

Dear Colleague,

## **CROSS-BORDER HEALTHCARE AND PATIENT MOBILITY IN EUROPE – EU EXIT**

### **The Cross-border Health Care (EU Exit) (Scotland) (Amendment) Regulations 2020**

1. This letter provides guidance for NHS Scotland in handling requests from patients who are resident in Scotland or in the European Economic Area (EEA) and who wish to exercise their rights to receive healthcare under the provisions of the European Cross-border Healthcare Directive following the completion of the EU exit implementation period (31 December 2020 at 11.00 pm UK time). **It should be read in conjunction with the guidance issued under the cover of CEL 22 (2013)**<sup>1</sup>

#### **Background**

2. Directive 2011/24/EU, which entered the European statute book in April 2011, clarified citizens' rights to access healthcare in another Member State of the European Economic Area (EEA) and sets out the grounds on which they can claim reimbursement of the eligible costs of treatment from their home healthcare system. In 2013, the Scottish Government transposed the Directive into domestic regulations. The National Health Service (Cross-border Health Care) (Scotland) Regulations 2013 implemented the majority of the Directive's provisions in Scotland.

3. The Directive rights are separate from reciprocal healthcare arrangements under the social security co-ordination regulations (Regulations (EC) No. 883/2004 and (EC) No. 987/2009). Reimbursement rights under

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#### **Addresses**

##### For action / information

NHS Board Chief  
Executives  
Medical / Clinical  
Directors  
Nursing Directors  
Finance Directors  
Overseas Visitors  
Managers  
Primary Care  
Administrators  
Medical Practitioners  
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#### **Enquiries to:**

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<sup>1</sup> [CEL 22 \(2013\) - Cross border healthcare and patient mobility in Europe: directive 2011/24 EU on the application of patients' rights in cross-border healthcare \(the European Cross-border Healthcare Directive\) \(scot.nhs.uk\)](#)

the Directive relate to the fundamental EU principle of the freedom to provide and avail of services, whereas the rights under the social security co-ordination regulations relate to the free movement of people. Payments for reciprocal healthcare under social security co-ordination regulations flow between member states, whereas reimbursements under the Directive route are made to the individual by their local healthcare provider - in Scotland their local NHS Board

4. The Cross-border Health Care (EU Exit) (Scotland) (Amendment) Regulations 2020 came into force on 24th December 2020 and retire current cross-border healthcare rights, except for patients in a transitional position on IP completion day. **Maintaining effective access to cross-border healthcare abroad is inoperable without reciprocity and the UK will be unable to participate in existing European cross-border healthcare arrangements as a non-member of the EU.** The UK Government and other devolved administrations are introducing similar regulations.

5. The arrangements for reimbursing health care costs to people ordinarily resident in Scotland who receive treatment in EEA states will cease to operate on IP completion day. **Reimbursement should, however, continue to be made available where the treatment was provided, an application for its authorisation was made or the patient can prove that they entered into an agreement for treatment provision with the overseas healthcare provider before IP completion day.**

6. The Cross-border Health Care (EU Exit) (Scotland) (Amendment) Regulations 2020 seek to protect, as far as possible, Scottish patients accessing healthcare in the EEA under the Cross-Border Healthcare Directive who are in a transitional situation at the end of the EU Exit IP (31 December 2020 at 11.00 p.m. UK time), allowing them to continue to receive arranged treatment and to claim reimbursement for treatment received during a transitional period. The regulations make provision for reimbursement of the costs of cross-border healthcare services provided to persons residing in EU member states where those services were provided before the cut-off day (i.e. 1 year after IP completion day).

7. Under provisions in the amended Regulations, people in Scotland may use the Directive route to be reimbursed for treatment which has been received;

- a. up to one year after 11 pm on 31 December 2020; or
- b. within the period specified for any prior authorisation approval if this is longer than a year.

In order to provide reimbursement, NHS Boards must ensure;

- c. the existing criteria for re-imburement are met; and
- d. the treatment began, or authorisation for the treatment was sought, before 11 pm on 31 December 2020.

## **EEA Citizens Seeking Treatment in Scotland**

8. EEA citizens seeking cross-border treatment in Scotland after 31 December 2020 should be advised that the Directive no longer applies in the UK.

## **NHS Inform – National Contact Point**

9. NHS Inform will continue to contain the National Contact Point for the Cross-border Healthcare Directive and we are updating the guidance on the website to confirm arrangements for the transitional period. Hopefully, this will go some way in lowering the volume of enquiries submitted to Boards.

## **Monitoring**

10. I would also remind you of the need for NHS Boards to record information on patients who use the Directive to receive healthcare during the transition period. This should include: the type of treatment; cost of treatment; country of treatment.

## **Distribution**

11. I would be grateful if you could ensure that this information is circulated as widely as possible, including to all frontline staff that may have an interest in EU Cross-border Healthcare as part of their responsibilities. General practitioners should also be made aware of these changes, given that they are usually the point of entry for access to secondary care and may receive enquiries about treatment in the EEA following IP completion day.

Yours Sincerely

A handwritten signature in black ink, appearing to read 'J. Leitch', with a long horizontal flourish underneath.

**JASON LEITCH**

National Clinical Director

Directorate for Healthcare Quality and Improvement