
WELSH STATUTORY INSTRUMENTS

2020 No. 1607 (W. 334)

**EXITING THE EUROPEAN UNION, WALES
NATIONAL HEALTH SERVICE, WALES**

**The National Health Service (Charges to Overseas Visitors)
(Amendment) (Wales) (EU Exit) Regulations 2020**

Made - - - - 18 December 2020

Laid before Senedd Cymru 21 December 2020

*Coming into force in accordance with regulation 1(2)
and 1(3)*

The Welsh Ministers make these Regulations in exercise of the powers conferred by sections 124 and 203(9) and (10) of the National Health Service (Wales) Act 2006(1).

PART 1

General

Title, commencement and interpretation

1.—(1) The title of these Regulations is the National Health Service (Charges to Overseas Visitors) (Amendment) (Wales) (EU Exit) Regulations 2020.

(2) Except as provided in paragraph (3), these Regulations come into force on implementation period completion day.

(3) Regulation 9 comes into force immediately before implementation period completion day.

(4) In these Regulations, “the Principal Regulations” means the National Health Service (Charges to Overseas Visitors) Regulations 1989(2).

(1) 2006 c. 42. See section 206(1) for the definition of “prescribed” and “regulations”.

(2) S.I. 1989/306, amended by S.I. 2004/614; S.I. 2004/1433 (W. 146); S.I. 2009/1824 (W. 165); S.I. 2009/3005 (W. 264); S.I. 2010/730 (W. 71); S.I. 2010/927 (W. 94); S.I. 2011/1043; S.I. 2011/2906 (W. 310), S.I. 2012/1809; S.I. 2014/1622 (W. 166); and S.I. 2015/1985; there are other amending instruments but none are relevant to these Regulations.

PART 2

Amendment of the Principal Regulations

Amendment of regulation 1

2.—(1) Regulation 1(2) (citation, commencement and interpretation) of the Principal Regulations is amended as follows.

(2) At the appropriate place insert—

- (a) ““the 2014 Act” means the Immigration Act 2014(3);”;
- (b) ““competent institution” has the same meaning as in Regulation (EC) No 883/2004 or Regulation (EEC) No 1408/71, as the case may be;”;
- (c) ““equivalent document” means a document which, for the purposes of a listed healthcare arrangement is treated as equivalent to an S1 healthcare certificate(4);”;
- (d) ““immigration rules” means the rules laid before Parliament under section 3(2) (general provisions for regulation and control) of the Immigration Act 1971(5);”;
- (e) ““listed healthcare arrangement” has the meaning given in regulation 1(3) of the Healthcare (European Economic Area and Switzerland Arrangements) (EU Exit) Regulations 2019(6);”;
- (f) ““Regulation (EC) No 883/2004” means Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems as it had effect immediately before implementation period completion day(7);”;
- (g) ““Regulation (EEC) No 1408/71” means Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community as it had effect immediately before implementation period completion day(8);”;
- (h) ““relevant services” means accommodation, services or facilities(9) which are provided, or whose provision is arranged, under the National Health Service (Wales) Act 2006(10) other than—
 - (i) primary medical services provided under Part 4 (medical services);
 - (ii) primary dental services provided under Part 5 (dental services);
 - (iii) primary ophthalmic services provided under Part 6 (ophthalmic services); or

(3) 2014 c. 22.

(4) An S1 healthcare certificate entitles a person to healthcare in an EEA state and Switzerland on the same basis as residents of that country. It is issued by an EEA state and Switzerland and was issued by the United Kingdom, before it exited the EU. It was issued to certain workers working in an EEA state or Switzerland who paid National Insurance Contributions in the United Kingdom or to people in receipt of certain United Kingdom exportable benefits (for example, retirement pensions). Following the United Kingdom’s exit from the EU, the United Kingdom will no longer issue S1 healthcare certificates but will issue certain qualifying persons with a document which will provide the same access to healthcare as the S1 healthcare document.

(5) 1971 c. 77.

(6) S.I. 2019/1293, to which there are amendments not relevant to these Regulations.

(7) OJ No. L 166, 30.4.2004, p. 1. This EU Regulation has been amended by various EU instruments, most recently by Regulation (EU) 2019/1149 of the European Parliament and of the Council of 20 June 2019 (OJ No. L 186, 11.7.2019, p. 21). Amendments are made prospectively with effect from implementation period completion day by S.I. 2019/722.

(8) OJ No. L 149, 5.7.1971, p. 2. Regulation (EEC) No 1408/71 was repealed by Regulation (EC) No 883/2004 but saved for certain purposes. Regulation (EEC) No 1408/71 has been amended by various EU instruments and was restated in Part 1 of Annex A of Council Regulation (EC) No 118/97 of 2 December 1996 (OJ No. L 28, 30.1.1997, p. 1). It has most recently been amended by Regulation (EC) No 592/2008 of the European Parliament and of the Council of 17 June 2008 (OJ No. L 177, 4.7.2008, p. 1). Amendments are made prospectively with effect from implementation period completion day by S.I. 2019/726.

(9) “Facilities” is defined in section 206(1) of the National Health Service (Wales) Act 2006.

(10) 2006 c. 42.

- (iv) equivalent services which are provided, or whose provision is arranged, under that Act;”.
- (3) For the definition of “member of the family” substitute—
““member of the family” has the same meaning as in Regulation (EC) No 883/2004 or Regulation (EEC) No 1408/71 as the case may be;”.

Amendment of regulation 4

3.—(1) Regulation 4(1) (overseas visitors exempt from charges) of the Principal Regulations is amended as follows.

- (2) In sub-paragraph (l), for “another” substitute “a”.
- (3) In sub-paragraph (m), after “member state” insert “or a British citizen”.
- (4) For sub-paragraph (o) substitute—
 - “(o) in whose case the services are provided in circumstances covered by a reciprocal agreement—
 - (i) with a country or territory specified in Schedule 2; or
 - (ii) with an EEA state or Switzerland where that agreement is a listed healthcare arrangement; or”.
- (5) After sub-paragraph (r) insert—
 - “(s) who—
 - (i) is granted leave to remain in the United Kingdom under Appendix S2 Healthcare Visitor to the immigration rules, and
 - (ii) in respect of whom a waiver to the immigration health charge applies, except in the case of relevant services which do not form part of the planned healthcare treatment authorised by that person’s S2 healthcare certificate(11).”.

Amendment of regulation 4A

4.—(1) Regulation 4A (exemption from charges during long term visits by United Kingdom pensioners) of the Principal Regulations is amended as follows.

- (2) In sub-paragraph (b), for “another” substitute “a”.
- (3) In sub-paragraph (c), for “another” substitute “a”.

New regulations 4B, 4C and 4D

5. After regulation 4A (exemption from charges during long term visits by United Kingdom pensioners) of the Principal Regulations, insert—

“Overseas visitors with citizens’ rights

4B.—(1) No charge may be made or recovered in respect of any relevant services provided to an overseas visitor who has an entitlement to the provision of those services without charge by virtue of a right arising from—

- (a) Title III of Part 2 of the withdrawal agreement;

(11) An S2 healthcare certificate is issued by an EEA state and Switzerland, and, before it exited the EU, by the United Kingdom. It entitles a person to travel to an EEA state or Switzerland to receive pre-authorised planned treatment on the same basis as the national of that country, with the costs of the treatment being met by the country who issued the S2 healthcare certificate, pursuant to Regulation (EC) No 883/2004.

- (b) Title III of Part 2 of the EEA EFTA separation agreement; or
 - (c) the social security co-ordination provisions of the Swiss citizens' rights agreement.
- (2) Subject to paragraphs (3) to (5) of this regulation, no charge may be made or recovered in respect of any relevant services provided to an overseas visitor who is a member of the family of another overseas visitor ("the principal overseas visitor") if—
- (a) the overseas visitor is lawfully present in the United Kingdom;
 - (b) the overseas visitor is visiting the United Kingdom with the principal overseas visitor; and
 - (c) the principal overseas visitor is exempt from charges under paragraph (1).
- (3) The exemption in paragraph (2) only applies if both conditions in paragraphs (4) and (5) are satisfied.
- (4) The first condition is that—
- (a) the overseas visitor does not have a right under an agreement mentioned in paragraph (1), and
 - (b) the reason that the overseas visitor does not have such a right is because the overseas visitor is not recognised as a member of the family (within the meaning of Article 1(i) of Regulation (EC) No 883/2004).
- (5) The second condition is that the relevant services provided to the overseas visitor are services that the overseas visitor would be entitled to receive without charge by virtue of a right under an agreement mentioned in paragraph (1) if the overseas visitor had such a right.
- (6) For the purposes of this regulation, unless otherwise provided, "member of the family" means—
- (a) the spouse or civil partner of an overseas visitor; or
 - (b) a child in respect of whom an overseas visitor has parental responsibility.
- (7) In paragraph (1), "withdrawal agreement", "EEA EFTA separation agreement" and "Swiss citizens' rights agreement" have the same meanings as in section 39(1) of the European Union (Withdrawal Agreement) Act 2020(12).

Overseas visitors with a United Kingdom issued S1 healthcare certificate or equivalent document

- 4C.—(1) No charge may be made or recovered in respect of any relevant services provided to an overseas visitor who—
- (a) was ordinarily resident in an EEA state or Switzerland immediately before implementation period completion day,
 - (b) continues to be ordinarily resident in an EEA state or Switzerland on and after implementation period completion day,
 - (c) receives a state pension paid by the United Kingdom Government, and
 - (d) holds a S1 healthcare certificate, or an equivalent document, issued to or in respect of that person by a competent institution of the United Kingdom.
- (2) No charge may be made or recovered in respect of any relevant services provided to—
- (a) the spouse or civil partner of an overseas visitor; or

(b) a child in respect of whom an overseas visitor has parental responsibility, if that overseas visitor is exempt from charges under paragraph (1).

Persons who make late applications under Appendix EU to the immigration rules

4D.—(1) Subject to paragraph (4), no charge may be made or recovered in respect of relevant services provided to an overseas visitor to whom paragraph (2) or (3) applies during the period which begins on the date on which the application mentioned in paragraph (2)(b) or (3)(b), as the case may be, is made and which ends on the date on which that application is finally determined under Appendix EU to the immigration rules.

(2) This paragraph applies to a person who is an overseas visitor by virtue of section 39 of the 2014 Act who—

- (a) is eligible to apply for leave to enter or remain in the United Kingdom under Appendix EU to the immigration rules, and
- (b) makes a valid application for leave to enter or remain in the United Kingdom under that Appendix to those rules after the application deadline.

(3) This paragraph applies to a person who is an overseas visitor by virtue of section 39 of the 2014 Act who—

- (a) was granted limited leave to enter or remain in the United Kingdom under Appendix EU to the immigration rules, and
- (b) after the expiry of that limited leave to enter or remain, makes a valid application for indefinite leave to enter or remain in the United Kingdom under Appendix EU to the immigration rules.

(4) Where it is determined under Appendix EU to the immigration rules not to grant leave to enter or remain in the United Kingdom to a person pursuant to an application mentioned in paragraph (2)(b) or (3)(b), as the case may be, a Local Health Board or NHS trust must make and recover charges for any relevant services provided to that person during the period specified in paragraph (1).

(5) Where a person is granted leave to enter or remain in the United Kingdom pursuant to an application mentioned in paragraph (2)(b) or (3)(b)—

- (a) if the Local Health Board or NHS trust has made charges for relevant services provided during the period specified in paragraph (1), it must not recover those charges;
- (b) if the Local Health Board or NHS trust has made and recovered charges for relevant services provided during the period specified in paragraph (1), it must repay any sum paid in respect of those charges in accordance with regulation 8.

(6) In paragraph (2), “application deadline” has the meaning given in regulation 2 of the Citizens’ Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020(13).”

Amendment of regulation 5

6. In regulation 5(a) (exemption from charges for treatment the need for which arose during the visit) of the Principal Regulations, after “a national of a member state,” insert “a British citizen.”

New regulation 5A

7. After regulation 5 (exemption from charges for treatment the need for which arose during the visit) of the Principal Regulations insert—

“EU Exit: transitional arrangements

5A. Where an overseas visitor who is ordinarily resident in an EEA state or Switzerland has—

- (a) before implementation period completion day received relevant services from a Local Health Board or NHS trust, or
- (b) on or after implementation period completion day received relevant services from a Local Health Board or NHS trust as part of a course of treatment which commenced before implementation period completion day,

the charges payable in respect of those services must be calculated in the same way as provided for by regulation 13(1) of the National Health Service (Cross-Border Healthcare) Regulations 2013⁽¹⁴⁾.”

Amendment of Schedule 2

8.—(1) Schedule 2 (countries or territories in respect of which the United Kingdom has entered into a reciprocal agreement) to the Principal Regulations is amended as follows.

(2) At the appropriate place insert—

- (a) “Bosnia and Herzegovina”;
- (b) “Faroe Islands”;
- (c) “Kosovo”;
- (d) “Liechtenstein”;
- (e) “Montenegro”;
- (f) “North Macedonia”; and
- (g) “Serbia”.

(3) Omit—

- (a) “Barbados”;
- (b) “Iceland”;
- (c) “Russian Federation”;
- (d) “the Union of Soviet Socialist Republics except the States of Estonia, Latvia, Lithuania and the Russian Federation”; and
- (e) “Yugoslavia”.

⁽¹⁴⁾ [S.I. 2013/2269](#). These Regulations are revoked on implementation period completion day by [S.I. 2019/777](#), subject to saving and transitional provision in regulation 15 to 17 of those Regulations.

PART 3

Revocation of the National Health Service (Charges to Overseas Visitors) (Amendment) (Wales) (EU Exit) Regulations 2019

Revocation of the National Health Service (Charges to Overseas Visitors) (Amendment) (Wales) (EU Exit) Regulations 2019

9. The National Health Service (Charges to Overseas Visitors) (Amendment) (Wales) (EU Exit) Regulations 2019(15) are revoked.

18 December 2020

Vaughan Gething
Minister for Health and Social Services, one of
the Welsh Ministers

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the National Health Service (Charges to Overseas Visitors) Regulations 1989 (“the Principal Regulations”), which provide for the making and recovery of charges for relevant services provided under the National Health Service (Wales) Act 2006 (c. 42) to certain persons not ordinarily resident in the United Kingdom.

Regulation 1 contains commencement and interpretation provisions. Except for regulation 9, these Regulations come into force on implementation period completion day, as defined in Schedule 1 to the Legislation (Wales) Act 2019 (anaw 4). Regulation 9 comes into force immediately before implementation period completion day.

Regulation 2 amends regulation 1 of the Principal Regulations to insert definitions of “the 2014 Act”, “competent institution”, “equivalent document”, “immigration rules”, “listed healthcare arrangements”, “Regulation (EC) No 883/2004”, “Regulation (EEC) No 1408/71” and “relevant services”. It also amends the existing definition of a “member of the family”.

Regulation 3 amends regulation 4 of the Principal Regulations. Paragraphs (1) to (3) make minor amendments as a result of the United Kingdom’s exit from the European Union. Paragraph (4) provides an exemption from charges for overseas visitors in circumstances where this is captured by a reciprocal agreement with a country listed in Schedule 2 to the Principal Regulations or with an EEA state or Switzerland under a listed healthcare arrangement. Paragraph (5) provides that where a person with an S2 healthcare certificate is given leave to stay in the United Kingdom for the purposes of their treatment, and has the immigration health charges waived, charges can be made for the provision of relevant services that are not authorised by the S2 healthcare certificate.

Regulation 4 amends regulation 4A of the Principal Regulations to reflect the fact that the term “Member State” will not capture the United Kingdom after implementation period completion day.

Regulation 5 inserts new regulations 4B, 4C and 4D into the Principal Regulations.

Regulation 4B provides that persons who are in scope of Title III of Part 2 of the withdrawal agreement, Title III of Part 2 of the EEA EFTA separation agreement or the Swiss citizens’ rights agreement are able to continue to receive relevant services without charge where there is a right to this under Regulation (EU) No 883/2004. It also provides that the family members of such a person will be entitled to receive relevant services without charge, subject to specific conditions.

Regulation 4C provides that a United Kingdom national in receipt of a United Kingdom pension who is ordinarily resident in an EEA state or Switzerland and who has a United Kingdom issued S1 healthcare certificate (or equivalent document) will receive relevant services without charge. It also provides that the family members of such a person will also be entitled to receive relevant services without charge. Regulation 4D provides that a person who makes a late application under Appendix EU to the immigration rules will not be charged for relevant services which are provided while their application is being determined. If that application is unsuccessful they will be charged for the provision of those relevant services and, if an application is successful and if charges have been made and recovered, these will be repaid.

Regulation 6 amends regulation 5 of the Principal Regulations by adding “a British citizen” to the categories of persons who will be exempt from charges for needs arising treatment after implementation period completion day.

Regulation 7 inserts a new regulation 5A into the Principal Regulations as a result of the United Kingdom’s exit from the European Union. The new regulation provides that where an overseas

visitor from an EEA state or Switzerland has either received treatment before implementation period completion day or is part way through treatment on implementation period completion day, the charge which applied before implementation completion day will apply in respect of that treatment.

Regulation 8 adds Bosnia and Herzegovina, the Faroe Islands, Kosovo, Liechtenstein, Montenegro, North Macedonia and Serbia to the list of countries in Schedule 2 to the Principal Regulations which concerns reciprocal agreements. Regulation 8 also removes from the list of countries in Schedule 2 Barbados, Iceland, Russian Federation, the Union of Soviet Socialist Republics and Yugoslavia.

Regulation 9 revokes the National Health Service (Charges to Overseas Visitors) (Amendment) (Wales) (EU Exit) Regulations 2019 which were prepared for a “no deal” EU Exit and which do not reflect the provisions of the EU withdrawal agreement, the EEA EFTA separation agreement or the Swiss Citizens’ rights agreement.

The Welsh Ministers’ Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with these Regulations. A copy can be obtained from the Department of Health and Social Services, Welsh Government, Cathays Park, Cardiff, CF10 3NQ.