EXPLANATORY MEMORANDUM TO

THE NATIONAL HEALTH SERVICE (CHARGES TO OVERSEAS VISITORS) (AMENDMENT) (NO. 3) REGULATIONS 2020

2020 No. 1152

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department of Health and Social Care (the "Department") and is laid before Parliament by the Command of Her Majesty.

1.2 The Joint Committee on Statutory Instruments and the Secondary Legislation Scrutiny Committee should be aware of paragraph 3.1 in this explanatory memorandum as the 21 day rule is being disapplied.

2. Purpose of the instrument

2.1 This instrument amends regulation 10 of the National Health Service (Charges to Overseas Visitors) Regulations 2015 (S.I. 2015/238) ("the Charging Regulations") to ensure that people who receive a full refund of their immigration health charge ("the surcharge") because they work in health and social care, and their dependents, do not become chargeable for health services under those Regulations.

2.2 It also amends the application of regulation 10(3) so that people who are exempt from the surcharge as applicants for the Health and Social Care visa provided for in Schedule 2 paragraph (1)(o) of the Immigration (Health Charge) Order 2015 (S.I. 2015/793) do not become chargeable under the Charging Regulations if their visa is for 6 months or less.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 This instrument is subject to the negative resolution procedure and comes into force on 27 October. It is laid less than a week before commencement.

3.2 While the Department acknowledges the importance of observing the "21 day rule", it is of the view that the instrument needs to be bought into effect as soon as possible so that affected individuals are not charged for healthcare under unamended provisions. There is no power to cancel such charges retrospectively without primary legislation. This instrument restores the charging position for health and care staff who have received a full refund of the surcharge that until recently was in place. Early introduction is of benefit to those to whom it applies and is unlikely to pose significant disadvantage to anyone else.

3.3 27 October has been chosen as a commencement date as it is the date from which the surcharge exemption at Schedule 2 paragraph (1)(o) (which is referred to in the instrument) comes into effect.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.4 As this instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P or 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

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 The Charging Regulations provide for relevant NHS bodies in England to make and recover charges from 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. An overseas visitor is anyone not ordinarily resident in the UK, which, for non-EEA nationals subject to immigration control, requires the immigration status of indefinite leave to remain in the UK.

6.2 The Immigration (Health Charge) Order 2015 (S.I.2015/792) introduced a requirement for individuals applying to temporarily reside in the UK for six months or more to pay a charge with their visa application fee in order to make a financial contribution towards the NHS, unless an exemption category applied or the requirement was waived.

6.3 The Charging Regulations simultaneously introduced, at regulation 10, an exemption from charges for relevant NHS services for overseas visitors in respect of whom, for the period of leave to remain granted to them:

(a) a surcharge has been paid;

(b) an exemption from paying the surcharge applies, except where (broadly) the exemption is because an application is for a visa of six months or less;

(c) a reduction or waiver from paying the surcharge applies; or

(d) a refund for part, but not all, of the surcharge has been made.

7. Policy background

What is being done and why?

7.1 This instrument is being made in light of the Prime Minister's commitment in May 2020 that health and care staff would be exempt from paying the surcharge.

7.2 In response to that commitment, health and care staff entering the UK on the Health and Care Visa that was introduced in August 2020 are exempt from paying the surcharge. They are therefore exempt from direct charge under regulation 10 of the Charging Regulations.

7.3 However, people who entered the UK on Tier 2 type visas specifically to work in sponsored roles within the health and care sector prior to the introduction of the

Health and Care Visa were required to pay the surcharge for themselves and their dependents and so are being fully refunded the surcharge payment by the Home Office. Those who receive full refunds become inadvertently chargeable under regulation 10 of the Charging Regulations. It was also decided that those in receipt of the Health and Care Visa should not be subject to the general rule in regulation 10 paragraph (2)(b) that those applying for visas of six months or less should pay charges under the Charging Regulations.

7.4 This instrument therefore amends the Charging Regulations to provide that, from the commencement date, the following overseas visitors are included in the exemption from charge category within regulation 10:

a) people who are working in the field of health or social care to whom a full refund of the surcharge has been made; or

b) dependants of people who are working in the field of health or social care in respect of whom a full refund of the surcharge has been made; or

c) people holding a Health and Social Care visa of six months or less.

7.5 It is not anticipated that this will have a significant impact on the relevant service providers also affected by these changes. This is because, in the case of (a) and (b) this instrument reinstates the exempt from charge status from which these cohorts benefitted until they were fully refunded the relevant surcharge. In respect of (c), it will be extremely unusual, though theoretically possible, for a Health and Social Care Visa to be granted for a duration of six months or less.

8. European Union (Withdrawal) Act 2018/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union.

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. The Home Office and the Department of Health and Social Care led consultation exercises in 2013 which led to the introduction of the surcharge and regulation 10 of the Charging Regulations.

10.2 Charging policy is a devolved matter. 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 is updated appropriately when required.

12. Impact

12.1 There is no impact on business, charities or voluntary bodies.

12.2 There is no significant impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument given that this instrument reinstates the exempt from charge status that was until recently previously

held by the cohort of overseas visitors in question and adds an exceptionally small group of people holding Health and Care Visas if six months or less to the exempt from charge category. It is therefore not within the scope of the Better Regulation Framework as the cost falls below the £5m threshold and other relevant criteria also do not apply.

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 Craig Keenan at the Department of Health and Social Care (craig.keenan@dhsc.gov.uk) can be contacted with any queries regarding the instrument.

15.2 Deborah Persaud, Deputy Director for NHS Cost Recovery Team, at the Department of Health and Social Care can confirm that this explanatory memorandum meets the required standard.

15.3 Edward Argar Minister of State for Health at the Department of Health and Social Care can confirm that this explanatory memorandum meets the required standard.