HOUSE OF LORDS

Select Committee on the European Union

Home Affairs Sub-Committee

Corrected oral evidence: Brexit: reciprocal healthcare

Wednesday 29 November 2017

10.30 am

Watch the meeting

Members present: Lord Jay of Ewelme (The Chairman); Baroness Browning; Lord Condon; Lord Crisp; Baroness Janke; Lord O'Neill of Clackmannan; Baroness Pinnock; Lord Ribeiro; Lord Ricketts; Lord Soley; Lord Watts.

Evidence Session No. 12 Heard in Public Questions 94 - 110

Witness

I: Lord O'Shaughnessy, Parliamentary Under-Secretary, Department of Health.

Examination of witness

Lord O'Shaughnessy, Parliamentary Under-Secretary, Department of Health.

Q94 **The Chairman:** Welcome, Minister. We are very grateful to you for coming to give evidence to us today. We are reaching the end of our inquiry on reciprocal healthcare, and we are very grateful to you for agreeing to answer one or two questions that we have on the import of medical isotopes after we leave Euratom, which we had a hearing about last week and which engages the Committee's interest as well.

I will start by asking a question on the reciprocal healthcare to get us going. Could you give us some indication of how many EU citizens access healthcare in the UK using the EHIC system and vice versa—ie, how many UK citizens in the EU do the same? Do you also have any sense of how many people call on the S1, S2 or patients' rights directive?

Lord O'Shaughnessy: Thank you for the invitation; I am very pleased to be able to come today. I will go through the EHIC, S1 and S2. In terms of the numbers, there are about 27 million EHIC holders in the UK, but only 1% of those actually claim each year—that is across the entire year. The cost to the UK is about £150 million a year in payments for those treatments that UK citizens have abroad, and we claim back about £35 million a year. That obviously reflects a difference in the number of visits. There are about twice as many visits from UK citizens to the EU as the number of EU visits to the UK. There are about 53 million visits from the UK to the EU and about 25 million in reverse.

The S1 entitlement covers both pensions and posted workers, but pensions are the bulk of that; they account for about 80% of the spend, which is about £500 million a year. That covers around 190,000 pensioners. Possibly because of our weather, there are only 5,800 EU state pensioners resident in the UK, so there is quite a big difference.

Under S2, which enables people to go abroad for planned medical treatments, the numbers are fairly even. About 1,300 S2 portable documents were issued by the UK to its citizens and 1,100 were issued by EU, EEA and Swiss nationals for treatment in the UK in 2016, so that is a more even flow.

The Chairman: Is the patients' rights directive relevant to this at all?

Lord O'Shaughnessy: The cross-border directive is the one that provides for the reimbursement of the planned treatments that I just described.

Q95 **Baroness Janke:** What are the important issues for you in the current first phase of the negotiations and what progress have you seen on them? How are you continuing to work with the Cabinet Office and DExEU to achieve your aims?

Lord O'Shaughnessy: If we take the three categories, what we wanted was obviously to provide as much protection for those who are exercising their rights under those three headings—EHIC, S1 and S2—at the point of

exit. For pensioners and those resident in member states on the EU exit day, it means that the reciprocal healthcare is protected for those UK residents who are resident in the EU who are already of state pension age and those who are resident in the EU and will become state pensioners at some point. At the point at which they claim their pension, their reciprocal healthcare is covered. Secondly, on EHIC, for people who are in the EU on the day, it means that they will be covered for the remainder of the duration of their holiday or course of study or whatever it is that has taken them abroad. Thirdly, for those who have planned or are in the middle of planned treatments, the aim is to protect those people who are exercising those rights at the point of exit. That is in effect the most that we could have achieved in the light of the EU's mandate, which did not allow it formally to talk about future flows.

On your second point about work with the Cabinet Office and DExEU, there is, as you would expect, huge amounts of policy work going on within the department to work out the legal basis and policy frameworks that we are operating and using those to inform discussions within Government and to inform the negotiations as they have gone on. As you know, all this progress has been documented in the papers published so far as a result of the negotiations.

The Chairman: Are the relationships amicable?

Lord O'Shaughnessy: Yes. I have not been in the room myself, because obviously other departments lead on that, but I think we have got to a good and reasonable position that provides certainty for those people exercising those rights—most of all for pensioners and posted workers, because they are the people who have made their lives abroad, as opposed to those who are visiting for temporary or episodic reasons.

Baroness Janke: With regard to the next phase, once sufficient progress has been made, what will be the important issues?

Lord O'Shaughnessy: Again, what we want to achieve is a continuation—albeit necessarily in a new form—of the current arrangements, in terms of continued involvement in the EHIC process or a version of that; reciprocal healthcare for future pensioners, ie, those resident in the UK now but who may move abroad; and the continued possibility for UK and EU residents to come to one another's countries for planned care and for that to be funded by their respective Governments.

Baroness Janke: And how do you see that? You mentioned a new form; presumably you see some issues that will need to be resolved through that.

Lord O'Shaughnessy: Yes, they will need to be resolved through the negotiation process. Clearly, we have an EU regulation under which this all operates. We are looking in the next phase of negotiations to find a way to continue that in order to provide the continuity that we are looking for.

Baroness Janke: So you are trying to achieve the same benefits after Brexit as we have now.

Lord O'Shaughnessy: Absolutely, albeit in a legal framework because we will be outside the body of EU law that governs it currently.

Q96 **Lord Condon:** Good morning, Minister. We have taken evidence from organisations representing UK citizens currently resident in Europe. As you would expect, they are very unsettled and fairly gloomy about their prospects post Brexit. One big issue that seemed to concern them was if, post Brexit day, a UK citizen was resident in France and wanted to move to Italy or Spain—to move around Europe from whatever country they are currently resident in. You said earlier that there were ambitions to maintain the status quo. What are your feelings about the ambitions for that group of people who might want to move, and what is the realistic outcome of that discussion?

Lord O'Shaughnessy: First, I recognise that uncertainty and the effect that it is having on people. That is why we want to settle these issues as soon as we get into the next phase of negotiations around citizens' rights, and so on. I also point out that, if you are a UK citizen resident in a member state and you go to another member state temporarily, you are under what has already been agreed, and you can use your EHIC card. It is important to recognise that—but I know that you are making the point about a permanent move to another country. That is part of the idea of the onward free movement rights, which has not been agreed yet. It is effectively around future flows, which has not been agreed under the auspices of the withdrawal negotiations.

Lord Condon: But is your negotiating stance—

Lord O'Shaughnessy: Clearly, our ambition is to continue the rights that the current arrangements provide with EHIC, S1 and S2—and clearly that would mean, if it was reciprocated by the European Union, reciprocal healthcare would continue under those circumstances.

Lord Condon: And that would be the same for EU citizens resident in the UK.

Lord O'Shaughnessy: Implied in all of this is absolute reciprocity.

Baroness Pinnock: Minister, you said that your ambition is that the rights will continue post Brexit. We can all have ambitions that are not realised. Presumably, you have worked out some fall-back arrangements if those ambitions are not fulfilled. I wonder what those might be.

Lord O'Shaughnessy: You are right about ambitions, of course, but it has been important for us to be clear about what we as a Government want to achieve and what is in the interests of UK and European Union citizens. Of course, it is important to remember that, historically, bilateral and multilateral reciprocal healthcare agreements existed with European countries before our membership of the European Union or, indeed, their membership of it. This does not apply only because of the fact of the

European Union. That is important to remember. Of course, we have reciprocal healthcare agreements with lots of other countries, such as Australia. We have set that out, and it is what we want to achieve. The mood music is positive in terms of what we want to achieve when we get into the second phase of negotiations. Clearly, we have to start thinking about what we do if we are not able to achieve that. There are a number of potential routes that one could look at; they might be bilateral or multilateral agreements or they might be unilateral options. But at this point in time, we are focusing on trying to achieve our ambition.

Q97 **Lord Crisp:** Thank you. You have made it very clear what you want to achieve. How do you see the transitional period? Is it just an opportunity to continue exactly what we have at the moment, or do you see different priorities?

Lord O'Shaughnessy: No—if we come back to what we are trying to achieve, which is continuity, albeit within a different legal framework, with the UK as a third-party country, the implementation period would provide for that kind of continuity. We have said that it may be the case—although this is subject to negotiations led by another department, so I do not want to overreach myself here—that the jurisdiction of the CJEU continues through that period, or it may be the case that a new dispute resolution mechanism is created, in which case that would apply. But given that we are intent on continuing the relationship, you would not think that much would need to change during that period.

Lord Crisp: You actually used the words "implementation period" then, as well as "transition period". Could you tell us the difference between them?

Lord O'Shaughnessy: There is no difference whatever. They mean the same thing. We are talking about an implementation period, as the Prime Minister has made very clear.

The Chairman: Could I go back to an earlier question and ask about one point? The EU's own negotiating principles state that a "non-member of the Union"—that is, what we will be after we have left—"that does not live up to the same obligations as a member, cannot have the same rights and enjoy the same benefits as a member". On the face of it, that seems to suggest that, once we have left, our citizens will not have the same rights as citizens of the Union. Does the position as you have described it fit well with that?

Lord O'Shaughnessy: If you look at the current reciprocal arrangements that currently exist through and around the EU, they apply to members of the EU but also to those outwith it. I think that it incorporates about 31 countries in total. It is clearly possible to have arrangements mirroring the reciprocal healthcare arrangements that exist because of the body of EU law. So it is not impossible to achieve. It is clearly in the interests of both sets of citizens to be able to continue with the current arrangements, but we need to find a new legal basis on which to create it. I do not see that the statement that you have just read out

means that we cannot continue with reciprocal healthcare, not least because reciprocal healthcare pre-exists the European Union, and EU member countries have reciprocal healthcare arrangements with non-EU members in numerous instances.

The Chairman: So your objective would be that they should have more or less the same arrangements as we have now, and our citizens will be in a better position than, say, Australian, New Zealand or American citizens.

Lord O'Shaughnessy: That is what we intend by the idea of a deep and special partnership—to recognise the unique circumstances in which the UK and the EU find themselves, with perfect regulatory alignment. That is, of course, not the case usually when you are striking free trade agreements, or any other type of agreement; you are trying to pull down barriers, whereas here the barriers are down. So we start in a unique position.

The Chairman: Okay. Thank you for that. Lord Condon had another question.

Q98 **Lord Condon:** Minister, you have mentioned the ambition to preserve the status quo. Part of that status quo is the rights for individuals and Governments to have dispute resolution access to the European Court of Justice. If that Court is no longer going to be a player as far as we are concerned, what will happen during the transition phase and post Brexit for dispute resolution? Do you envisage individuals having some rights, or will it be only at an intergovernmental level?

Lord O'Shaughnessy: First, I should point that the design of the overall dispute resolution mechanism is being led by DExEU, so I am not in a position to talk about it in great detail. At the point at which we have left the European Union and any implementation period has ended, we will be outwith the jurisdiction of the CJEU. Until Brexit day, we are within it—so the question is really about the implementation period. We have been clear that we may still be under CJEU jurisdiction then, or we may have a new dispute resolution mechanism up and running. But as I have said, I cannot go into more detail on that because it is not a health issue.

I do not need to point out to the Committee that there are precedents for non-CJEU based dispute resolution mechanisms, such as the EFTA Court, and so on. But I do not want to stray any further beyond my healthcare remit.

Lord Condon: But in the broad contextual setting, from your department's point of view, do you have the ambition that individuals should continue to have some access to dispute resolution post Brexit? If the ambition is to preserve the status quo on reciprocal healthcare, at the moment access to dispute resolution is part of that package.

Lord O'Shaughnessy: I would imagine so but, as I said, I am not in a position to be more authoritative on that.

Q99 **Lord O'Neill of Clackmannan:** We have heard from witnesses that a single market regulatory alignment would be the most preferable outcome of the discussions about the UK's future relationship with the EU. Indeed, the PM in her Florence speech made the point that Britain would not be a part of the single market. How does this stand up with another statement that she made—it was not made in relation to existing reciprocal healthcare—about having a "deep and special partnership"? What would such a partnership involve in relation to reciprocal healthcare? How does this match up with the negotiating position that there will be no sector-by-sector deals?

The PM has said that we will not be part of the single market, but a lot of our evidence has suggested that the simplest and best way would be to have a kind of single market-style arrangement for health. The only hope, as it were, that we have at the moment is for a deep and special partnership with Europe. What would that entail as far as health is concerned, and particularly reciprocal healthcare?

Lord O'Shaughnessy: I do not have a huge amount to add to what I have said already. We want to mirror the current arrangements as far as possible, so that we have continuity on EHIC, S1 and S2. As I say, reciprocal healthcare agreements are not a unique creature of the European Union; they pre-exist it and they exist in parallel to it with other countries. They are not linked to wider trading and economic relationships. We have reciprocal healthcare agreements with countries with which we have a range trading arrangements, for example.

I do not think that not having a sector-by-sector deal, as you described, rules out the possibility of having a strong and deep arrangement on reciprocal healthcare, just as it would not on sharing information for health security reasons, for example.

Lord O'Neill of Clackmannan: But what incentive would there be for the Europeans to enter into such an agreement, given that the people who cost a health system the most tend to be retirees, the elderly or the active elderly? We have far, far more people in Europe in that category—probably costing quite a lot of money to the Spanish and French health systems—than Spanish and French workers who are in the United Kingdom, contributing to the tax revenues and not going to see their GP from one year's end to the other.

Lord O'Shaughnessy: You are right to highlight the discrepancy between the types of population, which I also described at the beginning. Do not forget that the whole point of a reciprocal healthcare arrangement is that we pick up the bill for the healthcare, so that the health costs that a pensioner accrues in another country are paid for by the UK Exchequer. I would not anticipate that other countries would want to pick up that bill when it is currently paid by the UK. That is sort of the lowest common denominator reason, but it is a financial reason why you would want to continue.

A more positive reason is that, currently, people are able to go on holiday and to retire in other countries. That is something that goes on and is part of everyday life. Lots of Europeans take advantage of that; clearly we are one country out of 28, so that is one reason for the discrepancy. Providing that level of continuity for people who are currently enjoying those rights is another reason why we think this is in the interests of other EU countries.

Lord Watts: At the moment, there are two groups of pensioners in Spain: those who are there who have not worked but get reciprocal healthcare because of the agreement that we have and, in the second group, those who have worked there and are entitled to it, because they have paid the equivalent of national insurance. Are you suggesting that we will pick up the cost for both of those groups after Brexit?

Lord O'Shaughnessy: You are talking about a group who are already retired and a group who are not yet retired.

Lord Watts: Both, really.

Lord O'Shaughnessy: I just wanted to be clear about the groups you were describing. What I was saying is that, in what has already been agreed within the bounds of the withdrawal agreement, for those who have already retired, we are obviously continuing to honour those reciprocal healthcare agreements—that is not dependent on future flows—and also for those who live and have made their life abroad and then retire, it has already been agreed. What has yet to come is the people who will move abroad; that is what we mean by future flows.

Baroness Browning: You focus quite obviously for reasons that we understand on the elderly population but, if you look under the current arrangements at the younger age group of people who come from Europe to work in the UK—some settle permanently; others do it for only a few years—there is quite a high proportion who will access maternity and childcare as a result. I take it that we are not suggesting in any way that, after Brexit, there would be some need for money to change hands for that, would there?

Lord O'Shaughnessy: Do you mean EU workers who are currently here?

Baroness Browning: Yes.

Lord O'Shaughnessy: That is a really important point. I know you already know, but do not forget that the NHS is obviously a healthcare system that provides care on the basis of ordinary residence and so, for families who are ordinarily resident—they are studying here, or have a job or children are at school, or whatever it is—they are entitled to NHS care. That is not affected by discussions on reciprocal healthcare.

Baroness Browning: No. That will not be affected at all.

Lord O'Shaughnessy: It is not affected by discussions on reciprocal healthcare, no.

Q100 **Lord Watts:** Minister, what will be the role of the devolved nations and regions in the future provision of reciprocal healthcare? Will they have a role?

Lord O'Shaughnessy: We are engaging with the devolved Administrations, as you would expect. Our understanding is that they support the continuation of reciprocal healthcare. It is important to point out that reciprocal healthcare is centrally funded and administered by the department in England, but for the whole UK. There is a central budget and an operational centre to provide services to customers and to process claims, and so on. That is the basis on which we are moving ahead. We think it works well and remains appropriate for the future, but we are just starting discussions with all the DAs to work out exactly how that will look in future. The current systems operates well and provides the coverage, whichever part of the UK you are from.

Baroness Janke: We heard evidence from Northern Ireland and Ireland. From that evidence, there appeared to be quite a number of issues, particularly in terms of cross-border provision and the quality of healthcare, given the peripheral nature of so much of Ireland. What work has been done on this and are you planning on taking it forward?

Lord O'Shaughnessy: The answer is a lot of work. As you say, some of the commissioned services that Irish citizens use are in Northern Ireland and vice versa, so there is a lot of movement. That is of course underpinned not just by the EU rights but by the common travel area. We are talking to the Irish; a couple of months ago I met the Irish Health Minister, Simon Harris, to talk about these issues. We are absolutely engaged with them in working this out. Clearly, it will be bound by decisions on the wider negotiations, but we are very clear about the importance of continuing with the cross-border flows and access to health services.

Baroness Janke: Regardless of what happens with the Irish border.

Lord O'Shaughnessy: I cannot say regardless, because, of course, this all takes place in the context of the wider negotiations. But we are very clear about wanting to respect the continuity of the common travel area, which of course predates the European Union and sits underneath the exchange of health services that goes on at the moment.

Baroness Janke: But in relation to developments since the Good Friday agreement in particular, there would appear to be considerable resource issues, if there has to be separate provision within Ireland and the EU and Northern Ireland, which is presumably going to be outside the EU. What sort of contingency is there for additional investment to make good that situation?

Lord O'Shaughnessy: If that were to happen, clearly contingencies would need to be in place, but I do not think that we should think that that will happen. As I say, we need to get to a position in which we are able, with the Anglo-Irish agreement and with the history of the CTA, to

be able to continue with the situation as we are. The Commission has said that it will respect the arrangements that the UK and Ireland come up with for the continuation of the CTA, with its aspects of healthcare—so I do not think that that is going to happen. We will be able to resolve that.

Baroness Pinnock: One concern that was raised when we saw representatives from Northern Ireland and Eire was about one of the strands of the Good Friday agreement, about cross-border co-operation and provision of healthcare. They have done an incredible amount of positive and constructive work about sharing facilities for specialisms, and so on, particularly in the more isolated rural areas. I have to say that they were very concerned that people's health would be at risk if there was no satisfactory outcome to this. They were concerned that a consequence of the hard border would be to put people's lives at risk. What discussions have you had that might overcome that situation?

Lord O'Shaughnessy: I think, as in answer to Lord O'Neill's question, this exemplifies the importance of continuing the reciprocal healthcare agreements, with the rest of the EU but particularly with Ireland. We all share the concerns about what might happen if we were unable to reach those agreements, which is why it is important—and that is why we will come to an agreement, precisely because of the reasons that you have discussed. I mentioned the meeting that I had with Simon Harris, when we talked about those issues explicitly. Clearly, officials are working together, not just in health but across government. I am not in a position to say more than that, because we have not moved into that phase of negotiations, but everyone is incredibly conscious that it is important to deal with it and deal with it quickly, to remove some of the uncertainty that I admit exists and which we want to get rid of.

The Chairman: Are there talks between the Department of Health and its Dublin equivalent about the potential implications might be if difficulties arise as a result of Brexit?

Lord O'Shaughnessy: There is an ongoing dialogue between the two departments on issues relating to Brexit and, I should point out, on other issues, such as antimicrobial resistance and other things besides. We have a very close working relationship.

Q101 **Baroness Pinnock:** Again, on future arrangements, as you have said, Professor Martin McKee told us as one of the witnesses that we already have reciprocal healthcare agreements with other countries that are outside the EU, with varying degrees of formality, and so on. Do you think that those agreements will just revive in future? What has the Department of Health done about discussions on those agreements?

Lord O'Shaughnessy: If there were to be a need to disinter old agreements, that would be only because we were unable to reach the kind of agreement that we want to reach on the maintenance of the current arrangements in a new form. As you said, this is not an issue that is unique to the European Union. It has historically happened in parallel.

The arrangements that we have with the EU are very good and work well; they go to a level of depth and detail that is not necessarily reflected in other agreements, so we want to continue with them.

Baroness Pinnock: Can you expand on that? That is a really interesting point.

Lord O'Shaughnessy: For example, they do not always include country-to-country reimbursement. Some of the reciprocal healthcare agreements that we have say, "We'll estimate some level of cost and you estimate some level of cost and we'll agree to write it off". The arrangements that we currently have with the European Union involve more detail. We have talked at length about what we are trying to continue but, clearly, if there need to be other options, we will look at whether we can use pre-existing agreements that predate the European Union. We have not reached a conclusion on that, but work is ongoing on a possible contingency.

Lord Soley: The countries in the European Economic Area are different in that they are in the single market. Are you suggesting that, when we withdraw, the arrangements that we have with them will carry on undisturbed, or are you at the same time proposing to negotiate with them to come to some separate agreement?

Lord O'Shaughnessy: I think we would anticipate that it is with the EEA group that we are trying to forge this new relationship.

Lord Soley: Are you doing that now? Are you talking to them now?

Lord O'Shaughnessy: Yes.

Lord Soley: So if you are doing that, are you also thinking of having a dispute resolution system with those countries?

Lord O'Shaughnessy: Yes. I think it will flow from what we decide with the European Union.

Lord Soley: So basically you are looking for a model whereby your agreement with the EU countries can simply transfer to the EEA countries. Is that right?

Lord O'Shaughnessy: I do not know if it is a case of simple transfer, because I do not know what that dispute resolution mechanism will look like. But the arrangements are pretty much as one, so it would need to be very closely aligned to it, I would have thought.

Lord Soley: You see, what I am thinking, and what a lot of people are thinking, is that it is a very complicated arrangement with all those countries. If you are going to have individual agreements with them, there is going to be some dispute among European Union members about what that dispute resolution should be and whether it should involve the courts, or the European Court, which is an anathema to the British Government at the moment. With non-EU countries that are members of the single market, you are looking at what would in effect have to be a

totally separate arrangement, simply because they are not members of the EU. That must be right.

Lord O'Shaughnessy: I do not want to overreach what I am able to say about what that should look like, because it is not being led by the department. Clearly, we are trying to ensure that we can continue with arrangements that work well for both sides, and we will work with the dispute resolution mechanism that is decided for the whole of the UK as a consequence of that. Reciprocal healthcare agreements can work within whatever mechanism is decided. But as I said, that is not something that I can talk much about.

Lord Soley: I understand that, but I am interested in the complexity of this situation, where you have two separate groups—and in the EU one you have a large number of countries, but there is a significant number of countries in the non-EU one. Are you satisfied that you can come up with agreements that also have a dispute resolution mechanism with all of those?

Lord O'Shaughnessy: We are. Again, I do not want to overreach myself on the dispute resolution mechanism, because it is not part of the health lead, but we have reciprocal healthcare agreements with a number of other countries. We have managed to come up with ways of doing that, and I am sure that we could come up with new ways of doing that, if that were necessary.

Q102 **Lord Crisp:** Minister, you have been very clear about your ambition to have, if I may paraphrase, the same arrangements but a different legal framework for them. You are very positive and very ambitious about it, but also with lot of common sense. So, what can get in the way? What will sabotage our position?

Lord O'Shaughnessy: You tell me. What can get in the way? Well, the point at which we move on to the next phase of negotiations will be done in a positive spirit. I think that in a number of areas, not just reciprocal healthcare but healthcare itself, continued collaboration is in the interests of patients. I think that this is understood both in the Commission and by the EU 27 member states. To some extent, each department makes a certain amount of special pleading, but we happen to think that health is different. It is not like any other traded good or service, because the consequences are obviously different; we think that this message has been understood. Once we get to that set of negotiations, I would not expect there to be any reason why we should not strike a good deal.

Lord Crisp: And you are getting positive signals from other countries on this. Do you think other countries, not just Ireland, also see this as a positive benefit?

Lord O'Shaughnessy: We generally find the EU to be pragmatic about it. I do not sense any sort of ideological drive. I have had bilaterals with several member state Health Ministers—I mentioned Ireland—and they take an entirely practical approach to it.

Lord O'Neill of Clackmannan: Minister, obviously the most complex set of arrangements will be those between Switzerland and its neighbours, because there are so many of them. But there is also the case of Norway and Sweden, where one is a member and the other is in the EEA. There are, in some respects, challenges not dissimilar to that between the 26 counties and the six counties, in that there are agrarian areas with remote communities, where healthcare is probably better delivered by Norwegians to Swedes, or vice versa. Has the department done any work on the existing arrangements within Europe where there are differing types of border relationships, if I can put it that way?

Lord O'Shaughnessy: Yes. Obviously we talked about Ireland, and fact-finding missions have also taken place to Switzerland and Norway to look at those kinds of arrangements. They are absolutely under consideration.

Lord O'Neill of Clackmannan: And Switzerland?

Lord O'Shaughnessy: Yes, I said Switzerland.

The Chairman: Are there any questions about the reciprocal healthcare work that we have been doing? Otherwise, we will move on to Euratom.

Q103 **Lord Ricketts:** I am new to the Committee, Minister, so I am learning as I listen but I have recently been an ambassador in France.

Lord O'Shaughnessy: You know something about these issues then.

Lord Ricketts: I felt the pressure from the British community in France—it is enormous in Spain of course—and the figures that you opened with just show the sheer scale of movement, with 50 million visits a year by British people to the EU and 800,000 pensioners. It is an enormous human-scale issue and I was interested in your answers to previous questions about the mood music that we get from the negotiators.

You talk a lot about reciprocity and, in the case of pensioners, there are far more British pensioners abroad than there are EU pensioners in this country. Yet you are not finding reticence or hesitation on the EU side about continuing these reciprocal agreements, which in a way impose more of a burden—at least administratively—on them than on us.

Lord O'Shaughnessy: I am not sure that they do—though I obviously understand how much you know about this area and the European Union. To think about it from a Spanish point of view, having the good system and effective administrative system that we have underpinning reciprocal healthcare means that services delivered in Spain are paid for by the UK Government. It is quite a decent arrangement, because it means that the money stays locally in the economy but the public service bill, if you like, is picked up by another Government.

If you think about it, it is like a little economic sector that we have exported into another country—which is perhaps not how pensioners would like to be thought of. These arrangements work well, and they work to the benefit of both sides.

Q104 **The Chairman:** Okay. Thank you very much for that. Perhaps we can move on to talk a bit about Euratom, on which we heard evidence last week. There is quite a lot of interest in the Committee about the potential implications of Brexit for the import of medical radioisotopes and the effect on health.

One point that struck us after the very interesting session that we had last week was that there did not seem to be one clear government lead or contact point on setting up a post-Euratom system for transporting and delivering medical radioisotopes. In that context, we are very grateful to you for agreeing to answer questions on the subject. Can you tell us what you saw as being the method of co-ordination within the Government for dealing with quite a complex set of issues involving practitioners, Coventry airport, where these things are flown in, and ports, where they come by sea? It is quite complex, and it is important, potentially, to individual patients.

Lord O'Shaughnessy: Yes, absolutely, and the research community as well. BEIS is taking the lead on the UK's exit from Euratom, in general policy terms—that is the important thing to state first—but access to medical radioisotopes lies with my department. So, to be absolutely clear, when it comes to medical radioisotopes it is a Department of Health lead. Hopefully that provides some clarity.

I should point to a couple of pieces of work that are highly relevant. First, we have commissioned a full risk assessment of the medical supply chain for all medical radioisotopes, so that we understand the potential risks and how to mitigate them. There is also a meeting coming up with the Royal College of Radiologists and others at the end of next week, to make sure that we properly understand their concerns—they have been public about their concerns—and that we can build that into our risk assessment work and make sure there is a system in place to ensure the continued supply of isotopes for the benefit of patients and research.

The Chairman: Thank you very much. We heard last week that there was a meeting on 8 December; is that the one you are talking about?

Lord O'Shaughnessy: Yes, indeed.

The Chairman: And are you taking the lead on that?

Lord O'Shaughnessy: I am afraid I am not, but for a good reason: I am going to the EU Health Ministers meeting in Brussels, where I will obviously be making the case for a deep and special partnership on reciprocal healthcare and other things. So I am not available for that meeting.

The Chairman: It is a Department of Health meeting.

Lord O'Shaughnessy: Yes, the Department of Health—the senior official will be there.

The Chairman: Is that just on the health aspects, or are there other

meetings taking place to try to co-ordinate the whole lot?

Lord O'Shaughnessy: It is on the health aspects. I do not know what other meetings are taking place with regard to Euratom. As I said, it is not a DoH lead. It is on the health aspects, which will include health research, just for clarity.

Q105 **Lord Watts:** When we heard evidence last week, there seemed to be two options about how to clear through customs. At the moment, it is waved through but, if you have a hard border, you cannot do that unless you have a system for taking them in a different way. You need some infrastructure to do that, which seemed to us quite difficult. The other way would be to expand Coventry, because a lot of it comes through there, but then there would need to be an expansion of Coventry and all the other countries would have to have the capacity to take your products in and send them back to Coventry.

Is that the sort of discussion that you are involved in? Who is looking at the infrastructural needs and how long it would take to build up that capacity? It seemed to us that there was a lead-in time but we are running out of time to build the port facility or the airport facility. Perhaps you could shed some light on that.

Lord O'Shaughnessy: The first thing to say on the overall arrangements for the import and export of isotopes is that it has been dealt with in the round, and it has huge implications for our customs arrangements. Whatever customs arrangements we agree in the round for our future relationship with the European Union will include future arrangements for isotopes. I am afraid that I am not in a position to say more, because we are looking just at the medical isotope element of this. I cannot make a general comment on what the customs arrangements will be. The withdrawal Bill in the House of Commons translates the relevant legislation to provide for a continued relationship. It is effectively a customs issue, I understand, rather than anything else. We as a department are trying to work out what the potential risks would be for patients and research and work out what needs to be put in place to mitigate them, but we are not leading on the overall customs arrangements.

Lord Watts: But we hear that there is a large number of movements taking place at the moment, and there does not appear to be any worked-out plan for the infrastructure that we require yet. Does the department know how long it will take to build up capacity at Coventry and other airports around Europe or to build a facility to get the products through at ports? If I was waiting for treatment, I would be starting to get worried that the flow is not going to happen. We have heard that, if products get stuck for a period of time, they are no good. You would have to reorder them, with all the problems that that would bring.

Lord O'Shaughnessy: We are undertaking that risk assessment from a health research point of view. As you would expect, we are working with BEIS and the Treasury and other departments to think how to put in

place the arrangements, but that will be governed by the overall customs environment that we agree with the European Union as we leave it. So whatever arrangements need to be put in place will have to reflect that.

Lord Watts: Let us try once more on timing.

Lord O'Shaughnessy: On the timing of products?

Lord Watts: No, the timing for the facility. I understand that you are still in the middle of negotiations, but do the department know how long it would take up to build up capacity in either of those options?

Lord O'Shaughnessy: I do not know how long it would take to build up capacity. Clearly, we need to make contingency arrangements for every possibility of the outcomes of the talks, including those that we do not want to see, therefore making sure that we have arrangements so that there can be a continued smooth supply from 29 March onwards, regardless of what the outcome is. Clearly, we want an outcome that continues frictionless interchange of these kinds of products, but we have to plan for every contingency so we will have to have, and will have, something in place on 30 March, come what may.

Q106 **Lord O'Neill of Clackmannan:** Minister, you have not been in the job very long.

Lord O'Shaughnessy: It feels long.

Lord O'Neill of Clackmannan: The issue of Euratom is one that seems to have crept up; nobody thought about it in the context of the immediate post-referendum situation. It was raised in large measure by the industries relating to Euratom, in which I used to have an interest but no longer have. It is quite appalling, as you have admitted yourself, that a number of people are not very clear as to whether the treatments that they receive will be guaranteed if appropriate measures are not put in place. One would have thought that this would have enjoyed a higher priority. When did your department start to become seriously aware of the implications of the withdrawal from Euratom in the context of health and the availability of the appropriate materials coming from the continent?

Lord O'Shaughnessy: We have been aware of it. As I say, we have to think through the implications of various potential outcomes from the negotiations in terms of the supply of these isotopes. That is the risk assessment that we are doing now, and when it has been carried out we will know what we need to do to mitigate it.

Lord O'Neill of Clackmannan: You seem to have wakened up to it rather late in the day and, even now, it does not seem to be of the highest priority. You are saying that you cannot go to the meeting because you have something else on in Brussels. The meeting is taking place on 9 December. I think that the matter was raised, almost tangentially, but quite early on in June this year, so it has taken the best part of six months to get to talk to the professionals in the field. At the

end of the day, you as the responsible Minister, although I accept that it is for the best of reasons, are unable to attend—but it does not seem to be sufficiently important for you to change your diary to get them coming on another day.

Lord O'Shaughnessy: I can only reiterate that it is a priority and we were in touch with the RCR after it expressed its concerns publicly. That was in July, and I believe that there were initial conversations between the departments immediately after its intervention, and an invitation was sent in August. Obviously, it has not happened as quickly as it should have done, but it is happening. I understand that BEIS will be at the meeting, so it will be able to plug into the broader conversation, as well as the specifics about the department. I cannot be there for that particular meeting, but that is not the only route by which I pay attention to things, if you see what I mean, as you would know. So we are taking it seriously. As I say, we need to act on the basis of good quality information about what the actual risks are, because potentially there is a lot of misinformation around about the risks, so we can have mitigations in place by the time we leave.

Q107 **Lord Soley:** What I do not understand about this is that a number of countries send urgent medical supplies to the UK, including as I understand it—correct me if I am wrong—some involving radioisotopes, from South Africa. What happens with them now? Do we have reciprocal arrangements, or am I wrong in thinking that it involves radioisotopes? Even so, what happens about other urgent, time-limited medical supplies, such as organ transplants?

Lord O'Shaughnessy: Medical supplies in general, do you mean? Clearly, we have arrangements for the time-limited delivery of all sorts of medical products that are unaffected by what we are discussing today in terms of Euratom. Obviously, we need to make sure that those supplies coming between the EU and UK can continue on the basis they do now—but supplies from the rest of the world can continue down the routes that they have.

Lord Soley: The point that I am making is that radioisotopes are time limited, so there must be a system by which we get those in fast. If there is, why cannot it simply apply to Euratom?

Lord O'Shaughnessy: The reason for that is that we are trying to create a continuity with the system that we have with the European Union, because that is where we get a lot of those products from. That is the short answer.

Lord Watts: Just to clarify Lord Soley's point, the problem is that the South African supplies come into Coventry, I suspect. If you tried to move more materials from Europe, it would be possible, but you would have to build capacity. That is why I was labouring the point of how long it would take you actually to build that capacity, which you would have to build in every European country that is supplying or receiving goods. So it is quite a complex and time-consuming thing. I think that that is what

worries the Committee—that there does not seem to be any idea of how long it would take to build that capacity if it is needed.

Lord O'Shaughnessy: I absolutely understand the point that you are making, but the point that I am trying to make in response is that, until we have a proper full risk assessment of what would be required to maintain that, it would not be responsible of me to put timeframes on it—but I am aware the clock is ticking.

Q108 **Baroness Pinnock:** I move on to research. We heard from leading practitioners in this country who are very concerned about the future of research, which is regarded as world leading in nuclear medical fields. A lot of the funding for that research comes from the EU Horizon 2020 and Euratom research programme. They also rely on the ability of experts to come from other parts of Europe, and so on, to collaborate in that research. How will the Government deal will all this, then—to get the best people, continue the research and help us to continue to be a world-leading user of nuclear?

Lord O'Shaughnessy: Which we are.

Baroness Pinnock: We are at the minute, yes. There was a big concern among the practitioners that we would fall back because of the consequences of leaving the EU—if we do.

Lord O'Shaughnessy: I know you will have seen it, but the future partnership paper *Collaboration on Science and Innovation* is very clear about how we would like to continue working together. Obviously, there are precedents for that; there are third parties involved in the Horizon 2020 programme, for example. So there is no reason to think that that should not be achievable, again for the mutual benefit of both sides.

In terms of people, there are two issues. There is the stock of existing people who are here and the need to provide reassurance about citizens' rights. The Government have been very clear about providing a route towards settled status. We want that dealt with very quickly in the next phase of talks. Then the question becomes about the future flows of researchers and their families. Again, this needs to be finalised, but I think that the Prime Minister has been incredibly clear about the Government's desire for the United Kingdom to continue to attract the brightest and the best. We have that attitude with non-EEA immigrants who come to work in highly skilled jobs and we would continue with that attitude post Brexit, under whatever circumstances. It is not just about thinking about the researchers themselves, but their families as well and making sure there are arrangements in place for that.

I think that if you get back to the basic ideas, in a way, that informed many people's views and reasons for voting to leave, they were around immigration, as we know, but not high-skilled immigration. Once we have an immigration system where we can provide that control of immigration in the round, if you look at the public's views when they are polled, they are very keen for there to be high levels—or reasonably high levels—of

continued highly skilled immigration of exactly the kind of researchers who are essential if we are going to continue our world-leading status.

Baroness Pinnock: Unfortunately, when we heard from practitioners, the one who was involved in this described how some of his colleagues were already uncertain about their future in this country and were already moving back to Europe or wherever, because of that uncertainty. They could not see that there would be a future here. That undermines the situation in this country in terms of this research project.

The other side of it was that they were concerned about the future of the funding, because they looked at it from the EU's perspective and wondered whether the EU would be willing to fund a similar project in an EU member state rather than here. I have not heard you give us any real, concrete assurance.

Lord O'Shaughnessy: I will try my best. On the certainty point, the Government have been very clear that we want to settle the issue of citizens' rights for those people who are already here. I recognise that the uncertainty is difficult for them; I am sure we all know people in that situation. So we want to deal with that as soon as possible once we move on to the next phase of the talks, which will I think provide a huge amount of reassurance to people who are settled here and contributing to the research community, the NHS or whatever else it is.

On the funding issue, the Treasury has again been very clear that we will continue to underwrite projects that are funded by Horizon 2020; indeed, any bids that are submitted before Brexit day and which are subsequently successful will be underwritten. That is a very concrete promise to underwrite those research projects, come what may. As I have said, our intention and our desire—which I think is entirely achievable, because other countries have done it—is to have continuity within Horizon 2020 and other programmes for the benefit of our research community. Hopefully that is the kind of concrete answer that you want.

Baroness Pinnock: Time will tell.

Lord O'Shaughnessy: Of course.

Q109 **Lord Ribeiro:** In June, the Minister for Universities, Jo Johnson, said that medical radioisotopes are not special fissile nuclear material and are not subject to international nuclear safeguards. We all understand that, but he then went on to say that their availability should not be impacted by the UK's exit from Euratom. That "should" that rather worries me. Are you confident that, given third-country status, the UK will be able to deliver the same access to radioisotopes? We do not produce any here, or hardly any—80% of the stuff that we produce for diagnostic use, particularly technetium-99, comes from outside. Are you confident that, when we leave the EU—and, with Article 50, Euratom—that we can safeguard access to these radionuclides? Lord Watts has already referred to some of the problems around customs being put up and delays at port. Of course, when you have delay, you have a deterioration in isotopes.

Lord O'Shaughnessy: Yes. First, on the safety point, obviously we have a very robust domestic regulatory regime to guarantee the safety of radioactive material. In terms of the potential risks, as we discussed already, we are carrying out this risk assessment to understand what the risks are. That is risk not from a safety point of view in the sense of the product but in terms of the impact on patients and the research community. Clearly, where we end up is going to depend, as I have said, on our overall customs arrangements. We do not want customs arrangements that create delays, clearly, for the reasons that have been outlined.

Lord Ribeiro: Can I just stop you there? The point is that even while we have been in the EU we have had situations where delays in getting materials to the UK have affected NHS treatment; in other words, when there have been problems with productivity and difficulty getting the products in. The concern that people have is that when we leave, we will have to have a different customs arrangement as a third country, and if delays then occur we do not have the capacity in the UK to make up for those losses.

Lord O'Shaughnessy: I understand that. Obviously, I am not in a position to say exactly what our new customs arrangements are going to be. What I can say to you is that we all understand the risks of having delays, which is one of the reasons that we want trade to be as frictionless as possible. We need to understand properly what the consequences would be of various types of arrangements—the full spectrum of potential deals—and then put in place the things that are going to ensure that those risks are mitigated. As I say, I am not in a position to do that today because we have not done the risk assessment, but once we have done that, obviously we will be in a position to work out what we need to do to prevent those delays. As you said, there is a risk of harm if it happens now for reasons outside our control.

Lord Ribeiro: Can I give you the opportunity to do a bit of horizon-scanning? In the worst-case scenario of having to move away from these types of radioisotopes, as I said, we do not produce them ourselves, but we know that we can produce through the use of cyclotrons different types of alpha and beta-emitter treatment. Alliance Medical, for example, is planning to produce two new cyclotrons. What sort of help are the Government likely to give those companies? This could actually be a very productive way of dealing with the problems that we are likely to face.

Lord O'Shaughnessy: I do not know about the technical details of the different isotopes that could be used. I am not aware of the particular organisation that you mentioned. But if there is capacity to produce domestic products which would help in contingency planning, obviously it would be interesting to look at those, but that is not something I have looked at yet.

Lord Ribeiro: I am just holding out the suggestion that, mindful of the fact that Canada, which has been producing isotopes and which we have been taking supplies from, has now stopped for a period, and mindful

that 60% or more of our production comes from the Netherlands and Belgium, which are in the EU, we really need to make some contingency plans for a worst-case scenario. I am just thinking that from a research point of view and a practical point of view, there is a potential for the UK to embrace new technology and produce the products in-house.

Lord O'Shaughnessy: Understood.

The Chairman: I think you said you were carrying out a risk assessment on some of this.

Lord O'Shaughnessy: Yes, indeed.

The Chairman: Do you know when that will be finished?

Lord O'Shaughnessy: I do not have a date. I will write to you.

The Chairman: Is it something that will be published, or is it just internal?

Lord O'Shaughnessy: I will write to you with a date of when we will have carried it out.

The Chairman: That would be helpful. Just going back a bit, would it be possible to write to us also on the discussion we had about South Africa and how isotopes get here, where they land, and so on? That would be very helpful.

Lord O'Shaughnessy: Yes, absolutely.

The Chairman: I think Lord Crisp has one last question.

Q110 **Lord Crisp:** Like Lord O'Neill, I was surprised that the first high-level meeting is on 8 December. We have heard from a number of people whom I am sure your officials will be meeting. I was impressed by a number of things: first, the scale of this issue—there are an awful lot of patients and an awful lot of isotopes coming through; secondly, the potential complexity of the practical arrangements; and, thirdly, that while we were assured by the clinicians that there were some alternatives that could be made and you could use different sorts of treatment and so on, actually they were very costly. All of that sounded like a recipe for more costs. Do you accept that, whatever happens with this, we will be faced with a very large additional cost as a result of changing these arrangements?

Lord O'Shaughnessy: It will depend on what the arrangements are. Until we know what the arrangements would need to be to deal with the various potential scenarios, I cannot say. I absolutely understand the size and complexity of it. I genuinely think the department has tried to engage with stakeholders in the past six months to get to the bottom of this issue. Obviously, it would have been better if the meeting had taken place sooner, but it is taking place. Once we understand what the risks are, we will be able to quantify costs and look at potential options, but I am not in a position to do that today.

The Chairman: Thank you very much. You will have gathered from the last part of our discussion that the potential implications of Brexit for the import of radioisotopes exercise us quite a lot. We had a very good session yesterday. As I said, we are very grateful to you for at rather short notice agreeing to answer questions on this. Thank you very much indeed for coming to give evidence to us this morning. We are very grateful to you for covering, as you have done, both the topics on which this Committee has been working.