
STATUTORY INSTRUMENTS

2008 No. 1185

The General Ophthalmic Services Contracts Regulations 2008

PART 1

General

Citation, commencement and application

1.—(1) These Regulations may be cited as the General Ophthalmic Services Contracts Regulations 2008 and shall come into force on 1st August 2008.

(2) These Regulations apply in relation to England.

Interpretation

2.—(1) In these Regulations—

“the 1977 Act” means the National Health Service Act 1977;

“the Act” means National Health Service Act 2006;

“additional services” means the primary ophthalmic services prescribed under section 115(1)(b) (primary ophthalmic services), which are provided to an eligible person, other than a prisoner;

“adjudicator” means the Secretary of State or a person appointed by the Secretary of State under section 9(8) (NHS contracts) or paragraph 30(4) of Schedule 1 (NHS dispute resolution procedure);

“Charges Regulations” means the National Health Service (Optical Charges and Payments) Regulations 1997(1);

“charity trustee” means one of the persons having the general control and management of the administration of a charity;

“child” means a person who has not attained the age of 16 years;

“contract” means, except where the context otherwise requires, a general ophthalmic services contract under section 117 (general ophthalmic services contracts: introductory);

“contract disqualification order” means an order of the FHSAA, under regulation 6, that a person be disqualified from entering into a contract;

“day centre” means an establishment in the locality of the PCT attended by eligible persons, who would have difficulty in obtaining sight testing services from practice premises because of physical or mental illness or disability or because of difficulties in communicating their health needs unaided;

“eligible person” means a person, who is entitled, by virtue of the POS Regulations, to receive mandatory services or additional services;

“employment” means any employment whether paid or unpaid and whether under a contract for services or a contract of service and “employ” and “employed” shall be construed accordingly;

“family member” means—

- (a) a spouse;
- (b) a civil partner;
- (c) a person whose relationship with the patient has the characteristics of the relationship between husband and wife or civil partners;
- (d) a parent or step-parent;
- (e) a son;
- (f) a daughter;
- (g) a child of whom the person is—
 - (i) the guardian; or
 - (ii) the carer duly authorised by the local authority to whose care the child has been committed under the Children Act 1989⁽²⁾; or
- (h) a grandparent;

“FHSAA” means the Family Health Services Appeal Authority constituted under section 169 (the Family Health Services Appeal Authority);

“health service body” has, unless the context otherwise requires, the meaning given to it in section 9(4) (NHS contracts);

“licensing body” means any body that licences or regulates any profession;

“MHRA” means the Medicines and Healthcare products Regulatory Agency⁽³⁾;

“mandatory services” means the primary ophthalmic services mentioned in section 115(1)(a) (sight-testing services) provided to an eligible person, except when those services are provided other than at the contractor’s practice premises;

“mobile services” means the sight testing service provided by a contractor to patients—

- (a) attending at a day centre;
- (b) residing at a residential centre; or
- (c) at their home, where the patient is unable to leave it unaccompanied because of physical or mental illness or disability;

where the contractor has entered into a contract with a PCT to provide additional services in the PCT’s locality;

“national disqualification” means—

- (a) a decision made by the FHSAA under section 159 or under regulations corresponding to that section made under sections 91(3), 106(3), 123(3) or 146(3) (national disqualifications);
- (b) a decision under provisions in force in Scotland or Northern Ireland corresponding to section 159; or
- (c) a decision by the Tribunal, constituted under section 46 of the 1977 Act for England and Wales (which, except for prescribed cases, had effect, in relation to England, only until 14th December 2001 and, in relation to Wales, only until 26th August 2002), which is treated as a national disqualification by the FHSAA by virtue of regulation 6(4)(b)

(2) 1989 c. 41.

(3) The MHRA is an executive agency of the Department of Health.

of the Abolition of the National Health Service Tribunal (Consequential Provisions) Regulations 2001⁽⁴⁾ or regulation 6(4)(b) of the Abolition of the National Health Service Tribunal (Consequential Provisions) Regulations 2002⁽⁵⁾;

“NHS contract” has the meaning assigned to it in section 9(1);

“NHS dispute resolution procedure” means the procedure for disputes specified in paragraphs 30 and 31 of Schedule 1;

“notice” means a notice in writing (including electronically) and “notify” and “notification” shall be construed accordingly;

“ophthalmic performers list” means a list of ophthalmic practitioners prepared in accordance with regulation 3(1)(c) of the National Health Service (Performers Lists) Regulations 2004⁽⁶⁾

“ophthalmic practitioner” means either—

(a) a registered optometrist, who is not a corporate body; or

(b) a registered medical practitioner,

who is included in an ophthalmic performers list;

“Opticians Act” means the Opticians Act 1989⁽⁷⁾;

“PCT” means the Primary Care Trust which is a party, or prospective party, to the contract;

“parent”, in relation to any child, means a parent or other person who has parental responsibility for that child;

“patient” means an eligible person to whom the contractor is providing or proposes to provide services under the contract;

“the POS Regulations” means the Primary Ophthalmic Services Regulations 2008⁽⁸⁾;

“practice” means the business operated by the contractor for the purpose of delivering services under the contract;

“practice premises” means an address specified in the contract as one at which mandatory services are to be provided under the contract;

“primary care list” means—

(a) a list of persons performing primary medical, dental or ophthalmic services under sections 91 (persons performing primary medical services), 106 (persons performing primary dental services), or 123 (persons performing primary ophthalmic services);

(b) a list of persons undertaking to provide pharmaceutical services prepared in accordance with regulations made under sections 126 to 131 (provision of pharmaceutical services);

(c) a list of persons approved for the purposes of assisting in the provision of pharmaceutical services prepared in accordance with regulations made under section 149 (supplementary lists);

(d) a list of persons who undertook to provide general medical services, general dental services or general ophthalmic services prepared in accordance with regulations made under sections 29A (medical lists), 36 (regulations for general dental services) or 39 (regulations for general ophthalmic services) of the 1977 Act⁽⁹⁾;

(4) S.I. 2001/3744, amended by S.I. 2002/2469.

(5) S.I. 2002/1920.

(6) S.I. 2004/585; regulation 3(1) was substituted by S.I. 2008/1187.

(7) 1989 c. 44.

(8) S.I. 2008/1186.

(9) Sections 29A and 36 were repealed by sections 175(2) and 196 of and Schedule 11 to the Health and Social Care (Community Health and Standards) Act 2003 and section 39 was repealed in its application to England by section 80 of and Schedule 9 to the 2006 Act.

- (e) a list of persons approved for the purposes of assisting in the provision of general medical services or general ophthalmic services prepared in accordance with regulations made under section 43D of the 1977 Act⁽¹⁰⁾ (supplementary lists);
- (f) a services list which fell within the meaning of section 8ZA of the National Health Service (Primary Care) Act 1997⁽¹¹⁾ (lists of persons who may perform personal medical services or personal dental services);
- (g) a list corresponding to a services list prepared by virtue of regulations made under section 145 (application of enactments local pharmaceutical services); or
- (h) a list corresponding to any of the above lists in Scotland, Wales or Northern Ireland;

“private”, in the context of services or treatment, means otherwise than under the contract or Part 1, and “privately” shall be construed accordingly;

“professional registration number” means the number against an ophthalmic practitioner’s name in the register, together with the prefix and suffix given to that number in the ophthalmic performers list in which the name is included;

“register” means, except in paragraph 4 of Schedule 3—

- (a) in the case of an optometrist, the register maintained by the General Optical Council under section 7(a) of the Opticians Act⁽¹²⁾; or
- (b) in the case of a registered medical practitioner, the register of medical practitioners maintained pursuant to section 2(2) of the Medical Act 1983⁽¹³⁾;

“registered” means included in the register;

“relevant Strategic Health Authority” means the Strategic Health Authority established for an area which includes the area for which the PCT is established;

“residential centre” means an establishment in the locality of the PCT for persons, including eligible persons, who normally reside in that establishment and who are unable to leave the establishment unaccompanied because of physical or mental illness or disability;

“sight test form” means the form which, in accordance with these Regulations or the POS Regulations, is to be completed for the purposes of payments in respect of a sight test; and

“working day” means any day apart from Saturday, Sunday, Christmas Day, Good Friday or a day that is specified or proclaimed as a bank holiday in England pursuant to section 1 of the Banking and Financial Dealings Act 1971⁽¹⁴⁾.

(2) In these Regulations—

- (a) the use of the term “it” in relation to the contractor includes a reference to a contractor who is an individual or two or more individuals practising in partnership and related expressions shall be construed accordingly;
- (b) all references to sections or Parts are to sections or Parts of the Act, except where specified otherwise; and
- (c) references to forms supplied by the PCT to contractors includes electronic forms and forms which are generated electronically, but does not include prescription forms.

⁽¹⁰⁾ Section 43D was inserted by section 24 of the 2001 Act.

⁽¹¹⁾ 1997 c. 46; section 8ZA was inserted by section 26(2) of the 2001 Act.

⁽¹²⁾ Section 7 was amended by S.I. 2005/848.

⁽¹³⁾ 1983 c.54; section 2(2) was amended by S.I. 2002/1315, 2006/1914 and 2007/3101.

⁽¹⁴⁾ 1971 c. 80.

PART 2

Contractors

Conditions: introductory

3. Subject to the provisions of any regulations made under section 43 of the Health Act 2006 (general ophthalmic services: transitional), a PCT may only enter into a contract if—

- (a) the conditions set out in regulation 4 are met, and
- (b) an application to enter into a contract, which complies with Schedule 3, has been made to that PCT.

Persons eligible to enter into GOS contracts

4.—(1) For the purposes of section 118 (persons eligible to enter into GOS contracts) it is a prescribed condition that a person must not fall within paragraph (3).

(2) The reference to a person in paragraph (1) includes any director, chief executive or secretary of a corporate body.

(3) A person falls within this paragraph if—

- (a) it is the subject of a national disqualification or a contract disqualification order;
- (b) subject to paragraph (4), it is disqualified or suspended (other than by an interim suspension order or direction pending an investigation) from practising by any licensing body anywhere in the world;
- (c) within the period of 5 years prior to the date the contract is to be commenced or, if earlier, the date on which the contract is to be signed, he has been dismissed (otherwise than by reason of redundancy) from any employment by a health service body, unless he has subsequently been employed by that health service body or another health service body and paragraph (5) applies to him or that dismissal was the subject of a finding of unfair dismissal by any competent tribunal or court;
- (d) within the period of 5 years prior to the date the contract is to be commenced or, if earlier, the date on which the contract is to be signed, it has been removed from, or refused admission to, a primary care list by reason of inefficiency, fraud or unsuitability (within the meaning of section 151(2), (3) and (4)) (disqualification of practitioners) respectively, unless its name has subsequently been included in such a list;
- (e) he has been convicted in the United Kingdom of—
 - (i) murder; or
 - (ii) a criminal offence other than murder, committed on or after 14th December 2001, and has been sentenced to a term of imprisonment of over 6 months;
- (f) it has been convicted of a criminal offence, not falling within subparagraphs (d), (e) or (g), and, in the opinion of the PCT, is not a person with whom it ought to contract;
- (g) subject to paragraph (6), he has been convicted outside the United Kingdom of an offence which would, if committed in England and Wales constitute—
 - (i) murder; or
 - (ii) a criminal offence other than murder, and been sentenced to a term of imprisonment of over 6 months;

- (h) he has been convicted of an offence committed on or after 1st April 2006, referred to in Schedule 1 to the Children and Young Persons Act 1933⁽¹⁵⁾ (offences against children and young persons with respect to which special provisions apply) or Schedule 1 to the Criminal Procedure (Scotland) Act 1995⁽¹⁶⁾ (offences against children under the age of 17 years to which special provisions apply);
 - (i) it has—
 - (i) been adjudged bankrupt or had sequestration of his estate awarded unless (in either case) he has been discharged or the bankruptcy order has been annulled;
 - (ii) been made the subject of a bankruptcy restrictions order or an interim bankruptcy restrictions order under Schedule 4A to the Insolvency Act 1986⁽¹⁷⁾ unless that order has ceased to have effect or has been annulled; or
 - (iii) made a composition or arrangement with, or granted a trust deed for, its creditors unless he or it has been discharged in respect of it;
 - (j) an administrator, administrative receiver or receiver is appointed in respect of it;
 - (k) the PCT is not satisfied that the person—
 - (i) has the premises, equipment and record keeping arrangements, or
 - (ii) will employ or engage, by the date the contract is to commence, appropriate staff, to provide the services under the contract;
 - (l) the PCT is not satisfied that it is a person suitable to provide general ophthalmic services;
 - (m) he has within the period of 5 years prior to the date the contract is to commence or, if earlier, the date on which the contract is to be signed—
 - (i) been removed from the office of charity trustee or trustee for a charity by an order made by the Charity Commissioners or the High Court on the grounds of any misconduct or mismanagement in the administration of the charity for which he was responsible or to which he was privy, or which he by his conduct contributed to or facilitated; or
 - (ii) been removed under section 7 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990⁽¹⁸⁾ (powers of the Court of Session to deal with management of charities), from being concerned in the management or control of any body; or
 - (n) he is subject to a disqualification order under the Company Directors Disqualification Act 1986⁽¹⁹⁾, the Companies (Northern Ireland) Order 1986⁽²⁰⁾ or to an order made under section 429(2)(b) of the Insolvency Act 1986 (failure to pay under county court administration order)⁽²¹⁾.
- (4) A person does not fall within paragraph (3)(b) where the PCT is satisfied that the disqualification or suspension from practising is imposed by a licensing body outside the United Kingdom and that disqualification or suspension does not make the person unsuitable to be, as the case may be—
- (a) a contractor; or

⁽¹⁵⁾ 1933 c. 12; as amended by the Domestic Violence, Crime and Victims Act 2004 (c. 28), section 58(1), Schedule 10, para. 2; the Sexual Offences Act 2003 (c. 42), section 139 and Schedule 6, para. 7; the Criminal Justice Act 1988 (c. 33), section 170 and Schedule 15, Para. 8, and Schedule 16, para. 16; and the Sexual Offences Act 1956 (c. 69), sections 48 and 51 and Schedules 3 and 4 and modified by the Criminal Justice Act 1988, section 170(1) and Schedule 15, para. 9.

⁽¹⁶⁾ 1995 c. 46.

⁽¹⁷⁾ 1986 c. 45; Schedule 4A was inserted by s. 257 of and Schedule 20 to the Enterprise Act 2002 (c. 40).

⁽¹⁸⁾ 1990 c. 40.

⁽¹⁹⁾ 1986 c. 46; as amended by the Insolvency Act 2000 (c. 39).

⁽²⁰⁾ S.I. 1986/1032 (N.I. 6).

⁽²¹⁾ 1986 c. 45.

(b) a director, chief executive or secretary of a corporation entering into a contract.

(5) The condition referred to in paragraph (3)(c) is that, where a person has been employed as a member of a health care profession, any subsequent employment must also be as a member of that profession.

(6) A person does not fall within paragraph (3)(g) where the PCT is satisfied that the conviction does not make the person unsuitable to be, as the case may be—

(a) a contractor; or

(b) a director, chief executive or secretary of a corporate body entering into a contract.

Reasons

5.—(1) Where a PCT is of the view that the conditions in regulation 4 for entering into a contract are not met, it shall notify the person intending to enter into the contract of—

(a) that view and its reasons for that view; and

(b) the person's right of appeal under regulation 6.

(2) The PCT shall also notify of that view and its reasons for that view, a director, chief executive or secretary of a corporate body that is notified under paragraph (1), where its reason for the decision relates to that person or those persons.

Appeals and contract disqualifications

6.—(1) A person who has been served with a notice under regulation 5(1) may appeal to the FHSAA against the decision of the PCT that the conditions in regulation 4 are not met, by giving notice to the FHSAA within the period of 28 days, beginning on the day that the PCT served its notice.

(2) A PCT, which has given notice under regulation 5(1) may, if it considers that that person should be disqualified from entering into a contract, apply to the FHSAA for a contract disqualification order in relation to that person.

(3) The FHSAA, in a case where a person has appealed under paragraph (1) may, of its own motion, make application to itself for a contract disqualification order in relation to that appellant.

(4) In a case to which paragraph (2) or (3) applies, the FHSAA may make a contract disqualification if it considers it right to do so in all the circumstances of the case.

(5) Subject to paragraph (7), where the FHSAA has made a contract disqualification order, the person in respect of whom it has been made may, not less than 3 years after the making of the order, apply to the FHSAA for a review of that order and, on such an application, the FHSAA shall either confirm that order or specify a date on which that order shall cease to have effect.

(6) Subject to paragraph (7), in any case where the FHSAA has confirmed an order under paragraph (5) or this paragraph, the person in respect of whom a contract disqualification order was confirmed may, not less than 3 years after the making of the order, apply to the FHSAA for a review of that order and, on such an application, the FHSAA shall either confirm that order or specify a date on which that order shall cease to have effect.

(7) The FHSAA may, when making or confirming an order under paragraph (5) or (6), determine that instead of the period of 3 years specified in those paragraphs, the period for a review shall be such period, of not less than 1 year or more than 5, as the FHSAA may decide.

PART 3

Pre-contract Dispute Resolution

Pre-contract disputes

7.—(1) Subject to paragraphs (2) and (3), if, in the course of negotiations intending to lead to a contract, the prospective contracting parties are unable to agree on a particular term of the contract, either party may refer the dispute to the Secretary of State to consider and determine the matter in accordance with the procedure provided for in paragraph 30(2) and (3) of Schedule 1 (NHS dispute resolution procedure).

(2) Paragraph (1) does not apply in the case where both parties to the prospective contract are health service bodies (in which case section 9(7) (NHS contracts) applies).

(3) Before referring the dispute for consideration and determination under paragraph (1), both parties to the prospective contract must make every reasonable effort to communicate and co-operate with each other with a view to resolving it.

(4) Disputes referred to the Secretary of State in accordance with paragraph (1) or section 9(7) shall be considered and determined in accordance with the provisions of paragraphs 30(4) to (13) and 31(1) (determination of dispute) of Schedule 1 and paragraph (5) (where it applies) of this regulation.

(5) In the case of a dispute referred to the Secretary of State under paragraph (1), the determination—

- (a) may specify terms to be included in the proposed contract;
- (b) may require the PCT to proceed with the proposed contract, but may not require the proposed contractor to proceed with the proposed contract; and
- (c) shall be binding upon the prospective parties to the contract.

PART 4

Health Service Body Status

Health service body status

8.—(1) Where a proposed contractor elects, in a notice served on the PCT at any time prior to the contract being entered into, to be regarded as a health service body for the purposes of section 9, it shall be so regarded, but only so far as concerns the contract, from the date on which the contract is entered into.

(2) If, in accordance with paragraph (1) or (5), a contractor is to be regarded as a health service body, that fact shall not affect the nature of, or any rights or liabilities arising under, any other contract with a health service body entered into by that contractor before the date on which the contractor is to be so regarded.

(3) Where a contract is made with an individual or two or more persons practising in partnership, and that individual or that partnership is to be regarded as a health service body in accordance with paragraph (1) or (5), the contractor shall, subject to paragraph (4), continue to be regarded as a health service body for the purposes of section 9, but only so far as concerns the contract, for as long as that contract continues and irrespective of any change in—

- (a) the partners comprising the partnership;
- (b) the status of the contractor from that of an individual to that of a partnership; or
- (c) the status of the contractor from that of a partnership to that of an individual.

(4) A contractor may at any time request a variation of the contract to include or remove the provision from the contract that the contract is an NHS contract, and if it does so—

- (a) the PCT shall agree to the variation; and
- (b) the procedure in paragraph 33(1) of Schedule 1 shall apply (variation of a contract: general).

(5) Where, pursuant to paragraph (4), the PCT agrees to a variation of the contract, the contractor shall—

- (a) be regarded; or
- (b) subject to paragraph (7), cease to be regarded,

as a health service body for the purposes of section 9, but only so far as concerns the contract, from the date that variation takes effect pursuant to paragraph 33(1) of Schedule 1.

(6) Subject to paragraph (7), a contractor shall cease to be regarded as a health service body for the purposes of section 9 if the contract is terminated.

(7) Where a contractor ceases to be a health service body pursuant to—

- (a) paragraph (5) or (6), it shall continue to be regarded as a health service body for the purposes of being a party to any other general ophthalmic services contract entered into after it became a health service body, but before the date on which the contractor ceased to be a health service body (for which purposes it ceases to be such a body on the termination of that NHS contract);
- (b) paragraph (5), it shall, if it or the PCT has referred any matter to the NHS dispute resolution procedure before it ceases to be a health service body, be bound by the determination of the adjudicator as if the dispute had been referred pursuant to paragraph 29 of Schedule 1 (dispute resolution: non-NHS contracts); or
- (c) paragraph (6), it shall continue to be regarded as a health service body for the purposes of the NHS dispute resolution procedure where that procedure has been commenced—
 - (i) before the termination of the contract; or
 - (ii) after the termination of the contract, whether in connection with or arising out of the termination of the contract or otherwise,

for which purposes it ceases to be such a body on the conclusion of that procedure.

PART 5

Contracts: Required Terms

Parties to the contract

9. A contract must specify—

- (a) the names of the parties;
- (b) whether the contract is for mandatory services or for additional services;
- (c) in the case of a partnership—
 - (i) whether or not it is a limited partnership, and
 - (ii) the names of the partners and, in the case of a limited partnership, their status as a general or limited partner; and
- (d) in the case of each party, the postal address to which official correspondence and notices should be sent.

NHS contracts

10. In the case of a contractor who is to be regarded as a health service body pursuant to regulation 8, the contract must state that it is an NHS contract.

Contracts with individuals practising in partnership

11.—(1) Where the contract is with two or more individuals practising in partnership, the contract shall be treated as made with the partnership as it is from time to time constituted and the contract shall make specific provision to this effect.

(2) Where the contract is with two or more individuals practising in partnership, the contractor must be required by the terms of the contract to ensure that any person who becomes a member of the partnership after the contract has come into force is bound automatically by the contract whether by virtue of a partnership deed or otherwise.

Duration

12.—(1) Except in the circumstances specified in paragraph (2), a contract must provide for it to subsist until it is terminated in accordance with the terms of the contract or the general law.

(2) The circumstances referred to in paragraph (1) are that the PCT has terminated the contract of another provider of primary ophthalmic services, and as a result of that termination, it wishes to enter into a temporary contract for a period specified in the contract for the provision of services.

(3) Where a temporary contract is entered into pursuant to paragraph (2)—

- (a) paragraph 39 of Schedule 1 (termination by the contractor) shall not apply to that contract; and
- (b) the parties to that contract may include such terms as to termination by notice as they may agree.

Testing of sight

13.—(1) A contract must contain terms to the effect specified in this regulation.

(2) A contractor shall, having accepted an application from or on behalf of a patient for the testing of sight—

- (a) secure the testing of the patient's sight to determine whether the patient needs to wear or use an optical appliance; and
- (b) in so doing, shall secure the fulfilment of any duty imposed on a tester of sight by, or in regulations made under, section 26 of the Opticians Act (duties to be performed on sight testing)(22).

(3) Where a contractor or an ophthalmic practitioner employed by it to perform the contract is of the opinion that a patient whose sight was tested pursuant to paragraph (2)—

- (a) shows on examination signs of injury, disease or abnormality in the eye or elsewhere which may require medical treatment; or
- (b) is not likely to attain a satisfactory standard of vision notwithstanding the application of corrective lenses,

the contractor shall, if appropriate, and with the consent of the patient—

- (i) refer the patient to an ophthalmic hospital, which includes an ophthalmic department of a hospital,

(22) Section 26 was amended by S.I. 2005/848.

- (ii) inform the patient's doctor or GP practice that it has done so, and
 - (iii) give the patient a written statement that it has done so, with details of the referral.
- (4) Where a contractor or an ophthalmic practitioner employed by it to perform the contract tests the sight of a patient diagnosed as suffering from diabetes or glaucoma, it shall inform the patient's doctor or GP practice of the results of the test.
- (5) Where a contractor or an ophthalmic practitioner employed by it to perform the contract issues to a patient a prescription for glasses, it shall, immediately thereafter, require the patient to acknowledge its receipt on a sight test form.
- (6) A prescription for glasses issued following a testing of sight under general ophthalmic services shall be completed by the method recommended in Appendix A to British Standard BS 2738 Part 3: 2004 (Glossary of Terms relating to Ophthalmic Lenses and Spectacle Frames) published by the British Standards Institution⁽²³⁾ and shall comply with any requirements as to its form specified in any direction made under section 120 for the purposes of payment in respect of the sight test.

Services: general

14. A contract for mandatory services must specify—
- (a) the address of each of the premises to be used by the contractor for the provision of such services; and
 - (b) the hours during which services are normally to be provided at each of those premises.

Finance

- 15.—(1) The contract must contain a term which has the effect of requiring—
- (a) the PCT to make payments to the contractor under the contract promptly and in accordance with both the terms of the contract and any other conditions relating to the payment contained in any directions given by the Secretary of State under section 120 (GOS contracts: payments) (“the relevant directions”); and
 - (b) the contractor to make payments promptly to the PCT and in accordance with both the terms of the contract and any other conditions relating to payment contained in the relevant directions.
- (2) The obligation referred to in paragraph (1) is subject to any right the PCT has to set off against an amount payable to the contractor an amount that—
- (a) is owed by the contractor to the PCT under the contract;
 - (b) has been paid to the contractor owing to an error or in circumstances when it was not due; or
 - (c) the PCT may withhold from the contractor in accordance with the terms of the contract or any other applicable provisions contained in the relevant directions.
- (3) The contract must contain a term to the effect that where, pursuant to directions under section 8 (Secretary of State's directions: exercise of functions) or 120, a PCT is required to make a payment to a contractor under a contract, but subject to conditions, those conditions are to be terms of the contract.
- (4) The contract must contain a term to the effect that, where the PCT has a right to set off under paragraph (2), the PCT may also recover that amount, or any part of it that has not been recovered by set off, as a civil debt, whether or not the contract has been terminated.

⁽²³⁾ Copies can be obtained from the British Standards Institute, 389 Chiswick High Road, London, W4 4AL or online at www.bsi-global.com/en/Standards-and-Publications/.

Fees, charges and financial interests of the contractor

16.—(1) The contract must contain terms relating to fees, claims, charges and financial interests which have the same effect as those set out in this regulation.

(2) The contractor shall not, either itself or through any other person, demand or accept a fee or other remuneration for its own or another's benefit from—

(a) any patient of its; or

(b) any person who has requested services under the contract for himself or a family member, for the provision of any treatment under the contract or as a prerequisite to providing services under the contract to that person or the family member.

(3) Obligations imposed on the contractor by virtue of the Charges Regulations or any determination under section 180(11) must be terms of the contract.

(4) The contractor in making a decision—

(a) as to what services to recommend or provide to a patient who has sought services under the contract; or

(b) to refer a patient for other services within the National Health Service,

must do so without regard to its own financial interests.

(5) Any claim by a contractor for fees in respect of the provision of mandatory services or additional services shall be made by completing or securing the completion of a sight test form and sending it to the PCT within 6 months after the date of completion of the provision of the services.

(6) Any such claim shall be—

(a) signed by the ophthalmic practitioner who performed the sight test in respect of which the claim is made, who shall also supply, with that signed claim, his professional registration number; and

(b) in a case where the ophthalmic practitioner is not the contractor, counter-signed on behalf of the contractor by a person (who may be the ophthalmic practitioner), duly authorised by the contractor to counter-sign, whom the contractor has previously notified the PCT is so authorised.

(7) A signatory or counter-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.

(8) 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.

(9) A contractor shall not demand or accept from the PCT the payment of any fee or other remuneration in respect of any item of service—

(a) which has not been provided under the contract; or

(b) for which another claim has already been submitted to the PCT.

Arrangements on termination

17. A contract shall make suitable provision for arrangements on the termination of the contract including the consequences (whether financial or otherwise) of the contract ending.

Other contractual terms: mandatory services

18. Where a contract is for the provision of mandatory services, it must contain other terms which have the same effect as those specified in Schedule 1.

Other contractual terms: additional services

19. Where a contract is for the provision of additional services, it must contain other terms that have the same effect as those specified in Schedule 2.

PART 6

Transitional Provision

Commencement of contract

20. The contract shall provide for services to be provided under it from any date that falls after 31st July 2008.

Signed by authority of the Secretary of State for Health.

28th April 2008

Ann Keen
Parliamentary Under-Secretary of State,
Department of Health