EXPLANATORY MEMORANDUM TO

THE NATIONAL HEALTH SERVICE (CHARGES TO OVERSEAS VISITORS) (AMENDMENT) (NO. 3) REGULATIONS 2022

2022 No. 614

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 adds monkeypox to Schedule 1 of the Charging Regulations, which is a list of infectious diseases, the diagnosis and treatment of which is exempt from charge to all overseas visitors.

2.3 It also provides that if any charges have been incurred for services for the diagnosis and treatment of monkeypox, they must be cancelled and not recovered, or if paid they must be refunded.

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 the day after it is laid, in breach of the 21-day rule. This is to minimise any public health risk of discouraging an overseas visitor from coming forward for treatment due to the prospect of being charged.

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.

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 Section 175 of the National Health Service Act 2006 ("the 2006 Act") authorises the Secretary of State to make regulations for the making and recovery of charges from persons not ordinarily resident in Great Britain for NHS services, including that charges may only be made in such cases as may be determined in accordance with the regulations.

6.2 The Charging Regulations require relevant NHS and other bodies in England to make and recover charges from overseas visitors (anyone not ordinarily resident in the UK) for certain NHS 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 regulations.

7. Policy background

What is being done and why?

7.1 This instrument amends the Charging Regulations and subsequent amendments for the purpose of ensuring overseas visitors in England are exempt from charge for services for the diagnosis and treatment of monkeypox.

7.2 Specifically, it adds monkeypox to Schedule 1 of the Charging Regulations, which is the list of infectious diseases, services for the diagnosis and treatment of which are exempt from charge under Regulation 9(1)(d). Schedule 1 also includes diseases such as tuberculosis and Covid-19.

7.3 This is to remove a financial barrier to overseas visitors in England presenting for NHS hospital treatment for monkeypox, therefore ensuring that the risk to public health from infected visitors is minimised.

7.4 This instrument also amends the Charging Regulations to provide that if any charges have been incurred for services for the diagnosis and treatment of monkeypox since 1 May 2022 (up to the date when the amending regulations come into force), they must be cancelled and not recovered, or if paid they must be refunded. This is because as a result of the latest outbreak there are already a number of monkeypox cases in the UK. It is intended, that by cancelling charges that might otherwise apply before the coming into force date, overseas visitors will not be deterred from presenting for treatment due to charging concerns.

7.5 The changes made by this instrument form part of the Government's strategy for dealing with serious infectious diseases at large in the community.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 This instrument does not consolidate legislation and there are no plans to do so at this time.

10. Consultation outcome

10.1 There has been no public consultation in relation to this instrument.

10.2 Charging policy is a devolved matter. The Devolved Administrations have been engaged in relation to the changes in this instrument but are responsible for taking forward any amendments to charging regulations in Scotland, Wales and Northern Ireland. This instrument makes no provision that could otherwise fall within devolved competence.

11. Guidance

11.1 Extensive guidance to the NHS on how to implement the Charging Regulations is available. This will be updated appropriately.

11.2 Queries from the NHS and the public on the Regulations can be taken at 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 beyond the NHS.

12.3 A full Impact Assessment has not been prepared for this instrument.

13. Regulating small business

13.1 This instrument does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 DHSC will monitor those provisions. It is not expected that a review of this instrument will be necessary, but the Charging Regulations are kept under continuous general review.

15. Contact

15.1 Craig Keenan at the Department of Health and Social Care Telephone: 0113 254 6438 or email: Craig.Keenan@dhsc.gov.uk can be contacted with any queries regarding the 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 Sajid Javid, Secretary of State, at the Department of Health and Social Care can confirm that this Explanatory Memorandum meets the required standard.