SCOTTISH STATUTORY INSTRUMENTS

2019 No. 333

EXITING THE EUROPEAN UNION

NATIONAL HEALTH SERVICE

The National Health Service (Charges to Overseas Visitors) (Scotland) (Amendment) (EU Exit) Regulations 2019

Made - - - - at 11.30 a.m. on 23rd October 2019

Laid before the Scottish Parliament at 2 p.m. on 23rd October 2019

Coming into force in accordance with regulation 1(2)

The Scottish Ministers make the following Regulations in exercise of powers conferred by sections 98 and 105 of the National Health Service (Scotland) Act 1978(**a**) and all other powers enabling them to do so.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the National Health Service (Charges to Overseas Visitors) (Scotland) (Amendment) (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) (Scotland) Regulations 1989(**b**).

Amendment of regulation 1

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

(2) For the definition of "member of the family", substitute—

> ""member of the family", in relation to a national of an EEA State, a frontier worker, a stateless person or a refugee, has the meaning it had for the purposes of Regulation (EC) No 883/2004(**c**) or (as the case may be) Regulation (EEC) 1408/71(**d**) immediately before exit day;".

(**a**) 1978 c.29. Section 98 was amended by the Health and Medicines Act 1988 (c.49), section 7(13) and (14). Section 105(7), which was amended by the Health Services Act 1980 (c.53), schedule 6, paragraph 5 and schedule 7, the Health and Social Services and Social Security Adjudications Act 1983 (c.41), schedule 9, paragraph 24 and the Health Act 1999 (c.8), schedule 4, paragraph 60, contains provisions relevant to the exercise of the powers under which these Regulations are made. Section 108(1) contains definitions of "prescribed" and "regulations" relevant to the exercise of the statutory powers under which these Regulations are made. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of the Scotland Act 1998 (c.46), section 53.

(**b**) S.I. 1989/364, amended by S.I. 1992/411, S.I. 1994/1770, S.I. 1998/251, S.S.I. 2004/369, S.S.I. 2006/141, S.S.I. 2008/290, S.S.I. 2009/177, S.S.I. 2012/87 and S.S.I. 2014/70.

(**c**) OJ L 166, 30.04.2004, p.1.

(**d**) OJ L 149, 05.07.1971, p.2 (OJ/SE 1st Series vol 2, p.416).

(3) After the definition of "child" insert—

""competent institution" has the meaning it had in Regulation (EC) No 883/2004 or (as the case may be) Regulation (EEC) No 1408/71 immediately before exit day;".

Amendment of regulation 4

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

(2) After sub-paragraph (c) insert—

"(ca) who is a stateless person or a refugee or a member of the family of a stateless person or a refugee resident in each case in the territory of an EEA State or Switzerland; or".

(3) In sub-paragraph (l) for "another" substitute "an".

(4) Omit sub-paragraph (m).

(5) In sub-paragraph (p)(i), after "State" insert "which has entered into a reciprocal agreement which comes into effect on or after exit day".

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 paragraph (b), for "another" substitute "an".

(3) In paragraph (c), for "another" substitute "an".

New regulation 4B

5. After regulation 4A insert—

"Reciprocal arrangements with EEA States on or after exit day

4B. No charge may be made or recovered in respect of any services forming part of the health service to an overseas visitor where those services are provided in circumstances covered by a reciprocal agreement with an EEA State where that agreement comes into force on or after exit day.".

Amendment of regulation 5

6. In regulation 5 (exemption from charges for treatment the need for which arose during the visit) of the Principal Regulations omit paragraph (a).

New regulations 5A to 5C

7. After regulation 5 insert—

"Overseas visitors from the Republic of Ireland: treatment the need for which arose during the visit

5A. No charge may be made or recovered for services forming part of the health service provided only for the purpose of giving treatment the need for which arose during the visit in respect of 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: treatment the need for which arose during the visit

5B.—(1) No charge may be made or recovered for services forming part of the health service provided only for the purpose of giving treatment the need for which arose during the visit in respect of an overseas visitor who is a relevant frontier worker.

(2) In paragraph (1) "a relevant frontier worker" means a person who—

(a) 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.

Overseas visitors from EEA States where no reciprocal agreement: treatment the need for which arose during the visit

5C.—(1) This regulation applies only where regulation 4B (reciprocal arrangements with EEA States) does not apply.

(2) No charge may be made or recovered for services forming part of the health service provided only for the purpose of giving treatment, the need for which arose during the visit, in respect of an overseas visitor described in paragraph (3).

(3) For the purposes of paragraph (2) an overseas visitor is a person who is resident in an EEA State and, at the time that the treatment which constitutes the service is provided—

(a) holds a European Health Insurance card issued by the competent institution of an EEA State or Switzerland,

(b) holds a Provisional Replacement Certificate issued by the competent institution of an EEA State or Switzerland, or

(c) would have been eligible to be issued with a European Health Insurance Card by the United Kingdom if exit day had not occurred.".

New regulations 6B and 6C

8. After regulation 6A (exemption from charges for exceptional humanitarian reasons) insert—

"**Exemption from charges for overseas visitors with UK reciprocal healthcare entitlements before exit day**

6B.—(1) No charge may be made or recovered in respect of any services forming part of the health service 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

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

(2) In paragraph (1) "UK reciprocal healthcare document" means an S1 certificate, A1 healthcare certificate, European Health Insurance Card or equivalent document issued by a competent institution of the United Kingdom.

EU Exit: transitional arrangements

6C.—(1) No charge may be made or recovered in respect of any services forming part of the health service 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 services forming part of the health service provided before 31 December 2020 to a person who is an overseas visitor by virtue of section 39 of the Immigration Act 2014(**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). This 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 schedule 2

9. In schedule 2 (countries or territories in respect of which the United Kingdom government has entered into a reciprocal agreement) of the Principal Regulations, for the list of entries substitute—

"Anguilla

Australia

Bosnia and Herzegovina

British Virgin Islands

Falkland Islands

Faroe Islands

Gibraltar

Iceland

Isle of Man

Jersey

Kosovo

Liechtenstein

North Macedonia

Montenegro

Montserrat

New Zealand

Norway

Serbia

(**a**) 2014 c.22.
(**b**) Appendix EU was amended by the statement of changes in immigration rules presented to Parliament on 7 March 2019 (HC 1919).

St Helena

Switzerland

Turks and Caicos Islands".

JEANE FREEMAN
A member of the Scottish Government

St Andrew's House,
Edinburgh
At 11.30 a.m. on 23rd October 2019

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the National Health Service (Charges to Overseas Visitors) (Scotland) Regulations 1989 ("the Principal Regulations") which provide for the making and recovery of charges for health services provided to certain persons who are not ordinarily resident in the United Kingdom.

The Regulations come into force on exit day and make changes consequential on the United Kingdom's exit from the European Union. Regulation 2 makes amendments to definitions in the Principal Regulations. Regulation 5 introduces new regulation 4B to the Principal Regulations to provide that no charge may be made for treatment provided to overseas visitors from EEA States which have entered into a reciprocal healthcare agreement which comes into effect on or after exit day. Regulations 3 and 4 make consequential amendments.

Regulations 6 and 7 make amendments to the Principal Regulations which provide for exemptions for charges for treatment the need for which arose during an individual's visit.

Regulation 7 introduces new regulations 5A, 5B and 5C to the Principal Regulation. New regulation 5A exempts from charges overseas visitors who are resident in the Republic of Ireland and are Irish or British citizens. New regulation 5B provides an exemption for frontier workers in the UK. New regulation 5C provides an exemption for overseas visitors resident in an EEA State which applies where no reciprocal arrangement is in place.

Regulation 8 introduces new regulations 6B and 6C to the Principal Regulations. Regulation 6B provides an exemption for those visitors who are ordinarily resident in an EEA State or Switzerland and hold a valid UK reciprocal healthcare document (an S1 or A1 healthcare certificate, a 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 6C provides exemptions from charges which will apply on a transitional basis to overseas visitors from an EEA State or Switzerland in specified circumstances. Paragraph (1) exempts services forming 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. Paragraph (2) provides exemptions for charges for services which are provided before 31 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 in the United Kingdom by virtue of the Appendix EU to the immigration rules.

Regulation 9 substitutes the list of entries in schedule 2 of the Principal Regulations which specifies those countries or territories which have entered into a reciprocal agreement with the United Kingdom.

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