

EXPLANATORY MEMORANDUM TO
THE NATIONAL HEALTH SERVICE (GENERAL MEDICAL SERVICES
CONTRACTS AND PERSONAL MEDICAL SERVICES AGREEMENTS)
(AMENDMENT) (NO. 3) REGULATIONS 2020

2020 No. 1415

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department of Health and Social Care (DHSC) and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument amends the following Regulations relating to the provision of primary medical services in England:

- i. the National Health Service (General Medical Services Contracts) Regulations 2015 (SI 2015/1862) (the “GMS Contracts Regulations”) which set out the framework for General Medical Services (“GMS”) contracts; and
- ii. the National Health Service (Personal Medical Services Agreements) Regulations 2015 (SI 2015/1879) (the “PMS Agreements Regulations”), which set out the framework for Personal Medical Services (“PMS”) agreements.

2.2 Every individual or partnership of GPs must hold an NHS GP contract to run an NHS commissioned general practice. The contract sets out mandatory requirements and services for all general practices, as well as making provisions for several types of other services that practices may also provide, if they so choose. There are three different types of GP contract arrangements in England: General Medical Services (GMS), Personal Medical Services (PMS) and Alternative Provider Medical Services (APMS). All types of contract are managed by the NHS commissioner (either NHS England and NHS Improvement, (NHSE/I), the operating name of the NHS Commissioning Board, or *Clinical Commissioning Groups*).

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 As the instrument is subject to the negative resolution procedure there are no matters relevant to Standing Order Nos. 83P and 83T of the Standing Orders of the House of Commons relating to public business at this stage.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England and Wales.

4.2 The territorial application of this instrument is England.

5. European Convention on Human Rights

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

6. Legislative Context

- 6.1 Part 4 of the National Health Service Act 2006 (c. 41) requires NHSE/I to secure the provision of primary medical services in England. It makes provision for Regulations to be made to govern the terms of contracts under which primary medical services are provided.
- 6.2 This instrument is being made to amend existing Regulations to include an additional term in the GP contracts. Amendments are generally only made twice a year (in April and October). This instrument takes forward an additional amendment that was not included in either the NHS (General Medical Services Contracts and Personal Medical Services Agreements) (Amendment) Regulations 2020 (SI 2020/226) which came into force on 1st April 2020, or the NHS (General Medical Services Contracts and Personal Medical Services Agreements) (Amendment) (No. 2) Regulations 2020 (S.I. 2020/911), which came into force on 1st October 2020.

7. Policy background

What is being done and why?

- 7.1 The following amendment is here made:

Improving collection of data on the ethnicity of their patients by GPs

- 7.2 The GMS Contracts Regulations and PMS Agreements Regulations are amended to ensure, where a patient provides information about their ethnicity for inclusion in their medical record, that the relevant information is so recorded. If a patient, or an appropriate person, acting on behalf of the patient indicates that the patient's ethnicity will not be disclosed, that fact will also be recorded in the patient's medical record. A new regulation 67A is being inserted into the GMS Contracts Regulations for this purpose and a new regulation 60A is being inserted into the PMS Agreements Regulations.
- 7.3 Changes to the related Alternative Provider Medical Services Directions 2020 will be made separately for 1st January 2021.
- 7.4 This provision aims to improve the recording of patient ethnicity data in general practice, which will help clinicians and commissioners provide better clinical care, public health planning and monitoring of health inequalities. The data may be collected in a number of ways, including through new questions being added to the GMS1 patient registration form.
- 7.5 DHSC has met its duty under Article 36 (4) of the General Data Protection Regulations ('GDPR') in relation to policy development: this Article requires consultation with the Information Commissioner's Office (ICO) during preparation of a legislative measure to process data. The Department has consulted with the ICO and they are content with this provision.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 The GMS Contracts Regulations and the PMS Agreements Regulations from 2015 were consolidating instruments. Both sets of Regulations have since been amended, however, the Department does not consider there to be a current need to further consolidate these Regulations.

10. Consultation outcome

10.1 There is no statutory requirement to consult on proposals to amend the GP contract Regulations. However, it is custom and practice that contractual changes are negotiated with the GP Committee of the British Medical Association (BMA). The Department referred a draft of these proposed amendments to the BMA, who are the recognised representatives of GPs for these purposes, and to NHSE/I for their consideration and comment. They, and the BMA have agreed on the wording. We have responded to the comments received and made appropriate changes to the Regulations.

11. Guidance

11.1 NHSE/I will publish guidance. In a recent letter to the primary care sector, 'Implementing phase 3 of the NHS response to the COVID-19 pandemic'¹ NHSE/I set out eight urgent actions for the sector. One of these is to '...ensure datasets are complete and timely, to underpin an understanding of and response to inequalities. All NHS organisations should proactively review and ensure the completeness of patient ethnicity data by no later than 31 December, with general practice prioritising those groups at significant risk of COVID-19 from 1 September'.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 A full Impact Assessment has not been prepared for this instrument as no, or no significant impact, on the private, voluntary or public sector is foreseen. However, an internal Equality Impact Assessment has been produced, which we have not published.

13. Regulating small business

13.1 Although many GP practices are small businesses, they are nevertheless exempt from the Small Firm Impact Test. This is because they are considered as part of the public sector due to their provision of primary medical services for the NHS.

¹ The letter can be viewed at: https://www.england.nhs.uk/wp-content/uploads/2020/08/C0716_Implementing-phase-3-v1.1.pdf (see p. 3, para. 7)

14. Monitoring & review

- 14.1 The approach to monitoring of this legislation is the responsibility of NHSE/I. However, the Secretary of State has responsibility for the terms of contracts contained in Regulations and for the consolidation of those Regulations.
- 14.2 The Regulations do not include a statutory review clause.

15. Contact

- 15.1 Grant Hibberd, GP legislation policy and parliamentary business officer at the Department of Health and Social Care, can be contacted with any queries regarding these Amending Regulations and this Explanatory Memorandum. Please email: generalpracticemailbox@dhsc.gov.uk.
- 15.2 Sarah Gravenstede, Deputy Director for Primary Care at the Department of Health and Social can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Jo Churchill, Parliamentary Under Secretary of State for Prevention, Public Health and Primary Care at the Department of Health and Social Care, can confirm that this Explanatory Memorandum meets the required standard.