
WELSH STATUTORY INSTRUMENTS

2006 No. 358 (W.46)

NATIONAL HEALTH SERVICE, WALES

**The National Health Service (Primary Medical Services)
(Miscellaneous Amendments) (Wales) Regulations 2006**

Made - - - - 14 February 2006

Coming into force - - 1 March 2006

The National Assembly for Wales, in exercise of the powers conferred by sections 28R, 28S, 28V, 28W, 28X and 126(4) of the National Health Service Act 1977⁽¹⁾ and section 4(5) of the National Health Service and Community Care Act 1990⁽²⁾ hereby makes the following Regulations:

PART 1

GENERAL

Title, commencement, application and interpretation

1.—(1) The title of these Regulations is the National Health Service (Primary Medical Services) (Miscellaneous Amendments) (Wales) Regulations 2006 and they come into force on 1 March 2006.

(2) These Regulations apply in relation to Wales.

(3) In these Regulations—

“GMS Contracts (Wales) Regulations” means the National Health Service (General Medical Services Contracts) (Wales) Regulations 2004⁽³⁾; and

“Performers Lists (Wales) Regulations” means the National Health Service (Performers Lists) (Wales) Regulations 2004⁽⁴⁾.

(1) 1977 c. 49; sections 28R, 28S, 28V and 28W were inserted by section 175(1) of the Health and Social Care (Community Health and Standards) Act 2003 (c. 43) (“the 2003 Act”); section 28X was inserted by section 179(1) of the 2003 Act; section 126(4) was amended by the National Health Service and Community Care Act 1990 (c. 19) (“the 1990 Act”), section 65(2), the Health Act 1999 (c. 8), Schedule 4, paragraph 37(6) and the Health and Social Care 2001 (c. 15), Schedule 5, paragraph 5(13)(b).

(2) 1990 c. 19.

(3) S.I. 2004/478 (W.48).

(4) S.I. 2004/1020 (W.117) as amended by S.I. 2005/258 (W.24).

PART 2

AMENDMENT OF THE GMS CONTRACTS (WALES) REGULATIONS

Amendment of regulation 2 of the GMS Contracts (Wales) Regulations

2.—(1) Regulation 2(1) (interpretation) of the GMS Contracts (Wales) Regulations is amended as provided in the following paragraphs.

(2) In the definition of “adjudicator” for “paragraph 101(5)” substitute “paragraph 99(5)”.

(3) In the definition of “bank holiday”, after “proclaimed as a bank holiday” insert “in England and Wales”.

(4) In the definition of “general medical practitioner”—

(a) after “means” insert “, unless the context otherwise requires”;

(b) in paragraph (a), omit “otherwise than by virtue of paragraph 1(d) of Schedule 6 to that Order”;

(c) in paragraph (b)(i), after “Health and Personal Social Services (Northern Ireland) Order 1978”, insert “or a person who has an acquired right to practise as a general medical practitioner pursuant to regulation 5(1)(d) of the Vocational Training for General Medical Practice (European Requirements) Regulations 1994(5)”; and

(d) in paragraph (b)(ii), omit “other than by virtue of having an acquired right under paragraph (1)(d) of Schedule 6 to the 2003 Order”.

(5) For the definition of “GP Registrar”, substitute—

““GP Registrar” means a medical practitioner who is being trained in general practice by—

(a) until the coming into force for all purposes of article 4(5)(d) of the 2003 Order, a general medical practitioner who—

(i) has been approved for that purpose by the Joint Committee on Postgraduate Training for General Practice under regulation 7 of the National Health Service (Vocational Training for General Medical Practice) Regulations 1997(6), and

(ii) performs primary medical services; and

(b) from the coming into force for all purposes of that article, a general medical practitioner who is approved under that article for the purpose of providing training under article 5(1)(c)(i) of the 2003 Order, whether as part of training leading to the award of a CCT or otherwise;”.

(6) Omit the definition of “GP Trainer”.

(7) In the definition of “immediate family member”, after “spouse” insert “or civil partner”.

(8) Omit the definition of “NCAA”.

(9) After the definition of “normal hours” insert—

““NPSA” means the National Patient Safety Agency established as a Special Health Authority by the National Patient Safety Agency (Establishment and Constitution) Order 2001(7)

(10) In the definition of “out of hours services”, in paragraph (a), after “if provided” insert “by a contractor to its registered patients”.

(11) In the definition of “supplementary prescriber”—

(5) S.I. 1994/3130; regulation 5 was amended by S.I. 1997/2817 and modified by article 117 of S.I. 2004/865. The whole Regulations are prospectively revoked by S.I. 2003/1250, article 31(5) and Schedule 10, Part 2.

(6) S.I. 1997/2817 as amended by S.I. 1998/669 and modified by article 118 of S.I. 2004/865.

(7) S.I. 2001/1743 as amended by S.I.2003/1077 and S.I.2005/504.

- (a) In paragraph (b)(ii), omit “or”;
- (b) In paragraph (b)(iii), omit “and”; and
- (c) After paragraph (b)(iii), insert—
 - “(iv) the part of the register maintained by the Health Professions Council in pursuance of article 5 of the Health Professions Order 2001⁽⁸⁾ relating to—
 - (aa) chiropodists and podiatrists;
 - (bb) physiotherapists; or
 - (cc) radiographers:diagnostic or therapeutic, or
 - (v) the register of optometrists maintained by the General Optical Council in pursuance of section 7 of the Opticians Act 1989⁽⁹⁾, and”;
- (d) In paragraph (c), after “an annotation” insert “or entry”.

Amendment of regulation 4 of the GMS Contracts (Wales) Regulations

3. In regulation 4 (conditions relating solely to medical practitioners) of the GMS Contracts (Wales) Regulations, add—

“(4) In paragraph (1), (2)(a) and (3)(a), “general medical practitioner” does not include—

- (a) from the coming into force of article 10 of the 2003 Order, a medical practitioner whose name is included in the General Practitioner Register by virtue of—
 - (i) paragraph 1(a) of Schedule 6 to that Order by virtue of the practitioner having been a restricted services principal included in a list specified in that paragraph,
 - (ii) paragraph 1(d) of that Schedule, or
 - (iii) article 11(2) of that Order because of an exemption under regulation 5(1)(d) of the regulations specified in paragraph (5);
- (b) until the coming into force of article 10 of the 2003 Order, a medical practitioner who either—
 - (i) until the coming into force of paragraph 22 of Schedule 8 to that Order—
 - (aa) has an acquired right to practise as a general medical practitioner pursuant to regulation 5(1)(a) of the Vocational Training for General Medical Practice (European Requirements) Regulations 1994⁽¹⁰⁾ only by virtue of having been a restricted services principal included in a list specified in that paragraph, or regulation 5(1)(d) of those Regulations; or
 - (bb) is exempt from the need to be suitably experienced by virtue of regulation 5(1)(d) of the regulations specified in paragraph (5), or
 - (ii) upon the coming into force of that paragraph of that Schedule to that Order, is an eligible general practitioner pursuant to that paragraph by virtue of an acquired right under the provisions listed in sub-paragraph (a)(i) to (iii).

(5) The regulations referred to in paragraph (4)(a)(iii) and (b)(i)(bb) are the National Health Service (Vocational Training for General Medical Practice) Regulations 1997⁽¹¹⁾,

⁽⁸⁾ S.I. 2002/254 as amended by S.I.2004/2033.

⁽⁹⁾ 1989 c. 44.

⁽¹⁰⁾ S.I. 1994/3130 as amended by S.I. 1997/2817 and 2003/3148. The whole Regulations are prospectively revoked by S.I. 2003/1250, article 31(5) and Part 2 of Schedule 10.

⁽¹¹⁾ S.I. 1997/2817 as amended by S.I. 1998/669 and 2003/3148 and modified by S.I. 2004/865, article 118. The whole Regulations are prospectively revoked by S.I. 2003/1250, article 31(5) and Part 2 of Schedule 10.

the National Health Service (Vocational Training for General Medical Practice) (Scotland) Regulations 1998(12) and the Medical Practitioners (Vocational Training) Regulations (Northern Ireland) 1998(13).

(6) In paragraph (4), “restricted services principal” has the same meaning as in the 2003 Order(14).”.

Amendment of regulation 5 of the GMS Contracts (Wales) Regulations

4.—(1) In regulation 5(2)(h) (general conditions relating to all contracts) of the GMS Contracts (Wales) Regulations for “the Criminal Procedure Act (Scotland) 1995” substitute “the Criminal Procedure (Scotland) Act 1995”.

(2) In regulation 5(2)(j) of the GMS Contracts (Wales) Regulations insert at the beginning “within the period of five years prior to signing the contract or commencement of the contract, whichever is the earlier.”.

Amendment of regulation 10 of the GMS Contracts (Wales) Regulations

5. In regulation 10(2) (health service body status) of the GMS Contracts (Wales) Regulations for “body that fact, it” substitute “body, that fact”.

Amendment of regulation 17 of the GMS Contracts (Wales) Regulations

6. In regulation 17 (opt outs of additional and out of hours services) of the GMS Contracts (Wales) Regulations for “paragraph 4(8)” substitute “paragraph 4(9)”.

Amendment of regulation 22 of the GMS Contracts (Wales) Regulations

7. In regulation 22 (finance), of the GMS Contracts (Wales) Regulations in paragraph (1), for “the Local Health Board to make payments to the contractor”, substitute, “payments to be made”.

Amendment of regulation 23 of the GMS Contracts (Wales) Regulations

8. In regulation 23 (finance) of the GMS Contracts (Wales) Regulations—
- (i) for “Assembly's” substitute “(Assembly's”;
 - (ii) delete “payments”.

Amendment of regulation 24 of the GMS Contracts (Wales) Regulations

9. In regulation 24(4) (fees and charges) of the GMS Contracts (Wales) Regulations for “paragraph (e)” substitute “paragraph 1(e)”.

Amendment of Schedule 2 to the GMS Contracts (Wales) Regulations

10.—(1) Schedule 2 (additional services) to the GMS Contracts (Wales) Regulations shall be amended as provided in the following paragraphs.

- (2) In paragraph 2 (cervical screening), in sub-paragraph (2), for paragraph (a) substitute—

(12) [S.I. 1998/5](#) as amended by [S.I. 1998/669](#) and [S.S.I. 2000/23](#) and modified by [S.S.I. 2004/163](#), article 101. The whole Regulations are prospectively revoked by [S.I. 2003/1250](#), article 31(5) and Part 2 of Schedule 10.

(13) [S.R. 1998/13](#) as modified by [S.R. 2004/156](#), Article 93. The whole Regulations are prospectively revoked by [S.I. 2003/1250](#), article 31(5) and Part 2 of Schedule 10.

(14) The definition of “restricted services principal” was substituted, for England, by [S.I. 2004/865](#), for Scotland, by [S.I. 2004/226](#), for Northern Ireland, by [S.I. 2004/3038](#) and for Wales, by [S.I. 2004/1016](#).

“(a) the provision of any necessary information and advice to assist relevant patients in making an informed decision as to participation in the Cervical Screening Wales Programme of the Assembly undertaken by Velindre NHS Trust;”

(3) After sub-paragraph (2) of paragraph 2 insert—

“(2A) For the purposes of paragraph (2) “relevant patients” means female patients on the contractor’s patient list who have been identified by Velindre NHS Trust as suitable candidates for a cervical screening test.”

(4) In paragraph 4 (vaccinations and immunisations) of Schedule 2 to the GMS Contracts (Wales) Regulations, in paragraph (2)(a), for “influenza vaccination” substitute “influenza and pneumococcal vaccinations”.

Amendment of Schedule 6 to the GMS Contracts (Wales) Regulations

11.—(1) Schedule 6 (other contractual terms) to the GMS Contracts (Wales) Regulations shall be amended as provided in the following paragraphs.

(2) After paragraph 1 (premises), insert—

“Telephone services

1A.—(1) From 1 April 2006 the contractor shall not be a party to any contract or other arrangements under which the number for telephone services to be used—

- (a) by patients to contact the practice for any purpose related to the contract; or
- (b) by any other person to contact the practice in relation to services provided as part of the health service,

starts with the digits 087, 090 or 091 or consists of a personal number, unless the service is provided free to the caller.

(2) In this paragraph, “personal number” means a telephone number which starts with the number 070 followed by a further 8 digits.”

(3) In paragraph 7 (clinical reports), at the end insert—

“(3) This paragraph does not apply in relation to out of hours services provided by a contractor on or after 1 March 2006.”

(4) In paragraph 11 (standards for out of hours services) after the word “must” insert the words “have regard to and omit “meet”.

(5) After paragraph 11 (standards for out of hours services), insert—

“Supply of medicines etc. by contractors providing out of hours services

11A.—(1) In this paragraph—

“the Charges Regulations” means the National Health Service (Charges for Drugs and Appliances) (Wales) Regulations 2001⁽¹⁵⁾;

“complete course” means the course of treatment appropriate to the patient’s condition, being the same as the amount that would have been prescribed if the patient had been seen during core hours;

“necessary drugs, medicines and appliances” means those drugs, medicines and appliances which the patient requires and for which, in the reasonable opinion of the contractor, and in the light of the patient’s medical condition, it would not be reasonable

⁽¹⁵⁾ S.I.2001/1358 (W.86). Relevant amending instruments are S.I.2001/2539 (W.196), 2004/1018 (W.115), 2004/1605 (W.164), 2005/427 (W.44) and 2005/1915 (W.158)

in all the circumstances for the patient to wait until such time as he or she could obtain them during core hours;

“out of hours performer” means a prescriber, a person acting in accordance with a Patient Group Direction or any other health professional employed or engaged by the contractor who can lawfully supply a drug, medicine or appliance, who is performing out of hours services under the contract;

“Patient Group Direction” has the same meaning as in the Prescription Only Medicines (Human Use) Order 1997(16); and

“supply form” means a form provided by a Local Health Board and completed by or on behalf of the contractor for the purpose of recording the provision of drugs, medicines or appliances to a patient during the out of hours period.

(2) Where a contractor whose contract includes the provision of out of hours services has agreed with the Local Health Board that its contract should also include the supply of necessary drugs, medicines and appliances to patients at the time that it is providing them with out of hours services, the contractor shall comply with the requirements in sub-paragraphs (3) to (5).

(3) The contractor shall ensure that an out of hours performer—

- (a) only supplies necessary drugs, medicines and appliances;
- (b) supplies the complete course of the necessary medicine or drug required to treat the patient; and
- (c) does not supply—
 - (i) drugs, medicines or appliances which he or she could not lawfully supply,
 - (ii) appliances which are not listed in Part IX of the Drug Tariff,
 - (iii) restricted availability appliances, except where the patient is a person, or it is for a purpose, specified in the Drug Tariff, or
 - (iv) a drug, medicine or other substance listed in Schedule 1 to the National Health Service (General Medical Services Contracts) (Prescription of Drugs etc) (Wales) Regulations 2004(17), or a drug, medicine or other substance listed in Schedule 2 to those Regulations other than in the circumstances specified in that Schedule.

(4) The out of hours performer shall record on a separate supply form for each patient any drugs, medicines or appliances supplied to the patient provided that a single supply form may be completed where the out of hours performer supplies necessary drugs, medicines or appliances to two or more persons in a school or other institution in which at least 20 persons normally reside, when the out of hours performer may write on the supply form the name of the school or institution rather than the name of the individual patient.

(5) The out of hours performer shall—

- (a) ask any person who makes a declaration that the patient does not have to pay the charges, specified in or payable by virtue of regulation 4(1) of the Charges Regulations(18), by virtue of either—
 - (i) entitlement to exemption under regulation 8(1) of the Charges Regulations, or

(16) S.I. 1997/1830; relevant amending instruments are S.I. 2000/1917 and 2003/2915.

(17) S.I. 2004/1022 (W.119) as amended by S.I. 2005/366 (W.32).

(18) Regulation 4(1) was amended by S.I. 2005/427 (W.44) and 2005/1915 (W.158) which contains additional prospective amendments to regulation 4(1) with effect from 1st April 2006..

(ii) entitlement to remission of charges under regulation 3 of the National Health Service (Travelling Expenses and Remission of Charges) Regulations 1988(19),

to produce satisfactory evidence of such entitlement, unless the declaration is in respect of entitlement to exemption by virtue of regulation 8(1) of the Charges Regulations, and at the time of the declaration the out of hours performer already has such evidence available to him or her; and

(b) if no satisfactory evidence is produced to him or her (and, where it is relevant, none is already available to him or her as mentioned in paragraph (a)), endorse the supply form to that effect.

(6) Subject to paragraph (7), nothing in this paragraph shall prevent an out of hours performer supplying a Scheduled drug or a restricted availability appliance in the course of treating a patient under a private arrangement.

(7) The provisions of regulation 24 (fees and charges) apply in respect of the supply of necessary drugs, medicines and appliances as they apply in respect of prescriptions for drugs, medicines and appliances. ”.

(6) In paragraph 19 (removal from the list at the request of the patient) in sub-paragraph (5), for “(9), 21(6) and (7), 23 and 26,” substitute “(10), 21(6) and (7), 23, 26 and 28”.

(7) In paragraph 31 (rejection of closure notice by the Local Health Board), after sub-paragraph (8) insert—

“(8A) Subject to sub-paragraph (8B), the contractor’s list of patients shall remain closed for the period specified by the assessment panel in accordance with sub-paragraph (8)(b).

(8B) The contractor’s list of patients shall re-open before the expiry of the period mentioned in sub-paragraph (8A) if—

(a) the number of the contractor’s registered patients falls to the number specified by the assessment panel in accordance with sub-paragraph (8)(b) as the number of registered patients which, if that number were reached, would trigger the re-opening of the contractor’s list of patients; or

(b) the Local Health Board and the contractor agree that the list of patients should re-open.

(8C) If the contractor’s list of patients has re-opened pursuant to sub-paragraph (8B)(a), it shall nevertheless close again if, during the period specified by the assessment panel as the period for which the list should remain closed, the number of the contractor’s registered patients rises to the number specified by the assessment panel in accordance with sub-paragraph (8)(b) as the number of registered patients which, if that number were reached, would trigger the re-closure of the contractor’s list of patients.

(8D) Except in cases where the contractor’s list of patients is already open pursuant to paragraph (8B), the Local Health Board shall notify the contractor in writing between seven and fourteen days before the expiry of the closure period specified in paragraph (8A), confirming the date on which the contractor’s list of patients will re-open.”.

(8) In paragraph 36 (assignments to closed lists NHS dispute resolution procedure relating to determinations of the assessment panel), in sub-paragraph (13) for “him” substitute “it”.

(9) In paragraph 40 (repeatable prescribing services), in sub-paragraph (2), omit paragraph (a).

(10) In paragraph 43 (restrictions on prescribing by supplementary prescribers) omit sub-paragraphs (2)(b), (4)(c) and (f) and (6).

(11) In paragraph 48 (consent to dispense), in sub-paragraph (6)(a), for “paragraph (2)” substitute “paragraph (1)(c)”.

(12) In paragraph 49 (terms relating to the provision of dispensing services), for sub-paragraph (8) substitute—

“(8) A contractor providing dispensing services shall comply with paragraph 36 (terms of service for doctors who provide pharmaceutical services) of Schedule 2 to the Pharmaceutical Regulations, as if modified as follows—

(a) for “paragraph 34(1)” substitute “paragraph 49(4) of Schedule 6 to the GMS Regulations”;

(b) for “paragraph 35(a)” substitute “paragraph 49(2)(a) of Schedule 6 to the GMS Regulations”;

(c) for “a doctor who is authorised or required by the Local Health Board under regulation 20 to provide drugs and appliances to a patient”, substitute “a contractors providing dispensing services to a patient”; and

(d) for “doctor”, in both places where it appears substitute “medical practitioner”.

(13) In paragraph 52 (qualifications of performers), in sub-paragraph (2)—

(a) for paragraph (c) substitute—

“(c) a GP Registrar who has applied to a Local Health Board to have his or her name included in its medical performers list until the first of the following events arises—

(i) the Local Health Board notifies him or her of its decision on that application;
or

(ii) the end of a period of two months, starting with the date on which his or her vocational training scheme began.”; and

(b) at the end, add—

“(3) In this paragraph, “vocational training scheme” has the meaning given in regulation 21(2) of the National Health Service (Performers Lists) (Wales) Regulations 2004(20).”.

(14) In paragraph 63 (arrangements for GP Registrars), in sub-paragraph (1), omit “for the purpose of being trained by a GP Trainer with the agreement of the Assembly and”.

(15) In paragraph 67 (appraisal and assessment, in sub-paragraph (1)(b), for “NCAA” substitute “NPSA”.

(16) In paragraph 71, for sub-paragraph (2) substitute—

“(2) A notice served under sub-paragraph (1) shall take effect on the date on which it is received by the contractor.”.

(17) In paragraph 72 (patient records), in sub-paragraph (4)(c), for ““Good Practice Guidelines for General Practice Electronic Patient Records” published on 26 September 2003”, substitute, ““Good Practice Guidelines for General Practice Electronic Patient Records (Version 3.1)” published on 29 July 2005(21).”

(18) Omit paragraph 73 (access to records for the purpose of the Quality Information Preparation Scheme).

(19) In paragraph 76 (provision of information), at the end insert—

(20) [S.I. 2004/1020 \(W.117\)](#).

(21) This document is available on the following website address: www.dh.gov.uk/PolicyAndGuidance/OrganisationPolicy/PrimaryCare/PrimaryCareComputing.

- “(3) The contractor shall produce the information requested, or, as the case may be, allow access to it—
- (a) by such date as has been agreed as reasonable between the contractor and the Local Health Board; or
 - (b) in the absence of such agreement, within 28 days of the request being made.”
- (20) In paragraph 79 (annual return and review)—
- (a) after sub-paragraph (1), insert—
 - “(1A) Subject to article 50 (annual returns and reviews) of the General Medical Services Transitional and Consequential Provisions (Wales) (No.2) Order 2004(22), one such return may be requested by the Local Health Board at any time during each financial year in relation to such period (not including any period covered by a previous annual return) as may be specified in the request.
 - (1B) The contractor shall submit the completed return to the Local Health Board—
 - (a) by such date as has been agreed as reasonable between the contractor and the Local Health Board; or
 - (b) in the absence of such agreement, within 28 days of the request being made.”; and
 - (b) at the end insert—
 - “(6) In this paragraph, “financial year” means the twelve months ending with 31 March.”.
- (21) In paragraph 83 (notice provisions specific to a contract with a company limited by shares)—
- (a) in sub-paragraph (1), after paragraph (a) insert—
 - “(aa) a new director or secretary is appointed;”; and
 - (b) after sub-paragraph (2), insert—
 - “(3) A notice under sub-paragraph (1)(aa) shall confirm that the new director or, as the case may be, secretary meets the conditions imposed on directors and secretaries by virtue of regulation 5.”.
- (22) In paragraph 89 (entry and inspection by the Commission for Healthcare Audit and Inspection and by the National Assembly for Wales) for “enter and inspect the premises in accordance with section 66 and 73” substitute “exercise their functions in accordance with sections 66, 67, 72 and 73”.
- (23) In paragraph 96 (provision of information about complaints)—
- (a) renumber the existing provision as sub-paragraph (1); and
 - (b) after that provision, insert—
 - “(2) This paragraph does not apply in relation to out of hours services provided by a contractor on or after 1 March 2006.”.
- (24) In paragraph 99 (NHS dispute resolution procedure), in sub-paragraph (6), after “the matter”, in both places where it occurs, insert “under dispute”.
- (25) In paragraph 102 (variation of a contract : general) in sub-paragraph (1) insert a comma after “Schedule 3” and the words “of this Schedule” after “115”.
- (26) In paragraph 103 (variation provisions specific to a contract with an individual medical practitioner) in sub-paragraph (2), before “proposing” insert “is”.

(27) In paragraph 104 (variation provisions specific to a contract with two or more individuals practising in partnership)—

(a) in sub-paragraph (4), omit the words from “sub-paragraphs (1), (2) and (3)” to the end and substitute “the remaining individual shall notify the Local Health Board in writing as soon as is reasonably practicable of the death of his or her partner and sub-paragraph (4A) or (4B) shall apply.”;

(b) after sub-paragraph (4), insert—

“(4A) If the remaining individual is a general medical practitioner, the contract shall continue with that individual.

(4B) If sub-paragraph (4A) does not apply, the Local Health Board may, if it thinks fit, serve notice in writing on the remaining individual confirming that the Local Health Board will allow the contract to continue with that individual, for a period specified by the Local Health Board of up to six months (the “interim period”) provided that he or she consents to the Local Health Board employing or supplying a general medical practitioner to him or her for the interim period to assist in the provision of clinical services under the contract.

(4C) Before deciding whether to serve a notice pursuant to paragraph (4B), the Local Health Board shall, whenever it is reasonably practicable to do so, consult the Local Medical Committee (if any) for its area.

(4D) If, during the interim period, the contractor withdraws his or her consent to the Local Health Board employing or supplying a general medical practitioner, the Local Health Board shall serve notice in writing on the contractor terminating the contract forthwith.

(4E) If, at the end of the interim period, the contractor has not entered into partnership with a general medical practitioner who is not a limited partner, the Local Health Board shall serve notice on the contractor terminating the contract forthwith.”;

(c) in sub-paragraphs (5) and (6), for “(4)(b)” substitute “(4)”; and

(d) after sub-paragraph (7), add—

“(8) In this paragraph, “general medical practitioner” has the same meaning as in regulation 4(1).”.

(28) After paragraph 105 (termination by agreement), insert—

“Termination on the death of an individual medical practitioner

105A.—(1) Where the contract is with an individual medical practitioner and that practitioner dies, the contract shall terminate at the end of the period of seven days after the date of the practitioner’s death unless, before the end of that period—

(a) the Local Health Board has agreed in writing with the contractor’s personal representatives that the contract should continue for a further period, not exceeding 28 days after the end of the period of seven days; and

(b) the contractor’s personal representatives have consented in writing to the Local Health Board employing or supplying one or more general medical practitioners to assist in the provision of general medical services under the contract throughout the period for which it continues.

(2) In sub-paragraph (1), “general medical practitioner” has the same meaning as in regulation 4(1).

(3) Sub-paragraph (1) does not affect any other rights to terminate the contract which the Local Health Board may have under paragraphs 112 to 115.”.

(29) In paragraph 109 (termination by the Local Health Board for breach of conditions in regulation 4)—

(a) in sub-paragraph (1), insert at the beginning “Subject to sub-paragraph (1A),”;

(b) after sub-paragraph (1) insert—

“(1A) Where the failure of an individual medical practitioner to continue to satisfy the condition specified in regulation 4(1) is the result of a suspension specified in sub-paragraph (3B), sub-paragraph (1) shall not apply unless—

(a) the contractor is unable to satisfy the Local Health Board that it has in place adequate arrangements for the provision of clinical services under the contract for so long as the suspension continues; or

(b) the Local Health Board is satisfied that the circumstances of the suspension are such that if the contract is not terminated forthwith—

(i) the safety of the contractor’s patients is at serious risk, or

(ii) the Local Health Board is at risk of material financial loss.”;

(c) in sub-paragraph (2), insert at the beginning “Except in a case to which paragraph 106(4) applies,”;

(d) in sub-paragraph (3), for “of up to six months” substitute “in accordance with paragraph (3A)”;

(e) after sub-paragraph (3) insert—

“(3A) The period specified by the Local Health Board under sub-paragraph (3)(b) shall not exceed—

(a) six months; or

(b) in a case where the failure of the contractor to continue to satisfy the condition in regulation 4(2)(a) or, as the case may be, 4(3)(a), is the result of a suspension referred to in subparagraph (3B), the period for which that suspension continues.

(3B) The suspensions referred to in sub-paragraphs (1A) and (3A)(b) are suspension—

(a) by a Fitness to Practise Panel under—

(i) section 35D (functions of a fitness to practise panel) of the Medical Act 1983(23) in a health case, other than an indefinite suspension under section 35D(6), or

(ii) section 38(1) (power to order immediate suspension etc after a finding of impairment of fitness to practise) of that Act; or

(b) by a Fitness to Practise Panel or an Interim Orders Panel under section 41A (interim orders) of that Act.

(3C) In paragraph (3B), “health case” has the meaning given in section 35E(4) of the Medical Act 1983”; and

(f) after sub-paragraph (6), add—

“(7) In sub-paragraphs (3) and (5), “general medical practitioner” has the same meaning as in regulation 4(1).”.

(30) In paragraph 110 (termination by the Local Health Board for the provision of untrue etc. information) for the words “by the contractor before the contract” to the end substitute—

“by the contractor—

(a) before the contract was entered into; or

(23) 1983 c. 54; section 35D was inserted by and sections 38(1) and 41A substituted by S.I. 2002/3135.

- (b) pursuant to paragraph 85(2) or (3) or 86(2), in relation to the conditions set out in regulations 4 and 5 (and compliance with those conditions) was, when given, untrue or inaccurate in a material respect.”.
- (31) In paragraph 111 (other grounds for termination by the Local Health Board)—
 - (a) in sub-paragraph (1) after “the existence of the contract” insert “or, if later, on or after the date on which a notice in respect of his or her compliance with the conditions in regulation 5 was given under paragraph 85(2) or (3) or 86(2)”.
 - (b) in sub-paragraph (2)(e) for “efficiency” substitute “inefficiency”.
- (32) In paragraph 117 (termination and the NHS dispute resolution procedure), in sub-paragraph (1), for “or 113(4) or (6)” substitute “113(4) or (6) or 114(2)”.
- (33) In paragraph 120 (insurance), in sub-paragraph (3)(b) for “an employee of its in connection with clinical services which that employee” substitute “a person employed or engaged by it in connection with clinical services which that person”.
- (34) In paragraph 122 (gifts), in sub-paragraph (2)(f), after “spouse” insert “or civil partner”.

Amendment of schedule 7 to the GMS Contracts (Wales) Regulations

- 12.** In paragraph 5 (immediate withdrawal of approval other than following review)—
- (i) in sub-paragraph (2) for “(1)(b) and (c)” substitute “(1)(a) and (b)”;
 - (ii) in sub-paragraph (3) for “1(c)” substitute “(1)(b)”.

Amendment of Schedule 9 to the GMS Contracts (Wales) Regulations

- 13.** Schedule 9 (Local Health Boards specified for the purposes of repeatable prescribing) to the GMS Contracts (Wales) Regulations is omitted.

PART 3

TRANSITIONAL PROVISION

Transitional provision relating to regulation 4 of the GMS Contracts (Wales) Regulations

14.—(1) This regulation applies where, in relation to a general medical services contract entered into before 1 March 2006, the only person who counted as the general medical practitioner for the purposes of regulation 4(1), (2)(a) or (3)(a) of the GMS Contracts (Wales) Regulations falls within regulation 4(4) of those Regulations as inserted by regulation 3 of these Regulations.

(2) A Local Health Board shall not terminate a general medical services contract under paragraph 109 of Schedule 6 to the GMS Contracts (Wales) Regulations on the grounds that the person referred to in paragraph (1) no longer falls within the definition of general medical practitioner for the purposes of regulation 4(1), (2)(a) or (3)(a) of the GMS Contracts (Wales) Regulations as amended by these Regulations.

PART 4

Amendment of regulation 2 of the Performers Lists (Wales) Regulations

15. In regulation 2 (interpretation and modification) of the Performers Lists (Wales) Regulations, after the definition of “notice” insert ““the NPSA” means the National Patient Safety Agency established as a special health authority under section 11;”.

Amendment of regulation 4 of the Performers Lists (Wales) Regulations

16. In regulation 4 (application for inclusion in a performers list) of the Performers Lists (Wales) Regulations—

- (a) in paragraph (3)(d) (application for inclusion in a performers list) for “NCAA” substitute “NPSA”.
- (b) for paragraph (4)(d) and (e) substitute—
 - “(d) has accepted a conditional offer under section 302 of the Criminal Procedure (Scotland) Act 1995(24) (fixed penalty: conditional offer by procurator fiscal) or agreed to pay a penalty under section 115A of the Social Security Administration Act 1992(25) (penalty as alternative to prosecution);
 - (e) has, in proceedings in Scotland for an offence, been the subject of an order under section 246(2) or (3) of the Criminal Procedure (Scotland) Act 1995 discharging him or her absolutely;”.

Amendment of regulation 6 of the Performers Lists (Wales) Regulations

17. In regulation 6 (decisions and grounds for refusal) of the Performers Lists (Wales) Regulations, in paragraph (4)(f), for “to which Part I of the Sexual Offences Act 1997 applies, or if it had been committed in England or Wales, would have applied” substitute “for the purposes of Part 2 of the Sexual Offences Act 2003(26), or if it had been committed in England and Wales, would have been such an offence”.

Amendment of regulation 9 of the Performers Lists (Wales) Regulations

18. In regulation 9 (requirements with which a performer in a performers list must comply) of the Performers Lists (Wales) Regulations, for paragraph (1)(d) and (e) substitute—

- “(d) has accepted a conditional offer under section 302 of the Criminal Procedure (Scotland) Act 1995(27) (fixed penalty: conditional offer by procurator fiscal) or agreed to pay a penalty under section 115A of the Social Security Administration Act 1992(28) (penalty as alternative to prosecution);
- (e) has, in proceedings in Scotland for an offence, been the subject of an order under section 246(2) or (3) of the Criminal Procedure (Scotland) Act 1995 discharging him or her absolutely;”.

(24) 1995 c. 46.

(25) 1992 c. 5; section 115A was inserted by section 15 of the Social Security Administration (Fraud) Act 1997 (c. 47).

(26) 2003 c. 42.

(27) 1995 c. 46.

(28) 1992 c. 5; section 115A was inserted by section 15 of the Social Security Administration (Fraud) Act 1997 (c. 47).

Amendment of regulation 11 of the Performers Lists (Wales) Regulations

19. In regulation 11 (criteria for a decision on removal) of the Performers Lists (Wales) Regulations—

- (a) in paragraph (2)(f), for “to which Part I of the Sexual Offences Act 1997 applies, or if it had been committed in England and Wales, would have applied” substitute “for the purposes of Part 2 of the Sexual Offences Act 2003, or if it had been committed in England and Wales, would have been such an offence”.
- (b) In paragraph (6)(e) after “NCAA” insert “on or before 31 March 2005 or thereafter by the NPSA”.

Amendment of regulation 16 of the Performers Lists (Wales) Regulations

20. In regulation 16(2)(g) (notification) of the Performers Lists (Wales) Regulations, for “NCAA” substitute “NPSA”.

Amendment of regulation 20 of the Performers Lists (Wales) Regulations

21. In regulation 20(1)(f) (disclosure of information) of the Performers Lists (Wales) Regulations, for “NCAA” substitute “NPSA”.

Signed on behalf of the National Assembly for Wales under section 66(1) of the Government of Wales Act 1998(29)

14 February 2006

John Marek
The Deputy Presiding Officer of the National
Assembly for Wales

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make amendments to certain regulations relating to general medical services contracts in Wales and to the NHS (Performers Lists) (Wales) Regulations 2004.

Part 2 amends the National Health Service (General Medical Services Contracts) (Wales) Regulations 2004 (the GMS Contracts (Wales) Regulations). In particular—

- it widens the definition of general medical practitioner in regulation 2 of the GMS Contracts (Wales) Regulations to cover all medical practitioners who are included in the General Practitioner Register or who, prior to coming into force of that Register, are suitably experienced within the meaning of section 31 of the National Health Service Act 1977 (“the 1977 Act”) or have an acquired right to practise (regulation 2(4));
- it provides that provisions that relate to a spouse will also relate to a civil partner to take into account the effect of the Civil Partnerships Act 2004 (regulations 2(7) and 11(34));
- it amends the definition of supplementary prescriber to include chiropodists, podiatrists, physiotherapists and radiographers and optometrists in the list of those who may be so recognised (regulation 2(10));
- it restricts the categories of general medical practitioner who, under regulation 4 of the GMS Contracts (Wales) Regulations, can act as the mandatory medical practitioner for the purposes of a general medical services contract (regulation 3). It excludes from that role practitioners who, prior to 1 April 2004 were restricted services principals or who were not considered to be suitably experienced for the purposes of operating as a principal in the provision of general medical services under section 29 of the 1977 Act;
- regulations 4 to 10 make provision for a number of minor corrections and amendments;
- it bans the use of telephone services for the purposes of general medical services contracts which make use of national rate numbers (starting with 087), premium rate numbers (starting with 090) or personal numbers (starting with 070) (regulation 11(2));
- it disapplies the provisions relating to clinical reports in the case of out of hours services (regulation 11(3));
- it inserts provisions to enable the supply of medicines to patients by providers of out of hours services where certain conditions are met (regulation 11(5));
- it amends paragraph 31 of Schedule 6 to the GMS Contracts (Wales) Regulations to enable a contractor’s list of patients which has been closed as a result of a determination by an assessment panel to re-open by agreement before the end of the closure period specified by that panel and, in certain circumstances, to re-close again during that period (regulation 11(7));
- it removes the restrictions preventing supplementary prescribers from prescribing controlled drugs or unlicensed medicines (regulations 11(10));
- it amends the circumstances in paragraph 52 of Schedule 6 in which a GP Registrar can perform medical services under a contract without being included in a medical performers list (regulation 11(13)). It brings them into line with those in regulation 22(3) of the National Health Service (Performers Lists) (Wales) Regulations 2004;
- it removes the requirement in paragraph 63 of Schedule 6 for the National Assembly for Wales to consent to the employment of a GP Registrar (regulation 11(14));

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

- it removes the provision relating to the Quality Information Preparation Scheme (regulation 11(18));
- it inserts in paragraph 76 of Schedule 6 a timescale for the provision of information by contractors to the Local Health Board (regulation 11(19));
- it clarifies the timescale for the submission of annual returns to Local Health Boards under paragraph 79 of Schedule 6 (regulation 11(20));
- regulation 11(21) requires contractors who are companies limited by shares to notify the Local Health Board of a change of director or secretary and enables the Local Health Board to terminate the contract if untrue information is given about the compliance of that director or secretary with the conditions in regulation 5 of the GMS Contracts (Wales) Regulations;
- regulation 11(23) disapplies the provision relating to the provision of information about complaints in the case of out of hours services which are covered by the quality requirements referred to in paragraph 11 of Schedule 6 ;
- it enables a Local Health Board to vary a contract to allow it to continue at least for an interim period after the death of a partner in a two-handed partnership even where the remaining individual is not a medical practitioner (regulation 11(27));
- it provides that a contract with an individual medical practitioner shall terminate seven days after that practitioner's death unless before then arrangements have been made for it to continue for a further short period (regulation 11(28));
- it enables a Local Health Board to continue a contract for a limited period with a medical practitioner who no longer meets the conditions in regulation 4 if:
 - (i) the reason for that failure is an immediate or interim suspension or health suspension under the Medical Act 1983,
 - (ii) adequate arrangements are in place to provide clinical services during the period of suspension, and
 - (iii) immediate termination is not necessary on grounds of patient safety or to protect public funds; (regulation 11(29));
- it clarifies that the grounds for termination of the contract in paragraph 111 of Schedule 6 to the GMS Contracts (Wales) Regulations only apply to partners, shareholders and directors who join the contracting body after the start of the contract in respect of circumstances which arise after they have so joined (regulation 11(31));
- regulation 11(33) amends paragraph 120 of Schedule 6 to provide that, for the purpose of meeting its obligation of holding adequate insurance, a contractor can rely on insurance held by a person engaged by it as well as by an employee;
- regulation 12 corrects minor errors in Schedule 7 to the GMS Contracts (Wales) Regulations.

Part 3 of the Regulations makes transitional provision in relation to the removal by regulation 3 of the right of certain persons to be the mandatory general medical practitioner for the purposes of a general medical services contract. It provides that where such a person has been the mandatory medical practitioner for the purposes of a general medical services contract entered into before the date of coming into force of these Regulations, the contract will not be able to be terminated for breach of the amended requirements (regulation 14).

Part 4 of the Regulations makes a number of minor amendments to the NHS (Performers Lists) (Wales) Regulations 2004.