PROPOSED CONSOLIDATION AND UPDATING OF THE PROVISION OF HEALTH SERVICES TO PERSONS NOT ORDINARILY RESIDENT REGULATIONS (NORTHERN IRELAND) 2005, INCLUDING AMENDMENTS TO SPECIFIC PROVISIONS AND EXTENSION TO PRIMARY CARE SERVICES

Closing date for responses: 10 April 2013

Introduction

This consultation invites your views on the Department of Health, Social Services
and Public Safety's ("the Department") proposals to consolidate and restructure the Provision of Health Services to Persons not Ordinarily Resident Regulations (as amended) ("the 2005 Regulations") and specific provisions under the 2005 Regulations to ensure that the regulatory framework on access to services is effective, reflects current policy and keeps pace with an ever-changing healthcare and international landscape. It is also proposed to extend the access exemptions to Primary Care Services rather than just Secondary Care Services as at present.

Responses should reach the Department by
10 April 2013.

DHSSPS Primary Care Medical Services Branch
10 January 2013

Background

1. It is the Department of Health, Social Services and Public Safety's duty under the Health and Social Care Reform Act 2009 to provide for the health and well being of the people of Northern Ireland. The Department recognises that there are occasions when people visiting Northern Ireland will need access to healthcare and that the HSC has a duty of care to any person whose life or long-term health is at immediate risk. Wider public health must also be protected by ensuring that infectious diseases are identified, treated and contained wherever they occur in the population. There is not however an obligation to provide free treatment for all and there has been a long-standing policy of (with specified exceptions) charging overseas visitors for most treatment, a position which has been reflected across all the health systems of the UK for many years. By way of clarification, overseas visitors in the context of this consultation should be understood as any person not "ordinarily resident" in Northern Ireland i.e. anyone who does not live here lawfully, and on a continuous and settled basis.

2. Maintaining a policy that balances cost, public health, migration and humanitarian principles is challenging. The Department has therefore undertaken a review of access policy and legislation to ensure that policies continue to reflect these competing needs. Before arriving at these proposals the Department has also taken into account the views of a number of interest groups in this field.

Objective

3. The objective is to consolidate and restructure the 2005 Regulations and make clarifying amendments to existing provisions in order to ensure that the regulations are comprehensive and clear, and thereby reflect the current policy on access to publicly funded healthcare in Northern Ireland.

Options

4. A number of options have been identified:

(i) no changes;

(ii) consolidate and restructure the Provision of Health Services to Persons not Ordinarily Resident Regulations 2005 (as amended);

(iii) consolidate and restructure the Provision of Health Services to Persons not Ordinarily Resident Regulations 2005 (as amended) and amend specific provisions to reflect policy on access to health services (proposals (a) to (i)); and

(iv) Options (ii) or (iii) could also include the extension of provisions to Primary Care Service (proposals (a) to (j)).

5. Option (i) would maintain the status quo, however over the past few years, the Department has become increasingly aware that the existing policy and legislation governing overseas visitor (i.e. non-UK residents) access to healthcare in NI has become complex and complicated to understand and administer.

6. Option (ii) would consolidate and restructure the 2005 Regulations bringing the current provisions under the 2005 Regulations into a single clearer legislative document. Since the introduction of the 2005 Regulations further amendments have been introduced via Statutory Rule 377/2008. This, along with the increasing influence of European legislation in this area, and the vastly increased number of non-UK nationals both living in and visiting Northern Ireland, means that the 2005 Regulations are in need of clarification and consolidation to ensure that they are comprehensive and clear and to ensure consistent and fair application.

7. Option (iii) - consolidating and restructuring the 2005 Regulations would ensure that the regulations are comprehensive and clear but would not ensure that they fully reflect current policy of encouraging persons to access services in a primary care setting where this would be more appropriate for their condition. This is therefore also an opportunity to introduce minor amendments to ensure protection of the rights of the most vulnerable groups.

8. Option (iv) - There is a major drive within health services at present to ensure that patients access their care in the most appropriate setting. It is therefore proposed to extend the exemptions allowing entitlement to Secondary Care to non-residents to Primary Care so that treatment could be accessed through this route where more appropriate. This would also require consequential amendments to the General Medical Services Contract Regulations 2004.

9. On the basis that extending the exemption categories to primary care would provide for a more complete and comprehensive legislative framework and is in line with current policy that healthcare is accessed in the most appropriate setting, the preferred option covered in this consultation is Option (iv) which includes all the proposals (A) to (J) below. Please note it is not necessary to adopt all the proposals from A to J, as proposals are not mutually exclusive;

Proposals

10. Proposal A: INCREASING THE PERIOD THAT PERSONS CAN BE ABSENT FROM THE COUNTRY WITHOUT BEING LIABLE FOR HEALTHCARE CHARGES FROM 3 TO 6 MONTHS

People living in the UK for part of the year, while also spending significant periods of time abroad, risk being considered as not ordinarily resident and so not entitled to free healthcare, although some exemptions do protect this group:

- Any UK state pensioner living abroad, who has previously lived in the UK for at least ten years, receives free treatment for immediate needs arising during any temporary visit to the UK, but not for existing conditions or elective needs;

- UK state pensioners, living for no more than six months per year in another EEA country, and the remainder of the year in the UK, retain full eligibility for treatment for the period they reside in the UK, as long as they do not register as resident in the other EEA country;

- EEA nationals (including former UK residents) have the right under European Community Regulations to receive all clinically necessary healthcare when they visit the UK, which is covered by their European Health Insurance Card;

- Those working abroad for up to five years (who have previously resided in the UK for ten years) retain full eligibility during that period;

- Members of the Armed Forces and Crown Servants, together with their dependants, retain full eligibility;

- Those who have previously resided in the UK for ten years and are living in a country with which the UK has a bilateral healthcare agreement will also receive free treatment for needs arising during their visit (and in any case, such other care as is covered by the terms of the agreement);

- People returning from abroad to resume permanent residence are immediately entitled to full free treatment.

If a returning resident is not covered by an exemption, whether or not they are ordinarily resident will usually be assessed by a local Private Patient Manager, on the basis of whether or not they are 'settled' with 'a sufficient degree of continuity'. People who may risk being assessed as not ordinarily resident include those on repeat extended holidays or visits to relatives abroad, and retirees living part of the year abroad, particularly those below state pension age and/or living outside the EEA.

The current regulations include a specific disregard of any period of temporary absence of not more than three months for the purposes of calculating a period of residence – in effect, this allows current UK residents a regular period of absence from the UK of up to three months per year before they risk being chargeable for hospital treatment.

With people having increasingly mobile lifestyles, it is considered necessary to review this regulation. Increasing the permitted period of absence for former residents from three to six months would be consistent with current exemptions for state pensioners. At the same time, six months is a short enough disregard to distinguish between "genuine" residents who spend at least half of the year in the UK, and citizens who now choose to reside in another country for most or all of the year, returning only for short visits, including specifically to access healthcare here.

11. Proposal B: CLARIFYING THE RIGHTS OF PERSONS UNDER THE EU CONVENTION ON SOCIAL AND MEDICAL ASSISTANCE

The Convention is an international legal instrument signed and ratified by the UK which commits to a number of core social and medical rights principles. Signatories to the Convention consist mainly of countries in the EEA and other countries with which the UK already has additional arrangements. The revision would require that such persons are lawfully in the country and that treatment under the Convention does not extend to pre-planned care.

12. Proposal C: ENSURING THAT THE "LEGAL GUARDIAN" HAS THE SAME INTERPRETATION AS PARENT IN RELATION TO ANY CHILD UNDER THE REGULATIONS

Children are rarely exempt from charges in their own right, but instead depend on their parents' circumstances. The intention is that the legal guardian of the child should have parity with the parent of the child within the context of the Regulations.

13. Proposal D: ENTITLEMENT TO FREE TREATMENT FOR ANY UNACCOMPANIED CHILDREN IN THE CARE OF SOCIAL SERVICES

Children found to be unaccompanied in Northern Ireland are taken into the care of social services, at which point they would likely be considered ordinarily resident in Northern Ireland and so entitled to free treatment. However, the Department plans to create an exemption category for such children to put this beyond doubt. A child who becomes an adult during treatment or who leaves the care of social services would continue to benefit from an easement clause for a particular course of treatment. Failed asylum seekers with children who are co-operating with the UKBA are likely to be in receipt of support

from the UKBA; the Department proposes to permit free treatment in such cases until they leave the country or their asylum status is changed.

Framing the exemption around those children in the care of social services avoids the situation of staff having to assess the age of unaccompanied children when that age is disputed. HSC Trusts should have ready access to social workers who have been trained in conducting Merton-compliant age assessment of young people. It also prevents a child becoming exempt from charges simply when in the UK with a person who is not their parent or guardian, such as an extended family member (possibly to attempt to receive treatment). The HSC would be advised to use their discretion to write off debts if they treat a child who shortly afterwards is taken into the care of social services, having been found to be unaccompanied in the UK.

14. Proposal E: AMENDING THE REFUGEE EXEMPTION SO THAT ANY LEGAL ROUTE MADE FOR REFUGEES IN THE UK FALLS WITHIN THIS DEFINITION

That anyone who makes a formal application to be granted refuge in the UK, irrespective of the legal route by which the application is submitted, is exempt from charges until that application is finally rejected. There is unlikely to be a large increase in numbers as most of the individuals who fit this criterion already do so under the current wording which exempts refugees from charges.

15. Proposal F: AMENDING THE CURRENT POSITION SO THAT ANY LEGALLY REQUIRED TREATMENT ORDER WILL BE GIVEN WITHOUT CHARGE

The intention is that if the State requires a person to have treatment (including by way of a Court disposal) then that treatment should be exempt from charges. The current regulation only considers the

improvement of a patient's mental condition, but there are circumstances when a requirement for treatment imposed by a Court may not be confined to the improvement of mental health. For instance, a Court order can include a medical treatment requirement where the person's medical condition, other than their mental condition, is likely to impose a risk to others.

16. Proposal G: ALLOWING FOR FAILED ASYLUM SEEKERS CO-OPERATING WITH THE UK BORDER AGENCY (UKBA) AND IN RECEIPT OF S4 OR S95 SUPPORT TO CONTINUE ACCESSING HEALTH SERVICES

Currently people seeking refuge or asylum are exempt from healthcare charges while their claim is still outstanding, and any appeal is ongoing.

Those whose claims have been refused (failed asylum seekers) are chargeable for most treatment that begins after they have been directed to leave the country and their full appeals process has been exhausted. Immediately necessary or urgent treatment may still be provided in advance of payment although a charge must be levied. Charges may be written off after reasonable efforts have been made to seek recovery, taking into account the person's ability to pay.

The Department is not proposing any change to these arrangements for the vast majority of failed asylum seekers. Many failed asylum seekers have limited resources, meaning that debts to the HSC are often written off and the cost of administering charges is likely to outweigh the income recovered, and some untreated non-urgent conditions may lead to subsequent more costly, urgent provision for which costs would be unlikely to be recoverable. However, automatic entitlement to full healthcare, including both urgent and non-urgent treatment, would not be consistent with the denial of leave to remain and may act both as a deterrent to leaving the UK on a voluntary basis and an incentive to others to travel here illegally.

Similarly, the Department is proposing no change to the current position for other people, such as illegal entrants and over-stayers, who have no lawful basis of stay in the UK and so are subject to charges. The Department is proposing a specific exception for those Failed Asylum Seekers who are co-operating with the UKBA and are supported under Sections 4 or 95 of the Immigration and Asylum Act 1999:

- Section 4 support is available to those adults who are taking all reasonable efforts to leave the UK and where there is a genuine recognised barrier to leaving (such as being unable to obtain a passport). Support is provided in the form of accommodation and food vouchers/payment cards;

- Section 95 support is provided for all asylum seekers where they would otherwise be rendered destitute. This support is retained until their asylum application and appeals have been determined. In the case of families with children under 18, support is normally maintained until the family has departed voluntarily or been removed. Support is provided in the form of accommodation and/or subsistence only in the form of cash.

Section 4 and Section 95 support do not currently include free healthcare. The extension of free healthcare to these groups therefore is wholly consistent with this element of the UK Government's migration and asylum policy. In effect the new exemption will allow those in receipt of Section 4 and Section 95 support will be entitled to the full range of health services. It is understood that a small group of persons will be entitled to avail of this exemption.

17. Proposal H: AMENDMENT TO WORDING OF A&E EXEMPTION TO BETTER REFLECT POLICY INTENT

It is proposed to amend the wording of the exemption in the 2005 Regulations relating to Accident & Emergency (A&E) Services. The policy intent was always to exempt otherwise chargeable patients from payment for their immediate treatment in an emergency or accident situation (if needing admission they once again become chargeable). The difficulties presented by people attending A&E with problems that would be more appropriately treated in Primary Care, coupled with the current wording of "No charge shall be made in respect of any services forming part of health services provided for a visitor—at a hospital accident and emergency department or casualty department" has created an anomaly whereby those not entitled to general publicly funded healthcare can obtain it by this route. The proposal is to reword this exemption to limit it to treatment related to an accident or emergency in order to reflect the policy intent.

Such an amendment would aid efforts to reduce pressure on A&E services by redirecting those patients more appropriately treated in Primary Care. It is recognised that by directing such patients to a treatment setting where they would be charged, some provision would be necessary for those genuinely without funds, and this would be taken into account.

18. Proposal I: AMENDING THE STI EXEMPTION IN RELATION TO HIV/AIDS TO INCLUDE TREATMENT IN SOME CASES

At present the exemption in relation to STIs covers treatment except in the case of HIV infection where only diagnosis and counselling is covered. The Department is proposing the following three options on HIV treatment and would welcome views on which should be the preferred option:

i. Introduce entitlement to HIV treatment to those persons with a specified length of residency (perhaps 3 or 6 months) in Northern Ireland);
ii. Introduce an exemption for failed asylum seekers only, to full HIV treatment; and
iii. introduce a complete exemption as proposed in England with a view to restricting the misuse by short term visitors via clinical guidance.

19. Proposal J: EXTENSION OF CLASSES OF PERSONS IN RESPECT OF AVAILABILITY TO, AND EXEMPTIONS FROM CHARGES IN, PRIMARY CARE

There is a focus within health services to ensure that patients access their care in the most appropriate setting. It is therefore proposed to extend some of the classes of persons categories allowing availability to free Secondary Care to non-residents, to family practitioner services, for example primary medical services, so that treatment can be accessed through this route where more appropriate. Consequential amendments may be required to Regulations made under the Health and Personal Social Services (Northern Ireland) Order 1972, for example to ensure that persons who meet availability categories are entitled to register with GP and Dental practices.

It will also be necessary to make provision in primary care for patients from other EEA countries who may wish to exercise their right to healthcare under Directive 2011/24 EU (on the application of patients' rights in cross border healthcare). Specifically Article 4, 4 which requires that:

"Member States shall ensure that the healthcare providers on their territory apply the same scale of fees for healthcare for patients from other Member States as for domestic patients in a comparable medical

situation, or that they charge a price calculated according to objective, non-discriminatory criteria if there is no comparable price for domestic patients. This paragraph shall be without prejudice to national legislation which allows healthcare providers to set their own prices, provided that they do not discriminate against patients from other Member States."

In order to implement the Directive obligations the Department proposes to make health services both within primary and secondary care available to persons exercising their EU rights, but subject to charges being levied. These charges would reflect the cost to the public health system in Northern Ireland of providing such care in both primary and secondary care settings. The mechanisms and administrative arrangements in respect of this change will be further consulted on when the Department consults on the wider implementation of the Directive.

Equality Implications

20. Section 75 of the Northern Ireland Act 1998 requires each public authority, in carrying out its functions in relation to Northern Ireland, to have due regard to the need to promote equality of opportunity. The Department has conducted a preliminary screening of the changes proposed under this review and in light of this screening exercise has concluded that a full Equality Impact Assessment of these proposals is not required. The preliminary screening can be made available on request.

Circulation of proposals and consultation responses

21. A copy of this documents and attachments is also available at:

www.dhsspsni.gov.uk/index/consultations/current_consultations.htm

22. If you require a copy of this consultation paper in any other format, e.g. braille, large font, audio, please contact the address below.

Responding to this consultation

23. The Department would welcome your views on the proposals set out in this document.

Hard copy replies should be sent to:

Primary Care Medical Services Branch
Castle Buildings
Stormont Estate
Belfast
BT4 3SQ

Replies can be sent by fax to: 028 90 765 621

Email replies should be sent to:

overseas.visitors.consultation@dhsspsni.gov.uk

Telephone enquiries about this consultation can be made to:

028 90 522 285

24. Replies should reach the Department by **10 April 2013**.

25. A summary of responses will be published in conjunction with any further action.

Responses: confidentiality and disclaimer

26. The Department will publish a summary of responses following completion of the consultation process. Your response and all other responses to the consultation may be disclosed in full on request. The Department can only refuse to disclose information in exceptional circumstances. Before submitting your response please read the paragraphs below.

27. The Freedom of Information Act gives the public a right of access to any information held by a public authority, namely the Department in this case. This right of access to information includes information provided in response to a consultation. The Department cannot automatically consider as confidential information supplied to it in response to a consultation. However, it does have the responsibility to decide whether any information provided by you in response to this consultation including information about your identity should be made public or be treated as confidential.

28. This means that information provided by you in response to the consultation is unlikely to be treated as confidential except in very particular circumstances. The Lord Chancellor's Code of Practice on the Freedom of Information Act provides that:

(a) the Department should only accept information from third parties in confidence if it is necessary to obtain that information in connection with the exercise of any of the Department's functions and it would not otherwise be provided;

(b) the Department should not agree to hold information received from third parties "in confidence" which is not confidential in nature, and

(c) acceptance by the Department of confidentiality provisions must be for good reasons, capable of being justified to the Information Commissioner.

29. For further information about confidentiality of responses please contact the Information Commissioner's Office or visit:

www.informationcommissioner.gov.uk.