GUIDANCE ON IMPLEMENTING THE OVERSEAS VISITORS HOSPITAL CHARGING REGULATIONS

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Prepared by International Health and Public Health Policy Division

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CHAPTER ONE: INTRODUCTION & EXECUTIVE SUMMARY

1.1 This guidance concerns what should happen when a person who is not ordinarily resident in the UK needs NHS treatment provided by a hospital in England. Such a person will be subject to the *National Health Service (Charges to Overseas Visitors) Regulations 2011*, as amended (the "Charging Regulations"). A person who is not 'ordinarily resident' in the UK falls within the definition of an overseas visitor (regulation 2) and may incur a charge for treatment.

1.2 '**Ordinary residence'** means, broadly, living in the UK on a lawful, voluntary and properly settled basis for the time being. It is defined in detail at paragraphs 3.4 to 3.16. A person who is not ordinarily resident in this country at the time of treatment is not automatically entitled to NHS hospital treatment free of charge. A person who is ordinarily resident is not subjected to this charging regime.

1.3 A person does not become ordinarily resident in the UK simply by: having British nationality; holding a British passport; being registered with a GP; having an NHS number; owning property in the UK, or having paid (or currently paying) National Insurance contributions and taxes in this country. Whether a person is ordinarily resident is a question of fact, for which a number of factors are taken into account.

1.4 The Charging Regulations place a legal obligation on NHS trusts, NHS foundation trusts, special health authorities (SpHAs) and local authorities in the exercise of public health functions ('relevant NHS bodies' or 'relevant NHS body' as the context requires) in England to establish whether a person is an overseas visitor to whom charges apply or whether they are exempt from charges by virtue of the Charging Regulations for the NHS services provided. When charges apply, a relevant NHS body must charge the person liable (usually the patient) for the costs of the NHS services and recover the cost from them. Chapter 3 describes the exemption categories.

1.5 This guidance is for staff at these relevant NHS bodies, including clinicians, senior managers and clerks, and particularly those whose responsibility it is to identify and charge overseas visitors. The Department of Health strongly recommends that relevant NHS bodies have a designated person/s – hereafter referred to as an '**Overseas Visitors Manager (OVM)**' – to oversee the implementation of the Charging Regulations. It needs to be a person of sufficient seniority and skill to be able to resolve complex and sensitive situations and to deal effectively with clinicians, senior trust managers, finance colleagues

and members of the public. They should be given the authority to ensure that the charging regime can be properly implemented in all departments.

1.6 A relevant NHS body also has human rights obligations, meaning that treatment which is considered by clinicians to be immediately necessary must never be withheld from chargeable overseas visitors pending payment, although charges will still apply (unless the service provided is exempt from charges, eg treatment inside an Accident and Emergency Department). Treatment which is not immediately necessary, but is nevertheless classed as urgent by clinicians, since it cannot wait until the overseas visitor can return home, should also be provided, although deposits should be sought in the period ahead of treatment. See Chapter 4 for more important information.

1.7 All relevant NHS bodies, as public authorities, must comply with a general equality duty in the exercise of their functions. More on this can be found at paragraph 5.16 to 5.19.

1.8 A relevant NHS body also needs to inform the Overseas Healthcare Team at the Department of Work and Pensions with details of the **European Health Insurance Cards**/E112/S2 documents held by a visitor from one of our European Economic Area (EEA) partners or Switzerland whenever they provide services to such a visitor. This information is necessary to allow the UK to recover the cost of treating EEA/Swiss residents. See paragraphs 7.26 to 7.30 for more information.

1.9 This guidance does not concern treatment provided by a general practitioner (**GP**), dentist or optician, although there is some comment on GP registration at paragraphs 5.11 to 5.12. Nor does it concern charging arrangements in **Wales**, **Scotland** and **Northern Ireland** as these are governed by separate Regulations under the jurisdiction of their respective devolved administrations.

1.10 A relevant NHS body in England may seek help and advice from the Department of Health, by contacting the Overseas Visitors Policy Team on 0113 254 5819 or by e-mail to overseasvisitors@dh.gsi.gov.uk about any aspect of the Charging Regulations and this guidance (but questions cannot be answered about GP registrations – GP practices should contact the Local Area Team of NHS England with any queries). Ultimately, however, the decision as to whether a particular patient is liable for charges legally rests with the relevant NHS body providing treatment. In some cases, perhaps where a patient's circumstances are unclear or appear not to be provided for in the Charging Regulations or guidance, relevant NHS bodies may need to take their own legal advice.

1.11 A draft of this guidance was publicly consulted upon in 2010 and this final published version reflects comments received during that exercise. The guidance may be amended

on occasion, and relevant NHS bodies should ensure that they are referring to the latest version. Up to date advice and information is also available on the Department of Health website at www.dh.gov.uk/overseasvisitors. Relevant NHS bodies should check this regularly for information which may update and augment this document. A table of subsequent changes made to this guidance will be compiled as they arise (see below).

1.12 This manual of guidance supersedes and replaces all previous guidance on the implementation of the overseas visitors hospital Charging Regulations.

1.13 Main amendments made to Guidance since Charging Regulations came into force:

Date updated	Summary of Change	Reference
22 December 2011	Clarification on writing off debts	Para 6.24-6.28
22 December 2011	Addition of guidance on sharing information with Home Office on those with debts of £1,000 or more	Para 5.56/6.25 & Appendix 7
May 2012	Removal of writing off debt reference	Para 4.41
May 2012	Clarification on dealing with third parties for payment but not delaying urgent treatment	Para 6.20
May 2012	Reordering of Chapter 6; clarification of advice on pursuing and writing off debt	Ch 6, para 6.23-6.27
May 2012	Clarification on when to share data with Home Office on those with NHS debts	Appendix 7, para 8, 11
October 2012	Modification of exemption for sexually transmitted diseases to include HIV treatment	Para 3.26d
October 2013	References to relevant NHS bodies in light of the Health & Social Care Act 2013	Para 1.4/10
October 2013	Changes in relation to updated *Who Pays?*	Para 6.9-6.16
October 2013	Discussion of EU Derivative Rights	Appendix 6

IMPORTANT NOTE:

This guidance seeks to provide as much help and advice as possible on the implementation of the National Health Service (Charges to Overseas Visitors) Regulations 2011, as amended. However, it cannot cover everything and is not intended to be a substitute for the Regulations themselves, which contain the legal provisions. Relevant NHS bodies are advised to seek their own legal advice on the extent of their obligations when necessary.

CHAPTER TWO: THE LAW IN ENGLAND

Statutory provisions

2.1 The statutory provisions which enable overseas visitors to be charged for NHS treatment are found in section 175 of the National Health Service Act 2006 ("the 2006 Act"). Section 175 allows the Secretary of State for Health to make regulations for making and recovery of charges in relation to any person who is not ordinarily resident in Great Britain for any NHS services provided to them. They also give him powers to calculate such charges on any appropriate commercial basis. These powers are devolved to the relevant NHS bodies in England.

2.2 The section 175 regulatory powers have so far only been used in relation to NHS hospital services. The Charging Regulations made under those powers place a legal obligation on the trust providing treatment to identify those patients who are not ordinarily resident in the United Kingdom; establish if they are exempt from charges by virtue of the Charging Regulations; and, if they are not exempt, make and recover a charge from them to cover the full cost of their treatment.

The Charging Regulations

2.3 The Charging Regulations 2011 apply in relation to England only and consolidated previous Regulations on charges relating to overseas visitors. The Charging Regulations place a legal obligation on a relevant NHS body to make and recover charges for NHS treatment provided by that relevant NHS body, and in so doing to:

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

Overlap with other legal provisions

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

injuries as a result of criminal actions: in these cases the patient may be eligible to claim compensation from the Criminal Injuries Compensation Authority. It will be for the patient to pursue such a claim and, although the relevant NHS body can advise the patient to contact the Authority, the possibility of compensation does not affect the patient's liability for charges as an overseas visitor. The recovery of NHS charges from the patient should not be suspended pending the outcome of a claim.

injuries as a result of a road traffic accidents and personal injury: Since 1 April 2009, the requirement on insurers to pay costs charged to overseas visitors is nil. This was amended by the Personal Injuries (NHS Charges) Amendment Regulations 2009 (SI 2009/316) made under the Health and Social Care (Community Health and Standards) Act 2003.

CHAPTER THREE: HOW THE CHARGING REGULATIONS WORK

3.1 This chapter explains each of the regulations, including those that set out which services or persons are exempt from charges. It also offers examples of evidence that a person can provide to demonstrate to the satisfaction of a relevant NHS body that they benefit from a particular regulation.

3.2 There are 25 regulations and these are explained below. Relevant NHS bodies are advised to maintain a library of the full text of current Charging Regulations.

3.3 An overseas visitor is defined in the Charging Regulations as anyone who is not ordinarily resident in the UK. The question of ordinary residence is therefore the first and most fundamental issue to resolve when operating the charging regime as a whole, because if a patient is classed as ordinarily resident in the UK then the Charging Regulations cannot apply to them, even if the patient has only been in the UK for a few days or weeks. The Secretary of State has no powers to charge someone who is ordinarily resident in the UK for NHS hospital treatment.

Ordinary residence

3.4 'Ordinarily resident' is not defined in the NHS Act 2006. The concept was considered by the House of Lords in 1982 in the case of *Shah v. Barnet LBC* and although the case being considered was concerned with the meaning of ordinary residence in the context of the Education Acts, the decision is generally recognised as having a wider application. Therefore, the House of Lords[1] interpretation should be used to help decide if a person can be considered ordinarily resident for the purposes of the NHS Act 2006 and the Charging Regulations.

3.5 In order to take the House of Lords judgement into account, when assessing the residence status of a person seeking free NHS services, a relevant NHS body will need to consider whether they are:

living lawfully in the United Kingdom voluntarily and for settled purposes as part of the regular order of their life for the time being, whether they have an identifiable

1 R v Barnet LBC Ex p Shah (Nilish) 1983 2AC 309 HL

purpose for their residence here and whether that purpose has a sufficient degree of continuity to be properly described as "settled".

3.6 Ordinary residence can be of long or short duration.

3.7 A person does not become ordinarily resident in the UK simply by: having British nationality; holding a British passport; being registered with a GP; having an NHS number; owning property in the UK, or having paid (or currently paying) National Insurance contributions and taxes in this country.

3.8 Ordinary residence must not be confused with exemption under the Charging Regulations, and in particular Regulation 7, which provides that an overseas visitor who has lived lawfully in the UK for the previous twelve months is exempt from charge, even if they have spent up to 182 days of that twelve-month period outside the UK.

3.9 It is a question of fact whether a patient is ordinarily resident in the light of the circumstances of that individual patient. There is no minimum period of residence that confers ordinarily resident status. In the past, the Department of Health has suggested that someone who has been here for less than 6 months is less likely to meet the "settled" criterion of the ordinary residence description at paragraph 3.5 but it is important to realise that this is only a guideline. In each case, it is for the relevant NHS body to decide whether the criteria within the ordinary residence description are met, but here are some example scenarios:

3.10 A person whose work takes them out of the UK for the majority of the year, eg a pilot, can still be ordinarily resident here if their centre of interest remains the UK, eg, they have a home only here. That centre of interest might mean that they are properly settled here during the time they are in the UK. However, if they are working and settled in one place overseas and only spend a few weeks of the year in the UK visiting family then they might not be considered properly settled here during those visits, in which case they would not be ordinarily resident here. (They may, however, be exempt from charge – see Regulation 19).

3.11 A person with **dual residence** can still be ordinarily resident here if their centre of interest remains the UK, eg their family ties and employment interests are here. This could apply even if they have not spent six months of the previous twelve in the UK. However, if they spend very little of each year here, or only own a property in the other country, then it may be that their centre of interest is in fact the other residence. If they appear to have an equal centre of interest in each residence then the amount of time they spend in each residence a year may become the deciding factor.

3.12 Someone who goes to study overseas with a view to return to the UK after his or her studies might be considered ordinarily resident here during vacation, since their centre of interest overseas will have temporarily ceased. However, if it is not their intention to return to live in the UK and they have in fact moved their residence overseas and are simply visiting the UK, then they may not be considered ordinarily resident here.

3.13 A person here lawfully, but with no particularly identifiable purpose for their residence here, will not pass the ordinary residence test. If they remain here a year they will become exempt from charge under Regulation 7. A person here unlawfully will never be able to acquire ordinary residence.

3.14 A person who is ordinarily resident will be so in their own right, and it is not transferable to other family members (except in certain circumstances regarding children – see paragraph below). Therefore, if a spouse or civil partner of someone who is ordinarily resident here normally lives overseas and requires treatment during a visit to the UK, they will not be ordinarily resident or automatically entitled to free treatment just because their spouse or civil partner is. The relevant NHS body must establish whether the ordinarily resident person's spouse or civil partner meets one of the categories of exemption in their own right or is liable to be charged. This is different to when a person is *exempt from charges under the Charging Regulations*, rather than being ordinarily resident here, where a spouse/civil partner and any dependent children may, in certain circumstances, also benefit from the exemption – see paragraph 3.106.

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

3.16 If the patient is not ordinarily resident, then that patient is an overseas visitor for the purpose of the Charging Regulations. The relevant NHS body then needs to establish if the patient can be exempted from charges by virtue of any of the exemptions listed in regulations 6-24.

Regulation 1 – Citation, commencement and application

3.17 This cites the title of the Charging Regulations, and states that they come into force on 1st August 2011 and apply in relation to England only.

Regulation 2 – Interpretation

3.18 This regulation provides definitions of the words and terms used in the Charging Regulations and also what temporary absence is allowed when calculating a period of residence in the UK. The definitions which will be most useful on a daily basis are:

Calculating the period of residence - regulation 2(2) provides that when calculating a period of residence a person can be out of the UK for up 182 days before it is taken into consideration. For example, if someone has lived in the United Kingdom for the twelve months immediately preceding their treatment but has spent no more than 182 days of that time on holiday abroad they can still be considered to have spent the last twelve months in the UK. The allowed absence cannot include an absence where the overseas visitor was not entitled to enter or remain in the UK, so will not apply to those on visitors visas who were absent from the UK because their visa demanded it. The period of absence can be calculated cumulatively, eg 3 separate periods abroad during the last 12 months that add up to more than 182 days must be regarded. N.B. – the 182 days' absence rule legally cannot be applied to the establishment of ordinary residence, since that is outside the scope of the Charging Regulations. Someone who is outside the UK for more than 182 days might still pass the ordinary residence test when back in the UK, depending on their individual circumstances, although a relevant NHS body might consider them to be insufficiently settled here if they are routinely absent for more than 182 days each year;

child - for the purposes of the Charging Regulations a child is someone under the age of 16 (or under 19 if still at school or college and in respect of whom child benefit would be payable);

overseas visitor – means any person of any nationality not ordinarily resident in the United Kingdom;

relevant services - means, except in regulation 8(2)(c), accommodation, services or facilities provided under section 3(1) of the NHS Act 2006 (Secretary of State's duty as to provision of certain services), other than primary dental services, primary medical services or primary ophthalmic services;

treatment the need for which arose during the visit – this applies to treatment needed where the diagnosis of a condition is made when first symptoms arise during a visit to the UK. It also applies where, in the opinion of a doctor or dentist employed by the relevant NHS body, treatment is needed quickly to prevent a pre-existing condition increasing in severity, eg dialysis. It does not include routine monitoring of an existing condition such as

diabetes. It should be noted that this is not the same definition for those covered by EU Regulations who are entitled to "all clinically necessary treatment" (see paragraph 7.12).

Regulation 3 – The making and recovery of charges

3.19 This regulation states when and how a relevant NHS body should make a charge for treatment and how it should recover the money. It places a legal obligation on such bodies to determine whether the Charging Regulations apply to any overseas visitor they treat. It is therefore also necessary to determine whether a patient is ordinarily resident, in order to know whether the patient is to be dealt with as an overseas visitor. Where a person is not ordinarily resident the relevant NHS body must make reasonable enquiries into the circumstances of that person to determine if they meet one of the categories of exemption or are liable to pay charges. The enquiries must be reasonable with regard to all the circumstances of the individual case, including the person's illness or injury. If the relevant NHS body determines that the patient is chargeable then, again, this regulation requires the relevant NHS body to make and recover a charge for any treatment provided. It is not optional, nor is there the authority to waive the charge on the part of the NHS body.

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

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

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

3.23 This regulation also states that an overseas visitor who is receiving a course of free treatment on the basis that they are exempt from charge cannot be charged for the remainder of that particular course of treatment if their exempt from charge status changes to chargeable part way through that course of treatment. It only applies if the overseas visitor has been properly assessed as exempt from charge to begin with and where the overseas visitor did not provide fraudulent or misleading information to the relevant NHS body when the relevant NHS body was establishing their exempt status. It applies only

until the overseas visitor first leaves the UK. It is a clinical decision as to what constitutes a particular course of treatment. This is sometimes referred to as the '**easement clause**'.

Regulation 4 – Liability for charges

3.24 This regulation specifies who is liable to pay the NHS charges once a patient has been identified as liable for charges. In the vast majority of cases, this will be the patient. There are only three exceptions:

- seamen or women present in the UK in the course of employment on/for a ship/vessel. The liable person is the owner of that ship/vessel. (See also Regulation 22, as those employed on UK-registered ships are exempt from charges);

- air crew present in the UK in the course of employment on/for an aircraft. The liable person is the employer of such a person;

- a child to whom no exemption applies. The liable person is the parent or legal guardian of that child. "Legal guardian" means someone who is acting as parent to the child, with a degree of permanence and is not just a person who is responsible for the child on a temporary basis, such as a teacher. This will be a matter of fact in each case.

Regulation 5 – Repayments

3.25 This regulation concerns repayment of NHS charges where either the patient was not an overseas visitor in respect of whom charges were payable at the time the services were provided or did not receive the services. The patient has to provide a receipt, a signed declaration in support of the claim and such evidence in support of the claim to have been exempt from charge at the time of treatment which the relevant NHS body requires. Where these conditions are met, any charges recovered must be repaid.

Regulation 6 – Services which are exempt from charges

3.26 Some NHS services are free to everyone regardless of the status of the patient. This regulation says what these services are. The current list comprises:

a. **accident and emergency services**, whether provided at a hospital accident and emergency department, a minor injuries unit, a walk-in centre, or elsewhere, up until the point an overseas visitor is accepted as an inpatient or given an out patient appointment. So, where emergency treatment is given after admission to the hospital e.g. intensive care or coronary care, it is chargeable to a non-exempt overseas visitor. Non accident and

emergency services provided in a walk-in centre are not part of this exemption;

b. **family planning services**, which means services that supply contraceptive products and devices to prevent establishment of pregnancy. Termination of an established pregnancy is not a method of contraception or family planning (see Chapter 8 under Terminations);

c. certain diseases where treatment is necessary to protect the wider **public health**. This exemption from charge will apply to the diagnosis even if the outcome is a negative result. It will also apply to the treatment necessary for the suspected disease up to the point that it is negatively diagnosed. It does not apply to any secondary illness that may be present even if treatment is necessary in order to successfully treat the exempted disease.

The exempt diseases are:

Acute encephalitis
Acute poliomyelitis
Anthrax
Botulism
Bruscellosis
Cholera
Diphtheria
Enteric fever (typhoid and paratyphoid fever)
Food poisoning
Haemolytic uraemic syndrome (HUS)
Infectious bloody diarrhoea
Invasive group A streptococcal disease and scarlet fever
Invasive meningococcal disease (meningococcal meningitis, meningococcal septicaemia and other forms of invasive disease)
Legionnaires' Disease
Leprosy
Leptospirosis
Malaria
Measles
Mumps
Pandemic influenza (defined as "phase 6" in the World Health Organisation's (WHO) influenza pandemic phases, or influenza that might become pandemic – defined as "phase 4" or "phase 5")
Plague

Rabies
Rubella
Severe Acute Respiratory Syndrome (SARS)
Smallpox
Tetanus
Tuberculosis
Typhus
Viral haemorrhagic fever
Viral hepatitis
Whooping cough
Yellow fever

d. treatment for all **sexually transmitted diseases**, including HIV treatment. Guidance for HIV clinicians and OVMs is available on the DH website;

e. treatment given to people detained, or liable to be detained, or subject to a community treatment order under the provisions of the **Mental Health Act** 1983 or other legislation authorising detention in a hospital because of mental disorder;

f. treatment (other than that described in (e), above) which is imposed by, or included in, an **order of the Court**;

g. services provided other than in a hospital or by a person who is employed to work for, or on behalf of, a hospital[2]. This means that services provided in the **community** will be chargeable only where the staff providing them are employed by or on behalf of an NHS hospital.

3.27 Regulations 7-24 set out which individuals are exempt from charges. A flow chart to assist relevant NHS bodies is provided at 3.109.

Regulation 7 – Twelve months' lawful residence in the UK

3.28 A person (subject to exceptions – see below) who has been living lawfully in the UK for twelve months immediately before treatment was provided is exempt from charges. This exemption does not apply where the patient was originally granted leave to enter the UK for the purpose of undergoing private medical treatment or has been given special leave to enter on humanitarian grounds by provision of regulation 13.

2 "Hospital" means (a) any institution for the reception and treatment of persons suffering from illness, (b) any maternity home, and (c) any institution for the reception and treatment of persons during convalescence or persons requiring medical rehabilitation, and includes clinics, dispensaries and out-patient departments maintained in connection with any such home or institution, and "hospital accommodation" must be construed accordingly.

3.29 A person who has spent up to 182 days of the previous twelve months outside the UK can still benefit from this exemption, but only if they were lawfully entitled to be in the UK during the whole of the 12 months. See "Calculating the period of residence" in regulation 2(2). A person who has spent 182 days or more outside the UK in the last twelve months cannot benefit from this exemption. They may benefit from others or, depending on their circumstances, still be considered ordinarily resident in the UK.

3.30 Where an overseas visitor living lawfully in the UK has been paying for treatment being received, those charges should cease once they have completed 12 months of lawful residence.

3.31 The spouse/civil partner and children of such an overseas visitor will also be exempt from charge when they are lawfully present on a permanent basis with the overseas visitor whilst the overseas visitor is residing in the UK.

***Examples of evidence**:*

- *(a) proof lawfully in UK – e.g. UK/EEA national, or has valid leave to enter documents issued by HO, or visitor/work/student visa etc is still valid; and*

- *(b) period of residence – e.g. visa stamps (where applicable), utility bills paid, regular attendance at clubs and classes, housing contracts, (but note that the patient does not need to have been resident at the same address for the whole 12 months).*

Regulation 8(2)(a) and 8(2)(b) – Workers, including self-employed

3.32 A person is exempt from charges when they are present in the UK (and other designated places specified in the Charging Regulations) for the purpose of engaging in employment with an employer who has his principle place of business in the UK or is registered in the UK as a branch of an overseas company, or for engaging in employment as a self-employed person whose principle place of business is in the UK.

3.33 It is not sufficient to have the right to work here, they must be actually in work or have a firm and specific job offer if they are here shortly before commencing it. Business visitors to the UK are not workers in this sense, even if employed by a UK based company, if they do not have the right to engage in employment in the UK or are simply in the UK to attend meetings or training courses etc. See paragraph 3.46 for spouses/civil partners/children. See also Chapter 7 on EEA/Swiss nationals' employment rights.

***Examples of evidence**:*

- (a) proof of lawfulness – e.g. if not an EEA/Swiss national then valid permission to work or if EEA*/Swiss national, proof of nationality; and*

- (b) proof of employment and that employer is principally based/registered in UK – e.g. confirmation from employer, contract of employment, current wage slip;

or for self-employed, evidence of being registered as a self-employed person, eg a Unique Tax Reference Number from HMRC, plus as many of the following as possible:- sales/purchase invoices; letters of references; business bank account statements; letters from accountant; business contracts; confirmation of rent for business premises; Criminal Records Bureau check; business insurance.

* see Appendix 6 for more on EEA nationals' employment rights – some do need to provide work permits/other evidence.

3.34 N.B. – if the worker is posted here from the EEA or Switzerland, or working here temporarily, and has an EHIC from one of those countries, the UK can claim a reimbursement from the appropriate country for their treatment. A worker does not *have* to have an EHIC to prove entitlement under the worker exemption, but if they have one, and are a posted/temporary worker, details should be recorded and submitted to DWP OHT. Please see Chapter 7 for more details.

Regulation 8(2)(c) – Volunteers in health or social services

3.35 A person present in the UK (and other designated places specified in the Charging Regulations) for the purpose of working as a volunteer, providing services similar to health or social services, is exempt from charges. See paragraph 3.46 for spouses/civil partners/children and Chapter 8 for more on volunteers.

***Examples of evidence**:*

- (a) lawfully in UK – e.g. if not an EEA/Swiss national then must have valid entry clearance or if EEA/Swiss national show proof of nationality – passport, EEA residence permit; and

- (b) proof of providing services similar to health or social services as a volunteer – e.g. letter from organisation where volunteering to describe service being provided.

3.36 N.B. – if the volunteer is here from the EEA or Switzerland and has an EHIC from one of those countries, the UK can claim a reimbursement from the appropriate country for their treatment. A volunteer does not *have* to have an EHIC to prove entitlement under the volunteer exemption, but if they have one details should be recorded and submitted to DWP OHT. Please see Chapter 7 for more details.

Regulations 8(2)(d) – Students

3.37 A person present in the UK (and other designated places specified in the Charging Regulations) for the purpose of pursuing a full time course of study which is of at least six months' duration or is otherwise substantially funded by the UK government, is exempt from charges. A full time course of study is likely to involve at least 15 hours a week attendance time. See paragraph 3.46 for spouses/civil partners/children.

3.38 Visas for overseas students are granted under Tier 4 of the Points Based System (PBS) and can only be granted for the purpose of full time studies. They are usually issued to allow the student to settle in before their course starts, and to give them time to wind up their affairs, attend graduation ceremonies etc before returning home. The exemption from charges should cover these periods as well as the duration of the course itself. If a student has stopped attending their course of study for no discernible reason, and is unable to offer evidence that they intend to return, or take up a new course, then they are acting outside of their visa entry clearance and this exemption from charge will not apply. Where treatment is being provided over a long period of time it is reasonable for relevant NHS bodies to check at intervals that the patient is still a student.

3.39 The Home Office has a list of educational organisations (see link below) which are licensed to sponsor migrants coming to the UK under the Tier 4 student category. A person present in the UK for the purpose of pursuing a full time course of study should be studying on such a course at one of these organisations. If the organisation they are studying at is not listed, then they should refer to the Home Office.

http://www.ukba.homeoffice.gov.uk/sitecontent/documents/employersandsponsors/pointsbasedsystem/registerofsponsorseducation

3.40 There are a number of short courses and academic fellowships which are either wholly or substantially funded by various UK Government Departments. Students on these sorts of courses are also exempt from charges, even if the course lasts less than 6 months. In this context, "substantially" should be taken as meaning at least 35% government funded, but may be as much as 100% in some cases.

Examples of evidence:

- *(a) valid student visa or, if EEA/Swiss national, proof of nationality – passport, EEA residence card; and*

- *(b) proof of attendance on a qualifying course of study, or that such a course of study has recently been completed/is scheduled to start – e.g. confirmation from university or college; receipt showing that they have paid for their course.*

3.41 N.B. – if the student is here from the EEA or Switzerland, and has an EHIC from one of those countries, the UK can claim a reimbursement from the appropriate country for their treatment. A student does not *have* to have an EHIC to prove entitlement under the student exemption, but if they have one, details should be recorded and submitted to DWP OHT. Please see Chapter 7 for more details.

Regulation 8(2)(e) – Taking up permanent residence

3.42 A person present in the UK (and other designated places specified in the Charging Regulations) for the purpose of taking up permanent residence is exempt from charges. This will include former residents with a right of abode who return to the UK to resume their permanent residence. Anyone who has been granted indefinite leave to enter/remain, or has a route to settlement, will also be entitled to take up permanent residence. This exemption category will apply from the first day that a person is in the UK in accordance with the relevant immigration requirements. Appendix 6 sets out some of the ways a person can lawfully reside permanently in the UK. See paragraph 3.46 for spouses/civil partners/children.

Examples of evidence*:*

- *(a) proof of right to live permanently in the UK – e.g.*
- *UK national or EEA/Swiss national with right of abode in accordance with the Immigration (European Economic Area) Regulations 2006[3];*
- *has right of abode in the UK;*
- *non-EEA family member of EEA national exercising EU treaty rights;*
- *has a route to settlement with a spouse/civil partner/fiance visa;*

3 Under European Regulation 883/2004 EC and its predecessor Regulation 1408/71 EC (which make provision for reciprocal social security provision and health care to facilitate the right to freedom of movement) NHS care is provided to an EEA citizen free of charge to the individual and the UK can seek reimbursement for the costs of this NHS care from the Member State under which the EU citizen is insured.

- has appropriate entry clearance issued by HO, e.g. indefinite leave to enter/remain stamp in passport; and

- (b) resuming permanent residence – anything that will confirm their intention is to reside permanently e.g. –
- forging ties with the UK – e.g. acquiring housing; children are attending school; looking for work; job seeker's allowance; application/granted benefit; transfer of assets to the UK; or
- cutting ties with former place of residence – e.g. sale of goods and properties overseas; receipts to show shipping of goods; ending of a rental agreement; end of an employment contract.

3.43 Someone who has entered the country on a temporary basis, for example on a visitor's visa, but subsequently makes an application for indefinite leave to remain, or leave to remain for a purpose which would make them exempt from charges under a different regulation (except an asylum application), will remain liable for charges unless and until that application is granted. There should be no reimbursement of charges paid between the date of application and the grant of leave to remain.

3.44 However, if whilst awaiting a decision on an application the person accumulates 12 months of lawful residence, then regulation 7 will apply. Residence will count as lawful as long as the application was made before the expiry of the initial visa. If the application is turned down after someone has become exempt from charges under regulation 7, then they would become chargeable again as they would not be in the country on a lawful basis. However, a course of treatment already underway would remain free until completion, or until they left the country (see paragraph 3.23).

3.45 Further, depending on the individual circumstances, it could also be possible for a person to acquire ordinary residence, and therefore fall outside the scope of the Charging Regulations, whilst awaiting an application for indefinite leave to remain to be granted.

3.46 The spouse/civil partner and/or dependent children of an exempt overseas visitor within regulation 8(a) to 8(e) will also be exempt provided that they are lawfully present on a permanent basis with the overseas visitor whilst the overseas visitor is residing in the UK. In some circumstances, e.g. for students, it is acceptable for a spouse/civil partner/child to join the principally exempt person shortly after that person has moved to the UK, but they must demonstrate that they will then live with that person for the duration of that person's stay, which will include being able to show that they are allowed to be in the UK for the same duration as the principally exempt person.

Regulation 9 – EU regulations

3.47 Regulation 9 concerns those overseas visitors who are exempted by virtue of European Union Rights arising under EU Regulations. These arrangements are governed by the European Union (EU) Social Security Regulations (Regulations (EC) 883/2004 and 987/09 for EU member states, and Regulations (EEC) 1408/71 and 574/72 for Iceland, Liechtenstein, Norway and Switzerland).

3.48 In practice this applies to residents of other European Economic Area (EEA) states[4] and Switzerland[5], including third country nationals, who are entitled to hold a European Health Insurance Card issued by their country of residence or, in some cases, the country which is the 'competent authority' for them. It also applies when such EEA/Swiss residents are referred to the UK for treatment with an E112/S2. See Chapter 7 for detailed information on how to apply this exemption category.

Regulation 10 – Reciprocal healthcare agreements (non-EEA)

3.49 Where a person receives relevant services (NHS hospital treatment) covered by a reciprocal agreement which we hold with a country listed in Schedule 2 of the Charging Regulations, then no charge may be made or recovered from that person for those relevant services. This exemption extends to their spouse/civil partner and/or dependent children if they are lawfully present on a permanent basis with the exempt overseas visitor whilst the overseas visitor is visiting the UK.

3.50 Most of these reciprocal agreements provide for free treatment only when the need for it arises during a visit (see paragraph 3.18). Pre-existing conditions that acutely exacerbate here, or in the opinion of a clinician need prompt treatment to prevent them from acutely exacerbating, eg dialysis, are also included. The routine monitoring of chronic/pre-existing conditions is not included and free treatment should be limited to that which is urgent in that it cannot wait until the patient can reasonably return home. However, some reciprocal agreements also provide for referrals to the UK specifically for the treatment of pre-existing medical conditions (see paragraphs 3.56 to 3.59 below).

4 The EEA comprises all the EU member states (Austria, Belgium, Bulgaria, Croatia, Cyprus (Southern), Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Republic of Ireland, Romania, Slovakia, Slovenia, Spain, Sweden and the UK), plus Iceland, Liechtenstein and Norway.

5 Switzerland has a separate agreement with the European Union which, in effect, applies Regulations 883/2004 and 987/09 to Switzerland.

3.51 List of countries in Schedule 2:

Anguilla	Kazakhstan*
Armenia*	Kyrgyzstan*
Australia	Macedonia*
Azerbaijan*	Moldova*
Barbados	Montenegro*
Belarus*	**Montserrat**
Bosnia and Herzegovina*	New Zealand*
British Virgin Islands	Russia*
Falkland Islands	Serbia*
Georgia*	**St. Helena**
Gibraltar*	Tajikistan*
Iceland	Turkmenistan*
Isle of Man	**Turks and Caicos Islands**
Jersey [6]	Ukraine*
	Uzbekistan*

3.52 Countries with an asterisk (*) have agreements covering their nationals and UK nationals only, resident in that country. The others cover all residents, irrespective of nationality. It is for non-nationals resident in an "all residents" country to produce evidence of their residential status. The agreements covering "nationals" only applies where nationals are living in their own country, not if they are living in another country with which the UK holds a bilateral healthcare agreement, or indeed any other country.

3.53 Iceland is an EEA member state but the reciprocal healthcare agreement also covers non-EEA nationals resident in Iceland.

3.54 The UK recognises Kosovo as an independent country, and no longer part of Serbia. However, since the UK does not have a reciprocal arrangement with Kosovo, overseas visitors resident in Kosovo will be chargeable, unless covered by a different exemption.

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

3.55 Persons who can present evidence that they are either nationals or residents, as appropriate, living in any of these countries should be treated as exempt from charges in respect of treatment the need for which arose during a visit to the UK.

Evidence required:

- *proof that the person is a national/resident (as appropriate) of the country, eg passport, residence permit, identity card, social security card, utility bill etc.*

3.56 Under the terms of the reciprocal arrangements with those countries highlighted in bold text, eg **Anguilla**, the exemption also applies to citizens or nationals 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.

3.57 Referrals from Gibraltar are commissioned by Gibraltar itself, which holds the total funds for meeting the costs of treating these referrals. The funds include an allocation from the Department of Health.

3.58 The British Overseas Territories (BOT) of Anguilla, the British Virgin Islands, the Falkland Islands, Montserrat, St Helena and the Turks & Caicos Islands can refer patients specifically for treatment. With the exception of the Falkland Islands, this is limited to four patients per BOT per year. Referral arrangements are made by the relevant BOT through DWP Overseas Healthcare Team (see Appendix 7 for their contact details). Persons hoping to be referred should contact the relevant BOT in the first instance.

3.59 For all patients who are referred for NHS treatment as in paragraphs 3.56 to 3.58 above, advance arrangements for their acceptance should be made and the patients must be given the same priority as patients living in the UK.

Evidence required:

- *they will be in receipt of formal confirmation to cover them for their treatment.*

Regulation 11(a) – Refugees

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

Regulation 11(b) – Asylum seekers and others seeking refuge

3.61 Anyone who has made a formal application with the Home Office to be granted temporary protection, asylum or humanitarian protection which has not yet been determined is also exempt. Formal applications are those made under the 1951 UN Convention and its 1967 Protocol and also any other request for humanitarian protection, such as some claims made on protection from serious harm grounds under Article 3 of the European Convention on Human Rights. Relevant NHS bodies should seek their own legal advice if it is not clear under what circumstances a person is making such a claim. See paragraph 3.64 below.

Regulation 11(c) – Failed asylum seekers supported by the Home Office under section 4 or section 95

3.62 A person who has had their asylum/humanitarian protection application and all appeals rejected becomes a 'failed asylum seeker'. They will become liable for charges for their NHS hospital treatment at that point, even if they have been here for more than one year, unless one of the following situations applies to them.

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

3.64 A failed asylum seeker who makes a fresh application for asylum, temporary protection or humanitarian protection will become an asylum seeker again and will therefore be exempt from charge again until that new application is considered. Charges will still apply during any period between the first application, including appeals, being rejected and the second, fresh application being lodged with the Home Office.

3.65 Under the easement clause (see paragraph 3.23) any particular course of treatment underway when an asylum seeker's application, including all appeals, is rejected, or when a failed asylum seeker stops receiving Home Office section 4 or 95 support, will continue free of charge until that treatment concludes or the person leaves the country. However, they must be charged for any new courses of treatment, although relevant NHS bodies are reminded that, regardless of the lack of advance payment, they must not withhold treatment that is medically considered immediately necessary or urgent in that it cannot

wait until the patient can reasonably return home. They are also reminded that they have the option to write off debts when the person is genuinely without funds. See Chapter 4.

Regulation 11(d) – Children in the care of the Local Authority

3.66 Children who are in the care of the Local Authority under the Children Act 1989 are exempt from charges. There may be occasions when a relevant NHS body treats an overseas visitor child who it believes should be in the care of the Local Authority and that child is subsequently taken into the care of the Local Authority. Relevant NHS bodies are reminded of their option to write off debts.

3.67 The spouse/civil partner and/or dependent children of an exempt overseas visitor within regulation 11 will also be exempt provided that they are lawfully present on a permanent basis with the overseas visitor whilst the overseas visitor is residing in the UK.

***Examples of evidence**:*

- *confirmation from Home Office of refugee status/Temporary Protection having been granted;*
- *valid Application Registration Card (ARC) issued by Home Office;*
- *confirmation from Home Office that asylum application or application for humanitarian protection on protection from serious harm grounds is still under consideration;*
- *confirmation that the failed asylum seeker is being supported by the Home Office under section 4 or section 95 support*
- *confirmation that a child is in the care of the Local Authority.*

Regulation 12 – Victims of human trafficking

3.68 Any person who the Competent Authorities of the UK have identified as being a victim of human trafficking, or where the Competent Authorities consider there are reasonable grounds to believe a person is a victim of human trafficking for whom the requisite recovery and reflection period has not expired, is exempt from charges.

3.69 The Competent Authorities are the UK Human Trafficking Centre (UKHTC) and, where cases are linked to asylum and immigration issues, the Home Office.

Examples of Evidence:

- *a letter from the Competent Authority confirming their status as a victim, or suspected victim for whom the recovery and reflection period has not elapsed.*

3.70 The spouse/civil partner and dependent children of those exempt under this regulation are also exempt from charges in their own right – they do not have to live permanently with the exempt person.

Regulation 13 – Exceptional humanitarian reasons

3.71 This regulation allows the Secretary of State for Health to designate an individual as exempt from charges on exceptional humanitarian grounds, as long as certain specified criteria are met. This designation can only be made by the Secretary of State. It is envisaged that the powers will only be used very rarely, where there is a clear humanitarian imperative to do so (for example, the UK is responsible for causing the injury needing treatment). As far as relevant NHS bodies are concerned, their role in the context of the Charging Regulations is to establish whether such a determination has been made, not to make the determination themselves.

Evidence required:

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

3.72 Where such a determination is made, the patient will be allowed to be accompanied by an authorised companion (which need not be their spouse/civil partner) and any authorised children, who will be exempt from charges for treatment the need for which arises while they are here, but not for other treatment. See Regulation 23(d).

Regulation 14 – Diplomats posted to the UK

3.73 Diplomats posted to the UK are exempt from charges. This includes staff working in embassies etc in the UK, but does not include diplomats from embassies in another country who happen to be visiting the UK on business or on holiday.

Examples of evidence:

- *confirmation of diplomatic position in the UK, letter from embassy confirming posting.*

3.74 The spouse/civil partner and/or dependent children of an exempt overseas visitor within this regulation will also be exempt provided that they are lawfully present on a permanent basis with the diplomat whilst the diplomat is residing in the UK.

Regulation 15 – North Atlantic Treaty Organisation (NATO)

3.75 The eligibility of NATO personnel and attached civilians stationed in the UK is governed by the NATO (Status of Forces Agreement) 1955. This regulation provides for free treatment to be given to a person, or the spouse/civil partner and/or dependent children of a person, who is serving with the armed forces of a country which is part of NATO[7]. The only NATO country to have bases in the UK and maintain substantial members of service personnel here is the USA, but members of the armed forces of the other countries may spend time on duty in the UK.

3.76 NATO personnel and their exempt family members are expected to use their own or UK armed forces hospitals where this is practicable, but if they use NHS hospital facilities (e.g. because they are significantly more accessible to the patient) then they are exempt.

Example of evidence:

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

Regulation 16 – UK state pensioners living in both the UK and another EEA state/Switzerland

3.77 This regulation concerns a person who is in receipt of a UK State pension and who lives both in the UK and another EEA state/Switzerland. As long as they spend at least six months of the year living in the UK, and are not registered as resident in another EEA state/Switzerland, they are exempt from charges for treatment they receive during the period they live here. This exemption does not apply if they are living in a non-EEA country during the period they are away from the UK.

Examples of evidence:

- *(a) proof in receipt of UK state pension (not a private or occupational pension) – pension slip or pink card BR 464 issued by DWP or letter from DWP or appropriate Northern Irish authority;*

- *(b) evidence to support period spent living in UK – e.g. bank details showing withdrawals in EEA and UK, details of travel documents; and*

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

- *(c) proof not registered as resident elsewhere – e.g. confirmation that S1 has not been activated. Patients should be encouraged to obtain this themselves from DWP, but if unavoidable, relevant NHS bodies can ring DWP on 0191 218 1999 as a last resort.*

3.78 This exemption extends to the spouse/civil partner and/or dependent children of the exempt pensioner as long as they are lawfully present on a permanent basis with the exempt pensioner whilst the exempt pensioner is residing in the UK.

3.79 N.B. – those UK state pension holders who register as residents in other EEA states have their healthcare in that member state paid for by the UK. However, they may still benefit from regulation 23(a) or regulation 9 (for example, they may have an EHIC) and OVMs should check those provisions before levying charges.

Regulation 17 – War pensioners and armed forces compensation scheme payment recipients

3.80 People who receive UK war pensions or war widows' pensions are exempt from charges, as are recipients of armed forces compensation scheme payments. This exemption extends to their spouse/civil partner and/or dependent children if they are lawfully present on a permanent basis with the exempt overseas visitor whilst the overseas visitor is visiting the UK.

Examples of evidence:

- *proof of appropriate pension/compensation scheme payment – pension book/slip, letter from Ministry of Defence or Department for Work and Pensions.*

Regulation 18(a) – Members of Her Majesty's UK forces

3.81 Members of HM's UK forces are exempt from charge.

Examples of evidence:

- *proof they are a serving member of HM UK forces – e.g. valid HM forces ID card, confirmation from MOD.*

Regulation 18(b) – UK civil servants working abroad

3.82 UK civil servants working abroad are exempt from charges if they were recruited in the UK.

Examples of evidence:

- *proof of employment and where recruited – e.g. letter from employer confirming employment and stating where recruitment took place.*

Regulation 18(c) – British Council or Commonwealth War Graves Commission staff

3.83 People working abroad for the British Council or the Commonwealth War Graves Commission are exempt from charge if they were recruited in the UK.

Examples of evidence:

- *proof of employment and where recruited – e.g. letter from employer confirming employment and stating where recruitment took place.*

Regulation 18(d) – UK Government financed posts overseas

3.84 People working abroad, where their post is financed in part by the UK Government in agreement with another government or public body are exempt from charge. Recruitment must have taken place in the UK and will include people working for the Department for International Development and the British Volunteer Programme.

Examples of evidence:

- *evidence to confirm nature of employment – e.g. letter from employer confirming employment and funding arrangements.*

3.85 The spouse/civil partner and dependent children of those exempt under regulation 18 are also exempt from charges in their own right – they do not have to live permanently with the exempt person and can be in the UK independently of them.

Regulation 19 – Former residents working overseas

3.86 People who have lawfully lived for ten continuous years in the UK at some point and are now working abroad for a period which has not lasted more than 5 years are exempt from

charges.

3.87 The patient will be exempt from charges for any treatment, including elective treatment, received during short term visits (eg leave) during the five year period, but once they have been working abroad for more than 5 years they will no longer be exempt, unless they can show they are exempt by another category, e.g. taking up permanent residence.

3.88 Under this regulation, the exemption extends to the exempt person's spouse/civil partner and/or dependent children if they are lawfully present on a permanent basis with the exempt overseas visitor whilst the overseas visitor is visiting the UK.

Examples of evidence

- *(a) proof of ten years continuous residence e.g. previous job, schools attended, previous address(es); and*
- *(b) proof of current employment and that it has not lasted more than 5 years - letter from employer(s); contract of employment; passport stamps.*

3.89 N.B. – if the visitor is here from the EEA or Switzerland, and has an EHIC issued by that country, the UK can claim a reimbursement from that country for some treatment. Such a visitor does not *have* to have an EHIC to prove entitlement under this exemption, but if they have one, details should be recorded and submitted to DWP OHT. Please see Chapter 7 for more details.

3.90 Furthermore, people who work abroad in another EEA country or Switzerland, who pay compulsory (not voluntary) National Insurance contributions in the UK, and are in receipt of an E106/S1 from Her Majesty's Revenue & Customs are exempt from charges during visits to the UK, even without the former residence and even if they have worked abroad for more than 5 years. See regulation 9.

Regulation 20 – Missionaries

3.91 People acting as Missionaries (i.e. doing religious and social work) overseas for an organisation principally based in the United Kingdom, regardless of whether they are drawing a salary or wage or receiving any kind of funding or financial assistance from that organisation, are exempt from charges.

3.92 The spouse/civil partner and dependent children of those exempt under this regulation are also exempt from charges in their own right – they do not have to live permanently with the exempt person and can be in the UK independently of them.

Examples of evidence:

- *proof that the missionary is carrying out duties overseas for a relevant organisation based in the UK, e.g. a confirmatory letter from the organisation.*

Regulation 21 – Prisoners and detainees

3.93 Anyone who is in prison or anyone who as been detained under provision of Immigration Acts is exempt from charges.

Examples of evidence:

- *they will have been referred by the appropriate authorities.*

3.94 This exemption extends to the spouse/civil partner and/or dependent children of the prisoner/detainee as long as they are lawfully present on a permanent basis with the prisoner/detainee whilst the prisoner/detainee is in the UK.

Regulation 22 – Employees on ships

3.95 People working on ships registered in the UK are exempt from charges. See regulation 4 for the liability for charges for those present in the UK for the purpose of working on a ship not registered in the UK. See also Norwegian Seafarers (Chapter 8).

Examples of evidence:

- *(a) proof of employment; e.g. letter from employer, contract of employment; and*
- *(b) evidence of where the vessel is registered, e.g. from ship's owner*.

3.96 This exemption extends to the spouse/civil partner and/or dependent children of the employee on the ship as long as they are lawfully present on a permanent basis with the employee whilst the employee is in the UK.

Regulation 23 – Exemption for treatment the need for which arises during a visit to the UK

3.97 Regulation 23 lists categories of overseas visitor who are exempt from charges only for 'treatment the need for which arises during a visit to the UK' (see full definition of this term at paragraph 3.18).

Regulation 23(a) – UK state pensioners

3.98 UK state pensioners who have lived lawfully in the UK, or been employed by the UK government, for ten continuous years at some point are exempt from charges for treatment the need for which arises during the visit to the UK. This is regardless of where they are now residing, how long each year they reside there or if they have registered as resident there.

Examples of evidence:

- *(a) confirmation in receipt of UK state pension (not private or occupational pension) – e.g. pension slip, pink form BR 464, confirmation from DWP; and*
- *(b) proof of ten years continuous residence e.g. previous job, schools attended, previous address(es).*

3.99 This exemption extends to their spouse/civil partner and/or dependent children if they are lawfully present on a permanent basis with the UK state pensioner whilst the UK state pensioner is visiting the UK.

3.100 See also regulation 16, which also concerns UK state pension holders, to see if it applies for planned treatment. UK state pensioners living in other EEA members states may also qualify for free treatment under EU Regulations – see regulation 9.

Regulation 23(b) – former UK residents now living in EEA/Switzerland or other reciprocal country

3.101 People who have lawfully lived for ten continuous years in the UK at some point but who are now living in an EEA state or Switzerland, or a non-EEA country with which we have a reciprocal healthcare agreement (see regulation 10) are exempt from charges for treatment the need for which arises during the visit. This does not apply to those living in Israel.

Examples of evidence*:*

- *(a) proof of ten years continuous residence e.g. previous job, schools attended, previous address(es); and*
- *(b) proof living in EEA member state/Switzerland or non-EEA reciprocal country – e.g. address details.*

3.102 This exemption extends to their spouse/civil partner and/or dependent children if they are lawfully present on a permanent basis with the exempt overseas visitor whilst the overseas visitor is visiting the UK.

3.103 N.B. – if such a person is here from the EEA or Switzerland, and has an EHIC from one of those countries, the UK can claim a reimbursement from the appropriate country for some treatment. Such a person does not *have* to have an EHIC to prove entitlement under this exemption, but if they have one, details should be recorded and submitted to DWP OHT. Please see Chapter 7 for more details.

Regulation 23(c) – The UK's obligations under the European Convention on Social and Medical Assistance 1954 and the European Social Charter 1961

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

***Examples of evidence**:*

- *(a) proof of nationality and here lawfully, e.g. passport; and*
- *(b) evidence of inability to pay, e.g. they are destitute.*

Regulation 23(d) – an authorised child/companion of someone under regulation 13

3.105 An authorised child or an authorised companion accompanying someone deemed exempt from charges under regulation 13 is exempt from charge for treatment the need for which arises during the visit.

Examples of evidence:

- *will have appropriate documentation from the Home Office*.

Regulation 24 – Family members of overseas visitors

3.106 This regulation describes the circumstances in which the family members of overseas visitors exempted in regulations 7-23 are also exempt from charges. For ease, these circumstances have been described in the description of each regulation, above. For the purposes of this regulation, family members are spouses or civil partners of overseas visitors and children (under the age of 16 or under the age of 19 if in full time education) in respect of whom an overseas visitor is a parent or legal guardian. “Legal guardian” means someone who is acting as parent to the child, with a degree of permanence and is not just a person who is responsible for the child on a temporary basis, such as a teacher. This will be a matter of fact in each case. Not all regulations have a corresponding exemption for family members.

3.107 This table can also be used for a quick reference.

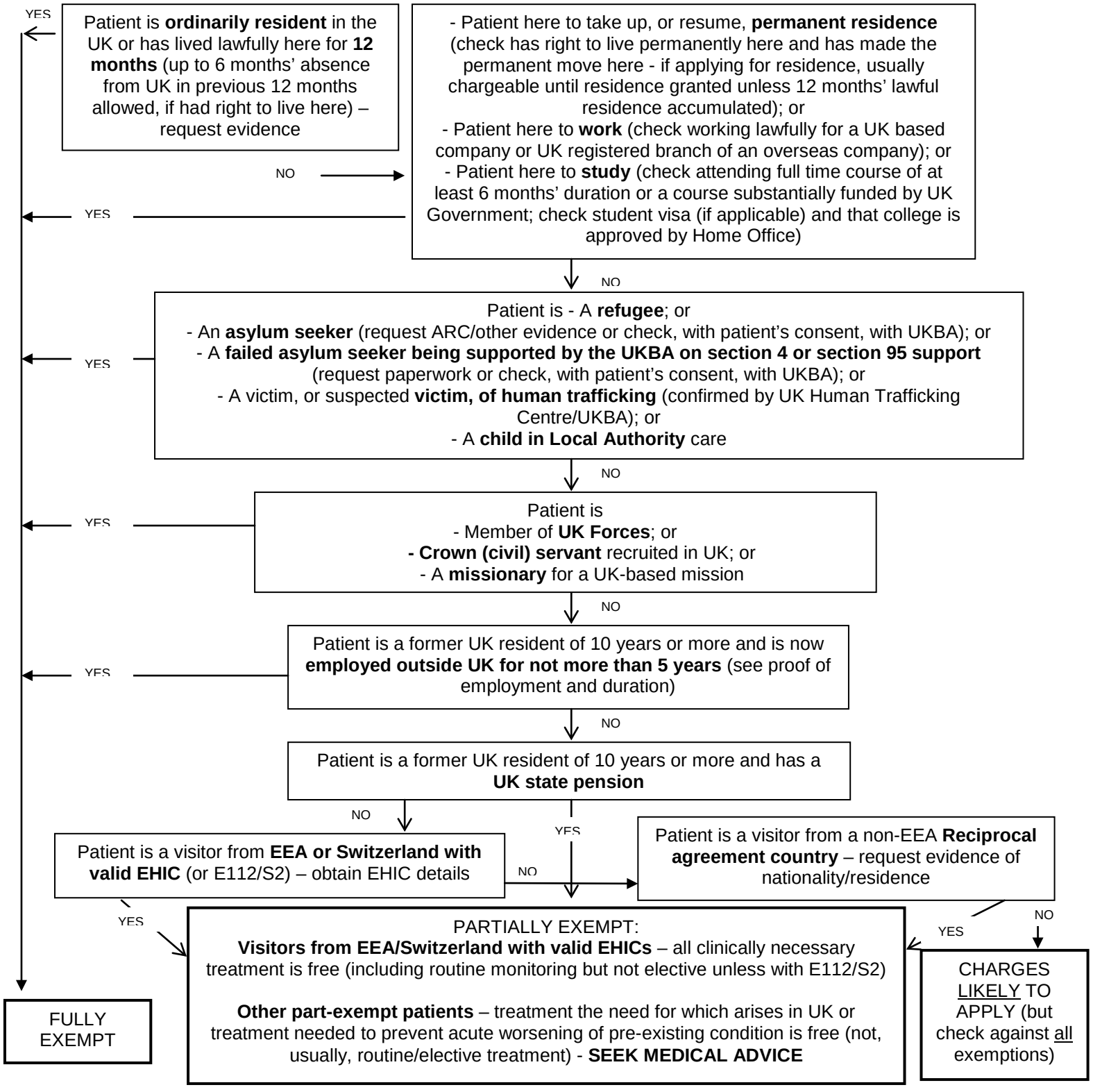
Reg	Description	Family Members Exempt?
7	12 months' lawful residence	Yes, if lawfully present on a permanent basis with the exempt person whilst exempt person is living here
8	Workers/students/taking up permanent residence etc	As above
9	EU rights	As above
10	Reciprocal agreements (non-EEA)	Yes, treatment the need for which arises only
11	Refugees/asylum seekers/children in care etc	Yes, if lawfully present on a permanent basis with the exempt person whilst exempt person is living here
12	Human Trafficking Victims	Yes
13	Exceptional humanitarian reasons	Only the authorised child/companion is exempt for treatment the need for which arises during the visit accompanying the exempt person
14	Diplomats	Yes, if lawfully present on a permanent basis with the exempt person whilst exempt person is living here
15	NATO forces	Yes
16	UK state pensioners living in both the UK and another EEA state/Switzerland	Yes, if lawfully present on a permanent basis with the exempt person whilst exempt person is living here
17	War pensioners	As above
18	UK armed forces/crown servants etc	Yes
19	Former residents working overseas	Yes, if lawfully present on a permanent basis with the exempt person whilst the exempt person is residing in/visiting the UK
20	Missionaries	Yes
21	Prisoners and detainees	Yes, if lawfully present on a permanent basis with the exempt person whilst the exempt person is living here
22	Employees on ships	As above
23 (a) (b)	Treatment the need for which arises during visit to UK - UK state pensioners former UK residents now living in EEA/Switzerland or other reciprocal country	 Yes, if lawfully present on a permanent basis with the exempt person whilst the exempt person is residing in/visiting the UK. Treatment the need for which arises only
23 (c) (d)	Treatment the need for which arises during visit to UK - ECSMA and ESC Authorised child/companion of Reg 13	 No No

Regulation 25 – Revocations and Consequential Amendments

3.108 This regulation revokes previous instruments and sets out amendments that are consequential on the revocation of the previous regulations.

3.109 **WHY IS THE PATIENT IN THE UK?**

This does not include all the exemption categories, but, starting at the top left-hand box, can help work out if a patient's circumstances mean that they are entitled to free NHS hospital treatment.



CHAPTER FOUR: WHEN TO PROVIDE NHS HOSPITAL TREATMENT TO THOSE NOT ENTITLED TO IT FREE OF CHARGE

4.1 This chapter gives important advice on safeguards that relevant NHS bodies should employ to protect the lives of overseas visitors who are not charge exempt under the Charging Regulations, and guidelines on how relevant NHS bodies should handle such patients without the resources to pay, including when to withhold treatment. It also sets out the roles and responsibilities of clinicians and OVMs when applying charges to patients.

What are the relevant NHS body's responsibilities?

4.2 Paragraph 2.3 sets out the legal obligations under the Charging Regulations of all relevant NHS bodies.

4.3 However, relevant NHS bodies must also ensure that treatment which is immediately necessary is provided to any patient, even if they have not paid in advance. Whilst treatment provided in an Accident and Emergency Department is free to any person, further emergency treatment after admission as an inpatient is not. Failure to provide immediately necessary treatment may be unlawful under the **Human Rights Act** 1998. Urgent treatment should also be provided to any patient, even if deposits have not been secured. Non-urgent treatment should not be provided unless the estimated full charge is received in advance of treatment.

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

4.4 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 charge.

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

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

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

Maternity treatment

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

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

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

4.10 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.

4.11 **Non-urgent treatment** is routine elective treatment that could wait until the patient can return home. Relevant NHS bodies do not have to provide non-urgent treatment if the patient does not pay in advance and should not do so until the estimated full cost of treatment has been received (but see paragraph 4.19).

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

4.13 It is the responsibility of OVMs to gather the information on when the patient can return home in such cases, based on the patient's ability to do so. It is also the OVM's responsibility to establish whether or not the patient is entitled to free NHS treatment in the first place. More information about the particular duties of OVMs and clinicians in operating the charging regime is provided at paragraphs 4.30 to 4.38.

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

4.14 The general principle is that overseas visitors should either return home for treatment that is not immediately necessary or pay in advance of receiving it. However, in some cases it may not be possible or reasonable to expect a person to return home quickly enough for treatment. Clinicians will need to know when a patient can reasonably be expected to return home to decide if their need for NHS hospital treatment is urgent or if it can safely await their return.

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

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

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

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

4.19 Where a clinician has decided that the need for treatment is non-urgent and can wait until the patient can return home, this should be reassessed if the patient informs the relevant

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

What limits should be placed on treatment?

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

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

4.21 When a patient is in need of immediately necessary treatment, it may not be appropriate, or possible, to inform them ahead of treatment commencing that charges might apply, nor to secure from them an agreement to pay those charges. Patients who, after baseline questioning (see paragraph 5.20 to 5.28), appear not to have lived lawfully in the UK for the previous 12 months, should be notified that charges might apply at the earliest appropriate opportunity and they should subsequently be interviewed by an OVM to establish this definitively when it is medically appropriate to do so. Patients should not be told by anyone that charges will not apply until this is formally established.

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

4.23 If and when it is established that charges apply, the patient should be informed and presented with a bill for the treatment they have received, but 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 a bill until all immediately necessary or urgent treatment has completed, but patients should nevertheless be fully informed about the charges they might face.

4.24 An overseas visitor whose need for treatment after admission from A&E or from a GP referral is not immediate, should be interviewed by the OVM at the earliest appropriate

opportunity and before a course of treatment commences to establish if they are entitled to free treatment or have to pay.

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

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

4.27 However, where a clinician considers that a chargeable patient's need for treatment is non-urgent, further treatment processes, eg putting the patient on a waiting list or booking outpatient clinics, should not be initiated until a deposit equivalent to the estimated full cost of treatment has been obtained. Any surplus which is paid can be returned to the patient on completion of treatment. This is not refusing to provide treatment, it is requiring payment conditions to be met in accordance with the Charging Regulations before treatment can commence.

4.28 When providing immediately necessary or urgent treatment clinicians should be asked to complete an advice from Doctors or Dentists form at Appendix 2 which should then be documented in the patient's notes and a copy sent to the relevant service/delivery manager.

4.29 A flow chart is provided below at paragraph 4.42 to assist relevant NHS bodies in this process.

Collaborative Working & Separation of Duties

4.30 All staff, including clinicians and managers, have a responsibility to ensure that the charging regime works effectively.

4.31 The fact that the NHS will provide treatment to those in immediate or urgent need on humanitarian grounds, but that charges still apply to some patients, means that the decision on what treatment to provide, at what point to apply the charges and what to do when payment is not forthcoming needs careful handling, often necessitating an exchange of information between clinicians and OVMs.

The role of clinicians

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

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

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

The role of Overseas Visitors Managers

4.35 The OVM's role is to see that the Charging Regulations are applied in practice, so that those overseas visitors who are lawfully entitled to free treatment receive it without charge, and that those who are not exempt from charges are charged. It is therefore important to identify patients who are not ordinarily resident in the UK and then determine if they are exempt from charges or not under the Charging Regulations.

4.36 Where a patient is identified as chargeable and claims s/he cannot pay, an OVM should then assess when the patient can be reasonably expected to return home and inform the clinician of this, so that the clinician can then consider if and what treatment can wait .

4.37 OVMs should ensure that:

- payment is received in advance of providing urgent treatment, wherever possible, and in advance of providing non-urgent treatment in all cases; and

- any debts incurred following the provision of immediately necessary treatment or urgent treatment (when advance payment was not obtained) are recovered, wherever possible.

At some relevant NHS bodies, it is the responsibility of other staff to recover debt.

4.38 OVMs and other non-clinical staff must not make decisions on urgency of treatment or deny any patient access to a clinician.

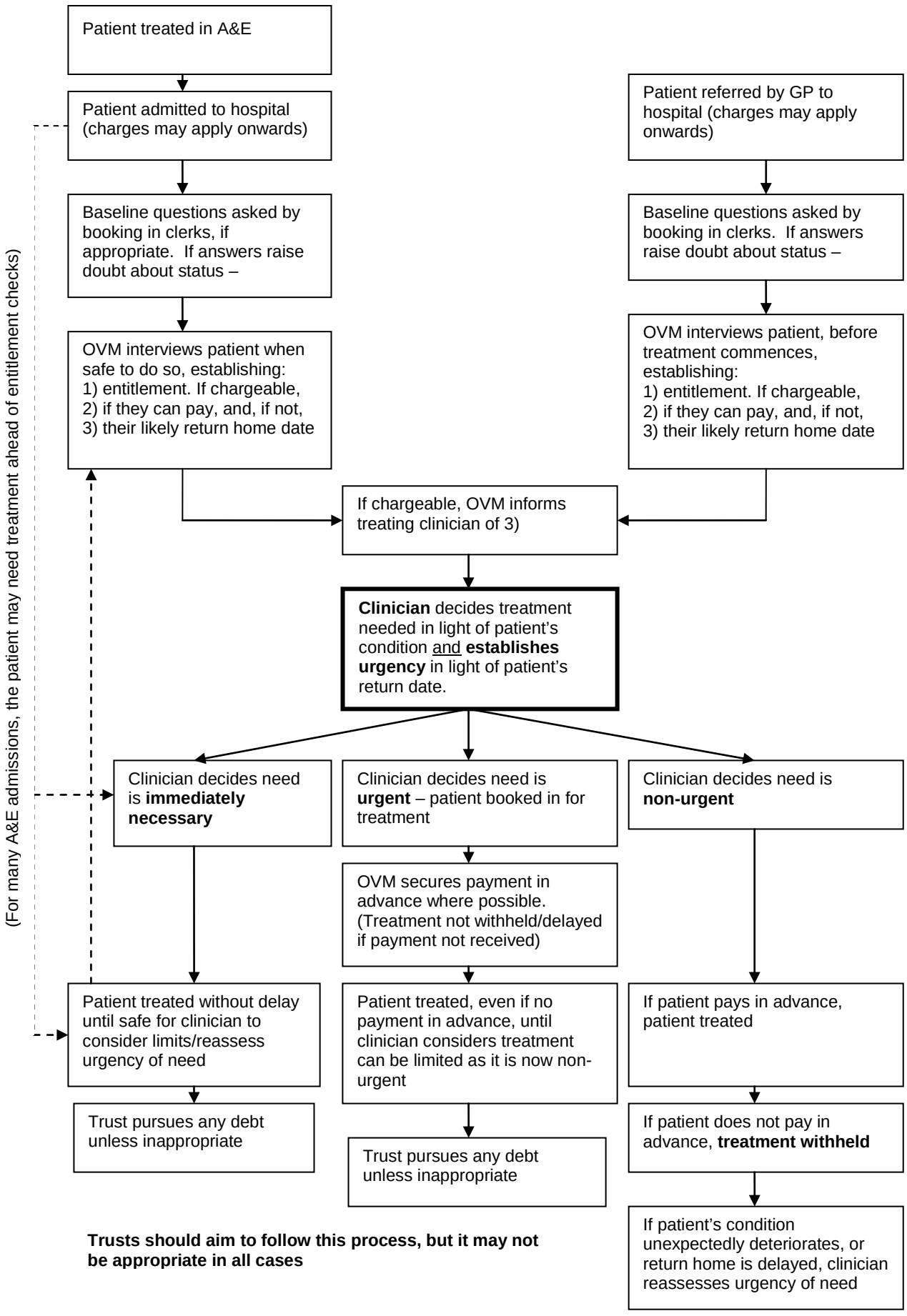
When to pursue debts and when not to

4.39 Where a patient is provided with urgent or immediately necessary treatment, which they have not paid for in advance, this does not mean that that treatment is then free of charge. If charges apply, they cannot be waived for any reason – or by any person – and relevant NHS bodies have an obligation to recover them. Therefore, reasonable measures must be taken to pursue overseas visitors' debt, based on the individual circumstances of the patient. Relevant NHS bodies are recommended to consider employing the services of a debt recovery agency that specialises in the recovery of overseas debt, except in relation to persons whom it is clear to the relevant NHS body will be unable to pay, e.g. destitute failed asylum seekers.

4.40 In cases where patients are without sufficient funds to pay the debt immediately, relevant NHS bodies should accept payment from the patient in instalments where possible. If relevant NHS bodies begin to recover debt before the course of treatment is finished, they should be careful not to discourage those in further need of immediately necessary or other urgent treatment from continuing to receive it.

4.41 Even where it is believed that an overseas visitor is unable to pay, an invoice for treatment provided should still be raised. This must be recorded accurately and identified in the relevant NHS body's accounts. More financial information is provided at Chapter 6.

4.42


A&E Route
GP Referral Route
Patient treated in A&E
Patient admitted to hospital (charges may apply onwards)
Patient referred by GP to hospital (charges may apply onwards)
Baseline questions asked by booking in clerks, if appropriate. If answers raise doubt about status –
Baseline questions asked by booking in clerks. If answers raise doubt about status –
OVM interviews patient when safe to do so, establishing:
1) entitlement. If chargeable,
2) if they can pay, and, if not,
3) their likely return home date
OVM interviews patient, before treatment commences, establishing:
1) entitlement. If chargeable,
2) if they can pay, and, if not,
3) their likely return home date
If chargeable, OVM informs treating clinician of 3)
Clinician decides treatment needed in light of patient's condition and establishes urgency in light of patient's return date.
Clinician decides need is immediately necessary
Clinician decides need is urgent – patient booked in for treatment
Clinician decides need is non-urgent
OVM secures payment in advance where possible. (Treatment not withheld/delayed if payment not received)
Patient treated without delay until safe for clinician to consider limits/reassess urgency of need
Patient treated, even if no payment in advance, until clinician considers treatment can be limited as it is now non-urgent
If patient pays in advance, patient treated
Trust pursues any debt unless inappropriate
Trust pursues any debt unless inappropriate
If patient does not pay in advance, treatment withheld
If patient's condition unexpectedly deteriorates, or return home is delayed, clinician reassesses urgency of need
(For many A&E admissions, the patient may need treatment ahead of entitlement checks)
Trusts should aim to follow this process, but it may not be appropriate in all cases

CHAPTER FIVE: HOW TO OPERATE THE CHARGING REGIME EFFECTIVELY

5.1 This chapter provides advice to relevant NHS bodies on how to operate the charging regime to optimum effect, including advice on how to use baseline questioning to quickly identify those patients who may be overseas visitors and who can then be interviewed to establish if charges apply, using the exemption categories listed in Chapter 3.

Overseas visitors managers

5.2 As already stated, the Department of Health strongly recommends that relevant NHS bodies have a designated person to oversee the implementation of the Charging Regulations. This could be linked with other similar roles within the relevant NHS body, for example the Private Patients Manager role. It needs to be a person of sufficient seniority and skill to be able to resolve complex and sensitive situations and to deal effectively with clinicians, senior trust managers, finance colleagues and members of the public. They should be given the authority to ensure that the charging regime can be properly implemented in all departments.

The support of clinicians and senior managers

5.3 The success of the charging regime depends on all staff being aware and supportive of the role of the OVM. Senior managers should support the charging regime not only because it is a legal obligation to ensure that those overseas visitors who are not exempt from charges pay for their treatment wherever possible, but also because it allows extra income to be raised and protects allocated funds for those entitled to free treatment.

5.4 OVMs are much more likely to receive the support of clinicians when they have a good and transparent relationship with them. It is crucial that clinicians do not feel that following the charging regime means that they cannot diagnose and treat their patients appropriately. This can be helped by OVMs explaining that their role is not to be involved in any decisions on urgency of treatment, but to inform clinicians when they are dealing with a chargeable overseas patient who cannot pay and to provide details on when the patient can reasonably return home. With this information, clinicians can decide if the treatment that the patient needs can wait until the patient can return home or not. More about the clinician's role can be found in Chapter 4.

What a relevant NHS body needs to do

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

i) **identify, without discrimination, all patients who may be liable to charges** – this will involve all staff in patient administration, including A&E, out-patient clinics and wards. At least one person should be responsible for organising the training of these staff and the configuration of the Patient Administration System. Relevant NHS bodies need to have procedures in place for identifying charge liable patients out of normal hours;

ii) **interview possible overseas visitors to establish if they are, in fact, ordinarily resident, or, if not, whether they are exempt from charges or liable for charges** – these in-depth interviews need to be handled sensitively and by staff who have received appropriate training by the relevant NHS body. The relevant NHS body will need to ensure that they have an adequate number of these staff to provide cover at all sites and that appropriate back-up services, for example interpreters, are available; and

iii) **make and recover charges to overseas visitor patients who are not covered by an exemption category, providing them with a written statement of why charges apply, what the charge is estimated to be and how they can pay. This statement should be given to the patient before treatment is provided as far as is reasonably practicable.** Relevant NHS bodies are obliged to provide this statement under the Care Quality Commission (Registration) Regulations 2009 (SI 2009/3002). Where a person is in need of immediately necessary treatment it may not be possible or appropriate to provide them with this statement ahead of treatment, and relevant NHS bodies should also take into account the guidelines of chapter 4 when considering how to exercise this obligation.

IDENTIFYING PATIENTS WHO MAY BE LIABLE TO CHARGES

Spreading the word

5.6 A relevant NHS body should ensure as a priority that all its staff and patients are aware of the overseas visitors charging regime. **Posters** explaining the Charging Regulations are available for download at http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH106808. OVMs should ensure that these are displayed throughout the hospital where people have an opportunity to read them. Posters tell readers to ask at reception for more information so receptionists should be aware that leaflets are available for information.

5.7 These **leaflets** are also available for download at http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuid

ance/DH_107246 and can be targeted at the correct audience when they require further information about their particular circumstances. Information can also be placed on websites, on plasma screens in waiting rooms, within the literature sent out to patients with their appointment details or anywhere else that the relevant NHS body considers appropriate and helpful. If a person requires detailed information that is not covered by the leaflets they should be referred to the OVM.

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

5.9 Some relevant NHS bodies ensure that each specialty has at least one person trained to carry out the primary interview with a potential overseas visitor. More complex cases can then be referred to the principal OVM.

5.10 Regular contacts with local community relations organisations can also be valuable. These may help to explain that charges apply only to visitors to the UK and not people who are ordinarily resident here. This could avoid misunderstandings about the availability of free health care to family visitors who do not meet any of the exemptions.

GPs and primary care

5.11 GPs have discretion to accept any person, including overseas visitors, to be either fully registered as a NHS patient, or as a temporary resident if they are to be in an area between 24 hours and three months. There is no minimum period that a person needs to have been in the UK before a GP can register them. Furthermore, GPs have a duty to provide free of charge treatment which they consider to be immediately necessary or emergency, regardless of whether that patient is an overseas visitor or registered with that practice.

5.12 Being registered with a GP, or having a NHS number, does not give a person automatic entitlement to access free NHS hospital treatment. It can be helpful to ensure that local GPs understand this, so that they do not unintentionally misinform their patients regarding hospital charges and so that they identify in the referral letter any patient whom they believe may be an overseas visitor, which the relevant NHS body could then check. OVMs should consider establishing formal contacts with local GPs to aid this process, which can be used by them as an extra useful tool in identifying potential overseas visitors who have to pay for treatment. GP surgeries could also be encouraged to display the posters regarding entitlement to free hospital treatment.

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

5.14 Charges only apply under the Charging Regulations for services provided in a hospital or, when provided outside a hospital, by staff employed by, or under direction of, a hospital. Therefore services provided in the community cannot be charged for unless provided by hospital employed/directed staff.

What about A&E?

5.14 A&E treatment is free to all until the patient is admitted as an inpatient or provided with an outpatient appointment (see paragraph 3.26a). However, this does not mean that OVMs should not liaise with A&E staff and make them aware of the charging regime. This is a vital point at which to flag up a potentially chargeable overseas visitor. In some relevant NHS bodies A&E departments provide OVMs with a daily print out of those patients who have been admitted and who, on answering the baseline questions (see below), appear to be overseas visitors. Having this information allows the OVM to trace quickly relevant patients, who they can then interview, when medically appropriate. It can also be very useful to know if an A&E patient is a potential overseas visitor when they are given outpatient appointments. They can be informed before they leave A&E that charges might apply for that appointment, and/or the OVM can be prepared for their future attendance.

Avoiding discrimination in establishing if charges apply

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

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

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

- foster good relations between people who share a protected characteristic and those who do not.

5.17 It is therefore important that no person is discriminated against in the application of the Charging Regulations when establishing entitlement to free treatment. Ordinary residence or exemption from charges cannot be judged from external appearance, or name, or language.

5.18 It is important to see that all patients are treated the same way, to avoid discrimination. It is not discriminatory to ask someone if they have lived lawfully in the UK for the last 12 months as long as you can show that all patients – regardless of their address, appearance or accent – are asked the same question when beginning a course of treatment. The answer to that question may result in others needing to be asked, but again you will not be breaking any laws as long as those questions are asked solely in order to apply the Charging Regulations consistently.

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

Asking the baseline questions

5.20 The vast majority of patients will not be liable for charges. The purpose of asking the baseline questions at this stage is to quickly identify that majority in a way that avoids discrimination and to ensure that all patients who may be liable for charges are identified.

5.21 Where a person has resided lawfully for one year immediately prior to treatment (regulation 7), that person is exempt from charge. For pragmatic reasons, baseline questioning should be based around this regulation rather than ordinary residence, so the minority of patients who have not resided in the UK lawfully for the previous year can be quickly identified. They can then be interviewed to establish if they are in fact ordinarily resident here, exempt from charges via another category or if they have to pay.

5.22 Therefore, the baseline questions should be -

> "**Are you a UK/EEA/Swiss national or do you have a valid visa or leave to enter/remain in the UK?**"
>
> and
>
> "**Which country/countries have you lived in for the last 12 months?**"

5.23 Patients who have been abroad for up to 182 days of the year immediately preceding treatment can still be considered exempt under the '12 months' lawful residence exemption category (see paragraph 3.18 "calculating period of residence"). It is important that administration staff are aware of this easement. However, where a person has spent 182 days or more of the 12 months abroad the case should be referred for further interview whatever explanation is provided at this stage. It is not, however, necessary for the patient to have been living at the same address in the UK for the whole 12 months – they can have been living anywhere, or be of no fixed abode, as long as they have been staying somewhere within the UK for the last year.

5.24 These questions need to be asked every time a patient begins a new course of treatment at the hospital and is entered onto the relevant NHS body's records for in-patient or out-patient care, either on paper or computer and either by administration or ward staff, in order to comply with the Charging Regulations. The system should allow the questioner to record either that the patient has lived in the UK lawfully for 12 months or that there is some doubt. In all cases where the patient has not lived here lawfully for 12 months, the patient should be referred for interview by the Overseas Visitors Team. The questioner should inform the patient that he or she will be further interviewed.

5.25 This does mean that booking-in staff, ward clerks etc, will need to be prepared to ask for basic supporting evidence. The flow chart at paragraph 5.57 shows how the baseline questions process should work, together with examples of the sort of evidence that would help confirm both that someone had been living in the UK for twelve months and that they were entitled to do so. Being unable to provide evidence does not mean that someone should be refused treatment at this stage, only that they should be referred to the Overseas Visitors Team for further investigation.

5.26 To minimise delays and possible problems when booking in, relevant NHS bodies are strongly recommended to use a **pre-attendance form** that could be included with all out-patient and in-patient appointment letters. This form should explain that patients should be prepared to provide certain pieces of evidence and should have a declaration for the patient to sign in which it is clear why the questions are being asked and what use may be made of the data. Checking will then be a relatively quick and simple matter that need not add more than a few seconds to the booking in process. An example of such a form is at Appendix 1. Relevant NHS bodies could place this on their intranet to be used by admissions staff, and it should be made available in multiple languages.

5.27 In some departments, catering for very elderly or mentally confused patients, or when direct admission from critical care is needed, the baseline questioning may be inappropriate or unworkable. In these cases admissions staff should still be aware of the possibility of patients being chargeable and should notify the Overseas Visitors Team of any patient who, on any non-discriminatory information they have, may be an overseas

visitor.

5.28 Where it is established that a patient has not lived in the UK for the last 12 months, or has not lived here lawfully:

- the patient should be told immediately, where possible and appropriate, that they will need to be interviewed to establish their eligibility for free NHS hospital treatment;

- the person who identifies the patient as potentially liable should contact the Overseas Visitors Team immediately and arrange for an interview to take place. Wherever possible, that interview should take place before treatment begins, but if, in the opinion of medical staff, the treatment is needed urgently it should always go ahead without delay;

- where it is not possible for a patient to be referred for immediate interview by the Overseas Visitors Team a note should be placed inside the medical records to alert other members of staff to the patient's potential liability for charges. A suggested form of words is as follows:

> **PATIENT MAY NOT BE ORDINARILY RESIDENT IN UNITED KINGDOM**
>
> This patient may not be ordinarily resident in the United Kingdom and has been referred for further interview by the Overseas Visitors Team. The patient may be liable to pay for any treatment received. The patient has been informed.
>
> For further information contact: [Overseas Visitors Team number]

Things not to do at this stage

5.29 It is not intended that staff completing administration forms should do anything other than ask the baseline questions and alert the Overseas Visitors Team if necessary. There is no need and no question of staff at this stage asking supplementary questions or carrying out detailed investigations themselves unless they have been trained to do so by the Overseas Visitors Team.

INTERVIEWING PATIENTS WHO MAY BE LIABLE TO CHARGES

Appropriate skills

5.30 A relevant NHS body should ensure that all staff involved with the identification and interviewing of a patient who may have to pay a charge for treatment are properly advised

of their role and provided with adequate training. Staff involved in interviewing patients should have a thorough understanding of the Charging Regulations and guidance together with training on interviewing techniques and handling difficult situations. Staff can sometimes be confronted with distressed, angry or abusive patients and/or relatives. They should be fully trained on the NHS body's policy for dealing with violent or potentially violent situations. As already mentioned, they should also be trained on how to exercise their trust's general equality duty.

Timeliness of interview

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

The main interview

5.32 This should take place in private and, wherever possible, before treatment has started. The interviewer should begin by explaining that a person not ordinarily resident in the UK can, in some circumstances, be liable for the cost of their treatment. The interviewer should explain that the interview is taking place because the patient indicated during the process of administration (or because admissions staff have indicated) that he or she may not normally live in the UK, or has been unable to show that they have the right to live here. Some patients will be clear that they are not normally resident here but others may dispute the assessment. The first issue to explore during the interview, therefore, is whether the patient may be ordinarily resident even though they have not lived here for twelve months. A patient cannot be charged if they are ordinarily resident in the UK. Paragraphs 3.4 to 3.16 discuss ordinary residence.

5.33 If, after questioning, the interviewer decides that the patient is not ordinarily resident here, then that patient is an overseas visitor for the purpose of the Charging Regulations. The next stage of the interview therefore needs to be to establish if the patient can be exempted from charges by virtue of any of the exemptions listed in the Charging Regulations, described at Chapter 3.

Overseas visitors claiming exemption – supporting documentary evidence

5.34 Where a patient claims to be covered by any of the exemptions, or indeed claims to be ordinarily resident, the relevant NHS body is required, by provision of the Charging

Regulations, to make “such enquiries as it is satisfied are reasonable in all the circumstances”, to confirm that is the case. It is for the patient to satisfy the relevant NHS body of the validity of their claim to free treatment and the relevant NHS body is entitled to ask for supporting documentary evidence, as long as it does not behave unreasonably. Where the patient cannot support their claim, the relevant NHS body may decide to charge for treatment. However, in making this decision it should take account of the individual circumstances and judge each case on its own merits. For example, in some cases it will be easier for the patient to provide evidence than in others. Also, just because one of the exemption categories is found not to apply does not mean that others will not apply. Each should be considered. If charged, the patient can claim reimbursement at a later date providing that sufficient evidence can be produced to show that he or she was entitled to free treatment at the time it was given.

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

5.36 In general, patients will be able to provide satisfactory documentary evidence e.g. pension details, letters from employers or colleges etc to support their claim. Where, however, the patient does not have the evidence to hand an interviewer may be asked to either accept confirmation from a reputable third party e.g. a letter from a solicitor or, in some cases, to accept the word of the patient without supporting evidence. What level of evidence is acceptable is entirely a matter for the relevant NHS body in the light of the individual patient’s circumstances. Providing the relevant NHS body can demonstrate, if need be, that it has acted reasonably in all cases, it is unlikely to encounter criticism.

Using the Home Office for advice

5.37 There may be occasions where patients produce entry clearance documents that are not familiar to OVMs. Useful information can be found at the UKBA website http://www.ukba.homeoffice.gov.uk/.

Using the Home Office secure email service

5.38 When other avenues of establishing entitlement have been exhausted, it may be necessary to establish the immigration status of a person. This might include establishing whether a failed asylum seeker has exhausted all their appeal processes and whether or not they are receiving section 4 or section 95 support, or cases where a hospital comes across a person who appears to be in the country without the proper authority. In these exceptional cases, enquiries about immigration status can be sent to the Home Office via

a secure email. Please note that Home Office cannot advise how this information affects the patient's liability for charges.

5.39 It is vital that patient confidentiality is not breached, therefore this service can only be used in cases where the patient's informed consent has been obtained. You must keep a signed record of the patient's consent for your records, although the Home Office do not need to witness this. A question and answer sheet is attached at Appendix 4 to assist you in informing the patient on what might be done with their information. For further information on patient confidentiality see paragraph 5.51 to 5.55. Under no circumstances should any medical information be divulged.

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

5.41 A form is attached at Appendix 3, which should be used to request an immigration status check from the Home Office. The Home Office will respond with the requested information as soon as possible. Should the information not be received within 10 days please send another email marked 'second request' which will be dealt with as a priority.

5.42 Relevant NHS bodies can obtain the Home Office email address by contacting the DH Overseas Visitors Policy Team on 0113 254 5819 or by e-mail to overseasvisitors@dh.gsi.gov.uk.

5.43 Alternatively, relevant NHS bodies can set up arrangements with Home Office centres local to them, as long as the same rules regarding security and consent are applied.

5.44 In cases where a patient refuses to give their permission to contact Home Office and has not provided valid evidence to support their claim to be living lawfully in the UK, a relevant NHS body can decide to levy a charge where no other exemption applies.

Maximising payment of charges

5.45 In order to reduce the incidents of failure to pay and to protect NHS resources it is important to identify chargeable overseas visitors as early in the process as possible, notwithstanding that the patient must not be denied access to a clinician and the urgency of treatment guidelines in chapter 4 should be followed. Where a relevant NHS body provides urgent treatment in advance of payment it will be helpful, particularly if debt

recovery action becomes necessary, to ask the patient, or someone on their behalf, to sign an **undertaking to pay form**. However, the overseas visitor will still be liable to pay the debt whether or not they sign that form. See Appendix 5 for an example of an undertaking to pay form.

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

OTHER ISSUES WITHIN THE CHARGING REGIME

Referrals by one NHS body to another

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

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

Other statutory NHS charges

5.49 An overseas visitor exempt from charges under the Charging Regulations is normally liable for other statutory NHS charges, such as those for prescriptions, on the same basis as a UK resident. However some charge exempt patients will also be exempt from statutory prescription charges, for example asylum seekers, and will be issued with an **HC2** certificate for full help with health costs. However, having an HC2 does not in itself mean the patient is exempt from charges under the Charging Regulations. Information on other statutory charges can be found here:-
http://www.nhs.uk/NHSEngland/Healthcosts/Pages/Abouthealthcosts.aspx

Fraud - NHS Protect

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

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

Patient confidentiality and data sharing

5.52 Relevant NHS bodies have legal obligations under the Data Protection Act 1998 in relation to storing personal information. Furthermore, the protection of patient confidentiality, even non-medical information, is very important to the doctor/patient relationship and to the wider public health.

5.53 When a hospital becomes aware that a patient may be here without proper authorisation then a decision needs to be taken in the full light of the patient's circumstances as to whether his suspected immigration status should be reported without the patient's permission. The NHS should not share patient information with third party agencies without the patient's consent except where:

- they are required to do so by the law (e.g. where a Court Order has been made);

- they have special permission for health or research purposes; or

- there is an overriding public interest to do so (e.g. where the police are investigating a serious crime). An immigration offence is not, in itself, usually considered a serious crime in this context.

5.54 The public interest argument for reporting the patient's immigration status needs to be weighed against the competing public interest of protecting medical confidentiality but also of providing medical treatment to patients who need urgent care or have infectious diseases that may put the wider public at risk. It is important that each case should be judged on its own merits. Each case should be discussed with the relevant NHS body's Caldicott Guardian before a decision is taken, and it would probably be advisable for relevant NHS bodies to seek advice from their own legal advisers.

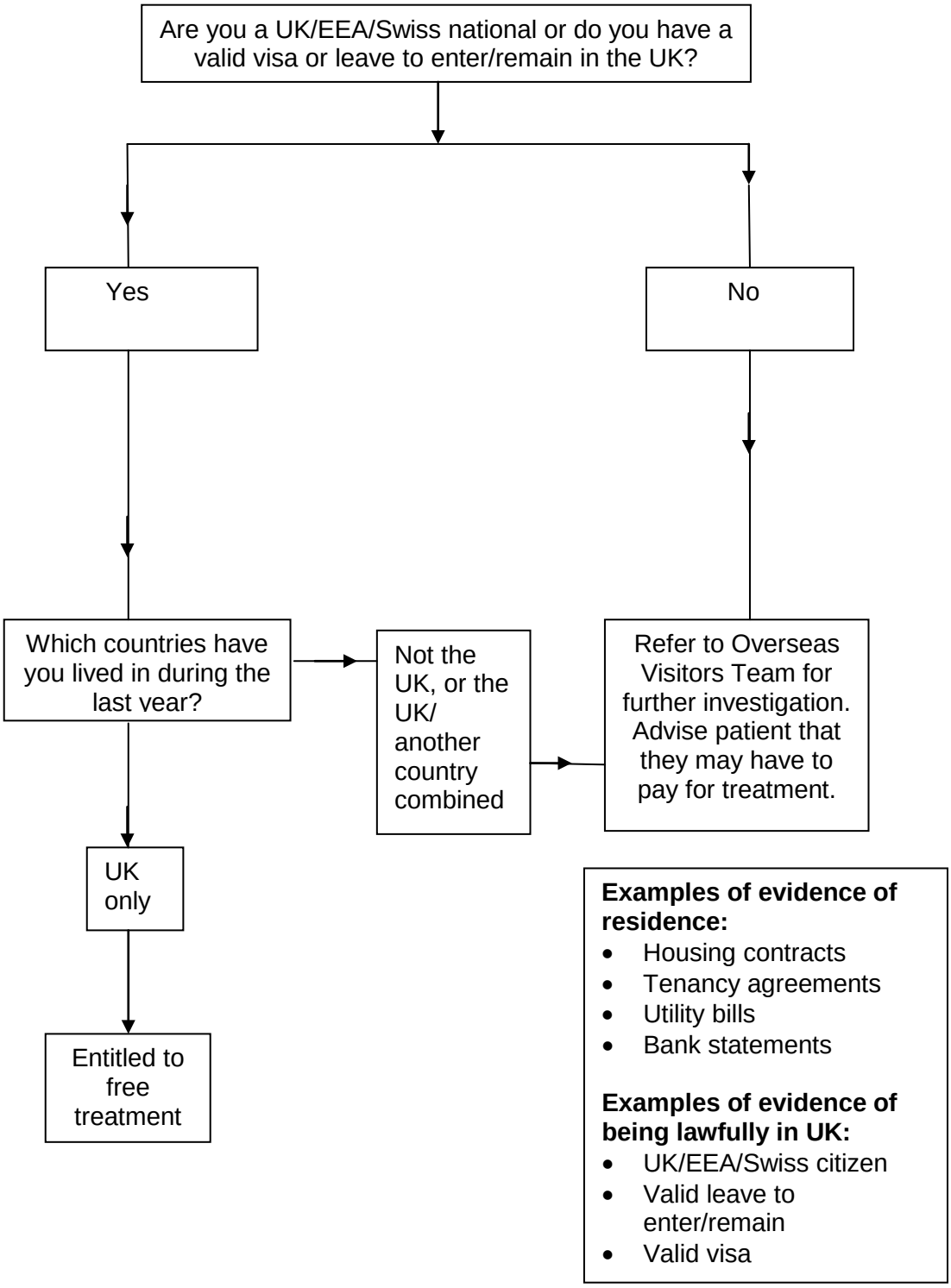
5.55 Trusts are allowed to share non-medical information with third parties without the patient's consent when it is for the purpose of collecting debts owed to the NHS.

5.56 NHS bodies (or debt collection agencies working on their behalf) can share non-medical information with the Home Office, via the Department of Health, on those with a debt of £1,000 or more once that debt has been outstanding for three months, with a view to better collect debts owed. The Home Office can then use that information to deny any future immigration application to enter or remain in the UK that the person with the debt might make. Patients do not have to provide their consent to this information being shared but NHS bodies should ensure that patients are aware of the potential immigration consequences of not paying a debt for which they are liable. More specific guidance on sharing data with the Home Office for this purpose is provided at Appendix 7 and NHS bodies must ensure that they pay due regard to that guidance when sharing information.

Complaints

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

5.37 **Baseline questions**



CHAPTER SIX: FINANCIAL MATTERS

NHS Charged Patients

6.1 Patients charged under the Charging Regulations are **NHS charged patients**. They should not be confused with private patients. Unlike private patients, NHS charged patients are liable to pay for their treatment even where an undertaking to pay has not been obtained.

6.2 The treatment of NHS charged patients is subject to the same clinical priority as other NHS patients. The beds they occupy are not pay beds and consultants cannot charge them for their services.

At what stage to administer the charge

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

How much to charge chargeable patients

6.4 Relevant NHS bodies should recover the full cost of the treatment (which may include an element to cover reasonable costs of administration) given to a chargeable overseas visitor. To calculate the cost trusts should, where possible, use the latest Non-Contract Activity guidance at www.dh.gov.uk/paymentbyresults.

Value Added Tax

6.5 All charges to overseas visitors are exempt from VAT.

Deceased patients

6.6 The patient is solely liable for the debt, therefore where a patient dies without making or completing payment no-one else becomes liable for that debt. Relevant NHS bodies should seek repayment from the patient's estate if possible but otherwise the debt will need to be written off (see paragraph 6.26). An offer from relatives or another person to meet the debt can be accepted but should not be actively sought, nor is it acceptable to pursue relatives of a deceased patient for recovery of a debt for which they have no legal

liability.

Newborns

6.7 Where a chargeable mother delivers in hospital, mother and child are charged as a single patient. If one of them is transferred to another department, for example neo-natal care, the charge will continue to accumulate to recover the full costs of treating both of them. If one is discharged and the other remains in hospital, the charge will continue to accumulate to recover the cost of treating the one remaining. If one of them is transferred to a different NHS body then that NHS body will then be responsible for recovering the costs of any treatment they provide. This will result in two separate bills being issued.

Calculation of length of stay

6.8 For in-patients the day of admission and the day of discharge count together as a single day. Thus someone admitted on a Monday and discharged the following Friday should be treated as having been an in-patient for 4 days.

Who pays when the patient is exempt from charges?

6.9 Information on establishing the responsible commissioner for payment (known as *Who Pays?*) can be found at http://www.england.nhs.uk/wp-content/uploads/2013/08/who-pays-aug13.pdf

6.10 When:

i) the patient receiving treatment is exempt from charges, or

ii) when the service being provided is exempt from charges (eg that for pandemic influenza, TB)

the relevant NHS body should invoice the appropriate Clinical Commissioning Group (CCG) as set out in paragraph 9 of Appendix A of *Who Pays?*

6.11 To do this they should use the costing outlined at paragraph 6.4.

6.12 NHS England oversees an annual data collection exercise on the details of payments made by CCGs to providers for charge exempt overseas visitors. This information is then used to make an annual non-recurrent adjustment to CCG budgets. It is therefore important that this information is annually collected and submitted by CCG Allocation Contacts/Directors of Finance.

6.13 Where the patient is visiting from an EEA country or Switzerland, and is exempt under regulation 9, relevant NHS bodies will need to:

i) invoice the appropriate CCG (if no contract/service level agreement is in place) using the costing outlined at paragraph 6.4; and

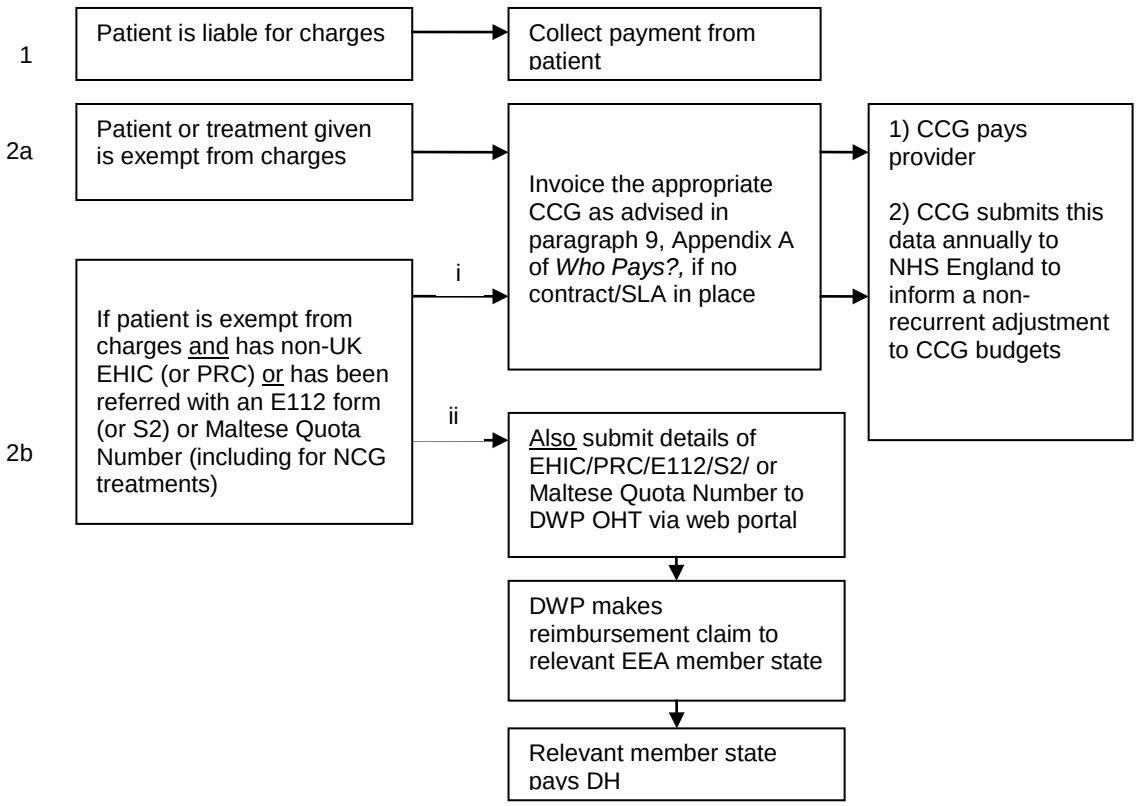
ii) record and report any E112/S2/Maltese Quota Number or European Health Insurance Card details to the Department of Work and Pensions Overseas Healthcare Team via the Overseas Visitors Treatment Web Portal.

6.14 Without this information, the UK is unable to make a claim for reimbursement for treating these visitors (see Chapter 7 for more important information).

6.15 If such a visitor receives National Commissioning Group (NCG) treatment, the relevant code for the NCG service should be selected from the OVT web portal. The NCG cost will be added automatically.

6.16 The flow chart below explains.

Who Pays?



Methods of payment and dealing with third parties

6.17 Relevant NHS bodies can accept payment by any method acceptable to them. Where a relevant NHS body provides treatment in advance of payment it will be helpful, particularly if debt recovery action becomes necessary, to ask the patient, or someone on their behalf, to sign an **undertaking to pay** form. The overseas visitor will be liable to pay the debt whether or not they sign an undertaking to pay form. See Appendix 5 for an example of an undertaking to pay form.

6.18 Where the overseas visitor has received treatment as an in-patient, finance departments need to ensure that they are able to issue invoices promptly, perhaps at very short notice, in order to ensure that the invoice can be presented, wherever possible, before the patient leaves the hospital. Some relevant NHS bodies have had success with the installation of a portable **credit card machine**, to take to the patient before they are discharged.

6.19 In cases where patients are without sufficient funds to pay the debt right away, payment should be accepted from the patient in instalments where possible.

6.20 Whilst, except in rare cases, or cases related to children (see regulation 4), the patient themselves is liable for the cost of treatment, there may be cases where patients offer some form of guarantee that their costs will be met by a third party. Examples are patients with travel healthcare insurance or patients being sponsored by an employer or government. In each case, the relevant NHS body must decide whether or not to accept the risk of seeking payment from this third party rather than directly from the patient. In any event, immediately necessary or urgent treatment must not be withheld or delayed because of uncertainty over payment (see Chapter 4).

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

Pursuing overseas debt

6.22 It is not acceptable not to bother raising an invoice for treatment provided to a chargeable overseas visitor simply because it is believed that they are unable to pay. There is no provision in the Charging Regulations that allows the relevant NHS body to waive charges.

6.23 Reasonable measures must be taken to pursue overseas visitors' debt. Relevant NHS bodies are recommended to consider employing the services of a debt recovery agency

that specialises in the recovery of overseas debt, except in relation to persons whom it is clear to the relevant NHS body will be unable to pay, eg destitute failed asylum seekers, and for whom such action may not be appropriate or cost-effective (see paragraph 6.24). There is some evidence that those who do so are significantly more successful in recovering overseas visitors' debt.

6.24 In determining whether a patient is able to pay their debt and should be actively pursued for it, it may be presumed that most short-term visitors, e.g. tourists and those visiting family, who have been able to fund a trip to the UK, would have significant personal assets and/or future income and so could not be properly considered as being without sufficient funds to pay the charge. This decision would need to be taken on all the facts of the individual case and may not apply to some patients.

6.25 Relevant NHS bodies (or the debt recovery agency working on their behalf) are encouraged to share non-medical information with the Home Office, via the Department of Health, on those with a debt of £1,000 or more that is still outstanding after three months. This is regardless of whether or not the debt has been written off for accounting purposes as unrecoverable. The Home Office can then deny an immigration application to enter or remain in the UK that that person subsequently makes, thereby encouraging payment of debts. Such action may provide a further opportunity to recover debts if the person seeks to enter or remain in the UK in the future. Detailed guidance on this process is provided at Appendix 7 and NHS bodies must ensure that they pay due regard to that guidance when sharing this information.

Writing off debt and recording debt and income in the accounts

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

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

6.27 However, writing off the debt for accounting purposes may not necessarily mean that the debt is extinguished and relevant NHS bodies are still able to recover it. Debts can be cancelled entirely if the charges they relate to are found not to have applied in the first place, for reasons discussed in paragraph 3.25.

6.28 Any written off debt for chargeable overseas visitors must be properly recorded and identified in the relevant NHS body's accounts. Overseas visitors' debt must be recorded as Losses and Special Payments overseas visitors' bad debt. It is extremely important

that overseas visitor bad debt is properly and accurately reported in the accounts, no matter what the level of that debt may be. It is only through accurate recording that the scale of unrecovered debt can be known.

6.29 Relevant NHS bodies are also required to separately identify income payable by overseas visitors liable for charges for NHS hospital treatment in their accounts.

6.30 Full instructions on how to write off overseas debt can be found in the Department of Health Finance Manual which can be accessed via the internet at *http://www.info.doh.gov.uk/doh/finman.nsf >NHS Finance Manual (Download version)> NHS Manual for Accounts - Shared Chapters 2010/11>Chapter 5 losses.*

6.31 Relevant NHS bodies should also keep their own, more detailed, financial records of overseas visitors including the total amount of prepayment before treatment, invoices raised, the amounts recovered, the amounts outstanding and the debt written off. The Department of Health recommends that this should be kept under review at senior management level as there may be occasional requests by the Department for information including any emerging patterns or problems.

CHAPTER SEVEN: VISITORS FROM EUROPE

7.1 Regulation 9 of the Charging Regulations concerns those overseas visitors who are exempted from charge by virtue of European Union (EU) Rights arising under EU Social Security Regulations (EC) 883/2004 and 987/09 (and Regulations (EEC) 1408/71 and 574/72 for Iceland, Liechtenstein, Norway and Switzerland) – the "**EU Regulations**". OVMs therefore need to know what entitlements these EU Regulations provide certain visitors from Europe over and above the entitlements provided elsewhere under the Charging Regulations. The UK can claim reimbursement for the cost of providing healthcare to visitors from other member states under the EU Regulations if certain data is captured.

Who is covered for health care under the EU Regulations?

7.2 The EU Regulations apply to all countries within the European Economic Area (EEA), which is made up of the 28 member states of the EU (i.e. 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, Slovak Republic, Slovenia, Spain, Sweden and the UK) plus Iceland, Liechtenstein and Norway.

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

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

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

a. EEA nationals, stateless persons or refugees, plus their family members and the survivors (irrespective of nationality) of these groups of people, insured in each case in an EEA member state;

b. Swiss or *EU* nationals, stateless persons or refugees, plus their family members and the survivors (irrespective of nationality) of these groups of people, insured in each case in Switzerland;

c. non-EEA nationals legally resident and insured in any EU country (except Denmark).

European Health Insurance Card (EHIC)

7.6 How a person qualifies as insured varies depending on the member state. However, in every case where someone is insured they will have, or will be entitled to hold, an **EHIC** from the member state in which they are insured. Each family member, including children, will have their own EHIC.

7.7 If they cannot show their EHIC, they may instead produce a **Provisional Replacement Certificate (PRC)** to prove entitlement under the EU Regulations. It is for the patient or their representative to arrange the issue of the PRC from the member state that would issue their EHIC, but the OVM may offer to assist. A list of providers of PRCs is available at http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_106803

7.8 Therefore, with the exception of visitors from the Republic of Ireland[8], only a valid EHIC or PRC can demonstrate that a visitor (including a student) is exempt from charge under the EU Regulations and therefore entitled to free NHS treatment that is medically necessary during their visit. Visitors from Switzerland or the EEA (except Ireland) that do not provide an EHIC/PRC must be charged for their NHS hospital treatment, unless a different exemption applies to them under the Charging Regulations (see paragraph 7.10).

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

7.10 Visitors from the EEA/Switzerland may be exempt under a different exemption category within the Charging Regulations, for which it is not necessary to show an EHIC, and it is very important that this is considered before the patient is charged. See particularly regulation 23(b). EEA and Swiss nationals who are ordinarily resident in the UK are entitled to free treatment anyway, and so do not have to show an EHIC.

7.11 In order for the UK to make a claim to the relevant member state for treating their residents, it is *imperative* that the data from the EHIC is recorded and reported to the Overseas Healthcare Team at the Department of Work and Pensions via the Overseas Visitor Treatment (OVT) web portal (see paragraph 7.26 to 7.30, below).

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

What treatment is free under the EHIC?

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

- diagnosis of symptoms or signs occurring for the first time after the visitor's arrival in the UK;

- any other treatment which, in the opinion of a medical or dental practitioner employed by or under contract with a CCG is required promptly for a condition which:

- arose after the visitor's arrival; or

- became acutely exacerbated after their arrival; or

- would be likely to become acutely exacerbated without treatment; plus

- the treatment of chronic, or pre-existing, conditions, including routine monitoring.

7.13 It should be noted that this is a wider definition than the one which applies to visitors from reciprocal agreement countries which are not covered by EU regulations (see paragraph 3.50).

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

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

7.16 In the case of **industrial injuries beneficiaries** (including persons receiving benefit in respect of an occupational disease), the EHIC covers them for any condition resulting from their industrial injury or occupational disease, even if their need for treatment is not medically necessary before their date of return. This does not apply if they have come to the UK expressly for that treatment (in which case see paragraph 7.20).

7.17 **Registered unemployed persons** are also covered for treatment that it is not medically necessary to provide to them before their return date, again, unless they have come here expressly for that treatment.

What about European students and posted workers?

7.18 Posted workers are those sent to the UK from their employer in another EEA member state/Switzerland, rather than those who have chosen to move to the UK for employment. They will remain insured in their home member state. Those from the EEA/Switzerland who are temporarily studying in the UK will also remain insured in their home member state. Therefore, both of these groups must show a valid EHIC to demonstrate that they are exempt from charge under the EU Regulations. Posted workers/students may be here for several years before returning home, so they are likely to require a greater range of treatments than a general holidaymaker 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, with a view to preventing them from being forced to return home for treatment before the end of their planned duration of stay.

7.19 Given that some workers and students are also exempt from charge under the Charging Regulations, OVMs will need to assess for this before levying charges if the posted worker/student does not provide a valid EHIC/PRC.

What about pre-planned treatment?

7.20 There are separate arrangements under Articles 22(1)(c) and 55(1)(c) of Regulation (EEC) 1408/71 and Articles 20, 27(3) and 36 of Regulation (EEC) 883/2004 for people from another EEA country or Switzerland who want to come to the UK expressly to seek treatment. These patients will need to obtain the prior authorisation of their social security institution, which bears the cost, meaning that the patient is exempt from charges for that treatment. The institution is obliged to grant authorisation only if the treatment is provided under the legislation of the applicant's state of residence and can not be made available in the member state of residence or competent member state "without undue delay".

7.21 A person who has obtained permission from his or her social security institution to seek treatment in the UK will be issued with an **E112** or **S2**. They must make advance arrangements for their treatment and be given the same clinical priority as NHS patients

i.e. if there is a waiting list they are subject to it. Patients referred under scheduled treatment arrangements will continue to be covered for all medically necessary treatment for any other conditions, if they show their valid EHIC/PRC.

7.22 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 social security institution or at the patient's own cost.

7.23 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). The patient can pay in advance for the planned treatment and if this is the case they should be charged as a NHS Charged Patient not a private patient. (For further information on NHS Charged Patients see paragraph 6.1). 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.

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

7.25 The UK has accepted responsibility for the healthcare of persons from other EEA countries and Switzerland who are employed by Her Majesty's Government (e.g. locally employed staff in UK embassies in EEA countries and Switzerland). Such persons will be in possession of a letter issued by the Foreign and Commonwealth Office, to provide evidence of their entitlement to obtain free NHS treatment.

Reclaiming the costs of treating EEA/Swiss residents

7.26 In order for the UK to make a claim to the relevant member state for treating their residents, it is <u>imperative</u> that the data from a valid EHIC/PRC (for unplanned treatment) or the E112/S2/Maltese quota number (for planned treatments) are recorded and reported to the Overseas Healthcare Team at the Department of Work and Pensions. <u>Without this data, the UK cannot make a claim for reimbursement.</u>

7.27 <u>All</u> treatment carried out whenever one of the above documents 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, eg a student) should be reported using the OVT portal, which every relevant NHS body can access at https://nww.ovt.dh.nhs.uk/

7.28 The full cost of treatment should be recovered. To calculate the cost, relevant NHS bodies should use the latest Non-Contract Activity guidance at www.dh.gov.uk/paymentbyresults, supplementing these with local tariffs where the treatment is not covered by payment by results.

7.29 NB – recording and reporting this data so that the UK can claim reimbursement from the appropriate country does not mean that relevant NHS bodies do not have to invoice the appropriate CCG. If this CCG is not invoiced, then the relevant NHS body will not be paid for treating the patient. See paragraph 6.4 for more information.

7.30 Full instructions on how to submit this data can be found in the Department of Health Finance Manual which can be accessed via the internet at http://www.info.doh.gov.uk/doh/finman.nsf *>NHS Trust Detailed Guidance>Chapter 22*. For advice on how to operate the web portal/submit data contact:-

DWP Overseas Healthcare Team
Email: OHT.Overseasvisitorsteam@DWP.gsi.gov.uk
Tel: 0191 218 1999

When are EHICs and S2s issued by the UK for persons resident in other member states?

7.31 Under the EU Regulations, some people, including **UK state pensioners** and their dependents, who are resident in other EEA member states/Switzerland have EHICs issued by the UK, rather than that other member state/Switzerland, since the UK is the 'competent authority' for them. OVMs need to be aware that there will be times when visitors from the EEA/Switzerland will produce a valid EHIC issued by the UK instead of by their country of residence. Such persons are entitled, free of charge, to all medically necessary treatment during their visit here. Their EHIC information should not be entered into the portal for reimbursement.

7.32 Persons with such UK-issued EHICs will be either:

a. UK state pensioners (whose pension is in payment) or those in receipt of long term incapacity benefit/bereavement benefit/war pension or disability living allowance, living in another member state/Switzerland who, in each case, have registered an E121/S1 (open ended);

b. Those living (but not working) in another member state/Switzerland who have an underlying entitlement to sickness benefit, and who, in each case, have been issued with

an E106/S1 by the DWP Overseas Healthcare Team (valid for a maximum of two and a half years);

c. Those working in another EEA member state for a UK employer and still paying compulsory national insurance contributions to the UK, and who, in each case, have been issued with an E106/S1 by Her Majesty's Revenue & Customs (HMRC) (generally issued for no more than five years); or

d. Dependents, living in another member state, of workers in the UK who, in each case, have been issued with an E109/S1 by HMRC (issued for a limited period).

7.33 If the person fails to present a UK-issued EHIC but claims to hold an E106/E121/S1 or to be a dependent on an E109/S1, OVMs can contact the DWP Overseas Healthcare Team on 0191 218 1999 (option 4) to see if such a registered form is held on the system. If not, and none of the other exemption categories apply under the Charging Regulations, then the patient should be charged.

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

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

7.35 All remaining EEA countries/Switzerland will continue to issue the S2 to those living there who have registered E106/E109/E121/S1s.

Other European issues

7.36 It should be noted that:-

a. for the purposes of the relevant EU Regulations:-

- France includes the overseas departments of Guadeloupe, Martinique, Guyane (French Guiana) and Réunion;

- Spain includes the Balearic Islands, Canary Islands, Ceuta and Melilla;

- Portugal includes the Azores and Madeira;

b. Denmark excludes the Faroe Islands and for EU purposes excludes Greenland. However a reciprocal healthcare agreement between the EU and Greenland allows Greenland nationals visiting EEA countries to receive immediately necessary treatment under state health care;

c. Andorra, Monaco, San Marino and the Vatican City are not part of the EEA;

d. EC law is not yet operable in the Northern part of Cyprus. It only applies in Southern Cyprus. Therefore, visitors from Northern Cyprus are not covered by the EU Regulations;

e. the UK sovereign base area in Cyprus does not count as part of the UK in this context, nor as part of the EU;

f. for the purposes of health care, relations between the UK and Gibraltar are governed by a bilateral healthcare agreement (see paragraph 3.51). The EU Regulations do not apply;

g. though not covered under the EU Regulations, Bosnia & Herzegovina, Croatia, Macedonia, Montenegro and Serbia have reciprocal agreements with the UK (see paragraph 3.51). Kosovo does not have a reciprocal agreement with the UK and is not considered part of Serbia. (See paragraph 3.54);

h. A separate bilateral agreement with Iceland outside the EU regulations also covers non-EEA nationals resident in Iceland. See paragraph 3.53.

CHAPTER EIGHT: BUT WHAT ABOUT…..?
An A to Z guide to terms and less usual circumstances

Abortion - see Termination of pregnancy.

All medically necessary treatment – this is not only "treatment the need for which arose during the visit" (see definition of this below) but also the treatment of chronic conditions including the routine monitoring of them. It only applies to those visitors from the EEA and Switzerland who have valid European Health Insurance Cards or have Provisional Replacement Certificates for them. See paragraph 7.12.

Ambulance services - the Regulations do not apply to ambulance services. These should be provided free of charge where they are part of the patient's clinical need.

Artificial limbs - see Prosthetic services.

Asylum seekers including failed asylum seekers – see paragraphs 3.61 to 3.65. See also refugees.

Au pairs - au pairs are not employed as such and are therefore not automatically eligible for free treatment under regulation 8(2)(a). However, they may benefit from a different exemption category, such as if they are from a reciprocal healthcare agreement country or once they have resided lawfully here for 12 months. Alternatively, an au pair who is coming to the UK for a reasonable length of time and a settled purpose could be said to be ordinarily resident. The relevant NHS body will have to decide each case on its own merits and in the light of the individual's circumstances.

Baseline questions – all relevant NHS bodies should have systems in place to ask all patients beginning a new course of treatment at the hospital the two baseline questions. Where a person's answers to the two baseline questions indicate they may be chargeable, they must be referred for a second interview with a trained member of staff (ie Overseas Visitors Manager) to establish eligibility. (See paragraph 5.20 to 5.28).

Boarding School – see Children.

Calculation of length of stay - For in-patients the day of admission and the day of discharge count together as a single day. Thus, someone admitted on a Monday and discharged the following Friday should be treated as having been an in-patient for 4 days.

Children - children of overseas visitors will rarely be exempt in their own right, but only via their parents' or legal guardian's status. "Legal guardian" means someone who is acting as parent to the child, with a degree of permanence and is not just a person who is responsible for the child on a temporary basis, such as a teacher. This will be a matter of fact in each case.

Thus, where treatment is given to a child who is in the UK without his or her parents/legal guardian the child will be chargeable unless: -

- s/he is in the care of the local authority (see paragraph 3.66 for more information);

- s/he is from another EEA member state or Switzerland and has a valid EHIC or PRC for all clinically necessary treatment, or an E112/S2 for pre-planned treatment, (see Chapter 7 for more information);

- s/he is from a non-EEA bilateral healthcare agreement countries and the need for the treatment has arisen here (see regulation 10 for more information).

When the child is liable for charges this should be explained to the person in whose charge the child has been left (e.g. teacher, tour leader, host) and the bill handed to that person. Copies should be sent to the child's parents/legal guardian.

A further exception is for children attending boarding school in the UK whose parents both live outside the UK. In this case the child will be classed as ordinarily resident while at school because in legal terms the school is acting *in loco parentis.*

Finally, where a child who normally lives abroad is visiting a parent who is ordinarily resident in the UK, that child can take on the status of its parent if dual access or a shared custody order has been granted.

Civil partners - Registered civil partners of the same sex have parity of treatment in a range of matters with heterosexual married couples. Unions comparable to civil partnerships authorised under the legislation of other countries must also be recognised. For a list of current countries that do so please see:
http://www.legislation.gov.uk/ukpga/2004/33/schedule/20
Therefore, civil partners must be treated in exactly the same way as spouses are in relation to the charging regime. See also Spouse/civil partner (and children).

Community services - services delivered in the community rather than at a hospital will only be subject to charge when the staff delivering the service are employed by, or on behalf of, an NHS

hospital. Where similar services are provided by staff not employed by an NHS hospital, e.g. district nurses directly employed by a GP, then the Charging Regulations do not apply and the patient cannot be charged for those community services.

Confidentiality - see paragraphs 5.39 to 5.40 and paragraphs 5.52 to 5.56

Debt – see Writing off debt.

Dentistry – dentistry not provided at a hospital or by hospital employed/directed staff does not come under the charging regulations. Information on general dentistry costs can be found at:- http://www.nhs.uk/NHSEngland/Healthcosts/Pages/Dentalcosts.aspx

Dependants – for the purpose of the Charging Regulations, dependants are limited to spouse/civil partner and children under the age of 16 or up to 19 if still at school and receiving child benefit.

Dialysis (haemodialysis or peritoneal dialysis) - temporary visitors from the EEA/Switzerland who have valid EHICs are entitled to free dialysis. They do not need an E112/S2 to obtain free dialysis treatment. This is subject to the patient making an advance booking and facilities being available at the time of treatment.

Temporary visitors from all non-EEA countries with which the UK has a reciprocal agreement should be provided with free dialysis under the terms of those reciprocal agreements, since not to do so is likely to lead to an acute exacerbation of the patient's pre-existing condition. This is subject to the patient making an advance booking and facilities being available at the time of treatment.

UK residents who enquire about the provision of dialysis whilst abroad should be directed to the NHS unit where they normally dialyse for information. For EEA countries an EHIC will cover the cost of treatment (in Spain visitors will be issued with a P10 form before their visit).

Domiciliary nursing - see Community services.

Dual residence - a person with homes in more than one country may or may not be considered ordinarily resident whilst in the UK, depending on their circumstances. If not, and they do not spend at least 6 months of the year in the UK then they do not qualify under regulation 7 either. See paragraphs 3.4 to 3.16 for more information on ordinary residence.

EEA – see Appendix 6 for the residency rights of those from the EEA/Switzerland and those of their family members. For EEA/Swiss residents visiting the UK see Chapter 7 (regulation 9).

Employment - the Charging Regulations do not define employment other than to make clear that self-employment is included, and that it must be with an employer based in the UK or at a

registered UK branch of an overseas employer. Self-employed workers must show that their principle place of business is in the UK. Generally, where there is a doubt that a person is genuinely employed it can be satisfied by asking to see documentary evidence from the employer, or in the case of a self-employed person, a letter from a reputable bank or accountant or solicitor. Part-time work will also count although relevant NHS bodies may wish to satisfy themselves that the primary reason the person is in the UK is to work. See Chapter 3, regulation 8(2)(a) and 8(2)(b).

Establishing Responsible Commissioner – *Who Pays?* guidance can be found at: http://www.england.nhs.uk/wp-content/uploads/2013/08/who-pays-aug13.pdf

Eye Care – eye care not provided at a hospital or by hospital employed/directed staff does not come under the charging regulations. Information on general eye care costs can be found at:- http://www.nhs.uk/NHSEngland/Healthcosts/Pages/Eyecarecosts.aspx

Family planning services – services that supply contraceptive products and devices to prevent establishment of pregnancy. Termination of an established pregnancy is not a method of contraception or family planning. See Termination of pregnancy.

General practitioners - the hospital charging Regulations do not apply to general practitioners. GPs are able to offer treatment to overseas visitors on a private basis but can also accept anyone as an NHS patient. Such patients may receive an NHS registration card and number. This does **not** automatically entitle them to treatment without charge at a hospital, nor does the fact that they may have been referred to hospital by a GP. The relevant NHS body remains responsible for checking that all patients – including those with NHS cards or numbers – are ordinarily resident in the UK or exempt from charges before treating them without charge. See paragraphs 5.11 to 5.13.

HC2 Certificates – these exempt the holder from certain statutory NHS charges but it is important to note that being in possession of an HC2 certificate does not exempt a patient from charges for hospital treatment. A patient should be assessed in accordance with the Charging Regulations and if found to be liable charges will apply.

Health visitors - see Community services.

HIV/AIDS – prior to 1 October 2012, only the diagnostic HIV test and associated counselling was free to all overseas visitors but subsequently HIV treatment itself is also a free of charge service.

Hospital at Home - see Community services.

Immediately necessary treatment – See Chapter 4.

Interpreters – see paragraph 5.5.

Irregular migrants - relevant NHS bodies may occasionally discover when establishing residence that a patient is in the UK without proper permission. This may be because they have entered the country on a visitor's visa that has since expired or they may have entered the country clandestinely. In these cases charges are likely to apply depending on the circumstances. See also confidentiality.

IVF treatment – it is not the OVM's job to decide if a person is an eligible candidate for a course of NHS funded in vitro fertilisation (IVF) treatment, only if the patient is entitled to free NHS hospital treatment generally. However, if the patient is chargeable for pre-planned NHS hospital treatment then they will not be able to receive IVF treatment at an NHS hospital free of charge. More information on IVF can be found on the Human Fertilisation and Embryology Authority's (HFEA) website - http://www.hfea.gov.uk/

Maternity services - maternity services are not exempt from charges. However, because of the severe health risks associated with conditions such as eclampsia and pre-eclampsia, maternity services, even in early pregnancy, should always be considered to be immediately necessary and must not be withheld if the woman is unable to pay in advance. No woman must ever be denied, or have delayed, maternity services due to charging issues, although she should be informed if charges apply to her treatment. She should not be discouraged from receiving the remainder of her maternity treatment. A chargeable patient remains liable for charges and the debt should be pursued in the normal way.

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

Women from non-EEA countries with which we have reciprocal healthcare agreements are eligible to receive immediately necessary treatment in connection with their pregnancy, if an unexpected emergency arises during their visit. This applies irrespective of whether the pregnancy was first confirmed in the UK or elsewhere. However, if they come to the UK or remain in the UK to obtain routine antenatal care or deliver their baby then charges will apply, unless they are specifically referred to the UK under the agreement because of complications.

Midwifery - see Community services.

Newborns – If the mother is chargeable but the father is not, maternity care and delivery are still charged to the mother. If the father is ordinarily resident here and the baby will be living here with him, the baby can be said to be ordinarily resident in the UK after birth, in which case charges would cease for the baby after birth. The baby will not be ordinarily resident here if

neither parent is. See paragraph 6.20 for more information.

NHS card or number – having an NHS card or NHS number does not give automatic entitlement to free NHS hospital treatment. Every patient's eligibility should be checked.

NHS charged patients – overseas visitors who are liable for charges are NHS charged patients. They should not be confused with private patients. They must receive the same priority as NHS patients. Unlike private patients, NHS charged patients are liable to pay for their treatment even where an undertaking to pay has not been obtained.

No recourse to public funds – a stamp on some visitors' passports. It prevents people from accessing UK social security benefits but does not apply to NHS treatment – a person with this stamped in their passport will have to be assessed for entitlement to free NHS hospital treatment.

Non-urgent treatment – See Chapter 4.

Norwegian seafarers - a Norwegian national employed on a Norwegian registered vessel is exempt if brought to the UK for treatment on or from that vessel.

Observation wards - patients kept in observation wards attached to accident and emergency departments should not be charged unless and until they are formally admitted to hospital as an inpatient.

Offshore workers - a person working in UK territorial waters or in the UK sector of the Continental Shelf is exempt, as is an offshore worker working elsewhere on the Shelf if his employer or contractor has his principal place of business in the UK.

One year rule - there is no "one year rule" that says you have to have been in the UK for 12 months before you are entitled to free treatment. This should not be confused with the exemption for people who have been living lawfully in the UK for twelve months immediately preceding the date on which treatment is given. Someone who is ordinarily resident, or is exempt under one of the other exemptions, is entitled to free treatment even before 12 months residence - there is no "qualifying" residence period.

Optical treatment – see eye care.

Ordinarily resident – see paragraphs 3.4 to 3.16.

Organ donation – see transplants.

Overseas visitor - any person of any nationality who is not ordinarily resident in the UK.

Permanent residence - see regulation 8(2)(e) in Chapter 3 and Appendix 6.

Prescription charges – information on statutory prescription charges can be found here:- http://www.nhs.uk/NHSEngland/Healthcosts/Pages/Prescriptioncosts.aspx

Prosthetic services – charges will apply for prosthetic services when the patient is neither ordinarily resident in the UK nor exempt from charge under the Charging Regulations.

Refugees - see regulation 11(a).

Relevant NHS body – this means an NHS trust, an NHS foundation trust, a Special Health Authority or a local authority in the exercise of public health functions.

Repatriation back to the UK – when a person goes to live outside of the UK the NHS ceases to have responsibility for their healthcare. If such a person is taken seriously ill, the NHS is not responsible for funding their repatriation back to the UK. However if the patient's family make their own arrangements to repatriate the patient who on arrival will be resuming their permanent residence, then they will become entitled to access full NHS treatment free of charge from the date of their arrival. In cases where relevant NHS bodies are advised in advance that a patient is arriving, they must make adequate arrangements to ensure that the patient receives the appropriate healthcare on their arrival back in the UK.

Repatriation to the overseas visitor's home country – the NHS is not responsible for the cost of repatriating patients to their home country, even if they are charge exempt for NHS hospital treatment, including when the patient is exempt under EHIC arrangements. The patient is liable for any such costs. However, where a person has received NHS treatment but has not been able to pay for that treatment and expresses a wish to return home, relevant NHS bodies can consider funding the cost of their repatriation if it outweighs the cost of providing urgent treatment to the patient and will therefore produce a cost saving. The patient must consent to return home. Relevant NHS bodies cannot force patients to accept repatriation.

Routine monitoring - will include the monitoring of conditions such as diabetes. Such provision of treatment is not covered under the existing non-EEA bilateral healthcare arrangements and charges will apply. Those visitors who have valid EHICs are entitled to free routine monitoring. For further information on arrangements for EEA countries and Switzerland see Chapter 7.

Seamen or women - a person working on a UK registered ship is exempt from charges. A person in the UK for the purpose of working on any other ship may be exempt under a different category, but if not they will be chargeable. However, liability for the charge is not with the individual seaman or woman, it is with the owner of the ship and it is the owner of the ship who should be billed. See paragraph 3.24.

Sexually Transmitted Diseases Clinics - The NHS (Venereal Diseases) Regulations 1974 and the NHS Trusts and Primary Care Trusts (Sexual Transmitted Diseases) Directions 2000 prevent the disclosure of any identifying disease other than to a medical practitioner (or to a person employed under the direction of a medical practitioner) in connection with, and for the purpose of, either the treatment of the patient and/or the prevention of the spread of the disease. This does not mean, however, that sexually transmitted diseases clinics do not have to apply the Charging Regulations or should not allow OVMs access to do their job. Whilst treatment for all sexually transmitted diseases is exempt from charge, overseas visitors being provided with treatment for such diseases will still be liable for charges for other types of treatment unless another exemption applies. The Charging Regulations place a legal obligation on all secondary care providers to establish whether a person is entitled to NHS hospital treatment free of charge and, if not, apply a charge.

Six month rule - there is no six month rule that says you have to have been in the UK for 6 months before you are entitled to free treatment. As a guideline only, the Department of Health has suggested that when determining whether someone is ordinarily resident, they may be less likely to meet the "settled" element of the criteria if they are going to be here for less than 6 months. However, a person intending to stay for less than six months should not automatically be deemed an overseas visitor for the purposes of the Charging Regulations – it will depend on their overall circumstances and every case must be determined on its own merits. See ordinary residence.

Sponsors - some people are allowed into the UK only because another person or authority has agreed to sponsor their stay here and guaranteed that they will not become a drain on public funds. However, the sponsor is not liable for the cost of that person's hospital treatment, if the person is chargeable.

Spouse/civil partner (and children) - where a person is exempt from charges for NHS hospital treatment then, usually, so is their spouse/civil partner (but not a co-habitee or "common law" partner) and children under the age of 16, or 19 if in full time education when the spouse/cp/child are either:

- in the UK lawfully with the exempt person for the duration of the exempt person's visit; or
- living lawfully and permanently with the exempt person if the exempt person has come to the UK on a more settled basis e.g. to work, study.

Usually the exempt person must be in the UK with their spouse/civil partner and/or children for the exemption to apply. For example if the exempt overseas visitor is exempted because of the working abroad rule, and the spouse/civil partner is visiting the UK without the exempt overseas visitor, then the spouse/civil partner will not be exempt from charges under this exemption should they need to access hospital services during their visit.

However, the spouse/civil partner/children of some overseas visitors (eg UK Forces' Members) are exempt in their own right, even when their family member is not with them in the UK. See Chapter 3 for details.

Where a person is ordinarily resident and their spouse/civil partner lives abroad, the spouse/civil partner will not be considered ordinarily resident on a visit to the UK. Unless they meet one of the exemptions from charge in their own right, they will be liable to be charged. But for children see paragraph 3.15.

Students from UK on leave here – a student on a course overseas who is in the UK during vacation may be considered ordinarily resident here, depending on their circumstances. See paragraph 3.12.

Termination of pregnancy - in considering whether to provide a termination to a chargeable overseas visitor who is unable to pay in advance, the relevant NHS body will have to consider whether her need is immediately necessary, urgent or non-urgent. See Chapter 4 for these definitions. If a person can reasonably return home before the clinician considers the treatment is needed then it is non-urgent and should not be provided until the patient has paid in full. A non-EEA/Swiss national who has come to the UK specifically to try to obtain a termination on the NHS, will, in most cases, be able to return to her home country without delay, since it is a condition of entry to have sufficient funds available to finance their stay, as well as the onward or return journey. If the patient is provided with a termination without paying in advance on the grounds that it is immediately necessary or urgent then she remains liable for charges and the debt should be pursued in the normal way.

Women from an EEA country or Switzerland who come to the UK specifically to seek terminations will be liable for charges unless they have obtained an authorised E112/S2 from their own health institutions. If they are liable for charges then they will need to be assessed under the urgency of treatment guidelines, as above. Similarly, for women from non-EEA bilateral healthcare agreement countries, they need to have been specifically referred for treatment under the terms of the agreement, otherwise charges will apply.

Termination of pregnancy is not a method of contraception or family planning so does not fall under that exemption.

Transplants – There are clear Directions in the UK on the allocation of organs from deceased donors. The NHS Blood and Transplant Directions 2005 place patients into two categories – Group 1 and Group 2. The Directions make it clear that a person in Group 2 cannot receive an organ if there is a clinically suitable person in Group 1. Group 1 includes, amongst others, persons ordinarily resident in the UK, persons entitled under European legislation or reciprocal health agreements, and certain people entitled under bilateral reciprocal health agreements.

Some overseas visitors come to the UK to donate live organs to residents of the UK. The cost of medical treatment specifically for the purposes of donating a kidney (donor assessment, donor surgery and out-patient follow-up appointments) will be covered by the NHS. Free treatment is not available to them after they have returned to their own country at the end of the 6 month period or for any treatment outside of the donor process (unless exempt).

Treatment the need for which arose during the visit - the limiting of access to treatment without charge to conditions which occur only whilst present in the UK or which in a doctor's opinion, although pre-existing, need immediate treatment to prevent deterioration. For patients from EEA and Switzerland see all medically necessary treatment.

UK Government-financed posts - see regulation 18(d).

UK Government-financed students - see regulation 8(2)(d).

Unemployed persons - there is no exemption for unemployed persons with the exception of people here under specific EEA arrangements. The person will have an EHIC.

Urgent treatment – See Chapter 4.

Volunteers coming into the UK - exemption from charges is limited to people who are in the UK as volunteers providing services which are similar to health or social services. For example serving in a hospice or children's home. If there is doubt the local authority or CCG should be asked to confirm that it would regard the work being done as proper to its functions. Consideration should also be given, however, to the possibility that the nature of the voluntary work might mean that the volunteer could be considered to be ordinarily resident. The relevant NHS body will have to decide each case on its own merits and in the light of the individual's circumstances

Volunteers from UK - people who leave the UK to spend time as a volunteer are not automatically entitled to return to the UK for free hospital treatment. Each case should be carefully considered. Only people working on a UK Government financed project (regulation 18(d)) or as missionaries for a UK-based mission (regulation 20) are automatically entitled. Others may be if they are returning to take up permanent residence or meet the ordinarily residence criteria whilst in the UK. The relevant NHS body will have to decide each case on its own merits and in the light of the individual's circumstances.

Waiving charges - no power has been given, in the Charging Regulations or otherwise, for any person, including a relevant NHS body's chief executive or Government Minister, to waive charges which are due.

Wheelchairs - Generally, if an individual is assessed as needing a wheelchair for their medical needs, then they will be provided with one, free of charge, by the NHS. Therefore, if an

individual is eligible to access free NHS hospital treatment for free, they could receive a wheelchair for free. If not, they would have to pay for it.

Currently, each CCG sets medical eligibility criteria for the provision of different types of wheelchair (eg manual/powered), based on assessment of local need and resources.

A short summary of state-funded wheelchair provision is provided here:
http://www.nhs.uk/NHSEngland/AboutNHSservices/social-care-services/Pages/nhs-wheelchair-services.aspx

Writing off Debt – see Chapter 6.

CHAPTER NINE: LIST OF APPENDICES

Relevant forms

9.1 The forms you may find useful are:

Appendix 1 – example pre-attendance form (see paragraph 5.26)

Appendix 2 – request for advice from doctor or dentist (see paragraph 4.28)

Appendix 3 – template for using the Home Office secure email service (see paragraph 5.41)

Appendix 5 – example undertaking to pay form (see paragraph 5.45 and 6.13)

9.2 Appendix 4 is a number of questions and answers you should use when obtaining a person's consent to ask the Home Office to check their immigration status.

9.3 Appendix 6 provides useful information about the permanent residence rights of certain categories of person, which is important in establishing if a person can benefit from regulation 8(2)(e) – taking up permanent residence in the UK.

9.4 Appendix 7 contains important guidance that relevant NHS bodies must follow when they are sharing information on those overseas visitors with debts to the NHS of £1,000 or more so that the Home Office can deny their immigration application to enter or remain in the UK.

9.5 A list of useful contacts can be found at Appendix 8.