
DRAFT SCOTTISH STATUTORY INSTRUMENTS

2019 No.

**The Cross-border Health Care (EU Exit)
(Scotland) (Amendment etc.) Regulations 2019**

Modifications

Modification of the National Health Service (Scotland) Act 1978

- 4.—(1) The National Health Service (Scotland) Act 1978 is modified as follows.
- (2) In section 75A (remission and repayment of charges and payment of travelling expenses), in subsection (1)(b)(ii), for “75B” substitute “75BA”.
- (3) Section 75B (reimbursement of the cost of services provided in another EEA State) is repealed.
- (4) In section 75BA (reimbursement of the cost of services provided in another EEA State on or after 25 October 2013)—
- (a) in subsection (1), after “and (14)” insert “and section 75BC”,
 - (b) in subsection (3), omit “other than the United Kingdom”,
 - (c) for subsection (15) substitute—
 - “(15) In this section and section 75BB—
 - “authorised provider” in relation to services provided in an EEA State means a person who is lawfully providing services,
 - “services” includes any goods, including drugs, medicines and appliances which are used or supplied in connection with the provision of a service, but does not include accommodation other than hospital accommodation.”
- (5) In section 75BB (prior authorisation for the purposes of section 75BA), in subsection (9), omit “and section 75C”.
- (6) After section 75BB insert—

“Restriction on reimbursement after EU withdrawal

75BC.—(1) The duty to reimburse in section 75BA(2) applies in respect of a service provided to a person on or after exit day only if one of the following conditions is met.

- (2) Condition 1 is that the service began to be provided to the person before exit day.
- (3) Condition 2 is that—
- (a) the application for authorisation under section 75BB in relation to the provision of the service to the person was made before exit day, and
 - (b) the service began to be provided to the person before—
 - (i) the end of the period specified in the authorisation as the period for which authorisation is granted, or

- (ii) if no such period is specified in the authorisation, the end of the period of 1 year beginning with exit day.
- (4) Condition 3 is that the service began to be provided to the person at a time when a cross-border arrangement with the EEA State in which the service was provided was in effect.
- (5) Condition 4 is that—
 - (a) the application for authorisation under section 75BB in relation to the provision of the service to the person was made at a time when a cross-border arrangement with the EEA State in which the service was provided was in effect, and
 - (b) the service began to be provided to the person before—
 - (i) the end of the period specified in the authorisation as the period for which authorisation is granted, or
 - (ii) if no such period is specified in the authorisation, the end of the period of 1 year beginning with the day that the cross-border arrangement in question ceased to have effect.
- (6) For the purposes of this section—
 - (a) “exit day” has the meaning given by section 20 of the European Union (Withdrawal) Act 2018,
 - (b) a cross-border arrangement with an EEA State is in effect during the period that the list maintained under regulation 16(4) of the National Health Service (Cross-Border Healthcare and Miscellaneous Amendments etc.) (EU Exit) Regulations 2019(1) says that a cross-border arrangement with that State is to be treated as having effect.”.
- (7) Section 75C (which provides the prior authorisation rules for section 75B) is repealed.
- (8) In section 75D (deduction of NHS charges)—
 - (a) in subsection (1), omit “75B(1) or”,
 - (b) in subsection (2), omit “75B and 75C or”,
 - (c) for subsection (3) substitute—
 - “(3) In this section—
 - “eligible person” means a person who is ordinarily resident in Scotland,
 - “NHS charge” means any charge payable in accordance with sections 69 to 74 or regulations made under those sections,
 - “services” has the meaning given in section 75BA(15).”.