

EXPLANATORY MEMORANDUM TO

THE NATIONAL HEALTH SERVICE (CHARGES TO OVERSEAS VISITORS) (AMENDMENT ETC.) (EU EXIT) REGULATIONS 2019

2019 No. 516

1. Introduction

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

2. Purpose of the instrument

- 2.1 The Regulations amend the National Health Service (Charges to Overseas Visitors) Regulations 2015 (S.I. 2015/238) (the 2015 regulations) and subsequent amendments.
- 2.2 These changes are being made as a consequence of the United Kingdom's (UK) withdrawal from the European Union (EU) to ensure that the NHS is able to recover effectively the costs of NHS services provided to EU/EEA and Swiss visitors and migrants once the UK leaves the European Union. Where appropriate, the changes also ensure that these cohorts are not charged for NHS services.
- 2.3 The Regulations will make provisions on the chargeable status of EU/EEA and Swiss migrants and visitors accessing healthcare in England while residing or staying temporarily in the UK, in order to ensure that domestic legislation reflects UK Government policies under a no-deal scenario.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

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)

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business.

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 (anyone not ordinarily resident in the UK) 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 regulations.

- 6.2 Should the UK leave the EU without a ratified Withdrawal Agreement to ensure that the regulations function effectively after exit day, amendments to the charging regulations are necessary

7. Policy background

What is being done and why?

- 7.1 The Regulations amend National Health Service (Charges to Overseas Visitors) Regulations 2015 (S.I. 2015/238) and subsequent amendments.
- 7.2 Section 175 of the National Health Service Act 2006 (the 2006 Act) authorises the Secretary of State to make regulations for the making and recovery of charges from persons not ordinarily resident in Great Britain for NHS services, including that charges may only be made in such cases as may be determined in accordance with the regulations.
- 7.3 The regulations ensure that the NHS, which is supported by the British taxpayer, receives the requisite contribution from overseas visitors towards the cost of care that they receive, should they use NHS services. The overarching aim is to safeguard the long-term sustainability of the NHS in England.
- 7.4 Amendments to the charging regulations are necessary as a consequence of the UK's withdrawal from the EU to ensure that the NHS is able to recover effectively the costs of NHS services provided to EU/EEA and Swiss visitors and migrants after exit day. The amendments also ensure that these cohorts are not charged for NHS care, where such charges would be inconsistent with wider UK Government no deal policy. In the event that the UK leaves the EU without a ratified agreement, references to EU law and EU rights within the existing legislative framework for the recovery of costs from overseas visitors and migrants will no longer be clear.
- 7.5 The proposed changes do not undermine the principle that the NHS is, and will remain, free at the point of delivery for those who are ordinarily resident. Existing exemptions to protect the most vulnerable in society and for key services essential to public health are unchanged, ensuring that urgent or immediately necessary treatment will always be provided, regardless of an individual's ability or willingness to pay for that treatment.
- 7.6 The Regulations will make provisions on the chargeable status of EU/EEA and Swiss visitors or migrants who access healthcare in England while residing or staying temporarily in the UK, in order to ensure that domestic legislation reflects UK Government policies under a no-deal scenario.
- 7.7 The Regulations introduce a number of new charging exemptions to give effect to no-deal charging policy.
- 7.8 The Regulations will until 31 December 2020 provide an exemption from charging for EU/EEA and Swiss citizens who have arrived before exit day, who are eligible for leave to remain under the EU Settlement Scheme (in legislative terms this is Appendix EU to the Immigration Rules), as well as their family members. This cohort would otherwise be chargeable in some circumstances. This will ensure, pending the

negotiation of the future economic relationships, the fulfilment of the UK Government's commitment, set out in the policy paper on citizen's rights published on 6 December 2018, that in a no deal scenario, EU citizens lawfully resident in the UK by 29 March 2019 will retain their entitlement to healthcare.

- 7.9 The exemptions predominantly cover pre-exit arrivals (though the family members of pre-exit arrivals who join their relatives after exit day will also be exempt). This is because, after exit day, Home Office regulations will continue freedom of movement for a short period of time, during which EU/EEA/Swiss migrants will not be chargeable so long as they are ordinarily resident. When free movement ends with the commencement of the Immigration and Social Security Co-ordination (EU Withdrawal) Bill ("Immigration Bill"), further Home Office regulations will ensure that people with pre-settled status under the EU Settlement Scheme or with European Temporary Leave to Remain (EUTRL) can access free NHS care, so long as they are ordinarily resident.
- 7.10 The Regulations provide an exemption from charging for Irish citizens, and British citizens who are ordinarily resident in the Republic of Ireland, for needs-arising healthcare when visiting England, because of the special arrangement that we have with the Republic of Ireland. Frontier workers in the UK on or before exit day will also be exempt from charging for needs-arising treatment.
- 7.11 The UK Government is seeking the continuation of reciprocal healthcare arrangements that enable EU/EEA and Swiss visitors temporarily in the UK to receive healthcare without being charged directly. Reciprocal healthcare rights are currently set out in EU law, and the UK Government is seeking to maintain them on a bilateral or multilateral basis until December 2020. Part of these arrangements involves reimbursement by EEA states or Switzerland, where the UK treats patients for whom those states are responsible. The Regulations therefore amend Regulation 14 of the 2015 Regulations to provide that overseas visitors from an EEA state or Switzerland, who are covered by a reciprocal agreement will not be directly chargeable.
- 7.12 The UK has reached a limited agreement with Switzerland and the EEA EFTA states of Norway, Iceland and Liechtenstein to protect citizens' rights in a no deal scenario to protect (among other things) access to healthcare in the UK for citizens and their family members who have moved between the UK and the other countries before exit day, to which effect is also given in amendments to Regulation 14 of the 2015 Regulations.
- 7.13 The Regulations ensure that the level of any charges made to overseas visitors from EU/EEA states or Switzerland will be calculated by reference to the standard NHS tariff for the relevant service, meaning that such visitors will pay no more than a UK national (who is not ordinarily resident) would pay.
- 7.14 The Regulations will transpose into domestic legislation the existing right (derived from EU law) of UK-insured persons residing in an EEA state or Switzerland receive NHS care without a charge, should they return temporarily to the UK. The exemption will apply to people living in the EU on exit day who are either UK-insured, or who would have been UK-insured when they received NHS treatment, had the pre-exit rules continued to apply. The exemption does not cover those who choose to move to the EU after exit day. This provision builds upon the current exemption in the 2015 regulations which applies to UK state pensioners (with an UK-issued S1 document which has been registered in another member state) living in the EU.

- 7.15 The existing rights to free NHS care under EU law will continue until the point at which the UK formally leaves the EU. It is reasonable to expect that there will be instances in which an EU/EEA or Swiss visitor arrives in the UK before exit day but requires treatment on or after exit day, at which point their European Health Insurance Card may no longer be recognised. There could be similar instances in relation to planned treatment authorised before, but provided after exit day. The Regulations will introduce a transitional exemption from charging for EU/EEA visitors in such situations, for healthcare received in England. This will apply for the duration of their temporary visit to the UK, but not for subsequent visits.
- 7.16 These exemptions are consistent with the UK's obligations to respect reciprocal healthcare rights in transitional situations, which arise under The Social Security Coordination (Reciprocal Healthcare) (Amendment etc) (EU Exit) Regulations 2019.
- 7.17 A separate exemption ensures that students whose courses began before exit day can access needs-arising treatment until the completion of their course of study.
- 7.18 The Regulations will remove references to EU law and rights derived under EU law that may no longer be operable or coherent after exit day.

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

- 8.1 This instrument is not being made under the European Union (Withdrawal) Act but relates to the withdrawal of the United Kingdom from the European Union because the changes required are a consequence of withdrawal. The instrument will correct references to EU law that will be inoperable after we leave the EU and make provision on the chargeable status of EU visitors and migrants using NHS services in England in line with UK Government policy in a no-deal scenario.

9. Consolidation

- 9.1 The instrument does not consolidate legislation and there are no plans to do so at this time.

10. Consultation outcome

- 10.1 There has been no public consultation in relation to this instrument.
- 10.2 Charging policy 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 Comprehensive guidance will be published to accompany the Regulations. Training will also be available for relevant NHS staff, both e-learning and face to face training sessions, to support staff implementing the Regulations.
- 11.2 A 'Cost Recovery Support Team', established in January 2015, is available for deployment to Trusts free of charge to assist them to implement systems and processes for improved identification of, and recovery of charges from, chargeable overseas visitors under the Regulations.

- 11.3 The NHS Cost Recovery programme is undertaking an information campaign to the NHS which will run until May 2019. A wide range of channels will be used to communicate information effectively to the NHS, to increase understanding of the changes, engage in discussion and to identify areas of concern. Information will be made available directly to overseas visitor managers, trusts and commissioners through key websites, social media sites and stakeholder communication channels.
- 11.4 Queries from the NHS and the public on the Regulations can be taken at nhscoastrecovery@dhsc.gov.uk, Room 2S15, Quarry House, Leeds, LS2 7UE.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 The impact on the public sector is that NHS bodies providing relevant services will have changed obligations in respect of the making and recovery of charges from overseas visitors. These are not expected to be onerous as the regulations clarify but do not substantially amend the chargeable status of EU citizens should the UK leave the EU without a ratified agreement.
- 12.3 An Impact Assessment is submitted with this memorandum and published alongside the Explanatory Memorandum on the legislation.gov.uk website.

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 NHS Cost Recovery programme is subject to regular internal review. The Regulations will be kept under review in the light of on-going negotiations between the EU and the UK on reciprocal healthcare agreements and our future relationship, and may be amended accordingly.

15. Contact

- 15.1 Alison Tyson at the Department of Health and Social Care Telephone: 0113 254 5512 or email: Alison.Tyson@dhsc.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Tim Brown, Deputy Director for NHS Cost Recovery, at the Department of Health and Social Care can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Stephen Hammond, Minister of State for Health at the Department of Health and Social Care can confirm that this Explanatory Memorandum meets the required standard.