

STATUTORY INSTRUMENTS

2019 No. 777

The National Health Service (Cross-Border Healthcare and Miscellaneous Amendments etc.) (EU Exit) Regulations 2019

PART 1 U.K.

Preliminary

Citation, commencement, interpretation and extent U.K.

1.—(1) These Regulations may be cited as the National Health Service (Cross-Border Healthcare and Miscellaneous Amendments etc.) (EU Exit) Regulations 2019 and come into force on exit day^{M1}.

(2) In these Regulations—

“the NHS Act 2006” means the National Health Service Act 2006^{M2};

“the NHS (Wales) Act” means the National Health Service (Wales) Act 2006^{M3};

“the 2013 Regulations” means the National Health Service (Cross-Border Healthcare) Regulations 2013^{M4};

“the NHS Functions Regulations” means the National Health Service and Public Health (Functions and Miscellaneous Provisions) Regulations 2013^{M5}.

(3) An amendment, repeal or revocation made by these Regulations has the same extent and application as the provision being amended, repealed or revoked.

(4) The amendments, repeals and revocations made by Parts 2 and 3 take effect subject to the provisions made by Part 5 of these Regulations.

Commencement Information

I1 Reg. 1 in force at 31.12.2020 on IP completion day (in accordance with 2020 c. 1, Sch. 5 para. 1(1)), see reg. 1(1)

Marginal Citations

M1 Section 20(1) of the European Union (Withdrawal) Act 2018 defines “exit day”.

M2 [2006 c.41](#).

M3 [2006 c.42](#).

M4 [S.I. 2013/2269](#); as amended by [S.I. 2015/139](#) and 238.

M5 [S.I. 2013/261](#); amended by [S.I. 2013/2269](#); there are other amending instruments but none is relevant.

*Status: Point in time view as at 31/12/2020. This version of this Instrument contains provisions that are prospective.
Changes to legislation: There are currently no known outstanding effects for the The National Health Service (Cross-Border Healthcare and Miscellaneous Amendments etc.) (EU Exit) Regulations 2019. (See end of Document for details)*

PART 2 U.K.

Amendments to primary legislation

The Health and Social Security Act 1984 U.K.

- 2.—(1) The Health and Social Security Act 1984^{M6} is amended as follows.
- (2) Omit section 10 (reimbursement of cost of medical and maternity treatment in member States of European Economic Community).
- (3) In section 26(4) (extent) omit “section 10”.

Commencement Information

I2 Reg. 2 in force at 31.12.2020 on IP completion day (in accordance with 2020 c. 1, Sch. 5 para. 1(1)), see reg. 1(1)

Marginal Citations

M6 1984 c.48. Functions under section 10 were, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales by article 2 of, and Schedule 1 to, S.I. 1999/672; those functions are now exercisable by the Welsh Ministers by virtue of paragraph 30 of Schedule 11 to the [Government of Wales Act 2006 \(c.32\)](#).

The National Health Service Act 2006 U.K.

3. In the NHS Act 2006 omit the following provisions—
- section 6A (reimbursement of cost of services provided in another EEA state)^{M7};
 - section 6B (prior authorisation for the purposes of section 6A)^{M8};
 - section 6BA (reimbursement of cost of services provided in another EEA state where expenditure incurred on or after 25 October 2013)^{M9};
 - section 6BB (prior authorisation for the purposes of section 6BA)^{M10};
 - section 6D (regulations relating to EU obligations)^{M11};
 - section 6E(7)(b) (regulations as to the exercise of functions by the Board or clinical commissioning groups)^{M12};
 - section 183(a)(ii) (payment of travelling expenses)^{M13};
 - the definition of “Regulation (EC) No. 883/2004” in section 275(1) (interpretation)^{M14} except in so far as it relates to section 183(a)(iii).

Commencement Information

I3 Reg. 3 in force at 31.12.2020 on IP completion day (in accordance with 2020 c. 1, Sch. 5 para. 1(1)), see reg. 1(1)

Marginal Citations

M7 Section 6A was inserted by S.I. 2010/915 and amended by paragraph 3 of Schedule 4 to the [Health and Social Care Act 2012 \(c.7\)](#) (“the 2012 Act”) and S.I. 2013/2269.

M8 Section 6B was inserted by S.I. 2010/915 and amended by paragraph 4 of Schedule 4 to the 2012 Act.

M9 Section 6BA was inserted by S.I. 2013/2269.

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Changes to legislation: There are currently no known outstanding effects for the The National Health Service (Cross-Border Healthcare and Miscellaneous Amendments etc.) (EU Exit) Regulations 2019. (See end of Document for details)

- M10** Section 6BB was inserted by [S.I. 2013/2269](#).
- M11** Section 6D was inserted by section 19 of the 2012 Act.
- M12** Section 6E was inserted by section 20 of the 2012 Act.
- M13** Section 183(a) was substituted by [S.I. 2010/915](#) and amended by paragraph 98 of Schedule 4 to the 2012 Act and by [S.I. 2013/2269](#).
- M14** The definition was inserted by [S.I. 2010/915](#).

The National Health Service (Wales) Act 2006 **U.K.**

- 4.—(1) The NHS (Wales) Act is amended as follows.
- (2) In section 46 (GMS contracts: prescription of drugs, etc)—
- (a) in subsection (3), for “Community marketing authorization or United Kingdom” substitute “UK”;
 - (b) for subsection (4) substitute—
“(4) “UK marketing authorisation” has the meaning given by regulation 8(1) of the Human Medicines Regulations 2012 (S.I. 2012/1916).”.
- (3) Omit the following provisions—
- (a) section 6A (reimbursement of cost of services provided in another EEA state) ^{M15};
 - (b) section 6B (prior authorisation for the purposes of section 6A) ^{M16};
 - (c) section 6BA (reimbursement of cost of services provided in another EEA state where expenditure incurred on or after 25 October 2013) ^{M17};
 - (d) section 6BB (prior authorisation for the purposes of section 6BA) ^{M18};
 - (e) section 131(a)(ii) (payment of travelling expenses) ^{M19};
 - (f) the definition of “Regulation (EC) No. 883/2004” in section 206(1) (interpretation) ^{M20} except in so far as it relates to section 131(a)(iii).

Commencement Information

- I4** Reg. 4 in force at 31.12.2020 on IP completion day (in accordance with 2020 c. 1, Sch. 5 para. 1(1)), see reg. 1(1)

Marginal Citations

- M15** Section 6A was inserted by [S.I. 2010/915](#) and amended by [S.I. 2013/2269](#).
- M16** Section 6B was inserted by [S.I. 2010/915](#) and amended by [S.I. 2013/2269](#).
- M17** Section 6BA was inserted by [S.I. 2013/2269](#).
- M18** Section 6BB was inserted by [S.I. 2013/2269](#).
- M19** Section 131(a) was substituted by [S.I. 2010/915](#) and amended by [S.I. 2013/2269](#).
- M20** The definition was inserted by [S.I. 2010/915](#).

The Health and Social Care Act 2012 **U.K.**

5. In the Health and Social Care Act 2012 ^{M21} omit the following provisions—
- (a) section 124(9) (local modifications of prices: agreements);
 - (b) section 125(9) (local modifications of prices: applications).

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Commencement Information

I5 Reg. 5 in force at 31.12.2020 on IP completion day (in accordance with 2020 c. 1, Sch. 5 para. 1(1)), see reg. 1(1)

Marginal Citations

M21 [2012 c.7.](#)

The Cities and Local Government Devolution Act 2016 **U.K.**

6. In the Cities and Local Government Devolution Act 2016 ^{M22} omit section 18(2)(b) (devolving health service functions).

Commencement Information

I6 Reg. 6 in force at 31.12.2020 on IP completion day (in accordance with 2020 c. 1, Sch. 5 para. 1(1)), see reg. 1(1)

Marginal Citations

M22 [2016 c.1.](#)

PART 3 **U.K.**

Amendments to secondary legislation

The Welsh Ambulance Services National Health Service Trust (Establishment) Order 1998 **U.K.**

7. The Welsh Ambulance Services National Health Service Trust (Establishment) Order 1998 ^{M23} is amended as follows—

- (a) in article 1(2) (interpretation), omit the definitions of “Directive 2011/24/EU” and “National Contact Point”;
- (b) omit article 3(2)(d) (nature and functions of the trust) but not the “and” after it.

Commencement Information

I7 Reg. 7 in force at 31.12.2020 on IP completion day (in accordance with 2020 c. 1, Sch. 5 para. 1(1)), see reg. 1(1)

Marginal Citations

M23 [S.I. 1998/678](#); relevant amendments were made by [S.I. 2013/2729](#).

The National Assembly for Wales (Transfer of Functions) Order 1999 **U.K.**

8. In Schedule 1 (enactments conferring functions transferred by article 2) to the National Assembly for Wales (Transfer of Functions) Order 1999 ^{M24} omit the entry relating to the Health and Social Security Act 1984.

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Commencement Information

I8 Reg. 8 in force at 31.12.2020 on IP completion day (in accordance with 2020 c. 1, Sch. 5 para. 1(1)), see reg. 1(1)

Marginal Citations

M24 S.I. 1999/672; to which there are amendments not relevant to these Regulations.

[^{F1}The National Health Service (General Medical Services Contracts) (Prescription of Drugs etc.) Regulations 2004 **U.K.**

9.—(1) The National Health Service (General Medical Services Contracts) (Prescription of Drugs etc.) Regulations 2004 are amended as follows.

(2) In Schedule 2 (drugs, medicines and other substances that may be ordered only in certain circumstances), in the entry in column 2 of the table that corresponds to the entry in column 1 relating to drugs for the treatment of erectile dysfunction—

(a) for sub-paragraph (b) (including the “or” at the end) substitute—

“(b) a man who is a national of an EEA State who—

(i) immediately before IP completion day was entitled to treatment by virtue of Article 7(2) of Council Regulation 1612/68 as extended by the EEA Agreement or was entitled to treatment by virtue of any other enforceable EU right;

(ii) has erectile dysfunction and was on 14th September 1998 receiving a course of treatment under a national health insurance system of an EEA State for that condition with any of the drugs listed in sub-paragraph (a); and

(iii) immediately before IP completion day was receiving a course of treatment as part of the health service for the condition mentioned in paragraph (ii) of this sub-paragraph with any of the drugs listed in sub-paragraph (a); or”;

(b) for sub-paragraph (c) (including the “or” at the end) substitute—

“(c) a man who is not a national of an EEA State but who is the member of the family of such a national and who—

(i) immediately before IP completion day had an enforceable EU right to be treated no less favourably than the national in the provision of medical treatment;

(ii) has erectile dysfunction and was on 14th September 1998 receiving a course of treatment for that condition with any of the drugs listed in sub-paragraph (a); and

(iii) immediately before IP completion day was receiving a course of treatment as part of the health service for the condition mentioned in paragraph (ii) of this sub-paragraph with any of the drugs listed in sub-paragraph (a); or”.]

Textual Amendments

F1 Reg. 9 substituted (31.12.2020 immediately before IP completion day) by [The Reciprocal and Cross-Border Healthcare \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1348\)](#), regs. 1, 8

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Changes to legislation: There are currently no known outstanding effects for the The National Health Service (Cross-Border Healthcare and Miscellaneous Amendments etc.) (EU Exit) Regulations 2019. (See end of Document for details)*

Commencement Information

I9 Reg. 9 in force at 31.12.2020 on IP completion day (in accordance with 2020 c. 1, Sch. 5 para. 1(1)), see reg. 1(1)

PROSPECTIVE

The National Health Service (General Medical Services Contracts) (Prescription of Drugs Etc.) (Wales) Regulations 2004 U.K.

F2 10.

Textual Amendments

F2 Reg. 10 omitted (31.12.2020 immediately before IP completion day) by virtue of The Reciprocal and Cross-Border Healthcare (Amendment etc.) (EU Exit) Regulations 2020 (S.I. 2020/1348), regs. 1, 9

The National Health Service (Cross-Border Healthcare) Regulations 2013 U.K.

11. The 2013 Regulations are revoked.

Commencement Information

I10 Reg. 11 in force at 31.12.2020 on IP completion day (in accordance with 2020 c. 1, Sch. 5 para. 1(1)), see reg. 1(1)

The National Health Service and Public Health (Functions and Miscellaneous Provisions) Regulations 2013 U.K.

12.—(1) The NHS Functions Regulations ^{M25} are amended as follows.

(2) Omit the following provisions—

- (a) regulation 3(a) (exercise of functions);
- (b) regulation 4(1)(a) and (b) (procedure for applications);
- (c) regulation 6(2)(a) and (b) (form and content of determination);
- (d) regulation 7(3) and (4) (CCGs);
- (e) regulation 8 (applications made before 1st April 2013).

(3) For regulation 4(3)(a) substitute—

“(a) information about the procedures the Board has in place for prior authorisation pursuant to Article 20 or Article 27(3);”

Commencement Information

I11 Reg. 12 in force at 31.12.2020 on IP completion day (in accordance with 2020 c. 1, Sch. 5 para. 1(1)), see reg. 1(1)

Status: Point in time view as at 31/12/2020. This version of this Instrument contains provisions that are prospective.
Changes to legislation: There are currently no known outstanding effects for the The National Health Service (Cross-Border Healthcare and Miscellaneous Amendments etc.) (EU Exit) Regulations 2019. (See end of Document for details)

Marginal Citations

M25 S.I. 2013/261; relevant amendments were made by S.I. 2013/2269; there are other amending instruments but none are relevant.

PART 4 U.K.

Revocation of retained direct EU legislation

2011/890/EU: Commission Implementing Decision U.K.

13. 2011/890/EU: Commission Implementing Decision of 22 December 2011 providing the rules for the establishment, the management and the functioning of the network of national responsible authorities on eHealth is revoked.

Commencement Information

I12 Reg. 13 in force at 31.12.2020 on IP completion day (in accordance with 2020 c. 1, Sch. 5 para. 1(1)), see reg. 1(1)

2013/329/EU: Commission Implementing Decision U.K.

14. 2013/329/EU: Commission Implementing Decision of 26 June 2013 providing the rules for the establishment, management and transparent functioning of the Network of national authorities or bodies responsible for health technology assessment is revoked.

Commencement Information

I13 Reg. 14 in force at 31.12.2020 on IP completion day (in accordance with 2020 c. 1, Sch. 5 para. 1(1)), see reg. 1(1)

PART 5 E+W

Savings and Transitional Provision

Cross-border cases arising before [^{F3}IP completion day] E+W

15.—(1) The legislation referred to in Parts 2 and 3, except for regulations 2, 4(2), 8, 9 and 10 is to continue to apply on and after [^{F3}IP completion day] without the amendments, repeals and revocations made by those Parts, and with the modifications made by Schedule 1 in a case where any of paragraphs (2) to (5) apply.

(2) This paragraph applies where a service that satisfied the condition in section 6A(3) or (4) or 6BA(4) or (7) of the NHS Act 2006 or the NHS (Wales) Act was provided, or began to be provided, before [^{F3}IP completion day].

(3) This paragraph applies where an application for authorisation under section 6B or 6BB of the NHS Act 2006 or the NHS (Wales) Act has been made, but not determined, before [^{F3}IP completion day].

*Status: Point in time view as at 31/12/2020. This version of this Instrument contains provisions that are prospective.
Changes to legislation: There are currently no known outstanding effects for the The National Health Service (Cross-Border Healthcare and Miscellaneous Amendments etc.) (EU Exit) Regulations 2019. (See end of Document for details)*

(4) This paragraph applies where authorisation has been given under section 6B or 6BB of the NHS Act 2006 or the NHS (Wales) Act before [^{F3}IP completion day].

(5) This paragraph applies where a cross-border healthcare service was provided or began to be provided to a visiting patient before [^{F3}IP completion day].

(6) Nothing in this regulation—

(a) requires reimbursement in respect of a service which was provided after the later of—

(i) the end of the period of one year beginning with the day after the day on which [^{F3}IP completion day] falls, or

(ii) in a case where the authorisation for the service authorises the service to be provided within a specified period, the end of the specified period;

(b) imposes an obligation in relation to a charge to a visiting patient for a service which was provided after the end of the period of one year beginning with the day after the day on which [^{F3}IP completion day] falls.

(7) In this regulation—

“cross-border healthcare service” and “visiting patient” have the same meaning as in the 2013 Regulations;

“service” is to be construed in accordance with section 6A or section 6BA of the NHS Act 2006 or, as the case may be, of the NHS (Wales) Act.

Textual Amendments

F3 Words in reg. 15 substituted (31.12.2020 immediately before IP completion day) by [The Reciprocal and Cross-Border Healthcare \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1348\)](#), regs. 1, 10

Commencement Information

I14 Reg. 15 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1, Sch. 5 para. 1\(1\)](#)), see [reg. 1\(1\)](#)

PROSPECTIVE

Cases arising during cross-border arrangements **E+W**

^{F4}16.

Textual Amendments

F4 Reg. 16 omitted (31.12.2020 immediately before IP completion day) by virtue of [The Reciprocal and Cross-Border Healthcare \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1348\)](#), regs. 1, 11

PROSPECTIVE

Savings provision for cases arising during cross-border arrangements **E+W**

^{F5}17.

Status: Point in time view as at 31/12/2020. This version of this Instrument contains provisions that are prospective.
Changes to legislation: There are currently no known outstanding effects for the The National Health Service (Cross-Border Healthcare and Miscellaneous Amendments etc.) (EU Exit) Regulations 2019. (See end of Document for details)

Textual Amendments

- F5** Reg. 17 omitted (31.12.2020 immediately before IP completion day) by virtue of [The Reciprocal and Cross-Border Healthcare \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1348\)](#), regs. 1, **11**

PART 6 U.K.

Rights etc deriving from the Treaties

EU-derived rights U.K.

18. Any rights, powers, liabilities, obligations, restrictions, remedies and procedures which continue to be recognised and available in domestic law ^{M26} by virtue of section 4 of the European Union (Withdrawal) Act 2018 (including as they are modified by domestic law from time to time) cease to be recognised and available in domestic law so far as they are inconsistent with, or are otherwise capable of affecting the interpretation, application or operation of, provision made by these Regulations.

Commencement Information

- I15** Reg. 18 in force at 31.12.2020 on IP completion day (in accordance with 2020 c. 1, Sch. 5 para. 1(1)), see reg. 1(1)

Marginal Citations

- M26** “Domestic law” is defined in section 20 of the European Union (Withdrawal) Act 2018.

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

Department of Health and Social Care

Stephen Hammond
Minister of State,

Status:

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Changes to legislation:

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