
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations replace the National Health Service (Charges to Overseas Visitors) Regulations 2011 (the 2011 Regulations) and provide for the making and recovery of charges for relevant services provided under the National Health Service Act 2006 (the 2006 Act) to certain persons not ordinarily resident in the United Kingdom (overseas visitors).

Regulation 2 defines “child” to mean a person who is under the age of eighteen. This aligns the definition of child with that set out in the Children Act 1989 (the Children Act). “Parental responsibility” is defined by reference to the meaning in section 3 of the Children Act.

“Entry clearance” and “immigration rules” are defined which are relevant for the purposes of regulations 6, 10, 11 and 15.

The definition of “relevant NHS body” includes NHS foundation trusts, NHS trusts and local authorities exercising public health functions. The definition of “relevant services” means all services provided under the 2006 Act, except for primary medical, dental and ophthalmic services. The definition of “treatment the need for which arose during the visit” includes only that treatment which cannot wait until the overseas visitor can reasonably be expected to return to their country of ordinary residence and only applies where the overseas visitor has not travelled to the United Kingdom for the purpose of seeking treatment.

Regulation 3 imposes an obligation on a “relevant NHS body” to make and recover charges in respect of relevant services provided to an overseas visitor where the relevant NHS body determines that no exemption provided for in the Regulations applies.

Paragraph (4) provides for the remainder of a course of treatment to continue to be exempt from charges where part way through the course of treatment the overseas visitor ceases to be exempt from charges. The exception is where an overseas visitor is exempt from charges under regulation 10 because they have paid, are exempt from paying, or in respect of whom the Secretary of State has waived, the immigration health charge; under transitional arrangements under regulation 11 for overseas visitors unable to pay the health charge until their next visa application; and under regulation 25(3) as a child born to parent who is exempt from charges under regulation 10 or 11. These exemptions are time limited (based on visa expiry or time spent in the UK) so the overseas visitor (or their parents, as the case may be) will know when their entitlement to the exemption from charges will cease and will have the opportunity to apply for further leave to remain, or to regularise the immigration status of their children.

Regulation 4 makes provision about the persons liable to pay charges in respect of relevant services provided to an overseas visitor. Regulation 5 provides for repayment to be made to a person who has paid charges in respect of relevant services provided to an overseas visitor where a charge has been made and recovered which is not payable under these Regulations.

Regulation 6 provides for an overseas visitor who receives relevant services and, subsequent to those charges being made or recovered, is granted temporary protection, asylum or humanitarian protection under the immigration rules or is identified as a victim of human trafficking, to be treated, in respect of those relevant services, as an overseas visitor in respect of whom the Regulations provide for no charge to be made or recovered.

Regulation 7 makes provision about how relevant NHS bodies must calculate charges for relevant services provided to an overseas visitor.

Regulation 8 defines “female genital mutilation” and “torture” for the purposes of Part 3 of the Regulations which makes provision about relevant services which are exempt from charges.

Regulation 9 provides for an exemption from charges for relevant services provided to an overseas visitor to treat a condition caused by torture, genital mutilation, domestic violence or sexual violence. Regulation 8(3) makes clear that treatment that is exempt from charges in those

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circumstances includes any subsequent and on-going treatment for any condition, including chronic conditions, that is directly attributable to the violence and that treatment, in the case of female genital mutilation, includes any antenatal, perinatal and postpartum treatment the need for which is directly attributable to the mutilation.

Regulation 10 provides for an exemption from charges for an overseas visitor who has paid, is exempt from paying (except when exempt on the basis of visiting the United Kingdom for less than six months), or in respect of whom the Secretary of State has exercised discretion to reduce, partially refund or waive, a charge under an order made under section 38 (immigration health charge) of the Immigration Act 2014. The exemption applies for the “relevant period” which is the period for which leave to enter or remain in the United Kingdom is granted to the overseas visitor. Regulation 11 provides for an exemption from charges for those overseas visitors who apply for leave to enter or remain before the first order made under section 38 comes into force and who, consequently, will not have an opportunity to pay the immigration health charge until they next apply for leave to enter or remain in the United Kingdom. By virtue of section 39 of the Immigration Act 2014 (related provision: charges for health services), which has yet to come into force, such people, who would previously have been ordinarily resident or, in most cases, exempt from charges under the 2011 Regulations will become chargeable under these Regulations. Regulation 11 is intended to maintain the exemption from charges for those people until they next apply for leave to enter or remain in the UK.

Regulation 12 ensures that the Regulations are consistent with the United Kingdom's obligations in respect of overseas visitors who are entitled to the provision of relevant services without charge by virtue of an enforceable EU right.

Regulation 13 provides for an exemption from charges for overseas visitors who would be entitled to the provision of relevant services without charge under Regulation (EC) No 883/2004 if the United Kingdom was listed in Annex IV to that Regulation.

Regulation 14 provides for an exemption from charges for overseas visitors who are entitled to relevant services without charge under the terms of a reciprocal healthcare agreement with another country. Schedule 2 lists those countries with which the United Kingdom has a reciprocal healthcare agreement.

Regulation 15 provides for an exemption from charges for person who have been granted or have made an application for temporary protection, asylum or humanitarian protection and persons supported by the Home Office under section 95 of the Immigration and Asylum Act 1999 (the 1999 Act). Failed asylum seekers who are supported by the Home Office under section 4(2) of the 1999 Act or by a local authority under section 21 of the National Assistance Act 1948 are also exempt from charges. Paragraph (e) provides for an exemption for children looked after by a local authority within the meaning of section 22(1) of the Children Act 1989.

Regulation 16 provides an exemption from charges for an overseas visitor who is identified by a competent authority as a victim of human trafficking under the Council of Europe Convention on Action against Trafficking in Human Beings, or who a competent authority has reasonable grounds for believing is a victim of human trafficking.

Regulation 17 provides for the Secretary of State to determine that, if exceptional humanitarian reasons justify it, an overseas visitor is exempt from charges, subject to conditions on that determination set out in paragraph (2).

Regulation 18 provides for an exemption from charges for an overseas visitor who is detained in hospital under the Mental Health Act 1983, received in guardianship or subject to a community treatment order under that Act or deprived of their liberty under the Mental Capacity Act 2005. An overseas visitor required to submit to treatment under a court order is also exempt from charges.

Regulation 19 provides for an exemption from charges for an overseas visitor who is detained in a prison; or in a remand centre, young offender institution or secure training centre under section 43(1) of the Prison Act 1952; or who is in immigration detention.

Regulation 20 exempts qualifying employees and members of the regular and reserve forces from charges. A qualifying employee, unless they are in the United Kingdom in the course of their employment, must have been recruited in the United Kingdom and have been ordinarily resident

in the United Kingdom prior to taking up that employment. A qualifying employee includes Crown servants, employees of the British Council or the Commonwealth War Graves Commission and overseas visitors in employment financed by the United Kingdom Government.

Regulation 21 exempts NATO forces members to whom Article IX(5) of the Agreement regarding the Status of Forces of Parties to the North Atlantic Treaty applies, where the relevant services in question cannot readily be provided by the medical services of either the armed forces of the overseas visitor's own country or those of the United Kingdom.

Regulations 22 exempts war pensioners and armed forces compensation scheme payment recipients from charges for relevant services. Regulation 23 exempts overseas visitors who are employed, engaged or working on a United Kingdom registered ship from charges for relevant services.

Regulation 24 provides for an exemption from charges for treatment the need for which arose during the overseas visitor's visit, for an overseas visitor who is entitled to services under the European Convention on Social and Medical Assistance or the European Social Charter, where the overseas visitor is in the United Kingdom lawfully and without sufficient resources to pay the charges. An authorised child or companion to a person exempt from charges under regulation 17 (exceptional humanitarian reasons) is also exempt from charges for treatment the need for which arose during the overseas visitor's visit.

Regulation 25 provides an exemption from charges for an overseas visitor who is the member of the family of a principal overseas visitor who is exempt from charges under various other regulations.

Paragraph (2) provides an exemption from charges for an overseas visitor who is a member of the family of a principal overseas visitor who is exempt under regulation 16 (victims of human trafficking), regulation 20 (members of the regular and reserve forces, Crown servants and others) or regulation 21 (NATO forces).

Paragraph (3) provides an exemption for a child who is born to a parent who is exempt from charges under regulation 10 (immigration health charge). The exemption applies while the child is less than three months of age provided they have not left the United Kingdom since birth. The exemption ensures that a child born in these circumstances does not attract charges before the child's parents have had an opportunity to regularise the child's immigration status and apply for leave for their child to remain in the United Kingdom and pay the immigration health charge, if applicable.

Paragraph (4) provides an exemption from charges for an overseas visitor who is a member of the family of a principal overseas visitor who has an enforceable EU right to the provision of relevant services without charge under regulation 12 (EU rights) or 13 (overseas visitors who are treated as if entitled under the social security coordination regulation), or is exempt under regulation 22 (war pensioners and armed forces compensation scheme payment recipients). The exemption in respect of family members of overseas visitors with EU rights captures family members who do not have an EU right in their own right or as a family member under EU law because their relationship to the principal overseas visitor is not recognised as a family relationship under EU law. This would include an overseas visitor whose same sex marriage to, or civil partnership with, the principal overseas visitor is not recognised in the law of the member state in which the principal overseas visitor is insured.

Regulation 26 provides for the consequential amendments in Schedule 3 to have effect.

Regulation 27 saves the instruments listed in Schedule 4 in respect of charges made, or to be made, and recovered for courses of treatment commenced before the coming to force of the Regulations, and otherwise revokes the instruments to the extent specified in Schedule 4.

^{M1}An impact assessment for the Visitor and Migrants Cost Recovery Programme was published in July 2014 . A further impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.

Changes to legislation:

There are currently no known outstanding effects for the The National Health Service (Charges to Overseas Visitors) Regulations 2015.