

# SL(5)707 – The National Health Service (Charges to Overseas Visitors) (Amendment) (Wales) (EU Exit) Regulations 2020

## Background and Purpose

These Regulations amend the National Health Service (Charges to Overseas Visitors) Regulations 1989 (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 made in consequence of the UK's withdrawal from the European Union (EU). These 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 EU/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.

## Procedure

Negative.

These Regulations were made by the Welsh Ministers before they were laid before the Senedd.

The Senedd can annul these Regulations within 40 days (excluding any days when the Senedd is: (i) dissolved, or (ii) in recess for more than four days) of the date they were laid before the Senedd.

## Technical Scrutiny

The following two points are identified for reporting under Standing Order 21.2 in respect of this instrument.

### **1. Standing Order 21.2(vi) – that its drafting appears to be defective or fails to fulfil statutory requirements.**

Regulation 4 contains an incorrect cross-reference. The reference to regulation 4A of the Principal Regulations in both the English and Welsh versions of these Regulations should be to regulation 4A(1). A Government response is requested.

### **2. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation.**



Regulation 8 amends Schedule 2 to the Principal Regulations, by inserting and omitting various countries and territories. Schedule 2 to the Principal Regulations lists the countries and territories in respect of which the UK Government has entered into reciprocal agreements. The position in England is contained in Schedule 2 to the National Health Service (Charges to Overseas Visitors) Regulations 2015 (England's Charging Regulations). The Explanatory Memorandum does not contain much additional explanation for the amendments made by regulation 8.

Specifically, regulation 8(2)(d) of these Regulations inserts Liechtenstein into Schedule 2 to the Principal Regulations and regulation 8(3)(b) of these Regulations omits Iceland from Schedule 2 to the Principal Regulations. Liechtenstein and Iceland are both members of the European Free Trade Association (EFTA).

Further, it is noted that Sweden remains listed within Schedule 2 to the Principal Regulations despite being a member of the EU.

It is not clear why Liechtenstein is inserted into Schedule 2 to the Principal Regulations when Iceland is omitted. It is also not clear why Sweden remains listed in Schedule 2 to the Principal Regulations when no other EU Member States are listed.

The position in relation to citizens of Liechtenstein and Iceland, as well as Norway, are governed by the EEA EFTA separation agreement. Similarly, the position in relation to citizens of Sweden, as well as the other EU Member States, are governed by the withdrawal agreement between the EU and UK.

Rights under both agreements are provided for under regulation 4B of the Principal Regulations, which is inserted by virtue of regulation 5 of these Regulations. There does not, therefore, appear to be a need to include the signatories to the EEA EFTA separation agreement, nor the EU withdrawal agreement, within Schedule 2 to the Principal Regulations.

Further, it is noted that the Explanatory Memorandum states that:

*"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."*

Liechtenstein, Iceland and Sweden are not included in England's Charging Regulations and so the position as set out in Schedule 2 to the Principal Regulations is not consistent with that under England's Charging Regulations.

Welsh Government is asked to explain:

- (a) why Liechtenstein is inserted into, and Iceland is omitted from, Schedule 2 to the Principal Regulations; and
- (b) whether Sweden should be omitted from Schedule 2 to the Principal Regulations.



## Merits Scrutiny

The following two points are identified for reporting under Standing Order 21.3 in respect of this instrument.

### **3. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd.**

We note the breach of the 21-day rule (i.e. the rule that 21 days should pass between the date a “made negative” instrument is laid before the Senedd and the date the instrument comes into force), and the explanation for the breach provided by Rebecca Evans MS, Minister for Finance and Trefnydd, in a letter to the Llywydd dated 21 December 2020.

In particular, we note what the letter says regarding why these Regulations (referred to as “the 2020 Regulations” in the letter) breach the 21 day rule:

*“The 2020 Regulations were made and laid as soon as practicable after the final draft SI for amending England’s Charging Regulations was shared by DHSC in early December. The 2020 Regulations were contingent on these and their lateness has meant that Wales’ Regulations have come into force less than 21 days after they were made in order to come into effect by IP completion day at the absolute latest.*

*“Not adhering to the 21 day convention allows the Regulations to come into force on 31 December, IP completion day in order to ensure the continued effective operation of the Principal Regulations following the UK leaving the EU with No Deal. Not adhering to the 21 day rule is therefore necessary and justifiable in this case.”*

### **4. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd.**

Regulation 2(2)(h) inserts a new definition of “relevant services”, which refers to provisions in the National Health Service (Wales) Act 2006. One of the services is to “primary ophthalmic services provided under Part 6” of the 2006 Act, although the 2006 Act uses the definition of “general ophthalmic services”. A Government response is requested.

## Welsh Government response

A Welsh Government response is required in respect of Technical Points 1 and 2 and Merits Point 4.

### **Legal Advisers**

**Legislation, Justice and Constitution Committee**

**20 January 2021**

