

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

I am satisfied that the benefits justify the likely costs.

Eluned Morgan MS
Minister for Health and Social Services

2 February 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 allow Local Health Boards, NHS Trusts and NHS Foundation Trusts (as applicable) 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:

- ensure the Principal Regulations reflect the UK-Switzerland Convention on Social Security Coordination;
- include a new Regulation 4F which provides an exemption from charges for an overseas visitor who has paid the Immigration Health Surcharge (IHS) of the Immigration Act 2014, or where a person is exempt from paying the IHS or, in certain circumstances, where the Secretary of State has exercised discretion to reduce, refund or waive the IHS;
- include a new Regulation 4G which provides an exemption from charges for an overseas visitor who applied for leave to enter or remain in the United Kingdom before the requirement to pay the IHS came into force and who, consequently, will not have had an opportunity to pay the IHS until they next apply for leave to enter or remain in the United Kingdom;
- Include an exemption from charges for a child who is born in the United Kingdom to a parent who is exempt from charges by virtue of Regulation 4F or Regulation 4G, and the child is aged three months or less and has not left the United Kingdom since birth;
- update Schedule 1 to change the reference to coronavirus used at the time of the February 2020 amendment to the current confirmed name for the virus; and
- include technical amendments following previous updates to the Principal Regulations.

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

2.1 These Regulations include corrections previously highlighted by the Committee in relation to National Health Service (Charges to Overseas Visitors) (Amendment) (Wales) Regulations 2020 and 2021.

The detail of the technical changes are set out below which are contained in LJCC report [SL\(5\)707](#) – The National Health Service (Charges to Overseas Visitors) (Amendment) (Wales) (EU Exit) Regulations 2020 and [SL\(5\)780](#) – The National Health Service (Charges to Overseas Visitors) (Amendment) (Wales) (EU Exit) Regulations 2021.

The changes are:

- amend Regulation 2(2)(h) which inserted a new definition of “relevant services”, referring to provisions in the National Health Service (Wales) Act 2006. The amendment will be to replace ‘primary ophthalmic services’ with ‘general ophthalmic services’, so it is aligned with the definition used in the 2006 Act.
- remove Sweden from Schedule 2 as the latter is covered by the Social Security Co-ordination Protocol provisions of the UK Trade and Cooperation Agreement and therefore does not need to be separately listed in Schedule 2.
- remove Liechtenstein from Schedule 2 until new reciprocal healthcare agreements are put in place with this country by the UK Government.

3. Legislative background

3.1 The instrument is being made under section 124 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.

3.2 The instrument is also being made under section 203(9) and (10) of the 2006 Act and is subject to the negative resolution procedure.

4. Purpose and intended effect of the legislation

4.1 The Regulations will give effect to an international agreement negotiated by the UK Government on a UK level. The insertion of Switzerland into Schedule 2 of the Principal Regulations will ensure that the UK-Switzerland Convention on Social Security Coordination is given full legal effect in Wales. The Convention ensures that where the UK or Switzerland is responsible for an individual’s healthcare and they fall within the scope of the Convention that the individual will be entitled to reciprocal healthcare in the other State.

4.2 The Regulations will provide a legal basis for an exemption from charging to apply in respect of those who have paid the IHS under the Immigration Act 2014, or where a person is exempt from paying the IHS or, in certain circumstances, where the Secretary of State has exercised discretion to reduce, refund or waive the IHS. The Regulations also provide an exemption from charges for those overseas visitors who applied for leave to enter or remain in the UK prior to 6 April 2015 when the Immigration (Health Charge) Order 2015 came into force and who, consequently, will not have had an opportunity to pay the IHS until they next apply for leave to enter or remain in the United Kingdom. Furthermore, the Regulations also provide an exemption in respect of relevant services provided to an overseas visitor who is a child

born in the UK to a parent who is exempt from charges due to having paid the IHS (or are exempt from paying the IHS or where the Secretary of State has reduced, refunded or waived the IHS accordingly), provided the child is aged three months or less and has not left the UK 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 IHS, if applicable.

4.3 The Regulations will update Schedule 1 to change the reference to coronavirus used at the time of the February 2020 amendment from Wuhan novel coronavirus (2019-nCoV) to the current confirmed name for the virus, Severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2).

4.4 The Regulations will make minor technical amendments to ensure the wording of the instrument is accurate and current (as set out in section 2.1 above).

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 either implementing a UK international agreement, updating the name for Coronavirus, making minor technical corrections to provide clarity and consistency in the law or, in the case of the IHS, to reflect the policy position that has been applied in Wales since the IHS was introduced in 2015.

5.2 Since the introduction of the IHS in 2015, in line with the position in the rest of the UK, Wales has not charged any overseas visitors for relevant NHS health services where the overseas visitor has paid the Surcharge, where an IHS exemption has applied or, in the circumstances set out in the amended Regulations, where the Secretary of State has reduced, refunded or waived the IHS. This also applies in respect of the exemption for children. It is considered therefore that including this exemption in the Wales' Charging regulations does not represent a change in policy but confirms and enshrines the exemption in law. In the case of including Switzerland in Schedule 2, this will be to include an international agreement applying to the UK as a whole which Wales is obliged to implement and observe.

PART 2 – REGULATORY IMPACT ASSESSMENT

6. Options

Two options have been considered:

Option 1: Do nothing, retain the National Health Service (Charges to Overseas Visitors) Regulations 1989 (SI 1989/306) as currently in force.

Option 2: Amend the National Health Service (Charges to Overseas Visitors) Regulations 1989.

Option 1: Do nothing, retain The National Health Service (Charges to Overseas Visitors) Regulations 1989 (SI 1989/306) as currently in force

Not reflecting the UK-Switzerland Convention on Social Security Coordination in the Welsh Charging Regulations would leave Welsh law incorrect, as the agreement is binding on the UK as a whole and Wales is required to implement and observe the agreement. This would also leave a lack of clarity for our Local Health Boards if the Welsh regulations do not accurately reflect the UK position as they use the regulations in meeting their legal obligation to establish if people to whom they are providing NHS services are chargeable or exempt from charging.

With regard to the IHS, whilst the Immigration Act 2014 introduced the Surcharge and the requirement for its payment as a visa entry requirement to the UK, the Wales' Charging Regulations also need to include a specific provision for an exemption from charging to apply to those who have paid the Surcharge. It also includes those that are exempt from the Surcharge, those where the Secretary of State has exercised discretion to reduce, waive or refund the Surcharge, and the exemption in respect of children.

Option 2: - Amend the National Health Service (Charges to Overseas Visitors) Regulations 1989

The objective is to ensure Welsh law remains correct and operable.

To ensure this, the Wales' Charging Regulations need to be amended to:

- reflect the UK reciprocal healthcare agreement with Switzerland;
- provide a legal basis to continue the current policy position in exempting from charge those individuals who have paid the IHS or where a person is exempt from paying the IHS or, in certain circumstances, where the Secretary of State has exercised discretion to reduce, refund or waive the Surcharge, and the exemption in respect of children;
- update Schedule 1 to change the reference to coronavirus used at the time of the February 2020 amendment to the current confirmed name for the virus;
- make minor technical changes highlighted in previous Legislation, Justice and Constitution Committee reports (as set out in section 2.1 above) to provide further consistency and clarity to the law.

7. Costs and Benefits

The changes being made essentially relate to ensuring Welsh law is correct and operable.

A failure to make these changes would not change Wales' obligation to operate the requirements of the reciprocal healthcare agreement with Switzerland, as the UK-Switzerland Convention is binding on the UK as a whole and the Welsh Government is required to implement and observe it. It is estimated there would be minimal impact on costs in the day to day delivery of the Convention as citizens from Switzerland were exempt from charging prior to 31 December 2020. The UK Government will meet in full the costs of treatment of Welsh citizens in Switzerland and Local Health Boards will continue to receive the current annual allocation of £822,000 from Welsh Government for the treatment of overseas visitors who are not chargeable due to reciprocal healthcare agreements (this covers both EU and non EU agreements). The continuation of this allocation will assist Local Health Boards in cases where no costs are recoverable from overseas visitors.

The amendment regarding the inclusion of an exemption for those that have paid the IHS (or for those who are exempt from paying the Surcharge or in certain circumstances where the Secretary of State has exercised discretion to reduce, refund or waive the Surcharge), and in respect of children, will not result in any additional costs either to Welsh Government or Local Health Boards. The exemption from charging for those individuals in these circumstances reflects the current policy position and practice in Wales.

The other amendments in relation to the change of name of coronavirus and the technical correcting changes have no cost implications attached to them.

Option 2 benefits from providing clarity for Local Health Boards that accurately reflect the Welsh regulations and the current charging position in Wales. Local Health Boards use the regulations in meeting their legal obligation to establish if people to whom they are providing NHS services are chargeable or exempt from charging.

8. Competition Assessment

This is not applicable.

9. Post implementation review

A post implementation review is not required as the changes made by the regulations give effect to an international agreement and make other changes which do not change the status quo of the charging position in Wales.