EXPLANATORY MEMORANDUM TO

THE NATIONAL HEALTH SERVICE (CHARGES TO OVERSEAS VISITORS) (AMENDMENT) (NO. 4) REGULATIONS 2022

2022 No. 1253

1. Introduction

1.1 This explanatory memorandum has been prepared by 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:

- Adopt the statutory definition of domestic abuse created by the Domestic Abuse Act 2021;
- Extend the exemption from charge under regulation 6 (provision relating to recovery of charges in respect of refugees and victims of modern slavery) to dependants of refugees and family members of victims of modern slavery;
- Provide an exemption from charge for children born in the UK to refugees;
- Provide an exemption from charge for family members of victims of modern slavery, whether or not the family member is lawfully present in the UK;
- Add Guernsey, Iceland, Liechtenstein and Malta to the list of countries specified in Schedule 2 to the Charging Regulations; and
- Replace the definition of 'reciprocal agreement' in regulation 2 with 'healthcare agreement' and replace regulation 14 (reciprocal health care agreements) so that it is consistent with section 3 of the Healthcare (European Economic Area and Switzerland Arrangements) Act 2019 (c. 14) (as it is due to be amended by section 162 of the Health and Care Act 2022 (c. 31)).

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 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 the instrument is subject to negative resolution procedure and does not amend primary legislation no statement is required.

6. Legislative Context

6.1 The UK's healthcare system is a residence-based one, which means entitlement to receive relevant services without charge is based on living lawfully in the UK.

6.2 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.

6.3 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 European Union Settlement Scheme. A person who is 'ordinarily resident' in the UK must not be charged for relevant services. Paragraph 3.11 of the guidance on implementing the Charging Regulations[1] sets out further details on determining whether a person is 'ordinarily resident'.

7. Policy background

What is being done and why?

Domestic Abuse

7.1 The Charging Regulations currently exempt from charge relevant services (defined in regulation 2) provided to an overseas visitor for the treatment of a condition caused by or directly attributable to 'domestic violence'. 'Domestic violence' is not defined under the Charging Regulations, although non-statutory guidance had a section to explain the meaning of domestic violence. This instrument replaces 'domestic violence' (in regulations 8(2)(a) and 9(1)(f)(iii)) with the statutory definition of 'domestic abuse' in the Domestic Abuse Act 2021 (c.17). The amendment provides an exemption so that overseas visitors will not be charged for treatment of a condition caused by or directly attributable to domestic abuse. The new definition makes clear that this can include physical and non-physical forms of abuse, including coercion.

7.2 This change will bring the Charging Regulations in line with wider government policy.

Extending the exemption from charge under regulation 6 to dependants of refugees and family members of victims of modern slavery

7.3 The Regulations exempt from charge overseas visitors who are granted temporary protection, asylum or humanitarian protection under the immigration rules (referred to here as "refugees") (regulation 15) and victims of modern slavery (regulation 16). Regulation 6 provides an exemption for relevant services received before refugees and victims of modern slavery became exempt. This instrument extends regulation 6 to dependants of refugees and family members of victims of modern slavery.

7.4 These amendments provide that a dependant of a refugee or a family member of a victim of modern slavery should be exempt from charge on the same basis as the refugee and victim of modern slavery under all the relevant provisions of the Charging Regulations. The amendment provides that there must be a cancellation or refund of charges, if the patient is subsequently identified as a dependant of a refugee or a family member of a victim of modern slavery at the time charges were imposed.

[1] Guidance for Charging Regulations, (https://www.gov.uk/government/publications/overseas-nhs-visitors-implementing-the-charging-regulations)

Extending the exemption from charge for children born in the UK to refugees

7.5 Regulation 15(aa) provides an exemption from charge for refugees. This instrument amends regulation 15(aa) to include babies born in the UK to refugees.

Removing the requirement that family members of victims of modern slavery be lawfully present in the UK

7.6 The Charging Regulations currently provide an exemption from charge for family members of victims of modern slavery, subject to the family member being lawfully present in the UK. This instrument amends regulation 25 to remove the requirement that the family member be lawfully present in the UK. This is to mirror the exemption for victims of modern slavery under regulation 16, who may or may not be lawfully present in the UK. The amendment will ensure that a family member of a victim of modern slavery who requires relevant services is exempt from charge on the same basis as the victim of modern slavery.

Amending the 'reciprocal agreement' definition and regulation 14

7.7 Regulation 14 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 another country. The amendments to the definition of 'reciprocal agreement' in regulation 2 and the substitution of regulation 14 ensures the terminology is consistent with section 3 of the Healthcare (European Economic Area and Switzerland Arrangements) Act 2019 (c. 14), as it will be amended by section 162 of the Health and Care Act 2022 (c. 31) once that provision comes into force. This makes it clearer that agreements in the form of a Memorandum of Understanding are in scope and that healthcare obligations in agreements, for example with the Crown Dependencies and Overseas Territories, do not need to be completely reciprocal.

Adding Guernsey, Iceland, Liechtenstein and Malta to Schedule 2

7.8 To be exempt under regulation 14 the country with which the UK has a healthcare agreement must be specified in Schedule 2. This instrument adds the following countries and territories to Schedule 2:

- The Bailiwick of Guernsey;
- Iceland;
- Liechtenstein; and
- Malta.

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 The instrument does not consolidate legislation.

10. Consultation outcome

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

10.2 Policy about specific NHS charges is a devolved matter. The Devolved Governments 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 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 also 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 produced for this instrument because there is no, or no significant, impact on business, charities or voluntary bodies. An Equalities Impact Assessment has been prepared for this instrument and has been published alongside this explanatory memorandum at Legislation.gov.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 Ben Haithwaite at the Department of Health and Social Care (ben.haithwaite@dhsc.gov.uk) can be contacted with any queries regarding the instrument.

15.2 Catherine Davies, Deputy Director for EU Strategy and Cost Recovery, 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 at the Department of Health and Social Care can confirm that this Explanatory Memorandum meets the required standard.