STATUTORY INSTRUMENTS

2024 No. 1250

NATIONAL HEALTH SERVICE, ENGLAND

The National Health Service (Ophthalmic Services and Optical Charges and Payments) (Amendment) Regulations 2024

Made - - - -	*27th November 2024*
Laid before Parliament	*28th November 2024*
Coming into force - -	*19th December 2024*

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 9(8), 115(1)(b), 121, 180, 272(7) and (8) and 274(a) and (b) of the National Health Service Act 2006(**a**).

Citation, commencement and application

1.—(1) These Regulations may be cited as the National Health Service (Ophthalmic Services and Optical Charges and Payments) (Amendment) Regulations 2024.

(2) They come into force on 19th December 2024.

(3) They apply in relation to England.

Amendment of the General Ophthalmic Services Contracts Regulations 2008

2.—(1) The General Ophthalmic Services Contracts Regulations 2008(**b**) are amended as follows.

(2) In regulation 2(1) (interpretation)—

(a) for the definition of "additional services" substitute—

> ""additional services" means primary ophthalmic services prescribed for the purposes of section 115(1)(b) of the Act which are—
>
> (a) mobile services provided to persons falling within regulation 3(1)(a) to (h) of the POS Regulations; or
>
> (b) sight-testing services provided in a special educational setting to persons falling within regulation 3A of the POS Regulations(**c**);";

(b) in the definition of "mandatory services", omit "except sight-testing services provided as mobile services";

(**a**) 2006 c. 41. Section 115 was amended by the Health and Social Care Act 2012 (c. 7) ("the 2012 Act)", Schedule 4, paragraph 54 and the Health and Care Act 2022 (c. 31) ("the 2022 Act"), Schedule 1, paragraph 1(1) and (2). Section 121 was amended by the 2012 Act, Schedule 4, paragraph 59 and by the 2022 Act, Schedule 1, paragraph 1(1) and (2). Section 180 was amended by the Health Act 2009 (c. 21), section 34 and Schedule 6, the 2012 Act, section 205 and Schedule 4, paragraph 96 and the 2022 Act, Schedule 1, paragraph 1(1) and (2). "Prescribed" and "regulations" are defined in section 275(1) of the National Health Service 2006 Act.

(**b**) S.I. 2008/1185; relevant amending instruments are S.I. 2010/22 and 634, 2013/365, 2016/211, 2017/1056, 2023/1071.

(**c**) Regulation 3A is inserted by regulation 3(4) of these Regulations.

(c) after the definition of "sight test form"—

(i) omit "and";

(ii) insert—

""special educational setting" means—

(a) a special school in England within the meaning of section 337(1) of the Education Act 1996(**a**);

(b) an independent educational institution within the meaning of Chapter 1 of Part 4 of the Education and Skills Act 2008(**b**)—

(i) which has been entered on the register of independent educational institutions in England kept under section 95 of that Act; and

(ii) which is specially organised to make special educational provision for students with special educational needs; or

(c) a special post-16 institution which is within the meaning given in section 83(2) of the Children and Families Act 2014(**c**) and in England.".

(3) In regulation 3 (conditions for entering into a contract: introductory)—

(a) the existing text becomes paragraph (1) and in that text, in sub-paragraph (b), at the beginning, insert "subject to paragraph (3),";

(b) at the end, insert—

"(2) A person may provide sight-testing services in a special educational setting only if that person has entered into a contract with NHS England for that purpose in accordance with the Health Care Services (Provider Selection Regime) Regulations 2023(**d**).

(3) An application to enter into a contract for the provision of sight-testing services in a special educational setting is not required to comply with Schedule 3.".

(4) In regulation 7 (pre-contract disputes)—

(a) in paragraph (1), for "and (3)", in the first place it occurs, substitute ", (3) and (6)";

(b) at the end, insert—

"(6) Paragraph (1) does not apply in relation to a contract awarded by NHS England for the provision of sight-testing services in a special educational setting in accordance with the Health Care Services (Provider Selection Regime) Regulations 2023.".

(5) In regulation 13 (testing of sight)—

(a) in paragraph (2), for the opening words substitute "Where a contractor has accepted an application from or on behalf of a patient for the testing of sight or before the testing of sight is undertaken in a special educational setting, the contractor shall—";

(b) in paragraph (3)—

(i) in the words after sub-paragraph (b), after "the patient", insert "or, in the circumstances set out in paragraph (3A), with consent given on the patient's behalf";

(ii) in paragraph (ii), after "practice", insert "and, where the sight test has been provided in a special educational setting to a person who is under the care of a paediatrician, that paediatrician,";

(c) after paragraph (3), insert—

"(3A) For the purposes of paragraph (3), where the patient is incapable of giving consent, it may be given on the patient's behalf by—

(**a**) 1996 c. 56. Section 337 of the Education Act 1996 was substituted by the Children and Families Act 2014 (c. 6), Schedule 3, paragraph 36 and amended by the Additional Learning Needs and Education Tribunal (Wales) Act 2018 (anaw 2), Schedule 1, paragraph 4(10).

(**b**) 2008 c. 25. Section 93A of the Education and Skills Act 2008 (in Chapter 1 of Part 4 of that Act) was amended by S.I. 2012/976. There are other amendments to Chapter 1 of Part 4 of that Act but none is relevant.

(**c**) Section 83(2) of the Children and Families Act 2014 was amended by S.I. 2019/1027.

(**d**) S.I. 2023/1348.

(a) in the case of a child—

(i) a parent,

(ii) the guardian or other adult who has the care of the child,

(iii) a person duly authorised by a local authority to whose care the child has been committed under the Children Act 1989(**a**), or

(iv) a person duly authorised by a voluntary organisation which is accommodating the child under the provisions of that Act;

(b) in the case of any other person, the adult relative or other adult who has the care of that person.".

(6) In regulation 19 (other contractual terms: additional services)—

(a) the existing text becomes paragraph (1) and in that text—

(i) after "additional services" insert "which are mobile services provided to persons falling within regulation 3(1)(a) to (h) of the POS Regulations,";

(ii) after "specified in", insert "paragraphs 1 to 7 of";

(b) at the end, insert—

"(2) Where a contract is for the provision of additional services which are sight-testing services in a special educational setting to persons falling within regulation 3A of the POS Regulations, it must include provision about the period during which services may be provided under it and contain other terms that have the same effect as those specified in paragraphs 1, 3 to 5 and 7 to 10 of Schedule 2.".

(7) In Schedule 1 (other contractual terms)—

(a) in paragraph 19(2) (entry and inspection by NHS England)—

(i) after paragraph (b), omit "and";

(ii) at the end, insert—

"; and

(d) where the contract is for the provision of sight-testing services in a special educational setting to persons falling within regulation 3A of the POS Regulations, entry is not made to that setting without the consent of the head teacher or principal.";

(b) in paragraph 21 (other rights of entry and inspection)—

(i) the existing text becomes sub-paragraph (1) and in that text, for "The" at the beginning, substitute "Subject to the conditions in sub-paragraph (2), the";

(ii) at the end, insert—

"(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;

(c) entry is not made to any premises or part of the premises used as residential accommodation without the consent of the resident; and

(d) where the contract is for the provision of sight-testing services in a special educational setting to persons falling within regulation 3A of the POS Regulations, entry is not made to that setting without the consent of the head teacher or principal.".

(8) In Schedule 2 (additional services)—

(**a**) 1989 c. 41.

(a) in paragraph 3 (provision of information), at the end of sub-paragraph (a), insert "except for, where the contract is for the provision of sight-testing services in a special educational setting to persons falling within regulation 3A of the POS Regulations, the information specified in paragraph 5 of that Schedule (how to request services as a patient);";

(b) in paragraph 5 (facilities and equipment)—

(i) in sub-paragraph (1), for "mobile" substitute "additional";

(ii) in sub-paragraph (2)—

(aa) after paragraph (b), omit "and";

(bb) at the end, insert—

"; and

(d) where the contract is for the provision of sight-testing services in a special educational setting to persons falling within regulation 3A of the POS Regulations, entry is not made to that setting without the consent of the head teacher or principal.";

(c) at the end, insert—

"Testing in special educational settings – consent

8. The contractor may not provide sight-testing services to a patient in a special educational setting without the consent of the patient or, where the patient is incapable of giving consent, of—

(a) in the case of a child—

(i) a parent;

(ii) the guardian or other adult who has the care of the child;

(iii) a person duly authorised by a local authority to whose care the child has been committed under the Children Act 1989; or

(iv) a person duly authorised by a voluntary organisation which is accommodating the child under the provisions of that Act;

(b) in the case of any other person, the adult relative or other adult who has the care of that person.

Testing in special educational settings – DBS conditions relating to the provision of services under the contract

9.—(1) The contractor must—

(a) when considering the competence and suitability of any person for the purpose of paragraph 9(1) of Schedule 1, not consider that person to be competent and suitable if that person does not have a valid DBS certificate for that purpose; and

(b) where the contractor is to provide services under the contract (with or without assistance), have a valid DBS certificate for that purpose.

(2) In this paragraph—

"DBS" means the Disclosure and Barring Service established by section 87(1) of the Protection of Freedoms Act 2012(**a**);

"DBS certificate" means an enhanced criminal record certificate issued by DBS under section 113B(1) of the Police Act 1997(**b**) which includes—

(**a**) 2012 c. 9.

(**b**) 1997 c. 50. Section 113B was inserted into the Police Act 1997 by the Serious Organised Crime and Police Act 2005 (c. 15), section 163(2). Section 113B(1) was amended by S.I. 2012/3006, the Policing and Crime Act 2009 (c. 26), sections 97(2) and 112(2) and Schedule 8, Part 8 and the Protection of Freedoms Act 2012 (c. 9), section 80(1). Sections 113BA and

(a) in such cases as are from time to time prescribed under section 113BA(1) of that Act, suitability information relating to children (within the meaning given by subsection (2) of that section);

(b) in such cases as are from time to time prescribed under section 113BB(1) of that Act, suitability information relating to vulnerable adults (within the meaning given by subsection (2) of that section).

Testing in special educational settings – report on the patient's eye health and vision

10.—(1) After a sight test, the contractor or ophthalmic practitioner employed by the contractor to perform the contract must provide a written report on the patient's eye health and vision to the patient.

(2) Subject to sub-paragraph (4), the contractor or ophthalmic practitioner must also provide the report to—

(a) in the case of a child—

(i) a parent;

(ii) the guardian or other adult who has care of the child;

(iii) a person duly authorised by a local authority to whose care the child has been committed under the Children Act 1989; or

(iv) a person duly authorised by a voluntary organisation which is accommodating the child under the provisions of that Act;

(b) in the case of any other patient, the adult relative or other adult who has the care of the patient;

(c) the head teacher or principal of the patient's special educational setting; and

(d) where the contractor or ophthalmic practitioner has determined that the patient needs to wear or use an optical appliance or that there are any other visual or ocular concerns—

(i) the patient's general practitioner;

(ii) where the patient is under the care of a paediatrician, that paediatrician; and

(iii) where the patient is under the care of any other secondary care professional, that person.

(3) Where sub-paragraph (2)(d) applies, the report must include—

(a) details of the prescription for that appliance that it has been determined the patient needs to wear or use; and

(b) details of any other visual or ocular concerns.

(4) Where the patient is capable of giving consent, the contractor or ophthalmic practitioner must not provide the report to any person listed in sub-paragraph (2)(c) or (d) without the consent of the patient.

(5) Where the patient is incapable of giving consent, the contractor or ophthalmic practitioner must not provide the report to any person listed in paragraph (2)(c) or (d) without the consent of—

(a) where the patient is a child—

(i) a parent;

(ii) the guardian or other adult who has care of the child;

(iii) a person duly authorised by a local authority to whose care the child has been committed under the Children Act 1989; or

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113BB were inserted into the Police Act 1997 by the Safeguarding Vulnerable Groups Act 2006 (c. 47), Schedule 9, paragraph 14(4).

(iv) a person duly authorised by a voluntary organisation which is accommodating the child under the provisions of that Act;

(b) where the patient is not a child, the adult relative or other adult who has the care of the patient.".

Amendment of the Primary Ophthalmic Services Regulations 2008

3.—(1) The Primary Ophthalmic Services Regulations 2008(**a**) are amended as follows.

(2) In regulation 2(1) (interpretation)—

(a) for the definition of "additional services" substitute—

""additional services" means primary ophthalmic services prescribed for the purposes of section 115(1)(b) of the Act which are—

(a) mobile services provided to persons falling within regulation 3(1)(a) to (h) of these Regulations; or

(b) sight-testing services provided in a special educational setting to persons falling within regulation 3A of these Regulations(**b**);";

(b) in the definition of "mandatory services", omit "except sight-testing services provided as mobile services";

(c) after the definition of "secure training centre"—

(i) omit "and";

(ii) insert—

""special educational setting" means—

(a) a special school in England within the meaning of section 337(1) of the Education Act 1996(**c**);

(b) an independent educational institution within the meaning of Chapter 1 of Part 4 of the Education and Skills Act 2008(**d**)—

(i) which has been entered on the register of independent educational institutions in England kept under section 95 of that Act; and

(ii) which is specially organised to make special educational provision for students with special educational needs; or

(c) a special post-16 institution which is within the meaning given in section 83(2) of the Children and Families Act 2014(**e**) and in England;".

(3) In regulation 2A (sight-testing services), after "mobile services", insert "or in special educational settings".

(4) After regulation 3 (sight tests – eligibility), insert—

"**Sight tests in special educational settings – eligibility**

3A. A person may have his sight tested in a special educational setting under primary ophthalmic services if, at the time of the testing of sight, he is receiving education in that setting.".

(5) In regulation 4(1) (sight tests - applications)—

(**a**) S.I. 2008/1186, amended by S.I. 2010/634; there are other amending instruments but none is relevant.

(**b**) Regulation 3A is inserted by regulation 3(4) of these Regulations.

(**c**) 1996 c. 56. Section 337 of the Education Act 1996 was substituted by the Children and Families Act 2014 (c. 6), Schedule 3, paragraph 36 and amended by the Additional Learning Needs and Education Tribunal (Wales) Act 2018 (anaw 2), Schedule 1, paragraph 4(10).

(**d**) 2008 c. 25. Section 93A of the Education and Skills Act 2008 (in Chapter 1 of Part 4 of that Act) was amended by S.I. 2012/976. There are other amendments to Chapter 1 of Part 4 of that Act but none is relevant.

(**e**) Section 83(2) of the Children and Families Act 2014 was amended by S.I. 2019/1027.

(a) after "eligible person", insert ", other than a person who is an eligible person only by virtue of regulation 3A,";

(b) in sub-paragraph (b), for "additional" substitute "those".

(6) In regulation 6(1) (applications and signatures by children or persons incapable), for "additional services" substitute "mobile services to a person falling within regulation 3(1)(a) to (h)".

(7) In regulation 7 (entitlement to additional services)—

(a) in paragraph (1), for "the following provisions of this regulation" substitute "paragraphs (2) to (4)";

(b) at the end, insert—

"(5) A person eligible for a sight test under regulation 3A may have his sight tested under sight-testing services provided by a contractor in the special educational setting in which he is receiving education where the contractor has entered into a contract to provide those services in that setting.".

Amendment of the National Health Service (Optical Charges and Payments) Regulations 2013

4.—(1) The National Health Service (Optical Charges and Payments) Regulations 2013(**a**) are amended as follows.

(2) In regulation 1(2) (interpretation), after the definition of "small glasses", insert—

""special educational setting" means—

(a) a special school in England within the meaning of section 337(1) of the Education Act 1996(**b**);

(b) an independent educational institution within the meaning of Chapter 1 of Part 4 of the Education and Skills Act 2008(**c**)—

(i) which has been entered on the register of independent educational institutions in England kept under section 95 of that Act; and

(ii) which is specially organised to make special educational provision for students with special educational needs; or

(c) a special post-16 institution which is within the meaning given in section 83(2) of the Children and Families Act 2014(**d**) and in England;".

(3) In regulation 8(2) (eligibility for a voucher – supply of optical appliances), at the end, insert—

";

(g) a person for whom a prescription for the supply of an optical appliance is issued in consequence of a sight test in a special educational setting.".

(4) In regulation 9 (issue of vouchers by ophthalmic practitioners)—

(a) in paragraph (1), after "a person", insert "who is an eligible person by virtue of regulation 8(2)(g) or";

(b) in paragraph (2)(b), after "the person", insert "is an eligible person by virtue of regulation 8(2)(g) or".

(**a**) S.I. 2013/461; relevant amending instruments are S.I. 2016/211 (W. 84), 2017/1056, 2023/848.

(**b**) 1996 c. 56. Section 337 of the Education Act 1996 was substituted by the Children and Families Act 2014 (c. 6), Schedule 3, paragraph 36 and amended by the Additional Learning Needs and Education Tribunal (Wales) Act 2018 (anaw 2), Schedule 1, paragraph 4(10).

(**c**) 2008 c. 25. Section 93A of the Education and Skills Act 2008 (in Chapter 1 of Part 4 of that Act) was amended by S.I. 2012/976. There are other amendments to Chapter 1 of Part 4 of that Act but none is relevant.

(**d**) Section 83(2) of the Children and Families Act 2014 was amended by S.I. 2019/1027.

(5) In regulation 12(4) (use of vouchers for the supply of optical appliances), for "Before", at the beginning, substitute "Subject to regulation 26(1A), before".

(6) In regulation 14(2)(a) (payments to suppliers), at the beginning, insert "subject to regulation 26(1A),".

(7) In regulation 16(3) (eligibility for a voucher – replacement or repair)—

(a) after sub-paragraph (c), omit "or";

(b) at the end, insert—

"; or

(e) is a person of a description specified in regulation 8(2)(g), where the appliance needs replacement or repair as a result of loss or damage.".

(8) In regulation 17(4) (completion of vouchers), for "The" at the beginning, substitute "Subject to regulation 26(1A), the".

(9) In regulation 19(2)(a) (payments to suppliers for the replacement or repair), at the beginning, insert "subject to regulation 26(1A),".

(10) In regulation 26 (signatures and claims for payments), after paragraph (1), insert—

"(1A) Regulations 12(4) and 17(4) and the related conditions under, respectively, regulations 14(2)(a) and 19(2)(a) do not apply in respect of a person who is an eligible person by virtue of regulation 8(2)(g) where—

(a) that person is incapable of giving the signature, and

(b) the parent, guardian, adult relative or other adult who has the care of that person is not present.".

Signed by authority of the Secretary of State for Health and Social Care

Stephen Kinnock
Minister of State
Department of Health and Social Care

27th November 2024

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make amendments to the General Ophthalmic Services Contracts Regulations 2008 (S.I. 2008/1185) ("the General Ophthalmic Services Regulations"), the Primary Ophthalmic Services Regulations 2008 (S.I. 2008/1186) ("the Primary Ophthalmic Services Regulations") and the National Health Service (Optical Charges and Payments) Regulations 2013 (S.I. 2013/461) ("the Optical Charges and Payments Regulations").

Regulation 2 amends the General Ophthalmic Services Regulations which set out a framework for general ophthalmic services contracts. Paragraphs (2) and (3) make provision to extend the category of "additional services" covered by them to include sight-testing services in a "special educational setting" ("SES"). SES is defined to mean a school or institution (other than a higher education institution) in England specially organised to make special educational provision for persons with special educational needs. Paragraph (2) also corrects an incorrect cross-reference in the definition of "mandatory services". Paragraph (3) makes provision to exclude the need for applications to NHS England to enter into contracts for SES services to meet the requirements set out in Schedule 3 to the General Ophthalmic Services Regulations.

Paragraph (4) makes provision to disapply provisions relating to pre-contract disputes. Paragraph (5) makes provision to reflect the fact that there is no application to a contractor for sight-testing provided in a SES. It also amends those Regulations to require contractors providing sight-testing services in a SES to share information with paediatricians, where the sight-testing results in a referral for further investigation, and adds provision as to who may give consent for these purposes.

Paragraphs (6) and (8) amend the General Ophthalmic Services Regulations to require the inclusion in SES sight-testing contracts of provision about the contract period during which services may be provided and other terms which have the same effect as certain terms specified in Schedules 1, 2 and 4. These include requirements for consent for the sight-testing to take place, for the provider of the services to have a valid enhanced DBS (Disclosure and Barring Service) certificate and for the provision of a written vision outcome report to specified persons. Paragraph (7) amends requirements in those Regulations applicable to the contractor relating to conditions for rights of entry and inspection of premises used for SES services.

Regulation 3 amends the Primary Ophthalmic Services Regulations which make provision for who is entitled to an NHS sight test and how to apply for the test under the National Health Service Act 2006 (c. 41). Paragraphs (2) and (3) respectively amend those Regulations to extend the category of "additional services" covered by the Regulations to include SES services and to prescribe these services as other primary ophthalmic services. Paragraph (2) also corrects an error in the definition of "mandatory services". Paragraphs (4) and (7) make amendments (including the insertion of new regulation 3A) to provide for a person's eligibility for and entitlement to sight-testing services in a SES where a contract has been awarded to provide those services. Paragraphs (5) and (6) make consequential amendments to disapply the requirement for individuals to complete and sign an application form to receive sight-testing services in a SES.

Regulation 4 amends the Optical Charges and Payments Regulations which make provision for eligible groups to be given NHS optical vouchers and certain additional supplements to help with the cost of the supply, replacement or repair of optical appliances. The Optical Charges and Payments Regulations also provide for ophthalmic practitioners and suppliers of optical appliances to redeem an NHS optical voucher in full or part payment for supplying, replacing or repairing an optical appliance. Paragraphs (3), (4) and (7) amend those Regulations to add persons who have received a prescription for an optical appliance following a sight test in a SES to the list of persons eligible to receive a voucher to help with the cost of the supply, replacement or repair of an optical appliance. Paragraphs (5), (6) and (8) to (10) remove the need for a signature on a voucher for the supply, replacement or repair of an optical appliance where the patient is incapable of giving the signature and the parent, guardian or other adult who has the care of the patient is not present.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sectors is foreseen.

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