

**EXPLANATORY MEMORANDUM TO**  
**THE NATIONAL HEALTH SERVICE (CHARGES TO**  
**OVERSEAS VISITORS) (AMENDMENT) REGULATIONS 2006**

**2006 No. 3306**

1. This explanatory memorandum has been prepared by the Department of Health and is laid before Parliament by Command of Her Majesty.
2. **Description**
  - 2.1 This instrument amends the National Health Service (Charges to Overseas Visitors) Regulations 1989 (S.I. 1989/306) (“the charging regulations”). It provides for an exemption from charges for NHS hospital treatment for the spouse, civil partner and dependent children of certain categories of exempt persons, and for an exemption from charges for missionaries. It also makes changes to Schedule 2 of the charging regulations to take account of changes in membership of the European Union.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
  - 3.1 None.
4. **Legislative background**
  - 4.1 The charging regulations provide for NHS bodies to charge overseas visitors (who are defined as anyone not ordinarily resident in the United Kingdom) for any NHS hospital treatment provided to the overseas visitor. They also provide for a range of exemptions from charges. Some of these relate to services themselves, such as treatment provided solely in an accident and emergency department, or treatment for certain specified diseases. Others relate to the individual circumstances of the overseas visitor, for example overseas students and Crown Servants posted overseas. A third broad category of exemption reflects international agreements and legislation to which the UK is a signatory.
  - 4.2 This instrument provides for changes to the scope of the individual exemptions by introducing a new one – for missionaries – and extending exemptions unconditionally to the spouse, civil partner and dependent children of a number of the existing ones. These changes are being made as a result of lobbying of the Department of Health by interested parties, including other Government Departments. The argument, which the Department has accepted, was that these additions and changes were needed in order to make the hospital charging regime fairer and more equitable.
  - 4.3 This instrument also makes provision to reflect changes in membership of the European Union, which have resulted in some countries which had previously

been party to a bilateral healthcare agreement with the United Kingdom now being covered by European Union healthcare regulations instead.

## **5. Extent**

5.1 This instrument applies to England only.

## **6. European Convention on Human Rights**

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

## **7. Policy background**

7.1 Section 121 of the National Health Service Act 1977 gives the Secretary of State for Health powers to make regulations governing charging persons who are not ordinarily resident in the United Kingdom for any NHS services they receive. These powers have only been used in relation to hospital treatment, currently through the charging regulations.

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

7.3 Over time, a number of loopholes had been identified arising from changes in migration and employment practices, with the result that NHS hospital services were being abused by persons who should have been chargeable overseas visitors but who were using these loopholes to get free treatment.

7.4 In April 2004, the charging regulations were amended to update them, and to close the loopholes that had become apparent. Among other things, changes were made so that the spouses and dependent children (and civil partners from December 2005) of an exempt person could not rely on that exemption for their own treatment if the exempt person was not themselves in the UK at the time of treatment. Limits were also set on the length of time someone could be working abroad before their exemption from charges ended.

7.5 In 2005, a number of other Government Departments brought to the Department of Health's attention an unintended consequence of the changes in relation to spouses, civil partners and dependent children. Crown Servants posted overseas, members of Her Majesty's armed forces, employees of the Commonwealth War Graves Commission and the British Council, and persons working overseas whose employment is funded in part by the UK Government and in part by the Government of another country are all exempt from charges. Very often, when these persons are sent overseas, their families go with them. Under the amended charging regulations, these family members would only be exempt from charges if the exempt person was with them in the UK at the time of treatment. Clearly this was not always possible. For

example wives of soldiers deployed abroad routinely return to the UK to give birth, but under the new arrangements would be liable to be charged because their husbands could not be with them in the UK. Ministers agreed that this was an anomaly that needed to be put right. This instrument provides for an unconditional exemption from charges for these categories of person.

- 7.6 The changes to the working abroad exemption affected missionaries working abroad, by placing a 5 year limit on how long they could spend away. After that time, they would no longer be exempt from charges if they returned to the UK in need of hospital treatment. A considerable number of missionary organisations contacted the Department making the argument that the nature of missionary work made it a special case, and that missionaries should be granted an unconditional exemption. Ministers also accepted this argument, and this instrument makes provision for that exemption.
- 7.7 Finally, 10 countries joined the European Union in 2004 and 2 more will join on 1 January 2007. On accession, a new Member State comes under the umbrella of European Union healthcare regulations. A number of these countries had previously been party to individual bilateral healthcare agreements with the United Kingdom and had therefore been listed in Schedule 2 of the charging regulations. Since the EU healthcare regulations take precedence over bilateral agreements, and in general offer more extended eligibility for access to free healthcare, these countries need to be removed from the list in Schedule 2.
- 7.8 The existing guidance on the Regulations will be revised and published on the DH website.
- 7.9 It is intended to consolidate the Regulations. Work has begun on this.

## **8. Impact**

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

## **9. Contact**

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