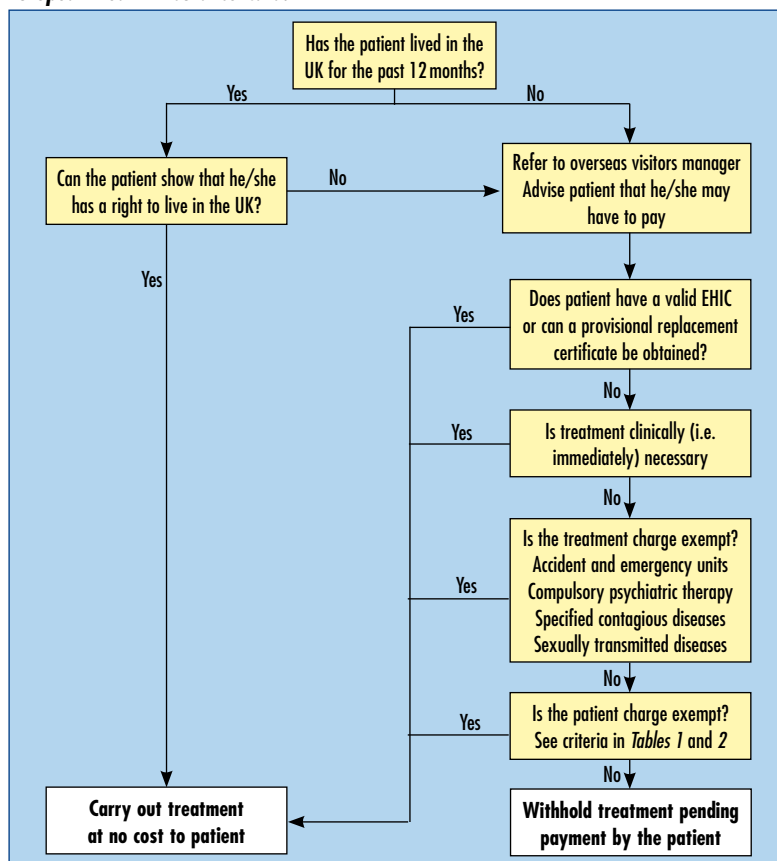


Entitlement to hospital treatment in the UK: qualifiers, challenges and comment

Entitlement to NHS care is in some cases complex. Regulations include inter-country reciprocal agreements and specific categories of individuals who qualify. This article describes the current, albeit fluid, situation with discussion around some of the more contentious areas.

The regulations governing entitlement to health-care treatment in the UK are complex and continue to evolve. In some circumstances, determining eligibility is technically difficult. Moreover, once determined application of the regulation may be impractical and in some cases ethically questionable.

Figure 1. Process map illustrating entitlement to free NHS health care in the UK. EHIC = European Health Insurance Card.



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The authors' geographical location in outer west London, only 3 miles from Heathrow, one of the busiest passenger airports in the world, exposes them to many of the issues described. In addition, there is locally an expanding first and established large second generation immigrant population. Many such persons will have increased health needs largely related to their country of origin and circumstances surrounding departure from that country. This raises many issues with regard to family members, dependents, 'visitor' status, 'health tourism', immigration and true residency status.

The volume and the cost of providing care to 'overseas visitors' is substantial; one inner London hospital accident and emergency department reported non-eligible patients, without insurance (2704 cases), accounting for 4.7% of their annual budget (Colville et al, 1996). Over the last 3 years, it is estimated that an annual average of £5 million of overseas charges have been written off by NHS trusts (UK Border Agency, 2010b). For comparative purposes, this equates to the basic salary of 150 nurses for 1 year.

This article describes the categories of patients who fulfil eligibility and highlights some of the problems encountered.

Entitlement to NHS health care

The government of the UK set out regulations for entitlement to free NHS health care in 1989 (Department of Health, 1989). In summary, hospital treatment is 'free' at the time of delivery (but paid for by UK taxpayers), to people who are ordinarily resident in the UK. A process map illustrating entitlement to free UK NHS health care is shown in *Figure 1*. A useful resource, with details on entitlements to NHS care, can be found at www.hpa.org.uk/MigrantHealthGuide. Entitlement to treatment ceases once a British citizen has been living outside the UK for a period greater than 3 months. Under new plans, about to be implemented, it is intended to extend this to 6 months.

Anyone not resident in the UK will not be entitled to treatment, unless they fulfil one of a fairly extensive list of exemption categories (*Table 1*).

It should be emphasized that, for people who live outside the UK, this may apply regardless of whether you are:

- A British citizen
- Hold a British passport

- Hold an NHS number
- Have lived, or worked, in the UK in the past
- Have in the past paid, or currently pay UK taxes or National Insurance contributions.

The only relevant factor is whether you 'ordinarily' live in the UK. As such, the concept of 'ordinarily resident' is critical. The definition in current Department of Health information is 'living lawfully in the United Kingdom voluntarily and for settled purposes as part of the regular order of their life for the time being, with an identifiable purpose for their residence here, which has a sufficient degree of continuity to be properly described as "settled"' (Department of Health, 2010a).

A legal criteria for 'ordinary residence' has been defined by the House of Lords in the case of *Shah v Barnet* [1983]. In this ruling Lord Scarman concluded that 'ordinarily resident refers to a man's abode in a particular place or country which he had adopted voluntarily for settled purpose as part of the regular order of his life for the time being, whether of short or long duration'. Regarding the degree of settled purpose: 'The purpose may be one or there may be several. It may be specific or general. All that the law requires is that the purpose of living where one does has a sufficient degree of continuity to be properly described as settled.' (Department of Health, 2009a).

People who may risk being assessed as not ordinarily resident include those on repeat or extended 'holidays' or visits to relatives abroad, and retirees living part of the year abroad, particularly those below state pension age and/or living outside the European Economic Area.

Table 1 outlines some of the categories of exemption from charging as set out in regulation 4 of the NHS (Charges to Overseas Visitors) Regulations 1989 (as amended) (Department of Health, 1989). This table is not all inclusive and reference to the full regulations and latest amendments is recommended.

Specific situations

Pensioners of the UK

UK state pensioners form an increasing group. The extent of NHS health-care coverage is (at present) not automatic once out of the UK for more than 3 months and will depend where outside the UK you live, how long you live there and, for European Economic Area member states (Table 2), whether you have 'registered' yourself as resident in that country. This 3-month period is likely to be increased under recent proposals (Department of Health, 2010b). Living in a country with bilateral health-care agreements with the UK (Table 2) will entitle and exempt you (provided you have lived in the UK for a 10-year continuous period) from charges for most conditions arising after arrival. However, routine treatment of a pre-existing condition or pre-planned surgery will be charged. Living in a non-bilateral health-care agreement country you will usually be charged once you have lived outside the UK for more than 3 months

Table 1. People entitled to full NHS hospital treatment free of charge

A person living lawfully in the UK for at least 12 months (temporary absences, currently of up to 3 months are ignored; likely to be increased to 6 months in the near future)
UK state pensioners who have lived lawfully in the UK for 10 continuous years at some point, who now live for not more than 6 months each year in another European Economic Area member state (Table 2) and not less than 6 months each year in the UK
Anyone who has come to permanently live in the UK (once application is approved)
Anyone working in the UK, for an employer based or registered in the UK
Full time students (course must be >6 months, if <6 months funded substantially by UK government)*
Anyone who receives a UK war disablement pension or war widows pension
Members of Her Majesty's UK armed forces
Anyone working abroad for not more than 5 years (as long as they have lived legally in the UK for 10 continuous years at some point)
The spouse, civil partner and dependent children† of anyone exempt under the above criteria, if they live permanently with the exempt person in the UK (visiting the exempt person for a few weeks or months does not give exemption)
Refugees and asylum seekers whose applications are being considered (not free if application is rejected). However, any course of treatment already underway at the time of the claim, or any appeals, remains free of charge until completion (Department of Health, 2009b; McLeod, 2009)
Anyone employed on a ship or vessel registered in the UK
Anyone working offshore on the UK sector of the continental shelf
Any unpaid worker with a voluntary organization (offering services similar to a social services department)
Diplomatic staff working in embassies or commonwealth high commissions in UK
UK civil servants working abroad (recruited in UK and working for HM Government)
Anyone working for the British Council or Commonwealth War Graves Commission
Anyone working abroad in a post financed in part by the UK government
Anyone working in an European Economic Area country and contributing compulsory (not voluntary) UK National Insurance contributions (class 1 or 2)
A national of an European Economic Area member state, a refugee or stateless person or dependent living in an European Economic Area member state, referred to the UK for specified treatment (forms E112 or E123)
Anyone referred by their home country authorities for specified treatment in the UK under the terms of a bilateral agreement (Table 2)
Anyone detained in prison or by the immigration authorities in the UK
Serving North Atlantic Treaty Organisation (NATO) staff, posted in the UK, not using their own armed forces hospitals
Missionaries working overseas for an organization principally based in the UK
Victims of human trafficking (formally identified as such)
Unaccompanied children‡
People returning from abroad to resume permanent residence
The spouse, civil partner and dependent children of anyone exempt under the above criteria, if they live permanently with the exempt person (visiting for a few weeks or months does not give exemption)

From Department of Health (1989). *There are over 350 000 overseas students in the UK at any time (UK Border Agency, 2010a). † Children are defined as under the age of 16 years, or 19 years if in further education. ‡ Children identified as unaccompanied (without parent or guardian) in the UK are usually taken into care and then deemed 'ordinarily resident' and are thence entitled to free treatment

(unless you satisfy another category of exemption). The most obvious example is that if you return to the UK after any length of absence, having been in any country, to take up a right to lawful permanent residence in the UK, you are again entitled to full free NHS care. As part of this process, re-registering with a GP in the UK would be the usual expectation and requirement. These rules

also apply to a spouse, civil partner and any children if living with the person in question when in the UK.

Furthermore, pensioners living abroad are not entitled to NHS prescriptions for medications required while out of the UK. Any repeat prescribing must be confined to a normal safe review period, which would not normally exceed 13 weeks (i.e. around the same duration (3 months) of the longest permitted 'holiday' (in terms of health-care provision) from the UK). Extended prescribing might also put the practitioner at medicolegal risk. Any treatments received privately outside the UK and/or repatriation costs back to the UK are also not covered.

Table 2. Countries with a reciprocal health-care agreement with the UK

Members of the European Economic Area (population 500 017 119; 7.6% of the world's population)	Austria	Non-European Economic Area countries (population 324 888 675; 4.9% of the world's population)	Turkey
	Belgium		Northern Cyprus
	Denmark (and associated dependent territories)		Albania
	Finland		Armenia
	France		Azerbaijan
	Germany		Belarus
	Greece		Bosnia
	Iceland		Croatia
	Irish Republic		Georgia
	Italy		Gibraltar
	Lichtenstein*		Serbia and Montenegro (former Yugoslavia)
	Luxembourg		Kazakhstan
	Netherlands		Kyrgyzstan
	Norway*		Macedonia
	Portugal (and associated dependent territories)		Moldovia
	Spain (and associated dependent territories)		New Zealand
	Sweden		Romania
	Bulgaria		Russia
	Cyprus (southern portion)		Tajikistan
	Czech Republic		Turkmenistan
	Estonia		Ukraine
	Hungary		Uzbekistan
	Latvia	Further territories (population 22 856 993)	Anguila
	Lithuania		Australia
	Malta		Barbados
	Poland		British Virgin Islands
	Romania		Falkland Islands
	Slovakia		Isle of Man
	Slovenia		Montserrat
	Switzerland†		St Helena
			Turks & Caicos Islands

* Countries asterixed are not members of the European Union but are in the European Economic Area. †An international treaty in 2002 granted Swiss nationals a similar right to live in the UK as European Economic Area nationals. Data correct as of January 2010.

Entitlement to emergency treatment

Any emergency treatment is provided free of charge. This predominantly means hospital accident and emergency departments, but also dental or ophthalmic emergency departments, unless and until accepted as an in-patient at the hospital. Emergency treatment might also be provided by a primary care practice (a GP) or by a walk-in service providing services similar to those offered by a hospital accident and emergency department.

Exemption from charging also includes the treatment of certain infective (communicable) diseases (*Figure 2*) and all sexually transmitted diseases. However, services provided for infection by human immunodeficiency virus (HIV) are limited to diagnostic testing and initial counselling and do not cover chronic management (i.e. the management of acquired immune deficiency syndrome). HIV-positive pregnant women will be treated to prevent mother to child transmission, as it is considered 'immediately necessary treatment', but could still be charged afterwards if they are not entitled to free care in the UK.

No charge is made for anyone detained in hospital or an institution by reason of a mental health disorder. This also applies to treatment for the improvement of a mental health condition where submission to treatment is under section 3(1) of the Mental Health Act 1983 (compulsory detention). Family planning services are also provided free of charge.

Persons entitled to some NHS hospital treatment

In other circumstances a person may be entitled to some NHS hospital treatment. These extra inclusions for some treatments are limited to treatments for any condition aris-

Figure 2. Infectious diseases exempt from charges.

Acute encephalitis, acute poliomyelitis, amoebic dysentery, anthrax, bacillary dysentery, cholera, diphtheria, food poisoning, leprosy, leptospirosis, malaria, measles, meningitis, meningococcal septicaemia, mumps, ophthalmia neonatorum, paratyphoid fever, plague, rabies, relapsing fever, rubella, salmonella infections, severe acute respiratory syndrome (SARS), scarlet fever, smallpox, staphylococcal infections, tetanus, tuberculosis, typhoid fever, typhus, viral haemorrhagic fevers, viral hepatitis, whooping cough and yellow fever.
Pandemic flu was added in June 2009.

ing after arrival in the UK (although this does include pre-existing conditions which acutely exacerbate while in the UK). This includes routine maternity care, unless the purpose of the trip to the UK was to deliver the baby (Borman, 2004). Likewise, it does not include cover for any medical treatment if that is the main purpose of the visit to the UK.

Additional special arrangements

One of the most recent special arrangements, in 2009, concerned the resettlement of British citizens coming to the UK following planned resettlement from Zimbabwe. Owing to a 'deteriorating humanitarian situation' in Zimbabwe, the UK government has agreed to offer support to older British people (and younger adults with health and social care support needs). Such individuals will be classed as taking up permanent residence and as such will be exempt from charges. Overseas officers should ask to see evidence of a 'sign up' to this resettlement scheme.

Overseas visitors

For overseas visitors (defined as a person not normally resident in the UK) there is no charge for treatment provided for a need that arose during a visit to the UK when the overseas visitor satisfies any criteria in *Tables 1* and *3*.

Patients must be given clear information about any charges, which might include the use of information in a foreign language or via an interpreter. Failure to do so might be classed as discrimination. The Department of Health 1989 guidelines were further amended in 2004 and 2007 to extend restrictions to include refused asylum seekers (Department of Health, 2004, 2007; McLeod, 2009).

This amendment, along with the restrictions on patients with established HIV disease, has attracted the largest criticism of government policy in the medical literature (Pollard and Savulescu, 2004). Several have argued that these amendments, that deny care, are in breach of international law (Hall, 2006; Yates et al, 2007). Guidance on the ethical and legal issues are beyond the scope of this article and the reader is referred to several sources on this subject (Hamill et al, 2004; Hall, 2006).

Enactment of these regulations in everyday hospital care

The law states that the hospital providing treatment must itself decide if each patient is entitled to free NHS hospital treatment. This places the responsibility on individual NHS trusts. Clinicians frequently find themselves in the invidious situation of enquiring into the lives of their patients at the same time as trying to treat them. Clinicians are unlikely to withhold treatment when it is urgent (even if not immediately necessary). A full description of treatments deemed to be 'immediately necessary', 'urgent' to or 'non-urgent' is beyond this review, but, can be found in a draft document published in May 2010 setting out this guidance (Department of Health, 2010c). Patients are frequently invoiced for such treatment in the knowledge that a proportion of these patients will not

have the facilities to pay the charges. When this occurs and it becomes obvious that pursuing the debt is useless, the hospital has no choice but to write off the debt. Several difficult situations can arise (*Table 4*).

Table 3. Persons entitled to some treatment in the UK

Anyone living in a country with which the UK has a bilateral health-care agreement (*Table 2*)

A national of a European Economic Area 'member state' (*Table 2*) – includes family members, refugees or stateless persons resident in the territory of a member state.

A person, spouse or child of a person with not less than 10 years continuous residence, at any time, in the UK or not less than 10 years continuous service as a Crown servant and in receipt of a UK state pension or benefit

A person without sufficient resource to pay and who is a national of a country contracting to the European Convention on Social and Medical Assistance but not entitled to treatment under any bilateral agreement (currently only Turkey)

A person, spouse or child of a person with not less than 10 years continuous residence, at any time, in the UK and who is resident in a European Economic Area 'member state'

Table 4. Issues arising in applying the aforementioned regulations

Persons from European Economic Area member states – claiming they live and work in the UK but are in fact 'just visiting'

Asylum cases – and checking that their application has not been rejected (hence removing entitlement to treatment)

Students – obtaining proof of courses, their legitimacy and their duration

Pensioners – in obtaining proof that they are resident in the UK for a minimum of 6 months in each year

Persons from European Economic Area member states should carry a European Health Insurance Card* – many do not carry this

Persons who refuse to provide any personal details or provide false details (i.e. giving a temporary UK address as their place of permanent residence)†

When mis-information is given to patients – particularly at the first point of contact in an accident and emergency department when it becomes assumed that all treatment is free as it originated in accident and emergency

Difficulties in applying regulations without support from clinical staff who might object on moral grounds

Persons who assume they will not be charged if they have an NHS number or have lived in the UK at some time in the past

Persons who come to the UK for private medical treatment and stay for longer than 12 months

Treatment received in the UK that might make repatriation difficult in terms of ongoing management (i.e. heart valve replacement, renal dialysis, specific drug therapies)

'Health tourists' that might include pregnant women‡ presenting to maternity units, those needing life-saving operations and some dying from cancer or HIV

'Health tourists' that might develop serious complications (and require emergency NHS care) following a private sector procedure or treatment (i.e. plastic surgery)

Returning visitors obtaining subsequent treatment at different trusts (an existing non-eligibility or debt may not be identified)

*The European Health Insurance Card replaced the E111 form in January 2006. †The Home Office are currently consulting on a proposal to refuse requests for entry visas and permission to stay to those who have outstanding debts for previous NHS treatment (UK Border Agency, 2010b). ‡ The UK Border Agency report often encountering passengers in an advanced state of pregnancy intent on access to NHS maternity services. Over 300 such cases were identified at Gatwick Airport between 2006 and 2008, some of whom had used the NHS for previous births and had not paid their invoices (Department of Health, 2010b)

Many of the issues listed in *Table 4* arise from one of the founding principles of the NHS Act 1946, to 'provide health services free at the point of need'. Recuperation of expenses after the point of need provides many challenges.

Patients may have received treatment beyond that deemed 'emergency treatment' before it is realized that they should be charged. In many circumstances patients may not have the resources to meet the costs presented to them or, on discharge, may become untraceable by the hospital. In 2009 a single west London hospital, close to Heathrow airport, identified 278 chargeable overseas patients. The outstanding unpaid invoices for overseas visitors to this hospital amounted to £1 303 000 over the last 6 years. One might also assume that a number of unentitled visitors either conceal their status or are simply not identified. A government report released under Freedom of Information rules in 2007, based on a sample of 12 NHS trusts, estimated an amount of £30 million in unrecovered fees in 2004 (Furlong, 2008).

This article has largely concentrated on hospital care but treatment in primary care may cause later issues in secondary care. The relevant point is that acceptance onto a primary care list does not automatically entitle a patient to other NHS services. This can create issues for the patient if, when referred on to secondary care, he/she is then invoiced.

Conclusions

The regulations are complex and have many provisos and exceptions. Understanding, applying and enforcing them in the NHS, one of the largest organizations in the world, poses considerable issues and challenges. The UK health-care system has many visitors via both legitimate and illegal routes. It is bound within a growing European community, has historical ties with Commonwealth countries and expanding reciprocal arrangements with others. Agreements that entitle individuals to all or some health care in the UK extend to approximately 12.5% of the world's population, although most of these people will have access to health services in their home country. While this arrangement is a governmental decision, the consequences fall ultimately on a health-care system already struggling to provide care for UK citizens.

The Department of Health has been working on updating the guidance over the last 2 years and a consultation

document has been released for comment (Department of Health, 2010b), although there is still no further information about the possible release of new guidance. **BJHM**

Conflict of interest: none.

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KEY POINTS

- The regulations regarding eligibility for NHS treatment are complex and in some case open to 'interpretation'.
- The UK has many reciprocal health-care agreements with European Economic Area countries, countries forming the original Soviet Union and selected Commonwealth countries.
- Enactment of these regulations requires dedicated resources and determination, along with tact and understanding.
- The current reciprocal agreements and regulations expose the NHS to a vast number of potential patients, at a time when many would argue that we are already struggling to manage the workload.