

EXPLANATORY MEMORANDUM TO
THE NATIONAL HEALTH SERVICE (PRIMARY MEDICAL SERVICES)(MISCELLANEOUS AMENDMENTS) REGULATIONS 2010

2010 No. 578

1. This explanatory memorandum has been prepared by the Department of Health and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 These Regulations amend the:-

- i. National Health Service (General Medical Services Contracts) Regulations 2004 (SI 2004/291) (the GMS Contracts Regulations) - which set out the framework for General Medical Services (GMS) contracts, and
- ii. National Health Service (Personal Medical Services Agreements) Regulations 2004 (SI 2004/627) (the PMS Agreements Regulations) - which set out the framework for Personal Medical Services (PMS) agreements;
- iii. National Health Service (Performers Lists) Regulations 2004 (SI 2004/585).

The amendments update the various Regulations to reflect policy developments and associated legislative changes introduced since the original Regulations were made, or last amended.

3. Matters of special interest to the [Joint Committee on Statutory Instruments or the Select Committee on Statutory Instruments]

3.1 None

4. Legislative Context

4.1 These Regulations amend the Statutory Instruments, as detailed above, that control the way in which primary medical services are delivered pursuant to the provisions contained in Part 4 of the National Health Service Act 2006.

4.2 There have been a number of policy initiatives and amendments to other legislation introduced, which as a consequence require amendments to be made to the GMS Contracts Regulations and PMS Agreements Regulations. They cover the following matters:-

- The coming into force of the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2010 (SI 2010/234)
- The introduction of the Social Security (Medical Evidence) and Statutory Sick Pay (Medical Evidence) (Amendment) Regulations 2010 (SI 2010/137)
- The use of premium rate telephone numbers

- Changes to the provision of medical reports to the Department for Work and Pensions

In addition, there are minor updating amendments. In the PMS Agreements Regulations, there are also amendments clarifying the provisions for termination on notice and the prescribing of medicines.

5. Territorial Extent and Application

5.1 This instrument applies to England.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- *What is being done and why*

General and Specialist Medical Practice (Education, Training and Qualifications) Order 2010 (SI 2010/234)

7.1 The above Order, made on 10 February 2010 and coming into force on 1 April 2010, abolishes the Postgraduate Medical Education and Training Board, transfers its functions to the General Medical Council and makes transitional and consequential amendments. Associated with this Order is the Postgraduate Medical Education and Training Order of Council 2010, coming into force on 1 April 2010, which makes provision in respect of eligibility for entry in the General Practitioner Register and the Specialist Register kept by the General Medical Council. The amendments made by these Regulations update the GMS Regulations as a consequence of the Postgraduate Medical Education and Training Order of Council 2010.

7.2 Similarly, the amendment made by these Regulations to the National Health Service (Performers Lists) Regulations 2004 is an updating amendment required as a consequence of the Postgraduate Medical Education and Training Order of Council 2010.

Social Security (Medical Evidence) and Statutory Sick Pay (Medical Evidence) (Amendment) Regulations 2010 (SI 2010/137)

7.3 The above Regulations amend the rules concerning the completion of a “doctor’s statement” (medical certificate) which is used to assist a person to claim certain health related social security benefits – such as Employment and Support Allowance.

7.4 These amending regulations ensure that patients continue to receive these statements free of charge.

Telephone numbers

- 7.5 Following a public consultation on the future use of 084 numbers in the NHS, the Department announced on September 14, 2009 that it would be regulating the use of telephone numbers which charged the patient more than the equivalent cost of calling a geographical number. The Regulations do not prohibit practices from using specific number ranges – they remain free to use non-geographical number ranges such as 084, providing that patients are not charged more than the equivalent cost of calling a geographical number to do so.

Changes to the provision of medical reports to the Department for Work and Pensions (DWP)

- 7.6 The Department for Work and Pensions has changed its procedure whereby further medical evidence is sought in respect of patients for whom a GP has provided, or has refused to provide, a medical certificate. Previously medical practitioners employed or engaged by DWP, or employed or engaged by an external organisation that has a contract with DWP, could request such further clinical information from GPs, as could DWP officers acting on the medical practitioner's behalf. The Regulations make amendments to provide that GPs must also supply that information, on request, to a nurse, physiotherapist or occupational therapist employed or engaged by DWP, or employed or engaged by an external organisation that has a contract with DWP. GPs must also supply the clinical information, on request, to a DWP officer acting on one of these health care professional's behalf.

Before providing such information a contractor must be satisfied that the patient concerned has consented to the disclosure. The contractor may rely on an assurance in writing from the DWP officer, medical practitioner, nurse, physiotherapist or occupational therapist that the patient's consent (whether oral or written) has been obtained.

Minor amendments

- 7.7 These are:
- Introduction of provisions to prevent those who have been removed from being concerned in the management or control of any body under section 34 of the Charities and Trustee Investment (Scotland) Act 2005 (powers of Court of Session) from holding a GMS or PMS contract.
 - Standards for out of hours – updating the references to the standards which contractors providing out of hours services must meet.
 - The references to the systems on which contractors may hold computerised patient records, with the approval of their Primary Care Trust (PCT), have been updated. The standard with which systems must comply is General Practice Systems of Choice Level 2.
 - Substitution of the references to the Commission for Healthcare Audit and Inspection with references to the Care Quality Commission

- Clarifying amendments as a consequence of the abolition of the Family Health Services Appeal Authority

In the PMS Regulations, clarification of the provisions for termination on notice and prescribing of medicines

- ***Consolidation***

7.8 In introducing the current set of miscellaneous amending Regulations the Department considered the possibility of consolidation, the resources required and other sources of information for those that might use the Regulations.

7.9 The GMS Contracts Regulations and PMS Agreements Regulations are used to stipulate the mandatory elements of primary medical care contracts entered into between service providers and the PCTs. In respect of GMS contracts, the GMS Contracts Regulations and certain financial directions set out in a document known as the Statement of Financial Entitlement (SFE) set a rigid central framework for the contracts that must be followed. The primary reference documents used by providers and PCTs are, consequently, the Department's standard GMS contract template and the SFE.

7.10 Each time the GMS Contracts Regulations are amended the Department issues electronically:

- a consolidated GMS contract template;
- a standard variation notice for use by PCTs when amending existing GMS contracts.

7.11 In addition, the Department has issued a consolidated electronic version of the SFE incorporating any amending directions issued since the last consolidation. The last consolidation was on 15 February 2010.

8. Consultation outcome

8.1 In finalising the content of these amending regulations the Department has specifically consulted the General Practitioners Committee of the British Medical Association. They have raised no objection to the content.

9. Guidance

9.1 Whilst there will be no specific guidance issued in relation to these amending regulations, guidance has been issued by the Department on the use of telephone numbers and guidance will also be published by DWP in respect of changes to medical certification.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 There is no negative impact on equality issues.

10.3 There is no negative impact on the public sector.

10.4 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 Monitoring of GMS and PMS contracts is part of the role of PCTs. The Department of Health has not identified a need for a further formal review process in respect of these amending regulations.

13. Contact

Jenny Smith at the Department of Health Tel: 0113 254 5020 or email: jenny.smith@dh.gsi.gov.uk can answer any queries regarding the instrument.