Home Office
UK Border Agency

SECURING
OUR BORDER
CONTROLLING
MIGRATION

Consultation; Refusing entry or stay to NHS debtors

A public consultation around proposed changes to the immigration rules.

February 2010

CONTENTS

FOREWORD

The creation of the UK Border Agency as a full Agency in April 2009 signalled a step change in the way we will protect the UK border – a more integrated and secure approach which incorporates stronger off-shore controls and pre-arrival screening, a stronger UK border and tougher checks in the UK. We control immigration for various different reasons, including to protect our communities from harm and to manage access to the UK labour market through the points based scheme in the interests of strengthening our economy and the interests of UK business. Legal migrants continue to make a significant contribution to the economic and social fabric of the United Kingdom.

But another key objective is to ensure that our public services are shielded against misuse by those who are not permitted free access, enabling providers to focus their resources on delivering services to those who have a right to live in this country or are otherwise entitled to receive them. It is important that we have rules governing access to tax-payer funded benefits and services that are fair and transparent. Where non-residents have a responsibility to pay for the public services they use, this should be enforced. This supports the principles behind our system of earned citizenship which sets out the Government's intentions to develop a clearer journey to British Citizenship. This includes a package of requirements to ensure that migrants who wish to make the UK their home earn that right; balancing migrants' rights with their responsibilities; and encouraging those who want to remain here, and who meet our stringent requirements, to become British citizens. This means that we will delay access to benefits until migrants have British citizenship or permanent residence. We have recently legislated to give effect to these provisions in the Borders, Citizenship and Immigration Act 2009. Healthcare is a separate issue, raises different public policy concerns and requires a different approach, as explored in this consultation.

We are also concerned to mitigate the impact of migration on local services and that is why we have created the Migration Impacts Fund. The Fund has received applications from a number of excellent, innovative projects across the regions, covering a broad range of issues that are intended to reflect the different interests of government departments, in particular themes of housing; education; families and young people; community safety; and health.

As part of the biggest shake-up of our immigration system in a generation, we have been examining how the UK Border Agency should work together more effectively with other public authorities to help regulate access to public services. Those subject to immigration control restrictions are already barred from claiming most forms of non-contributory state benefit under immigration legislation, but historically immigration laws and health regulations which govern the charging of non-residents have existed in parallel rather than being integrated. The UK Border Agency and Department of Health have jointly reviewed the rules governing overseas visitors' access to free NHS services in England. Separate rules exist on overseas

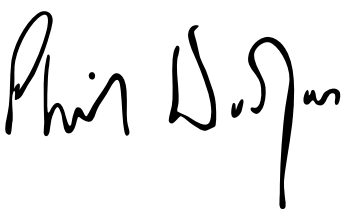
visitors in Northern Ireland, Scotland and Wales. The devolved administrations have been included in the findings of the review, and the review's conclusions announced on 20 July 2009. The review was carried out because of concerns about inappropriate access by overseas visitors, including foreign nationals, and about the impact of the current charging arrangements on some vulnerable groups and the compatibility of the regulations with the UK's human rights obligations.

The review was wide ranging and the issue of migrant access to the National Health Service gives rise to strong feelings on many sides of the immigration debate. In reaching final decisions the Government has embraced the need to strike the right balance between protecting public health, NHS resources and human rights on the one hand by ensuring vulnerable groups receive free treatment at an early stage to head off the risk of the spread of infection and prevent health conditions from exacerbating requiring more expensive downstream medical intervention, and on the other ensuring we have fair rules on free access. The National Health Service is a national resource for the people of the United Kingdom, not a free for all service internationally for non-residents.

One of the review's key conclusions was that the NHS in England and the UK Border Agency should work together to tackle the problem of non residents evading payment for treatment for services provided by the NHS. It is right that immediately necessary NHS treatment should never be withheld from those here who require it, irrespective of immigration status or ability to pay. But this gives rise to the problem of how to deal with those who should pay for their treatment but do not do so as well as those who repeatedly seek to flout the NHS charging regulations (as approved by the UK and Scottish Parliaments and the Welsh and Northern Ireland Assemblies) and sometimes misrepresent their true intentions when seeking permission to visit the UK. There are two elements to this proposal: that real time data on those with payments still outstanding to the NHS above a certain threshold should be shared by the NHS with the UK Border Agency; and that the Immigration Rules governing entry and stay in the UK should be changed to provide that those with outstanding payments above a certain threshold should be refused if encountered as applicants at any of the principal immigration control check points, namely: as visa applicants at the Off shore Border Control; as arriving passengers at the UK Border; and as applicants seeking to extend their stay permanently or temporarily in the UK or to acquire British citizenship. For the first time, the UK's immigration rules would state explicitly that a record of failing to discharge payment obligations to the National Health Service will impact upon a person's ability to enter and stay in this country. The purpose of this consultation paper is to seek comments from the public, immigration and health service bodies groups and other groups across the UK on the detail of this proposal. Although health policy is a devolved matter, immigration is not and therefore we have also worked with the devolved authorities in Scotland, Northern Ireland and Wales with the aim of building on any arrangements they already have in place with the UK Border Agency to tackle health tourism fraud with a view to broad harmonisation with the proposals for England but tailoring the processes proposed to their individual requirements. The Agency's related impact assessments are also published online.

Separately, the Department of Health in England will be consulting in parallel on the proposals announced on 20 July 2009 to streamline, consolidate and rationalise the existing body of charging regulations which govern free access to secondary care services, and wider 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 Department of Health consultation is available at http://www.dh.gov.uk/en/Consultations/index.htm. It will be for the devolved authorities in Northern Ireland, Scotland and Wales to legislate on their own health policy on charging.

Our intention is to produce a set of working arrangements which ensure that migrants subject to immigration control who evade payment for treatment or services provided to them by the NHS are unable to take advantage of this country's hospitality and can be identified for appropriate action by the UK Border Agency as and when they come into contact with the immigration system. Subject to the outcome of this consultation, our aim will be for these new arrangements to go live during 2010 alongside the new consolidated NHS charging regulations in England.



Phil Woolas

CONTEXT

The UK Border Agency Business Plan for 2009/2012 set out a number of key objectives and commitments for the Agency over the next three years. The Agency's three strategic objectives are to:

- Protect our border and our national interests;
- Tackle border tax fraud, smuggling and immigration crime; and
- Implement fast and fair decisions.

The UK Border Agency's purpose is to ensure controlled, fair migration that protects the public and contributes to economic growth. We have taken steps to achieve these aims by merging customs detection and immigration arrival control into a single Border Force, introducing a points-based system that provides added weight to the skills and experience we require in our economy as informed by expert advice from the Migration Advisory Committee, backed by a system of shared responsibilities with their sponsors. In order to protect our national interests, local communities and public services, we have introduced identity cards for foreign nationals to combat identity fraud and make it easier for public authorities and employers to determine a person's identity and immigration status. We are introducing E-Borders to count those travelling in and out of the country and perform real time electronic security checks, removed record numbers of foreign nationals committing crime and introduced the presumption of automatic deportation for those who commit crimes attracting a minimum prison sentence of 12 months. Under the "Earned Citizenship" (http://www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/consultations/221878/earning-the-right-to-stay/) provisions, those who come to the UK and who wish to make this country their home, will be required to progress through three successive stages, with obligations at each stage to be met, as well as being encouraged to integrate and contribute to our society, before they will be allowed to remain here as either a permanent resident or British citizen.

Action to deal with so called "health tourists" who default on the payments they should make to the NHS is clearly consistent with the Agency's three strategic objectives and with our wider action to reform the immigration system. The 2009/12 business plan included a commitment to review the rules governing access to health services by the end of 2009. This commitment has been delivered with the announcement of the outcome of the joint Department of Health/Home Office review on 20 July 2009. The review was originally launched in May 2007 and involved discussions with a wider range of NHS practitioner bodies and local government through the auspices of a project group chaired by senior Department of Health officials. The review has taken some time to complete due to the breadth and complexity of the issues under consideration, but the Government is now ready to press ahead with detailed consultation on some of the main changes proposed by the review. One of the key recommendations was that there should be practical working level co-operation between the NHS and UK Border Agency to apply immigration sanctions to those seeking leave to enter or remain when they have significant un-cleared payments to the NHS. The Government proposes to amend the Immigration Rules to provide that non-EEA nationals will normally be refused permission to enter or remain in the United Kingdom if they have significant debts to the NHS. The current rules which govern free access to NHS secondary care services in England are summarised later in this consultation document and the respective devolved administrations also have their rules and in Scotland the equivalent rules extend to some primary care services also. The Government remains committed through the provision of development aid overseas to strengthening the health systems of developing countries and to promoting the availability of essential medicines.

SCOPE OF THE CONSULTATION

Topic of this consultation:	The purpose of this consultation is to obtain input and opinions as to whether the proposed changes to the Immigration Rules are an appropriate and proportionate response to the perceived problems of inappropriate access to free NHS services, and to seek views on the way in which the new arrangements should be implemented and operated. We are also interested in identifying, exploring and preparing for any unintended adverse impacts of these changes.
Scope of this consultation:	The proposed rules change would cover applications made within the UK and at posts overseas.
Geographical scope:	The consultation arose from a joint review with the Department of Health in England. The devolved authorities are also being consulted in order to explore the potential scope for similar data sharing arrangements to be brought into place. This consultation exercise is, therefore, being run UK wide.
Impact assessment (IA):	A preliminary impact assessment is available online. Responses are sought in order to establish and explore further any matters relating to issues relating to diversity and equality.

Basic Information

To:	Members of the public, immigration practitioners, health bodies and groups and migrant representative groups.
Duration:	Closing date for responses: 28 May 2010
Enquiries:	UK Border Agency, CPU Consultations, PO Box 90, Postal Account 23, M90 3RR Email: NHSUKBAConsultation@homeoffice.gsi.gov.uk Telephone: 0208 760 2348
How to respond:	As above for postal returns. URL for online survey.
Additional ways to become involved:	You should also contact the above address should you require a copy of this consultation paper in any other format, e.g. Braille, Large Font, Audio, or in Welsh.
After the consultation:	Responses will be considered and a summary of responses published on the UK Border Agency website.

Background

Getting to this stage:	The Government announced the outcome of a joint Department of Health and UK Border Agency review on 20 July 2009.
Previous engagement:	Senior officials from the Department of Health in England, the NHS and representatives from local authorities and the UK Border Agency convened a Project Board between 2007 and 2008 in order to explore options available.

HOW TO RESPOND

All documents are freely available to view and print online at http://www.ukba.homeoffice.gov.uk/aboutus/consultations/ and any responses may be returned by completing the online survey. Responses can also be posted to "UK Border Agency, CPU Consultations, PO Box 90, Postal account 23, M90 3RR".

If you wish to make any enquiries relating to this consultation, please email NHSUKBAConsultation@homeoffice.gsi.gov.uk. Please ensure that you have included full contact details and that your email is only text and does not include attachments or HTML links. In the alternative, please write to the address above but mark your covering envelope "ENQUIRIES" or telephone 020 8760 2348.

Responses: Confidentiality & Disclaimer

The information you send us may be passed to colleagues within the Home Office, the Government or related agencies.

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 [FOIA], the Data Protection Act 1998 [DPA] and the Environmental Information Regulations 2004).

If you want other information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.

In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

The Department will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.'

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 this 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 does not propose to change these arrangements, but is concerned to ensure that effective regulation is properly applied to more expensive secondary care services.

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. Immediately necessary or other urgent treatment, including all maternity care, must never be withheld or delayed because of questions of payment and charges need not be paid in advance. In the case of non-urgent treatment full payment would normally be 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 advice for HIV is free of charge but not subsequent treatment.

A significant problem is posed by a minority of non-residents who receive chargeable NHS treatment while in the UK and fail to pay, in some cases repeatedly. NHS Trusts make every effort to recover these charges, including the use of tracing and debt collection agencies, but substantial sums remain outstanding. In some cases, non payments are written off as unpaid debts and the overall costs covered by the NHS. There is currently no provision in the Immigration Rules to refuse re-entry to such debtors unless it can be established that their purpose in visiting the UK is to seek further NHS treatment or they are otherwise unable to meet the requirements of the Rules, and in the past there has

not been a systematic sharing of information about non-EEA nationals with significant outstanding debts to the NHS with the UK Border Agency.

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", but 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.

As across the UK, 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. 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.

Case Study

A regular visitor to the UK with five year multiple entry visit visa sought leave to enter the UK for seven days in the late stages of pregnancy. Her son had been born in this country using the NHS nine years previously. During her visit she gave birth and incurred an NHS debt of £4,910, which remained unpaid.

COLLECTING, SHARING AND ACTING ON INFORMATION

Hospital managers and professionals are responsible for applying the respective regulations relating to access to NHS care. The hospitals are also responsible for identifying instances where a patient is liable to be charged for services (this is regardless of nationality) and for then securing payment. This consultation proposes that data around outstanding non payments should be gathered centrally by the NHS. Where the amount outstanding is above a prescribed amount, the data should be processed by the relevant NHS Counter Fraud Services in England, Scotland, Northern Ireland and Wales (CFS) who would develop a central overview of the problem of un-recovered payments to the NHS and lead on sharing this information securely with the UK Border Agency. No clinical details or other personal medical data would be included in the shared data. The Department of Health's consultation sets out these proposed data handling processes. The CFS notification of an outstanding payment would be checked by UK Border Agency officers each time a non-EEA national makes an application at one of the key immigration control check points: as a visa applicant at an overseas post; as an arriving passenger at a port of entry; or as an in-country applicant applying to UK Border Agency offices in the United Kingdom for permission to extend their stay either temporarily or permanently or to become a UK citizen. Where an outstanding payment is found against the NHS data, the application will fall to be refused or in the case of application for citizenship, delayed.

Where individuals subsequently pay for the NHS treatment or services received, the UK Border Agency will be notified via CFS. The NHS in England operates a 24 hour telephone/enquiry service, enabling individuals to settle outstanding debt at any time. The UK Border Agency's strong preference is that non-EEA nationals with outstanding payments to the NHS should clear these before making an immigration application for travelling to the United Kingdom. In this way, both the UK Government and the traveller are observing to a contract of behaviour that we expect travellers to enter into when travelling here. The Government will ensure that healthcare is available in a fair and responsible manner and those who use these services should accept that it is only fair that they discharge their responsibilities in turn by paying any charges made.

In Scotland, information on oveseas visitors who evade payments to the NHS or attempt to obtain NHS services without charge is already given to NHSScotland Counter Fraud Services from a variety of sources, for example, from NHS Boards or GP practices. Information on the total costs to the NHS in such cases is sent securely to the UK Border Agency to assist with determination of any future visa applications. Similarly, the UK Border Agency in Scotland provides to NHSScotland Counter Fraud Services information on overseas visitors identified by the Border Agency who have accessed NHS services/treatment without charge or have arrived in Scotland with the purpose of doing so. The relevant NHS Board is advised by Counter Fraud Servcies of the position. Where the overseas visitor has been identified at the port of entry, Counter Fraud Services in turn advise the UKBA of the total NHS costs to date for which the visitor has evaded payment.

The actions described above are undertaken on a case by case basis. The UK Border Agency's proposals would build on this two-way process. It is not proposed however that NHS 24 in Scotland would have a payment recovery function. Instead, outstanding payments would be made to the NHS Board/hospital within normal working hours.

Case Study

A 63 year old woman sought leave to enter the UK for 8-12 weeks in order to attend an NHS hospital appointment and for a back operation 10 days later. On her previous visit, in the space of less than four months she had had the following treatments at various hospitals, all on the NHS: treatment for myeloma including a scan and stem cell collection, three appointments at an eye clinic and two visits to a cardiac department.

PROPOSALS AND QUESTIONS

(please see separate response form online for full questions)

Changing the Immigration Rules

We propose to amend the Immigration Rules so as to make non payment of NHS charges specific grounds for refusal of entry or further stay in the United Kingdom. Initial research with the NHS in England shows that it raises over £25m in invoices in a financial year against chargeable visitors. Where payment was not able to be secured in advance, (ie when the treatment was urgent), approximately 50% of invoices were paid within a year, however, some £5m were written off (some debts are not written off within the financial year). The NHS bodies have to carry not only the original outstanding payments but also the additional costs of managing these deficits and in some cases cover the full costs where costs are written off. For illustrative purposes, £5m equates to the basic salaries of over 150 nurses for one year. The proposed change to the Immigration Rules will not directly impact upon access to NHS services. It will, however, assist the NHS in recovering payments owed to it and in ensuring that NHS resources are further protected from abuse. Claiming state benefits unlawfully whilst subject to immigration control already constitutes an immigration offence and grounds for administrative removal. This proposal will help strengthen the measures the Government has already taken in protecting NHS resources. The Government believes that it fair and reasonable to expect non resident patients to pay for services received and for foreign nationals to be held accountable and to take responsibility for payments owed to the NHS.

Not all who are liable to NHS charges will be persons subject to immigration control (the charging regulations apply to British nationals normally resident abroad as well). For those non EEA Nationals who are resident here it is proposed that non payment of NHS charges be taken into consideration in applications to become permanently resident here or a British citizen in assessing the applicant's behaviour and conduct (see Earned Citizenship).

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

Q. 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 the permission to travel to the UK?

Q. 3 Is it appropriate for non payment of NHS charges to constitute sufficient grounds to delay someone's application to become a British citizen or permanent resident?

Research by the Department of Health in England found that in a sample, 53% of NHS patient invoices related to non payments of over £1000. However, non payments above £1000 represented 94% of all outstanding costs. A lower threshold of £500 outstanding represented 71% of patients and 98% of outstanding costs. £500 equates to a 2 night stay in a hospital with attendant 24 hour nursing care. £1000 roughly equates to a 4 night stay in a hospital excluding any surgical or drug treatment.

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

If yes, at what level should the threshold be set?

Over £500
Over £1000.

Proposed system of data sharing

In order that the new immigration rule can be applied effectively, it is proposed that the NHS share data relating to non payers with the UK Border Agency. The Agency will then be able to make checks against this data when considering applications to enter or remain in the UK.

There will be a number of safeguards in place in order to protect the accuracy and content of data shared about individuals from misuse or misappropriation.

1. The data will be shared electronically by secure channels, with security restrictions as to access and use, and will relate only to details on identity, level (or confirmation that there are payments of NHS charges outstanding over the threshold) of non payment and the particular NHS bodies owed the funds:

2. The NHS will provide refreshed updates to the Agency on a regular basis through a single point of contact, (relevant CFS) where the NHS will be responsible for checking that unnecessary data is removed and for removing details of instances where costs incurred have been paid or agreement reached over payments.

3. No clinical details will be required or shared. Where an applicant is found to be recorded as a non payer to the NHS, the UK Border Agency will disclose the details in full on request and provide advice to allow the applicant to make contact directly with a representative of the NHS.

4. The NHS in England has facilities to take telephone and electronic queries and payments 24 hours a day and 7 days a week. In urgent cases, the NHS will be able to confirm payment to an Entry Clearance Officer or Immigration Officer by phone or by electronic means. Non payers in Northern Ireland, Scotland and Wales will be able to make contact with the relevant health authorities in those countries.

5. At all times, the transfer of data will be operated under the principles of Data Protection legislation.

6. The UK Border Agency will not be directly involved in the arrangements made between the non payer and the NHS and will not be involved in the collection of funds.

Case Study

A child arrived from abroad accompanied by his parents, ostensibly for a hospital consultation. It became apparent that the true intention was to seek medical care for the boy, who had several serious medical issues. The boy was admitted to another NHS hospital where a bill of over £28,000 was incurred.

Q. 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?

Q. 6 Are the proposed safeguards sufficient to protect the individual?

If no, what other safeguards should be put in place?

It is proposed that only those who have failed to make payment for the costs of NHS treatment or services within 2 weeks (in England) are included in the shared data. In practical terms this will be a month when working with the NHS in England. Processes will be tailored to the existing processes and procedures employed in the devolved authorities and administrations across the UK.

Q. 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?

No time (the Agency should receive data on all non payers regardless of the age of the debt)

1 month

2 months

3 months or more (please specify)

In Scotland, the Common Services Agency for the NHS, of which NHSScotland Counter Fraud Services is one Division, holds payment information. It is proposed that the costs to the NHS of the treatment/services provided to an overseas visitor who has accessed these inappropriately should be forwarded to the UK Border Agency by NHSScotland Counter Fraud Services.

Information would be supplied as soon as it has been identified that the overseas visitor will not pay – usually because they have left Scotland.

Q. 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?

If no, how long should NHSScotland Counter Fraud Services wait before providing the information?

1 month

2 months

3 months or more (please specify)

Case Study

A 38 year old woman sought leave to enter for 3-4 weeks to attend a check-up at an NHS fertility clinic where she had previously received IVF treatment but still had an outstanding bill.

Coverage of data sharing

At present only a small proportion of NHS Trusts in England are in a position to provide the data in a format that the UK Border Agency could use effectively. The method of providing data in Scotland is centralised as explained above. The Health Authorities in Wales and Northern Ireland are also being consulted and have indicated their early agreement to the new immigration rule and proposed processes in principle.

Impact of refusal of entry or permission to remain further on the individual's immigration position

The proposal to refuse entry or further stay for NHS non payers relates to a matter between the NHS and the individual. The NHS is owed funds and has recorded the individual as a non payer. Whilst the costs remain outstanding, it is proposed that an application to enter or remain in the UK will fall to be refused and any application to become a permanent resident or British citizen delayed. Any rights of appeal will be dependent upon the nature of the main immigration application made (and so there will be no change to rights of appeal as they exist already). Once an outstanding payment is cleared, the rule will not act as a bar to entry or further stay. Any application, however, will remain subject to the usual examination by an entry clearance officer, immigration officer or the Agency against the criteria in the wider rules. Failure to pay NHS costs in the past may, for instance, lead to doubts over the applicant's ability to maintain and accommodate themselves, their true intentions in visiting the UK, or in some cases their character and conduct.

Q. 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?

(Previous behaviour, conduct and character are matters that are pertinent to immigration decisions).

Not all non payers will be persons subject to immigration control (the charging regulations apply to British nationals normally resident abroad as well). For those who are resident here it is proposed that NHS non payments be a factor taken into consideration in considering applications from those who wish to become permanently resident here or a British citizen (See Earned Citizenship).

Case Study

An overseas businessman received NHS treatment for many years at a total cost of £55,000 after falsely claiming to be a UK resident.

Protecting our communities and those in need of international protection

In carrying out all of its duties, the UK Border Agency and its officers will act in a manner that is consistent with our tradition of protecting those who require international protection and our obligations under the Human Rights Act 1998. In reviewing the rules on

migrant access to the NHS with the Department of Health, careful account has been taken of these legal duties.

The UK Border Agency has transformed the way that asylum applications are handled in the UK. Descision making has been speeded up with over 60% of asylum decisions made within 6 months. For those who are in need of international protection, the Agency works closely with other agencies in assisting refugees in integrating into our society through our Refugee Integration and Employment Service scheme.

All operational staff are required to undertake diversity training and in particular to be able to identify and assist those who may be vulnerable. For instance, with those we suspect may have been trafficked into the UK, we work closely with agencies that provide specialised care and assistance to victims. Section 55 of the Borders Citizen and Immigration Act 2009 places a positive obligation on the UK Border Agency and those who carry out functions on behalf of the Agency to "have regard to safeguard and promote the welfare of children who are in the UK". Paragraphs 349 to 352 of the Immigration Rules outline the specific steps to be taken when dealing with children. The UK Border Agency has ensured that all staff have received specialist training, with further advanced training for those who will deal with children. Unaccompanied children are immediately referred to the relevant Social Services teams and provided with independent representation.
In operating the proposed change to the Immigration Rules imigration staff will have regard to these important duties. In particular, children encountered in the operation of our duties will be treated as children first and foremost.

The Department of Health's proposals clarify the duty to provide full medical treatment to unaccompanied children in care free of charge (though parents or guardians of accompanied children will be charged for NHS services provided) and new proposals to ensure that those who have been refused asylum but remain in receipt of support from the UK Border Agency in England (as there are recognised barriers to returning home) are also exempted from charges.

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

Equality Impact Assessment

A preliminary screening assessment is available online at:

http://www.ukba.homeoffice.gov.uk/aboutus/consultations/current/

We should, nevertheless, wish to canvass wider opinion as to the potential for the proposed rules change to have a disproportionate impact upon certain elements of society. These responses will assist the UK Border Agency in completing a fuller assessment.

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

If yes, please explain why or in what circumstances you foresee these impacts.

Q. 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?

The full set of consultation documents and response questions can be found on the response form available for completion online or for print at:

http://www.ukba.homeoffice.gov.uk/aboutus/consultations/current/

ANNEX

Consultation criteria

The Consultation follows the Government's Code of Practice on Consultation – the criteria for which are set out below:

Criterion 1 When to consult – Formal consultation should take place at a stage when there is scope to influence the policy outcome.

Criterion 2 Duration of consultation exercises – Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.

Criterion 3 Clarity of scope and impact – Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.

Criterion 4 Accessibility of consultation exercises – Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.

Criterion 5 The burden of consultation – Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.

Criterion 6 Responsiveness of consultation exercises – Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.

Criterion 7 Capacity to consult – Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

The full Code of Practice on Consultation is available at:
http://www.berr.gov.uk/whatwedo/bre/consultation-guidance/page44420.html

Consultation Co-ordinator

If you have a complaint or comment about the Home Office's approach to consultation, you should contact the Home Office Consultation Co-ordinator, Nigel Lawrence. Please DO NOT send your response to this consultation to Nigel Lawrence. The Co-ordinator works to promote best practice standards set by the Government's Code of Practice, advises policy teams on how to conduct consultations and investigates complaints made against the Home Office. He does not process your response to this consultation.

The Co-ordinator can be emailed at: Nigel.Lawrence@homeoffice.gsi.gov.uk or alternatively write to him at:

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