

Explanatory Memorandum to the National Health Service (Charges to Overseas Visitors) (Amendment) (Wales) Regulations 2023

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) (Wales) Regulations 2023. I am satisfied the benefits justify the likely costs.

Eluned Morgan MS
Minister for Health and Social Services

31 January 2023

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 Regulation 4D(1) of the Principal Regulations provides that a person who makes a late application to the EU Settled Scheme (“EUSS”) will not be charged for relevant services which are provided while their application is being determined. However regulation 4D(4) further provides that if the application is unsuccessful then they will be charged for the provision of those relevant services that were received during the period that their application was made and the date on which the application was finally determined.
- 1.4 These Regulations remove the requirement to charge unsuccessful late applicants to the EUSS for NHS treatment received whilst their application is under consideration, and require that any charges for such services:
 - 1.4.1 If already made, must not be recovered, or
 - 1.4.2 If already paid, must be repaid.

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 this instrument will come into force less than 21 days after the instrument has been laid. Early commencement is necessary to ensure that no unnecessary charges are made and also to ensure that the Principal Regulations reflect the provisions of Article 18 of the Withdrawal Agreement (“WA”) and Article 17 of the EEA EFTA Separation Agreement (“SA”).
- 2.2 Even though the Regulations apply prospectively (i.e., on or after the date the amendments come into force) there is an element of retrospectivity to the Regulations since they provide that any charges which have already been made for NHS treatment provided to unsuccessful late applicants during the period that their application was under consideration must not be recovered, and any payments already received must be repaid. The policy justification for these Regulations is provided at paragraph 4.1 below.

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 sections 203(9) and (10) of the 2006 Act and is subject to the negative procedure.

4. Purpose and intended effect of the legislation

- 4.1 The Regulations will ensure that the Principal Regulations reflect the provisions of Article 18 of the WA and Article 17 of the SA with regard to the charging for treatment of late EUSS applicants, and to ensure that unsuccessful late applicants are afforded equal treatment to those applicants who submitted their application to the EUSS within time.

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 provisions of the WA and SA with regard to late EUSS applicants.

Costs and Benefits

6.3 The amendment concerns the charging for treatment of individuals, who have submitted a late EUSS application and had their application subsequently rejected, for treatment received while their application was being determined. Local Health Boards have advised the Welsh Government that no individuals with this status have been treated or charged to date. It is not expected that the number of individuals of this status treated and therefore charged would significantly change going forward.

6.4 Retaining the provision would therefore result in minimal benefits to Local Health Boards in terms of income via charging for treatment in the future.

6.5 Retaining the provision would mean the provisions of the WA and SA with regard to late EUSS applicants were not reflected in the Welsh law, in this case the Principal Regulations. The Welsh Government would therefore be in potential conflict with its international obligations.

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

6.6 This option would amend the Principal Regulations to reflect the provisions of the WA and SA with regard to late EUSS applicants. The Principal Regulations would be amended to:

- remove the current requirement to charge unsuccessful late applicants to the EUSS for NHS treatment received during the period that their application was under consideration; and
- require that any charges for such services: if made, must not be recovered; or if paid, must be repaid.

Cost and Benefits

6.7 As set out in paragraphs 6.3 above, Local Health Boards have advised the Welsh Government that no individuals of the cohort of concern have

been treated or charged to date. There are therefore no costs to be refunded to individuals by Local Health boards in this regard.

6.8 Given the number of individuals of this status receiving treatment in the future is likely to be low, the removal of this charging provision is expected to have minimal impact on Local Health Board income in the future.

6.9 This amendment would, in the view of the Welsh Government, align Welsh law (in this case the Principal Regulations) with the WA and SA, thereby removing any potential conflict in this regard with regard to Wales' fulfilment of its international obligations.

6.10 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.

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.