

SL(6)188 – The National Health Service (Charges to Overseas Visitors) (Amendment) (No. 2) (Wales) Regulations 2022

Background and Purpose

The National Health Service (Charges to Overseas Visitors) Regulations 1989 (“the Principal Regulations”) allow Local Health Boards and NHS Trusts in Wales to make and recover charges for relevant healthcare services that are provided to overseas visitors not ordinarily resident in the United Kingdom, unless the overseas visitor or the service they receive falls within a charging exemption.

These Regulations amend the Principal Regulations to provide exemptions from charging in relation to overseas visitors who are lawfully present in the United Kingdom but are ordinarily resident in Ukraine, as well as providing exemptions for their family members, authorised companions and authorised children.

These Regulations provide that charges incurred between 24 February 2022 (the date that the full scale Russian invasion of Ukraine began) and the date on which these Regulations come into force, in respect of such overseas visitors:

- if not yet made, must not be made,
- if made, must not be recovered, or
- if paid, must be repaid.

These Regulations are subject to review by the Welsh Ministers before 1 October 2022.

Procedure

Negative.

The Regulations were made by the Welsh Ministers before they were laid before the Senedd. The Senedd can annul the Regulations within 40 days (excluding any days when the Senedd is: (i) dissolved, or (ii) in recess for more than four days) of the date they were laid before the Senedd.

Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.



Merits Scrutiny

The following point is identified for reporting under Standing Order 21.3 in respect of this instrument:

1. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd

We note the breach of the 21-day convention (i.e. the convention that 21 days should pass between the date a “made negative” instrument is laid before the Senedd and the date the instrument comes into force), and the explanation for the breach provided by Eluned Morgan MS, Minister for Health and Social Services in a [letter to the Llywydd dated 30 March 2022](#).

In particular, we note the following part of the letter:

“The 2022 Regulations were made and laid as soon as practicable after the final draft SI for amending England’s Charging Regulations was shared by the Department for Health and Social Care in mid-March. The Wales’ 2022 Regulations have been made contingent to the English regulations so that the same exemptions apply in Wales and due to the urgency of the situation, requires that the Wales’ Regulations come into force less than 21 days after they were made.

If the 21 day convention is adhered to, there is a risk that Ukrainian refugees coming into Wales will be subject to NHS charges for treatment whereas the position in England will be more favourable as they will have a legal exception in force already. This will provide an unacceptable position of inequality between Ukrainian refugees in Wales and those across the border in England in a time of humanitarian crisis.”

Welsh Government response

A Welsh Government response is not required.

Legal Advisers

Legislation, Justice and Constitution Committee

11 April 2022

