

Eluned Morgan MS

Minister for Health and Social Services

21 February 2022

Dear Eluned

Welsh Government's Supplementary Legislative Consent Memoranda (Memorandum No. 2 and Memorandum No. 3) on the Health and Care Bill – response to Committee's report

Thank you again for providing a formal written response to our report on the Welsh Government's Supplementary Legislative Consent Memoranda (Memorandum No. 2 and Memorandum No. 3) on the Health and Care Bill on the morning of Tuesday 15 February, in advance of the Senedd's consideration of a legislative consent motion for the Bill that same afternoon.

There is one matter of particular importance raised in your written response which requires urgent attention. In your response to recommendation 4 in our report on Memoranda No's 2 and 3 (which asked you to explain why you were not seeking the Senedd's consent for clause 153 of the Bill), you said:

*"The Committee will be aware that the consent of the Senedd is being sought to the Bill in its entirety and not on a clause by clause basis."*

This is not the position as set out in the three memoranda you have laid before the Senedd in relation to the Bill, and on which basis the consent of the Senedd was sought – and granted – on 15 February.

The vast majority of the Bill – a Bill which spans over 170 clauses and almost 20 Schedules – does not make provision within a devolved purpose (or include provision which modifies the competence of the Senedd).

I note that the wording of the motion agreed by the Senedd referred to “provisions in the Health and Care Bill in so far as they fall within the legislative competence of the Senedd”. The motion also references the three memoranda which you have laid for this Bill.

The Senedd must be made fully aware of what a Welsh Government Minister is asking it to consent to. Given that the correspondence to my Committee is at odds with the memoranda, on this occasion, there is now a worrying and unwelcome ambiguity as to what you have asked of, and recommended to, the Senedd. This is a serious matter, which requires urgent clarification.

Therefore, I would be grateful to receive a response from you which addresses and clarifies your position by Monday 28 February. Given the potential significance of the matter, I am copying the letter to the Llywydd.

I also take the opportunity to remind you of the request I made during the Plenary debate on the consent motion for the Bill, that you write to us to provide a fuller explanation of the “minor constitutional risk” of which you spoke in Memorandum No. 3. We would also be grateful to understand more regarding your decision not to pursue an amendment to the Bill so that its powers cannot be used by UK Ministers to make regulations that amend the *Government of Wales Act 2006*.

The Committee will fully consider your response to our report at our next meeting, and we may write to you further at that point should we wish to follow-up on any other matters.

I am also copying the letter to the First Minister, and to the Counsel General and Minister for the Constitution.

Yours sincerely,

A handwritten signature in black ink that reads "Huw Irranca-Davies". The signature is written in a cursive style and is underlined with a single horizontal stroke.

Huw Irranca-Davies

Chair