
STATUTORY INSTRUMENTS

2015 No. 1862

**The National Health Service (General
Medical Services Contracts) Regulations 2015**

PART 6

Opt outs: additional and out of hours services

[^{F1}Minor surgery]: temporary opt outs and permanent opt outs following temporary opt outs

36.—(1) Where [^{F2}NHS England] has given a temporary opt out notice or a temporary opt out notice which, by virtue of regulation 35(7), is treated as a permanent opt out notice, [^{F2}NHS England] must, as soon as is reasonably practicable and, in any event, before the end of the period of seven days beginning with the date on which [^{F2}NHS England] receives a notice given under regulation 35(5)—

- (a) approve the opt out notice and specify, in accordance with paragraphs (4) and (5), the date on which the temporary opt out is to commence, and the date on which it is to come to an end (“the end date”); or
- (b) reject the opt out notice in accordance with paragraph (3).

(2) [^{F2}NHS England] must give notice to the contractor of its decision under paragraph (1) as soon as practicable, including the reasons for its decision.

(3) [^{F2}NHS England] may reject the opt out notice on the ground that the contractor—

- (a) is providing [^{F3}minor surgery] to patients other than its own registered patients, or enhanced services; or
- (b) has no reasonable need to opt out temporarily having regard to its ability to deliver [^{F4}minor surgery].

(4) The date specified by [^{F2}NHS England] for the commencement of the temporary opt out must, where reasonably practicable, be the date requested by the contractor in the contractor's opt out notice.

(5) Before determining the end date, [^{F2}NHS England] must make reasonable efforts to reach agreement with the contractor.

(6) Where [^{F2}NHS England] approves an opt out notice, the contractor's obligation to provide [^{F5}minor surgery] is to be suspended from the date specified by [^{F2}NHS England] in its decision under paragraph (1) and is to remain suspended until the end date unless—

- (a) the contractor and [^{F2}NHS England] agree in writing an earlier date, in which case the suspension comes to an end on the earlier date agreed;
- (b) [^{F2}NHS England] specifies a later date under paragraph (7) in which case the suspension comes to an end on the later date specified;
- (c) paragraph (9) applies and the contractor refers the matter to the NHS dispute resolution procedure or the court, in which case the suspension comes to an end—

Changes to legislation: The National Health Service (General Medical Services Contracts) Regulations 2015, Section 36 is up to date with all changes known to be in force on or before 09 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- (i) where the outcome of the dispute is to uphold the decision of [F²NHS England], on the day after the date of the decision of the Secretary of State or the court,
 - (ii) where the outcome is to overturn the decision of [F²NHS England], 28 days after the date of the decision of the Secretary of State or the court, or
 - (iii) where the contractor ceases to pursue the NHS dispute resolution procedure or court proceedings, on the day after the date on which the contractor withdraws its claim or the proceedings are otherwise terminated by the Secretary of State or the court;
- (d) paragraph (11) applies and—
- (i) [F²NHS England] refuses the contractor's request for a permanent opt out before the end of the period of 28 days ending with the end date, in which case the suspension comes to an end 28 days after the end date, or
 - (ii) [F²NHS England] refuses the contractor's request for a permanent opt out after the end date, in which case the suspension comes to an end 28 days after the date of service of the notice.

(7) Before the end date, [F²NHS England] may, in exceptional circumstances and with the agreement of the contractor, give notice in writing to the contractor of a later date on which the temporary opt out is to come to an end, being a date which is no more than six months later than the end date.

- (8) Where [F²NHS England] considers that—
- (a) the contractor will be unable to satisfactorily provide [F⁶minor surgery] at the end of the temporary opt out; and
 - (b) it would not be appropriate to exercise its discretion under paragraph (7) to specify a later date on which the temporary opt out is to come to an end or the contractor does not agree to a later date,

[F²NHS England] may give notice in writing to the contractor at least 28 days before the end date that a permanent opt out is to follow a temporary opt out.

(9) Where [F²NHS England] gives notice to the contractor under paragraph (8) that a permanent opt out is to follow a temporary opt out, the permanent opt out is to take effect immediately after the end of the temporary opt out.

(10) A contractor who has temporarily opted out may, at least three months prior to the end date, give notice in writing to [F²NHS England] that it wants to permanently opt out of [F⁷minor surgery].

(11) Where the contractor has given notice to [F²NHS England] under paragraph (10) that it wants to permanently opt out, the temporary opt out is to be followed by a permanent opt out beginning on the day after the end date of the temporary opt out notice unless [F²NHS England] refuses the contractor's request to permanently opt out by giving notice in writing to the contractor to this effect.

(12) A temporary opt out or a permanent opt out commences, and a temporary opt out ends, at 8.00am on the relevant day unless—

- (a) the day is Saturday, Sunday, Good Friday, Christmas Day or a bank holiday in which case the opt out is to take effect on the next working day at 8.00am; or
- (b) [F²NHS England] and the contractor agree a different day or time.

Changes to legislation: *The National Health Service (General Medical Services Contracts) Regulations 2015, Section 36 is up to date with all changes known to be in force on or before 09 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

Textual Amendments

- F1** Words in [reg. 36](#) heading substituted (1.10.2021) by [The National Health Service \(General Medical Services Contracts and Personal Medical Services Agreements\) \(Amendment\) \(No. 2\) Regulations 2021 \(S.I. 2021/995\)](#), [reg. 1\(2\)](#), [Sch. 1 para. 22\(2\)](#) (with [reg. 3](#))
- F2** Words in Regulations substituted (6.11.2023) by [The Health and Care Act 2022 \(Further Consequential Amendments\) \(No. 2\) Regulations 2023 \(S.I. 2023/1071\)](#), [reg. 1\(1\)](#), [Sch. para. 1](#)
- F3** Words in [reg. 36\(3\)\(a\)](#) substituted (1.10.2021) by [The National Health Service \(General Medical Services Contracts and Personal Medical Services Agreements\) \(Amendment\) \(No. 2\) Regulations 2021 \(S.I. 2021/995\)](#), [reg. 1\(2\)](#), [Sch. 1 para. 22\(3\)\(a\)](#) (with [reg. 3](#))
- F4** Words in [reg. 36\(3\)\(b\)](#) substituted (1.10.2021) by [The National Health Service \(General Medical Services Contracts and Personal Medical Services Agreements\) \(Amendment\) \(No. 2\) Regulations 2021 \(S.I. 2021/995\)](#), [reg. 1\(2\)](#), [Sch. 1 para. 22\(3\)\(b\)](#) (with [reg. 3](#))
- F5** Words in [reg. 36\(6\)](#) substituted (1.10.2021) by [The National Health Service \(General Medical Services Contracts and Personal Medical Services Agreements\) \(Amendment\) \(No. 2\) Regulations 2021 \(S.I. 2021/995\)](#), [reg. 1\(2\)](#), [Sch. 1 para. 22\(4\)](#) (with [reg. 3](#))
- F6** Words in [reg. 36\(8\)\(a\)](#) substituted (1.10.2021) by [The National Health Service \(General Medical Services Contracts and Personal Medical Services Agreements\) \(Amendment\) \(No. 2\) Regulations 2021 \(S.I. 2021/995\)](#), [reg. 1\(2\)](#), [Sch. 1 para. 22\(5\)](#) (with [reg. 3](#))
- F7** Words in [reg. 36\(10\)](#) substituted (1.10.2021) by [The National Health Service \(General Medical Services Contracts and Personal Medical Services Agreements\) \(Amendment\) \(No. 2\) Regulations 2021 \(S.I. 2021/995\)](#), [reg. 1\(2\)](#), [Sch. 1 para. 22\(6\)](#) (with [reg. 3](#))

Changes to legislation:

The National Health Service (General Medical Services Contracts) Regulations 2015, Section 36 is up to date with all changes known to be in force on or before 09 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.

[View outstanding changes](#)

Changes and effects yet to be applied to the whole Instrument associated Parts and Chapters:

Whole provisions yet to be inserted into this Instrument (including any effects on those provisions):

- Sch. 3 para. 2(3)(4) inserted by [S.I. 2024/575 Sch. 1 para. 7\(a\)\(ii\)](#)
- Sch. 3 para. 18(3)(3A) substituted for Sch. 3 para. 18(3) by [S.I. 2024/575 Sch. 1 para. 10](#)