

LEGISLATIVE CONSENT MEMORANDUM

Healthcare (International Arrangements) Bill

1. This Legislative Consent Memorandum is laid under Standing Order (“SO”) 29.2. SO29 prescribes that a Legislative Consent Memorandum must be laid, and a Legislative Consent Motion may be tabled, before the National Assembly for Wales if a UK Parliamentary Bill makes provision in relation to Wales for any purpose within, or which modifies the legislative competence of the National Assembly.
2. The Healthcare (International Arrangements) Bill (the “Bill”) was introduced in the House of Commons on 26 October 2018. The Bill can be found at: [Bill documents — Healthcare \(International Arrangements\) Bill 2017-19 — UK Parliament](#)

Policy Objectives

3. The UK Government’s stated policy objectives are to enable the Government to respond to the wider range of possible outcomes of EU Exit in relation to reciprocal healthcare including the implementation of new reciprocal healthcare agreements. This Bill forms part of the UK Government’s legislative response to EU Exit. Although the Bill is being introduced as a result of the decision to leave the EU, the legislation could also be used to give effect to healthcare agreements with other third countries.

Summary of the Bill

4. The Bill is sponsored by the Department of Health and Social Care.
5. The Bill makes provision:
 - To provide the Secretary of State with powers to fund and arrange healthcare outside the UK;
 - To make regulations to give effect to healthcare agreements between the UK and other countries, territories or international organisations, such as the European Union (EU); and
 - To enable the designation of authorised persons for the purpose of data processing, which is necessary to underpin these arrangements and agreements.

Provisions in the Bill for which consent is required

6. It is considered that Clauses 1, 2, 4 and 5 require consent on the basis that they are making provision for a purpose that is either partially or

wholly within the Assembly's legislative competence as they relate to health. (Clauses 3 and 6 make provision about interpretation, extent and commencement for the purposes of the other clauses in the Bill for which consent is required.)

7. **Clause 1** – provides the Secretary of State with a power to make payments and to arrange for payments to be made to fund healthcare outside of the UK.
8. Should new reciprocal healthcare arrangements be similar to current EU arrangements this could include, amongst other things, funding healthcare for state pensioners living outside the UK, providing healthcare for UK residents visiting countries outside the UK, funding healthcare for posted workers and funding for UK residents to receive planned treatment in other countries.
9. **Clause 2** – provides the Secretary of State with powers to make regulations in relation to Clause 1, in connection with the provision of healthcare outside the UK, and to give effect to healthcare agreements.
10. It is envisaged that should the UK exit the EU in a deal scenario, this power would enable the implementation of future healthcare arrangements with the EU, individual Member States or third countries from January 2021 onwards. In a no deal scenario, then this would enable the UK Government to give effect to new reciprocal healthcare arrangements on or after exit day.
11. Whilst it is for the UK to make bilateral or multilateral agreements with other territories and international organisations, the Assembly may legislate for the purpose of observing and implementing the UK's international obligations relating to devolved matters, such as healthcare.
12. **Clause 4** – provides powers to enable authorised persons to process personal data to facilitate reciprocal healthcare arrangements.
13. It may be necessary for authorised persons to share personal data, including medical data, with equivalent persons or bodies overseas to facilitate any reciprocal healthcare arrangements. Currently EU law provides the necessary powers to do this. This data processing gateway would support the operation of payments and arrangements for healthcare outside the UK provided for under Clause 1.
14. **Clause 5** – provides a power to amend, repeal or revoke primary legislation, including a Measure or Act of the Assembly, for the purpose of conferring functions on the Secretary of State or any other person, or to give effect to a healthcare agreement.
15. Consent is required for these provisions as they fall within the legislative competence of the National Assembly for Wales in so far as they relate to

health and the observance and implementation of international obligations relating to healthcare.

Reasons for making these provisions for Wales in the Healthcare (International Arrangements) Bill

16. The Welsh Government agrees that following EU Exit, legislation is necessary to make provision for reciprocal healthcare arrangements to give certainty and assurance to UK residents. These arrangements allow individuals to travel, work and receive treatment outside of the UK where this may not be otherwise possible. In the case of a no deal exit from the EU, it will be important to provide assurances for residents as soon as possible. There is, therefore, urgency to the timing of the Bill and the legislation made under it.
17. While the Welsh Government believes that there are benefits to having a UK-wide approach, any healthcare agreement entered into on behalf of the UK will affect the NHS in Wales and this legislation will therefore have a significant impact on a devolved policy area.
18. There are therefore outstanding concerns about the extent to which the Welsh Government will be involved in informing and shaping the healthcare agreements to be delivered under the Bill which will impact on the NHS in Wales. Whether or not legislative consent should be given, therefore, needs to be considered in light of legislative and non-legislative assurances given by the UK Government to ensure that the Welsh Government is involved in matters that affect devolved areas in Wales.
19. Further work to resolve our concerns will continue during the Bill's passage through Parliament and a supplementary Legislative Consent Memorandum will be brought forward if required.

Financial implications

20. There are financial costs associated with reciprocal healthcare arrangements. These costs relate to arranging to pay for the treatment of UK residents abroad and to providing healthcare for non residents in the UK. There could be increased or decreased costs depending on the number of countries with which the UK establishes reciprocal healthcare arrangements and the nature of these agreements.
21. Lord O'Shaughnessy wrote to the Cabinet Secretary for Health and Social Services on 26 October to give assurances that there will be no additional costs to the devolved administrations associated with the Bill. The Welsh Government is seeking clarification as to how this assurance will be provided for.

Conclusion

22. It is the view of the Welsh Government that it is appropriate to deal with these provisions in this UK Bill due to the urgency of the legislation and the preference for a consistent approach across the UK. However, given the significant impact on devolved areas it is crucial that Welsh interests are appropriately considered in the development of reciprocal health arrangements and that mechanisms are in place to ensure that the Welsh Government contributes to the making of decisions that affect Wales.

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