

New Northern Ireland Regulations governing access to healthcare for migrants - A SUMMARY



Law Centre (NI)

Northern Ireland has issued new regulations that govern access to healthcare for migrants. The Provision of Health Services to Persons not Ordinarily Resident Regulations 2015¹ ("Visitors Regulations") are now in force. They revoke and replace a number of previous regulations including the 2005 Regulations.²

This briefing provides a **summary** of the contents of the new legislation. The regulations themselves are detailed and assessing a person's entitlement to healthcare can be fairly complicated.

If you are not sure whether you are entitled to free healthcare, please contact Law Centre Community Care Legal Advice Line: 028 9024 4401, Monday to Friday 9.30am to 1pm.

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¹ <http://www.legislation.gov.uk/nisr/2015/27/made>

² http://www.dhsspsni.gov.uk/de/nisr_20050551_en.pdf

1. What remains the same

The new Visitor Regulations do not change the general principles of accessing healthcare in Northern Ireland, which are:

The Department of Health, Social Services and Public Safety (DHSSPS) has a general duty to prevent, diagnose and treat illness to improve the physical and mental health of people in Northern Ireland.

- a) Healthcare is generally accessible for everyone. However, it is only **free** for those who are Ordinarily Resident in Northern Ireland.³
- b) If a person is not Ordinarily Resident, then s/he is considered to be a Visitor.
- c) A Visitor must pay for health treatment unless s/he:
 - i) falls into a specified exemption category;
 - ii) requires a specified services or treatment;
 - iii) is from a particular country that has a reciprocal agreement with the UK.

2. What the Regulations change

The new Visitor Regulations 2015 make a number of changes to categories of visitors, types of treatment and countries with reciprocal arrangements.

2.1 Categories of visitors

First, they introduce or redefine a number of exemption categories of visitors who are not required to pay for their healthcare treatment, which includes both primary care (for example GP) and secondary care (for example hospital)⁴. These categories include:

- visitors who have resided lawfully in the UK for the previous twelve months;
- full-time students who are either on a course that is substantially funded by the UK or of at least six months duration;

³ A person is regarded as ordinarily resident if: *s/he is lawfully living in Northern Ireland voluntarily and for a settled purpose as part of the regular order of her/his life for the time being. A person must have an identifiable purpose for her/his residence and that purpose must have a sufficient degree of continuity to be properly described as settled.* Circular HSS (PCD) 10/2000.

⁴ This is a very important change. Prior to the 2015 Visitor Regulations, the exemptions existed primarily in respect of secondary care only – entitlement to primary care was much less clear. The 2015 Visitor Regulations are clear that the exemption categories apply to both primary and secondary care.

- In some instances, visitors who are employed / self-employed / volunteering;
- visitors exercising European rights;
- **refugees and asylum seekers (including refused asylum seekers);**
- **children who have been taken into care;**
- **victims of trafficking;**
- UK pensioners who spend at least half of the year in the UK;
- prisoners and detainees;
- diplomats, NATO forces, war pensioners, missionaries;
- **generally, the family members of the exemption categories are also entitled to receive free healthcare.**

2.2 Types of treatment

Second, the Visitor Regulations 2015 also change the types of treatments that must always be provided for free. This list has historically included:

- accident and emergency services;
- family planning services;
- treatment for named diseases;
- treatment for persons detained under Mental Health powers.

However, the new regulations include an additional category:

- **treatment for HIV – AIDS.**

2.3 Countries with reciprocal arrangements

Third, the Visitor Regulations 2015 update the list of countries that have reciprocal arrangements with the UK and whose nationals are not required to pay for their treatment in certain circumstances, such as when a medical need arises during a visit.

The updated list includes:

- Caribbean countries including: Anguilla, Barbados, Turks & Caicos Islands;
- Eastern European countries including: Belarus, Ukraine;
- Central Asian countries including: Kazakhstan, Tajikistan;
- Pacific countries including: Australia, New Zealand;
- Other countries including: Gibraltar, Israel, Russia.

3. Changes to other legislation: registering with a GP

In order to bring effect to the new Visitor Regulations, the Department has also amended the General Medical Services Regulations,⁵ so as to ensure that any visitor who is exempt from charges is able to register with a GP. These regulations also specify that a person must be ordinarily resident in order to temporarily register with a GP.

4. Upcoming guidance

The Department intends to develop guidance in the near future. The Law Centre anticipates that the guidance will provide further information about the exemption categories. We hope that the guidance will also clarify definitively whether the ‘ordinarily resident’ test applies to primary care. This is important for persons who do not fall into any of the exemption categories and do not require one of the exempted services.

5. Demonstrating entitlement for refused asylum seekers

The 2015 Visitor Regulations provide new entitlements for categories of prospective patients including refused asylum seekers.

Prior to these new regulations, only asylum seekers with pending claims had free access to healthcare. Many refused asylum seekers were deregistered from their GPs.

However, these new regulations do not distinguish between asylum seekers with pending cases and refused asylum seekers. As long as a person has **made** an application for asylum (or humanitarian protection or temporary protection), then s/he is entitled to free primary and secondary care while s/he remains in Northern Ireland.⁶ This also applies to any family members.

If you are a refused asylum seeker, you may wish to re-register with your GP. You must complete a HS22X form, which can be obtained from your GP surgery. You must also provide evidence that you have claimed asylum. This might be a Home Office Asylum Registration Card and/or a letter from Home Office / Orchard & Shipman / Migrant Help / your solicitor

⁵Health and Personal Social Services (General Medical Services Contracts) (Amendment) Regulations (Northern Ireland) 2015 <http://www.legislation.gov.uk/nisr/2015/26/contents/made>

⁶ 2015 Visitor Regulations, Regulation 9

confirming that you have claimed asylum. The more evidence you can provide the better. You are also entitled to receive free dental care.

If you experiencing any difficulties re-registering, you may wish to seek advice from the Law Centre Community Care Legal Advice Line: 028 9024 4401, Monday to Friday 9.30am to 1pm.

Law Centre (NI), March 2015

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