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By Email.

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Dear Lewis,

THE CURRENT AND FUTURE OPERATION OF RECIPROCAL HEALTHCARE SCHEMES

Thank you for your notification of 8 February, seeking the Scottish Government's response to the above Health & Sport Committee report.

This follows on from Paul Gray's appearance before the Committee on 11 December and his letter of 12 December, when he provided evidence on the UK Healthcare (International Arrangements) Bill, the requirement for a Legislative Consent Memorandum/Motion and reciprocal healthcare more generally.

I have addressed the specific points that have been raised in the order that they appear in the report, setting out the Committee's comment and following it with the Scottish Government's response in the attached Annex.

I hope this is helpful to the considerations of the Committee.

JEANE FREEMAN

ANNEX

THE CURRENT AND FUTURE OPERATION OF RECIPROCAL HEALTHCARE SCHEMES

Determining eligibility of individual from overseas to receive primary and secondary care

Committee comment – *Paragraph 25 - It is important that regulations regarding entitlement to NHS treatment are applied fairly and consistently.*

The legal duty to identify and where appropriate make and recover charges from overseas visitors who receive secondary and tertiary NHS treatment lies with NHS Boards under section 2 (1) of the NHS (Charges to overseas Visitors) (Scotland) Regulations 1989, as amended. It is for NHS Boards to ensure that the regulations are applied fairly and consistently in their respective catchment areas. The Scottish Government have put in place several measures to support Boards in this regard and to promote consistency of approach throughout NHS Scotland:

- Guidance issued to Boards under cover of CEL 09 (2010) sets out how the regulations should be applied. We are confident that all NHS Boards are aware of and refer to this guidance when determining overseas visitors' eligibility to receive secondary or tertiary NHS healthcare and on what basis.

- The NHS Inform overseas visitors' helpline was established by the Scottish Government in 2011 to provide advice on overseas visitors' issues. The helpline is operated by experienced staff that have a sound knowledge of overseas visitors' issues. It is available to both the public and healthcare providers seeking advice on overseas' visitor eligibility to receive NHS healthcare, including GP registration.

- NHS Boards have been informed by the Scottish Government on numerous occasions and are aware that NHS Inform is the contact point when they are unclear on an overseas visitor's eligibility to receive NHS healthcare at no charge. And in more difficult or unusual cases, the Cross-Border and Overseas Visitors' Healthcare Manager at the Scottish Government will offer advice. However, given that the Charging Regulations apply to NHS Boards they are advised to seek legal advice from their own legal advisors when that is necessary.

- The Overseas Visitors Healthcare Managers Network was established in 2017 to enable NHS Boards to share good practice and provide a forum for discussion between Boards, the Scottish Government and partners on overseas visitors' issues. The group meets three-four times each year and has facilitated contacts between individual Boards. This has enabled Boards to share and discuss issues and to solve problems with their peers. The Committee's Reciprocal Healthcare Report will be considered by that Group.

Committee Comment – *Paragraph 26. We support the principle that anybody in Scotland may access primary care services at a GP practice and receive A&E treatment without charge. However we are concerned that, because GP practices are not required to conduct checks on a patients' identification or proof of address, a GP may be referring a patient on for non-emergency secondary care services without it being established if they are entitled to access these services without charge.*

Paragraph 27 - We recommend the Scottish Government should re-examine its guidance for Healthcare Providers of General Medical Services in Scotland recognising

the role of GPs as gate-keepers to providing access to secondary care. We believe the Scottish Government should give further consideration to whether changes should be made to the registration process for general medical services to ensure those who should be charged for receiving secondary care are identified.

I am pleased to note that the Committee supports the principle that anybody in Scotland should have access primary care services at a GP practice, as set out in the GP Contract Regulations, and to receive A&E services without charge. However, the Scottish Government believe that to shift the onus from 14 territorial NHS Boards to over 900 GP contractors in determining overseas visitors' eligibility to receive NHS healthcare would increase rather than reduce inconsistencies in the assessment process. It would also require a legislative change and would make the position in Scotland different to that in England and Wales. Moreover, the new GP contract aims to make general practice a more attractive career by allowing GPs to focus on their role as Expert Medical Generalists doing the work only they can do. Therefore, we have no plans to place a further administrative burden on them at this time.

Committee Comment - ***Paragraph 28 – NHS boards have a legal duty to adhere to charging regulations. However, we believe there may currently be instances where NHS boards' assessment process for patient eligibility to services may be resulting in inconsistencies in application.***

The Scottish Government acknowledge that there will always be room for improvement in assessment processes, and will continue to work with NHS Boards through the aforementioned Overseas Visitors Healthcare Managers Network to promote consistency, both at local and national level.

Committee Comment – ***Paragraph 29 - NHS boards currently conduct their own assessment to determine who should be in receipt of free care and treatment. The responses from NHS boards suggest there are variations in their approaches and procedures to determine eligibility. We are concerned there could be instances where staff treating patients are asked to identify patients as a non-EEA citizen but without adequate processes and support to approach potentially sensitive and difficult discussions and this has its roots in the lack of effective identification procedures in primary care.***

It is for NHS Boards to ensure that they have appropriate practices and procedures in place to meet their statutory duty under the Overseas Visitors Charging Regulations. In doing so, they must comply with equality legislation and must ensure that all staff involved in assessing patients' eligibility to access NHS healthcare and on what basis, receive appropriate training in carrying out this important role.

Committee Comment – ***Paragraph 30 - We recommend the Scottish Government conduct a review of the approaches and procedures NHS boards use to establish eligibility for free NHS treatment and establish a consistent and standardised approach. Boards are potentially losing out on significant revenue as we detail later in this report.***

It is primarily for NHS Boards to manage healthcare for their local populations and we expect them to make every effort to recover treatment costs from overseas visitors when charges apply. However, the Scottish Government clearly has a role in providing the legal and policy framework to support Boards in this regard. Therefore, once we know the outcome of the UK's exit from the EU, which the people of Scotland did not vote for and do not support, and the impact that this will have on EU reciprocal healthcare, we plan to carry out a full review of the existing charging regulations and associated guidance (CEL 09 (2010)).

Divergence in eligibility rules between Scotland and England

Committee Comment – ***Paragraph 35 - We welcome the Director General's commitment to monitor usage of NHS Scotland services by UK citizens working abroad. We ask the Scottish Government to provide further information on how it will conduct this monitoring, and the financial implications that arise from this divergent policy.***

The review referred to in the previous response to paragraph 30 will look at the exemption in our Overseas Visitors Charging Regulations that allows UK nationals working overseas to access healthcare when they are in Scotland without charge. In the meantime, we will ask NHS Boards, through the Overseas Visitors Healthcare Managers Network, to report any increased activity from UK nationals originally from England, but now working overseas, who wish to access healthcare in Scotland under the provision in our Charging Regulations. However, we do not envisage particular issues in this regard.

Price tariff for NHS services

Committee Comment – ***Paragraph 38 - We believe it is important that where charges are levied there is a consistent and transparent approach taken to how these charges are determined across NHS Scotland. We recognise the cost of the provision of the same treatment may vary across NHS boards due to variables in the cost of delivery. We ask the Scottish Government how NHS boards set their price tariffs and what assessment is undertaken at a national level to determine that these are transparent, fair and consistent.***

It is for NHS Boards to calculate the actual cost to the NHS in providing and charging for treatment provided to overseas visitors. Individual Boards will calculate such costs, based on local mechanisms, the treatment carried out and the duration of any stay in hospital. NHS Boards have a legal duty to be transparent, fair and consistent in all of their financial transactions. This applies equally when providing healthcare for overseas visitors when charges apply.

EHIC Incentive Scheme

Committee Comment – ***Paragraph 52 - The Committee's consideration of the current operation of the EHIC Incentive Scheme has highlighted that a number of NHS boards are not currently participating in the scheme. We note that following our request to NHS boards for information on scheme usage NHS GGC has since chosen to participate in the scheme. We welcome this change in approach by the NHS board, especially as the board was collecting the data required for the scheme.***

In common with the Committee, the Scottish Government welcomes the steps taken by our largest NHS Board, NHS Greater Glasgow, and Clyde to participate in the EHIC incentive scheme and to carry out a backtrack exercise. Work is ongoing and the figures for January 2019 saw further progress with over £191,000 now reported in total by GGC.

Committee Comments ***- Paragraph 53 - We recommend the Scottish Government take steps to ensure all boards are recovering money that is owed to them under the EHIC Incentive Scheme. We estimate the average money coming back to NHS boards, if all participated in the scheme, will increase substantially.***

Paragraph 54 - We welcome the comments made by the Director General that following our scrutiny of the EHIC Incentive Scheme he is now calling for greater consistency across boards and further justification from those not participating in the scheme. We request an update on the progress the Scottish Government has made since December 2018 to achieve greater consistency in the operation of the scheme including specifically whether the five outstanding boards have now joined the scheme.

It is also encouraging to report that NHS Fife has now put procedures in place and has carried out training to ensure that all admitting staff are aware of the scheme and the requirement to record EHIC information. NHS Fife believe that they have addressed the first step in the process and are in a position to submit data through the web portal. There are now four remaining Boards not participating in the scheme; NHS Dumfries and Galloway, NHS Forth Valley, NHS Lanarkshire and NHS Western Isles. We will continue to work with boards, utilising the Overseas Visitor Healthcare Managers network group, to raise the issue further and highlight the experience of NHS GGC and NHS Fife as recent participants.

Committee Comment - ***Paragraph 55 - If there are boards that continue to consider the scheme too administratively cumbersome when compared with the financial benefits we ask the Scottish Government whether consideration has been given to centralising the system at a Scottish Government or regional NHS board level to reduce administrative costs. Also, whether reductions in costs can be achieved through the use of technology which could be used to both assist in identifying those who should be charged and in receiving payment.***

The reciprocal health schemes, including the EHIC and the EHIC incentive scheme, are managed by the Department for Health and Social Care on behalf of the devolved administrations. The Scottish Government is not responsible for the delivery of the incentive scheme and while we strongly urge Boards to participate, we have no powers to make this mandatory. The reporting activity which is required to recover money is carried out through a secure portal and is not a complicated or administratively cumbersome process for NHS Boards and we therefore have no plans to centralise this function. Rather, as Paul Gray mentioned during the session on 11 December, Boards that are still not participating should be encouraged and supported to do so by Boards that are benefiting from the scheme.

Individuals not resident in the EU/EEA

Committee Comment – Paragraph 59 - ***Several of the health boards highlighted that debts over £500 can be reported to the UK Home Office and non-payers can be refused entry visas or extensions of stay. The information on outstanding debts is provided monthly to the Home Office.***

This immigration rule applies to the whole of the UK and all territorial NHS Boards in Scotland must report longstanding debts of more than £500, incurred by non-EEA nationals, to the Home Office. However, provision of this information must take full regard of data protection, information security and patient confidentiality duties. And it is not only incumbent on Boards to notify debts to the Home Office, but also to notify where debts are cleared to ensure individuals are not disadvantaged when applying to re-enter the UK or stopped at the border for non-payment of a NHS health bill.

The scheme is part of the cost recovery process for the NHS when there is a reluctance to pay. It encourages overseas visitors with outstanding NHS debts to pay promptly or to enter into a meaningful repayment plan. It can also prevent additional outstanding debts being

incurred by overseas visitors who wish to return to the UK to receive further treatment without the means to pay.

Committee Comment – ***Paragraph 62 - There is currently variation between NHS boards in their ability to recover the costs of care and treatment by individuals not resident in the EU/EEA. It is difficult to determine without conducting a detailed consideration of specific cases if the reasons why costs are not recovered is due to the individual circumstances of a case or whether there are inconsistencies in the approach taken and resources used to recover costs from individuals.***

The Scottish Government expects NHS Boards to take all reasonable steps to recover the cost of NHS treatment from those overseas visitors who are liable to pay charges for healthcare. However, while we can never be complacent and must keep matters constantly under review, we do not consider that Scotland has a significant problem with regard to overseas visitors accessing NHS healthcare that they are not entitled to, or who renege on their liability to pay for healthcare they receive when charges apply.

We are aware of the variation across Boards in the recovery of costs from overseas visitors who have received NHS healthcare when charges have applied. The reasons for this are varied, but the processes adopted and the deployment of resources within individual Boards is a key factor. Evidence from NHS Lothian indicates that where overseas visitors are effectively managed, this brings positive results both in terms of the number of overseas visitors identified as being chargeable and cost recovery.

NHS Lothian has had a dedicated overseas visitor's patient team in place for several years. Over the last five years, by identifying overseas visitors not eligible for free healthcare, the Board has applied the highest volume of charges (£4.5 million) in Scotland, recovering almost 90% of these costs. The success of NHS Lothian and its approach to identifying overseas visitors and processes for cost recovery has been shared with other NHS Boards through the Overseas Visitors Healthcare Managers Network. However, decisions on deployment of resources and organisational processes and procedures are matter for individual Boards and there is a balance to be struck between the cost of administration and the amount of revenue that can realistically be recovered.

Committee Comment – ***Paragraph 63 - We recommend the Scottish Government conduct an assessment of each NHS board's, performance, criteria and approach to cost recovery. This should include an assessment of whether there are instances where costs should and could be recovered. We also recommend this assessment consider whether a more centralised system to manage NHS reporting and recovery of costs would deliver a more consistent approach across all NHS boards. We ask the Scottish Government to report to the Committee on progress on this matter.***

Feedback from Boards highlighted that the key issue for them is the identification of patients who may be subject to charge and, as has been mentioned above, they have a legal duty to do so under the Overseas Visitors Charging regulations. Therefore, the onus is on NHS Boards to have appropriate assessment arrangements in place. Once chargeable patients are identified, Boards have systems in place to recover healthcare costs, including access to debt recovery agencies when payment is not forthcoming. However, we certainly do not want to promote a culture whereby treatment can be withheld until a payment has been received from an overseas visitor.

The Healthcare International Arrangements Bill

Committee Comments – ***Paragraph 77 - We recognise the importance of continuing as close as possible to the same arrangements for reciprocal healthcare as currently exist after EU withdrawal. As the Scottish Government has highlighted, many thousands of UK nationals, including Scots, benefit from EU reciprocal healthcare each year. Either as state pensioners residing in other EEA countries outside the UK or as travellers using the European Health Insurance Card, as well as those seeking treatment in the EEA (S2 route).***

Paragraph 78 - We also note that current arrangements for the cost of providing the £48 million to fund the S1 scheme for Scots is applied at a EEA state level and is therefore funded by the UK Government on a UK-wide basis. We therefore welcome discussions on the UK Healthcare (International Arrangements) Bill containing 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 ask the Scottish Government for an update on whether this clause will be contained in the Bill.

I have written to the UK Government and have made it clear that we place great importance on the protection of our devolved status and legislative competence. Therefore, before making regulations under the powers in the Bill 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 must also seek Scottish Ministers' consent before the power may be exercised by the Secretary of State. In addition, there is a need for a further parallel power for the Scottish Ministers that may be exercised in or as regards Scotland. This has been our position as regards all new powers that relate to devolved matters. I understand that the Bill is now in the House of Lords and I expect the UK Government to table an amendment in the above terms. I have written to Stephen Hammond MP, Minister of State for Health, to that effect.

EU Directive Patient's Rights in Cross-border Healthcare

Committee Comment – ***Paragraph 82 - We ask the Scottish Government if it has requested a further update from the Department of Health and Social Care since December 2018 on the future plans for the Directive. We recommend consideration should be given to similar arrangements being made to replace the Directive regarding patients' rights in cross border healthcare.***

Under the Withdrawal Agreement of 8 December 2017, reciprocal healthcare arrangements with the EU will continue during the implementation period, and afterwards for people who are within scope of the citizens' rights part of that agreement (broadly those who at the end of the implementation period who are, or have previously been, in a reciprocal/cross-border healthcare situation involving the UK and another EEA country). The Withdrawal Agreement is subject to ratification, and rights of future cohorts are being negotiated as part of the UK's future relationship with the EU.

The Directive rights will be discussed as part of this second phase of negotiations. It is not clear at this stage whether these rights will continue, as this will be subject to the ongoing negotiations and a range of negotiated and non-negotiated scenarios.

However, in planning for 'no deal' the UK Government has now taken the decision to revoke the England and Wales regulations that transposed the Directive into domestic legislation in 2013 and to allow the policy to operate for certain listed countries for a transitional period until

31 December 2020. This is the same approach being pursued for reciprocal healthcare regulations and would involve listing countries (who agree to reciprocally maintaining the status quo until that date). The National Health Service (Cross-Border Healthcare and Miscellaneous Amendments etc.) (EU Exit) Regulations 2019 were laid in the Commons on Monday 11 February. As the SI touches on devolved competences Scottish Parliament notification is necessary, I have written to the committee in this regard on 13 February.

As Scotland also transposed the Directive into domestic legislation (the Cross-border Health Care) (Scotland) Regulations 2013) we are also considering the future of the cross-border healthcare provisions and the need to legislate in preparation for a no deal situation, but have come to this late. My officials have been pressing the UK Government to share its proposals for the future of the Directive with us for over eighteen months, but it is only recently that it has begun to engage in a meaningful way.

I would, though, mention that existing EU cross-border arrangements are more attuned to insurance based healthcare systems rather than NHS healthcare that is free at the point of delivery. Additionally, the Directive provides greater access to healthcare in Europe than is available at home given that patients can choose to access either state or private healthcare in other EEA countries. It is not possible for Scottish patients to obtain reimbursement from the NHS for private healthcare they have purchased in any part of the UK as that would be contrary to Scottish Government policy. Healthcare under the Directive can also present issues of inequality because those patients who have the resources and are better informed are much more likely than less well-off patients to access treatments abroad, when they perceive the healthcare to be better or faster there.