



## Statement of Changes in Immigration Rules (HC 1511)

Sections 43 and 44 of the October 2011 Statement of Changes in the Immigration Rules include new rules which make it possible for the UK Border Agency to prevent a migrant from entering or extending their stay in the UK if they have unpaid NHS debts above £1,000.

**As drawn to the attention of the House in the 40<sup>th</sup> Report from the Merits Committee, these provisions were laid before Parliament without full explanation of concerns that had been raised about the:**

- **Impact on public health** – Undermining efforts to tackle the spread of HIV in the UK by dissuading migrants from accessing HIV testing and treatment.
- **Unlawful discriminatory impact of the proposals** - Migrants with HIV who incur debts above the £1,000 threshold will face immigration restrictions which would not apply if they did not have a disability (in law, HIV is a disability from the point of diagnosis). This is indirect disability discrimination as defined by the Equality Act 2010.
- **Barriers to the rules being implemented consistently and effectively** – Immigration rules apply across the UK, but NHS treatment charges are implemented differently (or not at all) depending on the nation or region.

The UKBA has not responded to concerns about public health or the inconsistent application of the rules. They have defended the discriminatory impact of the proposals by noting that it is a “proportionate means of achieving a legitimate aim”.

However, they are yet to provide any evidence to support the claim either that the response is proportionate or that these rules will achieve the aim of safeguarding NHS resources. In fact, there is considerable evidence against both these claims, which is outlined in this briefing.

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NAT (National AIDS Trust) is the UK’s HIV policy charity. We provide fresh thinking, expertise and practical resources. We champion the rights of people living with HIV and campaign for change

## 1. The rules are not proportionate

**The rules will dissuade migrants from accessing testing and treatment for HIV, undermining public health and leading to more onward transmission of HIV and HIV-related hospitalisations.**

- HIV is the one communicable disease still subject to NHS charges and it particularly affects migrant communities. Chargeable migrants are deterred from accessing treatment and also getting tested, even though the test is not subject to charges, because any treatment they access will result in a large, unpayable bill. These rules add the further disincentive that any future applications for entry or stay may be denied because of this treatment bill.
- One in 20 Africans living in the UK has HIV, and the majority are diagnosed 'late', after the point when they should have started treatment.<sup>1</sup> HIV positive people who are not diagnosed and treated in good time can become seriously ill, needing hospitalisation and much more expensive treatment and care.
- Recent research shows that being on treatment can reduce infectiousness by 96%.<sup>2</sup> By contrast, those who are untreated or have interrupted treatment are more likely both to become seriously ill themselves and pass on HIV to others. Those who are undiagnosed are the most likely to pass on HIV to others, and are responsible for more than half of new infections.<sup>3</sup> Immigration restrictions which dissuade from testing and treatment for HIV within migrant communities will be disastrous for public health.

**The rules will penalise migrants who follow their doctors' advice by accessing 'immediately necessary treatment'.**

- The NHS charging guidelines state that no migrant should be denied or have delayed treatment which is 'immediately necessary' to save their life, to prevent their condition becoming life-threatening, or to prevent permanent serious damage from occurring. It is widely accepted by clinicians that HIV treatment fits into this category.<sup>4</sup>
- Chargeable migrants who receive immediately necessary treatment and acquire an NHS debt as a result are not exercising a choice: they are following clinical advice which will save their life. It is profoundly unfair that their future ability to enter or remain in the UK should be affected by this.

**The rules cannot be consistently or fairly applied across the UK. This will lead to some migrants facing immigration restrictions which others, in the same circumstances, will not.**

- There are significant national differences in the application of NHS charges. In Scotland, Wales and Northern Ireland, there is not the same practice of charging

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<sup>1</sup> 66% of Africans diagnosed in 2009 were diagnosed late. HPA – personal communication.

<sup>2</sup> [http://www.hptn.org/web%20documents/PressReleases/HPTN052PressReleaseFINAL5\\_12\\_118am.pdf](http://www.hptn.org/web%20documents/PressReleases/HPTN052PressReleaseFINAL5_12_118am.pdf)

<sup>3</sup> Marks, G, Crepaz N, Janssen RS. 'Estimating sexual transmission of HIV from persons aware and unaware that they are infected with the virus in the USA. *AIDS*. 2006 Jun 26;20(10):1447-50

<sup>4</sup> According to the British HIV Association, the professional body for HIV clinicians in the UK.

migrants for their HIV treatment as in England. There is also significant inconsistency within England. A migrant may be charged by one PCT, but not be by another.

- Trusts may write off debts when it is clear that these cannot be paid by the migrant. However, there is no detailed advice on how best to identify patients who are unable to pay, or consistent criteria for such a decision. The same migrant could have a debt written off by one PCT, but have their debt information passed on to UKBA by another.
- The UKBA outlined to the Merits Committee some details of their proposed processes for implementing the rules, but they have not yet announced any plans to develop guidance to support consistent and fair implementation.

## **2. The rules will not achieve the aim of saving NHS resources**

**The claim that the rules will safeguard NHS resources rests on the assumption that there will be a deterrent effect on others seeking to enter the UK to access free NHS care. However, there is no current trend of HIV 'health tourism' to address.**

- The groups most affected by NHS charges for HIV treatment are refused asylum seekers, visa overstayers and those without papers, who have often been living in the UK for many years without lawful residency status. Many live in destitution. They are not flying in and out of the UK to seek free treatment.
- On average, migrants are in the UK for almost five years before they even have an HIV diagnosis (and this was true when HIV treatment was not routinely charged in practice).<sup>5</sup> Accessing treatment was not their motivation for coming to the UK.
- There has been no mass movement of chargeable migrants to Scotland, Wales or Northern Ireland, who do not implement NHS treatment charges as in England.

**The rules will cost the NHS more money in the long run, as HIV positive migrants avoid treatment and become ill, and HIV spreads within migrant communities.**

- The public health impacts described above will have a considerable financial impact for the NHS. One onwards transmission of HIV costs between £280,000 and £360,000 in treatment costs across a lifetime.<sup>6</sup> Accessible testing and treatment stops onwards transmission.
- People who are not diagnosed and treated in a timely manner become seriously ill, often repeatedly, and need hospitalisation. In 2010, London hospitals estimated that a week's stay in an Intensive Care Unit (ICU) was between £14,250 and £25,000. One year of routine HIV treatment and care is estimated to cost between

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<sup>5</sup> Personal correspondence between NAT and HPA. Year of arrival is completed by clinicians for just over half of people who acquired their infection abroad.

<sup>6</sup> HPA modelling.

£10,000 and £16,000. A migrant who cannot afford to incur the £10,000 treatment bill which will end any future chance to enter or stay in the UK is likely to end up in ICU - and cost the NHS much more than the treatment bill would have.

- Stopping NHS debtors from returning to or remaining in the UK will not recoup what the NHS has spent on their HIV treatment. Those charged are almost all destitute migrants unable to pay these bills.

**The rules will encourage affected migrants to go ‘underground’, making them less likely to ever leave the UK. This will undermine immigration controls.**

- The restrictions on entry and stay will not only dissuade migrants from accessing essential NHS treatment, it will dissuade them from ever leaving the UK – even if they had planned to. The knowledge that an unpayable bill will prevent them from ever coming back to the UK will encourage some migrants to go ‘underground’, out of the reach of both immigration controls and healthcare services.

### **3. Recommendations**

**In NAT's view, the Statement of Changes in the Immigration Rules (HC 1511) should be annulled.**

**But if the changed Immigration Rules are to come into force, the following actions are necessary to mitigate the impacts of sections 43 and 44 as described above:**

- **The UKBA and the Department of Health must produce joint guidance on the implementation of the rules. These should be consulted on publicly, or at least with the involvement of expert groups who have raised concerns about the proposals.**
- **The NHS must have discretion in applying the rules, so that debt information is only passed to UKBA where there is compelling evidence that a migrant is a ‘health tourist’.**
- **The rules should not apply to anyone who has incurred a debt while accessing ‘immediately necessary’ treatment.**
- **The Department of Health must produce comprehensive guidance on the writing off of debts, including a consistent approach to identifying destitute migrants and promptly writing off the debt.**