
SCOTTISH STATUTORY INSTRUMENTS

2019 No. 131

**The Cross-border Health Care (EU Exit)
(Scotland) (Amendment etc.) Regulations 2019**

Modifications

Modification of the National Health Service (Scotland) Act 1978

4.—(1) The National Health Service (Scotland) Act 1978 is modified as follows.

(2) In section 75A (remission and repayment of charges and payment of travelling expenses), in subsection (1)(b)(ii), for “75B” substitute “75BA”.

(3) Section 75B (reimbursement of the cost of services provided in another EEA State) is repealed.

(4) In section 75BA (reimbursement of the cost of services provided in another EEA State on or after 25 October 2013)—

- (a) in subsection (1), after “and (14)” insert “ and section 75BC ”,
- (b) in subsection (3), omit “other than the United Kingdom”,
- (c) for subsection (15) substitute—

“(15) In this section and section 75BB—

“authorised provider” in relation to services provided in an EEA State means a person who is lawfully providing services,

“services” includes any goods, including drugs, medicines and appliances which are used or supplied in connection with the provision of a service, but does not include accommodation other than hospital accommodation.”.

(5) In section 75BB (prior authorisation for the purposes of section 75BA), in subsection (9), omit “and section 75C”.

(6) After section 75BB insert—

“75BC Restriction on reimbursement after EU withdrawal

(1) The duty to reimburse in section 75BA(2) applies in respect of a service provided to a person on or after [^{F1}IP completion day] only if one of the following conditions is met.

(2) Condition 1 is that the service began to be provided to the person before [^{F1}IP completion day].

(3) Condition 2 is that—

(a) the application for authorisation under section 75BB in relation to the provision of the service to the person was made before [^{F1}IP completion day], and

[^{F2}(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.]

F³(4)

F³(5)

F³(6)”.

(7) Section 75C (which provides the prior authorisation rules for section 75B) is repealed.

(8) In section 75D (deduction of NHS charges)—

- (a) in subsection (1), omit “75B(1) or”,
- (b) in subsection (2), omit “75B and 75C or”,
- (c) for subsection (3) substitute—

“(3) In this section—

“eligible person” means a person who is ordinarily resident in Scotland,

“NHS charge” means any charge payable in accordance with sections 69 to 74 or regulations made under those sections,

“services” has the meaning given in section 75BA(15).”.

Textual Amendments

F1 Words in reg. 4(6) substituted (31.12.2020 immediately before IP completion day) by [The Cross-border Health Care \(EU Exit\) \(Scotland\) \(Amendment\) Regulations 2020 \(S.S.I. 2020/478\)](#), regs. 1, [4\(a\)](#)

F2 Words in reg. 4(6) substituted (31.12.2020 immediately before IP completion day) by [The Cross-border Health Care \(EU Exit\) \(Scotland\) \(Amendment\) Regulations 2020 \(S.S.I. 2020/478\)](#), regs. 1, [4\(b\)](#)

F3 Words in reg. 4(6) omitted (31.12.2020 immediately before IP completion day) by virtue of [The Cross-border Health Care \(EU Exit\) \(Scotland\) \(Amendment\) Regulations 2020 \(S.S.I. 2020/478\)](#), regs. 1, [4\(c\)](#)

Commencement Information

I1 Reg. 4 in force at 31.12.2020 in force on IP completion day (in accordance with [2020 c. 1](#), [Sch. 5 para. 1\(1\)](#)), see [reg. 2](#)

Modification of the National Health Service (Cross-Border Health Care) (Scotland) Regulations 2013

5.—(1) The National Health Service (Cross-Border Health Care) (Scotland) Regulations 2013 ^{M1} is modified as follows.

(2) In regulation 2 (interpretation)—

F⁴(a)

(b) after the definition of “medicinal product” insert—

““Member State” means a State that is a member of the European Union or the European Economic Area,”,

(c) omit—

(i) the definition of “resident patient”, and

(ii) the definition of “visiting patient”.

- (3) In regulation 4 (national contact point: information about treatment in Scotland)—
- (a) in paragraph (1)(e) omit “other”,
 - (b) in paragraph (2), for “visiting patient” substitute “ relevant person ”,
 - [^{F5}(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.”]
- (4) In regulation 5 (national contact point: information about treatment in another member state)—
- (a) for “resident patients”, in both places it occurs, substitute “ persons ordinarily resident in Scotland ”,
 - (b) in paragraph (a), for “another” substitute “ a ”.
- (5) In regulation 6(1) (national contact point: cross border co-operation)—
- ^{F6}(a)
 - (b) in paragraph (a) omit “other”.
- (6) In regulation 9 (information on rights and entitlements)—
- ^{F7}(a)
 - ^{F8}(b)
 - (c) for “resident patients” substitute “ persons ordinarily resident in Scotland ”.
- (7) In regulation 10 (exemption from NHS charges for certain persons who reside in another member state)—
- (a) in paragraph (2)—
 - (i) for “if P is” substitute “ if, when the cross-border healthcare service began to be provided, P was ”,
 - (ii) in sub-paragraph (a) omit “other than the United Kingdom”,
 - (iii) at the end of sub-paragraph (a) (after the semi-colon) insert “ and ”,
 - (iv) in sub-paragraph (b) before “for whom” insert “ a person ”,
 - (b) in paragraph (3), for sub-paragraph (a) substitute—
 - “(a) it is not a service of the kind that falls within section 75BA(6) of the NHS Act, and”,
 - [^{F9}(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.”]
 - [^{F9}(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.”]
 - [^{F9}(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).”]

(8) After regulation 10 insert—

“Exemption from NHS charges for certain pensioners after EU withdrawal

10A.—(1) A person to whom paragraph (3) applies is exempt from any charge provided for by regulations under section 98 of the NHS Act in respect of a relevant service.

(2) A service is relevant, for the purpose of paragraph (1), insofar as it is provided during the period of 1 year beginning with [F10IP completion day].

(3) This paragraph applies to—

(a) a person who, immediately before [F10IP completion day]—

(i) was resident in a Member State, and

(ii) was in receipt of—

(aa) a state pension under Part 1 of the Pensions Act 2014 ^{M2} or Part 1 of the Pensions Act (Northern Ireland) 2015 ^{M3}, or

(bb) a retirement pension under the Social Security Contributions and Benefits Act 1992 ^{M4} or the Social Security Contributions and Benefits (Northern Ireland) Act 1992 ^{M5}, and

(b) a person who, immediately before [F10IP completion day], was a member of the family of a person described by sub-paragraph (a).

[F11(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.”].

(9) In regulation 11 (NHS charges)—

(a) in paragraph (1)—

(i) omit “visiting” in both places it occurs,

(ii) for “resident patient” substitute “ British citizen who is ordinarily resident in Scotland ”,

[F12(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.”]

(c) in paragraph (2)(a)—

(i) omit “visiting”,

(ii) after “Directive” insert “ or a cross-border arrangement with an EEA State ”.

Textual Amendments

- F4** Reg. 5(2)(a) omitted (31.12.2020 immediately before IP completion day) by virtue of [The Cross-border Health Care \(EU Exit\) \(Scotland\) \(Amendment\) Regulations 2020 \(S.S.I. 2020/478\)](#), regs. 1, **5(a)**
- F5** Reg. 5(3)(c) substituted (31.12.2020 immediately before IP completion day) by [The Cross-border Health Care \(EU Exit\) \(Scotland\) \(Amendment\) Regulations 2020 \(S.S.I. 2020/478\)](#), regs. 1, **5(b)**
- F6** Reg. 5(5)(a) omitted (31.12.2020 immediately before IP completion day) by virtue of [The Cross-border Health Care \(EU Exit\) \(Scotland\) \(Amendment\) Regulations 2020 \(S.S.I. 2020/478\)](#), regs. 1, **5(c)**
- F7** Reg. 5(6)(a) omitted (31.12.2020 immediately before IP completion day) by virtue of [The Cross-border Health Care \(EU Exit\) \(Scotland\) \(Amendment\) Regulations 2020 \(S.S.I. 2020/478\)](#), regs. 1, **5(d)**
- F8** Reg. 5(6)(b) omitted (31.12.2020 immediately before IP completion day) by virtue of [The Cross-border Health Care \(EU Exit\) \(Scotland\) \(Amendment\) Regulations 2020 \(S.S.I. 2020/478\)](#), regs. 1, **5(d)**
- F9** Reg. 5(7)(c)-(e) substituted (31.12.2020 immediately before IP completion day) by [The Cross-border Health Care \(EU Exit\) \(Scotland\) \(Amendment\) Regulations 2020 \(S.S.I. 2020/478\)](#), regs. 1, **5(e)**
- F10** Words in reg. 5(8) substituted (31.12.2020 immediately before IP completion day) by [The Cross-border Health Care \(EU Exit\) \(Scotland\) \(Amendment\) Regulations 2020 \(S.S.I. 2020/478\)](#), regs. 1, **5(f)(i)**
- F11** Words in reg. 5(8) substituted (31.12.2020 immediately before IP completion day) by [The Cross-border Health Care \(EU Exit\) \(Scotland\) \(Amendment\) Regulations 2020 \(S.S.I. 2020/478\)](#), regs. 1, **5(f)(ii)**
- F12** Reg. 5(9)(b) substituted (31.12.2020 immediately before IP completion day) by [The Cross-border Health Care \(EU Exit\) \(Scotland\) \(Amendment\) Regulations 2020 \(S.S.I. 2020/478\)](#), regs. 1, **5(g)**

Commencement Information

- I2** Reg. 5 in force at 31.12.2020 in force on IP completion day (in accordance with [2020 c. 1](#), [Sch. 5 para. 1\(1\)](#)), see [reg. 2](#)

Marginal Citations

- M1** [S.S.I. 2013/292](#), amended by [S.S.I. 2015/91](#).
- M2** [2014 c.19](#).
- M3** [2015 c.5](#).
- M4** [1992 c.4](#).
- M5** [1992 c.7](#).

Changes to legislation:

There are currently no known outstanding effects for the The Cross-border Health Care (EU Exit) (Scotland) (Amendment etc.) Regulations 2019, Modifications.