



**ILPA and JCWI briefing on the *Immigration (Health Charge) (Amendment) Order 2018***

*The Immigration Law Practitioners' Association ('ILPA') is a registered charity and a professional membership association. The majority of members are barristers, solicitors and advocates practising in all areas of immigration, asylum and nationality law. Academics, non-governmental organisations and individuals with an interest in the law are also members. Founded in 1984, ILPA exists to promote and improve advice and representation in immigration, asylum and nationality law through an extensive programme of training and disseminating information and by providing evidence-based research and opinion. ILPA is represented on advisory and consultative groups convened by Government departments, public bodies and non-governmental organisations.*

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ILPA submits that the Immigration (Health Charge) (Amendment) Order 2018 ('the SI') House of Commons Approval motion and House of Lords Approval motion should be resisted. Through this briefing, ILPA will show how the SI:

- Will be detrimental to the NHS
- Will have a detrimental effect upon the lives of migrants, acting as it is a discriminatory form of repeated taxation of migrants.

**KEY RECOMMENDATIONS:**

- For the House of Commons to resist the Approval motion for the SI; and
- For the House of Lords to resist the Approval motion for the SI.

**BACKGROUND**

The immigration health surcharge ('IHS') is a levy imposed on most non-EU migrants coming to the UK for over six months, intended to contribute to the costs of the National Health Service. The charge was first introduced in April 2015 by the *Immigration Act 2014*. The Government is seeking to double the current charge pursuant to sections 38(1), (3) and 74(8) of the *Immigration Act 2014*. The Government argue that the IHS would ensure that migrants make a 'fairer contribution' to their average annual cost to the NHS. This ignores the fact that most migrants are also taxpayers and are thus paying double to the NHS. Furthermore, migrants access the NHS less frequently than the general population. A Department of Health and Social Care analysis of the cost to the NHS of treating surcharge payers suggests an average cost of £480/year per surcharge-paying migrant. The Government's manifesto commitment was to raise the IHS to £600. The SI will, however, double the IHS to £400 (£300 for students, the dependants of students and those on the Youth Mobility Scheme). It is understood that exemptions from the IHS will exist for vulnerable groups such as asylum

applicants, victims of trafficking and those who apply pursuant to the 'Destitution and Domestic Violence Concession'<sup>1</sup>.

It is estimated that the (monetised) costs of increasing the IHS will be:

- lowered tuition fee income for the education sector (£63.2m),
- lost tax contributions from reduced migration numbers (£58.6m),
- lost IHS revenue due to reduced migration numbers (£4.9m); and
- lowered visa fee revenue due to reduced migration numbers (£4.4m).

The (monetised) benefits of increasing the IHS are estimated to be:

- increased revenue from continued migration on the standard application route (£984.9m),
- increased revenue from continued migration on the premium route (£20.0m),
- savings from lowered public service provision (£51.2m),
- increased employment of UK native workers (£7.7m); and
- savings to the Home Office due to processing fewer visa applications (£1.2m)<sup>2</sup>.

Albeit not monetised, the Government also expects that the "*reduction in the volume of migrants entering the UK can have an impact also on the labour market by affecting the employment opportunities of UK residents where the migrants deterred from entering the country for employment reasons are replaced by UK residents.*" This argument is unsound: migrants, such as Tier 1 (Entrepreneurs), who pay the IHS, create jobs for UK residents because they set up or run UK companies. As the latest MAC report noted, the majority of academic studies have found that neither EU nor non-EU immigration have had any impact on employment or unemployment prospects of UK-born workers.<sup>3</sup>

## **A RISK TO THE NHS**

Migrants and their descendants are overrepresented amongst the cohort of NHS doctors. Data from the NHS show that, e.g. 26.54% of doctors identify as Asian or Asian British<sup>4</sup>.

More than that, the NHS relies on migrants. This was accepted by the Secretary of State earlier this year, when the Government excluded doctors and nurses from the cap on skilled worker visas. At the time, Health and Social Care Secretary Jeremy Hunt said:

*Overseas staff have been a vital part of our NHS since its creation 70 years ago. Today's news sends a clear message to nurses and doctors from around the world that the NHS welcomes and values their skills and dedication. It's fantastic that patients will now benefit from the care of thousands more talented staff.*<sup>5</sup>

Doubling the Immigration Health Surcharge will send the opposite message, and will discourage nurses and doctors from moving to the UK. The Royal College of Nursing (RCN) recognises this and has

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<sup>1</sup> <https://www.legislation.gov.uk/ukdsi/2018/9780111172995/impacts>

<sup>2</sup> *Ibid*

<sup>3</sup> Migration Advisory Committee, 'EEA migration in the UK: Final report', p.24.

<sup>4</sup> *Equality and Diversity NHS Trusts and CCGs March 2018* – accessible at <https://digital.nhs.uk/data-and-information/publications/statistical/nhs-workforce-statistics/nhs-workforce-statistics---march-2018-provisional-statistics#key-facts>

<sup>5</sup> <https://www.gov.uk/government/news/doctors-and-nurses-to-be-taken-out-of-tier-2-visa-cap>

called for the Immigration Health Surcharge not to be levied on nursing staff and their dependants. In the words of Chair of RCN Council Maria Trewern:

*The immigration health surcharge not only imposes an enormous personal cost on hardworking nurses and health care assistants, but risks driving away overseas staff at a time we need them most.*

*Patient care is suffering because we don't have enough nurses - there are 41,000 vacancies in England alone. In light of this, we have written to the Home Secretary presenting evidence of the negative effect these charges have, both on individuals and their families, and wider patient care.<sup>6</sup>*

The RCN highlighted the case of Evaline Omondi, a Kenyan nurse working in Luton, whose children had to return to her homeland because the surcharge proved too costly. She was told to pay £3,600 to ensure that she, her partner and four children could receive NHS care free at the point of use during her three-year stint working in the NHS.<sup>7</sup>

Paul Myatt, workforce policy adviser at NHS Providers, the trade association for NHS acute, ambulance, community and mental health services, sets out in an article for the *New Statesman* how the doubling of the Immigration Health Surcharge will make it harder for NHS trusts to recruit their workforce:

*When an NHS trust recruits health workers from outside the EU, they need to have a work visa before they can take up their jobs in the health service.*

*Often their visa application may be for an initial period of up to three years. Under the plans announced this week, they would now need to pay a health surcharge of up to £1,200, compared to £600 at present.*

*They will also need to pay a visa application fee, currently £587 (or £446 if, like nurses, a profession is on the official shortage occupation list) for visas for periods of up to three years. If health workers want to bring dependents with them – a spouse or partner or children – there will be health surcharges and visa application fees to pay for them too.*

*So, greater upfront costs of getting into the UK to work – also including professional registration fees – are likely to make the prospect of working in the health service less attractive for overseas health workers and make NHS trusts' efforts to recruit from overseas in the face of staff shortages even more challenging.*

*This is especially so when costs can represent a significant proportion of a health worker's earning potential, such as for nurses for who the basic starting salary is £22,128 a year. Trusts themselves also have to pay a separate immigration skills charge of £1,000 for every health worker they recruit from outside of the EU.*

*So, all in all, government policy – including the doubling of the health surcharge – is making it harder for NHS trusts to recruit from overseas, even though this is essential for them to deliver safe high-quality care.<sup>8</sup>*

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<sup>6</sup> <https://www.rcn.org.uk/news-and-events/news/rcn-fights-immigration-health-surcharge-for-nursing-staff-as-fee-sets-to-double>

<sup>7</sup> <https://www.theguardian.com/society/2018/may/12/scrap-healthcare-fees-for-non-eu-staff-in-nhs-say-nurses-leaders>

<sup>8</sup> <https://www.newstatesman.com/politics/health/2018/02/why-hiking-immigration-health-surcharge-bad-nhs>

Doubling the Immigration Health Surcharge, supposedly to contribute to the NHS's "long-term sustainability" (ref Health Minister James O'Shaughnessy)<sup>9</sup>, will have the opposite effect of putting its sustainability at risk by depriving the NHS of workers.

## DOUBLE TAXATION

Data from the Department of Health show that 98.8% of NHS funding comes from general taxation and National Insurance, whilst 1.2% of NHS funding comes from patient charges<sup>10</sup>. As detailed below, the overwhelming majority of migrants, along with the rest of the population, already pay taxes and National Insurance contributions in the UK. Furthermore, should they collect prescriptions, obtain dental work or need glasses, will again pay patient charges. Alongside all the above, migrants then pay the IHS as part of any immigration status application in the United Kingdom. Given that this means that migrants paying the current IHS rate are effectively contributing twice over for their NHS services, it is unclear as to why the IHS need be doubled to ensure 'greater fairness'.

It has long been the ILPA position that the term 'migrant' and 'taxpayer' are not mutually exclusive. Migrants not only contribute to the costs of the NHS, but also contribute significantly to ensuring that the NHS functions as an institution. In this context, the IHS simply forms one of the planks of the 'hostile environment' ushered in by the *Immigration Act 2014* and the *Immigration Act 2016*.

The overwhelming majority of migrants are liable to pay the Immigration Health Surcharge. In particular, the following categories must pay for the Immigration Health Surcharge:

1. Tier 2 workers\*
2. Tier 1 (Entrepreneurs) \*
3. Tier 1 (Investors)
4. Tier 1 (Exceptional Talent/Promise) \*
5. Tier 4 (students)
6. Tier 5 (Temporary Workers) \*
7. Tier 5 (Youth Mobility Scheme)
8. Migrants coming to the UK on the basis of their ancestry\*
9. Representatives of overseas businesses\*
10. Partners, parents and children of British or settled citizens
11. Migrants applying on the basis of their human rights, including private and/or family life in the UK

Migrants in the categories with asterisks (7 out of the 11) must work to remain lawfully in the UK, or to extend their leave in the UK. Most adult family members will be working, as families have to show that they are able to support themselves; many students are able to work part-time. They are, therefore, already paying taxes and National Insurance contributions. Asking them to pay the IHS means, effectively, taxing them twice.

Tier 1 (Investors) do not need to work but will have invested a minimum of £2,000,000 in the UK economy. They cannot reasonably be considered to be a burden to the British taxpayers.

Student migrants may not work, but paradoxically, they currently pay a "discounted Immigration Health Surcharge" of £150/year. In any event they are likely to have significant resources available to them to ensure that they are not a burden to the taxpayer. Tier 5 (Youth Mobility Scheme) migrants

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<sup>9</sup> <https://www.gov.uk/government/news/health-charge-for-temporary-migrants-will-increase-to-400-a-year>

<sup>10</sup> <https://www.kingsfund.org.uk/projects/nhs-in-a-nutshell/how-nhs-funded>

also pay the discounted IHS for the two-year period that their visas are granted for. Furthermore, migrants who have obtained comprehensive, private sickness insurance ought not be required to pay the IHS. It is submitted that those migrants who receive private healthcare do not contribute towards the annual average costs of treating migrants to the NHS. It is further submitted that requiring migrants who cannot reasonably be considered burdens to the taxpayer to pay the IHS is not a “*fair and proportional*” contribution.

Finally, the remaining two categories: (1) family members of British or settled citizens; and (2) those who have applied on the basis of their broader human rights – can be divided into three sub-groups.

1. Those who are working and can try to save up to pay Home Office fees and the Immigration Health Surcharge;
2. Those who cannot afford the Immigration Health Surcharge and may qualify for a fee waiver; and
3. Those who cannot afford the Immigration Health Surcharge but are unable to satisfy the Home Office they qualify for their fees to be waived.

The first group are likely to be able to afford the IHS because they have sufficient funds, generally coming from employment income. Again, the majority of those applicants are workers who are paying taxes or supported by family members who pay taxes.

The second group are those who can show the Home Office that they are destitute or will become destitute by paying the fees, or should be exempt for other “exceptional circumstances”. Their fees will be waived, including the Immigration Health Surcharge. They will therefore not pay the Immigration Health Surcharge but still have access to the NHS. This is only fair and in accordance with basic human rights principles.

The third group, discussed in more details below, may be caught between the rock of fees, and a hard place of attempting to return to countries of origin with their families. Such families may have had children here, who are unfamiliar with their parents’ country of origin. They may have lost contact and sources of support in their country of origin. Some families may be unable to afford flight tickets to their country of origin. In effect, such families may be effectively forced into a position of either uprooting themselves and their families, or becoming undocumented/overstaying. Those who are not eligible for assistance through the assisted voluntary return scheme will be particularly vulnerable. Again, they will not contribute to the NHS.

This double taxation is particularly unfair when there is evidence showing that migrants often use the NHS less than native populations:

*People who migrate tend to be younger and healthier than native populations. Older people and those with disabilities and severe illness are less likely to move, apart from in extreme circumstances. This underpins a longstanding epidemiological phenomenon, called the “[healthy migrant effect](#)”<sup>11</sup>*

*[The average use of health services by immigrants and visitors](#) appears to be lower than that of people born in the United Kingdom, which may be partly due to the fact immigrants and visitors are, on average, younger.<sup>12</sup>*

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<sup>11</sup> <https://theconversation.com/the-truth-about-migrants-and-the-nhs-60908>

<sup>12</sup> <https://www.kingsfund.org.uk/projects/verdict/what-do-we-know-about-impact-immigration-nhs>

There is, therefore, no economic logic or fairness in deciding who is charged the Immigration Health Surcharge. Instead, in the overwhelming majority of cases, the Immigration Health Surcharge results in migrants being subject to discriminatory double taxation.

### **FEES PUTTING THE MORE VULNERABLE AT RISK**

As of 2017/18, fees for immigration and nationality applications have risen above the rate of inflation for most categories of application. The fee to apply for limited leave to remain on the basis of family or private life in the UK is £1,033 per person. Taking into account the current IHS, the fee goes up to £1,533. For a family of 4, the fees for an extension of leave for 2.5 years will come to £6,132.

If the IHS were to double, such family would face a bill of £8,132. This is a sum of money which is simply unaffordable for many families, even with two breadwinners.

As set out above, these applicants could in theory be eligible for fee waivers. However, it is notoriously difficult to make a successful application for a fee waiver. To make a successful application for a fee waiver, a migrant must show that

- 1) they are destitute (i.e. do not have adequate accommodation and/or cannot meet their essential living needs); or
- 2) they would be rendered destitute by payment of the fee; or
- 3) there are exceptional circumstances meaning that a fee waiver should be granted.

Applicants have to provide detailed evidence of their income and outgoings, their budgeting for necessities, explaining the minutiae of their finances to the Home Office. They are often also asked to show that they are unable to borrow the required amount from family or friends, and/or why not.

The test is so high that an average family with two breadwinners will most likely not be considered destitute or at risk of destitution, but may also simply not be able to pay the fee and IHS. They may decide to apply for some members of the family only, or not to apply at all, falling into irregularity.

Without status, they would of course not have the right to access most services of the NHS free of charge. This may, in turn, deter migrants from seeking care in the early stages of illness, forcing them to go to A&E when that illness becomes a medical emergency, care for which is more expensive for the NHS<sup>13</sup>. Vulnerable groups may also simply decide to put their health at risk<sup>14</sup>.

Doubling the IHS will, therefore, predominantly affect the most vulnerable, who may be forced to decide which family members should apply to extend their stay, being forced to create 'mixed families' where some members have immigration status whilst others do not, placing great strain upon their families as some family members can access public services whilst others will not even have the right to rent, put their health at risk, and eventually accessing the NHS when their care will cost more to the NHS, when their condition has worsened, thus again defeating the supposed purpose of the increase. The alternative choice may appear to be simple, however, migrants can struggle with the financial burden of having to relocate back to their country of origins, leading them to irregularity. It is worth noting that assisted voluntary return schemes remain a public expense.

For all of the reasons set out above, ILPA urges the House of Commons and the House of Lords to vote against the Approval motion for the SI.

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<sup>13</sup> <http://www.docsnocops.co.uk/wp-content/uploads/2014/09/Argumentsagainstcharginginhealthcare-v3.pdf>

<sup>14</sup> <https://www.independent.co.uk/news/uk/home-news/pregnant-and-ill-migrants-going-without-medical-care-due-to-hardline-government-immigration-policy-a8011351.html>

**Immigration Law Practitioners' Association  
Joint Council for the Welfare of Immigrants  
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