
STATUTORY INSTRUMENTS

2008 No. 1700

The Primary Ophthalmic Services Amendment, Transitional and Consequential Provisions Regulations 2008

PART 1

GENERAL

Citation, commencement and application

1.—(1) These Regulations may be cited as the Primary Ophthalmic Services Amendment, Transitional and Consequential Provisions Regulations 2008 and 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⁽¹⁾;

“the 1986 Regulations” means the National Health Service (General Ophthalmic Services) Regulations 1986⁽²⁾;

“the 2006 Act” means the National Health Service Act 2006⁽³⁾;

“the Complaints Regulations” means the National Health Service (Complaints) Regulations 2004⁽⁴⁾.

“the Contracts Regulations” means the General Ophthalmic Services Contracts Regulations 2008⁽⁵⁾;

“general ophthalmic services contract” means a contract under section 117 of the 2006 Act (general ophthalmic services contracts: introductory);

“ophthalmic list” means the list of persons that had effect on and before 31st July 2008 who undertook to provide general ophthalmic services for persons in a PCT’s area kept by a PCT under regulations made under section 39(1)(a) of the 1977 Act⁽⁶⁾;

“ophthalmic practitioner” means a person who was included in an ophthalmic list;

“Optical Charges Regulations” means the National Health Service (Optical Charges and Payments) Regulations 1997⁽⁷⁾;

(1) 1977 c.49.

(2) S.I. 1986/975.

(3) 2006 c. 41.

(4) S.I. 2004/1768; relevant amendments are S.I. 2006/562 and 2084 and 2007/1898.

(5) S.I. 2008/1185.

(6) Section 39(1)(a) was substituted by the National Health Service Reform and Health Care Professions Act 2002, s. 2(5) and Schedule 2, paras 1 and 12.

(7) S.I. 1997/818; amended by S.I. 1999/609, 2000/5934, 2001/414, 3066 and 3323, 2002/547 and 1306, 2003/657 and 2381, 2004/642, 936 and 1138, 2005/818, 2006/479 and 3123, 2007/542 and 3289 and 2008/553.

“PCT” means a Primary Care Trust;

“the Statement” means the Statement of remuneration of ophthalmic practitioners determined and published by the Secretary of State under regulation 10 of the 1986 Regulations(8), as it had effect on 31st July 2008; and

“the Transitional Regulations” means the Primary Ophthalmic Services Transitional Provisions Regulations 2008(9).

(2) In this Order, the use of the term “it” in relation to a contractor or ophthalmic practitioner includes a reference to a contractor or ophthalmic practitioner that is an individual or two or more individuals practising in partnership and related expressions shall be construed accordingly.

PART 2

TRANSITIONAL PROVISIONS IN RESPECT OF GENERAL OPHTHALMIC SERVICES PROVIDED BEFORE 1ST AUGUST 2008

Interpretation of Part 2

3. For the purposes of this Part “relevant contractor” means an ophthalmic practitioner included in an ophthalmic list on 31st July 2008 which enters into a general ophthalmic services contract and includes any contractor which is a partnership, one of whose partners was such an ophthalmic practitioner.

Investigation of outstanding complaints

4.—(1) Subject to paragraph (2), where before 1st August 2008—

- (a) a complaint had been made under paragraphs 8A to 8C of Schedule 1 (terms of service) to the 1986 Regulations(10) by or on behalf of a patient or former patient of an ophthalmic practitioner; and
- (b) the investigation of that complaint under the procedure required to be established under those paragraphs had not concluded,

that complaint must, on or after 1st August 2008, be investigated, or continue to be investigated, by the relevant contractor, as if those paragraphs had not been revoked and continued to have effect as in force on 31st July 2008.

(2) In a case where there is no relevant contractor the complaint must be investigated or continue to be investigated by the PCT on whose ophthalmic list the ophthalmic practitioner was included.

(3) Where a complaint falls to be investigated by a PCT under paragraph (2), the investigation shall be carried out in accordance with the Complaints Regulations.

Complaints relating to general ophthalmic services made after 31st July 2008

5.—(1) Subject to paragraph (2), the complaints procedure established and operated by a relevant contractor under the terms of its general ophthalmic services contract which gives effect to paragraph 22 of Schedule 1 (other contractual terms) to the Contracts Regulations shall apply to any complaint which a patient or former patient of the relevant contractor could have made (but did not make) on or before 31st July 2008 under paragraphs 8A to 8C of Schedule 1 to the 1986 Regulations, as it

(8) Regulation 10 was amended by [S.I. 2001/3739](#), [2002/2469](#) and [2005/1481](#); the Statement is available on www.dh.gov.uk.

(9) [S.I. 2008/1209](#).

(10) Paragraphs 8A to 8C were inserted by [S.I. 1996/705](#) and amended by [S.I. 2002/2469](#), [2004/865](#) and [2006/1550](#).

applies to complaints made by a patient or former patient of the relevant contractor in relation to any matter reasonably connected with the provision of services under the contract.

(2) In a case where there is no relevant contractor, the complaint must be investigated by the PCT in whose area the general ophthalmic services were provided.

(3) Where a complaint falls to be investigated by a PCT under paragraph (2), the investigation shall be carried out in accordance with the Complaints Regulations.

Recovery of Overpayments

6.—(1) Where, before 1st August 2008, an ophthalmic practitioner had admitted an overpayment drawn to its attention by a PCT under regulation 12(2) (payment for services) of the 1986 Regulations⁽¹¹⁾, but the overpayment, or any part of it, had not been recovered before that date, the amount overpaid, or the part of it not recovered, shall continue to be recoverable by that PCT and be treated as a debt owed by that ophthalmic practitioner to that PCT, notwithstanding the revocation of the 1986 Regulations.

(2) Notwithstanding the revocation of the 1986 Regulations, where a PCT considers that a payment has been made to an ophthalmic practitioner under the Statement when it was not due and that alleged overpayment has not been drawn to the ophthalmic practitioner's attention by the PCT before 1st August 2008, that PCT may draw that overpayment to the attention of the ophthalmic practitioner and—

- (a) where the overpayment is admitted by the ophthalmic practitioner, the PCT may recover the amount overpaid from the ophthalmic practitioner as a civil debt; and
- (b) where the overpayment is not admitted by the ophthalmic practitioner —
 - (i) the arrangements for appeals referred to in regulation 12(2)(b) of the 1986 Regulations as in force on 31st July 2008, as those arrangements had effect on 31st July 2008, shall apply,
 - (ii) if the ophthalmic practitioner does not appeal or appeals unsuccessfully, the PCT may recover the amount of the civil debt.

(3) Where, before 1st August 2008, a PCT has drawn a possible overpayment under the Statement to the attention of an ophthalmic practitioner, and the overpayment has not been admitted by the ophthalmic practitioner, then notwithstanding the revocation of the 1986 Regulations—

- (a) the arrangements for appeals referred to in regulation 12(2)(b) of the 1986 Regulations, as in force on 31st July 2008, as those arrangements had effect on 31st July 2008, shall apply; and
- (b) if the ophthalmic practitioner has not appealed or does not appeal, or is unsuccessful in an appeal, the PCT may recover the amount as a civil debt.

Remuneration of Ophthalmic Practitioners

7.—(1) Notwithstanding the revocation of the 1986 Regulations, claims may still be made for payments under the Statement by an ophthalmic practitioner in relation to general ophthalmic services provided before 1st August 2008, who may be entitled to such a payment, provided that the claim is made within any period stipulated in the Statement as being the period during which a claim for the payment is to be made.

(2) Notwithstanding the revocation of the 1986 Regulations, as regards any claim for payment under the Statement which is made within the period stipulated in the Statement (whether before 1st August 2008 or by virtue of paragraph (1)), the 1986 Regulations shall continue to have effect as they were in force on 31st July 2008 in respect of—

(11) Regulation 12(2) was amended by [S.I. 1996/705](#), [2001/3739](#) and [2002/2469](#).

- (a) the approval and making of the payments;
- (b) the recovery of payments and overpayments; and
- (c) the payments in consequence of suspension or successful appeal.

Service of documents

8. Where any notice or other document is required to be given or sent as a consequence of regulation 16 (service of documents on contractors) of the 1986 Regulations⁽¹²⁾ and has not been given or sent before 1st August 2008, notwithstanding the revocation of the 1986 Regulations, regulation 16 of those Regulations shall continue to have effect as in force on 31st July 2008 in respect of such a notice or document.

Records

9. Notwithstanding the revocation of the 1986 Regulations, an ophthalmic practitioner shall continue to keep a record in respect of the matters referred to in paragraph 6(1) (records)⁽¹³⁾ of Schedule 1 to the 1986 Regulations and paragraph 6 of that Schedule shall continue to have effect as in force on 31st July 2008 to such a record until 1st August 2015.

PART 3

TRANSITIONAL ARRANGEMENTS: THE NATIONAL HEALTH SERVICE (SERVICE COMMITTEES AND TRIBUNAL) REGULATIONS 1992

Interpretation: Part 3

10.—(1) In this Part—

“the Service Committees Regulations” means the National Health Service (Service Committees and Tribunal) Regulations 1992⁽¹⁴⁾;

“amendments” in respect of any regulation in the Service Committees Regulations means amendments made to that regulation by paragraph 3 of Schedule 1 to this Order;

“appropriate PCT” means the appropriate Primary Care Trust within the meaning of regulation 4(5) of the Service Committees Regulations;

“contracting PCT” means a PCT that has entered into a general ophthalmic services contract with—

- (a) an ophthalmic practitioner who is the subject of the allegation,
- (b) a partnership, where an ophthalmic practitioner who is the subject of the allegation is a partner, or
- (c) a corporate body, where an ophthalmic practitioner who is the subject of the allegation is a director, chief executive or secretary of that body;

“the Performers List PCT” means the PCT (if any) in whose ophthalmic performers list the ophthalmic practitioner’s name appears on 1st August 2008;

“Performers Lists Regulations” means the National Health Service (Performers Lists) Regulations 2004⁽¹⁵⁾;

⁽¹²⁾ Regulation 16 was amended by S.I. 1996/705, 2001/414 and 3739 and 2002/2469.

⁽¹³⁾ Paragraph 6 was substituted by S.I. 2001/414 and amended by S.I. 2002/2469 and 2005/480.

⁽¹⁴⁾ S.I. 1992/664 was amended by S.I. 1996/703, 1998/674, 2002/2469, 2003/1397, 2004/865, 2005/641 and 2006/562.

⁽¹⁵⁾ S.I. 2004/585; as amended by S.I. 2004/2694, 2005/502, 893 and 3491, S.I. 2006/835, 1914 and 3185 and S.I. 2008/1187.

“relevant contractor” means a party to a general ophthalmic services contract with a contracting PCT, where that contractor is—

- (a) an ophthalmic practitioner who is the subject of the allegation;
- (b) a partnership, where an ophthalmic practitioner who is or was the subject of the allegation is a partner in that partnership; or
- (c) a corporate body, where an ophthalmic practitioner who is or was the subject of the allegation is a director, chief executive or secretary of that body;

“relevant date” means 1st August 2008,

and terms used both in this Part and in the Service Committees Regulations shall bear the same meaning in this Part as they do in those Regulations.

(2) Unless the context otherwise requires, any reference in this Part to—

- (a) a numbered regulation is to the regulation bearing that number in the Service Committees Regulations; and
- (b) a numbered Schedule is to the Schedule to the Service Committees Regulations bearing that number.

Cases where no decision has been made before the relevant date as to whether disciplinary action should be taken (regulation 4)

11.—(1) Where, before the relevant date, or on or after the relevant date in respect of a matter that occurred before the relevant date, a PCT receives, or has received, information that could amount to an allegation that an ophthalmic practitioner had failed to comply with the terms of service and—

- (a) that PCT, or its reference committee, has not taken a final decision pursuant to regulation 4(1) before the relevant date as to whether it will take no action or take one or both of the courses of action set out in regulation 4(2); and
- (b) any time limit specified in regulation 6 has not expired,

paragraph (2) shall apply.

(2) Where this paragraph applies, the PCT shall—

- (a) if it is the appropriate PCT, continue to be the appropriate PCT for the purposes of the Service Committees Regulations, and consider and take such action as it sees fit pursuant to the Service Committees Regulations, subject to regulation 14 of these Regulations, as if the amendments to regulations 2 to 6 and 10 and Schedules 2 and 4 had not taken effect; or
- (b) if it is not the appropriate PCT, forward the information to the appropriate PCT as soon as is reasonably practicable, and that PCT shall consider the information received and take such action as it sees fit pursuant to the Service Committees Regulations, as if the amendments to regulations 2 to 6 and 10 and Schedules 2 and 4 had not taken effect.

(3) If the appropriate PCT, or its reference committee, decides to refer the matter to another PCT (PCT B) in accordance with regulation 4(2)(a) or (7) (that is for investigation under regulation 5(1))

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- (a) PCT (B) shall investigate the matter and report to the appropriate PCT as if the amendments to regulations 2 to 10 and Schedules 2 and 4 had not taken effect; and
 - (b) the appropriate PCT shall be entitled, subject to regulation 14 of these Regulations, to take any action it could have taken pursuant to the Service Committees Regulations as if those amendments had not taken effect.

Referrals to investigating discipline committees before the relevant date (regulation 5)

12. Where a PCT (PCT(A)) has, before the relevant date, referred a matter in respect of an ophthalmic practitioner to another PCT (PCT (B)) in accordance with regulation 4(2)(a) or (7) (that is for investigation under regulation 5(1)) and—

- (a) that matter has not been finally determined by the discipline committee of PCT (B) before the relevant date—
 - (i) the discipline committee of PCT (B) shall investigate the matter and report to the PCT (A) as if the amendments to regulations 2 to 6 and 10 and Schedules 2 and 4 had not taken effect, and
 - (ii) PCT (A) shall be entitled to take any action it could have taken pursuant to the Service Committees Regulations as if those amendments had not taken effect, subject to regulation 14 of these Regulations; or
- (b) PCT (A) has received the report of the discipline committee of PCT (B), but has not yet determined what (if any) action to take as a result of the report, PCT (A) shall be entitled to take any action it could have taken pursuant to the Service Committees Regulations as if the amendments to regulations 2 to 6 and 10 had not taken effect, subject to regulation 14 of these Regulations.

Determination of a PCT or the Secretary of State made before the relevant date (regulations 8, 9, 10 and 11)

13.—(1) Where, before the relevant date, a PCT (or where relevant, the Secretary of State) has determined pursuant to regulation 8(5)(a), regulation 9(3) or regulation 11 that an amount should be recovered from the ophthalmic practitioner, in so far as any of that amount has not been recovered before the relevant date, it shall continue to be recoverable by the PCT that was the appropriate PCT for the purposes of the Service Committees Regulations in respect of that matter, and it shall be treated as a debt owed by that ophthalmic practitioner to that Trust.

(2) Where a contracting PCT has record of, or receives notification of, an adverse determination made before the relevant date pursuant to regulation 8, 9, 10, 11 or 12 in respect of an ophthalmic practitioner (where, in the case of a determination under regulation 8, such a determination was not overturned on appeal), paragraph (3) shall apply without prejudice to any other rights the contracting PCT may have to take action against the relevant contractor pursuant to any term of the general ophthalmic services contract.

- (3) Where this paragraph applies, the contracting PCT—
 - (a) may take into account that adverse determination in relation to a relevant contractor if it is considering, pursuant to a term of the general ophthalmic services contract that gives effect to paragraph 46(7) (remedial notices and breach notices) of Schedule 1 to the Contracts Regulations, whether the cumulative effect of breaches under that contract is such that to allow the contract to continue would be prejudicial to the efficiency of the services provided under that contract; but
 - (b) in any case where the contracting PCT is considering terminating the general ophthalmic services contract, it shall not take into account any adverse determination that was made more than 6 years before the date of any such proposed termination.

(4) Where a Performers List PCT has record of, or receives notification of, an adverse determination pursuant to regulation 8, 9, 10, 11 or 12 made before the relevant date in respect of a ophthalmic practitioner (where, in the case of a determination under regulation 8, such a determination was not overturned on appeal) it may take that determination into account in determining what (if any) action it should take in respect of that ophthalmic practitioner pursuant to its powers under the Performers Lists Regulations.

Determination of a PCT made on or after the relevant date (regulation 8)

14.—(1) Where, on or after the relevant date, an appropriate PCT is determining what (if any) action to take pursuant to regulation 8 in accordance with provision made in this Part, it shall make the determination in accordance with the provisions relating to that regulation specified in this regulation.

(2) The appropriate PCT may—

- (a) pursuant to regulation 8(1)(c)(i), determine that no further action should be taken;
- (b) pursuant to regulation 8(5)(a), determine that an amount shall be recovered from the ophthalmic practitioner; or
- (c) pursuant to regulation 8(5)(c), determine that it would have warned the ophthalmic practitioner to comply more closely with the terms of service in future, if those terms of service were still applicable,

and if it makes any one or more of the decisions specified in sub-paragraphs (b) or (c), it shall, after the period specified in regulation 8(11)(a) or (b) (as applicable) has expired, notify in writing the contracting PCT and the Performers List PCT (if any) of its decision and the reasons for it, if either one is a different PCT to the appropriate PCT.

(3) Where, pursuant to paragraph (2)(b), the appropriate PCT determines that an amount should be recovered from the ophthalmic practitioner, that amount shall be recoverable by the appropriate PCT and it shall be treated as a debt owed by that ophthalmic practitioner to the appropriate PCT.

(4) Where the appropriate PCT has notified the contracting PCT that it has made any of the determinations specified in paragraph (2)(b) or (c), or where the appropriate PCT is the contracting PCT, paragraph (5) shall apply without prejudice to any other rights the contracting PCT may have to take action against the relevant contractor pursuant to any term of the general ophthalmic services contract.

(5) Where this paragraph applies, the contracting PCT—

- (a) may, in relation to a relevant contractor, take into account the determination of the appropriate PCT if it is considering, pursuant to a term of the general ophthalmic services contract that gives effect to paragraph 46(7) of Schedule 1 to the Contracts Regulations, whether the cumulative effect of breaches under that contract or agreement is such that to allow the contract to continue would be prejudicial to the efficiency of the services provided under that contract; but
- (b) in any case where the contracting PCT is considering terminating the general ophthalmic services contract, it shall not take into account any adverse determination that was made more than 6 years before the date of any such proposed termination.

(6) Where—

- (a) a Performers List PCT has received notification from an appropriate PCT pursuant to paragraph (2); or
- (b) where an appropriate PCT that has taken a decision pursuant to paragraph (2) is also the Performers List PCT,

it shall consider what (if any) action it should take in respect of that ophthalmic practitioner pursuant to its powers under the Performers Lists Regulations.

Appeals to the Secretary of State against determinations of PCTs (regulations 9, 10 and 11)

15.—(1) Where—

- (a) an ophthalmic practitioner has appealed against a determination of a PCT in accordance with regulation 9 before the relevant date, but that appeal has not been finally determined before that date; or
- (b) in respect of a determination made by a PCT in accordance with regulation 8 before the relevant date, the time limit specified in regulation 9(2) for appealing that determination has not expired before the relevant date and the ophthalmic practitioner serves a notice of appeal on or after the relevant date, but within the time limit specified in regulation 9(2),

that appeal shall be determined pursuant to regulations 9, 10 and 11, as if any amendments in these Regulations to those regulations had not taken effect.

(2) Where an appropriate PCT has made a determination in respect of an ophthalmic practitioner on or after the relevant date pursuant to this Part—

- (a) the ophthalmic practitioner shall be entitled to appeal against that determination in accordance with regulation 9; and
- (b) that appeal shall be determined pursuant to regulations 9, 10 and 11,

as if any amendments in these Regulations to those regulations had not taken effect.

(3) Where, on or after the relevant date, the Secretary of State is determining pursuant to regulation 9, 10 or 11 what (if any) action to take in respect of an ophthalmic practitioner, the Secretary of State shall make a determination pursuant to those regulations as if the amendments to those regulations had not taken effect and that determination shall have effect in accordance with this regulation.

- (4) If, in accordance with paragraph (3), the Secretary of State determines pursuant to—
 - (a) regulation 9(3)(d), that there has been an overpayment and, if so, what amount;
 - (b) regulation 8(5)(a) and 9(3) or 11, that an amount shall be recovered from the ophthalmic practitioner; or
 - (c) regulation 8(5)(c) and 9(3), that the Secretary of State would have warned the ophthalmic practitioner to comply more closely with its terms of service in future, if those terms of service were still applicable;

the Secretary of State shall, in addition to the persons specified in regulation 10(14), notify the PCT specified in paragraph (5).

(5) The PCT specified is the contracting PCT and the Performers List PCT (if any) if those PCTs are different to the PCT specified in regulation 10(14).

(6) Where, pursuant to regulation 8(5)(a), 9(3) or 11, the Secretary of State has determined that an amount shall be recovered from an ophthalmic practitioner, the Secretary of State shall direct the appropriate PCT, to recover that amount from the ophthalmic practitioner and that amount shall be a debt owed to that appropriate PCT.

(7) Where, pursuant to paragraph (5), the Secretary of State has notified the contracting PCT that the Secretary of State has taken any of the decisions specified in paragraph (4)(a) to (4)(c), whether or not the contracting PCT is also the appropriate PCT, paragraph (8) shall apply without prejudice to any other right the contracting PCT may have to take action against the relevant contractor pursuant to any term of the general ophthalmic services contract.

(8) Where this paragraph applies, the contracting PCT may, in relation to a relevant contractor, take into account the determination of the Secretary of State if it is considering, pursuant to a term of the general ophthalmic services contract that gives effect to paragraph 46(7) of Schedule 1 to the Contracts Regulations whether the cumulative effect of breaches under that contract is such that to allow the contract to continue would be prejudicial to the efficiency of the services provided under that contract.

(9) The contracting PCT shall not, pursuant to paragraph (8), take into account any notification received that relates to a determination that was made by the Secretary of State more than 6 years before the date upon which the contracting PCT is considering the matter pursuant to paragraph (8).

(10) Where a Performers List PCT has received notification from the Secretary of State pursuant to paragraph (4) or (5), whether or not the Performers List PCT is also the appropriate PCT, it shall consider what (if any) action it should take in respect of that ophthalmic practitioner pursuant to its powers under the Performers Lists Regulations.

Functions of Local Optical Committees

16. Where—

- (a) a Local Optical Committee has, before the relevant date had any matter referred to it for its consideration that it had not finally determined before the relevant date; and
- (b) pursuant to this Part, that matter is to be determined by the Local Optical Committee on or after the relevant date,

the Local Optical Committee that is recognised by a PCT pursuant to section 125 (local optical committees) of the 2006 Act shall be the Committee to consider or determine the matter.

PART 4

TRANSITIONAL, CONSEQUENTIAL AND REVOCATION PROVISIONS

Transitional provision in relation to the Family Health Services Appeal Authority (Procedure) Rules 2001

17. Notwithstanding the amendments made to the Family Health Services Appeal Authority (Procedure) Rules 2001⁽¹⁶⁾ by paragraph 8 of Schedule 1, those Rules shall, in relation to any decision of a PCT made before 1st August 2008, continue to apply as they had effect on 31st July 2008 as if those amendments had not been made.

Minor and consequential amendments

18. The provisions listed in Schedule 1 are amended as there specified.

Revocations

19. The provisions listed in Schedule 2 are revoked in relation to England to the extent there specified.

Signed by authority for the Secretary of State for Health

28th June 2008

Ann Keen
Parliamentary Under Secretary of State
Department of Health

(16) [S.I. 2001/3750](#); relevant amendments are [S.I. 2004/865](#) and [2006/520](#).