

UK MINISTERS ACTING IN DEVOLVED AREAS

National Health Service (Cross-Border Healthcare and Miscellaneous Amendments etc) (EU Exit) Regulations 2019

Laid in the UK Parliament: 11 February 2019

Sifting

Subject to sifting in UK Parliament?	No
Procedure:	Affirmative
Date of consideration by the House of Commons European Statutory Instruments Committee	12 February
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Not known
Date sifting period ends in UK Parliament	N/A
Written statement under SO 30C:	Paper 16
SICM under SO 30A (because amends primary legislation)	Paper 17

Scrutiny procedure

Outcome of sifting	N/A
Procedure	Affirmative
Date of consideration by the Joint Committee on Statutory Instruments	Not known
Date of consideration by the House of Commons Statutory Instruments Committee	Not known
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Not known

Commentary

These Regulations are proposed to be made by the UK Government pursuant to section 8(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018.

The Regulations will remove current cross border healthcare rights under domestic legislation, while at the same time protecting patients in a transitional position and enabling transitional continuation (up to 31 December 2020) of cross-border healthcare arrangements with those countries with whom the UK has established continued reciprocity. They enable people resident in England and Wales to access cross-border healthcare in "listed" countries. The Secretary of State will maintain a list of countries that reach agreement with the UK to continue cross-border healthcare arrangements. However, the Regulations extinguish access to healthcare in countries with which there is no reciprocity.

Legal Advisers agree with the statement laid by the Welsh Government dated 14 February 2019 regarding the effect of these Regulations.

The statement refers to the Statutory Instrument Consent Memorandum laid in respect of amendments to the NHS (Wales) Act 2006, but does not indicate whether the Welsh Government proposes to table a Statutory Instrument Consent Motion under Standing Order 30A.10.

The above summary and the content of the Explanatory Memorandum to these Regulations confirm their effect and the extent to which these Regulations would enact new policy in devolved areas. The Explanatory Note annexed to the Regulations, on the other hand, is notably unhelpful in explaining their effect.

Legal Advisers do not consider that any significant issues arise under paragraph 8 of the Memorandum on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks in relation to these Regulations.

Legal Advisers have not identified any legal reason to seek a consent motion under Standing Order 30A.10 in relation to these Regulations. The Regulations do, however, raise issues of “political or legal importance or [that give] rise to issues of public policy likely to be of interest to the Assembly” in a way that would give rise to a ‘merits’ report if this were a Statutory Instrument to be made by the Welsh Ministers.

Members may, therefore, wish to consider whether to table a consent motion in accordance with Standing Order 30A.10 in respect of these Regulations, unless the Welsh Government confirms that it intends to do so.