

Draft Regulations laid before Parliament under section 7(4) of the Healthcare (International Arrangements) Act 2019, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2023 No.***

**EXITING THE EUROPEAN UNION
HEALTH SERVICES
NATIONAL HEALTH SERVICE,
ENGLAND AND WALES
NATIONAL HEALTH SERVICE, SCOTLAND
HEALTH SERVICES, NORTHERN IRELAND**

**The Healthcare (International
Arrangements) (EU Exit) Regulations 2023**

*Made - - - - - ***
Coming into force in accordance with regulation 1(2)*

The Secretary of State makes these Regulations in exercise of the powers conferred by sections 2 and 7(2) of the Healthcare (International Arrangements) Act 2019⁽¹⁾.

In accordance with section 5(1) of that Act, the Secretary of State has consulted the Scottish Ministers, the Welsh Ministers and the Department of Health in Northern Ireland before making these Regulations.

In accordance with section 7(4) of that Act, a draft of these Regulations has been laid before and approved by a resolution of each House of Parliament.

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Healthcare (International Arrangements) (EU Exit) Regulations 2023.

(2) These Regulations come into force immediately after section 162 of the Health and Care Act 2022⁽²⁾ comes into force.

(1) 2019 c. 14 (“the 2019 Act”). The Act was renamed and sections 2 and 7 were amended by section 162 of the Health and Care Act 2022 (c. 31).
(2) 2022 c. 31.

(3) These Regulations extend to England and Wales, Scotland and Northern Ireland.

Interpretation

2. In these Regulations—

“applicant” means a person making an application or claim under or in relation to these Regulations;

“listed country” means a country or territory listed in the Schedule;

“maternity application” means an application, other than a third country application, for authorisation to travel to a listed country for the purpose of receiving healthcare⁽³⁾ under a relevant healthcare agreement⁽⁴⁾ in connection with giving birth in the listed country;

“NHS BSA” means the NHS Business Services Authority (Awdurdod Gwasanaethau Busnes y GIG) established under article 2 of the NHS Business Services Authority (Awdurdod Gwasanaethau Busnes y GIG) (Establishment and Constitution) Order 2005⁽⁵⁾;

“planned healthcare application” means an application, other than a maternity application or a third country application, for authorisation to travel to a listed country for the purpose of receiving healthcare under a relevant healthcare agreement;

“relevant health board” means—

- (a) in relation to England, NHS England⁽⁶⁾;
- (b) in relation to Scotland, a Scottish health board⁽⁷⁾;
- (c) in relation to Wales, a Welsh health board⁽⁸⁾;

“relevant healthcare agreement” means a healthcare agreement concerning healthcare provided in a listed country;

“third country application” means an application in relation to a person residing in a listed country for authorisation to travel to another country for the purpose of receiving healthcare under a relevant healthcare agreement.

Function of making payments under relevant healthcare agreements

3. The Secretary of State may make a payment, and arrange for the making of a payment, in respect of healthcare provided in a listed country under a relevant healthcare agreement.

Functions relating to healthcare payments in exceptional circumstances

4.—(1) The Secretary of State may make a payment (otherwise than under a healthcare agreement) in respect of healthcare provided in a listed country where the Secretary of State considers that exceptional circumstances justify the payment.

(2) The following persons may refer any application or claim for a payment under paragraph (1) to the Secretary of State—

- (a) a relevant health board;
- (b) NHS BSA.

(3) See section 3 of the 2019 Act for the definition of “healthcare”.

(4) See section 3 of the 2019 Act for the definition of “healthcare agreement”.

(5) S.I. 2005/2414. There are amending instruments but none is relevant.

(6) NHS England (formerly the National Health Service Commissioning Board) is a body corporate established by section 1H of the National Health Service Act 2006 (c. 41), inserted by section 9(1) of the Health and Social Care Act 2012 (c. 7). It was renamed by section 1 of the Health and Care Act 2022.

(7) See section 2(8) of the 2019 Act for the definition of “Scottish health board”.

(8) See section 2(8) of the 2019 Act for the definition of “Welsh health board”.

(3) Where a person refers an application or claim to the Secretary of State under paragraph (2) it must, on request from the Secretary of State, provide the Secretary of State with such information as the Secretary of State reasonably requires for the purposes of determining that application or claim.

(4) The Secretary of State must establish and publish procedures for the determination of applications and claims for payments under this regulation.

(5) Those procedures must include provision for the review of determinations.

(6) The Secretary of State must inform the applicant in writing of their determination of the application or claim.

(7) Where the determination is not to approve the application or claim, the determination must set out—

- (a) the information considered,
- (b) the reasons for the determination, and
- (c) the steps an applicant must take if the applicant disagrees with the determination and wishes to request a review of the determination.

NHS BSA functions: healthcare agreements

5.—(1) NHS BSA must give effect to the obligations and commitments of the United Kingdom under or in relation to relevant healthcare agreements.

(2) The duty in paragraph (1) includes (but is not limited to) doing the following in accordance with such agreements—

- (a) processing any applications or claims;
- (b) determining any applications or claims (including maternity applications and third country applications) other than—
 - (i) applications required to be determined under regulation 8;
 - (ii) planned healthcare applications in relation to Northern Ireland;
- (c) registering any entitlements;
- (d) making any payments;
- (e) issuing any documents verifying entitlement to the provision of healthcare.

(3) The duty in paragraph (1) does not apply where the Secretary of State or another person is required to give, or has given, effect to the obligations or commitments.

(4) NHS BSA must establish and publish procedures for the determination of applications and claims under this regulation.

(5) Those procedures must include provision for the review of determinations.

(6) NHS BSA must inform the applicant in writing of its determination of the application or claim.

(7) Where the determination is not to approve the application or claim the determination must set out—

- (a) the information considered,
- (b) the reasons for the determination, and
- (c) the steps an applicant must take if the applicant disagrees with the determination and wishes to request a review of the determination.

NHS BSA functions: information and advice

6.—(1) NHS BSA must establish and maintain a service making available to the public information and advice in relation to—

- (a) its functions under these Regulations,
- (b) the provision of healthcare under relevant healthcare agreements, and
- (c) any evidential or administrative requirements or processes under or in relation to such agreements.

(2) The service referred to in paragraph (1) may include information and advice in relation to such other matters relating to relevant healthcare agreements, or in connection with the provision of healthcare in listed countries, as NHS BSA considers appropriate.

NHS BSA functions: assisting the Secretary of State

7. Subject to, and in accordance with, such instructions as the Secretary of State may give, NHS BSA must assist the Secretary of State with the Secretary of State’s exercise of functions in relation to relevant healthcare agreements and otherwise in relation to the provision of healthcare in listed countries.

Health board functions: planned healthcare

8.—(1) Relevant health boards must determine planned healthcare applications and must, in each case, do so in accordance with the relevant healthcare agreement to which the application relates⁽⁹⁾.

(2) Relevant health boards must establish and publish procedures for the determination of planned healthcare applications under this regulation.

(3) Those procedures must include provision for the review of determinations.

(4) A relevant health board must inform the applicant in writing of its determination of the application.

(5) Where the determination is not to approve the application the determination must set out—

- (a) the information considered,
- (b) the reasons for the determination, and
- (c) the steps an applicant must take if the applicant disagrees with the determination and wishes to request a review of the determination.

Signed by authority of the Secretary of State for Health and Social Care

Date

Name
Minister of State
Department of Health and Social Care

⁽⁹⁾ See [S.I. 2019/1293](#) as to the determination of planned healthcare applications in relation to Northern Ireland, and in particular regulation 6 (functions relating to authorisation for planned healthcare). Subject to savings in relation to the determination of planned healthcare applications in relation to Northern Ireland under the 2019 Act and [S.I. 2019/1293](#) (see regulation 3 of [S.I. 2023/***](#)), [S.I. 2023/***](#) repealed the powers under which [S.I. 2019/1293](#) was made and thus also impliedly revoked those regulations for all other purposes.

SCHEDULE

Regulation 2

Listed countries

Anguilla
Australia
Austria
Bailiwick of Guernsey
Bailiwick of Jersey
Belgium
Bermuda
Bosnia and Herzegovina
British Virgin Islands
Bulgaria
Croatia
Cyprus
Czech Republic
Denmark
Estonia
Falkland Islands
Faroe Islands
Finland
France
Germany
Gibraltar
Greece
Hungary
Iceland
Ireland
Isle of Man
Israel
Italy
Kosovo
Latvia
Liechtenstein
Lithuania
Luxembourg
Malta
Montenegro
Montserrat
Netherlands

New Zealand
North Macedonia
Norway
Poland
Portugal
Romania
Serbia
Slovakia
Slovenia
Spain
St Helena, Ascension and Tristan da Cunha
Sweden
Switzerland
Turks and Caicos Islands

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations confer functions in relation to the provision of healthcare in the countries and territories listed in the Schedule (“listed countries”), including the making of payments in respect of such healthcare, as provided for by the Healthcare (International Arrangements) Act 2019 (c. 14). These Regulations also make provision to give effect to agreements and other commitments concerning the provision of such healthcare (“relevant healthcare agreements”) and for related purposes.

Regulation 3 provides for the Secretary of State to make payments, or arrange for payments to be made, for healthcare provided in a listed country under a relevant healthcare agreement.

Regulation 4 provides for the Secretary of State to make a payment for healthcare provided in a listed country outside of a relevant healthcare agreement if the Secretary of State considers the payment to be justified by exceptional circumstances. This regulation also places requirements on the Secretary of State as to procedures and information to be provided to applicants.

Regulation 5 confers functions on the NHS Business Services Authority (“NHS BSA”) for the purposes of giving effect to relevant healthcare agreements. The functions of NHS BSA are subject to exceptions as set out in paragraphs (2)(b) and (3), including the determination of certain applications in relation to England, Wales and Scotland relating to authorisation to travel to a listed country for the purpose of receiving healthcare under a relevant healthcare agreement (“planned healthcare”) which are determined under regulation 8. This regulation also places requirements on NHS BSA as to procedures and information to be provided to applicants.

Regulation 6 requires NHS BSA to establish an information and advice service.

Regulation 7 imposes a duty on NHS BSA to assist the Secretary of State with the exercise of the Secretary of State's functions in relation to relevant healthcare agreements and the provision of healthcare in listed countries.

Regulation 8 requires certain health boards in England, Wales and Scotland to determine applications relating to planned healthcare in listed countries under relevant healthcare agreements. This regulation also places requirements on relevant health boards as to procedures and information to be provided to applicants.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen. An assessment of the impact of the healthcare agreements which these Regulations implement will be carried out as appropriate and any such assessment will be available from the Department of Health and Social Care at 39 Victoria Street, London, SW1H 0EU.