

STATUTORY COOLING OFF PERIODS

Advice to providers of goods and services in the home or place of work

The Optical Confederation and UK Domiciliary Eyecare Committee advises that the new statutory cooling off period of seven (7) days applies to all goods and services ordered/contracted for in the home and, in some circumstances in a place of work, for over £35 including the supply of spectacles, contact lenses and other optical devices.¹

Private sight tests are included in the regulations, but GOS sight tests are not.²

Summary

These Regulations affect domiciliary providers and, in some circumstances, providers in places of work, with respect to the services they offer (private sight tests) and the goods they provide (spectacles and contact lenses).

The Regulations apply to a contract between "a consumer" and a trader "for the supply of goods or services to the consumer by a trader", which is made "during a visit by the trader to the consumer's home or place of work, or to the home of another individual" or "during an excursion organised by the trader away from his business premises" or "after an offer made by the consumer during such a visit or excursion". In a domiciliary setting, the contract to supply goods and services is with the patient. In a place of work, the contract to supply may be with the employee or the employer. This distinction is important. The circumstances within which the contract would fall under the Regulations are outlined in this advice.

Spectacles and contact lenses

¹ Cancellation of Contracts made in a Consumer's Home or Place of Work etc Regulations 2008 (SI 2008 No 1816) http://www.opsi.gov.uk/si/si2008/uksi_20081816_en_1

² Schedule 3, sections 5 & 6

When a provider takes an order from a patient in their home or, in some circumstances, in their place of work to supply spectacles to the patient's prescription, the patient is entitled to a 7 day "cooling off period". This means that he may cancel the order for the new spectacles/contact lenses at any time within 7 days of the order being placed without explanation, justification or reason. The provider may start the ordering process before the 7 day cooling off period is over but this is at the provider's own risk of the patient cancelling unless the patient has given written permission for the work to proceed. If the patient has given written permission then he/she is liable for the costs of any work carried out after that permission is given.

Sight test

These regulations only apply to private sight tests with a fee of over £35. GOS sight tests are exempt because the contract is between the NHS and the provider, therefore the patient is not the 'consumer' under these regulations. Providers are required to draw up contracts for each private sight test appointment made, together with notices of the patient's right to cancel and the patient's right to request that the work is carried out within the cooling off period. Although the regulations were not primarily aimed at private sight tests, nevertheless private sight tests are covered by these requirements.

The Requirements

Providers contracting to supply optical devices or other goods and services to a patient in their home, residential home, day centre or, in some circumstances, place of work are required by law to:

- give the patient written notice of their right to cancel within 7 days of the order (or should that patient be incapable of making the decision for themselves, give that right to a close relative or an authorised representative of the patient)
- do so in a specified format and containing specified information (see points (ii) and (iii) below)
- contain specified words (see point (iii) below)
- provide a detachable form for the patient to use if they wish to cancel³ and
- accept notice of cancellation in writing in any format e.g. email or letter.

Failure to implement these regulations is punishable by a fine of up to £5,000.

³ Regulation 7(3)(d)(ii) stipulates that the written notice of the right to cancel must contain a cancellation form provided as a detachable slip and completed by or on behalf of the trader.

Please note that these regulations are purely about the patient's right to cancel the order. They do not affect any of the patient's normal statutory rights in respect of spectacles or contact lenses supplied.

The Details

1. What the Regulations say

Regulation 7 gives the patient (*consumer*) the statutory right to cancel the contract up to 7 days from the date that the written notice is supplied.

Regulation 7 requires

- the provider (*trader*) to give the patient (*consumer*) written notice of their right to cancel a contract for goods and services supplied in their own home or, in some circumstances, place of work
- the notice to be given to the patient (*consumer*) when the order/contract is made, and
- the notice to be accompanied by a document/form that the patient (*consumer*) can send to the provider (*trader*) to exercise their right of cancellation.

If the cancellation is sent by post, the cancellation takes effect from the time of posting (provided posting is within 7 days) whether or not it is received by the provider within 7 days (Regulation 8(5)).

Failure to provide notice of the right to cancellation in the specified format is an offence punishable by a fine (Regulation 17). It also results in the contract being unenforceable against the consumer (Regulation 7(6)).

Please note that if a GOS voucher is used, and the order for the goods and services is subsequently cancelled, the voucher should not be sent to the PCT for claiming, but should be returned to the patient.

2. When the regulations apply and to whom

When visiting a patient in their home, the regulations will apply to a contract between the domiciliary provider and patient (as consumer), provided that the order is worth above £35.

Whenever a provider supplies goods and services to a place of work, it is advisable to consider in advance the circumstances (below) in which these Regulations would apply.

When visiting a place of work, careful consideration will need to be given to the nature of the contract. The key question to consider: is the contract with "a consumer"?

"Consumer" is defined in Regulation 2 as meaning: "**a natural person** who in making a contract to which these Regulations apply is acting for purposes which can be regarded as outside his trade or profession".

Thus, if the contract is with the employee (i.e. the employee is the one required to pay the trader), then the Regulations apply as all employees are "natural persons".

If the contract is with the employer, then provided the employer is not a natural person (i.e. it is corporate viz a limited liability company or limited liability partnership), then the Regulations do not apply.

However, if the employer is an individual (or a partnership which is not a limited liability partnership) then the Regulations do apply.

If the employer pays, and the employer is a corporate (as above), then the Regulations do not apply.

Conversely, if the employee is responsible for paying, then the Regulations do apply: the employee is a "natural person" and the contract is being made at their place of work.

If the employee decides to pay separately to update their spectacles during a visit arranged by a corporate employer, at a cost of over £35, then these Regulations would also apply.

3. Form of Notice of Cancellation

Regulations 7(3) and 7(5) specify the format of the notice to be given.

The information must, if included in the contract or another document, be headed "Notice of the Right to Cancel" and given as much prominence as any other information in the contract/order. It must also:

- be dated
- indicate the right of the patient (*consumer*) to cancel the contract within the cancellation period
- be easily legible
- contain the information specified in Schedule 4 Part I of the regulations (see 5 below)

- contain a cancellation form using the wording set out in Schedule 4 Part II of the regulations (see 5 below) provided as a detachable slip and completed by the provider (*trader*)
- indicate, if applicable, that the patient (*consumer*) may be required to pay for the goods or services supplied if use of the goods (“performance of the contract”) has begun with his written agreement before the end of the cancellation period, and
- indicate, if applicable, that a related consumer credit agreement will be automatically cancelled if the contract for goods or services is cancelled.

The cancellation form must be provided as a detachable slip. This could be on a separate piece of paper but would need to be attached to the notice in some way to make it easily detachable.

4. Consumers may request in writing that performance of the contract commences before the end of the cancellation period. They would then be liable to pay for any work done if they subsequently cancel before the end of the cancellation period.

Regulation 9 makes provision, for certain "specified" contracts, to enable the consumer to request in writing that the performance of the contract commences before the end of the cancellation period. Specified contracts include contracts for “the supply of goods made to a customer’s specifications or clearly personalised and any services in connection with the provision of such goods”. This will include a private sight test and the supply of spectacles or contact lenses following any sight test – private or GOS.

If the provider goes ahead to fulfil the order before the end of the cancellation period, in the absence of a written request to do so, the patient will not be obliged to pay for any goods or services provided or manufactured during the cancellation period (if the patient cancels the order within the 7 day cooling off period).

It goes without saying that such a written request must be freely given by the patient and the provider would need to take great care to ensure, especially with elderly and vulnerable patients, that they are not perceived to be placing any pressure on the patient to provide a written request.

5. Written documentation to be provided to the consumer under the Regulations

To meet the requirements of the regulations, providers who are seeing patients in their homes etc, should provide them with the following information, in writing: the contract, the cooling off period, their right to cancel, and, if so required, a written request for the performance of the contract to begin before the end of the cooling off period. Examples of the necessary documentation are set out below:

(i) **Contract:**

Identify the parties to the contract for a sight test and the cost of the sight test. If, following the sight test the patient wishes to purchase spectacles or contact lenses from the provider, a separate contract for what has been ordered, including the cost, will have to be issued. This should include a notice of the right to cancel and, if so required, a written request for the performance of the contract to begin before the end of the cancellation period. These documents may be in terms adapted from those set out below.

Remember, the patient must be given their prescription following the sight test and may choose to have their spectacles dispensed where they wish.

You may wish to give the contract(s) a reference number, or code or other details to enable the contract or offer to be identified in the cancellation form.

(ii) **Notice of Right to Cancel**

Date

Name of the provider (trader) including any trading name.

Provider's reference number, code or other details to enable the contract/offer to be identified e.g. invoice number

To:

Dear [Name of patient]

You have a right to cancel this contract if you wish.

The right to cancel can be exercised by delivering or sending (including by email) a cancellation notice to the person mentioned below at any time within 7 days starting with the day of receipt of this written notice of the right to cancel.

The cancellation notice may be given to the following person by post, hand delivery or e-mail: [insert name, address and email].

The notice of cancellation is deemed to be served as soon as it is posted or sent to [name of recipient] or in the case of cancellation by email from the day it is sent to [name of recipient].

You may use the cancellation form provided if you wish, but you do not need to do so as long as written confirmation is sent within 7 days.

If you request in writing that performance of the contract commences before the end of the cancellation period, and you then cancel the contract after its performance has begun but

within the cancellation period, you agree to pay for services provided and work undertaken or orders placed for the provision of spectacles or contact lenses following the sight test.

A related credit agreement (consumer credit relating to that contract being cancelled) will be automatically cancelled if the contract for goods or services is cancelled.

Yours sincerely

(iii) Cancellation form should use the following wording:

“If you wish to cancel the contract you MUST DO SO IN WRITING and deliver personally or send (which may be by email) this to the person named below. You may use this form if you want to but you do not have to.

(Complete, detach and return this form ONLY IF YOU WISH TO CANCEL THE CONTRACT.)

To:.....[trader to insert name and address of person to whom notice may be given]

I/We (delete as appropriate) hereby give notice that I/we (delete as appropriate) wish to cancel my/our (delete as appropriate) contract.....[trader to insert reference number, code or other details to enable the contract or offer to be identified. He may also insert the name and address of the consumer]

Signed

Name and Address

Date

6. Signatory

If the patient is incapable of making the decision for themselves or of understanding the documents, then it is permissible for an authorised representative to sign on their behalf. However, in this case the domiciliary provider and any documentation should be clear as to who the domiciliary provider is contracting with and who will pay for the sight test (if private) and spectacles or contact lenses, i.e. the patient or the signatory, if that is not the patient.

7. Non-Regulatory

A patient may request that performance of the contract commences before the end of the cancellation period. Should this be requested, we suggest that the patient signs a written request using the following wording:

"I/We (delete as appropriate) hereby request that (insert trader's name) commence performance of this contract (trader to insert reference number, code or other details to enable the contract to be identified) to make up my spectacles/contact lenses on (insert date) before my 7 day cancellation period has expired."

I understand that if I decide to cancel within seven days, I may be asked to pay for any work that has been carried out prior to cancellation.

Patient/Consumer Signature _____

Date _____

Some providers also choose to add the following

“In the event of cancellation, we will be responsible for collecting the spectacles, lenses or other optical appliances from you and will inform you, within [for example 21] days of cancelling, of the date when the goods will be collected.”

It should also be noted that should a patient or representative make contact by telephone to communicate their wish to cancel the contract, the patient or representative should be advised that they need to send written notice of this within 7 days to the relevant contact at the domiciliary provider.

8. Further Information

This advice does not purport to be a full statement of the law and is intended for guidance only.

In cases of doubt, providers should consult their representative body or seek legal advice.

The Optical Confederation, and

The UK Domiciliary Eye Care Committee of ABDO/AOP/College of Optometrists/FODO

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