

EXPLANATORY MEMORANDUM TO
THE NATIONAL HEALTH SERVICE (GENERAL MEDICAL SERVICES
CONTRACTS AND PERSONAL MEDICAL SERVICES AGREEMENTS)
(AMENDMENTS) REGULATIONS 2017

2017 No. 908

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department of Health and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 This Instrument amends the following sets of Regulations relating to the provision of primary medical services:-
 - i. The National Health Service (General Medical Services Contracts) Regulations 2015 (SI 2015/1862) (GMS Contracts Regulations) which set out the framework for General Medical Services (GMS) contracts.
 - ii. The National Health Service (Personal Medical Services Agreements) Regulations 2015 (SI 2015/1879) (PMS Agreements Regulations) which set out the framework for Personal Medical Services (PMS) agreements.
- 2.2 The amendments implement the agreement between the National Health Service Commissioning Board (NHS Commissioning Board) and the General Practitioners Committee (GPC) of the British Medical Association on changes to primary medical services (GP) contracts from 6th October 2017.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

The Committee's attention is drawn to the amendments being made by regulations 5 and 9 of this instrument. These amendments seek to remove two revocations from the GMS Contracts Regulations and the PMS Agreements Regulations that were included in error and are ultra vires and therefore of no legal effect. The GMS Contracts Regulations and the PMS Agreements Regulations were made under Part 4 of the National Health Service Act 2006 (primary medical services) and specify the terms and conditions on which GP services are provided as part of the NHS. They consolidated provisions previously contained in The National Health Service (General Medical Services Contracts) Regulations 2004 (S.I. 2004/291) and The National Health Service (Personal Medical Services Agreements) Regulations 2004 (S.I. 2004/627) ("the 2004 Regulations") which applied in relation to England only. As part of this exercise, the Department intended to revoke outdated references to provisions of the 2004 Regulations (which were themselves revoked in the

consolidating instruments) where these appeared in other secondary legislation. Section 272(8)(a) of the National Health Service Act 2006 contains a power to make consequential amendments or revocations of ‘enactments’ and was relied on by the Department for these purposes.

However, it has recently come to the Department’s attention that, included in error in the revocations Schedules to the two consolidating instruments, were revocations of provisions in the Value Added Tax (Drugs and Medicines etc.) Order 2009 (S.I. 2009/2972) which inserted references to existing provisions of Scottish and Welsh secondary legislation into Group 12 of Schedule 8 to the Value Added Tax Act 1994 in order to give effect to the zero rating of prescription charges in Scotland and Wales. The intention had been to remove references to equivalent provisions previously contained in the 2004 Regulations which applied in relation to England only but which were no longer in force. S.I. 2009/2972 is made under sections 30(4) and 96(9) of the Value Added Tax Act 1994 and amends Group 12 of Schedule 8 to that Act in order to confer a zero rate of VAT on prescription charges. These provisions confer responsibility on Her Majesty’s Treasury (HMT) to make amendments to the VAT Act 1994. The revocations now being removed by regulations 5 and 9 of this instrument were not made by HMT or by using the correct legal vires. In addition, they were included in error in the revocations schedules of the consolidated instruments. Regulations 5 and 9 seek to remove these ineffective provisions in order to avoid confusion.”

Other matters of interest to the House of Commons

As this instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 Part 4 of the National Health Service Act 2006 currently requires the NHS Commissioning Board to secure the provision of primary medical services in England. It makes provision for regulations to be made to govern primary medical services contracts.
- 4.2 Agreement was reached between NHS Employers, on behalf of the NHS Commissioning Board, and the GPC on changes to be made to primary care contracts during 2017-18.
- 4.3 This instrument amends the GMS Contracts Regulations and the PMS Agreements Regulations which contain the mandatory contractual terms that must be contained in primary medical services contracts and agreements made between the NHS Commissioning Board and primary medical services contractors.

5. Extent and Territorial Application

- 5.1 This Instrument extends to England only.
- 5.2 This Instrument applies to England only.

6. European Convention on Human Rights

- 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

7.1 Introduction of a requirement to participate in the National Diabetes Audit (NDA)

The NDA measures the effectiveness of diabetes healthcare against NICE Clinical Guidelines and Quality Standards. It collects and analyses data which supports local care systems to drive improvements in the quality of services and health outcomes for people with diabetes.

Diabetes is a significant driver of costs for the NHS with associated costs estimated to be around £10bn. NDA data and high participation in the audit is central to NHS improvement and for informing the assessment of the quality of diabetes care nationally by NHS England. Following recent decline in participation in the audit, the amendments require practices to submit data, providing robust information on which to build improvement in the quality of services.

7.2 Registration of Overseas Visitors

The amendments place a contractual duty on GP practices to collect information from non-UK issued European Health Insurance Cards (EHIC) and S1 forms. An S1 Healthcare Certificate is issued to those who are posted to another member state and who pay National Insurance Contributions in their home member state or to people in receipt of exportable benefits (for example retirement pensions).

Information will be collected through a new self-declaration form that will be handed to all new patients when they register with a GP practice. This will enable the patient record to be flagged to show non-UK status and allow Trusts to more easily identify EEA and non EEA visitors in order to recoup costs in secondary care under the EHIC arrangements.

7.3 Requirement to diagnose and deal with frailty

The requirements will be for practices to assess the level of frailty of patients aged 65 and over. For those patients identified as living with severe frailty, the practice will be required to provide a clinical review, provide an annual medication review and, where appropriate, discuss whether the patient has fallen in the last 12 months and provide relevant interventions as clinically appropriate. It is expected that this will reduce the number of A&E attendances by this group and reduce expenditure as well as reducing pressure on social care services.

Information on clinical interventions to this group of patients will be collected from practices. The NHS Commissioning Board will use this information to understand the nature of the interventions made and the prevalence of frailty by degree among practice populations and nationally.

7.4 Provision for certain detained persons to register with a GP prior to their release

Under existing contract regulations, patients should be removed from a contractors list of patients where they are serving a term of imprisonment of more than two years.

Many prisoners are released without a GP as regulations currently require attendance at a practice to complete the necessary registration form.

The amendments to the contract regulations provide an opportunity for pre-registering patients with a surgery thereby ensuring that prisoners being discharged back to the community could secure a place at an appropriate GP and continue this person's care.

The patient will be able to complete a registration form prior to release, the form will be sent to the GP practice and the GP practice will process the registration as normal, therefore allowing the patient to be fully registered with the GP practice at the point of release from prison. The full medical record will be sent to the practice following upon the patient's release from prison, thereby ensuring that the GP practice had ready access to the medical records of the care provided in the prison setting.

7.5 Requirement to allow the extraction of data relating to clinical indicators no longer in the Quality and Outcomes Framework (QOF)

QOF incentivises GP practices to have a more organised approach to chronic disease management, and provides a strong incentive to engage in secondary prevention. It has also provided an incentive for deprived practices that were not well organised and lacked resources to adopt a more systematised approach. However, gains that were seen in the early years appear to have diminished.

As part of the NHS Commissioning Board's decision to reduce QOF, certain indicators are no longer incentivised. However, it was agreed with the GPC that information on these indicators would continue to be collected and reported. The data will be used to allow the NHS Commissioning Board, and partner organisations, to use the information for strategic planning and developing new services for patients.

7.6 Requirement to allow the extraction of data relating to the former enhanced service schemes i.e. alcohol related risk reduction scheme and the Dementia scheme

The Alcohol Related Risk Reduction Scheme and the Dementia scheme were, prior to April 2017, directed enhanced services. As such, GP practices had the choice whether to participate in the Schemes. From April 2017, as part of the negotiated agreement, it is a contractual requirement for all GP practices to record information which they would have been required to provide by virtue of participation in those schemes and to submit that information to the NHS Commissioning Board.

The amendments require practices to allow activity data linked to these services to be extracted from their systems. The data collected will support strategic planning by the NHS Commissioning Board. The information will be published and used by different organisations (such as health charities and other public bodies) for their own analytical purposes.

7.7 Data required for the purposes of the NHS Digital Workforce Census

The NHS Digital workforce census is being used to support monitoring of the delivery of the commitment to an additional 5,000 doctors in primary care by 2020. There is concern that the non-return by some practices is inhibiting the ability to manage the delivery and track progress, and shape policy and investment decisions around the workforce.

Around 75% of practices submit their workforce information through NHS Digital's workforce tool, the remainder through an Health Education England tool. To ensure more robust information, the amendments to regulations will require all practices to submit data through NHS Digital's workforce census.

Consolidation

- 7.8 In response to JCSI concerns, consolidated NHS (General Medical Services Contracts) Regulations and consolidated NHS (Personal Medical Services Agreements) Regulations came into force on 7th December 2015. These are the third set of amending regulations since December 2015.

8. Consultation outcome

- 8.1 The Department of Health has consulted the British Medical Association (BMA), the National Association of Primary Care, the NHS Alliance and the NHS Commissioning Board on the proposed changes to the regulations.
- 8.2 The BMA have commented on the draft regulations. We have responded to the comments received and made appropriate changes to the Regulations – although none of the comments received were particularly contentious.

9. Guidance

- 9.1 NHS Employers propose to issue guidance to their areas teams on implementing the contractual changes.

10. Impact

- 10.1 There is no impact on business, charities or voluntary bodies.
- 10.2 There is no impact on the public sector.
- 10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

- 11.1 The GP practices are exempt from the Small Firm Impact Test as they are considered as part of the public sector due to their provision of primary medical services for the NHS. Public sector organisations are exempt from this test

12. Monitoring & review

- 12.1 Monitoring of GMS Contracts and PMS Agreements is the responsibility of the NHS Commissioning Board however the Secretary of State has responsibility for the terms of contracts contained in regulations and for the consolidation of those regulations.

13. Contact

- 13.1 Jenny Smith at the Department of Health Tel: 0113 254 5020 or email: jenny.smith@dh.gsi.gov.uk can answer any queries regarding the instrument.