

Explanatory Memorandum to the National Health Service (Charges to Overseas Visitors) (Amendment) (No.3) (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.3) (Wales) Regulations 2023. I am satisfied the benefits justify the likely costs.

Eluned Morgan MS
Minister for Health and Social Services

8 December 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 Iceland and Liechtenstein in accordance with the healthcare provisions of the UK-EEA/EFTA Social Security Coordination (“the Convention”) 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) 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 are being made to give full legal effect to the reciprocal healthcare provisions of the Social Security Coordination Convention agreed between the UK Government and the EEA/EFTA States (Norway, Iceland and Liechtenstein).
- 4.2 The Convention was signed by the representatives of the UK Government and the EEA/EFTA States on 30 June 2023 and will come into force Convention to come into force on 1 January 2024 for all three states, once the necessary procedures have been undertaken by their national bodies.
- 4.3 The Convention re-instates the majority of the reciprocal health arrangements, which prior to EU Exit were provided for by the various EU reciprocal healthcare provisions which extended to the EEA/EFTA States.
- 4.4 In terms of reciprocal healthcare, the Convention provides that where the UK or an EEA/EFTA State is responsible for an individual’s healthcare

and they fall within the scope of the Convention that the individual will be entitled to reciprocal healthcare in the UK or EEA/EFTA State.

- 4.5 The main reciprocal healthcare provisions of the Convention relevant to healthcare in Wales are set out below:
- Necessary healthcare – the provision of state healthcare that becomes necessary while on a temporary stay in another contracting state, including pre-arranged treatments in another contracting state and a provision which permits those who fall ill on a voyage to receive state-funded necessary healthcare in the state of arrival.
 - Planned treatment (S2) – Individuals can choose to have planned treatments in the EEA/EFTA States and vice versa subject to qualifying criteria.
 - Comprehensive reciprocal healthcare – pensioners, cross-border workers and benefit exporters who are eligible are eligible under this Convention subject to qualifying criteria.
 - Personal scope – as with the TCA, this Convention contains a ‘nationality-blind’ personal scope with regard to who is covered by the Convention – that is, for reciprocal healthcare, the personal scope will cover all those that are resident in the UK regardless of nationality (and vice versa).
- 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 Iceland and Liechtenstein into Schedule 2 of the Principal Regulations will ensure that the healthcare provisions of the Convention referred to above are given full legal effect in Wales.
- 4.8 Norway is already listed in the Principal Regulations as there is a pre-existing limited bi-lateral agreement with the UK (the 1991 Convention on Social Security between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Kingdom of Norway and subsequent supplementary protocol). This pre-existing agreement has been the fall back for reciprocal healthcare between the UK and Norway since EU Exit and will cease to apply in the UK upon the coming into force of the Convention with Norway.

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 a UK international agreement which applies 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 healthcare provisions of the EEA/EFTA Convention.

Costs and Benefits

6.3 The EEA/EFTA Convention is binding on the UK as a whole and so Wales is already required to implement and observe it. A failure to make these changes would thus not change Wales’ obligation to operate the requirements of the agreement with the EEA/EFTA States.

6.4 Information regarding the estimated costs to Wales of the Convention’s healthcare provisions are set out at paragraphs 6.11 to 6.18 below.

6.5 If the Principal Regulations are not amended to include Iceland and Liechtenstein, this 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 being charged.

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 healthcare provisions of the UK and EEA/EFTA Convention.

Costs and Benefits

6.8 Adding Iceland and Liechtenstein to the Principal Regulations will ensure that the law in Wales remains correct and operable and reflects the Convention between the UK and EEA/EFTA States.

6.9 This option would provide clarity for our Local Health Boards as the Principal Regulations would accurately reflect the UK position.

6.10 There are no additional financial costs or benefits to adding Iceland and Liechtenstein to Schedule 2 of the Charging Regulations, 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 agreement with EEA/EFTA States

6.11 As set out above, any costs arising from these agreements will accrue to Wales under both Options 1 and 2. They are thus presented for information only.

6.12 The Convention is expected to result in minimal costs to Local Health Boards in Wales.

6.13 Under the Convention, individuals from the UK will no longer have to pay for necessary healthcare treatment when visiting the EEA/EFTA States and vice versa.

6.14 The number of citizens from Iceland and Liechtenstein seeking necessary treatment in Wales is expected to be extremely low due to the small populations of those countries. There are therefore expected to be minimal costs to Local Health Boards in this regard. Furthermore, any costs would be offset by savings to Local Health Board's with regard to Welsh citizens receiving necessary reciprocal necessary healthcare treatment in those countries.

6.15 With regard to Norway, the Convention replaces an existing bi-lateral agreement between the UK and Norway which already provides for necessary treatment for UK nationals in each other's country. As the Convention thus broadly maintains the status quo with Norway regarding necessary healthcare, it is unlikely that the Convention will lead to an increase in the numbers of patients being treated in Wales.

6.16 Planned treatment costs for UK citizens (including Welsh citizens) seeking treatment in any of the EEA/EFTA States will be met by the UK Government and will therefore represent a saving to the NHS in Wales.

6.17 It is expected that the numbers of individuals from the EEA/EFTA States seeking planned treatment in Wales will be extremely low. Furthermore, any planned treatment agreed in Wales can be recharged to the EEA/EFTA States by Local Health Boards at 100% of the cost. The agreement provides the additional safeguard in that applications for planned treatment can be declined by Local Health Board in Wales, should capacity issues arise.

6.18 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.