

POLICY NOTE

The National Health Service (Charges to Overseas Visitors) (Scotland) (Amendment) (EU Exit) Regulations 2019

SSI 2019/333

1. The above instrument is being made in exercise of powers conferred by sections 98 and 105 of the National Health Service (Scotland) Act 1978. The instrument is subject to the negative procedure.

Purpose of the instrument

2. The instrument is necessary as a consequence of the United Kingdom's (UK) withdrawal from the European Union (EU) to ensure that the National Health Service (Charges to Overseas Visitors) (Scotland) Regulations 1989 ("the principal regulations") remain operable and capture changes to reciprocal healthcare arrangements once the UK leaves the EU.

Policy Objectives

3. The principal regulations provide for NHS Boards in Scotland to make and recover charges from overseas visitors (anyone not ordinarily resident in the UK) for relevant services provided to them, unless the overseas visitor, or the service they receive, is covered by one of a number of exemption categories. Amendments to the principal regulations are necessary to ensure that should the UK leave the EU without a ratified withdrawal agreement, the regulations continue to function effectively where references to EU law and EU rights within the existing legislative framework will no longer be operable. The instrument removes or amends such references.

4. In summary the instrument amends the principal regulations to:

- Exempt visitors from EEA States from healthcare charges where the treatment is covered by a reciprocal healthcare agreement between the UK and their country of affiliation that comes into force on or after exit day.
- Ensure that Irish citizens, and British citizens who are ordinarily resident in the Republic of Ireland, continue to be exempt from charges for treatment, the need for which arises when visiting Scotland, because of the special arrangement that the UK has with the Republic of Ireland
- Exempt frontier workers who are ordinarily resident in the EEA or Switzerland from charges for treatment, the need for which arises when they are in Scotland on or after exit day. The new exemption applies to frontier workers who began pursuing an activity as employed or self-employed person in the UK before exit day.

- Exempt visitors who are ordinarily resident in the EEA or Switzerland from healthcare charges if they require treatment, the need for which arises on or after exit day. At which point their EU issued European Health Insurance Card may otherwise no longer be recognised. The instrument ensures that visitors who hold an EHC card will continue to be exempt from these charges unless a relevant reciprocal agreement is in place.
- Exempt visitors originally from the UK who, before exit day, had EU reciprocal healthcare entitlements funded by the UK, and are now ordinarily resident in EEA or Switzerland, from healthcare charges if they require treatment, the need for which arises on or after exit day. At which point their UK issued European Health Insurance Card may no longer be recognised.
- Exempt visitors who are ordinarily resident in the EEA or Switzerland from charges for planned healthcare under EU healthcare arrangements where that treatment was authorised before exit day but was provided on or after exit day.
- Provide an exemption from charging for healthcare provided before 31 December 2020 to EU citizens and family members who are overseas visitors by virtue of section 39 of the immigration Act and who may be granted leave to remain in the UK by virtue of Appendix EU to the immigration rules. This applies whether or not they have applied for or has been granted leave to remain under Appendix EU to the immigration rules.
- Bring the list of countries with which the UK has reciprocal healthcare agreements, as set out in Schedule 2 of the principal regulations, up to date.

Transitional Provisions

5. It is reasonable to expect that there will be instances in which an EU/EEA or Swiss visitor requires planned treatment authorised before, but provided after exit day. The instrument introduces transitional exemptions from charging for EU/EEA and Swiss visitors in such situations, for healthcare received in Scotland. UK nationals/citizens residing in the EU/EEA or Switzerland, who previously had reciprocal healthcare entitlements funded by the UK, are also covered by this exemption.

Bilateral Reciprocal Healthcare Agreements

6. In the event that the UK leaves the EU without a ratified agreement, the UK Government is seeking the continuation of reciprocal healthcare arrangements that enable EU/EEA and Swiss visitors temporarily in the UK to receive healthcare without being charged directly on a bilateral basis. The instrument amends the principal regulations to provide that overseas visitors from an EEA state or Switzerland, who are covered by a bilateral reciprocal healthcare agreement, will not be directly chargeable for treatment.

7. The Instrument also ensures that visitors to Scotland who are ordinarily resident in the EU/EEA or Switzerland can continue to receive need for which arises (necessary) treatment

when they visit Scotland without being charged, as they do now under EU reciprocal arrangements (the European Health Insurance Card (EHIC) scheme).

8. This is an interim measure to prevent undue disruption to NHS Scotland in the event of anticipated gaps between the date the UK leaves the EU and the establishment of formal UK-wide bilateral reciprocal healthcare agreements with EU/EEA countries that are willing to participate.

Guidance

9 Guidance will be introduced to accompany the instrument.

Impact Assessment, including Regulatory Impact Assessment

10. Assessments have not been carried out as any changes to the existing obligation placed on NHS Boards to make and recover charges from overseas visitors are minimal. The instrument clarifies but does not materially change the chargeable status of EU citizens should the UK leave the EU without a ratified agreement.

11. There is no impact on business (the legislation does not apply to activities that are undertaken by small businesses) charities or voluntary bodies or the public sector.

Monitoring & review

12. The instrument will be kept under review in the light of on-going negotiations between the EU and the UK on future reciprocal healthcare agreements and the introduction of the bilateral reciprocal healthcare agreements referred to above.

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23 October 2019