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03 FEB 2016

Dear Richard,

IMMIGRATION BILL – COMMITTEE STAGE CONSIDERATION – IMMIGRATION HEALTH CHARGE

During Monday's debate on the Immigration Bill, I committed to write in order to follow up on points related to the immigration health charge.

The purpose of the immigration health charge is to ensure that migrants make a contribution to the NHS services available to them during their stay. As I explained yesterday, the total cost of visitors and temporary migrants accessing NHS services, in England alone, was estimated at £2 billion per year in 2013. Non-EEA temporary migrants (workers and family) here for more than 12 months have a weighted average cost to the NHS of around £800 per head, and a total estimated gross cost to the NHS of more than £500 million per year. Non-EEA students have a weighted average cost to the NHS of just over £700 per head, with a total gross cost to the NHS of £430 million per year.

The immigration health charge, which is set at £200 pa, with a discounted rate of £150 pa for students and their dependants, is therefore set well below the true cost to the NHS of treating temporary migrants. The low level of the charge recognises the valuable contribution migrants make, and the need to ensure that the UK remains an attractive destination for global talent.

During our debate, I explained that a migrant that makes an immigration application under the Home Office's Destitute Domestic Violence Concession is exempt from the requirement to pay the immigration health charge, as are any dependants. Migrants who benefit from this exemption are entitled to free NHS care.

More generally, where a migrant's immigration application fee is waived on destitution grounds, the requirement to pay the immigration health charge is also waived.

Baroness Lister asked about the criteria that must be met in order to demonstrate destitution for the purposes of a fee waiver. The Government recognises that there will be some, limited circumstances where applicants relying on ECHR rights such as Article 8 - family and private life - are unable to meet the cost of the application fee and where a waiver may be appropriate. The criteria for waiving the fee for Article 8 applications are set out in detail at Annex A. The policy has been narrowly defined to ensure that this provision is limited to those who can clearly evidence (i) destitution, or (ii) they would be rendered destitute by payment of the fee because they cannot afford to pay it now and save up for it within a reasonable period (12 months) or borrow the money from family or friends, or (iii) exceptional circumstances relating to the ability to pay the fee and are unable to meet the cost of the application fee through any reasonable means.

Lord Alton asked about compatibility of the immigration health charge with Article 24 of the United Nations Convention on the Rights of the Child, which sets out that "*States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.*" I can confirm that the health charge, and indeed the Government's health policy more generally, is compliant with Article 24 as all children in the UK have access to healthcare, regardless of their immigration status.

Article 24 does not however preclude the possibility of charging for health services. Children for whom the immigration health charge has been paid, or who are exempt from the requirement to pay the charge, for example, because they are an asylum seeker, victim of trafficking or in local authority care, may access the NHS without further charge for the duration of their lawful stay.

Those children who do not fall within the scope of the health charge, such as those on visitor visas or who are illegally present, also have full access to the NHS. In some circumstances however, their parent or guardian might have to pay for their treatment. It is important to remember, however, that primary care services including GP consultations, are free of charge for everyone regardless of immigration status, as are accident and emergency services until a person is accepted as an in-patient or at a follow up outpatient appointment. Treatment for certain conditions, such as some infectious diseases, is also free of charge to all, as is treatment related to injuries sustained as a result of domestic violence, sexual violence, torture or female genital mutilation.

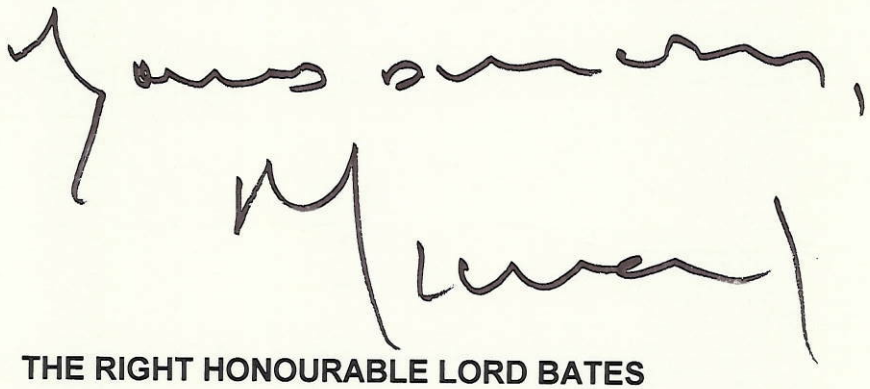
In addition, relevant NHS bodies must always provide treatment which is classed as immediately necessary by the treating clinician irrespective of whether or not the patient has been informed of, or agreed to pay, charges, and it must not be delayed

or withheld to establish the patient's chargeable status or seek payment. It must be provided even when the patient has indicated that they cannot afford to pay. This ensures that those in genuine need are able to receive treatment regardless of their financial position.

We do not, however, believe the NHS should be free of charge to all migrant children as this would encourage migrants to come to the UK in order to seek free NHS care for their children.

Finally, Lord Hylton asked whether Section 38 of the Immigration Act 2014 is compatible with healthcare agreements the UK holds with other EU member states. The immigration health charge does not apply to any EU citizen; a national of an EEA country or Switzerland; or a person from a Third Country who has rights of residence because of their relationship with an EU citizen, as such I can confirm that section 38 is entirely compliant with EU law.

I hope this letter provides reassurance on health charge matters raised during Monday's debate. Lord Keen of Elie will be writing separately on other matters raised in relation to Part 3 of the Bill. A copy of this letter goes to colleagues who have spoken in debates on the Bill as well as to the House Library.



THE RIGHT HONOURABLE LORD BATES

Annex A – Destitution and fee waivers

An applicant will qualify for a fee waiver in the following circumstances:

1. When the applicant has demonstrated, by way of evidence, that they are destitute; or

2. When the applicant has demonstrated, by way of evidence, that they would be rendered destitute by payment of the fee, because whilst they have adequate accommodation and can meet their essential living needs:

a) They have no additional disposable income such that they could either:

(i) pay the fee now; or
(ii) save the required amount within a reasonable period (12 months) (and it would be reasonable in all the circumstances to expect the applicant to delay their application for this length of time);

in either event, without compromising their ability to accommodate themselves adequately or meet their other essential living needs; **and**

b) They have no ability to borrow the required amount from family or friends; and

c) There is no basis for concluding that the applicant's financial circumstances are likely to change within a reasonable period (12 months) (and it would be reasonable in all the circumstances to expect the applicant to delay their application for this length of time); or

3. The applicant has demonstrated, by way of evidence, that notwithstanding the fact that neither 1. nor 2. (above) apply, there are exceptional circumstances in their case such that the fee waiver should be granted. The 'exceptional circumstances' relied on must relate to the applicant's financial circumstances and their ability to pay the fee.

Consistent with the provision of support to asylum seekers and their dependants under section 95 of the Immigration and Asylum Act 1999, a person is destitute if:

a) They do not have adequate accommodation or any means of obtaining it (whether or not their other essential living needs are met); or

b) They have adequate accommodation or the means of obtaining it, but cannot meet their other essential living needs.

The assessment of whether the applicant qualifies for a fee waiver will be made on the basis of their own individual circumstances and those of any dependent family

members. The applicant must provide relevant supporting documentation to evidence their claim, including detailed evidence as to their financial circumstances. Home Office caseworkers, for example, should normally expect to see information and evidence relating to the applicant's accommodation, the type and adequacy of this, the amount of their rent/mortgage, or the amount of the applicant's contribution towards this, their income and outgoings in terms of spending on food, utility bills, etc. This information should be borne out by independent evidence, such as their tenancy agreement, pay slips, utility bills, bank statements, etc. The nature of the evidence provided will necessarily vary depending on the individual circumstances of the applicant, but the caseworker should expect to see evidence appropriate to the circumstances claimed.

If the applicant is being supported by family or friends, a Local Authority or a registered charity, the caseworker should expect to see corroborating documentary evidence confirming provision of support and detailing the exact nature and amount of the support provided. In all cases evidence must be up-to-date.

We have found that insufficient evidence is provided in a number of applications, and, as a result, the application for a fee waiver is refused and the application rejected as invalid for non-payment of the required fee. An applicant whose application for a fee waiver has been rejected due to insufficient evidence, may however re-submit their application with additional, relevant documentary evidence in support of their claim. Re-submitted applications are considered afresh by the Home Office.