

EXPLANATORY MEMORANDUM TO
THE NATIONAL HEALTH SERVICE (CHARGES TO OVERSEAS VISITORS)
(AMENDMENT) REGULATIONS 2022

2022 No. 19

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.

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 Charging Regulations").

2.2 The instrument is necessary to introduce an exemption from charges for NHS funded secondary care for those individuals who are accredited members of the Commonwealth Games Family during the period of the Commonwealth Games ("the Games") in 2022.

2.3 In addition, the instrument is required to ensure that charges which apply to overseas visitors can continue to be calculated correctly following changes to the way in which prices for NHS healthcare services are published in the National Tariff¹.

2.4 Finally, the instrument updates the list of infectious diseases at Schedule 1 of the Charging Regulations in respect of a change in name of one of those diseases.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

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 Charging Regulations require relevant bodies in England to make and recover charges from an overseas visitor 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 Charging Regulations. An overseas visitor is defined as anyone not ordinarily resident in the UK.

¹ The 2021-22 national tariff can be found here - <https://www.england.nhs.uk/publication/national-tariff-payment-system-documents-annexes-and-supporting-documents/>

- 6.2 Some of the exemption from charge categories for overseas visitors provide for all of the relevant services provided to them to be included in the exemption. However regulation 24 is in respect of those groups of overseas visitor for whom only treatment the need for which arises during their visit to the UK is included within the exemption, and not for instance, treatment they might be seeking in the UK.
- 6.3 When a charge applies, regulation 7 of the Charging Regulations sets out that this must be at 150% of the tariff for the relevant service with which the overseas visitor has, or will be, provided. Where the relevant service is specified under section 116(1)(a) (national tariff) of the Health and Social Care Act 2012 (“the 2012 Act”), the tariff is based on the national price specified in the National Tariff for that service in relation to the relevant body.
- 6.4 The Charging Regulations also provide for situations where the relevant service is not specified in the National Tariff under section 116(1)(a) of the 2012 Act. They set out that the tariff is instead to be determined in accordance with the rules provided in the National Tariff for these circumstances. In practical terms this usually means the tariff will be the price locally agreed between commissioners and providers.

7. Policy background

What is being done and why?

- 7.1 In 2021 NHS England conducted a consultation on the National Tariff which proposed to limit national prices to unbundled diagnostic imaging services, with all other prices calculated and published as ‘unit prices’. The 2021/2022 National Tariff was published in October 2021 and such published unit prices are now used to determine prices in some circumstances.
- 7.2 The Charging Regulations currently only refer to national prices and not unit prices. Regulation 2(2) of this instrument therefore updates the Charging Regulations to reflect this change and enable relevant bodies to correctly calculate the tariff where the relevant service does not have a national price, but where it does have a unit price.
- 7.3 As part of its bid to host the 2022 Games, the UK government committed to providing free NHS care for the Commonwealth Games Family in the event of illness or accident. Whilst the vast majority of their healthcare needs are expected to be dealt with on site, in the event that they do need secondary care treatment they may be considered chargeable overseas visitors. Regulation 2(3) of this instrument therefore introduces a new exemption from charge category between 14 July and 17 August 2022 for those who have been given an accreditation pass to participate in the Games, with the exception of those within the Games workforce which consists of paid staff, contractors and volunteers.
- 7.4 The Commonwealth Games Family will be entitled, during the relevant period, to free of charge treatment the need for which arises during their visit to the UK. This will include treatment for the diagnosis of symptoms or signs occurring for the first time after their arrival in the UK, or treatment which, in the opinion of a medical or dental practitioner employed by or providing services to, the relevant NHS body, is required promptly for a condition which arose after their arrival in the UK, or became, or but for the treatment would be likely to become, acutely exacerbated after their arrival. Pre-planned, elective treatment or routine monitoring of chronic conditions that can wait until after the period of the Games is not covered under the exemption.

7.5 The Charging Regulations were amended in January 2020 to add the coronavirus to the list of infectious diseases in Schedule 1 for which no charge may be made to any overseas visitor accessing diagnostic services or treatment for any of those diseases. At the time, the coronavirus was known as “Wuhan novel coronavirus (2019-nCoV)” but was subsequently changed to “Severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2)”. Regulation 2(4) of this instrument updates Schedule 1 accordingly.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union and does not trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 The instrument does not consolidate legislation.

10. Consultation outcome

10.1 There was no requirement for a public consultation in relation to this instrument. However, NHS England consulted on changes to the National Tariff in 2021 and Regulation 2(2) of this instrument updates the Charging Regulations as a consequence of part of the outcome of that consultation.

11. Guidance

11.1 Extensive Guidance to the NHS on how to implement the Charging Regulations is available. This will be updated appropriately.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument. Regulations 2(2) and 2(4) of this instrument will not have a financial impact. Given that the vast majority of the Commonwealth Games Family’s healthcare needs would be expected to be dealt with locally, it is anticipated that the financial impact of regulation 2(3) of this instrument on the NHS will be small. It is therefore not within the scope of the Better Regulation Framework as the cost falls below the £5m threshold and other relevant criteria also do not apply.

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 Charging Regulations are continually monitored by officials in the NHS Cost Recovery programme to ensure they work as intended.

15. Contact

15.1 Craig Keenan at the Department of Health and Social Care (craig.keenan@dhsc.gov.uk) can be contacted with any queries regarding the instrument.

- 15.2 Emily Clarke, Deputy Director for NHS Cost Recovery Team, at the Department of Health and Social Care can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Edward Argar at the Department of Health and Social Care can confirm that this Explanatory Memorandum meets the required standard.