HOUSE OF LORDS

Library Briefing

Healthcare (International Arrangements) Bill HL Bill 155 of 2017–19

Summary

The Healthcare (International Arrangements) Bill is a government bill that was introduced in the House of Commons on 26 October 2018. It completed its report stage and third reading on 21 January 2019. No amendments were made to the bill during its House of Commons stages. It was introduced in the House of Lords on 22 January 2019 and it is scheduled to have its second reading on 5 February 2019.

The bill is intended to allow the UK to maintain reciprocal healthcare arrangements with the EU and its member states, and to strengthen or implement new arrangements with other countries outside of the EU, after Brexit. The bill would provide the Secretary of State for Health and Social Care with powers to make regulations to fund and implement reciprocal healthcare agreements outside the UK and to share necessary data.

The bill was introduced as a result of the UK's decision to leave the EU and is intended to enable the Government to respond to a range of possible outcomes of the UK's exit in relation to reciprocal healthcare arrangements. Currently, the UK Government's ability to fund and arrange healthcare for UK citizens within the EU is enabled by the EU Social Security Coordination Regulations, which provide the legal authority for the Secretary of State to make overseas payments to reimburse the cost of healthcare. The UK also has bilateral reciprocal healthcare agreements with several non-EU countries, for example Australia, which are more limited in scope. Presently, the Secretary of State has limited domestic powers to fund overseas healthcare or to implement complex reciprocal healthcare agreements with other states. The Government has said that once the UK leaves the EU it will be necessary for domestic legislation to provide the Secretary of State with powers to fund and arrange for healthcare overseas.

Overall, there was cross-party support for the aim of the bill to continue and replicate the existing reciprocal healthcare arrangements with the EU. However, the Opposition raised concerns about the level of parliamentary scrutiny of the powers given to the Secretary of State to make regulations to fund and implement multiple bilateral arrangements. It also called for greater parliamentary oversight with regard to the cost of future healthcare agreements. Several Members expressed concern that the Government had underestimated the potential consequences of the UK leaving the EU without an agreement on future healthcare arrangements.

Table of Contents

1. Introduction
2. Bill Provisions
3. Second Reading
4. Committee
5. Report and Third Reading

Sarah Tudor

31 January 2019

Table of Contents

1. Introduction 1
1.1 Background to the Bill ... 1
1.2 UK Reciprocal Healthcare Arrangements ... 2
1.3 EU Reciprocal Healthcare Framework ... 2
2. Bill Provisions 8
2.1 Bill Overview ... 8
2.2 Summary of the Bill ... 9
2.3 Report on the Use of Delegated Legislation Powers ... 12
3. Second Reading 12
4. Committee 15
5. Report and Third Reading 18
5.1 Report ... 18
5.2 Third Reading ... 20

A full list of Lords Library briefings is available on the research briefings page on the internet. The Library publishes briefings for all major items of business debated in the House of Lords. The Library also publishes briefings on the House of Lords itself and other subjects that may be of interest to Members.

House of Lords Library briefings are compiled for the benefit of Members of the House of Lords and their personal staff, to provide impartial, authoritative, politically balanced briefing on subjects likely to be of interest to Members of the Lords. Authors are available to discuss the contents of the briefings with the Members and their staff but cannot advise members of the general public.

Any comments on Library briefings should be sent to the Head of Research Services, House of Lords Library, London SW1A 0PW or emailed to purvism@parliament.uk.

1. Introduction

1.1 Background to the Bill

The Healthcare (International Arrangements) Bill is a government bill. It is intended to allow the UK to maintain reciprocal healthcare arrangements with the EU and its member states, and to strengthen or implement new arrangements with other countries outside of the EU, after Brexit.[1] The bill would provide the Secretary of State for Health and Social Care with the powers to fund and implement reciprocal healthcare arrangements outside the UK and to share necessary data.

The bill was introduced as a result of the UK's decision to leave the EU and is intended to enable the Government to respond to the range of possible outcomes of the UK's exit in relation to reciprocal healthcare arrangements, ie in the event of the UK leaving either with or without an agreement.[2] If enacted, it would sit alongside the European Union (Withdrawal) Act 2018 and a European (Withdrawal Agreement) Bill as "part of the Government's response to EU exit".

The bill seeks to safeguard healthcare for UK state pensioners who have chosen to or are intending to retire in the EU and for those UK citizens wishing to travel abroad, either through an agreement with the EU or bilateral agreements with individual member states.[3] Commenting on the bill's introduction in the House of Commons, the Parliamentary Under Secretary of State at the Department of Health and Social Care, Lord O'Shaughnessy, said:

> Whether on holiday, working or retiring abroad, British people want to know they can access the same high-quality healthcare that they enjoy in the NHS. This bill will allow us to implement new healthcare arrangements with other countries—in the EU and elsewhere—so that UK citizens can travel with confidence.[4]

The following sections of this briefing provide an overview of the current EU reciprocal healthcare framework and then focus on the Government's proposals for a future agreement with the EU. The House of Commons Library briefing, *Healthcare (International Arrangements) Bill*, provides further information on the current EU reciprocal healthcare framework and an analysis of the possible future reciprocal healthcare arrangements both with the EU and with countries outside of the EU following Brexit.[5]

---

[1] Explanatory Notes, p 2.

[2] ibid.

[3] Department of Health and Social Care, 'New Law Proposed to Safeguard UK Citizens' Healthcare Abroad after Brexit', 26 October 2018.

[4] ibid.

[5] House of Commons Library, *Healthcare (International Arrangements) Bill*, 17 January 2019.

1.2 UK Reciprocal Healthcare Arrangements

Existing UK reciprocal healthcare agreements support people from the UK to obtain healthcare when they live in, work in or visit other countries (and vice versa for people from other countries who are in the UK).[6] They normally involve the UK and the other country agreeing to waive healthcare charges for migrants, workers or visitors. Some agreements involve the UK and other countries reimbursing one another for the cost of healthcare—this approach underpins EU reciprocal healthcare.[7] Reciprocal healthcare agreements can also facilitate co-operation on planned treatment or other areas of healthcare policy.

The UK is currently part of the EU's reciprocal healthcare framework, a complex system with rules governing access and reimbursement (see section 1.3 of this briefing). The UK is also party to many bilateral reciprocal healthcare agreements with non-European Economic Area (EEA) countries; for example, with Australia and New Zealand. However, these do not cover state-to-state cost reimbursement and are more limited in scope compared to the EU reciprocal healthcare arrangements. Annex C of the explanatory notes to the bill provides a list of the current reciprocal healthcare arrangements outside of the EU and provides further details on these agreements.

1.3 EU Reciprocal Healthcare Framework

Current System

The EU's reciprocal healthcare framework has 32 participating countries: the 28 current members of the EU; the three EEA states (Norway, Iceland and Liechtenstein); and the European Free Trade Area (EFTA) state, Switzerland.[8] To date, the system has been enabled by EU regulations 883/2004 and 987/2009, and their predecessors—'the EU Social Security Coordination Regulations'.[9] The regulations set out detailed rules for who is eligible and on the reimbursement of healthcare costs. They provide legal authority for cross-border payments to repay the costs of healthcare.

The EU reciprocal healthcare system enables UK citizens to access healthcare when they live, study, work, or travel abroad in the EU, EEA or Switzerland (and vice versa).[10] The explanatory notes to the bill set out the main groups of UK citizens who benefit from access to healthcare under the existing arrangements:

a) State pensioners (using 'S1' forms): healthcare for 180,000 UK

---

[6] Explanatory Notes, p 2.

[7] ibid.

[8] Switzerland is a member of EFTA but does not take part in the EEA.

[9] Explanatory Notes, p 3.

[10] ibid.

state pensioners living abroad, principally in Ireland, Spain, France and Cyprus and for their dependent relatives. There are smaller numbers of EU state pensioners residing in the UK.

b) Visitors and students (using European Health Insurance Cards (EHIC)): emergency and needs-arising healthcare when UK residents visit the EU, EEA or Switzerland eg on holiday, to study, etc. People who are ordinarily resident in the UK qualify for an EHIC and 250,000 medical claims are resolved each year. EU nationals visiting the UK can use EHICs to receive emergency and needs-arising NHS healthcare for free with the cost recouped from their home member state.

c) Workers (using 'S1' forms or an EHIC): healthcare for employees of UK firms/bodies working in the EU, EEA or Switzerland (posted workers) and for frontier workers living in the EU, EEA or Switzerland and working in the UK and vice versa.

d) Planned treatment (using 'S2' forms): funding for UK residents to travel overseas to receive planned treatment in other countries (eg for procedures unavailable in the UK within a medically-justifiable timescale or returning home to give birth). EU citizens may also be able to access planned healthcare in the UK via this system.[11]

The UK is responsible for reimbursing other member states for the cost of healthcare received in those states by people for whom the UK is responsible under the EU Social Security Coordination Regulations.[12]

The system works on a reciprocal basis, meaning that other member states also reimburse the UK for the cost of the healthcare provided to their own nationals who are eligible under the regulations.[13] The regulations impose a charging regime in respect of NHS treatment for persons who are not ordinarily resident in the UK. Guidance issued by the Department of Health and Social Care explains that the NHS is a residency-based healthcare system and eligibility for relevant services without charge is based on the concept of 'ordinary residence'.[14] A person will be 'ordinarily resident' in the UK when that residence is lawful, adopted voluntarily, and for settled purposes.[15]

In June 2017, the Government set out the position for EU citizens currently in the UK:

> EU citizens currently in the UK are eligible for NHS-funded healthcare

[11] Explanatory Notes, pp 3–4.

[12] ibid, p 4.

[13] ibid.

[14] Department of Health and Social Care, *Guidance on Implementing the Overseas Visitor Charging Regulations*, August 2018, p 9.

[15] ibid.

in the same way as a UK national who is resident in the UK, if they can show they are 'ordinarily resident' in the UK. In addition, those who present valid documentation (for example, a tourist or student who presents an EHIC) receive treatment on the NHS, the cost of which is reimbursed to the UK by the member state which provides the individual's insurance.[16]

EEA/Swiss nationals may also be exempt from NHS charges by virtue of being ordinarily resident in the UK.[17]

Examples of when the NHS can claim back the cost of treatment from the responsible state include:[18]

- An EU/EEA/Swiss state pensioner living in the UK.
- An EU/EEA/Swiss insured individual visiting the UK temporarily with a valid EHIC.
- An EU/EEA/Swiss insured individual funded by their home state to travel to the UK to receive planned treatment (via the S2 route).

Expenditure on EU Reciprocal Healthcare

The Department of Health and Social Care, on behalf of the UK Government, is responsible for reimbursing other EEA countries and Switzerland for the cost of providing treatment to UK nationals and others for whom it is responsible under the EU regulations.[19] The UK Government also centrally manages cost recovery for EEA reciprocal healthcare on behalf of England, Northern Ireland, Scotland and Wales.

The bill's impact assessment sets out the current expenditure on EU reciprocal healthcare entitlements:

- Expenditure on healthcare provided to UK citizens in the EU in 2016/17 is estimated at £630 million.[20]

[16] Department for Exiting the European Union et al, 'The United Kingdom's Exit from the European Union: Safeguarding the Position of EU Citizens Living in the UK and UK Nationals Living in the EU', 26 June 2017.

[17] ibid; and House of Commons Library, *Healthcare (International Arrangements) Bill*, 17 January 2019, p 10.

[18] ibid. Further information on current arrangements for cost recovery from overseas visitors can be found in the National Audit Office report, *Recovering the Cost of the NHS Treatment for Overseas Visitors* (23 October 2016, HC 728 of session 2016–17) and the House of Commons Library briefing, *NHS Charges for Overseas Visitors* (October 2017).

[19] House of Commons Library, *Healthcare (International Arrangements) Bill*, 17 January 2019, p 11.

[20] Payments to individual member states are made on a monthly basis. They are made in the local currency of member states and the GBP equivalent amount is therefore sensitive to movements in foreign exchange rates within a given financial year (Department of Health and Social Care, *Impact Assessment on the Healthcare (International Arrangements) Bill*, October

- Expenditure on UK state pensioners and their dependents accounts for approximately 75% of this, at an estimated £468 million for activity in 2016/17.
- Expenditure on 2016/17 activity for temporary visitors (those covered by the EHIC scheme, which includes some posted workers who rely on EHIC to access healthcare rather than an S1 form), and those seeking planned treatment in another EU country is estimated to have cost £156 million. Expenditure on dependents of posted workers accounts for the remaining expenditure.[21]
- The income from provision of NHS services to EU-insured individuals is estimated at £66 million for 2016/17 activity. The majority of this income arises from temporary visitors, EU posted workers in the EU relying on EHIC and planned treatment, at £41 million. Estimated income from provision of healthcare to EU-insured pensioners and their dependents in 2016/17 is £25 million.[22]

The impact assessment states that in both a deal or no deal scenario with the EU, the UK Government would be seeking to maintain reciprocal healthcare arrangements with EU/EEA member states and Switzerland during a transitional period.[23] If the Government does not reach a withdrawal agreement with the EU, it has stated that it will seek reciprocal healthcare arrangements with EU/EEA member states and Switzerland through bilateral agreements that will maintain the current framework for a transitional period.[24] The impact assessment estimates that the cost of a transitional period established either through an agreement with the EU or through multiple bilateral agreements would be similar. The longer-term costs of reciprocal healthcare arrangements are subject to the outcome of the negotiations between the UK and the EU.

The House of Commons briefing, *Healthcare (International Arrangements) Bill* (17 January 2019), provides further information on claims for reciprocal healthcare between EEA countries and Switzerland and the UK.

2018, p 4).

[21] A 'posted worker' is an employee who is sent by his or her employer to carry out a service in another EU member state on a temporary basis (European Commission, 'Posted Workers', accessed 23 January 2019).

[22] Department of Health and Social Care, *Impact Assessment on the Healthcare (International Arrangements) Bill*, October 2018, p 7.

[23] ibid, p 4.

[24] ibid, p 10. The UK has agreed a Citizens' Rights Agreement with Switzerland in both a deal and a no-deal scenario. It includes the protection of certain reciprocal healthcare and other social security rights. The UK and Ireland are currently negotiating the continuation of healthcare arrangements.

Government Proposals for Future Reciprocal Agreements with the EU

The white paper on the UK's future relationship with the EU, published in July 2018, set out the Government's ambition to ensure broad continuation of the current EU reciprocal healthcare arrangements after the UK exits the EU:

> There should be reciprocal healthcare cover for state pensioners retiring to the EU or the UK, continued participation in the EHIC scheme and cooperation on planned medical treatment. This would be supported by any necessary administrative cooperation and data-sharing requirements.[25]

The UK Government intends to do this by way of a future agreement with the EU, EEA countries and Switzerland.[26] However, the Government has stated that it could also enter into bilateral arrangements with individual countries if necessary.

A draft withdrawal agreement between the European Commission and the UK Government was published in March 2018. It included an agreed legal text for the implementation period and set out the reciprocal healthcare arrangements that would be protected under the agreement.[27] On 25 November 2018, the UK and the EU concluded a withdrawal agreement and a political declaration on the framework for their future relationship. It was agreed that the implementation period would run until the end of December 2020, with the possibility of extension for up to two years. The provisions on healthcare coordination remained substantively the same as those set out in the agreement published in March.

Under the terms of the agreement, EU regulations on social security coordination, including reciprocal healthcare arrangements, would continue to apply across the whole of the UK at the end of the implementation period for individuals in scope of the withdrawal agreement.[28] This would protect the rights of those citizens:[29]

- Who had moved between the UK and the EU before the end of the implementation period to access their pensions, benefits and other forms of social security, including healthcare cover.

---

[25] HM Government, *The Future Relationship between the United Kingdom and the European Union*, July 2018, Cm 9593, p 35.

[26] Explanatory Notes, p 5.

[27] The UK Government describes this period as the 'implementation period'. However, the EU and the text of the withdrawal agreement refers to it as the 'transition period'. This briefing uses the term 'implementation period'.

[28] HM Government, *Explainer for the Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union*, 14 November 2018, pp 10–11. Information on those who fall within the scope of the agreement in relation to citizens' rights can be found on page 8 of the guidance.

[29] ibid.

- Visiting the UK or the EU for planned medical treatment, where authorisation had been requested before the end of the implementation period.
- Who were in a cross-border situation at the end of the implementation period, (for example a UK national who is in an EU member state for a holiday or for the duration of a course of study) and who were entitled to a UK EHIC. They would continue to benefit from that scheme for as long as that cross-border situation continued.

The withdrawal agreement would also provide protections in a number of other circumstances, such as where a UK national, although not living in the EU at the end of the implementation period, had paid social security contributions in a member state in the past.[30] The rights that flowed from those contributions, such as benefits, pension and reciprocal healthcare rights, would be protected.

Social security coordination would apply to EFTA countries as well as the EU.

In June 2018, in its response to the House of Lords European Union Committee report on reciprocal healthcare, the Government set out the range of rights not covered by the withdrawal agreement that it wished to secure in its future negotiations with the EU. These included:

- the rights of UK state pensioners who retire to the EU (and vice versa) after the end of the implementation period to benefit from a reciprocal healthcare scheme.
- The rights of UK residents to continue to receive needs-arising treatment in the EU under the EHIC scheme (and vice versa).
- The rights of UK residents to be able to receive planned treatment in an EU member state when it has been pre-authorised by the UK (and vice versa).[31]

In September 2018, the Prime Minister, Theresa May, stated that in a no deal scenario the UK would protect the rights of EU citizens who were living in the UK before 29 March 2019, the date that the UK is set to leave the EU.[32] The impact assessment on the Healthcare (International Arrangements) Bill notes:

> In such an event the UK will look for EU/EEA member states to

[30] HM Government, *Explainer for the Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union*, 14 November 2018, p 11.

[31] Department of Health and Social Care, *Government Response to the House of Lords European Union Committee, 13th Report of Session 2017–19, 'Brexit: Reciprocal Healthcare'*, June 2018, Cm 9634, p 8.

[32] Prime Minister's Office, 'PM Brexit Negotiations Statement: 21 September 2018', 21 September 2018.

> reciprocate such assurances for UK citizens living in the EU/EEA and Switzerland through bilateral agreements that will maintain the reciprocal healthcare arrangements for a transitional period. The UK and Ireland are currently negotiating the continuation of such arrangements.[33]

The impact assessment states that the bill would be necessary to underpin these arrangements.

2. Bill Provisions

2.1 Bill Overview

The Healthcare (International Arrangements) Bill would provide the Secretary of State for Health and Social Care with powers to bring in regulations to:

- Fund and arrange healthcare outside the UK.
- Give effect to healthcare agreements between the UK and other countries, territories or international organisations.
- Make provision in relation to data processing, which would be necessary to underpin these arrangements and agreements.[34]

Presently, the Secretary of State has limited domestic powers to pay for overseas healthcare or implement complex reciprocal healthcare agreements with other states.[35] When the UK leaves the EU it will be necessary for domestic legislation to provide the Secretary of State with such powers. The proposed European Union (Withdrawal Agreement) Bill—legislation that would implement a withdrawal agreement in domestic law—would not support long-term arrangements covering the general UK population after any agreed implementation period; separate legislation would be required. The Healthcare (International Arrangements) Bill is intended to supplement any European Union (Withdrawal Agreement) Bill. If the UK leaves the EU without a withdrawal agreement, the Healthcare (International Arrangements) Bill would allow the Government to arrange for healthcare overseas for UK citizens, either on a unilateral basis or by means of bilateral agreements with individual EU countries.

The bill is an enabling measure. It contains six clauses and does not provide detail as to the operation of future reciprocal healthcare arrangements. The bill's impact assessment notes that no immediate impacts are on the face of

[33] Department of Health and Social Care, *Impact Assessment on the Healthcare (International Arrangements) Bill*, October 2018, p 10. On 28 January 2019, the Government published the guidance, 'UK Nationals Living in the EU/EEA and Switzerland: Healthcare', which provided information on access to healthcare for UK nationals living in the EU/EEA and Switzerland if the UK left the EU without a deal on 29 March 2019.

[34] Explanatory Notes, p 2.

[35] ibid, p 5.

the bill, as the exercise of the powers contained in its provisions is subject to a number of uncertain factors, such as negotiations with the EU.[36]

2.2 Summary of the Bill

Clause 1: Power to make Healthcare Payments

This clause provides the Secretary of State with a power to make payments and arrange for payments to be made, in respect of the cost of healthcare provided outside the UK.[37] It would enable the funding of reciprocal healthcare agreements with EU and non-EU states, and with international organisations such as the EU, as well as unilateral funding of treatment abroad.[38]

Clause 2: Healthcare and Healthcare Agreements

Clause 2 provides the Secretary of State with a discretionary power to make regulations that make provision:[39]

a. In relation to the payments, and arrangement for such payments, in respect of healthcare outside the UK made under clause 1.
b. For, and in connection with, the provision of healthcare outside the UK.
c. To give effect to healthcare agreements.

In the event of a future deal with the EU that includes reciprocal healthcare, the regulation making powers in clause 2 and clause 5 (which enables the Secretary of State to make regulations by statutory instrument) could be used, in part, to implement aspects of any deal alongside powers available under the European Union (Withdrawal) Act 2018 and/or the European Union (Withdrawal Agreement) Bill.[40] If a deal with the EU did not replicate the current framework or did not cover reciprocal healthcare, then the powers would enable the Secretary of State, by the way of regulation, to give effect to new international agreements.

The explanatory notes to the bill highlight that the provisions in each set of regulations would be dependent on the agreement that was put in place: the scope of the regulations would vary depending on the underlying detail of the arrangement agreed in each case.[41] Clause 2 gives examples of what may be included in the regulations. However, the explanatory notes state that it

[36] Department of Health and Social Care, *Impact Assessment on the Healthcare (International Arrangements) Bill*, October 2018, p 5.
[37] Explanatory Notes, p 7.
[38] ibid.
[39] ibid.
[40] ibid, pp 6–7.
[41] ibid, p 8.

is not envisaged all such provisions would be necessary in every set of regulations made under the bill. The regulations could include:[42]

- Provision about the type of arrangements or payments that may be made, the level of payments and how they are calculated.
- Specifications in respect of whom payments and provision may be made.
- Provision about the types of healthcare which may be arranged or funded.
- The arrangements for payment, waiver or reimbursement (which may include caps) and the administrative and other processes that might be needed to support such arrangements or payments.
- Provision about appeals.

Regulations made under clause 2 would be capable of being used to confer functions on the Secretary of State or any other person, and would provide the Secretary of State with a discretionary power to make directions about the exercise of any functions that have been conferred or delegated.

Clause 3: Meaning of "Healthcare" and "Healthcare Agreement"

Clause 3 defines "healthcare" as used in clauses 1 and 2, and "healthcare agreement" which is used in clause 2.

- Healthcare means all forms of healthcare provided for individuals, whether relating to mental or physical health, and includes and relates to ancillary care.[43]
- The definition of healthcare is modelled on, but not confined to, the definition contained in the Health and Social Care Act 2012. The explanatory notes state that the additional element of "ancillary care" is included to enable the Secretary of State to provide for expenses such as travel costs which do not strictly fall within the definition of healthcare.[44]
- A healthcare agreement, bilaterally or multilaterally, is an agreement between parties (states/countries/multilateral organisations) to provide for access to stated/agreed forms of healthcare when individuals from one country are seeking healthcare in another country, and which provides for how funding of such treatment will be shared between the two parties.[45]

---

[42] Explanatory Notes, p 8.

[43] Healthcare (International Arrangements) Bill, HL Bill 155 of session 2017–19, clause 3.

[44] Explanatory Notes, p 8.

[45] ibid.

Clause 4: Data Processing

This clause provides a legal basis for "authorised people" to process personal data (including medical data) to facilitate reciprocal healthcare after the UK leaves the EU, whether as part of an agreement with the EU, an agreement with a country outside of the EU, or in connection with contingency plans.[46] However, clause 4 also provides that any such processing must continue to comply with data protection legislation.

Clause 4 defines "authorised person" and includes:[47]

- The Secretary of State, Scottish ministers, Welsh ministers and a Northern Ireland department.
- Providers of healthcare and other NHS bodies (such as special health authorities which may have administrative functions in relation to the NHS but do not provide healthcare directly).
- Any other person authorised, or falling within a description of persons authorised, by virtue of regulations made by the Secretary of State.

Clause 5: Regulations and Directions

Clause 5 provides that regulations made under the bill would be exercisable by the Secretary of State by statutory instrument.

Its provisions include that regulations made under clause 2 would be able to amend, repeal or revoke primary legislation. This use would be restricted to regulations made for the purpose of conferring functions or to give effect to a healthcare arrangement.[48] These regulations would be subject to the affirmative resolution procedure. Regulations which do not contain provisions that make modifications to primary legislation would be subject to the negative resolution procedure.

This clause also provides that regulations under the bill may amend, repeal or revoke retained EU law.[49]

Clause 6: Extent and Commencement

Clause 6 relates to the bill's extent, commencement and short title. The bill extends to the whole of the UK and its provisions would come into force on royal assent.

---

[46] Explanatory Notes, p 8.
[47] ibid, p 9.
[48] ibid, p 10.
[49] ibid.

2.3 Report on the Use of Delegated Legislation Powers

On 15 November 2018, the House of Lords Delegated Powers and Regulatory Reform Committee published its report on the delegated powers provided for in the bill.[50] It drew attention to the powers delegated to the Secretary of State in clause 2. It described the scope of the clause as "breath-taking".[51] The committee noted that the Government had stated that clause 2 would enable the Secretary of State to "address essential matters".[52] However, the committee suggested that the powers went "much wider than essential matters". It highlighted that the bill would apply to the funding and provision of healthcare worldwide and not just to agreements made with the EU.

The committee also expressed concern that all regulations, excepting those that would amend primary legislation, would be "subject only to the negative procedure".[53]

The committee concluded:

> [The powers in clause 2] are inappropriately wide and have not been adequately justified by the Department. It is particularly unsatisfactory that exceedingly wide powers should be subject only to the negative procedure.[54]

3. Second Reading

The bill had its second reading in the House of Commons on 14 November 2018. Opening the debate, the then Minister of State for the Department of Health and Social Care, Stephen Barclay, set out the purpose of the bill:

> Once we leave the European Union, the EU reciprocal healthcare arrangements will no longer apply in the UK in their current form and we will need new legislation to provide for future arrangements. With a deal, the withdrawal agreement will enable the continuation of existing reciprocal healthcare rules during the implementation period, and afterwards for people covered by that withdrawal agreement, but it is not a long-term arrangement for the British public as a whole, does not provide for the event of the withdrawal agreement not being concluded and does not cover healthcare arrangements with countries worldwide […] this is important and necessary legislation, introduced

[50] House of Lords Delegated Powers and Regulatory Reform Committee, *Fisheries Bill; Healthcare (International Arrangements) Bill; Divorce (Financial Provision) Bill; [HL] Prisons (Interference with Wireless Telegraphy) Bill*, 15 November 2018, HL Paper 226 of session 2017–19.

[51] ibid, p 4.

[52] ibid, p 5.

[53] ibid.

[54] ibid, p 6.

> so that the British public can look to the future with confidence that they will get the healthcare they need, when they need it.[55]

Mr Barclay explained that the bill was an enabling measure to allow for the continuity of reciprocal healthcare arrangements with the EU and its member states after the UK left the EU, "whether that happens through an agreement with the EU itself or through individual agreements with EU member states".[56] He stated that in the event of "no deal", the provisions in the bill would allow the UK to "act swiftly" to protect existing healthcare cover for UK nationals in the EU, EEA and Switzerland. Mr Barclay stated that the powers in the bill would help to implement deals that seek to provide "continuity of care for UK nationals and avoid a cliff edge".

Mr Barclay stressed that the bill would not affect the UK's ability to negotiate or enter into international agreements.[57] He stated that the bill would allow the UK to "strengthen" existing reciprocal healthcare arrangements or "seek new arrangements" with countries outside of the EU and EEA.

Responding for the Opposition, the Shadow Minister for Health and Social Care, Justin Madders, welcomed the aim of retaining existing reciprocal healthcare arrangements with the EU. However, Mr Madders stated that Labour had concerns with specific clauses, which he said would be raised at committee.[58]

Mr Madders set out the Opposition's intention to address the level of parliamentary oversight of the new powers given to the Secretary of State under the provisions of the bill, in particular, the "scope for extensive use of statutory instruments under the negative procedure". He called for all regulations made under the provisions of the bill to be subject to the affirmative procedure. Mr Madders stated that Labour would also seek clarification on how the safeguards contained in clause 4 for processing data would work. He expressed concern that the bill "appear[ed] to allow the Secretary of State to hand personal data to private providers".[59] Responding on this issue, Mr Barclay stated that the policy intent was for continuity, and stressed that the data would be processed only where necessary and for limited purposes or for funding arrangements.[60]

Concerns were also raised during the debate about the impact of a "no-deal scenario".[61] Mr Madders suggested that the Government had "seriously" underestimated the consequences of the UK not reaching a withdrawal

---

[55] HC *Hansard*, 14 November, col 340.
[56] ibid, col 339.
[57] ibid, cols 340–1.
[58] ibid, col 341.
[59] ibid, col 344.
[60] ibid
[61] ibid, col 342.

agreement with the EU. He highlighted the potential cost to the NHS of British nationals who might return to the UK for treatment, and the administrative costs associated with implementing multiple, "diverse" agreements with EU, EEA and other countries worldwide.

Several Members expressed particular concern about the impact on those people with long-term health conditions trying to secure adequate travel insurance if there were to be no reciprocal healthcare arrangements. Dr Sarah Wollaston (Conservative MP for Totnes and chair of the House of Commons Health and Social Care Committee) asked what guidance the Government had given to people with pre-existing medical conditions who were planning to travel after 29 March 2019.[62] Dr Wollaston asked whether the Government intended to set aside a contingency fund to "assist British nationals who find themselves in difficulties on the wrong side of the channel in the event of a no deal and no transition".[63] The Minister agreed that without reciprocal healthcare arrangements those people with pre-existing medical conditions may find it harder to travel.[64] Mr Barclay argued that was the "very essence of why the bill is necessary", so that the Government would be able to implement bilateral healthcare arrangements.

Justin Madders and Sarah Wollaston also raised the issue of dispute resolution under future arrangements; for instance, if there was a disagreement about payment or administration of the scheme.[65] Both asked for further information about how disputes would be resolved, and Mr Madders also questioned whether the Government would oppose the European Court of Justice (ECJ) having any jurisdiction. In response, Mr Barclay highlighted that the current arrangements between the UK and other EU countries required states in the first instance to resolve disputes between themselves.[66] On the issue of how a future arrangement would operate, the Minister stated that would be a matter for negotiations and was not an issue "pertaining solely to this bill". He stated that the matter of the jurisdiction of the ECJ would also be dealt with in other areas of the withdrawal agreement.

The Scottish National Party (SNP) spokesperson, Martyn Day, said that his party would not oppose the bill, as it understood the "desperate need for all these reciprocal agreements to continue" and that the Scottish Government would work with the UK Government to achieve them.[67] Mr Day welcomed the Government's commitment to engage with the devolved administrations.

[62] HC *Hansard*, 14 November, col 352.
[63] ibid, col 353.
[64] ibid, cols 362–3.
[65] ibid, cols 343–4 and 352.
[66] ibid, col 364.
[67] ibid, col 348.

4. Committee

The bill was considered at public bill committee in the House of Commons on 27 and 29 November 2018. No amendments were made to the bill in committee.

On day one, the committee took oral evidence from the Academy of Medical Royal Colleges (AMRC), the British Medical Association (BMA), the Association of British Insurers (ABI), and Kidney Care UK. The witnesses were broadly supportive of the aims of the bill, but they all noted specific concerns about certain provisions.

The representatives from the AMRC and the BMA welcomed the Government's aim to continue and replicate the existing reciprocal arrangements with the EU.[68] However, the AMRC expressed concern about additional administrative burdens on the NHS and stressed that it was important that the new arrangements were "as seamless and as simple as possible".[69] The BMA stated that it wanted further detail and clarity about how the arrangements would operate in practice and called for greater emphasis on establishing scrutiny processes to "ensure there is clarity and transparency in what the arrangements negotiated and facilitated through the bill would look like". The BMA also suggested that the bill needed to be clearer about how it would meet existing safeguarding criteria and principles on data sharing, and it cited concerns about the potential pressure on the NHS if there were large numbers of UK citizens returning from the EU.[70]

Kidney Care UK wanted greater public assurances for those with long-term medical conditions and further details about what contingencies would be in place.[71] It argued that public guidance was needed for those who had booked holidays for after 29 March 2019.

The ABI was questioned on the impact on travel insurance premiums in the event of no agreement being reached between the EU and the UK.[72] It stated that it was difficult to estimate, and said that it was important for insurers to know "as early as possible" the outcome of any negotiations on future reciprocal healthcare arrangements.

The committee conducted its line-by-line scrutiny of the bill on 29 November 2018. In his opening remarks, Justin Madders reiterated the Opposition's concerns about the "breadth of powers" clause 2 would give the Secretary of State and the "lack of opportunity to scrutinise" regulations

---

68 Public Bill Committee, *Healthcare (International Arrangements) Bill*, 27 November 2018, 1st sitting, cols 1–3.

69 ibid, col 3.

70 ibid, col 5.

71 ibid, cols 13–14.

72 ibid, cols 8–9.

made under the provisions.[73] Mr Madders highlighted the BMA's concerns and quoted the House of Lords Delegated Powers and Regulatory Reform Committee's report on the bill. However, Mr Madders explained that he would not oppose the clause in its entirety, but would press for all regulations made under the bill to be subject to the affirmative procedure. In response to the concerns over the powers being "too broad", the Minister of State in the Department of Health and Social Care, Stephen Hammond, stated that the bill had a "very focused purpose" and that the Government needed to have the flexibility for the continuation and updating of reciprocal healthcare arrangements.[74]

The Opposition moved a number of amendments and new clauses, which were either withdrawn or negatived on division. Justin Madders moved an amendment to clause 5 which would have made all regulations made under the provisions of the bill subject to the affirmative procedure. Speaking to the amendment, Mr Madders stated that, given the scope of regulations that could be made under clause 2, it was important that Parliament was able to scrutinise them as "much as possible".[75] He explained:

> There are widely held concerns about the scope of the regulations, which are exacerbated by the fact that these extraordinarily wide powers, necessary as they may be in the circumstances, are subject only to the negative procedure.[76]

Mr Madders stated that, because "nobody knows where this process will take us" and how the powers would be used in the future, it was important that Parliament had the appropriate level of oversight of any future arrangements, how they would affect UK citizens living or travelling abroad and of the impact any new arrangements would have on the NHS.[77]

Responding for the Government, Mr Hammond stressed that the Government "absolutely recognis[ed] the importance of appropriate levels of scrutiny" of legislation.[78] However, he argued that the proper parliamentary procedure for the scrutiny of regulations made under the bill that would not amend, repeal or revoke primary legislation was the negative procedure. Mr Hammond pointed to the narrow remit of the regulating powers contained in the bill, emphasising that they could only be used to give effect to healthcare arrangements or to fund healthcare abroad. He argued that the "most important elements" and the detail that Parliament would need to consider would be in the healthcare agreement.[79]

[73] Public Bill Committee, *Healthcare (International Arrangements) Bill*, 29 November 2018, 2nd sitting, cols 26–7.
[74] ibid, col 27.
[75] ibid, col 35.
[76] ibid, cols 34–5.
[77] ibid, col 35.
[78] ibid, col 36.
[79] ibid, cols 36–7.

Mr Hammond stated that the implementing regulations would be procedural and technical and therefore it was "right" that they should be subject to the negative procedure. He stated that the bill, as it stood, would provide the Government with the necessary flexibility to implement complex healthcare arrangements with other countries.

The amendment was moved to a division and was defeated by 8 votes to 9 votes.[80] A division also took place on the question that clause 5 stand part of the bill. It was agreed to by 9 votes to 8.[81]

Opposition spokesperson Julie Cooper also moved Labour's new clause 1, which would have required the Government to lay an annual report before Parliament setting out all expenditure and income arising from healthcare arrangements made under the bill's provisions. Speaking to the proposed new clause, Julie Cooper stated that because the provisions of the bill would give the Government the authority to establish multiple complex agreements, the cost implications of which could not be known in advance, it was "sensible" to require the Government to report back to Parliament on an annual basis.[82]

In response, the Minister stated that the provisions were "premature".[83] Mr Hammond argued that the frequency and detailed content of a financial report should be determined once the reciprocal healthcare arrangements had been made and the technical and operational details were known. He highlighted that there were already several reporting processes in place. He stated that the Government wanted to ensure that future reporting processes were proportionate.

New clause 1 was negatived on division by 8 votes to 7 votes.[84]

Justin Madders moved new clause 2 which would have required the Secretary of State to lay before Parliament a strategy on continued access to medical treatment in Northern Ireland and the Republic of Ireland through a reciprocal healthcare arrangement. The new clause was withdrawn after Stephen Hammond made a commitment to provide committee members with an official briefing on contingency plans in the event of the UK leaving the EU without a withdrawal agreement.[85]

New clause 3, which would have required the Secretary of State to lay a strategy before Parliament on a process for settling disputes, was withdrawn

---

[80] Public Bill Committee, *Healthcare (International Arrangements) Bill*, 29 November 2018, 2nd sitting, col 38.

[81] ibid, col 41.

[82] ibid, cols 42–3.

[83] Public Bill Committee, *Healthcare (International Arrangements) Bill*, 29 November 2018, 3rd sitting, cols 47–8.

[84] ibid, col 49.

[85] ibid, cols 51–2.

by the Opposition after the Minister provided further details on possible arrangements. Mr Hammond explained that the negotiated text of the withdrawal agreement, published by the UK Government and the EU in November 2018, set out a mechanism for settling disputes.[86] In the first instance, the states would aim to reach a mutually agreeable resolution. If this was not possible, either party could request the establishment of an independent arbitration panel which would be made up of five members: the UK and the EU would nominate two members to sit on the panel and then mutually agree a fifth, who would be the chairperson. Regarding the jurisdiction of the ECJ, Mr Hammond stated that after the implementation period, its role would be restricted to ensuring the correct interpretation of EU law. If the UK were to exit the EU without a withdrawal agreement, Mr Hammond said that the UK would need to arrange bilateral healthcare arrangements and the processes for dispute resolution would have to be part of the negotiations. He suggested that the process would have to be agreed on a case-by-case basis and therefore a single strategy on dispute resolution would restrict future reciprocal healthcare arrangements.

The Opposition withdrew amendment 1, which would have removed "providers of healthcare" as an authorised person to process personal data, following assurances from Mr Hammond that the powers given to providers would be limited and following a commitment to provide a briefing on the matter.[87] Justin Madders also withdrew new clause 4, which would have created a duty to consult with devolved administrations, after the Minister put on record a commitment to ongoing engagement.[88]

5. Report and Third Reading

5.1 Report

The bill completed its report stage and third reading in the House of Commons on 21 January 2018. There were no amendments made to the bill during report stage.

At report, the Opposition returned to the issue of parliamentary scrutiny. It tabled new clause 1, which would have required the Secretary of State to lay before Parliament an annual report on the cost of healthcare arrangements made under the provisions of the bill, and amendment 1, which would have made all regulations issued under the bill's provisions subject to the affirmative procedure.[89]

---

[86] Public Bill Committee, *Healthcare (International Arrangements) Bill*, 29 November 2018, 3rd sitting, cols 53–4.

[87] Public Bill Committee, *Healthcare (International Arrangements) Bill*, 29 November 2018, 2nd sitting, col 32.

[88] Public Bill Committee, *Healthcare (International Arrangements) Bill*, 29 November 2018, 3rd sitting, col 56.

[89] HC *Hansard*, 21 January 2019, col 81.

Speaking to the amendments, Justin Madders reiterated his concerns expressed at committee. He stated that new clause 1 would put in place safeguards with regards to cost.[90] He argued that the new provisions were necessary because the bill gave the Secretary of State the power to enter into multiple new bilateral healthcare agreements and to strengthen existing reciprocal arrangements, the cost of which would not be known in advance. He argued that it was a "sensible and very reasonable requirement" for the Government to report back to Parliament annually.

Turning to amendment 1, Mr Madders stated that the Opposition was concerned about the scope of the powers that the bill would give the Secretary of State and the "lack of clarity about how the[y] might be used" in the future.[91] He argued that it was necessary that the regulations were scrutinised by Parliament through the affirmative procedure.

Responding for the Government, the Minister for Health, Stephen Hammond, repeated several arguments made at committee. He stated that it would not be appropriate to place a statutory duty on future governments to collect and report on data when the provisions and administrative processes of future reciprocal healthcare arrangements were unknown. He said the detail and frequency could only be determined once the agreement had been reached.[92] He highlighted that spending on EU healthcare was reported as part of the Department of Health and Social Care's annual report.[93]

Regarding the Opposition's call for all regulations made under the bill's provisions to be subject to the affirmative procedure, Mr Hammond stated that the Government would again vote against the amendment.[94] He explained:

> [W]here statutory instruments do not make changes to primary legislation, and deal with procedural, administrative or technical provisions, they should be subject to the negative resolution procedure, and that is reflected in our approach to this Bill.[95]

New clause 1 and amendment 1 were negatived on division by 260 to 295 votes and 261 to 298 votes respectively.[96]

---

[90] HC *Hansard*, 21 January 2019, cols 81–2.

[91] ibid, col 83.

[92] ibid, cols 88–9.

[93] For example: Department of Health and Social Care, *Department of Health and Social Care Annual Report and Accounts 2017–18*, July 2018, HC 1205 of session 2017–19, pp 152 and 176–8.

[94] HC *Hansard*, 21 January 2019, col 89.

[95] ibid.

[96] ibid, cols 91–8.

5.2 Third Reading

Introducing the third reading debate, Mr Hammond welcomed the support shown to the bill and the "consensual approach" shown by all parties.[97] He stated that the bill would allow the Government to implement complex reciprocal healthcare arrangements and would ensure that the UK was prepared "whatever the outcomes of exiting the EU".[98] Summarising the purpose of the bill, Mr Hammond stated that it was intended to provide "reassurance" to UK citizens either living abroad or planning to travel overseas.

Speaking for the Opposition, Julie Cooper confirmed that it would not be opposing the bill.[99] However, she stated that there were still issues that "remained unresolved". In particular, she noted concerns about the impact of not reaching an agreement with the EU, including: the potential financial implications and administrative burdens on the NHS; the costs associated with multiple bilateral arrangements; the uncertainty for UK citizens living abroad and those with long-term medical conditions who wish to travel; and the "lack of clarity" on the role of the ECJ in future dispute resolution procedures.[100] Julie Cooper also expressed "anxiety" about the "implications of the sweeping powers" that the bill would give the Secretary of State.[101]

---

[97] HC *Hansard*, 21 January 2019, col 98–9.

[98] ibid, col 99.

[99] ibid.

[100] ibid, cols 100–1.

[101] ibid, col 99.