
STATUTORY INSTRUMENTS

2019 No. 777

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

PART 5

Savings and Transitional Provision

Cross-border cases arising before exit day

15.—(1) The legislation referred to in Parts 2 and 3, except for regulations 2, 4(2), 8, 9 and 10 is to continue to apply on and after exit day without the amendments, repeals and revocations made by those Parts, and with the modifications made by Schedule 1 in a case where any of paragraphs (2) to (5) apply.

(2) This paragraph applies where a service that satisfied the condition in section 6A(3) or (4) or 6BA(4) or (7) of the NHS Act 2006 or the NHS (Wales) Act was provided, or began to be provided, before exit day.

(3) This paragraph applies where an application for authorisation under section 6B or 6BB of the NHS Act 2006 or the NHS (Wales) Act has been made, but not determined, before exit day.

(4) This paragraph applies where authorisation has been given under section 6B or 6BB of the NHS Act 2006 or the NHS (Wales) Act before exit day.

(5) This paragraph applies where a cross-border healthcare service was provided or began to be provided to a visiting patient before exit day.

(6) Nothing in this regulation—

(a) requires reimbursement in respect of a service which was provided after the later of—

(i) the end of the period of one year beginning with the day after the day on which exit day falls, or

(ii) in a case where the authorisation for the service authorises the service to be provided within a specified period, the end of the specified period;

(b) imposes an obligation in relation to a charge to a visiting patient for a service which was provided after the end of the period of one year beginning with the day after the day on which exit day falls.

(7) In this regulation—

“cross-border healthcare service” and “visiting patient” have the same meaning as in the 2013 Regulations;

“service” is to be construed in accordance with section 6A or section 6BA of the NHS Act 2006 or, as the case may be, of the NHS (Wales) Act.

Cases arising during cross-border arrangements

16.—(1) The legislation referred to in Parts 2 and 3, except for regulations 2, 4(2), 8, 9 and 10, is to continue to apply on and after exit day without the amendments, repeals and revocations made by those Parts, and with the modifications made by Schedule 2, so far as relating to—

- (a) reimbursement of qualifying EEA expenditure;
- (b) authorisation in relation to the provision of a service in an EEA State;
- (c) the charge to a visiting patient for the provision of a cross-border healthcare service;
- (d) functions relating to National Contact Points.

(2) The legislation applied by paragraph (1) has effect so as to impose an obligation relating to—

- (a) reimbursement of qualifying EEA expenditure,
- (b) authorisation in relation to the provision of a service in an EEA State, or
- (c) the charge to a visiting patient for the provision of a cross-border healthcare service,

only if, and only during the period when, cross-border arrangements have effect between the United Kingdom and the EEA State in question or, in the case of sub-paragraph (c), the member State which is the visiting patient's member State of affiliation within the meaning of Article 3(c) of the Directive.

(3) For the purposes of this regulation—

- (a) arrangements between the United Kingdom and an EEA State concerning cross-border healthcare are cross-border arrangements if and only if the EEA State is included in the list maintained by the Secretary of State under paragraph (4);
- (b) cross-border arrangements between the United Kingdom and an EEA State are to be treated as beginning and ceasing to have effect at the times specified in the list maintained by the Secretary of State under paragraph (4).

(4) The Secretary of State must maintain a list for the purposes of paragraph (3).

(5) The list must specify in relation to each EEA State listed in it—

- (a) when cross-border arrangements between the EEA State and the United Kingdom are to be treated as beginning to have effect;
- (b) when cross-border arrangements between the EEA State and the United Kingdom are to be treated as ceasing to have effect.

(6) The time specified in the list as the time when cross-border arrangements are to be treated as beginning to have effect may not be before exit day.

(7) The time specified in the list as the time when cross-border arrangements are to be treated as ceasing to have effect may not be after 31 December 2020.

(8) The Secretary of State may remove an EEA State from the list before the time specified in the list as the time when the EEA State's cross-border arrangements are to be treated as beginning to have effect.

(9) The Secretary of State may change a time specified in the list (but not after the time specified).

(10) The Secretary of State must publish the list and keep it up to date.

(11) This regulation is without prejudice to regulation 15.

(12) In this regulation—

“cross-border healthcare service”, “healthcare”, “National Contact Point” and “visiting patient” have the same meaning as in the 2013 Regulations;

“cross-border healthcare”, except in the phrase “cross-border healthcare service”, means—

- (a) healthcare provided in an EEA State, payments in respect of which may be made by the government of the United Kingdom; or
- (b) healthcare provided in the United Kingdom, payments in respect of which may be made by an EEA State;

“the Directive” means [Directive 2011/24/EU](#) of the European Parliament and of the Council of 9th March 2011 on the application of patients’ rights in cross-border healthcare;

“qualifying EEA expenditure” has the same meaning as in section 6BA(3) of the NHS Act 2006 or, as the case may be, of the NHS (Wales) Act;

“service” is to be construed in accordance with section 6BA of the NHS Act 2006 or, as the case may be, the NHS (Wales) Act.

Savings provision for cases arising during cross-border arrangements

17.—(1) The legislation referred to in Parts 2 and 3, except for regulations 2, 4(2), 8, 9 and 10, is to continue to apply on and after exit day (and despite any cross-border arrangements ceasing to have effect), without the amendments, repeals and revocations made by those Parts and with the modifications made by Schedule 3, in a case where any of paragraphs (2) to (5) apply.

(2) This paragraph applies where a service that satisfies the condition in section 6BA(4) or (7) of the NHS Act 2006 or the NHS (Wales) Act is provided, or began to be provided, in an EEA State during the relevant period in relation to that State.

(3) This paragraph applies where, during the relevant period in relation to an EEA State, an application under section 6BB of the NHS Act 2006 or the NHS (Wales) Act for authorisation in relation to the provision of a service in that State was made, but not determined.

(4) This paragraph applies where, during the relevant period in relation to an EEA State, authorisation is given under section 6BB of the NHS Act 2006 or the NHS (Wales) Act in relation to the provision of a service in that State.

(5) This paragraph applies where a cross-border healthcare service was provided, or began to be provided, to a visiting patient during the relevant period in relation to the patient’s member State of affiliation within the meaning of Article 3(c) of the Directive.

(6) Nothing in this regulation—

(a) requires reimbursement of qualifying EEA expenditure incurred on a service which was provided in an EEA State after the later of—

(i) the end of the period of one year beginning with the day after the end of the relevant period in relation to that State, or

(ii) in a case where the authorisation for the service authorises the service to be provided within a specified period, the end of the specified period;

(b) imposes an obligation in relation to a charge to a visiting patient for a service which was provided after the end of the period of one year beginning with the day after the end of the relevant period in relation to the member State which was the visiting patient’s member State of affiliation within the meaning of Article 3(c) of the Directive.

(7) This regulation does not have effect in a case to which regulation 15 applies.

(8) In this regulation—

“cross-border arrangements” is to be construed in accordance with regulation 16;

“cross-border healthcare service” and “visiting patient” have the same meaning as in the 2013 Regulations;

“the Directive” has the same meaning as in regulation 16;

“qualifying EEA expenditure” has the same meaning as in section 6BA(3) of the NHS Act 2006;

“the relevant period” means, in relation to an EEA State, the period during which cross-border arrangements between the United Kingdom and that State have effect;

“service” is to be construed in accordance with section 6BA of the NHS Act 2006 or, as the case may be, the NHS (Wales) Act.