PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Seventh Delegated Legislation Committee

DRAFT RECIPROCAL AND CROSS-BORDER HEALTHCARE (AMENDMENT ETC.) (EU EXIT) REGULATIONS 2020

Wednesday 4 November 2020

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not later than

Sunday 8 November 2020

The Committee consisted of the following Members:

Chair: Mrs Maria Miller

Begum, Apsana *(Poplar and Limehouse)* (Lab)
Bryant, Chris *(Rhondda)* (Lab)
† Churchill, Jo *(Parliamentary Under-Secretary of State for Health and Social Care)*
† Crosbie, Virginia *(Ynys Môn)* (Con)
Cummins, Judith *(Bradford South)* (Lab)
† Fletcher, Mark *(Bolsover)* (Con)
Garnier, Mark *(Wyre Forest)* (Con)
† Higginbotham, Antony *(Burnley)* (Con)
† Holden, Mr Richard *(North West Durham)* (Con)
Johnson, Dame Diana *(Kingston upon Hull North)* (Lab)
† Kendall, Liz *(Leicester West)* (Lab)
† Moore, Damien *(Southport)* (Con)
† Randall, Tom *(Gedling)* (Con)
† Roberts, Rob *(Delyn)* (Con)
Thompson, Owen *(Midlothian)* (SNP)
† Throup, Maggie *(Lord Commissioner of Her Majesty's Treasury)*
† Western, Matt *(Warwick and Leamington)* (Lab)

Seb Newman, *Committee Clerk*

† attended the Committee

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[Mrs Maria Miller *in the Chair*]

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

2.30 pm

The Parliamentary Under-Secretary of State for Health and Social Care (Jo Churchill): I beg to move,

That the Committee has considered the draft Reciprocal and Cross-Border Healthcare (Amendment etc.) (EU Exit) Regulations 2020.

It is a pleasure to see you in the Chair, Mrs Miller, and to serve under you. My right hon. Friend the Secretary of State for Health and Social Care has laid before the House this statutory instrument, which concerns reciprocal and cross-border healthcare. In summary, it is a technical instrument that updates the 2019 legislation, taking into account the withdrawal agreement, which was not in place when the legislation was made in 2019 and offers significant healthcare protections for those relying on reciprocal healthcare arrangements in the EU. The aim is to ensure that the statute book is ready for the end of the transition period.

The Government are introducing the statutory instrument under section 8 of the European Union (Withdrawal) Act 2018 and under the Healthcare (European Economic Area and Switzerland Arrangements) Act 2019. On 31 December 2020, the transition period will end and the EU withdrawal Act will automatically retain the relevant EU law, and the domestic implementing legislation, in UK law. If we did not legislate further, the retained law would be incoherent and unworkable. There would also be uncertainty and a lack of clarity about patients' rights to have UK-funded healthcare in EEA countries and Switzerland.

In April 2019, the Government made three statutory instruments to correct the deficiencies in retained EU law relating to reciprocal healthcare, as part of the UK's preparations for leaving the EU without a deal. The UK has since agreed with the EU reciprocal healthcare arrangements under the withdrawal Act and entered a transition period. The purpose of this instrument is basically to fix this issue—first, to reflect the transition period and the withdrawal agreement by making consequential and technical amendments to four EU exit instruments, which will come into force on 31 December. Those are the Social Security Coordination (Reciprocal Healthcare) (Amendment etc) (EU Exit) Regulations 2019, the National Health Service (Cross-Border Healthcare and Miscellaneous Amendments etc.) (EU) Exit) Regulations 2019, the Healthcare (European Economic Area and Switzerland Arrangements) (EU Exit) Regulations 2019 and the Health Services (Cross-Border Health Care and Miscellaneous Amendments) (Northern Ireland) (EU Exit) Regulations 2019. I will refer to those, for ease, as the 2019 EU exit regulations.

The purpose of this instrument is, secondly, to update references in NHS legislation to EU forms, to entitlements under EU treaties and to concepts such as "EU rights" that will no longer be appropriate after the end of the year; and, thirdly, to set out clearly the rights of patients in a transitional situation who will access pre-authorised or ongoing treatment in the EEA under the cross-border healthcare directive following the end of the transition period. This instrument will allow the Government to complete the funding of those patients who are in the middle of treatment at the end of the year, or if they have already applied for authorisation.

As the instrument is quite technical, I am sure that members of the Committee will welcome a summary of the 2019 EU exit regulations. As Committee members all know, those regulations were made in preparation for our exit from the EU and will come into force at the end of the transition period. They revoked the EU reciprocal healthcare legislation and social security co-ordination regulations, as well as the domestic legislation implementing the cross-border healthcare directive, in relation to England, Wales and Northern Ireland. As the arrangements are inherently reciprocal, it would not be possible to operate them without reciprocity from the member states.

The regulations enabled the continuation of reciprocal healthcare arrangements until 31 December 2020, to the extent that that was agreed with member states through bilateral reciprocal healthcare arrangements. They made provision for the UK to protect patients in a transitional situation accessing reciprocal healthcare on exit day in the event that the UK left the EU without a deal, in so far as that was possible unilaterally. The regulations conferred functions on the NHS Business Services Authority and on health bodies—that is, NHS England and devolved Administrations' health boards—to implement aspects of reciprocal healthcare arrangements. That includes the administering of healthcare payments.

In addition, in March 2019 the House passed primary legislation—the Healthcare (European Economic Area and Switzerland Arrangements) Act 2019— providing the legal basis for funding and implementing future reciprocal healthcare arrangements.

I will now outline the reciprocal healthcare arrangements that have been agreed with the EU under the withdrawal agreement since the 2019 EU exit regulations were made. In practice, the agreement that we have reached with the EU means that there are no changes to the reciprocal healthcare access for state pensioners, workers, students, tourists and other visitors, the European healthcare insurance card scheme, or planned treatment before 31 December 2020.

From 1 January 2021, reciprocal healthcare arrangements will not change for those individuals who are in scope of the withdrawal agreement. This means that, regardless of any future healthcare arrangements, state pensioners and workers who have moved to the UK or the EU and are resident there before 31 December 2020 will continue to have lifelong reciprocal healthcare rights for as long as they live in that country and are covered by the agreement.

The agreement also protects UK and EU nationals who find themselves in a cross-border situation over the end of the transition period. For example, somebody whose holiday begins before 31 December 2020 but ends afterwards can continue to use their EHIC to access any treatment they need until they leave that country by travelling to another EU member state or returning to the UK.

A student who habitually resides in the UK but is studying in the EEA or Switzerland before 31 December 2020 can continue to use their EHIC to access immediate and necessary healthcare in the country of study for the duration of their course. People receiving planned medical treatment in the UK or through the EU S2 route will be able to commence or complete their treatment, provided that authorisation was requested by 31 December 2020. This provides certainty to patients, as it guarantees that they will be able to complete their course of treatment.

I will now address the amendments made by the instrument and the reasons for making the changes now. As I have just set out, the withdrawal agreement protections mean that several transitional measures under the 2019 EU exit regulations have now been superseded by the withdrawal agreement protections. Therefore, they are being revoked through this instrument.

One element, namely cross-border healthcare under the cross-border healthcare directive, was not included in the withdrawal agreement. It will no longer apply as a matter of EU law from 31 December 2020. The cross-border healthcare directive is separate from the reciprocal healthcare rights under the social security co-ordination regulations, for example for pensioners, students, tourists and workers, which relate to the free movement of people. The directive is linked with the single market and the free movement of services, which is ending with the UK's departure from the EU. The directive facilitated patients' rights to travel to another EEA country and to receive qualifying healthcare and reimbursement, capped at the cost of state-provided treatment in their own country.

As the cross-border directive is ending, this instrument will ensure that the Government can finish funding those who have received or applied for treatment through this route, and those who are in the middle of treatment at the end of the year. This will provide reassurance for patients, as people will not face an abrupt change in their access to healthcare at the end of the year, and it ensures that their reimbursement rights are protected.

The withdrawal agreement also means that the 2019 provisions that allowed the UK to maintain current reciprocal healthcare arrangements until the end of 2020 are no longer required. These provisions were subject to bilateral agreements with EEA countries and Switzerland. The withdrawal agreement automatically continued current agreements with those countries during the transition period and therefore the 2019 provisions are being revoked as redundant.

As many hon. Members will know, the Healthcare (European Economic Area and Switzerland Arrangements) Act 2019 provides powers to give effect to healthcare arrangements, including those that may be comprehensive, bespoke or different from the current arrangements provided by the EU framework. The Act also provides the legislative framework to implement long-term complex reciprocal healthcare arrangements with the EU.

Finally, other technical amendments made by the instrument include updating EU references that will no longer be appropriate following the end of the transition period. The devolved Administrations have been consulted in the drafting of this instrument at every stage and they have provided consent for the Government to proceed. The instrument also makes provision in relation to and on behalf of Northern Ireland and Wales.

I am grateful for the continued collaborative approach in this area. Indeed, the Department and the devolved Administrations have had excellent engagement and clear arrangements in place to ensure the implementation of reciprocal healthcare arrangements after the end of the transition period. I am pleased to say we have worked openly and collaboratively with operational partners in NHS England, NHS Improvement and the NHS Business Services Authority, ensuring that reciprocal healthcare arrangements will be successfully implemented.

Looking to the future, reciprocal healthcare arrangements with the EU are subject to ongoing negotiations. The UK has been clear that it wishes to establish arrangements that provide healthcare cover for tourists, short-term business visitors and service providers.

I am also pleased to report good progress with Ireland on agreeing a specific healthcare arrangement between the UK and Ireland, under the auspices of the common travel area. That will seek to ensure that the residents of the UK and Ireland continue to be able to access necessary healthcare when visiting the other country, as well as benefiting from co-operation between UK and Irish healthcare providers, regardless of the outcome of negotiations with the EU.

Finally, as this instrument proposes no significant changes to the current regulatory regime, we estimate there will be no significant impact on industry or the public sector. As this instrument makes technical amendments, and does not introduce new policy, we have not conducted an impact assessment.

In summary, the overarching aim of the instrument is to ensure that the UK statute book is functional, reflecting the withdrawal agreement and EU exit. It also ensures that reimbursement rights are provided for people accessing healthcare at the end of the transition.

2.41 pm

Liz Kendall (Leicester West) (Lab): It is a pleasure to serve under your chairmanship, Mrs Miller. We will not vote against the regulations because they provide some certainty for some citizens in terms of cross-border healthcare arrangements after 31 December, as set out in the withdrawal agreement.

I want to put on record the concerns of Opposition Members and a range of patient groups and healthcare organisations that the regulations do not go anywhere near far enough in protecting rights to healthcare for British citizens who travel to the EU. They could leave some people with underlying health conditions not completely covered and cause real problems for the NHS, at precisely the time when it needs to be totally focused on dealing with covid-19 and the backlog of health problems that has caused. It is important that the Government secure agreement with the EU and do not end up with no deal.

As the Minister has explained, the regulations update existing regulations, so they reflect reciprocal healthcare arrangements as set out in the withdrawal agreement. United Kingdom nationals who live and work in EU and European Free Trade Association countries on or before 31 December will continue to be entitled to healthcare in that member state, under that member state's rules, and have access to an EHIC issued by that member state. That is good.

[Liz Kendall]

European Union and EFTA nationals registered in the UK on or before 31 December will continue to be entitled to NHS services and a UK-issued EHIC, which is also good. S1 holders, essentially UK state pensioners who live in EU or EFTA countries on or before 31 December will continue to be entitled to UK-funded healthcare as well. That is also good.

Can the Minister confirm who and what is not covered by the regulations and therefore will not be covered if we end up in the disastrous situation of no deal? Can she confirm that after 31 December, if the UK Government fail to reach agreement with the EU, UK citizens who are normally resident in an EU member state will not be entitled to free NHS care when visiting the UK, unless and until any bilateral arrangement is reached with that individual member state?

Can the Minister confirm that UK citizens who go on holiday, or a business trip in an EU member state, will no longer be able to use their EHIC card and therefore have to buy travel insurance to make sure they are covered? Can she confirm that if someone falls sick in France or Italy, they may get immediate emergency treatment but could then be required to pay for it afterwards, as well as for any follow-up care? Will she spell out the estimated additional cost of buying this travel insurance for the 50 million people a year who go on holiday or on business trips to the EU—or at least did, before covid-19? Will she also set out the Government's estimate of the number of people who may be unable to get insurance because of an underlying health condition?

For example, we know from Kidney Care UK that the 30,000 people on dialysis can currently travel throughout Europe and receive their dialysis free of charge because of the EHIC. Even though dialysis is a life-sustaining treatment for kidney failure, it is not covered by travel insurance, and without reciprocal healthcare arrangements, it will cost up to £1,000 per week. How many more thousands of people with pre-existing health conditions will not be able to get insurance and could be put in the same situation if the Government fail to reach a deal? Have the Minister or the Government made any estimate of how many people this could affect?

Will the Minister also spell out the cost to the NHS, in terms of time and red tape, of trying to get reimbursement for EU citizens having to use healthcare here? Each of the four nations of our great United Kingdom manage their own recovery costs, and within each nation, individual trusts or health boards are responsible for directly charging patients for the costs of their care. The Minister will know how difficult it has been for trusts to reclaim costs from patients from outside the EU. What is her estimate of the cost to the NHS, in the event of no deal, or of no individual bilateral arrangements, of hospitals in this country having to reclaim costs from every single EU person who comes here and ends up needing healthcare?

The Brexit Health Alliance—a group of organisations that want to ensure that the views of healthcare users and providers are reflected in the Brexit negotiations, including the Academy of Medical Royal Colleges, NHS Providers, the Richmond Group of Charities and the Association of the British Pharmaceutical Industry—says:

> "The current arrangements involve minimal bureaucracy for patients and healthcare providers, underpinned by well-established systems for reimbursement between member states. The NHS will face unwelcome increased resourcing burdens, if it is required to handle new, more complex administrative and funding procedures when providing care to EU citizens in future."

I am sure that every hon. Member agrees that that is the very last thing the NHS needs when it is facing the biggest health crisis of its life, with a huge backlog of untreated conditions because of covid-19. I also ask the Minister, if there is any dispute between the UK and an EU member state about a cross-border healthcare arrangement, who would have jurisdiction? Would it be the European Court of Justice? I think people would like to know the answer.

As I said at the beginning of my comments, we will not oppose the draft regulations, because they at least provide some security and certainty for some groups of people. However, the Minister will know that there are huge gaps that must be filled. The British Medical Association says that failure to reach a deal would

> "lead to significant disruption to…individuals' healthcare arrangements, an increase in costs of insurance, and uncertainty regarding accessing healthcare abroad. Moreover, the NHS would face a drastic increase in demand for services, which could dramatically increase its costs and place greater pressure on doctors and clinical staff."

The Government say that, if they cannot reach agreement with the EU as a whole on these issues, they will negotiate individual bilateral deals with individual EU member states, but when? How long will that take? What will happen to patients and NHS staff meanwhile?

The Prime Minister spent the last general election saying that he had an "oven-ready deal", but on healthcare arrangements, as in so many other areas, that deal is, so far, nowhere to be seen. Holidaymakers, businesspeople, patient groups, healthcare professionals and NHS organisations urgently need clarity. The Government must deliver.

2.49 pm

Jo Churchill: There was quite a lot there, and I will try to canter through what I can. As the hon. Lady knows, my door is always open. The majority of what she alluded to is the subject of ongoing negotiations, which are currently being handled with the Foreign, Commonwealth and Development Office. We are working hard to ensure that people can enjoy the travel that they have enjoyed thus far.

I fully recognise that it is challenging for those with pre-existing conditions. I know how difficult it is to secure travel insurance in the current environment when travelling outside the EU. However, the Money Advice Service has recently launched an insurance directory for people with serious medical conditions, which brings together specialist firms with the aim of making it easier to find travel insurance that provides the right health cover. Working with the FCDO, the DHSC stands ready to support UK nationals who might find themselves in difficulty.

On cost recovery, identified income from NHS costs for overseas visitors has increased significantly over the past five years, rising to £760 million in 2019-20. NHS Improvement is working closely with NHS trusts to improve cost recovery. As I said, we have been most grateful for the work that the NHS Business Services

Authority has done with us to enable that work to go forward. As the hon. Lady well knows, many of these things will become clearer in the next few weeks, but there have already been good conversations with some member countries. It is hoped that we will shortly be able to have more clarity on the matter.

I want to assure members of the Committee that the overarching aim of the SI is to ensure that the UK's statute book is functional by reflecting the withdrawal agreement and EU exit, and to ensure that reimbursement rights are provided for people accessing healthcare at the end of the transition period, when the directive will no longer apply to the UK. The withdrawal agreement provides a robust framework for reciprocal healthcare, which includes significant transitional and longer-term protections, as the hon. Lady mentioned. To support people in understanding their entitlements, the Government have published guidance on people's rights under the withdrawal agreement on gov.uk, and we are keeping the information updated regularly so that people are clear about the reciprocal health rights, their rights and the actions they might need to take as they prepare for the end of the year.

Looking ahead, reciprocal healthcare arrangements with the EU are subject to ongoing negotiations, as I said earlier. Finally, I thank again the devolved Administrations and our operational partners in the NHS, who are working extremely hard. Their collaborative and constructive engagement means that we have clear arrangements in place and assurance for patients' healthcare at the end of the year. I commend the regulations to the Committee.

Question put and agreed to.

2.53 pm

Committee rose.