

LEGAL & POLICY BRIEFING

Access to Healthcare for Migrants in Wales

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Introduction

This briefing provides a general overview of migrants' entitlement to NHS healthcare services in Wales. A broad range of migrant groups are considered here, including mobile EU citizens, asylum seekers, refugees and third country nationals, including those with irregular immigration status. Information on access to both primary and secondary healthcare services is provided in this briefing. Links to more detailed information, including the texts of relevant primary legislation, are provided at the end of this briefing in the section 'Further resources.' The Welsh Government is in the process of updating its guidance on charging overseas visitors, which will provide guidance to Local Health Boards (LHBs) and further details on the charging regulations. Please check updates to this briefing for a link to the updated guidance.

Health is a devolved area of law and policy, therefore most of the laws and policies in this briefing apply specifically to Wales. This briefing does not constitute legal advice and does not have statutory status.

How this briefing is structured

This briefing begins by considering how the NHS in Wales is structured, followed by a consideration of migrants' entitlements to primary healthcare provided by the NHS in Wales. The substantive part of this briefing addresses the entitlements of migrants to secondary healthcare provided by the NHS, the charging regulations and the Immigration Health Surcharge. The briefing closes by providing links to further resources.

The NHS in Wales

The Welsh Government develops and implements health policy in Wales. In some circumstances, the entitlements of migrants or restrictions pertaining to migrants in relation to healthcare in Wales may derive from immigration law and policy, which is non-devolved, or from EU law.

Since 2009, the NHS in Wales has comprised seven Local Health Boards (LHBs), replacing a former structure that comprised 22 LHBs and seven NHS Trusts. LHBs plan and deliver healthcare services in their area, help deal with complaints, monitor the quality of NHS services, provide information about access to NHS services and influence policy and practice. LHBs are responsible for determining whether patients are ordinarily resident in the UK and subject to the charging regulations, and for implementing the charging regulations.

The seven Local Health Boards are:

- [Aneurin Bevan University Health Board;](#)
- [Abertawe Bro Morgannwg University Health Board;](#)
- [Cardiff & Vale University Health Board;](#)
- [Hywel Dda University Health Board;](#)
- [Cwm Taf University Health Board;](#)
- [Betsi Cadwaladr University Health Board;](#) and
- [Powys Teaching Health Board.](#)

Three NHS Trusts are now operational on an all-Wales basis, including the [Welsh Ambulance Services NHS Trust](#) (running emergency services) and the [Velindre NHS Trust](#), which offers specialist cancer services. The third NHS Trust is [Public Health Wales](#), a body that has a range of functions, including public health and healthcare improvement, providing information, commissioning and undertaking research, delivering training, and monitoring and evaluating services.

Primary care

Primary care services provided by the NHS include services provided in the community (and not in hospitals), such as General Practitioner (GP) surgeries, pharmacies and opticians.

GP services

GPs have the discretion to register any patient resident in their catchment area, however a prospective patient can only be refused registration if they are resident outside the GP's catchment area, if their list is closed, or if there are other reasonable grounds, with the exception that they cannot discriminate on the basis of protected characteristics under the Equality Act 2010: race, disability, gender reassignment, pregnancy and maternity, age, religion or belief, sex or sexual orientation.¹ A refusal to register a patient should be given in writing, stating the reason for refusal. There is no law that prevents GPs from treating any patient and there are no immigration restrictions on access to primary care services such as those provided by GPs. Prospective patients should not be required to prove their immigration status in order to register.^{2,3}

People residing in Wales for a period of between 24 hours and 3 months can register with a GP practice as a temporary resident and GPs are required to provide emergency treatment at their practices even if a person is not registered with that practice.

NHS Wales provide answers to FAQs on access to GPs on their webpage: www.nhsdirect.wales.nhs.uk/localservices/gpfaq/.

Similarly, dentists providing NHS treatment retain discretion to register any patient resident in their catchment area, and as with GPs, must have reasonable grounds to refuse to register a patient that does not discriminate on the grounds protected under the Equality Act 2010, listed above.

Prescriptions and help with health costs

Prescriptions are free for those registered with a GP in Wales and who get their prescription from a pharmacy in Wales. Information on the [Welsh Government webpages](#) provides further details on access to free prescriptions.

Help towards payment for other health services, including dental or optometry services, may be available in Wales to people on a low income.⁴ An HC1 form can be completed by those on a low income to obtain an HC2 certificate that can be used as evidence of a person's entitlement to such help. People in receipt of certain welfare benefits, including income-based Jobseeker's Allowance and income-related Employment and Support Allowance do not need to complete an HC1 form in order to obtain an HC2 certificate, and asylum seekers receiving Section 95 Immigration and Asylum Act 1999 accommodation and/or financial support should be provided with an HC2 certificate by the Home Office.⁵

Secondary care

Secondary care services provided by the NHS include treatment provided in hospitals or facilities requiring referral from a GP. Secondary NHS treatment is free of charge for people who are 'ordinarily resident' in the UK (more below). Certain secondary treatments are free of charge to everyone in the UK irrespective of their residence or immigration status, such as treatment provided in Accident and Emergency (A&E) departments, family planning

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1. Further information about discrimination when registering with a GP is available at: <https://www.citizensadvice.org.uk/healthcare/discrimination-in-health-and-care-services/health-and-care-services-common-situations/discrimination-when-registering-with-a-gp/>.
 2. The Department of Health in England is currently consulting on potential amendments to the charging regulations that would affect migrants' access to primary health care: <https://www.gov.uk/government/consultations/overseas-visitors-and-migrants-extending-charges-for-nhs-services>.
 3. Additionally NHS England published in November 2015 guidance on access to GP's services which is an illustrative interpretation of the relevant laws and regulations, available at: <https://www.england.nhs.uk/commissioning/wp-content/uploads/sites/12/2015/11/pat-reg-sop-pmc-gp.pdf>.
 4. To be eligible for the low income scheme in Wales individuals must not have savings or investments above the capital limit of £24,000 for those permanently in a care home and £16,000 for everyone else.
 5. Further information about the Low Income Scheme and information about how to access HC1 forms in Wales are available at: <http://www.nhsbsa.nhs.uk/HealthCosts/1128.aspx>.

services, treatment under the Mental Health Act 1983 and treatment for some communicable diseases. Treatment for HIV along with testing and diagnosis is also free of charge in Wales, irrespective of a person's residence or immigration status.

Charging regulations

The NHS may charge patients for secondary healthcare treatment if they are not deemed to be 'ordinarily resident' in the UK. People who are not 'ordinarily resident' in the UK are termed 'overseas visitors' for the purposes of charging and will be liable to pay for NHS treatment unless they are exempt from paying NHS charges, including when they have paid the Immigration Health Surcharge as part of their immigration application (more below). In Wales, powers to charge for NHS treatment are given under Section 124 National Health Service (Wales) Act 2006, subject to Regulations enacted by the Welsh Government. There is a statutory requirement on Local Health Boards (LHBs) in Wales to establish whether a person requiring secondary health care is ordinarily resident and whether they are liable to be charged for treatment.

Ordinary residence was until recently not defined in primary legislation and its meaning was generally recognised as deriving from the case of *Shah v LB Barnet [1983] 2 AC 309* where it is defined as "when that residence is lawful, adopted, voluntary and for settled purposes as part of the regular order of their life." Section 39 Immigration Act 2014, however, defines ordinary residence for the first time in primary legislation for the purpose of NHS charging. Those who are considered not to be ordinarily resident are "persons who require leave to enter or remain in the United Kingdom but do not have it; and persons who have leave to enter or remain in the United Kingdom for a limited period." In order to be ordinarily resident therefore, people must have Indefinite Leave to Remain in the UK. Those who have Limited Leave to Remain (including people on visas) will not be considered ordinarily resident for the purposes of NHS charging.

In Wales, the key legislation outlining the groups liable to charging and those exempt from charging are given in the National Health Service (Charges to Overseas Visitors) (Amendment) Regulations 1989⁶ and its many subsequent amendments, including, in Wales, the National Health Services (Charges to Overseas Visitors) (Amendment) (Wales) Regulations 2004.

Whilst the assessment of whether a patient is liable for charging must be done on a case-by-case basis, broadly speaking there are certain groups of people who are unlikely to be entitled to free secondary health care treatment from the NHS in Wales, including visa overstayers and illegal entrants. It is important to note that in Wales, unlike in England, refused asylum seekers are exempt from secondary health care charging.

Those who are not ordinarily resident would need to prove that they fall into an exempt category (see Figure 1 below) such that the charging regulations would not apply to them. Those who cannot prove the above, it recommends, may be questioned in more depth in an interview with an Overseas Visitor Manager from the Local Health Board, to establish whether the patient should be charged for their treatment.

Exemptions from charging regulations

A number of categories of people are exempt from charging under the governing Regulations. These are listed in Figure 1 below. In some cases, the ordinary residence of a person listed under the regulations may be extended to their family members, meaning that these family members too would be exempt. Family members include spouses/civil partners and dependent children under the age of 16 (or under the age of 19 if in full-time education). Some exemptions extend to family members only when they are in the UK with the exempt person for the duration of their visit, and not if they are in the UK independently of that person (applying to exemptions 4–24 listed in Figure 1). Where the exemption of a person listed under the Regulations is not extendable to family members, these family members must

6. The Welsh Government are currently in the process of updating these regulations.

be lawfully present in the UK and be ordinarily resident in their own right or exempt from charging in their own right. Other exemptions extend to family members irrespective of whether they are with the exempt person in the UK during their visit (applying to exemptions 25 to 29 in Figure 1). Only dependent children up to 3 months old of those who have paid the Immigration Health Charge are exempt from the charging regulations. The Immigration Health Charge must be paid for those above the age of 3 months in their own right order to be exempt from charging.

Evidence to support a person’s claim for exemption from the charging regulations will be specific to their particular circumstances and may include a passport, visa, utility bill, Biometric Residence Card etc.

Figure 1 – Exemptions from NHS charging listed under Part 4 National Health Service (Charges to Overseas Visitors) (Amendment) Regulations 1989 and its subsequent amendments (under devolved Welsh legislation)

	Detail of exemption
1	People with leave to enter or remain and have paid the Immigration Health Surcharge (IHS) or are exempt from paying the IHS or where charge has been waived/refunded
2	People who made applications for leave to enter or remain before the introduction of the Immigration Health Surcharge on 6 April 2015
3	Children looked after by local authorities under Section 22 (1) Children Act 1989 ⁷
4	People with rights under EU regulations or agreements
5	People who would be entitled to services as a pensioner under the EU Social Security Coordination Regulations
6	People who make UK National Insurance contributions but work in another EEA country or Switzerland
7	People who have been referred to the NHS in the UK for specific treatment from another EEA country or Switzerland
8	People whose treatment is covered because they are a national of a country with a bilateral healthcare agreement with the UK
9	People who are granted refugee status or humanitarian protection
10	Asylum seekers awaiting a determination of their asylum claim
11	Refused asylum seekers
12	People, whose situation, on exceptional humanitarian grounds, warrants exemption, to be decided on a case-by-case basis by the Welsh Government or the UK government
13	People detained under the Mental Health Act 1983 or detained under deprivation of liberty under Mental Capacity Act 1985
14	Immigration detainees and prisoners
15	War pensioners and armed forces compensation scheme payment recipients
16	People employed on board a ship registered in the United Kingdom
17	Diplomatic staff working at embassies or Commonwealth High Commissions in the UK
18	People in receipt of UK state pension who reside both in the UK and in another EEA country but live for at last 6 months a year in the UK and are not a registered resident in the other EEA country
19	People who have been living lawfully in the UK for 12 months immediately before requiring treatment
20	Anyone working abroad for not more than 5 years as long as they have lived legally in the UK for 10 continuous years
21	A person employed by an employer which has its principal place of business in the UK or is registered in the UK as a branch of an overseas company, or a self-employed person whose principal place of business is in the UK
22	An unpaid worker with a voluntary organisation who provide similar services to health authorities or local authority social services department
23	Students pursuing a full-time course of study that is at least 6 months long or less than 6 months and is funded substantially by the UK government
24	Treatment where the need arose during a visit to the UK ⁸

7. No reference is made in the regulations to parallel duties under the Social Services and Well-being (Wales) Act 2014 from April 2016 (when this part of the Children Act 1989 in Wales is repealed).
8. A number of category of people are covered by this exemption, including nationals and refugees (and their family members) resident in EEA countries and Switzerland; UK pensioners living outside the EEA but have lived for 10 years continuously in the UK or worked for the same time period for the UK government; people from countries with whom the UK has a bilateral healthcare agreement; Turkish nationals without funds; and people who live in the EEA or Switzerland who have lived lawfully in the UK for 10 continuous years.

25	Permanent residents (including those granted Indefinite Leave to Remain)
26	UK Civil Servants working abroad who were recruited in the UK or those working abroad where the post is financed, at least in part, by the UK government
27	Members of the armed forces and crown servants
28	Members of NATO forces
29	Victims of human trafficking

Immediately necessary and urgent treatment

Treatment cannot, however, be refused by hospitals or specialist secondary NHS facilities where a person is classified as an overseas visitor and has not paid for the treatment upfront if that treatment is assessed by a clinician to be 'immediately necessary or urgent'. This includes treatment that is necessary to save someone's life, to prevent a condition from becoming immediately life threatening or to prevent permanent or serious damage from occurring. 'Urgent treatment' is where it cannot be reasonably expected that treatment can be delayed until the patient can return to their country of origin.⁹ Failure to provide immediately necessary or urgent treatment could breach a person's rights under the Human Rights Act 1998. Patients who are overseas visitors and not exempt from NHS charging may subsequently be required to pay for any treatment received.

All maternity treatment, including antenatal care, birth and post-natal care, is considered to be immediately necessary.

Non-urgent treatment, that is, treatment that a clinician assesses can wait until a patient returns to their country of origin, can be refused if it is not paid for upfront or if a patient is not ordinarily resident or exempt from charging.

Payment of healthcare costs

Guidance from the Welsh Government recommends that Trusts (now Local Health Boards) appoint Overseas Visitors Managers to oversee the process of assessing eligibility and administering charging.

LHBs can refer to the National Tariff Payment System for the estimated costs of various NHS treatments. LHBs may elect to obtain full payment in advance of providing treatment.

Those repaying NHS costs may be able to set up a repayment plan with their LHB. Citizens Advice Bureau may be able to advise patients on their repayment options. LHBs have the power to write off a person's NHS debts, for example, where a person does not have funds.

Under the immigration rules, the Home Office have a discretionary power to refuse applications for leave to remain if a person has £1,000 or more in debt to the NHS.

Mobile EU citizens

Mobile EU citizens¹⁰ that are ordinarily resident in the UK or are exempt from charging under the Regulations will not be charged for secondary healthcare. Those who are not ordinarily resident or exempt from charging under the Regulations should hold a European Health Insurance Card (EHIC) or a Provisional Replacement Document (PRC) in order to access medically necessary treatment that arises during their visit, free of charge. These entitlements,

9. Guidance from NHS England recommends that for migrants with irregular status, clinicians may wish to estimate that they will remain in the UK for an initial six months and on this basis, decide whether the treatment can wait for six months or not, bearing in mind the definition of immediately necessary or urgent treatment. However, they can also consider that their stay in the UK may be longer than six months.

10. Mobile EU citizen is a term we use for nationals of European Economic Area (EEA) countries, which comprise the 28 EU Member States (Austria, Belgium, Bulgaria, Croatia, Republic of Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the UK) and Iceland, Norway, Liechtenstein and Switzerland.

deriving from EU Social Security Regulations (EC) 883/2004 and 987/2009, cover nationals of European Economic Area (EEA) countries (see footnote 6 for a list of EEA countries) and people with refugee status in an EEA country and their family members; and nationals of non-EEA countries that are legally resident in an EEA country and are insured there (with the exception of Denmark). Irish nationals or those resident there need only show proof of residence in Ireland in order to be entitled to free secondary healthcare in Wales.

The NHS in Wales can recuperate the costs of providing secondary treatment to nationals of EEA countries that are visiting the UK. LHBs are required to submit a spread sheet to the Welsh Government providing certain details, such as the cost of treatment and the patient's country of origin. Further, LHBs can submit details of such EEA patients through the Department of Work and Pensions portal to receive a 25% reimbursement on the cost of providing treatment.

Bilateral healthcare agreements

Some countries outside of the European Economic Area have bilateral healthcare agreements with the UK. They are: Anguilla, Australia, Barbados, Bosnia and Herzegovina, British Virgin Islands, Falkland Islands, Gibraltar, Isle of Man, Jersey, Kosovo, Macedonia, Montenegro, Montserrat, New Zealand, Serbia, St Helena and Turks and Caicos Islands.

Nationals, citizens or lawful residents of those countries may be able to access a certain level of free secondary NHS treatment, depending on the nature of their particular agreement. The agreements generally cover free treatment for emergency care for conditions that arise during a person's visit to the UK and do not cover those who travel to the UK specifically to receive treatment. In some cases, however the available free treatment is more comprehensive.¹¹

Similarly to the system for nationals of EEA countries, the NHS in Wales can recuperate the costs of providing secondary treatment to those with entitlements under bilateral healthcare agreements. In order to do this, LHBs are required to submit a spreadsheet to the Welsh Government providing certain details, such as the cost of treatment and the patient's country of origin.

Immigration Health Surcharge

The Immigration Health Surcharge (IHS) applies to certain migrants applying to enter or remain in the UK, requiring them to pay an additional fee (on top of their immigration application) to cover potential costs incurred through use of NHS services. These powers are enacted in the Immigration (Health Charge) Order 2015, which was introduced in 2015 and applies across the UK, including in Wales. The following website guides potential applicants through a series of questions so that they can determine whether they are required to pay the surcharge. Applicants can also pay the surcharge and obtain an IHS reference number using the site: www.immigration-health-surcharge.service.gov.uk/payment/start

The Immigration Health Charge amounts to £200 for each period of residence in the UK of 12 months, or £150 for 12 months for students. It must also be paid for all dependents included in immigration applications, however, children up to the age of three months are exempt if their parent has paid (thereafter, they are assessed for exemption in their own right). For example, an application for Limited Leave to Remain lasting 30 months will incur an Immigration Health Charge of £2,500, payable on top of the immigration application itself. The Home Office retains discretion to reduce, waive or refund the IHS on a case-by-case and exceptional basis.

11. Further information about bilateral healthcare agreements is provided in Chapter 7 of Welsh Government [guidance](#) on NHS charging. A table outlining entitlements under bilateral health agreements by country, detailing who can access healthcare (according to their residency status in that country) and the level of NHS healthcare, is provided on [pages 82-84 of Department of Health \(England\) guidance](#).

Those submitting applications to enter or remain in the UK must obtain an Immigration Health Surcharge Reference Number before they submit their immigration application, even if they are not required to pay the charge. Some people do not have to obtain an IHS reference number (more information below) however some people who are exempt from paying the IHS still need to obtain an IHS reference number before submitting their immigration application.

Exemptions from Immigration Health Surcharge

Schedule 2 of the Immigration (Health Charge) Order 2015 lists certain groups of people that are exempt from paying the Immigration Health Surcharge. Immigration applications that require applicants to obtain an IHS reference number but do not have one, will not be processed by the Home Office. There are two groups amongst those that are exempt: firstly, people who must obtain an IHS reference number but do not need to pay the IHS; and secondly, those who neither need to obtain an IHS reference number nor pay the IHS.

Groups who are exempt from paying IHS but must still obtain an IHS reference number are:

- Tier 2 Intra-Company Transfer visa holders and their dependants
- Those making applications for leave to remain as a child being looked after by a Welsh local authority under Section 74 (1) of the Social Services and Well-being (Wales) Act 2014, or equivalent legislation in England, Northern Ireland and Scotland
- Dependants of members of HM Forces
- Dependants of members of a force exempt from immigration control
- Nationals of Australia and New Zealand

Groups who are exempt from paying IHS and do not need to obtain an IHS reference number are:

- Those applying for entry clearance for six months or less
- Visitors applying for entry clearance
- Those making asylum applications, applications under Article 3 ECHR or applications for humanitarian protection, and their dependants
- Those making applications as victims of trafficking and their dependants
- Those eligible for the Destitution Domestic Violence Concession and their dependants
- Those making applications on the basis of EU rights
- Those making applications as a British Overseas Territory Citizens resident in the Falkland Islands
- Those applying for Indefinite Leave to Remain (ILR)
- Those whose application for an immigration application fee waiver is successful (if the fee waiver application is refused, the IHS can subsequently be paid)

Further resources

NHS Direct Wales – www.nhsdirect.wales.nhs.uk

Public Health Wales – www.wales.nhs.uk/sitesplus/888/home

Welsh Government Health and Social Care Webpages – <http://gov.wales/topics/health/?lang=en>

NHS Wales and Welsh Assembly Government (2009) Implementing the Overseas Visitors Hospital Charging Regulations <http://gov.wales/docs/dhss/publications/110721overseasen.pdf>

Crawley, H (2014) Migration and Health in Wales www.wmp.org.uk/documents/wsmpp/WSMP%20Info/Migration%20and%20Health%20in%20Wales%20English%20Final.pdf

Key Legislation

National Health Service (Charges to Overseas Visitors) (Amendment) Regulations 1989 – www.legislation.gov.uk/uksi/1989/306/contents/made

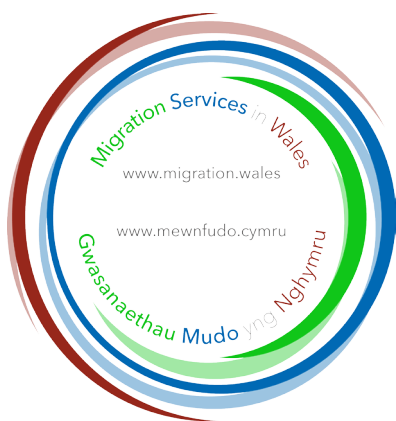
The National Health Service (Charges to Overseas Visitors) (Amendment) (Wales) Regulations 2004 – <http://legislation.data.gov.uk/wsi/2004/1433/made/data.html>

National Health Service (Wales) Act 2006
www.legislation.gov.uk/ukpga/2006/42/contents

Immigration (Health Charge) Order 2015 – www.legislation.gov.uk/uksi/2015/792/contents/made

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Migration Services in Wales

Funded by Welsh Government, Migration Services in Wales is a project led by the Welsh Refugee Council in partnership with COMPAS that aims to increase understanding of migration policy and practice in Wales, and to support and facilitate the development of a 'strategic approach' to migration in Wales, one that will ensure relevant stakeholders are able to access detailed and up-to-date information.



The Migration Observatory

Based at the Centre on Migration, Policy and Society (COMPAS) at the University of Oxford, the Migration Observatory provides independent, authoritative, evidence-based analysis of data on migration and migrants in the UK, to inform media, public and policy debates, and to generate high quality research on international migration and public policy issues. The Observatory's analysis involves experts from a wide range of disciplines and departments at the University of Oxford.



COMPAS

The Migration Observatory is based at the ESRC Centre on Migration, Policy and Society (COMPAS) at the University of Oxford. The mission of COMPAS is to conduct high quality research in order to develop theory and knowledge, inform policy-making and public debate, and engage users of research within the field of migration.

www.compas.ox.ac.uk



Welsh Refugee Council

The Welsh Refugee Council has over 25 years' experience working with refugees and asylum seekers in Wales. It aims to ensure that Wales is a place of welcome through the delivery of specialist services in Cardiff, Wrexham, Newport and Swansea and by influencing policy and practice to improve the lives of migrants across Wales.

