
STATUTORY RULES OF NORTHERN IRELAND

2012 No. 167

HEALTH AND PERSONAL SOCIAL SERVICES

The Health Care (Reimbursement of the Cost of EEA Services etc.) Regulations (Northern Ireland) 2012

Made - - - - *18th April 2012*

Coming into operation *10th May 2012*

The Department of Health, Social Services and Public Safety⁽¹⁾, makes the following Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972⁽²⁾.

The Department of Health, Social Services and Public Safety is a Department designated for the purposes of section 2(2) of the European Communities Act 1972 in relation to cross-border healthcare⁽³⁾.

Citation and commencement

1. These Regulations may be cited as the Health Care (Reimbursement of the Cost of EEA Services etc.) Regulations (Northern Ireland) 2012 and shall come into operation on 10th May 2012.

Commencement Information

II Reg. 1 in operation at 10.5.2012, see [reg. 1](#)

Interpretation

2.—(1) In these Regulations—

“the Order of 1972” means the Health and Personal Social Services (Northern Ireland) Order 1972⁽⁴⁾;

“the 2009 Act” means the Health and Social Care (Reform) Act (Northern Ireland) 2009⁽⁵⁾.

(1) Formerly the Department of Health and Social Services; See [S.I. 1999/283 \(N.I. 1\)](#) Article 3(6)
(2) [1972 c.68](#). By virtue of the amendment to section 1(2) of the European Communities Act 1972 by section 1 of the European Economic Area Act [1993 \(c.51\)](#), regulations may be made under section 2(2) of the European Communities Act to implement obligations of the United Kingdom created or arising by or under the EEA Agreement. Section 2(2) was amended by the Legislative and Regulatory Reform Act [2006 \(c.51\)](#), section 27(1) and by the European Union (Amendment) Act [2008 \(c.7\)](#), section 3(3) and Part 1 of the Schedule
(3) [S.I. 2009/2743](#)
(4) [S.I. 1972/1265 \(N.I. 14\)](#)
(5) [2009 c.1 \(N.I.\)](#)

Changes to legislation: There are currently no known outstanding effects for the The Health Care (Reimbursement of the Cost of EEA Services etc.) Regulations (Northern Ireland) 2012. (See end of Document for details)

(2) The Interpretation Act (Northern Ireland) 1954(6) shall apply to these Regulations as it applies to an Act of the Assembly.

Commencement Information

I2 Reg. 2 in operation at 10.5.2012, see [reg. 1](#)

Provision of health care outside Northern Ireland

3.—(1) After section 3 of the 2009 Act, insert—

“Provision of health care outside Northern Ireland

3A. The Department may provide or secure the provision of health care mentioned in Article 5(1), 6(1), 7(1), 8(1) or 10(1) of the Order of 1972 (hospital etc. accommodation and health care services, including diagnostic services, after-care and ancillary services) outside Northern Ireland.”

(2) In section 8(6) of that Act (functions of the Regional Board), after “3” insert “or its power under section 3A”.

Commencement Information

I3 Reg. 3 in operation at 10.5.2012, see [reg. 1](#)

Reimbursement of the cost of health care services secured in another EEA state

^{F1}4.

F1 [Reg. 4](#) omitted (31.12.2020) by virtue of [The Health Services \(Cross-Border Health Care and Miscellaneous Amendments\) \(Northern Ireland\) \(EU Exit\) Regulations 2019 \(S.I. 2019/784\)](#), regs. 1(1), [5](#) (with [regs. 11, 12](#)) (as amended by [S.I. 2020/1348](#), [regs. 14, 16](#)); 2020 c. 1, Sch. 5 para. 1(1)

Commencement Information

I4 Reg. 4 in operation at 10.5.2012, see [reg. 1](#)

Travelling expenses of patients, etc.

5. In Article 45(1) of the Order of 1972 (travelling expenses of patients, etc.), for subparagraph (a) substitute—

- “(a) by any person of a prescribed description for the purpose of availing himself of—
- (i) such services under this Order, the 1991 Order or the 2009 Act as may be prescribed;
 - (ii) services in respect of which the costs are reimbursable under Article 14B; or
 - (iii) services authorised to be received in another EEA state or Switzerland under Article 20 or Article 27(3) of Regulation (EC) No. 883/2004;”.

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Commencement Information

I5 Reg. 5 in operation at 10.5.2012, see **reg. 1**

Sealed with the Official Seal of the Department of Health, Social Services and Public Safety on
18th April 2012



Eugene Rooney
A senior officer of the
Department of Health, Social Services and
Public Safety

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Health and Social Care (Reform) Act (Northern Ireland) 2009 and the Health and Personal Social Services (Northern Ireland) Order 1972 to give effect to the judgement of the European Court of Justice in Case C-372/04 *The Queen, on the application of Yvonne Watts v Bedford Primary Care Trust and Secretary of State for Health* ([2006]ECR I-4325). It held that the obligation under Article 49 of the EC Treaty to reimburse the cost of hospital treatment provided in another member State also applies to a tax-funded health service, such as in Northern Ireland, which provides such treatment free of charge. (Article 49, now numbered Article 56 under the Treaty on the Functioning of the European Union, provides for the freedom to provide and receive services in another member State of the European Union.) These Regulations also cover non-hospital treatment.

The Regulations make provision which is similar in effect to that made in England and Wales (S.I. 2010/915) and Scotland (S.S.I. 2010/283). Whilst the Regulations may to some extent reflect the general object of Chapter III (reimbursement of costs of cross-border healthcare) of Directive 2011/24/EU of the European Parliament and of the Council of 9 March 2011 (on the application of patients' rights in cross-border healthcare), further legislation will be required to give effect to that Directive in UK domestic law, with transposition due to take place by late 2013.

The EEA (European Economic Area) consists of the member States of the European Union, together with Norway, Iceland and Liechtenstein.

Regulation 3 inserts a new section 3A into the Health and Social Care (Reform) Act (Northern Ireland) 2009 ("the 2009 Act"). Section 3A expressly enables the Department of Health, Social Services and Public Safety ("the Department") to provide health care referred to in section 3A outside Northern Ireland. It is conceivable that a particular case may justify or require the securing of aspects of the health care referred to in the new power from outside Northern Ireland. The amendment to section 8(6) of the 2009 Act provides that for the purposes of carrying out its functions the Regional Board may, on behalf of the Department, exercise the Department's power under new section 3A, as well as the general power under section 3.

Paragraph (1) of regulation 4 makes amendments to Article 2(2) of the Health and Personal Social Services (Northern Ireland) Order 1972 ("the Order of 1972") which are necessary in relation to the amendments of that Order contained in both paragraph (2) of regulation 4 and regulation 5.

Paragraph (2) of regulation 4 inserts new Articles 14B and 14C into the Order of 1972.

The new Article 14B places a duty on the Department to reimburse qualifying EEA expenditure (defined in paragraph (3)) incurred on or after 10th May 2012, subject to the conditions for reimbursement of qualifying EEA expenditure (including certain requirements for prior authorisation of the expenditure), the exceptions that apply, any limits and restrictions that may be imposed and the health care charges that may be deducted.

Article 14C contains detailed provision about any prior authorisation that is required for the purposes of Article 14B(3)(b) or (c) (in relation to the health care services referred to there). The circumstances in which prior authorisation must be given by the Department are set out.

Regulation 5 amends the regulation making power in Article 45(1)(a) of the Order of 1972 in respect of travelling expenses to cover services the cost of which falls to be reimbursed under Article 14B or services authorised to be received (in another EEA state or Switzerland) under Article 20 or Article 27(3) of Regulation (EC) No. 883/2004.

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