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REPORT ON THE HEALTHCARE (INTERNATIONAL ARRANGEMENTS) BILL

Thank you for the report from the Constitution Committee dated 18 February 2018, on the Healthcare (International Arrangements) Bill.

The Government takes the concerns raised by this Committee seriously and I have reviewed these carefully alongside the views of the House and the Delegate Powers and Regulatory Reform Committee and would like to inform you that the Government has tabled a number of amendments to the Bill ahead of Report stage on the 12 March.

The Government has tabled amendments which respond directly to the Committee’s request for the Government to; seek narrower powers, provide greater scrutiny mechanisms and include sunsetting provisions.

1. Firstly, there has been much debate since its introduction on the scope of the delegated powers in the Bill and their application on a global scale. The Government has listened very carefully to these legitimate concerns and has concluded that the regulation making powers used to implement unilateral healthcare schemes (i.e., arrangements outside of an international healthcare agreement) should be time-limited. The amendment tabled by the Government is to sunset the regulation-making powers in clause 2(1)(a) and clause 2(1)(b) so that they are only exercisable for a five-year period after the UK leaves the EU.
2. The purpose of this amendment is to significantly curtail the scope of the delegated powers in the Bill and make it clear that the wider regulation making powers to deal with EU exit are for immediate rather than long-term use. The effect of this amendment is to limit the delegated powers, and therefore limit the scope of what can be done under the Bill around the world.

3. It is important to note that current reciprocal healthcare agreements are not limited to the EU. These agreements are less complex, and post Exit we may want to strengthen these to ensure that we are delivering important opportunities for UK nationals abroad. This is key to delivering greater security and certainty for UK nationals post-exit, and the powers in the Bill enable us to do that.

4. For example, regulations under clause 2(1)(c), would allow us to give effect to future complex healthcare agreements with other countries - a purely implementing mechanism. The statutory framework for ratification of such binding agreements or treaties is provided for via the Constitutional Reform and Governance Act 2010 (CRaG). The Bill does not change this, and implementing regulations would be subject to their own Parliamentary scrutiny process.

5. This amendment constrains the delegated powers under the Bill in a direct response to the issues that the House has raised both on the breadth and scope of the Bill and confirms that these powers would only be used in exceptional circumstance of EU Exit.

6. In addition, the Government has tabled an amendment to limit the operation of regulations made under clause 2(1), so that if exercised to confer functions, they can only do so to a public authority.

7. I have noted the concerns raised by the Committee on the nature of conferring or delegating functions through the regulation-making powers in clause 2. Indeed, the body which we envisage needing to confer functions to in the future and whom we already work closely with to deliver current reciprocal healthcare agreements is the NHS Business Services Authority. I hope that this amendment puts beyond doubt the Government’s position that there is not and never has been any intention to confer functions on private bodies.

8. In responding to the Committee’s request for the Government to set out how it intends to manage overlapping competencies in relation to this Bill, I can confirm that not only has the Scottish Parliament already granted a Legislative Consent Motion to the Bill, but I can also confirm that the Welsh Government has tabled a
consent motion in the Welsh Assembly recommending that the Assembly grants consent to the Bill, to be debated on 12 March. We have also had positive and productive engagement with colleagues in the Northern Ireland Department of Health and in the Northern Ireland Office.

9. I would also like to note to the Committee that the Government committed to bring forward a Government amendment placing a **statutory duty to consult the Devolved Administrations where regulations under clause 2 of the Bill** make provision that would be within the legislative competence of the Devolved Administrations during Committee Stage. This has been tabled for Report, demonstrating the Government’s intent to continue deep collaboration with the Devolved Administrations to deliver reciprocal healthcare agreements that support the whole of the UK.

10. Importantly, we have also agreed a Memorandum of Understanding (MoU) to underpin consultation with the Devolved Administrations. This MoU sets out a pragmatic and mutually beneficial working relationship, which will ensure that the Devolved Administrations will continue to have a vital role to play in delivering reciprocal healthcare for the benefit of all UK nationals. In addition, it will enable Devolved Ministers to set out their views at an early stage of reciprocal healthcare policy formation, where their officials will have been involved in helping to develop the proposals. The MoU contains a commitment that the UK Government will not normally lay regulations under clause 2 containing provision within an area of devolved competence, without the agreement of the Devolved Administrations.

11. In recognition of the potential challenges associated with policy areas such as in this Bill, where there is overlapping competency, we have included a review mechanism in the MoU which will take place no longer than 2 years after the Act has come into force. This will allow the Government and the Devolved Administrations to consider the success and effectiveness of the working arrangements set out in the MoU over the first 2 years and will provide an opportunity to adapt, include or amend these arrangements if appropriate and agreed at that time. This review would be signed off by respective UK Government and Devolved Administrations Ministers.

12. The Government is also committed to financial transparency and opportunities for Parliament to scrutinise spending. We have therefore decided to go beyond the commitment that I made in my letter to the Delegated Powers and Regulatory Reform Committee on 30 January to issue an annual written ministerial statement
on the operation of reciprocal healthcare arrangements, to insert a **statutory duty to issue a report on payments made under the Bill, in each financial year after exit day.**

13. The Government has listened carefully to the Delegated Powers and Regulatory Reform Committee’s concerns on the inclusion of a consequential Henry VIII power, which has also been the subject of consideration by the Constitution Committee and robust debate in the House. We considered it was appropriate to have flexibility to consequentially amend different types of legislation, including primary legislation on a limited basis, so that we can operate reciprocal healthcare arrangements domestically in the most coherent way. Looking at past experience, we are aware that when we have implemented international healthcare arrangements we have made consequential amendments to primary legislation. For example, when we implemented the EU Cross-Border Healthcare Directive in 2013, we inserted discrete new sections into the National Health Service Act 2006. Given the general uncertainty of EU exit scenarios we are not able to categorically rule out the possibility of needing to make consequential changes to primary legislation.

14. I appreciate, however, the views of the House and the Committees and I support their recommendation that it would be appropriate to **remove the powers in the Bill to make regulations containing consequential amendments to primary legislation.** I hope that this alleviates any fears that we are taking powers which are not necessary in this Bill.

15. Furthermore, I would also like to inform the Committee that the Government has tabled an amendment in relation to data processing. Clause 4(6) sets out a list of persons who are authorised to process data for the purposes set out in the Bill, namely to facilitate reciprocal healthcare, whether as part of an agreement with the EU or with individual countries, or in connection with independent arrangements.

16. The delegated power at clause 4(6)(e) enables the Secretary of State to make regulations to add to the list of persons who can process data for the purposes of the Bill. The list can only be extended via regulations. The tabled amendment **provides regulations which add to the list of who is an “authorised person” are made subject to the affirmative procedure.**

17. Parliamentarians have rightly demonstrated that data protection is a critical issue and the Government shares this important concern. This amendment therefore facilitates greater parliamentary scrutiny on those persons authorised to process
data, while equally ensuring that the Government has the necessary flexibility to guarantee that future agreements are administered in the most efficient way possible.

18. Finally, on the specific point that the Committee raised on reflecting a distinction between principal and minor retained direct EU legislation, I can reassure the Committee that I am currently in discussion with colleagues across the House on this matter.

May I reiterate my gratitude to you and the Committee for your careful consideration of the Bill and for the important issues that it has raised. I hope that the Committee is reassured by the Government’s intentions in relation to the powers to the Bill and feels that the tabled amendments respond to this appropriately.

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