

EXPLANATORY MEMORANDUM TO

THE NATIONAL HEALTH SERVICE (CHARGES TO OVERSEAS VISITORS) (AMENDMENT) (EU EXIT) REGULATIONS 2020

2020 No. 1423

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department of Health and Social Care and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 The Regulations amend the National Health Service (Charges to Overseas Visitors) Regulations 2015 (S.I. 2015/238) (the 2015 regulations) and subsequent amendments.
- 2.2 These changes are being made as a consequence of the United Kingdom's (UK) withdrawal from the European Union (EU) to ensure that the NHS is able to recover effectively the costs of NHS services provided to EU/EEA and Swiss visitors and migrants after the end of the Transition Period on 31 December 2020.
- 2.3 The Regulations make provisions on the chargeable status of EU/EEA and Swiss visitors and migrants accessing healthcare in England while residing or staying temporarily in the UK. These provisions ensure that domestic legislation fulfils UK obligations under Title III of Part 2 of the Withdrawal Agreement between the EU and the UK, Title III of Part 2 of the EEA EFTA Separation Agreement and the social security co-ordination provisions of the Swiss Citizens' Rights Agreement (hereafter referred to as "the Agreements") insofar as they relate to healthcare rights. The Regulations reflect the UK Government's policies where there is no further agreement reached with the EU on the terms of the future EU-UK relationship.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 Is not subject to Parliamentary procedure or is subject to a negative resolution procedure and is not likely to be schedule for debate.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is England and Wales.
- 4.2 The territorial application of this instrument is England.

5. European Convention on Human Rights

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

- 6.1 The 2015 regulations provide for relevant NHS bodies in England to make and recover charges from overseas visitors (anyone not ordinarily resident in the UK) for relevant services provided to them, unless the overseas visitor, or the service they receive, is covered by one of a number of exemption categories as set out in the regulations.
- 6.2 Amendments to the charging regulations are necessary to provide an appropriate legislative framework for the making and recovering of charges from overseas visitors for relevant services that they receive after the end of the Transition Period on 31 December 2020.

7. Policy background

What is being done and why?

- 7.1 The Regulations amend the 2015 regulations and subsequent amendments.
- 7.2 Section 175 of the National Health Service Act 2006 (the 2006 Act) authorises the Secretary of State to make regulations for the making and recovery of charges from persons not ordinarily resident in Great Britain for NHS services, including that charges may only be made in such cases as may be determined in accordance with the regulations.
- 7.3 The regulations ensure that the NHS, which is supported by the British taxpayer, receives the requisite contribution from overseas visitors towards the cost of care that they receive, should they use NHS services. The overarching aim is to safeguard the long-term sustainability of the NHS in England.
- 7.4 Amendments to the charging regulations are necessary as a consequence of the UK's withdrawal from the EU to ensure that the NHS is able to recover effectively the costs of NHS services provided to EU/EEA and Swiss visitors and migrants after the end of the Transition Period. The amendments also ensure that these cohorts are not charged for NHS care, where such charges would be inconsistent with UK Government obligations under the Agreements.
- 7.5 The proposed changes do not undermine the principle that the NHS is, and will remain, free at the point of delivery for those who are ordinarily resident in the UK. Existing exemptions and safeguards to protect the most vulnerable in society and for key services essential to public health are unchanged, such as ensuring that urgent or immediately necessary treatment will always be provided, regardless of an individual's ability to pay for that treatment.
- 7.6 The amendments remove references to EU rights within the existing legislative framework, the interpretation of which may be unclear as the UK is no longer a member of the EU.
- 7.7 The Regulations will provide that the level of any charges made to chargeable overseas visitors from EU/EEA states or Switzerland is calculated by reference to the tariff for the relevant service multiplied by 150 per cent. This means that such visitors

will pay the same amount as a third-country national who is not ordinarily resident in the UK would pay.

- 7.8 The Regulations make provision on the chargeable status of EU/EEA and Swiss visitors or migrants and former UK residents who access healthcare in England while residing or staying temporarily in the UK, in order to ensure that domestic legislation reflects UK Government obligations under the Agreements and domestic policies.
- 7.9 Part Two of the Withdrawal Agreement gives people certainty that their citizens' rights will be protected. People within scope of Part Two of the Withdrawal Agreement will have broadly the same entitlements to work, study and access public services and benefits as now, in as far as these entitlements have derived from UK membership of the EU.
- 7.10 EU/EEA and Swiss citizens working as frontier workers (citizens who reside in one state and regularly work in another) or as a posted worker can continue working in the UK if they did so by the end of the transition period and will retain existing healthcare entitlements.
- 7.11 The existing rights to free NHS care under EU law will continue until the end of the Transition Period on 31 December 2020. The Agreements provide protections in a number of other circumstances to ensure there is no 'cliff edge' or loss of rights for individuals who are in a cross-border situation on 31 December 2020. This includes EU/EEA and Swiss visitors on a temporary stay in the UK which begins before but ends after 31 December 2020, for example tourists and students, and those seeking planned treatment in the UK, where this was requested from the relevant EEA health insurance authority before 31 December 2020. The Regulations provide that the latter may be charged for relevant services not covered by the scope of their authorisation where the person stays longer than six months in the UK and payment of the immigration health surcharge is waived in relation to this temporary stay.
- 7.12 The Regulations will provide that UK-insured state pensioners residing in an EEA state or Switzerland at the end of the Transition Period will continue to be exempt from charges for relevant services received in England, when on temporary visits to the UK. The exemption does not extend to those who choose to move to the EU after IP completion day, who will be chargeable for relevant NHS services on the same basis as other chargeable overseas visitors. As former UK residents who have emigrated from the UK to a non-EU country are already chargeable, this means that from the end of the Transition Period all UK residents who emigrate from the UK will be treated on a comparable basis, irrespective of where in the world that they live.
- 7.13 In line with the Agreements, EU/EEA and Swiss citizens and their family members resident in the UK by the end of the Transition Period will continue to be eligible for free NHS healthcare where they meet the test of ordinary residence. They must apply to the EU Settlement Scheme (EUSS) for an immigration permission to secure these rights for the future. The Citizens' Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020 set the deadline for applications as 30 June 2021. Those who do not make an application by this date will not have lawful status in the UK.
- 7.14 The UK Government has been clear that, where individuals have reasonable grounds for missing the deadline, they will be given a further opportunity to apply to the EUSS. The Regulations provide an exemption from charging for EU/EEA and Swiss citizens who make a late application for leave to enter or remain under the EUSS

(whether that be an application for pre-settled status or for settled status, when their period of pre-settled status expires). The exemption will apply to the period which begins on the date on which the late application is made and ends on the date on which that application is finally determined under those rules.

- 7.15 The Regulations will revoke the National Health Service (Charges to Overseas Visitors) (Amendment etc.) (EU Exit) Regulations 2019. These regulations have not come into legal effect and are no longer fit for purpose as the provisions have been superseded by the Agreements.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument is not being made under the European Union (Withdrawal) Act 2018 but relates to the withdrawal of the United Kingdom from the European Union because the changes required are a consequence of withdrawal. The instrument will correct references to EU law that will be inoperable after the end of the Transition Period and will make provision on the chargeable status of EU visitors and migrants using NHS services in England after the end of the Transition Period, in line with UK Government domestic policy and to fulfil legal obligations under the Agreements.

9. Consolidation

- 9.1 The instrument does not consolidate legislation and there are no plans to do so at this time.

10. Consultation outcome

- 10.1 There has been no public consultation in relation to this instrument.
- 10.2 Charging policy is a devolved matter. The Devolved Administrations have been engaged in relation to the changes in this instrument but are responsible for taking forward any amendments to charging regulations in Scotland, Wales and Northern Ireland. This instrument makes no provision that could otherwise fall within devolved competence.

11. Guidance

- 11.1 Comprehensive guidance will be published to accompany the Regulations. Training will also be available for relevant NHS staff, both e-learning and face to face training sessions, to support staff implementing the Regulations.
- 11.2 An Overseas Visitor Improvement Team, established in January 2015, is available to NHS providers free of charge to assist them to implement systems and processes for improved identification of, and recovery of charges from, chargeable overseas visitors under the Regulations.
- 11.3 The NHS Cost Recovery programme is undertaking an information campaign to the NHS which will run until April 2021. A wide range of channels will be used to communicate information effectively to the NHS, to increase understanding of the changes, engage in discussion and to identify areas of concern. Information will be made available directly to overseas visitor managers, trusts and commissioners through key websites, social media sites and stakeholder communication channels.
- 11.4 Queries from the NHS and the public on the Regulations can be taken at nhscostrcovery@dhsc.gov.uk, Room 2S15, Quarry House, Leeds, LS2 7UE.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 The impact on the public sector is that NHS bodies providing relevant services will have modified obligations in respect of the making and recovery of charges from overseas visitors. These are not expected to be onerous as the Regulations maintain healthcare entitlements for those in scope of the Agreements, and the NHS will use existing processes in order to make and recover costs from overseas visitors who are chargeable for NHS healthcare in England.
- 12.3 An Impact Assessment is submitted with this memorandum and published alongside the Explanatory Memorandum on the legislation.gov.uk website.

13. Regulating small business

- 13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

- 14.1 The NHS Cost Recovery programme is subject to regular internal review. The Regulations will be kept under review and may be amended should reciprocal healthcare agreements be agreed with the EU or with EU Member States in future or as charging policy is amended.

15. Contact

- 15.1 Alison Tyson at the Department of Health and Social Care Telephone: 0113 254 5512 or email: Alison.Tyson@dhsc.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Deborah Persaud, Deputy Director for NHS Cost Recovery, at the Department of Health and Social Care can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Edward Argar, Minister of State for Health at the Department of Health and Social Care can confirm that this Explanatory Memorandum meets the required standard.