
STATUTORY INSTRUMENTS

2011 No. 1556

**The National Health Service (Charges
to Overseas Visitors) Regulations 2011**

PART 3

EXEMPTIONS

Services exempted from charges

6. No charge may be made or recovered in respect of any relevant services provided to an overseas visitor which fall within the following paragraphs—

- (a) accident and emergency services, whether provided at a hospital accident and emergency department, a minor injuries unit, a walk-in centre or elsewhere, but not including any services provided—
 - (i) after the overseas visitor has been accepted as an in-patient; or
 - (ii) at an outpatient appointment;
- (b) services otherwise than at, or by staff employed to work at, or under the direction of, a hospital⁽¹⁾;
- (c) family planning services;
- (d) treatment in respect of a disease listed in Schedule 1;
- (e) treatment for sexually transmitted infections, but in the case of services which relate to infection with Human Immunodeficiency Virus, only to the extent that they consist of a diagnostic test for evidence of infection with the Virus and counselling associated with that test or its result;
- (f) services provided to an overseas visitor who is liable to be detained in a hospital or, received into guardianship under the Mental Health Act 1983⁽²⁾ “(the 1983 Act)” or any other enactment authorising detention in a hospital by reason of mental disorder, or subject to a community treatment order under the 1983 Act⁽³⁾;
- (g) treatment which is provided in circumstances where—
 - (i) a requirement to submit to the form of treatment concerned is imposed by, or included in, an order of a court; and
 - (ii) paragraph (f) does not apply.

(1) See section 275(1) of the National Health Service Act 2006 (c. 41) for the definition of “hospital”.

(2) 1983 c. 20 as amended by the Mental Health Act 2007 (c.12).

(3) See section 17A of the 1983 Act inserted by section 32(1) and (2) of the Mental Health Act 2007, which defines “community treatment order” for the purposes of the 1983 Act.

Overseas visitors exempt from charges - lawful residence for 12 months

7.—(1) No charge may be made or recovered in respect of any relevant services provided to an overseas visitor who has resided lawfully in the United Kingdom for a period of not less than 12 months immediately preceding the time when such services are provided.

(2) Paragraph (1) does not apply to a person who has leave to enter the United Kingdom for the purpose of undergoing private medical treatment, or a person in relation to whom a determination under regulation 13 has been made.

(3) Where a person meets the residence qualification in paragraph (1) on a date during a course of treatment for which charges could have been made prior to that date, no charge may be made in respect of services subsequently received.

Overseas visitors exempt from charges - presence for work, study etc., or to settle

8.—(1) No charge may be made or recovered in respect of any relevant services provided to an overseas visitor who is shown to the satisfaction of the relevant NHS body for any purpose specified in paragraph (2) to be present—

- (a) in the United Kingdom;
- (b) in a designated area of the Continental Shelf;
- (c) in or over any area of the Continental Shelf; or
- (d) on a stationary structure within the territorial waters of the United Kingdom.

(2) The purposes specified for this paragraph are—

- (a) engaging in employment with an employer which has its principal place of business in the United Kingdom or which is registered in the United Kingdom as a branch of an overseas company;
- (b) being a self-employed person whose principal place of business is in the United Kingdom;
- (c) working as a volunteer with a voluntary organisation that is providing a service similar to a relevant service as defined in sections 64 and 65 (financial and other assistance to certain voluntary organisations) of the Health Services and Public Health Act 1968⁽⁴⁾, or a service to which Article 71 (arrangements with and assistance to voluntary organisations) of the Health and Personal Social Services (Northern Ireland) Order 1972⁽⁵⁾ applies;
- (d) pursuing a full time course of study which is—
 - (i) substantially funded by the Secretary of State, the Welsh Ministers, Northern Ireland departments or the Scottish Ministers; or
 - (ii) of at least six months duration; and
- (e) taking up permanent residence in the United Kingdom.

Overseas visitors exempt from charges – EU Rights

9. No charge may be made or recovered in respect of any relevant services provided to an overseas visitor who has entitlement to the provision of the services in question under or by virtue of any of the following—

- (a) regulations made under article 48 of the Treaty on the Functioning of the European Union;
- (b) an agreement entered into between the European Union and any other country;

(4) 1968 c.46.

(5) S.I. 1972/1265 (N.I. 14).

- (c) any other enforceable EU right(6).

Overseas visitors exempt from charges - reciprocal agreements

10. No charge may be made or recovered in respect of any relevant services provided to an overseas visitor where those services are provided in circumstances covered by a reciprocal agreement with a country or territory specified in Schedule 2.

Overseas visitors exempt from charges – refugees, asylum seekers and children in care

11. No charge may be made or recovered in respect of any relevant services provided to an overseas visitor who—

- (a) has been granted temporary protection, asylum or humanitarian protection under the immigration rules made under section 3(2) (general provisions for regulation and control) of the Immigration Act 1971(7);
- (b) has made an application, which has not yet been determined, to be granted temporary protection, asylum or humanitarian protection under those rules;
- (c) is currently supported under section 4 or 95 of the Immigration and Asylum Act 1999(8); or
- (d) is a child, taken into local authority care under the Children Act 1989(9).

Overseas visitors exempt from charges – human trafficking

12.—(1) No charge may be made or recovered in respect of any relevant services provided to an overseas visitor, where the competent authorities—

- (a) consider that there are reasonable grounds to believe that person is a victim within the meaning of Article 4 of the Convention, and the recovery and reflection period in relation to that person under Article 13 of the Convention has not yet expired; or
- (b) have identified that person as a victim within the meaning of Article 4 of the Convention.

(2) In this regulation, “the competent authorities” means the competent authorities of the United Kingdom for the purposes of the Convention, and “the Convention” means the Council of Europe Convention on Action Against Trafficking in Human Beings(10).

Overseas visitors exempt from charges - exceptional humanitarian reasons

13.—(1) Where an overseas visitor who has been granted leave to enter the United Kingdom for a course of treatment applies (or someone on his behalf applies) for exemption from charges for relevant services, and the Secretary of State determines that exceptional humanitarian reasons justify it, then no charge may be made or recovered in respect of that overseas visitor and that course of treatment.

(2) Such a determination may only be made by the Secretary of State if the Secretary of State is satisfied in the case of that overseas visitor that—

(6) For the expression “enforceable EU right”, see section 2(1) of the European Communities Act 1972 (c.68) as amended by section 3(3) of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c. 7).

(7) 1971 c. 77.

(8) 1999 c. 33. Section 4 was amended by section 49(1) and (2) of the Nationality, Immigration and Asylum Act 2002 (c. 41) (“the 2002 Act”), section 10(1) and (6) of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 (c. 19) and section 43(7) of the Immigration, Asylum and Nationality Act 2006 (c. 13). Section 95 was amended by sections 44(1) and (6) and 50(1) of the 2002 Act.

(9) 1989 c. 41. Part III provides for Local Authority Support for Children and Families.

(10) Cmd 7465. The Council of Europe Convention on Action against Trafficking in Human Beings 2005 (CETS No. 197) was opened for signature in Warsaw on 16th May 2005.

- (a) the treatment specified is not available in that person's home country;
- (b) the necessary arrangements have been made for temporary accommodation for that person, any authorised companion and any authorised child for the duration of the course of treatment; and
- (c) the necessary arrangements have been made for the return of that person, any authorised companion and any authorised child to their home country when the course of treatment is completed.

Overseas visitors exempt from charges - diplomats

14. No charge may be made or recovered in respect of any relevant services provided to an overseas visitor who is a diplomatic agent for the purposes of the Articles of the Vienna Convention on Diplomatic Relations set out in Schedule 1 to the Diplomatic Privileges Act 1964(11).

Overseas visitors exempt from charges - NATO forces

15.—(1) No charge may be made or recovered in respect of any relevant services provided to an overseas visitor who is a person to whom Article IX(5) of the North Atlantic Treaty Organisation Status of Forces Agreement(12) applies.

(2) This regulation applies where the services in question cannot readily be provided by the medical services of the armed forces of the overseas visitor's own country, or those of the United Kingdom.

Overseas visitors exempt from charges - long term visits by United Kingdom pensioners

16. No charge may be made or recovered in respect of any relevant services provided to an overseas visitor whilst in the United Kingdom, who is—

- (a) in receipt of a retirement pension under the Social Security Contributions and Benefits Act 1992 or the Social Security Contributions and Benefits (Northern Ireland) Act 1992;
- (b) resident in the United Kingdom for more than 182 days, and in another EEA state or Switzerland for less than 183 days each year; and
- (c) not registered as a resident of another EEA state or Switzerland.

Overseas visitors exempt from charges - war pensioners and armed forces compensation scheme payment recipients

17. No charge may be made or recovered in respect of any relevant services provided to an overseas visitor who is in receipt of—

- (a) any pension or other benefit under a Personal Injuries Scheme or Service Pensions Instrument as defined in regulation 2(1) (interpretation) of the Social Security (Overlapping Benefits) Regulations 1979(13); or
- (b) a payment made under article 15(1)(c) (description of benefits - injury) or article 29(1) (description of benefits - death) of the Armed Forces and Reserve Forces (Compensation Scheme) Order 2011(14).

(11) 1964 c. 81.

(12) Cmd 9363 of 1955. The Agreement was made in London on 19th June 1951. Article IX(5) provides for visiting forces to receive medical, dental and hospital services under the same conditions as comparable personnel of the receiving state, where there are inadequate facilities where they are stationed.

(13) S.I.1979/597. Relevant amendments are made by S.I. 1980/1927.

(14) S.I. 2011/517.

Overseas visitors exempt from charges – Her Majesty’s United Kingdom Forces, Crown servants and others

18. No charge may be made or recovered in respect of any relevant services provided to an overseas visitor who is any of the following—

- (a) a member of Her Majesty’s United Kingdom forces;
- (b) a Crown servant (other than a person falling within sub-paragraph (a)), recruited in the United Kingdom and employed by, or in the service of, the Government of the United Kingdom;
- (c) an employee, recruited in the United Kingdom, of the British Council or the Commonwealth War Graves Commission;
- (d) working in employment that is financed in part by the Government of the United Kingdom in accordance with arrangements with the Government of some other country or territory or a public body in such other country or territory.

Overseas visitors exempt from charges – former residents working overseas

19. No charge may be made or recovered in respect of any relevant services provided to an overseas visitor who—

- (a) has at any time had not less than ten years continuous lawful residence in the United Kingdom; and
- (b) is employed or self-employed outside the United Kingdom, provided that the period of employment or self-employment has lasted for no more than five years.

Overseas visitors exempt from charges - missionaries

20. No charge may be made or recovered in respect of any relevant services provided to an overseas visitor who is working as a missionary for an organisation that is established in the United Kingdom, regardless of whether the missionary—

- (a) derives a salary or wage from the organisation; or
- (b) receives any type of funding or assistance from the organisation for the purposes of working overseas for the organisation.

Overseas visitors exempt from charges - prisoners and detainees

21. No charge may be made or recovered in respect of any relevant services provided to an overseas visitor—

- (a) whose detention in prison or in an institution provided by the Secretary of State under section 43(1) (remand centres and young offender institutions) of the Prison Act 1952(15) is for the time being authorised by law; or
- (b) who is detained under any of the following provisions—

(15) 1952 c. 52. Section 43 was substituted by section 11 of the Criminal Justice Act 1982 (c.48). Subsection (1) has been amended by section 170 of, and paragraph 11 of Schedule 15, and Schedule 16 to, the Criminal Justice Act 1988 (c.33), section 168(3) of, and Schedule 11 to, the Criminal Justice and Public Order Act 1994 (c.33), section 119 of, and paragraph 6 of Schedule 8 to, the Crime and Disorder Act 1998 (c.37), section 165(1) of, and paragraph 5 of Schedule 9 to, the Powers of Criminal Courts (Sentencing) Act 2000 (c.6), and section 148(1) of, and paragraph 3 of Part 2 of Schedule 26 to, the Criminal Justice and Immigration Act 2008 (c. 4). Prospective amendments are made by sections 59 and 75 of, and Schedule 8 to, the Criminal Justice and Court Services Act 2000 (c. 43).

- (i) Schedule 2 (administrative provisions as to control on entry etc) or 3 (supplementary provisions as to deportation) to the Immigration Act 1971(16);
- (ii) section 62 (detention by Secretary of State) of the Nationality, Immigration and Asylum Act 2002(17);
- (iii) section 40(7)(c) (searches: contracting out) of the Immigration, Asylum and Nationality Act 2006(18);
- (iv) section 2 (detention) or 36 (detention) of the UK Borders Act 2007(19).

Overseas visitors exempt from charges - employees on ships

22. No charge may be made or recovered in respect of any relevant services provided to an overseas visitor who is employed on a ship or vessel registered in the United Kingdom.

Overseas visitors exempt from charges for treatment the need for which arose during the visit only

23.—(1) No charge may be made or recovered in respect of any relevant services, consisting of treatment the need for which arose during the visit, provided to an overseas visitor who is any of the following—

- (a) in receipt of a pension or benefit under the Social Security Contributions and Benefits Act 1992 or the Social Security Contributions and Benefits (Northern Ireland) Act 1992 and has at any time had—
 - (i) not less than ten years continuous lawful residence in the United Kingdom; or
 - (ii) not less than ten years continuous service as a Crown servant employed by, or in the service of, the Government of the United Kingdom;
- (b) resident in an EEA state, Switzerland or in a country or territory specified in Schedule 2 (except Israel) and has at any time had not less than ten years continuous lawful residence in the United Kingdom;
- (c) a national of a state which is a contracting party to the European Convention on Social and Medical Assistance 1954(20) or the European Social Charter 1961(21) and is—
 - (i) lawfully present in the United Kingdom; and
 - (ii) without sufficient resources to pay the charge;
- (d) an authorised child or an authorised companion; or
- (e) an individual who is in the United Kingdom as part of the “Games Family”, as defined in Schedule 3, during the relevant period.

(2) For the purposes of this regulation, “treatment” includes medical, dental and nursing services required for—

(16) 1971 c. 77. Relevant amendments to Schedule 2 are made by section 169(1) of, and paragraphs 43 and 60 of Schedule 14 to, the Immigration and Asylum Act 1999 (c.33) (“the 1999 Act”), and section 140(1) of that Act, section 73(5) of the Nationality, Immigration and Asylum Act 2002 (c.41) (“the 2002 Act”) and section 42(1) and (3) of the Immigration, Asylum and Nationality Act 2006 (c.13) (“the 2006 Act”). Relevant amendments to Schedule 3 are made by section 64 of, and Schedule 10 to, the Criminal Justice Act 1982 (c.48), section 54 of the 1999 Act, and section 169(1) of, and paragraphs 43 and 68 of Schedule 14 to that Act, section 114(3) of, and paragraph 7 of Schedule 7 to, the 2002 Act, section 34 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 (c.19), and section 53 of the 2006 Act.

(17) 2002 c. 41.

(18) 2006 c. 13.

(19) 2007 c. 30.

(20) Cmd. 9512. The European Convention on Social and Medical Assistance (CETS No. 14) was opened for signature in Paris on 11th December 1953.

(21) Cmd. 1667. The European Social Charter (CETS No. 35) was opened for signature in Turin on 18th October 1961. Article 13 provides the right to social and medical assistance.

- (a) the care of women who are pregnant or in childbirth; or
- (b) the prevention or diagnosis of illness.

Family members of overseas visitors

24.—(1) Where paragraph (2) applies, no charge may be made or recovered in respect of any relevant services provided to a member of the family of an overseas visitor, where that family member is lawfully present in the United Kingdom.

(2) Paragraph (1) applies in relation to an overseas visitor who is exempt from charges under any of the following regulations—

- (a) regulation 12 (human trafficking);
- (b) regulation 15 (NATO forces);
- (c) regulation 18 (Her Majesty’s United Kingdom Forces, Crown servants and others);
- (d) regulation 20 (missionaries).

(3) Where paragraph (4) applies, no charge may be made or recovered in respect of any relevant services provided to a member of the family of an overseas visitor, where the member of the family is lawfully present on a permanent basis with the overseas visitor whilst the overseas visitor is residing in or visiting the United Kingdom.

(4) Paragraph (3) applies in relation to an overseas visitor who is exempt from charges under any of the following regulations—

- (a) regulation 7 (lawful residence for 12 months);
- (b) regulation 8 (presence for work, study etc., or to settle);
- (c) regulation 9 (EU rights);
- (d) regulation 11 (refugees, asylum seekers and children in care);
- (e) regulation 14 (diplomats);
- (f) regulation 16 (long term visits by United Kingdom pensioners);
- (g) regulation 17 (war pensioners and armed forces compensation scheme payment recipients);
- (h) regulation 19 (former residents working overseas);
- (i) regulation 21 (prisoners and detainees);
- (j) regulation 22 (employees on ships).

(5) Where paragraph (6) applies, no charge may be made or recovered in respect of any relevant services consisting of treatment the need for which arose during the visit, provided to a member of the family of an overseas visitor, where the member of the family is lawfully present on a permanent basis with the overseas visitor whilst the overseas visitor is residing in or visiting the United Kingdom.

(6) Paragraph (5) applies to an overseas visitor who is exempt from charges under regulation 10 (reciprocal agreements), or regulation 23(1)(a) or (b) (treatment for needs arising).

(7) For the purposes of this regulation “member of the family of an overseas visitor” means—

- (a) the spouse or civil partner of an overseas visitor; or
- (b) a child in respect of whom an overseas visitor is a parent or legal guardian.

(8) None of the provisions of this regulation affect any entitlement which any member of the family of an overseas visitor may have to the provision of any relevant services by virtue of an enforceable EU right.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.
