

**EXPLANATORY MEMORANDUM TO**  
**THE NATIONAL HEALTH SERVICE (PRIMARY OPHTHALMIC SERVICES)**  
**(MISCELLANEOUS AMENDMENTS AND TRANSITIONAL PROVISIONS)**  
**REGULATIONS 2013**

**2013 No. 365**

**1.** This explanatory memorandum has been prepared by The Department of Health and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the instrument**

2.1 This instrument amends:-

- i. The National Health Service (General Ophthalmic Services Contracts) Regulations 2008 (SI 2008/1185) (“the GOS Contracts Regulations”) which set out the framework for General Ophthalmic Services (GOS) contracts.
- ii. The Primary Ophthalmic Services Regulations 2008 (SI 2008/1186) (“the POS Regulations”) which set out entitlement to Primary Ophthalmic Services (POS).
- iii. The National Health Service (Charges for Appliances) Regulations 1974 (SI 1974/284) which provides for charges to be made when optical appliances are more expensive than clinically necessary.

**3. Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 None

**4. Legislative Context**

4.1 Part 6 of the National Health Service Act 2006 (“the 2006 Act”) currently requires Primary Care Trusts (PCTs) to provide, or secure the provision of, primary ophthalmic services in their area.

4.2 The Health and Social Care Act 2012 (“the 2012 Act”) abolishes PCTs and Strategic Health Authorities with effect from 31st March 2013. The 2012 Act also creates the National Health Service Commissioning Board (“the Board”) and places responsibility on the Board for securing the provision of primary ophthalmic services across England with effect from 1st April 2013.

4.3 This instrument amends the GOS Contracts Regulations. Those regulations prescribe the persons eligible to enter into a GOS contract. They also set out the

required terms that must be contained in such contracts. The amendments are to reflect the fact that functions relating to GOS contracts are to be transferred to the Board on 1st April 2013. They make provision in respect of the transfer of existing contracts and for new contracts entered into between contractors and the Board. Transitional provisions enable contracts to continue as if the necessary contractual amendments had been made.

4.4 This instrument also amends the POS Regulations. Those regulations prescribe persons eligible to have their sight tested under primary ophthalmic services. Again, the amendments are to reflect the fact that functions relating to primary ophthalmic services transfer to the Board from 1st April 2013.

4.5 There are also minor updating and policy changes reflected in the amendments to the GOS Contracts Regulations and POS Regulations.

4.6 The receipt of Universal Credit (UC) is made a ground of eligibility for a sight test following the introduction of UC as a welfare benefit this April. However, this is limited for the period April to October this year, in line with the 'Pathfinder' for UC, following which the policy in relation to UC will be reviewed.

4.7 The instrument also amends regulations relating to charges for optical appliances that are more expensive than clinically necessary. These regulations are amended to reflect the transfer to the Board of functions relating to primary ophthalmic services.

## **5. Territorial Extent and Application**

5.1 This instrument applies to England

## **6. European Convention on Human Rights**

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

## **7. Policy background**

7.1 This instrument amends the regulations detailed in paragraph 2.1 above, as a consequence of the provisions of the Health and Social Care Act 2012. In particular, regulations are amended in relation to the abolition of Primary Care Trusts and Strategic Health Authorities and the establishment of the National Health Service Commissioning Board and the transfer of functions relating to primary ophthalmic services (including GOS contracts) from Primary Care Trusts to the Board. In the main, these amendments substitute references to a PCT with references to the Board. As well as substantive amendments, this instrument also makes transitional provision in respect of the abolition of these bodies and the transfer of functions to the Board.

7.1 Where an ophthalmic practitioner tests the sight of a patient with diabetes or glaucoma, there is no longer a requirement to notify the patient's general

practitioner of the test results. Such notifications are no longer regarded as necessary. Amendments are also made to reflect the abolition of Local Involvement Networks and their replacement by Local Healthwatch organisations under section 222 of the 2006 Act as amended by the 2012 Act. There is also a new requirement to co-operate with the Secretary of State, or Health Education England, in the discharge of the duty in regard to training and education in the health service in section 1F of the 2006 Act.

### *Consolidation*

7.3 The Department proposes to consolidate the GOS Contract Regulations and the POS Regulations in future once the 2012 Act reforms have been implemented. This will allow the NHS Commissioning Board to assume responsibility for the provision of primary ophthalmic services and to determine what, if any, further amendments are required to allow it to carry out its functions.

## **8. Consultation Outcome**

8.1 The Department of Health has consulted the Association of Optometrists, the Federation of Ophthalmic and Dispensing Opticians, the Association of British Dispensing Opticians, the British Medical Association Ophthalmic Group, the Royal College of General Practitioners, the Royal College of Ophthalmologists, the National Optometric Advisers Association, Diabetes UK, the International Glaucoma Association and the UK Vision Strategy.

8.2 It is usual practice to consult the representative bodies of providers on any proposed changes to the GOS contract regulations. However, we consulted more widely on this occasion and specifically included relevant patient groups. This was due in particular to the proposal to remove the requirement for GOS providers to notify general practitioners of sight tests carried out on people with diabetes or glaucoma.

8.3 There were few comments on the draft regulations although the optical bodies sought additional changes, which we will consider in future regulations. This will allow other stakeholders the opportunity to comment and be after the NHS Commissioning Board has assumed its responsibilities and is able to give a view as to any changes needed for it to carry out its functions.

8.4 Some concerns were raised about a new requirement for contractors to co-operate with the Secretary of State in the discharge of his duty as to education and training in section 1F of the 2006 Act or with Health Education England where that authority is discharging that duty. (Health Education England is a Special Health Authority which exercises functions in relation to education and training in the health service, as the Secretary of State may direct.) However, the requirement to co-operate must be included in a GOS contract by virtue of section 1F(2) of the 2006 Act.

8.5 All consultees who commented on the proposed removal of the duty on GOS providers to notify general practitioners of sight tests carried out on people with diabetes or glaucoma supported the proposed change.

## **9. Guidance**

9.1 As these amendments are, in the main, consequential on the Health and Social Care Act 2012, the Department of Health does not propose to issue guidance on these regulations.

## **10. Impact**

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

10.2 There is no negative impact on the public sector.

10.3 An Impact Assessment has not been prepared for this instrument. The majority of amendments are being made as a consequence of the Health and Social Care Act 2012 for which a full impact assessment was undertaken.

10.4 Consideration has been given to whether any further impact assessment was required but this was not considered to be necessary.

## **11. Regulating small business**

11.1 The legislation applies to GOS providers who are party to public sector contracts.

## **12. Monitoring & review**

12.1 Monitoring of GOS contracts will become the responsibility of the NHS Commissioning Board however the Secretary of State will retain responsibility for the terms of contracts contained in regulations and for the consolidation of those regulations.

## **13. Contact**

**Derek Busby** at the Department of Health Tel: 020 7972 5656 or email: [Derek.busby@dh.gsi.gov.uk](mailto:Derek.busby@dh.gsi.gov.uk) can answer queries regarding the instrument.