EXPLANATORY MEMORANDUM TO

THE NATIONAL HEALTH SERVICE (CHARGES TO OVERSEAS VISITORS) (AMENDMENT) (NO. 2) REGULATIONS 2022

2022 No. 318

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 Charging Regulations").

2.2 This instrument introduces a new exemption from the charge for people ordinarily resident in Ukraine who are lawfully present in the United Kingdom and received treatment on and after 24 February 2022. The intention of this instrument is to ensure that all people who are ordinarily resident in Ukraine and who are lawfully in the UK are exempt from charging, except for assisted conception services. This is to provide consistency across the visa routes that are open to such individuals.

2.3 The exemption also applies to the family members (spouses, civil partners and children under 18 years) of people lawfully in the UK. Individuals who accompany people medically evacuated to the UK for treatment will also be exempt from the charge for treatment if the need for treatment arises during their stay.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 This instrument comes into force on the day it is laid, in breach of the 21-day rule. This is in order to provide immediate certainty to people who are ordinarily resident in Ukraine and who are lawfully present in the UK on their entitlement to free NHS treatment, and to ensure that the health service can provide treatment without charge.

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 only.

5. European Convention on Human Rights

5.1 As this 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.

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, some overseas visitors will only be exempt for treatment when the need for treatment arises during their visit to the UK.

7. Policy background

What is being done and why?

7.1 The government has considered how to support those displaced from their homes by conflict in Ukraine, including by introducing new visa entry pathways into the UK and allowing for the extension of some short-term visas. Many of these pathways trigger the Immigration Health Surcharge (IHS), which has been waived by the Home Office. Anyone who uses an entry pathway to which the IHS system applies will be entitled to receive relevant NHS services (except assisted conception services) free of charge at the point of use under regulation 10 of the Charging Regulations. However, anyone who holds or extends a short-term visa to which the IHS does not apply, will be chargeable for relevant services, unless another exemption applies.

7.2 In order to ensure all residents of Ukraine who are lawfully in the UK have the same entitlements, this instrument introduces a new exemption from charge category (new regulation 22A). The exemption applies to individuals who are ordinarily resident in Ukraine and their family members (regulation 25 of the Charging Regulations). In respect of any children born here to a person exempt under regulation 22A, charges will not apply in respect of the child for the first three months of the child's life.

7.3 Regulation 22A will apply to treatment provided to eligible overseas visitors on and after 24 February 2022. No charge may be made or recovered on or after this date. This puts individuals benefiting from new regulation 22A in the same position as a person who has the benefit of an exemption under regulation 10 of the Charging Regulations. If charges have already been incurred since 24 February 2022, they must be cancelled and not recovered, or if paid they must be refunded.

7.4 In respect of someone ordinarily resident in the Ukraine who has been medically evacuated to the UK, the amendments made by this instrument also exempt the authorised companion of that person, and the children of that authorised companion, from charges for treatment the need for which arose during their stay. The definition of authorised companion is amended to acknowledge the circumstances of medical evacuation from Ukraine.

7.5 The Secretary of State must carry out a review of the amendments made by this instrument within six months of this instrument entering into force.

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 2018.

9. Consolidation

9.1 This 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 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 beyond the NHS.

12.3 A full Impact Assessment has not been prepared for this instrument because the instrument is being introduced as a temporary measure that will largely impact the NHS and will be reviewed within 6 months of commencement. The requirement to prepare a full Impact Assessment will be considered when this instrument is reviewed.

13. Regulating small business

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

14. Monitoring & review

14.1 A statutory review clause is included in this instrument.

15. Contact

15.1 Claire Young at the Department of Health and Social Care, Telephone: 0113 254 6624 or email: claire.young@dhsc.gov.uk, can be contacted with any queries regarding this instrument.

15.2 Emily Clarke, 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 MP, Minister of State for Health at the Department of Health and Social Care can confirm that this explanatory memorandum meets the required standard.