

Annex A



Name of Policy/Guidance/Operational Activity

Aims and background

The UK Border Agency has a key role to play in working with others to ensure that UK publicly funded services are shielded against misuse by those who are not permitted free access. This will enable providers to focus their resources on delivering services to those who are otherwise entitled to receive them, and will provide the public with reassurance that the rules governing access to tax-payer funded benefits and services are fair and transparent and effectively applied. Where non-residents have a responsibility to pay for the public services they use, this requirement should be enforced.

Regular polling commissioned by the Home Office reveals that public attitudes favour firm action to enforce our immigration laws. In particular, there is significant public support for the UK Border Agency to work closely with other Government departments to deny benefits and free NHS treatment to those who are not entitled. Taking firm action against those who misuse public funds and services helps to address public concerns about the impact of migration.

An ongoing objective for the UK Border Agency is to help protect the UK's publicly funded services and to prevent their misuse by those who are not entitled to free access. Currently, those subject to immigration control restrictions are barred by immigration law from claiming most forms of non-contributory state benefit. However, currently there is not an equivalent integration of health regulations with immigration laws. This is because there is a duty not to deny urgent treatment to any person who needs it – most such treatment will subsequently be charged for but in some instances those charges will not be able to be recovered.

It is intended that people subject to immigration control who fail to clear outstanding National Health Service (NHS) charges of or above £1,000 should be refused permission to re-enter or extend their stay in the UK, and the NHS should share information about relevant non-payers with the UK Border Agency so that individuals can be identified for action when they come into contact with the immigration system. The aim is to send a strong deterrent message that free NHS treatment is a benefit for people who are currently exercising a lawful right to live in this country, or are otherwise specifically exempted under regulations, not an international free for all, and to encourage the recovery of money owed to UK taxpayers.

The measures are designed to deal with those who seek to evade payment for treatment they know they are liable to pay for, those who repeatedly ignore the NHS charging regulations (as approved by the UK and Scottish Parliaments and the Welsh and Northern Ireland Assemblies) and those who misrepresent their true reason for visiting the UK when their prime motivation is to make use of the NHS.

Paragraph 51 of the Immigration Rules (HC 395 as amended) makes provision for persons subject to immigration control to enter the UK for the purpose of pre-arranged private medical treatment. There is no provision to enter for the purpose of obtaining NHS treatment but urgently needed or immediately necessary treatment for which the need arises during a visit is never

denied. With certain exceptions, such treatment is chargeable for non-residents under the National Health Service (Charges to Overseas Visitors) Regulations 2011 (in England), the National Health Service (Charges to Overseas Visitors) Regulations in relation to Wales, as amended, the National Health Service (Charges to Overseas Visitors) (Scotland) Regulations 1989 and the Provision of Health Services to Persons not Ordinarily Resident Regulations (Northern Ireland) 2005.

Analysis of data from a sample of NHS bodies conducted by the Department of Health in England suggests around 3,600 people in one year incurred unpaid NHS debts over £1,000, and around 4,500 people had outstanding NHS debts of over £500. Exercises by UK Border Agency to examine arriving passengers as to their previous stay and level of health care access provided evidence that some were accessing health care and sought, often on a repeat basis, to evade payment. The evidence also demonstrated the administrative difficulty faced by the NHS in identifying foreign nationals and their liability to be charged. The evidence of this analysis suggests that there is an ongoing need to control the level of debts incurred by foreign nationals in order to meet a proportional and reasonable need and that failure to do so would place a financial and capacity burden on our health services that could effect the NHS treatment available for those who are entitled to it for free.

Scope and Purpose of Rules Change:

The broad aims of this rules change are to:-

- Deter overseas visitors from misusing the NHS;
- Encourage overseas visitors to meet their obligations to pay for the NHS services they use;
- Enable the UK Border Agency to identify more effectively and take action against migrants with significant unpaid NHS charges;
- Provide better controls to avoid the potential for fraud, safeguarding NHS resources;
- Reassure the public that we operate fair and robust controls on migrants' access to public benefits and services;
- Enable hospitals to be better able to recover unpaid debt; and
- Enable other patients to indirectly benefit by the recovery of NHS resources.

The policy will:

- Apply to persons not entitled to free NHS treatment in England, Scotland, Wales or N Ireland;
- Not apply in respect of private treatment provided by an NHS hospital;
- Only apply to accumulated debts of at least £1,000 whether due to one NHS Trust or more than one Trust, where it is clear that the debt will not be paid;
- Not apply while there is an active dispute or a payment schedule has been agreed;
- Only apply in respect of chargeable hospital treatment and excludes treatment for which charges do not apply (e.g. A&E and specified diseases);
- Only apply to debts invoiced on or after 1 November 2011; and
- Not apply to EEA citizens who are exercising their free movement treaty rights or able to access healthcare under the European Health Insurance Card scheme.

A previous Equality Impact Assessment relating to this policy change is located at:

<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/consultations/nhs-debtors/>. The UK Border Agency undertook a public consultation "Refusing entry or stay to NHS debtors" which centred on proposed changes to the Immigration Rules. This consultation ran from February 2010 to June 2010. Participants included both organisations and private individuals who

provided responses to an online questionnaire but were also able to provide written input. A Consultation Report was published in March 2011.

Some respondents to the public consultation raised concerns that the proposed sanctions may act as a deterrent to seeking medical advice or treatment. However, existing safeguards ensure the provision of treatment where it is urgently required or considered immediately necessary. It is reasonable and proportionate to seek to recoup charges that have been raised in compliance with the law. These measures, together with the need to protect the public purse, ensure that the impact is mitigated and is proportionate to the risk.

The proposed Immigration Rules change will not affect the current rights of people to seek medical opinion or treatment, either free or chargeable according to Health regulations and guidance. Where there is a wider public interest in providing treatment, e.g. in cases of disease where there is a risk to public health, such treatment is currently, and will remain, free of charge under respective Charging Regulations and so will not incur debts that trigger an Immigration Rule sanction.

This Immigration Rule will apply to any person who has an outstanding NHS debt (as defined earlier in this section). While our direct equality duty lies in the application of the Immigration Rules, we recognise that there is a further indirect consideration in that the determination of who may incur a debt so as to trigger the immigration sanction is dependant on the policies of the Health departments of England, Scotland, Northern Ireland and Wales in respect of the charging of visitors (those not ordinarily resident) for NHS services.

In March this year the Department of Health in England announced its intention to undertake a fundamental review of the rules on charging those not ordinarily resident, including exemption categories, residency rules and how the rules are administered. This announcement was supported by a preliminary equality analysis. That analysis identified no significant issues of equality in the current rules. It noted safeguards in the related guidance on how they should be implemented in hospitals including the requirement not to delay or deny urgent treatment pending payment, and practices to ensure that no individual or group is discriminated against at the point of confirming their status and resulting eligibility. The analysis did however note the limited data evidence available to support equality. It commits the Department to undertaking a full equality analysis alongside the review that was announced. This review is just commencing. The Equality Analysis can be found at:

http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/documents/digitalasset/dh_128876.pdf

Summary of the evidence considered in demonstrating due regard to the Public Sector Equality Duty.

External consultation:

The UK Border Agency undertook a public consultation “Refusing entry or stay to NHS debtors” which centred on proposed changes to the Immigration Rules. The consultation ran from February 2010 to June 2010. The UK Border Agency worked with the Department of Health in England and the health ministries of the devolved administrations in Scotland, Wales and Northern Ireland to seek views from the broadest possible range of interested parties. The devolved authorities are responsible for the charging policies within those countries, and individual NHS institutions are responsible for raising and recovering charges under the various charging regulations and for deciding whether to write off debts where appropriate, taking into account the circumstances of the case.

The purpose of this consultation was to obtain input and opinions as to whether the proposed changes to the Immigration Rules are an appropriate and proportionate response to the problems of failure to pay for chargeable treatment provided by the NHS, and to seek views on the way in which the new arrangements should be implemented and operated.

The consultation was available online to the general public on our website:
www.ukba.homeoffice.gov.uk

The UK Border Agency sought views from a range of key sources including representative groups for medical practitioners, patients, immigration law practitioners and migrant community groups. Key partners were notified of the consultation - eighty-three from our Corporate Partner Group and thirty-two from the National Migration Group. The Department of Health also informed their partners of the UK Border Agency consultation, as did the relevant devolved health ministries.

Organisation respondents

The following organisations responded to the consultation:

- British Medical Association (BMA)
- Council of Ethnic Minority Voluntary Sector Organisations (CEMVO)
- George House Trust (GHT)
- Immigration Law Practitioners Association (ILPA)
- National AIDS Trust (NAT)
- North West Regional Strategic Migration Partnership
- Terrence Higgins Trust (THT)
- UK Council for International Student Affairs (UKCISA)
- West Midlands Strategic Migration Partnership
- Great Ormond Street Hospital for Children NHS Trust, (International Division)
- NHS Scotland Counter Fraud Services
- Overseas Visitor Advisory Group, (OSVAG)

The public consultation received 107 responses from individuals, and 12 responses on behalf of organisations. The individual respondents included 36 from persons representing themselves as NHS workers. The responses were mainly supportive with 76 of the 107 individual respondents thinking that non-payment of NHS charges should be sufficient grounds for refusing entry or extension of stay to a foreign national.

The British Medical Association (BMA) supported the proposals in principle and stated that “the introduction of changes to the Immigration Rules to promote repayment of NHS debt seems reasonable”. The primary concern for most of the organisations, including the BMA, was the unintended consequence that the proposed rule changes might act as a deterrent for migrants seeking necessary medical care.

The Department of Health undertook a separate consultation on the charging regulations in force in England. This consultation included a number of questions which were relevant to the matters covered by the UK Border Agency consultation, specifically around the principles and proposed arrangements for collecting and processing data on debts incurred to the NHS by overseas visitors (questions 9, 10, 11, 12 and 13 of the Department of Health consultation). A total of 166 responses were received to the Department of Health consultation. The responses to these questions reflected a less positive balance of opinion than the overall response received to the UK Border Agency consultation. A summary of these responses is included in the UK Border Agency consultation response.

The full report on the results of the UK Border Agency consultation was published in March 2011 and is available at the above address. This summarised a number of the comments made by the respondents to the consultation:-

- Of those who indicated that particular racial groups were likely to be affected by these measures, a few responses commented that non-whites might be affected disproportionately. However, most respondents did not comment further on how different racial groups would be affected.
- There was concern amongst three of the organisations that responded to the consultation about the disproportionate effect of these proposed Immigration Rule changes on migrants living with HIV. They felt that the changes could act as a disincentive for those migrants living with HIV to seek necessary medical care.
- A number of individuals were particularly concerned about the impact on children and older people.
- Some respondents also highlighted the potential for discrimination and misuse of power.
- One respondent also raised a point regarding discrimination due to gender where, it was argued, there might be a disproportionate debt burden placed on mothers in cultures where they are less likely to be the primary earner and so less able to discharge the debt.
- Another respondent said that the measures may disproportionately affect some religious groups and cited the example of women seeking termination of pregnancy from countries where abortion is not permitted.
- Some respondents raised concerns that those living with a disability may be disproportionately affected by the proposed rules change.

The results of the UK Border Agency public consultation indicated support for improved processes to recoup costs of healthcare borne inappropriately by the NHS. There was though an inconclusive response to the question of whether additional safeguards were needed to protect the interests of children and vulnerable adults. The proposed Immigration Rules change will allow for the exercise of discretion where necessary to secure human rights obligations and UK Border Agency officers will have a duty to discharge their duties with due regard to their obligations to safeguard the wellbeing of those who may be vulnerable, including children.

Other consultation:

The views of a range of internal business partners (across policy and operational areas) were sought in relation to the operational impact of the new rules and their effect on consideration of applications to enter or remain in the UK. Particular issues were raised regarding the reliability of data and its efficacy in relation to decision-making. It was recognised that data accuracy was paramount to the effective and fair operation of the processes. The production, management and secure handling of data in accordance with the Data Protection Act has been a particular issue for analysis. This has resulted in the development of detailed process specifications to ensure that shared data is specific to the needs of the process and is proportionate to those needs. It is proposed that data will be shared through the respective NHS Counter Fraud Services across the UK nations or through a central point of contact. The NHS will retain “ownership” of any data shared and will only provide data to the UK Border Agency where adequate steps have been taken in ensuring that this data complies with agreed data standards. No data will be included beyond the personal details needed to identify non-payers, the charges outstanding and the NHS body to which the money is owed. Medical detail will not be provided. All data will be transmitted through secure electronic means. The NHS will maintain the information, providing updates on a regular basis. All data held by the UK Border Agency will be subject to regular review.

Equality impact assessments – specific groups:

Race

The impact of the legislation will be based on existing entitlement to services and does not directly affect the provision of services to any racial group. The UK Border Agency accepts that non-settled persons may, on the basis of their nationality, incur a debt if they use a chargeable NHS service, however, the Immigration Rules are exempt from the duty not to discriminate because by their very nature they discriminate on the basis of nationality. Therefore, the UK Border Agency accepts that by introducing a change to the Immigration Rules so as to refuse entry clearance or leave to remain to a NHS debtor, such a policy change will not eliminate discrimination, nor is it likely to advance equality of opportunity between persons of different nationalities nor is it likely to foster good relations between such persons.

Consideration of whether to provide treatment, whether charged or not, is a matter for the NHS to assess. UK Border Agency will not play any part in a decision as to whether medical treatment is provided or whether this is provided as a free or charged service. The Department of Health and the devolved administrations provide guidance and advice to the NHS in deciding the question as to whether treatment should be charged. Race, including nationality, is not a material factor in those considerations (some ex British citizens who reside abroad are also liable to be charged for treatments) and there are specific “baseline” questions that NHS staff should ask the patient to ensure that specific groups are not unfairly targeted for eligibility screening. Therefore, it is the UK Border Agency’s view that the change to the Immigration Rules does not unlawfully discriminate directly on the basis of race and even though the policy is unlikely to meet the policy aims in section 149 of the Equality Act 2010, The UK Border Agency has shown the necessary due regard to the section 149 duty when considering the impact of the policy on different racial groups.

Religion/ belief & non belief

The potential liability for a NHS charge and therefore the potential to be affected by the rules change is based on the individual’s place of residence or on whether the person is exempt from the charge. It is not based on the person’s religion, belief or non belief. There are specific “baseline” questions that NHS staff should ask the patient to ensure that specific groups are not unfairly targeted for eligibility screening.

Disability

Disability covers mental and physical disability, which includes some illness such as HIV. The changes to the Immigration Rules may potentially have a greater impact on persons with disabilities as compared to persons without disabilities. For example, those suffering with some form of mental impairment, or those with learning difficulties, may have difficulty in understanding the implications of having an outstanding debt. Individuals with disabilities may be more likely to require treatment, including needing to undergo procedures that may be chargeable but which were unforeseen, such as persons with HIV or AIDS. Accordingly, some respondents to the UK Border Agency Consultation on the rules change raised concerns that those living with a disability may be disproportionately affected by the proposed rules change.

There are, however, a number of factors that need to be taken into consideration when assessing whether the proposed rules change would constitute unlawful discrimination. These include whether the individual was considered to be disabled at the time that the charges were raised, whether the charges were raised in compliance with legislation and whether the sanctions are a proportionate means of achieving a legitimate aim. With regard to the latter aspect, this includes consideration of the impact upon NHS resources and the potential consequences for other users of NHS services when outstanding charges remain unpaid. In light of these considerations, the UK Border Agency does not believe that the proposed measure to apply immigration control

consequences for those who default on charges owed to the NHS would be unlawful under the Equality Act. The safeguards mentioned elsewhere in this assessment relating to discretion and continued compliance with human rights equality legislation considerations continue to apply. In any event, it remains a matter for the NHS as to what services are provided and whether these are provided on a charged basis or free of cost.

The UK Border Agency deals with a wide spectrum of people with differing needs every day. Officers are trained to identify specific needs and provided with training, guidance and assistance from specialist services in discharging their statutory duties. These will include seeking an appropriate guardian where necessary (for instance through Social Services). The proposed change to the rules does not impinge on the provision of urgent or necessary, primary or accident and emergency treatment. The matter as to whether a charge is applied is for the NHS professionals to consider. Notice of liability for such charges is given as early as possible, will not prevent the NHS from providing urgent or immediately necessary treatment and may in many cases be covered by adequate travel insurance.

As stated above, those living with HIV are classified disabled. It may be argued that refusing entry to the UK based on a failure to pay charges for medical care relating to a disability may amount to indirect discrimination. However, this must be considered against the need to achieve a legitimate aim; in this case, safeguarding NHS resources for those who have a lawful claim to them and the impact upon the NHS and other NHS service users where charges remain outstanding. It is considered that the rules change is a proportionate response and the Government does not believe that the proposal to hold overseas visitors to account for unpaid charges would amount to unlawful discrimination under the Equality Act.

Gender

As indicated above, the potential liability for a NHS charge and therefore the potential to be affected by the rules change is based the individual's place of residence or on whether the person is exempt from the charge. It is not based on the person's gender.

Pregnancy and Maternity

All maternity care is considered as immediately necessary treatment and would never be denied even if chargeable. An outstanding debt for previous maternity services might however be taken into account should the person come to light in the course of further applications to enter or remain. The UK Border Agency will not decide whether treatment is provided or a charge applied.

Gender Identity

It is very unlikely that there will be an impact in respect of gender identity as gender reassignment treatment is elective. It is unlikely to be urgent or immediately necessary. Accordingly, in so far as a person is chargeable, the treatment would be delayed until payment has been made. In any event, the UK Border Agency will neither take medical decisions nor a decision as to whether a charge is payable for those seeking treatment within the UK. The UK Border Agency may, however, take into account outstanding debts for previous treatment received in the course of considering applications for entry to the UK or applications to remain further.

Sexual Orientation

The increased risk of HIV/AIDs within the population of gay men provides a potential impact of the policy change on this category. This has already been discussed above. Otherwise, there is unlikely to be an impact, as the UK Border Agency will neither take medical decisions nor a

decision as to whether a charge is payable for those seeking treatment within the UK. The UK Border Agency may, however, take into account outstanding debts for previous treatment received in the course of considering applications for entry to the UK or applications to remain further.

Age

A number of different age groups could be affected, including older visitors/patients who are more likely to require health care treatment. The proposed changes do not introduce any new or additional liability to pay for treatment or services and UK Border Agency will continue to apply the same published processes to all foreign visitors including older travellers. Most foreign nationals subject to immigration control have an existing and ongoing responsibility to be able to maintain and accommodate themselves during their stay or to ensure that they are properly maintained and accommodated.

Welfare of Children

Access to the services provided by the NHS is primarily dependent upon the individual's (or their guardian's) residence status and healthcare needs. The NHS is not obliged to provide secondary care for non-residents.

We expect parents to take responsibility for the care and treatment of their children. The Department of Health in England amended its regulations to make it clear that parents and guardians are to be held liable for costs to the NHS in respect of their children or for those children that they act as guardian to and, therefore, it will be the parents' details that are shared by the NHS in the case of any debt.

In dealing with children and in particular those who are unaccompanied, the UK Border Agency has an obligation in law to safeguard and promote their welfare in the UK. The recent changes to the NHS charging regulations clarify the position that unaccompanied children in care are exempt from NHS charges. As a consequence, such a child will not be recorded as a debtor and so will not be subject to the proposed immigration sanctions.

Human Rights

It is recognised that there is a potential impact on human rights, in particular with regard to Article 8 (right to family life), and to Article 14 (discrimination) of the European Convention on Human Rights where a person is coming to join a family member or wishes to undertake activities that affect their private life. The proposals are, however, proportionate to achieve a legitimate aim, i.e. protecting the NHS and its budget from inappropriate use. Furthermore, the UK Border Agency has objective and reasonable justification for introducing the changes to the Immigration Rules, namely the need to protect the NHS resources. The change to the Immigration Rules does not override existing legislative controls and does not affect either the UK Border Agency or Health departments in their statutory duty to comply with human rights and equality legislation.

In any event, those seeking asylum are exempt from health charges whilst their claim, and any appeal, remains under consideration. In England, a course of treatment may continue free of charge even after the asylum claim has been refused, and destitute failed asylum seekers who remain supported by the UK Border Agency continue to receive free chargeable NHS treatment.

The direct application of the new change to the Immigration Rules is to create a cooperative framework to manage the imposition of costs to foreign nationals who are liable to be charged. The change to the Immigration Rules allows an outstanding charge to be factored into the consideration of applications to enter or remain in the UK but does not override the existing requirement for the Health departments and the UK Border Agency to comply with the Human

Rights Act.

Evaluation:

Whilst neither the UK Border Agency nor the territorial Health Departments routinely collect equality data in respect of chargeable patients, they will work together to sample, analyse and evaluate data relating to the implementation of the rules change over a 12 month period. This data may be drawn from data systems or contemporaneous qualitative reports. Subject to the agreement of the territorial Health Departments, patients will be provided with an opportunity to disclose appropriate information on a voluntary basis for the sole purpose of undertaking a post implementation equality review. Within the known constraints (data protection and patient confidentiality), the UK Border Agency and the Department of Health will seek to monitor and evaluate any disproportionate impact within the categories detailed in this assessment.

SCS sign off	<i>[Considerations are detailed in Part 2]</i>	Name/Title	Kristian Armstrong, Director, Asylum, Criminality and Enforcement Unit, Strategy, Immigration and Border Policy Directorate, Home Office
I have read the available evidence and I am satisfied that this demonstrates compliance, where relevant, with Section 149 of the Equality Act and that <u>due regard</u> has been made to the need to: eliminate unlawful discrimination; advance equality of opportunity; and foster good relations.			
Directorate/Unit	Home Office, Immigration and Border Policy Directorate. Asylum, Criminality and Enforcement Unit.	Lead contact	Parvaiz Asmat 0161 261 1085
Date		Review Date	

Retain the completed PES for your records and send a copy to SDAT@homeoffice.gsi.gov.uk and your relevant business area Equality and Diversity Lead.

Part 2 - Policy Equality Sign-off

N.B. The PES can be completed throughout the development of a policy but is only signed at the point the policy is made public i.e. finalised and implemented.

To assist in evaluating whether there is robust evidence that could withstand legal challenge, the following questions must be asked prior to sign-off.

- Q.** Has 'due regard' been made to the three aims of the General Duty (Section 149 of the Equality Act 2010)?
- **Eliminate unlawful discrimination**, harassment, victimisation and any other conduct prohibited by the Act;
 - **Advance equality of opportunity** between people who share a protected characteristic and people who do not share it; and
 - **Foster good relations** between people who share a protected characteristic.
- Q.** Have all the **protected characteristics** been considered – age; disability; gender reassignment; pregnancy and maternity; race (includes ethnic or national origins, colour or nationality); religion or belief (includes lack of belief); sex; and sexual orientation?
- Q.** Have the relevant stakeholders been involved and/or consulted?
- Q.** Has all the relevant **quantitative and qualitative data** been considered and been subjected to **appropriate analysis**?
- Q.** Have lawyers been consulted on any legal matters arising?
- Q.** Has a date been established for reviewing the policy?

Further resources including: Case Law; Equality Assurance Table; examples of best practice are available on Horizon.