

Draft Regulations laid before the Scottish Parliament under paragraph 1(6) of schedule 7 of the European Union (Withdrawal) Act 2018, for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2020 No.

**EXITING THE EUROPEAN UNION
NATIONAL HEALTH SERVICE**

**The Cross-border Health Care (EU Exit)
(Scotland) (Amendment) Regulations 2020**

*Made - - - - 2020
Coming into force in accordance with regulation 1*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by paragraph 1(1) and (3) of schedule 2 and paragraph 21(b) of schedule 7 of the European Union (Withdrawal) Act 2018⁽¹⁾ and all other powers enabling them to do so.

In accordance with paragraphs 4(a) and (b) of schedule 2 of that Act⁽²⁾, the Secretary of State has been consulted prior to the making of these Regulations.

In accordance with paragraph 1(6) of schedule 7 of that Act, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

Citation and commencement

1. These Regulations may be cited as the Cross-border Health Care (EU Exit) (Scotland) (Amendment) Regulations 2020 and come into force immediately before IP completion day.

Amendment of the Cross-border Health Care (EU Exit) (Scotland) (Amendment etc.) Regulations 2019

2. The Cross-border Health Care (EU Exit) (Scotland) (Amendment etc.) Regulations 2019⁽³⁾ are amended as follows.

(1) [2018 c.16](#). Paragraph 21 of the European Union (Withdrawal) Act 2018 was amended by paragraphs 38 and 53 of schedule 5 of the European Union (Withdrawal Agreement) Act [2020 \(c.1\)](#).
(2) Paragraph 4(a) of schedule 2 of the European Union (Withdrawal) Act 2018 was amended by section 27(7)(a) of the European Union (Withdrawal Agreement) Act [2020 \(c.1\)](#) to substitute “exit day” with “IP completion day”.
(3) [S.S.I. 2019/131](#).

Amendment of regulation 3

3. In regulation 3(1)(a) (savings in relation to regulation 4), for “exit day” substitute “IP completion day”.

Amendment of regulation 4

4. In regulation 4(6) (modification of the National Health Service (Scotland) Act 1978), in the new section 75BC inserted by that regulation into the National Health Service (Scotland) Act 1978(4) (restriction on reimbursement after EU withdrawal)—

- (a) for “exit day” in each place where that occurs in subsections (1), (2) and (3)(a) of that section, substitute “IP completion day”,
- (b) for subsection (3)(b) of that section substitute—
 - “(b) the service began to be provided to the person on or after IP completion day and before—
 - (i) the end of the period specified in the authorisation as the period for which authorisation is granted, or
 - (ii) if no such period is specified in the authorisation, the end of the period of 1 year beginning with IP completion day.”,
- (c) omit subsections (4) to (6) of that section.

Amendment of regulation 5

5. In regulation 5 (modification of the National Health Service (Cross-Border Health Care) (Scotland) Regulations 2013(5))—

- (a) omit paragraph (2)(a) (amendment of regulation 2 – interpretation – definition of “cross-border arrangement with an EEA State”),
- (b) for paragraph (3)(c) (amendment of regulation 4 – national contact point: information about treatment in Scotland) substitute—
 - “(c) after paragraph (3) insert—
 - “(4) In paragraph (2), “relevant person” means a person to whom health care may be, or has been, provided in Scotland as a consequence of an exercise of the person’s rights in relation to access to health care under the Directive.””
- (c) omit paragraph (5)(a) (amendment of regulation 6(1) – national contact point: cross-border co-operation),
- (d) omit paragraph (6)(a) and (b) (amendment of regulation 9 – information on rights and entitlements),
- (e) for paragraph (7)(c), (d) and (e) (amendment of regulation 10 – exemption from NHS charges for certain persons who reside in another member state) substitute—
 - “(c) after paragraph (3) insert—
 - “(3A) But a cross-border healthcare service is not within paragraph (3) insofar as it is provided after the cut-off day.
 - (3B) For the purpose of paragraph (3A), the cut-off day is, in a case where the service is provided as a consequence of an exercise of P’s rights under the Directive, the day falling 1 year after IP completion day.”,

(4) 1978 c.29.

(5) S.S.I. 2013/292, amended by S.S.I. 2015/91.

- (d) in paragraph (4), after sub-paragraph (a) insert—
- “(aa) “cross-border healthcare service” means healthcare that is provided to a person in Scotland as a consequence of an exercise of the person’s rights in relation to access to healthcare under the Directive,”
- (e) after paragraph (4) insert—
- “(5) The modifications made to the preceding paragraphs of this regulation by regulation 5(7) of the Cross-border Health Care (EU Exit) (Scotland) (Amendment etc.) Regulations 2019 do not apply in relation to any service that began to be provided before IP completion day (which is the day that those modifications came into force).”
- (f) in paragraph (8), in the new regulation 10A inserted by that provision (exemption from NHS charges for certain pensioners after EU withdrawal)—
- (i) for “exit day”, in each place where that occurs in paragraphs (2) and (3) of that regulation, substitute “IP completion day”,
- (ii) for paragraph (4), substitute—
- “(4) In this regulation—
- “member of the family” has the meaning it had for the purposes of Regulation (EC) No 883/2004 immediately before IP completion day.”
- (g) for paragraph (9)(b) (amendment of regulation 11 - NHS charges), substitute—
- “(b) after paragraph (1) insert—
- “(1A) But paragraph (1) does not apply to a cross-border healthcare service insofar as it is provided after the cut-off day.
- (1B) For the purpose of paragraph (1A), the cut-off day in a case where the service is provided as a consequence of an exercise of the patient’s rights under the Directive, the day falling 1 year after IP completion day.”

St Andrew’s House,
Edinburgh
Date

Name
A member of the Scottish Government

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in exercise of the powers conferred by paragraph 1(1) and (3) of schedule 2 and paragraph 21(b) of schedule 7 of the European Union (Withdrawal) Act 2018 (c.16) in order to address failures of retained EU law to operate effectively and other deficiencies (in particular under paragraphs (a) and (c) of section 8(2) of this Act) in the field of cross-border health care arising from the withdrawal of the UK from the European Union.

These Regulations amend the Cross-border Health Care (EU Exit) (Scotland) (Amendment etc.) Regulations 2019 (“the 2019 Regulations”).

Regulation 3 amends regulation 3 of the 2019 Regulations (which makes a savings provision in regulation 4 of those Regulations) to substitute a reference to “IP completion day” for “exit day” (which is the date the modifications made by the 2019 Regulations will take effect).

Regulation 4 amends regulation 4(6) of the 2019 Regulations, which inserts a new section 75BC into the National Health Service (Scotland) Act 1978 concerning the arrangements for reimbursing health care costs to people ordinarily resident in Scotland who receive treatment in EEA states, which arrangements cease to operate on IP completion day. Reimbursement will however continue to be available where the treatment was provided, or an application for its authorisation was made, before IP completion day.

Regulation 5 amends the National Health Service (Cross-Border Health Care) (Scotland) Regulations 2013, to make provision to allow certain pensioners residing in the EEA, who previously would have had access to cross-border healthcare services, to access NHS healthcare at no cost when they are in Scotland on or after IP completion day where those services were provided before the cut-off day (i.e. 1 year after IP completion day).