

# HEALTH ACT 2006

---

## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### PART 4 CHAPTER 2

##### Ophthalmic Services

180. General ophthalmic services (GOS) are at present provided by optometrists (previously known as ophthalmic opticians) and ophthalmic medical practitioners (OMPs) under Part 2 of the National Health Service Act 1977 (“the 1977 Act”). These services are purely sight testing services.
181. [Part 2](#) of that Act previously governed the services not only of optometrists and OMPs but also of general medical practitioners, dentists and chemists (the NHS “in the high street”).
182. The Health and Social Care (Community Health and Standards) Act 2003 repealed the provisions in Part 2 of the 1977 Act regarding the provision of services by general medical practitioners and dentists and provided in their place for primary medical services and primary dental services respectively under Part 1 of the 1977 Act. The general effect of these new provisions was to replace the previous arrangements for such services with new general medical services (GMS) or general dental services (GDS) contracts with providers (i.e. those bodies that provided the services contracted for), whilst having a new list system for performers (i.e. the health service professionals who actually perform the services).
183. The provisions in this Act will introduce a new “contract system” for the provision of ophthalmic services in place of the present system, very much on the model of what has already been done for primary medical services and primary dental services.
184. Part 2 of the 1977 Act will remain in force for the delivery of pharmaceutical services.

##### *Section 37: Provision of primary ophthalmic services*

185. [Section 37](#) makes provision for primary ophthalmic services by inserting into the National Health Service Act 1977 new sections 16CD and 16CE.
186. As regards section 16CD, *subsection (1)(a)* sets out the duty of a Primary Care Trust to provide or secure the provision of a sight testing service. The testing of sight will be, as at present, carried out in accordance with section 26 of the Opticians Act and the Sight Testing (Examination and Prescription) (No. 2) Regulations 1989. The Primary Care Trust must also, by *subsection (1)(b)*, provide or secure the provision of other primary ophthalmic services prescribed in Regulations. Finally, by *subsection (1)(c)*, a PCT must provide or secure the provision of such further primary ophthalmic services to the extent it considers necessary to meet reasonable requirements.
187. *Subsection (2)* sets out the groups for which a Primary Care Trust must provide or secure a sight test pursuant to *subsection (1)(a)* (except any such testing which takes place in circumstances specified in regulations). Regulations may be made for other groups to become eligible for sight tests. Regulations will be made to cover all groups

currently eligible for NHS funded sight tests where they are not expressly mentioned. *Subsections (3) to (10)* and section 16CE make further provision for regulations as to sight-testing and other arrangements for the provision of primary 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.

### ***Section 39 Persons performing primary ophthalmic services***

213. *Section 39* amends section 28X of the 1977 Act, so that, in common with primary medical services and primary dental services, only a person on the performers list of a Primary Care Trust may perform primary ophthalmic services. It also allows the Secretary of State to prescribe the qualifications and experience which a medical practitioner who applies for inclusion in a primary ophthalmic services list must have. The testing of sight (which is the only primary ophthalmic service required by these provisions) is reserved to registered optometrists and medical practitioners so only such registered practitioners may be on a performers list.

### ***Section 40 Assistance and support***

214. *Section 40* amends section 28Y of the 1977 Act so PCTs may provide assistance or support to those providing or purposing to provide primary ophthalmic services. This would allow PCTs to help providers or intending providers to set up or expand primary ophthalmic services in its area

### ***Section 41 Local Optical Committees***

215. *Section 41* inserts new section 45C in the 1977 Act. The new section relates to Local Optical Committees and largely mirrors the existing provision.
216. *Subsections (1), (2) and (3)* allow a Primary Care Trust to recognise a committee formed for its area that is representative of those who have entered into a general ophthalmic services contract and those who are performing primary ophthalmic services in that area and who have notified the committee that they wish to be represented. At present Local Optical Committees are representative of those on the ophthalmic list, and this will make the Committee more representative of professionals performing primary ophthalmic services in an area.
217. *Subsections (4 to 11)* specify that the committee shall be the Local Optical Committee and allow for regulations to be made in respect of consultation of that committee by the Primary Care Trust in respect of primary ophthalmic services, allows for co-option of persons to membership of the Committee, for other functions to be prescribed, for determination of committee expenses and for a levy on fees paid to contractors to meet those expenses. Subsection (10) permits the administrative expenses of the committee to be defrayed by a levy on the fees paid to those providing the services. This follows the present arrangements for funding the Committees.

### ***Section 42 Payments in respect of optical appliances***

218. *Section 42* amends Schedule 12 to the 1977 Act by inserting a new paragraph 2B. Paragraph 2B allows for regulations to be made providing for the Secretary of State to give a notice to a provider of optical appliances to the effect that no further payments will be made to that person in respect of optical appliances supplied in a specified area (or for their replacement or repair) (“a local disqualification”). Regulations may also make provision for appeal rights for the person to whom the notice was given. Further, the Secretary of State may, following a local disqualification, apply to the FHSAA for a notice to be given in respect of the whole of England. This provides machinery for preventing any suppliers abusing the system from continuing to receive monies in respect of it.

### ***Section 43 General ophthalmic services: transitional***

219. *Section 43* makes transitional provision.

220. *Subsections (1), (2) and (3)* require the Secretary of State to make transitional provisions in respect of persons who, immediately before coming into force of the new provisions about general ophthalmic services, were providing general ophthalmic services in England under section 38 of the 1977 Act, provide that regulations made under this section may provide that a Primary Care Trust must, under specified circumstances, and if the person wishes, enter into a general ophthalmic services contact with that person and allow the regulations to make provision as to the terms of the contract.
221. *Subsection (4)* allows regulations made under this section to make provision for the resolution of disputes in relation to a contract, entered into or proposed, and for the determination of disputes by the Secretary of State or someone appointed by the Secretary of State.
222. *Subsection (5)* allows regulations made under this section to make provision in respect of a period beginning before the coming into force of that provision or of section 38 of the Act. It is intended to exercise this power so that payments can be made on the coming into force of sections 38 or 43 to maintain the provision of ophthalmic services.