



Huw Irranca-Davies MS
Chair,
Legislation, Justice and Constitution Committee

SeneddLJC@senedd.wales

25 April 2023

Dear Huw

I am writing to inform the Committee of the UK Governments intent to make and lay the Healthcare (International Arrangements) (EU Exit) Regulations 2023 (“the HIA Regulations”).

I have received a letter from Will Quince MP, Minister of State for Health and Secondary Care regarding the HIA Regulations, which the UK Government intends to lay in Spring 2023. UK Government officials have further advised that they are seeking to lay the Regulations in early June.

The HIA Regulations will extend to the whole UK. They will be made in exercise of powers conferred on the Secretary of State by the Healthcare (International Arrangements) Act 2019 (“the Act”) (formerly titled the Healthcare (European Economic Area and Switzerland Arrangements) Act 2019 but to be renamed by section 162 of the Health and Care Act 2022). When section 162 is brought into force, it will commence the main enabling power for the HIA Regulations. The main enabling power will be contained in section 2 of the Act. Under section 2A of the Act, the Welsh Ministers may also make certain provision by regulations equivalent to that which the Secretary of State can make using section 2, although not all provision and only where the provision is within devolved competence.

The HIA Regulations will replace the UK legal framework for implementing healthcare arrangements provided for in existing regulations, the Healthcare (European Economic Area and Switzerland Arrangements) (EU Exit) Regulations 2019 (“HEEASA Regulations”), which are made in relation to the provision of reciprocal healthcare in EEA states and Switzerland, including the making of payments. The HEEASA Regulations also place duties on public authorities in Wales to give effect to reciprocal healthcare arrangements with the European Union (EU), European Economic Area Countries and Switzerland.

The HIA Regulations are to a large extent similar to the HEEASA Regulations, but broaden the scope of the legal framework to healthcare agreements between the UK Government and Rest of the World countries. The HIA Regulations:

- enable payments to be made pursuant to a reciprocal healthcare agreement by the Secretary of State on a UK wide basis;
- enable payments to be made by the Secretary of State in exceptional circumstances on a UK wide basis;
- impose a requirement to give effect to obligations and commitments of the UK under relevant healthcare agreements, including the processing of maternity planned treatment functions, on UK NHS Business Services Authority (NHS BSA);
- impose information and advice functions on NHS BSA;
- list Rest of World Countries party to international healthcare agreements with the UK;
- impose S2 planned treatment functions on NHS England, Welsh Local Health Boards and Scottish health boards (i.e. to carry out clinical determination of applications and to establish and publish procedures for the determination of S2 applications, which include provision for a review process).

Some aspects of the HIA Regulations could be made all or in part by provision contained in regulations made by the Welsh Ministers under section 2A of the Act.

Although the Welsh Government's general principle is that the law relating to devolved matters should be made and amended in Wales, on this occasion, I have considered it appropriate for the Secretary of State to legislate in relation to Wales.

The competence position in this area is complex. Whilst the Welsh Ministers have some power to make regulations in this area in relation to Wales, the legal framework in place for the provision of reciprocal healthcare is also intertwined with aspects outside of devolved competence. Therefore, separate UK Government and Wales-only regulations would be interdependent. As this area is so intertwined, I consider it prudent to have the legal framework in Wales established in one set of regulations, rather than split this between Wales only regulations and UK Regulations. This also makes the legislation more accessible, in line with good law principles.

The replacement legislative provision made by the HIA Regulations in relation to the UK's regime for reciprocal healthcare broadly retains the status quo under the current HEEASA Regulations. This means that provision which the Secretary of State would make in the HIA Regulations in relation to Wales and in devolved areas would be equivalent to the provision we would make in Wales only regulations. Therefore, having the UK Government make this provision for Wales would not be detrimental to the policy position in this area. This approach also does not preclude the Welsh Ministers from making Wales only regulations under section 2A of the Act in future.

Countries covered by International Healthcare Agreements are listed in a Schedule to the HIA Regulations. Given the UK Government is seeking agreements with a number of countries in the coming years and that each time countries are listed in the Schedule will need to be amended by affirmative procedure, I regard it as more pragmatic and efficient to have UK Government carry out this work on our behalf.

The approach within the HIA Regulations as drafted is not in conflict with either the Programme for Government or the Co-operation agreement.

These Regulations do not have implications for the Programme for Government.

I have written similarly to Russell George MS, the 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