

**EXPLANATORY MEMORANDUM TO**

**PROVISION OF HEALTH SERVICES TO PERSONS NOT ORDINARILY  
RESIDENT (AMENDMENT) REGULATIONS (NORTHERN IRELAND) 2013**

**S.R. 2013 No. 302**

**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 42, 106(b) and 107(6) of the Health and Personal Social Services Order (Northern Ireland) Order 1972, "the 1972 Order", and is subject to the negative resolution procedure.

**2. Purpose**

- 2.1. These Regulations amend the Provision of Health Services to Persons not Ordinarily Resident Regulations (Northern Ireland) 2005, "the 2005 Regulations", which make provision as to the availability of services forming part of health services which may be provided to visitors in Northern Ireland. The amendments clarify that the availability of services forming part of health services is subject to a charge as determined by the Department under Article 42 of the 1972 Order, unless a visitor falls within a prescribed exempt category of visitor or the service is itself exempt.
- 2.2. 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.
- 2.3. These Regulations inset a new regulation 8B into the 2005 Regulations as part of the implementation of that Directive. Regulation 8B provides that certain general health services shall be available, at a charge determined by the Department under Article 42(2) of the 1972 Order, to insured persons visiting Northern Ireland, i.e. "visiting patients", (the definition of which is to be inserted by these Regulations), who are exercising their EU rights under the Directive. The general health services to be made available include prescribed primary medical services, prescribed general dental services, prescribed personal dental services and prescribed Out of Hours Services.

**3. Background**

- 3.1. Northern Ireland (in line with the other UK jurisdictions) has maintained a policy of charging overseas visitors for secondary care services, with

defined categories of visitor and defined services free from charge, when on a visit to Northern Ireland. The categories of persons who can avail of free secondary care services and the categories of secondary care services that are free to all visitors are set out in the 2005 Regulations. Presently the 2005 Regulations and the exemptions therein do not extend to general health services. At present in Northern Ireland, for general health services, unless a person is “ordinarily resident” in Northern Ireland they are not entitled to free treatment unless it is in relation to immediately necessary treatment owing to an accident or emergency.

- 3.2. New Regulation 8B prescribes that certain general health services shall be available, at a charge determined by the Department, to visiting patients exercising rights under the Directive. These services include: primary medical services (essential services only) from a GP, on an ad hoc basis; out of hours services in accordance with arrangements between the Health and Social Care Board and the out of hours providers; general dental services in accordance with paragraph 3(2)(b)(v) of Schedule 2 to the General Dental Services Regulations (NI) 1993 and personal dental services in accordance with an existing pilot scheme established under Article 3(1) of the Health Service (Primary Care)(Northern Ireland) Order 1997. In terms of dentistry, visiting patients will be charged, similar to a domestic patient, the present rate for each occasional treatment dental service as outlined in the Statement of Dental Remuneration document. Visiting patients will not be entitled to claim any of the exemptions from charges available to domestic patients. For other general health services made available to visiting patients, the charge is that set out in the Statement of Health Service Treatment Costs.

#### **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 the Directive. 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 NI legislation is consistent with European law under the Directive. England, Wales and Scotland carried out their own consultations.

#### **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. The PEQIA did not identify any potential for adverse impact on any of the nine section 75 categories.

#### **6. Regulatory Impact**

- 6.1. An assessment was not considered necessary as these Regulations do not apply to small businesses and the impact on the charitable sector is negligible.

## **7. Financial Implications**

- 7.1. As general health services provided to visiting patients under these Regulations will be at a charge, any additional financial implications flowing from these Regulations will be minimal.

## **8. Section 24 of the Northern Ireland Act 1998**

- 8.1. Considered compliant with Section 24 of the Northern Ireland Act 1998.

## **9. EU Implications**

- 9.1. These Regulations implement existing ECJ case law and are therefore compliant with EU legislation.

## **10. Parity or Replicatory Measure**

- 10.1. Implementation of the Directive has been taken forward on a UK-wide approach with one exception in relation to Northern Ireland which relates to EU Directive patients' entitlement to general health services. Currently persons who seek to register with a GP Practice must prove they are ordinarily resident here. In other UK countries persons can simply register with GP practices at the discretion of the GP regardless of their status. In Northern Ireland general health services shall be available to visiting patients exercising rights under the Directive as set out in paragraph 3.2 of this explanatory memorandum.

## **11. Additional Information**

- 11.1. Not applicable