

EXPLANATORY MEMORANDUM TO
THE IMMIGRATION (HEALTH CHARGE) (AMENDMENT) ORDER 2017
2017 No. [DRAFT]

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 This Order amends the Immigration (Health Charge) Order 2015 (“the Principal Order”) to remove the exemption from the immigration health charge available for Intra-Company Transfer (ICT) applicants and their dependants, and it provides an explicit exemption from the surcharge for all victims of modern slavery (not just human trafficking) who are applying for discretionary leave under the criteria set out in the competent authority guidance or leave as a domestic worker, who is a victim of slavery or human trafficking, following a Conclusive Grounds decision. There are also some amendments to the Order to enable payment of the immigration health charge to be requested after (i) a successful review or appeal of a refusal decision where the charge was not initially requested by the entry clearance officer or the Secretary of State (ii) a successful review or appeal of a refusal decision where all or part of the charge was initially refunded and (iii) a successful challenge to the grant of a lesser period of leave than requested by the applicant and where all or part of the charge was initially refunded. There are also minor amendments to the exemption relating to visitors so that it includes visitors applying for further leave to remain. It is intended that these changes will take effect from early 2017.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 Disregarding minor or consequential changes, the territorial application of this instrument includes Scotland and Northern Ireland.

4. Legislative Context

- 4.1 This Order will be made under sections 38 and 74(8) of the Immigration Act 2014, which provide the Secretary of State with a power, by order, to require certain migrants to pay an immigration health charge. It amends the Principal Order.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is the United Kingdom.
5.2 The territorial application of this instrument is the United Kingdom.

6. European Convention on Human Rights

- 6.1 The Immigration Minister, Robert Goodwill MP, has made the following statement regarding Human Rights:

“In my view the provisions of the Immigration (Health Charge) (Amendment) Order 2017 are compatible with the Convention rights.”

7. Policy background

What is being done and why

- 7.1 Section 38 of the Immigration Act 2014 (“the Act”) enables the Secretary of State by order to provide for an immigration health charge to be imposed on those applying for leave to enter or remain in the UK for a limited period. The immigration health charge was introduced on 6 April 2015 by the Principal Order.
- 7.2 The immigration health charge of £200 (£150 for students and Youth Mobility Scheme applicants) annually is payable by non EEA nationals who enter the UK for more than six months in a temporary capacity or who apply to extend their stay in the UK subject to certain exemptions listed in Schedule 2 to the Principal Order. Those who pay the immigration health charge can access NHS services free of charge subject to those charges UK residents must pay, such as for prescriptions and dental treatment in England.
- 7.3 ICT workers were initially exempt from paying the immigration health charge, but in 2015, the independent Migration Advisory Committee (MAC) was asked to review Tier 2, including whether the exemption from the charge should continue to apply to ICTs; the MAC¹ concluded that it should not. The Government accepted this recommendation and announced on 24 March by written ministerial statement that the immigration health charge will apply to ICTs. This Order will enable the immigration health charge to be levied against ICTs from early 2017.
- 7.4 Victims of slavery are not currently explicitly covered by the exemption in the Principal Order, which exempts victims of human trafficking from paying the charge; currently the surcharge is, however, waived for victims of slavery. This Order amends the Principal Order to ensure that all eligible victims of modern slavery, that is victims of slavery, servitude and forced or compulsory labour as well as victims of trafficking are exempt from the charge. Eligible victims of modern slavery are those applying for discretionary leave under the criteria set out in the competent authority guidance or leave as a domestic worker who is a victim of slavery or human trafficking, following a Conclusive Grounds decision.
- 7.5 There are some circumstances where the Home Office does not request payment of the immigration health charge at the point of application, such as where the intention is to refuse that application. The Order makes it clearer that the Home Office can request the charge, in the event that leave is subsequently granted. The Principal Order is also amended to ensure that the immigration health charge can be requested in those cases where the charge was refunded in whole or in part but a decision to refuse leave, or grant a shorter period of leave than applied for, is overturned following administrative review or otherwise, as well as on appeal.

¹ The Migration Advisory Committee’s report can be accessed via this link - <https://www.gov.uk/government/publications/migration-advisory-committee-mac-review-tier-2-migration>

- 7.6 This Order also amends the wording in the exemption relating to visitors (Schedule 2, 1(b)) to make clear that the exemption applies not only for entry clearance but also further leave under Appendix V of the immigration rules.

Consolidation

- 7.7 The Government intends to consolidate with the Immigration (Health Charge) Amendment Order 2015 at the earliest opportunity.

8. Consultation outcome

- 8.1 There was no public consultation on these changes.

9. Guidance

- 9.1 Guidance on gov.uk will be amended in line with these changes.

10. Impact

- 10.1 The impact on business, charities or voluntary bodies is set out in the Impact Assessment published alongside the instrument.
- 10.2 The impact on the public sector is set out in the Impact Assessment published alongside the instrument.
- 10.3 An Impact Assessment is published alongside the instrument on the legislation.gov.uk website.

11. Regulating small business

- 11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

- 12.1 Parliament received an assessment of income generated by the immigration health charge after the first year of operation on 23 March 2016. There has also been an internal review of the immigration health charge.

13. Contact

- 13.1 Pommy Tumber at the Home Office Telephone: 020 7035 6914 or email: pommy.tumber@homeoffice.gsi.gov.uk can answer any queries regarding the instrument.