

2019 No. 516

EXITING THE EUROPEAN UNION

NATIONAL HEALTH SERVICE, ENGLAND

**The National Health Service (Charges to Overseas Visitors)
(Amendment etc.) (EU Exit) Regulations 2019**

Made - - - - *7th March 2019*

Laid before Parliament *8th March 2019*

Coming into force in accordance with regulation 1(2)

The Secretary of State makes these Regulations in exercise of the powers conferred by sections 175 and 272(7) and (8) of the National Health Service Act 2006(a).

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the National Health Service (Charges to Overseas Visitors) (Amendment etc.) (EU Exit) Regulations 2019.

(2) These Regulations come into force on exit day.

(3) In these Regulations, “the Principal Regulations” means the National Health Service (Charges to Overseas Visitors) Regulations 2015(b).

Amendment of regulation 2

2. In regulation 2 (interpretation) of the Principal Regulations—

(a) after the definition of “child” insert—

““competent institution” has the same meaning as in Regulation (EC) No 883/2004 or Regulation (EEC) No 1408/71 as the case may be”; and

(b) after the definition of “registered dentist” insert—

““Regulation (EC) No 883/2004” means Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems as it had effect immediately before exit day(c);

“Regulation (EEC) No 1408/71” means Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-

(a) 2006 c.41. By virtue of section 271(1) of the National Health Service Act 2006 the powers of the Secretary of State exercised in making these Regulations are exercisable only in relation to England.

(b) S.I. 2015/238, as amended by S.I. 2015/2025, 2016/211 and 2017/756.

(c) OJ No. L 166, 30.4.2004, p.1. This EU Regulation has been amended by various EU instruments, most recently by Commission Regulation (EU) 2017/492 of 21 March 2017 (OJ No. L 76, 22.3.2017, p.13).

employed persons and to members of their families moving within the Community as it had effect immediately before exit day^(a)”.

Amendment of regulation 7

3.—(1) Regulation 7 (charges imposed on overseas visitors) of the Principal Regulations is amended as follows.

(2) In paragraph (2)—

- (a) for “Where” substitute “Subject to paragraphs (2A) and (2B), where”;
- (b) for “another” substitute “an”; and
- (c) for “calculated in the same way as provided for by regulation 13(1) (NHS charges) of the National Health Service (Cross-Border Healthcare) Regulations 2013” substitute “equal to the tariff for that relevant service”.

(3) After paragraph (2) insert—

“(2A) Where an overseas visitor who is ordinarily resident in an EEA state or Switzerland has before exit day received relevant services from a relevant body, the charges payable in respect of those services must be calculated in the same way as provided for by regulation 13(1) (NHS charges) of the National Health Service (Cross-Border Healthcare) Regulations 2013 as it had effect immediately before exit day.

(2B) Where an overseas visitor who is ordinarily resident in an EEA state or Switzerland—

- (a) has before exit day received relevant services from a relevant body as part of a course of treatment; and
- (b) on or after exit day receives relevant services from a relevant body as part of the same course of treatment,

the charges payable in respect of those services, whether provided before, on or after exit day, must be calculated in the same way as provided for by regulation 13(1) (NHS charges) of the National Health Service (Cross-Border Healthcare) Regulations 2013 as it had effect immediately before exit day.”.

Revocation of regulation 12

4. Omit regulation 12 (overseas visitors with EU rights) of the Principal Regulations.

Amendment of regulation 13

5. For regulation 13 (overseas visitors who are treated as if entitled under the Social Security Coordination Regulation) of the Principal Regulations substitute—

“Overseas visitors with UK reciprocal healthcare entitlements before exit day

13.—(1) No charge may be made or recovered in respect of any relevant services provided on or after exit day to an overseas visitor who is ordinarily resident in an EEA state or Switzerland, was ordinarily resident there immediately before exit day and either—

- (a) immediately before exit day held a valid UK reciprocal healthcare document; or

(a) OJ No. L 149, 5.7.1971, p.2. Regulation (EEC) No 1408/71 was repealed by Regulation (EC) No 883/2004 but saved for certain purposes. Regulation (EEC) No 1408/71 has been amended by various EU instruments and was restated in Part 1 of Annex A of Council Regulation (EC) No 118/97 of 2 December 1996 (OJ No. L 28, 30.1.1997, p.1). It has most recently been amended by Regulation (EC) No 592/2008 of the European Parliament and of the Council of 17 June 2008 (OJ No. L 177, 4.7.2008, p.1).

- (b) at the time that the treatment which constitutes the relevant services was provided, would have been eligible to be issued with a UK reciprocal healthcare document if exit day had not occurred.

(2) Paragraph (1) does not apply to a frontier worker or a member of the family of a frontier worker.

(3) In this regulation—

“frontier worker” has the same meaning as in Regulation (EC) No 883/2004 or Regulation (EEC) No 1408/71 as the case may be;

“member of the family” has the same meaning as in Regulation (EC) No 883/2004 or Regulation (EEC) No 1408/71 as the case may be; and

“UK reciprocal healthcare document” means an S1 healthcare certificate, A1 healthcare certificate, European Health Insurance Card or equivalent document issued by a competent institution of the United Kingdom.”.

Amendment of regulation 14

6. In regulation 14 (reciprocal health care agreements) of the Principal Regulations—

- (a) after “reciprocal agreement” insert “— (a)”; and
- (b) after “Schedule 2” insert “; or (b) with an EEA state or Switzerland where that agreement comes into effect on or after exit day.”.

New regulations 14A and 14B

7. After regulation 14 (reciprocal health care agreements) insert—

“Overseas visitors from the Republic of Ireland

14A. No charge may be made or recovered in respect of any relevant services, consisting of treatment the need for which arose during the visit, provided to an overseas visitor who is ordinarily resident in the Republic of Ireland and who is—

- (a) an Irish citizen; or
- (b) a British citizen.

Frontier workers

14B.—(1) No charge may be made or recovered in respect of any relevant services, consisting of treatment the need for which arose during the visit, provided to an overseas visitor who is a relevant frontier worker.

(2) In paragraph (1), “a relevant frontier worker” means a person who—

- (a) on or after exit day, is pursuing in the United Kingdom an activity as an employed or self-employed person which the person began to pursue there before exit day;
- (b) resides in an EEA state or Switzerland; and
- (c) returns to their residence in that EEA state or Switzerland (as the case may be) at least once a week.”.

New regulation 24A

8. After regulation 24 (treatment the need for which arose during the visit) of the Principal Regulations insert—

“EU exit: transitional arrangements

24A.—(1) No charge may be made or recovered in respect of any relevant services provided on or after exit day to an overseas visitor who is ordinarily resident in an EEA state or Switzerland, as part of a course of treatment which was authorised before exit day in accordance with Regulation (EC) No 883/2004 or Regulation (EEC) No 1408/71.

(2) No charge may be made or recovered in respect of any relevant services consisting of treatment the need for which arose during the visit, provided on or after exit day to an overseas visitor whose visit to the United Kingdom began before exit day and who held either—

- (a) a European Health Insurance Card issued by the competent institution of an EEA state (other than the United Kingdom) or Switzerland which was valid when—
 - (i) the visit began; and
 - (ii) the need for the treatment arose; or
- (b) a Provisional Replacement Certificate issued by the competent institution of an EEA state (other than the United Kingdom) or Switzerland which was valid when the treatment was provided.

(3) No charge may be made or recovered in respect of any relevant services provided to an overseas visitor who is a national of an EEA state or Switzerland who began receiving education or training in the United Kingdom before exit day where those services—

- (a) consist of treatment the need for which arose during that education or training (taking account of the nature of the treatment and the expected duration of the education or training); and
- (b) are provided on or after exit day but before the end of that education or training.

(4) No charge may be made or recovered in respect of any relevant services provided before 31st December 2020 to a person who is an overseas visitor by virtue of section 39 of the 2014 Act^(a) and who may be granted leave to remain in the United Kingdom by virtue of Appendix EU to the immigration rules^(b) (EU citizens and family members).

(5) Paragraph (4) applies whether or not the person has applied for or has been granted leave to remain under Appendix EU to the immigration rules.”.

Amendment of regulation 25

9.—(1) Regulation 25 (family members of overseas visitors) of the Principal Regulations is amended as follows.

(2) In paragraph (4)—

- (a) for “Subject to paragraphs (5) to (7) of this regulation, no” substitute “No”; and
- (b) in sub-paragraph (c), for paragraphs (i) and (ii) substitute—
 - “(i) regulation 14A (overseas visitors from the Republic of Ireland);
 - (ii) regulation 24A(3) (transitional arrangements for students following EU exit);or;”.

(3) Omit paragraphs (5) to (7).

(4) In paragraph (8), omit “enforceable EU right or any other”.

Amendment of Schedule 2

10. In Schedule 2 (reciprocal agreements) to the Principal Regulations—

(a) 2014 c.22.

(b) Appendix EU was amended by the statement of changes in immigration rules presented to Parliament on 7th March 2019 (HC 1919).

- (a) after “Falkland Islands” insert “Faroe Islands”;
- (b) after “Gibraltar” insert “Iceland”;
- (c) after “Kosovo” insert “Liechtenstein”;
- (d) after “New Zealand” insert “Norway”; and
- (e) after “St Helena” insert “Switzerland”.

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

7th March 2019

Blackwood
Parliamentary Under-Secretary of State,
Department of Health and Social Care

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the National Health Service (Charges to Overseas Visitors) Regulations 2015 (“the Principal Regulations”), which provide for the making and recovery of charges for relevant services provided under the National Health Service Act 2006 (c.41) to certain persons not ordinarily resident in the United Kingdom.

Regulation 1 contains commencement, citation and interpretation provisions. The Regulations come into force on exit day, as defined in Schedule 1 to the Interpretation Act 1978 (c.30).

Regulation 2 amends regulation 2 of the Principal Regulations to insert definitions of “competent institution”, “Regulation (EC) No 883/2004” and “Regulation (EEC) No 1408/71”.

Regulation 3 amends regulation 7(2) of the Principal Regulations, which sets out how relevant bodies calculate charges for services provided to overseas visitors ordinarily resident in an EEA state or Switzerland. It requires the charges imposed on such visitors to be the national tariff charge for those services. Regulation 3 also inserts new paragraphs (2A) and (2B) into regulation 7, which provide that the national tariff applies where such services span exit day (or end before exit day, if charges are imposed after exit day).

Regulation 4 revokes regulation 12 of the Principal Regulations which concerns overseas visitors with EU rights.

Regulation 5 substitutes regulation 13 of the Principal Regulations. The substituted regulation 13 exempts overseas visitors from charges if they are ordinarily resident in an EEA state or Switzerland, were ordinarily resident there before exit day and either held a UK-issued reciprocal healthcare document (an S1 or A1 healthcare certificate, European Health Insurance Card or equivalent document) or would have been eligible to do so if, when the treatment was provided, exit day had not occurred.

Regulation 6 amends regulation 14 of the Principal Regulations to provide an exemption from charges for overseas visitors for relevant services provided in circumstances covered by a reciprocal agreement with an EEA state or Switzerland which comes into effect on or after exit day.

Regulation 7 inserts new regulations 14A and 14B into the Principal Regulations. Regulation 14A provides an exemption from charges in respect of treatment, the need for which arises during a visit, for overseas visitors who are either Irish or British citizens and who are ordinarily resident in the Republic of Ireland. Regulation 14B provides an exemption from charges for frontier workers who work in the United Kingdom (and began doing so before exit day) but reside in an EEA state or Switzerland, to which they return at least once a week.

Regulation 8 inserts new regulation 24A into the Principal Regulations, which sets out exemptions from charges which will apply on a transitional basis to overseas visitors from an EEA state or

Switzerland (a “relevant visitor”) in relation to the United Kingdom’s exit from the European Union.

New regulation 24A(1) provides an exemption from charges for treatment provided to a relevant visitor on or after exit day which is part of a course of treatment which was authorised before exit day in accordance with Regulation (EC) No 883/2004 or Regulation (EEC) No 1408/71.

New regulation 24A(2) provides an exemption from charges for treatment provided to a relevant visitor on or after exit day if the visit began before exit day and the relevant visitor held a valid European Health Insurance Card at the time the visit began and the need for treatment arose (or held a Provisional Replacement Certificate when the treatment was provided).

New regulation 24A(3) provides an exemption from charges for relevant visitors who are students on a course of education or training which began before exit day. The exemption applies until the end of the student’s course.

New regulation 24A(4) and (5) provides exemptions from charges for services provided before 31st December 2020 for EEA and Swiss nationals and their family members who live in the United Kingdom, are not ordinarily resident for the purposes of the Principal Regulations but are eligible for leave to remain under Appendix EU to the immigration rules.

Regulation 9 makes amendments to regulation 25 of the Principal Regulations consequential on the revocation of regulation 12, the substitution of regulation 13 and the insertion of regulations 14A and 24A(3). Regulation 25 provides exemptions from charges for family members of certain overseas visitors who are eligible for exemptions from charges.

Regulation 10 adds the Faroe Islands and EFTA states to the list of countries in Schedule 2 to the Principal Regulations which concerns reciprocal agreements.

An impact assessment has been prepared in relation to these Regulations and is published with these Regulations on www.legislation.gov.uk and copies can be obtained from the Department of Health and Social Care, 39 Victoria Street London SW1H 0EU.

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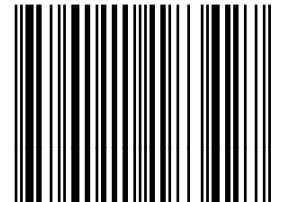
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