EXPLANATORY MEMORANDUM TO

THE NATIONAL HEALTH SERVICE (OPHTHALMIC SERVICES AND OPTICAL CHARGES AND PAYMENTS) (AMENDMENT) REGULATIONS 2024

2024 No. 1250

1. Introduction

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

2. Declaration

2.1 Stephen Kinnock, Minister of State for Care at the Department of Health and Social Care, confirms that this Explanatory Memorandum meets the required standard.

2.2 Alette Addison, Deputy Director for Pharmacy and Eye Care, at the Department of Health and Social Care, confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Claire Osborne at the Department of Health and Social Care Telephone: 0207 210 5273 or email: CommunityPharmacyTeam@dhsc.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This instrument amends the Primary Ophthalmic Services Regulations 2008 (S.I. 2008/1186) ("the Primary Ophthalmic Services Regulations") to provide eligibility to free NHS sight tests for those receiving education in a defined "special educational setting" ("SES"). It also amends the National Health Service (Optical Charges and Payments) Regulations 2013 (S.I. 2013/461) ("the Optical Charges and Payments Regulations") to add persons who have received an optical prescription following a sight test in a SES to the list of persons eligible for an NHS optical voucher and additional supplements to help meet or contribute to the cost of glasses or contact lenses. This instrument also amends the General Ophthalmic Services Contracts Regulations 2008 (S.I. 2008/1185) ("the General Ophthalmic Services Regulations") to require specified terms and conditions to be applied to sight testing undertaken in a SES.

Where does the legislation extend to, and apply?

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

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

5. Policy Context

What is being done and why?

5.1 Children and young people with learning disabilities are more likely to have serious sight problems and require glasses, but face challenges accessing high street NHS sight testing services. This can mean they have no option but to access sight testing within a hospital setting. NHS England made a commitment in The NHS Long Term Plan (2019) to roll out free NHS sight testing in residential special educational settings. A subsequent commitment was made in 2023 to extend the service to special day educational settings. NHSE have tested the proposed sight testing model in 80 special day and 3 special residential schools since 2021. This was subject to evaluation which showed that 46% of pupils received a prescription for glasses that they may not have received otherwise. A copy of the evaluation report can be found here: https://www.england.nhs.uk/publication/special-schools-eye-care-proof-of-concept-evaluation-report/. Copies of the evaluation report in alternative formats can be requested by emailing: specialschooleyecareservice@nhs.net

5.2 Key elements of the service include the delivery of free NHS sight testing to those receiving education in defined SES, where a contract has been awarded to provide services in that setting. Sight testing can only be provided with the consent of the patient or parent/adult who has the care of the patient. All those receiving sight testing will also be eligible to receive help with the cost of glasses/contact lenses through an NHS optical voucher, which they will be able to redeem with the contractor providing the sight testing services or with a supplier of choice. Help is also available with the cost of any necessary repairs or replacements where glasses have been broken or lost.

5.3 Integrated Care Boards will commission services for eligible local SES who have decided to 'opt in' to receiving the service. A specific procurement exercise for local services will need to be undertaken in line with The Health Care Services (Provider Selection Regime) Regulations 2023 (S.I. 2023/1248). Those carrying out services will be required to be registered with the general optical council (the regulator for the optical profession) and have a valid enhanced Disclosure and Barring Service (DBS) certificate.

5.4 Following the sight test, contractors will provide a vision outcome report to the patient and the adult who has care of the child/young person and, with consent, the head teacher or principal. If vision correction is needed or there are ocular/vision concerns, contractors may also share the outcome report, with consent, with the patient's general practitioner, paediatrician and any other secondary care professional involved in the care of the child or young person, so they understand the individual's eye care needs. There are existing legal requirements for ophthalmic practitioners to refer patients for further investigation if there are any signs of injury, disease or abnormality during the sight test and information about such referrals are shared, with consent, with a patient's GP. This instrument will require contractors to also share, with consent, information regarding any necessary referral following the sight test with the patient's paediatrician, where the patient is under such care.

What was the previous policy, how is this different?

5.5 Children up to the age of 16 and those under 19 in full time education have existing entitlement to free NHS sight tests from high street optical practices. They can also access domiciliary services, which can be provided in an individual's home, day centre or care home if they are eligible for free NHS sight tests and unable to leave home unaccompanied due to physical or mental illness or disability.

5.6 We recognise that particular challenges are faced by children and young people who attend SES in accessing high street sight testing services, leaving many having to access sight testing provided within a hospital setting.

5.7 This instrument will allow the implementation of NHS sight testing within 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 pupils or students with special educational needs. This instrument provides new eligibility for children and young people to receive NHS sight testing services and NHS optical vouchers in SES, where a contract has been awarded to provide services in those settings. This will provide new eligibility to those aged over 16 and under 19 who may not be in full time education and those over 19 who are not currently entitled to free NHS sight testing services or NHS optical vouchers through meeting other eligibility criteria, such as being on a low income.

5.8 Evidence has shown the benefits of having sight testing undertaken in a familiar environment, adapted to the child and young person with learning disabilities and/or autism, whilst also minimising disruption to the school day. Ensuring a child or young person has glasses and the teacher understands the need for those glasses has also been shown to improve the ability of the child to participate and make the most out of their learning.

6. Legislative and Legal Context

How has the law changed?

6.1 The Primary Ophthalmic Services Regulations provide for free NHS sight tests for eligible groups. This instrument extends eligibility to NHS sight testing services provided in a SES, where a contract has been awarded for those services to be provided.

6.2 The Optical Charges and Payments Regulations provide for eligible groups to be given an NHS optical voucher and certain additional supplements to help meet or contribute towards the cost of the supply, replacement or repair of optical appliances (glasses or contact lenses). This instrument amends these Regulations to add persons who have received a prescription following a sight test in a SES to the list of persons eligible to receive a voucher and additional supplements.

6.3 The General Ophthalmic Services Regulations set out the legal framework for general ophthalmic services contracts. This instrument extends the category of "additional services" to include sight testing services provided in SES. It also provides for the commissioning of such services by Integrated Care Boards, from selected providers, under the Health Care Services (Provider Selection Regime) Regulations 2023, for eligible settings in their local area who have chosen to 'opt in' to receiving the service. This instrument also introduces new contractual terms that apply only in relation to contracts for SES services. This includes requirements to have a valid enhanced DBS (Disclosure and Barring Service) certificate and the requirement to have consent in place for sight testing. This instrument also introduces the requirement for providers to issue a vision outcome report following every sight test to the patient and adult who has the care of the child/young person and for this report to be shared (with consent) with the head teacher or principle. If vision correction is needed or there are ocular/vision concerns the report may also be shared (with consent) with the patient's GP, paediatrician and any other secondary care professional, where the patient is under such care. Where the sight testing results in a referral for further investigation, there is also a requirement to share referral

information, with consent, with a patient's paediatrician, if the patient is under such care.

6.4 This instrument corrects, in regulations 2(2)(b) and 3(2)(b), an incorrect exception within the definition of "mandatory services" (the exception of sight-testing services provided as mobile services which are provided under paragraph (b), not (a), of section 115(1) of the National Health Service Act 2006 (c. 41)). This definition is in regulation 2(1) of the General Ophthalmic Services Regulations and of the Primary Ophthalmic Services Regulations. In accordance with paragraph 4.7.6 of Statutory Instrument Practice, the Department consulted the SI Registrar on whether, in view of these corrections, this instrument should be issued free of charge. Since these corrections represent a very small proportion of the seven pages of the operative provisions of the instrument the Department considers that the free issue procedure would be disproportionate and should not be applied.

Why was this approach taken to change the law?

6.5 Legislation was already in place to underpin NHS sight testing services and NHS optical vouchers. Amending existing legislation was the only way to implement sight testing services in SES.

7. Consultation

Summary of consultation outcome and methodology

7.1 Although there was no statutory duty to carry out a consultation on this instrument, DHSC carried out a targeted consultation with the Optical Fees Negotiating Committee, as representatives of the primary eye care sector, and they were content with the proposed regulatory changes. NHS England were also consulted on the instrument and were content that the SI achieved the policy aims.

8. Applicable Guidance

8.1 NHS England will be supporting commissioners with a national commissioning standard and service specification, a model contract, standard forms including a template eye health outcome report and a bespoke claim form.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument. This is because the impact will be limited to those who choose voluntarily to apply to provide the NHS sight testing service in SES and who are successfully awarded a contract by an Integrated Care Board. This is a new service for which there will be agreed remuneration against a national service specification. The fee for sight testing services in SES will be set in Directions.

Impact on businesses, charities and voluntary bodies

9.2 The legislation will positively impact on businesses, charities or voluntary bodies who choose to apply to provide the NHS sight testing service in SES and who are successfully awarded a contract. Although there may be a need for applicants to invest, for example in training or equipment, we expect this investment will not be significant and will be offset by the remuneration they will receive in return through

any contract. There will be no impact on other NHS sight testing services as a result of this instrument.

9.3 The legislation will impact positively on small or micro businesses who choose to apply and are awarded a contract to provide NHS sight testing services in SES. Any necessary investment we would expect will be offset by the remuneration they will receive in return through any contract.

9.4 The public sector impact includes increased costs for NHS England of up to £12.7 million per year (in 2024 prices). Funding for the optometry service in special educational settings will be provided to Integrated Care Boards by NHS England each year.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 This instrument does not include a statutory review clause. NHS England is responsible for the ongoing monitoring of General Ophthalmic Services, including the monitoring of NHS sight testing in special educational settings and for bringing forward any proposals for legislative changes.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

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

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").