

EXPLANATORY MEMORANDUM TO
THE NATIONAL HEALTH SERVICE (CHARGES TO OVERSEAS VISITORS)
(AMENDMENT) REGULATIONS 2023

2023 No. 81

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 His 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”) to introduce an exemption from charges for National Health Service (“NHS”) funded secondary care for the application period of those individuals who have made a late application for European Union Settled Status (“EUSS”) but have not been granted leave to remain or enter. Any charges for such services which have already been made should either not be collected or, if already paid, should be refunded.

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 extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.
- 4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England only.

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 United Kingdom’s (“UK”) healthcare system is a residence-based one, which means entitlement to receive relevant services without charge is based on living lawfully in the UK.
- 6.2 The Charging Regulations require relevant bodies in England (mainly the NHS) to make and recover charges from liable overseas visitors 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 set out in the Charging Regulations.
- 6.3 An ‘overseas visitor’ is defined in the Charging Regulations as any person who is not ‘ordinarily resident’ in the UK. Persons who are subject to immigration control can only be ‘ordinarily resident’ in the UK if they have indefinite leave to remain in the UK, including settled status under the EUSS. A person who is ‘ordinarily resident’ in

the UK must not be charged for relevant services. Paragraph 3.11 of the guidance on implementing the Charging Regulations¹ sets out further details on determining whether a person is ‘ordinarily resident’.

7. Policy background

What is being done and why?

Extending the exemption provision for late applications to the EUSS

- 7.1 The Charging Regulations currently exempt from charge overseas visitors who apply to the EUSS while their application for leave to enter or remain is being determined (regulation 13A(1)). When an application is refused the Charging Regulations require relevant bodies to make and recover charges for any relevant services provided to the applicant during the application period (regulation 13A(4)).
- 7.2 This instrument amends regulation 13A(1) so that unsuccessful applicants are not retrospectively chargeable during the application period. This is consistent with applicants who made in time EUSS applications and are non-chargeable during the application period regardless of the outcome of the EUSS application pursuant to regulation 12.
- 7.3 The amendments also include provision that any charges for services which have already been made should either not be collected or, if already paid, should be refunded.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument is not being made under the European Union (Withdrawal) Act 2018 but relates to the withdrawal of the UK from the European Union because it implements the Withdrawal Agreement.

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.

11. Guidance

- 11.1 Extensive guidance to the NHS on how to implement the Charging Regulations is available. This will be updated accordingly.
- 11.2 Queries from the NHS and the public on the Regulations can be sent to nhscostrecovery@dhsc.gov.uk or NHS Cost Recovery Team, DHSC, Quarry House, Leeds, LS2 7UE.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is limited impact on the public sector. Providers of relevant services will no longer be able to recover income from the affected groups. Providers will also need to

¹ [Guidance for Charging Regulations. \(https://www.gov.uk/government/publications/overseas-nhs-visitors-implementing-the-charging-regulations\)](https://www.gov.uk/government/publications/overseas-nhs-visitors-implementing-the-charging-regulations)

adjust their practices when undertaking their duties to make and recover charges so that they do not incorrectly charge those newly exempted from charge under these amendments. Given the NHS' experience in applying the Charging Regulations and adapting to amendments, this should not place a significant burden on them.

- 12.3 A full impact assessment has not been produced for this instrument because there is no, or no significant, impact on business, charities or voluntary bodies.

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 Gillian Baker at the Department of Health and Social Care (Gillian.Baker@dhsc.gov.uk) can be contacted with any queries regarding the instrument.
- 15.2 Catherine Davies, Deputy Director for EU, Strategy and NHS Cost Recovery at the Department of Health and Social Care can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Will Quince, Minister of State for Health and Secondary Care at the Department of Health and Social Care can confirm that this Explanatory Memorandum meets the required standard.