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STATUTORY INSTRUMENTS

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**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<sup>(2)</sup>; 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<sup>(3)</sup>;

“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)

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(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);

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(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<sup>(10)</sup> (supplementary lists);
- (f) a services list which fell within the meaning of section 8ZA of the National Health Service (Primary Care) Act 1997<sup>(11)</sup> (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<sup>(12)</sup>; 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<sup>(13)</sup>;

“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<sup>(14)</sup>.

(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.

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

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

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

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

<sup>(14)</sup> 1971 c. 80.