EXPLANATORY MEMORANDUM TO

THE IMMIGRATION (HEALTH CHARGE) (AMENDMENT) ORDER 2020

2020 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Home Office 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 immigration health charge is the levy placed on those who apply for leave to enter or remain in the UK for a limited period, subject to certain exemptions. This Order amends the Immigration (Health Charge) Order 2015 ("the Principal Order") to increase the amount of the charge so that it broadly covers the full cost of use. The charge will increase to £470 for students, dependants of a student, and Youth Mobility Scheme applicants. In respect of all other applications, the charge will be increased to £624 for adults (i.e. where the applicant is aged 18 years or over at the date of the application). The annual amount will be set at £470, where the applicant is aged under 18 years at the date of application.

2.2 This Order also amends the Principal Order to provide an exemption from the charge for migrants who apply for the new Tier 2 (General) Health and Care Visa.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 This is an amended version of a draft instrument, with the same title, laid before Parliament on 19 March 2020. This instrument differs from the version laid on 19 March in two respects. In line with the Prime Minister's announcement, on 21 May 2020, NHS and care workers would be exempt from the Health Charge, it amends the Principal Order to provide an exemption for Tier 2 (General) Health and Care Visa applicants. Recognising Parliamentary consideration of the amended instrument may be later than originally planned, it also provides for the instrument to come into force 21 days after it is made, instead of 1 October 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 The territorial application of this instrument includes Scotland, Wales and Northern Ireland.

3.3 The powers under which this instrument is made cover the entire United Kingdom (see section 38 Immigration Act 2014) and the territorial application of this instrument is not limited either by the Act or by the instrument.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is the United Kingdom.

4.2 The territorial application of this instrument is the United Kingdom.

5. European Convention on Human Rights

5.1 The Immigration Minister, Kevin Foster, MP, has made the following statement regarding Human Rights:

"In my view the provisions of the Immigration (Health Charge) (Amendment) Order 2020 are compatible with the Convention rights."

6. Legislative Context

6.1 The Immigration (Health Charge) Order 2015 ("the Principal Order") was made under section 38 of the Immigration Act 2014. It requires a person who applies for entry clearance to the United Kingdom for a limited period of more than 6 months, or for limited leave to remain in the United Kingdom, to pay an immigration health charge. Schedule 1 to the Order sets out the amounts of the charge to be paid by particular categories of applicant. In respect of applications by students and dependants of students, it set the amount at £150. For all other categories of application, it set the amount at £200. Exemptions from the requirement to pay the charge are set out in Schedule 2 to the Order.

6.2 The Principal Order was amended by the Immigration (Health Charge) (Amendment) Order 2016, which amended the amount of the charge to £150 in respect of applications for entry clearance as a Tier 5 (Youth Mobility Scheme Applicant) and removed the exemption in Schedule 2 for nationals of Australia or New Zealand. It was further amended by the Immigration (Health Charge) (Amendment) Order 2017 to remove the exemption from the charge available for Intra-Company Transfer applicants and their dependants, and to provide an explicit exemption from the surcharge for all victims of modern slavery (not just human trafficking). The Immigration (Health Charge) (Amendment) Order 2018 amended the Principal Order to double the amount of the charge across all routes - in respect of applications by students, dependants of students and Youth Mobility Scheme applicants the annual amount of the charge was increased to £300. The annual amount in respect of all other categories of application was increased to £400.

7. Policy background

What is being done and why?

7.1 Section 38 of the Immigration Act 2014 ("the Act") enables the Secretary of State by order to provide for an immigration health charge to be imposed on those applying for leave to enter or remain in the UK for a limited period. The immigration health charge was introduced on 6 April 2015 by the Principal Order.

7.2 The immigration health charge is currently payable by non-EEA nationals who enter the UK for more than six months in a temporary capacity or who apply to extend their temporary stay in the UK, subject to certain exemptions listed in Schedule 2 to the Principal Order. Those who pay the immigration health charge can access NHS services free of charge (subject to those charges UK residents must pay, such as for prescriptions and dental treatment in England). Since 21 August 2017, those who pay the health charge are also subject to NHS charges for assisted conception services in England under the National Health Service (Charges to Overseas Visitors)

Regulations 2015 as amended by the National Health Service (Charges to Overseas Visitors) (Amendment) Regulations 2017.

7.3 Schedule 1 to the Principal Order sets the amount of the charge. It is currently set at £400 per annum per migrant, with a discounted rate for students, their dependants and Youth Mobility Scheme applicants of £300 per annum. Article 2 of this Order amends the Principal Order to increase the amount of the charge. In respect of applications by students, dependants of students and Youth Mobility Scheme Temporary Migrants, the annual amount of the charge will increase from £300 to £470. The annual amount in respect of all other categories of application will be dependent on the age of the individual at time of application. For those aged under 18, the amount of the charge will increase to £470. For all other applicants aged 18 and above, the charge will increase from £400 to £624.

7.4 This Order delivers the Government's manifesto commitment to increase the immigration health charge to a level that broadly reflects the full cost of use. In specifying the new amount of the charge, the Secretary of State for the Home Department has considered the range of health services available without charge to those given immigration permission, and the cost to the NHS of treating those who pay the charge. In England, the Department of Health and Social Care (DHSC) estimates that the cost to the NHS of treating charge payers is £625, based on analysis carried out by DHSC in April 2019 using 2017/18 NHS England data. However, to support the administration of the charge in respect of calculating part payments and refunds, the charge will be set at £624.

7.5 The Government is mindful of the fact that the health charge has a greater financial impact on family groups than individual applicants. This is because the charge applies to both applicant and dependants, and the amount payable is calculated with reference to the length of leave granted. By way of illustration and using the current surcharge rate (£400), an individual applicant seeking to enter the UK for two years would pay a health charge of £800 (£400 x 2 years). A family of four, seeking the same length of leave would pay a health charge of £3,200 (£400 x 4 applicants x 2 years).

7.6 Whilst it is right that migrants contribute to the cost of the NHS services that are available to them, the Government is committed to ensuring that the health charge remains affordable for family groups. Consequently, the amount of the charge for children under the age of 18 at the date of their application will be set at £470, bringing them into line with the health charge rate for students and the Youth Mobility Scheme.

7.7 Whilst the new discount for children will mean that overall surcharge income will remain below cost recovery level relative to the current policy of charging a flat rate, the Government believes this is outweighed by the importance of supporting families, some of whom may be paying the surcharge for a number of years.

7.8 This increase, to the level that broadly reflects the full cost of NHS services provided to those that pay it, will help ensure the long-term sustainability of the NHS. The Secretary of State has also considered other matters, such as the need to ensure the UK remains competitive as a place for skilled workers and international students to come and has concluded that this change best meets the Government's policy objectives.

7.9 On 21 May 2020, the Prime Minister asked the Home Office and the Department of Health and Social Care to work together to exempt NHS and care workers from the Immigration Health Charge.

7.10 Schedule 2 to the Principle Order sets out exemptions from payment of the Immigration Health Charge. This Order amends the Principal Order to provide an exemption for Tier 2 (General) Health and Care Visa applicants. The detail of who can apply for this visa is set out in the 'Tier 2 of the Points Based System – Policy Guidance'. Until such time as this exemption is in force, the Secretary of State will waive the requirement for this group to pay the charge. In addition, Tier 2 migrants who paid the charge on or after 31 March 2020 but who would have qualified for the new Health and Care Visa had it been in operation at that time, will be refunded.

7.11 Separately, the Department of Health and Social Care will establish a reimbursement scheme for eligible migrants who do not qualify for the new Health and Care Visa, but who may also work in the health and care sector. More detail on the reimbursement scheme will be published in due course.

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.

9. Consolidation

9.1 The Government indicated in the Explanatory Memorandum to the Immigration (Health Charge) (Amendment) Order 2017 that it intended to consolidate with the Principal Order at the earliest opportunity. Given the limited amendments made by this Order, the Government has concluded that this is not a suitable opportunity for consolidation with the Principal Order. The issue will be kept under review in respect of any future amending orders.

10. Consultation outcome

10.1 There was no public consultation on these changes. The Government's 2019 general election manifesto included a commitment to increase the charge. There has been strong support for those working in health and social care to be exempt from paying the Immigration Health Charge.

11. Guidance

11.1 The relevant guidance on gov.uk will be amended in line with these changes.

12. Impact

12.1 The impact on business, charities or voluntary bodies is set out in the Impact Assessment published alongside this memorandum.

12.2 The impact on the public sector is set out in the Impact Assessment published alongside this memorandum.

12.3 A full 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 Home Office keeps the operation of the immigration health charge under review, with support from, amongst others, the Department of Health and Social Care.

14.2 The Order does not include a statutory review clause.

15. Contact

15.1 Elizabeth Coley at the Home Office Telephone: 020 7035 8703 or email: Elizabeth.coley@homeoffice.gov.uk can answer any queries regarding the instrument.

15.2 Alison Samedi at the Home Office can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Immigration Minister, Kevin Foster MP, at the Home Office can confirm that this Explanatory Memorandum meets the required standard.