



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

By email: SeneddHealth@senedd.wales

15 February 2022

Dear Huw

Thank you for the Legislation, Justice and Constitution Committee's report laid on 14 February on the Supplementary Legislative Consent Memoranda (Memoranda No. 2 and No. 3) (the SLCMs) on the Health and Care Bill (the Bill).

I note the Committee's comments on the Bill and the SLCMs laid on 17 December 2021 and 28 January 2022 respectively.

Please find my responses to your specific recommendations below.

Recommendation 1 - Clause 87 (formerly Clause 85) (Medicines information systems)

Recommendation 1

The Minister should, before or during the debate on the relevant consent motion, provide an update to the Senedd on progress being made by the Welsh and UK Governments to finalise the Memorandum of Understanding concerning Medicines Information Systems, and confirm whether it will be in place before the relevant provisions in the Bill (if and once enacted) come into force.

Response

The Committee can be assured that the Memorandum of Understanding in relation to Medicines Information Systems is being progressed. The UK Government has stated that it will do its best to have the Memorandum in place before the provisions come into effect, but at the very latest in advance of drafting of regulations.

Recommendations 2 and 3 - Clauses 149, 144 and 91 (formerly clauses 89, 125 and 130): Consequential Amendments to Senedd Legislation

Recommendation 2

The Minister, should in advance of the Senedd's debate on the relevant legislative consent motion, explain and quantify the risk she describes in paragraph 33 of Memorandum No 3.

Response

These clauses provide the Secretary of State with the power, by regulations, to make provision which is consequential on the Bill. This includes provision that amends, repeals, revokes or otherwise modifies provision made by, or under, an Act or Measure of the Senedd.

As set out in my letter to the Committee of 3 February, and the SLCM (No. 3), I and my officials have met with Edward Argar MP, the Minister of State for Health, and his officials on a number of occasions to discuss these provisions. The UK Government is of the view that these are standard clauses and I reiterate it is the case that Wales similarly takes powers in Senedd Acts to make consequential amendments to UK Government legislation.

UK Government officials have provided examples of how these powers may be used – the amendments likely would be of a minor nature, for example the changing of the name of an English organisation which is referred to in Senedd legislation where a transfer of functions has occurred. They have also specifically confirmed that they do not plan to use the powers in clause 149 to amend the Government of Wales Act 2006. The Minister of State for Health has, through Lord Kamall, also now made the Dispatch Box Statement in relation to clauses 91 and 149, on how these powers might be used. The Statement was made in the House of Lords on 9 February. As advised in my previous response, the UK Government has not identified clause 144 as requiring the legislative consent of the Senedd and therefore would not have been included in the Dispatch Box Statement.

On the basis of all the assurances given by the UK Government and the Statement, I am of the view that the risk to Senedd legislation presented by the provisions is minor and recommend Senedd consent to clauses 91, 144 and 149 should be given.

Recommendation 3

The Minister should seek an amendment to the Bill to the effect that the powers in the Bill cannot be used by UK Ministers to make regulations that amend the Government of Wales Act 2006. The Minister should, in advance of the Senedd's debate on the relevant consent motion, confirm that she has sought such an amendment and provide an update to the Senedd on the latest position

Response

As I have set out above in my response to the Committee's Recommendation No 2, I have discussed these provisions with UK Government at length and am satisfied with all the assurances provided by the UK Government. Consequently I have not approached the UK Government to request that such an amendment be made.

Recommendation 4 - Clauses 135 and 153 – Community Pharmacies

Recommendation 4

The Minister should, in advance of the Senedd's debate on the relevant consent motion, explain in full why she is not seeking the Senedd's consent for clause 153 of the Bill.

Response

I would assure the Committee that Senedd consent is being sought to all the clauses in the Bill that impact on devolved competence. In SLCM (No. 2), I included a section on the clause about Reimbursement to Community Pharmacies and within that section the amendments to clause 153 (now clause 169) which provide the Welsh Ministers with the regulation making powers on commencement of the clause were referred to (paragraph 47). In paragraph 53 of the SLCM (No 2), I stated that the amendments referred to in the preceding paragraphs fell within the legislative competence of the Senedd as the purpose of the amendments related to devolved matters.

The relevant provisions in clause 153 (now clause 169) do not do anything substantive other than allow the Welsh Ministers to commence provisions which Senedd consent is already sought on in the SLCM (No 2). Therefore whilst the wording could possibly have been clearer, the relevant provision within that clause is linked to the substantive provision in the clause on Reimbursement to Community Pharmacies.

In SLCM (No. 2) I stated that I was content with clause 135. 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. I consider therefore that clause 153 (now clause 169) has been included and that the consent of the Senedd is being sought for it.

With regard to the Committee's point in the report about the regulations to commence the clause on Reimbursement to Community Pharmacies being subject to no legislative procedure, I would advise that this is standard practice for commencement orders and the regulation making power only enables the Welsh Ministers to commence substantive provisions (or make related transitional or saving provision in connection with commencement).

Recommendations 5, 6, 7 and 8 – Clause 136 – International Healthcare Agreements

Recommendation 5

In the absence of amendments being tabled to the face of the Bill in line with recommendation 5 in our first report, we believe that the Secretary of State should make information publicly available regarding the broad tests and criteria that will be used in determining what is an 'exceptional circumstance' for the purpose of clause 136. The Minister should pursue this matter directly with the Secretary of State

Response

As set out in my letter to the Committee of 3 February, it is my view that it is not appropriate to put a clear and proportionate test on the face of the Bill for what would qualify as an 'exceptional circumstance' for the purposes of the amount or type of healthcare that can be funded outside of an international healthcare agreement as this could have a detrimental or limiting impact to provide support when needed.

I note the request of Committee that the Secretary of State should make information publicly available regarding the broad tests and criteria that will be used in determining

what is an 'exceptional circumstance' for the purpose of clause 136. I will explore this with UK Government.

Recommendation 6

The Minister should work proactively with the UK Government and other devolved governments to ensure that the Memorandum of Understanding in respect of the consultation process for international healthcare agreements and their implementation is updated as soon as possible to reflect the new intergovernmental relations arrangements (including dispute resolution processes) agreed and announced on 13 January 2022.

Response

My officials have already advised their counterparts in the Department of Health and Social Care of the need to do this and there is full acceptance and commitment to do so.

Recommendation 7

Further to recommendation 6, the Minister must provide to the Senedd the updated version of the Memorandum of Understanding in respect of the consultation process for international healthcare agreements and their implementation as soon as it is agreed and finalised.

Response

I will provide the Senedd with the updated version of the reciprocal healthcare Memorandum of Understanding as soon as it is amended and agreed by all four nations.

Recommendation 8

As the Committee responsible for the scrutiny of non-trade international agreements, the Minister should commit to notify us of any forthcoming international agreements which will fall within the remit of the Memorandum of Understanding in respect of the consultation process for international healthcare agreements and their implementation.

Response

I am happy to notify Committee of any such agreements at such point in the negotiation process when this information can be made public.

I am copying this letter to Russell George MS, Chair of the Health and Social Care Committee.

Yours sincerely



Eluned Morgan AS/MS

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