

Explanatory Memorandum to The National Health Service (Charges to Overseas Visitors) (Amendment) (No 3) (Wales) Regulations 2022

This Explanatory Memorandum has been prepared by the Health and Social Services Department and is laid before Senedd Cymru in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The National Health Service (Charges to Overseas Visitors) (Amendment) (No 3) (Wales) Regulations 2022.

Eluned Morgan MS
Minister for Health and Social Services

29 June 2022

PART 1

1. Description

1.1 These Regulations amend the National Health Service (Charges to Overseas Visitors) Regulations 1989 (SI 1989/306) (the Principal Regulations).

1.2 The Principal Regulations require Local Health Boards and NHS Trusts in Wales to make and recover charges for relevant healthcare services that are provided to overseas visitors not ordinarily resident in the United Kingdom (UK), unless the overseas visitor or the service they receive falls within a charging exemption.

1.3 These Regulations are being made to:

- amend Schedule 1 of the Principal Regulations to include monkeypox as a disease, services for the treatment of which is exempt from NHS charges for overseas visitors; and
- amend the Principal Regulations such that where services were provided to an overseas visitor for the treatment of monkeypox on or after the 23 May 2022 but before these amendments come into force, a Local Health Board or NHS Trust:
 - yet to make charges, must not make the charges;
 - that made charges but has yet to recover them, must not recover the charges; and
 - that made charges and received payment, must repay any sum paid in respect of the charges.

2. Matters of special interest to the Legislation, Justice and Constitution Committee

2.1 In accordance with section 11A (4) of the Statutory Instruments Act 1946, the Llywydd has been informed that the Regulations are being made according to the negative procedure and will come into force less than 21 days after the instrument has been laid. The early commencement is necessary to respond to a public health emergency as well as removing a financial barrier to overseas visitors in Wales in presenting for NHS hospital treatment for monkeypox, therefore ensuring that the risk to public health from infected visitors is minimised.

2.2 As well as inserting monkeypox into the list of diseases exempt from charges, the amendments also provide that where services were provided to an overseas visitor for the treatment of monkeypox on or after 23 May 2022 but before these amendments are brought into force, a Local Health Board or NHS Trust must not charge for such services, and if charges have already been made then those charges must not be recovered or if they have already been recovered then they must be repaid. This is because as a result of the latest outbreak there are already monkeypox cases in Wales. The policy justification for this amendment is provided at paragraph 4.4 below.

2.3 The Regulations will come into force on 1 July 2022.

3. Legislative background

3.1 The instrument is being made under sections 124, 203(9) and 203(10) of the National Health Service (Wales) Act 2006 (the 2006 Act) which confers a power on the Welsh Ministers to make regulations for the making and recovery of charges from persons who are not “ordinarily resident” in the United Kingdom for NHS services. As required by Section 203(4) of the 2006 Act, these Regulations are being made under the negative resolution procedure.

4. Purpose and intended effect of the legislation

4.1 The Regulations amend the Principal Regulations and add monkeypox to Schedule 1 of those Regulations, which is a list of infectious diseases, services for the treatment of which are exempt from charge to all overseas visitors.

4.2 This is to remove a financial barrier to overseas visitors in Wales presenting for NHS hospital treatment for monkeypox, therefore ensuring that the risk to public health from infected visitors is minimised.

4.3 The Regulations also provide that where an overseas visitor who, on or after 23 May 2022 but before these Regulations are brought into force, was provided with services for the treatment of monkeypox, a Local Health Board or NHS Trust must not charge for those services and if charges have already been made then they must not be recovered and if they have already been recovered then they must be repaid.

4.4 It is intended, that by cancelling charges that might otherwise apply before the coming into force date, overseas visitors will not be deterred from presenting for treatment due to charging concerns. It will also ensure that those who have received treatment for monkeypox before the Regulations came into force are treated equally to those who receive treatment after the Regulations come into force.

5. Consultation

5.1 There is no statutory duty to consult prior to making the regulations. It is considered that the proposed amendments do not require consultation as they are an urgent amendment to the Principal Regulations to protect the wider public health by including monkeypox as a disease, services for the treatment of which is exempt from NHS charges for overseas visitors and thereby ensuring that the risk to public health from infected visitors is minimised.

5.2 Previous amendments to the 1989 Charging Regulations have not always been consulted on, this was in the case of the 2020 Coronavirus amendment which added SARS-CoV-2 to Schedule 1 of the Principal Regulations.

6. Regulatory Impact Assessment (RIA)

6.1 A regulatory impact assessment has not been prepared in relation to these Regulations due to the need to put them in place urgently to respond to the current outbreak of monkeypox in the UK.