

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

2015 No. 238

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

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Purpose of the instrument**

2.1 The Regulations replace the National Health Service (Charges to Overseas Visitors) Regulations 2011 (S.I. 2011/1556) (the 2011 regulations) and subsequent amendments. The Regulations also:

- implement the immigration health charge;
- provide for commercial charging of overseas visitors;
- remove overly generous or superfluous existing exemptions from charges for overseas visitors; and
- introduce new, or expand existing, exemptions from charges for particularly vulnerable overseas visitors.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 None.

4. **Legislative Context**

4.1 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 be made only in such cases as may be determined in accordance with the regulations.

4.2 Under paragraph (4) the Secretary of State may calculate charges for overseas visitors on a commercial basis. The Secretary of State is exercising this power for the first time in the Regulations and overseas visitors will be liable for charges that include a reasonable profit element. Commercial charging will apply to overseas visitors who reside in non-EEA¹ countries. Charges for overseas visitors who reside in EEA² states will not exceed the cost of providing that service to an ordinarily resident patient. This change is being introduced as part of a package of financial incentives for NHS Trusts and Foundation Trusts (referred to collectively as trusts) to maximise

¹ Non-EEA countries are all countries not covered under footnote [2].

² European Economic Area (EEA) countries include all 28 countries of the European Union plus Norway, Liechtenstein, and Iceland. Switzerland – although not part of the EEA – is also included in this definition as its citizens have similar rights to EEA nationals by virtue of a series of bilateral agreements with the European Community and European Union.

identification and recovery of charges from chargeable overseas visitors, significantly contributing to the programme's aim to recover £100 million from directly chargeable overseas visitors by 2017/2018 (who are expected to be predominately from non-EEA countries).

5. Territorial Extent and Application

5.1 This instrument applies to England only.

5.2 The other Devolved Administrations may elect to amend corresponding secondary legislation in their jurisdictions about charging of overseas visitors to implement the immigration health charge, which applies to visitors to the whole of the United Kingdom (UK), and replicate the UK joining Annex IV of Regulation (EC) 883/2004 on the coordination of social security services.

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

7.1 The Regulations replace the 2011 regulations, and subsequent amendments, and implement changes in policy around the charging of overseas visitors for NHS services. The policy changes in the Regulations are the outcome of the Visitor and Migrant Cost Recovery Programme, part of a cross-government programme on Migrant Access to Benefits and Public Services. The overarching aim of the Programme is to improve identification and recovery from overseas visitors and migrants and to ensure that the NHS in England receives fair contribution for the cost of healthcare it provides to visitors who require treatment by the NHS. The Regulations commence on 6th April 2015, rather than 1st April 2015, to align with the expected coming into force of an order made under section 38 of the Immigration Act 2014 which provides for an immigration health charge to be payable in respect of applications to enter or remain in the UK (see paragraphs 7.34 – 7.40).

7.2 In 2012 the Department of Health conducted a review of the overseas visitors charging policy³, which was followed by a public consultation process in 2013 with consultation documents published by both the Department of Health and the Home Office⁴. The Regulations implement policy developed as

³ 2012 Review of overseas visitors charging policy. The full and summary report is available at www.gov.uk/government/consultations/migrants-and-overseas-visitors-use-of-the-nhs or from Overseas Visitors Team, Room 2N15, Quarry House, Leeds LS2 7UE.

⁴ The Department of Health consultation Sustaining services, ensuring fairness: A consultation on migrant access and their financial contribution to NHS provision in England is available at www.gov.uk/government/uploads/system/uploads/attachment_data/file/210438/Sustaining_services_ensuring_fairness_consultation_document.pdf or from Overseas Visitors Team, Room 2N15, Quarry House, Leeds LS2 7UE. The Home Office consultation Controlling Immigration – Regulating Migrant Access to Health Services in the UK is available at www.gov.uk/government/uploads/system/uploads/attachment_data/file/226744/consultation-health.pdf or from Overseas Visitors Team, Room 2N15, Quarry House, Leeds LS2 7UE.

a consequence of the review and consultation process. More detail on the consultation process is set out in paragraph 8.

7.3 NHS hospitals in England face significant challenges in identifying, charging and recovering income from chargeable overseas visitors due to inefficiencies and complexities in the current system. Visitors and migrants are often able to access free NHS care immediately or soon after arrival in the UK, meaning that the NHS is overly generous. Legislative change is necessary to ensure fairness in the system, including that visitors and migrants make a fair contribution to the cost of NHS services.

7.4 Independent research was commissioned from Prederi in 2013 to assess the size of the problem. The research suggested that £388 million is spent each year on patients that need healthcare while in England and in respect of whom charges are payable under the 2011 regulations, but are not identified, so this is income the NHS could get better at recovering. There is also evidence of a cost between £70 million and £300 million from so-called 'health tourists'.

7.5 The Department of Health has publically stated an aim to recover up to £500 million annually by improving identification and recovery in respect of NHS services provided to overseas visitors, immigration health charge income, and better identification of patients insured by another EEA state and recovery of the cost of their healthcare from the relevant member state, to be invested into the NHS by 2017/2018.

7.6 The proposed changes do not undermine the principle that the NHS is, and will remain, free at the point of delivery for our residents. The changes are being introduced because the Government believes that the NHS can no longer afford to be so open and generous to non-residents and that everyone, including overseas visitors, should make a fair contribution to the cost of their healthcare; as is the case in comparable health systems overseas.

Commercial charging

7.7 As mentioned in paragraph 4.2, the Secretary of State is exercising the power to calculate charges for overseas visitors on a commercial basis for the first time. This means that overseas visitors will be liable for charges that include a reasonable profit element. Commercial charging will only apply to overseas visitors who reside outside the EEA.

7.8 Currently there is an active disincentive for trusts to identify chargeable visitors from outside the EEA. The introduction of commercial charging is part of a package of financial incentives designed to incentivise identification and recovery of charges from chargeable overseas visitors by trusts.

7.9 Overseas visitors who reside in a non-EEA country will be liable for charges calculated at 150% of "the tariff" for the relevant services they receive. The rate of 150% of the tariff includes administrative costs and a reasonable profit element. Setting the rate at 150% of the tariff was based on extensive modelling of the cost of care to the NHS against the cost of the same service through private providers, consultation with representatives from NHS

providers, NHS England, Monitor and NHS Trust Development Authority and modelling of the optimal share of risk between NHS providers and commissioners.

7.10 The Overseas Tariff (referred to the Regulations as “the tariff”), which forms of the basis of the calculation of charges for services provided to overseas visitors by the NHS, is determined by reference to the prices determined in accordance with the National Tariff published annually by Monitor⁵. Where relevant services are specified in the National Tariff and have a national price as set out in the National Tariff, the Overseas Tariff will be the national price subject to certain national variations, any modification to the price imposed by Monitor and any local modifications to that price agreed between the relevant NHS body and the commissioner responsible for the overseas visitor.

7.11 The Overseas Tariff will not include any local variations to the national price agreed by relevant NHS bodies and commissioners or most national variations. Such variations are intended to incentivise behaviour of the provider and to share financial risks between commissioners and providers on behalf of their resident or registered population. It is not appropriate for these types of arrangements, which impose changes to the price of a service that are not reflective of the actual cost of providing the service, to apply to the calculation of charges for an overseas visitor who is accessing discrete services.

7.12 The national variations to be incorporated into the calculation of the tariff include variations to reflect regional cost differences and to reflect patient complexity, on the basis that these variations reflect price differences associated with providing services in particular areas or due to the complex nature of treatment for a particular patient.

7.13 The Overseas Tariff will also include adjustments to reflect local modifications agreed between commissioners and providers or imposed by Monitor. Local modifications increase the price of a service for providers where it would be uneconomical for the provider to charge the price specified in the National Tariff.

7.14 The exception to the above arrangements is where the relevant service provided to an overseas visitor represents part, but not all, of a bundle of services to which a pathway payment applies. Pathway payments are single payments that cover a bundle of services often provided by a number of providers. Currently two pathway payment mechanisms exist – the maternity pathway payment and cystic fibrosis pathway payment. These pathway payment mechanisms, while useful for ordinary resident patients receiving the full pathway of care in England, are not workable for overseas visitor patients who may only receive a small portion of the full bundle of services. Where a relevant NHS body cannot identify the component price for a relevant service that is provided as part of a bundle of services, the relevant NHS body may set the Overseas Tariff on a reasonable basis having regard to the matters set out in the regulations, including the price for the full pathway payment, the

⁵ The 2014/15 national tariff is available at the following website: www.gov.uk/government/publications/national-tariff-payment-system-2014-to-2015 or from the Pricing Team, Monitor, 3rd Floor Wellington House, 133-155 Waterloo Road, London SE1 8UG.

proportion of the bundle of services that the overseas visitor receives and the complexity of the service provided to the overseas visitor.

7.15 Where the relevant service is not specified in the National Tariff, the Overseas Tariff will be the price for the provision of that service as determined in accordance with rules set out in the National Tariff for that purpose subject to certain national variations, any modification to the price imposed by Monitor and any modifications to that price agreed between the relevant NHS body and the commissioner responsible for the overseas visitor.

7.16 Where more than one relevant NHS body provides services to an overseas visitor, each of the relevant NHS bodies is obliged to make and recover charges in respect of the services it provides.

Residency based healthcare system

7.17 The NHS is a residency based healthcare system. The Regulations ensure this principle is applied fairly and that those who now reside indefinitely only in another country do not benefit from an exemption from charges when visiting the UK, regardless of past residence status, unless there is a very compelling reason for them to do so.

7.18 Exemptions in the 2011 regulations that were very generous to former residents or visitors who have never resided in the UK, and exemptions that duplicate each other; overlap with the ordinary residence criterion; or will be replaced by new exemptions, have been removed.

7.19 For example, the previous exemption for missionaries applied to overseas visitors working as missionaries abroad even if they had never resided in the UK. Additionally, the fact that the exemption did not apply more widely to other charity and voluntary workers abroad is considered to be unfair. The removal of this exemption will not affect missionaries who retain ordinary residence in the UK while posted abroad, nor will it affect those missionaries who are exempt from charges under other exemption categories within the Regulations. They, along with charity workers and volunteers in comparable situations, will continue to be entitled to free hospital care.

7.20 Existing exemptions from charges in respect of Crown servants, employees of the British Council or Commonwealth War Graves Commission, and overseas visitors working under UK Government funded employment (referred to as “qualifying employees” in “qualifying employment” in the Regulations) are retained, with the introduction of a residency requirement for such persons unless they are in the UK in the course of that employment. This means that qualifying employees must have been ordinarily resident in the UK immediately prior to commencing qualifying employment. Where a qualifying employee has held more than one position of qualifying employment the requirement to be ordinarily resident immediately prior to commencing qualifying employment only applies to one of the periods of employment. This recognises that Crown servants may have successive postings abroad or gaps in qualifying employment where employees are seconded in other roles.

7.21 A number of the exemptions in the 2011 regulations applied to people who were ordinarily resident in the UK, and consequently already exempt

from charges. Those exemptions are superfluous and have been removed, for example, the exemption for diplomats. Individuals previously covered under these exemptions are ordinarily resident in the UK and will continue to be entitled to free hospital care under the Regulations on that basis.

7.22 The exemptions in the 2011 regulations that applied to UK state pensioners have been removed. While a new exemption for state pensioners residing in EEA states is provided for in the Regulations, state pensioners residing outside the EEA will now be chargeable under the Regulations.

7.23 The new exemption for state pensioners residing in EEA states replicates the UK joining Annex IV of Regulation (EC) 883/2004 on the coordination of social security systems. The UK currently has obligations to pay for the urgent and necessary healthcare costs of most of its state pensioners who reside in another EEA states. Joining Annex IV will increase the UK's obligation in respect of its state pensioners such that they will be entitled to return to the UK for elective hospital care without charge. In return for this increased obligation, the UK will be entitled to a 5% discount on the pensioner lump sum payment it pays to those member states which the UK reimburses on a fixed (average cost) annual sum basis for providing healthcare to UK pensioners resident in those EEA states. It is anticipated that the UK could save up to £20m a year by joining Annex IV.

7.24 The UK is unable formally to join Annex IV until Regulation (EC) 883/2004 is amended by the European Parliament and the Council, but intends for the associated pensioner entitlements to apply immediately. Consequently regulation 13 provides rights for UK state pensioners to free NHS healthcare on the same basis that they would receive if the UK was listed in Annex IV. When Regulation (EC) 883/2004 is amended UK state pensioners will be entitled to these rights by virtue of Regulation (EC) 883/2004, confirmed by regulation 12 (EU Rights). At this point regulation 13 will become obsolete.

7.25 Exemptions in the 2011 regulations that applied to former residents who now work or reside in an EEA state, or reside in Switzerland or a country with which the UK has a reciprocal healthcare agreement have been removed. Former residents who reside or work in another EEA state are insured by that member state and are already exempt from charges directly under regulation 12 on the basis that the UK is able to recover the cost of their care from the member state in which they are insured (known as the competent member state). Likewise, former residents who reside in a country with which the UK has a reciprocal healthcare agreement are likely to be covered by the terms of that agreement and are exempt from charges on that basis.

Vulnerable overseas visitors and need to reduce health inequalities

7.26 The Secretary of State has had due regard to the public sector equality duty⁶ and the need to reduce health inequalities between the people of England, and recognises that there are vulnerable migrants in need of health care which they would otherwise be unable to pay for. Existing exemptions have been expanded and new exemptions introduced to benefit the most vulnerable, in particular due to the impecunious, powerless or exploitative circumstances they find themselves in.

⁶ The Equality Analysis prepared for these Regulations will be published on GOV.UK in March 2015.

7.27 A new exemption has been introduced in respect of relevant services provided to overseas visitors who are victims of violence, comprising torture, female genital mutilation, domestic violence and sexual violence. Exempting treatment necessary to treat victims of those types of violence is consistent with wider government policy in respect of preventing such violence and supporting victims of violence. The exemption applies to treatment of any condition, including a chronic condition, which is directly attributable to the violence, provided the overseas visitor has not travelled to the UK for the purpose of seeking that treatment. In the case of a woman or girl who is the victim of female genital mutilation, the exemption will also cover any maternity services the need for which is directly attributable to the mutilation.

7.28 Torture and female genital mutilation are defined in regulation 8 consistent with existing statutory and international definitions. Domestic violence and sexual violence are not defined in the Regulations and guidance will be provided to assist relevant NHS bodies to identify victims. The Home Office has developed a non-statutory cross-government definition of domestic violence which will be adopted and set out in the guidance.

7.29 The 2011 regulations provide for an exemption from charges for overseas visitors who were supported by the Home Office under section 4 or section 95 of the Immigration and Asylum Act 1999 (the 1999 Act). The Regulations retain the exemption in respect of section 95 supported individuals but limit the exemption for section 4 supported individuals to those who are failed asylum seekers only (that is, those supported under section 4(2)), which better reflects the policy intention in 2011 to capture failed asylum seekers only.

7.30 The Regulations also include a new exemption for failed asylum seekers supported by local authorities under section 21 of the National Assistance Act 1948. The exemption removes indirect discrimination that existed in respect of individuals supported by local authorities under section 21 because of their need for care and attention (often due to a disability), who would otherwise qualify for support from the Home Office under section 4. This issue was the subject of the recent High Court case of *Cushnie*⁷ where the court held that the Secretary of State did not properly discharge the public sector equality duty under section 149 of the Equality Act 2010 when making the 2011 regulations to exempt those supported under section 4. The Regulations rectify this by ensuring that disabled and able-bodied failed asylum seekers who are in comparable circumstances are equally entitled to free NHS hospital care.

7.31 The Regulations extend the exemption in the 2011 Regulations for children in the care of a local authority (by virtue of a care order) to children who are looked after by a local authority within the meaning of section 22(1) of the Children Act 1989, which includes both children who are in the care of a local authority and children accommodated by a local authority in the exercise of social services functions. These children are in similarly vulnerable situations (at risk of significant harm) to those in respect of whom a care order is made and include children who are unaccompanied or voluntarily

⁷ *R (on the application of Cushnie) v Secretary of State for Health* [2014] EWHC 3626 (Admin).

accommodated by local authorities (without the need for an intervention by a court).

7.32 Regulation 6 creates a new mechanism under which previous charges made against a refugee or victim of human trafficking must not be made, or if have been made must not be pursued, or, where payment has been made, for it to be refunded. This is intended to capture refugees and victims of trafficking who are found to be chargeable for relevant services and who, after those services are provided, are recognised as refugees or victims of human trafficking. This provision reflects the fact that despite not having been properly identified as a refugee or victim of human trafficking at the time the charges were imposed (because the person had yet to go through the relevant official processes) they were nevertheless at that time a refugee or victim of human trafficking and should not be expected to pay for any services they received.

7.33 Regulation 17 provides an exemption for those overseas visitors in respect of whom the Secretary of State for Health has decided that exceptional humanitarian circumstances warrant an exemption from charge. The exemption has been redrafted to take account of the immigration route by which such a person would have to enter the UK for that treatment.

Implementation of the immigration health charge

7.34 The Regulations implement the immigration health charge that was introduced by section 38 of the Immigration Act 2014. The immigration health charge is expected to be imposed for the first time in April 2015, subject to the commencement of the first order made under section 38, and will apply to persons applying for leave to enter or remain in the UK for over six months. If an order is not made under section 38 by the coming into force of these Regulations then regulations 10, 11 and 25(3) (set out below) will have no practical effect until such time as an order is made.

7.35 Payment of the immigration health charge entitles the individual to access to free NHS care on the same basis as an ordinarily resident patient. To give effect to this policy regulation 10 provides an exemption from charges for overseas visitors who have paid the immigration health charge. The exemption also covers those who are exempt from paying the immigration health charge (except on the basis of being in the UK for less than 6 months), or in respect of whom the Secretary of State has exercised discretion to waive, reduce or partially refund the immigration health charge. The exemption reflects the contribution made by the overseas visitor to the NHS by paying the immigration health charge and ensures that such overseas visitors will enjoy access to free NHS services on the same basis as a person ordinarily resident in the UK.

7.36 The exemption will apply while the overseas visitor's leave to enter or remain in the UK is in effect. When an overseas visitor's leave is extended, the exemption is also extended.

7.37 The Regulations also provide for an exemption in regulation 11 for those overseas visitors who make an application for leave to enter or remain in the UK for six months or more prior to commencement of the immigration

health charge and who will not have an opportunity to pay the immigration health charge until they next make an application (sometimes years in the future). By virtue of section 39 of the Immigration Act 2014 (related provision: charges for health services), which has yet to come into force, such people, who would previously have been ordinarily resident or, in most cases, exempt from charges under the 2011 regulations will become chargeable. Regulation 11 is intended to maintain the exemption from charges for those people until they next apply for leave to enter or remain in the UK.

7.38 New born children who are born to a parent who is exempt under regulation 10 or regulation 11 will also be exempt from charges for 3 months from their birth, provided they do not leave the UK, to enable the parent to regularise their child's immigration status.

7.39 The abovementioned overseas visitors will not be entitled to benefit from the so called easement clause in regulation 3(4) which provides for a course of treatment commenced while the overseas visitor is exempt from charges to continue to be exempt from charges where the overseas visitor becomes chargeable part way through the course of treatment. This ensures that overseas visitors who commence treatment under the belief that it will be free do not unexpectedly accrue charges part way through treatment. In the case of overseas visitors who have paid the immigration health charge or are covered under transitional arrangements, they should be aware that there are consequences of being in the UK without the required leave, one of which is that they become chargeable for NHS hospital treatment.

7.40 As a consequence of the introduction of the immigration health charge, many of the previous exemptions from charges under the 2011 regulations will no longer be necessary and are removed by the Regulations, including exemptions for those who have had twelve months lawful residence in the UK; those taking up permanent residence in the UK; and those (under certain conditions) working, studying or volunteering in the UK.

Other miscellaneous changes

7.41 The family member exemptions have been updated to reflect the removal, amendment or addition of new exemptions. The family member exemptions for prisoners and detainees, asylum seekers, refugees, children in care and person supported under section 4 or 95 of the Immigration and Asylum Act 1999, and employees on ship have also been removed as it is considered that such family members, if they reside in the UK will be covered under other exemptions or be ordinarily resident, or if they are visiting the UK then they should be subject to charges in the same way as other visitors.

7.42 The family member exemption for overseas visitors who are members of the family of a person (the principal overseas visitor) with EU rights (either under regulation 12 or 13) has been modified to ensure that only those family members who do not have an EU right in their own right or as a family member (and consequently are covered under regulation 12 or 13 and should be relying on that exemption) because their relationship isn't recognised by the relevant member state who insures the principal overseas visitor. This exemption is specifically targeting same sex couples who are married or civil partners and may be insured in member states that do not recognise that

relationship. This is consistent with wider government policy on removing discrimination for such individuals.

7.43 The exemptions in respect of overseas visitors detained in a hospital under the Mental Health Act 1983 and other enactments, or subject to treatment under a court order, have been updated and combined into a new exemption in regulation 18. The exemption makes clear that any detention in hospital for treatment, including deprivation of liberty under the Mental Capacity Act 2005 and treatment required under a court order, regardless of what the treatment is for (mental or physical health), is covered by the exemption.

7.44 The interpretation provision in the Regulations has been updated, including the following changes:

- the meaning of “child”, to align the meaning with that set out in the Children Act 1989 (under 18);
- the introduction of a definition for “parental responsibility”. A child will be recognised as the child of a person who has parental responsibility for them. Again, this aligns the language in the Regulations with that of the Children Act 1989;
- definition of “registered dentist” where previously this was not defined;
- expanded definition of “relevant services” to reflect the policy that all services under the National Health Service Act 2006 (the Act) should be chargeable except for primary care services. Primary medical, dental and ophthalmic services are primarily provided under Parts 4, 5 and 6 of the Act, although increasing arrangements are made for the provision of these services under other contractual arrangements and mechanisms under the Act. Paragraph (d) of the definition intends to capture this and ensure no primary medical, dental or ophthalmic services provided to overseas visitors attracts charges;
- the removal of special health authorities, who do not have a charging function in respect of overseas visitors, from the list of relevant NHS bodies;
- the definition of “treatment the need for which arose during the visit” has been updated to ensure that overseas visitors who have entered the UK for the purpose of seeking treatment are chargeable and that where treatment can wait until the overseas visitor returns home it is chargeable if provided;
- the insertion of new definitions for immigration terms, legislation and statutory rules to support the implementation of the immigration health charge.

7.45 Many exemptions in the 2011 regulations are retained by the Regulations, including exemptions for overseas visitors with EU rights, those covered under reciprocal healthcare agreements, refugees, asylum seekers, victims and suspected victims of human trafficking, prisoners and detainees, NATO forces, war pensioners and armed forces compensation scheme payment recipients, employees on ships and those covered under the European Convention on Social and Medical Assistance 1954 or the European Social Charter. Likewise exemptions in respect of accident and emergency services, family planning services, treatment of infectious diseases and sexually transmitted infections and services provided otherwise than at, or by staff

employed to work at, or under the direction of, a hospital are retained. Language has been updated where appropriate.

7.46 The list of infectious conditions in Schedule 1, the treatment for which is exempt from charges, has been updated to include human immunodeficiency virus (HIV), to make clear treatment for HIV, however transmitted (whether sexually or otherwise), is exempt from charges and the updated definition of pandemic influenza as per the World Health Organisation's Guidance⁸. The list of countries with which the UK has reciprocal healthcare agreements has also been updated to remove Croatia following its accession to the EU (the agreement is replaced by EU law) and add Kosovo.

7.47 Regulations providing for the obligation of relevant NHS bodies to make and recover charges, liability of overseas visitor or other persons for payment of charges and provision for the repayment of charges in certain circumstances are retained, although language is updated where appropriate.

7.48 The Regulations also make consequential amendments, save the 2011 regulations and associated amendments in respect of course of treatment commenced before the coming into force of the Regulations and revocations.

8. Consultation outcome

8.1 In 2013 the Department of Health consulted on proposed changes to the existing system of visitors and migrants access and financial contribution to the NHS in England and considered options of how those who do not live here permanently could contribute towards the costs of their care. The main objectives of the consultation were to examine who should be charged for care in the future, what services they should be charged for, and how to ensure the current system is better able to identify chargeable patients and recover costs. The consultation ran from 3 July to 28 August 2013. This consultation was shorter than 12 weeks because a separate, parallel Home Office consultation ran in parallel to look at three specific elements (1) redefining qualifying residency (2) using a visa levy to ensure migrants make a fair contribution and (3) extending charging to primary care services. The Government response was published on 30 December 2013 setting out initial decisions and next steps⁹. In July 2014, the Department published an implementation plan¹⁰ which outlines the approach of the cost recovery programme.

8.2 The Department received a total of 412 responses to the consultation. This included responses from individuals (including residents, expats, and

⁸ The Guidance may be obtained from the World Health Organisation website: www.who.int/influenza/preparedness/pandemic/influenza_risk_management/en/ or from the Department of Health, Pandemic Influenza Preparedness Team, Room 101 Richmond House, 79 Whitehall, London SW1A 2NS.

⁹ Department of Health (30/12/2013). Sustaining services and ensuring fairness: Government response to consultation. www.gov.uk/government/uploads/system/uploads/attachment_data/file/268630/Sustaining_services_ensuring_fairness_-_Government_response_to_consultation.pdf or from Overseas Visitors Team, Room 2N15, Quarry House, Leeds LS2 7UE.

¹⁰ Department of Health (14/07/2014) Visitor & Migrant NHS Cost Recovery Programme. Implementation Plan 2014-16 www.gov.uk/government/uploads/system/uploads/attachment_data/file/329789/NHS_Implementation_Plan_Phase_3.PDF or from Overseas Visitors Team, Room 2N15, Quarry House, Leeds LS2 7UE.

people working in other Government departments), the NHS (a mix of Trusts, GPs, Commissioners, clinical and non-clinical staff) and other public bodies (including local authorities and health advisory panels), the voluntary sector (with a variety of focus including women/maternity, children, refugees and asylum seekers, medical, victims of trafficking or torture, missionaries, domestic marginalised groups), educational, commercial and professional bodies and faith-based organisations.

8.3 There were three overarching themes which emerged from the consultation responses.

8.4 Firstly, the assertion from frontline staff that ‘something must be done’ to enable the NHS to better recover charges imposed on chargeable overseas visitors. In particular, there was a clear and consistent message in the responses that the NHS is under significant pressure to save money and that the NHS is not sufficiently financially resourced to provide free healthcare to overseas visitors, and that, consequently, the NHS should be seeking to recover costs wherever possible. The Regulations respond to this by implementing the immigration health charge, introducing commercial charging, aligning exemptions from charges for overseas visitors with the principle of residency, removing those overly generous exemptions and limiting exemptions to the most vulnerable patients or those in respect of whom the United Kingdom has international obligations.

8.5 Secondly, that the proposals could adversely impact on vulnerable migrants, particularly those here unlawfully without means to support themselves or their families and who may have increased health needs reflective of the fact that they are more likely to be in a lower socio-economic group and to have been subject to lower levels of healthcare in their home country prior to coming the UK. Concerns were also raised about increased inequality in health outcomes between vulnerable migrants and the resident population, in particular the implications for public health associated with vulnerable migrants being reluctant to seek medical intervention for fear of being liable for charges they cannot afford to pay or being identified by authorities as being in the country illegally.

8.6 The 2011 regulations provide for free treatment (including diagnosis) to be provided to any person who is suffering from specified infectious diseases and conditions. This exemption from charges is retention by the Regulations to encourage overseas visitors to seek early intervention of conditions that may adversely affect public health in the population.

8.7 Exemptions from charges are retained for asylum seekers, refugees and victims (and suspected victims) of human trafficking. Furthermore, exemptions from charges are being extended or introduced for specific vulnerable groups as set out above in paragraphs 7.26 to 7.33 to ensure that those overseas visitors who are most vulnerable are able to access free hospital care. This was informed by the programme’s work to consider the potential impact on vulnerable groups. To address the absence of primary data, a qualitative market research study and quantitative analyses were

commissioned¹¹ to inform an equality analysis, published in November 2013¹², providing extensive consideration to the potential impact of the policy on vulnerable groups.

8.8 The Secretary of State has had regard to his public sector equality duty, his duty to have regard to the need to reduce health inequalities between the people of England, other statutory duties as Secretary of State and the Family Test, and has committed to the Department of Health undertaking a further review into the impact of the Regulations on vulnerable groups.

8.9 Thirdly, responses questioned whether it was worth making the changes at all, in particular highlighting the lack of data about NHS services provided to overseas visitors and the need for a full cost-benefit analysis of the impact on the NHS. In response to these concerns the Department commissioned independent research and analysis from Prederi (discussed at paragraph 7.4).

8.10 In addition to the formal published consultation the Department has been engaging with the NHS and other interested stakeholders directly:

- i. The programme holds an ‘Implementation Group’ every other month with members representing NHS England, the BMA, NHS acute providers, Public Health England, a Clinical Commissioning Group and a Commissioning Support Unit.
- ii. There is also a ‘Primary Care Reference Group’ with stakeholders from primary care (providers and commissioners) to inform future phases of the programme.
- iii. The non-EEA incentive was tested and developed in consultation with NHS England, Monitor, NHS Trust Development Authority and representatives from NHS acute providers and commissioners as well as the Implementation Group.
- iv. The programme has undertaken a series of engagement visits with NHS provider trusts, where members of the team have met with the senior trust staff to influence behaviour at a local level and raise the profile of the programme.
- v. The programme has also arranged visits to various groups representing vulnerable individuals, including asylum and failed asylum seekers, the homeless, gypsies and travellers, and victims of human trafficking and domestic violence. Representatives have also been invited to a series of meetings and discussions on the programme’s design and implementation.
- vi. The programme has created a Cost Recovery Support Team, to go out to trusts on a voluntary and free basis to help them with cost recovery.

¹¹ Qualitative and quantitative research is available at www.gov.uk/government/publications/overseas-visitors-and-migrant-use-of-the-nhs-extent-and-costs or from Overseas Visitors Team, Room 2N15, Quarry House, Leeds LS2 7UE.

¹² Sustaining services, ensuring fairness: Equality Analysis 2013 is available at www.gov.uk/government/uploads/system/uploads/attachment_data/file/268632/Sustaining_services_ensuring_fairness_-_Government_response_to_consultation_-_Equality_Analysis.pdf or from Overseas Visitors Team, Room 2N15, Quarry House, Leeds LS2 7UE.

9. Guidance

9.1 Comprehensive guidance will be published in March 2015 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.

9.2 The programme has been conducting a series of engagement visits with trusts since July 2014, to directly engage with stakeholders, influence behaviour change, and ensure all persons involved are aware of the upcoming regulation changes.

9.3 The Home Office have also been conducting a series of visits to trusts to inform them how they can provide support, particularly how to check a patient's migration status, for trusts to better identify whether a patient is chargeable.

9.4 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.

9.5 The programme is undertaking an information campaign to the NHS. 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. We expect to commence in February 2015 until the end of March 2015.

9.6 Queries from the NHS and the public on the Regulations can be taken at overseasvisitors@dh.gsi.gov.uk, Room 2N15, Quarry House, Leeds, LS2 7UE.

10. Impact

10.1 There is no impact on business. There may be a small impact on some charities or voluntary bodies supporting men or women who are victims of violence, from whom evidence might be requested by NHS staff that their client is such a victim. This is not expected to be onerous, and will only be sought with the consent of the patient, and, in some cases, may not be necessary if there are other indicators that the patient is a victim of such violence.

10.2 The impact on the public sector is that NHS bodies providing hospital services will have new obligations in respect of the making and recovery of charges from overseas visitors. In particular, trusts will be required to charge overseas visitors on a commercial basis at the levels set by the Secretary of State.

10.3 The introduction of the immigration health charge and change to the ordinary residence test (see section 39 of the Immigration Act 2014) will mean an increase to the number of patients who will be overseas visitors within the

meaning of the Regulations. However, this is only expected to lead to a marginal increase in the numbers of directly chargeable overseas visitors as those who have paid the immigration health charge (or are exempt from paying it, pay a reduced amount or for whom it is waived) will be exempt from charges under the Regulations.

10.4 The Regulations make significant changes to the scheme set out in the 2011 regulations, including the removal of overly generous exemptions, implementation of the immigration health charge, aligning existing exemptions with the principles of residency and protection of vulnerable patients, which will result in a fairer charging regime that reflects the policy of a fair contribution by overseas visitors to the NHS.

10.5 An impact assessment for the Visitor and Migrants Cost Recovery Programme was published in July 2014¹³. A further impact assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 Prior to the introduction of the Visitor and Migrant Cost Recovery Programme, the NHS could not provide an accurate assessment of its performance in recovering payments due from those overseas visitor patients who are chargeable for their treatment. In order to be able to monitor progress in maximising the recovery of costs incurred through the treatment of chargeable visitors and migrants who use the NHS, the Programme started to measure, by Trust, the following metrics (for visitors and migrants):

- Invoiced income
- Actual cash recovered
- Bad debt – provision
- Written-off debt

12.2 An evaluation of the Cost Recovery Programme is being undertaken during implementation. The evaluation will determine whether there has been an early change in culture and behaviour on this topic amongst stakeholders including front line NHS staff, enable lessons to be learned about what has worked in improving cost recovery, and will provide continuous feedback on the Programme. This will be in two stages. Stage 1 will include findings from a staff survey allowing an evaluation of the programme's work to date. Stage 2 is expected to continue beyond March 2015 to evaluate elements of the programme implemented up until the end of summer 2015 including the impact of regulations changes. A final report will be completed by autumn 2015.

¹³ The impact assessment is available at www.gov.uk/government/uploads/system/uploads/attachment_data/file/331623/Impact_assessment.pdf or from the Overseas Visitors Team, Room 2N15, Quarry House, Leeds LS2 7UE.

12.3 There will also be a full review of the Cost Recovery Programme post-implementation, planned for 2017/2018. This will be undertaken to understand the extent to which the Programme's objectives have been achieved, and whether the costs and benefits are in line with expectations.

13. Contact

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