EXPLANATORY MEMORANDUM TO

THE NATIONAL HEALTH SERVICE (CHARGES TO OVERSEAS VISITORS) (AMENDMENT) (NO. 2) REGULATIONS 2023

2023 No. 515

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 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 add Ascension Island and Tristan da Cunha, Bermuda, Cayman Islands and Pitcairn, Henderson, Ducie and Oeno Islands into the list of countries and territories specified in Schedule 2 to the Charging Regulations to allow access to the NHS Quota System and reduced Overseas Visitors tariff in England.

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.

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 (mainly the National Health Service ("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.

6.2 Regulation 14 of the Charging Regulations provides for an exemption from charges for overseas visitors who are entitled to relevant services without charge under the terms of a healthcare agreement with a country, territory or international organisation specified in Schedule 2. This instrument reflects arrangements agreed with Ascension and Tristan da Cunha, Bermuda, Cayman Islands and Pitcairn, Henderson, Ducie and Oeno Islands, adding them to Schedule 2.

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 EU Settlement Scheme (EUSS). A person who is ‘ordinarily resident’ in the UK must not be charged for relevant services.

7. Policy background

What is being done and why?

7.1 The UK has healthcare agreements with most of the British Overseas Territories, under which healthcare entitlements in the UK vary.

7.2 Under these agreements, five Overseas Territories (Turks & Caicos, Anguilla, St Helena, British Virgin Islands and Montserrat) have access to the NHS Quota System, which allows the referral of patients to the NHS for a course of treatment free of charge. Additional patients can be referred and are chargeable at the standard Overseas Visitors’ Tariff of 150%.

7.3 The Overseas Territories of Ascension and Tristan da Cunha, Bermuda, Cayman Islands and Pitcairn, Henderson, Ducie and Oeno Islands do not have access to the NHS Quota System and pay the standard tariff for any referral.

7.4 Following a review of the Overseas Territories NHS Quota System and UK Government healthcare support offered to Overseas Territories, policy is being put into effect to enhance our support for the Overseas Territories whilst managing the impact on the NHS.

7.5 The UK has subsequently commenced discussions with the inhabited Overseas Territories without healthcare arrangements to put in place healthcare arrangements with those territories to allow access to the NHS Quota System and reduced Overseas Visitors tariff in England.

7.6 For relevant services provided to an overseas visitor under a healthcare agreement to be exempt under regulation 14, the country or territory with which the UK has a healthcare agreement must be specified in Schedule 2. This instrument adds the following Overseas Territories:

- Ascension and Tristan da Cunha
- Bermuda
- Cayman Islands
- Pitcairn, Henderson, Ducie and Oeno Islands

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 This Statutory Instrument does not consolidate legislation.

10. Consultation outcome

10.1 There was no requirement for a public consultation on the instrument.

10.2 Policy about specific NHS charges is a devolved matter. DHSC has positively engaged with the Devolved Governments at official level at all stages. The Devolved Governments will also need to make any relevant changes to their legislation.

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 send 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 no, or no significant, impact on the public sector. Providers of relevant services will need to 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 prepared for this instrument because no, or no significant, impact on the private, voluntary or public sector is foreseen.

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 Sarah Smith at the Department of Health and Social Care email: sarah.smith1@dhsc.gov.uk can be contacted with any queries regarding the instrument.

15.2 Sophie Eltringham, Deputy Director for Devolution and Union, 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.