

Explanatory Memorandum to The National Health Service (Charges to Overseas Visitors (Amendment) (No.4) (Wales) Regulations 2022

This Explanatory Memorandum has been prepared by the Health and Social Service 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.4) (Wales) Regulations 2022. I am satisfied the benefits justify the likely costs.

Eluned Morgan MS
Minister for Health and Social Services

22 November 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 and NHS 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 that the requirement for the NHS in Wales to treat overseas patients from:
 - The States of Guernsey, the States of Alderney and the Chief Pleas of Sark (“the Bailiwick of Guernsey”); and
 - Malta;

in accordance with two international agreements negotiated with the Bailiwick of Guernsey and Malta by the UK Government, is reflected in the Principle Regulations.

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

- 2.1 None.

3. Legislative background

- 3.1 This instrument is being made under section 124 of the National Health Service (Wales) Act 2006 (the 2006 Act), which confers a power on 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) of the 2006 Act and is subject to the negative procedure.

4. Purpose and intended effect of the legislation

- 4.1 The Regulations will give effect within the Principal Regulations to two international agreements negotiated by the UK Government on a UK level. The agreements are:
 - The Memorandum of Understanding between the Government of the United Kingdom and Great Britain and Northern Ireland and the Bailiwick of Guernsey (comprising the States of Guernsey, the States of Alderney and the Chief Pleas of Sark) concerning Healthcare arrangements; and

- The Healthcare Convention between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Malta.
- 4.2 The agreements set out that where the UK or the Bailiwick of Guernsey or Malta is responsible for an individual's healthcare and the individual falls within the scope of the respective agreement between the UK and that country, that the individual will be entitled to reciprocal healthcare in the other State.
- 4.3 The Principal Regulations set out the duties for Local Health Boards and NHS Trusts regarding charging for the treatment of overseas visitors. They include categories of overseas visitors exempt from charging, including those receiving services that are covered by international healthcare agreements. Schedule 2 of the Principal Regulations lists countries with which the UK has such agreements.
- 4.4 The insertion of the Bailiwick of Guernsey and Malta into Schedule 2 of the Principal Regulations will ensure that the two agreements referred to above are given full legal effect in Wales with regard to charging of visitors under those agreements.
- 4.5 The Agreement with the Bailiwick of Guernsey was signed by representatives of the UK Government and Guernsey on 31 August 2022 and is to come into force on 1 January 2023.
- 4.6 With regard to overseas visitors from the Bailiwick of Guernsey to the UK (and therefore Wales), the Agreement includes:
- A necessary healthcare arrangement for those on temporary stays.
 - A facility for Guernsey residents to access planned treatment within the NHS at 100% cost on an equal basis as someone ordinarily resident in the UK, with treatment providers in both the UK (i.e., in Wales, the Local Health Boards) able to decline to accept a referral form for such treatment.
- 4.7 The Agreement between the UK Government and Malta came into force on 1 April 1975 and has thus been in place for many years. Malta is an EU member and individuals from Malta seeking healthcare in the UK are therefore covered under a separate agreement (the Trade and Cooperation Agreement (TCA) between UK Government and the European Union). However, there are a small number of circumstances where the terms of the UK-Malta Convention differ from the TCA and, as such, an individual could access healthcare in the UK and be non-chargeable under the terms of the UK-Malta Convention alone. For example, the definitions of temporary stay under the TCA and the UK-Malta Convention differ, allowing individuals covered under the Convention's definition of a temporary stay to be non-chargeable, whereas the same individual would be chargeable under the TCA. Malta thus needs to be added to Schedule 2 of the Principal Regulations to ensure that such circumstances are properly reflected in domestic legislation.

5. Consultation

- 5.1 There is no statutory duty to consult prior to making the recommendations. It is considered that the proposed amendments do not require consultation as they are implementing UK international agreements which apply to the UK as a whole and thereby Wales is obliged to implement and observe them.

PART 2 – REGULATORY IMPACT ASSESSMENT

6. Options

6.1 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

6.2 This option would retain the National Health Service (Charges to Overseas Visitors) Regulations 1989 (SI 1989/306) (“the Principal Regulations”) as currently in force, and thereby not amend them to reflect the international agreements between the UK and the Bailiwick of Guernsey and the UK and Malta.

Costs and Benefits

6.3 There are no financial costs or benefits to this option, as the agreements are binding on the UK as a whole and Wales is required to implement and observe them. A failure to make these changes would thus not change Wales’ obligation to operate the requirements of the agreements with the Bailiwick of Guernsey and Malta.

6.4 Information regarding the estimated costs to Wales of the agreements with the Bailiwick of Guernsey and Malta is set out in paragraphs 6.13 to 6.15, below.

6.5 In relation to both the Bailiwick of Guernsey and Malta, not reflecting the changes made by the UK Government and incorporating those to the Principal Regulations would leave Welsh law incorrect.

6.6 This option would leave a lack of clarity for our Local Health Boards should the Principal Regulations not accurately reflect the UK position, as Local Health Boards use the Principal Regulations to meet their legal obligations and establish if people to whom they are providing NHS services are chargeable or exempt from charging.

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

6.7 This option would amend the Principal Regulations to insert reference to the international agreements between the UK and the Bailiwick of Guernsey and the UK and Malta.

Cost and Benefits

6.8 Adding the Bailiwick of Guernsey and Malta to the Principal Regulations will ensure that the law in Wales remains correct and operable and reflects the legislative updates made by the UK Government.

- 6.9 This option would provide clarity for our Local Health Boards as the Principal Regulations would accurately reflect the UK position.
- 6.10 As with Option 1, there are no additional financial costs or benefits to this option, as the signed agreements are binding on the UK as a whole and Wales is required to implement and observe them regardless of whether they are explicitly referred to in the Principal Regulations.

Estimated Costs to Wales of the UK Government Agreements with the Bailiwick of Guernsey and Malta

- 6.11 As set out above, costs arising from these agreements will accrue to Wales under both Options 1 and 2. They are thus presented for information only.
- 6.12 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. The continuation of this allocation will assist Local Health Boards in cases where no costs are recoverable from overseas visitors.

Bailiwick of Guernsey

- 6.13 Under the Agreement, the UK and the Bailiwick of Guernsey are required to waive healthcare treatment costs for each other's visitors should medically necessary treatment be necessary during their stay. At present more UK people visit the Bailiwick of Guernsey on holiday and access free medically necessary treatment than vice versa, thus there are expected to be minimal costs on balance to Wales. In addition, the agreement provides the additional safeguard that applications for pre-arranged necessary healthcare (for example, kidney dialysis) can be declined by a Local Health Board, should capacity or cost issues arise.
- 6.14 With regard to planned treatment, it is expected that few individuals from the Bailiwick of Guernsey will seek planned treatment in Wales. The majority of patients are likely to continue to seek treatment in the South of England. Any planned treatment agreed in Wales can be recharged to the Bailiwick of Guernsey by Local Health Boards at 100% of cost and are thereby cost neutral. The agreement provides the additional safeguard that that applications for planned treatment can be declined, should capacity or cost issues arise.

Malta

- 6.15 The majority of patients from Malta eligible to receive treatment in the UK can already do so under the provisions of the TCA. The costs arising to Wales from patients receiving treatment under the Malta Convention rather than the TCA are expected to be minimal as it is regarded as unusual that such a situation would routinely arise.

7. Competition Assessment

- 7.1 The Regulations are not expected to impact on competition in Wales or the competitiveness of Welsh firms.

8. Post implementation review

- 8.1 A post implementation review is not required as the changes made by the regulations give effect to international agreements.