14 February 2018

Dear Cabinet Secretary,

Thank you for your letter of 13 February providing the Committee with notification of the following statutory instruments:

- The Social Security Coordination (Benefits in Kind) (Amendment etc.) (EU Exit) Regulations 2019
- The National Health Service (Cross Border Healthcare and Miscellaneous Amendments) (EU Exit) Regulations 2019.

To inform the Committee’s consideration of this notification it would be helpful to have a response to the questions set out in Annex A which all relate to the first SI on social security coordination.

Your letter indicates that you anticipated the two SIs would be laid by 12 February. Are you able to confirm if they have now been laid and if so provide copies to the Committee?

Also as we requested upon publication of our report The Current and future Operation of Reciprocal healthcare Schemes it would be helpful to receive the Scottish Government’s substantive response to this report in time to inform our consideration of this notification.

Given the/
Given the short timescales we are working to we request the response to our questions and report by **Tuesday 19 February**.

Yours sincerely

Lewis Macdonald

Convener, Health and Sport Committee
Annexe A

The Social Security Coordination (Benefits in Kind) (Amendment etc.) (EU Exit) Regulations 2019 appears to engage the Category B criteria of “Proposals predominantly concerned with technical detail but which include some more significant provisions that may warrant subject committee scrutiny.”

In particular, the transitional arrangements are significant insofar as they: (a) preserve reciprocity for states that agree with the UK to such reciprocity until 31 December 2020; and (b) unilaterally protect the rights of patients who are EU nationals in the UK but who are not UK nationals who are in the course of treatment or who have planned treatment authorised before exit day.

1. Can the Scottish Government update the Committee on progress to agree reciprocal arrangements under (a) above during the transitional period? In particular:
   a. Which states have indicated that they are willing to enter into such arrangements and which have indicated that they would not be willing to enter into such arrangements?
   b. Are negotiations sufficiently advanced to enable agreement to be reached with those states who are willing to guarantee reciprocity by exit day?

2. Is it envisaged that the Healthcare (International Arrangements) Bill will be passed and in force by the time the transitional arrangements at (a) above end on 31 December 2020?

3. Is the Scottish Government confident it will be able to identify which foreign nationals are covered by any interim reciprocal arrangements, and therefore eligible for NHS treatment?

4. NHS England has established a number of mechanisms to identify and charge ineligible patients upfront for treatment. Does the Scottish Government have any concerns that NHS Scotland’s more open access policy regarding NHS treatment will leave the NHS in Scotland vulnerable to exploitation by newly-ineligible EEA citizens visiting or working in Scotland or elsewhere in the UK?

5. What contingency planning is underway that would protect NHS Scotland’s services from ‘health tourism’ that might be created by confusion over eligibility?

6. Is the Scottish Government reassured that once the interim period is over (1 January 2021) the Healthcare (International Arrangements) Bill will provide a legislative framework that will take account of the divergence of devolved administrations’ healthcare systems?
7. How confident is the Scottish Government that Scottish citizens living in the EU, EEA or Switzerland as pensioners or workers will be protected by reciprocal healthcare arrangements to be established by this SI - ie up till December 31 2020?

8. Is the Scottish Government prepared for any financial implications such as the need for increased data collection to establish eligibility on behalf of the DWP?

9. What advice will be issued to health boards about planned treatment requests covered by reciprocal healthcare arrangements, that are received up to December 31 2020?