
STATUTORY INSTRUMENTS

2015 No. 238

NATIONAL HEALTH SERVICE, ENGLAND

**The National Health Service (Charges
to Overseas Visitors) Regulations 2015**

<i>Made</i>	- - - -	<i>5th February 2015</i>
<i>Laid before Parliament</i>		<i>16th February 2015</i>
<i>Coming into force</i>	- -	<i>6th April 2015</i>

The Secretary of State for Health, in exercise of the powers conferred by sections 175 and 272(7) and (8) of the National Health Service Act 2006⁽¹⁾, makes the following Regulations.

PART 1

Introduction

Citation and commencement

1. These Regulations may be cited as the National Health Service (Charges to Overseas Visitors) Regulations 2015 and come into force on 6th April 2015.

Interpretation

2. In these Regulations—

“the 1971 Act” means the Immigration Act 1971⁽²⁾;

“the 2006 Act” means the National Health Service Act 2006;

“the 2014 Act” means the Immigration Act 2014⁽³⁾;

“authorised child” means a child who—

- (a) has been granted leave to enter the United Kingdom with a parent for the purpose of the parent receiving a course of treatment in respect of which no charge may be made or recovered under regulation 17; or

(1) [2006 c.41](#). By virtue of section 271(1) of the National Health Service Act 2006 (“the 2006 Act”) the powers of the Secretary of State exercised in making these Regulations are exercisable only in relation to England.

(2) [1971 c. 77](#).

(3) [2014 c. 22](#).

- (b) is a child of an authorised companion;
- “authorised companion” means a person who has been granted leave to enter the United Kingdom to accompany a person who is obtaining a course of treatment in respect of which no charge may be made or recovered under regulation 17;
- “child” means a person who is under the age of eighteen;
- “entry clearance” has the meaning given in section 33(1) (interpretation) of the 1971 Act(4);
- “immigration health charge” means a charge payable under an order made under section 38 (immigration health charge) of the 2014 Act;
- “immigration rules” means the rules laid before Parliament under section 3(2) (general provisions for regulation and control) of the 1971 Act;
- “overseas visitor” means a person not ordinarily resident in the United Kingdom(5);
- “parental responsibility” has the meaning given in section 3 (meaning of “parental responsibility”) of the Children Act 1989(6);
- “reciprocal agreement” means arrangements agreed mutually between the Government of the United Kingdom and the Government of a country or territory outside the United Kingdom for the provision of health care;
- “registered dentist” has the meaning given in section 53(1) (interpretation) of the Dentists Act 1984(7);
- “relevant NHS body” means—
- (a) an NHS foundation trust;
 - (b) an NHS trust; or
 - (c) a local authority within the meaning of section 2B (functions of local authorities and Secretary of State as to improvement of public health) of the 2006 Act(8) exercising public health functions (within the meaning of that Act(9));
- “relevant services” means accommodation, services or facilities(10) which are provided, or whose provision is arranged, under the 2006 Act other than—
- (a) primary medical services provided under Part 4 (medical services);
 - (b) primary dental services provided under Part 5 (dental services);
 - (c) primary ophthalmic services provided under Part 6 (ophthalmic services); or
 - (d) equivalent services which are provided, or whose provision is arranged, under the 2006 Act;
- “ship” includes fishing vessels and hovercraft;
- “treatment the need for which arose during the visit” means—
- (a) diagnosis of symptoms or signs occurring for the first time after the overseas visitor’s arrival in the United Kingdom; or

(4) The definition of “entry clearance” in section 33(1) was amended by the British Nationality Act 1981 (c. 61), Schedule 4, paragraph 2, and the Immigration Act 1988 (c. 14), Schedule, paragraph 5.

(5) The meaning of ordinary residence in section 175 of the 2006 Act was amended by section 39 (related provision: charges for health services) of the Immigration Act 2014 (c. 22) which has not yet come into force.

(6) 1989 c. 41.

(7) 1984 c. 24; to which there are amendments not relevant to these Regulations.

(8) Section 2B was inserted by the Health and Social Care Act 2012 (c. 7) (“the 2012 Act”), section 12.

(9) The meaning of a reference to the public health functions of local authorities is given by section 1H(5)(b) of the 2006 Act, which was inserted by the 2012 Act, section 9(1).

(10) “Facilities” is defined in s275(1) of the 2006 Act.

- (b) treatment, provided that the overseas visitor has not travelled to the United Kingdom for the purpose of seeking that treatment, which in the opinion of a registered medical practitioner or registered dentist employed by or providing services to the relevant NHS body is required promptly for a condition which arose, or became acutely exacerbated, after the overseas visitor's arrival, or which, but for the treatment, would be likely to become acutely exacerbated,
- which cannot wait until the overseas visitor can reasonably be expected to return to the overseas visitor's country of ordinary residence.

PART 2

Provision for making and recovery of charges

Obligation to make and recover charges

3.—(1) Where the condition specified in paragraph (2) is met, a relevant NHS body must make and recover charges for any relevant services it provides to an overseas visitor from the person liable under regulation 4 (liability for payment of charges).

(2) The condition is that the relevant NHS body, having made such enquiries as it is satisfied are reasonable in all the circumstances, including in relation to the state of health of that overseas visitor, determines that the case is not one in which these Regulations provide for no charge to be made.

(3) Where more than one relevant NHS body provides relevant services to an overseas visitor, each relevant NHS body must make and recover charges for the relevant services it provides to that overseas visitor in accordance with paragraph (1).

(4) A relevant NHS body that makes and recovers a charge in accordance with paragraph (1), must give or send to the person making the payment a receipt for the amount paid.

(5) Subject to paragraph (6), where—

- (a) a relevant NHS body has determined that an overseas visitor is exempt from being charged for relevant services under these Regulations, except where the overseas visitor is exempt from being charged by virtue of—
- (i) regulation 10 (immigration health charge);
 - (ii) regulation 11 (overseas visitors who have made applications for entry clearance or leave to remain prior to the commencement of the immigration health charge); or
 - (iii) regulation 25(3) (family members of overseas visitors – children born to a parent exempt under regulation 10 or 11);
- (b) the overseas visitor has received relevant services from a relevant NHS body as part of a course of treatment; and
- (c) prior to the course of treatment being completed, a relevant NHS body has determined that the overseas visitor is no longer exempt from being charged for relevant services under these Regulations,

a relevant NHS body may not make and recover charges under paragraph (1) in respect of relevant services provided as part of that course of treatment during a period where the overseas visitor has remained in the United Kingdom without absence.

(6) Paragraph (5) does not apply where a relevant NHS body has determined that a person is exempt from being charged for relevant services as a result of that body receiving fraudulent or misleading information.

Liability for payment of charges

4.—(1) The person liable to pay charges under these Regulations is, unless paragraph (2), (3) or (4) applies, the overseas visitor in respect of whom the relevant services are provided.

(2) Where—

- (a) an overseas visitor is employed or engaged or works in any capacity on board a ship and whose normal place of work is on board a ship; and
- (b) that overseas visitor is present in the United Kingdom in the course of that employment, engagement or work,

the person liable to pay charges under these Regulations is the shipowner of the ship on which the overseas visitor is employed, engaged or works.

(3) Where an overseas visitor is an air crew member and is present in the United Kingdom in the course of that employment, the person liable to pay charges under these Regulations is the employer of that overseas visitor.

(4) Where an overseas visitor is a child, the person liable to pay charges under these Regulations is the person with parental responsibility for that child.

(5) In this regulation—

“air crew member” means any person employed or engaged in an aircraft in flight on the business of the aircraft;

“shipowner” has the meaning given in regulation 2(1) (interpretation) of the Merchant Shipping (Maritime Labour Convention) (Minimum Requirements for Seafarers etc) Regulations 2014⁽¹¹⁾.

Repayment of charges made and recovered by relevant NHS bodies

5.—(1) Where a sum has been paid in respect of a charge for relevant services by or on behalf of a person who—

- (a) at the time that the relevant services were provided was an overseas visitor in respect of whom these Regulations provide for no charge to be made or recovered; or
- (b) did not receive the relevant services for which the charge was payable,

a claim for repayment of the sum may be made in accordance with this regulation.

(2) A person making a claim for repayment (“the claimant”) of a sum must provide to the relevant NHS body—

- (a) the receipt for payment of the sum;
- (b) a declaration in support of the claim signed by or on behalf of the claimant; and
- (c) such other evidence in support of the declaration as the relevant NHS body may require.

(3) The relevant NHS body must repay to the claimant the amount of the sum if it is satisfied that the sum was not payable by virtue of these Regulations.

(4) For the purposes of this regulation, the relevant NHS body is the one to which the sum was paid.

Provision relating to recovery of charges in respect of refugees and victims of human trafficking

6.—(1) This paragraph applies to an overseas visitor who—

(11) S.I. 2014/1613.

- (a) received relevant services from a relevant NHS body;
 - (b) subsequent to receiving the relevant services, has become an overseas visitor who is exempt from charges under—
 - (i) regulation 15(a) (refugees, asylum seekers, supported individuals and looked after children); or
 - (ii) regulation 16 (victims of human trafficking); and
 - (c) at the time that the overseas visitor received the relevant services—
 - (i) where paragraph (1)(b)(i) applies, was in the United Kingdom for the purpose of making an application to be granted temporary protection, asylum or humanitarian protection under the immigration rules, but had not made that application; or
 - (ii) where paragraph (1)(b)(ii) applies, was a person to whom regulation 16 applies but had not yet been identified as such.
- (2) An overseas visitor to whom paragraph (1) applies is to be treated for the purposes of these Regulations as if, at the time that the relevant services were provided, the overseas visitor was an overseas visitor in respect of whom no charge may be made or recovered for the relevant services.
- (3) A relevant NHS body which, in respect of an overseas visitor to whom paragraph (1) applies, has—
- (a) yet to make charges under regulation 3 (obligation to make and recover charges), must not make the charges;
 - (b) made charges under regulation 3 but has yet to recover the charges, must not recover the charges; or
 - (c) made charges under regulation 3 and received payment in respect of the charges, must repay any sum paid in respect of the charges in accordance with regulation 5 (repayment of charges made and recovered by relevant NHS bodies).

Charges imposed on overseas visitors

7.—(1) The relevant NHS body must calculate charges made under these Regulations in accordance with this regulation.

(2) Where the overseas visitor is ordinarily resident in another EEA state or Switzerland the charge payable in respect of a relevant service provided to the overseas visitor shall be calculated in the same way as provided for by regulation 13(1) (NHS charges) of the National Health Service (Cross-Border Healthcare) Regulations 2013(12).

(3) In any other case, the charge payable in respect of each relevant service provided to an overseas visitor shall be equal to the tariff for that relevant service multiplied by 150 per cent.

(4) In this regulation “the tariff” has the meaning set out in paragraphs (5) to (8), subject to paragraphs (9) to (12).

(5) Unless paragraph (6) applies, where a relevant service is specified in the national tariff under section 116(1)(a) (national tariff) of the 2012 Act, the tariff for the provision of that service to an overseas visitor is such price as is determined in accordance with the national tariff on the basis of the national price specified in the national tariff for that service in relation to that relevant NHS body including any applicable modification referred to in paragraph (10).

(6) Where—

- (a) a relevant NHS body provides a relevant service to an overseas visitor that is included in a bundle of services to which a pathway payment applies in accordance with the national tariff;
- (b) that relevant service constitutes part, but not all, of the bundle of services; and
- (c) the relevant NHS body is unable to determine the price of that relevant service as an individual service within the bundle of services to which the pathway payment relates,

the tariff is such reasonable price for the provision of the relevant service that the NHS body determines having had regard to the matters set out in paragraph (7).

(7) The matters to which the relevant NHS body must have regard for the purposes of determining the tariff for a relevant service under paragraph (6) are—

- (a) the amount of the pathway payment which would be payable to the relevant NHS body in accordance with the national tariff, by the commissioner with responsibility for commissioning services in respect of the overseas visitor to whom the relevant service was provided, if that overseas visitor were ordinarily resident in the United Kingdom;
- (b) the relevant service that the overseas visitor received as a proportion of the bundle of services to which the pathway payment applies; and
- (c) the complexity of the relevant service provided to the overseas visitor.

(8) Where a relevant service is not specified in the national tariff under section 116(1)(a) of the 2012 Act, the tariff is such price for the provision of that service as is determined in accordance with the rules provided for in the national tariff for that purpose including any applicable modification referred to in paragraph (10).

(9) The following variations to the national price of a relevant service made under the 2012 Act shall not apply to the determination of the national price for that relevant service for the purpose of paragraph (5)—

- (a) a variation agreed to by the commissioner of the service and the relevant NHS body that is providing that service in accordance with rules made under section 116(2);
- (b) a variation specified in the national tariff under section 116(4)(a), except for a variation—
 - (i) to reflect regional cost difference; or
 - (ii) to reflect patient complexity.

(10) An applicable modification is any modification to the price, as determined in accordance with the national tariff, of the relevant service where that modification is—

- (a) made in accordance with an agreement made under section 124(1) of the 2012 Act; or
- (b) determined by Monitor under section 125(1) of the 2012 Act.

(11) For the purposes of determining the tariff for a relevant service provided to an overseas visitor—

- (a) under paragraph (5) or (8) (whichever is applicable), a modification of the kind specified in paragraph (10) will apply to the relevant service only when the modification applies to the price payable to the relevant NHS body by the commissioner with responsibility for commissioning services in respect of that overseas visitor; and
- (b) under paragraph (8), an agreement between a commissioner and the relevant NHS body made in accordance with the rules will be relevant for the determination of the tariff only when the commissioner which is party to the agreement is the commissioner with responsibility for commissioning services in respect of that overseas visitor.

(12) Where rules made under section 116(6) provide for which specification of a relevant service is to apply in a particular case or cases of any particular description, the relevant NHS body must comply with those rules when calculating charges under this regulation for that relevant service.

(13) For the purposes of this regulation—

“the 2012 Act” means the Health and Social Care Act 2012(13);

“national price” has the meaning given in section 115(1) (price payable by commissioners for NHS services) of the 2012 Act;

“national tariff” is the document known as the national tariff published by Monitor under section 116(1) of the 2012 Act(14);

“the rules” mean the rules provided for in the national tariff under section 116 and 117 (the national tariff: further provision) of the 2012 Act.

(14) Nothing in this regulation prevents a relevant NHS body from obtaining a deposit or full payment in advance in respect of relevant services to be provided to an overseas visitor in respect of whom charges are payable under these Regulations.

PART 3

Relevant services exempt from charges

Interpretation of this Part

8.—(1) In this Part—

“female genital mutilation” means the excision, infibulation or other mutilation (collectively referred to as mutilation) of the whole or any part of a female’s labia majora, labia minora or clitoris where—

- (a) that mutilation constituted an offence under the Female Genital Mutilation Act 2003(15) (“the 2003 Act”);
- (b) if the mutilation was performed prior to the coming into force of the 2003 Act, that mutilation would have constituted an offence under the 2003 Act if the Act had been in force at the time the mutilation was performed; or
- (c) if the mutilation was performed outside the United Kingdom but did not constitute an offence under the 2003 Act, that mutilation would have constituted an offence under the 2003 Act had it been performed in the United Kingdom;

“girl” includes woman;

“torture” has the meaning given in Article 1(1) of the United Nations Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (agreed in New York on 4th February 1985)(16).

(2) The reference to treatment in regulation 9(f) includes—

- (a) any subsequent or on-going treatment provided to an overseas visitor for any condition, including a chronic condition, that is directly attributable to the torture, female genital mutilation, domestic violence or sexual violence; and
- (b) in the case of female genital mutilation, any antenatal, perinatal and postpartum treatment provided to an overseas visitor the need for which is directly attributable to the mutilation.

(13) 2012 c. 7.

(14) The 2014/15 national tariff is published on the following website: <https://www.gov.uk/government/publications/national-tariff-payment-system-2014-to-2015> or available from the Pricing Team, Monitor, 3rd Floor Wellington House, 133-155 Waterloo Road, London SE1 8UG.

(15) 2003 c. 31.

(16) Cm 1775. The Convention entered into force in respect of the United Kingdom on 7th January 1989.

Relevant services exempt from charges

9. No charge may be made or recovered in respect of any of the following relevant services provided to an overseas visitor—

- (a) accident and emergency services, but not including any services provided—
 - (i) after the overseas visitor has been accepted as an in-patient at a hospital⁽¹⁷⁾; or
 - (ii) at an outpatient appointment;
- (b) services provided otherwise than at, or by staff employed to work at, or under the direction of, a hospital;
- (c) family planning services;
- (d) services provided for the diagnosis and treatment of a condition listed in Schedule 1;
- (e) services provided for the diagnosis and treatment of sexually transmitted infections;
- (f) services provided for the treatment of a condition caused by—
 - (i) torture;
 - (ii) female genital mutilation;
 - (iii) domestic violence; or
 - (iv) sexual violence,

provided that the overseas visitor has not travelled to the United Kingdom for the purpose of seeking that treatment.

PART 4

Overseas visitors exempt from charges

Immigration health charge

10.—(1) In this regulation “relevant period” means—

- (a) where—
 - (i) an immigration health charge is payable⁽¹⁸⁾;
 - (ii) an exemption from paying an immigration health charge applies as a consequence of any exemption provided for in an order made under section 38 (immigration health charge) of the 2014 Act;
 - (iii) the Secretary of State has exercised discretion to reduce or waive all or part of an immigration health charge in accordance with such an order; or
 - (iv) the Secretary of State has exercised discretion to refund part, but not all of an immigration health charge paid under such an order,

the period of leave to enter or remain in the United Kingdom which is granted to the overseas visitor, or has effect on their arrival in the United Kingdom, in respect of the application for entry clearance or leave to remain to which the immigration health charge, exemption, reduction or waiver relates; and

- (b) in a case where the overseas visitor’s leave to enter or remain in the United Kingdom is extended by virtue of—

⁽¹⁷⁾ “Hospital” is defined in section 275(1) of the 2006 Act.

⁽¹⁸⁾ It is anticipated that an order will be made under section 38 of the Immigration Act 2014 to be in force on the 6th April 2015, but if that is not the case then regulations 10, 11 and 25(3) have no practical effect until such time as an order is made.

- (i) section 3C (continuation of leave pending variation decision)(**19**); or
- (ii) section 3D (continuation of leave following revocation)(**20**),

of the 1971 Act, the period in respect of which leave is extended under those sections.

(2) No charge may be made or recovered under these Regulations in respect of any relevant services provided during the relevant period to an overseas visitor in respect of whom—

- (a) an immigration health charge has been paid;
- (b) an exemption from paying such an immigration health charge applies, unless paragraph (3) applies;
- (c) a reduction or waiver from paying such an immigration health charge applies; or
- (d) a refund for part, but not all, of an immigration health charge has been made,

in accordance with an order made under section 38 of the 2014 Act.

(3) This paragraph applies where a person is exempt from payment of an immigration health charge under an order made under section 38 of the 2014 Act by virtue of having made an application—

- (a) for entry clearance where, if granted in accordance with the immigration rules, the entry clearance would have effect on arrival in the United Kingdom as leave to enter for 6 months or less, or where the leave to enter which may be granted pursuant to that entry clearance would be for 6 months or less if granted in accordance with the immigration rules; or
- (b) for entry clearance under Part 2 (visitors to the UK) of the immigration rules.

Overseas visitors who have made applications for entry clearance or leave to remain prior to the commencement of the immigration health charge

11.—(1) In this regulation “relevant period” means—

- (a) the period of leave to enter or remain in the United Kingdom granted to the overseas visitor in respect of the application for entry clearance or leave to remain to which paragraph (3) (a) refers; and
- (b) in a case where the overseas visitor’s leave to enter or remain in the United Kingdom is extended by virtue of—
 - (i) section 3C (continuation of leave pending variation decision); or
 - (ii) section 3D (continuation of leave following revocation),of the 1971 Act, the period in respect of which leave is extended under those sections.

(2) In this regulation “relevant date” means the date of coming into force of the first order made under section 38 of the 2014 Act.

(3) No charge may be made or recovered under these Regulations in respect of any relevant services provided to an overseas visitor during the relevant period who—

- (a) made an application for entry clearance or leave to remain in the United Kingdom before the relevant date and was granted leave to enter or remain in the United Kingdom or entry clearance which has effect on the overseas visitor’s arrival in the United Kingdom as leave to enter or remain in the United Kingdom in respect of that application;

(19) 1971 c. 77; section 3C was amended by the Nationality, Immigration and Asylum Act 2002 (c. 41), section 118; the Immigration, Asylum and Nationality Act 2006 (c. 13), section 11(1) to (4); and the Immigration Act 2014 (c. 22) (the 2014 Act), Schedule 9, paragraphs 20 and 21.

(20) Section 3D was amended by the Immigration, Asylum and Nationality Act 2006, section 11(5) and the 2014 Act, Schedule 9, paragraphs 20 and 22.

- (b) has entered, or remained in, the United Kingdom by virtue of that leave to enter or remain; and
- (c) had that application for entry clearance or leave to remain been made on or after the relevant date, would be—
 - (i) liable to pay an immigration health charge; or
 - (ii) exempt from paying an immigration health charge as a consequence of an exemption provision under an order made under section 38 of the 2014 Act, unless paragraph (4) applies.
- (4) This paragraph applies where an overseas visitor—
 - (a) would be exempt from an immigration health charge under an order made under section 38 of the 2014 Act by virtue of having made an application of a kind described in regulation 10(3)(a) or (b) (immigration health charge); or
 - (b) has been granted leave to enter or remain in the United Kingdom outside the immigration rules for 6 months or less.

Overseas visitors with EU rights

12. No charge may be made or recovered in respect of any relevant services provided to an overseas visitor who has an entitlement to the provision of the services in question without charge under or by virtue of any of the following—

- (a) regulations made under Article 48 of the Treaty on the Functioning of the European Union⁽²¹⁾;
- (b) an agreement entered into between the European Union and any other country; or
- (c) any other enforceable EU right⁽²²⁾.

Overseas visitors who are treated as if entitled under the Social Security Coordination Regulation

13. No charge may be made or recovered in respect of any relevant services provided to an overseas visitor who would have an entitlement to the provision of the services in question under Article 27(2) of Regulation (EC) No 883/2004⁽²³⁾ if the United Kingdom had opted in as described in that Article and was listed in Annex IV to that Regulation.

Reciprocal health care agreements

14. No charge may be made or recovered in respect of any relevant services provided to an overseas visitor where those services are provided in circumstances covered by a reciprocal agreement with a country or territory specified in Schedule 2.

Refugees, asylum seekers, supported individuals and looked after children

15. No charge may be made or recovered in respect of any relevant services provided to an overseas visitor who—

- (a) has been granted temporary protection, asylum or humanitarian protection under the immigration rules;

(21) OJ C 326, 26.10.2012, p. 47.

(22) For the expression “enforceable EU right”, see section 2(1) of the European Communities Act 1972 (c. 68), as amended by the European Union (Amendment) Act 2008 (c. 7), section 3(3) and Schedule, Part 1.

(23) Regulation (EC) No 883/2004 is defined in section 275(1) of the National Health Service Act 2006.

- (b) has made an application, which has not yet been determined, to be granted temporary protection, asylum or humanitarian protection under those rules;
- (c) is currently supported under section 95 (persons for whom support may be provided) of the Immigration and Asylum Act 1999(24) (“the 1999 Act”);
- (d) has made an application to be granted temporary protection, asylum or humanitarian protection under the immigration rules which was rejected and who is supported under—
 - (i) section 4(2) (facilities for the accommodation of a person) of the 1999 Act(25); or
 - (ii) section 21 (duty of local authorities to provide accommodation) of the National Assistance Act 1948(26); or
- (e) is a child who is looked after by a local authority within the meaning of section 22(1) (general duty of local authority in relation to children looked after by them) of the Children Act 1989(27).

Victims of human trafficking

16.—(1) No charge may be made or recovered in respect of any relevant services provided to an overseas visitor, where a competent authority—

- (a) has identified the overseas visitor as a victim of human trafficking; or
- (b) considers that there are reasonable grounds to believe that the overseas visitor is a victim of human trafficking, and the recovery and reflection period in relation to that person under Article 13 of the Trafficking Convention has not yet expired.

(2) In this regulation—

“competent authority” means a designated competent authority of the United Kingdom for the purposes of the Trafficking Convention(28);

“Trafficking Convention” means the Council of Europe Convention on Action against Trafficking in Human Beings (agreed at Warsaw on 16th May 2005)(29);

“victim of human trafficking” means a victim within the meaning of Article 4 of the Trafficking Convention.

Exceptional humanitarian reasons

17.—(1) Where an overseas visitor who has been granted leave to enter the United Kingdom outside the immigration rules—

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- (24) 1999 c. 33; section 95 was amended by the Nationality, Immigration and Asylum Act 2002 (c. 41), section 44(1) and (6) and 50(1).
 - (25) Section 4 was amended by the Nationality, Immigration and Asylum Act 2002 (c. 41), section 49; the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 (c. 19), section 10(1) and (6), and the Immigration, Asylum and Nationality Act 2006 (c. 13), section 43(7).
 - (26) 1948 c. 29. Relevant amendments to section 21 were made by the Local Government Act 1972 (c. 70), Schedule 23, paragraph 2, and Schedule 30; the National Health Service Reorganisation Act 1973 (c. 32), Schedule 5; the Housing (Homeless Persons) Act 1977 (c. 48), Schedule; the Children Act 1989 (c. 41), Schedule 13, paragraph 11(1); the National Health Service and Community Care Act 1990 (c. 19), section 42(1), Schedule 9, paragraph 5(1) to (3), and Schedule 10; the Immigration and Asylum Act 1999 (c. 33), section 116; the Health and Social Care Act 2001 (c. 15), section 53; the Nationality, Immigration and Asylum Act 2002 (c. 41), section 45(5), and the National Health Service (Consequential Provisions) Act 2006 (c. 43), Schedule 1, paragraphs 5 and 6.
 - (27) 1989 c. 41; section 22(1) was amended by the Local Government Act 2000 (c. 22), Schedule 5, paragraph 19; the Children (Leaving Care) Act 2000 (c. 35), section 2(1) and (2), and the Adoption and Children Act 2002 (c. 38), section 116(2).
 - (28) The designated competent authorities for the United Kingdom for the purposes of the Trafficking Convention are the Home Office (postal address: UKVI, Waterside Court, 471 Kirkstall Road, Leeds LS4 2QB) and the United Kingdom Human Trafficking Centre (postal address: UKHTC, PO Box 8000, London SE11 5EN).
 - (29) Cm 8414. The Convention entered into force in respect of the United Kingdom on 1st April 2009.

- (a) applies (or someone applies on the overseas visitor's behalf) for exemption from charges in respect of relevant services for a course of treatment; and
 - (b) the Secretary of State determines that exceptional humanitarian reasons justify it,
- no charge may be made or recovered in respect of relevant services provided to that overseas visitor for that course of treatment.

(2) A determination under paragraph (1)(b) may only be made by the Secretary of State if the Secretary of State is satisfied, in the case of that overseas visitor, that—

- (a) the treatment specified is not available in that person's home country;
- (b) the necessary arrangements have been made for temporary accommodation for that person, any authorised companion and authorised child for the duration of the course of treatment; and
- (c) the necessary arrangements have been made for the return of that person, any authorised companion and any authorised child to their home country when the course of treatment is completed.

Overseas visitors detained in hospital or subject to court ordered treatment

18. No charge may be made or recovered in respect of relevant services provided to an overseas visitor—

- (a) who is liable to be detained in a hospital, received into guardianship or subject to a community treatment order under the Mental Health Act 1983⁽³⁰⁾;
- (b) who is detained in a hospital in circumstances which amount to deprivation of the overseas visitor's liberty and that deprivation of liberty is authorised under any of the following provisions of the Mental Capacity Act 2005⁽³¹⁾—
 - (i) section 4A (restriction on deprivation of liberty)⁽³²⁾;
 - (ii) section 4B (deprivation of liberty necessary for life-sustaining treatment etc)⁽³³⁾;
 - (iii) section 16 (powers to make decisions and appoint deputies: general); or
 - (iv) Schedule A1 (hospital and care home residents: deprivation of liberty)⁽³⁴⁾;
- (c) whose detention in hospital is authorised by any other enactment authorising detention in a hospital; or
- (d) who is required to submit to a specified form of treatment that is imposed by, or included in, an order of a court and paragraph (a), (b) or (c) does not apply.

Prisoners or detainees

19.—(1) No charge may be made or recovered in respect of any relevant services provided to an overseas visitor—

- (a) who is detained in prison or in a place in which a person may be detained that is provided by the Secretary of State under section 43(1) (remand centres and young offender institutions) of the Prison Act 1952⁽³⁵⁾; or

⁽³⁰⁾ 1983 c. 20. Section 17A(3) of the Mental Health Act 1983, which was inserted by section 32(1) and (2) of the Mental Health Act 2007 (c. 12) ("the 2007 Act"), defines "community treatment order" for the purposes of that Act.

⁽³¹⁾ 2005 c. 9.

⁽³²⁾ Section 4A was inserted by the 2007 Act, section 50(1) and (2).

⁽³³⁾ Section 4B was inserted by the 2007 Act, section 50(1) and (2).

⁽³⁴⁾ Schedule A1 was inserted by the 2007 Act, Schedule 7.

⁽³⁵⁾ 1952 c. 52; section 43(1) was amended by the Criminal Justice Act 1988 (c. 33), Schedule 8, paragraph 1, Schedule 15, paragraph 11, Schedules 16 and 18; the Criminal Justice and Public Order Act 1994 (c. 33), section 5(2), 18(3) and Schedule 11; the Crime and Disorder Act 1998 (c. 37), Schedule 8, paragraph 6; the Powers of Criminal Courts (Sentencing) Act 2000

- (b) who is detained under any of the following provisions—
- (i) Schedule 2 (administrative provisions as to control on entry etc)(**36**) or Schedule 3 (supplementary provisions as to deportation)(**37**) to the 1971 Act;
 - (ii) section 62 (detention by Secretary of State) of the Nationality, Immigration and Asylum Act 2002(**38**);
 - (iii) section 40(7)(c) (searches: contracting out) of the Immigration, Asylum and Nationality Act 2006(**39**); or
 - (iv) section 2 (detention) or 36 (detention) of the UK Borders Act 2007(**40**).
- (2) In this regulation, “prison” has the meaning given in section 53(1) of the Prison Act 1952(**41**).

Members of the regular and reserve forces, Crown servants and others

20.—(1) No charge may be made or recovered in respect of any relevant services provided to an overseas visitor who is—

- (a) a member of the regular or reserve forces within the meaning of the Armed Forces Act 2006(**42**);
- (b) a qualifying employee who is visiting the United Kingdom in the course of the qualifying employment; or
- (c) where paragraph (b) does not apply, a qualifying employee who—
 - (i) was ordinarily resident in the United Kingdom immediately prior to becoming a qualifying employee; or
 - (ii) where the qualifying employee has been employed in more than one position of qualifying employment, the qualifying employee was ordinarily resident in the United Kingdom immediately prior to taking up one of the positions of qualifying employment.

(2) An overseas visitor will be a “qualifying employee” if the overseas visitor was recruited in the United Kingdom and is—

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- (c. 6), Schedule 9, paragraph 5(1) and (2); the Criminal Justice and Immigration Act 2008 (c. 4), Schedule 26, paragraph 3, and the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10), Schedule 12, paragraph 4.
- (36) 1971 c. 77; Schedule 2 was amended by the Criminal Justice Act 1972 (c. 71), Schedule 6, Part II; the British Nationality Act 1981 (c. 61), Schedule 4, paragraphs 2 and 3(1); the Immigration Act 1988 (c. 14), Schedule, paragraphs 6 to 9 and 10(1); the Asylum and Immigration Act 1996 (c. 49), Schedule 2, paragraphs 5 to 12 and Schedule 4; the Access to Justice Act 1999 (c. 22), Schedule 13, paragraph 70; the Immigration and Asylum Act 1999 (c. 33), section 18, 19, 132(2), 134(2), 135(2), 136(2), 139(2), 140, Schedule 14, paragraphs 43, 56 to 65, 67 and Schedule 16; the Nationality, Immigration and Asylum Act 2002 (c. 41), sections 63, 64, 73(1) and (5), 119 and Schedule 7, paragraphs 2, 4 and 6; the Courts Act 2003 (c. 39), Schedule 8, paragraph 149; the Health Protection Agency Act 2004 (c. 17), Schedule 3, paragraph 3; the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 (c. 19), section 16, 18 and Schedules 2 and 4, paragraph 1; the Immigration, Asylum and Nationality Act 2006 (c. 13), sections 27, 31 and 42 and Schedule 3; the Immigration Act 2014 (c. 22), section 5, 7, 9, 13, Schedule 1, paragraphs 1, 2(1) and 3, Schedule 2, paragraph 1, Schedule 8, Schedule 9, paragraphs 1, 20, 23 and 72; S.I. 1990/2227, 1993/1813, 2010/21 and 2014/1704.
- (37) Schedule 3 was amended by the Criminal Justice Act 1982 (c. 48), Schedule 10; the Immigration Act 1988 (c. 14), Schedule, paragraph 10(2); the Asylum and Immigration Act 1996 (c. 49), Schedule 2, paragraph 13; the Immigration and Asylum Act 1999 (c. 33), section 54 and Schedule 14, paragraphs 43 and 68; the Nationality, Immigration and Asylum Act 2002 (c. 41), Schedule 7, paragraph 7 and 8; the Courts Act 2003 (c. 39), Schedule 8, paragraph 150 and Schedule 10; the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 (c. 19), section 34; the Immigration, Asylum and Nationality Act 2006 (c. 13), section 53, and the Immigration Act 2014 (c. 22), Schedule 1, paragraph 2(2) and Schedule 9, paragraphs 9, 20 and 24.
- (38) 2002 c. 41; section 62 was amended by the Prevention of Terrorism Act 2005 (c. 2), section 16(2)(c) and the Immigration Act 2014 (c. 22), Schedule 9, paragraphs 3(1), (2) and 13.
- (39) 2006 c. 13.
- (40) 2007 c. 30; section 2 was amended by the Borders, Citizenship and Immigration Act 2009 (c. 11), section 52(1).
- (41) 1952 c. 52. There are amendments to section 53(1) but none are relevant.
- (42) 2006 c. 52; “the regular forces” and “the reserve forces” are defined in section 374 of the Armed Forces Act 2006 as amended by the Defence Reform Act 2014 (2014 c. 20), section 44(3)(a), (b) and (4).

- (a) a Crown servant (other than a person falling within paragraph (1)(a)) employed by, or in the service of, the Government of the United Kingdom;
- (b) an employee of the British Council or the Commonwealth War Graves Commission; or
- (c) working in employment, whether or not the overseas visitor derives a salary or wage from that employment, that is financed in part by the Government of the United Kingdom in accordance with arrangements with the Government of some other country or territory or a public body in such other country or territory.

(3) In this regulation “qualifying employment” means any period of employment during which the overseas visitor was a qualifying employee.

NATO forces

21.—(1) No charge may be made or recovered in respect of any relevant services provided to an overseas visitor who is a person to whom Article IX(5) of the Agreement regarding the Status of Forces of Parties to the North Atlantic Treaty (agreed in London on 19th June 1951)(**43**) applies.

(2) This regulation applies where the services in question cannot readily be provided by the medical services of the armed forces of—

- (a) the overseas visitor’s own country; or
- (b) the United Kingdom.

War pensioners and armed forces compensation scheme payment recipients

22. No charge may be made or recovered in respect of any relevant services provided to an overseas visitor who is in receipt of—

- (a) any pension or other benefit under a Personal Injuries Scheme or Service Pensions Instrument, which Scheme and Instrument are defined in regulation 2(1) (interpretation) of the Social Security (Overlapping Benefits) Regulations 1979(**44**); or
- (b) a payment made under article 15(1)(c) (description of benefits – injury) or article 29(1) (description of benefits – death) of the Armed Forces and Reserve Forces (Compensation Scheme) Order 2011(**45**).

Employees on ships

23. No charge may be made or recovered in respect of any relevant services provided to an overseas visitor who is employed or engaged or working in any capacity on board a ship and whose normal place of work is on board a ship, where that ship is registered in the United Kingdom.

Treatment the need for which arose during the visit

24. No charge may be made or recovered in respect of any relevant services, consisting of treatment the need for which arose during the visit, provided to an overseas visitor who is any of the following—

- (a) a national of a state which is a contracting party to the European Convention on Social and Medical Assistance (agreed in Paris on 11th December 1953)(**46**) or the European Social Charter (agreed in Turin on 18th October 1961)(**47**) and is—

(43) Cmd. 9363.

(44) S.I. 1979/597, amended by S.I. 1980/1927; there are other amending instruments but none is relevant.

(45) S.I. 2011/517, amended by S.I. 2011/2552; there are other amending instruments but none is relevant.

(46) Cmd. 9512. The Convention entered into force in respect of the United Kingdom on 7th September 1954.

(47) Cmd. 2643. The Charter entered into force in respect of the United Kingdom on 11th July 1962. Article 13 provides the right to social and medical assistance.

- (i) lawfully present in the United Kingdom; and
 - (ii) without sufficient resources to pay the charge;
- (b) an authorised child or an authorised companion.

Family members of overseas visitors

25.—(1) For the purposes of this regulation, unless otherwise provided, “member of the family” means—

- (a) the spouse or civil partner of an overseas visitor; or
- (b) a child in respect of whom an overseas visitor has parental responsibility.

(2) No charge may be made or recovered in respect of any relevant services provided to an overseas visitor who is a member of the family of another overseas visitor (“the principal overseas visitor”) and is lawfully present if the principal overseas visitor is exempt from charges under any of the following regulations—

- (a) regulation 16 (victims of human trafficking);
- (b) regulation 20 (members of the regular and reserve forces, Crown servants and others);
- (c) regulation 21 (NATO forces).

(3) No charge may be made or recovered in respect of any relevant services provided to an overseas visitor who is a child who—

- (a) is born in the United Kingdom to a parent who is exempt from charges by virtue of—
 - (i) regulation 10 (immigration health charge); or
 - (ii) regulation 11 (overseas visitors who have made applications for entry clearance or leave to remain prior to the commencement of the immigration health charge);
- (b) is aged 3 months or less; and
- (c) has not left the United Kingdom since birth.

(4) Subject to paragraphs (5) to (7) of this regulation, no charge may be made or recovered in respect of any relevant services provided to an overseas visitor who is a member of the family of a principal overseas visitor if—

- (a) the overseas visitor is lawfully present in the United Kingdom;
- (b) the overseas visitor is visiting the United Kingdom with the principal overseas visitor; and
- (c) the principal overseas visitor is exempt from charges under—
 - (i) regulation 12 (EU rights);
 - (ii) regulation 13 (overseas visitors who are treated as if entitled under the social security coordination regulation); or
 - (iii) regulation 22 (war pensioners and armed forces compensation scheme payment recipients).

(5) Where the overseas visitor is a member of the family of a principal overseas visitor who is exempt from charges under—

- (a) regulation 12 (EU rights); or
- (b) regulation 13 (overseas visitors who are treated as if entitled under the social security coordination regulation),

the exemption in paragraph (4) only applies if both the conditions in paragraphs (6) and (7) are satisfied.

- (6) The first condition is that—

- (a) the overseas visitor—
 - (i) where paragraph (5)(a) applies, does not have an enforceable EU right of the kind described in regulation 12; or
 - (ii) where paragraph (5)(b) applies, would not have an enforceable EU right of the kind described in regulation 13 if the United Kingdom had opted in as described in Article 27(2) of Regulation 883/2004 and was listed in Annex IV to that Regulation; and
 - (b) the reason that the overseas visitor does not, or would not, have an enforceable EU right of the kind described in those regulations is because the overseas visitor is not recognised as a member of the family (within the meaning in Article 1(i) of Regulation (EC) 883/2004 or any other relevant regulations or agreements which provide for an enforceable EU right of the kind described in regulation 12 for family members) of the principal overseas visitor.
- (7) The second condition is that the relevant services provided to the overseas visitor are services that the overseas visitor would be entitled to receive without charge by virtue of an enforceable EU right under regulation 12 or 13 if the overseas visitor had such a right.
- (8) None of the provisions of this regulation affect any entitlement which any member of the family of an overseas visitor may have to an exemption from charges for relevant services by virtue of an enforceable EU right or any other exemption which they may be entitled to in their own right.

PART 5

Consequential amendments, savings and revocations

Consequential amendments

26. The consequential amendments set out in Schedule 3 have effect.

Savings and revocations

27. The instruments set out in column (1) of the table in Schedule 4 are saved in respect of charges made, or to be made, and recovered for courses of treatment (whether continuing or not) commenced before the 6th April 2015, but are otherwise revoked to the extent set out in column (3) of that table.

Signed by authority of the Secretary of State for Health.

5th February 2015

Earl Howe
Parliamentary Under-Secretary of State,
Department of Health

SCHEDULE 1

Regulation 9

Diseases for which no charge is to be made for treatment

Acute encephalitis
Acute poliomyelitis
Anthrax
Botulism
Brucellosis
Cholera
Diphtheria
Enteric fever (typhoid and paratyphoid fever)
Food poisoning
Haemolytic uraemic syndrome (HUS)
Human immunodeficiency virus (HIV)
Infectious bloody diarrhoea
Invasive group A streptococcal disease and scarlet fever
Invasive meningococcal disease (meningococcal meningitis, meningococcal septicaemia and other forms of invasive disease)
Legionnaires' disease
Leprosy
Leptospirosis
Malaria
Measles
Mumps
Pandemic influenza (defined as the "Pandemic Phase") or influenza that might become pandemic (defined as the "Alert Phase") as defined by WHO in the World Health Organisation's ("WHO") Pandemic Influenza Risk Management Interim Guidance⁽⁴⁸⁾
Plague
Rabies
Rubella
Severe Acute Respiratory Syndrome (SARS)
Smallpox
Tetanus
Tuberculosis
Typhus
Viral haemorrhagic fever
Viral hepatitis
Whooping cough

⁽⁴⁸⁾ The Guidance may be obtained from the World Health Organisation website: http://www.who.int/influenza/preparedness/pandemic/influenza_risk_management/en/ or from the Department of Health, Pandemic Influenza Preparedness Team, Room 101 Richmond House, 79 Whitehall, London SW1A 2NS.

Yellow fever

SCHEDULE 2

Regulation 14

Reciprocal agreements

Anguilla
Armenia
Australia
Azerbaijan
Barbados
Belarus
Bosnia
British Virgin Islands
Falkland Islands
Georgia
Gibraltar
Isle of Man
Israel
Jersey
Kazakhstan
Kosovo
Kyrgyzstan
Macedonia
Moldova
Montenegro
Montserrat
New Zealand
Russia
Serbia
St Helena
Tajikistan
Turkmenistan
Turks and Caicos Islands
Ukraine
Uzbekistan

SCHEDULE 3

Regulation 26

Consequential amendments

Amendment of the Personal Injuries (NHS Charges) (General) and Road Traffic (NHS Charges) (Amendment) Regulations 2006

1. In the Personal Injuries (NHS Charges) (General) and Road Traffic (NHS Charges) (Amendment) Regulations 2006(49), in regulation 1 (citation, commencement, application and interpretation), in paragraph (3), in the definition of “overseas visitors’ charge” for “or regulation 3 of the National Health Service (Charges to Overseas Visitors) Regulations 2011 (obligation to make and recover charges)” substitute “, regulation 3 of the National Health Service (Charges to Overseas Visitors) Regulations 2011 (obligation to make and recover charges) or regulation 3 of the National Health Service (Charges to Overseas Visitors) Regulations 2015 (obligation to make and recover charges)”.

Amendment of the Human Tissue Act 2004 (Ethical Approval, Exceptions from Licensing and Supply of Information about Transplants) Regulations 2006

2. In the Human Tissue Act 2004 (Ethical Approval, Exceptions from Licensing and Supply of Information about Transplants) Regulations 2006(50), in Schedule 2 (receipt of transplantable material), in paragraph 10(c) after “Schedule 2 to the National Health Service (Charges to Overseas Visitors) Regulations 2011” insert “, Schedule 2 to the National Health Service (Charges to Overseas Visitors) Regulations 2015”.

Amendment of the National Health Service (Cross-Border Healthcare) Regulations 2013

3. In the National Health Service (Cross-Border Healthcare) Regulations 2013(51), at the end of regulation 14 (exemption from NHS charges for certain persons who reside in another member State) insert—

“(5) None of the provisions of this regulation affect any entitlement which any person may have to the provision of services without charge by virtue of regulations made under section 175 of the NHS Act.”.

SCHEDULE 4

Regulation 27

Revocations

<i>(1) Instruments revoked</i>	<i>(2) References</i>	<i>(3) Extent of revocation</i>
The National Health Service (Charges to Overseas Visitors) Regulations 2011	SI 2011/1556	The whole Regulations
The National Health Service (Charges to Overseas Visitors) Amendment Regulations 2012	SI 2012/1586	The whole Regulations

(49) [S.I. 2006/3388](#), amended by [S.I. 2011/1556](#) and [2009/316](#).

(50) [S.I. 2006/1260](#), amended by [S.I. 2012/1809](#) and [2011/1556](#).

(51) [S.I. 2013/2269](#).

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

<i>(1) Instruments revoked</i>	<i>(2) References</i>	<i>(3) Extent of revocation</i>
The National Health Service (Charges to Overseas Visitors) (Amendment) Regulations 2014	SI 2014/1534	The whole Regulations
The National Treatment Agency (Abolition) and the Health and Social Care Act 2012 (Consequential, Transitional and Saving Provisions) Order 2013	SI 2013/235	Paragraph 164 of Schedule 2

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations replace the National Health Service (Charges to Overseas Visitors) Regulations 2011 (the 2011 Regulations) and provide for the making and recovery of charges for relevant services provided under the National Health Service Act 2006 (the 2006 Act) to certain persons not ordinarily resident in the United Kingdom (overseas visitors).

Regulation 2 defines “child” to mean a person who is under the age of eighteen. This aligns the definition of child with that set out in the Children Act 1989 (the Children Act). “Parental responsibility” is defined by reference to the meaning in section 3 of the Children Act. “Entry clearance” and “immigration rules” are defined which are relevant for the purposes of regulations 6, 10, 11 and 15.

The definition of “relevant NHS body” includes NHS foundation trusts, NHS trusts and local authorities exercising public health functions. The definition of “relevant services” means all services provided under the 2006 Act, except for primary medical, dental and ophthalmic services.

The definition of “treatment the need for which arose during the visit” includes only that treatment which cannot wait until the overseas visitor can reasonably be expected to return to their country of ordinary residence and only applies where the overseas visitor has not travelled to the United Kingdom for the purpose of seeking treatment.

Regulation 3 imposes an obligation on a “relevant NHS body” to make and recover charges in respect of relevant services provided to an overseas visitor where the relevant NHS body determines that no exemption provided for in the Regulations applies.

Paragraph (4) provides for the remainder of a course of treatment to continue to be exempt from charges where part way through the course of treatment the overseas visitor ceases to be exempt from charges. The exception is where an overseas visitor is exempt from charges under regulation 10 because they have paid, are exempt from paying, or in respect of whom the Secretary of State has waived, the immigration health charge; under transitional arrangements under regulation 11 for overseas visitors unable to pay the health charge until their next visa application; and under regulation 25(3) as a child born to parent who is exempt from charges under regulation 10 or 11. These exemptions are time limited (based on visa expiry or time spent in the UK) so the overseas visitor (or their parents, as the case may be) will know when their entitlement to the exemption from

charges will cease and will have the opportunity to apply for further leave to remain, or to regularise the immigration status of their children.

Regulation 4 makes provision about the persons liable to pay charges in respect of relevant services provided to an overseas visitor. Regulation 5 provides for repayment to be made to a person who has paid charges in respect of relevant services provided to an overseas visitor where a charge has been made and recovered which is not payable under these Regulations.

Regulation 6 provides for an overseas visitor who receives relevant services and, subsequent to those charges being made or recovered, is granted temporary protection, asylum or humanitarian protection under the immigration rules or is identified as a victim of human trafficking, to be treated, in respect of those relevant services, as an overseas visitor in respect of whom the Regulations provide for no charge to be made or recovered.

Regulation 7 makes provision about how relevant NHS bodies must calculate charges for relevant services provided to an overseas visitor.

Regulation 8 defines “female genital mutilation” and “torture” for the purposes of Part 3 of the Regulations which makes provision about relevant services which are exempt from charges. Regulation 9 provides for an exemption from charges for relevant services provided to an overseas visitor to treat a condition caused by torture, genital mutilation, domestic violence or sexual violence. Regulation 8(3) makes clear that treatment that is exempt from charges in those circumstances includes any subsequent and on-going treatment for any condition, including chronic conditions, that is directly attributable to the violence and that treatment, in the case of female genital mutilation, includes any antenatal, perinatal and postpartum treatment the need for which is directly attributable to the mutilation.

Regulation 10 provides for an exemption from charges for an overseas visitor who has paid, is exempt from paying (except when exempt on the basis of visiting the United Kingdom for less than six months), or in respect of whom the Secretary of State has exercised discretion to reduce, partially refund or waive, a charge under an order made under section 38 (immigration health charge) of the Immigration Act 2014. The exemption applies for the “relevant period” which is the period for which leave to enter or remain in the United Kingdom is granted to the overseas visitor.

Regulation 11 provides for an exemption from charges for those overseas visitors who apply for leave to enter or remain before the first order made under section 38 comes into force and who, consequently, will not have an opportunity to pay the immigration health charge until they next apply for leave to enter or remain in the United Kingdom. By virtue of section 39 of the Immigration Act 2014 (related provision: charges for health services), which has yet to come into force, such people, who would previously have been ordinarily resident or, in most cases, exempt from charges under the 2011 Regulations will become chargeable under these Regulations. Regulation 11 is intended to maintain the exemption from charges for those people until they next apply for leave to enter or remain in the UK.

Regulation 12 ensures that the Regulations are consistent with the United Kingdom’s obligations in respect of overseas visitors who are entitled to the provision of relevant services without charge by virtue of an enforceable EU right.

Regulation 13 provides for an exemption from charges for overseas visitors who would be entitled to the provision of relevant services without charge under Regulation (EC) No 883/2004 if the United Kingdom was listed in Annex IV to that Regulation.

Regulation 14 provides for an exemption from charges for overseas visitors who are entitled to relevant services without charge under the terms of a reciprocal healthcare agreement with another country. Schedule 2 lists those countries with which the United Kingdom has a reciprocal healthcare agreement.

Regulation 15 provides for an exemption from charges for person who have been granted or have made an application for temporary protection, asylum or humanitarian protection and persons

supported by the Home Office under section 95 of the Immigration and Asylum Act 1999 (the 1999 Act). Failed asylum seekers who are supported by the Home Office under section 4(2) of the 1999 Act or by a local authority under section 21 of the National Assistance Act 1948 are also exempt from charges. Paragraph (e) provides for an exemption for children looked after by a local authority within the meaning of section 22(1) of the Children Act 1989.

Regulation 16 provides an exemption from charges for an overseas visitor who is identified by a competent authority as a victim of human trafficking under the Council of Europe Convention on Action against Trafficking in Human Beings, or who a competent authority has reasonable grounds for believing is a victim of human trafficking.

Regulation 17 provides for the Secretary of State to determine that, if exceptional humanitarian reasons justify it, an overseas visitor is exempt from charges, subject to conditions on that determination set out in paragraph (2).

Regulation 18 provides for an exemption from charges for an overseas visitor who is detained in hospital under the Mental Health Act 1983, received in guardianship or subject to a community treatment order under that Act or deprived of their liberty under the Mental Capacity Act 2005. An overseas visitor required to submit to treatment under a court order is also exempt from charges.

Regulation 19 provides for an exemption from charges for an overseas visitor who is detained in a prison; or in a remand centre, young offender institution or secure training centre under section 43(1) of the Prison Act 1952; or who is in immigration detention.

Regulation 20 exempts qualifying employees and members of the regular and reserve forces from charges. A qualifying employee, unless they are in the United Kingdom in the course of their employment, must have been recruited in the United Kingdom and have been ordinarily resident in the United Kingdom prior to taking up that employment. A qualifying employee includes Crown servants, employees of the British Council or the Commonwealth War Graves Commission and overseas visitors in employment financed by the United Kingdom Government.

Regulation 21 exempts NATO forces members to whom Article IX(5) of the Agreement regarding the Status of Forces of Parties to the North Atlantic Treaty applies, where the relevant services in question cannot readily be provided by the medical services of either the armed forces of the overseas visitor's own country or those of the United Kingdom.

Regulations 22 exempts war pensioners and armed forces compensation scheme payment recipients from charges for relevant services. Regulation 23 exempts overseas visitors who are employed, engaged or working on a United Kingdom registered ship from charges for relevant services.

Regulation 24 provides for an exemption from charges for treatment the need for which arose during the overseas visitor's visit, for an overseas visitor who is entitled to services under the European Convention on Social and Medical Assistance or the European Social Charter, where the overseas visitor is in the United Kingdom lawfully and without sufficient resources to pay the charges. An authorised child or companion to a person exempt from charges under regulation 17 (exceptional humanitarian reasons) is also exempt from charges for treatment the need for which arose during the overseas visitor's visit.

Regulation 25 provides an exemption from charges for an overseas visitor who is the member of the family of a principal overseas visitor who is exempt from charges under various other regulations.

Paragraph (2) provides an exemption from charges for an overseas visitor who is a member of the family of a principal overseas visitor who is exempt under regulation 16 (victims of human trafficking), regulation 20 (members of the regular and reserve forces, Crown servants and others) or regulation 21 (NATO forces).

Paragraph (3) provides an exemption for a child who is born to a parent who is exempt from charges under regulation 10 (immigration health charge). The exemption applies while the child is less than three months of age provided they have not left the United Kingdom since birth. The exemption ensures that a child born in these circumstances does not attract charges before the child's parents

have had an opportunity to regularise the child's immigration status and apply for leave for their child to remain in the United Kingdom and pay the immigration health charge, if applicable.

Paragraph (4) provides an exemption from charges for an overseas visitor who is a member of the family of a principal overseas visitor who has an enforceable EU right to the provision of relevant services without charge under regulation 12 (EU rights) or 13 (overseas visitors who are treated as if entitled under the social security coordination regulation), or is exempt under regulation 22 (war pensioners and armed forces compensation scheme payment recipients). The exemption in respect of family members of overseas visitors with EU rights captures family members who do not have an EU right in their own right or as a family member under EU law because their relationship to the principal overseas visitor is not recognised as a family relationship under EU law. This would include an overseas visitor whose same sex marriage to, or civil partnership with, the principal overseas visitor is not recognised in the law of the member state in which the principal overseas visitor is insured.

Regulation 26 provides for the consequential amendments in Schedule 3 to have effect.

Regulation 27 saves the instruments listed in Schedule 4 in respect of charges made, or to be made, and recovered for courses of treatment commenced before the coming to force of the Regulations, and otherwise revokes the instruments to the extent specified in Schedule 4.

An impact assessment for the Visitor and Migrants Cost Recovery Programme was published in July 2014⁽⁵²⁾. A further impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.

(52) The impact assessment is available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/331623/Impact_assessment.pdf or from the Overseas Visitors Team, Room 2N15, Quarry House, Leeds LS2 7UE.