Home Office
UK Border Agency

SECURING
OUR BORDER
CONTROLLING
MIGRATION

CONSULTATION: REFUSING ENTRY OR STAY TO NHS DEBTORS

RESULTS OF THE PUBLIC CONSULTATION ON PROPOSED CHANGES TO THE IMMIGRATION RULES

March 2011

CONTENTS

FOREWORD

The UK Border Agency is responsible for securing the UK border and controlling migration in the UK. The Government believes that legal migration benefits the UK; it has enriched our culture and enhanced our society, but we know that in order for the public to have confidence in the system, immigration must be effectively controlled. The Government has announced that we will introduce a cap on the number of non-EU economic migrants admitted to the UK to work and live, and will also consider the introduction of new measures to minimise abuse of the immigration system.

An ongoing objective for the UK Border Agency is to help protect the UK's publicly funded services and to prevent their misuse by those who are not entitled to free access. Currently, those subject to immigration control restrictions are barred by immigration law from claiming most forms of non-contributory state benefit. However, currently there is not an equivalent integration of health regulations with immigration laws.

With this in mind, last year the UK Border Agency, working with the Department of Health and the health ministries of the devolved administrations in Scotland, Wales and Northern Ireland, conducted a public consultation on proposals to tackle the problem of those overseas nationals who are not entitled to free NHS secondary care services defaulting on the payment of treatment charges made under the regulations in force in relevant parts of the UK. The consultation reflected the need for a tailored approach towards extending the protection of immigration law to the NHS, taking into account the varied circumstances in which chargeable overseas nationals present for treatment in the UK.

The basic proposition is that persons subject to immigration control who fail to clear outstanding NHS charges above a specified amount should be refused permission to re-enter or extend their stay in the country, and the NHS should share information about relevant non-payers with the UK Border Agency so that individuals can be identified for action when they come into contact with the immigration system. The aim is to send a strong deterrent message that the NHS is a service for people who have the right to live in this country, not an international free for all, and to encourage the recovery of money owed to UK taxpayers.

In the UK, immediately necessary or urgent medical treatment should never be denied to those that need it. The measures proposed in the consultation were designed to deal with those who seek to evade payment for treatment they know they are liable to pay for, those who repeatedly flout the NHS charging regulations (as approved by the UK and Scottish Parliaments and the Welsh and Northern Ireland Assemblies) and those who misrepresent their true reason for visiting the UK when their prime motivation is to make use of the NHS.

The UK Border Agency public consultation was carried out in tandem with a Department of Health consultation on options for streamlining, consolidating and rationalising the existing body of charging regulations which govern free access to secondary care services, and possible future options for introducing a health insurance requirement as a fairer more secure way of regulating overseas visitors' access to NHS services in England. The devolved authorities in Northern Ireland, Scotland and Wales are responsible for the charging policies within those countries, and individual

NHS institutions are responsible for raising and recovering charges under these regulations and for deciding whether to write off debts where appropriate, taking into account the circumstances of the case.

This consultation report sets out the response received to the UK Border Agency's consultation, and sets out the Government's views and the steps we now intend to take to implement the proposals. The UK Border Agency will work with the Department of Health and the devolved authorities in introducing a change to the Immigration Rules that will allow the UK Border Agency to refuse entry to, or stay in the UK to those with outstanding unpaid NHS charges.

Damian Green
Immigration Minister

ABOUT THE CONSULTATION

The UK Border Agency undertook a public consultation "Refusing entry or stay to NHS debtors" around proposed changes to the Immigration Rules and associated administrative arrangements. The consultation ran for an extended period from 26 February to 30 June 2010.

The purpose of this consultation was to obtain external input and opinions as to whether the proposed changes to the Immigration Rules are an appropriate and proportionate response to the perceived problems of misuse of NHS services and to seek views on the way in which the new arrangements should be implemented and operated. We are committed to identifying, exploring and preparing for any unintended adverse impacts of these changes.

The consultation was available online to the general public on our website: www.ukba.homeoffice.gov.uk

Key stakeholders were notified of the consultation - 83 via our Corporate Partner Group and 32 from the National Migration Group were informed via email. The Department of Health also informed their stakeholders of the UK Border Agency consultation, as did the relevant devolved health organisations.

ANALYSIS

Each question in the consultation document was followed by categorical response options ('Yes', 'No', 'Don't Know'). A space was provided with each question for further comment. The results were analysed initially by response to the categorical questions. The further comments to the questions were coded into commonly occurring themes.

The consultation received 119 responses in total. There were 106 responses from individual members of the public via an "online survey" and there was one written individual response. 36 individual respondents represented themselves as NHS employees. There were 12 responses of behalf of organisations. The majority of the organisations wrote a general response as well as answering the questions individually; the additional comments have been taken into account throughout this document.

In the summaries of responses to the consultation questions found in this document, text in bold italic type with quotation marks is a direct quote from a respondent. Text in bold italic type without quotation marks is a common theme that has been paraphrased.

For example:

- **"direct quote"**
- **paraphrasing a commonly occurring theme**

All percentages given are rounded to the nearest whole number. Percentages in the figures shown may not add up to 100% due to independent rounding.

EXECUTIVE SUMMARY

- The UK Border Agency public consultation: "Refusing entry or stay to NHS debtors", received 107 responses from individuals, and 12 responses on behalf of organisations. The individual respondents included 36 from persons representing themselves as NHS workers. The full list of the organisations that responded is in Appendix A.

- The responses were mainly supportive: 76 of the 107 individual respondents thought that non-payment of NHS charges should be sufficient grounds for refusing entry or extension of stay to a foreign national.

- Many thought that it would act as a deterrent for 'health tourists', with others seeing it as an appropriate sanction for abuse of a public system which leaves UK taxpayers to "foot the bill".

- When questioned about the minimum amount of outstanding charges which should act in the proposed new immigration rule as a bar to re-entry or stay, the responses were mixed with the balance towards a threshold of £500. Many respondents did not think that there should be a minimum threshold as "a debt is a debt".

- The British Medical Association (BMA) supported the proposals in principle and it stated that "the introduction of changes to the Immigration Rules to promote repayment of NHS debt seems reasonable".

- The primary concern for most of the organisations, including the BMA, was the unintended consequence that the proposed rule changes may act as a deterrent for migrants to seek necessary medical care.

- The main concerns highlighted in this consultation regard the existing charging regulations. The proposed rules change serves to enforce the payment of charges received in accordance with NHS charging regulations currently in force.

- The DH has undertaken a separate consultation on the charging regulations in force in England. This consultation included a number of questions which were relevant to the matters covered by the UK Border Agency consultation, specifically around the principles and proposed arrangements for collecting and processing data on debts incurred to the NHS by overseas visitors (questions 9, 10, 11, 12 and 13 of the DH consultation). A total of 166 responses were received to the DH consultation and the responses to these particular questions are also summarised in this consultation report for the sake of completeness. The responses to these questions reflected a less positive balance of opinion than the overall response received to the UK Border Agency consultation.

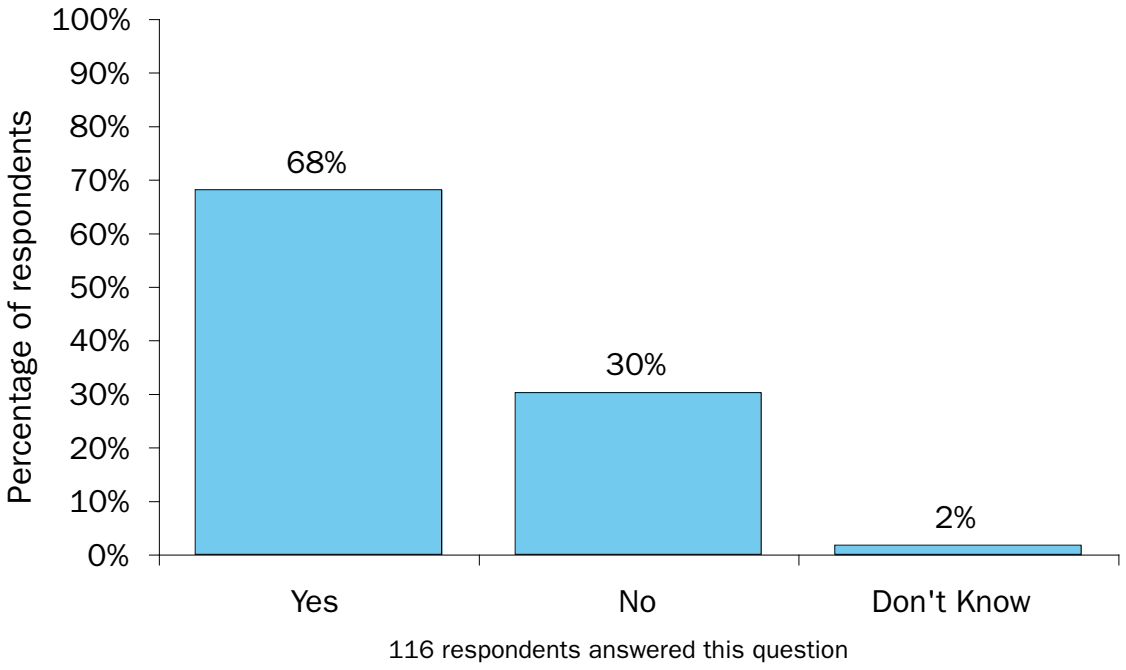
Question 1: Should non-payment of NHS charges be sufficient grounds for refusing entry or extension of stay to a foreign national?

68% of respondents thought that non-payment of NHS charges should be sufficient grounds for refusing entry or extension of stay to a foreign national. This contrasts with 30% of respondents that did not (see Figure 1).

80 of the 116 respondents commented further on question1.

One commonly mentioned theme, appearing in around a third of the further comments, was that **the NHS is only for those entitled to it and UK taxpayers should not have to 'foot the bill' for abuse by foreign nationals.** Another commonly occurring point was that refusing entry or extension of stay for non-payment should "**act as a deterrent**" and hopefully prevent non-payments in the future.

Figure 1: Should non-payment of NHS charges be sufficient grounds for refusing entry or extension of stay to a foreign national?



116 respondents answered this question

Many of those who responded negatively to the proposed changes suggested or implied that refusing entry or extension of stay should **only be done on a case-by-case basis**. Whilst 18% of the respondents made this recommendation, it was most prevalent in the responses from organisations. For these respondents there was a clear distinction between how those who "**evaded payment**" and those who were "**unable to pay**" should be viewed. One respondent commented, "**There is real difference between an individual who is destitute and thus unable to pay for NHS treatment and an individual who deliberately enters the UK seeking to abuse the health system**".

Other comments stressed that **abuse of NHS services should not be tolerated** (16%), and as a result of written off charges, other patients could suffer. There was also a suggestion that **all visitors should have health insurance** or prove that they had the financial security to pay, should they need health care (11%). Other topics highlighted by respondents were that the measures should particularly **prevent repeat offenders** and that the **NHS funds should be 'on par' with public funds** (i.e. state benefits and social assistance services) and protected in the same way. Currently, those subject to immigration control restrictions are barred by immigration law from claiming most forms of non-contributory state benefit.

The BMA supported the proposals in principle, but raised concerns that the **proposed measures may act as a disincentive to those seeking medical care.** The potential risk of this unintended consequence was a particular concern voiced by 3 HIV/AIDS representative groups who responded to the consultation. The main details of this can be found in the responses to **Question 11**, regarding discrimination.

Some respondents suggested that there should be a specific third party agency brought in to handle the issue of non-payment of NHS charges, including the initial identification of who is liable to pay for treatment.

The proposed changes to the Immigration Rules do not change charging regulations nor affect the decisions of individual NHS institutions when considering whether to write off outstanding charges in individual cases; they serve to enforce the payment of charges that are imposed and maintained. For more information on charging regulations see the summary in **Appendix B**.

Question 2: Where it is subsequently established that a holder of a long-term or multiple-entry visa has evaded payments of NHS charges, is it fair to curtail or cancel their permission to travel to the UK?

77% of the 115 respondents agreed with the proposal in Question 2. In contrast, 19% disagreed (see Figure 2).

There was a notable difference between responses from individuals and organisations. 80% of the individuals questioned responded positively to question 2, whereas only 4 of the 8 organisations that responded gave a positive answer. Two of the organisations who answered this question were indecisive on this point and two responded negatively.

In addition to the initial question, 67 respondents gave further comments. The largely positive response from individuals seemed to be based upon the concept that **misuse of the NHS must be punished to prevent greater cost to the UK taxpayer**. Again, many of the respondents were positive, indicating that the sanctions would be effective as a deterrent and one individual commented that it would stop Britain being viewed as a "**soft touch**".

The principal objections to this question were again about the 'blanket approach'. One organisation questioned:

"the appropriateness of the use of 'evasion' to describe unpaid NHS charges, which implies unwillingness to pay".

It was highlighted that "evasion" implies intent, and therefore the question would not apply to those simply without the means to pay.

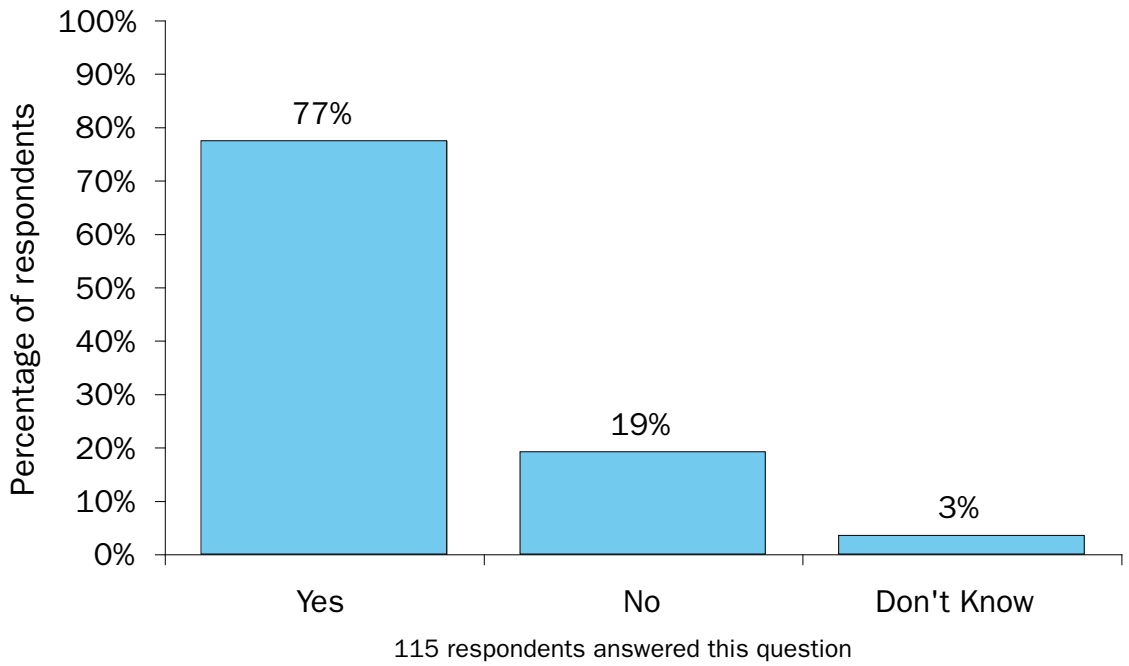
Another suggestion was that the foreign national must be given the opportunity to pay before the sanctions were enforced. It was also stated that:

"If a person pays taxes they should be entitled to NHS"

Some thought that if a migrant was contributing to the UK they should not be charged for NHS treatment. However, access to free secondary care NHS services is determined by residence status, not compliance with tax obligations.

Several responses to this consultation highlight concerns about the **destitute and vulnerable migrants,** who may seek urgent medical care and

Figure 2: Where it is subsequently established that a holder of a long-term or multiple-entry visa has evaded payments of NHS charges, is it fair to curtail or cancel their permission to travel to the UK?



then incur immigration sanctions for not being able to pay the bill. Many of these migrants may be exempt from these charges, see **Appendix B** for a summary of the current charging regulations.

Question 3: Should non-payment of NHS charges be sufficient grounds for delaying someone's application to become a British citizen or permanent resident?

The majority (68%) of respondents thought that non-payment of NHS charges should be sufficient grounds for delaying someone's application to become a British citizen or permanent resident.

58 respondents gave further comments on this question. A popular opinion given in this response was that non-payment of charges **reflected character** and this should be considered in an application for citizenship. Almost one third of the further comments mentioned this, a typical response was:

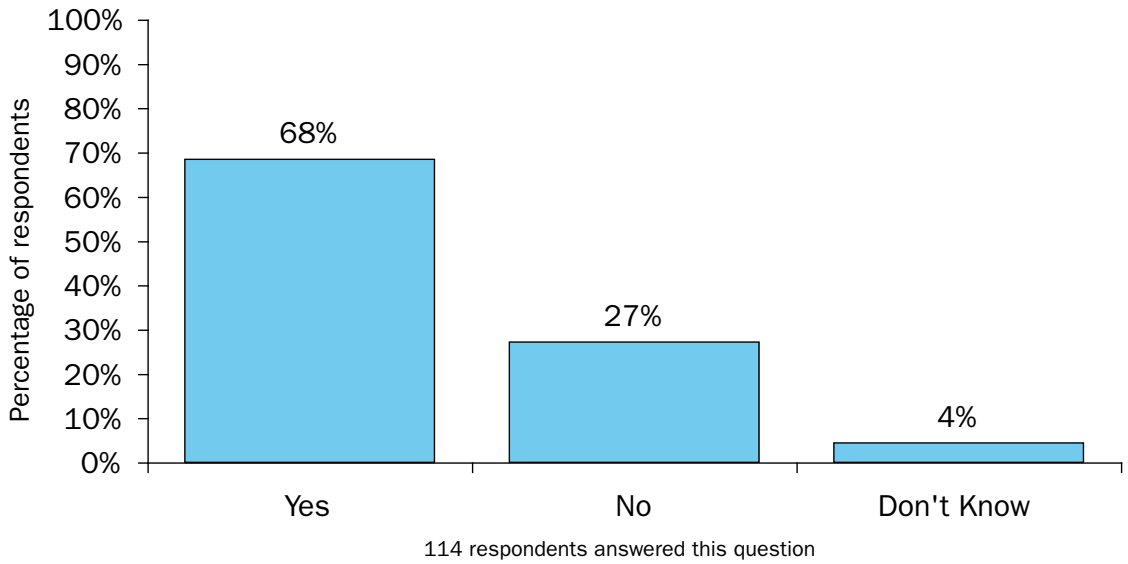
"All citizens need to abide by the law and rules of the country if they want to reside and remain in [the] UK".

For those who objected to the proposal (25% of the organisations and 28% of individuals), the issue of potential discrimination was key. Again the topic of HIV/AIDS was raised. In relation to non-payment of NHS charges for necessary HIV treatment, one representative group states:

"Individuals will be subject to negative immigration decisions, which, had the individual not had a disability, would have been positive - this is discrimination".

This refers to a situation in which a migrant has unpaid NHS charges due to HIV treatment. If they are subsequently denied citizenship due to these unpaid charges it could be argued that this constitutes discrimination on the grounds of disability. There are, however, a number of factors that need to be taken into consideration when assessing whether the proposed immigration sanctions constitute unlawful discrimination. These include whether the individual was considered to be disabled at the time that the charges were raised and whether the sanctions are a proportionate means of achieving a legitimate aim. With regards to the latter aspect, this includes consideration of the impact upon NHS resources and the potential consequences for other users of NHS services

Figure 3: Should non-payment of NHS charges be sufficient grounds for delaying someone's application to become a British citizen or permanent resident?



when outstanding charges remain unpaid. The Government does not believe that the proposed measure to apply immigration control consequences for those who default on charges owed to the NHS would be unlawful under the Equality Act.

The Government is scrutinising the existing and planned settlement and citizenship policies. In the meantime the current rules on citizenship and settlement still apply.

Information on current charging practices is available in **Appendix B**. For more information see the DH website: **www.dh.gov.uk**

Question 4: Should there be a minimum level of outstanding payments owing before the new sanction is enforced?

Responses to this question were more evenly spread between 'Yes' and 'No' than previous questions. 52% of respondents thought that there should be a minimum level of outstanding payments owing before the new sanction is enforced, whereas 43% did not (See Figure 4).

72 of the 119 respondents answered this. To many of the respondents, the question was irrelevant as they had already replied that any outstanding charges should be sufficient ground to refuse entry. As shown in Figure 4a, marginally more respondents opted for a lower threshold of £500. The suggestions for a threshold other than £500 or £1,000, ranged from £100 to £5,000 and some respondents did not give a value. More responses were made for an "other" threshold of less than £1,000, than for an "other" threshold of greater than £1,000.

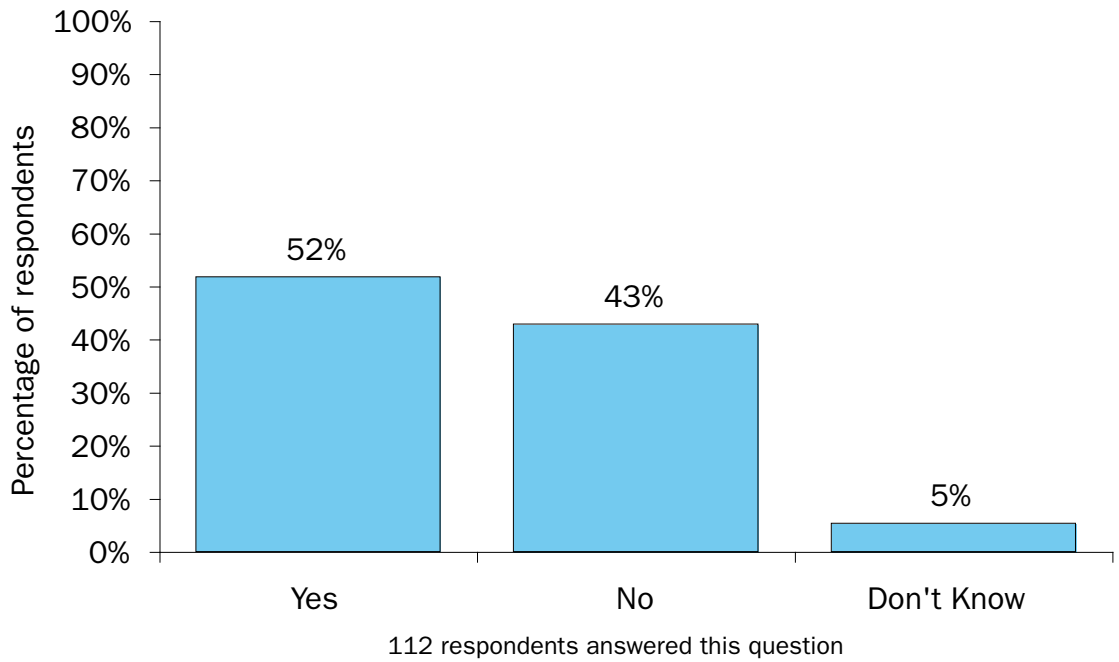
There were 49 further comments on this question. Several of the responses were concerned about the cost/benefit aspect of enforcing the sanctions, particularly whether they were worth enforcing when a relatively small amount of outstanding charges was involved. Almost one third of the further responses covered this issue, with comments such as:

"If a minimum amount is set to trigger recovery action, consideration needs to be given to the financial costs which may be incurred in seeking repayment and whether it is cost effective to pursue amounts under a certain level".

However, others believed that on principle no outstanding charges should be accepted and therefore sanctions should be enforced at any level of non-payment. Over 40% of further respondents made this point. "**Any outstanding amount owed to the NHS regardless of amount. This would then send a clear message that all monies owed to the NHS are/will be recovered**".

Alongside the consultation, a Regulatory Impact

Figure 4: Should there be a minimum level of outstanding payments owing before the new sanction is enforced?



112 respondents answered this question

Assessment (RIA) was published. As stated in the consultation document, a threshold of £1,000 would capture 94% of outstanding costs. A threshold of £500 would cover 98% of outstanding costs but would involve considerably more non-payers. In these circumstances and given the findings demonstrated in the published RIA, setting the threshold at the higher figure would afford the Government the greatest certainty in securing recovery of charges against the costs of applying the proposed immigration sanctions. Setting the threshold at £500 would entail greater cost to both the NHS and UK Border Agency, which may, in some circumstances, lead to expenditure in applying the sanctions above the cost of the outstanding charges. In light of these considerations and in view of the concerns raised by some respondents as to the ability of some to pay charges, the Government

Figure 4a: What should the threshold be?

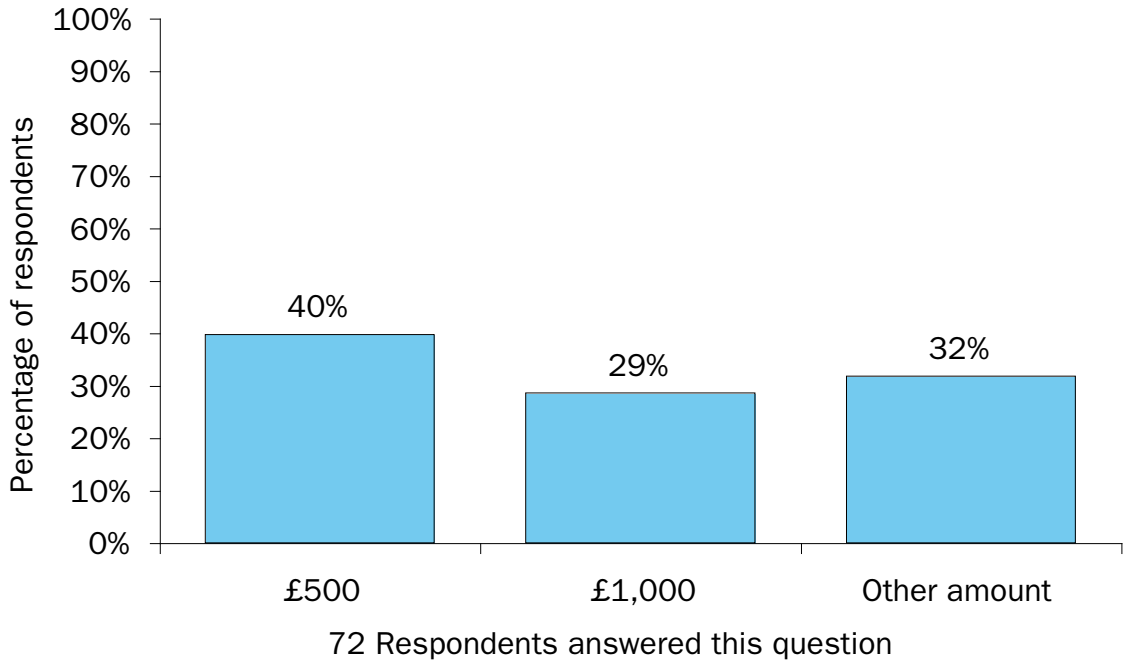
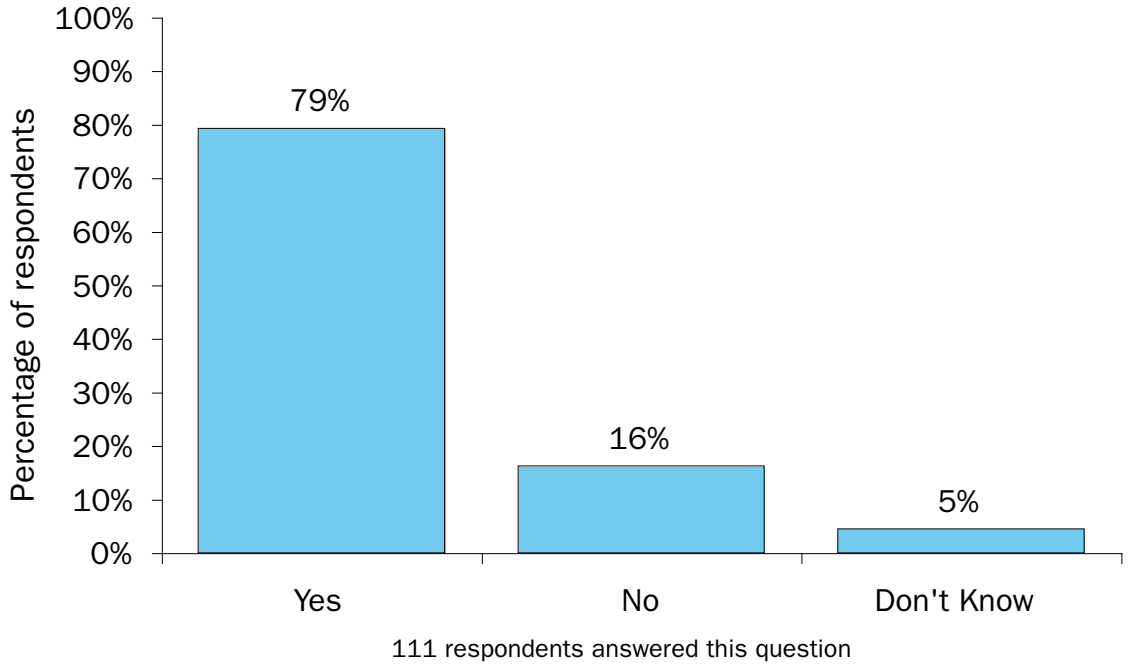


Figure 5: Is it appropriate for the UK Border Agency to receive data on non-payers from the NHS in a more systematic manner across the UK?



has adopted the threshold at £1,000. In all cases, however, the NHS will continue to seek recovery of charges through other means as is done currently, irrespective of the sanctions applied through the Immigration Rules.

Question 5: Is it appropriate for the UK Border Agency to receive data on non-payers from the NHS in a more systematic manner across the UK?

As shown in Figure 5, a large majority (79%) thought it was appropriate for the UK Border Agency to receive data on non-payers from the NHS in a more systematic manner across the UK.

49 of the 111 respondents chose to comment on this further, including 8 of the 12 organisations. The most commonly raised point, mentioned by over a third of those who commented further, was that the **UKBA must have full access to this information to ensure effective management of the issue**. One respondent commented:

"I'm surprised this isn't already happening".

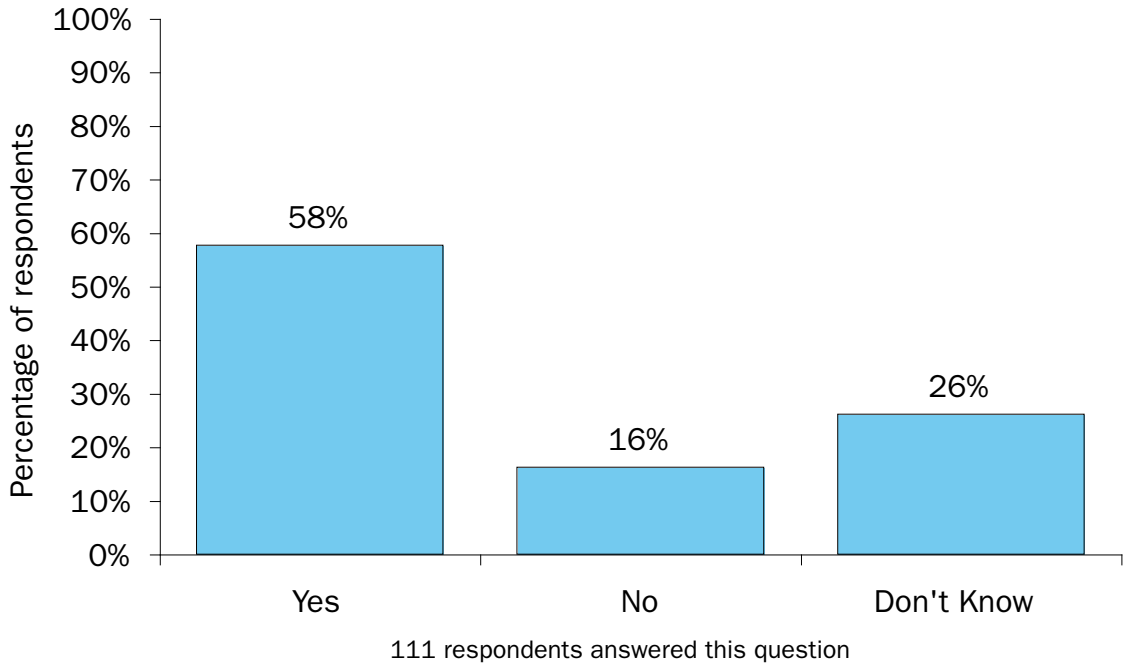
One fifth of the respondents that commented further reiterated that information sharing must be **easy and efficient**. Slow communications between the UK Border Agency and the NHS may lead to incorrect or out of date information being shared.

Of those who responded negatively to this question, the main reason was issues of confidentiality and/or data protection. Three out of the twelve organisations who responded raised this as a concern. "**There is insufficient detail within this document as to how information sharing would work in practice and how vulnerable patients' confidentiality would be protected**."

The proposed data sharing arrangements were described in both the UK Border Agency and DH consultation papers. Data will be shared through the respective NHS Counter Fraud Services across the UK nations or through a central point of contact. The NHS will retain "ownership" of any data shared and will only provide data to the UK Border Agency where adequate steps have been taken in ensuring that this data complies with agreed data standards. No data will be included beyond the personal details needed to identify non-payers, the charges outstanding and NHS body to which the money is owed. All data will be transmitted through secure electronic means. The NHS will maintain the information, providing updates on a regular basis. All data held by the UK Border Agency will also be subject to regular reviews for possible deletion in the future.

The issue of data sharing and confidentiality is examined further in the responses to **Question 6**.

Figure 6: Are the proposed safeguards sufficient to protect the individual?



Question 6: Are the proposed safeguards sufficient to protect the individual?

There was mixed opinion in response to this question, with a higher level of "Don't Know" responses than seen in previous questions. 58% of respondents thought there were sufficient safeguards proposed but 26% responded to this question with "Don't Know" (see Figure 6).

Responses from the organisations and responses from individuals differed on this question. 59% of individuals thought that the safeguards were sufficient but half of the organisations did not think that the proposed safeguards adequately protected the individual.

There were queries raised about the efficiency of data sharing and some strong responses regarding patient confidentiality. One organisation remarked:

"We do not believe that UKBA will need to know the level of debt involved or the NHS bodies to whom it is owed in order to carry out its duties in respect of this intervention. There is a risk that in some instances the conjunction of these two pieces of information could give an indication of the type of treatment received and inadvertently disclose sensitive personal data as defined in Section 2 Data Protection Act 1998".

The issue of confidentiality was most actively highlighted by the HIV/AIDS representative groups. They stated that as it is a stigmatised condition, confidentiality was particularly important to those living with HIV/AIDS.

One representative group also suggested that "**any refusal linked to unpaid NHS debt will inevitably lead to challenges and appeals. Clinical detail about HIV would inevitably have to be shared to make such a claim, based as it would be on the unfairness and discriminatory nature of this process**". More responses from this consultation looking at discrimination of this sort are covered in **Question 11**.

In any instance where the UK Border Agency and its officers take an adverse decision, it is important that those refused an immigration application are provided with full reasons for that decision and the grounds on which that decision has been taken. It is therefore important that where it is alleged there are charges outstanding, sufficient detail is provided to those whose immigration applications are refused in order to ensure that the decision is defensible in law. It is also important that those refused an application are provided with the means by which they may liaise directly with the NHS body to which charges remain outstanding.

The original consultation document is available at: **http://www.ukba.homeoffice.gov.uk/aboutus/consultations/closed/**.

Figure 7: How long should the NHS wait before it hands over data to the UK Border Agency on those who have failed to pay their NHS charges?

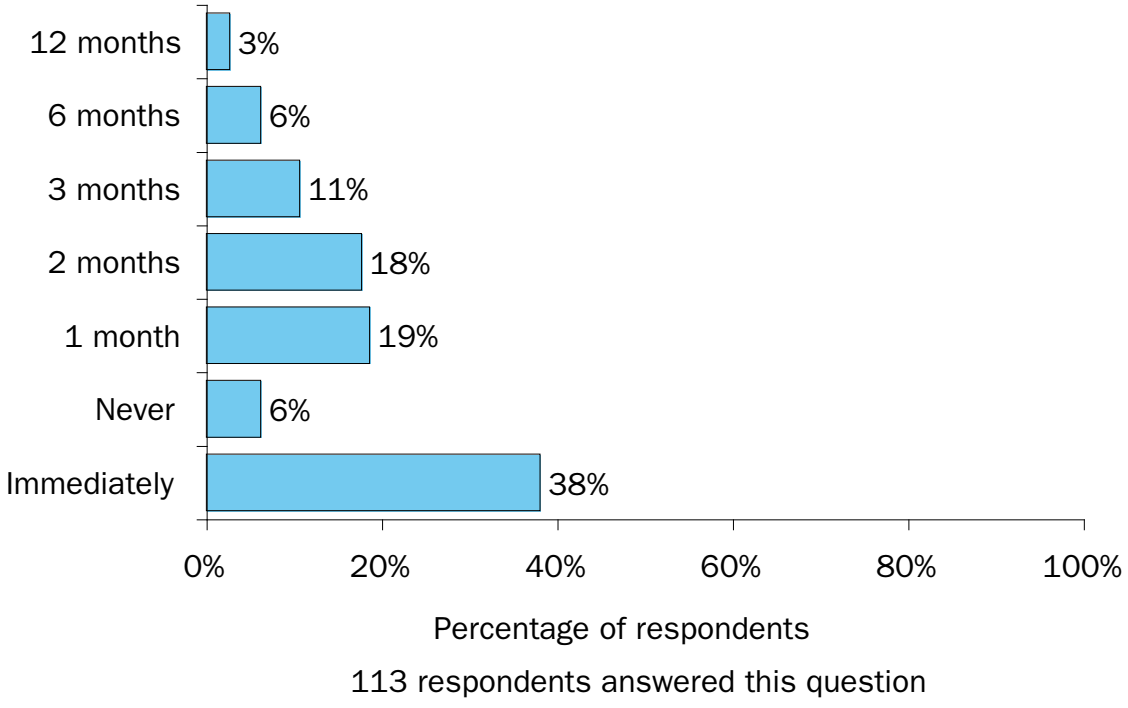
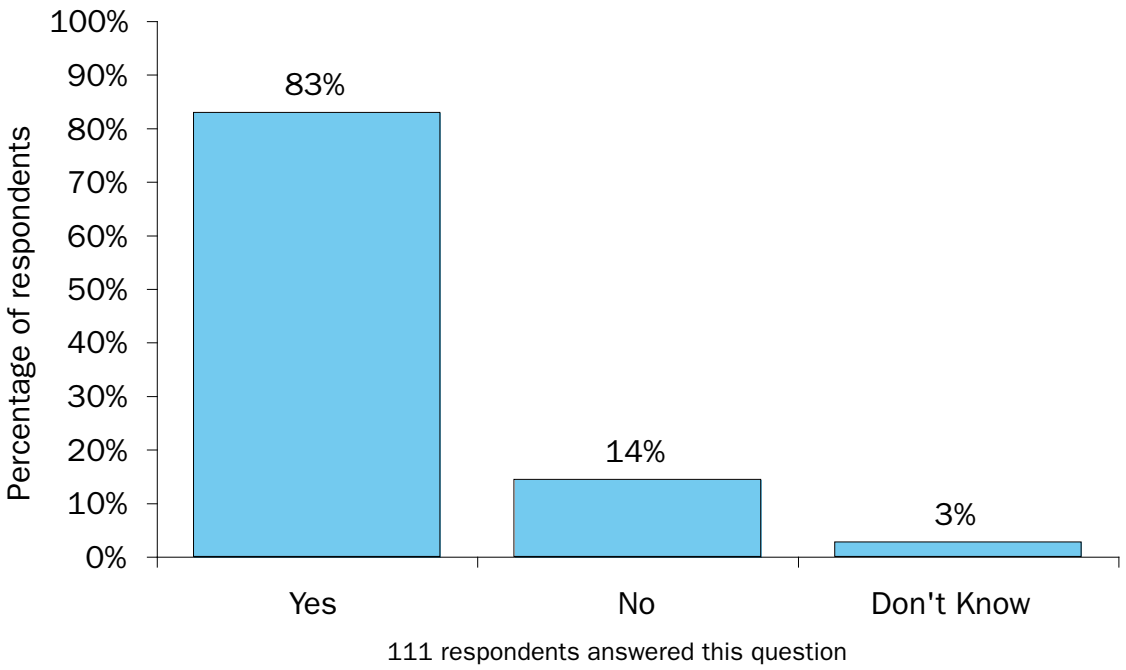


Figure 8: Would you agree that information should be provided to the UK Border Agency by NHS Scotland Counter Fraud Services on non-payers as soon as it is clear that the overseas visitor will not pay?



This document highlights the security measures in place for data sharing. These safeguards explicitly state that "no clinical details will be required or shared". All data handled by the UK Border Agency is dealt with in accordance with the Data Protection Act 1998.

Question 7: How long should the NHS wait before it hands over data to the UK Border Agency on those who have failed to pay their NHS charges?

113 respondents answered this question. Although there was not a clear majority response, the most popular answer was that the UK Border Agency should immediately receive data from the NHS on those who have failed to pay their NHS charges (see Figure 7).

There was a notable division in opinion between the individual responses and those on behalf of an organisation. Almost 40%of individuals thought that the UK Border Agency should immediately receive information on unpaid NHS charges, whereas only 2 of the organisations supported this view. Conversely, 3 out of 8 organisations suggested that the UK Border Agency and the NHS should never exchange data, a view supported by less than 4% of individual responses.

Respondents that favoured an immediate sharing of information gave comments such as:

"Any delay may result in the person re-entering the UK and gaining further free treatment."

"No matter what age the debt is it should be handed over, the only condition should be that the information is accurate."

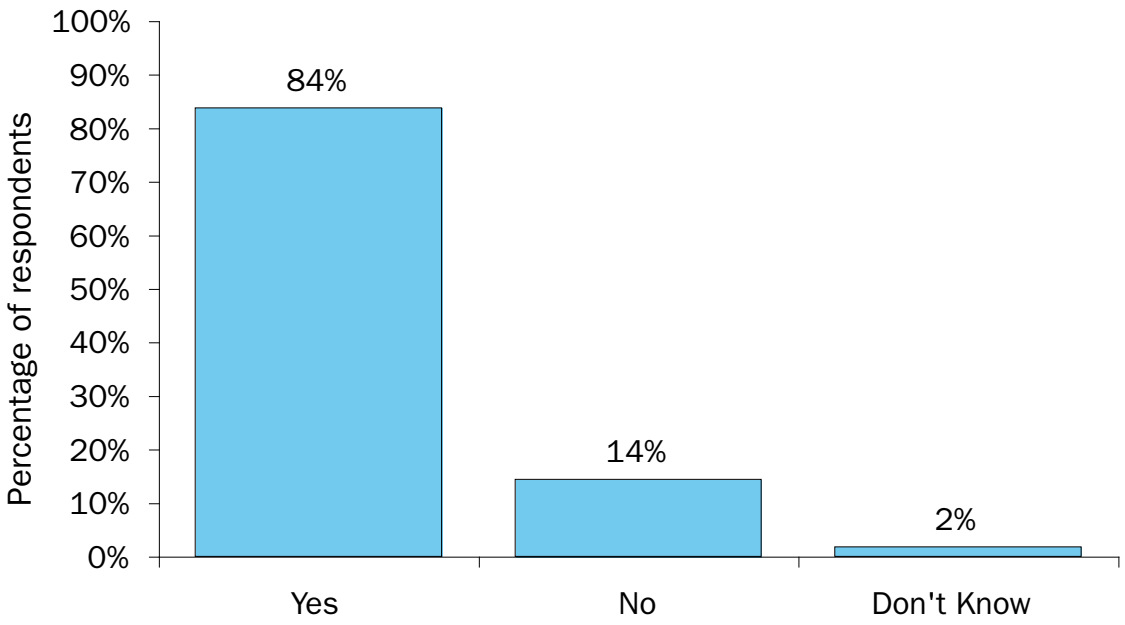
Respondents that supported a longer waiting period thought that migrants should be given sufficient time to pay their outstanding charges. Also, it was suggested that a longer time period would give the individual NHS trusts more time to enforce their own debt collection.

The original consultation document notes that sharing data on those who have failed to make a payment within 2 weeks in England will, in practical terms, take a month from when they are invoiced.

Question 8: Would you agree that information should be provided to the UK Border Agency by NHSScotland Counter Fraud Services on non-payers as soon as it is clear that the overseas visitor will not pay?

Access to NHS services across the UK is subject to the respective NHS regulations in each UK nation. For NHSScotland, for instance, this would mean that the proposed immigration sanctions will

Figure 9: Is it appropriate to keep a record of previous non-payments in order to assist the UK Border Agency in making informed decisions on any future immigration application?



111 respondents answered this question

impact upon some who may access dental or eye examinations and treatments (where in England these services are not covered by existing NHS Charging Regulations).

This question produced a clear majority response (83%) agreeing that information should be provided to the UK Border Agency by NHS Scotland Counter Fraud Services on non-payers as soon as it is clear that the overseas visitor will not pay. This is shown in Figure 8.

Only 18 respondents commented further on this issue; however, the points that were raised stressed the importance of security, efficiency and accuracy in the sharing of information between the NHS and the UK Border Agency.

The procedures for information sharing between the UK Border Agency and NHS Scotland Counter Fraud Services would be subject to the same security controls as outlined in the responses to Question 6.

Question 9: Is it appropriate to keep a record of previous non-payments in order to assist the UK Border Agency in making informed decisions on any future immigration application?

111 respondents answered this question. 84% thought it was appropriate to keep a record of previous non-payments to assist the UK Border Agency in making informed decisions on future immigration applications (see Figure 9).

50 respondents commented further on this issue. The most commonly raised point from those who responded in support was that non-payment of a NHS debt is an **indicator of character**. It was suggested that it would be useful for the UK Border Agency to be able to access this information and that knowledge of a prior unpaid NHS charge could assist with its decision making.

Those who raised objections, in particular from amongst the organisations, thought that non-payment of an NHS charges was not sufficient to reflect:

"personal suitability in immigration applications".

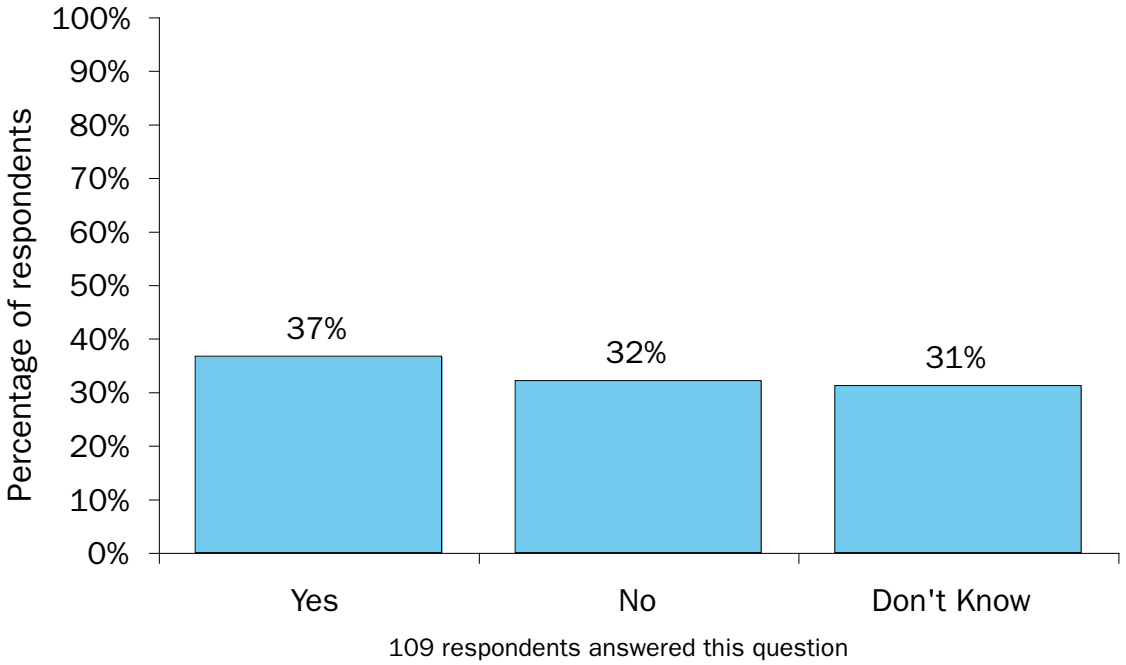
One organisation states that:

"the distinction between criminal and civil penalties is in danger of being blurred by these proposals".

Another organisation raises concerns that:

"the anecdotal case studies in the document are all one-sided".

Figure 10: In addition to the proposed safeguards, are further specific safeguards required to protect the interests of children or vulnerable individuals?



109 respondents answered this question

These proposals, however, as outlined in the original consultation paper, seek to extend a similar level of protection in immigration law to the NHS as is already provided for the state benefit system.

Question 10: In addition to the proposed safeguards, are further specific safeguards required to protect the interests of children or vulnerable individuals?

Question 10 received a mixed response with 37% of respondents stating that there are further safeguards required, 32% stating that there are not any further safeguards required and 31% unsure about the safeguards (see Figure 10).

In addition to this question, seventeen respondents gave further comments, including seven of the organisations.

The importance of protecting children and vulnerable people was highlighted in several of the comments:

"It is vital children and vulnerable individuals are protected in all aspects."

Some felt that:

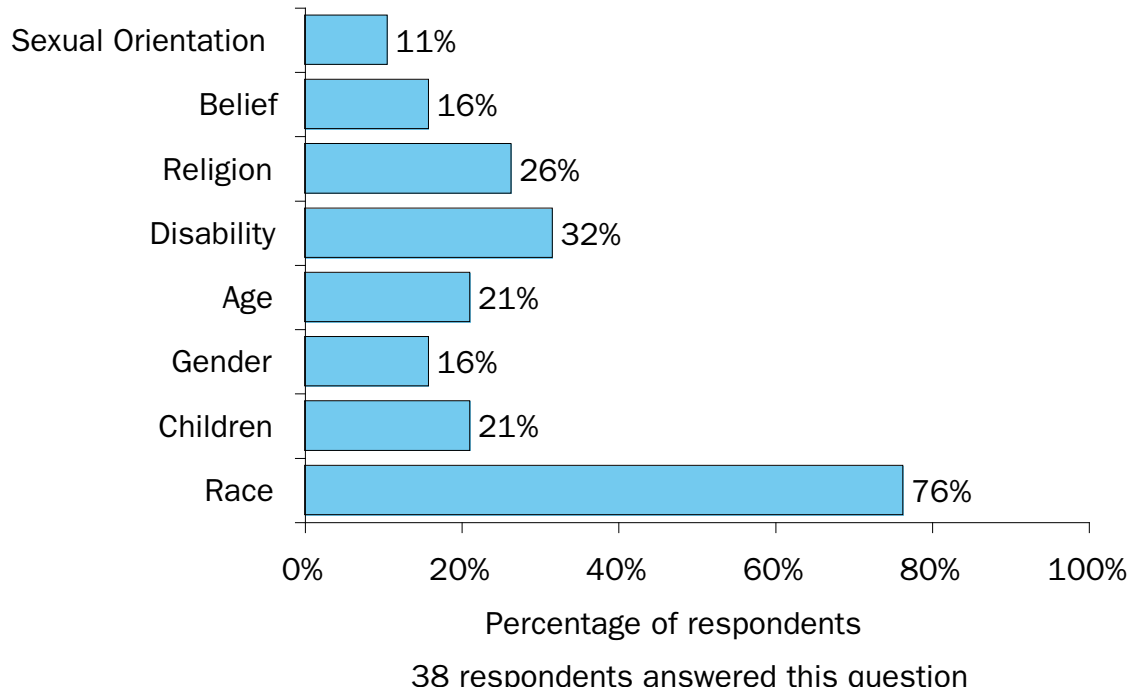
children and vulnerable people should be excluded from the proposed changes.

However, another respondent stated that:

"General experience has shown that children or vulnerable adults normally travel with a responsible adult who knows that healthcare in the UK is not free to all."

The proposed Immigration Rules change will allow for the exercise of discretion where necessary to secure human rights obligations and UK Border Agency officers will discharge their duties with due regard to their obligations to safeguard the wellbeing of those who may be vulnerable including children. The DH consultation paper also explored its proposals to amend the NHS Charging Regulations so as to allow for charges to be made to the parents of child patients, and to exempt unaccompanied children. The proposed changes to the Immigration Rules would apply in tandem with any changes made to the NHS Charging regulations and so should go some considerable way to addressing the circumstances described above.

Figure 11: Groups that may be disproportionately impacted by the proposed changes to the Immigration Rules



Question 11: Do you believe that the proposed changes to the Immigration Rules will have a disproportionate impact upon any particular group(s)?

38 respondents (32% of all respondents to the consultation) thought that the proposed changes to the Immigration Rules would have a disproportionately adverse impact on certain groups. Of these, 76% thought that particular racial groups would be affected. This is indicated in Figure 11.

Of those who indicated that particular racial groups were likely to be affected by these measures, a few responses commented that non-whites may be affected disproportionately. However, most respondents did not comment further on how different racial groups would be affected. There was concern amongst three of the organisations that responded to the consultation about the disproportionate affect of these proposed Immigration Rule changes on migrants living with HIV. All felt that the changes could act as a disincentive for those migrants living with HIV to seek necessary medical care:

"These migrants and others with little or no income could therefore be placed in the position of having no choice other than to access HIV immigration applications. When these migrants charges. They would incur NHS debt and under these proposals, this would impact any future treatment, but being unable to pay subsequent access care, it is because they are in urgent need. They do not 'evade payment', they are unable to pay."

Under the Equality Act 2010, those living with HIV are classified 'disabled'. As highlighted in **Question 3, and Question 6** it may be argued that refusing entry to a country based on a failure to pay charges for medical care relating to a disability may amount to indirect discrimination. However, it is the Government's view that this must be considered against the need to achieve a legitimate aim. In this case, that would be safeguarding NHS resources for those who have a lawful claim to them and the impact upon the NHS and other NHS service users where charges remain outstanding. The Government does not believe that the proposal to hold overseas visitors to account for unpaid charges would amount to unlawful discrimination under the Equality Act. As seen in the responses to **Question 10**, a number of individuals were particularly concerned about the impact on children and old people. Respondents also highlighted the potential for discrimination and misuse of power:

"The proposal here has a multiplying effect. From a health check up which escalates to banning one from entering the country. The various authorities can misuse their power at different stages which creates more bureaucracy."

One respondent also raised a point regarding discrimination due to gender:

"If the responsible parent is penalised for not paying a NHS bill, there could be a problem due to the mother being the primary caregiver (and hence the one incurring the debt) while the fathers are the primary earners in many cultures - if the father refuses to pay the debt for the child's NHS care given in his absence, will the mother be penalised with no consequence to the father?"

Another respondent said that the measures may disproportionately affect some religious groups:

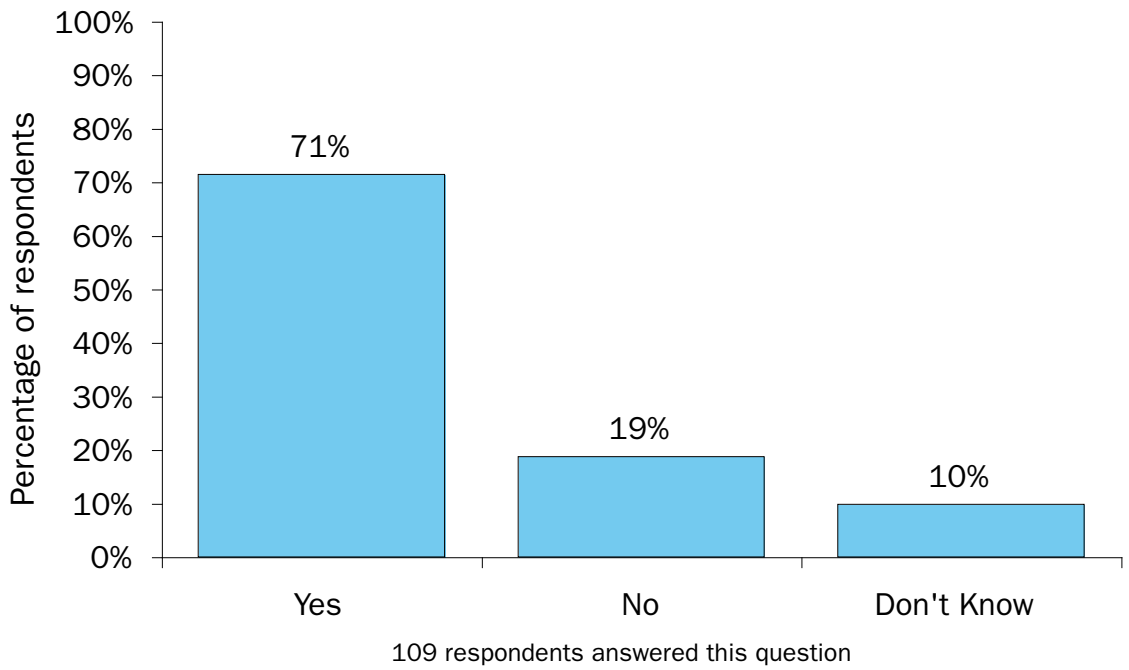
"There is a foreseeable impact on women of religions/countries where abortion is not allowed and have come to the UK for a termination."

The question of whether charges should be applicable for migrants living with HIV for their treatment is a matter for the DH and devolved administrations. An Equality Impact Assessment (EIA) was published alongside the original consultation document. This investigated whether any of the groups discussed in **Question 11** will be disproportionately affected by the proposed measures. The EIA also outlines the course of action the UK Border Agency will take to prevent potential discrimination. All the relevant points made in response to this question will be considered by the UK Border Agency. However, the UK Border Agency does not have control over who is liable to charges; they can only enforce the payment of existing charges raised by the NHS.

Question 12: In order to avoid unlawful discrimination, it is proposed that all patients seeking secondary care are asked the same 'baseline' questions about residence. Are you satisfied that this safeguard will assist in avoiding unlawful discrimination?

71% of respondents thought that asking all patients seeking secondary care the same 'baseline' questions would assist in avoiding unlawful discrimination (see Figure 12).

Figure 12: In order to avoid unlawful discrimination, it is proposed that all patients seeking secondary care are asked the same 'baseline' questions about residence. Are you satisfied that this safeguard will assist in avoiding unlawful discrimination?



20 respondents chose to comment further on this question. It was stressed by half of the individuals that commented, that everyone must be asked the 'baseline' questions.

A typical comment was:

"We must ensure that, if we ask the baseline question, ALL patients are asked it so that we can not be accused of unlawful discrimination."

A few of the respondents suggested that it should be compulsory to show I.D. before receiving secondary care as patients may be dishonest in their responses to the 'baseline' questions. Many of the negative responses to this question raised objections already seen in earlier questions, including the concern that the proposed changes to the Immigration Rules would act as a disincentive for a migrant to seek necessary medical care.

The point was raised that even though the 'baseline' questions may help determine eligibility, the Immigration Rule changes discriminate against non-EEA foreign nationals, as the sanctions cannot be applied to a UK Citizen who lives abroad. A British Citizen could not be prevented from entering Britain and possibly using the NHS without the appropriate payment.

The European Health Insurance Card (EHIC) allows for some charges incurred by EEA nationals who are not resident here to be reclaimed from their home nations. British Citizens resident abroad who fail to pay their charges will be subject to the normal cost recovery mechanisms applied by the NHS.

DEPARTMENT OF HEALTH CONSULTATION: REVIEW OF ACCESS TO THE NHS BY FOREIGN NATIONALS

The Department of Health consultation also sought the views of respondents on the proposed immigration sanctions (Chapter 4) in the terms below. There were a total of 166 responses, with 83 from organisations and 83 from individuals.

Do you agree with the proposal to require an overseas visitor receiving chargeable NHS treatment to provide personal information to aid subsequent recovery of charges?

There was an equal split between respondents agreeing and disagreeing with the proposition (Q9 of the DH consultation).

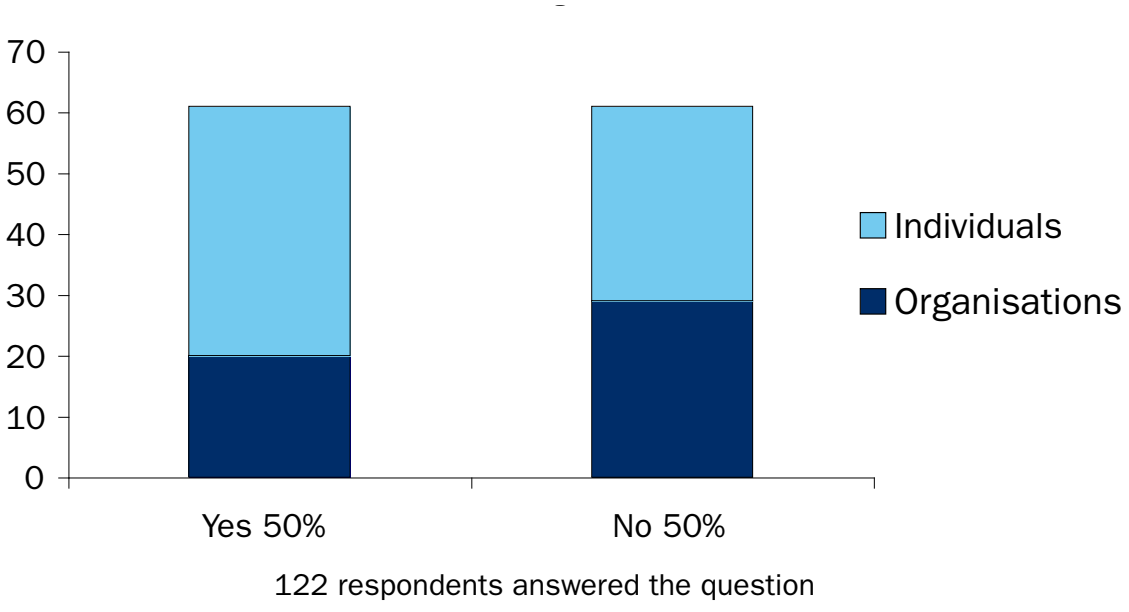
There were 122 (out of a possible 166) responses to this question.
Amongst the reasons given by respondents for a negative answer the chief concerns raised related to the potential disincentive to migrants seeking necessary treatment, the possibility that migrants may be forced to use false details and, for some, the principle that all healthcare should be provided free of charge.

Comments made by those supportive of this proposition made reference to the difficulties that some NHS bodies already experience in identifying overseas visitors who are liable to a charge. Others made comparison with the restrictions placed on migrants' access to the NHS against the international perspective where many migrants would be required to pay for all healthcare services received.

Do you agree with the proposal that NHS organisations must provide information relating to outstanding debt for NHS treatment to the Department of Health or to an appointed agency?

The responses to this question (Q10 in the DH consultation paper) showed less of a consensus amongst respondents.

Q9 ranges



There were 129 (out of a possible 166) responses to this question.

Once again, the chief concerns raised by those who responded in the negative were issues as to the potential disincentive to migrants in seeking healthcare and around the principle that healthcare should be provided free to all. Another concern raised was around safeguarding the personal data of patients and the need to maintain the integrity of that data by limiting the numbers of bodies that can access that information.

Similarly, those who responded positively repeated comments similar to those made in relation to the previous question. Some respondents also suggested that data relating to overall outstanding charges should be made available to the public.

What safeguards on the protection of personal information are needed beyond those described?

70 respondents (42% of consultation respondents) made comments in relation to this question (Q11 of the DH consultation). The majority of respondents who commented felt it was important that any information gathered and held on non-payers should be accurate, treated as confidential and have adequate safeguards in place (suggestions included firewalls, authorised access log-in and encrypted data transfer).

In general terms, there were also many who felt that no data should be shared or transferred through private industry, such as cost recovery agents, nor any other country or party. An additional comment stated that if this did happen then money should be made available to ensure monitoring of misuse issues.

There was comment that the charging form, being used to take the personal information, should stipulate that data may be shared with other departments.

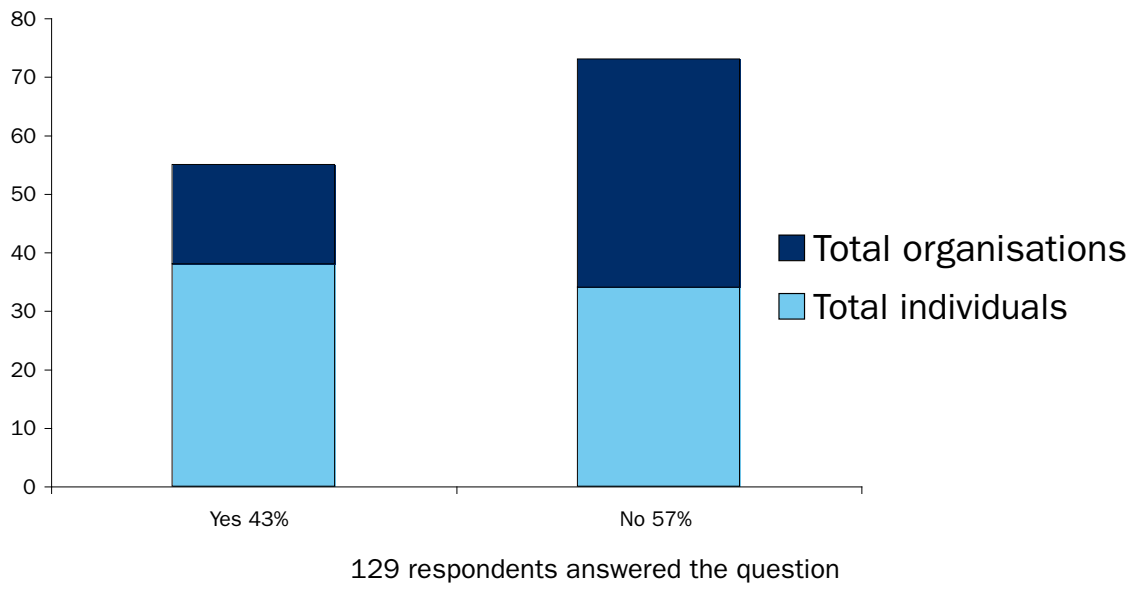
Some organisations and individuals felt that there were no adequate safeguards that could be utilised safely. For instance, there was concern that women who suffered violent relationships would be placed at particular risk.

Amongst the respondents who were satisfied in general terms with the principles around sharing data and the safeguards described within the respective consultation papers, some made reference to the obligation on healthcare users in other countries to disclose personal data, including identification, in accessing those services.

Do you agree that the NHS Counter Fraud Service should transfer the data from the Department of Health's appointed agency to the UK Border Agency to support recovery and implement any agreed immigration sanctions under rules approved by Parliament?

This question (Q12 of the DH consultation) showed an overall negative response to the proposition.

Q10 ranges



129 respondents answered the question

There were 124 (out of a possible 166) responses to this question.

The respondents' comments in support of and against the proposal rehearsed the issues raised in relation to the earlier questions. Some respondents wished to ensure that there was no connection between healthcare and immigration policies.

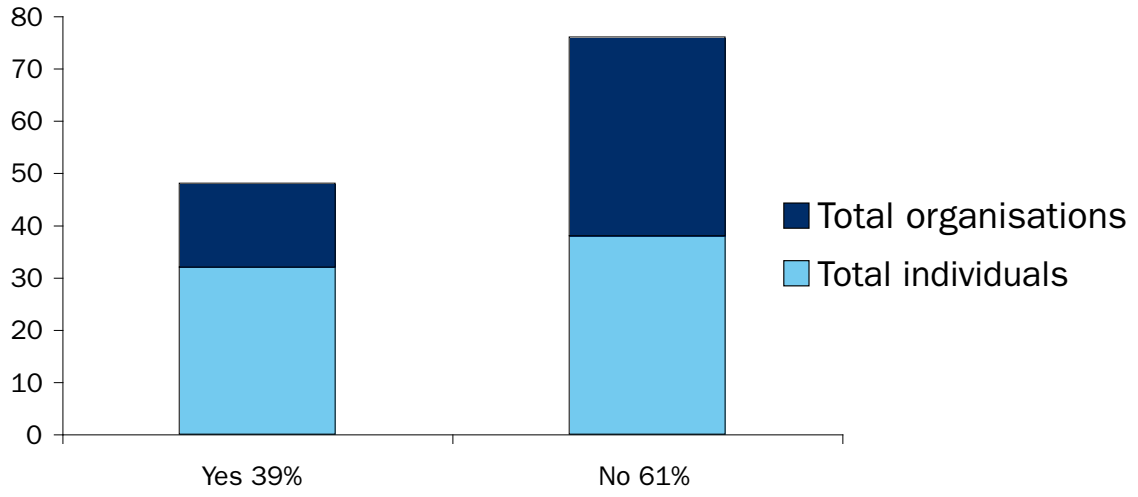
Do you agree that the Secretary of State Directions to the NHS Business Services Authority should be amended to enable the NHS Counter Fraud Service to lawfully carry out the data transfer process?

This question (Q13) elicited a similar marginal negative response to the previous question. The respondents made similar comments to the ones made in relation to previous questions, with a few raising the possible difficulties involved in safeguarding personal data where another agency is involved.

There were 121 (out of a possible 166) responses to this question.

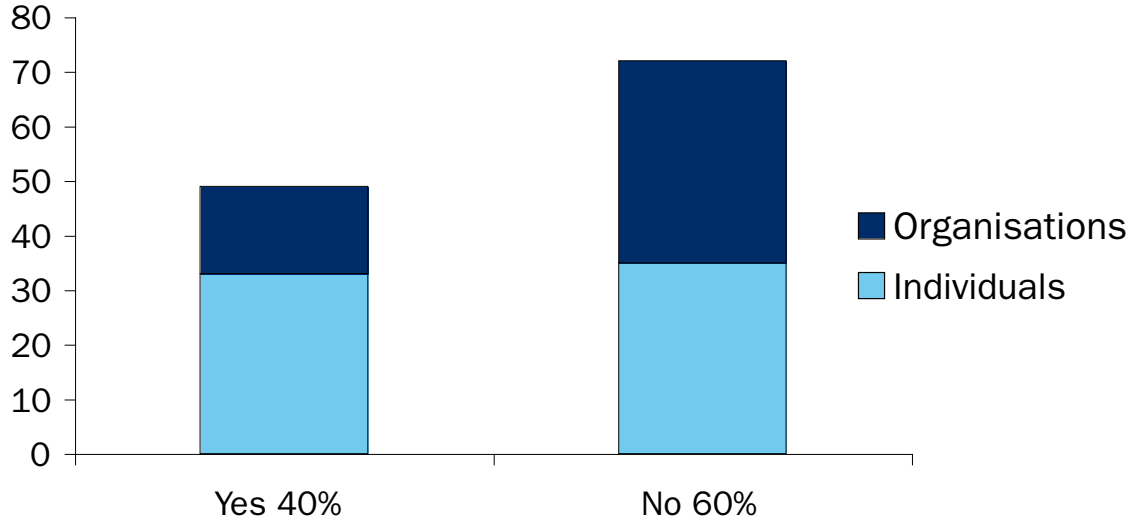
The Department of Health has provided fuller details on the responses to these and the other questions in their consultation paper in their response document published at **www.dh.gov.uk**.

Q12 ranges



124 respondents answered the question

Q13 ranges



121 respondents answered the question

CONCLUSIONS FROM THE CONSULTATION

Overall, the responses to the public consultation on "Refusing entry or stay to NHS debtors" were supportive of the proposed changes to the Immigration Rules which would mean that an outstanding NHS charge should be sufficient grounds to refuse entry to or leave to remain in the UK. Opinion on whether there should be a threshold of outstanding charges before the proposed immigration sanctions apply and where the line should be drawn was divided.

The majority of respondents supported the planned data sharing, as long as the data transfers were secure and protected confidential information. Most respondents were satisfied that the 'baseline' questions would prevent unlawful discrimination and that no group would be unduly affected by the proposals. Concerns were raised by some that the charging regulations and subsequent sanctions could lead to a disproportionate impact on certain groups. There were also worries that the sanctions could act as a disincentive for migrants to seek necessary medical care. The existing charging regulations are a matter for the Department of Health and the devolved administrations.

The Department of Health's related consultation also elicited concerns that an immigration sanction may drive migrants away from seeking necessary healthcare and concerns about the need to maintain confidentiality. Notably, however, the BMA expressed their general support, in principle, to both consultations.

The Government has considered the responses to both the UK Border Agency and Department of Health consultations. It is clear that there are respondents who disagree with the proposals in principle and others remain concerned that migrants are not deterred from accessing necessary healthcare (or in the view of some respondents, all healthcare). The question of migrants' access to publicly funded services is one that will always generate controversy. However, the Government believes that it is reasonable to expect foreign nationals to make a positive contribution to the economy of our nation and to pay for services that they do not qualify for. This would place the UK more on a par with the majority of other nations in terms of the services that foreign nationals must pay for in order to access. The current economic climate also requires the Government to take reasonable steps to safeguard vital national resources and the economic wellbeing of our nation.

After careful consideration, the Government has decided to amend the Immigration Rules in autumn 2011. It is proposed that the threshold of outstanding charges at which immigration sanctions are applied should be set at £1,000 and that there is some measure of discretion available to UK Border Agency decision makers in applying these sanctions. The Immigration Rules change will work in conjunction with the respective NHS Charging Regulations applied across the UK and the UK Border Agency will continue to work closely with the Department of Health and the devolved administrations in preparing to implement the new sanctions in a phased manner through 2011 and 2012. This will include further work to provide the required data sharing in a way which will ensure that data privacy concerns are addressed.

Ministers will consider the matters raised by this public consultation when making decisions on how to advance with the proposed Immigration Rules change. We are grateful to everyone who took the time to complete this consultation.

APPENDIX A – ORGANISATIONS THAT RESPONDED

Organisation respondents

British Medical Association (BMA)

Council of Ethnic Minority Voluntary Sector Organisations (CEMVO)

George House Trust (GHT)

Great Ormond Street Hospital for Children NHS Trust (International Division)

Immigration Law Practitioners Association (ILPA)

National AIDS Trust (NAT)

NHSScotland Counter Fraud Services

North West Regional Strategic Migration Partnership

Overseas Visitor Advisory Group (OSVAG)

Terrence Higgins Trust (THT)

UK Council for International Student Affairs (UKCISA)

West Midlands Strategic Migration Partnership

APPENDIX B – SUMMARY OF CURRENT CHARGING REGULATIONS

SUMMARY OF CURRENT RULES IN ENGLAND ON ACCESS TO FREE NHS SERVICES FOR NON-EEA NATIONALS

The NHS is provided primarily for the benefit of people currently resident in the United Kingdom. Nationality and the payment of UK tax or National Insurance contributions is not taken into account when establishing entitlement. With certain exceptions non-residents are expected to pay the full cost of any medical treatment they receive while they are here. These exceptions are explained in the Department of Health's consultation document "Review of access to the NHS for foreign nationals; Consultation on proposals" **http://www.dh.gov.uk/en/Consultations/index.htm**. The Immigration Rules make provision for visitors subject to immigration control to come to this country for private medical treatment but not for the purpose of receiving NHS care. Where individuals are detected seeking to enter the country as visitors when their true intention is to access NHS public services or unlawfully access state benefits, as part of the normal procedure for handling arriving passengers the usual course of action for UK Border Force staff is to refuse and seek to remove the persons concerned. This will remain the Agency's practice irrespective of the changes proposed in the consultation.

Under the terms of their contract with the NHS, general practitioners have discretion to register any patient for free primary medical care, regardless of their residential or immigration status, or may offer to treat short-term visitors as private patients. GPs play a key role in the provision of public health services such as inoculations and screening, which protects the health of the British population at large. Registration with a GP gives no automatic entitlement to free hospital treatment.

The Government is concerned to ensure that effective regulation is properly applied to secondary care services (or those subject to NHS Charging regulations). For people who are not 'ordinarily resident' in the UK, or otherwise exempted from charges, the respective NHS regulations require the making and recovery of a charge for any hospital treatment they may need. In the case of emergency treatment received solely in an Accident and Emergency Department this is exempt from charge. Other treatment which, in the opinion of a clinician, is immediately necessary, including all maternity care, or otherwise urgent in that it cannot wait until the patient can reasonably return home, must never be withheld or delayed because of questions of payment. Charges need not be paid in advance, although NHS bodies should try to do so if possible when the need for treatment is not immediate. In the case of non-urgent treatment full payment is required before treatment commences

The respective regulations make provision for certain categories of patient to be exempt from charges. These include people taking up residence in the UK, for example on marriage to a British resident, anyone lawfully working in this country for a UK-based employer and their dependants living here with them, overseas students on courses lasting over six months and anyone who has made a formal claim for asylum in this country for as long as their claim and any subsequent appeals are being processed or who has been granted refugee status here. There are limited exemptions for other categories such as people from the European Economic Area and other countries with whom the UK has reciprocal health agreements. Some services and treatment are provided free of charge to all for public health reasons, for example treatment for specified infectious diseases including TB. Initial testing and counselling for HIV is free to all but not subsequent treatment.

EEA NATIONALS (NON RESIDENT) AND OTHER BILATERAL ARRANGEMENTS.

The NHS has reciprocal arrangements with many countries around the provision of healthcare. This

includes the European Health Insurance Card scheme for EEA nationals who are not resident in the UK.

SUMMARY OF CURRENT RULES IN SCOTLAND ON ACCESS TO FREE NHS SERVICES FOR NON-EEA NATIONALS

The devolved authorities govern access to their NHS services through their own regulations. These are similar in terms of the definition of "ordinary resident", However, they vary in specific instances in terms of the ranges of services covered and those exempted from charge. The UK Border Agency is liaising with all of the devolved health authorities so as to ensure that similar arrangements to those proposed in England may be applied in 2010.

For example, in Scotland GPs may provide immediately necessary or emergency treatment to any patient without registration. They also have discretion to register any patient for free primary medical care. There are, however, limits to this discretion. Regard should be had, for example, to the guidance on the eligibility of overseas visitors for free NHS services issued by the Scottish Government and to the National Health Service (General Medical Services Contracts) (Scotland) Regulations 2004 (SSI 2004 No. 115). These Regulations provide that any person who is staying at a particular place for less than 3 months should be treated under the temporary resident arrangements. In other cases, GPs may offer to treat short-term overseas visitors as private patients. Failed asylum seekers in Scotland may also continue a course of treatment provided at a hospital or by a GP. Permanent or temporary registration with a GP gives no automatic entitlement to free hospital treatment although anyone is entitled to treatment at a hospital's Accident & Emergency Department.

It will be for the respective health bodies to lead on how and what data they share and the arrangements they have in place to secure payments. The UK Border Agency will pass on contact details for the NHS, but will not be directly involved in negotiating or collecting any payments.

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