
DRAFT STATUTORY INSTRUMENTS

2020 No.

**The Reciprocal and Cross-Border Healthcare
(Amendment etc.) (EU Exit) Regulations 2020**

PART 3

Amendment of Cross-Border Healthcare Regulations

Amendment of the National Health Service (Cross-Border Healthcare and Miscellaneous Amendments etc.) (EU Exit) Regulations 2019

7. The National Health Service (Cross-Border Healthcare and Miscellaneous Amendments etc.) (EU Exit) Regulations 2019(1) are amended as follows.

Substitution of regulation 9

8. For regulation 9 substitute—

“The National Health Service (General Medical Services Contracts) (Prescription of Drugs etc.) Regulations 2004

9.—(1) The National Health Service (General Medical Services Contracts) (Prescription of Drugs etc.) Regulations 2004(2) are amended as follows.

(2) In Schedule 2 (drugs, medicines and other substances that may be ordered only in certain circumstances), in the entry in column 2 of the table that corresponds to the entry in column 1 relating to drugs for the treatment of erectile dysfunction—

(a) for sub-paragraph (b) (including the “or” at the end) substitute—

“**(b)** a man who is a national of an EEA State who—

- (i) immediately before IP completion day was entitled to treatment by virtue of Article 7(2) of Council Regulation 1612/68 as extended by the EEA Agreement or was entitled to treatment by virtue of any other enforceable EU right;
- (ii) has erectile dysfunction and was on 14th September 1998 receiving a course of treatment under a national health insurance system of an EEA State for that condition with any of the drugs listed in sub-paragraph (a); and
- (iii) immediately before IP completion day was receiving a course of treatment as part of the health service for the condition mentioned in paragraph (ii) of this sub-paragraph with any of the drugs listed in sub-paragraph (a); or”;

(1) [S.I. 2019/777](#).

(2) [S.I. 2004/629](#); relevant amendments were made by [S.I. 2011/1043](#), [2013/2194](#) and [2014/1625](#).

(b) for sub-paragraph (c) (including the “or” at the end) substitute—

- “(c) a man who is not a national of an EEA State but who is the member of the family of such a national and who—
- (i) immediately before IP completion day had an enforceable EU right to be treated no less favourably than the national in the provision of medical treatment;
 - (ii) has erectile dysfunction and was on 14th September 1998 receiving a course of treatment for that condition with any of the drugs listed in sub-paragraph (a); and
 - (iii) immediately before IP completion day was receiving a course of treatment as part of the health service for the condition mentioned in paragraph (ii) of this sub-paragraph with any of the drugs listed in sub-paragraph (a); or”.”.

Revocation of regulation 10

9. Omit regulation 10 (amendment of the National Health Service (General Medical Services Contracts) (Prescription of Drugs Etc.) (Wales) Regulations 2004).

Amendment of regulation 15

10. In regulation 15 (cross-border cases arising before exit day), for the words “exit day” wherever they occur (including the heading) substitute “IP completion day”.

Revocation of regulations 16 and 17 and Schedules 2 and 3

11. Omit regulations 16 (cases arising during cross-border arrangements) and 17 (savings provision for cases arising during cross-border arrangements) and Schedules 2 (modifications in relation to regulation 16) and 3 (modifications in relation to regulation 17).

Amendment of Schedule 1

12. In Schedule 1 (cross-border cases – modifications in relation to regulation 15)—

- (a) for the words “exit day” wherever they occur (including the heading) substitute “IP completion day”;
- (b) after paragraph 1(b) insert—
 - “(ba) in section 6A(6), after the second reference to “apply” there were inserted “by virtue of Title III of Part 2 of the withdrawal agreement (co-ordination of social security systems), Title III of Part 2 of the EEA EFTA separation agreement or social security co-ordination provisions of the Swiss citizens’ rights agreement (co-ordination of social security systems)”;
 - (bb) after section 6A(11), there were inserted—
 - “(12) In subsection (6), expressions which are defined in the European Union (Withdrawal Agreement) Act 2020 have the same meaning as they have in that Act.”;
 - (bc) in section 6BA(9), after “applies” there were inserted “by virtue of Title III of Part 2 of the withdrawal agreement (co-ordination of social security systems), Title III of Part 2 of the EEA EFTA separation agreement or social security co-ordination provisions

of the Swiss citizens' rights agreement (co-ordination of social security systems)";

(bd) after section 6BA(15), there were inserted—

“(16) In subsection (9), expressions which are defined in the European Union (Withdrawal Agreement) Act 2020 have the same meaning as they have in that Act.”;”;

(c) omit paragraph 1(e);

(d) after paragraph 2(b) insert—

“(ba) in section 6A(6), after the second reference to “apply” there were inserted “by virtue of Title III of Part 2 of the withdrawal agreement (co-ordination of social security systems), Title III of Part 2 of the EEA EFTA separation agreement or social security co-ordination provisions of the Swiss citizens' rights agreement (co-ordination of social security systems)”;

(bb) after section 6A(11), there were inserted—

“(12) In subsection (6), expressions which are defined in the European Union (Withdrawal Agreement) Act 2020 have the same meaning as they have in that Act.”;

(bc) in section 6BA(9), after “applies” there were inserted “by virtue of Title III of Part 2 of the withdrawal agreement (co-ordination of social security systems), Title III of Part 2 of the EEA EFTA separation agreement or social security co-ordination provisions of the Swiss citizens' rights agreement (co-ordination of social security systems)”;

(bd) after section 6BA(15), there were inserted—

“(16) In subsection (9), expressions which are defined in the European Union (Withdrawal Agreement) Act 2020 have the same meaning as they have in that Act.”;”;

(e) omit paragraph 2(c);

(f) after paragraph 5(j) insert—

“(ja) in regulation 13(2) (NHS charges), in paragraph (a) of the definition of “cross-border healthcare service”, after “visiting patient”, there were inserted “which insofar as it was provided before IP completion day was provided”;”;

(g) for paragraph 5(l)(iv) substitute—

“(iv) in paragraph (3)(b), for “it is not provided” there were substituted “insofar as the service was provided before IP completion day it was not provided”;”;

(h) omit paragraph 5(l)(v);

(i) for paragraph 5(m) substitute—

“(m) regulation 16 (review) were omitted;”;

(j) for paragraph 6 substitute—

“Modifications to the National Health Service and Public Health (Functions and Miscellaneous Provisions) Regulations 2013

6. The NHS Functions Regulations are to be read as if—

- (a) regulation 2(1)(a) (interpretation) were omitted;
- (c) in regulation 3 (exercise of functions)—
 - (i) in paragraph (a), for references to “another EEA state” (in both places) there were substituted “an EEA state”;
 - (ii) paragraph (b) were omitted;
- (c) in regulation 4 (procedure for applications)—
 - (i) after paragraph (1)(a) there were inserted “and”;
 - (ii) paragraph (1)(c) and the “and” before it were omitted;
 - (iii) in paragraph (3)(a), the words “or pursuant to Article 20 or Article 27(3)” were omitted;
- (d) in regulation 6(2) (form and content of determination)—
 - (i) after sub-paragraph (a) there were inserted “or”;
 - (ii) sub-paragraph (c) and the “or” before it were omitted.”.