

2010 No.729 (W. 70)

**NATIONAL HEALTH
SERVICE, WALES**

The National Health Service
(Primary Medical Services)
(Miscellaneous Amendments)
(Wales) Regulations 2010

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make amendments to the National Health Service (General Medical Services Contracts) (Wales) Regulations 2004 (“the GMS Contracts Regulations”) and the National Health Service (Performers Lists) (Wales) Regulations 2004 (“the Performers Lists Regulations”).

Part 2 amends the GMS Contracts Regulations. In particular:

- (a) regulation 2 amends regulation 2 of the GMS Contracts Regulations (interpretation) as a consequence of the abolition of the Family Health Services Appeal Authority by the Transfer of Tribunal Functions Order 2010 (S.I. 2010/22);
- (b) regulation 3 amends regulation 4 of the GMS Contracts Regulations (conditions: general) as a consequence of the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2010 (S.I. 2010/234) and the Postgraduate Medical Education and Training Order of Council 2010 (S.I. 2010/473);
- (c) regulations 4 and 6(6) update references to the provisions relating to removal of a person being concerned in the management or control of a charity or body as a consequence of the Charities and Trustee Investment (Scotland) Act 2005;
- (d) regulation 5 amends regulation 21 (certificates) of the GMS Contracts Regulations as a consequence of the

introduction in the Social Security (Medical Evidence) and Statutory Sick Pay (Medical Evidence) (Amendment) Regulations 2010 (S.I. 2010/137) of new rules relating to medical evidence;

- (e) regulation 6(2) inserts new provisions in respect of the use of certain telephone numbers which charge patients more than the equivalent cost of calling a geographical number;
- (f) regulation 6(3) amends an erroneous reference in paragraph 20 of Schedule 6 to the GMS Contracts Regulations;
- (g) regulation 6(4) updates the reference to the requirements in respect of a contractor's computer system; and
- (h) regulation 6(5) makes changes to the arrangements under which contractors must disclose information (with the consent of the patient) in connection with claims for benefits.

Part 3 makes an amendment to the Performers Lists Regulations consequential on the abolition of the Postgraduate Medical Education and Training Board by the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2010 and the transfer of functions from the Board to the General Medical Council. The amendment is also consequential on the associated Postgraduate Medical Education and Training Order of Council 2010.

2010 No. 729 (W. 70)

**NATIONAL HEALTH
SERVICE, WALES**

The National Health Service
(Primary Medical Services)
(Miscellaneous Amendments)
(Wales) Regulations 2010

Made 10 March 2010

Laid before the National Assembly for Wales
11 March 2010

Coming into force 1 April 2010

The Welsh Ministers make the following Regulations in exercise of the powers conferred by sections 44(1), 47, 49 and 203(9) and (10) of the National Health Service (Wales) Act 2006(1).

PART 1

GENERAL

Title, commencement, application and interpretation

1.—(1) The title of these Regulations is the National Health Service (Primary Medical Services) (Miscellaneous Amendments) (Wales) Regulations 2010 and they come into force on 1 April 2010.

(2) These Regulations apply in relation to Wales.

(3) In these Regulations “GMS Contracts Regulations” (“*Rheoliadau Contractau GMS*”) means the National Health Service (General Medical Services Contracts) (Wales) Regulations 2004(2).

(1) 2006 c.42.

(2) S.I. 2004/478 (W.48).

PART 2
AMENDMENT OF THE GMS CONTRACTS
REGULATIONS

Amendment of regulation 2

2. In regulation 2(1) (interpretation) of the GMS Contracts Regulations—

- (a) for the definition of “the 2003 Order” substitute—

““the 2010 Order” means the Postgraduate Medical Education and Training Order of Council 2010(1);”;
- (b) omit the definitions of “FHSAA” and “medical officer”; and
- (c) in the definition of “national disqualification”, in sub-paragraph (c), for “is treated as a national disqualification by the FHSAA” substitute “was treated as a national disqualification by the Family Health Services Appeal Authority(2)”.

Amendment of regulation 4

3.—(1) Regulation 4 (conditions: general) of the GMS Contracts Regulations is amended as follows.

(2) For paragraph (4), substitute—

“(4) In paragraphs (1), (2)(a) and (3)(a), “general medical practitioner” does not include a medical practitioner whose name is included in the General Practitioner Register by virtue of—

- (a) article 4(3) of the 2010 Order (general practitioners eligible for entry in the General Practitioner Register) because of an exemption under regulation 5(1)(d) of one or more of the sets of Regulations specified in paragraph (5);
- (b) article 6(2) of the 2010 Order (persons with acquired rights) by virtue of being a restricted services principal (within the meaning of one or more of the sets of Regulations specified in paragraph (6)) included in a list specified in that article; or
- (c) article 6(6) of the 2010 Order.”.

(1) S.I. 2010/473.

(2) The Family Health Services Appeal Authority was constituted under section 49S of the National Health Service Act 1977 (c.49) and was abolished on 18 January 2010 by article 3 of the Transfer of Tribunal Functions Order 2010 (S.I. 2010/22).

(3) In paragraph (5), for “paragraph (4)(a)(iii) and (b)(i)(bb)” substitute “paragraph (4)(a)”.

(4) For paragraph (6), substitute—

“(6) The Regulations referred to in paragraph (4)(b) are the National Health Service (General Medical Services) Regulations 1992, the National Health Service (General Medical Services) (Scotland) Regulations 1995 and the General Medical Services Regulations (Northern Ireland) 1997.”.

Amendment of regulation 5

4. In regulation 5 (general condition relating to all contracts) of the GMS Contracts Regulations, in paragraph (2)(j)(ii), after “(powers of the Court of Session to deal with management of charities)”, insert “or under section 34 of the Charities and Trustee Investment (Scotland) Act 2005(1) (powers of Court of Session)”.

Amendment of regulation 21

5. In regulation 21 (certificates) of the GMS Contracts Regulations, for paragraph (2), substitute—

“(2) The exception in paragraph (1)(a) does not apply where the certificate is issued in accordance with regulation 2(1) of the Social Security (Medical Evidence) Regulations 1976(2) (evidence of incapacity for work, limited capability for work and confinement) or regulation 2(1) of the Statutory Sick Pay (Medical Evidence) Regulations 1985(3) (medical information).”.

Amendment of Schedule 6

6.—(1) Schedule 6 (other contractual terms) of the GMS Contracts Regulations is amended as follows.

(2) After paragraph 1A (telephone services), insert—

“Cost of relevant calls

1B.—(1) The contractor must not enter into, renew or extend a contract or other arrangement for telephone services unless it is satisfied that, having regard to the arrangement as a whole, persons will not pay more to make relevant calls to the practice than they would to make equivalent calls to a geographical number.

(1) 2005 asp 10.

(2) S.I. 1976/615. Regulation 2(1) is substituted by S.I. 2010/137.

(3) S.I. 1985/1604. Regulation 2(1) is substituted by S.I. 2010/137.

(2) Where a contractor is party to an existing contract or other arrangement for telephone services under which persons making relevant calls to the practice call a number which is not a geographical number, the contractor must comply with sub-paragraph (3).

(3) The contractor must—

- (a) before 1 April 2011, review the arrangement and consider whether, having regard to the arrangement as a whole, persons pay more to make relevant calls than they would to make equivalent calls to a geographical number; and
- (b) if the contractor so considers, take all reasonable steps, including in particular considering the matters specified in sub-paragraph (4), to ensure that, having regard to the arrangement as a whole, persons will not pay more to make relevant calls than they would to make equivalent calls to a geographical number.

(4) The matters referred to in sub-paragraph (3)(b) are—

- (a) varying the terms of the contract or arrangement;
- (b) renegotiating the terms of the contract or arrangement; and
- (c) terminating the contract or arrangement.

(5) If, despite taking all reasonable steps referred to in sub-paragraph (3)(b), it has not been possible to ensure that, having regard to the arrangement as a whole, persons will not pay more to make relevant calls to the practice than they would to make equivalent calls to a geographical number, the contractor must consider introducing a system under which if a caller asks to be called back, the contractor will do so at the contractor's expense.

(6) In this paragraph—

- (a) “existing contract or other arrangement” means a contract or arrangement that was entered into prior to 1 April 2010 and which remains in force on 1 April 2010;
- (b) “geographical number” means a number which has a geographical area code as its prefix; and
- (c) “relevant calls” means calls—

- (i) made by patients to the practice for any reason related to services provided under the contract, and
- (ii) made by persons, other than patients, to the practice in relation to services provided as part of the health service.”.

(3) In paragraph 20 (removal from the list at the request of the contractor), in sub-paragraph (1), for “applicant’s” substitute “patient’s”.

(4) In paragraph 72 (patient records), in sub-paragraph (4)(a), for the words from ““General Medical” to the end substitute ““General Medical Practice Computer Systems Minimum Systems Specification (MSS) Version 2.0”;”.

(5) For paragraph 78 (reports to a medical officer), substitute—

“Provision of information to a medical officer etc.

78.—(1) The contractor must, if satisfied that the patient consents—

- (a) supply in writing to any person specified in sub-paragraph (3), within such reasonable period as that person may specify, such clinical information as any of the persons mentioned in sub-paragraph (3)(a) to (d) considers relevant about a patient to whom the contractor or a person acting on behalf of the contractor has issued or has refused to issue a medical certificate; and
- (b) answer any inquiries by any person mentioned in sub-paragraph (3) about—
 - (i) a prescription form or medical certificate issued or created by, or on behalf of, the contractor, or
 - (ii) any statement which the contractor or a person acting on behalf of the contractor has made in a report.

(2) For the purposes of being satisfied that a patient consents, a contractor may rely on an assurance in writing from any person mentioned in sub-paragraph (3) that the consent of the patient has been obtained, unless the contractor has reason to believe that the patient does not consent.

(3) For the purposes of sub-paragraph (1) and (2), the persons are—

- (a) a medical officer;

- (b) a nursing officer;
 - (c) an occupational therapist;
 - (d) a physiotherapist; or
 - (e) an officer of the Department for Work and Pensions who is acting on behalf of, and at the direction of, any person specified in paragraphs (a) to (d).
- (4) In this paragraph—
- (a) “medical officer” means a medical practitioner who is—
 - (i) employed or engaged by the Department for Work and Pensions, or
 - (ii) provided by an organisation under a contract entered into with the Secretary of State for Work and Pensions;
 - (b) “nursing officer” means a health care professional who is registered on the Nursing and Midwifery Register and—
 - (i) employed or engaged by the Department for Work and Pensions, or
 - (ii) provided by an organisation under a contract entered into with the Secretary of State for Work and Pensions;
 - (c) “occupational therapist” means a health care professional who is registered in the part of the register maintained by the Health Professions Council under article 5 of the Health Professions Order 2001⁽¹⁾ relating to occupational therapists and—
 - (i) employed or engaged by the Department for Work and Pensions, or
 - (ii) provided by an organisation under a contract entered into with the Secretary of State for Work and Pensions; and
 - (d) “physiotherapist” means a health care professional who is registered in the part of the register maintained by the Health Professions Council under article 5 of the Health Professions Order 2001 relating to physiotherapists and—

(1) S.I. 2002/254. A relevant amendment was made by S.I. 2009/1182.

- (i) employed or engaged by the Department for Work and Pensions, or
- (ii) provided by an organisation under a contract entered into with the Secretary of State for Work and Pensions.”.

(6) In paragraph 111(2)(m)(ii) (which relates to other grounds for termination by the Local Health Board), after “(powers of the Court of Session to deal with the management of charities)”, insert “or under section 34 of the Charities and Trustee Investment (Scotland) Act 2005 (powers of Court of Session)”.

PART 3

AMENDMENT OF THE NATIONAL HEALTH SERVICE (PERFORMERS LISTS) (WALES) REGULATIONS 2004

Amendment of regulation 23 of the National Health Service (Performers Lists) (Wales) Regulations 2004

7. In regulation 23 of the National Health Service (Performers Lists) (Wales) Regulations 2004⁽¹⁾ (application for inclusion in a medical performers list), in paragraph (2)(b), for “regulation 5(1)(d) of the Vocational Training for General Medical Practice (European Requirements) Regulations 1994” substitute “article 6(6) of the Postgraduate Medical Education and Training Order of Council 2010”.

Edwina Hart

Minister for Health and Social Services,
One of the Welsh Ministers

10 March 2010

(1) S.I. 2004/1020 (W.117).

