

Healthcare

Withdrawal of the United Kingdom from the European Union (Consequential Provisions) Act 2019

Most relevant to

- Healthcare providers in Ireland and the UK
- Health insurers in Ireland and the UK
- Pharmaceutical companies in Ireland and the UK



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What does the Act say?

In a no-deal Brexit, Part 2 of the Act would:

- enable arrangements in relation to health services including reimbursement arrangements to be maintained between Ireland and the UK
- provide for the making of Ministerial Orders and Regulations to facilitate continued access to emergency, routine and planned healthcare in the UK and Ireland
- the treatment abroad scheme which allows Irish residents to access treatment which is not available in Ireland or is unavailable within a reasonable period of time

Arrangements in relation to health services is defined as arrangements between Ireland and the UK in respect of the provision of access to health services in Ireland, and reciprocal access to health services in the UK.

In making a Ministerial Order under S75A(1) the Minister is to have regard to certain general policy matters listed at Section 75A(3).

Section 4 – Arrangements in relation to health services

The Health Act 1970 is amended by the insertion of Part IVA Arrangements in relation to health services. Part IVA comprises sections 75A – D.

Section 75A confers on the Minister for Health a broad power to make Ministerial Orders to continue in being or carry out any reciprocal or other arrangements in relation to health services which were in operation between Ireland and the UK immediately prior to the UK's withdrawal from the EU.

This is necessary to support existing and future all-Ireland and bilateral healthcare programmes. For example:

- access of Irish patients to UK organ transplant programmes
- Irish patients in the northwest who access cancer programmes in Northern Ireland
- paediatric cardiac care programmes which see patients from Northern Ireland receiving complex cardiac surgery in Ireland

Section 75B confers on the Minister for Health a general power to make Regulations to give full effect to the provisions in Part IVA. In making regulations under this section of the Act the Minister is to have regard to the general policy matters listed under Section 75A(3).

Section 75B(1) (a) – (p) identifies matters which may be provided for by regulations and these include:

- Arrangements for assessing eligibility of persons for health services in Ireland and the UK including the:
 - » classes of person including persons resident outside Ireland entitled to access health services in Ireland (S75B(a))
 - » classes of person and the qualifying criteria for persons to access planned health services in the UK(S75B(b))
- Arrangements to be administered by the Health Service Executive (HSE) to ensure access to planned health services in the UK and in Ireland by UK residents (S75B(c) and (d))

- The duties of healthcare providers and healthcare professionals to provide information in relation to health services that they provide to persons from the UK (S75B (e))
- The categories of health services to be provided and the financial arrangements to include payments, charges and provisions for reimbursement (S75B (f) - (n)).

Section 75B (n) provides for regulations setting out the basis on which the HSE may reimburse persons for the cost of health services received and paid for by those persons in the UK. This would allow for reimbursement of persons who were incorrectly levied charges in the UK. However, it would also be relevant if Ireland and the UK establish an analogous scheme to the EU Cross Border Directive mechanism which would apply post-Brexit. In that event, regulations under this sub-section could facilitate Irish patients to be reimbursed for the cost of healthcare in the UK.

Section 75C also envisages the establishment of an analogous scheme between Ireland and the UK to the current EU Cross Border Scheme as it provides that an authorised officer appointed under the regulations implementing the EU Cross Border Scheme in Ireland would be deemed to be an authorised officer for the purposes of any regulations made under Regulation 75B.

Ministerial Orders and Regulations must be laid before both Houses of Parliament in Ireland (Section 75D).