EXPLANATORY MEMORANDUM TO

THE NATIONAL HEALTH SERVICE (OPHTHALMIC SERVICES AND OPTICAL CHARGES AND PAYMENTS) (AMENDMENT) REGULATIONS 2023

2023 No. 848

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department of Health and Social Care and is laid before Parliament by Command of His Majesty.

2. Purpose of the instrument

2.1 This instrument amends the General Ophthalmic Services Contracts Regulations 2008 (S.I. 2008/1185) ("the General Ophthalmic Services regulations"); The National Health Service (Optical Charges and Payments) Regulations 2013 (S.I. 2013/461) ("the Optical Charges and Payments Regulations"); and The Primary Ophthalmic Services Regulations 2008 (S.I. 2008/1186) ("the Primary Ophthalmic Services Regulations"). This instrument amends these three regulations to require general ophthalmic services contractors and suppliers to submit claim forms electronically in respect of the provision of primary ophthalmic services, unless there are exceptional circumstances.

2.2 This instrument also: amends the time period given for contractors to submit sight test claims; removes the need for contract applications to include the sex of the applicant; and increases the time given before a contract terminates following the death of a contractor.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England.

5. European Convention on Human Rights

5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

6.1 The Primary Ophthalmic Services Regulations provide for NHS funded sight tests to be provided to eligible patients. Contractors receive a set fee, provided for in directions made under s120 of the National Health Service Act 2006, for every sight test undertaken. The Optical Charges and Payments Regulations provide for NHS optical vouchers to be given to eligible patients, to help with the cost of glasses or

contact lenses. There are 10 voucher bands (depending on a individuals' optical prescription) ranging from £41.70 to £229.70.

6.2 Once sight tests are undertaken and optical vouchers are redeemed by patients, contractors and suppliers submit their claims for payment. This instrument amends the General Ophthalmic Services Regulations and the Optical Charges and Payments Regulations to mandate the electronic submission of claim forms and remove the option of paper claims, except in exceptional circumstances (e.g. a contractor is in the process of terminating their contract).

6.3 Contractors submitting claims are currently required by the General Ophthalmic Services Regulations to submit NHS sight testing claims within 6 months of the sight test being completed. This instrument amends the General Ophthalmic Services Regulations to reduce this to 3 months in respect of all claims for sight tests completed on or after 1st January 2024.

6.4 The General Ophthalmic Services Regulations also set the requirement for contract applications to include the sex of the applicant. This instrument amends these regulations to remove the requirement to provide this information. Furthermore, the General Ophthalmic Services Regulations also provide for contracts to terminate after 7 days following the death of a contractor. This instrument amends regulations to increase this period to 28 days.

7. Policy background

What is being done and why?

7.1 High street and domiciliary primary eye care contractors hold general ophthalmic services contracts to provide NHS sight testing services to eligible groups. NHS optical vouchers are also available to help eligible groups with the cost of glasses or contact lenses. Patients are able to redeem NHS optical vouchers with a supplier of their choice. Once sight tests are completed and optical vouchers redeemed, contractors and suppliers submit their claim forms for payment. Claims were made solely on paper up until regulations were amended in 2017 by The National Health Service (Primary Dental Services and General Ophthalmic Services) (Amendment) Regulations 2017 (S.I. 2017/1056) to allow claims to also be made electronically.

7.2 The majority of contractors (96.6%) are now submitting some or all of their claims electronically. Whilst only a small proportion of claims remain on paper, of these, a large number continue to be returned to contractors and suppliers due to errors. Now that almost all contractors are submitting forms electronically, regulations are being amended to compel the electronic submission of all claims for sight tests completed on or after 1 January 2024. This will improve the validation of claims, secure transfer of patient data and reduce the administrative burdens for both contractors and the NHS. This instrument also provides discretion for NHS England to accept the submission of a claim in paper form, where they consider to be exceptional circumstances (e.g. a contractor is in the process of terminating their contract).

7.3 An online portal has already been developed for electronic claims submission, which can be accessed via a broadband or mobile connection, with a device such as a laptop or tablet. Of the 3.4% contractors not currently submitting claims electronically, we consider there could be a small number who do not currently have any access to a mobile or internet connection and a device, for which there will be a small financial impact. Contractors will be supported through user guides, instructions and webinars

to transition from paper to electronic claims by NHS England and Primary Care Support England (PCSE), who currently manage the payments of eye care claims.

7.4 When a patient applies for a free NHS sight test, they are required to sign a sight test application form and following a sight test, if a patient is eligible, they will be given an NHS optical voucher to help with the cost of glasses or contact lenses, which a patient must also sign. With forms being completed electronically, any patient signature would also be captured electronically and if the patient chooses to redeem their optical voucher at a later date or with another supplier, the contractor will provide an optical voucher. The current requirement is for an optical voucher to be provided on the same occasion as the patient is given their optical prescription. There may be instances with forms being completed electronically, where the computer system is down or contractors providing domiciliary services (mobile sight tests) will be unable to access the computer system when visiting patients in areas with poor internet or mobile connection. In these circumstances, contractors will be permitted to collect any necessary patient signatures on a separate paper form and complete the electronic form once an internet connection can be secured. Any necessary optical voucher may also, in these circumstances, have to be provided to the patient a short time after the sight test, which this instrument allows for.

7.5 Previously, patients were required to acknowledge receipt of their optical prescription on a sight test form. This requirement has since been removed. This instrument therefore removes this requirement from the General Ophthalmic Services Regulations. This instrument also removes the need to waive or modify the requirement for that signature during a pandemic, given the signature is no longer required.

7.6 Claims for sight tests are currently required to be made within 6 months following the completion of the sight test. With the move to electronic submission of claims, this claim window is being reduced to 3 months. This will improve contractor claims and cash flow whilst improving financial management for the NHS. This amendment will come into effect from 1 January 2024, in line with the expansion of electronic claims.

7.7 When applications are made for general ophthalmic services contracts, the General Ophthalmic Services Regulations require applicants to provide their sex. This information is not used by NHS England in assessing applications and therefore this instrument removes this requirement from 1 November 2023. Contract applications, which are available to download from the NHS Business Services Authority website, will be amended to coincide with this provision coming into force.

7.8 When a contractor dies, the General Ophthalmic Services Regulations provide for their contract to automatically terminate after 7 days, unless an application is made before the end of the 7 days to extend the contract by up to 3 months. This instrument will amend this period from 7 days to 28 days in respect of contractors from 1 November 2023, to provide more compassionate circumstances for the contractors' personal representative. NHS England will issue contract variations to coincide with this provision coming into force.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act 2018.

9. Consolidation

9.1 These regulations do not consolidate any existing legislation. The Optical Charges and Payments Regulations provided a consolidation of the National Health Service (Optical Charges and Payments) Regulations 1997. The consolidation of the Primary Ophthalmic Services Regulations and the General Ophthalmic Services Regulations will be considered in the future.

10. Consultation outcome

10.1 The Department of Health and Social Care carried out a targeted consultation with the Optical Fees Negotiating Committee (OFNC), as representatives of the profession, on these regulations. The OFNC were content with the proposed regulations and offered to work with NHS England on any underpinning guidance.

11. Guidance

11.1 NHS England will produce guidance to contractors and suppliers ahead of the regulatory changes coming into effect on 1 January 2024. The guidance will set out what NHS England is likely to constitute as exceptional circumstances in relation to the submission of paper claims, such as a where a contractor is in the process of terminating their contract. The guidance will also set out the circumstances where signatures in ink may be collected on a separate paper form; and where an optical voucher may need to be issued to a patient after the issuing of an optical prescription. This could include where the computer system is down or issues relating to poor internet/mobile connectivity.

12. Impact

12.1 There is no significant impact on business, charities or voluntary bodies.

12.2 There is no significant impact on the public sector.

12.3 A full Impact Assessment has not been prepared for this instrument, because these regulations will only have a small financial impact on a small number of contractors who may not currently have the ability to submit claims electronically. With 96.6% of contractors already submitting some or all of their claims electronically, the vast majority will be unaffected. Contractors will be supported to transition from paper to electronic claims by NHS England and PCSE through user guides, instructions and webinars. No financial impact is anticipated with the reduction in the window for sight test claims. Positive impacts are expected from the amendments which will remove the need for contract applications to include the sex of the applicant and increase the time given before a contract is terminated, following the death of a contractor.

13. Regulating small business

13.1 This legislation applies to activities that are undertaken by small businesses.

13.2 To minimise the impact of the requirements on small businesses (employing up to 50 people), a free online portal which can be accessed through any mobile or internet enabled device has already been developed for the electronic submission of claim forms. This will improve the validation of claims, reduce the administrative burdens on contractors and suppliers, and enhance efficiency.

14. Monitoring & review

14.1 NHS England (on behalf of the Secretary of State for Health and Social Care) are responsible for monitoring the implementation, and compliance with this legislation; however, the Secretary of State is ultimately responsible for these regulations and the policies they implement. This instrument does not include a statutory review clause.

15. Contact

15.1 Claire Osborne at the Department of Health and Social Care Telephone 020 7210 5273 or email: claire.osborne@dhsc.gov.uk can be contacted with any queries regarding the instrument.

15.2 Alette Addison, Deputy Director for Pharmacy, Eye Care and Controlled Drugs, at the Department of Health and Social Care can confirm that this Explanatory Memorandum meets the required standard.

15.3 Neil O'Brien, Parliamentary Under Secretary of State for Primary Care and Public Health at the Department of Health and Social Care can confirm that this Explanatory Memorandum meets the required standard.