
STATUTORY INSTRUMENTS

2015 No. 1862

The National Health Service (General Medical Services Contracts) Regulations 2015

PART 6

Opt outs: additional and out of hours services

Opt outs: interpretation

33. In this Part—

“opt out notice” means a notice given under regulation 35(1) to opt out permanently or temporarily of the provision of [^{F1}minor surgery];

“out of hours opt out notice” means a notice given under regulation 38(1) to opt out permanently of the provision of out of hours services;

“permanent opt out” in relation to the provision of [^{F1}minor surgery] that is funded through the global sum, means the termination of the obligation under the contract for the contractor to provide that service, and “permanently opt out” is to be construed accordingly;

“permanent opt out notice” means an opt out notice to permanently opt out;

“preliminary opt out notice” means a notice given under regulation 35(1) that a contractor wants to temporarily opt out or permanently opt out of the provision of [^{F1}minor surgery];

“temporary opt out” in relation to the provision of [^{F1}minor surgery] that is funded through the global sum, means the suspension of the obligation under the contract for the contractor to provide that service for a period of more than six months and less than 12 months and includes an extension of a temporary opt out, and “temporarily opted out” is to be construed accordingly; and

“temporary opt out notice” means an opt out notice to temporarily opt out.

Textual Amendments

- F1** Words in [reg. 33](#) substituted (1.10.2021) by [The National Health Service \(General Medical Services Contracts and Personal Medical Services Agreements\) \(Amendment\) \(No. 2\) Regulations 2021 \(S.I. 2021/995\)](#), [reg. 1\(2\)](#), [Sch. 1 para. 19](#) (with [reg. 3](#))

Opt outs: general

34. Where a contract provides for the contractor to provide—

- [^{F2}(a) minor surgery, or]
- (b) out of hours services,

to be funded through the global sum, the contract must contain terms relating to the procedure for opting out of the provision of any such service which have the same effect as those specified in the following provisions of this Part.

Textual Amendments

- F2** Reg. 34(a) substituted (1.10.2021) by The National Health Service (General Medical Services Contracts and Personal Medical Services Agreements) (Amendment) (No. 2) Regulations 2021 (S.I. 2021/995), reg. 1(2), **Sch. 1 para. 20** (with reg. 3)

Opt outs: [^{F3}minor surgery]

35.—(1) Where a contractor wants to permanently or temporarily opt out of the provision of [^{F4}minor surgery], the contractor must give to [^{F5}NHS England] in writing a preliminary opt out notice which must state the reasons for the contractor wanting to opt out.

(2) [^{F5}NHS England] must enter into discussions with the contractor concerning—

- (a) the support which [^{F5}NHS England] is able to give to the contractor; or
- (b) other changes which [^{F5}NHS England] or the contractor may make,

that would enable the contractor to continue to provide [^{F6}minor surgery].

(3) [^{F5}NHS England] and the contractor must use reasonable endeavours in order to achieve the aim specified in paragraph (2).

(4) The discussions referred to in paragraph (2) must be—

- (a) entered into as soon as is reasonably practicable but before the end of the period of seven days beginning with the date on which the preliminary opt out notice was received by [^{F5}NHS England]; and
- (b) completed before the end of the period of ten days beginning with the date on which the preliminary opt out notice was received by [^{F5}NHS England] or as soon as reasonably practicable thereafter.

(5) If, following the discussions referred to in paragraph (2), the contractor still wants to opt out of the provision of [^{F7}minor surgery], the contractor must send an opt out notice to [^{F5}NHS England].

(6) An opt out notice must specify—

^{F8}(a)

(b) whether ^{F9}... the contractor wants to—

- (i) permanently opt out, or
- (ii) temporarily opt out;

(c) the reasons for the contractor wanting to opt out;

(d) the date from which the contractor would like the opt out to commence, which must—

- (i) in the case of a temporary opt out, be at least 14 days after the date of the service of the opt out notice, and
- (ii) in the case of a permanent opt out, be the day either three or six months after the date of service of the opt out notice; and

(e) in the case of a temporary opt out, the desired duration of the opt out.

(7) Where, before the end of the period of three years ending with the date on which the opt out notice was given to [^{F5}NHS England], a contractor has given two previous temporary opt out

notices (whether or not [^{F10}they also concerned minor surgery]), the latest opt out notice is to be treated as a permanent opt out notice (even if the opt out notice states that the contractor wishes to temporarily opt out).

Textual Amendments

- F3** Words in reg. 35 heading substituted (1.10.2021) by The National Health Service (General Medical Services Contracts and Personal Medical Services Agreements) (Amendment) (No. 2) Regulations 2021 (S.I. 2021/995), reg. 1(2), **Sch. 1 para. 21(2)** (with reg. 3)
- F4** Words in reg. 35(1) substituted (1.10.2021) by The National Health Service (General Medical Services Contracts and Personal Medical Services Agreements) (Amendment) (No. 2) Regulations 2021 (S.I. 2021/995), reg. 1(2), **Sch. 1 para. 21(3)** (with reg. 3)
- F5** Words in Regulations substituted (6.11.2023) by The Health and Care Act 2022 (Further Consequential Amendments) (No. 2) Regulations 2023 (S.I. 2023/1071), reg. 1(1), **Sch. para. 1**
- F6** Words in reg. 35(2) substituted (1.10.2021) by The National Health Service (General Medical Services Contracts and Personal Medical Services Agreements) (Amendment) (No. 2) Regulations 2021 (S.I. 2021/995), reg. 1(2), **Sch. 1 para. 21(4)** (with reg. 3)
- F7** Words in reg. 35(5) substituted (1.10.2021) by The National Health Service (General Medical Services Contracts and Personal Medical Services Agreements) (Amendment) (No. 2) Regulations 2021 (S.I. 2021/995), reg. 1(2), **Sch. 1 para. 21(4)** (with reg. 3)
- F8** Reg. 35(6)(a) omitted (1.10.2021) by virtue of The National Health Service (General Medical Services Contracts and Personal Medical Services Agreements) (Amendment) (No. 2) Regulations 2021 (S.I. 2021/995), reg. 1(2), **Sch. 1 para. 21(5)(a)** (with reg. 3)
- F9** Words in reg. 35(6)(b) omitted (1.10.2021) by virtue of The National Health Service (General Medical Services Contracts and Personal Medical Services Agreements) (Amendment) (No. 2) Regulations 2021 (S.I. 2021/995), reg. 1(2), **Sch. 1 para. 21(5)(b)** (with reg. 3)
- F10** Words in reg. 35(7) substituted (1.10.2021) by The National Health Service (General Medical Services Contracts and Personal Medical Services Agreements) (Amendment) (No. 2) Regulations 2021 (S.I. 2021/995), reg. 1(2), **Sch. 1 para. 21(6)** (with reg. 3)

[^{F11}Minor surgery]: temporary opt outs and permanent opt outs following temporary opt outs

36.—(1) Where [^{F5}NHS England] has given a temporary opt out notice or a temporary opt out notice which, by virtue of regulation 35(7), is treated as a permanent opt out notice, [^{F5}NHS England] must, as soon as is reasonably practicable and, in any event, before the end of the period of seven days beginning with the date on which [^{F5}NHS England] receives a notice given under regulation 35(5)—

- (a) approve the opt out notice and specify, in accordance with paragraphs (4) and (5), the date on which the temporary opt out is to commence, and the date on which it is to come to an end (“the end date”); or
- (b) reject the opt out notice in accordance with paragraph (3).

(2) [^{F5}NHS England] must give notice to the contractor of its decision under paragraph (1) as soon as practicable, including the reasons for its decision.

(3) [^{F5}NHS England] may reject the opt out notice on the ground that the contractor—

- (a) is providing [^{F12}minor surgery] to patients other than its own registered patients, or enhanced services; or
- (b) has no reasonable need to opt out temporarily having regard to its ability to deliver [^{F13}minor surgery].

(4) The date specified by [F⁵NHS England] for the commencement of the temporary opt out must, where reasonably practicable, be the date requested by the contractor in the contractor's opt out notice.

(5) Before determining the end date, [F⁵NHS England] must make reasonable efforts to reach agreement with the contractor.

(6) Where [F⁵NHS England] approves an opt out notice, the contractor's obligation to provide [F¹⁴minor surgery] is to be suspended from the date specified by [F⁵NHS England] in its decision under paragraph (1) and is to remain suspended until the end date unless—

- (a) the contractor and [F⁵NHS England] agree in writing an earlier date, in which case the suspension comes to an end on the earlier date agreed;
- (b) [F⁵NHS England] specifies a later date under paragraph (7) in which case the suspension comes to an end on the later date specified;
- (c) paragraph (9) applies and the contractor refers the matter to the NHS dispute resolution procedure or the court, in which case the suspension comes to an end—
 - (i) where the outcome of the dispute is to uphold the decision of [F⁵NHS England], on the day after the date of the decision of the Secretary of State or the court,
 - (ii) where the outcome is to overturn the decision of [F⁵NHS England], 28 days after the date of the decision of the Secretary of State or the court, or
 - (iii) where the contractor ceases to pursue the NHS dispute resolution procedure or court proceedings, on the day after the date on which the contractor withdraws its claim or the proceedings are otherwise terminated by the Secretary of State or the court;
- (d) paragraph (11) applies and—
 - (i) [F⁵NHS England] refuses the contractor's request for a permanent opt out before the end of the period of 28 days ending with the end date, in which case the suspension comes to an end 28 days after the end date, or
 - (ii) [F⁵NHS England] refuses the contractor's request for a permanent opt out after the end date, in which case the suspension comes to an end 28 days after the date of service of the notice.

(7) Before the end date, [F⁵NHS England] may, in exceptional circumstances and with the agreement of the contractor, give notice in writing to the contractor of a later date on which the temporary opt out is to come to an end, being a date which is no more than six months later than the end date.

(8) Where [F⁵NHS England] considers that—

- (a) the contractor will be unable to satisfactorily provide [F¹⁵minor surgery] at the end of the temporary opt out; and
- (b) it would not be appropriate to exercise its discretion under paragraph (7) to specify a later date on which the temporary opt out is to come to an end or the contractor does not agree to a later date,

[F⁵NHS England] may give notice in writing to the contractor at least 28 days before the end date that a permanent opt out is to follow a temporary opt out.

(9) Where [F⁵NHS England] gives notice to the contractor under paragraph (8) that a permanent opt out is to follow a temporary opt out, the permanent opt out is to take effect immediately after the end of the temporary opt out.

(10) A contractor who has temporarily opted out may, at least three months prior to the end date, give notice in writing to [F⁵NHS England] that it wants to permanently opt out of [F¹⁶minor surgery].

(11) Where the contractor has given notice to [F5NHS England] under paragraph (10) that it wants to permanently opt out, the temporary opt out is to be followed by a permanent opt out beginning on the day after the end date of the temporary opt out notice unless [F5NHS England] refuses the contractor's request to permanently opt out by giving notice in writing to the contractor to this effect.

(12) A temporary opt out or a permanent opt out commences, and a temporary opt out ends, at 8.00am on the relevant day unless—

- (a) the day is Saturday, Sunday, Good Friday, Christmas Day or a bank holiday in which case the opt out is to take effect on the next working day at 8.00am; or
- (b) [F5NHS England] and the contractor agree a different day or time.

Textual Amendments

- F5** Words in Regulations substituted (6.11.2023) by [The Health and Care Act 2022 \(Further Consequential Amendments\) \(No. 2\) Regulations 2023 \(S.I. 2023/1071\)](#), reg. 1(1), **Sch. para. 1**
- F11** Words in [reg. 36](#) heading substituted (1.10.2021) by [The National Health Service \(General Medical Services Contracts and Personal Medical Services Agreements\) \(Amendment\) \(No. 2\) Regulations 2021 \(S.I. 2021/995\)](#), reg. 1(2), **Sch. 1 para. 22(2)** (with reg. 3)
- F12** Words in [reg. 36\(3\)\(a\)](#) substituted (1.10.2021) by [The National Health Service \(General Medical Services Contracts and Personal Medical Services Agreements\) \(Amendment\) \(No. 2\) Regulations 2021 \(S.I. 2021/995\)](#), reg. 1(2), **Sch. 1 para. 22(3)(a)** (with reg. 3)
- F13** Words in [reg. 36\(3\)\(b\)](#) substituted (1.10.2021) by [The National Health Service \(General Medical Services Contracts and Personal Medical Services Agreements\) \(Amendment\) \(No. 2\) Regulations 2021 \(S.I. 2021/995\)](#), reg. 1(2), **Sch. 1 para. 22(3)(b)** (with reg. 3)
- F14** Words in [reg. 36\(6\)](#) substituted (1.10.2021) by [The National Health Service \(General Medical Services Contracts and Personal Medical Services Agreements\) \(Amendment\) \(No. 2\) Regulations 2021 \(S.I. 2021/995\)](#), reg. 1(2), **Sch. 1 para. 22(4)** (with reg. 3)
- F15** Words in [reg. 36\(8\)\(a\)](#) substituted (1.10.2021) by [The National Health Service \(General Medical Services Contracts and Personal Medical Services Agreements\) \(Amendment\) \(No. 2\) Regulations 2021 \(S.I. 2021/995\)](#), reg. 1(2), **Sch. 1 para. 22(5)** (with reg. 3)
- F16** Words in [reg. 36\(10\)](#) substituted (1.10.2021) by [The National Health Service \(General Medical Services Contracts and Personal Medical Services Agreements\) \(Amendment\) \(No. 2\) Regulations 2021 \(S.I. 2021/995\)](#), reg. 1(2), **Sch. 1 para. 22(6)** (with reg. 3)

[F17]Minor surgery]: permanent opt outs

37.—(1) In this regulation—

“A day” is the day specified by the contractor in the permanent opt out notice which the contractor gives to [F5NHS England] for the commencement of the permanent opt out;

“B day” is the day six months after the date on which the permanent opt out notice was given to [F5NHS England]; and

“C day” is the day nine months after the date on which the permanent opt out notice was given to [F5NHS England].

(2) [F5NHS England] must, as soon as is reasonably practicable and in any event before the end of the period of 28 days beginning with the date on which [F5NHS England] receives a permanent opt out notice under regulation 35(5) (or temporary opt out notice which is treated as a permanent opt out notice under regulation 35(7))—

- (a) approve the opt out notice; or
- (b) reject the opt out notice in accordance with paragraph (4).

(3) [F⁵NHS England] must give notice to the contractor of its decision under paragraph (2) as soon as possible, including the reasons for its decision where that decision is to reject the opt out notice.

(4) [F⁵NHS England] may reject the opt out notice on the ground that the contractor is providing [F¹⁸minor surgery] to patients other than its registered patients, or enhanced services.

(5) A contractor may not withdraw an opt out notice once that notice has been approved by [F⁵NHS England] in accordance with paragraph (2)(a) without [F⁵NHS England's] agreement.

(6) If [F⁵NHS England] approves the opt out notice under paragraph (2)(a), [F⁵NHS England] must use reasonable endeavours to make arrangements for the contractor's patients to receive [F¹⁹minor surgery] from an alternative provider from A day.

(7) The contractor's duty to provide [F²⁰minor surgery] terminates on A day unless [F⁵NHS England] gives notice to the contractor under paragraph (8) (extending A day to B day or C day).

(8) If [F⁵NHS England] is not successful in finding an alternative provider to take on the provision of [F²¹minor surgery] from A day, then [F⁵NHS England] must give notice in writing to the contractor of that fact no later than one month before A day, and in a case where A day is—

(a) three months after the date on which the opt out notice was given, the contractor must continue to provide [F²¹minor surgery] until B day unless, at least one month before B day, the contractor is given notice in writing by [F⁵NHS England] under paragraph (9) to the effect that, despite using reasonable endeavours, [F⁵NHS England] has not been able to find an alternative provider to take on the provision of [F²¹minor surgery] from B day;

(b) six months after the opt out notice was given, the contractor must continue to provide [F²¹minor surgery] until C day.

(9) Where, in accordance with paragraph (8)(a), the permanent opt out is to commence on B day and [F⁵NHS England], despite using reasonable endeavours, has not been able to find an alternative provider to take on the provision of [F²²minor surgery] from that day, [F⁵NHS England] must give notice in writing to the contractor of that fact at least one month before B day, in which case the contractor must continue to provide [F²²minor surgery] until C day.

(10) As soon as is practicable and, in any event, within seven days of [F⁵NHS England] giving notice to the contractor under paragraph (9), [F⁵NHS England] must enter into discussions with the contractor concerning the support that [F⁵NHS England] is able to give to the contractor or other changes which [F⁵NHS England] or the contractor may make in relation to the provision of [F²³minor surgery] until C day.

(11) Nothing in the preceding paragraphs prevents the contractor and [F⁵NHS England] from agreeing a different date for the termination of the contractor's duty under the contract to provide [F²⁴minor surgery] and, accordingly, varying the contract in accordance with regulation 29 and Part 8 of Schedule 3.

(12) The permanent opt out takes effect at 8.00am on the relevant day unless—

(a) the day is Saturday, Sunday, Good Friday, Christmas Day, or a bank holiday in which case the opt out is to take effect on the next working day at 8.00am; or

(b) [F⁵NHS England] and the contractor agree a different day or time.

Textual Amendments

F5 Words in Regulations substituted (6.11.2023) by [The Health and Care Act 2022 \(Further Consequential Amendments\)](#) (No. 2) Regulations 2023 (S.I. 2023/1071), reg. 1(1), [Sch. para. 1](#)

- F17** Words in reg. 37 heading substituted (1.10.2021) by The National Health Service (General Medical Services Contracts and Personal Medical Services Agreements) (Amendment) (No. 2) Regulations 2021 (S.I. 2021/995), reg. 1(2), **Sch. 1 para. 23(2)** (with reg. 3)
- F18** Words in reg. 37(4) substituted (1.10.2021) by The National Health Service (General Medical Services Contracts and Personal Medical Services Agreements) (Amendment) (No. 2) Regulations 2021 (S.I. 2021/995), reg. 1(2), **Sch. 1 para. 23(3)** (with reg. 3)
- F19** Words in reg. 37(6) substituted (1.10.2021) by The National Health Service (General Medical Services Contracts and Personal Medical Services Agreements) (Amendment) (No. 2) Regulations 2021 (S.I. 2021/995), reg. 1(2), **Sch. 1 para. 23(4)** (with reg. 3)
- F20** Words in reg. 37(7) substituted (1.10.2021) by The National Health Service (General Medical Services Contracts and Personal Medical Services Agreements) (Amendment) (No. 2) Regulations 2021 (S.I. 2021/995), reg. 1(2), **Sch. 1 para. 23(5)** (with reg. 3)
- F21** Words in reg. 37(8) substituted (1.10.2021) by The National Health Service (General Medical Services Contracts and Personal Medical Services Agreements) (Amendment) (No. 2) Regulations 2021 (S.I. 2021/995), reg. 1(2), **Sch. 1 para. 23(6)** (with reg. 3)
- F22** Words in reg. 37(9) substituted (1.10.2021) by The National Health Service (General Medical Services Contracts and Personal Medical Services Agreements) (Amendment) (No. 2) Regulations 2021 (S.I. 2021/995), reg. 1(2), **Sch. 1 para. 23(7)** (with reg. 3)
- F23** Words in reg. 37(10) substituted (1.10.2021) by The National Health Service (General Medical Services Contracts and Personal Medical Services Agreements) (Amendment) (No. 2) Regulations 2021 (S.I. 2021/995), reg. 1(2), **Sch. 1 para. 23(8)** (with reg. 3)
- F24** Words in reg. 37(11) substituted (1.10.2021) by The National Health Service (General Medical Services Contracts and Personal Medical Services Agreements) (Amendment) (No. 2) Regulations 2021 (S.I. 2021/995), reg. 1(2), **Sch. 1 para. 23(9)** (with reg. 3)

Out of hours services: opt outs

38.—(1) Where a contractor wants to terminate its obligation under the contract to provide out of hours services, the contractor must give an out of hours opt out notice in writing to [F5NHS England] to that effect.

(2) An out of hours opt out notice must specify the date on which the contractor would like the out of hours opt out to take effect, which must be either three or six months after the date on which that notice is given.

(3) [F5NHS England] must approve the out of hours opt out notice and specify, in accordance with paragraph (6), the date on which the out of hours opt out is to commence (“OOH day”) as soon as is reasonably practicable and in any event before the end of the period of 28 days beginning with the date on which [F5NHS England] receives the out of hours opt out notice.

(4) [F5NHS England] must give notice to the contractor of its decision as soon as possible.

(5) The OOH day is the date that is specified in the out of hours opt out notice.

(6) A contractor may not withdraw an out of hours opt out notice once it has been approved by [F5NHS England] under paragraph (3) without [F5NHS England’s] agreement.

(7) Following receipt of the out of hours opt out notice, [F5NHS England] must use reasonable endeavours to make arrangements for the contractor’s registered patients to receive out of hours services from an alternative provider from OOH day.

(8) Paragraphs (7) to (10) of regulation 37 apply in respect of an out of hours opt out—

(a) as they apply to a permanent opt out; and

(b) as if the reference to “A day” was a reference to “OOH day”.

Textual Amendments

- F5** Words in Regulations substituted (6.11.2023) by [The Health and Care Act 2022 \(Further Consequential Amendments\)](#) (No. 2) Regulations 2023 (S.I. 2023/1071), reg. 1(1), **Sch. para. 1**

Informing patients of opt outs

39.—(1) Before any opt out takes effect, [^{F5}NHS England] and the contractor must discuss how to inform the contractor's patients of the proposed opt out.

(2) The contractor must, if requested by [^{F5}NHS England], inform its registered patients of an opt out and of the arrangements made for those patients to receive [^{F25}minor surgery] or out of hours services by—

- (a) placing a notice in the contractor's practice waiting rooms; or
- (b) including the information in the contractor's practice leaflet.

(3) In this regulation, “opt out” means an out of hours opt out, a permanent opt out or a temporary opt out.

Textual Amendments

- F5** Words in Regulations substituted (6.11.2023) by [The Health and Care Act 2022 \(Further Consequential Amendments\)](#) (No. 2) Regulations 2023 (S.I. 2023/1071), reg. 1(1), **Sch. para. 1**
- F25** Words in [reg. 39\(2\)](#) substituted (1.10.2021) by [The National Health Service \(General Medical Services Contracts and Personal Medical Services Agreements\) \(Amendment\)](#) (No. 2) Regulations 2021 (S.I. 2021/995), reg. 1(2), **Sch. 1 para. 24** (with reg. 3)

Changes to legislation:

There are currently no known outstanding effects for the The National Health Service (General Medical Services Contracts) Regulations 2015, PART 6.