

## **Explanatory Memorandum to the National Health Service (Charges to Overseas Visitors) (Amendment) (Wales) (EU Exit) Regulations 2020**

This Explanatory Memorandum has been prepared by Health and Social Services Group and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

### **Minister's Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the National Health Service (Charges to Overseas Visitors) (Amendment) (Wales) (EU Exit) Regulations 2020 and I am satisfied that the benefits justify the likely costs.

Vaughan Gething AM

**Minister for Health and Social Services**

21 December 2020

## **PART 1**

### **1. Description**

These Regulations amend the National Health Service (Charges to Overseas Visitors) Regulations 1989 (SI 1989/306) (the Principal Regulations).

The Principal Regulations allow Local Health Boards (LHBs) in Wales to recover charges from overseas visitors who are not ordinarily resident in the United Kingdom (UK) for certain categories of healthcare provided to them in Wales, unless the overseas visitor, or the service they receive, falls within an exemption.

These Regulations are being made in consequence of the UK's withdrawal from the European Union (EU). Amendments to the Principal Regulations are required to ensure that the law remains operable, existing exemptions still operate effectively and there is consistency of approach with England following EU Exit implementation period completion date in the event of a No Deal exit.

### **2. Matters of special interest to the Legislation, Justice and Constitution Committee**

In accordance with section 11A(4) of the Statutory Instruments Act 1946, as inserted by Sch.10 para 3 of the Government of Wales Act 2006, the Llywydd has been informed that the Regulations will come into force less than 21 days from the date of laying.

Not adhering to the 21 day convention allows the Regulations to come into force on 31 December, Implementation Period completion day. This will ensure the continued effective operation of the Principal Regulations and that specified categories of visitors from EU/EEA States and Switzerland remain exempt from charging for NHS services in Wales, in the event that the UK leaves the EU without a deal.

### **3. Legislative background**

The instrument is being made under section 124 of the National Health Service (Wales) Act 2006 (the 2006 Act) which confers a power on the Welsh Ministers to make regulations for the making and recovery of charges from persons who are not "ordinarily resident" in Great Britain for NHS services.

The instrument is also being made under section 203(9) and (1) of the 2006 Act and is subject to the negative resolution procedure.

### **4. Purpose and intended effect of the legislation**

The Regulations will correct references to EU law that will be inoperable after the UK leaves the EU and make provision on the chargeable status of EEA

State and Swiss visitors using NHS services in Wales in the event of a No Deal at implementation period completion day.

The amendments will ensure that specified categories of visitors from EU/EEA States and Switzerland remain exempt from charging for particular NHS care.

The Regulations:

- Remove references to EU law and rights derived under EU law contained in the Principal Regulations that may no longer be operable or coherent after implementation period completion day.
- Include a provision for a S2 Healthcare Visitor in the UK for planned treatment to be charged for any treatment not covered by their S2 certificate.
- Provide an exemption for charging overseas visitors with citizens' rights under Title III of Part 2 of the Withdrawal Agreement, Title III of Part 2 of the EEA EFTA separation agreement or the Swiss citizens' rights agreement.
- Provide an exemption from charging for UK S1 state pensioners on temporary visits to Wales to those already living in the EEA/Switzerland pre-2021.
- Provide an exemption from charging in relation to late applications to the EU Settlement Scheme.
- Preserves the existing rights from charging family members in certain cases.
- Amend Schedule 2 to the Principle Regulations to add Bosnia and Herzegovina, the Faroe Islands, Kosovo, Liechtenstein, Montenegro, North Macedonia and Serbia to the list of countries and remove Barbados, Iceland, Russian Federation, the Union of Soviet Socialist Republics and Yugoslavia from the list of countries.
- Revoke the National Health Service (Charges to Overseas Visitors) (Amendment) (Wales) (EU Exit) Regulations 2019 which were prepared for Exit Day and consequently do not reflect the provisions of the EU Withdrawal Agreement, the EEA EFTA separation agreement or the Swiss Citizens' rights agreement.

## **5. Consultation**

No public consultation was undertaken. The purpose of the instrument is to enable the law and the existing exemptions still operate effectively after the withdrawal of the UK from the EU.

## **PART 2 – REGULATORY IMPACT ASSESSMENT**

### **6. Options**

Two options have been considered:

Option 1: - Do nothing, retain the National Health Service (Charges to Overseas Visitors) Regulations 1989 (SI 1989/306) as currently in force.

Option 2: - Amend the National Health Service (Charges to Overseas Visitors) Regulations 1989.

#### **Option 1: Do nothing, retain The National Health Service (Charges to Overseas Visitors) Regulations 1989 (SI 1989/306) as currently in force**

In the event that the UK leaves the EU without a ratified agreement, the rights of EU/EEA and Swiss citizens which derive from EU law would fall away.

Free movement rights for EU citizens, EEA EFTA nationals, and Swiss nationals is implemented primarily through the Immigration (European Economic Area) Regulations 2016 (the 'EEA Regulations 2016'). The EEA Regulations 2016 will be revoked on Implementation Period completion day (i.e. 31 December 2020) at which time EU citizens, EEA EFTA nationals, and Swiss nationals will become subject to immigration control and therefore require leave to enter or remain in the UK in accordance with the EU Settlement Scheme.

There would be an immediate loss of rights for particular residents of the EU/EEA/Switzerland in the event that the UK leaves the EU without a deal by implementation period completion date. For example, UK S1 state pensioners on temporary visits to Wales who are already living in the EEA/Switzerland pre-2021 would not have an automatic entitlement to receive free treatment on their return to the UK after 1 January 2021 and EU/EEA and Swiss citizens will be within the definition of "overseas visitor" (i.e. not ordinarily resident) if they make a late application to the EU Settlement Scheme until their application is processed and Settled or Pre-settled status is awarded.

Technical references to aspects of EU reciprocal healthcare arrangements will no longer be applicable following implementation period completion date in the event of a No Deal and parts of the Regulations would be inoperable. For example where an overseas visitor from an EEA state or Switzerland, has either received treatment before implementation period completion day or is part way through treatment on implementation period completion day, they would not remain exempt from charging after implementation period completion day in respect of that treatment.

Under option 1 there could be cost savings for the NHS in cases where an EU/EEA/Swiss resident is not covered by another existing exemption in the 1989 Regulations and is chargeable. However, it is not possible to estimate the extent of these savings but it is likely they would be minimal. Local Health Boards currently receive a recurring annual allocation of £822,000 from Welsh

Government for the treatment of overseas visitors who are not chargeable due to reciprocal healthcare agreements (this covers both EU and non EU agreements). The continuation of this allocation will assist LHBs in cases where no costs are recoverable from overseas visitors.

## **Option 2: - Amend the National Health Service (Charges to Overseas Visitors) Regulations 1989**

The objective is to correct references to EU law that will be inoperable after the UK leaves the EU and ensure that specified categories of visitors from EU/EEA States and Switzerland remain exempt from charging for NHS services in Wales in the event of a No Deal at implementation period completion day. They will provide equality for EEA state or Switzerland citizens accessing healthcare with their counterparts in the rest of the United Kingdom.

In summary, the amendment regulations will:

- Remove references to EU law and rights derived under EU law contained in the Principal Regulations that may no longer be operable or coherent after implementation period completion day.
- Include a provision for a S2 Healthcare Visitor in the UK for planned treatment to be charged for any treatment not covered by their S2 certificate.
- Provide an exemption for charging overseas visitors with citizens' rights under Title III of Part 2 of the Withdrawal Agreement, Title III of Part 2 of the EEA EFTA separation agreement or the Swiss citizens' rights agreement.
- Provide an exemption from charging for UK S1 state pensioners on temporary visits to Wales to those already living in the EEA/Switzerland pre-2021.
- Provide an exemption from charging in relation to late applications to the EU Settlement Scheme.
- Preserves the existing rights from charging family members in certain cases.
- Amend Schedule 2 to the Principle Regulations to add Bosnia and Herzegovina, the Faroe Islands, Kosovo, Liechtenstein, Montenegro, North Macedonia and Serbia to the list of countries and remove Barbados, Iceland, Russian Federation, the Union of Soviet Socialist Republics and Yugoslavia from the list of countries.
- Revoke the National Health Service (Charges to Overseas Visitors) (Amendment) (Wales) (EU Exit) Regulations 2019, which were prepared for Exit Day in the event of a No Deal scenario, but consequently do not now reflect the provisions of the EU Withdrawal Agreement, the EEA EFTA separation agreement or the Swiss Citizens' rights agreement. Those provisions in the National Health Service (Charges to Overseas Visitors) (Amendment) (Wales) (EU

Exit) Regulations 2019 which are still required after implementation period completion day have been included in these new amendment regulations.

The changes being made essentially relate to ensuring the law operates correctly at EU implementation period completion day for EU citizens in a No Deal scenario; the continuation of existing rights under Title III of Part 2 of the Withdrawal Agreement, Title III of Part 2 of the EEA EFTA separation agreement or the Swiss citizens' rights agreement and preserves current healthcare arrangements post EU Implementation Period for EU citizens in a No Deal scenario. It is estimated that there would be minimal impact on costs in the day to day delivery of the service as these people are currently exempt from charging. LHBs will continue to receive the current annual allocation of £822,000 from Welsh Government for the treatment of overseas visitors who are not chargeable due to reciprocal healthcare agreements (this covers both EU and non EU agreements). The continuation of this allocation will assist LHBs in cases where there are not reciprocal healthcare agreements with Member States and where no costs are recoverable from overseas visitors.