



Briefing: Brexit and access to healthcare for EU/EEA nationals living in England

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Over the last 5 years the NHS has become increasingly entangled in immigration enforcement policy. NHS Charging Regulations restrict who the NHS can provide healthcare to and require hospital staff to conduct immigration status checks on their patients.¹ People have been denied lifesaving care resulting in serious harm and – in some cases - death². And hospital trusts, struggling to apply complex immigration laws, have accidentally withheld treatment from people fully entitled to NHS care, as was demonstrated by the case of Albert Thompson, a member of the Windrush generation who was wrongly denied cancer chemotherapy.³

The Immigration and Social Security Bill and White Paper on the UK's future immigration system⁴ are clear that, after Brexit, EEA / Swiss nationals living in the UK (and their family members) will be subjected to hostile environment measures including restricted access to NHS services. It is anticipated that, as NHS trusts struggle to navigate the new and complex immigration system, EEA / Swiss nationals who continue to be entitled to NHS services, such as those with settled status, will face a host of legal and administrative obstacles in NHS services including treatment being wrongful denied.

This briefing lays out Doctors of the World's concerns about the Government post Brexit healthcare arrangements for EEA/ Swiss nationals living in the UK.

The current situation for EEA and Swiss nationals accessing NHS services

Everyone in England is eligible for free primary (GP) care. To receive NHS secondary care services free of charge a person must be 'ordinarily resident' in the UK, meaning the individual is in the UK lawfully, voluntarily and is properly settled. Hospitals and community services are legally obliged to check if patients are 'ordinarily resident' before providing a service. Services considered 'urgent' or 'immediately necessary' will not be withheld pending payment⁵.

How does this apply to EEA and Swiss national living in the UK?

- At present, EU/Swiss nationals who are living in the UK and exercising their treaty rights (as a worker, a self-employed person, a student, a self-sufficient person, or as a job seeker for up to 91 days)⁶ are considered 'ordinarily resident' and are entitled to all NHS service free of charge⁷.
- EEA/Swiss national visitors (under 3 month stay) with A valid EHIC or Provisional Replacement Certificate (PRC) (confirming that the holder is covered for their health costs by the country of issue) are entitled to free treatment for 'all treatment that is medically necessary before their planned date of return'⁸

¹ <https://www.doctorsoftheworld.org.uk/wp-content/uploads/2018/11/research-report-122-people-seeking-asylum-access-to-healthcare-lived-experiences.pdf> and https://www.doctorsoftheworld.org.uk/wp-content/uploads/import-from-old-site/files/Research_brief_KCL_upfront_charging_research_2310.pdf

² <https://www.theguardian.com/society/2018/nov/13/cancer-patient-died-after-nhs-demanded-30000-for-treatment>

³ <https://www.theguardian.com/uk-news/2018/mar/10/denied-free-nhs-cancer-care-left-die-home-office-commonwealth>

⁴ HM Government, The UK's future skills-based immigration system, December 2018, <https://www.gov.uk/government/publications/the-uks-future-skills-based-immigration-system>

⁵ National Health Service (Charges to Overseas Visitors) (Amendment) Regulations 2017.

⁶ students and self-sufficient persons also need 'Sufficient Resources' and 'Comprehensive Sickness Insurance' to be exercising the Treaty right.

⁷ [Guidance on implementing the overseas visitor charging regulations: Ways in which people can be lawfully resident in the UK, Department of Health and Social Care, 2019](#)

⁸ Regulations (EC) 883/2004 and 987/2009

- EEA/Swiss nationals not exercising Treaty rights (or without a valid EHIC/PRC or residing beyond 3 months) will not automatically be considered to be in the UK unlawfully and may not meet the 'ordinarily resident' test. In this case they are not entitled to secondary care services and will be charged the NHS tariff costs in advance of receiving most services⁹.

The impact of Brexit in EEA/Swiss national's entitlement to NHS services

The Secretary of State for Health's power to charge for NHS services are, at present, limited to secondary care services only. It is therefore unlikely that EEA / Swiss nationals' entitlement to primary care services will be restricted.

EEA/Swiss nationals living in the UK before exit day:

- Those with either settled (indefinite leave to remain) or pre-settled status (limited leave to remain) will meet the ordinarily resident test, they will be able to access NHS funded healthcare for as long as their status lasts.
- EEA/Swiss nationals who do not apply for settled status, or those whose applications are unsuccessful will become undocumented, as will those who do not leave the UK once their leave expires. They will not be eligible for NHS secondary care services and will be charged the NHS tariff for most services. It is reasonable to presume that the most vulnerable EEA/Swiss nationals are at highest risk of become undocumented.

EEA/Swiss nationals moving to the UK after exit day:

- The Government's White Paper on the future immigration system (published in December 2018) indicates EU skilled workers (and their dependents) will be required to pay the immigration health surcharge (IHS) when making an immigration application either to enter or remain in the UK.¹⁰ They will then be eligible for all NHS services for as long as their status lasts.¹¹
- The White Paper indicates EU migrants on short term visas (of up to 12 months) will have "no right to healthcare (beyond emergency care)"¹²
- Those who arrive in the after Brexit day without some form of leave and do not leave the UK by 31 December 2020, and those who do not leave the UK once their leave expires, will not be eligible for NHS secondary care services and will be charged in advance at 150% of the NHS tariff for most services.

EEA/Swiss nationals moving to the UK after exit day if the UK leaves the EU without a deal:

- If the UK leaves the EU without a deal, EEA/Swiss nationals who subsequently move to the UK will need to apply for European temporary leave to remain (Euro TLR). Those granted Euro TLR applicants will meet the ordinarily resident test, they will be able to access NHS funded healthcare for as long as their status lasts.

Reciprocal healthcare arrangements after Brexit

At present the UK can claim reimbursement for the cost of providing healthcare to visitors (under 3 months) from other EEA countries or Switzerland under Regulations (EC) 883/2004 and 987/2009. The UK government is aiming to agree reciprocal healthcare arrangements either with the EU or with individual EEA countries and Switzerland if there is a no deal Brexit. This would allow the continuation of the existing reciprocal healthcare arrangements for EEA/Swiss national visitors (under 3 months) until at least December 2020. Where such agreement is reached, visitors from that country would have access to NHS care under the terms of that agreement, potentially using their non-UK EHIC, PRC, S1 or S2 form to avoid being charged.

⁹ Guidance on implementing the overseas visitor charging regulations, Department of Health and Social Care, 2019

¹⁰ HM Government, The UK's future skills-based immigration system, December 2018, <https://www.gov.uk/government/publications/the-uks-future-skills-based-immigration-system>

¹¹ All NHS services excluding assisted fertility.

¹² HM Government, The UK's future skills-based immigration system, December 2018, <https://www.gov.uk/government/publications/the-uks-future-skills-based-immigration-system>, p53.

Why is DOTW concerned?

Healthcare delayed and withheld

Global Futures' analysis of the Government's White Paper *Closing the door – the true cost of the immigration white paper* warned that EU migrants are at risk of being subjected to a Windrush-style scandal - but on a much larger scale – with people being wrongfully denied essential public services:

“[After Brexit] EU nationals could have one of at least six different kinds of immigration status. They have different types of proof and periods of validity. It is inevitable that employers, landlords and others dealing with EU citizens will make mistakes in administering this system, with dire consequences for those affected. The settlement scheme creates an entirely new form of status, with which officials, employers and landlords will have no experience. And there are no plans to give EU nationals any hard-copy documentation of their status. This makes the risk of problems due to confusion and risk-aversion high.”¹³

We share this view. After Brexit, EEA/Swiss nationals and their family members will be subjected to hostile environment measures including restricted access to NHS services. They will need to **prove** their status to be allowed NHS care without charge. EEA/national living in the UK could have one of (at least) six different types immigration status¹⁴ each with different entitlement to access NHS services. This change in immigration law will present a huge challenge to already struggling NHS hospitals, and increase the risk of NHS trusts incorrectly identifying EU nationals as ineligible for NHS care and withholding treatment. We anticipated that even those with eligible status will face a host of legal and administrative obstacles to accessing NHS services. There has been no evaluation or consultation with the NHS on the impact that this change will have on already overstretched NHS staff and resources.

We are particularly concerned about ‘up front charging’ being applied to EEA/Swiss nationals. It is well documented that NHS trusts struggle to implement the existing NHS Charging Regulations for non-EU migrants¹⁵, and often incorrectly withhold lifesaving care resulting in serious harm or death (see appendix for case studies).¹⁶ Following evidence of widespread misapplication of the Charging Regulations, the Equality and Human Rights Commission demanded a clear separation between immigration policies and the NHS¹⁷, and the Shadow Secretary for Health has regularly called for the Regulations to be suspended as they are “implemented in a shambolic and cruel manner”.¹⁸ To extend the existing upfront charging system to EEA/Swiss nationals will be to multiply the existing injustices within a system already failing to cope.

Temporary workers

Doctors of the World is particularly concerned that the White Paper indicates that recipients of short term visas of 12 months will have “no right to healthcare (beyond emergency care)”¹⁹, thereby establishing a precedent of excluding of migrants who are legally living and working in the UK from access to free or subsidised²⁰ NHS services at the point of need.

¹³ <https://ourglobalfuture.com/reports/closing-the-door-the-true-cost-of-the-immigration-white-paper/>

¹⁴ Settled status, pre-settled status, investment visa, working visa, short term visa, and undocumented.

¹⁵ The National Health Service (Charges to Overseas Visitors) Regulations 2015 and The National Health Service (Charges to Overseas Visitors) Regulations 2017

¹⁶ <https://www.theguardian.com/uk-news/2018/mar/10/denied-free-nhs-cancer-care-left-die-home-office-commonwealth>;

<https://www.theguardian.com/society/2018/nov/13/cancer-patient-died-after-nhs-demanded-30000-for-treatment>;

https://www.doctorsoftheworld.org.uk/wp-content/uploads/import-from-old-site/files/Research_brief_KCL_upfront_charging_research_2310.pdf; ;

https://www.doctorsoftheworld.org.uk/wp-content/uploads/import-from-old-site/files/DoTW_Response_to_DH_formal_review.pdf

¹⁷ <https://www.equalityhumanrights.com/en/publication-download/making-sure-people-seeking-and-refused-asylum-can-access-healthcare-what-needs>

¹⁸ <https://www.theguardian.com/society/2018/nov/13/nhs-denied-treatment-for-migrants-who-cant-afford-upfront-charges>

¹⁹ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/766465/The-UKs-future-skills-based-immigration-system-print-ready.pdf, p.53

²⁰ Via the health surcharge

Good, preventative healthcare plays a central role in maintaining a fit and healthy workforce, and the policy to exclude people on short term visas from all healthcare beyond emergency care establishes a worrying precedent of excluding migrants who are legally living and working in the UK from NHS services. Those on short term visas are likely to be in lower paid jobs and unable to pay for healthcare out of pocket.

Skilled workers and the IHS

Requiring EU migrants on skilled worker visas and their dependents to pay the IHS is unfair and will be cost prohibitive for some. Payment of the IHS – currently set at £400 per person per year with a discounted rate for students of £300 per year²¹ - must be made at the same time as an immigration application and must cover the total cost for the duration of the visa and for all the people named on the application. A person applying for a 2 ½ year visa will incur an IHS of £1,000 per person (on top of any other immigration fees) and a family of four would be required to pay £8,100 for a visa for the same time period.

For those on lower incomes the IHS will be cost probative. Of particular concern is the impact the IHS will have on EU migrants living in the UK when they come to renew their visa and that large IHS payments will prevent those on low incomes from being able to renew their visa, causing them to lose their lawful stay in the UK.

It is also of note that EU migrants who are employed, for example those on a short term or skilled worker visa, will contribute to the NHS through tax and national insurance payments and in effect, by being required to pay the IHS, will be charged twice for healthcare.

Doctors of the World (DOTW) UK's recommendations:

- The Government removes NHS services from all hostile/compliant environment policies by repealing the NHS Charging Regulations
- The Government's unilateral Citizens' Rights offer includes a commitment that NHS services will not be withheld from EEA/Swiss nationals.
- That the government remove the requirement on NHS trusts to secure payment from EEA/Swiss nationals and their family members *before* providing NHS services (upfront charging) by exempting them from Regulation 4 of The National Health Service (Charges to Overseas Visitors) (Amendment) Regulations 2017.
- Exempt EEA/Swiss nationals with immigration permission, including temporary workers on short term visas, from NHS overseas visitor charges to reflect the current situation of EEA/Swiss nationals living and working in the UK.

Doctors of the World (DOTW) UK is part of the Médecins du Monde network, an international humanitarian organisation providing medical care to vulnerable populations across the world. In the UK, we run a volunteer-led clinic and advocacy programme that that helps people who have been unable to access NHS services to get the healthcare they need. We also run a specialist clinic for women and children.

We support just under 2,000 people every year to access NHS services. The majority of patients in 2018 were undocumented migrants and asylum seekers whose claims had been refused. Thirteen percent were asylum seekers, and the remaining 29% were refugees, EU nationals and undefined. On average, our service users have been living in the UK almost 6 years, without ever having been registered with a GP.

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²¹ http://www.legislation.gov.uk/ukxi/2015/792/pdfs/ukxiem_20150792_en.pdf#page=3, para 7.5

Appendix – Case studies of NHS trusts withholding urgent and immediately necessary services from patients

Deidre, undocumented migrant with cancer (2017)

Deidre is from the Caribbean. She came to live in London with her daughter Sally, a UK citizen, after she was widowed. In 2016, Deidre was diagnosed with cancer. A specialist advised her that she was too sick to fly home, and another clinician later confirmed that the need for chemotherapy was ‘urgent’. Despite this, the hospital demanded a five-figure sum before treatment could commence. As a care worker, Sally is not able to pay for her mum’s treatment all in one go. Doctors of the World supported Sally to challenge the hospital’s decision to refuse the palliative care that Deidre so desperately needed. Deidre passed away in early 2018.

This case was covered by the Guardian in November 2018: *Cancer patient died after NHS demanded £30,000 for treatment* (available at <https://www.theguardian.com/society/2018/nov/13/cancer-patient-died-after-nhs-demanded-30000-for-treatment>).

Djibril, refused asylum seeker with cancer (2017)

Djibril says that when he was refused cancer treatment he was “very scared and desperate [...] and worried that [his] days were numbered”. He had arrived in the UK 17 years earlier, fleeing political persecution in his home country. He claimed asylum, but this was turned down. Twice the Home Office has tried to return to his home country – yet on each occasion the local authorities refused to allow him back. He remained living in limbo in the UK.

In 2016 Djibril was diagnosed with cancer and told he needed surgery, but the hospital cancelled the operation because his asylum case had been refused. Djibril’s medical notes explained that there was a risk of the cancer spreading if he did not receive treatment. Despite this, the hospital declined to treat him unless he paid for the surgery in advance. Unable to pay upfront or return home, Djibril came to Doctors of the World. The treatment was provided after a significant delay and after we supported Djibril to get legal help to challenge the hospital’s decision.

This case was covered by the Guardian in November 2018: *NHS trusts call in the bailiffs to chase ineligible patients’ debts* (available at: <https://www.theguardian.com/uk-news/2019/mar/23/nhs-trusts-use-bailiffs-collect-debts-ineligible-patients-asylum-seekers-immigrants>).

“Albert Thompson” (2018)

Albert Thompson is a member of the Windrush generation (British-born commonwealth subjects who arrived in the UK from before 1973) He has lived in the UK for 45 years having arrived from Jamaica as a teenager. Albert was caught up in the Windrush scandal – a 2018 political scandal in which the UK government denied members of the Windrush generation immigration papers resulting in them being incorrectly deported or detained, or denied public services to which they were entitled.

In 2017, having been diagnosed with prostate cancer, Albert had surgery and was to begin a course of radiotherapy in November. The treating hospital then withheld the radiotherapy until Albert paid £54,000 in advance. After a public campaign that attracted the attention of the national media and politicians, Albert received treatment in May 2018, six months after he was due to start.

This case was covered by the Guardian in March 2018: Londoner denied NHS cancer care: 'It's like I'm being left to die' (available at <https://www.theguardian.com/uk-news/2018/mar/10/denied-free-nhs-cancer-care-left-die-home-office-commonwealth>).

Saloum, 54, anti-FGM campaigner from the Gambia

Saloum came to Derby from The Gambia about 10 years ago, having fled in fear of political persecution for his activism against FGM. Sal never claimed asylum but worked odd jobs to make ends meet. He had never had any health issues, so had never seen a doctor during this time.

In December 2018, Sal had been homeless for about two months, staying on friends' sofas, when he collapsed suddenly on the street. He fell unconscious and woke up days later in Royal Derby hospital, where he was diagnosed with two brain tumours and lung cancer. He was given days to live, but after being treated for several days, he was told that as an undocumented migrant he was not eligible for further NHS treatment unless he could pay for it. He would no longer receive the palliative chemotherapy that had been planned. He said: "Somebody came and told they couldn't care for me anymore because of my status... They told me I'd have to pay, and it would be very expensive."

He was discharged without any referrals to community care or efforts to ensure he had an appropriate place to stay. He was left without any advice about ongoing care, and only with a prescription for anti-seizure meds. He later received a bill for £8,397 for the treatment received before his care was terminated. His friend said: "He was homeless leaving the hospital. He had to stay on my sofa... Can you imagine someone as sick as him staying on a sofa? Honestly, it's just ridiculous... He's sick and they want him to stay on the street."

After raising some money, Sal's friends found a small bedsit for him to stay in and looked after him in shifts. He was extremely weak, coughing frequently, and drifting in and out of consciousness. Understandably, there were at a loss at how to properly care for him and felt abandoned by his doctors. DOTW UK dedicated over 20 hours of case work time to support him to register with a GP, negotiate with hospital doctors to start the palliative radiotherapy he was entitled to and receive visits from community nurses.

Before Saloum passed away, he was rushed to A&E on multiple occasions as his condition worsened. Before he died, he told us: "This can happen to other people too. Even if I die...but another person might survive. You have to protect life in this world, you know? That's why I'm interested in telling my story."

It was particularly upsetting to hear that despite support and reassurance the impact of the experience left a lasting impact on Sal, his friend said: "Last night, just before he died he became panicked and anxious and I could see he was scared he might be discharged again because he could not pay for his treatment. I knew him for a long time. He was a very brave soul the way he challenged FGM in Gambia. He had a very tough time in the UK because of the labour exploitation and never really had any time to enjoy his life."