

STATUTORY INSTRUMENT CONSENT MEMORANDUM

The National Health Service (Cross-Border Healthcare and Miscellaneous Amendments etc) (EU Exit) Regulations 2019

1. This Statutory Instrument Consent Memorandum is laid under Standing Order (“SO”) 30A.2. SO 30A prescribes that a Statutory Instrument Consent Memorandum must be laid and a Statutory Instrument Consent Motion may be tabled before the National Assembly for Wales (“the Assembly”) if a UK Statutory Instrument (SI) makes provision in relation to Wales amending primary legislation within the legislative competence of the Assembly.
2. The National Health Service (Cross-Border Healthcare and Miscellaneous Amendments etc) (EU Exit) Regulations 2019 was laid before Parliament on 11 February 2019 and is now being laid before the Assembly. The order can be found at:

<https://beta.parliament.uk/work-packages/dP0mXn4e>

Summary of the Statutory Instrument and its objective

3. The objective of the SI is to correct deficiencies in legislation arising from the UK leaving the European Union relating to the application of patients’ rights in cross-border healthcare.
4. This Cross-Border Directive (Directive 2001/24/EU) (“the Directive”) clarifies patients’ right to obtain qualifying treatments in another European Economic Area Member State and to receive reimbursement from their home healthcare system. The Directive was implemented in England and Wales via the National Health Service (Cross-Border Healthcare) Regulations 2013. The SI will make corrections for reciprocity; revoking the Directive implementing legislation so that it no longer operates after Exit Day whilst also putting transitional arrangements in place to allow the effect of the Directive to continue to operate until December 2020 for countries who have entered into an appropriate reciprocal agreement with the UK Government. The SI also makes savings provisions in relation to pending applications.

Relevant provision to be made by the SI

5. The SI amend the NHS (Wales) Act 2006. The SI will remove those sections (6A to 6BB) which provide that the Welsh Ministers will reimburse costs to Welsh residents for pre-planned treatment in an EEA state together with section 131(a)(ii) which provides the Welsh Ministers with a regulation making power to provide for the payment by the Welsh Ministers of travelling expenses incurred for the purpose of obtaining pre-planned treatment in an EEA state.

6. The SI also removes section 10 of the Health and Social Security Act 1984 which provides the Welsh Ministers with a power to reimburse the cost of medical and maternity treatment in members' states of European Economic Community. .
7. It is the view of the Welsh Government that the provisions described in paragraph 5 above fall within the legislative competence of the National Assembly for Wales in so far as they relate to the provision of healthcare.

Why it is appropriate for the SI to make this provision

8. There is no divergence between the Welsh Government and the UK Government (Department of Health and Social Care) on the policy for the corrections. Although healthcare is devolved, the scope for Wales to implement different policy is limited by a requirement to meet any international obligations entered into by the UK. These would include international healthcare agreements. The Directive was originally transposed on an England and Wales basis. Therefore, making separate SIs in Wales and England would lead to duplication, and unnecessary complication of the statute book. Consenting to a England and Wales wide SI ensures that there is a single legislative framework across the UK which promotes clarity and accessibility for patients and providers. In these exceptional circumstances, the Welsh Government considers it appropriate that the UK Government legislates on our behalf in this instance.

Vaughan Gething AM
Minister for Health and Social Services

14 February 2019