

# SL(5)780 – The National Health Service (Charges to Overseas Visitors) (Amendment) (Wales) (EU Exit) Regulations 2021

## Background and Purpose

These Regulations amend the National Health Service (Charges to Overseas Visitors) Regulations 1989 (the Principal Regulations). Amendments to the Principal Regulations are required to ensure that the law remains operable.

The Principal Regulations allow Local Health Boards (LHBs) in Wales to recover charges from overseas visitors who are not ordinarily resident in the 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 provide an exemption to any overseas visitor who has an entitlement to the provision of health services without charge by virtue of a right arising from the Social Security Co-ordination (SSC) Protocol provisions of the UK Trade and Cooperation Agreement (TCA) as a consequence of the UK's withdrawal from the European Union.

These Regulations also ensure that visitors from Ireland and Norway remain exempt from charging for particular NHS care following new/revised reciprocal healthcare arrangements between those countries and the UK.

## Procedure

Negative.

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

The Senedd can annul the 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

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

## Merits Scrutiny

The following 2 points are identified for reporting under Standing Order 21.3 in respect of this instrument.



**1. 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.**

These Regulations add Ireland and Norway to Schedule 2 to the Principal Regulations in order to reflect the UK's agreed reciprocal healthcare arrangements set out in a Memorandum of Understanding with Ireland and an agreement with Norway respectively. The Memorandum of Understanding between the UK and Ireland and the agreement between the UK and Norway each came into effect at 11:00pm on 31 December 2020.

As these arrangements commenced over 2 months ago, the Government is asked to explain the delay for making these Regulations. The Government are also asked whether any visitors from Ireland or Norway have been adversely effected due to the delay in making these Regulations.

**2. 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.**

The Principal Regulations were amended by the National Health Service (Charges to Overseas Visitors) (Amendment) (Wales) (EU Exit) Regulations 2020 (the 2020 Regulations). The Committee considered the 2020 Regulations, and raised two technical scrutiny points and two merits scrutiny points in its report on the 2020 Regulations. The first technical scrutiny point was noted by the Government. The Government responses to the second technical scrutiny point and the second merits scrutiny point each stated that the Government would "*correct this at the earliest possible opportunity*".

It is specifically noted that the technical point which the Government agreed to correct related to the amendment of Schedule 2 to the Principal Regulations in relation to countries that are members of the European Free Trade Association (EFTA). The Committee's report stated:

*"It is not clear why Lichtenstein is inserted into Schedule 2 to the Principal Regulations when Iceland is omitted."*

This lack of clarity remains with the insertion of Norway into the Schedule, alongside Lichtenstein, whilst Iceland remains omitted.

Welsh Government is asked to explain:

- (a) why these Regulations were not used as an opportunity to correct issues identified by the Committee, and which the Welsh Government noted and in two instances committed to correct "*at the earliest possible opportunity*"; and
- (b) why Lichtenstein and Norway are included in Schedule 2 to the Principal Regulations whilst Iceland remains omitted.



## Welsh Government response

### **Merits Scrutiny point 1:**

#### **Response:**

The Welsh Government notes the scrutiny point.

Delaying the making of these changes in Welsh law did not change Wales' obligation to operate the requirements of the Memorandum of Understanding with Ireland and a reciprocal healthcare agreement with Norway respectively as they are binding on the UK as a whole.

Officials also assessed the movement of people from Ireland and Norway would be low due to the closure of countries' borders and recommendations by governments over recent months to not travel in response to a further surge of Covid cases. Having regard to this it was considered not necessary to contravene the 21 day period for the amendment regulations.

Officials understand from Local Health Boards that no Irish or Norwegian citizens have been affected in Wales by the later introduction of these Regulations compared to the timing in England.

### **Merits Scrutiny point 2:**

#### **Response:**

The Welsh Government notes the scrutiny point.

It was an oversight by officials to not use these amendment regulations as an opportunity to correct issues identified by the Committee previously and which officials noted and committed to correct "*at the earliest possible opportunity*", this includes removing Liechtenstein and Sweden from Schedule 2.

Officials' initial understanding was that UK Government negotiations with the EFTA countries on reciprocal healthcare agreements would be concluded early in 2021 and the intention was for all these amendments to be made together in an effort to reduce the number of Statutory Instruments and improve clarity for LHBs. However, it became apparent to officials that these negotiations were unlikely to be fully concluded before the Senedd elections, therefore not reflecting the Social Security Co-ordination Protocol provisions of the UK Trade and Cooperation Agreement and the agreements with Ireland and Norway in the Welsh Charging Regulations would have resulted in the law in Wales being inaccurate until after the elections. Consequently the amendment regulations were made at the earliest point to ensure the 21 day period was completed before Easter recess but unfortunately we overlooked making the corrections previously identified by the Committee and failed to



remove Liechtenstein and Sweden from Schedule 2. These will all be corrected at the next set of changes to the Wales' Charging Regulations which is expected to be when the UK Government signs reciprocal healthcare agreements with the EFTA countries and the Charging Regulations require amendment to the countries listed in Schedule 2.

Sweden will be removed from Schedule 2 as Sweden is covered by the Social Security Co-ordination Protocol provisions of the UK Trade and Cooperation Agreement and therefore does not need to be separately listed in Schedule 2.

It is correct that Liechtenstein and Iceland should not be included in Schedule 2 until any new reciprocal healthcare agreements are put in place with those countries by the UK Government.

Norway should however be listed in Schedule 2 as the UK Government has resurrected an old reciprocal healthcare agreement with this country which provides for limited medically necessary treatment for UK citizen passport holders until any new reciprocal healthcare agreement is put in place.

## **Legal Advisers**

### **Legislation, Justice and Constitution Committee**

**15 March 2021**

