

EXPLANATORY MEMORANDUM TO

THE NATIONAL HEALTH SERVICE (PRIMARY MEDICAL SERVICES AND PERFORMERS LISTS) (AMENDMENT) REGULATIONS 2024

2024 No. 575

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 His Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Declaration

- 2.1 The Rt Hon Andrea Leadsom MP, Parliamentary Under Secretary of State for Public Health, Start for Life and Primary Care at DHSC can confirm that this Explanatory Memorandum meets the required standard.
- 2.2 Mark Joannides, Deputy Director for General Practice Policy at DHSC, can confirm that this Explanatory Memorandum meets the required standard.

3. Contact

- 3.1 Maia Goree at the DHSC (email:generalpracticemailbox@dhsc.gov.uk Telephone:020 7104 7797) can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

- 4.1 This instrument amends the regulations underpinning the framework for General Medical Services (GMS) contracts and Personal Medical Services (PMS) agreements to implement changes to the terms required to be contained in those contracts and agreements. It also amends the regulations under which NHSE maintain performers lists to ensure alignment between the regulations in relation to inclusion in the medical performers list.
- 4.2 This instrument amends the following Regulations relating to the provision of primary medical services in England:
 - (a) The National Health Service (Performers Lists) (England) Regulations 2013 (S.I. 2013/335) (the “Performers Lists Regulations”) which sets out the performers list framework;
 - (b) 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
 - (c) 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.

Where does the legislation extend to, and apply?

- 4.3 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.
- 4.4 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England.

5. Policy Context

What is being done and why?

- 5.1 Every GP practice 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 provide, if they so choose. There are three different types of GP contract arrangements in England: GMS, PMS and Alternative Provider Medical Services (APMS). These regulations relate to GMS and PMS contracts only; the terms of APMS contracts are governed by separate directions, which will also be amended to implement these amendments. All types of contracts are managed by NHS England (NHSE) or Integrated Care Boards (ICBs).
- 5.2 With the exception of the determination of dispute amendment (paragraph 5.17, the amendments made by these Regulations are being made to implement policies announced in Changes to the GP Contract in 2024/25 (which was published by NHSE on 28 February 2024 and is available at: <https://www.england.nhs.uk/long-read/arrangements-for-the-gp-contract-in-2024-25/>).

Amendments to the Performers Lists Regulations

- 5.3 The Performers Lists Regulations establish the medical performers list, dental performers list, and ophthalmic performers list. A practitioner must generally be included in the relevant list in order to perform the relevant services in the NHS in England. These regulations were made under section 91 of the National Health Service Act 2006 (c. 41) (“the NHS Act 2006”) and must be maintained by NHS England.
- 5.4 During the COVID-19 pandemic there was an amendment to the Performers Lists Regulations (S.I. 2020/411) that intended to allow doctors other than GPs to deliver primary care services without being on the Medical Performers List (MPL) if they had a prescribed connection to a designated body in the Medical Profession (Responsible Officers) Regulations 2010; or were granted permission to practise as medical practitioners in hospitals owned or managed by such bodies.
- 5.5 Doctors that are employed or registered with bodies designated by the Medical Profession (Responsible Officers) Regulations 2010 (Schedule, Part 1 only) will be able to deliver primary care services without being on the MPL. These changes will permit GP practices and Primary Care Networks (“PCNs”) to employ doctors who are not GPs to deliver primary medical services, without the requirement for the doctor to also be included on the MPL. This change will allow the flexibility introduced during the pandemic to continue. However, limiting the doctors who can work under this provision to those with a prescribed connection to a designated body listed in Schedule, Part 1 only, such as an NHS trust, NHS foundation trust or health board, will ensure that all doctors delivering primary medical services are working within robust clinical governance structures.

- 5.6 These amendments are intended to increase flexibility and efficiency in the primary care workforce. The changes will provide increased flexibility, enabling PCNs and practices to make local decisions to obtain the workforce required to support delivery of innovative service models in their area.
- 5.7 The National Health Service (Performers Lists) (England) (Coronavirus) (Amendment) Regulations 2020 (S.I. 2020/411); and (b) the National Health Service (Performers Lists, Coronavirus) (England) Amendment Regulations 2021 (S.I. 2021/30) are being revoked as a consequence, as these SIs will be redundant following these amendments.
- 5.8 The GMS Contracts Regulations and PMS Agreements Regulations are also amended to ensure alignment with the Performers Lists Regulations.

Vaccination and Immunisations

- 5.9 These amendments require contractors to comply with the Vaccines and Immunisations Standards determined by NHS England in relation to processing of records. The Vaccines and Immunisations Standards have been updated from 15th April to state that contractors must:
- share vaccination status (both vaccinated and unvaccinated) with the local Child Health Information Services (CHIS), and any other system nationally required, and support CHIS data cleansing.
 - improve data recording of vaccination status for all patients, including where they have arrived from overseas and where there is an unknown or incomplete history to offer vaccinations in line with the UK Schedule and Green Book.
 - improve data quality for vaccination events, with this being supported through a rationalisation of SNOMED codes used for vaccination event recording.
 - following an impact assessment by NHS England, with practices ensuring they are using the relevant codes within their clinical system templates; and
 - maintain accurate and up-to-date patient vaccination records, including correcting vaccination records as and when they are made aware of any errors.
- 5.10 This is intended to improve Commissioner’s ability to understand population coverage and need, particularly in under-served communities and communities with health inequalities, and reduce the risk of disease outbreak like that seen recently for polio and measles.

Good practice guidelines

- 5.11 This amendment updates the guidance reference within the patient record provisions (regulation 67 of the GMS Contracts Regulations and regulation 60 of the PMS Agreements Regulations), to require contractors to have signed an undertaking that it will have regard to the guidelines contained in “Digital Primary Care: Good Practice Guidelines for GP electronic patient records – (GPGv5)”. This updated guidance was published on 20th September 2023.
- 5.12 This is intended to ensure practices are required to have regard to the updated version of the guidance.

National workforce reporting service

- 5.13 The amendments are intended to clarify the requirements on data submission to the National Workforce Reporting Service (NWRS), previously referred to as the

National Workforce Reporting System to include requirements for reviewing and updating the data for collection at intervals set by NHSE.

- 5.14 This is intended to increase compliance with the provision and ensure the accuracy of the data submitted on the NWRs.

Digital catchment tools

- 5.15 NHS England has provided digital tools to enable GP practices to re-produce their contractual practice area boundary digitally. It has not previously been a contractual requirement for practices to use these digital tools. As a result, NHS England does not have complete data for all GP practices, and the quality of data submitted by some GP practices is not sufficient to support its intended beneficial use for patients, GP practices and NHS England.

- 5.16 The amendment is to require GP practices to use digital tools provided by NHS England to reproduce a digital copy of their practice boundary (including any branch site areas, whether coterminous or not).

Determination of dispute

- 5.17 This amendment does not change policy. This amendment corrects an error to refer to the correct reference “section 90(5) of the Act”. This error was contained in GMS Contracts Regulations and PMS Agreements Regulations. The effect of a reference to section 90(5) of the NHS Act 2006 is to make clear that this provision applies to a non-NHS contract, as if it had been referred under the dispute procedure for NHS contracts under section 9 of the NHS Act 2006.

Telephone Contract Data

- 5.18 This amendment is intended to require practices to provide call handling data through a national data extraction, for use by Primary Care Network’s Clinical Directors, Integrated Care Boards (ICBs) and NHS England.
- 5.19 This data will be used by ICBs and NHS England to support service improvement and planning, for example by providing better insight into patient demand and access trends which systems can use to support understanding of operational pressure in general practice; and providing better understanding of patterns of demand and periods of surge activity to inform commissioning of local services.
- 5.20 The requirement will come into force from October 1st, 2024 to allow practices time to review and understand their own data before it is shared as outlined.

Continuity of Care

- 5.21 This amendment is intended to highlight the importance of continuity of care, whilst ensuring practices have flexibility to deliver services to best meet the needs of their patient population. This amendment explicitly requires continuity of care to be considered when determining the appropriate response when a patient contacts their practice. The amendment clarifies this is to be considered as part of taking into account the needs of the patient.
- 5.22 The amendment has been made following comments made by the Joint Committee on Statutory Instruments (“JCSI”) in their Thirty-Eighth Report of Session 2022-23 in relation to paragraph 10 of both schedules to the National Health Service (General Medical Services Contracts and Personal Medical Services Agreements) (Amendment) (No. 2) Regulations 2023 (S.I. 2013/449).

Veterans Duty

- 5.23 The amendment places a requirement on practices that they must have due regard for the needs and circumstances of Armed Forces Veterans when offering services and making onward referrals. It is intended to improve service persons' experience of general practice services.

Patient Registration

- 5.24 NHS England has co-developed a new standardised registration solution with patients and practices to make registering with a practice easier and simpler for patients and practices. The solution consists of an online service and an improved paper form option. Over 2500 practices are already offering the online service to patients. This amendment requires practices to adopt and offer both formats to their patients.
- 5.25 The regulations require practices to offer both the online and paper registration option and mandates these application methods. These requirements come into force on 31st October 2024 to allow contractors time to change over to these new application methods. There is no transitional period in respect of ongoing applications as the regulations relate to acceptance of new applications, rather than completing new registrations.

What was the previous policy, how is this different?

Amendment to the Performers Lists Regulations

- 5.26 During the COVID-19 pandemic there was an amendment to the Performers List Regulations (S.I. 2020/411) that intended to allow doctors other than GPs to deliver primary care services without being on the Medical Performers List (MPL) if they had a prescribed connection to a designated body in the Medical Profession (Responsible Officers) Regulations 2010; or were granted permission to practise as medical practitioners in hospitals owned or managed by such bodies.
- 5.27 Flexibilities similar to the COVID-19 amendment will be made permanent. Doctors that are employed or registered with bodies designated by the Medical Profession (Responsible Officers) Regulations 2010 (Schedule, Part 1 only) will be able to deliver primary care services without being on the MPL.
- 5.28 The National Health Service (Performers Lists) (England) (Coronavirus) (Amendment) Regulations 2020 (S.I. 2020/411) are being revoked to avoid duplicative legislation.

Vaccination and Immunisations

- 5.29 The Vaccination and Immunisation (V&I) Standards in the GP Contract guidance were last updated on the 10th March 2021. The standards set out the expectation of general practices, such as a named lead for vaccination service, provision of sufficient convenient appointments, standards for call and recall programmes and opportunistic vaccination offers, participation in national agreed catch-up campaigns and standards for record keeping and reporting. The amendments to regulations and corresponding guidance updates are intended to update the requirements in relation to compliance with the V&I standards, particularly regarding the reporting of vaccination status.

Good Practice Guidelines

- 5.30 Within the patient record provisions of the current GP Contract Regulations (regulation 67 of the GMS Contracts Regulations and regulation 60 of the PMS Agreements Regulations), contractors are required to have 'signed an undertaking that

it will have regard to, the guidelines contained in “The Good Practice Guidelines for GP electronic patient records” (Version 4) published on 21st March 2011’. The policy has not changed, the reference to guidance has been updated to refer to the latest version of the guidance.

National workforce reporting service

- 5.31 Previously the GMS Contract Regulations and PMS Agreements Regulations required practices and PCNs to “record and submit any data required [for] the NHS Digital workforce collection” by updating the NWRS with information on all of their staff, the full specification is provided on the NHS Digital website. This policy is not changing, the amendment is intended to ensure the data is reviewed and updated regularly prior to collection by NHSE.

Digital catchment tools

- 5.32 General practices could previously return paper copies of practice boundaries. This has led to incomplete data, which is problematic and limits the impact of digital features such as a ‘Find a GP’ service. This amendment will require the use of digital tools to rectify the issue and improve the data available.

Determination of dispute

- 5.33 The policy has not changed, this amendment is correcting an erroneous reference. There was not intended to be a policy change in relation to determination of disputes when the GMS Contract Regulations and PMS Agreements Regulations were consolidated in 2015, however, the erroneous reference to section 9(5) of the NHS Act 2006 departs from the previous policy position. Therefore, this amendment rectifies this error, by amending the reference to section 9(5) to section 90(5) of the NHS Act 2006 realigning it with previous versions of this provision.

Telephone Contract Data

- 5.34 The amendments to the 2023/24 GP Contract required that when practices enter into any new digital telephone contract, it must be procured through the national framework. This was to provide greater functionality for practices and patients. Amendments were made (in S.I. 2023/449) to standardise contractor uptake of approved cloud-based telephony solutions.
- 5.35 This amendment requires practices to provide data related to call handling. This requirement applies to all contractors regardless of if they have a new contract, but the obligation is limited to data that is available to them. That data will provide insight into demand on general practice and provide better evidence of the pressures they are facing. This insight will be used by PCN Clinical Directors, ICBs and NHS England to better support practices and improve service planning. There has not previously been a requirement to share call handling data.

Continuity of Care

- 5.36 There is an existing provision in the GMS Contracts Regulations and PMS Agreements Regulations that requires all patients to be assigned a named accountable GP, and practices must endeavour to comply with all reasonable requests of patients to see a particular practitioner, including their accountable GP.
- 5.37 The accountable GP takes responsibility for the co-ordination of all appropriate services required under the contract and ensures they are delivered to each of their

patients where required (based on the clinical judgement of the named accountable GP).

- 5.38 For patients over 75, the accountable GP must also take all reasonable steps to recognise and appropriately respond to the physical and psychological needs of the patient in a timely manner; ensure that the patient receives a health check if requested, and work co-operatively with such other health and social care professionals who may become involved in the care and treatment of the patient to ensure the delivery of a multi-disciplinary care package designed to meet the needs of the patient.
- 5.39 This amendment clarifies the expectation that continuity of care is given appropriate consideration when any patient contacts the practice and the benefits it can bring for patients, the workforce and the wider system.

Veterans Duty

- 5.40 The Government is committed to ensuring GP access for all, including veterans. Currently the Armed Forces Covenant Duty, which comes from the Armed Forces Act 2021, requires specified bodies to have due regard to the following when exercising a relevant function:
- (a) the unique obligations of, and sacrifices made by, the Armed Forces;
 - (b) the principle that it is desirable to remove disadvantages arising for service people from membership, or former membership, of the Armed Forces; and
 - (c) the principle that special provision for Service people may be justified by the effects on such people of membership, or former membership, of the Armed Forces.
- 5.41 NHS England, ICBs, NHS Trusts, NHS Foundation Trusts and Local Authorities are included as specified bodies. This amendment places a similar obligation on general practice as already exists for NHS bodies under The Armed Forces Covenant and Armed Forces Act 2021 and is intended to help to improve provision of services for this group of patients.

Patient Registration

- 5.42 Individuals wishing to register with a GP currently need to complete a form to register. Previously the form could be completed electronically then submitted to the practice, or a paper form could be completed and handed to the practice. Previously there was no online registration system in place, now that this has been introduced the amendment requires contractors to offer the new online registration system as well as a new standardised paper form. This amendment makes it a requirement that the new online registration system, where patients will be able to register with a GP practice via an online portal, be adopted by practices. It also makes it a requirement that contractors use a standardised paper form specified by NHS England to enable standardisation across practices.

6. Legislative and Legal Context

How has the law changed?

- 6.1 Part 4 of the NHS Act 2006 requires NHS England 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. This instrument is being made to amend existing regulations to reflect the terms which will form part of the GP contract.

Why was this approach taken to change the law?

6.2 This is the only possible approach to make the necessary changes.

7. Consultation

Summary of consultation outcome and methodology

7.1 Customarily, DHSC seeks the views of the England General Practitioners Committee (GPC England), part of the British Medical Association (BMA), on changes to the GP contract. DHSC has consulted NHSE and the GPC England on this instrument. Drafts of the proposed amendments were shared with the GPC England for consultation. GPC had no comments on the instrument drafting.

8. Applicable Guidance

8.1 NHSE have issued guidance to support the implementation of the policies relating to the following provisions:

- (a) Online Registration: <https://digital.nhs.uk/services/register-with-a-gp-surgery-service>
- (b) Good Practice Guidelines: <https://www.england.nhs.uk/digital-gp-good-practice-guidance/>
- (c) National Workforce Reporting Service: <https://digital.nhs.uk/data-and-information/areas-of-interest/workforce/national-workforce-reporting-service-nwrs/support>
- (d) Telephony Contract Data: <https://digital.nhs.uk/services/digital-services-for-integrated-care/advanced-telephony-better-purchasing-framework/buyers-guide>
- (e) V&I Standards: <https://www.england.nhs.uk/long-read/general-practice-vaccination-and-immunisation-services-standards-and-core-contractual-requirements/>
- (f) Continuity of Care: <https://www.england.nhs.uk/publication/network-contract-des-2024-25-part-b-guidance-non-clinical/>

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because it does not meet the requirements for conducting an Impact Assessment.

Impact on businesses, charities and voluntary bodies

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

9.3 The legislation does not impact small or micro businesses. Although many general practices are small businesses, they are nevertheless exempt from the Small Firm Impact Test.

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

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 NHSE (on behalf of the Secretary of State for Health and Social Care) are responsible for monitoring the implementation of, and compliance with, this instrument. However,

the Secretary of State is ultimately responsible for this instrument and the policies it implements.

- 10.2 The instrument does not include a statutory review clause.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

- 11.1 This instrument makes amendments in response to the JCSI's Thirty-Eighth Report of Session 2022-23 in relation to the Contact with the Practice amendment in the National Health Service (General Medical Services Contracts and Personal Medical Services Agreements) (Amendment) (No. 2) Regulations 2023 (S.I. 2013/449). This has been addressed in paragraphs 8 of Schedules 1 and 2.
- 11.2 This instrument corrects an error contained in both the GMS Contracts Regulations and PMS Agreements Regulations, as outlined in paragraphs 5.17 and 5.33. These corrections are made in paragraphs 6 of Schedules 1 and 2 of this instrument. The Department has consulted with the SI Registrar whether the free issue should apply to this instrument in accordance with paragraph 4.7.6 of Statutory Instrument Practice in light of these corrective provisions. It is considered appropriate to apply the free issue procedure to this instrument.

12. European Convention on Human Rights

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

13. The Relevant European Union Acts

- 13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").