



Department  
of Health

# Overseas chargeable patients, NHS debt and immigration rules

Guidance on administration and data sharing

April 2016

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# Introduction

1. This manual of guidance supersedes all previous guidance on administration and data sharing of NHS debt.
2. In order to allow better recovery of NHS debts, and following a public consultation in 2010, the Home Office amended the immigration rules to include an unpaid debt of £1,000 or more by a person subject to immigration control as a ground to refuse an application for a new visa or extension of stay. These rules came into force on 31 October 2011 and apply to invoices raised for treatment provided by NHS hospitals from 1 November 2011 onwards.
3. The Immigration rules have since been amended, with changes coming into force on 6th April 2016. This amendment means:
  - a) in respect of relevant NHS services provided from 1 November 2011 up to, and including 5 April 2016, relevant NHS bodies must notify the Home Office of outstanding debts of £1000 or more that have been outstanding for 3 months or more\*; and
  - b) In respect of relevant NHS services provided on, or after, 6 April 2016, relevant NHS bodies must notify the Home Office of outstanding debts of £500 or more that have been outstanding for 2 months or more\*.

\* Note: the time period starts from when the patient is formally charged, usually with an invoice, rather than from the date of treatment, which might be an earlier date.
4. Relevant NHS bodies (including NHS Trusts and NHS Foundation Trusts) must support the administration of these rules to improve the recovery of debts by providing relevant information to the Home Office. Provision of this information must take full regard of data protection, information security and patient confidentiality duties. It is important that this guidance is followed closely to ensure that these duties are met and that the immigration rules are applied fairly and lawfully.

## Why should NHS bodies supply such data to the Home Office?

5. Relevant NHS bodies must provide relevant debtor information to the Home Office and thereby improve the recovery of NHS debts. The scheme is an important part of the cost recovery process for the NHS when recovering costs of treatment, as it:
  - a) encourages overseas visitors with outstanding NHS debts to pay promptly or to enter into a meaningful repayment plan; and

b) potentially prevents additional outstanding debts being incurred by an overseas visitor who wishes to return to the UK to receive further treatment without the means to pay;

## Informing the Patient

6. It is important that patients who incur a charge for NHS services are made aware that failure to pay their healthcare bills could result in a future immigration sanction under the Home Office rule if it remains unpaid.
7. Chargeable patients should therefore be made aware or reminded at the earliest point at each key stage of interaction, in particular:
  - Initial registration and screening for liability for NHS charges;
  - At the point of invoicing; and
  - Follow up requests pursuing outstanding payment by the hospital or any agency it may have contracted.

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 NHS hospital.

Registration forms should already include clear information on information sharing with the Home Office and other Government agencies. These should include reference to the immigration rules. You are advised to use the model forms and letters which are available for download from the Overseas Visitor Manager toolbox on <https://www.gov.uk/government/publications/guidance-on-overseas-visitors-hospital-charging-regulations>

8. For pre-attendance forms and invoices/undertaking to pay documents:

If you fail to pay for NHS treatment for which charges have been applied, it may result in a future immigration application to enter or remain in the UK being denied. Necessary non-clinical personal information may be passed via the Department of Health (DH) to the Home Office for this purpose.

9. For letters following up on unpaid debts. The second paragraph is important to mitigate against any delay in updating shared records:

*You should be aware that under paragraphs 320(22) and 322(12), and 3.14 of Appendix V, of the Immigration Rules a person with outstanding debts of over £500 for NHS treatment that is not paid within two months of invoicing, may be denied a further immigration application to enter or remain in the UK.*

*In the absence of prompt full settlement or a reasonable repayment schedule, non-clinical information relating to this debt is provided routinely to the Home Office and may be used by the Home Office to apply the above Immigration Rules. The information will remain active for the purpose of the above rules until the debt is settled and a record of the settled debt will also be retained, both subject to normal limitation periods.*

*In the event that you may seek entry to the UK or make an advance immigration application after settling an NHS debt in the previous **two months**, you are advised to retain and carry evidence of payment for potential examination by Home Office officials.*

10. Where an invoice is particularly large, or where the patient is genuinely willing to provide payment for services provided but cannot meet repayment in full, then trusts should agree with the patient, at the earliest opportunity, a meaningful repayment plan (see details below on what constitutes a meaningful repayment plan).

## What constitutes a meaningful Repayment Plan?

11. The repayment needs to be meaningful to allow for the debt to be repaid within a realistic timeframe. NHS bodies will therefore need to consider the individual's particular circumstances such as amount of disposable income against the amount of the debt to decide whether a repayment plan is a suitable way forward in eliminating the debt.
12. Payments of a specified amount will need to be made on a specified date, perhaps by BACs transfer or direct debit.
13. The individual should be made fully aware of the consequences if the plan is not adhered to i.e. the NHS body will notify the Home Office of the outstanding debt.

## Criteria for referring to the Home Office

14. Information relating to cases of outstanding debt owed by a person should only be shared when all of the following criteria are met:

a) For charges relating to NHS treatment from 1st November 2011 until 5th April 2016

- Single or multiple invoice debts amount to £1,000 or more; and
- The debt has been outstanding for three months or more<sup>1</sup>

b) For charges relating to NHS treatment from 6th April 2016 onwards

- Single or multiple invoice debts amount to £500 or more;
- The debt has been outstanding for two months or more<sup>1</sup>;
- Charges relate to NHS and not private treatment;
- There are no genuine outstanding challenges to, or doubt about, the legitimacy of the charge<sup>2</sup>;
- No reasonable arrangement has been made, and is being adhered to, for a schedule of payments to clear the debt. If a patient has entered into a repayment plan, and then subsequently cancels that plan, NHS bodies should submit the debt information to the Home Office as described. Further information on repayment plans is at para 11;
- The debt has not been cancelled; and
- The person is not: an EU citizen; a national of an EEA country or Switzerland; or a person from a Third Country (i.e. non-EEA) who has rights of residence because of their relationship with an EU citizen<sup>3</sup>.

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<sup>1</sup> The time period starts from when the patient is formally charged, usually with an invoice, rather than from the date of treatment, which might be an earlier date.

<sup>2</sup> Where a person seeks to challenge the legitimacy of the charge through judicial review proceedings, such a challenge must be brought promptly and in any event within 3 months of the date on which the grounds first arose. This is likely to be the date when the patient is formally charged but may be earlier or later depending on the circumstances. If it is clear that judicial review proceedings may be brought a referral to the Home Office should not be made until the challenge is resolved. If it is not possible to resolve the challenge and proceedings are not issued within three months, the debt may be referred to the Home office.

<sup>3</sup> It is unlawful to apply the immigration restriction to an EU citizen or a national of an EEA country or Switzerland as it would be counter to their rights under the Free Movement Directive. Nationals of other countries who have a right of residence because of their relationship with an EU citizen will also attract these rights (for instance if they are the EU citizen's primary carer or are economically dependent on the EU citizen).

15. Whilst it is not necessary to seek the patient's consent before sharing their personal information with the Home Office, it is best practice – if possible and appropriate – to inform them that you have done so or are going to do so and why. This may encourage the overseas visitor to pay the debt or enter into a meaningful repayment plan. There is a leaflet available in the OVM Toolbox for this purpose.
16. While most of these criteria are factual, a local decision may be required for individual cases as to:
  - Whether there is reasonable doubt over the legitimacy of charges made under the Charging Regulations on which dialogue with the patient or their authorised representative is ongoing; and
  - Whether a meaningful arrangement for scheduled payments is in place and is being maintained – see para 11.
17. NHS staff should not exercise judgement or discretion regarding other circumstances of individual cases (for example domestic or compassionate circumstances, age, connections with the UK). For these and other circumstances the immigration rules provide for discretion in applying the sanctions in exceptional circumstances, but this is a matter solely for Home Office staff at the time and point of their engagement. The NHS should therefore continue to refer information relating to such cases.

## Additional points to bear in mind

18. NHS Bodies are expected to treat individuals fairly at all times.
19. NHS bodies should consider whether there are any relevant circumstances that need to be taken into account, for example if the individual has a mental health condition. Where necessary NHS bodies might wish to use the services of professional teams.
20. NHS bodies should also read paragraphs 13.64 and 13.69 of the main guidance.

## Details of the information to be shared

21. The Home Office requires as many pieces of information as can reasonably be provided in order to verify the unique identity of the person who has incurred the debt. The DH has a standard form that NHS bodies should complete when seeking to transfer the above information to the Home Office.
22. Further information may be provided on a case specific basis that may be helpful in tracing the individual. However, personal clinical information relating to treatment provided must not be included. Care should also be taken not to provide information from which the clinical history of the patient can be deduced.
23. While not all of all required information will be available in every case, much will already be collected during patient registration or charging to support routine recovery of debts. It has been established that it is reasonable to collect any or all of the above information for the purposes of ensuring a contractual agreement to pay for services provided, as long as it is handled in accordance with data protection law and the NHS Confidentiality Code of Practice.

**It is not permissible to refuse immediately necessary or urgent treatment in the event that information is withheld.**

## How data should be shared with the Home Office

24. NHS bodies (mainly hospital trusts) with outstanding debts owed for NHS services in line with the listed referral criteria should collate the relevant information and pass it securely (in accordance with information security duties) to the Overseas Visitor team at the DH. The standard spreadsheet should be used.
25. The information should be sent in response to the DH team's request for it, which is on a monthly basis. **However, updates on any change in the debt status (including payment, or agreement to pay leading to removal of the case) should be sent immediately to the DH team and should not be held back for the following month's return, so that appropriate immigration decisions can be made.** The Trust may be liable for the consequences of any failure to inform such changes.

26. NHS bodies should take care to ensure that they complete the spreadsheet accurately. A step by step guide for NHS bodies on how to complete the monthly spreadsheet is set out within the Department of Health toolbox .
27. The DH will collate individual returns and pass them securely to the Home Office. The holding and/or transfer of all personal data must comply with the requirements of the Data Protection Act 1998.
28. Home Office systems will validate the returned spreadsheets, any errors will be returned to NHS bodies as a rejection report with the reason for rejection against each entry. These will be returned on a monthly basis outside the normal reporting.
29. Where the NHS body has contracted a commercial debt recovery company or agency to recover applicable outstanding debts on its behalf, it may instruct the agency to undertake the full process of data sharing on its behalf. However, it should be recognised that the debt company will do so as an agent of the NHS body that will itself remain responsible for the due diligence of the process. Relevant NHS bodies are reminded that debt collection agencies should not be employed in relation to persons whom it is clear to them will be unable to pay (paragraph 13.64 of main guidance).

## Use of the information by the Home Office

30. Home Office staff use the debtor information to identify individuals as they interact with immigration and border controls (which could be through online applications, at offices abroad or in the UK or at border points).
31. The Home Office is responsible for making an immigration decision. However, they may on occasion also encourage any voluntary payment of the debt between the individual and the NHS body or nominated debt agency prior to making that decision.
32. In some cases these actions by the Home Office may require contact with the NHS body or the debt agency, either to check the accuracy of disputed information (e.g. copy invoices or letters chasing payment), or

to facilitate a payment. The Home Office will not take direct payment themselves. This will therefore require appropriate contact details to be available within reasonable office hours.

33. Where the status of the debt is disputed at ports outside of reasonable office hours, port officials have discretion to agree temporary admission and require the person to report for further verification that may involve contacting the NHS body or agency.
34. The immigration rules apply on a UK-wide basis and relate to NHS debts pertaining from chargeable NHS treatment in Scotland, Wales and Northern Ireland as well as England. Equivalent data-sharing and related processes are therefore in place in all four countries.

## Roles and Responsibilities

35. The following sets out the separate responsibilities of bodies and agencies involved in the information collation & sharing and operational decision-making related to the immigration rules:

### **NHS Bodies**

- Identify cases where patient debts trigger the criteria for potential immigration sanctions;
- Pass relevant information relating to these cases (including any subsequent payment or cancellation of the debt) to the DH Overseas visitor team;
- Mandate a third-party agency that manages debt recovery on their behalf to manage the debt information handling process with the DH team;
- Ensure that the handling process, whether carried out directly or through an agency conforms to all relevant aspects of this guidance;
- Remain responsible for the maintained accuracy of information provided (whether provided directly or through their third party agency), in particular ensuring that any debt payment is accounted for;
- Provide a point of contact (directly or through their third party agency) to facilitate information checks and/or debt payment;

- For audit purposes, securely keep local records of all submitted spreadsheets. This will also help NHS bodies ascertain when a NHS debt has been submitted to the Department of Health and help with repayments of debts; and
- Provide (directly or through their third party agency) relevant case history to assist the Home Office with handling any disputed claims

### **Contracted Third party Agencies**

- Maintain accurate records of outstanding patient debts for all cases referred by their contractor NHS body;
- Pass relevant information relating to these cases securely to the DH Overseas visitor team in accordance with instruction from their contractor NHS body and this guidance; and
- Provide a point of contact to facilitate information checks and/or debt payment.

### **Department of Health**

- Collate monthly returns from NHS bodies and contracted third party agencies, and validate their completeness (but not the accuracy of individual records);
- Hold all received data in accordance with information security and assurance processes as laid down by Cabinet Office;
- Pass a full record of returns by secure means to the Home Office; and
- To keep anonymised data (as set out in Data Protection Act 1998) to allow for data analysis.

### **Home Office**

- Make decisions on the application of an immigration sanction, including any instances of discretion in exceptional individual circumstances;
- Make necessary checks with NHS bodies or their agents to verify information where its accuracy may be challenged;
- Hold all received data in accordance with information security and assurance processes as laid down by Cabinet Office;
- Publicise the rules and the implications of current or recent NHS debts for travellers to the UK; and
- To provide Management Information.