

EXPLANATORY MEMORANDUM TO
GENERAL DENTAL SERVICES (AMENDMENT) REGULATIONS
(NORTHERN IRELAND) 2013

S.R. 2013 No. 300

1. Introduction

- 1.1. This Explanatory Memorandum has been prepared by the Department of Health, Social Services and Public Safety "the Department" to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2. The Statutory Rule is made under powers conferred by the Health and Personal Social Services (Northern Ireland) Order 1972 and is subject to the negative resolution procedure.

2. Purpose

- 2.1. Directive 2011/24/EU of the European Parliament and of the Council of 9th March on the application of patients' rights in cross-border healthcare, "the Directive", which came into operation on 25 October 2013, clarifies the rights of "insured persons", within the definition of Article 3(b) of the Directive, to access healthcare in another Member State of the European Union. It sets out the grounds on which such persons can claim reimbursement of the eligible costs of treatment from their home healthcare system.
- 2.2. These Regulations are part of the implementation of the Directive. The Provision of Health Service to Persons not Ordinarily Resident (Amendment) Regulations (NI) 2013, "PNOR Regulations", make available, at a charge determined by the Department, certain Health Service dental services to those insured persons visiting Northern Ireland, i.e. "visiting patients", (defined in regulation 2(a) of the PNOR Regulations and these Regulations), exercising their EU rights under the Directive. These Regulations make consequential changes to the General Health Services occasional treatment provisions to reflect that availability.

3. Background

- 3.1. The Directive requires the Department to provide access to healthcare services to visiting patients in accordance with the legislation applicable in Northern Ireland and on a non-discriminatory basis. This means providing the same services that are provided to domestic patients and charging for those services on an objective and non-discriminatory basis.
- 3.2. While visiting patients can exercise their rights under the Directive to avail of and pay for General Dental Services in Northern Ireland, a dentist will not be required to treat such visiting patients, just as a dentist is not required to treat a patient ordinarily resident in NI.
- 3.3. The Directive permits Member States to derogate from the requirement to provide access to healthcare where this is justified in accordance with Article 4(3) of the Directive. Under Article 4(3), derogation is permitted

for overriding reasons of general interest. Any derogation must be limited to what is necessary and proportionate and be made publicly available in advance.

- 3.4. The Department has decided to derogate from full implementation of the Directive by limiting dental treatment to the “occasional treatment” provisions of the Regulations. This will mean that visiting patients, seeking to exercise their rights under the Directive to seek dental healthcare in Northern Ireland, will not be able to seek full registration with a dentist. Instead, they will be treated under the “occasional treatment” provisions of the Regulations. The Department has taken this approach to preserve available registration for domestic patients. Visiting patients will be charged at the same rate as domestic patients but will not be able to claim any of the exemptions available to domestic patients. Any prescriptions for medication will be provided and charged for on a private basis. Domiciliary visits will be restricted to Northern Ireland for all patients, (visiting patients and domestic patients). The treatment of visiting patients under occasional treatment provisions and charging at the domestic rate (albeit with no exemptions) is the Department’s preliminary implementation position. Monitoring of uptake will indicate whether this approach is both necessary and transparent and whether any change from this position (and subsequent legislative change) is necessary.
- 3.5. Regulation 3 amends the list of those patients entitled to seek occasional treatment to include visiting patients seeking treatment under the Directive.
- 3.6. Regulation 4 amends the Terms of Service for all dentists set out in Schedule 2 to the Regulations so that a dentist treating visiting patients under the Directive under the occasional treatment provisions supplies or prescribes drugs under a private arrangement.
- 3.7. Regulation 5 amends the Terms of Service for all dentists set out in Schedule 2 to the Regulations so that a dentist is not required to carry out any domiciliary visit outside Northern Ireland.

4. Consultation

- 4.1. Consultation on the Implementation of Directive 2011/24/EU took place from 22 July 2013 until 13 September 2013. In total, 13 responses were received, generally supportive of the proposed changes.

5. Equality Impact

- 5.1. Section 75 of the Northern Ireland Act 1998 requires each public authority, in carrying out its functions in relation to Northern Ireland, to have due regard to the need to promote equality of opportunity. The Department has conducted a preliminary screening of the proposals to implement the EU Cross Border Healthcare Directive in Northern Ireland and, in light of this screening exercise and the responses to the consultation, has concluded that a full Equality Impact Assessment of these proposals is not required.

6. Regulatory Impact

- 6.1. A Regulatory Impact Assessment is not considered necessary as there will be no adverse impact on business, charities, social enterprise or voluntary bodies.

7. Financial Implications

- 7.1. Visiting patients availing of General Dental Services will be charged at the same rate as domestic patients (normally 80% of the full cost). There will be some cost to the Department (as they will be subsidising the 20% difference). Although a 100% charge would be more appropriate, and in keeping with the requirement for any charge to be calculated in accordance with objective, non discriminatory criteria, it is considered administratively too costly and onerous to establish. Monitoring of uptake will indicate whether the introduction of full charging would be cost effective. Unlike domestic patients, no exemptions will apply to visiting patients, as the Member State is not required to subsidise their treatment: rather set an objective, non discriminatory charge.

8. Section 24 of the Northern Ireland Act 1998

- 8.1. The legislation is considered compatible with section 24 of the Northern Ireland Act 1998.

9. EU Implications

- 9.1. The statutory rule implements Directive 2011/24/EU (on the application of patients' rights in cross-border healthcare) for dental services. These Regulations are accompanied by a Transposition Note setting out how the Directive is being implemented. That Transposition Note indicates that this is the preliminary implementation. The decision to monitor the position with a view to potentially implementing the Directive differently and introducing a different charge, should that prove cost effective, is formally recorded in that Transposition Note.

10. Parity or Replicatory Measure

- 10.1. Implementation of the Directive is by the Member State (the UK). Due to its land border, Northern Ireland has differed in its implementation from the rest of the UK in respect of primary care services. In relation to dental services, this means that visiting patients can exercise their rights under the Directive to avail of and pay for General Dental Services in Northern Ireland. However, they will not be able to seek full registration with a dentist. Instead, they will not be registered but treated under the "occasional treatment" provisions of the Regulations. This derogation is permitted under Article 4(3) of the Directive. The Department has taken this approach to preserve available registration for domestic patients. However, the non - discrimination obligation is subject to an exception which allows the adoption of proportionate measures to ensure domestic access. Given the significant number of unregistered domestic patients (in excess of 600,000) this derogation is considered proportionate.

11. Additional Information

- 11.1. Not applicable