
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations give effect to the judgment 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* ([2006] ECR I-4325), which held that the obligation under Article 49 of the EC Treaty (this Article, now numbered Article 56 under the Treaty on the Functioning of the European Union, 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 England and Wales, which provides such treatment free of charge. These Regulations also cover non-hospital treatment.

The EEA (European Economic Area) consists of the member States of the European Union, together with Norway, Iceland and Liechtenstein.

Regulation 2 provides for the National Health Service Act 2006 (“the NHS Act”) to be amended by inserting new sections 6A and 6B. Regulation 5 provides for equivalent amendments to the National Health Service (Wales) Act 2006 (“the NHS (Wales) Act”) by inserting new sections 6A and 6B. Regulations 3 and 4 make consequential amendments to the NHS Act and regulations 6 and 7 make equivalent amendments to the NHS (Wales) Act.

The new section 6A of the NHS Act and the NHS (Wales) Act sets out the conditions for reimbursement of qualifying EEA expenditure (defined in subsection (2)) incurred on or after 23 August 2010, the limitations that may be imposed on the amount of the reimbursement and the NHS charges that may be deducted.

Section 6B provides for when an application for prior authorisation must be made to the Secretary of State or the Welsh Ministers and when authorisation must be given by the Secretary of State or Welsh Ministers.

Regulation 8 amends the National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements) (England) Regulations 2002, by inserting new entries into Part 2 of Schedule 1 (Secretary of State functions exercisable by (A) Primary Care Trusts and (B) Strategic Health Authorities, for specified purposes only). These new entries provide for the Secretary of State’s functions under the new sections 6A and 6B of the NHS Act to be exercisable by Primary Care Trusts.