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Health and Sport Committee Comataidh Slàinte is Spòrs

Cross-border Health Care (EU Exit) (Scotland) (Amendment etc.) Regulations 2019 [draft]



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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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Cross-border Health Care (EU Exit) (Scotland) (Amendment etc.) Regulations 2019 [draft]

1. The Cross-border Health Care (EU Exit) (Scotland) (Amendment etc.) Regulations 2019 [draft], amends the National Health Service (Scotland) Act 1978 and the National Health Service (Cross-Border Health Care) (Scotland) Regulations 2013. The changes remedy deficiencies in retained EU law relating to cross-border healthcare in circumstances where the UK leaves the EU without a withdrawal agreement in place (known as a “no-deal Brexit”).
2. It provides a mechanism for ensuring there is no interruption to healthcare arrangements for people accessing healthcare through Directive 2011/24/EU after exit day in those European Economic Area (EEA) Member States that agree to maintain the current arrangements in place with the UK for a transitional period until 31 December 2020. Those agreements are conducted at a UK level. However, the instrument extinguishes rights to reimbursement in countries where there is no reciprocity.
3. The instrument also makes transitional provision for patients who are in the process of obtaining cross-border healthcare on exit day. In addition, it provides for UK state pensioners and their families residing in the EEA on exit day to access NHS healthcare in Scotland free of charge for a period of up to one year from exit day.
4. A [protocol](#) has been agreed between the Scottish Government and Scottish Parliament on the process for considering SSIs laid under the European Union (Withdrawal) Act 2018 (the Act).
5. Scottish Ministers have discretion about whether instruments made in exercise of the powers in Schedule 2 to the Act should be subject to the affirmative or the negative procedure, unless the instrument makes provision falling within one of the categories which attracts the mandatory affirmative procedure.
6. The Scottish Government has determined this instrument is required under the European Union (Withdrawal) Act 2018 “Act” to be laid under the affirmative procedure on the basis that certain amendments to the 2009 Scottish Regulations relate to a fee in respect of a function exercisable by a public authority in the UK.
7. The Scottish Government have laid this SSI under paragraph 1(6) of schedule 7 of the European Union (Withdrawal) Act 2018 (mandatory affirmative procedure).
8. This instrument therefore is not subject to the process of ‘sifting’ which applies to certain instruments made under powers conferred by Schedule 2 of the Act.
9. The protocol referred to above also sets out three different levels of prioritisation based on the significance of an SSI.
10. Standard scrutiny processes still apply to the consideration of this SSI. This SSI has been considered by the DPLR Committee from a technical perspective irrespective

of the category it falls into. It has been referred to the Health and Sport Committee as the lead Committee.

11. The protocol does not prescribe a process that lead committees should apply to the scrutiny of matters falling into the different categories, but by categorising instruments it provides committees with a guide as to what they might wish to prioritise.
12. This particular SSI has been categorised as medium.
13. The Delegated Powers and Law Reform Committee considered this instrument at its meeting on 19 March 2019. The Committee agreed that the instrument had been given the appropriate categorisation. The Committee draws the instrument to the attention of the Parliament under the general reporting ground, as it contains an error in regulation. The Committee calls on the Scottish Government to correct this error at the next legislative opportunity.
14. At the Health and Sport Committee's tenth meeting on 26 March 2019, the Committee agreed the Cross-border Health Care (EU Exit) (Scotland) (Amendment etc.) Regulations 2019 [draft] had been given the appropriate categorisation.
15. The Committee then took evidence from –
 - Joe FitzPatrick, Minister for Public Health, Sport and Wellbeing;
 - John Brunton Senior Policy Manager, Scottish Government; and
 - John Paterson, Solicitor, Legal Directorate, Scottish Government
16. Motion S5M-16442 was lodged by Jeane Freeman, Cabinet Secretary for Health and Sport and supported by Clare Haughey, Minister for Mental Health and Joe FitzPatrick, Minister for Public Health, Sport and Wellbeing. Following the evidence session, Joe FitzPatrick moved motion S5M-16442.

That the Cross-border Health Care (EU Exit) (Scotland) (Amendment etc.) Regulations 2019 [draft] be approved.

The motion was agreed without division.
17. The evidence taken and the debate held can be found in the Official Report for 26 March 2019.

The Health and Sport Committee recommends the Cross-border Health Care (EU Exit) (Scotland) (Amendment etc.) Regulations 2019 [draft] be approved.

