



National Health Service (Scotland) Act 1978

1978 CHAPTER 29

PART IV

POWERS OF THE SECRETARY OF STATE

Regulations as to certain charges

^{F1}
^{F2}**75BA Reimbursement of the cost of services provided in another EEA State where expenditure is incurred on or after 25 October 2013.**

- (1) This section applies where qualifying EEA expenditure is incurred by a person on or after 25 October 2013 (but see subsections (9) and (14) [^{F3}and section 75BC]).
- (2) A Health Board must, on an application made by the person, reimburse to that person the amount of the qualifying EEA expenditure incurred by that person, but this is subject to subsections (8) and (9), to any limit applicable under subsection (11) and to any deduction applicable under section 75D.
- (3) For the purpose of this section, “qualifying EEA expenditure” is expenditure incurred on the provision by an authorised provider, in an EEA State ^{F4}..., to a person ordinarily resident in Scotland (“the patient”) of services as respects which condition A or condition B is met.
- (4) Condition A is that the services—
 - (a) are necessary to treat or diagnose a medical condition of the patient, and
 - (b) are the same as or equivalent to services that a Health Board in whose area a patient resides would make or have made available to a patient under this Act in the circumstances of the patient’s case.
- (5) But in the case of services which, although meeting the requirements in paragraphs (a) and (b) of subsection (4), fall within subsection (6), condition A is only met if,

Status: Point in time view as at 31/12/2020.

Changes to legislation: National Health Service (Scotland) Act 1978, Section 75BA is up to date with all changes known to be in force on or before 29 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

before the services were provided, the Health Board had given authorisation under section 75BB for the provision of the services to the patient.

- (6) Services fall within this subsection if—
- (a) they are subject to planning requirements relating to the objective of ensuring sufficient and permanent access to a balanced range of high quality treatment or to the wish to control costs and avoid, as far as possible, any waste of financial, technical and human resources, and—
 - (i) involve a stay in hospital accommodation for at least one night, or
 - (ii) require the use of highly specialised and cost-intensive medical infrastructure or medical equipment,
 - (b) they involve treatments presenting a particular risk for the patient or the population, or
 - (c) they are provided by a healthcare provider in circumstances that, on a case-by-case basis, could give rise to serious and specific concerns relating to the quality or safety of the care, with the exception of healthcare services which are subject to European Union legislation ensuring a minimum level of safety and quality throughout the European Union.
- (7) Condition B is that before the services were provided the Health Board had given authorisation under section 75BB(4)(b) for the provision of the services to the patient.
- (8) The duty in subsection (2) does not apply where the applicant for reimbursement incurred the qualifying EEA expenditure in connection with an arrangement which was entered into by or on behalf of the applicant in the course of business and under which the applicant has gained or might be expected to gain any financial benefit.
- (9) This section does not apply in circumstances where Article 20 or 27(3) of Regulation (EC) No. 883/2004 apply.
- (10) Subsection (11) applies where the services are the same as or equivalent to services that the Health Board in whose area a patient resides would have made available to that patient under this Act in the circumstances of the patient’s case.
- (11) The Health Board may limit the amount of any reimbursement under this section to the cost that the Board would have incurred if the same or an equivalent service had been made available by the Board to a patient resident in the Board’s area.
- (12) A Health Board may, on an application made by a person who receives reimbursement of qualifying expenditure under paragraph (2), reimburse to that person travelling expenses (including the travelling expenses of companions) incurred or to be incurred for the purpose of their obtaining any services reimbursed under this section.
- (13) The Scottish Ministers may determine—
- (a) the form in which an application under this section must be made, and
 - (b) the information to be provided in support of the application.
- (14) This section does not apply where expenditure is incurred in Iceland, Liechtenstein or Norway before Directive 2011/24/EU of the European Parliament and of the Council of 9 March 2011 on the application of patients’ rights in cross-border healthcare applies to that state in accordance with the EEA Agreement.
- [^{F5}(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,

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“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.]]]

Textual Amendments

- F1** Ss. 75B-75D inserted (7.7.2010) by [The National Health Service \(Reimbursement of the Cost of EEA Treatment\) \(Scotland\) Regulations 2010 \(S.S.I. 2010/283\)](#), **reg. 3(3)**
- F2** S. 75BA - 75BB inserted (25.10.2013) by [The National Health Service \(Cross-Border Health Care\) \(Scotland\) Regulations 2013 \(S.S.I. 2013/292\)](#), regs. 1(1), **8(4)**
- F3** Words in s. 75BA(1) inserted (31.12.2020) by [The Cross-border Health Care \(EU Exit\) \(Scotland\) \(Amendment etc.\) Regulations 2019 \(S.S.I. 2019/131\)](#), regs. 2, **4(4)(a)** (with reg. 3) (as amended by [S.S.I. 2020/478](#), regs. 1, 3); 2020 c. 1, Sch. 5 para. 1(1)
- F4** Words in s. 75BA(3) omitted (31.12.2020) by virtue of [The Cross-border Health Care \(EU Exit\) \(Scotland\) \(Amendment etc.\) Regulations 2019 \(S.S.I. 2019/131\)](#), regs. 2, **4(4)(b)** (with reg. 3) (as amended by [S.S.I. 2020/478](#), regs. 1, 3); 2020 c. 1, Sch. 5 para. 1(1)
- F5** S. 75BA(15) substituted (31.12.2020) by [The Cross-border Health Care \(EU Exit\) \(Scotland\) \(Amendment etc.\) Regulations 2019 \(S.S.I. 2019/131\)](#), regs. 2, **4(4)(c)** (with reg. 3) (as amended by [S.S.I. 2020/478](#), regs. 1, 3); 2020 c. 1, Sch. 5 para. 1(1)

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