
WELSH STATUTORY INSTRUMENTS

2022 No. 89 (W. 30)

NATIONAL HEALTH SERVICE, WALES

The National Health Service (Charges to Overseas Visitors) (Amendment) (Wales) Regulations 2022

<i>Made</i>	- - - -	<i>30 January 2022</i>
<i>Laid before Senedd Cymru</i>		<i>2 February 2022</i>
<i>Coming into force-</i>	- -	<i>24 February 2022</i>

The Welsh Ministers make these Regulations in exercise of the powers conferred by sections 124 and 203(9) and (10) of the National Health Service (Wales) Act 2006⁽¹⁾.

Title, commencement and interpretation

1.—(1) The title of these Regulations is the National Health Service (Charges to Overseas Visitors) (Amendment) (Wales) Regulations 2022.

(2) These Regulations come into force on 24 February 2022.

(3) In these Regulations, “the principal Regulations” means the National Health Service (Charges to Overseas Visitors) Regulations 1989⁽²⁾.

Amendment of the principal Regulations

2. The principal Regulations are amended as follows.

Amendment of regulation 1

3. Regulation 1(2) (citation, commencement and interpretation) is amended as follows—

(a) at the appropriate places insert—

““the 1971 Act” means the Immigration Act 1971⁽³⁾”;

(1) 2006 c. 42. See section 206(1) for the definitions of “prescribed” and “regulations”.

(2) S.I. 1989/306, amended by S.I. 1991/438; S.I. 1994/1535; S.I. 2004/614; S.I. 2004/696; S.I. 2004/1433 (W. 146); S.I. 2008/2364 (W. 203); S.I. 2009/1175 (W. 102); S.I. 2009/1512 (W. 148); S.I. 2009/1824 (W. 165); S.I. 2009/3005 (W. 264); S.I. 2010/730 (W. 71); S.I. 2010/927 (W. 94); S.I. 2011/1043; S.I. 2011/2906 (W. 310); S.I. 2012/1809; S.I. 2014/1622 (W. 166); S.I. 2020/113 (W. 20); S.I. 2020/1607 (W. 334); S.I. 2021/221 (W. 55); there are other amending instruments but none are relevant to these Regulations.

(3) 1971 c. 77.

“immigration health charge” means a charge payable under an order made under section 38 (immigration health charge) of the 2014 Act;”;

- (b) in the definition of “relevant services”, for “primary ophthalmic services” substitute “general ophthalmic services”.

Amendment of regulation 4

4. In regulation 4(1) (overseas visitors exempt from charges), omit sub-paragraph (s).

Insertion of regulations 4F, 4G and 4H

5. After regulation 4E (overseas visitors with Trade and Cooperation Agreement Rights) insert—

“Immigration health charge

4F.—(1) In this regulation, “relevant period” means—

(a) where—

- (i) an immigration health charge is payable;
- (ii) an exemption from paying an immigration health charge applies as a consequence of any exemption provided for in an order made under section 38 (immigration health charge) of the 2014 Act;
- (iii) the Secretary of State has exercised discretion to reduce or waive all or part of an immigration health charge in accordance with such an order;
- (iv) the Secretary of State has exercised discretion to refund part of an immigration health charge paid under such an order; or
- (v) in a case to which paragraph (5) applies, the Secretary of State has exercised discretion to refund all of an immigration health charge paid under such an order,

the period of leave to enter or remain in the United Kingdom which is granted to the overseas visitor, or has effect on their arrival in the United Kingdom, in respect of the application for entry clearance or leave to remain to which the immigration health charge, exemption, reduction, refund or waiver relates; and

(b) in a case where the overseas visitor’s leave to enter or remain in the United Kingdom is extended by virtue of—

- (i) section 3C (continuation of leave pending variation decision)**(4)**; or
- (ii) section 3D (continuation of leave following revocation)**(5)**,

of the 1971 Act, the period in respect of which leave is extended under those sections.

(2) No charge may be made or recovered under these Regulations in respect of any relevant services provided during the relevant period to an overseas visitor in respect of whom—

- (a) an immigration health charge has been paid;

(4) Section 3C was amended by the Nationality, Immigration and Asylum Act 2002 (c. 41), section 118; the Immigration, Asylum and Nationality Act 2006 (c. 13), section 11(1) to (4); the Immigration Act 2014 (c. 22), Schedule 9, paragraphs 20 and 21; the Immigration Act 2016 (c. 19), section 62(1); and S.I. 2020/61, Schedule 4, paragraph 1.

(5) Section 3D was repealed by the Immigration Act 2016, Part 4, section 64(1), subject to savings and transitional provisions as specified in section 64(5).

- (b) an exemption from paying such an immigration health charge applies, unless paragraph (3) applies;
- (c) subject to paragraph (6), a reduction or waiver from paying such an immigration health charge applies; or
- (d) a refund for part, or in a case to which paragraph (5) applies (but only in that case) all, of an immigration health charge has been made,

in accordance with an order made under section 38 of the 2014 Act.

(3) Subject to paragraph (4), this paragraph applies where a person is exempt from payment of an immigration health charge under an order made under section 38 of the 2014 Act by virtue of having made an application—

- (a) for entry clearance where, if granted in accordance with the immigration rules, the entry clearance would have effect on arrival in the United Kingdom as leave to enter for 6 months or less, or where the leave to enter which may be granted pursuant to that entry clearance would be for 6 months or less if granted in accordance with the immigration rules; or
- (b) for entry clearance—
 - (i) before 6 April 2016, under Part 2 of the immigration rules (visitors to the UK); or
 - (ii) on or after 6 April 2016, under Appendix V to the immigration rules (immigration rules for visitors).

(4) Paragraph (3) does not apply where a person is exempt from the payment of an immigration health charge by virtue of paragraph 1(o) of Schedule 2 to the Immigration (Health Charge) Order 2015(6).

(5) No charge may be made to or recovered from a person under these Regulations—

- (a) in respect of any relevant services provided to that person on or after 27 October 2020 and during the relevant period; and
- (b) where a full refund of an immigration health charge has been made to, or in respect of that person on the ground that they are a—
 - (i) person who is working in the field of health or social care; or
 - (ii) dependant of a person who is working in the field of health or social care.

(6) Paragraph (2) does not apply in respect of relevant services that are provided to an overseas visitor—

- (a) who is granted leave to remain in the United Kingdom under Appendix S2 Healthcare Visitor to the immigration rules; and
- (b) in respect of whom a waiver to the immigration health charge applies,

where those relevant services are not part of the planned healthcare treatment authorised by that person's S2 healthcare certificate.

Overseas visitors who have made applications for entry clearance or leave to remain prior to the commencement of the immigration health charge

4G.—(1) In this regulation, “relevant period” means—

- (a) the period of leave to enter or remain in the United Kingdom granted to the overseas visitor in respect of the application for entry clearance or leave to remain to which paragraph (3)(a) refers; and

(6) [S.I. 2015/792](#). Paragraph 1(o) of Schedule 2 was inserted by article 2(3)(a) of [S.I. 2020/1086](#).

- (b) in a case where the overseas visitor's leave to enter or remain in the United Kingdom is extended by virtue of—
 - (i) section 3C (continuation of leave pending variation decision); or
 - (ii) section 3D (continuation of leave following revocation),of the 1971 Act, the period in respect of which leave is extended under those sections.
- (2) In this regulation, "relevant date" means 6 April 2015.
- (3) No charge may be made or recovered under these Regulations in respect of any relevant services provided to an overseas visitor during the relevant period who—
 - (a) made an application for entry clearance or leave to remain in the United Kingdom before the relevant date and was granted leave to enter or remain in the United Kingdom or entry clearance which has effect on the overseas visitor's arrival in the United Kingdom as leave to enter or remain in the United Kingdom in respect of that application;
 - (b) has entered, or remained in, the United Kingdom by virtue of that leave to enter or remain; and
 - (c) had that application for entry clearance or leave to remain been made on or after the relevant date, would be—
 - (i) liable to pay an immigration health charge; or
 - (ii) exempt from paying an immigration health charge as a consequence of an exemption provision under an order made under section 38 of the 2014 Act, unless paragraph (4) applies.
- (4) This paragraph applies where an overseas visitor—
 - (a) would be exempt from an immigration health charge under an order made under section 38 of the 2014 Act by virtue of having made an application of a kind described in regulation 4F(3)(a) or (b) (immigration health charge); or
 - (b) has been granted leave to enter or remain in the United Kingdom outside the immigration rules for 6 months or less.

Children of overseas visitors exempt from charges by virtue of regulations 4F and 4G

- 4H.** No charge may be made or recovered in respect of any relevant services provided to an overseas visitor who is a child who—
- (a) is born in the United Kingdom to a parent who is exempt from charges by virtue of—
 - (i) regulation 4F (immigration health charge); or
 - (ii) regulation 4G (overseas visitors who have made applications for entry clearance or leave to remain prior to the commencement of the immigration health charge);
 - (b) is aged 3 months or less; and
 - (c) has not left the United Kingdom since birth."

Amendment of Schedule 1

6. In Part 4 (other diseases) of Schedule 1 (diseases for the treatment of which no charge is to be made), for “Wuhan novel coronavirus (2019-nCoV)” substitute “Severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2)”.

Amendment of Schedule 2

7. Schedule 2 (countries or territories in respect of which the United Kingdom Government has entered into a reciprocal agreement) is amended as follows—

(a) at the appropriate place insert—

“Switzerland”;

(b) omit—

“Liechtenstein”, and

“Sweden”.

30 January 2022

Eluned Morgan
Minister for Health and Social Services, one of
the Welsh Ministers

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EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the National Health Service (Charges to Overseas Visitors) Regulations 1989 (S.I. 1989/306) (“the principal Regulations”), which provide for the making and recovery of charges for relevant services provided under the National Health Service (Wales) Act 2006 (c. 42) to certain persons not ordinarily resident in the United Kingdom.

Regulation 3 amends regulation 1 of the principal Regulations to insert definitions of “the 1971 Act” and “immigration health charge”. It also amends the existing definition of “relevant services” to refer to “general”, rather than “primary” ophthalmic services.

Regulation 4 amends regulation 4 of the principal Regulations to omit the exemption in respect of persons granted leave to remain in the United Kingdom under Appendix S2 Health Visitor to the immigration rules, and in respect of whom a waiver to the immigration health charge applies. This is as a consequence of the equivalent provision being included in the new regulation 4F. The requirement on overseas visitors to pay for relevant services that do not form part of the planned healthcare treatment authorised by that person’s S2 healthcare certificate remains.

Regulation 5 inserts new regulations 4F, 4G and 4H into the principal Regulations. The new regulation 4F provides an exemption from charges for an overseas visitor who has paid or is exempt from paying an immigration health charge, subject to specified exemptions. The exemption applies for the “relevant period” which is the period for which leave to enter or remain in the United Kingdom is granted to the overseas visitor. The new regulation 4G provides an exemption from charges for those overseas visitors who applied for leave to enter or remain in the United Kingdom prior to 6 April 2015 when the Immigration (Health Charge) Order 2015 (S.I. 2015/792) came into force and who, consequently, will not have had an opportunity to pay the immigration health charge until they next apply for leave to enter or remain in the United Kingdom.

The new regulation 4H provides an exemption from charges for a child who is born to a parent who is exempt from charges under regulation 4F (immigration health charge) or regulation 4G (overseas visitors who have made applications for entry clearance or leave to remain prior to the commencement of the immigration health charge). The exemption applies while the child is less than three months of age provided they have not left the United Kingdom since birth. The exemption ensures that a child born in these circumstances does not attract charges before the child’s parents have had an opportunity to regularise the child’s immigration status and apply for leave for their child to remain in the United Kingdom and pay the immigration health charge, if applicable.

Regulation 6 amends the reference to “Wuhan novel coronavirus (2019-nCoV)” in Schedule 1 to the principal Regulations to the current confirmed name for the Coronavirus, which is “Severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2)”.

Regulation 7 inserts Switzerland into, and removes Sweden and Liechtenstein from, the list of countries or territories with whom the United Kingdom Government has entered into a reciprocal agreement in Schedule 2 to the principal Regulations. Sweden is covered by the Social Security Co-ordination Protocol provisions of the UK Trade and Co-operation Agreement and does not need to be separately listed.

The Welsh Ministers’ Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with these Regulations. A copy can be

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