

Eluned Morgan AS/MS

Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol

Minister for Health and Social Services



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: MA-EM-2157-22

Elin Jones MS
Llywydd
Senedd Cymru
Cardiff Bay
CARDIFF
CF99 1SN

29 June 2022

Dear Llywydd

The National Health Service (Charges to Overseas Visitors) (Amendment) (No. 3) (Wales) Regulations 2022 (“the 2022 Regulations”)

In accordance with section 11A(4) of the Statutory Instruments Act 1946 I am notifying you that this statutory instrument will come into force on 1 July 2022, less than 21 days after it has been laid. A copy of the instrument and the Explanatory Memorandum that accompanies it are attached for your information.

The 2022 Regulations amend the National Health Service (Charges to Overseas Visitors) Regulations 1989 (“the Principal Regulations”). The Principal Regulations set the framework for charging persons who are not ordinarily resident in the UK for hospital treatment which is provided in Wales.

The 2022 Regulations 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.

The 2022 Regulations also provide that where an overseas visitor who, on or after 23 May 2022 but before 1 July 2022 (the latter being the date that the amendments are to come 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. This is because as a result of the latest outbreak there are already monkeypox cases in Wales. 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

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400

Gohebiaeth.Eluned.Morgan@llyw.cymru
Correspondence.Eluned.Morgan@gov.wales

Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

treatment for monkeypox before the Regulations came into force are treated equally to those who receive treatment after the Regulations come into force.

For information, The Department of Health and Social Care (DHSC) have included a similar provision in its charging regulations save that DHSC has chosen to extend the exemption from charges to treatment that was provided to overseas visitors on or after 1 May 2022, as opposed to 23 May 2022. This is because the first case of monkeypox was identified in England earlier (6 May 2022) than in Wales (25 May 2022 and confirmed by Public Health Wales on 26 May 2022). The amending legislation brought into effect by DHSC in England came into force less than 21 days after it was laid, so as to minimise any public health risk of discouraging an overseas visitor from coming forward for treatment due to the prospect of being charged.

The 2022 Regulations were made and laid as soon as practicable to enable monkeypox to be included in the list of diseases in Schedule 1 which are exempt from NHS charge (where treatment is necessary to protect the wider public health).

If the 21 day convention is adhered to, there is a risk (as has been identified by DHSC in respect of its legislation in England) that overseas visitors will be deterred from presenting for treatment due to charging concerns and thereby become a public health risk to the wider community.

Not adhering to the 21 day convention allows the 2022 Regulations to come into force as early as practicable, thereby minimising the risk to wider public health.

I am copying this letter to the Minister for Rural Affairs, North Wales and Trefnydd, Huw Irranca-Davies MS, Chair of the Legislation, Justice and Constitution Committee, Russell George MS Chair of the Health and Social Care Committee, Siwan Davies, Director of Senedd Business, Sian Wilkins, Head of Chamber and Committee Services and Julian Luke, Head of Policy and Legislation Committee Service.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'M. E. Morgan'.

Eluned Morgan AS/MS

Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol
Minister for Health and Social Services

W E L S H S T A T U T O R Y
I N S T R U M E N T S

2022 No. 715 (W. 158)

**NATIONAL HEALTH
SERVICE, WALES**

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

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the National Health Service (Charges to Overseas Visitors) Regulations 1989 (S.I. 1989/306) (“the principal Regulations”), which provide for the making and recovery of charges for relevant services provided under the National Health Service (Wales) Act 2006 (c. 42) to overseas visitors.

Regulation 2 amends the principal Regulations to insert “Monkeypox” into Schedule 1 (diseases for the treatment of which no charge is to be made). Regulation 2(2)(b) provides that charges incurred in respect of services provided to an overseas visitor for the treatment of monkeypox on or after 23 May 2022 but before these Regulations came into force—

- if not yet made, must not be made,
- if made, must not be recovered, or
- if paid, must be repaid.

There has been no regulatory impact assessment 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 United Kingdom.

W E L S H S T A T U T O R Y
I N S T R U M E N T S

2022 No. 715 (W. 158)

**NATIONAL HEALTH
SERVICE, WALES**

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

Made 28 June 2022

Laid before Senedd Cymru 29 June 2022

Coming into force 1 July 2022

The Welsh Ministers make these Regulations in exercise of the powers conferred by sections 124 and 203(9) and (10) of the National Health Service (Wales) Act 2006(1).

Title, commencement and interpretation

1.—(1) The title of these Regulations is the National Health Service (Charges to Overseas Visitors) (Amendment) (No. 3) (Wales) Regulations 2022.

(2) These Regulations come into force on 1 July 2022.

(3) In these Regulations, “the principal Regulations” means the National Health Service (Charges to Overseas Visitors) Regulations 1989(2).

(1) 2006 c. 42.

(2) S.I. 1989/306, amended by S.I. 1991/438; S.I. 1994/1535; S.I. 2004/614; S.I. 2004/696; S.I. 2004/1433 (W. 146); S.I. 2008/2364 (W. 203); S.I. 2009/1175 (W. 102); S.I. 2009/1512 (W. 148); S.I. 2009/1824 (W. 165); S.I. 2009/3005 (W. 264); S.I. 2010/730 (W. 71); S.I. 2010/927 (W. 94); S.I. 2011/1043; S.I. 2011/2906 (W. 310); S.I. 2012/1809; S.I. 2014/1622 (W. 166); S.I. 2020/113 (W. 20); S.I. 2020/1607 (W. 334); S.I. 2021/221 (W. 55); S.I. 2022/89 (W. 30); S.I. 2022/402 (W. 99); there are other amending instruments but none are relevant to these Regulations.

Amendment of the principal Regulations

2.—(1) The principal Regulations are amended as follows.

(2) In regulation 3 (services exempted from charges)—

- (a) the existing text becomes paragraph (1);
- (b) after the new paragraph (1), insert—

“(2) Services provided to an overseas visitor for the treatment of monkeypox on or after 23 May 2022 but before this paragraph came into force are to be treated for the purposes of these Regulations as if, at the time that the services were provided, they were relevant services in respect of which no charge may be made or recovered.

(3) Where paragraph (2) applies, a Local Health Board or NHS Trust—

- (a) yet to make charges under regulation 2 (making and recovery of charges) must not make the charges;
- (b) that made charges under regulation 2 but has yet to recover the charges, must not recover the charges; or
- (c) that made charges under regulation 2 and received payment in respect of the charges, must repay any sum paid in respect of the charges in accordance with regulation 8 (repayments).”.

(3) In Part 4 of Schedule 1 (diseases for the treatment of which no charge is to be made), in the appropriate alphabetical position, insert “Monkeypox”.

Eluned Morgan

Minister for Health and Social Services, one of the
Welsh Ministers

28 June 2022

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.