

EXPLANATORY MEMORANDUM TO
THE NATIONAL HEALTH SERVICE (GENERAL MEDICAL SERVICES
CONTRACTS AND PERSONAL MEDICAL SERVICES AGREEMENTS)
(AMENDMENT) (NO. 2) REGULATIONS 2021

2021 No. 995

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.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments (JCSI).

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 (S.I. 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 (S.I. 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 a National Health Service (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: GMS, 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 (“the Board”), or Clinical Commissioning Groups (CCGs)).
- 2.3 The amendments in this instrument relating to *disclosure of information about NHS earnings* (see paragraphs 7.2 – 7.10 of this explanatory memorandum) implement part of the agreement reached in January 2019 between NHSE/I and the General Practitioners Committee (GPC) of the British Medical Association (BMA) regarding changes to be made to primary medical services contract agreements (see *Investment and evolution: A five-year framework for GP contract reform to implement The NHS Long Term Plan*, published by NHSE/I and the BMA on 31 January 2019 at <https://www.england.nhs.uk/wp-content/uploads/2019/01/gp-contract-2019.pdf>).
- 2.4 The amendments in this instrument relating to *registration of crown servants posted overseas and their family members* (see paragraphs 7.11 – 7.20) and *online and electronic services* (see paragraphs 7.23 – 7.26) implement part of the agreement reached in February 2020 between NHSE/I and the GPC regarding changes to be made to primary medical services contract agreements (see *Update to the GP contract agreement 2020/21 – 2023/24*, published by NHSE/I and the BMA on 6 February 2020 at <https://www.england.nhs.uk/wp-content/uploads/2020/03/update-to-the-gp->

[contract-agreement-v2-updated.pdf](#)). Further details about the policy underpinning the *online and electronic services* amendments were agreed between NHSE/I and the GPC in 2021-22 GP contract negotiations and communicated to the profession in NHSE/I's letter of 21 January 2021 (available at <https://www.england.nhs.uk/wp-content/uploads/2021/01/C1054-supporting-general-practice-in-21-22.pdf>).

- 2.5 The amendments in this instrument relating to *transfer of patient records: time limits* (see paragraphs 7.30 and 7.31) and *prescribing for electronic repeat dispensing* (see paragraphs 7.21 and 7.22) implement part of the agreement reached between NHSE/I and the GPC in 2021-22 GP contract negotiations and communicated to the profession in NHSE/I's letter of 21 January 2021 (see paragraph 2.4). For the latter, this makes permanent the temporary suspension of this requirement for patient consent that was announced by NHSE/I to the profession on 4 June 2020, and extended until 30 September 2021, under powers granted by the National Health Service (Amendments Relating to the Provision of Primary Care Services During a Pandemic etc.) Regulations 2020 (SI 2020/885).
- 2.6 The GPC have been consulted on the amendments in this instrument relating to *patients who should not be tested for, or vaccinated against, coronavirus: confirmation of exemption* (see paragraphs 7.27 – 7.28). These amendments are being made to support processes enabling individuals to demonstrate they have a medical exemption from COVID-19 vaccination, or COVID-19 vaccination and testing. Such exemptions may be needed, where a person is asked to show their COVID-19 status certification, or to show a person is exempt from the requirement for COVID-19 vaccination as a condition of deployment in adult social care settings in regulation 12 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 (S.I. 2014/2936), as amended by the Health and Social Care Act 2008 (Regulated Activities) (Amendment) (Coronavirus) Regulations 2021 (S.I. 2021/891)).
- 2.7 The instrument also makes various consequential and minor amendments.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 The Joint Committee on Statutory Instruments in its 2nd Report of the 2021-22 session (available at <https://committees.parliament.uk/publications/5985/documents/67762/default/>) reported paragraphs 2(3)(a) and 4 of Schedule 1 to NHS (General Medical Services Contracts and Personal Medical Services Agreements) (Amendment) Regulations 2021 (S.I. 2021/331) (“the Amendment Regulations”) for defective drafting.
- 3.2 Paragraph 2(3)(a) of Schedule 1 to the Amendment Regulations amended the definition of “additional services” in the GMS Contracts Regulations by removing all but one of the services listed but leaving the words “one or more of” in place. The Committee believed that the words “one or more of” should also have been omitted. The Department agreed to correct this error. Part 5 of Schedule 1 to this instrument makes amendments to the GMS Contracts Regulations to correct this error, as well as to making broader amendments to those Regulations to reflect the fact that the only “additional service” is now “minor surgery”. In particular, the definition of “additional services” is omitted and references to those services replaced throughout the GMS Contracts Regulations.

- 3.3 Paragraph 4 of Schedule 1 to the Amendment Regulations amended regulation 17 of the GMS Contracts Regulations by removing paragraphs (12) to (15) of that regulation. However, a reference to paragraph (12) remained in regulation 17(1), where it was stated that “essential services” include those specified in paragraph (12). The Committee believed that the reference to paragraph (12) should have been revoked. The Department agreed to correct this error. This correction is made by paragraph 15 of Schedule 1 to this instrument.
- 3.4 The Department has not adopted the free issue procedure in relation to this instrument, as it considers doing so would be disproportionate given the nature of the correcting provisions and the proportion of the whole instrument that they represent. The Department confirms that it has complied with the requirement stated in paragraph 4.7.6 of Statutory Instrument Practice to consult the SI Registrar on the use of the free issue procedure in relation to this instrument.

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 this 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 reflect the terms which will form part of the GP contract. Such amendments are usually made twice a year.
- 6.3 Various amendments have already been made to existing regulations to reflect some of the changes agreed in *Investment and evolution (2019)*, *Update to the GP contract agreement 2020/21 – 2023/24 (2020)* and 2021/22 GP contract negotiations (communicated to the profession on 21 January 2021) (see the NHS (General Medical Services Contracts and Personal Medical Services Agreements) (Amendment) Regulations 2020 (S.I. 2020/226); the NHS (General Medical Services Contracts and Personal Medical Services Agreements) (Amendment) (No. 2) Regulations 2020 (S.I. 2020/911), the NHS (General Medical Services Contracts and Personal Medical Services Agreements) (Amendment) (No. 3) Regulations 2020 (S.I. 2020/1415); and the NHS (General Medical Services Contracts and Personal Medical Services Agreements) (Amendment) Regulations 2021 (S.I. 2021/331)).
- 6.4 However, it was not possible to implement all of the agreed amendments in those earlier instruments. This instrument is, therefore, being made to amend existing regulations to implement some of the remaining amendments which were agreed and made public in 2019, 2020 and 2021 but were not implemented in those earlier instruments.
- 6.5 The amendments made by this instrument will apply from 1 October 2021.

7. Policy background

What is being done and why?

7.1 This instrument makes the following amendments to the GMS Contracts and PMS Agreements Regulations:

Disclosure of information about NHS earnings

7.2 These amendments aim to increase pay transparency of individuals working in general practice as a corollary to the increased investment in NHS general practice contracts announced in *Investment and evolution: A five-year framework for GP contract reform to implement The NHS Long Term Plan* and *Update to the GP contract agreement 2020/21 – 2023/24*.

7.3 These amendments require all GMS contracts to include the following terms in respect of the financial years from 2019-20 to 2023-24:

- a) where the contractor is an individual medical practitioner or consists of two or more persons practicing in partnership, a requirement on the individual medical practitioner or each partner to comply with the disclosure obligation for each of those financial years in which their NHS earnings exceed the financial threshold;
- b) a term prohibiting the contractor from sub-contracting any of its obligations to provide clinical services under the contract, unless that sub-contract (where the sub-contractor is an individual or partnership) requires that individual or each individual who is a partner in that partnership to comply with the disclosure obligation for each of those financial years in which their NHS earnings exceed the financial threshold (for these purposes, a sub-contract includes a contract with a locum practitioner not employed by an agency);
- c) a term prohibiting the sub-contractor from entering into a new arrangement to sub-contract any of the clinical services it has agreed with the contractor to provide under the sub-contract, unless that sub-contract (where it is with a sub-contractor who is an individual or partnership) requires that individual or each individual who is a partner in that partnership to comply with the disclosure obligation for each of those financial years in which their NHS earnings exceed the financial threshold;
- d) a term requiring the contractor to use reasonable endeavours to ensure that, in the case of any existing sub-contract held with a sub-contractor who is an individual or a partnership, this individual or each individual who is a partner in that partnership complies with the disclosure obligation for each of those financial years in which their NHS earnings exceed the financial threshold (for these purposes, a sub-contract includes a contract with a locum practitioner).

7.4 Amendments are also made to require all PMS Agreements to include terms corresponding to those mentioned in (a) to (d) above.

7.5 The financial threshold for the 2019-20 financial year is £150,000, and it increases by 2% per annum to £163,000 for the 2023-24 financial year.

7.6 Where a person is required to comply with the disclosure obligation for a financial year, they must submit by the disclosure date the following information to the Health and Social Care Information Centre (known as NHS Digital) for publication:

- a) Their name,

- b) Their job title,
 - c) The details of each organisation from which they have derived NHS earnings in that financial year, and
 - d) Their NHS earnings for that financial year.
- 7.7 This data must be submitted to NHS Digital via a self-declaration which is made through an online portal (which will be accessible at <https://datacollection.sdcs.digital.nhs.uk>) by the disclosure date specified in the regulations.
- 7.8 The disclosure date for the financial year ending 31 March 2020 is 12 November 2021. For all subsequent financial years, it is 30 April in the financial year which begins two years after the financial year to which the information relates. So, for example, in relation to the financial year ending 31 March 2021, the disclosure obligation must be complied with by 30 April 2022.
- 7.9 For the purposes of this provision, an individual’s “NHS earnings” are income (including any form of remuneration and any salary, wages, fees, director’s remuneration or dividends) in the relevant financial year which:
- a) is practitioner income for the purposes of the National Health Pension Scheme (“the Scheme”), or
 - b) would be practitioner income for the purposes of that Scheme, if the individual were a medical practitioner or a non-GP provider and an active member of the Scheme.
- 7.10 “Practitioner income”, is for these purposes, to be calculated in accordance with Schedule 10 to the National Health Service Pension Scheme Regulations 2015 (which establish the Scheme), as modified by the GMS Contracts Regulations or PMS Agreements Regulations (as the case may be) (see regulation 27B of the GMS Contracts Regulations and regulation 21B of the PMS Agreements Regulations).

Registration of crown servants posted overseas and their family members

- 7.11 These amendments seek to make it easier for civil servants who are posted overseas, as well as certain of their dependents who accompany them on those postings, together with the certain dependents of service personnel who are posted overseas, to register with contractors in a timely way when returning to the United Kingdom (UK) permanently or temporarily. Currently, some of these individuals face significant challenges accessing timely NHS general practice services upon their return to the UK, as these individuals are de-registered if they are abroad for longer than 3 months. Delays in registering upon their arrival to the UK can impact on their ability to access timely care and enjoy continuity of care.
- 7.12 A contractor will be required to register the following individuals as permanent patients or temporary residents (where an application is made for one of these individuals to be registered with the contractor as a permanent patient or temporary resident respectively), even if its patient list is closed:
- a) civil servants, or former civil servants, returning to the UK from an overseas posting, if they were registered with that contractor or its predecessor (where there has been a practice merger) immediately before that posting or a previous overseas postings;

- b) certain family members of civil servants, or former civil servants, posted overseas who were accompanying the civil servant on that overseas posting and are now returning to the UK, provided that the civil servant was registered with the contractor or its predecessor immediately before that posting or a previous overseas posting;
 - c) certain family members accompanying a member, or former member, of the Armed Forces on an overseas posting from which they are coming to the UK, if the family member was registered with the contractor or its predecessor immediately before accompanying that person on that posting or a previous overseas posting.
- 7.13 An application mentioned in paragraph 7.12 may be made up to one month before the relevant person is to return to the UK, but cannot be made more than three months after the date on which the person returns to the UK.
- 7.14 A contractor may refuse to accept an application mentioned in paragraph 7.12 in certain limited circumstances.
- 7.15 In addition, a contractor will be required to register the following individuals as permanent patients or temporary residents (where an application is made for one of these individuals to be registered with the contractor as a permanent patient or temporary resident respectively), if its patient list is open:
- a) civil servants, or former civil servants, who are returning to the UK from an overseas posting, but who were not previously registered with the contractor or its predecessor;
 - b) certain family members of civil servants, or former civil servants, who were accompanying the civil servant on their overseas posting and are returning to the UK, but who are not required to be treated as “previous patients” of the contractor;
 - c) certain family members of members of the accompanying a member, or former member, of the Armed Forces on an overseas posting from which they are coming to the UK, but who are not required to be treated as “previous patients” of the contractor.
- 7.16 An application mentioned in paragraph 7.15 must be made in advance of a person’s intended return to the UK.
- 7.17 A contractor may refuse to accept an application mentioned in paragraph 7.15 in certain limited circumstances.
- 7.18 A contractor whose patient list is closed may accept a person mentioned in paragraph 7.15 as a registered patient if an immediate family member of that person is already a registered patient.
- 7.19 The contractor will be required to provide primary medical services to the individuals that are accepted as registered patients, or temporary residents, from the date of their return to the UK.
- 7.20 Related consequential amendments are made to the GMS Contracts Regulations and the PMS Agreements Regulations.

Prescribing for electronic repeat dispensing

- 7.21 These amendments remove the requirement on contractors in regulation 60A in the GMS Contracts Regulations and regulation 53A in the PMS Contracts Regulations to,

when issuing a patient's electronic repeatable prescription, obtain patient consent to issue this in a format that is appropriate for electronic repeat dispensing (eRD).

- 7.22 This change is intended to allow practices to continue to transfer clinically suitable patients to e-RD, with the anticipated impact of helping to reduce footfall in GP practices by allowing patients to collect prescriptions over a longer period, and reducing demands on GPs and practice staff to approve and process repeat prescriptions.

Online and electronic services

- 7.23 To standardise and improve the quality of digital services provided by contractors to their patients, these amendments will require all contractors to offer and promote the following standardised package of digital services to their registered patients (which many contractors are already offering):
- a) A secure two-way electronic communication method via which contractors can communicate with registered patients, or an appropriate person acting on their behalf where that patient is a child or lacks capacity. Such a communication method may be used where it is clinically appropriate and otherwise appropriate to the needs and circumstances of the patient;
 - b) A facility for registered patients, or an appropriate person acting on their behalf if that patient is a child or lacks capacity, to provide the contractor their personal or contact information (specifically, the patient's: name, ethnicity, address, telephone number and email address) in their medical record, or inform it of changes to that information, either online or by other electronic means;
 - c) An online consultation tool through which a registered patient, or an appropriate person acting on their behalf where that patient is a child or lacks capacity, may seek advice or information related to their health (other than in an emergency) or make a clinical or administrative request. The contractor is not, however, required to respond in real time or using the same means as those by which the original request was made;
 - d) The facility of participating in their consultations with the contractor by video conference using appropriate software, where clinically appropriate and otherwise appropriate to the needs and circumstances of the patient. The contractor must only be party to a contract or other arrangement under which this software is provided, if it is satisfied that any software needed by the patient to participate in a video consultation is available free of charge to the patient, and has taken reasonable steps to satisfy itself that patients will not have to pay more to participate in these than they would a meeting by video conference with any other person in the contractor's area.
- 7.24 The software used for 7.23 (a), (c) and (d) must meet the requirements of the GPIT Operating Model relevant to that software, or requirements equivalent in their effect to the relevant requirements in the GPIT Operating Model, which is published by the Board ("*Securing Excellence in Primary Care (GP) Digital Services: The Primary Care (GP) Digital Services Operating Model 2019-21*", available at: <https://www.england.nhs.uk/publication/securing-excellence-in-primary-care-gp-digital-services-the-primary-care-gp-digital-services-operating-model-2019-21>).
- 7.25 Contractors will be required to submit to the Board anonymised data relating to its use of the online consultation tool and video consultations as the Board may require.

- 7.26 Contractors are also required to ensure there are prominently displayed links on their practice website or online profile directing people to the online consultation tool and the symptom checker and self-care information available on the NHS website.

Patients who should not be tested for, or vaccinated against, coronavirus: confirmation of exemption

- 7.27 This amendment introduces a requirement on contractors to respond, free of charge, to a valid request to confirm whether a registered patient or temporary resident should not, for clinical reasons, be vaccinated with an authorised COVID-19 vaccine, or should not be tested for COVID-19 nor vaccinated with an authorised COVID-19 vaccine.
- 7.28 This request must be made in accordance with the process approved by the Secretary of State. It may be made by the patient, or if the patient is a child or lacks capacity, an appropriate person acting on their behalf. The contractor must record its response on an information hub using a method approved by the Secretary of State (this will be set out in guidance published on <https://www.gov.uk/> by 1 October 2021). The contractor may refuse to respond to this request only if the relevant patient is attended by another medical practitioner in relation to the medical condition which may give rise to the exemption and that condition is not one which means an exemption is required by all those who have that condition – as the separate medical practitioner could review the request for an exemption instead.

Removal of references to “additional services”

- 7.29 As “minor surgery” is now the only “additional service” under the GMS Contracts and PMS Agreements Regulations, this instrument also makes various drafting amendments to the GMS Contracts Regulations to replace references to “additional services” with references to “minor surgery” and various related changes.

Transfer of patient records: time limits

- 7.30 This amendment introduces a requirement on contractors to transfer a patient’s complete medical records to a new provider within 28 calendar days, where the patient on a contractor’s list of patients has registered with another provider of primary medical services, and the contractor receives a request from that provider for the patient’s medical records. These 28 days begin on the day the contractor receives the request from the new primary medical service provider. The contractor must transfer these records electronically (via the GP2GP facility), and/or in paper form (where the GP2GP transfer is unsuccessful and/or part or all of a patient’s records are held only in paper form by the contractor).
- 7.31 This amendment intends to prevent significant delays in the transfer of the medical records of a patient registered with a contractor who is registering with a new primary medical services provider. It aims to improve continuity of care and safer prescribing by enabling the information required to make clinical decisions to reach the relevant clinician in a timely manner.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act 2018.

9. Consolidation

- 9.1 The department published consolidated statutory instruments of previous existing National Health Service GMS Contracts Regulations and the PMS Agreements Regulations in 2015. Both sets of Regulations have since been amended; however, DHSC does not consider there to be a current need to further consolidate these Regulations.

10. Consultation outcomes

- 10.1 The DHSC has consulted NHSE/I and the GPC on this instrument. There is no statutory duty to consult on proposals to make regulations under the NHS Act 2006, however it is the department's custom to consult and negotiate contractual changes. Drafts of the proposed amendments have been shared with the BMA and NHSE/I for consideration and commentary. The Department has considered the comments and made changes where considered appropriate as part of the drafting process.

11. Guidance

- 11.1 Guidance for commissioners and contractors on the amendments in this instrument relating to *patients who should not be tested for, or vaccinated against, coronavirus: confirmation of exemption* will be published by 1 October 2021 on <https://www.gov.uk/>.
- 11.2 For the purposes of the provisions regarding *Online and electronic services*, the relevant requirements of the GPIT Operating Model are contained in *Securing Excellence in Primary Care (GP) Digital Services: The Primary Care (GP) Digital Services Operating Model 2019-21*", available at: <https://www.england.nhs.uk/publication/securing-excellence-in-primary-care-gp-digital-services-the-primary-care-gp-digital-services-operating-model-2019-21>.

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 submitted with this memorandum.

13. Regulating small business

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

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 as set in regulations and for the consolidation of those regulations.
- 14.2 The instrument does not include a statutory review clause.

15. Contact

- 15.1 Marlene Santos at the Department of Health and Social Care Telephone: 0207 972 2721 or email: generalpracticemailbox@dhsc.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Sarah Gravenstede, Deputy Director for Primary Care, at the Department of Health and Social Care can confirm that this explanatory memorandum meets the required standard.
- 15.3 Jo Churchill MP, 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.