
STATUTORY INSTRUMENTS

2013 No. 461

**The National Health Service (Optical
Charges and Payments) Regulations 2013**

PART 1

GENERAL

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the National Health Service (Optical Charges and Payments) Regulations 2013 and come into force on 1st April 2013 except for regulation 8(3)(j) and (4)(e) which comes into force on 29th April 2013.

(2) In these Regulations—

“the 2006 Act” means the National Health Service Act 2006;

“the 1997 Regulations” means the National Health Service (Optical Charges and Payments) Regulations 1997**(1)**;

“the Board” means the National Health Service Commissioning Board**(2)**;

“capital limit” means the amount prescribed for the purpose of section 134(1) of the Social Security Contributions and Benefits Act 1992**(3)** (exclusions from benefit) as it applies to income support;

“child tax credit” means child tax credit under Part 1 of the Tax Credits Act 2002**(4)**;

“complex appliance” means an optical appliance at least one lens of which—

(a) has power in any one meridian of plus or minus 10 or more dioptries; or

(b) is a prism-controlled bifocal lens;

“disability element” means the disability element of working tax credit as specified in section 11(3) of the Tax Credits Act 2002 (maximum rate);

“eligible person” is to be construed—

(a) for the purposes of Part 3 (payments toward cost of sight tests) in accordance with regulation 3**(2)**;

(b) for the purposes of Parts 4 (payments for cost of supply of optical appliances) and 5 (payments for cost of replacement or repair of optical appliances) in accordance with regulation 8**(2)** to **(5)**;

(1) S.I. 1997/818; amended by S.I. 1997/2488, 1998/499, 1999/609 and 2562, 2000/594 and 3029, 2001/414, 749 and 3066, 2002/35, 547 and 2469, 2003/657 and 2381, 2004/696, 2008/553, 1657 and 2449, 2009/409 and 2010/22 and 634.

(2) The National Health Service Commissioning Board is established by section 1H of the 2006 Act. Section 1H is inserted by section 9(1) of the Health and Social Care Act 2012.

(3) 1992 c.4.

(4) 2002 c.21.

“face value” means, in relation to a voucher on which is marked a letter code specified in column 2 of Schedule 1, the amount specified in relation to that letter code in column 3 of that Schedule, plus the amount of any increase provided for by paragraph 1 of Schedule 2;

“an income-based jobseeker’s allowance” has the meaning given by section 1(4) of the Jobseekers Act 1995⁽⁵⁾ (the jobseeker’s allowance);

“income-related employment and support allowance” means an employment and support allowance, entitlement to which is based on section 1(2)(b) of the Welfare Reform Act 2007⁽⁶⁾ (employment and support allowance);

“income support” means income support under Part VII of the Social Security Contributions and Benefits Act 1992;

“minimum complex appliance payment” means, in relation to an optical appliance, the amount specified as such for the appliance in paragraph 2 of Schedule 2;

“NHS sight test fee” means the fee for a sight test determined in accordance with directions given by the Secretary of State under section 120 of the 2006 Act (GOS contracts: payments), as those directions have effect at the time of making these Regulations and as amended subsequently⁽⁷⁾;

“notice of entitlement” means a notice issued under regulation 8 of the Remission Regulations (notices of entitlement) for the purposes of remission of charges under the 2006 Act;

“ophthalmic list” has the meaning given in section 11(5) of the 2006 Act (arrangements to be treated as NHS contracts);

“ophthalmic performers list” means a list of ophthalmic medical practitioners and optometrists prepared in accordance with regulations made under section 123 of the 2006 Act⁽⁸⁾;

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

“patient contribution” means a contribution to be paid by a person whose eye sight has been tested, towards the cost of that sight test or towards the cost of the supply, replacement or repair of an optical appliance for which a prescription has been given in consequence of the sight test, and the amount of that contribution is to be calculated as follows—

- (a) for the purposes of Part 3, the contribution is to be the amount by which the person’s resources exceed their requirements;
- (b) for the purposes of Parts 4 and 5, where a person’s resources are treated as being less than their requirements, the contribution is to be nil;
- (c) for the purposes of Parts 4 and 5, where a person’s resources exceed their requirements, the contribution is to be an amount equal to twice that excess, and a person’s resources and their requirements are to be calculated in accordance with Part 4 of, and Schedule 1 to, the Remission Regulations;

“pension credit guarantee credit” shall be construed in accordance with sections 1 and 2 of the State Pension Credit Act 2002⁽⁹⁾;

(5) 1995 c.18. This definition in section 1(4) of the Jobseekers Act 1995 was amended by paragraphs 1 and 2 of Schedule 7 to the Welfare Reform and Pensions Act 1999 (c.30).

(6) 2007 c.5.

(7) The Secretary of State has made the General Ophthalmic Services Contracts (Payments) Directions 2010, signed on 3rd March 2010. The Directions are available on the Department of Health website at http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsLegislation/DH_114692 and from Department of Health Publications, PO Box 777, London SE1 6XH.

(8) Section 123 was amended by paragraph 60 of Schedule 4 to the Health and Social Care Act 2012.

(9) 2002 c.16. Section 2 of the State Pension Credit Act 2002 was amended by paragraphs 140 and 141 of Schedule 24 to the Civil Partnerships Act 2004 (c.33).

“the POS Regulations” means the Primary Ophthalmic Services Regulations 2008⁽¹⁰⁾;

“prisoner” means a person who is detained in a prison, including a young offender institution but not a secure training centre or a naval, military or air force prison, but is, at the time of receiving any primary ophthalmic service, on leave from that prison, and for the purposes of this definition—

- (a) “secure training centre” means a place in which offenders subject to detention and training orders under section 100 of the Powers of Criminal Courts (Sentencing) Act 2000⁽¹¹⁾ (offenders under 18: detention and training orders) may be detained and given training and education and prepared for their release; and
- (b) “young offender institution” means a place for the detention of offenders sentenced to detention in a young offender institution or to custody for life;

“redemption value” is to be construed—

- (a) for the purposes of Part 3, in accordance with regulation 7;
- (b) for the purposes of Part 4, in accordance with regulation 15;
- (c) for the purposes of Part 5, in accordance with regulation 20;

“relevant income” has the same meaning as in section 7(3) of Part 1 of the Tax Credits Act 2002 (income test);

“the Remission Regulations” means the National Health Service (Travel Expenses and Remission of Charges) Regulations 2003⁽¹²⁾ and reference to those Regulations is to be construed as a reference to them as they have effect on the making of these Regulations and as amended subsequently;

“replacement” does not include the replacement of an optical appliance rendered unserviceable by fair wear and tear;

“severe disability element” means the severe disability element of working tax credit specified in section 11(6)(d) of the Tax Credits Act 2002 (maximum rate);

“small glasses” means glasses—

- (a) having a frame which is either custom made or a stock frame requiring extensive adaptation to ensure an adequate fit; and
- (b) having a boxed centre distance of no more than 55 millimetres, and for this purpose “box centre” is to be construed in accordance with the British Standard BS EN ISO 8624:2011 (Ophthalmic Optics. Spectacle Frames. Measuring System and Terminology) published on 28th February 2011⁽¹³⁾;

“supplier” includes a person replacing or repairing an optical appliance;

“supply” includes the replacement of an optical appliance rendered unserviceable by fair wear and tear;

“voucher” for the purposes of enabling a payment to be made under these Regulations means—

- (a) in Part 3, a voucher form supplied by the Secretary of State or the Board to a person with whom the Board has entered into a general ophthalmic services contract under section 117 of the 2006 Act (general ophthalmic services contracts: introductory);
- (b) in Part 4, a voucher form supplied—

⁽¹⁰⁾ S.I. 2008/1186, amended by S.I. 2008/1700 and 2449, 2009/409, 2010/634, and 2013/365.

⁽¹¹⁾ 2000 c.6. Section 100 of the Powers of Criminal Courts (Sentencing) Act 2000 was amended by paragraphs 90 and 111 of Schedule 32 to the Criminal Justice Act 2003 (c.44).

⁽¹²⁾ S.I. 2003/2382; relevant amending instruments are S.I. 2004/663, 2005/26 and 578, 2006/675, 1065 and 2171, 2007/1975 and 2590, 2008/2868, 2009/1599, 2010/620 and 1727, 2011/1587, and 2012/1650.

⁽¹³⁾ British Standard BS EN ISO 8624:2011 is available from the British Standards Institution, at <http://shop.bsigroup.com> or BSI Customer Services, 389, Chiswick High Road, London W4 4AL.

- (i) where a sight test is carried out otherwise than by an NHS trust or NHS foundation trust, by the Secretary of State to the person who carries it out;
 - (ii) where a testing of sight is carried out by an NHS trust or NHS foundation trust, by that NHS trust or NHS foundation trust;
 - (c) in Part 5, a voucher form supplied—
 - (i) where the person replacing or repairing the optical appliance is an NHS trust or NHS foundation trust, by that NHS trust or NHS foundation trust;
 - (ii) in any other case, by the Secretary of State; and
- “working tax credit” means working tax credit under Part 1 of the Tax Credits Act 2002.

PART 2

CHARGES

Charges for glasses and contact lenses

2.—(1) A charge of such amount as may be determined by or in accordance with directions given by the Secretary of State must be made and recovered in accordance with paragraph (2) in respect of the supply of glasses and contact lenses under the 2006 Act.

(2) Where a charge is payable by virtue of paragraph (1), the NHS trust or NHS foundation trust, or other person on its behalf, that supplies or is to supply the glasses or contact lenses must—

- (a) on arranging to supply the glasses or contact lenses, make the charge, and
- (b) on supplying the glasses or contact lenses or having them available for supply, recover the charge from the person supplied or to be supplied (if the charge has not previously been paid).

PART 3

PAYMENTS TOWARDS COST OF SIGHT TESTS

Eligibility for a voucher — sight tests

3.—(1) A payment must be made as provided for by this Part to contribute towards the cost of a sight test which the Board accepts as having been incurred by an eligible person.

(2) An eligible person is a person whose income resources, as calculated in accordance with Part 4 of, and Schedule 1 to, the Remission Regulations, exceed their requirements as so calculated, but whose patient contribution does not exceed the NHS sight test fee and whose capital resources as so calculated do not exceed the capital limit.

Completion and use of voucher—sight tests

- 4.—(1) A person who wishes to receive a voucher for a sight test must—
- (a) apply to the Secretary of State for a notice of entitlement;
 - (b) apply for their sight to be tested by an ophthalmic practitioner;
 - (c) indicate to that ophthalmic practitioner that they are an eligible person at the time of the application for their sight to be tested; and

- (d) show the ophthalmic practitioner a current notice of entitlement and permit them to copy such details as may be required for the purposes of regulation 5(2)(b)(ii).
- (2) The ophthalmic practitioner may complete the relevant parts of the voucher with the name and address of the person, the person's date of birth and the date the person's sight was tested.
- (3) The person must sign on the voucher a declaration to the effect that they are an eligible person.
- (4) The ophthalmic practitioner may accept the voucher as being in substitution for payment by the person of an amount equal to its redemption value, being part of the cost incurred for the sight test.

Payments to ophthalmic practitioners

5.—(1) The Board must, if the conditions specified in paragraph (2) are met, make a payment of the voucher's redemption value to an ophthalmic practitioner who has accepted a voucher in accordance with regulation 4(4).

- (2) The conditions referred to in paragraph (1) are that—
 - (a) the eligible person has signed the declaration in accordance with regulation 4(3); and
 - (b) the ophthalmic practitioner has—
 - (i) made a claim for a payment on a completed voucher to the Board within three months of the date of the sight test; and
 - (ii) informed the Board of the amount of the patient contribution.

Payments to persons in respect of sight tests

6.—(1) A payment may be made by the Board to an eligible person who incurs the cost of a sight test by an ophthalmic practitioner without a voucher being completed in accordance with regulation 4.

- (2) A person who wishes to receive a payment under this regulation must—
 - (a) make a claim to the Board for a payment within three months of the date of the sight test, or within such further period as the Board may allow, and that claim must be made on a form provided by or on behalf of the Board for that purpose; and
 - (b) produce such evidence as the Board may reasonably require in support of the claim, which may include the receipt for any fee paid for the sight test.
- (3) Where the Board is satisfied that the person is entitled to a payment under paragraph (1) the Board must make a payment to the person of an amount equal to the redemption value of the voucher which could have been completed under regulation 4 if the person had satisfied the requirements of regulation 4(1).

Redemption value of voucher for sight test

- 7.** For the purposes of this Part the redemption value of a voucher is the lesser of—
 - (a) the NHS sight test fee; or
 - (b) the full cost which would have been incurred by the eligible person for the sight test but for these regulations,
less the amount of the patient contribution (if any).

PART 4

PAYMENTS FOR COST OF SUPPLY OF OPTICAL APPLIANCES

Eligibility for a voucher — supply of optical appliances

8.—(1) A payment must be made as provided for by this Part to meet, or to contribute towards, the cost incurred (whether by way of a charge under the 2006 Act or otherwise) for the supply of an optical appliance for which a prescription has been given for an eligible person in consequence of a sight test (whether or not that sight test took place under the 2006 Act).

(2) An eligible person is a person who at the time of the payment for the supply of the optical appliance is any of the following—

- (a) a person who is under the age of 16 years;
 - (b) a person who is under the age of 19 years and receiving qualifying full-time education within the meaning of section 180(8) of the 2006 Act (payments in respect of costs of optical appliances and sight tests);
 - (c) a person whose resources are treated, in accordance with paragraph (3), as being less than their requirements;
 - (d) a person whose income resources, as calculated in accordance with Part 4 of, and Schedule 1 to, the Remission Regulations, exceed their requirements as so calculated, but whose patient contribution is less than the face value of a voucher issued to them under this Part, and whose capital resources as so calculated do not exceed the capital limit;
 - (e) a person for whom a prescription is issued for a complex appliance;
 - (f) a prisoner.
- (3) A person's resources must be treated as being less than their requirements if—
- (a) that person is in receipt of income support or is a member of the same family as a person in receipt of income support;
 - (b) that person's income resources, as calculated in accordance with Part 4 of, and Schedule 1 to, the Remission Regulations, do not exceed their requirements as so calculated, or exceed their requirements by fifty per cent or less of the amount of the charge specified in regulation 3(1)(b) of the National Health Service (Charges for Drugs and Appliances) Regulations 2000⁽¹⁴⁾ (supply of drugs and appliances by chemists), and their capital resources as so calculated do not exceed the capital limit;
 - (c) that person is a member of the same family as a person described in sub-paragraph (b);
 - (d) that person is in receipt of an income-based jobseeker's allowance or is a member of the same family as a person in receipt of an income-based jobseeker's allowance;
 - (e) that person is a member of a family, one member of which is receiving—
 - (i) working tax credit and child tax credit;
 - (ii) working tax credit which includes a disability element or severe disability element;
or
 - (iii) child tax credit, but is not eligible for working tax credit;
 - (f) that person is a member of a family where the relevant income of the person or persons to whom an award of tax credit is made under section 14 of the Tax Credits Act 2002 (initial decisions) is determined at the time of the award not to exceed £15,276;

⁽¹⁴⁾ S.I. 2000/620, amended by S.I. 2012/470 and 2013/...; there are other amending instruments but none is relevant.

- (g) that person is a member of a family, in respect of which there is a current notice of entitlement under regulation 13;
 - (h) that person is receiving pension credit guarantee credit or is a member of the same family as a person who is receiving pension credit guarantee credit;
 - (i) that person is in receipt of income-related employment and support allowance, or is a member of the same family as a person in receipt of income-related employment and support allowance; or
 - (j) during the period beginning on 29th April 2013 and ending on 31st October 2013, that person is—
 - (i) the recipient of an award of universal credit either as a single person or as a member of a couple;
 - (ii) a child or qualifying young person for whom a recipient referred to in sub-paragraph (i) is responsible (within the meaning of Part 1 of the Welfare Reform Act 2012⁽¹⁵⁾ and regulations made thereunder); or
 - (iii) a member of a couple, the other member of which is the recipient of an award of universal credit as a single person.
- (4) In paragraph (3), in—
- (a) sub-paragraphs (a), (c) and (h), “family” has the meaning given to it by section 137(1) of the Social Security Contributions and Benefits Act 1992⁽¹⁶⁾ (interpretation and supplementary provisions), as it applies to income support;
 - (b) sub-paragraph (d), “family” has the meaning given to it by section 35(1) of the Jobseekers Act 1995⁽¹⁷⁾ (interpretation);
 - (c) sub-paragraphs (e), (f) and (g), “family” has the meaning given to it by regulation 2(2) of the Tax Credits (Definition and Calculation of Income) Regulations 2002⁽¹⁸⁾ (interpretation);
 - (d) sub-paragraph (i), “family” has the meaning given to it by regulation 2 of the Employment and Support Allowance Regulations 2008⁽¹⁹⁾ (interpretation);
 - (e) sub-paragraph (j)—
 - (i) “couple” has the meaning given in section 39 of the Welfare Reform Act 2012 (couples);
 - (ii) “qualifying young person” has the meaning given in section 10(5) of the Welfare Reform Act 2012 (responsibility for children and young persons);
 - (iii) “single person” is to be construed in accordance with section 1(2)(a) of the Welfare Reform Act 2012 (universal credit)”; and
 - (iv) “universal credit” means universal credit under Part 1 of the Welfare Reform Act 2012.
- (5) For the purposes of regulation 10 and other provisions of this Part that apply to payments where the sight test was carried out by an NHS trust or NHS foundation trust, a person is also an eligible person if, because of the frequency with which the condition of their eyes changes, they are considered by the NHS Trust or NHS foundation trust to be non-tolerant of their existing optical appliance.

⁽¹⁵⁾ 2012 c.5.

⁽¹⁶⁾ The definition of ‘family’ in section 137(1) was amended by paragraph 46 of Schedule 24 to the Civil Partnership Act 2004 (c.33).

⁽¹⁷⁾ The definition of ‘family’ in section 35(1) was amended by paragraph 124 of Schedule 24 to the Civil Partnership Act 2004.

⁽¹⁸⁾ S.I. 2002/2006, amended by S.I. 2005/2919.

⁽¹⁹⁾ S.I. 2008/794.

Issue of vouchers by ophthalmic practitioners

9.—(1) An ophthalmic practitioner who, following a sight test under the POS Regulations, issues a prescription for an optical appliance to a person who has indicated they are an eligible person must, in the circumstances described in paragraph (5), but subject to paragraph (6), issue to the person a voucher relating to the optical appliance prescribed, on the same occasion as issuing the prescription to that person in accordance with regulation 13(2), (5) and (6) of the General Ophthalmic Services Contracts Regulations 2008(20) (testing of sight).

(2) Where—

- (a) a person has been supplied with an optical appliance following a sight test under the POS Regulations or otherwise;
- (b) the person has indicated that they are an eligible person; and
- (c) the ophthalmic practitioner, having consulted any records they have relating to that person and having made such enquiry of the person as they consider relevant, is satisfied that—
 - (i) the prescription relating to the person's existing optical appliance is unchanged; and
 - (ii) the person requires a new optical appliance because their existing appliance has been rendered unserviceable by fair wear and tear,

the ophthalmic practitioner must issue to that person a voucher relating to the optical appliance prescribed by the prescription.

(3) Where —

- (a) a person has been issued with a prescription following a sight test under the POS Regulations or otherwise;
- (b) the person has indicated that, following the issue of the prescription, they have become an eligible person; and
- (c) the ophthalmic practitioner, having consulted any records they have relating to that person and having made such enquiry of the person as they consider relevant, is satisfied that—
 - (i) no voucher has been issued in respect of the prescription;
 - (ii) the prescription is unchanged; and
 - (iii) the person requires an optical appliance for the first time or an optical appliance to a prescription the particulars of which differ from those relating to that person's existing appliance,

the ophthalmic practitioner must issue to that person a voucher relating to the optical appliance prescribed by the prescription.

(4) The ophthalmic practitioner issuing the voucher under paragraphs (1), (2) or (3) must sign it and must—

- (a) mark on it the letter code specified in column 2 of Schedule 1 which relates to the type of optical appliance prescribed as set out in column 1 of that Schedule; and
- (b) complete the relevant parts of the voucher with the name and address of the person, the person's date of birth, particulars of the prescription issued to the person, the date on which the person's sight was tested and the date of issue of the voucher.

(5) The circumstances referred to in paragraph (1) are where the ophthalmic practitioner, having consulted any records they have relating to that person and made such enquiry of the person as they consider relevant, is satisfied that—

- (a) the person requires an optical appliance for the first time or an optical appliance to a prescription the particulars of which differ from those relating to that person's existing appliance; or
- (b) the person requires an optical appliance because their existing optical appliance has been rendered unserviceable by fair wear and tear.

(6) Where a person requires a prescription for an optical appliance, the particulars of which differ from those relating to their existing appliance only because the person is non-tolerant of that appliance, and has been so since it was supplied, a voucher must not be issued unless the Board, being satisfied that the prescription for that existing appliance was clinically correct, has authorised the issue of a voucher.

(7) Unless paragraph (2) or regulation 11 applies, only one voucher may be issued to a person in respect of any one optical appliance prescribed.

Issue of vouchers by NHS trusts

10.—(1) An NHS trust or NHS foundation trust which, following a sight test, issues a prescription for an optical appliance to a person who—

- (a) has indicated that they are an eligible person; or
 - (b) is an eligible person by virtue of regulation 8(5),
- must issue to that person a voucher relating to the optical appliance prescribed.

(2) The NHS trust or NHS foundation trust issuing the voucher must—

- (a) mark on it the letter code specified in column 2 of Schedule 1 which relates to the type of optical appliance prescribed as set out in column 1 of the Schedule; and
- (b) complete the relevant parts of the voucher with the name and address of the person, the person's date of birth, particulars of the prescription issued to the person, the date on which the person's sight was tested and the date of issue of the voucher.

Issue of replacement vouchers

11.—(1) This regulation applies where a person makes an application for a replacement voucher within a period of two years beginning on the date a voucher was issued to them under regulation 9 or 10.

(2) The Board may authorise an ophthalmic practitioner to issue the person with a replacement voucher where, having made such enquiries as it considers relevant, it is satisfied that the voucher has been—

- (a) lost; or
 - (b) destroyed,
- without having been presented to a supplier of optical appliances.

(3) The replacement voucher must be completed in accordance with regulation 9(4)(a) and (b) or 10(2)(a) and (b), but the date of issue of the voucher must be the date on which the replacement is issued.

Use of vouchers for supply of optical appliances

12.—(1) Subject to paragraphs (4), (5) and (6), a person to whom a voucher, completed in accordance with regulation 9, 10 or 11, has been issued may present it to a supplier who supplies or is to supply an optical appliance to them, provided that the arrangements for supply are made within two years of the date on which the voucher was issued.

(2) A supplier may accept the voucher in substitution for payment by the person of an amount equal to its redemption value, being the whole or part of the cost incurred for the supply of an optical appliance.

(3) A voucher relating to glasses may be accepted in connection with the supply of contact lenses.

(4) Before presenting the voucher to the supplier the person must sign on the voucher—

(a) a declaration to the effect that they are an eligible person, indicating the grounds for such eligibility; and

(b) an undertaking to the effect that, if they are unable to show that they are an eligible person, they will pay to the Board an amount equal to the voucher's redemption value.

(5) A person who is an eligible person only by virtue of regulation 8(2)(d) or by virtue of their resources being treated in accordance with regulation 8(3)(b) or (c) as being less than their requirements must—

(a) before presenting the voucher to the supplier, apply to the Secretary of State for a notice of entitlement; and

(b) on the same occasion as presenting the supplier with a voucher in accordance with paragraph (1), show a current notice of entitlement to the supplier and permit that supplier to copy such details as may be required for the purpose of regulation 14(2)(c)(iii).

(6) When the person presents the voucher—

(a) the supplier must ask that person to produce satisfactory evidence that they are an eligible person, unless the supplier, in cases other than where the person is an eligible person by virtue of regulation 8(2)(c) or (d), already has satisfactory evidence of entitlement; and

(b) if the person is requested to produce satisfactory evidence, but does not do so, the supplier must record the fact on the voucher.

Notice of entitlement

13.—(1) Where a person is entitled to the payment of, or contribution towards, the cost incurred for the supply of an optical appliance because they are a member of a family described in regulation 8(3)(e) or (f), the Secretary of State must issue a notice of entitlement to that family.

(2) Such a notice of entitlement shall apply to any member of that family whether or not they are named in the notice of entitlement.

(3) A notice of entitlement issued under paragraph (1) shall be effective from such date and for such period as the Secretary of State may determine.

(4) Any change in the financial or other circumstances of a person who is a member of a family in respect of which a notice of entitlement has been issued under paragraph (1), during the period for which the notice is effective, shall not affect the validity of the notice in respect of that period.

Payments to suppliers

14.—(1) The Board must, if the conditions specified in paragraph (2) are met, make a payment of a voucher's redemption value to a supplier who has accepted the voucher from a person in accordance with regulation 12.

(2) The conditions referred to in paragraph (1) are that—

(a) the person has signed the declaration and undertaking referred to in regulation 12(4) and acknowledged receipt on the voucher of the optical appliance supplied to them;

- (b) the optical appliance is not sold or supplied in contravention of section 27(1) of the Opticians Act 1989⁽²¹⁾ (sale and supply of optical appliances); and
- (c) the supplier has—
 - (i) made and kept a written record of the supply and issued to the person a receipt for any money received from that person;
 - (ii) made a claim for a payment on a completed voucher to the Board within three months of the date of the supply of the optical appliance;
 - (iii) where the person has shown a notice of entitlement to the supplier, informed the Board of the amount of the patient contribution, if any; and
 - (iv) where the claim relates to a voucher the value of which is increased in accordance with paragraph 1(1)(e) of Schedule 2, certified that the glasses supplied were small glasses.

Redemption value of voucher for supply of optical appliances

15.—(1) Where an optical appliance was supplied otherwise than under the 2006 Act the redemption value of a voucher is, subject to paragraphs (3) and (4), the lesser of—

- (a) the full cost which would have been payable by the person for the supply but for this Part; or
- (b) the face value of the voucher.

(2) Where an optical appliance was supplied under the 2006 Act, the redemption value of a voucher is, subject to paragraphs (3) and (4), the lesser of—

- (a) the amount of the charge for the time being determined pursuant to regulation 2 which would have been payable by the person for the supply but for this Part; or
- (b) the face value of the voucher.

(3) In relation to payments to be made because of a person's eligibility by virtue of regulation 8(2)(d), the amounts taken for the purposes of paragraph (1)(a) and (b) or paragraph (2)(a) and (b) must be reduced by the amount of the patient contribution.

(4) Where the person was an eligible person only because a prescription was issued to them for a complex appliance, the redemption value of a voucher shall be the minimum complex appliance payment, except that where—

- (a) the appliance was supplied under the 2006 Act; and
- (b) in accordance with directions made by the Secretary of State and pursuant to regulation 2(1), the amount of any charge made for the supply would, but for any maximum charge specified in the directions, have exceeded by any amount the charge actually made, the redemption value must be reduced by the amount of the excess.

(21) 1989 c.44. Section 27(1) of the Opticians Act 1989 was amended by S.I. 2005/848.

PART 5

PAYMENTS FOR COST OF REPLACEMENT OR REPAIR OF OPTICAL APPLIANCES

Eligibility for a voucher – replacement or repair

16.—(1) A payment must be made as provided for by this Part to meet, or contribute towards, any cost accepted by the Board as having been incurred for the replacement or repair of an optical appliance for which the condition in paragraph (3) is met.

(2) The payment referred to in paragraph (1) must be made whether or not the cost was incurred by way of a charge under the 2006 Act.

(3) The condition referred to in paragraph (1) is that a prescription is given for the optical appliance in consequence of the sight test of a person who, at the time the cost is incurred for the replacement or repair—

- (a) is under the age of 16 years, where the appliance needs replacement or repair as a result of loss or damage;
- (b) is a person of any description specified in regulation 8(2)(b), (c), (d), or (e) who is suffering from illness, where the appliance needs replacement or repair as a result of loss or damage and the Board is satisfied, after making such enquiries as it considers relevant, that the loss or damage would not have occurred but for that illness; or
- (c) is a relevant child within the meaning of section 23A of the Children Act 1989⁽²²⁾ (the responsible authority and relevant children) whom a responsible local authority is supporting under section 23B of that Act (additional responsibilities of the responsible authority in respect of relevant children).

(4) No payment must be made under this Part unless the Board is satisfied, after making such enquiries as it considers relevant, that the full cost of replacement or repair cannot be met under the terms of any warranty, insurance or other arrangement made with the supplier or manufacturer.

Completion of vouchers

17.—(1) A person who considers that a payment may be made under this Part in respect of the replacement or repair of their optical appliance may indicate to the supplier that they wish such a payment to be made.

(2) In the case of a replacement, the supplier must—

- (a) ask the person to produce satisfactory evidence that the condition in regulation 16(3) is met, unless the supplier, in cases other than where the person is an eligible person by virtue of regulation 8(2)(c) or (d), already has satisfactory evidence;
- (b) mark on a voucher the letter code specified in column 2 of Schedule 1, which relates to the type of optical appliance to be replaced, as set out in column 1 of that Schedule;
- (c) complete the relevant parts of the voucher with the name and address of the person and the person's date of birth;
- (d) if the person has been asked for, but not shown, satisfactory evidence that the condition in regulation 16(3) is met, record the fact on the voucher.

(3) In the case of a repair, the supplier must—

⁽²²⁾ 1989 c.41. Section 23A was inserted by section 2 of the Children (Leaving Care) Act 2000 (c.35) and amended by paragraphs 1 and 8 of Schedule 3 to the Children and Young Persons Act 2008 (c.23).

- (a) ask the person to produce satisfactory evidence that the condition in regulation 16(3) is met, unless the supplier, in cases other than where the person is an eligible person by virtue of regulation 8(2)(c) or (d), already has satisfactory evidence;
 - (b) mark on a voucher the letter code specified in column 2 of Schedule 1, which relates to the type of optical appliance to be repaired, as set out in column 1 of that Schedule;
 - (c) indicate on the voucher the nature of the repair of the appliance to be undertaken and, in particular, whether it comprises—
 - (i) the replacement or repair of one or more lenses included in the appliance and, if so, how many,
 - (ii) the repair of a frame and, if so, whether it is the whole frame, the front of a frame or one or both sides of a frame;
 - (d) complete the relevant parts of the voucher with the name and address of the person and the person's date of birth; and
 - (e) if the person has been asked for, but not shown, satisfactory evidence that the condition in regulation 16(3) is met, record the fact on the voucher.
- (4) The person must sign on the voucher—
- (a) a declaration to the effect that they are eligible for such a repair or replacement indicating the grounds of their eligibility;
 - (b) a declaration to the effect that the optical appliance cannot be replaced or repaired free of charge under the terms of any warranty, insurance or other arrangement made with its supplier or manufacturer; and
 - (c) an undertaking to the effect that, if they are unable to show that they are an eligible person, they will pay to the Board an amount equal to the voucher's redemption value.
- (5) A person who is an eligible person only by virtue of—
- (a) regulation 8(2)(d); or
 - (b) their resources being treated in accordance with regulation 8(3)(b) or (c) as being less than their requirements,
- must show a current notice of entitlement to the supplier and permit the supplier to copy such details as may be required for the purposes of regulation 19(2)(b)(iv).
- (6) In a case to which regulation 16(3)(b) applies—
- (a) a supplier intending to accept the voucher under regulation 18 must first submit it to the Board, and
 - (b) the Board, if satisfied that the loss or damage to the appliance would not have occurred but for the illness, must give its approval to the use of the voucher.

Use of vouchers for replacement or repair

18. The supplier may accept the voucher as being in substitution for payment by the person of an amount equal to its redemption value, being the whole or part of the cost incurred for the replacement or repair.

Payments to suppliers for the replacement or repair

19.—(1) The Board must, if the conditions specified in paragraph (2) are met, make a payment of a voucher's redemption value to a supplier who has accepted a voucher in accordance with regulation 18.

- (2) The conditions referred to in paragraph (1) are that—

- (a) the person has signed the declarations and undertaking referred to in regulation 17(4) and acknowledged on the voucher that the optical appliance has been replaced or repaired; and
- (b) the supplier has—
 - (i) made and kept a written record of the replacement or repair and issued to the person a receipt for any money received from the person;
 - (ii) obtained any prior approval required by regulation 17(6);
 - (iii) made a claim for a payment on a completed voucher to the Board within the period of three months beginning with the date of the replacement or repair of the optical appliance; and
 - (iv) where the person has shown a notice of entitlement to the supplier, informed the Board of the amount of the patient contribution, if any.

Redemption value of voucher for replacement or repair

20.—(1) Subject to paragraph (4), the redemption value of a voucher shall, in the case of the replacement of an optical appliance, be the lesser of—

- (a) the full cost which would have been payable by the person for the replacement but for this Part; or
- (b) the face value of the voucher or, in the case of the replacement of one only of a pair of contact lenses, £54.70.

(2) Subject to paragraph (4), the redemption value of a voucher shall, in the case of the repair of an optical appliance, be the lesser of—

- (a) the full cost which would have been payable by the person for the repair but for this Part; or
- (b) the amount specified in column 2 of Schedule 3 which relates to the type of optical appliance repaired (identified in that column by reference to the relevant letter code as specified in Schedule 1) and to the nature of the repair specified in column 1 of Schedule 3, together with any increase provided for by Schedule 2.

(3) Where more than one repair is made to an appliance the amount taken for the purposes of paragraph (2)(b) as being specified in Schedule 3 shall be the aggregate of the relevant amounts ascertained in accordance with Schedule 3, except that the element of the value of the voucher which relates to the repair of the frame must not exceed £14.10.

(4) In the case of a person who was eligible for a payment to be made only by virtue of regulation 8(2)(d), the amounts taken for the purpose of paragraphs (1)(a) and (b) or (2)(a) and (b) must be reduced by the amount of the patient contribution.

PART 6

CESSATION OF PAYMENTS

Notice as to cessation of payments

21.—(1) No payment must be made in any of the circumstances set out in paragraph (2), where a notice has been given under paragraph (3) or (4), from the date specified in that notice.

- (2) The circumstances mentioned in paragraph (1) are that—
 - (a) in the judgement of the Board, the supplier is not a suitable person to receive public funds from it;

- (b) the supplier has failed to comply with conditions determined by the Secretary of State pursuant to section 180(11) of the 2006 Act (payments in respect of costs of optical appliances and sight tests); or
- (c) the supplier or, if the supplier is a corporate body, any director, chief executive or secretary of the supplier, or if the supplier is a partnership any partner, has been removed from an ophthalmic performers list on the grounds mentioned in section 151(3) of the 2006 Act (disqualification of practitioners) or from an ophthalmic list under a provision corresponding to that section.

(3) In a case to which paragraph (2)(a) applies, the Secretary of State may give notice to the supplier under section 181(3) of the 2006 Act (section 180: supplementary) that no further payments may be made by the Board to that supplier from the date specified in the notice, which must be a month after the date of that notice.

(4) In a case to which paragraph (2)(b) or (c) applies, the Secretary of State must give notice to the supplier under section 181(3) of the 2006 Act that no further payments may be made by the Board to that supplier from the date specified in the notice, which must be the date of that notice.

(5) Subject to paragraph (7), in any case where notice has been given under either paragraph (3) or (4)—

- (a) the Secretary of State may apply to the First-tier Tribunal for a stop order in relation to that supplier and must notify the supplier of that application; and
- (b) the supplier may appeal to the First-tier Tribunal, whether or not the Secretary of State applies for a stop order, provided it does so within 28 days of receipt of the notice.

(6) On appeal the First-tier Tribunal may make any decision that the Secretary of State could have made.

(7) In a case where—

- (a) paragraph (2)(c) applies and notice has been given under paragraph (4); and
- (b) that person is subject to a national disqualification under section 159 of the 2006 Act (national disqualification) or provisions corresponding to that section,

the Secretary of State must apply to the First-Tier Tribunal for a stop order and must notify the supplier of that application.

(8) A notice under paragraph (3) must state—

- (a) the reasons why that supplier is judged not to be suitable; and
- (b) that the supplier has the right of appeal set out in paragraph (5)(b) and how to exercise that right.

(9) A notice under paragraph (4) must state—

- (a) in a case to which paragraph (2)(b) applies, the condition the supplier has failed to comply with; or
- (b) in a case to which paragraph (2)(c) applies, which of the circumstances specified in that paragraph apply and the person to whom they apply; and
- (c) that the supplier has the right of appeal set out in paragraph (5)(b) and how to exercise that right.

(10) In this Part—

- (a) “notify” means to notify in writing (including electronically) and “notice” shall be construed accordingly; and
- (b) “payment” means payment in accordance with regulation 14 or 19.

Reviews of stop notices

22.—(1) The Secretary of State must review a notice in a case to which regulation 21(2)(a) applies, if—

- (a) the supplier requests it; and
- (b) more than two years have elapsed since either the notice was given or the last review took place, whichever is the later, and
if in the judgement of the Board the supplier is then a suitable person to receive public funds from it, the Secretary of State must cancel that notice.

(2) Where a notice has been given in a case to which regulation 21(2)(b) applies and the supplier considers that it has now complied with the condition specified in that notice, the Secretary of State must, if requested to do so by the supplier, review that notice and, if satisfied as a result of the review that the supplier has complied with the condition, cancel the 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 review.

(4) Where a notice has been given in a case to which regulation 21(2)(c) applies and—

- (a) the person stated in that notice has since been restored to the list from which they were removed;
- (b) the supplier is a partnership, and the person stated in the notice was a partner in that partnership but has now ceased to be so; or
- (c) the supplier is a corporate body and the person stated in the notice was a director, chief executive or secretary of that corporate body but has now ceased to be so,
the Secretary of State must, if requested to do so by the supplier, review that notice and may, if considered appropriate in the Secretary of State’s judgement, cancel that notice.

(5) If, as a result of a review under paragraph (1), (2) or (4), the Secretary of State does not cancel that notice, the supplier may appeal to the First-tier Tribunal within 28 days of receipt of the Secretary of State’s decision.

(6) Nothing in this regulation affects the ability of the Secretary of State to cancel a notice under section 181(5) of the 2006 Act (section 180: supplementary) without the supplier having requested a review.

Reviews of stop orders

23.—(1) The First-tier Tribunal may review a stop order at the request of the supplier upon which the order has been imposed, and on such a review may confirm the order 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 two years beginning with the date—

- (a) on which the stop order was imposed; or
- (b) of the First-tier Tribunal’s decision on the last such review,
whichever is the later.

(3) If, on making a decision to impose or confirm a stop order, the First-tier Tribunal 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 “two years” shall be a reference—

- (a) to five years, or
- (b) to such shorter period, being more than two years, as the First-tier Tribunal may determine.

(4) If, on a review, the First-tier Tribunal is of the opinion that there is a realistic prospect of a further review being successful if held within a shorter period than that specified in paragraph (2), the reference to “two years” shall be a reference to “one year”.

PART 7

PAYMENTS TO PERSONS IN RESPECT OF OPTICAL APPLIANCES

Payments to persons in respect of the supply, replacement or repair of optical appliances

24.—(1) A payment may be made under this regulation to a person of a description specified in regulation 8(2) or 16(3) who pays for the supply, replacement or repair of an optical appliance without exercising their right under regulation 9, 10 or 17 to a payment to meet or contribute towards the cost incurred for that supply, replacement or repair.

(2) A person who wishes to receive a payment under this regulation must—

- (a) make a claim to the Secretary of State if they consider that they fall within the description specified in regulation 8(2)(c) or (d); or
- (b) in all other cases, make a claim to the Board.

(3) Subject to paragraph (4), any such claim must be made within three months of the date of payment for the supply, replacement or repair of the optical appliance, or within such further period as the Secretary of State or the Board may allow, and that claim must be made on a form provided by or on behalf of the Secretary of State or the Board for that purpose.

(4) Where a person pays by instalments for the supply, replacement or repair of an optical appliance, any claim made by that person under paragraph (2) must be made within three months of the date of payment of the first instalment.

(5) A person who makes a claim under paragraph (2) must produce such evidence in support of that claim as the Secretary of State or the Board may reasonably require, which may include the receipt for any fee paid for the supply, replacement or repair of the optical appliance.

(6) Subject to paragraph (8), where the Secretary of State is satisfied that the person is entitled to a payment as a result of a claim under paragraph (2)(a)—

- (a) the Secretary of State must authorise in writing the payment of the amount in question to the person by the Board, and
- (b) on receipt of such authorisation, the Board must make a payment to the person of an amount equal to the redemption value of the voucher which could have been completed under regulations 9, 10 or 17 if the person had satisfied the requirements of regulations 9, 10 or 17 as the case may be.

(7) Subject to paragraph (8), where the Board is satisfied that the person is entitled to a payment as a result of a claim under paragraph (2)(b), it must make a payment to the person of an amount equal to the redemption value of the voucher which could have been completed under regulations 9, 10 or 17 if the person had satisfied the requirements of regulations 9, 10 or 17 as the case may be.

(8) Where the Board makes a payment under paragraph (6) or (7) to a person who pays by instalments for the supply, replacement or repair of an optical appliance, that payment must be made as soon as reasonably practicable after the date on which the total value of the instalments paid becomes equal to or greater than the redemption value of the voucher which could have been completed under regulation 9, 10 or 17 if the person had satisfied the requirements of regulation 9, 10 or 17 as the case may be.

PART 8

MISCELLANEOUS

Amounts wrongly paid

25.—(1) Where a person who is not an eligible person declares that they are an eligible person and as a consequence the Board makes a payment to that person under these Regulations, the Board may recover the amount of that payment from that person.

(2) Where a supplier makes a claim for a payment to the Board, representing that the conditions specified in regulation 5(2), 14(2) or 19(2) are met, but those conditions are not met and the Board makes a payment to the supplier under these Regulations, the Board may recover the amount of that payment from the supplier.

Signatures and claims for payments

26. A signature required by these Regulations may be given, and a claim for a payment pursuant to regulations 6 or 24 may be made —

- (a) on behalf of a child by either parent or, in the absence of both parents, the guardian or other adult person who has the care of the child;
- (b) on behalf of any other person who is incapable of giving the signature or making the claim, by a relative or any other adult who has the care of that person; or
- (c) on behalf of any person under 18 years of age who is—
 - (i) looked after by a local authority within the meaning of section 22(1) of the Children Act 1989(**23**) (general duty of local authority in relation to children looked after by them), by a person authorised by that authority;
 - (ii) accommodated by a voluntary organisation within the meaning of section 59 of the Children Act 1989(**24**) (provision of accommodation by voluntary organisations), by that organisation or a person authorised by it.

Exercise of the Board's functions under these Regulations

27. NHS trusts and NHS foundation trusts are prescribed for the purposes of section 180(6A) of the 2006 Act(**25**) (payments in respect of costs of optical appliances and sight tests).

Transitional Provisions

28.—(1) Where, before 1st April 2013, a person was issued with a voucher pursuant to regulations 9, 10, 11 or 16 of the 1997 Regulations, but that voucher has not been accepted before that date, such a voucher may be accepted in accordance with the provisions of the 1997 Regulations as though they remained in force.

(2) The amounts specified in regulation 20(1)(b) and (3), column 3 of Schedule 1, and Schedules 2 and 3 shall apply only to a voucher accepted on or after 1st April 2013 pursuant to regulation 12 or 18.

(23) 1989 c.41. Section 22(1) of the Children Act 1989 was amended by paragraph 19 of Schedule 5 to the Local Government Act 2000 (c.22), section 2 of the Children (Leaving Care) Act 2000 (c.35), and section 116 of the Adoption and Children Act 2002 (c.38).

(24) Section 59 of the Children Act 1989 was amended by section 49 of the Children Act 2004 (c.31), paragraph 14 of Schedule 4 to the Care Standards Act 2000 (c.14) and paragraph 2 of Schedule 1 to the Children and Young Persons Act 2008 (c.23).

(25) Section 180(6A) was inserted by paragraph 96 of Schedule 4 to the Health and Social Care Act 2012.

(3) Where, before 1st April 2013, a person made a claim for payment under regulation 6 or 20 of the 1997 Regulations, but that claim has not been determined before that date, the claim must be determined in accordance with the provisions of the 1997 Regulations as though they remained in force.

(4) For the purposes of paragraphs (1) and (3), references to the responsible authority in the 1997 Regulations shall be taken as a reference to the Board.

Revocations

29. The Regulations specified in column 1 of Schedule 4 are revoked to the extent specified in column 3 of that Schedule.

Signed by authority of the Secretary of State for Health.

28th February 2013

Earl Howe
Parliamentary Under-Secretary of State,
Department of Health