# PATIENTS SEEKING NHS FUNDED HOSPITAL TREATMENT IN THE EUROPEAN UNION, EUROPEAN ECONOMIC AREA OR SWITZERLAND

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| Director:         | Vikki Taylor  
|                   | Strategy and Market Management  
|                   | NHS Leicester City |
### Version Control and Summary of Changes

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1. Definitions

*NHS commissioned care* is healthcare which is routinely funded by the patient’s responsible primary care trust. The PCT has policies which define the elements of healthcare which the PCT is and is not prepared to commission.

*Responsible PCT* and *Responsible Commissioner* mean the PCT which discharges the Secretary of State’s functions under the National Health Service Act 2006 for an individual patient.

*EU* means the European Union. The EU is narrower than the European Economic Area (EEA) which includes some European countries that are not in the EU, such as Norway and Liechtenstein. Switzerland is not in the EEA but is linked to the EU by Swiss-EU bilateral agreements. The terms “Europe” and “European” are used in this policy to refer to EU and EEA countries and (except where stated otherwise) Switzerland.

*Host Country* means the European country in which the patient is seeking, and ultimately receives, the healthcare for which they are requesting funding.

*Country of Origin* means the country in which the patient is ordinarily resident.

*Undue delay* means a delay in providing treatment which, given both the individual clinical circumstances of the patient and the period that the patient could reasonably be expected to wait before receiving the requested treatment, cannot be objectively justified.

*EHIC* means the European Health Insurance Card. This allows temporary access to emergency healthcare for patients in all EEA countries and Switzerland at a reduced rate or, sometimes, free of charge. The EHIC covers any medical treatment that becomes necessary during an individual’s visit to Europe, because of either illness or accident.

*E112* is an application which is made by UK resident patients to the Department of Health to obtain prior authorisation to obtain hospital treatment in a state-funded healthcare setting within the EU/EEA/Switzerland. If approved by the responsible Primary Care Trust (PCT) and the Department of Health, treatment is provided under the same conditions of care and payment as a resident of the host country and the
NHS pays the full cost of treatment (if free to the patient in the host country) or the amount reimbursed by the state system (if treatment is not free to the patient), even if those costs are greater than in the United Kingdom. Where applicable, the patient makes a co-payment equivalent to that paid by a member of the host country receiving healthcare under that country’s state system. Where co-payments are charged, the NHS is also liable to pay any difference between costs reimbursed in the host country and the cost of treatment in the NHS (where higher). E112 authorisations are issued by the Department of Health once local commissioners of the responsible PCT confirm that the eligibility criterion of “undue delay” has been satisfied in the applicant’s case.

*Article 56* is an article of the Treaty on the Functioning of the European Union which provides for the development of a free market in goods and services in the EU (“the TFEU treaty”).

This policy outlines the circumstances in which patients can request NHS funding from their PCT to support them in seeking planned treatment within the EU, EEA countries or in Switzerland. Patients should be directed to guidance available for travellers under the EHIC mechanism for *unplanned* healthcare treatment available from the Department of Health “Health Advice for Travellers” section. This policy focuses on patients seeking treatment within the EU, EEA or Switzerland for *planned* healthcare services.

This policy only relates to the countries listed in Appendix 1. EU legislation and allied agreements do not give patients any right to be refunded for treatment outside the countries on this list.

### 2. The policy

2.1 This policy applies to any patient for whom the PCT is the Responsible Commissioner.

2.2 Requests from patients to receive treatment abroad should be made, initially, direct to the PCT. There are 3 routes\(^1\) under which a patient can be treated within the EU/EEA wholly or partly at the expense of the NHS:

- By the PCT commissioning treatment from a hospital based in the EU/EEA/Switzerland;
- Through the E112 system; and
- By the patient exercising rights under Article 56 of the TFEU treaty.

2.3 Patients are entitled to seek to exercise their rights to have NHS funded treatment in Europe in respect only of those treatments that the PCT would have been prepared to commission for a patient as part of NHS commissioned healthcare or where such treatments are approved under the PCT’s IFR process.

2.4 The PCT is prepared to consider commissioning treatment from a European-based hospital provided there is a business case for the commissioning activity and the PCT can be satisfied about quality, access and the overall cost of providing treatment to NHS patients at a European-based hospital.

\(^1\) The Article 56 route does not apply to treatment in EEA countries or Switzerland.
2.5 Treatment through the E112 scheme or under Article 56 is only available to patients who:

- Have been recommended for treatment by their GP or another duly authorised NHS clinician, and
- Have been informed by the PCT that the PCT is prepared to commission the treatment for the patient, and
- Where the patient has suffered unacceptable delay before the treatment is able to be provided or where the patient has a right to reimbursement under section 6A of the National Health Service Act 2006 (“the NHS Act”) (that is for non-special services which would be routinely funded as defined in the NHS Act).

2.6 If all 3 conditions in paragraph 2.5 are met, the patient is entitled:

- to apply to the PCT under the E112 scheme, or
- for prior authorisation to seek treatment abroad under Article 56 where that is required under sections 6A and 6B of the NHS Act, or
- claim reimbursement where that is possible without prior authorisation under section 6A of the NHS Act.

2.7 The PCT shall have no responsibility to fund a patient whose has sought and received treatment abroad where that patient has failed to apply for prior approval (under 2.6) unless that patient has a right to claim reimbursement without prior authorisation under section 6A of the NHS Act.

2.8 The PCT will consider each request under either E112 or Article 56 case, as applicable, and, where this is required, will consider the circumstances that the patient has advanced as constituting unacceptable delay in their particular case, applying the criteria in section 6B(6) of the National Health Service Act 2006. The referring consultant should make a case to the PCT, on behalf of the patient, including a clinical assessment of the patient, setting out the delay that the patient faces before being provided with treatment, and explaining whether the consultant considers that that delay would be medically unacceptable.

2.9 Where the patient applies for E112 support, the PCT is required to forward the application to the Department of Health for a decision on whether the NHS will support the application. Where E112 approval is provided, the PCT will meet the full cost of treatment (if free to the patient in the host country) or the amount reimbursed by the host country’s state system (if treatment is not free to the patient), even if these costs are greater than in the UK. Where co-payments are charged to the patient, the NHS is also liable to pay any difference between costs reimbursed in the host country and the cost of treatment in the NHS (where higher).

2.10 Where an application is made to the PCT under Article 56 either for prior authorisation or for reimbursement where prior authorisation is not required, and the PCT considers that it has sufficient information to be able to determine the application, the PCT will make a decision as to whether the
conditions in paragraph 2.5 have been met within 20 working days of the date of the application.

2.11 In a prior authorisation application in respect of special services, if the PCT is of the opinion that the conditions 6B (5) and (6) of the NHS Act have been met, the PCT will write to the patient, setting out the exact terms of the proposed prior authorisation and related arrangements. This is for the benefit of both parties, and enables the patient to be certain of the financial and clinical care arrangements that will apply. This letter will ensure that the patient is aware that, under the Article 56 route, the responsibility for ensuring the quality of the care that the patient receives is that of the health system in the host country. It is important that patients understand that the PCT cannot vouch for the quality of providers that the UK neither oversees nor regulates.

2.12 In a prior authorisation application in respect of a service which is not a special service within the meaning of section 6A, the PCT may refer the case to the PCT’s IFR committee for its consideration. If, having considered all relevant matters, the PCT is minded to approve the application, the PCT will write to the patient, setting out the exact terms of the proposed prior authorisation and related arrangements. This is for the benefit of both parties, and enables the patient to be certain of the financial and clinical care arrangements that will apply. This letter will ensure that the patient is aware that, under the Article 56 route, responsibility for ensuring the quality of the care that the patient receives is that of the health system in the host country. It is important that patients understand that the PCT cannot vouch for the quality of providers that the UK neither oversees nor regulates.

2.13 In an article 56 case where the patient has not sought prior authorisation, the PCT will consider whether prior authorisation ought to have been sought. If the PCT considers that prior authorisation ought to have been sought by the patient then the application for reimbursement will be refused. If the PCT has a duty to make reimbursement then the PCT will approve payment to the patient in accordance with the National Health Service (Reimbursement of the Costs of EEA Treatment) Regulations 2010 and any relevant DH Guidance.

2.14 Neither E112 nor Article 56 authorisations will make the PCT liable for the clinical negligence of practitioners or clinicians in the host country. Any liability of the provider would have to be established in accordance with the legislation of the host state. The letter also provides an opportunity to set out what care arrangements the patient can expect when they return to the UK.

2.15 Where prior authorisation is granted under Article 56 or a case for reimbursement is made pursuant to section 6A, the PCT will be responsible for reimbursing the patient any costs paid out by the patient up to an amount which is equivalent to the cost of NHS treatment in UK, or the actual cost of treatment in the EEA country, whichever is the lower.

2.16 The PCT will give reasons in writing for granting or refusing any application which is made under this Policy.

2.17 The PCT is entitled to refuse to pay for healthcare services that are available in other European states but that the PCT does not offer to patients in the UK as set out in sections 6A and 6B of the NHS Act. The PCT is also entitled to refuse a request for treatment that it does not fund, even if that treatment is funded elsewhere in the UK by another PCT.
2.18 There may be exceptional circumstances where the PCT may agree to fund treatment in another European country in a case which falls outside of the criteria set out above. Such applications should be made to the PCT's individual funding request panel ("IFR panel"), outlining the exceptional circumstances in the case. The IFR panel will make a decision applying its IFR policy.

2.19 If the PCT refuses a request for a patient to seek treatment abroad, that patient has the right to make a complaint to the PCT using the NHS Complaints System.

2.20 Patients are only entitled to receive payment towards travel and subsistence costs if the patient would have been entitled to travel and subsistence if treatment for the patient had been provided in the UK. These payments must not be greater than the cost of supporting the patient if they had been treated by the NHS in the UK.

2.21 The NHS does not accept any legal liability for the quality of providers outside the UK, on the basis that the choice of provider is for the patient and the UK neither oversees nor regulates such providers. Authorisation for E112 or Article 56 does not make the NHS liable for any clinical negligence and any liability of the provider would have to be established within the legislation of the host state. Patients must make their own inquiries about the level of insurance held by the proposed providers and the level of any liability within the country where the treatment is to be provided. Patients seeking treatment outside of the UK are not covered by the Clinical Negligence Scheme for Trusts (CNST).

3. Committee responsible for administering this policy:

Strategy and Market Management Contracting Team
NHS Leicester City
St John’s House
30 East Street
Leicester
LE1 6NB

4. How the PCT will provide support to those contemplating going abroad as set out in the Directions:

Please contact the patient advisory liaison service for information on the support that we can provide you when considering going abroad for treatment

Tel: 0116 295 7011
Fax: 0116 295 7012 (Confidential)
Email: pals@leicestercity.nhs.uk
5. Key principles supporting this policy

3.1 Primary care trusts have legal responsibility for NHS healthcare budgets and their primary duty is to live within the budget allocated to them.

3.2 PCT commissioners have a responsibility to make rational decisions in determining the way in which they allocate resources and to act fairly between patients.

3.3 All NHS commissioned care should be provided as a result of a specific policy or decision to support the proposed treatment. A third party has no mandate to pre-commit resources from PCT budgets unless directed by the Secretary of State.

6. Local documents which have a direct bearing on this policy

East Midlands Specialised Commissioning Group supporting documents
EMSCG Definitions (EMSCGN001V1), 2009

East Midlands Specialised Commissioning Group supporting documents
EMSCG Key Principles (EMSCGN003V1), 2009

Please refer to your PCT's documents in relation to:

Priority setting processes within the organisation
Individual Funding Procedures within the organisation
The principles guiding prioritisation

Patients and clinicians should ensure that they have checked any relevant treatment specific policy on the PCT's website as the treatment may not be routinely commissioned by the PCT. For specialised services/treatments the website is http://www.emscg.nhs.uk/

7. Documents which have informed this policy

The National Health Service (Reimbursement of the Costs of EEA Treatment) Regulations 2010.

The National Health Service (Reimbursement of the Costs of EEA Treatment) (England) Directions 2010

Cross Border Healthcare & Patient Mobility: Revised Advice on Handling Requests from patients for treatment in countries of the EEA


The National Prescribing Centre, Supporting rational local decision-making about medicines (and treatments), February 2009, http://www.npc.co.uk/policy/resources/handbook_complete.pdf

http://www.dh.gov.uk/en/Publicationsandstatistics/Legislation/Actsandbills/DH_064103


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| East Midlands Specialised Commissioning Group  
| Malcolm.Qualie@emscg.nhs.uk |
| Version | Second |
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| Date of next review | This policy will be reviewed in light of relevant further direction or guidance issued. |
| Acknowledgements | West Midlands SCG, David Lock (no 5 Chambers). |
APPENDIX 1: EQUALITY IMPACT ASSESSMENT SCREENING REPORT

Please see separate Equality Impact Assessment document EMSCGP020V1
APPENDIX 2: LIST OF THE COUNTRIES WHERE PATIENTS CAN REQUEST TO BE TREATED UNDER THIS POLICY.

**EU Member States (other than UK)**

Austria  
Belgium  
Bulgaria  
Cyprus  
Czech Republic  
Denmark  
Estonia  
Finland  
France  
Germany  
Greece  
Hungary  
Ireland  
Italy  
Latvia  
Lithuania  
Luxembourg  
Malta  
Netherlands  
Poland  
Portugal  
Romania  
Slovakia  
Slovenia  
Spain  
Sweden

**Non EU Member States**

Norway  
Iceland  
Liechtenstein  
Switzerland (E112 route only)