

EXPLANATORY MEMORANDUM

THE HEALTH AND PERSONAL SOCIAL SERVICES (GENERAL MEDICAL SERVICES CONTRACTS) (AMENDMENT No.2) REGULATIONS (NORTHERN IRELAND) 2013

S.R.2013 No 301

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 Articles 57A, 57E, 106 and 107(6) of the Health and Personal Social Services (Northern Ireland) Order 1972, “the 1972 Order”, 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 2011 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 that Directive. The Provision of Health Services to Persons not Ordinarily Resident (Amendment) Regulations (NI) 2013, “PNOR Regulations”, make available, at a charge determined by the Department, certain primary medical services to those insured persons visiting Northern Ireland, ie “visiting patients”, (defined in regulation 2(a) of the PNOR Regulations), exercising their EU rights under the Directive. These Regulations make consequential changes to the Health and Personal Social Services (General Medical Services Contracts) Regulations (Northern Ireland) 2004, “the GMS Contracts Regulations” 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 primary medical services in Northern Ireland, a GP is not obliged to prioritise a visiting patient to the detriment of other persons.
- 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 Presently primary medical services are only available to a person in Northern Ireland where they can demonstrate that they are “ordinarily resident” in Northern Ireland, unless it is in relation to immediately necessary treatment owing to an accident or emergency.
- 3.5 As a result of these Regulations, there is no necessity for persons exercising rights under the Directive to be ordinarily resident. The Department has made available to visiting patients, exercising rights under the Directive, essential services under regulation 15(3) and (5) of the GMS Contracts Regulations on an ad hoc basis. The services shall be available to a visiting patient at a charge determined by the Department under Article 42(2) of the 1972 Order. Regulation 2 provides a definition of visiting patient and highlights that are two routes by which a person exercising rights under the Directive can become a visiting patient. The first route is under Paragraph 15A of Schedule 5 of the GMS Contracts Regulations, (inserted by regulation 5(3) of these Regulations), where the person exercising rights under the Directive is accepted by the contractor for services under regulation 15(3) and (5) of the GMS Contracts Regulations, that is to say “essential services on an ad hoc basis”. The second route is under Paragraph 32A of Schedule (5) of the GMS Contracts Regulations, (inserted by regulation 5(4) of these Regulations), where the person exercising rights under the Directive contacts the Health and Social Care Board and requests assignment to a contractor for essential services on an ad hoc basis. The Regulations restrict home visits for all patients and visiting patients to Northern Ireland. The Regulations make provision so that the contractor can demand and accept a fee, as determined by the Department, where treatment has been provided to a visiting patient under regulation 15(3) or (5) of the GMS Contracts Regulations. Provision is also included so that in relation to a visiting patient, prescriptions are to be issued via a private arrangement. This is the Department’s preliminary implementation position. Monitoring of uptake will indicate whether this

approach is both justifiable and transparent and whether any change from this position (and subsequent legislative change) will be necessary.

4. Consultation

4.1 The Department undertook an 8 week consultation from 22 July to 13 September 2013 as part of its on-going work to transpose Directive 2011/24/EU on the application of patients' rights in cross-border health care. A total of 13 responses to the consultation were received. These revealed that there was no substantial disagreement with the Department's overall approach to implementing the Directive and in general recognised the Department's responsibility for ensuring that our legislation is consistent with European law under the Directive.

5. Equality Impact

5.1 In line with the commitments in its Equality scheme, the Department conducted a Preliminary Equality Impact Assessment (PEQIA) on the policy proposals being introduced by Directive 2011/24/EU on the application of patients' rights in cross-border healthcare. The PEQIA did not identify any potential for adverse impact on any of the nine section 75 categories.

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 Primary medical services shall only be available to visiting patients at a charge determined by the Department under Article 42(2) of the 1972 Order. Any additional financial implications flowing from these regulations will be minimal.

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) in relation to the provision of primary medical services to visiting patients.

10. Parity or Replicatory Measure

10.1 Implementation of the Directive is by Member State (the UK). Due to planning requirements and the need to ensure sufficient and permanent access to a balanced range of high quality treatment in NI, the Department has differed in its implementation from the rest of the UK in respect of primary care services. As a direct consequence, in relation to primary medical services, in NI visiting patients can exercise their rights under the Directive to avail of and pay for primary medical services under regulations 15(3) and (5) of the GMS Contracts Regulations (essential services).

11. Additional Information

11.1 Not applicable.