



Department of Health & Social Care

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Cabinet Secretary for Health
Welsh Government

Lord O'Shaughnessy
Parliamentary Under Secretary of State (Lords)
Department of Health and Social Care
39 Victoria Street, SW1H 0EU

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Dear Vaughan,

THE HEALTHCARE (INTERNATIONAL ARRANGEMENTS) BILL

Thank you for your time on Wednesday, further to our call as discussed I am writing with regard to the anticipated introduction of the Healthcare (International Arrangements) Bill. The Bill was considered at a PBL Committee meeting on 22 October 2018 and is expected to be introduced to the House of Commons on 26 October 2018.

I understand officials from my Department have been engaging with your officials on this piece of legislation for some time; however, I wanted to provide you with further information on the Bill and its underlying policy. Please find a copy of the Bill and an Annex outlining reciprocal healthcare and our European Union (EU) Exit plans enclosed in this letter.

This letter highlights the main provisions that relate to Wales or to devolved matters. I appreciated our discussions on Wednesday and hope you found them helpful. I have asked my officials to follow up immediately with yours, to follow up my commitment on the call. I would be grateful, once these discussions have progressed further, if you could write to confirm whether you agree with our devolution analysis and indicate if you will be content to begin the required legislative consent process in the Welsh Legislative Assembly.

This Bill confers powers on the Secretary of State for Health and Social Care to fund and arrange healthcare outside the UK, to give effect to reciprocal healthcare agreements between the UK and other countries, territories or international organisations such as the European Union (EU), and to make provision in relation to data processing which is necessary to underpin these arrangements and agreements.

The Bill is an important part of the Government's preparations for EU Exit and will ensure that, whatever the outcome of EU Exit, we can make appropriate arrangements to support UK residents to obtain healthcare when they move to or visit the EU, European Economic Area (EEA) and Switzerland. The Bill underscores our commitment to reaching an ambitious reciprocal healthcare agreement with the EU or where necessary making agreements with Member States and to exploring potential agreements with third countries.

Without such arrangements many UK citizens who currently live or work in the EU may still have good options for accessing healthcare but some could face additional healthcare costs. UK tourists and others visiting the EU, EEA and Switzerland would rely more on travel insurance and this might make travel difficult for the elderly and/or people with medical risk factors. It would not be as easy for the NHS to refer patients for treatment to the EU, EEA and Switzerland. There could also be costs to tourism, to the wider economy and to the NHS if UK citizens currently living overseas return to the UK to seek treatment here.

Given the range of potential scenarios associated with EU exit and the difficulty, for example, of predicting the final terms of numerous separate bilateral deals and the future economic partnership with the EU, the Bill powers being sought provide a straightforward and clear way to prepare for the range of eventualities. The powers in the Bill provide the necessary legal authority for the Secretary of State to give effect to and fund complex bilateral or international healthcare agreements, and provide for necessary data processing.

Devolved Competence

The UK is responsible for entering into international agreements, and will consult the devolved administrations as a matter of course before agreeing (or amending) anything that touches on a devolved policy area, such as healthcare.

The Bill powers deal with the domestic implementation of international agreements. They will enable the existing arrangements provided for under the EU Regulations, which benefit residents of England, Wales, Scotland and Northern Ireland, to be maintained, subject to EU agreement. They could also support implementation of other agreements with third countries in future for the benefit of all UK nationals.

Reciprocal healthcare as governed by EU Regulations pre-dates the devolution settlements and while international affairs is a reserved matter, domestic healthcare is devolved. As we take the Bill and regulations forward it will be important we do so in a way that is collaborative and respects the devolution settlement and conventions for working together. The UK Government is committed to working closely with the devolved administrations to deliver an approach that works for the whole of the UK.

The Bill has a strong international focus and is predominantly concerned with the welfare of UK nationals outside the UK including the making of payments abroad and data sharing to support that. It is recognised that in some parts of the Bill, powers may be used in ways which relate to domestic healthcare and consequently legislative consent motions will be sought to this extent only. These uses are summarised below:

- To fund and arrange healthcare abroad pre-authorised by the NHS, including NHS bodies in Scotland, Wales or Northern Ireland;
- to give effect to any healthcare agreement which concerns healthcare provided in the UK, the cost of which is met by another country, and
- to enable [Scottish Ministers/Welsh Ministers] to be designated as authorised persons for the purposes of data processing for the purposes of facilitating anything done under or by virtue of the Act in relation to the above (and therefore making a change to their functions).

I propose my officials discuss with officials in the Welsh government in more detail where Regulations might be required and how they might interact with the devolution settlement, for example, in giving effect to international healthcare agreements and any consequential amendments that might need to be made to retained EU legislation that is currently on our statute books. I would like to reassure you that, depending on the subject matter, we would expect an exchange of Ministerial letters before Regulations are laid.

Healthcare in the UK, including eligibility and charging of people from overseas, is a devolved competence and nothing in our proposals would change that. In practice, devolved administrations would need to ensure their cost recovery provisions align with any international agreement entered into by the UK, as you already do now.

I would like to reassure you that, as reciprocal healthcare arrangements are already conducted centrally on behalf of all parts of the UK by the Department of Health and Social Care, which

includes responsibility for all financial costs, there will be no additional costs to the Devolved Administrations associated with the Bill.

Next Steps

I understand my Department has been engaging with your officials and in addition to providing the draft Bill, has provided briefings on the policy intent of the Bill and our contingency plans. These conversations will of course be ongoing, and my officials would be extremely happy to provide further information should you require it.

As per our discussion on Wednesday, I want to again give you my categorical assurance that in no way do we intend for this Bill to impact the existing devolution settlement, and I am ready and willing to engage with you personally on the Bill as and when this would be helpful to you.

I am copying this letter to the Secretary of State for Wales.

A handwritten signature in black ink, appearing to read 'James O'Shaughnessy', is centered on the page. The signature is written in a cursive, flowing style.

James O'Shaughnessy

Annex A - Reciprocal Healthcare Background

Current EU reciprocal healthcare arrangements enable UK citizens to access healthcare when they live, study, work, or travel in the EU/EEA/Switzerland (and vice-versa for those nationals when in the UK):

- The UK funds healthcare for the 190,000 UK state pensioners living abroad (principally in Ireland, Spain, France and Cyprus) registered for the scheme, and their dependent relatives.
- We fund emergency and needs-arising healthcare when UK residents visit the EU/EEA (e.g. on holiday, to study, etc.). People who are ordinarily resident in the UK qualify for the European Health Insurance Card (EHIC) and 250,000 medical claims are resolved each year.
- UK nationals who live and work in the EU can access healthcare when they pay the same local taxes and contributions as other EU nationals (and are not otherwise UK funded). However, we directly fund healthcare for over 10,000 employees of UK firms / bodies working in the EU/EEA ('posted workers') and 'frontier workers' who live in the UK but travel to work in the EU.
- We fund UK residents to travel overseas to receive planned treatment in other countries (e.g. for procedures unavailable in the UK or returning home to give birth). Around 1,500 UK residents choose this option, and the NHS benefits from EU-funded patients who pay for NHS services under this route.

The Department of Health and Social Care, on behalf of the United Kingdom Government, reimburses other EEA countries and Switzerland for the cost of providing treatment to people that the UK is responsible for under the EU social security regulations. This includes people from or resident in Scotland, Wales and Northern Ireland. In the same way, other EEA countries and Switzerland reimburse the UK for the cost of the NHS providing treatment to people they are responsible for under the regulations, including UK nationals insured in another EEA country or Switzerland.

These schemes are popular across the UK and have broad parliamentary support. It is good that people who live or have worked in the UK can retire and travel in the EU/EEA without having to worry about healthcare access and costs. EHIC is good for the travel economy, reducing the cost of insurance and making travel more viable for the elderly and high-risk groups. Co-operation on planned treatment promotes patient choice and enables the NHS to access treatments overseas.

As you will be aware, there is a financial component too because the current EU arrangements involve Member States reimbursing one another for healthcare costs. The UK spends £630m per annum on healthcare for current or former UK residents who are visiting or have retired to the EU. We recover £50m from EU Member States under the same rules – this amount is increasing as the NHS improves at identifying visitors from the EU. However, the overall balance will be one of net spend because many more UK state pensioners and tourists go to Europe, than the other way around.

Overall, because of the clear benefits to the public and wider society, it is important we seek to ensure reciprocal healthcare arrangements continue post EU Exit whether this happens through an agreement with the EU or through agreements with individual Member States.

The rationale for the Bill

This legislation is necessary because the UK has only limited domestic powers to fund and arrange healthcare overseas, and to share data for those purposes, activities that are currently facilitated by EU regulations.

The majority of UK / EU reciprocal healthcare has to date been enabled by EU regulations (883/2004 and 987/2009 and their predecessors). The regulations set out detailed rules for who is eligible and reimbursement, and provide the legal authority for overseas payments and recovery of costs. Once we leave the EU, the EU reciprocal healthcare arrangements will no longer apply in the UK in their current form and we will need new legislation to provide future arrangements.

The EU (Withdrawal Agreement) Bill will allow us to continue reciprocal healthcare during the Implementation Period, and afterwards for people covered by the Withdrawal Agreement. However, it is not intended to support long-term arrangements covering the general UK population, does not provide for the unlikely event the Withdrawal Agreement is not ratified, and nor does it enable healthcare arrangements with countries outside of the EU.

The Healthcare (International Arrangements) Bill is therefore intended to provide the Secretary of State with statutory powers to fund and arrange healthcare overseas, and to share necessary data to facilitate this, after we leave the EU. Specifically, the Bill provides the Secretary of State for Health and Social Care with powers to:

- Make, and arrange for payments to be made, in respect of the cost of healthcare provided outside the UK;
- Make regulations for and in connection with the provision of healthcare abroad;
- Give effect to healthcare agreements with other countries or territories (both EU and non-EU) or supranational bodies such as the EU; and
- Lawfully process data where necessary for purposes of implementing, operating or facilitating the operation of reciprocal healthcare arrangements or payments.

These powers prepare us for a number of possible outcomes of EU Exit. I have summarised below what role the Bill will play when (as we expect) there is an agreement with the EU later this year, along with how it would support contingency planning should agreement not be reached.

Agreement with the EU

During the Implementation Period all reciprocal healthcare rights will continue and there will be no changes to healthcare for pensioners, workers, the EHIC scheme, or planned treatment until at least 31 Dec 2020. The Withdrawal Agreement will then guarantee longer-term rights for UK nationals / EU citizens living or working in the EU / UK at the end of the Implementation Period, or in a number of other specified circumstances, such as those who have previously paid into EU Member States' social security systems. This will all be legislated for by the European Union (Withdrawal Agreement) Bill which will be brought before Parliament soon.

However, we also want a more comprehensive reciprocal healthcare agreement. The Future Relationship White Paper sets out proposals for a UK / EU 'mobility framework', available at www.gov.uk/government/publications/the-future-relationship-between-the-united-kingdom-and-the-european-union. As part of this we are proposing reciprocal healthcare cover for future UK state pensioners, our participation in EHIC scheme, and co-operation on planned treatment.

In a deal scenario, the Healthcare (International Arrangements) Bill would support us in implementing a future relationship with the EU from 2021. It would also support us in giving effect to bilateral agreements with Member States if there is a need for to have arrangements over and above whatever is agreed at EU level.

No agreement with the EU

We are committed to reaching an agreement with the EU but are also taking responsible steps to prepare for all eventualities, including the unlikely event there is no deal later this year.

Without reciprocal healthcare arrangements many UK citizens who currently live or work in the EU may still have good options for accessing healthcare, but some could face additional healthcare costs. UK tourists and others visiting Europe would rely more on travel insurance and this might make travel difficult for the elderly and/or people with medical risk factors. It would not be as easy for the NHS to refer patients for pre-planned treatment in EU member States. There could also be costs to tourism and the wider economy, and to the NHS if UK citizens currently living overseas return to the UK to seek treatment here. In a no deal, we want to avoid these impacts wherever possible.

The UK and Republic of Ireland, recognising our unique relationship and the importance of the Common Travel Area, are committed to continuing reciprocal healthcare arrangements on a bilateral basis after the UK's withdrawal from the EU. An agreement between our two countries will set out arrangements for ensuring that UK and Irish nationals who move to or visit the other country can access healthcare, along with ensuring continued day to day co-operation on planned treatment. Negotiations with Ireland are still ongoing but once agreed, the Bill will enable the UK to implement this reciprocal healthcare agreement. We are committed to upholding our commitments under the Good Friday Agreement.

Further to this, and in the event of a 'no deal' the UK would like to enter into reciprocal agreements with individual EU Member States to ensure there are no changes in people's healthcare rights and so that there is a strong basis for ongoing co-operation on health issues. These will be subject to negotiation and we are in the early stages of discussions with Member States. However, the UK is open to maintaining reciprocal healthcare rights including for pensioners, workers, tourists and other visitors and others along with the current administrative arrangements including reimbursement of healthcare costs, for a transitional period lasting no less than the Implementation Period (i.e. 31 Dec 2020).

Looking to the future

Regardless of the outcome of the Brexit negotiations, the powers in this Bill will also allow us to implement new agreements to support UK nationals to obtain healthcare if they live in, work in, or move to third countries should this be desirable as part of a future policy on trade and international co-operation on healthcare.

The UK already has highly valued agreements with Australia and New Zealand and many of our Crown Dependencies and Overseas Territories, and we may wish to strengthen these or seek new agreements with other countries in future.