EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations give effect to the judgement of the European Court of Justice in Case C-372/04 *The Queen, on the application of Yvonne Watts v Bedford Primary Care Trust and Secretary of State for Health*(**1**) which held that the obligation under article 49 of the EC Treaty (now article 56 of the Treaty on the Functioning of the European Union which provides for the freedom to provide and receive services in another member state of the European Union) to reimburse the cost of hospital treatment provided in another member state also applies to a tax funded national health service, such as in Scotland, which provides treatment free of charge. These Regulations also cover non-hospital treatment.

Regulation 3 provides for the National Health Service (Scotland) Act 1978 to be amended by inserting new sections 2CA and 75B to 75D. The new section 2CA gives Health Boards a power to secure the provision of services outside Scotland. This power is not restricted to primary medical services.

The new section 75B places a duty on Health Boards to reimburse the cost of eligible services (defined in subsection (2)) received by NHS patients in another EEA state and sets out the limitations that may be imposed on the amount of reimbursement. The EEA (European Economic Area) consists of the member states of European Union together with Norway, Iceland and Liechtenstein.

The new section 75C provides for prior authorisation to be obtained in respect of certain eligible services and sets out when authorisation must be given by a Health Board.

The new section 75D provides for the rules on charges, remission from charges and exemptions to apply as if the services had been provided by the Health Board.

Regulation 4 amends the regulation making power in section 75A(1)(b) in respect of travelling expenses to cover services received under section 75B or Regulation (EEC) No. 883/2004.

Regulation 5 adds a consequential amendment to the 1978 Act.

(**1**) [2006] ECR 1-4325.