



# Healthcare (European Economic Area and Switzerland Arrangements) Act 2019

## 2019 CHAPTER 14

An Act to make provision about paying and arranging for healthcare provided in an EEA state or Switzerland and giving effect to healthcare agreements with such countries; and for connected purposes. [26th March 2019]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### **1 Power to make healthcare payments**

The Secretary of State may make payments, and arrange for payments to be made, in respect of the cost of healthcare provided in an EEA state or Switzerland.

### **2 Healthcare and healthcare agreements**

- (1) The Secretary of State may by regulations make provision—
- (a) in relation to the exercise of the power conferred by section 1;
  - (b) for and in connection with the provision of healthcare in an EEA state or Switzerland;
  - (c) to give effect to a healthcare agreement.
- (2) Regulations under subsection (1) may only do one or more of the following things—
- (a) specify or describe levels of payments and how they are to be calculated;
  - (b) specify or describe persons in respect of whom payments and provision may be made;
  - (c) specify or describe the types of healthcare in respect of which payments and provision may be made;
  - (d) make provision about set-off arrangements between countries or territories;

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- (e) make provision about reimbursement levels (which may include caps);
  - (f) specify or describe evidential or administrative requirements or processes;
  - (g) make provision about appeals;
  - (h) confer functions (including conferring a discretion);
  - (i) provide for the delegation of functions.
- (3) But regulations under subsection (1) may not confer functions on, or provide for the delegation of functions to, a person who is not a public authority.
- (4) The Secretary of State may give directions to a person about the exercise of any functions exercisable by the person by virtue of regulations under subsection (1).
- (5) The Secretary of State may vary or revoke directions given under subsection (4).
- (6) In this section “public authority” means a person who exercises functions of a public nature (but does not include a person who does so only because of exercising functions on behalf of another).
- (7) No regulations may be made under subsection (1)(a) or (b) after the end of the period of five years beginning with exit day.

### 3 Meaning of “healthcare” and “healthcare agreement”

In this Act—

“healthcare” means all forms of healthcare provided for individuals, whether relating to mental or physical health, and includes related ancillary care;

“healthcare agreement” means an agreement made between the government of the United Kingdom and either the government of an EEA state or Switzerland or an international organisation, concerning either or both of the following—

- (a) healthcare provided in an EEA state or Switzerland, payments in respect of which may be made by the government of the United Kingdom;
- (b) healthcare provided in the United Kingdom, payments in respect of which may be made by an EEA state or Switzerland;

“international organisation” means an organisation of which—

- (a) two or more sovereign powers are members, or
- (b) the governments of two or more sovereign powers are members.

### 4 Data processing

- (1) An authorised person may process personal data held by the person in connection with any of the person’s functions where that person considers it necessary for the purposes of implementing, operating or facilitating the doing of anything under or by virtue of this Act.
- (2) The processing of personal data in accordance with subsection (1) does not breach—
- (a) any obligation of confidence owed by the person processing the personal data, or
  - (b) any other restriction on the processing of personal data (however imposed).
- (3) But nothing in subsection (1) authorises the processing of personal data which—
- (a) contravenes the data protection legislation, or

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- (b) is prohibited by any of Parts 1 to 7 or Chapter 1 of Part 9 of the Investigatory Powers Act 2016.
- (4) Until the repeal of Part 1 of the Regulation of Investigatory Powers Act 2000 by paragraphs 45 and 54 of Schedule 10 to the Investigatory Powers Act 2016 is fully in force, subsection (3)(b) has effect as if it included a reference to that Part.
- (5) Subsection (1) does not limit the circumstances in which personal data may be processed apart from this section.
- (6) In this section—
  - “authorised person” means—
    - (a) the Secretary of State, the Treasury, the Commissioners for Her Majesty’s Revenue and Customs, the Scottish Ministers, the Welsh Ministers and a Northern Ireland department;
    - (b) an NHS body (as defined in section 275 of the National Health Service Act 2006 or in section 206 of the National Health Service (Wales) Act 2006);
    - (c) a health service body listed in section 17A(2)(a) to (e) of the National Health Service (Scotland) Act 1978 or in article 8(2)(a) to (e) of the Health and Personal Social Services (Northern Ireland) Order 1991 (S.R. & O. (N.I.) 1991 No. 194);
    - (d) a provider of healthcare (not falling within paragraph (b) or (c));
    - (e) any other person authorised, or falling within a description of persons authorised, by regulations made by the Secretary of State for the purposes of this section;
  - “the data protection legislation” has the same meaning as in the Data Protection Act 2018 (see section 3 of that Act);
  - “personal data” has the same meaning as in the Data Protection Act 2018 (see section 3 of that Act).

## **5 Requirement for consultation with devolved authorities**

- (1) Before making regulations under section 2 that contain provision which is within the legislative competence of a devolved legislature, the Secretary of State must consult the relevant devolved authority on that provision.
- (2) In this section—
  - “devolved authority” means the Scottish Ministers, the Welsh Ministers or a Northern Ireland department;
  - “devolved legislature” means the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly.
- (3) A provision is within the legislative competence of a devolved legislature if—
  - (a) it would be within the legislative competence of the Scottish Parliament if it were contained in an Act of the Scottish Parliament;
  - (b) it would be within the legislative competence of the National Assembly for Wales if it were contained in an Act of the Assembly (including any provision that could only be made with the consent of a Minister of the Crown); or
  - (c) the provision, if it were contained in an Act of the Northern Ireland Assembly—
    - (i) would be within the legislative competence of the Assembly, and

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(ii) would not require the consent of the Secretary of State.

## **6 Report on payments made under this Act**

- (1) The Secretary of State must, in relation to each relevant period—
  - (a) prepare a report in accordance with this section, and
  - (b) lay the report before Parliament as soon as practicable after the end of the period.
- (2) Each report must give details of payments made under the powers conferred by or under this Act.
- (3) “Relevant period” means—
  - (a) the period beginning with the day on which this Act is passed and ending with the end of the first financial year to begin after exit day;
  - (b) each subsequent period of 12 months.
- (4) “Financial year” means the period of 12 months beginning with 1 April.

## **7 Regulations and directions**

- (1) A power to make regulations under this Act is exercisable by statutory instrument.
- (2) Regulations and directions under this Act may—
  - (a) make different provision for different purposes;
  - (b) be made for all cases to which the power in question applies, for those cases subject to specified exceptions or for any specified cases or descriptions of case;
  - (c) make any provision either unconditionally or subject to specified conditions;
  - (d) provide for a person to exercise a discretion in dealing with any matter;
  - (e) include consequential, supplementary, incidental, transitional, transitory or saving provision.
- (3) Regulations under this Act may amend, repeal or revoke retained EU law that is not primary legislation.
- (4) A statutory instrument which contains (whether alone or with other provision) regulations under section 4(6) may not be made unless a draft of the instrument has been laid before Parliament and approved by a resolution of each House.
- (5) Any other statutory instrument which contains regulations under this Act is subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) In this section “primary legislation” means—
  - (a) an Act;
  - (b) an Act of the Scottish Parliament;
  - (c) a Measure or Act of the National Assembly for Wales;
  - (d) Northern Ireland legislation.

## **8 Extent, commencement and short title**

- (1) This Act extends to England and Wales, Scotland and Northern Ireland.

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- (2) This Act comes into force on the day it is passed.
- (3) This Act may be cited as the Healthcare (European Economic Area and Switzerland Arrangements) Act 2019.