
DRAFT STATUTORY INSTRUMENTS

2023 No.

The Healthcare (International Arrangements) (EU Exit) Regulations 2023

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Healthcare (International Arrangements) (EU Exit) Regulations 2023.

(2) These Regulations come into force immediately after section 162 of the Health and Care Act 2022(1) comes into force.

(3) These Regulations extend to England and Wales, Scotland and Northern Ireland.

Interpretation

2. In these Regulations—

“applicant” means a person making an application or claim under or in relation to these Regulations;

“listed country” means a country or territory listed in the Schedule;

“maternity application” means an application, other than a third country application, for authorisation to travel to a listed country for the purpose of receiving healthcare(2) under a relevant healthcare agreement(3) in connection with giving birth in the listed country;

“NHS BSA” means the NHS Business Services Authority (Awdurdod Gwasanaethau Busnes y GIG) established under article 2 of the NHS Business Services Authority (Awdurdod Gwasanaethau Busnes y GIG) (Establishment and Constitution) Order 2005(4);

“planned healthcare application” means an application, other than a maternity application or a third country application, for authorisation to travel to a listed country for the purpose of receiving healthcare under a relevant healthcare agreement;

“relevant health board” means—

- (a) in relation to England, NHS England(5);
- (b) in relation to Scotland, a Scottish health board(6);
- (c) in relation to Wales, a Welsh health board(7);

“relevant healthcare agreement” means a healthcare agreement concerning healthcare provided in a listed country;

(1) [2022 c. 31](#).

(2) See section 3 of the 2019 Act for the definition of “healthcare”.

(3) See section 3 of the 2019 Act for the definition of “healthcare agreement”.

(4) [S.I. 2005/2414](#). There are amending instruments but none is relevant.

(5) NHS England (formerly the National Health Service Commissioning Board) is a body corporate established by section 1H of the National Health Service Act 2006 (c. 41), inserted by section 9(1) of the Health and Social Care Act 2012 (c. 7). It was renamed by section 1 of the Health and Care Act 2022.

(6) See section 2(8) of the 2019 Act for the definition of “Scottish health board”.

(7) See section 2(8) of the 2019 Act for the definition of “Welsh health board”.

“third country application” means an application in relation to a person residing in a listed country for authorisation to travel to another country for the purpose of receiving healthcare under a relevant healthcare agreement.

Function of making payments under relevant healthcare agreements

3. The Secretary of State may make a payment, and arrange for the making of a payment, in respect of healthcare provided in a listed country under a relevant healthcare agreement.

Functions relating to healthcare payments in exceptional circumstances

4.—(1) The Secretary of State may make a payment (otherwise than under a healthcare agreement) in respect of healthcare provided in a listed country where the Secretary of State considers that exceptional circumstances justify the payment.

(2) The following persons may refer any application or claim for a payment under paragraph (1) to the Secretary of State—

- (a) a relevant health board;
- (b) NHS BSA.

(3) Where a person refers an application or claim to the Secretary of State under paragraph (2) it must, on request from the Secretary of State, provide the Secretary of State with such information as the Secretary of State reasonably requires for the purposes of determining that application or claim.

(4) The Secretary of State must establish and publish procedures for the determination of applications and claims for payments under this regulation.

(5) Those procedures must include provision for the review of determinations.

(6) The Secretary of State must inform the applicant in writing of their determination of the application or claim.

(7) Where the determination is not to approve the application or claim, the determination must set out—

- (a) the information considered,
- (b) the reasons for the determination, and
- (c) the steps an applicant must take if the applicant disagrees with the determination and wishes to request a review of the determination.

NHS BSA functions: healthcare agreements

5.—(1) NHS BSA must give effect to the obligations and commitments of the United Kingdom under or in relation to relevant healthcare agreements.

(2) The duty in paragraph (1) includes (but is not limited to) doing the following in accordance with such agreements—

- (a) processing any applications or claims;
- (b) determining any applications or claims (including maternity applications and third country applications) other than—
 - (i) applications required to be determined under regulation 8;
 - (ii) planned healthcare applications in relation to Northern Ireland;
- (c) registering any entitlements;
- (d) making any payments;
- (e) issuing any documents verifying entitlement to the provision of healthcare.

(3) The duty in paragraph (1) does not apply where the Secretary of State or another person is required to give, or has given, effect to the obligations or commitments.

(4) NHS BSA must establish and publish procedures for the determination of applications and claims under this regulation.

(5) Those procedures must include provision for the review of determinations.

(6) NHS BSA must inform the applicant in writing of its determination of the application or claim.

(7) Where the determination is not to approve the application or claim the determination must set out—

- (a) the information considered,
- (b) the reasons for the determination, and
- (c) the steps an applicant must take if the applicant disagrees with the determination and wishes to request a review of the determination.

NHS BSA functions: information and advice

6.—(1) NHS BSA must establish and maintain a service making available to the public information and advice in relation to—

- (a) its functions under these Regulations,
- (b) the provision of healthcare under relevant healthcare agreements, and
- (c) any evidential or administrative requirements or processes under or in relation to such agreements.

(2) The service referred to in paragraph (1) may include information and advice in relation to such other matters relating to relevant healthcare agreements, or in connection with the provision of healthcare in listed countries, as NHS BSA considers appropriate.

NHS BSA functions: assisting the Secretary of State

7. Subject to, and in accordance with, such instructions as the Secretary of State may give, NHS BSA must assist the Secretary of State with the Secretary of State's exercise of functions in relation to relevant healthcare agreements and otherwise in relation to the provision of healthcare in listed countries.

Health board functions: planned healthcare

8.—(1) Relevant health boards must determine planned healthcare applications and must, in each case, do so in accordance with the relevant healthcare agreement to which the application relates⁽⁸⁾.

(2) Relevant health boards must establish and publish procedures for the determination of planned healthcare applications under this regulation.

(3) Those procedures must include provision for the review of determinations.

(4) A relevant health board must inform the applicant in writing of its determination of the application.

(5) Where the determination is not to approve the application the determination must set out—

- (a) the information considered,

⁽⁸⁾ See [S.I. 2019/1293](#) as to the determination of planned healthcare applications in relation to Northern Ireland, and in particular regulation 6 (functions relating to authorisation for planned healthcare). Subject to savings in relation to the determination of planned healthcare applications in relation to Northern Ireland under the 2019 Act and [S.I. 2019/1293](#) (see regulation 3 of [S.I. 2023/***](#)), [S.I. 2023/***](#) repealed the powers under which [S.I. 2019/1293](#) was made and thus also impliedly revoked those regulations for all other purposes.

- (b) the reasons for the determination, and
- (c) the steps an applicant must take if the applicant disagrees with the determination and wishes to request a review of the determination.

Signed by authority of the Secretary of State for Health and Social Care

Date

Name
Minister of State
Department of Health and Social Care