

Explanatory Memorandum to the National Health Service (Charges to Overseas Visitors) (Amendment) (Wales) Regulations 2024

This Explanatory Memorandum has been prepared by the Health, Social Care and Early Years 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 2024. I am satisfied the benefits justify the likely costs.

Eluned Morgan MS
Cabinet Secretary for Health and Social Care

04 June 2024

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 Principal Regulations are aligned with UK Government policy regarding the Immigration Healthcare Surcharge (IHS) and overseas students from the EU, Switzerland, Norway, Iceland and Lichtenstein and their dependents (“European students and dependents”).

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 UK 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 align the provisions of the Principal Regulations regarding European students and dependents with UK Government policy regarding the IHS.
- 4.2 The IHS is a flat fee paid by temporary migrants to the UK which is used to fund their NHS care and allows them to access NHS care on a similar basis to a UK resident. The majority of overseas visitors who are here for more than 6 months must pay the IHS as part of their visa application. Accompanying family members must also pay a separate IHS charge.
- 4.3 The Welsh Government receives a Barnett share of UK receipts under the IHS, which in 2023/24 provided just over £86m funds for the Welsh NHS.
- 4.4 Regulation 4F of the Principal Regulations exempts overseas visitors who have paid the IHS from being charged for healthcare in Wales.

- 4.5 Since 1 January 2022 (for EU and Swiss students) and 1 January 2024 (for EEA students), students and dependants from the EU, EEA or Switzerland in full time education and who are in the UK for more than 6 months have been eligible for a reimbursement of the IHS. Once reimbursed the students and dependants can in most instances only access necessary healthcare using their EHIC.
- 4.6 Necessary healthcare is regarded as all treatment that is medically necessary before their planned date of return, except where charges also apply to residents in Wales, such as dental fees.
- 4.7 European students and dependants access this as insured citizens of their respective countries under the respective social security conventions in place between the UK and their respective countries. Students from countries other than the EU, EEA and Switzerland (“Rest of World Countries”) are not able to apply for reimbursement of the IHS.
- 4.8 European students and dependants who have had their IHS reimbursed are expected to be charged for treatment received over and above that provided for by the relevant social security conventions.
- 4.9 Regulation 4(1)(a)(iii) of the Principal Regulations exempts overseas students (and their families) who are pursuing a full time course in education of more than 6 months duration from being charged for healthcare in Wales.
- 4.10 This is in conflict with the position set out in paragraphs 4.5 to 4.8 above regarding European students and dependants who have received reimbursement of their IHS. Regulation 4(1)(a)(iii) allows students and their families to receive full treatment on the NHS on the same basis as a Welsh resident regardless of whether they have received reimbursement or not.
- 4.11 Thus there is the potential for European students and dependants to receive reimbursement of their IHS and still be eligible for full NHS treatment without charge – instead of only necessary healthcare.
- 4.12 Regulation 4(1)(a)(iii) also exempts overseas students (and their families) pursuing a full-time course of study which is substantially funded by the UK Government from being charged for healthcare in Wales.
- 4.13 As the IHS is unlikely to be paid by anyone visiting the UK for less than 6 months, the removal of the exemption means that, unless another exemption in the Principal Regulations applies, all European overseas students studying full time courses substantially funded by the UK Government of a duration than less than 6 months will become chargeable for non-necessary healthcare and all non-European overseas students studying full time courses substantially funded by the UK Government of a duration than less than 6 months will become chargeable for non-emergency healthcare. This brings such students into line with overseas students studying courses in Wales for less than 6 months which are not funded by the UK Government. In practice, the Welsh Government understands that there are unlikely to be students

studying in Wales to whom the criteria of studying on a substantially UK funded course of less than 6 months would apply.

- 4.14 The Welsh Government is therefore seeking to remove regulation 4(1)(a)(iii) from the Principal Regulations.

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 there is no discretion for the Welsh Government with regard to IHS policy and as the changes are regarded as essential to align the Principal Regulations with UK policy.

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 align with UK Government IHS policy regarding European students.

Costs and Benefits

6.3 The Welsh Government estimates that the number of European students and dependants in Wales who may have received IHS reimbursement is less than 600.¹

6.4 The proportion of these students and dependants likely to require treatment over and above the necessary healthcare they may receive free of charge under the Social Security Agreements with their respective countries is expected to be small.

6.5 The number of overseas students studying for less than six months in Wales on courses substantially funded by the UK Government is estimated by the Welsh Government to be very small (if any).

6.6 Thus the cost to the NHS in Wales of providing such treatment if the Principal Regulations are not amended is low. Consequently, the potential cost to the NHS if the Principal Regulations are not amended to bring into line with IHS policy in this regard are low.

6.7 However, the conflict between the UK Government IHS policy and exemption 4(1)(a)(iii) of the Principal Regulations is undesirable as it potentially undermines the payment of the IHS at UK Government level in that a student coming to Wales may be more likely to seek a reimbursement of the IHS.

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

6.8 This option would amend the Principal Regulations to align them with UK Government IHS policy regarding European students.

¹ Figure based on the numbers of European students enrolled in full time education in Wales in 2021/22 ([Table 28 - Non-UK domiciled HE students by HE provider and country of domicile 2014/15 to 2021/22 | HESA](#)) and unpublished UK Government data regarding the proportion of European students in the UK receiving reimbursement of their IHS.

Costs and Benefits

- 6.9 The primary benefit of this option is to align the Principal Regulations with UK Government IHS policy and to remove the potential for undermining of the IHS at UK Government level.
- 6.10 For the reasons set out in paragraphs 6.3 to 6.6 above, the numbers of firstly European students and their dependents, and secondly overseas students studying for less than six months in Wales on courses substantially funded by the UK Government, accessing chargeable healthcare should the Principal Regulations be amended are likely to be low. Thus the savings to the NHS of being able to charge for such treatment are minimal.

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 are to align Welsh and UK Government policy.