EXPLANATORY MEMORANDUM TO

THE HEALTHCARE (INTERNATIONAL ARRANGEMENTS) (EU EXIT) REGULATIONS 2023

2023 No. 854

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department of Health and Social Care (DHSC) and is laid before Parliament by Command of His Majesty.

2. Purpose of the instrument

2.1 This instrument makes provision for the purpose of implementing international healthcare agreements with countries listed in the Schedule (listed countries). It does this by conferring functions on certain bodies, including the NHS Business Services Authority (the NHS BSA). 'Healthcare agreement' is defined in section 3 of the Healthcare (International Arrangements) Act 2019 as "an agreement or other commitment between the United Kingdom and either a country or territory outside the United Kingdom or an international organisation, concerning healthcare provided anywhere in the world". The listed countries include European Economic Area (EEA) countries (to implement obligations set out in the Protocol on Social Security Coordination in the EU-UK Trade and Cooperation Agreement (the Trade and Cooperation Agreement) and in the Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (the Withdrawal Agreement). The listed countries also include countries and territories outside of the EEA with which the UK has existing agreements.

2.2 The instrument also gives the Secretary of State the power to make payments in respect of the cost of healthcare provided in listed countries.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is the United Kingdom.

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is the United Kingdom.

5. European Convention on Human Rights

5.1 The Secretary of State for Health and Social Care has made the following statement regarding Human Rights:

"In our view the provisions of the Healthcare (International Arrangements) (EU Exit) Regulations 2023 are compatible with the Convention rights".

6. Legislative Context

6.1 This instrument is being made under the Healthcare (International Arrangements) Act 2019.

6.2 This instrument makes provision for the implementation of healthcare agreements with listed countries, including provision enabling funding of healthcare in listed countries pursuant to those arrangements.

6.3 The listed countries are countries or territories with which the UK has a current healthcare agreement.

6.4 The instrument also makes provision for the Secretary of State to make a payment (otherwise than under a healthcare agreement) in respect of healthcare provided in listed countries but only where the Secretary of State considers that exceptional circumstances justify the payment.

7. Policy background

What is being done and why?

7.1 The UK has several international healthcare agreements with partner countries, often referred to as reciprocal healthcare agreements. These agreements support UK residents when they visit partner countries by enabling them to access public healthcare on the same basis as a resident of that country. The agreements in place depend on the terms of individual agreements, but they all offer free (or low cost e.g. a co-payment may be required in line with what a resident of the country would pay) emergency and necessary healthcare for those on short term stays.

7.2 International healthcare agreements vary in terms of their scope and coverage. The current reciprocal healthcare agreements the UK has with the EU and Switzerland enable people whose state healthcare costs the UK has responsibility for (known as 'UK-insured') to access healthcare when they live, study, work, or travel in Member States and Switzerland (and vice versa for people whose state healthcare costs those states have responsibility for (known as 'EU-insured' or 'Swiss-insured) when in the UK). This includes healthcare for UK state pensioners and certain workers such as detached or cross-border workers living in those states (the S1 scheme), emergency and needs arising healthcare for UK-insured temporary visitors to the Member States such as tourists and students (the European or UK Global Healthcare Insurance Card Scheme - EHIC/GHIC) and UK-insured individuals travelling overseas to receive planned treatment in other countries (the S2 scheme). They can offer benefits for UK residents when they travel abroad for tourism or business and promote healthcare cooperation. Such agreements can provide especially valuable support to certain groups, for example, those with a protected characteristic of disability or age.

7.3 The UK Government has committed to strengthening its healthcare agreements with countries and territories across the globe, deepening international healthcare cooperation and benefiting UK residents when travelling abroad. In order to do this it was necessary to broaden the territorial scope of our legislation from only covering the European Economic Area and Switzerland to having an international scope. These Regulations confer the necessary powers on to administrative bodies to implement new international arrangements.

Explanations

What did any law do before the changes to be made by this instrument?

7.4 Section 162 of the Health and Care Act 2022 will amend the Healthcare (European Economic Area and Switzerland Arrangements) Act 2019 (the 2019 Act). Once that provision has been brought into force the 2019 Act will be renamed the Healthcare (International Arrangements) Act 2019 (the Act). The Healthcare (European Economic Area and Switzerland Arrangements) (EU Exit) Regulations 2019 (the 2019 Regulations), made under the powers in the 2019 Act and which confer functions in relation to the implementation of healthcare agreements with countries in the European Economic Area and Switzerland will be replaced, save for as outlined in 7.12 below, by this instrument. The section 162 amendments and this instrument will enable the Secretary of State to implement comprehensive healthcare agreements with countries around the world (the powers are currently limited to EEA countries and Switzerland), strengthening diplomatic relationships whilst also furthering international healthcare cooperation.

Why is it being changed?

7.5 The UK Government already has several healthcare agreements with countries outside the EU, such as with Australia and New Zealand, where both sides agree to absorb the associated costs of the necessary healthcare arrangements. Further examples are the recently concluded agreements with the Bailiwicks of Guernsey and Jersey, and several British Overseas Territories. These arrangements work in a similar way to those for New Zealand and Australia, with both sides absorbing the costs of the necessary healthcare arrangements. The amendments to the Act will allow the Government to implement more complex agreements with the ability to make financial reimbursement at cost, as the UK currently does with many EEA countries. It will therefore enable the UK Government to take forward its ambitions to expand necessary healthcare arrangements internationally.

What will it now do?

7.6 This instrument supports existing reciprocal healthcare agreements with the EU and Switzerland and existing agreements with countries around the world. As new agreements with countries outside of the EEA are agreed they will be implemented by amending the instrument to add the relevant country to the listed countries.

7.7 This instrument confers UK-wide functions on the NHS BSA, requiring them to give effect to the obligations and commitments of the United Kingdom under relevant healthcare agreements. It also enables the NHS BSA to make payments and authorise applications for the purposes of implementing healthcare agreements.

7.8 The NHS BSA will also be able to administer payments which are made pursuant to the Secretary of State's exceptional circumstances payment power for healthcare in listed countries outside the scope of an agreement.

7.9 The instrument also confers an information function on the NHS BSA. NHS BSA must establish and maintain a service making available to the public information and advice in relation to its functions under this instrument, the provision of healthcare under relevant healthcare agreements, and any evidential or administrative requirements or processes under or in relation to such agreements. This service may include information and advice in relation to such other matters relating to relevant healthcare agreements

or in connection with the provision of healthcare in listed countries as the NHS BSA considers appropriate.

7.10 The determination of applications for planned treatment in listed countries falls within devolved competence and the instrument provides for authorisation of applications made in accordance with healthcare agreements to be undertaken by the National Health Service Commissioning Board (NHS England) in relation to England and by the respective health boards in Scotland and Wales in relation to those areas. The Secretary of State has consulted the Scottish and Welsh Governments about this provision pursuant to section 5 of the Act.

7.11 The NHS BSA will have a UK-wide role in issuing authorisation certificates for all applicants where such certificates are required under a healthcare agreement. The NHS BSA will also handle exclusively and entirely any maternity planned treatment applications including for applicants from Scotland, Wales and Northern Ireland, as agreed after consultation with the Devolved Administrations. Applications for other planned treatment in another country submitted by UK-insured people residing in a listed country will be authorised by NHS BSA and they will also issue those certificates.

7.12 The Department of Health in Northern Ireland will continue to process applications for planned treatment in EEA and Switzerland under the 2019 Regulations. The relevant provisions are saved by the Health and Care Act 2022 (Commencement No. 5 and Saving Provision) Regulations 2023.

7.13 Apart from planned healthcare applications in relation to Northern Ireland which will continue to be determined under the 2019 Regulations, any other applications or claims made on or after the date this instrument comes into force will be determined under this instrument.

7.14 The instrument also makes provision for the Secretary of State to make a payment (otherwise than under a healthcare agreement) in respect of healthcare provided in listed countries, but only where the Secretary of State considers that exceptional circumstances justify the payment. It also makes provision for relevant public authorities to refer applications or claims in respect of healthcare (otherwise than under a relevant healthcare agreement) provided in listed countries to the Secretary of State.

7.15 A consultation on a reciprocal healthcare policy framework for the funding of healthcare abroad in exceptional circumstances and accompanying impact assessment has been published on gov.uk. This will support decision making under the exceptional circumstances funding power.

8. European Union Withdrawal and Future Relationship

8.1 This instrument is not being made under the European Union (Withdrawal) Act, but relates to the withdrawal of the United Kingdom from the European Union because it implements healthcare obligations in the Withdrawal Agreement and the Trade and Cooperation Agreement.

9. Consolidation

9.1 This Statutory Instrument does not involve consolidation and there are no plans to consolidate the relevant legislation at this time.

10. Consultation outcome

10.1 DHSC has not undertaken a consultation on the instrument but as set out at para 12.2. we are currently consulting on a policy framework to support the exercise of the exceptional circumstances funding power. The results and an analysis of the public consultation will be published by July 2023. The consultation will not impact the drafting of this instrument but will be relevant to administrative decision making. The policy framework will come into effect once this instrument is brought into force.

10.2 This instrument contains provision which is within devolved competence. The Devolved Administrations have been consulted in accordance with the requirement for consultation under section 5 of the Act.

10.3 DHSC has also consulted NHS England, the relevant health boards in the Devolved Administrations and the NHS BSA about the functions conferred upon them by this instrument.

11. Guidance

11.1 No guidance is published alongside this instrument.

11.2 Information for UK insured individuals and their rights under healthcare agreements when travelling abroad is available gov.uk and nhs.uk.

11.3 Administrative guidance for the NHS BSA and other bodies that have been conferred functions under this instrument will be issued as appropriate and updated as further healthcare arrangements are made. The policy framework on payments in exceptional circumstances, which includes guidance on processes, will be published after the public consultation concludes on the 16 June 2023.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies. A regulatory impact assessment has been completed for the instrument.

12.2 An Impact Assessment has not been prepared for this instrument because it will implement existing healthcare agreements which have their own assessments of impact. Assessments of impact will be conducted for any future international healthcare arrangement into which the UK enters. An assessment of impact has been completed for the exceptional payments policy framework.

12.3 This instrument includes provisions for the continuation of existing healthcare arrangements.

12.4 There are no costs or benefits associated with this option as there would not be any changes to the reciprocal healthcare arrangements.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses. A regulatory triage assessment has been completed which identified no business impact

14. Monitoring & review

14.1 Under section 6 of the Act, the Secretary of State has a statutory duty to lay a report giving details of payments made under the powers conferred under the Act to enable an effective and review process to take place.

14.2 The instrument does not include a statutory review clause.

15. Contact

15.1 Kirsty Larmour at the Department of Health and Social Care. Telephone: 07902401034 or email: Kirsty.Larmour@dhsc.gov.uk can be contacted with any queries regarding the instrument.

15.2 Charlotte Bright, Deputy Director for Reciprocal Health at the Department of Health and Social Care can confirm that this Explanatory Memorandum meets the required standard.

15.3 Will Quince, Minister of State for Health and Secondary Care at the Department of Health and Social Care can confirm that this Explanatory Memorandum meets the required standard.