

T: 0131-244 2790  
E: dghsc@gov.scot

Lewis Macdonald MSP  
Convener  
Health and Sport Committee  
T3.60  
Scottish Parliament  
EDINBURGH  
EH99 1SP

12 December 2018

Dear Convener,

**UK HEALTHCARE (INTERNATIONAL ARRANGEMENTS) BILL:  
LEGISLATIVE CONSENT MEMORANDUM**

As discussed at Committee yesterday the Healthcare (International Arrangements) Bill is necessary because the UK has only limited domestic powers to fund and arrange healthcare overseas, and to share data for those purposes: activities that are currently facilitated by EU regulations. On leaving the EU, the reciprocal healthcare arrangements may no longer apply in the UK in their current form and UK legislation is required to provide for future arrangements.

During yesterday's evidence session the Committee raised a number of issues about healthcare for people from overseas that went beyond the provisions of the Bill. I therefore agreed to write to clarify the following:

- Overseas' visitors eligibility to access primary and secondary care.
- Whether claims under the European Health Insurance Card (EHIC) Incentive Scheme can be submitted retrospectively.
- Returning UK state pensioners originally from Scotland.
- UK nationals originally from England and now working overseas, returning to the UK and accessing NHS services in Scotland.
- The operation of the Immigration Health Surcharge and the implications for Scotland.
- The provisions in the Healthcare (International Arrangements) Bill that would allow the UK Government to enter into arrangements other than for reciprocal healthcare.

The attached Annex sets out this information.

I would also like to confirm that EEA nationals who have decided to take up residence in Scotland are entitled to access the full range of NHS treatment and services without restriction while they are living here. As that arrangement is provided for in Scottish Regulations that position will not change when the UK leaves the EU.

Yours sincerely,

A handwritten signature in black ink that reads "Paul Gray". The signature is written in a cursive style with a prominent initial 'P' and a long, sweeping underline.

**Paul Gray**

## **Primary Care - GP Registration**

I undertook to set out the arrangements that are in place in determining the eligibility of persons from overseas to receive primary and secondary care.

Everybody who is in Scotland is entitled to register with a general medical practice and receive primary medical services without charge. Patients should register on a permanent or temporary basis depending on their length of stay in a practice area and not upon their legal status to remain in the UK. This is in line with the position in England and Wales.

Recent guidance for healthcare Providers of General Medical Services in Scotland on “Patient Registration” was published on 26 September 2018. There has been no change in national policy in respect of patient registration. The intention of the guidance was to provide clarity around the patient registration process to ensure it is being conducted fairly and equitably for all patients, including transient populations such as Gypsy Travellers, migrants, asylum seekers (including refused asylum seekers), people liberated from prison and overseas visitors amongst others.

The two key principles are:

- No documents are required to register with a GP. The inability by a patient to provide identification or proof of address is not considered reasonable grounds to refuse or delay registering a patient.
- Anybody in Scotland may access primary care services at a GP practice without charge.

The guidance clarifies that the NHS (Charges to Overseas Visitors) (Scotland) Regulations 1989 do not permit charging for NHS primary care services other than certain dental and optical services.

Where a GP refers a patient for secondary care services (hospital or other community services), they should do so on clinical grounds alone; eligibility for free care must be assessed by the receiving organisation. It is not the responsibility of primary care services to check the eligibility of patients for charging in secondary care settings. A patient’s nationality is therefore not relevant in giving people entitlement to register as NHS patients for primary medical care services.

Whilst it is not a contractual requirement to request proof of identification, it is understood that there are practical reasons why a practice may apply a policy to ask new patients to provide identification upon registering as a patient’s correct identity will have significant implications for treatment, referral and other clinical purposes. It also helps to ensure the correct matching of a patient to any existing NHS record, enabling previous medical records to transfer smoothly between practices.

## **Secondary and Tertiary NHS Healthcare**

The principal Regulations that determine whether overseas visitors are required to pay for secondary or tertiary (hospital or specialised) healthcare they receive while in Scotland are the [National Health Service \(Charges To Overseas Visitors\) \(Scotland\) Regulations 1989, as](#)

amended. The Overseas Visitors Charging Regulations only apply to secondary or tertiary healthcare provided by NHS Boards, apart from certain dental and optical services.

Where an NHS Board provides an overseas visitor with treatment or services and they are not covered by an exemption or exemptions in the Overseas Visitors Charging Regulations, it has a legal duty to make and recover charges for the provision of that treatment. All Board in Scotland have arrangements and staffing in place to do this, including overseas visitors healthcare managers.

It is, therefore, important that when a GP practice refers a person from overseas for hospital or specialised treatment, the relevant NHS Board carries out its own assessment of the patient's eligibility to receive healthcare at no cost or if charges should be applied, that includes patients from the EEA or Switzerland. This is regardless of whether the patient has already received primary medical services from a GP at no charge or has been added to the GP's NHS patient list. Registration is a matter for GPs as private contractors to the NHS, but NHS Boards have a legal duty to make decisions based on the Charging Regulations.

The Scottish Government welcomes overseas visitors as they contribute to our economy and culture, and we take a balanced approach to their ability to access NHS healthcare, whether they are from the EEA or beyond. However, when charges apply, we expect NHS Boards to recover such costs whenever possible.

### **The EHIC Incentive Scheme - Retrospective Claims**

I confirm that the Department for Work and Pensions will accept retrospective claims for healthcare cost reimbursement (25%) from NHS Boards in Scotland under the EHIC Incentive Scheme. I would also mention that my officials receive monthly figures from DWP for the Boards that are participating in the Scheme and have used the secure portal to report EHIC activity.

The Committee raised questions about NHS Greater Glasgow and Clyde who for the first time recorded EHIC Incentive scheme data for November 2018. Whilst I am concerned that it has taken the Board so long to participate, it is encouraging that they have undertaken a back-tracking exercise and reported activity to the value of almost £120,000 in November with a further £88,000 to follow in December 2018. The Board have assured me that efforts will continue on the back-track exercise and that processes have been put in place to record and claim EHIC activity on an ongoing basis.

### **Returning UK State Pensioners Originally From Scotland**

The Committee expressed concerns about the provision of healthcare for returning UK state pensioners, originally from Scotland. For a number of years the Department of Health and Social Care and DWP have said that they cannot identify state pensioners from Scotland, and the other devolved administrations, that are participating in the S1 scheme while residing in other EEA countries (or Switzerland). However, by using a historical estimate of the total cost of £48 million to fund the S1 scheme for Scots, and by dividing that sum by the amount paid for each pensioner on an annual basis at the time (£3,200), we have been able to estimate that around 15,000 pensioners from Scotland are participating in the S1 scheme. The UK Government has confirmed that 190,000 UK state pensioners, and their dependents, are registered under the scheme. Therefore, in the absence of accurate data from DWP, 15,000 would appear to be a reasonable estimate of that total for Scots pensioners.

The UK Government has said that it pays a lump sum of around 4,000€ for each UK state pensioner residing in the EU, which it claims is value for money as it would cost an average

of between £4,000 and £5,000 to treat those pensioners on the NHS at home. Amongst this cohort of pensioners there are likely to be a number who have acute or multiple illnesses and a number who are relatively healthy and will not require access to health or social care services, other than registration with a GP, if they return to Scotland.

Following withdrawal from the EU, it is accepted that a number of UK state pensioners from Scotland are likely to return, for whatever reason. However, the total is relatively small; not all will want or need to return to the UK/Scotland; not all will require access to acute healthcare or social care on their return; and they will be spread throughout Scotland. Therefore, while there may be particular pressures in certain areas, we do not see returning pensioners as placing an unmanageable burden on the NHS or Social services in Scotland. We will however include this in our scenario planning for Brexit.

We fully appreciate that if reciprocal healthcare was halted or there was a hiatus because of a no deal situation, this could have adverse implications for the many thousands of Scots that live in, or travel to, other EEA countries. That is why the provisions in the UK Healthcare (International Arrangements) Bill are so important. However, while we are aware of the concerns and will continue to monitor the position, we do not believe that this would have a material impact on the way that NHS Scotland and Social Services deliver treatment and care.

### **Former UK Residents Working Abroad**

Under Section 4(K) of the [National Health Service \(Charges To Overseas Visitors\) \(Scotland\) Regulations 1989, as amended](#) former UK residents who are currently working abroad are entitled to access NHS healthcare when in Scotland if:

- they have previously resided in the UK legally for more than 10 years before moving abroad and have worked abroad for less than five years; or
- have worked abroad for five years or more, and have come back to the UK for a visit at least once every two years; or
- their contract of employment allows them to visit the UK at least once every two years; or
- their employer will pay for the cost of their return to the UK at the end of their contract.

We do not have figures for the number of people from Scotland that use this provision, but it will be very small. And while NHS England has removed this provision from their Charging Regulations, there is no evidence to suggest that people who are originally from England are taking advantage of this arrangement to receive healthcare in Scotland when they are back in the UK. We will, however, monitor the position.

At present UK nationals residing in other parts of the EEA can receive necessary or planned treatment when they are in Scotland using EU reciprocal healthcare arrangements. And as they have right of abode, can take up residence at any time and receive NHS healthcare without restriction if they chose to come back to Scotland or other parts of the UK to live.

### **The Immigration Health Surcharge**

The Committee was interested in the Immigration Health Surcharge and the potential adverse impact it may have on attracting key skilled workers to Scotland. The Surcharge was introduced by the UK Government on 6 April 2015 by an Order taken from the UK Immigration Act 2014. The Scottish Government opposed the Surcharge and made representations, claiming that it impinged on devolved responsibility, during the passage of the Immigration Bill. However, the Home Office has constantly maintained that the health provisions in the Immigration Act 2014 support immigration policy, which is reserved.

The Surcharge applies to the following categories of individuals who apply for limited leave to remain in the UK for more than 6 months and is paid up-front with visa fees:

- non-EEA migrant workers and their dependants;
- non-EEA (International) students and their dependants; and
- those from outside the EEA who are joining their British family in the UK.

The cost depends on the individual's reason for coming to the UK (the charge also applies to dependants and spouses), currently costs are:

- Students and those on a Youth Mobility visa must pay £150 for each year they remain in the UK.
- Under most other immigration routes, those who are liable to pay the charge must pay £200 for each year they remain in the UK, (There are exceptions for e.g. diplomats and dependents of a member of the UK's armed forces).

The categories of individuals listed above are already entitled to receive hospital healthcare in Scotland at no charge under exemptions in the National Health Service (Charges to Overseas Visitors) (Scotland) Regulations 1989, as amended and the Scottish Government has not aligned the Surcharge with Scotland's Overseas Charging Regulations, viewing it as an attempt to control immigration through healthcare provision. However, as the Surcharge is paid with visa fees, those from non-EEA countries coming to Scotland to work and study will have already paid it to enter the UK.

On 11 October, the UK Government laid The Immigration (Health Charge) (Amendment) Order 2018 before Parliament, in accordance with section 38 of the Immigration Act 2014. The Order contains provisions to double the cost of the Immigration Health Surcharge and is set to come into effect in early 2019.

The Cabinet Secretary for Health and Sport wrote to the UK Immigration Minister on 1 November restating Scotland's position that implementation of the Surcharge did not take account of Scotland's very different needs with regards to migration, and that we remain deeply concerned that doubling the cost of the surcharge will make Scotland a less attractive destination for skilled workers and international students, who generate considerable income for our higher education establishments and the economy.

Through the Barnett Formula, Scotland receives a percentage share (8.29%) of the revenue generated by the surcharge given that it is applied across the UK. Scotland's share for 2017/18 is £19 million.

### **UK Health (International Arrangements) Bill**

The Committee expressed some concern that the Bill goes beyond reciprocal healthcare in taking provisions to implement new agreements. As is set out in the explanatory note, the Bill provides the Secretary of State with powers which are necessary to arrange for the provision of healthcare overseas and to fund this, after the UK leaves the EU. The powers are required both in a deal and in a no deal scenario, and go beyond the EU sphere, to allow the Secretary

of State to implement any new agreements on reciprocal healthcare which the UK puts in place with both EU and non-EU states should this be part of a global strategy.

The Scottish Government is aware of this provision and has noted that at the third reading of the Bill on 29 November assurances were given that The UK Government is committed to working closely with the devolved administrations now and in the future to deliver an approach that works for the whole of the United Kingdom. And will engage with and consult the devolved administrations where regulations may relate directly to devolved matters. We will hold the UK Government to that undertaking. There has been discussions between UK and Scottish Government officials about amending the Bill to include a clause whereby the UK Government must consult the devolved administrations and enter into a memorandum of understanding with them, before regulations that impact on devolved responsibility can be introduced. We have yet to learn if this will be formally adopted.

However, as is set out in the Legislative Consent Memorandum, many thousands of UK nationals, including Scots, benefit from EU reciprocal healthcare each year as state pensioners residing in other European Economic Area countries outside the UK or as travellers using the European Health Insurance Card. This Bill is required to enable existing reciprocal healthcare arrangements to continue or for new arrangements to be put in place after EU Exit, in the event of no deal or following the transition period. Given the purpose of this Bill in providing reassurance to those requiring healthcare, the Scottish Government believes that its application to Scotland should be put beyond any doubt, and therefore intends to seek the Scottish Parliament's formal legislative consent to the Bill in these exceptional circumstances.