

EXPLANATORY MEMORANDUM TO
THE NATIONAL HEALTH SERVICE (GENERAL MEDICAL SERVICES
CONTRACTS AND PERSONAL MEDICAL SERVICES AGREEMENTS)
(AMENDMENT) REGULATIONS 2019

2019 No. 1137

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department of Health and Social Care 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 2015 (SI 2015/1862) (GMS Contracts Regulations) which set out the framework for General Medical Services (GMS) contracts; and:
 - ii. The National Health Service (Personal Medical Services Agreements) Regulations 2015 (SI 2015/1879) (PMS Agreements Regulations), which set out the framework for Personal Medical Services (PMS) agreements.
- 2.2 The amendments implement the agreement between NHS England (the operating name of the NHS Commissioning Board) and the General Practitioners Committee (GPC) of the British Medical Association (BMA) on changes to primary medical services (GP) contracts from 1st October 2019.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments.

- 3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 As the instrument is subject to the negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is England.
- 4.2 The territorial application of this instrument is England.

5. European Convention on Human Rights

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

6. Legislative Context

- 6.1 Part 4 of the National Health Service Act 2006 requires NHS England to secure the provision of primary medical services in England. It makes provision for regulations to be made to govern the terms of primary medical services contracts.
- 6.2 Agreement has been reached between NHS England and the GPC on changes to be made to primary medical services contracts for 2019-20.
- 6.3 This instrument is being made to amend existing regulations to reflect the terms which will form part of the GP contract. Such amendments are made annually.

7. Policy background

What is being done and why?

- 7.1 The new GP contract agreement (between NHS England, the Government and the BMA on behalf of the GP profession) seeks to create a five-year framework for GPs (see: <https://www.england.nhs.uk/publication/gp-contract-five-year-framework/>). This will support the delivery of the NHS Long Term Plan, announced in January 2019 (see: <https://www.england.nhs.uk/long-term-plan/>). The Statutory Instrument contains the following amendments:

Removal of contraceptive services from the list of optional Additional Services and addition to Essential Services.

- 7.2 Under these proposed amendments, contraceptive services will be removed from the list of Additional Services contractors can opt to provide and will be added to the Essential Services that contractors must provide. This cost-neutral move will help provide clarity and consistency in the provision of services, ensure that both practices and commissioners are clear on their obligations and provide equality of access to these services for patients. Services covered include general contraceptive advice concerning safe sexual practices and barrier methods; oral contraception; intramuscular depot injections; advice regarding long acting reversible contraception and oral post coital contraception.

Restrictions on provision of private GP services.

- 7.3 This proposed amendment provides that a practice will only be permitted to provide private primary medical services to persons other than its patients at times when it is not contracted to provide services for the NHS and from premises that are not funded by the NHS. The intention of these changes is to make absolutely clear that private services must be completely separate to NHS services. The exception to this is the provision of travel vaccines which are not funded under the contract, but which can be provided on premises which attract NHS funding. However, they must still be provided outside of core NHS hours.

Preventing GPs from charging for completion of a Mental Health Evidence Form.

- 7.4 The form is a tool enabling debt advisers and creditors to request clear, relevant and comprehensive information from GPs, as appropriate to each given situation. Creditors on receipt of a completed form should then be in a better position to make appropriate decisions about the debts of their customers. Under this proposed amendment, GPs will not be able to charge for filling out a debt and mental health

evidence form or for an examination of the patient or the patient's medical record required to do so.

A requirement for all practices to use electronic repeat dispensing (eRD).

- 7.5 This proposed amendment requires prescribers to issue an electronic repeat dispensing prescription if it is clinically appropriate and to do so if the patient consents. The technology to use eRD has been in place for some time; the use of eRD confers significant benefits in terms of reduced practice workload, a more efficient prescribing process and a much more convenient process for patients.

An obligation to ensure that a minimum of 25% of GP appointments are made available for registered patients to book online.

- 7.6 The 2019/20 contract reform agreement sets out some ambitious proposals for a step change in the provision of digital primary care; one of the building blocks for doing so is increasing patient use of online services. This proposed amendment provides that practices will need to ensure that a minimum of 25% of their daily appointments are available for online booking provided they have access to computers systems and software which allow this.

A requirement for new registrants to have full online access to prospective data on their patient record from October 2019.

- 7.7 This proposed amendment is a first step in the planned full digitisation of patient records; it provides for newly registered patients to have full online access to prospective data so far as computer systems and redaction software allow. It is anticipated that from April 2020 all patients will have full access to their online record.

Removal of a provision for practices to provide GP access data.

- 7.8 Clinical Commissioning Groups (CCGs) already have to provide a monthly return to NHS England reporting on the CCG Improving Access Framework; this duplicates the GP access data which practices also provide. This proposed amendment, which removes the need for GPs to continue to provide GP access data, will therefore reduce the administrative burden on their practices.

Insertion into the Regulations of an updated table providing up-to-date information on indicators no longer in the Quality and Outcomes Framework.

- 7.9 The Quality and Outcomes Framework (QOF) is a voluntary pay-for-performance scheme within GMS and PMS Contracts and which aims to support practices to deliver good quality care. It provides quality incentives by using a set of agreed clinical indicators, with payments to practices based on their achievement against those indicators. QOF is periodically updated, with new indicators being introduced and existing indicators withdrawn. Following a review, NHS England has recently published a revised set of QOF indicators for 2019/20 – these are set out in the Statement of Financial Entitlement Amendments 2019 (please see: <https://www.gov.uk/government/publications/gp-contract-directions-2019-to-2020>). There is clinical and public health value in continuing to measure activity against the indicators no longer in QOF; the proposed revised table makes clear which indicators these are and in respect of which practices must allow extraction of information from their computer systems by NHS Digital.

Improvements to the Medicines and Healthcare products Regulatory Agency (MHRA) Clinical Alert System, (used in the NHS to issue safety alerts to all providers, including GP practices).

- 7.10 The proposed amendment seeks to make it a contractual requirement for practices to provide an email address and mobile phone number for the system, so that alerts can be sent directly to them. The MHRA are confident the alerts will arrive quicker as they will no longer be sending them to NHS England to then forward on. There will be a resource saving for the NHS England Regional Offices.

Direct booking of appointments from the NHS 111 service into GP practices.

- 7.11 This proposed amendment seeks to make it a requirement for all practices to allow the direct booking of clinician-assessed patient appointments from the NHS 111 service into the practice. This process is already happening in some places around the country and will provide a more seamless transfer of care for patients requiring face-to-face assessment, as well as an additional access point into general practice. Such appointments count as part of the required quotient of 25% of appointments to be made available for online booking. Practices will make available one appointment per whole three thousand registered patients each day, from existing appointments. They may be asked to make more available in future.

Duty requiring practices not part of a Primary Care Network (PCN) to co-operate with a Network.

- 7.12 This proposed amendment requires a contractor, which is not signed up to the Network Contract Directed Enhanced Service (DES) and not part of a PCN, to co-operate with contractors who are, in order to facilitate access by its patients to services provided by these other practices. Any practice not signed up to the DES will have its patient list, for the purposes of PCN services, added to a local PCN. Those patients will then receive PCN services under a locally-commissioned agreement.

Use of the NHS logo in GP practices, to ensure greater uniformity.

- 7.13 This proposed amendment seeks to make it a contractual requirement that where practices choose to apply the NHS primary care logo to their NHS-provided services, they must have regard to the NHS Identity Guidelines and correctly apply the logo to all information and materials about those NHS services.

A duty for practices to promote six national NHS marketing campaigns a year, as community pharmacists already do.

- 7.14 This proposed amendment requires practices to take part in up to 6 marketing campaigns in each financial year as reasonably requested by NHS England. It is envisaged that this will include displaying campaign material in practice premises – posters and display cards for reception counters and leaflet dispensers with leaflets, window stickers, and digital display images. A similar requirement is already in place for community pharmacists and can be found in the ***NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013*** at Schedule 4, Part 4, 16 – 18 (pp.145-6 - see: https://www.legislation.gov.uk/uksi/2013/349/pdfs/uksi_20130349_en.pdf)

Restrictions on the advertising of private GP services.

- 7.15 This proposed amendment seeks to prevent a practice from advertising private GP services in any leaflets, on its practice website or in any other written format where it

also advertises its NHS services. This is to ensure that there is separation between NHS and non-NHS services.

8. European Union (Withdrawal) Act / Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 The NHS (General Medical Services Contracts) Regulations and the NHS (Personal Medical Services Agreements) Regulations were consolidated in December 2015. These are only the fifth set of amendments to those regulations since that date. The Department does not consider that there is a current need to further consolidate these regulations.

10. Consultation outcome

10.1 There is no statutory requirement to consult on proposals to amend the GP contract regulations. However, the contract changes are negotiated with the GPC and the Department has referred a draft of the proposed amendments to the BMA, who are the recognised representatives of GPs for these purposes and to NHS England for their consideration and comment.

10.2 In July 2018 NHS England held a General Medical Services (GMS) contract patient engagement event.

10.3 The BMA have commented on the draft amendment regulations. We have responded to the comments received and made appropriate changes to the Regulations – although none of the comments received were particularly contentious.

11. Guidance

11.1 NHS England has published guidance on implementing the contractual changes. See: <https://www.england.nhs.uk/publication/2019-20-general-medical-services-gms-contract-guidance-and-audit-requirements-for-gms-contract/>.

12. Impact

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

12.2 There is no, or no significant, impact on the public sector.

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

13. Regulating small business

13.1 Although many GP practices are small businesses, they are nevertheless exempt from the Small Firm Impact Test. This is because they are considered as part of the public sector due to their provision of primary medical services for the NHS.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is the responsibility of NHS England. However, the Secretary of State has responsibility for the terms of contracts contained in regulations and for the consolidation of those regulations.

14.2 The Regulations do not include a statutory review clause.

15. Contact

15.1 Grant Hibberd at the Department of Health and Social Care, (Telephone: 0207 972 2325 or email: grant.hibberd@dhsc.gov.uk) can be contacted with any queries regarding the instrument.

15.2 Ed Scully, Deputy Director for Primary Care at the Department of Health and Social Care can confirm that this Explanatory Memorandum meets the required standard.

15.3 Seema Kennedy, Parliamentary Under Secretary of State for Public Health and Primary Care at the Department of Health and Social Care, can confirm that this Explanatory Memorandum meets the required standard.