

HEALTHCARE (INTERNATIONAL ARRANGEMENTS) BILL (CHANGED TO HEALTHCARE (EUROPEAN ECONOMIC AREA AND SWITZERLAND ARRANGEMENTS) BILL)

EXPLANATORY NOTES ON LORDS AMENDMENTS

WHAT THESE NOTES DO

- 1 These Explanatory Notes relate to the Lords Amendments to the Healthcare (International Arrangements) Bill (changed to Healthcare (European Economic Area and Switzerland Arrangements) Bill) as brought from the House of Lords on 20 March 2019.
- 2 These Explanatory Notes have been prepared by the Department of Health and Social Care in order to assist the reader of the Bill and the Lords amendments, and to help inform debate on the Lords amendments. They do not form part of the Bill and have not been endorsed by parliament.
- 3 These Explanatory Notes, like the Lords amendments themselves, refer to HL Bill 155, the Bill as first printed for the Lords.
- 4 These Explanatory Notes need to be read in conjunction with the Lords amendments and the text of the Bill. They are not, and are not meant to be, a comprehensive description of the Lords amendments.
- 5 Lords Amendments 4, 5, 6, 7, 11, 12, 13, 14, 15, 16 and 17 were tabled in the name of the Minister.
- 6 Lords Amendments 1, 2, 3, 8, 9, 10, 18, 19 and 20 were tabled by Baroness Thornton, and were opposed by the Government.
- 7 In the following Commentary, an asterisk (*) appears in the heading of any paragraph that deals with a non-Government amendment.

COMMENTARY ON LORDS AMENDMENTS

[LORDS AMENDMENTS TO CLAUSE 1, 2, 3, 6 & IN THE TITLE: POWER TO MAKE HEALTHCARE PAYMENTS; HEALTHCARE AND HEALTHCARE AGREEMENTS; MEANING OF “HEALTHCARE” AND “HEALTHCARE AGREEMENT”; EXTENT, COMMENCEMENT AND SHORT TITLE](#)

[LORDS AMENDMENTS 1, 2, 3, 8, 9, 10, 18, 19, 20*](#)

- 8 Lords Amendments 1, 2, 3, 8, 9, 10, 18, 19 and 20 would confine the powers in the Bill to make provision about paying and arranging healthcare provided in a European Economic Area (EEA) or Switzerland. The amendments would remove the ability to exercise the Bill powers in relation to countries outside the EEA or Switzerland.

LORDS AMENDMENTS TO CLAUSE 2: HEALTHCARE AND HEALTHCARE AGREEMENTS

LORDS AMENDMENT 3*

- 9 Lords Amendment 3 would limit the regulation making powers at clause 2(1) by making the illustrative list of matters the regulations can provide for, at clause 2(2), exhaustive. This would mean that regulations under clause 2(1) would not be able to include provision for anything other than the matters set out at clause 2(2) (although the regulations would not have to make provision in relation to all of the matters listed at clause 2(2)).
- 10 Lords Amendments 4, 5 and 6 would restrict the operation of clause 2(1), so that if regulations make provision to confer or delegate functions, functions may not confer on, or be delegated to, a person who is not a “public authority”. This would result in the Secretary of State not being able to confer functions on a person who is not a public authority. “Public authority” is defined to include only a person who exercises a function of a public nature.

LORDS AMENDMENT 7

- 11 Lords Amendment 7 would sunset the regulation-making powers in clause 2(1)(a) and 2(1)(b) after a period of five years, starting when the UK leaves the EU. Regulations made under these powers before the sunset would be preserved after that date, unless they are expressly time-limited. After the sunset the Government would no longer be able to exercise the regulation-making powers under clause 2(1)(a) and 2(1)(b).

LORDS AMENDMENTS AFTER CLAUSE 4

LORDS AMENDMENT 11

- 12 Lords Amendment 11 would insert a new clause to the Bill which would place a statutory duty on the Secretary of State to consult the devolved administrations where regulations under clause 2 would make provision that would be within the legislative competence of the devolved legislatures (i.e. the Scottish Parliament, the Welsh Assembly and the Northern Ireland Assembly).

LORDS AMENDMENT 12

- 13 Lords Amendment 12 would insert a new clause to the Bill which would place a statutory duty on the Secretary of State to publish an annual report on payments made under the Bill. This report would be published each financial year after exit day and would cover payments made in respect of any healthcare arrangements implemented under the powers conferred by or under the Bill.

LORDS AMENDMENTS TO CLAUSE 5: REGULATIONS AND DIRECTIONS

LORDS AMENDMENTS 13, 14, 16 AND 17

- 14 Lords Amendments 13, 14, 15, 17 and 17 would remove the consequential Henry VIII powers contained in the Bill. It would not be possible to make consequential amendments to primary

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legislation (including to retained EU law that is found in primary legislation) using regulations made under this Bill.

LORDS AMENDMENT 15

- 15 Lords Amendment 15 would mean that if the Secretary of State wanted to make regulations adding to the list of "authorised persons" in clause 4(6), these regulations would be subject to the draft affirmative procedure.

FINANCIAL EFFECTS OF LORDS AMENDMENTS

- 16 Lords Amendments have no financial implications.

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