



Llywodraeth Cymru  
Welsh Government

# Guidance on implementing EU Exit amendments to the Overseas Visitors Charging Regulations

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# Contents

<b>4</b>	Chapter 1: Purpose of Guidance
<b>5</b>	Chapter 2: Summary
<b>7</b>	Chapter 3: Immigration Act 2014
<b>8</b>	Chapter 4: Immigration Health Surcharge <ul style="list-style-type: none"><li>- Exemption from charges</li><li>- How to recognise someone who has paid the health charge</li></ul>
<b>15</b>	Chapter 5: Former UK residents
<b>17</b>	Chapter 6: Healthcare for EU and EFTA citizens
<b>17</b>	- Withdrawal Agreement
<b>18</b>	- Applications to the UK European Settlement Scheme (EUSS)
<b>19</b>	- Late applications to the UK European Settlement Scheme (EUSS)
<b>20</b>	- No application made to the European Settlement Scheme (EUSS)
<b>20</b>	- UK-EU Trade and Co-operation Agreement: SSC Protocol
<b>22</b>	- UK-Switzerland SSC Convention
<b>22</b>	- European Health Insurance Card (EHIC)
<b>26</b>	- What about coming to Wales for pre-planned treatment?
<b>27</b>	- Reclaiming treatment costs under the EHIC and S2 routes
<b>27</b>	- People resident in an EU country for whom payment of healthcare costs remains the responsibility of the UK
<b>28</b>	- UK pensioners living in an EU or EFTA country
<b>29</b>	- When are S2s issued by the UK for persons resident in an EU country
<b>29</b>	- Patients' rights and information
<b>29</b>	- Other European Issues

<b>31</b>	Chapter 7: Other reciprocal healthcare agreements and international obligations
<b>35</b>	Chapter 8: Cost Recovery
<b>36</b>	Annex A: When to provide relevant services to those not exempt from charge
<b>41</b>	Annex B: Information on 'Ordinarily Resident'
<b>44</b>	Annex C: Information on different categories of persons who may apply for leave to enter and documentation required

## CHAPTER 1

# Purpose of Guidance

**1.1** This guidance seeks to provide help and advice on the implementation of changes to the charging of overseas visitors to Wales:

- as a consequence of the UK Government’s decision to leave the European Union (EU);
- the new arrangements resulting from the UK’s relationship with EU under the Protocol on Social Security Co-ordination (SSC) contained in the UK-EU Trade and Co-operation Agreement (TCA);
- the consequential changes made in The National Health Service (Charges to Overseas Visitors) (Amendment) (Wales) (EU Exit) Regulations 2020 and The National Health Service (Charges to Overseas Visitors) (Amendment) (Wales) (EU Exit) Regulations 2021; and
- The National Health Service (Charges to Overseas Visitors) (Amendment) (Wales) Regulations 2023.

**1.2** However, the guidance cannot cover everything and is not intended to be a substitute or a definitive statement for the Regulations themselves which contain the legal provisions. Local Health Boards (LHBs) are advised to seek their own legal advice on the extent of their obligations when necessary.

**1.3** The National Health Service (Charges to Overseas Visitors) Regulations 1989 are the baseline from which LHBs should work, taking into account all other amending Regulations made since 1989, this includes the National Health Service (Charges to Overseas Visitors) (Amendment) (Wales) (EU Exit) Regulations 2020; the National Health Service (Charges to Overseas Visitors) (Amendment) (Wales) (EU Exit) Regulations 2021, the National Health Service

(Charges to Overseas Visitors) (Amendment) (Wales) Regulations 2022; and the National Health Service (Charges to Overseas Visitors) (Amendment) (Wales) Regulations 2023.

**1.4** This manual of guidance does not supersede or replace the previous guidance on the implementation of the overseas visitors’ Charging Regulations. It is to be used in conjunction with that document and reflects the changes in regulations following the UK leaving the EU on 31 December 2020 and the subsequent Protocol on Social Security Co-ordination (SSC) contained in the UK-EU Trade and Co-operation Agreement (TCA).

**1.5** As a consequence of the SSC/TCA, The National Health Service (Charges to Overseas Visitors) (Amendment) (Wales) (EU Exit) Regulations 2019 (the “Exit Amendments”), which were made as part of the UK’s no deal preparations, have been revoked and replaced by:

- **the National Health Service (Charges to Overseas Visitors) (Amendment) (Wales) (EU Exit) Regulations 2020** which came into force at the end of the Transition Period (31 December 2020);
- **the National Health Service (Charges to Overseas Visitors) (Amendment) (Wales) (EU Exit) Regulations 2021**, which came into force on 26 March 2021; and
- **the National Health Service (Charges to Overseas Visitors) (Amendment) (Wales) Regulations 2023**, which came into force 1 February 2023.

## CHAPTER 2

# Summary

**2.1** EU and EFTA citizens lawfully residing in the UK on or before 31 December 2020 retain their entitlement to healthcare as long as they continue to be ordinarily resident here. To do this they need to have applied to the EU Settlement Scheme by 30 June 2021 and been granted Settled or Pre-Settled Status in order to secure these rights for the future, and their entitlements will be subject to any future domestic policy changes which apply to UK nationals. EU and EFTA citizens legally residing in the UK prior to 31 December 2020, can be joined in the UK by eligible family members, who will also need to apply to the EU Settlement Scheme (EUSS). In August 2021 the UK Government announced temporary protection for joining family members for three months following their arrival in the UK even if they have not yet applied to the EUSS. They will need to make an EUSS application within three months of arrival to continue receiving free healthcare. They will remain entitled to free healthcare, subject to the ordinarily resident test, until a final decision on their application is made.

**2.2** EU citizens who move to the UK from 1 January 2021 will generally pay the Immigration Health Surcharge (health surcharge) as part of any visa application. Those whose healthcare costs are covered by an EU member state under the SSC Protocol, such as EU-insured state pensioners or detached workers with a valid S1 document, or eligible students with a valid member state European Health Insurance Card (EHIC), may be eligible for a reimbursement of their health surcharge payment.

**2.3** Under the Withdrawal Agreement and SSC Protocol, overseas visitors who reside in an EU country (including third-country nationals) may be insured under the public healthcare insurance system in the EU member state where they are habitually resident, the country from which they receive a state pension, or their country of work. They will consequently be exempt under the Charging Regulations from charges for treatment they are eligible to receive as long as they present the appropriate EU healthcare document. This is because the UK can recover the cost of their care from the relevant insuring member state, if the details of their healthcare form are recorded. Costs can be recovered wherever this treatment is provided, including for services that are ‘free to all’ e.g. in A&E departments, or for NHS primary care. EHIC or Provisional Replacement Certificate (PRC) holders are eligible to receive needs-arising treatment without charge; UK issued S1 holders who moved to reside in an EU member state prior to 31 December 2020 will be eligible for healthcare services on the same basis as someone ordinarily resident in the UK under the SSC Protocol.

**2.4** The way in which a person qualifies as insured varies depending on their country of habitual residence, work or state pension. However, in every case where someone is insured under the public system for needs-arising healthcare they will have, or should be entitled to hold, an EHIC or PRC from the EU country in which they are insured. This includes British nationals who are insured in an EU country. The EHIC/PRC is issued by the insuring country, which is not necessarily the person’s country of citizenship. The patient or their representative may arrange the issue of the EHIC/PRC from the relevant country.

Each family member, including children, will have their own EHIC or PRC. Overseas visitors who are EU-insured may also be issued an S2 form if they wish to seek maternity or planned treatment in the UK, or an S1 if they are living or working in the UK and the issuing member state is responsible for their healthcare costs in the UK.

**2.5** EU residents who are coming to the UK on a temporary basis to pursue a course of study will, for courses commencing on or after 1 January 2021, or on or after 1 November 2021 for Swiss residents, and which last for more than six months, pay the health surcharge as part of their visa application. Those who are insured by their resident member state and who do not work while studying in the UK may be eligible for a reimbursement of their health surcharge payment. Applications for student reimbursement opened in January 2022.

Those who obtain a reimbursement will only be entitled to medically necessary treatment free of charge during the period covered by that refund and must present a valid EHIC or PRC to obtain that treatment without charge, unless another exemption in the Wales' Charging regulations applies. Reimbursed students will also need to present an S2 for any planned treatment that they wish to access free of charge.

Students from an EU country or Switzerland on courses which last less than six months will not pay the health surcharge and may use their EHIC/PRC to access needs-arising healthcare.

**2.6** Whether or not a treatment is classed as 'medically necessary' (also known as 'needs arising-treatment') is a matter for the treating clinician to decide, bearing in mind the expected length of a student's stay in Wales. Whilst some students might travel home in the holidays, they should not be expected to return to their home country sooner than planned to obtain treatment, for example, before their course ends.

**2.7** When a relevant body treats an EU or Swiss-insured patient they should inform the Overseas Healthcare Services Team at the NHS Business Services Authority (NHSBSA) of details of the EHIC/PRC/S2 document held by that person. This information is necessary to allow the UK to recover the cost of treating EU residents from the relevant country.

**2.8** Those visitors from the EU or Switzerland to the UK who do not have a valid EHIC, PRC, S1 or S2 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. They must be charged at the LHB tariff rate.

**2.9** The EFTA countries of Switzerland, Liechtenstein, Iceland and Norway are outside of the SSC/TCA. Qualifying EFTA visitors will be exempt from charging on presentation of a valid EHIC/ PRC, S1 or S2 from the relevant country.

**2.10** To assist Overseas Visitor Managers (OVMS) in determining the provision of NHS healthcare to persons who are not exempt from charging, Annex A provides more detailed information on immediately necessary, urgent or non-urgent treatment.

## CHAPTER 3

# Immigration Act 2014

**3.1** The Immigration Act 2014 made changes to the charging rules. These changes are twofold.

**3.2** First, section 39 of the Immigration Act 2014 changes the meaning of “ordinary residence” in section 124 of the National Health Service (Wales) Act 2006 as it relates to persons who are subject to immigration control. Since 6 April 2015, non-EEA nationals also have to have indefinite leave to remain in the UK in order to be ordinarily resident here. Since 1 January 2021, this applies also to EU and EFTA nationals. Annex B provides more information about ordinary residence.

**3.3** Second, section 38 of the Immigration Act 2014 authorised the Home Secretary to introduce an Immigration Health Surcharge (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 amount of the health surcharge to be paid is set out in The Immigration (Health Charge) Order 2015, which came into force on 6 April 2015. Since 1 January 2021, the requirement to pay the health surcharge also applies to most EU and EFTA nationals seeking to reside temporarily in the UK for six months or longer.

**3.4** The health surcharge is paid at the same time as a visa applicant pays their visa application fee. There are 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 have made an application for a visa on or after 27 April 2015. Chapter 4 explains more about the health surcharge and how to identify and process people who have paid, are exempt, or are waived from paying the health surcharge.

**3.5** Some of the guidance in relation to the Immigration Act 2014 and the immigration health surcharge covers visitors from countries other than EU/EFTA states. However it has been included here to be of assistance to Overseas Visitors Managers (OVMs).

## CHAPTER 4

# Immigration Health Surcharge

## How to deal with and recognise someone who has paid or is exempt from paying the Immigration Health Surcharge

**4.1** This chapter is about persons subject to immigration control applying to come to the UK for longer than six months, or to extend a period of leave to remain in the UK. It is not about those coming to the UK for six months or less, those on visitor visas, or those coming to the UK who are not subject to immigration control.

**4.2** A health surcharge is payable by persons subject to immigration control who apply for a visa to enter the UK for more than six months or who apply to remain in a temporary capacity. People with indefinite leave to remain in the UK as well as those not subject to immigration control (e.g. diplomats posted to the UK) are not liable to pay the health surcharge, but may be ordinarily resident and entitled to receive relevant services free of charge on that basis.

**4.3** Payment of the health surcharge entitles the payer to relevant services on a similar basis as someone who is ordinarily resident. They are entitled to relevant services free at the point of use, including hospital care, which in Wales also includes assisted conception services (e.g. IVF) and free prescriptions.

They must pay for services for which a Wales ordinary resident must also pay, such as dentistry, unless they also meet the particular exemption criteria for those services.

**4.4** 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 the health surcharge payment. Most of these groups also receive relevant services on a similar basis as an ordinarily resident person.<sup>1</sup>

**4.5** The exemptions to paying the health surcharge are set out at Schedule 2 of The Immigration (Health Charge) Order 2015 and include the following<sup>2</sup>:

- persons who make an application for entry clearance where the leave to enter is for six months or less
- persons who apply for entry clearance or leave to remain under the Immigration Rules as visitors
- persons who apply for leave to enter or remain where the fee is exempt for that entry route (e.g. Health and Care Worker visa)
- a child under the age of 18 years who applies for leave of any kind to remain and is looked after by a local authority<sup>3</sup>

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1 Where a refund has been made under the Social Security Coordination Protocol because they are an EU Insured citizen with a valid EU S1 or an EU student with a valid EU EHIC they will continue to be eligible for free NHS healthcare for the foreseeable future.

2 Exemption categories for paying the health surcharge are subject to change, for instance those seeking entry clearance or leave to remain as Tier 2 intra-company migrant transfers are no longer exempt as of 27 April 2017.

3 Unaccompanied children, who are asylum seekers, refugees, or failed asylum seeker are all entitled to free healthcare.



- 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
- victims of modern slavery (which includes victims of trafficking or slavery, servitude and forced or compulsory labour) with a positive conclusive grounds decision, who apply for discretionary leave to remain (for personal circumstances, to help police with their enquiries or to pursue a compensation claim against their trafficker), or under paragraph 159I of the Immigration Rules (a provision for victims who are overseas domestic workers) and their dependants
- a person who applies for leave to remain outside the Immigration Rules with access to public funds under the Home Office “Destitution Domestic Violence Concession” policy and their dependants
- a person who applies for entry clearance or leave to remain as the dependent of a member of Her Majesty’s forces under the immigration rules
- a person who applies for entry clearance or leave to remain as the dependant 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 under the immigration rules
- a person who applies for entry clearance or leave to remain where provision for such entry clearance or leave has been made pursuant to a retained EU obligation
- a person who applies for entry clearance under any immigration rules which are identified in the immigration rules as having effect in connection with the granting of entry clearance for the purposes of acquiring leave to enter or remain in the UK by virtue of Appendix EU to the immigration rules

- a person who applies for leave to remain by virtue of Appendix EU to the immigration rules or
- a British Overseas Territories citizen who is resident in the Falklands Islands.

**4.6** As of 27 October 2020, the **health surcharge** is £624 per annum per applicant, with a discounted rate of £470 per annum for students and their dependents, Youth Mobility Scheme visa holders and those under the age of 18 at the time of application. The health surcharge is collected by the Home Office alongside the immigration application fee unless an exemption applies. The health surcharge must be paid for each applicant and for each dependant included in a visa application. This ensures that long-term visitors make a financial contribution to the NHS.

**4.7** 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 health surcharge) will result in an immigration application being refused or considered invalid, or, if leave to enter/remain has been granted, that leave will be cancelled.

## Exemption from charges

**4.8** The National Health Service (Charges to Overseas Visitors) (Amendment) (Wales) Regulations 2022 provide for an exemption from charges for persons who:

- have paid the health surcharge
- are exempt from paying the health surcharge (see above paragraph 4.5 for a full list of exemptions), except where they are exempt by virtue of being a visitor to the UK, as a result of applying for leave to enter for six months or less or by virtue of having made an application

for entry clearance before 6 April 2016, under Part 2 of the immigration rules (visitors to the UK) or on or after 6 April 2016 under Appendix V to the immigration rules (immigration rules for visitors) – these persons are still liable for charges. However a person will continue to be exempt from charges where that person is exempt from the payment of an immigration health charge by virtue of Schedule 2, paragraph 1(o) of the Immigration (Health Charge) Order 2015

- the Home Secretary has exercised their discretion to:
  - waive the health surcharge; or
  - reduce the health surcharge.

Save that, charges will still apply in respect of relevant services that are provided to an overseas visitor who is granted leave to remain in the United Kingdom under Appendix S2 Healthcare Visitor to the immigration rules, and in respect of whom a waiver to the immigration health charge applies, where those relevant services are not part of the planned healthcare treatment authorised by that person's S2 healthcare certificate<sup>4</sup>.

- the Home Secretary has exercised his or her discretion to refund part of a health surcharge. No charge may be made or recovered from a person in respect of any relevant services provided to a person on or after 27 October 2020 and during the relevant period and where a full refund of an immigration charge has been made in respect of that person on the ground that they are a person who is working in the field of health or social care or a dependent of a person who is working in the field of health and social care.

**4.9** An individual who pays the health surcharge is only entitled to free treatment on the same basis as an ordinary resident once their application for a visa has been granted, and not from the date when the health surcharge is paid. The exemption from charges for relevant services applies to the period of leave to enter or remain in the UK granted to the person.

**4.10** Individuals coming to the UK for six months or less, or as a visitor, will be liable for charges under the charging regulations unless another exemption from charges applies.

**4.11** Where a person was refunded their Immigration Health Surcharge under the relevant arrangements in the UK-EU SSC Protocol or UK-Switzerland SSC Convention, they will be insured for healthcare by an EU Member State or Switzerland. They will need to hold an EHIC (or PRC) to access free medically necessary treatment and S2 to access free planned treatment unless another exemption under the Charging Regulations applies. Some students may also hold an S1 certificate which entitles the holder to free healthcare in the UK paid for by the issuing country.

**4.12** However, in other cases where individuals receive a full health surcharge refund not through the UK-EU SSC Protocol or UK-Switzerland SSC Convention, they are chargeable for relevant services at the point of delivery unless another exemption in the Charging Regulations applies or where the full refund was made because they work in the field of health and social care (including where they are dependents of such workers). Where the health surcharge has been refunded because the person did not initially claim an exemption from paying the health surcharge, to which they were entitled, the person will be exempt from charges for relevant services in the same way as others who are exempt from

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<sup>4</sup> S2 Healthcare Visitors are allowed to enter and stay in the UK for up to 6 months if the individual has had authorisation to receive planned healthcare under the 'S2 arrangement' or accompanying or joining someone who is. They can apply to extend their stay as an S2 Healthcare Visitor for free, if the planned healthcare treatment period is for longer than 6 months. Enter the UK as an S2 Healthcare Visitor – GOV.UK ([www.gov.uk](http://www.gov.uk))

paying the health surcharge, (except for visitors who are usually chargeable for relevant services).

**4.13** Where a person has been refunded all or part of the health surcharge under the UK-EU SSC Protocol or UK-Switzerland SSC Convention they will be chargeable for healthcare which is not covered by their S1, or in the case of students by their EHIC/PRC.

**4.14** Those who applied for leave to enter or remain in the UK prior to the implementation of the health surcharge (6 April 2015 and 1 January 2021 for EU/EFTA countries) will not be retrospectively required to pay the health surcharge. As they will not have an opportunity to pay the health surcharge until they next make an immigration application. Overseas visitors who have made applications for entry clearance or leave to remain prior to the commencement of the immigration health charge will benefit from an exemption from charges pursuant to Regulation 4G of the Charging Regulations. They will be liable to pay the health surcharge if they make a further application for leave to remain in the UK after 6 April 2015, subject to being eligible for exemption or waiver from paying the health surcharge.

**4.15** Where a person makes an in-time application (before expiry of their existing leave) for further leave to enter or remain in the UK, and their existing leave is extended pending the outcome of that application, they will continue to be exempt from charges for relevant services until any extended period of their existing leave expires.

**4.16** The Charging Regulations contain an exemption for charges in respect of any services forming part of the health service provided for an overseas visitor who has resided lawfully in the United Kingdom for a period of not less than one year immediately preceding the time when the services are provided (unless this period of residence followed the grant of leave to enter the United Kingdom for the purpose of undergoing private medical treatment).<sup>5</sup> Where a person meets this residence qualification on a date during a course of treatment for which charges could have been made prior to that date no charge shall be made in respect of services received subsequently. Where it is established that a person does not meet this residence qualification and that person has already received services as part of a course of treatment on the basis that no charges would be made, no charges may be made for the remainder of that course of treatment. This differs from the position in England in which the residence qualification does not apply.

**4.17** A child born in the United Kingdom to a person who is exempt from charges under Regulations 4F or 4G of The National Health Service (Charges to Overseas Visitors) (Amendment) (Wales) Regulations 2022 will also be exempt from charges while they are aged three months or younger provided that the child has not left the UK since birth. 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 health 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 unless they qualify for any other exemptions.

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<sup>5</sup> Regulation 4(1)(b) of the Charging Regulations. Please be aware that this exemption was not the subject of consideration in *R v Barnett LBC ex parte Shah* [1983] 1 All ER 226 in which the House of Lords determined that there is no minimum period that a person must be resident in order to qualify as "ordinarily resident". This exemption applies once it has been established that someone is not "ordinarily resident" and that therefore the Charging Regulations apply to them. See Annex B to see definition of ordinarily resident.



**4.23** Nationals from these countries who are visiting the UK for less than 6 months will not have their passport stamped/endorsed on arrival and so will not be able to demonstrate their date of entry to the UK via a stamp in their passport. Those who come to the UK for more than 6 months will continue to have a vignette placed in their passport and subsequently be issued a BRP which can be used to evidence their status in the UK. Border Force officers will no longer routinely question travellers from these countries who use ePassport gates but will still speak to individuals where there is reason to do so.

**4.24** From 31 January 2021, the UK opened the Hong Kong British National (Overseas) (BNO) visa route for British Nationals (Overseas) and their dependents, to enable them to come to the UK to live, study and work. As with other visas, the health surcharge will be payable and after 5 years in the UK, they will be able to apply for settlement (also known as indefinite leave to remain), followed by British citizenship after a further 12 months. Where an application is granted on the Hong Kong BNO visa route, the individual will be given a vignette in their passport and a BRP, or for applications made after 23 February 2021 via the fully digital process, a digital status. Both can be verified through the ‘view and prove’ or ‘status checker’ on-line services. The Home Office checking service may also provide advice to the NHS regarding a person’s immigration status. Further information at: [Hong Kong British Nationals \(Overseas\) welcome programme – information for local authorities – GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/hong-kong-british-nationals-overseas-welcome-programme-information-for-local-authorities)

**4.25** There is one exceptional category of individuals who are issued with BRPs but who are chargeable for relevant 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 and private medical visitors).

These people will have BRPs but will not have paid the health surcharge and should be subject to overseas visitor charges (unless a different exemption in the Charging Regulations applies). Their BRPs will be marked to demonstrate their ‘visitor’ status.

**4.26** Their 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 relevant services. A person whose leave has been curtailed is likely to be chargeable for relevant services. However, they may be in possession of a BRP that has not yet expired. This reinforces the importance of checking for updates on a patient’s immigration status.

**4.27** 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. These groups will be exempt from paying the health surcharge and will have an NHS record created demonstrating their ‘green’ status.

**4.28** Some third-country nationals have a right to live in the UK as family members of an EU/ EFTA national who has exercised EU Treaty rights before 31 December 2020, typically by working in the UK. These individuals are exempt from paying the health surcharge and will have been issued with a Biometric Residence Card (BRC) instead of a BRP from April 2015. 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 relevant services without charge. Individuals who present EEA BRCs after 30 June 2021 should be encouraged to apply for leave under the EU Settlement Scheme.

## No NHS record visible and no BRP

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

- nationals of a country where, at the time of the immigration application process, the BRP was not issued (this can be verified with the Home Office/ Status Verification, Enquiries and Checking Team (SVEC) by emailing [ICESSEVECWorkflow@homeoffice.gov.uk](mailto:ICESSEVECWorkflow@homeoffice.gov.uk))
- people who applied for leave to enter or remain in the UK prior to the implementation of the health surcharge or who will be exempt from charges until their existing visa expires
- people residing in Northern Ireland, Scotland, or England
- those who are exempt from paying the health surcharge and who are not issued with a BRP.

**4.30** Asylum seekers and those applying for leave to remain as victims of domestic violence are not issued with a BRP until such time as a decision is made to grant leave to remain. These groups should have an NHS record, but if one is not available OVMs should continue to use good judgement and other available documentation such as the Application Registration Card (ARC) or evidence of exemption from paying the health surcharge from the Home Office to ascertain eligibility for relevant services without charge.

**4.31** EU and Swiss students who have paid and received a reimbursement of their IHS.

**4.32** OVMs will need to continue to exercise good judgement and make enquiries of the Status Verification, Enquiries and Checking Team (SVEC) at the Home Office, where individuals are not recorded and where you cannot verify that the health surcharge has been paid. The current Home Office system does not differentiate between a student who has paid the IHS and a student who has paid the IHS but then received a reimbursement of that payment (although this is likely to change as systems are updated in the future). In the cases of EU and Swiss students, OVMs will need to continue to apply their judgement and carry out proportionate checks to ascertain whether the patient has received a reimbursement of their IHS, and if they have, to provide evidence of their entitlement in the form of an EHIC, PRC, a S2 or S1 if applicable as appropriate.

## Verifying status

**4.33** Annex C outlines different categories of persons 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 health surcharge, and the documentation that OVMs should request to verify their status.

## CHAPTER 5

# Former UK residents

**5.1** 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: whether the patient is still ordinarily resident in the UK, and, if not, whether they have any exemption from charge under the Charging Regulations.

**5.2** British citizens and non-UK nationals with indefinite leave to remain who are returning to resume properly settled residence in the UK will meet the ordinarily residence test most likely from the date of their arrival (assuming their residence is lawful and voluntarily adopted). From 30 June 2021, EU/EFTA nationals will need to have a lawful status ie Settled or Pre-Settled under the EUSS in order to meet the ordinarily resident test.

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

- **Regulation 4B** – overseas visitors with citizens' rights: persons who are in scope of Title III of part 2 of the withdrawal agreement (e.g. UK nationals living in an EU country on or before 31 December 2020), Title III of Part 2 of the EEA EFTA separation agreement or the Swiss citizens' rights agreement are able to continue to receive relevant services without charge. It also provides that the family members of such a person will be entitled to receive needs arising healthcare without charge, subject to specific conditions.
- **Regulation 4C** – Overseas visitors with a United Kingdom issued S1 healthcare certificate or equivalent document: UK nationals in receipt of a UK pension with a UK-issued S1 healthcare certificate who are ordinarily resident in an EU or EFTA country on or before 31 December 2020 are exempt from charge for all relevant services, including elective treatment. It also provides the spouse or civil partner of the overseas visitor, and a child in respect of whom the overseas visitor has parental responsibility is exempt from charges.
- **Regulation 4D** – Persons who make late applications under Appendix EU to the immigration rules: provides that a person who makes a late application under Appendix EU will not be charged for relevant services which are provided while their application is being determined.
- **Regulation 4E** – Overseas visitors with Trade and Co-operation Agreement rights: UK nationals residing in EU countries who are within the scope of the SSC Protocol provisions of the Trade and Cooperation Agreement are entitled to relevant services without charge.
- **Schedule 2** – Reciprocal healthcare agreements: Former UK 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 relevant services without charge (usually only for needs-arising healthcare but will depend on the terms of the relevant agreement).

## CHAPTER 6

# Healthcare for EU and EFTA citizens

**6.1** OVMs need to be aware of the entitlements reciprocal healthcare agreements provide over and above the entitlements provided elsewhere under the Charging Regulations. LHBs should maximise the identification of patients covered by such agreements and collect the necessary information to enable cost recovery. The UK can claim reimbursement for the cost of providing healthcare to visitors under these agreements, if certain data is captured.

**6.2** A person's eligibility under the agreements will normally be established by production of the relevant reciprocal healthcare document (EHIC, PRC, S1 or S2) confirming that the holder is covered for their health costs by the country of issue.

**6.3** 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.

## Withdrawal Agreement

**6.4** Regulation 4B of the Charging Regulations concerns entitlements to free treatment for EU and EFTA citizens under the terms of the Withdrawal Agreement.

**6.5** The Withdrawal Agreement set out the terms of the UK's departure from the EU on 31 January 2020, and includes provisions on citizens' rights. It protects the rights of EU citizens and their family members who live in the UK and UK nationals and their family members who live in EU countries. The EEA EFTA Separation Agreement and the Swiss Citizens' Rights Agreement extend the citizens' rights provisions of the Withdrawal Agreement to nationals of these states and UK nationals who have moved between the UK and these states before the end of the transition period. This includes Norway, whereby UK nationals settled in Norway with rights under the UK-EEA EFTA Separation Agreement, can use their Norwegian EHICs when visiting the UK. More information on the citizens' rights provisions can be found in the [Withdrawal Agreement explainer for part 2: citizens' rights published by the Foreign, Commonwealth and Development Office \(FCDO\)](#).

**6.6** Family members (for example, spouses and civil partners, children in respect of whom an overseas visitor has responsibility) and survivors of these individuals will retain healthcare cover on the same terms as before the end of the transition period.

**6.7** UK nationals who were living lawfully in an EU or EFTA country on or before 31 December 2020 will be entitled to healthcare without charge in the UK, using a valid member state issued EHIC/PRC or S2, or a UK S1 for those whose healthcare costs are the responsibility of the UK.



**6.8** Visitors from EU and EFTA countries whose visit to the UK began on or before 31 December 2020 and continues uninterrupted thereafter may continue to use their EHIC for needs-arising healthcare. For tourists, this is until the end of their temporary stay; for students, this is usually until the end of the course of study. They may also complete planned treatment in the UK, where authorisation for this was sought from the relevant health authority in their home country on or before 31 December 2020 and subsequently granted.

**6.9** Detached workers (those sent to work in the UK from an EU or EFTA country) whose posting began before 31 December 2020 will be covered for free healthcare for the duration of their posting.

## Applications to the UK European Settlement Scheme (EUSS)

**6.10** EU and EFTA citizens lawfully residing in the UK by 31 December 2020 will retain their entitlement to free healthcare where they meet the ordinarily resident test. From 1 July 2021, they must meet the ordinarily resident test and hold either settled or pre-settled status under the EUSS (late applications will be accepted in certain circumstances). Those who are awaiting the outcome of an application submitted on or before 30 June 2021 will have received a Certificate of Application (CoA) and will remain entitled to free healthcare, subject to the ordinarily resident test, until that outcome is known (and during the period of any subsequent appeal made until the outcome of the appeal is known).

**6.11** Should a patient claim to have a Certificate of Application but is unable to provide it at the time of treatment, OVMs should contact the Home Office SVEC service for confirmation, by emailing [ICSSSVECWorkflow@homeoffice.gov.uk](mailto:ICSSSVECWorkflow@homeoffice.gov.uk).

The status check will be valid for 6 months and a repeat check should not be submitted within this time period. After 6 months a further check with SVEC will be required.

**6.12** OVMs may also access information from the UK Government website [Check someone's immigration status – GOV.UK \(www.gov.uk\)](https://www.gov.uk/check-someones-immigration-status) provided the person has obtained a 'Share Code' to use to prove their status to others eg employers etc. Those granted EUSS status will be able to provide a share code.

**6.13** Future developments will see the Home Office information to show when someone has been granted EUSS status accessible via the Welsh Demographic Service (WDS). NHS records for those granted EUSS status will show one of two icons, as shown below. A third icon will indicate that the Home Office database has been checked, and no status was returned.

### Settled Status (Indefinite Leave to remain) found on the Home Office



### Pre-settled Status (Leave to remain) found on the Home Office



## No Settled or Pre-settled status found on the Home Office

EUSS Details	
EU Settled Status	 No EU Settled / Pre-Settled Status

This status will be re-checked for each hospital attendance. These indicate immigration status only; the individual must still meet the ordinarily resident test to be eligible for free healthcare.

**6.14** Where the Home Office has accepted an application to the EUSS prior to 30 June 2021 and has issued a Certificate of Application (CoA) but the application has yet to be determined, the person is non-chargeable from the date on which the application was made. Where charges have already been invoiced to this individual in that period, they must not be recovered.

Where charges have already been paid by the individual for treatment they received after they have made their application, they must be refunded by the relevant body.

**6.15** Where the Home Office outcome of an application to the EUSS is to refuse to grant Settled or Pre-Settled status, the person should be considered as a chargeable patient (unless another exemption applies). This applies from the point on which the Home Office decision is confirmed. If an appeal against the decision is made, no charges should be made from the point the appeal was made until the outcome of the appeal is determined. The onus is on the individual to provide evidence of the appeal as a CoA will not be applicable evidence as it is only for initial applications.

Where the outcome of the appeal is the Home Office decision to grant Settled or Pre-Settled status the person will remain non-chargeable. If the outcome is again a refusal to grant Settled or Pre-Settled status, the person should be considered as a chargeable patient (unless another exemption applies) from the time of that notification.

**6.16** EU and EFTA citizens lawfully residing in the UK by 31 December 2020 can be joined in the UK by eligible close family members (spouses, civil and unmarried partners, dependent children and grandchildren, and dependent parents and grandparents) where the relationship existed on 31 December 2020 and still exists when they wish to come to the UK. They will require a EUSS family permit which will be valid for six months and must also apply to the EUSS before the permit expires.

**6.17** Irish citizens in the UK will not need to apply for settled or pre-settled status to protect their entitlements due to the Common Travel Area arrangements.

## Joining Family Members of a EUSS status holder

**6.18** Joining family members<sup>7</sup>, including those without a EUSS family permit, are eligible for free treatment in the first three months following arrival in the UK even if they have not yet applied to the EUSS. They will need to make an EUSS application within three months of arrival to continue receiving free healthcare. They will remain entitled to free healthcare, subject to the ordinarily resident test, until a final decision on their application is made.

<sup>7</sup> The UK Government defines close family members (spouses, civil and unmarried partners, dependent children and grandchildren, and dependent parents and grandparents) of a person in scope of the Withdrawal Agreement, if the relationship existed on 31 December 2020 and the relationship still exists when the family member wishes to join the person in scope. Children born or adopted after 31 December 2020 are also able to join eligible family members in the UK.

**6.19** Joining family members can submit a late EUSS application (more than 3 months following arrival to the UK) where they have reasonable grounds for doing so. If a joining family member chooses not to apply to the EUSS they should ensure they have appropriate health insurance or a valid Member State EHIC for the duration of their stay in order to access medically necessary healthcare.

**6.20** OVMs should encourage joining family members to apply to the EUSS as EUSS status or a Certificate of Application (CoA) remain the most straightforward way of demonstrating entitlement. If a joining family member has not applied to the EUSS within the first three months of arrival and therefore does not yet have a Certificate of Application (CoA) or EUSS status, OVMs should continue to use good judgement and consider other available documentation to ascertain the patient's eligibility for free treatment in the first three months following arrival in the UK. A non-exhaustive list of alternative evidence that could be provided by a joining family member can be found in the table below.

<b>Evidence of family relationship might include:</b>	<b>Evidence of arrival in the UK in the last three months might include:</b>
<ul style="list-style-type: none"> <li>• Marriage or Civil Partnership Certificate</li> <li>• Birth or Adoption Certificate</li> <li>• EUSS family permit</li> <li>• Passport (where the relationship has been established by 31 December 2020)</li> <li>• Council Tax bill in joint names – valid for the current year</li> <li>• Joint bank, building society or credit card statements – this must be no more than three months old</li> <li>• Tenancy agreements / Mortgage statements / Local authority rent book in joint names</li> <li>• Utility bills in joint names</li> <li>• Finance agreements</li> <li>• Tax returns</li> <li>• Loan agreement</li> <li>• Power of attorney</li> </ul>	<ul style="list-style-type: none"> <li>• Travel document</li> <li>• Passport stamp confirming entry at the UK border</li> <li>• Used travel ticket</li> <li>• EUSS family permit</li> </ul>

## Late applications to the UK European Settlement Scheme (EUSS)

**6.21** Regulation 4D concerns entitlements to free healthcare for people who make a late application to the EUSS (Appendix EU to the immigration rules).

**6.22** The Home Office will accept late applications to the EUSS, where they accept that the person has “reasonable grounds” for making an application after the required date (30 June 2021).

**6.23** Where a late application has been made to the Home Office, as evidenced by a CoA, the person should be considered as non-chargeable from the date of their application until such time as the outcome of that application is determined by the Home Office. Should a patient claim to have a CoA but is unable to provide it at the time of treatment, OVMs should contact the Home Office SVEC service for confirmation, by emailing [ICESSVECWorkflow@homeoffice.gov.uk](mailto:ICESSVECWorkflow@homeoffice.gov.uk). The status check will be valid for 6 months and a repeat check should not be submitted within this time period. If the individual is granted EUSS status this will be displayed on WDS using updated information from the Home Office. Otherwise, after 6 months a further check with SVEC will be required.

**6.24** Where the Home Office accepts a late application to the EUSS, and grants a person status under that scheme, the person is non-chargeable from the date on which the late application was made, as per Regulation 4D. Where charges have already been made to this individual, they must not be recovered. Where charges have already been paid by the individual for treatment they received after they have made their late application – which may include individuals who experience a delay between submitting a valid EUSS application and

receiving a CoA, they must be refunded by the relevant body. Charges incurred before the late application was submitted should be recovered.

**6.25** Where the Home Office refuses a late application to the EUSS, the person should be considered as a chargeable patient from the date of rejection (unless another exemption applies).

**6.26** Should a late application be refused by the Home Office, and the applicant appeals that decision, they should be considered as exempt from charging under Regulation 4D until the appeal has been finally determined.

## No application made to the UK European Settlement Scheme (EUSS)

**6.27** An individual who is eligible to apply to the EUSS but who has not submitted an application by 30 June 2021, or put in a late application and is not a joining family member who has not arrived in the UK in the last three months, who is therefore in the UK without immigration status, will be chargeable. If they receive and pay for relevant services, and then later make a late application which is granted, they should not be refunded for the earlier treatment. They should be considered against the ordinarily resident test when accessing services after the date on which they are granted EUSS status.

**6.28** OVMs should encourage those who are eligible for EUSS status (or those who represent them, for example a legal or court-appointed representative, guardian or social worker) to make a late application. The Home Office provide a range of support for applicants, including those who are vulnerable or who need support applying on-line.

## UK-EU Trade and Co-operation Agreement: SSC Protocol

**6.29** Regulation 4E of the Charging Regulations concerns the entitlements of EU residents under the social security provisions in the UK-EU Trade and Co-operation Agreement (the SSC Protocol). The SSC Protocol ensures that, where the UK or an EU Member State is responsible for the healthcare of an individual, they will be entitled to reciprocal healthcare cover in certain circumstances.

**6.30** EU citizens who move to the UK from 1 January 2021 will usually pay the immigration health surcharge as part of any visa application. Some EU residents, such as EU state pensioners or detached workers who have an S1, who are insured in an EU member state, may be reimbursed their health surcharge payment, where their healthcare costs are covered by an EU member state under the SSC Protocol. Where OVMs identify that such a reimbursement has been made NHS BSA should be notified.

**6.31** The SSC Protocol does not apply to overseas visitors from the EFTA countries. Switzerland has an separate SSC Convention operational from 1 November 2021 (see section below on UK-Switzerland SSC Convention). Visitors from Iceland, Liechtenstein and Norway should be charged for NHS healthcare, unless they have entitlements under the Withdrawal Agreement, another exemption under the Charging Regulations applies, or a reciprocal healthcare agreement has been put in place. It should be noted that there is a limited agreement with Norway which allows British citizens to access medically necessary treatment free of charge in Norway on production of a (British Citizen) passport and vice versa.

## Who is covered for healthcare under the SSC Protocol?

**6.32** The SSC Protocol applies to all 27 member states of the EU, and the UK:

- 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

**6.33** The SSC Protocol does not apply to the EFTA countries. UK has agreed a separate Convention on SSC with Switzerland.

**6.34** The UK also has reciprocal healthcare agreements with some other European countries, but these are outside of the SSC Protocol (see Chapter 7).

**6.35** OVMs will be aware that Directive 2011/24/EU on the application of patients' rights in cross border healthcare – also known as the Cross-Border Healthcare Directive ceased to apply in the UK from 1 January 2021, other than for transitional cases in progress on 31 December 2020.

**6.36** Only specified residents ‘insured’ under any public healthcare system of an EU country or by the UK are covered by the SSC Protocol when they are visiting the UK. In detail, this covers:

- EU and non-EU nationals, stateless persons or refugees, plus their family members and survivors (irrespective of nationality) of these groups of people, who are legally resident in and insured in each case under any public healthcare system in an EU country (N.B. they may be ‘insured’ by the UK even if they are living abroad);
- non-EEA nationals legally resident and insured in any EU country (except Denmark).

## UK-Switzerland SSC Convention

### Who is covered for healthcare under the UK-Switzerland SSC Convention?

**6.37** Where the UK or Switzerland is responsible for the healthcare of an individual (i.e. they are “insured” by that country), they will be entitled to certain reciprocal healthcare in the other State if they are a Swiss national, a UK national, an EU citizen, a refugee, a stateless person or the family member or survivor of someone with one of those nationalities or statuses.

**6.38** Individuals who hold the nationality of one state (e.g. the UK) can be insured by the other state (e.g. Switzerland) and are covered by this Convention in that case.

**6.39** Switzerland only issues entitlement documents to individuals in scope of this agreement. Therefore, if an individual holds an EHIC, PRC, S1 or S2, they are in scope of the Convention and no further eligibility checks need be carried out.

**6.40** Individuals in scope of the Convention (i.e. who fulfil the nationality requirements) who are on a temporary stay in the other state

(including students) can access free necessary healthcare in the other state using a GHIC, EHIC or PRC as entitlement documents.

**6.41** The UK-Switzerland Convention on SSC offers comprehensive healthcare to individuals in scope who reside in one state but are insured in the other. This covers certain categories of cross-border workers. It also covers individuals in scope who export their state pensions to the other state and individuals in scope who export eligible benefits to the other state. Comprehensive healthcare means that someone is entitled to receive the same treatment as someone ordinarily resident in the UK.

## European Health Insurance Card (EHIC)

**6.42** A valid EHIC or Provisional Replacement Certificate (PRC) for the EHIC can demonstrate that a visitor (including a student) is exempt from charge under the SSC Protocol or the UK-Switzerland SSC Convention, and therefore entitled to relevant services that are medically necessary during their visit until their planned date of return. This is because the other country is responsible for the healthcare costs of the visitor. The UK can reclaim back the cost of providing treatment to the patient, if the details of the EHIC or PRC are recorded.

**6.43** For the UK to make a claim to the relevant country for the cost of treating their residents, it is imperative that the data from a valid EHIC/ PRC is recorded and reported to the Overseas Healthcare Services Team at NHSBSA via the Overseas Healthcare Services (OHS) portal which can be accessed at [www.services.nhsbsa.nhs.uk/ovt/Pages/](http://www.services.nhsbsa.nhs.uk/ovt/Pages/). Without this data, the UK cannot make a claim for reimbursement and is in effect subsidising the healthcare costs of other countries.

**6.44** An arrangement between the UK and Ireland means that visitors from Ireland do not have to present an EHIC to obtain relevant services without charge under the EU Regulations. They only need to present evidence that they are resident in Ireland, although a valid EHIC can also be used as evidence of this. Visitors from Ireland do need to be referred with an S2 for pre-planned treatment.

**6.45** Similarly, an arrangement between the UK and Norway means that Norwegian and UK nationals residing in Norway or insured in Norway may present a valid Norwegian passport in order to access needs-arising treatment when visiting the UK.

**6.46** Visitors who are resident in an EU country or Switzerland who do not provide an EHIC/PRC (or specified equivalent for Ireland and Norway) and chargeable visitors from the EFTA countries must be charged for relevant services at the LHB's tariff, unless another exemption applies to them under the Charging Regulations.

**6.47** 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 EHIC/PRC covering the period of treatment within a reasonable timescale after treatment, they should be reimbursed by the relevant body.

**6.48** Visitors from EU or EFTA countries may be exempt under a different exemption category within the Charging Regulations and it is important that this is considered before the patient is charged. Some EU/EFTA nationals as well as some third-country nationals not subject to immigration control who are ordinarily resident in the UK are entitled to free treatment on that basis.

**6.49** However, if a visitor is able to show a valid EHIC or PRC from an EU country or Switzerland, the UK can claim back the cost of their treatment from that country. It is possible to be ordinarily resident in the UK and still be insured by another country, for example under the S1 arrangements. Consequently, if a patient from an EU country presents for treatment and the treating LHB suspects they may be ordinarily resident in the UK but have not seen sufficient evidence of this, the provider should still ask the patient if they have an EHIC/PRC and report their details via the OHS web portal.

### What treatment is free under the EHIC?

**6.50** A person with a valid EHIC/PRC (or passport in the case of visitors from Norway) is entitled to free treatment for 'all treatment that is medically necessary before their planned date of return', except where charges also apply to residents in Wales, such as dental fees. In other words, this means treatment that it is medically necessary to provide a visitor during their temporary stay in the UK, with a view to preventing them from being forced to leave the UK for treatment before the end of their planned duration of stay. The patient does not need to have a specific leaving date or duration of stay, as long as the stay is temporary.

This means the following is covered:

- diagnosis of symptoms or signs occurring for the first time after the visitor's arrival in the UK; and
- any other treatment which, in the opinion of a registered medical or dental practitioner, 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.

**6.51** 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 non-EU reciprocal agreement countries which are not covered by the UK-EU SSC Protocol or UK-Switzerland SSC Convention.

**6.52** 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’ (eg. their habitual residence) there. This is not limited to a defined period of time and will depend on the individual circumstances of the case. For the purposes of the UK-EU SSC Protocol and the UK-Switzerland SSC Convention, the centre of interest for EU and Switzerland insured students is presumed to remain in their home country for the duration of their course of study.

**6.53** EU and Switzerland insured persons who are passengers or members of the crew on a vessel or aircraft travelling to the UK may use their EHIC in the UK for treatment which became medically necessary during that voyage or flight.

**6.54** 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 this case, the patient should present an S2 maternity form to the relevant body. However, given that not all EU countries automatically issue an S2 for maternity care, 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).

**6.55** 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 journey. 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 workers from the EU or Switzerland posted to the UK?**

**6.56** Those sent to the UK on a time-limited posting by their employer from an EU country, or the other way around (rather than those who have chosen to move to another country to take up employment or to seek work) are known as ‘detached workers’. Detached workers insured by their EU Member State or Switzerland who are on a temporary stay in the UK should show an EHIC and ideally an EU A1 document. The details of the EHIC should be recorded on the portal. Detached workers who are residing in the UK should be covered by an S1 document and may be eligible for full or partial reimbursement of their health surcharge payment. All EU Member States have opted in to the detached worker provisions in the UK-EU SSC Protocol so this applies for all EU Member States and for Switzerland, for which no opt-in was required.

### **What about workers from the UK posted elsewhere in the EU?**

**6.57** Workers from the UK who are sent to work in an EU country or Switzerland on a time-limited posting by their employer may be issued with an A1 (to be used alongside an EHIC/GHIC) or S1 form by Her Majesty’s Revenue and Customs (HMRC) for use abroad, where the relevant member state has agreed to this arrangement. This gives them the right to receive relevant services for free when visiting Wales, just like someone who is ordinarily resident here. The family members of UK detached workers, even if living elsewhere in the EU, may also have a UK-issued S1 form registered abroad and are therefore entitled to receive healthcare in the UK as though they were ordinarily resident.



## What about family members living in a non-EU country?

**6.58** Direct family members of either an EU national, or an EFTA national who has exercised their treaty rights in the UK by 31 December 2020 (for example by moving from abroad to work in Wales), should be treated as though ordinarily resident in the UK. If they wish to remain in the UK, they will need to apply for status under the EUSS. Direct family members include a spouse/civil partner and children. A parent or grandparent who is dependent on the spouse/civil partner would also qualify (unless they hold an entitlement in their own right). More information can be found in the [FCDO's Withdrawal Agreement explainer for part 2: citizens' rights](#). In August 2021 the UK Government announced temporary protection for joining family members for three months following their arrival in the UK even if they have not yet applied to the EUSS. They will need to make an EUSS application within three months of arrival to continue receiving free healthcare. They will remain entitled to free healthcare, subject to the ordinarily resident test, until a final decision on their application is made.

## What about family members who are living in an EU country?

**6.59** Direct family members of either an EU national or an EFTA national who has exercised their treaty rights in the UK by 31 December 2020 (for example by moving from abroad to work in the UK) may be eligible for a UK-issued S1 form to be registered in their country of residence. Direct family members include a spouse/civil partner and children. A parent or grandparent dependent upon the spouse/civil partner would also qualify (unless they hold an entitlement in their own right). If they have a registered S1 form abroad, they will be eligible to return to the UK to access treatment as though they were ordinarily resident in the UK, except if they are family members of frontier workers, who would only be entitled to unplanned healthcare on the same basis as with an EHIC.

For further information, see Trade and Cooperation Agreement between UK and EU – CP 426 and CP 530 – Convention of Social Security Coordination between the United Kingdom of Great Britain and Northern Ireland and the Swiss Confederation ([publishing.service.gov.uk](https://publishing.service.gov.uk)).

## What about students from the EU and Switzerland?

**6.60** Students who are insured in an EU country or Switzerland generally remain insured in their home state while temporarily studying in the UK. For the purposes of the UK-EU SSC Protocol and the UK-Switzerland SSC Convention, the centre of interest (eg. their habitual residence) for EU and Swiss students who are in the UK to pursue a full-time course of study is presumed to remain in their home country for the duration of their course of study.

**6.61** Students whose course of study in the UK began on or before 31 December 2020 and covered by the Withdrawal Agreement should present a valid EHIC/PRC, and any otherwise chargeable treatment costs should be reported via the OHS portal. If they cannot provide a valid EHIC/PRC, OVMs will need to consider whether they are ordinarily resident and therefore should not be charged.

**6.62** Students may be here for several years before leaving the UK, 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.

**6.63** Students who come from the EU or EFTA countries to the UK to study (for courses lasting more than six months) whose student visas start on or after 1 January 2021 will pay the health surcharge as part of their student visa application.

**6.64** Students from the EU or Switzerland may be entitled to a full or partial refund of their health surcharge under the UK-EU SSC Protocol or UK-Switzerland SSC Convention, if they are a full-time student in higher education, do not work while in the UK and have an EHIC issued by an EU country or Switzerland. Applications for student reimbursement opened in January 2022; those who intend to apply should present their EHIC or PRC when accessing needs-arising healthcare. Those who obtain a reimbursement will only be entitled to needs-arising healthcare for the period for which the reimbursement relates, on presentation of a valid EHIC or PRC or an S2 to access free planned treatment unless another exemption in the Wales' Charging regulations applies. Some students may also hold an S1 certificate which entitles the holder to free healthcare in the UK paid for by the issuing country. OVMs should report the EHIC details via the OHS portal.

**6.65** Students from an EU country or Switzerland whose course of study lasts for less than six months, will not pay the health surcharge and may continue to use their EHIC or present an S2 for planned treatment during their course of study.

## What about coming to Wales for pre-planned treatment?

**6.66** People from an EU country or Switzerland are able to receive planned healthcare in Wales where they meet the relevant requirements under:

- the planned treatment route under the SSC Protocol, for EU residents
- the planned treatment route under the UK-Switzerland SSC Convention, for eligible Swiss residents
- the S2 route under the Withdrawal Agreement
- Holders of a UK-issued S1 form registered with the relevant authorities in an EU or EFTA

country and who were living in that country on or before 31 December 2020 may also be able to return to Wales and obtain planned healthcare.

**6.67** These routes only relate to state-provided treatment, and costs are dealt with directly between states. The S2 form acts 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 that would also be payable by those ordinarily resident).

**6.68** The Cross-Border Healthcare Directive ceased to operate in the UK on 31 December 2020, other than for transitional cases in progress on 31 December 2020.

**6.69** The planned treatment route under the UK-EU SSC Protocol and S2 route under the Withdrawal Agreement enables people from an EU or EFTA country who want to come to the UK expressly to seek treatment can do so, where they meet the relevant requirements. These patients will need to obtain prior authorisation from their social security institution, which bears the cost, meaning that the patient should not be charged for that treatment.

**6.70** Where authorisation is granted, the individual will be issued with an S2. They must make advance arrangements with the treating provider for their treatment and be given the same clinical priority as NHS patients. This means that if there is an NHS waiting list, they are subject to it.

**6.71** Patients referred under planned treatment arrangements will continue to be covered for all medically necessary treatment for any other conditions if they show a valid EHIC/PRC.

**6.72** To avoid the complications that may occur if a patient authorised to seek NHS treatment in the UK is inadvertently treated privately, hospitals and consultants are advised to establish when

accepting such referrals whether the treatment should be at the cost of the patient's relevant foreign authority or at the patient's own cost, and if they wish to be a chargeable NHS or private patient.

**6.73** Where a 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 at LHB tariff cost 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 hospital, they should be told to take the matter up with their social security institution.

**6.74** Whilst Malta is an EU country and the TCA/SSC arrangements apply, under special arrangements with Malta, a number of referred patients from Malta are treated free, governed by a strict quota which is monitored by the Department of Health and Social Care. Arrangements exist by which 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 at LHB tariff cost for their treatment unless they can provide a valid S2. The Maltese quota number should be recorded and reported to the Overseas Healthcare Services team and NHSBSA.

## Reclaiming treatment costs under the EHIC and S2 routes

**6.75** For the UK to make a claim to the relevant country for the cost of treating their residents, it is imperative that the data from a valid EHIC/PRC/S2 is recorded and reported to the Overseas Healthcare Services Team at NHSBSA. Without this data, the UK cannot make a claim for reimbursement and is in effect subsidising the healthcare costs of other countries.

**6.76** 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, should be reported using the OHS portal, which can be accessed at [www.services.nhsbsa.nhs.uk/ovt/Pages/](http://www.services.nhsbsa.nhs.uk/ovt/Pages/)

**6.77** For patients from the EU or Switzerland who are covered by the UK-EU SSC Protocol or the UK-Switzerland SSC Convention, the full cost of treatment should be calculated on the basis of LHB tariff and recovered.

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

**6.79** For advice on how to operate the web portal/submit data contact the NHSBSA Overseas Healthcare Services Team. Email: [nhsbsa.ovmqueries@nhs.net](mailto:nhsbsa.ovmqueries@nhs.net)

## People resident in an EU country for whom payment of healthcare costs remains the responsibility of the UK

**6.80** Under the Withdrawal Agreement and UK-EU SSC Protocol and the UK-Switzerland SSC Convention, some people who are resident in an EU country or Switzerland (for example frontier workers, some detached workers, and pensioners) may have their healthcare costs paid for by the UK by virtue of the UK being the ‘competent country’ for them and therefore responsible for their healthcare costs. These persons should have a valid UK-issued S1 registered in their EU country of residence or Switzerland (except some detached workers on short-term postings, who will have a UK A1 and UK EHIC/GHIC). OVMs need to be aware that there will be times when visitors from the EU or Switzerland fall within this category. See also paragraph 6.80 below.

**6.81** Except for UK state pensioners and family members of frontier workers (see paragraphs below), people in this category are entitled to not be charged for planned and unplanned treatment, except where charges would also apply to UK residents, for example dental charges. They will need to show evidence of their entitlement and may have to make arrangements before accessing care.

### Family members of frontier workers

**6.82** As set out above, family members of frontier workers are not entitled to relevant services on the same basis as people ordinarily resident in the UK (unless they have entitlements in their own right). Frontier workers are people who are resident in one EU country or Switzerland but work in the UK, who return to their country of residence at least once a week and who have a valid UK S1 registered in their country of residence. While frontier workers are entitled

to relevant services free of charge, as explained in the paragraph above, their family members, also resident in the other EU country or Switzerland with a UK S1, are only entitled, free of charge, to treatment which becomes medically necessary during a temporary visit to Wales. However, they will still need to pay any charges which also apply to residents in Wales, such as dental charges. They do not need to show an EHIC for this but may be asked to show a copy of their S1, failing this, OVMs should contact NHSBSA Overseas Healthcare Services Team to verify the status of their S1.

## UK pensioners living in an EU or EFTA country

**6.83** Regulation 4C of the Charging Regulations continues rights to free treatment for UK pensioners living in the EU on or before 31 December 2020, whose healthcare costs in their EU/EFTA country of residence is funded by the UK because of a registered UK-issued S1 form. This is not part of the UK-EU SSC Protocol or UK-Switzerland SSC Convention, but these rights mean they should not be charged for healthcare in secondary healthcare settings in Wales. This rule also applies to their spouse, civil partner, or child who also possess a UK-issued S1. However, they will need to pay any charges which also apply to UK residents in their UK country of residence, e.g. dental charges. Individuals who have registered a UK S1 in an EU/EFTA country should be asked to provide some evidence confirming this, ideally a copy of their UK S1. A UK EHIC/GHIC should not be accepted as proof of entitlement under this Regulation.

**6.84** However, UK nationals who have moved to the EU after 1 January 2021 or who moved to Switzerland after 1 November 2021 and hold, or become eligible for, a UK S1 will not be entitled to relevant services in Wales, without charge, as the UK has not opted for this under the SSC

Protocol and they are not covered by Regulation 4C of the Charging Regulations. They must be charged as an overseas visitor when temporarily visiting the UK, unless another exemption applies.

### Obligations on OVMs to confirm S1 or A1 entitlement

**6.85** To confirm entitlement to treatment and to non-chargeable status, OVMs should, in the first instance, ask the patient to present a copy of their UK-issued 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 relevant services without charge is directly linked with the S1 form's validity. If OVMs have any questions about an S1 form, they can contact the NHSBSA Overseas Healthcare Services Team 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 LHB should consider reimbursing the patient for costs incurred.

**6.86** OVMs can check whether a patient has a registered S1 form in an EU country or Switzerland by contacting the Overseas Healthcare Services Team at [nhsbsa.ovmqueries@nhs.net](mailto:nhsbsa.ovmqueries@nhs.net)

**6.87** Because there is no prior authorisation process (unlike with an S2) and the patient does not pay when returning to Wales with an S1 form, LHBs can ask the patient to obtain a GP referral in order to establish entitlement to treatment, if it is unclear whether a patient would be entitled to the treatment they are seeking if they were living locally. However, if it is clear that the patient would be entitled to the treatment locally, a GP referral should not be used to question the medical assessment of a clinician abroad. An S2 form issued by the relevant institution can also be accepted instead of a copy of an S1 form.

**6.88** On a procedural level, it is down to an individual LHBs how to accept patients, and processes may vary between LHBs.

### When are S2s issued by the UK for persons resident in an EU country

**6.89** The UK (NHSBSA Overseas Healthcare Services Team) is also responsible for issuing the S2 for pre-planned treatment in an EU country for the holders of a UK S1 form when that person lives in:

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

**6.90** All remaining EU countries and Switzerland will continue to issue the S2 to those living there who have registered UK issued S1s in that country.

### Patients' rights and information

**6.91** If visitors from the EU ask for information on accessing healthcare in the UK, they can be directed to the following website: [www.111.wales.nhs.uk/Travelhealth/](http://www.111.wales.nhs.uk/Travelhealth/)

## Other European issues

**6.92** It should be noted that:

- a. For the purposes of the UK-EU SSC Protocol:
  - 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.
- b. The territory of Denmark excludes the Faroe Islands. A reciprocal healthcare agreement between the Kingdom of Denmark and the UK allows Faroese residents who are Danish nationals to receive needs-arising NHS treatment in the UK.
- c. A separate reciprocal healthcare agreement between the UK and Norway allows Norwegian nationals and UK nationals residing in Norway to receive needs-arising NHS treatment in the UK on presentation of a valid passport. This applies also to Norwegian nationals posted to work in the UK.
- d. Andorra, Monaco, San Marino and Vatican City are not part of the EU or EEA.
- e. EU law is suspended in north Cyprus. It only applies in the rest of Cyprus. Therefore, visitors from north Cyprus are not covered by the SSC Protocol or the Withdrawal Agreement. Visitors who are ordinarily resident in north Cyprus and chargeable directly at the point of use for relevant services should be charged on the same basis as any other chargeable visitor.
- f. The UK sovereign bases in Cyprus do not count as part of the UK in this context, nor as part of the EU.
- g. For the purposes of healthcare, relations between the UK and Gibraltar are governed by a bilateral healthcare agreement (Chapter 7).
- h. Though not covered under the Withdrawal Agreement or SSC Protocol, Bosnia and Herzegovina, Kosovo, North Macedonia, Montenegro and Serbia have reciprocal agreements with the UK (see Schedule 2 of the Charging Regulations and Chapter 7).

## CHAPTER 7

# Other reciprocal healthcare agreements and international obligations

## Reciprocal healthcare agreements (Regulation 4 and Schedule 2)

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

### **7.2** 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/NHSBSA that the referral has been agreed.

**7.3** 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.

<b>Country</b>	<b>Level of cover provided (see key)</b>	<b>Further information</b>
Anguilla	1*	Applies to all residents of that country. Can also refer four patients to the UK for free NHS hospital treatment.
Australia	1*	Applies to all residents of 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.
Falkland Islands	4	Applies to all residents of that country. Can refer an unlimited number of patients to the UK for free elective treatment.
Faroe Islands	2	Applies to Faroese residents who are Danish Nationals.
Gibraltar	4	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 paragraph 7.5).
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.
Israel	5	Applies only to those who are entitled to benefits in respect of an industrial injury under either country's legislation.
Jersey (The UK has a reciprocal agreement with Jersey, but not with the other Channel Islands)	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.
Kosovo	3	Applies to all insured persons of 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.
North Macedonia	3	Applies to all insured persons of that country.
Norway	1	Applies only to citizens resident in that country.
Serbia	3	Applies to all insured persons of that country.



Country	Level of cover provided (see key)	Further information
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.
Switzerland	1	Applies to all Swiss nationals. It also covers dependants of Swiss nationals regardless of their nationality.
Turks and Caicos Islands	1*	* Applies to all residents of that country. Can also refer four patients per year for free NHS hospital treatment.

**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. Free treatment should be limited to that which is urgent in that it cannot wait until the patient can reasonably be expected to leave the UK.
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.
5. Applies in relation to certain industrial injuries only.

For all levels of coverage, it will be for a doctor or dentist employed by the relevant 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

**7.4** Depending on the terms of the particular country's reciprocal healthcare agreement, 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.

**7.5** Referrals from Gibraltar are commissioned by Gibraltar itself, but LHBs should not bill back Gibraltar for treatment provided to someone referred from Gibraltar under the terms of the reciprocal healthcare agreement.

**7.6** 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 Department of Health and Social Care. Persons hoping to be referred should contact the relevant British Overseas Territory in the first instance.

**7.7** For all people who are referred for NHS treatment as per paragraphs 7.4 to 7.5 above, advance arrangements for their acceptance should be made and the patients must be given the same priority as patients living in the UK.

**7.8** A number of reciprocal healthcare agreements ended on 31 December 2015 and the agreement with Barbados ended on 30 September 2016. OVMs should refer to the Charging Regulations to determine whether an exemption applies for ongoing treatment which, when the treatment began, was exempt under the reciprocal agreement on or before 31 December 2015 or 30 September 2016 respectively.

## Chapter 8

# Cost Recovery

**8.1** The 2009 Charging Regulations Guidance refers to notification to Welsh Government when NHS services are provided to EU overseas visitors and those from other countries with which the UK Government has reciprocal healthcare agreements via an OVIS form. This arrangement (including the OVIS form) ended in 2018/19 with the introduction of a recurring funding arrangement to Health Boards, based on an average of the claims made in the prior three year period. This will have included claims made by Health Boards where the treatments were commissioned from another Welsh Provider. The Welsh Government has no current intention to revise this recurring funding value.

**8.2** The following are the current country to country cost recovery arrangements:

## EU Countries/Switzerland

- EHC – LHBs are encouraged to report the use of EU Member State/Switzerland issued EHCs to Overseas Healthcare Services Team at NHSBSA via the Overseas Healthcare Services (OHS) portal which can be accessed at [www.services.nhsbsa.nhs.uk/ovt/Pages/](http://www.services.nhsbsa.nhs.uk/ovt/Pages/). This reporting enables the UK Government to recover the costs from the relevant Member States/Switzerland. Through reporting, LHBs are also able to receive back 25% of the reported costs.
- S1 – Reporting use of S1 certificates at both primary and secondary care settings to NHSBSA is encouraged via the OHS Portal. This reporting enables the UK Government to recover the costs from the relevant Member States/Switzerland.

- S2 – The OVM team at the hospital should forward a copy of the S2 to NHS BSA and enter treatment details via the OHS Portal as soon as the treatment has taken place. OVMs can contact Liaison Officers at [nhsbsa.ovmqueries@nhs.net](mailto:nhsbsa.ovmqueries@nhs.net) for further advice on how they can upload details to the Portal.

## Countries with Reciprocal Healthcare Agreements

**8.3** There is no cost recovery under any of the rest of the world (ie non-EU/Swiss) reciprocal healthcare agreements currently in place. Treatment is provided within the scope of the individual agreement on a non-payment reciprocal basis.

**8.4** This position may change in the future should the UK Government to enter into new healthcare agreements with rest of the world countries. Charging/cost recovery arrangements may be included such healthcare agreements. OVMs are advised to keep abreast of changes to reciprocal healthcare agreements by the UK Government.

# Annex A

## When to provide relevant services to those not exempt from charge

Relevant bodies must ensure that treatment which clinicians consider to be immediately necessary or urgent, is provided to any patient. 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 payments have not been secured.

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

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.

## Immediately necessary treatment

Immediately necessary treatment is that which a patient needs promptly:

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

Relevant 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

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 must be treated as being immediately necessary. Maternity services include all antenatal, intrapartum and postnatal services provided to a pregnant person, a person who has recently given birth or a baby.

No one must ever be denied, or have delayed, maternity services due to charging issues. Although a person must be informed if charges apply to their treatment, in doing so they should not be discouraged from receiving the remainder of their maternity treatment. 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.

## Urgent treatment

Urgent treatment is that which clinicians do not consider to be immediately necessary, but which nevertheless cannot wait until the person can be reasonably expected to leave the UK. This means that the longer a patient is expected to remain in the UK, the greater the range of their treatment needs that are likely to be regarded as urgent. If the person is unlikely to leave the UK for some time (which will be the case for some undocumented migrants), treatment which clinicians might otherwise consider non-urgent (e.g. certain types of elective surgery) is more likely to be considered by them as urgent. It may not always be clear when a person can reasonably be expected to leave the UK.

Clinicians may base their decision as to whether treatment can reasonably wait until the expected date by which the patient can leave the UK 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 leave the UK.

For urgent treatment, relevant bodies are strongly advised to make every effort, taking account of the individual's circumstances, to invoice for payment in the time before treatment is scheduled. The treatment should not be delayed or withheld for the purposes of securing payment.

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.

## Termination of pregnancy

If a person, who presents seeking a termination of pregnancy and satisfies a ground under the Abortion Act 1967, cannot reasonably be expected to leave the UK before the date at which an abortion may no longer be a viable option for them, treatment should be regarded as being urgent and should not be delayed or withheld in order to establish chargeable status or to seek payment. This may, for example, be the case for failed asylum seekers or undocumented migrants who are unlikely to leave the UK in the short term, whereas in other cases visitors may more easily be able to leave the UK within the relevant timeframe.

## Non-urgent treatment

Non-urgent treatment is treatment that can wait until the date a patient can reasonably be expected to leave the UK. Relevant bodies must not provide non urgent treatment until the estimated full cost of treatment has been invoiced.

## Clinician and OVM collaboration

The decision on whether a patient's need for treatment is immediately necessary, urgent or non-urgent is only for clinicians to make, and should then be documented in the patient's notes.

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 leave the UK (i.e. whether it is urgent or non-urgent), clinicians will need to know the patient's estimated return date.

It is the responsibility of OVMs to gather the information on when the patient can be reasonably expected to leave the UK 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 treatment in the first place.

A patient's chargeable status, or enquiries to ascertain a patient's chargeable status, must never prevent or delay a patient being assessed by a clinician to establish the urgency of treatment.

## How to determine when an overseas visitor patient can reasonably be expected to leave the UK

For treatment which is not immediately necessary, it is the role of the OVM to establish when a patient can reasonably be expected to leave the UK. Clinicians will need to know this information in order to decide if the patient's need for treatment is urgent or if it can safely wait until they leave the UK.

## Documented migrants

As a condition of their entry to the UK, short term 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 and cannot pay for it in advance, they should arrange an earlier return journey before the treatment would be necessary in the opinion of a clinician. If an earlier return journey would not be reasonable, and treatment is urgent, care should be provided and debts recovered when clinically appropriate.

Those without return journeys booked are expected to leave the UK 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.

## Undocumented migrants

For undocumented migrants (some of whom could be chargeable), the likely date by which the person can reasonably be expected to leave the UK may be unclear, and will have to be assessed on a case-by-case basis. Those for whom there is no viable place of return, for example because there are travel or entry clearance restrictions in their country of origin, or for whom there are other conditions beyond their control preventing their departure, should not reasonably be expected to leave the UK, until such issues are resolved.

For some cases relating to undocumented migrants, it will be particularly difficult to estimate the date at which they can be reasonably expected to leave the UK.

Relevant 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 can be used.

### **Re-assessing urgency of treatment decisions (applies to all chargeable patients)**

Where a clinician has decided that the need for treatment is non-urgent this should be reassessed if the patient informs the relevant 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. Alternatively, patients' circumstances may require regular follow-up by clinicians.

### **What limits should be placed on treatment?**

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 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**

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, appear not to be ordinarily resident here or not covered by health surcharge arrangements, or who do not provide a valid EHIC, PRC or S2 form, or evidence of a registered S1 form should be notified that charges might apply at the earliest appropriate opportunity. 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.

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

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.

An overseas visitor whose need for treatment after admission from A&E or from a GP referral is not considered immediately necessary 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.

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 or had the necessary diagnostic tests, 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 (potentially taking into account the results of necessary diagnostic tests) and the consequent level of urgency. It should be remembered that diagnostic tests for STIs or the infectious diseases listed in the Charging Regulation are exempt from charge, even if the diagnosis is negative.

When, after this initial assessment, clinicians consider the need for treatment to be urgent, relevant bodies should obtain the full estimated cost of treatment during the period before treatment is to commence, as long as this does not delay or impede treatment.

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 be discussed with the patient and should not be initiated until the estimated full cost of treatment has been invoiced. Any surplus which is paid in advance can be returned to the patient on completion of treatment.

When providing treatment to a chargeable overseas visitor, clinicians should document the treatment in the patient's notes and a copy sent to the relevant service/delivery manager.



# Annex B

## Ordinary Residence

The UK's healthcare system is a residence-based one, which means entitlement to receive relevant services without charge is based on living lawfully in the UK. This contrasts with many other countries which have insurance-based healthcare systems.

The test of residence that the UK uses to determine entitlement to free relevant services is known as 'ordinary residence'. An overseas visitor is defined in the Charging Regulations as anyone who is not ordinarily resident in the UK.

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 annex explains how the concept of ordinary residence should be applied in Wales.

In practice, it may not be necessary to consider the question of ordinary residence, for instance where a patient is entitled to treatment under a reciprocal healthcare arrangement and provides the specified document(s) in evidence of this entitlement. In this case it will already be clear that the patient is entitled to some free needs arising care, although exact entitlement depends on rules relating to the use of these documents. 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 do not apply to them, even if the patient has only been in the UK for a few days or weeks. The Welsh Ministers have no powers to charge someone who is ordinarily resident in Great Britain for a relevant service.

## Meaning of ordinary residence

A person is not ordinarily resident in the UK simply because they have British nationality; hold a British passport; are registered with a GP in the UK; have an NHS number; own property in the UK; or have paid (or are currently paying) National Insurance contributions and taxes in the UK. 'Ordinarily resident' is not defined in the National Health Service (Wales) Act 2006.

The concept was considered by the House of Lords in 1982 in the case of *Shah v Barnet LBC*<sup>8</sup> and although the case 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 (Wales) Act 2006 and the Charging Regulations.

When assessing the ordinary residence status of a person seeking free relevant services, a relevant 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, whether of short or long duration.

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

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

It is important to note that since 6 April 2015, non-EEA nationals who are subject to immigration control must have indefinite leave to remain (ILR) in the UK in order to be ordinarily resident in the UK<sup>9</sup>. They must also still meet the other requirements of the test ie being lawfully in the UK; having ILR on its own is not sufficient since that person may no longer be, for example, residing in the UK on a properly settled basis, and may only be visiting. From 1 January 2021, EU and EFTA nationals (except where they have rights under the Withdrawal Agreement) will become subject to immigration control and the requirement to have ILR will apply.

## Determining ordinary residence

Whether a person is ordinarily resident in the UK is essentially a three-fold test (four fold for certain individuals) assessing whether that individual:

- is lawfully in the UK
- is here voluntarily – it will be rare for a person not to be in the UK voluntarily
- is properly settled here for the time being
- in the case of persons subject to immigration control, has ILR in the UK or
- in the case of an EU or EFTA citizen living in the UK on or before 31 December 2020, has by 30 June 2021 applied for/been granted status under the EUSS.

## Being lawfully in the UK

British citizens have automatic right of abode in the UK, so are always here lawfully. Irish citizens have the right to enter and live in the UK under the Common Travel Area arrangements. EU and EFTA nationals who were living in the UK by 31 December 2020 will almost always be here lawfully. They must apply for status under the EUSS by 30 June 2021 to retain their lawfully resident status. It is important to note that a person does not need to meet the ‘right to reside test’ for certain benefits, for example, in order to be considered ordinarily resident in the UK. 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 EU/EFTA national who is resident here, or when a diplomat.

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<sup>9</sup> See Section 39 Immigration Act 2014 which provides that a reference in the NHS charging provisions to persons not ordinarily resident in Great Britain or persons not ordinarily resident in Northern Ireland includes (without prejudice to the generality of that reference) a reference to (a) persons who require leave to enter or remain in the United Kingdom but do not have it and (b) persons who have leave to enter or remain in the United Kingdom for a limited period unless that leave was granted by virtue of residence scheme immigration rules.

## Being properly settled in the UK for the time being

While most persons subject to immigration control must also have the immigration status of ILR (Indefinite Leave to Remain ie 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<sup>10</sup>.

For a British citizen, an EU or EFTA national who has moved to the UK before 31 December 2020 and exercised their treaty rights, 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. EU or EFTA nationals will need to have applied for status under the EUSS by 30 June 2021. In each case, it is for the relevant body to decide whether the criteria within the ordinary residence description are met.

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 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.

Where a child who normally lives overseas is visiting an ordinarily resident parent, they may be ordinarily resident in line with their parent's ordinary residence if the parent can show that the child normally lives with both parents. If the child is subject to immigration control, then they will also need to have Indefinite Leave to Remain (ILR) at the time of receiving treatment to be considered ordinarily resident. Additional rules apply to children of people exercising EU Treaty rights in the UK before 31 December 2020.

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<sup>10</sup> OVMs should note that Regulation 4(1)(b) of the Charging Regulations provides an exemption from charges for overseas visitors who have resided lawfully in the United Kingdom for a period of not less than one year immediately preceding the time when the services are provided. This exemption was not the subject of consideration in *R v Barnet LBC ex parte Shah* [1983] 1 All ER 226 in which the House of Lords determined that there is no minimum period that a person must be resident in order to qualify as "ordinarily resident".

# Annex C

	Exempt from paying surcharge	Exempt from charges	Issued a BRP	Documentation to verify status
Health surcharge payees (whose visas remain valid)	N	Y	Y	<ul style="list-style-type: none"> <li>• Additional information on the digital status checker</li> <li>• BRP</li> <li>• 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)</li> </ul>
British Overseas Territories citizens who are resident in the Falklands Islands	Y	Y	Y	<ul style="list-style-type: none"> <li>• Additional information on the digital status checker</li> <li>• BRP</li> <li>• 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</li> </ul>
Dependants of military personnel	Y	Y	Y	<ul style="list-style-type: none"> <li>• Additional information on the digital status checker</li> <li>• BRP</li> </ul>
Intra-company transfers	N	Y	Y	<ul style="list-style-type: none"> <li>• Additional information on the digital status checker</li> <li>• BRP</li> <li>• Visa stamp/vignette in passport</li> </ul>

	<b>Exempt from paying surcharge</b>	<b>Exempt from charges</b>	<b>Issued a BRP</b>	<b>Documentation to verify status</b>
Non-EEA nationals who are family members of an EU citizen who has exercised an EU right before 31 December 2020	Y	Y	N (issued with BRC)	<ul style="list-style-type: none"> <li>• Additional information on the digital status checker</li> <li>• BRC from April 2015</li> <li>• Permanent and temporary residence cards (during the transition period as the BRP is rolled out overseas)</li> <li>• Visa stamp/vignette in passport</li> </ul>
EU and Swiss students in full time education	N	N	N	<ul style="list-style-type: none"> <li>• Additional checks to determine if the individual has received a reimbursement of their IHS</li> </ul>
Children who are looked after by a Local Authority and make an application for leave to remain	Y	Y	Y	<ul style="list-style-type: none"> <li>• Additional information on the digital status checker</li> <li>• Confirmation from the Local Authority that the child is looked after</li> <li>• Confirmation from the Home Office that they have made an application for leave to remain</li> <li>• Visa stamp/vignette in passport (during the transition period as the BRP is rolled out overseas)</li> <li>• BRP if granted leave to remain by the Home Office</li> </ul>
People, and their dependants, who make an application for asylum, temporary protection or humanitarian protection	Y	Y	N (issued with ARC)	<ul style="list-style-type: none"> <li>• Additional information on the digital status checker</li> <li>• ARC</li> <li>• Confirmation from Home Office that asylum application or application for temporary protection or humanitarian protection is still under consideration</li> <li>• BRP if granted limited leave refugee status (including temporary protection or humanitarian protection)</li> </ul>

	<b>Exempt from paying surcharge</b>	<b>Exempt from charges</b>	<b>Issued a BRP</b>	<b>Documentation to verify status</b>
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	<ul style="list-style-type: none"> <li>• Additional information on the digital status checker</li> <li>• BRP</li> <li>• 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</li> </ul>
Victims of modern slavery and their dependants who make applications for leave to remain	Y	Y	N	<ul style="list-style-type: none"> <li>• Additional information on the digital status checker</li> <li>• Confirmation from the UK Human Trafficking Centre or Home Office that they are a victim of human trafficking</li> </ul>
People who make applications for leave to remain under the Home Office Destitution Domestic Violence Concession	Y	Y	N	<ul style="list-style-type: none"> <li>• Additional information on the digital status checker</li> <li>• Confirmation from the Home Office of Destitution Domestic Violence Concession having been granted</li> <li>• From April 2015, if granted leave under the concession could be issued with a 'short stay permit' for periods of 6 months or less, in which case a BRP will not be issued</li> </ul>
People who applied for leave to enter or remain in the UK prior to the implementation of the health surcharge	N/A	Y	<p>Y (in country applicant)</p> <p>N (out of country applicant)</p>	<ul style="list-style-type: none"> <li>• Migrants who applied for further leave to remain in the UK prior to the implementation of the health surcharge and still have leave to remain will have a BRP</li> <li>• 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</li> </ul>

	<b>Exempt from paying surcharge</b>	<b>Exempt from charges</b>	<b>Issued a BRP</b>	<b>Documentation to verify status</b>
Special long- stayer visitors (e.g. private medical or academic visitors)	Out of scope	N	Y	<ul style="list-style-type: none"> <li>• Additional information on digital status checker</li> <li>• BRP marked to clearly state visitor category</li> <li>• Visa stamp/vignette in passport (during the transition)</li> </ul>
Short-term students or Parents of Child Student Route visitors	N	Y	Y	<ul style="list-style-type: none"> <li>• Additional information on the digital status checker</li> <li>• BRP</li> <li>• 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</li> </ul>