



Huw Irranca-Davies MS
Chair, Legislation, Justice and Constitution Committee
Senedd Cymru
Cardiff Bay,
Cardiff,
CF99 1SN

By email: SeneddHealth@senedd.wales

28 February 2022

Dear Huw,

Thank you for your letter of 21 February regarding the Supplementary Legislative Consent Memoranda (Memoranda No. 2 and No. 3) (the SLCMs) on the Health and Care Bill (the Bill) and my response of 15 February to your Committee's report of 14 February.

You have raised two issues which I will address in turn below.

Firstly, the provision in the Bill to provide the Welsh Ministers with a regulation making power to bring into force the amendments to section 88 of the 2006 Act referred to in Memorandum No. 2. I apologise if my letter of 15 February was not sufficiently clear in this regard. The letter more correctly should have stated that as per the Legislative Consent Motion, the consent of the Senedd was being sought in relation **to provisions in the Health and Care Bill in so far as they fall within the legislative competence of the Senedd**, rather than consent to the Bill in its entirety. I apologise for any confusion from this. However it is still the case that the consent of the Senedd was being sought to the provisions collectively, as is usually the case for Legislative Consent Motions, and I do not agree there was any ambiguity as to what the Senedd was being asked to give consent to.

Secondly, you have asked for further information regarding my view that clauses in the Bill, which provide the Secretary of State with powers to amend Senedd legislation which is consequential upon provisions of the Bill, presents a minor constitutional risk. Specifically, around my decision not to pursue an amendment to the Bill to carve out the Government of Wales Act 2006 from any consequential amendments made by the Secretary of State under these powers.

As you are aware, the decision to recommend Senedd consent with regard to these provisions was taken following much consideration. The conclusion I reached that the provisions represented a minor constitutional risk, as set out in Memorandum No. 3 and my letter of 14 February, is based on discussions with the UK Government about the intended use of the powers, the sight of examples of the likely usage of the powers and the Despatch Box Statement made in the House of Lords on 9 February by Lord Kamall. The UK Government has specifically confirmed that it has no plan to use the powers, which are consequential on the Bill, to amend the Government of Wales Act 2006. The Welsh Government accepts the commitments given by the UK Government.

I would again reiterate that this is not solely the practice of the UK Government. We have made similar provision in Senedd Acts to make consequential amendments to UK Government legislation.

Taken together these are the factors on which I reached my conclusion and my decision not to pursue an amendment to the Bill in this regard.

I am copying this letter to the Llywydd, the First Minister, the Counsel General and Minister for the Constitution and to Russell George MS, Chair of the Health and Social Care Committee.

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