

**2008 No. 1657**

**NATIONAL HEALTH SERVICE, ENGLAND**

**The National Health Service (Optical Charges and Payments)  
Amendment (No. 2) Regulations 2008**

<i>Made</i> - - - -	<i>26th June 2008</i>
<i>Laid before Parliament</i>	<i>1st July 2008</i>
<i>Coming into force</i> - -	<i>1st August 2008</i>

The Secretary of State for Health makes the following Regulations in exercise of the powers conferred by section 126(4) of, and paragraphs 2A and 2B of Schedule 12 to, the National Health Service Act 1977(a).

**Citation, commencement, application and interpretation**

- 1.—(1) These Regulations may be cited as the National Health Service (Optical Charges and Payments) Amendment (No. 2) Regulations 2008 and shall come into force on 1st August 2008.
- (2) These Regulations apply in relation to England.
- (3) In these Regulations “the Optical Regulations” means the National Health Service (Optical Charges and Payments) Regulations 1997(b).

**Amendment of regulation 1 of the Optical Regulations**

- 2.—(1) Regulation 1 (citation, commencement and interpretation) of the Optical Regulations shall be amended in accordance with the following paragraphs of this regulation.
- (2) In the definition of “responsible authority”, in paragraph (2), for paragraph (b) substitute—
  - “(b) in relation to a voucher issued pursuant to regulation 9 or completed pursuant to regulation 16, otherwise than by an NHS Trust or NHS foundation trust, the Primary Care Trust for the area in which—
    - (i) the supply, replacement or repair of the optical appliance to which it relates takes place or is to take place, or

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(a) c. 49; section 126(4) was amended by the National Health Service and Community Care Act 1990 (c.19), section 65(2); the Health Act 1999 (c.8), section 65(1) and Schedule 4, paragraphs 3 and 37; the Health and Social Care Act 2001 (c.15) (“the 2001 Act”), section 67(1) and Schedule 5, paragraph 5; the National Health Service Reform and Health Care Professions Act 2002 (c.15) (“the 2002 Act”), sections 6(3)(c) and 37(1) and Schedule 8, paragraphs 1 and 10; and the Health and Social Care (Community Health and Standards) Act 2003 (c.43) (“the 2003 Act”), sections 184 and 196 and Schedule 4, paragraphs 3 and 37. Paragraph 2A of Schedule 12 was inserted by the Health and Social Security Act 1984 (c.48), section 1(6) and paragraph 3 of Schedule 1 and amended by the Health and Medicines Act 1988 (c.49), section 13 and amended by section 42(2) of the Health Act 2006 (c.28) (“the 2006 Act”). Paragraph 2B of Schedule 12 was inserted by section 42(3) of the 2006 Act.

(b) S.I. 1997/818; amended by S.I. 1999/609, 2000/5934, 2001/414, 3066 and 3323, 2002/547 and 1306, 2003/657 and 2381, 2004/642, 936 and 1138, 2005/818, 2006/479 and 3123, 2007/542 and 3289 and 2008/553.

- (ii) in a case where the optical appliance to which that voucher relates (including an appliance which has been repaired or replaced) is delivered to the patient by post or courier, that voucher was issued;”.

(3) Insert the following definitions at the appropriate alphabetical places—

““ophthalmic performers list” means a list of ophthalmic medical practitioners and optometrists prepared in accordance with regulation 3(1)(c) of the National Health Service (Performers Lists) Regulations 2004(a);”;

““ophthalmic practitioner” means an ophthalmic medical practitioner or optometrist whose name is included in an ophthalmic performers list;”;

““the POS Regulations” means the Primary Ophthalmic Services Regulations 2008(b);”

(4) Omit the definitions of “Ophthalmic Services Regulations” and “optician”.

(5) For paragraph (a) of the definition of “voucher”, substitute “in Part 3, a voucher form supplied by the Secretary of State or a Primary Care Trust to a person with whom that Trust has entered into a general ophthalmic services contract”.

### **Insertion of regulations 19A to 19C into the Optical Regulations**

3. At the end of Part V of the Optical Regulations (payments for cost of replacement or repair of optical appliances), add regulations 19A to 19C—

#### **“Notice as to cessation of payments**

**19A.**—(1) No payment shall be made in any of the circumstances set out in paragraph (2), where a notice has been served under paragraph (3) or (5), from the date specified in that notice.

(2) The circumstances mentioned in paragraph (1) are that—

- (a) in the judgement of the responsible authority, the supplier is not a suitable person to receive public funds from the responsible authority;
- (b) the supplier has failed to comply with conditions as to records or certificates as determined by the Secretary of State pursuant to section 180(11) (payments in respect of costs of optical appliances) in relation to the responsible authority; or
- (c) the supplier or, if the supplier is a corporate body, any director, chief executive or secretary of it, or if the supplier is a partnership any partner in the supplier, has been removed from an ophthalmic list or a supplementary list on the grounds mentioned in section 49F(3) of the Act (disqualification in a fraud case)(c) or from an ophthalmic performers list under a provision corresponding to the section.

(3) Subject to paragraph (4), in a case to which paragraph (2)(a) applies, the Secretary of State may give notice under section 181(4) (section 180: supplementary) that no further payments in the area of the responsible authority may be made to that supplier from the date specified in the notice, which shall be a month after the date of that notice.

(4) In a case to which paragraph (3) applies, where the supplier has appealed under paragraph (7)(b), the payments may, if the Secretary of State so decides, continue to be made until the FHSAA decides to uphold that notice or to issue a stop order.

(5) Subject to paragraph (6), in a case to which paragraph (2)(b) or (c) applies, the Secretary of State shall give a notice to the supplier under section 181(4) that no further payments in the area of a responsible authority may be made to it from the date specified in the notice, which shall be the date of that notice.

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(a) S.I. 2004/585; regulation 3(1) was substituted by S.I. 2008/1187.

(b) S.I. 2008/1186.

(c) Section 49F was inserted by the 2001 Act, s. 25 and amended by the 2002 Act, s. 2(5) and Schedule 2, paras 1 and 21(a) and the 2003 Act, s. 196 and Schedule 14, Part 4.

(6) In a case to which paragraph (2)(b) applies, the Secretary of State may withdraw the notice, given under paragraph (5), if that supplier has, since the date of that notice, complied with the conditions mentioned in paragraph (2)(b).

(7) Subject to paragraph (9), in any case where notice has been given under either paragraph (3) or (5)—

- (a) the Secretary of State may apply to the FHSAA for a stop order<sup>(a)</sup> in relation to that supplier and, if he does, he shall notify that supplier that he has so applied; and
- (b) the supplier may appeal to the FHSAA, whether or not the Secretary of State applies for a stop order, provided it does so within 28 days of receipt of the notice.

(8) On appeal the FHSAA may make any decision that the Secretary of State could have made.

(9) In a case where—

- (a) paragraph (2)(c) applies and notice has been given under paragraph (5); and
- (b) that person is subject to a national disqualification, under section 159 (national disqualification) or provisions corresponding to that section,

the Secretary of State shall apply to the FHSAA for a stop order and notify the supplier of that application.

(10) A notice under paragraph (3) shall state—

- (a) the reason why that supplier is judged not to be suitable;
- (b) that the supplier has the right of appeal set out in paragraph (7)(b); and
- (c) how to exercise that right.

(11) A notice under paragraph (5) shall state—

- (a) in a case to which paragraph (2)(b) applies, what condition the supplier has failed to comply with; or
- (b) in a case to which paragraph (2)(c) applies, the circumstances specified in that paragraph and the person to whom they apply, and

that the supplier has the right of appeal set out in paragraph (7)(b) and how to exercise that right.

(12) Except in a case where a stop order has been made by the FHSAA, a notice under paragraph (3) may be withdrawn at any time.

(13) In this regulation and in regulations 19B and 19C—

- (a) the FHSAA means the Family Health Services Appeal Authority constituted under section 169 (FHSAA);
- (b) “notify” means to notify in writing (including electronically) and “notice” shall be construed accordingly;
- (c) “payment” means payment in accordance with regulation 13 or 18;
- (d) any reference to a section, except where specified otherwise, is to a section of the National Health Service Act 2006<sup>(b)</sup>, and

the use of the term “it” in relation to a supplier includes a reference to a supplier that is an individual or two or more individuals practising in partnership and related expressions shall be construed accordingly.

## Reviews

**19B.**—(1) The Secretary of State shall review a notice under regulation 19A(2)(a) if—

- (a) the supplier so requests; and

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<sup>(a)</sup> Provision for stop orders is made in s. 181(7) of the NHS Act 2006.  
<sup>(b)</sup> 2006 c. 41.

- (b) more than 2 years have elapsed since either the notice was given or the last such review, whichever is the later, and

if, in the judgement of the responsible body, that supplier is then a suitable person to receive public funds from it, the Secretary of State shall withdraw that notice.

(2) Where a notice has been issued under regulation 19A(2)(b) and the supplier considers that it has now complied with the condition specified in that notice, it may request the Secretary of State to review the notice and, if the Secretary of State is satisfied as a result of that review that it has so complied, he shall withdraw that notice.

(3) In any case where a review has been conducted under paragraph (2), that supplier may not request a further review until a period of 12 months has elapsed since the last such review.

(4) Where a notice has been issued under regulation 19A(2)(c) and—

- (a) that person has since been restored to the list mentioned in that provision; or  
(b) where that person was a director, chief executive or secretary of a corporate body and has ceased to be a director, chief executive or secretary of that corporate body,

the Secretary of State shall, if requested to do so by the supplier, review that notice and may, if he considers it appropriate, withdraw that notice.

(5) If, as a result of a review under paragraph (1), (2) or (4), the Secretary of State does not withdraw that notice, the supplier may appeal to the FHSAA, provided it does so within 28 days of receipt of the Secretary of State's decision on that review.

### **Reviews of stop orders**

**19C**—(1) The FHSAA may, at the request of the supplier upon which a stop order has been imposed, review it and on such a review may confirm it or revoke it.

(2) Subject to paragraphs (3) and (4), the supplier may not request a review of a stop order before the end of the period of 2 years beginning with the date—

- (a) on which the stop order was imposed; or  
(b) of the FHSAA's decision on the last such review,

whichever is the later.

(3) If, on making a decision to impose a stop order, the FHSAA states that it is of the opinion that there is no realistic prospect of a review or a further review, as the case may be, being successful if held within the period specified in paragraph (2), the reference to "2 years" shall be a reference to 5 years or such lesser period, being more than 2 years, as the FHSAA may determine.

(4) If, on a review, the FHSAA states that it is of the opinion that there is a realistic prospect of a review or a further review, as the case may be, being successful if held within a lesser period than that specified in paragraph (2), the reference to "2 years" shall be a reference to "one year".

### **Schedule**

4. The Schedule to these Regulations shall have effect.

Signed by authority of the Secretary of State for Health

26th June 2008

*Ann Keen,*  
Parliamentary Under Secretary of State  
Department of Health

## CONSEQUENTIAL AMENDMENTS

1. The Optical Regulations shall be amended in accordance with the following paragraphs.
2. In regulations 4(1)(b), (2) and (4), 5(1) and (2)(b), 6(1), 9(1), (1A), (1B), (1C), (2) and (3) and 11, for “ophthalmic medical practitioner or optician”, in each place where it occurs, substitute “ophthalmic practitioner”.
3. In regulations 4(1)(b) and 6(1) omit “whose name is included in an ophthalmic list or supplementary list”.
4. In regulation 4(1)(c) omit “or optician”.
5. In regulation 9(1), (1A) and (1B), for “the Ophthalmic Services Regulations”, substitute “the POS Regulations”.
6. In regulation 9(1), for “paragraph 10(1) of Schedule 1 of the Ophthalmic Services Regulations”, substitute “regulation 13(2), (5) and (6) of the General Ophthalmic Services Contracts Regulations 2008(a)”.

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(a) S.I. 2008/1185.

## **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations amend the National Health Service (Optical Charges and Payments) Regulations 1997 (“the Optical Regulations”) which provide for payments to be made by means of a voucher system in respect of costs incurred by certain categories of persons in connection with the supply, replacement and repair of optical appliances. They are made under section 126(4) of, and paragraphs 2A and 2B of Schedule 12 to, the National Health Service Act 1977, which is in force in relation to ophthalmic matters until the coming into force of the relevant provisions of the Health Act 2006 (see section 277(3) and (4) of the National Health Service Act 2006), which will be on 1st August 2008.

Regulation 2 amends the definition of responsible authority to clarify the position in relation to delivery of optical appliances by post and provides some further definitions for the Regulations.

Regulation 3 inserts new regulations 19A, 19B and 19C into the Optical Regulations to provide a procedure whereby a supplier can be disqualified from receiving NHS payments for optical appliances upon the service of a notice in specified circumstances. It provides for an appeal against that to the Family Health Services Appeal Authority and for application to be made for a national disqualification (a stop notice) to that Authority. It also provides for reviews of those decisions.

Regulation 4 and the Schedule make amendments consequential on the coming into force of the relevant provisions of the Health Act 2006.

An Impact Assessment has not been produced for this Instrument as it has no impact on the cost of business, charities or voluntary bodies.

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STATUTORY INSTRUMENTS

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