

**EXPLANATORY MEMORANDUM TO**  
**THE NATIONAL HEALTH SERVICE (GENERAL MEDICAL SERVICES**  
**CONTRACTS AND PERSONAL MEDICAL SERVICES AGREEMENTS)**  
**(AMENDMENT) (NO. 2) REGULATIONS 2022**

**2022 No. 687**

**1. Introduction**

1.1 This explanatory memorandum has been prepared by the Department of Health and Social Care (DHSC) 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 (S.I. 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 (S.I. 2015/1879) (the “PMS Agreements Regulations”), which set out the framework for Personal Medical Services (PMS) agreements.

2.2 Every GP practice must hold a National Health Service (NHS) GP contract to run an NHS-commissioned general practice. The contract sets out mandatory requirements and services for all general practices, as well as making provisions for several types of other services that practices may also provide, if they so choose. There are three different types of GP contract arrangements in England: GMS, PMS and Alternative Provider Medical Services (APMS). These regulations relate to GMS and PMS contracts only and do not affect APMS contracts, which will be amended by way of directions at a later date, to come into force at the same time as these regulations. All types of contract are managed by NHS England or Integrated Care Boards (ICBs).

2.3 This instrument makes amendments relating to deceased patients’ records and covid vaccine exemption certification.

2.4 The amendments in this instrument relating to *records of deceased patients* (see paragraphs 7.2-7.3) implement the commitment in *General practice contract arrangements in 2022/23* (published by NHS England/ NHS Improvement with the support of the Secretary of State, following GP contract negotiations with the GPC – available at [https://www.england.nhs.uk/wp-content/uploads/2022/03/B1375\\_Letter-re-General-practice-contract-arrangements-in-2022-23\\_010322.pdf](https://www.england.nhs.uk/wp-content/uploads/2022/03/B1375_Letter-re-General-practice-contract-arrangements-in-2022-23_010322.pdf)) to remove the requirement for contractors to send copies of the records of their deceased patients to NHS England. This is to reflect the Department and NHS England’s understanding that contractors rather than NHS England are responsible for responding to requests for these records made under the Access to Health Records Act 1990 (AHRA); this means there is not a need to require contractors to send copies of these records to NHS England.

2.5 The amendments relating to *confirmation by GPs of patients who should not be vaccinated against/vaccinated and tested for coronavirus* (see paragraphs 7.4 – 7.7) are being made to reflect the closure of the NHS COVID-19 exemptions service. They

do so by requiring contractors to respond to a valid request for confirmation of exemption from COVID-19 vaccination only when there is legislation or guidance in place requiring individuals to be vaccinated against COVID-19 or prove they are exempt from this for clinical reasons.

### **3. Matters of special interest to Parliament**

#### *Matters of special interest to the Joint Committee on Statutory Instruments*

3.1 None.

### **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 this instrument is subject to 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 are provided.

6.2 This instrument is being made to amend existing regulations to reflect the terms which will form part of the GP contract.

6.3 Various amendments have already been made to existing regulations to reflect some of the changes agreed in *Investment and evolution* (2019), *Update to the GP contract agreement 2020/21 – 2023/24* (2020) and subsequent contract negotiations (most recently: the NHS (General Medical Services Contracts and Personal Medical Services Agreements) (Amendment) (No. 2) Regulations 2021; and The NHS (General Medical Services Contracts and Personal Medical Services Agreements) (Amendment) Regulations 2022).

6.4 The provisions in this instrument relating to *confirmation by GPs of patients who should not be vaccinated against/vaccinated and tested for coronavirus* amend provisions introduced by the National Health Service (General Medical Services Contracts and Personal Medical Services Agreements) (Amendment) (No. 2) Regulations 2021, which require contractors to respond to valid requests for confirmation of exemption from vaccination, or vaccination and testing, for COVID-19. Those provisions were introduced in October 2021 to support the introduction of the NHS COVID-19 medical exemptions service.

6.5 The amendments in this instrument relating to *records of deceased patients* remove from the GMS Contracts Regulations and PMS Agreements Regulations the current requirement in contracts for contractors to send the records of their deceased patients to NHS England.

6.6 The amendments made by this instrument will apply from 11 July 2022.

## **7. Policy background**

### *What is being done and why*

- 7.1 This instrument makes the following amendments to the GMS Contracts and PMS Agreements Regulations:

#### Deceased Patient Records

- 7.2 Currently, under GMS contracts and PMS agreements, contractors are required to send copies of deceased patients' records to NHS England. However, it is contractors rather than the NHS England who are responsible for responding to requests made under The Access to Health Records Act (AHRA).

- 7.3 This means that there is no reason to require contractors to send copies of these records to NHS England. These amendments therefore remove this requirement by removing paragraph (5) from regulation 67 of the National Health Service (General Medical Services Contracts) Regulations 2015, and by removing paragraph (6) from regulation 60 in the National Health Service (Personal Medical Services Agreements) Regulations 2015.

#### Confirmation by GPs of patients who should not be vaccinated against/vaccinated and tested for coronavirus

- 7.4 This amendment reflects the closure of the NHS COVID-19 medical exemptions service. Currently, the contract requires contractors to respond to a valid request to confirm whether a registered patient or temporary resident should not, for clinical reasons, be vaccinated with an authorised COVID-19 vaccine, or should not be tested for COVID-19 nor vaccinated with an authorised COVID-19 vaccine.

- 7.5 This amendment will mean that contractors are only required to respond to these requests if they are made at 'a relevant time', which is defined as a time in which:
- a) legislation applying in England requires a person or class of person to be vaccinated against coronavirus unless they can show that they are exempt from vaccination with an authorised vaccine for clinical reasons, or
  - b) guidance issued by, or on behalf of, the Secretary of State provides that a person or class of person should be vaccinated against coronavirus unless they can show that they are exempt from vaccination with an authorised vaccine for clinical reasons.

- 7.6 As of 1st April 2022, neither of the above legislation or guidance exists in England with regards to compulsory vaccination against COVID-19. Therefore it is anticipated that when these amendments are translated into contracts between GP practices and NHS England, contractors will not be required to respond to these requests.

- 7.7 If either a) legislation or b) guidance is issued in future which results in contractors being required to respond to these requests, contractors will be required to respond to these requests in the same manner as they were required to prior to these amendments.

## **8. European Union Withdrawal and Future Relationship**

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act 2018.

## **9. Consolidation**

- 9.1 DHSC published consolidated statutory instruments of previous existing National Health Service GMS Contracts Regulations and the PMS Agreements Regulations in 2015. Both sets of Regulations have since been amended; however, DHSC does not consider there to be a current need to further consolidate these Regulations.

## **10. Consultation outcomes**

- 10.1 The DHSC has consulted NHS England/ NHS Improvement and the GPC on this instrument. Drafts of the proposed amendments were shared with the GPC for consultation.

## **11. Guidance**

- 11.1 None.
- 11.2 NHS England will inform contractors of these amendments when they come into effect via the NHS England Primary Care Bulletin.

## **12. Impact**

- 12.1 There is no, or no significant, impact anticipated on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact anticipated on the public sector.
- 12.3 A full Impact Assessment has not been submitted with this memorandum.

## **13. Regulating small business**

- 13.1 Although many general practices are small businesses, they are nevertheless exempt from the Small Firm Impact Test.

## **14. Monitoring & review**

- 14.1 NHS England (on behalf of the Secretary of State for Health and Social Care) are responsible for monitoring the implementation of, and compliance with, this legislation; however the Secretary of State is ultimately responsible for these regulations and the policies they implement.
- 14.2 This instrument does not include a statutory review clause.

## **15. Contact**

- 15.1 Josh Bradlow at the Department of Health and Social Care Telephone: 07707 281 535 or email: [generalpracticemailbox@dhsc.gov.uk](mailto:generalpracticemailbox@dhsc.gov.uk) can be contacted with any queries regarding this instrument.
- 15.2 Mark Joannides, 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 Maria Caulfield MP, Parliamentary Under-Secretary of State for Primary Care and Patient Safety at the Department of Health and Social Care can confirm that this explanatory memorandum meets the required standard.