

Healthcare (International Agreements) and Social Security Coordination Act 2019

Principal Act

Act. No. 2019-10

Commencement (except Part 3)
LN.2020/441 - Part 3
Assent

9.5.2019
10.12.2020
8.5.2019

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2019-10 **Healthcare (International Agreements) and Social Security Coordination**

AN ACT TO MAKE PROVISION ABOUT PAYING AND ARRANGING FOR HEALTHCARE PROVIDED OUTSIDE GIBRALTAR AND GIVING EFFECT TO HEALTHCARE AGREEMENTS; TO CONFER POWER TO MODIFY RETAINED DIRECT EU LEGISLATION RELATING TO SOCIAL SECURITY COORDINATION; AND FOR CONNECTED PURPOSES.

PART 1

TITLE AND COMMENCEMENT

Short title.

1. This Act may be cited as the Healthcare (International Agreements) and Social Security Coordination Act 2019.

Commencement.

2.(1) Subject to subsection (2), this Act comes into operation on the day of publication.

(2) Part 3 of this Act comes into operation on such day as the Minister with responsibility for social security may appoint by notice in the Gazette.

(3) The notice under subsection (2) may make-

- (a) transitional, transitory or saving provision;
- (b) different provision for different purposes.

PART 2

HEALTHCARE AGREEMENTS

Interpretation of Part 2.

3.(1) In this Part-

“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 Her Majesty’s Government of Gibraltar and either the government of another country or territory or an international organisation, concerning either or both of the following-

- (a) healthcare provided outside Gibraltar, payments in respect of which may be made by the government of Gibraltar;
- (b) healthcare provided in Gibraltar, payments in respect of which may be made by another country or territory outside;

“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;

“Minister” means the Minister with responsibility for health.

(2) Where the government of the United Kingdom enters into an agreement with the government of another country or territory or an international organisation and Gibraltar is included in the scope of that agreement or that agreement is otherwise extended to or applies to Gibraltar, that agreement is a healthcare agreement for the purposes of subsection (1).

Power to make healthcare payments.

4. The Minister may make payments, and arrange for payments to be made, in respect of the cost of healthcare provided outside Gibraltar.

Healthcare and healthcare agreements.

5.(1) The Minister may by regulations make provision-

- (a) in relation to the exercise of the power conferred by section 4;
- (b) for and in connection with the provision of healthcare outside Gibraltar;
- (c) to give effect to a healthcare agreement.

(2) Regulations under subsection (1) may-

- (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;

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- (d) make provision about set-off arrangements between countries or territories;
- (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 on the Minister or on any other person (including conferring a discretion);
- (i) provide for the delegation of functions.

(3) The Minister may give directions to a person about the exercise of any functions exercisable by the person by virtue of regulations under subsection (1).

(4) The Minister may vary or revoke directions given under subsection (3).

Data processing.

6.(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 Part.

(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 contravenes the data protection legislation.

(4) Subsection (1) does not limit the circumstances in which personal data may be processed apart from this section.

(5) In this section-

“authorised person” means-

- (a) the Minister, the Minister with responsibility for social security, the Commissioner for Income Tax;
- (b) the Gibraltar Health Authority;

- (c) any other person authorised, or falling within a description of persons authorised, by regulations made by the Minister for the purposes of this section;

“the data protection legislation” has the meaning given in section 2 of the Data Protection Act 2004;

“personal data” has the meaning given in section 2 of the Data Protection Act 2004.

Regulations and directions.

7.(1) Regulations and directions under this Part 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.

(2) Regulations under section 5 may amend, repeal or revoke an Act-

- (a) for the purpose of conferring functions on the Minister or on any other person (including conferring a discretion);
- (b) to give effect to a healthcare agreement,

and where such regulations amend, repeal or revoke an Act they must be laid before Parliament at the meeting thereof next ensuing after they have been made.

(3) Regulations under this Part may amend, repeal or revoke retained EU law.

PART 3

SOCIAL SECURITY CO-ORDINATION

Power to modify retained direct EU legislation relating to social security coordination.

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8.(1) The Minister may by regulations modify the retained direct EU legislation mentioned in subsection (2).

(2) The retained direct EU legislation is-

- (a) Regulation (EC) No 883/2004 of the European Parliament and of the Council on the co-ordination of social security systems;
- (b) Regulation (EC) No 987/2009 of the European Parliament and of the Council laying down the procedure for implementing Regulation (EC) No 883/2004;
- (c) Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community;
- (d) Regulation (EEC) No 574/72 fixing the procedure for implementing Regulation (EEC) No 1408/71;
- (e) Regulation (EC) No 859/2003 extending Regulation 1408 to nationals of non-EU Member Countries.

(3) The power to make regulations under subsection (1) includes power-

- (a) to make different provision for different categories of person to whom they apply (and the categories may be defined by reference to a person's date of arrival in Gibraltar, their immigration status, their nationality or otherwise);
- (b) otherwise to make different provision for different purposes;
- (c) to make supplementary, incidental, consequential, transitional, transitory or saving provision;
- (d) to provide for a person to exercise a discretion in dealing with any matter.

(4) The power to make provision mentioned in subsection (3)(c) includes power to modify-

- (a) any provision made by or under an Act;
- (b) retained direct EU legislation which is not mentioned in subsection (2).

(5) EU-derived rights, powers, liabilities, obligations, restrictions, remedies and procedures cease to be recognised and available in domestic law so far as they are inconsistent with, or are otherwise capable of affecting the interpretation, application or operation of, provision made by regulations under this section.

(6) “EU-derived rights, powers, liabilities, obligations, restrictions, remedies and procedures” means any rights, powers, liabilities, obligations, restrictions, remedies and procedures which continue to be recognised and available in domestic law by virtue of section 7 of the European Union (Withdrawal) Act 2019 (including as they are modified by domestic law from time to time).

(7) In this section-

“domestic law” means the law of Gibraltar;

“Minister” means the Minister with responsibility for social security; and

“modify” includes amend, repeal or revoke (and related expressions are to be read accordingly).