
STATUTORY INSTRUMENTS

2015 No. 238

**The National Health Service (Charges
to Overseas Visitors) Regulations 2015**

PART 4

Overseas visitors exempt from charges

Immigration health charge

10.—(1) In this regulation “relevant period” means—

(a) where—

- (i) an immigration health charge is payable⁽¹⁾;
- (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; or
- (iv) the Secretary of State has exercised discretion to refund part, but not 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 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)⁽²⁾; or
- (ii) section 3D (continuation of leave following revocation)⁽³⁾,

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;
- (b) an exemption from paying such an immigration health charge applies, unless paragraph (3) applies;

(1) It is anticipated that an order will be made under section 38 of the Immigration Act 2014 to be in force on the 6th April 2015, but if that is not the case then regulations 10, 11 and 25(3) have no practical effect until such time as an order is made.

(2) 1971 c. 77; 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); and the Immigration Act 2014 (c. 22) (the 2014 Act), Schedule 9, paragraphs 20 and 21.

(3) Section 3D was amended by the Immigration, Asylum and Nationality Act 2006, section 11(5) and the 2014 Act, Schedule 9, paragraphs 20 and 22.

(c) a reduction or waiver from paying such an immigration health charge applies; or
 (d) a refund for part, but not all, of an immigration health charge has been made,
 in accordance with an order made under section 38 of the 2014 Act.

(3) 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 under Part 2 (visitors to the UK) of the immigration rules.

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

11.—(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
- (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 the date of coming into force of the first order made under section 38 of the 2014 Act.

(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 10(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.

Overseas visitors with EU rights

12. No charge may be made or recovered in respect of any relevant services provided to an overseas visitor who has an entitlement to the provision of the services in question without charge 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(4);
- (b) an agreement entered into between the European Union and any other country; or
- (c) any other enforceable EU right(5).

Overseas visitors who are treated as if entitled under the Social Security Coordination Regulation

13. No charge may be made or recovered in respect of any relevant services provided to an overseas visitor who would have an entitlement to the provision of the services in question under Article 27(2) of Regulation (EC) No 883/2004(6) if the United Kingdom had opted in as described in that Article and was listed in Annex IV to that Regulation.

Reciprocal health care agreements

14. 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.

Refugees, asylum seekers, supported individuals and looked after children

15. 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;
- (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 95 (persons for whom support may be provided) of the Immigration and Asylum Act 1999(7) (“the 1999 Act”);
- (d) has made an application to be granted temporary protection, asylum or humanitarian protection under the immigration rules which was rejected and who is supported under—
 - (i) section 4(2) (facilities for the accommodation of a person) of the 1999 Act(8); or
 - (ii) section 21 (duty of local authorities to provide accommodation) of the National Assistance Act 1948(9); or

(4) OJ C 326, 26.10.2012, p. 47.

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

(6) Regulation (EC) No 883/2004 is defined in section 275(1) of the National Health Service Act 2006.

(7) 1999 c. 33; section 95 was amended by the Nationality, Immigration and Asylum Act 2002 (c. 41), section 44(1) and (6) and 50(1).

(8) Section 4 was amended by the Nationality, Immigration and Asylum Act 2002 (c. 41), section 49; the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 (c. 19), section 10(1) and (6), and the Immigration, Asylum and Nationality Act 2006 (c. 13), section 43(7).

(9) 1948 c. 29. Relevant amendments to section 21 were made by the Local Government Act 1972 (c. 70), Schedule 23, paragraph 2, and Schedule 30; the National Health Service Reorganisation Act 1973 (c. 32), Schedule 5; the Housing (Homeless Persons) Act 1977 (c. 48), Schedule; the Children Act 1989 (c. 41), Schedule 13, paragraph 11(1); the National Health Service and Community Care Act 1990 (c. 19), section 42(1), Schedule 9, paragraph 5(1) to (3), and Schedule 10; the Immigration and Asylum Act 1999 (c. 33), section 116; the Health and Social Care Act 2001 (c. 15), section 53; the Nationality, Immigration

- (e) is a child who is looked after by a local authority within the meaning of section 22(1) (general duty of local authority in relation to children looked after by them) of the Children Act 1989⁽¹⁰⁾.

Victims of human trafficking

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

- (a) has identified the overseas visitor as a victim of human trafficking; or
- (b) considers that there are reasonable grounds to believe that the overseas visitor is a victim of human trafficking, and the recovery and reflection period in relation to that person under Article 13 of the Trafficking Convention has not yet expired.

(2) In this regulation—

“competent authority” means a designated competent authority of the United Kingdom for the purposes of the Trafficking Convention⁽¹¹⁾;

“Trafficking Convention” means the Council of Europe Convention on Action against Trafficking in Human Beings (agreed at Warsaw on 16th May 2005)⁽¹²⁾;

“victim of human trafficking” means a victim within the meaning of Article 4 of the Trafficking Convention.

Exceptional humanitarian reasons

17.—(1) Where an overseas visitor who has been granted leave to enter the United Kingdom outside the immigration rules—

- (a) applies (or someone applies on the overseas visitor’s behalf) for exemption from charges in respect of relevant services for a course of treatment; and
- (b) the Secretary of State determines that exceptional humanitarian reasons justify it,

no charge may be made or recovered in respect of relevant services provided to that overseas visitor for that course of treatment.

(2) A determination under paragraph (1)(b) may only be made by the Secretary of State if the Secretary of State is satisfied, in the case of that overseas visitor, that—

- (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 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.

and Asylum Act 2002 (c. 41), section 45(5), and the National Health Service (Consequential Provisions) Act 2006 (c. 43), Schedule 1, paragraphs 5 and 6.

(10) 1989 c. 41; section 22(1) was amended by the Local Government Act 2000 (c. 22), Schedule 5, paragraph 19; the Children (Leaving Care) Act 2000 (c. 35), section 2(1) and (2), and the Adoption and Children Act 2002 (c. 38), section 116(2).

(11) The designated competent authorities for the United Kingdom for the purposes of the Trafficking Convention are the Home Office (postal address: UKVI, Waterside Court, 471 Kirkstall Road, Leeds LS4 2QB) and the United Kingdom Human Trafficking Centre (postal address: UKHTC, PO Box 8000, London SE11 5EN).

(12) Cm 8414. The Convention entered into force in respect of the United Kingdom on 1st April 2009.

Overseas visitors detained in hospital or subject to court ordered treatment

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

- (a) who is liable to be detained in a hospital, received into guardianship or subject to a community treatment order under the Mental Health Act 1983**(13)**;
- (b) who is detained in a hospital in circumstances which amount to deprivation of the overseas visitor's liberty and that deprivation of liberty is authorised under any of the following provisions of the Mental Capacity Act 2005**(14)**—
 - (i) section 4A (restriction on deprivation of liberty)**(15)**;
 - (ii) section 4B (deprivation of liberty necessary for life-sustaining treatment etc)**(16)**;
 - (iii) section 16 (powers to make decisions and appoint deputies: general); or
 - (iv) Schedule A1 (hospital and care home residents: deprivation of liberty)**(17)**;
- (c) whose detention in hospital is authorised by any other enactment authorising detention in a hospital; or
- (d) who is required to submit to a specified form of treatment that is imposed by, or included in, an order of a court and paragraph (a), (b) or (c) does not apply.

Prisoners or detainees

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

- (a) who is detained in prison or in a place in which a person may be detained that is provided by the Secretary of State under section 43(1) (remand centres and young offender institutions) of the Prison Act 1952**(18)**; or
- (b) who is detained under any of the following provisions—
 - (i) Schedule 2 (administrative provisions as to control on entry etc)**(19)** or Schedule 3 (supplementary provisions as to deportation)**(20)** to the 1971 Act;

(13) 1983 c. 20. Section 17A(3) of the Mental Health Act 1983, which was inserted by section 32(1) and (2) of the Mental Health Act 2007 (c. 12) (“the 2007 Act”), defines “community treatment order” for the purposes of that Act.

(14) 2005 c. 9.

(15) Section 4A was inserted by the 2007 Act, section 50(1) and (2).

(16) Section 4B was inserted by the 2007 Act, section 50(1) and (2).

(17) Schedule A1 was inserted by the 2007 Act, Schedule 7.

(18) 1952 c. 52; section 43(1) was amended by the Criminal Justice Act 1988 (c. 33), Schedule 8, paragraph 1, Schedule 15, paragraph 11, Schedules 16 and 18; the Criminal Justice and Public Order Act 1994 (c. 33), section 5(2), 18(3) and Schedule 11; the Crime and Disorder Act 1998 (c. 37), Schedule 8, paragraph 6; the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), Schedule 9, paragraph 5(1) and (2); the Criminal Justice and Immigration Act 2008 (c. 4), Schedule 26, paragraph 3, and the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10), Schedule 12, paragraph 4.

(19) 1971 c. 77; Schedule 2 was amended by the Criminal Justice Act 1972 (c. 71), Schedule 6, Part II; the British Nationality Act 1981 (c. 61), Schedule 4, paragraphs 2 and 3(1); the Immigration Act 1988 (c. 14), Schedule, paragraphs 6 to 9 and 10(1); the Asylum and Immigration Act 1996 (c. 49), Schedule 2, paragraphs 5 to 12 and Schedule 4; the Access to Justice Act 1999 (c. 22), Schedule 13, paragraph 70; the Immigration and Asylum Act 1999 (c. 33), section 18, 19, 132(2), 134(2), 135(2), 136(2), 139(2), 140, Schedule 14, paragraphs 43, 56 to 65, 67 and Schedule 16; the Nationality, Immigration and Asylum Act 2002 (c. 41), sections 63, 64, 73(1) and (5), 119 and Schedule 7, paragraphs 2, 4 and 6; the Courts Act 2003 (c. 39), Schedule 8, paragraph 149; the Health Protection Agency Act 2004 (c. 17), Schedule 3, paragraph 3; the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 (c. 19), section 16, 18 and Schedules 2 and 4, paragraph 1; the Immigration, Asylum and Nationality Act 2006 (c. 13), sections 27, 31 and 42 and Schedule 3; the Immigration Act 2014 (c. 22), section 5, 7, 9, 13, Schedule 1, paragraphs 1, 2(1) and 3, Schedule 2, paragraph 1, Schedule 8, Schedule 9, paragraphs 1, 20, 23 and 72; S.I. 1990/2227, 1993/1813, 2010/21 and 2014/1704.

(20) Schedule 3 was amended by the Criminal Justice Act 1982 (c. 48), Schedule 10; the Immigration Act 1988 (c. 14), Schedule, paragraph 10(2); the Asylum and Immigration Act 1996 (c. 49), Schedule 2, paragraph 13; the Immigration and Asylum Act 1999 (c. 33), section 54 and Schedule 14, paragraphs 43 and 68; the Nationality, Immigration and Asylum Act 2002 (c. 41), Schedule 7, paragraph 7 and 8; the Courts Act 2003 (c. 39), Schedule 8, paragraph 150 and Schedule 10; the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 (c. 19), section 34; the Immigration, Asylum and Nationality Act 2006 (c. 13), section 53, and the Immigration Act 2014 (c. 22), Schedule 1, paragraph 2(2) and Schedule 9, paragraphs 9, 20 and 24.

- (ii) section 62 (detention by Secretary of State) of the Nationality, Immigration and Asylum Act 2002(21);
 - (iii) section 40(7)(c) (searches: contracting out) of the Immigration, Asylum and Nationality Act 2006(22); or
 - (iv) section 2 (detention) or 36 (detention) of the UK Borders Act 2007(23).
- (2) In this regulation, “prison” has the meaning given in section 53(1) of the Prison Act 1952(24).

Members of the regular and reserve forces, Crown servants and others

20.—(1) No charge may be made or recovered in respect of any relevant services provided to an overseas visitor who is—

- (a) a member of the regular or reserve forces within the meaning of the Armed Forces Act 2006(25);
- (b) a qualifying employee who is visiting the United Kingdom in the course of the qualifying employment; or
- (c) where paragraph (b) does not apply, a qualifying employee who—
 - (i) was ordinarily resident in the United Kingdom immediately prior to becoming a qualifying employee; or
 - (ii) where the qualifying employee has been employed in more than one position of qualifying employment, the qualifying employee was ordinarily resident in the United Kingdom immediately prior to taking up one of the positions of qualifying employment.

(2) An overseas visitor will be a “qualifying employee” if the overseas visitor was recruited in the United Kingdom and is—

- (a) a Crown servant (other than a person falling within paragraph (1)(a)) employed by, or in the service of, the Government of the United Kingdom;
- (b) an employee of the British Council or the Commonwealth War Graves Commission; or
- (c) working in employment, whether or not the overseas visitor derives a salary or wage from that 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.

(3) In this regulation “qualifying employment” means any period of employment during which the overseas visitor was a qualifying employee.

NATO forces

21.—(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 Agreement regarding the Status of Forces of Parties to the North Atlantic Treaty (agreed in London on 19th June 1951)(26) applies.

(2) This regulation applies where the services in question cannot readily be provided by the medical services of the armed forces of—

(21) 2002 c. 41; section 62 was amended by the Prevention of Terrorism Act 2005 (c. 2), section 16(2)(c) and the Immigration Act 2014 (c. 22), Schedule 9, paragraphs 3(1), (2) and 13.

(22) 2006 c. 13.

(23) 2007 c. 30; section 2 was amended by the Borders, Citizenship and Immigration Act 2009 (c. 11), section 52(1).

(24) 1952 c. 52. There are amendments to section 53(1) but none are relevant.

(25) 2006 c. 52; “the regular forces” and “the reserve forces” are defined in section 374 of the Armed Forces Act 2006 as amended by the Defence Reform Act 2014 (2014 c. 20), section 44(3)(a), (b) and (4).

(26) Cmd. 9363.

- (a) the overseas visitor's own country; or
- (b) the United Kingdom.

War pensioners and armed forces compensation scheme payment recipients

22. 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, which Scheme and Instrument are defined in regulation 2(1) (interpretation) of the Social Security (Overlapping Benefits) Regulations 1979⁽²⁷⁾; 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⁽²⁸⁾.

Employees on ships

23. No charge may be made or recovered in respect of any relevant services provided to an overseas visitor who is employed or engaged or working in any capacity on board a ship and whose normal place of work is on board a ship, where that ship is registered in the United Kingdom.

Treatment the need for which arose during the visit

24. 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) a national of a state which is a contracting party to the European Convention on Social and Medical Assistance (agreed in Paris on 11th December 1953)⁽²⁹⁾ or the European Social Charter (agreed in Turin on 18th October 1961)⁽³⁰⁾ and is—
 - (i) lawfully present in the United Kingdom; and
 - (ii) without sufficient resources to pay the charge;
- (b) an authorised child or an authorised companion.

Family members of overseas visitors

25.—(1) For the purposes of this regulation, unless otherwise provided, “member of the family” means—

- (a) the spouse or civil partner of an overseas visitor; or
- (b) a child in respect of whom an overseas visitor has parental responsibility.

(2) No charge may be made or recovered in respect of any relevant services provided to an overseas visitor who is a member of the family of another overseas visitor (“the principal overseas visitor”) and is lawfully present if the principal overseas visitor is exempt from charges under any of the following regulations—

- (a) regulation 16 (victims of human trafficking);
- (b) regulation 20 (members of the regular and reserve forces, Crown servants and others);

⁽²⁷⁾ S.I. 1979/597, amended by S.I. 1980/1927; there are other amending instruments but none is relevant.

⁽²⁸⁾ S.I. 2011/517, amended by S.I. 2011/2552; there are other amending instruments but none is relevant.

⁽²⁹⁾ Cmd. 9512. The Convention entered into force in respect of the United Kingdom on 7th September 1954.

⁽³⁰⁾ Cmd. 2643. The Charter entered into force in respect of the United Kingdom on 11th July 1962. Article 13 provides the right to social and medical assistance.

(c) regulation 21 (NATO forces).

(3) 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 10 (immigration health charge); or
 - (ii) regulation 11 (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.

(4) Subject to paragraphs (5) to (7) of this regulation, no charge may be made or recovered in respect of any relevant services provided to an overseas visitor who is a member of the family of a principal overseas visitor if—

- (a) the overseas visitor is lawfully present in the United Kingdom;
- (b) the overseas visitor is visiting the United Kingdom with the principal overseas visitor; and
- (c) the principal overseas visitor is exempt from charges under—
 - (i) regulation 12 (EU rights);
 - (ii) regulation 13 (overseas visitors who are treated as if entitled under the social security coordination regulation); or
 - (iii) regulation 22 (war pensioners and armed forces compensation scheme payment recipients).

(5) Where the overseas visitor is a member of the family of a principal overseas visitor who is exempt from charges under—

- (a) regulation 12 (EU rights); or
- (b) regulation 13 (overseas visitors who are treated as if entitled under the social security coordination regulation),

the exemption in paragraph (4) only applies if both the conditions in paragraphs (6) and (7) are satisfied.

(6) The first condition is that—

- (a) the overseas visitor—
 - (i) where paragraph (5)(a) applies, does not have an enforceable EU right of the kind described in regulation 12; or
 - (ii) where paragraph (5)(b) applies, would not have an enforceable EU right of the kind described in regulation 13 if the United Kingdom had opted in as described in Article 27(2) of Regulation 883/2004 and was listed in Annex IV to that Regulation; and
- (b) the reason that the overseas visitor does not, or would not, have an enforceable EU right of the kind described in those regulations is because the overseas visitor is not recognised as a member of the family (within the meaning in Article 1(i) of Regulation (EC) 883/2004 or any other relevant regulations or agreements which provide for an enforceable EU right of the kind described in regulation 12 for family members) of the principal overseas visitor.

(7) The second condition is that the relevant services provided to the overseas visitor are services that the overseas visitor would be entitled to receive without charge by virtue of an enforceable EU right under regulation 12 or 13 if the overseas visitor had such a right.

(8) None of the provisions of this regulation affect any entitlement which any member of the family of an overseas visitor may have to an exemption from charges for relevant services by virtue of an enforceable EU right or any other exemption which they may be entitled to in their own right.

