



# “Windrush Generation” guidance for NHS staff and other providers of NHS funded secondary and community care services

Published 31 October 2018

## Contents

1. What is the “Windrush generation” and what immigration status do they have?.....	3
2. Are members of the Windrush generation entitled to free NHS treatment?.....	4
3. Is a person who arrived in the UK after 1 January 1973 entitled to free NHS treatment?.....	5
4. How do I assess the eligibility to free NHS treatment of those who may benefit from ILR (deemed or otherwise) or right of abode, including those who arrived in the UK after 1 January 1973?.....	6
5. How do I assess the eligibility to free NHS treatment of those who may benefit from ILR (deemed or otherwise) or right of abode, including those who arrived in the UK after 1 January 1973?.....	8
6. What if a person from the Windrush generation has an existing debt which has been notified to the Home Office?.....	9

## Using this guidance

This guidance is particularly relevant for those whose role it is to establish eligibility to NHS funded secondary and community care treatment. It should be read in conjunction with [Guidance on implementing the overseas visitors charging regulations](#).

# 1. What is the “Windrush generation” and what immigration status do they have?

- 1.1 The “Windrush generation” refers to Commonwealth citizens who settled in the UK before 1 January 1973. They may hold various types of immigration status such as British citizenship, right of abode and indefinite leave to remain (ILR) under section 1(2) of the Immigration Act 1971. If they held ILR this may have lapsed if they have been out of the country for 2 years or more.
- 1.2 The Home Office have launched the Windrush Scheme to help members of the Windrush generation who are without documentation to confirm their immigration status, which will enable them to provide evidence of their right to access benefits and services. Although the term “Windrush generation” is frequently used to refer to people from the Commonwealth (most, though not all, from the Caribbean), the Windrush Scheme will apply to a person of any nationality who was settled in the UK before 1973. [Details of the Windrush Scheme can be found here.](#)
- 1.3 Those who arrived from Commonwealth countries or anywhere else after 1 January 1973 but before 1989 are not part of the Windrush generation. They do not automatically have the same rights to be here that the Windrush generation do, but may have obtained leave and so are here lawfully. Some people in this category may already have the necessary immigration documentation to demonstrate they are in the UK lawfully but some may be missing such documentation, although this does not mean they do not have the necessary leave to be in the UK lawfully. The Windrush Scheme is also intended to assist this group of people obtain evidence of their right to be here and to have access to benefits and services.
- 1.4 Certain Commonwealth citizens may also have a ‘right of abode’ which means they are treated as British citizens for the purposes of [immigration legislation](#) (see page 6).

## 2. Are members of the Windrush generation entitled to free NHS treatment?

- 2.1 Anyone who is “ordinarily resident” in the UK cannot be charged for NHS funded care. “Ordinarily resident” broadly means living here lawfully, voluntarily and for settled purposes as part of the regular order of life for the time being. Individuals subject to immigration control also need the immigration status of indefinite leave to remain in order to be ordinarily resident. This includes anyone who has ILR in the UK as well as British citizens, and others, who are lawfully resident here.
- 2.2 Members of the Windrush generation and anyone settled in the UK before 1973 may have deemed (as opposed to documented) ILR and therefore the right to live and to work in the UK (unless their ILR has lapsed as a result of a long absence from the UK). Therefore they may be in the UK if currently living here and thereby entitled to free NHS treatment like other people who are ordinarily resident in the UK. Anyone with a right of abode who is currently living here will also be ordinarily resident in the UK. It is important that they must not be treated differently to anyone else who is ordinarily resident - i.e. they are not chargeable for treatment and have never been chargeable as long as they were resident here at the time any treatment was provided to them.
- 2.3 If you encounter anyone who is likely to be from the Windrush generation or who claims to be, but who does not have documents that demonstrate their immigration status, you should direct them to the Taskforce which has been set up to assist people to navigate the Windrush Scheme. This Taskforce will seek to help individuals obtain the necessary documents to prove their right to be lawfully in the UK if they have deemed ILR or a right of abode. These individuals should not be charged even though they may not yet have the required documents.

Contact details for the Taskforce are:

Freephone: 0800 678 1925 (Monday to Saturday: 9am to 5pm; Sunday: 10am to 4pm)

Email: [commonwealthtaskforce@homeoffice.gsi.gov.uk](mailto:commonwealthtaskforce@homeoffice.gsi.gov.uk)

More information at [www.gov.uk/windrush](http://www.gov.uk/windrush)

- 2.4 If someone has in the past been charged for NHS care when they were ordinarily resident here at the time of treatment, they should be reimbursed.

### **3. Is a person who arrived in the UK after 1 January 1973 entitled to free NHS treatment?**

- 3.1 Individuals who entered the UK after 1 January 1973 may or may not have ILR. If they do not have it they may be chargeable. If you encounter anyone from the cohort of people arriving after 1 January 1973 and before 31 December 1988 who does not have documents that demonstrate their immigration status you should direct them to the Taskforce (see paragraph 6 above) which may be able to help with the necessary documents to prove their right to be in the UK. The Windrush Scheme only provides assistance to someone struggling to provide their ILR status if they arrived before 31 December 1988. Anyone arriving after that date who claims to have ILR will need to approach the Home Office in the normal way.
- 3.2 Immediately necessary or urgent care must never be delayed or denied for reasons associated with charging and that includes confirmation of a person’s eligibility status. When making a decision between whether treatment is urgent or non-urgent, the treating clinician should consider when the person can reasonably be expected to leave the UK. For individuals in scope of this guidance, there may be no plan to leave.

## **4. How do I assess the eligibility to free NHS treatment of those who may benefit from ILR (deemed or otherwise) or right of abode, including those who arrived in the UK after 1 January 1973?**

- 4.1 All patients must be assessed against the test for ordinary residence in the UK. Providers must avoid discriminatory measures and must not assume particular nationalities or ethnic groups are more likely to be eligible for free NHS treatment. They should therefore not practice racial or nationality profiling to identify chargeable patients or “cherry-pick” which patients to question. In order to avoid discrimination, the same approach should be taken with every patient. Therefore, both the Windrush generation and those people arriving between 1973 and 1988 should be treated the same as any other patient accessing NHS services in terms of having their eligibility established.
- 4.2 When considering a patient’s immigration status you are advised to bear in mind that not all those with a right to free treatment will have documentation to prove their status. You should handle the situation with sensitivity and exercise particular care because those who benefit from deemed leave, including members of the Windrush generation, those with a right of abode and those arriving to reside since 1 January 1973 may not have documentation that can prove their immigration status.
- 4.3 12. If you are unsure of a patient’s immigration status, and this is relevant to establishing eligibility to free NHS care, you can contact the Home Office for an immigration status check in the normal way. See Chapter 12 of [Guidance on implementing the overseas visitor charging regulations](#).
- 4.4 If the Home Office are unable to confirm the status of the individual within their databases/systems they will inform you of that. It should not be assumed the individual is in the UK unlawfully, as they may have arrived before extant records began. In instances where an individual who may require assistance from the Taskforce has been identified the requester will be asked to signpost the individual to the Taskforce for further assistance.

**“Windrush Generation” guidance for NHS staff and other providers of NHS funded secondary and community care services**

- 4.5 Immediately necessary or urgent care must never be delayed or denied, for reasons associated with charging and that includes confirmation of a person’s eligibility status. When making a decision between whether treatment is urgent or non-urgent, the treating clinician should consider when the person can reasonably be expected to leave the UK. For individuals in scope of this guidance, there may be no plan to leave.
- 4.6 Any member of the Windrush generation will never have been chargeable as long as they were resident in the UK at the time of any treatment. The Windrush Scheme also assists people who arrived before 31 December 1988 who have ILR but cannot provide evidence of it. However, those people may not have had ILR from the date of their arrival. NHS treatment provided before they obtained ILR may still be chargeable.
- 4.7 Others in this group, e.g. some children of Commonwealth citizens resident in the UK prior to 1973 but who were born outside the UK and came to the UK before they were 18, may have been granted ILR recently. A fresh grant of ILR is also possible for those Commonwealth citizens who lost their leave when they left the UK for longer than 2 years, but who subsequently returned to the UK with a more limited leave. NHS treatment provided before the granting of ILR may still be chargeable.
- 4.8 Anyone not ordinarily resident in the UK is an overseas visitor for the purposes of the National Health Service (Charges to Overseas Visitors) Regulations 2015. These Regulations place a legal obligation on providers of NHS funded secondary and community care services to make reasonable enquiries to establish whether a person is an overseas visitor to whom charges apply, or whether they are exempt from charges. When charges apply for NHS secondary and community care services provided to an overseas visitor, the provider must make and recover charges from the person liable to pay in accordance with the Charging Regulations.

## **5. How do I assess the eligibility to free NHS treatment of those who may benefit from ILR (deemed or otherwise) or right of abode, including those who arrived in the UK after 1 January 1973?**

- 5.1 If any of these patients are found to be chargeable and unable or unwilling to pay, the provider then needs to decide whether the treatment must be withheld pending advance payment. Treatment must only be withheld pending payment when it is deemed by a clinician to not be immediately necessary or urgent.
- 5.2 In the context of charging, urgent treatment is that which cannot wait until the patient can reasonably be expected to leave the UK. Non-urgent treatment is that which a clinician considers can safely wait until that time. It is not for the clinician to try to determine when, or if, a person will leave the UK but the clinician will need to cross reference to that information, usually provided by the overseas visitor team in consultation with the patient or their representatives, in order to decide level of urgency.
- 5.3 What a clinician will consider can wait for a person here on a two week holiday will often be very different to what they consider can wait for a person who is likely to be here several months or indefinitely. For example:
- a clinician might consider overseas visitor X with cancer to be in need of non-urgent treatment because the treatment can safely wait the 2-3 weeks until X returns home; but
  - a clinician might consider overseas visitor Y with the same type/stage of cancer to be in need of urgent treatment, even though it might not need to be provided within a few weeks, because of the fact Y will not leave the UK for several months or longer.

## **6. What if a person from the Windrush generation has an existing debt which has been notified to the Home Office?**

- 6.1 NHS trusts should not send to the Home Office details of a debt owed to the NHS by a person of the Windrush generation. This is because they are not subject to immigration control.
- 6.2 Where a debt is cancelled (i.e. it did not apply in the first place, e.g. in the case of someone who was ordinarily resident at the time of treatment) the Trust should inform the Home Office via the Department of Health and Social Care immediately so that the Home Office records can be updated accordingly.
- 6.3 See Overseas chargeable patients, NHS debt and immigration rules: guidance on administration and data sharing for strict procedures to follow.

**“Windrush Generation” guidance for NHS staff and other providers of NHS funded secondary and community care services**

© Crown copyright 2018

Published to GOV.UK in pdf format only.

Provider Efficiency and Performance/Visitor and Migrant Cost Recovery Programme

[www.gov.uk/dhsc](http://www.gov.uk/dhsc)

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit [nationalarchives.gov.uk/doc/open-government-licence/version/3](http://nationalarchives.gov.uk/doc/open-government-licence/version/3)

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

