

EXPLANATORY MEMORANDUM TO
THE NATIONAL HEALTH SERVICE (GENERAL MEDICAL SERVICES
CONTRACTS AND PERSONAL MEDICAL SERVICES AGREEMENTS)
(AMENDMENT) REGULATIONS 2020

2020 No. 226

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 Regulations relating to the provision of primary medical services in England:

- i. the National Health Service (General Medical Services Contracts) Regulations 2015 (SI 2015/1862) (the “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) (the “PMS Agreements Regulations”), which set out the framework for Personal Medical Services (“PMS”) agreements.

2.2 The amendments implement parts of the agreements 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 made in 2019 and 2020.

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 there are no matters relevant to Standing Order Nos. 83P and 83T of the Standing Orders of the House of Commons relating to public business at this stage.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England and Wales.

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 (c. 41) 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 contracts under which primary medical services.
- 6.2 Agreement has been reached between NHS England and the GPC on changes to be made to primary medical services contracts for 2020-21.
- 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 twice a year.

7. Policy background

What is being done and why?

- 7.1 The GP contract agreement signed in 2019 (between NHS England, the Government and the BMA on behalf of the GP profession) created a five-year framework for GPs (see: <https://www.england.nhs.uk/publication/gp-contract-five-year-framework/>). This is supporting the delivery of the NHS Long Term Plan, announced in January 2019 (see: <https://www.england.nhs.uk/long-term-plan/>). The amendments listed here are being made as a result of actions agreed in the five-year framework and the Long-Term Plan. Additional changes will be taken forward later in 2020. Following the conclusion of the negotiations between the BMA and NHS England over changes to the GP contract for 2020/21, an Update to the GP contract agreement 2020/21-2023/24 was published by NHS England in February 2020 (see: <https://www.england.nhs.uk/publication/investment-and-evolution-update-to-the-gp-contract-agreement-20-21-23-24/>). The Statutory Instrument contains the following amendments:

Mandating of a postnatal maternal consultation

- 7.2 Under the amendments, GPs will be required to offer a maternal postnatal check to all of their registered female patients who give birth. The consultation must be with a GP and take place separate from any check of the baby's health. The consultation is generally expected to take place 6-8 weeks after the baby is delivered and will focus on the physical and mental health, and the well-being, of the female patient.

Phasing out of fax machines from primary care settings

- 7.3 Provision is added to the GMS Contracts Regulations and the PMS Agreement Regulations to make clear that, from 1 April 2020, GP practices should no longer use facsimile (fax) machines for either NHS or patient communications where there is a secure electronic alternative means of communication available, such as NHS Mail. This provision follows Investment and evolution, the five-year framework for GP contract reform to implement the NHS Long Term Plan, published in 2019¹, which gave a commitment that by April 2020, practices will no longer use facsimile machines for either NHS or patient communications, to improve patient safety and cyber security, as well as to cut costs. Practices may still use them for private work if

¹ Investment and Evolution: A five-year framework for GP contract reform to implement The NHS Long Term Plan can be viewed at <https://www.england.nhs.uk/wp-content/uploads/2019/01/gp-contract-2019.pdf>. Hard copies can be obtained at NHS England, PO Box 16738, Redditch, B97 9PT.

they wish. NHS Digital² has produced guidance for general practice that sets out a clear process for phasing out use of fax machines for NHS communications – see: <https://www.england.nhs.uk/publication/practice-guidance-removal-of-facsimile-fax-machines-from-general-practice/>.

Requirement that all GP practices have an up-to-date and informative online presence.

- 7.4 The GMS Contracts Regulations and the PMS Agreements Regulations are amended so that all GP practices are required to have an online presence, most usually a practice website. The GP practice must ensure that all of the information required to be included in their practice leaflet is available on the website or in the profile along with information about earnings, the availability of online services and information about the practice’s accountable GP. The information available must be reviewed at least once a year and, if necessary, updated. It must also be updated during the course of the year if there are changes to any of the GP practice’s contact details. All GP practices will also be required to maintain their profile page on the NHS website at <https://www.nhs.uk/>.

Changes to ensure that practices offer all patients online access to all prospective data³ on their patient record, from April 2020, and provide access to the full digital historical record on request.

- 7.5 Building on a longstanding requirement to provide online access to patient records, and more recent provisions made in October 2019, to require contractors to offer (as far as their computerised clinical systems and redaction software allow) all patients online access to all information on their patient record entered after 1 April 2020 at latest (“their prospective record”). If this requirement results in a large number of requests that adversely affect contractors’ ability to provide business as usual essential services, we have agreed that they may reasonably delay providing access so to those prospective records so as not to jeopardise those services; and if requested by individual patients, to provide online access to all historic information on their patient record.
- 7.6 In all cases exceptions apply for providing access to sensitive and third-party information, and these provisions comply with requirements under the General Data Protection Regulation (GDPR).

Amendments in relation to electronic repeat dispensing

- 7.7 It is now possible for a patient to make use of the electronic prescription service (EPS) even if they have not nominated a specific dispenser to dispense their prescription. Where a patient chooses not to nominate a dispenser, a contractor may issue the patient with an EPS token, which will include a barcode to allow any dispenser with the necessary access to the EPS (in the most common case, a community pharmacy) to retrieve the required information from the NHS Spine. (This supports the IT infrastructure for health and social care in England, connects clinicians and patients to essential national healthcare services and allows information to be shared securely through national services such as the Electronic Prescription Service, Summary Care

² NHS Digital is the national information and technology partner to the health and social care system, providing information, data and IT systems for commissioners, analysts and clinicians – see: <https://digital.nhs.uk/>.

³ This means all information after an agreed fixed date, which will be either 1 October 2019 or 1 April 2020 depending on date of patient registration.

Record and the e-Referral Service). Regulation 60A of the GMS Contracts Regulations and regulation 53A of the PMS Agreements Regulations are being amended so that prescribers are required, if it is clinically appropriate to do so and the patient consents, to issue a prescription in a form that can be used for electronic repeat prescribing even where there is no nominated dispenser.

Minor changes - change of email address to which information relating to overseas visitors is sent and amendments to the child health surveillance service

7.8 Regulation 74F of the GMS Contracts Regulations and regulation 67F of the PMS Agreements Regulations are amended to update the addresses to which information from primary care settings relating to overseas visitors has to be sent. Currently, when a patient who is from overseas provides the contractor, on first registration, with details of their European Health Insurance Card (EHIC), their Provisional Replacement Certificate (PRC), or an S1 Healthcare Certificate, the contractor must send that information respectively either to NHS Digital or the Department for Work and Pensions (DWP). Processing of information relating to S1 healthcare certificates has been transferred from the Department of Work and Pensions to the NHS Business Services Authority. A minor amendment is made to the child health surveillance additional service as set out at paragraph 6 of Schedule 1 to the GMS Contracts Regulations so that it refers to the fifth, rather than the fourth, edition of the publication “Health for All Children”. (The fifth edition by Alan Emond was published by Oxford University Press on 28th February 2019).

7.9 Changes to related APMS Directions will be made separately for April 2020.

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 GMS Contracts Regulations and the PMS Agreements Regulations were consolidating instruments. Both sets of Regulations have since been amended; however, 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 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 The BMA have commented on the draft amendment regulations. We have responded to the comments received and made appropriate changes to the Regulations.

11. Guidance

11.1 NHS England will publish guidance ahead of the 1st April implementation. There is a range of supporting material on the 2020/21 GP contract page – see <https://www.england.nhs.uk/gp/investment/gp-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 A full Impact Assessment has not been prepared for this instrument as no, or no significant impact, on the private, voluntary or public sector is foreseen.

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, GP legislation policy and parliamentary business officer at the Department of Health and Social Care, can be contacted with any queries regarding these Amending Regulations and this Explanatory Memorandum. Please email: generalpracticemailbox@dhsc.gov.uk.
- 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 Jo Churchill, Parliamentary Under Secretary of State for Prevention, Public Health and Primary Care at the Department of Health and Social Care, can confirm that this Explanatory Memorandum meets the required standard.