of Schedule 2 (information, consents, declarations, certificates and undertakings to be included in an application for inclusion in the second part of the ophthalmic list)—

- (a) in the title, after “CERTIFICATES” insert “, DISCLOSURE REQUESTS, DISCLOSURE RECORDS”;
- (b) in paragraph 1—
  - (i) in sub-paragraph (i) omit from “(and” to “corporate)”;
  - (ii) in sub-paragraph (j), after “applicant”, insert “(and, where the applicant is an optician that is a body corporate, all directors of the body corporate)”;
- (c) for paragraph 3(a) and (aa)(a) substitute—
  - “(a) where the applicant is an ophthalmic medical practitioner or an optician (except where the optician is a body corporate)—
    - (i) a disclosure request for any disclosure record required under regulation 7(3)(f); and
    - (ii) where required by the Board under that regulation, any existing disclosure record the applicant holds;
  - (aa) where the applicant is a body corporate, an enhanced criminal record certificate in relation to each director, dated not earlier than 28 days before the date of the application, or an application for such a certificate completed and signed by each director who is not already on the Board’s Ophthalmic List; and”.
- (d) in paragraph 4—
  - (i) omit “and” at the end of sub-paragraph (e); and
  - (ii) at the end of sub-paragraph (f), insert—
    - “; and
  - (g) that the applicant (except where the applicant is a body corporate) will remain a scheme member.”.

### **Amendments to the National Health Service (General Dental Services) (Scotland) Regulations 2010**

3.—(1) The 2010 Regulations are amended as follows.

(2) In regulation 2(1) (interpretation) insert the following definitions in the appropriate place:—

“the 2007 Act” means the Protection of Vulnerable Groups (Scotland) Act 2007(b);

“barred from regulated work” means barred from regulated work with children or adults within the meaning of section 92(1) or (2) (individuals barred from regulated work) of the 2007 Act;

“considered for listing” means considered for listing by the Scottish Ministers in the children’s list or adult’s list or in both lists in pursuance of section 10, 11, 12 or 13 (consideration whether to list) of the 2007 Act;

“disclosure record” has the meaning given in section 97(1) of the 2007 Act;

“disclosure request” has the meaning given in section 97(1) of the 2007 Act;

“scheme member” means a member of the Scheme, established by section 44 of the 2007 Act, in relation to both—

- (a) regulated work with children, as defined in section 91(2) (regulated work) of the 2007 Act; and
- (b) regulated work with adults, as defined in section 91(3) of the 2007 Act;

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(a) Paragraph 3 was amended by regulation 3(11)(a)(ix) of S.S.I. 2010/86.

(b) 2007 asp 14.

- (3) In regulation 5 (application for inclusion in the dental list and notification of changes)—
- (a) in paragraphs (1) and (13) after “certificate or application,” in each place it occurs insert “disclosure request and disclosure record,”;
  - (b) in paragraph (3)—
    - (i) omit “and” at the end of sub-paragraph (d);
    - (ii) at the end of sub-paragraph (e), insert—
      - “; and
      - (f) obtain any disclosure record required in respect of the application.”;
  - (c) in paragraph (9) after “certificate” insert “or disclosure record”.
- (4) In regulation 6 (general provisions relating to the dental list)—
- (a) in paragraph (5)(b) after “certificate or application,” in each place it occurs insert “disclosure request and disclosure record,”; and
  - (b) for paragraph (5)(c) substitute—
    - “(c) if the dentist or body corporate is included in the dental list of more than one Health Board, the dentist or body corporate shall send the notification and information referred to in sub-paragraph (a) to each Health Board on whose dental lists that dentist or body corporate is included, and—
      - (i) to the Health Board in whose area the dentist or body corporate derives most income from general dental services: the original declarations, certificate or application, disclosure record and disclosure request, undertakings and consents required in terms of sub-paragraph (b); and
      - (ii) a copy of such originals to each other Health Board on whose dental lists that dentist or body corporate is included.”.
- (5) At the end of regulation 7(1)(p) (grounds for refusal of application), insert—
- “;
  - (q) if the applicant is a dentist, the applicant is not a scheme member;
  - (r) if the applicant is a dentist, the applicant is barred from regulated work.”.
- (6) In regulation 8 (deferment of a decision on application)—
- (a) in paragraph (1)—
    - (i) omit “or” after sub-paragraph (i); and
    - (ii) at the end of paragraph (j), insert—
      - “; or
      - (k) the applicant is being considered for listing and the Health Board is satisfied that it is necessary for protection of members of the public that the application is deferred.”;
  - (b) in paragraph (2) for “(j)” substitute “(k)”.
- (7) In regulation 11 (suspension)—
- (a) at the end of paragraph (1)(e), insert—
    - “;
    - (f) while that person is being considered for listing.”; and
  - (b) in paragraph (5) for “(1)(d)” substitute “(1)(b), (d) or (f)”.
- (8) After regulation 12(3)(g) (removal from dental list), insert—
- “(h) in the case of a dentist, is barred from regulated work;
  - (i) in the case of a dentist, is no longer a scheme member.”.

(9) In Part IA of Schedule 2 (information, declarations, certificate, applications, undertakings and consents, to be included in an application for inclusion in sub-part A of the first part of the dental list)—

(a) in the title after “APPLICATIONS,” insert “DISCLOSURE REQUESTS, DISCLOSURE RECORDS,”;

(b) for paragraph 3 substitute—

“3. An applicant must include either—

(a) where the applicant is a dentist—

(i) a disclosure request for any disclosure record required under regulation 5(3)(f); and

(ii) where required by the Health Board under that regulation, any existing disclosure record the applicant holds; or

(b) where the applicant is a body corporate, an enhanced criminal record certificate in relation to each director, dated not earlier than 28 days before the date of the application, or an application for such a certificate completed and signed by each director who is not already on the Health Board’s dental list.”;

(c) at the end of paragraph 4(g), insert—

“;

(h) where the applicant is a dentist, that the applicant will remain a scheme member.”.

(10) In Part IB of Schedule 2 (information, declarations, certificate, applications, undertakings and, consents to be included in an application for inclusion in sub-part B only of the first part of the dental list)—

(a) in the title after “APPLICATIONS,” insert “DISCLOSURE REQUESTS, DISCLOSURE RECORDS,”;

(b) for paragraph 3 substitute—

“3. An applicant must include either—

(a) where the applicant is a dentist—

(i) a disclosure request for any disclosure record required under regulation 5(3)(f); and

(ii) where required by the Health Board under that regulation, any existing disclosure record the applicant holds; or

(b) where the applicant is a body corporate, an enhanced criminal record certificate in relation to each director, dated not earlier than 28 days before the date of the application, or an application for such a certificate completed and signed by each director who is not already on the Health Board’s dental list.”;

(c) at the end of paragraph 4(f) insert—

“;

(g) where the applicant is a dentist, that the applicant will remain a scheme member.”.

(11) in Part II of Schedule 2 (information, declarations certificate, undertakings and consents, to be included in an application for inclusion in the second part of the dental list)—

(a) in the title after “CERTIFICATE,” insert “DISCLOSURE REQUESTS, DISCLOSURE RECORD,”;

(b) for paragraph 3 substitute—

“3. An applicant must include—

(a) a disclosure request for any disclosure record required under regulation 5(3)(f); and

- (b) where required by that regulation, any existing disclosure record the applicant holds.”;
- (c) omit “and” at the end of paragraph 4(d);
- (d) at the end of paragraph 4(e) insert—
  - “; and
- (f) that the applicant will remain a scheme member.”.

**Transitional provision**

4.—(1) Subject to paragraph (2), where any application to join the relevant list by a dentist, ophthalmic medical practitioner or optician (who is not a body corporate) was received by a Health Board prior to the coming into force of these Regulations and that application has not been determined by the Health Board, the Health Board must before determining the application—

- (a) require the applicant to provide a disclosure request and, where required, any existing disclosure record that the applicant holds; and
- (b) obtain the disclosure record it requires.

(2) Paragraph (1) does not apply if—

- (a) the Health Board received an enhanced criminal record certificate with the application and that certificate was dated not earlier than 28 days before the date of the application; or
- (b) prior to the coming into force of these Regulations, the Health Board had sought to obtain an enhanced criminal record certificate under regulation 7(3)(e) of the 2006 Regulations or regulation 5(3)(c) of the 2010 Regulations and the Health Board has subsequently received such a certificate.

*ADAM INGRAM*

Authorised to sign by the Scottish Ministers

St Andrew’s House,  
Edinburgh  
2nd November 2010

## EXPLANATORY NOTE

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

These Regulations make amendments to the National Health Service (General Ophthalmic Services) (Scotland) Regulations 2006 (“the 2006 Regulations”) and the National Health Service (General Dental Services) (Scotland) Regulations 2010 (“the 2010 Regulations”). They come into force on the same day as section 44 of the Protection of Vulnerable Groups (Scotland) Act 2007 (“the 2007 Act”); that day will be appointed by the Scottish Ministers by an order under that Act. Section 44 establishes the new vetting and disclosure scheme.

Regulation 2 makes amendments to the 2006 Regulations in consequence of the 2007 Act. Regulation 2(2) inserts definitions relating to the 2007 Act. Regulation 2(3) to (5) makes changes to the process for Health Boards to accept, refuse and defer decisions on applications to join their Ophthalmic List. Regulation 2(6) allows for an ophthalmic medical practitioner or optician to be suspended if he or she is being considered for listing under the 2007 Act. Regulation 2(7) allows for ophthalmic medical practitioners or opticians to be removed from the ophthalmic list if they become barred from working with children or adults or leave the 2007 Act Scheme. Regulation 2(8) and (9) amend Schedule 2 to provide that an applicant must provide an application for a disclosure record, and any existing disclosure record, under the 2007 Act with his or her application and adds a new undertaking that any ophthalmic medical practitioner or optician must remain in the 2007 Act Scheme. Regulation 2(9)(b) makes an amendment to Part B of Schedule 2 to rectify an error in regulation 3(11)(a)(viii) of the National Health Service (General Ophthalmic Services) (Scotland) Amendment Regulations 2010 (S.S.I. 2010/86).

Regulation 3 makes corresponding amendments to the 2010 Regulations. Regulation 3(2) inserts definitions relating to the 2007 Act. Regulation 3(3) to (6) makes changes to the process for Health Boards to accept, refuse and defer decisions on applications to join their dental lists which relate to the 2007 Act Scheme. Regulation 3(7) allows for a dentist to be suspended if he or she is being considered for listing under the 2007 Act. Regulation 3(8) allows for a dentist to be removed from the dental list if he or she becomes barred from working with children or adults or leave the 2007 Act Scheme. Regulation 3(9) to (11) amends Schedule 2 to provide that an applicant must provide an application for a disclosure record, and any existing disclosure request, under the 2007 Act with his or her application and adds a new undertaking that a dentist must remain in the 2007 Act Scheme.

Regulation 4 makes transitional provision for an application to join a list which was received by a Health Board prior to the coming into force of these Regulations but which has yet to be determined. It obliges Health Boards to seek disclosure records under the 2007 Act for such applications unless it has already received a valid enhanced criminal record certificate relating to the applicant.

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