

Eluned Morgan AS/MS
Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol
Minister for Health and Social Services



Llywodraeth Cymru
Welsh Government

Russell George MS
Chair, Health and Social Care Committee
Welsh Parliament
Cardiff Bay,
Cardiff,
CF99 1SN

SeneddHealth@senedd.wales

19 October 2021

Dear Russell

Thank you for your letter of 29 September seeking information and update regarding the Legislative Consent Memorandum (LCM) for the UK Government Health and Care Bill. I have addressed your questions below.

- 1) An update on discussions with the UK Government in respect of the matters raised in the LCM, including details of any assurances the Welsh Government is seeking, amendments it is proposing, or agreements that have been reached with the UK Government. We would also be grateful to receive copies of any relevant correspondence with the UK Government on these matters.**

Discussions with the UK Government have continued since the laying of the LCM on 1 September. I met with Minister Argar on 15 September and 13 October to discuss the Bill and our officials have been working to try to find positions on the Bill clauses acceptable to both the Welsh Government and UK Government.

As set out in the LCM, two of my main areas of concern with the Bill are:

Firstly, the clauses where the UK Government is proposing that the Welsh Ministers are consulted before the Secretary of State exercises powers in relation to Wales in an area within devolved competence.

The preferred approach of the UK Government for clauses of this nature is that the requirement for consultation of Welsh Ministers accompanied by a separate intergovernmental agreement setting out how that will work. That is not my preferred approach given that the agreements are not legally binding and can be disregarded by future Governments.

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400

Gohebiaeth.Eluned.Morgan@llyw.cymru
Correspondence.Eluned.Morgan@gov.wales

Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

Secondly, the powers contained in a number of clauses for the Secretary of State to be able to make consequential amendments to provisions in a Measure or Act of Senedd Cymru.

My officials have been working closely with Department for Health and Social Care (DHSC) officials exploring options to seek acceptable positions on these issues and I remain hopeful that such agreement can be reached.

There are also a number of areas of concern regarding specific clauses, including those referred to in your letter. The issues and progress on these is as set out below:

Clause 85: Medicines information systems

I have a number of concerns regarding this clause, which provides for the Secretary of State to make regulations making provision about the establishment and operation of one or more UK-wide patient medicines registries. The purpose of these registries is to provide a source of evidence on the use, safety and effectiveness of medicines, and to improve patient safety.

Issue 1 – Overlap with data gathering in Wales

While I am supportive of allowing routinely collected data to be included in registries for the purposes of improving the safety, quality and efficacy of human medicines, the purpose for which information can be collected under this clause is too broad, extending beyond safety matters and into areas within devolved competence, such as information relating to clinical decision making.

The effect of the clause is that a broader range of information can also be collected by NHS Digital and not only information about medicines. This will result in NHS bodies, GPs, pharmacies, schools, and higher education in Wales being required to provide information to NHS Digital, potentially within areas of devolved competence.

The introduction of these registries could also place a significant financial burden on the providers of health and education services in Wales, specifically for those contracted to provide primary care health services. The requirement to collect the relevant information could have an impact on the Primary Care service contracts in Wales and the subsequent financial burden being placed upon Welsh Government.

I do not consider that it is necessary for NHS Digital, which is an England body, to establish a system for the whole of the UK. Wales has its own Digital Health Authority (Digital Health and Care Wales) with powers to collect the information from existing systems in Wales.

Digital Health and Care Wales is responsible for health data in Wales and therefore could establish a system for Wales and contribute to the UK registry based on a set of agreed standards and specifications ensuring NHS Digital is only provided with the specific information on Welsh patients, it needs for the specific purposes of the registries.

I have therefore requested that UK Government amend the clause to place duties on the Welsh Ministers to enable them to set up equivalent systems, either through digital authorities in Wales or by nominating NHS Digital to set up a system on their behalf. This would avoid arrangements by-passing Welsh Ministers.

Issue 2 – Use of Data by Welsh Ministers

There is no provision in the Bill to enable the data to be made available for use by the Welsh Ministers for purposes within their competence, for example clinical decision making.

Issue 3 – Inappropriate use of Welsh patient data

Regulations made under this provision potentially enable a wide use of the information contained within these systems that may not be considered appropriate in relation to Welsh patients.

In order to resolve these issues I have requested the Bill be amended to provide for an intermediary (NHS Wales) organisation to collect data on behalf of Welsh Ministers, removal of the specific element allowing Welsh citizens' data to be used for clinical decision making once provided to NHS Digital, and allowing for the provision of pseudonymised data to NHS Digital. Discussions are currently still on-going on these matters.

Issue 4 – Need for the Consent of Welsh Ministers to regulations

As regulations impacting Wales can be made by the Secretary of State under these powers, I requested the Bill be amended to include that regulations made under the powers provided to the Secretary of State under this clause should only be made with the consent of Welsh Ministers.

If the Bill is amended as I have indicated above then the issue of the requirement for the consent of Welsh Ministers to regulations made under the provisions impacting on Wales would fall away. If the amendments are not however made then a consent requirement would remain my position.

Clauses 86-92; Arm's Length Bodies Transfer of Functions

These clauses create a general power in primary legislation for the Secretary of State for Health to transfer or merge functions between specified Arm's Length Bodies and to abolish Arm's Length Bodies where all functions are transferred by way of regulations. Some of the Arm's Length Bodies in scope of the power undertake functions in Wales, Welsh Ministers have powers of direction in respect of some functions and Welsh Ministers have rights to appoint or nominate Welsh representation to them. Transferring or merging the functions of these bodies could therefore result in an erosion of Welsh Ministers' powers in relation to those bodies or impact on the functions of that body in Wales. The main bodies of concern are:

- NHS Digital
- Health Research Authority
- Human Fertilisation and Embryology Authority
- Human Tissue Authority
- NHS Blood and Transplant
- NHS Business Services Authority.

The clauses also enable the Secretary of State for Health to delegate specified functions to these Arm's Length Bodies. These specified functions are functions of the Secretary of State which relate to the health service in England or any other functions that the Secretary of State may provide for a Special Health Authority to exercise. However, reassurances have been provided that in relation to cross-border Special Health Authorities, such as NHS Blood and Transplant, this does not include functions that they are directed to exercise by the Welsh Ministers in relation to Wales.

Issue 1 – Provision of Consent in clause rather than Consult

The clauses regarding the transfer of functions between specified Arm's Length Bodies provide for the Secretary of State to consult the Welsh Ministers on regulations made under clauses 87 or 88 if those regulations would apply in Wales.

As stated above, I have requested that the Bill be amended to require that regulations made under the powers provided to the Secretary of State under this clause should be with the consent of Welsh Ministers in order to protect the devolution settlement.

Issue 2 – Power to make consequential amendments to Welsh legislation

There is a power for the Secretary of State, when making regulations under clauses 87 or 88, to be able to make consequential amendments to provisions in a Measure or Act of Senedd Cymru.

Issue 3 – Secretary of State power to transfer property etc to Welsh Ministers

Clause 90 provides the Secretary of State with the power to transfer property, rights and other liabilities to the Welsh Ministers or Welsh NHS Trusts.

I have requested that Welsh Ministers and Welsh bodies are carved out of the Clause 90 provision and I am hopeful that this happen. Discussions on the other issues of concern are still continuing.

Clause 120: International healthcare arrangements

Though international healthcare agreements are not devolved, the NHS in Wales has to manage incoming patients covered under all international healthcare arrangements. Any arrangements struck with other countries which are implemented under these provisions could lead to increased health tourism which could put pressure on, and impact the capacity of, our Local Health Boards.

Issue 1 – Provision of Consent in clause rather than Consult

The main concern with this clause is the requirement to only consult with the Welsh Ministers on draft regulations giving effect to international healthcare agreements. This means that should the Welsh Government have concerns regarding unreasonable or unfunded pressures on the NHS in Wales arising from such agreements, those concerns may not always be taken into account.

Issue 2 – Conferring functions on Welsh Ministers and Public Authorities in Wales

The clause also enables the Secretary of State to confer functions on and/or delegate functions to Welsh Ministers and public authorities in Wales, when making regulations to make provision for the purpose of giving effect to healthcare agreements.

Discussions are continuing on the wording of these provisions that would address my key concerns and I am hopeful that a satisfactory position can be reached.

Clause 123: Regulation of health care and associated professions

While the regulation of health professionals is reserved, the regulation of persons who are not professionals but who are groups of workers concerned with the physical or mental health of individuals falls within devolved competence. The clause would extend the power of the Secretary of State to regulate these additional groups of workers. UK Government officials have proposed that this clause be amended to include a requirement to consult the Welsh Ministers which is supported by a Memorandum of Understanding, should UK Government seek to regulate under section 60 of the Health Act 1999 in areas of devolved competence.

I have requested that the Bill be amended such that the Secretary of State would require the consent of the Welsh Ministers to such regulations. Positive discussions in this area are continuing.

Clause 125 and Schedule 16: Advertising of less healthy food and drink

Whilst the substantive content of the clauses covering restrictions on the advertising of unhealthy food on a 4 nations basis is welcomed, there is consequential power included enabling the Secretary of State to amend Welsh legislation.

As with the same provision in relation to Arm's Length Bodies, this is an issue of on-going discussion. However it should be noted that this is an area of the Bill DHSC do not accept is devolved and do not agree should be subject to a requirement for the legislative consent of the Senedd.

Clause 130: Power to make consequential provision

This clause 130 gives the Secretary of State a broad consequential amendment power in relation to the Bill and allows an Act or Measure of the Senedd to be amended, repealed or revoked without any recourse to Welsh Ministers or provision enabling Welsh Ministers to exercise this power

Discussions on this matter are on-going.

To sum up overall at this point, I welcome the engagement that has taken place with the UK Government so far and that my officials are continuing with what I remain hopeful will be productive discussions and outcomes.

Further Bill Amendments

There are a number of other potential amendments to the Bill being drafted by the UK Government one of which, in relation to Medical Examiners (detailed below), has been requested by the Welsh Ministers. Should these amendments require the legislative consent of the Senedd then a supplementary LCM will be laid before the Senedd at the appropriate time.

Medical Examiners

The UK Government has agreed, at my request, to table an amendment to Clause 124 of the Bill to amend section 19 of the Coroners and Justice Act 2009. This amendment is not being requested to address any issues of concern with the Medical Examiner provisions currently in the Bill, which do not impact on devolved competence, but has been requested in order to better reflect the manner in which the Medical Examiner system has been developed to operate in Wales.

2) The LCM notes that the Welsh Government has concerns about a number of clauses in the Bill. We would welcome further information about the Welsh Government's concerns in respect of:

- a. Clause 85 (Medicines information systems).**
- b. Clause 120 (International healthcare arrangements)**
- c. Clause 123 (Regulation of health care and associated provisions).**

My concerns with regard to these clauses are set out in the answers to question 1, above and question 3, below.

3) Paragraph 70 of the LCM notes that the Bill could have potential negative impacts on NHS bodies in Wales. We would welcome further details about the anticipated nature and extent of these negative impacts.

I am concerned about all the areas in the Bill I have identified as potentially impacting on the devolved settlement or on devolved bodies - and set out in the LCM - should we not secure the amendments being sought. It is difficult however to precisely quantify negative impacts until the powers in the Bill are being used. My officials are working to secure amendments which would have the effect of minimising potential negative impacts.

4) The Welsh Government's view on the potential implications of clause 75 (Tidying up etc. provisions about accounts of certain NHS bodies) for the NHS Business Services Authority and NHS Blood and Transport.

This clause gives Secretary of State for Health powers to place obligations on cross border Special Health Authorities in relation to their accounts and auditing - primarily prescribing standard arrangements for the preparation of annual accounts. This includes two cross border Special Health Authorities established under the NHS Wales Act 2006 - the NHS Business Services Authority and the NHS Blood and Transplant. Thus the consent of the Senedd is required here as the Senedd has competence to legislate in respect of both of these authorities.

However, though requiring the legislative consent of the Senedd, I have no objection to this clause as it is not expected to conflict with the exercise of the England/Wales Special Health Authorities' functions (for example, the laying of the NHS Blood and Transplant Annual Report and Accounts in Senedd Cymru under section 86 of the Government of Wales Act 2006).

5) The Welsh Government's views on any implications for Wales of the restructuring of the NHS in England proposed by the Bill, including any anticipated cross-border issues, employment issues, or issues relating to the commissioning of services for Welsh patients from NHS England such as mental health in patient care or cancer services.

There is a possibility that secondary and tertiary (specialist) services provided to Welsh patients in England may be impacted, for example planned care procedures undertaken by English trusts. For example, a potential risk identified by Welsh Government was in the event of multiple Integrated Care Systems collaboratively commissioning from a provider/ providers in a specific geographic area, the availability of service capacity for Welsh Health Boards to commission for Welsh patients may be reduced.

However, though there is potential for impact on secondary and tertiary services, on the basis of the information currently available it is anticipated that there is limited likelihood of any adverse impact with regard to the commissioning of these services.

There are close working relationships between Welsh and English organisations and Welsh Health Specialised Services Committee (WHSSC) works closely with NHS England as the responsible English body to ensure that the requirements of Welsh patients are taken into account in decisions relating to specialised services.

Secondary care services are provided under commissioning arrangements between Health Boards and English provider organisations.

During the engagement process with DHSC, it was confirmed that there would be formal involvement of Welsh Government officers in the development of the guidance associated with commissioning proposals.

It has been agreed that Welsh Government officers will work with DHSC, as required, on the guidance associated with the changes, in order to enable the requirements of Welsh patients to be taken into account.

It is not anticipated that the restructure in England will affect the development and delivery of cross-border care and support services in Wales. It is anticipated that people will continue to receive services as they currently do now, particularly so in respect of those who receive cross-border care and support services.

6) Further information about the potential financial implications associated with the provisions in the Bill, and how they will be accommodated within the Welsh Government's financial planning.

At present it is not possible to make an accurate estimate of the financial implications associated with these provisions. The majority of the provisions relate to England-only, and while there may be some knock on effects for Wales from these provisions, they are likely to be minor and are currently unquantifiable. With regard to the provisions covered by the LCM, while areas of risk to Wales (such as potential increased costs to our Local Health Boards from International Healthcare Agreements) have been identified, once again, these are at present unquantifiable as we have no detail on the nature of any such planned agreements and what treatment they will include.

There is agreement under the Statement of Funding Policy that costs arising from UK Acts will be met by the UK Government. However, in addition, I have written to Minister Argar seeking specific reassurance that costs falling to Wales as a result of this Act will be met by the UK Government. Welsh Government officials are liaising with the DHSC officials regarding the means of such reimbursement (for example whether this would be via settlement under the Barnett formula or via another funding route).

7) An outline of the reasons for this LCM not being laid before the Senedd until eight weeks after the introduction of the Bill to the UK Parliament when Standing Order 29.2(i) requires an LCM to be laid normally no later than two weeks after the introduction of the Bill.

The UK Department of Health and Social Care was very slow in providing us with draft Bill clauses for our consideration and analysis.

At the point of introduction of the Bill on 6 July 2021, we still had not seen all the draft clauses or amended versions of previously shared clauses. In addition, the full finalised Bill was only made available to us the day prior to its introduction. This made it impossible for officials to complete a full and thorough analysis of the Bill for its impact on Wales and any requirement for the legislative consent of the Senedd within the normal two week deadline.

Though my officials completed the work as quickly as possible, the emphasis was on ensuring a thorough analysis of the Bill had been undertaken and all the issues of impact and concern for Wales and the areas requiring the legislative consent of the Senedd had been identified.

As requested I am attaching copies of the letters I have written to the UK Government on the Bill. Minister Argar of the Department of Health and Social Care has requested that I do not share his correspondence to me with the Committee. However I understand he is happy to write separately to the Committee once a position of agreement on the Bill between the two Governments has been reached if that would be considered helpful.

I trust this response will be helpful in the Committee's scrutiny of the LCM.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'M. E. Morgan'.

Eluned Morgan AS/MS

Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol
Minister for Health and Social Services



Ein cyf/Our ref: MA/EM/1934/21

Edward Argar MP
Minister of State for Health
Department of Health and Social Care

MSHealth@dhsc.gov.uk

14 June 2021

Dear Edward

I write further to our previous correspondence regarding the UK Government's Health and Care Bill. I understand that the UK Government's intention is that the Bill will enter Parliament during the week commencing 21 June in advance of the summer recess. The draft Bill contains a provision to amend section 19 of the Coroners and Justice Act 2009, which relates to medical examiners, so that medical examiners in England may be appointed by English NHS bodies (as defined), rather than by local authorities.

I am writing to seek your support for our request to make a similar amendment via the Bill in relation to medical examiners in Wales. In our case the amendment would enable medical examiners to be appointed by Welsh NHS bodies (as defined) on an all-Wales basis, rather than requiring one category of health body (that is, Local Health Boards) to do so in relation to their area, which is currently the case.

Section 19 has not yet been commenced in relation to either England or Wales. Our requested amendment has been discussed at official level and has my support. The amendment is required because the way we envisage the medical examiner system will operate in Wales has developed and entails the appointment of medical examiners on an all-Wales basis by NHS Wales Shared Services Partnership (NWSSP). NWSSP is part of Velindre NHS Trust and is not a Local Health Board.

The amendment would also provide an element of future proofing by facilitating the possibility of moving the responsibility for medical examiners between Wales' health bodies, for example, should new health bodies be established, without the need for further amending primary legislation.

As is the case with the Department's amendment to section 19 in England, our amendment for Wales is unlikely to be controversial and has the support of NWSSP.

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400

Gohebiaeth.Eluned.Morgan@llyw.cymru
Correspondence.Eluned.Morgan@gov.wales

Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

I appreciate that I am writing to you late in the process, but I would be grateful for your support in relation to this request as the provisions in section 19 of the Coroners and Justice Act 2009 relating to medical examiners are reserved under the Government of Wales Act 2006, and suitable opportunities to make the amendments we require are unlikely to come along again before the intended commencement of the relevant provisions in April next year.

I am copying this letter to the Secretary of State for Wales.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'M. E. Morgan'.

Eluned Morgan AS/MS

Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol
Minister for Health and Social Services

Eluned Morgan AS/MS
Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol
Minister for Health and Social Services



Llywodraeth Cymru
Welsh Government

Edward Argar MP
Minister of State for Health
39 Victoria Street
London
SW1H 0EU

MSHEALTH@dhsc.gov.uk

26 July 2021

Dear Edward,

Thank you for your letters of 5 and 22 July 2021 concerning the Health and Care Bill 2021. I note your confirmation that the Professional Regulations clauses also fall within the devolved competence. I also welcome that your lawyers are considering options to amend the Medical Examiners clause as requested by my officials.

I am conscious that you requested a response to your letter of 5 July before Parliament's summer recess. I apologise for not being able to meet your request. You are aware my officials are currently finalising their analysis of some of the Bill clauses. Until all of that analysis is concluded I am unable to reply substantively to your letters at this point. I will respond to your letters shortly, in full, once I have considered officials' advice.

Yours sincerely

Eluned Morgan AS/MS
Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol
Minister for Health and Social Services

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400

Gohebiaeth.Eluned.Morgan@llyw.cymru
Correspondence.Eluned.Morgan@gov.wales

Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.



Ein cyf/Our ref MA-EM-2390-21

Edward Argar MP
Minister of State for Health
39 Victoria Street
London
SW1H 0EU

psmsh@dhsc.gov.uk

31 August 2021

Dear Edward

Thank you for your letters of 5 July and 22 July concerning the UK Health and Care Bill 2021.

Having now considered the Bill as introduced, I must say upfront that I have significant concerns about certain provisions. Some of these concerns I previously raised at our meeting on 23 June. Others we have not yet discussed at Ministerial level. My officials have however informed your officials of all the areas of concern and are in discussions regarding amending those provisions to address our issues.

I can however confirm that I agree with your assessment of Bill provisions which fall within the legislative competence of the Senedd, namely:

- Clause 78 – Hospital patients with care and support needs
- Clause 85 – UK wide medicines information system
- Clause 86-92 – Transfer of functions between Arm's Length Bodies
- Clause 120 – International healthcare agreements
- Clause 123 - Regulation of health care and associated professions
- Clause 127 - Food information for consumers - power to amend retained EU law.

However, in addition, I consider that the following clauses also fall within the legislative competence of the Senedd and will require its legislative consent:

- Clause 75 – Special Health Authorities (“SHAs”) accounts and auditing
- Clause 125 and Schedule 16 - Advertising of less healthy food and drink
- Clause 130 - Power to make consequential provision.

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400

Gohebiaeth.Eluned.Morgan@llyw.cymru
Correspondence.Eluned.Morgan@gov.wales

Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

I expect the legislative consent process to begin soon, in advance of the return of the Senedd from its summer recess in September.

I would welcome in particular further discussion with you about a number of areas where I have significant concerns.

Firstly, the potential for a number of clauses in the Bill to be amended so that the consent of the Welsh Ministers is required before the Secretary of State may exercise powers in relation to Wales in an area within devolved competence, as opposed to having a statutory requirement to consult with the Welsh Ministers. I believe that this is best way to protect the devolution settlement and is likely to be the expectation if Members of the Senedd are to give their consent to this Bill. I appreciate that your preferred approach for clauses of this nature would be a requirement for consultation accompanied by a separate intergovernmental agreement to set out how that will work; I am content for exploration of this by our officials to continue, but without prejudice to our final position on the adequacy of this approach.

Secondly, the powers contained in a number of clauses for the Secretary of State to be able to make consequential amendments to provisions in a Measure or Act of Senedd Cymru, which I regard as constitutionally unacceptable as currently drafted. It is my view, and the likely view of the Senedd that powers concerning devolved areas in the Bill, including Henry VIII powers, should be conferred on the Welsh Ministers alone. Alternatively I would expect the provisions to be removed from the Bill.

Thirdly, I have specific issues regarding the following clauses:

Medicines Information System

With regard to the Medicines Information System (Clause 85), I am supportive of and see the benefits to allowing routinely collected data to be included in registries for the purposes of improving the safety, quality and efficacy of human medicines. However the purpose for which information can be collected is too broad, extending beyond safety matters and into areas within devolved competence, such as information relating to clinical decision making.

The effect of the clause is that a broader range of information can also be collected by NHS Digital and not only information about medicines. This will result in NHS bodies, GPs, pharmacies, schools, and higher education in Wales being required to provide information to NHS Digital, potentially within areas of devolved competence.

In addition, I do not consider that it is necessary for NHS Digital to establish a system for the whole of the UK. As an alternative to this, I would prefer the clause placed duties on the Welsh Ministers to set up equivalent systems, either through digital authorities in Wales or by nominating NHS Digital to set up a system on their behalf. Digital Health and Care Wales is responsible for health data in Wales and therefore could establish a system for Wales and contribute to the UK registry based on a set of agreed standards and specifications.

Furthermore, there is no provision in the Bill to enable the data to be made available for use by the Welsh Ministers for purposes within their competence, for example clinical decision making. I consider the Bill should include clauses allowing this and that NHS Digital should be obliged to provide the Welsh Ministers with data for this purpose.

I am also concerned that regulations made under this provision potentially enable a wide use of the information contained within these systems that may not be considered appropriate in relation to Welsh patients.

My officials have also requested that regulations brought under the powers provided to the Secretary of State under this clause are subject to a requirement to consult the Welsh Ministers. This is, however, also subject to my previously expressed concerns with regard to the use of “consult” provisions in the Bill.

Arm’s Length Bodies

The clauses regarding the transfer of functions between specified Arm’s Length Bodies (Clauses 86-92) provide for the Secretary of State to consult the Welsh Ministers where draft regulations are made under clauses 87 or 88 if those regulations would apply in Wales. Our officials are currently in discussions regarding the consultation requirement and your proposal for a Memorandum of Understanding to support the provision, but to date no draft MoU has been shared with my officials. However, please note this is an area where a requirement for the Secretary of State to seek the consent of the Welsh Ministers is still considered the best way to protect the devolution settlement.

In addition, there is a power for the Secretary of State, when making regulations under clauses 87 or 88, to make consequential amendments to provisions in a Measure or Act of Senedd Cymru. As I have said earlier in this letter, I regard this as constitutionally unacceptable as currently drafted and request that the clause is amended to enable the Welsh Ministers to make any necessary amendments to Senedd legislation rather than the Secretary of State, or that in the alternative, this provision is removed from the Bill.

Our officials are also in discussion with regard to clause 90, which appears to provide the Secretary of State with the power to transfer property, rights and other liabilities to the Welsh Ministers or Welsh NHS Trusts. My officials have requested that this power is subject to the “consult” requirement in clause 92 and that a corresponding power is provided for the Welsh Ministers to exercise independently in the appropriate circumstances. This is, however, also subject to my previously expressed concerns with regard to the use of “consult” requirements within the Bill.

International healthcare agreements

Though international healthcare agreements (Clause 120) are not devolved, the NHS in Wales has to manage incoming patients covered under all international healthcare arrangements. I am concerned that any arrangements struck with other countries which are implemented under these provisions could lead to increased health tourism which could put pressure on, and impact the capacity of, our Local Health Boards.

In addition, the current requirement for the Welsh Ministers to be consulted by the Secretary of State before regulations are made to give effect to reciprocal healthcare agreements means that should the Welsh Government have concerns regarding unreasonable or unfunded pressures on the NHS in Wales arising from such agreements, those concerns may not always be taken into account. Our officials are in discussions regarding the use of the requirement to consult Welsh Ministers (as is currently provided for in the Healthcare (European Economic Area and Switzerland Arrangements) Act 2019) and a revised Memorandum of Understanding to support the extension of the 2019 Act to rest of the world countries. However, as with the Arm’s Length Body clauses above, such discussions are subject to my reservations regarding the use of a consult requirement where a requirement for the Secretary of State to seek the consent of the Welsh Ministers is considered the best way to protect the devolution settlement.

I also have concerns with regard to the power enabling the Secretary of State to confer functions on and/or delegate functions to public authorities, when making regulations to make provision for the purpose of giving effect to healthcare agreements. I understand that our officials are in discussions regarding amendments to the Bill to ensure that the Welsh

Ministers and other organisations not operating under the direction of Welsh Ministers are not caught under the definition of “Public Authority”.

Regulation of health professionals

While the regulation of health professionals (Clause 123) is reserved, we now agree that the regulation of persons who are not professionals but who are groups of workers concerned with the physical or mental health of individuals falls within devolved competence. Your officials have proposed that this clause be amended to include a requirement to consult Welsh Ministers which is supported by a MoU, should UK Government seek to regulate under section 60 of the Health Act 1999 in areas of devolved competence. Once again, such discussions are subject to my previously expressed reservations regarding the use of a consult requirement in the Bill.

Restrictions on the advertising of unhealthy food

Though I support the substantive content of the clauses covering restrictions on the advertising of unhealthy food (Clause 125 and Schedule 16) and welcome seeing these included in the Bill on a 4 nations basis, there is consequential power included allowing the Secretary of State to amend Welsh legislation. This is constitutionally unacceptable as currently drafted and request that the clause is amended to enable Welsh Ministers to make the consequential amendments to Senedd legislation rather than the Secretary of State or alternatively the provision is removed from the Bill.

Clause 130

Finally, Clause 130 gives the Secretary of State a broad consequential amendment power in relation to the Bill and allows an Act or Measure of the Senedd to be amended, repealed or revoked without any recourse to Welsh Ministers or provision enabling Welsh Ministers to exercise this power. I regard this as constitutionally unacceptable as currently drafted and request that the clause is amended to enable the Welsh Ministers to make the consequential amendments to Senedd legislation rather than the Secretary of State, or alternatively that this provision is removed from the Bill.

Having regard to the above I am unlikely to be able to recommend Senedd consent to the Bill at this stage.

Finally, I must also raise the issue of funding of additional costs to Wales arising from the Bill provisions. It is my expectation that UK Ministers will provide written guarantees to meet any new costs falling to the Welsh Government or devolved Welsh authorities as a result of the provisions.

I look forward to meeting with you to further discuss and resolve the matters raised in this letter. I am aware our offices are currently liaising to agree a meeting date.

Yours sincerely



Eluned Morgan AS/MS

Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol
Minister for Health and Social Services