

2019 No. (W.)

**EXITING THE EUROPEAN
UNION, WALES**

**NATIONAL HEALTH
SERVICE, WALES**

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

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the National Health Service (Charges to Overseas Visitors) Regulations 1989 (“the Principal Regulations”), which provide for the making and recovery of charges for relevant services provided under the National Health Service (Wales) Act 2006 (c. 42) to certain persons not ordinarily resident in the United Kingdom.

Regulation 1 contains commencement, application 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 1 of the Principal Regulations to insert definitions of “Regulation (EC) No 883/2004”, “Regulation (EEC) No 1408/71” and “relevant services”. It also amends the existing definition of a “member of the family”.

Regulation 3 amends regulation 4 of the Principal Regulations to provide an exemption from charges for overseas visitors in circumstances where this is captured by a reciprocal agreement with an EEA state or Switzerland which comes into effect on or after exit day.

Regulation 4 amends regulation 4A of the Principal Regulations to reflect the fact that the term “Member state” will not capture the United Kingdom after exit day.

Regulation 5 inserts new regulations 4B and 4C into the Principal Regulations.

Regulation 4B 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 4C 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 6 amends regulation 5 of the Principal Regulations by adding “a British citizen” to the categories of persons who will be exempt from charges for needs arising treatment after exit day.

Regulation 7 inserts a new regulation 5A into the Principal Regulations. The new regulation provides an exemption from charges which will apply on a transitional basis to overseas visitors from an EEA state or Switzerland on or after exit day in circumstances where a course of treatment was authorised before exit day in accordance with Regulation (EC) No 883/2004 or Regulation (EEC) No 1408/71.

Regulation 8 adds the Faroe Islands, Liechtenstein, Norway and Switzerland to the list of countries in Schedule 2 to the Principal Regulations which concerns reciprocal agreements.

The Welsh Ministers’ Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with these Regulations. A copy can be obtained from the Department of Health and Social Service, Welsh Government, Cathays Park, Cardiff, CF10 3NQ.

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

Made 26 June 2019

Laid before the National Assembly for Wales
28 June 2019

*Coming into force in accordance with
regulation 1(2)*

The Welsh Ministers make these Regulations in exercise of the powers conferred by sections 124, and 203(9) and (10) of the National Health Service (Wales) Act 2006(1).

Title, commencement, application and interpretation

1.—(1) The title of these Regulations is the National Health Service (Charges to Overseas Visitors) (Amendment) (Wales) (EU Exit) Regulations 2019.

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

(3) These Regulations apply in relation to Wales.

(4) In these Regulations, “the Principal Regulations” means the National Health Service (Charges to Overseas Visitors) Regulations 1989(2).

(1) 2006 c. 42.

(2) S.I. 1989/306, amended by S.I. 2004/614; S.I. 2004/1433 (W. 146); S.I. 2009/1824 (W. 165); S.I. 2009/3005 (W. 264); S.I. 2010/730 (W. 71); S.I. 2010/927 (W. 94); S.I.

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) ““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(1);”;
- (b) ““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 exit day(2);”;
- (c) ““relevant services” means accommodation, services or facilities(3) which are provided, or whose provision is arranged, under the National Health Service (Wales) Act 2006(4) other than—
 - (a) primary medical services provided under Part 4 (medical services);
 - (b) primary dental services provided under Part 5 (dental services);
 - (c) primary ophthalmic services provided under Part 6 (ophthalmic services); or
 - (d) 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

2011/1043; S.I. 2011/2906 (W. 310), S.I. 2012/1809; S.I. 2014/1622 (W. 166); and S.I. 2015/1985; there are other amending instruments but none is relevant to these Regulations.

- (1) 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).
- (2) 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).
- (3) “Facilities” is defined in section 206(1) of the National Health Service (Wales) Act 2006.
- (4) 2006 c. 42.

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 comes into effect on or after exit day;”.

Amendment of regulation 4A

4.—(1) Regulation 4A(1) (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”.

New regulations 4B and 4C

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

“Overseas visitors with UK reciprocal healthcare entitlements before exit day

4B.—(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

(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—

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

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

“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.

Frontier workers

4C.—(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.”

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. 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 planned treatment which was authorised before exit day in accordance with Regulation (EC) No 883/2004 or Regulation (EEC) No 1408/71.”

Amendment of Schedule 2

8. In Schedule 2 (countries or territories in respect of which the United Kingdom has entered into a reciprocal agreement) to the Principal Regulations, at the appropriate place insert—

- (a) “Faroe Islands”;
- (b) “Liechtenstein”;
- (c) “Norway”; and
- (d) “Switzerland”.

Vaughan Gething

Minister for Health and Social Services, one of the
Welsh Ministers

26 June 2019