

EXPLANATORY MEMORANDUM TO
THE NATIONAL HEALTH SERVICE (GENERAL MEDICAL SERVICES
CONTRACTS AND PERSONAL MEDICAL SERVICES AGREEMENTS)
(AMENDMENT) REGULATIONS 2023

2023 No. 436

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 His Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 This instrument amends the following Regulations relating to the provision of primary medical services in England:
- a) 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
 - b) 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 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; APMS contracts are amended via separate directions. All types of contract are managed by NHS England (NHSE) or Integrated Care Boards (ICBs).
- 2.3 This instrument makes amendments to GMS Contracts Regulations and PMS Agreements Regulations (see further in section 7), in relation to:
- *Removal of references to medical cards (paragraphs 7.2 – 7.3);*
 - *Correction of errors in pay transparency regulations (paragraphs 7.4 – 7.6);*
 - *Patient online access to GP records (paragraphs 7.7 – 7.15);*
 - *Cloud based telephony (paragraphs 7.16 – 7.18);*
 - *Appropriate response to patient contact with the GP practice (paragraphs 7.19 – 7.22); and*
 - *Consequential amendments (paragraphs 7.23 – 7.24).*

3. Matters of special interest to Parliament

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

- 3.1 The provisions relating to *pay transparency* are made to correct defective drafting in the National Health Service (General Medical Services Contracts and Personal Medical Services Agreements) (Amendment) (No. 3) Regulations 2022 (S.I. 2022/935) (“the 2022 regulations”, which was reported by the Joint Committee on Statutory Instruments (JCSI) in their Sixteenth Report of Session 2022–23 (available at: <https://committees.parliament.uk/publications/31578/documents/177298/default>).

4. Extent and Territorial Application

- 4.1 The 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 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) (“NHS 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 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.

7. Policy background

What is being done and why?

- 7.1 With the exception of the provisions relating to *correction of errors in pay transparency regulations* (see paragraphs 7.4 – 7.6), these amendments made by these Regulations are being made to implement policies announced in *Changes to the GP Contract in 2023/24* (which was published by NHSE on 6 March 2023 and is available at: www.england.nhs.uk/long-read/changes-to-the-gp-contract-in-2023-24).

Removal of references to medical cards

- 7.2 To support the simplification of patient registration requirements for general practice, the amendments made by these Regulations removes the term ‘medical cards’ from the GMS Contracts Regulations and PMS Agreements Regulations. This is to ensure that medical cards can no longer be used by patients to support their application to register for inclusion in a contractor’s list of patients, or as a temporary resident with a contractor.
- 7.3 This amendment is necessary because medical cards are no longer issued in England. Where a patient still has a medical card, it may reference a now-defunct NHS number (consisting of letters and numbers); those NHS numbers have subsequently been replaced for all patients with an NHS number containing only numbers. It was considered that a transitional provision was not necessary, because if the patient’s medical card had a non-defunct NHS number, they could still use this NHS number to

apply to register using the standard GMS1 application form (as any other patient would). In addition, NHSE research and engagement with general practice has yet to identify any examples of medical cards currently in use by GP practices or other organisations for registration purposes; patients are instead required to complete a registration form (i.e. GMS1 form or local variant).

Correction of errors in pay transparency regulations

- 7.4 These amendments are being made in order to rectify defective drafting in the 2022 Regulations as mentioned in paragraph 3.1 above.
- 7.5 This amendment makes explicit that:
- a) Where a contract is held between a contractor and a third party ('T'), or between a sub-contractor and T; and
 - b) T is a party to a contract with a person who is engaged to work for the contractor or sub-contractor (which was entered into before T entered into the contract with the contractor or the sub-contractor, as the case may be)
- T or the sub-contractor must use only *reasonable endeavours* to vary their contracts in order to pass on the requirement to the person engaged under the contract with T to disclose information about their NHS earnings.
- 7.6 These amendments rectify defective drafting in the amendments made by the 2022 Regulations. Those amendments were interpreted by the JCSI as meaning that those parties would be *under a clear duty to vary* existing contracts to insert the requirement relating to the disclosure obligation; which was not DHSC's intent.

Patient online access to GP records

- 7.7 In January 2019, NHSE and the General Practitioners Committee (GPC) of the British Medical Association, with the support of DHSC, published *Investment and evolution: A five-year framework for GP contract reform to implement The NHS Long Term Plan* (available at: www.england.nhs.uk/wp-content/uploads/2019/01/gp-contract-2019.pdf). This committed to ensuring that, from April 2020, all patients would have online access to their full GP medical record, in order to support patients to better manage their health and long-term conditions.
- 7.8 This included a commitment to require practices to offer their newly registered patients full online access to *prospective data* in their patient records from April 2019, subject to existing safeguards for vulnerable groups and third party confidentiality and system functionality. This commitment was implemented by The National Health Service (General Medical Services Contracts and Personal Medical Services Agreements) (Amendment) Regulations 2019 (S.I. 2019/1137). This supplemented the existing requirement on practices in the GMS Contracts Regulations and PMS Agreements Regulations to promote and offer to their patients online access to coded information in their historic record.
- 7.9 In February 2020, NHSE and the GPC, with the support of DHSC, published an update to this framework (available at: www.england.nhs.uk/publication/investment-and-evolution-update-to-the-gp-contract-agreement-20-21-23-24). This included a commitment that practices would be required to offer *all* patients online access to:
- a) All prospective data on their patient record unless exceptional circumstances apply; and

- b) Upon the patient's request, the full historic patient record.
- 7.10 This commitment was implemented by The National Health Service (General Medical Services Contracts and Personal Medical Services Agreements) (Amendment) Regulations 2020 (S.I. 2020/226), which replaced the provisions referenced in paragraph 7.8.
- 7.11 The Regulations made in 2020 at the moment require contractors to, if their computerised clinical systems and redaction software allow:
- a) Offer all their registered patients online access to their prospective GP medical record (defined as information entered onto the patient's medical record after: 1 April 2020, where the patient became a registered patient before 1 October 2019; 1 October 2019, where the patient became a registered patient on or after 1 October 2019). If the patient accepts the offer, the contractor must, as soon as possible, provide the patient with the facility to access that record online.
 - b) Promote and offer to their registered patients online access to the coded information in their medical records.
 - c) Provide, upon request by the patient, online access to the rest of the patient's medical record.
- 7.12 In 2021, NHS Digital (now NHSE) launched the Accelerating Citizens Access to GP Records programme to support the delivery of online access of prospective medical records. This has developed technical capability within GPIT systems to enable registered patients aged 16 and over to automatically (i.e. by default and without needing to request access from their practice) access their prospective medical record online.
- 7.13 To standardise uptake of those technical capabilities across all practices, alongside online access for patients to their historic records, the amendments made by these Regulations require contractors to configure their computerised clinical systems to provide their registered patients with the facility to access online their medical records.
- 7.14 Where the GP practice has not, as at the coming into force date, provided the patient with the facility to access their *prospective* records online, and the patient makes a request (on or after that date but before 31 October) to be provided with the facility, the contractor must provide that facility to the patient by the end of the compliance period (which is defined as the period specified in Article 12 of the UK GDPR for compliance with a request made by virtue of Article 15 of the UK GDPR) or by 31 October (whichever is the earlier).
- 7.15 Where the contractor has not, as at 31 October 2023, provided the patient with the facility to access their medical records online, and the patient makes a request in writing to the contractor on or after that date, to be provided with that facility, the contractor must provide the patient with that facility by the end of the compliance period. For avoidance of doubt, a request made in writing includes written requests made via electronic means such as email, digital messaging systems and other patient facing applications.

Cloud based telephony

- 7.16 To make it easier for patients to speak to their practice via telephone, amendments are being made to standardise contractor uptake of approved cloud-based telephony (CBT) solutions.
- 7.17 CBT can help assist practices in redirecting calls, and provide an improved patient experience when the practice's telephone lines are busy. In addition, from the end of 2025, all analogue Integrated Services Digital Network and public switched telephone network telephone lines will be removed for use in all home and business settings; from that point, only cloud-based platforms will be supported.
- 7.18 The amendments made by these Regulations require contractors to ensure that any new contract or arrangement for telephone services (which is used by patients, or any other person, to contact the contractor's practice for, or in relation to, the services provided by the contractor) is with a supplier specified in NHSE's nationally set framework for CBT (the *Advanced Telephony Better Purchasing* framework). The solution adopted by the contractor must meet the national specification requirements and standards specified in that framework.

Appropriate response to patient contact with the GP practice

- 7.19 The amendments made by these Regulations intend to improve and standardise patient access to general practice services, by requiring contractors to ensure that a patient who contacts them in person, by telephone or online, is provided with an appropriate response. The appropriate response is that the contractor must:
- a) Invite the patient for an appointment;
 - b) Provide appropriate advice or care to the patient by another method;
 - c) Signpost the patient towards appropriate services; or
 - d) Communicate with the patient to either request further information, or to inform the patient of when and how the patient will receive further information on the services that may be provided to them.
- 7.20 This means that contractors will no longer be able to request that patients contact the practice later.
- 7.21 The contractor must provide the appropriate response on the day the patient contacts them (if the patient contacts them during core hours), or in the following core hours (if the patient contacts them outside of core hours).
- 7.22 These amendments substitute paragraph 4 of Schedule 3 of the GMS Contracts Regulations and paragraph 5 of Schedule 2 of the PMS Agreements Regulations, which require contractors to take steps to ensure that a patient without an appointment who attends the contractor's premises (during the practice's normal hours for essential services) is provided with those services during that surgery period.

Consequential amendments

- 7.23 Further to the Health and Care Act 2022 ("the 2022 Act"), these Regulations make consequential amendments to:
- a) Regulation 59B of the PMS Agreements Regulations, to include integrated care boards in the list of relevant persons with whom the contractor must co-operate, in relation to the provision of the vaccines and immunisations essential service.

- b) Paragraph 3(7) of Schedule 2A of the PMS Agreements Regulations, to reference arrangements made under section 7B of the NHS Act 2006 (which were inserted into that Act by the 2022 Act).
- 7.24 The Health and Care Act 2022 (Consequential and Related Amendments and Transitional Provisions) Regulations 2022 made equivalent consequential amendments to the GMS Contracts Regulations.
- 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.
- 9. Consolidation**
- 9.1 DHSC 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 need to consolidate these Regulations again at this time.
- 10. Consultation outcome**
- 10.1 DHSC has consulted NHSE and the GPC on this instrument. Drafts of the proposed amendments were shared with the GPC for consultation.
- 11. Guidance**
- 11.1 NHSE have issued guidance to support the implementation of the policies relating to the following provisions:
- a) *Pay transparency*: This was published on 16 March 2023 and is available at: www.england.nhs.uk/long-read/general-practice-pay-transparency-guidance.
 - b) *Patient online services*: On 21 July 2022, NHSD (now NHSE) published guidance on patients' access to their GP medical records at <https://digital.nhs.uk/records>.
 - c) *New telephone contract or arrangements*: The framework referenced in these provisions is the Advanced Telephony Better Purchasing framework (available at: <https://buyingcatalogue.digital.nhs.uk/advanced-telephony-better-purchase>).
- 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 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 NHSE (on behalf of the Secretary of State for Health and Social Care) are responsible for monitoring the implementation of, and compliance with, this instrument. However,

the Secretary of State is ultimately responsible for this instrument and the policies it implements.

14.2 This instrument does not include a statutory review clause.

15. Contact

15.1 Jane Pennifold at the Department of Health and Social Care (email: generalpracticemailbox@dhsc.gov.uk) can be contacted with any queries regarding this instrument.

15.2 Mark Joannides, Deputy Director for General Practice Policy at DHSC, can confirm that this Explanatory Memorandum meets the required standard.

15.3 Neil O'Brien MP, Parliamentary Under Secretary of State (Minister for Primary Care and Public Health) at DHSC can confirm that this Explanatory Memorandum meets the required standard.