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STATUTORY INSTRUMENTS

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**2008 No. 1185**

**The General Ophthalmic Services Contracts Regulations 2008**

**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)(1).

(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(2) 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.

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

(2) 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/).

## **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 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.