STATUTORY RULES OF NORTHERN IRELAND

2012 No. 167

HEALTH AND PERSONAL SOCIAL SERVICES

The Health Care (Reimbursement of the Cost of EEA Services etc.) Regulations (Northern Ireland) 2012

Made - - - -	*18th April 2012*
Coming into operation	*10th May 2012*

The Department of Health, Social Services and Public Safety(**1**), makes the following Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(**2**).

The Department of Health, Social Services and Public Safety is a Department designated for the purposes of section 2(2) of the European Communities Act 1972 in relation to cross-border healthcare(**3**).

Citation and commencement

1. These Regulations may be cited as the Health Care (Reimbursement of the Cost of EEA Services etc.) Regulations (Northern Ireland) 2012 and shall come into operation on 10th May 2012.

Interpretation

2.—(1) In these Regulations—

"the Order of 1972" means the Health and Personal Social Services (Northern Ireland) Order 1972(**4**);

"the 2009 Act" means the Health and Social Care (Reform) Act (Northern Ireland) 2009(**5**).

(2) The Interpretation Act (Northern Ireland) 1954(**6**) shall apply to these Regulations as it applies to an Act of the Assembly.

(**1**) Formerly the Department of Health and Social Services; See S.I. 1999/283 (N.I. 1) Article 3(6)
(**2**) 1972 c.68. By virtue of the amendment to section 1(2) of the European Communities Act 1972 by section 1 of the European Economic Area Act 1993 (c.51), regulations may be made under section 2(2) of the European Communities Act to implement obligations of the United Kingdom created or arising by or under the EEA Agreement. Section 2(2) was amended by the Legislative and Regulatory Reform Act 2006 (c.51), section 27(1) and by the European Union (Amendment) Act 2008 (c.7), section 3(3) and Part 1 of the Schedule
(**3**) S.I. 2009/2743
(**4**) S.I. 1972/1265 (N.I. 14)
(**5**) 2009 c.1 (N.I.)
(**6**) 1954 c.33 (N.I.)

Provision of health care outside Northern Ireland

3.—(1) After section 3 of the 2009 Act, insert—

"**Provision of health care outside Northern Ireland**

3A. The Department may provide or secure the provision of health care mentioned in Article 5(1), 6(1), 7(1), 8(1) or 10(1) of the Order of 1972 (hospital etc. accommodation and health care services, including diagnostic services, after-care and ancillary services) outside Northern Ireland."

(2) In section 8(6) of that Act (functions of the Regional Board), after "3" insert "or its power under section 3A".

Reimbursement of the cost of health care services secured in another EEA state

4.—(1) In Article 2(2) of the Order of 1972 (interpretation), at the appropriate place, insert the following definitions—

""EEA agreement" means the agreement on the European Economic Area signed at Oporto on 2nd May 1992, together with the Protocol adjusting that Agreement signed at Brussels on 17th March 1993, as modified or supplemented from time to time;

"EEA state", in relation to any time, means—

(a) a state which at that time is a member State; or

(b) any other state which at that time is a party to the EEA agreement;

"Regulation (EC) No. 883/2004" means Regulation (EC) No. 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems(**7**);".

(2) After Article 14A of that Order, insert—

"**Reimbursement of the cost of health care services secured in another EEA state**

14B.—(1) The Department must, on an application being made by or on behalf of an eligible person, reimburse the amount of any qualifying EEA expenditure incurred by or on behalf of the person, on or after 10th May 2012.

(2) The duty under paragraph (1) is subject to—

(a) the exceptions in paragraphs (4) and (5);

(b) any limit applicable under paragraph (7);

(c) any restriction applicable under paragraph (8); and

(d) any deduction applicable under paragraph (9).

(3) For the purpose of this Article, "qualifying EEA expenditure" is expenditure incurred on the provision, by an authorised provider in an EEA state other than the United Kingdom, of a service which is necessary to treat or diagnose a medical condition of the eligible person and is also—

(a) a service—

(i) which is the same as or equivalent to health care that the Department would make or have made available to the eligible person under this Order or the 2009 Act in the circumstances of the person's case; and

(ii) which is not a special service;

(**7**) OJ L166, 30.4.2004, p.1

(b) a special service for which the Department has given prior authorisation under Article 14C; or

(c) a service—

(i) which is neither the same as nor equivalent to health care that the Department would so make or have made available to the eligible person;

(ii) which is not a special service; and

(iii) for which the Department has given prior authorisation under that Article.

(4) The duty under paragraph (1) does not apply where the qualifying EEA expenditure was incurred in connection with an arrangement which was entered into by or on behalf of the eligible person in the course of business and under which the applicant for reimbursement has gained or might be expected to gain any financial benefit.

(5) This Article does not apply in circumstances where Article 20 or 27(3) of Regulation (EC) No. 883/2004 applies(**8**).

(6) Paragraphs (7), (8) and (9) apply where the service is the same as or equivalent to health care that the Department would have made available to the eligible person under this Order or the 2009 Act in the circumstances of the person's case.

(7) The Department may limit the amount of any reimbursement under paragraph (1)—

(a) as respects health care other than a dental service, to the cost that the Department would have incurred if the same or an equivalent service had been made available by it; and

(b) as respects a dental service, to the amount that would have been payable in respect of the same or an equivalent service if the service had been made available by the Department.

(8) Where the same or an equivalent service referred to in paragraph (7)(b) would have required approval(**9**) from the Dental Committee(**10**), the Department—

(a) may require the applicant to submit evidence as to the clinical necessity of the dental service; and

(b) may decline to reimburse the cost of any service which was not clinically necessary.

(9) The Department may deduct from any amount to be reimbursed under paragraph (1) in whole or in part the amount of any health care charge which would have been payable for the same service or an equivalent service if the service had been made available by the Department; and in determining for this purpose the amount of any health care charge regard shall be had to any entitlement the eligible person would have had—

(a) to any payment or contribution by virtue of regulations made under paragraph 2A(1) or (4) of Schedule 15; or

(b) to any remission or repayment by virtue of regulations made under paragraphs 1(b) and 1B of Schedule 15.

(10) The Department may determine—

(a) the form in which an application under this Article must be made; and

(b) the information to be provided in support of the application.

(11) In this Article and Article 14C—

(**8**) Regulation (EC) No. 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems
(**9**) See Schedule 5 to S.R. 1993 No. 326
(**10**) See regulation 30 of S.R. 1993 No. 326