

EXPLANATORY MEMORANDUM TO
THE NATIONAL HEALTH SERVICE (CHARGES TO OVERSEAS
VISITORS) AMENDMENT REGULATIONS 2012

2012 No. 1586

1. This explanatory memorandum has been prepared by the Department of Health and is laid before Parliament by Command of Her Majesty.
2. **Purpose of the instrument**
 - 2.1 The National Health Service (Charges to Overseas Visitors) Amendment Regulations 2012 (“the 2012 Regulations”) amend the National Health Service (Charges to Overseas Visitors) Regulations 2011 (“the 2011 Regulations”):
 - so that the Human Immunodeficiency Virus (HIV) is no longer stated as an exception in the provision of treatment without charge for sexually transmitted infections to all overseas visitors;
 - to remove the exemption for Olympic and Paralympic Games Family members; and
 - to clarify the provision where someone would be exempt under regulation 8 and to clarify the position of a member of the family of an overseas visitor under regulation 24, in response to previous criticism for the Joint Committee on Statutory Instruments.
3. **Matters of special interest to the [Joint Committee on Statutory Instruments *or* the Select Committee on Statutory Instruments]**
 - 3.1 None
4. **Legislative Context**
 - 4.1 Lord Fowler tabled an amendment to the Health Bill to provide free HIV treatment to anyone who has been in the UK for more than 6 months. As set out in the policy background below, the Department of Health had already been reviewing its policy on charging overseas visitors not otherwise exempt for HIV treatment, and had concluded that it was a public health risk to continue to do so. Therefore, the Department decided to agree in principle to the amendment, but, on public health and equality grounds, we decided that treatment should be available free regardless of 6 months presence in the UK, similar to all other infectious diseases. We committed to amend the 2011 Regulations in October 2012 to enact this, so Lord Fowler agreed to withdraw the amendment.
 - 4.2 The amendment in relation to the Games Family is being made to update the 2011 Regulations as the provision for such patients will no longer apply after 12 September 2012 when the Games Period ends, which is before the date when the 2012 Regulations come into force.

4.3 The amendment in relation to regulation 8 is made to clarify when a person comes within the exemption if they would have been in one of the specified places but for the fact that the patient is in England having treatment.

4.4 The amendment in relation to regulation 24 is made to clarify that the exemption from charges applies to an overseas visitor who is a member of the family of an overseas visitor, and that overseas visitor is exempt from charges under any of the specified regulations.

5. Territorial Extent and Application

5.1 This instrument applies to England.

6. European Convention on Human Rights

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

7. Policy background

- *What is being done and why*

7.1 In the 2011 Regulations HIV is excluded from the list of infectious and sexually transmitted diseases the treatment of which is provided free to all overseas visitors on public health grounds. Only the diagnostic test for HIV and associated counselling is currently free to all.

7.2 In recent years there has been consistent lobbying from migrant support groups, HIV charities and the All-Party Parliamentary Group on HIV and AIDS. Concerns were raised that some people in the UK, often here without the proper authority and so not entitled to free NHS hospital treatment, were not being treated effectively for HIV, with humanitarian and public health concerns.

7.3 In 2009, the Department committed to review the current arrangements. Recent research concludes that providing a person with effective HIV treatment reduces infectivity by up to 96% so can largely prevent onward transmission. The Chief Medical Officer's Expert Advisory Group on AIDS also considered the clinical evidence and supported the change.

7.4 As noted above, Lord Fowler tabled an amendment to the Health Bill to provide free HIV treatment to anyone who has been in the UK for more than 6 months. This was made as the review was concluding. On the public health grounds mentioned above, we decided to treat HIV the same as all other infectious diseases and provide free treatment to all, even if they have not yet been here 6 months. This decision was also influenced by equality

considerations, since, due to the new public health advice, there could be no defensible reason to potentially indirectly discriminate against those overseas visitors with HIV, who are classed as disabled. We committed to amend the 2011 Regulations in October 2012 to enact this, so Lord Fowler agreed to withdraw the amendment.

7.5 The current regulations include an exemption from charges for certain Games Family members (including athletes, technical officials and press for the Olympic and Paralympic Games). It is limited to treatment the need for which arises during the visit if the treatment needed commences between 9 July to 12 September 2012 (the “relevant period”).

7.6 We are making this amendment to update the Regulations, otherwise they would contain an exemption category that would no longer be applicable.

7.7 Other amendments are in response to criticism from the Joint Committee on Statutory Instruments to provide clarification.

- ***Consolidation***

7.8 We do not intend to consolidate these Regulations in the near future as the 2011 Regulations were a consolidation themselves of previous Regulations.

8. Consultation outcome

8.1 Our decision on HIV was informed by a degree of public consultation primarily with HIV and sexual health clinicians and organisations but also the recommendations of the House of Lords Select Committee on HIV and AIDS. The other amendments are simply to update or clarify the existing position.

9. Guidance

9.1 Guidance to the NHS known as *Implementing the Overseas Visitors Hospital Charging Regulations* will be updated in light of these amendments and the NHS will be made aware of the change. Guidance to the public on the Department’s website will also be updated.

10. Impact

10.1 An Impact Assessment has not been prepared for this instrument because no impact on the private or voluntary sector is foreseen. Impacts will be on the public sector. Also, the economic impact of the HIV amendment on the public sector (NHS) is below the threshold for an IA to be required. However, an economic appraisal and an equality analysis have been undertaken and will be published.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The Health Protection Agency (and from 2013 Public Health England) will as part of their HIV monitoring and surveillance help assess the impact of the amendment. They are agreeing with HIV clinicians (responsible for HPA data returns) and the Department key data to collect. Any impact of the amendment is likely to have most affect on London HIV centres and we propose focussing initially on London but also taking account of local HPA intelligence from other areas if they too are seeing an impact. Impact will assess any increases in diagnoses, numbers accessing treatment as well as the public health impact in contributing to reductions in undiagnosed and late HIV diagnoses.

12.2 However, the number of overseas visitors accessing HIV treatment who are not already receiving it, or the number of people coming forward for HIV testing as a result of this amendment is considered to be very low and caution will be needed in interpreting small changes.

12.3 The HPA publish an annual HIV Report in late November alongside epidemiological data. The first published report following this amendment will be November 2013. In London the HPA oversee a twice-yearly survey of people with diagnosed HIV accessing NHS treatment services which informs London's HIV commissioning. This will help identify any unexpected impact of this change.

13. Contact

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