



Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT BY THE WELSH GOVERNMENT

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

DATE 14 February 2019

BY Rebecca Evans AM, Minister for Finance and Trefnydd

National Health Service (Cross-Border Healthcare and Miscellaneous Amendments etc) (EU Exit) Regulations 2019 (“the Cross-Border SI”).

Policy Overview of the SI

The Regulations provide for the ‘switching off’ in the UK of current reciprocal healthcare arrangements relating to the right to purchase healthcare overseas and apply for reimbursement. This will ensure that, post-EU exit, the UK will not be unilaterally committed to continue to continue to satisfy its current obligations. However, the Regulations also provide that current reciprocal arrangements may continue until December 2020 where reciprocal agreements have been reached between the UK and other countries.

There is no policy divergence between the Welsh Government and UK Government in relation to this SI.

The Directive is not widely utilised in Wales; only 27 reimbursements were made to Welsh patients in 2017. Anecdotal evidence from Local Health Boards suggests that the Directive is more accessible to patients with in depth knowledge of the system and the necessary financial status to pay up front for healthcare costs. There would be financial risks to Local Health Boards should the Directive not be switched off in Wales.

The retained EU law which is being amended

- The Health and Social Security Act 1984
- The National Health Service Act 2006
- The National Health Service (Wales) Act 2006
- The Health and Social Care Act 2012
- The Welsh Ambulance Services National Health Service Trust (Establishment) Order 1998
- The National Assembly for Wales (Transfer of Functions) Order 1999
- The National Health Service (General Medical Services Contracts) (Prescription of Drugs etc.) Regulations 2004

- The National Health Service (General Medical Services Contracts) (Prescription of Drugs etc.) (Wales) Regulations 2004
- The National Health Service (Cross-Border Healthcare) Regulations 2013
- The National Health Service and Public Health (Functions and Miscellaneous Provisions) Regulations 2013
- 2011/890/EU: Commission Implementing Decision
- 2013/329/EU: Commission Implementing Decision
-

Any impact the SI may have on the Assembly’s legislative competence and/or the Welsh Ministers’ executive competence

The Cross-Border SI will remove sections 6A to 6BB of the NHS (Wales) Act 2006 which provide that the Welsh Ministers will reimburse costs to Welsh residents for pre-planned treatment in an EEA State. Section 131((a)(ii) is also removed 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 cross-border healthcare.

The Cross-Border SI will also remove 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.

The Welsh Ministers have the function of designating a body as the National Contact Point (NCP) under the 2013 Regulations. The Cross-Border SI will remove this function. The Welsh Ambulance Services NHS Trust is no longer the designated NCP for Wales.

The Cross-Border SI does not involve the transfer of any functions. The only new function being conferred on the Secretary of State is that of maintaining and publishing a list of the 3rd countries with which the UK agrees a short bilateral agreement for the provision reciprocal healthcare (and the entry into force and expiry dates of that agreement).

The purpose of the amendments

The purpose of the amendments is to correct deficiencies arising from the UK leaving the European Union on the application of patients’ rights in cross-border healthcare. The Cross-Border Healthcare Directive (Directive 2011/24/EU) clarifies patients’ rights 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 2013 Regulations”). The Cross-Border 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 Cross-Border SI also makes saving provisions in relation to pending applications.

The SI and accompanying Explanatory Memorandum, setting out the effect of each amendment is available here: <https://beta.parliament.uk/work-packages/dP0mXn4e>

Why consent was given

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 an England and Wales wide SI ensures that there is a single legislative framework across England and Wales 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.

A Statutory Instrument Consent Memorandum has also been laid in the National Assembly in respect of the amendments to the NHS (Wales) Act 2006