Policy on the Treatment of Overseas Visitors

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<tr>
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<td>2</td>
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<tr>
<td>Author Name &amp; Job Title</td>
<td>Cathy Miller, Accounts Payable &amp; Receivable Manager</td>
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<tr>
<td>Executive Lead</td>
<td>Chief Financial Officer</td>
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<td>Approved by/ Date</td>
<td>Patients Panel/ December 2015</td>
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<td>Ratified by</td>
<td>Finance, Investment &amp; Performance Committee</td>
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<td>All WHHT Staff</td>
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### CONTRIBUTION LIST

Key individuals involved in developing this version of the document

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<tr>
<th>Name</th>
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<tr>
<td>Cathy Miller</td>
<td>Cathy Miller, Accounts Payable &amp; Receivable Manager</td>
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Approved by Patients Panel | December 2015  
Ratified by Finance, Investment & Performance Committee | August 2016

### Change History

<table>
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<th>Version</th>
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<th>Author</th>
<th>Reason for change</th>
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| Version 1   | 2010 188     | December 2010           | Cathy Miller  
New document: NHSLA Requirement                                                                 |
| Version 1.2 | December 2012| Cathy Miller            | DoH change in respect of treatment for HIV (page 9)                               |
| Version 1.3 | December 2014| Cathy Miller            | Review and update in respect of DoH Policy                                         |
| Version 2   | October 2015 | Cathy Miller, Accounts Payable & Receivable Manager | Formal Review |
1. INTRODUCTION

i. The National Health Service (NHS) provides healthcare for people who live in the United Kingdom. People who do not normally live in this country are not automatically entitled to use the NHS free of charge - regardless of their nationality or whether they hold a British passport or have lived and paid National Insurance contributions and taxes in this country in the past.

ii. The charging Regulations place a legal obligation on NHS Trusts to establish if people to whom they are providing NHS hospital services are not normally resident in the United Kingdom. If they are not then charges may be applicable for the NHS services provided. When this is the case the Trust must charge the person liable, (usually the patient) for the costs of the NHS services.

2. THE TRUST'S RESPONSIBILITIES

i. The Trust has a legal obligation to:

- ensure that patients who are not ordinarily resident in the United Kingdom are identified
- assess liability for charges in accordance with the charging Regulations
- charge those liable in accordance with the Regulations

ii. In the context of charging overseas visitors, when to charge can be considered in terms of the urgency of the treatment needed:

- **Immediately necessary treatment** – if the opinion of the clinicians treating the patient is that treatment is immediately necessary then it must not be delayed or withheld while the patient’s chargeable status is being established. There is no exemption from charges for “emergency” treatment (other than that given in an accident and emergency department). Immediately necessary treatment should always be provided whether or not the patient has been informed of, or agreed to pay, charges. Not to do so could be in breach of the Human Rights Act 1998. It is a matter of clinical judgement whether treatment is immediately necessary, this is different to clinically appropriate, as it may be, in some cases reasonable to expect the visitor to return home for treatment rather than incurring NHS charges.
• **Urgent treatment** – where the treatment is, in a clinical opinion, not immediately necessary, but cannot wait until the patient returns home. Patients should be booked in for treatment, but the Trust should use the intervening period to establish the patient’s chargeable status. Wherever possible, if the patient is chargeable, the Trust will seek a deposit equivalent to the estimated full cost of treatment in advance of providing any treatment. Any surplus which is paid can be returned to the patient on completion of treatment.

**Non-urgent treatment** – routine elective treatment which could in fact wait until the patient returned home. The patient’s chargeable status should be established as soon as possible after first referral to the hospital. Where the patient is chargeable, the Trust will initiate treatment processes, e.g., by putting the patient on a waiting list, expect a deposit equivalent to the estimated full cost of treatment before treatment is provided. Any surplus which was paid can be returned to the patient on completion of treatment. This is not refusing to provide treatment, it is requiring payment conditions to be met in accordance with the charging Regulations before treatment commences.

3. **SCOPE-SPREAD THE WORD**

   i. All Trust staff and patients should be aware of the overseas visitors charging regime. Posters and leaflets explaining the charging Regulations should be displayed throughout the hospitals where people have an opportunity to read them.

   ii. Overseas Visitors Managers are able to provide more formal briefing events for all members of staff who come into contact with patients including medical staff, for example at staff induction courses. These training sessions are repeated at intervals to ensure that new members of staff understand the work of the Overseas Visitors Manager and the role they themselves may have to play.

4. **THE BASELINE QUESTIONS**

   **Avoiding discrimination**

   i. Article 14 of the European Convention on Human Rights, which is now incorporated into UK law in the Human Rights Act 1998, prohibits discrimination against a person in the exercise of their rights under the Convention, on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

   ii. It is therefore important that no person is discriminated against in the application of the Regulations when establishing ordinary residence. The only thing that is relevant is residence and this cannot be judged from external appearance, or name, or language, or nationality, or past or present payment of National Insurance contributions or taxes.

   iii. The way to avoid accusations of discrimination is to ensure that everybody is treated the same way. It is not racist to ask someone where they have lived for the last 12 months as long as you can show that all patients – regardless of their address, appearance or accent – are asked the same question. The answer to that question will result in others needing to be asked, but again you will not be breaking any laws as long as those questions are asked solely in order to apply the Regulations consistently.
iv. The Trust needs to ensure that all staff involved with the identification and interviewing of potentially liable patients should be properly advised of their role and provided with adequate training.

**Asking the baseline questions**

i. Anyone who has lived lawfully in the UK for at least 12 months immediately preceding treatment is exempt from charges, so the baseline question continues to be based on this and is:

   “Where have you lived for the last 12 months?”

ii. However, because the exemption now expressly applies only to those living here lawfully, you need to follow this first question with another:

   “Can you show that you have the right to live here?”

iii. These questions need to be asked every time a patient begins a new course of treatment at the hospital and is entered onto the Trust’s records for in-patient or out-patient care, either on paper or computer and either by administration or ward staff, in order to comply with the Regulations. The system allows the questioner to record either that the patient has lived in the UK for 12 months or that there is some doubt. In all cases where the patient has not lived here for 12 months, or there is an element of doubt (for example because they have been unable to provide satisfactory evidence of their right to live here) the patient should be referred for interview to the Overseas Visitors Team. The questioner should inform the patient that he or she will be further interviewed.

iv. Booking-in staff and ward clerks etc, must be vigilant, and refer potential Overseas Visitors to the Overseas Visitors Team for further investigation.

v. Patients who have been abroad for up to three months of the year immediately preceding treatment can still be regarded as ordinarily resident. However, where a person has spent more than 3 months of the 12 abroad the case should be referred for further interview whatever explanation is provided at this stage. It is not, however, necessary for the patient to have been living at the same address in the UK for the whole 12 months – they can have been living anywhere, or be of no fixed abode, as long as they have been staying somewhere within the UK for the last year.

vi. In some departments, catering for very elderly or mentally confused patients, the baseline questioning may be inappropriate or unworkable. In these cases admissions staff should still be aware of the possibility of patients being chargeable and should notify the Overseas Visitors Team of any patient who, on the information they have, may be an overseas visitor.

vii. Where it is established that a patient has not lived in the UK for the last 12 months, or has not lived here lawfully:

   - The patient should be told immediately, where possible, that they will need to be interviewed by the Overseas Visitors Team to establish their eligibility for free NHS treatment.

   - Wherever possible, that interview should take place before treatment begins, particularly where it is non-urgent elective treatment. But if, in the opinion of medical staff, the treatment is needed urgently it should always go ahead without delay.
• Where it is not possible for a patient to be referred for immediate interview by the Overseas Visitors Team a note should be placed inside the medical records to alert other members of staff to the patient’s potential liability for charges.

viii. Treatment given in accident and emergency departments is exempt from charges and so baseline questioning need not be undertaken until the patient is referred for further out-patient or in-patient care. In settings where questioning could be inappropriate for example, direct admission to critical care, then admitting staff should alert the Overseas Visitors Team of any patient who, on the information before them, could potentially be liable for charges.

Things not to do at this stage

The vast majority of patients will not be liable for charges. The purpose of asking the baseline questions at this stage is to quickly identify that majority in a way that avoids discrimination and to ensure that all patients who may be liable for charges are identified. It is not intended that staff completing administration forms should do anything other than ask the baseline questions and alert the Overseas Visitors Team if necessary. There is no need and no question of staff at this stage asking supplementary questions or carrying out detailed investigations themselves.

5. THE INTERVIEWS

i. Appropriate skills

All staff involved with the identification and interviewing of potentially liable patients are properly advised of their role and provided with adequate training. Staff must have a thorough understanding of the Regulations and guidance together with training on interviewing techniques and handling difficult situations. Staff can sometimes be confronted with distressed, angry or abusive patients and/or relatives, and are fully trained on the Trust’s policy for dealing with these situations.

ii. Timeliness of interview

It is important that patients are aware as soon as possible that there may be a charge for treatment. Whilst it may not be always practicable for interviews to happen immediately Overseas Visitors Managers will make every effort to ensure that a member of their team sees potentially liable patients as soon as possibly.

iii. The main interview

This will take place in private and, wherever possible, before treatment has started. The interviewer will begin by explaining that people not ordinarily resident in the UK can in some circumstances be liable for the cost of their treatment. The interviewer should explain that the interview is taking place because the patient indicated during the process of administration (or because admissions staff have indicated) that he or she may not normally live in the UK, or has been unable to show that they have the right to live here. Some patients will be clear that they are not normally resident here but others may dispute the assessment. The first issue to explore during the interview, therefore, is whether the patient may be ordinarily resident even though they have not lived here for twelve months.

iv. Ordinarily resident
An overseas visitor is defined in the Regulations as a person not ordinarily resident in the UK. “Ordinarily resident” is not defined in the NHS Act 1977. The concept was considered by the House of Lords and although the case being considered was concerned with the meaning of ordinary residence in the context of the Education Acts the decision is generally recognised as having a wider application. The House of Lords interpretation should, therefore, be used to help decide if a person can be considered ordinarily resident for the purposes of the NHS Act 1977 and the overseas visitors charging Regulations.

In order to take the House of Lords judgement into account, when assessing the residence status of a person seeking free NHS services, the Trust will need to consider whether they are: “Living lawfully in the United Kingdom voluntarily and for settled purposes as part of the regular order of their life for the time being, whether they have an identifiable purpose for their residence here and whether that purpose has a sufficient degree of continuity to be properly described as settled”.

The Trust will make a judgement as to whether a patient is ordinarily resident in the light of the circumstances of that individual patient. But there are several elements which all need to be satisfied. For example, a person who has the right of abode or who has been given leave to remain and has an identifiable purpose for their visit may not meet the “settled” criterion if they are only here for a few weeks. Alternatively, someone may be here legally, for several months, but with no identifiable purpose. But it is for the Trust to decide whether the criteria are met. There is no minimum period of residence that confers ordinarily resident status.

A person who is ordinarily resident will be so in their own right, and it is not transferable to other family members. Therefore if a spouse or civil partner of someone who is ordinarily resident normally lives overseas and requires treatment during a visit to the UK they will not be ordinarily resident or automatically entitled to free treatment just because their spouse or civil partner is. The Trust must establish whether the spouse or civil partner meets one the categories of exemption in their own right or is liable to be charged.

Where a child who normally lives overseas is visiting an ordinarily resident parent they can take on the ordinarily resident status of their parent if the parent can show that the child lives with both parents e.g. they have joint legal custody.

v. Overseas visitors

If questioning at the interview results in the interviewer deciding that the patient cannot be deemed ordinarily resident, they must then be treated as an overseas visitor. The next stage of the interview therefore needs to be to establish if he or she can be exempted from charges because they fall into one of the categories for exemption listed in the Regulations.

Where a patient claims to be covered by one of the exemption categories, or indeed claims to be ordinarily resident, the Trust will, by provision of the Regulations, to “make such enquiries as it is satisfied are reasonable in all the circumstances”, to confirm that is the case. It is for the patient to satisfy the Trust of the validity of their claim to free treatment and the Trust is entitled to ask for supporting documentary evidence, as long as it does not behave unreasonably. Where the patient cannot support their claim, the Trust will take the decision to charge for treatment. However in making this decision the Trust will take account of the individual circumstances and judge each case on its own merits. For example, in some cases it will be easier for the patient to provide evidence than in others. The patient can claim reimbursement at a later date providing that sufficient evidence can be produced to show that he or she was entitled to free treatment at the time it was given.
An overseas visitor exempt from charges is normally liable for other statutory NHS charges, such as those for prescriptions, on the same basis as an UK resident. However some charge exempt patients will also be exempt from statutory prescription charges, for example asylum seekers, and will be issued with an HC2 (certificate for full help with health costs). However, having an HC2 does not mean the patient is automatically exempt from hospital treatment charges under the charging Regulations.

vi. **What is acceptable evidence?**

The onus is on the patient to provide whatever evidence he or she thinks is appropriate to support their claim. Access to NHS services is through residence not nationality and the Trust’s interviewers will avoid questions relating to immigration status unless it is strictly relevant e.g. asylum seekers or those claiming to be from a country with which we hold a bilateral healthcare agreement. Interviewers can ask to see passports or visa entry documents, such as work permit/student visa, where appropriate.

In general, patients will be able to provide satisfactory documentary evidence e.g. pension details, letters from employers or colleges etc to support their claim. Where, however, the patient does not have the evidence to hand an interviewer may be asked to either accept confirmation from a reputable third party e.g. a letter from a solicitor or, in some cases, to accept the word of the patient without supporting evidence. What level of evidence is acceptable is entirely a matter for the Trust in the light of the individual patient’s circumstances. Providing the Trust can demonstrate, if need be, that it has acted reasonably in all cases it is unlikely to encounter criticism.

vii. **Using the IND telephone helpline**

There may be occasions where patients produce entry clearance documents that are not familiar to Overseas Visitors Managers. In these cases the Immigration and Nationality Directorate (IND) have provided a general telephone 'helpline', (for use by The Overseas Visitors Manager only). This service will provide the Trust with advice on interpreting different types of entry visas and visa stamps. This service will not provide details of a specific individual's immigration status. Under no circumstances will any medical information be divulged.

viii. **Using the IND secure fax**

In exceptional circumstances and when all other avenues of establishing entitlement have been exhausted, it may be necessary to establish the immigration status of a person. This might include establishing whether a failed asylum seeker has exhausted all their appeal processes, or cases where a hospital comes across a person who appears to be in the country without the proper authority. In these exceptional cases, enquiries about immigration status can be sent to the IND via a separate, secure fax number. To ensure patient confidentiality not breached this service will only be used in cases where the patient's permission has been obtained. Under no circumstances will any medical information be divulged.

In cases where a patient refuses to give their permission to contact IND and has not provided valid evidence to support their claim to be living lawfully in the UK the Trust may decide to levy a charge.

Where a patient gives their permission and it is established their status has changed for example, a person whose claim for asylum has been unsuccessful, if that person has completed 12 months residency then any ongoing course of treatment will continue to be
given free of charge but any new course of treatment for a different condition will be chargeable. If that person has not completed 12 months residency then charges will apply immediately.

Only the Overseas Visitors Manager has the authority to direct immigration enquiries via the helpline and secure fax number.

6. VISITORS FROM EUROPE

Regulation 9 of the Charging Regulations concerns those overseas visitors who are exempted from charge by virtue of European Union (EU) Rights arising under EU Social Security Regulations (EC) 883/2004 and 987/09 (and Regulations (EEC) 1408/71 and 574/72 for Iceland, Liechtenstein, Norway and Switzerland) – the “EU Regulations”. OVMs therefore need to know what entitlements these EU Regulations provide certain visitors from Europe over and above the entitlements provided elsewhere under the Charging Regulations. The UK can claim reimbursement for the cost of providing healthcare to visitors from other member states under the EU Regulations if certain data is captured.

Who is covered for health care under the EU Regulations?

The EU Regulations apply to all countries within the European Economic Area (EEA), which is made up of the 28 member states of the EU (i.e. Austria, Belgium, Bulgaria, Croatia, Cyprus (Southern), Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain, Sweden and the UK) plus Iceland, Liechtenstein and Norway.

Switzerland has a separate agreement with the EU which, in effect, applies the EU Regulations to Switzerland.

European Health Insurance Card (EHIC)

How a person qualifies as insured varies depending on the member state. However, in every case where someone is insured they will have, or will be entitled to hold, an EHIC from the member state in which they are insured. Each family member, including children, will have their own EHIC.

If they cannot show their EHIC, they may instead produce a Provisional Replacement Certificate (PRC) to prove entitlement under the EU Regulations. It is for the patient or their representative to arrange the issue of the PRC from the member state that would issue their EHIC, but the OVM may offer to assist.

Therefore, with the exception of visitors from the Republic of Ireland, only a valid EHIC or PRC can demonstrate that a visitor (including a student) is exempt from charge under the EU Regulations and therefore entitled to free NHS treatment that is medically necessary during their visit. Visitors from Switzerland or the EEA (except Ireland) that do not provide an EHIC/PRC must be charged for their NHS hospital treatment, unless a different exemption applies to them under the Charging Regulations.

A patient who has been charged because they did not provide an EHIC/PRC may be entitled to a reimbursement from their home member state on their return. Alternatively, if they provide a valid PRC covering the period of treatment within a reasonable timescale after treatment, they should be reimbursed.
Visitors from the EEA/Switzerland may be exempt under a different exemption category within the Charging Regulations, for which it is not necessary to show an EHIC, and it is very important that this is considered before the patient is charged. EEA and Swiss nationals who are ordinarily resident in the UK are entitled to free treatment anyway, and so do not have to show an EHIC.

In order for the UK to make a claim to the relevant member state for treating their residents, it is imperative that the data from the EHIC is recorded and reported to the Overseas Healthcare Team at the Department of Work and Pensions via the Overseas Visitor Treatment (OVT) web portal.

What treatment is free under the EHIC?

A person with a valid EHIC/PRC is exempt from charges for "all medically necessary treatment", i.e. treatment that it is medically necessary to provide to them during their temporary stay in the UK, with a view to preventing them from being forced to return home for treatment before the end of their planned duration of stay. This means:

- diagnosis of symptoms or signs occurring for the first time after the visitor’s arrival in the UK;
- any other treatment which, in the opinion of a medical or dental practitioner employed by or under contract with a CCG is required promptly for a condition which:
  - arose after the visitor’s arrival; or
  - became acutely exacerbated after their arrival; or
  - would be likely to become acutely exacerbated without treatment; plus
- the treatment of chronic, or pre-existing, conditions, including routine monitoring.

It should be noted that this is a wider definition than the one which applies to visitors from reciprocal agreement countries which are not covered by EU regulations.

7. EXEMPTED TREATMENTS

Some NHS services provided by the Trust are free to everyone regardless of status. The current list includes:

i. Treatment given in an accident and emergency or casualty department. This exemption from charges ceases once the patient is admitted to a ward or given an outpatient appointment. For example, where emergency treatment is given elsewhere in the hospital e.g. intensive care or coronary care, it is chargeable – it is the location that is exempt, not the type of treatment.

ii. Treatment given in a walk-in centre providing services similar to those given at an accident and emergency department. This means that walk-in centres providing services similar to those provided in A&E departments should not charge overseas visitors who have been referred on from an A&E department.

iii. Family planning services. Certain diseases where treatment is necessary to protect the wider public health. This exemption from charge will apply to the diagnosis even if the
outcome is a negative result. It does not apply to any secondary illness that may be present even if treatment is necessary in order to successfully treat the exempted disease.

The exempt diseases are:

- Acute encephalitis
- Acute poliomyelitis
- Amoebic dysentery
- Anthrax
- Bacillary dysentery
- Cholera
- Diphtheria
- Food poisoning
- Leptospirosis
- Malaria
- Measles
- Meningitis
- Meningococcal septicaemia (without meningitis)
- Mumps
- Ophthalmia neonatorum
- Paratyphoid fever
- Plague
- Rabies
- Relapsing fever
- Rubella
- Salmonella infection
- Severe Acute Respiratory Syndrome (SARS)
- Scarlet fever
- Smallpox
- Staphylococcal infections
- Tetanus
- Tuberculosis
- Typhoid fever
- Typhus
- Viral haemorrhagic fevers
- Viral hepatitis
- Whooping cough
- Yellow fever

iv. Treatment given to people detained under the provisions of the Mental Health Act 1983.

v. Treatment given for mental health problems as part of a court probation order.

vi. Treatment of Prisoners i.e. anyone who has been detained under provision of section 43(1) the Prison Act 1952 or anyone who as been detained under provision of the Immigration Act 1971.

From 1 October 2012 an amendment to the NHS (Charges to Overseas Visitors) Regulations means that HIV treatment is no longer chargeable to any overseas visitors. HIV often presents with other healthcare needs which may be chargeable unless they too are exempt from NHS charge. Overseas visitors requiring HIV treatment will include:
i. People who have no lawful permission to remain in the UK, with diagnosed HIV requiring treatment until they return to their country of origin.

ii. As above, but newly diagnosed in the UK.

iii. People with diagnosed HIV receiving treatment in their home country, who are lawfully present in the UK for a limited period, requiring limited emergency access to treatment including ARVs before they return to their home country.

iv. People visiting the UK on a temporary basis newly diagnosed with HIV during their stay.

INTERPRETING SERVICES

An in depth study is underway in respect of this service to overseas visitors, and it is possible that this will be a chargeable service in the near future.

WHAT WILL THE CHARGE BE AND HOW MAY PAYMENT BE MADE

Costs will vary depending on the treatment plan. Hence it is difficult to have a basic pricing structure that will cover each case.

i. Hospital admissions are charged per night excluding diagnostic tests. Specialised units such as ITU, SCBU and CCU will incur higher costs.

ii. Outpatient appointments are charged per visit excluding diagnostic tests.

iii. Wherever possible the Trust will obtain a deposit to cover expected cost prior to treatment. We accept payment in cash or by credit card with the exception of American Express. The Overseas Team will discuss payment with the patient or their representative.

Patients with Medical Insurance are requested to pay the Trust and send the medical report & receipt to the Insurer for reimbursement.

PROCESS FOR MONITORING COMPLIANCE AND EFFECTIVENESS

The Trust will use the following processes to monitor its compliance with and the effectiveness of this policy:

i. Any changes or amendments to the Immigration Rules & regulations.

ii. Any changes or amendments implemented by the Department of Health.

CONTACT THE TRUST’S OVERSEAS TEAM

Any questions arising from the content of this policy can be directed to:

Elliot Harris
Office: 01923 436729
Mobile: 07979 702520
Email: elliott.harris@whht.nhs.uk

Amanda Briers
Office: 01923 436728
Mobile: 07979 626127
EXTERNAL LINKS/FURTHER READING

The Department of Health
https://www.gov.uk/government/organisations/department-of-health

The Home Office
https://www.gov.uk/government/publications/guidance-on-overseas-visitors-hospital-charging-regulations
# Equality Impact Assessment

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<td>Race</td>
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<td>Sexual orientation including lesbian, gay and bisexual people</td>
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<td>Age</td>
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<td>Disability - learning disabilities, physical disability, sensory impairment and mental health problems</td>
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<td>Marriage &amp; Civil partnership</td>
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<td>Pregnancy &amp; maternity</td>
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2. Is there any evidence that some groups are affected differently? No

3. If you have identified potential discrimination, are any exceptions valid, legal and/or justifiable? No

4. Is the impact of the policy/guidance likely to be negative? No

5. If so can the impact be avoided? None

6. What alternatives are there to achieving the policy/guidance without the impact? None

7. Can we reduce the impact by taking different action? No

If you have identified a potential discriminatory impact of this procedural document, please refer it to Cathy Miller together with any suggestions as to the action required to avoid/reduce this impact.
Policy and Procedure Sign-off Sheet

**Policy Name and Number:** Policy on the Treatment of Overseas Visitors F004  
**Version Number and Date:** July 2015  
**No:** 3  
**Service Location:**

All staff members must sign to confirm they have read and understood this policy.

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