

STATUTORY INSTRUMENT CONSENT MEMORANDUM

The Social Security Coordination (Benefits in Kind etc) (Amendment 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 Social Security Coordination (Benefits in Kind etc) (Amendment etc) (EU Exit) Regulations 2019 was laid before Parliament on 11 February 2019 and is now being laid before the Assembly. The Regulations can be found at:

<https://beta.parliament.uk/work-packages/PMq3ENDc>

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 reciprocal healthcare elements of social security coordination.
4. This SI will make corrections for reciprocity; switching off the provisions in the long term whilst putting transitional arrangements in place until December 2020 for countries who have entered into an appropriate reciprocal agreement with the UK Government.

Relevant provision to be made by the SI

5. The Regulations will amend section 131 of the NHS (Wales) Act 2006. This will remove the Welsh Ministers’ powers to make regulations about the payment by the Welsh Minister of travel expenses incurred for the purpose of obtaining services authorised to be provided in another EEA State under Articles 20 or 27 of Regulation (EC) 883/2004. This regulation-making power will be saved in relation to overseas treatment that can continue to be authorised post-exit under the saving provisions for the retained direct EU law.
6. 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

7. 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. Therefore, making separate SIs in Wales and England would lead to duplication, and unnecessary complication of the statute book. Consenting to a UK 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