

STATUTORY INSTRUMENT CONSENT MEMORANDUM

The Reciprocal and Cross-Border Healthcare (Amendment etc) (EU Exit) Regulations 2020

1. This Statutory Instrument Consent Memorandum is laid under Standing Order (“SO”) 30A.2. SO 30A that prescribes a Statutory Instrument Consent Memorandum must be laid and a Statutory Instrument Consent Motion may be tabled before the Senedd if a UK Statutory Instrument (SI) makes provision in relation to Wales amending primary legislation within the legislative competence of the Senedd.
2. The Reciprocal and Cross-Border Healthcare (Amendment etc) (EU Exit) Regulations 2020 were laid before Parliament on 30 September 2020 and are now being laid before the Senedd. The Regulations can be found at:

<http://www.legislation.gov.uk/id/ukdsi/2020/9780348212594>

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. The SI will amend three reciprocal healthcare SIs that were made on an England and Wales basis, with the consent of the Welsh Ministers, as part of the corrections exercise for a no-deal EU Exit to ensure the statute book continued to function correctly.
5. The amendments will ensure the three SIs will be functional at the end of the Implementation Period (31 Dec 2020) and in line with the European Union (Withdrawal Agreement) Act 2020.

Relevant provision to be made by the SI

6. The SI amends the National Health Service (Cross-Border Healthcare and Miscellaneous Amendments etc.) (EU Exit) Regulations 2019 (“the 2019 Regulations”). The 2019 Regulations amend the NHS (Wales) Act 2006. The effect of the provision therefore is that the NHS (Wales) Act 2006 (“the 2006 Act”) is consequently amended.
7. The 2019 Regulations removed those sections of the 2006 Act (6A to 6BB) which provide that the Welsh Ministers will reimburse costs to Welsh residents for pre-planned treatment in an EEA state. Those sections however were retained, with modifications, for cases that arise before exit day (regulation 15 and Schedule 1 of the 2019 Regulations). The SI make further amendments to those retained provisions of the 2006 Act to reflect changes made by the European Union (Withdrawal Agreement) Act 2020.

8. It is the view of the Welsh Government that the provisions described in paragraph 6 above fall within the legislative competence of the Welsh Parliament in so far as they relate to the provision of healthcare.

Why it is appropriate for the SI to make this provision

9. 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 Regulations amend three reciprocal healthcare SIs that were made on an England and Wales basis, with the consent of the Welsh Ministers, as part of the corrections exercise for a no-deal EU Exit to ensure the statute book continued to function correctly. Therefore, making separate SIs in Wales and England would lead to duplication, and unnecessary complication of the statute book. Consenting once again 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 AS
Minister for Health and Social Services

5 October 2020