

HEALTH ACT 2006

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

PART 4 CHAPTER 2

Ophthalmic Services

Section 38: General ophthalmic services contracts

188. *Section 38* makes provision for general ophthalmic services contracts. It inserts new sections 28WA, 28WB, 28WC, 28WD, 28WE and 28WF into the 1977 Act.

General ophthalmic services contracts: introductory

189. Provision for general ophthalmic services contracts is set out in section 28WA.
190. *Subsections (1), (2) and (3)* allow Primary Care Trusts to enter into contracts under which primary ophthalmic services are provided, specify that these contracts are to be called “general ophthalmic services contracts” and allow general ophthalmic services contracts to make provision in relation to services to be provided, remuneration and any other matters.
191. *Subsection (4)* specifies that services provided under a general ophthalmic services contract may include services which are not primary ophthalmic services and services provided outside of a Primary Care Trust’s own area. This provision allows for Primary Care Trusts working in partnership with other Primary Care Trusts to provide a service.
192. *Subsection (5)* defines “contractor” in relation to a general ophthalmic services contract as any person who enters into a general ophthalmic services contract with the Primary Care Trust. A “contractor” can be either an individual or a corporate body.

Persons eligible to enter into GOS contracts

193. Provisions around persons eligible to enter into GOS contracts are set out in section 28WB.
194. *Subsections (1) and (2)* allow a Primary Care Trust, subject to such conditions and exceptions as may be prescribed, to enter into a general ophthalmic services contract with any person, apart from someone who has been disqualified from doing so by virtue of regulations made under the 1977 Act. This is wider than the present position which is restricted to registered professionals. Regulations will be made to cover disqualifications.

Exclusion of contractors

195. Provisions around exclusion of contractors are set out in section 28WC.
196. *Subsection (1)* allows the Secretary of State to make regulations providing for a Primary Care Trust, or other prescribed person, to apply to the Family Health Service

Appeal Authority (FHSAA) for a person to be disqualified from entering into a general ophthalmic services contract anywhere in England.

197. *Subsection (2)* specifies that regulations may in particular provide for review by the FHSAA of a disqualification and what is to happen to the general ophthalmic services contracts to which the disqualified person is a party when they are disqualified.

General Ophthalmic Services contracts: payments

198. Provisions around General Ophthalmic Services contracts and payments are set out in section 28WD.
199. *Subsections (1) and (2)* allow the Secretary of State for Health to give directions as to the payments to be made under these contracts and to specify that general ophthalmic services contracts must require payments to be made in accordance with any such directions that are in force.
200. *Subsection (3)* provides that directions may provide for payments to be made by reference to standards, the achievement of levels of performance or to a specified scheme or scale. They provide for conditions to be imposed in respect of a payment or part of a payment; and allow provisions to be made which have effect before the date of the direction itself.
201. *Subsection (4)* requires the Secretary of State to consult representatives of those providing services or any other appropriate bodies before making a direction on payments under *subsection(1)*.
202. *Subsection (6)* defines payments in this section as including fees, allowances, reimbursements, loans and repayments.

General Ophthalmic Services contracts: other required terms

203. Provisions around General Ophthalmic Services contracts and other required terms are provided in section 28WE.
204. *Subsection (1)* allows general ophthalmic services contracts to contain such provision as may be prescribed in addition to those already specified in this Part.
205. *Subsection (2)* specifies that regulations may make provision as to standards of provision of service, who may perform the service and who the service may be provided to, variation and termination of contracts, rights of entry and inspection and adjudication of disputes. These powers allow for regulations to be made to ensure that primary ophthalmic services are properly regulated, as at present: by, for example (as now) allowing for PCTs to have the right to inspect premises of contractors and for ending contracts if a contractor is found to be unsuitable for any reason.
206. *Subsections (3) and (4)* allow for regulations which make provision for Primary Care Trusts to impose a variation of terms in a contract. The regulations may also suspend or terminate a duty under the contract to provide services of a prescribed description; in such a case the regulations may prescribe services by reference to the manner or circumstances in which they are provided. This allows a PCT to act in cases of sub-standard performance not meriting termination of the contract.
207. *Subsection (5)* requires that regulations must make provision as to patients choosing the person from whom they are to receive services which ensures that eligible patients have an appropriate choice.

General Ophthalmic services contracts: disputes and enforcement

208. Provisions around disputes and enforcement are provided for in section 28WF.

- 209. *Subsections (1) and (2)* allow regulations to be made for the resolution of disputes as to the terms of a proposed general ophthalmic services contract and for referral to the Secretary of State, or a person appointed by her, to determine the terms on which the contract may be entered into.
- 210. *Subsection (3)* allows for regulations which may make provision for persons entering into a general ophthalmic services contract to be regarded as a health service body for the purposes of section 4 of the National Health Service and Community Care Act 1990, but only so far as concerns the general ophthalmic services contract. This allows the PCT and the person providing primary ophthalmic services to enter into an NHS contract, which is not a contract in law, but an agreement subject to determination by the Secretary of State in the event of dispute between the parties, if one of them so requests.
- 211. *Subsection (4)* allows for regulations made under *subsection (3)* to include provision for the case where there is a change in membership of a partnership which has elected to become a health service body.
- 212. *Subsection (5)* allows for directions on payments made in relation to persons who have elected to become a health service body under *subsection 3* to be enforceable in a county court as though it were a judgment of the court.