Dear Lewis

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

Thank you for your letter of 14 February about notification of the above-named Statutory Instruments to the Scottish Parliament in response to my letter of 13 February.

I can confirm that the SIs were laid in the Commons on Monday 11 February and are available, together with supporting documents, at:


I have set out and responded to the specific questions you and have raised in the attached annex.

The Scottish Government’s response to the Committee’s report on the Current and Future Operation of Reciprocal Healthcare has been included with the covering e-mail to this letter.

I hope this is helpful to the Committee’s further considerations.

JEANE FREEMAN
THE SOCIAL SECURITY COORDINATION (BENEFITS IN KIND) (AMENDMENT ETC.) (EU EXIT) REGULATIONS 2019

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?

We are advised by the UK Government that a number of EEA states have agreed in principle to the continuation of reciprocal healthcare arrangements. However, whether negotiations will be sufficiently advanced to guarantee reciprocity by exit day remains unclear and there is a risk that the current arrangements for reciprocal healthcare will not continue in a ‘no deal’ scenario in some EU member states. I wrote to the Undersecretary of State for Health at the end of last year when, amongst other things, I made representations about the lack of engagement on this important matter and that this was unacceptable. The Scottish Government continue to press the Department for Health and Sport for clarity in this regard.

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?

It is my understanding that UK Government plan to have the Healthcare (International Arrangements) Bill, which it has said is necessary in both a ‘no deal’ situation and in the longer term following the transition period if a deal can be agreed, in place by 29 March. However, since the Bill was introduced it has subsequently laid the Social Security Coordination (Benefits in Kind) (Amendment etc.) (EU Exit) Regulations 2019 as a short term measure in the event of ‘no deal’.

We have been working closely with the UK Government to ensure that UK wide-primary and secondary legislation is in place to facilitate the continuance of reciprocal healthcare, regardless of how we leave the EU. But the delivery of that legislation is in the hands of the UK Government, and with the repeated delays to agreement of the deal reached with the EU, there is now very little time left to complete its passage.

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?

This is dependent on the UK Government. Once it becomes clearer if bilateral reciprocal agreements have been reached and the countries that have signed up in a ‘no deal’ situation, we will issue guidance to NHS Scotland. If a deal is struck, the existing arrangements will continue until 31 December 2020. During that time the UK Government will negotiate future arrangements for reciprocal healthcare with the EU and we will develop guidance for NHS Boards during that period.
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-eligible EEA citizens visiting or working in Scotland or elsewhere in the UK?

The Scottish Government has no plans to apply charges to anyone upfront when they require medical care in Scotland, regardless of their nationality or eligibility to receive NHS healthcare without cost or if charges apply. NHS Boards will be reminded of their legal obligation under the overseas visitors charging regulations to assess overseas visitors’ eligibility to receive NHS treatment and on what basis at an appropriate juncture for the patient, and that charges should always be applied when it is established that the overseas visitor is not entitled to free NHS treatment. I would mention that under an exemption in the overseas visitors charging regulations overseas visitors engaged in employment in Scotland are exempt from NHS charges. That will not change regardless of the outcome of Brexit. There has been divergence between our balanced approach to overseas visitors’ healthcare and UK Government policy in this regard for a number of years.

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

I would refer to the answer at paragraph 4. There is no evidence to suggest that a significant number of overseas visitors come to Scotland to access healthcare that they are not entitled to at no cost or who renge on the cost of healthcare they receive when charges apply. We will, however, keep matters under review following the UK’s exit from the EU, if that is the final outcome.

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?

As the Parliament has acknowledged the Bill is necessary to protect reciprocal healthcare arrangements, as far as that can be achieved. The Scottish Government places great importance on the protection of our devolved status and legislative competence. Therefore, our view is that, before making regulations that contain a provision which is within the competence of devolved legislature, the UK Government must not only consult the devolved administrations on that provision but we would expect there to be a requirement for the Scottish Ministers to consent before the power may be exercised by the Secretary of State.

In addition we would expect a further parallel power for the Scottish Ministers which may be exercised in or as regards Scotland. This has been our position as regards all new powers which relate to devolved matters.

I have written to Stephen Hammond MP, Minister of State for Health, setting out the above and that the Bill must contain a clause to this effect. I have also made reference to this in my response to the Health & Sport Committee’s report on Reciprocal Healthcare.
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?

The current reciprocal EU healthcare arrangements, which come directly from EU legislation, are applied at a Member State level and are funded and administered by the UK Government on a UK-wide basis. Therefore while as a responsible Government we of course have concerns, as have our colleagues in Wales and Northern Ireland, it is for the UK Government to ensure that, as far as possible, reciprocal healthcare arrangements can continue and UK nationals, including those from Scotland, are not disadvantaged in any way when or if the UK leaves the EU. We have been absolutely clear with the UK Government on this matter from the outset.

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?

Reciprocal healthcare is funded by the UK Government through the Department of Health and Social Care and administered by the DWP. We have made it clear that we expect that to continue, as have the other devolved administrations, and the UK Government are in agreement and have confirmed this publically. Any changes to that arrangement in the future would need to be agreed between the UK Government and devolved administrations with the necessary transfer of resource.

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?

The advice to NHS Boards will depend on the final outcome, while the UK remains in the EU there will be no change to the status quo. If a deal is agreed, planned treatment under the S2 scheme will continue as it does now with EEA countries and Switzerland until 31 December 2020. In a ‘no deal’ situation the S2 scheme will continue with countries that agree to enter into bilateral agreements until 31 December 2020, when further reciprocal arrangements, using powers in the Healthcare (International Arrangements) Bill will be put in place. As you will appreciate, I am not in a position to comment on such provisions at this time. I will though add that under current arrangements very few Scots (less than 10 each year) choose to travel in the EEA for planned treatment under the S2 scheme.