

2010 No. 578

NATIONAL HEALTH SERVICE, ENGLAND

**The National Health Service (Primary Medical Services)
(Miscellaneous Amendments) Regulations 2010**

<i>Made</i> - - - -	<i>3rd March 2010</i>
<i>Laid before Parliament</i>	<i>5th March 2010</i>
<i>Coming into force</i> - -	<i>1st April 2010</i>

The Secretary of State for Health makes the following Regulations in exercise of the powers conferred by sections 86(1), 89, 91, 93(2), 94, 272(7) and (8) of the National Health Service Act 2006(a).

PART 1

GENERAL

Citation, commencement, application and interpretation

1.—(1) These Regulations may be cited as the National Health Service (Primary Medical Services) (Miscellaneous Amendments) Regulations 2010 and come into force on 1st April 2010.

(2) These Regulations apply in relation to England.

(3) In these Regulations—

“GMS Contracts Regulations” means the National Health Service (General Medical Services Contracts) Regulations 2004(b); and

“PMS Agreements Regulations” means the National Health Service (Personal Medical Services Agreements) Regulations 2004(c).

PART 2

AMENDMENT OF THE GMS CONTRACTS REGULATIONS

Amendment of regulation 2

2. In regulation 2(1) (interpretation) of the GMS Contracts Regulations—

(a) for the definition of “the 2003 Order” substitute—

(a) 2006 c.41. See section 275(1) for the definition of “prescribed” and “regulations”.

(b) S.I. 2004/291. Relevant amendments were made by S.I. 2004/2694, 2005/893, 3315 and 3491 and 2010/22.

(c) S.I. 2004/627. Relevant amendments were made by S.I. 2004/2694, 2005/893, 3315 and 3491 and 2010/22.

““the 2010 Order” means the Postgraduate Medical Education and Training Order of Council 2010(a);”;

- (b) omit the definitions of “FHSAA” and “medical officer”; and
- (c) in the definition of “national disqualification”, in sub-paragraph (c), for “is treated as a national disqualification by the FHSAA” substitute “was treated as a national disqualification by the Family Health Services Appeal Authority(b)”.

Amendment of regulation 4

3.—(1) Regulation 4 (conditions relating solely to medical practitioners) of the GMS Contracts Regulations is amended as follows.

(2) For paragraph (4), substitute—

“(4) In paragraphs (1), (2)(a) and (3)(a), “general medical practitioner” does not include a medical practitioner whose name is included in the General Practitioner Register by virtue of—

- (a) article 4(3) of the 2010 Order (general practitioners eligible for entry in the General Practitioner Register) because of an exemption under regulation 5(1)(d) of one or more of the sets of Regulations specified in paragraph (5);
- (b) article 6(2) of the 2010 Order (persons with acquired rights) by virtue of being a restricted services principal (within the meaning of one or more of the sets of Regulations specified in paragraph (6)) included in a list specified in that article; or
- (c) article 6(6) of the 2010 Order.”.

(3) In paragraph (5), for “paragraph (4)(a)(iii) and (b)(i)(bb)” substitute “paragraph (4)(a)”.

(4) For paragraph (6), substitute—

“(6) The Regulations referred to in paragraph (4)(b) are the National Health Service (General Medical Services) Regulations 1992, the National Health Service (General Medical Services) (Scotland) Regulations 1995 and the General Medical Services Regulations (Northern Ireland) 1997.”.

Amendment of regulation 5

4. In regulation 5 (general condition relating to all contracts) of the GMS Contracts Regulations, in paragraph (2)(k)(ii), after “(powers of the Court of Session to deal with management of charities)”, insert “or under section 34 of the Charities and Trustee Investment (Scotland) Act 2005(c) (powers of Court of Session)”.

Amendment of regulation 21

5. In regulation 21 (certificates) of the GMS Contracts Regulations, for paragraph (2), substitute—

“(2) The exception in paragraph (1)(a) does not apply where the certificate is issued in accordance with regulation 2(1) of the Social Security (Medical Evidence) Regulations 1976(d) (evidence of incapacity for work, limited capability for work and confinement) or regulation 2(1) of the Statutory Sick Pay (Medical Evidence) Regulations 1985(e) (medical information).”.

(a) S.I. 2010/473.

(b) The Family Health Services Appeal Authority was constituted under section 49S of the National Health Service Act 1977 (c.49) and was abolished on 18th January 2010 by article 3 of the Transfer of Tribunal Functions Order 2010 (S.I. 2010/22).

(c) 2005 asp 10.

(d) S.I. 1976/615. Regulation 2(1) is substituted by S.I. 2010/137.

(e) S.I. 1985/1604. Regulation 2(1) is substituted by S.I. 2010/137.

Amendment of Schedule 6

6.—(1) Schedule 6 (other contractual terms) of the GMS Contracts Regulations is amended as follows.

(2) After paragraph 1A (telephone services), insert—

“Cost of relevant calls

1B.—(1) The contractor must not enter into, renew or extend a contract or other arrangement for telephone services unless it is satisfied that, having regard to the arrangement as a whole, persons will not pay more to make relevant calls to the practice than they would to make equivalent calls to a geographical number.

(2) Where a contractor is party to an existing contract or other arrangement for telephone services under which persons making relevant calls to the practice call a number which is not a geographical number, the contractor must comply with sub-paragraph (3).

(3) The contractor must—

- (a) before 1st April 2011, review the arrangement and consider whether, having regard to the arrangement as a whole, persons pay more to make relevant calls than they would to make equivalent calls to a geographical number; and
- (b) if the contractor so considers, take all reasonable steps, including in particular considering the matters specified in sub-paragraph (4), to ensure that, having regard to the arrangement as a whole, persons will not pay more to make relevant calls than they would to make equivalent calls to a geographical number.

(4) The matters referred to in sub-paragraph (3)(b) are—

- (a) varying the terms of the contract or arrangement;
- (b) renegotiating the terms of the contract or arrangement; and
- (c) terminating the contract or arrangement.

(5) If, despite taking all reasonable steps referred to in sub-paragraph (3)(b), it has not been possible to ensure that, having regard to the arrangement as a whole, persons will not pay more to make relevant calls to the practice than they would to make equivalent calls to a geographical number, the contractor must consider introducing a system under which if a caller asks to be called back, the contractor will do so at the contractor’s expense.

(6) In this paragraph—

- (a) “existing contract or other arrangement” means a contract or arrangement that was entered into prior to 1st April 2010 and which remains in force on 1st April 2010;
- (b) “geographical number” means a number which has a geographical area code as its prefix; and
- (c) “relevant calls” means calls—
 - (i) made by patients to the practice for any reason related to services provided under the contract, and
 - (ii) made by persons, other than patients, to the practice in relation to services provided as part of the health service.”.

(3) In paragraph 11 (standards for out of hours services)—

- (a) omit “From 1st January 2005,”; and
- (b) for “14th October 2004” substitute “20th July 2006(a)”.

(4) In paragraph 20 (removal from the list at the request of the contractor), in sub-paragraph (1), for “applicant’s” substitute “patient’s”.

(5) In paragraph 73 (patient records), in sub-paragraph (4)(a), for the words from ““General Medical” to the end substitute ““General Practice Systems of Choice Level 2””.

(a) The guidance can be accessed on the following website: <http://www.dh.gov.uk>.

(6) For paragraph 80 (reports to a medical officer), substitute—

“Provision of information to a medical officer etc.

80.—(1) The contractor must, if satisfied that the patient consents—

- (a) supply in writing to any person specified in sub-paragraph (3), within such reasonable period as that person may specify, such clinical information as any of the persons mentioned in sub-paragraph (3)(a) to (d) considers relevant about a patient to whom the contractor or a person acting on behalf of the contractor has issued or has refused to issue a medical certificate; and
- (b) answer any inquiries by any person mentioned in sub-paragraph (3) about—
 - (i) a prescription form or medical certificate issued or created by, or on behalf of, the contractor, or
 - (ii) any statement which the contractor or a person acting on behalf of the contractor has made in a report.

(2) For the purposes of being satisfied that a patient consents, a contractor may rely on an assurance in writing from any person mentioned in sub-paragraph (3) that the consent of the patient has been obtained, unless the contractor has reason to believe that the patient does not consent.

(3) For the purposes of sub-paragraph (1) and (2), the persons are—

- (a) a medical officer;
- (b) a nursing officer;
- (c) an occupational therapist;
- (d) a physiotherapist; or
- (e) an officer of the Department for Work and Pensions who is acting on behalf of, and at the direction of, any person specified in paragraphs (a) to (d).

(4) In this paragraph—

- (a) “medical officer” means a medical practitioner who is—
 - (i) employed or engaged by the Department for Work and Pensions, or
 - (ii) provided by an organisation under a contract entered into with the Secretary of State for Work and Pensions;
- (b) “nursing officer” means a health care professional who is registered on the Nursing and Midwifery Register and—
 - (i) employed or engaged by the Department for Work and Pensions, or
 - (ii) provided by an organisation under a contract entered into with the Secretary of State for Work and Pensions;
- (c) “occupational therapist” means a health care professional who is registered in the part of the register maintained by the Health Professions Council under article 5 of the Health Professions Order 2001^(a) relating to occupational therapists and—
 - (i) employed or engaged by the Department for Work and Pensions, or
 - (ii) provided by an organisation under a contract entered into with the Secretary of State for Work and Pensions; and
- (d) “physiotherapist” means a health care professional who is registered in the part of the register maintained by the Health Professions Council under article 5 of the Health Professions Order 2001 relating to physiotherapists and—
 - (i) employed or engaged by the Department for Work and Pensions, or

(a) S.I. 2002/254. A relevant amendment was made by S.I. 2009/1182.

- (ii) provided by an organisation under a contract entered into with the Secretary of State for Work and Pensions.”.

(7) In paragraph 91 (entry and inspection by the Commission for Healthcare Audit and Inspection)—

- (a) for “Commission for Healthcare Audit and Inspection”, substitute “Care Quality Commission”; and
- (b) after “(right of entry)”, insert “, as modified by paragraph 15 of Schedule 3 to the Health and Social Care Act 2008 (Commencement No. 9, Consequential Amendments and Transitory, Transitional and Saving Provisions) Order 2009(a) and section 62 of the Health and Social Care Act 2008(b) (entry and inspection)”,

and in the heading to that paragraph, for “Commission for Healthcare Audit and Inspection”, substitute “Care Quality Commission”.

(8) In paragraph 113(2)(m)(ii) (which relates to other grounds for termination by the Primary Care Trust), after “(powers of the Court of Session to deal with the management of charities)”, insert “or under section 34 of the Charities and Trustee Investment (Scotland) Act 2005 (powers of Court of Session)”.

PART 3

AMENDMENT OF THE PMS AGREEMENTS REGULATIONS

Amendment of regulation 2

7. In regulation 2(1) (interpretation) of the PMS Agreements Regulations—

- (a) omit the definitions of “FHSAA” and “medical officer”; and
- (b) in the definition of “national disqualification”, in sub-paragraph (c), for “is treated as a national disqualification by the FHSAA” substitute “was treated as a national disqualification by the Family Health Services Appeal Authority”.

Amendment of regulation 5

8. In regulation 5 (general condition relating to all agreements) of the PMS Agreements Regulations, in paragraph (3)(j)(ii), after “(powers of the Court of Session to deal with management of charities)”, insert “or under section 34 of the Charities and Trustee Investment (Scotland) Act 2005 (powers of Court of Session)”.

Amendment of regulation 12

9. In regulation 12 (certificates) of the PMS Agreements Regulations, for paragraph (2), substitute—

“(2) The exception in paragraph (1)(a) does not apply where the certificate is issued in accordance with regulation 2(1) of the Social Security (Medical Evidence) Regulations 1976 (evidence of incapacity for work, limited capability for work and confinement) or regulation 2(1) of the Statutory Sick Pay (Medical Evidence) Regulations 1985 (medical information).”.

Amendment of Schedule 5

10.—(1) Schedule 5 (other contractual terms) of the PMS Agreements Regulations is amended as follows.

(2) After paragraph 2A (telephone services), insert—

-
- (a) S.I. 2009/462.
 - (b) 2008 c.14.

“Cost of relevant calls

2B.—(1) The contractor must not enter into, renew or extend a contract or other arrangement for telephone services unless it is satisfied that, having regard to the arrangement as a whole, persons will not pay more to make calls to the practice than they would to make equivalent calls to a geographical number.

(2) Where a contractor is party to an existing contract or other arrangement for a telephone service under which persons making relevant calls to the practice call a number which is not a geographical number, the contractor must comply with sub-paragraph (3).

(3) The contractor must—

- (a) before 1st April 2011, review the arrangement and consider whether, having regard to the arrangement as a whole, persons pay more to make relevant calls than they would to make equivalent calls to a geographical number; and
- (b) if the contractor so considers, take all reasonable steps, including in particular considering the matters specified in sub-paragraph (4), to ensure that, having regard to the arrangement as a whole, persons will not pay more to make relevant calls than they would to make equivalent calls to a geographical number.

(4) The matters referred to in sub-paragraph (3) are—

- (a) varying the terms of the contract or arrangement;
- (b) renegotiating the terms of the contract or arrangement; and
- (c) terminating the contract or arrangement.

(5) If, despite taking all reasonable steps referred to in sub-paragraph (3)(b), it has not been possible to ensure that, having regard to the arrangement as a whole, persons will not pay more to make relevant calls to the practice than they would to make equivalent calls to a geographical number, the contractor must consider introducing a system under which if a caller asks to be called back, the contractor will do so at the contractor’s expense.

(6) In this paragraph—

- (a) “existing contract or other arrangement” means a contract or arrangement that was entered into prior to 1st April 2010 and which remains in force on 1st April 2010;
- (b) “geographical number” means a number which has a geographical area code as its prefix; and
- (c) “relevant calls” means calls—
 - (i) made by patients to the practice for any reason related to services provided under the agreement, and
 - (ii) made by persons, other than patients, to the practice in relation to services provided as part of the health service.”.

(3) For paragraph 9 (standards for out of hours services), substitute the following—

“Standards for out of hours services

9. A contractor which—

- (a) provides out of hours services to registered patients of another contractor or provider of essential services (or their equivalent); or
- (b) has contracted to provide out of hours services to patients to whom it provides essential services under the agreement,

must, in the provision of such services, meet the quality requirements set out in the document entitled “National Quality Requirements in the Delivery of Out of Hours Services” published on 20th July 2006(a).”.

(a) The guidance can be accessed on the following website: <http://www.dh.gov.uk>.

(4) In paragraph 19 (removal from the list at the request of the contractor), in sub-paragraph (1), for “applicant’s” substitute “patient’s”.

(5) In paragraph 44 (excessive prescribing), in sub-paragraph (1) for “drugs and appliances” substitute “drugs, medicines or appliances”.

(6) In paragraph 70 (patient records), in sub-paragraph (5)(a), for the words from ““General Medical” to the end substitute ““General Practice Systems of Choice Level 2””.

(7) For paragraph 76 (reports to a medical officer), substitute—

“Provision of information to a medical officer etc.

76.—(1) The contractor must, if satisfied that the patient consents—

- (a) supply in writing to any person specified in sub-paragraph (3), within such reasonable period as that person may specify, such clinical information as any of the persons mentioned in sub-paragraph (3)(a) to (d) considers relevant about a patient to whom the contractor or a person acting on behalf of the contractor has issued or has refused to issue a medical certificate; and
- (b) answer any inquiries by any person mentioned in sub-paragraph (3) about—
 - (i) a prescription form or medical certificate issued or created by, or on behalf of, the contractor, or
 - (ii) any statement which the contractor or a person acting on behalf of the contractor has made in a report.

(2) For the purposes of being satisfied that a patient consents, a contractor may rely on an assurance in writing from any person mentioned in sub-paragraph (3) that the consent of the patient has been obtained, unless the contractor has reason to believe that the patient does not consent.

(3) For the purposes of sub-paragraph (1) and (2), the persons are—

- (a) a medical officer;
- (b) a nursing officer;
- (c) an occupational therapist;
- (d) a physiotherapist; or
- (e) an officer of the Department for Work and Pensions who is acting on behalf of, and at the direction of, any person specified in paragraphs (a) to (d).

(4) In this paragraph—

- (a) “medical officer” means a medical practitioner who is—
 - (i) employed or engaged by the Department for Work and Pensions, or
 - (ii) provided by an organisation under a contract entered into with the Secretary of State for Work and Pensions;
- (b) “nursing officer” means a health care professional who is registered on the Nursing and Midwifery Register and—
 - (i) employed or engaged by the Department for Work and Pensions, or
 - (ii) provided by an organisation under a contract entered into with the Secretary of State for Work and Pensions;
- (c) “occupational therapist” means a health care professional who is registered in the part of the register maintained by the Health Professions Council under article 5 of the Health Professions Order 2001 relating to occupational therapists and—
 - (i) employed or engaged by the Department for Work and Pensions, or
 - (ii) provided by an organisation under a contract entered into with the Secretary of State for Work and Pensions; and

(d) “physiotherapist” means a health care professional who is registered in the part of the register maintained by the Health Professions Council under article 5 of the Health Professions Order 2001 relating to physiotherapists and—

- (i) employed or engaged by the Department for Work and Pensions, or
- (ii) provided by an organisation under a contract entered into with the Secretary of State for Work and Pensions.”

(8) In paragraph 85 (entry and inspection by the Commission for Healthcare Audit and Inspection)—

- (a) for “Commission for Healthcare Audit and Inspection”, substitute “Care Quality Commission”, and
- (b) after “(right of entry)”, insert “, as modified by paragraph 15 of Schedule 3 to the Health and Social Care Act 2008 (Commencement No. 9, Consequential Amendments and Transitory, Transitional and Saving Provisions) Order 2009 and section 62 of the Health and Social Care Act 2008 (entry and inspection).”

and in the heading to that paragraph, for “Commission for Healthcare Audit and Inspection”, substitute “Care Quality Commission”.

(9) For paragraph 100 (termination by notice) substitute—

“Termination by serving notice

100.—(1) The contractor or the relevant body may terminate the agreement by serving notice in writing on the other party at any time.

(2) Where a notice is served pursuant to sub-paragraph (1) and the period of notice in relation to such termination (which must be a period of not less than six months) has previously been agreed between the parties and provided for in the agreement, the date of termination under the notice must be calculated in accordance with such agreed period of notice, and the agreement will terminate on the date so calculated.

(3) Where a notice is served pursuant to sub-paragraph (1) and no period of notice has previously been agreed between the parties and provided for in the agreement in relation to such termination, the period of notice required must be six months and the date of termination under the notice must be calculated accordingly, and the agreement will terminate on the date so calculated.

(4) This paragraph is without prejudice to any other rights to terminate the agreement which the contractor and the relevant body may have.”

(10) In paragraph 101 (late payment notices)—

- (a) in sub-paragraph (1), for “regulation 12” substitute “regulation 13”; and
- (b) in sub-paragraph (4), omit “Paragraph 100 and”.

(11) Omit paragraph 102 (termination by the relevant body: general provisions).

(12) In paragraph 105(3)(j)(ii) (which relates to termination by the relevant body on fitness grounds), after “(powers of the Court of Session to deal with the management of charities)”, insert “or under section 34 of the Charities and Trustee Investment (Scotland) Act 2005 (powers of Court of Session)”.

PART 4

AMENDMENT OF THE NATIONAL HEALTH SERVICE (PERFORMERS LISTS) REGULATIONS 2004

Amendment of regulation 23 of the National Health Service (Performers Lists) Regulations 2004

11. In regulation 23 of the National Health Service (Performers Lists) Regulations 2004(a) (application for inclusion in a medical performers list), in paragraph (2)(b), for “regulation 5(1)(d) of the Vocational Training for General Medical Practice (European Requirements) Regulations 1994” substitute “article 6(6) of the Postgraduate Medical Education and Training Order of Council 2010”.

Signed by authority of the Secretary of State for Health

3rd March 2010

Mike O'Brien
Minister of State,
Department of Health

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make amendments to the National Health Service (General Medical Services Contracts) Regulations 2004 (“the GMS Contracts Regulations”), the National Health Service (Personal Medical Services Agreements) Regulations 2004 (“the PMS Agreements Regulations”) and the National Health Service (Performers Lists) Regulations 2004 (“the Performers Lists Regulations”).

Part 2 amends the GMS Contracts Regulations. In particular:

- (a) regulation 2 amends regulation 2 of the GMS Contracts Regulations (interpretation) as a consequence of the abolition of the Family Health Services Appeal Authority by the Transfer of Tribunal Functions Order 2010 (S.I. 2010/22);
- (b) regulation 3 amends regulation 4 of the GMS Contracts Regulations (conditions relating solely to medical practitioners) as a consequence of the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2010 (S.I. 2010/234) and the Postgraduate Medical Education and Training Order of Council 2010 (S.I. 2010/473);
- (c) regulations 4 and 6(8) update references to the provisions relating to removal of a person being concerned in the management or control of a charity or body as a consequence of the Charities and Trustee Investment (Scotland) Act 2005;
- (d) regulation 5 amends regulation 21 (certificates) of the GMS Contracts Regulations as a consequence of the introduction in the Social Security (Medical Evidence) and Statutory Sick Pay (Medical Evidence) (Amendment) Regulations 2010 (S.I. 2010/137) of new rules relating to medical evidence;
- (e) regulation 6(2) inserts new provisions in respect of the use of certain telephone numbers which charge patients more than the equivalent cost of calling a geographical number;
- (f) regulation 6(3) updates the reference to requirements which a contractor must comply with in providing out of hours services;
- (g) regulation 6(4) amends an erroneous reference in paragraph 20 of Schedule 6 to the GMS Contracts Regulations.

(a) S.I. 2004/585. A relevant amendment was made by S.I. 2010/234.

- (h) regulation 6(5) updates the reference to the requirements in respect of a contractor's computer system;
- (i) regulation 6(6) makes changes to the arrangements under which contractors must disclose information (with the consent of the patient) in connection with claims for benefits; and
- (j) regulation 6(7) updates certain statutory references in relation to entry and inspection.

Part 3 makes amendments to the PMS Agreements Regulations which mirror those made to the GMS Contracts Regulations. In addition, it makes:

- (a) a minor amendment to clarify paragraph 44 of Schedule 5 to the PMS Agreements Regulations in respect of prescribing medicines (regulation 10(5)); and
- (b) amendments clarifying the provisions for termination by notice and correcting an incorrect cross reference (regulation 10(9) to (11)).

Part 4 makes an amendment to the Performers Lists Regulations consequential on the abolition of the Postgraduate Medical Education and Training Board by the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2010 and the transfer of functions from the Board to the General Medical Council. The amendment is also consequential on the associated Postgraduate Medical Education and Training Order of Council 2010.

A full regulatory impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.

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STATUTORY INSTRUMENTS

2010 No. 578

NATIONAL HEALTH SERVICE, ENGLAND

The National Health Service (Primary Medical Services)
(Miscellaneous Amendments) Regulations 2010

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