

**2023 No. 848**

**NATIONAL HEALTH SERVICE, ENGLAND**

**The National Health Service (Ophthalmic Services and Optical Charges and Payments) (Amendment) Regulations 2023**

*Made* - - - - at 12.22 p.m. on 20th July 2023

*Laid before Parliament* at 3.00 p.m. on 20th July 2023

*Coming into force in accordance with regulation 1*

The Secretary of State, in exercise of the powers conferred by sections 115(1), 121(1) and (2), 179(1), 180, 272(7) and (8) of the National Health Service Act 2006(a), makes the following Regulations.

**Citation, commencement and extent**

1.—(1) These Regulations may be cited as the National Health Service (Ophthalmic Services and Optical Charges and Payments) (Amendment) Regulations 2023.

(2) Subject to paragraph (3), these Regulations come into force on 1st January 2024.

(3) This regulation and regulations 2(4) and 2(5) come into force on 1st November 2023.

(4) These Regulations extend to England and Wales.

**Amendment of the General Ophthalmic Services Contracts Regulations 2008**

2.—(1) The General Ophthalmic Services Contracts Regulations 2008(b) are amended as follows.

(2) In regulation 13 (testing of sight)—

(a) omit “paragraph (5)”; and

(b) omit “paragraphs (7) to (9)”.

(3) In regulation 16 (fees, charges and financial interests of the contractor)—

(a) in paragraph (5), for “6 months after” substitute “3 months of”;

(b) after paragraph (5), insert—

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(a) 2006 c. 41. Section 115 has been amended by the Health and Social Care Act 2012 (c. 7) (“the 2012 Act”), Schedule 4, paragraph 54. Section 121 has been amended by the 2012 Act, Schedule 4, paragraph 59. Section 180 has been amended by section 34 of, and Schedule 6 to, the Health Act 2009 (c. 21), section 205 of, and paragraph 96 of Schedule 4 to, the 2012 Act. Sections 115, 121 and 180 have been amended by paragraph 1(1) and 1(2) of Schedule 1 to the Health and Care Act 2022 (c. 31). “Prescribed” and “regulations” are defined in section 275 of the National Health Service Act 2006. By virtue of section 271(1) of the National Health Service Act 2006, the powers conferred by these sections are exercisable by the Secretary of State only in relation to England.

(b) S.I. 2008/1185; relevant amending instruments are S.I. 2008/1700, 2009/309, 2010/22 and 634, 2013/365, 2014/418 and 1887, 2015/416, 2016/211, 2017/1056 and 2020/885.

“(5A) Notwithstanding paragraph (5), where a claim is made by a contractor for fees in respect of mandatory or additional services completed on or before 31 December 2023, NHS England must consider the claim if it is sent to it within 6 months of the date of completion of the provision of services.”.

(c) in paragraph (6)—

(i) omit “which may be submitted in either electronic form or on paper and”,

(ii) at the end of sub-paragraph (a), omit “and”, and

(iii) at the end of sub-paragraph (b), insert—

“;and

(c) submitted in electronic form, subject to paragraph (6A).”; and

(d) after paragraph (6), insert—

“(6A) NHS England(a) may accept submission of a claim in paper form in such exceptional circumstances as NHS England may reasonably determine.”.

(4) In Part 7 of Schedule 1, in paragraph 38 (termination on the death of an individual contractor), for “7 days” in both places it occurs, substitute “28 days”.

(5) In Schedule 3, (applications for a contract), in paragraph 3, omit “sex and”.

### **Amendment of the Primary Ophthalmic Services Regulations 2008**

**3.**—(1) The Primary Ophthalmic Services Regulations 2008(b) are amended as follows.

(2) In regulation 4(2) (sight tests-applications), for “contain” substitute “be accompanied by”.

(3) In regulation 6 (applications and signatures by children or persons incapable)—

(a) for paragraph (3)(i), substitute “subject to paragraph (4), where an electronic form is used, be provided electronically; or”; and

(b) after paragraph (3), insert—

“(4) A signature in ink may be provided on a paper form separate from the application, in such exceptional circumstances as NHS England may reasonably determine.”.

### **Amendment of the Optical Charges and Payments Regulations 2013**

**4.**—(1) The Optical Charges and Payments Regulations 2013(c) are amended as follows.

(2) In regulation 4(3) (completion and use of voucher-sight tests), omit “on the voucher”.

(3) In regulation 5(2)(b) (payments to ophthalmic practitioners)—

(a) in paragraph (i)—

(i) omit “(which may be submitted in either electronic or paper form)”,

(ii) for “the sight test” substitute “completion of the sight test”; and

(b) at the end of paragraph (ii), after “patient contribution” insert—

“; and

(iii) submitted the claim in electronic form, subject to paragraph (3).”.

(4) After regulation 5(2), insert—

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(a) NHS England (formerly known as the National Health Service Commissioning Board) was established by section 1H of the NHS Act 2006 (c. 41). Section 1H was inserted by section 9(1) of the Health and Social Care Act 2012 (c. 7). The National Health Service Commissioning Board was renamed “NHS England” by section 1 of the Health and Care Act 2022 (c. 31). References to the National Health Service Commissioning Board in any instrument or other document made prior to the commencement of section 1 of the Health and Care Act 2022 are construed as references to NHS England pursuant to paragraph 1(3) of Schedule 1 to that Act.

(b) S.I. 2008/1186; amending instruments are S.I. 2008/1700 and 2449, 2009/409, 2010/634, 2013/365, 2015/570 and 1776, 2016/211 and 1045, 2017/1056 and 2020/885. There are other amendments, but none are relevant.

(c) S.I. 2013/461; amending instruments are S.I. 2013/1856, 2015/570 and 1776, 2016/211,325 and 1045 and 2017/1056 2020/885. There are other amendments, but none are relevant.

“(3) NHS England may accept submission of a claim referred to in paragraph (2)(b)(i) in paper form in such exceptional circumstances as NHS England may reasonably determine.”

(5) In regulation 9 (issue of vouchers by ophthalmic practitioners)—

(a) in paragraph (1)—

(i) omit from “, on the same occasion” to the end, and

(b) after paragraph (1), insert—

“(1A) Where an ophthalmic practitioner is required to issue a voucher under paragraph (1), the practitioner must—

(a) issue the voucher with the prescription; or

(b) where for technical reasons the voucher cannot be issued on that occasion, issue the voucher as soon as reasonably practicable after issuing the prescription.”

(6) In regulation 12(4) (use of vouchers for supply of optical appliance), omit “on the voucher”.

(7) In regulation 14 (payments to suppliers)—

(a) in paragraph (2)(a), omit “on the voucher”;

(b) in paragraph (2), for sub-paragraph (c) substitute—

“(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 to NHS England on a completed voucher 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 NHS England of the amount of the patient contribution, if any;

(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; and

(v) submitted the claim in electronic form, subject to paragraph (3).”; and

(c) after paragraph (2), insert—

“(3) NHS England may accept submission of a claim referred to in paragraph (2)(c)(ii) in paper form in such exceptional circumstances as NHS England may reasonably determine.”

(8) In regulation 17(4) (completion of vouchers), omit “on the voucher”.

(9) In regulation 19 (payments to suppliers for the replacement or repair)—

(a) in paragraph (2)—

(i) in sub-paragraph (a), omit “on the voucher”; and

(ii) for sub-paragraph (b), substitute—

“(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 to NHS England on a completed voucher within the period of three months beginning with the date of the replacement or repair of the optical appliance;

(iv) where the person has shown a notice of entitlement to the supplier, informed NHS England of the amount of the patient contribution, if any; and

(v) submitted the claim in electronic form, subject to paragraph (3).”; and

(b) after paragraph (2), insert—

“(3) NHS England may accept submission of a claim in paper form in such exceptional circumstances as NHS England may reasonably determine.”.

(10) In regulation 26 (signatures and claims for payments)—

(a) in paragraph (2), for sub-paragraph (i) substitute—

“subject to paragraph (3) where an electronic form is used, be provided electronically, or”;  
and

(b) after paragraph (2), insert—

“(3) A signature in ink may be provided on a paper form separate from the document to which it relates in such exceptional circumstances as NHS England may reasonably determine.”.

Signed by authority of the Secretary of State for Health and Social Care

At 12.22 p.m. on 20th July 2023

*Markham*  
Parliamentary Under Secretary of State,  
Department of Health and Social Care

#### **EXPLANATORY NOTE**

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

These Regulations make amendments to the General Ophthalmic Services Contracts Regulations 2008 (“the General Ophthalmic Services Regulations”), the Primary Ophthalmic Services Regulations 2008 (“the Primary Ophthalmic Services Regulations”) and the National Health Service (Optical Charges and Payments) Regulations 2013 (“the Optical Charges and Payments Regulations”).

Regulation 2 amends the General Ophthalmic Services Regulations, which set out a framework for general ophthalmic services contracts. This regulation prescribes: conditions that must be met by a contractor to enter a general ophthalmic service contract; the procedure for pre-contract dispute resolution; the procedure by which the contractor may obtain health service body status; and the terms that which must be included in a general ophthalmic service contract.

Regulation 2(2) amends the General Ophthalmic Services Regulations to remove the requirement for a patient to acknowledge receipt of a prescription for glasses. It also removes provision added to those regulations during the Coronavirus pandemic.

Regulation 2(3)(a) amends regulation 16(5) of the General Ophthalmic Services Regulations to reduce the claim period for fees for the provision of mandatory or additional services from 6 months to 3 months.

Regulation 2(3)(b) provides for a transitional provision to allow 6 months for claims made by a contractor for fees in respect of mandatory services or additional services completed on or before 31<sup>st</sup> December 2023.

Regulations 2(3)(c) and (d) amend regulation 16(6) of the General Ophthalmic Services Regulations to mandate the electronic submission of the claim form and give NHS England (formerly known as the National Health Commissioning Board) a discretionary power to accept the submission of paper claim forms in exceptional circumstances.

Regulation 2(4) amends paragraph 38 of Schedule 1 to the General Ophthalmic Services Regulations to extend the date of termination of the contract following the death of an individual contractor from 7 days to 28 days to allow a longer compassionate period.

Regulation 2(5) amends paragraph 3 of Schedule 3 to the General Ophthalmic Services Regulations to remove the requirement for the applicant for a contract to specify their sex.

Regulation 3 amends the Primary Ophthalmic Services Regulations which makes provision for who is entitled to a primary ophthalmic services sight test and how to apply for them under the National Health Service Act 2006.

Regulation 3(2) and (3) amends regulation 4(2) and (6) of the Primary Ophthalmic Services Regulations to allow a signed patient declaration and submission of an ink signature on a separate paper form in exceptional circumstances.

Regulation 4 amends the Optical Charges and Payments Regulations, which make provision for a scheme for payments to be made by means of a voucher system, in respect of the costs incurred by certain categories of persons in connection with sight test and the supply, replacement and repair of optical appliances. The regulations also provide for ophthalmic practitioners and suppliers of optical appliances to redeem a voucher in full or in part payment of the cost of a sight test or the cost of supplying, repairing or replacing an optical appliance.

Regulations 4(2), (6), (7)(a), (8), (9)(a) and (10)(b) amend regulations 4(3), 12(4), 14(2)(a), (17)(4), 19(2)(a) and 26(3) of the Optical Charges and Payments Regulations to remove the requirement for the signed patient declaration as to eligibility to be on the voucher and to enable NHS England to determine the exceptional circumstances in which a separate form may be used to capture signed patient declarations.

Regulations 4(3) and (4) amend regulation 5 to mandate the electronic submission of claim forms and provide a discretionary power for NHS England to accept the submission of paper claim forms in exceptional circumstances.

Regulation 4(5) amends regulation 9 of the Optical Charges and Payments Regulations to require the voucher to be issued with the prescription unless for technical reasons, where this is not possible, the voucher is to be issued as soon as reasonably practicable thereafter.

Regulations 4(7) and (9) amend regulations 14(2) and 19 of the Optical Charges and Payments Regulations to mandate the electronic submission of claim forms and to provide for a discretionary power for NHS England to accept submission of paper claim forms and ink signatures in exceptional circumstances.

A full impact assessment has not been produced for this instrument as no, or no significant, impact is foreseen.

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