

EXPLANATORY MEMORANDUM TO
THE NATIONAL HEALTH SERVICE (CHARGES TO
OVERSEAS VISITORS) (AMENDMENT) REGULATIONS 2008

2008 No. 2251

1. This explanatory memorandum has been prepared by the Department of Health and is laid before Parliament by Command of Her Majesty.
2. **Description**
 - 2.1 This instrument amends the National Health Service (Charges to Overseas Visitors) Regulations 1989 (S.I. 1989/306) (“the charging regulations”). It provides for an exemption from charges for NHS hospital treatment for those persons who have been identified by the competent authorities of the UK as victims of human trafficking, and those persons who the same authorities have reasonable grounds to believe are victims of trafficking. It also provides that the spouse/civil partner and dependent children of such persons are exempt from charges for all NHS hospital treatment.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None.
4. **Legislative background**
 - 4.1 The charging regulations provide for NHS bodies to charge overseas visitors (who are defined as anyone not ordinarily resident in the United Kingdom) for any NHS hospital treatment provided to the overseas visitor. They also provide for a range of exemptions from charges. Some of these relate to services themselves, such as treatment provided solely in an accident and emergency department, or treatment for certain specified diseases. Others relate to the individual circumstances of the overseas visitor, for example overseas students and Crown Servants posted overseas. A third broad category of exemption reflects international agreements and legislation to which the UK is a signatory.
 - 4.2 This instrument provides for an addition to the exemption from charge categories for those persons who are, or who are thought to be, victims of human trafficking. This is being made to ensure compliance with the Council of Europe Convention on Action Against Trafficking in Human Beings (“the CoE Convention”), which the UK has agreed to ratify by the end of 2008.
 - 4.3 This instrument also makes provision to exempt from charges the spouse/civil partner and dependent children of such victims, or suspected victims, of human trafficking.

5. Territorial Extent and Application

5.1 This instrument applies to England only.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 Section 175 of the National Health Service Act 2006 gives the Secretary of State for Health powers to make regulations governing charging persons who are not ordinarily resident in the United Kingdom for any NHS services they receive. These powers have only been used in relation to hospital treatment, currently through the charging regulations.

7.2 The charging regulations place a legal obligation on the providers of NHS hospital services to identify patients who are overseas visitors as defined within the regulations, and to charge all overseas visitors for any treatment provided to them, unless the overseas visitor, or the treatment they receive, is covered by one of a considerable number of exemption categories.

7.3 The charging regulations have been amended several times to take account of changes to the categories of person or service that the Government of the day want to be exempt from charges. Amendments have also been necessary to reflect changes in the UK's international obligations.

7.4 The UK is committed to ratifying the CoE Convention by the end of this year. It will come into effect early 2009. In order to be compliant with the provisions of the CoE Convention, relevant implementing legislation needs to be amended before the process of ratification of the CoE Convention can commence.

7.5 The UK is primarily a destination country for trafficked men, women, and children. The overall scale of human trafficking remains unclear although HO research published in 2003 suggests that at any one time there were approximately 4,000 victims of trafficking for sexual exploitation in the UK. It is thought that this figure has remained static over the past 5 years. The number of victims of trafficking for forced labour is even more difficult to estimate. However, not many of this number are likely to make themselves known or be willing to cooperate. It is projected that a total of around 500 victims per year of all forms of trafficking (excluding children) may be identified as potential victims and examined by a National Referral Mechanism.

7.6 The CoE Convention states at Article 12(1)(b) that victims of human trafficking (and, by virtue of Article 13(2), those who there are reasonable grounds to think are victims and are within a requisite recovery and reflection period) should have access to "emergency medical treatment". It then states

at Article 12(3) that “each Party shall provide necessary medical or other assistance to victims lawfully resident within its territory who do not have adequate resources and need such help”.

- 7.7 Currently, victims of human trafficking who were not exempt from charge in some other way (eg by applying for leave to remain in the UK as a refugee or by being from a country with which the UK has a reciprocal healthcare agreement) would only receive “free to all” services free of charge, such as treatment provided solely within an accident and emergency (A&E) department or treatment for certain contagious diseases.
- 7.8 Whilst urgent and immediately necessary treatment (outside of an A&E) would not be withheld from them, they would be liable for charges and pursued for any debt after being treated. Since many are without the funds to pay, hospitals usually write off the debt meaning that, in effect, the person receives that level of treatment without paying. Therefore, this amendment does not necessarily increase costs for the NHS as much as it might appear, since it regularises what often happens informally anyway, reducing the stress on the victims and withdrawing the necessity for the NHS to issue fruitless bills to them.
- 7.9 For practical reasons and to ensure unequivocal compliance with the CoE Convention, the Department of Health has decided to make such persons fully exempt from NHS hospital charges within the charging regulations. Not amending the charging regulations risks an inadequate level of compliance in relation to healthcare provision for victims of human trafficking, meaning that the UK could not ratify the CoE Convention.
- 7.10 This instrument also makes provision to exempt from charges the spouse/civil partner and dependent children of such victims, or suspected victims, of human trafficking. This is consistent with other categories of exemption applying to the circumstances of individuals within the charging regulations.
- 7.11 The existing guidance on the Regulations will be revised and published on the DH website. Information will be disseminated to those in the NHS operating the charging regime.
- 7.12 It is intended to consolidate the Regulations next year. Work has begun on this.

8. Impact

- 8.1 An Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.
- 8.2 The impact on the public sector is that NHS bodies providing hospital services will see a small increase in the number of persons classified as overseas visitors who are exempt from paying charges for hospital treatment.

9. Contact

- 9.1 Martin Campbell at the Department of Health Tel: 0113 254 5174 or e-mail: martin.campbell@dh.gsi.gov.uk can answer any queries regarding the instrument.