

**EXPLANATORY MEMORANDUM TO**  
**THE NATIONAL HEALTH SERVICE (GENERAL MEDICAL SERVICES**  
**CONTRACTS AND PERSONAL MEDICAL SERVICES AGREEMENTS)**  
**(AMENDMENT) REGULATIONS 2015**

**2015 No. 196**

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 This Instrument amends the following sets of Regulations relating to the provision of primary medical services:-
    - i. The National Health Service (General Medical Services Contracts) Regulations 2004 (SI 2004/291) (GMS Contracts Regulations) which set out the framework for General Medical Services (GMS) contracts.
    - ii. The National Health Service (Personal Medical Services Agreements) Regulations 2004 (SI 2004/627) (PMS Agreements Regulations) which set out the framework for Personal Medical Services (PMS) agreements.
  - 2.2 The amendments implement the agreement between the NHS Commissioning Board and the British Medical Association on changes to primary medical care contracts from 1 April 2015.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
  - 3.1 The Joint Committee on Statutory Instruments (“the Committee”) wrote to the Department of Health on 19 November raising concerns about the drafting of footnotes relating to provision for the Friends and Family Test in the National Health Service (General Medical Services Contracts and Personal Medical Services Agreements)(Amendment No.2)Regulations 2014 (SI 2014/2721). The Department of Health responded to the Committee on 26<sup>th</sup> November, accepting the points raised and setting out proposed ways in which the concerns would be addressed, including issuing correction slips to amend the footnote errors. The Committee should note that the provision in relation to the Friends and Family Test, inserted by S.I. 2014/271, is to be substituted, in a slightly amended form, by regulations 10 and 23 of this instrument. The substituted provisions take into account the Committee’s earlier concerns about footnotes.

3.2 The Committee has also previously made the point that the number of amendments made to SI 2004/291 and SI 2004/627 since their coming into force have made it difficult to understand the requirements of that legislation. JCSI suggested that the regulations are consolidated. The Department of Health undertook to prepare consolidated regulations to come into force by 1 April 2015. While good progress has been made on consolidation of regulations and amendments, the current Parliamentary timetable does not allow a sufficient period for the draft consolidating regulations to be finalised and for adequate consultation with stakeholders in respect of the consolidated versions to take place in the time before Parliament is likely to be prorogued. Earl Howe wrote to the Committee on 13 January 2015 to apologise for the delay and to advise that the consolidated regulations are now planned to come into force as soon as possible after the General Election. A copy of the letter from Earl Howe is attached to this EM.

#### **4. Legislative Context**

4.1 Part 4 of the NHS Act 2006 currently requires the NHS Commissioning Board to secure the provision of primary medical services in England. It makes provision for regulations to be made to govern primary medical services contracts.

4.2 Agreement was reached between NHS Employers, on behalf of the NHS Commissioning Board, and the GPC on changes to be made to primary care contracts from 1<sup>st</sup> April 2015.

4.3 This instrument amends the GMS Contracts Regulations and the PMS Agreements Regulations which contain the mandatory contractual terms that must be contained in primary medical services contracts and agreements made between the NHS Commissioning Board and primary medical services contractors.

#### **5. Territorial Extent and Application**

5.1 This Instrument applies to England only.

#### **6. European Convention on Human Rights**

6.1 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?**

**The requirement for a named, accountable, GP for all patients**

- 7.1 Government has given a commitment to provide all patients with a named, accountable, GP who will take lead responsibility for co-ordination of all appropriate services required under their contract and ensure they are delivered to each of their patients when required.
- 7.2 This follows on from the introduction, in 2014, of a named, accountable, GP for those patients aged 75 and over.

### **Provision of NHS Primary Medical Services to certain armed forces personnel**

- 7.3 Health care for armed forces personnel is provided by the Defence Medical Services (DMS). Regulations currently require that patients who join HM Forces are removed from the list of GPs providing NHS primary medical services.
- 7.4 A prescribed group of armed forces personnel will be able to register for NHS primary medical services where approved by DMS. Patients will be given a notice of approval from DMS and a summary of their medical record to take to the NHS GP practice.

### **Publication of earnings information**

- 7.5 Requirement on primary medical services contractors to publish details of the mean net earnings of GPs in their practice. Earnings for 2014/15 to be published on practice websites by 31 March 2016. Contractors will also be required to publish the number of full and part time GPs associated with the published figure.

### **Extension of the scope of online access to medical records and improvement in online appointment booking**

- 7.6 Introduces provision for patients to have access to more detailed information that is held within the patient's medical record. Increased number of appointments available to book online.

### **The requirement to establish a patient participation group**

- 7.7 It will now be a mandatory contractual requirement on primary medical services contractors to establish a patient participation group to obtain the views of patients and to enable patients to give feedback to the practice.
- 7.8 Currently, requirements are contained in a directed enhanced service under Secretary of State Directions. Under these directions, participation in the scheme is optional.

### **The requirement to establish an alcohol related risk reduction scheme**

- 7.9 It will now be a mandatory contractual requirement on primary medical services contractors to establish an alcohol related risk reduction scheme

to review newly registered patients aged 16 and over to identify those possibly drinking alcohol at increasing risk or higher risk levels.

- 7.10 Currently, requirements are contained in a directed enhanced service under Secretary of State Directions. Under these directions, participation in the scheme is optional.

### **Provision of information on out of hours services**

- 7.11 Contractors who provide services to their patients out of hours are required to provide information to their Clinical Commissioning Group, as commissioners of out of hours services, to ensure that out of hours services are being delivered in line with National Quality Requirements.

### **NHS Contracts and NHS Disputes**

- 7.12 Amendment following a High Court judgement in the case of NHS England v Bargain Dentist.com and others [2014] EWHC1994(QB) on 18<sup>th</sup> June 2014.
- 7.13 Providers of NHS primary medical services may choose their contract with NHS England to be either an NHS contract or a non-NHS contract. Disputes arising from NHS contracts are determined by the NHS Litigation Authority. Disputes arising from non-NHS contracts are determined through the Courts unless the contractor opts to use the NHS disputes procedure.
- 7.14 Contractors may alter the status of their contract if they wish. Currently, if the holder of an NHS contract changes the status of the contract to a non-NHS contract any disputes, relating to the period when the contract was an NHS contract may not be determined by the NHS Litigation Authority.
- 7.15 Amendments provide for disputes arising from contracts deemed NHS primary medical services contracts to be heard by the NHS Litigation Authority despite the contractor subsequently changing the status of the contract to a non-NHS contract.

### **Responsibility for Out of area patients**

- 7.16 Regulations prevent a contractor from removing a patient from their list of registered patients on grounds of the patient's medical condition.
- 7.17 Contractors who have registered patients from outside of their practice boundary will be permitted to remove such patients from their list if there is a change in the patient's medical condition which means it is, in the opinion of the contractor, no longer clinically appropriate or practical for that patient to be registered with a practice away from their home area.

## **Friends and Family Test**

- 7.18 Amendments to primary medical services regulations, made in October 2014, introduced requirements for practices to give patients the opportunity to provide feedback about the service received from the practice through the Friends and Family Test. Contractors were also required to publish the results of responses to the test, at local level in a manner approved by the Board.
- 7.19 Guidance issued by the NHS Commissioning Board was not specific about the manner of publication. As such, these regulations substitute the wording of the Friends and Family Test provision in a slightly amended form so as to remove the reference to publication “*at local level*”.

## **Consolidation**

- 8.1 The Department proposed to consolidate the GMS Contracts Regulations and the PMS Agreements Regulations 2014 by 1 April 2015. It is now proposed that consolidated regulations will come into force as soon as possible after the General Election.

## **8. Consultation outcome**

- 9.1 The Department of Health has consulted the British Medical Association (BMA), the Royal College of Nurses, the National Association of Primary Care, NHS Alliance, the Family Doctors’ Association and the NHS Commissioning Board on the proposed changes to the regulations.
- 9.2 It is usual practice to consult the BMA on any proposed changes to the GMS contract regulations. However, we have widened the group of bodies consulted to those who may represent personal medical service contractors or who represent those involved in the commissioning or provision of primary medical services.
- 9.3 The BMA have commented on the draft regulations. We have responded to the comments received and made appropriate changes to the Regulations – although none of the comments received were particularly contentious.

## **9. Guidance**

- 10.1 As holders of the contract, the NHS Commissioning Board propose to issue guidance to their areas teams on implementing the contractual changes.

## **10. Impact**

- 11.1 There is no impact on business, charities or voluntary bodies.
- 11.2 There is no negative impact on the public sector.

## **11. Regulating small business**

- 12.1 GP practices are exempt from the Small Firm Impact Test as they are considered as part of the public sector due to their provision of primary medical services for the NHS. Public sector organisations are exempt from this test

## **12. Monitoring & review**

- 13.1 Monitoring of GMS and PMS contracts is the responsibility of the NHS Commissioning Board however the Secretary of State has responsibility for the terms of contracts contained in regulations and for the consolidation of those regulations.

## **13. Contact**

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

**Sarah Burrow** at the Department of Health Tel: 0113 254 6323 or email: [sarah.burrow@dh.gsi.gov.uk](mailto:sarah.burrow@dh.gsi.gov.uk) can answer any queries regarding the instrument.