



Department
of Health

Guidance on implementing the overseas visitor hospital charging regulations 2015

Contents

Introduction	1
Executive summary	3
Part One – Who is subject to charges?	
Chapter 1. Exempt services and individuals	10
Chapter 2. The law in England	13
Chapter 3. Ordinary residence	27
Chapter 4. Detailed list of services which are exempt from charges	31
Chapter 5. The health surcharge: how to deal with and recognise someone who has paid or is exempt from paying	36
Chapter 6. Former UK residents, armed forces members and war pensioners	51
Chapter 7. Vulnerable patients and those detained	54
Chapter 8. When to provide hospital treatment to those not entitled to it free of charge	65
Chapter 9. How to deal with those with EU rights and exemptions	70
Chapter 10. How to deal with those under reciprocal healthcare agreements and other international obligations	82
Part Two – How to implement the charging rules effectively	
Chapter 11. Collaborative working and separation of duties: the role of staff in cost recovery	88
Chapter 12. Working with the Home Office	101
Chapter 13. Financial matters	103

Introduction

This manual of guidance supersedes and replaces all previous guidance on the implementation of the Charging Regulations.

This guidance seeks to provide help and advice on the implementation of the National Health Service (Charges to Overseas Visitors) Regulations 2015. However, it cannot cover all circumstances and is not intended to be a substitute for the Regulations themselves, which contain the legal provisions. Relevant NHS bodies are advised to seek their own legal advice on the extent of their obligations when necessary.

Not everyone is entitled to free NHS hospital treatment in England. This guidance explains what should happen when an overseas visitor needs NHS treatment provided by an NHS hospital in England. It is for staff at relevant NHS bodies, including clinicians, senior managers and clerks, and in particular for staff with a responsibility to identify and charge overseas visitors. The Department of Health strongly recommends that relevant NHS bodies have a designated person/s – hereafter referred to as an **Overseas Visitor Manager (OVM)** – to oversee the implementation of the Charging Regulations. All staff, including clinicians and managers, have a responsibility to ensure that the charging rules works effectively. The success of the charging rules also depends on the trust NHS staff being aware and supportive of the role of the OVM. **They should be given the authority to ensure that the charging rules can be properly implemented in all departments.**

Frequently used abbreviations

EHIC – the European Health Insurance Card (previously E111).

PRC – Provisional Replacement Certificate, issued to eligible citizens in cases where an EHIC cannot be produced.

S1 – issued to pensioners, posted or frontier workers. The term ‘pensioner’ includes those in receipt of a qualifying long-term benefit. If an original form is presented to an OVM, this should be sent to the Overseas Healthcare Team in Newcastle for registration (the holder may also have a copy for personal use).

A1 – the portable form issued to a posted worker confirming cover by the issuing state. The A1 accompanies a valid EHIC for qualifying posted workers.

S2 – payment guarantee from the issuing country for planned treatment (previously E112).

EEA – refers to visitors and migrants from inside the European Economic Area countries. A summary of these countries can be found in Chapter 9. Throughout this guidance, reference to EEA states or EEA nationals should be understood to include a reference to Switzerland or Swiss nationals as appropriate, except in relation to the operation of the cross-border healthcare directive (discussed in Chapter 9) which has not been applied to Switzerland.

Non-EEA – refers to visitors and migrants from any countries which are outside the European Economic Area.

Executive summary

1. A person will be “**ordinarily resident of a trust**” in the UK when that residence is lawful, adopted, voluntary, and for settled purposes as part of the regular order of their life for the time being, whether of short or long duration. Nationals of countries outside the European Economic Area (EEA) must also have indefinite leave to remain in the UK in order to be ordinarily resident here. A person who is ordinarily resident in the UK must not be charged for NHS hospital services.
2. The Charging Regulations place a **legal obligation** on NHS trusts, NHS foundation trusts and Local Authorities in the exercise of public health functions¹ in England, to establish whether a person is an overseas visitor to whom charges apply, or whether they are exempt from charges. When charges apply, a relevant NHS body **must** make and recover charges from the person liable to pay for the NHS services provided to the overseas visitor. A list of exempt services and exempt categories of overseas visitor is provided in Chapter 1, with a more detailed list of exempt services at Chapter 4.
3. Significant changes have been made to the exemption categories by these Charging Regulations. An exemption for temporary migrants coming to the UK for six months or more from outside the EEA/Switzerland has been introduced. They are required to pay the immigration health charge (referred to as the health surcharge), are exempt, or payment is waived. Payment of, or exemption or waiver from the health surcharge entitles the person to free NHS services on the same basis as an ordinarily resident patient while their visa remains valid, which means they must not be charged. More on this group and how to recognise them can be found in Chapter 5.
4. The **general position** for non-EEA and Swiss nationals is that those who have indefinite leave to remain in the UK and are ordinarily resident here, and those who have paid or are exempt or waived from paying the health surcharge, are entitled to NHS services on the same basis. This means that while their visa remains valid they **must not be charged**.
5. Non-EEA/Swiss nationals who are visiting the UK for six months or less including on a multiple entry VISA, or who are in the UK without permission, **must be charged** for services they receive at the point of accessing care, unless exempt from charges under other categories of the Charging Regulations.
6. The **general position** for British citizens/EEA/Swiss nationals is that those who are ordinarily resident here **must not be charged**.

1 Referred to as ‘relevant NHS bodies’ or ‘relevant NHS body’ in the Charging Regulations, as the context requires.

7. British citizens living in another EEA country/Swiss nationals living in another EEA country here on a temporary visit or course of study, and who are insured by their resident state, should present a valid European Health Insurance Card (EHIC) from that member state to access free medically necessary treatment. The UK will recover the cost of that healthcare from the other member state.

8. British citizens/EEA/Swiss nationals who are visiting and who do not have a valid EHIC or Provisional Replacement Certificate (PRC) and who are not covered under another exemption category under the Charging Regulations, must be charged for services they receive at the point of accessing care.

9. The way in which a person qualifies as insured varies depending on their country of residence. However, in every case where someone is insured they will have, or will be entitled to hold, an **EHIC** from the EEA state/Switzerland in which they are insured. Each family member, including children, will have their own EHIC.

10. If they cannot show their EHIC, they may instead produce a **PRC** to prove entitlement under the EU Regulations. It should be for the patient or their representative to arrange the issue of the PRC from the EEA state/Switzerland that would issue their EHIC, but the OVM may assist with this if needed. The relevant document in the OVM toolbox can be accessed here:

www.gov.uk/government/publications/help-for-nhs-to-recover-costs-of-care-from-visitors-and-migrants

www.gov.uk/government/publications/guidance-on-overseas-visitors-hospital-charging-regulations

11. The information above sets out the **general** position only. These general principles **do not apply in all cases**, and relevant NHS bodies must ensure that they understand the full scope of the Charging Regulations when making and recovering charges from overseas visitors.

12. A relevant NHS body also has human rights obligations, so chargeable **treatment which is considered by clinicians to be immediately necessary must never be withheld from an overseas visitor**, even when that overseas visitor has indicated that they cannot pay. This does not mean that the treatment should be provided free of charge. Charges will still apply, and, if not yet recovered, should be pursued after the treatment is provided. Treatment which is not immediately necessary, but is nevertheless classed as urgent by clinicians, as it cannot wait until the overseas visitor can return home, should also be provided regardless of the patient's ability to pay. Every effort should be made to obtain payment or a deposit in the period before treatment starts. **Non-urgent, or elective, treatment should not begin until full payment has been received.** See Chapters 11 and 13 for more important information about how and when to ask for payment from chargeable overseas visitors.

13. All relevant NHS bodies, as public authorities, must comply with the public sector equality duty in the exercise of their functions. More details on this, and on resources which can be used to assist NHS organisations to do this, can be found in Chapter 11.

14. When a relevant NHS body treats a visitor or student from another EEA member state or Switzerland, they must inform the Overseas Healthcare Team at the Department of Work and Pensions of details of the **EHICs/S2** documents held by that person. **This information is necessary to allow the UK to recover the cost of treating EEA/Swiss residents.** See Chapter 9 for more information.

15. This guidance does not cover treatment provided by a **general practitioner (GP)**, dentist or optician, although there is some comment on GP registration in Chapter 11. Nor does it concern charging arrangements in **Wales, Scotland** and **Northern Ireland** as these are governed by separate legislation under the jurisdiction of their respective devolved administrations.

16. A relevant NHS body in England may seek help and advice from the Department of Health about any aspect of the Charging regulations and this guidance. They should do so by using the OVM online community, or emailing overseasvisitors@dh.gsi.gov.uk,² about any aspect of the Charging Regulations and this guidance.³ **Ultimately, the decision that a patient is liable for charges legally rests with the relevant NHS body providing the treatment.** In cases where a patient's circumstances are unclear, unusual or appear not to be provided for in this guidance, relevant NHS bodies should seek legal advice as to the application of the Charging Regulations to the patient.

17. This guidance may be amended on occasion to reflect changes to the Charging Regulations. Relevant NHS bodies should ensure that they refer to the latest version. Up-to-date advice and information is also available on the Department of Health website at www.dh.gov.uk/overseasvisitors the Department of Health has also published a toolbox at www.gov.uk/government/publications/help-for-nhs-to-recover-costs-of-care-from-visitors-and-migrants and www.gov.uk/government/publications/guidance-on-overseas-visitors-hospital-charging-regulations. The aim of the toolbox is to help trusts discharge their cost recovery duties more effectively and contains a wide range of documents including standardised best practice preattendance forms for all patients to fill in when being admitted. Relevant NHS bodies should check the website and toolbox regularly for information which may update and augment this document. A table of subsequent changes made to this guidance will be compiled as they arise, and will appear in any updates. A list of other relevant materials is set out below.

2 If you would like an invitation to be part of the forum, please email nhscostrecovery@dh.gsi.gov.uk.

3 NB: Questions cannot be answered about GP registrations – GP practices should contact the Local Area Team of NHS England with any queries.

Documents/materials available to assist OVMs in carrying out their role

Document/item name	Type	Location
Visitor & Migrant NHS Cost Recovery Programme Plan Implementation 2014–16	Policy document	www.gov.uk/government/publications/recovering-costs-of-nhs-healthcare-from-visitors-and-migrants
The Overseas Visitor Manager Toolbox	Policy document	www.gov.uk/government/publications/help-for-nhs-to-recover-costs-of-care-from-visitors-and-migrants www.gov.uk/government/publications/guidance-on-overseas-visitors-hospital-charging-regulations
The Overseas Visitor Manager Online Community	Web forum	https://dhexchange.kahootz.com/connect.ti/system/home
Visitor & Migrant NHS Cost Recovery Programme's Twitter feed	Social media	https://twitter.com/nhscostrecovery
Visitor & Migrant NHS Cost Recovery Programme's blog	Social media	https://nhscostrecovery.blog.gov.uk/
Sustaining Services, Ensuring Fairness – The NHS Cost Recovery Programme	Webinar	www.hfma.org.uk/hfma-tv/webinars/webinar-detail.html?id=101&pageSection=2
Improving systems for cost recovery	Webinar	https://www.brighttalk.com/webcast/7323/146139

Contents of the Overseas Visitor Manager Toolbox	
Policy Documents	Equality Analysis: Immigration sanctions for those with unpaid debts arising from NHS (Charging to Overseas Visitors) Regulations 2011
	Equality Analysis: Overseas visitors Charging Regulations and guidance 2015
	Government response to the consultation on migrant access and financial contribution to NHS provision in England
	Guide to EHIC Incentive Scheme
	How to complete the NHS debtors spreadsheet
	How to report EEA treatment on the OVT Portal
	Implementing the overseas visitor Charging Regulations (The Guidance)
	Information about the cross-border healthcare directive

Contents of the Overseas Visitor Manager Toolbox	
Policy Documents (cont)	Information sharing with the Home Office: guidance for overseas patients
	Tool: Determining if a person is properly settled in the UK in order to establish if they are ordinarily resident here
Templates	Example pre-attendance form
	Example undertaking to pay form
	Immigration information request form
	Letter: Advice to doctors and dentists
	Letter: Document acknowledgment – patient chargeable
	Letter: Document acknowledgment – patient non-chargeable
	Letter: No documents received – patient chargeable
	Letter: Payment request
	Letter: Reminder for patient information
	Letter: Request for advice from doctors/dentists form
	Letter: Request for patient information

Contents of the Overseas Visitor Manager Toolbox	
Other useful resources	EEA countries and contact points
	EEA member state flags
	How to recognise a European Health Insurance Card
	Overseas Visitor Manager code of conduct
	Poster: Map of EEA countries
	Poster: Map of countries with reciprocal agreements
	Poster: Show your EHIC poster
	Useful contacts for NHS Overseas Visitor Managers
	Vulnerable groups signposting contact list

Part One – Who is subject to charges?

Chapter 1. Exempt services and individuals

This chapter lays out details of all services which are free of charge to patients, and of all individuals who are entitled to receive healthcare on the same basis as an ordinarily resident person

1.1 The following services are free at the point of use to everyone to all people. A charge cannot be made or recovered from any overseas visitor for:

- accident and emergency (A&E) services, this includes all A&E services provided at an NHS hospital, e.g. those provided at a walk-in centre or urgent healthcare centre. This does **not** include those emergency services provided after the overseas visitor has been accepted as an inpatient, or at a follow-up outpatient appointment, for which charges must be levied unless the overseas visitor is exempt from charge in their own right;
- services provided outside an NHS hospital, unless the staff providing the services are employed by, or working under the direction of, an NHS hospital;
- family planning services (does not include termination of pregnancy);
- diagnosis and treatment of specified infectious diseases (listed at Chapter 4)
- diagnosis and treatment of sexually transmitted infections;
- treatment required for a physical or mental condition caused by:
 - torture;
 - female genital mutilation;
 - domestic violence; or
 - sexual violence,
- except where the overseas visitor has travelled to the UK for the purpose of seeking that treatment.

Exempt categories of person

1.2 The following categories of overseas visitor are exempt from charge:

Those who have paid the health surcharge or are covered by transitional arrangements

- Any non-European Economic Area (EEA) national, subject to immigration control, is exempt from charge if one of the following applies to them while their leave to enter/remain is still valid:

- they have paid the surcharge; or
- they are exempt from payment of the surcharge or have had the requirement waived or reduced, or have had part (but not all) of the surcharge refunded to them; or
- they would have been covered under one of the above, but for the fact that they applied for leave to enter or remain in the UK before the start of the surcharge (this will include those already resident here without indefinite leave to remain, and a small number of people arriving after 6 April 2015).
- A child born in the UK to an exempt person is also exempt from charge up to the age of three months.

Those with an enforceable EU right to free healthcare

- Anyone insured for healthcare in another EEA member state or Switzerland and who, for medically necessary treatment, presents either a European Health Insurance Card (EHIC) from that member state or a Provisional Replacement Certificate (PRC) (see Introduction for definitions) for that card, or, for elective treatment, presents an S2 document for that treatment (see Chapter 9 for more details).
- Any UK state pensioner resident in another EEA member state or Switzerland who has registered an S1 document in that state. The person's spouse/civil partner and children under 18 are also exempt when lawfully visiting the UK with them, unless they are entitled to hold a non-UK EHIC (see Chapter 9 for more details).
- The spouse/civil partner and children under 18 of the above are also exempt when lawfully visiting the UK with them, unless they have an enforceable EU right in their own right.⁴

Vulnerable patients and those detained

- Refugees, (those granted asylum, humanitarian protection or temporary protection by the UK).
- Asylum seekers, (those applying for asylum, humanitarian protection or temporary protection whose claims, including appeals, have not yet been determined).
- Individuals receiving support under section 95 of the Immigration and Asylum Act 1999 (the 1999 Act) from the Home Office.
- Failed asylum seekers receiving support under section 4(2) of the 1999 Act from the Home Office or those receiving support under section 21 of the National Assistance Act 1948 from a Local Authority.
- Children who are looked after by a Local Authority.
- Victims, and suspected victims, of human trafficking, as determined by the UK Human Trafficking Centre or the Home Office, plus their spouse/civil partner and any children under 18 provided they are lawfully present in the UK.

4 That is, the exemption only applies where EU law does not provide them with a right to an EHIC or PRC of their own – in practice this is likely to be only when their same-sex marriage or civil partnership is not recognised by the insuring member state.

- Anyone in whose case the Secretary of State for Health determines there to be exceptional humanitarian reasons to provide a free course of treatment. This exemption will also apply to their child and/or companion who is authorised to travel with them, for whom the exemption is limited to treatment that cannot await their return home.
- Anyone receiving compulsory treatment under a court order or who is detained in an NHS hospital or deprived of their liberty (e.g. under the Mental Health Act 1983 or the Mental Capacity Act 2005), who is exempt from charge for all treatment provided, in accordance with the court order, or for the duration of the detention.
- Prisoners and immigration detainees.

UK Government employees and war pensioners

- UK armed forces members, plus their spouse/civil partner and children under 18 provided they are lawfully present in the UK (even if they are on a visit visa).
- UK Crown servants who were ordinarily resident prior to being posted overseas, plus their spouse/civil partner and children under 18 provided they are lawfully present in the UK.
- Employees of the British Council or Commonwealth War Graves Commission who were ordinarily resident in the UK prior to being posted overseas, plus their spouse/civil partner and children under 18 provided they are lawfully present in the UK.
- Those working or volunteering in employment overseas that is financed in part by the UK Government, who were ordinarily resident in the UK prior to being posted overseas, plus their spouse/civil partner and children under 18 provided they are lawfully present in the UK.
- Those receiving war pensions, war widows' pensions or armed forces compensation scheme payments, plus their spouse/civil partner and children under 18 when these family members are lawfully visiting the UK with the recipient of this pension/payment.

Those covered by reciprocal healthcare agreements, other international obligations and employees on UK-registered ships

- Anyone entitled to free healthcare in the UK under the terms of a reciprocal healthcare agreement with a country outside the EEA (usually limited to immediate medical treatment); see Chapter 10 for more details.
- Nationals of states that are contracting parties to the European Convention on Social and Medical Assistance or the European Social Charter and who are lawfully present here and without sufficient resources to pay. Free treatment is limited only to that which cannot wait until the overseas visitor can return home for it, and if the person did not come to the UK for the purpose of seeking treatment.
- NATO personnel, when the services required cannot readily be provided by armed forces medical services, plus their spouse/civil partner and children under 18 provided they are lawfully present in the UK.
- Employees on ships registered in the UK (even if they are here on a visit visa).

Chapter 2. The law in England

Statutory provisions

2.1 Section 175 of the National Health Service Act 2006 (the 2006 Act) allows the Secretary of State for Health to make regulations for the making and recovery of charges in relation to any person who is not ordinarily resident. It also gives the Secretary of State the power to calculate charges on any appropriate commercial basis.

2.2 The power to charge for NHS services in section 175 has so far only been used in relation to NHS hospital services. The Charging Regulations 2015 are made under those powers.

The Charging Regulations

2.3 The Charging Regulations apply to England only, and replace previous regulations on charges to overseas visitors. A relevant NHS body must only make and recover charges when it determines that the patient is not entitled to free NHS hospital care, either on the basis of being ordinarily resident, or because the person is exempt from charges under the Charging Regulations. The obligation to undertake reasonable enquiries is an important part of the duty to make and recover charges from overseas visitors, and:

- ensure that patients who are not ordinarily resident in the UK are identified;
- assess liability for charges in accordance with the Charging Regulations;
- charge those liable to pay in accordance with the Charging Regulations; and
- recover payment from those liable to pay.

2.4 Relevant NHS bodies must undertake the following steps to identify and charge chargeable overseas visitors:

Step 1: Determine if the patient is insured by another member state

The UK is able to recover the cost of treatment provided to any patient who is insured by another European Economic Area (EEA) state or Switzerland, including those patients who are ordinarily resident in the UK or covered under another exemption category. All patients should be asked if they have a European Health Insurance Card (EHIC), S1 or S2 (see Introduction for definitions). It is possible that a patient may be ordinarily resident in the UK but still continue to be insured by another state. Chapter 9 provides further information about identifying persons who have an EU right to free healthcare in the UK and the process for recovering the cost of their healthcare from the insuring member state.

If the patient is not insured by another member state, proceed to step 2.

Step 2: Determine if the patient is ordinarily resident in the UK

All patients must be assessed against the test for ordinary residence in the UK. More information on how to determine whether a patient is ordinarily resident in the UK, including suggested questions to be asked, can be found in Chapter 3. If the patient is ordinarily resident in the UK they must not be charged.

If the patient is not ordinarily resident in the UK, proceed to step 3.

All relevant NHS bodies must comply with their legal duties when asking questions of treating patients. In particular, they must avoid discriminatory measures or practise racial profiling to identify chargeable patients or cherry-pick which patients to question. Further information on the legal duties of relevant NHS bodies is set out in Chapter 11.

Step 3: Determine if the patient is covered by an exemption in the Charging Regulations or if the patient is liable for charges

Patients who are not ordinarily resident in the UK and are not insured by another EEA state or Switzerland need to be assessed against the exemptions in the Charging Regulations.

Step 4: Make and recover charges from chargeable overseas visitors

Where treatment is non-urgent or elective, this means that the relevant NHS body should obtain payment or collect a deposit in advance of providing treatment. For more information about when and how to collect payment from chargeable patients, see Chapters 11 and 13.

The Immigration Act 2014

2.5 The Immigration Act 2014 made changes to the charging rules. These changes are two-fold. First, section 39 of the Act changes the meaning of 'ordinary residence' in section 175 of the National Health Service Act, as it relates to non-EEA nationals who are subject to immigration control. Such individuals, in addition to satisfying the existing test for ordinary residence, must also now have indefinite leave to remain in the UK in order to be ordinarily resident here. This has effect from 6 April 2015. Chapter 3 provides more information about ordinary residence.

2.6 Second, section 38 of the Immigration Act authorises the Home Secretary to introduce an immigration health charge (known as the health surcharge) to be paid by non-EEA nationals, subject to immigration control, who apply to reside temporarily in the UK for six months or longer. The health surcharge will be paid at the same time as a visa applicant pays their visa application fee. There will be exemptions from paying the health surcharge for certain people, and the Home Secretary has the discretion to reduce, refund or waive all or part of the health surcharge. The health surcharge is payable for new visa applicants who make an application for a visa on or after 6 April 2015. Chapter 5 explains how to identify and process people who have paid, are exempt, or are waived from paying the health surcharge.

Other statutory obligations that apply to relevant NHS bodies

2.7 In addition to their obligations under the Charging Regulations, relevant NHS bodies are also subject to other legal duties when exercising their functions to impose charges on overseas visitors. The duties set out below are key legal duties, with which relevant NHS bodies must comply, and which are relevant to the implementation of the charging rules. It is not an exhaustive list of legal duties to which relevant NHS bodies may be subject.

The Human Rights Act 1998

2.8 Article 14 of the European Convention on Human Rights, which is incorporated into UK law in the Human Rights Act 1998, prohibits discrimination against a person in the exercise of their rights under the Convention, on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. Article 14 is not free-standing and can only be invoked in relation to other convention rights (e.g. Article 8 – the right to private and family life) which can be engaged when a person seeks healthcare. Not every difference in treatment is discriminatory, provided that it can be shown that there is a ‘reasonable and objective justification’ for the difference in question.

The Equality Act 2010

2.9 Under the Equality Act 2010, relevant NHS bodies, as public authorities, have a general **equality duty** in the exercise of their functions to have due regard of the need to:

- eliminate discrimination, harassment and victimisation and other conduct prohibited by the Act;
- advance equality of opportunity between people who share a protected characteristic and those who do not; and
- foster good relations between people who share a protected characteristic and those who do not.

2.10 The protected characteristics are:

- age;
- disability;
- gender reassignment;
- marriage and civil partnership;
- pregnancy and maternity;
- race;
- religion or belief;
- sex; and
- sexual orientation.

2.11 The Equality Act 2010 prohibits:

- direct discrimination (section 13);

- indirect discrimination (section 19) unless the discrimination is a proportionate means of achieving a legitimate aim;
- harassment (section 26); and
- victimisation (section 27).

2.12 A relevant NHS body would be discriminating against a person if, because of a protected characteristic, it treated that person less favourably than it would treat others. For example, the use of racial profiling (e.g. targeting a person for questioning as a potential overseas visitor on the basis of their being a racial minority) is discriminatory and is prohibited by the Equality Act. See Chapter 11 for further information about how to avoid discrimination.

2.13 A relevant NHS body must also take care that, when questioning or engaging with patients with a protected characteristic, the conduct of staff does not create an intimidating, hostile, degrading, humiliating or offensive environment for that patient.

2.14 Detailed guidance on the Equality Act 2010 is available at:
www.gov.uk/equality-act-2010-guidance.

Overlap with other legal provisions

2.15 There are occasions where patients may be affected by other legal provisions:

- **Injuries as a result of criminal actions:** in these cases, the patient may be eligible to claim compensation from the Criminal Injuries Compensation Authority. It will be for the patient to pursue such a claim and, although the relevant NHS body can advise the patient to contact the Authority, the possibility of compensation does **not** affect the patient's liability for charges as an overseas visitor. The recovery of NHS charges from the patient should not be suspended pending the outcome of a claim.
- **Injuries as a result of a road traffic accident and personal injury:** the requirement on insurers to pay a relevant NHS body for services provided to an overseas visitor, where charges have been made and recovered for those services through the Charging Regulations, is zero. This provision was inserted with effect from 1 April 2009, and now appears in the Personal Injuries (NHS Charges) (Amounts) Regulations 2015 (SI 2015/295) made under the Health and Social healthcare (Community Health and Standards) Act 2003.

Regulation 2 – Interpretation

2.16 This regulation provides definitions of the words and terms used in the Charging Regulations. The definitions which will be most useful on a daily basis are as follows:

- **Child** – for the purposes of the Charging Regulations, a child is someone under the age of 18.
- **Overseas visitor** – means any person of any nationality not ordinarily resident in the UK.
- **Parental responsibility** – has the meaning given in section 3 of the Children Act 1989. A person with parental responsibility has all the rights, duties, powers, responsibilities and

authority which by law a parent of a child has in relation to the child and their property. This does not include a person who is responsible for the child on a temporary basis, such as a teacher. This will be a matter of fact in each case.

- **Relevant services** – means accommodation, services or facilities provided under the National Health Service Act 2006, other than primary dental services, primary medical services or primary ophthalmic services, or equivalent services provided under that Act.
- **Treatment the need for which arose during the visit** – means treatment needed where the diagnosis of a condition is made when the first symptoms arise during a visit to the UK. It also applies where, in the opinion of a doctor or dentist employed by the relevant NHS body, treatment is needed quickly to prevent a pre-existing condition increasing in severity, e.g. dialysis. It does not include routine monitoring of an existing condition such as diabetes, nor does it cover treatment that the overseas visitor travelled to the UK for the purpose of seeking, or treatment that can await the overseas visitor's return home.

Those people covered by EU Regulations, however, are entitled to **'all medically necessary treatment' for the duration of their visit (more details can be found at Chapter 9)**. Those covered by reciprocal healthcare agreements are all subject to their own specific terms (more details can be found at Chapter 10).

Regulation 3 – The making and recovery of charges

2.17 This regulation states **when** and **how** a relevant NHS body should make a charge for treatment and how it should recover the money; it places a **legal obligation** on an NHS body to determine whether the Charging Regulations apply to an overseas visitor. Where a person is not ordinarily resident, the relevant NHS body must make reasonable enquiries into the circumstances of that person to determine whether they meet one of the categories of exemption or are liable to pay charges. The enquiries must be reasonable with regard to all the circumstances of the individual case, including the person's illness or injury. If the patient is chargeable, this regulation **requires** the relevant NHS body to make and recover a charge for any treatment provided. There is no option, nor is there the authority, to waive the charge on the part of the NHS body. There are limited circumstances when persons granted asylum or temporary protection or humanitarian protection, or persons who are identified as victims of human trafficking, must be treated as exempt for services they received before acquiring that status. In such cases, any prior charges made must not be pursued, or if charges were recovered they must be repaid. More information can be found at Chapter 3.

2.18 Where a patient is claiming an exemption from charges, it is their responsibility to prove they are entitled to that treatment without charge. The relevant NHS body is entitled to ask for documentary evidence to support a claim for free treatment. However, they must take into consideration the individual circumstances of each case, and that it will be easier to provide evidence in some circumstances than in others.

2.19 If, in the light of its enquiries, the relevant NHS body decides that the person is not eligible for treatment without charge, or that the person has not provided sufficient evidence to support their claim, then the relevant NHS body must levy a charge and take all reasonable measures to recover it from that person.

2.20 The relevant NHS body must give the person paying the charge a receipt for the amount paid.

2.21 Certain categories of overseas visitors who are receiving a course of free treatment on the basis that they are exempt from charge, cannot be charged for the remainder of that particular course of treatment if their exempt status changes to chargeable part-way through the course of treatment. It **does not** apply to those who are exempt under Regulation 10 or 11 (surcharge and transitional arrangements) or Regulation 25(3) (children born to them in the UK). It only applies if the overseas visitor has been properly assessed as exempt from charge to begin with, and where the overseas visitor did not provide fraudulent or misleading information to the relevant NHS body. It applies **only** until the overseas visitor first leaves the UK. It is a clinical decision as to what constitutes a particular course of treatment. This provision (Regulation 3(5)) is sometimes referred to as the '**easement clause**'.

Regulation 4 – Liability for charges

2.22 The person liable to pay charges for treatment provided to an overseas visitor will in most cases be the overseas visitor themselves. There are only three exceptions:

- where the overseas visitor is present in the UK in the course of employment on board a ship, the liable person is the owner of that ship (note that this applies only to non-UK registered ships; those employed on UK-registered ships are exempt from charges – see Chapter 10);
- for air crew present in the UK in the course of employment on an aircraft, the liable person is the employer of that person; and
- for a child to whom no exemption applies, the liable person is the person with parental responsibility for that child.

Regulation 5 – Repayments

2.23 There are certain circumstances where a relevant NHS body must repay charges recovered under the Charging Regulations when it receives a claim for repayment. If the person was not a chargeable overseas visitor at the time the services were provided, or if they did not receive the services. There are also limited circumstances when repayment must be made in respect of charges recovered from refugees or victims of human trafficking, for which see paragraph 2.24. The person making a claim for repayment must provide a receipt, a signed declaration in support of the claim, and such evidence in support of the claim which the relevant NHS body requires. Where these conditions are met, any charges recovered must be repaid to the patient. The trust should alert the relevant commissioner to ensure any non-EEA incentive is repaid and costs for a charge-exempt overseas visitor are applied.

Regulation 6 – Recovery of charges in respect of refugees and victims of trafficking

2.24 There are limited circumstances in which a relevant NHS body must cancel or repay charges made, or recovered, for treatment provided to an overseas visitor who goes on to:

- acquire refugee status (i.e. exempt under Regulation 15(a)); or
- be identified as a victim, or suspected victim, of human trafficking (i.e. exempt under Regulation 16). This provision is set out in more detail in Chapter 7 under the relevant sections for refugees and trafficking victims.

Changes to exemptions from charge to begin from 6 April 2015

Exemptions which have not changed and continue from 6 April 2015
Anyone entitled to services under or by virtue of EU Regulations, an EU agreement or other EU right (e.g. by having an EHIC)
Anyone covered by a reciprocal healthcare agreement with the UK
Anyone granted asylum or temporary or humanitarian protection in the UK (e.g. refugees)
Anyone who has applied for asylum or temporary or humanitarian protection, until their application, including appeals, is decided (e.g. asylum seekers)
Serving NATO personnel
Anyone who receives a UK war pension, war widows' pension or armed forces compensation scheme payment
Members of the regular and reserve forces
Employees on ships (but the exemption for family members has been removed)
Anyone lawfully in the UK and covered under the European Social Charter or European Convention on Social and Medical Assistance with insufficient resources to pay ('needs arising' treatment only)
Anyone who is detained in prison or by the Immigration Authorities in the UK (but the exemption for family members has been removed)

Expanded exemptions from 6 April 2015		
Category of person	Previous exemption up until 6 April 2015	Exemption as of 6 April 2015
Anyone receiving s4 or s95 Home Office support (Immigration and Asylum Act 1999)	Exempt from charge for all treatment	<p>(i) To include all failed asylum seekers who receive s21 support from a Local Authority (National Assistance Act 1948)</p> <p>(ii) To limit the exemption in respect of s4 recipients to failed asylum seekers only (s4(2)), as originally intended; s95 recipients unchanged</p> <p>(iii) S95 recipients unchanged</p>
Children taken into Local Authority care	Exempt from charge for all treatment. The exemption applies to children in Local Authority healthcare (those children who are the subject of a healthcare order by a court)	Expanded to cover children accommodated by the Local Authority in the exercise of any social service functions (known as 'looked after children' in the Children Act 1989)
UK state pensioners residing in the EEA or Switzerland if they have lived lawfully in the UK, or been employed as a Crown servant, for 10 continuous years or more ('needs arising' treatment only)	Exempt from charge if the need arises during visits to the UK	<p>(i) Exemption removed and replaced with a new exemption for UK state pensioners living in EEA countries or Switzerland which includes all care, including elective. UK state pensioners living in EEA countries and with an S1 document registered in that country will be exempt under a new exemption which replicates the effect of the UK joining Annex IV of EC Regulation 883/2004 and extends the entitlement of UK state pensioners residing in the EEA to elective healthcare on the NHS in England. There is no requirement for former residence or employment, merely receipt of a state pension</p> <p>(ii) The exemption is removed in respect of UK state pensioners living outside the EEA/Switzerland</p>

Limited exemptions from 6 April 2015		
Category	Previous exemption up until 6 April 2015	Exemption as of 6 April 2015
Exceptional humanitarian reasons (determined by the Secretary of State only with qualifying criteria)	Exempt from charge for approved course of treatment	The regulation has been redrafted to take account of the immigration route that such a person would take to enter the UK
Government workers (Crown servants, UK Government financed employment, British Council and Commonwealth War Graves Commission staff) who are required to work abroad	Exempt from charge for all treatment	Introduce a requirement to have been ordinarily resident in the UK prior to going overseas to take up such a post
Anyone who is detained in prison or by Immigration Authorities in the UK	They and their family members exempt from charge for all treatment	Family members of prisoners/detainees will no longer be exempt from charge
An employee on a ship registered in the UK	They and their family members exempt from charge for all treatment	Family members of employees on ships will no longer be exempt from charge

Removed exemptions from 6 April 2015		
Category	Previous exemption up until 6 April 2015	Exemption as of 6 April 2015
UK state pensioners residing 6 months in UK/less than 6 months in EEA country or Switzerland, but not registered as resident there	Exempt from charge for all treatment	Removed (persons falling under this category are considered ordinarily resident in the UK and so are already entitled to free healthcare on that basis)
Diplomatic agents posted to the UK	Exempt from charge for all treatment	Removed (diplomats posted to the UK are considered ordinarily resident in the UK and so are already entitled to free healthcare on that basis)
Former UK residents of 10 continuous years or more who are now working abroad (including self-employed)	Exempt from charge for all treatment for up to five years	Removed
Former UK residents (with 10 years as a UK resident) now living in EEA countries, Switzerland or a Reciprocal Health healthcare Agreements country.	Exempt from charge if the need arises during visits to the UK	Removed. Should rely on non-UK EHIC or reciprocal agreement instead
Missionaries acting overseas for organisations established in the UK	Exempt from charge for all treatment	Removed. Some will still be ordinarily resident here and entitled to free healthcare on that basis

Removed exemptions from 6 April 2015		
Category	Previous exemption up until 6 April 2015	Exemption as of 6 April 2015
The family members (spouse/civil partner and dependent children) of exempt groups	Exempt on similar basis to main exempt overseas visitor. For some groups the exemption applies to the family member even if the main person is not in the UK with them, for others only if the person is in the UK on a lawful and permanent basis with them	Removed for groups where the exemption is superfluous. We will retain the exemption for those not required to be here permanently, i.e. armed forces members, Crown servants etc. and victims of trafficking. Therefore, no real change in practice to most family members, except for family members of prisoners/detainees and employees on ships, the exemption for whom is removed

Exemptions replaced by the immigration health surcharge as of 6 April 2015		
Category	Previous exemption up until 6 April 2015	Exemption as of 6 April 2015
12 months' lawful residence in the UK	Exempt from charge for all treatment	Replaced
Taking up permanent residence in the UK	Exempt from charge for all treatment	Replaced
Working in the UK for a UK-based employer	Exempt from charge for all treatment	Replaced
Being self-employed in the UK	Exempt from charge for all treatment	Replaced
Volunteering in the UK for a voluntary organisation providing services similar to health or social service	Exempt from charge for all treatment	Replaced
Studying full time in the UK on a course of at least 6 months' duration or substantially funded by the UK Government	Exempt from charge for all treatment	Replaced

New exemptions as of 6 April 2015		
Category	Previous exemption up until 6 April 2015	Exemption as of 6 April 2015
Victims of violence (relating to domestic violence, sexual violence, torture and female genital mutilation (FGM))	Does not exist. Currently, all NHS secondary healthcare provided to chargeable overseas visitors subject to such violence is chargeable	To exempt specific treatment provided to victims of violence. This will function similarly to current exemptions for infectious diseases. Only the treatment needed to treat conditions caused by the violence is exempt from charge, rather than all treatment for the patient
Anyone who has paid, or who is exempt from paying, the immigration health charge or for whom the charge is waived, reduced or partially refunded, while their leave to remain is extant, including for any children born to that person for a period of 3 months	Does not currently exist	Exempt from charge for all treatment. Implements the health surcharge by providing entitlement to NHS healthcare on the same basis as an ordinarily resident patient
Migrants who apply for leave to enter or remain for over 6 months prior to the surcharge being introduced but who cannot pay the surcharge until their next application for leave	Does not currently exist	This is a transitional arrangement for individuals who made a visa application before the surcharge came into force, but who would have paid it had it been in force at the time

Chapter 3. Ordinary residence

3.1 The UK's healthcare system is a residence-based one. This contrasts with many other countries which have insurance-based healthcare systems.

3.2 The test of residence that the UK uses to determine entitlement to free NHS healthcare is known as 'ordinary residence', as this is the term used in the National Health Service Act 2006. An overseas visitor is defined in the Charging Regulations as anyone who is not ordinarily resident in the UK.

3.3 The concept of **ordinary residence** should not be confused with permanent residence, usual residence, habitual residence or other phrases denoting residence in a place used in other domestic or European legislation. This chapter explains how the concept of ordinary residence should be applied to British citizens, European Economic Area (EEA)/Swiss nationals and non-EEA nationals.

3.4 In practice, it may not be necessary to consider the question of ordinary residence, for instance where a patient presents a valid non-UK European Health Insurance Card (EHIC) or Provisional Replacement Certificate (PRC). In this case it will already be clear that the patient is entitled to free medically necessary care. But where that is not the case, the question of ordinary residence will be the most fundamental issue to resolve when operating the charging rules as a whole. This is because **if a patient is classed as ordinarily resident in the UK then the Charging Regulations cannot apply to them**, even if the patient has only been in the UK for a few days or weeks. **The Secretary of State has no powers to charge someone for NHS hospital treatment who is ordinarily resident in the UK.**

Meaning of ordinary residence

3.5 A person is **not** ordinarily resident in the UK simply because they have British nationality; hold a British passport; are registered with a GP; have an NHS number; own property in the UK; or have paid (or are currently paying) National Insurance contributions and taxes in the UK.

3.6 'Ordinarily resident' is not defined in the National Health Service Act 2006. The concept was considered by the House of Lords in 1982 in the case of *Shah v Barnet LBC*⁵ and although the case being considered was concerned with the meaning of ordinary residence in the context of the Education Acts, the decision is recognised as having a wider application and applies to the National Health Service Act 2006 and the Charging Regulations.

5 *Shah v Barnet London Borough Council and other appeals* [1983] 1 All ER 226.

3.7 When assessing the ordinary residence status of a person seeking free NHS services, a relevant NHS body will need to consider whether they are:

living lawfully in the United Kingdom voluntarily and for settled purposes as part of the regular order of their life for the time being.

3.8 The concept of ‘settled purpose’ has been developed by the courts:

There must be an identifiable purpose for their residence here, there can be one purpose or several, and it may be for a limited period. The purpose for living in the UK must have a sufficient degree of continuity to be properly described as ‘settled’.

Ordinary residence can be of long or short duration.

3.9 A person can be ordinarily resident in more than one country at once.

3.10 It is important to note that, since 6 April 2015, non-EEA nationals who are subject to immigration control are now no longer able to be considered as ordinarily resident in the UK, unless they also have the immigration status of ‘indefinite leave to remain’ (ILR) at the time of treatment; or, in other words, have the right to live here permanently. They must also still meet the other requirements of the test set out at paragraph 3.11; having ILR on its own is not sufficient, since that person may no longer be residing in the UK on a properly settled basis, and may only be visiting.

Determining ordinary residence

3.11 Whether a person is ordinarily resident in the UK is essentially a three-fold test (four-fold for non-EEA nationals) assessing whether that individual:

- (i) is lawfully in the UK;
- (ii) is here voluntarily – it will be rare for a person not to be in the UK voluntarily; and
- (iii) is properly settled here for the time being; and
- (iv) in the case of non-EEA nationals subject to immigration control, has ILR in the UK.

Being lawfully in the UK

3.12 British citizens have automatic right of abode in the UK, so are always here lawfully. EEA nationals are almost always here lawfully. Non-EEA nationals usually need permission to be in the UK, except in some circumstances when they are not subject to immigration control, e.g. due to their relationship to an EEA national who is resident here, or when a diplomat.

Being properly settled in the UK for the time being

3.13 While non-EEA nationals must also have the immigration status of ILR (the **right** to live here on a permanent basis), there is no requirement for any person to actually be living here permanently or indefinitely in order to meet the ordinary residence test. There is no minimum period of residence that confers ordinarily resident status.

In the past, the Department of Health has suggested that someone who has been here for less than six months is less likely to meet the ‘settled’ criterion of the ordinary residence description, but this is only a guideline. For a British citizen or EEA national (and for a non-EEA national with ILR, or a non-EEA national not subject to immigration control), it is perfectly possible to be ordinarily resident here from the day of arrival, when it is clear that that person has, upon arrival, taken up settled residence. In each case, it is for the relevant NHS body to decide whether the criteria within the ordinary residence description are met. A tool has also been developed to assist them in considering whether an individual is properly settled in the UK in order to establish ordinary residence status. It can be found as part of the Overseas Visitor Manager (OVM) toolbox available via these links:

www.gov.uk/government/publications/help-for-nhs-to-recover-costs-of-care-from-visitors-and-migrants

www.gov.uk/government/publications/guidance-on-overseas-visitors-hospital-charging-regulations

3.14 A person who is ordinarily resident will be so in their own right, and it is not transferable to other family members (except in certain circumstances regarding children – see paragraph below). Therefore, if a spouse or civil partner of someone who is ordinarily resident here normally lives overseas and requires treatment during a visit to the UK, they will not be ordinarily resident or automatically entitled to free treatment. The relevant NHS body must establish whether the ordinarily resident person’s spouse or civil partner meets one of the categories of exemption in their own right, or is liable to be charged.

3.15 Where a child who normally lives overseas is visiting an ordinarily resident parent, they can take on the ordinarily resident status of their parent if the parent can show that the child normally lives with both parents, e.g. on a shared residence order.

Questions and answers

Q: Are those acting as missionaries or volunteers overseas ordinarily resident in the UK?

A: This will depend on their circumstances. A person can be absent from the UK for a temporary or finite period and still be ordinarily resident here. Staff, workers and volunteers for UK charity and missionary agencies, and their family members, may not intend to live overseas indefinitely, and may maintain a base in the UK to which they return regularly or periodically between assignments. This base may be their own home or the home of close friends or family. A letter from the UK-based organisation for which they have gone overseas, confirming that their assignment or series of assignments is temporary, may also be useful. Appearing settled in another country does not prevent them also being properly settled here, since a person can be ordinarily resident in more than one country at once. On the other hand, if there are no indicators that the person remains, or has ever been, properly settled here, then they will not pass the ordinary residence test and will be chargeable if no other exemption applies to them. See also the exemption for those in employment funded by the UK Government, as this may apply to some missionaries or volunteers overseas.

Q: What about someone who works overseas?

A: Again, this will depend on their circumstances. A person whose work takes them out of the UK for the majority of the time but whose home, which they return to between trips, is still here will still be ordinarily resident here. This would apply to, for example, a pilot or member of cabin crew. However, if they are working and settled in one place overseas and only spend a few weeks of the year in the UK visiting family, then they are not likely to be properly settled here, in which case they would not be ordinarily resident here. If some people are posted overseas temporarily as part of their contract and maintain a base in the UK that they return to even if only on short stays, they may well still be ordinarily resident here. Assessing whether someone maintains ordinary residence in the UK will require consideration of their family and other relationships with people in the UK, financial, property and other connections to the UK, in addition to the time they actually spend in the UK in any given year.

Q: I have a patient who lives both here and in Spain, spending most of their time there. Where are they ordinarily resident?

A: A person can be ordinarily resident in more than one country at once. As long as they are properly settled here, despite spending more time in their other place of residence, they will meet the ordinary residence test. There is no requirement that the time be equally split between the UK and another country in order to maintain ordinary residence in the UK. Where a person has lived in more than one country for several years, consideration needs to be given to whether there is a pattern of regular trips to the UK over the years that demonstrates a sufficient degree of continuity to establish ordinary residence in the UK. The length and number of trips to the UK, family and other relationships with people in the UK, financial, property and other connections to the UK will all be relevant factors in determining if the person is ordinarily resident in the UK despite spending time living in another country. If they live only in Spain, and are only here as a visitor, not as a resident, then they will not meet the ordinary residence test.

Q: Can a non-EEA national without ILR be ordinarily resident in the UK?

A: A non-EEA national without ILR can only pass the ordinary residence test if they are not subject to immigration control, e.g. they are diplomat posted to the UK, or have a right of residence here by virtue of their relationship with an EEA national who is resident here.

Q: Can someone studying overseas still be considered ordinarily resident here?

A: Yes, someone studying temporarily overseas can still be ordinarily resident here, if they plan to return to the UK after their studies have ceased. This will mean that they are entitled to free NHS healthcare when back in the UK. However, if it is not their intention to return to live in the UK and they have in fact moved their residence overseas and are simply visiting the UK, then they are unlikely to be ordinarily resident here.

Chapter 4. Detailed list of services which are exempt from charges

4.1 Some NHS services are free to **everyone**, even if the patient would be liable to pay for other services. Regulations 8 and 9 set out these services, including defining key terms.

4.2 Please note that despite these services being free to the patient, in the case of insured visitors or students from the European Economic Area (EEA), the UK can still be reimbursed by the relevant EEA member state for having provided these individuals with medically necessary treatment, if the patient has a non-UK European Health Insurance Card (EHIC), or PRC for the EHIC. Relevant NHS bodies are encouraged to record and report EHICs/PRCs whenever possible for such patients accessing 'exempt' services. More on this can be found at Chapter 9.

4.3 The current list of exempt services comprises:

- **accident and emergency (A&E) services** provided at an NHS hospital⁶ (whether provided at an A&E department or elsewhere in the NHS hospital, e.g. urgent healthcare centre) but not including services provided after the overseas visitor is accepted as an inpatient or at a follow-up outpatient appointment. So, **where emergency treatment is given after admission to the NHS hospital, e.g. intensive healthcare or coronary care, it is chargeable to a non-exempt overseas visitor**;
- some walk-in centres provide primary healthcare services rather than A&E-type services; overseas visitors cannot be charged for such services either;
- services provided other than in an NHS hospital or by a person who is employed to work for, or on behalf of, an NHS hospital. **This means that services provided in the community will be chargeable only where the staff providing them are employed by or on behalf of an NHS hospital**;
- **family planning services**, which means services that supply contraceptive products and devices to prevent pregnancy – termination of an established pregnancy is not a method of contraception or family planning; and
- the diagnosis and treatment of the conditions specified in Schedule 1 to the Charging Regulations which is necessary to protect the wider **public health**. This exemption from

6 'Hospital' means:

(i) any institution for the reception and treatment of persons suffering from illness;

(ii) any maternity home; and

(iii) any institution for the reception and treatment of persons during convalescence or persons requiring medical rehabilitation, and includes clinics, dispensaries and outpatient departments maintained in connection with any such home or institution, and 'hospital accommodation' must be construed accordingly.

charge will apply to the diagnosis of the condition, even if the outcome is a negative result. It will also apply to any treatment provided for a suspected specified condition, up to the point that it is negatively diagnosed. It does not apply to any secondary illness that may be present even if treatment is necessary in order to successfully treat the condition.

4.4 The conditions to which the exemption applies are:

- 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') in the *World Health Organization's Pandemic Influenza Risk Management Interim Guidance*
- plague
- rabies
- rubella
- severe acute respiratory syndrome (SARS)
- smallpox

- tetanus
- tuberculosis
- typhus
- viral haemorrhagic fever (which includes Ebola)
- viral hepatitis
- whooping cough
- yellow fever

4.5 The exemption also applies to the diagnosis and treatment of **sexually transmitted infections**.

4.6 The exemption for victims of violence covers the treatment of conditions directly attributable to certain types of violence, namely:

- torture;
- female genital mutilation;
- domestic violence; and
- sexual violence.

4.7 The conditions include physical or mental illness, or an acute or chronic condition. The exemption applies wherever the violence has been experienced, provided that the overseas visitor has not travelled to the United Kingdom for the purpose of seeking that treatment. Any other treatment that they need that is not directly attributable to that violence is not free, unless covered by another exemption. More information on this exemption can be found in Chapter 7.

Question and answers

Q: Is emergency treatment free to all?

A: No. Only A&E services that are provided prior to an overseas visitor being admitted as an inpatient are free to all. Inpatient services and outpatient appointments are chargeable.

Q: Can I ask European visitors and students for EHICs for A&E services?

A: Yes, even though you cannot charge any patient directly for A&E services, you should still seek to record and report EHICs wherever possible to allow the UK to be reimbursed by the relevant member state for providing this treatment. This is also true of the other exempt services, e.g. for infectious or sexually transmitted diseases. If they do not present an EHIC you cannot then charge the patient for these exempt services.

Q: Can I charge someone for A&E services while on an observation ward?

A: No, patients kept in observation wards, or similar, attached to A&E departments are usually still under the healthcare of the A&E consultant and should not be charged unless and until they are formally admitted to NHS hospital as an inpatient.

Q: Is a termination of pregnancy considered to be a 'family planning service'?

A: No. A termination of pregnancy is not a method of contraception or family planning so does not fall under that exemption.

Q: I provide NHS community services, including to some overseas visitors. Should I be charging them?

A: If these are community services that are provided outside the NHS hospital setting, then whether you can charge overseas visitors using them depends on who employs the person providing the community services. If an NHS hospital employs such staff, or the staff are working under the direction of an NHS hospital, then the Charging Regulations apply and overseas visitors must be charged for these community services, unless they are covered by an exemption from charge. However, if staff providing the community services are not employed, or directed by, an NHS hospital, then no charge can be made to overseas visitors.

Q: Clinicians are treating a patient for TB. Do I charge for other conditions the patient has?

A: Yes, unless treatment of the other condition is also an exempt service, or the patient is exempt from charges under another exemption, then you must charge for the treatment of the other condition, even if the other condition impacts on the treatment of the TB.

Q: An overseas visitor says they have forgotten to bring their antiretroviral (ARV) therapy for their HIV. Do we provide it free of charge?

A: HIV is a disease for which treatment is free on public health grounds. Guidance to the NHS advises that in such circumstances the supply of free ARVs should be limited to an amount that will last until the overseas visitor returns home or has arranged for ARVs to be sent to them. This guidance is available at www.gov.uk/government/publications/hiv-treatment-for-overseas-visitors-in-england-from-1-october-2012.

Q: Do I need to assess patients attending sexually transmitted diseases clinics for charges?

A: The diagnosis and treatment of sexually transmitted infections is free to all, so charging issues will arise less often in those settings. Regulations prevent the disclosure of any identifying disease other than to a medical practitioner (or to a person employed under the direction of a medical practitioner). This applies to information in connection with, and for the purpose of, the treatment of the patient and/or the prevention of the spread of the disease. However, this does not mean that sexually transmitted diseases clinics do not have to apply the Charging Regulations or should not allow Overseas Visitor Managers (OVMs) access to do their job. Overseas visitors being provided with treatment for sexually transmitted diseases will still be liable for charges for other types of treatment unless another exemption applies, so it can still be helpful for awareness of charging issues to be raised in these settings.

Reimbursement claims can be made to other EEA member states for providing treatment for sexually transmitted infections whenever the patient has a valid European Health Insurance Card (EHIC), so sexually transmitted diseases clinics can be encouraged to take down these details and provide OVMs with them. There would be no question of treatment being charged, or delayed, if no EHIC was presented.

Q: Where can I go to find more information about HIV and sexual health treatment to pass on to patients?

A: Please use the Terrence Higgins Trust's helpline, THT Direct:

www.tht.org.uk/our-charity/Get-help-now/THT-Direct

Chapter 5. The health surcharge: how to deal with and recognise someone who has paid or is exempt from paying

Background

5.1 This chapter is about non-European Economic Area (EEA) individuals applying to reside in the UK for longer than six months. It is not about those coming to the UK for six months or less (except for those falling within the 'skills transfer' category), those on visitor visas, or those coming to the UK from the EEA.

5.2 From April 2015, an immigration health charge (referred to in this guidance as the **health surcharge**) will be payable by non-EEA nationals who apply for a visa to enter or remain in the UK for more than six months. People with indefinite leave to remain in the UK and those not subject to immigration control (e.g. diplomats posted to the UK) are not liable to pay the surcharge, but may be ordinarily resident and entitled to free NHS healthcare on that basis (see Chapter 3 for information about ordinary residence).

5.3 Payment of the health surcharge entitles the payer to NHS-funded healthcare on the same basis as someone who is ordinarily resident. They are entitled to free NHS services, including NHS hospital care, except for services for which a UK ordinary resident must also pay, such as dentistry and prescriptions in England.

5.4 Payment of the health surcharge is mandatory when making an immigration application, subject to exemptions for certain categories of people and the discretion of the Home Secretary to reduce, waive or refund all or part of a surcharge payment. Most of these groups also receive NHS-funded healthcare on the same basis as an ordinarily resident person.

5.5 The exemptions to paying the health surcharge are as follows:

- (i) persons who apply for entry clearance where the leave to enter is for six months or less;
- (ii) persons who apply for entry clearance under the Immigration Rules as visitors;
- (iii) those who apply for entry clearance or leave to remain under the Immigration Rules as a Tier 2 intra-company migrant transfer and their dependants;
- (iv) a child who applies for leave to remain and is looked after by a Local Authority (or a Local Authority or Authority in other devolved administrations);
- (v) a person, and their dependants, who makes an application for leave to remain which relates to a claim:
 - for asylum or humanitarian protection; or
 - that their removal from the UK would be contrary to Article 3 of the European Convention on Human Rights;

- (vi) a person who applies for leave to remain as a victim of human trafficking and their dependants;
- (vii) a person who applies for leave to remain under the Home Office Destitution Domestic Violence Concession policy and their dependants;
- (viii) a dependant of a member of HM forces, or of a member of a force who is exempt from immigration control under section 8(4)(b) and (c) of the Immigration Act 1971, when applying for entry clearance or leave to remain as a dependant;
- (ix) a person granted entry clearance or leave to remain pursuant to an EU obligation;
- (x) nationals of Australia or New Zealand; or
- (xi) a British Overseas Territories citizen who is resident in the Falklands Islands.

5.6 The health surcharge is £200 per annum per applicant, with a discounted rate of £150 per annum for students and their dependants. The health surcharge will be collected by the Home Office alongside the immigration application fee. The health surcharge must be paid for each applicant and for each dependant included in a visa application. This ensures that non-EEA migrants make a proportionate financial contribution to the NHS. All surcharge income will be delivered back to the NHS.

5.7 The health surcharge must be paid in full for each year, or part of a year, that the applicant is applying to stay for. Failure to pay a health surcharge (except when an exemption from paying it applies, or when the Home Secretary waives, refunds or reduces the surcharge) will result in an immigration application being refused or considered invalid, or, if leave has been granted, that leave will be cancelled.

Exemption from NHS charges

5.8 The Regulations provide for an exemption from NHS charges for persons who:

- have paid the health surcharge;
- are exempt from paying the health surcharge (see paragraph 5.4 for a full list of exemptions), except where they are exempt by virtue of being a visitor to the UK or as a result of applying for leave to enter for six months or less; these persons are still liable for charges
- the Home Secretary has exercised discretion to:
 - waive the health surcharge;
 - reduce the health surcharge; or
 - refund part, but not all, of the health surcharge.

5.9 The exemption from NHS charges applies to the period of leave to enter or remain in the UK granted to the person. Once that leave expires or is curtailed, the person becomes liable for charges from then on including where the person is part-way through a course of treatment.

5.10 Individuals coming to the UK for six months or less as a visitor will be liable for charges under the Charging Regulations unless another exemption from charges applies. The only exception to this is a sub-category of intra-company transfers known as 'skills transfer', where leave is only granted for a maximum of six months. The 'skills transfer' category is not a visitor route and the person's visa (a category D visa) will be distinct from a visitor visa. The visa will clearly state the immigration category of intra-company transfer and this will indicate eligibility to access free NHS services.

5.11 Where a person is refunded part of the health surcharge, they will be exempt from NHS charges. However, where they receive a full refund, they are chargeable for NHS services at the point of delivery (unless another exemption in the Charging Regulations applies) because their immigration application has been refused. Where the surcharge has been refunded because the person did not claim an exemption to which they were entitled, and incorrectly paid the surcharge, the person will be exempt from NHS charges in the same way as others exempt on this basis (except for visitors who are chargeable for NHS services).

5.12 Non-EEA migrants who applied for leave to remain in the UK for more than six months prior to the implementation of the health surcharge (6 April 2015) will not be retrospectively required to pay the health surcharge. As these individuals will not have an opportunity to pay the health surcharge until they next make an immigration application, Regulation 11 operates as a transitional arrangement and exempts them from charges for NHS services until their existing leave (visa) expires. They will be liable to pay the health surcharge if they make a further application for leave to remain in the UK for a time-limited period after 6 April 2015, subject to being eligible for exemption or waiver from paying the surcharge.

5.13 Where a person who is exempt from charges under Regulation 10 or 11 makes an in-time application (before expiry of their existing leave) for further leave to remain in the UK, and their existing leave is extended pending the outcome of that application, they will continue to be exempt from NHS charges until any extended period of their existing leave expires.

5.14 Where a person who is exempt from charges under Regulation 10 or 11 stops being exempt from charges because their leave expires, they overstay their visa or have their visa curtailed or rescinded by the Home Office, they become chargeable for treatment from that point onwards, including for the continuation of courses of treatment that are already under way. The 'easement clause' under Regulation 3(5) does not apply to those under surcharge or transitional arrangements.

5.15 A child born to a person who is exempt from charges under Regulation 10 or 11 will also be exempt from charges while they are aged three months or younger, unless the child leaves and returns to the UK within this timeframe, in which case the exemption will no longer apply. Parents should ensure that they regularise their child's immigration status in the UK during this three-month period, which may include the parent paying the surcharge on their child's behalf. If the parent does not regularise their child's status, they will be liable for any charges for treatment provided to the child after the three-month period.

How to recognise someone who has paid the surcharge

Additional information contained in the Summary care Record application on the Spine

5.16 Individuals who have paid the health surcharge, or who are exempt or waived from payment of the surcharge, will be pre-registered on the Spine using information provided by the Home Office. The Spine is an information technology system consisting of applications, services and directories, used to record and display data on individuals and provide for the exchange of information across the health service in England. NHS records for surcharge payers, and those exempt from paying the surcharge, will include basic demographic information visible to all NHS staff. Overseas Visitor Managers (OVMs), or equivalents, will be able to access additional information regarding an individual's nationality, UK Biometric Residence Permit (BRP) and period of permitted stay in the UK via a 'Chargeable Status' tab within the Summary care Record application (SCRa).

5.17 Individuals who are able to access NHS services on the same basis as a UK ordinary resident, either because they have paid the surcharge, or are exempt or waived from paying the surcharge, will have a 'green' banner on their NHS record. The banner will indicate that they are 'Green: Paid or exempt from the health surcharge'. All smartcard-enabled staff will be able to view a green banner on the NHS records of surcharge payers, or those exempt or waived from paying the surcharge, when the record is viewed through the SCRa. Upon seeing a record marked as 'green', NHS staff should be able to proceed with medical healthcare without undertaking any further investigation for charges. However, if there are any concerns regarding a migrant's status NHS staff should refer the individual to the OVM.

5.18 Should an individual's 'green' status change for any reason (e.g. the period of granted leave expires), the individual may be chargeable for NHS services from that point onwards, including the remainder of courses of treatment already under way. These individuals will have a red banner indicating that they are 'Red: Likely chargeable for NHS services'. This should act as a prompt to call the OVM, or relevant staff member, for further investigation to determine chargeability.

5.19 Demographic information on surcharge payers, and those exempt or waived from paying the surcharge, will be visible on the local demographics system via the hospital IT system. However, the green/red banner will only be visible via the SCRa to NHS staff with smartcard access. For the vast majority of NHS staff it will not be possible to distinguish between those individuals who have paid the surcharge and those who are exempt or waived from paying the surcharge.

5.20 Only OVMs, or their equivalents, will have access to the additional immigration information regarding nationality and granted period of leave to remain in the UK via the 'Chargeable Status' tab within the SCRa. This tab will also contain details of any previous periods of leave within the UK. To gain access to the additional immigration information contained in the tab, you will need to apply for access via your local registration authority. You should complete an RA02 form and request access to the B0259 activity code, which is called 'Entitlement Administration'.

5.21 The screenshot that follows provides an example of what the NHS record of a surcharge payee, and those exempt or waived from paying the surcharge, will look like when viewed through the Chargeable Status tab on the SCRa visible only to OVMs.

1 NHS Summary Care Record

dev.spine2.ncrs.nhs.uk/summarycarerecord/immigrationstatus

AppsSummary Care RecordSpine Alert Servicealertserv-2Reporting transaction ...Reporting demographicsreporting-clinicalsSpine Self-ServiceReporting role listSCR Allocate NHS num...SCR migrantsSCR Child Carescr-edit consentSCR death notificationSCR view workgroupReporting All

Find a patientHelpPrintExit

Summary Care RecordNHS

Ebba BERESFORD

DOB: 17-May-1989FemaleNHS: 945 230 4842GP Practice: N82663Address: 1 SANDOWN ROAD, WAVERTREE, LIVERPOOL, L15 4JA

Patient Details

Chargeable Status

Green: Access to free NHS Services

Current Status

Access to free NHS Services

Green

Immigration status valid from

15-Dec-2011 to 02-Feb-2015

Home Office Reference Number

0123456789

Biometric Residency Permit

907654321

Country of Nationality

India

Spine System Effective From date

14-Dec-2011

Chargeable Status

The Chargeable Status may take one of the following values:
01 Green: Access to Free NHS Treatment
02 Red: Likely chargeable for NHS service
03 Update: Patient is now a British Citizen
Any valid 'Green' or 'Update' current status takes priority over any 'Red' status.

Use of the NHS Summary Care Record is subject to confidentiality regulations. Some actions will raise a privacy alert.

More about privacy alerts

Historical Status

This information is held by Spine, though there may be other historic statuses that have not been recorded.

Immigration Status From	Immigration Status To	Status	HO Reference	BRP Number	Country of Nationality	System Effective From	System Effective To
14-Oct-2010	14-Dec-2011	Red: Likely chargeable for NHS services	1123456700	900664422	Sri Lanka	14-Oct-2010	14-Dec-2011

CONFIDENTIAL: PERSONAL PATIENT DATA accessed by ROWE, Ben - Clinical Practitioner Access Role - NELPOT OUT OF HOURS SERVICE

Version: jg1-8845-mon2-4.20140305180427

start

NHS Summary Care R...

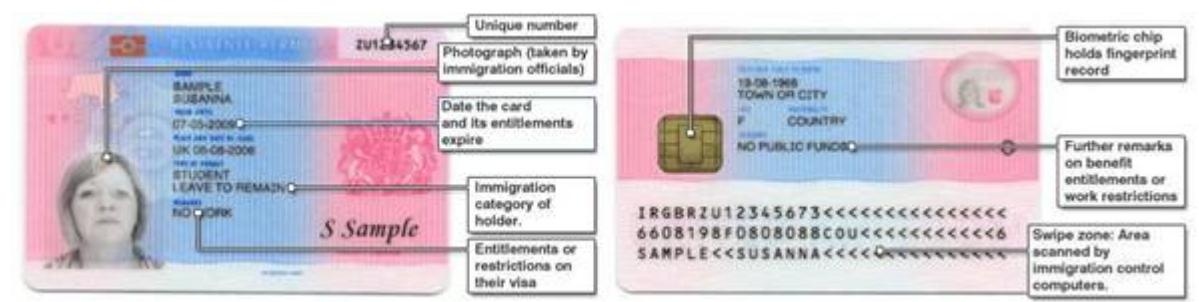
EN 15:29

The Biometric Residence Permit

5.22 The BRP provides a simple and secure means of determining and verifying a person's immigration status and entitlements. The BRP contains the holder's photograph, basic biographical information and their immigration status, including any relevant conditions and the date the card and entitlements expire, on the face of the card.

5.23 Since 2012, the BRP has been issued to all non-EEA nationals applying within the UK for further leave to remain for more than six months. During 2015, all non-EEA nationals newly granted permission to enter the UK for more than six months will be issued with a BRP. By the end of July 2015, the BRP will be the only document issued by the Home Office to non-EEA nationals under the Immigration Rules to evidence their status. However, BRPs will not be issued retrospectively so there will be a transitional period in which other immigration documents are still in circulation.

5.24 The following is an example of a BRP.



5.25 No information relating to surcharge payment will be contained on the card. However, after April 2015, when the surcharge is introduced, the vast majority of non-EEA nationals subject to immigration control will only have a BRP if they have paid the surcharge, are exempt or waived from payment of the surcharge, or were granted leave to remain in the UK prior to the surcharge being implemented. Therefore, a valid BRP will indicate that the individual is eligible for NHS services on the same basis as an ordinary resident, unless the BRP is clearly marked to show that the migrant applied in a visitor category (see paragraph 5.26).

5.26 Prior to collection of the BRP, people will be issued with a 30-day multi-entry short stay vignette in their passport to allow them to travel to the UK. From April, this vignette will be evidence that an individual has paid the surcharge, or is exempt or waived from payment, if they have not yet collected their BRP.

5.27 There is one exceptional category of individuals who will be issued a BRP but who are chargeable for NHS services. This is a small number of visitors who are permitted to stay for longer than six months but less than a year (including academic visitors, student visitors and private medical visitors). These people will have BRPs, but will not have paid the health surcharge and should be subject to NHS overseas visitor charges (unless a different exemption in the Charging Regulations applies). Their BRPs will be marked to demonstrate their 'visitor' status.

5.28 The BRP is only valid for the period shown on the card, which covers the period of leave to enter or remain in the UK granted. If the card has expired, and the subject has not obtained a new card to extend their stay or cannot provide evidence that they are in the process of

making an in-time application (i.e. they submitted their application before their previous leave expired), then they are likely to be chargeable for NHS services. A person whose leave has been curtailed is likely to be chargeable for NHS care. However, they may be in possession of a BRP that has not yet expired. This reinforces the importance of checking the Spine for updates on a patient's immigration status.

5.29 Only data on those individuals who have been granted a BRP will be visible on the Spine (except if the individual is in one of the groups who are exempt from paying the surcharge and not issued with a BRP – see paragraph 5.29 below).

5.30 Certain categories of migrants will not be issued with a BRP. This includes asylum seekers, and those applying for leave as victims of domestic violence or trafficking. These groups will be exempt from paying the surcharge and will have an NHS record created on the Spine demonstrating their 'green' status. See Chapter 7 for more information about what other evidence you can accept to establish entitlement to free NHS services for these groups.

5.31 One sub-category of intra-company transfers, 'skills transfer', where leave is only granted for a maximum of six months, will also not be issued with a BRP. These individuals will receive a visa but will be exempt from the surcharge and will be entitled to access NHS services on the same basis as an ordinary resident. The 'skills transfer' category is not a visitor route, and the visa (a category D visa) will be distinct from a visitor visa. The category D visa clearly states the immigration category of intra-company transfer and this will indicate eligibility to access free NHS services.

5.32 Some non-EEA nationals have a right to live in the UK as family members of an EEA national who is exercising EU Treaty rights, typically by working in the UK. These individuals are exempt from paying the surcharge and will have an NHS record created on the Spine demonstrating their 'Green: Free access to NHS services' status during the time granted to remain in the UK. They will be issued with a Biometric Residence Card (BRC) instead of a BRP from April 2015. Some may continue to rely on valid non-biometric residence cards until they expire. The BRC will be almost identical in style and substance to the BRP and should be handled in the same way to verify eligibility for free NHS services.

5.33 OVMs should be aware that, from April 2015, short stay permits will be issued to persons who have extended their stay in the UK for a cumulative period of six months or less. BRPs will be issued to migrants who apply for leave to remain in the UK for a total period of more than six months. Individuals who carry a short stay permit will not have a banner describing their access to NHS services on the Spine and will be subject to the charges (unless another exemption from charges in the Charging Regulations applies).

No NHS record visible on the Spine and no BRP

5.34 There will be a transitional period in which some people who have paid the surcharge, or who are exempt or waived from paying the surcharge, do not have an NHS record or a BRP. These individuals are likely to be:

- nationals of a country where the BRP does not yet form part of the immigration application process (this can be verified using the timetable in the toolbox outlining when migrants of certain countries will be issued with a BRP as part of the immigration application process);

- people who applied for leave to enter or remain in the UK prior to the implementation of the surcharge or who will be exempt from charges until their existing visa expires; or
- those who are exempt from paying the surcharge and who are not issued with a BRP.

5.35 Asylum seekers and those applying for leave to remain as victims of domestic violence or trafficking are not issued with a BRP. These groups should have an NHS record visible on the Spine, but if one is not available you should continue to use good judgement and other available documentation such as the Application Registration Card (ARC) or evidence of exemption from paying the surcharge from the Home Office to ascertain eligibility for free NHS services.

5.36 You will need to continue to exercise good judgement and make enquiries of the Evidence and Enquiry team at the Home Office, where individuals are not recorded on the Spine and where you cannot verify that the health surcharge has been paid.

5.37 The table below outlines different categories of non-EEA migrants who may apply for leave to enter and remain in the UK for a period of more than six months, and who will therefore be in scope of paying the immigration health surcharge, and the documentation that NHS staff should request to verify their status.

	Exempt from paying surcharge	Exempt from NHS charges	Issued a BRP	Status on SCRa	Documentation to verify status
Surcharge payees (whose visas remain valid)	N	Y	Y	Green	<ul style="list-style-type: none"> • Additional information on the SCRa • BRP • Visa stamp/vignette in passport to show that leave to enter or remain in the UK for more than 6 months was granted after April 2015 (during the transition period as the BRP is rolled out overseas)

	Exempt from paying surcharge	Exempt from NHS charges	Issued a BRP	Status on SCRa	Documentation to verify status
Nationals of Australia and New Zealand (non-visitors)	Y	Y	Y	Green	<ul style="list-style-type: none"> • Additional information on the SCRa • BRP • Visa stamp/vignette in passport to show that leave to enter or remain in the UK for more than 6 months was granted after April 2015 (during the transition period as the BRP is rolled out overseas)
British Overseas Territories citizens who are resident in the Falklands Islands	Y	Y	Y	Green	<ul style="list-style-type: none"> • Additional information on the SCRa • BRP • Visa stamp/vignette in passport to show that leave to enter or remain in the UK for more than 6 months was granted after April 2015
Dependants of military personnel	Y	Y	Y	Green	<ul style="list-style-type: none"> • Additional information on the SCRa • BRP

	Exempt from paying surcharge	Exempt from NHS charges	Issued a BRP	Status on SCRa	Documentation to verify status
Intra-company transfers	Y	Y	Y	Green	<ul style="list-style-type: none"> Additional information on the SCRa BRP Visa stamp/vignette in passport
Skills transfer sub-category	Y	Y	N (issued with category D visa)	Green	<ul style="list-style-type: none"> 'Skills transfer', where leave is only granted up to 6 months, will NOT have a BRP. They will have a category D visa which looks different from a visitor visa and it will be clear this is an intra-company transfer and not a visitor route.
Third country nationals exercising an EU right	Y	Y	N (issued with BRC)	Green	<ul style="list-style-type: none"> Additional information on the SCRa BRC from April 2015 Permanent and temporary residence cards (during the transition period as the BRP is rolled out overseas) Visa stamp/vignette in passport

	Exempt from paying surcharge	Exempt from NHS charges	Issued a BRP	Status on SCRa	Documentation to verify status
Children who are looked after by a Local Authority and make an application for leave to remain	Y	Y	Y	Green	<ul style="list-style-type: none"> • Additional information on the SCRa • Confirmation from the Local Authority that the child is looked after • Confirmation from the Home Office that they have made an application for leave to remain • Visa stamp/vignette in passport (during the transition period as the BRP is rolled out overseas) • BRP if granted leave to remain by the Home Office
People, and their dependants, who make an application for asylum, temporary protection or humanitarian protection	Y	Y	N (issued with ARC)	Green	<ul style="list-style-type: none"> • Additional information on the SCRa • ARC • Confirmation from Home Office that asylum application or application for temporary protection or humanitarian protection is still under consideration • BRP if granted refugee status (including temporary protection or humanitarian protection)

	Exempt from paying surcharge	Exempt from NHS charges	Issued a BRP	Status on SCRa	Documentation to verify status
People, and their dependants, whose removal from the UK would be contrary to Article 3 of the European Convention on Human Rights	Y	Y	Y	Green	<ul style="list-style-type: none"> • Additional information on the SCRa • BRP • From April 2015, could be issued with a 'short stay permit' for periods of 6 months or less, in which case a BRP will not be issued
Victims of trafficking and their dependants who make applications for leave to remain	Y	Y	N	Green	<ul style="list-style-type: none"> • Additional information on the SCRa • Confirmation from the UK Human Trafficking Centre or Home Office that they are a victim of human trafficking
People who make applications for leave to remain under the Home Office Destitution Domestic Violence Concession	Y	Y	N	Green	<ul style="list-style-type: none"> • Additional information on the SCRa • Confirmation from the Home Office of Destitution Domestic Violence Concession having been granted • From April 2015, could be issued with a 'short stay permit' for periods of 6 months or less, in which case a BRP will not be issued

	Exempt from paying surcharge	Exempt from NHS charges	Issued a BRP	Status on SCRa	Documentation to verify status
People who applied for leave to enter or remain in the UK prior to the implementation of the surcharge	N/A	Y	Y (in country applicant) N (out of country applicant)	Green none	<ul style="list-style-type: none"> • Migrants who applied for further leave to remain in the UK prior to the implementation of the surcharge and still have leave to remain will have a BRP • Migrants who applied for leave to enter the UK from abroad will have a stamp/vignette in passport demonstrating that leave was granted for more than 6 months prior to April 2015.
Special long-stayer visitors (e.g. private medical or academic visitors)	Out of scope	N	Y	none	<ul style="list-style-type: none"> • BRP marked to clearly state visitor category • Visa stamp/vignette in passport (during the transition period as the BRP is rolled out overseas)

When could a status on the SCRa change?

- Applies for further leave to remain and application is granted → status remains **green**.
- Applies for further leave to remain and application is refused → status changes **green** to **red**.
- Period of leave granted is curtailed → status changes **green** to **red**.
- Period of leave granted expires and no in-time application for an extension of leave is made → status changes **green** to **red**.
- Granted citizenship → migrant information on NHS record deleted.
- Granted indefinite leave to remain → **green banner removed** and no end date for period of leave.
- An asylum seeker is granted refugee status or humanitarian protection → status remains **green**.

- Failed asylum seekers with no recourse to further appeal (leave is curtailed or expires) → status changes to **red**.
- Failed asylum seekers may be exempt from NHS charges if they are supported by the Home Office or a Local Authority → status remains **green** (see Chapter XX for more information).

NB: A migrant whose leave has been curtailed is likely to be chargeable for NHS care. However, they may be in possession of a BRP that has not yet expired. This reinforces the importance of checking the Spine for updates on a patient's immigration status.

Chapter 6. Former UK residents, armed forces members and war pensioners

Former UK residents

6.1 Former UK ordinary residents who have emigrated and no longer reside in the UK are usually chargeable on visits to the UK. However, there are two important things to consider before charging: is the patient still ordinarily resident in the UK, and, if not, are they exempt from charge under the Charging Regulations?

6.2 British citizens, European Economic Area (EEA) nationals and non-EEA nationals with indefinite leave to remain returning to resume properly settled residence in the UK will meet the ordinary residence test (assuming their residence is lawful and voluntarily adopted), most likely from the date of their arrival. See Chapter 3 more information on ordinary residence.

6.3 The following exemption categories may apply to those who are not ordinarily resident in the UK:

- **Regulation 12 – EU rights:** Former residents now residing in other EEA member states (and in limited circumstances residing outside the EEA) may have a right under EU law to free NHS hospital care. See Chapter 9 for more information on persons with EU rights.
- **Regulation 13 – UK state pensioners resident in the EEA:** UK state pensioners who are resident in another EEA member state are exempt from charge for all NHS hospital treatment, including elective treatment, provided that they have registered an S1 document in that member state. See Chapter 9 for more about this exemption.
- **Regulation 14 – reciprocal healthcare agreements:** Former residents residing in countries with which the UK has a reciprocal healthcare agreement may be covered by the terms of that agreement and be entitled to free NHS hospital healthcare (usually only for medically necessary healthcare but will depend on the terms of the relevant agreement). See Chapter 10 for more information on reciprocal healthcare agreements.
- **Regulation 20 – armed forces, Crown servants and UK Government funded employment:** Former residents may be working abroad as part of an armed service or as a Crown servant. They may also be in UK Government funded employment abroad or be employed by the British Council or Commonwealth War Graves Commission. Such individuals may be exempt from charges (see paragraphs 6.4 to 6.10).
- **Regulation 22 – war pensioners and armed forces compensation recipients:** Such individuals are exempt from charges while visiting or living in the UK (see paragraphs 6.11 and 6.12).

Armed forces members, Crown servants and UK Government funded employment (Regulation 20)

Armed forces members

6.4 Members of the regular and reserve forces (collectively referred to as UK forces) are exempt from charge for all treatment. The armed forces member does not have to have been a former UK resident, but the exemption will also cover those who are serving overseas and who might not be considered ordinarily resident in the UK.

6.5 The spouse/civil partner and children under 18 of the armed forces member are also exempt from charge, even if the armed forces member is not in the UK with them at the time of treatment. The spouse/civil partner or child must be in the UK lawfully. Note that those dependants of armed forces members who apply to reside in the UK for six months or more will be entitled to free NHS healthcare by virtue of the surcharge arrangements (they are exempt from having to pay the surcharge – see Chapter 5 for more details).

6.6 Examples of evidence include proof that they are a serving member of the UK forces, e.g. valid UK forces ID card or confirmation from the Ministry of Defence.

Crown servants; British Council staff; Commonwealth War Graves Commission staff; and those in employment (paid or unpaid) financed in part by the UK Government (in arrangements with the government or public body of another country or territory)

6.7 A person from any of the above groups (called a ‘qualifying employee’ in the regulation) is exempt from charge for all treatment, provided that they are either:

- (i) visiting the UK as a requirement of the qualifying employment; or
- (ii) if visiting for leisure/other purposes, they were ordinarily resident in the UK prior to being posted overseas as a qualifying employee. A qualifying employee who was not ordinarily resident in the UK immediately prior to their current post will still be exempt if they had previously held another post as a qualifying employee, and were ordinarily resident in the UK immediately prior to taking up that earlier post.

6.8 The spouse/civil partner or children under 18 of the qualifying employee are also exempt from charge, even if the qualifying employee is not in the UK with them at the time of treatment. The spouse/civil partner or child must be in the UK lawfully. However, if the qualifying employee was not previously ordinarily resident as described in paragraph 6.7(ii) above, and is only exempt because they are visiting the UK as a requirement of their employment, their spouse/civil partner or child will only be exempt when visiting the UK with that qualifying employee.

6.9 Examples of evidence include proof of such employment, and of being ordinarily resident in the UK prior to taking up such a post. For more information about evidence of ordinary residence, see Chapter 3.

War pensioners and armed forces compensation scheme payment recipients (Regulation 22)

6.10 People who receive UK war pensions or war widows' pensions are exempt from charges for all NHS hospital treatment, as are recipients of armed forces compensation scheme payments. This exemption extends to their spouse/civil partner and/or dependent children if they are lawfully present and visiting the UK with the exempt overseas visitor.

6.11 Examples of evidence include proof of appropriate pension/compensation scheme payment – pension book/slip, letter from the Ministry of Defence or the Department for Work and Pensions. The relevant NHS body should contact the departments for confirmation if necessary.

Question and answers

Q: Will the NHS pay for repatriating someone to the UK if they become seriously ill while abroad?

A: No. If someone is taken seriously ill, the NHS is not responsible for funding their repatriation back to the UK if a person is taken seriously ill. However, if the patient's family make their own arrangements to repatriate the patient who on arrival will be resuming their ordinary residence, then they will become entitled to access full NHS treatment free of charge from the date of their arrival. In cases where relevant NHS bodies are advised in advance that a patient is arriving, they must make adequate arrangements to ensure that the patient receives the appropriate healthcare on their arrival back in the UK.

Chapter 7. Vulnerable patients and those detained

When operating the charging rules it is very important to consider the position of vulnerable overseas visitors, including those unlawfully resident in our communities, both those who are exempt from charge and those who are chargeable.

7.1 Not all people who are in vulnerable positions are exempt from charge, but the NHS must always provide immediately necessary or urgent care, including maternity care, to any chargeable patient, regardless of whether or not they have yet paid for that care. Chapter 8 discusses in detail what should happen when a chargeable patient cannot pay for treatment.

7.2 Overseas Visitor Managers (OVMs), and other NHS staff are strongly encouraged to speak to their safeguarding leads if, in the course of their work, they are concerned about the welfare of any patient. It can also be helpful for OVMs to build constructive relationships with local agencies which support people in various types of need, or to seek advice and information from relevant national agencies and organisations. This can help in understanding the needs and circumstances of patients, some of whom can be very afraid of disclosing personal information. This can have a negative impact on their care. Working together with organisations and agencies supporting these patients helps to ensure that they receive the support they need, and are fully informed about how to access support services, including any entitlement to free NHS hospital services. It can also improve a person's understanding of the charges they face and the choices they have (including the consequences of incurring NHS debts), and facilitate discussions about the possibility of payment plans being agreed for those having difficulty paying for the cost of their treatment.

The following groups are exempt from charge:

Treatment of conditions caused by specified types of violence (Regulation 9(f))

7.3 An overseas visitor who has been subjected to certain types of violence will not be charged for treatment or services needed to treat conditions caused by that violence.

The types of violence are:

(i) Torture

The term 'torture' means:

Any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.⁷

7.4 Services provided for the treatment of a condition directly attributable to torture are free to all overseas visitors, provided that the overseas visitor has not travelled to the UK for the specific purpose of seeking that treatment. Coming to the UK to escape torture does not mean coming here for the specific purpose of seeking treatment. Provision of treatment should be holistic, include medical and psychological care, and may include measures such as medical, physical and psychological rehabilitative services. Many survivors of torture suffer mental health difficulties and mental health services play a key role in their treatment.

7.5 There are significant complexities in identifying this group of vulnerable people. Survivors of torture may not disclose humiliating and degrading experiences of torture and ill-treatment, or may disclose this sensitive information over a period of time as a relationship of trust develops. When identifying a survivor of torture (and other cruel, inhuman or degrading treatment or punishment) to establish if an exemption applies, an OVM should accept:

- confirmation from a medical professional, including a referring GP, who could most appropriately identify signs and symptoms of torture and that the treatment accessed is attributable to this torture; and/or
- confirmation from an appropriate non-governmental organisation or charity, such as the Helen Bamber Foundation or Freedom from Torture Foundation, confirming that the patient is a client of theirs and is accessing their services as a survivor of torture.

7.6 Both Foundations provide training, capacity-building and supervision to NHS clinicians on the identification of victims of torture, and the assessment of their health needs, and are keen to continue to offer training and/or contribute to training packages to build capacity to support the identification of survivors of torture.

(ii) Female genital mutilation

7.7 Female genital mutilation (FGM) 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 that mutilation constituted an offence under the Female Genital Mutilation Act 2003 (or would have done so if performed before the Act came into force, or, if

⁷ Article 1(1) of the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

performed outside the UK, would have done so if performed in the UK). Services provided for the treatment of any condition, including a chronic condition or a mental health condition, that is directly attributable to the FGM are covered by the exemption and are free of charge. This includes any maternity services (antenatal, perinatal and postpartum treatment) the need for which is directly attributable to the mutilation.

7.8 The exemption applies wherever the FGM was performed, provided that the overseas visitor has not travelled to the UK for the specific purpose of seeking that treatment. Any other treatment that a woman or girl who is a victim of FGM needs that is not directly attributable to the FGM may be chargeable unless covered by another exemption.

7.9 Where FGM is identified in NHS patients, it is now mandatory to record this in the patient's [health record](#). Since September 2014, all acute trusts are required to provide a monthly report to the Department of Health on the number of patients who have had FGM or who have a family history of FGM.

7.10 Health professionals in acute trusts should always update a patient record with whatever discussions or actions have been taken. If the patient has undergone FGM, referral to a specialist FGM clinic should always be considered. If a relevant NHS body refers a patient to social services or the police, then this should also be recorded in the patient's health record. If a patient is identified as being at risk of FGM, then this information must be shared with the GP and health visitor, as part of safeguarding actions.

7.11 In order to establish if an exemption should apply, OVMs should therefore obtain confirmation from a medical professional (which might be a referring GP) who is aware of the patient's health record that FGM is, or will be, recorded there, and that the treatment being accessed is directly attributable to the FGM. A referral from an FGM clinic will also be evidence that a charge is not to be applied for treatment attributable to the FGM.

You can access training resources on FGM using the link below:

www.nhs.uk/NHSEngland/AboutNHSservices/sexual-health-services/Pages/fgm-for-professionals.aspx

(iii) Domestic violence

7.12 The Home Office has developed a non-statutory cross-government definition of domestic violence and abuse which is:

Any incident or pattern of incidents of controlling, coercive, threatening behaviour, violence or abuse between those aged 16 or over who are, or have been, intimate partners or family members⁸ regardless of gender or sexuality. The abuse can encompass, but is not limited to:

- *psychological*
- *physical*
- *sexual*
- *financial*
- *emotional*

8 Family members are: mother, father, son, daughter, brother, sister and grandparents; in-laws or step-family.

Controlling behaviour is a range of acts designed to make a person subordinate and/or dependent by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving them of the means needed for independence, resistance and escape and regulating their everyday behaviour.

Coercive behaviour is an act or a pattern of acts of assault, threats, humiliation and intimidation or other abuse that is used to harm, punish, or frighten their victim.

7.13 The Home Office website on domestic violence and abuse provides other useful resources at www.gov.uk/domestic-violence-and-abuse.

7.14 Services provided for the treatment of a condition that is directly attributable to domestic violence are free to all overseas visitors provided that the overseas visitor has not travelled to the UK for the specific purpose of seeking that treatment. This will include any mental health services that are needed as a consequence of the violence.

7.15 It is often difficult to identify victims of domestic violence, particularly as victims are often in powerless and dangerous situations and may be unwilling to disclose that they are suffering in this way. However, where a person has disclosed previously to a medical professional that they are a victim, this may be recorded in their health record. In such cases, OVMs may be able to obtain confirmation from a medical professional (including a referring GP) who is aware of the patient's health record that the person is in a domestically violent situation, and that the treatment being accessed is directly attributable to domestic violence. Otherwise, an OVM should accept confirmation from a medical professional who could most appropriately identify signs and symptoms of domestic violence that the services being provided are directly attributable to that violence.

7.16 A number of training tools and sources of information exist to support clinicians to recognise domestic violence. The Department of Health has provided the following resources:

- April 2014, a toolkit for health visitors, to help increase knowledge about identifying people affected by domestic violence and providing support through partnership working: www.gov.uk/government/publications/guidance-for-health-professionals-on-domestic-violence.
- *Responding to Domestic Abuse: a handbook for health professionals* which gives practical guidance to healthcare professionals working with patients who may have experienced or are experiencing domestic abuse. The 2009 edition is available at: www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/@dh/@en/documents/digitalasset/dh_4126619.pdf.
- *Improving safety, reducing harm: children, young people and domestic violence. A practical toolkit for front-line practitioners*, 2009. This toolkit for health professionals was developed to improve responses to a range of key issues affecting children and young people, including domestic violence, bullying, sexual violence and gangs as well as child protection and risk assessments. A copy of the toolkit is available at: www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/@dh/@en/@ps/documents/digitalasset/dh_116914.pdf.

7.17 In the absence of confirmation from a medical professional, it is crucial that, in trying to establish if charges apply, people who may be victims of domestic violence are treated sensitively and discreetly, especially if accompanied by others who may be violent towards them. In no circumstances should documentation regarding charging (or exemption from charging) be sent to the patient that mentions domestic violence, due to the danger this might place the person in. For this reason, organisations supporting victims of domestic violence may also be reluctant to provide documentation specifying that a person is considered by them to be a victim of domestic violence. OVMs must bear this in mind when trying to establish if charges apply to the person. If a victim has made steps to claim legal aid because they have separated from the abusive partner/family member, they would have needed to provide documentation from a domestic violence refuge or specialist support service; this could count as evidence of entitlement to free treatment, where necessary.

7.18 NHS staff and OVMs should be aware that some non-European Economic Area (EEA) nationals and their dependants are able to make applications to the Home Office for leave to remain under the Destitution Domestic Violence Concession policy, following the breakdown of their relationship due to domestic violence. These individuals are exempt from paying the surcharge and are entitled to healthcare on the same basis as an ordinary resident. They will have a 'Green: Paid or exempt from the health surcharge' banner on their record when viewed through the Summary care Record application.

(iv) Sexual violence

7.19 Sexual violence is rape or sexual assault. Sexual violence may be included in domestic violence too. When it is not, a separate exemption means that services provided for the treatment of a condition directly attributable to sexual violence are free of charge, provided that the overseas visitor has not travelled to the UK for the specific purpose of seeking that treatment. Treatment will include mental health services and maternity services needed as a consequence of sexual violence.

7.20 Anyone can be a victim of rape or sexual assault, no matter what age they are, their sexuality and regardless of whether they are male or female.

7.21 If a person is a victim of rape or sexual assault it may be recorded in their health record, in which case OVMs may be able to obtain confirmation from a medical professional who is aware of the patient's health record that the patient is a victim of sexual violence, and that the treatment being accessed is directly attributable to that violence. Otherwise, an OVM should accept confirmation from a medical professional, including a referring GP, who could most appropriately identify signs and symptoms of sexual violence, that the services being provided are directly attributable to that violence. The training tools provided on page 37 for domestic violence may also assist medical professionals in identifying signs of sexual violence.

7.22 Since referrals would normally come through a Sexual Assault Referral Centre (SARC), which provides specialist medical and forensic services, this will be an obvious indicator that the services being accessed are as a result of sexual violence, so that treatment will be exempt from charges.

Refugees (Regulation 15(a))

7.23 Anyone granted asylum, temporary protection or humanitarian protection under the Immigration Rules made under section 3(2) of the Immigration Act 1971 is recognised as a refugee and is exempt from charges.

7.24 Such individuals are also exempt from paying the surcharge, and are entitled to their NHS healthcare free of charge on the same basis as an ordinary resident. They will have a green banner on their record when viewed through the Summary healthcare Record application.

See Chapter 5 for more information.

7.25 The following should be provided as evidence of being granted asylum, temporary protection or humanitarian protection:

- a 'Green: Paid or exempt from the health surcharge' banner on the patient's record, when the record is viewed through the Summary care Record application; or
- confirmation from the Home Office of asylum, temporary protection or humanitarian protection having been granted.

OVMs should also contact the Evidence and Enquiry team at the Home Office if they need confirmation that a person has been granted asylum, temporary protection or humanitarian protection.

Asylum seekers and others seeking refuge (Regulation 15(b))

7.26 Anyone who has made a formal application with the Home Office to be granted asylum, temporary protection or humanitarian protection which has not yet been determined is also exempt from charges. Formal applications are those made under the 1951 UN Convention and its 1967 Protocol and also any other request for humanitarian protection, such as some claims made on protection from serious harm grounds under Article 3 of the European Convention on Human Rights. Relevant NHS bodies should seek their own legal advice if it is not clear under what circumstances a person is making such a claim.

7.27 A person, and their dependants, who makes an application for leave to remain which relates to a claim for asylum or humanitarian protection, or on the basis that that their removal from the UK would be contrary to Article 3 of the European Convention on Human Rights, will be exempt from paying the surcharge and will be entitled to their NHS **healthcare** on the same basis as an ordinary resident.

7.28 Other than the Summary care Record, the following should be provided as evidence of having made an application for asylum, temporary protection or humanitarian protection:

- Application Registration Card (ARC) issued by the Home Office or confirmation from the Home Office that the person has made such an application and that it is still under consideration.

Asylum seekers supported by the Home Office under section 95; failed asylum seekers supported by the Home Office under section 4(2) or by a Local Authority under section 21 (Regulation 15(c) and (d))

7.29 A person who has had their asylum/humanitarian protection application and all appeals rejected becomes a 'failed asylum seeker'. They will become liable for charges for their NHS hospital treatment at that point, unless one of the following situations applies to them.

7.30 Persons who are being supported by the Home Office under section 4(2) or section 95 of the Immigration and Asylum Act 1999 are exempt from charges. Section 4(2) support is given to those failed asylum seekers making reasonable efforts to leave the UK but for whom there are genuine recognised barriers to their return home. Section 95 is provided to asylum seekers where they would otherwise be destitute and this normally continues for those failed asylum seekers who have children under the age of 18.

7.31 Failed asylum seekers being supported by a Local Authority under section 21 of the National Assistance Act 1948 are also exempt from charges. Such failed asylum seekers receive this support due to a need for healthcare and attention (usually because of a disability), and are in an analogous situation to those receiving section 4(2) support, who are usually able bodied.

7.32 The following should be provided as evidence of being supported by the Home Office or a Local Authority:

- confirmation that the person is being supported by the Home Office under section 95, or is a failed asylum seeker supported by the Home Office under section 4(2) or by a Local Authority under section 21.

7.33 A failed asylum seeker who makes a fresh application for asylum, temporary protection or humanitarian protection will become an asylum seeker again and will therefore be exempt from charges again under Regulation 15(b), until that new application, including any appeals, is determined. Charges will still apply during any period between the first application, including appeals, being rejected and the second, fresh, application being lodged with the Home Office.

Children looked after by a Local Authority

7.34 Children who are looked after by a Local Authority within the meaning of section 22(1) of the Children Act 1989 are exempt from charges. This will include the following children who are accommodated by a Local Authority:

- children in the care of the Local Authority by virtue of a care order (by a court);
- children who are unaccompanied by a parent or guardian in the UK or abandoned or for whom there is no one with parental responsibility; and
- children who are voluntarily accommodated by a Local Authority (without the need for intervention by a court).

7.35 There may be occasions when a relevant NHS body treats an overseas visitor child who is unaccompanied or abandoned, or for whom there is no one with parental responsibility, and whom the relevant NHS body believes should be in the care of or looked after by the Local Authority. Where that child is subsequently taken into the care of the Local Authority, there will be no charge for the treatment prior to the child being taken into the care of, or becoming looked after by, the Local Authority.

7.36 OVMs and NHS staff should be aware that some of these children will make applications to the Home Office for leave to remain in the UK. They are exempt from paying the surcharge, and are entitled to **all** their NHS healthcare free of charge on the same basis as an ordinary resident. They will have a 'Green: Paid or exempt from the health surcharge' banner on their record when viewed through the Summary care Record application.

7.37 Confirmation from the Local Authority should be obtained to confirm that the child is looked after by that Local Authority.

7.38 Victims, and suspected victims, of human trafficking (Regulation 16)

7.39 A person who is thought to be a victim of human trafficking can be referred to the 'Competent Authorities' (CA) of the UK to be identified as such. The Competent Authorities are the UK Human Trafficking Centre (UKHTC) and, where cases are linked to asylum and immigration issues, the Home Office. The CA will then consider if there are reasonable grounds to consider the person to be such a victim and if so, will issue a 'reasonable grounds' decision. Individuals given a reasonable grounds decision are suspected victims of human trafficking and are exempt from charge during the recovery and reflection period (45 days in the UK). They will continue to be exempt from charge if the CA confirms them as being a victim of trafficking with a 'conclusive grounds' decision.

7.40 Those whom the CA confirm not to be victims of trafficking are no longer exempt from charge, other than for courses of treatment already under way, which remain free of charge until complete or until the person leaves the country.

7.41 It may be that NHS treatment is provided prior to a person being referred to the CA for identification. Charges incurred prior to a referral to the CA for assessment as a victim of trafficking must be refunded or, if not yet paid, cancelled, when the CA provide a reasonable grounds decision. If the CA do not provide a reasonable grounds decision, these charges are not cancelled or refunded. If the CA go on to establish that the person is not, in fact, a victim of trafficking, no treatment provided during the time that the person was suspected as being a victim of trafficking, or provided prior to being referred to the CA for such an assessment, will become chargeable.

7.42 The spouse/civil partner and dependent children of those exempt under this regulation are also exempt from charges in their own right, as long as they are here lawfully. They do not have to have been here with the victim of trafficking during the entire period of their stay.

7.43 Victims of human trafficking are often in powerless situations and NHS staff may come across them before they have had a chance to escape their oppressors and seek help. They may be unwilling to disclose their situation, although NHS staff are often trusted individuals who might be best placed to identify signs of trafficking. A leaflet and e-learning resources were launched in April 2013 for health professionals, to raise awareness about the issue of

human trafficking and enable health professionals to identify and respond to victims more effectively. A copy of the tool and leaflet are available at:

www.e-lfh.org.uk/programmes/human-trafficking-e-learning/open-access-session/

www.gov.uk/government/uploads/system/uploads/attachment_data/file/187041/A5_Human_Trafficking_Guidance_leaflet.pdf

7.44 Consequently, it may be that NHS staff are concerned that a person they are treating or assessing for charges is a victim of trafficking. OVMs should speak to their safeguarding lead for advice. If the patient appears to be in danger, the relevant NHS body should contact the police.

7.45 There are also charitable ‘First Responder’ organisations that are trained to identify and provide support to victims, and suspected victims, that can be contacted for advice. OVMs are encouraged to engage with these organisations to ensure that victims of trafficking who are not exempt from charges (because they are unwilling to be referred to the CA) still receive the support they need. The current list of First Responder organisations can be found here:

www.nationalcrimeagency.gov.uk/about-us/what-we-do/specialist-capabilities/uk-human-trafficking-centre/national-referral-mechanism

7.46 Some victims of trafficking go on to make applications to the Home Office for leave to remain as victims of trafficking. They are exempt from paying the surcharge and are entitled to **all** their NHS healthcare free of charge on the same basis as an ordinary resident. They will have a ‘Green: Paid or exempt from the health surcharge’ banner on their record when viewed through the Summary care Record application.

7.47 The following should be provided as evidence:

- a letter from the CA confirming their status as a victim (a ‘conclusive grounds’ decision), or suspected victim (a ‘reasonable grounds’ decision) for whom the recovery and reflection period has not elapsed;
- those who make an immigration application for leave to remain as a victim of trafficking will have a ‘Green: Paid or exempt from the health surcharge’ banner on their NHS record, when it is viewed through the Summary care Record application, indicating their access to NHS services on the same basis as a person who is ordinarily resident. Note that not all victims will make such an application to the Home Office, so they will not all have a green banner indicating their status.

Exceptional humanitarian reasons (Regulation 13)

7.48 This regulation allows the Secretary of State for Health to designate an individual as exempt from charges on exceptional humanitarian grounds, as long as certain specified criteria are met. This designation can only be made by the Secretary of State. It is envisaged that the powers will only be used very rarely, where there is a clear humanitarian imperative to do so (e.g. the UK is responsible for causing the injury needing treatment or there are humanitarian reasons for treating the person in the UK). As far as relevant NHS bodies are

concerned, their role in the context of the Charging Regulations is to establish whether such a determination has been made, not to make the determination themselves.

7.49 The following should be noted with regard to evidence:

- the relevant NHS body will be advised that the appropriate determination has been made and supporting documentation will be provided (although in an emergency this may arrive after the patient).

7.50 Where such a determination is made, the person will be allowed to be accompanied by an authorised companion (which need not be their spouse/civil partner) and any authorised children, who will be exempt from charges for treatment the need for which arises while they are here, but not for other treatment.

Operation of the easement clause in respect of vulnerable individuals

7.51 Under the easement clause, any particular course of treatment under way when either:

- an asylum seeker's application, including all appeals, is rejected; or
- a person stops receiving section 95 support from the Home Office; or
- a failed asylum seeker stops receiving section 4(2) support from the Home Office, or section 21 support from a Local Authority; or
- a person ceases to be a child looked after by a Local Authority;
- a prisoner is released from prison, and
- a person suspected of being a victim of human trafficking is then found by the competent authority not to be a victim.

will continue free of charge until that treatment concludes or the person leaves the country.

7.52 However, they must be charged for any new courses of treatment, although relevant NHS bodies are reminded that, regardless of the lack of advance payment, they must not withhold treatment that is medically considered immediately necessary or urgent in that it cannot wait until the patient can reasonably return home. They are also reminded that they have the option to write off debts and not pursue them when the person is genuinely without funds. See Chapter 8 for more details.

Persons detained in an NHS hospital or subject to court ordered treatment (Regulation 18)

7.53 People who are detained in an NHS hospital or deprived of their liberty or subject to court ordered treatment are exempt from charges for the treatment specified in the court order and any treatment provided during their detention. This exemption applies to the following people:

- overseas visitors liable to be detained in an NHS hospital under the Mental Health Act 1983 (the 1983 Act) or any other legislation authorising their detention;

- overseas visitors received into guardianship under the 1983 Act or subject to a community treatment order under that Act;
- overseas visitors deprived of their liberty under section 4A, 4B, 16 or Schedule A1 of the Mental Capacity Act 2005; and
- overseas visitors required to submit to treatment imposed by a court order, other than those set out above.

7.54 The following should be provided as evidence:

- a court order; or
- evidence that the detention is authorised, in the form of a referral.

Prisoners and detainees (Regulation 19)

7.55 Anyone who is in prison or in a young offender institution and anyone who has been detained under immigration legislation is exempt from charges.

7.56 They will have been referred for treatment by the appropriate authorities.

Links and contacts for relevant support groups

We have provided a small number of suggested links to national organisations who support vulnerable individuals who might be exempt from charges under the Charging Regulations but this is by no means intended to be an exhaustive list. OVMs are encouraged to build constructive relationships with those local agencies which support people in various types of need in their own local areas. This can be found in the OVM toolbox:

www.gov.uk/government/publications/help-for-nhs-to-recover-costs-of-care-from-visitors-and-migrants

www.gov.uk/government/publications/guidance-on-overseas-visitors-hospital-charging-regulations

Chapter 8. When to provide hospital treatment to those not entitled to it free of charge

This chapter gives important advice on the safeguards that relevant NHS bodies must employ to protect the lives of overseas visitors who are not exempt from charges under the Charging Regulations, and guidelines on how relevant NHS bodies should handle such people without the resources to pay, including when to withhold treatment.

What are the relevant NHS bodies' responsibilities?

8.1 Chapter 2 sets out the legal obligations under the Charging Regulations of all relevant NHS bodies.

8.2 Relevant NHS bodies must also ensure that treatment which is immediately necessary is provided to any person, even if they have not paid in advance. **Failure to provide immediately necessary treatment may be unlawful under the Human Rights Act 1998.** Urgent treatment should also always be provided to any person, even if deposits have not been secured. Non-urgent treatment should not be provided unless the estimated full charge is received in advance of treatment.

What is immediately necessary, urgent and non-urgent treatment?

8.3 Only clinicians can make an assessment as to whether a patient's need for treatment is immediately necessary, urgent or non-urgent. In order to do this they may first need to make initial assessments based on the patient's symptoms and other factors, and conduct further investigations to make a diagnosis. These assessments and investigations will be included in any charges.

8.4 **Immediately necessary treatment** is that which a patient needs:

- to save their life; or
- to prevent a condition from becoming immediately life-threatening; or
- promptly, to prevent permanent serious damage from occurring.

8.5 Relevant NHS bodies must always provide treatment which is classed as immediately necessary by the treating clinician irrespective of whether or not the patient has been informed of, or agreed to pay, charges, and it must not be delayed or withheld to establish the patient's chargeable status or seek payment. It must be provided even when the patient has indicated that they cannot afford to pay.

Maternity treatment

8.6 Due to the severe health risks associated with conditions such as eclampsia and pre-eclampsia, and in order to protect the lives of both mother and unborn baby, **all maternity services, including routine antenatal treatment, must be treated as being immediately necessary**. No woman must ever be denied, or have delayed, maternity services due to charging issues. Although she must be informed if charges apply to her treatment, in doing so she should not be discouraged from receiving the remainder of her maternity treatment. Overseas Visitor Managers (OVMs) and clinicians should be especially careful to inform pregnant patients that further maternity healthcare will not be withheld, regardless of their ability to pay.

8.7 **Urgent treatment** is that which clinicians do not consider immediately necessary, but which nevertheless cannot wait until the person can be reasonably expected to return home. Clinicians may base their decision on a range of factors, including the pain or disability a particular condition is causing, the risk that delay might mean a more involved or expensive medical intervention being required, or the likelihood of a substantial and potentially life-threatening deterioration occurring in the patient's condition if treatment is delayed until they return to their own country.

8.8 For urgent treatment, relevant NHS bodies are strongly advised to make every effort, taking account of the individual's circumstances, to secure payment in the time before treatment is scheduled. However, if that proves unsuccessful, **the treatment should not be delayed or withheld** for the purposes of securing payment.

8.9 **Treatment is not made free of charge** by virtue of being provided on an immediately necessary or urgent basis. Charges found to apply cannot be waived and if payment is not obtained before treatment then every effort must be made to recover it after treatment has been provided.

8.10 **Non-urgent treatment** is routine elective treatment that could wait until the patient can return home. Relevant NHS bodies do not have to provide non-urgent treatment if the patient does not pay in advance and should not do so until the estimated full cost of treatment has been received (but see paragraph 8.18).

8.11 The decision on whether a patient's need for treatment is immediately necessary, urgent or non-urgent is **only for clinicians to make**. However, in determining whether or not a required course of treatment should proceed even if payment is not obtained in advance, or if it can safely wait until the patient can return home (i.e. whether it is urgent or non-urgent), clinicians will need to know the patient's estimated return date.

8.12 It is the responsibility of OVMs to gather the information on when the patient can return home in such cases, based on the patient's ability to do so. It is also the OVM's responsibility to establish whether or not the patient is entitled to free NHS treatment in the first place.

How to determine when an overseas visitor patient can reasonably be expected to return home

8.13 The general principle is that overseas visitors should either return home for treatment that is not immediately necessary or urgent, or pay in advance of receiving it. However,

in some cases it may not be possible or reasonable to expect a person to return home quickly enough for treatment. Clinicians will need to know when a patient can reasonably be expected to return home in order to decide if their need for NHS hospital treatment is urgent or if it can safely await their return.

8.14 As a condition of their entry to the UK, general visitors are required to have sufficient funds available to finance their stay, and that of any dependants, as well as the onward or return journey. Many documented migrants have return journeys booked when they enter the UK. If they need treatment before that return date but claim that they cannot pay for it in advance, they should arrange an earlier journey home before the treatment would be necessary in the opinion of a clinician. If an earlier journey home would not be reasonable, treatment should go ahead and debts recovered afterwards.

8.15 Those without return journeys booked are expected to return home for the treatment needed, again, unless it would not be reasonable to do so. As a final resort, the date at which their visa requires them to leave the UK should be used as the date of return.

8.16 For undocumented migrant patients, including failed asylum seekers, the likely date of return may be unclear, and will have to be assessed on a case-by-case basis, including their ability to return home. Some may be prevented by travel or entry clearance restrictions in their country of origin, or by other conditions beyond their control.

8.17 For some cases relating to undocumented migrants, it will be particularly difficult to estimate their return date. Relevant NHS bodies may wish to estimate that such patients will remain in the UK initially for six months, and the clinician can then consider if treatment can or cannot wait for six months, bearing in mind the definitions of urgent and non-urgent treatment given above. However, there may be circumstances when the patient is likely to remain in the UK longer than six months, in which case a longer estimate of return can be used.

8.18 Where a clinician has decided that the need for treatment is non-urgent and can wait until the patient returns home, this should be reassessed if the patient informs the relevant NHS body that their return date has been postponed for valid reasons. It should also be reassessed if the patient's medical condition unexpectedly changes. On being told that their need for treatment has been found to be non-urgent, and will therefore not proceed without advance payment, patients should be informed that they should present again for a reassessment of the urgency of their treatment if their condition changes.

What limits should be placed on treatment?

8.19 While urgency of treatment is a matter of clinical judgement, this does not mean that treatment should be unlimited; there may be some room for discretion about the extent of treatment and the time at which it is given. In many cases, a patient undergoing immediately necessary treatment may be able to be stabilised, allowing them to be safely discharged and giving them time to return home for further treatment rather than incurring further avoidable NHS charges. This should be done wherever possible, unless ceasing or limiting treatment would precipitate deterioration in the patient's condition.

Recommended timeline for establishing a patient's entitlement to free treatment and applying relevant charges

8.20 When a patient is in need of immediately necessary treatment, it may not be appropriate, or possible, to inform them ahead of treatment commencing that charges might apply, nor to secure from them an agreement to pay those charges. Patients who, after baseline questioning (see Chapter 11), appear not to be ordinarily resident here or not covered by surcharge arrangements, or who do not provide a valid European Health Insurance Card (EHIC) card, should be notified that charges **might** apply at the earliest appropriate opportunity and they should subsequently be interviewed by an OVM to establish this definitively, when it is medically appropriate to do so. Patients should **not** be told by anyone that charges will not apply until their status as chargeable or exempt from charges is formally established.

8.21 In circumstances where it is possible and appropriate to assess charges and request payment before or during a course of immediately necessary treatment, relevant NHS bodies should make clear to the patient that treatment will **not** be withheld or delayed if they do not pay in advance.

8.22 If and when it is established that charges apply, the patient should be informed and presented with an invoice for the treatment they have received and/or an estimation of the charges they are liable for in respect of any future treatment. However, patients who may be in need of further immediately necessary or urgent treatment should not be discouraged from receiving it, even if they indicate that they are unable to pay. In some cases, it may be appropriate not to present an invoice until all immediately necessary or urgent treatment has been completed, but patients should nevertheless be fully informed about the charges they might face.

8.23 An overseas visitor whose need for treatment after admission from accident and emergency (A&E) or from a GP referral is not immediate, should be interviewed by the OVM at the earliest appropriate opportunity and before a course of treatment commences, to establish if they are entitled to free treatment or have to pay.

8.24 However, if it is established that the patient is a chargeable overseas visitor who claims they cannot pay, and this has been done before the patient has seen the clinician, **the patient must not then be prevented from going on to see the clinician**, since it will be necessary for the clinician to determine what treatment is needed and the level of urgency. **Only when a clinician confirms that the need for treatment is non-urgent should treatment be withheld**, pending payment.

8.25 When, after this initial assessment, clinicians consider the need for treatment to be urgent, relevant NHS bodies are strongly advised to seek a deposit equivalent to the estimated full cost of treatment during the period before treatment is to commence. If it is not possible to secure payment, treatment should not be cancelled or delayed.

8.26 However, where a clinician considers that a chargeable patient's need for treatment is non-urgent, further treatment processes (e.g. putting the patient on a waiting list or booking outpatient clinics) should **not** be initiated until a deposit equivalent to the estimated full cost of treatment has been obtained. Any surplus which is paid can be returned to the patient

on completion of treatment. This is not refusing to provide treatment, it is requiring payment conditions to be met in accordance with the Charging Regulations before treatment can commence.

8.27 When providing immediately necessary or urgent treatment, clinicians should be asked to complete an advice from doctors or dentists form which is available in the OVM toolbox at: www.gov.uk/government/publications/help-for-nhs-to-recover-costs-of-care-from-visitors-and-migrants

www.gov.uk/government/publications/guidance-on-overseas-visitors-hospital-charging-regulations

which should then be documented in the patient's notes and a copy sent to the relevant service/delivery manager.

Chapter 9. How to deal with those with EU rights and exemptions

9.1 Regulation 12 of the Charging Regulations principally concerns those overseas visitors who are entitled to access NHS healthcare by virtue of EU rights arising under the EU Social Security Regulations (EC) 883/2004 and 987/2009 – the ‘EU Regulations’. Overseas Visitor Managers (OVMs), therefore, need to know what entitlements the EU Regulations provide to certain visitors from Europe over and above the entitlements provided elsewhere under the Charging Regulations. The UK can claim reimbursement for the cost of providing healthcare to visitors from other European Economic Area (EEA) states or Switzerland under the EU Regulations, if certain data is captured. A person’s eligibility under the EU Regulations will normally be established by production of the relevant portable document confirming that the holder is covered for their health costs by the country of issue. See the introduction and footnote on page 3 for an explanation of the main EU forms of interest to OVMs.

9.2 Regulation 13 of the Charging Regulations concerns those overseas visitors who are treated as if entitled under the EU Regulations and for whom no charge should be made.

9.3 OVMs also need to know of rights granted to visitors from Europe under Directive 2011/24/EU on the application of patients’ rights in cross-border healthcare – ‘the Directive’. This can apply to pre-planned treatment. Regulation 13(1) of the National Health Service (Cross-Border Healthcare Regulations 2013). If a patient is exercising these rights, the health provider should recover the full cost of treatment directly from the patient. However, as set out the charge recovered from the patient shall be equal to the NHS tariff for that service, or the equivalent NHS cost if no national tariff exists. Regulation 13(1) of the National Health Service (Cross-Border Healthcare) Regulations 2013 applies here. Regulation 7(2) of the Charging Regulations confirms this and applies the same principles to all visiting patients ordinarily reside in EU/EEA states or Switzerland (and who are not otherwise exempt from charging):

- It is important to remember that this guidance seeks to provide as much help and advice as possible. However, it cannot cover everything and is not intended to be a substitute for the Charging Regulations themselves, which contain the legal provisions.

Who is covered for healthcare under the EU Regulations?

9.4 The EU Regulations apply to all countries within the EEA, which is made up of the 28 member states of the EU:

- Austria
- Belgium

- Bulgaria
- Croatia
- Cyprus (Southern)
- Czech Republic
- Denmark
- Estonia
- Finland
- France
- Germany
- Greece
- Hungary
- Ireland
- Italy
- Latvia
- Lithuania
- Luxembourg
- Malta
- Netherlands
- Poland
- Portugal
- Romania
- Slovakia
- Slovenia
- Spain
- Sweden
- UK

plus Iceland, Liechtenstein and Norway.

9.5 **Switzerland** has a separate agreement with the EU which, in effect, applies the EU Regulations to Switzerland.

9.6 The UK also has reciprocal healthcare agreements with some other European countries, but these are outside of the EU Regulations – see Chapter 10.

9.7 Only ‘insured’ residents of the EEA or Switzerland are covered by the EU Regulations when they are visiting the UK. In detail, this covers:

- (i) **EEA nationals, stateless persons or refugees**, plus their family members and survivors (irrespective of nationality) of these groups of people, **insured** in each case in an **EEA** country;
- (ii) **Swiss or EU nationals**, stateless persons or refugees, plus their family members and survivors (irrespective of nationality) of these groups of people, **insured** in each case in Switzerland;
- (iii) **non-EEA nationals** legally resident and **insured** in any **EU** country (except Denmark).

Who can seek reimbursement under the EU Directive?

9.8 People from countries within the EEA may say they are seeking treatment that they will seek reimbursement for under the EU Directive upon their return to their state of residence.

9.9 Visitors from Switzerland are not covered by the Directive.

9.10 Non-EEA nationals who are legally resident and insured in the EEA are also covered by the Directive.

European Health Insurance Card (EHIC)

9.11 With the exception of visitors from the Republic of Ireland, a valid EHIC or Provisional Replacement Certificate (PRC) can demonstrate that a visitor (including a student) is exempt from charge under the EU Regulations, and therefore entitled to free NHS treatment that is medically necessary during their visit. **Visitors from Switzerland or the EEA (except Ireland) who do not provide an EHIC/PRC must be charged for their NHS hospital treatment, unless they are ordinarily resident or a different exemption applies to them under the Charging Regulations.**

9.12 An arrangement between the UK and the **Republic of Ireland** means that visitors from the Republic of Ireland do not have to present an EHIC to obtain free NHS treatment under the EU Regulations. They need only present evidence that they are resident in the Republic of Ireland, although a valid EHIC can be used as evidence of this. Visitors from the Republic of Ireland do need to be referred with an S2 for pre-planned treatment.

9.13 A person who has been charged because they did not provide an EHIC/PRC may be entitled to a reimbursement from their home state on their return. Alternatively, if they provide a valid PRC covering the period of treatment or within a reasonable timescale after treatment, they should be reimbursed by the treating NHS provider.

9.14 Visitors from the EEA/Switzerland may be exempt under a different exemption category within the Charging Regulations, for which it is not necessary to show an EHIC, and it is very important that this is considered before the patient is charged. EEA and Swiss nationals who are ordinarily resident in the UK are entitled to free treatment on that basis, but if they are able to show an EHIC or PRC from the EEA or Switzerland, the UK can claim back the cost of their treatment from that EEA state or Switzerland. It is possible to be ordinarily resident in the UK yet still be insured by another state. Consequently, if a patient from another EEA state or Switzerland presents for treatment and a relevant NHS body suspects they are ordinarily resident in the UK, the relevant NHS body should still ask the patient if they have an EHIC/PRC and report their details via the Overseas Visitor Treatment (OVT) web portal.

9.15 In order for the UK to make a claim to the relevant EEA state or Switzerland for treating its residents, it is imperative that the data from the EHIC/PRC is recorded and reported to the Overseas Healthcare Team at the Department for Work and Pensions (DWP) via the OVT web portal (see paragraph 9.46 below).

What treatment is free under the EHIC?

9.16 A person with a valid EHIC/PRC is exempt from charges for ‘all medically necessary treatment’, i.e. treatment that it is medically necessary to provide to them during their temporary stay in the UK, with a view to preventing them from being forced to return home for treatment before the end of their planned duration of stay. This means:

- diagnosis of symptoms or signs occurring for the first time after the visitor’s arrival in the UK;
- any other treatment which, in the opinion of a medical or dental practitioner employed by or under contract with a Clinical Commissioning Group (CCG), is required promptly for a condition which:
 - arose after the visitor’s arrival; or
 - became acutely exacerbated after their arrival; or
 - would be likely to become acutely exacerbated without treatment; plus
- the treatment of chronic or pre-existing conditions, including routine monitoring.

9.17 It should be noted that the above definition of ‘medically necessary treatment’ is different from the entitlement to free treatment that applies to visitors from reciprocal agreement countries which are not covered by EU regulations (see Regulation 14 and Chapter 10).

9.18 A temporary stay is a period during which someone is staying in a place other than the one where they usually live and they do not move their ‘centre of interest’ there. For the purpose of the EU Regulations and the Directive, a temporary stay is not limited to a defined period of time and will depend on the individual circumstances of the case.

9.19 In the case of **maternity services**, the EHIC covers all maternity care, including antenatal and postnatal care, provided the reason for the woman’s visit was not specifically to give birth or receive maternity treatment, in which case they should present form S2 (formerly E112), issued by the authorities in their home country, to the relevant NHS body. However, since not all EEA states automatically issue the S2 (formerly E112) for maternity, discretion can be applied if a valid EHIC is presented instead. If no valid entitlement document is presented, then payment will be required from the patient (unless a different exemption applies).

9.20 In the case of **dialysis**, patients with valid EHICs are eligible for free dialysis treatment, but this is dependent on the patient making an advance booking and the facilities being available at the time requested. Home **oxygen** services are also covered under the EHIC. Again, patients should make advance arrangements for provision, usually with a GP practice, and should ensure they have enough oxygen to travel to their destination in the UK and for their return home. Oxygen for travel must be arranged privately and is not covered by the state-funded arrangements described above. The treatments that require advance booking may be subject to change in the future.

What about European posted workers?

9.21 **Posted workers** are those sent to the UK on a time-limited posting by their employer in another EEA member state or Switzerland, rather than those who have chosen to move to the UK to take up employment or to seek work. Posted workers here for less than two years should show an EHIC and a portable A1 document, which the patient carries with them. Posted workers who are in the UK for more than two years should be covered by portable document S1 but may also be classed as ordinarily resident in the UK. Regardless of their length of stay, if a posted worker is able to present an EHIC, this should be recorded on the portal.

NB: by virtue of remaining subject to UK tax and national insurance, workers (and their family members) posted by the UK to another EEA country have the same right of access to NHS services as someone who is ordinarily resident here.

What about European students?

9.22 **Students** from the EEA/Switzerland who are temporarily studying in the UK may remain insured in their home state. Therefore, students should be asked to show a valid EHIC/PRC. If they cannot provide a valid EHIC/PRC, OVMs will need to consider whether they are ordinarily resident and therefore should not be charged.

9.23 Students may be here for several years before returning home, so they are likely to require a greater range of treatments than a general holiday-maker would need. Their EHIC will still cover them for all treatment that it is medically necessary to provide to them during their temporary (albeit lengthy) stay in the UK.

What about pre-planned treatment?

9.24 There are currently two potential routes for patients to receive planned healthcare in another EEA state or Switzerland:

- (i) the long-established route under Articles 22(1)(c) and 55(1)(c) of Regulation (EEC) 1408/71 and Articles 20 and 27(3) of Regulation (EC) 883/2004 (“the S2 route”);
- (ii) the more recent route under Directive 2011/24/EU (“the Directive route” – NB: the Directive does not apply to Switzerland).

9.25 The key difference between the two routes is that the S2 route relates only to state-provided treatment and costs are dealt with directly between states, with the S2 acting as a form of payment guarantee. This means that in the majority of cases, the patient is not required to pay anything themselves (other than any applicable statutory charge – e.g. for prescriptions).

9.26 The Directive operates on a principle of purchase and reimbursement – patients are able to purchase state or private healthcare in another EEA state and seek reimbursement for this treatment from their country of residence up to the cost of the treatment in that country.

The Directive route

9.27 Under the terms of the Directive, the principle of reimbursement of costs assumes that patients will pay the overseas provider upfront for their treatment and then claim reimbursement from their state of residence. The patient will also bear the financial risk of any additional costs arising. However, the Directive creates obligations on healthcare providers, which are set out in paragraph 9.30 onwards.

9.28 Except where the legislation in the state of residence requires the seeking of prior authorisation, a patient may obtain healthcare in another EEA state under the Directive without authorisation from their state of residence, whereas under the S2 route, **all** healthcare must be authorised in advance.

Obligations on providers under the Directive

9.29 Healthcare providers in England who are providing treatment to visiting patients under the provisions of the Directive need to observe some key requirements. They must:

- provide patients with relevant information on treatment options and quality and safety;
- provide clear invoices and price information;
- apply fees in a non-discriminatory manner;
- ensure transparent complaints procedures and procedures to obtain redress are in place;
- apply adequate systems of professional liability insurance or similar;
- respect privacy in the processing of personal information;
- supply patients with a copy of the record of their medical treatment.

Charging under the Directive route

9.30 The Directive requires healthcare providers to provide visiting patients with clear information on prices and clear invoices. Pricing must be non-discriminatory: providers cannot make up a price or seek to charge more simply because the person is a visiting patient seeking treatment under the Directive. Healthcare providers must therefore apply the same scale of fees for healthcare to visiting patients as for domestic patients. If there is no comparable price for domestic patients, the price must be based on objective, non-discriminatory criteria. The NHS (Cross-Border Healthcare) Regulations 2013 provide that, where a visiting patient receives an NHS service for which a charge can be made, the visiting patient must not be charged more than the amount that an NHS commissioner would have been charged if that service had been provided to an NHS patient.

9.31 If providers (including providers from the independent sector contracted to deliver NHS services) accept a visiting patient for treatment, they must not assume that such patients wish to be considered as private patients. This is because, although the patient is independent of the NHS system and is not referred formally by their state health system, they are exercising their rights under the Directive and may themselves receive reimbursement from their state system for eligible costs under the provisions of the Directive. At the same time, patients who

specify from the outset that they do wish to be treated privately may be charged in the same way as at the equivalent cost to private patients resident in England.

9.32 Similarly, primary healthcare providers should not assume that a visiting patient can, or should, be treated as a private patient.

9.33 In terms of how these requirements are met, for secondary healthcare provided by the NHS, relevant NHS bodies should recover the full cost of the treatment given to a visiting patient under the Directive. EEA states must have a transparent mechanism for the calculation of costs for cross-border healthcare and this must be based on objective, non-discriminatory criteria known in advance. To calculate the NHS cost, trusts should use the latest mandatory tariff (or equivalent) or the published national average reference costs at:

www.gov.uk/government/publications/national-tariff-payment-system-2014-to-2015⁹

9.34 Providers will need to ensure systems are in place for dealing with requests for treatment from visiting patients. This includes processes for seeking more information about the patients' conditions and diagnoses where this is not initially available, systems for dealing with payment direct from the patients, clear information about the services provided and the terms of treatment.

Non-discrimination under the Directive

9.35 The inflow of patients from other EEA states who wish to access treatment from NHS providers (including those contracted to the NHS in the independent sector) raises particular issues for providers. While there is no specific requirement on the provider to accept any patient, there are a number of factors that need to be considered.

9.36 The Directive does not require providers to accept visiting patients for planned healthcare if this would be to the detriment of ensuring sufficient access for their own patients with similar health needs, nor to prioritise them to the detriment of other patients, for instance by increasing waiting times. However, given that it is possible that providers or acute trusts may be contacted in advance by either the prospective patient, his/her clinician or potentially another country's National Contact Point, acute trusts or other providers would need to be able to explain and evidence the lack of capacity, demonstrate that refusal is necessary and show they were not discriminating against nationals of other states on grounds of nationality if rejecting a request for treatment.

9.37 In principle, the strongest grounds for refusing a visiting patient are a lack of service capacity – however, the provider would need to consider whether the patient could be offered the option of joining the waiting list, to be treated alongside “home” patients on the basis of clinical priority. Alternatively, the patient has the option of considering a different provider.

The S2 route

9.38 There are separate arrangements under Articles 22(1)(c) and 55(1)(c) of Regulation (EEC) 1408/71 and Articles 20, 27(3) and 36 of Regulation (EEC) 883/2004 for people from another EEA country or Switzerland who want to come to the UK expressly to seek treatment.

⁹ This is the web link for the national tariff payment system for 2014/15. For guidance for subsequent years, search for 'NHS tariff' at www.gov.uk/government/publications

These patients will need to obtain the prior authorisation of their social security institution, which bears the cost, meaning that the patient should not be charged for that treatment. The institution is obliged to grant authorisation only if the treatment is provided under the legislation of the applicant's state of residence and cannot be made available in the state of residence or competent state 'without undue delay'.

9.39 A person who has obtained permission from their social security institution to seek treatment in the UK will be issued with an **S2** (formerly E112). They must make advance arrangements for their treatment and be given the same clinical priority as NHS patients – i.e. if there is a waiting list they are subject to it. Patients referred under scheduled treatment arrangements will continue to be covered for all medically necessary treatment for any other conditions, if they show their valid EHIC/PRC.

9.40 To avoid the complications that may occur if a patient authorised to seek NHS treatment in the UK is inadvertently treated privately, NHS hospitals and consultants are advised to establish when accepting such referrals whether the treatment should be at the cost of the patient's social security institution or at the patient's own cost.

9.41 Where an NHS hospital has agreed to accept a patient under these arrangements, but on arrival the patient cannot produce the appropriate form, only treatment under the 'all medically necessary treatment' definition should be provided without charge (assuming they can show their EHIC or PRC). The patient can pay in advance for the planned treatment and should be charged the tariff cost or equivalent (if no national tariff exists) for the treatment. The patient may be able to claim reimbursement for this cost from their state of residence. If the relevant form is subsequently received, the charge should be refunded. If the form has not been received by the time the patient is discharged from NHS hospital they should be told to take the matter up with their social security institution.

9.42 The number of referred patients from **Malta** who are treated free under these arrangements is governed by a strict quota and is monitored by the Department of Health. Arrangements exist by which NHS hospitals are notified in advance of patients authorised to come under these arrangements. The Maltese High Commission in London allocates quota numbers to patients referred to the UK. When the quota is exhausted, further patients may be referred to the UK by the health authorities of Malta, but these patients should be charged for their treatment.

Reclaiming the costs of treating EEA/Swiss residents under the EHIC and S2 routes

9.43 In order for the UK to make a claim to the relevant EEA state or Switzerland for treating their residents, it is **imperative** that the data from a valid EHIC/PRC (for unplanned treatment), or S2 (formerly E112)/or Maltese quota number (for planned treatment) is recorded and reported to the Overseas Healthcare Team at DWP. **Without this data, the UK cannot make a claim for reimbursement.**

9.44 All treatment carried out whenever a valid EHIC/PRC/S2 is presented (including 'exempt' services such as treatment in A&E, and including when the person with an EHIC might be

exempt in another way or if they are ordinarily resident) should be reported using the OVT portal, which every relevant NHS body can access at: www.ovt.dh.nhs.uk/

9.45 The full cost of treatment should be recovered. To calculate the cost, relevant NHS bodies should use the latest national tariff guidance at: www.gov.uk/government/publications/national-tariff-payment-system-2014-to-2015,¹⁰ supplementing this with local tariffs calculated in accordance with the rules set out in the national tariff document where the treatment does not have a national tariff price.

9.46 Relevant NHS bodies should note that recording and reporting this data so that the UK can claim reimbursement from the appropriate country does not mean that relevant NHS bodies do not have to invoice the appropriate CCG. If this CCG is not invoiced, then the relevant NHS body will not be paid for treating the patient.

9.47 Full instructions on how to submit this data can be found in the Department of Health Finance Manual, which can be accessed via the internet at: www.info.doh.gov.uk/doh/finman.nsf

For advice on how to operate the web portal/submit data contact:

DWP Overseas Healthcare Team

Email: OHT.Overseasvisitorsteam@DWP.gsi.gov.uk

Persons resident in another EEA country but for whom the UK remains responsible for their healthcare costs in their country of residence

9.48 Under the EU Regulations, some people who are resident in other EEA member states or Switzerland have their healthcare costs paid for by the UK by virtue of the UK being the 'competent authority' for them. These persons will have a valid registered UK S1 in their EEA country of residence or Switzerland (except some posted workers, who will have a UK A1 and UK EHIC). OVMs need to be aware that there will be times when visitors from the EEA or Switzerland fall within this category. Bar one group of persons, of which further details below, persons in this category are entitled to receive all NHS treatment on the same basis as someone ordinarily resident in the UK and should not be charged for treatment, except where statutory charges apply e.g. prescription charges.

9.49 As set out above, there is one group of persons within this category who are not entitled to all NHS treatment on the same basis as people ordinarily resident in the UK. These are family members of 'frontier workers'. 'Frontier workers' are people who are resident in one EEA country but work in the UK, with a valid UK S1 registered in their country of residence. While 'frontier workers' are entitled to full NHS treatment, as explained in the paragraph above, their family members, also resident in the other EEA country with a UK S1, are only entitled, free of charge, to all medically necessary treatment during their visit here.

¹⁰ This is the web link for the national tariff payment system for 2014/15. For guidance for subsequent years, search for 'NHS tariff' at www.gov.uk/government/publications

Obligations on OVMs

9.50 To confirm entitlement to treatment, OVMs should, in the first instance, ask the patient to present a copy of their UK issued EU healthcare form (S1 or A1). OVMs will need to check whether there is an 'end date' on the form as some S1s are time-limited and entitlement to free NHS treatment is directly linked with the S1 form's validity. If OVMs have any questions about an S1 form, they can contact the DWP Overseas Healthcare Team details below to make further enquiries about the form's registration status. If OVMs are unable to confirm the patient's status, and the patient is neither ordinarily resident here, nor exempt under another category under the Charging Regulations, then the patient may be liable for their healthcare costs. However, if the patient is able to present their valid form within a reasonable period of time, the Trust should consider reimbursing the patient for costs incurred.

UK state pensioners living in another EEA country

9.51 From April 2015, all pensioners in receipt of a UK state pension who are living abroad in the EEA or Switzerland and have registered an S1 form from the UK with the local authorities in their EEA country of residence, and their family members, will be able to access all healthcare in the UK as though they were ordinarily resident and should not be charged for treatment. If they present an EHIC, their EHIC information should not be entered into the portal for reimbursement. Regulation 13 of the Charging Regulations concerns this category of patient.

9.52 OVMs can check whether a patient has a registered S1 form in another EEA country by contacting the Overseas Healthcare Team at:

DWP Overseas Healthcare Team

Email: OHT.Overseasvisitorsteam@DWP.gsi.gov.uk

When are S2s issued by the UK for persons resident in another EEA country or Switzerland?

9.53 The UK (DWP Overseas Healthcare Team) is also responsible for issuing the S2 for pre-planned treatment in either the UK or another member state for the holders of a UK S1 form (formerly E106/E121/E109) when that person lives in:

Austria	Denmark	Hungary	Slovakia
Belgium	Estonia	Latvia	Slovenia
Bulgaria	France	Lithuania	
Croatia	Germany	Poland	
Czech Republic	Greece	Romania	

9.54 All remaining EEA countries/Switzerland will continue to issue the S2 to those living there who have registered S1s in that country.

Patients' rights and information

9.55 If visitors from the EEA ask for information on accessing healthcare in the UK, they can be directed to the following website:

www.nhs.uk/NHSEngland/AboutNHSservices/uk-visitors/Pages/accessing-nhs-services.aspx

9.56 Patients can also contact National Contact Points for issues related to the Directive. A list of National Contact Points for European member states can be accessed at the following website:

http://ec.europa.eu/health/cross_border_care/docs/cbhc_ncp_en.pdf

Other European issues

9.57 It should be noted that:

- (i) for the purposes of the relevant EU Regulations:
 - France includes the overseas departments of Guadeloupe, Martinique, Guyane (French Guiana) and Réunion;
 - Spain includes the Balearic Islands, the Canary Islands, Ceuta and Melilla;
 - Portugal includes the Azores and Madeira;
- (ii) the territory of Denmark excludes the Faroe Islands and Greenland. However, a separate reciprocal healthcare agreement between the EU and Greenland allows Greenland nationals visiting EEA countries to receive immediately necessary treatment under state healthcare;
- (iii) Andorra, Monaco, San Marino and Vatican City are not part of the EEA;
- (iv) EU law is suspended in the northern part of Cyprus. It only applies in Southern Cyprus. Therefore, visitors from northern Cyprus are not covered by the EU Regulations;
- (v) the UK sovereign bases in Cyprus do not count as part of the UK in this context, nor as part of the EU;
- (vi) for the purposes of healthcare, relations between the UK and Gibraltar are governed by a bilateral healthcare agreement (see Regulation 14 and Chapter 10). The EU Regulations do not apply;
- (vii) though not covered under the EU Regulations, Bosnia and Herzegovina, Kosovo, Macedonia, Montenegro and Serbia have reciprocal agreements with the UK (see Regulation 14 and Chapter 10).

Questions and answers

Q: Can temporary visitors from the EEA/Switzerland who have a valid EHIC (or PRC) receive free dialysis?

A: Yes, those with valid EHICs are entitled to free dialysis; they do not need an S2 (formerly E112). This is subject to the patient making an advance booking and facilities being available at the time of treatment.

Q: Can temporary visitors from the EEA/Switzerland use an EHIC (or PRC) for maternity care?

A: Yes, those with valid EHICs (or PRCs) are covered for all maternity care, including antenatal and postnatal care, providing the reason for their visit was not specifically to give birth or receive maternity treatment, in which case they should have been referred here using an S2. However, for pragmatic reasons, a valid EHIC can be accepted instead of an S2 at the discretion of the relevant NHS body.

Q: Can temporary visitors from the EEA/Switzerland use an EHIC (or PRC) for a termination of pregnancy?

A: Women from an EEA country or Switzerland who come to the UK specifically to seek terminations will be liable for charges unless they have obtained an authorised S2 (formerly E112) from their own health institutions.

Q: A husband and wife are here from an EEA country. He needs treatment but doesn't have an EHIC with him. His wife does have her EHIC. Does he need to show his EHIC to get free treatment?

A: The spouse/civil partner and children under 18 of those with EHICs are exempt from charge under the Charging Regulations, but only in certain circumstances. If the family member is entitled to hold an EHIC from another EEA member state then the family member exemption does not apply. Therefore the husband would need either to present his EHIC (or PRC) or demonstrate that he is not entitled to an EHIC from the other EEA member state in order for the family member exemption in the Charging Regulations to apply.

Chapter 10. How to deal with those under reciprocal healthcare agreements and other international obligations

Reciprocal healthcare agreements (non-EEA) (Regulation 14)

10.1 The UK has reciprocal healthcare agreements with some non-European Economic Area (EEA) countries. Overseas visitors who can present evidence that they are nationals, citizens or lawful residents of one of these countries should be treated as exempt from charges in respect of treatment that the relevant agreement entitles them to.

Evidence required:

Proof that the person is a national/citizen/resident (as appropriate) of the country and that they are resident in that country, e.g. passport, residence permit, identity card, social security card, utility bill etc. For referrals for elective treatment (see below), confirmation from the relevant country/the Department for Work and Pensions (DWP) that the referral has been agreed.

10.2 Within the reciprocal agreements there are a number of variations in the level of free treatment afforded to visitors travelling to the UK. Generally, only immediate medical treatment is to be provided free of charge, to allow the overseas visitor to return home for other needs. Also, the agreements do not usually apply when the person has travelled to the UK for the purpose of obtaining healthcare. However, this is not always the case. See the table below for the level of free treatment by country, and other conditions that apply.

Country	Level of cover provided (see key)	Further information
Anguilla	1*	Applies to all residents of that country. Can also refer four patients to the UK for free NHS hospital treatment.
Armenia	1	Applies only to citizens resident in that country.
Australia	1*	Applies to all residents of that country.
Azerbaijan	1	Applies only to citizens resident in that country.
Barbados	1*	Applies to all residents of that country.
Belarus	1	Applies only to citizens resident in that country.
Bosnia and Herzegovina	3	Applies to all insured persons of that country.
British Virgin Islands	1*	Applies to all residents of that country. Can also refer four patients to the UK for free NHS hospital treatment.

Country	Level of cover provided (see key)	Further information
Falkland Islands	4	Applies to all residents of that country. Can refer an unlimited number of patients to the UK for free elective treatment.
Georgia	1	Applies only to citizens resident in that country.
Gibraltar	3	Applies only to citizens resident in that country when that citizen is not expected to stay in the UK for more than 30 days. Can also refer an unlimited number of patients to the UK for free elective treatment (see 10.4).
Isle of Man	2	Applies to all residents of the Isle of Man for a period of stay in the UK that has not exceeded, nor is expected to exceed, three months.
Jersey¹²	2	Applies to all residents of Jersey for a period of stay in the UK that has not exceeded, nor is expected to exceed, three months.
Kazakhstan	1	Applies only to citizens resident in that country.
Kosovo	3	Applies to all insured persons of that country
Kyrgyzstan	1	Applies only to citizens resident in that country.
Macedonia	3	Applies to all insured persons of that country.
Moldova	1	Applies only to citizens resident in that country.
Montenegro	3	Applies to all insured persons of that country.
Montserrat	1*	Applies to all residents of that country. Can also refer four patients per year for free NHS hospital treatment.
New Zealand	2	Applies only to citizens resident in that country.
Russia	1	Applies only to citizens resident in that country.
Serbia	3	Applies to all insured persons of that country.
St Helena	1*	Applies to all residents of that country. Does not include Ascension Island or Tristan da Cunha. Can also refer four patients per year for free NHS hospital treatment.
Tajikistan	1	Applies only to citizens resident in that country.
Turkmenistan	1	Applies only to citizens resident in that country.
Turks and Caicos Islands	1*	Applies to all residents of that country. Can also refer four patients per year for free NHS hospital treatment.
Ukraine	1	Applies only to citizens resident in that country.
Uzbekistan	1	Applies only to citizens resident in that country.

11 The UK has a reciprocal agreement with Jersey, but not with the other Channel Islands.

Key:

1. Immediate medical treatment only.
2. Only treatment required promptly for a condition which arose after arrival into the UK or became, or but for treatment would have become, acutely exacerbated after such arrival. Services such as the routine monitoring of chronic/pre-existing conditions are not included and free treatment should be limited to that which is urgent in that it cannot wait until the patient can reasonably return home.
3. All treatment on the same basis as for a person insured in the other country, including services such as routine monitoring of pre-existing conditions, but not including circumstances where a person has travelled to the other country for the purpose of obtaining healthcare.
4. All treatment free on the same terms as for an eligible UK resident (an ordinary resident), including elective treatment.

For all levels of coverage, it will be for a doctor or dentist employed by the relevant NHS body to provide clinical input into whether required treatment meets a specific level of coverage.

* For these countries, the agreement will also apply to those persons requiring treatment if they are a member of the crew, or a passenger, on any ship, vessel or aircraft travelling to, leaving from or diverted to the UK and the need for urgent treatment has arisen during the voyage or flight.

Referrals for elective healthcare under the agreements

10.3 Under the terms of the reciprocal arrangements the exemption also applies to those who have been referred to the UK specifically for NHS treatment. Normally the referrals can be made only when the countries do not have adequate facilities to provide the treatment needed.

10.4 Referrals from Gibraltar are commissioned by Gibraltar itself. Trusts should not bill back the Clinical Commissioning Group for treatment provided to someone referred from Gibraltar under the terms of the reciprocal healthcare agreement.

10.5 The British Overseas Territories of Anguilla, the British Virgin Islands, Montserrat, St Helena and the Turks and Caicos Islands can refer up to four patients each per year. In respect of the Falkland Islands, there is no limit on the number of referrals that can be made. Referral arrangements are made by the relevant British Overseas Territory through the DWP Overseas Healthcare Team (see Chapter 9 for their contact details). Persons hoping to be referred should contact the relevant British Overseas Territory in the first instance.

10.6 For all people who are referred for NHS treatment as per paragraphs 10.2 to 10.4 above, advance arrangements for their acceptance should be made and the patients must be given the same priority as patients living in the UK.

The UK's obligations under the European Convention on Social and Medical Assistance 1954 and the European Social Charter 1961 (Regulation 24(a))

10.7 Nationals of countries that are contracting parties to the European Convention on Social and Medical Assistance or the European Social Charter are exempt from charges for 'treatment the need for which arises during the visit' here when they are lawfully present in the UK and without sufficient resources to pay. Other reciprocal arrangements have generally superseded these arrangements, although not in the case of **Turkey**. The regulation will apply when lawfully present nationals from Turkey are genuinely without the resources to pay a charge for their treatment. However, since visitors from Turkey are required to have sufficient funds available to finance their stay, as well as their onward or return journey, they are unlikely to be genuinely without resources to pay, at least by instalments, or other assets, so this exemption is unlikely to apply.

Examples of evidence:

- *Proof of nationality and lawful presence in the UK, e.g. passport.*
- *Evidence of inability to pay, e.g. they are destitute.*

North Atlantic Treaty Organisation (NATO) (Regulation 21)

10.8 The eligibility of NATO personnel and attached civilians stationed in the UK is governed by the Agreement Regarding the Status of Forces of Parties to the North Atlantic Treaty. This regulation provides for free treatment to be given to a person, or the spouse/civil partner and/or dependent children of a person, who is serving with the armed forces of a country which is part of NATO.¹² The only NATO country to have bases in the UK and maintain substantial numbers of service personnel here is the USA, but members of the armed forces of the other countries may spend time on duty in the UK.

10.9 NATO personnel and their exempt family members are expected to use their own or UK armed forces hospitals, but if the services they require cannot readily be provided by the medical services of their own or the UK armed forces (e.g. because NHS services are significantly more accessible to the patient) then NHS hospital services may be provided free of charge.

Example of evidence:

- *Will be in receipt of appropriate documentation confirming NATO status.*

Employees on ships (Regulation 23)

10.10 People working on ships registered in the UK are exempt from charges. The exemption applies to any overseas visitor who is employed or engaged or working in any capacity on board a UK-registered ship and whose normal place of work is on board a UK-registered ship.

¹² The NATO countries are Belgium, Canada, Czech Republic, Denmark, France, Germany, Greece, Hungary, Iceland, Italy, Luxembourg, Netherlands, Norway, Poland, Portugal, Spain, Turkey, the UK and the USA.

See Regulation 4 for the liability for charges of those present in the UK for the purpose of working on a ship **not** registered in the UK.

Examples of evidence:

- *Proof of employment, e.g. letter from employer, contract of employment.*
- *Evidence of where the vessel is registered, e.g. from ship's owner.*

Questions and answers

Q: Is dialysis (either haemodialysis or peritoneal dialysis) included under the terms of the reciprocal agreements?

A: Temporary visitors from all non-EEA countries with which the UK has a reciprocal agreement should be provided with free dialysis, if clinicians consider this to be immediate medical treatment. In considering this, clinicians should assess if the dialysis can safely wait until the patient can return home, but this may be unlikely. This is subject to the patient making an advance booking and facilities being available at the time of treatment.

Q: Are maternity services included under the terms of the reciprocal agreements?

A: Women from non-EEA countries with which we have reciprocal healthcare agreements are eligible to receive immediately necessary treatment in connection with their pregnancy, if an unexpected emergency arises, or would arise without treatment, during their visit. This applies irrespective of whether the pregnancy was first confirmed in the UK or elsewhere. Those from Bosnia and Herzegovina, Gibraltar, Kosovo, Macedonia, Montenegro and Serbia may also be entitled to routine maternity healthcare free of charge, as long as they did not travel to the UK specifically for that treatment. However, if they come to the UK or remain in the UK to obtain routine antenatal healthcare or deliver their baby then charges will apply, unless they are specifically referred to the UK under the agreement because of complications. Those from the Falkland Islands can receive all treatment free of charge, but referrals should still be pre-arranged with the DWP Overseas Healthcare Team.

Part Two – How to implement the charging rules effectively

Chapter 11. Collaborative working and separation of duties: the role of staff in cost recovery

11.1 This chapter explains how to operate the charging rules to optimum effect.

11.2 NHS Senior managers must support the charging rules, not only because relevant NHS bodies have a legal obligation to make and recover charges from chargeable overseas visitors for the services they receive, but also because it ensures that the services provided to overseas visitors are funded through the collection of charges rather than placing additional financial burden on the NHS and ensures that NHS funds remain solely for NHS-funded patients. The recovery of charges from chargeable EEA overseas visitors also enables the collection of additional revenue, including profit following the introduction of commercial charging, that will support better delivery of a reasonable services element to all patients (including NHS-standard patients).

11.3 Senior managers must ensure the compliance of their relevant NHS body with its statutory duties and that legislation, guidance and advice provided by the Department of Health is followed. More information about the statutory duties of relevant NHS bodies in implementing the charging rules for overseas visitors can be found in Chapter 2.

What a relevant NHS body needs to do

In order to enforce their legal responsibilities, all relevant NHS bodies will need to have systems in place to support charging of overseas visitors, with staff who have the appropriate skills to:

11.4 **Identify, without discrimination, all patients who may be liable to charges.** This will involve all staff in patient administration, including A&E, outpatient clinics and wards. **At least one person must be responsible for organising the training of these staff** and the configuration of the Patient Administration System. Procedures must be in place to enable identification of chargeable patients out of normal hours (especially during weekends).

11.5 **Interview people to establish if they are, in fact, ordinarily resident or, if not, whether they are exempt from charges or liable for charges.** These in-depth interviews need to be handled sensitively and by staff who have been adequately trained to perform this task, including training on appropriate interview techniques and how to identify patients in a non-discriminatory manner (e.g. to avoid racial discrimination and harassment). The relevant NHS body must ensure that they have an adequate number of these staff to provide cover at all sites and that appropriate back-up services, for example interpreters, are available.

11.6 Make and recover charges from people who are not covered by an exemption category, providing them with a written statement of why charges apply, what the charge is estimated to be and how they can pay. Relevant NHS bodies are obliged to provide this statement under Regulation 19 of the healthcare Quality Commission (Registration) Regulations 2009 (SI 2009/3112). Where reasonably practicable, this statement should be given to the patient before treatment is provided. Where a person is in need of immediately necessary or urgent treatment it may not be possible or appropriate to provide them with this statement ahead of treatment. In such cases the statement should be given to the patient as soon as possible after treatment is provided.

The Department of Health strongly recommends that each relevant NHS body has a designated person to oversee the implementation of the Charging Regulations.

Tools to help staff assigned to this role are available at the toolbox:

www.gov.uk/government/publications/help-for-nhs-to-recover-costs-of-care-from-visitors-and-migrants

www.gov.uk/government/publications/guidance-on-overseas-visitors-hospital-charging-regulations

The role of Overseas Visitor Managers (OVMs)

11.7 The OVM's role is to see that the Charging Regulations are properly implemented and applied to all affected patients concerned. This will mean that OVMs have the same responsibilities as those described above for relevant NHS bodies. OVMs must fully understand the Charging Regulations, be able to communicate information about the Regulations to other NHS staff and patients, and identify, make and recover charges from chargeable overseas visitors in accordance with the Regulations. **They must be given the authority to ensure that the charging rules can be properly implemented in all departments.**

11.8 Staff assigned to a cost recovery role must be of sufficient seniority and skill to be able to resolve complex and sensitive situations and to deal effectively with administrative staff, clinicians, senior trust managers, finance colleagues and members of the public, ensuring that all groups understand their responsibilities.

11.9 We advise that the OVM is best placed within the finance department, to give them access to the full process (identification through to cost recovery) and to ensure that the finance department can more easily keep track of its responsibilities.

11.10 OVMs should be ready to provide more formal briefing events for all members of staff – both administrative and clinical – who come into contact with patients, for example at staff induction courses. These training sessions need to be repeated at regular intervals to ensure that new and existing members of staff understand the work of the OVM and the role they themselves may have to play.

Developing and maintaining good relationships

11.11 Regular contact with local community relations organisations is valuable. These organisations can be of significant assistance in communicating information about overseas visitors' liability for charges to members of the community, in particular to members of the overseas visitor community who may have language barriers to obtaining information, or who are vulnerable and receiving support through those voluntary sector organisations.

11.12 The success of the charging rules depends on all NHS trust staff being aware and supportive of the role of the OVM.

Identifying patients who may be liable for charges

11.13 Administrative staff have an essential role to play in identifying people who may be liable for Trust charges. The vast majority of people will not be liable for charges – nonetheless, the same questions must be asked of every single patient, in every single department, whose chargeable status is not known, in order to identify potentially chargeable patients. We call these the 'baseline questions'.

11.14 The Department of Health has suggested that you use the following baseline questions when carrying out interviews with people. Please note that you do not have to use the exact wording suggested below: if you are more comfortable covering this ground in a different way, please continue to do so, as long as the meaning of the questions remains the same and the same questions are asked of all people whose chargeable status is not known.

The baseline questions are:

“Are you a British citizen, European Economic Area (EEA) national or Swiss national?”

→ If yes: “Do you have an EHIC/PRC/S2?”

→ If yes, take details. The UK can recover the cost of their healthcare (including A&E services).

→ If no, where have you lived for the past six months? (Those who have lived in the UK for the past six months are likely to be ordinarily resident here; all others should be referred to the OVM.)

→ If no (i.e. the person is a non-EEA national), do you have indefinite leave to remain in the UK?

→ If yes, where have you lived for the past six months? (Non-EEA nationals with indefinite leave to remain who have lived in the UK for the past six months are likely to be ordinarily resident here; others should be referred to the OVM.)

→ If no, do you have a valid visa or leave to enter/remain in the UK?

→ If yes, have you paid the health surcharge or are you exempt or waived from paying it? (If yes, then they are exempt from charges; if no, then refer them to the OVM.)

→ If no, then refer them to the OVM.

11.15 Administrative staff must avoid discrimination when asking these questions. More information is provided at paragraph 11.16 onwards.

11.16 These questions need to be asked every time a patient begins a new course of treatment at the NHS hospital and is entered onto the relevant NHS body's records for inpatient or outpatient care, either on paper or computer and by either administration or ward staff, in order to comply with the Charging Regulations. As set out above, in cases where there is doubt about whether the patient is ordinarily resident, they should be referred for interview by the OVM. The questioner should inform the patient that he or she will be further interviewed.

11.17 This does mean that booking-in staff, ward clerks etc. will need to be prepared to ask for basic supporting evidence. Being unable to provide evidence does not mean that someone should be refused treatment, only that they should be referred to the OVM for further investigation.

11.18 The Department of Health has published a **toolbox** at

www.gov.uk/government/publications/help-for-nhs-to-recover-costs-of-care-from-visitors-and-migrants

www.gov.uk/government/publications/guidance-on-overseas-visitors-hospital-charging-regulations

to help trusts with their responsibilities here, including standardised best practice pre-attendance forms for all patients to fill in when being admitted. This form will explain that people should be prepared to provide certain pieces of evidence and should have a declaration for the person to sign, in which it is clear why the questions are being asked and what use may be made of the data. Checking will then be a quick and simple matter that need not add more than a few seconds to the booking-in process. Relevant NHS bodies should place this form on their intranet to be used by admissions staff, and it should be made available in multiple languages.

11.19 In some departments that cater for the very elderly or those with mental health problems, or when direct admission from critical healthcare is needed, the baseline questioning may be inappropriate or unworkable. In these cases admissions staff should still be aware of the possibility of people being liable for charges, and should notify the OVM of any patient whose chargeable status is unknown based on any non-discriminatory information they have (i.e. not purely on the basis of appearance, language, accent etc.).

11.20 Where it is established that a person may not be ordinarily resident here:

- the person should be told immediately, where possible and appropriate, that they will need to be interviewed to establish their eligibility for free NHS hospital treatment;
- the person who identifies that person as potentially liable for charges should contact the OVM as soon as possible and arrange for an interview to take place. Wherever possible, that interview should take place before treatment begins, but if, in the opinion of medical staff, the treatment is immediately necessary or needed urgently it should always go ahead without delay;

- where it is not possible for a person to be referred for immediate interview by the OVM, a note should be placed inside the medical records to alert other members of staff to the person's potential liability for charges. NB: this does not mean that treatment should be withheld or altered in any way. A suggested form of words is as follows:

Patient may not be ordinarily resident in the United Kingdom

This patient may not be ordinarily resident in the United Kingdom and has been referred for further interview by the Overseas Visitors Team. The patient may be liable to pay for any treatment received. The patient has been informed.

11.21 In undertaking this role, administrative staff should also fully understand the financial implications for the trust, and why they are important.

11.22 The following are details of some websites which may assist OVMs in carrying out their duties in relation to the Equalities Act 2010. NB: this is a small sample and is not intended to serve as a complete list.

NHS BME Network

www.nhsbmenetwork.org.uk/about/priorities/

Equality and diversity in the NHS

www.nhs.uk/NHSEngland/thenhs/equality-and-diversity/Pages/equality-and-diversity-in-the-NHS.aspx

NHS National Cancer Action Team – Patient Experience by Equality Group

www.google.co.uk

Avoiding discrimination in establishing if charges apply

11.23 In any dealings with patients, including overseas visitors, administrative staff must comply with their legal duties in respect of avoiding discrimination. This includes compliance with the Human Rights Act 1998 and the Equality Act 2010. Further information about the obligations of relevant NHS bodies under these pieces of legislation is set out in Chapter 2. In particular, relevant NHS bodies (and staff) must not discriminate against persons based on their having any of the protected characteristics (age, disability, gender reassignment, marriage or civil partnership, pregnancy and maternity, race, religion and belief, sex, sexual orientation) in comparison to persons without those characteristics. They must also, when exercising their functions, have due regard to the need to:

- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act;
- advance equality of opportunity between people who share a protected characteristic and those who do not;
- foster good relations between people who share a protected characteristic and those who do not.

11.24 It is therefore important that no person is discriminated against in the application of the Charging Regulations when establishing entitlement to free treatment. Ordinary residence or

exemption from charges cannot be judged from external appearance, or name, or language. It is not discriminatory to ask someone if they are living lawfully in the UK as long as you can show that all patients whose chargeable status is not known, regardless of their address, appearance, accent, race and first language, are asked the same question when accessing healthcare.

11.25 Relevant NHS bodies need to ensure that all staff involved with the identification and interviewing of potentially chargeable people should be properly advised of their role and provided with adequate training on how to exercise the general equality duty and how to avoid discrimination.

NHS trusts, ideally through an OVM, must ensure that all staff involved with the identification and interviewing of potentially chargeable patients should be properly advised of their role and provided with adequate training on how to exercise the general equality duty. e-learning will shortly be available via the Department of Health

What about A&E?

11.26 **Yes, whenever possible, A&E staff must ask all patients whose chargeable status is not known the baseline questions. A&E is a vital point at which to flag up a potentially chargeable overseas visitor** as it can be the first point of contact many people have with the relevant NHS body. A&E treatment is free to all until the patient is admitted as an inpatient or provided with an outpatient appointment. However, for visitors from the EEA who have an EHIC card, charges can be billed to the respective member state for all A&E treatment.

11.27 It is also important that visitors from the EEA are identified and asked to present their EHIC or Provisional Replacement Certificate (PRC). Even when the treatment provided is not directly chargeable to patients (e.g. A&E services), the UK is still able to recover the cost of such treatment provided to persons insured by another EEA member state from the relevant member state. EHIC or PRC information should be collected by A&E departments and reported through the Overseas Healthcare Team web portal. Information on EEA visitors and the reporting process can be found in Chapter 9.

OVMs should request a daily printout of those patients who have been admitted who answer positively to the baseline questions.

Once referred to the overseas team

11.28 A relevant NHS body should ensure that all staff involved with the identification and interviewing of a person who may have to pay a charge for treatment are properly advised of their role and provided with adequate training. Staff involved in interviewing people should have a thorough understanding of the Charging Regulations and guidance, together with training and techniques for handling difficult situations. Staff can sometimes be confronted

with distressed, angry or abusive patients and/or relatives. They should be fully trained on the NHS body's policy for dealing with violence or potentially violent situations. As already mentioned, they should also be trained on how to exercise their trust's general equality duty and to avoid discrimination when identifying chargeable people.

Interviewing patients who may be liable to charges

Timeliness of interview

11.29 It is important that a person is aware as soon as possible that there may be a charge for treatment. While it may not always be practicable for interviews to happen immediately, OVMs should ensure that a member of their team sees potentially liable patients as soon as they possibly can. Failure to do so, resulting in a bill being presented to a person who was not aware that they were liable, could result in accusations of maladministration, which the relevant NHS body would then have to defend. However, the fact that a person was not informed that charges would apply does not alter the fact that, under the Charging Regulations, they are still liable for that charge.

The main interview

11.30 This should be undertaken discreetly and sensitively in private and, wherever possible, before treatment has started. The interviewer should begin by explaining that a person not ordinarily resident in the UK can, in some circumstances, be liable for the cost of their treatment. The interviewer should explain that the interview is taking place because the patient indicated during the process of administration (or because admissions staff have indicated) that he or she may not normally live in the UK, or has been unable to show that he or she has have the right to live here. Some people will be clear that they are not normally resident here, but others may dispute the assessment. The first issue to explore during the interview, therefore, is whether the person may be ordinarily resident. A person cannot be charged if they are ordinarily resident in the UK. Chapter 3 discusses ordinary residence in detail.

11.31 If, after questioning, the interviewer decides that the person is not ordinarily resident here, then that person is an overseas visitor for the purpose of the Charging Regulations. The next stage of the interview therefore needs to establish if the person is exempt from charges by virtue of any of the exemptions listed in the Charging Regulations, described in Chapters 1 and 4.

Overseas visitors claiming exemption – supporting documentary evidence

11.32 Where a person claims to be covered by any of the exemptions, or indeed claims to be ordinarily resident, the relevant NHS body is required, by provision of the Charging Regulations, to make “such enquiries as it is satisfied are reasonable in all the circumstances” to confirm that is the case. It is for the person to satisfy the relevant NHS body of the validity of their claim to free treatment, and the relevant NHS body is entitled to ask for supporting documentary evidence, as long as it does not behave unreasonably.

11.33 Where the person cannot support their claim, the relevant NHS body may decide to charge for treatment. However, in making this decision it should take account of the individual

circumstances and judge each case on its own merits. For example, in some cases it will be easier for the person to provide evidence than in others. Also, just because one of the exemption categories is found not to apply does not mean that others will not apply. Each should be considered. If charged, the person can claim reimbursement at a later date providing that sufficient evidence can be produced to show that he or she was entitled to free treatment at the time it was given.

11.34 The onus is on the individual patient to provide whatever evidence he or she thinks is appropriate to support their claim. Examples of types of acceptable evidence are listed with each exemption from charge category in Chapter 3. These examples are only a guide and should not be taken as comprehensive lists. People may provide other evidence that is equally valid, and interviewers should be prepared to be flexible. Certainly, it would not be reasonable to reject evidence out of hand simply because it is not listed in this guidance.

11.35 In general, people will be able to provide satisfactory documentary evidence to support their claim. Where, however, the person does not have the evidence to hand, an interviewer may be asked to either accept confirmation from a reputable third party or, in some cases, accept the word of the person without supporting evidence. What level of evidence is acceptable is entirely a matter for the relevant NHS body in the light of the individual person's circumstances. Providing the relevant NHS body can demonstrate, if need be, that it has acted reasonably in all cases, it is unlikely to encounter criticism.

The role of clinicians

11.36 The success of the charging rules depends on all NHS staff, including clinicians, being aware and supportive of the role of the OVM.

11.37 It is the clinician's role to provide appropriate healthcare for their patients and to make decisions on their treatment based on their clinical needs. As part of their normal practice, for ordinarily resident people and chargeable overseas visitors alike, clinicians have an obligation to consider the costs associated with different treatment options and to balance these against the potential for a successful outcome. It is right that clinicians are aware of the cost implications of providing non-urgent treatment to chargeable overseas visitors who cannot or will not pay when that treatment could wait until they return home.

11.38 Clinicians are not expected to make judgements regarding the eligibility of patients for free NHS hospital treatment (with the exception of confirming when a patient is receiving particular treatment that is exempt from charges), but if it is the clinician who first becomes aware that a person may not be ordinarily resident in the UK, they should notify the OVM and can, if appropriate, inform the patient that charges might apply. Clinicians and other staff should not indicate to patients that treatment will be free unless and until this is established, as a charge may have to be levied if the OVM subsequently assesses the patient as chargeable.

11.39 Ultimately, it is always a clinician's decision on what treatment is needed. Whether the relevant NHS body then withholds or limits that treatment will depend on information received from OVMs on when the patient can return home (so that the clinician can decide if the treatment is urgent or non-urgent) and on the patient's intentions on paying (so that non-urgent treatment does not commence without prior payment).

11.40 Clinicians have three key responsibilities under the Charging Regulations:

- To take the final decision as to whether treatment is immediately necessary, urgent or non-urgent. More information on when treatment is immediately necessary, urgent or non-urgent can be found in Chapter 8.
- To confirm that a patient is receiving exempt services. For example, confirmation that a patient is undergoing diagnosis and/or treatment for a condition affecting public health and listed in Schedule 1 to the Charging Regulations or undergoing diagnosis or receiving treatment for a sexually transmitted infection. Information on services that are exempt from charges is in Chapter 4.
- To confirm that a patient is a victim of specified types of violence (torture, female genital mutilation, sexual or domestic violence). **It is not expected that the clinician will be able to provide confirmation in all cases**, in particular in respect of victims of torture, domestic or sexual violence where the cause of physical injuries and symptoms may not be immediately apparent. The Department of Health strongly recommends that clinicians are advised of this important role and its implications. Further information on exemption from charges for victims of specified types of violence can be found in Chapter 7.
- to confirm the patient is fit to travel to return home for further treatment.

OVMs must ensure that clinicians are aware of the important role these decisions play in the implementation of the charging rules and ensure effective management and prioritisation of NHS resources.

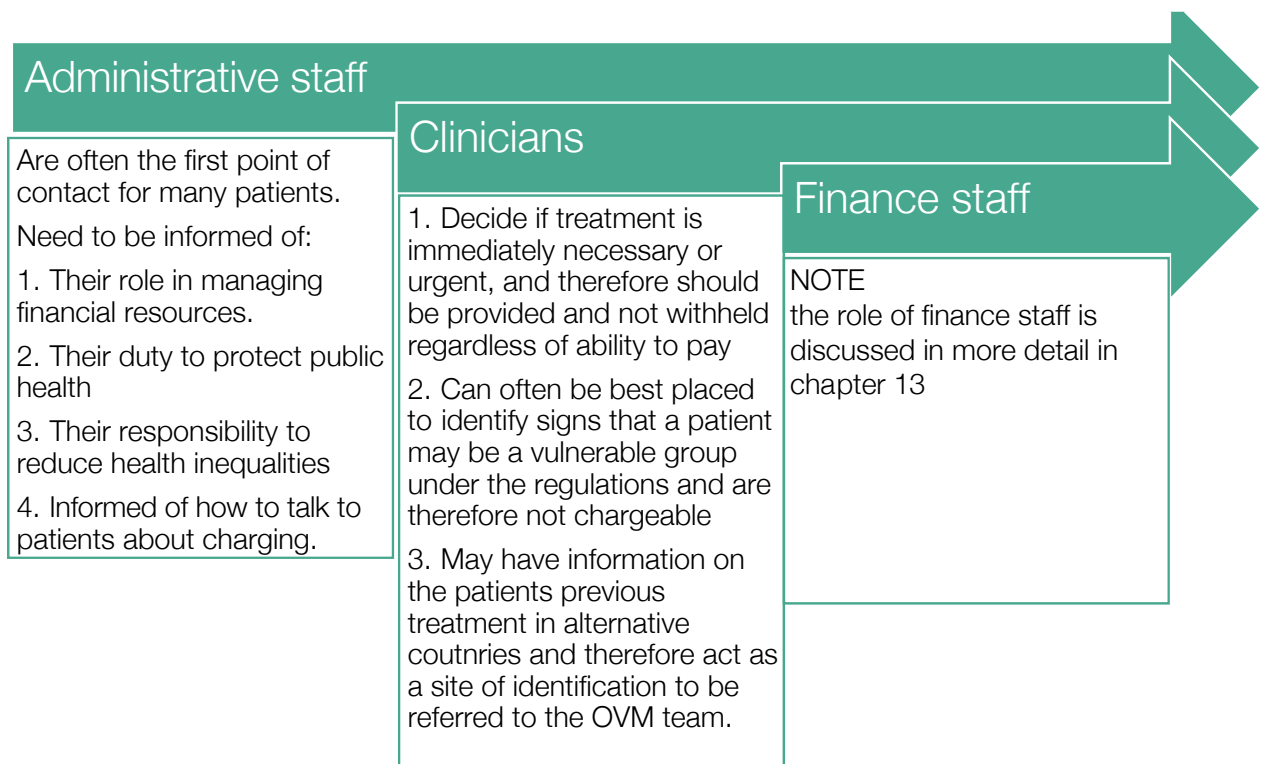
The role of finance staff

11.41 Finance staff need to be aware of their role in implementing the charging rules for overseas visitors. In particular, finance staff must understand the distinction between chargeable overseas visitors and private patients. Chargeable overseas visitors are chargeable for **NHS services**. They should not be confused with private patients, and the cost of any services they are provided with will be different from the rates charged to private patients. See Chapter 13 on the calculation of charges for chargeable overseas visitors. The treatment of chargeable overseas visitors is subject to the same clinical priority as other NHS patients. The beds they occupy are not pay beds and consultants cannot charge them for their services.

11.42 It is important that overseas visitors who are liable to charges are identified as early as possible in their dealings with the NHS hospital in order to reduce the incidence of failure to pay, and to protect NHS resources. In the context of charging overseas visitors, the point at which to charge can be considered in terms of the urgency of the treatment needed. See Chapter 4 for more details.

11.43 Finance departments need to ensure that they are able to issue invoices promptly, perhaps at very short notice, in order to ensure that the invoice can be presented, wherever possible, before the patient leaves the NHS hospital. Some relevant NHS bodies have had success with the installation of a portable **credit card machine**, to take to the patient before they are discharged.

In summary:



The role of GPs and primary care

11.44 GPs have discretion to accept any person, including overseas visitors, to be either fully registered as a measure of an NHS patient, or as a temporary resident if they are to be in an area for between 24 hours and three months. No registration application can be refused on the grounds of race, gender, class, age, religion, sexual orientation, appearance, diversity or medical condition. In reality, this means that the practice's discretion to refuse a patient is limited. There is no minimum period that a person needs to have been in the UK before a GP can register them. Furthermore, GPs have a duty to provide free of charge treatment which they consider to be immediately necessary or emergency, regardless of whether that person is an overseas visitor or registered with that practice.

11.45 **Being registered with a GP, or having an NHS number, does not give a person automatic entitlement to access free NHS hospital treatment.**

OVMs should ensure that local GPs understand this, so that they do not unintentionally misinform their patients regarding hospital charges and so that where possible they identify in the referral letter any patient that may be an overseas visitor.

11.46 OVMs should consider establishing formal contacts with local GPs to aid this process, which can be used by them as a useful tool in identifying potential chargeable overseas visitors who have to pay for treatment. GP surgeries could also be encouraged to display posters regarding entitlement to NHS hospital treatment.

11.47 **GPs should not be discouraged from referring their patients** to the relevant NHS body. It is the relevant NHS body's duty, not the GP's, to establish entitlement for free NHS hospital treatment. Furthermore, neither relevant NHS bodies nor anyone acting on their behalf should imply that a particular patient should not be registered with a GP practice as that is exclusively a matter for that GP.

11.48 Charges only apply under the Charging Regulations for services provided in an NHS hospital or, when provided outside an NHS hospital, by staff employed by, or under direction of, an NHS hospital. However, GPs are encouraged to help inform this process by indicating on referral letters when they understand a patient is not OR, or is an EHIC holder, and inform patients that they may be chargeable for some hospital services. Therefore services provided an NHS in the community cannot be charged for unless provided although it is by hospital-employed/directed staff.

Other issues within the charging rules

Referrals by one NHS body to another

11.49 It is the duty of the relevant NHS body providing treatment to establish whether that treatment will be free to the person and to make and recover charges where that person is liable. This is equally the case where a person is referred from one relevant NHS body to another. The relevant NHS body receiving the person should assess for eligibility and make and recover charges as appropriate.

11.50 A relevant NHS body should not refuse to accept and treat a person on the grounds that they are currently a chargeable overseas visitor at another relevant NHS body and that they have not paid for their treatment. If clinicians refer a person to a relevant NHS body then that NHS body should treat the patient and apply the charging rules in the usual manner. If the treatment they need at the second NHS body is considered by its clinicians to be non-urgent, then it can be withheld until payment is received.

Other statutory NHS charges

11.51 An overseas visitor exempt from charges under the Charging Regulations is normally liable for other statutory NHS charges, such as those for prescriptions, on the same basis as someone ordinarily resident in the UK. However, some charge-exempt patients will also be exempt from statutory prescription charges, for example asylum seekers, and will be issued with an **HC2** certificate for full help with health costs. However, having an HC2 does not in

itself mean the patient is exempt from charges under the Charging Regulations. Information on other statutory charges can be found at:

www.nhs.uk/NHSEngland/Healthcosts/Pages/Abouthealthcosts.aspx

Fraud – NHS Protect

11.52 NHS Protect has national responsibility to lead work on protecting NHS staff and resources from crime. It has responsibility for tackling fraud, bribery, corruption, criminal damage, theft and other unlawful actions such as market-fixing.

11.53 When there is a suspicion that an overseas visitor is attempting to access, or has accessed, free NHS treatment by fraud or deception, this should be reported to the relevant NHS body's Local Counter Fraud Specialist (LCFS), the NHS Fraud and Corruption Reporting Line on 0800 028 40 60 or online at <http://www.nhsbsa.nhs.uk/fraud>. The LCFS and/or NHS Protect will undertake an investigation and seek to apply criminal and civil sanctions, where appropriate.

Patient confidentiality and data sharing

11.54 Relevant NHS bodies have legal obligations under the Data Protection Act 1998 (DPA) in relation to the sharing and storing of a patient's data. The sharing of data in the two main examples discussed in this chapter has been found by the High Court to be compliant with the DPA. The principles of patient confidentiality are also very important to the NHS and are the basis of the doctor/patient relationship. However, non-clinical data about a patient is not confidential information, so can be shared by NHS staff without the patient's consent for the purposes of the two main examples.

11.55 There may be circumstances other than when fulfilling their statutory function of making and recovering charges where relevant NHS bodies feel they should share data – which might include confidential data – about a patient without their consent. For instance, an NHS hospital may become aware that a patient may be here without proper authorisation and may consider informing the Home Office of this, or the Home Office may request details of a patient's medical condition to assess if they have any particular requirements whilst the Home Office are investigating them in their care. More information on working with the Home Office is available in Chapter 12. A decision would need to be taken in the full light of the patient's circumstances before data is shared without a patient's consent. Generally, the NHS should not share patient data with third party agencies without the patient's consent except where:

- they are required to do so by law (e.g. where a court order has been made);
- they have special permission for health or research purposes; or
- there is an overriding public interest to do so (e.g. where the police are investigating a serious crime).

11.56 It is important that each case should be judged on its own merits. Relevant NHS bodies are encouraged to seek legal advice as to whether the sharing of that information is lawful and each case should be discussed with the relevant NHS body's Caldicott Guardian before a decision is taken.

11.57 In the context of this document, trusts are allowed to share non-clinical data with third parties without the patient's consent when it is to determine if they are chargeable and to report chargeable non-EEA patients with a debt of £1,000 or more (see Chapter 13).

Complaints

11.58 Where an NHS patient is unhappy with the healthcare they have received, it is right that they, or someone on their behalf and with their consent, can use the NHS complaints procedure. OVMs need to ensure that they and patients charged for NHS services are aware of the complaints procedure and that there are effective operational links with the organisation's complaints manager that reflect the extant guidance on managing complaints.

Chapter 12. Working with the Home Office

Using the Home Office for advice

12.1 There may be occasions where patients produce entry clearance documents that are not familiar to Overseas Visitor Managers (OVMs). Useful information can be found on the UK Immigration and Visas pages of GOV.UK: www.gov.uk/government/organisations/uk-visas-and-immigration

Sharing data to determine a patient's immigration status

12.2 When other avenues of establishing entitlement have been exhausted, it may be necessary to establish the immigration status of a person. This might include (but is not limited to) establishing whether a failed asylum seeker has exhausted all their appeal processes and whether or not they are receiving section 4(2) or section 95 support, or cases where an NHS hospital comes across a person who appears to be in the country without the proper authority. Enquiries about a patient's immigration status should be sent securely via email to the Home Office's Evidence and Enquiry (EE) Unit. Please note that the Home Office **cannot** advise on how this information affects the patient's liability for charges.

12.3 The recent High Court judgment¹³ confirmed that the NHS is **not** required to obtain consent from a patient before sharing non-clinical data with the Home Office for the purposes of determining the patient's immigration status. However, the NHS should notify the patient that their data is being shared, and how this data may or will be used. You are not required to keep a signed record of the patient's consent for your records, although you are encouraged to provide the patient with the information leaflet known as "*Information for patients: why your data has been shared with the Home Office*", which is part of the OVM toolbox. It is also best practice to keep a note recording that this has been done. For further information on patient confidentiality, see Chapter 11. It still remains the case that under **no circumstances** should any clinical data be divulged when seeking immigration status information from the Home Office.

12.4 NHS staff using this service **must** ensure that the data they send outside of the NHS to government departments and agencies is via a secure route. For email, this means being sent from an email account which ends **nhs.net** as these have inbuilt encryption technology. The Home Office will not accept emails which do not come from these accounts, nor will they accept emails from unrecognised persons or from non-relevant NHS body staff. It is therefore important that you inform the Department of Health Overseas Visitors Policy Team of any changes to personnel, so that the Home Office can be kept updated of their nhs.net email

13 R (on the application of W, X, Y and Z) v Secretary of State for Health [2014] EWHC 1532 (Admin).

accounts. You can send this information to the Department of Health Overseas Visitors Policy Team via email: overseasvisitors@dh.gsi.gov.uk

12.5 A new EE pro forma, developed by the Home Office and tested by OVMs, is now available in the OVM toolbox:

www.gov.uk/government/publications/help-for-nhs-to-recover-costs-of-care-from-visitors-and-migrants

www.gov.uk/government/publications/guidance-on-overseas-visitors-hospital-charging-regulations

The EE pro forma has been designed to be used by all government departments and agencies – including NHS providers – who require information on an individual's immigration status. By having a single form, the EE Unit is now able to process information requests much quicker than previously – now within five working days. Should the information not be received after five days, please send another email marked 'second request', which will be dealt with as a priority.

12.6 To establish a patient's immigration status, you should send the completed EE form via secure email to the Home Office's EE Unit: evidenceandenquiryunit@homeoffice.gsi.gov.uk. Once an immigration status is established, for any follow up action or more detailed enquiries you should contact the Home Office Interventions and Sanctions Unit: I&SDReferrals@homeoffice.gsi.gov.uk (please note the new email address).

12.7 The EE Unit now manages all initial status check enquiries. You should be aware that in some cases the data you share could be used to update Home Office records and, if applicable, may be used for the enforcement of immigration control. Your Local Partnership Manager may then contact you directly to discuss the patient's circumstances. Before sharing any data other than the non-clinical data already provided to the Home Office, you should ensure that your trust seeks its own legal advice.

You do not require a patient's express permission to share their non-clinical data with the Home Office for the purpose of establishing if they are chargeable. However, it remains best practice to **inform** the patient that you have done so and why, and to keep a record of having done so.

Sharing data on those with debts to the NHS of £1,000 or more

12.8 NHS bodies (or debt collection agencies working on their behalf) can share non-clinical data with the Home Office, via the Department of Health, on chargeable non-European Economic Area patients holding a debt of £1,000 or more (once that debt has been outstanding for three months) with a view to better collect debts owed. The Home Office can then use that data to deny any future immigration application to enter or remain in the UK that the person with the debt might make. Patients do not have to provide their consent to this data being shared but NHS bodies should ensure that patients are aware of the potential immigration consequences of not paying a debt for which they are liable. More specific guidance on sharing data with the Home Office for this purpose is provided in the OVM toolbox. NHS bodies must ensure that they pay due regard to the most recent version of the guidance when sharing patient data.

Chapter 13. Financial matters

Introduction

13.1 From April 2015, the Secretary of State for Health is for the first time exercising the power under section 175(4) of the National Health Service Act 2006 to calculate charges for overseas visitors on a commercial basis, which may include a reasonable profit element. Commercial charging will only apply to overseas visitors who ordinarily reside outside the European Economic Area (EEA). Charges for overseas visitors who ordinarily reside within EEA states must not exceed the cost of providing that service to an ordinarily resident patient. See the introduction to this document for more details about the different entitlements of EEA and non-EEA individuals.

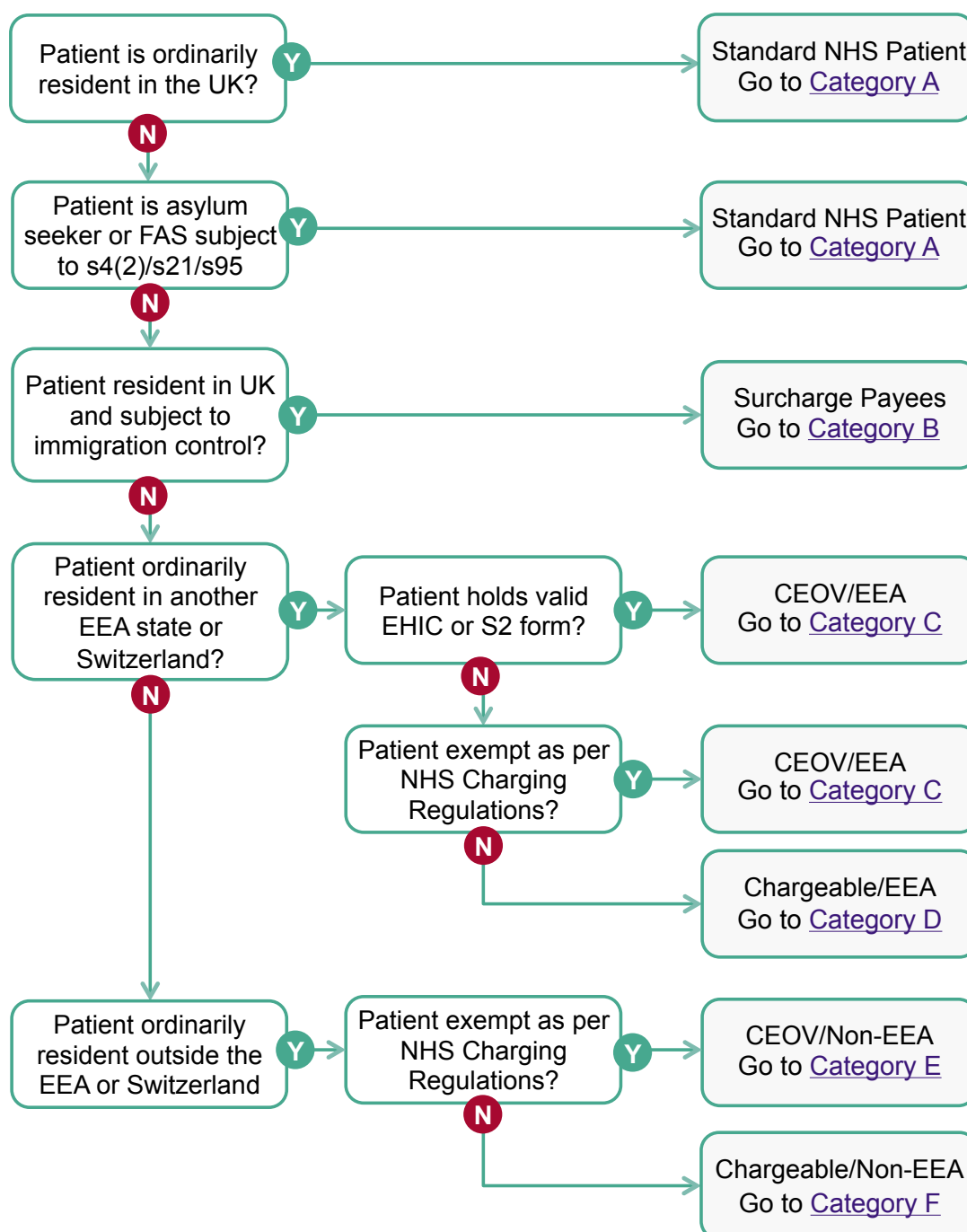
13.2 As a consequence of this change in the law, several categories of charging rules will now operate in parallel, and providers and their commissioners will require additional support to embed these. This chapter has been designed to help relevant NHS bodies understand which charging categories should be applied to which cohort of chargeable patient. Towards the end of the chapter, cross-cutting topics such as Value-Added Tax (VAT), translation and interpretation costs and calculating the length of stay are covered.

Determining the correct charging category

13.3 The charging categories and the involvement of commissioners in each case will depend on the patient's residency status. Relevant NHS bodies should refer to other sections of this guidance when determining a patient's residency. This chapter outlines the six charging categories for the following types of patient:

- patient ordinarily resident in the UK (category A);
- patient an asylum seeker or failed asylum seeker supported by certain conditions (category A);
- patient subject to immigration control, resident in the UK and a surcharge payee (or exempt from paying the surcharge) (category B);
- patient ordinarily resident in another EEA State or Switzerland (categories C & D); and
- patient ordinarily resident outside the EEA or Switzerland (categories E & F).

The flow diagram below sets out the six charging categories that will apply from April 2015 onwards. This chapter should be cross-referenced with the NHS England document entitled [Who Pays?: Determining responsibility for payments to providers](#)¹⁴ (published August 2013) and any subsequent guidance issued by NHS England on the subject of determining the correct commissioner. The current document will be referred to as Who Pays? for the purposes of this chapter.



14 www.england.nhs.uk/wp-content/uploads/2014/05/who-pays.pdf (accessed 5 March 2015).

Applying the correct charging rules

Charging category A: Standard NHS Patient

13.4 Patients in this category are deemed to be:

- ordinarily resident in the UK (according to the domestic Charging Regulations).

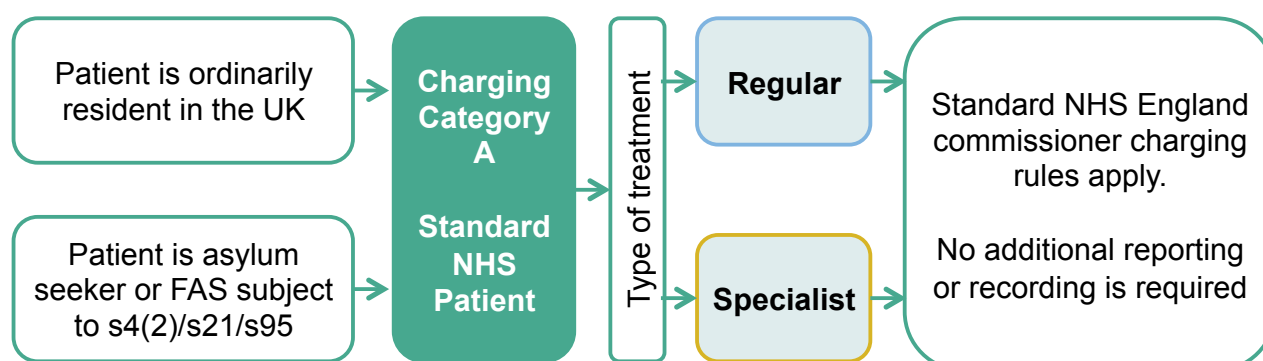
13.5 This charging category follows the “baseline” rules as set out in [Who Pays?](#) It follows all the standard rules that NHS providers and commissioners abide by when determining the responsible commissioner, as described in Section A: General Rules in [Who Pays?](#) Any patient falling into this category will be known in this chapter as a Standard NHS Patient.

13.6 It is important to note that the 2013 version of [Who Pays?](#) sets out the rules for asylum seekers as well as failed asylum seekers who are receiving section 4 or section 95 support from the Home Office. In these cases, the responsible commissioner is determined as laid out in paragraph 1 of [Who Pays?](#) (i.e. as per a Standard NHS Patient). However, under the [new](#) Charging Regulations (2015), the categories of patient that should now be managed as laid out in paragraph 1 of [Who Pays?](#) are as follows:

Category of person exemption until 6 April 2015	Category of person exemption from 6 April 2015
Anyone receiving s4 Home Office support (Immigration and Asylum Act 1999). Exempt from charge for all treatment.	Amended: Exemption from charge is now limited to failed asylum seekers receiving s4(2) Home Office support under the Immigration and Asylum Act 1999.
Anyone receiving s95 Home Office support (Immigration and Asylum Act 1999). Exempt from charge for all treatment.	Unchanged: Exemption from charge remains for anyone receiving s95 Home Office support under the Immigration and Asylum Act 1999.
N/A	New: Exemption from charge now covers all failed asylum seekers who receive s21 support from a Local Authority under the National Assistance Act 1948.

13.7 Any future edition of [Who Pays?](#) published by NHS England will be amended to reflect the change in the law.

Summary: Charging category A



Charging category B: Surcharge payee

13.8 Patients in this category are deemed to be:

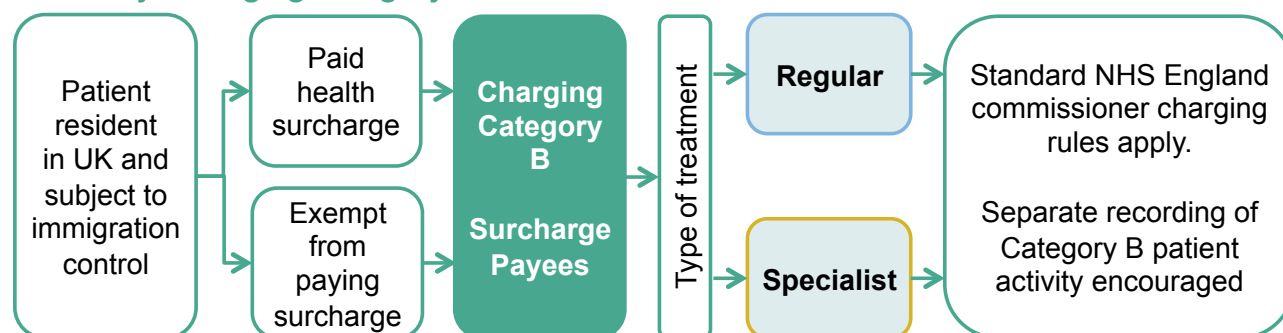
- resident in the UK but subject to Immigration Rules (i.e. they need a visa to live, work or study in the UK and are not considered to be ordinarily resident according to the Immigration Act 2014);
- in possession of a valid visa issued on or after 6 April 2015 permitting medium to long-term residence in the UK (typically from six months' to five years' duration although not always); and
- EITHER a health surcharge payee;
- OR exempt from paying the health surcharge.

13.9 For simplicity, the payment arrangements for patients who are subject to immigration control and have paid the surcharge, or who are exempt from paying it, should be managed as per a Standard NHS Patient. This category of patient is able to access NHS healthcare free at the point of use, except where normal charges such as prescription, optical or dental charges apply.

13.10 Providers should follow the same rules for determining the responsible commissioner as laid out in paragraph 1 of [Who Pays?](#) However, where possible, they should note in their billing where a patient has been treated under [Charging category B](#). This will be important for future policy making and national/local decisions on funding allocations.

13.11 In the case of patients who would normally fall into this category but who had their visa issued before 6 April 2015, they will remain subject to [Charging category A](#) until they next extend or apply for a new visa. Until such time, they are subject to the 2011 Charging Regulations and will be for the most part deemed ordinarily resident when in the UK.

Summary: Charging category B



Charging category C: Charge-exempt overseas visitor/EEA

13.12 Patients in this category are deemed to be:

- not ordinarily resident in the UK according to the domestic Charging Regulations;
- ordinarily resident in another EEA state or Switzerland; and

- EITHER insured by another EEA state, and in possession of a European Health Insurance Card/Provisional Replacement Certificate (EHIC/PRC) or an S2 form;
- OR not insured by another EEA state but exempt from domestic Charging Regulations (see paragraph 13.23 below).

13.13 The vast majority of patients in this category will be insured by another EEA state and therefore possess or have the right to possess a an EHIC/PRC or an S2 form. See Chapter 9 for more information on the EHIC/PRC and the S2 route. For those not insured, see paragraph 13.23.

13.14 Typically, this category of patient will use NHS services in the UK either on a 'needs arising' basis if on a short-term visit, on holiday, or when studying here (through the EHIC/PRC mechanism) or on an elective basis (through the S2 route).

13.15 In NHS billing terms, this category is known as charge-exempt overseas visitors (CEOV) as set out in [Who Pays?](#) CEOV/EEA is a new sub-category to distinguish the costs related to patients insured by other EEA member states from those related to patients from outside the EEA who are exempt from charges (CEOV/non-EEA, see [Charging category E](#)).

13.16 Individuals who are either in receipt of a state pension from another EEA country or who are classed as 'posted workers' and who have been provided with an S1 form to cover the costs of their healthcare when living in the UK, should also be classed as an EEA/CEOV. See Chapter 9 for more information on the S1 route.

13.17 While providers should invoice their commissioner(s) for the costs of healthcare provided to CEOV/EEA patients (as per the [Who Pays?](#)), **they must also report this activity (EHIC/PRC or S2) and its value** via the Overseas Healthcare portal. These reports are essential for the Overseas Healthcare Team to be able to reclaim the costs of NHS healthcare provided to such visitors from the relevant EEA member state. The income from these claims is a key income stream into the NHS and the relevant NHS bodies are expected to do all they can to properly identify and record the details of patients in possession of a non-UK EHIC/PRC or an S2 form.

13.18 The EHIC incentive scheme was launched on 1 October 2014 to encourage relevant NHS bodies to report their EHIC activity. The scheme allows NHS providers to claim an incentive from the Department of Health worth 25% of the standard tariff for every valid EHIC activity report they make on the portal in addition to the cost of healthcare that is charged to their commissioner. For more details, see the EHIC incentive guide in the toolbox or contact the Overseas Healthcare Team (oh.t.overseasvisitorsteam@dwp.gsi.gov.uk).

13.19 [Charging category C](#) will also include a minority of patients who are deemed to be:

- not ordinarily resident in the UK according to the domestic Charging Regulations;
- ordinarily resident in another EEA state or Switzerland; and
- **not** insured by another EEA state (as evidenced by EHIC/PRC or S2)

and are therefore subject to the Charging Regulations (see Chapter 9. They would normally be chargeable for NHS hospital services *unless* they are covered by an exemption under the Charging Regulations.

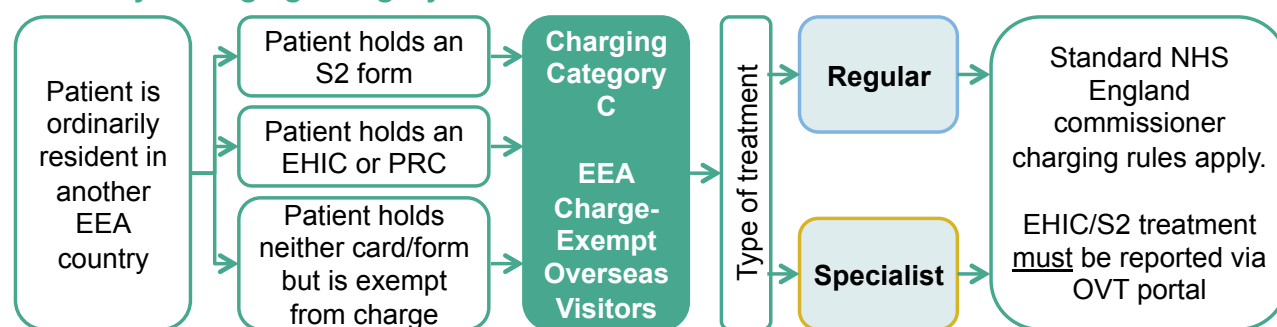
13.20 If the patient falls into one of the categories of persons exempt from charge or who requires treatment that itself is exempt from charge under the Regulations, the patient should also be classed as CEOV/EEA and charged to the relevant commissioner (as per [Who Pays?](#)). In these circumstances, the relevant NHS body is not able to report the activity on the Overseas Healthcare Team portal and therefore this activity is not subject to the EHIC incentive.

13.21 The majority of healthcare provided to CEOV/EEA patients will be of a “needs arising” nature. However, as students are eligible to hold an EHIC/PRC if they remain insured by their EEA home state, they could seek access to more specialist, elective or long-term NHS healthcare while in the UK. As such, there is no clear rule of thumb as to when specialist or elective treatment should be provided to EEA visitors and when this is no longer appropriate.

13.22 Generally speaking, if CEOV/EEA patients wish to access specialist or elective treatment in the UK, they should be encouraged to obtain either an S2 form from the EEA country which insures them or access NHS healthcare via the EU Directive on cross-border healthcare (see Chapter 9). Relevant NHS bodies should use their own discretion as to if and when to have this conversation with patients.

13.23 While it is good practice to assist patients to obtain a PRC (if, for example, they have forgotten to bring their EHIC), it is the patient’s responsibility to ensure that the correct paperwork is provided if they wish to benefit from healthcare free at the point of delivery. If the provider is unable to obtain an EHIC/PRC or an S2 form and the patient is not exempt from charges, then the relevant NHS body should apply charges (as per [Charging category D](#)). The patient should then be provided with invoices and receipts to facilitate reimbursement from their home country on return.

Summary: Charging category C



Charging category D: Chargeable EEA patient

13.24 Patients in this category are deemed to be:

- not ordinarily resident in the UK according to the domestic Charging Regulations;
- ordinarily resident in another EEA state or Switzerland; and
- not insured by another EEA state, and so do not possess an EHIC/PRC or an S2 certificate.

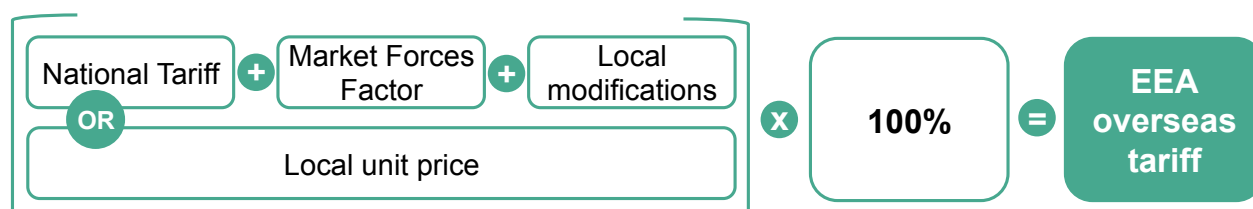
They are therefore subject to the Charging Regulations. If they do not qualify as exempt (i.e. because of their personal circumstances or because of the type of treatment they are seeking), they are deemed chargeable at the point of delivery for NHS hospital services.

13.25 If patients are deemed to fall into this category, they should be asked if they have private health/travel insurance. If they do not possess this, or if the provider deems the insurance to be insufficient to cover the costs of healthcare, the provider should charge the patient directly and provide the necessary paperwork for the patient to then manage any future reimbursement from their insurer.

13.26 Relevant NHS bodies are reminded that healthcare that is immediately necessary or urgent must never be refused, regardless of the patient's ability to pay. For more information about when healthcare must be provided and when payment should be requested before treatment proceeds, see Chapter 8.

13.27 Because of European law considerations, the Charging Regulations state that a patient legally resident in the EEA or Switzerland can only be charged the same rate by the NHS that would be charged to the commissioner if the individual had been a Standard NHS Patient (i.e. equivalent to the levels of charging as set out under [Charging category A](#)). Charges for patients in [Charging category D](#) should therefore be calculated as follows:

Summary: calculating the level of EEA direct charging

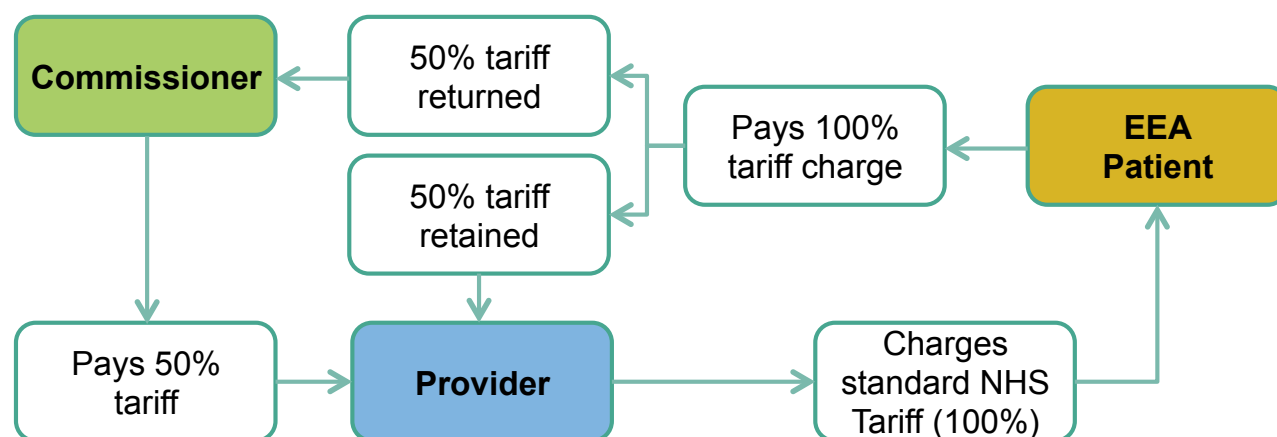


13.28 Under [Charging category D](#), the provider will – from 6 April 2015 – be able to access the new chargeable patient risk-sharing mechanism from its commissioner. This mechanism is proportionate to the charge being invoiced to the patient. The responsible commissioner will pay the costs of healthcare provided to this category of patients at 50% of tariff (or whatever the cost of the treatment determined in accordance with the national tariff and rules). No further administration charges should be added. To determine the responsible commissioner in this regime, please refer to the new NHS England “Who Pays?” supplement entitled “Improving Systems for Cost Recovery from Overseas Visitors”.¹⁵

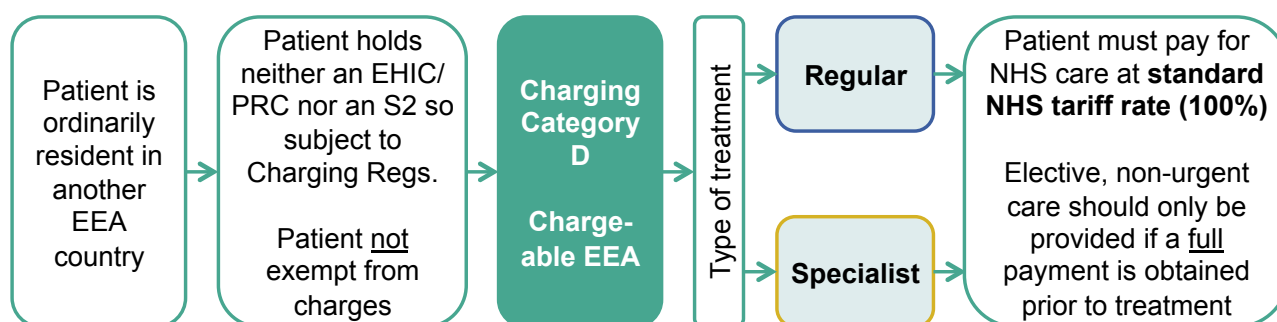
13.29 The exact nature of the payment flows should be decided between the provider and the responsible commissioner (please refer to the new NHS England guidance for further details). However, the basic principle remains that whatever payment the provider receives from the patient, this is divided equally between the provider and the commissioner, until such time as the commissioner has fully recouped the amount it paid the provider for the EEA chargeable patient.

¹⁵ This supplement had not been published by the time this guidance went to print. Please see www.england.nhs.uk for the latest details.

Summary: EEA direct charging finance flows



Summary: Charging category D



Charging category E: Charge-exempt overseas visitor/non-EEA

13.30 The category of patients considered charge-exempt overseas visitors from outside the EEA has existed for some time and falls into the baseline allocations inherited by Clinical Commissioning Groups in 2013. These are patients who:

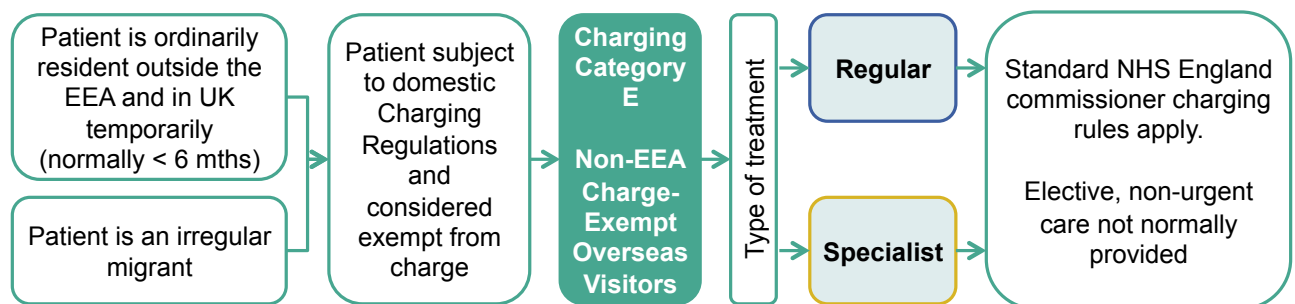
- are not ordinarily resident in the UK;
- are subject to immigration control to enter the UK;
- have not paid the health surcharge (or have not been exempt from paying it);
- are therefore subject to the Charging Regulations; BUT
- are exempt from charging, either because of their personal status or because the treatment they are seeking is exempt from charge.

13.31 This charging category would be applied to individuals such as a failed asylum seeker requiring treatment for an infectious disease or a non-EEA visitor who attends A&E (but isn't admitted to hospital) while on holiday in the UK.

13.32 The relevant NHS body should refer to the [Who Pays?](#) guidance to determine who the responsible commissioner is and invoice them the standard NHS tariff/costs for the treatment

(as per the charging rules applied to a Standard NHS Patient under [Charging category A](#)). Providers may choose to provide treatment deemed immediately necessary or urgent only, encouraging the patient to seek non-urgent treatment in their home country/country of residence where possible.

Summary: Charging category E



Charging category F: Chargeable non-EEA patient

13.33 The final category comprises patients who are:

- not ordinarily resident in the UK;
- not ordinarily resident in another EEA state;
- not subject to the health surcharge (or exempt from paying it);
- therefore subject to the Charging Regulations; and
- NOT exempt from charging under the Regulations.

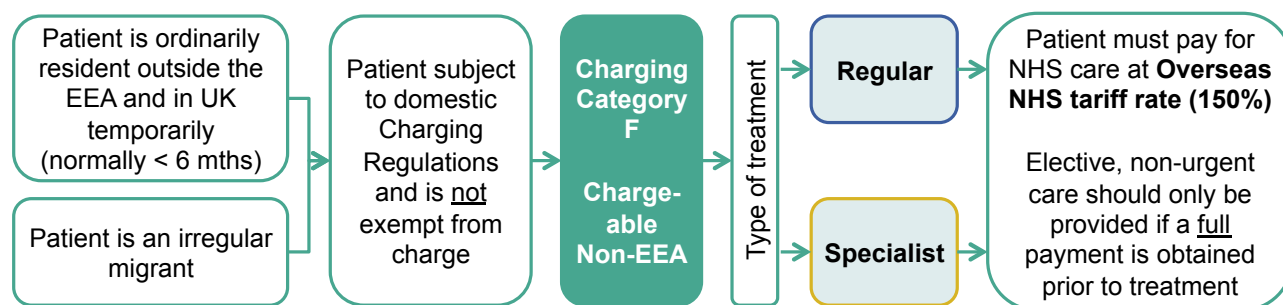
13.34 This charging category therefore includes patients who are ordinarily resident in a non-EEA country (which could include UK or EEA passport holders as well as non-EEA citizens) or patients who are in the UK on an irregular basis (which could include illegal migrants, visa overstayers and failed asylum seekers not otherwise exempt from charges).

13.35 This is the only charging category whereby a relevant NHS body can charge a higher rate than the standard NHS tariff or local tariff negotiations, and is designed to include a reasonable profit element.

13.36 If patients are deemed to fall into this category, they should be asked if they have private health/travel insurance. If they do not possess this, or if the provider deems the insurance to be insufficient to cover the costs of healthcare, the provider should charge the patient directly and provide the necessary paperwork for the patient to then manage any future reimbursement from their insurer. There is no requirement on the relevant NHS body to accept insurance details if they are not assured that they will receive payment from the insurer.

13.37 For more information about when healthcare must be provided and when payment should be requested before treatment proceeds, see Chapter 8 for more details.

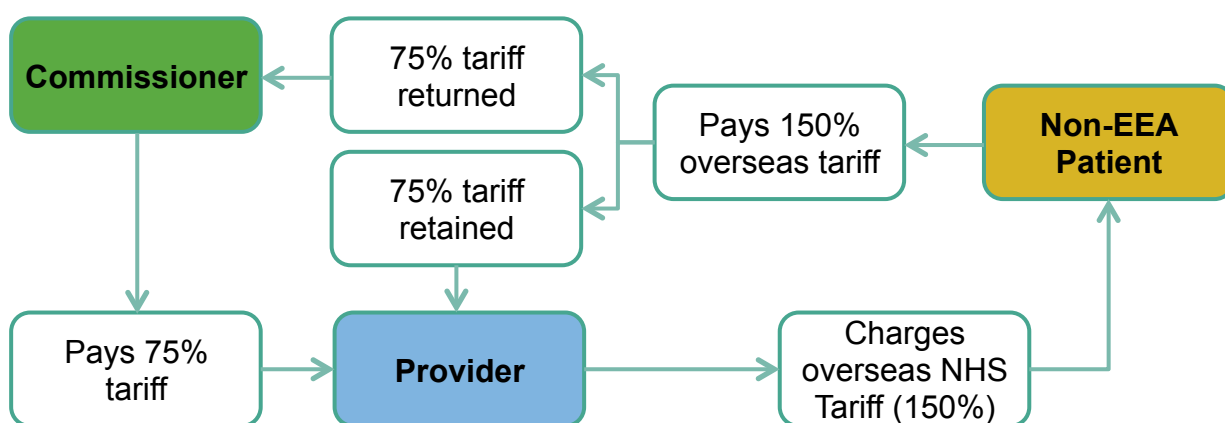
Summary: Charging category F



13.38 Under [Charging category F](#), the provider will – from 6 April 2015 – be able to access the new chargeable patient risk-sharing mechanism from its commissioner. This is proportionate to the charge being invoiced to the patient. Unlike [Charging category D](#), patients in this category are not subject to European law but instead fall under the new Charging Regulation 7 that sets out the levels of charging to apply.

13.39 If treatment has begun on or after 6 April 2015, commissioners will pay the costs of healthcare provided to this category of patients at 75% of tariff (or whatever the cost of the treatment determined in accordance with the national tariff and rules). This can be based on the costs that are charged to the commissioner for any Standard NHS Patient. The relevant NHS body will charge the patient 150% of tariff (or whatever the cost of the treatment determined in accordance with the national tariff and rules). This is explained in more detail in the section below.

Summary: Non-EEA finance flows

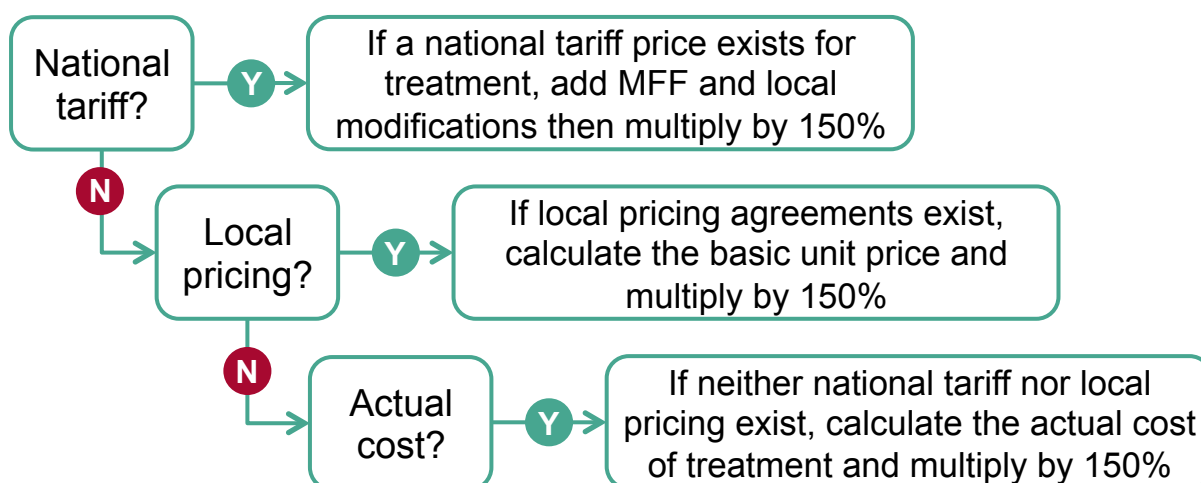


13.40 The payment flows should be decided between the provider and the relevant commissioner (see [Who Pays?](#) for further details). However, the basic principle remains that whatever payment the provider receives from the patient, this is divided equally between the provider and the commissioner, until such time as the commissioner has fully recouped the amount it paid the provider for the non-EEA patient.

Calculating the correct level of charges for Charging category F

13.41 Regulation 7 sets out how charges are to be calculated for chargeable non-EEA patients (i.e. those who fall into **Charging category F** as set out above). How the tariff is calculated depends on whether the relevant service has a national price or is a pathway payment service (e.g. maternity services or cystic fibrosis) or the price is determined by the rules set out in the national tariff (e.g. locally agreed prices).

Summary: Which NHS charging rules to apply



National price

13.42 Where a service has a national price in the national tariff,¹⁶ the overseas tariff will be the national price subject to any relevant:

- national variation for market forces factor;
- national variation for top-up payments;
- national modification; and
- agreed local modification.

13.43 Local variations to the national price for a service are **not** to be applied to the calculation of the overseas tariff. The marginal rate emergency rule, the 30-day readmission rule and variations to support transition to new payment approaches should **not** be applied. No other additions or inclusions (e.g. translation services, administrative costs) may be made to the price. The 150% tariff includes these costs in addition to a profit element.

¹⁶ The Regulations require that calculations are made on the basis of the national tariff. Until the 2015/16 National Tariff is published, relevant NHS bodies should calculate the overseas tariff on the basis of the 2014/15 Default Tariff Rollover (DTR), even if they have chosen to take the 2015/16 Enhanced Tariff Option (ETO).

Pathway payment services

13.44 Currently, two pathway payment mechanisms exist – the maternity pathway payment and the cystic fibrosis pathway payment. Where the relevant NHS body cannot identify the component price for a relevant service that is provided as part of a bundle of services, the relevant NHS body may set the overseas tariff on a reasonable basis having regard to the matters set out below:

- the price of the full pathway payment;
- the proportion of the bundle of services that the overseas visitor receives; and
- the complexity of the service provided to the overseas visitor.

13.45 For example, where a patient with cystic fibrosis receives one week of NHS hospital treatment while in England, the relevant NHS body will need to take the following into account when determining the price that should be charged for the services provided:

- the price of the cystic fibrosis pathway for the relevant band of patient complexity;
- the services provided during the one-week NHS hospital stay as a proportion of the yearly pathway payment; and
- the complexity of the services provided to the patient during their stay.

13.46 Calculation of charges must be reasonable and will vary on a case-by-case basis taking into account all of the relevant factors. However, the principle remains that non-EEA chargeable patients should be charged using the same methodology whichever relevant NHS body is providing the treatment.

13.47 If it is possible to identify the component prices for a service) e.g. for maternity services it may be possible to identify the price for providing the antenatal component of the pathway), then the relevant NHS body should calculate the price using the relevant national price as set out in paragraphs 13.47 and 13.48

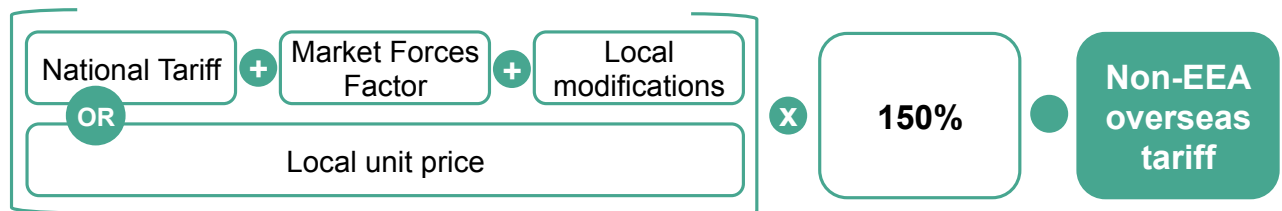
Price determined in accordance with the rules (locally agreed prices)

13.48 Where the relevant services do not have a national price and the price is locally agreed between commissioners and providers, the overseas tariff will be the locally agreed price subject to any applicable:

- national variation for Market Forces Factor;
- national variation for top-up payments;
- national modification; and
- agreed local modification.

13.49 The marginal rate emergency rule, the 30-day readmission rule and variations to support transition to new payment approaches should **not** be applied. No other additions or inclusions (e.g. translation services, administrative costs) may be made to the price. The 150% tariff includes these costs in addition to a profit element.

Summary: Calculating the level of non-EEA charges



Collaborative working between provider and commissioner

13.50 For the two processes involving payment of chargeable EEA ([Charging category D](#)) and non-EEA ([Charging category F](#)) patient costs by the commissioner, it is vital that a successful working relationship is established between the provider and the commissioner in the area of overseas visitor management. For the first time in the 2015/16 Standard NHS Contract, commissioners will be given the power to audit providers' procedures and systems to ensure that providers are doing all they can to identify chargeable patients and recover the costs of healthcare from them. Failure to demonstrate this could result in the commissioner refusing to pay the provider for the chargeable EEA or non-EEA patient's healthcare costs.

13.51 This is covered in more detail in the NHS England supplement to the [Who Pays?](#) guidance. It is strongly advised that providers and commissioners begin discussions as soon as possible to ensure that they both agree the easiest and least burdensome approach to demonstrating due diligence and invoicing the commissioner for the amounts to be paid. According to the chargeable overseas visitor numbers for a particular provider, this could be on a per-patient basis, it could be monthly or it could be quarterly. The best organisations to decide are those managing the payment flows themselves, i.e. the provider and the responsible commissioner.

13.52 Providers and commissioners are also encouraged to agree early on the appetite for risk of chargeable patient debt. The organisation holding the debt is the only one legally allowed to decide when and if to write off any outstanding debt. However, providers will wish to discuss decisions involving large amounts of debt and where they have established that the cost of pursuing debt is not worth the investment.

Further information on NHS chargeable patients

13.53 Patients treated under [Charging category D](#) (EEA chargeable patients) or [Charging category F](#) (non-EEA chargeable patients) are classed together in this section as NHS chargeable patients.

The difference between NHS chargeable patients and private patients

13.54 NHS chargeable patients should not be confused with private patients, and the cost of any services they are provided with will be different from the rates charged to private patients. See the section on the calculation of charges for NHS chargeable patients.

13.55 The treatment of NHS chargeable patients is subject to the same clinical priority as Standard NHS Patients. The beds they occupy are not pay beds and consultants cannot charge them for their services. NHS chargeable patients are not eligible to be “fast tracked” for services or provided with any supplementary service that they would not have access to as a Standard NHS Patient.

When charges should be administered to NHS chargeable patients

13.56 It is important that NHS chargeable patients who are liable for charges are identified **as early as possible** in their dealings with the relevant NHS body in order to provide the patient with more choice in what treatment to accept and what to postpone until they return home. In the context of charging NHS chargeable patients, at what point to charge can be considered in terms of the urgency of the treatment needed. See Chapter 8 for more details.

13.57 Presenting an invoice to a person who was not aware that they were liable for charge could result in accusations of maladministration, which the relevant NHS body would then have to defend. However, the fact that a patient was not informed that charges will apply does not alter the fact that, under the Charging Regulations, they are still liable for that charge.

Relevant NHS bodies do not have discretion to waive charges and where a patient who has received services is identified as chargeable the relevant NHS body must recover those charges from the patient.

Who to charge when a patient is exempt from charges (CEOV EEA or non-EEA)?

13.58 Where an overseas visitor is exempt from charge (i.e. they fall under [Charging category C](#) or [Charging category E](#)), then the relevant NHS body should invoice the appropriate commissioner as set out in www.england.nhs.uk/wp-content/uploads/2014/05/who-pays.pdf. Further information can also be obtained by contacting England.responsiblecommissioner@nhs.net

13.59 Where a patient is insured by another EEA state or Switzerland (i.e. they fall under [Charging category C](#)), then the relevant NHS body must take appropriate steps to ensure that the UK can recover the cost of treating that patient. Relevant NHS bodies will need to:

- invoice the responsible commissioner as per [Who Pays?](#); and
- record and report any EHIC or PRC details to the Department for Work and Pensions Overseas Healthcare Team via the Overseas Visitors Treatment web portal.

13.60 Without this information, the UK is unable to make a claim for reimbursement for treating these visitors. See Chapter 9 for more details.

Methods of payment and dealing with third parties

13.61 Relevant NHS bodies can accept payment by any method acceptable to them. Where a relevant NHS body provides treatment in advance of payment, it will be helpful, particularly if debt recovery action becomes necessary, to ask the patient, or someone on their behalf, to

sign an undertaking to pay form. However, the overseas visitor will be liable to pay the debt whether or not they sign an undertaking to pay form.

13.62 NHS chargeable patients are liable to pay for their treatment even where an undertaking to pay by a third party or sponsor has been received (e.g. the patient has travel insurance or the patient is sponsored by an employer or government). The relevant NHS body must decide whether or not to accept the risk of seeking payment from this third party rather than directly from the patient.

13.63 Relevant NHS bodies should be wary of dealing directly with third parties unless agreements have been reached on billing and currency. Some overseas insurers demand itemised billing or pay in local currencies which, with fluctuating exchange rates, can leave trusts with a shortfall on income. The problems will be minimised if the NHS chargeable patient pays the trust directly and then recovers the cost themselves. If the relevant NHS body has no experience of dealing with such matters it may be advisable to take specialist advice either from its own legal advisers or from a company specialising in debt collection.

Pursuing overseas debt

13.64 Relevant NHS bodies are recommended to consider employing the services of a debt recovery agency that specialises in the recovery of overseas debt, except in relation to persons whom it is clear to the relevant NHS body will be unable to pay (e.g. destitute illegal migrants for whom such action may not be appropriate or cost-effective). There is some evidence that those who do so are significantly more successful in recovering debt from NHS chargeable patients residing overseas.

Recording NHS income and debt in the accounts

13.65 Where any charge has been made in respect of NHS services, relevant NHS bodies must invoice for that treatment. It is extremely important that all invoices, together with recognised cash receipts, provisions made and amounts written off, are accurately recorded in the accounts of relevant NHS bodies. Not only does this provide important financial information for the relevant NHS body itself, but it also provides the Department of Health with emerging patterns or problems with the level of charges being recovered from overseas visitors and the amount of debt being recorded. Relevant NHS bodies are required to separately identify income payable by chargeable overseas visitors in their accounts.

Accounting procedures

13.66 Relevant NHS bodies should also recognise any written off debt within the appropriate part of their accounts and ensure that these are shown as losses and special payments overseas visitors' bad debt. It is extremely important that overseas visitor bad debt is properly and accurately reported in the accounts, no matter what the level of debt. It is only through accurate recording that the scale of unrecovered debt can be known. **There are also some new accounting requirements for the financial year 2014/15 and onwards.**

13.67 NHS bodies are now required to show separately within their accounts cash receipts relating to previous year income. This is where an invoice has been raised and the chargeable NHS patient (EEA or non-EEA) has made a cash payment in relation to that invoice.

13.68 Also new is a requirement for NHS bodies to record the increase in provision for impairment relating to this category of debt in the current financial year.

When to write off debt

13.69 The relevant NHS body may want to write off a debt for accounting purposes where:

- the NHS chargeable patient has subsequently died and recovery from their estate is impossible; or
- given the NHS chargeable patient's financial circumstances, it would not be cost effective to pursue it (e.g. they are a destitute illegal migrant or are genuinely without access to any funds or other resources to pay their debt); or
- all reasonable steps have failed to recover the debt (e.g. the NHS chargeable patient is untraceable or there are no further practical means of pursuing debt recovery).

13.70 However, writing off the debt for accounting purposes may not necessarily mean that the debt is extinguished and relevant NHS bodies are still able to recover it. Debts can be cancelled entirely if the charges they relate to are found not to have applied in the first place.

Further information on how to record financial information

13.71 Full instructions on how to recognise and record financial information within the accounts should first be directed to your accounts team within the relevant NHS body itself. However, further information on the accounting process itself can be found at:

NHS Trusts – the Department of Health Group Manual for Accounts and year-end FMA completion guidance www.info.doh.gov.uk/doh/finman.nsf/Admin%20Views%20%5C%20Stubs/Whatsnew?OpenDocument

NHS Foundation Trusts – the FT Annual Reporting Manual (ARM) www.gov.uk/government/publications/nhs-foundation-trusts-annual-reporting-manual-201415

Section 42 conditions

13.72 Any financial assistance¹⁷ provided by the Secretary of State for Health to NHS Foundation Trusts or NHS Trusts under Section 40 or Schedule 5 of the NHS Act 2006 comes with terms and conditions. Currently, recipients of such financial support are required to fulfill conditions around better chargeable patient identification and cost recovery.

Further Question and Answers for NHS Chargeable Patients

Q: How do I work out how long a patient has been an inpatient?

A: For inpatients the day of admission and the day of discharge count together as a single day. Thus, someone admitted on a Monday and discharged the following Friday should be treated as having been an inpatient for four days.

Q: If a patient does not have sufficient funds to pay for their NHS hospital treatment straight away, can I accept payment instalments?

¹⁷ www.gov.uk/government/publications/guidance-on-financing-available-to-nhs-trusts-and-foundation-trusts

A: Yes, although the relevant NHS body must ensure that, wherever possible, the patient adheres to the agreed payment plan. Failure to do so may result in the patient's non-clinical details and information about debt being reported to the Home Office and may affect future immigration decisions. See Chapter 8 for more details.

Q: Should I add VAT to a patient's invoice?

A: No. All charges to NHS chargeable patients are exempt from VAT.

Q: Where a patient dies without making or completing payment, can I obtain payment from the patient's family or the patient's estate?

A: The patient is solely liable for their debt; therefore no one else becomes liable after they die. Relevant NHS bodies should seek repayment from the patient's estate if possible but otherwise the debt will need to be written off (see paragraph 13.71). An offer from relatives or another person to meet the debt can be accepted but should not be actively sought, nor is it acceptable to pursue relatives of a deceased patient for recovery of a debt for which they have no legal liability.

Q: What is the difference between a NHS chargeable patient and a private patient?

A: Overseas visitors who are liable for charges are NHS chargeable patients. They should not be confused with private patients. They must receive the same priority (but no additional services) as NHS patients.

Q: What if I wasn't aware that someone was chargeable at the time, but I have since found out they should have been charged, can I present them with a bill now?

A: The fact that a patient was not informed that charges apply to them at the time does not alter the fact that, under the Charging Regulations, they are still liable for that charge. However, it is important that a patient is aware as soon as possible that there may be a charge for treatment. Failure to do so, resulting in a bill being presented to a person who was not aware that they were liable, could result in accusations of maladministration, which the relevant NHS body would then have to defend.

Q: What happens if I have already invoiced my commissioner for the cost of treatment provided to a chargeable patient who I thought wasn't chargeable?

A: If you have deemed the patient chargeable, you should charge them and reimburse any earlier payment you have received from your commissioner. Note that the commissioner may be required to pay the cost of the patient's treatment until such time as you are able to recoup the full costs from the patient directly.