



Huw Irranca-Davies MS
Legislation, Justice and Constitution Committee
Welsh Parliament
Cardiff Bay, Cardiff, CF99 1SN

Llywodraeth Cymru
Welsh Government

23 November 2021

Dear Huw,

I am writing in response to your letter of 9 November regarding the UK/Switzerland Convention on social security coordination.

It may help if I first of all clarify that international agreements are reserved to the UK Government and the Devolved Administrations are required to implement and observe them irrespective of the implications on devolved competence or for Welsh bodies.

I have addressed your specific questions below:

The Welsh Government's assessment of the agreement's implications on devolved competence

The agreement requires the delivery of healthcare for visitors from Switzerland to Wales both in relation to urgent medically necessary treatment and pre-arranged planned treatment. This will be the role of Welsh Local Health Boards to deliver. The implications of the agreement on devolved competence is the requirement of Welsh Government to implement and observe the agreement and for Local Health Boards to deliver healthcare in accordance with its terms.

However what I would also clarify is that prior to EU Exit, Switzerland was part of the reciprocal healthcare agreement in place with the EU and EFTA countries. The healthcare arrangements under the new Swiss Convention are broadly the same as the previous EU reciprocal healthcare agreement (prior to EU Exit) and the new Trade and Co-operation Agreement/Social Security Protocol between the UK Government and the EU. There are no

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

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

Gohebiaeth.Mark.Drakeford@llyw.cymru
Correspondence.Mark.Drakeford@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.

new requirements being placed on Welsh Local Health Boards under the Swiss Convention (or EU Trade and Co-operation Agreement).

What also must be remembered is that this is a reciprocal healthcare agreement which means that Welsh residents are able to access urgent medically necessary and pre-planned treatment in Switzerland free of charge with the costs met by the UK Government.

Whether the Welsh Government agrees with the UK Government's assessment of reserved and devolved matters in the agreement

The UK Government has acknowledged in the Explanatory Memorandum on the Convention that the negotiation of reciprocal healthcare agreements and the welfare of UK nationals abroad are reserved matters but that some of the areas that reciprocal healthcare agreements cover are devolved including domestic healthcare and the recovery of overseas visitors' costs. It has also been acknowledged by the UK Government that, as the charging of overseas visitors is a devolved matter, the Devolved Administrations will ensure that these aspects are implemented accordingly.

Paragraph 10(1) of Schedule 7A to GOWA reserves "international relations" (which includes relations with territories, countries and international institutions outside the United Kingdom) to the UK Parliament.

Pursuant to paragraph 10(3) of Schedule 7A to GOWA, observing and implementing international obligations and assisting a Minister of the Crown in relation to international relations (insofar as they relate to devolved matters) are carved out of the international relations reservation. Health is a devolved matter, which includes the recovery of overseas visitors' costs in relation to Wales. Furthermore, the giving effect to healthcare agreements which concern healthcare that is provided in Wales is within the legislative competence of Senedd Cymru.

I agree therefore that the entering into of the Convention is a matter for the UK, rather than the Devolved Administrations, and I am satisfied with the UK Government's position regarding the implications of the Convention with respect to devolved matters in Wales.

Whether the Welsh Government will be represented in the new UK-Swiss governance mechanisms created by the agreement, particularly in relation to attendance at the Joint Administrative Committee when devolved matters are discussed

UK Government has confirmed that the representation arrangements regarding the Devolved Governments and the governance mechanisms under the Swiss Convention mirror those under the Trade and Cooperation Agreement and Protocol on Social Security Coordination – meaning that central UK Government will represent the UK at the Joint Administrative Committee under the Convention, but there is the ability to invite representatives of the Devolved Governments Joint Administrative Committee meetings as appropriate and if needed, for example if an issue was to be discussed that was of particular interest or on an area of devolved delivery such as planned treatment.

What plans are in place for the Welsh Government to implement the agreement, if any, including timescales

International Agreements made by the UK Government are binding on the UK as a whole and the Devolved Administrations are required to implement them in line with any timescales in the Agreement. The Swiss Convention came into effect on 1 November 2021 and Welsh Local Health Boards are required to operate it from that date. The Local Health Boards have been notified about the agreement and all necessary arrangements (for

example guidance and application forms for pre-planned treatment, administrative and reimbursement arrangements with the NHS Business Services Authority) have been incorporated within the processes already in place for the EU Trade and Co-operation Agreement.

We will however need to reflect the agreement within the National Health Service (Charges to Overseas Visitors) Regulations 1989 which set out the exemptions for the charging of overseas visitors, and we will be making amendments to those regulations in respect of this as soon as possible.

Whether the Welsh Government is satisfied with the level and frequency of consultation with the UK Government during the negotiation of this agreement, as described in the Explanatory Memorandum

Whilst the UK Government informed Welsh Government officials about the development and progress of the Convention and the likely timings of signing and implementation, the Welsh Government were not involved in any of the actual negotiations with the Swiss Government. Whilst I recognise this is not an ideal position, international agreements are reserved to the UK Government and broadly the Memorandum of Agreement in place with the UK Government in support of the consultation requirements of the Healthcare (European Economic Area and Switzerland Arrangements) Act 2019 was followed. And in this case there was an agreed position of the UK Government and the Devolved Administrations that any agreement with Switzerland should seek to broadly replicate the arrangements in place under the UK/EU Trade and Co-operation Agreement following EU Exit (and the arrangements with Switzerland prior to EU Exit).

I trust this response will be helpful in the Committee's the Committee's consideration of the Convention.

Yours sincerely

A handwritten signature in black ink that reads "Mark Drakeford". The signature is written in a cursive, slightly slanted style.

MARK DRAKEFORD