

Explanatory Memorandum to The National Health Service (Charges to Overseas Visitors) (Amendment) (No 2) (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 2) (Wales) Regulations 2022.

I am satisfied that the benefits justify the likely costs.

Eluned Morgan MS
Minister for Health and Social Services

30 March 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 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:

- introduce a new exemption from charges for people ordinarily resident in Ukraine who are lawfully present in the United Kingdom;
- ensure the exemption also applies to their family members (spouses, civil partners and children in respect of whom they have responsibility) who are lawfully in the UK and also to children of such eligible overseas visitors that are born in the UK provided they are 3 months old or less and have not left the UK since birth;
- provide that in respect of someone ordinarily resident in the Ukraine who is medically evacuated to the United Kingdom, the authorised companion of that person, and the children of the authorised companion, is exempt from charges in respect of treatment the need for which arose during their stay;
- provide that eligible overseas visitors who received relevant services between 24 February 2022 (that being the date the full scale Russian invasion began) and the date these Regulations come into force and who are exempt from charges by virtue of the new exemptions will not be charged for such services received and if they have been charged they will be refunded; and
- the Regulations should be subject to review six months after the coming into force date.

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

2.1 The SI is being laid under the 'Negative Procedure' and comes into force the day after it is laid and does not follow the 21 day convention. The early commencement is necessary to support displaced residents / refugees from the Ukraine to be excepted from NHS charges for treatment due to the conflict in their home country. The Regulations are introduced as a temporary measure due to exceptional humanitarian reasons and will be reviewed within 6 months of commencement.

2.2 In these circumstances the shortened period is considered necessary and justifiable and the Llywydd has been notified of the circumstances.

2.3 It is anticipated that the Regulations will come into force on 31 March 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.

4. Purpose and intended effect of the legislation

4.1 The Regulations will ensure all persons ordinarily resident in Ukraine who are lawfully in the UK are provided with an exemption from charging for NHS services in consideration of the humanitarian crisis in the Ukraine through the introduction of a new exemption from charge category.

4.2 Those who will benefit from this additional exemption include:

- Anyone who uses an alternative temporary (less than six months) visa route outside of the Family or Sponsorship routes;
- Anyone who chooses to extend their visit or seasonal worker visa temporarily;
- Anyone who is in the process of switching visas;
- Anyone requiring planned treatment under official medical evacuation routes.

4.3 The exemption also extends to family members (i.e. spouses, civil partners and children) of eligible overseas visitors from Ukraine and who are lawfully present in the UK so that such people who are not ordinarily resident in Ukraine will benefit from an exemption from NHS charges. Children who are born in the United Kingdom to eligible overseas visitors from Ukraine will also benefit from an exemption from NHS charges provided they are aged three months or less and have not left the United Kingdom since birth.

4.4 In respect of someone ordinarily resident in the Ukraine who has been medically evacuated to the United Kingdom, the amendments enable the authorised companion of that person, and the children of that authorised companion, to receive treatment the need for which arose during their stay.

4.5 Furthermore, the amendments also require that any charges incurred by eligible overseas visitors between 24 February 2022 (that being the date that the full scale Russian invasion began) and the date these Regulations come into force: if not yet made, must not be made; or if made, must not be recovered; or, if paid, must be repaid.

4.6 The amendments introduced by the Regulations broadly align with those introduced by the UK Government and therefore ensure that all residents of Ukraine who are lawfully in the UK and who come to Wales have the same entitlements as in England. The difference between the Regulations are as follows:

- (i) assisted conception services are not carved out of the exemption as these are currently available to all other overseas visitors who come to Wales and have exemption under the Wales Charging Regulations;
- (ii) the exemption will extend to children of overseas visitors from Ukraine so that such children who are not ordinarily resident in Ukraine will also benefit from free NHS healthcare but that this will apply in respect of children of whom the overseas visitor has 'responsibility', as opposed to "parental" responsibility.

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 Wales' Charging Regulations to allow displaced Ukrainian refugees and residents to access NHS treatment free of charge. It also allows the NHS to take steps in preparation and to treat overseas visitors without charge in the knowledge that they are not breaking the law.

PART 2 – REGULATORY IMPACT ASSESSMENT

6. Options

Two options have been considered:

Option 1: Business as usual – maintain the status quo i.e. retain the National Health Service (Charges to Overseas Visitors) Regulations 1989 (SI 1989/306) as amended as currently in force.

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

7. Costs and Benefits

Option 1: Business as usual, maintain the status quo i.e. retain The National Health Service (Charges to Overseas Visitors) Regulations 1989 (SI 1989/306) as currently in force

This is the baseline option. However, England have introduced an amendment to their Regulations providing an exemption from NHS charges for persons ordinarily resident in Ukraine and their family members who are lawfully in the UK. If Wales does not provide a similar exemption, there will be disparity between Ukrainian residents coming to England and those who have come to Wales, causing confusion and inequality in their already displaced circumstances. This policy option could be found to be unfair given its application in other parts of the UK.

This option would not result in any additional costs for Local Health Boards.

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

The UK Government has previously indicated that more than 100,000 people may travel to the UK in order to flee the war in Ukraine.

Alternative migration options will be available and despite the factors which would push individuals to move to the UK, many will wish to remain in Ukraine, or within a neighbouring country, as has been demonstrated by the numbers of Ukrainian people who have fled the war to Poland, Hungary, Slovakia, Romania and Moldova, as well as other European countries¹. Estimating migratory patterns and how that will apply to Wales is therefore uncertain. No data has been collected yet by the UK Government and the Explanatory Memorandum can only speculate where they may end up.

¹ <https://data2.unhcr.org/en/situations/ukraine/location?secret=unhcrrestricted>

The Ukrainian diaspora within England and Wales is relatively small. Pre-released 2021 Census data² found that 530 people living in Wales reported as being born in Ukraine; that number is 37,530 for England and Wales. London and south east England have larger numbers of people born in Ukraine and the Ukraine Scheme cohort may not be drawn to Wales in as many numbers as those other regions. However, what ultimately informs decisions is unknown.

A simple calculation based on Wales' population compared to the rest of the UK³ and based on the 100,000 people the UK Government consider may adopt the family element of the route, could mean that 5,000 people move to Wales.

However, it is impracticable to calculate the numbers requiring access to NHS services as well as to determine / anticipate the type of services Ukrainian residents will require. Therefore calculating the cost of providing an exemption from charge for NHS services is not available.

The amendment to the Regulations will ensure Welsh law remains fair and equitable for Ukrainian residents who are lawfully in the UK in their access to NHS services.

To ensure this, the Wales' Charging Regulations need to be amended as soon as practicable to reflect the UK position on charging for Ukrainian residents. England's Regulations came into force on 17 March 2022.

The early commencement without observing the 21 day convention being necessary to exempt displaced residents / refugees from the Ukraine who have come to Wales, from charges for NHS treatment. As the Regulations are introduced as a temporary measure due to exceptional humanitarian reasons they will be reviewed 6 months following coming into effect.

Option 2 also benefits from providing clarity to Local Health Boards on the charging position in Wales for this group of people. 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. It will also allow the NHS to take steps in preparation for the incoming Ukrainian people and to treat these overseas visitors without charge in the knowledge that they are not breaking the law.

8. Competition Assessment

This is not applicable.

² [CT21_0001 - Office for National Statistics \(ons.gov.uk\)](https://ons.gov.uk)

³ Wales' population was estimated as of mid-2019 to be 3,152,879, representing 4.7% of the UK's population of 66,796,807. This is rounded up to 5% for this assessment:

National level population estimates by year, age and UK country

<https://statswales.gov.wales/Catalogue/Population-and-Migration/Population/Estimates/nationallevelpopulationestimates-by-year-age-ukcountry>

9. Post implementation review

A post implementation review is built into the Regulations at a 6 month point following the coming into force date.