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STATUTORY INSTRUMENTS

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**2008 No. 1185**

**NATIONAL HEALTH SERVICE, ENGLAND**

**The General Ophthalmic Services Contracts Regulations 2008**

<i>Made</i>	- - - -	<i>28th April 2008</i>
<i>Laid before Parliament</i>		<i>6th May 2008</i>
<i>Coming into force</i>	- -	<i>1st August 2008</i>

The Secretary of State for Health makes the following Regulations in exercise of the powers conferred by sections 28WB, 28WC, 28WE, 28WF and 126(4) of the National Health Service Act 1977(1) and section 9(8) of the National Health Service Act 2006(2).

**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;

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- (1) 1977 c.49 (“the 1977 Act”); see section 128(1) as amended by the National Health Service and Community Care Act 1990 (c.19) (“the 1990 Act”), section 26(2)(g) and (i), for the definitions of “prescribed” and “regulations”. Sections 28WB, 28WC and 28WF were inserted by the Health Act 2006 (c.28) (“the 2006 Act”), section 38. Section 126(4) was amended by the 1990 Act, s. 65(2); by the Health Act 1999 (c.8), Schedule 4, paragraph 37(6), by the Health and Social Care Act 2001 (c.15) (“the 2001 Act”), Schedule 5, paragraph 5(13)(b) and by the 2006 Act, section 80 and Schedule 8, paragraph 23. As regards Wales, the functions of the Secretary of State under sections 29 and 126(4) of the 1977 Act are transferred to Welsh Ministers under section 58 of, and Schedule 1 to, the Government of Wales Act 2006 (c. 32); these Regulations therefore extend only to England.
- (2) 2006 c. 41.

“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<sup>(3)</sup>;

“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>(4)</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;

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(3) S.I.1997/818.

(4) 1989 c. 41.

“MHRA” means the Medicines and Healthcare products Regulatory Agency<sup>(5)</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) of the Abolition of the National Health Service Tribunal (Consequential Provisions) Regulations 2001<sup>(6)</sup> or regulation 6(4)(b) of the Abolition of the National Health Service Tribunal (Consequential Provisions) Regulations 2002<sup>(7)</sup>;

“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<sup>(8)</sup>

“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<sup>(9)</sup>;

“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;

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<sup>(5)</sup> The MHRA is an executive agency of the Department of Health.

<sup>(6)</sup> S.I. 2001/3744, amended by S.I. 2002/2469.

<sup>(7)</sup> S.I. 2002/1920.

<sup>(8)</sup> S.I. 2004/585; regulation 3(1) was substituted by S.I. 2008/1187.

<sup>(9)</sup> 1989 c. 44.

“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<sup>(10)</sup>;

“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<sup>(11)</sup>;
- (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>(12)</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>(13)</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>(14)</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>(15)</sup>;

“registered” means included in the register;

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<sup>(10)</sup> S.I. 2008/1186.

<sup>(11)</sup> 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.

<sup>(12)</sup> Section 43D was inserted by section 24 of the 2001 Act.

<sup>(13)</sup> 1997 c. 46; section 8ZA was inserted by section 26(2) of the 2001 Act.

<sup>(14)</sup> Section 7 was amended by S.I. 2005/848.

<sup>(15)</sup> 1983 c.54; section 2(2) was amended by S.I. 2002/1315, 2006/1914 and 2007/3101.

“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(16).

(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.

## PART 2

### Contractors

#### Conditions: introductory

3. Subject to the provisions of any regulations made under section 43 of the Health Act 2006 (general ophthalmic services: transitional), a PCT may only enter into a contract if—

- (a) the conditions set out in regulation 4 are met, and
- (b) an application to enter into a contract, which complies with Schedule 3, has been made to that PCT.

#### Persons eligible to enter into GOS contracts

4.—(1) For the purposes of section 118 (persons eligible to enter into GOS contracts) it is a prescribed condition that a person must not fall within paragraph (3).

(2) The reference to a person in paragraph (1) includes any director, chief executive or secretary of a corporate body.

(3) A person falls within this paragraph if—

- (a) it is the subject of a national disqualification or a contract disqualification order;
- (b) subject to paragraph (4), it is disqualified or suspended (other than by an interim suspension order or direction pending an investigation) from practising by any licensing body anywhere in the world;
- (c) within the period of 5 years prior to the date the contract is to be commenced or, if earlier, the date on which the contract is to be signed, he has been dismissed (otherwise than by reason of redundancy) from any employment by a health service body, unless he has

- subsequently been employed by that health service body or another health service body and paragraph (5) applies to him or that dismissal was the subject of a finding of unfair dismissal by any competent tribunal or court;
- (d) within the period of 5 years prior to the date the contract is to be commenced or, if earlier, the date on which the contract is to be signed, it has been removed from, or refused admission to, a primary care list by reason of inefficiency, fraud or unsuitability (within the meaning of section 151(2), (3) and (4)) (disqualification of practitioners) respectively, unless its name has subsequently been included in such a list;
- (e) he has been convicted in the United Kingdom of—
- (i) murder; or
  - (ii) a criminal offence other than murder, committed on or after 14th December 2001, and has been sentenced to a term of imprisonment of over 6 months;
- (f) it has been convicted of a criminal offence, not falling within subparagraphs (d), (e) or (g), and, in the opinion of the PCT, is not a person with whom it ought to contract;
- (g) subject to paragraph (6), he has been convicted outside the United Kingdom of an offence which would, if committed in England and Wales constitute—
- (i) murder; or
  - (ii) a criminal offence other than murder, and been sentenced to a term of imprisonment of over 6 months;
- (h) he has been convicted of an offence committed on or after 1st April 2006, referred to in Schedule 1 to the Children and Young Persons Act 1933<sup>(17)</sup> (offences against children and young persons with respect to which special provisions apply) or Schedule 1 to the Criminal Procedure (Scotland) Act 1995<sup>(18)</sup> (offences against children under the age of 17 years to which special provisions apply);
- (i) it has—
- (i) been adjudged bankrupt or had sequestration of his estate awarded unless (in either case) he has been discharged or the bankruptcy order has been annulled;
  - (ii) been made the subject of a bankruptcy restrictions order or an interim bankruptcy restrictions order under Schedule 4A to the Insolvency Act 1986<sup>(19)</sup> unless that order has ceased to have effect or has been annulled; or
  - (iii) made a composition or arrangement with, or granted a trust deed for, its creditors unless he or it has been discharged in respect of it;
- (j) an administrator, administrative receiver or receiver is appointed in respect of it;
- (k) the PCT is not satisfied that the person—
- (i) has the premises, equipment and record keeping arrangements, or
  - (ii) will employ or engage, by the date the contract is to commence, appropriate staff, to provide the services under the contract;
- (l) the PCT is not satisfied that it is a person suitable to provide general ophthalmic services;
- (m) he has within the period of 5 years prior to the date the contract is to commence or, if earlier, the date on which the contract is to be signed—

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(17) 1933 c. 12; as amended by the Domestic Violence, Crime and Victims Act 2004 (c. 28), section 58(1), Schedule 10, para. 2; the Sexual Offences Act 2003 (c. 42), section 139 and Schedule 6, para. 7; the Criminal Justice Act 1988 (c. 33), section 170 and Schedule 15, Para. 8, and Schedule 16, para. 16; and the Sexual Offences Act 1956 (c. 69), sections 48 and 51 and Schedules 3 and 4 and modified by the Criminal Justice Act 1988, section 170(1) and Schedule 15, para. 9.

(18) 1995 c. 46.

(19) 1986 c. 45; Schedule 4A was inserted by s. 257 of and Schedule 20 to the Enterprise Act 2002 (c.40).

- (i) been removed from the office of charity trustee or trustee for a charity by an order made by the Charity Commissioners or the High Court on the grounds of any misconduct or mismanagement in the administration of the charity for which he was responsible or to which he was privy, or which he by his conduct contributed to or facilitated; or
- (ii) been removed under section 7 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990<sup>(20)</sup> (powers of the Court of Session to deal with management of charities), from being concerned in the management or control of any body; or
- (n) he is subject to a disqualification order under the Company Directors Disqualification Act 1986<sup>(21)</sup>, the Companies (Northern Ireland) Order 1986<sup>(22)</sup> or to an order made under section 429(2)(b) of the Insolvency Act 1986 (failure to pay under county court administration order)<sup>(23)</sup>.

(4) A person does not fall within paragraph (3)(b) where the PCT is satisfied that the disqualification or suspension from practising is imposed by a licensing body outside the United Kingdom and that disqualification or suspension does not make the person unsuitable to be, as the case may be—

- (a) a contractor; or
- (b) a director, chief executive or secretary of a corporation entering into a contract.

(5) The condition referred to in paragraph (3)(c) is that, where a person has been employed as a member of a health care profession, any subsequent employment must also be as a member of that profession.

(6) A person does not fall within paragraph (3)(g) where the PCT is satisfied that the conviction does not make the person unsuitable to be, as the case may be—

- (a) a contractor; or
- (b) a director, chief executive or secretary of a corporate body entering into a contract.

## Reasons

5.—(1) Where a PCT is of the view that the conditions in regulation 4 for entering into a contract are not met, it shall notify the person intending to enter into the contract of—

- (a) that view and its reasons for that view; and
- (b) the person's right of appeal under regulation 6.

(2) The PCT shall also notify of that view and its reasons for that view, a director, chief executive or secretary of a corporate body that is notified under paragraph (1), where its reason for the decision relates to that person or those persons.

## Appeals and contract disqualifications

6.—(1) A person who has been served with a notice under regulation 5(1) may appeal to the FHSAA against the decision of the PCT that the conditions in regulation 4 are not met, by giving notice to the FHSAA within the period of 28 days, beginning on the day that the PCT served its notice.

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<sup>(20)</sup> 1990 c. 40.

<sup>(21)</sup> 1986 c. 46; as amended by the Insolvency Act 2000 (c. 39).

<sup>(22)</sup> S.I. 1986/1032 (N.I. 6).

<sup>(23)</sup> 1986 c. 45.

(2) A PCT, which has given notice under regulation 5(1) may, if it considers that that person should be disqualified from entering into a contract, apply to the FHSAA for a contract disqualification order in relation to that person.

(3) The FHSAA, in a case where a person has appealed under paragraph (1) may, of its own motion, make application to itself for a contract disqualification order in relation to that appellant.

(4) In a case to which paragraph (2) or (3) applies, the FHSAA may make a contract disqualification if it considers it right to do so in all the circumstances of the case.

(5) Subject to paragraph (7), where the FHSAA has made a contract disqualification order, the person in respect of whom it has been made may, not less than 3 years after the making of the order, apply to the FHSAA for a review of that order and, on such an application, the FHSAA shall either confirm that order or specify a date on which that order shall cease to have effect.

(6) Subject to paragraph (7), in any case where the FHSAA has confirmed an order under paragraph (5) or this paragraph, the person in respect of whom a contract disqualification order was confirmed may, not less than 3 years after the making of the order, apply to the FHSAA for a review of that order and, on such an application, the FHSAA shall either confirm that order or specify a date on which that order shall cease to have effect.

(7) The FHSAA may, when making or confirming an order under paragraph (5) or (6), determine that instead of the period of 3 years specified in those paragraphs, the period for a review shall be such period, of not less than 1 year or more than 5, as the FHSAA may decide.

## PART 3

### Pre-contract Dispute Resolution

#### **Pre-contract disputes**

7.—(1) Subject to paragraphs (2) and (3), if, in the course of negotiations intending to lead to a contract, the prospective contracting parties are unable to agree on a particular term of the contract, either party may refer the dispute to the Secretary of State to consider and determine the matter in accordance with the procedure provided for in paragraph 30(2) and (3) of Schedule 1 (NHS dispute resolution procedure).

(2) Paragraph (1) does not apply in the case where both parties to the prospective contract are health service bodies (in which case section 9(7) (NHS contracts) applies).

(3) Before referring the dispute for consideration and determination under paragraph (1), both parties to the prospective contract must make every reasonable effort to communicate and co-operate with each other with a view to resolving it.

(4) Disputes referred to the Secretary of State in accordance with paragraph (1) or section 9(7) shall be considered and determined in accordance with the provisions of paragraphs 30(4) to (13) and 31(1) (determination of dispute) of Schedule 1 and paragraph (5) (where it applies) of this regulation.

(5) In the case of a dispute referred to the Secretary of State under paragraph (1), the determination—

- (a) may specify terms to be included in the proposed contract;
- (b) may require the PCT to proceed with the proposed contract, but may not require the proposed contractor to proceed with the proposed contract; and
- (c) shall be binding upon the prospective parties to the contract.



## PART 4

### Health Service Body Status

#### Health service body status

8.—(1) Where a proposed contractor elects, in a notice served on the PCT at any time prior to the contract being entered into, to be regarded as a health service body for the purposes of section 9, it shall be so regarded, but only so far as concerns the contract, from the date on which the contract is entered into.

(2) If, in accordance with paragraph (1) or (5), a contractor is to be regarded as a health service body, that fact shall not affect the nature of, or any rights or liabilities arising under, any other contract with a health service body entered into by that contractor before the date on which the contractor is to be so regarded.

(3) Where a contract is made with an individual or two or more persons practising in partnership, and that individual or that partnership is to be regarded as a health service body in accordance with paragraph (1) or (5), the contractor shall, subject to paragraph (4), continue to be regarded as a health service body for the purposes of section 9, but only so far as concerns the contract, for as long as that contract continues and irrespective of any change in—

- (a) the partners comprising the partnership;
- (b) the status of the contractor from that of an individual to that of a partnership; or
- (c) the status of the contractor from that of a partnership to that of an individual.

(4) A contractor may at any time request a variation of the contract to include or remove the provision from the contract that the contract is an NHS contract, and if it does so—

- (a) the PCT shall agree to the variation; and
- (b) the procedure in paragraph 33(1) of Schedule 1 shall apply (variation of a contract: general).

(5) Where, pursuant to paragraph (4), the PCT agrees to a variation of the contract, the contractor shall—

- (a) be regarded; or
- (b) subject to paragraph (7), cease to be regarded,

as a health service body for the purposes of section 9, but only so far as concerns the contract, from the date that variation takes effect pursuant to paragraph 33(1) of Schedule 1.

(6) Subject to paragraph (7), a contractor shall cease to be regarded as a health service body for the purposes of section 9 if the contract is terminated.

(7) Where a contractor ceases to be a health service body pursuant to—

- (a) paragraph (5) or (6), it shall continue to be regarded as a health service body for the purposes of being a party to any other general ophthalmic services contract entered into after it became a health service body, but before the date on which the contractor ceased to be a health service body (for which purposes it ceases to be such a body on the termination of that NHS contract);
- (b) paragraph (5), it shall, if it or the PCT has referred any matter to the NHS dispute resolution procedure before it ceases to be a health service body, be bound by the determination of the adjudicator as if the dispute had been referred pursuant to paragraph 29 of Schedule 1 (dispute resolution: non-NHS contracts); or
- (c) paragraph (6), it shall continue to be regarded as a health service body for the purposes of the NHS dispute resolution procedure where that procedure has been commenced—

- (i) before the termination of the contract; or
- (ii) after the termination of the contract, whether in connection with or arising out of the termination of the contract or otherwise,

for which purposes it ceases to be such a body on the conclusion of that procedure.

## PART 5

### Contracts: Required Terms

#### **Parties to the contract**

- 9.** A contract must specify—
- (a) the names of the parties;
  - (b) whether the contract is for mandatory services or for additional services;
  - (c) in the case of a partnership—
    - (i) whether or not it is a limited partnership, and
    - (ii) the names of the partners and, in the case of a limited partnership, their status as a general or limited partner; and
  - (d) in the case of each party, the postal address to which official correspondence and notices should be sent.

#### **NHS contracts**

**10.** In the case of a contractor who is to be regarded as a health service body pursuant to regulation 8, the contract must state that it is an NHS contract.

#### **Contracts with individuals practising in partnership**

**11.—(1)** Where the contract is with two or more individuals practising in partnership, the contract shall be treated as made with the partnership as it is from time to time constituted and the contract shall make specific provision to this effect.

(2) Where the contract is with two or more individuals practising in partnership, the contractor must be required by the terms of the contract to ensure that any person who becomes a member of the partnership after the contract has come into force is bound automatically by the contract whether by virtue of a partnership deed or otherwise.

#### **Duration**

**12.—(1)** Except in the circumstances specified in paragraph (2), a contract must provide for it to subsist until it is terminated in accordance with the terms of the contract or the general law.

(2) The circumstances referred to in paragraph (1) are that the PCT has terminated the contract of another provider of primary ophthalmic services, and as a result of that termination, it wishes to enter into a temporary contract for a period specified in the contract for the provision of services.

- (3) Where a temporary contract is entered into pursuant to paragraph (2)—
- (a) paragraph 39 of Schedule 1 (termination by the contractor) shall not apply to that contract; and
  - (b) the parties to that contract may include such terms as to termination by notice as they may agree.

## Testing of sight

13.—(1) A contract must contain terms to the effect specified in this regulation.

(2) A contractor shall, having accepted an application from or on behalf of a patient for the testing of sight—

- (a) secure the testing of the patient's sight to determine whether the patient needs to wear or use an optical appliance; and
- (b) in so doing, shall secure the fulfilment of any duty imposed on a tester of sight by, or in regulations made under, section 26 of the Opticians Act (duties to be performed on sight testing)(24).

(3) Where a contractor or an ophthalmic practitioner employed by it to perform the contract is of the opinion that a patient whose sight was tested pursuant to paragraph (2)—

- (a) shows on examination signs of injury, disease or abnormality in the eye or elsewhere which may require medical treatment; or
- (b) is not likely to attain a satisfactory standard of vision notwithstanding the application of corrective lenses,

the contractor shall, if appropriate, and with the consent of the patient—

- (i) refer the patient to an ophthalmic hospital, which includes an ophthalmic department of a hospital,
- (ii) inform the patient's doctor or GP practice that it has done so, and
- (iii) give the patient a written statement that it has done so, with details of the referral.

(4) Where a contractor or an ophthalmic practitioner employed by it to perform the contract tests the sight of a patient diagnosed as suffering from diabetes or glaucoma, it shall inform the patient's doctor or GP practice of the results of the test.

(5) Where a contractor or an ophthalmic practitioner employed by it to perform the contract issues to a patient a prescription for glasses, it shall, immediately thereafter, require the patient to acknowledge its receipt on a sight test form.

(6) A prescription for glasses issued following a testing of sight under general ophthalmic services shall be completed by the method recommended in Appendix A to British Standard BS 2738 Part 3: 2004 (Glossary of Terms relating to Ophthalmic Lenses and Spectacle Frames) published by the British Standards Institution(25) and shall comply with any requirements as to its form specified in any direction made under section 120 for the purposes of payment in respect of the sight test.

## Services: general

14. A contract for mandatory services must specify—

- (a) the address of each of the premises to be used by the contractor for the provision of such services; and
- (b) the hours during which services are normally to be provided at each of those premises.

## Finance

15.—(1) The contract must contain a term which has the effect of requiring—

- (a) the PCT to make payments to the contractor under the contract promptly and in accordance with both the terms of the contract and any other conditions relating to the payment

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(24) Section 26 was amended by [S.I. 2005/848](#).

(25) Copies can be obtained from the British Standards Institute, 389 Chiswick High Road, London, W4 4AL or online at [www.bsi-global.com/en/Standards-and-Publications/](http://www.bsi-global.com/en/Standards-and-Publications/).

contained in any directions given by the Secretary of State under section 120 (GOS contracts: payments) (“the relevant directions”); and

- (b) the contractor to make payments promptly to the PCT and in accordance with both the terms of the contract and any other conditions relating to payment contained in the relevant directions.

(2) The obligation referred to in paragraph (1) is subject to any right the PCT has to set off against an amount payable to the contractor an amount that—

- (a) is owed by the contractor to the PCT under the contract;
- (b) has been paid to the contractor owing to an error or in circumstances when it was not due; or
- (c) the PCT may withhold from the contractor in accordance with the terms of the contract or any other applicable provisions contained in the relevant directions.

(3) The contract must contain a term to the effect that where, pursuant to directions under section 8 (Secretary of State’s directions: exercise of functions) or 120, a PCT is required to make a payment to a contractor under a contract, but subject to conditions, those conditions are to be terms of the contract.

(4) The contract must contain a term to the effect that, where the PCT has a right to set off under paragraph (2), the PCT may also recover that amount, or any part of it that has not been recovered by set off, as a civil debt, whether or not the contract has been terminated.

#### **Fees, charges and financial interests of the contractor**

**16.**—(1) The contract must contain terms relating to fees, claims, charges and financial interests which have the same effect as those set out in this regulation.

(2) The contractor shall not, either itself or through any other person, demand or accept a fee or other remuneration for its own or another’s benefit from—

- (a) any patient of its; or
- (b) any person who has requested services under the contract for himself or a family member, for the provision of any treatment under the contract or as a prerequisite to providing services under the contract to that person or the family member.

(3) Obligations imposed on the contractor by virtue of the Charges Regulations or any determination under section 180(11) must be terms of the contract.

(4) The contractor in making a decision—

- (a) as to what services to recommend or provide to a patient who has sought services under the contract; or
- (b) to refer a patient for other services within the National Health Service,

must do so without regard to its own financial interests.

(5) Any claim by a contractor for fees in respect of the provision of mandatory services or additional services shall be made by completing or securing the completion of a sight test form and sending it to the PCT within 6 months after the date of completion of the provision of the services.

(6) Any such claim shall be—

- (a) signed by the ophthalmic practitioner who performed the sight test in respect of which the claim is made, who shall also supply, with that signed claim, his professional registration number; and
- (b) in a case where the ophthalmic practitioner is not the contractor, counter-signed on behalf of the contractor by a person (who may be the ophthalmic practitioner), duly authorised

by the contractor to counter-sign, whom the contractor has previously notified the PCT is so authorised.

(7) A signatory or counter-signatory shall sign any such claim in ink with his initials or forename and with his surname in his own handwriting and not by means of a stamp.

(8) A contractor shall be entitled to demand and recover from a patient or person having charge of a patient a sum in respect of loss of remunerative time resulting from that patient's failure to keep an appointment.

(9) A contractor shall not demand or accept from the PCT the payment of any fee or other remuneration in respect of any item of service—

(a) which has not been provided under the contract; or

(b) for which another claim has already been submitted to the PCT.

#### **Arrangements on termination**

17. A contract shall make suitable provision for arrangements on the termination of the contract including the consequences (whether financial or otherwise) of the contract ending.

#### **Other contractual terms: mandatory services**

18. Where a contract is for the provision of mandatory services, it must contain other terms which have the same effect as those specified in Schedule 1.

#### **Other contractual terms: additional services**

19. Where a contract is for the provision of additional services, it must contain other terms that have the same effect as those specified in Schedule 2.

## **PART 6**

### **Transitional Provision**

#### **Commencement of contract**

20. The contract shall provide for services to be provided under it from any date that falls after 31st July 2008.

Signed by authority of the Secretary of State for Health.

28th April 2008

*Ann Keen*  
Parliamentary Under-Secretary of State,  
Department of Health

## SCHEDULE 1

Regulation 18

## OTHER CONTRACTUAL TERMS

## PART 1

## Patients

**Persons to whom mandatory services are to be provided**

1.—(1) Subject to sub-paragraphs (3) to (5), the contractor shall provide mandatory services under the contract to any eligible person if a request is made for such services by—

- (a) an eligible person who requires the services; or
- (b) a person specified in sub-paragraph (2), on behalf of an eligible person who requires those services.

(2) For the purposes of sub-paragraph (1)(b), a request for services may be made—

- (a) on behalf of any child by—
  - (i) either parent;
  - (ii) a person duly authorised by a local authority to whose care the child has been committed under the Children Act 1989<sup>(26)</sup>; or
  - (iii) a person duly authorised by a voluntary organisation which is accommodating the child under the provisions of that Act; or
- (b) on behalf of any adult who is incapable of making such an application, or authorising such an application to be made on their behalf, by a relative or the primary carer of that person.

(3) The contractor shall—

- (a) (i) satisfy itself that the person is an eligible person by asking for satisfactory evidence that person is eligible, unless the contractor, in cases other than where the patient is a person specified in regulation 3(1)(d) of the POS Regulations (person of limited resources), already has satisfactory evidence of that available to it, or
- (ii) where the patient has been asked for, but not produced, satisfactory evidence that he is an eligible person, record that fact on the patient's sight test form;
- (b) subject to sub-paragraph (4), ensure that particulars of the patient and the approximate date of the last testing, if any, of his sight are inserted in a sight test form by the patient or on his behalf; and
- (c) satisfy itself that the testing of sight is necessary.

(4) If the requirements of sub-paragraph (3)(b) cannot be met, the contractor may, instead of satisfying itself that those requirements are met, satisfy itself that the person is an eligible person by referring to its own records or by measuring the power of the lenses of the person's existing optical appliance by means of a focimeter or other suitable means.

(5) The contractor shall only refuse to provide services under the contract to an eligible person if it has reasonable grounds for doing so, and those grounds cannot relate to a person's—

- (a) race, gender, social class, age, religion, sexual orientation, appearance, disability or medical or ophthalmic condition; or

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(26) 1989 c.41.

- (b) decision or intended decision to accept or refuse private services in respect of himself or a family member.
- (6) If the contractor refuses to provide services under the contract on any ground other than that it is not satisfied that—
  - (a) under sub-paragraph (3)(a)(i), the person to whom it has refused to provide services is an eligible person; or
  - (b) under sub-paragraph (3)(c), the testing of sight is necessary,it shall keep a record of that refusal, specifying in that record its grounds for doing so.

## PART 2

### Provision of Services

#### **Mixing of services provided under the contract with private services**

2. A contractor shall not, with a view to obtaining the agreement of a patient to undergo services privately—
- (a) advise an eligible person that mandatory services are not available from the contractor under the contract; or
  - (b) seek to mislead the patient about the availability, quality and extent of the services under the contract.

#### **Premises, equipment and facilities**

- 3.—(1) The contractor shall ensure that the practice premises and equipment used for the provision of mandatory services under the contract are—
- (a) suitable for the delivery of those services; and
  - (b) sufficient to meet the reasonable needs of the contractor’s patients.
- (2) The obligation in sub-paragraph (1) includes providing proper and sufficient waiting-room accommodation for patients.
- (3) The contractor shall provide, in relation to all of the services to be provided under the contract, such other facilities as are necessary to enable it to properly perform that service.

#### **Telephone services**

- 4.—(1) The contractor shall not be a party to any contract or other arrangement under which the number for telephone services—
- (a) to be used by patients to contact the practice for any purpose related to the contract; or
  - (b) to be used by any other person to contact the practice in relation to services provided as part of the health service,
- starts with the digits 087, 090 or 091 or consists of a personal number, unless the service is provided free to the caller.
- (2) In this paragraph, “personal number” means a telephone number which starts with the number 070 followed by a further 8 digits.

#### **Safety of the Public**

- 5.—(1) —The contractor shall ensure that it has—

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- (a) appropriate arrangements for infection control and decontamination; and
  - (b) regard to any relevant requirements of the MHRA or the Health and Safety Executive.
- (2) The contractor shall establish and operate arrangements applicable to all the persons specified in sub-paragraph (3).
- (3) The specified persons are—
- (a) any ophthalmic practitioner who performs services under the contract; and
  - (b) any other person employed by the contractor to perform or assist in the performance of services under the contract.
- (4) In sub-paragraph (2), “arrangements” means arrangements to ensure that—
- (a) effective measures of infection control are used;
  - (b) all legal requirements relating to health and safety in the workplace are satisfied; and
  - (c) any requirements of or recommendations by the MHRA are adhered to.

## PART 3

### Persons Who Perform Services

#### **Ophthalmic practitioners**

6. An optometrist or a registered medical practitioner may perform ophthalmic services under the contract provided—
- (a) he is included in an ophthalmic performers list; and
  - (b) his inclusion in that list is not subject to a suspension.

#### **Performers: registration and further requirements**

- 7.—(1) No person shall perform sight tests under the contract unless he is registered and his registration is not subject to a suspension.
- (2) Where—
- (a) the registration of an ophthalmic practitioner; or
  - (b) an ophthalmic practitioner’s inclusion in an ophthalmic performers list,
- is subject to conditions, the contractor shall ensure compliance with those conditions, in so far as they are relevant to the contract or the delivery of services under it.

#### **Conditions for employment: ophthalmic practitioners performing ophthalmic services**

- 8.—(1) A contractor shall not employ an ophthalmic practitioner to perform ophthalmic services under the contract unless—
- (a) that practitioner has provided it with his professional registration number and the name and address of the Primary Care Trust on whose ophthalmic performers list his name appears;
  - (b) it has checked that he meets the requirements in paragraphs 6 and 7 and has obtained and is satisfied with his clinical references; and
  - (c) it has taken reasonable steps to satisfy itself that he has the clinical experience and training necessary to enable him to properly perform primary ophthalmic services.
- (2) Where the employment of a person falling within sub-paragraph (1) is urgently needed and it is not possible for the contractor to obtain and satisfy itself as to the references in accordance



with sub-paragraph (1)(b) before employing him, the ophthalmic practitioner may be employed on a temporary basis for a single period of up to 14 days whilst those references are obtained and considered, and for an additional period of a further 14 days if the contractor has good reason to believe the person supplying the references is ill, on holiday or otherwise temporarily unavailable.

(3) Where the contractor employs the same person on more than one occasion within a period of 6 months, it may rely on the references provided on the first occasion, provided that those references are not more than 12 months old.

#### **Conditions for employment: persons assisting in the provision of services under the contract**

9.—(1) Before employing any person to assist it in the provision of services under the contract, the contractor shall take reasonable care to satisfy itself that the person in question is both suitably qualified and competent to discharge the duties for which he is to be employed.

(2) When considering the competence and suitability of any person for the purpose of sub-paragraph (1), the contractor shall have regard in particular to that person's —

- (a) academic and vocational qualifications;
- (b) education and training; and
- (c) previous employment or work experience.

#### **Level of skill**

10. The contractor shall carry out its obligations under the contract with reasonable care and skill.

## **PART 4**

### **Records, Information, Notifications, Name and Rights of Entry**

#### **Patient records**

11.—(1) The contractor shall ensure that a full, accurate and contemporaneous record is kept in the patient record in respect of each patient to whom it provides services under the contract, giving appropriate details of sight testing.

- (2) The contractor shall retain all such records for a period of at least 7 years.
- (3) The patient record may be kept in electronic form.

#### **Confidentiality of personal data**

12. The contractor shall nominate a person with responsibility for practices and procedures relating to the confidentiality of personal data held by it.

#### **Patient information**

13. The contractor shall ensure that there is displayed in a prominent position in its practice premises, in a part to which patients have access—

- (a) a notice supplied or approved by the PCT, indicating the services available under the contract;
- (b) in respect of its arrangements under paragraph 5, a written statement relating to its commitment to the matters referred to in paragraph 5(4);

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- (c) a notice supplied or approved by the PCT, indicating to which descriptions of its patients a payment may be made under the Charges Regulations; and
- (d) information about the complaints procedure which it operates in accordance with Part 5 of this Schedule, giving the name and title of the person nominated by the contractor in accordance with paragraph 25(2)(a).

**Provision of and access to information: PCT**

14.—(1) The contractor shall, at the request of the PCT—

- (a) produce to the PCT or to a person authorised in writing by the PCT in such format, and at such intervals or within such period, as the PCT specifies; or
- (b) allow the PCT, or a person authorised in writing by it to access,

the information specified in paragraph (2).

(2) The information specified for the purposes of sub-paragraph (1) is—

- (a) any information which is reasonably required by the PCT for the purposes of, or in connection with, the contract; and
- (b) any other information which is reasonably required in connection with the PCT's functions,

and includes the contractor's patient records.

**Use of disqualified name**

15.—(1) Subject to sub-paragraph (2), a contractor shall not use in any manner whatsoever the name or part of the name or trading name, either alone or in combination with any other words or letters of, or used by, any person subject to a national disqualification or a contract disqualification order.

(2) Nothing in sub-paragraph (1) shall prevent a contractor other than a body corporate from using its own name or, being a body corporate, from using the name by which it is registered pursuant to the provisions of the Opticians Act.

**Notification to the PCT**

16.—(1) In addition to any requirements of notification elsewhere in the Regulations, the contractor shall notify the PCT, as soon as reasonably practicable, of—

- (a) any serious incident that, in the reasonable opinion of the contractor, affects or is likely to affect the contractor's performance of its obligations under the contract; or
- (b) any circumstances which give rise to the PCT's right to terminate the contract under Part 7 of this Schedule.

(2) The contractor shall, unless it is impracticable for it to do so, notify the PCT within 28 days of any occurrence requiring a change in the information about it published by the PCT in accordance with regulations made under section 115(5) (primary ophthalmic services).

(3) The contractor shall notify the PCT when an ophthalmic practitioner who is performing or will perform services under the contract (as the case may be)—

- (a) leaves the contractor, and the date upon which he left or is to leave; or
- (b) is or is to be employed by the contractor,

and the notification shall include the name of the ophthalmic practitioner who has left, or who has been or is to be employed, together with his professional registration number and the name and address of the Primary Care Trust in whose ophthalmic performers list he is included.

### **Notice provisions specific to a contract with a corporate body**

- 17.—(1) A contractor which is a corporate body shall notify the PCT forthwith when—
- (a) it passes a resolution or a court of competent jurisdiction makes an order that the contractor be wound up;
  - (b) circumstances arise which might entitle a creditor or a court to appoint a receiver, administrator or administrative receiver for the contractor;
  - (c) circumstances arise which would enable the court to make a winding up order in respect of the contractor;
  - (d) it is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 (definition of inability to pay debts)<sup>(27)</sup>; or
  - (e) it has a new director, chief executive or secretary.
- (2) Where sub-paragraph (1)(e) applies, the notice shall—
- (a) confirm that the new director, chief executive or secretary meets the conditions imposed by regulation 4 (general conditions relating to all contracts);
  - (b) contain an application form in accordance with Schedule 3 in relation to that person.
- (3) Where the PCT is not satisfied that that person meets the conditions of regulation 4, it shall so notify the contractor and—
- (a) the contractor shall within 28 days remove that new secretary, director or chief executive, as the case maybe, and so notify the PCT; and
  - (b) if the contractor does not do so, the PCT shall terminate the contract in accordance with the provisions of paragraph 45.

### **Notice provisions specific to a contract with two or more individuals practising in partnership**

- 18.—(1) A contractor which is a partnership shall notify the PCT forthwith when—
- (a) a partner leaves or informs his partners that he intends to leave the partnership, and the date upon which he left or will leave the partnership; or
  - (b) a new partner joins or proposes to join the partnership.
- (2) A notice under sub-paragraph (1)(b) shall—
- (a) state the date that the new partner joined or it is proposed he will join the partnership;
  - (b) state whether the new partner is an ophthalmic practitioner;
  - (c) confirm that the new partner meets the conditions imposed by regulation 4 (general conditions relating to all contracts);
  - (d) contain an application form in accordance with Schedule 3 from that new partner; and
  - (e) state whether the new partner is or is to be a general or a limited partner.
- (3) Where the PCT is not satisfied that a new partner meets the conditions of regulation 4, it shall so notify the contractor and—
- (a) the contractor shall within 28 days remove the new partner; and
  - (b) if the contractor does not do so, the PCT shall terminate the contract in accordance with the provisions of paragraph 45.

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(27) 1986 c. 45.

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### **Entry and inspection by the PCT**

**19.**—(1) Subject to the conditions in sub-paragraph (2), the contractor shall allow persons authorised in writing by the PCT to enter and inspect the practice premises at any reasonable time.

(2) The conditions referred to in sub-paragraph (1) are that—

- (a) reasonable notice of the intended entry has been given;
- (b) written evidence of the authority of the person seeking entry is produced to the contractor on request; and
- (c) entry is not made to any premises or part of the premises used as residential accommodation without the consent of the resident.

### **Entering and viewing under the Local Involvement Networks (Duty of Services-Providers to Allow Entry) Regulations 2008**

**20.** The contractor must comply with regulation 3 of the Local Involvement Networks (Duty of Services-Providers to Allow Entry) Regulations 2008(28) in so far as it applies to the contractor.

### **Other rights of entry and inspection**

**21.** The contractor shall allow any other person who has a legal right to enter and inspect the practice premises to do so.

## **PART 5**

### **Complaints**

#### **Complaints procedure**

**22.**—(1) The contractor shall establish and operate a complaints procedure to deal with any complaints in relation to any matter reasonably connected with the provision of services under the contract and that procedure shall comply with the requirements of paragraphs 23, 25 and 27.

(2) The contractor shall take reasonable steps to ensure that patients are aware of—

- (a) the complaints procedure;
- (b) the role of the PCT and other bodies in relation to complaints about services under the contract; and
- (c) their right to assistance with any complaint from independent advocacy services provided under section 248 (independent advocacy services).

(3) The contractor shall take reasonable steps to ensure that the complaints procedure is accessible to all patients.

#### **Making of complaints**

**23.**—(1) A complaint may be made by or, with his consent, on behalf of a patient or former patient, who is receiving or has received services under the contract, or—

- (a) where the patient is a child, by—
  - (i) a parent;

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(28) [S.I. 2008/915](#).

- (ii) a person duly authorised by a local authority to whose care the child has been committed under the provisions of the Children Act 1989; or
  - (iii) a person duly authorised by a voluntary organisation by which is accommodating the child under the provisions of that Act; or
  - (b) where the patient is incapable of making a complaint, by a relative or other adult person who has an interest in his welfare.
- (2) Where a patient has died, a complaint may be made by a relative or other adult person who had an interest in his welfare or, where the patient falls within sub-paragraph (1)(a)(ii) or (iii), by the local authority or voluntary organisation.

### **Period for making complaints**

- 24.**—(1) Subject to sub-paragraph (2), the period for making a complaint is—
- (a) 6 months beginning with the date on which the matter which is the subject of the complaint occurred, or
  - (b) 6 months beginning with the date on which the matter which is the subject of the complaint comes to the complainant’s notice provided that the complaint is made no later than 12 months after the date on which the matter which is the subject of the complaint occurred.
- (2) Where a complaint is not made during the period specified in sub-paragraph (1), it shall be referred to the person nominated under paragraph 25(2)(a) and if he is of the opinion that—
- (a) having regard to all the circumstances of the case, it would have been unreasonable for the complainant to make the complaint within that period; and
  - (b) notwithstanding the time that has elapsed since the date on which the matter which is the subject of the complaint occurred, it is still possible to investigate the complaint properly,
- the complaint shall be treated as if it had been received during the period specified in sub-paragraph (1).

### **Further requirements for complaints procedures**

- 25.**—(1) A complaints procedure shall also comply with the requirements set out in sub-paragraphs (2) to (6).
- (2) The contractor must nominate—
- (a) a person (who need not be connected with the contractor and who, in the case of an individual, may be specified by his job title) to be responsible for the operation of the complaints procedure and the investigation of complaints; and
  - (b) a partner, or other senior person associated with the contractor, to be responsible for the effective management of the complaints procedure and for ensuring that action is taken in the light of the outcome of any investigation.
- (3) All complaints must be—
- (a) either made or recorded in writing;
  - (b) acknowledged in writing within the period of 3 working days beginning with the day on which the complaint was made or, where that is not possible, as soon as reasonably practicable; and
  - (c) properly investigated.
- (4) Within the period of 10 working days beginning with the day on which the complaint was received by the person specified under sub-paragraph (2)(a) or, where that is not possible, as soon

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as reasonably practicable, the complainant must be given a written summary of the investigation and its conclusions.

(5) Where the investigation of the complaint requires consideration of the patient's ophthalmic records, the person specified in sub-paragraph (2)(a) must inform the patient or person acting on his behalf if the investigation will involve disclosure of information contained in those records to a person other than the contractor or an employee of the contractor.

(6) The contractor must keep a record of all complaints and copies of all correspondence relating to complaints for a period of at least two years from the date on which such complaints were made, but such records shall be kept separate from patients' ophthalmic records.

### **Co-operation with investigations**

**26.**—(1) The contractor shall co-operate with—

- (a) any investigation of a complaint in relation to any matter reasonably connected with the provision for services under the contract undertaken by—
  - (i) the PCT; and
  - (ii) the Commission for Healthcare Audit and Inspection; and
- (b) any investigation of a complaint by an NHS body or local authority which relates to a patient or former patient of the contractor.

(2) In sub-paragraph (1)—

“NHS body” means a Primary Care Trust, an NHS trust, an NHS foundation trust, a Strategic Health Authority, a Local Health Board, a Health Board, a Health and Social Services Board, a Health and Social Services Trust or a Health Board or Special Health Board constituted under section 2 of the National Health Service (Scotland) Act 1978<sup>(29)</sup>; and

“local authority” means—

- (a) any of the bodies listed in section 1 of the Local Authority Social Services Act 1970<sup>(30)</sup>(local authority);
- (b) the Council of the Isles of Scilly; or
- (c) a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994<sup>(31)</sup> (constitution of councils).

(3) The co-operation required by sub-paragraph (1) includes—

- (a) answering questions reasonably put to the contractor by the PCT;
- (b) providing any information relating to the complaint reasonably required by the PCT; and
- (c) attending any meeting to consider the complaint (if held at a reasonably accessible place and at a reasonable hour, and due notice has been given) if the contractor's presence at the meeting is reasonably required by the PCT.

### **Provision of information**

**27.** The contractor shall inform the PCT, at such intervals as it shall agree with the PCT, of the number of complaints it has received under the procedure established in accordance with this Part.

<sup>(29)</sup> 1978 c.29.

<sup>(30)</sup> 1970 c. 42; s. 1 was amended by the Local Government Act 1972 (c. 70), s. 170.

<sup>(31)</sup> 1994 c. 39.

## PART 6

### Dispute Resolution

#### **Local resolution of contract disputes**

**28.** In the case of any dispute arising out of or in connection with the contract, the contractor and the PCT must make every reasonable effort to communicate and co-operate with each other with a view to resolving the dispute, before referring the dispute for determination in accordance with the NHS dispute resolution procedure (or, where applicable, before commencing court proceedings).

#### **Dispute resolution: non-NHS contracts**

**29.—(1)** In the case of a contract which is not an NHS contract, any dispute arising out of or in connection with the contract, except disputes about matters dealt with under the complaints procedure pursuant to Part 5 of this Schedule, may be referred for consideration and determination to the Secretary of State, if—

- (a) the PCT so wishes and the contractor has agreed in writing; or
  - (b) the contractor so wishes (even if the PCT does not agree).
- (2) In the case of a dispute referred to the Secretary of State under sub-paragraph (1)—
- (a) the procedure to be followed is the NHS dispute resolution procedure; and
  - (b) the parties agree (or in a case to which sub-paragraph (1)(b) applies is deemed to agree) to be bound by any determination made by the adjudicator.

#### **NHS dispute resolution procedure**

**30.—(1)** The procedure specified in the following sub-paragraphs and paragraph 31 applies in the case of any dispute arising out of or in connection with the contract which is referred to the Secretary of State—

- (a) in accordance with section 9(6) (where the contract is an NHS contract); or
  - (b) in accordance with paragraph 29 (where the contract is not an NHS contract).
- (2) Any party wishing to refer a dispute as mentioned in sub-paragraph (1) shall send to the Secretary of State a written request for dispute resolution which shall include or be accompanied by—
- (a) the names and addresses of the parties to the dispute;
  - (b) a copy of the contract; and
  - (c) a brief statement describing the nature and circumstances of the dispute.
- (3) Any party wishing to refer a dispute as mentioned in sub-paragraph (1) must send the request under sub-paragraph (2) within a period of 3 years beginning with the date on which the matter giving rise to the dispute happened or should reasonably have come to the attention of the party wishing to refer the dispute.
- (4) Where the dispute relates to a contract which is not an NHS contract, the Secretary of State may determine the matter himself or, if he considers it appropriate, appoint a person or persons to consider and determine it.
- (5) Before reaching a decision as to who should determine the dispute, either under sub-paragraph (4) or under section 9(8), the Secretary of State shall, within the period of 7 days, beginning with the date on which the matter was referred to him, send a written request to the parties to make in writing, within a specified period, any representations which they may wish to make about the matter.

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(6) The Secretary of State shall give, with the notice given under sub-paragraph (5), to the party other than the one which referred the matter to dispute resolution a copy of the written request for dispute resolution and any accompanying documents.

(7) The Secretary of State shall give a copy of any representations received from a party to the other party and shall in each case request (in writing) a party to whom a copy of the representations is given to make within a specified period any written observations which it wishes to make on those representations.

(8) Following receipt of any representations from the parties or, if earlier, at the end of the period for making such representations specified in the request sent under sub-paragraph (5) or (7), the Secretary of State shall, if he decides to appoint a person or persons to hear the dispute—

- (a) notify the parties of the name of the person or persons whom he has appointed; and
- (b) pass to the person or persons so appointed any documents received from the parties under sub-paragraphs (2), (5) or (7).

(9) For the purpose of assisting him in his consideration of the matter, the adjudicator may—

- (a) invite representatives of the parties to appear before him to make oral representations either together or, with the agreement of the parties, separately, and may in advance provide the parties with a list of matters or questions to which he wishes them to give special consideration; or
- (b) consult other persons whose expertise he considers will assist him in his consideration of the matter.

(10) Where the adjudicator consults another person under sub-paragraph (9)(b), he shall notify the parties accordingly and, where he considers that the interests of any party might be substantially affected by the result of the consultation, he shall give to the parties such opportunity as he considers reasonable in the circumstances to make observations on those results.

(11) In considering the matter, the adjudicator shall consider—

- (a) any written representations made in response to a request under sub-paragraph (5), but only if they are made within the specified period;
- (b) any written observations made in response to an invitation under sub-paragraph (7), but only if they are made within the specified period;
- (c) any oral representations made in response to an invitation under sub-paragraph (9)(a);
- (d) the results of any consultation under sub-paragraph (9)(b); and
- (e) any observations made in accordance with an opportunity given under sub-paragraph (10).

(12) In this paragraph, “specified period” means such period as the Secretary of State shall specify in the request, being not less than two, nor more than four, weeks beginning with the date on which the notice referred to is given, but the Secretary of State may, if he considers that there is good reason for doing so, extend any such period (even after it has expired) and, where he does so, a reference in this paragraph to the specified period is to the period as so extended.

(13) Subject to the other provisions of this paragraph and paragraph 31, the adjudicator shall have wide discretion in determining the procedure of the dispute resolution to ensure the just, expeditious, economical and final determination of the dispute.

### **Determination of dispute**

**31.—**(1) The adjudicator shall record his determination and the reasons for it, in writing and shall give notice of the determination (including a record of the reasons) to the parties.



(2) In the case of a contract referred for determination in accordance with paragraph 30(1), section 9(12) and (13) shall apply as that subsection applies in the case of a contract referred for determination in accordance with section 9(6).

(3) In the case of a contract referred for determination in accordance with paragraph 29(1), section 122(5) (GOS contracts: disputes and enforcement) shall apply as that subsection applies in the case of a contract referred for determination in accordance with section 9.

### **Interpretation of Part 6**

**32.**—(1) In this Part, reference to any dispute arising out of or in connection with the contract includes any dispute arising out of or in connection with the termination of the contract.

(2) Any term of the contract that makes provision in respect of the requirements in this Part shall survive even where the contract has terminated.

## **PART 7**

### **Variation and Termination of Contracts**

#### **Variation of a contract: general**

**33.**—(1) Save as provided in sub-paragraph (2), no amendment or variation shall have effect unless it is in writing and signed by or on behalf of the PCT and the contractor.

(2) In addition to the specific provision made in paragraphs 34(6), 35(6) and 36(3), the PCT may vary the contract without the contractor's consent where it—

- (a) is reasonably satisfied that it is necessary to vary the contract so as to comply with the Act, any regulations made under the Act, or any direction given by the Secretary of State under the Act; and
- (b) notifies the contractor of the wording of the proposed variation and the date upon which that variation is to take effect,

and, where it is reasonably practicable to do so, the date that the proposed variation is to take effect shall be not less than 14 days after the date on which the notice under paragraph (b) is served on the contractor.

#### **Variation provisions specific to a contract with an individual**

**34.**—(1) If a contractor who is an individual proposes to practise in partnership with one or more persons during the existence of the contract, the contractor shall notify the PCT of—

- (a) the name of the person or persons with whom it proposes to practise in partnership; and
- (b) the date on which the contractor wishes to change its status as a contractor from that of an individual to that of a partnership, which shall be not less than 28 days after the date upon which it has served the notice on the PCT pursuant to this sub-paragraph.

(2) A notice under sub-paragraph (1) shall in respect of the person or each of the persons with whom the contractor is proposing to practise in partnership, and also in respect of itself as regards the matters specified in sub-paragraph (d)—

- (a) state whether he is an ophthalmic practitioner;
- (b) contain an application form completed in accordance with Schedule 3 from that person;
- (c) confirm that he is a person who satisfies the conditions imposed by regulation 4; and

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- (d) state whether or not it is to be a limited partnership, and if so, who is to be a limited and who is to be a general partner,

and the notice shall be signed by the contractor and by the person, or each of the persons (as the case may be), with whom he is proposing to practise in partnership.

(3) The contractor shall ensure that any person who will practise in partnership with it is bound by the contract, whether by virtue of a partnership deed or otherwise.

(4) If the PCT is satisfied as to the accuracy of the matters specified in sub-paragraph (2) that are included in the notice and of the suitability of that person or persons, the PCT shall give notice to the contractor confirming that the contract shall continue with the partnership entered into by the contractor and its partners, from a date that the PCT specifies in that notice.

(5) Where it is reasonably practicable, the date specified by the PCT pursuant to sub-paragraph (4) shall be the date requested in the notice served by the contractor pursuant to sub-paragraph (1), or, where that date is not reasonably practicable, the date specified shall be a date after the requested date that is as close to the requested date as is reasonably practicable.

(6) Where a contractor has given notice to the PCT pursuant to sub-paragraph (1), the PCT—

- (a) may vary the contract, but only to the extent that it is satisfied is necessary to reflect the change in status of the contractor from an individual to a partnership; and
- (b) if it does propose to so vary the contract, it shall include in the notice served on the contractor pursuant to sub-paragraph (4) the wording of the proposed variation and the date upon which that variation is to take effect.

**Variation provisions specific to a contract with two or more individuals practising in partnership changing to a contract with an individual**

**35.—**(1) Subject to sub-paragraph (4), where a contractor consists of two or more individuals practising in partnership, in the event that the partnership is terminated or dissolved, the contract shall only continue with one of the former partners if that partner is nominated in accordance with sub-paragraph (3) and provided that the requirements in sub-paragraphs (2) and (3) are met.

(2) A contractor shall notify the PCT at least 28 days in advance of the date on which the contractor proposes to change its status from that of a partnership to that of an individual.

(3) A notice under sub-paragraph (2) shall—

- (a) specify the date on which the contractor proposes to change its status from that of a partnership to that of an individual;
- (b) specify the name of the individual with whom the contract will continue, which must be one of the partners; and
- (c) be signed by all of the persons who are practising in partnership.

(4) If a partnership is terminated or dissolved because, in a partnership consisting of two individuals practising in partnership, one of the partners has died, sub-paragraphs (1) to (3) shall not apply and—

- (a) the contract shall continue with the individual who has not died; and
- (b) that individual shall in any event notify the PCT as soon as is reasonably practicable of that partner's death.

(5) When the PCT receives a notice pursuant to sub-paragraph (2) or (4)(b), it shall acknowledge in writing receipt of the notice, and in relation to a notice served pursuant to sub-paragraph (2), the PCT shall do so before the date specified pursuant to sub-paragraph (3)(a).

(6) Where a contractor gives notice to the PCT pursuant to sub-paragraph (2) or (4)(b), the PCT may vary the contract, but only to the extent that it is satisfied is necessary to reflect the change in status of the contractor from a partnership to an individual.

(7) If the PCT varies the contract pursuant to sub-paragraph (6), it shall notify the contractor of the wording of the proposed variation and the date upon which that variation is to take effect.

### **Variation provisions specific to a contract with two or more individuals practising in partnership increasing the number of partners**

**36.**—(1) Where a contractor has given notice under paragraph 18(1) that a new partner or partners has joined or proposes to join the partnership, if the PCT is satisfied as to the accuracy of the matters specified in paragraph 18(2) that are included in the notice and of the suitability of that person or persons, the PCT shall give notice to the contractor confirming that the contract shall continue with the partnership entered into by the contractor and its partners, from a date that the PCT specifies in that notice.

(2) Where it is reasonably practicable, the date specified by the PCT pursuant to sub-paragraph (1) shall be the date requested in the notice served by the contractor pursuant to paragraph 18 or, where that date is not reasonably practicable, the date specified shall be a date after the requested date that is as close to the requested date as is reasonably practicable.

- (3) Where a contractor has given notice to the PCT pursuant to sub-paragraph (1), the PCT—
- (a) may vary the contract, but only to the extent that it is satisfied is necessary to reflect the change in the partners; and
  - (b) if it does propose to so vary the contract, it shall include in the notice served on the contractor pursuant to sub-paragraph (1) the wording of the proposed variation and the date upon which that variation is to take effect.

### **Termination by agreement**

**37.** The PCT and the contractor may agree in writing to terminate the contract, and if the parties so agree, they shall agree the date upon which that termination should take effect and any further terms upon which the contract should be terminated.

### **Termination on the death of an individual contractor**

**38.**—(1) Where the contract is with an individual who dies, the contract shall terminate at the end of the period of 7 days after the date of death unless, before the end of that period—

- (a) subject to sub-paragraph (2), the PCT has agreed in writing with the contractor's personal representatives that the contract should continue for a further period, not exceeding 3 months, after the end of the period of 7 days; and
- (b) the contractor's personal representatives have notified the PCT that they are employing one or more ophthalmic practitioners to perform ophthalmic services under the contract throughout the period for which it continues.

(2) Where the PCT is of the opinion that another contractor may wish to enter into a contract in respect of the services which were provided by the deceased, the 3 month period referred to in sub-paragraph (1)(a) may be extended by a period not exceeding 6 months as may be agreed.

(3) Sub-paragraph (1) does not affect any other rights to terminate the agreement which the PCT may have under this Part of this Schedule.

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### **Termination by the contractor**

**39.**—(1) A contractor may terminate the contract by serving notice on the PCT at any time.

(2) Where a contractor serves notice pursuant to sub-paragraph (1), the contract shall terminate on a date 3 months after the date on which the notice is served (“the termination date”), save that if the termination date is not the last calendar day of a month, the contract shall instead terminate on the last calendar day of the month in which the termination date falls.

(3) This paragraph and paragraph 40 are without prejudice to any other rights to terminate the contract that the contractor may have.

### **Late payment notices**

**40.**—(1) The contractor may notify (a “late payment notice”) the PCT if the PCT has failed to make any payments due to the contractor in accordance with a term of the contract that has the effect specified in regulation 15 (finance), and the contractor shall specify in the late payment notice the payments that the PCT has failed to make in accordance with that regulation.

(2) Subject to sub-paragraph (3), the contractor may, at least 28 days after having served a late payment notice, terminate the contract by a further notice if the PCT has still failed to make the payments that were due to the contractor and that were specified in the late payment notice served on the PCT pursuant to sub-paragraph (1).

(3) If, following receipt of a late payment notice, the PCT refers the matter to the NHS dispute resolution procedure within 28 days of the date upon which it is served with the late payment notice, and it notifies the contractor in writing that it has done so within that period of time, the contractor may not terminate the contract pursuant to sub-paragraph (2) until—

- (a) there has been a determination of the dispute pursuant to paragraph 30 and that determination permits the contractor to terminate the contract; or
- (b) the PCT ceases to pursue the NHS dispute resolution procedure,

whichever is the sooner.

### **Termination by the PCT: general**

**41.** The PCT may only terminate the contract in accordance with the provisions in paragraphs 17(3) or 18(3) or this Part of this Schedule.

### **Termination by the PCT: contractor’s inability to perform services**

**42.**—(1) Where a contractor is an individual who is an ophthalmic practitioner and ceases to be able to perform as an ophthalmic practitioner by virtue of a suspension specified in sub-paragraph (2), the PCT shall serve notice on the contractor terminating the contract forthwith unless—

- (a) the contractor is able to satisfy the PCT that it has in place adequate arrangements for the provision of ophthalmic services under the contract for so long as the suspension continues; and
- (b) the PCT is satisfied that the circumstances of the suspension are such that if the contract is not terminated forthwith—
  - (i) the safety of the contractor’s patients is not at serious risk; and
  - (ii) the PCT is not at risk of material financial loss.

(2) The suspensions referred to in sub-paragraph (1) are—

- (a) suspension of the ophthalmic practitioner by his licensing body; or
- (b) suspension of the ophthalmic practitioner from an ophthalmic performers list.

### **Termination by the PCT for the provision of untrue etc. information**

**43.** The PCT may serve notice on the contractor terminating the contract forthwith, or from such date as may be specified in the notice if, after the contract has been entered into, it comes to the attention of the PCT that written information—

- (a) provided to the PCT by the contractor before the contract was entered into;
- (b) provided to the PCT by the contractor pursuant to paragraph 17(2), 18(2) or 19(2); or
- (c) which should have been notified under paragraphs 16 to 18,

in relation to the conditions set out in regulation 4, the information as to suitability in Schedule 3 and compliance with those conditions or that information was, when given, untrue or inaccurate in a material respect or, in a case to which sub-paragraph (c) applies, the information that was not notified was material.

### **Termination by the PCT on grounds of suitability etc.**

**44.—(1)** The PCT shall serve notice on the contractor terminating the contract forthwith, or from such date as may be specified in the notice, if, in the case of a contract with—

- (a) an individual, that individual;
- (b) two or more individuals practising in partnership, any individual or the partnership; or
- (c) a corporate body—
  - (i) that body; or
  - (ii) any director, chief executive or secretary of that body,

falls within sub-paragraph (2) during the existence of the contract.

(2) A person falls within this sub-paragraph if—

- (a) it is the subject of a national disqualification or a contract disqualification order;
- (b) subject to sub-paragraph (3), it is disqualified or suspended (other than by an interim suspension order or direction pending an investigation or a suspension on the grounds of ill-health) from practising by any licensing body anywhere in the world;
- (c) subject to sub-paragraph (4), he has been dismissed (otherwise than by reason of redundancy) from any employment by a health service body unless, before the PCT has served a notice terminating the contract pursuant to this paragraph, he is employed by the health service body that dismissed him or by another health service body;
- (d) it is removed from, or refused admission to, a primary care list by reason of inefficiency, fraud or unsuitability (within the meaning of section 151(2), (3) and (4) respectively) unless its name has subsequently been included in such a list;
- (e) he has been convicted in the United Kingdom of—
  - (i) murder; or
  - (ii) a criminal offence other than murder and has been sentenced to a term of imprisonment of over 6 months;
- (f) subject to sub-paragraph (5), he has been convicted outside the United Kingdom of an offence, which would if committed in England and Wales constitute—
  - (i) murder; or
  - (ii) a criminal offence other than murder, and been sentenced to a term of imprisonment of over 6 months;
- (g) he has been convicted of an offence referred to in Schedule 1 to the Children and Young Persons Act 1933 (offences against children and young persons with respect to which

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special provisions apply) or Schedule 1 to the Criminal Procedure (Scotland) Act 1995 (offences against children under the age of 17 years to which special provisions apply);

- (h) it has—
    - (i) been adjudged bankrupt or had sequestration of his estate awarded unless (in either case) he has been discharged or the bankruptcy order has been annulled;
    - (ii) been made the subject of a bankruptcy restrictions order or an interim bankruptcy restrictions order under Schedule 4A to the Insolvency Act 1986, unless that order has ceased to have effect or has been annulled;
    - (iii) made a composition or arrangement with, or granted a trust deed for, its creditors unless it has been discharged in respect of it; or
    - (iv) been wound up under Part IV of the Insolvency Act 1986;
  - (i) there is—
    - (i) an administrator, administrative receiver or receiver appointed in respect of it; or
    - (ii) an administration order made in respect of it under Schedule B1 to the Insolvency Act 1986;
  - (j) that person is a partnership and—
    - (i) a dissolution of the partnership is ordered by any competent court, tribunal or arbitrator; or
    - (ii) an event happens that makes it unlawful for the business of the partnership to continue, or for members of the partnership to carry on in partnership;
  - (k) he has been—
    - (i) removed from the office of charity trustee or trustee for a charity by an order made by the Charity Commissioners or the High Court on the grounds of any misconduct or mismanagement in the administration of the charity for which he was responsible or to which he was privy, or which he by his conduct contributed to or facilitated; or
    - (ii) removed under section 7 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (powers of the Court of Session to deal with management of charities), from being concerned in the management or control of any body;
  - (l) he is subject to a disqualification order under the Company Directors Disqualification Act 1986, the Companies (Northern Ireland) Order 1986 or to an order made under section 429(2)(b) of the Insolvency Act 1986 (failure to pay under county court administration order); or
  - (m) he has refused to comply with a request by the PCT for him to be medically examined on the grounds that it is concerned that he is incapable of adequately providing services under the contract and, in a case where the contract is with two or more individuals practising in partnership or with a corporate body, the PCT is not satisfied that the contractor is taking adequate steps to deal with the matter.
- (3) A PCT shall not terminate the contract pursuant to sub-paragraph (2)(b) where the PCT is satisfied that the disqualification or suspension imposed by a licensing body outside the United Kingdom does not make the person unsuitable to be, as the case may be—
- (a) a contractor;
  - (b) in the case of a contract with two or more individuals practising in partnership, a partner; or
  - (c) in the case of a contract with a corporate body, a director, chief executive or secretary of that body.
- (4) A PCT shall not terminate the contract pursuant to sub-paragraph (2)(c)—

- (a) until a period of at least 3 months has elapsed since the date of the dismissal of the person concerned; or
- (b) if during the period of time specified in paragraph (a), the person concerned brings proceedings in any competent tribunal or court in respect of his dismissal, until proceedings before that tribunal or court are concluded,

and the PCT may only terminate the contract at the end of the period specified in sub-paragraph (b) if there is no finding of unfair dismissal at the end of those proceedings.

(5) A PCT shall not terminate the contract pursuant to sub-paragraph (2)(f) where the PCT is satisfied that the conviction does not make the person unsuitable to be, as the case may be—

- (a) a contractor;
- (b) in the case of a contract with two or more individuals practising in partnership, a partner; or
- (c) in the case of a contract with a corporate body, a director, chief executive or secretary of that body.

#### **Immediate Termination by the PCT**

**45.** The PCT may serve notice on the contractor terminating the contract forthwith, or with effect from such date as may be specified in the notice, if—

- (a) the contractor has breached the contract and, as a result of that breach, the safety of the contractor’s patients is at risk if the contract is not terminated;
- (b) the contractor’s financial situation is such that the PCT considers that the PCT is at risk of material financial loss; or
- (c) the contractor has breached the contract and, in the judgment of the PCT, that breach is so significant that it is inappropriate that the contract should continue.

#### **Termination by the PCT: remedial notices and breach notices**

**46.—(1)** Where a contractor has breached the contract other than as specified in paragraphs 42 to 45 and the breach is capable of remedy, the PCT shall, before taking any action it is otherwise entitled to take by virtue of the contract, serve a notice on the contractor requiring it to remedy the breach (“remedial notice”).

(2) A remedial notice shall specify—

- (a) details of the breach;
- (b) the steps the contractor must take in order to remedy the breach to the satisfaction of the PCT; and
- (c) the period during which the steps must be taken (“the notice period”).

(3) The notice period shall, unless the PCT is satisfied that a shorter period is necessary to—

- (a) protect the safety of the contractor’s patients; or
- (b) protect itself from material financial loss,

be no less than 28 days from the date that notice is given.

(4) Where a PCT is satisfied that the contractor has not taken the required steps to remedy the breach by the end of the notice period, the PCT may terminate the contract with effect from such date as the PCT may specify in a further notice to the contractor.

(5) Where a contractor has breached the contract other than as specified in paragraphs 42 to 45 and the breach is not capable of remedy, the PCT may serve notice on the contractor requiring the contractor not to repeat the breach (“breach notice”).

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(6) If, following a breach notice or a remedial notice, the contractor—

- (a) repeats the breach that was the subject of the breach notice or the remedial notice; or
- (b) otherwise breaches the contract resulting in either a remedial notice or a breach notice,

the PCT may serve notice on the contractor terminating the contract with effect from such date as may be specified in that notice.

(7) The PCT shall not exercise its right to terminate the contract under sub-paragraph (6) unless it is satisfied that the cumulative effect of the breaches is such that the PCT considers that to allow the contract to continue would be prejudicial to the efficiency of the services to be provided under the contract.

(8) If the contractor is in breach of any obligation and a breach notice or a remedial notice in respect of that breach has been given to the contractor, the PCT may withhold or deduct monies which would otherwise be payable under the contract in respect of that obligation which is subject of the breach.

#### **Termination by the PCT: additional provisions**

**47.**—(1) If the PCT becomes aware that the contractor is carrying on any business which the PCT considers to be detrimental to the contractor’s performance of its obligations under the contract—

- (a) the PCT shall be entitled to give notice to the contractor requiring that it ceases carrying on that business before the end of a period of not less than 28 days beginning on the day on which the notice is given (“the notice period”); and
- (b) if the contractor has not satisfied the PCT that it has ceased carrying on that business by the end of the notice period, the PCT may, by a further notice, terminate the contract forthwith or from such date as may be specified in the notice.

(2) Where the contractor is—

- (a) an individual, who is a registered optometrist;
- (b) a partnership and one of the partners is a registered optometrist; or
- (c) a corporate body and it or a director, chief executive or the secretary of that body is a registered optometrist,

who is the subject of a direction pursuant to section 13F of the Opticians Act (powers of the fitness to practice committee)**(32)**, or an order pursuant to section 13H (financial penalty order) of that Act, the PCT may, by notice, terminate the contract if it considers that as a consequence the contractor is no longer suitable to be a contractor.

(3) Where the contractor is two or more persons practising in partnership, the PCT shall be entitled to terminate the contract by notice on such date as may be specified in that notice where one or more partners have left the practice during the existence of the contract if, in its reasonable opinion, the PCT considers that the change in membership of the partnership is likely to have a serious adverse impact on the ability of the contractor or the PCT to perform its obligations under the contract.

(4) A notice given to the contractor pursuant to sub-paragraph (3) shall specify—

- (a) the date upon which the contract is to be terminated; and
- (b) the PCT’s reasons for considering that the change in the membership of the partnership is likely to have the serious adverse impact specified in sub-paragraph (3).

#### **Contract sanctions**

**48.**—(1) In this paragraph and paragraph 49, “contract sanction” means—

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**(32)** Sections 13F and 13H were inserted by [S.I. 2005/848](#).



- (a) termination of specified reciprocal obligations under the contract;
- (b) suspension of specified reciprocal obligations under the contract for a period of up to 6 months; or
- (c) withholding or deducting monies otherwise payable under the contract.

(2) Where the PCT is entitled to terminate the contract pursuant to this Part of this Schedule, it may instead impose any of the contract sanctions if it is reasonably satisfied that the contract sanction to be imposed is appropriate and proportionate to the circumstances giving rise to its entitlement to terminate the contract.

(3) If the PCT decides to impose a contract sanction, it must notify the contractor of the contract sanction that it proposes to impose, the date upon which that sanction will be imposed and provide in that notice an explanation of the effect of the imposition of that sanction.

(4) Subject to paragraph 49, the PCT shall not impose the contract sanction until at least 28 days after it has served notice on the contractor pursuant to sub-paragraph (3), unless the PCT is satisfied that it is necessary to do so in order to—

- (a) protect the safety of the contractor's patients; or
- (b) protect itself from material financial loss.

(5) Where the PCT imposes a contract sanction, the PCT shall be entitled to charge the contractor the reasonable costs of additional administration that the PCT has incurred in order to impose, or as a result of imposing, the contract sanction.

#### **Contract sanctions and the NHS dispute resolution procedure**

**49.**—(1) If there is a dispute between the PCT and the contractor in relation to a contract sanction that the PCT is proposing to impose, subject to sub-paragraph (4), the PCT shall not impose the proposed contract sanction, except in the circumstances specified in sub-paragraph (2) or (3).

(2) If the contractor refers the dispute relating to the contract sanction to the NHS dispute resolution procedure within 28 days beginning on the date on which the PCT served notice on the contractor in accordance with paragraph 30(3) (or such longer period as may be agreed in writing with the PCT), and notifies the PCT that it has done so, the PCT shall not impose the contract sanction unless—

- (a) there has been a determination of the dispute pursuant to paragraph 33 and that determination permits the PCT to impose the contract sanction; or
- (b) the contractor ceases to pursue the NHS dispute resolution procedure,

whichever is the sooner.

(3) If the contractor does not invoke the NHS dispute resolution procedure within the time specified in sub-paragraph (2), the PCT shall be entitled to impose the contract sanction forthwith.

(4) If the PCT is satisfied that it is necessary to impose the contract sanction before the NHS dispute resolution procedure is concluded in order to—

- (a) protect the safety of the contractor's patients; or
- (b) protect itself from material financial loss,

the PCT shall be entitled to impose the contract sanction forthwith, pending the outcome of that procedure.

#### **Termination and the NHS dispute resolution procedure**

**50.**—(1) Where the PCT is entitled to serve notice on the contractor terminating the contract pursuant to any provision of this Schedule, the PCT shall, in the notice served on the contractor

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pursuant to those provisions, specify a date on which the contract terminates, that is not less than 28 days after the date on which the PCT has served that notice on the contractor, unless sub-paragraph (2) applies.

(2) This sub-paragraph applies if the PCT is satisfied that a period less than 28 days is necessary in order to—

- (a) protect the safety of the contractor’s patients;
- (b) protect itself from material financial loss; or
- (c) otherwise protect the interest of the public.

(3) In a case falling with sub-paragraph (1), where the exceptions in sub-paragraph (2) do not apply, where the contractor invokes the NHS dispute resolution procedure before the end of the period of notice referred to in sub-paragraph (1), and it notifies the PCT that it has done so, the contract shall not terminate at the end of the notice period, but instead shall only terminate in the circumstances specified in sub-paragraph (4).

(4) The contract shall only terminate if and when—

- (a) there has been a determination of the dispute pursuant to paragraph 31 and that determination permits the PCT to terminate the contact; or
- (b) the contractor ceases to pursue the NHS dispute resolution procedure,

whichever is the sooner.

(5) If the PCT is satisfied that it is necessary to terminate the contract before the NHS dispute resolution procedure is concluded in order to—

- (a) protect the safety of the contractor’s patients; or
- (b) protect itself from material financial loss,

sub-paragraphs (3) and (4) shall not apply and the PCT shall be entitled to confirm, by notice to be served on the contractor, that the contract will nevertheless terminate at the end of the period of the notice the PCT served pursuant to the provisions of this Part of this Schedule.

## PART 8

### Miscellaneous

#### **Insurance: negligent performance and public liability**

51.—(1) The contractor shall at all times hold adequate—

- (a) insurance against liability arising from negligent performance of clinical services under the contract; and
- (b) public liability insurance in relation to liabilities to third parties arising under or in connection with the contract which are not covered by the insurance referred to in (a).

(2) In this paragraph—

- (a) “insurance” means a contract of insurance or other arrangement made for the purpose of indemnifying the contractor; and
- (b) a contractor shall be regarded as holding insurance in relation to any of its employees if it is held by that employee in connection with clinical services which that employee provides under the contract.

## **Gifts**

**52.**—(1) The contractor shall keep a register of gifts which are given to any of the persons specified in sub-paragraph (2) by or on behalf of—

- (a) a patient;
- (b) a relative of a patient; or
- (c) any person who provides or wishes to provide services to the contractor or its patients in connection with the contract,

and have, in its reasonable opinion, an individual value of more than £100.00.

(2) The persons referred to in sub-paragraph (1) are—

- (a) the contractor;
- (b) where the contract is with two or more individuals practising in partnership, any partner;
- (c) where the contract is with a corporate body, a director, chief executive or secretary of that body;
- (d) any person employed by the contractor for the purposes of the contract;
- (e) any ophthalmic practitioner engaged by the contractor for the purposes of the contract;
- (f) any spouse or civil partner of a contractor (where the contractor is an individual) or of a person specified in paragraphs (b) to (e); or
- (g) any person whose relationship with the contractor (where the contractor is an individual) or with a person specified in paragraphs (b) to (e) has the characteristics of the relationship between husband and wife or civil partners.

(3) Sub-paragraph (1) does not require a gift to be registered where—

- (a) there are reasonable grounds for believing that the gift is unconnected with services provided or to be provided by the contractor;
- (b) the contractor is not aware of the gift; or
- (c) in a case falling within sub-paragraph (1)(c), the contractor is not aware that the donor wishes to provide services to the contractor.

(4) The contractor shall take reasonable steps to ensure that it is informed of gifts which fall within sub-paragraph (1) and which are given to any of the persons specified in sub-paragraph (2) (b) to (2)(g).

(5) The register referred to in sub-paragraph (1) shall include the following information—

- (a) the name of the donor;
- (b) in a case where the donor is a patient, the patient's National Health Service number or, if the number is not known, his address;
- (c) in any other case, the address of the donor;
- (d) the nature of the gift;
- (e) the estimated value of the gift; and
- (f) the name of the person or persons who received the gift.

(6) The contractor shall make the register available to the PCT on request.

## **Compliance with legislation and guidance**

**53.** The contractor shall—

- (a) comply with all relevant legislation; and

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- (b) have regard to all relevant guidance issued by the PCT, the relevant Strategic Health Authority or the Secretary of State.

### **Third party rights**

- 54. The contract shall not create any right enforceable by any person not a party to it.

### **Signing of documents**

55.—(1) In addition to any other requirement that may relate to the signing of documents whether in these Regulations or otherwise, the contractor shall ensure such documents include—

- (a) the name of anyone who signed the documents;
  - (b) if he is a member of a clinical profession, that fact, identifying the profession; and
  - (c) the name of the contractor on whose behalf it is signed.
- (2) The reference to documents in sub-paragraph (1) include—
- (a) forms that are required to be completed as a consequence of these Regulations, where such forms require a signature;
  - (b) any clinical document.

## SCHEDULE 2

Regulation 19

### ADDITIONAL SERVICES

#### **Contents of the contract and interpretation**

- 1. A contract shall contain all the terms required under Schedule 1, except—
  - (a) that any reference to “mandatory services” in Schedule 1 shall be replaced by “additional services”, and
  - (b) in so far as any such term is added to, removed or varied by the provisions of this Schedule, in which case the contract shall contain the term as so added, removed or varied,

and in this Schedule any reference to a contract is to a contract for the provision of additional services and any reference to a contractor is to a person who has contracted to provide such services.

#### **Recording of details**

- 2. In addition to complying with the requirements of paragraph 1 of Schedule 1, the contractor shall record on the sight test form the reason given by the patient, or on his behalf, for—
  - (a) not being able to leave home unaccompanied; or
  - (b) if the reason the patient is entitled to the provision of mobile services is other than that in (a), that reason.

#### **Provision of information**

- 3. The contractor shall—
  - (a) compile a document (in this paragraph and in Schedule 4 called “patient information leaflet”) which shall include the information specified in Schedule 4;

- (b) review its patient information leaflet at least once in every period of 12 months and make any amendments necessary to maintain its accuracy; and
- (c) make available a copy of the leaflet, and any subsequent updates, to its patients and prospective patients.

#### **Inspection of premises where additional services are being provided**

4. In the application of paragraphs 19 and 21 of Schedule 1 to a contract, any reference to “practise premises” shall be varied to apply to the place where the additional services are being provided.

#### **Facilities and equipment**

5.—(1) A contractor shall provide such facilities and equipment as are necessary to enable it to properly perform mobile services, and in addition to the right to inspect under paragraph 4, a contractor shall allow an authorised officer of the PCT to inspect the facilities and equipment that it uses either—

- (a) during an inspection under paragraph 4; or
  - (b) subject to the conditions in sub-paragraph (2), at any reasonable time.
- (2) The conditions referred to in sub-paragraph (1)(b) are that—
- (a) reasonable notice of the intended inspection has been given;
  - (b) written evidence of the authority of the person seeking entry is produced to the contractor on request; and
  - (c) entry is not made to any premises or part of the premises used as residential accommodation without the consent of the resident.

#### **Notice of provision of additional services**

6.—(1) A contractor may provide additional services only in accordance with sub-paragraph (2), after giving notice in accordance with sub-paragraph (3).

- (2) The contractor may only provide additional services if—
- (a) an eligible person has requested the contractor to provide those services to him, or, where the eligible person is incapable of making such a request, a relative of his, a primary carer of that eligible person or a duly authorised person has made such a request; and
  - (b) subject to sub-paragraphs (5), (6) and (7), it has notified the PCT in accordance with sub-paragraphs (3) and, if applicable, (4) and the PCT has not informed the contractor that it is not content with the changes notified under sub-paragraph (4).
- (3) The contractor shall notify the PCT of its intention to provide additional services—
- (a) where they are to be provided to 3 or more eligible persons at a day centre or residential centre, at least 3 weeks and not more than 8 weeks in advance of that provision; or
  - (b) in any other case, not more than 8 weeks, but not less than 48 hours (except that no part of a Saturday, Sunday or bank holiday shall count towards that period of 48 hours) before that provision,

identifying the persons to whom the services are to be provided and specifying the date and approximate time when it will provide them.

(4) If the contractor wishes to change any of the matters of which it has notified the PCT under sub-paragraph (3), it must so notify the PCT at least 48 hours (except that no part of a Saturday, Sunday or bank holiday shall count towards that period) before—

- (a) if it wishes to provide additional services to further or different persons, that provision;

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- (b) if it wishes to change the date or time of the provision of those services, both—
  - (i) the previously notified date of that provision, and
  - (ii) if the notification is to change the date, the date so notified.
- (5) If the contractor is unable to attend the place at which it has notified the PCT that it would be attending, it may instead, on that day and at that approximate time, provide additional services at another location, provided that the PCT notifies the contractor that the PCT agrees to that.
- (6) In a case to which paragraph (5) applies the contractor may attend and provide additional services at the originally notified place at such time as the PCT shall agree.
- (7) In a case where circumstances have arisen whereby it was not possible to notify in accordance with sub-paragraph (4)(a), the contractor may provide additional services to up to 3 other eligible persons at the previously notified time and place.

### **Improper inducements and advice**

- 7. The contractor shall not—
  - (a) offer any inducement (except any discount or special offer available to patients) to use the additional services provided by the contractor and in particular no such inducement shall be offered by it, directly or indirectly, to the proprietor, manager or staff of a residential home or day centre to secure that the contractor is asked or permitted to provide additional services at that home or centre; or
  - (b) seek to mislead any person about the availability, quality and extent of additional services under the contract.

## SCHEDULE 3

Regulation 3(b)

### APPLICATIONS FOR A CONTRACT

- 1. Subject to paragraph 9, any applicant for a contract shall complete and send to the PCT an application in accordance with the following provisions of this Schedule, in such form as the PCT may require.
- 2. That application form shall include—
  - (a) where the applicant is an individual, the information required in paragraphs 3 to 5 and 7 and 8;
  - (b) where the applicant is a partnership, the information required in paragraph 7 and, in relation to each partner, the information required in paragraphs 3 to 5 and 8; and
  - (c) where the applicant is a corporate body—
    - (i) the information required in paragraphs 5 to 8, and
    - (ii) in relation to any director, chief executive or secretary of that corporate body, the information required in paragraphs 3 to 5 and 8.
- 3. His sex, date of birth and private address.
- 4. Where it is applicable in relation to him—
  - (a) his qualifications and where they were obtained;
  - (b) if he is a healthcare professional, which profession, the licensing body which regulates it, his professional registration number and date of first registration in which the register maintained by that licensing body; and

(c) if he is included in a primary care list, which list and the name and address of that PCT.

5. Information on whether it—

- (a) has any criminal convictions in the United Kingdom;
- (b) has been bound over following a criminal conviction in the United Kingdom;
- (c) has accepted a police caution in the United Kingdom;
- (d) has accepted a conditional offer under section 302 of the Criminal Procedure (Scotland) Act 1995<sup>(33)</sup> (fixed penalty: conditional offer by procurator fiscal) or agreed to pay a penalty under section 115A of the Social Security Administration Act 1992<sup>(34)</sup> (penalty as alternative to prosecution);
- (e) has, in summary proceedings in Scotland in respect of an offence, been the subject of an order discharging him absolutely (without proceeding to conviction);
- (f) has been convicted elsewhere of an offence, or what would constitute a criminal offence if committed in England and Wales;
- (g) is currently the subject of any proceedings which might lead to such a conviction, which have not yet been notified to the PCT;
- (h) has been subject to any investigation into his professional conduct by any licensing, regulatory or other body anywhere in the world, where the outcome was adverse;
- (i) is currently subject to any investigation into his professional conduct by any licensing, regulatory or other body anywhere in the world;
- (j) has been subject to an investigation into his professional or business conduct in respect of any current or previous employment or business where the outcome was adverse;
- (k) is currently subject to an investigation into his professional conduct in respect of any current or previous employment;
- (l) to its knowledge is the subject of any investigation by the NHS Business Services Authority<sup>(35)</sup> in relation to fraud, or has been notified of the outcome of such an investigation, where it is adverse;
- (m) is the subject of any investigation by another PCT, which might lead to his removal from any primary care list or the termination of any contract with that PCT;
- (n) has been removed, contingently removed or suspended from, refused admission to or conditionally included in any primary care list,

and if so, give details, including approximate dates, of where the investigation or proceedings were or are to be brought, the nature of that investigation or proceedings, and any outcome, with an explanation as to why and details of the PCT or equivalent body concerned.

6. Details of its registration as a company, the address of its registered office, and, if different, its principal place of business, with in either case, the relevant telephone number.

7. Details of—

- (a) the premises, equipment and record keeping arrangements; and
- (b) the staff,

it has or will have available by the date the contract is to be commenced, to provide or in relation to the services under the proposed contract;

8. Any other information the PCT may reasonably require.

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<sup>(33)</sup> 1995 c. 46.

<sup>(34)</sup> 1992 c. c.5; section 115A was inserted by section 15 of the [Social Security Administration \(Fraud\) Act \(c. 47\)](#).

<sup>(35)</sup> The NHS Business Services Authority is a special health authority established under section 28 of the Act.

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**9.** In the case of an applicant who, at the time of its application was included in the ophthalmic list of the PCT, that applicant need only notify the PCT that it wishes to enter into a contract and supply such of the information specified in this Schedule as—

- (a) it has not already provided to the PCT; or
- (b) has changed since it provided it.

#### SCHEDULE 4

Regulation 19 and paragraph 3 of  
Schedule 2

#### PATIENT INFORMATION LEAFLET

A patient information leaflet shall include—

- 1.** The name of the contractor.
- 2.** In the case of a contract with a partnership—
  - (a) whether or not it is a limited partnership; and
  - (b) the names of all the partners and, in the case of a limited partnership, their status as a general or limited partner.
- 3.** In the case of a contract with a corporate body—
  - (a) the names of the directors, chief executive and secretary of that body, in so far as those positions exist in relation to it; and
  - (b) the address of its registered office.
- 4.** The contractor's telephone number, any fax number or e-mail address and the address of its website (if any).
- 5.** How to request services as a patient.
- 6.** The services available under the contract.
- 7.** How patients may make a complaint or comment on the provision of service.
- 8.** The rights and responsibilities of the patient, including keeping appointments.
- 9.** Details of who has access to patient information (including information from which the identity of the individual can be ascertained) and the patient's rights in relation to disclosure of such information.
- 10.** A statement that the contractor is a party to a contract with the relevant PCT to provide additional services and that the contractor will provide, on request, the name, postal, e-mail and website address and telephone number of that PCT, from which details of primary ophthalmic services in the area may be obtained.



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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations set out, for England, the framework for general ophthalmic services contracts under section 117 of the National Health Service Act 2006 (“the Act”) and are made under the provisions of sections 28WA, 28WB, 28WC, 28WE and 28WF of the National Health Service Act 1977, which has force in relation to ophthalmic matters until the coming into force of the relevant provisions of the Health Act 2006 (see section 277(3) and (4) of the Act), which will occur on 1st August 2008.

Part 2 of and Schedule 3 to the Regulations prescribes the conditions which, in accordance with section 118 of the Act, must be met by a contractor before the PCT may enter into a general ophthalmic services contract with it.

Part 3 of the Regulations prescribes the procedure for pre-contract dispute resolution, in accordance with section 122(1) of the Act. Part 3 applies to cases where the contractor is not a health service body. In cases where the contractor is such a body, the procedure for dealing with pre-contract disputes is set out in section 9 of the Act.

Part 4 of the Regulations sets out the procedures, in accordance with section 122(3) of the Act, by which the contractor may obtain health service body status.

Part 5 of (and Schedules 1 and 2 to) the Regulations prescribe the terms which, in accordance with sections 121 and 122 of the Act, must be included in a general ophthalmic service contract (in addition to those contained in the Act). It includes, in regulation 13, a description of the services which must be provided to patients under a general ophthalmic services contract pursuant to 117 of the Act.

The prescribed terms include terms relating to—

- (a) the type and duration of the contract (regulations 9 to 12);
- (b) the services to be provided and the manner in which they are to be provided (regulations 13 and 14, Schedules 1 and 2);
- (c) finance, fees and charges (regulations 15 and 16);
- (d) the conditions to be met by those who perform services or are employed or engaged by the contractor (Schedules 1 and 2);
- (e) patient records, the provision of information and rights of entry and inspection (Schedules 1 and 2);
- (f) complaints (Schedule 1, Part 5);
- (g) procedures for dispute resolution (Schedule 1, Part 6);
- (h) procedures for variation and termination of contracts (Schedule 1, Part 7); and
- (i) contracts for additional services (Schedule 2).

Part 6 (regulation 20) of the Regulations makes transitional provision.

An Impact Assessment has not been produced for this Instrument as it has no significant impact on the cost of business, charities or voluntary bodies.