

EXPLANATORY MEMORANDUM TO

The Provision of Health Services to Persons Not Ordinarily Resident (Amendment) Regulations (Northern Ireland) 2019

SR 2019 no. 42

1. Introduction

- 1.1. This Explanatory Memorandum has been prepared by the the Department of Health 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 (Northern Ireland) Order 1972 and is subject to the negative resolution procedure.

2. Purpose

- 2.1. The Regulations amend the Provision of Health Services to Persons Not Ordinarily Resident Regulations (Northern Ireland) 2015 (SR 2015 No. 27) (the 2015 regulations) and subsequent amendments.
- 2.2. These changes are being made as a consequence of the United Kingdom's (UK) withdrawal from the European Union (EU) to ensure that the Health and Social Care trusts are able to provide healthcare for EU/EEA and Swiss visitors and migrants once the UK leaves the European Union.
- 2.3. The Regulations will make provisions on the exemptions from health service charges for EU/EEA and Swiss citizens accessing healthcare in Northern Ireland while residing in, seeking to settle in or visiting the UK, in order to ensure that domestic legislation reflects UK Government policies under a no-deal scenario.

3. Background

- 3.1. The Regulations amend the Provision of Health Services to Persons Not Ordinarily Resident Regulations (Northern Ireland) 2015 (SR 2015 No. 27) (the 2015 regulations) and subsequent amendments.
- 3.2. Article 42 of the Health and Personal Social Services (Northern Ireland) Order 1972 authorises the Department of Health to make regulations for the exemption of services and charges for persons not ordinarily resident in Northern Ireland for healthcare purposes.
- 3.3. Amendments to the regulations are necessary as a consequence of the UK's withdrawal from the EU to ensure that healthcare services can still be provided to EU/EEA and Swiss visitors and migrants after exit day. In the event that the UK leaves the EU without a ratified agreement, references to EU law and EU rights within the existing legislative framework to provide exemptions from the costs to overseas visitors and migrants will no longer be clear.
- 3.4. The proposed changes do not undermine the principle that healthcare is, and will remain, free at the point of delivery for those who are ordinarily resident in Northern Ireland. Existing exemptions to protect the most

vulnerable in society and for key services essential to public health are unchanged, ensuring that urgent or immediately necessary treatment will always be provided, regardless of an individual's ability or willingness to pay for that treatment.

- 3.5. The Regulations will make provisions for the exemption of services and charges for EU/EEA and Swiss citizens accessing healthcare in Northern Ireland while residing in, seeking to settle in or visiting the UK, in order to ensure that domestic legislation reflects UK Government policies under a no-deal scenario.
- 3.6. The Regulations will provide an exemption from charging for EU/EEA citizens who are lawfully resident in the UK on exit day, as set out in the policy paper on citizen's rights published on 6 December 2018. They will ensure that citizens of Switzerland and the EEA EFTA states will be exempt from charging, in line with the agreements on citizen's rights published on 20 December 2018 and 8 February 2019 respectively.
- 3.7. The Regulations will continue in Northern Ireland full access to healthcare for frontier workers who were working in Northern Ireland before exit day and also to provide for the rights of retired frontier workers, who retired before exit day, to continue to access treatment which began before they retired.
- 3.8. They will also continue the rights of UK insured persons to access healthcare in Northern Ireland as they currently can which included access to all services by posted workers and needs arising for UK pensioners living in an EEA State or Switzerland. In addition, the Regulations will provide an exemption from charging for Irish citizens, and British citizens resident in the Republic of Ireland, for treatment in Northern Ireland, the need for which arose during a temporary visit.
- 3.9. EU/EEA and Swiss citizens seeking to live, work and settle in the UK after exit day who require leave to remain in the UK but do not have it will become chargeable for health service treatment received.
- 3.10. The UK Government is seeking the continuation of reciprocal healthcare agreements that enable EU/EEA citizens temporarily in the UK to receive healthcare without a direct charge upon the individual. Under these agreements, the UK Government receives reimbursement from the relevant EU member state. The Regulations provide that any EU/EEA citizens covered by such an agreement will not be directly chargeable.
- 3.11. The Regulations are seeking to continue to provide healthcare after exiting the EU, to those frontier workers and retired frontier workers that were in that position before EU Exit, in the same way as it was before exit.
- 3.12. The existing rights under EU law of both UK and EU/EEA citizens will continue until the point at which the UK formally leaves the EU. It is reasonable to expect that there will be instances where an EU/EEA visitor is receiving treatment which began before exit day, when they relied upon their reciprocal healthcare rights, but which finishes after exit day, when the UK would potentially no longer recognise their European Health Insurance Card. There could be similar instances in relation to planned treatment authorised before, but provided after exit day. The Regulations

will introduce a transitional exemption from charging for EU/EEA citizens in such situations, for healthcare received in Northern Ireland. This will apply for the duration of their temporary visit to the UK, but not for subsequent visits

- 3.13. The Regulations will amend the ability to access healthcare under EU rights after exit day.

4. Consultation

- 4.1. There has been no public consultation carried out in relation to this rule as the legislative change is urgently required for 'no deal' planning in the event of the UK exiting the EU without an agreement.

5. Equality Impact

- 5.1. A full assessment was not considered necessary as amendments are not making changes to the policy and such an assessment was not considered necessary when the principle Regulation was laid.

6. Regulatory Impact

- 6.1. A Regulatory Impact Assessment has been carried out and there is no impact on business, charities, social enterprise or voluntary bodies. The only option available is to amend the health services legislation for exemption for charging of visitors and migrants so the policy intent remains unchanged and ensure that the regulations reflect wider UK Government policy decisions on the rights of EU citizens resident in the UK before exit day, the rights of EU citizens who seek to work or settle in the UK post exit-day, and the rights of UK nationals living in the EU who may wish to return to the UK, either permanently or temporarily.
- 6.2. It is for these reasons Department of Health is preparing the attached Provision of Health Services to Persons Not Ordinarily Resident (Amendment) Regulations (Northern Ireland) 2019.

7. Financial Implications

- 7.1. There may be financial implications to the budgets of HSC Trusts through increased payment/non-payment of charges. Department of Finance have agreed to the making of the regulations.

8. Section 24 of the Northern Ireland Act 1998

- 8.1. Consideration has been given to the human rights implications of these regulations. They are considered compatible with section 24 of the Northern Ireland Act 1998.

9. EU Implications

- 9.1. Amendments to the regulations are necessary as a consequence of the UK's withdrawal from the EU to ensure that healthcare services can still be provided to EU/EEA and Swiss visitors and migrants after exit day.

10. Parity or Replicatory Measure

- 10.1. The provisions in the regulations mirror similar legislation being made in England.

11. Additional Information

11.1. Not applicable