

## EXPLANATORY MEMORANDUM TO

### THE SOCIAL SECURITY COORDINATION (RECIPROCAL HEALTHCARE) (AMENDMENT ETC.) (EU EXIT) REGULATIONS 2019

2019 No. 776

#### 1. Introduction

- 1.1 This explanatory memorandum has been prepared by The Department of Health and Social Care (DHSC) and is laid before Parliament by Act.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

#### 2. Purpose of the instrument

- 2.1 This instrument remedies deficiencies in retained European Union (EU) law relating to reciprocal healthcare, which arise from the withdrawal of the United Kingdom (UK) from the EU.
- 2.2 The purpose of this instrument is to ensure there will continue to be a functioning statute book on exit day and an effective mechanism to maintain EU reciprocal healthcare arrangements in appropriate circumstances if the UK leaves the European Union without a deal. The instrument is made under powers in the European Union (Withdrawal) Act 2018.

#### *Explanations*

##### What did any relevant EU law do before exit day?

- 2.3 Current EU reciprocal healthcare arrangements enable people for whose state healthcare costs the UK has responsibility (known as ‘UK-insured’) to have access to healthcare when they live, study, work, or travel in the EU, EEA and Switzerland (and *vice versa* for people for whose state healthcare costs those states have responsibility (the ‘EU-insured’) when in the UK). The EU reciprocal health arrangements give people more life options, and support tourism, businesses and healthcare cooperation.
- 2.4 The legal framework for EU reciprocal healthcare arrangements is predominantly set out in wider social security coordination regulations which form part of EU retained law (the ‘EU SSC Regulations’):
  - Regulation (EC) 883/2004<sup>1</sup> of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems;
  - Regulation (EC) No 987/2009<sup>2</sup> of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems;

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<sup>1</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32004R0883>

<sup>2</sup> <https://publications.europa.eu/en/publication-detail/-/publication/1cb8bb8d-3370-4889-a03f-924da9af7318/language-en>

- Council Regulation (EEC) No 1408/71<sup>3</sup> of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community; and
- Council Regulation (EEC) No 574/72<sup>4</sup> of 21 March 1972 laying down the procedure for implementing Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons, to self-employed persons and to their families moving within the Community.

- 2.5 The EU SSC Regulations define the UK's and other Member States' responsibilities to reimburse healthcare costs when individuals for whom each state is responsible live, work, retire in or visit other states in the EU, EEA and Switzerland. This includes healthcare for UK state pensioners living abroad (the S1 scheme), emergency and needs arising healthcare for UK-insured temporary visitors to the EU such as tourists, students and posted workers (the European Healthcare Insurance Card Scheme (EHIC)) and UK-insured individuals travelling overseas to receive planned treatment in other countries (the S2 scheme).
- 2.6 The EU SSC Regulations provide that UK nationals working as employed or self-employed persons in the EU, EEA or Switzerland are 'insured' by that Member State, which is also responsible for their healthcare costs when they visit other countries including the UK. The same applies to EU, EEA and Swiss workers or self-employed persons living in the UK. The legislation generally requires state-to-state reimbursement although, in some circumstances, direct reimbursement of healthcare costs to individuals is required.
- 2.7 The EU SSC Regulations also impose an obligation of equal treatment, which means that individuals lawfully visiting or residing in a Member State of which they are not a national are able to access local state healthcare on the same terms as domestic nationals. Under the EU SSC regulations, family members are covered in the same way as the insured individual.

*Why is it being changed?*

- 2.8 As a responsible government, the UK Government will continue to proportionately prepare for all scenarios, including the unlikely outcome that we leave the EU without any deal in March 2019.
- 2.9 The EU SSC Regulations are predicated on membership of the EU. Further, they provide for reciprocal healthcare rights and obligations which cannot operate without the agreement and cooperation of the other state involved. This Statutory Instrument therefore:
- prevents, remedies or mitigates deficiencies in retained EU law by retiring reciprocal healthcare arrangements which are rendered defunct by the UK's exit from the EU;
  - transitionally preserves relevant aspects of the EU SSC Regulations in respect of states agreeing with the UK to continue these arrangements reciprocally; and

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<sup>3</sup> <https://publications.europa.eu/en/publication-detail/-/publication/81312945-046b-4697-9712-905771f1bd77>

<sup>4</sup> <https://publications.europa.eu/en/publication-detail/-/publication/bc43c0c2-fc26-44fc-8711-b7f66f24d554>

- makes provision to protect the position of patients who are in the course of treatment under the current reciprocal healthcare arrangements, in as far as the UK is able to offer such protection unilaterally. This provision also protects the position of patients whose planned treatment has been authorised before exit day (again, in as far as the UK is able to offer unilateral protection).
- 2.10 This Statutory Instrument affords the UK a mechanism for ensuring there is no interruption to healthcare arrangements for UK-insured individuals after exit day in those Member States who agree to maintain the current arrangements for an interim period. Through this instrument, the UK can transitionally maintain the current EU reciprocal healthcare arrangements for countries where we have established reciprocity until 31 December 2020. The instrument extinguishes healthcare arrangements with Member States who do not agree to transitionally maintain the current reciprocal arrangements with the UK, with the exception of the savings protecting the position of patients in the course of treatment.
- 2.11 This instrument is intended to support other preparations the UK Government is making with regard to reciprocal healthcare arrangements, and to remedy flaws in the statute book that exist in any event following UK exit.

*What will it now do?*

- 2.12 The Social Security Coordination (Reciprocal Healthcare) (Amendment etc.) (EU Exit) Regulations 2019 (the ‘SSC Exit Regulations’) will change aspects of EU SSC Regulations relating to reciprocal healthcare that would otherwise be incoherent following exit. The SSC Exit Regulations will fix the deficiencies in retained EU law by extinguishing reciprocal health aspects of the EU SSC Regulations or domestic implementing legislation which are inoperable without reciprocity, while at the same time transitionally maintaining in place and adjusting relevant provisions for countries where the UK have established reciprocity.
- 2.13 Specifically, the SSC Exit Regulations:
- fix deficiencies in retained EU law contained in primary legislation giving effect to of EU law on reciprocal healthcare , for example by omitting references to EU concepts that will no longer be appropriate (Part 2);
  - fix deficiencies in subordinate legislation giving effect to certain aspects of the EU SSC Regulations, for example by omitting references to EU concepts that will no longer be appropriate (Part 3);
  - fix deficiencies relating to reciprocal healthcare contained in each of the EU SSC Regulations (Part 5);
  - fix deficiencies relating to reciprocal healthcare contained in the EEA Agreement so far as it forms part of domestic law by virtue of section 3(2)(b) of the European Union(Withdrawal) Act (Part 6); and
  - in Part 7, make savings for cases arising before exit day and transitional provision, for a period up to 31 December 2020, for those cases in respect of which bilateral transitional reciprocal arrangements with listed countries are in place.
- 2.14 The Healthcare (International Arrangements) Bill, currently before Parliament, will provide a legislative framework to implement any future longer-term reciprocal healthcare arrangements with the EU, individual Member States or countries outside the EU.

### **3. Matters of special interest to Parliament**

#### *Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 The Minister of State for Health considers it appropriate for this instrument to be subject to the affirmative procedure.
- 3.2 The instrument contains provisions which anticipate prospective changes to be made by the Social Security Coordination Regulation (EC) No 883/2004, EEA Agreement and Swiss Agreement) (Amendment) (EU Exit) Regulations 2019 and the National Health Service (Cross-Border Healthcare and Miscellaneous Amendments etc) (EU Exit) Regulations 2019, which are laid in draft alongside this instrument. Footnotes in the instrument indicate where this is the case. Both instruments will be made at the same time to come into force on exit day.

#### *Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)*

- 3.3 The territorial application of this instrument varies between provisions.

### **4. Extent and Territorial Application**

- 4.1 The territorial extent and application of Parts 2, 3 and 4 of this instrument is the same as the territorial extent and application of each enactment being amended.
- 4.2 The territorial extent and application of Parts 5, 6 and 7 is all of the UK.

### **5. European Convention on Human Rights**

- 5.1 The Minister of State for has made the following statement regarding Human Rights:  
“In my view the provisions of the Social Security Coordination (Reciprocal Healthcare) (Amendment etc.) (EU Exit) Regulations 2019 are compatible with the Convention rights.”

### **6. Legislative Context**

- 6.1 This Statutory Instrument is made under Section 8(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018. As set out under section 2 above, this instrument seeks to correct deficiencies in retained EU law relating to reciprocal healthcare arising as a result of EU exit.
- 6.2 We have set out above the four EU SSC Regulations which this instrument will amend insofar as they relate to reciprocal healthcare. In addition, this instrument amends primary legislation which was enacted in order to implement or give effect to the EU law on reciprocal healthcare, as well as making miscellaneous changes to subordinate legislation which is retained EU law relating to reciprocal healthcare.
- 6.3 This Statutory Instrument:
- prevents, remedies or mitigates deficiencies in the EU SSC Regulations;
  - prevents, remedies or mitigates deficiencies in certain primary and secondary legislation which gives effect to or implements EU law on reciprocal healthcare, which are caused by the UK’s exit. For example, Part 2 amends section 183 of the National Health Service Act 2006 and section 131 of the National Health Service (Wales) Act 2006, both of which were introduced under section 2(2) of the European Communities Act 1972;

- transitionally preserves relevant aspects of the EU SSC Regulations in respect of states agreeing with the UK to continue these arrangements reciprocally;
  - saves certain provisions of the EU SSC regulations to protect, so far as possible unilaterally, the position of UK-insured patients who are in the course of treatment in an EU Member State, EEA or Switzerland on Exit Day;
  - clarifies the effect of the instrument on directly effective treaty rights retained under section 4 of the European Union (Withdrawal) Act 2018, insofar as they overlap with the instrument's provisions;
  - in Part 6, makes amendments to the EEA Agreement insofar as it forms part of domestic law.
- 6.4 The Department for Work and Pensions is making four separate Statutory Instruments to correct other deficiencies in the EU SSC Regulations. They will maintain the status quo, on a unilateral basis, for those aspects of social security coordination which do not relate to reciprocal healthcare.
- 6.5 The Healthcare (International Arrangements) Bill, currently before Parliament, will provide a legislative framework to implement any future longer-term reciprocal healthcare arrangements with the EU, individual Member States or countries outside the EU. The Bill also provides the Government with the ability to respond to other scenarios related to EU Exit, for example implementing any bilateral arrangements which may differ to the current EU regulations or making independent arrangements to pay for healthcare.
- 6.6 This instrument supports other preparations which the UK Government is making with regard to healthcare abroad, such as the National Health Service (Cross-Border Healthcare and Miscellaneous Amendments etc) (EU Exit) Regulations which are laid in draft alongside this instrument.

## 7. Policy background

### *What is being done and why?*

- 7.1 In a no deal scenario, intervention is required to create a suitable legislative framework for reciprocal healthcare arrangements after we leave the EU. When the UK leaves the EU, the EU (Withdrawal) Act 2018 will automatically retain the current EU regulations, and the domestic implementing legislation in UK law, if no further secondary legislation is made.
- 7.2 If we do not legislate further, the current EU SSC Regulations, which are predicated on EU membership and require cooperation between Member States, would be incoherent or unworkable without reciprocity by Member States. Retaining this legal framework as it is now would mean that it would include defunct terms, such as EU SSC Regulations provisions relating to the role of the EU Commission. Further, the obligations of other states towards the UK contained in the EU SSC would no longer be recognised in the EU legal order. This would create a lack of clarity and certainty for patients as to their rights and entitlements.
- 7.3 For example, if a UK tourist visited an EU state and attempted to use their EHIC while abroad for emergency or needs-arising care, there would be no valid multilateral mechanism or reciprocal obligation to ensure that state's recognition of the EHIC (given that the UK would no longer be a Member State) or for processing reimbursements between that state and the UK. Further, the NHS may be left in a

position where it would not be able to recover any costs from other states for EU-insured individuals receiving treatment in the UK, but UK-insured individuals overseas would not receive equivalent treatment in the EU, EEA states or Switzerland.

- 7.4 In a no deal scenario, intervention is also required to create an agile legislative framework for reciprocal healthcare arrangements after we leave the EU. In a no deal scenario, the UK would like to make arrangements with individual EU Member States, EEA States and Switzerland, to ensure there are no immediate changes to people's access to healthcare after Exit Day and so that there is a strong basis for ongoing co-operation on health issues.
- 7.5 The UK is seeking to transitionally maintain reciprocal healthcare rights for pensioners, workers, students, tourists and other visitors in line with the current EU arrangements, including reimbursement of healthcare costs, for an interim period lasting no longer than until 31 December 2020. This is only possible with agreement from other Member States.
- 7.6 Through this instrument, the UK can transitionally maintain the current EU reciprocal healthcare arrangements for countries where we have established reciprocity until 31 December 2020. The arrangements would only apply to those Member States who agree to maintain the current reciprocal arrangements with us, and would not apply to Member States who do not agree to maintain the status quo.
- 7.7 Elements of reciprocal healthcare fall within Scotland, Wales and Northern Ireland's devolved competence. Consent has therefore been sought for this instrument in so far as it makes provision that could have been made by the Devolved Authorities under the EU (Withdrawal) Act 2018.
- 7.8 This instrument is intended to support other preparations the UK Government is making with regard to reciprocal healthcare arrangements.

What will it now do?

- 7.9 As explained above, the SSC Exit Regulations will change aspects of the retained EU regulations that are incoherent and relate to reciprocal healthcare, by removing aspects of the EU SSC Regulations that are redundant or inoperable following Exit (for example, removing EU institutions' role) and maintaining and adjusting provisions that are relevant for preserved reciprocal arrangements to function with specific states with whom reciprocity has been agreed.
- 7.10 The SSC Exit Regulations will cease to apply the current reciprocal healthcare legislation in the longer term, but transitionally retain relevant aspects until 31 December 2020, with appropriate modifications, through a time-limited savings provision for a list of countries.
- 7.11 The regulations will enable the UK to continue to support the provision of healthcare to UK-insured persons in selected "listed" countries (as well as receiving reimbursement for healthcare provided in the UK to those countries' citizens). Countries would be selected and listed by the Secretary of State. We envisage listing countries who reach agreement with the UK to continue to continue the current arrangements for a time-limited period until 31 December 2020. The saving would not apply to countries where there is no reciprocity, in relation to whom inoperable legislation would be discontinued.

- 7.12 This instrument also saves relevant aspects of the EU SSC regulations to preserve, so far as possible, the position of patients in the course of treatment on Exit Day, irrespective of any reciprocity in place. This would allow the UK to continue to fund treatment that is ongoing on exit day for a period of a year following exit.
- 7.13 The Healthcare (International Arrangements) Bill, currently before Parliament, will provide a legislative framework to implement any future longer-term reciprocal healthcare arrangements with the EU, individual Member States or countries outside the EU.

## **8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union**

- 8.1 This instrument is made using the powers in section 8(1) of, and paragraph 21 of schedule 7 to, the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the United Kingdom from the European Union. In accordance with the requirements of that Act the Minister has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

## **9. Consolidation**

- 9.1 This Statutory Instrument does not involve consolidation and there are no plans to consolidate the relevant legislation at this time.

## **10. Consultation outcome**

- 10.1 Reciprocal Healthcare arrangements are popular and enjoy broad support from the general public. The Department of Health and Social Care has not undertaken a consultation on the instrument, but has engaged with relevant stakeholders on its approach to the future of EU reciprocal healthcare arrangements.

## **11. Guidance**

- 11.1 No further guidance is published alongside this instrument.
- 11.2 Specific guidance for UK nationals in the EU and EU Citizens in the UK on how to access healthcare is available on via [www.gov.uk](http://www.gov.uk) and [www.nhs.uk](http://www.nhs.uk).

## **12. Impact**

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies. This Statutory Instrument assumes that there will be continuing reciprocal arrangements with EU Member States, EEA states and Switzerland.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 A full Impact Assessment is submitted with this memorandum and published alongside the Explanatory Memorandum on the [legislation.gov.uk](http://legislation.gov.uk) website.

## **13. Regulating small business**

- 13.1 The legislation does not apply to activities that are undertaken by small businesses.

#### **14. Monitoring & review**

- 14.1 As this instrument is made under the EU (Withdrawal) Act 2018, no review clause is required.

#### **15. Contact**

- 15.1 Sophie Eltringham at the Department of Health and Social Care. Telephone: 020 7972 4018 or email: [Sophie.eltringham@dhsc.gov.uk](mailto:Sophie.eltringham@dhsc.gov.uk) can be contacted with any queries regarding the instrument.
- 15.2 Mayerling O'Regan, Deputy Director for EU and International Health, at the Department of Health and Social Care can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Stephen Hammond, Minister of State for Health at the Department of Health and Social Care can confirm that this Explanatory Memorandum meets the required standard.



# Annex

## Statements under the European Union (Withdrawal) Act 2018

### Part 1

#### Table of Statements under the 2018 Act

This table sets out the statements that may be required under the 2018 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them.  State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2 In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA SIs	Explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g., whether minor or technical changes only are intended to the EU retained law.
Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9, and	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.

		23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising sections 10(1), 12 and part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 4 or 14, Schedule 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 13, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA, identifying the relevant law before exit day, and explaining the instrument's effect on retained EU law.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 16, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority's response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and, c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.

## Part 2

### Statements required when using enabling powers under the European Union (Withdrawal) Act 2018

#### 1. Appropriateness statement

- 1.1 The Minister of State for Health, Stephen Hammond, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Social Security Coordination (Reciprocal Healthcare) (Amendment etc) (EU Exit) Regulations 2019 do no more than is appropriate”.

- 1.2 This is the case because the instrument corrects deficiencies in EU retained law and, in a no deal scenario, intervention is required to create a suitable legislative framework for reciprocal healthcare arrangements after we leave the EU. This is because, following the UK’s withdrawal from the EU, it will no longer be appropriate to continue reciprocal healthcare arrangements with EU states in the absence of reciprocity. This instrument does no more than is appropriate to remedy this deficiency because it ensures that reciprocal healthcare arrangements can continue to operate in respect of countries that agree to continue them with the UK. Furthermore, the instrument makes provision so that even where reciprocity ceases with another country, the legislation continues to apply for a transitional period to protect individuals that sought authorisation or started treatment before the arrangements ended.

#### 2. Good reasons

- 2.1 The Minister of State for Health, Stephen Hammond, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action”.

- 2.2 As explained in section 2 of the main body of this Explanatory Memoranda, when the UK leaves the EU (on the ‘Exit Day’), the EU (Withdrawal) Act 2018 will automatically retain EU reciprocal healthcare regulations, and their domestic implementing legislation, in UK law. In the event of no deal, if we do not legislate further, these retained EU regulations which currently operate on the basis of rights and obligations between Member States, would become incoherent and unworkable without being underpinned by reciprocity between the UK and EU Member States. This would create lack of clarity and certainty for patients as to their rights and entitlements.
- 2.3 For example, if a UK tourist visited an EU state and attempted to use their European Health Insurance Card (EHIC) while abroad for emergency care, there would be no valid multilateral mechanism or reciprocal obligation to ensure that state’s recognition of the EHIC (given that the UK would no longer be a Member State). There would also be no mechanism for processing reimbursements between that state and the UK. Further, the NHS may be left in a position where it would not be able to recover any costs from other states for EU-insured individuals receiving treatment in the UK, but

UK-insured individuals overseas would not receive equivalent treatment in the EU, EEA states or Switzerland.

- 2.4 There are therefore good reasons why reciprocal healthcare should only be continued with those countries that continue to operate reciprocal healthcare arrangements with the UK. Providing transitional protection to individuals that sought authorisation or started treatment before the arrangements ended will provide a reasonable period within which they can go on to receive and complete their courses of treatment.

### **3. Equalities**

- 3.1 The Minister of State for Health, Stephen Hammond, has made the following statement(s):

“The draft instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts.”

- 3.2 The Minister of State for Health, Stephen Hammond, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the draft instrument, I, Stephen Hammond have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010.”

- 3.3 An Equalities analysis has been conducted for this piece of secondary legislation.

### **4. Explanations**

- 4.1 The explanations statement has been made in section 2 of the main body of this explanatory memorandum.

### **5. Legislative sub-delegation**

- 5.1 The Minister of State for Health has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view it is appropriate to create a relevant sub-delegated power in the Social Security Coordination (Reciprocal Healthcare) (Amendment etc.) (EU Exit) Regulations 2019”.

- 5.2 This instrument makes provision for the Secretary of State to publish and maintain a list specifying the Member States with which the UK has reciprocal arrangements. This list mechanism is appropriate because it can be updated quickly in response to the conclusion of negotiations with Member States to continue reciprocal healthcare arrangements with them. The list will be published and accessible to the public so that it is clear which countries continue to operate these reciprocal healthcare arrangements with the UK and can provide individuals with certainty about the continuation of those arrangements as soon as negotiations are concluded. Including the list in legislation would delay the UK’s ability to give effect to agreements seeking to maintain the current healthcare arrangements and would require multiple amending instruments as negotiations with different Member States are concluded in advance of exit day.