



Your rights to treatment in Europe

A UK patient's guide to the **European Directive on Cross Border Healthcare**

Contents

Introduction	3
<hr/>	
Section 1 – What are my rights as an EU citizen?	4
Overview of the Directive on cross border healthcare	6
Background to the Directive	8
What does the Directive mean for you?	10
The rules	12
How it works	14
Further information	15
<hr/>	
Section 2: The UK patient...putting it into practice	16
Your rights as an NHS patient	17
The process and principles	19
Where can I go?	21
What do I do?	22
Choosing a healthcare provider	23
What if it goes wrong?	25
How do I complain?	27
The EU Directive and private medical insurance	28
Who to contact	30
Useful Resources	31
<hr/>	
Section 3: Questions and Answers	32

Introduction

As a UK citizen and therefore a citizen of a European Union state, you have a right in certain circumstances and under certain conditions to seek treatment in other European states and for the cost of this treatment to be reimbursed by the NHS.

In March 2011, the European Directive on the application of patients' rights in cross-border healthcare was adopted by the European Parliament. This Directive clarifies the rights of EU citizens to seek treatment in other EU member states.

The EU Directive does not give patients any rights to cross border healthcare that they don't have already. It doesn't introduce any new rights. These rights have already been established by the European Court of Justice. What the Directive aims to do is to establish a framework within which cross border healthcare will operate and to set the rules regarding how patients will access care and what kind of treatment they are entitled to outside of their own country.

However.... there are very few UK or EU citizens who understand what their rights are to treatment elsewhere within the EU and few know how to exercise those rights. In truth, most people are still not aware that they may choose treatment in another EU state.

This guide aims to plug the information gap for UK patients, and to help UK patients understand what their rights are under the new Directive and how to go about exercising those rights.

The guide has been produced by the editorial team at Treatment Abroad (www.treatmentabroad.com), the leading online guide to medical travel, run by Intuition Communication Ltd.

In preparing the guide, we have consulted throughout with the EU & International Cross Border Health & Competition Policy Team at the UK Department of Health. Their help in editing and reviewing this guide is greatly appreciated.



Section 1 – What are my rights as an EU citizen?

As a citizen of the European Union, you have the right to freedom of movement and the freedom to obtain services across the European Community. This includes the right to medical treatment in any member state, providing you meet certain criteria.

What does that mean?

The essence of the right to freedom of movement is that the **European Union** is seen as a single community of member states, where land borders assume less importance. As a citizen of the European Union, you have the right to travel, live and work in any member state.

It also means that many people enjoy the right to obtain medical treatment in any member state, including hospital services, dental, ophthalmology and other treatments, and to be treated on the same basis that you would be in your home nation.

For example, under these arrangements, migrant workers who are formally resident in one country, can return to their country of origin to have medical treatment near their families or to have children; pensioners living abroad can choose to have medical treatment in that country; or individuals can avoid long waiting lists at home by choosing treatment in another **European Union** country with spare capacity.

How are these rights enforced?

As you might expect, with 27 different member states, these freedoms are not always uniformly applied. The European Court of Justice exists to arbitrate in cases where the existing national laws and practices conflict with the underlying principles of the internal market.

In the case of cross border healthcare, the application of the principles became so confused and legally challenged, that a formal Directive had to be created by the European Union to clarify the position for both citizens and member states.

Over the next few pages, we'll explain what this means to you and how you can exercise your rights to cross border healthcare under the new European Directive on the application of patients' rights in cross-border healthcare.

Overview of the Directive on cross border healthcare

The new Directive on the application of patients' rights in cross border healthcare does not, in itself, give you any new rights. However, it does formalise the way in which you can take advantage of those rights, incorporating the case law established in the European Court of Justice, to make the system more transparent and easier to access.

What does the Directive cover?

The new Directive covers planned healthcare in EU member states. It does not affect emergency treatment, which is generally covered, in state healthcare systems by the European Health Insurance Card (EHIC).

The Directive has two main purposes:

- **To clarify the rights of patients** to obtain certain planned healthcare in any EU member state and establish the limits of those rights
- **To clarify the position of the member states** regarding their legal obligations and assist them in managing the system effectively

The Directive and EU citizens	The Directive and EU member states
<p>The Directive clarifies your rights to planned healthcare in any EU member state and establishes the circumstances in which these rights can be exercised.</p> <p>The Directive also sets out clear procedures to access these rights, including detailed explanations of what the home state is and is not obliged to reimburse you for.</p>	<p>The Directive clarifies the member state's obligations under EU law and details the circumstances under which it must fund planned healthcare treatment for its own citizens in other member states.</p> <p>The Directive sets out criteria under which states are obliged to accept citizens from other EU states, and explains the rules for refusing such treatment.</p> <p>The Directive also sets out the systems that a state must provide to allow its own citizens to access their rights to cross border healthcare, as well as the information they are required to provide for citizens considering coming to their country.</p>

What are the limits of the directive?

Under the Directive, no member state is obliged to accept a patient for treatment, but they must be able to explain their decision to refuse to arrange treatment. A patient arriving for treatment from another EEA Member State cannot receive treatment in preference to a patient already within the home state healthcare system.

Example

Mr L, a 28-year old German accountant normally resident in Lundberg, whose sister is now a permanent resident of the UK, applied to come to the UK for surgery on two of his vertebral discs. His back pain was causing him significant mobility problems and although a local hospital in Germany had agreed to carry out the operation within 3 months, Mr L wanted to have the surgery in Bristol, so that he could spend three weeks living with his sister, a qualified physiotherapist.

Mr L asked for authorisation in Germany, which was granted, but then requested that his treatment within the NHS was carried out within the 3 month period. The NHS refused to accept Mr L as a patient under these terms. They agreed to do the operation, but within the normal waiting time of 6 months.

The implications of this decision

To put Mr L ahead of patients who had already been on the waiting list for the operation that he needed was ruled to be unfair to patients in the home state.

Furthermore, no member state is obliged to fund treatment in another country if that same treatment is available at home within a medically justifiable period, or if that treatment is not normally funded by the local health service of the home state (except in exceptional circumstances).

Example

Mrs J, a 62-year old widow living in Somerset has been blind since the age of 10 but still now lives a successful and independent life in her own home. Over the last two years her osteoarthritis in her right knee has become progressively worse and she now needs a knee replacement to prevent her becoming disabled. She initially wanted to get treatment within the NHS and was prepared to go to the hospital in her nearest city, 12 miles away. Through her GP she made a request for a private room and extended physiotherapy. Her reasons for this, fully supported by her GP, were:

- She needed a private room so that she could start moving around and exercising her knee in an environment where her lack of sight would not put her at risk. In a busy ward, there would be a high probability that she would risk an accident due to items left around by visitors, other patients or staff. A private room could be kept clear, and she could learn the layout more easily.
- She needed additional physiotherapy to ensure she was fully mobile before she returned home so that she could remain independent despite being blind.

The hospital said that it was unable to meet either of these conditions. Mrs J, with the help of a family member, found a hospital in Germany that could provide a private room and an extra week of physiotherapy, and that could carry out the knee replacement within a month, 12 weeks earlier than her local hospital.

When Mrs J applied for permission from her primary care trust to do this through the Directive Route to cross border healthcare (see Section 2), she was refused. Her case was taken up by a local healthcare commissioner, who approached an exceptional funding panel that then reversed this decision and approved her authorisation for treatment in Berlin.

The implications of this decision

If Mrs J had not been blind, there would have been no exceptional circumstances and the request for additional treatments and facilities, over and above what is normally provided for patients having a knee replacement in the NHS, would have not been considered grounds for authorising cross border medical treatment through the Directive route.

When did the Directive come into force?

The Directive became EU law in April 2011 and must be implemented by all states within 30 months – so that's by October 2013.

Background to the Directive

The European Union is very much a work in progress and the rights of its citizens are continually evolving. Here is a brief look back at how the new Directive on cross border healthcare came about.

The history of EU rights

Since the Treaty of Rome created the European Community in 1957, citizens of member states have benefited from reciprocal social services arrangements between their home nation and other nations within the community. These included the rights of retired citizens to transfer pension and other social security rights, accrued in their home state, to another EU country.

These arrangements have been extended and refined through subsequent treaties, including the Maastricht Treaty in 1991 and the Lisbon Treaty in 2007, leading to the current situation of a free and open market across all member states in which services may be obtained across borders. This includes the right to access cross border healthcare in any EU country.

European Court of Justice rulings on cross border healthcare

The European Court of Justice exists to interpret the laws set out in the various European Union treaties. Their judgement on individual cases becomes 'case law', and determines the way in which the particular aspect of the law or right is applied in the future.

In the last 20 years, there have been more than a dozen high profile cases in which the right to cross border healthcare has been challenged in the court and key rulings have been made.

For example, in 2006, Yvonne Watts took the UK Government to court over their refusal to pay for her hip replacement operation in France. The court ruled that the UK did not have sufficient systems in place for citizens to access cross border healthcare. They also offered clarity on the decision making process required to define an 'undue waiting time', stating that a medical assessment of each individual patient is required to determine what constitutes an 'undue delay'. The NHS could not claim that no undue delay had occurred by citing arbitrary waiting time targets set by the UK government or the local primary care trust.

A need for clarification

With so many ad hoc judgements being made in the courts, and so many grey areas existing within and between countries, it became clear that a Directive was needed to clarify the law and the rights of citizens across the European Union.

This primary legislation brought together existing rights under previous treaties, best practice in providing access to these rights, and the judgements and case law of the European Court of Justice.

The creation of the Directive on cross border healthcare

The first draft of the Directive appeared in 2008, but this was considered to focus too heavily on the patients' rights and was rejected as not fit for purpose.

The Directive was then renegotiated over a period of two and a half years, resulting in a revised draft being agreed in December 2010. This was voted on in January 2011, ratified by

the Council in February 2011 and became law on April 4th 2011, when it was listed in the European Journal.

The future

Member states have until October 2013 to implement the Directive and the Commission has indicated that it will be closely monitoring this process to ensure that it is implemented fully across the EU by the deadline agreed.



What does the Directive mean for you?

The new Directive on cross border healthcare means that exercising your rights should now be simpler and more straightforward. You should have a much clearer idea of what you are entitled to, and what restrictions your own country can put on these rights.

It is important to realize that the new Directive does not give European Union citizens any new rights to cross border healthcare. These rights already existed as part of the Maastricht and Lisbon Treaties.

In essence, you are entitled to obtain healthcare services in any EU state, as long as you are entitled to the same services in your **own country**, and as long as you are not able to obtain such services within a reasonable amount of time at home.

Example

Mr G developed carpal tunnel syndrome in his right hand, and was put on a waiting list in his local primary care trust. He expected to receive surgical treatment within 18 weeks, but various delays and an administrative error meant that he still did not have a definite date for his surgery 5 months later and his condition had worsened to such an extent that he was now on long-term sick leave.

He found a hospital in the Netherlands willing to do the surgery within 10 days and applied for authorisation to under the Directive route. His treatment was authorized because he had experienced an 'undue delay' according to the judgement of his GP.

Under the Directive, if your health service refuses to fund you treatment in another state, or if another state refuses to accept you for treatment, you must be given a full explanation as to why. The circumstances under which such refusals are allowed are clearly set out in the Directive. (See "Rules" later in this document).

Example

Mr S has been on the NHS waiting list for a hip replacement operation for osteoarthritis for 8 months. His condition worsens after he slips at home, dislocating his hip. Emergency treatment restores his joint, but he is in agony afterwards, needing prescribed painkillers. His GP refers him for an urgent appointment with his orthopaedic surgeon, who says Mr S needs a hip replacement within 4 weeks. The local primary care trust cannot organize the surgery within this time, but they are prepared to reimburse his treatment in Hungary, as a hospital there is prepared to conduct the surgery in two weeks' time.

The estimated cost of the hip replacement is £2,000 less than the cost of the surgery done within the NHS but the primary care trust will only pay the cost of the Hungarian treatment, no more. Mr S is disappointed as he planned to use the difference to pay his travel expenses, but the rules of the Directive are clear on this point and he reluctantly accepts he will have to pay his air fare and hotel bills himself.

What the Directive does not mean

The Directive does not mean that you will automatically receive funding for treatment in another EU state. Your home state retains the right to pre-authorise treatment and you must comply with the rules and regulations in order to make an application. There are set circumstances under which that application can be refused.

The Directive does not alter the right of a member state to define the benefits that they choose to provide for their citizens, and so if your treatment is not funded locally by your healthcare provider, you cannot expect them to fund it for you in another country.

Example

Miss T, a 32-year old retail manager living in Kent was struggling with her weight problem. Despite joining several diet clubs and trying to lose weight for 2 years, she now weighs 14 stones; this is 6 lbs more than she did when she started her first weight loss program.

Miss T finds a hospital in Poland that is willing to operate on her to fit a gastric band and she applies to the NHS to authorise her treatment. The NHS refuses, as her BMI of 32.6 is way below the recommended minimum of 40 (or 35 if someone has a chronic health condition such as type 2 diabetes). As the NHS would not agree to perform a gastric band operation on Miss T, they also are within their rights not to agree to pay for her to have the surgery in another European Union Member State. She is, however, able to seek private weight loss surgery either at home or abroad.

Cross border treatment is your choice

The Directive has been created to support your rights to choose treatment anywhere in the EU, however it is not intended to encourage or to facilitate that decision. That means that although your local healthcare provider may fund your treatment, they will not arrange treatment or recommend providers in other countries. It is your decision to seek healthcare outside of your home state and therefore it is up to you to source that healthcare and make all the arrangements.

While the Directive obliges EU states to provide a range of information for visitors, by establishing National Contact Points, states are not obliged to provide their own citizens with details of treatment options elsewhere.

It is important to remember that even if your country has a system of prior authorisation, this does not constitute a recommendation of your chosen provider and carries no duty of care for the home state. Prior authorisation only confirms that your home state has agreed to reimburse the costs of your healthcare in another EU country.

The rules

The EU directive on cross border healthcare took many years to negotiate and has many complex and detailed rules and regulations. However, it is possible to summarise the rules for both you and your home country.

Rules for Citizens

- **Residency:** To be entitled to cross border healthcare, you must be a resident of a country within the European Economic Area (EEA). This includes EU citizens and also those in Norway, Lichenstein and Iceland. If you have lived outside the EEA for more than 3 months and are not registered with a general practitioner, then you may no longer be considered resident.
- **Local provision:** In order for cross border healthcare to be funded, it must be available in your home state as part of the standard healthcare package available to all citizens. Local commissioners will set out what treatment is covered under each state system.
- **Undue delay:** Cross border healthcare must be funded if there is undue delay in providing the same treatment locally. The European Court of Justice defined undue delay as a waiting time that "exceeds the period which is acceptable in the light of an objective medical assessment". This means that such judgements should be based on medical assessments, not just on arbitrary time based targets. The S2 route also applies here, and the Directive states that consideration should be given to the Regulations – (EC) 883/2004 initially – unless the patient does not wish to use this route.
- **Reimbursement:** The cost of cross border healthcare will only be reimbursed up to the cost of the treatment in the home state. States are not obliged to pay for costs in excess of the cost of treatment in the home state and you are not allowed to profit from having cheaper treatment in another state. The costs of travel and accommodation are not generally reimbursed.

Rules for States

- **Prior authorization:** Member states may introduce prior authorisation for any treatment that involves a hospital stay, expensive specialist equipment or staff, or in cases where there are doubts as to the quality or safety of treatment.
- **Refusal of authorization:** Authorisation may be refused if the treatment or healthcare provider represents a risk to your health. States may also refuse if appropriate care can be provided at home without undue delay. People with highly contagious or dangerous infections may be refused authorisation, as may those who require secure psychiatric care.
- **Protecting home state services:** Member states may also limit cross border healthcare approval if this presents a risk to their own healthcare provision. For example, where highly specialised, low volume departments would be threatened by even a small downturn in patient numbers.
- **Refusal of treatment:** Member states have the right to refuse treatment to a visiting citizen if this would compromise their ability to serve their home citizens. This applies where waiting lists are long or capacity is limited. Cross border healthcare cannot be used to jump the queue of another state and visitors must be treated exactly the same as home citizens.

Exceptions

There are exceptions to these rules, and the Directive on cross border healthcare allows for exceptional circumstances. For example, where specialist treatment for a rare disease is only available in certain countries, then cross border treatment can be funded, even though this treatment is not available in the home state. However this is not an absolute right: decisions are made on a case by case basis, usually by a nationally appointed body.



How it works

Now that your rights have been clarified by the new Directive, how do you go about accessing treatment, what do you need to consider, what happens afterwards and what if something goes wrong?

Are you considering cross border healthcare?

Most EU states will have some form of gate-keeping or prior authorisation to protect both their national interests and their citizens. It is very important therefore to follow the set procedures for pre-approval or you may struggle to get your money back following treatment.

The Directive obliges local commissioners to make the processes as clear and transparent as possible and to ensure that all citizens know their rights regarding cross border treatment.

Your GP cannot refer you for treatment in another country, but should be able to advise you on your rights and the pros and cons of having treatment in another EU state. One of the benefits of pre-approval is that there can be liaison between your home state provider and the country of your choice, ensuring that medical records and notes are shared and that aftercare can be arranged on your return.

Essential considerations when choosing treatment

Choosing treatment in another EU state is entirely your own responsibility, and as such it is down to you to thoroughly research your chosen destination. You should consider factors such as local healthcare standards, language barriers and the overall quality of facilities. Remember, pre-approval does not mean that your chosen provider is approved, merely that your treatment there will be paid for.

States are obliged to provide a National Contact Point for visiting citizens, but this should be just the start of your due diligence process. It is you, as an individual, who is purchasing the service, not your home state, and so it is your responsibility to ensure that it is appropriate for your needs.

After treatment

After treatment, you should be welcomed back into your home country healthcare system for after care on the same basis as if you had been treated there in the first place.

What if it goes wrong?

Since your home country did not commission your treatment, you have no rights to sue them if anything goes wrong. The responsibility for negligence and injury claims lies with the country in which you chose to be treated, and will be treated according to local and EU laws.

The Directive obliges National Contact Centres to provide full information on legal issues, complaints and compensation procedures. However, it should be noted that negligence claims can be extremely long and costly procedures in any EU country, and so it is essential that you take out insurance to cover such costs should they arise. You need to make sure that your travel insurance covers your particular needs, including any pre-existing conditions; this is important should you need repatriation.

Further information

The European Commission is a good source of information on cross border healthcare. The europa.eu site has two specific pages that cover [policy on cross border healthcare](#) and also the [legislative framework](#), which details how the new Directive on Cross Border Healthcare impacts on patients' rights.

If you want to you can read the full text of the [Directive 2011/24/EU of the European Parliament and of the Council of 9 March 2011 on the application of patients' rights in cross-border healthcare](#)



Section 2: The UK patient...putting it into practice

As a UK citizen, you have the right, in certain circumstances, to seek healthcare in the European Economic Area (EEA: EU member states plus Iceland, Liechtenstein and Norway) under the Cross Border Healthcare Directive. You can also access healthcare in all of these countries plus Switzerland under the S2 route.

So how do these systems work, what are you entitled to and how do you go about getting it?

Although the EU Directive on Patients' Rights in Cross Border Healthcare was only approved in April 2011, the rights contained within it have been around for many years, and the UK has well developed systems to help you to exercise those rights.

These systems were refined following the European Court of Justice ruling in the case of Yvonne Watts (see below) in 2006, which confirmed that the NHS should authorise and reimburse treatment for patients facing an 'undue delay' for treatment in the UK.

There are currently two routes through which you can access cross border healthcare. Each has its advantages and disadvantages, and your GP or local healthcare commissioner will advise you on the best route for you.

Your rights as an NHS patient

You have the right to apply for healthcare in any EEA state you choose, funded by the NHS, but you must comply with certain requirements to qualify for NHS funding of your treatment. These requirements include:

- You must be a UK resident
- You must be eligible for state funded healthcare services in the UK
- The treatment must be medically necessary.
- The treatment must be funded in the UK under normal circumstances. (You cannot go abroad for a treatment that would not normally be available under the NHS).
- The treatment must be available to an acceptable and safe standard in the country of your choice
- The treatment, clinic and trip must not pose an undue risk to your health

Your local health commissioner, as part of your local Primary Care Trust (or health board in Wales, Scotland or Northern Ireland), has the right, on behalf of the NHS, to refuse to authorise treatment if these conditions are not met, although the grounds for refusal are limited and you have the right to appeal any decision that is made by your local commissioner.

The case of Yvonne Watts

Mrs Yvonne Watts paid £3,900 for a private hip operation in France in March 2003 after she was put on a year-long waiting list by the NHS and refused authorisation for NHS funded treatment abroad. Her subsequent court battle, played out in the UK courts and in the European Court of Justice, acted as a catalyst that led to clarification for NHS patients seeking authorisation to have medical treatment abroad.

Background to the case

Mrs Watts, who was told by an NHS consultant that she needed a double hip replacement operation in September 2002, was informed that the waiting time for this treatment was a maximum of 12 months within the NHS in the UK. Mrs Watts applied to her primary care trust for authorisation to have the treatment done elsewhere in Europe but was refused. When her consultant agreed that her medical condition had deteriorated in January 2003, making surgery more urgent, she applied again for authorisation but was again refused.

After going ahead with a private hip replacement in March 2003, Mrs Watts then took her case to the High Court in the UK, who ruled that it was permissible in principle for someone who experienced 'undue delay' when waiting for surgery within the NHS to be able to seek medical treatment abroad, with funding provided by the patient's NHS primary care trust.

The case brought to the European Court of Justice did not consider the issue of 'undue delay' as a new issue; it is more accurate to say that it re-iterated previous cases of undue delay in its ruling. This stated that the UK Healthcare System (i.e. the NHS) did not have the correct administrative procedures in place to consider the case appropriately. Although it did not define 'undue delay', the ECJ clarified that the competent authority did not have a right to refuse approval for treatment elsewhere in the EEA if the treatment was not available in the home state within a medically justifiable period of time.

The key point that this ruling clarified was that any delay in treatment beyond the timing recommended by the patient's doctor could be considered an 'undue delay'. Artificial waiting list limits set by the government could not be used by primary care trusts to refuse authorisation for treatment abroad. The European Court of Justice did not rule that Mrs Watt's costs should be reimbursed, however.

The implications of the Watts' case

- The ruling confirmed that the NHS in the UK should agree to reimburse the cost of treatment abroad for a patient who is unable to access treatment within the NHS within a reasonable time. The time limit is that judged by a medical specialist, not an arbitrary target set by a primary care trust or the UK government.
- The ruling paved the way for the generation and adoption of the Directive on Cross Border Healthcare, which clarifies the rules that govern how patients from different EU Member States can travel to other Member States for essential medical treatment.



The process and principles

There are currently two routes through which you can access healthcare in another Member State – the “S2 route” based on the coordination of social security in the EEA and Switzerland, and the Directive route based on your individual rights under EU free market principles.

The S2 Route

The S2 replaced the E112 in May 2010 when new EU Regulations came into force. E112 was the name of the administrative form that someone received to prove they had authorization for planned medical treatment in another Member State of the European Economic Area and Switzerland. The E112 was issued under Article 22, Regulation (EEC) 1408/71, which was set out in 1971 and upheld by the European Court of Justice in 1998.¹ The S2 is issued in accordance with Articles 20 and 27(3) of Regulation (EC) 883/2004 and proves entitlement for planned treatment in another EU Member State.

Under the S2 route

- You must seek prior authorization for your treatment from your local healthcare commissioner.
- Only state funded healthcare will be paid for.
- Treatment costs will be paid directly by the Department of Health (except for any patient contributions or co-payments).
- Treatment cost is not limited to the equivalent UK tariff (i.e. the amount that the NHS would have paid for the treatment), except in co-funding Member States.

The S2 route involves a direct arrangement between the NHS and the state healthcare provider in the country of your choice. This means that you will not have to pay for all of your treatment upfront. Although if your chosen country has a co-funding scheme, you may have to pay this contribution and then claim it back.

To use this route, you must apply for prior authorization and, if the treatment is approved, you will be issued with an S2 form. These applications are dealt with by your local commissioner and S2 forms are issued by the Department of Health Overseas Healthcare Team in Newcastle.

Under the S2 route, if treatment in your chosen country is fully funded by the state, then the NHS will pay in full, even if this costs more than the NHS tariff. However, if you have to pay a co-funding contribution up front, you will only be reimbursed up to the equivalent UK tariff for the treatment and so you may lose out.

The Directive Route

Under the EU Directive:

- You may not need prior authorization from your healthcare commissioner.
- Treatment in both state and private healthcare facilities is covered.
- You pay for your treatment upfront and reclaim the costs later from the NHS.
- Any refund on treatment costs are limited to the equivalent UK tariff, (i.e. what the NHS normally pays for this treatment)

¹ <http://www.publications.parliament.uk/pa/ld200809/ldselect/ldcom/30/3004.htm>

The 'Directive route' is based on an individual exercising his or her rights to obtain health services on the open market within the EU, under article 56 of the Lisbon Treaty. It has been called the 'Article 56 route' previously. You will normally have to pay for all of your treatment upfront and claim reimbursement from the NHS when you return.

Treatment under the Directive route only needs prior authorisation if the treatment:

- Involves overnight hospital accommodation for the patient in question for at least one night,
- **or** requires highly specialised or cost-intensive medical infrastructure or medical equipment,
- **or** involves treatment that carries a particular risk,
- **or** involves a healthcare provider about which there are quality or safety concerns. This does not include healthcare subject to EU legislation that ensures a minimum level of safety and quality throughout the EU.

'Non-hospital' treatments, such as dentistry, opticians' services and other therapies do not require prior authorisation. However, they must be normally funded by your local health service to qualify and the treatment must be medically necessary. It is well worth applying for prior authorisation anyway, so that you know exactly what will be reimbursed on your return.



Where can I go?

Depending on the route you use, you have the right to obtain healthcare in any EU member state, as well as Iceland, Liechtenstein, Norway and Switzerland – although treatment in Switzerland is only available via the S2 route.

What facilities are available?

If you exercise your rights using the S2 route, you will only be able to access state funded healthcare. It is worth considering that in some countries, state healthcare remains rudimentary and poorly funded, with the best doctors and clinicians moving over to the private sector in search of better wages.

Using the Directive route gives you a greater choice, as it includes both state and private healthcare providers, however you will normally need to pay for your treatment in advance and then claim reimbursement.

What treatment can I have?

You can access any treatment that is normally provided by the NHS in your area. Local Health Boards and Primary Care Trusts (PCTs) will decide the priorities for their local budget and set out the treatments that they are prepared to pay for. If the treatment is not funded locally, you cannot expect it to be funded overseas.

If a treatment is funded locally, but is not available without undue delay, then you have the right to seek that treatment in another country. This right covers the whole spectrum of healthcare, from major operations, such as hip replacements, to dental services.

For example, the NHS is obliged to provide dental treatment for you, so if there are no places available with a local NHS dentist, then you have the right to get dental treatment abroad and have it paid for by the NHS, bearing in mind that the NHS will only reimburse you for costs in line with the NHS Tariff.

Similarly, the NHS is obliged to provide treatment without undue delay and the European Court of Justice ruled that this must be based on objective medical opinion, not arbitrary waiting list targets. So if your doctor recommends treatment earlier than is available locally, you have the right to seek that treatment overseas.

Specialist treatments

Certain highly specialist treatments, such as proton beam therapy for rare cancers, are not available in the UK, yet may still be funded by the NHS in another EU country. These are provided by exception with decisions made on a case by case basis by the National Commissioning Group.

What do I do?

The Cross Border Healthcare Directive clearly states your rights to obtain healthcare services anywhere in the EU, but how do you go about accessing those services, what is your first step and who should you talk to?

Establishing the need

The first step to accessing your rights under the Cross Border Healthcare Directive is to get your healthcare needs confirmed by your clinician either in the UK or in your chosen country. The NHS cannot challenge the medical assessment of a doctor overseas unless they have evidence that it was made in error.

Your GP or hospital consultant will not be able to refer you to a facility outside of the NHS, but they will be able to confirm the treatment that you need and the timescale in which they recommend you receive that treatment.

Getting prior authorisation

If you are using the S2 route then you will need to apply for prior authorisation to obtain your S2 form. You may also need prior authorisation to ensure you are reimbursed under the Directive route. This is dealt with by your local health commissioner, with each of the home nations having slightly different systems for administering local healthcare as follows:

- In England: Primary Care Trusts, practice –based commissioners and GP's
- In Wales: local health boards and Health Commission Wales
- In Scotland: the NHS board of the patient's residence
- In Northern Ireland: health and social services boards

You can get advice from your local Patient Advice and Liaison Service as to which route best suits your medical and financial needs.

Even if prior authorisation is not compulsory for the treatment you have planned, it is well worth investigating to understand what you are likely to be reimbursed.

Whatever your circumstances, it is important to note that prior authorisation does not mean approval of your choice, or referral to your chosen country, and so it does not come with any duty of care. If you choose to leave the NHS system, it is your choice and your responsibility.

Planning aftercare

Even if you do not need prior authorisation under the Cross Border Healthcare Directive, you should still discuss your planned treatment in detail with your GP, consultant or other doctor. This will ensure that the treatment you have planned is appropriate, your medical information is shared in advance with your chosen facility and that appropriate aftercare can be planned.

While the UK has a duty to provide aftercare, even if you have treatment overseas, you cannot expect to simply turn up and be treated. Aftercare needs to be planned and booked in advance.

Choosing a healthcare provider

The Cross Border Healthcare Directive establishes your rights to seek healthcare in other EU countries, but it is not designed to encourage or facilitate that choice. The onus is on the individual to find an appropriate provider.

So how do you go about finding healthcare overseas and what should you consider?

Finding healthcare providers in Europe

It is vitally important that you thoroughly research the medical treatment you are planning overseas. There are many websites, such as Treatment Abroad (www.treatmentabroad.com), which give detailed information on the services and standards you can expect to find across the 27 states of the EU. You will also find detailed information, listed by country, elsewhere on the EU Treatment website (www.eutreatment.com).

Under the Cross Border Healthcare Directive, each state is required to provide a National Contact Point by October 2013 giving information about healthcare services and standards in their country. However, the NHS is not required to provide information to you about healthcare in other states, and cannot comment about your choice unless they feel that the care you have chosen is inappropriate or unsafe.

Factors to consider

Getting medical treatment can be a traumatic experience at the best of times, so you need to know what else you will have to deal with if you choose treatment overseas. There are many factors to consider, including:

- Will there be English speaking doctors, and if not, will the hospital or clinic provide translators? Remember this may be an additional cost to the treatment, which you cannot claim back.
- Will the standards of care match your expectations and those in the UK?
- Is the number of nurses and doctors the same as in the UK?
- Will medical staff be qualified to the same high standards as the UK?

The more you research the treatment and the healthcare facility in which you will be treated, the more prepared you will be when you arrive. You want to feel completely confident in the facilities and staff you have chosen.

Availability of treatment

It is important to check that the treatment you are planning is available in the country of your choice for visiting EU citizens. There is no obligation for a healthcare provider to accept you for treatment, but they must be able to justify their refusal.

Reasons for refusal include lack of capacity or lack of funding, since you cannot be treated in another country at the expense of someone in the home system.

Check the overall costs

You should bear in mind that under the Cross Border Healthcare Directive, the NHS is only obliged to pay for the cost of your treatment (minus any co-payments), and not your travel or accommodation costs. You need to consider the total cost of your trip and how much of this you will have to pay yourself.

If you access your rights through the Cross Border Healthcare Directive, then you also need to consider that the NHS will only reimburse you up to the costs of the equivalent treatment in the UK, so it is well worth comparing the costs of treatment, especially from private providers, to reduce the amount you have to pay yourself. If you go overseas for treatment that costs more than the equivalent UK tariff, it is only fair that you pay the difference. Although some private clinics overseas will offer packages, with flights, accommodation and meals all included in the price, it is important to remember that the NHS will only reimburse you for the cost of your actual treatment.



What if it goes wrong?

Since you have chosen to move outside of the NHS system, you have no legal redress in the UK, and if anything goes wrong you are on your own. You will be covered by the laws of the country you have been treated in, and you will need to make any compensation claims or sue for negligence under that legal system.

Post-treatment problems

You should always ensure that you thoroughly research your chosen treatment centre, as the onus is on you to select an appropriate provider. **Under the Directive, prior authorisation will only be refused if there is a well-evidenced risk of unsafe treatment, of risk to public safety. However, even in the best facilities, things can go wrong.**

Naturally, if you suffer any problems following your treatment overseas, you can obtain treatment or emergency care under the NHS in exactly the same way as if you had been originally treated here in the UK. You will not be turned away as someone else's problem.

Similarly, if you experience problems overseas, you will be entitled to obtain treatment or emergency care that will be covered by the NHS, either as part of your S2 or Directive route funding, or as part of the European Health Insurance Card (EHIC) system in the case of an emergency admission.

When you are researching where to travel to for your treatment, it is important to not only find out about the facilities for your specific treatment, but also to research what happens should anything go wrong.

Your legal position

Although the NHS will support you with appropriate care if you experience problems, they have no legal responsibility for your original treatment overseas. It is your choice to step outside the NHS system, and so they have no duty of care or legal obligation to you for this treatment. Instead, your treatment will be covered by the legal system of the country where you were treated, and you will have to seek legal redress and compensation through their courts. **If you need to consider legal action, neither the legal expenses section of your travel, or medical travel insurance, nor any stand-alone legal expenses insurance, will provide cover. Specialist after the event insurances will not cover medical negligence claims.**

Insurance policies for medical travel

There are specialist insurance policies available that have been specifically designed to cover the potential risks and complications of having an operation abroad. Details of these can be found on the Treatment Abroad web site (www.treatmentabroad.com).

Travel insurance

If you are travelling overseas and the primary reason for your travel is medical, then it is very likely that your annual travel insurance policy, or an "off the shelf" travel insurance policy will not cover you. So, for example, you travel abroad for treatment and you are hospitalized as a result of a car accident. Your travel insurance may well not cover you, as there will be an exclusion in your policy for any travel undertaken for medical reasons.

So, you must check with your travel insurance company, before travelling abroad for treatment.

There are various specialist travel insurance policies available that have been specifically designed for people who are travelling abroad for medical reasons. Details of these can be found on the Treatment Abroad web site (www.treatmentabroad.com).

How do I complain?

Under the Cross Border Healthcare Directive, from October 2013 onwards, the National Contact Points in each country will be obliged to provide information about complaints procedures and how to claim for medical negligence. You cannot complain in the UK.

The UK government, the NHS, and your local healthcare commissioner **are not** responsible for your healthcare if you choose to be treated abroad. There are no systems for handling complaints about overseas providers as they do not fall under any UK jurisdiction.

If you have any problems with your treatment, from minor complaints to major negligence claims, you must direct these to the authorities in the country in which you were treated. The National Contact Point in the destination country should explain the procedure for making such complaints.

Research the legal system

It is vitally important that you research the legal system in each country before you make your choice, as this can have serious consequences if anything goes wrong.

Since the legal systems vary widely across Europe, from no-fault systems in the likes of Norway and Denmark, to combative legal systems elsewhere, it is important to understand the system you are entering into and how that will affect your rights.

Get insurance

When travelling overseas it is essential that you arrange travel insurance. **Normal travel insurance is not adequate**, but there are several specialist medical travel insurance policies. The legal liability section on your medical travel policy is, as on any standard policy - there to protect you against liability claims. It is not there as a tool to sue for medical negligence..

Get a lawyer

While it may be possible to make your initial complaint directly, through the formal channels set up in each country, it is advisable to get a lawyer as soon as possible to ensure that your claim is processed quickly and accurately.

There are legal firms in the UK who specialise in cross border medical claims, or you may wish to engage a local lawyer in the country you were treated. Once again, the language barrier may be an important factor in your choice, as you will want to fully understand the process and how your claim is progressing.

Legal firms may be prepared to work for you on a contingency basis, but the law is in a state of flux. Most lawyers working on medical negligence claims in UK courts will expect you to pay a fee whether you win or lose. Few lawyers will take on medical negligence cases in courts outside the UK, and they will almost always expect you to pay a hefty fee whether you win or lose.

The EU Directive and private medical insurance

If you have private medical insurance through your employer or through your own private medical, health cash, dental or similar insurance plan then the legal position is completely different from the NHS one. Nobody knows yet whether or not the cross-border directive will apply to UK citizens with private medical insurance.

Nobody knows if private medical insurance will be referred to in the forthcoming legislation which will formalise the application of the EU Directive in the UK. Even if the Directive does apply, there may be many practical and legal problems. The safest course is to assume that the new law does not give you any extra rights on your insurance. But, this does not mean that your insurance does not cover overseas treatment.

Does my insurance cover treatment outside the UK?

Most UK health insurances have a specific clause that excludes any non-emergency treatment outside the UK. Even if there is no specific clause, if the insurance limits you to treatment in certain pre-selected hospital groups, then by implication, treatment is limited to the UK. A handful of policies will allow non-emergency treatment anywhere in Europe. A few insurers will consider EU treatment on request.

What extras are covered?

If your insurer allows treatment outside the UK, this will be limited to medical treatment only. So the insurance will not pay travel, accommodation or ancillary costs either for the patient or any travelling companion.

What types of treatment are covered ?

This will depend on what your policy covers. Most health insurance policies do not cover cosmetic surgery, cosmetic dentistry, fertility treatment or obesity treatment.

Is it likely that insurers will cover EU treatment?

A handful of insurers do now. A few are expected to extend cover to EU countries but they will probably limit it to a few pre-selected hospitals. Even if the new law is held to apply in general to private medical insurance, in practice it will have little effect. This is because most health insurance gives a free or very wide choice of hospitals. So except in a few exceptional cases, there will always be a UK hospital that can offer private treatment within the necessary time limits.

The key thing to remember is that the cross-border rules do not offer you a full and free choice of treatment anywhere in the EU, whether it is paid for by private health insurance or the NHS, as there are rules and restrictions.

How do I know what my policy covers?

If the policy is arranged and paid for by your employer you should contact them. If you have a personal policy, then contact the insurer.

Can I get treatment abroad and then claim from my insurance?

If your insurance does allow EU treatment, then a few health cash/dental and specialist health policies will allow you to arrange, pay for and have EU treatment and then seek to claim what portion of the total costs is due from insurers. Most private medical policies will

insist that you contact them for their permission before arranging anything. The safest course of action is to contact your insurers before seeking EU treatment. Hoping that they will reimburse you afterwards may leave you seriously out-of-pocket.

Anything else I should consider

This area is a new one for most health insurers, so they may not have the answers. To avoid misunderstanding, if the insurance call centre says that your insurance will pay for overseas treatment, insist on the answer in writing from a named person.

Who to contact

- Your first point of contact should be your GP, hospital consultant or other doctor.
- They will put you in touch with the local Patient Advisory and Liaison Service
- Alternatively, you can contact your local PALS branch directly. Visit www.pals.nhs.uk to find your local branch.
- You can also get advice on the S2 route from the DWP Overseas Healthcare Team by calling 0191 218 1999 or writing to:

The Overseas Healthcare Team
Department for Work and Pensions
The Pension Service
International Pension Centre
Tyneview Park
Newcastle-upon-Tyne
NE98 1BA

- For advice on the Directive, you should contact the Department of Health at: www.dh.gov.uk/en/ContactUs/DH_066319#_4 or the Public Enquires Unit on 020 7210 4850
- You can find your local PCT online <http://www.nhs.uk/ServiceDirectories/Pages/ServiceSearchAdditional.aspx?SearchType=PCTSvc&ServiceType=Trust>



Useful Resources

Each of the 27 EU member states is obliged by the Cross Border Healthcare Directive, to provide National Contact Points. These will become the main resource for information regarding the cross border healthcare available in each country. These are not compulsory until October 2013 and will probably take some time to establish.

In the meantime, the following resources may prove useful in understanding your rights as a UK citizen:

- For general information about going abroad for treatment, you can download a free guide at www.treatmentabroad.com/guide/
- The NHS Direct website has detailed information on healthcare abroad. Visit www.nhs.uk/NHSEngland/healthcareabroad
- Specific information about planned healthcare abroad can be found at <http://tinyurl.com/3mn783k>
- To read an interview with one of the Department of Health team regarding the Cross Border Healthcare Directive, see <http://tinyurl.com/43wte9r>



Section 3: Questions and Answers

What does the Directive mean for patients living in the EU?

The Cross Border Healthcare Directive does not give people in any Member State additional rights. It states clearly what those rights are, something that was lacking before it came into force. It spells out what rights people have to get healthcare and medical treatment in another country within the EU and explains how the system works in practice.

Where will I be able to get information about my rights under the Directive?

Information will be more easily accessible through national contact points and other sources. Each Member State will have designated national contact points who are able to supply up-to-date information about patients' rights.

What happens about my medical records?

The Cross Border Healthcare Directive ensures that every patient has access to their medical records, but also safeguards patients' privacy, protecting any personal data that is transferred to a hospital or other healthcare organisation outside their own country.

What are my rights if something goes wrong when I have healthcare abroad?

This should happen rarely as the country providing the healthcare has full responsibility for any clinical oversight. The health authorities in your own country have no jurisdiction, and you cannot complain to them. If something does go awry, you will be able to get advice and

assistance from your national contact point and will be eligible for compensation from the Member State responsible for your treatment.

Will I get 'second class' treatment abroad?

No, if you go to another Member State in the European Union, the care you will receive will be the same as that offered to someone who is resident in that country. This also means that you may not jump ahead of a waiting system in your country of choice.

Why did the Cross Border Healthcare Directive come about?

After the Yvonne Watts case in the UK in 2003, there was a need for the European Commission to make patients' rights in the European Union much clearer. It was necessary to clarify how a patient in one Member State could gain approval for treatment in another Member State, reimbursed by their own healthcare system.

What does the Cross Border Healthcare Directive say about non-hospital treatment?

If you travel from your own country to another Member State you can gain access to any non-hospital care that is available to you in your own country, without prior authorisation. This means you do not have to have permission from your own healthcare system first. The cost of the treatment will be reimbursed in full, as long as the treatment you have can be provided within your own healthcare system. Reimbursement above and beyond that may not be granted.

What does the Cross Border Healthcare Directive say about hospital treatment?

The regulations about hospital treatment say that you can apply to go to another Member State for treatment as long as your case meets specific criteria. You must get pre-authorisation from your own healthcare system before you go, and then the healthcare system will reimburse the cost of treatment direct to the hospital in the Member State you have chosen in most cases. In others, you will need to pay, but will be reimbursed without too much delay, by your healthcare system. The size of the reimbursement will cover the cost of the treatment that you have, not the cost of the treatment in your own country.

Does my GP need to refer me for cross border healthcare?

In most cases, yes, as GP referral is usually required for any hospital treatment. Any Member State can set this as a condition for accepting a patient from another EU country for treatment in one of their hospitals.

What will the national contact points do?

If you are considering cross border healthcare, you have a right to access as much information as you need to be sure you are making the right decision. At the time the Cross Border Healthcare Directive came into force, people did recognise that information sources were inadequate. National contact points will develop to fulfil this requirement and each Member State will be able to decide how many National Contact Points it has, and where they are sited. The Directive stipulates that each European country should have enough National Contact Points with the proper facilities to provide prospective patients with information and practical support if required.

What are European reference networks?

These are centres of excellence for diagnosing and treating rare conditions. The idea is to set up European reference networks that are available to all residents of Europe, so that healthcare resources can be used as efficiently as possible. The Cross Border Healthcare

Directive clarifies the circumstances in which patients who need to access European reference networks can do so.

Why might I want to go to another Member State for medical treatment?

In most cases, you would want treatment locally, as this is more convenient. However, if there is an undue delay in obtaining the treatment you need in your own country, you should be able to travel to another country within the European Union that is able to provide it, and have the cost funded by the healthcare system of your own country. This may apply particularly to people in countries where there are long waiting lists for treatment, or where people live on the border near to another country with greater capacity in its healthcare system.

How many people are likely to take advantage of cross border healthcare?

Probably only a small fraction of people needing healthcare. Currently, countries in Europe spend about 1% of their healthcare budgets on healthcare obtained by their citizens in another European country and this is unlikely to change. Patients within smaller countries, or those near borders are probably more likely to request treatment in another Member State. It is also helpful for people with rare conditions to be able to get treatment in a specialised centre, no matter where in Europe that might be.

Notes:

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“Your rights to treatment in Europe” is published by Intuition Communication Ltd, a UK web publisher in the healthcare sector. Intuition operates various web sites in the medical travel sector aimed at both patients and healthcare providers, including:

- Treatment Abroad – www.treatmentabroad.com – the leading online guide for patients considering travelling abroad for treatment.
- International Medical Travel Journal (IMTJ) – www.imtj.com - an online business to business resource and e-newsletter for the medical travel industry.
- European Medical Travel Forum - www.medicaltravelforum.com - The business-to-business meeting place for the European medical travel and medical tourism sector and cross border healthcare.
- DoctorInternet – www.doctorinternet.ae, www.doctorinternet.info – a resource for Arab patients and their families who want to find out about healthcare services worldwide.



Intuition Communication Ltd
3 Churchgates
Wilderness
Berkhamsted HP4 2UB
England

Registered in England: 4858023
Web: www.intuition-communication.co.uk
Email: team@intuition-communication.co.uk

Switch: 0870 777 0401
Fax: 01442 817818