

2020 No. 1423

EXITING THE EUROPEAN UNION

NATIONAL HEALTH SERVICE, ENGLAND

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

Made - - - - *3rd December 2020*

Laid before Parliament *7th December 2020*

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

The Secretary of State makes these Regulations in exercise of the powers conferred by sections 175 and 272(7) and (8) of the National Health Service Act 2006(a).

PART 1

Introduction

Citation and commencement

- 1.**—(1) These Regulations may be cited as the National Health Service (Charges to Overseas Visitors) (Amendment) (EU Exit) Regulations 2020.
- (2) Except as provided in paragraph (3), these Regulations come into force on IP completion day.
- (3) Regulation 10 comes into force immediately before IP completion day.

PART 2

**Amendment of the National Health Service (Charges to Overseas Visitors)
Regulations 2015**

- 2.** The National Health Service (Charges to Overseas Visitors) Regulations 2015(b) are amended in accordance with regulations 3 to 9.

Amendment of regulation 2

- 3.** In regulation 2(c)—

(a) 2006 c. 41. There are amendments to section 272, none of which are relevant to these Regulations.
(b) S.I. 2015/238.
(c) Regulation 2 was amended by S.I. 2017/756, regulation 2.

- (a) after the definition of “child” insert—
 - ““competent institution” has the same meaning as in Regulation (EC) No 883/2004 or Regulation (EEC) No 1408/71, as the case may be;”;
- (b) after the definition of “entry clearance” insert—
 - ““equivalent document” means a document which, for the purposes of a listed healthcare arrangement, as defined in regulation 1(3) of the Healthcare (European Economic Area and Switzerland Arrangements) (EU Exit) Regulations 2019(a), is treated as equivalent to an S1 healthcare certificate (b);”;
- (c) after the definition of “registered dentist” insert—
 - ““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 IP completion day;
 - “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 IP completion day;”.

Amendment of regulation 7

- 4. In regulation 7(c)—**
 - (a) omit paragraph (2);
 - (b) in paragraph (3), for “In any other case” substitute “Unless paragraph (3A) applies”;
 - (c) after paragraph (3) insert—
 - “(3A) Where an overseas visitor who is ordinarily resident in an EEA state or Switzerland has—
 - (a) before IP completion day received relevant services from a relevant body, or
 - (b) on or after IP completion day received relevant services from a relevant body as part of a course of treatment which commenced before IP 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(d).”.

Amendment of regulation 10

- 5. In regulation 10(e)—**
 - (a) in paragraph (2)(c), at the beginning, insert “subject to paragraph (6),”;
 - (b) after paragraph (5) insert—
 - “(6) Paragraph (2) does not apply in respect of relevant services that are provided to an overseas visitor —

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

(b) 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 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 issue certain qualifying persons with a document which will provide the same access to healthcare as the S1 healthcare document. More information is available from <https://nhsbsa-live.powerappsportals.com/knowledgebase/article/KA-01285/en-us> or from NHS Business Service Authority, Bridge House, 152 Pilgrim Street, Newcastle upon Tyne, NE1 6SN.

(c) Regulation 7 was amended by S.I. 2017/756, regulations 3(1) and 9(b).

(d) S.I. 2013/2269. These regulations are revoked on IP completion day by S.I. 2019/777, subject to saving and transitional provision in regulation 15 to 17 of those regulations.

(e) Regulation 10 was amended by S.I. 2017/756, regulation 12 and S.I. 2020/1152, regulation 2.

- (a) who is granted leave to remain in the United Kingdom under Appendix S2 Healthcare Visitor to the immigration rules, and
 - (b) in respect of whom a waiver to the immigration health charge applies,
- where those relevant services are not part of the planned healthcare treatment authorised by that person’s S2 healthcare certificate(a).”.

Substitution of regulation 12

6. For regulation 12 substitute—

“Overseas visitors with citizens’ rights

12.—(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,
- (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) 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(b).”.

Substitution of regulation 13

7. For regulation 13 substitute—

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

13. 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 IP completion day,
- (b) continues to be ordinarily resident in an EEA state or Switzerland on and after IP completion day,
- (c) receives a state pension paid by the United Kingdom Government, and
- (d) holds an S1 healthcare certificate, or an equivalent document, issued to or in respect of that person by a competent institution of the United Kingdom.

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

13A.—(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 with the date on which the application mentioned in paragraph (2)(b) or (3)(b), as the case may be, is made and which ends with the date on which that application is finally determined under Appendix EU to the immigration rules.

(a) 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. More information is available from <https://www.nhs.uk/using-the-nhs/healthcare-abroad/going-abroad-for-treatment/what-is-the-s2-route/> or from European Cross Border Healthcare, NHS England, Fosse House, 6 Smith Way, Grove Park, Enderby, Leicester, LE19 1SX.

(b) 2020 c. 1.

(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 relevant body 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 relevant body has made charges for relevant services provided during the period specified in paragraph (1), it must not recover those charges;
- (b) if the relevant body 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 5.

(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(a).”.

Amendment of regulation 25

8. In regulation 25(b)—

(a) in paragraph (2), before subparagraph (a) insert—

“(za) regulation 13 (overseas visitors with a United Kingdom issued S1 healthcare certificate or equivalent document);”;

(b) in paragraph (4)—

(i) for subparagraph (c)(i) substitute—

“(i) regulation 12 (overseas visitors with citizens’ rights); or”;

(ii) omit subparagraph (c)(ii) and the “or” immediately after it;

(c) for paragraph (5), substitute—

“(5) Where the overseas visitor is a member of the family of a principal overseas visitor who is exempt from charges under regulation 12 (overseas visitors with citizens’ rights), the exemption in paragraph (4) applies only if the conditions in both paragraph (6) and (7) are satisfied.”;

(d) for paragraph (6) substitute—

“(6) The first condition is that—

(a) S.I. 2020/1209.

(b) Regulation 25 was amended by S.I. 2015/2025, regulation 6.

- (a) the overseas visitor does not have a right arising from a provision mentioned in regulation 12(1)(a) to (c) (overseas visitors with citizens' rights), 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).";
- (e) in paragraph (7), for "an enforceable EU right" to the end, substitute "a right arising from a provision mentioned in regulation 12(1)(a) to (c) if the overseas visitor had such a right";
- (f) in paragraph (8), for "an enforceable EU right" substitute "a right arising from a provision mentioned in regulation 12(1)(a) to (c)".

Amendment of Schedule 2

9. In Schedule 2(a)—

- (a) for "Bosnia" substitute "Bosnia and Herzegovina";
- (b) after "Falkland Islands" insert "Faroe Islands";
- (c) omit "Macedonia";
- (d) after "New Zealand" insert "North Macedonia".

PART 3

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

10. The National Health Service (Charges to Overseas Visitors) (Amendment etc.) (EU Exit) Regulations 2019**(b)** are revoked.

3rd December 2020

Edward Argar
Minister of State,
Department of Health and Social Care

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the National Health Service (Charges to Overseas Visitors) Regulations 2015 (S.I. 2015/238) ("the Principal Regulations") which provide for the making and recovery of charges for relevant services provided under the National Health Service Act 2006 (c. 41) to certain persons not ordinarily resident in the United Kingdom.

Regulation 3 amends regulation 2 of the Principal Regulations to insert definitions of "competent institution", "equivalent document", "Regulation (EC) No 883/2004" and "Regulation (EEC) 1408/71.

Regulation 4 amends regulation 7 of the Principal Regulations as a result of the United Kingdom's exit from the European Union. The amendments will mean that where an overseas visitor from an EEA state or Switzerland is chargeable for relevant services, they will pay the same charge for those services as other overseas visitors. It also inserts paragraph (3A) which provides that where an overseas visitor from an EEA state or Switzerland has either received treatment before IP

(a) Schedule 2 was amended by S.I. 2015/2025, regulation 8 and by S.I. 2017/756, regulation 16.
(b) S.I. 2019/516.

completion day or is part way through a course of treatment on IP completion day, the charge which applied before IP completion day will apply in respect of that treatment.

Regulation 5 amends regulation 10 of the Principal Regulations to provide that where a person with an S2 healthcare certificate is given leave to remain in the United Kingdom for longer than 6 months 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 6 substitutes regulation 12 of the Principal Regulations to provide 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.

Regulation 7 substitutes regulation 13 of the Principal Regulations to provide that an individual in receipt of a United Kingdom state 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. Regulation 8(a) amends regulation 25 to provide that the family members of such a person will also be entitled to receive relevant services without charge.

Regulation 7 also inserts regulation 13A into the Principal Regulations to provide 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 since the application was made, these will be repaid.

Regulation 8 amends regulation 25 of the Principal Regulations consequential on the substitution of regulations 12 and 13. The amendments also provide that the family members of an overseas visitor who has rights under the withdrawal agreement, the EEA EFTA separation agreement and the Swiss Citizens' rights agreement will not be chargeable for relevant services when they themselves do not have a rights under any of those agreements by reason of them not being recognised as a member of the family under Regulation (EC) No 883/2004.

Regulation 9 inserts the Faroe Islands to the list of countries in Schedule 2 to the Principal Regulations, meaning that no charges may be made or recovered in respect of relevant services provided to an overseas visitor where the provision of those services is covered by that reciprocal agreement, and makes other minor amendments to Schedule 2.

Regulation 10 revokes the National Health Service (Charges to Overseas Visitors) (Amendment etc.) (EU Exit) Regulations 2019.

An impact assessment of the effect that this instrument will have on the costs of business, the voluntary sector and the public sector is published with this instrument on <https://www.legislation.gov.uk/> and copies can be obtained from the Department of Health and Social Care, 39 Victoria Street, London SW1H 0UE.

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£6.90

UK202012041005 12/2020 19585

<http://www.legislation.gov.uk/id/uksi/2020/1423>

ISBN 978-0-34-821650-9



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