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STATUTORY INSTRUMENTS

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**2008 No. 1186**

**NATIONAL HEALTH SERVICE, ENGLAND**

**The Primary Ophthalmic Services 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 these Regulations in exercise of the powers conferred by sections 16CD(1), (2) and (3), 16CE and 126(4) of the National Health Service Act 1977(1):—

**Citation, commencement and application**

1.—(1) These Regulations may be cited as the Primary Ophthalmic Services 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, unless the context otherwise requires—

“the 1977 Act” means the National Health Service Act 1977;

“the 1992 Act” means the Social Security Contributions and Benefits Act 1992(2);

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

“additional services” means the primary ophthalmic services under section 115(1)(b), which are provided to a person, specified in regulation 3(1)(a) to (h);

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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”. Section 16CD and 16CE were inserted by the Health Act 2006 (c.28) (“the 2006 Act”), section 179(1). Section 126(4) was amended by the 1990 Act, s. 65(2); by the Health Act 1999 (c.8) (“the 1999 Act”), 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 the National Assembly for Wales under article 2 of, and Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999, S.I. 1999/672; section 68 of the 2001 Act provides that Schedule 1 shall be construed so as to include the amendments made by that Act to the 1977 Act; these Regulations therefore extend only to England.
- (2) 1992 c.4; relevant amendments are the Jobseekers Act 1995 (c.18) s.41, the Welfare Reform and Pensions Act 1999 (c.30), s. 70, the State Pension Credit Act 2002 (c.16), ss 14 and 21 and the Civil Partnership Act 2004 (c.33), s. 254.
- (3) 2006 c. 41.

“Charges Regulations” means the National Health Service (Optical Charges and Payments) Regulations 1997(4);

“child tax credit” means child tax credit under the Tax Credits Act 2002(5);

“complex appliance” means an optical appliance at least one lens of which—

- (a) has a power in any one meridian of plus or minus 10 or more dioptries, or
- (b) is a prism-controlled bifocal lens;

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

“contractor” means a person or partnership which has entered into a contract with a PCT;

“day centre” means an establishment in the locality of the PCT attended by persons, including 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;

“disability element” means the disability element of working tax credit as specified in section 11(3) of the Tax Credits Act 2002;

“eligible person” means a person who, in accordance with these Regulations, may have their sight tested under a contract for mandatory services or for 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;

“gross annual income” means income that is calculated for a tax year for the purposes of Part 1 of the Tax Credits Act 2002 in accordance with regulations made under section 7 of that Act;

“an income-based jobseeker’s allowance” has the meaning given to it by section 1(4) of the Jobseekers Act 1995(6);

“income support” means income support under the 1992 Act and includes personal expenses addition, special transition addition and transitional addition as defined in regulation 2(1) of the Income Support (Transitional) Regulations 1987(7);

“locality” means the locality for which a PCT is established;

“mandatory services” means the primary ophthalmic services mentioned in section 115(1)(a) (sight-testing service), provided to a person specified in regulation 3, except those services provided other than at the contractor’s 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 its locality;

“PCT” means a Primary Care Trust;

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(4) [S.I. 1997/818](#).

(5) [2002 c.21](#).

(6) [1995; c.18](#); s. 1(4) was amended by the Welfare Reform and Pensions Act 1999, ss 59 and 88 and by the Civil Partnership Act 2004 s. 254.

(7) [S.I 1987/1969](#).

“pension credit guarantee credit” shall be construed in accordance with sections 1 and 2 of the State Pension Credit Act 2002<sup>(8)</sup>;

“prisoner” means a person who is detained in a prison, including a young offender institution, but not a secure training centre or a naval, military or air force prison, but is, at the time he receives any primary ophthalmic service on leave from that prison and for the purposes of this definition;

“secure training centre” means a place in which offenders subject to detention and training orders under section 100 of the Powers of Criminal Courts (Sentencing) Act 2000 (offenders under 18: detention and training orders)<sup>(9)</sup> may be detained and given training and education and prepared for their release; and

“young offender institution” means a place for the detention of offenders sentenced to detention in a young offender institution or to custody for life;

“relevant income” has the same meaning as in section 7(3) of Part 1 of the Tax Credits Act 2002;

“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;

“severe disability element” means the severe disability element of working tax credit specified in section 11(6)(d) of the Tax Credits Act 2002;

“sight test form” means a form which, in accordance with General Ophthalmic Services Contracts Regulations 2008<sup>(10)</sup>, is to be completed for the purposes of payments in respect of a sight test; and

“working tax credit” means working tax credit under the Tax Credits Act 2002.

(2) In these Regulations—

- (a) all references to sections or Parts are to sections or Parts, as the case may be, of the Act, except where specified otherwise; and
- (b) the use of the term “it” in relation to a contractor shall be deemed to include a reference to a contractor who is an individual or two or more individuals practising in partnership and related expressions shall be construed accordingly.

### **Sight Tests - eligibility**

**3.—(1)** A person may have his sight tested under primary ophthalmic services if, at the time of the testing of sight, he is a person—

- (a) who is under the age of 16 years;
- (b) who is under the age of 19 years and receiving qualifying full-time education;
- (c) who is aged 60 years or more;
- (d) whose resources are treated in accordance with paragraph (2) as being less than, or equal to, his requirements;
- (e) who requires to wear a complex appliance;
- (f) who is registered blind or partially sighted under section 29 of the National Assistance Act 1948<sup>(11)</sup>;

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<sup>(8)</sup> 2002 c.16; relevant amendment is the Civil Partnership Act 2004 s. 254.

<sup>(9)</sup> 2000 (c. 6); section 100 was amended by the Criminal Justice Act 2003, ss 304, 332 and Schedule 32..

<sup>(10)</sup> S.I 2008/1185.

<sup>(11)</sup> 1948 (c.29).

- (g) who has been diagnosed as suffering from diabetes or glaucoma, or has been advised by an ophthalmologist that he is predisposed to the development of glaucoma;
  - (h) who is aged 40 or over and is the parent, brother, sister or child of a person who has been diagnosed as suffering from glaucoma; or
  - (i) who is a prisoner.
- (2) A person's resources shall be treated as being less than or equal to his requirements if—
- (a) he is in receipt of income support;
  - (b) he is a member of the same family as a person who is in receipt of income support;
  - (c) his income resources as calculated in accordance with Part II of, and Schedule 1 to, the National Health Service (Travel Expenses and Remission of Charges) Regulations 2003<sup>(12)</sup> for the purposes of remission of charges under the Act are less than or equal to his requirements as so calculated or exceed his requirements as so calculated by fifty per cent or less of the amount of the charge specified in regulation 3(1)(b) (supply of drugs and appliances by chemists) of the National Health Service (Charges for Drugs and Appliances) Regulations 2000<sup>(13)</sup> and his capital resources as so calculated do not exceed the capital limit;
  - (d) he is a member of the same family as a person falling within sub-paragraph (c),
  - (e) he is in receipt of an income-based jobseeker's allowance;
  - (f) he is a member of the same family as a person falling within sub-paragraph (e);
  - (g) he is a member of a family—
    - (i) one member of which is receiving—
      - (aa) working tax credit and child tax credit,
      - (bb) working tax credit which includes a disability element, or
      - (cc) child tax credit, but is not eligible for working tax credit, and
    - (ii) where the relevant income of the person or persons to whom an award of a tax credit is made under section 14 of the Tax Credits Act 2002 is determined at the time of the award not to exceed £15,050;
  - (h) he is a person in respect of whom there is a current notice of entitlement; or
  - (i) he is a member of the same family as a person who is receiving pension credit guarantee credit.
- (3) In paragraph (1)—
- (a) in sub-paragraph (b), “qualifying full-time education” means full-time instruction at a recognised educational establishment or by other means accepted as comparable by the Secretary of State, and, for the purpose of this definition, a “recognised educational establishment” means an establishment recognised by the Secretary of State as being, or as comparable to, a school, college or university; and
  - (b) in sub-paragraph (g), “ophthalmologist” means a doctor whose name is included in the register of specialists kept by the General Medical Council under article 13(1) of the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003<sup>(14)</sup> and in respect of whom that register indicates his speciality to be ophthalmology.
- (4) In paragraph (2)—

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<sup>(12)</sup> S.I. 2003/2382; relevant amendments are S.I. 2004/663, 683 and 936, 2005/26 and 578, 2006/562, 675, 1065 and 2171, 2007/988, 1898, 1975 and 2590 and 2008/843.

<sup>(13)</sup> S.I. 2000/620; relevant amendments are S.I. 2003/1084 and 2005/578.

<sup>(14)</sup> S.I. 2003/1250.

- (a) in sub-paragraphs (b), (d) and (i), “family” has the meaning given to it by section 137(1) of the 1992 Act, as it applies to income support;
- (b) in sub-paragraph (f), “family” has the meaning given to it by section 35 of the Jobseekers Act 1995<sup>(15)</sup>; and
- (c) in sub-paragraph (g), “family” has the meaning given to it by regulation 2(2) of the Tax Credits (Definition and Calculation of Income) Regulations 2002<sup>(16)</sup>.

### **Sight tests-applications**

4.—(1) An eligible person who wishes to have his sight tested may make an application for his sight to be tested to any contractor—

- (a) which has contracted to provide mandatory services; or
- (b) if he is entitled to mobile services, which has contracted to provide additional services.

(2) The application shall be made on a form provided for that purpose to a contractor by the PCT with whom it has contracted and shall contain a written declaration signed by the applicant to the effect that he is an eligible person.

(3) In addition, a person who is an eligible person, but only by virtue of—

- (a) regulation 3(1)(d) and (2)(c) or (d), shall show to the contractor a current notice of entitlement;
- (b) regulation 3(1)(e), shall show to the contractor the prescription for a complex appliance issued to him on the occasion when his sight was last tested;
- (c) regulation 3(1)(g) or (h), shall, on a form provided for that purpose to contractors by the PCT, provide the contractor with the name and address of that doctor or ophthalmologist, with consent to the PCT seeking confirmation of that diabetes or glaucoma from that doctor or ophthalmologist; or
- (d) regulation 3(1)(i), shall show to the contractor evidence that he is a prisoner.

(4) Where an eligible person to whom paragraph (3)(b) applies is unable to meet its requirements, the contractor may, instead of satisfying himself that those requirements are met, satisfy himself that the person is an eligible person by referring to his 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) A contractor shall be entitled to demand and recover from a patient or person making an application on a patient’s behalf under regulation 6(1) a sum in respect of loss of remunerative time resulting from that patient’s failure to keep an appointment.

### **Sight test treated as a test under general ophthalmic services**

5.—(1) A person whose sight is tested by a contractor, but who was not an eligible person immediately before the testing and is shown—

- (a) during the testing to fall within the description specified in sub-paragraph (e) of regulation 3(1); or
- (b) in accordance with paragraph (3), within 3 months after the testing to fall within any of the descriptions specified in regulation 3(2) (c) or (d),

shall be taken for the purposes of the testing to have so fallen immediately before his sight was tested.

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<sup>(15)</sup> Relevant amendment is the Civil Partnership Act 2004 s. 254.

<sup>(16)</sup> S.I. 2002/2006.

(2) Where paragraph (1) applies the testing shall be treated as a testing of sight under section 115 for the purposes of regulation 8(1)(a) of the Charges Regulations, as well as for the purposes specified in section 115(10)(a).

(3) For the purposes of paragraph (1)(b), a person is shown to fall within a description specified in regulation 3(2) (c) or (d), if he presents to the PCT a notice of entitlement which is effective for a period which includes the date of the testing of sight or for a period beginning no later than 14 days after the date of the testing of sight.

(4) Subject to the provisions of the Charges Regulations, where a testing of a person's sight is treated by virtue of paragraphs (1)(b), (2) and (3) as a testing of sight under section 115 the PCT shall, on being presented with a receipt for, or other evidence of, any fee paid for the testing, and on being satisfied as to its amount, pay to that person an amount equal to that fee.

### **Applications and signatures by children or persons incapable**

6.—(1) Subject to paragraph (2), an application for mandatory services or additional services may be made and a signature required by these regulations may be given—

- (a) on behalf of any person under 16 years of age by either parent or, in the absence of both parents, the guardian or other adult person who has the care of the child;
- (b) on behalf of any other person who is incapable of making the application, giving the signature, by a relative or any other adult who has the care of that person; or
- (c) on behalf of any person under 18 years of age—
  - (i) in the care of an authority, by a person duly authorised by that authority;
  - (ii) in the care of a voluntary organisation, by that organisation or a person duly authorised by them.

(2) A signature on an application may not be given by the contractor to whom the application is made nor by any person employed by it.

### **Entitlement to additional services**

7.—(1) Subject to the following provisions of this regulation, any person falling within regulation 3, except a prisoner, may apply under regulation 4 (or have someone apply on his behalf under regulation 6) to have his sight tested by mobile services.

(2) He may only have his sight tested at a day centre if he would have difficulty in obtaining mandatory services from practice premises because of physical or mental illness or disability or because of difficulties in communicating his health needs unaided.

(3) He may only have his sight tested at a residential centre if he normally resides in that establishment and is unable to leave the establishment unaccompanied because of physical or mental illness or disability.

(4) He may only have his sight tested at his home if he is unable to leave it unaccompanied because of physical or mental illness or disability.

### **Publication of information**

8. The PCT shall publish—

- (a) sufficient details of contractors who have entered into a contract with it to enable eligible persons to make contact with them; and
- (b) information as to the times and places at which mandatory or additional services, as the case may be, are available from those contractors.

Signed by authority of the Secretary of State for Health.

28th April 2008

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

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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## EXPLANATORY NOTE

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

These Regulations make provision for who is entitled to a primary ophthalmic services sight test under the National Health Service Act 2006, in accordance with the provisions of sections 16CD and 16CE 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 National Health Service Act 2006).

Regulation 2 provides some definitions and regulations 3 to 6 make provision as to who is entitled to such tests and how to apply for them.

Regulation 7 provides for who is entitled to have such a test provided by mobile services.

Regulation 8 requires PCTs to publish information to enable patients to know when and where services are available and how to contact contractors.

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