



Northern Ireland
Assembly

Committee for Health

OFFICIAL REPORT (Hansard)

Provision of Health Services to Persons Not
Ordinarily Resident (Amendment)
Regulations (Northern Ireland) 2021:
Department of Health

11 November 2021

NORTHERN IRELAND ASSEMBLY

Committee for Health

Provision of Health Services to Persons Not Ordinarily Resident (Amendment) Regulations (Northern Ireland) 2021: Department of Health

11 November 2021

Members present for all or part of the proceedings:

Mr Colm Gildernew (Chairperson)
Mrs Pam Cameron (Deputy Chairperson)
Ms Paula Bradshaw
Mr Alan Chambers
Mrs Deborah Erskine
Ms Órlaithí Flynn
Mr Colin McGrath
Ms Carál Ní Chuilín

Witnesses:

Ms Patricia Quinn-Duffy Department of Health

The Chairperson (Mr Gildernew): I welcome Ms Patricia Quinn-Duffy, who is head of healthcare policy/EU future relations. Patricia, go ahead and brief us, please.

Ms Patricia Quinn-Duffy (Department of Health): Thank you, Chair. The Department has made the statutory rule (SR), the Provision of Health Services to Persons Not Ordinarily Resident (Amendment) Regulations (Northern Ireland) 2021, SR 2021/286, under powers that were conferred by articles 42, 106(b) and 107(6) of the Health and Personal Social Services (Northern Ireland) Order 1972. The statutory rule is subject to the negative resolution procedure before the Assembly. Article 42 of the Health and Personal Social Services (Northern Ireland) Order 1972 authorises the Department of Health to make regulations for the exemption of services and charges for persons who are not ordinarily resident in Northern Ireland for healthcare purposes. The regulations amended the Provision of Health Services to Persons Not Ordinarily Resident Regulations (Northern Ireland) 2015 to implement changes as a consequence of the signing of the Convention on Social Security Coordination between the United Kingdom and the Swiss Confederation on 9 September 2021.

The convention ensures that individuals who are within scope who move between the UK and Switzerland will have their social security position in respect of certain benefits protected. That includes reciprocal healthcare cover in the UK and Switzerland. That will be equivalent to the European health insurance card (EHIC), global health insurance card (GHIC), S2 planned care treatment provisions and S1 provisions.

As EU regulation 883/2004 no longer applies to the UK, and no longer applies between the UK and Switzerland, and the Trade and Cooperation Agreement (TCA) is with the EU only, the UK and Swiss Governments both recognised the importance of continued coordination of the social security rights that are enjoyed by people who move between both states to work, stay or reside, as well as the rights

that are enjoyed by family members and survivors, and agreed to negotiate a new modern convention to allow the continued enjoyment of those rights by their citizens.

The convention ensures that individuals who move between the UK and Switzerland, and who are in scope, will have their social security coordinated in respect of certain benefits, including reciprocal healthcare. The convention replaces the bilateral convention on social security between the UK and Switzerland that was agreed in 1968. The convention does not impact on the provisions of the citizens' rights agreement, which was concluded between the UK and Switzerland on 25 February 2019. People who were residing and/or working in the UK or Switzerland by 31 December 2020 will continue to have lifelong social security coordination rights under the citizens' rights agreement, provided they are and remain in scope of it.

When signing the convention, the UK Government gave an obligation to the Swiss that all UK domestic legislation would be updated prior to 1 November 2021. That was not something that would be expected, as, in Northern Ireland, we have an obligation to implement international agreements under the Northern Ireland Act 1998, even without our legislation being updated.

In order to meet the commitment that has been made by the UK Government, those regulations needed to be in place by 25 October 2021, in time for the commencement of the convention. Unfortunately, that time was constrained. In order that the provisions in the statutory rule would come into operation in time for the commencement of the UK/Swiss convention, the Department did not have any other choice, unfortunately, but to break the 21-day rule. The Examiner of Statutory Rules had been advised accordingly and was content.

However, the opportunity was taken to tidy up schedule 2 to the Provision of Health Services to Persons Not Ordinarily Resident Regulations 2015 to add in countries with which the UK has reciprocal arrangements in place and to remove those with which it no longer has such arrangements. The tidy-up added the Faroe Islands, through the agreement with Denmark, because the Faroe Islands are not part of the EU; the Ireland agreement that was agreed at the end of December; Kosovo, with which an agreement has been in place for a while; Norway, with an older regulation that provides for needs-arising care between the two countries until a further more substantive arrangement is negotiated; and the new Switzerland arrangement that I have spoken about today.

I am happy to take any questions about the convention and the regulations, Chair.

The Chairperson (Mr Gildernew): Thank you, Patricia. Why has this not come to the Committee as an SL1? It is not emergency legislation that is similar to the COVID regulations that we have expressed concern about but about which we have been understanding, given the situation that was arising. Why has this not come through the SL1 process?

Ms Quinn-Duffy: It would have done, but the issue is that the UK Government made a commitment that the regulations would be in by 25 October. We were not advised of that until late in the day. We would have made amendments, as other amendments to the 2015 regulations are needed. It was, basically, because the regulations became urgent. We needed to meet the obligation that the UK Government had to the Swiss, which was unexpected and is not something that we would normally come across.

The Chairperson (Mr Gildernew): We are, basically, at the mercy of late or slow processes of the British Government. Is that not an issue of concern, given the grave ramifications?

Ms Quinn-Duffy: It is, Chair. It is the whole point of the memorandum of understanding (MOU) to make sure that our reciprocal healthcare agreements and further international arrangements are made within enough time and that what is negotiated is shared with the devolved Administrations (DAs) in time for us to make the amendments within our normal statutory processes. The Department of Health and Social Care in London has been informed.

The Chairperson (Mr Gildernew): OK. Can you explain why Croatia has been removed from the regulations? I am hugely concerned about the number of people who travel back and forth to Croatia. In the part of the world where I am, Dungannon in south Tyrone, we have very highly developed food manufacturing and engineering sectors, and there is regular business travel across many of the areas that we are discussing, including the former Russian areas. There is a significant impact. Why has Croatia been taken out, and what can be done to address the issue of the other states that have been excluded?

Ms Quinn-Duffy: As international relations are the UK Government's domain, we are almost at the mercy of the arrangements that the Department of Health and Social Care takes forward for the UK as a whole. Croatia is now part of the EU, so it is covered by the Trade and Cooperation Agreement, which is why it was removed. This is an update of the 2015 regulations, which have not been updated in some time, to remove the old agreement that has been superseded, first by EU regulation 883/2004 and then by the Trade and Cooperation Agreement. It is no longer necessary for Croatia to be in schedule 2.

With regard to the other ones that have been removed, we are, again, taking what the UK Government are deciding to negotiate. Unfortunately, the agreements with the former Russian states were removed some time ago, but we had not updated the 2015 regulations. The change in legislation makes people aware that they no longer apply.

The Chairperson (Mr Gildernew): You indicated that those who were ordinarily resident up to 2020 will still derive the benefits. What about those who do not meet that qualification? What will be the impact on them?

Ms Quinn-Duffy: For the Swiss, anybody who was in the country prior to the end of the transition period will have lifelong rights so long as they continue to meet the agreement's constraints. Between January and September, when there was no agreement with the Swiss, people did not have free access to, for example, EHIC or needs-arising care. Those would have been chargeable in Northern Ireland or vice versa for people from here who were going to Switzerland. From now, it will be as if regulation 883 has been put back in place, so people who visit Switzerland for work or for holidays will be able to use their GHIC, and Swiss people who come to Northern Ireland will be able to use their EHIC. There will be a planned care route, if one is required, to Switzerland or from Switzerland back to the UK or Northern Ireland, and posted workers or people who have decided to move longer term or go to college in either of the jurisdictions will be able to use EHCs and/or S1s depending on what is most appropriate.

Mrs Erskine: It is good to see this. Ensuring that visitors to the UK have fair and vital access to health services in times of need is important. How many visitors from Switzerland and other countries will the arrangements benefit?

Ms Quinn-Duffy: It is very difficult to say at the moment because travel is quite skewed. In Northern Ireland, we have a reasonable number — not a huge number — of visitors from other European countries. Most tend to be from the Republic. The number is in the hundreds. The number from Switzerland is very small, but the arrangements benefit business travellers who go to Switzerland, so they have an added benefit for Northern Ireland and the economy along with the ability to promote tourism and travel by advertising the fact that Swiss visitors can obtain necessary healthcare when they come.

Mrs Erskine: Thank you for that. I have two other questions. What is the Department's policy on charging for access to these services, and is there an overview of receipts from that? Has the convention prevented any unwelcome hiatus in reciprocal arrangements?

Ms Quinn-Duffy: The policy on charging is that a person who is not ordinarily resident is chargeable unless they fall under an exemption in the Persons Not Ordinarily Resident Regulations (Northern Ireland) 2015. There are extensive exemptions within those regulations. There are treatments that are exempt from charging, such as those provided in accident and emergency. Diseases that are public health issues, such as coronavirus, HIV and a number of other contagious diseases, are also exempt to make sure that any person who may have come into contact with those diseases will come forward for treatment or diagnosis. There are also a lot of exemptions for persons — for example, anyone from a country that is part of an international agreement or has some reciprocal healthcare arrangements. It depends on whatever the arrangement with that country is. For the Swiss, it is all needs arising care while they are here and any care that is necessary within the time period that they are here so that they do not have to cut their stay short. There is a raft of others, such as missionaries who are working overseas for UK agencies and their family members. Quite a lot of people are exempt. We do not keep figures centrally on how many people are charged or what that charge is. There is a possibility that that information may be available through the trusts — the patient payment officers are the ones who will look at patients who are chargeable and raise invoices — but we do not collect that information centrally.

Will you repeat your last question? It was about the convention.

Mrs Erskine: Has the convention prevented any unwelcome hiatus in the reciprocal arrangements?

Ms Quinn-Duffy: Not really. There has not, because of COVID, been as much travel, so fewer people have been impacted by not having access to needs-arising care when they travel to Switzerland. However, that is now in place, and things are opening up further. Hopefully, next year, there will be further openings as things get back to normal. It is good that it is in place now and that people can get used to it.

Mrs Erskine: OK. Thank you, Patricia.

The Chairperson (Mr Gildernew): I am conscious that we are experiencing workforce shortages across a range of areas. Of principal interest to the Committee is the healthcare workforce — health and social care, including domiciliary care — but there are also skills and workforce shortages in some of our key industries, such as engineering, food production and transportation. In light of that, do you have concerns that this will impact negatively here in a way that has not been fully considered by the British Government and that our individual needs will be impacted as a result?

Ms Quinn-Duffy: I do not believe that the convention itself has any impact on that. What will have an impact is the immigration health surcharge and the immigration points-based system. Those will have an impact on staffing. At the moment, the immigration health surcharge is still waived for health and social care staff, but the other staff whom you are talking about, those in social care, agriculture and food processing, do not fall under the skills visa, so they cannot get a visa to come to the UK or Northern Ireland to work. It is the immigration system that is impacting on that, not the convention itself.

The Chairperson (Mr Gildernew): Thank you, Patricia. I do not see any other indications from members, so we can go on to our consideration. Before you leave, I have to say that I am concerned about the detail of this SR. I am also concerned about the idea that the British Government are going ahead with things at the last minute and not giving us the proper time to consult or consider, and that could have a very significant impact. It is a worrying issue. I have repeatedly hit the problem, as a constituency MLA, of the Home Office immigration system not matching our needs in the North and not reflecting or responding quickly enough. Anyway, that might be for another day, but it is worrying, and, as a Committee, we should reflect that. I will let you go, Patricia. Thank you for giving evidence and answering questions today.

Ms Quinn-Duffy: Thank you, Chair.

The Chairperson (Mr Gildernew): There are some issues of concern there, but, anyway, members, are there any other comments on that statutory rule?

Ms Ní Chuilín: Chair, you have covered the issues. It is just that this is coming in really late in the day. The other issue is something that Patricia did not say. It strikes me that the British Home Office has a bearing on this stuff, and it will impact on workforce planning. That is just an observation.

The Chairperson (Mr Gildernew): OK. Members, we will now formally consider the SR.

I can advise that the Examiner of Statutory Rules has reported that this SR was laid in breach of the 21-day rule but that she is content with the reasons for the breach. The SR is subject to negative resolution. Do members have any further issues to raise in connection with the statutory rule? If not, I ask members to agree formally that the Committee for Health has considered SR 2021/286, the Provision of Health Services to Persons Not Ordinarily Resident (Amendment) Regulations (NI) 2021, and has no objection to the rule.

Question put and agreed to.