EXPLANATORY MEMORANDUM TO

THE NATIONAL HEALTH SERVICE (GENERAL MEDICAL SERVICES CONTRACTS AND PERSONAL MEDICAL SERVICES AGREEMENTS) (AMENDMENT) REGULATIONS 2022

2022 No. 404

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 (together, "the 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 sets 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 provision 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)). Only GMS and PMS contracts are within the scope of the Regulations.

2.3 The amendments in this instrument remove requirements in the Regulations on contractors and sub-contractors with NHS earnings over the relevant threshold for the financial year 2020/21 to declare their NHS earnings for that financial year. These requirements were introduced via the National Health Service (General Medical Services Contracts and Personal Medical Services Agreements) (Amendment) (No. 2) Regulations 2021 (S.I. 2021/995). This instrument is needed to delay the implementation of these requirements; reflecting the Secretary of State for Health and Social Care's plan to delay implementation of this, set out to the profession when the Standard GP contracts were varied in January 2022. This included the statement: "*the variation notices vary the contract/agreement to include the general practice pay transparency obligations (as required by the relevant regulations/directions). However, the Secretary of State for Health and Social Care has confirmed the implementation of general practice pay transparency is delayed until at least Spring 2022. This means that commissioners should not take action at this point in relation to*

contractors that have not submitted a declaration of 2019/20 earnings specifically. Further information on the implementation of the pay transparency provisions will be available in due course, and any changes to the provisions in this variation notice would be subject to a further contract variation" (available: NHS England » GP Contract documentation 2021/22).

2.4 A decision was taken by the Secretary of State for Health and Social Care in late February 2022 to confirm that this delay meant that implementation of general practice pay transparency would take place at a date after April 2022, following discussions with the General Practitioners Committee (GPC) of the British Medical Association (BMA). This was communicated to the GPC and, as is usual custom and practice, a draft of these regulations has been shared with the GPC for review. As this decision took place in late February, this amendment is being laid close to the deadline date for individuals to submit their NHS financial earnings information. For this reason, and to give the profession as much notice as is possible, NHSE/I will alert individuals covered by the policy of these planned changes when the regulations are laid (acknowledging that the changes are subject to the will of Parliament) and once again when they come into force.

2.5 The original policy was agreed as part of the agreement reached between NHSE/I (on behalf of Government) and the GPC of the BMA in January 2019 (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).

2.6 This instrument also makes minor amendments to regulation 27A(5) of the GMS Contracts Regulations and regulation 21A(5) of the PMS Agreements Regulations concerning inert parenthetical material, now removed from the Regulations, following Joint Committee on Statutory Instruments reporting in its 16th Report of the 2021-22 session (available at https://publications.parliament.uk/pa/jt5802/jtselect/jtstatin/111/11107.htm).

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 As per paragraph 2.6 this instrument makes minor amendments to remove inert parenthetical material in line with the JCSI's sixteenth report of the 2021/22 session.

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 reflect the terms which will form part of the GP contract. Such amendments are usually made at least twice a year. Given that the declaration deadline for 2020/21 earnings is 30 April 2022, these regulations must come into effect before that date to delay implementation of this policy.

6.3 The National Health Service (General Medical Services Contracts and Personal Medical Services Agreements) (Amendment) (No.2) Regulations 2021 introduced the disclosure of information about NHS earnings requirements. This instrument will revoke the requirement in these regulations on contractors and sub-contractors with NHS earnings above the relevant threshold (of £153,000) for the 2020/21 financial year to publicly declare these earnings by 30 April 2022, in order to delay implementation of these requirements.

7. Policy background

What is being done and why?

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

Amending the Disclosure of information about NHS earnings requirements

7.2 Introduced in October 2021 to reflect changes agreed in *Investment and evolution (2019), Update to the GP contract agreement 2020/21 – 2023/24* (2020), the *Disclosure of information about NHS earnings* amendments aimed to increase pay transparency of individuals working in general practice as a corollary to the increased investment in NHS general practice contracts. In November 2021, the Secretary of State for Health and Social Care decided to delay implementation of these requirements until at least Spring 2022. This was to allow general practice to focus on seeing patients at a time when we were seeing increasing levels of demand.

7.3 This amendment will remove the requirement in the GMS Contracts Regulations that GMS contracts must include the following terms in respect of the financial year 2020/21:

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 the financial year 2020/21 by 30 April 2022;

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 the financial year 2020/21 by 30 April 2022. (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 the financial year 2020/21 by 30 April 2022;

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 the financial year 2020/21 by 30 April 2022 (for these purposes, a sub-contract includes a contract with a locum practitioner).

7.4 Amendments are also made to the PMS Agreements Regulations to remove the requirement from all PMS Agreements to include terms corresponding to those mentioned in (a) to (d) above in relation to the financial year 2020/21.

7.5 Where a person would have been required to comply with the disclosure obligation for the financial year 2020/21, they would have been required to 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 would have been submitted to NHS Digital via a self-declaration which is made through an online portal (which is accessible at https://datacollection.sdcs.digital.nhs.uk) by the 30 April 2022.

7.7 Within the *Disclosure of information about NHS earnings* 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 "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).

7.9 This amendment is being made to prevent relevant individuals from being required to disclose their 2020/21 earnings by 30 April 2022, as is currently required by The National Health Service (General Medical Services Contracts and Personal Medical Services Agreements) (Amendment) (No.2) Regulations 2021. This is in line with the decision of the Secretary of State for Health and Social Care to delay implementation of this policy.

7.10 This amendment is made with the expectation that a future amendment to the GMS Contracts Regulations and the PMS Agreements Regulations will require the individuals in 7.3 and 7.4 to disclose their 2020/21 NHS earnings at a later date.

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 None. Previous existing National Health Service General Medical Services Contracts Regulations and the Personal Medical Services Agreements Regulations were consolidated and published 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 outcome

10.1 The DHSC has consulted the GPC on these regulations and has shared a draft of the proposed amendments.

11. Guidance

11.1 NHS England will issue notice to the profession when these amendments are laid stating that these amendments are being made advising individuals originally covered by the *Disclosure of information about NHS earnings* regulations.

11.2 NHS England will also issue notice to the profession when these amendments have come into effect advising individuals originally covered by the Disclosure of information about NHS earnings regulations.

11.3 No other guidance will be required.

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 therefore not been undertaken.

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 Board is responsible for monitoring compliance with this legislation.

14.2 The instrument does not include a statutory review clause.

15. Contact

15.1 Eoin Cassidy, Policy Advisor, at the Department of Health and Social Care 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 Maria Caulfield, Parliamentary Under Secretary of State for Patient Safety and Primary Care at the Department of Health and Social Care can confirm that this explanatory memorandum meets the required standard.