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WELSH STATUTORY INSTRUMENTS

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**2020 No. 1607**

**The National Health Service (Charges to Overseas Visitors)  
(Amendment) (Wales) (EU Exit) Regulations 2020**

**PART 2**

**Amendment of the Principal Regulations**

**Amendment of regulation 1**

**2.—**(1) Regulation 1(2) (citation, commencement and interpretation) of the Principal Regulations is amended as follows.

(2) At the appropriate place insert—

- (a) ““the 2014 Act” means the Immigration Act 2014**(1)**”;
- (b) ““competent institution” has the same meaning as in Regulation (EC) No 883/2004 or Regulation (EEC) No 1408/71, as the case may be”;
- (c) ““equivalent document” means a document which, for the purposes of a listed healthcare arrangement is treated as equivalent to an S1 healthcare certificate**(2)**”;
- (d) ““immigration rules” means the rules laid before Parliament under section 3(2) (general provisions for regulation and control) of the Immigration Act 1971**(3)**”;
- (e) ““listed healthcare arrangement” has the meaning given in regulation 1(3) of the Healthcare (European Economic Area and Switzerland Arrangements) (EU Exit) Regulations 2019**(4)**”;
- (f) ““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 implementation period completion day**(5)**”;
- (g) ““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-employed persons and to members of their families moving within the Community as it had effect immediately before implementation period completion day**(6)**”;

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(1) 2014 c. 22.

(2) An S1 healthcare certificate entitles a person to healthcare in an EEA state and Switzerland on the same basis as residents of that country. It is issued by an EEA state and Switzerland and was issued by the United Kingdom, before it exited the EU. It was issued to certain workers working in an EEA state or Switzerland who paid National Insurance Contributions in the United Kingdom or to people in receipt of certain United Kingdom exportable benefits (for example, retirement pensions). Following the United Kingdom’s exit from the EU, the United Kingdom will no longer issue S1 healthcare certificates but will issue certain qualifying persons with a document which will provide the same access to healthcare as the S1 healthcare document.

(3) 1971 c. 77.

(4) S.I. 2019/1293, to which there are amendments not relevant to these Regulations.

(5) OJ No. L 166, 30.4.2004, p. 1. This EU Regulation has been amended by various EU instruments, most recently by Regulation (EU) 2019/1149 of the European Parliament and of the Council of 20 June 2019 (OJ No. L 186, 11.7.2019, p. 21). Amendments are made prospectively with effect from implementation period completion day by S.I. 2019/722.

(6) 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

- (h) ““relevant services” means accommodation, services or facilities(7) which are provided, or whose provision is arranged, under the National Health Service (Wales) Act 2006(8) other than—
- (i) primary medical services provided under Part 4 (medical services);
  - (ii) primary dental services provided under Part 5 (dental services);
  - (iii) primary ophthalmic services provided under Part 6 (ophthalmic services); or
  - (iv) equivalent services which are provided, or whose provision is arranged, under that Act;”.
- (3) For the definition of “member of the family” substitute—
- ““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;”.

#### **Amendment of regulation 4**

**3.—**(1) Regulation 4(1) (overseas visitors exempt from charges) of the Principal Regulations is amended as follows.

- (2) In sub-paragraph (l), for “another” substitute “a”.
- (3) In sub-paragraph (m), after “member state” insert “or a British citizen”.
- (4) For sub-paragraph (o) substitute—
  - “(o) in whose case the services are provided in circumstances covered by a reciprocal agreement—
    - (i) with a country or territory specified in Schedule 2; or
    - (ii) with an EEA state or Switzerland where that agreement is a listed healthcare arrangement; or”.
- (5) After sub-paragraph (r) insert—
  - “(s) who—
    - (i) is granted leave to remain in the United Kingdom under Appendix S2 Healthcare Visitor to the immigration rules, and
    - (ii) in respect of whom a waiver to the immigration health charge applies, except in the case of relevant services which do not form part of the planned healthcare treatment authorised by that person’s S2 healthcare certificate(9).”.

#### **Amendment of regulation 4A**

**4.—**(1) Regulation 4A (exemption from charges during long term visits by United Kingdom pensioners) of the Principal Regulations is amended as follows.

- (2) In sub-paragraph (b), for “another” substitute “a”.
- (3) In sub-paragraph (c), for “another” substitute “a”.

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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). Amendments are made prospectively with effect from implementation period completion day by S.I. 2019/726.

(7) “Facilities” is defined in section 206(1) of the National Health Service (Wales) Act 2006.

(8) 2006 c. 42.

(9) An S2 healthcare certificate is issued by an EEA state and Switzerland, and, before it exited the EU, by the United Kingdom. It entitles a person to travel to an EEA state or Switzerland to receive pre-authorised planned treatment on the same basis as the national of that country, with the costs of the treatment being met by the country who issued the S2 healthcare certificate, pursuant to Regulation (EC) No 883/2004.

## **New regulations 4B, 4C and 4D**

5. After regulation 4A (exemption from charges during long term visits by United Kingdom pensioners) of the Principal Regulations, insert—

### **“Overseas visitors with citizens’ rights**

**4B.—**(1) No charge may be made or recovered in respect of any relevant services provided to an overseas visitor who has an entitlement to the provision of those services without charge by virtue of a right arising from—

- (a) Title III of Part 2 of the withdrawal agreement;
- (b) Title III of Part 2 of the EEA EFTA separation agreement; or
- (c) the social security co-ordination provisions of the Swiss citizens’ rights agreement.

(2) Subject to paragraphs (3) to (5) of this regulation, no charge may be made or recovered in respect of any relevant services provided to an overseas visitor who is a member of the family of another overseas visitor (“the principal overseas visitor”) if—

- (a) the overseas visitor is lawfully present in the United Kingdom;
- (b) the overseas visitor is visiting the United Kingdom with the principal overseas visitor; and
- (c) the principal overseas visitor is exempt from charges under paragraph (1).

(3) The exemption in paragraph (2) only applies if both conditions in paragraphs (4) and (5) are satisfied.

(4) The first condition is that—

- (a) the overseas visitor does not have a right under an agreement mentioned in paragraph (1), and
- (b) the reason that the overseas visitor does not have such a right is because the overseas visitor is not recognised as a member of the family (within the meaning of Article 1(i) of Regulation (EC) No 883/2004).

(5) The second condition is that the relevant services provided to the overseas visitor are services that the overseas visitor would be entitled to receive without charge by virtue of a right under an agreement mentioned in paragraph (1) if the overseas visitor had such a right.

(6) For the purposes of this regulation, unless otherwise provided, “member of the family” means—

- (a) the spouse or civil partner of an overseas visitor; or
- (b) a child in respect of whom an overseas visitor has parental responsibility.

(7) In paragraph (1), “withdrawal agreement”, “EEA EFTA separation agreement” and “Swiss citizens’ rights agreement” have the same meanings as in section 39(1) of the European Union (Withdrawal Agreement) Act 2020(10).

### **Overseas visitors with a United Kingdom issued S1 healthcare certificate or equivalent document**

**4C.—**(1) No charge may be made or recovered in respect of any relevant services provided to an overseas visitor who—

- (a) was ordinarily resident in an EEA state or Switzerland immediately before implementation period completion day,
  - (b) continues to be ordinarily resident in an EEA state or Switzerland on and after implementation period completion day,
  - (c) receives a state pension paid by the United Kingdom Government, and
  - (d) holds a S1 healthcare certificate, or an equivalent document, issued to or in respect of that person by a competent institution of the United Kingdom.
- (2) No charge may be made or recovered in respect of any relevant services provided to—
- (a) the spouse or civil partner of an overseas visitor; or
  - (b) a child in respect of whom an overseas visitor has parental responsibility,
- if that overseas visitor is exempt from charges under paragraph (1).

#### **Persons who make late applications under Appendix EU to the immigration rules**

**4D.**—(1) Subject to paragraph (4), no charge may be made or recovered in respect of relevant services provided to an overseas visitor to whom paragraph (2) or (3) applies during the period which begins on the date on which the application mentioned in paragraph (2)(b) or (3)(b), as the case may be, is made and which ends on the date on which that application is finally determined under Appendix EU to the immigration rules.

(2) This paragraph applies to a person who is an overseas visitor by virtue of section 39 of the 2014 Act who—

- (a) is eligible to apply for leave to enter or remain in the United Kingdom under Appendix EU to the immigration rules, and
- (b) makes a valid application for leave to enter or remain in the United Kingdom under that Appendix to those rules after the application deadline.

(3) This paragraph applies to a person who is an overseas visitor by virtue of section 39 of the 2014 Act who—

- (a) was granted limited leave to enter or remain in the United Kingdom under Appendix EU to the immigration rules, and
- (b) after the expiry of that limited leave to enter or remain, makes a valid application for indefinite leave to enter or remain in the United Kingdom under Appendix EU to the immigration rules.

(4) Where it is determined under Appendix EU to the immigration rules not to grant leave to enter or remain in the United Kingdom to a person pursuant to an application mentioned in paragraph (2)(b) or (3)(b), as the case may be, a Local Health Board or NHS trust must make and recover charges for any relevant services provided to that person during the period specified in paragraph (1).

(5) Where a person is granted leave to enter or remain in the United Kingdom pursuant to an application mentioned in paragraph (2)(b) or (3)(b)—

- (a) if the Local Health Board or NHS trust has made charges for relevant services provided during the period specified in paragraph (1), it must not recover those charges;
- (b) if the Local Health Board or NHS trust has made and recovered charges for relevant services provided during the period specified in paragraph (1), it must repay any sum paid in respect of those charges in accordance with regulation 8.

(6) In paragraph (2), “application deadline” has the meaning given in regulation 2 of the Citizens’ Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020(11).”

### **Amendment of regulation 5**

6. In regulation 5(a) (exemption from charges for treatment the need for which arose during the visit) of the Principal Regulations, after “a national of a member state,” insert “a British citizen,”.

### **New regulation 5A**

7. After regulation 5 (exemption from charges for treatment the need for which arose during the visit) of the Principal Regulations insert—

#### **“EU Exit: transitional arrangements**

**5A.** Where an overseas visitor who is ordinarily resident in an EEA state or Switzerland has—

- (a) before implementation period completion day received relevant services from a Local Health Board or NHS trust, or
- (b) on or after implementation period completion day received relevant services from a Local Health Board or NHS trust as part of a course of treatment which commenced before implementation period completion day,

the charges payable in respect of those services must be calculated in the same way as provided for by regulation 13(1) of the National Health Service (Cross-Border Healthcare) Regulations 2013(12).”

### **Amendment of Schedule 2**

8.—(1) Schedule 2 (countries or territories in respect of which the United Kingdom has entered into a reciprocal agreement) to the Principal Regulations is amended as follows.

(2) At the appropriate place insert—

- (a) “Bosnia and Herzegovina”;
- (b) “Faroe Islands”;
- (c) “Kosovo”;
- (d) “Liechtenstein”;
- (e) “Montenegro”;
- (f) “North Macedonia”; and
- (g) “Serbia”.

(3) Omit—

- (a) “Barbados”;
- (b) “Iceland”;
- (c) “Russian Federation”;
- (d) “the Union of Soviet Socialist Republics except the States of Estonia, Latvia, Lithuania and the Russian Federation”; and

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(11) [S.I. 2020/1209](#)

(12) [S.I. 2013/2269](#). These Regulations are revoked on implementation period completion day by [S.I. 2019/777](#), subject to saving and transitional provision in regulation 15 to 17 of those Regulations.

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**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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(e) “Yugoslavia”.