EXPLANATORY MEMORANDUM TO

The Provision of Health Services to Persons Not Ordinarily Resident (Amendment) Regulations (Northern Ireland) 2022

S.R. 2022 No. 174

1. Introduction

1.1. This Explanatory Memorandum has been prepared by the Department of Health to accompany the Statutory Rule (details above) which will be laid before the Northern Ireland Assembly (paragraph 11.1 refers).

1.2. The Statutory Rule is made under powers conferred by Articles 42, 106(b), and 107(6) of the Health and Personal Social Services (Northern Ireland) Order 1972 and is subject to the negative resolution procedure.

2. Purpose

2.1. To amend the Provision Of Health Services To Persons Not Ordinarily Resident Regulations (Northern Ireland) 2015 ("the 2015 Regulations") to allow Ukrainian visitors who are lawfully present in the United Kingdom and unable to return home, to access publically funded healthcare in Northern Ireland without charge.

3. Background

3.1. Entitlement to free healthcare in Northern Ireland requires someone to be "ordinarily resident" here, in other words you must be living here lawfully, voluntarily and on a continuous and settled basis with an identifiable purpose for your residency, and those who are not British or Irish Nationals must have a form of indefinite leave to remain. A visitor is someone who is not ordinarily resident in Northern Ireland.

3.2. The 2015 Regulations make certain health services available to visitors in Northern Ireland at a charge determined by the Department of Health. The Regulations also provide various exemptions from charge: some services are always exempt from charge whilst some categories of visitor are exempt from charge. The categories of visitor who are exempt from charge include refugees and asylum seekers.

3.3. Visitors to the UK who are in Northern Ireland for more than six months must pay the Immigration Health Surcharge (IHS) as part of their visa application process. Paying the IHS allows them to access any publically funded healthcare without charge while they are in the UK. This process is owned by the Home Office (HO), who have the power to waive the IHS fee in some circumstances.

3.4. Visitors who are in Northern Ireland for less than six months will generally only be able to access Accident and Emergency services for free, as well as services involved in the diagnosis and treatment of infectious disease. Visitors will be charged for most other care unless they are covered by an exemption.

3.5. Following the invasion of Ukraine, the HO announced several routes by which Ukrainians can lawfully remain in, or come to, the UK.

3.6. The Ukraine Family Scheme allows family members of Ukrainian people living in the UK to move in with their relatives whereas the Local Sponsorship Scheme provides a pathway whereby people from Ukraine who may not have family ties can be sponsored to come to the UK by willing and able individuals, businesses, or community organisations.

3.7. Anyone who uses these new visa routes and either pays the IHS or has the IHS waived will be able to access publically funded healthcare free of charge in Northern Ireland until their leave expires.

3.8. As part of Northern Ireland's response to this emergency situation, the 2015 Regulations are amended to allow Ukrainian visitors who are in the United Kingdom and unable to return home to access publically funded healthcare in Northern Ireland without charge. This will ensure equal treatment with those covered by the IHS.

3.9. Those who will benefit from this exemption include anyone who uses an alternative temporary (less than six months) visa route outside of the Family or Sponsorship routes, anyone who chooses to extend their visit or seasonal worker visa temporarily without going through the IHS system and anyone who is in the process of switching visas (which could take some time to process).

3.10. The amendments provide exemptions from charging for those visitors who are lawfully present in the United Kingdom but are ordinarily resident in Ukraine, as well as exemptions for their family members. It also applies to persons who accompany people medically evacuated to the UK for treatment who will be exempt from charge for treatment the need for which arises during their stay.

3.11. The Regulations provide an exemption from charge in respect of services forming part of health services since 24th February 2022 and make general health services available, and without charge, from the date the Regulations come into operation.

3.12. The amendments also provide for the Department to carry out a 6 month review of the amendments. This will allow the scope of the situation to emerge, and also for those in Northern Ireland on short term visas to switch to visas covered by the IHS. It is also hoped that this will help provide security and peace of mind for the health and social care sector and those in need, and remain open to further developments.

4. Consultation

4.1. There has been no public consultation in relation to this Statutory Rule. There is no change to the policy underpinning access to healthcare in Northern Ireland. The legislative change is required to support the humanitarian response to the plight of those fleeing the conflict in Ukraine.

5. Equality Impact

5.1. The legislative change is urgently required to support the humanitarian response to the plight of those fleeing the conflict in Ukraine. In

accordance with guidance produced by the Equality Commission for Northern Ireland and in keeping with Regulation 75 of the Northern Ireland Act 1998, the proposal for these Regulations was screened for equality impact and it is concluded that a full Equality Impact Assessment is not required.

6. Regulatory Impact

6.1. A Regulatory Impact Assessment (RIA) screening was carried out and concluded that these Regulations would have negligible impact on businesses, charities, social economy enterprises or the voluntary sector in Northern Ireland and will not otherwise adversely affect these groups. The Department considered that a full RIA is not required.

7. Financial Implications

7.1. The Regulations have been made in conjunction with the Department of Finance. It is unknown at present what healthcare needs Ukrainians fleeing the conflict will have. The cost of the healthcare needs will be absorbed in the budget.

8. Section 24 of the Northern Ireland Act 1998

8.1. Consideration has been given to the human rights implications of these Regulations. They are considered compatible with section 24 of the Northern Ireland Act 1998.

9. EU Implications

9.1. Not applicable.

10. Parity or Replicatory Measure

10.1. The Provision of Health Services to Persons Not Ordinarily Resident (Amendment) Regulations (Northern Ireland) 2022 mirror similar legislation that has been made in England.

11. Additional Information

11.1. In view of the emergency situation in Ukraine and plight of those fleeing the conflict, there is an urgency to allow Ukrainian visitors who are lawfully present in the United Kingdom and unable to return home, access to publically funded healthcare in Northern Ireland without charge. Therefore the Department requires to make and bring into operation the amending legislation at this time. The laying of the amending legislation will take place as soon as possible after the first sitting of the new Assembly.