



Department
of Health

Equality analysis

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

February 2015

Title: Equality analysis – The National Health Service (Charges to Overseas Visitors) Regulations 2015

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Document Purpose: This equality analysis builds on the equality analysis undertaken in 2013 and published with the Department of Health response to the consultation in December 2013. For the purpose of having due regard to the Public Sector Equality Duty, this equality analysis assesses the impact of the changes introduced by the National Health Service (Charges to Overseas Visitors) Regulations 2015 on overseas visitors with any of the protected characteristics, in comparison with the rest of the overseas visitor and ordinarily resident population.

Policy/ Transparency

Publication date: February 2015

Target audience:

Expatriates

Documented or undocumented migrants, temporary migrants (including students)

NHS staff

Ordinarily resident population of England

Visitors

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Published to gov.uk, in February 2015 PDF format only.

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

Prepared by: The Visitor and Migrant NHS Cost Recovery Programme

Relevant line in [DH Business Plan 2011-2015](#): Better value – providing better quality care by improving productivity and ensuring value for money for the taxpayer

What are the intended outcomes of this work?

The National Health Service (Charges to Overseas Visitors) Regulations 2015 (the Regulations) replace the National Health Service (Charges to Overseas Visitors) Regulations 2011 (the 2011 regulations) and subsequent amendments and implement new policy on the making and recovery of charges from overseas visitor for hospital care they receive.

The Regulations are the outcome of the Visitor and Migrant Cost Recovery Programme (the Programme), part of a cross-government programme on Migrant Access to Benefits and Public Services, and the culmination of the 2012 review of overseas visitor charging policy¹, consultation by the Home Office² and the Department of Health³ and on-going engagement with stakeholders. The overarching aim of the Programme is to improve identification and recovery from overseas visitors and migrants and to ensure that the NHS in England receives fair contribution for the cost of healthcare it provides to visitors who require treatment by the NHS.

Policy implemented by the Regulations includes:

- the immigration health charge (referred to the health charge);
- commercial charging of overseas visitors, including a profit element;
- the removal of overly generous or superfluous existing exemptions from charges for overseas visitors; and
- new, or expanded existing, exemptions from charges for particularly vulnerable overseas visitors.

This equality analysis builds on the equality analysis undertaken in 2013 and published with the Department of Health response to the consultation in December 2013⁴. For the purpose of having due regard to the Public Sector Equality Duty, this equality analysis assesses the impact of the changes introduced by the Regulations on overseas visitors with any of the protected characteristics⁵ in comparison with the rest of the overseas visitor and ordinarily resident population. Consideration has been given to equality issues raised by stakeholders in

¹ 2012 Review of overseas visitors charging policy. The full and summary report is available at <https://www.gov.uk/government/consultations/migrants-and-overseas-visitors-use-of-the-nhs>

² The Home Office consultation *Controlling Immigration – Regulating Migrant Access to Health Services in the UK* is available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/226744/consultation-health.pdf.

³ The Department of Health consultation *Sustaining services, ensuring fairness: A consultation on migrant access and their financial contribution to NHS provision in England* is available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/210438/Sustaining_services_ensuring_fairness_consultation_document.pdf.

⁴ The Government's consultation response is available at www.gov.uk/government/consultations/migrants-and-overseas-visitors-use-of-the-nhs. The Equality Analysis is available at <https://www.gov.uk/government/consultations/migrants-and-overseas-visitors-use-of-the-nhs>.

⁵ The protected characteristics, as defined in section 4 of the Equality Act 2010, are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation.

the 2013 consultation and in subsequent workshop and other stakeholder engagement forums.

The equality analysis does not explore:

- whether there should be no difference between residents of the UK and overseas visitors when it comes to charges, since Parliament has already decided that entitlement to free NHS care is on the basis of ordinary residence.
- the issues faced by the protected characteristic groups in relation to how they access treatment, their health needs or their health outcomes, either in the overseas visitor or the ordinarily resident populations, when those issues are not to do with charging.
- the impact of the immigration health charge on populations outside the UK.

Where this equality analysis refers to a person being entitled to free NHS care or services this means entitlement to NHS services on the same basis as an ordinarily resident patient, acknowledging while most NHS services are free for ordinarily resident patients, charges do apply to ordinarily resident patients for some NHS services (e.g. primary dental, pharmaceutical and ophthalmic services).

Who will be affected by the implementation of the Regulations?

NHS staff (clinical and administrative) – implementing a new charging regime, including commercial charging for the first time, the application of new or changed categories of exemptions from charges for overseas visitors (including the health charge), and continuing to make and recover charges from overseas visitors.

Visitors – revised categories of exemption from charges will change the entitlement of overseas visitors to free NHS services, some previously chargeable overseas visitors will now be exempt from charges and vice versa.

Temporary migrants (including students) who are subject to immigration controls (requiring visas of between 6 months and 5 years) – will be subject to the health charge when applying to come to the UK, however once in the UK will be exempt from charges under the Regulations.

Ordinarily resident population of England – noting the change to the meaning of ordinary residence in section 175 of the National Health Service Act 2006 (and the Regulations) as a consequence of section 39 of the Immigration Act 2014 (which is expected to come into force in April 2015), the ordinarily resident population in the UK will continue to be entitled to free NHS care.

Expatriates – will no longer be exempt from charges on the basis of former residence and unless they retain ordinary residence in the UK or are covered under another exemption category then they will be chargeable for NHS hospital care.

Illegal migrants (including failed asylum seekers liable to removal, illegal entrants and people who have overstayed their visas) – will continue to be chargeable for NHS hospital care, except for specified failed asylum seekers supported by the Home Office or a local authority who will be exempt from charges. New exemptions from charges in respect of victims of specified types of violence will also be applicable to those illegal migrants who have suffered such violence.

Evidence

What evidence have you considered?

Equality analyses were conducted for the 2011 regulations⁶, the imposition of immigration sanctions for those with unpaid debts to the NHS⁷ and to accompany the government response to the 2013 Department of Health consultation. This equality analysis builds on that previous work. Consideration has been given to the 2012 review of overseas visitor charging policy, responses to the 2013 consultation and input and opinion provided by stakeholders in other informal engagement conducted with stakeholders in 2014 when developing the policy underlying these Regulations and in the preparation of this equality analysis.

Heavy reliance has also been placed on research conducted by independent consultants. For example, during the development of the proposals for the 2013 consultation, the Department recognised that there was a need to understand in more detail the impact and scale of the use and costs of the NHS by visitors and temporary migrants. However, while there was a great deal of speculation and assumption about the numbers of visitors and short-term migrants using the NHS, solid data was quite limited.

To address the absence of primary data the Department commissioned two strands of work⁸. The first stage was a qualitative market research study (undertaken by Creative Research) and the second phase a quantitative analysis based on population level data to model the estimated order of magnitude of NHS costs for visitors and migrants (undertaken by Prederi Ltd). This second piece of research included a literature review to look at migrant use of the NHS which has also fed into this analysis⁹. Together they helped the Government and the NHS understand the issues with and gaps in the existing processes and support the development of proposals for the new system. The research was published on 22nd October 2013.

Disability

People with disabilities are subject to the same rules about residency status and entitlement to free NHS care as able-bodied people. Where a person with a disability is ordinarily resident in the UK or is an overseas visitor who is exempt from charges under the Regulations (for example, by paying the health charge) they will be entitled to free NHS care. Any overseas visitor with a disability who is not exempt from charges under the Regulations will be subject to charges in the same way as other overseas visitors.

It is acknowledged that overseas visitors with a disability may, due to the nature of their disability, be more likely to require healthcare than other overseas visitors and so be adversely

⁶ The equality analysis is published at <https://www.gov.uk/government/publications/guidance-on-overseas-visitors-hospital-charging-regulations>.

⁷ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/127063/EqIA.pdf.pdf

⁸ <https://www.gov.uk/government/publications/overseas-visitors-and-migrant-use-of-the-nhs-extent-and-costs>

⁹ Annex B: Migrant use of Healthcare Services: Findings from the literature; *Quantitative Assessment of Visitor and Migrant Use of the NHS in England Exploring the Data*, page 111

<https://www.gov.uk/government/publications/overseas-visitors-and-migrant-use-of-the-nhs-extent-and-costs>

affected by the imposition of charges, in particular commercial charges. However, any adverse impact is considered to be justified because of the need to ensure that visitors to the UK make a fair contribution to the cost of the NHS services they access.

Indirect discrimination has been identified in the 2011 regulations in respect of disabled failed asylum seekers being supported by local authorities under section 21 of the National Assistance Act 1948. Failed asylum seekers will be supported under section 21 where they need care and attention (often due to a disability). Without the need for care and attention such failed asylum seekers are entitled to support from the Home Office under section 4(2) of the Immigration and Asylum Act 1999. This issue came to light in a recent case of *Cushnie*¹⁰ which was heard before the High Court in 2014. The 2011 regulations provided an exemption from charges for persons supported under section 4 but not those supported under section 21, creating indirect discrimination against disabled asylum seekers supported under section 21 who, but for their disability, would be entitled to support under section 4. The Regulations correct this indirect discrimination and ensure that failed asylum seekers, whether disabled or able-bodied, who are supported in analogous situations are entitled to free NHS care. The Department considers that, with this rectification, people with disabilities are subject to the same rules about residency status and entitlement to free NHS care in the UK as other overseas visitors.

Sex

Men and women are subject to the same rules about residency status and entitlement to free NHS care. Both sexes are treated equally under the Regulations and are entitled to benefit from the exemption categories, with the exception of the exemption for victims of female genital mutilation which by definition can only apply to women or girls.

While it is acknowledged that men may be the victim of sexual and domestic violence, it is recognised that the introduction of an exemption for treatment needed as a consequence of such types of violence, but not others, is more likely to benefit women than men, since men are less likely to be the victim of sexual and domestic violence. Men may be more likely to be the victims of other types of violence, e.g. street crime, for which no exemption from charges is provided for by the Regulations.

We consider that any indirect discrimination on the basis of sex arising from the inclusion of an exemption for victims of female genital mutilation, sexual violence or domestic violence, but not other forms of violence, is justified because of the particularly vulnerable and powerless situations that victims of such violence find themselves in. This policy is consistent with wider government policy on preventing and supporting victims of violence and it is hoped that the provision of free NHS hospital treatment in a safe and trusted environment will encourage victims to seek treatment and provide a gateway for them to be referred to police and other relevant agencies and organisations who can assist the victim to remove themselves from the cause of harm and support the victim in their recovery.

¹⁰ *R (on the application of Cushnie) v Secretary of State for Health* [2014] EWHC 3626 (Admin).

Race

Overseas visitors of all races are subject to the same rules about residency status and entitlement to free NHS care and are entitled to benefit from the exemption categories in the Regulations. However, there is evidence (anecdotal and qualitative research commissioned by the Department from Prederi) that non-white people or people for whom English is not their first language are, on some occasions, targeted in the application of the 2011 regulations due to speculation or assumption that they are not resident in the UK. There is a longstanding principle in guidance to the NHS that each patient must be treated the same for the purposes of assessing whether charges are applicable. New guidance is being issued to accompany the Regulations which will reiterate this principle and expressly refer to the legal duties of NHS bodies to treat patients non-discriminatorily.

Age

Entitlement to some of the exemption from charge categories is dependent on a person's age. In particular, children who are looked after by a local authority are exempt from charges because of the vulnerable situation such children are in. The children of certain exempt overseas visitors are also exempt from charges under the Regulations. The exemption to replicate the UK joining Annex IV of Regulation (EC) 883/2004 applies only in relation to state pensioners, consequently providing an exemption in respect of individuals who have reached state pension age.

It is recognised that children are particularly vulnerable, in particular when they are in the country illegally or where their parents cannot afford to pay for their care. The exemption for children in local authority care in the 2011 regulations has been extended to cover children who are looked after by a local authority, which covers a much broader cohort of children including unaccompanied children and those accommodated voluntarily (without the need for intervention by a court), in addition to children in local authority care by virtue of a care order.

Consideration was given to whether the exemption for children looked after by a local authority should be further extended to apply to children supported by local authorities under section 17 of the Children Act 1989, however, it was determined that extending the exemption to such children would provide for too wide an exemption and would not capture the most vulnerable children. This is because of the range of services that can be provided under section 17 including some relatively low level services (e.g. money to buy new clothes for the child) that can be provided to children who are residing with their parents and are not in a comparably vulnerable position as compared to those accommodated and looked after by local authorities. While children supported under section 17 are vulnerable it is considered that limiting the exemption to those children who are looked after by local authorities better targets the most vulnerable children, including those who have been removed from their parents or who are unaccompanied.

Older people are recognised as having higher healthcare needs than younger overseas visitors and residents and consequently as being more likely to need to access NHS services while visiting the UK. Such overseas visitors will therefore be more likely to be adversely affected by charging, in particular commercial charging. This is also true of overseas visitors who are

illegal migrants who are older and may have increased healthcare needs.

UK state pensioners who reside outside the EEA will now be charged for healthcare on visits to the UK, for which they may previously have been exempt from charges. It might, therefore, be said that there is a disproportionate impact on older people, in particular those state pensioner residing outside the EEA for whom entitlement is changing. However, the changes to exemption categories in the Regulations reflect the policy intention of aligning the charging regime with the principle of residence in the UK, with previous exemptions that were overly generous to former residents (including state pensioners) being removed. These changes are not limited to exemptions affecting older people, they will also apply to former UK residents of working, so the impact will be felt across all age groups, although it is recognised that older people may be more likely to need to access NHS services while visiting the UK.

UK state pensioners residing in the EEA will have their entitlement to NHS service extended to include free elective treatment, in addition to the existing entitlement under EU regulations to treatment which becomes necessary on medical grounds during their stay in the UK. The justification for extending the entitlement to free NHS to state pensioners residing in the EEA to elective services, but removing the entitlement for those residing outside the EEA, is on the basis of the UK's obligations to those pensioners under EU law. Additionally, in return for taking on the obligation of providing free treatment, including elective care, to UK state pensioners resident in the EEA the UK will receive a discount on payments it makes to other EEA members which are expected to save the UK up to £20m a year.

Gender reassignment (including transgender)

Individuals who are transgender or transsexual will be subject to the same rules about residency status and entitlement to free NHS care as other overseas visitors and it is not anticipated that there will be any specific adverse impact from the changes in the Regulations on this group.

Sexual orientation

All overseas visitors, regardless of sexual orientation, will be subject to the same rules about residency status and entitlement to free NHS care as other overseas visitors and it is not anticipated that there will be any specific adverse impact from the changes in the Regulations on this group. To avoid such an adverse impact, the exemption for family members of an overseas visitor who is exempt from charges because of an EU right has been retained. The exemption has been narrowed to target only those family members who do not have an EU right in their own right or as a family member under EU law because their family relationship isn't recognised as one to which a right as a family member attaches under EU law. This will ensure that there is no disproportionate impact on same sex couples who are married or civil partners and whose relationship isn't recognised by the EEA state in which one of the couple is insured in. Both individuals in a same sex marriage or civil partnership will be entitled to free NHS care under the Regulations in these circumstances where they are not covered as a matter of EU law.

Religion or belief

Overseas visitors of all religions and beliefs are subject to the same rules about residency status and entitlement to free NHS care under the Regulations. This is ensured by the removal of the exemption for missionaries in the 2011 regulations, which those of no belief who were undertaking comparable charity or voluntary work abroad were unable to benefit from. There is now equality of treatment under the Regulations for those with religious or other beliefs and those of no belief.

Pregnancy and maternity

As is the case now, overseas visitors will be charged for maternity services (except where services are required as a direct consequence of female genital mutilation or the overseas visitor is entitled to free NHS care under another exemption category). The position that maternity services are always considered to be immediately necessary, and consequently must be provided regardless of the overseas visitor's ability to pay, also remains unchanged. This blanket health safeguard in respect of maternity services is justified by the significant risks to both mother and baby if health goes unchecked, and the fact that, at least for delivery, it cannot be delayed.

Carers

Carers are subject to the same rules about residency status and entitlement to free NHS care under the Regulations as other overseas visitors and it is not anticipated that there will be any specific adverse impact from the changes in the Regulations on this group.

Other identified groups

Resident status

An overseas visitor's status as a resident is relevant when establishing entitlement to free NHS care by being ordinarily resident in the UK, or for some exemptions where an overseas visitor is entitled to the exemption by virtue of being resident in a particular country (e.g. state pensioners residing in another EEA state, EU rights or reciprocal healthcare agreements). This is a fundamental concept in respect of the overseas visitor charging regime under the National Health Service Act 2006 and the Regulations – that the NHS should be free for ordinary residents only and that visitors should contribute to the cost of their care by paying for the services they receive.

Low or no income

A group who may be adversely affected by charging, in particular the introduction of commercial charging, are people who must pay at the point of delivery and who are on low or no income (e.g. some illegal migrants or failed asylum seekers).

The NHS has a legal, ethical and moral duty to provide immediately necessary or urgent care to overseas visitors, regardless of their ability to pay, and such treatment will not be delayed or denied.

Illegal migrants

Illegal migrants, including failed asylum seekers, illegal entrants and people who have overstayed their visa, who are residing in the UK are another group who are adversely affected

by the overseas visitor charging regime and they will often have limited income and may be unable to pay for healthcare when they require it. Such illegal migrants may also have increased healthcare needs as a consequence of being in a lower-socioeconomic group or due to having been subject to a lower standard of, or lack of access to, healthcare in their home country before travelling to the UK. The adverse impact on this group will be exacerbated by the introduction of commercial charging as they will be liable for increased charges when they access NHS services.

As noted above (in the section on age) some children of illegal migrants are recognised as being vulnerable and the exemption for children looked after by a local authority is intended to capture the most vulnerable, in particular those who are unaccompanied including those in the UK illegally. However, inevitably there may be other children of illegal migrants who are not covered by the exemption but who are also vulnerable. Such children may have poorer health or reduced access to healthcare comparative to resident children or those visiting the UK short-term.

The Regulations attempt to strike a balance between ensuring the most vulnerable overseas visitors, such as asylum seekers, refugees, supported failed asylum seekers, victims of human trafficking and unaccompanied children, including those in the UK illegally, are able to access free NHS care, with the principle that entitlement to free NHS care should be on the basis of ordinary residence, which must be lawful.

Area inequality

The Regulations apply equally to overseas visitors across England. However, the Regulations implement commercial charging of overseas visitors for the first time in respect of overseas visitors who ordinarily reside outside the EEA, which may result in charges being calculated in different ways in different parts of the country. Charges must be calculated under the Regulations in accordance with the national tariff and rules which set the prices to be paid by commissioners to providers in respect of services provided to ordinarily resident or exempt patients. The price for the services, as so determined, is then multiplied by 150 per cent for non-EEA residents. However, the price will be subject local modifications which are agreed between commissioners and providers, or imposed by Monitor, and increase the price of a service in respect of providers subject to the agreement or as determined by Monitor where it would be uneconomical for the provider to be paid for providing the service at the price set under the national tariff. For example, this may be the case where a provider is required to sustain provision of maternity services in a relatively less populated area of the country and, consequently, the cost of providing those services is more expensive than the price set in the national tariff. The consequence of this is that overseas visitors in certain geographical areas around the country may be required to pay a higher price for the service they receive than overseas visitors in other areas. However, any difference in price for the same services provided in different parts of the country will reflect the actual expense of providing that service to the provider, and consequently is considered to be justifiable.

Engagement and involvement

Was this work subject to the requirements of the cross-government [Code of Practice on Consultation](#)? YES

How have you engaged stakeholders in gathering evidence or testing the evidence available?

Since the publication in December 2013 of the equality analysis that accompanied the government's response to the consultation, the programme has engaged with or shadowed a number of vulnerable group representatives, key stakeholders and interested parties.

Through the NHS Reference Group and the recently formed Implementation Group (November 2014) the Department has discussed policy development and implementation with the above stakeholders, while being mindful of the impact on the whole of the patient population.

During 2014, the Programme team continued to engage with a number of vulnerable group stakeholders and interested parties to listen to concerns and suggested solutions. This included regular meetings with:

- Still Human, Still Here
- Maternity Action
- Doctors of the World
- National AIDS Trust

Other engagements included the following events:

On 17 April 2014, policy leads with the programme visited Brushstrokes, a charity working with new migrant community members in Sandwell.

On 10 July 2014 a health inequalities workshop took place with the presence of 19 vulnerable group representatives. The workshop also elicited comments on the protected characteristics under the Equality Act 2010. As part of policy development, we have considered the concerns and suggested solutions from the representatives.

Since July 2014, discussions were held with NHS England in relation to the issues faced by vulnerable individuals (e.g. the homeless, people for whom English is not their first language and Gypsies and Travellers), who are 'ordinarily resident' but unable to prove their residency status.

On 14 October 2014 a meeting was held with the Chief Executive Officer and the Health Inclusion Co-ordinator of Migrant Resource Centre, to discuss the Programme's work and listen to the MRC's concerns and suggested solutions.

How have you engaged stakeholders in testing the policy or programme proposals?

A number of engagements, visits, shadowing events and face-to-face meetings were held to discuss policy development and implementation, to learn about the concerns, suggestions and advice of vulnerable group representatives, NHS frontline staff and other stakeholders and interested parties. These stakeholder included:

- Brushstrokes
- Christian Kitchen, Walthamstow
- City Reach – The Matrix
- Doctors of the World
- Eaves (Poppy Project)
- Freedom from Torture
- Great Ormond Street Hospital
- Guys and St Thomas Community Health Services
- Home Office
- Homeless Health Services (Croydon Health Services NHS Trust)
- Homeless Link
- Imperial College London – World Health Organisation Collaborating Centre
- Kalayaan
- King’s Health Partners – Homeless team
- Leeds GATE
- Maternity Action
- Medaille Trust
- Migrant Rights Network
- Migrants Resource Centre
- National AIDS Trust
- NHS Overseas Visitors Advisory Group
- Pavilion Medical Centre (Brixton)
- Sandwell and West Birmingham Clinical Commissioning Group
- St Mungo’s
- Still Human, Still Here
- Tower Hamlets – New Residents and Refugees Forum
- Training and Support for Services and Exiles TS4SE
- Traveller Movement
- University College London Hospital – Homeless Team
- West Midlands Migration and Migrant Health (Birmingham City Council)
- Women’s Mental Health – King’s College London

Summary of Analysis

The Department of Health does not believe that the Regulations directly discriminate against overseas visitors who fall within any of the groups with protected characteristics. The aligning of the Regulations with a the principle of a residency, the introduction of the health charge and provision for commercial charging in the Regulations does not prevent anyone from being entitled to free NHS treatment based of disability, sex, race, age, gender reassignment, sexual orientation, religion or belief or pregnancy and maternity.

Any indirect discrimination that may arise from the application of provisions for charging under the Regulations identified in this analysis is considered to be justifiable as a proportionate means of achieving a legitimate aim. These groups are set out below, with any appropriate

mitigating actions:

Former UK residents (expatriates)

The removal of the exemptions for former residents of the UK aligns the Regulations with the principle of the NHS being a residency based service and is justifiable because these individuals are resident in other countries and should obtain healthcare in their country of residence or travel insurance when visiting the UK.

Illegal migrants

The position on charging illegal migrants has not changed, and overseas visitors who have no lawful basis for residing in the UK should be charged except where they are in particularly vulnerable circumstances that justify entitlement to free NHS care. The Regulations balance the need to provide for vulnerable groups whilst maintaining the principle that entitlement to free NHS care is on the basis of ordinary residence.

Victims of violence

A new exemption is introduced in the Regulations for victims of torture, female genital mutilation, domestic violence and sexual violence. While recognised that women are more likely to benefit from the latter two types of violence than men and, by definition, are the only sex that can benefit from the female genital mutilation exemption, the decision to focus on these types of violence and not others (e.g. street crimes) is because of the particularly vulnerable and powerless situations that victims find themselves in.

Children

The exemption for children in local authority care under the 2011 regulations has been expanded to include children looked after by a local authority (which is a broader cohort of children), however it was decided not to extend this further to children supported under section 17 of the Children Act 1989. Although it is recognised that children may be particularly vulnerable, including illegal migrant children, it is considered that the various exemptions in the regulations for vulnerable individuals (asylum seekers, refugees, supported failed asylum seekers, victims of human trafficking) are sufficient to protect the most vulnerable children. Consistent with the principle that everyone should make a fair contribution to the cost of their healthcare and that entitlement to free NHS care is based on ordinary residence in the UK, the Regulations ensure that charges are imposed fairly on overseas visitors and that exemptions from charge reflect those principles whilst also protecting access to free NHS care for particularly vulnerable overseas visitors.

Eliminate discrimination, harassment and victimisation

The removal of the specific exemption for missionaries, which those of no belief were unable to benefit from, we have eliminated discrimination and provided more equality between those with religious beliefs and those of no belief.

The introduction of an exemption for failed asylum seekers supported by local authorities under

section 21 of the National Assistance Act 1948 removes the indirect discrimination between disabled failed asylum seekers supported under section 21 and able-bodied failed asylum seekers supported under section 4(2) of the Immigration and Asylum Act 1999.

The family member exemption for overseas visitors who are a member of the family of an overseas visitor (the principal overseas visitor) with an EU right is drafted in the Regulations to target those who, because of the nature of their relationship are not recognised by under EU law as being a member of that person's family. The purpose of this exemption is to ensure that same sex married couples and civil partners are entitled to free NHS care where their spouse or civil partner has an EU right, and therefore eliminates discrimination under EU law against such individuals.

The Department of Health is issuing guidance to support the implementation of the Regulations in March 2015 which will address issues around reducing or eliminating discrimination, harassment and victimisation by NHS staff in the application of the Regulations, including discrimination, harassment or victimisation that may be targeted at ordinarily resident individuals who are unfairly suspected or assumed to be overseas visitors based on appearance, clothing or language.

Advance equality of opportunity

The Department of Health believes that these proposals are likely to promote equality opportunity through:

Health surcharge: payees and exempt groups:

A new exemption has been introduced to take account of anyone who has paid, or who is exempt from paying the health surcharge whilst their leave to remain is extant, including for any children born to that person for a period of 3 months. This exemption advances equality because it allows those who have paid/or exempt from paying the health surcharge have equal access to the NHS as all ordinary resident citizens in England. Additionally, the amount payable for the health charge does not discriminate on the basis of need for healthcare so those with higher health needs (such as disabled and older people) will pay the same charge as those with lower health needs.

Promote good relations between groups

The fact that everyone will make a fair contribution to the costs of their healthcare under the Regulations and the aligning of the Regulations with the principle of the NHS being a residency based system will promote better relations between residents and overseas visitors as it will make the system fairer, more transparent and may reduce any current hostility or misconception about what visitors and migrants receive at the expense of the taxpayers.

In the case of state pensioners there may be the perception that state pensioners residing in non-EEA countries are disproportionately disadvantaged in comparison to state pensioners residing in EEA states. While it is true that the entitlement to free NHS care is different this reflects the membership of the UK in the European Union and its obligations arising from that membership, in addition to the financial benefit to the UK by joining Annex IV of Regulation

(EC) 883/2004 and extending those additional rights to elective NHS care to UK state pensioners residing in EEA states.

What is the overall impact?

There is some evidence that overseas visitors with a protected characteristics may be adversely impacted by the charging of overseas visitors under the Regulations, including the introduction of commercial charging for non-EEA residents, in particular those who lack the resources to pay or who are more likely to require healthcare.

Overall, the Regulations have a positive impact on the NHS by better aligning the charging of overseas visitors with the principle of the NHS being a residency based system and that everyone should make a contribution to the services they receive, expanding exemptions for vulnerable individuals and removing overly generous or superfluous exemptions. The few negative impacts which are outlined in this analysis are considered to be proportionate to achieving the aforementioned aims. In particular, the introduction of new exemptions for victims of torture, female genital mutilation, sexual and domestic violence, the new exemption for failed asylum seekers supported under section 21 of the National Assistance Act 1948 and the widening of the exemption for children in local authority care to looked after children, are viewed as positive changes introduced by the Regulations.

The introduction of commercial charging may have some negative effects on overseas visitors with low or no income or who are illegal migrants and may be unable to pay, however immediately necessary and urgent treatment will not be denied or delayed regardless of the patient's ability to pay. It is also acknowledged that overseas visitors in some areas of the country may be liable to prices that are higher than other areas of the country for particular services as a consequence of local modifications made to prices under the national tariff or the rules. However, any increase in price will reflect an increased cost to the relevant NHS body that provides that service so is considered to be appropriate and consistent with the prices commissioners pay providers for ordinarily resident patients.

Addressing the impact on equalities

The Regulations implement a charging regime for overseas visitors based on residency and fair contribution, whilst providing access to free NHS services for the most vulnerable overseas visitors. The impact of the Regulations on protected groups will continue to be considered during implementation of the Regulation. The Government proposes to undertake the following actions to mitigate the impact of the Regulations on protected groups:

- Retention of free GP/nurse consultations
- Retention of existing exemptions for infectious diseases
- Immediately necessary or urgent treatment (clinically decided) will always be provided without delay, regardless of whether the overseas visitor can pay
- Maternity services are always considered to be immediately necessary
- Extension of the exemption for those detained, in guardianship or subject to community treatment orders under the Mental Health Act 1983 or who are subject to treatment

imposed by a court order to include those overseas visitors deprived of their liberty under the Mental Capacity Act 2005

- Retention of exemptions for refugees, victims of human trafficking, asylum seekers and Home Office supported failed asylum seekers
- Working with NHS frontline staff (e.g. overseas visitor managers) to raise awareness on the issues faced by vulnerable groups
- Issuing of guidance in March 2015 to support the implementation of the Regulations, including the reduction or elimination of discrimination, harassment and victimisation of both overseas visitors and ordinary residents

Action planning for improvement

The Department will consider on how best to undertake review of the potential unintended consequences on vulnerable groups once the Regulations come into force.

Training packages and guidance on the application of the charging regime for overseas visitors are being created to support NHS staff implement the Regulations. This will include training on supporting vulnerable individuals' access to healthcare.

The communication objective of the programme is to inform the NHS of the Regulations; persuade trusts to improve current systems and processes to identify chargeable patients and create sustainable change that addresses the needs of vulnerable groups. The programme will continue to lead with messaging that focuses on fairness, sustainability of the NHS and reinforce that we do not want to prevent access.

Given the scale of the Programme, a post-implementation evaluation was launched in 2014. This formative evaluation is a combination of research and analysis which explores how policies operate on the ground, how and why policies are working and identifies potential intended and unintended effects including on vulnerable individuals, which will allow for refinement.

A Cost Recovery Support Team (CRST), established in January 2015, is available for deployment to trusts free of charge to assist them to implement systems and processes for improved identification of, and recovery of charges from, chargeable overseas visitors under the Regulations. The CRST will also work to educate and inform trusts to better understand that this is not about discrimination but about a fairer system and about supporting vulnerable individuals to get the healthcare treatment they need.

The introduction of commercial charging, along with the other changes imposed by the Regulations under the Cost Recovery Programme, will be reviewed post-implementation by 2017/2018. This will be undertaken to understand the extent to which the programme's objectives have been achieved, and whether the costs and benefits are in line with expectations.

Please give an outline of your next steps based on the challenges and opportunities you have identified:

Comprehensive guidance to be published in March 2015 will accompany the Regulations to ensure consistent and proper implementation of the Regulations. It is also to ensure that the NHS staff understand that the policy is about fairness and not about restricting access to healthcare and will include advice on identifying those covered under new/expanded exemptions.

Training will also be available for relevant NHS staff, both e-learning and face to face training sessions, to support staff implementing the Regulations, including processes for identifying and charging chargeable overseas visitors. Assistance will also be available to NHS staff through peer support networks and a peer-reviewed "toolbox" to share good practice. Finance staff and administrative staff will also receive higher level face-to-face training.

For the record

Name of person who carried out this assessment: Huda Baig

Date assessment completed: 28 January 2015

Name of responsible Director: Isobel Stephen, Programme Director

Date assessment was signed: 28 January 2015