



Health and Medicines Act 1988

1988 CHAPTER 49

General ophthalmic services, optical appliances and sight-testing

13 General ophthalmic services and optical appliances

- (1) The first paragraph of section 38 of the National Health Service Act 1977 shall be renumbered so as to become section 38(1) of that Act; and for the words from “of sight by them”, at the end of the resulting subsection (1), to the end of the section there shall be substituted—

“by them of the sight—

- (a) of a child;
- (b) of a person whose resources fall to be treated under the regulations as being less than his requirements or as being equal to his requirements;
or
- (c) of a person of such other description as may be prescribed.

- (2) In this section—

“child” means—

- (a) a person who is under the age of 16 years; or
- (b) a person who is under the age of 19 years and receiving qualifying full-time education; and

“qualifying full-time education” means full-time instruction at a recognised educational establishment or by other means accepted as comparable by the Secretary of State, and for the purpose of this definition—

- (a) “recognised educational establishment” means an establishment recognised by the Secretary of State as being, or as comparable to, a school, college or university; and
- (b) regulations may prescribe the circumstances in which a person is or is not to be treated as receiving full-time instruction.

Status: This is the original version (as it was originally enacted).

- (3) Regulations under this section may direct how a person's resources and requirements are to be calculated and, without prejudice to the generality of this subsection, may direct that they shall be calculated—
- (a) by a method set out in the regulations;
 - (b) by a method described by reference to a method of calculating or estimating income or capital specified in an enactment other than this section or in an instrument made under an Act of Parliament or by reference to such a method but subject to prescribed modifications;
 - (c) by reference to an amount applicable for the purposes of a payment under an Act of Parliament or an instrument made under an Act of Parliament; or
 - (d) by reference to the person's being or having been entitled to payment under an Act of Parliament or an instrument made under an Act of Parliament.
- (4) Descriptions of persons may be prescribed for the purposes of subsection (1) above by reference to any criterion and, without prejudice to the generality of this subsection, by reference to any of the following criteria—
- (a) their age;
 - (b) the fact that a prescribed person or a prescribed body accepts them as suffering from a prescribed medical condition;
 - (c) the fact that a prescribed person or a prescribed body accepts that a prescribed medical condition from which they suffer arose in prescribed circumstances;
 - (d) their receipt of benefit in money or in kind under any enactment or their entitlement to receive any such benefit; and
 - (e) the receipt of any such benefit by other persons satisfying prescribed conditions or the entitlement of other persons satisfying prescribed conditions to receive such benefits.
- (5) Regulations which refer to an Act of Parliament or an instrument made under an Act of Parliament may direct that the reference is to be construed as a reference to that Act or instrument—
- (a) as it has effect at the time when the regulations are made; or
 - (b) both as it has effect at that time and as amended subsequently.
- (6) Regulations may provide that a person—
- (a) whose sight is tested by a person who provides general ophthalmic services; and
 - (b) who is shown during the testing or within a prescribed time after it to fall within subsection (1) above,
- shall be taken for the purposes of the testing to have so fallen immediately before his sight was tested; and the testing shall be treated—
- (i) for the purposes of any arrangements under this section;
 - (ii) for the purposes of remuneration in respect of the testing; and
 - (iii) for any such other purpose as may be prescribed,
- as a testing of sight under this Act.

- (7) Regulations shall define the services for the provision of which arrangements under this section are to be made and the services so defined are in this Act referred to as “general ophthalmic services”.
- (2) In sub-paragraph (1) of paragraph 2A of Schedule 12 to that Act and of Schedule 11 to the National Health Service (Scotland) Act 1978 after paragraph (c) (but not as part of it) there shall be added the words “or for which a prescription has been given for a person such as is mentioned in paragraph (a), (b) or (c) above in consequence of a testing of sight (not being a testing of sight under this Act) which took place in prescribed circumstances”.
- (3) The following sub-paragraphs shall be substituted for paragraph 2A(3) of Schedule 12 to the National Health Service Act 1977—
- “(3) The Secretary of State may by regulations—
- (a) provide for himself or such authority established under this Act as may be prescribed to contribute to the cost of a testing of sight which he or the prescribed authority accepts as having been incurred by a person whose resources fall to be treated under the regulations as exceeding his requirements but only by an amount calculated under the regulations;
- (b) provide for payments to be made by him or by such authority established under this Act as may be prescribed to meet, or to contribute towards, any cost accepted by him or by the prescribed authority as having been incurred (whether by way of charge under this Act or otherwise) for the replacement or repair in prescribed circumstances of optical appliances for which a prescription was given in consequence of a testing of the sight of a person of a prescribed description; and
- (c) direct how a person’s resources and requirements are to be calculated and, without prejudice to the generality of this sub-paragraph, give any such direction as to how they are to be calculated as may be given by regulations under section 83A(3) above.
- (3A) Descriptions of persons may be prescribed under this paragraph by reference to any criterion and, without prejudice to the generality of this sub-paragraph, by reference to any of the criteria specified in section 83A(2) above.
- (3B) Subsection (4) of section 83A above shall have effect in relation to regulations under this paragraph as it has effect in relation to regulations under that section.”
- (4) In section 26 of the National Health Service (Scotland) Act 1978 (arrangements for provision of general ophthalmic services) in subsection (1), for the words from “—(a) the” to the end there shall be substituted the words “the testing by such practitioners and opticians of the sight—
- (a) of a child;
- (b) of a person whose resources fall to be treated under the regulations as being less than his requirements or as being equal to his requirements; or
- (c) of a person of such other description as may be prescribed.

(1A) In this section—

“child” means—

- (a) a person who is under the age of 16 years; or
- (b) a person who is under the age of 19 years and receiving qualifying full-time education; and

“qualifying full-time education” means full-time instruction at a recognised educational establishment or by other means accepted as comparable by the Secretary of State, and for the purposes of this definition—

- (i) “recognised educational establishment” means an establishment recognised by the Secretary of State as being, or as comparable to, a school, college or university; and
- (ii) regulations may prescribe the circumstances in which a person is or is not to be treated as receiving full-time instruction.

(1B) Regulations under this section may direct how a person’s resources and requirements are to be calculated and, without prejudice to the generality of this subsection, may direct that they shall be calculated—

- (a) by a method set out in the regulations;
- (b) by a method described by reference to a method of calculating or estimating income or capital specified in an enactment other than this section or in an instrument made under an Act of Parliament or by reference to such a method but subject to prescribed modifications;
- (c) by reference to an amount applicable for the purposes of a payment under an Act of Parliament or an instrument made under an Act of Parliament; or
- (d) by reference to the person’s being, or having been, entitled to payment under an Act of Parliament or an instrument made under an Act of Parliament.

(1C) Descriptions of persons may be prescribed for the purposes of subsection (1) above by reference to any criterion and, without prejudice to the generality of this subsection, by reference to any of the following criteria—

- (a) their age;
- (b) the fact that a prescribed person or a prescribed body accepts them as suffering from a prescribed medical condition;
- (c) the fact that a prescribed person or a prescribed body accepts that a prescribed medical condition from which they suffer arose in prescribed circumstances;
- (d) their receipt of benefit in money or in kind under any enactment or their entitlement to receive any such benefit; and
- (e) the receipt of any such benefit by other persons satisfying prescribed conditions or the entitlement of other persons satisfying prescribed conditions to receive such benefits.

(1D) Regulations which refer to an Act of Parliament or an instrument made under an Act of Parliament may direct that the reference is to be construed as a reference to that Act or instrument—

- (a) as it has effect at the time when the regulations are made; or
- (b) both as it has effect at that time and as amended subsequently.

- (1E) Regulations may provide that a person—
- (a) whose sight is tested by a person who provides general ophthalmic services; and
 - (b) who is shown during the testing or within a prescribed time after it to fall within subsection (1) above,
- shall be taken for the purposes of the testing to have so fallen immediately before his sight was tested; and the testing shall be treated—
- (i) for the purposes of any arrangements under this section;
 - (ii) for the purposes of remuneration in respect of the testing; and
 - (iii) for any such other purpose as may be prescribed,
- as a testing of sight under this Act.
- (1F) Regulations shall define the services for the provision of which arrangements under this section are to be made and the services so defined are in this Act referred to as “general ophthalmic services”.
- (5) The following sub-paragraphs shall be substituted for paragraph 2A(3) of Schedule 11 to the National Health Service (Scotland) Act 1978—
- “(3) The Secretary of State may by regulations—
- (a) provide for himself or a Health Board to contribute to the cost of a testing of sight which he or the Board accepts as having been incurred by a person whose resources fall to be treated under the regulations as exceeding his requirements but only by an amount calculated under the regulations;
 - (b) provide for payments to be made by him or by a Health Board to meet, or to contribute towards, any cost accepted by him or by the Board as having been incurred (whether by way of charge under this Act or otherwise) for the replacement or repair in prescribed circumstances of optical appliances for which a prescription was given in consequence of a testing of the sight of a person of a prescribed description; and
 - (c) direct how a person’s resources and requirements are to be calculated and, without prejudice to the generality of this sub-paragraph, give any such direction as to how they are to be calculated as may be given by regulations under section 75A(3).
- (3A) Descriptions of persons may be prescribed under this paragraph by reference to any criterion and, without prejudice to the generality of this sub-paragraph, by reference to any of the criteria specified in section 75A(2).
- (3B) Subsection (4) of section 75A shall have effect in relation to regulations under this paragraph as it has effect in relation to regulations under that section.”
- (6) The following subsections shall be inserted after subsection (1) of section 21 of the Opticians Act 1958 (restriction on sale and supply of optical appliances)—
- “(1A) Subsection (1) above does not apply to an excluded sale.
- (1B) In subsection (1A) above “excluded sale” means a sale for a person not under the age of 16 of spectacles which have two single vision lenses of the same

positive spherical power not exceeding 4 dioptres, where the sale is wholly for the purpose of correcting, remedying or relieving the condition known as presbyopia; and for the purposes of this subsection lenses are to be taken to have the same positive spherical power if the difference between them is within the tolerances relating to the power of such lenses specified from time to time in the British Standard Specification.”

- (7) In subsection (2) of that section for the words “The foregoing subsection” there shall be substituted the words “Subsection (1) of this section.”

14 Sight-testing

The following section shall be inserted after section 20A of the Opticians Act 1958—

“20B Duties to be performed on sight-testing

- (1) The Secretary of State may by regulations provide that, subject to any exceptions specified in the regulations, when a registered medical practitioner or registered ophthalmic optician tests the sight of another person, it shall be his duty—
 - (a) to perform such examinations of the eye for the purpose of detecting injury, disease or abnormality in the eye or elsewhere as the regulations may require, and
 - (b) immediately following the test to give the person whose sight he has tested a written statement—
 - (i) that he has carried out the examinations that the regulations require, and
 - (ii) that he is or (as the case may be) is not referring him to a registered medical practitioner.
- (2) Except in circumstances specified in regulations under subsection (3)(b) of this section, it shall also be his duty to give the person whose sight he has tested, immediately following the test, either a signed, written prescription for an optical appliance or a signed, written statement that he does not need to wear or use an optical appliance.
- (3) The Secretary of State may by regulations specify—
 - (a) particulars to be included in a prescription or statement provided in fulfilment of the duty imposed by subsection (2) of this section; and
 - (b) circumstances in which that duty does not arise.
- (4) A person shall not be required as a condition of having his sight tested—
 - (a) to undertake to purchase from a specified person any optical appliance the testing of his sight may show he requires to wear or use; or
 - (b) to pay a fee before the testing is carried out.
- (5) A fee shall be payable in a case where a duty arises under this section only if that duty has been fulfilled.
- (6) Any term of an agreement for a testing of sight which is inconsistent with this section shall be unenforceable, and any sum paid in respect of a fee otherwise than in pursuance of this section shall be recoverable.

- (7) In this section “fee” means any payment in connection—
- (a) with testing sight in accordance with regulations under this section;
 - (b) with fulfilling any duty imposed by this section; or
 - (c) with the supply of optical appliances.
- (8) Any power to make regulations conferred by this section includes power to make different provision for different classes of case and shall be exercisable by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (9) In the application of this section to Northern Ireland—
- (a) for any reference to the Secretary of State there shall be substituted a reference to the Department of Health and Social Services for Northern Ireland;
 - (b) in subsection (8) of this section, for the words from “statutory instrument” onwards, there shall be substituted the words “statutory rule, which shall be subject to negative resolution within the meaning of section 41(6) of the Interpretation Act (Northern Ireland) 1954”.