STATUTORY RULES OF NORTHERN IRELAND

2005 No. 551

HEALTH AND PERSONAL SOCIAL SERVICES

Provision of Health Services to Persons not Ordinarily Resident Regulations (Northern Ireland) 2005

Made - - - - 8th December 2005

Coming into operation 10th January 2006

The Department of Health, Social Services and Public Safety(**1**), in exercise of the powers conferred on it by Articles 42, 106(b) and 107(6) of the Health and Personal Social Services (Northern Ireland) Order 1972(**2**) and of all other powers enabling it in that behalf, and in conjunction with the Department of Finance and Personnel, hereby makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Provision of Health Services to Persons not Ordinarily Resident Regulations (Northern Ireland) 2005, and shall come into operation on 10 January 2006.

Interpretation

2.—(1) In these Regulations —

"Board" means a Health and Social Services Board

"child" means a person who is —

(a) under the age of 16; or

(b) under the age of 19 and treated for the purposes of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(**3**) or Part IX of the Social Security Contributions and Benefits Act 1992(**4**) as receiving full-time education at an educational establishment under those Acts;

"Continental Shelf", except in a reference to a designated area of the Continental Shelf, means the sea-bed and subsoil of the submarine area (other than in the Baltic or Mediterranean Seas, including the Adriatic and the Aegean, or the Black Sea) adjacent to the coasts, lying north of the latitude of 25 degrees north and between the longitude of 30 degrees west and 35 degrees east, of the territory (including islands) of —

(**1**) See S.I.1999/283 (N.I. 1) - Article 3(6).
(**2**) S.I. 1972/1265 (N.I. 14); to which there are amendments not relevant to the subject matter of these regulations.
(**3**) 1992 c. 7
(**4**) 1992 c. 4

(a) any country situated on the Continent of Europe; or

(b) the Republic of Ireland,

where the submarine area is outside the seaward limits of the territorial limits of those countries and the Republic of Ireland and is an area with respect to which the exercise by any of them of sovereign rights in accordance with international law is recognised by Her Majesty's Government in the United Kingdom;

"designated area of the Continental Shelf" means any area which is for the time being designated by an Order in Council under the Continental Shelf Act 1964(**5**) as an area within which the rights of the United Kingdom with respect to the sea-bed and subsoil and their natural resources may be exercised;

"the EC Regulations" means regulations made by the Council of the European Communities under Article 51 of the Treaty establishing the European Economic Community;

"member of the family", in relation to a national of a member State or a stateless person or refugee entitled to receive treatment by virtue of the EC Regulations, means a member of the family as defined for the purpose of those regulations(**6**);

"member State" means a State which is a Contracting Party to the Agreement on the European Economic Area(**7**);

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

"reciprocal agreement" means arrangements mutually agreed between the Government of the United Kingdom and the Government of a country or territory outside the United Kingdom for providing health care;

"refugee" means a person who is a refugee within the meaning of Article 1 of the Convention relating to the Status of Refugees 1951(**8**) and Article 1 of the Protocol relating to the Status of Refugees 1967(**9**) and any other person taking refuge in the territory of a member State with leave of the Government of that State;

"services forming part of health services" means accommodation, services and other facilities provided under Article 5 of the Order (the Department's duty to provide accommodation and medical services, etc) and includes accommodation, services and other facilities provided by a HSS Trust, but does not include any accommodation, service or facility made available or provided under—

(a) Article 31 of the Order (accommodation and services for private patients);

(b) Article 3(2) of the Health and Medicines (Northern Ireland) Order 1988(**10**) (powers to make more income available for improving health services); or

(c) paragraph 14 of Schedule 3 to the Health and Personal Social Services (Northern Ireland) Order 1991(**11**) (accommodation and services for private patients of HSS Trusts);

"ship or vessel" includes hovercraft;

"stateless person" has the meaning assigned in Article 1 of the Convention relating to the Status of Stateless Persons 1954(**12**);

(**5**) 1964 c. 29
(**6**) *See* Article 1(f) of Council Regulation No. 1408/71, OJ No. L149/2, 5.7.71 (OJ/SE 1971 (II) p.416) and Council Regulation No. 1390/81, OJ No. 143, 12.5.81
(**7**) *See* the European Economic Area Act 1993 (c. 51)
(**8**) Cmnd. 9171 of 1954
(**9**) Cmnd. 3906 of 1968
(**10**) S.I. 1988/2249 (N.I. 24)
(**11**) S.I. 1991/194 (N.I. 1)
(**12**) Cmnd. 1098 of 1960

"treatment" includes medical, dental and nursing services required for the care of women who are pregnant or in childbirth or for the prevention or diagnosis of illness;

"treatment the need for which arose during the visit" means diagnosis of symptoms or signs occurring for the first time after the visitor's arrival in the United Kingdom and any other treatment which, in the opinion of a medical practitioner or dental practitioner employed by, or under contract with, a Board or a HSS Trust, is required promptly for a condition which arose after the visitor's arrival in the United Kingdom, or became, or but for treatment would likely to become, acutely exacerbated after such arrival;

"visitor" means a person not ordinarily resident in Northern Ireland.

(2) In calculating, for any purpose of any provision of these Regulations, a period of residence in Northern Ireland, any interruption by reason of temporary absence of not more than three months shall be disregarded.

Visitors to whom services forming part of health services shall be available

3. Services forming part of health services shall be available to a visitor—

(a) who is ordinarily resident in Great Britain or the Channel Islands; or

(b) who is shown to the satisfaction of the Board in whose area the services are provided, or as the case may be, by the HSS Trust by which those services are provided, to be present in the United Kingdom or Continental Shelf, or on a stationary structure within the territorial waters of the United Kingdom for the purpose of—

(i) engaging in employment with an employer which has its principal place of business in the United Kingdom or which is registered in the United Kingdom as a branch of an overseas company; or

(ii) being a self employed person whose principal place of business is in the United Kingdom; or

(iii) working as a volunteer with a voluntary organisation that is providing a service to which Article 71 of the Order applies, or a service similar to a relevant service as defined in sections 64 and 65 of the Health Services and Public Health Act 1968(**13**); or

(iv) pursuing a course of study which is substantially funded by the United Kingdom Government or is at least six months duration; or

(v) taking up permanent residence in the United Kingdom; or

(c) who has resided lawfully in the United Kingdom for a period of not less than one year immediately preceding the time when the services are provided unless this period of residence followed the grant of leave to enter the United Kingdom for the purpose of undergoing private medical treatment; or

(d) who has been accepted as a refugee in the United Kingdom, or who has made a formal application for leave to stay as a refugee in the United Kingdom which has not yet been determined; or

(e) who is employed on a ship or vessel registered in the United Kingdom; or

(f) who is in receipt of any pension or other benefit under a Personal Injuries Scheme, Service Pensions Instrument of a 1914-1918 War Injuries Scheme as defined in regulation 2(1) of the Social Security (Overlapping Benefits) Regulations (Northern Ireland) 1979(**14**); or

(**13**) 1968 c. 46
(**14**) S.R. 1979 No. 242, as amended by S.R. 1980 No. 451

(g) who is a diplomatic agent for the purposes of the Articles of the Vienna Convention on Diplomatic Relations set out in Schedule 1 to the Diplomatic Privileges Act 1964(**15**); or

(h) who is a member of Her Majesty's United Kingdom Forces; or

(i) who is some other Crown servant employed in the right of Her Majesty's Government in the United Kingdom having been recruited in the United Kingdom; or

(j) who is an employee, recruited in the United Kingdom, of the British Council or the Commonwealth War Graves Commission; or

(k) who is working in employment that is financed in part by the Government of the United Kingdom in accordance with arrangements made with the Government of some other country or territory or a public body in such other country or territory; or

(l) who has at any time had not less than ten years continuous lawful residence in the United Kingdom and is engaged in employment as an employed or self employed person outside the United Kingdom that has not lasted for a period of five years; or

(m) who is employed in another member State and who is contributing as an employed or self employed earner under the Social Security Contributions and Benefits (Northern Ireland) Act 1992 or the Social Security Contributions and Benefits Act 1992; or

(n) who, in the case of a national of a member State, a refugee or a stateless person, has entitlement to the provision of the services in question by virtue of the EC Regulations or, in the case of a national of another country, is entitled to be provided with such services by virtue of an agreement entered into between the European Economic Community and any other country; or

(o) who is detained in prison or in a young offenders centre provided by the Secretary of State under the Prison Act (Northern Ireland) 1953(**16**) as extended by section 2 of the Treatment of Offenders Act (Northern Ireland) 1968(**17**) or in a juvenile justice centre provided under Article 51 of the Criminal Justice (Children) (Northern Ireland) Order 1998(**18**); or who has been detained under the provisions of the Immigration Act 1971(**19**); or

(p) in whose case the services are provided in circumstances covered by a reciprocal agreement with a country or territory specified in Schedule 2; or

(q) who—

(i) is not a national of a member State; and

(ii) is a national of a State which is a signatory to the European Social Charter(**20**); and

(iii) is not entitled to be provided with such services under a reciprocal agreement specified in Schedule 2; and

(iv) is without sufficient resources to pay the charge.

Services exempted from charges

4.—(1) Services forming part of health services supplied to any class of person described in regulation 3 shall be exempt from charges except to the extent that charges would be payable by a person ordinarily resident in Northern Ireland.

(**15**) 1964 c. 81
(**16**) 1953 c. 18 (N.I.)
(**17**) 1968 c. 29 (N.I.)
(**18**) S. I. 1998/1504 (N.I. 9)
(**19**) 1971 c. 77
(**20**) See Cmnd. 1667. The European Social Charter was opened for signature at Turin on 18 October 1961, and entered into force on 26 February 1965. Copies of Cmnd. 1667, which is out of print, can be obtained via Her Majesty's Stationery Office (photocopies) from the British Library Lending Division

(2) Where a person meets the residence qualification in regulation 3(c) on a date during a course of treatment for which charges could have been made prior to that date no charge shall be made in respect of services received subsequently.

(3) Where it is established that a person does not meet the residence qualification in regulation 3(c) and that person has already received services as part of a course of treatment on the basis that no charges would be made, no charges may be made for the remainder of that course of treatment.

(4) No charge shall be made in respect of any services forming part of the health services provided for the spouse or civil partner or child of a visitor to whom regulation 3 applies where he lives on a permanent basis with the visitor in the United Kingdom.

(5) No charge shall be made in respect of any services forming part of health services provided for a visitor—

(a) at a hospital accident and emergency department or casualty department unless and until he has been accepted as an in-patient at the hospital for treatment of the condition in respect of which such services are provided; or

(b) otherwise than at, or by staff employed to work at, or under the direction of, a hospital; or

(c) consisting of the provision of family planning services; or

(d) for treatment in respect of a disease listed in Schedule 1; or

(e) at a special clinic for the treatment of sexually transmitted diseases or in respect of a sexually transmitted disease by virtue of a reference from such a clinic, but in the case of services which relate to infection with any Human Immunodeficiency Virus, only to the extent that they consist of a diagnostic test for evidence of infection with any such Virus and counselling associated with that test or its result; or

(f) who is detained in a hospital, or received into guardianship, under the Mental Health (Northern Ireland) Order 1986(**21**) or any other transferred provision authorising orders for admission to, and detention in, hospital by reason of mental disorder; or

(g) with a view to the improvement of his mental condition where submission to the treatment is, under paragraph 4 of Schedule 1 to the Criminal Justice (Northern Ireland) Order 1996(**22**), included by the court in a probation order under Article 10 of that Order.

Exemption from charges during long term visits by United Kingdom pensioners

5.—(1) No charge shall be made or recovered in respect of any visitor who—

(a) is in receipt of a retirement pension under the Social Security (Contributions and Benefits) (Northern Ireland) Act 1992(**23**) or the Social Security Contributions and Benefits Act 1992(**24**); and

(b) resides in the United Kingdom for at least six months and in another member State for less than six months each year; and

(c) is not registered as a resident of another member State

for services forming part of health services which he receives during the period he resides in the United Kingdom.

(2) No charge shall be made in respect of any services forming part of health services provided for the spouse or civil partner or child of a visitor to whom this regulation applies where he lives on a permanent basis with the visitor during the period they reside in the United Kingdom.

(**21**) S.I. 1986/595 (N.I. 14)
(**22**) S.I. 1996/3160 (N.I. 24)
(**23**) 1992 c. 7
(**24**) 1992 c. 4