

## **Explanatory Memorandum to the National Health Service (Charges to Overseas Visitors) (Amendment) (Wales) (EU Exit) Regulations 2019**

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 2019 and I am satisfied that the benefits justify the likely costs.

Vaughan Gething AM

**Minister for Health and Social Services**

28 June 2019

## **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 address deficiencies arising from EU Exit and to ensure that the existing exemptions still operate effectively after the UK has left the EU.

### **2. Matters of special interest to the Constitutional and Legislative Affairs Committee**

The SI is being laid under the 'Negative Procedure', pursuant to powers conferred by sections 124, and 203(9) and (10) of the National Health Service (Wales) Act 2006. The SI is required to ensure the effective operation of the Principal Regulations and to safeguard the position of UK citizens resident in an EEA State/Switzerland with existing reciprocal healthcare entitlements who return to Wales after Exit day.

### **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 (10) 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 EU Exit.

The amendments will ensure that specified categories of visitors from EU/EEA States and Switzerland remain exempt from charging for particular NHS care. The amendments are also required to maintain the current exemptions in the Principal Regulations following the making of the Social Security Coordination

(Reciprocal Healthcare) (Amendment etc) (EU Exit) Regulations 2019 (SI 2019/776).

The Regulations:

- Preserve the existing right for individuals who are ordinarily resident in an EEA State or Switzerland to receive NHS care without a charge in circumstances where they either held a UK-issued reciprocal healthcare document on exit day or would have been eligible to receive one had the pre-exit rules continued to apply.
- Provide an exemption from charges for needs arising treatment received by frontier workers when pursuing an activity as an employed or self-employed person in the United Kingdom.
- Provide an exemption from charging for planned treatment provided to EEA or Swiss visitors on or after Exit day which is part of a course of treatment which was authorised before Exit day.
- Provide an exemption from charges for overseas visitors for relevant services covered by a reciprocal agreement with an EEA State or Switzerland which comes into effect on or after Exit day.
- Remove EU references contained in the Principal Regulations that may no longer be operable or coherent after Exit day.

## **5. Consultation**

As there is no policy change, no public consultation was undertaken. The purpose of the instrument is to enable the current legislative and policy approach to remain unchanged by 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 in certain cases as a result of the approach taken towards the relevant EU legislation by the Social Security Coordination (Reciprocal Healthcare) (Amendment etc.) (EU Exit) Regulations 2019 (“the Social Security (EU Exit) Regulations”).

The Social Security (EU Exit) Regulations amend retained direct EU law relating to reciprocal healthcare so that, post-EU Exit, the UK is not responsible for unilaterally funding healthcare for tourists to the UK and EU visitors.

Subject to certain transitional and saving provisions, the Social Security (EU Exit) Regulations ‘switch-off’ reciprocal healthcare entitlements deriving from Regulations 1408/71, 883/2004 and 987/2009. The Regulations will, however, continue the effect of the current EU Regulations in limited circumstances, to include the situation where the UK has entered into bilateral arrangements with certain EEA countries or Switzerland. The Regulations will also save relevant provisions of the EU Regulations to preserve the position of key groups of patients in the course of treatment on exit day, irrespective of any reciprocity in place.

As the savings provisions will only operate in particular circumstances, there would be an immediate loss of rights for particular residents of the EU/EEA/Switzerland in the event that the UK were to leave the EU without a deal on the terms of withdrawal. For example, UK citizens living in an EU State who either held a UK-issued reciprocal healthcare document (or would have been eligible to receive one) prior to Exit day would not have an automatic entitlement to receive free treatment on their return to the UK after Exit day in the event of a No Deal Exit.

Under option 1 there could be potential cost savings for the NHS in cases where an EU/EEA/Swiss resident is not covered by another existing exemption in the 1989 Regulations. However, it is estimated that any savings would be very minimal and of no significant benefit to the NHS. 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 covered both EU and non EU agreements). The continuation of this allocation will assist LHBs in cases where no costs are recoverable from overseas visitors.

The Social Security (EU Exit) Regulations 'switch-off' reciprocal healthcare entitlements and LHBs will lose the income they claimed from the Department for Work and Pensions when treating EEA and Swiss patients who provided evidence of an EHIC when seeking treatment. The incentive for reporting these patients was 25% of the treatment cost incurred. In 2017/18 LHBs were paid a total of £113,000 and for 2018/19 the amount up to February 2019 was £130,000.

Welsh LHBs invoiced directly EEA and Swiss patients who were unable to provide evidence of an European Health Insurance Card (EHIC) in 2017/2018, £54,000.

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

The objective is to maintain individuals' rights. Charging rules will be amended in relation to the rights of EU citizens accessing NHS funded healthcare while residing in, or visiting the UK. This includes for example, the protection of the rights for residents of the EU/EEA/Switzerland in cases where they had an entitlement to access free healthcare in the UK immediately before exit day. The amendments will also make technical changes to ensure the legislation functions effectively from the point at which the UK exits the EU.

In summary, the amendment regulations will:

- remove references to EU law that are no longer operable following the UK's departure from the EU;
- preserve the existing right for individuals who are ordinarily resident in an EEA State or Switzerland to receive NHS care without a charge in circumstances where they either held a UK-issued reciprocal healthcare document on exit day or would have been eligible to receive one had the pre-exit rules continued to apply;
- provide an exemption from charges for needs arising treatment received by frontier workers when pursuing an activity as an employed or self-employed person in the United Kingdom;
- provide an exemption from charging for planned treatment provided to EEA or Swiss visitors on or after Exit day which is part of a course of treatment which was authorised before Exit day;
- provide an exemption from charges for overseas visitors for relevant services covered by a reciprocal agreement with an EEA State or Switzerland which comes into effect on or after Exit day..

As the changes being made will maintain the existing charging and exemption policy approach in the event of a No Deal EU Exit, it is estimated that there would be a nil impact on cost in the day to day delivery of the service. 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 covered 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.

Welsh LHBs invoiced directly EEA and Swiss patients who were unable to provide evidence of an European Health Insurance Card (EHIC) in 2017/2018, £54,000.