

Explanatory Memorandum to the National Health Service (Charges to Overseas Visitors) (Amendment) (No.2) (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) (No.2) (Wales) Regulations 2023. I am satisfied the benefits justify the likely costs.

Eluned Morgan MS
Minister for Health and Social Services

15 May 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 These Regulations are being made to ensure that the requirement for the NHS in Wales to treat overseas patients from:
 - Ascension;
 - Bermuda;
 - Cayman Islands;
 - Pitcairn, Henderson, Ducie and Oeno Islands (“Pitcairn”); and
 - Tristan da Cunha

in accordance with the international agreements negotiated by the UK Government, is reflected in the Principal 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 full effect within the Principal Regulations to international agreements negotiated by the UK Government on a UK level. The agreements are with Ascension, Bermuda, Cayman Islands, Pitcairn and Tristan da Cunha. Bermuda, Cayman Islands and Pitcairn have separate agreements with the UK. Ascension and Tristan da Cunha have (along with St Helena which has an existing agreement with the UK and is therefore already included in the Principal Regulations) entered into a single agreement. The agreements are:
 - Memorandum of Understanding between the Government of the United Kingdom of Great Britain and Northern Ireland and the

Government of Bermuda concerning Healthcare Arrangements dated 11 May 2023;

- Memorandum of Understanding between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Cayman Islands concerning Healthcare Arrangements dated 11 May 2023;
- Memorandum of Understanding between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Pitcairn, Henderson, Ducie and Oeno Islands concerning Healthcare Arrangements dated 11 May 2023 ;
- Memorandum of Understanding between the Government of the United Kingdom of Great Britain and Northern Ireland and the Governments of St Helena, Ascension and Tristan da Cunha concerning Healthcare Arrangements dated 11 May 2023.

4.2 The agreements set out that each Overseas Territory will be provided with a limited quota places of patient referrals for treatment in the UK, the number of referrals notified by the UK from time to time. The UK has agreed with the Overseas Territories that this will be set at five patients per Overseas Territory per year at this time. Should any of these Overseas Territories be in receipt of Official Development Assistance this quota will increase to 10 patients for the Overseas Territory in question.

4.3 The quota is spread across a three-year period with a three-year rolling allocation of quota places to allow flexibility.

4.4 Any patients sent to the UK for treatment over and above the quota will be charged at 100% of NHS tariff.

4.5 The Agreements were signed by representatives of the UK Government on the dates of the Memoranda set out in paragraph 4.1 and are to come into force on 5 June 2023.

4.6 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.

4.7 The insertion of Ascension, Bermuda, Cayman Islands, Pitcairn and Tristan da Cunha, into Schedule 2 of the Principal Regulations will ensure that will ensure that the agreements referred to above are given full legal effect in Wales with regard to charging of visitors under those agreements.

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 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 Ascension, Bermuda, Cayman Islands, Pitcairn and Tristan de Cunha.

Costs and Benefits

6.3 There are no financial costs or benefits to this option, as the new agreements between the UK and the Overseas Territories 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 Ascension, Bermuda, Cayman Islands, Pitcairn and Tristan de Cunha.

6.4 Information regarding the estimated costs to Wales of the agreements with Ascension, Bermuda, Cayman Islands, Pitcairn and Tristan de Cunha is set out in paragraphs 6.11 to 6.17 below.

6.5 Not reflecting the healthcare agreements changes made by the UK Government and incorporating those to the Principal Regulations would leave Welsh law incorrect.

6.6 This option would also 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 Ascension, Bermuda, Cayman Islands, Pitcairn and Tristan de Cunha.

Costs and Benefits

6.8 Adding Ascension, Bermuda, Cayman Islands, Pitcairn and Tristan de Cunha 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 Ascension, Bermuda, Cayman Islands, Pitcairn and Tristan de Cunha

- 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 Each of the Overseas Territories being added to the Principal Regulations (Ascension, Bermuda, Cayman Islands, Pitcairn and Tristan de Cunha) is allowed to send a number of patients per year for treatment in the UK. The UK has agreed with the Overseas Territories that this will be set at five patients per Overseas Territory per year at this time. Should any of these Overseas Territories be in receipt of Official Development Assistance this quota will increase to 10 patients for the relevant Overseas Territory. Of the five Overseas Territories being added to the Principal Regulations, Pitcairn and Tristan da Cunha are currently in receipt of Official Development Assistance.
- 6.13 The quota is spread across a three-year period with a three-year rolling allocation of Quota places to allow flexibility.
- 6.14 Any patients sent to the UK for treatment over and above the quota will be charged at 100% of NHS tariff.
- 6.15 Given the small numbers of patients involved and the likelihood that they will seek treatment in England, the impacts to Wales from quota patients being treated in Wales to be minimal.
- 6.16 A further safeguard is provided by the agreements whereby referrals for treatment under the quota arrangement may be declined by Local Health Boards in Wales should capacity or cost issues arise.
- 6.17 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.