**EXPLANATORY MEMORANDUM TO THE**

**NATIONAL HEALTH SERVICE (PRIMARY MEDICAL SERVICES) (MISCELLANEOUS AMENDMENTS) REGULATIONS 2004**

**2004 No. 2694**

**1.** This explanatory memorandum has been prepared by the Department of Health and is laid before Parliament by Command of Her Majesty.

## 2. Description

2.1 These Regulations make a number of relatively minor amendments to the:-

i. National Health Service (General Medical Services Contracts) Regulations 2004 (SI 2004/291);
ii. National Health Service (Personal Medical Services Agreements) Regulations 2004 (SI 2004/627);
iii. National Health Service (Performers Lists) Regulations 2004 (SI 2004/585); and,
iv. General Medical Services and Personal Medical Services Transitional and Consequential Provisions Order 2004 (SI 2004/865).

The amendments seek to provide greater clarity and consistency within and between the various Regulations as well as responding to policy developments since the original Regulations were made in March/April of this year.

## 3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

## 4. Legislative Background

4.1 These Regulations amend a number of Statutory Instruments, as detailed above, that set out significant changes to the way in which primary medical services are delivered consequent to the provisions contained in Part 4 of the Health and Social Care (Community Health and Standards) Act 2003.

4.2 Part 2 of the Regulations amends the National Health Service (General Medical Services Contracts) Regulations 2004 (SI 2004/291).

4.3 The amendments set out in Regulation 2 (part) and regulation 3 are concerned with the definition of "general medical practitioner". The original regulations defined this term for all purposes in a way that excluded certain medical practitioners who had acquired rights to practise. It has now been decided that this exclusion is only necessary in relation to regulation 4 of the GMS Regulations, which requires each medical practice to include one general

medical practitioner (the mandatory GP). Regulation 2 accordingly widens the definition of general medical practitioner for the regulations as a whole whilst regulation 3 narrows the term as it applies to the requirement for a mandatory medical practitioner in regulation 4. The narrower definition excludes both the previously excluded groups and a group of doctors known as restricted service principals (RSPs). These doctors are not qualified to work as general practitioners and generally provide specialist services such as maternity medical services or child health surveillance. Regulation 2 also clarifies two other definitions.

4.4 Regulations 4 and 5 make a number of minor amendments to Schedules 2 and 6 of the GMS Regulations. The most significant change relates to the publication and application of new national quality requirements to the delivery of out of hours services (reg. 5(2), (3) & (14). The specific exclusions in relation to clinical reports and complaints are necessary to avoid duplication between the Regulations and the quality requirements (which have higher standards). Details of other changes made by regulation 5 (other than those that are self-explanatory) can be found in the Explanatory Note to the instrument itself.

4.5 Part 3 of the Regulations amends the National Health Service (Personal Medical Services Agreements) Regulations 2004 (SI 2004/627).

4.6 The majority of these changes mirror the changes to the GMS Contracts Regulations. The other significant change is in regulation 8, which revokes regulation 4 of the PMS Regulations, which had imposed particular requirements in relation to PMS agreements with medical practitioners. This is adjudged to be superfluous within the PMS regulatory regime, which will now just impose a single set of requirements in relation to all contractors.

4.7 Part 4 of the Regulations amends the National Health Service (Performers Lists Regulations 2004 (SI 2004/585). Regulation 16 extends the circumstances in which removal from a performers list on discretionary grounds will not take immediate effect and regulation 17 introduces a definition of a GP Registrar that is consistent with the GMS and PMS Regulations.

4.8 Part 5 Regulations revokes article 34 of amends the General Medical Services and Personal Medical Services Transitional and Consequential Provisions Order 2004 (SI 2004/865). This provision is no longer required as these amending regulations remove the requirement dealt with by this transitional provision.

4.9 Part 6 is a transitional provision relating to RSPs (see paragraph 4.3 above). It protects from termination any existing GMS contract where the contractor was relying on a RSP to meet the condition that each contractor must include a GP, such contractors will be employing, or engaging, fully qualified GPs to deliver appropriate patient services.

## 5. Extent

5.1 This instrument applies to England only.

## 6. European Convention on Human Rights

6.1 Not applicable.

## 7. Policy background

7.1. NHS Confederation and the General Practitioners Committee of the BMA ("GPC") reached agreement on a new contract for the provision of primary medical services by doctors. This was published in the document "The new GMS contract 2003 – Investing in General Practice" in February 2003. This agreement called for a change in the regulatory framework for the provision of primary medical services by doctors from the current statutory arrangements made with individual general practitioners to one based on contractual arrangements with practices. The package of measures necessary to implement this agreement was included in the Health and Social Care (Community Health and Standards) Bill. These measures were the subject of full debate during passage of the Bill through Parliament in October and November 2003.

7.2 The Regulations set out in section 2 above represent the bulk of the secondary legislation, brought into force between February and April 2004, to bring about the new scheme for primary medical services.

7.3 Amendments are now required for two main reasons:-

i. experience with the regulations has revealed areas where greater clarity would assist those who need to be guided by them;
ii. policy in some areas has developed in the intervening months.

7.4 The changes to the definitions of "general medical practitioner" and GP Registrar (eg regulation 2), and the more specific rules in respect of returning information (eg regulations 5(12) & (13)) are examples of the first of these areas. Regulations 5 (2) & (3), introducing new national quality requirements for out of hours providers are an example of new policy areas.

7.5 These Regulations are important in that they are a mechanism for new policy to improve the standards of out of hours care and in that they demonstrate a willingness to make changes to improve the usability, consistency and clarity of secondary legislation for the benefit of those that have to use primary care legislation.

7.6 The Department has consulted the NHS Confederation and the GPC on the content of these Regulations and they have signified that they are content with the changes that are included.

7.7 There has not been a public consultation, as this was not considered appropriate given the limited new policy content of the Regulations. However, in developing the new national quality standards for out of hours providers the Department consulted a number of relevant stakeholders including the NHS Confederation, the GPC, the National Association of GP Cooperatives, the

Royal College of General Practitioners, a sample of Primary Care Trusts and Strategic Health Authorities, and PrimeCare (the largest private supplier of out of hours services). The new quality requirements were developed with these stakeholders and there were no significant objections to the final content of the published document.

## 8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument, as it has no impact on business, charities or voluntary bodies.

8.2 There is no impact on the public sector.

## 9. Contact

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