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STATUTORY INSTRUMENTS

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**1989 No. 364**

**The National Health Service (Charges to Overseas Visitors) (Scotland) Regulations 1989**

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the National Health Service (Charges to Overseas Visitors) (Scotland) Regulations 1989 and shall come into force on 5th April 1989.

(2) In these Regulations, unless the context otherwise requires—

“the Act” means the National Health Service (Scotland) Act 1978;

“child” means a person who is—

- (a) under the age of sixteen; or
- (b) under the age of nineteen and treated for the purposes of the Child Benefit Act 1975<sup>(1)</sup> or the Child Benefit (Northern Ireland) Order 1975<sup>(2)</sup> as receiving full time education at an educational establishment recognised under that Act or that Order;

“Continental Shelf”, except in a reference to a designated area of the Continental Shelf, means the sea-bed and subsoil of the submarine area (other than in the Baltic or Mediterranean Seas, including the Adriatic and Aegean, or the Black Sea) adjacent to the coasts, lying north of the latitude of 25 degrees north and between the longitude of 30 degrees west and 35 degrees east, of the territory (including islands) of—

- (a) any country situated on the Continent of Europe, or
- (b) the Republic of Ireland,

where the submarine area is outside the seaward limits of the territorial limits of those countries and the Republic of Ireland and is an area with respect to which the exercise by any of them of sovereign rights in accordance with international law is recognised by Her Majesty’s Government in the United Kingdom;

“designated area of the Continental Shelf” means any area which is for the time being designated by an Order in Council under the Continental Shelf Act 1964<sup>(3)</sup> as an area within which the rights of the United Kingdom with respect to the sea-bed and subsoil and their natural resources may be exercised;

“Health Board” means a Health Board constituted under section 2 of the Act;

“member of the family”, in relation to a national of a Member State or a stateless person or refugee entitled to receive treatment by virtue of regulations made by the Council of the European Communities under Article 51 of the Treaty establishing the European Economic Community, means a member of the family as defined for the purpose of such regulations<sup>(4)</sup>;

“Member State” means a Member State of the European Communities;

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(1) 1975 c. 61

(2) S.I. 1975/1504 (N.I. 16).

(3) 1964 c. 29

(4) See Article (f) of Council Regulation No. 1408/71, O.J. No. L149/2, 5.7.71 (O.J./S.E. 1971(II) p.416) and Council Regulation No. 1390/81, O.J. No. L143, 12.5.81.

“overseas visitor” means a person not ordinarily resident in the United Kingdom;

“reciprocal agreement” means arrangements mutually agreed between the Government of the United Kingdom and the Government of a country or territory outside the United Kingdom for providing health care;

“refugee” means a person who is a refugee within the meaning of Article 1 of the Convention relating to the Status of Refugees 1951<sup>(5)</sup> and Article 1 of the Protocol relating to the Status of Refugees 1967<sup>(6)</sup> and any other person taking refuge in the territory of a Member State with leave of the Government of that State;

“services forming part of the health service” means accommodation, services and other facilities provided under section 3(1) of the Act (the Secretary of State’s duty to provide accommodation and services) other than accommodation and services made available under section 57 of the Act<sup>(7)</sup> (accommodation and services for private resident and non-resident patients);

“ship or vessel” includes hovercraft;

“stateless person” has the meaning assigned to it in Article 1 of the Convention relating to the Status of Stateless Persons 1954<sup>(8)</sup>;

“treatment” includes medical, dental and nursing services required for the care of women who are pregnant or in childbirth or for the prevention or diagnosis of illness;

“treatment the need for which arose during the visit” means diagnosis of symptoms or signs occurring for the first time after the visitor’s arrival in the United Kingdom and any other treatment which, in the opinion of a medical or dental practitioner employed by, or under contract with, a Health Board, is required promptly for a condition which arose after the visitor’s arrival in the United Kingdom, or became, or but for treatment would be likely to become, acutely exacerbated after such arrival.

(3) In calculating for the purpose of any provision of these Regulations a period of residence in the United Kingdom, any interruption by reason of temporary absence of not more than three months shall be disregarded.

(4) Unless the context otherwise requires, in these Regulations any reference to a numbered regulation or Schedule is a reference to the regulation in or, as the case may be, the Schedule to these Regulations which bears that number, and any reference in a regulation to a numbered paragraph is a reference to the paragraph bearing that number in that regulation.

### **Making and recovery of charges**

2.—(1) Where a Health Board provides an overseas visitor with services forming part of the health service, that Health Board, having determined, by means of such enquiries as it is satisfied are reasonable in all the circumstances, including the state of health of that overseas visitor, that the case is not one in which these Regulations provide for no charge to be made, shall make and recover from the person liable under regulation 7 charges for the provision of those services.

(2) A Health Board which makes and recovers a charge in accordance with paragraph (1) shall give or send to the person making the payment a receipt for the amount paid.

### **Services exempted from charges**

3. No charge shall be made in respect of any services forming part of the health service provided for an overseas visitor—

(5) Cmd. 9171 of 1954.

(6) Cmnd. 3906 of 1968.

(7) The Health and Medicines Act 1988 (c. 49), section 7(11) substituted (for sections 57 and 58 of the Act) a new section 57.

(8) Cmnd. 1098 of 1960.

- (a) at a hospital accident and emergency department, casualty department, or dental or ophthalmic emergency department unless and until he has been accepted as an in-patient at the hospital for treatment of the condition in respect of which such services are provided; or
- (b) otherwise than at, or by staff employed to work at, or under the direction of, a hospital; or
- (c) for treatment in respect of a disease listed in Schedule 1; or
- (d) at a special clinic for the treatment of sexually transmitted diseases or in respect of a sexually transmitted disease by virtue of a reference from such a clinic, but in the case of services which relate to infection with any Human Immunodeficiency Virus, only to the extent that they consist of a diagnostic test for evidence of infection with any such Virus and counselling associated with that test or its result;
- (e) who is detained in a hospital, or received into guardianship, under the Mental Health (Scotland) Act 1984<sup>(9)</sup> or any other enactment authorising orders for admission to, and detention in, hospital by reason of mental disorder; or
- (f) with a view to the improvement of his mental condition where submission to the treatment is, under section 184(1) or 385(1) of the Criminal Procedure (Scotland) Act 1975<sup>(10)</sup>, included by the Court in a probation order under section 183(1) or 384(1) of that Act<sup>(11)</sup>.

#### **Overseas visitors exempt from charges**

4. No charge shall be made in respect of any services forming part of the health service provided for an overseas visitor, being a person or the spouse or child of a person—

- (a) who is shown to the satisfaction of the Health Board to be present in the United Kingdom or in a designated area of the Continental Shelf or, if his employer has his principal place of business in the United Kingdom, in or over any area of the Continental Shelf, or on a stationary structure within the territorial waters of the United Kingdom, for the purpose of—
  - (i) engaging in employment as an employed or self-employed person; or
  - (ii) working as a volunteer with a voluntary organisation that is providing a service similar to a relevant service as defined in sections 64(3)(b) and 65(3)(c) of the Health Services and Public Health Act 1968<sup>(12)</sup>, in section 16B of the Act<sup>(13)</sup> or service to which article 71 of the Health and Personal Social Services (Northern Ireland) Order 1972<sup>(14)</sup> applies; or
  - (iii) pursuing a course of study where a period of study during the first year of the course is broken by a period or periods of industrial or analogous experience forming an integral part of the course amounting in aggregate to not less than 12 weeks; or
  - (iv) taking up permanent residence in the United Kingdom; or
- (b) who has resided in the United Kingdom for a period of not less than one year immediately preceding the time when the services are provided, whether or not immediately prior to the completion of one years' residence as aforesaid, charges under these Regulations may have been made in respect of services provided as part of the same course of treatment; or

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<sup>(9)</sup> 1984 c. 36

<sup>(10)</sup> 1975 c. 21; sections 184(1) and 385(1) were amended by the Mental Health (Scotland) Act 1984 (c. 36), Schedule 3, paragraphs 29(a) and 36(a).

<sup>(11)</sup> Sections 183(1) and 384(1) were amended by the Criminal Justice (Scotland) Act 1987 (c. 41), Schedule 1, paragraph 10; section 384(1) was also amended by the Criminal Justice (Scotland) Act 1980 (c. 62), section 53(1).

<sup>(12)</sup> 1968 c. 46; section 64 ceased to have effect with regard to Scotland by virtue of section 3 of the Health and Social Services and Social Security Adjudications Act 1983 (c. 41) (“the 1983 Act”), and was amended by S.I. 1968/1699, by the National Health Service Reorganisation Act 1973 (c. 32), Schedule 4, paragraph 125(2) and by the Health Services Act 1980 (c. 53), Schedule 1, paragraph 19(1)(4).

<sup>(13)</sup> Section 16B was inserted by the 1983 Act, section 3.

<sup>(14)</sup> S.I. 1972/1265 (N.I. 14).

- (c) who has been accepted as a refugee in the United Kingdom, or who has made a formal application for leave to stay as a refugee in the United Kingdom; or
- (d) who is employed on a ship or vessel registered in the United Kingdom; or
- (e) who is in receipt of any pension or other benefit under a Personal Injuries Scheme, Service Pensions Instrument or a 1914-1918 War Injuries Scheme as defined in regulation 2(1) of the Social Security (Overlapping Benefits) Regulations 1979<sup>(15)</sup>; or
- (f) who is a diplomatic agent for the purposes of the Articles of the Vienna Convention on Diplomatic Relations set out in Schedule 1 to the Diplomatic Privileges Act 1964<sup>(16)</sup>; or
- (g) who is a member of Her Majesty's United Kingdom Forces; or
- (h) who is some other Crown servant employed in the right of Her Majesty's Government of the United Kingdom, having been recruited in the United Kingdom; or
- (i) who is an employee, recruited in the United Kingdom, of the British Council or the Commonwealth War Graves Commission; or
- (j) who is working in employment that is financed in part by the Government of the United Kingdom in accordance with arrangements made with the Government of some other country or territory or a public body in such other country or territory; or
- (k) who has at any time had not less than ten years' continuous residence in the United Kingdom and is engaged in employment as an employed or self-employed person outside the United Kingdom—
  - (i) that has not lasted for a period of five years; or
  - (ii) that has lasted for five or more years, if he takes or has a contractual right to take home leave in the United Kingdom at least once in every two years or if he has a right, under the contract by which he was engaged, to have the cost of his passage to the United Kingdom paid on completion of his engagement; or
- (l) who is employed in another Member State and who is contributing as an employed or self-employed earner under the Social Security Act 1975<sup>(17)</sup> or the Social Security (Northern Ireland) Act 1975<sup>(18)</sup>; or
- (m) who, in the case of a national of a Member State, a refugee or a stateless person, has entitlement to the provision of the services in question by virtue of regulations made by the Council of the European Communities under Article 51 of the Treaty establishing the European Economic Community or, in the case of a national of another country, is entitled to be provided with such services by virtue of an agreement entered into between that Community and any other country; or
- (n) whose detention in prison or in an institution provided by the Secretary of State under section 31(1) of the Prisons (Scotland) Act 1952<sup>(19)</sup> is for the time being authorised by law; or who is detained under the provisions of the Immigration Act 1971<sup>(20)</sup>; or
- (o) in whose case the services are provided in circumstances covered by a reciprocal agreement with a country or territory specified in Schedule 2.

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<sup>(15)</sup> S.I. 1979/597; the relevant amending instrument is S.I. 1980/1927

<sup>(16)</sup> 1964 c. 81

<sup>(17)</sup> 1975 c. 14

<sup>(18)</sup> 1975 c. 15

<sup>(19)</sup> 1952 c. 61; section 31(1) was amended by the Criminal Justice (Scotland) Act 1963 (c. 39), section 2(1) and Schedule 5, and by the Criminal Justice (Scotland) Act 1980 (c. 62), Schedule 7, paragraph 3(a).

<sup>(20)</sup> 1971 c. 77

### **Exemption from charges for treatment the need for which arose during the visit**

5. No charge for services forming part of the health service, provided only for the purpose of giving treatment the need for which arose during the visit, shall be made in respect of any overseas visitor who is—

- (a) a national of a Member State, or a stateless person or refugee, or a member of the family of any of them, resident in each case in the territory of a Member State; or
- (b) a person, or the spouse or child of a person, who has at any time had not less than ten years' continuous residence in the United Kingdom or not less than ten years' continuous service as a Crown servant employed in the right of Her Majesty's Government of the United Kingdom and is in receipt of a pension or benefit under the Social Security Act 1975 or the Social Security (Northern Ireland) Act 1975; or
- (c) a person resident in a country, other than Israel, or territory specified in Schedule 2; or
- (d) a person who is without sufficient resources to pay the charge and who is a national of a country which is a contracting party to the European Convention on Social and Medical Assistance 1954<sup>(21)</sup>; or
- (e) a person, or the spouse or child of a person, who has at any time had not less than ten years' continuous residence in the United Kingdom and who is resident in a Member State or in a country, other than Israel, or territory specified in Schedule 2.

### **Exemption from charges for treatment provided to a member of the forces of the North Atlantic Treaty Organisation**

6. No charge shall be made or recovered for the provision of services forming part of the health service required for the treatment of a person to whom Article IX(5) of the North Atlantic Treaty Organisation Status of Forces Agreement<sup>(22)</sup> applies, where such treatment cannot readily be provided by the medical services of the armed forces of his own country or of the United Kingdom.

### **Liability for payment of charges**

7. The person liable to pay charges payable by virtue of these Regulations shall be the overseas visitor in respect of whom the services are provided except that—

- (a) if the overseas visitor is employed to work on and for the purposes of a ship or vessel and is present in the United Kingdom in the course of such employment, the person liable to pay such charges shall be the owner of the ship or vessel on which the overseas visitor is employed; and
- (b) if the overseas visitor is employed to work on and for the purposes of an aircraft and is present in the United Kingdom in the course of such employment, the person liable to pay such charges shall be his employer.

### **Repayments**

8.—(1) Where a sum has been paid as a charge for services forming part of the health service by or on behalf of a person who, at the time services were provided for such person, was not an overseas visitor in respect of whom, or did not receive services for which, such a charge was payable, a claim for repayment of the sum may be made by presenting to the Health Board by which the charge was made and recovered—

- (a) the receipt for payment of such sum;

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<sup>(21)</sup> Cmd. 9512 of 1955.

<sup>(22)</sup> Cmd. 9363 of 1955 and Cmnd. 2191 of 1963.

- (b) a declaration in support of the claim signed by or on behalf of the claimant; and
- (c) such evidence in support of the declaration as the Health Board may require.

(2) The Health Board, if satisfied by the evidence so produced that the sum to which the receipt relates was not payable by virtue of these Regulations, shall repay to the claimant the amount of any such sum.

**Revocations**

- 9. The Regulations specified in Schedule 3 are hereby revoked.

St Andrew's House,  
Edinburgh  
5th March 1989

*Michael B Forsyth*  
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Office