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Health and Sport Committee Comataidh Slàinte is Spòrs

Legislative Consent Memorandum - Healthcare (International Arrangements) Bill



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Health and Sport Committee

To consider and report on matters falling within the responsibility of the Cabinet Secretary for Health and Sport.



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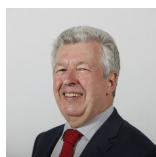


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Background

1. A Legislative Consent Memorandum (LCM) on provisions in the Healthcare (International Arrangements) Bill was lodged on 6 December 2018 by Jeane Freeman, Cabinet Secretary for Health and Sport ¹. The LCM was referred to the Committee by the Parliamentary Bureau on the 11 December 2018.

Healthcare (International Arrangements) Bill

2. The Healthcare (International Arrangements) Bill [‘the Bill’] is a UK Government Bill. The Bill was introduced in the House of Commons on 26 October 2018. ²

3. According to the House of Commons Library Briefing the Bill—

” establishes the legal basis for the Secretary of State for Health and Social Care to fund and implement reciprocal healthcare schemes and share necessary data after the UK leaves the EU. It is intended to allow the UK to maintain reciprocal healthcare arrangements with the EU and its Member States after Brexit, in the event of either a Brexit deal or no deal scenario. However, the provisions are not limited to arrangements with the EU; the UK Government states that the Bill would also allow the UK to strengthen existing reciprocal healthcare agreements with countries outside the EU, or implement new ones.” ³

4. The LCM states that the Scottish Government’s view is that the subject matter is not wholly reserved. The LCM details there are three specific areas within the Bill which may be exercised within the scope of devolved competence.

5. The first is the general power at Clause 1 of the Bill which provides for the Secretary of State to make payments and arrangements for payments to be made in respect of the cost of healthcare provided outside the UK.

6. The second is the regulation making powers at Clause 2 for the Secretary of State to make provision in relation to the exercise of that power but also for or in connection with the provision of healthcare outside the UK and to give effect to a healthcare agreement.

7. The third is the power to process data at Clause 4. The LCM details—

” Clause 4 provides a basis for facilitating data processing to support the making of payments, or provision for payments to be made, for healthcare outside the UK, giving effect to healthcare agreements as provided for by the Bill.

“Healthcare agreement” is defined as an agreement made between the UK government and either the government of a territory outside the UK or an international organisation concerning either or both of—

(a) health care provided outside the UK, payments in respect of which may be made by the UK Government;

(b) health care provided in the UK, payments in respect of which may be made by a country or territory outside the UK.”

8. The LCM also adds that—

” "the power to make regulations (clause 5(3)) includes a power to amend, repeal or revoke primary legislation for the purpose of conferring functions on the Secretary of State or on any other person (including conferring a discretion) or to give effect to a health care agreement. That includes an Act of the Scottish Parliament. " ⁴

Scrutiny of the Memorandum

9. Scottish Parliament Standing Orders state that an LCM should normally be lodged with the Scottish Parliament two weeks after the introduction of a relevant Bill in Westminster. In the case of this Bill that would have been 9 November 2018. The Committee received indication that an LCM would be lodged but not within these timescales. At its meeting on 27 November 2018 in anticipation of a truncated timescale for the Committee's scrutiny of a Memorandum the Committee agreed its approach in anticipation of the LCM being lodged and being referred to the Committee.
10. The Committee agreed to consider the current arrangements for paying healthcare costs for Scottish citizens when abroad, and on the charging of EEA citizens and non-EEA individuals when using NHS services in Scotland.
11. To inform this consideration the Committee wrote to NHS boards and Paul Gray, Director General for Health and Social Care and Chief Executive of NHSScotland. Responses were received from all health boards and the Director General.
12. The Committee also wrote to the Department for Work and Pensions (DWP) given its current role as the body responsible for charging and cost recovery for NHS treatment received by individuals from Non-UK EEA and countries where other reciprocal healthcare arrangements exist. A response was issued from the Department of Health and Social Care to the questions put to the DWP.
13. At its meeting on the 11 December 2018 the Committee held an oral evidence session with Paul Gray, Director General for Health and Social Care and Chief Executive of NHSScotland. The evidence session explored a range of issues including eligibility for free NHS care, cost recovery and payment for overseas visitors and the operation of the European Health Insurance Card Incentive Scheme.⁵

Conclusion

14. The Committee supports the use of the LCM procedure on this occasion. However, the evidence the Committee has received has raised a number of issues regarding the operation of the current scheme on which the Committee has agreed to produce a more detailed report on in the new year.
15. The LCM includes a draft legislative consent motion in the following terms—
 - ” “That the Parliament agrees that the relevant provisions of the Healthcare (International Arrangements) Bill, introduced in the House of Commons on 26 October 2018, relating to powers to make healthcare payments; healthcare agreements and data processing, in so far as these matters fall within the legislative competence of the Scottish Parliament or alter the executive competence of Scottish Ministers, should be considered by the UK Parliament.”
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16. The Committee recommends that the Parliament agrees to a legislative consent motion in the terms outlined in the memorandum.
17. Paul Gray, Director General, in his oral evidence session with the Committee stated that in the event of a deal being reached between the EU and the UK, the European Union (Withdrawal) Act 2018 would allow the current reciprocal health arrangements to continue during the implementation period. However, in the event of there being no deal, the Healthcare (International Arrangements) Bill would be needed to put new arrangements in place quickly.⁷
18. With regard to reciprocal healthcare it is the Committee's view as close as possible to the same arrangements continue to exist after 29 March 2019.

Annexe A - Minutes of meetings

31st Meeting, 2018 (Session 5) Tuesday 27 November 2018

5. Work programme (in private): The Committee considered its work programme and agreed to write to NHS boards, the Director General for Health and Social Care and Chief Executive of NHSScotland and the Department for Work and Pensions in anticipation of a Legislative Consent Memorandum in respect of the UK Healthcare (International Arrangements) Bill.

32nd Meeting, 2018 (Session 5) Tuesday 11 December 2018

1. Healthcare (International Arrangements) Bill 2017-19 (UK Parliament legislation): The Committee took evidence on the legislative consent memorandum from— Paul Gray, Director General Health & Social Care and Chief Executive NHSScotland, Shirley Rogers, Director of Health Workforce, Leadership and Service Transformation, Liz Sadler, Deputy Director, Planning and Quality Division, Ian Davidson, Head of Constitution and UK Relations, and John Paterson, Divisional Solicitor, Scottish Government.

2. Healthcare (International Arrangements) Bill 2017-19 (UK Parliament legislation) (in private): The Committee considered the evidence heard earlier in the meeting and agreed to consider a draft report at its next meeting.

33rd Meeting, 2018 (Session 5) Tuesday 18 December 2018

5. Healthcare (International Arrangements) Bill 2017-19 (UK Parliament legislation) (in private): The Committee considered and agreed a draft report on the legislative consent memorandum.

Annexe B - Evidence

Written Evidence

[Letter from Paul Gray, Director-General Health and Social Care and Chief Executive NHSScotland - 4 December 2018](#)

[Follow-up letter from Paul Gray, Director-General Health and Social Care and Chief Executive NHSScotland - 12 December 2018](#)

[Letter from the Healthcare \(International Arrangements\) Bill Team, Department of Health and Social Care - 12 December 2018](#)

[NHS Ayrshire and Arran - 4 December 2018](#)

[NHS Borders - 5 December 2018](#)

[NHS Dumfries and Galloway - 4 December 2018](#)

[NHS Fife - 4 December 2018](#)

[NHS Forth Valley - 5 December 2018](#)

[NHS Grampian - 4 December 2018](#)

[NHS Greater Glasgow and Clyde - 6 December 2018](#)

[NHS Highland - 5 December 2018](#)

[NHS Lanarkshire - 5 December 2018](#)

[NHS Lothian - 4 December 2018](#)

[NHS Orkney - 29 November 2018](#)

[NHS Shetland - 3 December 2018](#)

[NHS Tayside - 4 December 2018](#)

[NHS Western Isles - 30 November 2018](#)

Official Reports

[Tuesday 11 December 2018 - evidence from the Scottish Government](#)

- 1 Scottish Parliament. [Legislative Consent Memorandum Healthcare \(International Arrangements\) Bill](#).
- 2 UK Parliament. [Healthcare \(International Arrangements\) Bill](#) .
- 3 House of Commons Library. (9 November 2018) [Healthcare \(International Arrangements\) Bill 2017-19](#) .
- 4 Legislative Consent Memorandum (2018) [Healthcare \(International Arrangements\) Bill](#)
- 5 Health and Sport Committee. [Official Report, 11 December 2018](#) , Col 2
- 6 Legislative Consent Memorandum (2018) [Healthcare \(International Arrangements\) Bill](#)
- 7 Health and Sport Committee. [Official Report, 11 December 2018](#) , Col 2.

