



# STATUTORY COOLING OFF PERIODS

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## Advice to domiciliary providers

The 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 for over £35 including the supply of spectacles, contact lenses and other optical devices.<sup>1</sup>

Private sight tests are included in the regulations, but GOS sight tests are not.<sup>2</sup>

## Summary

These regulations affect domiciliary providers with respect to the services they offer (private sight tests) and the goods they provide (spectacles and contact lenses).

## Spectacles and contact lenses

When a provider takes an order from a domiciliary patient to supply spectacles to the patient's prescription, the patient is entitled to a seven day "cooling off period". This means that he may cancel the order for the new spectacles at any time within 7 days of the order being placed. The provider may start the ordering process before the 7 day cooling off period is over but at their own risk of the patient cancelling unless the patient gives written permission. 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. 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 it is obvious that the regulations were not aimed at domiciliary sight tests; that is what the regulations require.

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<sup>1</sup> *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](http://www.opsi.gov.uk/si/si2008/uksi_20081816_en_1)

<sup>2</sup> Schedule 3, sections 5 & 6

## The Requirements

The regulations state:

Domiciliary providers contracting to supply optical devices or other goods and services in a patient's home, residential home or day centre 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 2 and 3 below)
- contain specified words (see point 4 below)
- provide a detachable form for the patient to use if they wish to cancel<sup>3</sup> (see points 1 and 4 below), 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 £5000.

**Please note** that these regulations are purely about the patient's right to cancel the order. It does not affect any of their normal statutory rights in respect of spectacles being supplied.

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<sup>3</sup> 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.

## 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 domiciliary provider (*trader*) to give the patient (*consumer*) written notice of their right to cancel a contract concluded in their own home for goods or services
- the notice to be given to the patient (*consumer*) at the time the order/contract is made in the home, and
- the notice to be accompanied by a document/form that that the patient (*consumer*) can send to the domiciliary 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 (unless the trader has given the consumer a notice of the right to cancel) (Regulation 7(6)).

Please note that if a GOS voucher is involved in the goods and services ordered or contracted, and subsequently cancelled, the voucher should not be sent to the PCT, but should be returned to the patient.

### 2. Form of Notice

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 set out in a separate box headed “Notice of the Right to Cancel” and given as much prominence as any other information in the contract/order or other document. 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 below)
- contain a cancellation form using the wording set out in Schedule 4 Part II of the regulations (see 3 below) provided as a detachable slip and completed by the domiciliary 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 credit agreement (consumer credit relating to that contract being cancelled) will be automatically cancelled if the contract for goods or services is cancelled.

The information above (on cancellation format) 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.

**3. Consumers may request in writing that performance of the contract commences before the end of the cancellation period. They are liable to pay for any work done if they then 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.

Regulation 9 provides protection for the provider (“trader”) in that, if the patient (“consumer”) does proceed to cancel the agreement, the patient {"consumer"} must pay for the goods and services provided prior to the cancellation. In the absence of a written request by the patient, the provider is not obliged to commence performance before the end of the cancellation period. But similarly, 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 during the cancellation period if he 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 domiciliary provider will need to take care to ensure, especially with elderly and

vulnerable patients, that they are not perceived to be placing any pressure on the patient to provide the written request.

#### **4. Written documentation to be provided to the consumer under the Regulations**

To meet the requirements of the regulations, optometrists and dispensing opticians who are seeing patients in their homes, or in care homes, etc, should provide them with the following information, in writing, to ensure that they have information about the contract, the cooling off period, their rights 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:

(1) **Contract:** Identify the parties to the contract and set out the contract as a 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 examining domiciliary provider, they will choose their spectacles or contact lenses and a separate contract for what has been ordered, including the cost, will have to be issued with its own 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 where they wish to have their spectacles dispensed; so the patient may not wish to enter into a contract to purchase spectacles or contact lenses.

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. See "Cancellation form should use the following", below.

#### **(2) Notice of Right to Cancel**

Date

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

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

To: [Name of patient]

You have a right to cancel the 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 the written notice of the right to cancel.

The cancellation notice may be given to the following person by post, hand delivery or e-mail: [the name and address (including any email and a postal address) of the person to whom a cancellation notice may be given].

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 before the end of the cancellation period you then cancel the contract after its performance has begun, you agree to pay for services provided and work undertaken or orders placed for the provision of spectacles 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

(3) 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 electronic mail) 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

(4) Patient’s/consumer’s written request that performance of the contract commences before the end of the cancellation period.

"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 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 \_\_\_\_\_

## 5. Signatory

If the patient is mentally 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, the domiciliary provider should be clear and the documentation should be clear as to who the domiciliary provider is contracting with and who will pay for the sight test and glasses or contact lenses, i.e. the patient or the signatory, if that is not the patient.

## 6. Non-Regulatory

Some providers 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.

## 7. European Court of Justice clarification on delivery charges<sup>4</sup>

The European Court of Justice has recently clarified that in the case of cancellation of a contract (within 7 days), the supplier cannot charge the customer for the original cost of delivery of the goods. If, however, the goods have to be posted back to the supplier, this cost falls to the customer.

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<sup>4</sup> Court of Justice of the European Union **Press Release No 36/10** 15 April 2010, Judgement in Case C-511/08

## **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 their own legal advice.

**UK Domiciliary Eye Care Committee**

**ABDO/AOP/College of Optometrists/FODO**

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