



# Health Act 2006

## 2006 CHAPTER 28

### PART 4

#### THE NATIONAL HEALTH SERVICE

### CHAPTER 2

#### OPHTHALMIC SERVICES

### 37 Provision of primary ophthalmic services

After section 16CC of the 1977 Act insert—

#### “16CD Primary ophthalmic services

- (1) Each Primary Care Trust must exercise its powers so as to provide or secure the provision, within its area, of the following primary ophthalmic services—
  - (a) the sight-testing service mentioned in subsection (2);
  - (b) such other primary ophthalmic services as may be prescribed; and
  - (c) to the extent that it considers necessary to meet all reasonable requirements, any further primary ophthalmic services.
- (2) The sight-testing service mentioned in subsection (1)(a) is a service for testing the sight of all of the following persons (except any such testing which takes place in prescribed circumstances)—
  - (a) those aged under 16;
  - (b) those aged 16, 17 or 18 who are receiving qualifying full-time education;
  - (c) those whose resources are to be treated in accordance with regulations as being less than or equal to their requirements;
  - (d) those aged 60 or over;
  - (e) those of such other description as may be prescribed.

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- (3) Regulations may—
- (a) prescribe what “qualifying full-time education” is for the purposes of subsection (2)(b);
  - (b) make provision for the purposes of subsection (2)(c) about how a person’s resources and requirements are to be calculated.
- (4) A Primary Care Trust may (in addition to any other power conferred on it)—
- (a) provide primary ophthalmic services itself (whether within or outside its area);
  - (b) make such arrangements for their provision (whether within or outside its area) as it thinks fit, and may in particular make contractual arrangements with any person.
- (5) Each Primary Care Trust must publish information about such matters as may be prescribed in relation to the primary ophthalmic services provided under this Part.
- (6) A body on which functions are conferred under this section must co-operate with any other such body in the discharge of their respective functions relating to the provision of primary ophthalmic services under this Part.
- (7) Regulations may provide that services of a prescribed description are, or are not, to be regarded as primary ophthalmic services for the purposes of this Part (but these regulations may not affect the duty in subsection (1)(a)).
- (8) Regulations under subsection (7) may in particular describe services by reference to the manner or circumstances in which they are provided.
- (9) Regulations may provide that a person—
- (a) whose sight is tested by a person who is a party to a general ophthalmic services contract; and
  - (b) who is shown during the testing or within a prescribed time after it to fall within any of paragraphs (a) to (d) of subsection (2),
- is to be taken for the purposes of the testing to have so fallen immediately before his sight was tested.
- (10) In the case mentioned in subsection (9), the testing of his sight is (unless it took place in circumstances prescribed under subsection (2)) to be treated as a testing under the sight-testing service mentioned in subsection (1)(a)—
- (a) for the purposes of remuneration in respect of the testing; and
  - (b) for any such other purpose as may be prescribed.

### **16CE Regulations under section 16CD: supplementary**

- (1) Regulations under section 16CD which refer to an Act of Parliament or an instrument made under an Act of Parliament may direct that the reference is to be construed as a reference to that Act or instrument—
- (a) as it has effect at the time when the regulations are made; or
  - (b) both as it has effect at that time and as amended subsequently.
- (2) Descriptions of persons may be prescribed under section 16CD(2)(e) by reference to any criterion, including the following—
- (a) their age;

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- (b) the fact that a prescribed person or a prescribed body accepts them as suffering from a prescribed medical condition;
  - (c) the fact that a prescribed person or a prescribed body accepts that a prescribed medical condition from which they suffer arose in prescribed circumstances;
  - (d) their receipt of benefit in money or kind under any enactment or their entitlement to receive any such benefit;
  - (e) the receipt of any such benefit by other persons satisfying prescribed conditions or the entitlement of other persons satisfying prescribed conditions to receive such benefits.
- (3) Regulations under section 16CD(3)(b) may direct that a person’s resources and requirements be calculated—
- (a) by a method set out in the regulations;
  - (b) by a method described by reference to a method of calculating or estimating income or capital specified in an enactment other than this section or in an instrument made under an Act of Parliament or by reference to such a method but subject to prescribed modifications;
  - (c) by reference to an amount applicable for the purposes of a payment under an Act of Parliament or an instrument made under an Act of Parliament; or
  - (d) by reference to the person’s being or having been entitled to payment under an Act of Parliament or an instrument made under an Act of Parliament.”

### **38 General ophthalmic services contracts**

After section 28W of the 1977 Act insert—

#### *“General ophthalmic services contracts*

##### **28WA General ophthalmic services contracts: introductory**

- (1) A Primary Care Trust may enter into a contract under which primary ophthalmic services are provided in accordance with the following provisions of this Part.
- (2) A contract under this section is called in this Act a “general ophthalmic services contract”.
- (3) Subject to any provision made by or under this Part, a general ophthalmic services contract may make such provision as may be agreed between the Primary Care Trust and the contractor or contractors in relation to—
  - (a) the services to be provided under the contract;
  - (b) remuneration under the contract; and
  - (c) any other matters.
- (4) The services to be provided under a general ophthalmic services contract may include—
  - (a) services which are not primary ophthalmic services;
  - (b) services to be provided outside the area of the Primary Care Trust.

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- (5) In this Part, “contractor”, in relation to a general ophthalmic services contract, means any person entering into the contract with the Primary Care Trust.

#### **28WB Persons eligible to enter into GOS contracts**

- (1) A Primary Care Trust may, subject to such conditions and exceptions as may be prescribed, enter into a general ophthalmic services contract with any person.
- (2) But it may not enter into such a contract with a person who has been disqualified from doing so by an order of disqualification made by virtue of regulations under section 28WC.

#### **28WC Exclusion of contractors**

- (1) The Secretary of State may make regulations conferring on a Primary Care Trust, or another prescribed person, a right to apply to the FHSAA in prescribed circumstances for an order that a person (“P”) be disqualified from entering into a general ophthalmic services contract.
- (2) The regulations may in particular provide for—
- (a) the review by the FHSAA of an order of disqualification made by virtue of regulations under this section;
  - (b) what is to happen in relation to general ophthalmic services contracts to which P is a party when the order is made.

#### **28WD GOS contracts: payments**

- (1) The Secretary of State may give directions as to payments to be made under general ophthalmic services contracts.
- (2) A general ophthalmic services contract must require payments to be made under the contract in accordance with directions for the time being in force under this section.
- (3) Without prejudice to the generality of the power under subsection (1), a direction under that subsection may—
- (a) provide for payments to be made by reference to compliance with standards or the achievement of levels of performance;
  - (b) provide for payments to be made by reference to—
    - (i) any scheme or scale specified in the direction; or
    - (ii) a determination made by any person in accordance with factors specified in the direction;
  - (c) provide for the making of payments in respect of individual practitioners;
  - (d) provide that the whole or any part of a payment is subject to conditions (and may provide that payments are payable by a Primary Care Trust only if it is satisfied as to certain conditions);
  - (e) make provision having effect from a date before the date of the direction, provided that, having regard to the direction as a whole, the provision is not detrimental to the persons to whose remuneration it relates.

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- (4) Before giving a direction under subsection (1), the Secretary of State—
  - (a) must consult any body appearing to him to be representative of persons to whose remuneration the direction would relate; and
  - (b) may consult such other persons as he thinks appropriate.
- (5) Section 18(1) and (3)(b) apply in relation to directions under this section.
- (6) References in this section to payments include fees, allowances, reimbursements, loans and repayments.

#### **28WE GOS contracts: other required terms**

- (1) A general ophthalmic services contract must contain such provision as may be prescribed (in addition to the provision required by the preceding provisions of this Part).
- (2) Regulations under subsection (1) may in particular make provision as to—
  - (a) the manner in which, and standards to which, services are to be provided;
  - (b) the persons who perform services;
  - (c) the persons to whom services are to be provided;
  - (d) the variation of contract terms (other than terms required by or under this Part);
  - (e) rights of entry and inspection (including inspection of clinical records and other documents);
  - (f) the circumstances in which, and the manner in which, the contract may be terminated;
  - (g) enforcement;
  - (h) the adjudication of disputes.
- (3) Regulations under subsection (2)(d) may—
  - (a) make provision as to the circumstances in which a Primary Care Trust may impose a variation of contract terms;
  - (b) make provision as to the suspension or termination of any duty under the contract to provide services of a prescribed description.
- (4) Regulations making provision of the kind described in subsection (3)(b) may prescribe services by reference to the manner or circumstances in which they are provided.
- (5) Regulations under subsection (1) must make provision as to the right of persons to whom services are to be provided to choose the persons from whom they are to receive them.

#### **28WF GOS contracts: disputes and enforcement**

- (1) Regulations may make provision for the resolution of disputes as to the terms of a proposed general ophthalmic services contract.
- (2) Regulations under subsection (1) may make provision—
  - (a) for the referral of the terms of the proposed contract to the Secretary of State; and

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- (b) for the Secretary of State, or a person appointed by him, to determine the terms on which the contract may be entered into.
- (3) Regulations may make provision for a person or persons entering into a general ophthalmic services contract to be regarded, in circumstances where he or they so elect, 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 (and not for any other purpose).
- (4) Regulations under subsection (3) may include provision as to the application of section 4 of that Act in cases where—
  - (a) persons practising in partnership elect to become a health service body; and
  - (b) there is a change in the membership of the partnership.
- (5) Where—
  - (a) by virtue of regulations under subsection (3), subsection (7) of section 4 of that Act applies in relation to a general ophthalmic services contract; and
  - (b) a direction as to payments is made under that provision in relation to the contract,

the direction is to be enforceable in a county court (if the court so orders) as if it were a judgment or order of that court.”

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

- (1) Section 28X of the 1977 Act (persons performing primary medical and dental services) is amended as follows.
- (2) After subsection (2) insert—
 

“(2A) Regulations may provide that a health care professional of a prescribed description may not perform any primary ophthalmic service for which a Primary Care Trust is responsible unless he is included in a list maintained under the regulations by a Primary Care Trust.”
- (3) In subsection (3)(b), for “medical or dental” substitute “medical, dental or ophthalmic”.
- (4) After subsection (6) insert—
 

“(6A) Regulations under this section may, in particular, also prescribe the qualifications and experience which a medical practitioner who applies for inclusion in a list mentioned in subsection (2A) must have, and may—

  - (a) provide for the practitioner to show to the satisfaction of a committee recognised by the Secretary of State for the purpose that he possesses such qualifications and experience;
  - (b) confer on a person who is dissatisfied with the determination of such a committee a right of appeal to a committee appointed by the Secretary of State; and
  - (c) provide for anything which appears to the Secretary of State to be appropriate in connection with that right of appeal.”
- (5) In the heading, for “medical and dental” substitute “medical, dental and ophthalmic”.

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

- (1) Section 28Y of the 1977 Act (assistance and support for providers of primary medical and dental services) is amended as follows.
- (2) For paragraph (a) of subsection (1) substitute—
  - “(a) any person providing, or proposing to provide, primary medical services under a general medical services contract, primary dental services under a general dental services contract, or primary ophthalmic services under a general ophthalmic services contract;”.
- (3) In paragraph (b) of subsection (1), for “such services” substitute “primary medical or dental services”.

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

After section 45B of the 1977 Act insert—

##### **“45C Local Optical Committees: England**

- (1) A Primary Care Trust may recognise a committee formed for its area, or for its area and that of one or more other Primary Care Trusts, which it is satisfied is representative of—
  - (a) the persons to whom subsection (2) applies; and
  - (b) the persons to whom subsection (3) applies.
- (2) This subsection applies to every person who, under a general ophthalmic services contract entered into by him, is providing primary ophthalmic services in the area for which the committee is formed.
- (3) This subsection applies to every optometrist not falling within subsection (2)—
  - (a) who is performing primary ophthalmic services in the area for which the committee is formed, whether under section 16CD(4)(a) above, or under a general ophthalmic services contract; and
  - (b) who has notified the Primary Care Trust that he wishes to be represented by the committee (and has not notified it that he wishes to cease to be so represented).
- (4) A committee recognised under this section shall be called the Local Optical Committee for the area for which it is formed.
- (5) Any such committee may delegate any of its functions, with or without restrictions or conditions, to sub-committees composed of members of that committee.
- (6) Any such committee may co-opt persons not falling within subsection (2) or (3) on such terms as it thinks fit.
- (7) Regulations may require a Primary Care Trust, in the exercise of its functions relating to primary ophthalmic services, to consult any committee recognised by it under this section on such occasions and to such extent as may be prescribed.
- (8) A committee recognised under this section shall have such other functions as may be prescribed.

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- (9) A committee recognised under this section shall in respect of each year determine the amount of its administrative expenses for that year.
- (10) A Primary Care Trust may—
  - (a) on the request of a committee recognised by it, allot to that committee such sums as it may determine for defraying the committee’s administrative expenses; and
  - (b) deduct the amount of such sums from the remuneration of persons of whom it is representative under subsection (1)(a) under the general ophthalmic services contracts entered into by them with the Trust.
- (11) References in this section to the administrative expenses of a committee include the travelling and subsistence allowances payable to its members.”

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

- (1) Schedule 12 to the 1977 Act (which makes provision about charges and payments) is amended as follows.
- (2) In paragraph 2A(1)—
  - (a) for paragraph (b) substitute—
    - “(b) for a person whose resources fall to be treated under the regulations as being less than or equal to his requirements;
    - (ba) for any person falling within section 16CD(2)(d) above; or”,
  - (b) after “paragraph (a), (b)” insert “, (ba)”.
- (3) After paragraph 2A insert—
  - “2B (1) Regulations under paragraph 2A above providing for payments for meeting or contributing towards the cost incurred for the supply of optical appliances or their replacement or repair may also provide as follows, but in relation to England only.
  - (2) They may make provision for such payments not to be made to any person falling within a prescribed description.
  - (3) They may make provision for the Secretary of State to give notice as mentioned in sub-paragraph (4) to a person to whom such payments have been made (whether by the Secretary of State or by an authority established under this Act).
  - (4) Such a notice is notice that no further such payments in respect of the supply, replacement or repair of optical appliances at a particular location or in a particular area, in either case specified in the notice, will be made to him after a date specified in the notice.
  - (5) If such a notice is given, no further payments as mentioned in sub-paragraph (4) are to be made to him after the date specified in the notice, unless the notice is cancelled by the Secretary of State.
  - (6) The regulations may make provision conferring on the Secretary of State the right, if he has given a notice by virtue of sub-paragraph (3), to apply to the FHSAA for a stop order.



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- (7) A stop order is an order that no further such payments are to be made (whether by the Secretary of State or by any authority established under this Act) to the person in question in respect of the supply, replacement or repair of optical appliances, wherever the supply, replacement or repair occurred.
- (8) If the regulations make the provision mentioned in sub-paragraph (3), they must also make provision conferring prescribed rights of appeal to the FHSAA upon the person to whom the notice was given.”

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

- (1) The Secretary of State shall in regulations make transitional provision in respect of persons who, immediately before the coming into force of section 38 of this Act, are providing services in England under section 38 of the 1977 Act (general ophthalmic services).
- (2) Regulations under this section may provide that, in such circumstances as the regulations may specify, a Primary Care Trust must, if any such person so wishes, enter into a general ophthalmic services contract with him; and the regulations may make provision as to the terms of any such contract.
- (3) Regulations under this section may provide that, in such circumstances as the regulations may specify, a Primary Care Trust must, if any such person so wishes, enter into a contract with him, containing such terms as the regulations may specify, for the provision of ophthalmic services.
- (4) Regulations under this section may make provision for the resolution of disputes in relation to any contract entered into, or proposed to be entered into, under subsection (2) or (3), including provision for the determination of disputes by the Secretary of State or a person appointed by him.
- (5) Regulations under this section may make provision in respect of a period beginning before the coming into force of the provision (or of section 38 of this Act), but such provision must not as a whole be detrimental to the remuneration of the persons to whom it relates.
- (6) In this section, “general ophthalmic services contract” means a contract under section 28WA of the 1977 Act (as inserted by section 38(1)).