

## EXPLANATORY MEMORANDUM TO

### THE NATIONAL HEALTH SERVICE (CHARGES TO OVERSEAS VISITORS) (AMENDMENT) (EU EXIT) (NO. 2) REGULATIONS 2020

2020 No. 1659

#### 1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department of Health and Social Care (“DHSC”) 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 This instrument amends 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).
- 2.3 This instrument makes provisions on the chargeable status of EU 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 the EU-UK Trade and Cooperation Agreement (the EU-UK agreement) insofar as they relate to healthcare rights. The instrument also makes provisions to reflect reciprocal healthcare agreements that have been agreed with Ireland and Norway (the reciprocal healthcare agreements).

#### 3. Matters of special interest to Parliament

##### *Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 DHSC regrets that this instrument breaches the rule that statutory instruments subject to the negative procedure should normally be laid, and copies provided to the Committee, 21 days before the instrument comes into force (“the 21- day rule”). In response to the EU-UK agreement, as well as the reciprocal healthcare agreements, urgent action is needed to provide an appropriate legislative framework for the making and recovering of charges from overseas visitors covered by the EU-UK agreement and the reciprocal healthcare agreements for relevant services that they receive after the end of the Implementation Period on 31 December 2020.

##### *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 this 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 at this stage.

#### 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 This instrument supplements the National Health Service (Charges to Overseas Visitors) (Amendment) (EU Exit) Regulations 2020 to reflect further arrangements agreed with the EU, Norway and Ireland.

6.2 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.

6.3 Amendments to the 2015 Regulations are necessary to provide an appropriate legislative framework for the making and recovering of charges from overseas visitors covered by the EU-UK agreement and the reciprocal healthcare agreements for relevant services that they receive after the end of the Implementation Period on 31 December 2020.

## **7. Policy background**

### *What is being done and why?*

7.1 This instrument amends 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 2015 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 2015 Regulations are necessary to ensure that overseas visitors covered by the EU-UK agreement and the reciprocal healthcare agreements are not charged for NHS care, where such charges would be inconsistent with UK obligations under those 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 This instrument reflects the EU-UK agreement on social security coordination for reciprocal healthcare rights by adding a new provision within the 2015 Regulations.

7.7 This instrument reflects the UK's agreed Memorandum of Understanding ("MOU") with Ireland concerning reciprocal healthcare arrangements from the end of the Implementation Period. This will provide confidence to residents of both countries that they will continue to benefit from ongoing healthcare cooperation within the Common Travel Area. The instrument provides for the MOU by adding Ireland to the list of countries within Schedule 2.

7.8 This instrument reflects the UK's agreement with Norway on reciprocal healthcare arrangements. This instrument provides for this by adding Norway to the list of countries within Schedule 2.

## **8. European Union (Withdrawal) Act 2018/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 fulfil UK obligations under the EU-UK agreement and the reciprocal healthcare agreements.

## **9. Consolidation**

9.1 This 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 matter.

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 this instrument. Training will also be available for relevant NHS staff, both e-learning and face to face training sessions, to support staff implementing this instrument.

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 2015 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 about this instrument can be directed to [nhscostrecovery@dhsc.gov.uk](mailto:nhscostrecovery@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 changed obligations in respect of the making and recovery of charges from overseas visitors. NHS bodies will need to adjust their practices when undertaking their duties to make and recover charges so that they do not make or recover charges in relation to those covered in this instrument. Given their experience in applying the 2015 Regulations, and that such arrangements form part of the business as usual work for these bodies and broadly continue existing arrangements, these changes do not introduce any significant additional burden. The changes also benefit patient care by providing access without charge by patients covered by the agreements to treatment and medicines that they require.
- 12.3 An Impact Assessment has not been prepared in relation to this instrument.

## **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 further 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 Nadhim Zahawi, Parliamentary Under-Secretary of State for COVID-19 Vaccine Deployment can confirm that this explanatory memorandum meets the required standard.