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 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 decided 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 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. These arrangements had previously not been updated since 1989.

7.2 Under these historic agreements, five Overseas Territories (Turks & Caicos, Anguilla, St Helena, British Virgin Islands and Montserrat) had 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 could 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 did not have access to the NHS Quota System and pay the standard tariff for any referral.

7.4 DHSC committed to review healthcare support offered by UK Government in June 2018 and concluded this review in April 2021 on the NHS Quota System and UK Government Healthcare Support. The Review considered:

- Current and future access to a limited number of treatment places free-of-charge through the NHS Quota System and the implications of these on the NHS.
- Charging arrangements for overseas visitors (outside of the NHS Quota System) and how patients from the Overseas Territories are treated within the wider regulations.
- Working collaboratively to determine the individual needs of the Overseas Territories and other areas where the UK could offer healthcare support

7.5 The review found that the NHS Quota System was a valuable resource for many Overseas Territories as a way for their patients to access specialist treatment not available on island, but that more support could be given to help meet healthcare needs. Further to the Review’s recommendations, a package of reforms was developed that included:

- Extending the NHS Quota System offer to all ten inhabited Overseas Territories (excluding Gibraltar and Falkland Islands which have different arrangements in place) to allow for greater equality of access to healthcare across the Overseas Territories.
- Increasing the number of quota places from four to five per year and offering five additional quota places a year for Overseas Territories in receipt of Official Development Assistance (currently Montserrat, St. Helena, Pitcairn, Tristan da Cunha). These additional places respond to the Review’s findings that more support could be given and ensure greater support for those Overseas Territories with the greatest need.

- Introducing a rolling three-year block allocation to allow greater flexibility in how Overseas Territories referred patients to the NHS and manage demand across a longer period.
- Amending the National Health Service (Charges to Overseas Visitors) Regulations 2015 to reduce the standard charge for referrals of Overseas Territories residents from 150% NHS tariff to 100% to reflect the constitutional relationship between the UK and Overseas Territories and bring the arrangements in line with those of the Crown Dependencies.

7.6 This policy is being put into effect to enhance our support for the Overseas Territories whilst managing the impact on the NHS.

7.7 The UK has concluded discussions with the inhabited Overseas Territories and formalised this policy through Memoranda of Understanding with the Overseas Territories.

7.8 In addition, for a number of Territories the Memoranda of Understanding include necessary healthcare arrangements. For some, the Memoranda of Understanding have retained existing provisions, whilst new necessary healthcare arrangements have been agreed with St Helena, Ascension Island and Tristan da Cunha. All those Territories where a necessary healthcare arrangement is in place will also be listed under the Healthcare (International Arrangements) (EU Exit) Regulations 2023 when they come into force.

7.9 It is stated in the Memoranda of Understanding with the Overseas Territories and accompanying guidance that referrals to the NHS Quota System and referrals outside of the NHS Quota System are for pre-authorised courses of treatment within the NHS which is not available on island or not appropriate to be provided on island. Emergency treatment, travel costs and accommodation are not covered within the NHS Quota System. Patients are given the same priority in access to NHS as patients living in the UK, with treatment based on clinical priority and subject to any waiting lists.

7.10 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.

12.4 This offer is intended to support up to 70 patients to access services through the NHS each year through the NHS Quota System (20 existing quota places and an additional 50 places through this standardised offer). DHSC's data indicates the number of referrals by Overseas Territories have varied year to year and Overseas Territories have not always used their full quota each year.

12.5 Outside of the NHS Quota System, the Review found that most Overseas Territories utilise overseas routes in closer geographical proximity for specialist treatments as these can offer lower treatment costs, alongside lower travel and subsistence costs. It is expected that this would continue with the reduced 100% tariff as treatment costs via these routes are likely still lower than costs for treatment in the UK.

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 Minister Will Quince at the Department of Health and Social Care can confirm that this Explanatory Memorandum meets the required standard.