EXECUTIVE NOTE

THE NATIONAL HEALTH SERVICE (GENERAL OPHTHALMIC SERVICES) (SCOTLAND) AMENDMENT REGULATIONS 2010 (SSI 2010/86)

The above instrument is made in exercise of the powers conferred by sections 26, 105(7), 106(a) and 108(1) of the National Health Service (Scotland) 1978. The Instrument is subject to negative procedures.

Policy Objective

1. The purpose of this Instrument is to amend the National Health Service (General Ophthalmic Services) (Scotland) Regulations 2006 ("the 2006 Regulations") (SSI 2006/135) to:

- provide for maximum frequencies between primary eye examinations depending on the category of the patient;
- make changes to the ophthalmic list application process; and
- make other minor tidying up amendments.

Primary and Supplementary Eye Examinations

The 2006 Regulations brought into effect two new NHS eye examinations, defined as primary and supplementary eye examinations. A primary eye examination will normally be undertaken every two years but can be undertaken at a shorter interval where clinically necessary. A supplementary eye examination can currently only be undertaken following a primary eye examination, except where a child under the age of 16 is referred by an ophthalmic hospital to an optician or ophthalmic medical practitioner for a cycloplegic refractions. Supplementary eye examinations were introduced to allow further visits for repeat or follow-up procedures in certain circumstances following a primary eye examination. The need for a supplementary eye examination is therefore identified at the primary eye examination. There may be cases where multiple supplementary eye examinations are required following a primary eye examination. However, at present if a patient presents with new signs and symptoms not identified at the previous primary eye examination, a further primary eye examination is undertaken. It has been agreed with the optometric profession that primary eye examinations should only be undertaken in line with maximum set frequencies. All other examinations required at shorter intervals than these maximum set frequencies must be undertaken as supplementary eye examinations. There are two exceptions to this: where a patient attends for a primary eye examination no more than 4 weeks before that patient's next primary eye examination is due (e.g. 4 weeks early): and where a patient is new to a practice and the optician or ophthalmic medical practitioner does not have access to or means to access the patient's record. In these exceptions the examination can be undertaken as a primary eye examination. A new Table C is inserted at Schedule 3 to the 2006 Regulations and sets down the frequencies between primary eye examinations depending on the categories of the patient.

There are a number of mandatory tests and procedures that should be undertaken as part of a primary eye examination as well as a number of additional tests and procedures that should

be undertaken depending on the patient's presenting signs and symptoms. These are set out in Schedule 3 to the 2006 Regulations. The circumstances where a supplementary eye examination can be undertaken and the tests and procedures which should be undertaken as part of that supplementary eye examination are set down in Schedule 4 to the 2006 Regulations. Schedules 3 and 4 are being revised to provide for some additional tests and procedures which require to be undertaken as a result of discussions with the optometric profession.

When undertaking a primary or supplementary eye examination the specified mandatory tests and procedures should be carried out unless there is a clinical reason due to a patient's physical or mental condition which would make the carrying out of any of the tests and procedures inappropriate or the patient refuses any specific tests or procedures.

The primary eye examination is also being amended to require a sight test, i.e. a refraction, to be undertaken to determine whether or not a patient requires to use an optical appliance such as glasses.

Schedule 4 is also being expanded to include the additional circumstances where a supplementary eye examination can be undertaken and the tests and procedures which can be undertaken as part of that supplementary eye examination, as a result in the change to the frequencies of primary eye examinations.

The definitions of primary eye examinations and supplementary eye examination are revised accordingly.

Regulations 3(2)(a) and (c), 3(8), 3(9)(c)(i)-(iii), 3(12) 3(13), Schedule 1 and Schedule 2 of the Instrument provide for this.

Ophthalmic List Application Process

The Instrument makes a number of amendments to provisions relating to the application procedures for entry to ophthalmic lists maintained by Health Boards, including deferment of an application and refusal of entry.

Where the Health Board considers that it needs to meet with an applicant before determining an ophthalmic list application, a new power has been inserted enabling it to do so and a new duty has been placed on the applicant, or the director(s) if the applicant is an optician that is a body corporate, to attend for interview when requested to do so. This will be helpful where the information provided on the application is incomplete or unclear.

New provisions have been inserted in relation to knowledge of English and inspection of practice premises, mainly for patient safety purposes:

- Where a Health Board is not satisfied that an applicant has the knowledge of English necessary to provide or assist with the provision of general ophthalmic services ("GOS"), the Board must refuse the applicant entry to its ophthalmic list.

- Health Boards have a new power to inspect the proposed practice premises of an applicant if they consider it appropriate to do so. This power can be used where the premises have been inspected previously. The Boards also have a new duty to inspect

practice premises where the premises from which the applicant will operate have never been inspected before. Where an inspection has been carried out, Boards have a power to specify that the applicant shall carry out work within a reasonable period to bring the premises up to a standard which the Board considers will provide patients with proper, sufficient and appropriate premises, procedures and equipment to receive General Ophthalmic Services. Boards also have a power to defer an application while the specified work is undertaken. Boards also have a duty to refuse entry where, in their judgement, the premises have not been brought up to the specified standard.

Ophthalmic list applicants must provide a range of information, declarations, undertakings, consents and certificates to a Health Board when applying to join its ophthalmic list. One of the certificates is an enhanced criminal record certificate. Often, however, applicants do not have these certificates at all or do not have up-to-date certificates of this type when applying to join a list. Consequently, the Instrument makes amendments to provide that an applicant must include with the application to join an ophthalmic list/must supply to the Health Board either an enhanced criminal record certificate or an application for such a certificate and that the Health Board must obtain that certificate as part of the application procedure.

The Instrument also clarifies that, where an optician that is an ophthalmic body corporate applies to join an ophthalmic list, all directors of that body corporate must supply enhanced criminal record certificates, or applications for these, to the Health Board.

Where the information provided with an ophthalmic list application has changed either before the application has been decided or once the applicant has been added to the ophthalmic list, the applicant must notify all of the Health Boards considering the application or on whose ophthalmic lists the applicant's name appears of the change(s) and also provide the declarations, certificates etc relating to that change. If, for example, one or more directors of a body corporate changed once an ophthalmic list application had been forwarded, the new directors would need to provide the required information, declarations, enhanced criminal record certificates etc.

Regulations 3(3)(a) and (c)-(g), 3(4)(e), 3(5)(a) and (b), 3(10)(b) and 3(11)(a)(ix) of this Instrument provide for this.

Ophthalmic bodies corporate

The Instrument makes a number of other amendments relating to bodies corporate and their directors which will ensure that the Health Board receives all necessary and appropriate information, declarations, undertakings and consents.

Where an applicant is an ophthalmic body corporate, the ophthalmic list application must now be signed by all directors of that body corporate.

The amendments made to Schedule 2 ensure that the required information, declarations, undertakings and consents are applied or dis-applied appropriately to bodies corporate and directors of these. For example, it would not be appropriate to require an applicant that is a body corporate to supply chronological details of the applicant's professional experience or to supply the names and addresses of two referees who are willing to provide clinical references. Equally, it is appropriate to extend certain provisions to encompass directors of bodies corporate – for example, as well as optician applicants who are individuals, each

director of an optician applicant that is an ophthalmic body corporate must now provide information on any ophthalmic or equivalent list from which he/she was suspended or refused entry/removed/disqualified conditionally or unconditionally and the associated reasons.

Regulations 3(3)(b), 3(10) and 3(11) of this Instrument provide for this.

Grounds for Refusal of Entry or Removal

A number of amendments have been made to the grounds for refusal of an application or for removal or suspension from an ophthalmic list for the purposes of clarification and in order to give the optician or ophthalmic medical practitioner the opportunity to re-apply to join an ophthalmic list at a future date. For example, formerly a Health Board was required to refuse entry to its ophthalmic list to an optician or ophthalmic medical practitioner who had been suspended. The Board must now refuse entry to an optician or ophthalmic medical practitioner who is suspended.

Regulations 3(4)(a)-(d), 3(6) and 3(7) of this Instrument provide for this.

Other Amendments

Other minor tidying up amendments are being made by regulation 3(2)(b), 3(9)(a), (b) and (c)(iv) and (v), 3(14) and Schedule 3 of this Instrument.

Consultation

Optometry Scotland has been consulted.

Financial Effects

Any financial effects will be funded through the General Ophthalmic Services budget.

Scottish Government Health Directorates
March 2010