

WELSH HEALTH CIRCULAR



Llywodraeth Cymru
Welsh Government

Issue Date: 6 April 2021

STATUS: INFORMATION

CATEGORY: LEGISLATION

Title: The National Health Service (Cross-Border Healthcare) (Wales) (Amendment) Directions 2021 and the National Health Service (Reimbursement of the Cost of EEA Treatment) (Wales) (Amendment) Directions 2021

Date of Review: July 2022

For Action by:

All Local Health Boards and WAST.

Action required by: Immediate.

Sender: Chris Wright, Mental Health, Vulnerable Groups & NHS Governance, Health and Social Services Group

HSSG Welsh Government Contact(s):

Lyn Summers, Central Legislation Support Team, Mental Health, Vulnerable Groups & NHS Governance, Health and Social Services Group, lyn.summers@gov.wales

Chris Wright, Mental Health, Vulnerable Groups & NHS Governance, Health and Social Services Group, chris.wright@gov.wales

Mailbox: HSSG-CentralLegislationSupport@gov.wales

Enclosure(s): 2 (Annex 1, Annex 2)

Purpose

The purpose of this Welsh Health Circular is to inform you of the National Health Service (Cross-Border Healthcare) (Wales) (Amendment) Directions 2021 and the National Health Service (Reimbursement of the Cost of EEA Treatment) (Wales) (Amendment) Directions 2021 which were adopted on 25 March 2021.

Background Information

Following the UK-EU Trade and Cooperation Agreement (TCA) reciprocal healthcare arrangements between the UK and the EU under the Cross Border Directive (2011/24/EC) have been discontinued other than for transitional cases in progress on 31 December 2020. Under the Directive, patients were entitled to seek reimbursement for payment they make for health care from state or private providers within other parts of the EEA if it is the same as or equivalent to a service that would have been available to a patient in their circumstances within their Local Health Board area.

The Directive can therefore no longer be used by UK citizens to access healthcare treatment in the EU. However the National Health Service (Cross-Border Healthcare and Miscellaneous Amendments etc) (EU Exit) Regulations 2019 ("the 2019 Regulations") make provisions for the continuation of transitional cases, which are the cases in progress on Implementation Completion Date (31 December 2020).

To reflect the new provisions, two sets of Directions have been amended:

- the National Health Service (Cross-Border Health Care) (Wales) Directions 2013 (2013 No. 26) ("the Cross-Border Directions");
- the National Health Service (Reimbursement of Cost of EEA Treatment) (Wales) Directions 2010 ("the Reimbursement Directions").

The above Directions have been amended by the:

- National Health Service (Cross-Border Healthcare) (Wales) (Amendment) Directions 2021; and the
- National Health Service (Reimbursement of the Cost of EEA Treatment) (Wales) (Amendment) Directions 2021.

The amending Directions continue the Cross-Border Directions 2013 and the Reimbursement Directions 2010 for those transitional cases that continue to apply by virtue of the 2019 Regulations.

The amending Directions make it clear that the existing Directions are to continue to apply with modifications for transitional cases.

The amending Directions also make modifications to Local Health Board's (LHBs) obligations in relation to the provision of information etc. to the public to provide that

LHBs are no longer required to provide information regarding Directive treatments but rather must make reasonable efforts to provide information.

The Directions are published on the Welsh Government website at:

<https://gov.wales/national-health-service-cross-border-healthcare-wales-amendment-directions-2021>

and

<https://gov.wales/national-health-service-reimbursement-cost-eea-treatment-wales-amendment-directions-2021>

Action

We request that you familiarise yourselves with the amending Directions at the links above and act in accordance with them.

D I R E C T I O N S

2021 No. WG21-15

THE NATIONAL HEALTH SERVICE (WALES) ACT 2006

**The National Health Service (Cross-Border Healthcare) (Wales)
(Amendment) Directions 2021**

Made

25 March 2021

Coming into force in accordance with direction 1(2)

The Welsh Ministers give the following Directions in exercise of the powers conferred by sections 12(3), 203(9) and (10) and 204(1) of the National Health Service (Wales) Act 2006⁽¹⁾.

Title, commencement, application and interpretation

1.—(1) The title of these Directions is the National Health Service (Cross-Border Healthcare) (Wales) (Amendment) Directions 2021.

(2) These Directions come into force from implementation period completion day 2021.

(3) These Directions are given to Local Health Boards and apply in relation to Wales.

(4) In these Directions—

“the NHS Act” means the National Health Service (Wales) Act 2006;

“the Cross-Border Directions” means the National Health Service (Cross-Border Healthcare) (Wales) Directions 2013⁽²⁾.

(1) 2006 c. 42.

(2) 2013 No. 26. The Directions were made on 25 October 2013 and are available at <https://gov.wales/sites/default/files/publications/2019-07/national-health-service-cross-border-healthcare-wales-directions-2013-2013-no-26.pdf>

Savings and transitional provision relating to the Cross-Border Directions

2. The Cross-Border Directions are to continue to apply with the modifications made by the Schedule, to the provision of information to, and consideration of applications made by, patients in relation to whom any of the following continue to apply by virtue of regulation 15 of the National Health Service (Cross-Border Healthcare and Miscellaneous Amendments etc.) (EU Exit) Regulations 2019 (cross-border cases arising before implementation period completion day)(3)—

- (a) section 6A or 6B of the NHS Act (reimbursement of costs of services provided in an EEA state and prior authorisation)(4);
- (b) section 6BA or 6BB of the NHS Act (reimbursement of cost of services provided in an EEA state where expenditure incurred on or after 25 October 2013 and prior authorisation)(5);
- (c) the National Health Service (Cross-Border Healthcare) Regulations 2013(6).

Name,

Sioned Rees, Deputy Director, Welsh Government, under the authority of the Minister for Health and Social Services, one of the Welsh Ministers

Date: 25 March 2021

(3) S.I. 2019/777 as amended by S.I. 2020/1348.

(4) Sections 6A and 6B were inserted by S.I. 2010/915 and omitted by S.I. 2019/777, subject to savings and transitional provision.

(5) Sections 6BA and 6BB were inserted by S.I. 2013/2269 and omitted by S.I. 2019/777, subject to savings and transitional provision.

(6) S.I. 2013/2269; as amended by S.I. 2015/139 and S.I. 2015/238 and revoked by S.I. 2019/777, subject to savings and transitional provision.

SCHEDULE Direction 2

Cross-border cases arising before implementation period completion day

1. The Cross-Border Directions are to be read as if—

- (a) for direction 1(3) (application, commencement and interpretation) there were substituted—

“(3) These Directions apply to the provision of information to, and consideration of applications made in the exercise of the rights and entitlements mentioned in the Directive, by resident patients in relation to whom any of the following continue to apply by virtue of regulation 15 of the National Health Service (Cross-Border Healthcare and Miscellaneous Amendments etc.) (EU Exit) Regulations 2019—

 - (a) section 6A or 6B the National Health Service (Wales) Act 2006 (reimbursement of costs of services provided in an EEA state and prior authorisation);
 - (b) section 6BA or 6BB of the National Health Service Act 2006 (reimbursement of cost of services provided in an EEA state and prior authorisation);
 - (c) the National Health Service (Cross-Border Healthcare) Regulations 2013.”;
- (b) in direction 1(4) (application, commencement and interpretation)—
 - (i) in the appropriate place there were inserted—

““the Cross-Border Exit Regulations” means the National Health Service (Cross-Border Healthcare and Miscellaneous Amendments etc.) (EU Exit) Regulations 2019(7);”;
 - (ii) in the definition of “the Cross-Border Healthcare Regulations”, at the end there were inserted “as continued by regulation 15 of the Cross-Border Exit Regulations”;
 - (iii) in the definition of “Regulation (EC) No 883/2004”, at the end there were inserted “insofar as it applies by virtue of Title III of Part 2 of the withdrawal agreement (co-ordination of social security systems), Title III of Part 2 of the EEA EFTA separation agreement or the social security co-ordination provisions of the Swiss citizens’ rights agreement (co-ordination of social security systems)”;
 - (iv) in the definition of “resident patient”, for the reference to “the United Kingdom is” there were substituted “immediately before implementation period completion day the United Kingdom was”;
- (c) after direction 1(4) there were inserted—

“(5) In these Directions, a reference to section 6A, 6B, 6BA or 6BB of the NHS (Wales) Act is a reference to that section as continued by regulation 15 of the Cross-Border Exit Regulations.”;
- (d) in the heading to direction 4 (duty to publish information about healthcare services subject to prior authorisation), for “Duty to publish information” there were substituted “Information”;
- (e) in direction 4(1) (duty to publish information about healthcare services subject to prior authorisation)—
 - (i) after “each Local Health Board must” there were inserted “make reasonable efforts to”;
 - (ii) for “another EEA state” there were substituted “an EEA state”;
- (f) in the heading to direction 5, for “Duty to publish information” there were substituted “Information”;
- (g) in direction 5(1), after “each Local Health Board must” there were inserted “make reasonable efforts to”;
- (h) in the heading to direction 6, for “duty to provide” there were substituted “duty as to provision of”;
- (i) in direction 6 (Local Health Boards’ duty to provide information and advice and assistance to patients)—
 - (i) in paragraph (1), after “each Local Health Board must” there were inserted “make reasonable efforts to”;

- (ii) in paragraph (2), after “entitlements” there were inserted “as” and the words from “for the purpose of” to the end were omitted;
- (iii) in paragraph (3)—
 - (aa) after “The Local Health Board must” there were inserted “make reasonable efforts to”;
 - (bb) for “in any event” there were substituted “, so far as possible,”.

D I R E C T I O N S

2021 No. WG21-16

THE NATIONAL HEALTH SERVICE (WALES) ACT 2006

**The National Health Service
(Reimbursement of the Cost of EEA
Treatment) (Wales) (Amendment)
Directions 2021**

Made

25 March 2021

Coming into force in accordance with direction 1(2)

The Welsh Ministers give the following Directions in exercise of the powers conferred by sections 12(1)(b), 12(3), 203(9) and (10) and 204(1) of the National Health Service (Wales) Act 2006(8).

Title, commencement, application and interpretation

2.—(1) The title of these Directions is the National Health Service (Reimbursement of the Cost of EEA Treatment) (Wales) (Amendment) Directions 2021.

(2) These Directions come into force from implementation period completion day.

(3) These Directions are given to Local Health Boards and apply in relation to Wales.

(4) In these Directions—

“the NHS Act” means the National Health Service (Wales) Act 2006;

“the Reimbursement Directions” means the National Health Service (Reimbursement of the Cost of EEA Treatment) (Wales) Directions 2010(9).

(8) 2006 c. 42.

(9) 2010 No. 40. The Directions were made on 5 August 2010 and amended by the National Health Service (Reimbursement of the Cost of EEA Treatment) (Amendment) Directions 2013 (2013) No. 25 (“the Amendment Directions”). The Directions are available at <https://gov.wales/sites/default/files/publications/2019-07/the-national-health-service-reimbursement-of-the-cost-of-eea-treatment-wales-directions-2010-2010-no-40.pdf>
The Amendment Directions are available at <https://gov.wales/sites/default/files/publications/2019-07/national-health-service-reimbursement-of-the-cost-of-eea-treatment-wales-amendment-directions-2013-2013-no-25-no-w-25.pdf>

Saving and transitional provisions relating to the Reimbursement Directions

3. The Reimbursement Directions are to continue to apply with the modifications made by the Schedule, to the provision of information to, and consideration of applications made by, patients in relation to whom any of the following continue to apply by virtue of regulation 15 of the National Health Service (Cross-Border Healthcare and Miscellaneous Amendments etc.) (EU Exit) Regulations 2019 (cross-border cases arising before implementation period completion day)(**10**)—

- (a) section 6A or 6B of the NHS Act (reimbursement of costs of services provided in an EEA state and prior authorisation)(**11**);
- (b) section 6BA or 6BB of the NHS Act (reimbursement of cost of services provided in an EEA state where expenditure incurred on or after 25 October 2013 and prior authorisation)(**12**).

Name,

Sioned Rees, Deputy Director, Welsh Government, under the authority of the Minister for Health and Social Services, one of the Welsh Ministers

Date: 25 March 2021

(10) S.I. 2019/777 as amended by S.I. 2020/1348.

(11) Sections 6A and 6B were inserted by S.I. 2010/915 and omitted by S.I. 2019/777, subject to savings and transitional provision.

(12) Sections 6BA and 6BB were inserted by S.I. 2013/2269 and omitted by S.I. 2019/777, subject to savings and transitional provision.

SCHEDULE Direction 2

Cross-border cases arising before implementation period completion day

4. The Reimbursement Directions are to be read as if—

- (a) in direction 2 (interpretation) in the appropriate place there were inserted—

““the Cross-Border Exit Regulations” means the National Health Service (Cross-Border Healthcare and Miscellaneous Amendments etc.) (EU Exit) Regulations 2019⁽¹³⁾”;
- (b) direction 2 (interpretation) is to be read as if the existing text were to become paragraph (1) and after that paragraph there were inserted—

“(2) In these Directions, a reference to section 6A, 6B, 6BA or 6BB of the NHS (Wales) Act 2006 is a reference to that section as continued by regulation 15 of the Cross-Border Exit Regulations.”;
- (c) in the heading to direction 10 (duty to publish information about special services subject to prior authorisation), for “Duty to publish information” there were substituted “Information”;
- (d) in direction 10(1) after “each Local Health Board must” there were inserted “make reasonable efforts to”;
- (e) in the heading to direction 11 (duty to publish information on procedures for reimbursement and prior authorisation), for “Duty to publish information” there were substituted “Information”;
- (f) in direction 11, after “Each Local Health Board must” there were inserted “make reasonable efforts to”;
- (g) in direction 12(1) (advice and assistance)—
 - (i) after “Each Local Health Board must” there were inserted “make reasonable efforts to”;
 - (ii) for “another EEA state” in both places, there were substituted “an EEA state”;
- (h) for direction 13 (advice and assistance) there were substituted “Such advice and assistance is to be provided in accordance with the provisions of direction 6 of the National Health Service (Cross-Border Healthcare) (Wales) Directions 2013⁽¹⁴⁾”.

(13) S.I. 2019/777 as amended by S.I. 2020/1348.

(14) 2013 No. 26. The Directions were made on 25 October 2013 and are available at <https://gov.wales/sites/default/files/publications/2019-07/national-health-service-cross-border-healthcare-wales-directions-2013-2013-no-26.pdf>. The Directions were amended on implementation completion date and the amending directions are available at <https://gov.wales/national-health-service-cross-border-healthcare-wales-amendment-directions-2021>.