EXPLANATORY MEMORANDUM TO

THE NATIONAL HEALTH SERVICE (CHARGES TO OVERSEAS VISITORS) (AMENDMENT) REGULATIONS 2021

2021 No. 1123

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.

2. Purpose of the instrument

2.1 At London on 9 September 2021 a Convention on Social Security Coordination ("the Convention") between the United Kingdom of Great Britain and Northern Ireland ("the UK") and the Swiss Confederation was signed on behalf of the respective Governments. The Convention makes provision for reciprocal arrangements between the UK and the Swiss Confederation in relation to social security, including reciprocal healthcare, following the UK's withdrawal from the European Union ("EU").

2.2 This instrument implements the reciprocal healthcare aspects of the Convention by amending the National Health Service (Charges to Overseas Visitors) Regulations 2015 No. 238 ("the Charging Regulations"), to add Switzerland to Schedule 2 of those Charging Regulations, which lists the countries with which the UK has reciprocal healthcare agreements.

2.3 This amendment will mean that no charges may be made or recovered in respect of relevant NHS services provided to an overseas visitor where the provision of those services is covered by a reciprocal healthcare agreement with Switzerland.

2.4 The amendment to the Charging Regulations will be commenced when the Convention is provisionally applied or, where the Convention has not been provisionally applied, the date on which the Convention enters into force. To ensure transparency and legal certainty in relation to when this instrument comes into force, the instrument requires the Secretary of State to give notice of the date of provisional application or the date on which the Convention enters into force in the London Gazette.

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 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 as set out in the Charging Regulations. An "overseas visitor" is 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. A person who is "ordinarily resident" in the UK must not be charged for relevant services.

6.2 Through the Protocol on Social Security Coordination in the UK-EU Trade and Cooperation Agreement (“TCA”), the UK agreed ongoing reciprocal healthcare provisions following its exit from the EU. The UK has now also agreed the Convention with Switzerland.

6.3 The Convention is applied without prejudice to the UK-Switzerland Citizens’ Rights Agreement (as set out in Article 7 of the Convention and implemented under regulation 12 of the Charging Regulations). People who were residing and/or working in the UK or Switzerland by 31 December 2020 will continue to have life-long social security coordination rights provided they are, and remain, in scope of the Swiss Citizens’ Rights Agreement.

7. Policy background

What is being done and why?

7.1 This instrument amends the Charging Regulations to provide an exemption from charge category to persons who are in a cross-border situation between the UK and Switzerland from the date of provisional application provided those persons hold UK nationality, Swiss nationality, EU citizenship, or are a stateless person or refugee. The rules also apply, where eligible, to their family members and to their survivors.

7.2 The UK withdrew from the EU on 31 January 2020 and ceased applying the Free Movement of Persons Agreement with effect from 1 January 2021. The UK and Switzerland both recognise the importance of the coordination of social security rights enjoyed by persons moving between both States to work, to stay or to reside, as well as the rights enjoyed by their family members and survivors, and agreed to negotiate a new agreement to allow the continued enjoyment of social security coordination by their citizens.

7.3 The Convention ensures that where the UK or Switzerland is responsible for an individual’s healthcare, and that individual holds UK nationality, Swiss nationality, EU citizenship, or is a stateless person or refugee, or is a family member or survivor of one, that individual will be entitled to reciprocal healthcare cover in the other State as if they were covered for healthcare under the legislation of that State. This includes healthcare cover for state pensioners, those exporting maternity allowance, and certain categories of cross-border workers, as well as necessary and emergency healthcare cover for people visiting Switzerland or the UK. Planned treatment in Switzerland will continue to be covered, including for maternity care.

7.4 Therefore, persons falling within the scope of the Convention are required to be treated as if they were ‘ordinarily resident’ in the UK for healthcare purposes and be exempt from charges for NHS services for the healthcare covered by the agreement.

8. European Union Withdrawal and Future Relationship

8.1 This instrument is not being made under the European Union (Withdrawal) Act.

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 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 DHSC Care Guidance on implementing the Charging Regulations, intended for NHS staff, is available on GOV.UK (www.gov.uk).

11.2 This Guidance will be amended to take account of this instrument prior to the Convention being provisionally applied.

12. Impact

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

12.2 There is no significant impact on the public sector. Providers of NHS funded care will need to adjust their practices when undertaking their duties to make and recover charges so that they do not incorrectly charge those exempted from charge under the Charging Regulations. Given their experience in applying the Charging Regulations and adapting to amendments, and the fact that similar provision was previously in place in relation to Switzerland prior to EU Exit, it is not anticipated that this change will require additional resources.

12.3 A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sectors is foreseen. An impact assessment has been carried out in relation to the Convention on Social Security Coordination between the United Kingdom of Great Britain and Northern Ireland and the Swiss Confederation and is available from the Department of Health and Social Care, 39 Victoria Street, London, SW14 0EU.

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 Jahanara Begum at the Department of Health and Social Care (Jahanara.begum@dhsc.gov.uk) can be contacted with any queries regarding the instrument.

15.2 Emily Clarke, 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 Lord Kamall, Parliamentary Under Secretary of State at the Department of Health and Social Care can confirm that this Explanatory Memorandum meets the required standard.