EXPLANATORY MEMORANDUM TO

THE NATIONAL HEALTH SERVICE (GENERAL MEDICAL SERVICES CONTRACTS AND PERSONAL MEDICAL SERVICES AGREEMENTS) (AMENDMENT) (NO. 3) REGULATIONS 2022

2022 No. 935

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:

a) 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

b) 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 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 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). These regulations relate to GMS and PMS contracts only; APMS contracts are amended via separate directions. All types of contract are managed by NHS England or Integrated Care Boards (ICBs).

2.3 This instrument makes amendments to GMS Contracts Regulations and PMS Agreements Regulations (see further in section 7), in relation to:

- ***Disclosure of information about NHS earnings;***
- ***Alternative premises;***
- ***Electronic patient registration;***
- ***Directly bookable appointments; and***
- ***Minor amendments.***

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 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 (described in paragraph 7.8) 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 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.

6.2 This instrument is being made to amend existing regulations to reflect the terms which will form part of the GP contract.

7. Policy background

What is being done and why?

Disclosure of information about NHS earnings

7.1 The amendments in this instrument relating to *disclosure of information about NHS earnings* aim to increase pay transparency in general practice. This follows on from 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* (published by the NHSE/I and the British Medical Association (BMA) on 31 January 2019 at https://www.england.nhs.uk/wp-content/uploads/2019/01/gp-contract-2019.pdf); and
- *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/publication/investment-and-evolution-update-to-the-gp-contract-agreement-20-21-23-24/).

7.2 Specifically, these amendments are being made to expand the group of individuals subject to the requirements in this policy to reflect the list of individuals agreed by NHSE and the General Practitioners Committee (GPC) of the BMA in the 2020 *Update to the GP contract agreement 2020/21 – 2023/24*.

7.3 The amendments in this instrument make changes to all GMS and PMS contracts to include the following in respect of the financial years from 2021-22 to 2023-24:

a) An individual who is engaged (either under a contract of employment or a contract for services) by either a GP contractor (GMS, PMS), a clinical sub-contractor or any onward clinical sub-contractor, will be required by the contract of engagement they hold to self-declare their NHS earnings if these are above the threshold for the relevant financial year.

b) A contract of engagement also includes a contract held by a third party with an

individual to supply clinical services to the GP contractor, clinical sub-contractor or onward clinical sub-contractor, as the case may be.

c) If a GP contractor, clinical sub-contractor or any onward clinical sub-contractor is a company, company officers will also be required to self-declare their NHS earnings if they are above the threshold for the relevant financial year. Company officers are the directors and any company secretary.

d) These requirements will come into force once they have been included in contracts of engagement with either the GP contractor, clinical sub-contractor, onward clinical sub-contractor or third party. These requirements must be included in any new contracts of engagement. Contracting parties must also use reasonable endeavours to vary existing contracts of engagement (which were in place before the contracts were varied) held with individuals to include the self-declaration obligation. Reasonable endeavours will need to be applied to include the self-declaration obligation into third party contracts, whether these contracts are future or existing.

7.4 The financial threshold for the 2021-22 financial year is £156,000, and it increases by 2% per annum to £163,000 for the 2023-24 financial year.

7.5 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.

7.6 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.

7.7 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.

7.8 Two corrections are made to regulation 27A of the GMS Contracts Regulations and to regulations 21A and 21B of the PMS Agreements Regulations to amend the point in time from which reasonable endeavours to amend existing sub-contractors can properly apply, and to amend a cross-reference.

Alternative premises

7.9 The amendments in this instrument relating to *alternative premises* implement the commitment in General Practice contract negotiations in 2021/22 to clarify that practices may deliver suitable primary medical services through locations other than

practice premises (see *Supporting General Practice in 2021/22*, available at: https://www.england.nhs.uk/wp-content/uploads/2021/01/C1054-supporting-general-practice-in-21-22.pdf).

7.10 Currently, GMS and PMS Regulations enable a contractor to choose the premises from which they provide primary medical services. Contractors are required to specify these premises in the contract, making them 'practice premises'. Practice premises must meet the needs of patients, be clean and safe, be listed in the practice leaflet along with their opening hours and be accessible to the commissioner, Care Quality Commission (CQC) and local Healthwatch. Under the current regulations, contractors providing any services not through practice premises, such as from a home office, would be required to specify those locations as listed premises under their contract, and those locations would become subject to the same requirements set out above.

7.11 Contractors routinely provide services to patients remotely through telephone and video consultations alongside face-to-face consultations. They also remotely undertake day-to-day administration such as renewing electronic repeatable prescriptions, writing Fit Notes or reviewing clinical correspondence. Since the Covid-19 pandemic has led to an increase in remote working for GPs and practice staff, it is not considered necessary for each location that a contractor or sub-contractor works from to be listed within the contract.

7.12 Amendments to the current regulations will allow for the below list of services to be provided by contractors or sub-contractors at a place which is not the practice premises, without said place needing to be subject to the requirements set out above.

7.13 Under these amendments, the remote services which contractors or sub-contractors will be able to provide from outside practice premises are as follows:

a) a video consultation;

b) a telephone consultation;

c) an online consultation;

d) a secure electronic communication;

e) an electronic prescription; and

f) any other service which is suitable for remote provision, including administrative tasks in support of the contract.

7.14 Under these amendments, these remote services can be provided from outside practice premises so long as:

a) the service is provided from an appropriate location; or

b) the service is provided through an appropriate digital or telecommunications method.

7.15 A location is not "appropriate" if:

a) it, or its environment, is not conducive to ensuring the confidentiality of patient information, in connection with the service to be provided from that location; and

b) the location or its environment is not conducive to ensuring appropriate provision of the service from that location.

7.16 Under these amendments, remote services must not be provided from outside of practice premises if:

a) it would not be clinically appropriate to do so for the patient on that occasion; or

b) it is otherwise not appropriate to the needs or circumstances of the patient.

Electronic patient registration

7.17 This amendment implements the commitment in *General practice contract arrangements in 2022/23* (published by NHS England on 1 March 22 at https://www.england.nhs.uk/wp-content/uploads/2022/03/B1375_Letter-re-General-practice-contract-arrangements-in-2022-23_010322.pdf) to make explicit that patients may apply to register for inclusion in a practice's list of patients via electronic means. Under existing regulations, this is not explicit. This change is being made to facilitate the introduction of electronic patient registration.

Directly bookable appointments

7.18 This amendment implements the commitment in *General practice contract arrangement in 2022/23* to require contractors to make all their directly bookable appointments available for patients to book directly online, by phone or in person. A "directly bookable appointment" is defined in the amendment as an appointment of a type which, in line with guidance issued by NHSE (see paragraph 11.1), is available for booking by a registered patient or an appropriate person on their behalf. This replaces the current requirement on practices to make a minimum of 25% of all appointments available for direct booking online (and by telephone and in person). This amendment is being made to give practices discretion to determine which of their appointments are suitable for direct booking, and which are not; and to ensure that patients may book the former directly.

Minor amendments

7.19 This instrument makes a minor amendment to remove indicator MH005 from the list of Quality and Outcomes Framework (QOF) indicators that have been discontinued. This is because this indicator has been reinstated in the 2022/23 QOF.

7.20 This instrument also removes an outdated stipulation in the PMS Agreements Regulations that PMS contractors may only order specified controlled drugs using non-electronic prescription forms. Under the GMS Contracts Regulations, GMS contractors may order these drugs using electronic prescription forms, and so this amendment harmonises this for PMS contractors.

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 DHSC 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 at this time.

10. Consultation outcome

10.1 The DHSC has consulted NHSE/I and the GPC on this instrument. Drafts of the proposed amendments were shared with the GPC for consultation.

11. Guidance

11.1 NHSE will publish the guidance (titled "Directly bookable appointments – guidance for practices") referenced in the amendments relating to *directly bookable appointments* at https://www.england.nhs.uk/gp/investment/gp-contract/digital-requirements-guidance/ in September 2022.

11.2 NHSE will inform contractors of these amendments when they come into effect via the NHSE Primary Care Bulletin.

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.

14. Monitoring & review

14.1 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.

14.2 This instrument does not include a statutory review clause.

15. Contact

15.1 Josh Bradlow at the Department of Health and Social Care Telephone: 07707 281 535 or email: generalpracticemailbox@dhsc.gov.uk can be contacted with any queries regarding this instrument.

15.2 Sarah Gravenstede, Deputy Director for General Practice Strategy at the Department of Health and Social Care, can confirm that this explanatory memorandum meets the required standard.

15.3 James Morris MP, Parliamentary Under Secretary of State (Minister for Primary Care and Patient Safety), at the Department of Health and Social Care can confirm that this explanatory memorandum meets the required standard.